

CITY OF SAN DIEGO
CONSENT TO FIFTH AMENDMENT TO SUBLEASE AGREEMENT

THIS CITY OF SAN DIEGO CONSENT TO FIFTH AMENDMENT TO SUBLEASE AGREEMENT ("Consent") is made by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of July 18, 2011 (the "Effective Date"), as follows:

CITY, as lessor, and BH Partnership, a California Limited Partnership, d.b.a. BAHIA HOTEL ("LESSEE"), as lessee, are parties to a certain lease agreement (the "Master Lease") as amended and assigned and set forth in documents filed in the Office of the San Diego City Clerk as Document Nos. 697319, 710761 and RR-297246, and relating to certain CITY-owned real property (the "Premises") located in Mission Bay Park in San Diego, California.

LESSEE, and Charles A. Berry, d.b.a. RESORT WATERSPORTS, Inc., a California Corporation, ("Sublessee"), have entered into a sublease of a portion of the Premises dated June 29, 1993, ("Sublease"). CITY consented to Sublease on November 22, 1993.

Sublessee desires to amend Sublease pursuant to Fifth Amendment to Sublease dated April 1, 2010 ("Fifth Amendment").

CITY hereby consents to Fifth Amendment, provided all of the following conditions are and remain true throughout the term of the Sublease:

- (a) The Sublease shall remain subject and subordinate to the Master Lease, as may be amended from time to time, and this Consent; and
- (b) CITY is not bound by any term or condition in the Sublease which in any way conflicts with CITY'S rights or would otherwise result in increasing CITY'S obligations under the Master Lease.
- (c) LESSEE and Sublessee shall not amend the Sublease to alter any provisions of Article 11 (Assignment and Subletting) and Article 14 (Insurance) of the Sublease in any way that reduces the insurance of CITY or permits further assignment or subletting by Sublessee without prior written consent by CITY.
- (d) Sublessee shall assume the defense of, indemnify and hold harmless CITY, its elected officials, officers, representatives, agents and employees from all claims asserted or liability established for damages to or injuries to any person or property, including injury to Sublessees' employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the portion of the Premises that are the subject of the Sublease or the work to be performed under the Sublease, and all expenses of investigation and defense. However, Sublessees' duty to indemnify and hold harmless shall not include

any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its agents, officers or employees.

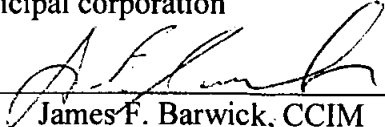
- (e) Sublessee's wakeboarding and sport fishing charter activities are considered to be "the operation of any excursion, sightseeing, or shuttle boat" under Section (C)(5) of the Master Lease. CITY shall be entitled to ten percent (10%) of all gross income of LESSEE derived from operation of Sublessee's wakeboarding and sport fishing charter activities as provided in Section (C)(5) of the Master Lease.

If at any time the foregoing provisions are not true, this Consent shall automatically and retroactively become null and void as of the Effective Date.

This Consent does not amend or otherwise modify the Master Lease.

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 7/13/11

BY: 
James F. Barwick, CCIM
Real Estate Assets Director

Approved as to form and legality:

JAN I. GOLDSMITH, CITY ATTORNEY

BY: 
Name: David L. Heerman
Title: Deputy City Attorney

07/18/2011

FIFTH AMENDMENT TO SUBLEASE

This Fifth Amendment to Sublease ("Fifth Amendment") is made and entered into effective April 1, 2009 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:

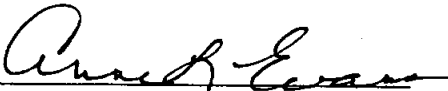
1. **RECITALS.** This Fifth Amendment is executed in contemplation of the following facts and circumstances:
 - a. Sublandlord is the sublandlord and Subtenant is the subtenant under that certain Sublease dated June 29, 1993 and amended by that certain First Amendment to Sublease (erroneously titled "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") that certain Third Amendment to Sublease dated November 5, 2004 ("Third Amendment"), and that certain Fourth Amendment to Sublease dated April 1, 2009 ("Fourth Amendment"). Together, the Sublease, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment shall be referred to as the "Sublease."
 - b. Subtenant has requested approval of additional uses under the Sublease.
 - c. Sublandlord has agreed to approve such additional uses pursuant to the provisions and conditions contained in this Fifth Amendment.
 - c. Capitalized terms not otherwise defined in this Fifth Amendment shall have those meanings assigned to them in the Sublease.
2. **ADDITIONAL USES.** Subtenant is permitted to provide wakeboarding and sport fishing charter activities, subject to the following conditions:
 - a. The wakeboarding and sport fishing charter activities shall reasonably conform to the description set forth in "Exhibit A," attached hereto and incorporated herein by reference; and
 - b. All gross income resulting from the operation of the wakeboarding and sport fishing charter activities shall be considered Gross Sales for the purposes of calculating Percentage Rent.
3. **APPROVAL.** This Fifth 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.

