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OFFICE OF THE
CITY MANAGER

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
ROOM 109
915 I STREET
SACRAMENTO, CA
95814-2684

September 4, 1987

916-449-5704

Transportation & Community Development Committee
Sacramento, California

Subject: The City-State Lands Commission Master Lease for the Docks
Area Waterfront

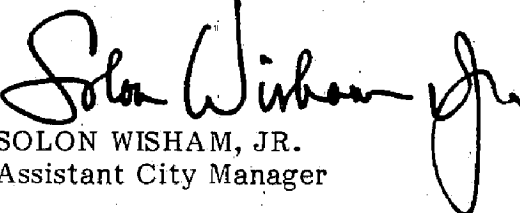
SUMMARY

The attached report recommends that the City Council approve a master lease between the City and State Lands Commission for submerged lands adjacent to the Docks Area on Front Street.

RECOMMENDATION

It is recommended that the Transportation & Community Development Committee review and approve the attached item for action by the full City Council.

Respectfully submitted,


SOLON WISHAM, JR.
Assistant City Manager

Attachments

September 15, 1987
All Districts



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CITY MANAGER

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
ROOM 109
915 I STREET
SACRAMENTO, CA
95814-2684

September 8, 1987

916-449-5704

City Council
Sacramento, California

Honorable Members In Session:

SUBJECT: The City-State Lands Commission Master Lease for the Docks Area Waterfront

SUMMARY

This report recommends that the City Council, by resolution, authorize the City Manager to execute a 49 year master lease agreement with the State of California Lands Commission for the use of submerged land underlying the Sacramento River between the Tower Bridge and the Pioneer Bridge.

BACKGROUND

The City, through its Redevelopment Agency, plans to develop the Docks Area south of the Tower Bridge (Capitol Avenue) and adjacent to the Old Sacramento Waterfront. The Docks Area plan provides for a unique public/private mix of development which will encourage access to the Sacramento River and feature an expansion of the California State Railroad Museum, a new hotel complex and potential expansion of the Tower Ford Museum. A master lease agreement to memorialize the City/State relationship has been developed by the staffs representing the City and the State during the past year. The basic provisions of the proposed lease agreement are as follows:

1. **Leasehold:** Submerged lands situated beneath the Sacramento River, adjacent to Front Street, extending to the seawall to the center line of the Sacramento River and from the Tower Bridge to the Pioneer Bridge.
2. **Term:** 49 years beginning November 1, 1987 through December 31, 2037.
3. **Use of the Lease Property:** The City can use the State owned parcel for the construction of private and public/commercial and noncommercial docks, marinas, retail complexes, walkways, wharves, platforms, fishing pads, floating vessels and other structures necessary to enhance the Docks Area Waterfront.
4. **Assignment or Subletting:** The lease provides for sublease opportunities by the City with State permission.

5. Rent:

Years 1 through 5

One dollar per year is payable for the first five years.

Years 6 through 25

The City is to pay 20% of the gross annual revenues received by the City from any commercial subleases.

Years 26 through 49

The amount of the rent is negotiable and will be decided during the 25th year of the lease.

No rent is paid to the State for City operated services, unless the services generate more revenue than expenditures. Excess revenues are subject to the terms listed above.

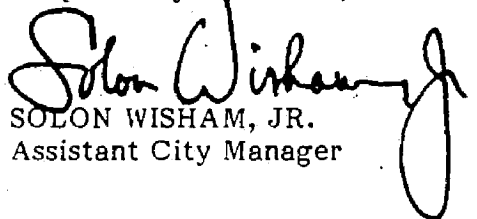
FINANCIAL DATA

The master lease is designed to provide maximum opportunity for public and private use of State owned lands adjacent to the Docks Area on the Sacramento Riverfront. Due to the emphasis on public access to the Sacramento River and the adjacency to the Old Sacramento Historic District development, the State's Lands Commission has participated in the design of a unique lease agreement which encourages maximum development by a local government at a minimum cost for the use of State owned submerged lands.

