

CONSENT TO AMENDMENT TO SUBLEASE AGREEMENT

CITY OF SAN DIEGO REAL ESTATE ASSETS DEPT.	
☐	DIRECTOR
☐	DEPUTY MANAGER
☒	FILE COPY
☐	CHRON. COPY
☐	ORIGINAL

The City of San Diego (City), as Permittor under that certain Non-Exclusive Permit (Permit) entered into with

BRAEMAR PARTNERSHIP

(Permittee) and filed in the Office of the City Clerk as Document No. RR-281244, hereby consent to that second amendment to sublease agreement between the above permittee (Sublessor) and

RESORTWATERSPORT, INC.,

(Sublessee), dated November 1, 1996. Said sublease as amended shall be subordinate to the Permit in all respects. The City is hereby merely approving this amendment and the proposed use, and all terms and conditions of the Permit shall control and supersede any inconsistent or contrary provisions in the amended sublease. The City is not bound by any term or condition in this amendment or original sublease which in any way conflicts with or is additional to the provisions of the Permit.

In addition, this consent is subject to the following:

Assignment and Subletting : Sublessee shall not assign or sublet the premises or any part thereto without the prior written consent of Sublessor and City of San Diego, hereafter "City". An assignment by operation of law shall automatically terminate this agreement.

Hold Harmless: Sublessee shall assume the defense of, indemnify and hold harmless Sublessor and City from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operation conducted on the leased premises, the condition of the premises or from any act or omission of Sublessee, his agents and invitees; provided, however, Sublessee's 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 the City, its agents, officers, or employees.

Insurance: Sublessee shall be insured by an insurance carrier acceptable to the Sublessor and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$2 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of policy of insurance shall be filed with the City and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to City by the

insurance company.

Legal proceedings: Should it become necessary for Sublessor or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of the sublease agreement, the prevailing party shall be entitled to an award of reasonable legal cost, including court and attorney's fees.

Subordination: This sublease agreement as amended is related to a portion of the premises covered by that certain Non-Exclusive Permit between the Sublessor herein and the City of San Diego. This sublease as amended is subject to and subordinate to the covenants and conditions of said Permit notwithstanding any provision hereof contrary to or in conflict with said sublease as amended.

Boat rentals: For purposes of this amendment, the "boats" include ships of all kinds, motorboats, sailboats, inflatable boats, personal watercraft, and every structure adapted to be navigated from place to place upon the water for recreation or for the transportation of merchandise or persons. Sublessor and Sublessee shall be permitted to rent boats to the general public subject to prior written approval from the City Manager as to the number and type of boats available to rent. The City Manager may, upon written notice to Sublessor and Sublessee and with reasonable cause, modify any approval previously given. Sublessor and Sublessee shall carry commercial general liability insurance, the amount and coverages shall be based upon the City Manager's assessment of the risk associated with the rental operation.

All boats for rent which are required by law to be registered with the California Department of Motor Vehicles shall be currently registered as rental vessels and carry proper registration numbers and stickers. All boats for rent shall be identified by Sublessee through the use of distinctive markings and logos.

Each rental boat shall be equipped with a waterproof map detailing all current regulations and activity zones for Mission Bay, along with all safety equipment required by law. At any time that the Sublessor or Sublessee is renting a boat or boats, Sublessor or Sublessee shall have at least one operational chase boat and staff available to operate on the water of Mission Bay. No rental boats may be stored on public property outside the leasehold. Sublessor and Sublessee agree that the City Manager or his designees shall have the authority to immediately terminate any agreement which is not in conformance with the stipulations of this Consent to Amendment to Sublease or current boating regulations.

THE CITY OF SAN DIEGO

Dated September 26, 1997

By Jane E. Vukobratovic
Deputy Director of Real Estate Assets
Department for the City Manager

APPROVED AS TO FORM:

Casey G. Gwinn, City Attorney

Dated 9/30/97

By William T. [Signature]
Deputy

BRAEMAR PARTNERSHIP

Dated 10-8-97

By Anne L. Evans
Anne L. Evans
Managing General Partner

RESORTWATERSPORTS

Dated 10-14-97

By Charles A. Berry
Charles A. Berry
President

SECOND AMENDMENT TO SUBLEASE

~~First~~ ^{SECOND}

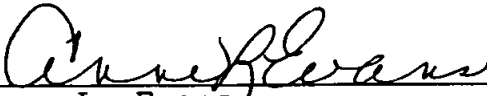
This ~~First~~ Amendment to Sublease ("Amendment") is made and entered into effective November 1, 1996 by and between Braemar Partnership, a California limited partnership, d/b/a Catamaran Resort Hotel ("Sublandlord") and ResortWatersports, Inc., a California corporation ("Subtenant"), who agree as follows:

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

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

SUBLANDLORD:

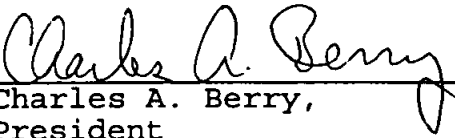
Braemar Partnership,
a California limited partnership



Anne L. Evans,
Managing General Partner

SUBTENANT:

ResortWatersports, Inc.,
a California corporation



Charles A. Berry,
President

SUBLEASE

This Sublease is made as of June 29, 1993, between BRAEMAR PARTNERSHIP, a California general partnership dba Catamaran Resort Hotel ("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 Braemar Partnership, a California general partnership dba Catamaran Resort Hotel, 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 December 8, 1992 ("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 September 1983, a ten year period, at the Catamaran 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 Catamaran Resort Hotel and Charles A. Berry, dba Watersports dated February 1, 1991.

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 Catamaran Resort 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: Bahia Hotel, located at 998 West Mission Bay Drive, San Diego, California.
2. PREMISES: Approximately 150 square feet at Boat Rental Stand at Bahia Marina 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: Bahia Hotel 998 West Mission Bay Drive 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 and the City Manager of The City of San Diego. Rental of motorized craft is subject to the prior approval and discretion of Sublandlord and the City Manager of The City of San Diego. 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 Catamaran Resort 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 General Manager.

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 the City of San Diego, Braemar Partnership, and Catamaran Resort Hotel 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 December 8, 1992, 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 Bahia 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 Catamaran Resort Hotel (on file at Executive Office at Bahia Hotel)

Exhibit B - Location Map of Catamaran Resort Hotel

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

Exhibit D - Location of Premises

Exhibit E - Percentage Rent Schedule

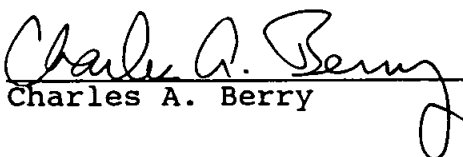
"SUBLANDLORD"

BRAEMAR PARTNERSHIP,
a California General Partnership

By: 
Anne L. Evans, Owner

By: 
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

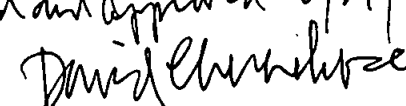
reviewed and approved 6/27/93


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%

TABLE OF CONTENTS

ARTICLE 1	1
RECITALS	1
ARTICLE 2	1
SUBLEASE OF PREMISES	1
ARTICLE 3	2
BASIC SUBLEASE PROVISIONS	2
LOCATION	2
PREMISES	2
TERM	2
BASIC MONTHLY RENT	2
PERCENTAGE RENT PERCENTAGE	2
SECURITY DEPOSIT	2
ADDRESSES	2
REQUIRED USES	2
BUSINESS HOURS	3
ARTICLE 4	3
COMMENCEMENT DATE OF TERM	3
ARTICLE 5	3
RENT	3
Basic Monthly Rent	3
Percentage Rent	3
Rent Payment	5
Past Due Rent	5
Late Fee	5
ARTICLE 6	6
INCORPORATION BY REFERENCE	6
ARTICLE 7	6
SERVICES AND FACILITIES	6
Provision of Services	6
Interruption of Standard Services	6
Common Facilities	6
Parking	6
Construction Phases	6
ARTICLE 8	6
ACCEPTANCE OF PREMISES	6
ARTICLE 9	7
MAINTENANCE; UTILITIES AND ALTERATIONS; COMMON	
FACILITIES	7
Subtenant to Maintain	7
Utilities	7
Alterations	7
Indemnity	7
Sublandlord's Right to Repair	8
Common Facilities	8
Grant of Easement	8
Sublandlord Control	8

ARTICLE 10	8
USE AND CONDUCT OF THE PREMISES	8
Definition of Premises	8
Required Use	8
Conduct of Business	9
Abandonment	10
Notice	10
Personal Property Taxes	10
Auctions	10
Experience	10
Licenses	10
Rental Equipment	10
Restrictions	11
ARTICLE 11	11
ASSIGNMENT AND SUBLETTING	11
Assignment and Subletting Prohibited	11
Subtenant's Waiver of Claims and Indemnity	11
Negligence of Third Parties	11
ARTICLE 13	11
HAZARDOUS MATERIALS	11
Hazardous Materials Prohibited	12
Hazardous Materials	12
Hazardous Materials Indemnity	12
ARTICLE 14	13
INSURANCE	13
Insurance to be Carried by Subtenant	13
Policy Forms and Delivery	14
Use of Proceeds	14
Failure to Respond	14
ARTICLE 15	14
TRANSFER OF SUBLANDLORD'S INTEREST	14
ARTICLE 16	15
PROPERTY TAXES	15
ARTICLE 17	15
DAMAGE OR DESTRUCTION	15
Repair or Termination	15
Loss of Enjoyment	16
Automatic Termination	16
ARTICLE 18	16
DEFAULTS AND REMEDIES	16
Events of Default	16
Sublandlord's Remedies	17
Sublandlord's Default	18
ARTICLE 19	18
EMINENT DOMAIN	18
ARTICLE 20	18
SUBORDINATION	18

ARTICLE 21	19
SURRENDER OF PREMISES; REMOVAL OF PROPERTY . .	19
Subtenant's Removal of Property	19
Abandoned Property	20
ARTICLE 22	20
MISCELLANEOUS	20
Sublandlord's Inspection and	
Maintenance	20
Exhibition of Premises	20
Rights Reserved by Sublandlord	20
Quiet Enjoyment	21
Force Majeure	21
Sign Control	21
Corporate Authority	21
Counterparts	21
Execution of Sublease, No Option	21
Furnishing of Financial Statements;	
Subtenant's Representations	22
Further Assurances	22
Mortgagee Protection	22
Expenses of Legal Action	22
Subtenant's Certificates	22
Holding Over	23
Notices	23
Rules and Regulations	23
Governing Laws	23
Heading and Titles	23
Heirs and Assigns	23
Time of Essence	23
Severability	24
Operation; Radius	24
Brokers	24
No Light, Air or View Easement	24
Entire Agreement	24
Recording	24
Joint and Several Liability	24
Waiver	24
Exhibits	24
EXHIBIT E	27
PERCENTAGE RENT SCHEDULE	27

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease ("Amendment") amends that certain Lease Agreement ("Lease") dated September 16, 1996 by and between BH Partnership, a California Limited Partnership and Webster Hotel Building, a California General Partnership ("Lessor") and Cox Communications PCS, L.P., a Delaware Limited Partnership ("Lessee").

RECITALS

A. Lessor and Lessee have entered into the Lease, a copy of which is attached hereto as Exhibit "A", and by this reference incorporated herein.

B. Under that certain City of San Diego master ground lease, by and between Lessor and the City of San Diego ("City"), the Lease is subject to approval by the City.

C. The City has advised the Lessor that Paragraph 3A of the Lease must be specific with regard to the number of antennas and support structures permitted on the Premises. Subsequent modifications to the Lease will require prior City approval.

D. The City requires the "City Of San Diego Land Use On The Air Test Instructions and Procedures" be incorporated into the Lease.

E. The City requires the "Minimum Standard Sublease Conditions" be incorporated into the Lease.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Paragraph 3A of the Lease is hereby amended by deleting the first sentence in its entirety and replacing it with the following: "LESSEE may use the Premises to construct, maintain, secure and operate a communications facility, including required antennas (as the same may be modified, and/or substituted from time to time, provided such modifications or substitutions do not materially change the appearance of the equipment) and antennas support structures, as shown on Attachment 2, and for no other use or purpose. Any changes or modifications to the Premises resulting in additional antennas or support structures not shown on Attachment 2 shall be made only with the prior written consent of the City of San Diego, approval not to be unreasonably withheld."

2. The following shall be inserted as Attachment 6 to the Lease:

CITY OF SAN DIEGO LAND USE
"ON THE AIR" TEST INSTRUCTIONS AND PROCEDURES

1. Explanation

Prior to City's approval of an application for a new radio-electronic use authorization or modification of an existing authorization, pre-installation or pre-use tests will be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to the existing authorized radio electronic type uses at the facility.

Should the interference problems result, it will be the responsibility of the user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves.

Permittee/Lessees may recognize the right of prior authorizes and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other users.

2. Pre-installation or pre-use Testing

A. It will be the responsibility of the applicant to make the complete arrangements and conduct all tests in a technically sound manner.

(1) A listing of all radio-electronic land use Permittee/Lessees operating at the facility will be obtained from the City.

B. It will be the responsibility of the applicant to notify all radio-electronic Permittees/Lessees at the facility of the tests and details thereof, at least 14 days in advance of the tests.

(1) The notification shall be in the form of letter to each listed Permittee/Lessee giving a technical summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the Permittees/Lessees to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the Permittee/Lessee.

(2) A copy of these instructions, "City of San Diego Radio-Electronic Land Use On-The-Air Test Instructions and

Procedures" shall be attached to each notification and it shall be so noted in the notification letter.

