

CONSENT TO SUBLEASE AGREEMENT

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

RICHARD L. GLEASON AND DEBRA L. GLEASON
dba
MISSION BAY SPORTS CENTER, INC
a California corporation

("LESSEE") and filed in the Office of the City Clerk as Document O-18224, dated November 1, 1995, hereby consents to that certain Sublease Agreement between the above LESSEE ("SUBLESSOR") and

EPIC BOATS, LLC
a California limited liability corporation

("SUBLESSEE") dated May 15, 2006. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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: SUBLESSEE shall not assign the sublease 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: SUBLESSEE 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 leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE'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: SUBLESSEE 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 dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY. On a separate endorsement, "The City of San Diego, its elected officials, officers, representatives, agents, and employees" shall be named as additional insureds. 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, 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.

SUBORDINATION: The License Agreement is in effect a sublease of a portion of the premises covered by the Master Lease. The License Agreement is subject to and subordinate to the covenants and conditions of the Master Lease.

THE CITY OF SAN DIEGO

Dated 6/29/06

By 
Real Estate Assets Director

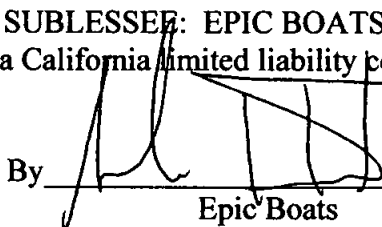
SUBLESSOR: MISSION BAY SPORTS
CENTER, a California corporation

Dated 6/26/06

By 
Mission Bay Sports Center

SUBLESSEE: EPIC BOATS, LLC
a California limited liability corporation

Dated 6/26/06

By 
Epic Boats

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

Dated 1-30-07

By 
Deputy City Attorney

SUBLEASE

THIS SUBLEASE AGREEMENT ("Sublease") dated, for reference purposes only, is executed between the MISSION BAY SPORTS CENTER, Inc, a California corporation ("Sublessor"), and EPIC BOATS, LLC; a California corporation, ("Sublessee").

RECITALS

- A. THE CITY OF SAN DIEGO ("the Lessor"), entered into a lease agreement dated November 1, 1995 ("the Lease"), with the Mission Bay Sports Center, Inc. ("the Sublessor"), for that certain real property known as 1010 Santa Clara Place, San Diego, California 92109 (the "Premises").
- B. Sublessor desires to sublet a portion of the Premises to the Sublessee.
- C. The Lessor has consented to a sublease to Sublessee by Sublessor per the attached memo.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, receipt of which is acknowledged, the parties agree to this Sublease on the following terms and conditions:

- 1. **Sublease.** Sublessor subleases to Sublessee and Sublessee subleases from Sublessor the indoor area consisting of approximately 2000 square feet (the "Subleased Premises"). The Subleased Premises are delineated on Exhibit A which is attached to and incorporated into this Sublease by this reference.
- 2. **Location.** Mission Bay Sports Center located at as 1010 Santa Clara Place, San Diego, California 92109.
- 3. **Term.** The term of this Sublease is a month to month.
- 4. **Right to Cancel the Sublease.** Sublessee shall have the right to cancel this Sublease upon providing a 24-hour prior written notification to the Sublessor stating the effective cancellation date.
- 5. **Monthly Rent and Utility Costs.** Sublessee shall pay directly to the Sublessor Attention: Jason Boone, Mission Bay Sports Center, 1010 Santa Clara Place, San Diego, CA 92109 the amount of four thousand dollars (\$4000) per month base. The rental payment is due on or before the first day of each month.
- 6. **Percentage Rent:** Lessee shall pay Lessor in addition to the base rent, two percent (2%) of Lessee's gross receipts for sales of new boats, boat service, boating accessories and one percent (1%) of Lessee's gross receipts for sales of used boats, for all sales processed at subleased premises monthly in arrears, and prior to the 16th day of the month following that month in which the revenue subject was earned to be forwarded to the city.

7. Shared Expenses: Lessee shall pay to Lessor, as additional rent, Lessee's "proportionate share" of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Sportcenter facility. Said-shared expenses shall be paid monthly by the end of the month billed. At the end of the first term of the sublease, the "proportionate share" shall be re-evaluated and adjusted to reflect actual usage. Definitions: For the purpose of this section (a) Lessee's "proportionate share" shall be equal to the total "shared expenses" divided by the number of sublessees and the Lessor in equal shares unless otherwise agreed upon.
8. Security Deposit. Sublessee shall deposit with Sublessor upon execution of this Sublease a security deposit in the amount of two thousand dollars (\$2000.00). If Sublessee fails to pay rent or other charges due pursuant to this Sublease, or otherwise defaults with respect to any provision of this Sublease, Sublessor may use, apply or retain all or any portion of the deposit for the payment of any rent or other charge in default for the payment of any other sum to which Sublessor may become obligated by reason of Sublessee's default, or to compensate Sublessor for any loss or damage which Sublessor may suffer. If Sublessee performs all of the Sublessee's obligations pursuant of this Sublease, the deposit, or any amount that has not been applied to the payment of rent or other charges incurred by Sublessor, shall be returned, without payment of interest or other increments for its use, to Sublessee at the expiration or cancellation of the term of this Sublease, and after the Sublessee has vacated the Subleased Premises.
9. Use. The Subleased Premises shall be used by Sublessee and Sublessee's permittees for boat and related accessories sales, and service. The premises shall be used for no other purpose. The Lessor shall not allow any other boat sales or service businesses to operate out of the facility. Any violation of this Section is a material breach of this Sublease and of the Lease.
10. Condition of Premises. Sublessee agrees that its act of taking possession will be an acknowledgment that the Subleased Premises are in leasable and good condition. Sublessee shall not, without Sublessor's and Lessor's prior written consent, make any alterations, improvements, additions on or about the Subleased Premises. At the expiration of the term, Sublessor may require the removal of any or all alterations and improvements in the Subleased Premises at Sublessee's sole expense. Upon termination of this Sublease, Sublessee shall surrender and vacate the Subleased Premises in a broom-clean, good condition, normal wear and tear excepted, and shall, without expense to Sublessor, remove or cause to be removed from the Subleased Premises all debris and rubbish, all furniture, equipment, business and trade fixtures, movable partitions and other articles of property owned by Sublessee. Sublessee shall repair all damage to the Subleased Premises resulting from any removal.
11. Late Charges. If any installment of rent, or any other sum due from Sublessee is not be received by Sublessor within five (5) days after the amount is due, then, without any requirement for notice to Sublessee, the Sublessee shall pay to Sublessor a late charge

equal to ten percent (10%) of the overdue amount. Acceptance of the late charge shall not constitute a waiver of Sublessee's default with respect to any overdue amount, nor prevent Sublessor from exercising legal remedies.

12. Defaults and Remedies

- a. Default. Each of the following shall constitute an event of default under this Sublease.
 - i. Sublessee's failure to make any payment required under this Sublease when due;
 - ii. Sublessee defaults in the performance of any covenant or condition required by this Sublease, other than those requiring payment to Sublessor, to be performed by Sublessee and fails to cure the default within thirty (30) days following written notice of the default from Sublessor; or if any such default, other than those requiring payment to Sublessor, is not curable within thirty (30) days, and fails to commence to cure the default(s) within said thirty (30) day period and diligently pursue such cure to completion;
 - iii. Sublessee voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - iv. Sublessee is adjudicated a bankrupt; and
 - v. Sublessee makes a general assignment for the benefit of creditors.
- b. Remedies. Upon default by Sublessee, Sublessor may, at its option, give Sublessee, or any person claiming rights through Sublessee, a written Three-Day Notice to Pay or Quit, or Sublessor may terminate this Sublease and all rights of Sublessee and of all persons claiming rights through Sublessee to the Subleased Premises or to possession of the Subleased Premises, and Sublessor may enter and take possession of the Subleased Premises provided, however, in the event that any default described in this Section is not curable within thirty (30) days after notice to Sublessee, Sublessor will not terminate this Sublease pursuant to the default if Sublessee immediately commences to cure the default and diligently pursues such cure to completion, and may recover from Sublessee the sum of:
 - i. the worth at the time of award of any unpaid rent that had been due at the time of termination; the worth at the time of award of the amount by which (a) the unpaid rent that would have been earned after termination until the time of award exceeds (b) the amount of rental loss, if any, and which Sublessee affirmatively proves could have been reasonably avoided;

- ii. the worth at the time of award of the amount by which (a) the unpaid rent for the balance of the term after the time of award exceeds (b) the amount of rental loss, if any as Sublessee affirmatively proves could be reasonably avoided;
- iii. any other amount necessary to compensate Sublessor for any detriment caused by Sublessee's failure to perform Sublessee's obligations or that, in the ordinary course of things, would be likely to result; and
- iv. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (i) and (ii) of this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (iii) of this Section, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section the term "rent" shall include base rent, Percentage Rent and any other payments required by Sublessee.

13. Insurance. Sublessee shall, at Sublessee's expense, obtain and keep in force at all times during the term of this Sublease insurance coverage as follows:

- a. Public liability and property damage in the amount of not less than two one million dollars (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by Sublessor or Sublessee or by authorized representatives of Sublessor or Sublessee on or in connection with the use or operation of the Subleased Premises.
- b. Fire, extended coverage, and vandalism insurance policy on all insurable property on the Subleased Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss will be payable jointly to Sublessor and Sublessee.
- c. All insurance policies will name the Sublessor as an additional insured, protect Sublessor and Lessor against any legal costs in defending claims, and will not terminate without sixty days (60) days prior written notice to Sublessor. A copy of the insurance policy will remain on file with Sublessor during the entire term of the Sublease. At least thirty (30) days prior to the expiration of each policy, Sublessee shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Sublease.
- d. If Sublessee fails or refuses to take out and maintain its required insurance or fail to provide the proof of coverage, Sublessor has the right to obtain the insurance. Sublessee shall reimburse Sublessor for the premiums paid with interest at the

maximum allowable legal rate then in effect in California. Sublessor shall give notice of payment of premiums within thirty (30) days of payments stating the amount paid, names of the insurer (s), and rate of interest. Reimbursement and interest shall be paid by Sublessee on the first (1st) day of the month following notice of payment by Sublessor.

14. Indemnity. Sublessee agrees to defend, indemnify, protect, and hold the Sublessor and Lessor, their elected officials, representatives, agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Sublessee's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the Subleased Premises or the work and operations to be performed under this Sublease, and all expenses of investigating and defending against same; provided, however, that Sublessee'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 Sublessor, its agents, officers, or employees.
15. Assignment and Subleasing. Sublessee shall not assign this Sublease or sublet the Subleased Premises or any part of the Subleased Premises without the prior written consent of Lessor and Sublessor. An assignment by operation of law shall automatically terminate this Sublease.
16. Attorney's Fees. In the event of any action or proceedings brought by either party against the other under this Sublease, the prevailing party shall be entitled to recover the fees for its attorneys in any action or proceeding, in the amount as the court may adjudge reasonable as attorney's fees. In the event the Sublessor intervenes in or becomes a party or is made a party to any action or proceeding arising in connection with this Sublease in order to protect its rights, then Sublessee will pay the Sublessor the fees of Sublessor's attorneys as fixed by the court.
17. Possessory Interest Tax. Sublessee agrees to pay, before delinquency, all possessory interest taxes assessed or levied upon Sublessee or the Subleased Premises, including any structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Sublessee or levied by reason of the business or other Sublessee activities related to the Subleased Premises, including any licenses or permits. Sublessee recognizes and agrees that this Sublease may create a possessory interest tax levied on such interest, and that Sublessee shall pay all such possessory interest taxes. Sublessee further agrees that payment for such taxes, fees and assessments will not reduce any rent due Sublessor.
18. Subordination. This Sublease is a sublease of a portion of the Premises, covered by the Lease dated November 1, 1995, between the Sublessor and Lessor. This Sublease is subject to the covenants and conditions of the Lease notwithstanding any provision of this Sublease contrary to or in conflict with the Lease.

19. Nondiscrimination. Sublessee agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Sublessee's use of the Subleased Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
20. Notices. Any notice, consent, demand, bill, statement or other communication required or permitted to be given under this Sublease shall be in writing and mailed to Sublessor at the following address:
- Mission Bay Sport Center
Attn: Jason Boone
1010 Santa Clara Place
San Diego, California 92109.
(619) 488-1004
- Epic Boats, LLC
Attn: Adam Tuttle
11379 Kelowna
San Diego, California 92126
(619) 955-0700
21. Signs. Upon approval of the Sublessor, Sublessee shall be allowed to display appropriate signage identifying its presence at the Subleased Premises.

IN WITNESS WHEREOF, this Sublease is executed by the Mission Bay Sports Center, acting by and through its lawfully authorized officers, and by Sublessee acting by and through its lawfully authorized officers.

SUBLESSOR:
MISSION BAY SPORTS CENTER
a California Corporation

SUBLESSEE:
EPIC BOATS, LLC
a California Corporation

By: _____



Mission Bay Sports Center

By: _____



Epic Boats
PRESIDENT / CEO

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego ("CITY"), as Lessor under that certain Lease Agreement ("MASTER LEASE") entered into with

RICHARD L. GLEASON AND DEBRA L. GLEASON

("LESSEE"), effective October 16, 1995, and filed in the Office of the City Clerk as Document No. 00-18224, hereby consents to that certain sublease ("SUBLEASE") made on June 1, 2003, by and between the above LESSEE and

BILL MOSS d.b.a. HYDRODIVER

("SUBLESSEE") for the subleased premises attached hereto as Exhibit A. The SUBLEASE is attached hereto as Exhibit B and incorporated herein by this reference. In addition, this consent is subject to the following:

1. **SUBORDINATION**: The SUBLEASE shall be subordinate to the MASTER LEASE in all respects, notwithstanding any provision of this consent or the MASTER LEASE contrary to or in conflict with the SUBLEASE. The CITY is not bound by any term or condition in the SUBLEASE which in any way conflicts with or is additional to the provisions of the MASTER LEASE. In the event of a conflict between the MASTER LEASE and SUBLEASE, the terms of the MASTER LEASE shall prevail.

2. **ASSUMPTION OF RIGHTS AND OBLIGATIONS**: SUBLESSEE agrees to assume the rights and obligations assigned by the SUBLEASE and further agrees that he will keep and perform all covenants, conditions and provisions of the Master Lease applicable to the rights acquired. This includes but is not limited to all obligations respecting use and occupancy of the premises.

3. **PERMITTED USE**: SUBLESSEE shall use and occupy the premises for boat charter and for no other purpose. Any change to the permitted use will require prior written consent and approval of the CITY.

4. **RENT AMOUNT**: LESSEE shall pay to CITY as rent, 50% of all revenues actually received as a result of the SUBLEASE. The rent shall be made payable to City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, CA 9212-4165, or delivered to the Office of the City Treasurer, 1200 Third Avenue, First Floor, San Diego, California.

5. ASSIGNMENT AND SUBLETTING: SUBLESSEE shall not assign the SUBLEASE or sublet the premises or any part thereof without the prior written consent of the CITY. An assignment by operation of law shall automatically terminate the City's consent to sublease of the premises. Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired.

