

THIRD AMENDMENT TO SUBLEASE

This Third Amendment to Sublease ("Third Amendment") is made and entered into effective November 5, 2004 by and between BH Partnership, a California limited partnership, d/b/a Bahia 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 dated November 1, 1996 ("First Amendment") and 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.

SUBTENANT:

BH Partnership, a California limited partnership

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

Its: Managing General Partner

SUBLANDLORD:

Resort Watersports, Inc., a California
corporation

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

SECOND AMENDMENT TO SUBLEASE

This Second Amendment to Sublease ("Amendment") is made and entered into effective April 30th, 1999 by and between BH Partnership, a California limited partnership, d/b/a Bahia 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, 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)	Closed**	11am-3:30pm**

Open all 3-day weekends
*All hours subject to weather permitting
**In addition, Subtenant shall endeavor to be open on Thursdays and Fridays and for longer hours during the winter to the extent feasible.
 - 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.

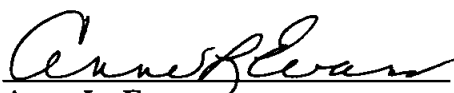
5. **EMPLOYEE DISCIPLINE.** Subtenant agrees that the conformity of its employees' appearance and behavior to that established by Sublandlord for its own employees is crucial to the operation and success of Sublandlord's business at the property. Therefore, Subtenant agrees that Sublandlord shall have 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.

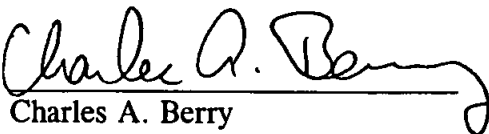
SUBLANDLORD:

BH Partnership,
a California limited partnership

By: 
Anne L. Evans
Its: Managing General Partner

SUBTENANT:

ResortWatersports, Inc.,
a California corporation

By: 
Charles A. Berry
Its: President

FIRST AMENDMENT TO SUBLEASE

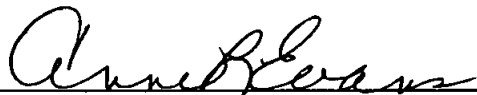
This First Amendment to Sublease ("Amendment") is made and entered into effective November 1, 1996 by and between BH Partnership, a California limited partnership, d/b/a Bahia Hotel ("Sublandlord") and ResortWatersports, Inc., a California corporation ("Subtenant"), who agree as follows:

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 commercially 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:

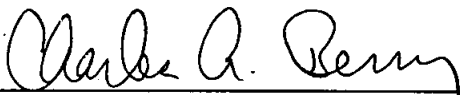
BH Partnership,
a California limited partnership



Anne L. Evans,
Managing General Partner

SUBTENANT:

ResortWatersports, Inc.,
a California corporation



Charles A. Berry,
President

SUBLEASE

This Sublease is made as of June 29, 1993, between BAHIA HOTEL ASSOCIATES, a California general partnership ("Sublandlord"), and CHARLES A. BERRY, DBA RESORT WATERSPORTS ("Subtenant"), who agree as follows:

ARTICLE 1

RECITALS

This Sublease is made with reference to the following facts and circumstances:

a. City of San Diego as Master Lessor, and William D. Evans dba Bahia Hotel Associates, a California general partnership, as Tenant, entered into a written lease for that certain real property described on Exhibit "A" attached hereto and shown as Parcel "A" on Exhibit "B" attached hereto (the "Property"), dated March 17, 1966 ("Master Lease"). A copy of said Master Lease is maintained on file at the Executive Office at the Bahia Hotel.

b. Subtenant desires to sublet a portion of the Property, as more particularly described in Article 2 below, from Sublandlord upon and subject to the provisions and conditions contained in this Sublease.

c. Sublandlord's willingness to sublease the Premises to Subtenant is predicated upon Subtenant's considerable watercraft rental experience and the prior success of his businesses since June 1984, a period of nine years, at the Bahia Hotel.

d. Master Lessor may be required to consent to the execution of this Sublease as herein provided.

e. This Sublease supersedes and replaces that certain Sublease between Bahia Hotel and Charles A. Berry, dba Watersports dated November 1, 1990.

ARTICLE 2

SUBLEASE OF PREMISES

Sublandlord subleases to Subtenant and Subtenant subleases from Sublandlord, upon the provisions and conditions set forth herein, those certain premises ("Premises") depicted on Exhibit "D" attached hereto, which Premises are located in the Property, more commonly known as Bahia Hotel ("Hotel").

ARTICLE 3

BASIC SUBLEASE PROVISIONS

The following are the Basic Sublease Provisions of this Sublease. Other sections of this Sublease explain and define the Basic Sublease Provisions in more detail and are to be read in conjunction herewith. In the event of any conflict between the Basic Sublease Provisions and the other sections of this Sublease, the balance of the Sublease shall control.

1. LOCATION: Catamaran Resort Hotel, located at 3999 Mission Boulevard, San Diego, California.
2. PREMISES: Approximately 175 square feet at Boat Rental Stand at Catamaran Resort Hotel dock, plus exterior space as may be appropriate and agreed upon by Sublandlord, as provided for in Exhibit D.
3. TERM: June 1, 1993 to October 31, 1996.
4. BASIC MONTHLY RENT: \$500.00, subject to adjustment as provided in paragraph 5.2 herein.
5. PERCENTAGE RENT PERCENTAGE: Fifteen percent (15%) to Twenty-five percent (25%) per Exhibit E.
6. SECURITY DEPOSIT: None.
7. ADDRESSES:

Sublandlord:
Catamaran Resort Hotel
3999 Mission Boulevard
San Diego, CA 92109
Attn: General Manager

Subtenant:
Charles A. Berry
Resort Watersports
Post Office Box 99686
San Diego, CA 92169-1686

8. REQUIRED USES: Watercraft, bicycle, and beach equipment rental and retail sales of sundries to the public; instruction with respect to watercraft rental. Rental equipment shall be first quality and shall include sail boats, windsurfers, canoes, kayaks, pedal boats, beach chairs and umbrellas and any additional equipment with the prior written approval of Sublandlord. Rental of motorized craft is subject to the prior approval and discretion of Sublandlord. The rental of personal watercraft of any kind is prohibited.

9. BUSINESS HOURS Subtenant shall remain open to the general public and shall continuously and fully stock, staff and merchandise the Premises during the following times:

	<u>Weekday</u>	<u>Weekend</u>
December-March	Closed	12 p.m. - 4 p.m.
April-May	11 a.m. - 4 p.m.	10 a.m. - 5 p.m.
June-Labor Day	9 a.m. - 6 p.m.	9 a.m. - 6 p.m.
Labor Day- November	12 p.m. - 4 p.m.	11 a.m. - 4 p.m.