- (3) Notification of Permittee/Lessee shall be sent via U.S. Mail or hand delivered.
- (4) The notification letter to the City Communications Engineer shall include a list of all Permittees/Lessee notified.

C. It will be the applicant's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each Permittee/Lessee participating in the test and a list of those Permittees/Lessee who did not respond.

D. In the event a notified Permittee/Lessee fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the Permittee/Lessee has assured themselves that their operations will not be affected.

3. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the applicant under the following technical conditions:

A. The applicant's transmitting and/or receiving equipment shall be of the type planned for final use at the site.

- (1) The transmitted RF power shall be the maximum to be used and authorized at the location.
- (2) On-the-air transmitter tests shall include the use of full allowable modulation.
- (3) Antenna height(s), location(s) and type(s) shall be the same as the final installation plan.

B. Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the applicant's electronic equipment.

C. All tests will include testing with all frequencies planned for use by the applicant at the location.

3. The following shall be inserted as Attachment 7 to the Lease:

MINIMUM STANDARD SUBLEASE CONDITIONS

ASSIGNMENT AND SUBLEASING: Sublessee shall not assign this lease or sublet the Premises or any part thereof without the prior written consent of Lessee and the City of San Diego, hereinafter, "City". An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: Sublessee shall assume the defense of, indemnify and save harmless Lessee and City from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have risen from the operations conducted on the leased premises or from any act or omission of Sublessee, his agents or invitees.

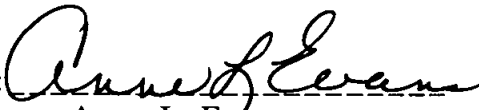
INSURANCE: Sublessee shall be insured by an insurance carrier acceptable to the Lessee and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$1 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of the policy of insurance shall be filed with the City and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to City by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for Lessee or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this lease, Sublessee agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated September 16, 1996, as amended between the sublessor 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.

LESSOR

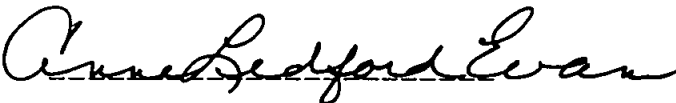
BH PARTNERSHIP,
INC.,
a California Limited Partnership

By: 
Name: Anne L. Evans
Title: Managing General Partner

WEBSTER HOTEL BUILDING,
a California General Partnership

By: 

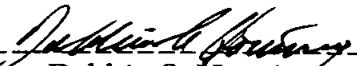
Name: Anne Ledford Evans as successor of the William D. Evans
share of the trust created by Decree of Distribution in the Estate of
William Henry Evans, General Partner

By: 

Name: Anne Ledford Evans as successor of the William D. Evans
share of the trust created by Decree of Distribution in the Estate of
Geraldine M. Evans, General Partner

LESSEE

COX COMMUNICATIONS PCS,
L.P.,
a Delaware Limited Partnership

By: 
Name: Debbie S. Horning
Vice President Cox
Communications Pioneer, Inc.,
General Partner of Cox Pioneer
Partnership, the General Partner
of Cox Communications PCS,
L.P.

First Lease Amendment
Assignment of Lease

This Amendment to the Building Lease Agreement is made by and between Cox California PCS, Inc., a Delaware Corporation (LESSEE), and Cox Communications PCS, LP, a Delaware Limited Partnership (ASSIGNEE), and BH Partnership, a California Limited Partnership and Webster Hotel Building, a California General Partnership (LESSOR).

For value received, it is agreed by and between the parties that:

1. LESSEE hereby agrees to assign, transfer and deliver to ASSIGNEE all of LESSEE's right in and to a certain lease between LESSEE and LESSOR for premises known as:

The Bahia Hotel, 998 West Mission Bay Dr., San Diego, Ca

under the lease dated September 16, 1996.

2. ASSIGNEE agrees to accept said Lease, pay all rents and perform all of LESSEE's remaining obligations under the Lease accruing after the date of this amendment. ASSIGNEE further agrees to indemnify and save harmless the LESSEE from any breach of ASSIGNEE's obligations hereunder.
3. The parties acknowledge that LESSEE shall deliver possession of the lease premises to ASSIGNEE on January 1, 1997 (effective date); time being of the essence. All rights or duties accrued under the Lease prior to said date, shall be fully paid and performed by LESSEE, and thereafter by the ASSIGNEE.
4. LESSOR hereby consents to the assignment of lease, provided that:
 - a) Assent to the assignment shall not discharge LESSEE of its obligations to pay rent under the Lease in the event of breach by ASSIGNEE.
5. The parties acknowledge the lease to be in good standing and in full force and effect.

6. This agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

Signed this 5 day of Feb., 1997.

LESSOR:

BH Partnership, a California Limited Partnership

By: Anne L. Evans

Name: Anne L. Evans

Title: Managing General Partner

Webster Hotel Building, A California General Partnership

By: Anne L. Evans

Name: Anne Ledford Evans as successor trustee of the William D. Evans share of the trust created by Decree of Distribution in the Estate of William Henry Evans, General Partner

By: Anne L. Evans

Name: Name: Anne Ledford Evans as successor trustee of the William D. Evans share of the trust created by Decree of Distribution in the Estate of Geraldine M. Evans, General Partner

LESSEE:

California PCS, Inc., a
Delaware Corporation

BY: Debbie S. Horning

Name: Debbie S. Horning

Title: Vice President Technical Operations

ASSIGNEE

Cox Communications PCS, LP,
a Delaware Limited Partnership

By: Debbie S. Horning

Name: Debbie S. Horning

Title: Vice President Cox Communications Pioneer, Inc.,
General Partner of Cox Pioneer Partnership, the
General Partner of Cox Communications PCS, LP.

BUILDING LEASE AGREEMENT

This BUILDING LEASE AGREEMENT ("Lease") is effective this 16th day of September 1996, by and between BH Partnership, a California Limited Partnership and Webster Hotel Building, a California General Partnership ("LESSOR"), and Cox California PCS, Inc., a Delaware corporation ("LESSEE").

Recitals

LESSOR is the owner of certain real property commonly known as The Bahia hotel, 998 West Mission Bay Drive, San Diego, California ("LESSOR's Property"); and LESSEE desires to lease a portion of LESSOR's Property, together with a right of access and a right to install utilities ("Premises");

NOW, THEREFORE, in consideration of the above and the mutual obligations and agreements contained below, the parties agree as follows:

1. The Premises

A. LESSOR's Property is described on Attachment 1.

B. The Premises are on, about, or within a building on LESSOR's Property (the "Building"), and consist of ground space of approximately Two Hundred Fifty (250) square feet together with such additional rooftop, ground or building space as is reasonably necessary to accommodate utility cables and conduits for the connection of LESSEE'S equipment and antennas as delineated on the plans to be prepared at the sole cost of LESSEE. Those plans shall be attached hereto as Attachment 2A-2D and once approved and initialed by the building engineer, such approval not to be unreasonably withheld, shall control to describe the Premises.

2. Lease And Irrevocable Right

LESSOR hereby leases the Premises to LESSEE and grants to LESSEE a right (during the initial term and any extensions thereof) of access to the Premises (seven [7] days a week, twenty-four [24] hours a day) and the right to install and maintain utility cables, conduits and pipes from the Premises to the nearest appropriate utility connection. If required during the term of the Lease, LESSEE shall have the right to install at its sole cost and expense and in accordance with applicable laws, a temporary power source (including a generator) on the Premises or at an appropriate location on LESSOR's Property reasonably acceptable to LESSOR. LESSEE shall have the right to park its vehicles in the designated commercial parking area on LESSOR's Property when LESSEE is servicing its communications facility. LESSEE agrees to provide reasonable notice to LESSOR for normal maintenance visits and to sign in/ sign out with the security office. LESSEE agrees to use its best efforts not to disturb the hotel guests.

3. Use Of The Property

A. LESSEE may use the Premises to construct, maintain, secure and operate a communications facility, including required antennas (as the same may be modified, added to and/or substituted from time to time) and antenna support structures, and for any incidental other use. Each such antenna and/or antenna support structure shall be configured as designed by LESSEE from time to time, provided that LESSEE obtains, pursuant to Section 3.B. below, all permits and approvals required by applicable jurisdictions relative to any such desired configuration. Improvement of the Premises to meet LESSEE's needs shall be at LESSEE's sole expense, and LESSEE shall maintain the Premises throughout the term in a reasonable condition.

B. LESSEE's ability to use the Premises is dependent upon LESSEE obtaining all of the certificates, permits and other approvals which may be required from any federal, state or local authority and/or any easements which LESSEE determines are required from any third parties. LESSOR shall cooperate with LESSEE from time to time, but at no expense to LESSOR, in its efforts to obtain such approvals and/or easements as may be required for the Premises as initially configured or as subsequently modified, and LESSOR shall take no action which will adversely affect the status of the Premises with respect to LESSEE's proposed uses. If any application by LESSEE for any such approval is finally denied or rejected, or if any such certificate, permit, license approval and/or easement is canceled, expires, lapses or

INITIAL
<i>af</i>
<i>MB</i>

is otherwise withdrawn or terminated LESSEE shall have the right to immediately terminate this Lease, provided however, such termination occurs within ninety (90) days after the date of this Lease.

C. Should LESSOR receive any request or requests to locate any wireless communications transmitting/receiving equipment on LESSOR's Property from any third party which is in the business of wireless communications ("Carrier"), LESSOR agrees to covenant that the Carrier will not interfere with LESSEE's use of the Premises. Furthermore, LESSEE agrees not to interfere with any existing carriers on the LESSOR's Property.

4. Term And Rent

A. This Lease shall be for an initial term of Five (5) years beginning on the date ("Commencement Date") which is the earliest to occur of (i) LESSOR's receipt of notice from LESSEE, (ii) LESSEE's commencement of construction on the Premises, or (iii) twelve (12) months after the date first-above written, at an initial Annual Rent of Twenty Two Thousand Eight Hundred Dollars (\$22,800.00), which rent shall be paid in equal monthly installments, in advance, on the first day of each calendar month to LESSOR or as LESSOR may otherwise direct from time to time in writing at least thirty (30) days prior to any rent payment date. If LESSEE fails to pay any Rent within ten (10) days after the due date under this Lease, LESSEE shall pay to LESSOR, the sum of One Hundred Dollars (\$100.00) as a late fee.

B. The parties agree that Annual Rent shall be adjusted annually throughout the term of the Lease on each anniversary of the Commencement Date (or the first day of the month in which such anniversary occurs) by the percentage change in the most recently published Consumer Price Index (1982-84=100) Urban Wage Earners and Clerical Workers-San Diego ("Index") compared to the Index published twelve (12) months earlier, with a minimum of three percent (3%). If the Index is discontinued or changed so that it is not practical to obtain a continuous measurement of price changes, the Index shall be replaced by a comparable governmental index.

5. Termination

LESSEE shall have the right to terminate this Lease beginning five (5) years after the Commencement Date of this Lease. LESSEE shall notify LESSOR of LESSEE's exercise of its right to terminate this Lease, and this Lease shall terminate upon LESSOR's receipt of such notice, concurrent with a payment to LESSOR of a sum in the amount of twelve (12) times the monthly Rent at the time of the termination. Such termination shall relieve both parties of any further obligations under this Lease, although each shall continue to have remedies for any breach of a lease obligation which occurred prior to the date of termination. Within sixty (60) days following the expiration or termination of this Lease, LESSEE shall remove its personal property and fixtures and restore the Premises to its original condition, reasonable wear and tear excepted. The parties agree that all of the provisions of Section 6, 7, 9, and 11 shall continue to apply until LESSEE has completed its removal of personal property and fixtures and restoration of the Premises.

6. Property Insurance: Fire Or Other Casualty

A. Throughout the term of this Lease, LESSOR shall maintain all-risk property insurance coverage in an amount equal to the full replacement cost of all improvements now or hereafter located on LESSOR's Property that is reasonably commercially available.

B. If the Building, or access to it, is impaired, damaged or destroyed by a casualty covered by the insurance required to be carried by LESSOR, LESSOR shall promptly commence appropriate repairs (to be diligently prosecuted to completion entirely at LESSOR's expense), and this Lease shall continue in full force and effect. If however, the Building is damaged to the extent of more than one-half (1/2) of its replacement cost, or to any substantial extent by a casualty not so covered by insurance, LESSOR shall deliver written notice to LESSEE, within thirty (30) days after the casualty, of LESSOR's election not to repair the Building. If as a result of any such casualty, the Premises becomes totally or partially unusable by LESSEE, Annual Rent shall abate during the period of repair in the same proportion to the total Annual Rent as the portion of the Premises rendered unusable bears to the entire Premises.

C. If LESSOR (a) undertakes the repair of the Building or of any access thereto, but fails to complete such repair within forty-five (45) days after the casualty, or (b) notifies LESSEE of LESSOR's intention not to repair the Building, or (c) fails to deliver to LESSEE the written notice required under Section 6.B. within thirty (30) days, then LESSEE may immediately terminate this Lease by giving written notice of its election to terminate to LESSOR.

INITIAL
AK
MS

D. LESSOR agrees that (if reasonably required) during any period of repair (or for the balance of the lease term if LESSOR elects not to repair the Building), LESSEE may use and/or construct a substitute communications facility upon an appropriate other portion of LESSOR's Property which is suitable for LESSEE's purposes, provided such space is available. The exact site to which LESSEE may relocate shall be determined by LESSOR, and it may be upon any portion of LESSOR's Property (or other premises owned or controlled by LESSOR), provided that LESSEE reasonably approves the site as equally suitable for LESSEE's intended uses. LESSOR shall designate a temporary site to which LESSEE may relocate with five (5) business days of the casualty, and it shall designate a permanent site to which LESSEE may relocate in any notice to LESSEE that it does not intend to repair the Building.

7. Personal Property Insurance

LESSEE shall provide LESSOR satisfactory evidence of personal property insurance in an amount sufficient to fully protect all personal property owned or controlled by LESSEE on and within the Premises from theft, fire, or other loss or damage while upon the Premises.

8. Intentionally Omitted.

9. Public Liability Insurance

Beginning on the Commencement Date and throughout the term of this Lease, as the same may be extended, each party shall, at its sole cost and expense, keep or cause to be kept in force, commercial general liability insurance coverage against claims and liability for personal injury, death or property damage arising from the use, occupancy, disuse or condition of LESSOR's Property or the Premises, as the case may be, and improvements thereon, providing protection of at least One Million and 00/100 Dollars (\$1,000,000.00). Each party shall deliver to the other party, not later than thirty (30) days after the Commencement Date, certificates of insurance evidencing the coverage required pursuant to Sections 6, 7 and 9. All certificates shall expressly provide that not less than thirty (30) days prior written notice shall be given to the other party in the event of any material alteration to or cancellation of the coverage evidenced by such certificates. LESSEE shall add LESSOR as an additional insured on the LESSEE's commercial general liability insurance policy. LESSEE agrees to maintain statutory workers compensation insurance.

10. Utilities

LESSEE shall be responsible directly to the serving entities for all utility services required for LESSEE's use of the Premises. Should electric power be provided by LESSOR, LESSEE shall either (i) pay a fixed monthly payment to LESSOR, such payment shall be adjusted by annual audits of actual electricity usage, or (ii) install an electric meter and LESSEE's usage shall be read by LESSOR or, at LESSOR's option, by LESSEE, on a monthly basis and the cost of electricity use by LESSEE shall be paid by LESSEE to LESSOR as a payment separate from Annual Rent and shall be computed at the then-current utility rate.

11. Indemnification

Each party hereby indemnifies the other and the other's partners, affiliates, agents and employees against and holds the other and all such persons and entities harmless from any and all costs (including reasonable attorney's fees and costs) and claims of liability for or loss from personal injury and/or property damage to the extent such claims result from or arise out of the use and/or occupancy of LESSOR's Property by such indemnifying party. Notwithstanding the preceding, the provisions of this Section 11 shall not apply to any claim arising from or in connection with any negligent or intentional conduct of the indemnified party or of any agent, employee, contractor or invitee of such party. Without limiting the foregoing, LESSEE shall defend and indemnify LESSOR and LESSOR'S officers, affiliates, agents, and employees against any liability or claim of liability for personal injury, and related reasonable attorneys' fees and costs, arising or allegedly arising out of electromagnetic fields generated by LESSEE'S facilities at the Premises or the deployment of PCS technology by LESSEE.

INITIAL
<i>ase</i>
<i>MS</i>

12. LESSEE Defaults

A. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by LESSEE:

(1) The failure by LESSEE to make any payment of Annual Rent or any other payment required to be made by LESSEE hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof is received by LESSEE from LESSOR.

(2) The failure by LESSEE to observe or perform any of the covenants or provisions of this Lease to be observed or performed by LESSEE, other than as specified in Section 12.A.(1), where such failure shall continue for a period of thirty (30) days after written notice thereof is received by LESSEE from LESSOR; provided, however, that it shall not be deemed an Event of Default by LESSEE if LESSEE shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecute such cure to completion.

B. If there occurs an Event of Default by LESSEE, in addition to any other remedies available to LESSOR at law or in equity, LESSOR shall have the option to terminate this Lease and all rights of LESSEE hereunder.

C. If there occurs an Event of Default by LESSEE, LESSOR shall not have the right, prior to the termination of this Lease pursuant to Section 13 below, to re-enter the Premises and/or remove persons or property from the Premises.

13. Resolution Of Disputes

A. Except as set forth in Section 13.D. below, all controversies or claims arising out of or relating to this Lease or any agreements or instruments relating thereto, or their enforcement or interpretation, or arising out of or relating to any alleged breach, default, or misrepresentation in connection with any of the provisions under this Lease, or any agreements or instruments relating thereto, shall be resolved by submission to final and binding arbitration at the offices of Judicial Arbitration & Mediation Services, Inc. ("JAMS") located in San Diego, California. Such arbitration shall be conducted in accordance with the most recent version of the JAMS Rules of Practice and Procedure for the Arbitration of Commercial Disputes ("JAMS Rules") as of the date of this Lease.

B. The aggrieved party shall initiate arbitration by sending written notice of its intention to arbitrate to the other party to this Lease at the addresses listed in Section 14 below and to JAMS at 401 B Street, Suite 200, San Diego, California 92101. Such notice shall contain a description of the dispute, the amount in controversy, and the remedy sought. If and when any party to this Lease shall make a demand for arbitration, the parties shall execute any and all documents and statements required by JAMS for the arbitration or settlement of the dispute in accordance with the JAMS Rules. In no event shall any demand for arbitration be made after the date when institution of a legal or equitable proceeding based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations. If there is any legal or arbitration action or proceeding between LESSOR and LESSEE to enforce any provision of the Lease or to protect or establish any right or remedy of either LESSOR or LESSEE hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred by such prevailing party in such action or proceeding, including proceedings to confirm, correct, or vacate any arbitration award, and any appeal in connection therewith.

C. The parties may agree on an arbitrator from the JAMS panel for any arbitration pursuant to this Section 13. If the parties are unable to agree on an arbitrator, JAMS shall provide a list of three prospective arbitrators and each party shall strike one in accordance with the JAMS Rules. The remaining arbitrator shall serve as the designated arbitrator during the arbitration proceedings conducted pursuant to the JAMS Rules. The final decision of the arbitrator shall be binding on the parties and shall not be subject to appellate review. In the event of any conflict between this Section 13 and the JAMS Rules, this Section 13 shall control.

D. Notwithstanding any provision of this Section 13 to the contrary, LESSOR and LESSEE shall be entitled to obtain immediate equitable relief, such as by temporary restraining order and injunction, in state or federal court to prevent any violation of any of the covenants, conditions or provisions contained in this Lease.

INITIAL
<i>[Signature]</i>
<i>[Signature]</i>

E. LESSOR and LESSEE agree that, in any arbitration conducted pursuant to this Section 13, the arbitrator shall have no right or power to award punitive damages.

14. Notices

See Attachment 5, section 14. Unless LESSOR otherwise specifies in writing, rent checks from LESSEE shall be made payable to the entity listed below to whom notices are sent.

LESSEE:

Cox California PCS, Inc.

18200 Von Karman

Irvine, California 92612

Attn: Robbie Frazier

(714) 623-5786

Fax: (714) 623-5790

LESSOR:

BH Partnership

998 West Mission Bay Drive

San Diego, CA 92109

Attn: David Cherashore

(619) 539-7600

Tax ID # 33-0540170

15. Sale Or Transfer By LESSOR

Should LESSOR, at any time during the term of this Lease, sell, lease, transfer or otherwise convey all or any part of LESSOR's Property to any transferee other than LESSEE, then such transfer shall be under and subject to this Lease and all of the LESSEE's rights hereunder.

16. Hazardous Material

A. With the exception of asbestos in the sprayed acoustic ceiling, LESSOR warrants and agrees that neither LESSOR nor, to LESSOR's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (as defined in Section 16.B.) on, under, about or within LESSOR's Property in violation of any law or regulation. LESSOR and LESSEE each agree that they will not use, generate, store or dispose of any Hazardous Material (as defined in Section 16.B.) on, under, about or within LESSOR's Property in violation of any law or regulation.

B. LESSOR and LESSEE each agree to defend and indemnify the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any warranty or agreement contained in Section 16.A. As used in Section 16.A., "Hazardous Material" shall mean any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

INITIAL
<i>QPE</i>
<i>MB</i>

17. Quiet Enjoyment And Non-Interference

LESSOR warrants and agrees that LESSEE, upon paying the rent and performing the covenants herein provided, shall peaceable and quietly have and enjoy the Premises. LESSOR shall not cause or permit any use of LESSOR's Property which interferes with or otherwise impairs the quality of the communications transmissions made to and from the Premises by LESSEE. LESSEE agrees not to interfere with existing communication facilities and the normal operation of the building.

18. Miscellaneous Provisions

A. LESSOR warrants and agrees that LESSOR has good and sufficient title to and interest in the Premises and has full authority to enter into and execute this Lease and that there are no undisclosed liens, judgments or impediments of title on the Premises which would affect this Lease.

B. This Lease, including the attached exhibits, incorporates all agreements and understandings between LESSOR and LESSEE, and no verbal agreements or understandings shall be binding upon either LESSOR or LESSEE, and any addition, variation or modification to this Lease shall be ineffective unless made in writing and signed by both of the parties.

C. The parties agree that each shall comply in all respects with all applicable building codes, regulations and ordinances affecting the Property, and that this Lease and the performance hereof shall be interpreted, construed and governed by the laws of the State of California, irrespective of California's choice of laws principles. LESSEE shall maintain all permits pertaining to the operation of its facility throughout the term of this Lease.

D. This Lease, and each and every covenant and condition herein, is intended to benefit the Premises and shall extend to and bind the heirs, personal representatives, successors and assigns of the parties.

E. The parties agree that all of the provisions hereof shall be construed as both covenants and conditions, the same as if the words importing such covenants and conditions had been used in each separate paragraph.

F. The language of each part of this Lease shall be construed simply and according to its fair meaning, and this Lease shall not be construed either for or against either party.

G. If LESSOR breaches this Lease in any manner or substantially breaches any material covenant, agreement or promise contained in any mortgage or deed of trust superior to LESSEE's estate hereunder or contained in any lease under which LESSOR holds title to any portion of LESSOR's Property, and if LESSOR fails to commence to cure such breach within thirty (30) days after receiving a written notice from LESSEE specifying exactly the violation (or if LESSOR fails thereafter to diligently prosecute the cure to completion), then LESSEE may enforce any and all of LESSEE's rights and/or remedies hereunder or by law.

H. At LESSOR's option, this Lease shall be subordinate to any mortgage by LESSOR which from time to time may encumber all or any part of the Premises, provided that every such mortgagee shall recognize, in writing and in a form acceptable to LESSEE, (i) the validity of this Lease in the event of a foreclosure of LESSOR's interest and (ii) LESSEE's right to remain in occupancy and have access to the Premises as long as there is not an existing Event of Default by LESSEE with all cure periods having lapsed at the time of foreclosure. LESSEE shall execute whatever instruments may reasonably be required to evidence any such subordination. If, as of the date of execution of this Lease, there is any deed of trust, ground lease or other similar encumbrance affecting LESSOR's Property, LESSOR agrees to use its best efforts to assist LESSEE and to cooperate with LESSEE in obtaining from the holder of such encumbrance an agreement that LESSEE shall not be disturbed in its possession, use and enjoyment of the Premises.

I. If any portion of this Lease is declared by a court of competent jurisdiction (or by an arbitrator pursuant to the provisions of Section 13 above) to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court or arbitrator, as the case may be, to render such portion enforceable and, as so modified, such portion and the balance of this Lease shall continue in full force and effect.

INITIAL
<i>CE</i>
<i>MF</i>

J. In addition to the other remedies provided for in this Lease, LESSOR and LESSEE shall be entitled to immediate restraint by injunction of any violation of any of the covenants, conditions or provisions of this Lease.

K. The captions of the paragraphs of this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.

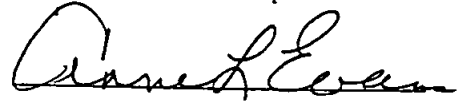
L. Concurrently with the execution of this Lease, LESSOR shall execute before a notary and deliver to LESSEE for recording a "Memorandum of Lease Agreement" in the form of Attachment 3.

M. Attachment 5 attached hereto and made a part thereof.

IN WITNESS WHEREOF, LESSOR and LESSEE have duly executed this Building Lease Agreement as of the day and year first-above written.

