

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

**STATE OF CALIFORNIA**  
**OFFICIAL BUSINESS**  
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SPACE ABOVE THIS LINE FOR RECORDER'S USE

County: Los Angeles

### LEASE PRC 391.1

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

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 4
Section 3	Description of Lease Premises
Section 4	General Provisions
Exhibit A	Report of Annual Income Form

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### SECTION 1

#### BASIC PROVISIONS

**THE STATE OF CALIFORNIA**, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to **The Kissel Company dba Paradise Cove Land Company**, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease:

**MAILING ADDRESS:** 28128 Pacific Coast Highway, Malibu, CA 90265

**LEASE TYPE:** General Lease - Commercial Use

**LAND TYPE:** Sovereign

**LOCATION:** 0.2629 acre, more or less, of tide and submerged lands at Paradise Cove in Santa Monica Bay, Malibu, Los Angeles County.

**LAND USE OR PURPOSE:** Operation and maintenance of the Paradise Cove Pier for private parties, commercial events, commercial film set location, fishing and recreational use. Authorized use specifically excludes the mooring, docking, storage, fueling and launching of any vessels including personal watercraft from the pier.

**TERM:** 10 years; beginning February 25, 2009; ending February 24, 2019, unless sooner terminated as provided under this Lease.

**CONSIDERATION:** Minimum annual rental as specified in Section 2, Paragraph 1, et seq., and subject to modification by Lessor as provided for in Section 2, Paragraph 1B- Special Provisions.. Pursuant to Section 2, Paragraph 13, Lessee will pay to the Lessor \$75,094.24 in back rent within 30 days of authorization of this Lease by the California State Lands Commission.

**AUTHORIZED IMPROVEMENTS:**

X **EXISTING:** Commercial Use Pier approximately 260 feet in length

**LIABILITY INSURANCE:** Not less than \$2,000,000 Combined Single Limit Coverage

**SURETY BOND OR OTHER SECURITY:** \$25,000; and as specified in Section 2, Paragraph 8 and Section 4, Paragraph 9 et seq.

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**SECTION 2  
SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED,  
REVISED OR SUPPLEMENTED AS FOLLOWS:**

**1. CONSIDERATION:**

**A. Percentage of Gross Annual Income:** Lessee agrees to pay annually on the date specified in Paragraph D below:

(1) Five Percent (5%) from the Lessee's and/or Operator's Gross Income derived from pier rental for private parties, commercial events and film set location events.

(2) Three Percent (3%) from the Lessee's and/or its Operator's Gross Income derived from the sale of Food and Beverages served on the lease premises.

(3) Expansion of the uses (activities) authorized in Section 1 of this Lease and/or additional uses shall be subject to Lessor's prior written consent and shall be subject to rent as specified herein. In the case where the expanded uses (activities) are commenced with Lessor's prior authorization, Lessee shall pay a rental as described in Paragraph A (1) above. If the expanded uses (activities) are commenced without Lessor's prior authorization, Lessee shall pay a rental at 10% of the Gross Income from Lessee and/or Operator's Gross Annual Income derived from the expanded use/activities not covered in Paragraph A (1) or A (2) above.

(4) Lessor will not accept any discounting of Lessee's normal rental rates, for reporting purposes, for use of the pier in connection with private or commercial use of the pier. Lessor reserves the right to audit Lessee's records associated with the private or commercial use of the pier.

**B. Increase and Modification of Consideration:** Consideration under this Lease is subject to modification by Lessor beginning the first, second and third anniversary of the effective date of the Lease and as specified in Section 4, General Provisions, 2. Consideration, (b) Modification.

**C. Minimum Annual Rental:**

(1) Lessee shall pay a Minimum Annual Rental of \$2,565 in advance on the beginning date of this Lease. Thereafter, on the lease anniversary date of every year, Lessee shall pay the established Minimum Annual Rent in effect for that lease year. This rent shall be paid regardless of whether any

activities are conducted on or over the Lease Premises.

