

MINUTE ITEM
This Calendar Item No. C10
was approved as Minute Item
No. C10 by the State Lands
Commission by a vote of 2
to 0 at its 412191
meeting.

A 44

S 18

CALENDAR ITEM

C 1 0

04/02/91
PRC 2589
Grimmett
Trout

GENERAL LEASE - PUBLIC AGENCY USE

APPLICANT:

Department of Parks and Recreation
1416 - 9th Street
Sacramento, California

AREA, TYPE LAND AND LOCATION:

A 1.18-acre parcel of tide and submerged land in
Santa Monica Bay at Malibu, Los Angeles County.

LAND USE:

Operation and maintenance of a recreational pier, sports
fishing and tour boat service, restaurants, shops complex,
and public restroom facilities.

TERMS OF ORIGINAL LEASE:

Initial period:

Ten (10) years beginning July 1, 1980.

CONSIDERATION:

The public use and benefit; with the State reserving
the right at any time to set a monetary rental if the
Commission finds such action to be in the State's best
interest.

Special:

Clause that Lessor shall accept the lease premises as
then improved with structures.

TERMS OF PROPOSED LEASE:

Initial period:

Twenty (20) years beginning July 1, 1990.

CALENDAR ITEM NO. C 1 0 (CONT'D)

CONSIDERATION:

Public use and benefit with a provision that Lessee agrees that 50 percent of any revenues not allocated for State Park and Recreation Fund purposes anywhere in the State, but deposited into the General Fund, that accrue to the Department from the concession agreement for the Malibu pier facilities, shall be paid annually to the State Lands Commission.

BASIS FOR CONSIDERATION:

Pursuant to 2 Cal. Code Regs. 2003.

APPLICANT STATUS:

Applicant is owner of upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Filing fee has been received.

STATUTORY AND OTHER REFERENCES:

A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.

B. Cal. Code Regs.: Title 3, Div. 3; Title 14, Div. 6.

AB 884:

N/A

OTHER PERTINENT INFORMATION:

1. This proposed lease is a revision worked out with the Department of Parks and Recreation of that lease approved by the Commission at its June 11, 1990 meeting as Item 59.

There are several special provisions added in Section 2 of this lease. There are also a number of clauses deleted from Section 4, the General Provisions. Reference is made to the proposed lease, attached as Exhibit "A", for the specific provisions and deletions.

2. The annual rental value of the site is estimated to be \$564,000.
3. This activity involves lands identified as possessing significant environmental values pursuant to P.R.C. 6370, et seq. but will not affect those significant lands.

CALENDAR ITEM NO. C 1 0 (CONT'D)

4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities, 2 Cal. Code Regs. 2905(a)(2).

Authority: P.R.C. 21084, 14 Cal. Code Regs. 15000, and 2 Cal. Code Regs. 2905.

EXHIBIT:

A. Proposed Lease

IT IS RECOMMENDED THAT THE COMMISSION:

1. RESCIND THE LEASE AUTHORIZATION AUTHORITY APPROVED FOR ITEM 59 AT THE COMMISSION'S JUNE 11, 1990 MEETING.
2. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES, 2 CAL. CODE REGS. 2905(a)(2).
3. AUTHORIZE ISSUANCE TO DEPARTMENT OF PARKS AND RECREATION OF A 20-YEAR GENERAL LEASE - PUBLIC AGENCY USE BEGINNING JULY 1, 1990; IN CONSIDERATION OF THE PUBLIC USE AND BENEFIT, WITH THE COMMISSION RESERVING THE RIGHT AT ANY TIME TO SET A MONETARY RENTAL IF THE COMMISSION FINDS SUCH ACTION TO BE IN THE STATE'S BEST INTEREST; FOR OPERATION AND MAINTENANCE OF A RECREATIONAL PIER, SPORTS FISHING AND TOUR BOAT SERVICE, RESTAURANTS, SHOPS COMPLEX, AND RESTROOM FACILITIES, THE LEASE BEING ATTACHED AS EXHIBIT "A" AND BY REFERENCE MADE A PART HEREOF.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

FOR RECORDER'S USE ONLY

RECORDED AT THE REQUEST OF
State of California/State Lands Commission
Official Business - Document entitled to
free recordation pursuant to Government
Code Section 27383.

