

Meeting Date: 06/07/24  
Lease Number: 5167  
Staff: V. Caldwell

# Staff Report 33

## **LESSEE:**

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Buffer Properties, LLC

## **APPLICANT:**

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Virgin Sturgeon Properties, LLC

## **SECURED PARTY LENDERS:**

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Banner Bank

The Mortgage Capital Development Corporation (hereafter CDC), servicing agent,  
U.S. Small Business Administration (SBA)

## **PROPOSED ACTION:**

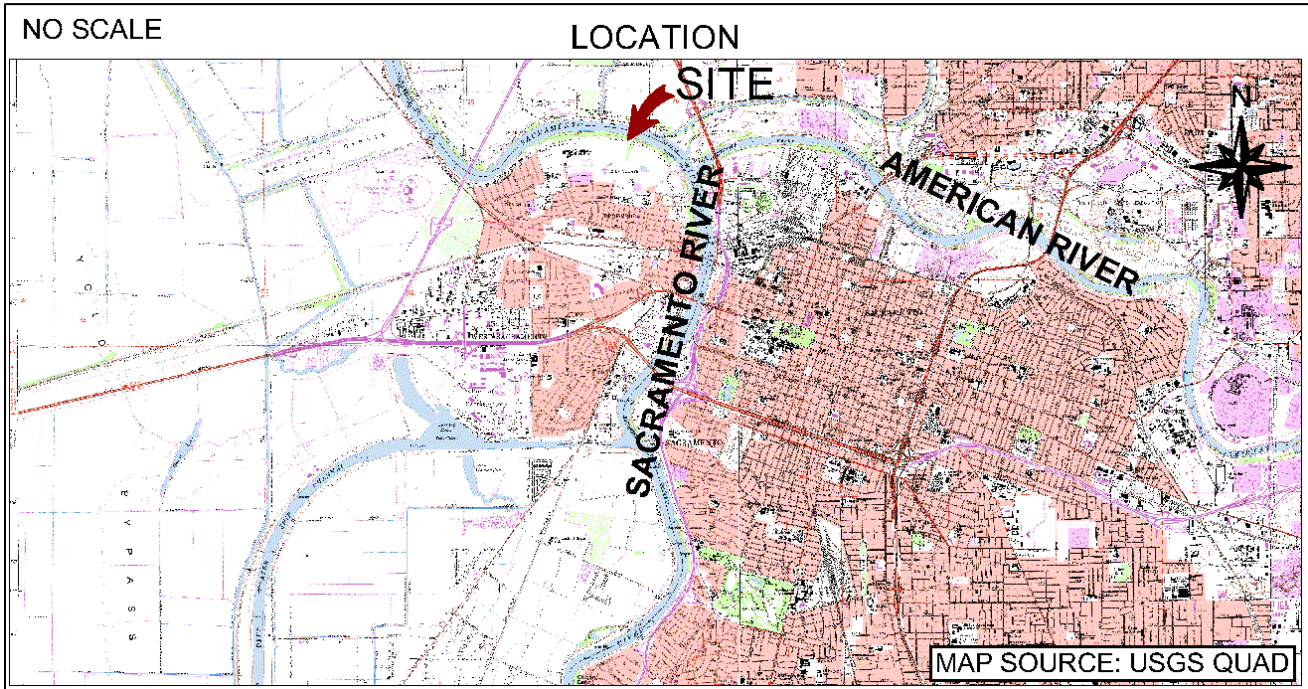
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Termination and Issuance of a General Lease – Commercial Use, and an  
Agreement and Consent to Encumbrance of Lease.

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in the Sacramento River, adjacent to 1577 Garden Highway,  
Sacramento, Sacramento County (as shown in Figure 1, below).

