MINUTE ITEM
This Calendar Item No. 23
was approved as Minute Item
No. 23 by the State Lands
Commission by a vote of 3
0 at its 6-26-80
meeting.

CALENDAR ITEM
23.

6/80
WP 2589
Faber/Poe

APPROVAL OF SUBLEASE FROM
DEPARTMENT OF GENERAL SERVICES TO
SEABOARD RENTAL COMPANY, INC.

BACKGROUND AND PRESENT SITUATION:

In the prior calendar item (of this date) the Commission was asked to authorize the execution of a lease of the Malibu Pier property to the Department of General Services. The purpose of this item is to authorize the sublease of the property to Seaboard Rental Company (Seaboard). The Paradise Cove pier, owned by Seaboard (Kissel) and about 10 miles from Malibu, is currently under lease with the Commission. No problems have been experienced by staff with Seaboard under the latter lease. A copy of the proposed sublease is attached as Exhibit "C".

The effect of this sublease will be to provide additional revenue to rehabilitate the Malibu Pier pursuant to the terms of Chapter 782 (1978) of the California Statutes. The pier will remain open to the public for fishing free of charge. The term of the new lease is for 10 years with an annual rental of $8,800 per annum. The sublessee will be required to carry $1,000,000 worth of liability insurance, holding the State as an additional insured.

The prior calendar item contains an explanation of the findings regarding Coastal Commission regulations, and environmentally significant characteristics. This transaction is considered categorically exempt because the activity is not deemed to be a project.

EXHIBITS:
A. Property Description.
B. Site Map.
C. Proposed Sublease Document.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21065, 14 CAL. ADM. CODE 15037, 14 CAL. ADM. CODE 15060 AND 2 CAL. ADM. CODE 2903(d).

A 38

S 19

2. FIND THAT GRANTING OF THE SUBLEASE WILL HAVE NO SIGNIFICANT EFFECT UPON ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1 OF THE P.R.C.

3. DETERMINE THAT THIS PROJECT IS EXEMPT FROM THE REQUIREMENTS OF ARTICLE 6.5 OF TITLE 2 OF THE CAL. ADM. CODE BECAUSE THIS PROJECT IS NOT A DEVELOPMENT WITHIN THE MEANING OF SECTION 2503 OF THE CAL. ADM. CODE AND SECTION 30105 OF THE P.R.C.

4. CONSENT TO THE SUBLEASING OF PRC 2589 FROM THE DEPARTMENT OF GENERAL SERVICES TO SEABOARD RENTAL COMPANY, INC. EFFECTIVE ON THE DATE OF TRANSFER OF PIER OWNERSHIP TO THE STATE OF CALIFORNIA THROUGH ESCROW NO. 7812937-10 WITH FIRST AMERICAN TITLE INSURANCE COMPANY OF LOS ANGELES, ON TERMS SUBSTANTIALLY AS INDICATED IN THE ATTACHED EXHIBIT "C".

5. AUTHORIZE STAFF TO COMMUNICATE SAID CONSENT IN WRITING TO THE PARTIES.

EXHIBIT "A"

LAND DESCRIPTION WP 2589

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 extremities of said pier, said pier being adjacent to and southerly of that certain parcel of land as 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 JUNE 13, 1980 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR

CALENDAR PAGE 167
MINUTE PAGE 1301

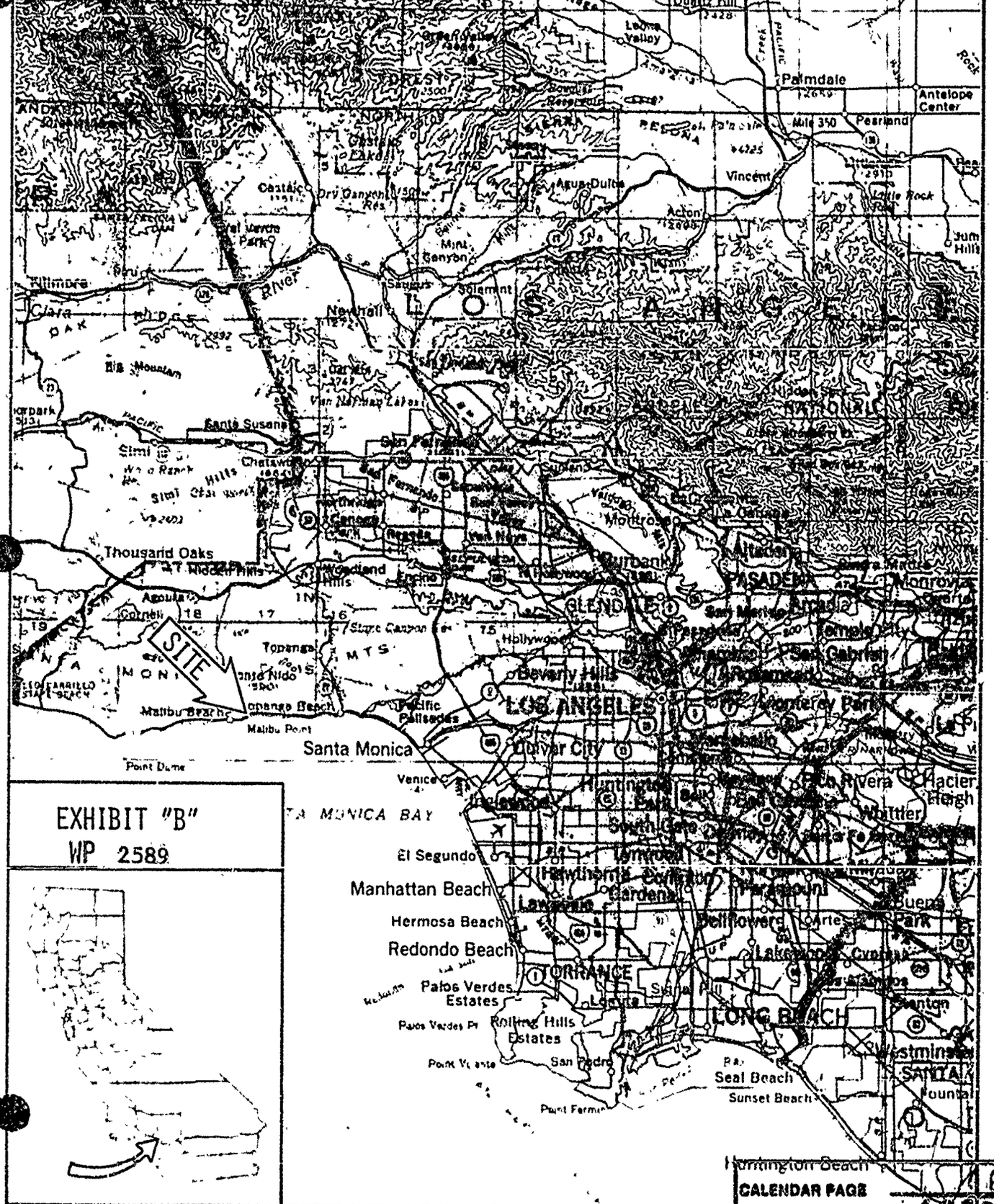

EXHIBIT "B"
WP 2589

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EXHIBIT "C"

LEASE

THIS LEASE is made and entered into this _____ day of _____, 1980, at Los Angeles, California, by and between, the State of California through its DEPARTMENT OF GENERAL SERVICES, ~~a California corporation~~, hereinafter called "Landlord" and SEABOARD RENTAL COMPANY, INC., a California corporation, hereinafter called "Tenant."

I

Leased Premises

Upon the terms and conditions herein contained, Landlord hereby leases to Tenant and Tenant hires from Landlord a portion of those certain premises with the appurtenances thereto, located in the County of Los Angeles, State of California, and more particularly described as follows:

A parcel of title 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 extremities of said pier, said pier being adjacent to and southerly of that certain parcel of land as 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.

Tenant shall have the right of ingress and egress to and from the demised premises for patrons and tradespeople doing business with Lessee; provided, however, that such rights shall at all times be and remain subject to all of the terms and conditions and provisions of this lease. Tenant shall be furnished with two (2) parking spaces ~~in the adjoining parking spaces~~ in the adjoining parking lots at no charge.