6. HOLD HARMLESS: LESSEE and SUBLESSEE shall be jointly and severally liable for the defense of, and shall indemnify and hold harmless CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the SUBLEASE including the operations conducted by SUBLESSEE on the leased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents and invitee's; provided, this duty to indemnify and hold harmless shall not include any claims or liability arising from the sole negligence or sole willful misconduct of the CITY, its agents, officers, or employees.

7. INSURANCE. SUBLESSEE 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 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 insureds. 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. Prior to each insurance renewal period, LESSEE or SUBLESSEE shall submit to CITY a copy of one new policy insurance.

8. LEGAL PROCEEDING: Should it become necessary for the CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Consent or the MASTER LEASE, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.

9. This Consent does not obligate the City to consent to any future subleases of the premises by Sublessee or any other party or to consent to any renewal of the SUBLEASE.

(Remainder of page intentionally blank)

LESSOR:

Dated: 1/9/04

THE CITY OF SAN DIEGO,
a municipal corporation

By: [Signature]
Deputy Director
for the City Manager

RICHARD L. GLEASON AND DEBRA L.
GLEASON

By: [Signature]
Name: RICHARD L. GLEASON
Title: PRESIDENT

By: [Signature]
Name: DEBRA L. GLEASON
Title: SEC.

SUBLESSEE:

Dated: 12/8/03

BILL MOSS d.b.a. HYDRODIVER

By: Bill Moss
Name: BILL MOSS
Title: OWNER

APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

By: [Signature]
Deputy City Attorney

Dated: 2/23/04

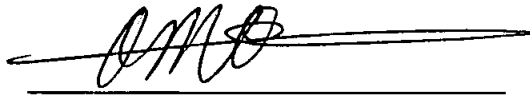
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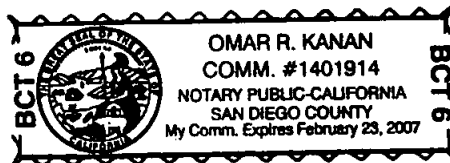
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STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On 12/8, 2003, before me, the undersigned, a notary public in and for said State, personally appeared William L. Moss (Bill), personally ~~known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.

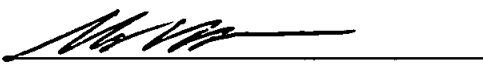


Notary Public

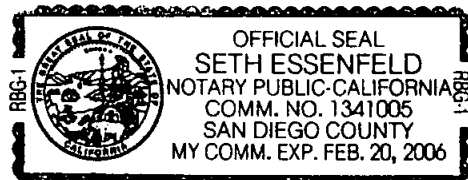


STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On 9 JAN⁴, 2003, before me, the undersigned, a notary public in and for said State, personally appeared DEBRA LYNN GLEASON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.



Notary Public



STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On 9 JAN⁴, 2003, before me, the undersigned, a notary public in and for said State, personally appeared RICHARD LEE GLEASON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.



STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

Notary Public

EXHIBIT A

SUBLEASED PREMISES

[TO BE ATTACHED]

1010 SANTA CLARA PLACE
MISSION BAY SPORTS CENTER

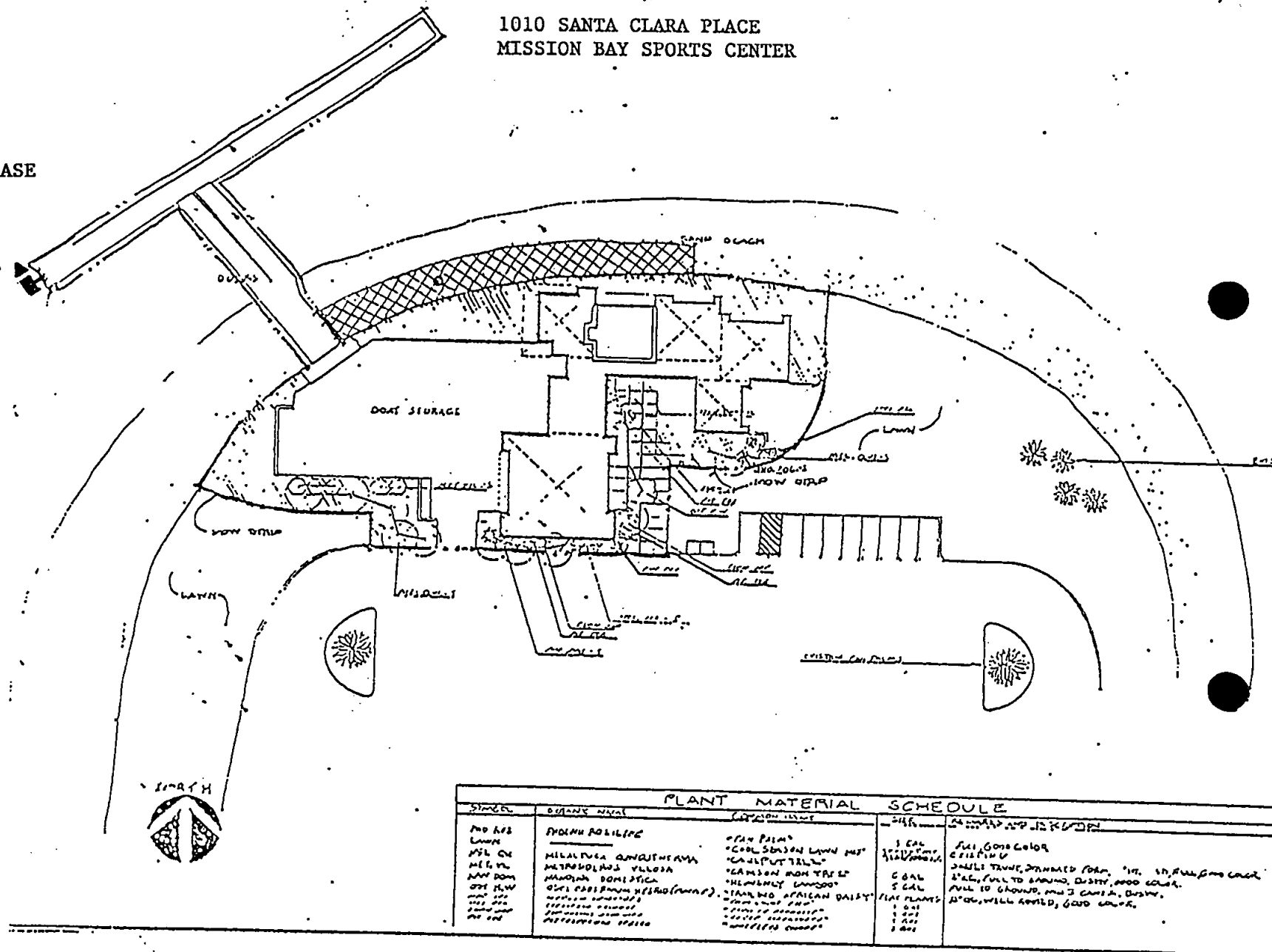


EXHIBIT B

SUBLEASE

[TO BE ATTACHED]

EXHIBIT B

Commercial Lease

This sublease is made between Jason Boone, Mission Bay Sportcenter, Inc., herein called "Lessor," and Bill Moss DBA Hydrodiver, herein called "Lessee."

Lessee hereby offers to sublease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described as an end tie located at 1010 Santa Clara Place, San Diego, CA 92109 (detailed in Exhibit A), upon the following TERMS and CONDITIONS:

1. **Term and Rent.** Lessor demises the above premises for a term of one year, commencing June 1, 2003 at the monthly base rate of three hundred dollars (\$300.00) per month, for the first year, payable in arrears on the last day of every month. All rental payments shall be made to the Lessor, at the address specified above.

Percentage Rent: Lessee shall pay Lessor in addition to the base rent, ten percent (10%) of Lessee's gross receipts, monthly in arrears, and prior to the 16th day of the month following that month in which the revenue subject was earned to be forwarded to the city.

In months that Lessee generates zero \$0.00 dollars in gross sales, Lessee shall pay Lessor ten percent (10%) of Lessee's base rent in addition to base rent.

Shared Expenses: Lessee shall pay to Lessor, as additional rent, the amount of seventy five dollars (\$75.00) each month to cover Lessee's share of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Mission Bay Sportcenter facility. Said-shared expenses shall be paid monthly by the end of the month billed. At the end of the first term of the sublease, the "proportionate share" shall be re-evaluated and adjusted to reflect actual usage.

Definitions: For the purpose of this section (a) Lessee's "proportionate share" shall be equal to the total "shared expenses" divided by the number of sublessees and the Lessor in equal shares unless otherwise agreed upon.

2. **Use.** Lessee shall use and occupy the premises for boat charter. The premises shall be used for no other purpose.
3. **Assignment and Subleasing.** Lessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessor and The City of San Diego, herein after called "City". An assignment by operation of law shall automatically terminate this lease.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excluded.
5. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to, or about the premises. The Lessee shall be responsible for all improvements.
6. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.

7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services.
8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit those persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.
10. **Indemnification of the Lessor.** Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.
11. **Insurance.** Lessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 million combined single limit liability. A copy of the policy of insurance shall be filed with the City and shall name "The City of San Diego" and "Mission Bay Sportcenter" as 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.
12. **Hold Harmless.** Lessee shall assume the defense of, indemnify and save harmless Lessor and City from all claims, expenses and liabilities of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Lessee, his agents or invitees.
13. **Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by the Lessee, and for moving expenses.
14. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor does not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.
15. **Lessor's Remedies on Fault.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of

such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

16. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this Lease the sum of three hundred dollars (\$300.00) as security deposit for the performance of Lessee's obligations under this lease, including, without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.
17. **Attorney's Fees.** In the event suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
18. **Notices.** Any notice which either party may, or is required to, give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such places as may be designated by the parties from time to time.
19. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated 6/30/03, as amended between the Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.
20. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits have been made a part of this lease before the parties execution hereof:

BY William S Moss
DATE 6/30/03

Bill Moss
Hydrodiver
1010 Santa Clara Place
San Diego, CA 92109

BY [Signature]
DATE 6/30/03

Jason Boone
Mission Bay Sportcenter, Inc.
1010 Santa Clara Place
San Diego, CA 92109

CONSENT TO SUBLEASE AGREEMENT

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

RICHARD L. GLEASON AND DEBRA L. GLEASON

(LESSEE) and filed in the Office of the City Clerk as Document No. OO-18224, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

JIM STICKLER d.b.a. HYDRODIVER

(SUBLESSEE) dated September 23, 1999 a copy of which is attached hereto as Exhibit A. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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. Percentage rent payable to CITY from LESSEE will be calculated on a calendar month basis and will consist of eight (8%) percent of the gross income resulting from this activity as delineated in Section 3.2 Rent of the Master Lease.
- II. The 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 SUBLESSEE 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 SUBLESSEE'S sole cost and expense.

III. Minimum standard sublease conditions are attached as "Exhibit B."

THE CITY OF SAN DIEGO

Dated 12/21/99

By Linda M. Fieno
Supervising Property Agent, Real Estate
Assets Department for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 5/10/00

By Russella Inyard
Deputy City Attorney

LESSEE: Richard L. Gleason and Debra L.
Gleason

Dated 2/17/00

By Richard L. Gleason

By Debra L. Gleason

SUBLESSEE: Jim Stickler, d.b.a. Hydrodiver

Dated 1-25-00

By Jim Stickler

jmj-n
12/09/99
I:\WFO\1999\BOYCE\CSA-STIC.KLR

Commercial Lease

This sublease is made between Jason Boone, Mission Bay Sportcenter, Inc., herein called "Lessor," and Jim Stickler, Hydrodiver, herein called "Lessee."

Lessee hereby offers to sublease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described Mooring #2 at 1010 Santa Clara place (detailed in exhibit A), upon the following TERMS and CONDITIONS:

1. **Term and Rent.** Lessor demises the above premises for a term of month to month, Commencing October 1, 1999 at the monthly rental of one hundred fifty dollars (\$150) per month, payable in arrears on the last day of the month. All rental payments shall be made to the Lessor, at the address specified above.

Percentage Rent: Lessee shall pay lessor in addition to the base rent, twelve percent (12%) of Lessee's gross receipts, monthly in arrears and prior to the 16th day of the month following that month in which the revenue subject was earned to be forwarded to the city.

Shared Expenses: Lessee shall pay Lessor, as additional rent, the amount of \$ 40.00 each month to cover Lessee's share of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Sportcenter facility. Said shared expenses shall be paid monthly by the end of the month billed.

2. **Use.** Lessee shall use and occupy the premises for dive charters and lessons. The premises shall be used for no other purpose. The Lessor shall not allow any other dive charter businesses to operate out of the facility.
3. **Assignment and Subleasing.** Lessee shall not assign this lease or sublet the premises or any part thereof with out the prior consent of Lessor and The City of San Diego, hereafter, "City." An assignment by operation of law shall automatically terminate this lease.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted.
5. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions or improvements, in, to, or about the premises. The Lessee shall be responsible for exterior improvements.
6. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and

requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.

7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity and telephone services.
8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit those persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.
10. **Indemnification of the Lessor.** Lessor shall not be liable for any damage of injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.
11. **Insurance.** Lessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 Million combined single limit liability. A copy of the policy of insurance shall be filed with the City and shall name "The City of San Diego" and "Mission Bay Sportcenter" as 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.
12. **Hold Harmless.** Lessee shall assume the defense of, indemnify and save harmless Lessor and City from all claims, expenses and liabilities of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Lessee, his agents or invitees.
13. **Eminent Domain.** If the premises of any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date and any rent paid for any period beyond that date shall be

repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by the Lessee, and for moving expenses.

14. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.
15. **Lessor's Remedies of Fault.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants of conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 day's notice to Lessee. On the date specified in such notice the term of this lease shall terminate and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.
16. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this Lease the sum of one hundred fifty dollars (\$150) as a security deposit for the performance of Lessee's obligations under this lease, including, without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have full deposit on hand at all times during the term of this lease.
17. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year, during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to

Lessor upon presentation of paid tax bills an amount equal to 25% of the increase in taxes upon the land and building in which the leased premises are situated, In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.

18. **Attorney's Fees.** In the event suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any cat which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
19. **Notices.** Any notice which either party may, or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such places as may be designated by the parties from time to time.
20. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated 9/23/99 as amended between the Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.
21. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by writing, signed by both parties. The following Exhibits have been made a part of this lease before the parties execution hereof.

