

**CALENDAR ITEM
C16**

A 9

09/20/13

PRC 6427.1

S 6

V. Caldwell

**TERMINATION AND ISSUANCE OF A GENERAL LEASE – COMMERCIAL USE;
TERMINATION OF THREE AND ISSUANCE OF ONE NEW AGREEMENT AND
CONSENT TO ENCUMBRANCING OF LEASE; AND APPROVAL OF SUBLEASES**

APPLICANT/SUBLESSOR:

Riverbank Holding Company, LLC
P.O. Box 340658
Sacramento, California 95834-0658

SECURED-PARTY LENDER:

The Ohio National Life Insurance Company
One Financial Way
Cincinnati, Ohio 45242

SUBLESSEES:

CLS1, LLC
dba, Crawdad's
1375 Garden Highway
Sacramento, CA 95833

Gordon Light and John Gomez
dba Sacramento Marine Sales
1371 Garden Highway, Suite 150
Sacramento, CA 95833

Eagle Painting and Drywall, Inc.
and John Miliano
1401 Garden Highway, Suite 125, 150, 200, 250
Sacramento, CA 95833

AREA, LAND TYPE, AND LOCATION:

Five acres, more or less, of sovereign land in the Sacramento River, adjacent to
1371 Garden Highway, city of Sacramento, Sacramento County.

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AUTHORIZED USE:

LEASE: Continued use and maintenance of an existing commercial marina consisting of 132 covered berths of various lengths, 25 uncovered berths of various lengths, outside side-tie docks accommodating approximately 19 boats, an inside side-tie dock accommodating approximately nine boats; a sewage pumpout dock; debris deflector; two speed signs; a restaurant and bar with an accommodation dock; two floating office buildings; and a two-line marine fuel dispenser with hose reel.

SUBLEASE: Use, maintenance, and operation of a restaurant and bar.

SUBLEASE: Office use for public trust-related services, a marine sales/boat brokerage tenant.

SUBLEASE: Office use for non-trust-related services, a construction company tenant.

LEASE TERM:

LEASE: 31 years, beginning the September 1, 2013.

SUBLEASE: Five years, beginning July 1, 2013, with five-year renewal option.

SUBLEASE: Two years, beginning February 1, 2013.

SUBLEASE: 1 ½ years, beginning February 1, 2013, with two-year renewal option.

CONSIDERATION:

Minimum annual rent in the amount of \$45,000 paid quarterly. The minimum annual rent is paid against the following percentages of gross income: six percent of gross income derived from the berthing, docking, and mooring of boats; one and one-half percent of gross receipts from the operation of the restaurant and bar; 10 percent of gross income derived from office rental space; 10 percent of all other gross income derived from retail sales; one and one-half cents per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and two cents per gallon for all fuel sales over 100,000 gallons; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

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SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$2,000,000 per occurrence.

Bond:

\$50,000

Other:

The lease contains provisions that require implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encourage implementation of the Commission's "Best Management Practices for Berth Holders and Boaters", including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining the Lease Premises and has the right to use the Lease Premises adjoining the adjacent uplands.
2. On October 1, 2002, the Commission authorized a 25-year General Lease – Commercial Use to Riverbank Holding Company, LLC (Riverbank) and an Agreement and Consent to Encumbrancing of Lease in favor of The Ohio National Life Insurance Company (Ohio National) in an amount not to exceed \$5,000,000.
3. On August 17, 2004 and again March 30, 2007, the Commission authorized additional encumbrancing agreements in favor of Ohio National in amounts not to exceed \$1,150,000 and \$1,900,000 respectively. On April 6, 2010, the Commission authorized an amendment of the lease for the construction, use, and operation of a new marine fuel dispenser located on the marina dock.
4. Riverbank Holding Company, LLC is in the process of obtaining refinancing in favor of Ohio National, the Secured-Party Lender, in a loan amount not to exceed \$5,850,000. Under the terms of the new loan, the Secured-Party Lender is requiring Riverbank to pledge their interest in a new lease as additional security. The new loan will consolidate the previous loan balances and effectively lower the overall loan obligation.
5. The existing lease will expire on August 31, 2027. However, Riverbank is now requesting termination of the lease and the three prior encumbrancing agreements and requests a new longer-term lease and a new Agreement and Consent to Encumbrancing of Lease to accommodate the new loan term requirements. In addition, Riverbank requests authorization of three new subleases. In approving the

