

AMENDMENT NO. 7

TO LEASE NO. 12450

12450  
SUPPLEMENT 7

PARCEL NO. 133S - MARINA DEL REY

This LEASE AMENDMENT (the "Amendment") is made by and between the County of Los Angeles (the "County") and the Commodore Club, Inc., a California corporation (the "Lessee"), who agree as follows.

ARTICLE 1. BACKGROUND AND GENERAL.

1.01. Property: Parcel 133S. 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 133S (the "Premises").

1.02. Lease. The Premises are currently being leased by the County to the Lessee under the terms of a lease dated August 1, 1962, as modified by various written amendments and policy statements on which mutual agreement has been reached (collectively the "Lease").

1.03. Rent Under the terms of the Lease the Lessee is required to pay the rent in monthly installments that are based upon the payment schedules set forth in Section 12 (Square Foot Rental) and Section 13 (Percentage Rentals) of the Lease, and to carry liability insurance with the coverage required by Section 26 (Casualty Insurance) of the Lease, as the amounts for the rent and liability coverage may periodically change over the term of the Lease in accordance with the provisions of Section 15 (General Rent renegotiation) of the Lease.

1.04. Purpose: Modification of the Rent and Liability Insurance Limits. The purpose of the Amendment is to modify the Lessee's obligation for the rent and the liability insurance limits pursuant to terms on which mutual agreement by the parties has been reached and that provide for the following changes to be made to the provisions of the Lease.

1.04.01 Annual Minimum Rental: Retroactive Increase. An increase in the annual minimum rental of Section 12 (Square Foot Rental) of the Lease from the amount for the period of the term of the Lease prior to August 1, 1983, to ONE HUNDRED ONE THOUSAND THIRTEEN AND 33/100 DOLLARS (\$101,013.33), commencing with the installment of the annual minimum rental that is due and payable on August 1, 1983, for the annual period of twelve consecutive calendar months that begins with the month of August, 1983.

1.04.02. Percentage Rentals: Retroactive Increase. An increase in the percentage rentals of subsections (j) and (s) of Section 13 (Percentage Rentals) of the Lease from the rates for the period of the term of the Lease prior to August 1, 1983, to THREE AND ONE HALF percent (3½%) for subsection (j) and FIVE percent (5%) for subsection (s), commencing with the percentage rentals payment that is due and payable on September 15, 1983, for the monthly gross receipts for the month of August, 1983.

1.04.03. Additional Rent: Time for Payment. A sixty (60) day period from the effective date of the Amendment for payment of one-half of the additional accrued rent owed for the period from August 1, 1983, to the effective date of the Amendment

due to the retroactive changes made in the annual minimum and percentage rentals (the "Additional Rent"), and a one hundred twenty (120) day period from the effective date of the Amendment for payment of the remaining balance.

1.04.04. Additional Rent: Interest. Compound annual interest on the Additional Rent from August 1, 1983 to the date of payment for the amount that is owed at the rate of FOUR AND ONE-QUARTER percent (4.25%) (the "Annual Interest Rate").

1.04.05. Growth Participation Fee. An annual participation fee of TEN percent (10%) of the Real Economic Growth of the gross receipts in each Calendar Year, commencing with the participation fee that will be due and payable on January 1, 1990, for the Calendar Year 1989.

1.04.06. Late Payment Charge. A late payment charge of TEN percent (10%) per annum, simple interest, prorated on a daily basis, on any late payment of the amounts that the Lessee is obligated to pay to the County under the terms of the Lease, as amended by the Amendment.

1.04.07. Annual Minimum and Percentage Rentals: Future Readjustments. An elimination of all future adjustments of the annual minimum and percentage rentals over the remaining term of the Lease, except for the readjustment on the Renegotiation Date of the annual minimum and percentage rentals by renegotiation and arbitration to the Fair Rental Value of the Premises on the Renegotiation Date; the readjustment on the Readjustment Date of the annual minimum rental to amounts equal to SEVENTY-FIVE percent (75%) of the arithmetic mean of the Annual

Rent over the five consecutive preceding Calendar Years of the Readjustment Date; and in the event of the commencement of a New Gross Receipts Activity on the Premises, the readjustment on the new Gross Receipts Activity Renegotiation Date of the percentage rentals that are applicable to the New Gross Receipts Activity, other than the percentage rentals of subsection (j) and (s) of Section 13 (Percentage Rentals) of the Lease, by renegotiation and arbitration to the Fair Rental Value of the New Gross Receipts Activity on the New Gross Receipts Activity Renegotiation Date.

