AMENDMENT NO. 7 TO LEASE NO. 5577
Parcel No. 42/43 - Marina del Rey

5577
SUPPLEMENT 7

THIS AMENDMENT TO LEASE (the "1989 Amendment") is made and entered into this 6th day of June, 1989 (the "Effective Date"),

BY AND BETWEEN COUNTY OF LOS ANGELES, hereafter referred to as "COUNTY",

AND MARINA INTERNATIONAL PROPERTIES, LTD., a California limited partnership, hereafter referred to as "LESSEE."

W I T N E S S E T H:

WHEREAS, Lessee and County entered into Lease No. 5577 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 42/43, which leasehold premises are more particularly and legally described in Exhibit "A" (the "Premises") attached to and incorporated in said lease, as amended (the lease and all amendments collectively hereafter referred to as the "Lease"); and

WHEREAS, disputes have arisen between County and Lessee regarding rent-related issues; and

WHEREAS, the parties hereto have reached an agreement with respect to such outstanding disputes.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and conditions contained herein, the parties, and each of them agree that the Lease is hereby amended as follows:

1. Past Due Rent.

(a) On the date set forth in subsection (c) below, Lessee shall pay to County the difference between: (a) the sum of the following (the "Retroactive Rent"): (i) 22.5% of the gross receipts from Boat Slip Rentals (as hereafter defined) for the period from March 1, 1983 through February 28, 1987, and 25% of the gross receipts from Boat Slip Rentals for the period from March 1, 1987 through the Effective Date; plus (ii) 25% of the gross receipts from Liveaboard Charges (as hereafter defined) for the period from March 1, 1983 through the Effective Date; plus (iii) 10% of the gross receipts from Boat Commissions (as hereafter defined) for the period from March 1, 1983 through the Effective Date; plus (iv) 3.5% of the gross receipts from Restaurants (as hereafter defined) for the period from March 1, 1983 through the Effective Date; plus (v) 5% of the gross receipts from Miscellaneous Sales (as hereafter defined) for the period from March 1, 1983 through the Effective Date; plus (vi) 2% of the gross receipts from Retail Stores (as hereafer defined) for the period from March 1, 1983 through the Effective Date; and (b) sums actually paid to the County prior to the Effective Date as percentage rentals for the categories of percentage rentals specified in the preceding clauses (a)(i)

through (a)(vi) for the period from March 1, 1983 through the Effective Date pursuant to Section 13 of the Lease. Lessee acknowledges and agrees that the Retroactive Rent due from Lessee to County for the period ending on February 28, 1989 is $327,572.58.

(b) In addition to the Retroactive Rent, Lessee shall pay to County 4.5% interest on the Retroactive Rent from March 1, 1983 through one year after the Effective Date, and 5% thereafter, compounded annually, calculated on the additional amount of percentage rent which is due pursuant to this 1989 Amendment from each day on which percentage rental was due to the County pursuant to the Lease (the "Interest"), until paid. County agrees to accept the Interest in lieu of interest, late charges or other penalties. The Interest shall be paid together with Retroactive Rent as set forth in subsection (c) below. Lessee acknowledges and agrees that the Interest which will accrue through June 15, 1989 on the Retroactive Rent which is due for the period ending February 28, 1989 is $40,116.46.

(c) The Retroactive Rent and Interest shall be due and payable to County commencing sixty (60) days after the Effective Date in equal monthly installments sufficient to fully amortize the amount of Retroactive Rent plus Interest over a term of eighteen (18) months.

2. Current Rent.

(a) Commencing on the Effective Date, the first paragraph of Section 12 of the Lease is amended to read as follows:

"The annual square foot rental for the whole of the Premises herein demised shall be 75% of all rent payable with respect to calendar year 1988, including without limitation all square foot and percentage rentals for such calendar year payable pursuant to the 1989 Amendment."

(b) Commencing on the Effective Date, the following subsections are substituted for the corresponding subsections in Section 13 (PERCENTAGE RENTALS) of the Lease:

"(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, dockside storage space, and such other facilities and services ancillary thereto as are generally provided in common to tenants (collectively, "Boat Slip Rentals")."

