

**STAFF REPORT
C41**

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08/23/18
PRC 6127.1
A. Franzoia

**CONSIDER TERMINATION OF AN AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE; AND AUTHORIZATION OF ASSIGNMENT,
AMENDMENT, AND AN AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE**

LESSEE/ASSIGNOR:

Burlingame Bay LLC
228 Hamilton Avenue, Third Floor
Palo Alto, CA 94031

ASSIGNEE:

EW-PG Airport Owner, LLC
1099 18th Street, Suite 2900
Denver, CO 80202

SECURED PARTY-LENDER:

CLNC Credit 1, LLC
Colony North Star, Inc.
515 South Flower Street, 44th Floor
Los Angeles, CA 90071

AREA, LAND TYPE, AND LOCATION:

1.978 acres, more or less, of filled and partially filled tidelands in San Francisco Bay adjacent to the Sanchez Channel and Burlingame Lagoon, Burlingame, San Mateo County.

AUTHORIZED USE:

Landscaping, public access, parking facilities, bicycle paths, and other improvements authorized by local and regional authorities.

LEASE TERM:

24 years, beginning July 1, 2006.

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CONSIDERATION:

\$44,148 per year, with an annual California Consumer Price Index (CCPI) adjustment as provided for in the lease.

PROPOSED AMENDMENT:

Lease Section 1, Basic Provisions is amended to add:

Insurance:

Liability insurance in an amount no less than \$5,000,000 per occurrence.

Surety Bond:

Bond in the amount of \$250,000.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

The lease area was conveyed to the State as part of Sovereign Land Exchange Agreement SLL 80 in 1982 and is comprised of a strip of land adjoining the southern and eastern sides of commercial land privately owned in fee by the Lessee. This adjacent commercial land passed into private ownership as part of Boundary Line Agreement 131 in the early 1970s. Both the land held by Lessee and the lease area are located in former tidal and marsh lands in San Francisco Bay that were subsequently filled.

On November 21, 2006, the Commission authorized a 24-year General Lease – Commercial Use for landscaping, public access, parking facilities, bicycle paths, and other improvements authorized by local and regional authorities (e.g., viewing areas, benches, and trash containers) to support Public Trust needs including access to and enjoyment of the shoreline. The lessee maintains the portion of Bay Trail within the lease area pursuant to the lease and San Francisco Bay Conservation and Development Commission requirements.

On August 9, 2016, the Commission authorized termination of an Agreement and Consent to Encumbrancing of Lease that had been issued to a prior lessee and authorized a new Agreement and Consent to Encumbrancing of Lease by and between the Lessee and Cathay Bank ([Item 15, August 9, 2016](#)).

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On May 23, 2018, Lessee/Assignor entered into a Purchase and Sale Agreement with EW-PG Airport Owner, LLC, a Delaware limited liability company (Assignee). On June 27, 2018, transfer of the adjacent private property was finalized. The Lessee/Assignor is applying for an assignment of Lease No. PRC 6127.1 to Assignee and termination of the existing Agreement and Consent to Encumbrancing the Lease.

The Assignee is applying for an Agreement and Consent to Encumbrancing of Lease in favor of CLNC Credit 1, LLC, a Delaware limited liability company (Secured Party-Lender or Lender/Beneficiary), for a loan amount not to exceed \$81.5 million. The purpose of the loan is for the Lessee's acquisition of the leasehold and the larger privately-held property adjoining the lease area.

The lease is being amended to include liability insurance in the amount of no less than \$5,000,000 per occurrence and a performance surety in the amount of \$250,000.

The encumbrancing of the lease is a condition of the Lender/Beneficiary under the terms of a "Deed of Trust, Security Agreement, Assignment of Leases, and Fixture Filing" which provides that the Assignee absolutely and unconditionally assigns to Stewart Title Guaranty Company in trust for CLNC Credit 1, LLC all of Assignee's right, title and interest in and to all current and future Leases and Rents, including the leasehold interest created by or pursuant to the provisions of the Ground Lease, Lease No. PRC 6127.1.

The encumbrance of the lease would be implemented through a document, "Agreement and Consent to Encumbrancing of Lease," that would include protections for the State land associated with the lease. These protections include requirements that: 1) no subsequent encumbrancing of the lease shall be executed without prior written consent of the Commission; 2) any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission; 3) if the Secured Party-Lender becomes the lessee, it shall be bound by all terms and conditions of the lease; and 4) any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent.

The proposed Assignee is a newly formed Limited Liability Company (LLC), and cannot provide previous financial statements to demonstrate a solid business or financial record. Staff reviewed Assignee's organizational structure and Limited Liability Company Agreement and

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Assignee's proforma balance sheet, and cash flow analysis. Staff has also received information on key employees of the Assignee's, verifying a satisfactory level of experience in managing and maintaining commercial real estate. Staff recommends the lease assignment be predicated on the amendment of the lease to require a financial performance surety, in the amount of \$250,000, to mitigate the risk of the Assignee being a newly formed LLC with no historic performance information available. Assignee agrees to perform and be bound by the terms, conditions, covenants, and agreements contained within the lease and lease amendment.