- (2) Lessee agrees to pay the minimum annual rental stated in this Lease to Lessor without deduction, delay or offset, at such place as may be designated by Lessor from time to time, in accordance with the schedule as set forth in this lease. Any rental due which is in excess of the minimum annual rental stated in this Lease, shall be due and payable on the same day that the annual report is due, and payment shall accompany such report.
- (3) It is specifically agreed that in the event of the termination of this Lease prior to its expiration date from any cause whatsoever, no portion of the minimum annual rental paid in advance shall be refundable.
- (4) The Minimum Annual Rental shall be paid without regard to whether Additional Rents accrue.

D. **Additional Rentals:** Any rentals due in excess of the Minimum Annual Rental for each reporting period shall be due and payable on or before January 31 of the following calendar year beginning **January 31, 2011**, and any such rental balance shall accompany the Annual Report specified in Section 2, Paragraph 2, below.

E. **Obligation to Pay Rent:**

- (1) Lessee agrees that any activity conducted from, on or over state owned lands shall be deemed to be subject to payment of rent.

F. **Definitions:** Section 2, Paragraph 1, Consideration, shall be controlled by the following definitions:

- (1) **Gross Income:** To the extent applicable to activities conducted on this leasehold, Gross Income shall include all income earned on or over the Lease Premises by the Lessee and/or Operator including, but not limited to:

(a) The charges made by the Lessee or others for the rental of the pier and of any type of equipment or product for use on the pier, whether for cash or for credit.

(b) The sales price of any type of food and/or beverages sold by Lessee, Lessee's subtenants or others whether for cash or credit and sold or served for consumption on the Lease Premises.

- (c) Any other income, whether for cash or credit generated directly from, or on, the leased area by the Lessee's or any other person's operations.
- (2) **Allowable Reductions to Gross Income:** Gross income shall not include any sales or excise taxes payable by the Lessee to Federal, State, County or municipal governments as a direct result of operations under this Lease, provided that these taxes are clearly segregated and identified in the Lessee's books and records.
- (3) **Allowable Reductions to Gross Sales:** Gross sales may be reduced by returns and allowances on the theory that these "sales" were never made, and should not have been included as part of the gross sales, but gross income shall not be reduced by any other amount.
- (4) **Cash:** "Cash" includes currency, coin, checks, and money orders.
- (5) **Credit:** "Credit" includes credit card transactions, and those transactions made on open account or for any oral or written promise to pay.
- (6) **Operator for All Purposes of This Lease:** Operator shall refer both individually and collectively to Lessee, its operators, sublessees, contractors and concessionaires conducting activities from, on or over the Lease Premises.

## 2. ANNUAL REPORT OF GROSS INCOME:

Lessee shall submit an annual report for the current reporting period, which will include, but is not limited to:

- A. Gross income from any operations and activities authorized under this Lease conducted from, on or over the Lease Premises;
- B. Gross income from any operations and activities not authorized under this Lease conducted on or over the Lease Premises.
- C. The gross income of Lessee, its Operators, sublessees, contractors, concessionaires and all others generating income shall be reported separately so that Lessor shall be able to identify the source of all gross income generated from, on or over the Lease Premises.

This report shall be accompanied by an Income Statement(s) and Balance Sheet(s) with supporting documentation including but not limited to film permits, event permits, etc.,

regarding Lessee's and/or Operator's operations on the Lease Premises and under this Lease for the prescribed reporting period which is a calendar year from January 1 through December 31. These reports shall be due on January 31 of each year beginning January 31, 2011 and cover operations and activities from the prior reporting period. Lessor may elect to provide forms for the Annual Report, as shown as Exhibit A. However, its failure to do so shall not relieve Lessee of its obligation to submit the Annual Report. The **initial first year report** shall cover operations from January 1, 2010 to December 31, 2010 and thence on a calendar year.

3. **BOOKS AND RECORDS:**

A. Lessee shall maintain books and records of all financial transactions relating to the Leased Premises in accordance with generally accepted accounting principles. These records shall be supported by source documents such as agreements with renters, copies of invoices, receipts, and other pertinent documents. If requested by the State, the Lessee shall allow representatives of the State Lands Commission to examine copies of Federal and State Income Tax Returns, and Board of Equalization Tax Returns in order to corroborate information shown on reports to the State Lands Commission.