By Jim Stickler
Date 9-23-99

Jim Stickler
Hydrodiver
1010 Santa Clara Place
San Diego, Ca. 92109

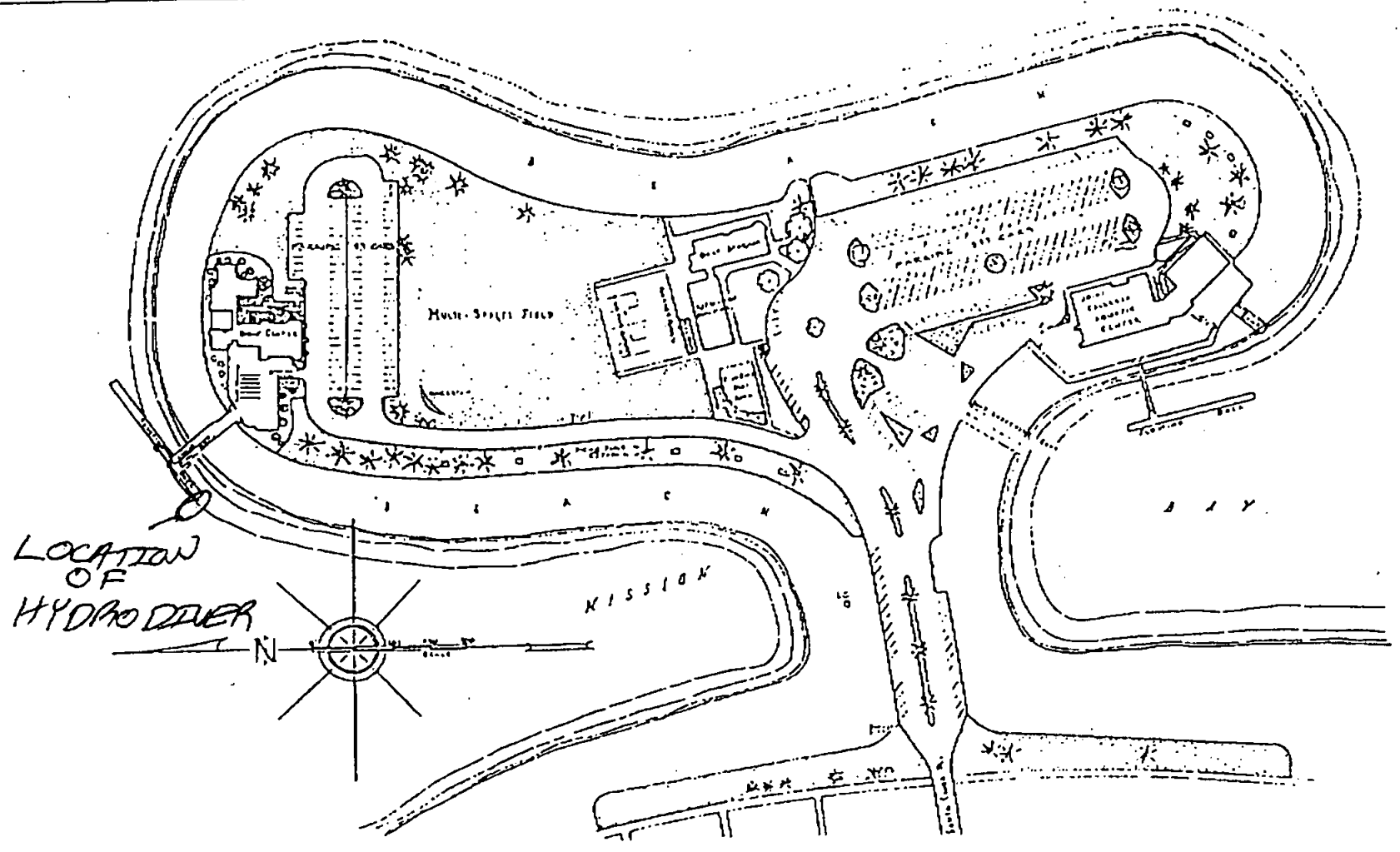
By Jason Boone
Date 9/23/99

Jason Boone
Mission Bay Sportcenter
1010 Santa Clara Place
San Diego, Ca. 92109

MOORING LOCATION OF HYDRO DIVER

ENCLOSURE 1

001
MISSION BAY SPORTCENTER
08/30/99 THU 15:14 FAX



08/30/99 THU 15:14 FAX 001 MISSION BAY SPORTCENTER		CITY OF SAN DIEGO PARKS & RECREATION DEPARTMENT	
THE GENERAL DEVELOPMENT PLAN SANTA CLARA POINT		MISSION BAY PARK	
08/30/99 THU 15:14 FAX 001 MISSION BAY SPORTCENTER		08/30/99 THU 15:14 FAX 001 MISSION BAY SPORTCENTER	

EXHIBIT B

MINIMUM STANDARD SUBLEASE CONDITIONS

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease 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 lease.

HOLD HARMLESS: SUBLESSEE 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 leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE'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: SUBLESSEE 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.

LEGAL PROCEEDINGS: 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 lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

SUBORDINATION: This agreement is in effect a Sublease of a portion of the premises covered by that certain Lease Agreement dated October 16, 1995 between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

CONSENT TO SUBLEASE AGREEMENT

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

RICHARD L. GLEASON AND DEBRA L. GLEASON

(LESSEE) and filed in the Office of the City Clerk as Document No. OO-18244, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

SHARA FISLER, d.b.a. AQUATIC ADVENTURES

(SUBLESSEE) dated April 1, 1998. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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: **NONE**

THE CITY OF SAN DIEGO

Dated 4/28/98

By Joan E. Vickers
Deputy Director, Real Estate
Assets Department for the City
Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 4/20/98

By [Signature]
Deputy City Attorney

Commercial Lease

This sublease is made between Jason Boone, Mission Bay Sports Center, Inc., herein called "Lessor," and Shara Fisler, Aquatic Adventures Science Education Foundation, herein called "Lessee."

Lessee hereby offers to sublease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described as the one story property at 1010 Santa Clara Place (detailed in Exhibit A), upon the following TERMS and CONDITIONS:

1. **Term and Rent.** Lessor demises the above premises for a term of four years, commencing April 1, 2001 at the monthly base rate of \$650.00 (\$650.00) per month, payable in arrears on the last day every month. All rental payments shall be made to the Lessor, at the address specified above.

Percentage Rent: Lessee shall pay Lessor in addition to the base rent, seven percent (7%), of Lessee's gross receipts, monthly in arrears, and prior to the 16th day of the month following that month in which the revenue subject was earned.

Shared Expenses: Lessee shall pay to Lessor, as additional rent, Lessee's "proportionate share" of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Sportcenter facility. Said-shared expenses shall be paid monthly by the end of the month billed. At the end of the first year of the sublease, the "proportionate share" shall be re-evaluated and adjusted to reflect actual usage.

Definitions: For the purpose of this section (a) Lessee's "proportionate share" shall be equal to the total "shared expenses" divided by the number of sublessees and the Lessor in equal shares unless otherwise agreed upon.

2. **Use.** Lessee shall use and occupy the premises for marine science education. The premises shall be used for no other purpose. The Lessor shall not allow any other marine science business to operate out of the facility.
3. **Assignment and Subleasing.** Lessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessor and The City of San Diego, hereinafter, "City." An assignment by operation of law shall automatically terminate this lease.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excluded. Lessee shall be responsible for all repairs required, including the roof and the exterior walls over and around the subleased area.
5. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to, or about the premises. The Lessee shall be responsible for all interior and exterior improvements.
6. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.
7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they

become due, including those for sewer, water, gas, electricity, and telephone services. Lessee will install a gas and electric sub-meter prior to the commencement of this lease. Lessee will be solely liable for the installation of the meter.

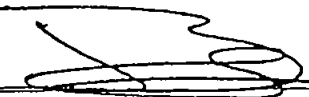
8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit those persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.
10. **Indemnification of the Lessor.** Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.
11. **Insurance.** Lessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 million combined single limit liability. A copy of the policy of insurance shall be filed with the City and shall name "The City of San Diego" and "Mission Bay Sportcenter" as 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.
12. **Hold Harmless.** Lessee shall assume the defense of, indemnify and save harmless Lessor and City from all claims, expenses and liabilities of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Lessee, his agents or invitees.
13. **Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by the Lessee, and for moving expenses.
14. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor does not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

15. **Lessor's Remedies on Fault.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.
16. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this Lease the sum of one thousand dollars (\$1000.00) as security deposit for the performance of Lessee's obligations under this lease, including, without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.
17. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to 25% of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.
18. **Attorney's Fees.** In the event suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
19. **Notices.** Any notice which either party may, or is required to, give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such places as may be designated by the parties from time to time.
20. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated April 1, 2001 as amended between the Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

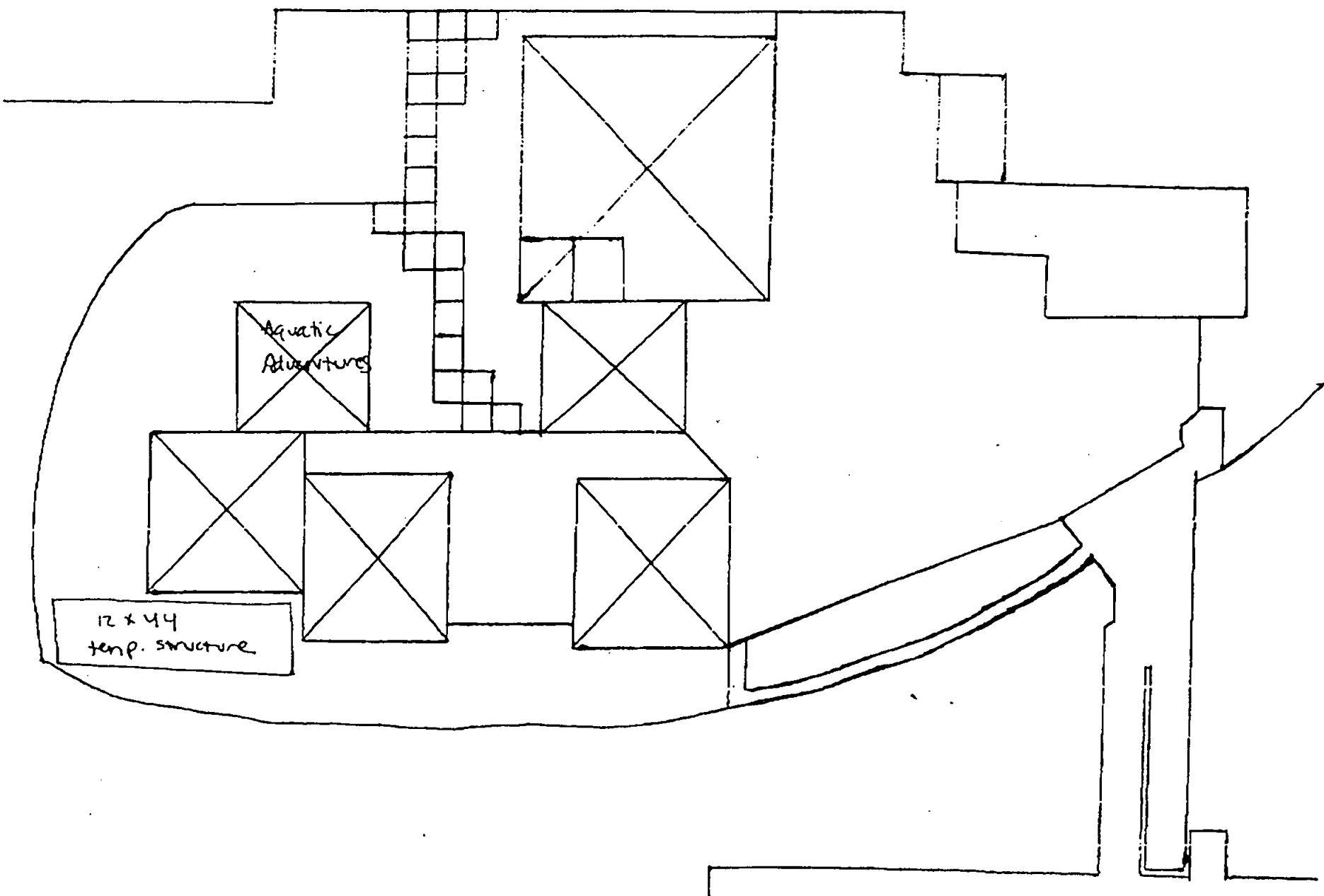
21. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits have been made a part of this lease before the parties execution hereof:

BY DATE April 1, 2001

Shara Fisler
Aquatic Adventures Science Education Foundation
1010 Santa Clara Place
San Diego, CA 92109

BY DATE 4/1/2001

Jason Boone
Mission Bay Sports Center, Inc.
1010 Santa Clara Place
San Diego, CA 92109



BUY/SELL AGREEMENT

This BUY/SELL AGREEMENT (the "Agreement") is made this 6TH day of MAY, 1995, by and among MISSION BAY SPORTS CENTER, a California corporation (referred to as "Company"), and those persons whose names are set forth at the end of this Agreement (referred to as "Shareholders"), and is made with respect to all of the issued and outstanding stock of the Company.

RECITALS

- A. The common shares presently outstanding, as well as any common shares or interest in common shares which may hereafter be issued, are referred to as the "Shares." The term "Shareholders" as used in this Agreement means (i) the persons named below and (ii) any future owners of Shares who become parties to this Agreement, provided, however, that no person shall be considered a Shareholder after disposal of all of their Shares.
- B. The parties desire to impose certain restrictions on the transfer of their Shares.
- C. The Shareholders intend by this Agreement that all present and future Shareholders of the Company shall be bound by this Agreement and the execution and delivery of this Agreement shall be a condition of "transfer" or issuance of other stock of the Company to any person not a party to this Agreement.

NOW, THEREFORE, the parties agree as follows:

- 1. Disposition or Encumbrance of Shares. No Shareholder shall, from and after the date above, sell, assign, transfer, encumber or dispose in any manner, by gift or by sale, voluntarily or by operation of law, any of the Shares without the written consent of all of the Shareholders and except in the manner provided in this Agreement. Any transfer in violation of the terms of this Agreement shall be void as against the Company and the other Shareholders.
- 2. Legend on Share Certificates. Each certificate representing a Share shall be marked with a legend in substantially the following form: The transfer of the shares represented by this Certificate is restricted by the terms of an agreement between the Corporation and its shareholders, a copy of which may be obtained from the Corporation.
- 3. Additional Shares. The Company shall not issue any additional Shares to any person who is not a party to this Agreement at the time he acquires his Shares.
- 4. Permitted Transfers. A Shareholder may sell, assign, or transfer any or all of his Shares to the Company or to another Shareholder at any time, on such terms and conditions as the transferring and acquiring parties may agree.

5. Receipt of Offer to Sell.

- a. If any Shareholder receives a bona fide offer to buy all or any portion of his Shares and such Shareholder (the "Offering Shareholder") wishes to accept the offer, he shall promptly send written notice to the Company and to the other Shareholders, specifying the number of Shares to be sold and offering to sell his Shares to the Company and/or to the other Shareholders at the same price, or the cash equivalent thereof, and otherwise on the same terms and conditions as are set forth in the bona fide offer or on terms and conditions which are no less favorable to the Company and/or to the other Shareholders. Such notice shall contain a complete copy of the bona fide offer, including the price, the terms and conditions, and the name and address of the person who has offered to buy the Shares (the "Offeror").
- b. The Company, the Company and the other Shareholders, or the other Shareholders alone, in the order listed, shall have 30 days from receipt of the notice described above by the last person (including the Company) entitled to receive such notice (the "Acceptance Period") to elect to buy the Shares offered for sale on the same terms and conditions as are set forth above.
- c. The Company and each Shareholder who receives notice and desires to buy any of the Shares offered for sale shall, not later than the end of the Acceptance Period, notify the Offering Shareholder, the Company and the remaining Shareholders of the number of Shares he is willing to buy on the terms and conditions set forth in the notice.
- d. If the Company elects to buy all of the offered Shares on the terms and conditions set forth in the notice, it shall settle within 30 days after the end of the Acceptance Period. If the Company does not elect to buy all of the offered Shares on such terms and conditions, then the Shareholders may buy the Shares which the Company has elected not to buy. The Shareholders purchasing Shares pursuant to the provisions of this section 5(d) shall settle within 30 days after the end of the Acceptance Period.
- e. If neither the Company nor the other Shareholders elects to buy, in the aggregate, all of the Shares offered for sale prior to the end of the Acceptance Period, or, if either elects to buy but fails to settle in a timely manner, then during the 30 day period following failure to settle, as the case might be, the Offering Shareholder may sell the offered Shares to the Offeror on the terms and conditions set forth in the notice referred to in section 5(a) hereof.
- f. No offer to purchase Shares shall be deemed a bona fide offer unless the Offeror can demonstrate ability to pay the purchase price.
- g. Shares purchased by Shareholders pursuant to this Section 5 shall remain subject to the provisions of this Agreement.