1.04.08. Binding Arbitration: Rent and Liability Insurance. A submission to binding arbitration of all disputes that may arise with respect to the readjustments of the annual minimum and percentage rentals and liability insurance.

1.04.09. Liability Insurance Limits. An increase in the limits of the liability insurance required by Section 26 (Casualty Insurance) of the Lease from the amounts for the period of the term of the Lease prior to August 1, 1983, to ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage liability.

## ARTICLE 2. RENT.

2.01. Annual Square Foot Rental. Section 12 (Square Foot Rental) of the Lease is deleted, and the following section is substituted in its place.

"12. Square Foot Rental.

"The annual square foot rental for the whole of the demised premises shall be \$1.774 per square foot of land as to 56,941 square feet. The total annual rental for the entire

leasehold shall be ONE HUNDRED ONE THOUSAND THIRTEEN AND 00/100TH DOLLARS (\$101,013.00).

"The Lessee shall pay the County the annual square foot rental in twelve (12) equal monthly installments. Each installment shall be due and payable in advance on the first day of each calendar month."

2.01.01. Effective Date. The effective date of the annual minimum rental set forth in paragraph 2.01 of the Amendment shall be retroactive to August 1, 1983.

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

"(j). THREE AND ONE HALF percent (3½%) of gross receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that gross receipts from facilities established and operated as a take-out food operation shall be reported under subsection 13 (s).

"(s). FIVE percent (5%) of gross receipts from the sale miscellaneous goods and services not specifically provided for elsewhere in his Section and as further defined in Policy Statement No. 21 issued by the Director of the Department of Beaches and Harbors (the "Director).

2.02.01. Effective Date. The effective date of the percentage rentals set forth in paragraph 2.02 of the Amendment shall be retroactive to August 1, 1983.

2.03. Additional Rent: Time for Payment: Interest.

One-half of the Additional Rent shall be paid no later than sixty (60) days after the effective date of the Amendment, and the remaining balance shall be paid no later than one hundred twenty (120) days after the effective date of the Amendment. The Additional Rent shall be paid with interest at the Annual Interest Rate, compounded annually, for the period August 1, 1983, to the date of payment of the amount that is owed.

2.03.01. Acknowledgement of Partial Amount Owed: Principal and Interest. The parties acknowledge that the amount of the Additional Rent owed for the period August 1, 1983, through November 30, 1988, is ONE HUNDRED TEN THOUSAND ONE HUNDRED THIRTY-FOUR AND 23/100 DOLLARS (\$110,134.23), and that the Annual Interest, compounded annually, on this amount for the period August 1, 1983, through February 15, 1989, is THIRTEEN THOUSAND FOUR HUNDRED AND 72/100 DOLLARS (\$13,400.72).

2.04. Annual 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. ANNUAL 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 and Section 13 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 a Calendar Year for which a Growth Participation Fee is required pursuant to the provisions of subsection 14.C.

"(4). Calendar Year.

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

"(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 Calendar Year.

"The 'Base Calendar Year' shall mean the Calendar Year that commences on the first day of January of the calendar year 1987.

"(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 of 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 15.E of the lease, except that the subject for arbitration, the decision by the arbitrator, and the confirming lease addendum, shall be 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 of the lease, as modified by the provisions of subsections 14.A(10(a) and (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 the Lessee, or an officer or shareholder of the Lessee; any person owning or controlling ten percent (10%) or more of the outstanding securities or other beneficial ownership of the Lessee; an officer, director, shareholder, partner or member of the immediate family of such officer, director, shareholder or partner of the Lessee; a member of the immediate family of the Lessee; or any entity for which the 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, 1987 (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 succeeding four 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>Cumu- lative Change</u>	<u>Adjusted Base Gross Receipts (000)</u>	<u>Partici- pation 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 close of each and every Calendar Year over the remaining term of the lease, commencing with the payment that is due on January 1, 1990, for the Calendar Year 1989. 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 gross receipts statements furnished the County in accordance with Section 30 of the lease, 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 and Section 13 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 there was no Real Economic Growth of the Participation Gross Receipts in the Participation Calendar Year.

