

AMENDMENT NO. 1

TO LEASE NO. 17566

PARCEL NO. 130 MARINA DEL REY

This LEASE AMENDMENT (the "Amendment") is made by and between the County of Los Angeles (the "County") and Grace Restaurant Company, a California Corporation (the "Lessee"), who agree as follows:

ARTICLE 1. BACKGROUND AND GENERAL.

1.01. Property: Parcel 130. The County is the owner of a parcel of land located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, that is commonly referred to by the parties as parcel 130 (the "Premises").

1.02. Lease. The Premises are currently leased by the County to the Lessee, under the terms of a lease dated December 8, 1970, executed with Lessee's predecessor in interest Commodore Club, Inc., a California Corporation (the "Lease").

1.03. Rent. Under the terms of the Lease the Lessee is required to pay the rent based upon the payment schedules set forth in Section 12 (Square Foot Rental) and Section 13 (Percentage Rentals), as the amounts set forth in those schedules may periodically change over the term of the Lease at the times and in accordance with the process set forth in Section 15 (General Rent Renegotiation and Arbitration).

1.04. Insurance. Under the terms of the Lease the Lessee must also carry liability insurance with insurance limits at least equal to amounts set forth in Section 26 (Indemnity Clause and Casualty Insurance) as those amounts may periodically change over the term of the Lease at the times and in accordance with the process, set forth in Section 15 (General Rent Renegotiation and Arbitration).

1.05. Purpose: Modification of the Rent and Liability Insurance Limits. The purpose of the Amendment is to modify the Lessee's obligations under the Lease for the rent and the liability insurance limits over the ten year period of the term of the Lease commencing on August 1, 1988, (the "Decennial Period") pursuant to terms on which mutual agreement by the parties has been reached and that provide for the following changes to be made in the Lessee's obligations for the rent and liability insurance limits over the Decennial Period.

1.05.01. Annual Minimum Rental. An increase in the annual minimum rental for the Decennial Period from the amount for the period of the term prior to August 1, 1988 to SEVENTY-FIVE THOUSAND ELEVEN AND 37/100 DOLLARS (\$75,011.37).

1.05.02. Percentage Rentals. An increase in the percentage rentals of subsections (c), (j) and (s) of Section 13 (Percentage Rentals) for the Decennial Period from the rates for the period of the term prior to August 1, 1988, to TEN AND ONE-HALF percent (10.5%) for subsection (c), to FOUR percent (4%) for subsection (j), and to FIVE percent (5%) for subsection (s).

1.05.03. Growth Participation Fee: Calendar Years 1989 through 1997. An annual percentage participation fee of TEN percent (10%) of the Real Economic Growth of the gross receipts in each calendar year for the calendar years 1989 through 1997.

1.05.04. Binding Arbitration: Rental Disputes. A submission to binding arbitration of all disputes that may arise over the Decennial Period with respect to the Growth Participation Fee and the Index used in calculating the Growth Participation Fee.

1.05.05. Additional Rent: Time for Payment. A thirty (30) day period from the effective date of the Amendment for payment without interest of the balance of the additional accrued rent owed for the Decennial Period from August 1, 1988, to the effective date of the Amendment due to the changes made in the rent for the Decennial Period (the "Additional Rent").

1.05.06. Additional Rent: Interest. Interest on the Additional Rent from the date that is thirty-one (31) days after the effective date of the Amendment to the date for payment of the amount that is owed at the daily rate computed by the Auditor-Controller of the County for each quarter of the calendar year for the funds that are held and invested by the Treasurer-Tax Collector of the County (the "Daily Interest Rate").

1.05.07. Security Deposit. An increase in the security required by Section 7 (Rental Payment Security) deposit from the amount for the period of the term prior to August 1, 1988, to an amount that is equal to TWENTY-FIVE percent (25%) of the annual minimum rental.