WHEN RECORDED MAIL TO
State Lands Commission
1807 - 13th Street
Sacramento, CA 95814
Attention: Title Unit

LEASE NO. 2589

This Lease consists of this summary and the following attached and
incorporated parts:

- Section 1 Basic Provisions
- Section 2 Special Provisions amending or supplementing Section 1 or 4
- Section 3 Description of Lease Premises
- Section 4 General Provisions

SECTION 1
BASIC PROVISIONS

The STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and
through the STATE LANDS COMMISSION (1807 - 13th Street, Sacramento, California,
95814), pursuant to Division 6 of the Public Resources Code and Title 2,

EXHIBIT A

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Division 3 of the California Administrative Code, and for consideration specified in the Lease, does hereby lease, demise, and let to DEPARTMENT OF PARKS AND RECREATION, hereinafter referred to as Lessee, whose mailing address is: 1416 - 9th Street, Sacramento, California 95814, those certain lands described in Section 3 subject to the reservations, terms, covenants, and conditions of this Lease.

LEASE TYPE: General Lease - Public Agency Use

LAND TYPE: Tide and Submerged

LOCATION: Santa Monica Bay, Malibu,
Los Angeles County

LAND USE OR PURPOSE: Operation and maintenance of a recreational pier, sports fishing and tour boat service, restaurants, shops complex, and restroom facilities.

TERM: Twenty (20) years, beginning July 1, 1990 and ending June 30, 2010, unless sooner terminated as provided under this Lease.

CONSIDERATION: Public use and benefit and as provided in Section 2, Special Provisions.

AUTHORIZED IMPROVEMENTS:

(X) EXISTING: Recreational pier, shops complex, and portion of restaurant.

SECTION 2
SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, SECTION 4, GENERAL PROVISIONS, IS AMENDED, REVISED, OR SUPPLEMENTED AS FOLLOWS:

- A. PARAGRAPH 2 CONSIDERATION, (a) Categories, (1) Rental, is modified to read:

Lessee agrees that 50 percent of any revenues not allocated for State Park and Recreation Fund purposes anywhere in the state, but deposited into the General Fund, that accrue to the Department from the concession agreement for the Malibu Pier facilities, shall be paid annually to the State Lands Commission.

The following subsections are added to Paragraph 2 to read:

- (d) Reports:

Lessee agrees to provide to Lessor an annual report showing the allocation of monies which source is attributable to rental or revenue from the Malibu Pier facilities relating to said leased lands.

(e) Books and Records:

Lessee shall assure that any concessionaire or sublessee, or any other party doing business on said leased lands shall maintain books and records of all financial transactions relating to the Malibu Pier facilities in accord with generally accepted accounting principles. These books shall be supported by source documents such as copies of invoices, receipts, and other pertinent documents. Lessee shall assure by the terms of its agreements with any sublessee or concessionaire that such books and records are available for inspection by the State Lands Commission at reasonable times during normal business hours.

B. PARAGRAPH 4, Land Use, (e) Conservation, is amended to include the following clauses:

1. Refuse

Lessee, its sublessee, or concessionaire shall provide containers on or immediately adjacent to the leased premises to receive trash and refuse generated at its facilities.

2. Plastics

Lessee, its sublessee, or concessionaires shall not, after the effective date of this lease, provide to its customers any prepared food in polystyrene foam food packaging, nor shall Lessee, its

sublessee, or concessionaires obtain or keep any polystyrene foam food packaging of a type, design, and condition suited for providing prepared food to its customers for consumption on or off the leased premises.

The following Special Provisions are added to the Lease:

16. Uses of Pier

Lessee agrees that all pier use, activities, or sublessee's business will be for the public benefit or of such nature as to require access or orientation to the waters of the Pacific Ocean and be of statewide benefit consistent with Public Trust uses.

17. Use Outside Prescribed Area

Lessee agrees to notify any sublessee, concessionaire, or any other party doing business on the Malibu Pier that use of any lands outside the lands described in Section 3 will require a separate lease from the State Lands Commission.

18. Ownership

Lessee agrees to inform all sublessees, concessionaire(s), or other necessary parties that the State Lands Commission is the owner of the tidelands and submerged land and the Malibu Pier structure lying waterward of the ordinary high water mark.

19. Signing

Lessee agrees to install and maintain one or more signs on the lease premises prominently stating that the State Lands Commission is contributing a portion of the land and pier within the lease area to the Department of Parks and Recreation as a public park.

D-1680Q

SECTION 3

PRC 2589

LAND DESCRIPTION

A parcel of tide and submerged land lying in the Pacific Ocean, City of Malibu, Los Angeles County, California, said parcel being immediately beneath an existing pier, TOGETHER WITH a necessary use area extending no more than 15 feet from the extremities of said pier, said pier being adjacent to and southerly of that certain parcel of land described in Grant Deed filed August 15, 1944, in Book 21117, page 357, Los Angeles County Records.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

END OF DESCRIPTION

REVIEWED MARCH, 1991 BY LLB

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SECTION 4

GENERAL PROVISIONS

1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION

(a) Categories

~~(1) Rental~~

~~Lessee shall pay the annual rental as stated in this lease to Lessor without deduction, delay or offset, on or before the beginning date of this lease and on or before each anniversary of its beginning date during each year of the lease term.~~

(2) Non-Monetary Consideration

If the consideration to Lessor for this lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

~~(b) Modification~~

~~Lessee may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this lease. Should Lessee fail to exercise this right effective on any fifth anniversary, it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.~~

(c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES

This lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this lease or within ninety (90) days of the date set for construction to commence as set forth in this lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements

and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation

Lessee shall practice conservation of water and other natural resources and shall prevent pollution and harm to the environment.

