

# Staff Report 62

## **PARTY:**

---

California State Lands Commission

## **PROPOSED ACTION:**

---

Consider amendment of the Delegation of Authority to require Commission approval of Lease Templates and General Provisions to be used for certain non-controversial and routine surface lease applications, approval of the Agreement and Consent to Encumbrance of Lease Template, where approvals are delegated to the Executive Officer.

## **BACKGROUND:**

---

The California State Lands Commission (Commission), in accordance with law, provides for the delegation of certain responsibilities and authority to the Executive Officer and staff of the Commission. The Comprehensive Delegation of Authority (Delegation) was most recently amended at the December 5, 2023 Commission meeting ([Item 54, December 5, 2023](#)).

## **PROPOSED AMENDMENT**

---

At the December 5, 2023, Commission meeting, the Commission approved staff's recommended amendment to the Delegation of Authority to the Executive Officer to authorize the issuance or assignment of certain categories of non-controversial surface leases. The Commission previously delegated to the Executive Officer the authority to authorize approval of any assignment of a mooring buoy within Tomales Bay. In addition, the Executive Officer was delegated authority to approve applications for recreational facilities when at least two officers on the Commission recuse themselves from voting due to a conflict of interest. The Executive Officer was also delegated the ability to approve continuations of rent. Where such

approvals take place, the Executive Officer will report or make public these actions to comply with Bagley-Keene and provide public notice of the actions.

More specifically, the recently approved delegations allow the Executive Officer to authorize assignments of leases for private recreational structures, or private recreational structure leases in combination with protective structures. These leases are issued to the upland owners, and do not automatically pass to the new owner when the upland property is sold. It is important to maintain contractual privity with the new owner of the facilities. These assignments in conjunction with an upland sale are almost never denied. Staff also propose a delegation to authorize the Executive Officer to approve leases for private recreational facilities where there are no changes from the prior lease and the lessee is in good standing with no defaults.

The proposed modifications to the delegation will ensure the Commission has vetted and approved the lease terms embodied in the lease templates and General Provisions for those leases that qualify for delegation to the Executive Officer. This adds more clarity and specificity to the delegation and enhances transparency for the public. The full text of the proposed amendments to the delegation are set forth in track change format as Exhibit A.

The Commission approved Section 3 General Provisions, for use in all leases, at the April 4, 2024 meeting ([Item 49, April 4, 2024](#)). These General Lease Provisions will continue to be updated from time to time, as needed, as part of the Commission's land management obligations to protect the Public Trust Resources (as applicable) and best interests of the state. Any future changes to the Section 3 General Provisions will be brought to the Commission for consideration at a regularly scheduled Commission meeting. The same process will be used for the proposed Lease Templates that are the subject of this staff report. Delegated approval of the leases going forward will always use the most current version of the Lease Templates and General Provisions approved by the Commission at that time.

Lease applications to be considered under the Comprehensive Delegation of Authority are limited to applications submitted by the prior lessee with no change of ownership, with no changes in improvements from the previously authorized lease, where the continued use of the infrastructure and state land is exempt from the California Environmental Quality Act (CEQA), and the prior lease is in good standing with no defaults.

Staff has developed various lease templates for use with the proposed delegation of authority. Each template includes Section 1, which specifies the parties to the

lease, the term of the lease, the authorized improvements, and a few other essential terms; and Section 2 provisions, which include specially crafted terms that are specific to the geographic region of the lease and the particular improvements being authorized. These exhibits are intended to be used in conjunction with the Commission's Section 3, General Provisions.

Staff requests that the Commission authorize the use of the following lease templates:

**GENERAL LEASE: RECREATIONAL USE TEMPLATE (EXHIBIT B)**

Recreational leases are used when the Commission is authorizing fixed facilities for the docking and mooring of boats and these improvements are not used as part of a commercial venture, such as a marina. Exhibit B is the template for General Lease, Recreational Lease without a specific geographic region. There are many regions throughout the state where privately-owned buoys, fixed or floating boat docks, with appurtenant facilities, and similar structures are clustered. These structures can be found along California's many rivers and lakes. Despite the wide distribution of these facilities, many of them are very similar and the leases are very routine and comparable to those in Lake Tahoe, Donner Lake, and Huntington Harbour. Exhibit B is being presented to give these lessees the same opportunity for efficient and timely application processing when they otherwise meet all the eligibility requirements.

**HUNTINGTON HARBOUR GENERAL LEASE: RECREATIONAL USE TEMPLATE (EXHIBIT C)**

The Huntington Harbour Template (Exhibit C) is to be used for the approximately 200 properties that front the Main and lower Midway channels of Huntington Harbour. Nearly each of these properties has a boat dock extending into the state-owned channels and many have a cantilevered deck extending from the upland and hanging over the dock area. These facilities are densely packed and relatively uniform in nature, meaning that a template specific to this area is very efficient. The specific terms for this area require the lessee to acknowledge the state's ownership of the channel and prohibit enclosing the cantilevered decks or using them for living quarters.

**LAKE TAHOE GENERAL LEASE: RECREATIONAL USE TEMPLATE (EXHIBIT D)**

Lake Tahoe has more than 700 private recreational leases, the highest number of any geographic region in the state. Most of these are fixed piers which frequently have boat lifts or catwalks for loading and unloading, along with mooring buoys.

The very high number of similar facilities in this area also creates an opportunity for enhanced efficiency through the Lake Tahoe Template presented as Exhibit D. The specialized terms of this template require the lessee to recognize the Public Trust easement that exists between the high and low water lines and protects public access within this easement. Additionally, the template prohibits moving mooring buoys and requires compliance with the Tahoe Regional Planning Agency's permitting authority.

### **DONNER LAKE GENERAL LEASE: RECREATIONAL USE TEMPLATE (EXHIBIT E)**

The Donner Lake Template presented as Exhibit E will be applied to the near 100 similarly situated residential properties along the shore of Donner Lake. Most of these are fixed piers, with very few mooring buoys. The template lease terms are very similar to the Lake Tahoe template terms in that they are protective of public access and prohibit relocating buoys without authorization. The template differs from the Lake Tahoe template because Donner Lake has a different high-water level that defines the landward boundary of the Public Trust easement and the Tahoe Regional Planning Agency is not the permitting agency on Donner Lake. Accordingly, a separate template is being presented to aid in efficient leasing around Donner Lake.

### **TOMALES BAY MOORING GENERAL LEASE: RECREATIONAL USE TEMPLATE (EXHIBIT F)**

The Commission, in partnership with the Greater Farallones National Marine Sanctuary, administers the Tomales Bay Mooring Program (Program) under the Tomales Bay Vessel Management Plan. The Program allows for up to 165 moorings within Tomales Bay. The primary goals for establishing a program for siting and permitting moorings on the bay are to protect habitat; decrease threats to and disturbance of wildlife; and ensure safe and enjoyable water-related recreation by allowing moorings; additionally, the plan includes guidelines for removing and preventing illegally and improperly placed moorings and mooring materials. On April 26, 2013, the Commission certified the Negative Declaration (State Clearinghouse No. 2012082074) for the Tomales Bay Vessel Management Plan ([Item 133, April 26, 2013](#)). Staff recommend the Commission delegate authority to the Executive Officer to issue new leases for Tomales Bay moorings subject to the existing Program and consistent with the Tomales Bay Vessel Management Plan and the previously certified Negative Declaration. Any substantive changes to the Program that require additional CEQA Review will suspend this delegation and

thereby require staff to bring applications for new mooring leases to the Commission until such time that new CEQA action is taken by the Commission.

