

Recording requested by, and please return to:

Department of Beaches and Harbors
13837 Fiji Way
Marina del Rey, California 90292

86 140087
86-1400875

Lease No. 5246
Sup. No. 9
Approved 9/23/86

NOTICE OF AMENDMENT TO LEASE

FREE 2 0

TO WHOM IT MAY CONCERN:

Please take notice that on the 23rd day of September, 1986, the County of Los Angeles, as Lessor, and Del Rey Restaurant Corporation, as Lessee of the following described parcel or parcels of land and water situated within the Marina del Rey Small Craft Harbor of the County of Los Angeles, State of California, previously referred to as Parcel(s) Number 61, now known as Parcel(s) Number 61, legally described in Exhibit "A" attached hereto and incorporated herein, did enter into an agreement amending that certain indenture of lease dated December 19, 1961. Neither the lease term nor the rental provisions have been modified by said document. Said original indenture and said agreement of amendment are on file in the official files of the Executive Officer-Clerk of the Board of Supervisors of the County of Los Angeles.

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RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
4 MIN. 8 A.M. OCT 17 1986
STATE OF CALIFORNIA

County of Los Angeles
Department of Beaches and Harbors
By K. C. Klinger
K. C. Klinger, Chief
Revenue Properties Division

County of Los Angeles)

On this 10th day of Oct., A.D., 1986, before me Larry J. Monteilh Executive Officer-Clerk of the Board of Supervisors of the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared K. C. KLINGER, known to me to be the Chief, Revenue Properties Division of the Department of Beaches and Harbors of the County of Los Angeles and the person who executed the within instrument on behalf of the County therein named, and acknowledged to me that such County executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year of this certificate first above written.

LARRY J. MONTEILH, Executive Officer-Clerk of
the Board of Supervisors of the County of Los Angeles

By Marsha L. Gray Deputy

AMENDMENT NO. 9 TO LEASE NO. 5246
 PARCEL NO. 61 - MARINA DEL REY

RENEGOTIATION OF RENT

THIS AMENDMENT TO LEASE made and entered into this 23rd day
 of September, 1986.

BY AND BETWEEN

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

AND

DEL REY RESTAURANT
 CORPORATION, a California
 corporation, hereinafter
 referred to as "LESSEE",

W I T N E S S E T H

WHEREAS, on December 19, 1961, Lessee and County entered into a lease and agreement 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 61, which leasehold premises are more particularly and legally described in Exhibit "A" attached to and incorporated in said lease No. 5246, as amended; and

WHEREAS, Section 15 of said lease provides that the square foot and percentage rents shall be renegotiated at the end of the first five (5) years of the term and at the end of each ten (10) year period thereafter in accordance with the standards of fair market value; and

WHEREAS, said Section 15 further provides that such readjustment shall be accomplished by agreement of the parties, and in the event such agreement cannot be reached, the readjustment shall be determined by a board of three (3) real estate appraisers in the manner set forth at length in said Section 15; and

WHEREAS, the parties have arrived at an agreement upon the readjustment of the rents without the necessity of arbitration by real estate appraisers;

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

1. The following paragraph is substituted for the first paragraph of Section 12 (SQUARE FOOT RENTALS).

"The annual minimum rent for the next ten (10) years of the term commencing on May 10, 1986, shall be the sum of forty-eight thousand dollars (\$48,000), unless there is a sale of the leasehold estate in which event the rent may be increased to a

greater amount equal to seventy five percent (75%) of the percentage rent for the five year period next preceding the date of sale. The words "date of sale" mean the earlier of either the delivery of the documents of transfer of the lease or the transfer of possession of the leasehold premises to the purchaser. This percentage readjustment of the rent shall occur each time the leasehold is sold".

2. The following paragraph is substituted for subsection (j) of Section 13 (PERCENTAGE RENTALS).

"Three and one-half percent (3½%) 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)."

3. The following paragraph is substituted for subsection (s) of Section 13 (PERCENTAGE RENTALS).

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

4. All other subsection of Section 13 (PERCENTAGE RENTALS) are continued without change, as it is agreed that their readjustment for the current ten (10) year period of the term in accordance with the provisions of Section 15 (GENERAL RENT RENEGOTIATION AND ARBITRATION) shall be postponed to the date, if any, that a request is made by the Lessee to engage in the activities to which the percentage rents apply, at which time it shall be readjusted in accordance with the provision of Section 15 as amended herein for the fair rental value for the use(s) requested for the date on which the request is made.

5. The following paragraph is added to Section 12 (Square Foot Rental).

"A late payment charge of ten percent (10%) per annum prorated on a daily basis shall be added to the payment of any monthly installment that is received by County after the tenth day of the month for which payment is due. The late payment charge may be cancelled, whenever the Director finds on appeal of Lessee that late payment was excusable by reason of extenuating circumstances. Any late payment shall be due and payable with the next rental payment. County shall not be obligated at any time to notify Lessee of late payment charges on the accumulated amount of these charges."

