

**RECORDED AT THE REQUEST OF**

State of California  
State Lands Commission  
Document entitled to free  
recording pursuant to  
Government Code Section 27383.

**WHEN RECORDED MAIL TO**

State Lands Commission  
1807 - 13th Street  
Sacramento, California 95814  
Attention: Title Unit

P 2856

**LEASE NO. 2856**

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

|           |                                                                |
|-----------|----------------------------------------------------------------|
| Section 1 | Basic Provisions                                               |
| Section 2 | Special Provisions Amending or Supplementing<br>Section 1 or 4 |
| Section 3 | Description of Lease Premises                                  |
| Section 4 | General Provisions                                             |

**SECTION 1**

**BASIC PROVISIONS**

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **STATE LANDS COMMISSION** (1807 13th Street, Sacramento, California 95814), 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:

Larry A. Neuner and Nova N. Neuner  
dba: Windmill Cove Marina & RV Park

hereinafter referred to as Lessee:

**WHOSE MAILING ADDRESS IS:** 7600 Windmill Cove Road  
Stockton, . CA 95206

those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

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

**LAND TYPE:** Tide and Submerged

**LOCATION:** San Joaquin River at Vulcan Island, San Joaquin County

**LAND USE OR PURPOSE:** Operate and maintain an existing Marina, Recreational Vehicle Park and Access Roads.

**TERM:** Twenty-five (25) years; beginning January 1, 1993 and ending December 31, 2017, unless sooner terminated as provided under this Lease.

**CONSIDERATION:** \$ ; As set forth in Section 2 hereof and Subject to modification by Lessor as specified in Section 4 - General Provisions.

**AUTHORIZED IMPROVEMENTS:** Twenty-six (26) covered berths, a floating dock with space for five berths, walkways, pilings, fifty-five recreational vehicle spaces with hook ups, two buildings for sanitary and laundry facilities, two mobile home sites, a maintenance building, two bulkheads along the deep water channel and access roads.

\_\_\_ **EXISTING:** As stated above.

\_\_\_ **TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY:**

**AND BE COMPLETED BY:**

**LIABILITY INSURANCE:** One million dollars combined single limit comprehensive general liability.

**SURETY BOND OR OTHER SECURITY:** Twenty thousand dollars.

-----

**SECTION 2  
SPECIAL PROVISIONS**

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

**I. ANNUAL RENTAL:**

**B. Percentage of Gross**

(1) Five Percent (5%) of the Gross Income derived from rental of boat Berthing and Mooring spaces.

(2) Five Percent (5%) of the Gross Income derived from rental of the Recreational Vehicle spaces.

- (3) Ten Percent (10%) of the Gross Income from all other sources, such as coin operated machines, in the lease area.

A. Minimum Annual Rental:

- (1) Lessee shall pay a minimum annual rental of \$3000.00 in advance on the beginning date of this Lease and on the lease anniversary date every year thereafter, and subject to modification pursuant to Section 4, Paragraph 2(b) of this lease.

Lessee agrees to pay the minimum annual rental stated in this Lease to Lessor without deduction, delay or offset, at such place as may be designated by Lessor from time to time, in accordance with the schedule as set forth in this lease. Any rental due which is in excess of the minimum annual rental stated in this Lease, shall be due and payable on the same day that the annual report is due, and payment shall accompany such report.

- (2) It is specifically agreed that in the event of the termination of this Lease prior to its expiration date from any cause whatsoever, no portion of the minimum annual rental paid in advance shall be refundable.

(3) DEFINITIONS:

(a) GROSS INCOME:

"Gross Income", for the purpose of computing annual rental due to the State Lands Commission, shall include, but not limited to:

- (i) The sales price of any type of food and/or beverages sold by Lessee, Lessee's subtenants or others whether for cash or credit.
- (ii) The sales price of all other goods, wares, merchandise or products sold by Lessee, or others whether for cash or credit.
- (iii) Commission received or earned from non-lessee owned coin-operated vending machines or other devices, and all sums deposited in Lessee owned coin-operated vending machines or other devices.
- (iv) Amounts collected by the Lessee or others for the berthing, docking, mooring or launching of boats.

(v) Amounts collected by the Lessee or others for the rental of any type of equipment or product, whether for cash or for credit.

(vi) Any other income, whether for cash or credit generated directly from, or on, the leased area by the Lessee's or any other person's operations.

**(4) ALLOWABLE REDUCTIONS TO GROSS INCOME:**

Gross income shall not include any sales or excise taxes payable by the Lessee to Federal, State, County or municipal governments as a direct result of operations under this Lease, provided that these taxes are clearly segregated and identified in the Lessee's books and records.

**(5) ALLOWABLE REDUCTIONS TO GROSS SALES:**

Gross sales may be reduced by returns and allowances on the theory that these "sales" were never made, and should not have been included as part of the gross sales, but gross income shall not be reduced by any other amount.

**(6) CASH:**

"Cash" includes currency, coin, checks, and money orders.

**(7) CREDIT:**

"Credit" includes credit card transactions, and those transactions made on open account or for any oral or written promise to pay.