"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 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 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 in dispute is mailed to the Lessee, their dispute over the amount shall be submitted for determination by arbitration that shall be conducted in accordance with the provisions of subsection 15.E. of the lease, except that the subject for arbitration, the decision by the arbitrator, and the confirming addendum to the lease, shall be the amount of the Growth Participation Fee for the particular Participation Calendar Year that is the subject of the dispute.

"(1). 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 of the lease. 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 without interest within thirty (30) days of the final determination on the amount of the Growth Participation Fee. Except as hereinafter provided, 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 Section 51 of the lease. A refund may 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. A refund by credit against accrued rent owed shall not be subject to a late charge, notwithstanding the refund is made after the expiration of the thirty (30) day period."

2.05 Late Payment Charge. The following new section is added to the Lease.

"Section 51 (Late Charge).

"The Lessee agrees to pay the County a late charge on all sums not received by the County within ten (10) days of the date the sum is due. The late charge shall be equal to TEN percent (10%) per annum, simple interest, prorated on a daily basis, on the sum not received. 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."

ARTICLE 3. READJUSTMENT OF ANNUAL SQUARE FOOT RENTAL AND PERCENTAGE RENTALS.

3.01 Elimination of Periodic Rent Readjustment: Exceptions. Section 15 (General Rent Renegotiation and Arbitration) of the Lease is deleted, and the following new section is substituted in its place.

"15. READJUSTMENT OF ANNUAL SQUARE FOOT RENTAL AND PERCENTAGE RENTALS.

"A. Readjustment of Annual Square Foot Rental and Percentage Rentals.

"The annual square foot rental of Section 12 of the lease and the percentage rentals of Section 13 of the lease shall be readjusted to the Fair Rental Value of the premises on the Renegotiation Date, subject to the limitation set forth in subsection 15.F.

"(1). Renegotiation Date.

"The 'Renegotiation Date' shall mean August 1, 2005.

"(2). Fair Rental Value.

"The 'Fair Rental Value' of the premises on the Renegotiation Date shall mean the fair rental value of the premises subject to the lease, taking into consideration the uses permitted thereunder and all of its terms, conditions, and restrictions, franchise value, earning power, and all of the factors and data required or proper to be considered in determining fair market value under the laws of eminent domain in the State of California.

"(3). Determination of the Fair Rental Value of the Premises.

"The Fair Rental Value of the premises on the Renegotiation Date shall be determined in accordance with the process set forth in subsections 15.D. and E. for the determination of the Fair Rental Value by renegotiation and arbitration. The determination of the Fair Rental Value of the premises in accordance with the process set forth in subsection 15.D. may be made at any time. The determination of the Fair Rental Value of the premises in accordance with the process set forth in subsection 15.E. may be commenced at the election of either party only in the event the parties are unable to reach agreement on the Fair Rental Value of the premises on or before the date which is ten (10) months prior to the Renegotiation Date,

"(4). Interim Annual Square Foot Rental and Percentage Rentals Pending Determination of the Fair Rental Value.

"If the Fair Rental Value of the premises on the Renegotiation Date is not determined by mutual agreement or arbitration before the Renegotiation Date, payment of the annual square foot rental and percentage rentals shall be made in the amount and at the rates in effect immediately before the Renegotiation Date (the "Interim Rent").

"(5). Correction of Underpayments and Overpayments.

"There shall be a reconciliation of the Interim Rent paid with the Fair Rental Value of the annual square foot and percentage rentals that is ultimately determined. If the Fair Rental Value of the annual square foot and percentage rentals as

determined by mutual agreement or arbitration is determined after the Renegotiation Date, then on the Settlement Date as defined in subsection 15.A.(6), for the period between the Renegotiation Date and the actual date of payment (the 'Retroactive Period'), the Lessee shall pay to the County, or the County shall pay or credit to the Lessee, the difference between the actual rents paid by the Lessee and the rents that should have been paid in accordance with the Fair Rental Value of the premises (the 'Retroactive Payment'). If the amount of rent paid by the Lessee to the County during the Retroactive Period is more or less than the amount which is determined to be due, then the Lessee with respect to overpayment or the County with respect to underpayments shall further be entitled to interest on each portion of the Retroactive Payment from each date on which the square foot rental and percentage rentals were payable under the lease to the date paid or credited, whichever is applicable, at the following rates.

"(a). The County Pool Rate.

"If the settlement date occurs no later than six months after the Renegotiation Date, the interest rate shall be equal to the average daily rate computed by the Auditor-Controller of the County for the funds held and invested by the Treasurer and Tax Collector of the County (the 'County Pool Rate') during the period between the Renegotiation Date and the Settlement Date.