RECOMMENDATION

It is recommended that the City Council, by resolution, authorize the City Manager to execute the lease agreement with the State of California Lands Commission for a master lease for certain submerged lands underlying the Sacramento River and adjacent to the Docks Area between the Tower Bridge and the Pioneer Bridge.

Respectfully submitted,


SOLON WISHAM, JR.
Assistant City Manager

RECOMMENDATION APPROVED:

Walter J. Slipe
City Manager

September 22, 1987
All Districts

Attachments

RESOLUTION No.

Adopted by The Sacramento City Council on date of

**RESOLUTION AUTHORIZING EXECUTION OF A LEASE
BETWEEN THE CITY OF SACRAMENTO AND THE STATE
OF CALIFORNIA LANDS COMMISSION FOR SUBMERGED
LANDS ADJACENT TO THE DOCKS AREA ON FRONT STREET**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO, that the lease
entitled "City-State Master Lease for the Docks Area", is hereby approved and the City
Manager and City Clerk are hereby authorized to sign said lease on behalf of the City of
Sacramento.**

Mayor

ATTEST:

CITY CLERK

MASTER LEASE

THIS LEASE, made and entered into this 1st day of November, 1987, by and between the State of California, acting by and through its State Lands Commission, hereinafter called the State or Lessor, and the City of Sacramento, hereinafter called the Lessee.

WHEREAS, the State is the owner, by virtue of its sovereignty, of that area located in the Sacramento River below and waterward of the line of Ordinary High Tide, hereinafter referred to as "State Parcel," and more particularly described in Exhibit "A," attached hereto and by reference made a part hereof; and

WHEREAS, the Lessee is the owner of that area adjoining and immediately landward of the State Parcel (Lessee's Uplands); and

WHEREAS, the Lessee proposes to make major improvements to the waterfront in the lease area; and

WHEREAS, these improvements will be constructed at public expense; and

WHEREAS, the proposed improvements will need to be designed and constructed to be compatible with the adjoining upland development; and

WHEREAS, the Lessee has control over the upland development and wishes to assure consistent development of the waterfront that will further the public's use and enjoyment of the water area in the City of Sacramento;

NOW, THEREFORE, the parties do agree as follows:

1. Description of Demised Premises: For the better promotion of commerce, and in consideration of the faithful performance by Lessee of the agreements, covenants, terms and conditions hereof, and of the payments herein provided to be made by Lessee, the State has leased and demised, and by these presents does hereby lease and demise unto Lessee, and Lessee by these presents does lease, hire and take from the State, that certain parcel of land situated in the Sacramento River, City of Sacramento, County of Sacramento, State of California, more particularly described in Exhibit "A," and hereafter referred to as "State Parcel."

2. Term: The term of this lease shall be for a period of forty-nine (49) years, unless sooner terminated in accordance with other provisions of this lease, commencing upon the recording of a fully executed copy of this lease in the office of the Sacramento County Recorder. This lease shall begin on November 1, 1987, and end on December 31, 2037, even if the lease is recorded after January 1, 1988.

3. Use of Property: The State Parcel may be used by the Lessee for the construction of private and public commercial and non-commercial docks, marinas, retail complexes, walkways, access ramps, wharfs, platforms, fishing pods, floating vessels and any other structures necessary or appurtenant to the Lessee's development of the State Parcel and for the mooring of vessels

consistent with the Lessee's approved Docks Master Plan. The uses of the State Parcel by the Lessee shall not be inconsistent with the Public Trust for Commerce, Navigation and Fishing.

