

STAFF REPORT

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A	22	06/23/20 W9301 Lease 4683.1 Lease 4687.1 K. Foster M. Wiemer B. Bugsch
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LEASE AMENDMENTS – COVID-19-RELATED RENT DEFERRAL

LESSEES:

1. Che Sheng Chao and Wei Yuan Chao; Keith Kai Tsu and Carmelita Ko; Burk H. Chung and Mary A.L. Chung; Charles Nip and Patricia Nip; Raymond K. Li and Chi F. Li; and Kwok Hung Szeto and Nikki Szeto; Lease 4683.1, a General Lease – Commercial Use, for the use and maintenance of a commercial parking lot adjacent to San Francisco Bay in Burlingame, San Mateo County.
2. Burlingame Bay Associates; Lease 4687.1, a General Lease – Commercial Use, for the use and maintenance of a restaurant, parking lot, lagoon, footbridge, paved pedestrian path, landscaping, and shoreline protection adjacent to San Francisco Bay in Burlingame, San Mateo County.

BACKGROUND:

The unprecedented COVID-19 global pandemic has caused significant economic impacts worldwide, including throughout the State of California. Many of the Commission’s lessees and applicants have been directly adversely impacted by COVID-19 and related shelter-in-place orders, including Governor Gavin Newsom’s March 19, 2020, Executive Order directing all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations in specified critical infrastructure sectors ([Executive Order N-33-20](#)). Local jurisdictions throughout California issued similar orders and directives both prior to and following the statewide order.

To address the impacts of these orders on some of the Commission’s applicants and lessees, on April 29, 2020 ([Item 75, April 29, 2020](#)), the Commission authorized its expedited Rent and Application Expense Deferral Program (Program) to provide a limited delegation of authority to the Executive Officer to approve expedited need-based Settlement Agreements that allow qualifying lessees to defer rent payments. Under the delegation of authority, the Executive

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Officer can approve Settlement Agreements for rent payment deferral requests from lessees whose leases are in good standing, have annual rent below \$10,000, and can demonstrate need-based qualifications. Each Settlement Agreement specifies the terms and conditions of the deferral, including the future payment due date and the waiver of any penalties and interest that would normally accrue for late payments, provided the deferred rent is paid on or before the agreed-upon due date.

Lessees whose annual rent is \$10,000 per year or more, and all lessees with mineral extraction leases regardless of rental amount do not qualify for the expedited staff-approved Program. However, these lessees can still request limited-term rent deferral due to COVID-19-related economic impacts by submitting a nonrefundable \$25 filing fee and application for a lease amendment, to be considered by the Commission at a regularly scheduled meeting.

The following lessees, whose leases are in good standing, have each submitted the \$25 filing fee and requested a lease amendment for a limited-term rent deferral. Staff proposes amending these leases using Settlement Agreements, substantially in the form of the template Settlement Agreement attached as Exhibit A. Proposed Settlement Agreement terms are described below for each Lessee:

1. Che Sheng Chao and Wei Yuan Chao et al.; Lease No. PRC 4683.1, a General Lease – Commercial Use for a commercial parking lot.

Basis for request: Lessee's tenant, Anza Parking runs a parking and shuttle business that serves San Francisco International Airport. Because of COVID-19 and related 'shelter in place' orders, business has dropped dramatically. In one week, Anza's car count dropped from 1,200 to 50 cars. Income has dropped to nearly zero but expenses remain. As sublessor, Anza Parking has asked for deferment until business resumes.

Proposed Settlement Agreement terms: Rent in the amount of \$78,331 due the Commission pursuant to the lease on July 1, 2020, is deferred and will be due 90 days after Executive Order N-33-20 is lifted or 90 days after July 1, 2020 (the lease anniversary date), whichever is later. Any penalty or interest that would have accrued for late payment is waived so long as the terms of the Settlement Agreement are met.

2. Burlingame Bay Associates; Lease No. PRC 4687.1, a General Lease – Commercial Use for a restaurant and associated facilities.

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Basis for request: Lessee's tenant, Kincaid Restaurant, closed the restaurant pursuant to COVID-19 related 'shelter in place' orders. As such, Kincaid's Restaurant cannot afford their rent payment. Lessor is a small business that is experiencing financial difficulty and requested deferment until business resumes.

Proposed Settlement Agreement terms: Rent in the amount of \$31,000 or 30 percent of gross income, whichever is greater, due the Commission pursuant to the lease on July 1, 2020, is deferred and will be due 90 days after Executive Order N-33-20 is lifted or 90 days after July 1, 2020 (the lease anniversary date), whichever is later. Any penalty or interest that would have accrued for late payment is waived so long as the terms of the Settlement Agreement are met.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 1911, 2000 and 2003.

Public Trust and State's Best Interests Analysis:

The proposed amendments do not allow for any waiver of rent; rather, rent would be deferred, and any penalty and interest that would otherwise accrue during the deferral period would be waived so long as the lessees comply with the payment terms of their respective Settlement Agreements. Both lessees are in good standing and have demonstrated a need for deferral of rent based on COVID-19 related impacts.

These amendments will help to achieve statewide public benefits, including maintaining economic stability, promoting employment, forestalling blight, and reducing State liability by assisting lessees to maintain the lease premises, comply with environmental protection regulations, and remain in compliance with all other terms of the lease. The goal is to ensure that the Commission's lessees and applicants survive and recover, and, in turn, ensure that the Commission's robust lease program for State lands under its jurisdiction continues through and after the COVID-19 pandemic.