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encumbrancing agreement, the Commission retains the right to approve any transfer from the lending institution to a prospective lessee, should any foreclosure of the loan occur.

6. Prior to the submission for approval of a new non-public trust related sublease, Riverbank is required to conduct a market survey demonstrating a demand for public trust related office space. The market survey consisted of mailing flyers to more than 100 small marine related businesses, as well as advertising on various websites. No responses were received.

Staff has concluded that Riverbank has demonstrated that, at this time, demand is limited for public trust related tenants. Riverbank is now requesting authorization of two public trust related subleases which includes CLS1, LLC, dba Crawdad's, a restaurant and bar, and Gordon Light and John Gomez, dba Sacramento Marine Sales; and one non-public trust related sublease to Eagle Painting and Drywall, Inc. and John Miliano. Staff has reviewed the sublease agreements and has concluded that they are consistent with the lease. Furthermore, staff has concluded that issuance of the non-public trust sublease will not interfere with the public's trust needs in the area.

7. Riverbank Marina is a large marina covering more than five acres. The marina is vulnerable to theft and property destruction and has experienced vandalism, accidents, fires, and other on-the-water problems, requiring immediate action for the overall safety and security of the facility and the public. These factors support a limited and controlled presence of one or more navigable vessels to be occupied on a 24-hour basis for security purposes. Taking into account the size and design of the marina, staff is recommending that no more than two navigable vessels be used for security purposes. These vessels will be located in strategically designated slips subject to the approval of Commission staff. The security vessels will be required to leave the marina waters at least once every 90 days for a minimum of six hours and the Applicants are required to maintain an annual log to be made available to Commission staff upon request.
8. **Termination of Lease and Termination of Three Existing Agreements and Consent to Encumbrancing of Lease:** The staff recommends that the Commission find that the subject termination of lease and termination of three agreements and consent to encumbrancing of lease do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not

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projects in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

9. **Issuance of New Lease:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

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

10. **Approval of Subleases and Issuance of an Agreement and Consent to Encumbrancing of Lease:** The staff recommends that the Commission find that the subject approval of subleases and issuance of agreement and consent to encumbrancing of the lease do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

11. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370, et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Site and Location Map
- B. Land Description

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Termination of Lease and Termination of Three Existing Agreements and Consent to Encumbrancing of Lease: Find that the subject termination of lease and termination of three agreements and consent to encumbrancing of lease are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not projects as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of New Lease:

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

Approval of Subleases and Issuance of an Agreement and Consent to Encumbrancing of Lease: Find that the subject approval of subleases and issuance of an agreement and consent to encumbrancing of the lease are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not projects as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

1. Authorize termination of Lease No. PRC 6427.1, a General Lease – Commercial Use, effective August 31, 2013, issued to Riverbank Holding Company, LLC.
2. Authorize issuance of a General Lease – Commercial Use to Riverbank Holding Company, LLC, beginning September 1, 2013, for a term of 31 years, for the continued use and maintenance of an existing commercial marina facility known as Riverbank Marina consisting of 132 covered berths of various lengths, 25 uncovered berths of various lengths, outside

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side-tie docks accommodating approximately 19 boats, an inside side-tie dock accommodating approximately nine boats; a sewage pumpout dock; debris deflector; two speed signs; a restaurant and bar with an accommodation dock; two floating office buildings; and a two-line marine fuel dispenser with hose reel as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; minimum annual rent in the amount of \$45,000 per year, against six percent of the gross annual income derived from the commercial activities from the berthing, docking, and mooring of boats; one and one-half percent of gross income from the restaurant and bar operations; 10 percent of gross income derived from office rental space; 10 percent of all other gross income derived from retail sales; and \$.015 per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and \$0.02 per gallon thereafter; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; liability insurance in the amount of no less than \$2,000,000 per occurrence; and surety bond in the amount of \$50,000.