Additional hours to be arranged as needed on a group contract basis or as demands requires. Winter months may be operated at reduced inventory. Hours may be reduced with inclement weather.

ARTICLE 4

COMMENCEMENT DATE OF TERM

The term of this Sublease ("Term") shall commence on June 1, 1993, (the "Commencement Date").

ARTICLE 5

RENT

5.1 Basic Monthly Rent. Subtenant shall pay to Sublandlord, as monthly rental ("Basic Monthly Rent"), the amount set forth in paragraph 4 of the Basic Sublease Provisions.

The Basic Monthly Rent and all other amounts payable hereunder shall be paid to Sublandlord in advance on the fifteenth day of each month during the Term, as set forth in paragraph 5.3, without deduction or offset, in lawful money of the United States of America at the office of Sublandlord or to such place as Sublandlord may designate in writing.

If the Term commences on other than the first day of a calendar month, then there shall be paid on the Commencement Date a pro rata portion of the Basic Monthly Rent based upon the number of days remaining in such month. In the event the Term ends on a day other than the last day of the month, the last monthly payment of Basic Monthly Rent shall be prorated based upon the number of days in such month prior to and including the last day of the Term.

5.2 Percentage Rent. Subtenant shall pay to Sublandlord a sum equal to the Percentage set forth in paragraph 5 of the Basic Sublease Provisions of Subtenant's Gross Sales as defined below made from or upon the Premises during each calendar month. Percentage Rent shall be computed each calendar month. On or before the fifteenth day of each calendar month Subtenant shall pay to Sublandlord the amount by which the sum computed as a percentage of Subtenant's Gross Sales during the preceding calendar month exceeds the Basic Monthly Rent that Subtenant paid during such calendar month, subject to the provisions of paragraph 5.4.

"Gross Sales" of Subtenant means the gross selling or rental price of all merchandise or services sold, leased, rented, licensed, or delivered in or from the Premises, by Subtenant, its licensees, or concessionaires, whether for cash or on credit (whether collected or not), including the gross amount received by reason of orders taken on the Premises although filled elsewhere, and whether made by store personnel or vending machines. Any transaction on an installment basis, including, without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes.

Gross Sales shall not include, or if included there shall be deducted (but only to the extent they have been included), the following:

1. The selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise.

2. Sales and use taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes, and other similar taxes now or in the future imposed on the sale or rental of merchandise or services, but only if such taxes are added to the selling or rental price, separately stated, collected separately from the selling or rental price of merchandise or services, and collected from customers.

Subtenant shall furnish to Sublandlord a statement of Subtenant's Gross Sales within five (5) days after the end of each month, and an annual statement of Gross Sales within five (5) days after the end of each calendar year. Each statement shall be signed and certified to be correct by Subtenant or its authorized representative, and if Subtenant is a corporation the statement shall be signed and certified to be correct by an officer of Subtenant. Each statement shall be on a form approved by Sublandlord. Subtenant shall keep at the Premises full and accurate books of account, records, cash receipts, and other pertinent data showing its Gross Sales. Subtenant shall install and maintain accurate receipt-printing cash registers and shall record on the cash registers every sale and other transaction made from the Premises. Subtenant shall also furnish to Sublandlord copies of its quarterly California sales and use tax returns at the time each is filed with the state of California. Such books of account, records, cash receipts, and other pertinent data shall be kept for a period of three (3) years after the end of each calendar year. The receipt by Sublandlord of any statement, or any payment of Percentage Rent for any period, shall not bind Sublandlord as to the correctness of the statement or the payment. Sublandlord shall be entitled during the Term and within three (3) years after expiration or termination of this Sublease to inspect and examine all Subtenant's books of account, records, cash receipts, and other pertinent data to determine Subtenant's Gross Sales by a certified public accountant to be designated by Sublandlord. The audit shall be limited to the determination of Gross Sales and shall be conducted during usual business hours at the Premises. If the audit shows that there is a deficiency in the payment of any Percentage Rent, the

deficiency shall become immediately due and payable. The costs of the audit shall be paid by Sublandlord unless the audit shows that Subtenant understated Gross Sales by more than 2%, in which case Subtenant shall pay all Sublandlord's costs of the audit.

5.3 Rent Payment. Concurrently with the rendering of each monthly statement of Percentage Rents, Subtenant shall pay the greater of the following two amounts:

(1) The total Percentage Rent computed for that portion of the Sublease Year (as defined below) ending with and including the last day of the preceding month, less total rent previously paid for the Sublease Year; or

(2) The Basic Monthly Rent multiplied by the number of months from the beginning of the Sublease Year to and including the preceding month, less total rent previously paid for the Sublease Year.

A Sublease Year is defined as the twelve month period commencing upon the first day of the first full calendar month of the Term and continuing yearly thereafter.

5.4 Past Due Rent. Any amount payable hereunder, including Basic Monthly Rent and any other charge ("Rent"), not paid when due shall bear interest from the date due until the date paid at the rate of 12% per annum; the payment of such interest shall not excuse or cure any default or modify any obligation of Subtenant under this Sublease.

5.5 Late Fee. Subtenant acknowledges that the late payment by Subtenant to Sublandlord of Rent will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which will be difficult to ascertain. Such costs may include, without limitation, administrative costs, processing and accounting charges, and late charges which may be imposed on Sublandlord. Accordingly, if any installment of Rent shall not be received by Sublandlord within five (5) days after the date that such amount is due and payable, Subtenant shall pay to Sublandlord, in addition to the interest provided above, a late charge in the amount of 10% of the amount due. The parties agree that such late charge represents a fair and reasonable estimate of the cost Sublandlord will incur by reason of late payment by Subtenant. Acceptance of such late charge by Sublandlord shall not constitute a waiver of Subtenant's default with respect to such overdue amount, nor prevent Sublandlord from exercising any of its other rights or remedies hereunder.

ARTICLE 6

INCORPORATION BY REFERENCE

This Sublease is subject to the provisions and conditions of the Master Lease, all of which are incorporated into this Sublease as if fully set forth herein. In the event any provision or condition of

this Sublease is inconsistent with the provisions and conditions of the Master Lease, the provisions and conditions of the Master Lease shall control.

ARTICLE 7

SERVICES AND FACILITIES

7.1 Provision of Services. Sublandlord shall provide domestic water and electrical subservice ("as is") to the Premises.

7.2 Interruption of Standard Services. Sublandlord shall not be liable for the failure to supply any service described in Section 7.1 above because of the happening of any occurrence beyond the reasonable control of Sublandlord.