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

SUBLANDLORD:

Braemar Partnership,
a California limited partnership

By: 9th 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

Resort Watersports

MISSION & PACIFIC BEACH, CALIFORNIA

Times. Fishing and Wakeboarding would be available year round reservations requested. Most fishing charters would start 5am to 7am

Cost. The market rates obtained through our research for wakeboarding is \$375 for 2 hours and an additional \$150 per hour after that. Our rate structure for wakeboarding will be: 1-2 people. 30 minutes- \$125. 1-3 people. 1 hour- \$200. 2-6 people. 2 hours- \$375. 2-6 people. 4 hours- \$600. Includes captain, 1 crew/observer, wakeboard, rope, & PFD. The shorter time frames or higher participant counts would be to pull experienced wakeboarders.

Market costs for Sport fishing vary with different boat size options. All our research is in the 6 passenger size boats as that is what Captains are rated for. Prices range from \$650 - \$800 for 6 hours (1/2 day). and \$1,200 - \$1,400 for 9 hours (3/4 day). The equipment we are evaluating is smaller faster boats to lengthen the fishing versus transport time (getting there) Price would include boat and gas, captain, 1 crew, ice, and all fishing gear. (Live bait, food and drinks, and fishing license extra charge).

Equipment/Boats. Wakeboarding. Epic professional wakeboarding boats (<http://www.epicboats.com/>) will be used in the wakeboarding program. Parker boats in the 24 ft range will be used for sport fishing. http://www.parkerboats.net/pages/boat_lineup/boat_detail.jsp?boatid=10) The fishing boat will be rigged with safety items listed in safety as well as 6 - 8 rigged poles, (depending on number of clients and what we are fishing for) live bait well, and all necessary items for the capture and storage of fish.

Fishing gear. We have established account with Squid co and Okuma Rod & Reels to supply our bait, tackle, and rods and reels. We have established an account with the Fish and Game to sell fishing licenses.

Wakeboarding gear. All wakeboarding gear is now obtained through West Marine but we will be using a name brand manufacturer account such as Slingshot, Liquid Force, or Hyperlite for wakeboarding; The Walker Project and Shred Stixx for wake surfing; and O'Brien and EP for water skiing.

Personnel/captains. RWS will employ a minimum of 3 full time Captains. The Captain designation requires CPR certification, 360 days experience in operation of a

vessel with 90 days within the last 3 years. (4 hours in one day constitutes a day). Drug screening is required as well as random drug testing by the Coast Guard. A physical examination within the past 12 months including vision is also required to evaluate ability to perform task.

Safety. All offshore boats will be equipped with the latest radar and GPS currently available, VHF radio, SAT phone, compass, and a back up hand held GPS. Float plans will be made for each trip out of Mission Bay. Navigation stations will be utilized and logged in case of electronic failure. All boats will have cell phones, first aid kits and floatation devices and will be inventoried with Captain's log. Safety gear will include blankets for hypothermia. Emergency response will include Vessel Assist for offshore rescues.

Wakeboard students will be outfitted with "the coach", an audible helmet for instruction while wakeboarding to increase learning and safety.

Training. Orlando, Florida and the Sacramento Delta area are the center of the wake universe. I will attend a wakeboarding camp in FL this winter to train on wake boarding, wake surfing, and skiing instructional techniques and lesson plans as well as boat handling skills for this equipment. Our other instructors and myself will attend a camp in Sacramento this spring. This will give us experience from both of the top facilities available to incorporate into our operation.

Our training procedures for fishing will include evaluating the weather and sea conditions to determine where to fish. For example, rough, windy, or foggy days we would fish closer to shore (La Jolla or Point Loma to allow quick return if conditions worsens). The rigging and care of fishing gear will be taught to all Captains and crew including baits to use for different fish. The study of all current fishing techniques to improve catch counts. We have two Tournament caliber sports fisherman currently on our payroll.