"(c) (i) TEN AND ONE-HALF percent (10.5%) of the gross receipts or other fees charged for the occupancy of apartments ("Apartments").

"(ii) SEVEN AND ONE-HALF percent (7.5%) of gross receipts or other fees charged for the occupancy of structures and other facilities other than Apartments or Offices, such as (1) hotel and/or motel accommodations, (2) house trailers, (3) meeting rooms, (4) 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, and (5) 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 (7.5%).

"(iii) ELEVEN percent (11%) of gross receipts or other fees charged for the occupancy of offices utilized for banking, financial or investment activities, internal clerical or administrative activities of business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, or similar professional services (collectively, "Offices"), 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.

"(iv) TWENTY-FIVE percent (25%) of gross receipts obtained from boat owners who live on their boats ("Liveaboard Charges")".

"(e) TEN percent (10%) 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 Director (collectively, "Boat Commissions")."

"(j) (i) THREE percent (3%) of gross receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities operated in hotels (collectively, "Hotel Restaurants"), except that gross receipts from facilities established and operated as a take-out food operation shall be reported under Subsection (j)(ii);

"(ii) 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 (collectively, "Restaurants"),

including gross receipts from facilities established as a take-out food operation."

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

"(t) TWO percent (2%) of gross receipts from the operation of all stores, shops or boutiques selling items at retail ("Retail Stores")."

(c) The square foot and percentage rentals and the liability insurance limits set forth in this 1989 Amendment shall be adjusted as set forth in Section 3 below.

3. Dispute Resolution Mechanisms. The following section is substituted for Section 15 (GENERAL RENT RENEGOTIATION AND ARBITRATION) of the Lease:

"15. GENERAL RENT ADJUSTMENT AND ARBITRATION

"(a) The rates for square foot rental and percentage rentals, and the liability insurance limits, shall apply and be in effect through February 28, 1993. As of March 1, 1993 and as of March 1 every tenth (10th) year

thereafter (each such date is hereafter referred to as a "Rental Adjustment Date"), the rates for square foot rental and all categories of percentage rentals, and liability insurance requirements (hereafter collectively referred to as the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the following standards:

"(i) The rates of square foot rental and percentage rentals shall be readjusted to Fair Market Rental as of each Rental Adjustment Date. "Fair Market Rental" shall be the fair rental value of the property subject to this Lease, taking into consideration the uses permitted thereunder and all of its terms, conditions, and restrictions, franchise value, earning power, and all of the factors and data required or proper to be considered in determining fair market value under the laws of eminent domain in the State of California.

"(ii) The liability insurance limits shall be readjusted on each Rental Adjustment Date to equal the amount of liability insurance which would customarily be carried by owners of similar property or required by institutional holders of liens against similar properties, exercising in each case reasonable and prudent business judgment.

"(b) If for any reason the Adjusted Rentals shall not be finally determined until after any given Rental Adjustment Date, Lessee shall continue to pay square foot and percentage rentals and maintain insurance at the rates and in the amounts in effect immediately prior to such Rental Adjustment Date until determination of the adjusted rental and insurance amounts, and such rental shall be credited against the amount of the adjusted square foot and percentage rentals when finally determined; provided, however, that the amount fixed as the new square foot and percentage rentals shall accrue from the applicable Rental Adjustment Date, together with interest at the rate provided in subsection (e) below on the unpaid amounts from the date such rentals otherwise would have been due until the date actually paid, and proper adjustment shall be made for payments made by Lessee at the former rates during said period and interest accrued as provided in subsection (e) below.

"(c) Adjusted Rentals may be determined by Lessee and County by mutual agreement at any time.

"(d) (i) In the event the parties hereto are unable to reach agreement on amounts of Adjusted Rentals on or prior to the date which is ten (10) months prior to the applicable Rental Adjustment Date, either party may elect at any time on or after such date to submit such dispute to

arbitration (the "Arbitration Process"). Any such arbitration shall occur in the County of Los Angeles before a single arbitrator who shall be selected as set forth herein. Either party may initiate (the "Initiating Party") the Arbitration Process by sending written notice to the other party (the "Responding Party"), requesting initiation of the Arbitration Process.