7.3 Common Facilities. Sublandlord shall operate and maintain the Common Facilities (as defined in paragraph 9.6 below) under its control and may make or permit changes in the size, shape, location, number and extent of the Common Facilities.

7.4 Parking. Subtenant shall comply with the rules and regulations imposed upon Subtenant and Subtenant's employees and visitors for any available parking at the Hotel. Landlord shall have the right to designate parking spaces both inside and outside the Hotel for required use by Subtenant and Subtenant's employees.

7.5 Construction Phases. Subtenant acknowledges that it is aware that construction work may take place from time to time upon various portions of the Hotel. Such construction work may consist of additions, replacements, repairs, and/or tenant improvement work, as well as the possible erection of additional improvements upon the Property. Notwithstanding any temporary diminution in Subtenant's use and enjoyment of the Premises and the Common Facilities, Sublandlord hereby reserves the right to undertake or allow others to undertake any such construction work, none of which shall entitle Subtenant to any rebate or reduction in rent, or subject Sublandlord to liability of any type relating thereto.

ARTICLE 8

ACCEPTANCE OF PREMISES

Subtenant acknowledges that neither Sublandlord nor any agent of Sublandlord has made any representation or warranty with respect to the suitability or fitness of the Premises or the applicable zoning regulations for the conduct of Subtenant's business or for any other purpose, nor Subtenant's ability to obtain a business license to operate its business on the Premises. The taking of possession or use of the Premises by Subtenant shall conclusively establish that the Premises were at such time suitable for Subtenant's occupancy, use and habitation, and in conformity with the provisions of this Sublease in all respects. Nothing contained in this Article shall affect the commencement of the Term or the obligation of Subtenant to pay any Rent due under this Sublease. Subtenant shall be

responsible, at his sole cost, for installing all tenant improvements upon the Premises.

ARTICLE 9

MAINTENANCE; UTILITIES AND ALTERATIONS; COMMON FACILITIES

9.1 Subtenant to Maintain. Subtenant shall, at its sole expense, keep the Premises in good repair and tenantable condition during the Term. In so doing, Subtenant shall be solely responsible for providing its own janitorial services to the Premises and operating and repairing the heating, ventilation and air conditioning system(s), if any, serving the Premises. Subtenant shall, additionally, obtain and keep in full force and effect maintenance contracts satisfactory to Sublandlord for the heating and air conditioning units, if any, servicing the Premises with a maintenance company approved by Sublandlord in writing. Subtenant agrees to provide Sublandlord with a copy of the maintenance contract and any renewals thereof, and to obtain Sublandlord's written approval to the terms thereof.

9.2 Utilities. The Premises are not separately metered for gas, water, sewer, light, power, heat, electricity and any other services or utilities provided to the Premises. Subtenant shall be responsible for paying all costs, fees and deposits associated with telephone service.

9.3 Alterations. Subtenant shall not, without the prior written consent of Sublandlord, make any alterations, improvements or additions to the Premises. All alterations, improvements or additions, made to the Premises shall become Sublandlord's property and remain upon the Premises at the termination or expiration of the Sublease (excepting only Subtenant's moveable furniture, trade fixtures and equipment); provided, however, that Sublandlord shall have the right to require Subtenant to remove such alterations, improvements or additions at Subtenant's cost upon the termination or expiration of this Sublease, and the repair of any damage caused to the Premises or the Hotel as a result of any such removal shall be paid for by Subtenant.

9.4 Indemnity. Subtenant shall defend and hold The City of San Diego, Sublandlord, the Premises and the Hotel harmless from all costs, damages, liens for labor, services and materials relating to such work, and shall defend and hold Sublandlord and The City of San Diego harmless from all costs, damages, liens and expenses related thereto. Subtenant hereby waives all right under, and benefit of, Sections 1941 and 1942 of the California Civil Code.

9.5 Sublandlord's Right to Repair. If at any time Subtenant fails to make any repair required to the Premises, then Sublandlord shall have the right, if it so elects, to make such repair and to immediately charge the cost of the same, together with a 15% overhead and administrative cost, to Subtenant as Rent. Any costs so charged to Subtenant shall be paid to Sublandlord in full within 30 days.

9.6 Common Facilities. The term Common Facilities shall mean, for purposes of this Sublease, all areas and facilities other than the Premises or any other area designated for the exclusive use of any other sublessee or designated for the exclusive use and business operation of Sublandlord which are located within the exterior boundary line of the Property that are provided and designated by the Sublandlord, from time to time, for the general non-exclusive use of Sublandlord, Subtenant, other lessees of the Hotel, and their respective employees, guests, invitees, and licensees. The Common Facilities shall include, but not be limited to, parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, driveways, beach areas, waterways, and landscaped areas.

9.7 Grant of Easement. Sublandlord hereby grants to Subtenant, for the benefit of Subtenant and its employees, guests, licensees, and invitees during the Term, the non-exclusive right to use, in common with others entitled to such use, the Common Facilities, subject to any rights reserved by Sublandlord under this Sublease and additionally subject to any reasonable rules and regulations or restrictions governing the use of Common Facilities which Sublandlord may from time to time implement.

9.8 Sublandlord Control. Sublandlord, or Sublandlord's agent, shall have the exclusive control, management, and obligation to maintain in good order and repair the Common Facilities.

ARTICLE 10

USE AND CONDUCT OF THE PREMISES

10.1 Definition of Premises. For purposes of Subtenant's obligations under this Sublease including, particularly, Subtenant's obligations under Article 6, Premises shall include (a) all interior walls, window coverings, floors and floor coverings, and ceilings, if any, (b) all interior and exterior doors and windows, if any, (c) all wiring, outlets, electrical panels, transformers and electrical fixtures serving the Premises, if any, (d) all plumbing and plumbing fixtures and sewer pipes and connections serving the Premises, if any, (e) all air conditioning, heating and ventilation equipment and duct work directly servicing the Premises, if any, (f) any yard area surrounding the Premises (including assigned slips), and (g) all of Subtenant's personal property, trade fixtures, and permitted alterations on or about or within the Premises.

10.2 Required Use. Subtenant shall use and occupy the Premises solely for the required uses set forth in paragraph 8 of the Basic Sublease Provisions and for absolutely no other. Any additional uses shall be subject to the prior written approval of Sublandlord and the City Manager, in their respective sole discretion.

