

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
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SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.: 003-233-003 and 003-276-008
County: Napa

STATE OF CALIFORNIA
STATE LANDS COMMISSION

AMENDMENT OF LEASE NO. PRC 7636.1

WHEREAS, the State of California, acting through the State Lands Commission, hereinafter called Lessor, and, the City of Napa hereinafter called the Lessee, have heretofore entered into an agreement designated as Lease No. PRC 7636.1, authorized by the State Lands Commission on December 5, 2012 and executed by the State Lands Commission on March 6, 2013, whereby Lessor granted to Lessee a 25-year General Lease – Public Agency Use, covering certain State lands situated in the Napa River, Napa, Napa County; and

WHEREAS, the Lease authorized Lessee to construct, operate and maintain the Main Street Boat Dock including an uncovered floating boat dock, ramp, platform, gangway, floating debris barrier, 15 steel guide piles, one 3-pile dolphin and sheet pile retaining wall on the Napa River in Napa; and

WHEREAS, Section 3, Paragraph 15(e) provides that the Lease may be terminated and its terms, covenants and conditions amended, revised or supplemented only by mutual written agreement of the Lessor and the Lessee (hereinafter referred to as the Parties); and

WHEREAS, by reason of the foregoing, it is now the desire of the Parties to amend the Lease.

NOW THEREFORE, the Parties hereto agree as follows:

1. **Section 1, Basic Provisions**, of the Lease is hereby amended to include the following:

a. Consideration, is deleted in its entirety; and replaced with the following:

CONSIDERATION:

Uncovered Floating Boat Dock, Ramp, Platform, Gangway, Floating Debris Barrier, 15 steel guide piles, one 3-pile dolphin, and sheet pile retaining wall: The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

Operation and Management of Commercial Watercraft Services: \$800 per year effective December 5, 2016, with an annual Consumer Price Index adjustment and the Lessor reserving the right to modify the rent as specified in Section 2, paragraphs 13 and 14 of Special Provisions.

b. **ACTIVITIES:**

Lessee is authorized to operate and manage commercial watercraft services on the boat dock including both motorized and non-motorized watercraft. Authorized activities include: sightseeing and recreational water tours; gondola rides; dinner cruises; water taxi excursions; and kayak, canoe, skiff, and paddleboard rentals. Lessee may only sublease the Subject Property, or a portion thereof, after obtaining approval from the Lessor and a written endorsement of the sublease. Any sublease of the Subject Property shall incorporate this Lease and require the Sublessee to be bound by its terms, including any and all insurance requirements. Any sublease shall be limited to the activities and uses permitted under this lease. No sublease may be amended, assigned, or assumed without the prior written endorsement of the Lessor.

c. **LIABILITY INSURANCE:**

Lessee shall ensure (1) that Sublessee maintains commercial liability insurance in an amount no less than \$3,000,000 per occurrence; more particularly described in Paragraph 8(a)(b)(c) of Section 3 General Provisions for the Subject Property for the duration of the Sublease; and (2) Sublessee's policy provides the City with thirty (30) days' advanced notification of any termination or change of Sublessee's liability coverage. Nothing in this section relieves Sublessee of the responsibility of maintaining the minimum liability coverage required by the Lease with the city of Napa while the Sublease is in place.

2. Amend Section 2, Special Provisions, which includes 12 provisions, to add the following provisions beginning with the following:

13. **CONSIDERATION:**

- A. **RENT:** Lessee shall pay rent on or before December 5th of each year, beginning December 5, 2016 with the first year's rent payment due on May 20, 2017.
- B. The rent will be adjusted annually by the Consumer Price Index (CPI) as specified in Title 2, California Code of Regulation, Section 1900(m) & (n). In the event the CPI is lower than the prior year, the rent will remain the same.