All guides and instructors will maintain the minimum qualifications as outlined:

A valid Basic First Aid certification from the American Red Cross or the equivalent.



Resort Watersports

MISSION & PACIFIC BEACH, CALIFORNIA

A valid CPR certification by either the American Red Cross as Professional Rescuer or American Heart Association as a Healthcare Provider or the equivalent.

Supervise and instruct clients and be capable of giving a suitable orientation talk to all clients on relative subjects which may include, but not limited to, overall safety, personal floatation devices, emergency signaling, and tow rope handling.

Possess a general knowledge of emergency access and evacuation routes, and summon and assist, when requested, any emergency response personnel.

Keeping patrons safe while engaged in fishing or wakeboarding will be the highest priority.

A culture of wakeboarding and fishing will be created by giving employee in good standing allowances of equipment usage on days off work to improve their skills and training techniques as well as to log time on boats to grow Captain base. Captains in training will crew on fishing charters to log more time at sea. Kayak fishing and wakeboarding were introduced this year to help in the creation of this culture. Employees were exposed to riding both wakeboards and surfboards behind our boats and also rigging and equipment care for fishing.



Resort Watersports

MISSION & PACIFIC BEACH, CALIFORNIA

1. Specify what the reporting requirements will be for any accidents (notification of Lifeguards, PD and USCG);

All accidents will be recorded with written statements from each party involved. (see enclosed form) Any medical treatment needed will be administered or summoned immediately. State of California Boating Accident Report Form A-1 will be filled out and submitted in any accident with over \$500 in property damage. The Captain's log will list all incidents with name, phone numbers and addresses of all parties involved.

2. Specify which parts of the Mission Bay they will be using for the wakeboarding operations (provide map);

The primary location of operations will be in Sail Bay. In the summer months, Sail Bay will be used before 11am and after 5pm. The East Bay Ski Beach area will be used between 11am and 5pm summer months. Usage will be determined by bay traffic. Scheduling will be done to avoid heaviest traffic times on the bay. The Captain will have 1 crew during busy times (July and August) to watch client and allow Captain to focus on bay traffic.

3. Proof that the captains have the proper Coast Guard approved license;

The Captain will have a copy of his license on board while operating. A copy of licenses of all operating Captains will be on file in the administrative office and with insurance carrier..

4. Specify how the vessel will to be marked (rental agencies on the Mission Bay are required to have the name of the agency on the boat). Please provide sample.

Boats will have Resort Watersports name with phone number displayed on hull.

**CITY OF SAN DIEGO
CONSENT TO FOURTH AMENDMENT TO SUBLEASE
AGREEMENT**

THIS CITY OF SAN DIEGO CONSENT TO FOURTH AMEDMENT TO SUBLEASE AGREEMENT ("Consent") is made by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of July 18, 2011 (the "Effective Date"), as follows:

CITY, as lessor, and BH Partnership, a California Limited Partnership, d.b.a. BAHIA HOTEL ("LESSEE"), as lessee, are parties to a certain lease agreement (the "Master Lease") as amended and assigned and set forth in documents filed in the Office of the San Diego City Clerk as Document Nos. 697319, 710761 and RR-297246, and relating to certain CITY-owned real property (the "Premises") located in Mission Bay Park in San Diego, California.

LESSEE, and Charles A. Berry, d.b.a. RESORT WATERSPORTS, Inc., a California Corporation, ("Sublessee"), have entered into a sublease of a portion of the Premises dated June 29, 1993, ("Sublease"). CITY consented to Sublease on November 22, 1993.

Sublessee amended Sublease pursuant to Fourth Amendment to Sublease dated April 1, 2009, ("Fourth Amendment").

CITY hereby consents to Fourth Amendment, provided all of the following conditions are and remain true throughout the term of the Sublease:

- (a) The Sublease shall remain subject and subordinate to the Master Lease, as may be amended from time to time, and this Consent; and
- (b) CITY is not bound by any term or condition in the Sublease which in any way conflicts with CITY'S rights or would otherwise result in increasing CITY'S obligations under the Master Lease.
- (c) LESSEE and Sublessee shall not amend the Sublease to alter any provisions of Article 11 (Assignment and Subletting) and Article 14 (Insurance) of the Sublease in any way that reduces the insurance of CITY or permits further assignment or subletting by Sublessee without prior written consent by CITY.
- (d) Sublessee shall assume the defense of, indemnify and hold harmless CITY, its elected officials, officers, representatives, agents and employees from all claims asserted or liability established for damages to or injuries to any person or property, including injury to Sublessees' employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the portion of the Premises that are the subject of the Sublease or the work to be performed under the Sublease, and all expenses of investigation and defense. However, Sublessees' duty to indemnify and hold harmless shall not include

any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its agents, officers or employees.