4. Assignment or Subletting: State acknowledges the intent of Lessee to sublet all of or portions of the State Parcel to private parties or entities, but reserves the right to approve any and all assignees, sublessees and subleases. Uses permitted under any assignment or subletting shall be consistent with and controlled by this master lease and with the Public Trust for Commerce, Navigation and Fishing. Lessee will secure the State's written approval of any and all assignees, sublessees and subleases and for any sublessee's proposed uses of the State Parcel prior to the placement by a sublessee of any improvements within or on the State Parcel. State shall make every effort to grant such approval as quickly as possible, and such approval shall not be unreasonably withheld.

5. Rental: In order to recoup the substantial capital costs Lessee will expend to improve the facilities adjacent to and over Lessor's property, for the first five years of this lease term Lessee shall pay as rent the sum of One Dollar (\$1.00) per year. Commencing on the fifth anniversary of the lease term and continuing through the twenty-fifth year of the lease term, Lessee shall pay to the Lessor as annual rent the sum of twenty percent (20%) of the gross annual rent Lessee obtains from any subleases which Lessee enters into for the demised premises. Rent for the

term of this lease from year twenty-six (26) through year forty-nine (49) is subject to adjustment as agreed by the parties hereto. State Lands Commission shall give written notice of its intention to negotiate an adjustment six months prior to the twenty-sixth year of this lease.

6. Market Rent for Sublease: Should Lessee elect to sublease all or any portion of the State Parcel pursuant to paragraph 4 hereof, then any such sublease shall provide for and require the payment of a Fair Market Rent. This Fair Market Rent shall be established in accordance with standard practices of real estate appraisers (M.A.I. or other similar qualifications), and is subject to the review of State upon reasonable notice to Lessee.

7. Encumbrancing and Hypothecation of Lease: State approval shall be required for the encumbrancing or hypothecation of the leasehold interest granted herein, but such approval shall not be unreasonably withheld. Request for such approval shall be made by Lessee or any sublessee in writing. However, such approval applies only to and through the use of that agreement attached to this lease as Exhibit "B" and entitled "Agreement and Consent to Encumbrancing of Lease" (Security Agreement). No security interest in this lease shall be created unless it shall be created through the use of the Security Agreement contained in Exhibit "B." The assignment of the security interest granted herein and any further security interest shall not be valid

unless the prior written approval of the State is secured as specified in the Security Agreement.

8. 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, occurring on the lease premises or improvements, or arising out of or connected in any way with the issuance of this lease.

(b) Lessee shall give prompt notice to Lessor in case of any accident, injury or casualty on the lease premises.

9. Liability Insurance:

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

(b) The insurance policy or policies shall name the State of California as a named insured or additional insured party as to the lease premises and shall identify the lease by its assigned number. Lessee shall provide Lessor with a cer-

tificate of such insurance, and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not be responsible for any premiums or other assessments on the policy. The insurance coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The liability 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.

10. Default and Remedies:

(a) Default: The occurrence of any one or more of the following events shall constitute a default or breach of this lease by Lessee:

(1) Lessee's failure to make any payment of rental as required under this lease;

(2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security;

(3) Lessee's vacation or abandonment of the lease premises during the lease term;

(4) 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 sixty (60) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach is such that more than sixty (60) 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 sixty (60) day period and diligently proceeds with such cure to completion.

(b) 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 as it becomes due, without terminating Lessee's right of possession, regardless of whether Lessee shall have abandoned the lease premises;

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

11. Annual Reports: The Lessee and each master sublessee shall be required to submit, on forms approved by the State, an annual report detailing the income generated from or on the State Parcel. This report shall be accompanied by a Balance Sheet of

the Lessee or sublessee as of the last day covered by the annual report and an Income Statement covering the results of Lessee's or sublessee's operations for the year ended on the last day covered by the annual report. These reports shall be due on the twenty-fifth (25th) day of the month following the end of the year covered by the annual report, unless the Lessee or sublessee has received, in writing, permission from the State for later submission, not to exceed ninety (90) days.