10.3 Conduct of Business.

a. Subtenant shall not do or permit anything to be done in or about the Premises which will, in any way, obstruct or interfere with the rights of Sublandlord, other subtenants or occupants of the

Hotel, or injure them, or allow the Premises to be used for any immoral or unlawful purpose, nor shall Subtenant cause, maintain, or permit any nuisance or waste in, on, or about the Premises.

b. Subtenant shall not use the Premises or permit anything to be done in or about the Premises which shall conflict with any provision or condition of the Master Lease, law, statute, any applicable zoning or land use law, conditional use permit, coastal permit, settlement agreement, ordinance, or governmental rule or regulation, the requirements of the Certificate of Occupancy for the Hotel or with the requirements of any covenant, condition or restriction affecting the Hotel ("Regulations"). Subtenant shall, at its sole cost and expense, promptly comply with all Regulations in force or which may hereafter be in force, and with the requirements of any fire insurance underwriters or other similar body affecting the use and occupancy of the Premises.

c. Subtenant shall not do or permit anything to be done in or about the Premises or any other area of the Hotel, nor bring or keep anything therein which will in any way increase the existing rate of or affect any insurance, including but not limited to fire, extended coverage, vandalism, malicious mischief, flood, liability insurance coverage, upon the Hotel or any of its contents, or cause a cancellation of any insurance policy covering the Hotel or any part thereof or any of its contents. Subtenant agrees that if any such activity causes an increase in any or all insurance premium rates, it will pay such increase in premiums to Sublandlord within ten (10) days after receipt by Subtenant from Sublandlord of a bill setting forth the amount of such increase. In the event any of the Subtenant's activities shall cause cancellation of any insurance policy covering the Premises, Subtenant shall immediately cease to conduct such activity. Subtenant shall not conduct or permit to be conducted any sale by auction on or from the Premises.

d. During the Term, Tenant shall continuously operate the Premises and shall otherwise fully stock and staff the same in order to maximize sales, subject to Article 3, paragraph 9 hereof.

e. Subtenant shall not do or permit to be done in or about the Hotel, exclusive of the area within the Premises, any uses set forth in paragraph 8 of the Basic Sublease Provisions, or any other uses, including, without limitation, parking, displays or advertising, storage, temporary storage or dock usage, without the prior approval of Sublandlord, which approval shall be in Sublandlord's sole discretion.

f. Subtenant shall expend a minimum of \$10,000.00 annually on advertising Subtenant's business including, but not limited to, newspapers, direct mail, brochures, flyers, and yellow pages.

g. Subtenant's employees shall wear a uniform at all times when they are on the Premises. Uniform to be approved by Bahia Hotel general manager.

10.4 Abandonment. Subtenant shall not abandon the Premises at any time during the Term hereof for more than ten (10) days without the consent of Sublandlord; and if Subtenant shall abandon or

surrender the Premises, or shall be dispossessed by process of law or otherwise, then any personal property belonging to Subtenant and left on the Premises shall be deemed abandoned property and otherwise handled and disposed of as provided herein.

10.5 Notice. Subtenant shall give Sublandlord prompt notice of any damage to or defective condition in any part or appurtenance of the Hotel's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through the Premises.

10.6 Personal Property Taxes. Subtenant shall pay before delinquency all taxes, assessments, license fees, and other charges that are levied and assessed against Subtenant's personal property installed or located in or on the Premises, and that become payable during the term. On demand by Sublandlord, Subtenant shall furnish Sublandlord with satisfactory evidence of these payments.

10.7 Auctions. Subtenant shall not conduct any auction, liquidation or distress sales from the Premises.

10.8 Experience. Inasmuch as Sublandlord is relying upon the personal experience of Subtenant in the type of business which is the subject matter of this Sublease, Subtenant agrees that he shall operate the day to day business upon the Premises and that he shall not be replaced or relinquish such duties unless the replacement(s) is approved by Sublandlord as having equivalent experience and qualifications.

10.9 Licenses. Subtenant shall obtain and continuously maintain in good standing all licenses necessary to operate its business as contemplated hereunder.

10.10 Rental Equipment. During the entire Term, Subtenant shall maintain the following Rental Equipment on the Premises:

- (a) Pedal boats, kayaks, and canoes.
- (b) Sailboats and windsurfers.
- (c) Bicycles.
- (d) Beach chairs and umbrellas.
- (e) Other equipment as may be approved, from time to time, by the Sublandlord and the City Manager of The City of San Diego.

10.11 Restrictions. The rental of personal watercraft of any kind is prohibited.

ARTICLE 11

ASSIGNMENT AND SUBLETTING

Assignment and Subletting Prohibited. Pursuant to California Civil Code section 1995.230, Subtenant may not transfer or assign this Sublease, or sublet the Premises or any part thereof. An assignment by operation of law shall automatically terminate this Lease.

ARTICLE 12

NON-LIABILITY AND INDEMNIFICATION

12.1 Subtenant's Waiver of Claims and Indemnity. Subtenant, to the extent permitted by law, waives all claims for loss, theft or damage to property and for injuries to persons, including death, in, upon or about the Premises, the Hotel or the Common Facilities, from any cause whatsoever except loss, damage or injury caused solely by the gross negligence or willful misconduct of Sublandlord. Subtenant shall defend, indemnify and hold The City of San Diego and Sublandlord, its partners, agents, servants and employees harmless from and against any loss, liability, claim or damage 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 Subtenant, its agents and invitees, other than that caused solely by the gross negligence or willful misconduct of Sublandlord, its partners, agents, servants or employees.

12.2 Negligence of Third Parties. Neither Sublandlord nor its partners, agents, servants or employees shall be liable to Subtenant for any damage by or from any act of negligence of any tenant or other occupant of the Hotel or by any owner or occupant of adjoining or contiguous property. Subtenant agrees to pay for all damage to the Hotel, the Common Facilities, or the Premises, as well as all damage to tenants or occupants thereof caused by Subtenant's misuse or neglect of the Premises, its apparatus or appurtenances, or caused by any licensee, contractor, agent or employee of Subtenant.

ARTICLE 13

HAZARDOUS MATERIALS

13.1 Hazardous Materials Prohibited. Subtenant shall not cause or permit the presence, use, generation, release, discharge, storage, disposal or transportation of any "Hazardous Materials" on, under, in, about, to or from, the Premises and/or the Hotel; provided that the presence or use of Hazardous Materials (a) in products required for the prudent and ordinary management and operation of the Premises for the uses specified in paragraph 8 of the Basic Sublease Provisions and (b) held and used strictly in accordance with (i) all applicable federal, state or local laws, regulations or orders, (ii) guidelines issued by any national or regional board of insurance underwriters, and (iii) prudent standards of practice, shall not be deemed in violation of this provision.

13.2 Hazardous Materials. As used herein, the term "Hazardous Materials" shall mean any hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by

any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos and (iv) polychlorinated biphenyls.