6. Sale of Shares upon Death, Disability or Other Transfer.

a. Upon a Shareholder's death, or event of disability (the "Event"), or in the event of involuntary transfer, transfer by operation of law or gift, the Shareholder or the Shareholder's legal representative (the "Former Shareholder") shall be required to offer to sell all of the Shares then owned by the Former Shareholder to the Company and/or the other Shareholders at the price and on the terms and conditions set forth in Sections 7 and 8, below.

b. The Company, the Company and the other Shareholders, or the other Shareholders alone, in the order listed, shall have the right (the "Purchase Right") to purchase all, but not less than all, of the Shares owned by the Former Shareholder. The Company and each Shareholder who elects to exercise the Purchase Right shall, within 90 days of receipt of notice of the Event, notify the Former Shareholder, the Company and the other Shareholders of the number of Shares they are willing to purchase.

c. If the Company does not elect to purchase all of the Shares then owned by the Former Shareholder, then the Shareholders may purchase the Shares which the Company has elected not to purchase, such purchases to be pro rata in proportion to the number of Shares they then hold. If any Shareholder has indicated that he is not willing to purchase the entire number of Shares to which he is entitled, the remaining Shareholders who have indicated a willingness to purchase the balance of the Shares may purchase such Shares, pro rata in proportion to the number of Shares they then hold.

d. For all purposes of this Agreement, a Shareholder shall be deemed to have suffered a disability if, because of a medically determinable physical or mental impairment which can be expected to continue for at least one year, or which actually continues for one year, he becomes unable to work or perform other normal day-to-day functions.

e. In the event the option referred to in this section 6 is not exercised as to all Shares of the Former Shareholder, then the Former Shareholder or his successor in interest will hold the remaining Shares subject to the provisions of this Agreement.

7. Purchase Price.

a. The purchase price for Shares purchased pursuant to Section 6 of this Agreement shall be mutually determined by the Former Shareholder and the party or parties acquiring the Shares (the "Buyer").

b. If there is no agreement, the purchase price for Shares purchased pursuant to Section 6 of this Agreement shall be computed at the per-share value determined annually by vote of a majority of the Shareholders. In the event any such annual valuation is not made, the most recent purchase price agreed upon by a majority of the Shareholders in accordance with the provisions of this Agreement shall be the purchase price.

c. If no annual valuation agreement has ever occurred per 7b, above, then the purchase price shall be the "Fair Value" thereof as of the date of the Event, which price shall be determined by a qualified appraiser jointly selected by the Former Shareholder and the Buyer. Such appraiser, in making his valuation, shall take into account as he deems appropriate, among other things, the history of earnings, projected future earnings, and earning power, asset value and the goodwill of the Company. The value of the Shares fixed by such appraiser shall be their Fair Value for purposes of the Agreement and shall be binding on the Former Shareholder and the Buyer. The term "qualified appraiser" as used herein shall mean (i) a public accountant or public accounting firm experienced in valuing businesses like that conducted by the Company at the time the appraisal is made or (ii) a person or business regularly paid to give opinions as to the value of businesses. The cost of the appraisal shall be paid 50% by the Former Shareholder and 50% by the Buyer.

8. Terms of Sale.

a. Settlement for any purchase made pursuant to Section 6 of the Agreement shall be on such date as may be mutually agreed upon by the Former Shareholder and the Buyer, but in no event shall it be later than 90 days after the exercise of the Purchase Right by the Company and/or the other Shareholders pursuant to the provisions of Section 6.

b. At any such settlement:

i) The Former Shareholder shall deliver to the Buyer a certificate or certificates for the Shares being sold, which certificates shall be duly endorsed for transfer to the Buyer.

ii) The Buyer shall deliver to the Former Shareholder, in cash, not less than 10% of the purchase price set forth in Section 7; provided, however, that if the Former Shareholder's death is the Event giving rise to the Purchase Right, the cash portion of the purchase price shall be not less than the greater of 10% of the purchase price or the amount of life insurance proceeds, if any, received by the Buyer as a result of the death of the Former Shareholder.

iii) The balance of the purchase price shall be evidenced by the Buyer's promissory note. The Note shall: (A) be dated the settlement date; (B) bear interest on the unpaid balance at the minimum per annum rate necessary to avoid imputed interest under the Code; (C) provide for the payment of principal and interest in 36 monthly installments; and (D) so long as the Buyer is not the Company, shall be secured by the Shares being acquired.

9. Life Insurance. The Company may apply for purchase and thereafter pay the premiums on permanent life insurance policies on the lives of the Shareholders in such amounts as it may from time to time determine. The Company shall be the named beneficiary on each such policy. All dividends on any such policies may be applied to the payment of the premiums.

10. Financial Statements. The Company will regularly supply the Shareholders with annual statements of the financial condition and affairs of the Company, prepared in a manner consistent with its past practice.

11. Notices. All notices, demands, requests, or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or by overnight courier service, or transmitted by telecopier, or when deposited in the United States Mail by registered or certified mail, return receipt requested, postage prepaid, and addressed to the Company at its principal office or to all Shareholders at the addresses listed on the books of the Company.

12. Entire Agreement; Modifications. This Agreement shall terminate and supersede all prior agreements, written, or oral, between the Company and the Shareholders and shall constitute the entire Agreement and understanding among the parties with respect to the subject matter. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended, or altered except by the written consent of the parties.

13. Governing Law. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of California.

14. Limitations on Company's Purchase of Shares. Anything to the contrary notwithstanding, the right of company to exercise its option to purchase Shares shall be subject to the laws of the State of California governing the right of a corporation to purchase its own shares.

15. Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs, in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include such reimbursement for attorneys' fees and costs.

16. Waivers. No delay or omission by any of the parties in exercising any right or power accruing upon the non-compliance or failure of performance by another party of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties of any of the covenants, conditions, or agreements to be performed by another party shall not be construed to be a waiver of any subsequent breach or of any other covenant, condition, or agreement.

17. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Company and the Shareholders, and their respective personal and legal representatives, successors, permitted assigns, heirs, estates, and legatees.

18. Severability. In case any provision of this Agreement is, for any reason, held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included.

19. Specific Performance. The parties agree that the Shares are unique, that failure on the part of any of the parties to perform the obligations provided by this Agreement will result in irreparable damage to the other parties and that specific performance of the obligations set forth may be obtained by suit in equity.

20. Interpretation. For purposes of construing this Agreement, unless the context otherwise requires, words in the singular shall include words in the plural and vice versa, words in one gender shall include words in the other gender and the word "person" shall include trusts, states, partnerships, corporations, and other business entities. The section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

21. Duration. This Agreement shall remain in full force and effect until ended by the unanimous consent of the parties, or until all of the Shares are held by only one Shareholder.

22. New Certificates. Upon the termination of this Agreement, the Shareholders shall have the right to present any certificate or certificates bearing a legend referring to this Agreement to the Company and to require that the proper officers issue, in lieu thereof, a new certificate or certificates representing the same number of Shares but bearing no legend referring to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

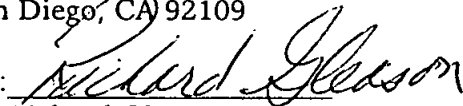
"COMPANY"

MISSION BAY SPORTS CENTER

1010 Santa Clara Pl.

San Diego, CA 92109

By:



Richard Gleason

President

RECEIPT FOR CASH PAYMENT

Receipt of \$50,000 from Jason Boone and Debra Braswell Boone, representing payment in full for 8,333 shares of the stock of this corporation, evidenced by certificate No. 3, is hereby acknowledged.

Date: 5/4/95

MISSION BAY SPORTS CENTER

a California corporation

By: Debra Gleason

Debra Gleason, Treasurer

CONSENT TO SUBLEASE AGREEMENT

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

RICHARD L. GLEASON AND DEBRA L. GLEASON

(LESSEE) and filed in the Office of the City Clerk as Document No. OO-18224, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

NEAL MANION d.b.a. M2O

(SUBLESSEE) dated April 9, 2000, a copy of which is attached hereto as Exhibit A. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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. Percentage rent payable to CITY from LESSEE will be calculated on a calendar month basis and will consist of two percent (2%) of the gross income resulting from the sales of new boats, boat service, boating accessories and one percent (1%) of the gross income resulting from the sales of used boats, as delineated in Section 3.2 Rent of the Master Lease.
- II. The 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 SUBLESSEE 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 SUBLESSEE'S sole cost and expense.

III. Minimum standard sublease conditions are attached as "Exhibit B."

THE CITY OF SAN DIEGO

Dated 5-11-00

By Linda M. Ferris
Supervising Property Agent, Real Estate
Assets Department for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 9/7/00

By Priscilla Lalor
Deputy City Attorney

LESSEE: Richard L. Gleason and Debra L. Gleason

Dated 5/18/00

By Richard L. Gleason

By Debra L. Gleason

SUBLESSEE: Neal Manion, d.b.a. M2O

Dated 3/15/00

By N. Manion

jmj

05/10/00

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Commercial Lease

This sublease is made between Jason Boone, Mission Bay Sportcenter, Inc., herein called "Lessor," and Neal Manion, M2O, Inc., herein called "Lessee."

Lessee hereby offers to sublease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described as the one story property at 1010 Santa Clara Place (detailed in Exhibit A), upon the following TERMS and CONDITIONS:

1. **Term and Rent.** Lessor demises the above premises for a term of three years, commencing May 1, 2000 at the monthly base rate of one thousand two hundred fifty dollars (\$1250.00) per month, for the first year, payable in arrears on the last day every month. The following two years of the lease shall have a monthly base rate of two thousand five hundred dollars (\$2500.00) per month, payable in arrears on the last day every month. All rental payments shall be made to the Lessor, at the address specified above.

Percentage Rent: Lessee shall pay Lessor in addition to the base rent, two percent (2%) of Lessee's gross receipts for sales of new boats, boat service, boating accessories and one percent (1%) of Lessee's gross receipts for sales of used boats monthly in arrears, and prior to the 16th day of the month following that month in which the revenue subject was earned to be forwarded to the city.

Shared Expenses: Lessee shall pay to Lessor, as additional rent, Lessee's "proportionate share" of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Sportcenter facility. Said-shared expenses shall be paid monthly by the end of the month billed. At the end of the first term of the sublease, the "proportionate share" shall be re-evaluated and adjusted to reflect actual usage.

Definitions: For the purpose of this section (a) Lessee's "proportionate share" shall be equal to the total "shared expenses" divided by the number of sublessees and the Lessor in equal shares unless otherwise agreed upon.

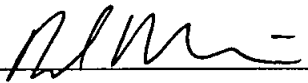
2. **Use.** Lessee shall use and occupy the premises for boat and related accessories sales, and boat service. The premises shall be used for no other purpose. The Lessor shall not allow any other boat sales or service businesses to operate out of the facility.
3. **Assignment and Subleasing.** Lessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessor and The City of San Diego, hereinafter, "City." An assignment by operation of law shall automatically terminate this lease.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excluded. Lessee shall be responsible for all repairs required, including the roof and the exterior walls over and around the subleased area.

5. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to, or about the premises. The Lessee shall be responsible for all interior and exterior improvements.
6. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.
7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services.
8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit those persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.
10. **Indemnification of the Lessor.** Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.
11. **Insurance.** Lessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 million combined single limit liability. A copy of the policy of insurance shall be filed with the City and shall name "The City of San Diego" and "Mission Bay Sportcenter" as 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.
12. **Hold Harmless.** Lessee shall assume the defense of, indemnify and save harmless Lessor and City from all claims, expenses and liabilities of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Lessee, his agents or invitees.
13. **Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or

any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by the Lessee, and for moving expenses.

14. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor does not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.
15. **Lessor's Remedies on Fault.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.
16. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this Lease the sum of one thousand dollars (\$1000.00) as security deposit for the performance of Lessee's obligations under this lease, including, without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.
17. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to 25% of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.
18. **Attorney's Fees.** In the event suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

19. **Notices.** Any notice which either party may, or is required to, give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such places as may be designated by the parties from time to time.
20. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated 4/9/00, as amended between the Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.
21. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits have been made a part of this lease before the parties execution hereof:
22. **Option to Renew.** Provided that lessee is not in default in the performance of his lease, lessee shall have the option to renew the lease for an additional term of 36 months commencing at the expiration of the initial lease term at a renegotiated rent. The option shall be exercised by written notice given to the lessor not less than 30 days prior to the expiration the initial lease term. If notice is not given in the manner provided herein within the time specified the option shall expire.

