

### **THIRD AMENDMENT TO SUBLEASE**

This Third Amendment to Sublease ("Third Amendment") is made and entered into effective November 5, 2004 by and between Braemar Partnership, a California limited partnership, d/b/a Catamaran Resort Hotel ("Sublandlord") and ResortWatersports, Inc., a California corporation ("Subtenant"), who agree as follows:

1. **RECITALS.** This Amendment is executed in contemplation of the following facts and circumstances:
  - a. Sublandlord is the sublandlord and Subtenant is the subtenant under that certain Sublease dated June 29, 1993 and amended by that certain First Amendment to Sublease (erroneously titled "Second Amendment to Sublease"), dated November 1, 1996 ("First Amendment"). This document is further amended by that certain Second Amendment to Sublease dated April 30, 1999 ("Second Amendment"). Together, the Sublease, First Amendment, and Second Amendment shall be referred to as the "Sublease."
  - b. Subtenant has requested an extension and modification of the Sublease.
  - c. Sublandlord has agreed to such an extension and modification pursuant to the provisions and conditions contained in this Amendment.
  - d. Capitalized terms not otherwise defined in this Third Amendment shall have those meanings assigned to them in the Sublease.
2. **TERM EXTENSION.** The Term of the Sublease is extended to March 31, 2009.
3. **AGREEMENT TO NEGOTIATE.** The parties agree that they will meet and confer between one year and six months prior to the termination of this Sublease in order to discuss the possibility of an extension of the Sublease. Sublandlord agrees that, at a minimum, it will provide Subtenant with a final decision as to whether it wishes to negotiate for such an extension at least six months prior to its termination (i.e., by September 30, 2007).
4. **APPROVAL.** This Amendment is subject to approval by the City of San Diego as Master Lessor under the Master Lease and by Sublandlord's current lender, if any, as beneficiary under a First Deed of Trust covering the Property.

5. **EFFECT.** Except as expressly amended and modified by the provisions and conditions of this Third Amendment, the Sublease shall and does remain in full force and effect.

**SUBLANDLORD:**

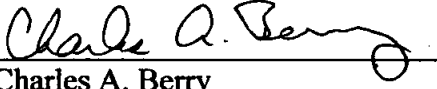
Braemar Partnership,  
a California limited partnership

By: 9<sup>th</sup> Braemar, Inc.,  
a California Corporation,  
Its: Managing General Partner

By:   
Anne L. Evans,  
Trustee of The Anne L. Evans Family Trust  
U/D/T dated July 22, 1999  
Its: Chairman

**SUBTENANT:**

Resort Watersports, Inc.,  
a California corporation

By:   
Charles A. Berry  
Its: President

## SECOND AMENDMENT TO SUBLEASE

This Second Amendment to Sublease ("Amendment") is made and entered into effective April 30<sup>th</sup>, 1999 by and between Braemar Partnership, a California limited partnership, d/b/a Catamaran Resort Hotel ("Sublandlord") and Resort Watersports, Inc., a California corporation ("Subtenant"), who agree as follows:

1. **RECITALS.** This Amendment is executed in contemplation of the following facts and circumstances:
  - a. Sublandlord is the sublandlord and Subtenant is the subtenant under that certain Sublease dated June 29, 1993, and amended by that certain First Amendment to Sublease (erroneously titled "Second Amendment to Sublease"), dated November 1, 1996. Together, the documents shall be referred to as the "Sublease."
  - b. Subtenant has requested an extension and modification of the Sublease.
  - c. Sublandlord has agreed to such an extension and modification pursuant to the provisions and conditions contained in this Amendment.
2. **TERM EXTENSION.** The Term of the Sublease is extended to March 31, 2005.
3. **BUSINESS PLAN.** Prior to January 1 of each year, Subtenant shall submit to Sublandlord, for Sublandlord's approval, a business plan for operation of Subtenant's business on the Premises. Such business plan shall include, but not be limited to, proposed plans for the following calendar year for the following items:
  - a. Advertising and marketing initiatives;
  - b. Maintenance of existing equipment and planned new equipment purchases;
  - c. Hours of operation;
  - d. Recruiting, hiring, and training procedures;
  - e. Employee pay scales; and
  - f. Revenue budget.

Subtenant agrees to meet with Sublandlord to review the business plan and to make such revisions as Sublandlord may in its reasonable discretion require.
4. **SERVICE STANDARDS.**
  - a. Subtenant provides a service on Sublandlord's property to Sublandlord's customers. As such, the management and operation of Subtenant's business is a

reflection on Sublandlord and Sublandlord's business. Subtenant acknowledges that it is of primary importance that Subtenant's operation be run in a first-class manner appropriate as a part of Sublandlord's own overall operation.