B. All annual reports submitted to the State Lands Commission are subject to audit and revision by the State Lands Commission and Lessor may inspect all of Lessee's books, records, and documents relating to the operation of the Leased Premises at all reasonable times. Any statutory or other right that the Lessee may have to object to such inspection by the State Lands Commission are hereby waived.

4. **FINAL RENTAL PAYMENTS AND ANNUAL REPORT:**

Within 60 days of the expiration or earlier termination of this Lease, Lessee shall submit to Lessor any rentals due in excess of the Minimum Annual Rental specified in Section 2, Paragraph 1 (C). Simultaneously, Lessee shall also submit its final Annual Report required in Section 2, Paragraph 2.

5. **REFUSE CONTAINERS:**

Lessee shall provide containers on or immediately adjacent to the leased premises to receive trash and refuse generated from use of the facilities. Refuse containers shall be located so as to be conveniently used by the public using the Lessee's facilities and shall be of sufficient size and number to contain the refuse. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. The contents of the containers shall be disposed of by Lessee or others acting pursuant to Lessee's direction at authorized landfills or other

garbage reception areas as provided under law applicable at the time of collection.

6. **PLASTICS:**

- A. Lessee shall not provide for sale, or allow other parties to provide, any prepared food in polystyrene foam containers or packaging, nor shall Lessee, or other parties, keep on the lease premises any polystyrene foam containers or packaging of a type, design and condition appropriate to the preparation of food for consumption on or off the lease premises.
- B. All packaging for prepared food that is consumed on or off the premises, or for takeout service, shall be degradable. Lessee shall provide, upon demand, copies of paid invoices which verify the purchase of degradable containers in quantities sufficient to validate Lessee's compliance with this provision.
- C. For purposes of this lease, the following definitions are applicable.
  - (1) "Prepared food" means foods or beverages which are prepared on the lease premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.
  - (2) "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse on or in which any foods or beverages are placed or packaged on the lease premises.
  - (3) "Takeout food" means prepared foods or beverages requiring no further preparation to be consumed and which are purchased in order to be consumed off the lease premises.
  - (4) "Polystyrene foam" means any styrene or vinyl chloride polymer which is blown into a foam-like material, an example of which is marketed under the trade name "styrofoam".
  - (5) "Degradable food packaging" means food packaging which within two years substantially reduces to its constituent substances through degradation processes initiated by natural organisms whose end products are substantially, but not necessarily entirely, carbon dioxide and water. Degradable food packaging does not include cellulose-based items which have a synthetic or plastic coating comprising more than 5% of the total volume of the item.
- D. The above conditions shall be in effect until such time as the State Lands Commission adopts regulations and/or policies on the subject of plastic pollution. To the extent that such policies or regulations differ from the foregoing provisions and

definitions, the parties hereby agree that the lease will be amended to incorporate the policies adopted by the State Lands Commission.

7. **PUBLIC ACCESS:**

Access shall be provided to and through the leased area for the general public, including non-paying visitors. This access shall be across the Lessee's upland. The purpose of this requirement is to assure public access from the first public road to the pier and from the pier to the first public road. The Lessee shall take no action to discourage reasonable use by the general public of this access. Special exceptions to public access may be made when the pier is closed for scheduled private and commercial events and for repairs.

8. Lessee acknowledges and agrees:

a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to waves, storm waves, tsunamis, earthquakes, flooding, and erosion.

b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit (CDP) issued for development on the leased property, of injury and damage from such hazards in connection with the permitted development and use.

c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.

d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any CDP involving this property or issuance of this Lease, any new lease, renewal, amendment, or assignment by Lessor.

9. **BONDS:** Section 4, Paragraph 9(b) is amended to read as follows:

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations, changes to authorized use, or modification of consideration at the time of those changes, and economic inflation on the initial or any succeeding fifth (5<sup>th</sup>) anniversary of this Lease. Should Lessor fail to exercise its right to increase the amount of the bond or other security on any fifth anniversary, it may do so effective on any one of the next four anniversaries following such fifth anniversary without prejudice to its right to effect an



increase on the next or any succeeding fifth anniversary.

