

AMENDMENT NO. 12



TED REED
DIRECTOR

COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS

November 13, 1990

EXECUTIVE SUMMARY

APPROVAL OF AMENDMENT NO. 12 TO LEASE
PARCEL 44U - MARINA DEL REY
(A THREE VOTES MATTER)



ERIC BOURDON
ASSISTANT DIRECTOR

CHRIS KLINGER
DEPUTY DIRECTOR

STAN WISNIEWSKI
DEPUTY DIRECTOR

Request

Board Chairman to execute lease amendment for Parcel 44U, commonly referred to as Pier 44, which increases the office rent percentage rate, increases lessee's security deposit and provides Director with authority to execute a non-disturbance agreement with lessee and a commercial sublessee.

Fiscal Impact:

- Increase percentage rent from lessee's proposed redevelopment of a yacht club building to office space primarily but not exclusively for marine oriented office tenants. Actual dollar amount will depend on the net rentable space to be developed.
- Increase lessee's security deposit from \$18,081.16 to \$50,000.00. Also provide for like increase in future if annual minimum is again increased.
- Restaurant rent from larger facility should substantially exceed the FY 88-89 rental of \$43,900 paid by the former restaurateur, for example.

Issues

- Lessee will redevelop the two story building formerly subleased by the Santa Monica Yacht Club into office space primarily but not exclusively for marine oriented tenants.
- Lessee will also redevelop the former Cyrano restaurant. A new sublease has been approved by the department and plans approved by our Design Control

#12



COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS



TED REED
DIRECTOR

November 13, 1990

ERIC BOURDON
ASSISTANT DIRECTOR

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

CHRIS KLINGER
DEPUTY DIRECTOR
STAN WISNIEWSKI
DEPUTY DIRECTOR

The Honorable Board of Supervisors 10
County of Los Angeles
383 Hall of Administration
500 West Temple Street
Los Angeles, California 90012

DEC 11 1990

LARRY J. MONTEILH
EXECUTIVE OFFICER

Dear Supervisors:

**AMENDMENT NO. 12 TO LEASE
PARCEL 44U - MARINA DEL REY
SMALL CRAFT HARBOR
(A THREE VOTE MATTER)**

The lease for Parcel 44U was awarded by your Board on April 4, 1963 for original Parcel 44 and May 22, 1968, original Parcel 46, respectively. The current lessee of merged Parcel 44U is Marina International Properties, Ltd., a California limited partnership.

The premises, located at 4635 Admiralty Way, contain a total of 17.4 acres of land and water and have been improved with 422 boat slips, a two story boat sales and brokerage building and four commercial buildings. One of the commercial buildings was formerly occupied by a yacht club and will be redeveloped into office space and another occupied by a restaurant will be expanded.

One of the primary purposes of this amendment relates to a new sublease dated December 15, 1989, between lessee and Marina Moose, Inc., which agreement provides for a major investment in the former Cyrano restaurant by the sublessee. To protect sublessee's investment, both parties have requested the finalization of a non-disturbance agreement that protects sublessee's right in the event of default by the prime lessee. Such an agreement has now been signed by lessee, sublessee and approved by County Counsel and awaits Director's signature per the authorization to be

The Honorable Board of Supervisors
November 13, 1990
Page 2

In consideration for the above, lessee has agreed to an increase in the security deposit to reflect an amount equal to one-fourth of the readjusted annual square foot rental.

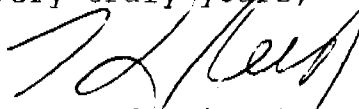
The amendment also increases the percentage rental rate for office space from 10% to 11%, to reflect fair market values already established for the marina, and makes a like modification to the percentage rate under which lessee reports the greater of sublessee's gross receipts at the appropriate percentage rate or reports its rental receipts collected from the sublessee (commonly called the greater percentage rule).

The amendment has been favorably endorsed by your Small Craft Harbor Commission at its meeting on October 11, 1989. This amendment is categorically exempt (Class 1) under County guidelines approved by your Board November 17, 1987 for compliance with the California Environmental Quality Act. The amendment has also been approved as to form by County Counsel.

THEREFORE, IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve, and authorize your Chairman to execute the attached Amendment No. 12 to Lease No. 6734.
2. Instruct the Executive Officer-Clerk of Board to attest to the execution of said amendment and send one fully executed copy of the amendment to the Department of Beaches and Harbors and one copy to Marina International Properties, Ltd., 444 Washington Street, Marina del Rey, California 90292, Attention: Patricia Younis, CPM.