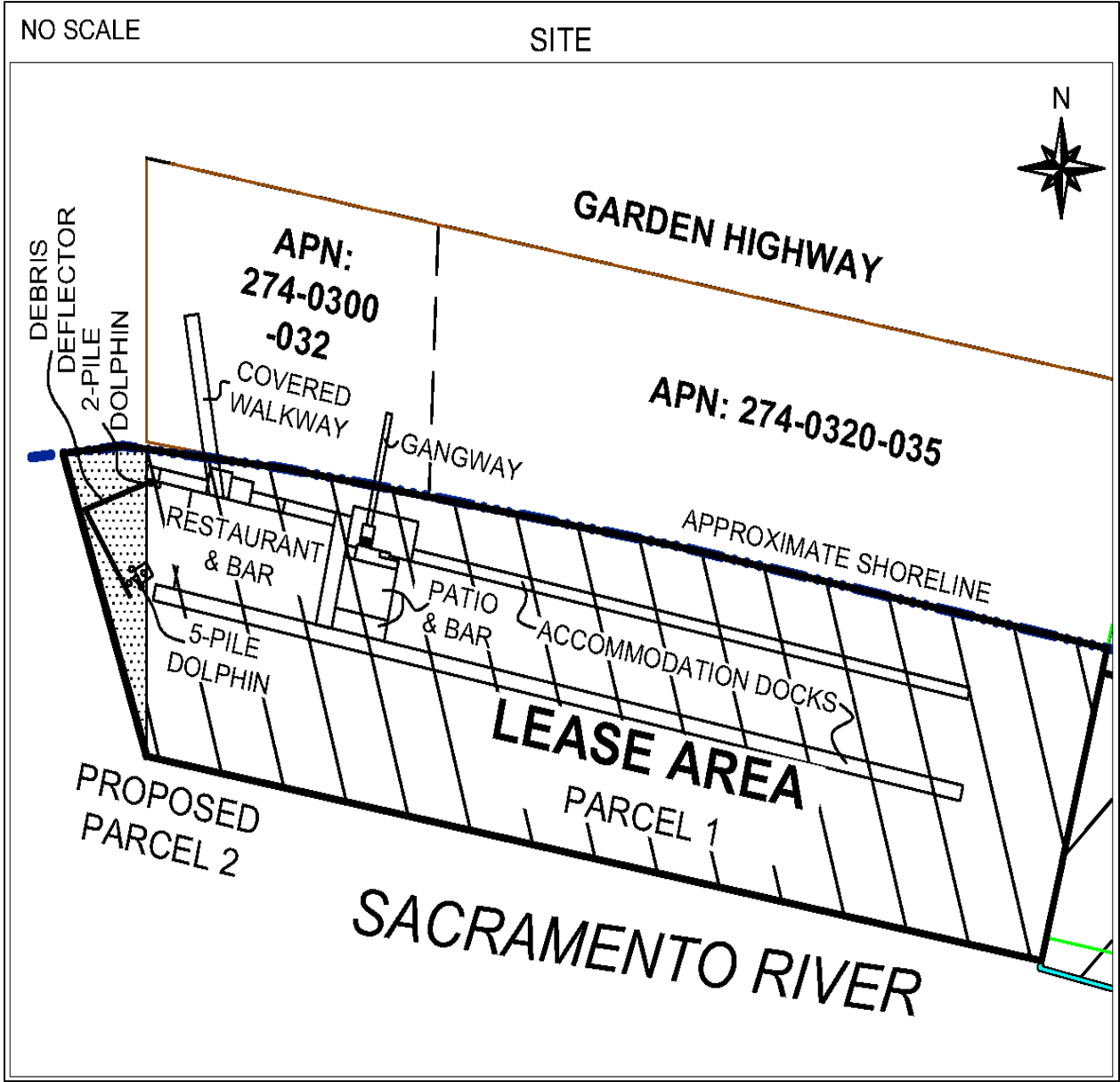
Figure 1. Location



**AUTHORIZED USE:**

Operation and use of an existing commercial marina known as the Virgin Sturgeon, consisting of an accommodation dock with deck, side tie dock with landing, two gangways, debris deflector with dock, restaurant, bar, and appurtenant facilities (as shown in Figure 2, below).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

30 years, beginning the later of June 7, 2024, or the close of escrow, but not later than December 31, 2024.

**CONSIDERATION:**

Annual rent of six percent of gross annual income derived from the commercial activities from berthing, docking, and mooring of boats; one and one-half percent of gross income from the restaurant and bar operations; and 10 percent of all other gross income generated on the Lease Premises; a minimum annual rent of \$24,000, paid in 12 equal installments; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount of no less than \$2,000,000 per occurrence.
- \$100,000 surety bond or other form of security as provided in the lease.
- The lease contains provisions requiring implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encourages implementation of the Commission's "Best Management Practices for Berth Holders and Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On December 9, 2003, the Commission authorized an assignment from Virgin Sturgeon, Inc., to Buffer Properties, LLC ([Item 15, December 9, 2003](#)). The lease will expire on June 17, 2025. The Applicant is working in conjunction with the Lessee to purchase the marina and is requesting to terminate the existing lease and authorization of a new lease.