1.05.08. Liability Insurance Limits. An increase in the limits of the liability insurance required by Section 26 (Casualty Insurance) from the amounts for the period of the term of the Lease prior to August 1, 1989 to ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage liability.

1.05.09. Interim Rent and Liability Insurance Limits: Next Succeeding Decennial Period. A recognition that in the event the rent and liability insurance limits for the next succeeding decennial period of the term of the Lease have not been readjusted in accordance with the process set forth in Section 15 (General Rent Renegotiation) of the Lease by August 1, 1998, then the rent and liability insurance limits set forth in the Lease, as amended by the Amendment, shall be the amounts, until such time as the determination of the readjusted amounts for this next period of the Lease is made.

1.05.10. Late Charge. A late payment charge of ten percent (10%) per annum, simple interest, prorated on a daily basis, on all rent that is not paid within fifteen (15) days after the date it is due and payable in any calendar year of the Decennial Period, whenever there is more than one late payment of the rent in a calendar year.

ARTICLE 2. RENT.

2.01. Annual Minimum Rental. The first paragraph of Section 12 (Square Foot Rental) of the Lease is deleted, and the following paragraphs are substituted in its place.

"12. SQUARE FOOT RENTAL

"The annual square foot rental for the whole of the demised premises shall be \$1.041 per square foot of land as to 72,057 square feet. The total annual rental for the entire leasehold shall be SEVENTY-FIVE THOUSAND ELEVEN AND 37/100 DOLLARS (\$75,011.37)."

2.02 Percentage Rentals: Occupancy, Food Service and Miscellaneous. Subsections (c), (j) and (s) of Section 13 (Percentage Rentals) are deleted, and the following subsections substituted in their place.

"(c) TEN AND ONE-HALF percent (10½%) 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;

"(j) FOUR percent (4%) 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;

"(s) FIVE percent (5%) of gross receipts from the sale of miscellaneous goods and services;"

2.03. Percentage Participation: Real Economic Growth of the Gross Receipts in a Calendar Year. Section 14 (Rent Renegotiation to Meet Legal Requirements) of the Lease is deleted, and the following new section is substituted in its place.

"14. PARTICIPATION IN THE REAL ECONOMIC GROWTH OF THE GROSS RECEIPTS IN A CALENDAR YEAR.

"A. Growth Participation Fee.

"In addition to the payments that are required under Section 12 (Square Foot Rental) and Section 13 (Percentage Rentals) of the lease, the Lessee shall pay the County an annual amount that shall be equal to TEN percent (10%) of the Real Economic Growth of the Participation Gross Receipts in the Participation Calendar Year for which the payment is made (the 'Growth Participation Fee').

"(1). Real Economic Growth.

"The 'Real Economic Growth' of the Participation Gross Receipts in a Participation Calendar Year shall mean the difference in the subtraction of the Adjusted Base Gross Receipts from the Participation Gross Receipts for the Participation Calendar Year.

"(2). Participation Gross Receipts.

"The 'Participation Gross Receipts' shall mean the Lessee's Gross Receipts of the Participation Calendar Year.

"(3). Participation Calendar Year.

"A 'Participation Calendar Year' shall mean each of the Calendar Years from 1989 through 1997.

"(4). Calendar Year.

"A 'Calendar Year' shall mean an annual period of twelve consecutive calendar months commencing with the first day of January.

"(5). Adjusted Base Gross Receipts.

"The 'Adjusted Base Gross Receipts' shall mean the product of the multiplication of the Base Gross Receipts by the Cumulative Change in the index.

"(6). Base Gross Receipts.

"The 'Base Gross Receipts' shall mean the Lessee's Gross Receipts of the Base Calendar Year.

"(7). The Base Calendar Year.

"The 'Base Calendar Year' shall mean the Calendar Year that commences on the first day of January, 1988.

"(8). The Index.