The amendments will also help staff reduce inefficient use of limited resources spent on compliance and enforcement on issues that are outside the scope of the lessee's control; staff will instead work with lessees to find reasonable solutions to unusual and unforeseen circumstances. For these reasons, staff believes approval of the proposed

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amendments will not substantially interfere with Public Trust needs and values and is in the State's best interests.

OTHER PERTINENT INFORMATION:

1. Approval or denial of a lease amendment is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or renewal of any previous lease, including but not limited to extending the lease term.
2. 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; Strategy 2.2 to ensure timely receipt of revenues and royalties from the use and development of State lands and minerals; Strategy 2.3 to align budget and policy initiatives and staff resources with Commission and State priorities; and Strategy 3.1 to foster, improve, and enhance relationships to engage the Legislature, public, local, state and federal agencies, legislative grantees, Commission lessees, potential applicants, non-governmental organizations, and the regulated community.
3. The amendments to modify the leases as specified above 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, section 15378, subdivision (b)(5).

EXHIBIT:

- A. Settlement Agreement Template

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendments to defer rent and waive penalty and interest will not substantially interfere with Public Trust needs and values; and are in the best interests of the State.

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AUTHORIZATION:

1. Authorize the amendment of Lease No. 4683.1, a General Lease – Commercial Use, through a Settlement Agreement substantially in the form attached hereto as Exhibit A, to allow the payment of annual rent of \$78,331 currently due on July 1, 2020 to be deferred until 90 days after Executive Order N-33-20 is lifted or 90 days after July 1, 2020, whichever is later, and to waive penalty and interest that would otherwise have accrued for late payment, provided the terms of the Settlement Agreement are met; all other terms and conditions of the lease to remain in effect without amendment.

2. Authorize the amendment of Lease No. 4687.1, a General Lease – Commercial Use, through a Settlement Agreement substantially in the form attached hereto as Exhibit A, to allow the payment of annual rent of \$31,000 or 30 percent of gross income, whichever is greater, currently due on July 1, 2020, to be deferred until 90 days after Executive Order N-33-20 is lifted or 90 days after July 1, 2020, whichever is later, and to waive penalty and interest that would otherwise have accrued for late payment, provided the terms of the Settlement Agreement are met; all other terms and conditions of the lease to remain in effect without amendment.

File Ref: W9301; Lease No. *[insert Lease #]*

Settlement Agreement

COVID-19 Rent Deferral Lease Amendment

Recitals

- A. The State of California, acting through the California State Lands Commission (Commission), and *[insert lessee name]* (Lessee) entered into *[insert lease type and number]* (Lease) effective on *[insert date]*.
- B. In response to the unprecedented COVID-19 global pandemic, Governor Gavin Newsom issued Executive Order N-33-20 on March 19, 2020, directing all individuals living in California to shelter in place, with limited exceptions.
- C. The pandemic and associated shelter-in-place orders have caused economic damage to California individuals and small businesses, including lessees of the Commission.
- D. Lessee has been adversely impacted by COVID-19 and related shelter-in-place orders, as shown by Lessee's application materials. Lessee applied for an amendment of its lease to defer rent and waive penalty and interest because it may not be able to meet its rent commitments under the Lease. Lessee was in good standing at the time of its application.
- E. By Item *[insert staff item number]* at its *[insert date of Commission meeting]* meeting, the Commission determined that Lessee sufficiently demonstrated adverse economic impact to justify a deferral of rent and waiver of penalty and interest and found that such deferral and waiver is in the State's best interests.

Settlement Agreement

The Commission and Lessee agree as follows:

- 1. Rent in the amount of $\$[insert amount]$ due the Commission pursuant to the Lease on *[insert payment date]* is hereby deferred and will be due 90 days after Executive Order N-33-20 is lifted or 90 days after the lease anniversary date, whichever is later, with the Commission to provide notification via

invoice. Any penalty or interest that would have accrued for late payment is waived so long as the terms of this Settlement are met; if the terms of the Settlement are not met, the Commission reserves the right to seek penalty and interest.

2. Lessee acknowledges that this Settlement addresses only deferral of rent and waiver of penalty and interest as described in Paragraph 1. This Settlement does not waive any other term, covenant, or condition of the Lease. All terms of the Lease not specifically amended by this Settlement remain in full force and effect. In particular, the payment date for future annual rents is not adjusted by this Settlement.
3. Lessee agrees to make deferred payments fully and on time according to this Settlement. If Lessee fails to meet the terms of this Settlement, the Settlement shall immediately terminate and cease to have any effect. All deferred payments will become due and begin accruing penalty and interest immediately, and the Lease may be subject to termination for default.
4. Lessee may pay more quickly than agreed without terminating this Settlement.
5. If Lessee provided false or misleading information on its application for lease amendment to defer rent, this Settlement shall terminate and cease to have any effect. All deferred payments will become due and begin accruing penalty and interest immediately. In addition, previously waived penalty and interest will be reinstated and accrue as though this Settlement had never existed. The Commission may also seek to enforce all penalties available at law.
6. This Settlement may be amended, revised, or supplemented only by mutual written agreement of Lessee and Commission.
7. This Settlement is not effective until signed by Lessee and Commission, which may be done in counterparts.

Lessee:

State of California
State Lands Commission

[Lessee Name, First Party]

By: _____

*[Lessee Name, Second Party, if
needed]*

Title: _____

Date: _____

Date: _____

Attach Acknowledgment

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

(Month Day Year)