"(ii) Disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which is as of the Effective Date contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280 (the "California Arbitration Act"), except as otherwise provided herein. However, notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply:

"(A) The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any Federal District Court or Court of Appeals.

"(B) If, for any reason whatsoever, the parties are unable to agree upon the arbitrator within twenty-five (25) days of the date the Initiating

Party sends written notice to the Responding Party, then at any time on or after such date either party may petition the court for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

"(C) County and Lessee hereby affirm that a mutual objective of such arbitration is to cause the Adjusted Rentals to be determined as expeditiously as possible. The Arbitration Process shall not apply to or be used to determine issues other than the Adjusted Rentals. The arbitrator shall render an award. Either party may, at its sole cost and expense, request findings of fact and conclusions of law ("Findings"). However, the Findings shall be solely to require the arbitrator to explain his or her reasoning and shall be in such detail as the arbitrator may determine in his or her sole discretion. Findings shall not be used for any purpose whatsoever, including without limitation as grounds for a petition to confirm, vacate or modify an award or any appeal that may be taken pursuant to this Section 15. The award determining Adjusted Rentals should be made by the appointed arbitrator no later than six (6) months after the date on which the arbitrator is selected by mutual agreement of the parties, or six (6) months after the date on which the court signs the

order appointing the arbitrator, whichever applies. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award determining Adjusted Rentals no later than the end of such six (6) month period. Notwithstanding the foregoing, failure to complete the arbitration within such six (6) month period shall not render such arbitration or any determination made therein void or voidable.

"(D) The first sentence of Code of Civil Procedure §1280.1 as existing on the Effective Date shall apply to the arbitration proceedings throughout the term of the Lease, without regard to the second sentence of said section.

"(E) The provisions of Code of Civil Procedure §1282.2 shall apply to the arbitration proceedings except as follows:

"(I) The arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said §1282.2 not less than 120 days before the hearing, regardless of the aggregate amount in controversy.

"(II) Twenty-five (25) days prior to the date first set for the hearing, in lieu of the exchange and inspection authorized by Code of Civil Procedure §1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

"(x) A list of witnesses each intends to call at the hearing, designating which witnesses will be called as expert witnesses;

"(y) A list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and

"(z) A list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

"(III) Neither party may, at any time during the proceedings, introduce any written report of an expert witness which expresses an opinion regarding Fair Market Rentals ("Written Appraisal Evidence") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of the Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees within Southern California who are authorized to conduct similar activities on comparable leaseholds, if any; describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed; and express an opinion regarding the fair market rental value of the Premises as prescribed by Section 12 (Square Foot Rental) and Section 13 (Percentage Rentals) that should be paid by the Lessee for the next period of ten (10) years. Such Written Appraisal Evidence shall in all other respects be in material conformity with and subject to the requirements of the Code of Professional Ethics and the Standards of

Professional Practice of the American Institute of Real Estate Appraisers.

"(IV) The provisions of Code of Civil Procedure §1282.2(a)(2)(E) shall apply except with respect to Written Appraisal Evidence. The arbitrator shall have no discretion to allow a party to introduce Written Appraisal Evidence unless such evidence substantially complies with the requirements of subsection (III) and was previously delivered to the other party in accordance with subsection (II).

"(F) The provisions of Code of Civil Procedure §1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in subsection (E) above.

"(G) Either party may appeal from an order dismissing or denying a petition to compel arbitration, an order dismissing a petition to confirm an award, or an order vacating an award unless a rehearing in arbitration is ordered. The parties waive any right

to appeal from a judgment confirming an arbitration award, from an order dismissing a petition to correct or vacate an award, from an order vacating an award in which a rehearing in arbitration is ordered, or from a special order after final judgment. The provisions of Code of Civil Procedure §1294 (d) and (e) shall not apply.