"The 'Index' shall mean the Consumer Price Index, All Urban Consumers, (CPI-U) Los Angeles - Anaheim - Riverside, All Items (1982-1984 = 100), published by the United States Department of Labor, Bureau of Labor Statistics, or the index with which it is replaced.

"(a). Replacement of Index.

"If the Index is discontinued or revised during the term of the lease, such other governmental index or computation with which it is replaced, shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. In the event the parties are unable to agree on the use of a replacement index

within sixty (60) days after such discontinuance or revision, the selection of the replacement index shall be determined by arbitration that shall be conducted in accordance with the provisions of subsection 14.D.(1)., except that the date for delivery of the Statement of Position shall be seventy-five (75) days after the date of discontinuance or revision of the Index, and the subject for arbitration, and therefore the Statements of Position, the decision by the arbitrator, and the confirming lease addendum, shall be the replacement index for the Index used in the determination of the Growth Participation Fee.

"(9). Cumulative Change in the Index.

"The 'Cumulative Change in the Index' shall mean the quotient of the division described in subsection 14.B.(1).

"(10). Lessee's Gross Receipts.

"The Lessee's 'Gross Receipts' shall mean the gross receipts, as defined in Section 11 (Gross Receipts) of the Lease, as modified by the provisions of subsections 14.A.(10)(a) and 14.A(10)(b) that follow.

"(a). Effect of Sublessee's Doing Business.

If gross receipts are generated by an Affiliated Sublessee doing business on the premises, Participation Gross Receipts shall include the Affiliated Sublessee's gross receipts. If gross receipts are generated by a sublessee other than an Affiliated Sublessee, Participation Gross Receipts shall not include the sublessee's gross receipts but shall instead include the sums paid by the sublessee to the Lessee.

"(b). Affiliated Sublessee. A sublessee shall be an 'Affiliated Sublessee' if the sublessee is: a person directly or indirectly controlling, controlled by or under common control with Lessee, or an officer or shareholder of Lessee; a person owning or controlling TEN percent (10%) or more of the outstanding securities or other beneficial ownership of Lessee; an officer, director, shareholder, partner or member of the immediate family of such officer, director, shareholder or partner of Lessee; a member of the immediate family of Lessee; or an entity for which Lessee is an officer, director or partner. 'Person' includes any natural person, partnership, corporation or other legal entity. 'Immediate family' includes any natural person, partnership, corporation or other legal entity. 'Immediate family' includes spouse, ancestors, lineal descendants and siblings. The term 'control' (including the terms 'controlled by' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

"B. Determination of the Growth Participation Fee.

"The Growth Participation Fee shall be calculated by determining the Cumulative Change in the Index; multiplying the Cumulative Change in the Index by the Base Gross Receipts to determine the Adjusted Base Gross Receipts; subtracting the Adjusted Base Gross Receipts from the Participation Gross Receipts to determine the Real Economic Growth of the

Participation Gross Receipts in the Participation Calendar Year; and multiplying the Real Economic Growth of the Participation Gross Receipts in the Participation Calendar Year by TEN percent (10%).

"(1). The Cumulative Change in the Index.

"In order to determine the Cumulative Change in the Index, the figure shown on the Index published for December, 1988 (the 'Beginning Index'), shall be divided into the figure shown on the Index published for December of the Participation Calendar Year (the 'Adjustment Index'). While the Beginning Index shall never change, except in the event of a change in the base year of the Index or a replacement of the Index, the Adjustment Index shall change annually to show the figure on the Index published for a date on or most recently before the closing date for each succeeding Participation Calendar Year.

"(2). Example.

"By way of example as to how the calculation of the Growth Participation Fee is to be made, assume a Beginning Index of 125.2 and Base Gross Receipts of \$2,000,000, and the following Adjustment Indexes and Participation Gross Receipts for each of the four succeeding Participation Calendar Years.