BY 
DATE 4-09-00

Neal Manion
M20 Marine Outfitters, Inc.
1010 Santa Clara Place
San Diego, CA 92109

BY 
DATE 4/9/00

Jason Boone
Mission Bay Sportcenter, Inc.
1010 Santa Clara Place
San Diego, CA 92109

EXHIBIT 'A'

— = LEASE HOLD PERIMETER

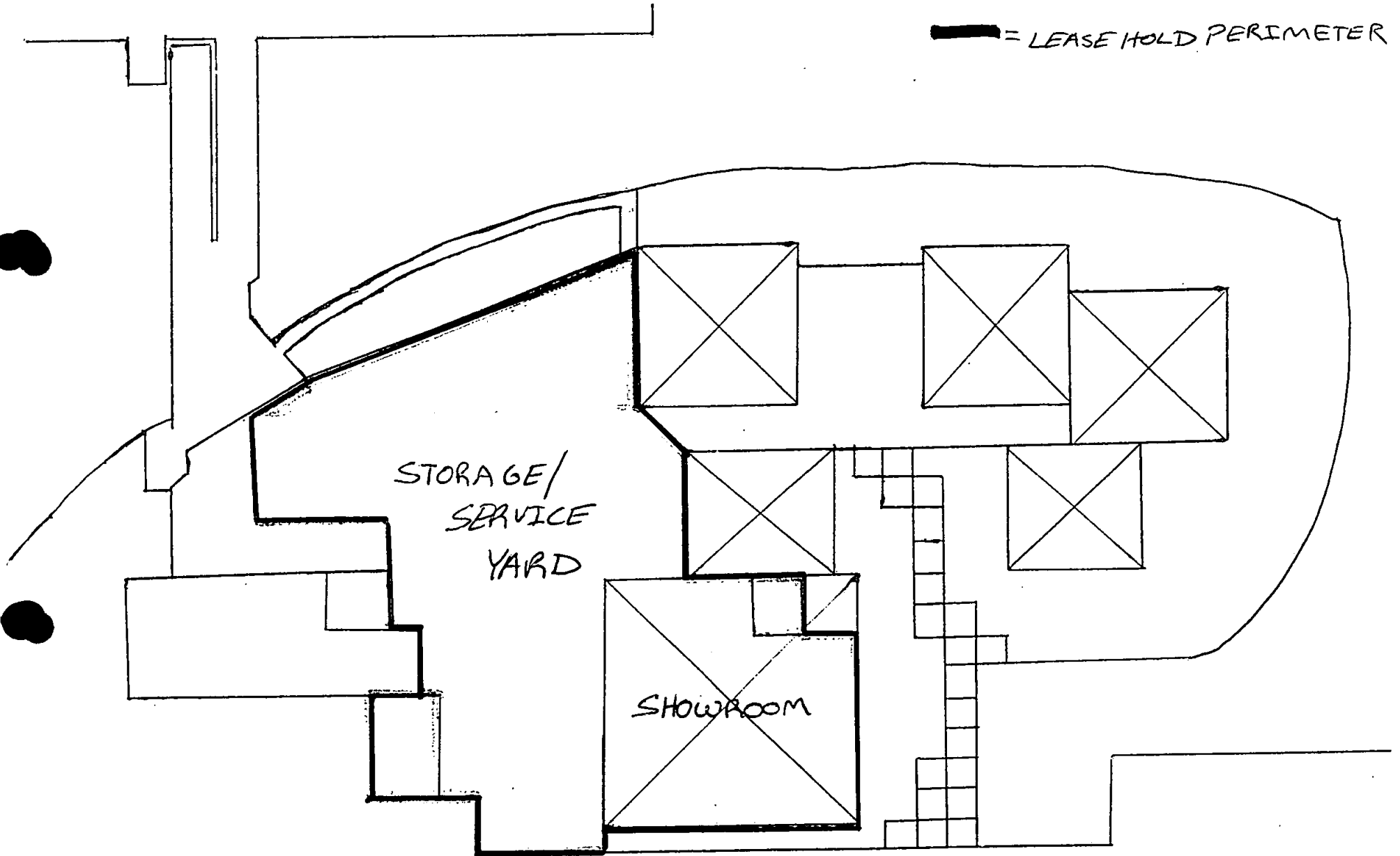


EXHIBIT B

MINIMUM STANDARD SUBLEASE CONDITIONS

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease 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 lease.

HOLD HARMLESS: SUBLESSEE 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 leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE'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: SUBLESSEE 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.

LEGAL PROCEEDINGS: 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 lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

SUBORDINATION: This agreement is in effect a Sublease of a portion of the premises covered by that certain Lease Agreement dated October 16, 1995 between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

CONSENT TO SUBLEASE AGREEMENT

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

RICHARD L. GLEASON AND DEBRA L. GLEASON

(LESSEE) and filed in the Office of the City Clerk as Document No. OO-18224, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

JIM STICKLER d.b.a. HYDRODIVER

(SUBLESSEE) dated September 23, 1999 a copy of which is attached hereto as Exhibit A. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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. Percentage rent payable to CITY from LESSEE will be calculated on a calendar month basis and will consist of eight (8%) percent of the gross income resulting from this activity as delineated in Section 3.2 Rent of the Master Lease.
- II. The 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 SUBLESSEE 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 SUBLESSEE'S sole cost and expense.

III. Minimum standard sublease conditions are attached as "Exhibit B."

THE CITY OF SAN DIEGO

Dated 12/21/99

By Linda M. Fieno
Supervising Property Agent, Real Estate
Assets Department for the City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 5/10/00

By Russella Inyard
Deputy City Attorney

LESSEE: Richard L. Gleason and Debra L.
Gleason

Dated 2/17/00

By Richard L. Gleason

By Debra L. Gleason

SUBLESSEE: Jim Stickler, d.b.a. Hydrodiver

Dated 1-25-00

By Jim Stickler

jmj-n
12/09/99
IAWPO\1999\BOYCE\CSA-STIC.KLR

Commercial Lease

This sublease is made between Jason Boone, Mission Bay Sportcenter, Inc., herein called "Lessor," and Jim Stickler, Hydrodiver, herein called "Lessee."

Lessee hereby offers to sublease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described Mooring #2 at 1010 Santa Clara place (detailed in exhibit A), upon the following TERMS and CONDITIONS:

1. **Term and Rent.** Lessor demises the above premises for a term of month to month, Commencing October 1, 1999 at the monthly rental of one hundred fifty dollars (\$150) per month, payable in arrears on the last day of the month. All rental payments shall be made to the Lessor, at the address specified above.

Percentage Rent: Lessee shall pay lessor in addition to the base rent, twelve percent (12%) of Lessee's gross receipts, monthly in arrears and prior to the 16th day of the month following that month in which the revenue subject was earned to be forwarded to the city.

Shared Expenses: Lessee shall pay Lessor, as additional rent, the amount of \$ 40.00 each month to cover Lessee's share of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Sportcenter facility. Said shared expenses shall be paid monthly by the end of the month billed.

2. **Use.** Lessee shall use and occupy the premises for dive charters and lessons. The premises shall be used for no other purpose. The Lessor shall not allow any other dive charter businesses to operate out of the facility.
3. **Assignment and Subleasing.** Lessee shall not assign this lease or sublet the premises or any part thereof with out the prior consent of Lessor and The City of San Diego, hereafter, "City." An assignment by operation of law shall automatically terminate this lease.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted.
5. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions or improvements, in, to, or about the premises. The Lessee shall be responsible for exterior improvements.
6. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and

requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.

7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity and telephone services.
8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit those persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.
10. **Indemnification of the Lessor.** Lessor shall not be liable for any damage of injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.
11. **Insurance.** Lessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 Million combined single limit liability. A copy of the policy of insurance shall be filed with the City and shall name "The City of San Diego" and "Mission Bay Sportcenter" as 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.
12. **Hold Harmless.** Lessee shall assume the defense of, indemnify and save harmless Lessor and City from all claims, expenses and liabilities of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Lessee, his agents or invitees.
13. **Eminent Domain.** If the premises of any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date and any rent paid for any period beyond that date shall be

repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by the Lessee, and for moving expenses.

14. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.
15. **Lessor's Remedies of Fault.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants of conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of such notice (or if such other default is of such nature that is cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 day's notice to Lessee. On the date specified in such notice the term of this lease shall terminate and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.
16. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this Lease the sum of one hundred fifty dollars (\$150) as a security deposit for the performance of Lessee's obligations under this lease, including, without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to sure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have full deposit on hand at all times during the term of this lease.
17. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year, during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to

Lessor upon presentation of paid tax bills an amount equal to 25% of the increase in taxes upon the land and building in which the leased premises are situated, In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.

18. **Attorney's Fees.** In the event suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any cat which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
19. **Notices.** Any notice which either party may, or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such places as may be designated by the parties from time to time.
20. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated 9/23/99 as amended between the Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.
21. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by writing, signed by both parties. The following Exhibits have been made a part of this lease before the parties execution hereof.

By Jim Stickler
Date 9-23-99

Jim Stickler
Hydrodiver
1010 Santa Clara Place
San Diego, Ca. 92109

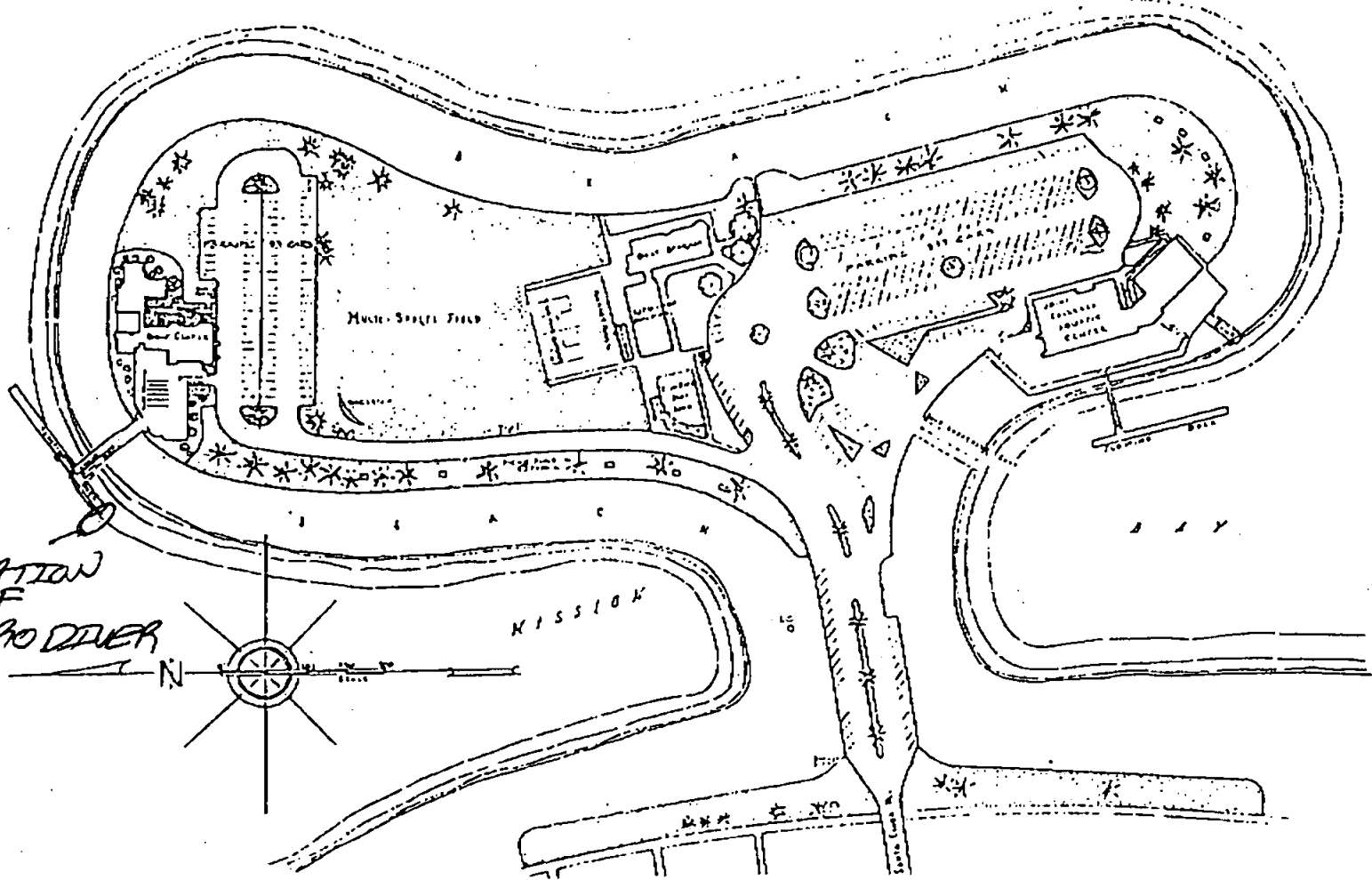
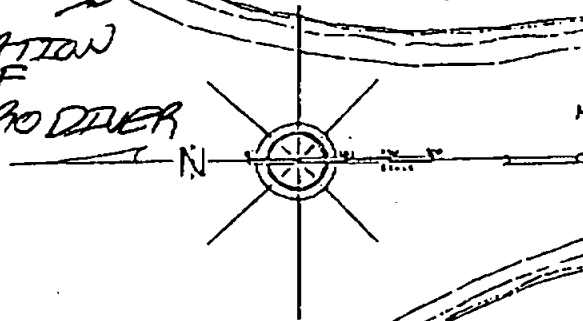
By Jason Boone
Date 9/23/99

Jason Boone
Mission Bay Sportcenter
1010 Santa Clara Place
San Diego, Ca. 92109

MOORING LOCATION OF HYDRO DIVER:

ENTRANCE

LOCATION
OF
HYDRO DIVER



MISSION BAY SPORTCENTER

09/30/98 THU 15:14 FAX

DATE	TIME	LOCATION	STATUS
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING

DATE	TIME	LOCATION	STATUS
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING
09/30/98	15:14	MISSION DAY PARK	MOORING

CITY OF SAN DIEGO PARK AND RECREATION DEPARTMENT

THE GENERAL DEVELOPMENT PLAN

SANTA CLARA POINT

MISSION DAY PARK

1998-1999

City of San Diego
Application to Lease

Name of Lessee: RUSSELL JAMES (JIM) STICKLER
D.B.A.: HYDRO DIVER ENTERPRISES
SS# or EIN#: 563-68-4024
Telephone: 800-493-7634 / 949-365-8779
Driver's License #: M0671913

Type of
Operation: SCUBA DIVING CHARTER BOAT

Years in Operation: 3

Experience: 30 YEARS SCUBA DIVING INSTRUCTOR, 7 YEARS USCGE
LICENSED CAPTAIN, 10 YEARS WAKING TECHNICIAN.

Name and Title of Person Authorized to Execute Documents: RUSSELL JAMES (JIM) STICKLER, CAPTAIN, OWNER/OPERATOR

Credit References: BOAT AMERICA/WHOLESALE, BANK OF AMERICA,
CHAPMAN DIESEL,

Bank: WASHINGTON MUTUAL

Applicant represents that the above statements are true and correct and hereby authorizes verification of references given and agrees to furnish additional credit references on request. Applicant also hereby authorizes City to obtain a personal or commercial credit report.

Date: 8-20-99

Signature: Russell J. Stickler

CONSENT TO SUBLEASE AGREEMENT

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

RICHARD L. GLEASON AND DEBRA L. GLEASON

(LESSEE) and filed in the Office of the City Clerk as Document No. OO-18244, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

DOUG BOTHWELL, d.b.a. GONDOLAS DI VENEZIA

(SUBLESSEE) dated May 11, 1999. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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. Percentage rent payable to CITY from LESSEE will be calculated on a calendar month basis and will consist of ten (10%) percent of the gross income resulting from this activity as delineated in Section 3.2 Rent of the Master Lease.
- II. On days which special events are scheduled within areas of Mission Bay Park or Mission Beach Park, the City Manager may restrict SUBLESSEE'S activities, Sublessee may be required to cease operations during that time period.
- III. The navigation route and operating hours of the SUBLESSEE are subject to review and approval by the City of San Diego.
- IV. The 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 SUBLESSEE 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 SUBLESSEE'S sole cost and expense.

V. Sublessee shall be keep in full force and effect a Worker's Compensation Policy with coverage:

1. As required by the laws of the State of California.
2. And coverage for employer liability in an amount not less than One Million (\$1,000,000) Dollars each accident.
3. The policy must also include a US L&H endorsement and maritime employers liability or protection and indemnity including crew.

VI. Minimum standard sublease conditions are attached as "Addendum A."

THE CITY OF SAN DIEGO

Dated 6/9/99

By Linda M. Feio
Supervising Property Agent, Real
Estate Assets Department for the
City Manager

APPROVED AS TO FORM:
CASEY GWINN, City Attorney

Dated _____

By Priscilla Dwyer
Deputy City Attorney

LESSEE: Richard L. Gleason and Debra
L. Gleason

Dated 6/2/99

By Richard L. Gleason
Debra L. Gleason

SUBLESSEE: Doug Bothwell, d.b.a.
Gondolas di Venezia

Dated 6-2-99

By Doug Bothwell

ADDENDUM A

MINIMUM STANDARD SUBLEASE CONDITIONS

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease 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 lease.