**(8) REPORTS:**

The Lessee shall submit, on forms approved by the State Lands Commission, an annual report detailing their gross income from boat docks and moorings, and any other income generated from, or on, the Leased Premises. This report shall be accompanied by a Balance Sheet of the Lessee as of the last day covered by the annual report, and an Income Statement covering the results of Lessee's operations for the year ended on the last day covered by the annual report. These reports shall be due on March first of each year following the end of the year covered by the annual report, unless the Lessee has received, in writing, permission from the State Lands Commission for later submission.

**(9) BOOKS AND RECORDS:**

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

**(10) EXAMINATION OF BOOKS AND RECORDS:**

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

**II. MARINA SUBLETTING:**

Lessor hereby consents to Lessee's subletting of all or any portion of the Lease Premises for berthing or mooring purposes in conjunction with normal commercial marina subleasing practices for terms of one (1) year or less.

**III. REFUSE CONTAINERS:**

Lessee shall provide containers on or immediately adjacent to the leased premises to receive trash and refuse generated aboard vessels using Lessee's docking or launching facilities. Refuse containers shall be located so as to be conveniently used by occupants of vessels using Lessee's facilities and shall be of sufficient size and number to contain the refuse generated aboard all vessels using Lessee's facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. The contents of the containers shall be disposed of by Lessee or others acting pursuant to Lessee's direction at authorized land fills or other garbage reception areas as provided under law applicable at the time of collection.

IV. **PLASTICS:**

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

policies or regulations differ from the foregoing provisions and definitions, the parties hereby agree that the lease will be amended to incorporate the policies adopted by the State Lands Commission.

V. PUBLIC ACCESS:

Access shall be provided to and through the leased area for the general public, including non-paying visitors. This access shall be from both the river and across the Lessee's upland. The purpose of this requirement is to assure public access from the first public road to the river and from the river to the first public road. The Lessee shall take no action to discourage reasonable use by the general public of this access. Special exceptions to public access may be made for security of private berthing areas and a time limit may be imposed for the use of non-customer boat tie-ups at transient docks.

VI. ENVIRONMENTAL POLLUTION STANDARD LEASE CLAUSE:

Section 4 General Provisions, Subsection 4 (e) Conservation is replaced by the following:

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

Section 4 General Provisions, Subsection 11 (a) (7) Defaults is replaced by the following:

Lessee's failure to comply with applicable provisions of federal, State, or local laws or ordinances relating to issues of health and safety, or whose purpose is to conserve resources or to protect the environment.

VII. The provisions of Section 4 General Provisions, Subsection 12 (a) Restoration of Lease Premises is modified by the following:

~~Lessor agrees that the existing and authorized~~  
improvements which are not affixed to the land are the personal property of lessee subject to all the terms of this lease.

STATE OF CALIFORNIA - STATE LANDS COMMISSION

2856

LEASE NO. \_\_\_\_\_

Section 3

LAND DESCRIPTION

Two parcels of land adjacent to Vulcan Island, San Joaquin County, State of California, and described as follows:

PARCEL 1

BEGINNING at a point on the southerly line of Vulcan Island, as said island was described by deed dated June 4, 1956, from the State of California, to George A. Speckman, which point of beginning bears S 65° 22' 49" W, 2,456.73 feet from USED Monument No. 150 D.W.; thence along said boundary line of Vulcan Island as follows:

N 70° 04' W, 200.00 feet; N 23° 47' W, 140.00 feet;  
N 43° 04' E, 314.00 feet; to the most southerly corner of the 0.37 acre parcel of land conveyed by Deed dated November 16, 1962 from George Speckman and Anna G. Speckman to the State of California; thence along the easterly side of said parcel, N 52° 43' 20" E, 170.10 feet; N 44° 59' E, 284.83 feet; N 25° 17' E, 99.29 feet to a point on the southerly boundary of the Stockton Deep Water Channel; thence along said southerly boundary N 64° 56' W, 141.13 feet to the easterly boundary line of the 0.37 acre parcel of land conveyed by patent dated December 13, 1962 from the State of California to George Speckman; thence along said easterly line S 18° 44' W, 105.74 feet; and S 56° 40' 30" W, 275.66 feet to a point on the boundary line of Chicken Ranch Island as conveyed by Deed dated November 11, 1957 from the State of California to George Speckman; thence along said boundary of Chicken Ranch Island S 84° 18' W, 101.50 feet; thence leaving said boundary of Chicken Ranch Island and proceeding along the ordinary high water mark of the left bank of the abandoned channel of the San Joaquin River S 17° 58' W, 86.94 feet to a point on the dredger cut adjoining Roberts Island; thence S 32° 22' W, 204.61 feet; S 25° 36' W, 211.65 feet; S 4° 34' E, 133.44 feet; S 23° 20' E, 103.54 feet; S 31° 16' E, 213.11 feet; and S 70° 08' E, 147.72 feet; thence leaving said ordinary high water mark and proceeding N 13° 46' 05" E, 297.29 feet to the point of beginning.

