

FOURTH AMENDMENT TO SUBLEASE

This Fourth Amendment to Sublease ("**Fourth Amendment**") is made and entered into as of July 24, 2007, by and between The City of San Diego, a California Municipal corporation ("**Subtenant**"), and Driscoll Marina, LTD., a California limited partnership ("**Sublandlord**"), with respect to that certain Sublease dated September 8, 1997 (the "**Sublease**").

Recitals

A. On or about September 8, 1997, The City of San Diego, as Subtenant, and Driscoll Marina, LTD., as Sublandlord, executed a sublease for certain portions of that property commonly known as Driscoll's Wharf (the "**Property**"), including office space and slips, located at 4918 North Harbor Island Drive, San Diego, California ("**Premises**"). The Sublease was amended by that certain First Amendment to Sublease dated November 27, 2000 ("**First Amendment**"), that certain Second Amendment to Sublease dated September 9, 2002 ("**Second Amendment**"), and that certain Third Amendment to Sublease dated October 13, 2003 ("**Third Amendment**"). The Sublease, along with the First Amendment, Second Amendment, Third Amendment and this Fourth Amendment, may sometimes be collectively referred to herein as the "**Sublease**."

B. On or about March 22, 2005, Subtenant exercised its option to extend the term of the Sublease on a month-to-month basis through September 14, 2007, in accordance with Section 3 of the Second Amendment to Sublease.

C. On or about August ⁰7, 2007, Sublandlord at the request of Subtenant, granted its consent to allow Subtenant to holdover and retain possession of the Premises upon the expiration of the term of the Sublease on September 14, 2007, and maintain a tenancy on a month-to-month basis. The parties desire to eliminate the current month-to-month tenancy and establish a fixed twelve (12) month term with options commencing on November 1, 2007, subject to Sublandlord's right to terminate as set forth in this Fourth Amendment.

D. All capitalized terms not otherwise defined in this Fourth Amendment have the meanings given them in the Sublease.

E. Subtenant and Sublandlord now desire to amend the Sublease pursuant to the following terms and conditions:

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are acknowledged, Subtenant and Sublandlord agree as follows:

1. **TERM.** Sublandlord and Subtenant acknowledge that the term of the Sublease has expired, and that Subtenant has maintained possession of the Premises with the consent of Sublandlord in accordance with Section 22.1 of the Sublease, and Subtenant's tenancy is currently on a month-to-month basis. As of November 1, 2007, the Sublease term for the

Premises shall be reinstated and extended for a period of twelve (12) months ("**Extended Term**"), commencing November 1, 2007, and expiring on October 31, 2008, subject to two (2) separate options to extend the Term (each an "**Option**") for two (2) separate, consecutive "**Option Terms**" of twelve (12) months each. References in the Sublease to the "**Term**" shall mean the Extended Term of the Sublease, as the same may be extended by any Option Terms, as applicable, unless sooner terminated pursuant to any provision of the Sublease or this Fourth Amendment, or as otherwise allowed by law.

2. **SUBTENANT'S OPTION TO EXTEND.** Subtenant shall have the Options to extend the Extended Term as set forth in Section 1 above, following expiration of the Extended Term, upon and subject to all the terms and conditions contained in the Sublease and this Fourth Amendment. Subtenant shall give written notice of the exercise of each Option to Sublandlord at least two (2) months prior to the expiration of the then applicable Term. The Options are not assignable separate and apart from this Sublease, and they may not be separated from this Sublease in any manner, either by reservation or otherwise. Subtenant shall have no right to exercise any of the Options if this Sublease has been terminated or if Subtenant is then in default of this Sublease beyond any applicable notice and cure period. Subtenant may not exercise an Option to extend as to any Option Term unless it has already exercised its Options as to all previous Option Terms. Subtenant shall have no right to extend or renew the Sublease other than for the aforesaid two (2) Option Terms. Time is of the essence with respect to any exercise of an Option by Subtenant. If Subtenant fails to exercise an Option when required as to any Option Term, said Option and all succeeding Options shall thereafter be of no force or effect. If an Option to extend described in this Section 2 is exercised, then all of the covenants and agreements contained in the Sublease as amended, shall apply during the applicable Option Term, except that Base Rent shall be adjusted as of the commencement of such Option Term in accordance with Section 5.1 below.