II

Term of Lease

The term of this lease shall be for ten (10) years and shall commence on the _____ day of July, 1980, and end on the _____ day of _____, 1990, subject to Landlord's and Tenant's unqualified right to terminate this lease effective on or at any time after July 1, 1985, upon giving one year's prior written notice to the other party.

III

Primary Uses

The premises are leased to the Tenant for the sole purpose of operating, maintaining and conducting therein, and Tenant agrees at all times to operate, maintain and conduct therein, a sportsfishing and pierfishing business together with a retail business wherein Tenant shall sell, and offer for sale to the general public, fishing bait, tackle and related equipment and supplies and a cafe-snack bar and restrooms. Landlord is hereby granting to Tenant the exclusive right to conduct such business on the premises and shall have no right to grant to anyone else the same or similar rights on the balance of the Malibu Pier.

Tenant shall not use the premises to sell any article of merchandise, or to conduct any activities or sell or dispense any service except as specifically allowed herein and Landlord shall have the right to injunctive relief to enforce this provision.

The use of the restrooms on the Malibu Pier shall be available to the general public but shall be maintained in a clean and sanitary condition and in working order by Tenant. No charge shall be made for the public to fish from the pier.

IV

Rent

Tenant agrees to pay to Landlord as rental for the premises, without deduction or off-set, at such place as may be designated from time to time by Landlord, an annual rental during the term hereof in the amount of EIGHT THOUSAND EIGHT HUNDRED ($8,800) DOLLARS payable 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. Should the lease be terminated prior to its normal expiration date, the rental paid in advance for the last year shall be prorated on the basis of a thirty (30) day month.

V

Required and Prohibited Uses

Tenant shall conform to and abide by all rules and regulations relating to the operation herein authorized and shall be subject at all times to applicable rules, regulations, resolutions, ordinances and statutes of the County of Los Angeles, the State of California, the Federal Government and all other governmental agencies where applicable; and where permits are required for such operations the same must be first had and obtained from the regulatory body having jurisdiction thereof before such operation is undertaken.

Tenant shall not do or permit anything to be done in or about the premises or building or keep anything therein which will in any way increase the rate of fire insurance upon the building where the premises are situated. No auction, fire or bankruptcy sales may be conducted in the premises without Landlord's written consent. Tenant shall not perform any acts which may injure the building or be a nuisance or menace to other tenants in the pier complex, and shall keep the premises and walkways adjacent thereto and any loading platform or service areas allocated for the use of Tenant (whether or not such use be exclusive), clean and free from rubbish and dirt at all times and shall store all trash and garbage within the premises or in such areas as Landlord may designate. Tenant shall not burn any trash or garbage in or about the premises.

Landlord shall perform repairs to the pier necessitated by normal wear and tear, excluding, but without being limited to, damages covered under Section XIV hereof and repairs to the fuel system and tank, the repair of which system and tank shall be the obligation of Tenant. Tenant shall maintain the premises in a safe, clean, wholesome and sanitary condition to the satisfaction of Landlord. Landlord and the County of Los Angeles shall have the right to enter upon and inspect the premises at any time, for cleanliness and safety. If Landlord fails, neglects or refuses to commence repair work within thirty (30) days after written notice has been served by Tenant, or fails, neglects or refuses to pursue said repair work with reasonable diligence to completion, Tenant shall have the right at its sole option to perform or cause to be performed said repair work and to deduct the reasonable cost thereof from the rent next due. or, Tenant, at its sole option, may surrender the premises and shall not be liable for any further rental under this lease. Tenant hereby acknowledges that Landlord intends to substantially overhaul the Malibu Pier; however, Landlord agrees to keep to a minimum the interference with Tenant's business. Tenant shall, to the fullest extent possible, retain rights of ingress and egress to the premises during periods of construction, etc., by Landlord. However, if such work done by Landlord causes Tenant to lose access of customers to and from its business, there shall be an abatement of rent for such period of time.

Tenant agrees to refrain from interferring with Landlord's reconstruction of said pier. Failure to do so may, at Landlord's option, be deemed a breach of this lease and allow Landlord to terminate this lease and/or bring an action for damages.

