

CONSENT TO SUBLEASE

(DRISCOLL MISSION BAY LLC: MCJ Boats LLC)

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

RECITALS

- A. City and Mission Bay Marina, a limited partnership, are parties to that certain Percentage Lease dated March 5, 1979, filed in the Office of the San Diego City Clerk as Document No. 766042 ("**Agreement**"), as amended by that certain First Amendment to Lease dated June 2, 1986, filed in the Office of the San Diego Clerk as Document No. RR-265857 ("**Amendment**") (collectively, the "**Master Lease**"), relating to that certain City-owned real property located in a portion of Mission Bay Park, in the City of San Diego, consisting of approximately 4.278 acres of land and 8.702 acres of water, commonly known as Driscoll Mission Bay and more particularly described in the Agreement ("**Master Premises**").
- B. Through a series of City-approved assignments, Lessee became the "Lessee" under the Master Lease and is the current "Lessee" under the Master Lease.
- C. Lessee now desires to sublease a portion of the Premises, consisting of a marina boat slip for a vessel named Bluebill ("**Sublease Premises**"), including non-exclusive use of the Master Premises, to MCJ Boats LLC, a California limited liability company ("**Sublessee**"), to provide recreational fishing, bay cruises, sightseeing charters, and for no other purpose or use. A true and correct copy of the sublease between Lessee and Sublessee (subject to this Consent being effective) is attached to this Consent as Exhibit "A" ("**Sublease**").
- D. Section IV.A.2 of the Master Lease requires that Lessee obtain City's written consent prior to entering into any sublease of the Master Premises.

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

1. City Consent to Sublease. Subject to the terms and conditions of this Consent and the Master Lease, City consents to Lessee subleasing to Sublessee the Sublease Premises. All terms and conditions of the Master Lease shall control and supersede all inconsistent or contrary provisions in the Sublease.

2. Sublessee Assumption of Lessee's Obligations. City's consent to the Sublease is conditioned upon Sublessee's written agreement in the Sublease to assume and perform all obligations of Lessee under the Master Lease applicable to the Sublease Premises. Sublessee's failure to perform one or more of these assumed obligations shall be a material default and breach under the Master Lease and may subject the Master Lease to termination by City.

3. Sublessee Acknowledgment of this Consent. This Consent is conditioned on City's receipt of an "Acknowledgement of Receipt of Consent to Sublease" in substantially the form of Exhibit "B" attached to this Consent signed by the authorized representative(s) of Sublessee.

4. No Effect on Master Lease. Notwithstanding any provision of this Consent to the contrary, this Consent does not release, discharge, or modify any obligation of Lessee under the Master Lease.

5. Subsequent Subleasing. This Consent does not constitute City's consent to any subsequent assignment, sublease, or license under the Master Lease or relating to the Premises or any portion thereof, including the Sublease Premises, and does not relieve Lessee or any person claiming under or through Lessee of the obligation to obtain City's consent to any future assignment, sublease, or license pursuant to the Master Lease.

6. Processing Fees. Lessee agrees to pay City all applicable processing and/or administrative fee(s) charged by City for processing this Consent.

7. Brokerage Commissions or Finder's Fees. Lessee acknowledges and agrees that City will not be liable for any brokerage commission or finder's fee in connection with the consummation of the Sublease. Lessee agrees to protect, defend, indemnify, and hold City harmless from any brokerage commission or finder's fee in connection with the consummation of the Sublease or this Consent, and from any cost or expense (including attorneys' fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 7 shall survive the expiration or earlier termination of the Master Lease, the Sublease, or this Consent.

8. Consideration for Sublease: Lessee represents and warrants to City that a true, correct, and complete copy of the Sublease is attached to this Consent as Exhibit "A." Lessee further represents and warrants to City that there are no additional payments of rent or any other consideration of any type that has been paid or provided or is payable or to be provided by Sublessee or any other person to Lessee in connection with the Sublease or the Sublease Premises, other than as disclosed in the Sublease.

9. Subordination. The Sublease is subject to and subordinate to the terms, covenants and conditions of the Master Lease. The Sublease may only be in effect while the Master Lease is in effect. Nothing in this Consent modifies the expiration date of the Master Lease or Sublease. Lessee represents and warrants to City that Lessee provided Sublessee a true, correct, and complete copy of the Master Lease before Sublessee entered into the Sublease.

10. Lessee Estoppels. Lessee certifies the following to City as of the date of this Consent:

10.1 Lessee has not assigned its interest (or any portion thereof) in the Master Lease or otherwise transferred its interest (or any portion thereof) in the Master Lease to any third party;

10.2 City does not owe Lessee any money or other performance under the Master Lease;

10.3 City is not in default under the Master Lease;

10.4 The Master Lease is in full force and effect; there have been no amendments, modifications, changes, or additions to the Master Lease since its execution; and

10.5 Lessee is not in default or breach under the Master Lease and no event has occurred that would constitute a default or breach under the Master Lease by Lessee, without regard for any requirement to give notice and/or for the passage of time.

11. No Fee Title Encumbrance. Nothing in this Consent or any document referenced in this Consent is intended to create or authorize the creation of any transfer, lien, or encumbrance affecting the fee title to the Master Premises.

[Remainder of page intentionally blank. Signatures appear on the following page.]