### **AGREEMENT AND CONSENT TO ENCUMBRANCE OF LEASE TEMPLATE (EXHIBIT G)**

Encumbrance Agreements are occasionally approved when necessary for a commercial lessee to obtain financing to purchase or maintain a commercial operation. In exchange for agreeing to provide notice to the security-holder of any defaults and deferring termination of a lease so the security-holder may cure defaults, the Commission gains an additional party with a financial interest in maintaining the lease premises in good working order. The December 5, 2023, revision to the delegation of authority also authorized the Executive Officer to review, approve, approve with revisions, or deny applications to encumber an existing lease. Staff requests Commission approval on the Agreement and Consent to Encumbrance of Lease.

### **OTHER PERTINENT INFORMATION:**

---

1. This action is consistent with addressing the challenges and opportunities described in the Commission's 2021-2025 Strategic Plan to maintain fiscal integrity through transparency, accountability, and efficient and effective management of the revenue-generation portfolio.
2. The amendment to the Delegation is not a project as defined by the CEQA because it is an organizational action 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).

### **EXHIBITS:**

---

- A. Proposed Revised Comprehensive Delegation of Authority (Amended June 7, 2024)
- B. General Lease: Recreational Use Template
- C. Huntington Harbour General Lease: Recreational Use Template
- D. Lake Tahoe General Lease: Recreational Use Template
- E. Donner Lake General Lease: Recreational Use Template

F. Tomales Bay Mooring General Lease: Recreational Use Template

G. Agreement and Consent to Encumbrance of Lease Template

## **RECOMMENDED ACTION:**

---

It is recommended that the Commission:

### **AUTHORIZATION:**

1. Amend the Comprehensive Delegation of Authority as set forth in Exhibit A, Effective June 7, 2024.
2. Authorize the use of the General Lease: Recreational Use Template; Huntington Harbour General Lease: Recreational Use Template; Lake Tahoe General Lease: Recreational Use Template; Donner Lake General Lease: Recreational Use Template; and Tomales Bay Mooring General Lease: Recreational Use Template as part of the Delegation of Authority set forth in Exhibit A.
3. Authorize the use of the Agreement and Consent to Encumbrance of Lease Template as part of the Delegation of Authority set forth in Exhibit A.

## EXHIBIT A

### COMPREHENSIVE DELEGATION OF AUTHORITY (AMENDED JUNE 7 2024 ~~DECEMBER 5 2023~~)

#### I. GENERAL

##### A. EXECUTIVE OFFICER

1. The Executive Officer shall represent the California State Lands Commission ("the Commission"), when it is not in session, in all matters under its jurisdiction, subject, however, to the limitations hereinafter expressed. The Executive Officer shall be the chief administrative officer of the staff of the Commission and shall supervise all personnel, property, equipment, bank accounts, funds, and records assigned to the Commission. The Executive Officer shall direct all operations and management of lands and interests in land under the Commission's jurisdiction, including but not limited to, administering the sale and leasing of lands in compliance with the provisions of law, the rules and regulations of the Commission and the Commission's expressed policies and approvals. The Executive Officer shall also direct all operations and administer the regulatory programs assigned to the Commission as set forth in the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990 (Public Resources Code, Division 7.8) and the Marine Invasive Species Control Act (Public Resources Code, Division 36). The Executive Officer shall make the determination whether a lease is necessary for dredging on granted tide and submerged lands wherein the right to minerals is reserved to the state, pursuant to Public Resources Code section 6707, subdivision (d), as added by Statutes 2013, chapter 104, section 3.
2. Emergency Action - In the event of an emergency whereby immediate action is necessary to avoid substantial harm to public health and welfare, to the environment, or to private or public property, where the emergency exists through no fault of the owner of any private property threatened, and where approvals from the Commission are needed that cannot be delayed until the Commission holds a regularly noticed meeting, the Executive Officer may give the emergency approval needed, provided that:

- a) The Executive Officer may approve only such action as is minimally necessary to avoid or respond to the emergency; and
- b) The applicant agrees to the following:
  - 1) That the State of California, its officers, agents, and employees shall not be liable for any claims, damages, or injuries of any kind and from any cause, arising out of or connected in any way with the proposed action, and that the applicant shall indemnify, hold harmless, and, at the option of the State, defend the State, its officers, agents, and employees, against and for any and all liability for any claims, damages, or injuries of any kind and from any cause, arising out of and connected in any way with the proposed action; and
    - a. Commission staff may agree to alternative methods of indemnification only if the alternative option protects the Commission and the state as well as or better than the term above.
  - 2) That the applicant shall comply with all terms and conditions imposed by the Commission staff; and
  - 3) That the applicant shall obtain and secure, prior to commencement of work, all approvals necessary or appropriate from all other agencies or governmental entities having jurisdiction; and
  - 4) That disturbance of the property under the Commission's jurisdiction shall be kept to a minimum area consistent with the nature and purpose of the emergency action, and that the applicant shall take all necessary and appropriate precautions to prevent littering or pollution on State lands, waterways, and adjoining properties; and
  - 5) That the applicant shall be responsible for any damage, destruction, or loss occurring to State lands, waterways, adjoining property, the State's lessees, or other members of the public; and



- 6) That the applicant shall provide the Commission staff notice of the proposed response time and work windows and shall provide to the Commission staff any information requested as to the work completed; and
  - 7) That the applicant shall provide the Commission staff satisfactory evidence of insurance coverage as requested by the Commission staff with the Commission named as an additional insured; and
  - c) If the approval requires a finding that the project is exempt from the California Environmental Quality Act (CEQA) and that exemption would properly apply, the Executive Officer is authorized to make that finding.
3. Letter of Non-Objection - The Executive Officer may issue letters of non-objection for activities requiring immediate or minor, nonexclusive, short-term use of State-owned land under the jurisdiction of the Commission, provided that:
- a. The Executive Officer determines that an exemption from CEQA applies, pursuant to authority granted in section IV of this Comprehensive Delegation of Authority;
  - b. The applicant agrees to the following:
    - i. That the State of California, its officers, agents, and employees shall not be liable for any claims, damages, or injuries of any kind and from any cause, arising out of or connected in any way with the proposed action, and that the applicant shall indemnify, hold harmless, and, at the option of the State, defend the State, its officers, agents, and employees, against and for any and all liability for any claims, damages, or injuries of any kind and from any cause, arising out of and connected in any way with the proposed action; and
1. Commission staff may agree to alternative methods of indemnification only if the alternative option

protects the Commission and the state as well as or better than the term above.

- ii. That the applicant shall comply with all terms and conditions imposed by the Commission staff; and
- iii. That the applicant shall obtain and secure, prior to commencement of work, all approvals necessary or appropriate from all other agencies or governmental entities having jurisdiction; and
- iv. That disturbance of the property under the Commission's jurisdiction shall be kept to a minimum area consistent with the nature and purpose of the event, and that the applicant shall take all necessary and appropriate precautions to prevent littering or pollution on State lands, waterways, and adjoining properties; and
- v. That the applicant shall be responsible for any damage, destruction, or loss occurring to State lands, waterways, adjoining property, the State's lessees, or other members of the public; and
- vi. That the applicant shall provide the Commission staff notice prior to any actual work or activity taking place pursuant to the approvals given and shall provide to the Commission staff any information requested as to the work completed; and
- vii. That the applicant shall provide the Commission staff satisfactory evidence of insurance coverage as requested by the Commission staff with the Commission named as an additional insured.