## PARCEL 2

BEGINNING at a point on the southerly line of Vulcan Island, as said island was conveyed by deed dated June 4, 1956, from the State of California, to George A. Speckman, which point of beginning bears S 65° 22' 49" W, 2,456.73 feet from USED Monument No. 150 D.W.; thence along said boundary line of Vulcan Island as follows:

S 70° 04' E, 129 feet; N 82° 42' E, 760 feet; S 89° 11' E, 411 feet; N 77° 18' E, 260 feet; N 67° 08' E, 93 feet; N 75° 20' E, 118.81 feet to the Stockton deep water channel; thence leaving said island along said channel S 64° 56' E, 385 feet; thence leaving said channel S 76° 59' W, 236 feet; S 71° 38' W, 450 feet; S 79° 03' W, 408 feet; S 87° 29' W, 440 feet; S 87° 51' W, 435 feet; N 86° 54' W, 228.32 feet; N 13° 46' 05" E, 297.29 feet to the point of beginning.

## END OF DESCRIPTION

Prepared

Frank V. Cany

Checked

W. K. Kannecke

Reviewed

John B. King  
203

Date

6-6-77

## SECTION 4

### GENERAL PROVISIONS

#### 1. GENERAL

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

#### 2. CONSIDERATION

##### (a) Categories

###### (1) Rental

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

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

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

##### (b) Modification

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

##### (c) Penalty and Interest

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

#### 3. BOUNDARIES

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

#### 4. LAND USE

##### (a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

##### (b) Continuous Use

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

##### (c) Repairs and Maintenance

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

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

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

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

##### (e) Conservation

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

##### (f) Toxics

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

##### (g) Enjoyment

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

##### (h) Discrimination

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

##### (i) Residential Use

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

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

##### (a) Reservations

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

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

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

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

**(b) Encumbrances**

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

**6. RULES, REGULATIONS AND TAXES**

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

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

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

**7. INDEMNITY**

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

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

**8. INSURANCE**

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

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

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

**9. SURETY BOND**

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

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

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

**10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING**

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

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

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

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

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

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

(1) Give prior written notice to Lessor;

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

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

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

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

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

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

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

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated used, placed disposed, stored or transported on the Lease Premises.

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

## 11. DEFAULT AND REMEDIES

### (a) Default

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

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or
- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.
- (8) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

### (b) Remedies

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

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

**12. RESTORATION OF LEASE PREMISES**

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

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

(c) All plans for and subsequent removal and restoration shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

**13. QUITCLAIM**

Lessee shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

**14. HOLDING-OVER**

Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty five percent (25%).

**15. ADDITIONAL PROVISIONS**

**(a) Waiver**

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

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

**(b) Time**

Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

**(c) Notice**

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

**(d) Consent**

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

**(e) Changes**

This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

**(f) Successors**

The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

**(g) Joint and Several Obligation**

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

**(h) Captions**

The captions of this Lease are not controlling and shall have no effect upon its construction or interpretation.

**(i) Severability**

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

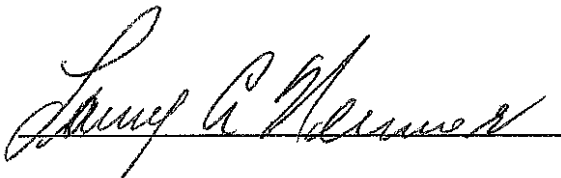
## STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. 2856

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

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

LESSEE

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By: 

Title:

Chief, Division of  
Land Management


Date:

JUN 21 1994

ACKNOWLEDGEMENT

This Lease was authorized by the  
California State Lands Commission on  
MAR - 8 1994  
(Month Day Year)

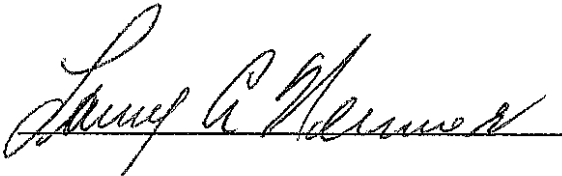
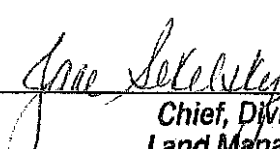
## STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. 2856

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

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

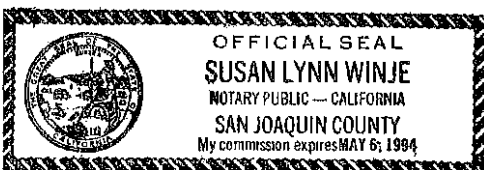
LESSEE

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By: 

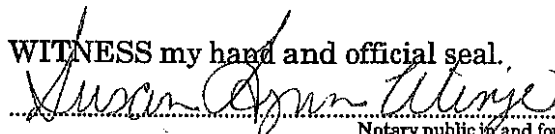
Title:

Chief, Division of  
Land ManagementSTATE OF CALIFORNIA  
COUNTY OF San Joaquin

On August 24, 1993 before me, Susan Lynn Winje,  
personally appeared Larry A. Neuner and Nova N. Neuner personally  
known to me (or proved on the basis of satisfactory evidence) to be the per-  
son(s) whose name(s) is/are subscribed in the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s)  
acted, executed the instrument.



WITNESS my hand and official seal.



Notary public in and for said State.