MINUTE ITEM

This Calendar Item No. C30 was approved as Minute Item No. 30 by the California State Lands Commission by a vote of 2 to 0 at its 12-08-05 meeting.

CALENDAR ITEM
C30

A 4

S 1

12/08/05
PRC 5513.1
W 26014
M. Hays

TERMINATION OF GENERAL LEASE – COMMERCIAL USE NO. PRC 5513.1 AND ISSUANCE OF A GENERAL LEASE – COMMERCIAL USE AND SUBLEASE

APPLICANT/SUBLESSOR:

East River Terrace Partners, A Minnesota General Partnership
dba Ski Run Marina
900 Ski Run Boulevard, Suite 1
South Lake Tahoe, CA 96150

SUBLESSEES:

Williams Sport Rentals, Inc.
John Shearer

LAND TYPE, AND LOCATION:

Sovereign lands in Lake Tahoe, South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Continued use, operation and maintenance of 71 mooring buoys, eight navigation buoys, one pier identified as Pier A, and two adjacent piers, identified as Pier B and C, as shown on Exhibit A.

LEASE TERM:

20 years, beginning December 8, 2005.

CONSIDERATION:

Five percent of annual gross income from the buoy field; five percent of gross income from the rental of personal watercraft, motorboats, kayaks, paddleboats, hydro bikes, canoes, a parasail operation and a fishing boat operation; ten percent of all other gross income generated on the Lease Premises; with a minimum annual rent in the amount of $4,429; and the State reserving the right to fix a different rent for all consideration periodically during the lease term, as provided in the Lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance with coverage of no less than $3,000,000.

Bond:

$20,000

BACKGROUND INFORMATION:

In 1977, the Commission authorized a General Lease – Commercial Use, PRC 5513.1, to Michael Philips, the owner of Ski Run Marina, for a term of 15 years. The lease authorized the commercial use of a pier, mooring buoys and waterfront concessions and authorized a sublease for a tour boat operation owned by Joseph Thiemann. In 1986, Mr. Philips sold the upland property and marina facilities to the El Dorado Improvement Company (EDIC). On April 1, 1986, the Commission authorized a new five-year lease to the EDIC and authorized a sublease for the tour boat operation. On March 31, 1991, the EDIC lease expired and in October 1991, EDIC filed for bankruptcy. In 1993, during the bankruptcy proceedings, Mr. Philips foreclosed on a note he carried against the upland property during the previous sale to EDIC. At the conclusion of the EDIC bankruptcy proceeding, the administrative expense claim made on behalf of the Commission for a portion of the back rent was allowed by the court and on December 15, 2004, the Commission received $12,483.11, which represents 27.91% of the back rent claimed.

Subsequently, Mr. Philips regained possession of the marina and upland property and proceeded to operate the lease in a hold over status while new lease negotiations were conducted. Between 1993 and 2003, staff had numerous meetings and correspondence with Mr. Phillips in an attempt to satisfactorily negotiate a new lease. The negotiations attempted to resolve many issues, foremost being the rent attributed to the operations of the marina in low water years and the State's share of income attributed to the sublessee's tour boat operation. During this time, Mr. Theimann passed away and in 1997, the tour boat operation, now known as Lake Tahoe Cruises, Inc., was sold to Hornblower Tahoe, Inc., which continued the negotiations. A subsequent sale of Hornblower Tahoe, Inc.'s, interest in Lake Tahoe Cruises, Inc., to Aramark Corporation occurred in July 2002. There had been countless delays and limited movement in reaching a new lease agreement during this period; however, Mr. Philips continued to pay the minimum annual rent each month.

In May 2003, Mr. Philips sold the Ski Run Marina facility and upland retail development to East River Terrace Partners and Lease PRC 5513.1 was included as a part of the sale agreement without benefit of notification to the Commission. With the change of ownership of both the tour boat operation and Ski Run Marina, staff requested a new lease application from East River Terrace Partners for the marina activities and one from Aramark Corporation, dba Lake Tahoe Cruises, Inc., for the tour boat operation. Staff is currently processing a lease application for Lake Tahoe Cruises, Inc., for the operation of three tour boats, the Tahoe Queen, Tahoe Paradise and Tahoe Princess and anticipates bringing it before the Commission early in 2006. East River Terrace Partners has continued to pay the minimum rent in hold over status. The original lease, PRC 5513.1, will terminate upon the authorization of the new lease.