- C. Lessor will provide a courtesy invoice at least thirty days prior to the date the rent is due specifying the updated rent at the address currently on file for the Lessee. If Lessor does not send a courtesy invoice, Lessee shall submit rent in the amount of the prior year's rent when due and contact Lessor within thirty days to determine the balance due.
 - D. In the event of the termination of this Lease prior to its expiration date from any cause whatsoever, the annual rental paid in advance shall not be prorated or refunded.
14. **RENT REVIEW AND MODIFICATION:** Section 3, Paragraph 2(b) is replaced by the following:
- Lessor may modify the method, amount, or rate of consideration effective on the ten-year anniversary of this Lease. Should Lessor fail to indicate its desire to conduct a rent review at the time of the ten-year anniversary of this Lease, Lessor may conduct a rent review at any one, but only one, of the next nine anniversaries after the tenth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides a greater notice period. Lessee shall provide Lessor with financial statements and all other documents necessary to conduct the rent review pursuant to Section 2, Paragraph 3 below.
15. **BOOKS AND RECORDS:**
- A. Lessee and/or Operator/Sublessee shall maintain books and records for the term of the lease of all financial transactions relating to the Leased Premises in accordance with generally accepted accounting principles. These records shall be supported by source documents such as agreements with renters, copies of invoices, receipts, and other pertinent documents. If requested by the State, to the extent necessary, the Lessee and/or Operator shall allow representatives of the State Lands Commission to examine copies of those portions of Lessee's and/or Operator's Federal and State Income Tax Returns, and Board of Equalization Tax Returns relating to activities conducted on the Lease Premises in order to corroborate information shown on reports to the State Lands Commission.
 - B. All reports submitted to the Lessor are subject to audit and revision by the Lessor and Lessor may inspect all of Lessee's and/or Operator's books, records, and documents relating to the operation of the Lease Premises at all reasonable times and with reasonable notice. Any statutory or other rights that the Lessee and/or Operator may have to object to such inspection by the State Lands Commission are hereby waived.

16. DREDGING:

No dredging of any kind shall be conducted under the terms of this Lease without separate authorization from the Lessor.

17. MANAGEMENT:

"Operator": For purposes of this Lease an "Operator" is defined as the Lessee and any of its sublessees, contractors, concessionaires, licensees or other parties conducting any authorized activity on the Lease Premises on behalf of Lessee or any other party. Lessee shall ensure that any Operator agrees to be bound by and complies with all provisions of the Lease.

18. REFUSE CONTAINERS:

Lessee shall provide containers on or immediately adjacent to the leased premises to receive trash, refuse and recyclables generated aboard vessels using Lessee's docking or launching facilities. Refuse and recycle containers shall be located so as to be conveniently used by occupants of vessels using Lessee's facilities and shall be of sufficient size and number to contain the refuse generated aboard all vessels using Lessee's facilities. The containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. The contents of the containers shall be disposed of by Lessee or others acting pursuant to Lessee's direction at authorized landfills or other garbage and recycle reception areas as provided under law applicable at the time of collection.

19. PLASTICS:

- A. Lessee shall not provide for sale, or allow other parties to provide, any prepared food in polystyrene foam containers or packaging, nor shall Lessee, or other parties, keep on the lease premises any polystyrene foam containers or packaging of a type, design and condition appropriate to the preparation of food for consumption on or off the lease premises.
- B. All packaging for prepared food that is consumed on or off the premises, or for takeout service, shall be degradable. Lessee shall provide, upon demand, copies of paid invoices that verify the purchase of degradable containers in quantities sufficient to validate Lessee's compliance with this provision.
- C. For purposes of this Lease, the following definitions are applicable.
 - (1) "Prepared food" means foods or beverages which are prepared on the lease premises by cooking, chopping, slicing, mixing, freezing or squeezing, and which require no further preparation to be consumed.

