MINUTE ITEM

This Calendar Item No. C05 was approved as Minute Item No. 05 by the California State Lands Commission by a vote of 3 to 0 at its 10-20-03 meeting.

CALENDAR ITEM
C05

A 33

S 18

10/20/03
PRC 8152.1
B. Dugal
R. Nobles

ASSIGNMENT OF LEASE

LESSEE/ASSIGNOR:
PC Landing Corp
2718 Creeks Edge Parkway
Austin, Texas 78733

ASSIGNEE:
Pivotal Telecom, LLC
2555 East Camelback Road, # 2100
Phoenix, Arizona 85016

AREA, LAND TYPE, AND LOCATION:
11 acres, more or less, of sovereign lands in the Pacific Ocean, located offshore of the city of Grover Beach, San Luis Obispo County.

AUTHORIZED USE:
Construction, use and maintenenace of two 5.25 inch steel conduits and two fiber optic cables.

LEASE TERM:
Ten years, beginning April 20, 2000, with the right to renew of one additional period of 15 years, subject to such reasonable renewal terms and conditions as the State may impose.

CONSIDERATION:
$242,075 per annum, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

BACKGROUND INFORMATION:
On April 20, 2000, the Commission adopted a Mitigated Negative Declaration and approved the issuance of lease PRC 8152.1 (the "Lease") to PC Landing

Corp, for the construction, operation and maintenance of two conduits and two fiber optic cables, sometimes referred to as the PC-1 cable.

On July 19, 2002, PC Landing Corp. ("PCL"), and related debtors (the "Debtors") filed a voluntary petition in the United States Bankruptcy Court for the District of Delaware seeking relief under Chapter 11 of the Bankruptcy Code. At the time of the filing of the bankruptcy petition the Debtors were financially insolvent, lacked sufficient working capital to continue the long-term operation of the PC-1 cable system, and were in default with respect to certain terms and conditions of the Lease. PCL continues to be in default with respect to the following lease requirements:

1) Cable Burial: The Lease, consistent with the project originally proposed by PCL in its application to the Commission, requires that the PC-1 cables be completely buried from the end of the conduits to the 1,000 fathom isobath (roughly 1800 meter water depth and 70 miles along the cable route) to a target burial depth of between 0.6 to 1.0 meter. However, there are sections one of the cables that is exposed, either on or suspended above the seabed.

2) Fishing Mitigation: The Lease also requires PCL to undertake certain fishing mitigations to address potential conflicts between the installation, operation and maintenance of PC-1 cables and the central California commercial fishing industry. The fishing mitigations include: payment of $500 to eligible trawl fishers for upgrading navigational equipment; the provision of a 24-hour toll-free emergency contact number in the event of a cable snag; agreement to provide compensation to fisherman for gear and time lost as the result of a cable snag at 150% of the replacement cost of the gear; agreement to hold fisherman harmless for unintentional damage to a buried cable in the project area; agreement that fisherman would only be held liable if a committee, comprised of trawl fishers and cable owners, found that such damage was intentionally inflicted. In addition, PCL was to participate in a Joint Cable/Fisheries Liaison Committee, which was to be established to resolve disputes between fishermen and cable operators over liability for damage to cables. In order to facilitate implementation of these fishing mitigations, PCL and PAC Landing Corp., entered into an Interim Agreement, dated June 4, 1999, (the "IA") with the Morro Bay Commercial Fishermen's Organization and the Port San Luis Commercial Fishermen's Association, which, among other things, a fishing committee was to be established. PCL and PAC Landing Corp. however, did not establish a functioning fishing committee under the IA with the fishermen associations, as required under the Lease and disputes

have arisen with respect to the payment of fees under the IA.

3) As-Built Plans: The Lease requires PCL, within 90 days of the acceptance of the work as complete from the contractor, to provide the Commission with (i) as-built cable coordinates on paper and electronically, (ii) a copy of the post lay burial report and a set of as-built plans showing the final plan and profile of the conduit in the lease area, and (iii) a post construction written report. Data and information responsive to this condition has not been provided to the Commission.

4) Performance Bond: PCL is also required to post and maintain a surety bond in the amount of $1,000,000 to guarantee the performance of all of the terms, covenants and conditions of the Lease. PCL provided the required bond, but has allowed the bond to be cancelled and has failed to furnish a replacement bond.

Court Approves Sale of PCL's Assets to Pivotal

On June 3, 2003, the Bankruptcy Court entered a Sale Order (the "Sale Order") approving the sale of substantially all of the assets of the Debtors, including PCL's interest in the Lease, to Pivotal Telecom, LLC ("Pivotal"). Earlier in the year, the Bankruptcy Court approved bidding procedures for the sale of the Debtors' assets. Pivotal submitted the only bid, which resulted in the execution of an Amended and Restated Asset Purchase Agreement dated April 15, 2003, as amended by the First Amendment of Amended and Restated Asset Purchase Agreement dated May 27, 2003 (collectively, the "Sale Agreement"), between the Debtors and Pivotal, pursuant to which Pivotal agreed to purchase the Debtors' assets for $63 million, subject to certain pro-rations and adjustments. The outside closing date under the Sale Agreement, as approved by the Sale Order, is November 30, 2003, with one 45-day extension period if the issuance of regulatory approvals is the only unfulfilled condition of the sale closing.

The Sale Order provided that the Debtors endeavor to secure the consent of certain federal, state and local agencies to the transfer of the licenses and permits that such agencies had issued in connection with the PC-1 cables. For purposes of the Sale Agreement and the Sale Order, the terms "licenses and permits" explicitly included and refer to the Lease. The Sale Order further provided that in the event the State or any other issuing agency refused to approve the transfer of a license or permit, the Debtors would have recourse to return to the Bankruptcy Court to seek an order authorizing the transfer of such license or permit to Pivotal over the objection of the disapproving agency. In connection with the Sale Motion, the Court approved a stipulation between the Debtors and the Commission, among other parties, reserving to the Commission,

the right in any such proceeding to raise jurisdictional, procedural and substantive objections to the sale, transfer or assignment of the Lease.

