

After recording, return

Small Craft Harbors  
13837 Fiji Way  
Marina del Rey, California

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AMENDMENT NO. 4 TO LEASE FOR PARCELS

23R AND 24 MARINA DEL REY

THIS AMENDMENT TO LEASE made this 21th day of September,  
1965,

*SEP 21 1965*

BY AND BETWEEN

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

AND

ROY NORRIS, HAROLD WISEMAN and JERRY B. EPSTEIN, hereinafter referred to as "Lessee," as assignees of Morris Appleman, Norman Beck and Jerry B. Epstein,

RECORDED IN OFFICIAL RECORDS  
OF LOS ANGELES COUNTY, CALIF.  
20 Min. Past 12 P.M. DEC 30 1968  
RAY E. LEE, County Recorder

WITNESSETH:

WHEREAS, on May 4, 1962, the predecessors in interest of the Lessee and County entered into a lease of certain premises known as Parcels No. 23 and 24, Marina del Rey, which premises consisted of a total of 1,101,750 square feet and are more particularly described in Exhibit "A" attached thereto and incorporated therein; and

WHEREAS, on August 7, 1964, the County and Lessee entered into an Amendment to Lease, whereby the total area leased to Lessee in the original lease dated May 4, 1962, was reduced by 120,921 square feet, certain other provisions were amended, and a new lease running to the same term was entered into between Lessee and County for the area so deleted, now known as Parcel No. 100, Marina del Rey; and

WHEREAS, it is the desire of the parties hereto and in the public interest to initiate a new schedule for the processing of plans and specifications for construction and additionally to extend the planning and construction periods specified in the original lease in consideration for an increase in the aggregate required construction within the premises demised by the original lease, and in further consideration of the release, relinquishment and waiver by Lessee of any and all claims that he may have against County for any reason up to and including the effective date of this amendment;

APPROVED BY BOARD OF SUPERVISORS

SEP 21 1965

*Gordon T. Nesvig* Gordon T. Nesvig

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NOW, THEREFORE, in consideration of the mutual covenants, considerations and promises contained herein, it is mutually agreed by and between the parties hereto as follows:

1. THE FIRST PARAGRAPH OF SECTION 5 (PLANS AND SPECIFICATIONS FOR REQUIRED CONSTRUCTION) OF SAID LEASE, AS AMENDED, IS DELETED AND THE FOLLOWING SUBSTITUTED THEREFOR:

Prior to March 1, 1966, Lessee shall file with Department six (6) sets of schematic plans for complete development of the demised premises by land improvements, the estimated cost of which shall be not less than the sum of Five Million Dollars (\$5,000,000). Said schematic plans shall designate a certain portion of the total improvements as Phase I construction, with the remainder designated as Phase II construction. The total estimated cost of Phase I construction shall be not less than \$1,000,000. After the approval of such schematic plans, Lessee shall diligently prepare and process for Department approval preliminary and final plans and specifications and working drawings for said Phase I construction to complete the improvements specified in approved schematic plans.

2. THE FOLLOWING PARAGRAPH IS HEREBY ADDED AT THE END OF SECTION 5 (PLANS AND SPECIFICATIONS FOR REQUIRED CONSTRUCTION):

Any and all of the plans and specifications and schematics required to be submitted by the provisions of this paragraph shall conform to the standards generally accepted in the architectural and engineering profession for such documents. Failure to conform to such standards shall constitute a default under this lease.

3. SECTION 6 (REQUIRED CONSTRUCTION SCHEDULE) OF SAID LEASE, AS AMENDED, IS DELETED AND THE FOLLOWING SUBSTITUTED THEREFOR:

Lessee expressly covenants and agrees that within sixty (60) days after the approval of final plans and

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specifications for Phase I construction as provided for in Section 5, as amended, Lessee shall in good faith commence construction of the improvements described therein, including required underground laterals for power, light, telephone, television, sewer, water (including fire lines), gas lines and landscaping, in accordance with said approved plans and specifications, and shall diligently prosecute such construction and shall complete the same not later than July 1, 1968; provided that any delay in construction due to fire, earthquake, war, labor dispute, or other event or condition beyond the control of Lessee shall defer the required completion date by the length of delay attributable to such circumstances as determined by the Director, and the decision of the Director as to the length of delay shall be final.

Failure of Lessee to commence the above-described work within the time specified or failure to diligently prosecute said work to completion once commenced shall constitute a default of Lessee hereunder.

