

AMENDMENT NO. 17 TO LEASE NO. 5352  
Parcel No. 13R - Marina del Rey

READJUSTMENT OF RENT

THIS AMENDMENT TO LEASE is made and entered into this 1<sup>st</sup> day of February, 2000 (the "Effective Date"),

BY AND BETWEEN

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

AND

VILLA DEL MAR PROPERTIES, LTD., a limited  
partnership, hereinafter referred to as "Lessee"

WITNESSETH:

WHEREAS, County and Lessee's predecessors in interest have, on the 7th day of September, 1961, entered into Lease No. 5352 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 13R, which leasehold premises (the "Premises") are more particularly described in Exhibit "A" attached to and incorporated into said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of July 1, 1997, and as of July 1st of every tenth (10th) year thereafter (the "Rental Adjustment Date"), the square foot rental and all categories of percentage rentals shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, Section 15 further provides that such readjustments shall be accomplished by agreement of the parties and in event such agreement cannot be reached, the readjustments shall be settled by binding arbitration in the manner set forth at length in said Section 15; and

WHEREAS, Section 26 of the Lease provides that the amounts of casualty insurance required to be maintained by Lessee by said Section shall be subject to renegotiation at the same time and in the same manner as the amounts of rent to be adjusted under the Lease; and

WHEREAS, the parties hereto have reached agreement with respect to the square foot rental, percentage rental, and amounts of liability insurance which are to apply for the ten (10) year period commencing as of July 1, 1997 (the "1997 Rental Adjustment Date"); and

WHEREAS, the parties hereto have reached agreement with respect to the amount of interest and the time over which Lessee shall make payments of the Retroactive Rent due to the County as a result of this Lease Amendment (as that term is subsequently defined); and

WHEREAS, due to multiple previous amendments to Section 13, the parties wish to restate said Section 13 in its entirety with the incorporation of the adjusted rentals specified herein;

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

**1. Square Foot Rental.** Commencing as of the 1997 Rental Adjustment Date, the first Paragraph of Section 12 (SQUARE FOOT RENTAL) of said Lease is deemed amended to read as follows:

"From the 1997 Rental Adjustment Date through June 30, 2000, the annual square foot rental for the whole of the Premises herein demised shall be Three Hundred Twenty-Four Thousand, Seven Hundred Eighty-Nine Dollars (\$324,789), payable in monthly installments of Twenty-Seven Thousand, Sixty-Six Dollars (\$27,066). The annual square foot rental shall be readjusted on July 1, 2000 and every third year thereafter to equal seventy-five percent (75%) of the annual average of all rents payable by Lessee under the Lease for the immediately preceding three-year period.

**2. Percentage Rentals.** Commencing as of the 1997 Rental Adjustment Date, Section 13 (PERCENTAGE RENTALS) of said Lease is hereby deemed deleted and the following is deemed substituted therefor:

Gross receipts from each transaction, sale or activity of Lessee and/or sublessee shall be reported under one or more of the following percentage categories, as applicable. It is understood that Section 3 of this Lease provides for all the purposes or uses of the demised Premises and that the percentage categories listed hereafter are not all applicable to this Lease and are in no way intended to expand the purposes and uses provided for by Section 3. The Director, by policy statement and with the approval of the Lessee, Auditor-Controller and County Counsel, may further interpret the percentage categories as set forth in this Section 13, with such determination and interpretation to be a guideline in determining the appropriate categories.

Within fifteen (15) days after the close of each and every calendar month of the term hereof, Lessee shall file a report of gross receipts and pay to County a sum equal to the total of the following percentages for said previous month, less the amount of monthly installment of square foot rent paid for said previous month as provided for in Section 12.

