

5/21/10 Stockbridge Comments on the Operating Lease Form

1. **Rent** – The draft provides that the State will make the monthly rental payments from “legally available funds” – it is unclear whether this means that the State is responsible for the monthly rental payments only to the extent funds have been appropriated for such purpose. We understood the lease would not contain any such appropriations contingency. Additionally, rent should be paid in advance on the first day of the month (not in arrears on the last day of the month), any late payments should be subject to a late charge and interest and there should be no decrease to the monthly rent due to CPI adjustment. The State should be entitled to a rent credit during the Transition Period only to the extent Lessor would have used the services of the employees for whom the State is getting a credit if Lessor were providing the services during the Transition Period.
2. **Rent Abatement** – The State should be entitled to rent abatement only as result of fire or other casualty (vs. repair and maintenance work, etc.)
3. **Property Tax Adjustment** – Our understanding is that the State would be exempt from property taxes. However, if that is not the case, the potential repeal of Proposition 13 needs to be addressed in the lease, and, given the length of the lease, there should be sunset provisions with respect to the State’s Proposition 13 protection.
4. **Condition of the Property; Maintenance, Repair, Replacements; Services; Hazardous Materials; LEED Recertification; Offsets** – The State should take the property as-is with Lessor having an obligation to perform maintenance, repair and replacement in accordance with the specified standards, including Exhibit B (which Exhibit is to be discussed) only going forward, and the State should indemnify Lessor for any existing hazardous materials. Any special equipment and systems, trade fixtures and personal property of the State (to be scheduled) should be maintained by the State not Lessor, and the State should reimburse Lessor for any costs and expenses incurred in maintaining, repairing or replacing the State’s signage. Lessor should be able to pass on to the State any costs incurred by Lessor in obtaining recertification under LEED to the extent such costs would not otherwise have been incurred by Lessor in the performance of its maintenance, repair and replacement obligations under the lease. The State should have a cure and offset right only after notice and opportunity for Lessor to contest with any disputes to be resolved in arbitration.
5. **Insurance** – Lessor should be able to pass on to the State any increases in the cost of maintaining the required insurance coverage. The State should have no right to terminate the lease for Lessor’s failure to maintain required insurance coverage (the State’s sole remedy should be to exercise its cure right) or to change the insurance requirements during the term of

the lease. The State should have an obligation to maintain general liability insurance and insurance coverage for any special equipment and systems, trade fixtures and personal property of the State. Lessor should be required to use insurance proceeds for restoration only to the extent not prohibited by any loan documents.

6. **Parking** – The State should have an obligation to pay a specified amount per covered parking space during the exclusive (i.e., business) hours for the use of the covered parking spaces.
7. **Tenant Alterations** – If Lessor is required to make the State’s alterations for the State, with respect to any alterations in excess of \$500,000, the State should make progress payments to Lessor. If a tenant alteration triggers a requirement to comply with a legal obligation, the State should reimburse Lessor for the cost of such compliance.
8. **Assignment/Subletting** – Assignments and subletting should be subject to Lessor’s reasonable consent (with any existing leases to be pre-approved). There should be no release of the State of its obligations under the lease upon any assignment or subletting by the State. Any subleases should be subordinate to the lease.
9. **Casualty** – The State should have no purchase option upon termination of the lease due to a casualty.
10. **Waiver of Condemnation Right** – The State should waive any right to condemn the leased premises.
11. **Mortgage Defaults** – The State should be allowed to cure any mortgage defaults only after notice and only if Lessor is not contesting such default.
12. **Lessor’s Ownership** – Lessor should be allowed to sell all or any portion of the property at any time and be released of Lessor’s obligations under the lease (to the extent the same are assumed by the transferee).
13. **Right of First Refusal** – If the State exercises its right of first refusal, the terms of the sale should be the same as those of the third party offer (e.g., Lessor has to deliver the property in a certain condition, pay the costs of escrow, etc. only to the extent those were the terms of the third party offer). The State’s right should be transferable only to a related entity or affiliate of the State.
14. Following sections should be added: (i) permitted uses, (ii) mutual waiver of subrogation (iii) mutual indemnity, (iv) defaults and remedies, (v) limitation of Lessor’s liability, (vi) attorneys’ fees for prevailing party, and (vii) arbitration.
15. In addition to the above, we will have some additional more minor and drafting comments on the lease form.