LESSOR:

BH Partnership,
a California Limited Partnership

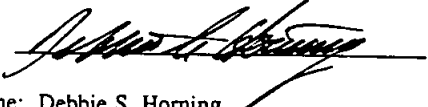
By: 

Name: Anne L. Evans

Title: Managing General Partner

LESSEE:

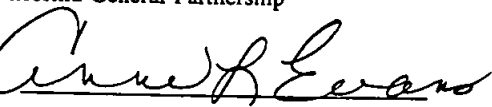
Cox California PCS, Inc.
a Delaware Corporation

By: 

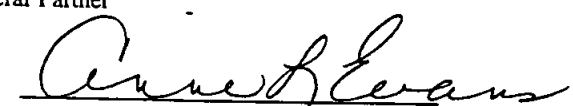
Name: Debbie S. Horning

Title: Vice President Technical Operations

Webster Hotel Building,
A California General Partnership

By: 

Name: Anne Ledford Evans as successor trustee of the
William D. Evans share of the trust created by Decree
of Distribution in the Estate of William Henry Evans,
General Partner

By: 

Name: Anne Ledford Evans as successor trustee of the
William D. Evans share of the trust created by Decree of
Distribution in the Estate of Geraldine M. Evans,
General Partner

LEGAL DESCRIPTION OF LESSOR'S PROPERTY

That portion of the tidelands and submerged or filled lands of MISSION BAY, formerly FALSE BAY, according to Map thereof made by James Pascoe in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego, November 14, 1921, and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL I:

Beginning at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8 and 10 and a portion of Block 9 and Lot "A", Inspiration Heights, according to Map thereof No. 1700, filed in the Office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South $89^{\circ}55'56''$ West, (Record North $89^{\circ}59'$ West) 25.00 feet to a Point of Tangent Curve in the boundary of said Lot 24; thence South $00^{\circ}04'04''$ East, 2.00 feet to an intersection with a line which is parallel with and 2.00 feet Southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North $89^{\circ}55'56''$ East, 249.70 feet; thence North $05^{\circ}30'00''$ West 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town" (The Lambert Grid Co-Ordinates, California Zone 6, for said Station "Old Town" are $X = 1,712,415.17$ - East and $Y = 213,819.22$ - North) and said Triangulation Station is located at Latitude $32^{\circ}45'02.845''$ North and Longitude $117^{\circ}11'07.200''$ West, being also the Point of Origin for the San Diego City Engineer's Mission Bay Park Co-Ordinate System; thence North 7,745.14 feet and West 19,146.03 feet to the TRUE POINT OF BEGINNING, the Mission Bay Park Co-Ordinates of said TRUE POINT OF BEGINNING being North 7,745.14 feet and West 19,146.93 feet; thence North $15^{\circ}33'49''$ East, 91.02 feet to Mission Bay Park Co-Ordinates North 7,832.82 feet and West 19,122.51 feet, being also a point on the Mean High Tide Line of Mission Bay, as established on Miscellaneous Map No. 198 recorded in the Office of the County Recorder of San Diego County on June 17, 1948; thence continuing along said Mean High Tide Line as follows: South $76^{\circ}42'39''$ East, 20.00 feet to Mission Bay Park Co-Ordinates North 7,828.23 feet and West 19,103.05 feet; thence North $75^{\circ}27'18''$ East 205.98 feet to Mission Bay Park Co-Ordinates North 7,879.95 feet and West 18,903.67 feet; thence North $80^{\circ}32'22''$ East 201.56 feet to Mission Bay Park Co-Ordinates North 7,913.09 feet and West 18,704.85 feet; thence North $51^{\circ}26'35''$ East 53.10 feet; thence North $37^{\circ}18'49''$ East 100.98 feet; thence North $8^{\circ}51'34''$ East 162.01 feet to a point hereby designated as Station "17" on said Mean High Tide Line; thence North $4^{\circ}30'49''$ West, 203.19 feet to Mission Bay Park Co-Ordinates North 8,389.13 feet and West 18,593.16 feet; thence North $16^{\circ}54'27''$ West, 64.06 feet; thence North $25^{\circ}25'48''$ West, 100.02 feet; thence North $29^{\circ}25'37''$ West, 100.40 feet; thence North $36^{\circ}08'47''$ West, 102.17 feet to Mission Bay Park Co-Ordinates North 8,710.70 feet and West 18,764.33 feet; thence leaving said Mean High Tide Line, North $65^{\circ}52'30''$ East, a distance of 435.62 feet; thence South $25^{\circ}16'00''$ East, 305.21 feet to a point on the arc of a tangent curve concave Westerly, having a radius of 705.0 feet; thence Southerly along the arc of said curve, through a central angle of $65^{\circ}16'$, a distance of 803.08 feet to Mission Bay Park Co-Ordinates North

INITIAL



LEGAL DESCRIPTION OF LESSOR'S PROPERTY

7,858.57 feet and West 18,333.94 feet; thence South 40°00'00" West, tangent to said curve, 496.60 feet; thence North 50°00'21" West, 28.76 feet to the Point of Tangency of a curve concave Southwesterly, having a radius of 1260.0 feet; thence Northwesterly along the arc of said curve, through a central angle of 24°25'50", a distance of 536.01 feet to the TRUE POINT OF BEGINNING of this Parcel I.

PARCEL II:

Beginning at said Station 17 of said Mean High Tide Line of Mission Bay according to said Miscellaneous Map No. 198, hereinbefore described in Parcel I; thence leaving said Mean High Tide Line, South 85°29'11" West a distance of 100.00 feet to a point; thence North 4°30'49" West, a distance of 100.00 feet to a point; thence North 85°29'11" East a distance of 100.00 feet to a point on aforesaid Mean High Tide Line; thence South 4°30'49" East, along said Mean High Tide Line, 100.00 feet to the POINT OF BEGINNING of this Parcel II.

Excepting from Parcels I and II all oil, gas, mineral and water upon or beneath said land as reserved by the City of San Diego, a municipal corporation in Lease recorded May 2, 1966 as File No. 73142 of Official Records.

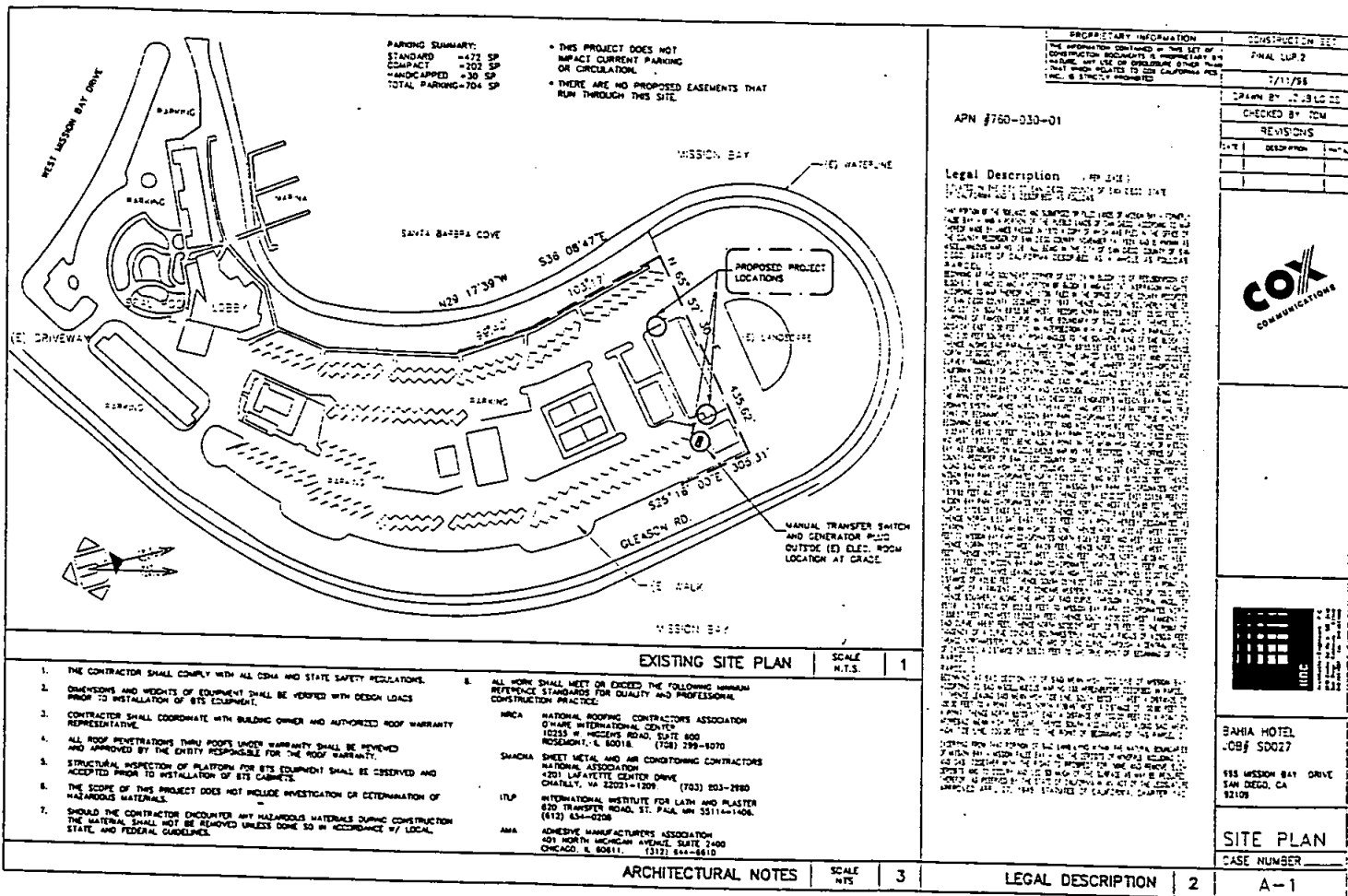
INITIAL
<i>ase</i>
<i>[Signature]</i>

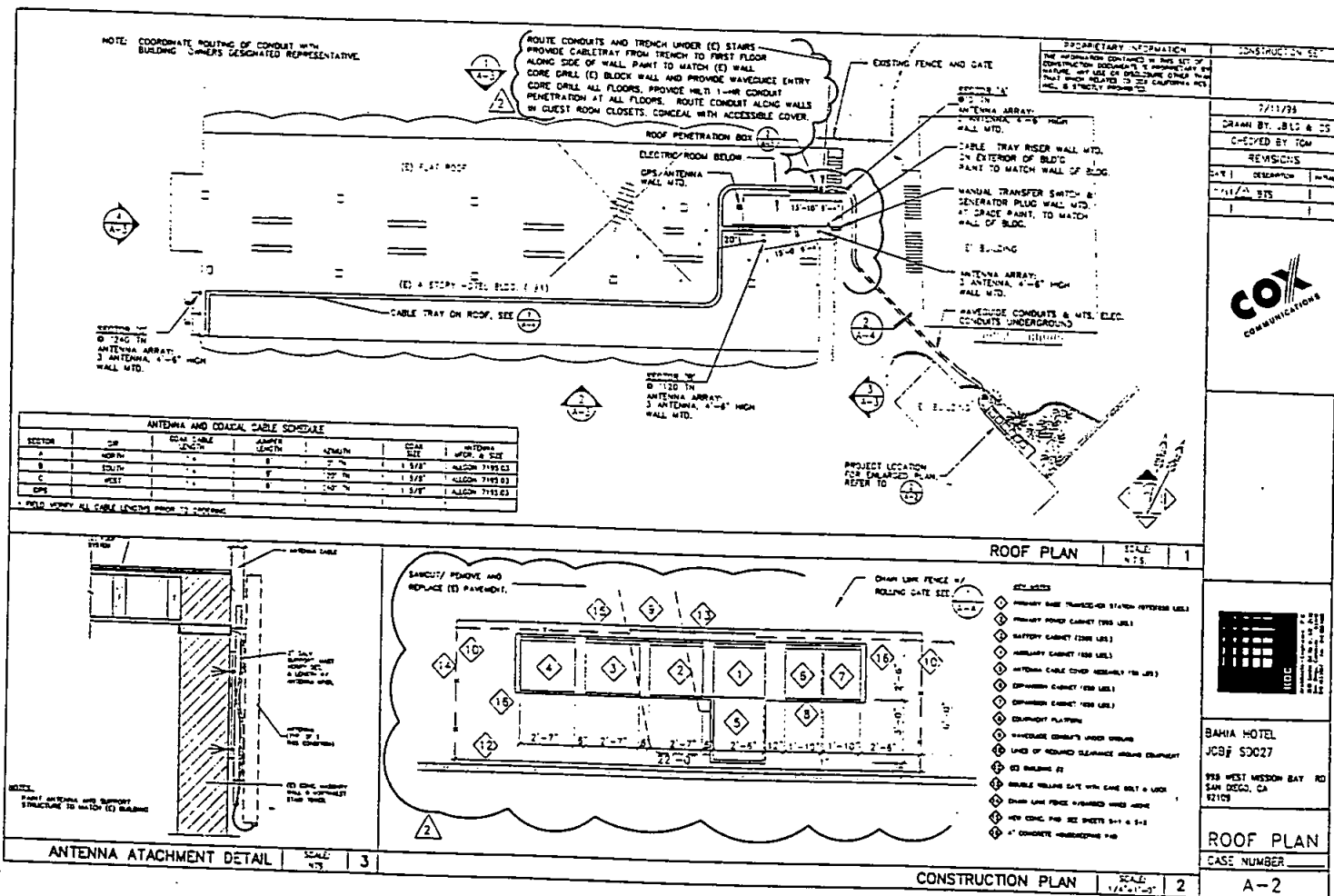
DEPICTION OF THE PREMISES AND LESSEE'S IMPROVEMENTS

[illegible]

INITIAL	
	<i>[Signature]</i>
	<i>[Signature]</i>

DEPICTION OF THE PREMISES AND LESSEE'S IMPROVEMENTS





LESSOR'S APPROVAL:

Anne L Evans

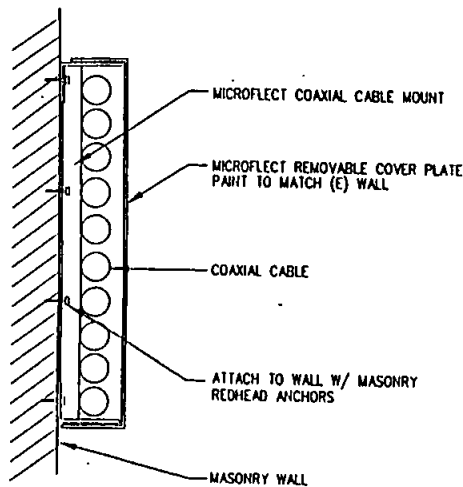
DEPICTION OF THE PREMISES AND LESSEE'S IMPROVEMENTS

		NOTE: BUILDING HEIGHT IS 4 (FOUR) STORIES, ALL ELEV. ABOVE (E) FINISHED GRADE		PROPRIETARY INFORMATION THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF COX COMMUNICATIONS, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF COX COMMUNICATIONS, INC. 7/11/98 DRAWN BY: JB, CS CHECKED BY: TOM REVISIONS <table border="1"> <thead> <tr> <th>DATE</th> <th>DESCRIPTION</th> <th>INITIALS</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> COX COMMUNICATIONS	DATE	DESCRIPTION	INITIALS			
DATE	DESCRIPTION	INITIALS								
EAST ELEVATION/EXIST'G BLDG. #1 SCALE: 1/32"=1'-0" 3		NORTH ELEVATION/EXIST'G BLDG. #1 SCALE: 1/32"=1'-0" 1		BAHIA HOTEL JOB# SD027 918 WESDON BAY RD. SAN DIEGO, CA 92109 EXTERIOR ELEVATIONS CASE NUMBER A-3						
WEST ELEVATION/EXIST'G BLDG. #1 SCALE: 1/32"=1'-0" 4		SOUTH ELEVATION/EXIST'G BLDG. #1 SCALE: 1/32"=1'-0" 2								

