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SAN DIEGO, CALIFORNIA3/30/88
CRYSTAL PIER MOTEL, INC.INDEX
PERCENTAGE LEASE

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PIER LEASE

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and CRYSTAL PIER MOTEL, INC., hereinafter called "LESSEE."

I. DEMISED PREMISES. CITY hereby leases to LESSEE and LESSEE Leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described and delineated on Exhibit "A" attached hereto and by this reference made part of this agreement, the easterly 116 feet of the said leased premises to extend northerly and southerly to the westerly prolongation of the present north and south boundaries of LESSEE'S fee-ownership lands lying immediately to the east of the leased premises. Said real property is hereinafter called the "premises."

A. PERMITTED USE. Said premises are leased to LESSEE only for the purposes of operating and maintaining a motel, a public fishing pier, restaurants and related retail uses as specified on the Development Plan hereof, and for such other related or incidental purposes as may first be approved in writing by the CITY and for no other purpose.

B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof unless prevented from doing so because of laws or acts of God.

C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of the City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which are required.

D. PUBLIC ACCESS. During the term of this lease, LESSEE shall provide pedestrian public access acceptable to the City Manager to and from the leased premises across LESSEE'S adjacent fee-owned lands. Said access shall be open a minimum each day from 8 a.m. until sunset. Such access shall be subject to such regulations as may be agreed to in writing by LESSEE and CITY'S City Manager ("City Manager").

II. TERM OF AGREEMENT.

A. COMMENCEMENT AND TERMINATION. The term of this lease shall be thirty-five (35) years commencing on the first day of the calendar month following execution by the City Manager.

III. CONSIDERATION.

A. RENT. The rental shall be Ten Percent (10%) of all gross income payable monthly in arrears against a minimum annual rental of \$25,000 payable in arrears, whichever is greater on an annual basis. Provided, however, LESSEE shall be allowed rent credits against the cost of necessary repairs to the premises, as specified in Section IV-A, 5 and 6, hereof. The City Manager in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted uses set forth under Paragraph I.A., hereof as may be approved in writing by the City manager prior to commencement of such other service or operation. Provided, however, LESSEE shall pay 10 percent of the revenues received by it from the existing bait house, shell shop and seafood galley operations. In addition, any activity conducted on the premises without the prior written approval of the City Manager shall be subject to a 20 percent rental rate.

MINIMUM RENT ADJUSTMENT. Prior to the end of the third year of this agreement and prior to the end of each third year thereafter, the minimum rent for the ensuing 3-year period shall be adjusted to eighty percent (80%) of the average annual rent accrued to CITY whether actually paid or utilized for necessary repairs during the three years preceding the rental review date. In no event shall any such minimum rent adjustment result in a

decrease in the minimum rent requirement in effect immediately prior to the adjustment date.

- B. TIME AND PLACE OF PAYMENT. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P. O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place of payment may be changed at any time by CITY Upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- C. PAYMENT PROCEDURE. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement

will be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

1. One-twelfth of the annual minimum rent until the full annual rent is achieved in any lease year.
2. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
3. The percentage rental due CITY, computed and totaled.
4. The accumulated total of all rents previously paid for the current lease year.
5. Payment in the greater of the two following amounts: One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease, and whether or not a separate percentage rent was established by CITY):

- a. Sublease commencement date.
- b. Physical occupancy date.
- c. Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

D. DELINQUENT RENT AND AUDIT(S) FEES. If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- E. GROSS INCOME. "Gross income or receipts" as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to

become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a government agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

F. INSPECTION OF RECORDS.

1. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issues a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

2. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent, attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
3. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under this section, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires and licensees operating on and in connection

with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

4. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):
 - a. The audit(s) reveal an underpayment of more than five percent (5%) or more than \$10,000, whichever is less, between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s); or
 - b. LESSEE has failed to maintain complete and true books, records, accounts and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section D, Delinquent Rent and Audit(s) Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

