

CONSENT TO LICENSE AGREEMENT

CITY ATTORNEY

OCT 2 1 5-11-2001

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

BARTELL HOTELS

(LESSEE) and filed in the Office of the City Clerk as Document No. RR-294161 hereby consents to that certain license agreement, titled "Concession Agreement" between the above LESSEE (LICENSOR) and

ADVENTURE WATER SPORTS

(LICENSEE) (License) dated April 11, 2001, a copy of which is attached hereto as Exhibit A. The License shall be subordinate to the Master Lease in all respects. The CITY is merely approving the LICENSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the License. The CITY is not bound by any term or condition in the License which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

- I. In consideration of CITY'S consent, LESSEE shall pay to CITY percentage rent calculated on a calendar month basis and consisting of ten percent (10%) of the gross income resulting from the rental of Motor Boats, Ski Boats, Fishing Boats, Pedal Boats, Aqua Cycles, Sail Boats, Kayaks, Personal Watercraft, Bicycles, Roller Blades, and Scooters, as delineated in Section 3.2 Rent of the Master Lease.
- II. LICENSEE'S operation shall be professionally maintained and staffed during all operating hours and shall be properly equipped to operate legally within any public operating areas or as otherwise required by Mission Bay Park rules. The LICENSEE shall at all times comply with all applicable laws, statutes, ordinances, regulations or "special notices" of the City of San Diego, United States Coast Guard or any other regulatory agency issued under their authority and at the LICENSEE'S sole cost and expense.
- III. LICENSEE shall not assign the license or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego, hereinafter, "CITY". An assignment by operation of law shall automatically terminate this Consent.
- IV. LICENSEE shall defend, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of LICENSEE, his agents and invitees; provided, however, LICENSEE'S duty to indemnify and hold harmless shall not include any claims or liability

arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

- V. LICENSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be Two Million (\$2,000,000) Dollars COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company.
- VI. Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Consent or the License, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

THE CITY OF SAN DIEGO

Dated 6-7-01

By Paul J. Crawford
Supervising Property Agent, Real Estate
Assets Department for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 10/29/01

By Russell Dwyer
Deputy City Attorney

LESSEE: Bartell Hotels

Dated 6/18/01

By [Signature]

Licensee: Adventure Water Sports

Dated 6-21-01

By Jim McLaughlin

CAN/jmj-n

06/07/01

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Concession Agreement

This Agreement made and is effective this 11th day of April 2001, by and between Dana Inn and Marina and Adventure Water Sports, a Delaware Limited Liability Company (hereinafter called "Concessionaire").

Witnesseth

Whereas, Dana Inn and Marina leases from the city of San Diego certain real property located at 1710 W Mission Bay Drive, San Diego California 92109, referred to herein as Dana Inn and Marina.

Whereas, Concessionaire is desirous of obtaining the concession for renting of Motor Boats, Ski Boats, Fishing Boats, Pedal Boats, Aqua Cycles, Sail Boats, Kayaks, Personal Watercraft, Bicycles, Roller Blades, and Scooters at the Dana Inn and Marina.

Now, Therefore, it is here by covenanted and agreed by the parties as follows:

1. Nature of Agreement

This agreement confers a license on the Concessionaire to use a portion of the Dana Inn and Marina property as is described herein for the purposes of this agreement. This agreement does not constitute a lease of premises.

2. Grant Of License

During the term hereof Dana Inn and Marina grants to concessionaire a license to operate the business of renting, but not limited to Motor Boats, Ski Boats, Fishing Boats, Sail Boats, Personal Watercraft, Kayaks, Aqua Cycles, Pedal Boats, Bicycles, Roller Blades, and Scooters at the Dana Inn and Marina within the area designated in Exhibit "A". This area is subject to temporary and permanent change both during and after the hotel remodel.

3. Maintenance of Improvements

Dana Inn and Marina shall, at its sole cost and expense, maintain all structures and other improvements, which have been constructed for concessionaire to conduct business. The maintenance includes but is not limited to painting, repairing and generally maintaining the improvements and surrounding areas. Concessionaire shall be responsible for minor repairs as well as keeping the designated area clean and free of any safety hazards.

4. Term

The term of this agreement will be for a period of five (5) years commencing on the 11th day of April 2001.