12. Books and Records: The 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 Lessor, 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. All annual reports submitted to Lessor are subject to audit and revision by the State Lands Commission. Lessor may inspect all Lessee's books, records, and documents relating to the operation of the leased premises at all reasonable times. Any statutory or other rights that the Lessee may have to object to such inspection by the State Lands Commission are hereby waived.

13. Restoration of Lease Premises:

(a) Upon expiration or sooner termination of this lease, Lessor may accept all or any portion of the lease premises, as then improved with structures, buildings, pipelines, machinery, facilities and fills in place; or Lessor may require Lessee to remove all or any portion of 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. Should Lessor elect to take title to some or all of the improvements upon expiration or sooner termination of the lease, it shall do so without cost to Lessor and without payment to Lessee. 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 other encumbrances.

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

(c) All such removal and restoration shall be accomplished ninety (90) days prior to the expiration or sooner termination of this lease.

14. Quitclaim: Lessee shall, within ninety (90) days of the expiration or sooner termination of this lease, execute and deliver to Lessor, in a form provided by Lessor, a good and sufficient release of all rights under this lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of

its recordation, be conclusive evidence against Lessee and all other claimants of the termination of this lease and any rights or interests of Lessee in the lease premises.

15. Holding-Over: Any holding over by Lessee after the expiration of the lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the lease term, and shall be on the terms, covenants and conditions of this lease with rental, royalty or other consideration payable in advance on the first day of each month at the rate of one-twelfth (1/12th) of the annual amount.

16. Additional Provisions:

(a) Waiver:

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

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

(b) Time: Time is of the essence of this lease and each and all of its terms, covenants or conditions in which perfor-

mance is a factor.

(c) Notice: All notices required to be given under this lease shall be given in writing, sent by United States mail with postage prepaid, to Lessor at the offices of the State Lands Commission and to Lessee at the address specified in this lease. Lessee shall give Lessor notice of any change in its name or address.

Lessor: State Lands Commission
1802 13th Street
Sacramento, CA 95814

Lessee: City of Sacramento
915 "I" Street
Sacramento, CA 95814

(d) Consent: Where Lessor's consent is required under this lease, its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes: This lease may be terminated, and its term, covenants and conditions amended, revised or supplemented, by mutual agreement of the parties.

(f) Successors: The terms, covenants and conditions of this lease shall be binding on the successors of any party to this lease, the obligations of the Lessee shall be joint and several.

(g) Captions: The captions of this lease are not controlling and shall have no effect upon its construction or interpretation.

(h) Severability: If any term, covenant or condition of this lease is judicially determined to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

17. Exemptions from Rent: It is contemplated that the Lessee shall use the demised premises from time to time for activities, services, special uses, or security purposes, which may generate revenue. The parties agree that said use by said Lessee shall not constitute subleasing, however, any revenue earned which exceeds the actual cost of operation will be subject to the provisions of Paragraph 5 and Lessor shall be entitled to a percentage thereof. The types of activities contemplated by the Lessee and specifically exempted by this Paragraph 17 include but are not limited to:

(a) City-owned and operated activities or services such as the operation of moorage or tour boats;

(b) Temporary activities or events conducted by or at the request of the City for which the City issues a permit, such as the Sacramento Jazz Festival, the annual City Water Festival, and other similar activities.

(c) Any living quarters designed for a watchman or security guard, the use of which might be supplied to an individual as part of his benefits or compensation.

STATE OF CALIFORNIA
LANDS COMMISSION

CITY OF SACRAMENTO,
a municipal corporation

By: _____

By: _____
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

EXHIBIT "A"

LAND DESCRIPTION

W 21741

A strip of tide and submerged land in the bed of the Sacramento River, in the City of Sacramento, Sacramento County, California, described as follows:

Bounded on the north by the south line of the Tower Bridge, bounded on the east by the mean high water line along the seawall and levee on the left bank of the Sacramento River, and bounded on the west by the centerline of the Sacramento River. Bounded on the south by the north line of the Pioneer Bridge.