No goods, merchandise or material shall be kept, stored or sold in or about the premises which are in any way explosive or hazardous; and no offensive or dangerous business shall be carried on therein. No machinery or apparatus shall be used or operated on the premises which will in any way injure said premises or improvements thereon or adjacent or other premises or improvements thereon; provided that nothing herein shall preclude Tenant from building, keeping or using on or about the premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on Tenant's business or from carrying on Tenant's business in all usual respects. Open

flame welding or burning, other than for emergency repairs, is expressly prohibited without Landlord's prior written consent. Tenant shall pay for any and all licenses required in connection with the use or operation of the leased premises.

No signs or awnings shall be erected or maintained upon the premises (other than inside the premises), except such signs as show the business or profession of Tenant.

VI

Subject to Lease from State and Continuity of Ownership
Tide and Submerged Land Lease

Tenant fully understands that Landlord now has a certain Tide and Submerged Land Lease from the State of California State Lands Commission (hereinafter referred to as "Commission") covering an area of tidal and submerged lands adjacent to the property owned by Landlord, and that the said Malibu Pier is now built on such tidal and submerged lands; that said lease for clarity is designated, "Tide and Submerged Land Lease" and Landlord herein is designated the Lessee therein; that this instant lease, the provisions hereof, and the term herein demised, at all times is and shall be, subject to the aforementioned Tide and Submerged Land Lease the terms of which, by this reference, are incorporated herein (said lease is attached hereto as Exhibit "B"); and this instant lease, and the term herein demised, and any extension thereof, is limited and conditioned accordingly.

The right is hereby created in the Commission to enforce this lease either in law or in equity.

VII

Insurance

(a) Casualty Insurance. Tenant shall maintain in full force and effect during the term of this lease, comprehensive general liability insurance with bodily injury and property damage liability limits of not less than One Million Dollars ($1,000,000) single limit and Fifty Thousand Dollars ($50,000) property damage; and Tenant agrees that Landlord, the Commission and their respective agents, and employees, shall be named as additional insureds under such liability insurance policy or policies.

A duplicate policy evidencing such insurance coverage shall be filed with Landlord within ten (10) days after the execution of this lease by Landlord and prior to any entry upon the premises herein demised, and said policy shall provide that such insurance coverage shall not be cancelled or reduced without at least thirty (30) days prior written notice to Landlord. At least thrity (30) days prior to the expiration of any such policy, a policy showing that such insurance coverage has been renewed or extended shall be filed with Landlord.

the County of Los Angeles

(b) Indemnity Clause. Tenant shall at all times relieve, indemnify, protect and save harmless Landlord and Commission and their respective directors, officers, agents and employees from any and all claims and liability, including expenses incurred in defending against the same, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of Landlord and any of their officers, agents or employees, that may in whole or in part arise from or be caused by (i) the operation, maintenance, use or occupation of the herein demised premises by Tenant (ii) the acts, omissions or negligence of Tenant, Tenant's agents, officers, employees or permitees, or (iii) the failure of Tenant to observe and abide by any of the terms or conditions of this lease or any applicable law, ordinance, rule or regulation; the obligation of Tenant to so relieve, indemnify, protect and save harmless Landlord, the Commission, and each of their directors, officers, and employees, shall continue during any periods of occupancy or of holding over by Tenant, Tenant's agents, officers, employees, or permitees, beyond the expiration or other termination of this lease.

(c) Worker's Compensation Insurance. Tenant shall maintain in force, during the term of this lease, worker's compensation insurance in an amount and type required by law. A certificate evidencing such insurance coverage shall be filed with Landlord prior to commencement of the term hereof.

(d) Insurance on Tenant's Fixtures. Tenant shall maintain in force a policy or policies of fire insurance with a standard extended coverage endorsement on all fixtures and equipment on the premises of one hundred percent (100%) of their insurable value, the proceeds of which will, so long as this lease is in effect, be used for the repair or replacement of the fixtures or equipment so insured.