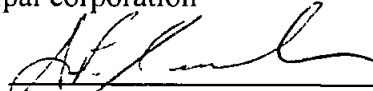
If at any time the foregoing provisions are not true, this Consent shall automatically and retroactively become null and void as of the Effective Date.

This Consent does not amend or otherwise modify the Master Lease.

7/13/11

THE CITY OF SAN DIEGO, a California
municipal corporation

BY:



James F. Barwick, CCIM
Real Estate Assets Director

Date: 7/18/2011

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

BY:



David L. Herman, Deputy City Attorney

FOUTH AMENDMENT TO SUBLEASE

This Fourth Amendment to Sublease ("Fourth Amendment") is made and entered into effective April 1, 2009 by and between BH Partnership, a California limited partnership, d/b/a Bahia Hotel ("Sublandlord") and Resort Watersports, Inc., a California corporation ("Subtenant"), who agree as follows:

1. RECITALS. This Fourth 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"), that certain Second Amendment to Sublease dated April 30, 1999 ("Second Amendment"), and that certain Third Amendment to Sublease dated November 5, 2004 ("Third Amendment"). Together, the Sublease, First Amendment, Second Amendment, and Third 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 Fourth Amendment.
 - d. Capitalized terms not otherwise defined in this Fourth Amendment shall have those meanings assigned to them in the Sublease.
2. TERM EXTENSION. The Term of the Sublease is extended to September 30, 2015.
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 March 31, 2015).
4. APPROVAL. This Fourth 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 Fourth 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

**CITY OF SAN DIEGO
CONSENT TO THIRD AMENDMENT TO SUBLEASE
AGREEMENT**

THIS CITY OF SAN DIEGO CONSENT TO THIRD AMENDMENT TO SUBLEASE AGREEMENT ("Consent") is made by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of July 12, 2011 (the "Effective Date"), as follows:

CITY, as lessor, and BH Partnership, a California Limited Partnership, d.b.a. BAHIA HOTEL ("LESSEE"), as lessee, are parties to a certain lease agreement (the "Master Lease") as amended and assigned and set forth in documents filed in the Office of the San Diego City Clerk as Document Nos. 697319, 710761 and RR-297246, and relating to certain CITY-owned real property (the "Premises") located in Mission Bay Park in San Diego, California.

LESSEE, and Charles A. Berry, d.b.a. RESORT WATERSPORTS, Inc., a California Corporation, ("Sublessee"), have entered into a sublease of a portion of the Premises dated June 29, 1993, ("Sublease"). CITY consented to Sublease on November 22, 1993.

Sublessee amended Sublease pursuant to Third Amendment to Sublease dated November 5, 2004 ("Third Amendment").

CITY hereby consents to Third Amendment, provided all of the following conditions are and remain true throughout the term of the Sublease:

- (a) The Sublease shall remain subject and subordinate to the Master Lease, as may be amended from time to time, and this Consent; and
- (b) CITY is not bound by any term or condition in the Sublease which in any way conflicts with CITY'S rights or would otherwise result in increasing CITY'S obligations under the Master Lease.
- (c) LESSEE and Sublessee shall not amend the Sublease to alter any provisions of Article 11 (Assignment and Subletting) and Article 14 (Insurance) of the Sublease in any way that reduces the insurance of CITY or permits further assignment or subletting by Sublessee without prior written consent by CITY.
- (d) Sublessee shall assume the defense of, indemnify and hold harmless CITY, its elected officials, officers, representatives, agents and employees from all claims asserted or liability established for damages to or injuries to any person or property, including injury to Sublessees' employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the portion of the Premises that are the subject of the Sublease or the work to be performed under the Sublease, and all expenses of investigation and defense. However, Sublessees' duty to indemnify and hold harmless shall not include

any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its agents, officers or employees.

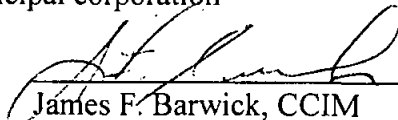
If at any time the foregoing provisions are not true, this Consent shall automatically and retroactively become null and void as of the Effective Date.

This Consent does not amend or otherwise modify the Master Lease.