3. Authorize by endorsement a sublease between Riverbank Holding Company, LLC, and CLS1, LLC, dba Crawdad's of a portion of Lease No. PRC 6427.1, effective July 1, 2013, and ending July 1, 2018 with one five-year renewal option.
4. Authorize by endorsement a sublease between Riverbank Holding Company, LLC, and Gordon Light and John Gomez, dba Sacramento Marine Sales of a portion of Lease No. PRC 6427.1, effective February 1, 2013 and ending January 31, 2015.
5. Authorize by endorsement a sublease between Riverbank Holding Company, LLC, and Eagle Painting and Drywall, Inc. and John Miliano of a portion of Lease No. PRC 6427.1, effective February 1, 2013 and ending August 31, 2014 with one two-year renewal option.
6. Authorize termination of three existing Agreements and Consent to Encumbrancing of Lease, effective at the close of escrow, but no later than December 31, 2013.
7. Authorize consent to encumbrancing of Lease No. PRC 6427.1 and the execution of the document entitled "Agreement and Consent to Encumbrancing of Lease", effective at the close of escrow, but no later than December 31, 2013.

RIVERBANK LEASE

A PARCEL OF TIDE AND SUBMERGED LAND LYING IN THE SACRAMENTO RIVER, ADJACENT TO SWAMP AND OVERFLOWED LAND SURVEYS NO. 184 AND 907, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:


BEGINNING AT THE NORTHEASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED AS PARCEL B OF THAT CERTAIN CERTIFICATE OF COMPLIANCE, RECORDED APRIL 2, 1985 IN BOOK 85-04-02, PAGE 1162, OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE EAST LINE OF SAID PARCEL AND ITS PROLONGATION SOUTH 00° 23' 30" WEST 327.42 FEET; THENCE LEAVING THE PROLONGATION OF SAID LINE SOUTH 23° 01' 00" WEST 92.38 FEET; THENCE NORTH 66° 59' 00" WEST 291.84 FEET; THENCE NORTH 70° 04' 56" WEST 638.52 FEET; THENCE NORTH 76° 10' 55" WEST 634.86 FEET TO A POINT FROM WHICH THE NORTHWEST CORNER OF LOT A OF THAT CERTAIN MAP RECORDED IN BOOK 226 OF MAPS, MAP NO. 1, IN THE OFFICE OF THE RECORDER OF SAID COUNTY BEARS THE FOLLOWING TWO COURSES: NORTH 13° 49' 05" EAST 223.76 FEET; (2) NORTH 78° 54' 49" WEST 323.95 FEET; THENCE FROM SAID POINT, NORTH 15° 49' 05" EAST 223.76 FEET TO THE NORTHERLY LINE OF SAID LOT A, ALSO BEING THE SOUTHERLY RIGHT OF WAY OF GARDEN HIGHWAY; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY SOUTH 78° 54' 49" EAST 1498.29 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING LANDWARD OF THE ORDINARY HIGH WATER MARK OF THE SACRAMENTO RIVER.

ALSO EXCEPTING THEREFROM ANY PORTION OF LOT A OF THAT CERTAIN MAP RECORDED IN BOOK 226 OF MAPS, MAP NO. 1, IN THE OFFICE OF THE RECORDER OF SAID COUNTY AND PARCEL B OF THAT CERTAIN CERTIFICATE OF COMPLIANCE, RECORDED APRIL 2, 1985 IN BOOK 85-04-02, PAGE 1162 OF OFFICIAL RECORDS OF SAID COUNTY.