13.3 Hazardous Materials Indemnity. Subtenant shall exonerate, indemnify, pay and protect, defend (with counsel reasonably approved by Sublandlord) and save The City of San Diego and Sublandlord, and its directors, trustees, beneficiaries, officers, shareholders, partners, employees, agents, and invitees and of those of the other tenants of the Hotel (collectively, the "Related Parties"), harmless from and against any claims (including, without limitation, third party claims for personal injury or real or personal property damage, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, taxes, assessments, liabilities (including sums paid in settlements of claims), interest or losses, including reasonable attorneys' fees and expenses (including any such fees and expenses incurred in enforcing this Sublease or collecting any sums due hereunder), consultant fees, and expert fees, together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly in connection with the presence, suspected presence, release or suspected release of any Hazardous Materials in or into the air, soil, ground water, surface water or improvements at, on, about, under or within the Hotel, or any portion thereof, or elsewhere in connection with the transportation of Hazardous Materials to or from the Hotel by or on behalf of Subtenant or with respect to the Premises. The indemnification provided in this paragraph shall specifically apply to and include claims or actions brought by or on behalf of employees of Subtenant; Subtenant hereby expressly waives any immunity to which it may otherwise be entitled under any industrial or worker's compensation laws. In the event that any of the Related Parties shall suffer or incur any such Costs, Subtenant shall pay to Sublandlord or such Related Parties, the total of all such Costs suffered or incurred upon demand therefor. Without limiting the generality of the foregoing, the indemnification provided herein shall specifically cover Costs including, without limitation, capital, operating and maintenance costs incurred in connection with any investigation or monitoring of site conditions, any clean-up, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any non-governmental entity or person because of the presence, suspected presence, release or suspected release of any Hazardous Materials in or into the air, soil, ground water, surface water or improvements at, on, about, under or within the Hotel (or any portion thereof), or elsewhere in connection with the transportation of Hazardous Materials to or from the Hotel and any claims of third parties for loss or damage due to such Hazardous Materials. This indemnification shall survive the termination of this Sublease and shall be binding upon the Subtenant and its successors-in-interest whenever such threat, claim, or cause of action may arise. Subtenant expressly waives any defense concerning laches or the statute of limitations, constructive eviction or rent abatement with respect to such claims.

ARTICLE 14

INSURANCE

14.1 Insurance to be Carried by Subtenant. Subtenant shall, during the term of the Sublease, at its sole cost and expense, keep in force the following insurance coverage. All policies shall be with insurance companies licensed to do business in the State of California and maintaining a Best's rating of A X or better or become subject to approval of Sublandlord.

a. ISO Special Form (CP 10 30 07 99) coverage or equivalent, covering all of Subtenant's property, including, but not limited to, furniture, additions, fixtures, and anything in the nature of a leasehold improvement in an amount equal to the full replacement cost of such property without deduction for depreciation. Sublandlord shall be a co-loss payee with Subtenant for any such insurance.

b. Worker's compensation insurance including \$1,000,000.00 employer's liability insurance.

c. General liability with coverage equal to at least that provided by the 1986 Commercial General Liability Insurance policy (CG 00 01 11 85) or the 1972 Comprehensive General Liability policy including Broad Form Comprehensive General Liability Endorsement. Policy shall be endorsed to delete all watercraft exclusions. Such policy shall provide for coverage on an occurrence basis with limits equal to at least \$1,000,000.00 per occurrence combined bodily injury and property damage liability, \$1,000,000.00 per occurrence personal injury/advertising injury, \$1,000,000.00 general aggregate combined bodily injury and property damage liability. Any restricting endorsements and any deductibles in excess of \$1,000 shall require approval of Sublandlord. Such policy shall provide that Sublandlord and City of San Diego are named as an additional insureds and that such coverage shall be primary and Sublandlord's general liability policy excess as regards liability arising from this Sublease.

d. Any other form or forms of insurance as the Master Lessor or Sublandlord may reasonably require from time to time in form, in amounts, and for insurance risks against which a prudent tenant would protect itself.

Each policy evidencing insurance required to be carried by Subtenant pursuant to this Article shall contain a provision including Sublandlord, the City of San Diego, and any other parties in interest designated by Sublandlord, as an additional named insured(s).

14.2 Policy Forms and Delivery. All policies shall be taken out from insurers acceptable to Sublandlord and The City of San Diego, in form required by the Master Lease, and satisfactory to Sublandlord and The City of San Diego. Subtenant agrees that certificates of such insurance shall be delivered to Sublandlord and The City of San Diego as soon as practicable after the placing of the required insurance, but in no event later than ten (10) days prior to the date Subtenant

takes possession of the Premises. All policies shall require at least thirty (30) days' prior written notice be given to Sublandlord and The City of San Diego by the insurer prior to termination, cancellation or material change in such insurance.

14.3 Use of Proceeds. In the event of damage or destruction to the leasehold improvements in the Premises covered by insurance required to be taken out by Subtenant pursuant to this Article, Subtenant shall use the proceeds of such insurance for the purposes of repairing or restoring such leasehold improvements. In the event of damage or destruction of the Hotel improvements entitling the Sublandlord to terminate this Sublease pursuant to Article 17, hereof, then, if the Premises have also been damaged, Subtenant will pay to Sublandlord that portion of its insurance proceeds relating to the leasehold improvements in the Premises that were paid for by Sublandlord.

14.4 Failure to Respond. Failure of any insurance policy to respond to any liability for which Subtenant is obligated under the terms of this Sublease shall not relieve Subtenant of any such obligations assumed in this Sublease. Losses under any deductibles, in excess of any limits required by policies designated in paragraph 14.1.(a) through (d), or excluded from coverage shall remain the responsibility of Subtenant.

ARTICLE 15

TRANSFER OF SUBLANDLORD'S INTEREST

In the event of a transfer of all of Sublandlord's ownership interest in the Hotel, other than a transfer for security purposes only, Sublandlord shall be automatically relieved of all obligations and liabilities on the part of the Sublandlord hereunder accruing from and after closing of such transfer.

ARTICLE 16

PROPERTY TAXES

Sublandlord shall pay all real estate taxes assessed, imposed, or chargeable against or payable in connection with the Premises.

