

**CALENDAR ITEM
C08**

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04/26/13
PRC 8655.1
R. Boggiano

**ASSIGNMENT OF A GENERAL LEASE – COMMERCIAL USE AND AN
AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE**

LESSEE/ASSIGNOR:

East River Terrace Partners, a Minnesota General Partnership

APPLICANT/ASSIGNEE:

Ski Run Marina, LLC, a Delaware limited liability company

SECURED PARTY-LENDER:

German American Capital Corporation
60 Wall Street, 10th Floor
New York, NY 10005

SECURED PART- LENDER AGENT:

Cassin & Cassin LLP
711 Third Avenue
New York, NY 10017

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in Lake Tahoe, adjacent to 900 Ski Run Boulevard, city of South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

Continued use, operation, and maintenance of 71 mooring buoys, eight marker buoys, three piers and associated authorized activities related to the operation of a commercial marina known as Ski Run Marina.

LEASE TERM:

20 years, beginning December 8, 2005.

CONSIDERATION:

Minimum annual rent in the amount of \$4,912 per year, against five percent of gross income derived from the rental of mooring buoys, personal watercraft, motorboats, kayaks, paddleboats, hydro bikes, canoes, a parasail operation and

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a fishing boat operation and ten percent of all other gross income generated on the Lease Premises; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

Liability insurance of no less than \$3,000,000 per occurrence

Surety:

Surety bond or other security in the amount of \$20,000

Other:

Lessee agrees to the implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and "Best Management Practices for Guest Dock Users and Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories. Applicant shall post the "BMPs for Marina Owners/Operators" and "BMPs for Guest Dock Users and Boaters" in prominent places within the lease premises. The Lessee shall provide the Commission, on the first anniversary of the lease and tri-annually thereafter, a report on compliance with all BMPs.

OTHER PERTINENT INFORMATION:

1. Applicant/Assignee owns the uplands adjoining the lease premises.
2. On December 8, 2005, the Commission authorized a General Lease – Commercial Use to East River Terrace Partners, a Minnesota General Partnership, dba Ski Run Marina. That lease will expire on December 7, 2025. On April 8, 2013, East River Terrace Partners, a Minnesota General Partnership executed a grant deed transferring the upland ownership to Ski Run Marina, LLC, a Delaware limited liability company (Applicant/Assignee). The sole member of the Ski Run Marina, LLC is East River Terrace Partners.
3. The Applicant has now applied for an assignment of the lease and an Agreement and Consent to Encumbrancing of Lease in favor of German American Capital Corporation, the Secured Party-Lender, in a loan amount not to exceed \$10,100,000 (exclusive of protective advances, default interest and late fees). The purpose of the loan is to refinance an existing mortgage and additional private indebtedness incurred for construction and redevelopment of the marina facilities on the upland, make deposits in reserve accounts required by the Lender, and to pay costs and expenses incurred in connection with the loan.

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4. In order to meet certain bank requirements, the proposed encumbrancing agreement provides for a new lease to be issued to the secured party-lender should Lease No. PRC 8655.1 be terminated through bankruptcy or other proceedings. A new lease would only be for the remaining term of Lease No. PRC 8655.1, and would be issued if the Secured Party-Lender did not decline to cure defaults. Staff considers this authorization to be in the State's best interest because it allows the Secured Party-Lender to more quickly move to cure defaults in the unlikely event of a bankruptcy, similar to the Secured Party-Lender's rights in a foreclosure situation.
5. The staff recommends that the Commission find that the subject lease assignment and agreement 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 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.

EXHIBITS:

- A. Land Description
- B1. Site and Location Map: Buoy Field and Channel Marker Buoys
- B2. Site and Location Map: Piers and Marina Entrance

RECOMMENDED ACTION:

It is recommended that the commission:

CEQA FINDING:

Find that the subject lease assignment and agreement 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.

AUTHORIZATION:

1. Authorize the Assignment of Lease No. PRC 8655.1, a General Lease – Commercial Use, of sovereign land in Lake Tahoe as shown on Exhibit A attached and by this reference made a part hereof, from East River Terrace Partners, a Minnesota General Partnership to Ski Run Marina, LLC, a Delaware limited liability company, effective April 26, 2013.