EXCEPTING THEREFROM any portion thereof lying landward of the ordinary high water mark of the Sacramento River.

END OF DESCRIPTION

PREPARED AUGUST, 25, 1987 by BIU 1.

0555b

**AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE**

The parties to this Agreement and Consent to Encumbrancing of Lease PRC _____ dated _____ are:

1. The State of California, acting by and through the State Lands Commission, hereinafter referred to as LESSOR;
2. _____, hereinafter referred to as LESSEE;
3. _____, hereinafter referred to as SECURED PARTY-LENDER.

W I T N E S S E T H:

WHEREAS, the State of California as LESSOR did on _____ lease to _____ as LESSEE under Lease No. PRC _____ attached hereto and incorporated by reference herein and hereinafter referred to as the Lease, of certain real property situated in the County of _____, State of California, particularly described in Section 3 of the Lease, and hereafter referred to as the Lease Premises; and

WHEREAS, LESSEE, requires and has obtained indebtedness in the amount of _____ for a term of _____ pursuant to that Promissory Note ("Note" or other debt instrument), in favor of SECURED PARTY-LENDER dated _____ for the construction, permanent financing or refinancing of improvements to be constructed, maintained, repaired or reconstructed by the LESSEE on the Lease Premises; and

WHEREAS, such indebtedness and financing is necessary to achieve the purposes and objectives of the Lease and is in the best interest of all parties; and

WHEREAS, SECURED PARTY-LENDER will require the execution of a security instrument in the form of a Deed of Trust, mortgage, or other security device encumbering the Lease to secure the financing required by LESSEE; and

WHEREAS, SECURED PARTY-LENDER HAS been designated by LESSEE and is acceptable to LESSOR;

A. NOW, THEREFORE, the State of California, as LESSOR, DOES HEREBY APPROVE AND CONSENT TO:

1. the SECURED PARTY-LENDER designated as a party to this Agreement; and
2. the mortgaging or encumbering of Lease by a Deed of Trust and/or other security instrument being executed by LESSEE (Trustor) for the benefit of SECURED PARTY-LENDER (Beneficiary) to secure indebtedness for the purchase of improvements (or other purpose as stated) to be constructed, repaired

or reconstructed by LESSEE on the Lease Premises, pursuant to the terms and conditions of the Note (or other debt instrument) and any modifications, extensions or renewals thereof. The term security interest or interests shall be hereinafter included and be used interchangeably with the term mortgage, encumbrance, Deed of Trust or other security instrument used to encumber the Lease. The security interest may, at the option of SECURED PARTY-LENDER, be recorded in the Office of the County Recorder of _____ County, California. No additional or subsequent security interest concerning the Lease shall be executed by the LESSEE, SECURED PARTY-LENDER or other party without the prior written approval and consent of LESSOR; and

3. any increases in, or modifications, extensions, or renewals of the financing or indebtedness by the SECURED PARTY-LENDER provided; however, that any such increases, modifications or renewals shall not be deemed in any way to increase, modify, extend, renew or otherwise amend the Lease; and
4. SECURED PARTY-LENDER acquiring the Lease by any of the means set forth in this Agreement.
5. The assignment to SECURED PARTY-LENDER of rents paid by sublessees of the Lease Premises provided; however, that all subleasing shall have been approved by LESSOR.

B. THE PARTIES DO FURTHER AGREE AS FOLLOWS:

1. Lease Improvements

The proceeds of any loan procured for the purpose of constructing, maintaining, repairing or reconstructing improvements on the Lease Premises (for which a security interest in the Lease is required) shall be used exclusively for such purposes according to the objectives of the Lease provided; however, that SECURED PARTY-LENDER shall have no obligation to take any action, other than disbursing loan proceeds pursuant to invoicing provided by LESSEE, to see or ensure that the loan proceeds or any part thereof are or were used to construct or improve the Lease Premises, or that such construction or improvement, if any, is or was performed in a workmanlike manner, or in accordance with applicable law.