"(b). The Prime Rate.

"If the Settlement Date occurs later than six months after the Renegotiation Date, the interest rate shall be

the average County Pool Rate for the six month period after the Renegotiation Date, and the average prime rate published in the Wall Street Journal plus three percent (3%) for the period between that date which is six (6) months after the Renegotiation Date and the actual date of payment.

"(c). Limitations on Rates.

"In no event shall the rate of interest payable under either subsection 15.A.(5).(a). or 15.A.(5).(b). exceed the maximum rate permitted by law.

"(6). The Settlement Date.

"If the Fair Rental Value of the premises is determined by mutual agreement, the Settlement Date shall be three (3) working days after the date on which the Fair Rental Value of the premises is determined. If the Fair Rental Value of the premises is determined by arbitration, then the Settlement Date shall be five (5) working days after the award is made by the arbitrator, regardless of whether a party intends to file or actually does file a petition to confirm, correct or vacate such award.

"(7). Credit in Lieu of Payment.

"If the Fair Rental Value of the premises is determined to be less than the rentals paid prior to the Renegotiation Date, the County shall have the option to credit the amount of the Retroactive Payment plus interest against the next installments of square foot and percentage rentals due following the Settlement Date."

"B. Additional Periodic Readjustment of the Annual Square Foot Rental.

"In addition to the readjustment that is provided in subsection 15.A. for the annual square foot rental of Section 12 of the lease on the Renegotiation Date, the annual square foot rental shall be readjusted also on each Readjustment Date over the remaining term of the lease, subject to the limitation that is set forth in subsection 15.F., to amounts that shall be equal to SEVENTY-FIVE percent (75%) of the arithmetic mean of the Annual Rent over the five consecutive Calendar Years preceding the Readjustment Date.

"(1). Readjustment Date.

"The 'Readjustment Date' shall mean the earlier of the next succeeding Decennial Anniversary Date of the lease or the first day of the month following the date of recordation of an Assignment of the Lease or memorandum of the Assignment of the Lease in the office of the Los Angeles County Recorder.

"(a). The 'Decennial Anniversary Date' shall mean August 1, 1983, and each succeeding tenth anniversary of this date over the remaining term of the lease.

"(b). An 'Assignment of the Lease' shall mean a transfer of all the beneficial interest in the lease pursuant to the terms of an agreement for the purchase and sale of the lease and each succeeding similar transaction occurring over the remaining term of the lease.

"(2). Annual Rent.

"The 'Annual Rent' shall mean the total amount due and payable under the provisions of Section 12, Section 13 and Section 14 of the lease for the Calendar Year as determined by mutual agreement of the County and the Lessee that these obligations have been fully satisfied or arbitration in absence of mutual agreement on this amount.

"(3). Calendar Year.

"A 'Calendar Year' shall mean the same annual period that is described in subsection 14.A.(4). of the lease.

"(4). Arbitration.

"There shall be arbitration of any dispute over the annual square foot rental that is not resolved by mutual agreement of the parties within sixty (60) days after the date on which a final audit report prepared by or for the County on the Annual Rent for the last Calendar Year of the five Calendar Years in dispute is mailed to the Lessee. The arbitration shall be conducted in accordance with the provisions of subsection 15.E., except that the subject for arbitration and the decision by the arbitrator shall be the annual square foot rental in dispute. Following a determination of the annual square foot rental by either mutual agreement or arbitration, the parties shall confirm the amount by an addendum to the lease.

"(5). Interim Annual Square Foot Rental Pending Determination of the Amount and Reconciliation of Differences Paid.

"Pending final determination by the parties on the amount of the annual square foot rental, the Lessee shall pay the annual square foot rental on the basis of a calculation of the readjusted amount, subject to the limitation that is set forth in subsection 15.F., that uses the actual amounts paid under Section 12, Section 13 and Section 14 of the lease for the five consecutive Calendar Years on which the adjustment in dispute is to be made. Once the amount of the annual square foot rental is determined by mutual agreement or arbitration, the difference between the correct and paid amounts for the period between the Readjustment Date and the date of actual payment shall be paid or refunded with interest. Interest shall be calculated in the same manner as interest is calculated for the Retroactive Payment in subsections 15.A.(5). and (6)., except that in making these calculations the Renegotiation Date shall be deemed to mean the Readjustment Date. A refund may be made by crediting the amount overpaid plus interest 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 over-payment plus interest to accrued rent owed in order of its date of accrual beginning with the earliest date for which an amount is owed.