5. Providing of Service

Concessionaire shall at all time during the term of this agreement, at its cost, adequately furnish, stock and equip the designated area with the proper equipment and supplies so as to meet the demand for the rental thereof. Such equipment shall include but not be limited to Motor Boats, Ski Boats, Fishing Boat, Sail Boats, Personal Watercraft, kayaks, Pedal Boats, Aqua Cycles, Bicycles, Scooters, and Roller Blades. Concessionaire agrees to make regular safety checks of the equipment to ensure that it is in proper working order. Dana Inn and Marina shall be responsible for all power and water bills related to the operation of the rental office. This does not include the charging of electric vehicles. Concessionaire shall be responsible for the payment of all costs of the telephone including service and use fees.

Concessionaire shall pay all salaries, wages, workmen's compensation insurance, payroll taxes, social security taxes and similar taxes and other compensation. All such employees and personnel shall be employees of concessionaire and shall be required by concessionaire to wear approved uniforms conforming to Dana Inn and Marina standards, the cost of acquiring, furnishing and maintaining such uniforms shall be borne by concessionaire. Concessionaire hereby agrees to hold harmless and indemnify Dana Inn and Marina, and their respective officers, directors, shareholders, partners, employees, agents and attorneys from any claims for wages or compensation, workmen's compensation insurance payment, and payroll taxes of and connection with the operation of the concession contemplated hereby.

6. Hours of Operation

Concessionaire shall remain open for operation and stand ready, willing and able to rent equipment during the days and times shown below:

Summer hours M – F 9:30 – 5:00

S – S 9:00 – 6:00

Winter Hours M – F 10:00 – 4:00

S - S 10:00 – 4:00

Closed from Thanksgiving to New Years Day

Concessionaire shall not be required to remain open for operation during times of rain, or similar severely adverse weather conditions.

7. Permits and licenses

Other than the consent of the city of San Diego to this agreement, which Dana Inn and Marina shall obtain, solely in its capacity as lessor under the ground lease for Dana Inn and Marina, concessionaire shall obtain and maintain at its sole cost during the term hereof all necessary permits and licenses to conduct the concession.

8. Compliance with the Law

Concessionaire will not conduct nor permit to be conducted any unlawful business, occupation or activity in the designated area and shall at all times comply with all City, County, State and Federal laws, ordinances, rules and regulations.

9. Payment of Concession Fee

Concessionaire shall pay to Dana Inn and Marina a sum equal to fifteen percent (15%) of its gross rental receipts made in, upon or from the concession, adjusted on a monthly basis. The Dana Inn is responsible for all fees paid to the city specified in their lease. If the city increases the percentage rent for the concessionaire or and activities conducted by the concessionaire of the sublease, concessionaire shall be responsible for such increase. Concessionaire shall present to Dana Inn and Marina a statement certified by concessionaire to be true and correct and showing the gross rentals on the tenth day of the following month as herein and set forth. Payment shall be made within 10 days after the end of each month during the term of this agreement.

10. Insurance

Concessionaire shall take out and maintain at all time during the term of this agreement public liability and property damage insurance in the amount not less than one million dollars (\$1,000,000.00) combined single limit liability with an occurrence claims form. The policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failure to act by city of San Diego or Dana Inn and Marina or by authorized representatives of the city of San Diego or the Dana Inn and Marina on or in connection with the use or operation of the premises. All insurance policies will name the city of San Diego and Dana Inn and Marina as additional insured, protect the city of San Diego and Dana Inn and Marina against legal costs in defending claims, and will not terminate with out sixty (60) days prior written notice the Dana Inn and Marina.

11. Acts of god

Neither party hereto shall be responsible or be deemed in default by reason of and inability to perform its obligations hereto due to acts of god, or the public enemy; epidemics or insurrections or riots; fire, floods, explosions, earthquakes or serious accidents, epidemics or quarantine restriction.

12. Attorneys Fees

In the event of any proceedings by either party hereto to enforce the terms and provisions of this agreement, whether or not suit is instituted in connection therewith, the prevailing party shall be entitled, in addition to all other relief granted or awarded in any action or proceedings, to a reasonable sum for attorney's fees and costs incurred in connection therewith.