6. The following paragraph is added to Section 13 (Percentage Rentals).

"A late payment charge of ten percent (10%) per annum prorated on a daily basis shall be added to any payment of the monthly percentage(s) of gross receipts in excess of the monthly

installment of the annual minimum rent that is received by County after the twentieth day after the close of the calendar month for which a payment is due. The late payment charge may be cancelled, whenever the Director finds on appeal of Lessee that late payment was excusable by reason of extenuating circumstances. Non-payment and/or late payment of percentage rent(s) due to the failure of an assignee, sublessee, licensee, permittee or concessionaire of Lessee to report and/or pay percentage rent(s) on its gross receipts to Lessee shall be recognized as grounds for cancellation of the late charge. Any late payment charge shall be due and payable with the next rental payment. County shall not be obligated to notify Lessee of late payment charges on the accumulated amount of these charges."

7. The following paragraphs are substituted for Section 15 (GENERAL RENT RENEGOTIATION AND ARBITRATION).

"Except as provided in Section 14, the square foot and percentage rentals hereinbefore provided for shall apply and be in effect for the first five (5) years of the term hereof. At the end of said period, and at the end of every ten (10) year period thereafter, the said rentals shall be readjusted as provided hereinafter.

"Such rentals shall be readjusted by Lessee and County, in accordance with standards of and for fair rental value hereinafter set forth, at some time not more than nine (9) months and not less than six (6) months before the beginning of each such period. In the event Lessee and County cannot agree upon the readjustment of rentals, the same shall be determined by a board of three (3) real estate appraisers, one of whom shall be appointed by County, one by Lessee, and the third by the two (2) appraisers so appointed.

"If the rentals have not been readjusted by mutual agreement within the three-month period above prescribed, County shall give to Lessee a written notice demanding submission of any unresolved issues to said board of real estate appraisers and nominating the person to act as real estate appraiser on behalf of County. Within fifteen (15) days from the service of such notice, Lessee shall appoint its real estate appraiser and notify County of such appointment. If either party shall not have notified the other in writing of the appointment of its real estate appraiser, the Presiding Judge of the Superior Court of the State of California, in and for the County of Los Angeles, shall upon request of either party, appoint the real estate appraiser for the party so in default. If the two (2) real estate appraisers so chosen shall be unable to agree upon the third real estate appraiser within ten (10) days after the appointment of the second real estate appraiser, the third real estate appraiser shall be appointed by the Presiding Judge of said Superior Court upon request of either party. Any vacancy on the board of real estate appraisers shall be filled by the party who or which made the original appointment

to the vacant place. If not so filled within ten (10) days from the commencement of said vacancy, the vacant position shall be filled by the said Presiding Judge upon request of either party.

"The board of real estate appraisers shall, immediately upon the appointment of its members, enter upon the discharge of its duties and determine the amount of readjusted rentals and notify the parties thereof in writing within sixty (60) days after its appointment. A majority of the real estate appraisers who agree thereto may readjust such rentals, such readjustment to be based upon a determination of the fair rental value of 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 relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California; also provided that at all times during the term of this lease the total of such rentals shall be in such amount that the property hereby demised shall produce at least its proportionate share of the revenue required by Government Code Section 26360 and the revenue required to meet the obligations of County under that certain Revenue Bond Resolution of the County Board of Supervisors referred to in Section 46; and, notwithstanding the renegotiation and arbitration provisions of this Section 15, the minimum rental under this lease shall never be lower than the product of Twenty One cents (\$.021) multiplied by the square feet of the leased land and water area. In the event said real estate appraisers fail to determine and give notice of the amounts of readjusted rentals within sixty (60) days, a new board of real estate appraisers shall be appointed in the manner hereinbefore prescribed.

"If for any reason said readjusted rentals shall not be finally determined until after the beginning of any period for which the same must be readjusted, Lessee shall continue to pay rentals at the former rate as a credit against the amount of the readjusted rentals when finally determined; provided, however, that the amount fixed as the readjusted rentals shall accrue from the beginning of said period and proper adjustment shall be made for payments made by Lessee at the former rates during said interim. The costs and expenses of each of the two (2) real estate appraisers appointed by the parties shall be borne by the party so appointing. Costs and expenses of the third real estate appraiser shall be equally divided between the parties.