Very truly yours,

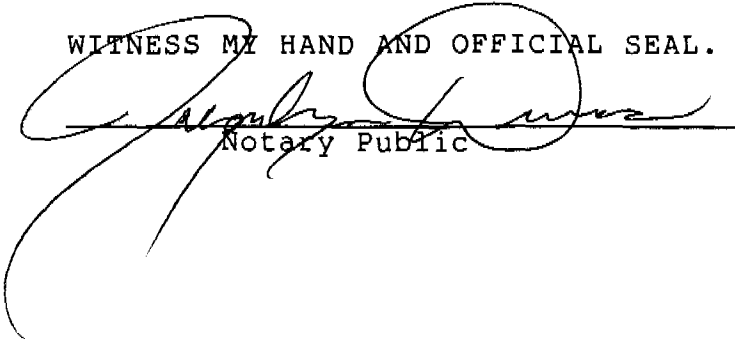


Ted Reed, Director

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On this 18th day of September, 1990, before me, a notary Public in and for said State, personally appeared A. M. Lurie personally known to me (or proved to me on the basis of satisfactory evidence), to be the person who executed the within instrument, namely A. M. Lurie, and acknowledged to me that he executed it.

WITNESS MY HAND AND OFFICIAL SEAL.


Notary Public



91 510890

Recording requested by, and please return to:

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

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
1 MIN. 2 P.M. APR 10 1991
PAST.

FREE T 3

MEMORANDUM OF AMENDMENT NO. 12 TO LEASE NO. 6734
PARCEL 44U - MARINA DEL REY

This Memorandum is made by and between the County of Los Angeles, a political subdivision of the State of California (hereafter, the "County") and Marina International Properties, Ltd., a California limited partnership (hereafter, "MIPL"), who agree as follows:

1. MIPL is the current lessee as successor by assignment to the interest of Fred L. Carlyle (hereafter, "Carlyle"), the signatory lessee, under that certain Lease No. 6734 dated April 4, 1963, by and between County, as lessor, and Carlyle, as lessee, as modified from time to time by amendments one through eleven (hereafter, the "Amended Lease").

2. The Amended Lease affects the property described in Exhibits A and B to the eleventh amendment as Marina Del Rey Lease Parcel No. 44U (Amended).

3. The Amended Lease has been further modified by an unrecorded document that was executed by the parties on December 11, 1990 (hereafter, the "Twelfth Amendment").

4. The Twelfth Amendment modifies the Amended Lease by increasing the security deposit, providing for further periodic adjustments in this deposit, and delegating authority within the County to grant non-disturbance to commercial sublessees.

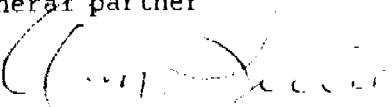


5. This Memorandum is not intended to change any terms or conditions of the Amended Lease, as further amended by the Twelfth Amendment, and therefore any inconsistency between the two shall be resolved by recognizing the latter as the prevailing document

Dated: 3-15-91

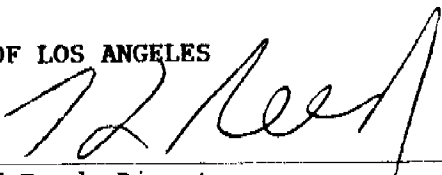
MARINA INTERNATIONAL PROPERTIES, LTD.
A California limited partnership

By: Real Property Management, Inc.,
a California corporation,
a general partner

By: 
A. M. Lurie, President

Dated: 3-22-91

COUNTY OF LOS ANGELES

By: 
Ted Reed, Director
Department of Beaches and Harbors

91-510890

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On March 15, 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared A. M. Lurie, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS MY HAND and official seal.

Signature Betty Hawkins (Seal)



STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On March 25, 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared T. L. Reed, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person whose name is subscribed to the within and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS MY HAND and official seal.