(e) Waiver of Insurer of Subrogation Rights. Tenant shall procure, forthwith after the execution of this lease, from and cause each of the insurers under all policies of insurance pertaining to the demised premises and to Tenant's business to be conducted thereon, and shall hereafter forthwith upon becoming insured under any such policy of insurance procure from and cause the insurer to, in writing, and for the express benefit of Landlord, the County of Los Angeles and Commission, waive all rights of subrogation which said insurer might otherwise, if at all, have as against Landlord, the foregoing including, the following being by way of specification and not by way of limitation, all policies of fire, public liability, theft and worker's compensation insurance now or hereafter during the term hereof of Tenant.

(f) Failure to Procure Insurance. In case of failure of Tenant to procure or renew the insurance required under this lease, Landlord may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant upon demand.

VIII

Utilities

Tenant shall pay for all water, gas, heat, lights, power, telephone service, fuel and all other such services and public utilities supplied to the demised premises, or to Tenant in any area of Malibu Pier; and Landlord shall at its own cost and expense install separate meters covering the foregoing matters, if necessary.

Tenant shall pay for the disposal of its garbage and other trash, which shall be done in a manner consistent with good practices. All containers for such waste products shall be furnished by and at its sole expense and shall be kept in a clean and sanitary condition and in whatever area is designated by the Landlord for that purpose.

IX

Maintenance of Cesspool

Landlord hereby convenants and agrees that if it shall become necessary at any time during the term of this lease, to pump out either the existing cesspool system, an extension of same, or a new one, then Landlord shall pay for any and all sums for such purpose.

X

Removal of Personal Property

In addition to the within lease of the demised premises, Tenant has separately purchased from Malibu Pier Corporation personal property of said Corporation consisting of trade fixtures, equipment and furnishings now situated within the demised premises. Upon termination of this lease, Tenant shall have the right to remove all such fixtures, etc. but shall be required to repair any damages to the demised premises caused by such removal.

XI

Alterations

Tenant shall make no alterations, improvements or additions to the premises which affect the exterior thereof, or any structures, mechanical or electrical part thereof, without first obtaining Landlord's and the Commission's written consent. All alterations, additions, improvements and fixtures, other than trade fixtures not affixed to the realty which may be made or installed by either of the parties upon the premises, and which, in any manner are attached to the floors, walls or

ceilings, shall be the property of the Landlord and at the termination of this lease shall remain upon and be surrendered with the premises as a part thereof without disturbance or injury. Any floor covering shall become the property of Landlord. Tenant shall not mark, drill or deface any walls, ceilings, partitions, floors, wood or iron work, without Landlord's written consent.

Tenant agrees to pay, when due, all sums which may become due for any labor, service, materials, supplies or equipment furnished to or for the Tenant in or upon the premises, including any amounts which may be secured by any lien against the premises and/or Landlord's interest therein, and Tenant will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien becomes due. Tenant recognizes and acknowledges that the pier is engineered to withstand stress by swaying and moving with the tides, and currents, and the shock of landing vessels. Tenant shall have posted and recorded and maintain on the premises for the benefit of Landlord such Notices of Non-Responsibility as are provided for under the Mechanics' Lien Law of California.

Tenant shall not keep or display anything on or otherwise obstruct the sidewalks or area-ways adjacent to the premises without the Landlord's written consent. Tenant shall keep any display windows in the premises well lighted from dusk until such reasonable time as Landlord may determine from time to time, unless prevented by cause beyond the control of Tenant.

It is further agreed that all such alterations, improvements, or additions shall only be undertaken pursuant to the terms of the Tide and Submerged Land Lease referred to in Section VI, supra.

XII

Auctions; Signs

Tenant shall not conduct or permit to be conducted any sale by auction on said premises. Tenant shall not place or permit to be placed any sign, marquee or awning on the building constituting a part of the demised premises without the written consent of Landlord.

Throughout the term of this lease, Tenant, upon request of Landlord, shall immediately remove any sign, advertisement or decoration which Tenant has placed or permitted to be placed in, on, or about the front of the demised premises and which, in the opinion of Landlord, is objectionable or offensive, and if Tenant fails to do so, Landlord may enter upon said premises to remove said objectionable sign, advertisement or decoration and charge to Tenant as additional rent the cost of such removal; and Tenant shall not place or permit to be placed upon the said sidewalls, rear wall or roof any sign, advertisement or notice without the written consent of Landlord.