2. Lease Termination

- a. LESSOR shall not terminate the Lease because of a default or breach of any of its terms, covenants or conditions by LESSEE if, within sixty (60) days after service of written notice on the SECURED PARTY-LENDER of LESSOR's intention to terminate the Lease for such default or breach, SECURED PARTY-LENDER shall:
- (1) cure any default or breach dealing with rental, a surety bond, liability insurance

and any other default or breach that can be cured by the payment or expenditure of money; and

(2) keep the Lease free of any such defaults or breaches; and

(3) give notice to Lessor and immediately commence and diligently pursue actions necessary for and leading expeditiously to:

(a) a transfer of the Lease and possession of the Lease premises by SECURED PARTY-LENDER or another party acceptable to Lessor by any of the means mentioned in this Agreement, and

(b) the cure of any default or breach for which possession of the Lease Premises is necessary.

b. SECURED PARTY-LENDER shall not be required to continue to pursue actions necessary to effect a transfer of the Lease if all defaults or breaches of the Lease have been cured by LESSEE or SECURED PARTY-LENDER and LESSEE has demonstrated to the satisfaction of LESSOR that it is willing and able to resume satisfactory performance of all of its duties and obligations under the Lease. If SECURED PARTY-

LENDER cannot effect a transfer of the Lease other than through foreclosure and is prohibited from commencing or continuing foreclosure as a result of a court order or provision of law, LESSOR shall not terminate the Lease, provided that SECURED PARTY-LENDER shall notify LESSOR of their intent to foreclose when permitted to do so and shall keep and perform all other conditions of this Agreement until such time that the Lease shall be sold upon foreclosure pursuant to the trust deed, or shall be transferred upon judicial foreclosure, by assignment in lieu of foreclosure or otherwise.

- c. LESSEE shall not terminate the Lease through mutual assent of LESSOR or otherwise during the duration of this Agreement without the consent of SECURED PARTY-LENDER unless the provisions of this Agreement would otherwise allow for such termination.

3. Lease or Security Interest Transfer

a. Lease transfer

- (1) Any transfer of the Lease, with the exception of a transfer to SECURED PARTY-LENDER, be it pursuant to judicial foreclosure, by way of a private sale under a trust deed, or an assignment from

LESSEE in lieu of foreclosure to a party selected by the SECURED PARTY-LENDER, or otherwise, shall be subject to the prior written approval and consent of LESSOR. If SECURED PARTY-LENDER shall proceed with a foreclosure sale, it shall provide LESSOR with a minimum of twenty (20) days notice of the date and time of such sale. SECURED PARTY-LENDER shall inform prospective Lease purchasers in its notice of sale of the requirement pursuant to law that any prospective lessee of State lands under the jurisdiction of the State Lands Commission must be approved by the Commission. If prospective purchasers wish to obtain notice of approval or disapproval before the foreclosure sale, their identify and intent to bid must be given to SECURED PARTY-LENDER at least three (3) state business days prior to the date of sale. SECURED PARTY-LENDER shall in turn give to LESSOR immediate notice of the identity of such prospective lease purchaser. LESSOR shall have two (2) state business days prior to the date of sale in which to approve or disapprove any prospective purchasers. LESSOR shall

advise SECURED PARTY-LENDER of its approval or disapproval of prospective purchasers prior to the scheduled time of sale and the Lease shall be awarded to the highest bidder, provided however, that if the highest bidder has not been approved by the State, the State shall retain its right to disapprove the highest bidder and terminate the lease. SECURED PARTY-LENDER shall indemnify, hold harmless and, at the option of LESSOR, defend LESSOR, its officers, agents, and employees against and for any and all liability arising out of, or alleged to arise out of, a failure to inform prospective Lease purchasers that they must be approved by LESSOR.

