



Real Estate Assets Department
SDC003

Driscoll Mission Bay LLC
P201RD-015-A02

Document Type

LEGAL DOCUMENTS



Sub - Category

(4)

SUBLEASES





Department of Real Estate and Airport Management

June 1, 2023

Driscoll Mission Bay Boatyard & Marina
Attn: Tom and Karen Driscoll, COO's
1500 Quivira Way
San Diego, CA 92109

Subject: Lessee Driscoll Mission Bay LLC – Sublessee Aqua Adventures: Non-approved site uses lacking written City Consent

Mr. and Mrs. Driscoll:

Thank you for your time and the tour last week of the Driscoll Mission Bay Boatyard & Marina improvements and facilities.

It has come to our attention that your subtenant Aqua Adventures does not have written City Consent for aquatic craft activities such as six pack charters and boat rentals but may be operating as such.

As you are aware your lease with the City requires you to obtain written consent of the City Manager prior to subleasing a portion of the leasehold. Please refer to the following: Mission Bay Marina lease, 1979-IV. Covenants & Conditions, A.2: Right to Assign and Sublet, and C. Restrictive Conditions, 18. City Approval and Consent, as well as City's Consent to Assignment of Lease to Driscoll Mission Bay LLC in 1997, Clause 7.

When the City consented to Aqua Adventures as your sublessee on October 28, 2021, only the following activities were approved: **retail operation, kayak and paddleboard sales, rental and storage, watersport classroom and water-based educational activities.**

If you have any questions, please contact at roswithas@sanidiego.gov or at (619) 236-6721.

Sincerely,

A handwritten signature in cursive script that reads "Roswitha Sanchez".

Roswitha Sanchez
Supervising Property Agent

cc: Matthew Ostlund, Program Manager, Department of Real Estate and Airport Management
Rick Strobel, Marine Safety Lieutenant, Fire-Rescue Department/Lifeguard Services Division

Encl.: Consent to Sublease

CONSENT TO SUBLEASE
(Driscoll Mission Bay: Aqua Adventures, a California Corporation)

THIS CONSENT TO SUBLEASE ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("City"), and DRISCOLL MISSION BAY LLC, a California limited liability company ("Lessee"), to be effective upon the respective authorized representatives of City and Lessee all signing this Consent and the form of this Consent being approved by the San Diego City Attorney. This Consent is made and entered into in reference to the following facts:

RECITALS

- A. CITY and Lessee (as successor in interest to Mission Bay Marina) are parties to that certain CITY OF SAN DIEGO PERCENTAGE LEASE dated March 5, 1979, and filed in the Office of the City Clerk as Document No. 766042, as amended (hereinafter, collectively, the "Agreement"), relating to the CITY-owned property located in a portion of Mission Bay Park, in the City of San Diego, consisting of approximately 4.278 acres of land and 8.702 acres of water, commonly known as "Driscoll Mission Bay" and more particularly described in the Agreement ("Premises").
- B. Lessee now desires to sublease a portion of the Premises to Aqua Adventures, a California corporation ("Sublessee") for retail operation, kayak and paddleboard sales, rental and storage, watersport classroom and water-based educational activities within the area designated in the sublease agreement.
- C. The Agreement requires City's consent to the license or sublease of any portion of the Premises by Lessee.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, City and Lessee agree as follows:

- 1. City Consent to Sublease. Subject to the terms and conditions of this Consent and the Agreement, City consents to Lessee subleasing to Sublessee that certain portion of the Premises subject to the Sublease ("Sublease Premises"). All terms and conditions of the Agreement shall control and supersede all inconsistent or contrary provisions in the Sublease.
- 2. Sublessee Assumption of Lessee's Obligations. City's consent to the Sublease is conditioned upon Sublessee's written agreement in the Sublease to assume and perform all obligations of Lessee under the Agreement applicable to the Sublease Premises. Sublessee's failure to perform one or more of these assumed obligations shall be a material default and breach under the Agreement and may subject the Agreement to termination by City.
- 3. No Effect on Agreement. Notwithstanding any provision of this Consent to the contrary, this Consent does not release, discharge, or modify any obligation of Lessee under the Agreement.
- 4. Subsequent Subleasing. This Consent does not constitute City's consent to any subsequent assignment, sublease, or license and does not relieve Lessee or any person claiming under or

through Lessee of the obligation to obtain City's consent to any future assignment, sublease, or license pursuant to the Agreement.

