

AMENDMENT NO. 2 TO LEASE FOR PARCEL(S) 53
MARINA DEL REY

5691
SUPPLEMENT 2

THIS AMENDMENT TO LEASE made this 10th day of
October, 1966,

BY AND BETWEEN
APPROVED BY
BOARD OF SUPERVISORS

COUNTY OF LOS ANGELES, herein-
after referred to as "County,"

AND

JUN 21 1966

PLAYA DEL REY MARINE SUPPLY
COMPANY, INC.

James S. Mize
James S. Mize,
Acting Clerk of the Board

hereinafter referred to as
"Lessee,"

WITNESSETH:

WHEREAS, the parties hereto or their predecessors in interest have, on the nineteenth day of June, 1962, entered into a lease under which Lessee leased from County that certain real property in the Marina del Rey Small Craft Harbor known as Parcel No(s). fifty-three (53); and

WHEREAS, said lease contains a provision whereby the Lessee agreed to pay as rent a certain percentage of his gross receipts from various activities conducted on the demised premises; and

WHEREAS, the lease provided twenty-three categories of business activities on account of which a percentage of the gross receipts was required to be paid as rent; and

WHEREAS, the percentage was different for each category; and

WHEREAS, it is the desire of the parties hereto to revise the percentages payable for certain categories of business activities in order to increase the revenue to be derived by the County from the operation of the leaseholds and in order to enable the Lessee to attract onto his demised premises certain types of businesses which at present are not able to operate on the demised premises because of the rent currently being charged; and

WHEREAS, it is also the desire of the parties hereto to clarify certain language in the lease pertaining to percentage rentals; and

WHEREAS, it is the desire of the parties hereto to amend said lease in order to alter certain technical language in the lease for the purpose of making said document more protective to County and Lessee;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, it is hereby agreed as follows:

1. Section 11 (Gross Receipts) is amended by changing the first subparagraph to read as follows:

"The term 'gross receipts' as used in this lease is defined to be all money, cash, receipts, assets, property or other things of value, including but not limited to, gross charges, sales, rentals, fees and commissions made or earned, and all gross sums received or earned by Lessee and all his assignees, sublessees, licensees, permittees or concessionaires, whether collected or accrued, from any business, use or occupation, or any combination thereof, originating, transacted or performed, in whole or in part, on the premises, including but not limited to, rental, the rendition or supplying of services, and the sale of goods, wares or merchandise; less sales and excise taxes applicable thereto, required to be collected by Lessee, his assignees, sublessees, licensees and permittees in connection with the rendering or supplying of services or goods, wares or merchandise. Gross receipts shall not include fees, charges or rentals paid to a Lessee by a sublessee where the gross receipts of such sublessee are reported and subject to the percentage rental schedule set forth in Section 13."

2. Section 13 (Percentage Rentals) is hereby deleted in its entirety and the following substituted therefor:

"The square foot rental agreed upon in Section 12 is a minimum rental, payable in lawful money of the United States. The money received as square foot rental for any calendar month shall be applied to the payment of the percentage rental for said calendar month as provided for in this Section 13.

"Within fifteen (15) days after the close of each and every calendar month of the term hereof, Lessee shall pay to County a sum in like money, less the amount of the monthly installment of annual square foot rental previously paid for said calendar month under Section 12, equal to the total of the following for said previous calendar month:

"(a) TWENTY Per Cent (20%) of gross receipts from the rental or other fees charged for the use of boat slips, anchorages, moorings, dockside gear lockers or storage space, and such other facilities and services ancillary thereto as are provided in common to all tenants;

"(b) TEN Per Cent (10%) of gross receipts from the dry storage, launching, or retrieving of small boats, and from rental of landside gear lockers or storage space;

"(c) SEVEN AND ONE-HALF Per Cent ($7\frac{1}{2}\%$) of gross receipts from fees, charges or rentals for occupancy of structures including apartment units, hotel or motel accommodations, house trailers, and offices or similar space utilized for banking, financial, or investment activities; internal clerical or administrative activities of business enterprises; real estate and insurance brokerage; or the rendering of legal, medical, engineering, or similar professional services; but excepting stores, shops or other commercial establishments the gross receipts pertaining to which are subject to percentage rentals and specifically required or authorized to be reported under any other subparagraphs of this section.

"(d) ONE Per Cent (1%) of gross receipts from the sale of new or used boats, boat trailers, house trailers and trailer cabanas; said gross receipts shall include all credits given for used items taken in trade as part payment for new items, as reflected in the bills of sale, but the trade-in allowance for a used item taken in trade may be deducted from the subsequent sale price of said used item if said used item is sold within 120 days of the date of the bill of sale which established said trade-in allowance.