CALENDAR ITEM NO. **C08** (CONT'D)

2. Authorize execution of the document entitled "Agreement and Consent to Encumbrancing of Lease" in the amount not to exceed \$10,100,000 (exclusive of protective advances, default interest and late fees), on file in the office of the Commission, between the State Lands Commission, Ski Run Marina, LLC, a Delaware limited liability company, and German American Capital Corporation effective April 26, 2013.

3. Authorize issuance of a General Lease – Commercial Use with Secured Party-Lender or its successor on substantially the same terms as the existing lease and for a duration equal to the remaining term of the lease should the lease be terminated for any reason, including the rejection of the lease in a bankruptcy proceeding. This authorization is contingent on Secured Party-Lender's submission of a complete application, and only applies if Secured Party-Lender did not decline to cure properly noticed defaults of the Lease. The lease would authorize the continued use, operation, and maintenance of 71 mooring buoys, eight marker buoys, and three piers, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; with a term of 20 years, beginning December 8, 2005 and expiring on December 7, 2025.

EXHIBIT A

PRC 8655.1

LAND DESCRIPTION

Eighty (80) parcels of submerged land in the bed of Lake Tahoe situate adjacent to and northwesterly of that land described in the Grant Deed dated 05/06/2003, recorded 05/20/2003 as Document 2003-50219 Official Records of El Dorado County, State of California, more particularly described as follows:

Parcel 1 Pier and Use Area

A rectangular parcel of submerged land described as follows:

BEGINNING at a point having CCS83, Zone 2 coordinates of Northing (y) = 2114700.0 feet and Easting (x) = 7141908.0 feet; thence from said point of beginning the following four courses:

1. S 74°46'56" W 30.0 feet; thence
2. S 15°13'04" E 55.0 feet; thence
3. N 74°46'56" E 30.0 feet; thence
4. N 15°13'04" W 55.0 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of elevation 6223.0 LTD (Lake Tahoe Datum).

Parcels 2 -- 9 Channel Marker Buoys

Eight (8) circular parcels of submerged land, 40 feet in diameter contained within the quadrilateral parcel of submerged land described as follows:

BEGINNING at a point having CCS83, Zone 2 coordinates of Northing (y) = 2114965.0 feet and Easting (x) = 7141670.0 feet; thence from said point of beginning the following four courses:

1. N 65°35'48" E 200.0 feet; thence
2. N 18°09'25" W 1310.0 feet; thence
3. S 65°35'48" W 200.0 feet; thence
4. S 18°09'25" E 1310.0 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of elevation 6223.0 LTD (Lake Tahoe Datum).

Parcels 10 – 80 Buoy Field

Seventy one (71) circular parcels of submerged land, 40 feet in diameter contained within the rectangular parcel of submerged land described as follows:

BEGINNING at a point having CCS83, Zone 2 coordinates of Northing (y) = 2115920.0 feet and Easting (x) = 7140310.0 feet; thence from said point of beginning the following four courses:

1. N 63°27'22" E 870.0 feet; thence
2. S 26°32'38" E 1,780.0 feet; thence
3. S 63°27'22" W 870.0 feet; thence
4. N 26°32'38" W 1,780.0 feet to the point of beginning.