ARTICLE 17

DAMAGE OR DESTRUCTION

17.1 Repair or Termination.

a. If the Premises are damaged by fire or other casualty of the type insured by Sublandlord the damage shall be repaired by Sublandlord; provided such repairs can reasonably be made within 120 days after the commencement of repairs without the payment of overtime or other premiums and that the insurance proceeds are sufficient to pay the costs of such repairs. Sublandlord shall give written notice

to Subtenant within thirty (30) days after the occurrence of the damage if Sublandlord concludes the damages can be so repaired. Until such repairs are completed, Basic Monthly Rent shall be abated in proportion to the part of the Premises which is unusable by Subtenant in the conduct of its business (but there shall be no abatement of Rent by reason of any portion of the Premises being unusable for a period of three (3) days or less). If the damage is due to the fault or neglect of Subtenant or its employees, there shall be no abatement of Rent.

b. Sublandlord shall not be liable for any failure to make any such repairs if such failure is caused by accidents, strikes, lockouts or other conditions beyond the reasonable control of Sublandlord.

c. If such repairs cannot reasonably be made within such one hundred twenty (120) days, or if such repairs will cost more than the available insurance proceeds, Sublandlord may, at its option, make such repairs within a reasonable time and, in such event, this Sublease shall continue in effect and the Basic Monthly Rent shall be abated in the manner provided above. Sublandlord's election to make such repairs must be evidenced by written notice to Subtenant advising Subtenant within 30 days after the occurrence of the damage whether or not Sublandlord will make such repairs. If Sublandlord does not so elect to make such repairs then either party may, by written notice to the other given within 60 days after the occurrence of the damage, cancel this Sublease as of the date of the occurrence of such damage.

d. With respect to any damage and repairs, Subtenant waives the provisions of Section 1932(2) and 1933(4) of the Civil Code of California.

e. All proceeds of any insurance maintained by Subtenant or Sublandlord upon the Premises (including insurance on Subtenant improvements) shall be used to pay for the repairs to the property covered by said insurance, to the extent that repairs are made pursuant to this Article.

f. Sublandlord shall not have any obligation whatsoever to repair, reconstruct, or restore the Premises or any portion of the Hotel when the damage occurs during the last eighteen (18) months of the Term.

17.2 Loss of Enjoyment. No damages, compensation or claim shall be payable by Sublandlord to Subtenant for any inconvenience, loss of business or annoyance of Subtenant arising from any repair or restoration of any portion of the Premises or any other portion of the Hotel or Common Facilities performed by Sublandlord or its agents. Sublandlord shall use its best efforts to effect such repair or restoration promptly and in such manner as not unreasonably to interfere with Subtenant's use and occupancy of the Premises.

17.3 Automatic Termination. A total destruction of the Hotel or the Premises shall automatically terminate this Sublease. For purposes of this Section 17.3, a total destruction shall mean the

total or substantial demolition of all or substantially all of the above-foundation improvements in the Hotel.

ARTICLE 18

DEFAULTS AND REMEDIES

18.1 Events of Default. The occurrence of any of the following shall constitute a material default and breach of this Sublease by Subtenant:

- a. Any failure by Subtenant to pay Rent as and when due;
- b. The abandonment (cessation of substantial use and occupancy) of the Premises by Subtenant;
- c. Any failure by Subtenant to observe and perform any other provision of this Sublease or the Rules and Regulations promulgated by Sublandlord hereunder or the Master Lease, where such failure continues for thirty (30) days after written notice thereof by Sublandlord to Subtenant; provided, however, that any such notice shall be in lieu of and not in addition to, any notice required under Section 1161, et seq. of the California Code of Civil Procedure; or
- d. The making by Subtenant of any general assignment for the benefit of creditors; the filing by or against Subtenant of a petition to have Subtenant adjudged a Chapter 7 debtor or to have debts discharged or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Subtenant, the same is dismissed within sixty (60) days): the appointment of a trustee or receiver to take possession of substantially all of Subtenant's assets located at the Premises or of Subtenant's interest in this Sublease, where possession is not restored to Subtenant within thirty (30) days; the attachment, execution or other judicial seizure of substantially all of Subtenant's assets located at the Premises or of Subtenant's interest in this Sublease, where such seizure is not discharged within thirty (30) days.

18.2 Sublandlord's Remedies.

a. In the event of any default by Subtenant, as defined herein, then, in addition to any other remedies available to Sublandlord at law or in equity, Sublandlord shall have the immediate option, but shall not be obligated to do so, to terminate this Sublease and all rights of Subtenant hereunder by giving Subtenant 30 days written notice of such election to terminate in the event that Sublandlord shall elect to so terminate this Sublease, then Sublandlord may recover from Subtenant:

(i) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination

until the time of award exceeds that portion of rental loss which Subtenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss which Subtenant proves reasonably could be avoided; plus

(iv) Any other amount necessary to compensate Sublandlord for all the detriment proximately caused by Subtenant's failure to perform its obligation under this Sublease or which in the ordinary course of things would be likely to result therefrom including, but not limited to, brokerage commissions and the cost of restoring said Premises to the condition required under this Sublease; plus

(v) At Sublandlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law;

(vi) As used in (i) and (ii) above, the "worth at the time of award" shall be computed by allowing interest at 12% per annum. As used in (iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank at San Francisco at the time of award, plus one (1) percentage point.

b. In the event of any such default by Subtenant, Sublandlord shall also have the right, with or without terminating this Sublease, to reenter the Premises to remove all persons and property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant.

c. Sublandlord shall not, by any reentry or other act, be deemed to have accepted any surrender by Subtenant of the Premises or Subtenant's interest therein, or be deemed to have terminated this Sublease or Subtenant's right to possession of the Premises or the liability of Subtenant to pay Rent thereafter to accrue or Subtenant's liability for damages under any of the provisions hereof, unless Sublandlord shall have given Subtenant 30 days notice in writing that it has so elected to terminate this Sublease.

d. All rights, options, and remedies of Sublandlord contained in this Sublease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Sublandlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Sublease.

18.3 Sublandlord's Default. Sublandlord shall not be deemed to be in default under this Sublease unless and until it has failed to perform such obligation within thirty (30) days after written notice by Subtenant to Sublandlord specifying the manner in which Sublandlord has failed to perform such obligation; provided, however, that if the

nature of Sublandlord's obligation is such that more than thirty (30) days are required for its performance, then Sublandlord shall not be deemed to be in default, if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

ARTICLE 19

EMINENT DOMAIN

If thirty-three percent (33%) or more of the Hotel or if such portion of the Premises, as in Sublandlord's judgment, make the balance of the Premises after restoration untenable or otherwise unsuitable for Subtenant's use and requirements shall be lawfully taken or condemned or conveyed under threat of such taking or condemnation, for any public or quasi-public use or purpose (such taking, condemnation or conveyance being referred to herein as a "Taking"), the Term of this Sublease shall end upon, and not before, the date of the taking of possession by the condemning authority. Subtenant hereby assigns to Sublandlord the entire amount of any award/settlement made by reason of such Taking and hereby waives any right to relocation benefits.