Types of activities for which a letter of non-objection may be issued include those shown below, followed by examples:

- Activities necessary for the processing of a lease application, the preparation of a CEQA analysis, or other research related to

Commission managed property that do not result in significant disturbances to an environmental resource, such as:

- Information collection,
- Scientific, biological, or cultural resource surveys,
- Research, or resource evaluation activities;
- Activities to abate or prevent a nonemergent nuisance or threat to public health or safety, or to public navigation, such as:
  - Fuel management activities including creation of fire breaks and vegetation removal,
  - Removal of nonindigenous or invasive species,
  - Removal of abandoned vessels, mooring tackle, and mooring structures,
  - Removal of derelict or hazardous structures on State waterways, school lands, and other lands under the jurisdiction of the Commission,
  - Trash clean-up involving private volunteers and/or government agencies, or
  - U.S. Army Corps of Engineers surveys on Formerly Used Defense Sites (FUDS) for unexploded ordnance;
- Activities to protect property under the jurisdiction of the Commission, such as:
  - Preservation or stabilization of previously unknown cultural or other resources accidentally discovered through human or natural processes;
- Activities that involve minor alterations to land, such as:
  - Well-capping projects involving abandoned water wells,

- Non-commercial seed or plant collecting as part of a mitigation monitoring program,
  - Collection of small amounts of “live rock” for public aquarium exhibits, or
  - Off-highway vehicle events where the participants stay on existing trails and the events are subject to permitting and monitoring by a government agency;
- Activities involving minor temporary use of land having negligible or no permanent effects on the environment, such as:
    - Regattas or other short-term water-related events involving the temporary placement of marker buoys,
    - Temporary use of existing access roads,
    - Tree surveys to monitor the health and growth rates of timber,
    - Research projects, or
    - Educational activities.
4. Lease Required – If Commission staff deems a lease is ultimately required for those activities authorized under the provisions of I.A.2. or 3, then the applicant shall apply at the earliest opportunity to the Commission for authorization for the action taken, and the action is subsequently approved and ratified by the Commission at its next noticed public meeting.
  5. The Executive Officer is authorized to execute ministerial California Department of Forestry and Fire Protection permit forms including, but not limited to: (1) Forest Fire Prevention Exemption forms; (2) 10% Dead, Dying or Diseased Trees or Fuelwood or Split Products or Removal of Slash & Woody Debris Not Located Within a WLPZ Exemption form (Timber Harvesting Permit); or (3) an Notice of Emergency Timber Operations form, provided that:
    - a. The Executive Officer determines that a CEQA exemption applies to the proposed forested land management action,

pursuant to authority granted in section IV of this Comprehensive Delegation of Authority.

6. Scrivener's Errors – The Executive Officer is authorized to correct scrivener's errors in contracts, leases, and other entitlements issued by the Commission. A scrivener's error is a mistake made by the scrivener or person drafting a document that does not reflect the intention and understanding of both parties to the contract, lease, or other entitlement, where the error is clearly unintentional and the true intent can be clearly obtained through other documentation. The Executive Officer is also authorized to correct scrivener's errors in staff reports, exhibits to staff reports, and in the Commission's meeting minutes.
7. Construction Deadlines – Where the Commission has authorized a lease that contains a date certain where a construction project must be completed, the Executive Officer is authorized to extend the deadline for the completion of such construction on the conditions that:
  - The revised project completion deadline does not exceed the term of the lease; and
  - The applicant is showing diligent effort to complete the construction; and
  - The applicant continues to conform to all other regulatory and work window requirements.
8. Commissioner Recusal - The Executive Officer is authorized to review, authorize, authorize with revisions, or deny an application for an existing recreational structure(s) when at least two officers on the Commission recuse themselves from participating in a decision at a properly noticed public Commission meeting due to a conflict of interest, unless a member of the public requests a public hearing on the item. In making such determination, the Executive Officer must act in accordance with the best interests of the State, establish rent according to the applicable benchmark, ensure that the action is consistent with the common law Public Trust Doctrine, and ensure that the action complies with the California Environmental Quality Act. This delegation will be limited to routine, non-controversial leases for

existing structures which would otherwise be on the Commission's Consent Agenda.

9. Assignments for General Lease: Recreational Use

- a. The Executive Officer is authorized to review, approve, approve with revisions, or deny an application for assignment of a lease issued pursuant to California Code of Regulations, title 2, section 2000, subdivision (c), which states that leases or permits for tide or submerged lands shall generally only be issued to riparian or littoral upland owners, provided that:
  - i. The lease is issued in conjunction with the riparian or littoral property;
  - ii. The riparian or littoral property has been sold;
  - iii. Either the prior upland owner or ~~the~~ new owner has submitted an application to take on the responsibilities of the lease;
  - iv. Commission staff finds that the assignee has the ability to comply with the terms of the lease;
  - v. The action is exempt from CEQA review, not a project, or ~~A~~ a CEQA Exemption applies.
- b. In making such determinations, the Executive Officer must act in accordance with the best interests of the State, ensure that the action is consistent with the Commission's leasing practices, the common law Public Trust Doctrine, and ensure that the action complies with CEQA. This delegation will be limited to routine, non-controversial lease assignments for existing structures which would otherwise be on the Commission's Consent Agenda.

10. Assignments for General Lease: Recreational and Protective Structure Use

- a. The Executive Officer is authorized to review, approve, approve with revisions, or deny an application for assignment of a lease

issued pursuant to California Code of Regulations, title 2, section 2000, subdivision (c), which states that leases or permits for tide or submerged lands shall generally only be issued to riparian or littoral upland owners, provided that:

- i. The lease is issued in conjunction with a riparian or littoral property adjacent to an inland waterway;
  - ii. The riparian or littoral property has been sold;
  - iii. Either the prior upland owner or the new owner has submitted an application to take on the responsibilities of the lease;
  - iv. Commission staff finds that the assignee has the ability to comply with the terms of the lease;
  - v. The action is exempt from CEQA review, not a project, or a CEQA Exemption applies.
- b. In making such determinations, the Executive Officer must act in accordance with the best interests of the State, ensure that the action is consistent with the Commission's leasing practices, the common law Public Trust Doctrine, and ensure that the action complies with CEQA. This delegation will be limited to routine, non-controversial lease assignments for existing structures which would otherwise be on the Commission's Consent Agenda.

#### 11. Lease applications for GL: Recreational Use

- a. The Executive Officer is authorized to review, approve, approve with revisions, or deny an application for a General Lease: Recreational Use where the following conditions apply:
  - i. Either the current lease is in good standing or there were no defaults of the prior lease; and
  - ii. There will be no substantive changes to the structures on, or uses of, state land from the prior lease; and

- iii. CEQA Exemption applies.
- iv. Leases that qualify for this delegation can only be issued using Lease Templates and General Provisions (Section 3) that have been reviewed and approved by the Commission at a regularly scheduled public meeting.
  - 1. Staff may bring updated Lease Templates and General Provisions to the Commission as needed to ensure the efficacy of this delegation.
  - 2. All leases approved under this delegation will use the most current version of the Lease Templates and General Provisions (Section 3) approved by the Commission.

b. In making such determinations, the Executive Officer must act in accordance with the best interests of the State, ensure that the action is consistent with the Commission's leasing practices, the common law Public Trust Doctrine, and ensure that the action complies with the California Environmental Quality Act. This delegation will be limited to routine, non-controversial leases for existing structures which would otherwise be on the Commission's Consent Agenda.