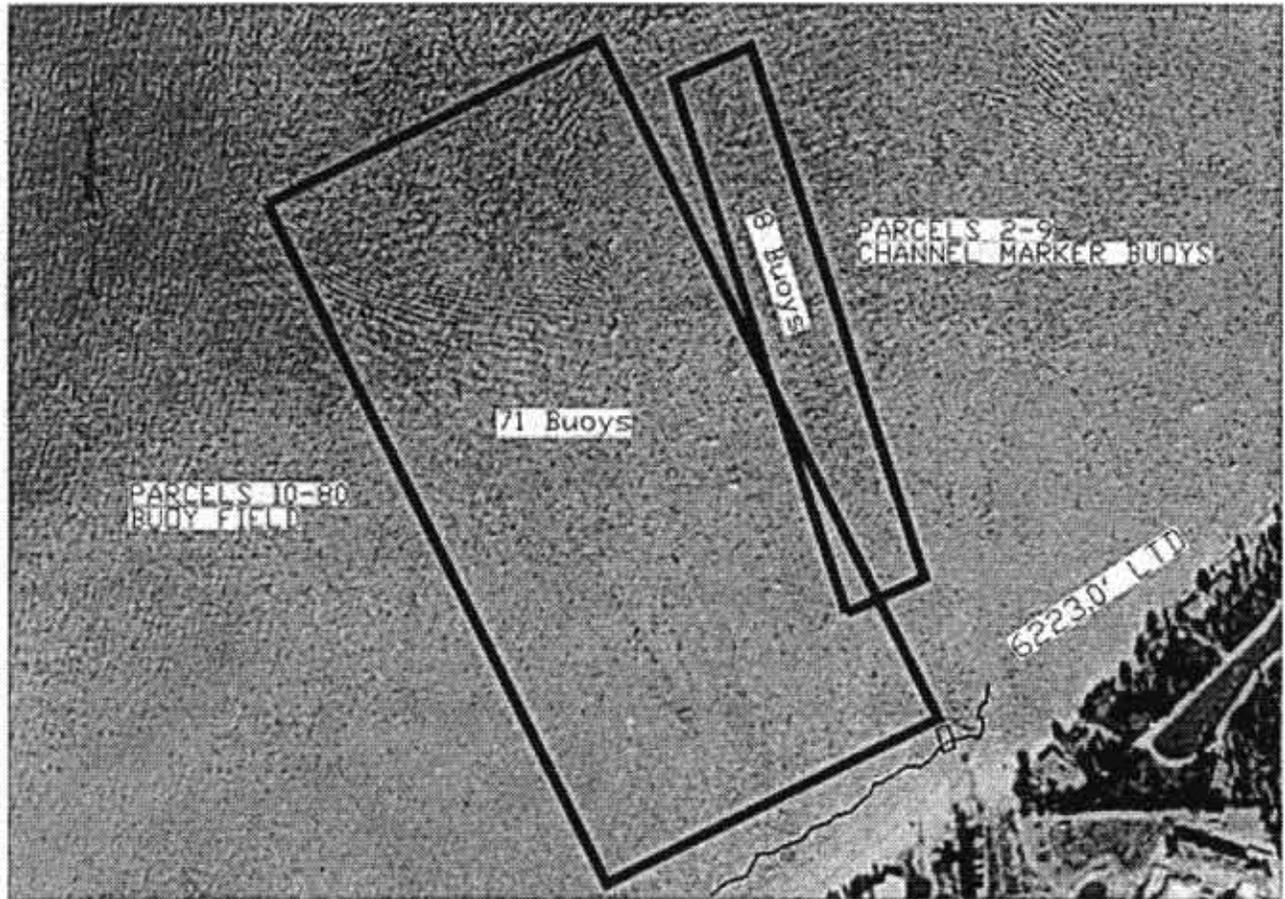
EXCEPTING THEREFROM any portion lying landward of elevation 6223.0 LTD (Lake Tahoe Datum).