OTHER PERTINENT INFORMATION:

1. The Applicant owns Ski Run Marina and associated Ski Run Village retail development on the upland property adjacent to the Lease Premises. Applicant has now made application for a new commercial lease.

2. Commission staff has reviewed the sublease agreements between the Applicant and the two concession operators doing business at Ski Run Marina. Williams Sport Rentals, Inc., owns the rental operation for the personal watercraft, motorboats, kayaks, paddleboats, hydro bikes, canoes, and parasail operation and has management of the buoy field; and John Shearer owns the sport fishing vessel operation.

3. The fixed sheetpile marina entrance, inner harbor, fueling facility, and Piers B and C (and a portion of Pier A) are located above 6,223 feet Lake Tahoe Datum and the Commission's leasing jurisdiction. Subsequently, those operations that take place within the inner harbor marina are not subject to annual rent. However, any activity that begins and is predominately conducted waterward of elevation 6,223 feet Lake Tahoe Datum will be subject to rent. The buoy field and all activities from Pier A are subject to rent. The Applicant is required to provide an Annual Report of Gross Income for all operations generated on the Lease Premises. Eight navigation buoys delineate the open channel fairway for safe navigation to and from the marina facilities.

4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of

the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

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

5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. 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.

APPROVALS OBTAINED:

Tahoe Regional Planning Agency
California Department of Fish and Game
Lahontan Regional Water Quality Control Board
City of South Lake Tahoe

EXHIBIT:

A. Site and Location Map

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

SIGNIFICANT LANDS INVENTORY FINDING:

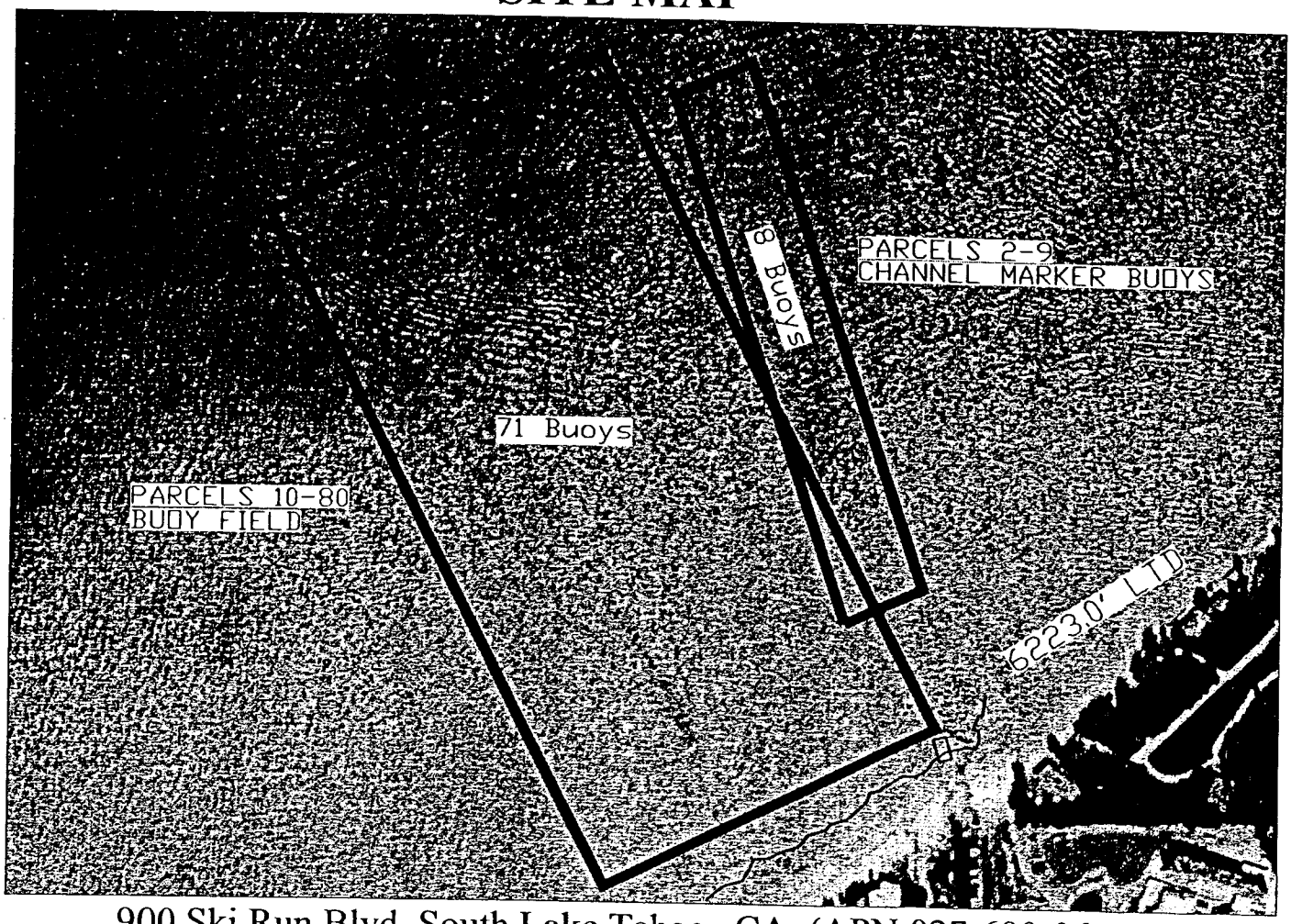
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE 1)THE TERMINATION OF LEASE NO. PRC 5513.1, A GENERAL LEASE – COMMERICAL USE; 2)ISSUANCE TO EAST RIVER TERRACE PARTNERHIP, A MINNESOTA GENERAL PARTNERSHIP, DBA SKI RUN MARINA, OF A GENERAL LEASE-COMMERCIAL USE, BEGINNING DECEMBER 8, 2005, FOR A TERM OF 20 YEARS, FOR THE CONTINUED USE, OPERATION AND MAINTENANCE OF 71 MOORING BUOYS, EIGHT NAVIGATION BUOYS, A PIER, IDENTIFIED AS PIER A, AND TWO ADJACENT PIERS, IDENTIFIED AS PIER B AND C, PREVIOUSLY AUTHORIZED BY THE COMMISSION ON THE LAND SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; WITH CONSIDERATION BEING FIVE PERCENT OF GROSS INCOME FROM 71 MOORING BUOYS; FIVE PERCENT OF GROSS INCOME FROM THE RENTAL OF PERSONAL WATERCRAFT, MOTORBOATS, KAYAKS, PADDLEBOATS, HYDROBIKES, CANOES, A PARASAIL OPERATION AND A FISHING BOAT OPERATION; TEN PERCENT FROM OTHER GROSS INCOME; WITH A MINIMUM ANNUAL RENT IN THE AMOUNT OF $4,429; WITH THE STATE RESERVING THE RIGHT TO FIX A DIFFERENT RENT FOR ALL THE CONSIDERATION PERIODICALLY DURING THE LEASE TERM, AS PROVIDED IN THE LEASE; WITH LIABILITY INSURANCE COVERAGE OF NO LESS THAN $3,000,000; A SURETY BOND OF $20,000; AND 3)APPROVAL OF TWO SUBLEASES, WHICH ARE ON FILE WITH THE COMMISSION, FROM EAST RIVER TERRACE PARTNERS, A MINNESOTA GENERAL PARTNERSHIP, DBA SKI RUN MARINA,TO WILLIAMS SPORT RENTALS, INC., AND JOHN SHEARER, OF A PORTION OF THE LEASE PREMISES, EFFECTIVE DECEMBER 8, 2005, FOR A TERM OF FIVE YEARS.