LESSOR's APPROVAL:

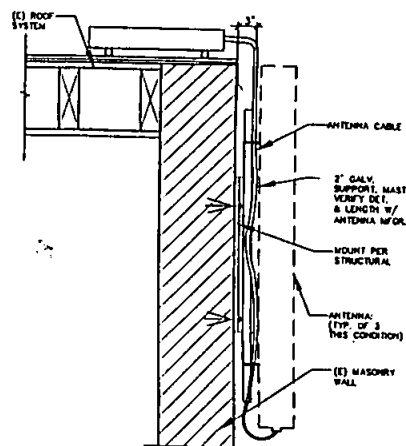
Ann Evans

[Signature]



WALL MOUNTED CABLE TRAY

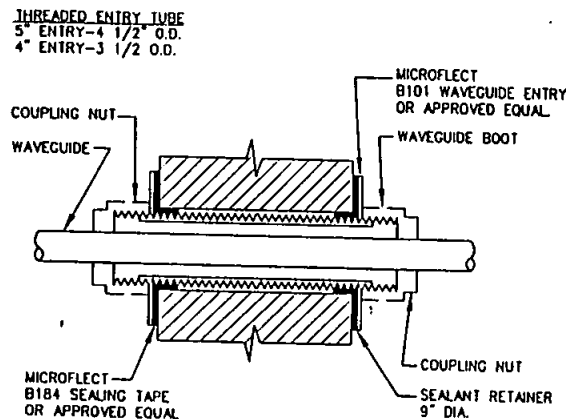
SCALE: NTS 6



NOTES:
PAINT ANTENNA AND SUPPORT STRUCTURE TO MATCH (E) BUILDING
SET ANTENNA MOUNT IN "JFFY-SEAL" OR APPROVED EQUAL. SEAL EDGES AND CONNECTIONS W/ SILICONE SEALANT.

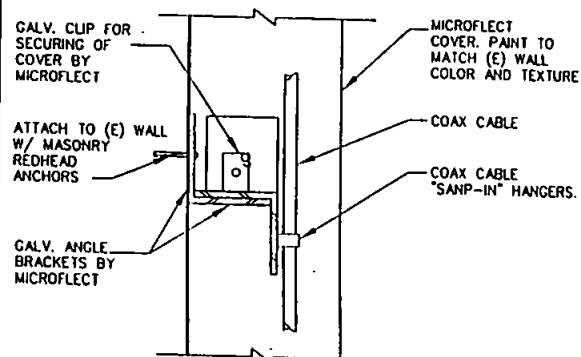
ANTENNA • PARAPET

SCALE: NTS 7



WAVEGUIDE ENTRY / SECTION

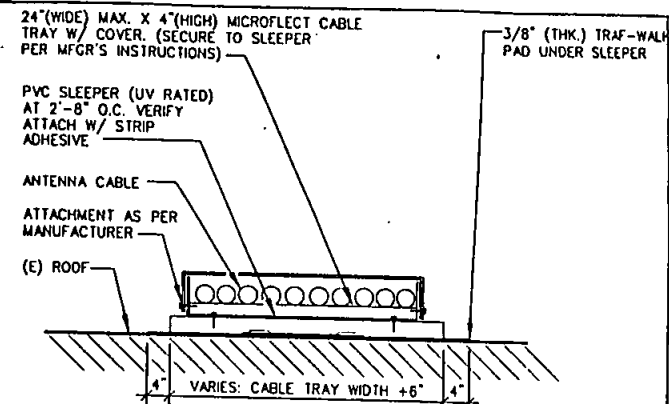
SCALE: NTS 4



MICROFLECT COAXIAL CABLE WALL MOUNT PER MFG.

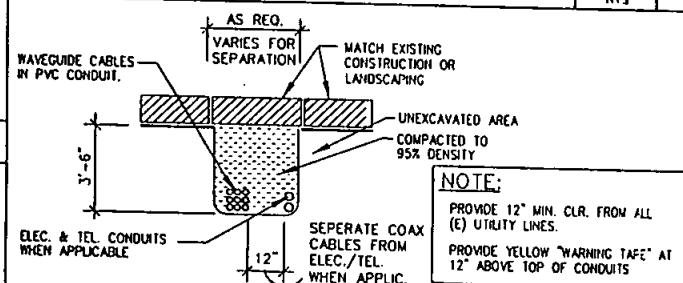
VERTICAL CABLE TRAY ATTACHMENT

SCALE: NTS 5



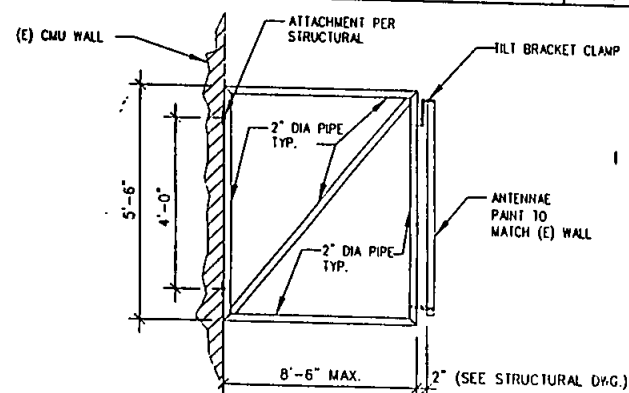
ROOF MOUNTING HOR. CABLE TRAY SUPPORT

SCALE: NTS 1



CONDUIT TRENCH BEYOND METER

SCALE: NTS 2



ANTENNA FRAME DETAIL

SCALE: NTS 3

CONSTRUCTION SET		
PRELIMINARY-CD.2		
7/15/96		
DRAWN BY: TWG,CS,JT		
CHECKED BY: JER		
REVISIONS		
DATE	DESCRIPTION	INITIAL



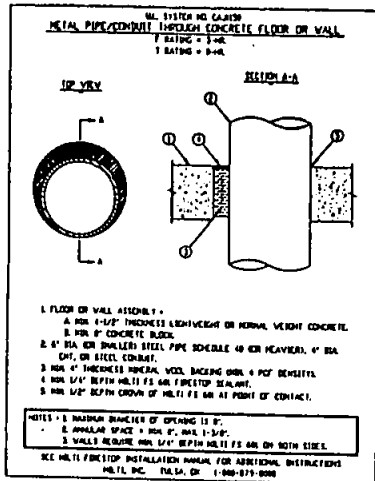
BAHIA HOTEL
JOB# SD027
998 WEST MISSION BAY RD
SAN DIEGO, CA
92109

DETAILS

CASE NUMBER

A-4

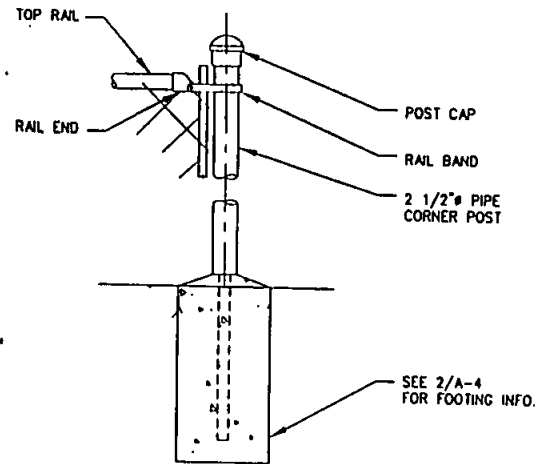
INITIAL	DATE
CEC	7/15/96



HILTI FIRESTOP DETAIL

SCALE:
NTS

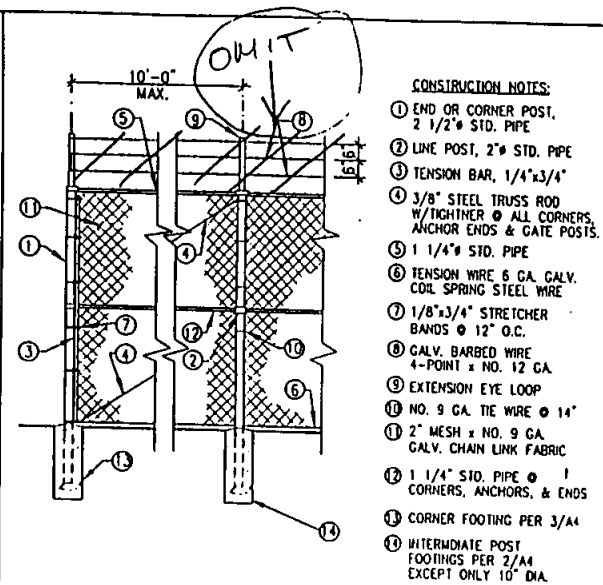
5



GATE POST DETAIL

SCALE:
NTS

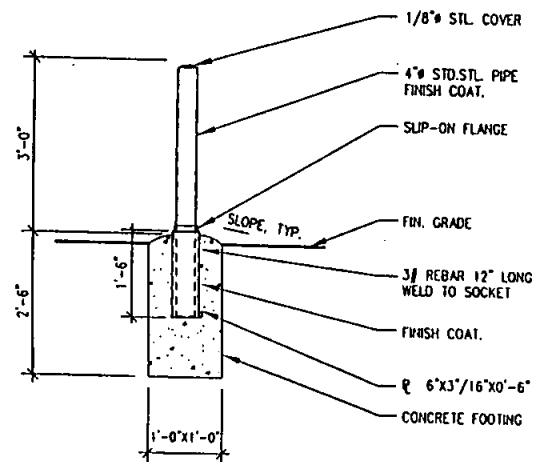
3



FENCE DETAIL

SCALE:
NTS

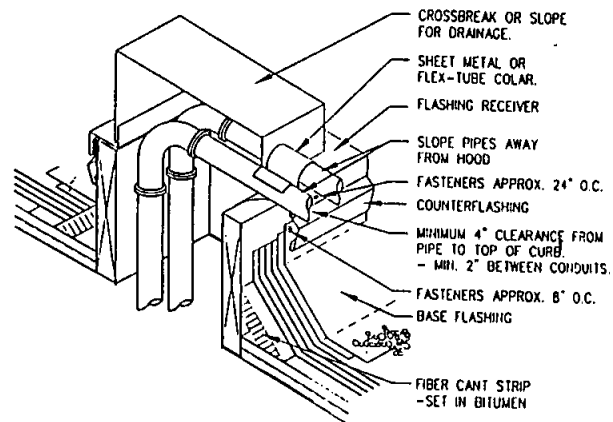
1



REMOVABLE BOLLARD

SCALE:
NTS

4



ROOF PENETRATION FLASHING

SCALE:
NTS

2

CONSTRUCTION SET

7/11/96

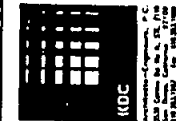
DRAWN BY: TMF, LG

CHECKED BY: TOM

REVISIONS

DATE DESCRIPTION INITIAL

COX COMMUNICATIONS



BAHIA HOTEL
JOB# S0027

998 WEST MISSION BAY RD
SAN DIEGO, CA
92109

DETAILS

CASE NUMBER

A-5

INITIAL

Handwritten initials: [Signature]

MEMORANDUM OF LEASE

ATTACHMENT 3

INITIAL
<i>AK</i>
<i>MA</i>

RECORDING REQUESTED BY AND)
WHEN RECORDED, RETURN TO:)

Cox California PCS, Inc.)
2381 Morse Avenue)
Irvine, California 92714)
Attn: Legal Department)
(Re: SD027 - Wild World))

(Space above for Recorder's use)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is executed by and between BH Partnership, a California Limited Partnership and Webster Hotel Building, a California General Partnership ("Lessor") and COX CALIFORNIA PCS, INC. a Delaware corporation ("Lessee").

RECITALS

A. Lessor and Lessee have executed that certain Communications Site Lease Agreement ("Lease") dated as of _____, 199__ covering certain premises and related improvements ("Premises") having a street address of , 998 West Mission Bay Drive, City of San Diego, State of California, and more particularly described in Attachment 1 attached hereto and incorporated herein by this reference ("Lessor's Property").

B. Lessor and Lessee desire to record notice of the Lease in the Official Records of San Diego County, California.

NOW, THEREFORE, in consideration of the foregoing and the rents and mutual covenants set forth in the Lease, Lessor and Lessee hereby agree and declare as follows:

1. Demise. Lessor has leased and does hereby lease the Premises to Lessee, and Lessee has leased and hired and does hereby lease and hire the Premises from Lessor, all on and subject to the terms, covenants and conditions contained in the Lease together with a right of access to and from the Premises and a right to install utilities over and across Lessor's Property.

2. Term. The term of the Lease ("Term") is Five (5) years commencing on the first to occur of (a) the date a building permit is issued to Lessee for construction of Lessee's Facility (as defined in the Lease) on the Premises or (b) 12 months after the date of the Lease.

3. Interference with Communications. The Lease provides, among other things, that Lessor shall not use or permit the use of any portion of Lessor's Property in a way which interferes with the communications operations of Lessee's Facility, and that Lessee has a right to review and approve or disapprove, according to procedures specified in the Lease, the design, location and operation of any communications transmitting equipment on Lessor's Property by any third party.