The Post Closing Escrow Fund to Resolve Coastal Regulatory Matters

The Sale Agreement acknowledges that the Debtors are not in compliance with some of the terms and conditions of the licenses and permits to be transferred to Pivotal under the Sale Agreement. Compliance issues associated with the licenses and permits, including defaults under the Lease, are referred to in the Sale Agreement as "Coastal Regulatory Matters". Under the Sale Agreement, the Debtors retain the initial obligation to seek to resolve the Coastal Regulatory Matters, even after the closing of the sale to Pivotal (the "Closing"). Among other things, the Sale Agreement provides the Debtors with access to the PC-1 facilities and authorizes physical interaction with the cables to facilitate its resolution of a Coastal Regulatory Matter. The agreement also establishes a "Post Closing Escrow Amount" (as defined in the Sale Agreement) funded out of the purchase price for use by the Debtors to pay and fund those costs they incur to satisfy, discharge or resolve any Coastal Regulatory Matter that remains unresolved at Closing. The Post Closing Escrow Amount will not be less than $10.5 Million, of which $6 Million has been segregated to resolve matters arising under a permit issued by the National Oceanic and Atmospheric Administration. Under the Sale Agreement, the Debtors explicitly retain liability for resolution of the Coastal Regulatory Matters delineated in the Sale Agreement up to, but not in excess of, the amount of the Post Closing Escrow Amount, with Pivotal assuming liability for such Coastal Regulatory Matters that exceed the Post Closing Escrow Amount. Accordingly, to the extent that the defaults under the Lease identified in this Motion are not cured by Debtors, or exceed the Post Closing Escrow Amount, Pivotal will be responsible for such cure. Pivotal also assumes at Closing, all liabilities of the Debtors accruing after the Closing under the licenses and permits, including the obligation to continue performing the obligations, terms, conditions and restrictions under or imposed by such license and permit to the extent applicable to the period following the Closing.

The Motion to Assume and Assign the Lease

On or about October 13, 2003, PCL will file a motion (the "Motion to Assume") with the Bankruptcy Court seeking the Court's approval for the Debtors to assume the Lease and assign it to Pivotal. A copy of the motion is attached hereto as Exhibit "B". Although the State is not a party to the Motion, staff of the Commission and the Attorney General's Office requested the Motion be filed and contributed to its preparation. The purpose of the Motion, in addition to seeking the approval of the Bankruptcy Court to the assumption and assignment of the Lease, is to identify the existing defaults under the Lease and provide assurances to the Commission that the defaults will be resolved in a timely manner. Section 365 of the Bankruptcy Code provides that executory leases and

unexpired leases may be assumed by the debtor, provided however, if there has been a default, the debtor may not assume the contract or lease unless, at the time of assumption, the debtor cures, or provides adequate assurance that the debtor will promptly cure, such default and further provides adequate assurance of future performance under the lease or contract. The Motion is scheduled for a hearing in the Bankruptcy Court on November 6, 2003.

The Motion to Assume identifies existing defaults under the Lease and outlines measures being undertaken, presently and to be taken in the future, to cure the defaults. The defaults identified in the Motion include fishing mitigation, surety bond reinstatement, furnishing the as-built surveys to the Commission, and measures to address the failure of PCL to achieve full burial of the cables from the end of the conduits to the 1,000 fathom water depth. Debtors and Commission staff believe that securing the Bankruptcy Court's approval of the Motion to Assume represents the most efficient means of obtaining authorization to assume and assign Lease PRC 8152.1 to Pivotal upon the consummation of the Sale, to identify existing defaults under the Lease, and to clarify the allocation of liability and responsibility between Debtors and Pivotal to effect cure of the defaults.

Proposed Cure identified in the Motion to Assume

Cable Burial: PCL will file an application with the Commission to amend the Lease to allow for the cable to remain in its present condition with portions exposed on or suspended above the seabed. The application will be submitted to Commission staff prior to the assumption and assignment of the Lease, but in no case later than November 30, 2003. PCL agrees to pursue such application process diligently to its conclusion, including through any hearing required before the Commission. After submission of the application to Commission staff for review, staff will determine the scope of additional environmental review pursuant to the California Environmental Quality Act (Public Resources Code section 21000, *et seq.*) that will need to be performed prior to formal consideration by the Commission of such proposed amendment of the Lease. The Debtors acknowledge that if the Commission approves amendment of the Lease, curing this current default under the terms of such amendment may involve costs for additional environmental mitigation measures that may be imposed by the Commission as a condition of approving the amendment. The Debtors also acknowledge that in the event that the Commission does not agree to amend the Lease to authorize the current condition of the suspended and unburied segments of PC-1, the Commission may seek to require complete cable burial to the 1,000 fathom isobath. As provided in the Motion to Assume, the Debtors have reserved their right to administrative or judicial review of such requirements or findings.

Fishing Mitigation: Since December 2002, PCL, together with PAC Landing Corp. and Global Crossing, Ltd., have been negotiating with the Central California fishermen to resolve disputes arising out of and provide for the termination of the IA, and to further provide for PCL and PAC Landing Corp to become a party to the Central California Joint Cable Fisheries Liaison Committee ("JCFLC"). These negotiations have culminated in the agreement in principle among PCL, PAC Landing Corp. and the Central California JCFLC, of a Joinder Agreement, whereby PCL and PAC Landing Corp. agree to pay jointly to the Central California JCFLC, $200,000 for 2002, $150,000 owed for 2003, and to join the Committee as a single member.

PCL and the other parties have also reached an agreement in principle for a Termination Agreement, which serves to terminate the IA upon the effectiveness of the Joinder Agreement and the payment of fees thereunder. On September 22, 2003, Debtors filed a Motion with the Bankruptcy Court for approval of both the Joinder Agreement and the Termination Agreement. On October 7, 2003, the Bankruptcy Court approved each of the agreements. Although not fully executed as of the date of preparation of this Calendar Item, the Joinder Agreement will be void and of no effect if it does not become effective by October 20, 2003, unless that date is extended in writing by the parties. The fishing mitigations addressed in the Joinder Agreement will be promptly implemented according to the terms set forth therein, thereby curing the above-identified fishing mitigation matters under the Lease. The Motion to Assume and Assign requires that the Joinder Agreement be in effect as to PCL prior to the assumption and assignment of the Lease to Pivotal.