13. General Provisions

- (a) If any term, provision, covenant or condition of this agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- (b) The laws of the State or California shall govern the validity, construction and effect of this agreement.
- (c) It is expressly agreed that there are no oral representations, understandings, stipulations, agreements or promises pertaining to this agreement not incorporated in writing herein, shall be of no force or affect; and it is agreed that this agreement shall not be altered, waived, or amended.
- (d) The signers of this agreement represent and warrant that they have the authority to enter into this agreement on behalf of the respective parties.

14. Indemnity

Concessionaire agrees to defend, indemnify, protect and hold Dana Inn and Marina, its agents, officers and employees harmless from and against any and all claims asserted or liability established for damage or injuries to any person or property, including injury to Dana Inn and marina employees, invitees, guests, agents, and officers, which arise out of or are in any manner directly or indirectly connected with the operation of the concession, and all expenses of investigating and defending (including attorney fees with counsel of Dana Inn and Marinas choice) against same.

15. Assignment/ Early Termination

Dana Inn and Marina is relying on the experience and goodwill of Jim McCoy and Richard Hannay, principals of Concessionaire, in entering into this Agreement. In the event that either Mr. McCoy or Mr. Hannay are no longer actively managing the day to day operations of Concessionaire at the Dana Inn and Marina, the Dana Inn and Marina may, at its sole option, terminate this Agreement. Furthermore, Concessionaire may not assign this Agreement without the written approval of the Dana Inn and Marina, approval of which shall be its sole discretion.

Executed at San Diego, California on the date below written.

Dana Inn and Marina

By: Wayne Blum GM

Name: WAYNE BLUM

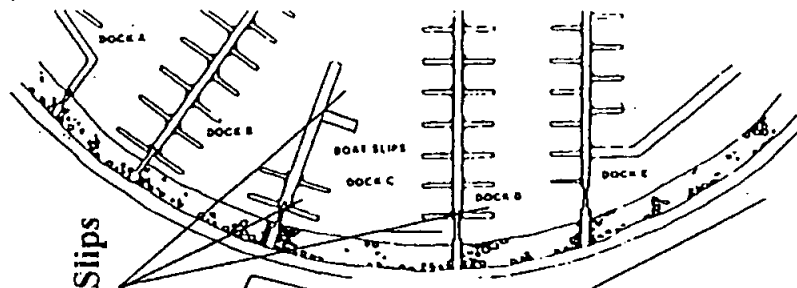
Date Signed: 4/11/01

**Adventure Water Sports,
A Delaware Limited Liability Company**

By: Jim McCoy member

Name: Jim McCoy member

Date Signed: 4/11/01



15 MINUTE WALK
TO SEA WORLD

TO MARINA
LAUNCHING RAMP

Exhibit "A"

629	628
627	626
625	624
623	622
621	620
619	618
617	616
615	614
613	612
611	610
609	608
607	606
605	604
603	602
601	600

Rental Slips

MARINA RENTALS

DOCK MASTER

ICE

ICE GUEST LAUNDRY



TENNIS COURTS

529	528
527	526
525	524
523	522
521	520
519	518
517	516
515	514
513	512
511	510
509	508
507	506
505	504
503	502
501	500

ICE - VENDING MACHINE

ICE - VENDING MACHINE
SOFT DRINKS

318	319
316	317
314	315
312	313
310	311
308	309
306	307
304	305
302	303
301	

HOUSEKEEPING

PAY PHONE

SHUFFLEBOARD

PING PONG

PING PONG

POOL BAR

HOT SPA

POOL

219	218
217	216
215	214
213	212
211	210
209	208
207	206
205	204
203	202
201	200

ICE - PAY PHONE

VENDING MACHINE
SOFT DRINKS

119	118
117	116
115	114
113	112
111	110
109	108
107	106
105	104
103	102
101	

EXECUTIVE OFFICES

LOBBY

ICE
SOFT DRINKS

700	701
702	703
704	705
706	707
708	709
710	711
712	713
714	715
716	717
718	719
720	721
722	723
724	725
726	727
728	729

BOAT TRAILER PARKING

RESTAURANT



YOU
ARE
HERE

UPSTAIRS - ODD NUMBERED / DOWNSTAIRS - EVEN NUMBERED

TO BEACHES

CONSENT TO CONCESSION AGREEMENT

The City of San Diego ("CITY"), as LESSOR under that certain Lease Agreement ("Master Lease") entered into with