4. Lease Controlling. This Memorandum is solely for the purpose of giving constructive notice of the Lease. In the event of conflict between the terms of the Lease and this Memorandum, the terms of the Lease shall control.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Memorandum as of the date first above written.

INITIAL
AK
AK

LESSOR

BH PARTNERSHIP,
a California Limited Partnership

By: Anne L. Evans

Name: Anne L. Evans

Title: Managing General Partner

LESSEE

COX CALIFORNIA PCS, INC.
a Delaware Corporation

By: Debbie S. Hornirg

Name: Debbie S. Hornirg

Title: Vice President, Technical Operations

WEBSTER HOTEL BUILDING,

A California General Partnership

By: Anne Ledford Evans

Name: Anne Ledford Evans as successor of the William D. Evans
share of the trust created by Decree of Distribution in the Estate
of William Henry Evans, General Partner

By: Anne Ledford Evans

Name: Anne Ledford Evans as successor trustee of the William
D. Evans share of the trust created by Decree of Distribution
in the estate of Geraldine M. Evans, General Partner

STATE OF CALIFORNIA)

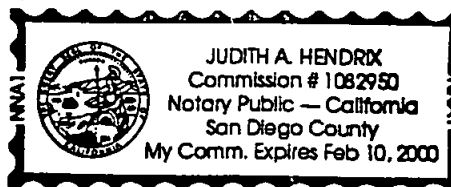
COUNTY OF San Diego)

On August 26, 1996 before me, Judith A. Hendrix personally appeared

Anne L. Evans, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Judith A. Hendrix (Seal)



STATE OF CALIFORNIA)

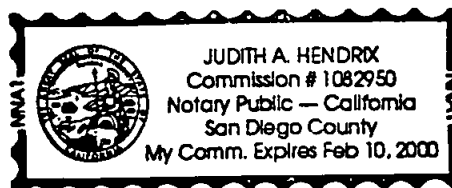
COUNTY OF San Diego)

On August 26, 1996 before me, Judith A. Hendrix personally appeared

Anne Ledford Evans, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Judith A. Hendrix (Seal)



LEGAL DESCRIPTION OF LESSOR'S PROPERTY

(TO BE PROVIDED)

ATTACHMENT 1 TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF LESSOR'S PROPERTY

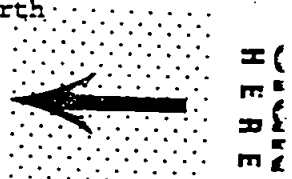
That portion of the tidelands and submerged or filled lands of MISSION BAY, formerly FALSE BAY, according to Map thereof made by James Pascoe in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego, November 14, 1921, and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL I:

Beginning at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8 and 10 and a portion of Block 9 and Lot "A", Inspiration Heights, according to Map thereof No. 1700, filed in the Office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South $89^{\circ}55'56''$ West, (Record North $89^{\circ}59'$ West) 25.00 feet to a Point of Tangent Curve in the boundary of said Lot 24; thence South $00^{\circ}04'04''$ East, 2.00 feet to an intersection with a line which is parallel with and 2.00 feet Southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North $89^{\circ}55'56''$ East, 249.70 feet; thence North $05^{\circ}30'00''$ West 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town" (The Lambert Grid Co-Ordinates, California Zone 6, for said Station "Old Town" are $X = 1,712,415.17$ - East and $Y = 213,819.22$ - North) and said Triangulation Station is located at Latitude $32^{\circ}45'02.845''$ North and Longitude $117^{\circ}11'07.200''$ West, being also the Point of Origin for the San Diego City Engineer's Mission Bay Park Co-Ordinate System; thence North 7,745.14 feet and West 19,146.03 feet to the TRUE POINT OF BEGINNING, the Mission Bay Park Co-Ordinates of said TRUE POINT OF BEGINNING being North 7,745.14 feet and West 19,146.93 feet; thence North $15^{\circ}33'49''$ East, 91.02 feet to Mission Bay Park Co-Ordinates North 7,832.82 feet and West 19,122.51 feet, being also a point on the Mean High Tide Line of Mission Bay, as established on Miscellaneous Map No. 198 recorded in the Office of the County Recorder of San Diego County on June 17, 1948; thence continuing along said Mean High Tide Line as follows: South $76^{\circ}42'39''$ East, 20.00 feet to Mission Bay Park Co-Ordinates North 7,828.23 feet and West 19,103.05 feet; thence North $75^{\circ}27'18''$ East 205.98 feet to Mission Bay Park Co-Ordinates North 7,879.95 feet and West 18,903.67 feet; thence North $80^{\circ}32'22''$ East 201.56 feet to Mission Bay Park Co-Ordinates North 7,913.09 feet and West 18,704.85 feet; thence North $51^{\circ}26'35''$ East 53.10 feet; thence North $37^{\circ}18'49''$ East 100.98 feet; thence North $8^{\circ}51'34''$ East 162.01 feet to a point hereby designated as Station "17" on said Mean High Tide Line; thence North $4^{\circ}30'49''$ West, 203.19 feet to Mission Bay Park Co-Ordinates North 8,389.13 feet and West 18,593.16 feet; thence North $16^{\circ}54'27''$ West, 64.06 feet; thence North $25^{\circ}25'48''$ West, 100.02 feet; thence North $29^{\circ}25'37''$ West, 100.40 feet; thence North $36^{\circ}08'47''$ West, 102.17 feet to Mission Bay Park Co-Ordinates North 8,710.70 feet and West 18,764.33 feet; thence leaving said Mean High Tide Line, North $65^{\circ}52'30''$ East, a distance of 435.62 feet; thence South $25^{\circ}16'00''$ East, 305.21 feet to a point on the arc of a tangent curve concave Westerly, having a radius of 705.0 feet; thence Southerly along the arc of said curve, through a central angle of $65^{\circ}16'$, a distance of 803.08 feet to Mission Bay Park Co-Ordinates North

INITIAL
<i>AK</i>
<i>AK</i>

ATTACHMENT 1



LEGAL DESCRIPTION OF LESSOR'S PROPERTY

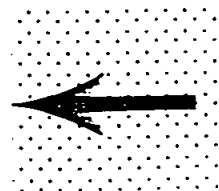
7,858.57 feet and West 18,333.94 feet; thence South 40°00'00" West, tangent to said curve, 496.60 feet; thence North 50°00'21" West, 28.76 feet to the Point of Tangency of a curve concave Southwesterly, having a radius of 1260.0 feet; thence Northwesterly along the arc of said curve, through a central angle of 24°25'50", a distance of 536.01 feet to the TRUE POINT OF BEGINNING of this Parcel I.

PARCEL II:

Beginning at said Station 17 of said Mean High Tide Line of Mission Bay according to said Miscellaneous Map No. 198, hereinbefore described in Parcel I; thence leaving said Mean High Tide Line, South 85°29'11" West a distance of 100.00 feet to a point; thence North 4°30'49" West, a distance of 100.00 feet to a point; thence North 85°29'11" East a distance of 100.00 feet to a point on aforesaid Mean High Tide Line; thence South 4°30'49" East, along said Mean High Tide Line, 100.00 feet to the POINT OF BEGINNING of this Parcel II.

Excepting from Parcels I and II all oil, gas, mineral and water upon or beneath said land as reserved by the City of San Diego, a municipal corporation in Lease recorded May 2, 1966 as File No. 73142 of Official Records.

INITIAL
<i>ASE</i>
<i>[Signature]</i>



LEGAL DESCRIPTION OF LESSOR'S PROPERTY

(TO BE PROVIDED)

ATTACHMENT 1 TO MEMORANDUM OF LEASE

INITIAL
<i>ape</i>
<i>MB</i>

TECHNICAL REQUIREMENTS
FOR THIRD PARTY CO-LOCATION

INTENTIONALLY OMITTED

INITIAL
<i>[Signature]</i>
<i>[Signature]</i>

ATTACHMENT 5

1. HOLD HARMLESS AND INDEMNITY

Lessee agrees to defend by counsel of Lessor's choice, indemnify, and hold Lessor and its affiliates, owners, partners, directors, shareholders, officers, employees, agents, successors, and assigns free and harmless from any and all claims asserted or liabilities established for property damage, and for bodily injuries or injuries to any person or persons, including employees of Lessee and Lessor and guest of Lessor, which arise from or are connected with the performance of or failure to perform the work or other obligations of this Agreement, and are caused all or in part by Lessee, its agents or employees, and all actual expenses of investigating and defending same, including actual attorneys' fees and court and other costs incurred; provided, however, that this indemnification and hold harmless clause shall not include any claim arising solely from the gross negligence or willful misconduct of Lessor, its agents, or employees.

2. TAXES:

Lessee shall be responsible for the payment of any and all federal, state, and municipal taxes which may be imposed or applicable to this Agreement and pertaining to the Lessees facility.

3. RULES AND REGULATIONS:

Lessee agrees to comply with the property's rules and regulations as determined by Lessor in its sole discretion. Lessor reserves the right to modify or amend its rules and regulations from time to time, and Lessee agrees to comply with such modified or amended rules and regulations. Notwithstanding the foregoing, LESSEE shall not be bound by any rules or regulations or modifications thereto which are inconsistent with or in any material respect impair the rights and protections provided to LESSEE under this Lease, including but not limited to LESSEE'S full exercise of its rights of use, access and non-interference set forth in Section 3 of the Lease.

4. DAMAGE:

Lessee is responsible for any damage or destruction to the property of Lessor caused by Lessee or its employees or agents, ordinary wear and tear excepted.

5. LOSS:

Lessor is not liable for loss, theft, or damage to property belonging to Lessee.

6. RELATIONSHIP OF PARTIES:

The relationship of Lessor and Lessee created by this Agreement shall be that of independent contractors. Lessee is not an employee of Lessor and nothing contained herein shall be construed as constituting a partnership, joint venture other association between Lessor and Lessee.

INITIAL
<i>ape</i>
<i>[Signature]</i>

ATTACHMENT 5 (cont.)

13. ACCUMULATION OF REMEDIES:

No remedy or election hereunder shall be determined exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

14. NOTICES:

Whenever Lessor or Lessee shall desire to serve notice upon the other, each such notice shall be in writing and served in person or by mailing the same by U. S. registered or certified mail, postage prepaid, return receipt requested, to the address set forth above, or at such other address as Lessor or Lessee may notify the other party of in writing from time to time. Every notice hereunder shall be deemed to have been given or served as of the third business day following the date of mailing such notice.

15. CAPTIONS:

Paragraph titles, headings, or captions contained herein are inserted as a matter of convenience and for reference purposes only and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof nor shall they be used in the interpretation of this Agreement.

16. EXECUTION IN COUNTERPARTS:

This Agreement may be executed in two or more counterparts, each of which shall constitute one and the same instrument.

17. NUMBER AND GENDER:

Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall include the others, and the word "person" shall include any natural person, corporation, firm, partnership joint venture, trust or estate.

18. USE OF "INCLUDING":

In this Agreement, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar impact) is used with reference thereto.

INITIAL
<i>afk</i>
<i>[Signature]</i>

ATTACHMENT 5 (cont.)

19. REASONABLENESS:

Where the terms of this Contract provide for action to be based upon the opinion, judgment, approval, review, or determination of with Lessor or Lessee, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

20. TIME OF ESSENCE:

Time is of the essence in the performance of each and every provision and condition of this Agreement.

21. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement between Lessee and Lessor pertaining to the subject matter hereof and superseded all prior or contemporaneous understandings, negotiations, discussions, and agreements, whether oral or written, between the parties respecting such subject matter. No supplement, modification, waiver, amendment, or termination of this Agreement shall be binding unless in writing and signed by both parties hereto.

INITIAL



OCT. -11' 96 (FRI) 10:19

P. 001



THE CITY OF
SAN DIEGO

DEVELOPMENT SERVICES CENTER • 1222 First Avenue • M.S. 501 • San Diego, California 92101

Proj: 57027Sect: LUP

cc: _____

OFFICE OF
DEVELOPMENT SERVICES
DEPARTMENT
236-6460

DATE: May 3, 1996

APPLICANT: Steve Laub for
Cox California PCS, Inc
2381 Morse Avenue
Irvine, CA 92714

PERMIT NO.: 95-0351-33 Personal Communications System Facility

ADDRESS: Bahia, 998 West Mission Bay Drive

PROJECT: Proposed installation of a Personal Communication System

DEVELOPMENT SERVICES DEPARTMENT ACTION:

It has been determined by the Land Development Review Division, that this proposal does not substantiate a major stationary facility and therefore will not be required to go through the Conditional Use Permit process. This approval is based on the Department's Determination 15 for telecommunications. This proposal has been reviewed with the California Environmental Quality Act (CEQA) and has been determined to be exempt per Section 15268.

The Development Services Department grants **APPROVAL** of your application, subject to the following description of work:

The application for 9 facade mounted antennas, 6 equipment storage cabinets installed initially. The equipment cabinets will be installed in the maintenance yard. All panels will be painted to match the existing building. Antennas will be connected to the equipment cabinets via coaxial cable. All of the work proposed is included on the plans marked "Exhibit A," dated May 3, 1996 on file in the Development Services Department, Land Development Review Division.

All work authorized by this permit shall be in conformance with the description of work contained herein and as indicated on the plans submitted to Permit Services and stamped with the Land Development Review (LDR) Division approval. All modifications to this structure or site not directly approved by this permit, shall require further review by LDR. Building permits must be obtained within six months from the date of this approval or this authorization shall be null and void.