The Applicant is applying for an Agreement and Consent to Encumbrance of Lease, in favor of Banner Bank, a Secured-Party Lender in a loan amount not to exceed \$700,000, and CDC, servicing agent for the SBA, a Secured-Party Lender in a loan amount not to exceed \$600,000. The purpose of the loans is to purchase,

make repairs, and maintain the commercial marina under lease. The encumbrance of the lease is a condition of both Secured Party Lenders.

The Agreement and Consent to Encumbrance of Lease provides the Commission with parties who may be able to step in if a default of the lease occurs. Additionally, the agreement would include protections for the State land associated with the lease. These protections include requirements that 1) no subsequent encumbrance of the lease shall be executed without prior written consent of the Commission; 2) any transfer of the lease to a third party shall be subject to the prior written approval and consent of the Commission; 3) if the Secured Party Lender becomes the lessee, it shall be bound by all terms and conditions of the lease; 4) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent; and 5) the duration of the encumbrance agreement is limited to the term of the lease. By encumbering the lease, the Lessee can obtain funds used to maintain the leased State property, and the Secured Party Lenders effectively act as the guarantor of Lessee's performance of its lease obligations.

The Virgin Sturgeon marina and accommodation dock have existed at this location and been under lease for many years. The marina facilities accommodate, promote, and foster the public's enjoyment of the State's waterways. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine.

The Applicant also operates a restaurant and bar on the lease premises which provides a variety of visitor-serving amenities to help the public access and enjoy these lands and are consistent with the Public Trust.

The proposed lease does not permanently alienate the State's fee simple interest in the underlying land, nor permanently impair public rights. Upon termination of the lease, the Lessee may be required to remove any improvements and restore the lease premises to their original condition. The proposed lease includes certain provisions and BMPs intended to protect the public use of the proposed lease area, including a limited lease term of 30 years. Furthermore, the lease requires that the lessee insure the lease premises and a performance surety in the amount of \$100,000. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The facilities are located on the Sacramento River, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea level rise.

The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea level rise scenario for the region as listed in Table 1.

**Table 1. Projected Sea Level Rise for San Francisco**

<b>Year</b>	<b>Projection (feet)</b>
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

This effect could increase the Sacramento River's inundation levels within the lease area. In addition, as stated in the [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms (especially when coupled with sea level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm

events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear and tear on the facilities within the lease area. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The floating barge restaurant with deck, gangways, and floating docks are adaptable to higher water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but they may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of the facilities. The pilings are fixed and therefore more vulnerable to sea level rise and more frequent flood events. These structures may need additional fortification or repair and maintenance to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation and dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are in an area that may be subject to the effects of climate change, including sea level rise.

**CONCLUSION:**

For all the reasons above, staff believes the issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the term of the proposed lease.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of an application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands. The Lessee has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the “Meeting Evolving Public Trust Needs, “Prioritizing Social, Economic, and Environmental Justice, and “Leading Climate Activism” Strategic Focus Areas of the [Commission's 2021-2025 Strategic Plan](#).
3. Termination of the lease and agreement and consent to encumbrance the lease are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease is exempt from CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2 section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

## **EXHIBIT:**

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A. Agreement and Consent to Encumbrance of Lease

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at



this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize termination, effective the day prior to the later of June 7, 2024, or the close of escrow, but not later than December 31, 2024, for Lease 5167, a General Lease – Commercial Use, issued to Buffer Properties, LLC.
2. Authorize issuance of a General Lease – Commercial Use to Virgin Sturgeon Properties, LLC beginning the later of June 7, 2024, or the close of escrow, but not later than December 31, 2024, for a term of 30 years, for the operation, use and maintenance of a commercial marina, consisting of an accommodation dock with deck, side tie dock with landing, two gangways, debris deflector with dock, restaurant, bar, and appurtenant facilities; annual rent in the amount of six percent of gross annual income derived from the commercial activities from berthing, docking, and mooring of boats; one and one-half percent of gross income from the restaurant and bar operations; and 10 percent of all other gross income generated on the Lease Premises; with a minimum annual rent of \$24,000, paid in 12 equal installments; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; liability insurance in an amount no less than \$2,000,000 per occurrence; and surety or other security in an amount of no less than \$100,000.
3. Authorize the Executive Officer or designee to execute the documents titled "Agreement and Consent to Encumbrance of Lease," allowing Lessee's right, title, and interest in Lease 5167 to be pledged as partial security for a loan in the principal amount not to exceed \$700,000 between Virgin Sturgeon Properties, LLC, and Banner Bank, and a loan in the principal amount not to exceed \$600,000 between Virgin Sturgeon Properties, LLC, and Mortgage Capital Development Corporation substantially the same form as that on file in the Sacramento office of the Commission, effective upon execution by all parties.
4. Authorize the Executive Officer or designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.