XIII

Assignment or Sub-Letting

Tenant shall not assign, mortgage or hypothecate this lease, or any interest therein or sublease the same or any part thereof, or permit the use of the premises by any person or persons other than Tenant without Landlord's and the Commission's prior written consent, which consent shall not be unreasonably withheld. Any transfer of this lease from Tenant by merger, consolidation or liquidation, shall constitute an assignment for purposes of this lease. If Tenant is a corporation, then the sale of a majority of Tenant's capital stock shall be deemed an assignment of this lease which cannot be effected without the prior written consent of Landlord and Commission.

XIV

Rules and Regulations for Common Areas

Landlord reserves the right to promulgate such reasonable rules and regulations relating to the use of premises, the parking areas and the common areas, and any part or parts thereof, as Landlord may deem appropriate and for the best interests of the Pier complex, and Tenant agrees to abide by such rules in the observance thereof. Such rules and regulations shall be binding upon Tenant upon delivery of a copy thereof to Tenant and may be amended from time to time by Landlord. All such amendments shall be effective upon delivery of a copy thereof to Tenant.

XV

Parking Areas

Landlord agrees to manage and maintain all parking areas, roads and common areas within the pier complex. The manner in which such areas shall be maintained and the expenditures therefor shall be at the sole discretion of Landlord and the use of such areas and facilities shall be subject to such reasonable regulations as Landlord shall make from time to time. It is specifically understood that Landlord has and will charg, reasonable rates for customer parking; and Landlord agrees that he will not charge Tenant's customers at any higher rate than other customers of Malibu Pier or its other tenants.

Tenant shall not allow or permit any delivery, or other type of trucks or any other kinds, or type, of motor vehicles to block the driveway, or to go, drive, or be upon the said pier proper, or any part thereof.

XVI

Access to Premises

Landlord and its designees shall have the right to enter upon the premises at all reasonable hours and in any emergency to inspect the same, to make repairs, additions or alterations to the premises and to post any "To Lease" signs within ninety (90) days of the end of the lease term.

XVII

Eminent Domain

If the whole or any substantial part of the premises hereby leased shall be taken by any paramount public authority under the power of eminent domain, then the terms of this lease shall cease as to the part so taken from the day the possession of that part shall be taken for any public purpose, and from that day Tenant shall have the right to either cancel this lease or to continue in possession of the remainder of the premises under the term herein provided, except that the square foot rental shall be reduced in proportion to the amount of the premises taken.

Any damages awarded for such taking shall be prorated between Landlord, the Commission and Tenant, based upon the value of Tenant's possessory interest for the balance of the lease term and the balance to Landlord and the Commission, Tenant shall be entitled to any portion of the award made for loss of business, installations or structures or other improvements belonging to Tenant immediately prior to the taking of possession by the condemning authority.

XVIII

Subordination

Tenant agress that this lease shall be subordinate to any mortgages or trust deeds that are now or may hereafter be placed upon said premises and to any and all advances made or to be made thereunder, and to the interest thereon and all renewals, replacements and extensions thereof, provided that the mortagee or beneficiary named in said mortgages or trust deeds shall agree to recognize the lease of Tenant in the event of foreclosure if Tenant is not in default. If any mortgagee or beneficiary elects to have this lease superior to its mortgage or deed or trust by notice to Tenant, then this lease shall be deemed superior to the lien of any such mortgage or trust deed, whether this lease is dated or recorded before or after said mortgage or trust deed.

Tenant agrees at any time and from time to time upon not less than ten (10) days prior request by Landlord, to execute, acknowledge and deliver to Landlord a statement, in writing, certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect an modified and stating the modifications), and the dates to which the fixed rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this sub-paragraph may be relied upon by any prospective purchaser, mortgagee or assignee of any mortgages of the premises.

If Landlord desires to finance or re-finance the Malibu Pier property, including the premises or any part thereof, Tenant agrees to deliver to any lender designated by Landlord, such financial statements of profit and loss of Tenant as may be reasonably required by such lender.

XIX

Remedies in the Event of Default

(a) Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach lease by Tenant:

(1) The vacation or abandonment of the premises by Tenant.

(2) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant.

(3) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this lease to be observed or performed by Tenant, other than described in sub-paragraph (2) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than ten (10) days is reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said ten (10) days period and thereafter diligently prosecutes such cure to completion.

