

12450

SUPPLEMENT 2

AMENDMENT NO. 2 TO LEASE NO. 12450
(PARCELS 131R AND 133 - MARINA DEL REY)

THIS AMENDMENT TO LEASE made and entered into this 16th
day of September, 1969,

BY AND BETWEEN COUNTY OF LOS ANGELES, hereinafter
referred to as "County,"

AND COMMODORE CLUB, INC., hereinafter
referred to as "Lessee,"

W I T N E S S E T H:

WHEREAS, the parties hereto have, on the eighth day of August, 1967, entered into a lease under which Lessee leased from County that certain real property in the Marina del Rey Small Craft Harbor known as Parcels 131R and 133; 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 (23) 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, charged or rental 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 tele-
phones, 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 sub-
section (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;

paragraph be provided by Lessee or its sublessees, assignees, licensees, concessionaires or permittees, without the usual charges therefor according to the price list or 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:

"21. DEFAULT AND CANCELLATION.

"The following events are deemed to be 'events of default':

"(a) The failure of Lessee to pay the rentals due or make any other payments required hereunder within ten (10) days after written notice from County that said payments are delinquent.

"(b) The failure of Lessee to keep, perform and observe any and all promises, covenants, conditions and agreements set forth in this lease on its part to be so kept, performed or observed within thirty (30) days after written notice of breach thereof from County, provided, however, that where fulfillment of any such promises, covenants, conditions or agreements requires activity over a period of time and Lessee shall have commenced to perform whatever may be required to cure the particular breach within thirty (30) days after receipt of the aforesaid thirty (30) days' notice and continues such performance diligently, an 'event of default'

shall not occur so long as Lessee diligently pursues the performance of whatever may be required to cure the breach.

"(c) The abandonment, vacation or discontinuance of its use of the demised premises for a period of thirty (30) days at any one time after written notice from County calling attention to such abandonment, except when prevented by fire, earthquake, strikes or other calamity beyond its control.

"Lessee shall not be considered in default as to any provisions 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.

"Notwithstanding any of the foregoing, County shall not exercise any remedy available to it for an 'event of default' and will not forfeit the lease unless County shall have given written notice of such default or defaults to any trustee, beneficiary or mortgagee under a deed of trust or mortgage affecting the demised premises or any part thereof. Such notice shall be sent simultaneously with the notice to Lessee referred to above. 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 the power to cure the events of default specified in the manner described below,

and if all of said events of default are cured, this lease shall remain in full force and effect. Said events of default may be cured in the following manner:

"(a) If the event of default be in the payment of rental, taxes, insurance premiums, utility charges, or any other sum of money, the 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 the event of 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;

"(i) If the encumbrance holder cures, remedies and corrects the default within thirty-five (35) days after mailing of the aforesaid notice of default to said encumbrance holder, or if curing of such default requires activity over a period of time and the encumbrance holder shall have commenced to perform whatever may be required to cure the particular default within thirty-five (35) days after mailing of the aforesaid notice and continues such performance diligently;

OR

"(i) If within sixty (60) days after the mailing of said notice to encumbrance holder by County said

encumbrance holder commences foreclosure by judicial action or trust deed sale of its encumbrance, (said sixty (60) day period shall be extended by the time during which encumbrance holder is prevented from commencing foreclosure by any order, judgment or decree of any court or regulatory body of competent jurisdiction); and

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

"(iii) If within thirty-five (35) days after such foreclosure sale and the vesting of title free of redemption in the purchaser thereat (whether or not such purchaser is the encumbrance holder) said purchaser cures, remedies and corrects the default, or commences and diligently pursues the performance of the thing or work required to be done to cure, correct and remedy said default. If said event of default or any of the events of default at this time are not money defaults and are impossible to cure, said purchaser shall not be obligated to cure such event of default.

"If an event of default has occurred and has not been cured by Lessee, or an encumbrance holder under the provisions hereinbefore set forth, then and in such event, at the option of County, a ten (10) days' notice shall be sent by County by registered mail to Lessee and any encumbrance holder and ten (10) days

after mailing such notice, unless said event of default is cured, this lease shall be forfeited. Upon such termination, Lessee's right to possession of the premises shall terminate and Lessee shall surrender, possession thereof immediately. Upon exercise of such right by County, Lessee hereby grants County license to enter upon the demised premises and take possession thereof, including all improvements, equipment and inventory.

"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 reinstatement of the 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, as amended, except to the extent that any provisions of this lease are, through the passage of time or for other reasons, obviously inapplicable. Said reinstatement 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 reinstatement and shall also assign any subleases that may have been assigned to County under Paragraph 22 or otherwise assigned. Such sublease shall be subordinate to such reinstated 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."

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

"22. SUBLEASES, ASSIGNMENTS, TRUST DEED
BENEFICIARIES, MORTGAGEES AND SUCCESSORS.

"A. Subleases

"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.

"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 (30) day period, Director shall approve or disapprove in writing said proposed sublease. In the event of disapproval, said proposed sublease shall not be made.

"Additionally, 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 non-business, 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 implemented without the approval of Director.