(f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

(g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises as provided under this Lease.

(h) Discrimination

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) Residential Use

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY

(a) Reservations

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this lease.

~~(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this lease.~~

(b) Encumbrances

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and is made without warranty by Lessor of title, condition or fitness of the land for the stated or intended purpose.

6. RULES, REGULATIONS AND TAXES

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. INDEMNITY

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury or casualty on the Lease Premises.

~~8. INSURANCE~~

~~(a) Lessee shall obtain and maintain in full force and effect during the term of this lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by the State from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, operation or maintenance of the Lease Premises and all improvements.~~

~~(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers, insured as to the Lease Premises and shall identify the Lessee by its assigned number. Lessee shall provide Lessee with a certificate of such insurance and shall keep such certificate current. The policy (or policies) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the State. The State will not be responsible for any premium or other assessments on the policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.~~

~~(c) The insurance coverage specified in this lease shall be in effect at all times during the lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee.~~

~~9. SURETY BOND~~

~~(a) Lessee shall provide a surety bond or other security device acceptable to Lessor for the specified sum, and naming the State of California as the secured party, to ensure the faithful and proper performance by Lessee of all of the terms, conditions and obligations of this lease.~~

(b) Lessor may require an increase in the amount of the security bond or other security device to ensure any additional authorized improvements, alterations or purposes and any modification of consideration.

(c) The security bond or other security device shall be maintained in full force and effect at all times during the term of the lease and shall not be released until the lease premises have been returned in good order and condition, by Lessee, or as ordered by Lessor as provided elsewhere in this lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessor shall not be deemed to have authorized by operation of law, design, transfer, mortgage, pledge, hypothecation or otherwise this lease and shall not enable the Lessee Premises, in whole or in part, to allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the lease premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons or the sale or other transfer of substantially all the assets of Lessee.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this lease is for sovereign lands it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) give prior written notice to Lessor.

(2) provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable.

(3) provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the lease premises; and

(5) provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7, 9, 11 or 13 of the Bankruptcy Code (11 USC Secs. 101, et seq.) then the trustee or debtor in possession must elect to assume or reject this lease within sixty (60) days after filing of the petition or appointment of the trustee, or the lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this lease shall be effective unless it is in writing and unless the Lessee or debtor in possession has cured all defaults under this lease (monetary and non-monetary) or has provided Lessee with adequate assurances (1) that within ten (10) days of the date of such assumption or assignment, all monetary defaults under this lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this lease will be cured; and (3) that all provisions of this lease will be satisfactorily performed in the future.

11. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

(1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease.

~~(2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease.~~

(3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term.

~~(4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements.~~

(5) Lessee's failure to comply with all applicable provisions of federal, state or local law regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law.

~~(6) Lessee's failure to commence to construct and to complete reconstruction of the improvements authorized by this Lease within the time limits specified in this Lease.~~

(7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

~~(1) Re-enter the Lease Premises, remove all persons and property and equipment and enjoy such premises.~~

(2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such

notice Lessee shall immediately surrender possession of the Lease Premises to Lessor.

(3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises.

(4) Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

~~(a) Upon expiration or sooner termination of this Lease, Lessee, upon written notice, may be required to remove any or all improvements, including title, on lease or any other improvements, to remove all or any such improvements or to remove and remove all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements, including deeds and release of any liens, mortgages, loans or any other encumbrances.~~

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

~~(e) Lessee may at any time during the lease term require Lessee to conduct at its own expense and by a contractor approved by Lessee or independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.~~

13. QUITCLAIM

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease execute and deliver to Lessor in a form provided Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail to or refuse

to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty five percent (25%).

15. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

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STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. _____

This Lease shall only become effective when approved by the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Premises upon the terms and conditions contained herein or a reservation of the Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE

STATE OF CALIFORNIA
STATE LANDS Commission

_____ By: _____

Title: _____

_____ Date: _____

ACKNOWLEDGEMENT

This Lease was authorized by
the California State Lands
Commission on _____
(month day year)

Form 51.15 (1/90)

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