# Exhibit A

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

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation.  
Pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Lease Number: 5167

## AGREEMENT AND CONSENT TO ENCUMBRANCE OF LEASE

The Parties to this Agreement and Consent to Encumbrance of Lease Number 5167 (this Agreement) are:

1. The State of California, acting by and through the State Lands Commission, hereinafter referred to as LESSOR;
2. Virgin Sturgeon Properties, LLC, hereinafter referred to as LESSEE;
3. BANNER BANK, a Washington state chartered commercial bank (hereafter Banner Bank), The Mortgage Capital Development Corporation (hereafter CDC) & U.S. Small Business Administration (hereafter SBA), hereinafter referred to collectively as SECURED PARTY-LENDER unless otherwise indicated.

### RECITALS:

The State of California acting by and through the State Lands Commission as LESSOR did on June 7, 2024, lease to Virgin Sturgeon Properties, LLC under Lease Number 5167 (hereafter the Lease) certain lands in the Sacramento River, Sacramento County for a commercial marina, restaurant, bar, and appurtenant

facilities (hereafter, the Lease Premises). A copy of the Lease is attached as Exhibit A hereto and is incorporated into this Agreement.

LESSEE requires and has obtained indebtedness in the amount not to exceed \$700,000 pursuant to the terms and conditions of Loan Agreements, Number 72616261 between LESSEE and **Banner Bank** ("Banner Bank Loan Agreement") for the permanent financing or refinancing of existing debt and improvements to be constructed, maintained, repaired or reconstructed by the LESSEE on the Lease Premises.

LESSEE requires and has obtained indebtedness in the amount not to exceed \$600,000 pursuant to the terms and conditions of that certain Loan Agreement Number 72616288 between Lessee and The Mortgage Capital Development Corporation and subsequently assigned to SBA ("CDC Loan Agreement") for the permanent financing or refinancing of existing debt and improvements to be constructed, maintained, repaired or reconstructed by the LESSEE on the Lease Premises. CDC remains as the servicing agent for the SBA loan.

Banner Bank and CDC have provided separate loans to LESSEE according to the terms of the loan documents evidencing such loans. As further described in that certain Third Party Lender Agreement by and between Banner Bank and CDC, Banner Bank and CDC have required LESSEE to grant liens on the Lease Premises to secure the separate loans advanced by the parties, and the lien of the CDC will be junior and subordinate to the lien of Banner Bank, unless Banner Bank, CDC and SBA agree otherwise in writing.

The indebtedness and financing are necessary for the purchase and to achieve the purposes and objectives of the Lease and are in the best interest of all parties.

SECURED PARTY-LENDER requires 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.

SECURED PARTY-LENDER has been designated as the lender and party to

this Agreement by LESSEE and is acceptable to LESSOR.

## AGREEMENT

A. NOW, THEREFORE, the State of California, acting by and through the State Lands Commission, as LESSOR, DOES HEREBY APPROVE AND CONSENT TO:

1. The SECURED PARTY-LENDER being designated as the lender and as a party to this Agreement; and
2. The mortgaging or encumbering of the 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 incurred for the purposes stated above, pursuant to the terms and conditions of the Loan Agreement, the Promissory Note, or other loan documents or debt instruments evidencing the loan made by Banner Bank and the loan made by CDC. The terms "security interest" or "security interests" shall be hereinafter used interchangeably with the terms "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 Placer 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 provided that LESSEE shall give LESSOR written notice of any of them having been made within 10 days of their execution; and

4. SECURED PARTY-LENDER or a corporation or limited liability company wholly owned and controlled by 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 to LESSEE by sublessees of the Lease Premises, provided, however, that all subleasing shall have been approved by LESSOR as provided in the Lease. (See Exhibit B hereto); and

6. Both Banner Bank and CDC have the right to exercise the rights of the SECURED PARTY-LENDER under this Agreement in accordance with Section 24 of this Agreement.

B. The parties do further agree as follows:

1. Estoppel Certificate.

As of the date of the execution of this Agreement, Lessor and Lessee certify to SECURED PARTY-LENDER that:

- a. The Lease is in full force and effect and no default, breach or other ground for termination has occurred and is continuing at this time, nor does there exist any condition or event which with notice, the passage of time, or both would constitute a default by either party under the Lease.
- b. The current term of the Lease expires on June 6, 2054.
- c. No event has occurred that authorizes Lessor, or with the passage of time will authorize Lessor, to terminate the Ground Lease;
- d. Neither Lessor nor Lessee has any offsets, counterclaims, or defenses under the Lease.
- e. Minimum Annual Rent has been paid through June 30, 2024.
- f. No percentage rent is due and payable at this time.
- g. Lessee owns all improvements now or hereafter located on the Lease Premises.

