

AMENDMENT NO. 7 TO LEASE NO. 6051
PARCEL NO. 65R - MARINA DEL REY

6051

SUPPLEMENT 7

RENEGOTIATION OF RENT

THIS AMENDMENT TO LEASE made and entered into this 3rd
day of November, 1988.

BY AND BETWEEN

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

AND

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA,
hereinafter referred to as
"LESSEE",

W I T N E S S E T H:

WHEREAS, on August 29, 1962, Lessee and County entered into a lease and agreement (the lease) under the amended terms of which County leases to Lessee certain real property located in the Marina del Rey commonly known as Parcel 65R (the premises); and

WHEREAS, Sections 15 and 26 of the lease provide that the amounts of the square foot and percentage rents and casualty insurance shall be readjusted at the end of the first five (5) years of the term of the lease and each succeeding ten (10) year period of the remaining term; and

WHEREAS, the next succeeding period of time for which the rental readjustment is to be made is the period from March 1, 1987 to February 28, 1997 (the readjustment period); and

WHEREAS, 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, paragraph 3 of the amendment to the lease dated September 25, 1962, deletes the section of the lease on percentage rents from the lease on condition the premises are not used in any business, use or occupation that makes or earns gross receipts on which percentage rents are paid; and

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

WHEREAS, the parties have limited their agreement on the rental to the square foot rent, since the premises are not being used in any business, use or occupation that makes or earns gross receipts on which percentage rents are paid; and

WHEREAS, the parties wish to amend the lease to provide for a late payment charge on delinquent rent and for a new process for the renegotiation and arbitration of the rent over the remaining term of the lease;

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

1. Section 12 (SQUARE FOOT RENTAL) is amended by deleting paragraph one and substituting the following paragraph.

"The total annual rental for the use of the premises for each of the five consecutive contract years commencing with the first contract year of the readjustment period shall be EIGHT THOUSAND TWO HUNDRED SIXTY DOLLARS (\$8,260). The total annual rent for the use of the premises for each of the remaining contract years of the readjustment period shall be Eight Thousand Two Hundred Sixty Dollars (\$8,260.) adjusted on March 1, 1992, for any positive percentage change in the Residential Rental Component of the Consumer Price Index for all Urban Consumers (base year 1967) for the Los Angeles-Long Beach area, published by the United States Department of Labor, Bureau of Labor Statistics (the index). In order to determine the percentage change in the index, the figure shown on the index published for a date on or most recently before March 1, 1987 (the beginning index), shall be subtracted from the index published on or most recently before March 1, 1992. The difference shall be divided by the figure shown on the beginning index, and that result shall be the percentage change in the index. If the percentage change in the index is positive, it shall be multiplied by Eight Thousand Two Hundred Sixty Dollars (\$8,260), and the resultant figure shall be added to Eight Thousand Two Hundred Sixty Dollars (\$8,260), with the sum of the addition of these two figures being the total annual rent for each of the remaining contract years of the readjustment period. However, if the percentage change in the index is negative, the adjustment just described shall not

be made, and the total annual rent for each of the remaining contract years of the readjustment period shall remain fixed at Eight Thousand Two Hundred Sixty Dollars (\$8,260.)."

2. Section 12 (SQUARE FOOT RENTAL) is further amended by adding the following new paragraph.

"A late 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 or the accumulated amount of these charges."

3. Section 26 (INDEMNITY CLAUSE AND CASUALTY INSURANCE) is amended by deleting paragraphs one and two and substituting the following paragraphs.

"Lessee shall defend, indemnify and hold harmless Lessor, its officers, employees and agents from and against all losses and expenses (including costs of reasonable attorney's fees) by reason of liability imposed by law upon Lessor for damages because of bodily injury, personal injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property, including loss of

4. Section 15 (GENERAL RENT RENEGOTIATION AND ARBITRATION) is amended by deleting paragraphs one through five and substituting the following paragraphs.

"The minimum annual rent and percentage rents shall be readjusted to the fair rental value of the land and water, if any, comprising the premises as of the renegotiation date, in accordance with this Section.

"The renegotiation date shall be March 1, 1967, and each tenth (10th) anniversary of such date over the remaining term of the lease.

"The fair rental value of the premises on the renegotiation date shall mean that fixed dollar amount for the minimum annual rent and the percentages of gross receipts which the land and water, if any comprising the premises, excluding improvements, would bring if exposed for lease in the open market allowing a reasonable time to find a tenant who leases with knowledge of all Relevant Factors, where neither the landlord nor tenant are under abnormal pressure, assuming the continued use of the premises for the then existing university boathouse. "Relevant Factors" shall mean all matters which, in the opinion of a professional real estate appraiser who is a member of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers (an "AIREA/SREA Appraiser"), affect the desirability of the premises, including, by way of example rather than limitation: the nature and type of improvements

then located upon the premises, assuming such improvements have been properly maintained and repaired, ordinary wear and tear excepted; the uses to which the premises and such improvements are then being devoted and ancillary uses, in addition to the university boathouse, and related facilities, to which they might be reasonably adapted under the expressed terms of this lease as it is amended by mutual agreement from time to time; the scarcity value of the land and water, if any, affected by this lease. Percentages shall be established for all classifications of use, irrespective of Lessee's then ability to use the premises therefor, and for all uses to which all or some portion of the premises is then being devoted.

"(a) Renegotiation.

"The process for renegotiation of the minimum annual rent and the percentage rents shall begin not more than one (1) year nor less than nine (9) months prior to the renegotiation date and commence with a written notice from County to Lessee setting forth the County's determination of the fair rental value of the premises. The County's notice must include a list of properties which it has utilized in determining such fair rental value; and, as to any of such properties which are leased or owned by the County, County shall, at Lessee's request, furnish to Lessee such information regarding such properties as Lessee may reasonably request. County shall not be required to furnish any information which County is required to keep confidential.

"If Lessee disagrees with any component of the fair rental value specified by County, Lessee shall give County written notice of such disagreement within the sixty (60)-day period following Lessee's receipt of County's notice (the Lessee's response period). The Lessee's notice must include a list of properties which it has utilized in determining fair rental value. Lessee shall, at County's request, furnish such other information regarding such properties as it possesses. Failure to so notify County during the Lessee's response period shall result in the County's determination of fair rental value becoming binding upon Lessee. Objection to any component shall constitute an objection to County's entire determination.

"Within fifteen (15) days of written request sent by Lessee, County shall furnish Lessee with a list of the then-current rentals being charged by County on the other Marina del Rey parcels specified in the request.

"If Lessee does so notify County as to a disagreement then County and Lessee shall have sixty (60) days from the end of the Lessee's response period (the renegotiation period) within which to attempt to agree upon all components of the fair rental value of the premises. If the parties do so agree within the renegotiation period, they shall execute an addendum to this Lease setting forth the agreed fair rental value of the premises.

"If County and Lessee have not agreed as to the fair rental value of the premises by the end of the renegotiation

period, then each party shall have fifteen (15) days from the end of the renegotiation period to deliver to the other party a written notice setting forth that party's position as to each component of the fair rental value of the premises (the statement of position), and the fair rental value of the premises shall thereafter be determined by arbitration in accordance with the following paragraphs on arbitration. If either party fails to so deliver its statement of position, then the other party's statement of position shall be binding as the fair rental value of the premises.

"If the arbitration is not concluded before the renegotiation date, then the rent to be paid until arbitration is complete shall be computed in the following manner. (1) If only one party's statement of position consists of only figures and percentages set forth in an opinion of fair rental value contained in a written appraisal by an AIREA/SREA Appraiser, dated not more than nine (9) months prior to the renegotiation date (an appraisal-based statement), then rent shall be paid according to the appraisal-based statement. If both parties' statements are appraisal-based statements, then the individual components of rent shall be determined by averaging the components as set forth on the two (2) appraisal-based statements, and such averages shall constitute the method of calculating the rent. (2) If neither party's statement of position is an appraisal-based statement, then the individual components of rent shall be

determined by averaging the components as set forth in the two (2) statements of position. (3) In no event, however, shall the interim minimum monthly rent and percentage rent figures be less than the amounts in effect immediately prior to the renegotiation date.

"(b) Arbitration.

"Arbitration shall be governed by the then existing provisions of California Arbitration Act as contained in Title 9 of Part III of the California Code of Civil Procedure commencing with Section 1280, and its successor provisions, as modified by the following paragraphs.

"The parties shall attempt to agree upon a single arbitrator who shall decide the matter. At the request of either party, however, there shall be a panel of three (3) arbitrators. The arbitrator(s) shall be selected from a list of retired judges who have agreed to resolve civil disputes, and/or from attorneys or other professionals who have real estate experience. If the parties cannot agree upon the arbitrator(s), the arbitrator(s) shall be appointed upon petition of either party to the Superior Court of the State of California, in and for the County of Los Angeles. Absent agreement of the parties, where there are to be three (3) arbitrators, the court shall designate which of the arbitrators shall head the panel and have the powers described in the California Arbitration Act.

"The arbitrator(s) shall have no right to propose a middle ground or any proposed modification of either state-

ment of position. The arbitrator(s) shall instead choose whichever of the two (2) statements of position the arbitrator(s) believe(s) most closely reflects the appropriate resolution of the rent in dispute. The statement of position so chosen shall be final and binding upon the parties, absent fraud or gross error on the part of the arbitrator(s).

"The arbitrator(s) shall have the right to consult experts and competent authorities with factual information or evidence pertaining to a determination of the dispute, but any such consultation shall be made in the presence of both parties and their representatives, with full right in each party to cross-examine. Each party shall have the right to subpoena documents and employees or experts of the other party and shall have the opportunity to present evidence as to the merits of its statement of position at the same hearing and shall have the right to cross-examine evidence presented by the other party. Notwithstanding the foregoing, the arbitrator(s) shall not consider properties other than the premises and those properties specified by the notices sent in the course of the renegotiation process that has been previously described.

"The provisions of Code of Civil Procedure Section 1283.05 relating to discovery, and its successor provisions, shall not apply to the arbitration proceedings.

"The costs of the arbitration, including, but not limited to, experts' fees, witnesses' fees and attorneys'

fees, shall be borne by the party whose position was not chosen by the arbitrator.

"Where either party has charged the arbitrator(s) with fraud or gross error, the arbitration process shall nonetheless continue through completion of the process and the decision shall be implemented unless prior to completion the charging party has obtained a final judgment of a court of competent jurisdiction stating that the arbitrator or group of arbitrators was guilty of fraud or gross error (a disqualification judgment). In the event of a disqualification judgment, the arbitration process shall begin over immediately in accordance with the procedure just described. The party alleging fraud or gross error shall have the burden of proof, and shall reimburse the arbitrator(s) for all costs, attorneys' fees and other expenses incurred in defending himself, except where the charging party obtains a disqualification judgment. Such arbitration shall be conducted as expeditiously as possible.

"If the fair rental value as determined by arbitration is higher than the rent paid between the renegotiation date and the date of the arbitration decision, Lessee shall pay the entire difference to County within thirty (30) days following the arbitration decision, together with interest on the difference in each installment at a rate equal to the lower of two percent (2%) per annum more than the prime rate (or its equivalent) of the commercial bank then headquar-

tered in California with the largest dollar amount of assets or the maximum rate allowed by law, from the date the installment was first due until such installment is actually paid (the adjustment interest).

"If the fair rental value as determined by arbitration is lower than the rent paid between the renegotiation date and the date of the arbitration decision, Lessee shall be entitled to a credit against the installments of minimum monthly rent and percentage rent next falling due, until such time as the entire difference, together with the adjustment interest on each installment of the difference, has been paid in full."

5. The effective date of this amendment shall be the date of execution of the amendment by the Chairman of the Board of Supervisors of the County.

6. Every other term and condition contained in the lease, as amended, shall remain in full force and effect and is hereby reaffirmed.

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, the day, month, and year first hereinabove written.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

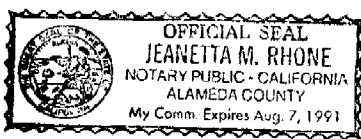
By Bonnie M. Smotory

SECRETARY

State of CALIFORNIA)
County of ALAMEDA) ss.

On this 24TH day of AUGUST, in the year 1987, before me JEANETTA M. RHONE, personally appeared BONNIE M. SMOTORY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as SECRETARY of The Regents of the University of California and acknowledged to me that The Regents of the University of California executed it.

APPROVED AS TO FORM:
MILTON N. GORDON
UNIVERSITY COUNSEL OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA



Witness my hand and seal.
Jeanetta M. Rhone

ATTEST:

LARRY J. MONTEILH
EXECUTIVE Officer-Clerk of Board of Supervisors

COUNTY OF LOS ANGELES
Michael W. Antonovich
Chairman, Board of Supervisors

By Lynethia A. Benevise
Deputy

APPROVED AS TO FORM:

DE WITT W. CLINTON
County Counsel

By Robert W. Reddy
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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Larry J. Montelh
LARRY J. MONTEILH
EXECUTIVE OFFICER