**SIGNATURE PAGE
TO
CONSENT TO SUBLEASE
(DRISCOLL MISSION BAY LLC: MCJ Boats LLC)**

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

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 10/04/2024

By: *Lucy Contreras*
Lucy Contreras, Deputy Director
Economic Development Department

Approved as to form on 10/04/2024

MARA W. ELLIOTT
City Attorney

By: *Michael Park*
Michael Park (Oct 4, 2024 07:32 PDT)
Michael Park
Deputy City Attorney

DRISCOLL MISSION BAY LLC, a California
limited liability company

Date: 01/10/24

By: *Thomas A. Driscoll*

Name: Thomas Driscoll

Title: Thomas Driscoll



Charter Boat Lessee Agreement

THIS CHARTER BOAT LESSEE AGREEMENT (the "Agreement") is made and entered into on April 10, 2024 ("Commencement Date") by and between Driscoll Mission Bay, LLC, a California limited liability company (the "Management") and MCJ Boats LLC (individually or jointly, "Lessee") with respect to the following facts:

- A. Management leases from the City of San Diego (hereinafter, "City"), and operates the marina, boat slips, docks and boatyard located at 1500 Quivira Way, San Diego, California, USA, 92109 (collectively, the "Landing").
- B. Lessee owns and operates the "Vessel" as follows: Name of Boat: BLUEBILL

Cal. DMV CF#:

Federal Document#: 999779

Length Overall: 49'6"

Beam: 15'0"

Draft: 3'6"

The Vessel shall provide: Recreational fishing, bay cruise and sightseeing charters.

(please provide a list of all charter activity types)

as agreed upon by Management and Lessee. Only the Vessel described in this paragraph, and no other vessel, may occupy the boat slip under this Agreement.

- C. Lessee desires to operate the Vessel from the Landing, and Management desires to allow such non-exclusive operation, in each case on the terms and conditions set forth below. The person identified above as the Lessee represents by signing this Agreement that he/she is the sole owner of the Vessel, or that he/she has full authority of all persons or entities with an ownership interest in the Vessel to bind them and the Vessel to the terms and conditions in this Agreement. Lessee represents and warrants that the Vessel is owned solely by Lessee. On or before the Commencement Date, Lessee shall submit to Management a true copy of Lessee's current California DMV ownership, registration certificate or other official (e.g., United States Department of Transportation) ownership documentation by delivery of same to Management's Landing office where it shall be placed on file in Management's records for Lessee and the Vessel in respect of the Landing. Lessee represents and warrants that Lessee (individually or collectively) is the sole owner of the Vessel; and as a condition of using the Landing under this Agreement, Lessee (individually or collectively) must hold exclusive legal title to and exclusive ownership of the Vessel while it occupies the Landing during the Agreement Term. In the event that Lessee is not the sole owner of the Vessel at anytime during the Term, then Lessee shall immediately notify Management and submit all such additional information regarding other owners of the Vessel as Management may request and temporarily cease operations at the Landing.

NOW THEREFORE, in consideration of the foregoing Recitals, and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing Recitals are incorporated in this Agreement as if fully set forth below.
2. **Term of Agreement.**
 - (a) Subject to paragraph 2(b) below, the rights and duties of the parties under this Agreement shall commence on approval of the CITY. This Agreement is for month-to-month tenancy. Written notice of termination shall be given thirty (30) days prior to the expiration of said term by either Management or Lessee. This Agreement will continue on a month-to-month basis and may be terminated by either party giving the other at least thirty (30) days' prior written notice.
 - (b) Notwithstanding the provisions of Section 2(a) above, Management shall have the rights, as set forth in Section 2(c) below, on the occurrence of any of the following specified events (each an "Event of Default"):
 - (i) Bankruptcy, by voluntary or involuntary petition, or insolvency of Lessee;

- (ii) Sale or transfer of more than fifty (50%) percent or more of the stock or beneficial interest in the stock of Lessee, or sale or transfer of substantially all of the assets of Lessee;
 - (iii) Destruction or seaworthiness of the Vessel, or her inoperability for a period longer than four (4) months, unless a substitute vessel approved, in writing, by Management is provided.
 - (iv) Seizure of the Vessel pursuant to Court order or non-judicial repossession as contractually permitted by a mortgage lien holder.
 - (v) Breach or default of any term, provision or covenant contained in this Agreement, each of which is deemed to be material for all purposes herein.
 - (vi) Assignment or transfer of any interest, rights or duties under this Agreement other than as permitted herein.
 - (vii) Abandonment of the Vessel by Lessee.
 - (viii) Vacate the Landing.
- (c) Upon the occurrence of the Event of Default, Management may:
- (i) Immediately terminate and declare a forfeiture of this Agreement, whereby effective as of the termination date, Management shall not have any further or future obligations under this Agreement except as may be required by applicable law. Pursuant to such termination, Management may recover and take exclusive custody, possession and control of the Landing, remove the Vessel and all other personal property therefrom, remove all other personal property of Lessee from the dock adjacent to the Landing and elsewhere in the Landing area, store the Vessel at any location, and recover from Lessee all damages resulting from any Event of Default including, without limitation, the cost of recovery of the Landing, the cost of removal the Vessel and any other personal property therefrom, the cost of storing the Vessel.
 - (ii) In the event that Management removes any personal property from the Landing, its adjacent docks and/or elsewhere in the Landing area, other than or in addition to the Vessel, Management may store such property at any location at the sole expense and risk of Lessee or other owner thereof and may sell or otherwise dispose of such property as provided by applicable law.
 - (iii) Immediately take exclusive custody, possession and control of the Vessel including, without limitation, any and all fixtures, engine(s), equipment, rigging, gear and other personal property thereon or appurtenant thereto (collectively, the "Gear"), and physically impound and secure the Vessel, together with any Gear, at any location for the purposes, inter alia, of enforcing, perfecting and executing upon Management's statutory lien rights in or upon the Vessel, e.g.: (i) pursuant to the California Harbors and Navigation Code Section 490, et seq., and Section 500, et seq. (the "California Boaters Lien Law"), and/or (ii) pursuant to the Federal Maritime Lien Act, 46 U.S.C. Section 31341, et seq. (collectively, the "Boat Liens"). The Boat Liens (as applicable, depending upon whether California law or Federal maritime law controls in the Landing) shall cover and apply to, as the case may be, any and all necessities (e.g., wharfage, moorage, towage and repairs subject to Federal statutory maritime liens) and/or any and all other items consisting of services and/or storage (e.g., rentals, materials, labor and goods subject to California statutory boaters liens), which shall have been provided or rendered to the Vessel and/or purchased or obtained by, or provided to, Lessee in respect of the Vessel pursuant to or in connection with this Agreement. Management's rights to physically impound and secure the Vessel, as described above, shall include, without limitation, securing the Vessel in the Landing, removing and transferring the Vessel from the Landing to any other location, securing the Vessel at any other location, and/or otherwise berthing, docking, mooring and/or storing the Vessel at any location. In the event that Management takes exclusive custody, possession and control of the Vessel including its Gear, and physically impounds, secures and stores the Vessel including its Gear, as described above, the impounding, securing and storing of the Vessel including its Gear, and any other actions taken by Management, shall be at the sole expense and risk of Lessee or other owner of the Vessel, and Lessee hereby