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• "(6). Monthly Payment of the Readjusted Annual Square Foot Rental.

"The readjusted annual square foot rental shall be paid monthly in twelve equal installments that shall be due and payable in advance on the first day of each calendar month of the term of the lease commencing with the Readjustment Date.

"C. Additional Readjustment of the Percentage Rentals; New Gross Receipts Activity.

"In addition to the readjustment that is provided in subsection 15.A. for the percentage rentals of Section 13 of the lease on the Renegotiation Date, each time a New Gross Receipts Activity is commenced on the premises, the percentage rentals of Section 13 of the lease that are applicable to the New Gross Receipts Activity, other than the percentage rentals of subsections (j) and (s) of Section 13 of the lease, shall be readjusted on the New Gross Receipts Activity Renegotiation Date, subject to the limitation that is set forth in subsection 15.F., to a percentage rental that shall be equal to the Fair Rental Value on the New Gross Receipts Activity Renegotiation Date of the New Gross Receipts Activity as established by mutual agreement or arbitration.

"(1). New Gross Receipts Activity.

"A 'New Gross Receipts Activity' shall mean an activity that is not subject to the percentage rentals of subsections (j) and (s) of Section 13 of the lease.

"(2). New Gross Receipts Activity Renegotiation Date.

"The 'New Gross Receipts Activity Renegotiation Date' shall mean the first day of the calendar month in which the New Gross Receipts Activity is approved for the premises by the Director.

"(3). Fair Rental Value.

"The 'Fair Rental Value' of the New Gross Receipts Activity on the New Gross Receipts Activity Renegotiation Date shall mean the percentage rental which the land, comprising the premises, excluding improvements, would bring, if the use of the land for the New Gross Receipts Activity was offered by a lease authorizing the New Gross Receipts Activity in the open market, allowing a reasonable time to find a tenant who leases with knowledge of all Relevant Factors, where neither the landlord nor tenant are under abnormal pressure to lease the land for such use. 'Relevant Factors' shall mean the same factors that are set forth in subsection 15.A.(2).

"(4). Determination of the Fair Rental Value of the New Gross Receipts Activity.

"The Fair Rental Value of the New Gross Receipts Activity on the New Gross Receipts Renegotiation Date shall be determined in accordance with the process set forth in subsections 15.D and E. for determination of the Fair Rental Value by renegotiation and arbitration. The determination of the Fair Rental Value in accordance with this process shall commence no later than sixty (60) days after the New Gross Receipts Activity Renegotiation Date.

"(5). Interim Percentage Rental for the New Gross Receipt Activity Pending Determination of the Fair Rental Value.

"Pending determination of the Fair Rental Value of the New Gross Receipts Activity by mutual agreement or arbitration, the percentage rental for the New Gross Receipts Activity, (the 'Interim Rent') shall be determined, subject to the limitation set forth in subsection 15.F., in accordance with this subsection 15.C.(5).

"(a) Determination with Appraisal-Based Statement(s).

"If only one party's Statement of Position consists of only figures and percentages set forth in an opinion of the Fair Rental Value for the New Gross Receipts Activity contained in a written appraisal by a professional real estate appraiser who is a member of the American Institute of Real Estate Appraisers and of the Society of Real Estate Appraisers (an 'AIREA/SREA Appraiser'), dated not more than six (6) months after the New Gross Receipts Activity Renegotiation Date (an 'Appraisal-Based Statement'), the Interim Rent shall be paid according to the Appraisal-Based Statement. If both parties' statements are Appraisal-Based Statements, the Interim Rent shall be determined by averaging the individual components of the rent as set forth in the two (2) Appraisal-Based Statements.

"(b). Determination Without Appraisal-Based Statement(s).

"If neither party's Statement of Position is an Appraisal-Based Statement, the Interim Rent shall be determined

by averaging the individual components of the rent as set forth in the two (2) Statements of Position.

"(6). Correction of Underpayments and Overpayments.