3. **SUBLANDLORD'S RIGHT TO TERMINATE.** Notwithstanding the extension of the Term and any Option Term as set forth in this Fourth Amendment, in the event that Sublandlord elects to proceed with a redevelopment or renovation of portions of the Property, which redevelopment or renovation may include but is not limited to the demolition of the Premises, Sublandlord shall have the unilateral right to terminate this Sublease upon ninety (90) days prior written notice to Subtenant, at any time whether during the Extended Term or an Option Term. The foregoing right to terminate shall not be interpreted or construed so as to limit any other right Sublandlord may have to terminate the Sublease under any provision of the Sublease or as otherwise allowed by law.

4. **PREMISES.** The Premises as set forth in the Sublease shall be revised to include only the following: North Harbor Drive, Suites 106,107, consisting of approximately one thousand six hundred sixty nine (1,669) square feet and Slips 15 and 16 of Pier 5 ("**Slips**").

5. **BASE RENT:** The Base Rent for the Extended Term shall be as follows, payable in advance on the first of each month without notice, offset or deduction:

Suites 106 and 107

\$ 3,139.88 per month

Slips 15 and 16

\$970 per month ("**Minimum Slip Rent**")

The Minimum Slip Rent is the minimum rent to be paid by Subtenant for use of the Slips, which incorporates a calculation up to a total of ninety (90) feet in length of vessels using the slips at \$10.00 per foot plus \$35 per month per slip in utilities. If during any given month the total combined length of vessels utilizing the slips exceeds ninety (90) feet then Subtenant shall pay as additional rent to Sublandlord \$10.00 per foot for each foot over and above the ninety (90) feet.

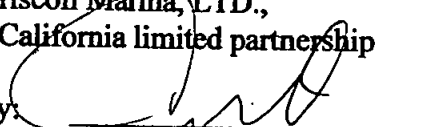
5.1 BASE RENT FOR OPTION TERM. If an Option to extend described in Section 2 above, is exercised, then each component of the Base Rent including the Minimum Slip Rent shall be as of the commencement of such Option Term increased by three percent (3%) over and above the Base Rent from the Extended Term or the previous Option Term, as the case may be.

Except as called out herein, all other terms and conditions of the Sublease and subsequent amendments shall remain in full force and effect. In the event of any conflict or discrepancy between the Sublease or any of the amendments thereto, and this Fourth Amendment, the provisions of this Fourth Amendment shall control. This Fourth Amendment shall inure to the benefit of and be binding upon Sublandlord and Subtenant and their respective successors and assigns. This Fourth Amendment constitutes the entire agreement of the parties with respect to the subject matter hereof. The Sublease and this Fourth Amendment shall not be further amended or modified except by a written instrument signed by Sublandlord and Subtenant. This Fourth Amendment is the joint work product of both parties and shall not be construed more favorably for, or more strictly against, either party on the grounds that such party participated more or less fully in the preparation of this Fourth Amendment. Except as expressly set forth herein, Sublandlord and Subtenant fully confirm, ratify, and restate the Sublease and each provision thereof.

IN WITNESS WHEREOF, this Fourth Amendment has been duly executed and delivered by the authorized officers of the undersigned.

SUBLANDLORD

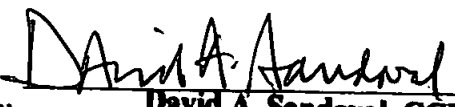
Driscoll Marina, LTD.,
a California limited partnership

By: 

Catherine Driscoll
Driscoll Management, Inc.,
Its General Partner

SUBTENANT

City of San Diego, a California municipal
corporation

By: 

Name:

David A. Sandoval, CCIM

Title:

Deputy Director, Real Estate Asset

APPROVED AS TO FORM AND LEGALITY, this 26th day of February 2007.

MICHAEL AGUIRRE, City Attorney

By: CEL

Name: Steve Barrera

Title: Deputy City Attorney

RESOLUTION NUMBER R- 303238

DATE OF FINAL PASSAGE DEC 18 2007

A RESOLUTION AUTHORIZING THE MAYOR OR HIS
ASSIGNEE TO EXECUTE AND FUND 4TH AMENDMENT
TO SUBLEASE BETWEEN THE CITY OF SAN DIEGO AND
DRISCOLL MARINA, LTD.

WHEREAS, the Driscoll Marina, LTD. [Sublandlord] is the current Sublandlord of the
City; and

WHEREAS, the Sublandlord for the Metro Wastewater Department's [Metro] boat and
operations which comprises approximately 1,669 square feet of office space and two boat slips at
4918 N. Harbor Drive; and

WHEREAS, the 4th Amended Lease commences November 1, 2007 and terminates
October 31, 2008, and provides two options for an additional twelve (12) months each; and

WHEREAS, the office space will rent for Three Thousand One Hundred Thirty-Nine
Dollars and Eight Cents (\$3,139.08) per month (\$1.88 per square foot) and two slips at Nine
Hundred Seventy Dollars (\$970) (\$10 per vessel foot and utilities) and is subject to an annual
adjustment of three percent (3%); and

WHEREAS, rent is approved for the FY08 budget; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the Mayor is authorized to execute, for and on behalf of The City of San Diego, a Fourth Amended Lease agreement with Driscoll Marina, LTD. for an additional one year extension.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Todd Bradley
Deputy City Attorney

TB:bas
10/18/07
Or.Dept:READ
R-2008-350
MMS #5279

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 04 2007.

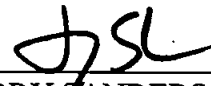
ELIZABETH S. MALAND
City Clerk

By 

Deputy City Clerk

Approved: 12-18-07

(date)



JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

THIRD AMENDMENT TO SUBLEASE

THIS THIRD AMENDMENT TO SUBLEASE OF REAL PROPERTY is dated, for reference purposes only October 13, 2003 between DRISCOLL MARINA, LTD, a California limited partnership, (Sublandlord) and the CITY OF SAN DIEGO, a California municipal corporation (Subtenant).

RECITALS

A. The parties entered into a sublease agreement dated September 8, 1997 ("the Sublease"), wherein Sublandlord leased to the City of San Diego that certain real property known as 4918 North Harbor Drive, Suites 101, 102, 105, 106, 107, 201, 202, 204A, 106A, 205D, 204B, 205E, Slips 15 and 16 and building 4904, Suite 105, San Diego, California 92106 (the "Premises") consisting of approximately 13,330 rentable square feet.

B. The Sublease is in full force and effect, and neither Subtenant nor Sublandlord has actual knowledge of any default or breach by the other under the Sublease.

C. The parties now desire to amend the Sublease dated September 8, 1997, and First Amendment to Sublease dated November 27, 2000, and Second Amendment to Sublease dated September 9, 2002, as provided in this Third Amendment to Sublease.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Sublandlord and Subtenant hereby agree as follows:

ARTICLE ONE - AMENDMENTS

1. **Term of Sublease:** The lease term as set forth in Article 1 of the Sublease is extended to March 14, 2004. Thereafter, Subtenant shall extend the term on a month to month basis as needed in accordance with the permitted term length in Paragraph 3 of the Second Amendment.

2. **Square Footage:** The square footage of the premises as set forth in Paragraph One of the First Amendment to Sublease is amended to 12,638 consisting of suites: 101, 102, 105, 106A, 106, 107, 201, 202, 204A, 205D, 205E, Slips 15 and 16, and Suite 105 at building 4904. MWWD contracted out of Suite 204B being 692 square feet. New square footage is 12,638.

