

**AMENDMENT NO. 5 TO LEASE NO. 8696
PARCEL 100S - MARINA DEL REY SMALL CRAFT HARBOR
READJUSTMENT OF RENT**

This AMENDMENT TO LEASE is made and entered into this 19th day of August, 1997
(the "Effective Date"),

BY AND BETWEEN

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

AND

DEL REY SHORES, a joint venture,
hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, County and the predecessors in interest of Lessee entered into Lease No. 8696 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, commonly known as Parcel 100S, which leasehold premises (the "Premises") are more particularly and legally described in Exhibit "A" attached to and incorporated in said Lease, as amended (the Lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of the Lease provides that as of August 1, 1992, and as of August 1 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 the 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 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 desire to make a present readjustment to the amount of square foot rental covered by Section 12, and have further agreed to a revised method of adjusting Lessee's future square foot rental payments through the end of the Lease term; and

WHEREAS, the parties hereto have reached agreement with respect to percentage rental rates and the amounts of casualty insurance which are to apply for the ten (10) year period commencing on the 1992 Rental Adjustment Date and the amount and manner in which Lessee shall pay County retroactive rent resulting from the above-referenced adjustments; and

WHEREAS, the parties desire to amend Section 15 to revise the manner in which percentage rent categories are to be readjusted for the August 1, 2002 Rental Adjustment Date and each Rental Adjustment Date thereafter; and

WHEREAS, County and Lessee desire that this Lease Amendment shall not become effective unless and until Amendment No. 7 to Lease No. 10023, pertaining to Parcel 101S, Marina del Rey Small Craft Harbor, has also become effective;

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

1. **Square Foot Rental.** Commencing as of the Effective Date, the first paragraph of Section 12 (SQUARE FOOT RENTAL) is deemed amended to read as follows:

"The annual square foot rental for the whole of the premises herein demised shall be \$73,688. Thereafter, on every third anniversary of the Effective Date until the expiration of the term of the Lease, the annual square foot rental shall be readjusted 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 1992 Rental Adjustment Date, Subsection (c) of Section 13 (PERCENTAGE RENTALS) is amended by replacing the amount "SEVEN AND ONE-HALF percent (7.5%)" with the amount "TEN AND ONE-HALF percent (10.5%)" at both places that it appears in said Subsection, and Subsection (s) of said Section 13 is amended by replacing the amount "ONE percent (1%)" with the amount "FIVE percent (5%)".

3. **Past Due Rent.** Notwithstanding the provisions of Section 15 of the Lease as set forth in this Lease Amendment, the amounts owed by Lessee to County representing the difference between (i) the percentage rent payable by Lessee, under Section 13 prior to this Lease Amendment from the 1992 Rental Adjustment Date to the Effective Date and (ii) the sum which is calculated to be due for percentage rent from the 1992 Rental Adjustment Date to the Effective Date based upon the adjustment set forth in Section 2 of this Lease Amendment (the "Retroactive Rent") shall bear interest, compounded monthly, at the prime rate reported in the Wall Street Journal on the first day of the month immediately following the Effective Date, from that date until the Retroactive Rent is fully paid. Lessee's payment of the Retroactive Rent and interest shall be made to County in equal monthly installments, on the first day of each month, over a five (5) year period commencing on the first day of the month immediately following the Effective Date.

4. **General Rent Adjustment and Arbitration.** Commencing as of the Effective Date, the following Section 15 is substituted for Section 15 (GENERAL RENT RENEGOTIATION AND ARBITRATION) of the Lease:

"GENERAL RENT ADJUSTMENT AND ARBITRATION

"(a) The rates for percentage rentals and the liability insurance limits shall apply and be in effect through July 31, 2002. As of August 1, 2002 and as of August 1 every tenth (10th) year thereafter (each such date is hereafter referred to as a "Rental Adjustment Date"), the rates for all categories of percentage rentals and liability insurance requirements shall be readjusted by Lessee and County in accordance with the following standards.