"Any difference between the amount fixed as the readjusted rental and the actual rental paid that may accrue from the effective date for commencement of the readjusted rental and a post-commencement determination on the readjusted rental, whether by mutual agreement or arbitration, shall be due and payable by Lessee, in the event the readjusted rental exceeds the actual rental paid, or shall be either credited against future rental owed or paid at the option of County, in the event the actual

rental paid exceeds the readjusted rental, within twenty calendar days of the date the readjusted rental is either determined by mutual agreement or arbitration, commencing with the next calendar day following the applicable date of determination. In the case of the readjustment of the rental by mutual agreement the date of determination shall be the effective date of a lease amendment confirming the parties agreement on the readjusted rental to be paid for the period of time for which the readjustment has been made. In the case of readjustment of the rental by arbitration the date of determination shall be the date the arbitration decision becomes final based upon whether County and/or Lessee seek judicial review of the decision that has been made by petition to a court of competent jurisdiction to vacate or correct the arbitration decision. In the event no such petition is filed, the decision shall become final on the next calendar day following the expiration of the statute of limitations for seeking judicial review of an arbitration decision by petition to vacate or correct the decision as set forth in section 1288 of the Code of Civil Procedure of California or any successor statute amending this provision of the law. However, in the event such a petition is filed, the decision shall become final on the day following the date of final judgment by a court of competent jurisdiction that denies the petition to vacate or in the case of a petition to correct grants and/or denies the correction(s) requested.

"The difference shall be paid or credited with interest thereon at a rate that shall be equal to ten percent (10%) per annum. The interest rate shall be prorated on a daily basis. The prorated amount shall be applied to the unpaid balance of the difference to be paid or credited commencing with the date that the readjusted rental shall accrue (i.e. the beginning of the period for which the readjustment was made) and continuing for each successive calendar day thereafter, until the total difference has been paid or credited.

"As further consideration to County for the benefits to be derived by Lessee from this lease amendment, Lessee agrees to resolve its existing controversy with County over whether this section of the lease constitutes a written agreement by the parties to submit their dispute, if any, on the readjusted rental to arbitration, as interpreted by County, or an agreement to submit their dispute, if any, on the readjusted rental to appraisal, as interpreted by Lessee, by accepting the interpretation of County as declaratory of the intention of the parties with respect to the readjustment of the rental by the board of real estate appraisers. Accordingly, it is now recognized and agreed by Lessee, as well as by County, that the following interpretation of this section of the lease is declaratory of their rights and duties in the absence of their mutual agreement on the readjusted rental: the provisions of this section of the lease relating to the submission of the rental dispute to a board of real estate appraisers constitutes a written agreement to submit the rental dispute to arbitration; the determination is to be made in accordance with the process

prescribed in chapter 3, title 9, part 3 of the California Code of Civil Procedure, commencing with section 1282, or any successor statute amending this provision of the law; the members of the board shall be acting as arbitrators and not as appraisers in making this determination; the members of the board shall be entitled to the same protection for resultant liability in making this decision that is afforded to any other person acting as an arbitrator under the doctrine of arbitral immunity as that doctrine is defined by the common law or the statutory enactments of the California Legislature; the neutral arbitrator shall be appointed by the court in accordance with the procedure prescribed by section 1281.6 of the Code of Civil Procedure or any successor statute amending this provision of law, in the absence of a timely mutual agreement on the neutral arbitrator by the two party arbitrators; and the Los Angeles County Trial Panel of Retired Judges and Commissioners shall constitute an independent source of qualified persons from which the court may nominate and appoint a neutral arbitrator under the authorization for the nomination and appointment to be made by the court from lists of persons supplied by a governmental agency or a private disinterested association concerned with arbitration contained in section 1281.6 of the Code of Civil Procedure or any successor statute amending this provision of the law."

8. The following paragraph is substituted for the second paragraph of Section 26 (INDEMNITY CLAUSE AND CASUALTY INSURANCE).

"Lessee shall maintain in full force and effect during the term of this lease, comprehensive general liability insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage liability, less a deductible of \$75,000. The County and the Board of Supervisors, its officers, agents and employees shall be named as additional insureds under such liability insurance policy or policies."

9. The effective date of this amendment shall be May 10, 1986.

10. All other terms shall remain in full force and effect and are reaffirmed.

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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-Clerk thereof, and the Lessee has executed the same the day, month and year first hereinabove written.

DEL REY RESTAURANT CORPORATION

By David C. Tallichet, Jr.
President

By _____

STATE OF CALIFORNIA)
) s.s.
COUNTY OF LOS ANGELES)

On this 8th day of August, in the year 86 before me, Rebecca J. List personally appeared David C. Tallichet, Jr., and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as president (or secretary or on behalf of the corporation therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of of its board of directors.

(SEAL) WITNESS my hand and

official seal.

Rebecca J. List
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE



ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

ATTEST:

LARRY J. MONTEILH, Executive Officer-Clerk of the Board of Supervisors

8 M SEP 23 1986

By [Signature]
Deputy

[Signature]
LARRY J. MONTEILH
EXECUTIVE OFFICER

APPROVED AS TO FORM

DEWITT W. CLINTON
County Counsel



COUNTY OF LOS ANGELES

By [Signature]
Deputy

[Signature]
Chairman, Board of Supervisors

TG:fg
rp6/5: 7-17-86