"(e) FIVE Per Cent (5%) of gross receipts from boat brokerage and from marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage.

"(f) TWENTY Per Cent (20%) of any commissions or fees collected from itinerant vendors or from service enterprises based outside the demised premises;

"(g) TWENTY Per Cent (20%) of gross receipts from rentals or other fees charged for use of trailer-cabana sites and such other facilities and services ancillary thereto as are provided in common to all tenants;

"(h) TWENTY-FIVE Per Cent (25%) of any commissions or other compensation paid to Lessee for the right to install coin-operated vending or service machines or devices, including pay telephones, or FIVE Per Cent (5%) of the gross receipts of any such coin-operated machines or devices owned, rented, or leased by Lessee or his sublessee;

"(i) TEN Per Cent (10%) of gross receipts from the operation of a bar, tavern, cocktail lounge or other such facility engaged primarily in the

on-premises sale of alcoholic beverages, except that gross receipts from such facilities as are established and operated in conjunction with a restaurant or similar food service facility on the same premises may be reported under subsection (j);

"(j) THREE Per Cent (3%) of gross receipts from the operation of food service facilities, including bar or cocktail lounge in conjunction with restaurant or similar facility when food service is the primary purpose;

"(k) ONE AND ONE-HALF Cents (\$0.015) per each gallon of gasoline, diesel fuel or mixed fuel sold or SIX Per Cent (6%) of gross receipts of such sales, whichever is the greater;

"(l) FIVE Per Cent (5%) of gross receipts from sales by a fuel sales facility of petroleum or fuel products other than those covered by subsection (k) above;

"(m) FIFTEEN Per Cent (15%) of gross receipts from club dues, initiation fees, and assessments, except that separate assessments for capital improvements are exempted;

"(n) TWENTY Per Cent (20%) of gross receipts from parking fees;

"(o) TEN Per Cent (10%) of gross receipts from the rental of boats, outboard motors, fishing tackle, and other recreation equipment and from the sale of live bait;

"(p) THREE Per Cent (3%) of gross receipts from boat haulout, repair, painting, and similar activities;

"(q) FIVE Per Cent (5%) of gross receipts from fees, charges or rentals from the leasing or charter of boats for a term of six (6) months or more;

"(r) SIX Per Cent (6%) of gross receipts from the operation of sportfishing boats;

"(s) ONE Per Cent (1%) of gross receipts from the sale of miscellaneous goods and services;

"(t) FIVE Per Cent (5%) of gross receipts from any and all other activities approved by Director which are not provided for in the preceding subparagraphs.

"If the total of the percentage rentals agreed to be paid by Lessee, when computed on an annual basis for any calendar year, is less than the sum of all rental payments actually made by Lessee for said calendar year, Lessee shall be allowed credit for any amount by which the payments actually made exceed the greater of (1) the sum of the square foot rentals for the calendar year, or (2) the sum of percentage rentals agreed to be paid, computed on an annual basis for the calendar year.

"If any of the items, services, goods or facilities mentioned in subparagraphs (a) through (t) of this paragraph be provided by Lessee or its sublessees, assignees, licensees, concessionaires or permittees, without the usual charges therefor according to the price list of schedule provided for in Section 16, or if said usual charge be not collected in full, the proper amount thereof shall nevertheless be included in the gross receipts reported by

Lessee and its sublessees, assignees, licensees, concessionaires and permittees, and the applicable percentage thereof paid to County."

3. Section 21 (Default) is hereby deleted in its entirety and the following substituted therefor:

"This lease is made upon the condition that if the rents or other sums which Lessee herein agrees to pay, or any part thereof, shall be unpaid on the date on which the same shall become due, or if other default be made in any of the terms, agreements, conditions, or covenants herein contained on the part of Lessee, or should Lessee abandon or cease to use the premises for a period of thirty (30) days at any one time, except when prevented by fire, earthquake, strikes or other calamity beyond its control, then and in such event, at the option of County as evidenced by resolution of Board, this lease shall be forfeited, and County may exercise all rights of entry and re-entry upon the demised premises and may operate for its own and sole benefit said premises and all improvements thereon.

"Lessee shall not be considered in default as to any provision of this lease when such default is the result of, or pursuant to, any process, order or decree of any court or regulatory body of competent jurisdiction.

"In the event Lessee is in default hereunder in the payment of rent or other sums provided to be paid by Lessee, no default with respect thereto shall be declared by the County until after the expiration of ten (10) days written notice to Lessee to cure such default.