12. Encumbrance of Lease - The Executive Officer is authorized to review, approve, approve with revisions, or deny an application to Encumber an existing lease. In making such determination, the Executive Officer must:

- a. find that the Encumbrance is necessary to secure financing for the operation of facilities on state land consistent with the state lease approval;
- b. ~~act in accordance with the best interests of the State,~~
- c. ensure that the action is **in the best interests of the state and, where appropriate,** consistent with the common law Public Trust Doctrine, and



- d. ensure that the action complies with the California Environmental Quality Act.
- e. This delegation will be limited to routine, non-controversial encumbrance of leases for existing structures which would otherwise be on the Commission's Consent Agenda.
  1. Staff may bring updated Encumbrance of Lease Templates to the Commission, as needed, to ensure the efficacy of this delegation.
  2. All Encumbrance of Lease Agreements approved under this delegation will use the most current version of the Template approved by the Commission.

## **B. DELEGATION IN ABSENCE OF EXECUTIVE OFFICER**

During any period when the Executive Officer is absent from the State or is unable to carry out his or her duties as delegated or when there is no Executive Officer, all authority delegated to the Executive Officer is hereby delegated to the officer highest on the following list who is not absent from the State and is able to carry out the duties of the Executive Officer:

1. The Assistant Executive Officer
2. The Chief Counsel
3. The Chief, Land Management Division
4. The Chief, Administrative Services Division
5. The Chief, External Affairs Division
6. The Chief, Division of Environmental Science, Planning, and Management
7. The Chief, Mineral Resources Management Division

8. The Chief, Marine Environmental Protection Division
9. The Assistant Chief Counsel
10. The Assistant Chief, Land Management Division
11. The Assistant Chief, Administrative Services Division
12. The Assistant Chief, Division of Environmental Science, Planning, and Management
13. The Assistant Chief, Mineral Resources Management Division
14. The Assistant Chief, Marine Environmental Protection Division

### **C. RE-DELEGATION BY EXECUTIVE OFFICER**

The Executive Officer may re-delegate authority delegated to him or her only as provided below in subsection D and in sections II, III, IV, V, VI, VII, and VIII. Such re-delegations and revocations thereof may be made at the discretion of the Executive Officer and shall be in writing. Any such re-delegation is subject to all limitations and conditions provided by law.

### **D. DELEGATE, SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION, DELTA PROTECTION COMMISSION, SAN JOAQUIN RIVER CONSERVANCY, SEAGRANT, AND OTHER BOARDS, COMMISSIONS, AND PANELS**

The Executive Officer shall serve as the delegate or representative on behalf of the Commission to the San Francisco Bay Conservation and Development Commission; to the Ocean Resources Task Force; and to any other boards, commissions, and councils upon which a representative of the Commission is to serve. The Executive Officer may re-delegate the authority to serve as his or her alternate on or as the delegate on behalf of the Commission or Chair to any of the boards, commissions, and councils listed herein to any one or more other members of the Commission's staff.

## **II. ADMINISTRATION**

### **A. BUDGET AND FISCAL**

The Executive Officer shall prepare, or cause to be prepared, all budgets, budget revisions, contracts and other fiscal documents necessary for the Commission to carry out its activities subject to the following express provisions:

1. All contracts requiring approval of the Department of General Services shall be first approved by a resolution of the Commission, except for contracts for environmental consultants that will be paid for entirely by the Applicant or with other non-public monies, and except for reimbursement agreements. The Executive Officer may solicit proposals for, negotiate price, and award and enter into contracts for environmental consultants that will be funded entirely by the Applicant or with other non-public monies. This authority may not be re-delegated.
2. All actions taken shall comply with statutory authority and the State Administrative Manual.
3. Budget revisions involving program changes or augmentation of funds from those budgets which are reportable to the Joint Legislative Budget Committee must be reviewed by the Executive Officer before being signed.

The Executive Officer may re-delegate the above authority, or such of it as he or she may deem appropriate, to one or more of the following officers:

- The Assistant Executive Officer
- The Chief, Administrative Services Division
- The Assistant Chief, Administrative Services Division

The Executive Officer may also re-delegate to the Chief, Administrative Services Division, Assistant Chief, Administrative Services Division, and to the Fiscal Officer, Accounting Administrator, or Accounting Officers, authority to sign purchase estimates, sub-purchase orders, supply orders, position changes (607s), claim schedules, vouchers, and contracts; counter-sign checks drawn against any bank accounts maintained in the

name of the Commission; or counter-sign for release or deposit of securities held by the State Lands Commission.

## **B. PERSONNEL**

The Executive Officer shall supervise all personnel and payroll matters for the Commission and its staff, subject to the limits of the approved budget and all statutes, rules, and regulations governing State civil service employees. He or she may act as appointing power and take adverse actions against any employee of the Commission as provided for in statute and applicable State Personnel Board laws and regulations.

The Executive Officer may re-delegate any of the above functions to one or more of the following officers:

- The Assistant Executive Officer
- The Chief, Administrative Services Division
- The Assistant Chief, Administrative Services Division
- The Personnel Officer.

## **C. LABOR RELATIONS**

The Executive Officer shall oversee the handling of grievances arising out of labor agreement administration and activities associated with all phases of the collective bargaining process on behalf of the Commission. These activities may include making recommendations to Commission management on the interpretation and application of labor agreement provisions; ensuring State compliance with laws, regulations, policies, and labor agreements; investigating, recommending, and making decisions regarding disposition of grievances arising out of labor agreement administration, or grievances and complaints filed outside of the labor agreements; and participating in the development and presentation of State positions on matters within the scope of bargaining. The Executive Officer may re-delegate these functions to the Assistant Executive Officer; the Chief, Administrative Services Division; the Assistant Chief, Administrative Services Division; or the Labor Relations Officer.

### III. LEGAL

The Executive Officer, in collaboration with the Chief Counsel for the Commission and the Office of the Attorney General, shall supervise all litigation brought by or against the Commission and shall, as deemed advisable, request the Chief Counsel and/or the Office of the Attorney General to consider instituting actions to protect the interests of the State that are under the jurisdiction of the Commission. Such authority includes, but is not limited to, accepting legal process served upon the Commission, requesting opinions from the Attorney General, administering oaths, issuing subpoenas, and conducting hearings as authorized by various statutes. The Executive Officer is also authorized to respond to questions and inquiries about federal legislative jurisdiction, to appear on behalf of the Commission and testify about federal legislative jurisdiction matters in any appropriate judicial or administrative proceedings, and to maintain an index or record of documents with descriptions of the lands over which the United States has jurisdiction and the degree of jurisdiction, pursuant to Government Code section 127.