(4) (i) The making by Tenant of any general assignment or general arrangement, for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's

assets located at the premises or of Tenant's interest in this lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the premises or of Tenant's interest in this lease, where such seizure is not discharged within thirty (30) days.

(b) Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

(1) Immediately re-enter and remove all persons and property from said premises, storing said property in a public warehouse or elsewhere at Tenant's expense without liability on the part of Landlord;

(2) Should Landlord elect to re-enter as herein provided, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may either terminate this lease or Landlord may from time to time, without terminating this lease, re-let said premises, or any part thereof for the account of Tenant either in Landlord's name or otherwise, upon such terms and conditions and for such period (whether longer than the balance of the term hereof or not) as Landlord may deem advisable, either with or without any equipment or fixtures that may be situated thereon or therein, in which event the rents received on any such re-letting during the balance of the term of this lease, or any part thereof shall be applied first to the expenses of re-letting and collecting, including necessary renovation and alteration of the premises and a reasonable attorney's fee and any real estate commission actually paid and, thereafter, toward payment of all sums due or to become due to Landlord hereunder, and if a sufficient sum shall not thus be realized to pay such rent and other charges, Tenant shall pay to Landlord monthly and deficiency and Landlord may sue therefor as each monthly deficiency shall rise; such monthly deficiencies shall be paid punctually when due, as herein provided, notwithstanding the fact that Landlord may have received rental in excess of the monthly rental herein stipulated in previous months, and notwithstanding the fact that Landlord may thereafter receive monthly rental in excess of the monthly payments herein specified during subsequent months. No re-entry or taking possession of said premises shall terminate this lease unless written notice of such intention is given to Tenant. Unpaid installments of rent or other sums shall bear interest at the highest legal rate from the date due. For the purpose of this sub-paragraph the percentage rent for any period after any such default and entry by Landlord shall be deemed to be at a monthly rate equal to the rate of percentage rent which Tenant was obligated to pay Landlord during the next preceding year, except that if such event shall occur during the first year, then at the rate for the then elapsed portion of the lease term.

(3) Collect by suit or otherwise each installment of rent or other sum as it becomes due or enforce by suit or otherwise any covenant or condition or term of this lease required to be performed by Tenant.

(4) Terminate this lease, in which event Tenant agrees to immediately surrender possession of said premises and to pay Landlord all damages Landlord may incur by reason of Tenant's default, including the cost of recovering possession of said premises and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to the rent reserved in this lease, for the remainder of the stated term over the then reasonable rental value of said premises for the remainder of said term.

(c) Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within ten (10) days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided that if the nature of Landlord's obligation is such that more than ten (10) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such ten (10) day period and thereafter diligently prosecutes the same to completion.

XX

Landlord May Cure Defaults

In the event of any breach hereunder by Tenant, Landlord may at any time, without notice, cure such breach for the account and at the expense of Tenant. If Landlord at any time, by reason of such breach, is compelled to pay, or elects to pay, any sum of money or to do any act which will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorney's fees, in instituting, prosecuting or defending any actions or proceedings to enforce Landlord's rights hereunder or otherwise, the sum or sums so paid by Landlord, with all interest, costs and damages, shall be deemed to be additional rent hereunder and shall be due from the Tenant to Landlord on the first day of the month following the incurring of such respective expenses.

XXI

Attorney's Fees

In case Landlord should bring suit for the possession of the premises, for the recovery of any sum due hereunder, or because of the breach of any covenant herein, or for any other relief against Tenant, declaratory or otherwise, or should Tenant bring any action for any relief against Landlord, declaratory or otherwise, arising out of this lease, the prevailing party in any such suit shall pay to the other reasonable attorney's fees fixed by the court.

Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by or against Tenant, or by or against any person holding under, or using the premises by license of, Tenant or for the foreclosure of any lien for labor and material furnished to or for Tenant or any such person, or otherwise arising out of or resulting from act or transaction of Tenant or of any such person, Tenant covenants to pay to Landlord the amount of any judgment rendered against Landlord or the demised premises or any part thereof, and any or all costs and expense, including reasonable attorney's fees incurred by Landlord fixed by the Court in or in connection with such litigation.