Signature T. L. Reed (Seal)



AMENDMENT NO. 12 TO LEASE NO. 6734
PARCEL 44U - MARINA DEL REY

6734 S-12

THIS AMENDMENT TO LEASE made this 11th day
of December, 1990,

BY AND BETWEEN

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

AND

MARINA INTERNATIONAL PROPERTIES, LTD.,
a California limited partnership
hereinafter referred to as "Lessee,"

W I T N E S S E T H:

WHEREAS, on April 4, 1963, the County and the predecessor in interest of the Lessee entered into Lease No. 6734 under the amended terms of which Lessee is leasing from the County 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 44U, which leasehold premises are more particularly and legally described in Exhibit A attached to and incorporated in said amended Lease No. 6734 (the "Lease"); and

WHEREAS, by letter agreement dated December 12, 1989, the County and the Lessee agreed that an office building,

leasehold premises, subject to an increase in the rental of item (7) of subsection 13(c) of the Lease from 10% to 11% and a modification of the greater percentage clause in Section 13 of the Lease; and

WHEREAS, the parties also desire to modify the Lease to provide for (1) an immediate increase in the security deposit from EIGHTEEN THOUSAND EIGHTY-ONE AND 66/100 DOLLARS (\$18,081.66) to FIFTY THOUSAND DOLLARS (\$50,000.00); (2) further periodic adjustments in the security deposit on the readjustment dates for the rent as provided in Section 15 of the Lease to an amount that is equal to one-fourth of the readjusted annual square foot rental; and (3) the authority for the Director to grant non-disturbance to a commercial sublessee in connection with the Director's approval of the commercial sublease;

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

1. The following subsection (c)(i) and (ii) are substituted for the existing subsection c in Section 13

"(c) (i) SEVEN AND ONE-HALF percent (7.5%) of gross receipts or other fees charged for the occupancy of structures and other facilities including, but not limited to (1) apartments, (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, (5) 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 (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 (7.5%).

"(ii) 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, 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

2. The second paragraph[^] of Section 13 of the Lease, set forth on page ~~24~~^{24 30} of Amendment No. 8 to the Lease, is amended to read as follows:

"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 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)(ii) of this Section."

3. The first paragraph of Section 7 of the Lease, is amended to read as follows:

"Lessee shall make such adjustments in the sum of EIGHTEEN THOUSAND EIGHTY-ONE AND 66/100 DOLLARS (\$18,081.66) that is currently on deposit with County as may be necessary to immediately increase this sum to FIFTY THOUSAND DOLLARS AND 00/100 DOLLARS (\$50,000) and to make such future

leasehold premises, as this rental may change over the term of this Lease due to the periodic changes that may be made in the rent pursuant to Section 15 of the Lease. This sum shall be retained by County as a security deposit to cover delinquent rent and any other financial obligations of Lessee under this Lease, and shall be so applied at the discretion of County."

5. The following paragraph is added to Subsection 22.A.(1) of the Lease:

"The Director may extend to a commercial sublessee whose sublease is approved by the Director, as well as any encumbrance holder of the sublessee whose encumbrance of the subleasehold estate is approved by the Director, the right to remain in possession of the subleasehold premises for the remaining period of approved sublease term following an early termination of this Lease, under such terms, covenants and conditions of this lease and the approved sublease as the Director may deem appropriate in view of the benefits to be derived and the obligations to be assumed by County from the sublessee' continued occupation of the leasehold premises. The benefits of this paragraph may be

conditions for the continued occupation of the leasehold premises following an early termination of this Lease, and who also agree to execute any documents requested by County to further document the Director's approved terms, covenants and conditions for the period over which the continued occupation is to occur,"

6. The effective date of this amendment shall be the date of its execution by County.

7. All other terms and conditions contained in the Lease shall remain in full force and effect and are 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, and the Lessee has executed same the day, month and year first hereinabove written.

MARINA INTERNATIONAL PROPERTIES, LTD.
a California limited partnership

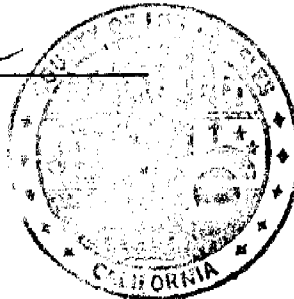
By *Am. Lurie*

By _____

ATTEST:

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

By *Samuel Rogan*
Deputy



APPROVED AS TO FORM:

DEWITT W. CLINTON
County Counsel

By *Robert W. Roddy*
Deputy

THE COUNTY OF LOS ANGELES

By *Rene Rano*

Chairman, Board of Supervisors

PRO TEM

rp19/17
1-30-90

ADOPTED
BOARD OF SUPERVISORS



TED REED
DIRECTOR

COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS



ERIC BOURDON
ASSISTANT DIRECTOR

CHRIS KLINGER
DEPUTY DIRECTOR

STAN WISNIEWSKI
DEPUTY DIRECTOR

August 1, 1990

Mr. A. M. Lurie
Marina International Properties Ltd.
444 Washington Street
Marina del Rey, California 90292

CERTIFIED MAIL

Dear Mr. Lurie:


**PARCEL 44 - MARINA DEL REY
DEPOSIT AGREEMENT**

The Agreement for the Deposit of Disputed Rents has been signed. Two copies of the fully executed document are enclosed for your records.