waives any claims for damages and for claims against Management and any of its officers, employees or agents for failure to maintain the safekeeping of the Vessel including its Gear, except for any duty of safekeeping imposed by statutory law that cannot be waived by Lessee as a matter of law.

- (iv) Immediately, at its election and in accordance with applicable law, proceed to enforce, perfect and execute upon: (a) the Boat Liens either: (i) in the case of a boater's lien, pursuant to the California Boaters Lien Law (California Harbors and Navigation Code Section 500, et seq.), by applying to the California DMV for authorization to conduct a lien sale of the Vessel including its Gear and to otherwise dispose of the Vessel including its Gear, or (ii) in the case of a maritime lien, pursuant to the Federal Maritime Lien Act (46 U.S.C. Section 31341, et seq.), by bringing an action in rem in federal court to foreclose upon such maritime lien on the Vessel including its Gear, or (b) Management's contractual and other statutory rights, by bringing a civil action in personam in state court against Lessee in unlawful detainer (pursuant to California Civil Code Section 1161, et seq.), subject to disposition of the Vessel including its Gear pursuant to the provisions of the California Boaters Lien Law
- (v) Immediately prohibit Lessee from entering into or using the Landing or any of its facilities including, without limitation, the Landing, or from boarding or otherwise having access to or upon the Vessel; and further, Management may immediately undertake all actions and remedies available and permissible under applicable law in order to eject and remove Lessee and any other unauthorized Persons from the Landing and from the Landing as a whole including, without limitation, any of its docks, gangways, waterways, areas or other facilities. In addition to the recovery of any other damages resulting from any Event of Default, Management may recover from the Lessee the cost of any such ejection and/or removal of the Lessee or any other unauthorized persons.
- (vi) The remedies hereinabove provided are not exclusive, and Management may pursue any one or more of such remedies or any other remedies provided by law. The exercise or failure to exercise any remedy provided herein for any breach shall not be deemed to be a waiver of Management's rights to have that or any other remedy specified above for any other breach of the same or any other provision of this Agreement.

3. Monthly Rent

- (a) Minimum Monthly Rent. In any given monthly rental period if the percentage rent mentioned in section 3(b), is less than FIVE HUNDRED DOLLARS (\$500.00), then Lessee shall pay Management the \$500.00 as that months Rent.
- (b) Gross Revenue Report. Sublessee will receive two (2) copies of the new Monthly Gross Revenue Report Form that Sublessor needs to have filled out, signed, and submitted with Sublessee's payment of monthly Base Rent, a copy of which is attached hereto as Exhibit E. These will be the only accepted forms for reporting Gross Sales. The attachment is a PDF document that can be downloaded, filled out, signed, and then sent to the address for Sublessor in Section 25.11 below, with an e-mail copy to: Tom Driscoll at tom@driscollinc.com. The other is a shared link to an Excel form that can be filled out online. Once filled out, the form is saved when Sublessee exits. The fields that are a light green and yellow are the only ones that can be edited. Green fields are for the specific uses in the Master Lease that tie to the uses in the Sublease. The yellow fields are for the uses not in the Sublease that tie to the uses in the Master Lease. Sublessee may have use descriptions in the Sublease that are different than the ones in the Master Lease.
- (c) Percentage Rent. In any given monthly rental period, if after processing the Gross Revenue Report, and the payment is determined to be more than FIVE HUNDRED DOLLARS (\$500.00), then Lessee shall pay that determined amount to Management.
 - (i) Lessee shall pay Management FIFTEEN percent (15%) of all gross revenue generated by charter activities that utilize the facility The term "Gross Revenue", as used in this Sublease, shall mean the actual gross selling price of all services, food, beverages and merchandise sold in or from the

Subleased Premises by Sublessee, its subtenants, licensees and concessionaires, whether for cash or on credit, as well as the entire amount of the sales price, whether for cash or otherwise, of all sales of merchandise, sales to employees, comps (including discounts given by Fare Harbor, Groupon, or other similar direct site), the gross amount received by Sublessee from any and all other sources, business interruption insurance proceeds received by Sublessee with respect to the Subleased Premises, and the gross income as defined in the Master Lease. All sales originating at the Subleased Premises shall be deemed made and completed from the Subleased Premises, even though bookkeeping or payment of the account is transferred to another location for collection or filling of the sale or service order and actual delivery of the merchandise is made from a location other than the Subleased Premises. Sublessee shall use best and good faith efforts to maximize Gross Sales from the Subleased Premises.