5. Default. LESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

IV. COVENANTS AND CONDITIONS.

A. CITY COVENANTS.

1. Quiet Possession. LESSEE, paying the said rent and performing the covenants and agreements herein, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said leased premises for the term hereof. If CITY for any reason whatsoever cannot deliver possession

of the said premises to LESSEE at the commencement of said term as hereinbefore specified, or if LESSEE is dispossessed through action of a title superior to CITY'S, or if any portion of the pier is lost or closed, then and in any of such events, this lease shall not be void or voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom but there shall be determined and stated in writing by the City Manager a proportionate reduction of the minimum rent covering the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the demised premises.

2. Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the premises or any part thereof, except for the rental of hotel rooms to guests, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any, partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleases and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

3. Encumbrance. Subject to prior consent by the CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of the LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with the section hereof entitled Development Plan; however, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural, engineering and attorney's fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises, or on any permanent improvements thereon, must first have the approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. The City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance.

In the event any such approved deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed, or transferred in lieu of foreclosure the CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease.

Upon prior approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

4. Compliance with Law. LESSEE agrees, to comply with applicable laws and to pay before delinquency all taxes, assessments, and fees assessed or levied upon the LESSEE or the leased premises including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the leased premises. LESSEE recognizes and understands that this lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to property taxation levied on such interest. LESSEE further agrees that such tax payment shall not reduce any rent due the CITY hereunder and that any such tax shall be paid by the LESSEE before becoming delinquent.

5. Rent Credit. LESSEE shall construct the public improvements described on Exhibit B within the time frame as set forth therein. In consideration for LESSEE'S construction, CITY shall provide a rent credit in an amount not to exceed \$450,000. The rent credit authorized shall be the actual amount of the cost of public improvements. No such improvements for which any rent credit is given shall be removed by LESSEE at any time, including upon expiration or earlier

termination of this lease. The rent credit shall be applied against all of the required monthly rent as it becomes due and owing until the rent credit is fully depleted. CITY shall not be liable for any unused rent credit upon expiration or earlier termination of this lease.

In addition, said rent credits shall include an amount of 10 percent annual interest on any approved costs or the balance thereof until the credit is fully applied. Said interest shall be included in the amount of rent credit.

6. Construction/Alterations/Repairs. LESSEE agrees not to construct or install any buildings on said premises or otherwise improve or alter said buildings in any manner except for normal maintenance and repair or in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager.

All repairs to the pier structure required by ordinary use, up to \$10,000 per year are LESSEE'S responsibility and shall

not result in rent credits. Extraordinary repairs as defined below and repairs required by ordinary use in excess of \$10,000 (i.e., LESSEE'S \$10,000) per year may be credited against rents due CITY to the extent that the total expended for both such extraordinary and normal repairs exceed said \$10,000 amount. Said \$10,000 amount shall be adjusted on each anniversary date of this lease to reflect changes in the CPI (Los Angeles - all items). CITY shall not be liable for costs beyond said rents.

In the event of storm damage to the pier, LESSEE shall have the right to make emergency repairs to mitigate potential additional damages resulting from collapse of any portion of the pier on reasonable notice by LESSEE for such emergency services. Emergency repairs shall be considered "extraordinary repairs" and shall be subject to a rent credit to be applied against all rent as it becomes due.

LESSEE shall cause the pier to be inspected, not less than biennially, by a licensed California civil or structural engineer selected by LESSEE and approved by CITY, and shall cause to be done such remedial repair work as shall be indicated to be required by such inspection. The cost of such inspection shall be included in the cost of repairs as set out in this Paragraph 5.

7. Development Plan. Subject to LESSEE obtaining all requisite permits and permissions to do so, LESSEE agrees to develop the leased premises in accordance with the Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Development Plan are described in Exhibit B, hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the Development Plan shall constitute a major default and subject this lease to termination by CITY. No additional parking will be permitted on the leased portion of the pier as a result of this Lease, and LESSEE shall provide 12 additional parking spaces off site and within 500 feet of the Crystal Pier property.
8. Hazardous Weather Conditions. The LESSEE shall close all or portions of the pier as required for public safety during hazardous surf or weather conditions.
9. Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees,

invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the leased premises or from any other cause or reason whatsoever.

LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor except for liabilities, or costs arising from the negligent acts or omissions of CITY.

10. Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Public liability and property damage insurance in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- b. Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- c. Conditions. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized

construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

e. Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement

of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

11. Labor and Materialman's Bond. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with LESSEE'S improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than the CITY, and a lien is filed, LESSEE agrees to file with CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

12. Legal Proceedings. LESSEE agrees that should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this Lease Agreement and will govern all dis-

putes under this Lease Agreement and will determine all rights and obligations hereunder. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation for rights under this Lease Agreement.

13. Maintenance. Subject to the limitation of Paragraph IV, A, 6, LESSEE agrees to assume full responsibility for the operation and maintenance of the leased premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve the same in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. In the event that surf, storm or other matters beyond the control of CITY or LESSEE cause substantial damage to the unleased westerly portion of the pier, CITY shall have the option to cause repairs to be made or the damaged portion removed, or may fence off the affected portion of the pier. In the event that surf, storm or other matters beyond the control of CITY or LESSEE cause substantial damage to the leased portion of the pier, LESSEE shall have the option to cause repairs to be made or the damaged portion removed, or may fence off the affected portion of the pier. If LESSEE elects to make repairs, then any such repairs shall be subject to the prior written approval of the City

Manager. Minimum rent shall be abated to the extent and in accordance with Paragraph IV, A, 1 hereof.

LESSEE agrees that in the event CITY shall have used reasonable efforts to timely contain storm damage, CITY shall have no liability to LESSEE in the event that due to storm conditions any or all of the CITY'S outboard portion of the Pier causes damage or injury to the premises.

14. Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
15. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground.
16. Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten days of such fire or damage. LESSEE agrees not to commit, or suffer to be committed any waste or injury or any public or private nuisance, to keep

the leased premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY subject to all other provisions of this lease. Subject to the provisions of Section IV, A, 13 hereof, if the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the conditions which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration and replacement of the premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter.

B. RESTRICTIVE CONDITIONS

17. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the leased premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or 48 hours after mailing in the manner required herein.

18. City Approval and Consent. The approval or consent of the CITY, wherever required in this agreement, shall mean the approval or consent of the City manager unless otherwise specified, without need for further resolution by the City Council.
19. Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgage then in effect), in the award and the effect of the taking upon this Lease Agreement shall be as follows:
- a. In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and

after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises.

- b. In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.
- c. In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
- d. In the event of any taking under subparagraphs, a, b, or c, hereinabove, the only portion of any award of

compensation which shall be paid to LESSEE shall be the Fair Market Value of LESSEE'S interest in the improvements place upon that portion of the leased premises which are taken by the condemning agency. It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE'S contractual rights in connection with the property condemned.

- e. Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interest in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the Fair Market Value of LESSEE'S interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with the provisions of this lease.

- 20. Entry and Inspection. CITY reserves and during the term of the lease shall always have the right on reasonable prior

notice to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said leased premises are not in a decent, safe, healthy and sanitary condition, CITY shall have the right, after ten days' written notice to LESSEE, subject to other provisions of this lease limiting responsibility for excess costs of repairs, to have any necessary maintenance work done for and at the expense of LESSEE and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done in order to keep said leased premises in a decent, safe, healthy and sanitary condition. Further, if at any time the CITY determines that said leased premises are not in a decent, safe, healthy and sanitary condition, CITY may, at its sole option, without additional notice, require LESSEE to file with CITY a Faithful Performance Bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligation on CITY or increase obligations elsewhere in this lease imposed on CITY or LESSEE.

21. Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month-to-month, and all other terms and conditions of this agreement shall continue in full force and effect.
22. Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
23. Oral Representation. It is specifically understood and agreed hereby that this lease contains the expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein, and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.

24. Removal of Improvements. CITY agrees that all fixtures and improvements installed by LESSEE in accordance with the provisions herein provided, and not being a replacement or repair of or for any improvement or improvements now existing and belonging to CITY, shall be and remain the property of LESSEE. LESSEE shall have the right to remove said fixtures and improvements prior to the termination of this agreement at LESSEE'S own expense, provided that any damage to CITY'S property or improvements shall be repaired and the premises left in as good order and condition as when LESSEE took possession of the leased premises. In the event LESSEE does not so remove said fixtures and improvements prior to the expiration of this agreement, CITY may remove, or sell, or destroy the same at the expense of LESSEE and LESSEE shall pay to CITY the reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property or improvements resulting from such removal, sale or destruction. At the option of the CITY, any property, real or personal, not so removed by LESSEE may be deemed abandoned. Provided, however, the cottages, pier structure and structural repairs and improvements thereof, shall be and remain the property of CITY and shall not be removed or damaged by removal of said fixtures and improvements of LESSEE upon expiration or any termination of this lease.

25. Remedies of City.

a. Default by LESSEE. In the event that:

- 1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to commence to cure said default within 30 days following the service on LESSEE of a written notice from CITY specifying the default complained of and proceed with reasonable diligence thereafter to prosecute such cure and such 30-day period shall be extended during the time required for LESSEE to exercise such right to cure; or
- 2) LESSEE shall voluntarily file or have involuntarily filed against him any petition under any bankruptcy or insolvency act or law; or
- 3) LESSEE shall be adjudicated a bankrupt; or
- 4) LESSEE shall make a general assignment for the benefit of creditors;

CITY may at any time thereafter, with or without notice and demand and without limiting CITY in the exercise of any right or remedy at law or in equity which CITY may have by reason of such default or breach:

- a) Maintain this lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating LESSEE'S right of possession, irrespective of whether LESSEE shall have abandoned the premises. In the event CITY elects to not terminate the lease, CITY shall have the right to attempt to re-let the premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the premises as CITY deems reasonable and necessary without being deemed to have elected to terminate the lease including removal of all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of LESSEE. In the event any such re-letting occurs, this lease shall terminate automatically upon the new tenant taking

possession of the premises. Notwithstanding that CITY fails to elect to terminate the lease initially, CITY at any time during the term of this lease may elect to terminate this lease by virtue of such previous default of LESSEE.

b) Terminate LESSEE'S right to possession by any lawful means, in which case this lease shall terminate and LESSEE shall immediately surrender possession of the premises to CITY. In such event, CITY shall be entitled to recover from LESSEE all damages incurred by CITY by reason of LESSEE'S default including without limitation thereto, the following:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceed the amount of such rental loss that is proved could be reasonably avoided; plus

(iv) any other amount necessary to compensate CITY for all the detriment approximately caused by LESSEE'S failure to perform its obligation under the lease or which in the ordinary course of things would be likely to result therefrom; plus

(v) at CITY'S election such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable state law . Upon any such reentry, CITY shall have the right to make any reasonable repairs, alteration or modifications to the premises, which CITY in its sole discretion deems reasonable and necessary.

As used in the subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by

allowing interest at the prime rate of the U.S. Federal Reserve Bank plus one percent (1%) per annum from the date of default. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank at the time of award plus One Percent (1%). The term "rent," as used in this section, shall be deemed to be and to mean the rent to be paid pursuant to the terms of this lease.

Provided, further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty-day (30) period shall be extended during the time required for said

mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure.

b. City Records.

If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

- 1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.
- 2) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund

held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any Faithful Performance or Cash Bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.

- 3) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any Trust Deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mort-

gatee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty-day (30) period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if curable by mortgagee or beneficiary, and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate LESSEE'S right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession.

- 1) Act by CITY of maintenance or preservation, or efforts to relet the property.