It is our understanding that you will provide the signature cards needed to open this account within three days after your receipt of this letter.

If you have any questions, please call Louise Estes of my staff at 305-9506.

Yours truly,
TED REED, DIRECTOR


K. C. Klinger
Deputy Director

TR:KCK:LE:le
DEPLET/AMB/LESTES/PCL44AUD
Enclosures
c: Bob Rodolf
Paul Dow

AGREEMENT FOR THE DEPOSIT
OF DISPUTED RENT

This Agreement for the Deposit of Disputed Rent ("Agreement") is made by and between Marina International Properties Ltd., a California limited partnership ("MIPL") and the County of Los Angeles ("County"), who agree as follows.

Article 1. General.

1.01. Lease. MIPL is the lessee of the County under that certain amended Lease No. 6734 for Parcel 44U Marina del Rey Small Craft Harbor and amended Lease No. 11140 for Parcel 77W Marina del Rey Small Craft Harbor (collectively, the "Pier 44 Lease").

1.02. Rent. Under the terms of the Pier 44 Lease MIPL is required to pay to the County a monthly minimum and percentage rent (collectively, the "Rent"), except for those months in which the percentage is less than the minimum.

1.03. Dispute. A dispute has arisen between the parties as to whether additional Rent in the sum of \$81,269.92 is due and owing for the period March 1, 1983, through December 31, 1985 (the "Disputed Rent"). In this regard the County claims that the Disputed Rent is due and owing, while MIPL claims that the Disputed Rent is not owed and that to the extent it is owed the statutory limitation on an action for the recovery of rent precludes its recovery by the County.

1.04. Purpose. MIPL and the County have agreed that pending a resolution of this dispute on the Disputed Rent by either mutual agreement or third party decision (a "Determination") MIPL shall make a deposit of its funds in an amount equal to the Disputed Rent into an account to be opened with a local depository from which the funds may be withdrawn only upon a Determination of the Disputed Rent. Accordingly, the purpose of this Agreement is to set forth the terms on which the parties have agreed with respect to the deposit to be made and the other matters relating to the Disputed Rent and this Agreement.

Article 2. Deposit.

2.01. Amount. MIPL shall make a deposit of its funds in an amount equal to the Disputed Rent.

2.02. Time. The deposit shall be made within twenty (20) days of the effective date of this Agreement.

California, be insured by an agency of the United States government, and be a depository to whom MIPL is not indebted under terms of a loan with MIPL that allow the depository to satisfy its debt out of the funds on deposit.

2.04. Account. The account shall be a joint account in both parties' names and which requires by its terms a joint authorization by the parties for any withdrawals of funds from the account.

2.05. Interest. Interest paid by the depository on the funds on deposit shall be allowed to accumulate, until such time as all funds on deposit in the account may be withdrawn as provided in paragraph 2.07.

2.06. Costs. MIPL shall pay all costs and expense incurred in opening and maintaining the account over the term of the account. Accordingly, it is understood and agreed that the account shall bear MIPL's federal and state taxpayer identification number and that MIPL shall pay all federal and state income taxes on interest paid by the depository on the funds on deposit over the term of the account. However, the foregoing obligations of MIPL for costs and expenses notwithstanding, it is understood and agreed that there shall be a proportionate allocation of these amounts between the parties based upon the same ratio that is provided in paragraph 2.07 for the withdrawal of the funds on deposit by the parties, and a proportionate reimbursement of MIPL by way of set-off against the County's withdrawal in an amount equal to the reimbursement to be made.

2.07. Withdrawal. The funds on deposit in the account can be withdrawn by the parties only upon a Determination on the Disputed Rent and only in the ratio that the Determination decides the parties' rights to the Disputed Rent. By way of example and not limitation, a Determination that only \$40,634.96 is owed the County by MIPL at a time that the funds on deposit in the account total \$100,000 would mean that each party is entitled to withdraw 50% of the total funds on deposit (i.e. \$50,000), subject in the case of the County to the set-off, if any, that is provided in paragraph 2.06. If the Determination on the Disputed Rent is made by agreement of the parties, the funds on deposit in the account shall be withdrawn within 30 days following the effective date of the parties' agreement on the Disputed Rent. If the Determination on the Disputed Rent is made by third party decision, the funds on deposit in the account shall be withdrawn within 30 days following the date on which the third party decision becomes a final decision. The term "third party decision" as used in this Agreement is intended to include the decision of a court of competent jurisdiction, an arbitration, a

subject to judicial review by the trial and appellate courts of the state of California.