- (2) Any grantee, assignee, purchaser or other transferee of the Lease or any interest therein, be it SECURED PARTY-LENDER or another party acceptable to LESSOR, shall succeed to all of the rights, title and interest of LESSEE and shall be bound by all terms, covenants and conditions of the Lease and by all of the provisions of this Agreement. Any such transferee shall, by the way of written agreement with LESSOR, expressly assume and agree to perform all

terms, covenants and conditions of the Lease and of this Agreement. SECURED PARTY-LENDER shall give written notice of the requirement of such assumption and agreement to any such transferee.

b. Security interest transfer. Any subsequent assignment or other transfer by the SECURED PARTY-LENDER of the security interest approved in paragraph A.2. shall be subject to the prior written approval and consent of LESSOR.

4. Lessee and Secured Party Lender Liability

a. Any encumbering, assignment, grant, purchase or other transfer of the Lease shall not release or relieve the current LESSEE, or a subsequent lessee from any obligations to LESSOR under the Lease and LESSOR may hold the current LESSEE, or a subsequent lessee, liable for the faithful performance of any and all terms, covenants and conditions of the Lease.

b. SECURED PARTY-LENDER shall have no obligations or liability under the Lease unless it shall become the lessee, and provided further that, if SECURED PARTY-LENDER should become the lessee, by any of the means mentioned in this Agreement, it shall have no further obligations or liabilities under the Lease after it has assigned or otherwise transferred the Lease to

a party approved by Lessor. Unless SECURED PARTY-LENDER becomes lessee under the Lease, termination shall be LESSOR's sole remedy against SECURED PARTY-LENDER for its failure or refusal to comply with any or all the provisions of this Agreement.

5. Lessor Approval

- a. Whenever the approval and consent of LESSOR as required under this Agreement is requested by SECURED PARTY-LENDER or LESSEE, LESSOR shall have two (2) State business days after receipt of written notice of such request to approve or disapprove it.
- b. The approval and consent of LESSOR whenever it is required by this Agreement shall not be unreasonably withheld and in the event of disapproval LESSOR shall inform LESSEE and SECURED PARTY-LENDER of the basis for such disapproval.
- c. Any transaction for which the approval and consent of LESSOR is required by the terms of this Agreement shall be void or voidable in the absence of such approval and consent.

6. Estoppel Certificate

As of the date of this Agreement, the Lease is in full force and effect and no default, breach or other ground for termination exists.

7. Miscellaneous Provisions

- a. No modification or amendment of the Lease or this Agreement shall be effective without the prior written consent of all parties to this Agreement.
- b. Any notices required under the Lease or this Agreement shall be in writing and shall be given concurrently to all parties to this Agreement. Whenever LESSEE or SECURED PARTY-LENDER are required to give LESSOR notice under this Agreement, such notice shall be given in writing to the Executive Officer of the State Lands Commission and shall be deemed effective when received by that person. The addresses of the parties at the time of this Agreement's execution for the purposes of such notice are:

LESSOR: STATE LANDS COMMISSION
1807 - 13th Street
Sacramento, California 95814

LESSEE: _____

SECURED PARTY-LENDER:

- c. In the event of any conflict between the provisions of this Agreement and those of the

Lease, the provisions of this Agreement shall take precedence and be controlling. Except as provided by this Agreement, the Lease shall remain in full force and effect as written.

d. This Agreement will become effective and binding on all parties when executed by all parties, LESSEE, SECURED PARTY-LENDER, and LESSOR, in that order, and it shall remain effective until the expiration or termination of the Lease, or until the expiration of the original or extended term of the indebtedness, whichever of the two comes first.

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

(LESSEE/Trustor)

DATED: _____

By _____

Title _____

SECURED PARTY-LENDER
BENEFICIARY)

DATED: _____

By _____

Title _____

STATE OF CALIFORNIA
STATE LANDS COMMISSION
(LESSOR)

DATED: _____

By _____

Title _____

ALL SIGNATURES MUST BE NOTARIALLY ACKNOWLEDGED