"(H) Lessee and County shall equally share the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator, excluding counsel fees or witness fees or other fees incurred by a party for its own benefit. If either party fails to pay its share of such expenses and fees as and when due, the other party may pay such expenses and fees on behalf of the defaulting party. The party paying such expenses and fees on behalf of such defaulting party shall be entitled to recover the actual amounts paid, together with interest at the maximum rate then allowed by law, on demand from the defaulting party. If Lessee is the defaulting party all sums advanced by County to pay such expenses and fees, with interest at such maximum rate, shall be due to County as additional rent. If County is the defaulting party all sums advanced by Lessee to pay such expenses and fees, with interest at such maximum rate,

may be deducted from the next installments of square foot and percentage rentals due to County pursuant to the Lease.

"(e) If the Adjusted Rentals are determined after the applicable Rental Adjustment Date, then on the Settlement Date (as defined below), for the period between the applicable Rental Adjustment Date and the actual date of payment (the "Retroactive Period"), Lessee shall pay to County, or County shall credit to Lessee, the difference between the actual rents paid by Lessee and the rents that should have been paid in accordance with the new rental rates as so determined (the "Retroactive Payment"). If the amount of rent paid by Lessee to County during the Retroactive Period is more or less than the amount which is determined to be due, then Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of the Retroactive Payment from each date on which the applicable square foot rental and percentage rentals were payable under the Lease to the date paid or credited, whichever is applicable, at the following rates:

"(i) If the Settlement Date occurs no later than six months after the applicable Rental Adjustment Date, the interest rate shall be equal to the average daily rate computed by the Auditor-Controller of

the County for the funds held and invested by the Treasurer and Tax Collector (the "County Pool Rate") during the period between the Rental Adjustment Date and the Settlement Date.

"(ii) If the Settlement Date occurs later than six months after the Rental Adjustment Date, the interest rate shall be the average County Pool Rate for the six month period after the Rental Adjustment Date, and the average prime rate published in the Wall Street Journal plus three percent (3%) for the period between that date which is six months after the Rental Adjustment Date and the actual date of payment.

"(iii) In no event shall the rate of interest payable pursuant to this Lease exceed the maximum rate permitted by law.

If the Adjusted Rentals are determined by mutual agreement, the Settlement Date shall be three (3) working days after the date on which the Adjusted Rentals are determined. If the Adjusted Rentals are determined by arbitration, then the Settlement Date shall be five (5) working days after the award is made by the arbitrator, regardless of whether a party intends to file or actually does file a petition to confirm, correct or vacate such award. Notwithstanding the foregoing, if the Adjusted

Rentals are determined to be less than the rentals paid prior to the applicable Rental Adjustment Date, County shall have the option to credit the amount of the Retroactive Payment plus interest thereon as provided above against the next installments of square foot and percentage rentals due following the Settlement Date."

4. Liability Insurance. Commencing as of the Effective Date the liability insurance limit shall be no less than a combined single limit of $5,000,000, or such greater amount as may be required by any holder of an encumbrance on the Premises which has been approved in accordance with Section 22 of the Lease. The amounts of liability insurance required by the Lease shall be subject to adjustment on each Rent Adjustment Date to the amount required by Section 15(a)(ii) above.

5. Dismissal. Lessee hereby agrees to sign a Request for Dismissal with Prejudice solely on behalf of Lessee in Marina International Properties, Ltd., et al. v. County of Los Angeles (LASC Case No. WEC 097090) (the "Action"), only with respect to Parcel 42/43. County hereby agrees to sign a Request for Dismissal with Prejudice solely for the benefit of Lessee and Lessee's lender with respect to the cross complaint filed by County in the Action, only with respect to Parcel 42/43.

6. 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 their respective obligations under the Lease as amended hereby.

"LESSEE":

MARINA INTERNATIONAL PROPERTIES, LTD., a California limited partnership

By: Real Property Management, Inc., General Partner

By: _____
Abe Lurie, President

ATTEST:

_____, Executive Officer-Clerk of the Board of Supervisors

COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

APPROVED AS TO FORM

DeWitt W. Clinton,
County Counsel

By: _____
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

09 JUN 06 1989

LARRY J. MONTEITH
EXECUTIVE OFFICER

Riordan & McKinzie, a professional corporation

By: _____
Richard J. Riordan,
Principal

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