3. **Base Rent:** Article 2 of the Sublease shall be amended to read: The monthly installment of Base Rent as set forth in Article 3 of the Sublease is amended to \$21,586.21. This includes the storage space (Suite 107) and the boat slips. The Base Rent for the extension period shall be increased by 3% per year. The rent schedule is as follows:

November 1, 2003 through March 14, 2004 - \$21,586.21 per month.

PDS B

ARTICLE TWO - GENERAL PROVISIONS

1. The Sublease, as hereby amended by this Third Amendment to Sublease of Real Property, represents the complete and final understanding of the parties with respect to the subject matter of the Sublease, as hereby amended. No further modification or amendment of the Sublease shall be effective unless set forth in a written instrument executed by a duly authorized representative of the parties hereto. This is an integrated agreement.

2. The effective date of this Amendment will be November 1, 2003.

IN WITNESS WHEREOF, this Amendment to Sublease is executed by City, acting by and through its City Manager, and by Sublandlord, acting by and through its lawfully authorized officers.

SUBLANDLORD:

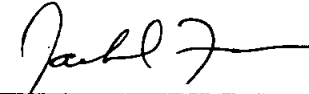
DRISCOLL MARINA, LTD., a
California limited partnership

By: 

J. Gerald Driscoll *Cherine Driscoll*
Driscoll Management, Inc.,
Its General Partner

SUBTENANT:

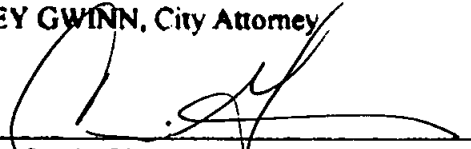
CITY OF SAN DIEGO, a California
municipal Corporation

By: 

Carol A. Chiode, Deputy Director
Jack Farris
Real Estate Assets Department

APPROVED AS TO FORM AND LEGALITY, this 23rd day of March, 2004.

CASEY GWINN, City Attorney

By: 

Carrie Gleeson, Deputy City Attorney

SECOND AMENDMENT TO SUBLEASE

THIS SECOND AMENDMENT TO SUBLEASE OF REAL PROPERTY is dated, for reference purposes only September 9, 2002 between DRISCOLL MARINA, LTD, a California limited partnership, (Sublandlord) and the CITY OF SAN DIEGO, a California municipal corporation (Subtenant).

RECITALS

A. The parties entered into a sublease agreement dated September 8, 1997 ("the Sublease"), wherein Sublandlord leased to the City of San Diego that certain real property known as 4918 North Harbor Drive, Suites 101, 102, 105, 106, 107, 201, 202, 204A, 106A, 205D, 204B, 205E, Slips 15 and 16 and building 4904, Suite 105, San Diego, California 92106 (the "Premises") consisting of approximately 13,330 rentable square feet.

B. The Sublease is in full force and effect, and neither Subtenant nor Sublandlord has actual knowledge of any default or breach by the other under the Sublease.

C. The parties now desire to amend the Sublease dated September 8, 1997, and First Amendment to Sublease dated November 27, 2000, as provided in this Second Amendment to Sublease.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Sublandlord and Subtenant hereby agree as follows:

ARTICLE ONE - AMENDMENTS

1. Term of Sublease: Article 2 of the Sublease shall be amended to read: The lease term as set forth in Article 4 of the Sublease is extended to September 14, 2003.

2. Base Rent: Article 3 of the Sublease shall be amended to read: The monthly installment of Base Rent as set forth in Article 3 of the Sublease is amended to \$22,104.99. This includes the storage space (Suite 107) and the boat slips. The Base Rent for the extension period shall be increased by 3% per year. The rent schedule is as follows:

September 15, 2002 through September 14, 2003 - \$22,104.99 per month.