4. **Responsibilities of Lessee.** During the term of this Agreement and any renewal thereof, Lessee shall:

- (a) Actively use and promote the vessel for charter _____

from the Landing. Subject to emergency and unanticipated repair periods, the Vessel, in seaworthy condition and currently licensed by the U.S. Coast Guard for carrying passengers for hire, shall be available for operation at the Landing for the entire term of this Agreement and any renewals, subject to normal maintenance and repair requirements. Lessee shall provide Management with at least ten (10) days' prior written notice of normal maintenance and repair periods during which the boat will not be available, during which periods Lessee shall make a good faith attempt to provide a substitute boat approved in writing by Management.

- (b) Lessee shall at all times cause the Vessel to be operated in a safe and lawful manner and in compliance with all Rules of Management which are incorporated herein in this Agreement, and all applicable federal, state or local statutes, regulations or directives.
- (c) Lessee shall at all times cause the Vessel to provide at least such services as are customarily provided by other charter fishing boats of a similar size.
- (d) If the Lessee is designated as the 1/2 day charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make two (2) one-half day fishing trips daily, the first trip departing from the Landing at approximately 6:00 a.m. and returning at approximately 11:30 a.m., and the second trip departing from the Landing at approximately 12:30 p.m. and returning at approximately 5:30 p.m. Lessee may schedule the second daily trip as a Twilight charter departing the landing at approximately 6:00 p.m. and returning approximately at 10:00 p.m. If the Lessee is designated as the 3/4 day charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make one three-quarter day fishing trips daily, the first trip departing from the Landing at approximately 5:30 a.m. and returning at approximately 5:00 p.m. If the Lessee is designated as an overnight charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make one fishing trip daily, departing from the Landing at approximately 10:00 p.m. and returning approximately 7:00 p.m. to 9:00 p.m. the following evening. If the Lessee is designated as a whale watching boat/bay cruise boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make two (2) whale watching trips daily, the first departing from the Landing at approximately 10:00 a.m. and the second departing at approximately 1:00 p.m.; each such trip shall be for a duration of two to three hours. The parties to this Agreement agree Management shall have the right to, from time to time, set a the minimum number of passengers required for each type of vessel excursion (for example, to require a 1/2 day charter boat depart in the event two (2) passengers wish to engage in such excursion).



- (e) Lessee shall at all times cause the Vessel to be docked and operated so as to cause no damage to the Landing or any other part of Management's property. Lessee shall notify Management immediately in the event he/she becomes aware of damage to Management's property. Lessee shall notify Management immediately in the event he/she becomes aware of damage sustained by any part of Management's premises, irrespective of whether such damage is caused by Lessee, his/her crew, his/her passenger(s) or other person. Lessee shall indemnify, defend, and hold Management harmless from, and reimburse Management for, all costs, expenses, damages, claims, demands, liabilities and lawsuits (including reasonable attorney's fees incurred by Management in investigating or defending such lawsuits) arising solely out of any action or inaction on the part of the Lessee, its agents or employees, or any passenger of Lessee. Lessee shall bear full responsibility, and shall reimburse Management, for any and all damages caused by the Vessel or her crew or passengers to the Landing or any other part of Management's property including, but not limited to, improper operation of the Vessel, seaworthiness of the Vessel, rough seas and/or bad weather.
- (f) Lessee shall provide a suitable picture of the Vessel to Management upon signing this Agreement and by December 1st of each year thereafter, together with a copy of current U.S. Coast Guard Certificate of Documentation.
- (g) Lessee shall keep the Vessel's designated dock area maintained and free from debris, or any hazardous materials, at all times. Lessee shall, after returning to the Landing following each excursion, spray with water and take all other necessary actions to thoroughly clean the dock areas adjacent to the Vessel.
- (h) Lessee shall provide his or her own bait.
- (i) Lessee shall strictly enforce courteous behavior by crewmembers and PROHIBIT THE FOLLOWING:
 - (i) the drinking of alcoholic beverages, possession OR USE of illicit drugs or narcotics by crew members BEFORE, DURING OR AFTER TRIPS, OR ANY TIME on board the Vessel;
 - (ii) crew members from boarding the Vessel AT ANY TIME while under the influence of alcohol or drugs; and
 - (iii) fishing by crewmembers.
 - (iv) Profane language or other indecorous conduct.
- (j) Crew members must wear appropriate attire designating them as crewmembers
- (k) Upon execution of this Agreement, and yearly on the anniversary of execution of this Agreement, Lessee shall provide Management and the City of San Diego with certificates of insurance, issued by a California admitted insurance carrier, covering the Vessel and Lessee (and naming Management and The City of San Diego as additional insureds), showing \$2,000,000.00 of commercial liability insurance in effect provided by a company acceptable to Management and the City, and in accordance with all Public Utility Commission requirements and all other governmental requirements. A copy of the policy of insurance shall be filed with the City. Said policy shall specify that the policy may not be terminated, altered, or cancelled without thirty (30) days' prior written notice to Management and the City by the insurance company.
- (l) Lessee shall obey all laws, rules and regulations of Mexico when operating in Mexican waters including, but not limited to, licensing and permits, and obey all laws, rules and regulations of the United States and California and all governmental entities/agencies with respect to activities undertaken therein.
- (m) Lessee shall at all times cause the Vessel to be operated by properly licensed personnel in compliance with U.S. Coast Guard requirements.
- (n) Lessee shall at all times operate the Vessel so as to be a credit to the Landing. Lessee shall cooperate with Management in providing reasonable free passage from time to time for writers, photographer's, news personnel and other persons designated by Management.
- (o) Upon termination, Lessee, at his/her expense, shall remove any and all stored goods, equipment and all other items, and return Management's spaces formerly used by Lessee for such storage to its original condition.
- (p) In the event Management elects to provide security at the Landing, it is understood and agreed such security is provided solely for the purpose of protecting Management's property, and not for the benefit of the Lessee,