"(i) As of each Rental Adjustment Date, Lessee's percentage rent for each category of use shall be set at the average (rounded to the nearest one-tenth of a percent with .x5 or greater being rounded up and .x49 or lesser being rounded down) of the then-effective percentage rental rate for that category of use charged to those Marina del Rey Small Craft Harbor leaseholds enumerated below which have not had their lease terms extended beyond their original terms. If, as of the Rental Adjustment Date, there are not at least two (2) leaseholds from which to currently obtain the average percentage rate for a particular rental category, then a review will be made to determine whether or not such average could be obtained at any time during the twelve month period immediately preceding the Rental

Adjustment Date, and, if so, the most current average available during that twelve month period shall be used. If no average percentage rate for a rental category can be obtained pursuant to the two immediately preceding formulas, then the percentage rate for that category shall be determined in accordance with the provisions contained in Subsection (a) (ii) of this Section 15. The parties agree that for purposes of calculating an average of any percentage rate pursuant to this Subsection, only the rates from the Marina del Rey leaseholds commonly known as Parcels 07, 08, 10, 12, 13, 15, 28, 64, 103, 111, 112, 113, 140, and the category denominated as low- rise apartment rentals at Parcel 102 shall be included, and only such of said Parcels which have not had their lease terms extended beyond their original terms. Notwithstanding the immediately preceding sentence, for purposes of the Rental Adjustment Date occurring on August 1, 2002 only, the Marina del Rey leasehold commonly known as Parcel 15 shall not be utilized to calculate the required average of any percentage rental rate.

"(ii) As of each Rental Adjustment Date, and only to the extent such percentage rentals cannot otherwise be adjusted pursuant to Subsection (a) (i) of this Section, the rates for percentage rentals shall be readjusted to Fair Market Rental as of that Rental Adjustment Date in accordance with the provisions of Subsections (b) through (e) of this Section 15. "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, 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.

"(iii) 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.

"(iv) The rates for percentage rentals and liability insurance requirements are sometimes referred to collectively as "Adjusted Rentals" in the

remainder of this Section 15.

"(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 percentage rentals and maintain liability 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 percentage rentals when finally determined; provided, however, that the amount fixed as the new 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 Section 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 Section 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 Section 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 Section 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange, 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 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 Section 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 Section 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 Section 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.

"NOTICE

"BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

 _____

County's Initials

 _____

Lessee's Initials"

"(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."

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

"Lessee shall maintain in full force and effect during the term of this lease, comprehensive general liability insurance with bodily injury and property damage liability limits of not less than fifteen million dollars (\$15,000,000.00) per occurrence or not less than fifteen million dollars (\$15,000,000.00) in general aggregate form with fifteen million dollars (\$15,000,000.00) per occurrence. 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."

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.

7. **Concurrent Amendment for Parcel 101S.** This Lease Amendment shall not become effective unless and until Amendment No. 7 to Lease No. 10023, pertaining to Parcel 101S, Marina del Rey Small Craft Harbor, has also become effective.

///

///

///

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 Clerk thereof, and the Lessee has executed the same the day and year first hereinafter written.

Dated: August 19, 1997

LESSEE:
DEL REY SHORES
a joint venture

By the Epstein Family Trust,
joint venturer

By: [Signature]
Jerry B. Epstein, Trustee

By: [Signature]
Pat Epstein, Trustee

By the Kirk Douglas and Anne Douglas
Declaration of Trust joint venturer

By: [Signature]
Kirk Douglas, Trustee

By: [Signature]
Anne Douglas, Trustee



ATTEST:

Joanne Sturges
Executive Officer-Clerk of the
Board of Supervisors

By [Signature] Deputy
APPROVED AS TO FORM:
DeWitt W. Clinton,
County Counsel

By: [Signature]
Deputy County Counsel

THE COUNTY OF LOS ANGELES:

By: [Signature]
Chairman, Board of Supervisors

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

75

AUG 19 1997

[Signature]
JOANNE STURGES
EXECUTIVE OFFICER