(a) TWENTY-FIVE PERCENT (25%) of gross receipts from the rental or other fees charged for the use of boat slips, anchorages, moorings, dockside gear lockers or dockside storage space, and such other facilities and services ancillary thereto as are provided in common to all tenants;

(b) TWENTY-FIVE PERCENT (25%) 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;

(c) (i) TEN AND ONE-HALF PERCENT (10-1/2%) of gross receipts or other fees charged for the occupancy of apartments;

(c) (ii) SEVEN AND ONE-HALF PERCENT (7-1/2%) of gross receipts or other fees charged for the occupancy of structures and other facilities including, but not limited to, (1) [left blank intentionally] (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, (5) rental of land and/or water facilities for activities not otherwise provided for in this Section such as but not limited to television and/or motion pictures, (6) 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 SEVEN AND ONE-HALF PERCENT (7-1/2%), and (7) 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;

(c)(iii) TWENTY-FIVE PERCENT (25%) of gross receipts or other fees constituting liveaboard charges over and above slip rental fees imposed by anchorages for the privilege of a boat owner living on his boat;

(d) ONE PERCENT (1%) of gross receipts from the sale of new or used boats, boat trailers, house trailers and trailer cabanas including credits for used items taken in trade as part payment for new items, as reflected in the bill of sale. However, the trade-in allowance for such used item taken in trade may be deducted from the sale price of said used item, provided said used item is sold within one hundred twenty (120) days of the date of the bill of sale which established said trade-in allowance;

(e) FIVE PERCENT (5%) of commissions or other fees earned from boat brokerage, car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, telephone service charges, laundry and dry cleaning commissions and other similar activities where earnings are normally on a commission basis when said activity is approved in advance by the Director;

(f) FIVE PERCENT (5%) of gross receipts received by Lessee or sublessee or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee from service enterprises;

(g) SIX PERCENT (6%) of gross receipts received by Lessee or sublessee or TWENTY PERCENT (20%) of any commissions or fees collected from commercial boating activities including, but not limited to, charter boat, bareboat charters and sportfishing boats;

(h) FIVE PERCENT (5%) of gross receipts received by Lessee or sublessee or TWENTY-FIVE PERCENT (25%) of any commissions or other fees collected for the installation and/or operation of coin-operated vending or service machines including pay telephones;

(i) TEN PERCENT (10%) of gross receipts from 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 (j);

(j) THREE PERCENT (3%) 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 (s);

(k) ONE AND ONE-HALF CENTS (\$0.015) per gallon of gasoline, diesel fuel or mixed fuel sold or SIX PERCENT (6%) of gross receipts of such sales, whichever is the greater;

(l) FIVE PERCENT (5%) of gross receipts from sales by a fuel sales facility of petroleum or fuel products other than those covered by Subsection (k) above;

(m) FIFTEEN PERCENT (15%) of gross receipts from club dues, initiation fees, and assessments, except that separate assessments for capital improvements are exempted, provided that to qualify for such an exemption, Lessee must comply with the "Criteria for Eligibility for Exemption of Special Assessments from Gross Receipts" issued by the Director;

(n) FIVE PERCENT (5%) of gross receipts or other fees charged from the operation of sightseeing boats, tour boats, or water taxis;

(o) TWO PERCENT (2%) of gross receipts from the operation of a cable television facility under a franchise granted by the County of Los Angeles;

(p) THREE PERCENT (3%) of gross receipts or other fees charged by authorized boat repair yards, including repair, painting, tugboat, salvage and boat pump-out services and similar activities, except that where parts and materials are separately invoiced, they may be reported under Subsection (s) of this Section;

(q) FIVE PERCENT (5%) of gross receipts or cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters whose gross receipts shall be reportable under Subsection (s);

(r) TWENTY PERCENT (20%) of gross receipts from parking fees except as provided for in Subsection (c);

(s) FIVE PERCENT (5%) of gross receipts from the sale of miscellaneous goods and services not specifically provided for elsewhere in this Section.

If rent payments actually made by Lessee exceed the total percentage rentals when computed on an annual basis for any calendar year, Lessee shall be allowed credit for the amount by which the rental payments exceed the sum of the percentage rentals when computed on an annual basis for the calendar year, provided, however, that the total rental paid shall be no less than the annual rental provided for in Section 12.