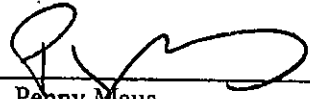
5. Processing Fees. Lessee agrees to pay City all applicable processing and/or administrative fee(s) charged by City for processing this Consent.
6. Brokerage Commissions or Finder's Fees. Lessee acknowledges and agrees that City will not be liable for any brokerage commission or finder's fee in connection with the consummation of the Sublease. Lessee agrees to protect, defend, indemnify, and hold City harmless from any brokerage commission or finder's fee in connection with the consummation of the Sublease or this Consent, and from any cost or expense (including attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 6 shall survive the expiration or earlier termination of the Agreement, the Sublease, or this Consent.
7. Consideration for Sublease: Lessee represents and warrants to City that a true, correct, and complete copy of the Sublease is attached to this Consent as Exhibit "A." Lessee further represents and warrants to City that there are no additional payments of rent or any other consideration of any type that has been paid or is payable by Sublessee or any other person to Lessee in connection with the Sublease or the Sublease Premises, other than as disclosed in the Sublease.
8. Subordination. The Sublease is subject to and subordinate to the covenants and conditions of the Agreement. The Sublease may only be in effect while the Agreement is in effect. Nothing in this Consent modifies the expiration date of the Agreement or Sublease. Lessee represents and warrants to City that Lessee provided Sublessee a true, correct, and complete copy of the Agreement before Sublessee entered into the Sublease. City does not release, discharge or modify Lessee's obligations to City under the Agreement. As set forth in applicable law, Lessee's obligations under the Agreement shall survive the Sublease and shall continue through the termination dates of the Agreement.
9. Lessee Estoppels. Lessee certifies the following to City as of the date of this Consent:
 - 9.1 Lessee has not assigned its interest in the Agreement or otherwise transferred its interest in the Agreement;
 - 9.2 City does not owe Lessee any money or other performance under the Agreement;
 - 9.3 City is not in default under the Agreement;
 - 9.4 The Agreement is in full force and effect, there have been no amendments, modifications, changes, or additions to the Agreement since its execution; and
 - 9.5 Lessee is not in default under the Agreement and no event has occurred that would constitute a default under the Agreement by Lessee, without regard for any requirement to give notice and/or for the passage of time.
10. No Fee Title Encumbrance. Nothing in this Consent or any document referenced in this Consent is intended to create or authorize the creation of any transfer, lien, or encumbrance affecting the fee title to the Premises.

SIGNATURE PAGE
TO
CONSENT TO SUBLEASE
(Driscoll Mission Bay: Aqua Adventures, a California corporation)

IN WITNESS WHEREOF, this Consent is made and entered into by and through the signatures of the respective authorized representative(s) of City, Lessee, and Sublessee, as set forth below:

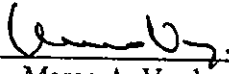
THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 8/11/2021

By: 
Penny Maus
Director
Real Estate Assets Department

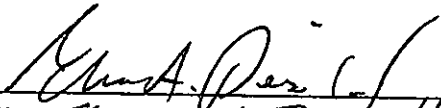
Approved as to form on October 28th
2021

MARA W. ELLIOTT, City Attorney

By: 
Marco A. Verdugo
Deputy City Attorney

Driscoll Mission Bay, a California limited
liability company

Date: 10/1/2021

By: 
Name: Thomas A. Driscoll
Title: owner