- (2) "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse on or in which any foods or beverages are placed or packaged on the Lease premises.
 - (3) "Takeout food" means prepared foods or beverages requiring no preparation to be consumed and which are purchased in order to be consumed off the lease premises.
 - (4) "Polystyrene foam" means any styrene or vinyl chloride polymer that is blown into a foam-like material, an example of which is marketed under the trade name "Styrofoam".
 - (5) "Degradable food packaging" means food packaging which within two years substantially reduces to its constituent substances through degradation processes initiated by natural organisms whose end products are substantially, but not necessarily entirely, carbon dioxide and water. Degradable food packaging does not include cellulose-based items that have a synthetic or plastic coating comprising more than 5% of the total volume of the item.
20. **FORCE MAJEURE:** Except as otherwise expressly provided in this Lease, neither Lessor nor Lessee shall be liable in damages or otherwise to the other for any act, omission or circumstance (Force Majeure Event) occasioned by or as a result of any acts of God or nature, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, volcanoes, fires, storms, floods, disasters, civil disturbances, explosions or sabotage. In no event, however, shall a Force Majeure Event relieve Lessee from the obligation of making Minimum Annual Rent payments due under this Lease at the time of such occurrence.
21. This Lease shall immediately and without further notice automatically terminate in the event Lessee is at any time unable to use the adjoining upland.
22. Lessee acknowledges that the Lease Premises and adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise. To prepare for the potential effects of sea-level rise, including flood damage, erosion damage, tsunamis, and damage from waves and storm-created debris, the Lessee acknowledges and agrees to the following:
- a. Hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.

- b. Consistent with Section 3, Paragraph 7, the Lessee assumes the risks associated with such potential hazards and agrees to be solely responsible for all damages, costs, and liabilities arising as a result of the impacts of such hazards on the Lease Premises. Any additional maintenance or protection strategies necessitated by such hazards may require additional approval by Lessor pursuant to Section 3, Paragraph 4(a) and be subject to environmental review.

The effective date of this Amendment to the Lease shall be, December 5, 2016.

This Amendment is a portion of Lease No. PRC 7636.1, with a beginning date of December 5, 2012, consisting of four (3) sections with a total of (13) pages.

All other terms and conditions of the Lease shall remain in full force and effect.

This Agreement will become binding on the Lessor only when duly executed on behalf of the State Lands Commission of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates hereafter affixed.

LESSEE:
CITY OF NAPA

LESSOR:
STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____

By: _____
Robert Brian Bugsch

Title: _____

Title: Chief, Land Management Division

Date: _____

Date: _____

ATTEST:

By: _____
DOROTHY ROBERTS

Title: City Clerk

Date: _____

Execution of this document was authorized by
the California State Lands Commission on

COUNTERSIGNED:

By: _____
DESIREE BRUN

Title: City Auditor

Date: _____

APPROVED AS TO FORM:

By: _____
MICHAEL W. BARRETT

Title: City Attorney

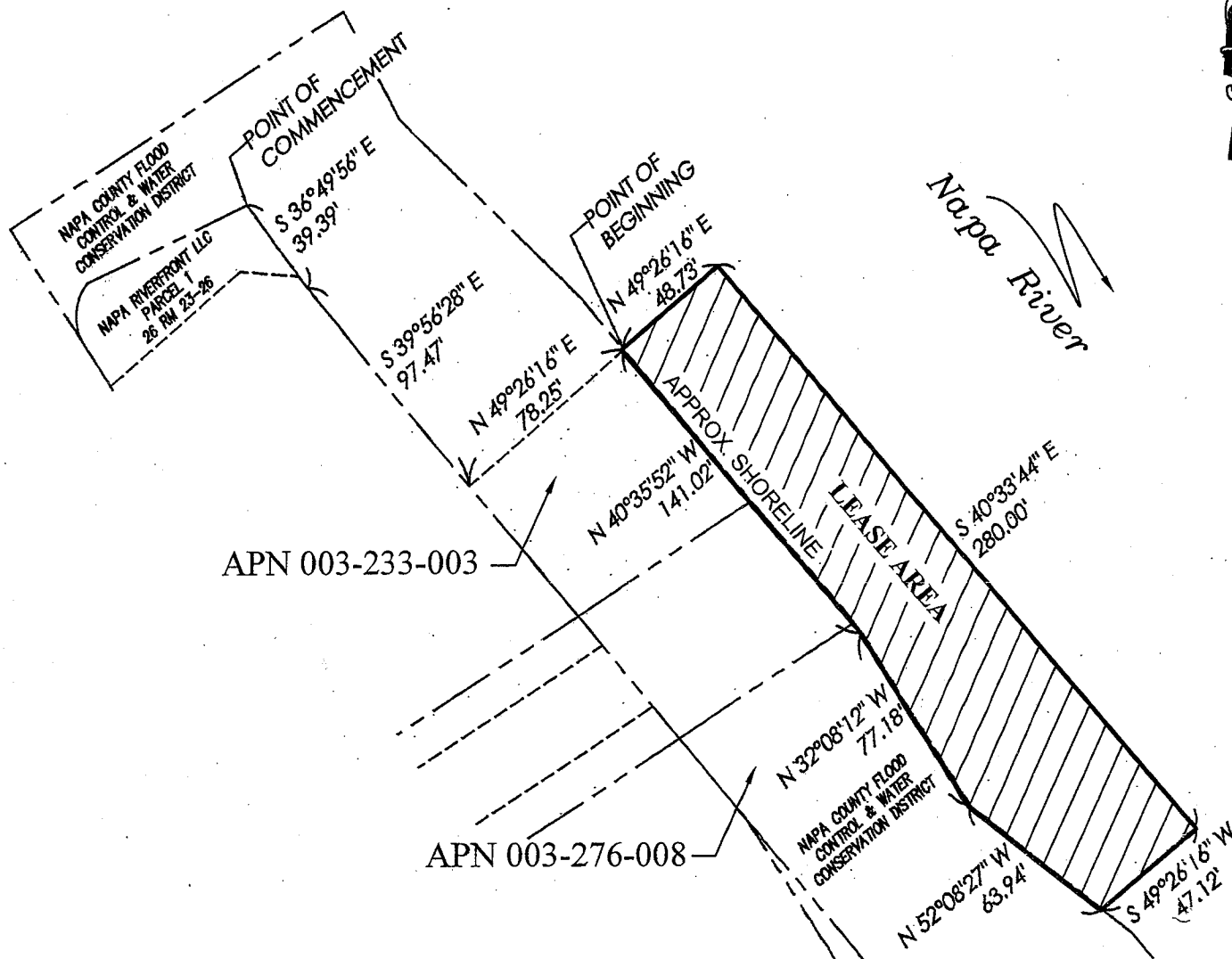
Date: _____

ATTACH ACKNOWLEDGMENT

NO SCALE

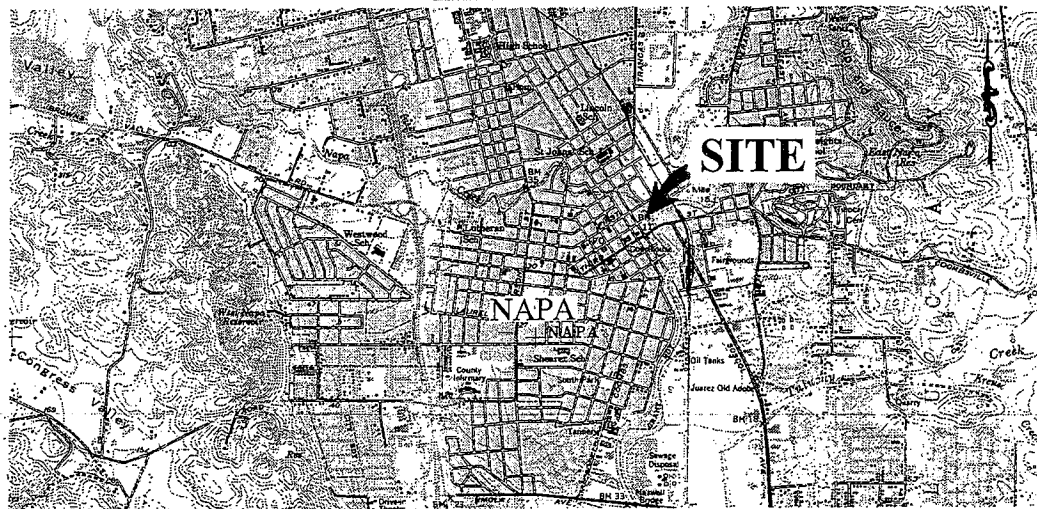
SITE

ATTACHMENT 2



NAPA MAIN STREET DOCK

LOCATION



MAP SOURCE: USGS QUAD

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.

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Exhibit A

PRC 7636.1
CITY OF NAPA
APN 003-233-003, -276-008
GENERAL LEASE -
PUBLIC AGENCY USE
NAPA COUNTY



MJJ 12/29/2016