Lessee further expressly covenants and agrees that any and all subsequent improvements initiated at the discretion of Lessee in Phase II shall, for the sole purpose of determining the application of full square foot rental under the provisions of Section 12, as amended, be deemed completed by July 1, 1970, regardless of whether said Phase II construction is completed, under planning, or in progress; provided, however, that the failure of Lessee to commence and complete said Phase II construction shall not constitute a material breach of this lease or a ground for termination thereof.

4. THE FIRST SENTENCE OF THE THIRD PARAGRAPH OF SECTION 12 (SQUARE FOOT AND HOLDING RENTALS) OF SAID LEASE, AS AMENDED, IS DELETED AND THE FOLLOWING SUBSTITUTED THEREFOR:

Notwithstanding any other provision of this paragraph it is understood and agreed that, for the sole purpose of determining the application of full square foot rental, all construction described in Sections 5 and 6, as amended, shall be deemed substantially completed by June 30, 1970, and full square foot rental shall begin on July 1, 1970, regardless of whether said construction is nonexistent, completed, under planning, or in progress. Nothing contained in the preceding sentence shall be construed so as to affect or modify the requirement for completion of Phase I construction as set forth in Section 6, as amended.

5. THE FOLLOWING SENTENCE IS ADDED TO THE THIRD PARAGRAPH OF SECTION 12 (SQUARE FOOT AND HOLDING RENTALS) OF SAID LEASE, AS AMENDED:

Notwithstanding any other provision of this lease, the portion of the demised premises to be subject to annual square foot rental shall be not less than 195,581 square feet in area on and after the date for completion of Phase I improvements under the provisions of Section 6, as amended.

6. As consideration for the rights granted by this amendment, Lessee hereby acknowledges that he has been advised that the demised premises may consist of hydraulic dredge fill or other fill materials placed over low-lying, marshy ground originally devoted to marginal uses including, but not necessarily limited to, agriculture, oil refineries, trash dumps and low production oil wells. Lessee accepts the premises in their present condition notwithstanding the fact that there may be certain defects in the premises which may not be actually known to either party at the time of the execution of this amendment and Lessee hereby acknowledges that he is familiar with the contents of any and all maps,

engineering plans and soil reports on file in the Department of Small Craft Harbors of County and relating to the demised premises and has been afforded an opportunity of examining same. Lessee acknowledges that the condition of the land may cause additional engineering and construction costs above and beyond those contemplated by either party to this amendment to lease at the time of the execution hereof and Lessee agrees that it will make no demands upon County for any construction, alterations or any kind of labor that may be necessitated by said conditions or any one of them. In addition, Lessee hereby waives, withdraws, releases and relinquishes any and all claims, suits, causes of action, rights of rescission, or charges against County, its officers, agents or employees which Lessee now has or may have or assert in the future which are based upon any defects in the physical condition of the demised premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this amendment.

7. SECTION 21 (DEFAULT) IS HEREBY DELETED, 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, except as otherwise provided herein, 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. Except as otherwise provided herein, 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 default 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
  - (1) 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 covered by its encumbrance.

8. SECTION 22 (SUBLEASE, ASSIGNMENTS, AND SUCCESSORS) IS HEREBY DELETED, 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 hereinbefore 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.

9. The effective date of this amendment to lease shall be July 1, 1965.

10. Any and all other terms and conditions in the present agreement are hereby reaffirmed and shall remain unaffected and in full force during the term of the agreement and any extensions thereof.

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 \_\_\_\_\_, 19 \_\_\_\_.

By Harold W. Kennedy

By Roy Norris

By Gordon T. Nesvig

By Gordon T. Nesvig  
Chairman, Board of Supervisors

THE COUNTY OF LOS ANGELES

ATTEST:

GORDON T. NESVIG, Clerk of the Board of Supervisors

By Winifred Bernstein  
Deputy

APPROVED AS TO FORM:

HAROLD W. KENNEDY, County Counsel

By James A. Johnson  
Deputy

(Individual)

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } SS.

On September 14, 1965 before me, the undersigned, a Notary Public in and for said State, personally appeared HAROLD WISEMAN, JERRY B. EPSTEIN  
and ROY NORRIS

\_\_\_\_\_ known to me to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature O. A. Tannenbaum

**O. A. TANNENBAUM**

Name (Typed or Printed)



My Commission Expires June 7, 1966

(This area for official notarial seal)

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