"There shall be a reconciliation of the Interim Rent paid during the determination of the Fair Rental Value of the New Gross Receipts Activity with the Fair Rental Value that is ultimately determined, and the difference between the correct and paid amounts for the period between the New Gross Receipts Activity Renegotiation Date and the date of actual payment shall be paid or refunded with interest. Interest shall be calculated in the same manner as interest is calculated for the Retroactive Payment in subsections 15.A.(5). and (6)., except that in making these calculations the Renegotiation Date shall be deemed to mean the New Gross Receipts Activity Renegotiation Date.

"(7). Monthly Payment of the Readjusted Percentage Rental for the New Gross Receipts Activity.

"The readjusted percentage rental for the New Gross Receipts Activity shall be reported and paid in accordance with the monthly reporting and payment schedule that is provided in Section 13 of the lease for the report and payment of percentage rentals.

"D. Determination of Fair Rental Value by Renegotiation.

"The County shall send the Lessee a written notice setting forth the County's determination of the Fair Rental Value.

"(1). County's Notice.

"The County's notice must include a list of properties which it has utilized in determining the Fair Rental

Value; and, as to any of such properties which are leased or owned by the County, the County shall, at the Lessee's request, furnish to the Lessee such information regarding such properties as the Lessee may reasonably request. The County shall not be required to furnish any information which the County is required to keep confidential.

"(2). Lessee's Request for Market Data in the Marina del Rey Small Craft Harbor.

"Within fifteen (15) days of a written request by the Lessee the County shall furnish the Lessee with a list of the then-current rentals being charged by the County on the other parcels specified in the request that are leased by the County in the Marina del Rey Small Craft Harbor.

"(3). Lessee's Response.

"If the Lessee disagrees with any component of the Fair Rental Value specified by the County, the Lessee shall give the County written notice of such disagreement within the sixty (60) day period following the Lessee's receipt of the County's notice ('Lessee's Response Period'). The Lessee's notice must include a list of properties which it has utilized in determining the Fair Rental Value. The Lessee shall, at the County request, furnish such other information regarding such properties as it possesses. Failure to so notify the County during the Lessee's Response Period shall result in the County's determination of the Fair Rental Value becoming binding upon the Lessee. Objection to any component of the Fair Rental Value shall constitute an objection to the County's determination on the Fair Rental Value.

"(4). Renegotiation Period.

"If the Lessee does notify the County of its disagreement, then the County and the Lessee shall have sixty (60) days from the end of the Lessee's Response Period and such additional time on which they mutually agree (the 'Renegotiation Period') within which to attempt to agree upon all components of the Fair Rental Value to be determined. If the parties agree within the Renegotiation Period, they shall execute an addendum to the lease setting forth the agreed Fair Rental Value.

"E. Determination of the Rental Issues By Arbitration.

"If all the components of the Fair Rental Value to be determined cannot be readjusted by mutual agreement, either party may elect to submit such dispute to arbitration (the 'Arbitration Process'). Any such arbitration shall occur in the County of Los Angeles before a single arbitrator who shall be selected by mutual agreement or in the manner provided in subsection 15.E.(1).(b). Either party may initiate (the 'Initiating Party') the Arbitration Process by sending written notice to the other party (the 'Responding Party'), requesting initiation of the Arbitration Process.

"(1). The California Arbitration Act.

"Disputed matters which may be arbitrated pursuant to this lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which is as of the effective date of amendment no. 7 to the lease contained in Title 9 of Part III of the California Code of Civil Procedures, commencing with

Section 1280 (the 'California Arbitration Act'), except as otherwise provided herein. However, notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply.

"(a). The Arbitrator.

"The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any Federal District Court or Court of Appeals.

"(b). Selection of the Arbitrator.

"If, for any reason whatsoever, the parties are unable to agree upon the arbitrator within twenty-five (25) days of the date the Initiating Party sends written notice to the Responding Party, then at any time on or after such date either party may petition the court for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

"(c). Completion of Arbitration.

"The County and the Lessee hereby affirm that a mutual objective of such arbitration is to cause the disputed matter to be determined as expeditiously as possible. The Arbitration Process shall not apply to or be used to determine issues other than the issues specified in subsections 14.A.(8).(a)., 14.A.(8).(a)., 14.D., 15.A.(3), 15.B.(4). or 15.C.(4). (the 'Rental Issues'). The arbitrator shall render an award. Either party may, at its sole cost and expense, request findings of fact and conclusions of law ('Findings'). However, the Findings shall be solely to require the arbitrator to explain

his or her reasoning and shall be in such detail as the arbitrator may determine in his or her sole discretion. Findings shall not be used for any purpose whatsoever, including without limitation as grounds for a petition to confirm, vacate or modify an award or any appeal that may be taken pursuant to this Section 15. The award determining the Rental Issues should be made by the appointed arbitrator no later than six (6) months after the date on which the arbitrator is selected by mutual agreement of the parties, or six (6) months after the date on which the court signs the order appointing the arbitrator, whichever applies. The County and the Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award determining the Rental Issues no later than the end of such six (6) month period. Notwithstanding the foregoing, failure to complete the arbitration within such six (6) month period shall not render such arbitration or any determination made therein void or voidable.