XXII

Waiver

One or more waivers of any covenant or condition by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by either party to or of any act by the other party requiring such party's consent or approval shall not be deemed to waive or render unnecessary such party's consent or approval to or of any subsequent similar act by the other party.

XXIII

Holding Over and Surrender

(a) If Tenant should remain in possession of the premises after the expiration of the term and without executing a new lease, then such holding over shall be construed as a tenancy from month to month, subject to all the conditions, provisions and obligations of this lease insofar as the same are applicable to a month to month tenancy, at a monthly rental of Eight Hundred Dollars ($800.00) and shall otherwise be on the terms and conditions herein specified.

(b) On the last day or sooner termination of the term, Tenant shall quit and surrender the premises in good condition and repair (reasonable wear and tear and damage by acts of God or fire excepted) together with all alterations, additions and improvements which may have been made in, to or on the premises. Tenant, on or before the end of the term shall remove all of Tenant's merchandise inventory from the premises, and all inventory not so removed shall be deemed abandoned by Tenant. If the premises be not surrendered at the end of the term, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the premises, including, without limitation, any claims made by succeeding tenant founded on such delay.

XXIV

Damage or Destruction

(a) Option to Terminate. In the event the premises shall be partially or totally destroyed by fire or other casualty, then, in any such event, Landlord may, if it so elects, rebuild or put said building or pier in good condition and fit for occupancy within a reasonable time after such destruction or damage, or may give notice in writing terminating this lease as of a date not later than sixty (60) days after any such damage or destruction. If Landlord elects to repair or rebuild said building or pier, it shall, within sixty (60) days after such injury, give Tenant notice of its intention to repair and then to proceed with reasonable speed to make such repairs. Unless Landlord elects to terminate this lease, this lease shall remain in full force and effect. It is understood and agreed that in no event shall Landlord have any responsibility to repair any damage caused by Tenant. Damage caused by Tenant shall be repaired by Tenant at the earliest date reasonably possible.

(b) Portion to be Rebuilt by Landlord and Tenant. Should Landlord elect to repair or rebuild the premises, the Landlord's obligation shall be limited to the basic pier, building, store front and exterior and interior walls and Tenant shall forthwith furnish the premises, and shall forthwith replace or fully repair all exterior signs, trade fixtures, equipment, display cases, at Tenant's expense.

XXV

Reservations

Tenant expressly agrees that this lease and all rights hereunder shall be subject to all prior exceptions, reservations, leases, licenses, easements, and rights of way of record now existing in, to, over or affecting the leased premises for any purpose whatsoever.

XXVI

Notices

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing, and shall be sufficiently given and served upon the other party if personally served upon the other party, or if sent by United States mail, postage prepaid, addressed as follows: If sent to Tenant the same shall be addressed to the last known post office address of Tenant or to the premises; if sent by mail to Landlord, the same shall be addressed in care of its Real Estate Services Division, 650 Howe Avenue, Sacramento, CA 95825, and Department of Parks and Recreation, 1416 Ninth Street, 14th Floor, Sacramento, CA 95814, or such other addresses as Landlord or Tenant may designate during the term of this lease by written notice to the other.

XXVII

Construction

The titles to the paragraphs of this lease are not a part of this lease and shall have no effect upon the construction or interpretation of any part thereof. This instrument contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner than by an agreement in writing signed by all of the parties hereto or their respective successors in interest. Time is and shall be of the essence of each term and provision of this lease. Except as otherwise expressly stated, each payment provided to be made by Tenant shall be in addition and not in substitution for the other payments to be made by Tenant. In the event that any provision of this lease shall remain in full force and effect.

XXVIII

Successors and Assigns

Subject to the provisions of this lease, hereinabove set forth, with reference to assignments and transfers, the terms and provisions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Landlord and Tenant.

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first above written.

STATE OF CAL FORNIA
DEPARTMENT OF GENERAL SERVICES

BY _____
Edward R. Miller
Chief Land Agent

LANDLORD

SEABOARD RENTAL COMPANY, INC.,
a California corporation

BY _____
HARRY LEE KISSEL, PRESIDENT

TENANT

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