3. Option to Extend: Sublandlord hereby grants to subtenant an option to extend the term of the Sublease on a month to month tenancy subject to the same rental rate and/or annual rent increases provided in paragraph 2 of this Amendment. Subtenant shall give Sublandlord ninety (90) days prior written notice if MWWD elects to continue occupying the premises on a month to month tenancy after September 15, 2003. In addition, should Subtenant need to terminate its subleased premises, Subtenant shall have the option to continue subleasing Suite 106 and the boat slips. Such tenancy shall not continue beyond September 15, 2007, being the remaining extension period provided in paragraph 2.2 of the Sublease, without City Council approval.

ARTICLE TWO - GENERAL PROVISIONS

1. The Sublease, as hereby amended by this Second Amendment to Sublease of Real Property, represents the complete and final understanding of the parties with respect to the subject matter of the Sublease, as hereby amended. No further modification or amendment of the Sublease shall be effective unless set forth in a written instrument executed by a duly authorized representative of the parties hereto. This is an integrated agreement.

2. The effective date of this Amendment will be September 15, 2002.

IN WITNESS WHEREOF, this Amendment to Sublease is executed by City, acting by and through its City Manager, and by Sublandlord, acting by and through its lawfully authorized officers.

SUBLANDLORD:

DRISCOLL MARINA, LTD., a
California limited partnership

By: J. Gerald Driscoll
J. Gerald Driscoll
Driscoll Management, Inc.,
Its General Partner

SUBTENANT:

CITY OF SAN DIEGO, a California
municipal Corporation

By: Tim C. Rothans
Tim C. Rothans
Real Estate Assets Department

APPROVED AS TO FORM AND LEGALITY, this 18th day of October, 2002.

CASEY GWINN, City Attorney

By: Debra J. Beyier
Debra J. Beyier, Deputy City Attorney

1st Amend

(R-2001-1344)

RESOLUTION NUMBER R- 294780

ADOPTED ON APR 23 2001

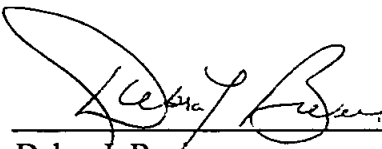
WHEREAS, Metropolitan Wastewater Department (MWWD), which currently subleases 12,779 square feet of office space at 4918 North Harbor Drive, has expanded beyond current capacity, and

WHEREAS, the City of San Diego has negotiated a First Amendment to Sublease for the lease of an additional 551 square feet at 4918 North Harbor Drive, an adjacent space referred to as Suite 105, at the initial rental rate of \$798.95 per month. The occupancy of the new space will be effective as of December 1, 2000, and will terminate September 14, 2002, the expiration date of the master Sublease; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego, the First Amendment to Sublease, which will increase the base rent of the Sublease by \$798.95 per month, under the terms and conditions set forth in that First Amendment to Sublease on file in the office of the City Clerk as Document No. RR- 294780.

BE IT FURTHER RESOLVED, by the Council of The City of San Diego, that an additional expenditure of \$5,592.65 from Fund No. 41508, Dept. 772, for rent from the FY 2001 budget, is authorized

APPROVED: CASEY GWINN, City Attorney

By 
Debra J. Beyer
Deputy City Attorney

DJB:jc
04/06/01
Or.Dept:REA
Aud.Cert:AC 2101019
R-2001-1344
Form=r-t.frm

Passed and adopted by the Council of San Diego on

APR 23 2001

by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS, MAIENSCHIN, MADAFFER,

INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE.

VACANT: DISTRICT 6.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: MARY A. CEPEDA, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 294780, passed and adopted by the Council of The City of San Diego, California on APR 23 2001.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Mary A. Cepeda, Deputy

FIRST AMENDMENT TO SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE OF REAL PROPERTY dated, for reference purposes only, November 27, 2000 by and between the CITY OF SAN DIEGO, a California municipal corporation ("Subtenant"), and DRISCOLL MARINA, LTD., a California limited partnership, ("Sublandlord").