HOLD HARMLESS: SUBLESSEE 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 leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE'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: SUBLESSEE 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.

LEGAL PROCEEDINGS: 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 lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

SUBORDINATION: This agreement is in effect a Sublease of a portion of the premises covered by that certain Lease Agreement dated October 16, 1995 between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

Commercial Lease

This sublease is made between Jason Boone, Mission Bay Sportcenter, Inc., herein called "Lessor," and Doug Bothwell, Gondolas di Venezia, herein called "Lessee."

Lessee hereby offers to sublease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described as the one story property at 1010 Santa Clara Place (detailed in Exhibit A), upon the following TERMS and CONDITIONS:

1. **Term and Rent.** Lessor demises the above premises for a term of two years, commencing June 1, 1999 at the monthly rental of two hundred and forty dollars (\$240) per month, payable in arrears on the last day every month. All rental payments shall be made to the Lessor, at the address specified above.

Percentage Rent: Lessee shall pay Lessor in addition to the base rent, twelve percent (12%) of Lessee's gross receipts, monthly in arrears, and prior to the 16th day of the month following that month in which the revenue subject was earned to be forwarded to the city.

Shared Expenses: Lessee shall pay to Lessor, as additional rent, the amount of \$ 50.00 each month to cover Lessee's share of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Sportscenter facility.

2. **Use.** Lessee shall use and occupy the premises for gondola charters. The premises shall be used for no other purpose. The Lessor shall not allow any other gondola charter businesses to operate out of the facility.
3. **Assignment and Subleasing.** Lessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessor and The City of San Diego, hereinafter, "City." An assignment by operation of law shall automatically terminate this lease.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required.
5. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to, or about the premises. The Lessee shall be responsible for all interior and exterior improvements.
6. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.
7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services.
8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit those persons desiring to lease the same to inspect the premises thereafter.

9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.
10. **Indemnification of the Lessor.** Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.
11. **Insurance.** Lessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 million combined single limit liability. A copy of the policy of insurance shall be filed with the City and shall name "The City of San Diego" and "Mission Bay Sportcenter" as 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.
12. **Hold Harmless.** Lessee shall assume the defense of, indemnify and save harmless Lessor and City from all claims, expenses and liabilities of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Lessee, his agents or invitees.
13. **Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by the Lessee, and for moving expenses.
14. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor does not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.
15. **Lessor's Remedies on Fault.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

16. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this Lease the sum of one hundred dollars (\$100) as security deposit for the performance of Lessee's obligations under this lease, including, without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.
17. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to 25% of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.
18. **Attorney's Fees.** In the event suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
19. **Notices.** Any notice which either party may, or is required to, give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such places as may be designated by the parties from time to time.
20. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated 5/11/99, as amended between the Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.
21. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits have been made a part of this lease before the parties execution hereof:

BY

DATE

Doug Bothwell
Gondolas di Venezia
1010 Santa Clara Place
San Diego, CA 92109

BY

DATE

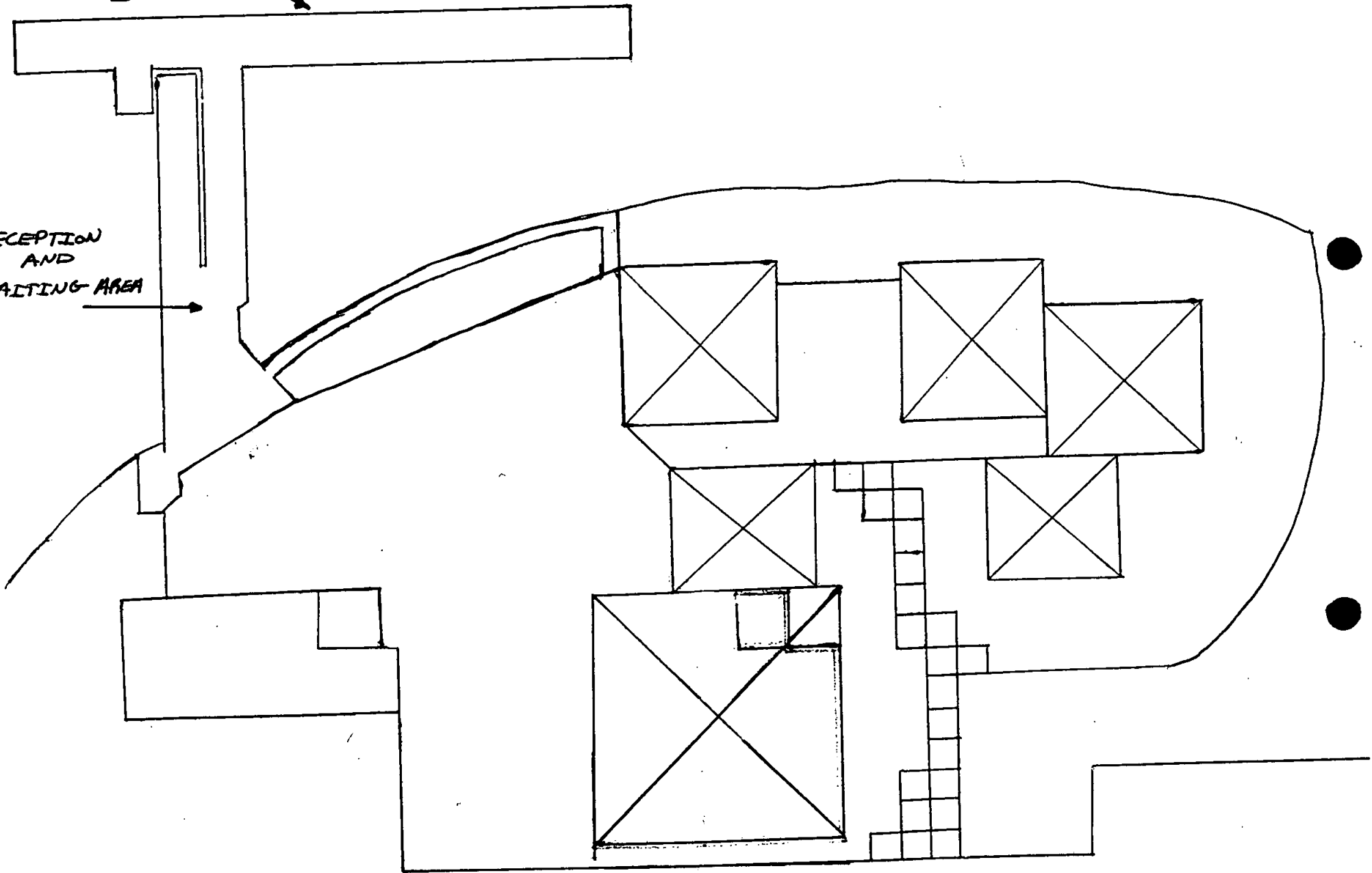
Jason Boone
Mission Bay Sportcenter
1010 Santa Clara Place
San Diego, CA 92109

EXHIBIT 'A'

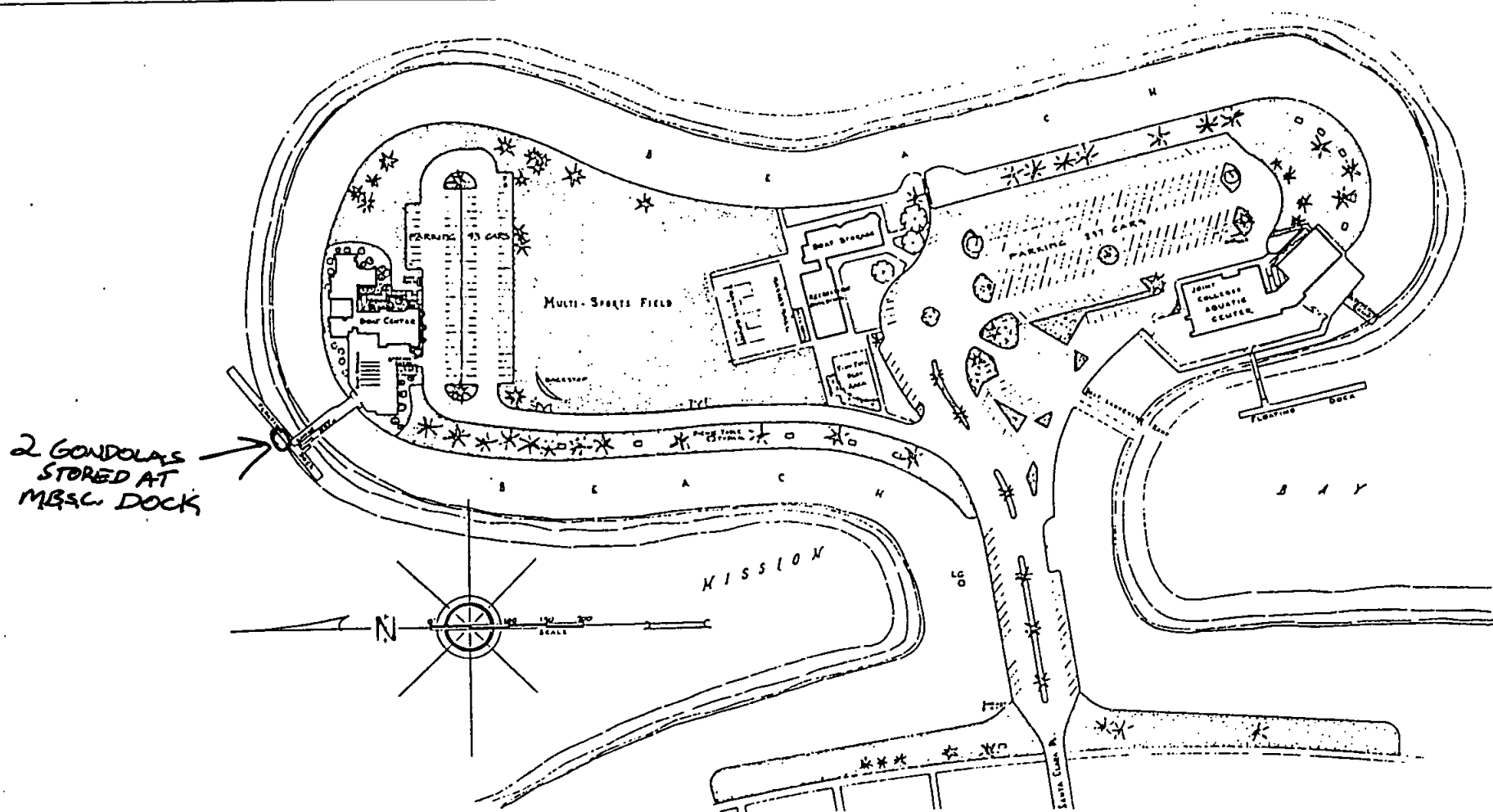
BOAT
STORAGE



RECEPTION
AND
WAITING AREA

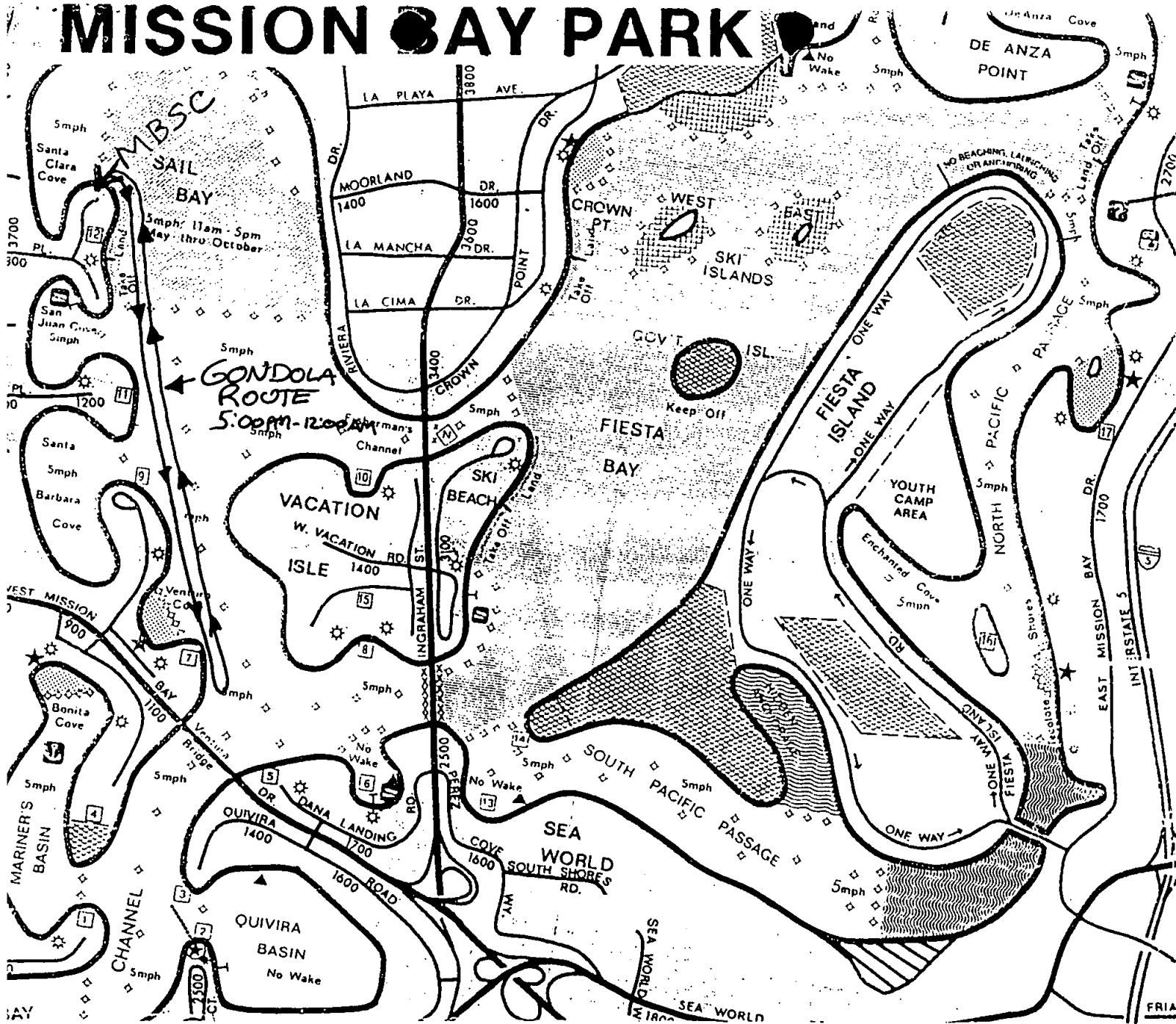


LOCATION OF GONDOLA STORAGE



DATA LOG FOR				IMPROVEMENTS SUMMARY (DATA FROM AS-BUILT DRAWINGS)				CITY OF SAN DIEGO PARK AND RECREATION DEPARTMENT			
DATE	ITEM	REFERENCE DOCUMENTS	QUANTITY	DATE	ITEM	REFERENCE DOCUMENTS	QUANTITY	THE GENERAL DEVELOPMENT PLAN			
1/14/83	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	SANTA CLARA POINT			
4/24/83	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1				
1/11/84	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	MISSION BAY PARK			
1/14/84	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	COLUMBIA 726-1673 THOMAS BAYS PG 22 AD-26			
1/14/84	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	1.1.1.1.1.1	MB-112			

MISSION BAY PARK



LEGEND:

- Open Speed/Waterskiing (Daytime Only)
- Waterski Landing/Take-Off Zone (Observe Signs; Counter-Clockwise Direction)
- Sailing Area/Controlled Speed (Read Regulations for Details)
- Special Event Waterski Area (Permit Required for Use)
- Personal Watercraft Area (No Boats)
- Swimming Area (No Vessels)
- Sand Bar (Use Caution)

- Mission Bay Park Headquarters (Coastal Division/Lifeguard Services Division)
- Lifeguard Station
- Lifeguard Boating Safety Unit
- S.D. Police Harbor Unit
- Navigational Buoy
- Public Restroom
- Public Dock (15 min. limit)
- Public Launching Ramp
- R. V. Pump-Out
- Transient Vessel Anchorage (72 hr. Limit per Week)
- Visitor Information Center
- Fuel Dock

Bridge Clearances:

(At Mean Low Tide; 0.0 ft.)

