

## CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and MISSION BAY SPORTS CENTER, a California Corporation ("MB Sports Center") to be effective upon execution by CITY and approval by the San Diego City Attorney (the "Effective Date"), as follows:

### RECITALS

- A. MB Sports Center is the "LESSEE," under that certain CITY OF SAND DIEGO PERCENTAGE LEASE dated July 21, 2011, filed as Document No. RR-306876 in the Office of the City Clerk, by and between CITY, as lessor, and Mission Bay Sports Center, a California Corporation, as lessee ("Master Lease"), relating to certain real property ("Master Lease Property") located at 1010 Santa Clara Place in Mission Bay Park, City of San Diego, County of San Diego, State of California, and more particularly described in the Master Lease.
- B. The Master Lease requires CITY'S prior consent to any sublease of the Master Lease Property.
- C. MB Sports Center and Radical Surf Company, LLC ("Sublessee") have executed that certain COMMERCIAL LEASE ("Radical Surf Company Sublease") dated June 1, 2012, whereby, MB Sports Center subleases to Sublessee and Sublessee subleases from MB Sports Center a portion of the Master Lease Property ("Sublease Premises") located on the Master Lease Property and more fully described in the Sublease, attached hereto as Exhibit A.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

- 1. Subordination. The Sublease is and shall be subordinate to the Master Lease. CITY shall not be bound by any term or condition in the Sublease. Any conflict between the Master Lease and the Sublease shall be construed or resolved in favor of the Master Lease.
- 2. Master Lease Provisions. Without releasing MB Sports Center from any obligations under the Master Lease, MB Sports Center shall ensure that Sublessee assumes and shall perform the obligations of "LESSEE" under the Master Lease as and to the extent such obligations are applicable to the Sublease Premises or Sublessee's use of any common area within the Master Lease Property.
- 3. Use. Sublessee shall use and occupy the Sublease Premises for instruction of wakeboarding, wake surfing instruction, sale of accessories, tours, and scheduled group events. The Sublease Premises shall not be used for any other purposes

without the advance written approval of CITY. Any activities conducted by Sublessee outside of the Sublease Premises on the waters of Mission Bay Park must receive prior written approval from the CITY's Fire-Rescue Department, Life Guard Division. All uses of the Sublease Premises shall comply at all times to the Master Lease.

4. Rent. MB Sports Center shall pay the following to CITY as Rent, as Rent is defined under the Master Lease:
  - (a) Five percent (5%) of all of Sublessee's gross revenue ("gross revenue" as that term is defined in the Master Lease) received from all business activities consisting of organized youth camps for participants under 18 years of age, and from all sales of used accessories; and
  - (b) Three percent (3%) of all of Sublessee's gross revenue ("gross revenue" as that term is defined in the Master Lease) received from sales of new accessories; and
  - (c) Ten percent (10%) of all of Sublessee's gross revenue ("gross revenue" as that term is defined in the Master Lease) received from all instruction of wakeboarding and wake surfing; and
  - (d) Twenty percent (20%) of all of Sublessee's gross revenue ("gross revenue" as that term is defined in the Master Lease) received from all tours and group events; and
  - (e) Twenty percent (20%) from all revenues that MB Sports Center receives from Sublessee as monthly base rent for office space ("monthly base rent" as that term is used in the Sublease);
5. Indemnification. MB Sports Center shall require that Sublessee shall defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation any injury to MB Sports Center's or Sublessee's officers, employees, agents, invitees, guests, subtenants or licensees, which arise out of or are in any manner directly or indirectly connected with the Sublease, Sublessee's use of or operations on the Master Lease Property, the condition of the Sublease Premises, or from any act or omission of Sublessee or any of his employees, agents, invitees, guests, subtenants or licensees; provided, however, this duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents or employees.
6. Subsequent Sublease. This Consent does not constitute consent to any subsequent subletting of any portion of the Master Lease Property, and does not relieve MB

Sports Center or any person claiming under or through MB Sports Center of the obligation to obtain CITY'S consent to any future sublease.

7. No Modification of Master Lease or Sublease. Except as may be provided herein, this Consent shall not be deemed or construed to modify, waive, impair, or affect any of the terms or conditions of the Master Lease. Additionally, MB Sports Center shall not modify, waive, impair or affect the terms or conditions of the Sublease without the consent of CITY.
8. Controlling Law. The terms and conditions of this Consent shall be construed in accordance with the laws of the State of California.
9. Captions. Captions to the sections of this Consent are included for convenience only and do not modify any of the terms of this Consent.
10. Entire Agreement. This Consent constitutes the entire statement of the agreement of the parties pertaining to CITY'S consent to MB Sports Center subleasing a portion of the Master Lease Property to the Sublessee, and is binding on and inures to the benefit of the parties' respective heirs, representatives, successors and assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. No modification of the terms or conditions of this Consent shall be effective unless made in a writing that expressly states that it modifies this Consent, and signed by the parties hereto.
11. Authority. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

12. CITY'S Consent. Subject to the terms and conditions of this Consent, CITY hereby consents to MB Sports Center subleasing a portion of the Master Lease Property to the Sublessee, Radical Surf Company, LLC.

IN WITNESS WHEREOF, the parties hereto execute this Consent to be effective as of the Effective Date.

Date: 10/23/2012 Mission Bay Sports Center, a California corporation

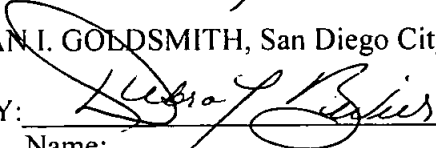
BY:   
Name: Susan Boone  
Title: PRESIDENT

Date: 2/14/13 THE CITY OF SAN DIEGO,  
A California municipal corporation

BY: BOB FILNER  
Name: Bob Filner  
Title: 2/14/13 - MAYOR

APPROVED AS TO FORM AND LEGALITY, <sup>25</sup>  
this 19<sup>th</sup> day of Feb 2012.

JAN I. GOLDSMITH, San Diego City Attorney

BY:   
Name: Debra J. Bevler  
Title: Deputy City Attorney

VEB/vb  
10/23/2012

I: WPO2012\BALOTSKY\MB SPORTS CENTER-CONSENT TO SUBLEASE-RADICAL SURF

**EXHIBIT A**

**COMMERCIAL LEASE**

["Sublease" dated June 1, 2012, by and between Mission Bay Sports Center, Inc. and Radical Surf Company, LLC.]

# Commercial Lease

This sublease is made between Mission Bay Sportcenter, Inc., herein called "Lessor," and Radical Surf Company LLC, 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 one-year term, commencing June 1, 2012 at the monthly base rate of five hundred (\$500.00) per month, payable in arrears on the first 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, five percent (5%) of business activities consisting of organized youth camps or group programs for participants under 18 years of age, ten percent (10%) of all Lessee's gross receipts for all instruction of wakeboarding and wake surfing instruction, tours and scheduled group events within the scope of authorized activities named in this sublease, monthly in arrears, and prior to the 16<sup>th</sup> 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 instruction of wakeboarding and wake surfing instruction accessories, tours and scheduled group events within the scope of stated authorized activities. The premises shall be used for no other purpose. The Lessor shall not allow any other instruction of wakeboarding and wake surfing instruction businesses or to operate out of the facility with the exception of the Lessor's programs. Lessee agrees to not engage in any business not specified in Lease.
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 Two Million Dollars (\$2,000,000) combined single limit liability subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). 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 July 21, 2011, 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 5/19/2012

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

BY \_\_\_\_\_

DATE 4-6-12

Chris Fischetti  
Radical Surf Company  
1010 Santa Clara Place  
San Diego, CA 92109

EXHIBIT A

N