"In the event Lessee shall default in keeping, observing or performing any of the other covenants, conditions, provisions or agreements herein required to be kept, observed or performed by Lessee, County shall give written notice of such default to Lessee and Lessee shall

have thirty (30) days after service of said notice in which to cure, remedy and correct said default, or in which to commence and diligently pursue the performance of the thing or work required to be done to cure, correct and remedy said default. Should Lessee fail to so cure, remedy and correct said default, or commence and diligently pursue such corrective or remedial action within and during said thirty (30) day period, County shall have the right to forfeit this lease as provided in the first paragraph of this section.

"Notwithstanding any of the foregoing, County shall not exercise any remedy available to it for breach thereof by Lessee and will not terminate this lease nor declare the same to be forfeited because of any default or breach hereunder on the part of Lessee unless and until County shall have given a written notice of such default or defaults to any beneficiary or trustee under a deed of trust or to any mortgagee under any mortgage affecting the demised premises or any part thereof. Said notice shall be sent simultaneously with the notice to the Lessee referred to in the preceding paragraph. It shall be sent by registered mail, postage prepaid, addressed as the trustee, beneficiary or mortgagee or each of them shall from time to time instruct County or, in the absence of such instructions, addressed as shown on the deed of trust or mortgage. After receipt of said notice, said trustee, beneficiary or mortgagee (hereinafter referred to collectively as 'encumbrance holder'), or each of them, shall have the right and power to cure the defaults specified and if all of said defaults are cured, this lease shall remain in full force and effect. Said defaults may be cured in the following manner:

"(a) If said default be in the payment of rental, taxes, insurance premiums, utility charges, or any other sum of money, said encumbrance holder may pay the same to County or other proper payee within thirty-five (35) days after mailing of the aforesaid notice of default to said encumbrance holder. If, after any payment to County by the encumbrance holder as aforesaid, the Lessee pays the same or any part thereof to County, County shall promptly refund said payment to encumbrance holder.

"(b) If said breach be other than as specified in subparagraph (a) above and cannot be cured by the payment of money as aforesaid, the default shall be cured if

"(i) within thirty-five (35) days after the mailing of the said notice to encumbrance holder by County said encumbrance holder commences foreclosure by judicial action or trust deed sale of its encumbrance (said 35-day period shall be extended by the time in which encumbrance holder is prevented from commencing foreclosure by any order, judgment or decree of any court or regulatory body of competent jurisdiction, but such extension shall not extend beyond a period of 100 days from the effective date of said order, judgment or decree); and

"(ii) said foreclosure action is prosecuted with reasonable diligence; and

"(iii) within thirty-five (35) days after such foreclosure sale the purchaser thereat (whether or not such purchaser is the encumbrance holder) cures, remedies and corrects said default, or commences and

diligently pursues the performance of the thing or work required to be done to cure, correct and remedy said default.

"Notwithstanding any of the foregoing, and in the event County declares the lease forfeited and secures possession under the provisions of this paragraph, the encumbrance holder, within sixty (60) days of such forfeiture and securing of possession, may request and receive a lease covering the premises subject to his encumbrance and running to said encumbrance holder and his successors and assigns. Said lease shall have the same provisions and conditions as this lease, except to the extent that any provisions of this lease are, through the passage of time or for other reasons, obviously inapplicable. Said lease shall have a term that shall commence upon the date of the County's securing possession of the premises demised herein and said lease shall terminate on the termination date of this lease. The County shall deliver possession of the property immediately upon the execution of said new lease. The encumbrance holder shall, however, pay County the amount of ground or holding rentals due under this lease on and after the date County has secured possession less any net rentals or other income which County may have received on account of said property during the time County may have been in possession of the premises. In addition, the encumbrance holder shall pay any and all rentals unpaid by Lessee under the original lease at the time of forfeiture thereof. However, said encumbrance holder shall be liable only for that proportionate amount of rent attributable to that portion of the demised premises covered by his encumbrance. In addition, said encumbrance holder shall also pay any and all taxes, current or delinquent, that have been levied or assessed against that portion of the demised premises

4. Section 22 (Sublease, Assignments, and Successors) is hereby deleted in its entirety and the following substituted therefor:

"At least thirty (30) days written notice of intention to sublet portions of the demised premises to others shall be given to Director. During said thirty day period, Director shall approve or disapprove said proposed sublease. In the event of disapproval, said proposed sublease shall not be made. The gross receipts of any sublessee under any such sublease shall be included within the definition of 'Gross Receipts' as set forth in Section 11. Any and all sublessees shall be subject to and bound by each and all of the terms and conditions of this lease and in particular those pertaining to control of prices pursuant to Section 16. The term 'sublease' as used in this paragraph shall include any license, permit, concession, assignment or transfer of any interest in or to said property by Lessee, and the term 'sublessee' shall include any licensee, permittee, concessionaire, assignee or transferee of or from Lessee. Lessee may, without prior approval of Director, sublease portions of the demised premises (including, but not limited to, single residential units, boat slips, and dry storage racks) for a period not to exceed one year, for individual nonbusiness, noncommercial uses. Lessee may at any time request approval by the Director of a plan to sublease specific residential units for stated periods in excess of one year. No condominium or cooperative dwelling plan of any kind shall be employed without the approval of Director.