Surety Bond: PCL is required to have a surety bond or other security in the amount of $1,000,000. Shortly after the Debtors filed for bankruptcy, PCL's bond for the Lease was cancelled. Pivotal will be required to have the bond in place prior to the assumption and assignment of the Lease.

CURRENT SITUATION:

Staff has reviewed Pivotal's confidential business plan that includes their Proformas. While the details of staff's evaluation are subject to a confidentiality agreement, staff believes that Pivotal's acquisition of the PC-1 cable system is economically viable, well capitalized and of lower risk than a typical venture capital investment.

Provided the Motion to Assume is approved by the Bankruptcy Court, substantively in the form attached, Commission staff believes, based on its evaluation, that the assignment of the Lease to Pivotal provides the best opportunity for the solvent operation of the cables and the resolution of existing defaults under the Lease.

OTHER PERTINENT INFORMATION:

1. Pivotal is in the process of securing the right to use the uplands adjoining the lease premises, which is a requirement of the Lease.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

   Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

EXHIBITS:

A. Site/Location Map
B. Motion to Assume

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AUTHORIZATION:

AUTHORIZE THE ASSIGNMENT OF LEASE NO. PRC 8152.1, A GENERAL LEASE - RIGHT OF WAY USE, OF SOVEREIGN LANDS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, FROM PC LANDING CORP TO PIVOTAL TELECOM, LLC; SUCH AUTHORIZATION TO BE EFFECTIVE UPON THE TIMELY OCCURANCE OF THE FOLLOWING CONDITIONS:

A) THE ISSUANCE OF AN ORDER FROM THE BANKRUPTCY COURT, NOT LATER THAN NOVEMBER 6, 2003 APPROVING THE MOTION TO ASSUME, WHICH IS IN THE JUDGEMENT OF THE EXECUTIVE OFFICER, SUBSTANTIVELY IN THE FORM ATTACHED HERETO AS EXHIBIT B; AND

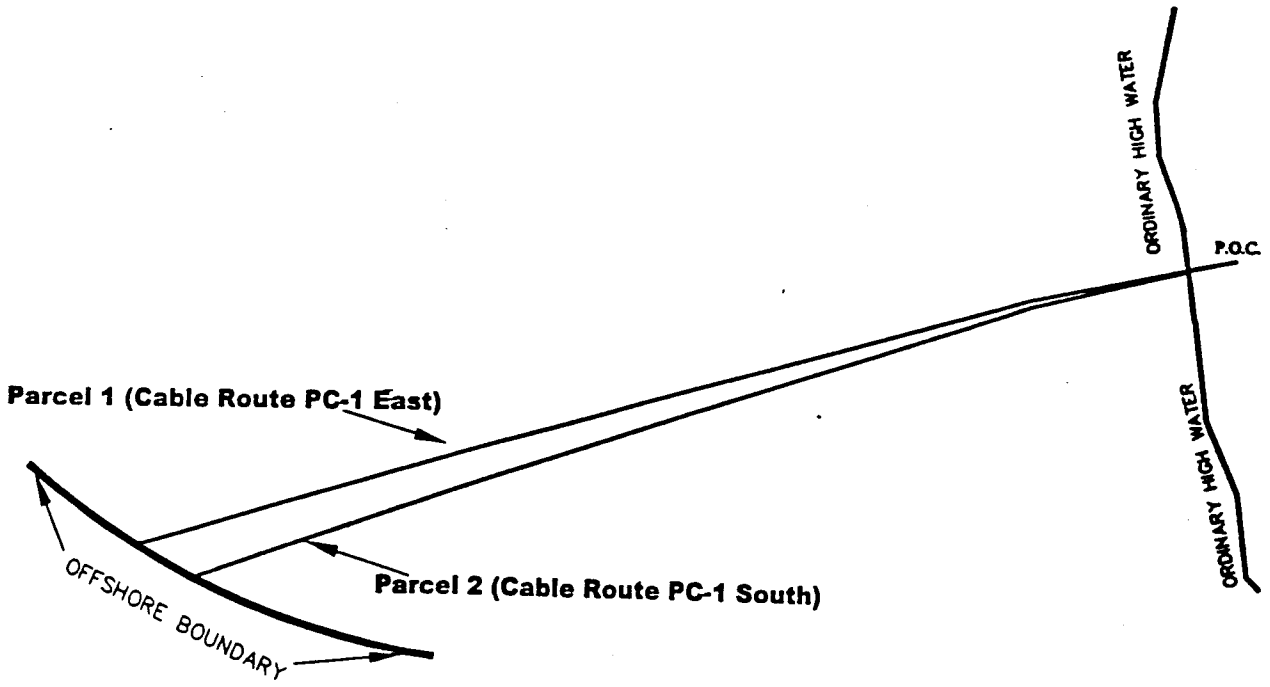
B) THE CLOSING OF THE SALE AND TRANSFER OF THE PC-1 CABLE SYSTEM TO PIVOTAL TELECOM, LLC, ON OR BEFORE JANUARY 14, 2004.

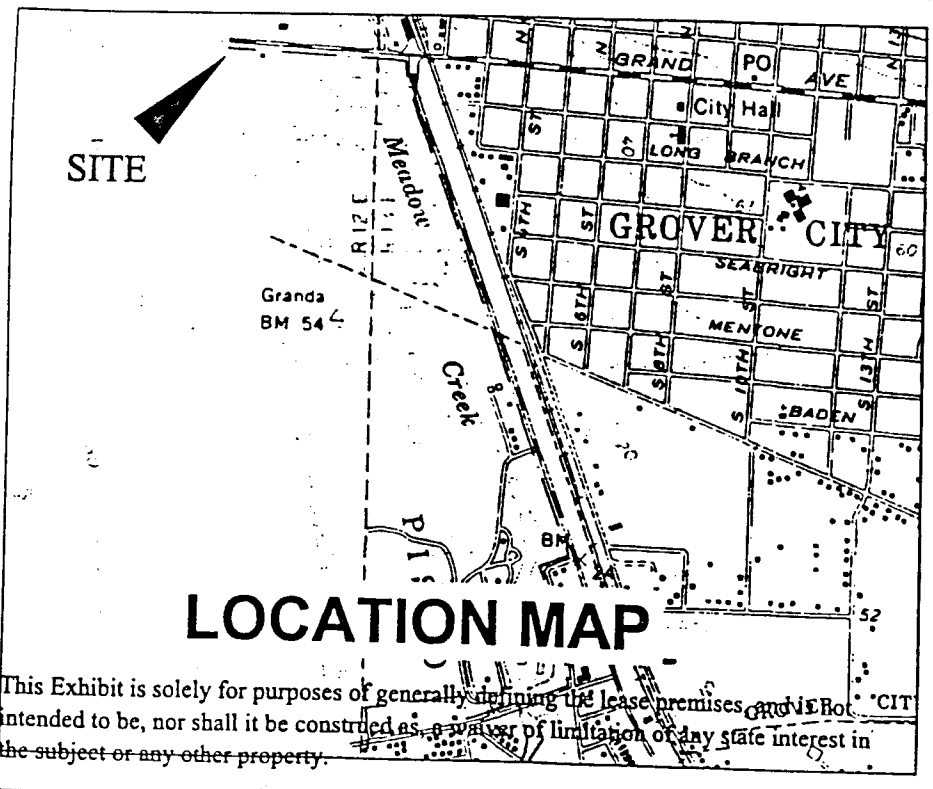
PROVIDED HOWEVER, THE EXECUTIVE OFFICER, IN HIS SOLE DISCRECTION, MAY EXTEND THE DEADLINE FOR FULFILLING EITHER OF THE CONDITIONS SET FORTH IN PARAGRAPHS A AND B ABOVE BY A PERIOD NOT TO EXCEED 60 DAYS UPON A SHOWING THAT THE AFFECTED CONDTION WILL LIKELY BE FULFILLED WITHIN THE PERIOD OF THE EXTENSION.

FAILURE OF EITHER OF THE FOREGOING CONDITIONS TO OCCUR WITHIN THE TIMEFRAME PROVIDED ABOVE SHALL RENDER THE AUTHORIZATION TO ASSIGN GRANTED BY THE COMMISSION'S ACTION IN THIS MATTER TO BE OF NO FORCE AND EFFECT.

NO SCALE

SITE MAP





LOCATION MAP

This Exhibit is solely for purposes of generally defining the lease premises, and is not intended to be, nor shall it be construed as, a waiver of limitation of any state interest in the subject or any other property.

EXHIBIT A
PRC 8152
RW LEASE
GROVER BEACH
SAN LUIS OBISPO

C. N. PEREZ - 2000

EXHIBIT B
PRC 8152

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
PC LANDING CORP., et al.,[1]	)	Case No. 02-12086 (PJW)
	)	(Jointly Administered)
Debtors.	)	

Objection Deadline: October 30, 2003 at 4:00 p.m.
Hearing Date: November 6, 2003 at 3:30 p.m.

MOTION OF DEBTORS PURSUANT TO 11 U.S.C. § 365 FOR AN ORDER AUTHORIZING DEBTORS TO ASSUME & ASSIGN CERTAIN CALIFORNIA STATE LANDS COMMISSION LEASE AND GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") hereby move (the "Motion") this Court for an order, pursuant to 11 U.S.C. § 365(a), authorizing the Debtors to assume and assign Lease P.R.C. 8152.1 (the "CSLC Lease"), between the State of California, acting through the California State Lands Commission ("CSLC"), and PC Landing Corp. in connection with the proposed sale of substantially all of the Debtors assets to Pivotal Telecom, LLC ("Pivotal"). In support of the Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

[1] The Debtors are the following entities: PC Landing Corp., a Delaware corporation, Pacific Crossing, Ltd., a Bermuda company, Pacific Crossing UK, Ltd., a United Kingdom company, PCL Japan, Ltd., a Japan company, and SCS Bermuda, Ltd., a Bermuda company.

Background

2. On July 19, 2002 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of Bankruptcy Code. The Debtors' respective chapter 11 cases (the "Chapter 11 Cases") have been procedurally consolidated for administrative purposes only. The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Debtors own and operate one of only three major trans-Pacific fiber optic cable systems with available capacity linking Japan and the United States. This fiber optic cable system named Pacific Crossing-1 ("PC-1") is a 13,076 route-mile fiber optic system between Japan and the United States. PC-1 consists of four fiber-pairs constructed into a fully redundant dense wavelength division multiplexing self-healing ring, and is supported by 424 sub-oceanic repeaters that use state-of-the-art optical amplifiers utilizing 980 nanometer pump laser technology. PC-1 has been fully operational for over two (2) years.

4. PC-1 consists of four segments connecting each of its four landing stations: Ajiguara, Japan to Harbour Pointe, Washington, Shima, Japan to Grover Beach, California, Ajiguara to Shima and Harbour Pointe to Grover Beach.

5. The Debtors primary source of revenue historically has been the sale of Indefeasible Rights of Use.

6. Prior to the Petition Date, the Debtors determined that they required the assistance of investment bankers to seek out restructuring or sale opportunities (the "Sale

Process"). Accordingly, the Debtors retained the investment banking firm of Dresdner Kleinwort Wasserstein, Inc. ("DrKW") on May 7, 2002 as financial advisor and investment banker to the Debtors to assist the Debtors with the Sale Process. In May 2002, DrKW commenced the Sale Process for all or part of the assets of the Debtors. As part of that Sale Process, the professionals of DrKW identified and contacted numerous potential financial and strategic acquirers, assisted the Debtors in drafting an Information Memorandum, assisted in developing additional marketing materials for potential acquirers (including a management presentation and various technical presentations), coordinated due diligence requests from interested parties, and arranged and coordinated management presentations and follow-up meetings with certain interested parties.

7. Post-petition, the Debtors retained DrKW and Miller Buckfire Lewis Ying & Co., LLC[2], as investment bankers to continue the Sale Process post-petition. The investment bankers, the Debtors' management, and the Debtors' professionals have spent substantial time and resources pursuing a sale of substantially all of the Debtors' assets.

8. These collective efforts resulted in the execution of an Amended and Restated Asset Purchase Agreement dated April 15, 2003, as amended by the First Amendment of Amended and Restated Asset Purchase Agreement dated May 27, 2003 (collectively, the "Sale Agreement"), both by and among the Debtors and Pivotal, pursuant to which Pivotal agreed to purchase substantially all of the Debtors' assets for $63 million, subject to certain prorations and adjustments. The outside closing date under the Sale Agreement is November 30, 2003, with one

[2] On May 22, 2003, Miller Buckfire Lewis & Co., LLC changed its name to Miller Buckfire Lewis Ying & Co., LLC.

45-day extension period if the issuance of regulatory approvals is the only then remaining condition of Closing (as defined in the Sale Agreement).

9. On May 5, 2003, the Debtors filed a motion seeking, among other things, Court approval of the sale of substantially all of their assets (the "Sale") to Pivotal (the "Sale Motion"). In connection with the Sale Motion, a stipulation and order was entered by the Court on May 30, 2003 (the "State Stipulation"), preserving CSLC's ability to object to the sale, transfer or assignment of the CSLC Lease on the various grounds set forth therein.

10. On June 3, 2003, this Court entered an order approving the Sale Motion (the "Sale Order"). The question of whether the CSLC Lease would be transferred as an unexpired lease pursuant to section 365 or as a permit under section 363 was not resolved and the Sale Order authorized the Debtors, in the first instance, to seek CSLC consent for the assignment of the CSLC Lease from the Debtors to Pivotal.[3] The Debtors have been advised by CSLC staff that such consent requires action by the CSLC at a Commission meeting, with the next such Commission meeting scheduled for October 20, 2003.[4]

11. The Debtors and Pivotal have been working with CSLC staff in order to obtain a positive staff recommendation on the proposed assignment of the CSLC Lease from the Debtors to Pivotal, and to facilitate inclusion of the CSLC Lease assignment on the agenda

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[3] The CSLC's prior written consent to assignment of the Lease from the Debtors to Pivotal is among the Governmental Approvals listed in the Sale Agreement, which must be obtained as a condition to Closing. Under the Sale Order, and the State Stipulation entered between the Debtors, the State of California (on behalf of, *inter alia,* the CSLC) and the State of Washington, to the extent the CSLC consents to the assignment, the CSLC Lease will be transferred at Closing without further order of the Court. Under the Sale Order and the State Stipulation, if a governmental authority does not consent to the transfer of a license or permit, the Debtors shall schedule a subsequent hearing before the Bankruptcy Court on whether the license or permit may be transferred in connection with the Sale, in the absence of the agency's consent.

[4] A Commission meeting had been scheduled for October 7, 2003, but was rescheduled until October 20, 2003. The next Commission meeting after October 20, 2003, is tentatively scheduled for December 9, 2003.

for the October 20 meeting for consideration by the Commission at that time.

12. The Debtors understand that in this regard CSLC staff are evaluating (i) the Debtors' assurances that several asserted defaults under the CSLC Lease (which are among what are referred to in the Sales Agreement as Coastal Regulatory Matters) will be timely cured, or, for those asserted defaults that will not likely be resolved by Closing, that provisions have been made for the availability of adequate resources necessary to assure cure of such matters in the Sale Agreement and the Sale Order; and (ii) Pivotal's financial condition and managerial experience. In order to facilitate CSLC staff's positive recommendation to the Commission, and the Commission's consideration of these issues, the Debtors have also agreed to: (i) seek an order from the Court under section 365(a) of the Bankruptcy Code authorizing the Debtors to assume and assign the CSLC Lease to Pivotal upon the consummation of the Sale, (ii) identify existing asserted defaults under the CSLC Lease, and (iii) reaffirm the allocation of liability and responsibility between the Debtors and Pivotal specified in the Sale Agreement and the Sale Order relating to the resolution of these matters in the context of a section 365 order. Indeed, it is the Debtors' understanding that, if CSLC approves the assumption of the CSLC Lease and its assignment to Pivotal at its upcoming October 20th meeting, the CSLC will not oppose the relief sought herein, provided that: (i) the Debtors identify the outstanding asserted defaults and provide adequate assurances that such defaults will be timely cured, or (ii)where the determination of the required cure is subject to later resolution by the CSLC, provide adequate assurance of the availability of sufficient resources to effectuate the cure that ultimately may be required, including the submission of sufficient documentation by Pivotal to establish its ability

to fully discharge the lessee's obligations under the CSLC Lease.

The CSLC Lease

13. Pursuant to the CSLC Lease, PC Landing Corp. leases certain submerged lands adjacent to Grover Beach, San Luis Obispo County, California, as a non-exclusive right-of-way in connection with the construction, installation, operation, maintenance and use of two segments of PC-1.

Relief Requested

14. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors seek the Court's approval of the Debtors' assumption and assignment of the CSLC Lease to Pivotal, with such assumption and assignment being contingent upon: (i) the consummation of the Sale, (ii) the As Built Plans, Fishing Mitigation, and Surety Bond matters specified herein being resolved as set forth below prior to the assumption and assignment of the CSLC Lease, unless such contingencies are waived or modified in writing by CSLC, and (iii) the availability of the Escrow Amount specified herein and Pivotal's liability under the Sale Agreement, as amended, and the Sale Order for any costs above the amount of the Escrow Amount, as adequate assurance to address the resolution of the Cable Burial matter discussed below.