2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

d. Damages. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

26. Reservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights-of-way over, under, along and across said leased premises for utilities, thoroughfares, or

access as it may be deemed advisable for the public good. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements of LESSEE located on the leased premises resulting from CITY'S exercising the rights retained in this paragraph. Such reimbursement shall include a reduction in the annual rent proportionate to the amount of said physical damage as determined by the City Manager. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.

27. Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assignees or sublessees of LESSEE.
28. Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any

subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this lease, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.

29. CITY Easement. CITY owns an easement for a pedestrian walkway and passageway for beach maintenance and service vehicles over a portion of LESSEE'S fee-owned property to the immediate east of the leased premises and under the pier walkway as more particularly therein described, said easement being recorded in the San Diego County Recorder's Office in File 192661 on October 21, 1964. CITY agrees to exercise its rights within such easement so as to avoid unnecessary interference with LESSEE'S use and enjoyment of the pier located on LESSEE'S said fee-owned property. The parties hereto mutually agree to relocate said easement as may be necessary and mutually satisfactory in the event of

redevelopment of the pier. During the term of the lease, the CITY shall also have the right, during reasonable times, to cross LESSEE'S portion of the pier, with or without vehicles, to repair and maintain the pier itself.

30. Cancellation of Previous Agreement. This lease cancels and supersedes that certain lease (as amended) dated July 1, 1984, and filed in the Office of the City Clerk as Document RR 259892-1.

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through the City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date JUL 31 1989

By V. J. F. Jones
Deputy City Manager

LESSEE: CRYSTAL PIER MOTEL, INC.

Date 4-1-88

By William Allen Sr.

By [Signature] President

APPROVED as to form and legality this 11 day of August, 1989.

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

JEH:st(61-4)
3-25-88

(R-89-1795)

RESOLUTION NUMBER R- 274124

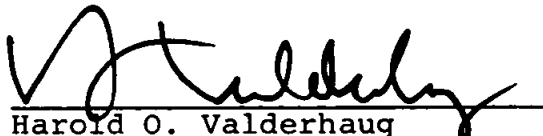
ADOPTED ON JUL 31 1989

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, a 35-year lease agreement with CRYSTAL PIER MOTEL, INC., for the purposes of operating and maintaining a motel, public fishing pier, restaurants, retail uses, and for such other related or incidental purposes as approved by the City Manager, on property located at the intersection of Garnet Avenue and Ocean Boulevard in Pacific Beach, at an initial minimum rent of \$25,000, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- 274124.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
03/16/89
Or.Dept:Prop.
Job:219456
R-89-1795
Form=r.none

Hummer
51A

(R-89-1795)

RESOLUTION NUMBER R- 274124

ADOPTED ON JUL 31 1989

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, a 35-year lease agreement with CRYSTAL PIER MOTEL, INC., for the purposes of operating and maintaining a motel, public fishing pier, restaurants, retail uses, and for such other related or incidental purposes as approved by the City Manager, on property located at the intersection of Garnet Avenue and Ocean Boulevard in Pacific Beach, at an initial minimum rent of \$25,000, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- 274124.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
03/16/89
Or.Dept:Prop.
Job:219456
R-89-1795
Form=r.none

Passed and adopted by the Council of The City of San Diego on
JUL 31 1989 by the following vote:

YEAS: Wolfsheimer, McColl, Pratt, Struiksma, Henderson, McCarty, Filner and
O'Connor.

NAYS: None.