"Any and all sublessees shall be subject to and bound by each and all of the terms and conditions of this lease.

"B. Trust Deed Beneficiaries and Mortgagees.

"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 encumbrance holder 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 encumbrance holder'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. One (1) copy of any and all security devices or instruments shall be filed with Director not later than seven (7) days after the effective date thereof, and Lessee shall give Director written notice of any changes or amendments thereto.

"The written consent of County shall not be required in the case of:

"(i) A transfer of this lease at foreclosure sale of trust deed or at a judicial foreclosure or an assignment to the encumbrance holder in lieu of foreclosure;

"(ii) A subsequent transfer by an encumbrance holder who is a purchaser at such foreclosure sale or an assignee in lieu of foreclosure if the transferee is an established bank, savings and loan association or insurance company;

provided that in either such event the encumbrance holder forthwith gives notice to County in writing of any such transfer setting forth the name and address of the transferee, the effective date of such transfer and

the express agreement of the transferee assuming and agreeing to perform all of the obligations under this lease, together with a copy of the document by which such transfer was made.

"Any transferee under the provisions of the above paragraph shall be liable to perform the obligations of the Lessee under this lease only so long as such transferee holds title to the leasehold. Such transferee shall be liable to pay County any unpaid rentals and other charges that may be due County for any period of time prior to the time when such transferee takes possession of the property provided, however, that such obligations shall not be effective unless County shall have transmitted to encumbrance holder notice of the original Lessee's default within sixty (60) days after such default occurs.

"Any subsequent transfer of the leasehold shall not be made without the prior written consent of the County and shall be subject to the conditions relating thereto as set forth in Paragraph C of this Section.

"Any encumbrance holder shall not be obligated to cure any default or breach if said encumbrance holder is unable to secure possession of the property and if it is necessary for him to have possession in order for him to cure the default or breach. In the event that a period of time is necessary in order for the encumbrance holder 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 encumbrance holder shall have all 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.

"C. Assignments

"Except as in this Section 22 specifically hereinbefore provided, Lessee shall not, without the written consent of County, 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 including proceedings under Chapters X and XI of the Bankruptcy Act.

"D. Successors.

"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 assignee or sublessee."

5. The effective date of this amendment to lease shall be September 1, 1969.

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 Executive Officer-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.

COMMODORE CLUB, INC.

(SEAL)

By [Signature]
President

By [Signature]
Secretary

ATTEST:

JAMES S. MIZE, Executive
Officer-Clerk of the
Board of Supervisors

By [Signature]
Deputy

APPROVED AS TO FORM:

JOHN D. MAHARG
County Counsel

By [Signature]
Deputy



THE COUNTY OF LOS ANGELES

[Signature]
Chairman, Board of Supervisors

APPROVED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
Jan 21, 1966
[Signature]
JAMES S. MIZE
EXECUTIVE OFFICER

STATE OF CALIFORNIA
County of Los Angeles } ss

On this 10th day of September, A.D., 19 69, before me JAMES S. MIZE, Executive Officer — Clerk of the Board of Supervisors of the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared

ERNEST E. DEBS

_____ , 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, Executive Officer — Clerk of the Board of Supervisors

By _____

May Richmond

Deputy

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. 131R

Those portions of Parcels 663 to 669 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county, within the following described boundaries:

Beginning at the intersection of the westerly line of the easterly 55.13 feet of said Parcel 663 with the northerly line of said last mentioned parcel; thence westerly along the northerly lines of said Parcels 663 to 669 inclusive to the northwesterly corner of said Parcel 669; thence southerly along the westerly lines of said Parcels 669 and 668 a distance of 202.09 feet to the southwest corner of said Parcel 668; thence easterly along the southerly lines of said Parcels 668, 667 and 666 a distance of 346.72 feet to the easterly line of the westerly 42.30 feet of said Parcel 666; thence northerly along said easterly line 59.00 feet to a line parallel with and 59 feet northerly, measured at right angles, from the southerly line of said last mentioned parcel; thence easterly along said parallel line to a point, said point being distant westerly thereon 148.00 feet from the westerly line of the easterly 55.13 feet of said Parcel 663; thence northerly at right angles from said parallel line 18.00 feet to a line parallel with and 77 feet northerly, measured at right angles, from said last mentioned southerly line; thence easterly along said last mentioned parallel line 148.00 feet to said last mentioned westerly line; thence northerly along said last mentioned westerly line to the point of beginning.

Together with the use, in common with others, of that portion of that certain 11 foot easement for sanitary sewer and harbor utility purposes, shown on said map to be reserved by the County of Los Angeles for such purposes, which extends from the easterly line of the westerly 42.30 feet of said Parcel 666, westerly to the westerly line of said Parcel 668.

Reserving and excepting unto the County of Los Angeles rights of way for storm drain, sanitary sewer and harbor utility purposes in and across those portions thereof designated on said map as easements to be reserved by said county for such purposes, together with the right to grant same unto others.

DESCRIPTION APPROVED

May 3, 1968

JOHN A. LAMBIE

County Engineer

By Edgar A. S. S. S. Deputy