THE CITY OF SAN DIEGO, a California
municipal corporation

7/13/11

BY: _____


James F. Barwick, CCIM
Real Estate Assets Director

Date: _____

7/18/2011

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

BY: _____


David L. Herman, Deputy City Attorney



998 WEST MISSION BAY DRIVE SAN DIEGO, CALIFORNIA 92109 PHONE: (858) 488-0551

December 13, 2004

Craig Gibson
Real Estate Assets Department
City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101-4199

**RE: CONSENT TO SUBLEASE
BAHIA RESORT HOTEL
CATAMARAN RESORT HOTEL**

Dear Craig:

As you know, Resort Watersports, Inc. is our Subleasee for boat rentals at both the Bahia Resort Hotel and the Catamaran Resort Hotel. We have recently executed a Third Amendment to Sublease between Resort Watersports, Inc. and BH Partnership d/b/a The Bahia Resort Hotel and Braemar Partnership d/b/a The Catamaran Resort Hotel. Those documents are enclosed along with the Sublease and associated documents.

Please review these documents and process a Consent to Sublease for both Subleases. Enclosed please find two separate checks made out the City Treasurer in the amount of \$600 each.

We thank you for your attention to this matter and, as always, please feel free to contact me directly if you have any questions or require any further information.

Sincerely,

Robert H. Gleason
Chief Financial Officer and General Counsel

RHG:rjh

Enclosure

Copy: Andy Berry, Resort Watersports, Inc.

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 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 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

**CITY OF SAN DIEGO
CONSENT TO SECOND AMENDMENT TO SUBLEASE
AGREEMENT**

THIS CITY OF SAN DIEGO CONSENT TO SECOND AMEDMENT TO SUBLEASE AGREEMENT ("Consent") is made by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of July 18, 2011 (the "Effective Date"), as follows:

CITY, as lessor, and BH Partnership, a California Limited Partnership, d.b.a. BAHIA HOTEL ("LESSEE"), as lessee, are parties to a certain lease agreement (the "Master Lease") as amended and assigned and set forth in documents filed in the Office of the San Diego City Clerk as Document Nos. 697319, 710761 and RR-297246, and relating to certain CITY-owned real property (the "Premises") located in Mission Bay Park in San Diego, California.

LESSEE, and Charles A. Berry, d.b.a. RESORT WATERSPORTS, Inc., a California Corporation, ("Sublessee"), have entered into a sublease of a portion of the Premises dated June 29, 1993, ("Sublease"). CITY consented to Sublease on November 22, 1993.

Sublessee amended Sublease pursuant to Second Amendment to Sublease dated April 30, 1999 ("Second Amendment").

CITY hereby consents to Second Amendment, provided all of the following conditions are and remain true throughout the term of the Sublease:

- (a) The Sublease shall remain subject and subordinate to the Master Lease, as may be amended from time to time, and this Consent; and
- (b) CITY is not bound by any term or condition in the Sublease which in any way conflicts with CITY'S rights or would otherwise result in increasing CITY'S obligations under the Master Lease.
- (c) LESSEE and Sublessee shall not amend the Sublease to alter any provisions of Article 11 (Assignment and Subletting) and Article 14 (Insurance) of the Sublease in any way that reduces the insurance of CITY or permits further assignment or subletting by Sublessee without prior written consent by CITY.
- (d) Sublessee shall assume the defense of, indemnify and hold harmless CITY, its elected officials, officers, representatives, agents and employees from all claims asserted or liability established for damages to or injuries to any person or property, including injury to Sublessees' employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the portion of the Premises that are the subject of the Sublease or the work to be performed under the Sublease, and all expenses of investigation and defense. However, Sublessees' duty to indemnify and hold harmless shall not include

any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its agents, officers or employees.

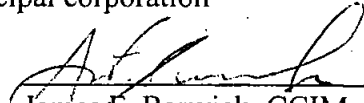
If at any time the foregoing provisions are not true, this Consent shall automatically and retroactively become null and void as of the Effective Date.

This Consent does not amend or otherwise modify the Master Lease.

7/13/11

THE CITY OF SAN DIEGO, a California
municipal corporation

BY:


James F. Barwick, CCIM
Real Estate Assets Director

Date: 7/18/2011

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

BY:


David L. Herman, Deputy City Attorney

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
Anne L. Evans
Its: Managing General Partner

SUBTENANT:

Resort Watersports, Inc.,
a California corporation

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