NO SCALE

SITE MAP



900 Ski Run Blvd, South Lake Tahoe, CA (APN 027-690-0610)

NO SCALE

LOCATION MAP

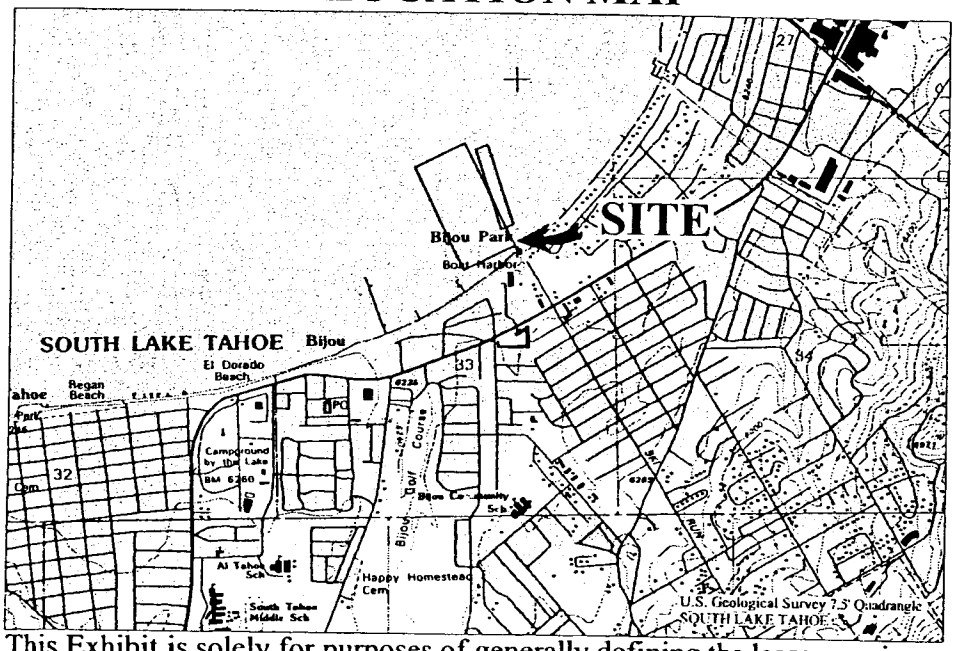
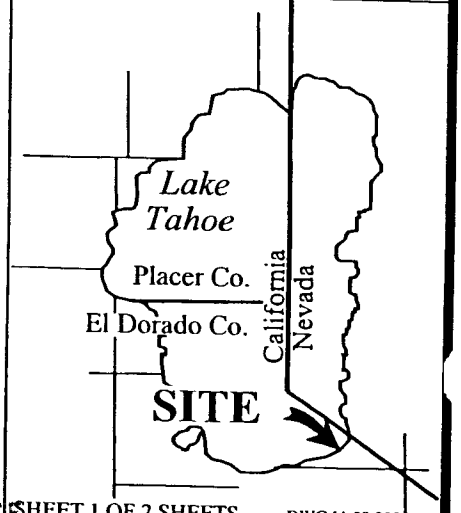


EXHIBIT A1

W 26014

East River Terrace Partners
dba Ski Run Marina

General Lease
Commercial Use
El Dorado County



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 any other property.

CALENDAR PAGE
MINUTE PAGE

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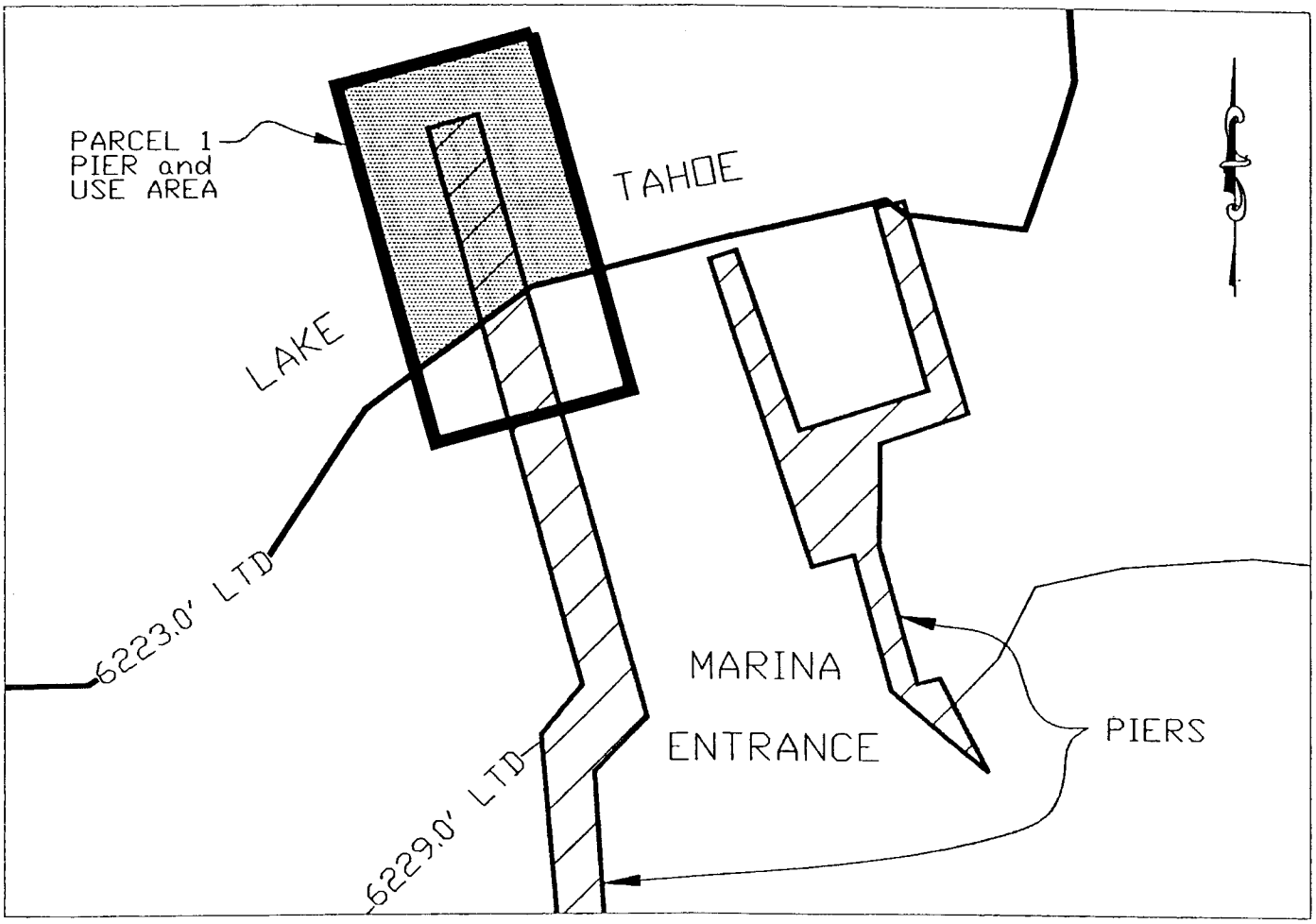
NO SCALE

SITE MAP



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NO SCALE

LOCATION MAP

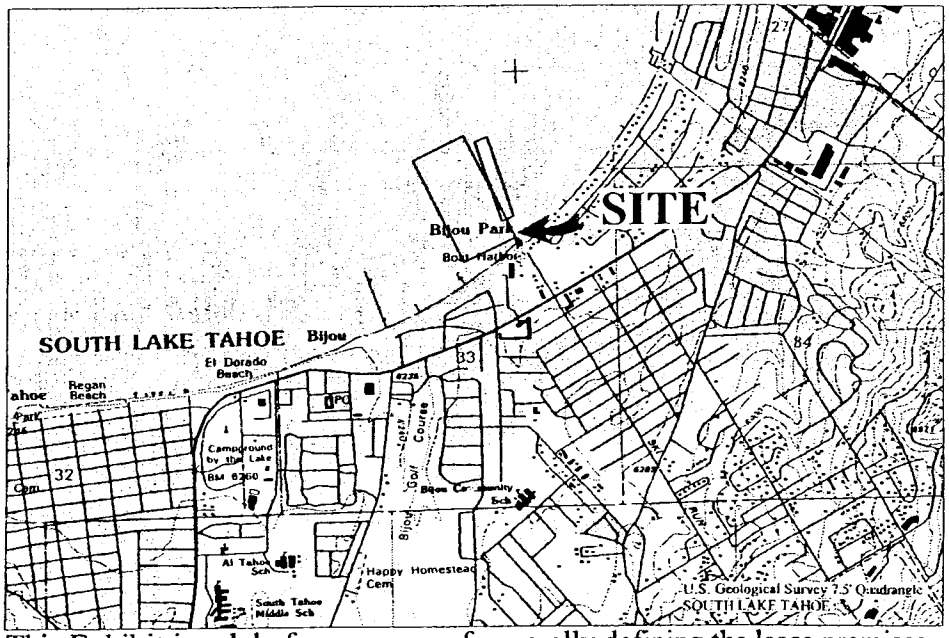

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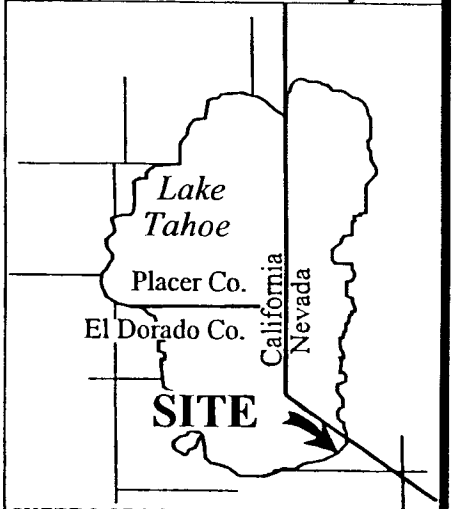
EXHIBIT A2

W 26014

East River Terrace Partners
dba Ski Run Marina

General Lease
Commercial Use
El Dorado County



SHEET 2 OF 2 SHEETS

DWC 11-28-2005