END OF DESCRIPTION

PREPARED FROM RECORD DATA BY JTS ENGINEERING CONSULTANTS, INC.

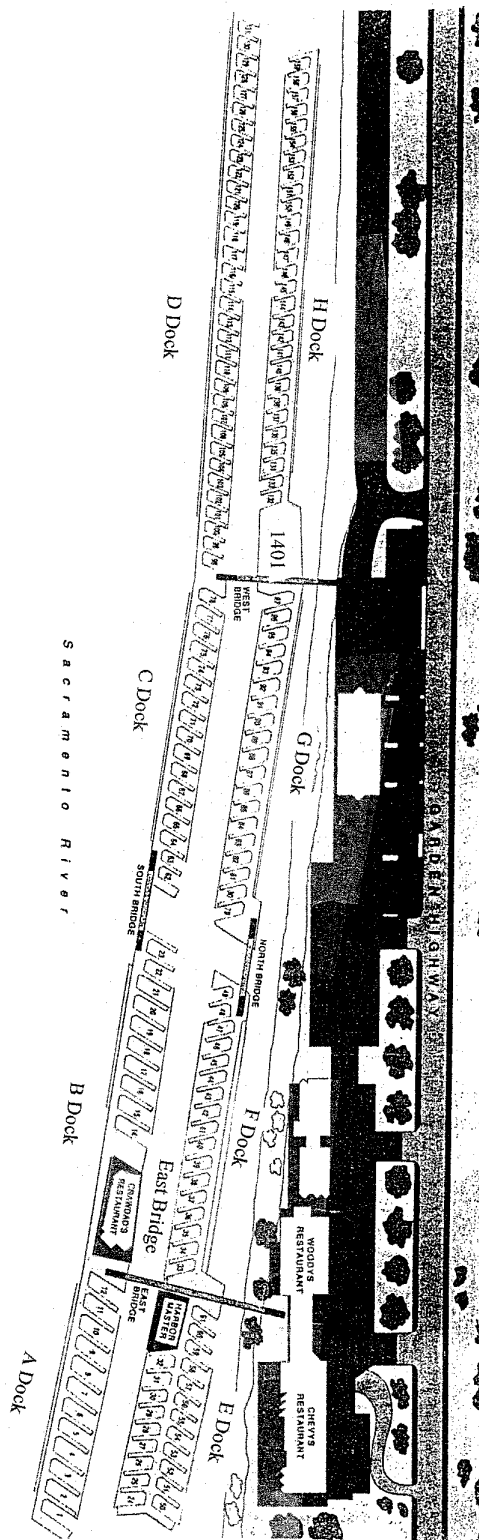

L.A. KNEEDLER, L.S. 4380
License Expires 9-30-2001

11-17-97
Date



This exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by Lessee or other parties, and is not intended to be, nor shall it be construed as, a waiver or limitation of any state interest in the subject or other property.

Exhibit A
PRC 6427.1



SLIP #	SIZE	SLIP #	SIZE	SLIP #	SIZE	SLIP #	SIZE
1.....	U40'	24-47.....	C30'	78-79.....	U30'	117-130.....	C24'
2-11.....	C40'	48-49.....	U24'	80-96.....	C30'	132-133.....	U24'
12.....	U40'	50-58.....	C30'	97.....	U30'	134-144.....	C24'
14.....	U40'	59-61.....	U30'	98-100.....	U24'	145-146.....	U24'
15-21.....	C40'	62-63.....	U24'	101-114.....	C24'	147-158.....	C24'
22-23.....	U33'	64-77.....	C30'	115-116.....	U24'	159.....	U24'

C = Covered U = Uncovered



**RIVERBANK
MARINA**
1371 Garden Highway, Sacramento, CA 95833
(916) 922-0720

This exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by Lessee or other parties, and is not intended to be, nor shall it be construed as, a waiver or limitation of any state interest in the subject or other property.

Exhibit B
PRC 6427.1