The Executive Officer may re-delegate the above authority, or such of it as he or she may deem appropriate, to one or more of the following officers:

- The Assistant Executive Officer
- The Chief Counsel
- The Assistant Chief Counsel
- Any Commission Attorney

In addition to those officers listed above, the Executive Officer may re-delegate the authority to certify copies of minutes and other documents in the custody of the Commission (including, but not limited to, certifications as required under Section 12276 of the Government Code in connection with the reproduction of records of the Commission) to any one or more of the following:

- Any Commission Attorney
- The Chief, Administrative Services Division

- The Assistant Chief, Administrative Services Division
- Supervising Boundary Determination Officer
- Public Land Management Specialist IV – Title Unit
- The Records Manager

#### **IV. ADMINISTRATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Executive Officer shall be responsible for ensuring the Commission's compliance with the provisions of CEQA and shall be authorized to carry out all responsibilities that may be delegated under the provisions of CEQA and Section 15025(a) of the State CEQA Guidelines, including, but not limited to: determining whether a project is exempt and filing notices for such projects; conducting an initial study and, if a project is not exempt, determining what environmental document would be required for the project; holding public hearings to receive comments on environmental documents prepared under the authority of the Commission; requesting shortened public review periods for such documents if deemed necessary; and filing notices of determination after the Commission approves or determines to carry out a project subject to CEQA. He or she shall also be authorized to take all actions necessary and appropriate to cause the preparation of such documents. Such authority includes, but is not limited to, the ability to: solicit proposals, negotiate a fair and reasonable price, award and execute contracts for environmental documentation and mitigation monitoring in accordance with State policies and procedures; and accept fees from project proponents/applicants to recover all costs incurred in the preparation of environmental documents and the monitoring of resultant mitigation measures directly or by contract. He or she shall also be authorized to take all actions necessary and appropriate to review and comment on other public agencies' environmental documents when the Commission is acting as a Responsible Agency (Guidelines Section 15096) and/or Trustee Agency (Guidelines Section 15386) under CEQA.

The Executive Officer may re-delegate the above authority to one or more of the following officers:

- The Assistant Executive Officer

- The Chief, Division of Environmental Science, Planning, and Management
- The Chief, Administrative Services Division
- The Assistant Chief, Division of Environmental Science, Planning, and Management

**V. MINERAL RESOURCES, INCLUDING GEOTHERMAL RESOURCES, OIL AND GAS, AND LONG BEACH OPERATIONS**

The Executive Officer shall have jurisdiction over all matters pertaining to operations of all kinds in all areas now subject to or available for State mineral resources leases, and to hold public hearings in connection with the consideration of oil and gas lease offers by the Commission as provided in Section 6873.2 of the Public Resources Code or successor provisions. He or she shall not have power, except as herein provided, to modify, amend, or abrogate any lease or agreement without specific authorization in each case.

The Executive Officer is authorized to execute all documents required for Commission-approved actions in connection with mineral resources, including, but not limited to, geothermal resources and oil and gas, and may make technical or clerical corrections thereto.

The Executive Officer may re-delegate the above authority, or such as he or she may deem appropriate, to one or more of the following officers:

- The Assistant Executive Officer
- The Chief, Mineral Resources Management Division
- The Assistant Chief, Mineral Resources Management Division

The Executive Officer may also designate any of those officers listed above to serve as the "Acting Executive Officer" for purposes of acting pursuant to the provisions of Section 5(g) of Chapter 138, Statutes of 1964, First Extraordinary Session, when and if this section is operative under Section 3(h) of Chapter 941, Statutes of 1991. The Executive Officer may also prescribe conditions under which each shall act if and when so designated.

## VI. LAND MANAGEMENT

The Executive Officer shall supervise all matters pertaining to the management, sale, exchange, and leasing of lands and interests in lands under the jurisdiction of the Commission. This delegation shall include authority to execute indemnity selections and exchange applications for School and Lieu Lands, filed by the State in accordance with federal laws, rules and regulations.

The Executive Officer is authorized to execute all documents required to give effect to Commission-approved actions in connection with land transactions and may make technical or clerical corrections thereto. The Executive Officer is also authorized to approve all Continuation of Rent actions if annual rent or other consideration is not being modified and no other Commission action on the lease is being considered.

The Executive Officer shall not have power, except as herein provided, to modify, amend or abrogate any lease or agreement without specific authorization from the Commission in each case.

The Executive Officer is authorized to approve any assignment of a mooring buoy within Tomales Bay which has been issued by the Commission under permit from the Greater Farallones National Marine Sanctuary.

The Executive Officer is authorized to review, approve, approve with revisions, or deny an application for new leases for Tomales Bay moorings, subject to the following conditions:

- a. The approval and issuance of a lease for a mooring must comply with the Tomales Bay Mooring Program (Program), under the Tomales Bay Vessel Management Plan;
- b. The approval and issuance of a lease for a mooring must comply with the previously certified Negative Declaration (State Clearinghouse No. 2012082074),
- c. If any substantive changes to the Program require additional CEQA Review, this delegated authority is suspended, requiring staff to bring applications for new mooring leases to the



Commission, until such time that the appropriate CEQA action is taken by the Commission;

- d. Leases that qualify for this delegation can only be issued using Lease Templates and General Provisions (Section 3) that have been reviewed and approved by the Commission at a regularly scheduled public meeting;
  3. Staff may bring updated Lease Templates and General Provisions to the Commission as needed to ensure the efficacy of this delegation;
  4. All leases approved under this delegation will use the most current version of the Lease Templates and General Provisions (Section 3) approved by the Commission.

The Executive Officer may re-delegate the above authority, or such of it as he or she may deem appropriate, to one or more of the following officers:

- The Assistant Executive Officer
- The Chief, Land Management Division
- The Assistant Chief, Land Management Division

## **VII. OIL SPILL PREVENTION AND RESPONSE AND MARINE INVASIVE SPECIES**

The Executive Officer shall have authority over all matters pertaining to prevention of and response to pollution of lands under the jurisdiction of the Commission as provided under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (the LKS Act), amendments thereto, associated regulations, and similar successor provisions of law or statute. The Executive Officer shall represent the Commission and its Chair on all panels and committees convened for the purposes of pollution prevention and response.

The Executive Officer shall have authority over all matters pertaining to the prevention of marine invasive species introductions as provided under the Marine Invasive Species Act (MISA), amendments thereto, associated

regulations, and similar successor provisions of law or statute, including, but not limited to, the authority to issue any approval or authorization that would otherwise require action by the Commission pursuant to the MISA. The Executive Officer shall represent the Commission and its Chair on all panels and committees convened for the purposes of invasive species prevention and control. At any time, the Chair of the Commission may direct that, this delegation notwithstanding, one or more specific requests for approval or authorization, as described under this paragraph, be submitted directly to the Commission for consideration and that no action upon that request be taken by the Executive Officer, Chief, Marine Environmental Protection Division, or Chief, Division of Environmental Science, Planning, and Management, pursuant to this delegation. Any approval, authorization, order, or any other action taken pursuant to this paragraph shall be reported to the Commission at the earliest Commission meeting for which legal notice can be provided. Notice of any action taken pursuant to this delegation shall be forwarded to any person or entity that has requested it.