BARTELL HOTELS, a Limited Partnership d/b/a DANA INN & MARINA

("LESSEE") and filed in the Office of the City Clerk as Document RR 294161 on November 14, 2000, consents to that certain Concession Agreement between the above LESSEE and

KATHLEEN CULORA

("CONCESSIONAIRE") dated July 1, 2004. The Concession Agreement shall be subordinate to the Master Lease in all respects. The CITY is merely approving the CONCESSIONAIRE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Concession Agreement. The CITY is not bound by any term or condition in the Concession Agreement which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

ASSIGNMENT AND SUBLEASING: CONCESSIONAIRE shall not assign the Concession Agreement, the license granted to Concessionaire, or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego. An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: CONCESSIONAIRE shall assume the defense of, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the licensed premises, the condition of the premises or from any act or omission of CONCESSIONAIRE, his agents and invitees; provided, however, CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: CONCESSIONAIRE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the licensed premises. Minimum coverage shall be two million dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego, its elected officials, officers, representatives, agents, and employees" as additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent or fees, to recover possession or enforce any other provision of

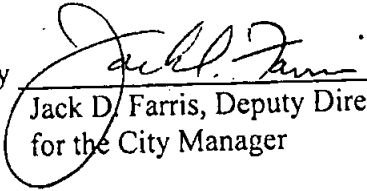
this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.

ASSUMPTION OF RIGHTS AND OBLIGATIONS: CONCESSIONAIRE agrees to assume the rights and obligations of the Master Lease pursuant to the Concession Agreement and to perform all contracts, conditions and provisions of the Master Lessee applicable to the rights acquired.

THE CITY OF SAN DIEGO

Date _____

By

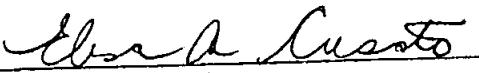

Jack D. Farris, Deputy Director,
for the City Manager

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

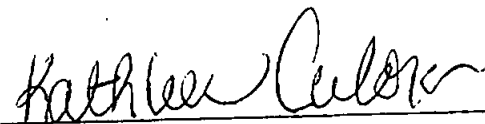
Date 1/11/05

By


Deputy City Attorney

Date 12/29/04

By


Kathleen Culora

JB/cj

12/16/04

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Concession Agreement

This Agreement made and is effective this 1st day of July 2004, by and between the Dana on Mission Bay ("the Dana") and Kathleen Culora ("Concessionaire").

Witnesseth

Whereas, the Dana leases from the City of San Diego certain real property located at 1710 West Mission Bay Drive, San Diego California 92109, referred to herein as the Dana on Mission Bay ("the Dana").

Whereas, Concessionaire is desirous of obtaining the concession for selling of goods at the gift shop located at the Dana

Now, Therefore, it is here by covenanted and agreed by the parties as follows:

1. Nature of Agreement

This agreement confers a license on the Concessionaire to use a portion of the Dana property as is described herein for the purposes of this agreement. This agreement does not constitute a lease of premises.

2. Grant of License

During the term of hereof the Dana grants to concessionaire a license to operate the business of selling goods at the Dana gift shop within the area designated in Exhibit "A". This area is subject to temporary and permanent change both during and after the hotel remodel.

3. Maintenance of Improvements

The Dana shall, at its sole cost and expense, maintain all structures and other improvements, which have been constructed for concessionaire to conduct business. The maintenance includes but is not limited to painting, repairing and generally maintaining the improvements and surrounding areas. Concessionaire shall be responsible for keeping the designated area clean and free of any safety hazards.

4. Term

The term of this agreement will be for a period of five (5) years commencing on the 1st day of July 2004.

5. Providing of Service

Concessionaire shall operate a first-class hotel gift shop and, at its cost, adequately furnish, stock and equip the designated area with the proper equipment and supplies so as to meet the demand of the Gift Shop thereof. Concessionaire agrees to make regular safety checks of the equipment to ensure that it is in proper working order. The Dana shall be responsible for all power and water bills related to the operation of the gift shop. Concessionaire shall be responsible for the payment of all costs of the telephone including service and use fees.