"Lessee may, with the consent of the County, give, assign, transfer, mortgage, hypothecate, grant control of, or encumber Lessee's interest under this lease and the leasehold estate so created, to a bona fide lender on the security of the leasehold estate, and Lessee may execute

any and all instruments in connection therewith necessary and proper to complete such loan and perfect the security therefor to be given to such lender. Any such bona fide lender shall have the right at any time during the term of the loan and while this lease is in full force and effect:

"(a) To do any act or thing required of Lessee in order to prevent a forfeiture of Lessee's rights hereunder and all such acts or things so done shall prevent a forfeiture of Lessee's rights hereunder as if done by Lessee.

"(b) To realize on the security of the leasehold estate and to acquire and succeed to the interest of Lessee hereunder by foreclosure or by a deed or assignment in lieu of foreclosure and thereafter at such lender's option to convey, assign, or sublease the interest or title to said leasehold estate to any other person provided, however, that said person shall agree to perform and be bound by any and all terms, conditions and covenants contained in this lease. Two (2) copies of any and all security devices or instruments shall be filed with Director prior to the effective date thereof, and Lessee shall give Director prior written notice of any changes or amendments thereto.

"Except as in this Section 22 specifically herein before provided, Lessee shall not, either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this lease or any interest, right or privilege therein, or sublet the whole or any portion of the demised premises or license the use of the same in whole or in part. Neither this lease nor any interest therein shall be assignable, or transferable in

proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee or by any process of law, and possession of the whole or any part of the demised premises shall not be divested from Lessee in such proceedings or by any process of law, without written consent of County. Any violations of the provisions of this paragraph shall give County the right to terminate this lease immediately and without any of the notices required in Section 21 above.

"The holder of a trust deed, or any other bona fide lender, shall not be required to cure any default or breach if said holder or lender is unable to secure possession of the property and if it is necessary for him to have possession in order to cure the default or breach. In the event that a period of time is necessary in order for the holder of a trust deed or any other bona fide lender to completely cure a default or breach, then he shall not be in default so long as he exercises diligence in the curing of such default or breach.

"The holder of a deed of trust or any other bona fide lender shall have all of the rights with respect to the demised premises as set forth in the deed of trust or mortgage or other lending document approved by the County as herein set forth, including the right to commence an action against the Lessee for the appointment of a receiver and to obtain possession of the demised premises under and in accordance with the terms of said deed of trust, mortgage or other lending instrument.

"Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the heirs, executors, administrators, successors and assigns

of the respective parties hereto, and all rights, privileges and benefits arising under this lease and in favor of either party shall be available in favor of the heirs, executors, administrators, successors and assigns thereof respectively; provided, that no assignment or subletting by or through Lessee in violation of the provisions of this lease shall vest any rights in any such assignment or sublease."

5. The effective date of this amendment to lease shall be July 1, 1966.

6. Any and all other terms and conditions contained in the lease shall remain in full force and effect and are hereby reaffirmed.

IN WITNESS WHEREOF, the COUNTY OF LOS ANGELES, by order of its Board of Supervisors, has caused this amendment to lease to be executed on its behalf by the Chairman of said Board and attested by the Clerk thereof, and the Lessee has executed this amendment to lease, or caused it to be duly executed, the day, month and year first above written.

Dated July 1, 1966.

(SEAL)

PLAYA DEL REY MARINE SUPPLY CO., INC.

By W. R. Martin President

By Frank J. Johnson Secretary

ATTEST:

JAMES S. MIZE, Acting Clerk of
the Board of Supervisors

By Harold W. Kennedy
Deputy

THE COUNTY OF LOS ANGELES

By Barth D. Chase
Chairman, Board of Supervisors

APPROVED AS TO FORM:

HAROLD W. KENNEDY, County
Counsel

By James A. Johnson
Deputy

STATE OF CALIFORNIA }
County of Los Angeles } ss.

On this 28th day of September, A. D., 1966, before me JAMES S. MIZE, Clerk of the Board of Supervisors of the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared

BURTON W. CHACE

_____ , known to me to be the Chairman of the Board of Supervisors 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.

JAMES S. MIZE, Clerk of the Board of Supervisors

By Burton W. Chace

Deputy