NOT PRESENT: Roberts.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: TENA M. MARTIN, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 274124, passed
and adopted by the Council of The City of San Diego, California
on JUL 31 1989.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

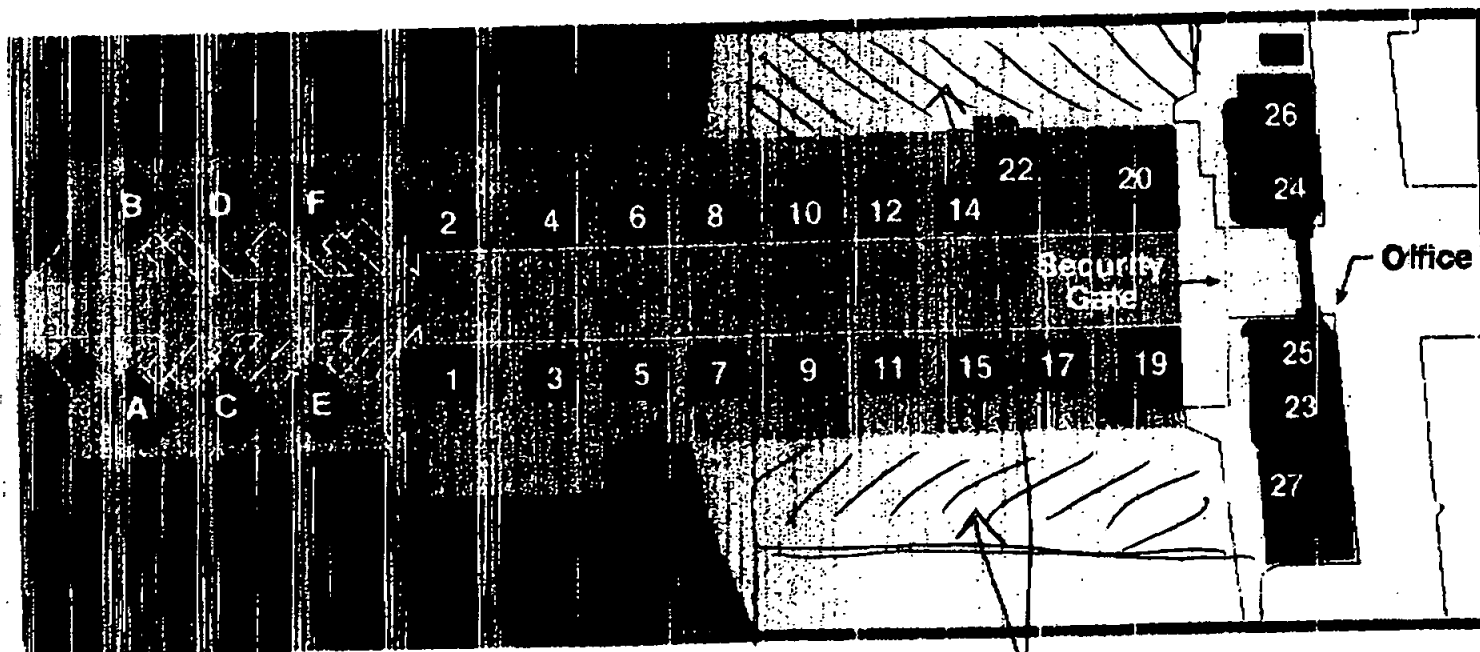
(SEAL)

By: Tena Martin, Deputy

For PAUL CRAWFORD
From BU Allen

Crystal Pier provides a
gated key entry and night
security for your comfort.

Due to the ocean tide changes
throughout the day and night,
not all the cottages on Crystal
Pier stand above the surf below.



SUBJECT PROPERTY SITE LAYOUT

OUR PROPERTY

*

EXHIBIT B

CRYSTAL PIER

DEVELOPMENT

Development Activity	Cost	Schedule	
		Commence	Complete
1. Addition of 8500 sq.ft. pier deck and structure ²	\$300,000	April 1989	April 1991
2. Renovation of existing pier deck and structure ²	<u>\$150,000</u>	April 1989	April 1991
Total	\$450,000		
3. Pier improvements for parking, pedestrian circulation, patios and relocation and/or construction of 14 cottages ²	\$1,000,000 ¹	April 1991	April 1993

¹ Estimated costs for item 3 not subject to rent credits

² Commencement and completion of construction subject to obtaining all necessary governmental permits and approvals