At his or her discretion, the Executive Officer may re-delegate the above authority, or such of it as he or she may deem appropriate, or any authority given directly to the Executive Officer under the LKS Act and the MISA, except for those pertaining to the Mineral Resources Management Program, to one or more of the following:

- The Assistant Executive Officer
- The Chief, Marine Environmental Protection Division
- The Assistant Chief, Marine Environmental Protection Division
- The Chief, Division of Environmental Science, Planning, and Management
- The Assistant Chief, Division of Environmental Science, Planning, and Management

## **VIII. REMOVAL OF VESSELS FROM STATE WATERWAYS**

The Executive Officer shall have authority to undertake any activity necessary to remove or dispose of abandoned, derelict or trespassing vessels as permitted under the provisions of Public Resources Code sections 6302.1, 6302.3, and 6302.4, provided that the Executive Officer has determined that

an exemption from CEQA applies pursuant to authority granted in section IV of this Comprehensive Delegation of Authority.

The Executive officer may re-delegate the above authority, or such of it as he or she may deem appropriate, to one or more of the following:

- The Assistant Executive Officer
- The Chief Counsel
- The Assistant Chief Counsel
- Any Commission Attorney
- The Chief, Land Management Division
- The Assistant Chief, Land Management Division
- Any Public Land Manager
- Any Public Land Management Specialist III or IV

EXHIBIT B  
General Lease: Recreational Use Template

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Land Management Division  
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

A.P.N.:  
County:

**LEASE No.**

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 3
- Section 3 General Provisions
- Exhibit A Land Description
- Exhibit B Site and Location Map

**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 \_\_\_\_\_, hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

**MAILING ADDRESS:**

**LEASE TYPE:**

**LAND TYPE:**

**LOCATION:**

, as described in Exhibit A attached and by this reference made a part hereof.

**LAND USE OR PURPOSE:**

**TERM:**

\_\_\_\_\_ years; beginning \_\_\_\_\_; ending \_\_\_\_\_, unless sooner terminated as provided under this Lease.

**CONSIDERATION:**

\_\_\_\_\_. Subject to modification by Lessor as specified in Section 3 – General Provisions, Paragraph 2 – Rent.

**AUTHORIZED IMPROVEMENTS:**

\_\_\_\_\_ **EXISTING:**

\_\_\_\_\_ **TO BE CONSTRUCTED**

**CONSTRUCTION MUST BEGIN BY:**

**CONSTRUCTION MUST BE COMPLETED BY:**

**LIABILITY INSURANCE:**

**SURETY BOND OR OTHER SECURITY:**

---

## SECTION 2: SPECIAL PROVISIONS

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

1. Lessee acknowledges that the land described in Exhibit A of the Lease is subject to the Public Trust and is currently available to members of the public for recreational, waterborne commerce, navigation, fisheries, open space, or other recognized Public Trust uses and that Lessee's authorized activities and use of the Lease Premises shall not interfere or limit the Public Trust rights of the public.
2. Lessee is hereby authorized to maintain the existing sundeck with stairs, and related structures, as shown on the attached Exhibit B, on the Lease Premises, subject to the following terms and conditions.
  - a. There shall be no expansion of the existing sundeck with stairs and related structures authorized by this Lease and as shown on the attached Exhibit B, or construction of new structures within the Lease Premises.
  - b. (1) Notwithstanding Section 3, Paragraph 9 (Repairs, Major Repairs, and Alternations) of this Lease, if repairs to any portion of the existing sundeck with stairs occupying State fee lands pursuant to this Lease (including, but not limited to, those repairs necessitated by unusual events such as storm or fire) would cost in excess of 50 percent of the base value of said portion of the structure, said portion of the structure shall be removed from the State fee lands. Allowable repairs must commence within one year from the date of damage and must be completed promptly thereafter.

(2) Base value of the existing sundeck with stairs to which damage has occurred shall be the depreciated replacement cost of the structure one day prior to said damage.

(3) In addition to the provisions of Section 3, Paragraph 13.3 (Remedies on Breach of Lease) of this Lease, in the event of default or breach by Lessee of any provision of this paragraph, Lessor may terminate this Lease and require removal of all or any part of the structure(s) authorized herein from the Lease Premises.

**Commented [A1]:** To be used when there is a sundeck.

EXHIBIT C  
Huntington Harbour General Lease: Recreational Use Template

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Land Management Division  
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

A.P.N.:  
County:

W

**LEASE No.**

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 3
- Section 3 General Provisions
- Exhibit A Land Description
- Exhibit B Site and Location Map

**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 \_\_\_\_\_, hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

**MAILING ADDRESS:**

**LEASE TYPE:**

**LAND TYPE:**

**LOCATION:**

, as described in Exhibit A attached and by this reference made a part hereof.

**LAND USE OR PURPOSE:**

**TERM:**

\_\_\_\_\_ years; beginning \_\_\_\_\_ ; ending \_\_\_\_\_ , unless sooner terminated as provided under this Lease.

**CONSIDERATION:**

\_\_\_\_\_. Subject to modification by Lessor as specified in Section 3 – General Provisions, Paragraph 2 – Rent.

**AUTHORIZED IMPROVEMENTS:**

\_\_\_\_\_ **EXISTING:**

\_\_\_\_\_ **TO BE CONSTRUCTED**

**CONSTRUCTION MUST BEGIN BY:**

**CONSTRUCTION MUST BE COMPLETED BY:**

**LIABILITY INSURANCE:**

**SURETY BOND OR OTHER SECURITY:**

---



## SECTION 2: SPECIAL PROVISIONS

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

1. Lessee acknowledges and agrees that the State of California acquired fee ownership of the Huntington Harbour Main and Midway Channels in 1962 as a result of a land exchange entered into between the Commission and the Huntington Harbour Corporation, recorded as the Amended Agreement for the Exchange of Lands in the Sunset Beach Area, Orange County, California, and recorded on March 7, 1963, in Book 6457, Page 819, Official Records, Orange County, California. Projects, including new development or maintenance of existing facilities, extending into these Channels beyond the bulkhead line require a lease from the Commission pursuant to Public Resources Code section 6501.1.
2. The following special conditions apply with respect to the Lessee's cantilevered deck:
  - a. No permanent roof or other enclosure will be constructed or permitted on the Lease Premises.
  - b. Lessee agrees that any proposed use of the Lease Premises that includes extension of the actual living quarters constitutes prohibited residential use.
  - c. Lessee agrees that the cantilevered deck measurements, submitted to the Lessor are accurate to the best of the Lessee's knowledge.

Commented [A1]: Use if applicable

EXHIBIT D  
Lake Tahoe General Lease: Recreational Use Template

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Land Management Division  
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

A.P.N.:  
County:

**LEASE No.**

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 3
- Section 3 General Provisions
- Exhibit A Land Description
- Exhibit B Site and Location Map

---

**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 \_\_\_\_\_, hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

**MAILING ADDRESS:**

**LEASE TYPE:**

**LAND TYPE:**

**LOCATION:**

, as described in Exhibit A attached and by this reference made a part hereof.

**LAND USE OR PURPOSE:**

**TERM:**

\_\_\_\_\_ years; beginning \_\_\_\_\_ ; ending \_\_\_\_\_ , unless sooner terminated as provided under this Lease.

**CONSIDERATION:**

\_\_\_\_\_. Subject to modification by Lessor as specified in Section 3 – General Provisions, Paragraph 2 – Rent.