10. **UPLAND OWNERSHIP:**

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

11. Lessee will provide to Lessor prior verbal notice of safety and engineering inspections that will be conducted to maintain the structural integrity of the pier. Lessee will provide copies to Lessor within thirty days of Lessee's receipt of any resulting inspection reports.
12. Lessee shall not enter into any subleases or concession agreements for the Lease Premises without the prior consent of Lessor.
13. Lessee has agreed to pay \$75,095.24 in back rent for unauthorized commercial activities that took place on the Lease Premises between 1999 and 2009. If Lessee fails to pay the back rent within 30 days of the authorization of this Lease by the Commission, Lessee shall be deemed to be in breach of the Lease and subject to Lessor's remedies under Section 4, General provisions of this Lease, including but not limited to removal of all or any portions of improvements at Lessee's sole expense.

In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

**SECTION 3**

**WP 391**

**LAND DESCRIPTION**

A 49 foot wide strip of tide and submerged land in the bed of the Pacific Ocean, situate adjacent to the Rancho Topanga Malibu Sequit, near Point Dume in the Santa Monica Bay, Los Angeles County, State of California, in an area known as Paradise Cove, and lying 24.5 feet each side of the following described centerline:

COMMENCING at NGS PID EW7473, Designation "Trestle", having CCS83 Zone 5 coordinates of Northing (y) = 1829984.40 feet and Easting (x) = 6322703.78 feet; thence North 30°18'47" East 640.46 feet; thence North 55°05'43" East 373.47 feet to the POINT OF BEGINNING, said point of beginning being a point on the centerline of an existing pier; thence along said centerline of existing pier and extension thereof South 43°46'59" East 280.00 feet to the terminus of said centerline.

The sidelines of said strip shall be lengthened or shortened so as to terminate on the northwest on the ordinary high water mark of the Pacific Ocean and on the southeast at lines perpendicular to said terminus of said centerline.

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

The BASIS OF BEARINGS of this description is the California Coordinate System of 1983, Zone 5 (1991.35).

**END OF DESCRIPTION**

Prepared 06/09/2010 by the California State Lands Commission Boundary Unit.



## SECTION 4

### GENERAL PROVISIONS

#### 1. GENERAL

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

#### 2. CONSIDERATION

##### (a) Categories

##### (1) Rental

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

##### (2) Non-Monetary Consideration

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

##### (b) Modification

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

##### (c) Penalty and Interest

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

#### 3. BOUNDARIES

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

#### 4. LAND USE

##### (a) General

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

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

##### (b) Continuous Use

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

##### (c) Repairs and Maintenance

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

##### (d) Additions, Alterations, and Removal

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

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

##### (e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

##### (f) Toxics

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

##### (g) Enjoyment

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

and enjoyment of the Lease Premises as provided under this Lease.

**(h) Discrimination**

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

**(i) Residential Use**

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

**5. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY**

**(a) Reservations**

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

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

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

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

**(b) Encumbrances**

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

**6. RULES, REGULATIONS, AND TAXES**

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

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

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

**7. INDEMNITY**

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

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

**8. INSURANCE**

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

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

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

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

**9. SURETY BOND**

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

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

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

**10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING**

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

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

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

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

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

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

(1) Give prior written notice to Lessor;

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

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

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

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

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

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

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

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

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

## 11. DEFAULT AND REMEDIES

### (a) Default

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

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's Failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or

- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

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

### (c) Remedies

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

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice, Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

## 12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

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



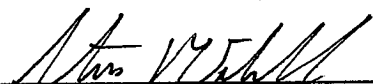
**STATE OF CALIFORNIA - STATE LANDS COMMISSION**

LEASE P.R.C. NO. 391.1

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

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

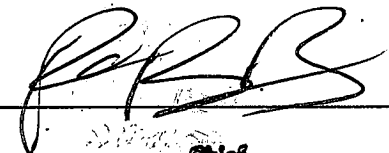
**LESSEE**  
**THE KISSEL COMPANY dba**  
**PARADISE COVE LAND COMPANY**

By: 

Title: President

Date: 6/30/10

**LESSOR**  
**STATE OF CALIFORNIA**  
**STATE LANDS COMMISSION**

By: 

Title: Chief  
Land Management Division

Date: APR - 4 2012

This Lease was authorized by the California State Lands Commission on

JUNE 28, 2010  
(Month Day Year)

**ACKNOWLEDGEMENT**