Terri Bumgardner
Associate Planner



DIVERSITY
BRINGS US ALL TOGETHER

PROPRIETARY INFORMATION
THE INFORMATION CONTAINED IN THIS SET OF
CONSTRUCTION DOCUMENTS IS PROPRIETARY OF
COX COMMUNICATIONS. ANY USE OR DISCLOSURE OTHER THAN
THAT WHICH RELATES TO COX CALIFORNIA PCS

CONSTRUCTION SET

7/11/96

DRAWN BY: JB, CS

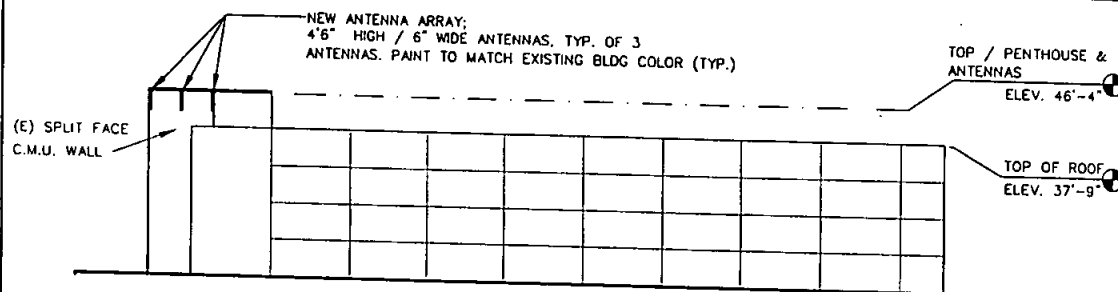
CHECKED BY: TOM

REVISIONS

DATE	DESCRIPTION	INITIAL

COX
COMMUNICATIONS

NOTE: BUILDING HEIGHT IS 4 (FOUR) STORIES,
ALL ELEV. ABOVE (E) FINISHED GRADE

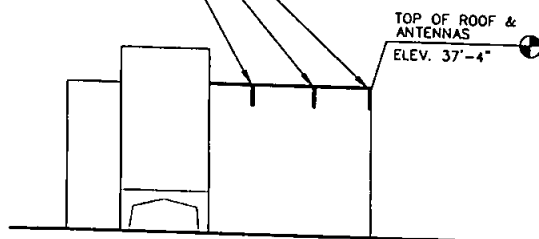


PICTURE #1

EAST ELEVATION/EXIST'G BLDG. #1

SCALE:
1/32"=1'-0" 3

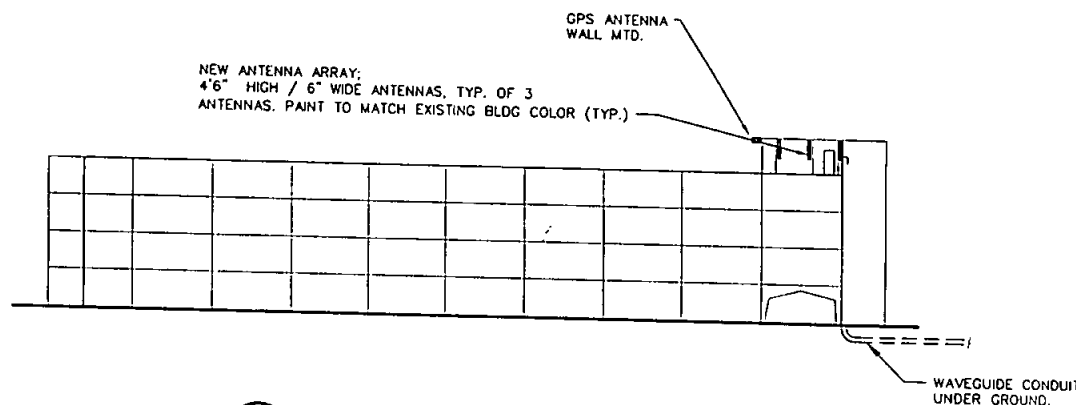
NEW ANTENNA ARRAY:
4'6" HIGH / 6" WIDE ANTENNAS, TYP. OF 3
ANTENNAS. PAINT TO MATCH EXISTING
BLDG COLOR (TYP.)



PICTURE #3

NORTH ELEVATION/EXIST'G BLDG. #1

SCALE:
1/32"=1'-0" 1



PICTURE #2

WEST ELEVATION/EXIST'G BLDG. #1

SCALE:
1/32"=1'-0" 4

SOUTH ELEVATION/EXIST'G BLDG. #1

SCALE:
1/32"=1'-0" 2

BAHIA HOTEL
JOB# SD027

998 MISSION BAY RD.
SAN DIEGO, CA
92109

EXTERIOR
ELEVATIONS

CASE NUMBER

A-3

CITY OF SAN DIEGO REAL ESTATE ASSETS DEPT.	
☐	DIRECTOR
☐	DEPUTY MANAGER
☒	FILE COPY
☐	CHRON. COPY
☒	ORIGINATOR

CONSENT TO AMENDMENT TO SUBLEASE AGREEMENT

The City of San Diego (City), as Lessor under that certain Lease Agreement (Master Lease) entered into with William D. Evans and Lucy E. Lamoreaux dated March 17, 1966, and filed in the Office of the City Clerk as Document No. 697319, as amended an subsequently assigned to

BH PARTNERSHIP

(Lessee) hereby consents to that certain first amendment to sublease agreement between the above Lessee (Sublessor) and

**CHARLES A. BERRY
DBA RESORT WATERSPORTS**

(Sublessee) dated November 1, 1996. Said sublease as amended shall be subordinate to the Master Lease in all respects. The City is hereby merely approving this amendment and the proposed use, and all terms and conditions of the master lease shall control and supersede any inconsistent or contrary provisions in the amended sublease. The City is not bound by any term or condition in this amendment or original sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following:

Assignment and Subletting : Sublessee shall not assign or sublet the premises or any part thereto without the prior written consent of Sublessor and City of San Diego, hereafter "City". An assignment by operation of law shall automatically terminate this agreement.

Hold Harmless: Sublessee shall assume the defense of, indemnify and hold harmless Sublessor and City from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operation conducted on the leased premises, the condition of the premises or from any act or omission of Sublessee, his agents and invitees; provided, however, Sublessee's 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 the City, its agents officers, or employees.

Insurance: Sublessee shall be insured by an insurance carrier acceptable to the Sublessor and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$2

million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of policy of insurance shall be filed with the City and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to City by the insurance company.

Legal proceedings: Should it become necessary for Sublessor or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of the sublease agreement, the prevailing party shall be entitled to an award of reasonable legal cost, including court and attorney's fees.

Subordination: This sublease agreement as amended is related to a portion of the premises covered by that certain Lease Agreement dated March 17, 1966, as amended between the Sublessor herein and the City of San Diego. This sublease as amended is subject to and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said sublease as amended.

Boat rentals: For purposes of this amendment, the "boats" include ships of all kinds, motorboats, sailboats, inflatable boats, personal watercraft, and every structure adapted to be navigated from place to place upon the water for recreation or for the transportation of merchandise or persons. Sublessor and Sublessee shall be permitted to rent boats to the general public subject to prior written approval from the City Manager as to the number and type of boats available to rent. The City Manager may, upon written notice to Sublessor and Sublessee and with reasonable cause, modify any approval previously given. Sublessor and Sublessee shall carry commercial general liability insurance, the amount and coverages shall be based upon the City Manager's assessment of the risk associated with the rental operation.

All boats for rent which are required by law to be registered with the California Department of Motor Vehicles shall be currently registered as rental vessels and carry proper registration numbers and stickers. All boats for rent shall be identified by Sublessee through the use of distinctive markings and logos.

Each rental boat shall be equipped with a waterproof map detailing all current regulations and activity zones for Mission Bay, along with all safety equipment required by law. At any time that the Sublessor or Sublessee is renting a boat or boats, Sublessor or Sublessee shall have at least one operational chase boat and staff available to operate on the water of Mission Bay. No rental boats may be stored on public property outside the leasehold. Sublessor and Sublessee agree that the City Manager or his designees shall have the authority to immediately terminate any agreement which is not in conformance with the stipulations of this Consent to Amendment to Sublease or current boating regulations.

THE CITY OF SAN DIEGO

Dated 9-12-97

By Mary Gammill
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

Casey G. Gwinn, City Attorney

Dated 9/15/97

By [Signature]
Deputy

BH PARTNERSHIP

Dated 10-8-97

By Anne L. Evans
Anne L. Evans
Managing General Partner

RESORT WATERSPORTS

Dated 10-14-97

By Charles A. Berry
Charles A. Berry
President

FIRST AMENDMENT TO SUBLEASE

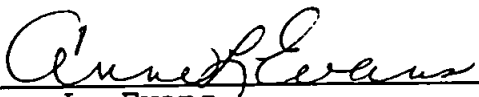
This First Amendment to Sublease ("Amendment") is made and entered into effective November 1, 1996 by and between BH Partnership, a California limited partnership, d/b/a Bahia Hotel ("Sublandlord") and ResortWatersports, Inc., a California corporation ("Subtenant"), who agree as follows:

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:

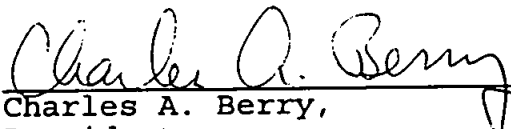
BH Partnership,
a California limited partnership



Anne L. Evans,
Managing General Partner

SUBTENANT:

Resort Watersports, Inc.,
a California corporation



Charles A. Berry,
President

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

BH Partnership

(LESSEE) and filed in the Office of the City Clerk as Document 697319, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

Cox California PCS, Inc.

(SUBLESSEE) dated September 16, 1996. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

Percentage rent to CITY will be calculated on a calendar month basis and will consist of 33 1/3% of gross income paid to LESSEE for the right to construct, maintain and/or operate a communications facility.

THE CITY OF SAN DIEGO

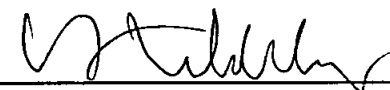
Dated 1-13-97

By 
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

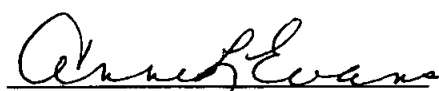
CASEY GWINN, City Attorney

Dated 1/16/97

By 
Deputy City Attorney

BH PARTNERSHIP

Dated 1-27-97

By 
Anne L. Evans
Managing General Partner

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain lease agreement (Master Lease) entered into with

BRAEMAR PARTNERSHIP

(LESSEE) and filed in the Office of the City Clerk as Document No. RR-281244, hereby consents to that certain sublease agreement between the above LESSEE (SUBLESSOR) and

**CHARLES A. BERRY
DBA RESORT WATERSPORTS**

(SUBLESSEE) dated June 29, 1993. Said sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and that all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the sublease. The CITY is not bound by any term or condition in the sublease which in any way conflicts with or is additional to the provisions of the Master Lease. In addition, this consent is subject to the following conditions:

- 1) Nondiscrimination. SUBLESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in SUBLESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding employment.
- 2) Equal Opportunity. SUBLESSEE shall comply with the CITY'S Equal Opportunity and Minority and Women Business Enterprise Contracting Programs approved by the City Council and filed with the City Clerk as Document RR-262633. SUBLESSEE shall submit a Workforce Analysis Report and a Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted.

- 3) PERSONAL WATERCRAFT - The premises may not and shall not be used for the sale or rental of "personal watercraft" of any kind. For purposes of this sublease, "personal watercraft" means a motorboat (as defined in the California Harbors and Navigation Code) which is under 16 feet in length, designed by the manufacturer to be capable of speeds in excess of 15 miles per hour, and designed to be operated by a person sitting, standing, kneeling on or being towed behind the device, rather than the conventional manner of sitting or standing in side the vessel. Anything to the contrary in the sublease agreement notwithstanding, a violation of the personal watercraft provision may, at **SUBLESSOR's** or **CITY's** sole option, be cause for immediate termination of this sublease. If the **CITY** Manager's policy regarding "personal watercraft" is amended, **SUBLESSOR/SUBLESSEE** may submit, for **CITY** Manager's consideration, a request to rent "personal watercraft" at the Catamaran Pier. The **CITY** Manager shall have sole discretion to approve or disapprove the aforementioned request.