**AUTHORIZED IMPROVEMENTS:**

\_\_\_\_\_ **EXISTING:**

\_\_\_\_\_ **TO BE CONSTRUCTED**

**CONSTRUCTION MUST BEGIN BY:**

**CONSTRUCTION MUST BE COMPLETED BY:**

**LIABILITY INSURANCE:**

---

## SECTION 2: SPECIAL PROVISIONS

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

1. Private owners of the uplands on non-tidal navigable waters own to the ordinary low water mark unless their deed provides otherwise. The area lying between the ordinary high and low water marks of the bed of such waters is subject to an easement for Public Trust purposes of commerce, navigation, fishing, water related recreation, and conservation of natural resources. Private upland owners may utilize lands between the ordinary high water and low water marks for purposes which are not incompatible with public trust needs on the property.
2. Except as specifically authorized in this Lease, Lessee shall not store any personal items or construct any improvements within the Public Trust easement below elevation 6228.75 feet, Lake Tahoe Datum, that may impair the public's right of access for navigation, fishing, and public trust consistent recreational uses, as described in the case of *State of California v. Superior Court of Lake County (Lyon)*, 29 Cal. 3d 210, 229-231.
3. Lessee acknowledges that a portion of the pier exists within the State administered Public Trust easement, which exists between the locations of the ordinary high water mark and the low water mark of Lake Tahoe. Lessee agrees to allow the public to pass and re-pass underneath the pier to allow access to the Public Trust easement.
4. Lessee shall post signs on both sides of the pier at the designated public access passageway that read "Public Passage Allowed (specify location)". The signs shall be in place at all times. Lessee agrees to be responsible for all costs incurred for the installation and maintenance of signage on each side of the pier.
5. Lessee acknowledges that issuance of this lease does not substitute for, or provide preference in, obtaining authorizations from Tahoe Regional Planning Agency (TRPA) or any other regulatory agency for the Authorized Improvements in this Lease. A TRPA permit or registration may be required for the Authorized Improvements and failure to obtain a permit or registration from TRPA and maintain compliance with that permit or registration may result in TRPA imposing civil penalties and will constitute a breach of this lease.
6. Lessee shall not move or relocate the mooring buoys authorized under this Lease without prior written authorization of the Lessor.

Commented [A1]: Revise to meet conditions

Commented [A2]: Revise to meet conditions

Commented [A3]: Buoy provision

7. This Lease authorizes only [ ] active mooring buoy(s) at any time. The use of which must comply with all special conditions imposed by TRPA in the low water anchor permit.
8. This Lease is issued on the condition that Lessee owns all of the improvements and/or personal property authorized under this Lease and the ownership shall remain with the Lessee.
9. Lessee shall provide for the use of the mooring buoys by all members of the Association in a fair and equitable manner. Lessee shall provide a copy of Lessee's buoy allotment program, which identifies how the buoys will be managed, maintained, and distributed for use by members no later than 90 days after the effective date of the Lease.
10. Lessee is hereby authorized to maintain the existing sundeck with stairs, and related structures, as shown on the attached Exhibit B, on the Lease Premises, subject to the following terms and conditions.
- A. There shall be no expansion of the existing sundeck with stairs and related structures authorized by this Lease and as shown on the attached Exhibit B, or construction of new structures within the Lease Premises.
- B. (1) Notwithstanding Section 3, Paragraph 9 (Repairs, Major Repairs, and Alterations) of this Lease, if repairs to any portion of the existing sundeck with stairs occupying State fee lands pursuant to this Lease (including, but not limited to, those repairs necessitated by unusual events such as storm or fire) would cost in excess of 50 percent of the base value of said portion of the structure, said portion of the structure shall be removed from the State fee lands. Allowable repairs must commence within one year from the date of damage and must be completed promptly thereafter.
- (2) Base value of the existing sundeck with stairs to which damage has occurred shall be the depreciated replacement cost of the structure one day prior to said damage.
- (3) In addition to the provisions of Section 3, Paragraph 13.3 (Remedies on Breach of Lease) of this Lease, in the event of default or breach by Lessee of any provision of this paragraph, Lessor may terminate this Lease and require removal of all or any part of the structure(s) authorized herein from the Lease Premises.

**Commented [A4]:** If there is a low water anchor included in the improvements AND TRPA has issued a permit

**Commented [A5]:** HOA Provisions

EXHIBIT E  
Donner Lake General Lease: Recreational Use Template

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Land Management Division  
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*

A.P.N.:  
County:

**LEASE No.**

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 3
- Section 3 General Provisions
- Exhibit A Land Description
- Exhibit B Site and Location Map

---

**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 \_\_\_\_\_, hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

**MAILING ADDRESS:**

**LEASE TYPE:**

**LAND TYPE:**

**LOCATION:**

, as described in Exhibit A attached and by this reference made a part hereof.

**LAND USE OR PURPOSE:**

**TERM:**

\_\_\_\_\_ years; beginning \_\_\_\_\_ ; ending \_\_\_\_\_ , unless sooner terminated as provided under this Lease.

**CONSIDERATION:**

\_\_\_\_\_. Subject to modification by Lessor as specified in Section 3 - General Provisions, Paragraph 2 - Rent.

**AUTHORIZED IMPROVEMENTS:**

\_\_\_\_\_ **EXISTING:**

\_\_\_\_\_ **TO BE CONSTRUCTED**

**CONSTRUCTION MUST BEGIN BY:**

**CONSTRUCTION MUST BE COMPLETED BY:**

**LIABILITY INSURANCE:**

---

## SECTION 2: SPECIAL PROVISIONS

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

1. Private owners of the uplands on non-tidal navigable waters own to the ordinary low water mark unless their deed provides otherwise. The area lying between the ordinary high and low water marks of the bed of such waters is subject to an easement for public trust purposes of commerce, navigation, fishing, water related recreation, and conservation of natural resources. Private upland owners may utilize lands between the ordinary high water and low water marks for purposes which are not incompatible with public trust needs on the property.
2. Except as specifically authorized in this Lease, Lessee shall not store any personal items or construct any improvements within the Public Trust easement below elevation 5935.8 feet, NGVD (1929), that may impair the public's right of access for navigation, fishing, and public trust consistent recreational uses, as described in the case of *State of California v. Superior Court of Lake County (Lyon)*, 29 Cal. 3d 210, 229-231.
3. Lessee acknowledges that a portion of the pier exists within the State administered Public Trust easement, which exists between the locations of the ordinary high water mark and the low water mark of Donner Lake. Lessee agrees to allow the public to pass and re-pass underneath the pier to allow access to the Public Trust easement.
4. Lessee shall post signs on both sides of the pier at the designated public access passageway that read "Public Passage Allowed (specify location)". The signs shall be in place at all times. Lessee agrees to be responsible for all costs incurred for the installation and maintenance of signage on each side of the pier.
5. Lessee shall not move or relocate the mooring buoys authorized under this Lease without prior written authorization of the Lessor.
6. This Lease is issued on the condition that Lessee owns all of the improvements and/or personal property authorized under this Lease and the ownership shall remain with the Lessee.
7. Lessee shall provide for the use of the mooring buoys by all members of the Association in a fair and equitable manner. Lessee shall provide a copy of Lessee's buoy allotment program, which identifies how the buoys will be managed, maintained, and distributed for use by members no later than 90 days after the effective date of the Lease.