	VERTICAL	HORIZONTAL
Ventura Bridge	42 ft.	116 ft.
So. Inghram St.	43 ft.	130 ft.
No. Inghram St.	35 ft.	125 ft.

(See Special Note about construction)

Depths: (At Mean Low Tide; 0.0 ft.)

Mission Bay Channel	20 ft.
Mariner's Basin	20 ft.
Quivira Basin	20 ft.
All Other Areas	8 ft.

Radio Beacon: (North Channel Jetty)

317 MHz "M. B." --

SCALE: 1 in. equals approx. 1200 ft.

CONSENT TO SUBLEASE AGREEMENT

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

RICHARD L. GLEASON AND DEBRA L. GLEASON

(LESSEE) and filed in the Office of the City Clerk as Document No. OO-18244, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

SHARA FISLER, d.b.a. AQUATIC ADVENTURES

(SUBLESSEE) dated April 1, 1998. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease 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: **NONE**

THE CITY OF SAN DIEGO

Dated

4/28/98

By

Joan E. Vickers

Deputy Director, Real Estate
Assets Department for the City
Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

By

Casey Gwinn

Deputy City Attorney

Dated

4/20/98

ADDENDUM A

MINIMUM STANDARD SUBLEASE CONDITIONS

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease 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 lease.

HOLD HARMLESS: SUBLESSEE 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 leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE'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: SUBLESSEE 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 \$1 million 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.

LEGAL PROCEEDINGS: 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 lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

SUBORDINATION: This agreement is in effect a Sublease of a portion of the premises covered by that certain Lease Agreement dated October 16, 1995 between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

Commercial Lease

This sublease is made between Jason Boone, Mission Bay Sports Center, Inc., herein called "Lessor," and Shara Fisler, Aquatic Adventures Science Education Foundation, herein called "Lessee."

Lessee hereby offers to sublease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described as the one story property at 1010 Santa Clara Place (detailed in Exhibit A), upon the following TERMS and CONDITIONS:

1. **Term and Rent.** Lessor demises the above premises for a term of four years, commencing April 1, 2001 at the monthly base rate of \$650.00 (\$650.00) per month, payable in arrears on the last day every month. All rental payments shall be made to the Lessor, at the address specified above.

Percentage Rent: Lessee shall pay Lessor in addition to the base rent, seven percent (7%) of Lessee's gross receipts, monthly in arrears, and prior to the 16th day of the month following that month in which the revenue subject was earned.

Shared Expenses: Lessee shall pay to Lessor, as additional rent, Lessee's "proportionate share" of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Sportcenter facility. Said-shared expenses shall be paid monthly by the end of the month billed. At the end of the first year of the sublease, the "proportionate share" shall be re-evaluated and adjusted to reflect actual usage.

Definitions: For the purpose of this section (a) Lessee's "proportionate share" shall be equal to the total "shared expenses" divided by the number of sublessees and the Lessor in equal shares unless otherwise agreed upon.

2. **Use.** Lessee shall use and occupy the premises for marine science education. The premises shall be used for no other purpose. The Lessor shall not allow any other marine science business to operate out of the facility.
3. **Assignment and Subleasing.** Lessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessor and The City of San Diego, hereinafter, "City." An assignment by operation of law shall automatically terminate this lease.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excluded. Lessee shall be responsible for all repairs required, including the roof and the exterior walls over and around the subleased area.
5. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to, or about the premises. The Lessee shall be responsible for all interior and exterior improvements.
6. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.
7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they

become due, including those for sewer, water, gas, electricity, and telephone services. Lessee will install a gas and electric sub-meter prior to the commencement of this lease. Lessee will be solely liable for the installation of the meter.

8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit those persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.
10. **Indemnification of the Lessor.** Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.
11. **Insurance.** Lessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 million combined single limit liability. A copy of the policy of insurance shall be filed with the City and shall name "The City of San Diego" and "Mission Bay Sportcenter" as 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.
12. **Hold Harmless.** Lessee shall assume the defense of, indemnify and save harmless Lessor and City from all claims, expenses and liabilities of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Lessee, his agents or invitees.
13. **Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by the Lessee, and for moving expenses.
14. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor does not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

15. **Lessor's Remedies on Fault.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.
16. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this Lease the sum of one thousand dollars (\$1000.00) as security deposit for the performance of Lessee's obligations under this lease, including, without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.
17. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to 25% of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.
18. **Attorney's Fees.** In the event suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
19. **Notices.** Any notice which either party may, or is required to, give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such places as may be designated by the parties from time to time.
20. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated April 1, 2001 as amended between the Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

21. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits have been made a part of this lease before the parties execution hereof:

BY 
DATE April 1, 2001

Shara Fisler
Aquatic Adventures Science Education Foundation
1010 Santa Clara Place
San Diego, CA 92109

BY 
DATE 4/1/2001

Jason Boone
Mission Bay Sports Center, Inc.
1010 Santa Clara Place
San Diego, CA 92109

Commercial Lease

This sublease is made between Jason Boone, Mission Bay Sports Center, Inc., herein called "Lessor," and Shara Fisler, Aquatic Adventures Science Education Foundation, herein called "Lessee."

Lessee hereby offers to sublease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described as the one story property at 1010 Santa Clara Place (detailed in Exhibit A), upon the following TERMS and CONDITIONS:

1. **Term and Rent.** Lessor demises the above premises for a term of four years, commencing April 1, 2001 at the monthly base rate of \$650.00 (\$650.00) per month, payable in arrears on the last day every month. All rental payments shall be made to the Lessor, at the address specified above.

Percentage Rent: Lessee shall pay Lessor in addition to the base rent, seven percent (7%) of Lessee's gross receipts, monthly in arrears, and prior to the 16th day of the month following that month in which the revenue subject was earned.

Shared Expenses: Lessee shall pay to Lessor, as additional rent, Lessee's "proportionate share" of (1) all costs of operation and maintenance of the common facilities; (2) utilities including electrical, gas and water; (3) all "real estate taxes" levied and assessed against the Sportcenter facility. Said-shared expenses shall be paid monthly by the end of the month billed. At the end of the first year of the sublease, the "proportionate share" shall be re-evaluated and adjusted to reflect actual usage.

Definitions: For the purpose of this section (a) Lessee's "proportionate share" shall be equal to the total "shared expenses" divided by the number of sublessees and the Lessor in equal shares unless otherwise agreed upon.

2. **Use.** Lessee shall use and occupy the premises for marine science education. The premises shall be used for no other purpose. The Lessor shall not allow any other marine science business to operate out of the facility.
3. **Assignment and Subleasing.** Lessee shall not assign this lease or sublet the premises or any part thereof without the prior written consent of Lessor and The City of San Diego, hereinafter, "City." An assignment by operation of law shall automatically terminate this lease.
4. **Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excluded. Lessee shall be responsible for all repairs required, including the roof and the exterior walls over and around the subleased area.
5. **Alterations.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to, or about the premises. The Lessee shall be responsible for all interior and exterior improvements.
6. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.
7. **Utilities.** All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they

become due, including those for sewer, water, gas, electricity, and telephone services. Lessee will install a gas and electric sub-meter prior to the commencement of this lease. Lessee will be solely liable for the installation of the meter.

8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit those persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.
10. **Indemnification of the Lessor.** Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.
11. **Insurance.** Lessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 million combined single limit liability. A copy of the policy of insurance shall be filed with the City and shall name "The City of San Diego" and "Mission Bay Sportcenter" as 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.
12. **Hold Harmless.** Lessee shall assume the defense of, indemnify and save harmless Lessor and City from all claims, expenses and liabilities of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the leased premises or from any act or omission of Lessee, his agents or invitees.
13. **Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by the Lessee, and for moving expenses.
14. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor does not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

15. **Lessor's Remedies on Fault.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.
16. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this Lease the sum of one thousand dollars (\$1000.00) as security deposit for the performance of Lessee's obligations under this lease, including, without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.
17. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to 25% of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.
18. **Attorney's Fees.** In the event suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
19. **Notices.** Any notice which either party may, or is required to, give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address shown below, or at such places as may be designated by the parties from time to time.
20. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated April 1, 2001 as amended between the Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

COMMERCIAL LEASE

This sub-lease is made between Jason Boone, Mission Bay Sports Center, herein called Lessor, and Share Fisler, Aquatic Adventures, herein called Lessee.

Lessee hereby offers to sub-lease from Lessor the premises situated in the City of San Diego, County of San Diego, State of California, described as the one story property at 1010 Santa Clara Place, upon the following **TERMS** and **CONDITIONS**.

1. Term and Rent. Lessor demises the above premises for a term of 3 months, commencing June 1, 1998 and terminating on August 31, 1998 or sooner as provided herein at the monthly rental of \$500.00 per month. Additionally Lessee agrees to subcontract all sports related activities in conjunction with summer camp to Mission Bay Sportcenter.

Percentage Rent: Lessee shall pay Lessor in addition to the base rent, seven percent (7%) of Lessee's gross receipts, monthly in arrears, and prior to the 16th day of the month following that month in which the revenue subject was earned to be forwarded to the city.

2. Use. Lessee shall use and occupy the premise for operating marine science summer camp. The premises shall be used for no other purpose. Lessor represents that the premises may lawfully be used for such purpose. The lessor shall not allow any other marine science summer camps to operate out of the facility.

3. Assignment and Subleasing. Sublessee shall not assign this lease or sublet the premises or any other 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 lease.

4. Care and Maintenance of Premises. Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in a good and safe condition, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required, including the roof and the exterior walls over and around the sub-leased area.

5. Alterations. Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises. The Lessee shall be responsible for all interior improvements and the Lessor will be responsible for all exterior improvements.

6. Ordinances and Statutes. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.

7. Assignment and Subletting. Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the opinion of the Lessor, may terminate this lease.

8. Utilities. All applicants and connections for necessary utility services on the demised premises shall be made in the name of Lessor only, and the Lessor shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services.

9. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the premises thereafter.

10. Possession. If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 10 days of the commencement of the term hereof.

11. Indemnification of Lessor. Lessor shall not be liable for any damage of injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim of damages, no matter how caused.

12. Insurance. Sublessee shall be insured by an insurance carrier acceptable to the Lessor 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 \$1 million COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with City and shall name "THE CITY OF SAN DIEGO" and "MISSION BAY SPORTS CENTER" 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.

13. Hold Harmless. Sublessee shall assume the defense of, indemnify and save harmless Lessee and City from all claims, expenses and liability of every nature, directly or indirectly arising from, alleged to have arisen from the operations conducted on the premises or from any act or omission of Sublessee, his agents and invitee.

14. Eminent Domain. If the premises or any part thereof or any part therein, or any other part of the building materially affecting Lessee's use of the premise, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

15. Destruction of Premises. In the event of partial destruction of premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of the Lessee on the premises. If such repairs cannot be made within sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs hereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

16. Lessor's Remedies on Fault. If Lessee defaults in the payment of any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 10 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 20 days thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

17. Security Deposit. Lessee shall deposit with lessor on the signing of this Lease the sum of Five Hundred Dollars (\$500.00) as security deposit for the performance of Lessee's obligations under this Lease, including without limitation, the surrender of possession of the premises to Lessor as herein provided. If lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this Lease.

18. **Tax Increase.** In the event that there is any increase during the year of the term of this lease in the City, County, or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to 25% of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.

19. **Attorney's Fees.** In case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

20. **Notices.** Any notice which either party may, or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises or Lessor at the address shown below, or at such other places as may be designated by the parties from time to time.

21. **Heirs, Assigns, Successors.** This lease is binding upon and inures to the benefit of heirs, assigns, and successors in interest to the parties.

22. **Option to Renew.** Provided Lessee is not in default in the performance of this Lease, Lessee shall have the option to renew the lease for a renegotiated term and rent.

23. **Subordination.** This agreement is in effect a sublease of a portion of the premises covered by that certain Lease agreement dated July 25, 1995, as amended between the Sub-Lessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

24. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.

By Shara Fisler 4/1/98 By Jason Boone 4/1/98
Shara Fisler Jason Boone
Lessee Lessor

HOLD HARMLESS AND MAINTENANCE AGREEMENT

This HOLD HARMLESS AND MAINTENANCE AGREEMENT (Agreement) is made by and between the City of San Diego, a municipal corporation ("LESSOR") and RICHARD & DEBRA GLEASON ("LESSEE")

RECITALS

WHEREAS, LESSOR and Richard and Debra Gleason d.b.a. Mission Bay Sportcenter entered into a lease agreement for certain City owned real property at 1010 Santa Clara Place in the City of San Diego, described in City Clerk Document No. 00-18224, filed October 16, 1995; and

WHEREAS, on February 28, 1997 per LESSEE request the City installed approximately 30 feet of removable railing ("Railing") along a retaining wall located between the leasehold premises and a portion of the public beach that LESSEE is utilizing for storage of its boats (the location of said railing is shown on the attached Exhibit A)

NOW, THEREFORE, LESSOR AND LESSEE AGREE AS FOLLOWS:

Beginning of the effective date of this agreement Lessee shall:

1. Indemnify, protect, and hold City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of LESSEE and its agents, officers, or employees in connection with the Railing and the condition of the Railing and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers, or employees.
2. Assume full responsibility and cost of operation and maintenance of the Railing throughout the term of the Lease, including any extensions. LESSEE will make all repairs and replacements necessary to maintain and preserve the Railing in a decent and safe condition satisfactory to the City.