Where a sublessee, licensee, or permittee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold except for those uses or occupations delineated under Item (7) of Subsection (c)(ii) of this Section, Lessee shall report whichever of the following results in the greater percentage rental: (1) The gross receipts of each sublessee under one or more of the appropriate subsections of this Section; or (2) Lessee's receipts from each sublessee under Subsection (c) of this Section.

Interest, service, or late charges collected in conjunction with a transaction, sale, or activity of Lessee or sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

Furthermore, where the Director and the Lessee and/or sublessee find that a percentage of gross receipts is not suitable or applicable for a particular activity not otherwise provided for herein, the Director may establish a minimum monthly rental or fee for that activity. Said rental or fee shall be set by the mutual consent of Director and Lessee and shall be reasonable in accordance with the revenue generated by the Lessee and/or sublessee.

**3. Retroactive Rent & Interest.** The amounts owed by Lessee to County representing the difference between (i) the percentage rents payable by Lessee under the rental rates in effect prior to the effectiveness of this Lease Amendment from the 1997 Rental Adjustment Date to the Effective Date and (ii) the sum which is calculated to be due for percentage rent from the 1997 Rental Adjustment Date to the Effective Date based upon the rental adjustments set forth in Section 2 of this Lease Amendment (the "Retroactive Rent") shall bear simple interest at the rate of 3.56% per annum from the date originally due until all Retroactive Rent and interest is paid in full. Full payment of all Retroactive Rent and interest shall be paid no later than ten (10) business days after the Effective Date.

**4. Indemnity Clause and Casualty Insurance.** Commencing as of the Effective Date, the second paragraph of Section 26 (INDEMNITY CLAUSE AND CASUALTY INSURANCE) is deleted and the following substituted therefor:

"Lessee shall maintain in full force and effect during the term of this Lease comprehensive general liability insurance written on a commercial general liability policy form CG 00 01, or its equivalent, covering the hazards of premises/operations, contractual, independent contractors, advertising, products/completed operations, broad form property damage and personal injury with a combined single limit of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate. The County, its Board of Supervisors, its officers, agents and employees shall be named as additional insureds under such liability insurance policy or policies."

5. **Miscellaneous.** Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

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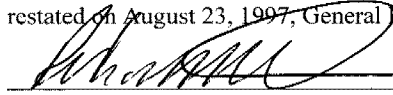
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IN WITNESS WHEREOF, the County has, by order of the Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chair of said Board and attested by the Clerk thereof, and the Lessee has executed the same the day and year first hereinafter written.

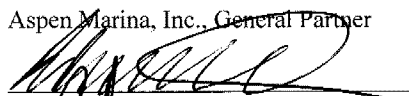
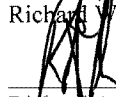
Dated: February 1, 2000

VILLA DEL MAR PROPERTIES, LTD., a limited partnership


By: Richard W. Silver 1988 Living Trust as amended and restated on August 23, 1997, General Partner

  
Richard W. Silver, Trustee

By: Aspen Marina, Inc., General Partner

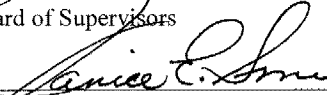
  
Richard W. Silver, President  
  
Richard A. Franklin, Secretary/Treasurer

COUNTY OF LOS ANGELES

By:   
Gloria Molina  
Chair, Board of Supervisors

ATTEST:

~~Laura Stanger~~ VIOLET VARONA-LUKENS  
Executive Officer-Clerk of the Board of Supervisors

By:   
Janice L. Smith  
Deputy



**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

APPROVED AS TO FORM:

Lloyd W. Pellman  
County Counsel  
By:   
Lloyd W. Pellman  
Deputy County Counsel

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FEB 1 2000

  
VIOLET VARONA-LUKENS  
EXECUTIVE OFFICER