<u>Participation Calendar Year</u>	<u>Index</u>	<u>Participation Gross Receipts (000)</u>
1989	130.0	\$2,100
1990	134.2	\$2,188
1991	141.6	\$2,344
1992	144.2	\$2,450

Based on these assumptions the following Growth Participation Fee would be due and payable for each of the four succeeding

Participation Calendar Years based on the Real Economic Growth of the Participation Gross Receipts in the Participation Calendar Year in view of the Adjusted Base Gross Receipts that are to be used in each of these years as determined by the Cumulative Change in the Index.

<u>Participation Calendar Year</u>	<u>Index</u>	<u>Cumulative Change</u>	<u>Adjusted Base Gross Receipts (000)</u>	<u>Participation Gross Receipts (000)</u>	<u>Real Economic Growth (000)</u>	<u>Fee (000)</u>
1989	130.0	1.038	\$2,076	\$2,100	\$ 24	\$2.4
1990	134.2	1.072	\$2,144	\$2,188	\$ 44	\$4.4
1991	141.6	1.131	\$2,262	\$2,344	\$ 82	\$8.2
1992	144.2	1.152	\$2,304	\$2,450	\$146	\$14.6

"C. Payment of the Growth Participation Fee.

"The Growth Participation Fee shall be paid within forty-five (45) days after the date of publication of the Adjustment Index that is used in the determination of the Growth Participation Fee to be paid. As is the case with other payments required by the lease, Lessee's payment of the Growth Participation Fee shall be based initially upon the statements furnished the County in accordance with Section 30 (Accounting Records) of the lease showing the Lessee's Gross Receipts for the preceding calendar month, and as such, they shall be subject to audit and other provisions of the lease.

"(1). Set-Off and Credit.

"The Growth Participation Fee shall be paid without credit or set-off of the amounts paid in satisfaction of the Lessee's obligations under Section 12 (Square Foot Rental) and Section 13 (Percentage Rentals) of the lease during the Participation Calendar Year.

"(2). No Real Economic Growth of the Participation Gross Receipts in the Participation Calendar Year.

"Payment of the Growth Participation Fee shall not be required for any Participation Calendar Year in which the Participation Gross Receipts in the Participation Calendar Year are less than the Adjusted Base Gross Receipts.

"D. Resolution of Disputes Over the Amount of the Growth Participation Fee.

"If the parties are unable to agree on the amount of the Growth Participation Fee that is due and payable for a Participation Calendar Year because of a dispute over the amount of the Base Gross Receipts for the Base Calendar Year or the Participation Gross Receipts for a Participation Calendar Year, their dispute over the amount shall be submitted for determination by arbitration that shall be conducted in accordance with the provision of subsection 14.D.(1) that follow.

"(1). Determination of the Growth Participation Fee by Arbitration.

"A dispute over the amount of the Growth Participation Fee for a Participation Calendar Year shall be resolved by binding arbitration that shall be governed by the then existing provisions of the California Arbitration Act as contained in Title 9 of the Part III of the California Code of Civil Procedure commencing with Section 1280, and its successor provisions, as modified by this subsection 14.D.(1).

"(a). Statements of Position.

"If the County and the Lessee have not agreed as to the amount of the Growth Participation Fee for a

Participation Calendar Year within sixty (60) days after the date on which a final audit report prepared by or for the County on the rent for the premises for the Participation Calendar Year is mailed to the Lessee, then each party shall deliver to the other within seventy-five (75) days after the date the audit report is mailed a written notice setting forth the party's position as to the growth Participation Fee for the Participation Calendar Year in dispute (the 'Statement of Position'), and the Growth Participation Fee for the Participation Calendar Year in dispute shall be determined thereafter by arbitration. If either party fails to so deliver its Statement of Position, then the other party's Statement of Position shall be binding as the Growth Participation Fee for the Participation Calendar Year in dispute.

"(b). Arbitrator.

"The parties shall attempt to agree upon a single arbitrator who shall decide the matter. The arbitrator shall be selected from a list of retired judges who have agreed to resolve civil disputes, or attorneys or other professionals having real estate experience. If the parties cannot agree upon the arbitrator, the arbitrator shall be appointed upon petition of either party to the Superior Court of the State of California for the County of Los Angeles.

"(c). Powers of Arbitrator.

"The arbitrator shall have the right to consult with experts and competent authorities for factual information or evidence pertaining to a determination of the dispute, but any such consultation shall be made in the presence

of both parties and their representatives, with full right in each party to cross-examine. Each party shall have the right to subpoena documents and employees or experts of the other party and shall have the opportunity to present evidence as to the merits of its Statement of Position at the same hearing and shall have the right to cross-examine evidence presented by the other party.

"(d). Costs of Arbitration.

"The costs of the arbitration, including, but not limited to, experts' fees, witnesses' fees and attorneys' fees, shall be borne by the party whose Statement of Position was not chosen by the arbitrator.

"(e). Impact of Allegations of Fraud, and Gross Error.

"Where either party has charged the arbitrator with fraud or gross error, the arbitration process shall nonetheless continue through completion and the decision shall be implemented, except as otherwise provided in this subsection. However, the decision shall not be implemented if, prior to the rendering of the decision, the charging party has obtained a final judgment of a court of competent jurisdiction stating that the arbitrator was guilty of fraud or gross error (a 'Disqualification Judgment'). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with subsection 14.D.(1). The party alleging fraud or gross error shall have the burden of proof, and shall reimburse

the arbitrator for all costs, attorneys' fees and other expenses incurred in defending himself, until and except where the charging party obtains a Disqualification Judgment.

"(f). Completion of Arbitration.

"The arbitration shall be conducted as expeditiously as reasonably possible, and upon completion shall be confirmed by an addendum to the lease setting forth the arbitrator's decision on the Growth Participation Fee for the Participation Calendar Year in dispute.

"(2). Interim Growth Participation Fee Pending Determination of the Amount.

"Pending final resolution of the parties' dispute over the amount of the Growth Participation Fee, the Lessee shall pay the fee on the basis of a calculation of the amount that uses the gross receipts statements that have been furnished to the County pursuant to Section 30 (Accounting Records) of the lease showing the Lessee's Gross Receipts for the preceding Calendar Year. Once the amount of the Growth Participation Fee is determined by arbitration, the difference between the correct and paid amount shall be paid or refunded within thirty (30) days after the final determination on the amount of the Growth Participation Fee. Payments or refunds after this thirty (30) day period shall be subject to a late charge commencing on the date following the expiration of the thirty (30) day period in the amount specified in paragraph 4.01 of Amendment No. 1 to the lease. A refund may be made by crediting the amount over-paid against the Lessee's obligations for the rent in accordance with

the Lessee's written instructions for application of the credit, and in the absence of such instruction, by crediting the overpayment to accrued rent owed in order of its date of accrual beginning with the earliest date for which an amount is owed.

2.04. Additional Rent: Time for Payment: Interest.

The Additional Rent shall be due and payable without interest thirty (30) days after the effective date of the Amendment. However, any payment of the Additional Rent after this thirty (30) day period shall include interest at the Daily Interest Rate, simple interest, on the amount that is owed.

2.05. Security Deposit. The first paragraph of Section 7 (Rental Payment Security) of the Lease is deleted, and the following paragraph is substituted in its place.

"The Lessee shall pay to the County the sum of EIGHTEEN THOUSAND SEVEN-HUNDRED FIFTY-TWO AND 84/100 DOLLARS (\$18,752.84). This sum shall be retained by the County as a security deposit to cover delinquent rent and any other financial obligations of the Lessee under this lease, and shall be so applied at the discretion of County."