CITY OF SAN DIEGO

Dated February 25, 1998

By Jane E. Wickers
Jane E. Wickers
Deputy Director of Real Estate
Assets Department

LESSEE

Dated 12/10/97

By Richard Gleason
Richard Gleason

By Debra Gleason
Debra Gleason

APPROVED AS TO FORM AND LEGALITY THIS 12th DAY OF Nov. 1997.
CASEY G. GWINN

By W. T. [Signature]
Deputy City Attorney

H:\WPWDATA\HOLDHARM.WPD

SANTA CLARA POINT

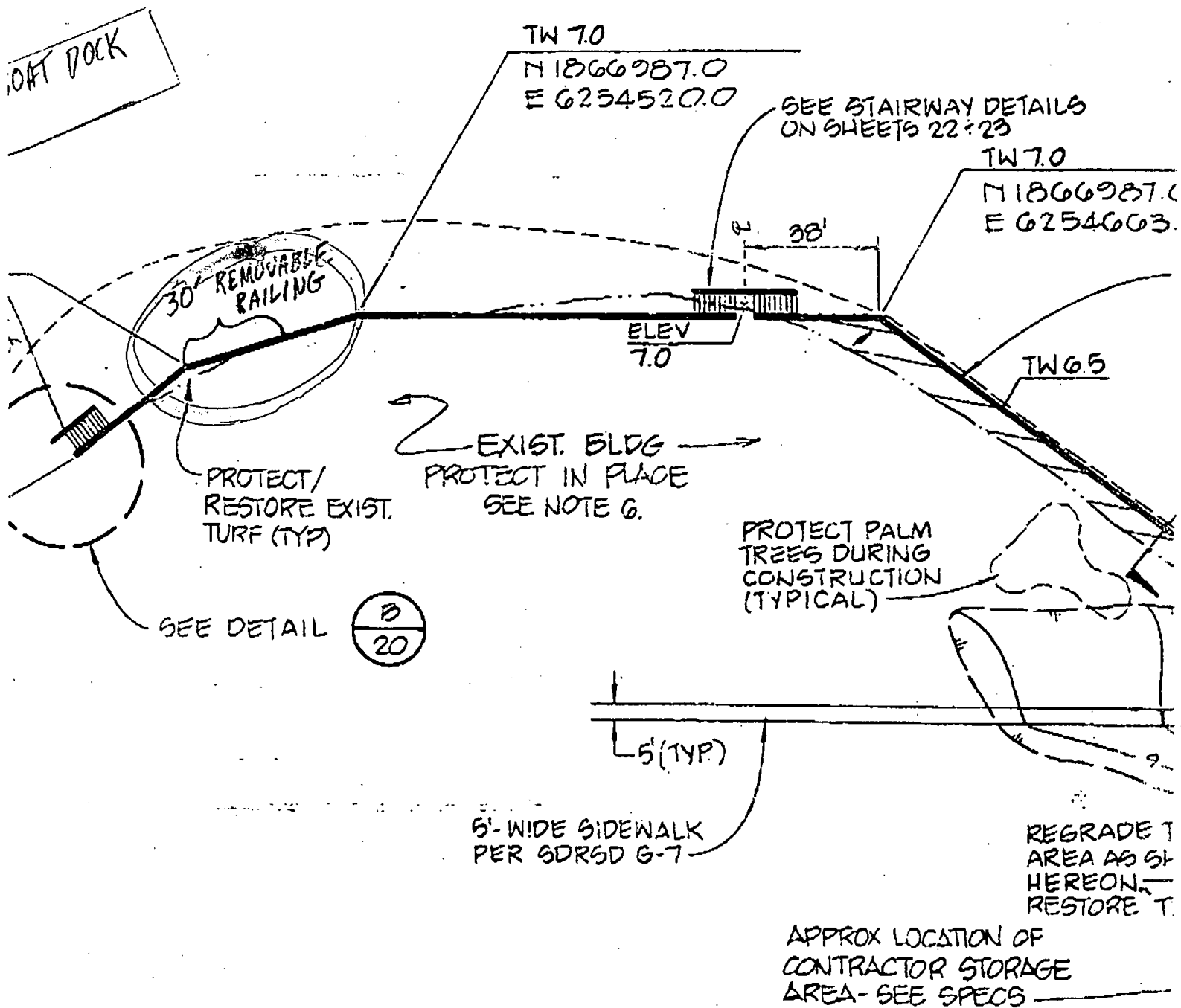


EXHIBIT A

BACKFILL BEHIND WALL
SEE LANDSCAPE PLAN
SHTS. 26 & 33, AND DETAIL

APPROXIMATE EDGE
OF EXISTING SCARP

NO SCALE

BUY/SELL AGREEMENT

This BUY/SELL AGREEMENT (the "Agreement") is made this 4TH day of MAY, 1995, by and among MISSION BAY SPORTS CENTER, a California corporation (referred to as "Company"), and those persons whose names are set forth at the end of this Agreement (referred to as "Shareholders"), and is made with respect to all of the issued and outstanding stock of the Company.

RECITALS

- A. The common shares presently outstanding, as well as any common shares or interest in common shares which may hereafter be issued, are referred to as the "Shares." The term "Shareholders" as used in this Agreement means (i) the persons named below and (ii) any future owners of Shares who become parties to this Agreement, provided, however, that no person shall be considered a Shareholder after disposal of all of their Shares.
- B. The parties desire to impose certain restrictions on the transfer of their Shares.
- C. The Shareholders intend by this Agreement that all present and future Shareholders of the Company shall be bound by this Agreement and the execution and delivery of this Agreement shall be a condition of "transfer" or issuance of other stock of the Company to any person not a party to this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Disposition or Encumbrance of Shares. No Shareholder shall, from and after the date above, sell, assign, transfer, encumber or dispose in any manner, by gift or by sale, voluntarily or by operation of law, any of the Shares without the written consent of all of the Shareholders and except in the manner provided in this Agreement. Any transfer in violation of the terms of this Agreement shall be void as against the Company and the other Shareholders.
2. Legend on Share Certificates. Each certificate representing a Share shall be marked with a legend in substantially the following form: The transfer of the shares represented by this Certificate is restricted by the terms of an agreement between the Corporation and its shareholders, a copy of which may be obtained from the Corporation.
3. Additional Shares. The Company shall not issue any additional Shares to any person who is not a party to this Agreement at the time he acquires his Shares.
4. Permitted Transfers. A Shareholder may sell, assign, or transfer any or all of his Shares to the Company or to another Shareholder at any time, on such terms and conditions as the transferring and acquiring parties may agree.

5. Receipt of Offer to Sell.

- a. If any Shareholder receives a bona fide offer to buy all or any portion of his Shares and such Shareholder (the "Offering Shareholder") wishes to accept the offer, he shall promptly send written notice to the Company and to the other Shareholders, specifying the number of Shares to be sold and offering to sell his Shares to the Company and/or to the other Shareholders at the same price, or the cash equivalent thereof, and otherwise on the same terms and conditions as are set forth in the bona fide offer or on terms and conditions which are no less favorable to the Company and/or to the other Shareholders. Such notice shall contain a complete copy of the bona fide offer, including the price, the terms and conditions, and the name and address of the person who has offered to buy the Shares (the "Offeror").
- b. The Company, the Company and the other Shareholders, or the other Shareholders alone, in the order listed, shall have 30 days from receipt of the notice described above by the last person (including the Company) entitled to receive such notice (the "Acceptance Period") to elect to buy the Shares offered for sale on the same terms and conditions as are set forth above.
- c. The Company and each Shareholder who receives notice and desires to buy any of the Shares offered for sale shall, not later than the end of the Acceptance Period, notify the Offering Shareholder, the Company and the remaining Shareholders of the number of Shares he is willing to buy on the terms and conditions set forth in the notice.
- d. If the Company elects to buy all of the offered Shares on the terms and conditions set forth in the notice, it shall settle within 30 days after the end of the Acceptance Period. If the Company does not elect to buy all of the offered Shares on such terms and conditions, then the Shareholders may buy the Shares which the Company has elected not to buy. The Shareholders purchasing Shares pursuant to the provisions of this section 5(d) shall settle within 30 days after the end of the Acceptance Period.
- e. If neither the Company nor the other Shareholders elects to buy, in the aggregate, all of the Shares offered for sale prior to the end of the Acceptance Period, or, if either elects to buy but fails to settle in a timely manner, then during the 30 day period following failure to settle, as the case might be, the Offering Shareholder may sell the offered Shares to the Offeror on the terms and conditions set forth in the notice referred to in section 5(a) hereof.
- f. No offer to purchase Shares shall be deemed a bona fide offer unless the Offeror can demonstrate ability to pay the purchase price.
- g. Shares purchased by Shareholders pursuant to this Section 5 shall remain subject to the provisions of this Agreement.

6. Sale of Shares upon Death, Disability or Other Transfer.

a. Upon a Shareholder's death, or event of disability (the "Event"), or in the event of involuntary transfer, transfer by operation of law or gift, the Shareholder or the Shareholder's legal representative (the "Former Shareholder") shall be required to offer to sell all of the Shares then owned by the Former Shareholder to the Company and/or the other Shareholders at the price and on the terms and conditions set forth in Sections 7 and 8, below.

b. The Company, the Company and the other Shareholders, or the other Shareholders alone, in the order listed, shall have the right (the "Purchase Right") to purchase all, but not less than all, of the Shares owned by the Former Shareholder. The Company and each Shareholder who elects to exercise the Purchase Right shall, within 90 days of receipt of notice of the Event, notify the Former Shareholder, the Company and the other Shareholders of the number of Shares they are willing to purchase.

c. If the Company does not elect to purchase all of the Shares then owned by the Former Shareholder, then the Shareholders may purchase the Shares which the Company has elected not to purchase, such purchases to be pro rata in proportion to the number of Shares they then hold. If any Shareholder has indicated that he is not willing to purchase the entire number of Shares to which he is entitled, the remaining Shareholders who have indicated a willingness to purchase the balance of the Shares may purchase such Shares, pro rata in proportion to the number of Shares they then hold.

d. For all purposes of this Agreement, a Shareholder shall be deemed to have suffered a disability if, because of a medically determinable physical or mental impairment which can be expected to continue for at least one year, or which actually continues for one year, he becomes unable to work or perform other normal day-to-day functions.

e. In the event the option referred to in this section 6 is not exercised as to all Shares of the Former Shareholder, then the Former Shareholder or his successor in interest will hold the remaining Shares subject to the provisions of this Agreement.

7. Purchase Price.

a. The purchase price for Shares purchased pursuant to Section 6 of this Agreement shall be mutually determined by the Former Shareholder and the party or parties acquiring the Shares (the "Buyer").

b. If there is no agreement, the purchase price for Shares purchased pursuant to Section 6 of this Agreement shall be computed at the per-share value determined annually by vote of a majority of the Shareholders. In the event any such annual valuation is not made, the most recent purchase price agreed upon by a majority of the Shareholders in accordance with the provisions of this Agreement shall be the purchase price.

c. If no annual valuation agreement has ever occurred per 7b, above, then the purchase price shall be the "Fair Value" thereof as of the date of the Event, which price shall be determined by a qualified appraiser jointly selected by the Former Shareholder and the Buyer. Such appraiser, in making his valuation, shall take into account as he deems appropriate, among other things, the history of earnings, projected future earnings, and earning power, asset value and the goodwill of the Company. The value of the Shares fixed by such appraiser shall be their Fair Value for purposes of the Agreement and shall be binding on the Former Shareholder and the Buyer. The term "qualified appraiser" as used herein shall mean (i) a public accountant or public accounting firm experienced in valuing businesses like that conducted by the Company at the time the appraisal is made or (ii) a person or business regularly paid to give opinions as to the value of businesses. The cost of the appraisal shall be paid 50% by the Former Shareholder and 50% by the Buyer.

8. Terms of Sale.

a. Settlement for any purchase made pursuant to Section 6 of the Agreement shall be on such date as may be mutually agreed upon by the Former Shareholder and the Buyer, but in no event shall it be later than 90 days after the exercise of the Purchase Right by the Company and/or the other Shareholders pursuant to the provisions of Section 6.

b. At any such settlement:

i) The Former Shareholder shall deliver to the Buyer a certificate or certificates for the Shares being sold, which certificates shall be duly endorsed for transfer to the Buyer.

ii) The Buyer shall deliver to the Former Shareholder, in cash, not less than 10% of the purchase price set forth in Section 7; provided, however, that if the Former Shareholder's death is the Event giving rise to the Purchase Right, the cash portion of the purchase price shall be not less than the greater of 10% of the purchase price or the amount of life insurance proceeds, if any, received by the Buyer as a result of the death of the Former Shareholder.

iii) The balance of the purchase price shall be evidenced by the Buyer's promissory note. The Note shall: (A) be dated the settlement date; (B) bear interest on the unpaid balance at the minimum per annum rate necessary to avoid imputed interest under the Code; (C) provide for the payment of principal and interest in 36 monthly installments; and (D) so long as the Buyer is not the Company, shall be secured by the Shares being acquired.

9. Life Insurance. The Company may apply for purchase and thereafter pay the premiums on permanent life insurance policies on the lives of the Shareholders in such amounts as it may from time to time determine. The Company shall be the named beneficiary on each such policy. All dividends on any such policies may be applied to the payment of the premiums.

10. Financial Statements. The Company will regularly supply the Shareholders with annual statements of the financial condition and affairs of the Company, prepared in a manner consistent with its past practice.

11. Notices. All notices, demands, requests, or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or by overnight courier service, or transmitted by telecopier, or when deposited in the United States Mail by registered or certified mail, return receipt requested, postage prepaid, and addressed to the Company at its principal office or to all Shareholders at the addresses listed on the books of the Company.

12. Entire Agreement; Modifications. This Agreement shall terminate and supersede all prior agreements, written, or oral, between the Company and the Shareholders and shall constitute the entire Agreement and understanding among the parties with respect to the subject matter. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended, or altered except by the written consent of the parties.

13. Governing Law. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of California.

14. Limitations on Company's Purchase of Shares. Anything to the contrary notwithstanding, the right of company to exercise its option to purchase Shares shall be subject to the laws of the State of California governing the right of a corporation to purchase its own shares.

15. Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs, in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include such reimbursement for attorneys' fees and costs.

16. Waivers. No delay or omission by any of the parties in exercising any right or power accruing upon the non-compliance or failure of performance by another party of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties of any of the covenants, conditions, or agreements to be performed by another party shall not be construed to be a waiver of any subsequent breach or of any other covenant, condition, or agreement.

17. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Company and the Shareholders, and their respective personal and legal representatives, successors, permitted assigns, heirs, estates, and legatees.

18. Severability. In case any provision of this Agreement is, for any reason, held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included.

19. Specific Performance. The parties agree that the Shares are unique, that failure on the part of any of the parties to perform the obligations provided by this Agreement will result in irreparable damage to the other parties and that specific performance of the obligations set forth may be obtained by suit in equity.

20. Interpretation. For purposes of construing this Agreement, unless the context otherwise requires, words in the singular shall include words in the plural and vice versa, words in one gender shall include words in the other gender and the word "person" shall include trusts, states, partnerships, corporations, and other business entities. The section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

21. Duration. This Agreement shall remain in full force and effect until ended by the unanimous consent of the parties, or until all of the Shares are held by only one Shareholder.

22. New Certificates. Upon the termination of this Agreement, the Shareholders shall have the right to present any certificate or certificates bearing a legend referring to this Agreement to the Company and to require that the proper officers issue, in lieu thereof, a new certificate or certificates representing the same number of Shares but bearing no legend referring to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

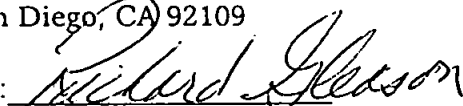
"COMPANY"

MISSION BAY SPORTS CENTER

1010 Santa Clara Pl.

San Diego, CA 92109

By:



Richard Gleason
President

RECEIPT FOR CASH PAYMENT

Receipt of \$50,000 from Jason Boone and Debra Braswell Boone, representing payment in full for 8,333 shares of the stock of this corporation, evidenced by certificate No. 3, is hereby acknowledged.

Date: 5/4/95

MISSION BAY SPORTS CENTER

a California corporation

By: Debra Gleason

Debra Gleason, Treasurer