Basis for Relief Requested

15. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). It is well established that the decision to

assume or reject an executory contract or unexpired lease is a matter within the "business judgment" of the debtor. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (describing the business judgment test as "traditional"). See also In re Taylor, 913 F.2d 102 (3d Cir. 1990); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36 (3d Cir. 1989).

16. As the Debtors seek to assume and assign the CSLC Lease to Pivotal pursuant to and in furtherance of the Sale Agreement that has already been approved by this Court and that will provide the Debtors with substantial value, the Debtors submit that the proposed assumption and assignment is in the sound business judgment of the Debtors.

17. Additionally, pursuant to section 365(b)(1)(A) of the Bankruptcy Code "[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee cures, or provides adequate assurance that the trustee will promptly cure such default." 11 U.S.C. § 365 (b)(1)(A).

18. The Debtors acknowledge that certain defaults currently exist, as set forth more fully below, relating to: (i) As Built Plans; (ii) Fishing Mitigations; (iii) Cable Burial; and (iv) a Surety Bond. As discussed more fully below, the defaults with respect to the As Built Plans, the Fishing Mitigations, and the Surety Bond will be cured prior to the assumption and assignment of the CSLC Lease. With respect to Cable Burial, the Debtors believe that mechanisms are in place pursuant to the Sale Agreement to provide adequate assurance of any cure that ultimately may be required by the CSLC.

As Built Plans

19. Section 2, paragraph 22 of the CSLC Lease requires the lessee, within 90 days of the acceptance of the work as complete from the contractor, to provide CSLC with (i) as-built cable coordinates on paper and electronically, (ii) a copy of the post lay burial report and a set of as-built plans showing the final plan and profile of the conduit in the lease area, and (iii) a post construction written report. Data and information responsive to this condition has not previously been provided to CSLC, and such data and information, in consultation with CSLC staff will be provided prior to the assumption and assignment of the CSLC Lease.[5]

Fishing Mitigation

20. The CSLC Lease requires Debtors to undertake certain fishing mitigations to address potential conflicts between the installation, operation and maintenance of PC-1 and the central California commercial fishing industry.[6] In order to facilitate implementation of these fishing mitigations, Global Crossing Ltd., through PC Landing Corp. and PAC Landing Corp., entered into an Interim Agreement dated June 4, 1999 (the "IA") with the Morro Bay Commercial Fishermen's Organization and the Port San Luis Commercial

[5] Section 2, paragraph 23 of the CSLC Lease also provides that as-built cable positions will be reviewed by CSLC staff and, if the positions are found to vary from the plans submitted prior to installation, the preliminary lease description will be revised by the lessee to reflect as-built cable positions. Based on a marine survey recently completed by the Debtors, the Debtors are preparing for CSLC staff a revised lease description that reflects the as-built cable positions, which will be provided together with the other as-built materials. The Debtors note that they do not have a copy of a construction report, as such, from the contractor and will work with CSLC staff as to the documentation, content and delivery schedule related to this item.

[6] Among the direct fishing mitigations that are part of the PC-1 project are the following: payment of $500 to eligible trawl fishers for upgrading navigational equipment; ability to be contacted through 24-hour emergency contact number in the event of a cable snag; agreement to provide compensation to fisherman for lost gear and time at 150% of the replacement cost of the gear; agreement to hold fisherman harmless for unintentional damage to a buried cable in the project area; agreement that fisherman would only be held liable if a committee, comprised of trawl fishers and cable owners, found that such damage was intentionally inflicted. In addition, the committee would also be used to resolve disputes between fishermen and cable operators over liability for damage to cables.

Fishermen's Association, pursuant to which, among other things, a fishing committee was to be established.

21. The Debtors, together with PAC Landing Corp. and Global Crossing, however, have been unable to organize and establish their own fishing committee under the IA with the fishermen associations, and certain disputes have arisen with respect to the payment of fees under the IA. At the same time, several other cable operators landing in the central California region entered into separate interim agreements with the same fishermen associations that are parties to the IA, and formed a fishing committee known as the Central California Joint Cable Fisheries Liaison Committee (the "Central California JCFLC" or "Committee"), which has been organized and functioning. The parties to these other interim agreements subsequently entered into a Final Agreement Between Cable Companies and Fishermen, dated January 30, 2002, superseding their respective interim agreements.[7] PC Landing Corp., while not participating as a member of the Central California JCFLC, has been working through the Central California JCFLC in connection with various activities that have required coordination with the local fishing industry.

22. In addition to incorporating the various fishing mitigations discussed in footnote 5, *supra,* the IA included a requirement that PC Landing Corp. and PAC Landing Corp. jointly pay $50,000 per year into a "Committee/Liaison Office Fund" to fund committee activities, and $100,000 per year into a "Fishing Industry Improvement Fund", a special fund for

[7] *See* Final Agreement between Cable Companies and Fishermen dated the 30th of January 2002, by and among MFS Globenet, Inc., AT&T Corp, Global West Network, Inc., a wholly owned subsidiary of Global Photon Holding Co., individual Fishermen, the Morro Bay Commercial Fishermen's Organization, and the Port San Luis Commercial Fishermen's Association ("Final Agreement").

the enhancement of commercial fisheries to be disbursed at the Committee's discretion. PAC Landing Corp. and PC Landing Corp. have jointly paid approximately $225,000 since 1999 to the Central California JCFLC, but have an outstanding balance under the IA of approximately $275,000.

23. Since December 2002, PC Landing Corp., together with PAC Landing Corp., have been negotiating with the Central California fishermen, termination of the IA and their joinder of the Final Agreement, and joint participation in the Central California JCFLC. These negotiations have culminated in the agreement in principle among PC Landing Corp., PAC Landing Corp. and the Central California JCFLC, subject to execution and Bankruptcy Court approval (as may be required), of a Joinder Agreement, pursuant to which PC Landing Corp. and PAC Landing Corp. agree to pay jointly to the Central California JCFLC, $200,000 of the $275,000 outstanding under the IA through 2002, to pay the $150,000 owed for 2003, and to join the Committee as a single member.[8] PC Landing Corp. and the other parties have also reached an agreement in principle, subject to execution and bankruptcy court approval (as required) of a Termination Agreement, which serves to terminate the IA upon the effectiveness of the Joinder Agreement and the payment of fees thereunder.