who it is agreed shall be solely responsible for the safety and security of the Vessel and her appurtenances, and for the safety of Lessee's crewmembers, officers and passengers.

- (q) Lessee shall not post any signs on the Vessel or Management's premises without the advance written approval of the Management.
- (r) The Vessel shall not be used by any person for purposes of living aboard.
- (s) The Lessee shall, upon request by the Management, permit placement of a dye tablet into all holding tanks.
- (t) Lessee understands and agrees Management maintains Rules and Regulations which are incorporated herein as though fully set forth in this Agreement, and that Management reserves the right to add new Rules and Regulations or modify existing Rules and Regulations from time to time, which shall become effective upon notice of revised Rules and Regulations via written notice of changes tendered via first class U.S. mail or email address to the Lessee's address' identified in Section 10 hereof.
- (u) Lessee shall maintain a log identifying by name and date each passenger who boards the Vessel, and shall make such log available for inspection by Management upon two (2) business days' advance notice.
- (v) Overboard discharges of heads or holding tanks are forbidden by law and by this Agreement. Violation of this term or any other term hereof is grounds for eviction and termination of this Agreement.
- (w) Lessee is solely responsible for the safety of his/her Vessel, and Lessee agrees that the Management shall have no obligation whatsoever to take action(s) in advance of or during a storm to preserve or protect Lessee's Vessel. It is further agreed, however, that the Management may, at its sole election, undertake such actions during or in advance of a storm as it alone deems appropriate and/or necessary to preserve or protect any or all vessels located on its premises; in such event, it is agreed that Lessee shall indemnify, defend and hold the Management harmless for any and all personal injury or property damage occurring in connection with the Management's efforts to preserve or protect vessels during or in advance of a storm. It is further agreed that if the Lessee provides such preservative/protective services during or in advance of a storm, all costs associated with such rendering of such services shall be apportioned equally among all vessel owners, including Lessee.
- (x) Management has no obligation whatever to dewater or provide any salvage services to the Vessel should she spring a leak or otherwise need assistance in remaining afloat or in seaworthy condition. Nevertheless, it is agreed that in such event the Management may, but is not required to, provide dewatering or other salvage services for the benefit of the Vessel. In the event the Management elects to provide salvage services, it is agreed Lessee shall be obligated to pay all material/labor costs associated with such services, or One Hundred Fifty and Zero/100 Dollars (\$150.00) for each hour such services are provided, whichever sum is greater. Payment in such event is not contingent upon the success of such salvage or other such services.
- (y) Lessee shall ensure all fish cleaning operations aboard the Vessel cease once the Vessel has passed the breakwater leading to Management's premises.
- (z) Lessee shall not permit anyone, apart from a qualified diver hired for the purpose of cleaning the Vessel's bottom, to enter the water from Management's Landing or from any other place located on Management's premises.
- (aa) Apart from ordinary maintenance, no work involving the Vessel may be accomplished while at the dock or otherwise on Management's premises. Prohibited work includes, but is not limited to, painting, heavy sanding, and use of paint remover, spray guns, or the burning of paint on the topsides or above the decks. Work of any kind to the exterior of the Vessel, including routine maintenance, to be undertaken by other than Management, must be approved in advance of such work, in writing, by the Management. Contractors hired by Management to work on the Vessel must be approved by the Management, in writing, prior to the commencement of such work, and each such contractor must maintain and provide proof of liability insurance in an amount of at least \$2,000,000.00.
- (bb) The Vessel may under no circumstances be refueled dockside and may be refueled only at a duly licensed commercial fueling station.

- (cc) Lessee shall not store anything on the Landing without Management's advance written permission, such permission to be in the Management's sole and absolute discretion.
- (dd) Lessee shall not operate engines or generators or other noisy equipment between the hours of 10:00 p.m. and 6:00 a.m., unless absolutely and immediately necessary in connection with making the Vessel ready for a scheduled excursion or in the event of an emergency.
5. **Non-Exclusive Agreement**. It is expressly acknowledged and agreed by Lessee that this Agreement may be one of a number of agreements between Management and the lessees of other vessels (including, but not limited to, those which are operated as _____)

As a result, Lessee's right to use of the Landing and the Vessel's slip thereat is non-exclusive and Lessee shall have no right to exclude any other vessel (including a competitor vessel) from the Landing. Lessee acknowledges and agrees that this Agreement gives Lessee its rights herein only with respect to the Vessel (or its substitute under Section 4(a) above). As a result, Lessee shall not dock or operate any other vessel at the Landing without Management's prior written consent, such consent to be in the Management's sole and absolute discretion.

6. **Rights of Lessee**. During the term of this Agreement, Lessee shall be provided by Management with the following at no cost or charge to Lessee except as specified herein:
- (a) Use of a slip agreed upon with the Management (at a location suitable for the size of the Vessel) during such time as the Vessel is present at the Landing. Management shall have the right to make boat location changes, as it in its unfettered discretion deems necessary or prudent.
 - (b) No water and electrical hook-up supplied to the slip.
 - (c) Management shall establish a Landing advertising and promotions program to advertise and promote the Landing and the activities thereat in such manner and at such times as Management may determine in its sole discretion. Management shall not be required to provide any funds for such purposes in excess of those supplied by Lessee, together with funds from such other persons as Management may cause to contribute to such fund.
 - (d) Operation under such general Mexican fishing licenses that Management may have from time to time, based on Lessee's proper registration of the Vessel with Mexican authorities and paying any fees required.
 - (e) Management shall provide 1 parking spaces for use by Crew members. Paid parking spaces are available for use for passengers while they are embarked. Management is not responsible for damage to, or loss of, personal property or personal vehicles using the parking lot.
7. **Indemnity**. Lessee shall protect, defend, indemnify, and hold Management, its members and managers, the City's elected officials, officers representatives, agents and employees and their respective members, affiliates, officers, directors, agents and employees harmless from and against any and all claims, demands, liabilities, costs, expenses, damages and lawsuits (including reasonable attorney's fees incurred by Management, and/or the City, in investigating or defending same) for personal injury, death, property damage or any other claim not occasioned by Management's gross negligence or willful misconduct, made by or on behalf of any customer, passenger, officer or crewmember, or other person permitted by Lessee to be on or around the Vessel, resulting from any cause whatsoever, occurring while such person is on or about the Vessel, including embarking or disembarking to or from the Vessel, whether the Vessel is docked or underway, or occurring during the course of any dive or other activity conducted by or participated in by Lessee, and from any such claims by other persons arising out of the use, or operation of, the Vessel. Lessee further waives, releases and discharges any claims, demands, actions or causes of action against Management, and/or the City, for damages to person or property, including but not limited to claims for injuries or damages to employees, agents or subcontractors of Lessee, arising from any cause whatsoever. Notwithstanding the foregoing, this waiver, release, and indemnity shall not apply to any damage or loss resulting solely from the gross negligence or willful misconduct of Management and/or the City.
8. **Lessee's Covenants**. The Lessee covenants and agrees to the following:



- (a) Lessee accepts responsibility and liability of any and all damage or loss to property or injury to persons that may occur as a result of his/her use of the Landing.
- (b) Lessee shall make no dockside alterations or additions to the dock space or facilities covered under this Agreement unless the same has been specifically requested, in writing, and such permission has been granted, in writing, by Management, in Management's sole and absolute discretion. Installations for storage of any kind are not permitted on piers, docks, walls, or any other area comprising the Landing. Any such dockside equipment, facilities, or items installed by such written permission shall be so constructed that they can be readily removed by the Lessee at the expiration of this Agreement.
- (c) All signage and location of a sign for charter operations must be reviewed and approved by the City of San Diego. One sign per charter boat is permitted and shall be placed only in a location determined by Management. All signage material, color schemes and location must have written approval by the City. Signage shall remain in a state of proper maintenance or will be removed by Management.
- (d) No person shall camp or maintain a campsite, tent, canopy, or mobile recreational vehicle, whether self-propelled or not, on any street or property owned, leased, maintained or controlled by the City.
- (e) Boat mooring shall be limited to the assigned boat space only, and no permission is expressed or implied that mooring lines may extend beyond the limits of the space described in this Agreement. Under these circumstances, the Lessee hereby accepts responsibility and liability for any and all damages to property or injury to persons that may occur as a result of the use of the Landing.

9. **General Provisions.**

- (a) This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns. The foregoing notwithstanding, Lessee's voluntary or involuntary assignment or transfer of any or all of its rights or duties under this Agreement shall be void and of no effect unless consented to, in writing, by Management, such consent to be in Management's sole and absolute discretion.
- (b) Any offers, notices and other communications to be given by any party to another shall be communicated in writing by personal delivery or by U.S. mail, registered or certified, postage prepaid by the sender, with return receipt requested, or by overnight delivery, delivery charges prepaid by the sender. Mailed notices shall be addressed as follows:

To the Lessee: MCJ BOATS LLC

3030 Jarvis st. Unit #11

San Diego, CA 92106

Lessee Email: mcjboat@gmail.com

To the Management: Driscoll Mission Bay, LLC

ATTN: Tom Driscoll

1500 Quivira Way

San Diego, California 92109

Management Email: info@driscollmissionbay.com

Each party may change its address by written notice in accordance with this Section. Notices delivered by U.S. mail shall be deemed communicated as of the day after mailing.

- (c) If any part, term, or provision of the Agreement is held invalid, such invalidity shall not affect other parts, terms, or provisions of this Agreement which can be given effect without the portion held invalid, and to that extent the parts, terms and provisions of this Agreement are severable. Any waiver of any term hereof shall



not be deemed to be a continuing waiver and consent to any one waiver and shall not be deemed to be the consent to any other waiver.

- (d) This Agreement constitutes the entire understanding between the parties with regard to its subject matter and supersedes all other agreements, written or oral, between the parties with respect to such subject matter. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of anyone, which are not contained in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding. The terms of this Agreement may not be terminated, waived, or amended except by a written agreement signed by all of the parties to this Agreement or their successors or assigns.
- (e) In the event of any action or litigation to enforce or interpret this Agreement or otherwise arising under or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party any and all reasonable attorney's fees and costs incurred, including expert witness fees.
- (f) This Agreement shall be governed and construed in accordance with the laws of California. All legal actions brought in connection with this Agreement shall be filed and tried in San Diego County, California
10. **Assignment and Subleasing.** Lessee shall not assign the Agreement or sublet the premises or any part thereof without the prior written consent of the Management and the City, such consent to be in the sole and absolute discretion of Management. An assignment by operation of law shall automatically terminate this Agreement.
11. **Legal Proceedings.** Failure to pay wharfage services rendered under the Agreement gives rise automatically, by operation of Maritime law, to a maritime lien that may be enforced personally against the Lessee and against the Vessel (in rem) as though it were in fact a person. LESSEE SPECIFICALLY AGREES THAT LEGAL SERVICES RENDERED IN CONNECTION WITH THE ENFORCEMENT AGAINST LESSEE OF ANY CONTRACTUAL OR OTHER LEGAL RIGHT OR REMEDY AVAILABLE TO THE LANDING SHALL BE DEEMED PART OF THE MARITIME WHARFAGE "NECESSARIES" PROVIDED, AND THEREFORE, ALL SUCH LEGAL SERVICES SHALL BE RECOVERABLE AGAINST LESSEE PERSONALLY AND AS PART OF THE LANDING'S LIEN AGAINST THE VESSEL IN REM.
- Notwithstanding the general rule that attorneys' fees incurred in connection with a necessities lien are not recoverable directly against the Vessel, it is understood and agreed that if any legal action is required to enforce the terms of this Agreement or to enforce the Landing's lien rights as existing under both federal and state law, the prevailing party shall be entitled to reasonable attorneys' fees and costs, and all other costs of enforcement, in addition to any other relief to which it, he or she may be entitled, and that if the Landing prevails, attorneys' fees shall be recoverable both in personam (against the Management) and in rem (against the Vessel).
12. **Subordination.** This Agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement filed as Document No. _____ in the Office of the City Clerk on, _____ as amended between the Management herein and the City of San Diego. This Agreement 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.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

MANAGEMENT:

Driscoll Mission Bay, LLC

A California limited liability company

By: _____

Thomas Allen Driscoll

Title: Owner

LESSEE:

MCJ Boats LLC

By: _____

Name: Christopher Lincoln

Title: Manager, Owner



GUARANTY

The undersigned, being the owner(s) of Lessee, hereby unconditionally and irrevocably guaranty the performance by Lessee of all its duties and obligations under the Agreement and Master Lease Document No. _____ as it may be modified from time to time. Such guaranty shall be joint and several among the undersigned, who agree to satisfy such duties and obligations upon demand, without prior demand upon Lessee having been made.

Printed Name: Christopher Lincoln _____

Address: 3030 Jarvis st. Unit 11, _____
San Diego, CA 92106 _____

Phone No.: (650) 455-1652 : _____

Printed Name: Jason Yecny
Address: 1072 Hollyhock Street,
Livermore, CA 94551
Phone No. Phone No.: (541) 980-9895

Printed Name: Michael Lubliner
Address: 1825 Hummock Lane, San Diego, CA
Phone No. Phone No.: (541) 515- 0582

:

9/11/2024

Attachment B

Environmental Determination	
Environmental Planner	Jordan Moore (JTMoore@sanidiego.gov)
Project Name	Consent to Sublicense – MCJ Boats LLC
Environmental Determination	This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).
Date NORA Posted	9/3/2024
Date NORA Removed	9/11/2024

CITY OF SAN DIEGO

FIRE-RESCUE DEPARTMENT LIFEGUARD DIVISION

MISSION BAY LESSEE OPERATIONAL PLAN TEMPLATE

DATE 7/17/24

NAME OF COMPANY/ORGANIZATION:

- MCJ Boats LLC
- 3030 Jarvis st #10
- San Diego, CA 92106
- mcjboat@gmail.com
- (619) 354-0036

- Vessel: Bluebill
- Hailing Port: San Diego, CA
- USCG UPV Inspected: Yes
- Builder: Shaw Boats At: Aberdeen, WA, Year: 1993
- Type/Model: Shaw 42 Custom Accommodations: Sleeps 5-6
- Hull No: SHGK4201L293 Off.
- No.: 999779

OPERATIONAL PERIOD:

- We will operate year round out of Driscoll's Marina Mission Bay. Initial period of operation requested is for July 2024 through July 2025.

CONCESSION SITE LOCATION:

Driscoll's Mission Bay
1500 Quivira Way, San Diego, CA 92109

DESCRIPTION OF ACTIVITIES & EQUIPMENT:

Bluebill offers a range of charter services, including fishing charters, bay cruise charters, snorkeling, and whale watching charters, providing memorable experiences for passengers of all interests. Fishing equipment such as rods, reels, bait, and tackle are available onboard for fishing charters. Other gear such as binoculars, and seating areas are provided for bay cruise and whale watching charters. Passengers can book charters through our website (linked to FareHarbor.com).

- All commercial operations will adhere to United States Coast Guard regulations regarding vessels carrying passengers for hire.
- All commercial operations will adhere to the San Diego Municipal Code when on waters under the jurisdiction of the City of San Diego.

A. Fishing Charters:

Fishing charters are customizable based on the preferences of the passengers, including target species, fishing techniques, and duration. The crew provides guidance on fishing strategies, bait selection, and local fishing hotspots to maximize the chances of a successful catch. Passengers can choose between half-day or full-day fishing charters, with options for both individual and group bookings.

B. Bay Cruise Charters:

Bay cruise charters offer passengers a leisurely exploration of Mission Bay or San Diego Bay. Narration and commentary are available by crew members, highlighting points of interest, historical landmarks, and local wildlife. Passengers also have the option to anchor and enjoy a day on the water.

C. Whale Watching Charters:

Whale watching charters provide an opportunity to observe whales and other marine wildlife in their natural habitat. The crew guides passengers to areas known for whale sightings, offering insights into whale behavior, migration patterns, and conservation efforts. Passengers can observe and photograph whales from viewing platforms and designated areas on the boat.

LICENSES & ACCREDITATIONS/CERTIFICATIONS:

- Captain Doug Kuczkowski – License # USA000688165, Exp. March 7, 2028
 - o U.S. COAST GUARD - 200 Ton Masters License with Towing Endorsement
 - o TSA - TWIC Card
 - o STCW Certification
 - o FEDERAL COMMUNICATIONS COMMISSION (FCC) - Marine Radio Operator Permit
 - o FREEDIVING INSTRUCTIONS INTERNATIONAL (FFI) - Level 2 Diver
 - o SCUBA SCHOOLS INTERNATIONAL (SSI) - Scuba Diver License (1000 dives including rescues)
 - o AMERICAN HEART ASSOCIATION - CPR and First Aid
- Vessel permit number DFG ID: 1088741830, FG Boat # 73998
- Commercial charter Insurance policy with appropriate coverage per Driscoll's marina and San Diego city guidelines

GENERAL SAFETY CONSIDERATIONS:

- Our vessel, Bluebill, is a well-maintained sportfishing boat equipped with necessary safety gear, navigation equipment, and amenities for passenger comfort. Safety is our top priority, and all charters adhere to strict safety standards and regulations set forth by maritime authorities.
- Pre-departure safety briefings are conducted to familiarize passengers with emergency procedures, life-saving equipment, and onboard facilities as well as passenger list and count and posted emergency instructions.
- Captains monitor weather conditions and sea state to ensure safe navigation and may modify or cancel charters if necessary for passenger safety.
- Drugs and any illegal activity will result in immediate cancellation of the charter.
- Requirements to rent: You must be at least 18 years of age to charter
- Safety: 12 Type 1 PFDs (including 4 childrens sizes) with visual list reflection and emergency whistles are located on the vessel. An additional 20 Type 2 PFDs are also located on the vessel.
- There are 4 Type B USCG approved fire extinguishers throughout the boat as well as 4 emergency flares, 1 handled throwable ring buoy, 2 emergency EPIRB beacons and Automatic Identification System (AIS) radio vessel tracking system as well as satellite radios.
- Diesel engine blower and fire suppression system.

Environmental Stewardship:

- We promote environmental stewardship and responsible boating practices among passengers.
- Waste management and recycling programs are implemented onboard to minimize our environmental impact.
- Educational initiatives may be offered to raise awareness about marine conservation and sustainable practices.
- Proper signage on board including waste management, garbage, and oil pollution placards.

TRAINING BACKGROUND:

Our crew includes a Licensed Captain (Doug Kuczkowski) and knowledgeable guides/deckhands who are experienced in both fishing and marine wildlife.

The seasoned and dedicated Licensed Captain, prioritizing safety above all else, brings extensive experience navigating diverse marine environments while safeguarding the well-being of passengers, crew, and vessel. With a track record of zero safety incidents throughout his career, they are committed to upholding stringent safety protocols and ensuring compliance with all maritime regulations. Their expertise encompasses risk assessment, emergency response procedures, and meticulous vessel maintenance to effectively mitigate potential hazards. Additionally, they possess a proven ability to lead

safety training sessions, zero tolerance drug and alcohol protocols, fostering a culture of awareness and preparedness among crew members. With safety as their guiding principle, they strive to deliver unparalleled service while maintaining the highest standards of maritime safety and professionalism.

Crew members are trained in safety procedures, first aid, and customer service to ensure a safe and enjoyable experience for all passengers.

EMERGENCY RESPONSE PLAN:

- Bulleted list of emergency steps include:
 - o Call 911
 - o VHF-FM radio notification to emergency channels including 16 for USCG
 - o AIS distress warning
 - o EPIRB Activation
 - o First aid equipment and training
 - o Emergency instructions plan documented and posted on-vessel

COMMUNICATIONS PLAN:

Contact numbers: emergency and non-emergency

If within Cellular Service:

- Emergency 911
- US Coast Guard – San Diego (619) 278-7000
- San Diego Lifeguard Service (619) 221-8899
- San Diego Harbor Police Department (619) 686-6570

Non-Cellular Service:

- Handheld Satellite Communicators - Garmin InReach Explorer
- Radios/VHF-FM - Channel 16 for USCG assistance
- EPIRB Beacon

Other Contact Information:

- MCJ Boats LLC Owners:
- Michael Lubliner 541-515-0582
- Jason Yecny 541-980-9895
- Christopher Lincoln 650-455-1652

EMERGENCY SIGNALS:

- USCG visual distress signals including emergency handheld flares, AIS tracking and distress system and handheld air horn
- Hand signals

ACCIDENT OR INCIDENT REPORTING:

- SD Lifeguards 619-221-8899
- CA Division of Boating and Waterways 1-888-326-2822
- USCG (619) 278-7000