2.08. Additional Agreements. The parties agree to cooperate with the depository selected by MIPL by executing all agreements customarily required by the depository in connection with the account to be opened and withdrawal of funds from the account.

2.09. Designated Agents. The designated agents of the parties for execution of all agreements with the depository concerning the account and withdrawal of funds from the account shall be A. M. Lurie, President Real Property Management, Inc., a California Corporation, for MIPL, and K. C. Klinger, Deputy Director, Department of Beaches and Harbors for the County. While the parties may make such changes in their designated agent, as they deem appropriate, any such change shall be subject to the notice provisions of paragraph 3.03.

2.10. Periodic Statements. In the absence of a periodic statement on the account being sent to each party by the depository with whom the account is opened, MIPL shall be designated as the party to whom the statement is to be sent, and MIPL shall send the County a copy of each statement it receives.

Article 3. Other Matters of Agreement.

3.01. Suspension of Statute of Limitations. The parties acknowledge and agree that they have been attempting to reach a mutually acceptable agreement on the Disputed Rent since October 12, 1989, and that they will continue to do so for an additional period of 90 days commencing with the effective date of this Agreement. Accordingly, it is understood and agreed by MIPL that the statutory limitation on an action by the County against MIPL for recovery of the Disputed Rent shall be suspended from January 8, 1990, to the 90th consecutive day following the effective date of this Agreement (the "Suspension Period"). However, it is also understood and agreed by the parties that MIPL contends that the County's claim for recovery of the Disputed Rent is barred by the appropriate statute(s) of limitation prior to January 8, 1990. Therefore, the parties further agree that this suspension of the statutory limitation on an action by the County against MIPL for recovery of the Disputed Rent during the Suspension Period shall be without prejudice to or waiver of an assertion by MIPL of the statutory limitation as a defense to the County's recovery of the Disputed Rent and that agreement to the Suspension Period does not constitute an admission or agreement by MIPL that the statute of limitations has not run and does not restart the statute of limitations. This agreement shall survive a termination of the Agreement under paragraph 3.02.

3.02. Remedies. In addition to all remedies in law and equity that may be available to the parties in the event of a party's breach of this Agreement, it is agreed that each party reserves the right to revoke this Agreement for a breach of its provisions by the other party.

3.03. Notice. Any notice or other communication given pursuant to the terms of this Agreement shall be deemed given and effective upon delivery, if delivered by hand, or 48 hours after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the address of the party indicated in this Agreement or to such other address as such party shall in writing have advised the other party. The initial address for MIPL shall be A. M. Lurie, Marina International Properties, Ltd., 444 Washington Street, Marina del Rey, CA 90292, with a copy to Richard Hamlin, Esq., Stall and Hamlin, 2049 Century Park East, Suite 2460, Los Angeles, CA 90067. The initial address for the County shall be Ted Reed, Director, Department of Beaches and Harbors, Administration Building, 13837 Fiji Way, Marina del Rey, CA 90292.

3.04. Successors and Assigns. This Agreement shall be binding upon each party's successors and assigns to their respective interests under the Pier 44 Lease.

3.05. Effective Date. The effective date of this Agreement shall be the date of execution of the Agreement by the last party to sign.

3.06. Amendments. This Agreement may be amended only by further written agreement of the parties.

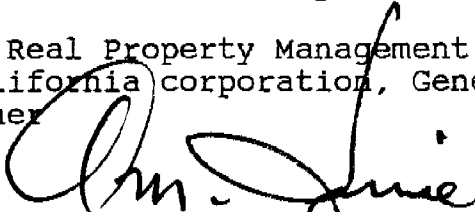
3.07. Interpretation. This Agreement shall be interpreted under California law.

Dated: 7-23-90.

2nd Charles E. Wellare
Pier 44 Venturers, Inc.
2029 Century Park East
Suite 2920
Los Angeles, CA 90067

Marina International Properties, Ltd.,
a California limited partnership

By: Real Property Management Inc.,
a California corporation, General
Partner

By: 
A. M. Lurie, President

Dated: _____.

Pier 44 Venturers, Inc., a California corporation

By: *Charles E. Wallace*
Charles E. Wallace, President

Dated: 7/27/90.

County of Los Angeles

By: *Ted Reed*
Ted Reed, Director
Department of Beaches and Harbors