ARTICLE 20

SUBORDINATION

This Agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated March 17, 1966, as amended between the Sublandlord 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. This Sublease is subject and subordinate to all declarations of restrictions, deeds of trust or other security interests of any kind now covering the Property; subject, however, to the qualification that so long as Subtenant is not in default under this Sublease, its peaceful use and occupancy of the Premises under this Sublease shall not be impaired, restricted or terminated by any such mortgagee, beneficiary, secured party or ground lessor. In the event of foreclosure or exercise of any power of sale under any deed of trust superior to this Sublease, Subtenant, upon demand, shall attorn to the purchaser at any foreclosure sale or sale pursuant to the exercise of any power of sale in which event this Sublease shall not terminate and Subtenant shall automatically be and become the tenant of the purchaser; provided, however, that no landlord or purchaser at any foreclosure sale or sale pursuant to the exercise of any power of sale or any successor thereto shall be liable for any act or omission of any prior landlord (including Sublandlord) or be subject to any offsets or defenses which Subtenant might have against any prior landlord (including Sublandlord), or be bound by any Rent which Subtenant might have paid in advance to any prior landlord (including Sublandlord) for a period in excess of one month or by any Security Deposit or other prepaid charge which Subtenant might have paid in advance to any prior landlord (including Sublandlord), or be bound by an agreement or

modification of this Sublease made after Subtenant has written notice of the interest of such party without the prior written consent of such party.

ARTICLE 21

SURRENDER OF PREMISES; REMOVAL OF PROPERTY

21.1 Subtenant's Removal of Property. Upon the expiration or termination of the Term of this Sublease, Subtenant shall quit and surrender possession of the Premises to Sublandlord in as good order, condition and repair as the same are now or hereafter may be improved by Sublandlord or Subtenant, reasonable wear and tear and repairs which are Sublandlord's obligation excepted, and in a reasonable state of cleanliness. In such event, Subtenant shall, without expense to Sublandlord, remove from the Premises all debris, rubbish, furniture, equipment, business and trade fixtures, free-standing cabinet work, shelving, moveable partitions and other articles of personal property owned by Subtenant or installed or placed by Subtenant at its expense in the Premises and all similar articles of any other persons claiming under Subtenant. Unless otherwise requested to do so by Sublandlord, however, Subtenant shall not remove any additions or improvements to the Premises, such as carpet, interior partition walls and doors, "built-ins", shelves, built-in fixtures or other similar items, it being understood and agreed that such items are and shall remain the property of Sublandlord. Subtenant shall also repair, at its expense, all damage to the Premises resulting from such removal.

21.2 Abandoned Property. Whenever Sublandlord shall reenter the Premises as provided in this Sublease, any property of Subtenant not removed by Subtenant upon the expiration of the Term of this Sublease or within two (2) days after a termination by reason of Subtenant's default, as provided in this Sublease, shall be considered abandoned, and Sublandlord may remove any or all such items and dispose of the same in any manner or store the same in a public warehouse or elsewhere for the account and at the expense and risk of Subtenant.

ARTICLE 22

MISCELLANEOUS

22.1 Sublandlord's Inspection and Maintenance. Subtenant shall permit Sublandlord and its agents at all reasonable times to enter the Premises for the purpose of making inspections, repairs, alterations, additions or improvements to the Premises or the Hotel and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Hotel or Sublandlord's interest therein, or as may be necessary or desirable for the operation or improvement of the Hotel or in order to comply with the laws, orders or requirements of governmental or other authorities.

22.2 Exhibition of Premises. Subtenant shall permit Sublandlord and its agents to enter and pass through the Premises at all reasonable hours to:

a. Post notices of nonresponsibility; and,

b. Exhibit the Premises to holders of encumbrances and to prospective purchasers, mortgagees or lessees of the Hotel.

If during the last month of the Term, Subtenant shall have removed substantially all of Subtenant's property and personnel from the Premises, Sublandlord may enter the Premises and repair, alter and redecorate the same, without abatement of Rent and without liability to Subtenant, and such acts shall have no effect on this Sublease.

22.3 Rights Reserved by Sublandlord. Sublandlord reserves the following rights, exercisable without liability to Subtenant for (a) damage or injury to property, person or business, (b) causing an actual or constructive eviction from the Premises, or (c) disturbing Subtenant's use or possession of the Premises:

a. To name the Hotel and to change the name or street address of the Hotel;

b. To install and maintain all signs on the exterior and interior of the Hotel and(or) Premises;

c. To have pass keys to the Premises and all doors within the Premises, excluding Subtenant's vaults and safes;

d. To grant to other lessees the exclusive right to sell goods and(or) services in the Hotel, so long as such exclusivity does not operate to the exclusion of any service or product previously provided and sold by Subtenant.

22.4 Quiet Enjoyment. Subtenant, upon paying the Rent and performing all of its obligations under this Sublease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Sublease and to any mortgage, lease, or other agreement to which this Sublease may be subordinate.

22.5 Force Majeure. Any prevention, delay or stoppage of work to be performed by Sublandlord or Subtenant which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Section, however, shall excuse or delay Subtenant's obligation to pay Rent or other charges under this Sublease.

22.6 Sign Control. Subtenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises or Hotel, including without limitation, the inside or outside of windows or doors, without the written consent of Sublandlord. Sublandlord shall have the right to

remove any signs or other matter, installed without Sublandlord's permission, without being liable to Subtenant by reason of such removal, and to charge the cost of removal to Subtenant as Rent hereunder, payable within ten (10) days of written demand by Sublandlord.

22.7 Corporate Authority. If Subtenant is a corporation, each individual signing this Sublease on behalf of Subtenant represents and warrants that he is duly authorized to execute and deliver this Sublease on behalf of the corporation, and that this Sublease is binding on Subtenant in accordance with its terms. Subtenant shall, at Sublandlord's request, deliver a certified copy of a resolution of its board of directors authorizing such execution.

22.8 Counterparts. This Sublease may be executed in multiple counterparts, all of which shall constitute one and the same Sublease.

22.9 Execution of Sublease, No Option. The submission of this Sublease to Subtenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Subtenant to lease or otherwise create any interest of Subtenant in the Premises or any other premises within the Hotel. Execution of this Sublease by Subtenant and its return to Sublandlord shall not be binding on Sublandlord notwithstanding any time interval, until Sublandlord has in fact signed and delivered this Sublease to Subtenant and has obtained the consent of Master Lessor to this Sublease.

22.10 Furnishing of Financial Statements; Subtenant's Representations. In order to induce Sublandlord to enter into this Sublease, Subtenant agrees that it shall promptly furnish Sublandlord, from time to time, upon Sublandlord's written request, with financial statements reflecting Subtenant's current financial condition. Subtenant represents and warrants that all financial statements, records and information furnished by Subtenant to Sublandlord in connection with this Sublease are true, correct and complete in all respects.