- b. Subtenant agrees to provide First-Class Service, subject to Sublandlord's reasonable discretion. This shall consist of such factors as, by way of example and not limitation, the quality and condition of Subtenant's equipment, the appearance of Subtenant's Premises, the quality of and service provided by Subtenant's employees, and attention to the overall customer-driven focus of Sublandlord's business. The parties agree that the First-Class Service shall specifically include:
- i. Adherence to the policies contained in the property's employee handbook, entitled "Evans Hotels and You," as such handbook may be amended from time to time in Sublandlord's sole discretion. Those policies are contained in pages 27 to 39 of the current version of the handbook (7/96).
  - ii. Adherence to employee uniform standards established by Sublandlord for Sublandlord's employees, as those standards may be altered from time to time in Sublandlord's sole discretion. Such standards may require the purchase of a specific brand or style of clothing by Subtenant or Subtenant's employees.
  - iii. Adherence to the hours of operation\* set forth below:

|                                | <u>Weekdays</u> | <u>Weekends</u> |
|--------------------------------|-----------------|-----------------|
| Spring (March 15 - May 31)     | 11am-5pm        | 10am-5pm        |
| Pre Summer (June 1 - 30)       | 10am-5pm        | 9am-6pm         |
| Summer (July 1 - Labor Day)    | 9am-7pm         | 9am-7pm         |
| Fall (Labor Day - October 31)  | 11am-5pm        | 10am-6pm        |
| Winter (November 1 - March 14) | 11am-3:30pm     | 11am-3:30pm     |

Open all 3-day weekends  
\*All hours subject to weather permitting
  - iv. Inclusion in the property's safety programs and adherence to its guidelines, including attendance at safety meetings as requested by Sublandlord's management.
- c. Subtenant acknowledges that Subtenant's agreement to provide the First-Class Service referenced in this paragraph is a material condition of Sublandlord's agreement to extend the Term of the Sublease. Accordingly, Subtenant's failure to provide such First-Class Service where such failure continues for thirty (30) days after written notice thereof from Sublandlord to Subtenant shall be

considered a default under Section 18.1 of the Sublease, subject to the remedies listed in Section 18.2 of the Sublease; provided, however, that any such notice shall be in lieu of and not in addition to any notice required under Section 1611, et. seq. of the California Code of Civil Procedure. Sublandlord's written notice of failure to comply with the provisions of this section shall set forth its reasons for such notice in sufficient detail to allow Subtenant to respond to such notice and correct such deficiencies.

5. **EMPLOYEE DISCIPLINE.** Subtenant agrees that the conformity of its employees' appearance and behavior to that established by Sublandlord for its own employees is crucial to the operation and success of Sublandlord's business at the property. Therefore, Subtenant agrees that Sublandlord shall have the right, but not the obligation, to discipline Subtenant's employees for failure to conform to the standards set forth in Section 4.b. above, up to and including termination from Subtenant's employment. Such disciplinary actions shall be at the sole discretion of Sublandlord; provided, however, that Sublandlord shall be required to provide an explanation of its reason(s) for such action to Subtenant (but not Subtenant's employees) and Subtenant shall have the right to protest such action in writing. Should Subtenant protest such action, Sublandlord agrees to give thorough consideration to such protest and, should Sublandlord not change its initial position, to explain the reasons behind such a decision.
6. **DUTY MEALS.** Subtenant's employees are entitled to eat in Sublandlord's employee cafeteria at the property free of charge, so long as such meal is consumed during the each employee's shift and Sublandlord is providing a similar benefit to its employees.
7. **DISCOUNTED ACCOMMODATIONS.** Sublandlord shall make available to Subtenant, during the term of this Sublease, discounted overnight accommodations at the property. Subtenant agrees to resell such rooms (1) only as part of a package including Subtenant's services and (2) at a price reasonably acceptable to Sublandlord. Sublandlord reserves the right to place further restrictions on this program as it, in its reasonable discretion, determines are appropriate.
8. **PAYMENT.** For any charges for Subtenant's services billed to Sublandlord's guests by Sublandlord, the parties agree as follows:
  - a. Sublandlord shall collect all revenue for such services;
  - b. Payment for such services shall be made to Subtenant at least once weekly for services rendered during the preceding week;
  - c. Sublandlord's payment shall identify the individual charges that make up the overall payment; and
  - d. Any amounts unable to be collected by Sublandlord from its guests shall not be remitted to Subtenant. If such amounts have already been paid to Subtenant, Sublandlord shall be entitled to offset future payments in an amount equal to the uncollected amount.

9. AGREEMENT TO NEGOTIATE. The parties agree that they will meet and confer between one year and six months prior to the termination of this Sublease in order to discuss the possibility of an extension of the Sublease. Sublandlord agrees that, at a minimum, it will provide Subtenant with a final decision as to whether it wishes to negotiate for such an extension at least six months prior to its termination (i.e., by September 30, 2004).
10. APPROVAL. This Amendment is subject to approval by the City of San Diego as Master Lessor under the Master Lease and by Sublandlord's current lender as beneficiary under a First Deed of Trust covering the Property.
11. EFFECT. Except as expressly amended and modified by the provisions and conditions of this Amendment, the Sublease shall and does remain in full force and effect.