2. Lease Improvements.

The proceeds of any loan procured in whole or in part for the purpose of permanent financing or refinancing of existing debt, constructing, maintaining, repairing or reconstructing improvements on the Lease Premises (for which a security interest in the Lease is required) shall be used 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.

3. Hazard Insurance Proceeds. In the event of damage to the improvements, hazard insurance proceeds shall be paid to SECURED PARTY-LENDER and disbursed pursuant to the terms of the Loan Agreement, the Deed of Trust or other documents evidencing the loan made by SECURED PARTY-LENDER to Lessee.

4. Condemnation Proceeds. SECURED PARTY-LENDER shall have the right to a collateral assignment of LESSEE'S share in the proceeds of any condemnation of the property covered by the Lease, in the order and amount of their respective liens.

5. No Lease Termination; Non-Merger.

a. Except as stated below in Section B.6, 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 (the "Termination 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 from any defaults or breaches of the kind described in the immediately preceding clause (1) occurring from and after the date that SECURED PARTY-LENDER receives the Termination Notice until the date all of the defaults and breaches described in the Termination Notice are cured; 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 to 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 notifies LESSOR of its intent to foreclose when permitted to do so and shall keep and perform all other conditions of the Lease and this Agreement until such time that the Lease shall be sold upon foreclosure pursuant to the Deed of Trust, or shall be transferred upon judicial or nonjudicial foreclosure, by assignment in lieu of foreclosure

or otherwise.

c. Except as stated below in Section B.6.c, LESSEE and LESSOR shall not seek to amend, modify, replace, terminate or surrender the Lease through mutual assent or otherwise without first having obtained the written consent of SECURED PARTY-LENDER, unless, with respect to a termination by LESSOR, the foregoing provisions of Section B.5 of this Agreement would otherwise allow for such termination.

d. The leasehold under the Lease shall not merge with the fee interest in all or any portion of the Lease Premises notwithstanding the ownership of the leasehold and of the fee by the same person(s) or entity(ies).

e. Except as stated below in Section B.6.c, LESSOR shall, upon serving LESSEE with any demand, consent or other notice under the Lease, concurrently serve a copy of such demand, consent or other notice upon SECURED PARTY-LENDER. LESSOR shall not be obligated to serve such notice on a SECURED PARTY-LENDER other than to the original SECURED PARTY-LENDER unless LESSOR has received notice that the security interest has transferred to a new lender.

6. Lease or Security Interest Transfer.

a. Lease Transfer.

(1) Any transfer or subletting of the Lease, with the exception of a transfer to SECURED PARTY-LENDER, or a corporation or limited liability company wholly owned and controlled by SECURED PARTY-LENDER {be it pursuant to judicial foreclosure, by way of a private sale under a Deed of Trust, an assignment from LESSEE in lieu of foreclosure to a party selected by the SECURED PARTY-LENDER, or an assignment by LESSEE pursuant to Paragraph 11 of Section 3 of the General



Provisions of the Lease or otherwise}, shall be subject to the prior written approval and consent of LESSOR, which shall not be unreasonably withheld, conditioned or delayed. If SECURED PARTY-LENDER shall proceed with a foreclosure sale, it shall provide LESSOR with a minimum of thirty (30) calendar 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 that any prospective lessee of State lands under the jurisdiction of LESSOR must be approved by LESSOR prior to assumption of the Lease. If prospective purchasers wish to obtain notice of approval or disapproval before the foreclosure sale, their identity and intent to bid must be given to SECURED PARTY-LENDER at least twenty-five (25) State business days prior to the date of sale. Within 24 hours of receiving such information, SECURED PARTY-LENDER shall in turn give LESSOR written notice of the identity of such prospective lease purchaser(s). LESSOR shall have fifteen (15) State business days after receipt of written notice from SECURED PARTY-LENDER in which to approve or disapprove any prospective purchasers. LESSOR's approval or disapproval of a prospective purchaser may be given by the Executive Officer of the State Lands Commission. If the Executive Officer disapproves of the prospective purchaser, SECURED PARTY-LENDER may appeal that disapproval to the State Lands Commission at the Commission's next available noticed public meeting. 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 who has been approved by LESSOR, provided,

however, that, if the highest bidder has not yet been vetted and approved or disapproved by LESSOR, LESSOR 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) Except SECURED PARTY-LENDER or a corporation or limited liability company wholly owned and controlled by SECURED PARTY-LENDER, all transferees, who succeed to the Lease whether by way of judicial foreclosure, private sale under a Deed of Trust or an assignment from LESSEE in lieu of foreclosure, or otherwise, must submit the following information in order to be considered for approval by LESSOR:

(a) The name and identification of the business organization and operational structure of the proposed transferee including certificate of good standing from the office of the California Secretary of State; identification of all affiliated entities, including subsidiaries and parent corporations; identification of the nature of the use of and interest in the Lease Premises by the proposed transferee; and a copy of the entity's formation documents (i.e. articles of incorporation, articles of organization, partnership agreement, joint venture agreement, etc.); and

(b) A copy of the terms and conditions of the proposed transfer. (This requirement is inapplicable in

the case where a transfer will be effected by judicial foreclosure, or private trustee sale.); and

(c) Audited or unaudited profit and loss statements for the two most recently completed fiscal years of the proposed transferee demonstrating its solvency and sufficient capital to operate the Lease and meet its terms and conditions; and

(d) If available, pro forma financial statements showing the projected income, expense, and financial condition resulting from use of the Lease Premises. (This requirement is inapplicable in the case where a transfer will be effected by judicial foreclosure, or private trustee sale.); and

(e) Evidence of ability to meet the insurance and bonding requirements required by the Lease; and

(f) Current credit report; and

(g) Demonstration of experience within the past ten (10) years in the type of business being conducted on the Lease Premises. (This requirement is inapplicable in the case where a transfer will be affected by judicial foreclosure, or private trustee sale.)

(3) 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 a 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.

(4) If SECURED PARTY-LENDER or a corporation or limited liability company wholly owned and controlled by SECURED PARTY-LENDER becomes the lessee under the Lease and subsequently desires to sell, assign or otherwise transfer the Lease, it shall first seek the prior written consent of LESSOR.

b. New Lease.

In the event of the termination of the Lease for any reason, and provided the SECURED PARTY-LENDER has not failed to take any actions required in Section 5(a) of this Agreement to preserve the Lease prior to termination, LESSOR shall provide written notice to SECURED PARTY-LENDER of such termination ("New Lease Notice") together with a statement of all sums which would be due at that time under the Lease but for such termination, and of all other defaults, if any, then known, to LESSOR. Subject to LESSOR'S prior written consent, which consent shall not be unreasonably withheld, LESSOR agrees to enter into a new lease ("New Lease") of the Lease Premises with SECURED PARTY-LENDER for the remainder of the term of the Lease, effective as of the date of termination, at the rent, and upon the terms and conditions (including all options to renew but excluding requirements which are not applicable or have already been fulfilled) of the Lease provided that the following conditions are met:

(1) SECURED PARTY-LENDER makes written request upon LESSOR for such new lease within sixty (60) days after the date SECURED PARTY-LENDER receives the New Lease Notice;

(2) SECURED PARTY-LENDER pays or causes to be paid to LESSOR at the time of the execution and delivery of the New Lease, any and all sums which would be due at the time of execution and delivery thereof pursuant to the Lease but for such termination and which have not otherwise been received by LESSOR from LESSEE or other party in interest.

(3) SECURED PARTY-LENDER agrees to remedy, within 45 days of issuance of the New Lease, any of LESSEE'S defaults of which SECURED PARTY-LENDER was notified by the Notice of Rejection of Lease in Bankruptcy and which are reasonably susceptible of being cured by SECURED PARTY-LENDER.

(4) Any New Lease made pursuant hereto shall have the same priority with respect to any other lien, charge or encumbrance on the fee of the Lease Premises, and the lessee under the New Lease shall have the same right, title, and interest in and to the Lease Premises as LESSEE had under the Lease.

(5) The lessee under the New Lease shall have the same right to assign or transfer the Lease as provided in this Agreement had it become the lessee under the initial Lease.

(6) The liability of any lessee under the New Lease, including the limitations on liability of SECURED PARTY-LENDER as stated in Section B.7.b if it becomes the lessee under the New Lease, shall be the same as if it had become the lessee under the initial Lease.

c. Security Interest Transfer.

Except as provided herein, 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. Such approval and consent shall not be unreasonably withheld. Failure of SECURED PARTY-LENDER to obtain such approval and consent shall be a breach of this Agreement and failure to cure such breach shall relieve LESSOR of any and all obligations to give notice to and/or obtain SECURED PARTY-LENDER's approval and consent to termination, amendment, modification, replacement, surrender or assignment or other transfer of the Lease.

d. Security Interest Termination.