24. On September 22, Debtors filed a Motion with this court for approval of both the Joinder Agreement and the Termination Agreement. Upon the Joinder Agreement becoming effective, which is expected to occur by October 20, 2003,[9] the fishing mitigations

[8] The Joinder Agreement also provides that upon completion of the Sale, the Committee will address whether PAC Landing Corp. and the successor company to PC Landing Corp. should be deemed separate cable companies and have separate memberships under the Final Agreement, and provides a dispute resolution mechanism if the parties are not able to amicably resolve the separate membership issue by the end of 2004.

[9] The Joinder Agreement will be void and of no effect if it does not become effective by October 20, 2003, unless

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addressed in the Joinder Agreement will be promptly implemented according to the terms set forth therein, thereby curing the above-identified fishing mitigation matters under the CSLC Lease. The Joinder Agreement shall be in effect as to PC Landing Corp. prior to the assumption and assignment of the CSLC Lease to Pivotal.

Cable Burial

25. The PC-1 project described in PC Landing Corp.'s application to the CSLC, and the CSLC Lease, provide that the cable would be completely buried from the duct ends to the 1,000 fathom isobath (roughly 1800 meter water depth and 70 miles along the cable route) to a target burial depth of between 0.6 to 1.0 meter. As previously reported to CSLC staff, however, there are sections of the cables that are exposed, either on or suspended above the seabed.

26. In accordance with prior discussions and correspondence with CSLC staff, PC Landing Corp. is currently finalizing the preparation of an application to CSLC to amend the CSLC Lease in order to authorize the current condition of the cable exposed on or above the seabed.[10] The Debtors and Pivotal have previously acknowledged that after submission of the application to CSLC for review, the Commission would thereafter determine the scope of additional environmental review pursuant to the California Environmental Quality Act (Public

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that date is extended in writing by the parties.

[10] The application will be a comprehensive document providing detailed information on the unburied and suspended segments of PC-1 (including suspension profiles) from the June 2003 survey. The application will evaluate the reasons for the PC-1 exposures, potential options and their implications, address resource issues (including information on marine biological resources and fishing industry and economic factors supplementing the Mitigated Negative Declaration for the project), and proposed measures, synthesizing the resource information presented. The application will be submitted to CSLC by prior to the assumption and assignment of the CSLC Lease, but in no event later than November 30, 2003. The Debtors agree to pursue such application process diligently to its conclusion, including through any hearing required before the CSLC.

Resources Code section 21000, *et seq.*) that will need to be performed prior to CSLC formal consideration of such proposed amendment of the CSLC Lease.[11] The Debtors and Pivotal have also previously acknowledged in a July 24, 2003 letter from PC Landing Corp. and Pivotal (hereafter referred to as the "July 24 Joint Letter"), that there are a range of potential outcomes and costs that may be imposed on the Debtors and Pivotal as the conclusion of this process.[12] As discussed below, the Sale Agreement, as amended, and the Sale Order provide a mechanism to insure that sufficient resources are available to the cover the cost of a resolution of this issue, first in the form of the Escrow Amount to cover the resolution of this and other Coastal Regulatory Matters, that will be set at an aggregate amount of no less than $10.5 Million, with Pivotal assuming liability for such Coastal Regulatory Matters that exceed the Post Closing Escrow Amount.

Surety Bond

27. Under the CSLC Lease, the lessee is required to have a surety bond or other security in the amount of $1,000,000. Shortly after the Debtors filed for bankruptcy, PC Landing Corp.'s bond for the CSLC Lease was cancelled. As reflected in the parties July 24 Joint Letter, Pivotal has acknowledged that that it will be required to have the required bond in place prior to the assumption and assignment of the CSLC Lease and that the assignment of the CSLC Lease will be conditioned on Pivotal having the required bond in place.

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[11] The Debtors understand that this environmental analysis would be performed at lessee's expense, and the cost of such environmental analysis would be covered, in the first instance, under the Escrow Amount, discussed below.

[12] The Debtors acknowledge that if the CSLC approves amendment of the CSLC Lease, curing this current default under the terms of such amendment may involve costs for additional environmental mitigation measures that may be imposed by the CSLC as a condition of approving the amendment. The Debtors also acknowledge that in the event that the CSLC does not agree to amend the CSLC Lease to authorize the current condition of the suspended and unburied segments of PC-1, CSLC may seek to require complete cable burial to the 1,000 fathom isobath. The Debtors reserve their right to administrative or judicial review of such requirements or findings.

Adequate Assurance

28. The Debtors and Pivotal understand that there are a range of potential outcomes and costs that may be imposed on PC Landing Corp. and Pivotal in order to cure the above-identified defaults under the CSLC Lease. Pursuant to the terms of the Sale Agreement, these potential liabilities are allocated between and assumed by the parties to the Sale Agreement, so as to ensure that CSLC has adequate assurance that any required remedial action will be performed.

29. In the first instance, any liabilities related to PC Landing Corp.'s compliance with the CSLC Lease conditions, and any and all costs associated with any required mitigations are included among the Coastal Regulatory Matters, as defined in the Sale Agreement. Under the Sale Agreement, the Debtors retain the obligation to seek to resolve such Coastal Regulatory Matters, even if such Coastal Regulatory Matter is not resolved by Closing. Among other things, the Sale Agreement provides the Debtors with access to the PC-1 facilities and authorizes physical interaction with the cable in order to facilitate its resolution of a Coastal Regulatory Matter.