END OF DESCRIPTION

Prepared 11/28/2005 by the California State Lands Commission Boundary Unit

NO SCALE

SITE MAP



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

NO SCALE

LOCATION MAP

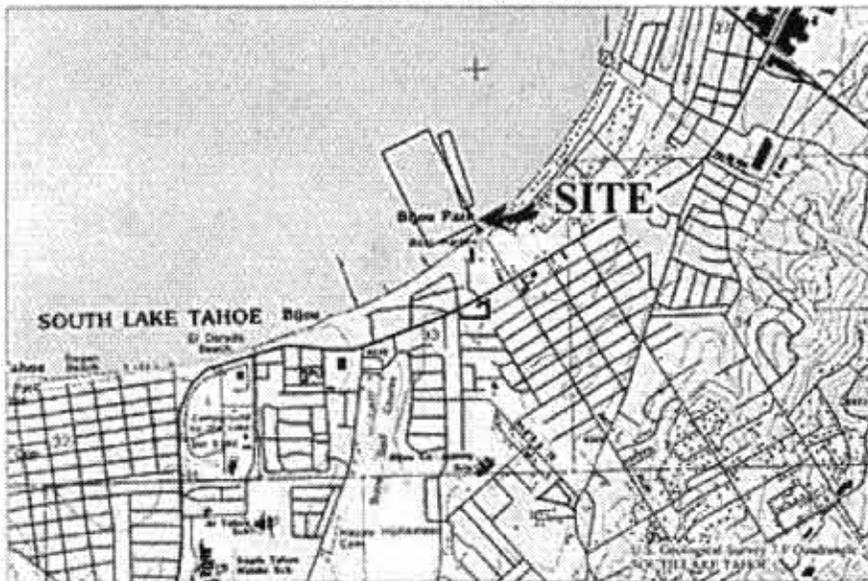


EXHIBIT B1

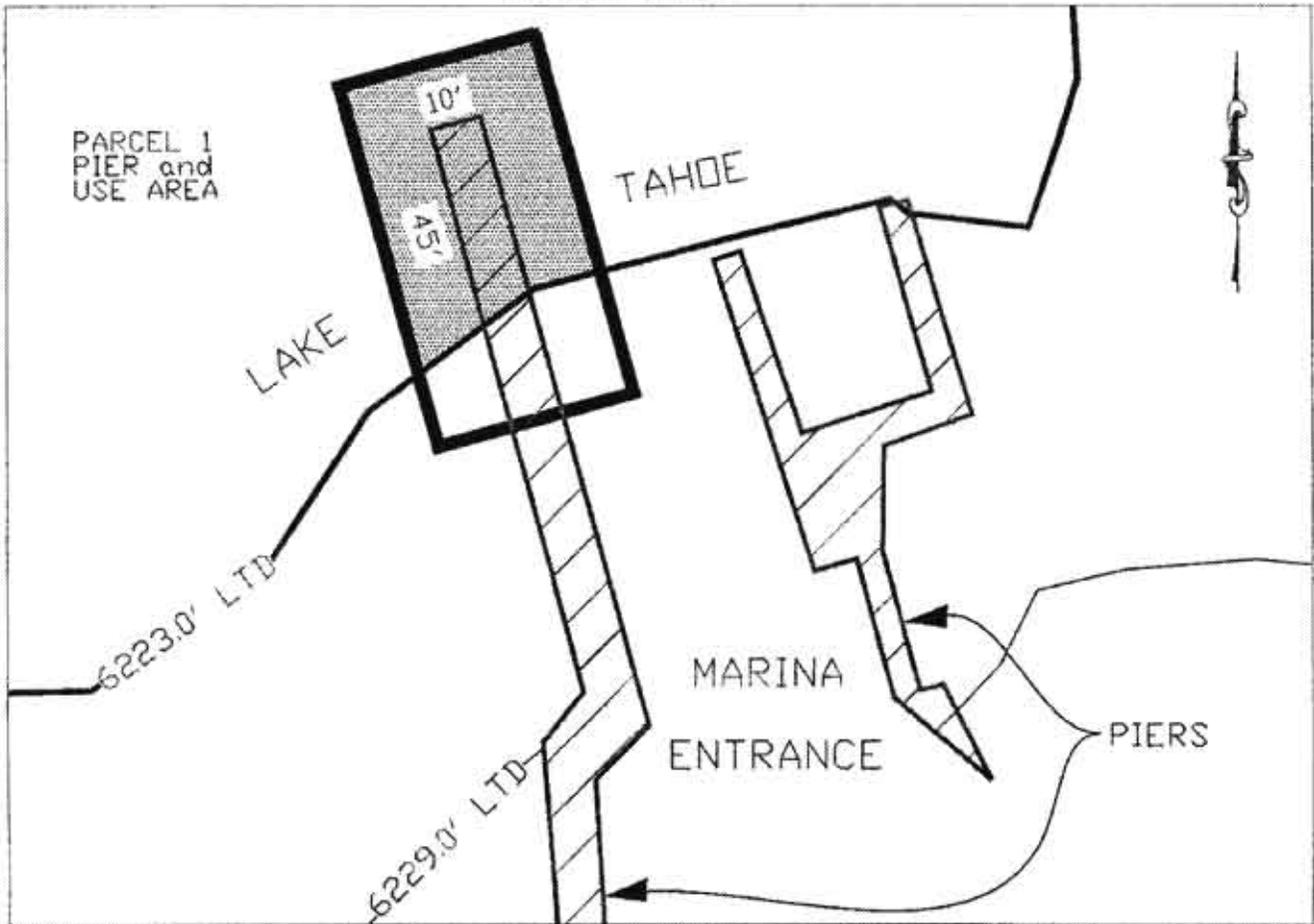
PRC 8655.1
 Ski Run Marina, LLC
 General Lease -
 Commercial Use
 El Dorado County



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.

NO SCALE

SITE MAP



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

NO SCALE

LOCATION MAP



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EXHIBIT B2

PRC 8655.1
Ski Run Marina, LLC
General Lease -
Commercial Use
El Dorado County