Upon full payment of the indebtedness giving rise to the security interest herein, LESSEE shall provide LESSOR, within 30 days of its receipt, a copy of any reconveyance or other instrument from SECURED PARTY-LENDER showing that the indebtedness has been fully satisfied. LESSEE shall further actively work to obtain from SECURED PARTY-LENDER such reconveyance or other instrument, beginning no later than 30 days after LESSEE's final payment.

7. Lessee and Secured Party-Lender Liability.

a. Subject to the terms of Section B.7.b below, 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 such obligations and liability shall only be for those obligations and liability

arising during the period of time that SECURED PARTY-LENDER remains the actual lessee under the Lease), 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 the lessee under the Lease, termination of this Agreement shall be LESSOR'S sole remedy against SECURED PARTY-LENDER for its failure or refusal to comply with any or all of the provisions of this Agreement.

c. Notwithstanding any other provision of this Agreement, if SECURED PARTY-LENDER becomes a lessee by any of the means set forth in this Agreement, then, during the time of its occupancy of the Lease Premises, it shall be bound by all of the terms and conditions of the Lease.

8. Lessor Approval.

a. Except as otherwise expressly provided for in section B.6.a.(1), whenever the approval and consent of LESSOR as required under this Agreement is requested by SECURED PARTY-LENDER or LESSEE, LESSOR shall have ten (10) State business days after receipt of written notice of such request to approve or disapprove it, unless an alternative specific time period is expressly set forth herein. LESSOR's approval, consent or disapproval may be given by the Executive Officer of the State Lands Commission. If the Executive Officer does not provide the requested approval or consent, SECURED PARTY-LENDER may appeal that disapproval or failure to consent to the State Lands Commission at the Commission's next available noticed public meeting.

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 in the absence of such approval and consent.

9. Notices, Consents and Demands.

a. Any notices, consents, or demands (hereafter collectively referred to as "notices") required under the Lease or this Agreement shall be in writing and shall be delivered personally, sent by telecopier, or email with the original notice sent by first class U.S. mail, registered or certified, return receipt requested, postage prepaid, and properly addressed as set forth in this Section provided that any party hereto may at any time change its address for such notices by giving to the other parties hereto a notice of such change. All notices to any and all of the parties shall be deemed effective when delivered at the party's address. The addresses of the parties at the time of this Agreement's execution for the purposes of such notice are:

LESSOR: STATE LANDS COMMISSION  
Attn: Chief, Land Management Division  
100 Howe Ave., Suite 100 South  
Sacramento, CA 95825

LESSEE: Virgin Sturgeon Properties, LLC  
Attn. Desirea Lee  
1577 Garden Highway  
Sacramento, CA 95833

SECURED PARTY-LENDER:  
Banner Bank  
Neil Scicluna  
Vice President, Senior Business Banking Officer



Northern California  
1 Park Center Drive Suite 200  
Sacramento, CA 95825

SECURED PARTY-LENDER:

U.S. Small Business Administration  
Loan # \_\_\_\_\_  
Commercial Loan Service Center – Fresno  
801 R. Street, Suite 101  
Fresno, CA 93721

SERVICING AGENT:

The Mortgage Capital Development Corporation  
Attn: Loan Servicing Dept.  
Loan # \_\_\_\_\_  
1611 Telegraph Avenue, Suite 504  
Oakland, CA 94612

- b. LESSEE and SECURED PARTY-LENDER agree to inform LESSOR of any change in address for purposes of receiving any notices, as defined above, required by the Lease or this Agreement. Failure to do so shall relieve: LESSOR of any and all obligations to give any notices other than to the last address of record prior to proceeding with amendment, modification, default, termination, surrender, replacement or assignment or other transfer of the Lease or other action under the Lease or this Agreement; and/or obtain SECURED PARTY-LENDER's approval and consent to any of them.

10. Failure to Comply with Agreement and Consent to Encumbrance of Lease.

LESSOR, LESSEE and SECURED PARTY-LENDER agree that LESSOR may treat a violation of the terms of this Agreement and Consent to Encumbrance of Lease as a breach of the Lease or of this Agreement and that, after notice to LESSEE and SECURED PARTY-LENDER and an

opportunity to cure as allowed under this Agreement, LESSOR may exercise all remedies available to it under the Lease and at law and equity. All defaults of this Agreement must be cured within 60 days of service of notice of default on SECURED PARTY-LENDER. Failure of SECURED PARTY-LENDER to cure any default within the 60-day period shall immediately terminate this Agreement without further action of any of the Parties.