Concessionaire shall be solely responsible for all salaries, wages, workmen's compensation insurance, payroll taxes, social security taxes and similar taxes and other compensation. All such employees and personnel shall be employees of concessionaire and shall be required by concessionaire to wear Dana approved uniforms conforming to the Dana standards; the cost of acquiring, furnishing and maintaining such uniforms shall be borne by concessionaire.

6. Hours of Operation

Concessionaire shall remain open for a minimum of 7:00am to 4:00pm, seven days a week and longer hours in the concessionaire sole discretion based on hotel occupancy, events on property and groups in house.

7. Permits and licenses.

Other than the consent of the City of San Diego to this agreement, which the Dana use its best efforts to obtain, solely in its capacity as lessor under the ground lease for the Dana, concessionaire shall obtain and maintain at its sole cost during the term hereof all necessary permits and licenses to conduct the concession.

8. Compliance with the Law

Concessionaire will not conduct nor permit to be conducted any unlawful business, occupation or activity in the designated area and shall at all times comply with all City, County, State and Federal laws, ordinances, rules and regulations.

9. Payment of Concession Fee

Concessionaire shall pay to the Dana on a monthly basis in amount equal to 7% of all gift shop items sold and 3% of all food items sold. Concessionaire shall also pay to the Dana on Mission Bay a sum equal to one percent (1%) of its gross sales receipts after \$5000.00 made in, upon or from the concession, adjusted on monthly basis and two percent (2%) after \$15000.00. If the City of San Diego increases the percentage rent for the Concessionaire or and activities conducted by the Concessionaire of the sublease, Concessionaire shall be responsible for such increase. Concessionaire shall

present to the Dana on Mission Bay a statement certified by concessionaire to be true and correct and showing the gross sales on the tenth day of the following month as herein and set forth. Payment shall be made within 10 days after the end of each month during the term of this agreement.

10. Insurance

Concessionaire shall take out and maintain at all time during the term of this agreement \$500,000 general liability and workers compensation insurance coverage. All insurance policies will name the City of San Diego and the Dana on Mission Bay as additional insured which will not terminate with out sixty (60) days prior written notice the Dana on Mission Bay.

11. Acts of God

Neither party hereto shall be responsible or be deemed in default by reason of and inability to perform its obligations hereto due to acts of god, or the public enemy; epidemics or insurrections or riots; fire, floods, explosions, earthquakes or serious accidents, epidemics or quarantine restriction.

12. Attorneys Fees

In the event of any proceedings by either party hereto to enforce the terms and provisions of this agreement, whether or not suit is instituted in connection therewith, the prevailing party shall be entitled, in addition to all other relief granted or awarded in any action or proceedings, to a reasonable sum for attorney's fees and costs incurred in connection therewith.

13. General Provision

- (a) If any term, provision, covenant or condition of this agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- (b) The laws of the State of California shall govern the validity, construction and effect of this agreement.
- (c) It is expressly agreed that there are no oral representations, understandings, stipulations, agreements or promises pertaining to this agreement not incorporated in written herein, shall be of no force or affect; and it is agreed that this agreement shall not be altered, waived, or amended.
- (d) The signers of this agreement represent and warrant that they have the authority to enter into this agreement on behalf of the respective.

14. Indemnity

Both Concessionaire and the Dana agree to indemnify, defend, and hold harmless each other from all claims, demands, action, liabilities and expenses (including attorney's fees) arising out of the insuring party's negligence or willful misconduct.

15. Assignment/ Early Termination

The Dana on Mission Bay is relying on the experience and goodwill of Kathleen Culora, principals of Concessionaire, in entering into this Agreement. In the event that Ms Culora is no longer actively managing the day to day operations of Concessionaire at the Dana on Mission Bay, the Dana on Mission Bay may, as its sole option, terminate this Agreement. Furthermore, Concessionaire may not assign this Agreement without the written approval of the Dana on Mission Bay, approval of which shall be its sole discretion.

Executed at San Diego, California on the date below written.

The Dana on Mission Bay

By: Gerald Kyle

Name: [Signature]

Date Signed: 9/17/04

Kathleen Culora

By: Kathleen Culora

Name: owner

Date Signed: 9/17/04