THE CITY OF SAN DIEGO

Dated 11-9-93

By Robert J. Collins
Robert Collins
Deputy Director
Property Department

APPROVED AS TO LEGAL FORM:

JOHN W. WITT, City Attorney

Dated 11/9/93

By [Signature]
Chief Deputy City Attorney

**BRAEMAR PARTNERSHIP, a
California General Partnership**

Dated 11-22-93

By Anne L. Evans
Anne L. Evans, Owner

Dated 11-22-93

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

CHARLES A. BERRY, DBA RESORT
WATERSPORTS

Dated 11-19-93

By Charles A. Berry
Charles A. Berry

NRS:nrs

TABLE OF CONTENTS

ARTICLE 1	1
RECITALS	1
ARTICLE 2	1
SUBLEASE OF PREMISES	1
ARTICLE 3	2
BASIC SUBLEASE PROVISIONS	2
LOCATION	2
PREMISES	2
TERM	2
BASIC MONTHLY RENT	2
PERCENTAGE RENT PERCENTAGE	2
SECURITY DEPOSIT	2
ADDRESSES	2
REQUIRED USES	2
BUSINESS HOURS	3
ARTICLE 4	3
COMMENCEMENT DATE OF TERM	3
ARTICLE 5	3
RENT	3
Basic Monthly Rent	3
Percentage Rent	3
Rent Payment	5
Past Due Rent	5
Late Fee	5
ARTICLE 6	6
INCORPORATION BY REFERENCE	6
ARTICLE 7	6
SERVICES AND FACILITIES	6
Provision of Services	6
Interruption of Standard Services	6
Common Facilities	6
Parking	6
Construction Phases	6
ARTICLE 8	6
ACCEPTANCE OF PREMISES	6
ARTICLE 9	7
MAINTENANCE; UTILITIES AND ALTERATIONS; COMMON	
FACILITIES	7
Subtenant to Maintain	7
Utilities	7
Alterations	7
Indemnity	7
Sublandlord's Right to Repair	8
Common Facilities	8
Grant of Easement	8
Sublandlord Control	8

ARTICLE 10	8
USE AND CONDUCT OF THE PREMISES	8
Definition of Premises	8
Required Use	8
Conduct of Business	9
Abandonment	10
Notice	10
Personal Property Taxes	10
Auctions	10
Experience	10
Licenses	10
Rental Equipment	10
Restrictions	11
ARTICLE 11	11
ASSIGNMENT AND SUBLETTING	11
Assignment and Subletting Prohibited	11
Subtenant's Waiver of Claims and Indemnity	11
Negligence of Third Parties	11
ARTICLE 13	11
HAZARDOUS MATERIALS	11
Hazardous Materials Prohibited	12
Hazardous Materials	12
Hazardous Materials Indemnity	12
ARTICLE 14	13
INSURANCE	13
Insurance to be Carried by Subtenant	13
Policy Forms and Delivery	14
Use of Proceeds	14
Failure to Respond	14
ARTICLE 15	14
TRANSFER OF SUBLANDLORD'S INTEREST	14
ARTICLE 16	15
PROPERTY TAXES	15
ARTICLE 17	15
DAMAGE OR DESTRUCTION	15
Repair or Termination	15
Loss of Enjoyment	16
Automatic Termination	16
ARTICLE 18	16
DEFAULTS AND REMEDIES	16
Events of Default	16
Sublandlord's Remedies	17
Sublandlord's Default	18
ARTICLE 19	18
EMINENT DOMAIN	18
ARTICLE 20	18
SUBORDINATION	18

ARTICLE 21	19
SURRENDER OF PREMISES; REMOVAL OF PROPERTY . .	19
Subtenant's Removal of Property	19
Abandoned Property	20
ARTICLE 22	20
MISCELLANEOUS	20
Sublandlord's Inspection and	
Maintenance	20
Exhibition of Premises	20
Rights Reserved by Sublandlord	20
Quiet Enjoyment	21
Force Majeure	21
Sign Control	21
Corporate Authority	21
Counterparts	21
Execution of Sublease, No Option	21
Furnishing of Financial Statements;	
Subtenant's Representations	22
Further Assurances	22
Mortgagee Protection	22
Expenses of Legal Action	22
Subtenant's Certificates	22
Holding Over	23
Notices	23
Rules and Regulations	23
Governing Laws	23
Heading and Titles	23
Heirs and Assigns	23
Time of Essence	23
Severability	24
Operation; Radius	24
Brokers	24
No Light, Air or View Easement	24
Entire Agreement	24
Recording	24
Joint and Several Liability	24
Waiver	24
Exhibits	24
EXHIBIT E	27
PERCENTAGE RENT SCHEDULE	27

SUBLEASE

This Sublease is made as of June 29, 1993, between BRAEMAR PARTNERSHIP, a California general partnership dba Catamaran Resort Hotel ("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 Braemar Partnership, a California general partnership dba Catamaran Resort Hotel, 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 December 8, 1992 ("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 September 1983, a ten year period, at the Catamaran 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 Catamaran Resort Hotel and Charles A. Berry, dba Watersports dated February 1, 1991.

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 Catamaran Resort 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 Catamaran Resort 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 General Manager.

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 the City of San Diego, Braemar Partnership, and Catamaran Resort Hotel 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 December 8, 1992, 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 Bahia 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 Catamaran Resort Hotel (on file at Executive Office at Bahia Hotel)

Exhibit B - Location Map of Catamaran Resort Hotel

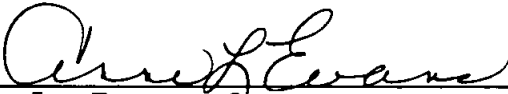
Exhibit C - Master Lease (on file at Executive Office at Bahia Hotel)

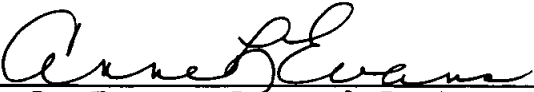
Exhibit D - Location of Premises

Exhibit E - Percentage Rent Schedule

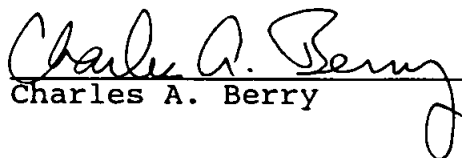
"SUBLANDLORD"

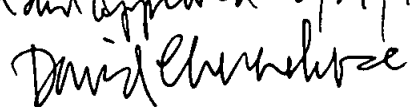
BRAEMAR PARTNERSHIP,
a California General Partnership

By: 
Anne L. Evans, Owner

By: 
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"

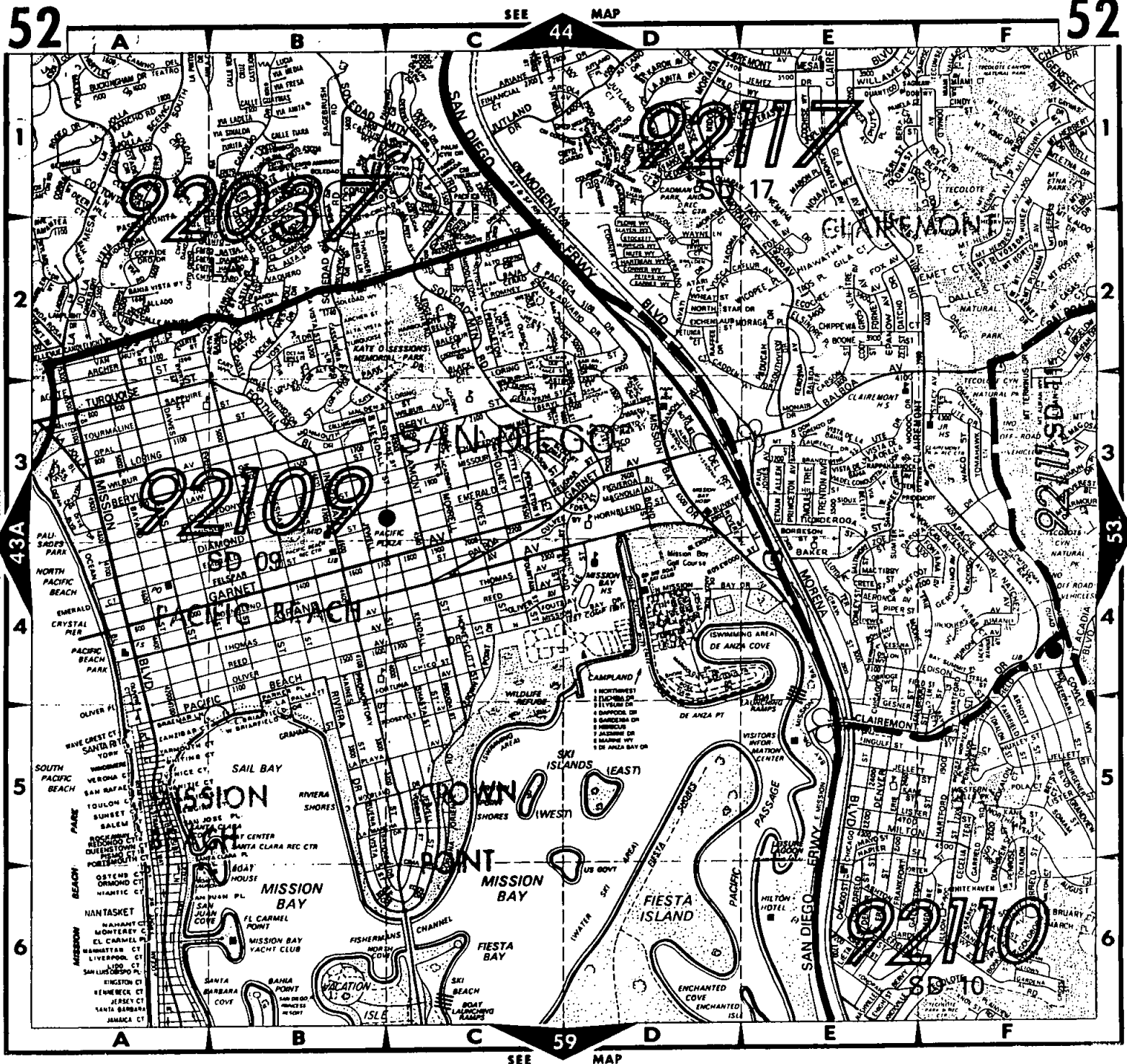

Charles A. Berry

reviewed and approved 6/21/93


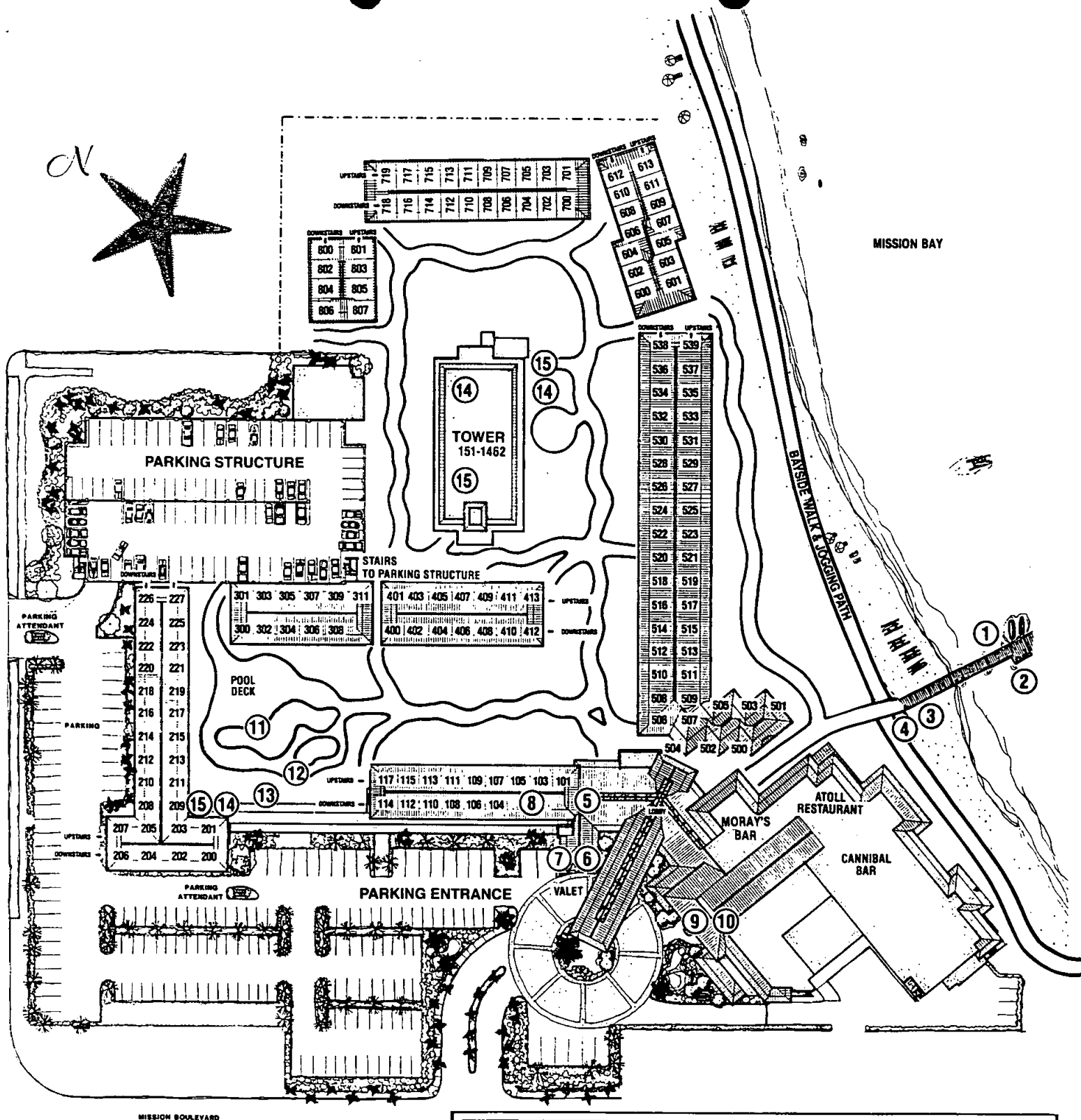
DETAIL

SEE MAP 43A

ZIP SAN DIEGO CO.



SEE MAP



CATAMARAN

RESORT HOTEL

3999 Mission Boulevard
San Diego, California 92109
(619) 488-1081

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Bahia Belle Landing 2. William D. Evans 3. Watersport Rentals & Lessons 4. Bicycle Rentals 5. Guest Registration 6. Guest Services 7. Laundry & Valet Services 8. Sales & Catering 9. Newsstand 10. Gift Shop | <ol style="list-style-type: none"> 11. Swimming Pool 12. Whirlpool Spa 13. Exercise Room 14. Vending Machines <ul style="list-style-type: none"> Soda - 1st Floor & 7th Floor - Tower; South Side of Tower Candy - 2nd Floor of 200 Bldg. Snacks - South Side of Tower 15. Ice Machines <ul style="list-style-type: none"> 1st Floor & 7th Floor - Tower; South Side of Tower; 2nd Floor - 200 Bldg. |
|---|---|

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%