"(d). Arbitrator Immunity.

"The first sentence of Code of Civil Procedure §1280.1 as existing on the effective date of amendment no. 7 to the lease shall apply to the arbitration proceedings throughout the term of the lease, without regard to the second sentence of said section.

"(e). Conduct of Arbitration Proceedings.

"The provisions of Code of Civil Procedure §1281.2 shall apply to the arbitration proceedings except as follows.

"(i). The arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said §1282.2 not less than 120 days before the hearing, regardless of the aggregate amount in controversy.

"(ii). Twenty-five (25) days prior to the date first set for the hearing, in lieu of the exchange and inspection authorized by Code of Civil Procedure §1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator: (x) A list of witnesses each intends to call at the hearing, designating which witnesses will be called as expert witnesses; (y) A list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and (z) A list of all Written Appraisal Evidence each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

"(iii). Neither party may, at any time during the proceedings, introduce any written report of an expert witness which expresses an opinion regarding the Fair Rental Value of the Rental Issues in dispute ('Written Appraisal Evidence') unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of the lease; correlate the appraisal method(s) applied; discuss the

relevant factors and data considered; review rentals paid by lessees within Southern California who are authorized to conduct similar activities on comparable leaseholds, if any; describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed; and express an opinion on the Fair Rental Value of the Rental Issues in dispute. Such Written Appraisal Evidence shall in all other respects be in material conformity with and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the American Institute of Real Estate Appraisers.

"(iv). The provisions of Code of Civil Procedure §1282.2(a)(2)(E) shall apply except with respect to Written Appraisal Evidence. The arbitrator shall have no discretion to allow a party to introduce Written Appraisal Evidence unless such evidence substantially complies with the requirements of subsection 15.E.(1).(e).(iii). and was previously delivered to the other party in accordance with subsection 15.E.(1).(e).(ii).

"(f). Discovery

"The provisions of Code of Civil Procedure §1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in subsection 15.E.(1).(e).

"(g). Appeal

"Either party may appeal from an order dismissing or denying a petition to compel arbitration, an order dismissing a petition to confirm an award, or an order vacating an award unless a rehearing in arbitration is ordered. The parties waive any right to appeal from a judgment confirming an arbitration award, from an order dismissing a petition to correct or vacate an award, from an order vacating an award in which a rehearing in arbitration is ordered, or from a special order after final judgment. The provisions of Code of Civil Procedure §1294 (d) and (e) shall not apply.

"(h). Costs

"The Lessee and the County shall equally share the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator, excluding counsel fees or witness fees or other fees incurred by a party for its own benefit. If either party fails to pay its share of such expenses and fees as and when due, the other party may pay such expenses and fees on behalf of the defaulting party. The party paying such expenses and fees on behalf of such defaulting party shall be entitled to recover the actual amounts paid, together with interest at the maximum rate then allowed by law, on demand from the defaulting party. If the Lessee is the defaulting party all sums advanced by the County to pay such expenses and fees, with interest at such maximum rate, shall be due to the County as additional rent. If the County is the defaulting party all sums advanced by the Lessee to pay such

expenses and fees, with interest at such maximum rate, may be deducted from the next installments of square foot and percentage rentals due to the County pursuant to the Lease.

"(2). Confirmation of Award

"The arbitration award shall be confirmed by an addendum to the lease setting forth the arbitrator's decision on the Rental Issues in dispute upon the award becoming a final decision on the Rental Issues in dispute.

"F. Annual Square Foot Rental and Percentage Rentals Floors.

"The readjustment of the annual square foot rental and percentage rentals that occur over the remaining term of the lease pursuant to subsections 15.A., 15.B. and 15.C. shall never be readjusted in the case of the annual square foot rental to an amount that shall be lower than the annual square foot rental that is in force and effect under Section 12 of the lease for the date preceding the date for the readjustment that is to be made or in the case of the percentage rentals to a rate that shall be lower than the rate that is in force and effect under Section 13 of the lease for the date preceding the date for the readjustment that is to be made."