11. Conflicts in Provisions.

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.

12. Non-Waiver of Lessee Default.

Nothing contained herein nor any failure by the undersigned LESSOR to insist upon the strict performance of any provisions contained herein shall be construed as a waiver of any default of LESSEE under the Lease, or the waiver, modification or limitation of any remedy available to the undersigned LESSOR under the Lease or at law or equity.

13. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original. Such counterparts, when taken together, shall constitute but one and the same agreement. A photocopy or facsimile copy of a signature shall be deemed as an original with the parties waiving any objection requiring such original signature under California Evidence Code §1520, et seq.

14. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of LESSOR, LESSEE and SECURED PARTY-LENDER and their respective

successors and assigns.

15. Modification of Agreement and Consent to Encumbrance of Lease.

No modification of this Agreement shall be effective without the prior written consent of all parties to this Agreement.

16. Acknowledgement, Release and Indemnity by Lessee.

LESSEE hereby acknowledges that LESSOR is executing this Agreement and Consent to Encumbrance of Lease in reliance on the terms of this Agreement, and LESSEE hereby releases, and agrees to indemnify, defend and hold LESSOR harmless from any and all claims, losses, costs, liabilities, damages and expenses, including without limitation, attorneys fees and costs, incurred in connection with or arising from the exercise of SECURED PARTY-LENDER'S rights and obligations under this Agreement. LESSEE hereby agrees to pay all of LESSOR's attorneys fees incurred in connection with the preparation and negotiation of this Agreement and other agreements required in connection with it, or incurred with respect to any dispute arising out of this Agreement. This Section shall survive the expiration or earlier termination of the Lease.

17. Severability.

In the event of any conflict between any provision (or portion thereof) of this Agreement and any law, the latter shall prevail, but the provision (or portion thereof) of this Agreement which is affected shall be limited and curtailed only and to the least extent necessary to bring it within the requirements of the law, and no other provision (or portion thereof) of this Agreement shall otherwise be affected.

18. Integration.

This Agreement and the exhibits hereto contain and constitute the final and entire agreement of the parties relating to the subject matter of this Agreement and supersede all prior understandings,

proposals, negotiations, or representations concerning the subject matter of this Agreement.

19. Governing Law and Jurisdiction.

This Agreement shall be governed by, and construed in accordance with, California law, without regard of the choice-of-law principles thereof. Any action seeking legal or equitable relief arising out or related to this Agreement or a breach thereof shall be brought in the courts of the State of California, County of Placer.

20. Effective Date.

This Agreement will become effective and binding on all parties when executed by all parties 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, or upon reconveyance from SECURED PARTY-LENDER, whichever comes first.

21. No Lease Modification. Until all obligations of Lessee to SECURED PARTY-LENDER (the Loan Obligations) shall have been completely paid and performed, no amendment or modification of the Lease shall be binding upon SECURED PARTY-LENDER unless made with SECURED PARTY-LENDER's written consent (which consent shall not be unreasonably withheld, delayed or conditioned).

22. No Cancellation or Voluntary Surrender. Until the Loan Obligations have been completely paid and performed, no voluntary cancellation or voluntary surrender of the Lease shall be binding upon SECURED PARTY-LENDER unless made with SECURED PARTY-LENDER's written consent.

23. Conflicts. If there is a conflict between any of the provisions of this Agreement, the documents evidencing the security interest, or the Lease, this Agreement shall prevail.

24. Lender Priority. So long as the SBA loan remains outstanding, Banner

Bank and SBA agree that the terms of that certain Third Party Lender Agreement executed by Banner Bank and SBA shall address their respective rights to pursue rights and remedies under this Agreement in the event of a default under the Banner Bank loan or the SBA loan.

The parties hereto hereby execute this Agreement and Consent to Encumbrance of Lease as of the date hereafter affixed.

LESSEE:

Virgin Sturgeon Properties, LLC

By\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

Dated\_\_\_\_\_

SECURED PARTY-LENDER:

Banner Bank

By\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

Dated\_\_\_\_\_

SECURED PARTY-LENDER:

The Mortgage Capital Development Corporation, *Loan Servicing Agent for the U.S. Small Business Administration*

By\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

Dated\_\_\_\_\_

ALL SIGNATURES MUST BE NOTARIZED

LESSOR:

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By \_\_\_\_\_  
Robert Brian Bugsch

Title \_\_\_\_\_  
Chief, Land Management Division

Dated \_\_\_\_\_

ALL SIGNATURES MUST BE NOTARIZED