The existing lease requires the Lessee to insure the lease premises and indemnify the state for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

For all the reasons above, staff believes that the termination of the existing Agreement and Consent to Encumbrancing and the authorization of the lease assignment, lease amendment, and proposed Agreement and Consent to Encumbrancing will not result in a change in the use of, or impacts to, Public Trust resources and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. On November 21, 2006, the Commission authorized a 24-year General Lease – Commercial Use for a portion of sovereign land that is currently used for parking for adjacent office buildings and for a portion of the San Francisco Bay Trail, including landscaping, paved walkways, bicycle paths, and viewing areas ([Item C34, November 21, 2006](#)). The lease will expire on June 30, 2030.
2. To reflect a corporate merger involving the lessee and refinancing, the Commission authorized an amendment of lease, assignment through corporate merger, and an encumbrancing of the lease as amended to CA-Bay Park Plaza Limited Partnership on February 5, 2007 ([Item C21, February 5, 2007](#)).
3. On February 20, 2015, the Commission authorized an assignment of lease from CA-Bay Park Plaza Limited Partnership to Hudson Bay Park Plaza LLC ([Item C54, February 20, 2015](#)).
4. On August 19, 2015 The Commission authorized an assignment of lease from Hudson Bay Park Plaza LLC, to Burlingame Bay LLC ([Item C45, August 19, 2015](#)).

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5. The Assignee was formed on May 11, 2018 by its Initial Shareholder, PGEW Burlingame, LLC, a subsidiary of Partner Group Bayside Holdings, LLC; and CL-Burlingame, LLC. CL-Burlingame, LLC is a wholly owned subsidiary of Great-West US RE Holdings, Inc., which is a wholly owned subsidiary of The Canada Life Assurance Company Inc., which is a wholly owned subsidiary of Canada Life Financial Corporation, which is a wholly owned subsidiary of The Great-West Assurance Company, which is a wholly owned subsidiary of Great West Lifeco Inc., a Canadian corporation. All of these entities, including Assignee, are Delaware limited liability companies.
6. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
7. Approving the lease amendment, assignment, and encumbering agreement are not projects as defined by the California Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

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

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment, lease assignment, and agreement and consent to encumber will not impact the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

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AUTHORIZATION:

1. Authorize the termination of the Agreement and Consent to Encumbrancing of Lease No. PRC 6127.1 previously authorized by the Commission on August 9, 2016, by and between Lessee/Assignor and Cathay Bank.
2. Authorize the assignment of Lease No. PRC 6127.1, a General Lease – Commercial Use, from Lessee/Assignor to Assignee, effective on June 27, 2018.
3. Authorize the amendment of Lease No. PRC 6127.1, a General Lease – Commercial Use for sovereign lands as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof, effective June 27, 2018, to amend Section 1, Basic Provisions, to include liability insurance in an amount no less than \$5,000,000 per occurrence; and performance surety in the amount of \$250,000. All other terms and conditions of the lease will remain in effect without amendment.
4. Authorize the Executive Officer or her designee to execute the document entitled Agreement and Consent to Encumbrancing of Lease, and as amended, allowing Lessee's right, title, and interest in Lease No. PRC 6127.1 to be pledged as partial security for a loan in the principal amount not to exceed \$81.5 million in favor of Secured Party-Lender, in substantially the same form as that on file in the Sacramento office of the Commission; authorize the Executive Officer or her designee to execute, acknowledge, accept, and record all related documents as may be necessary to complete the transaction.

EXHIBIT A

PRC 6127.1

LAND DESCRIPTION

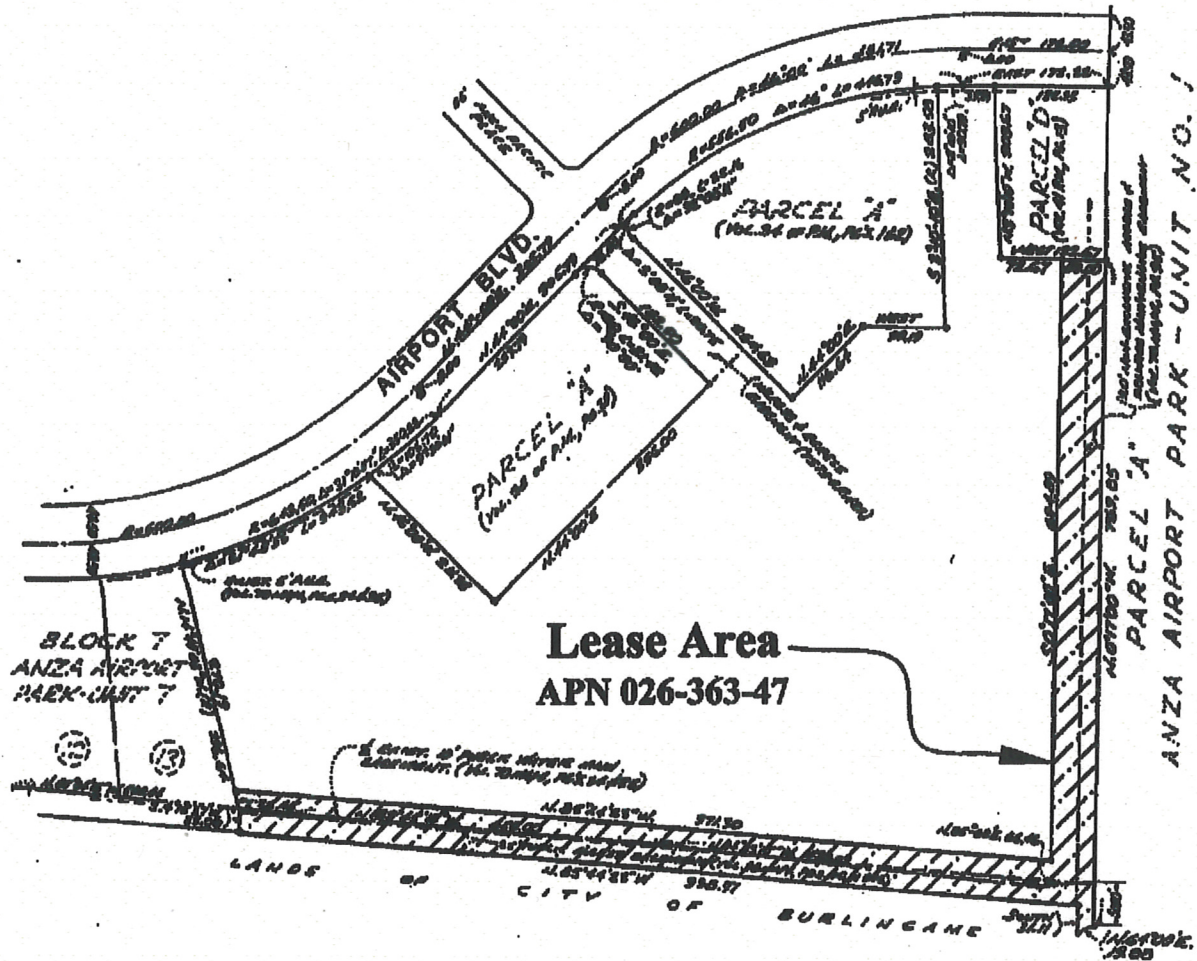
All that certain real property situate within the City of Burlingame, County of San Mateo, State of California, described as follows:

BEGINNING at the most Southerly corner of Lot 13 in Block 7, as shown on that certain map entitled "ANZA AIRPORT PARK UNIT NO. 7, CITY OF BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", filed in the office of the County Recorder of San Mateo County, State of California, on January 15, 1979 in Book 98 of Maps at pages 90, 91 and 92; thence from said described point of beginning along the Southerly line of said Block 7, South 85° 44' 23" East 998.97 feet; thence South 31.11 feet to the most Southerly corner of said Block 7; thence along the Easterly line of said Block 7 North 64° 00' East 19.88 feet; thence North 0° 17' 00" West 689.30 feet to the Northeasterly corner of said Block 7; thence along the most Easterly line of Parcel "E", as said Parcel "E" is shown on that certain Parcel map entitled "PARCEL MAP BEING A RESUBDIVISION OF LOTS 5 AND 6, BLOCK NO. 8; ANZA AIRPORT PARK - UNIT NO. 6 (R.S.M. VOL. 70, PG. 35) BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", which map was recorded in Book 41 of Parcel Maps at page 13, on February 10, 1973, in the office of the Recorder of San Mateo County, California; thence continuing along last said course along the said Easterly line of Parcel "E", North 0° 17' 00" West 80.55 feet to the Southeasterly corner of Parcel "D", as said Parcel "D" is shown on said described Parcel Map; thence along the South line of said Parcel "D", West 50.00 feet to a point; thence leaving said South line of Parcel "D", South 0° 17' 00" East 80.55 feet to a point on the Northerly line of said Block 7; thence continuing along last course, along a line within said Block 7, South 0° 17' 00" East 614.34 feet; thence North 85° 44' 23" West 971.30 feet to a point on the Easterly line of said Lot 13; thence along said Easterly line of said Lot 13 South 14° 49' 03" East 26.45 feet; thence South 4° 15' 37" West 25.00 feet to the said described point of beginning.

END OF DESCRIPTION

NO SCALE

SITE



ANZA PARK, CITY OF BURLINGAME

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 6127.1
 EW-PG AIRPORT
 OWNER, LLC.
 APN 026-363-47
 GENERAL LEASE -
 COMMERCIAL USE
 SAN MATEO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the 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 any other property.