Commented [A1]: Revise to meet conditions

Commented [A2]: Buoy provision

Commented [A3]: HOA Provisions



8. Lessee is hereby authorized to maintain the existing sundeck with stairs, and related structures, as shown on the attached Exhibit B, on the Lease Premises, subject to the following terms and conditions.
- a. There shall be no expansion of the existing sundeck with stairs and related structures authorized by this Lease and as shown on the attached Exhibit B, or construction of new structures within the Lease Premises.
  - b. (1) Notwithstanding Section 3, Paragraph 9 (Repairs, Major Repairs, and Alterations) of this Lease, if repairs to any portion of the existing sundeck with stairs occupying State fee lands pursuant to this Lease (including, but not limited to, those repairs necessitated by unusual events such as storm or fire) would cost in excess of 50 percent of the base value of said portion of the structure, said portion of the structure shall be removed from the State fee lands. Allowable repairs must commence within one year from the date of damage and must be completed promptly thereafter.  
  
(2) Base value of the existing sundeck with stairs to which damage has occurred shall be the depreciated replacement cost of the structure one day prior to said damage.

EXHIBIT F

Tomales Bay Mooring General Lease: Recreational Use Template

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Land Management Divisions  
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



County: Marin  
Latitude/Longitude:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**LEASE**

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 3
- Section 3 General Provisions
- Exhibit A Land Description
- Exhibit B Site and Location Map
- Exhibit C Tomales Bay Mooring Program Requirements

**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 \_\_\_\_\_, hereinafter referred to as Lessee, those certain lands described in Exhibit A, hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

**MAILING ADDRESS:**

**LEASE TYPE:**

General Lease – Recreational Use

**LAND TYPE:**

Sovereign

**LOCATION:**

, as described in Exhibit A attached and by this reference made a part thereof.

**LAND USE OR PURPOSE:**

**TERM:**

\_\_\_\_\_ years; beginning \_\_\_\_\_ ; ending \_\_\_\_\_ , unless sooner terminated as provided under this Lease.

**CONSIDERATION:**

\_\_\_\_\_. Subject to modification by Lessor as specified in Section 3 – General Provisions, Paragraph 2 – Rent.

**AUTHORIZED IMPROVEMENTS:**

\_\_\_ **EXISTING:**

\_\_\_ **TO BE INSTALLED:**

**LIABILITY INSURANCE:**

**SURETY BOND OR OTHER SECURITY:**

**SECTION 2  
SPECIAL PROVISIONS**

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

1. Lessee agrees to comply with the Tomales Bay Mooring Program Requirements, attached to this Lease as Exhibit C and incorporated herein by reference, and available online at <http://www.slc.ca.gov/Leases-Permits/TomalesBay.html>. Lessor reserves the right to modify the program requirements at any time. Lessee agrees to abide by any reasonable modifications to the program made by Lessor. Any

changes will be mailed to Lessee by Lessor to the mailing address in Section 1 of this lease. In the case of any conflict between Section 3, General Provisions, and the Tomales Bay Mooring Program Requirements, the Tomales Bay Mooring Program Requirements control.

2. Lessee shall provide Lessor with proof of current and valid Protection and Indemnity (P & I) or Watercraft Liability Insurance with limits in an amount no less than \$500,000 per occurrence, which names the State, its officials, and its employees as additional insured. A provision allowing for cost recovery for salvage and pollution control shall be included in the P & I or Watercraft Liability Insurance. In the event this insurance coverage is to be cancelled, Lessee shall provide thirty (30) days prior written notice to the Lessor, along with a plan to obtain new insurance.
3. Lessee acknowledges that the land described in Exhibit A of the Lease is subject to the Public Trust and is currently available to members of the public for recreational, waterborne commerce, navigation, fisheries, open space, or other recognized Public Trust uses and that Lessee's authorized activities and use of the Lease Premises shall not interfere with or limit the Public Trust rights of the public.
4. Lessee must maintain the right to access their mooring from the upland. A public access point or written permission for access from an upland owner adjacent to the mooring buoy location shall satisfy this provision. If written permission from a private property owner is terminated, the Lessee shall notify the Lessor and provide a plan to obtain access or move the mooring buoy to a new location, where access can be obtained, subject to approval by Lessor and in compliance with the Tomales Bay Mooring Program Requirements.
5. Lessee shall not move or relocate the mooring buoy authorized under this Lease without prior written authorization of the Lessor.

*[Remainder of page left blank intentionally.]*

EXHIBIT G  
Agreement and Consent to Encumbrance of Lease Template

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 \_\_\_\_\_

**AGREEMENT AND CONSENT TO ENCUMBRANCE OF LEASE**

The Parties to this Agreement and Consent to Encumbrance of Lease  
\_\_\_\_\_ (the Agreement) 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 unless otherwise indicated;

**RECITALS:**

The State of California acting by and through the State Lands Commission as LESSOR did on \_\_\_\_\_, 20\_\_, lease to \_\_\_\_\_

under Lease \_\_\_\_\_ (hereafter the Lease) certain lands within the [bed of] \_\_\_\_\_, \_\_\_\_\_ County for a \_\_\_\_\_. 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 of \_\_\_\_\_ pursuant to the terms and conditions of Loan Agreements, dated \_\_\_\_\_, between LESSEE and SECURED PARTY-LENDER 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.

The indebtedness and financing are necessary 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 instrument. 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 \_\_\_\_\_ 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; and

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.

B. The parties do further agree as follows:

1. **Estoppel Certificate.**

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

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. **Lease Termination.**

a. Except as stated below in Section B.4, 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.4.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.3 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.4.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 SECURED PARTY-LENDER.

4. **Lease or Security Interest Transfer.**

a. **Lease Transfer.**

(1) Any transfer 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. 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. SECURED PARTY-LENDER shall in turn give to LESSOR notice within five (5) business days 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 effected 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 Following Termination of Lease in Bankruptcy.**  
Except as stated below in Section B.4.c, in the event of the

termination of the Lease as a result of LESSEE's rejection of the Lease in bankruptcy, LESSOR shall provide written notice to SECURED PARTY-LENDER of such termination ("Notice of Rejection of Lease in Bankruptcy") 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 Notice of Rejection of Lease in Bankruptcy;
- (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.5.b if it becomes the lessee under the New Lease, shall be the same as provided in this Agreement had it 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.

5. **Lessee and Secured Party-Lender Liability.**

a. Subject to the terms of Section B.5.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.

6. **Lessor Approval.**

a. Except as otherwise expressly provided for in section B.4.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.

7. **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:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECURED PARTY-LENDER:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 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.

8. **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, 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 45 days of service of notice of default on SECURED PARTY-LENDER unless LESSOR elects to treat a default of this Agreement as a default of the Lease. Failure of SECURED PARTY-LENDER to cure any default within the 45-day period shall immediately terminate this Agreement without further action of any of the Parties.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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 \_\_\_\_\_.

18. **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.

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

LESSEE:

\_\_\_\_\_

-

\_\_\_\_\_

-

By \_\_\_\_\_

-

Dated \_\_\_\_\_

-

SECURED PARTY-LENDER:

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

-

Title \_\_\_\_\_

Dated

\_\_\_\_\_

LESSOR:

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By\_\_\_\_\_

Title\_\_\_\_\_

Dated\_\_\_\_\_

**ALL SIGNATURES MUST BE NOTARIZED**