RECITALS

1. The parties entered into a sublease agreement dated September 8, 1997 ("Sublease"), wherein Sublandlord leased to the City of San Diego that certain real property known as 4918 North Harbor Drive, Suites 101, 102, 105, 106, 107, 201, 202, 204A, 106A, 205D, 204B, 205E and Slips 15 and 16, San Diego, California 92106 (the "Premises") consisting of approximately 12,779 rentable square feet and Slips 15 and 16 of Pier 5.
2. The Sublease is in full force and effect, and neither Subtenant nor Sublandlord has actual knowledge of any default or breach by the other under the Sublease.
3. The parties now desire to amend the Sublease dated September 8, 1997, as provided in this First Amendment to Sublease.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Sublandlord and Subtenant hereby agree as follows:

ARTICLE ONE - AMENDMENTS

1. The Premises: The amount of space leased as set forth in Recital "C" of the First Sublease Agreement shall be amended to read: The existing Premises consisting of approximately 12,779 square feet shall be expanded to include Suite 105, located in building 4904 North Harbor Drive ("the Expansion Space"), consisting of approximately 551 square feet as crosshatched on Exhibit A, attached hereto. Total leased space is now 13,330 rentable square feet.
2. Term of Sublease: Paragraph 2, of the Sublease shall be amended to read: The Sublease term for the Expansion Space (Suite 105 - building 4904) shall commence December 1, 2000 and will terminate at the same time as the existing leased space. The term for the existing leased space terminates September 14, 2002.
3. Base Rent: Paragraph 3 of the Sublease shall be amended to hereinafter include the Base Rent for the Expansion Space being \$1.45 per square foot or \$798.95 per month for a total Base Rent of \$20,704.81. The Base Rent for the Expansion Space shall be adjusted in the same manner and at the same time as the Base Rent for the Premises is adjusted. The rent schedule is as follows:

December 1, 2000 through September 14, 2001 - \$20,704.81 per month

DOCUMENT NO. 294780

FILED APR 23 2001

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

ARTICLE TWO

1. The Sublease, as hereby amended by this First Amendment to Sublease of Real Property, represents the complete and final understanding of the parties with respect to the subject matter of the Sublease, as hereby amended. No further modification or amendment of the Sublease shall be effective unless set forth in a written instrument executed by a duly authorized representative of the parties hereto. This is an integrated agreement. This Amendment is subject to City Council approval.

2. The effective date of this Amendment will be December 1, 2000.

IN WITNESS WHEREOF, this Sublease Amendment is executed by City, acting by and through its City Manager, and by Sublandlord, acting by and through its lawfully authorized officers.

SUBTENANT:

CITY OF SAN DIEGO, a California
municipal Corporation

SUBLANDLORD:

DRISCOLL MARINA, LTD., a California limited
partnership

By: DRISCOLL MANAGEMENT, INC.,
Its General Partner

By: _____

Jane E. Vickers
Jane E. Vickers, Deputy Director
Real Estate Assets Department

By: _____

J. Gerald Driscoll
J. Gerald Driscoll

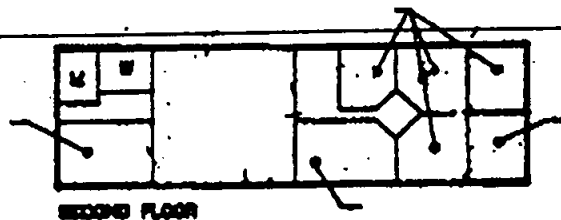
APPROVED AS TO FORM AND LEGALITY, this 19th day of June, 2001.

CASEY GWINN, City Attorney

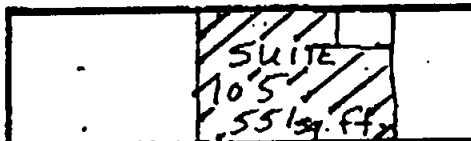
By: _____

Debra J. Bevier
Debra J. Bevier, Deputy City Attorney

EXHIBIT "A"



SECOND FLOOR



FIRST FLOOR

BLDG A 4904 N HARBOR DR.