ARTICLE 4. LIABILITY INSURANCE LIMITS.

4.01 The following paragraph is substituted for the second paragraph of Section 26 (INDEMNITY CLAUSE AND CASUALTY INSURANCE).

"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, less a deductible of \$75,000. The County and the Board of Supervisors, its officers, agents and employees shall be named as additional insureds under such liability insurance policy or policies."

4.02 The following paragraph is substituted for the next to last paragraph of Section 26 (Indemnity Clause and Casualty Insurance).

"The amount of casualty insurance required by this Section shall be renegotiated within sixty (60) days after the Readjustment Date for the readjustment of the annual square foot rental pursuant to the provisions of subsection 15.B. of the lease, and in the absence of mutual agreement on the amount within this renegotiation period by arbitration conducted in accordance with the provisions of subsection 15.E. of the lease, except that the subject for arbitration, the decision by the arbitrator, and the confirming lease amendment shall be the amount of casualty insurance. The amount of casualty insurance shall be readjusted on each Readjustment Date to equal the amount of casualty insurance which would customarily be carried by owners of similar property or required by institutional holders of liens against similar properties, exercising in each case reasonable and prudent business judgment. Pending a final determination on the readjusted amount by either mutual agreement or arbitration, and the effective date of coverage for the readjusted amount, the Lessee shall maintain the amount of casualty insurance that is required by this Section of the lease for the preceding period of the term of the lease."



IN WITNESS WHEREOF, the parties have executed the Amendment, and the County has, by order of its Board of Supervisors caused the Amendment to be subscribed by the Chairman of the Board of Supervisors and attested by the Clerk of the Board of Supervisors, on the day, month and year of the approval of the Amendment by the Board of Supervisors.

COMMODORE CLUB INC.

By

By

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss.

On this 7<sup>th</sup> day of June, in the year 1989 before Christy A. Doughty personally appeared Lloyd W. Taber, and \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Commodore Club President named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal. (SEAL)

NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE



OFFICIAL SEAL  
CHRISTY A DOUGHTY  
NOTARY PUBLIC - CALIFORNIA  
LOS ANGELES COUNTY  
My comm. expires NOV 14, 1989

ATTEST:

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

COUNTY OF LOS ANGELES

By Soter J. Bryant  
Deputy

By Pete E. Schabman  
Chairman, Board of Supervisors  
PRO TEM

APPROVED AS TO FORM:

APPROVED AS TO BUSINESS TERMS:

DEWITT W. CLINTON  
County Counsel

Riordan & McKinzie, a  
professional corporation

By Robert W. Kelly  
Deputy

By: Richard J. Riordan  
Principal

RR:fg  
rp17/02  
5-01-89

RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
1 MIN. PAST 10 A.M. JAN 11 1990

90 59660

Recording requested by, and please return to:

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

Lease No. 12450  
Sup. No. 7  
Approved 8/8/89

NOTICE OF AMENDMENT TO LEASE

FREE N

TO WHOM IT MAY CONCERN:

Please take notice that on the 8th day of August, 1989, the County of Los Angeles, as Lessor, and Commodore Club, Inc., a California Corp., as Lessee of the following described parcel or parcels of land and water situated within the Marina del Rey Small Craft Harbor of the County of Los Angeles, State of California, previously referred to as Parcel(s) Number 133S, now known as Parcel(s) Number 133S, legally described in Exhibit "A" attached hereto and incorporated herein, did enter into an agreement amending that certain indenture of lease dated 8/8/67. Said original indenture and said agreement of amendment are on file in the official files of the Executive Officer-Clerk of the Board of Supervisors of the County of Los Angeles.

County of Los Angeles  
Department of Beaches and Harbors  
By K. C. Klinger  
K. C. Klinger, Deputy Director  
Asset Management Bureau

STATE OF CALIFORNIA )  
County of Los Angeles ) ss.

On this 3rd day of January, A.D., 1990, before me Larry J. Monteilh 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 K. C. KLINGER, known to me to be the Deputy Director, Asset Management Bureau of the Department of Beaches and Harbors 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.

LARRY J. MONTEILH Executive Officer-Clerk of  
the Board of Supervisors of the County of Los Angeles  
By Jacquelyn Dumas  
Deputy