2.06. Interim Rent: Next Succeeding Decennial Period.

The parties agree that in the event the rent for the next succeeding Decennial Period of the term of the Lease has not been readjusted in accordance with the process set forth in Section 15 (General Rent Renegotiation and Arbitration) of the Lease by August 1, 1998, then the rent set forth in the Lease, as amended by the Amendment, shall be the amounts, until

such time as the determination of the readjusted amounts for this next period of the Lease is made. In the case of the additional annual percentage rental of TEN percent (10%) that is required by Section 14 (Participation in the Real Economic Growth of the Gross Receipts) the rent shall be the amount computed in accordance with the provisions of subsection 14.B., except that the Participation Gross Receipts for any Calendar Year after 1997 shall be the gross receipts for the Calendar Year preceding the next anniversary date of the last annual calculation for payment of the Growth Participation Fee. However, once the rent for the next succeeding Decennial Period of the term of the Lease is readjusted in accordance with the process set forth in Section 15 (General Rent Renegotiation and Arbitration) of the Lease, the readjusted amounts shall supersede the interim amounts as of August 1, 1998. Payment of the interim amounts pending a determination of the readjusted amounts shall be deemed to constitute satisfactory performance of the rental obligation for this next period of the term of the Lease, until the determination of the readjusted amounts and the expiration of the time period, if any, set by mutual agreement of the parties for a reconciliation of the payments made with the payments due and payment or refund of the difference between these two amounts. A refund of the difference, including a refund of any interim payment of the additional rental required by Section 14 (Participation in the Real Economic Growth of the Gross Receipts), due to a deletion of this section from the Lease, shall be made by crediting the amount overpaid against the

Lessee's obligations for the rent in accordance with the Lessee's written instructions for application of the credit, and in the absence of such instruction, by crediting the overpayment to accrued rent owed in order of its date of accrual beginning with the earliest date for which an amount is owed.

ARTICLE 3. LIABILITY INSURANCE LIMITS

3.01. Limits of Coverage. Section 26 (Indemnity Clause and Casualty Insurance) is amended by deleting paragraph two and substituting the following paragraph.

"Lessee shall maintain in full force and effect during the term of the lease, comprehensive general liability insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage liability. The County and Board of Supervisors, its officers, agents and employees shall be named as additional insureds under such liability insurance policy or policies."

3.02. Interim Liability Insurance Limits: Next Succeeding Decennial Period. The parties agree that in the event the liability insurance limits for the next succeeding Decennial Period of the term of the Lease have not been readjusted in accordance with the process set forth in Section 15 (General Rent Renegotiation and Arbitration) of the Lease by August 1, 1998, then the liability insurance limits set forth in the Lease, as amended by the Amendment, shall be the amounts, until such time as the determination of the readjusted amounts for this next period of the Lease is made.

ARTICLE 4. MISCELLANEOUS.

4.01. Late Payment Charge. The Lessee agrees to pay the County a late payment charge of TEN percent (10%) per annum, simple interest, prorated on a daily basis, on all rent that is not paid within fifteen (15) days after the date it is due and payable in any calendar year of the Decennial Period, whenever there is more than one late payment of the rent in a calendar year. The late payment charge may be cancelled, whenever the Director in his sole discretion finds on appeal of the Lessee that the late payment was excusable by reason of extenuating circumstances. The foregoing notwithstanding, the non-payment or late payment of percentage rentals due to the failure of an assignee, sublessee, licensee, permittee, or concessionaire of the Lessee to report and pay percentage rentals on its gross receipts to the Lessee shall be recognized by the Director as grounds for cancellation of the late charge. Any late payment charge shall be due and payable with the next rental payment. The County shall not be obligated to notify the Lessee of the accumulated amount of late charges.

4.02. Ratification. All terms of the Lease that are not changed by the Amendment shall remain in full force and effect and are reaffirmed.

4.03. Operative Date. The effective date of the Amendment shall be the date of its approval by the Los Angeles County Board of Supervisors (the "Board of Supervisors").