30. The Sale Agreement also establishes a Post Closing Escrow Amount (as defined in the Sale Agreement) funded out of the Purchase Price for use by the Debtors to pay and fund those costs they incur to satisfy, discharge or resolve any Coastal Regulatory Matter that remains unresolved at Closing.[13] Under the Sale Agreement, the Debtors explicitly retain

[13] Under the Sale Agreement, the Post Closing Escrow amount is set at the lesser of (i) $15 Million less amounts the Debtors expend pre-Closing to resolve any of the Coastal Regulatory Matters, or (2) the cost, as agreed by Pivotal and the Debtors, to resolve those Coastal Regulatory Matters not reasonably expected to be resolved by the Closing Date, plus $1 million. On September 22, 2003 Debtors filed a Motion for Court Approval of a Stipulation between Debtors and the National Oceanic and Atmospheric Administration and the U.S. Department of Commerce. The Motion is currently scheduled for hearing on October 7, 2003. The Motion provides, inter alia, that the Post Closing

liability for resolution of the Coastal Regulatory Matters delineated in the Sale Agreement up to, but not in excess of, the amount of the Post Closing Escrow Amount, with Pivotal assuming liability for such Coastal Regulatory Matters that exceed the Post Closing Escrow Amount. Accordingly, to the extent that the defaults under the CSLC Lease identified in this Motion are not cured by Debtors, or exceed the Post Closing Escrow Amount which in no case will be less than $10.5 million, Pivotal will be responsible for such cure. Pivotal also assumes at Closing, all liabilities of the Debtors accruing after the Closing Date under the Licenses and Permits, including the obligation to continue performing the obligations, terms, conditions and restrictions under or imposed by such License and Permits to the extent applicable to the period following the Closing. In addition, all such conditions shall remain unaffected by the Sale Order and shall remain in full force and effect.

31. Thus, the parties have put in place a comprehensive scheme whereby PC Landing Corp. will resolve the defaults relating to the Fishing Mitigation, As Built Plans and the Surety Bond prior to the assumption and assignment of the CSLC Lease, and continue to work with CSLC to resolve the outstanding default pertaining to the Cable Burial that ensures that even to the extent that the Cable Burial default is not resolved prior to Closing, CLSC has assurance as to the presence of adequate resources necessary to resolve it.

32. Section 365(f) of the Bankruptcy Code provides that, notwithstanding language in an executory contract or unexpired lease to the contrary, the debtor may assign a contract or lease, provided that the debtor must first assume such contract or lease, and second

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Escrow amount to resolve Coastal Regulatory Matters will be set at no less than $10.5 Million.

that the debtor must give adequate assurance of future performance by the assignee. *See* Leonard v. General Motors Corp. (In re Headquarters Dodge, Inc.), 13 F.3d 674, 678 (3d Cir. 1994).

33. The Debtors and/or Pivotal will provide CSLC with sufficient documentation to evaluate Pivotal's ability to adequately perform under the CSLC Lease and have made the assumption and assignment of the CSLC Lease contingent upon the Closing and Pivotal reinstating a $1 million bond in connection with performance under the Lease. As such, the Debtors believe that they will satisfy their burden with respect to providing adequate assurance of Pivotal's ability to perform under the CSLC Lease.

34. In the event that the CSLC, at its October 20, 2003 meeting, denies the Debtors' pending request for consent to assign the CSLC Lease to Pivotal, or conditions such consent in a manner that is inconsistent with this Motion and unacceptable to the Debtors, the Debtors shall withdraw the Motion. In that event, nothing herein shall be deemed an admission by the Debtors or the CSLC that the CSLC Lease is a lease that may not be transferred except in accordance with the provisions of section 365(a) of the Bankruptcy Code. If for any reason no decision is reached by the Commission at its meeting on October 20, 2003, the hearing on the Motion shall be continued, and the time within which interested parties, including the CSLC, may file responses or objections to the Motion shall be extended by the same number of days as the hearing date (*i.e.*, if the hearing date is pushed out 15 days, the objection deadline will be pushed out 15 days).

Notice

35. Notice of this Motion has been given, inter alia, to: (i) the United States Trustee for the District of Delaware, (ii) counsel for the Debtors' secured creditors, (iii)

counsel for CSLC, (iv) counsel for Pivotal, and (v) all parties that have requested such notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice need be given.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as is just and proper.

Dated: October __, 2003

PACHULSKI, STANG, ZIEHL, YOUNG, JONES & WEINTRAUB P.C.

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Counsel for Debtors and Debtors in Possession

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
PC LANDING CORP., et al.,[1]	)	Case No. 02-12086 (PJW)
	)	(Jointly Administered)
Debtors.	)	Re: Docket No. _____

ORDER UNDER 11 U.S.C. § 365(a) AUTHORIZING DEBTORS TO ASSUME & ASSIGN CERTAIN CALIFORNIA STATE LANDS COMMISSION LEASE AND GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (the "Debtors") for an order under 11 U.S.C. § 365(a) authorizing the Debtors to assume and assign the CSLC Lease to Pivotal upon Closing; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334 and that this matter is a core matter pursuant to 28 U.S.C. § 157(b)(2); and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and it appearing that due notice of the Motion has been given to: (i) the United States Trustee for the District of Delaware, (ii) counsel for the Debtors' secured creditors, (iii) counsel for Pivotal, (iv) counsel for CSLC, and (v) all parties that have requested such notice pursuant to Bankruptcy Rule 2002, and that no further notice need be given; and sufficient cause appearing therefore;

[1] The Debtors are the following entities: PC Landing Corp., a Delaware corporation, Pacific Crossing, Ltd., a Bermuda company, Pacific Crossing UK, Ltd., a United Kingdom company, PCL Japan, Ltd., a Japan company, and SCS Bermuda, Ltd., a Bermuda company.

[2] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. The Debtors are authorized to assume the CSLC Lease upon Closing and assign such lease to Pivotal upon the terms and conditions set forth in the Motion.

3. This Court retains jurisdiction to interpret, implement and enforce the provisions of this Order.

Dated: November _____, 2003

The Honorable Peter J. Walsh
United States Bankruptcy Judge