22.11 Further Assurances. The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Sublease.

22.12 Mortgagee Protection. Subtenant agrees to send by certified or registered mail to any first deed of trust beneficiary of Sublandlord whose address has been furnished to Subtenant, a copy of any notice of default served by Subtenant on Sublandlord. If Sublandlord fails to cure such default within the time provided for in this Sublease, such beneficiary shall have an additional thirty (30) days to cure such default; provided that if such default cannot reasonably be cured within that thirty (30) day period, then such beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

22.13 Expenses of Legal Action. If either party incurs any expense, including reasonable attorneys' fees, in connection with any

legal action instituted by either party by reason of any dispute under this Sublease or any default or alleged default of the other party, the party prevailing in such action shall be entitled to recover its reasonable expenses from the other party. Should it become necessary for Sublandlord or the City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Lease, Subtenant agrees to pay all legal costs in connection therewith, including a reasonable sum as attorneys' fees.

22.14 Subtenant's Certificates. Subtenant agrees at any time from time to time, within twenty (20) days of receipt of written request from Sublandlord, to execute, acknowledge and deliver to Sublandlord a statement in writing certifying: (a) that this Sublease is unmodified and in full force and effect or if there have been modifications, that this Sublease is in full force and effect as modified and stating the modifications; (b) as to the Commencement Date and expiration date of the Term; (c) as to the dates to which the Rent and other charges hereunder have been paid in advance, if any; (d) as to the amount of the current Basic Monthly Rent; (e) as to the subleases or assignments, if any, applicable to the Sublease; (f) whether or not, to the best knowledge of Subtenant, Sublandlord is in default in the performance of any covenant, agreement or condition contained in this Sublease, and, if so, specifying each such Sublandlord default of which Subtenant may have knowledge; and, (g) any other information reasonably requested by Sublandlord. Any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of the Hotel, or any mortgagee, ground lessor or other encumbrancer thereof, or by an assignee of any such encumbrancer.

22.15 Holding Over. Any holding over after the expiration or termination of the Term of this Sublease shall be construed to be a tenancy from month to month at a Basic Monthly Rent which shall be equal to 300% of the Basic Monthly Rent payable (without reduction) during the last month of the Term.

22.16 Notices. All notices, which Sublandlord or Subtenant may be required or may desire to serve on the other shall be in writing and shall be served by personal delivery or by mailing the same by registered or certified mail, postage prepaid, addressed as set forth in the Basic Sublease Provisions or addressed to such other address or addresses as either Sublandlord or Subtenant may from time to time designate to the other in writing in accordance with this Article. Any notice so given by mail as provided above shall be deemed effectively given seventy-two (72) hours after deposit in the mail as provided above, unless received earlier by the addressee. Any notice served by personal delivery shall be deemed effectively given when delivered at the party's address.

22.17 Rules and Regulations. Subtenant agrees to abide by and comply with the Rules and Regulations delivered to Subtenant by Sublandlord from time to time. Sublandlord shall not be liable to Subtenant for any violation of such Rules and Regulations by any other tenant. In the event of any inconsistencies between this Sublease and the Rules and Regulations, the language of this Sublease shall

prevail.

22.18 Governing Laws. This Sublease shall be governed by and construed in accordance with the laws of the State of California.

22.19 Heading and Titles. The marginal titles to the Articles of this Sublease are inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part hereof.

22.20 Heirs and Assigns. Subject to the limitations on assignment, subletting and transfers, this Sublease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

22.21 Time of Essence. Time is of the essence with respect to the performance of every provision of this Sublease.

22.22 Severability. If any condition or provision of this Sublease shall be held invalid or unenforceable to any extent under any applicable law or by any court of competent jurisdiction, the remainder of this Sublease shall not be affected thereby, and each condition and provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

22.23 Operation; Radius. Subtenant shall continuously operate and merchandise the Premises to the general public during the business hours set forth in paragraph 9 of the Basic Sublease Provisions. Subtenant shall keep the Premises completely and fully stocked with merchandise consistent with the type allowed hereunder. Subtenant shall not own, operate, manage or control, either directly or indirectly, any business of a type similar to that provided for herein within any portion of Mission Bay Park in San Diego, California, excepting Subtenant's business operations at the Catamaran Resort Hotel, unless having first obtained Sublandlord's written approval. If Subtenant does take such action then in addition to any other damages, Sublandlord shall be entitled to collect 20% of the Gross Sales from such other location.

22.24 Brokers. If Subtenant has dealt with any real estate broker or agent or any other person in connection with the leasing or renting of space in the Hotel, Subtenant shall be solely responsible for the payment of any fee due such person, and Subtenant shall defend, hold harmless and indemnify Sublandlord from and against all liability in respect thereto.

22.25 No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Hotel shall not in any way affect this Sublease or impose any liability on Sublandlord.

22.26 Entire Agreement. This Sublease, along with any Exhibits affixed hereto, constitutes the entire and exclusive agreement between Sublandlord and Subtenant relative to the Premises.

22.27 Recording. Subtenant shall not record this Sublease.

22.28 Joint and Several Liability. If there shall be more than one Subtenant, then the obligations hereunder imposed upon Subtenant shall be joint and several.

22.29 Waiver. No act or action by Sublandlord, including the acceptance of rent after its due date, shall be construed as a waiver by Sublandlord of its right to require the strict and punctual performance of this Sublease by Subtenant.

22.30 Exhibits. Each of the following Exhibits are attached hereto and incorporated herein by this reference.

Exhibit A - Legal Description of Bahia Hotel (on file in Executive Office at Bahia Hotel)

Exhibit B - Location Map of Bahia Hotel

Exhibit C - Master Lease (on file in Executive Office at Bahia Hotel)

Exhibit D - Location of Premises

Exhibit E - Percentage Rent Schedule

"SUBLANDLORD"

BAHIA HOTEL,
a California General Partnership

By: Anne L. Evans
Anne L. Evans, Owner

By: Anne L. Evans
Anne L. Evans, General Partner and
Trustee of the William D. Evans and
Anne Ledford Evans Trust C,
dated July 27, 1983, General Partner

"SUBTENANT"

Charles A. Berry
Charles A. Berry

reviewed and approved 6/29/93
David Cherkshore

EXHIBIT E

PERCENTAGE RENT SCHEDULE

January	15%
February	15%
March	15%
April	15%
May	15%
June	20%
July	25%
August	25%
September	20%
October	15%
November	15%
December	15%

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