SUBLANDLORD:

Braemar Partnership,  
a California limited partnership

By: 9<sup>th</sup> Braemar, Inc.,  
a California Corporation,  
Its: Managing General Partner

By: Anne L. Evans  
Anne L. Evans  
Its: Chairman

SUBTENANT:

ResortWatersports, Inc.,  
a California corporation

By: Charles A. Berry  
Charles A. Berry  
Its: President

## SECOND AMENDMENT TO SUBLEASE

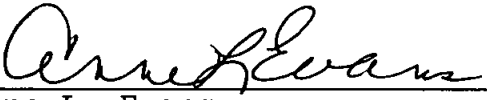
This First Amendment to Sublease ("Amendment") is made and entered into effective November 1, 1996 by and between Braemar Partnership, a California limited partnership, d/b/a Catamaran Resort Hotel ("Sublandlord") and ResortWatersports, Inc., a California corporation ("Subtenant"), who agree as follows:

1. This Amendment is executed in contemplation of the following facts and circumstances:
  - a. Sublandlord is the sublandlord and Subtenant is the subtenant under that certain Sublease dated June 29, 1993 ("Sublease").
  - b. Subtenant has requested an extension and modification of the Sublease.
  - c. Sublandlord has agreed to such an extension and modification pursuant to the provisions and conditions contained in this Amendment.
2. The Term of the Sublease is extended to October 31, 2002.
3. Subtenant is permitted to rent personal watercraft (the "Equipment") at the Premises, subject to the following conditions:
  - a. Subtenant shall ensure that the rentals of the Equipment (the "Rentals") are managed prudently and responsibly. To this end, Subtenant shall establish comprehensive operating policies and procedures for the Rentals. These policies and procedures shall be designed to ensure that the Equipment is maintained in first-class working order, that Subtenant's employees and agents are properly trained in the use of the Equipment, and that proper training is given to persons renting the Equipment. The overall goal of Subtenant's operation shall be to provide the Rentals in as safe a manner as possible.
  - b. Sublandlord reserves the right, at any time, to rescind approval for the Rentals if it determines, in its sole discretion, that Subtenant is violating any provision of this Amendment or is in any way endangering the safety of its employees, persons renting the Equipment, or guests, agents, or employees of Sublandlord.

- c. To the extent commercial practicable, Subtenant shall provide \$2,000,000 in comprehensive general liability insurance for the Rentals portion of its business. Except for the increased limit, the insurance provisions of the Sublease shall remain unchanged.
4. This Amendment is subject to approval by the City of San Diego as Master Lessor under the Master Lease.
5. Except as expressly amended and modified by the provisions and conditions of this Amendment, the Sublease shall and does remain in full force and effect.

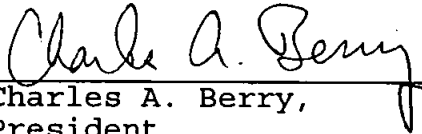
SUBLANDLORD:

Braemar Partnership,  
a California limited partnership

  
\_\_\_\_\_  
Anne L. Evans,  
Managing General Partner

SUBTENANT:

ResortWatersports, Inc.,  
a California corporation

  
\_\_\_\_\_  
Charles A. Berry,  
President

COPY

AMENDMENT TO LEASE

OCT 12 1993 This Amendment to Lease ("Amendment") is effective as of  
OCT 12 1993, ("Effective Date"), by and between THE CITY OF  
SAN DIEGO, a municipal corporation ("CITY"), and BRAEMAR  
PARTNERSHIP ("LESSEE").

RECITALS

A. Pursuant to a City of San Diego Percentage Lease Agreement executed on December 8, 1992 and filed in the Office of the City Clerk on December 8, 1992 as Document No. RR-281244-1 ("Lease"), the City leased certain real property ("Property") described therein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and LESSEE hereby amend the Lease as follows:

1. Encumbrance. Section 4.03 is hereby amended to read as follows:

"No encumbrance of the premises will be permitted without the prior written consent of City Manager."

2. Effective Date. This Amendment was approved by the City Council on OCT 12 1993 pursuant to Resolution No. R-282798 and executed by the City Manager, on behalf of CITY, and LESSEE as of the Effective Date first set forth above.

3. No Other Changes. In all other respects, the Lease shall remain unchanged, in full force and effect.

IN WITNESS WHEREOF, this Amendment to Lease is executed to be effective as of the Effective Date first set forth above.

THE CITY OF SAN DIEGO

By:

Robert J. Collins  
Robert J. Collins, Deputy Director  
on behalf of the City Manager

JOHN W. WITT, CITY ATTORNEY

John W. Witt  
CHIEF DEPUTY CITY ATTORNEY

LESSEE: BRAEMAR PARTNERSHIP

By:

Anne L. Evans  
Anne L. Evans, General Partner

DOCUMENT NO. R-282798

FILED OCT 12 1993

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA