

CONSENT TO CHARTER BOAT LESSE AGREEMENT

THIS CONSENT TO SUBLEASE (Consent) is provided by THE CITY OF SAN DIEGO, a California municipal corporation (City), to CHSP MISSION BAY LLC, a Delaware limited liability company, d.b.a. Hyatt Regency Mission Bay Spa and Marina (Lessee/Sublessor), to be effective upon execution by City and approval by the San Diego City Attorney, as follows:

RECITALS

- A. City and Lessee/Sublessor entered into a City of San Diego Lease Agreement (Agreement), filed as document RR-300863 in the Office of the San Diego City Clerk, as assigned to Lessee/Sublessor under the City of San Diego Consent to Assignment dated September 6, 2012, (Assignment), (the Agreement and Assignment are hereafter jointly referred to as the Master Agreement) relating to that certain City-owned real property located at 1441 Quivira Road, San Diego, California 92109, commonly known as "Hyatt Regency Mission Bay Spa and Marina," and more particularly described in the Agreement (Premises).
- B. Lessee/Sublessor now desires to sublease a portion of the Premises to Sail Mission Bay (Sublessee) by entering into a certain Charter Boat Lessee Agreement.
- C. The Master Agreement requires that Lessee/Sublessor obtain City's consent to sublease the Premises or any portion thereof.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, and with the incorporation of the above-listed Recitals into this Consent, the City consents to the sublease of a portion of the Premises, provided that all of the following conditions are and remain true throughout the term of the sublease:

- 1. Subject to the terms and conditions herein, City hereby consents to Lessee/Sublessor's request to sublease a portion of its right, title and interest in and to the Premises to Sublessee. By giving this Consent, City is merely consenting to the sublease request, and is not consenting to, approving, accepting or agreeing to be bound by any term or condition of the Charter Boat Lessee Agreement, which Lessee/Sublessor and Sublessee enter into.
- 2. All terms and conditions of the Master Agreement shall control and supersede any inconsistent or contrary provisions in any Charter Boat Lease Agreement executed between Lessee/Sublessor and the Sublessee. City is not and will not be bound by any term or condition of the Charter Boat Lease Agreement which in any way conflicts with the City's rights or would otherwise result in increasing the City's obligations or decreasing the Lessee/Sublessor's obligations under the Master Agreement; and
- 3. City's Consent is conditioned upon Sublessee's written agreement that it will assume all rights and obligations, and that it will keep and perform all covenants, conditions, and provisions of the Master Agreement applicable to the rights acquired as a "Lessee" under the Master Agreement, as applicable which rights and obligations include, but are not limited to, the Sublessee's obligation to indemnify the City in the manner set forth in Section 7.1 of the Master Agreement, and to comply with all insurance requirements in the manner set forth in Section 7.2 of the Master Agreement; and

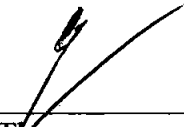
4. City does not release, discharge or modify Lessee/Sublessor's obligations to City under the Master Agreement. As set forth in applicable law, Lessee/Sublessor's obligations under the Master Agreement shall survive said Charter Boat Lease Agreement and shall continue through the termination dates of the Master Agreement, as set forth therein; and
5. This Consent does not constitute consent to any subsequent subleasing of any interest in and to the Premises subject to the Master Agreement.
6. Lessee/Sublessor agrees to pay City any applicable processing and/or administrative fee(s) for processing this Consent.
7. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Charter Boat Lease Agreement. Further, Lessee/Sublessor agrees to protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, and employees harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee.

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IN WITNESS WHEREOF, this Consent to sublease is executed by City acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO, a California municipal corporation

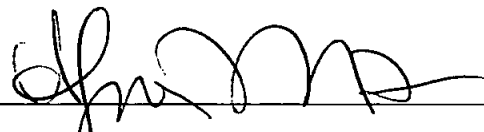
Date: 3/28/19

By: 
Cybele Thompson
Director, Real Estate Assets Department

Planning Department - Environmental Clearance:

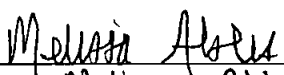
This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities).

Date: 4/24/19

BY: 
Name: Alyssa M. Muto
Title: Deputy Director, Environmental and Policy Analysis,
Planning Department

Approved as to form this 29th
day of April, 2019

MARA W. ELLIOTT, City Attorney

BY: 
Name: Melissa Ables
Title: Deputy City Attorney



Date of Notice: April 3, 2019

NOTICE OF RIGHT TO APPEAL

ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Sublease with CHSP Mission Bay LLC dba Hyatt Regency Mission Bay Spa and Marina

COMMUNITY PLAN AREA: Mission Bay Park

COUNCIL DISTRICT: District 2

LOCATION: 1441 Quivira Road, San Diego, CA 92109

PROJECT DESCRIPTION: Consent to sublease between Hyatt Corporation, an agent of CHSP Mission Bay LLC, d.b.a. Hyatt Regency Mission Bay Spa and Marina (Lessee) and Sail Mission Bay (individually or jointly "Sublessee") allowing the subleasing of a portion of the Hyatt Regency Mission Bay Spa and Marina dock to provide six passenger bay tours and whale watching as approved by Lessee and the City to the patrons of the hotel and the general public.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of existing or former use. The exceptions listed in State CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

PROJECT MANAGER: Vladimir Balotsky, SR/WA
Real Estate Assets Department

MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

PHONE NUMBER: (619) 235-5248

On April 3, 2019, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal the CEQA determination to the City Council must be filed in the Office of the City Clerk within 10 business days from the date of the posting of this Notice (**April 17, 2019**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 4/3/2019

REMOVED: 4/18/2019

POSTED: E. Pascual

CHARTER BOAT LESSEE AGREEMENT

THIS CHARTER BOAT LESSEE AGREEMENT (the "Agreement") is made and entered into on February, 3, 2018, by and between Hyatt Corporation, as agent of CHSP Mission Bay LLC, a Delaware limited liability company, DBA Hyatt Regency Mission Bay Spa and Marina (the "Management") and **Sail Mission Bay**, (individually or jointly, "Lessee") with respect to the following facts:

- A. Management leases from the City of San Diego (hereinafter, "City"), and operates the marina, boat slips, docks and landing located at 1441 Quivira Road. San Diego, California, USA, 92109 (collectively, the "Landing").
- B. Lessee owns and operates the "Vessel" as follows:

Name of Boat: Anna Rose

Cal. DMV CF#: 3741 GD

Federal Document #:

Length Overall: 25' Beam: 7'8"

Draft: 5'75"

The Vessel shall provide **Sail Tours, Whale watching Tours, Fishing Charters and Sight Seeing**

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

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

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

1. **Recitals.** The foregoing Recitals are incorporated in this Agreement as if fully set forth below.

2. **Term of Agreement**

(a) Subject to paragraph (b) below, the rights and duties of the parties under this Agreement shall commence on **Upon Approval By The CITY**. This agreement is for month to month tenancy. Written notice of termination shall be given thirty (30) days prior to the expiration of said term by either Management or Lessee, this Agreement will continue on a month-to-month basis and may be terminated by either party giving the other at least thirty (30) days prior written notice.

(b) Notwithstanding the provisions of Section 2(a) above, Management shall have the rights, as set forth in Section 2(c) below, on the occurrence of any of the following specified events (each an "Event of Default"):

- (i) Bankruptcy, by voluntary or involuntary petition, or insolvency of Lessee;
- (ii) Sale or transfer of more than fifty (50%) percent or more of the stock or beneficial interest in the stock of Lessee, or sale or transfer of substantially all of the assets of Lessee;
- (iii) Destruction or seaworthiness of the Vessel, or her inoperability for a period longer than four (4) months, unless a substitute vessel approved in writing by Management is provided.

(c) **Monthly Rate: \$450.00.** Said rate is based on flat monthly fee for Pickup & Drop-off ONLY at Fuel Dock

- (i) Seizure of the Vessel pursuant to Court order or non-judicial repossession as contractually permitted by a mortgage lien holder.
- (ii) Breach of any term, provision or covenant contained in this Agreement, each of which is deemed to be material for all purposes herein.
- (iii) Assignment or transfer of any interest, rights or duties under this Agreement other than as provided herein.
- (iv) Abandonment of the Vessel by Lessee.
- (v) Vacate the Landing.

(d) Upon the occurrence of the Event of Default, Management may:

- (i) Immediately terminate and declare a forfeiture of this Agreement, whereby effective as of the termination date Management shall not have any further or future obligations under this Agreement except as may be required by applicable law. Pursuant to such termination, Management

may recover and take exclusive custody, possession and control of the Landing, remove the Vessel and all other personal property therefrom, remove all other personal property of Lessee from the dock adjacent to the Landing and elsewhere in the Landing area, store the Vessel at any location and recover from Lessee all damages resulting from any Event of Default, including, without limitation, the cost of recovery of the Landing, the cost of removal the Vessel and any other personal property therefrom, the cost of storing the Vessel.

- (ii) In the event that Management removes any personal property from the Landing, its adjacent docks and/or elsewhere in the Landing area, other than or in addition to the Vessel, Management may store such property at any location at the sole expense and risk of Lessee or other owner thereof, and may sell or otherwise dispose of such property as provided by applicable law.
 - (iii) Immediately take exclusive custody, possession and control of the Vessel, including, without limitation, any and all fixtures, engine(s), equipment, rigging, gear and other personal property thereon or appurtenant thereto (collectively, the "Gear"), and physically impound and secure the Vessel, together with any Gear, at any location for the purposes, inter alia, of enforcing, perfecting and executing upon Management's statutory lien rights in or upon the Vessel, e.g., (i) pursuant to the California Harbors and Navigation Code Section 490, et seq., and Section 500, et seq. (the "California Boaters Lien Law"), and/or (ii) pursuant to the Federal Maritime Lien Act, 46 U.S.C. Section 31341, et seq. (collectively, the "Boat Liens"). The Boat Liens (as applicable, depending upon whether California law or Federal maritime law controls in the premises) shall cover and apply to, as the case may be, any and all necessities (e.g., wharfage, moorage, towage and repairs subject to Federal statutory maritime liens) and/or any and all other items consisting of services and/or storage (e.g., rentals, materials, labor and goods subject to California statutory boaters liens), which shall have been provided or rendered to the Vessel and/or purchased or obtained by, or provided to, Lessee in respect of the Vessel pursuant to or in connection with this Agreement. Management's rights to physically impound and secure the Vessel, as described above, shall include, without limitation, securing the Vessel in the Landing, removing and transferring the Vessel from the Landing to any other location, securing the Vessel at any other location and/or otherwise berthing, docking, mooring and/or storing the Vessel at any location.
- (1) In the event that Management takes exclusive custody, possession and control of the Vessel including its Gear, and physically impounds, secures and stores the Vessel including its Gear, as described above, the impounding, securing and storing of the Vessel including its Gear, and any other actions taken by Management, shall be at the sole expense and risk of Lessee or other owner of the Vessel, and Lessee hereby waives any claims against Management and any of its officers, employees or agents

for failure to maintain the safekeeping of the Vessel including its Gear, except for any duty of safekeeping imposed by statutory law that cannot be waived by Lessee as a matter of law.

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

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

- (a) Actively use and promote the Vessel for charter **Sailing, Fishing Whale watching, sightseeing**

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

- (b) Lessee shall at all times cause the Vessel to be operated in a safe and lawful manner and in compliance with all Rules of Management which are incorporated herein in this Agreement, and all applicable federal, state or local statutes, regulations or directives.
- (c) Lessee shall at all times cause the Vessel to provide at least such services as are customarily provided by other charter fishing boats of a similar size.
- (d) If the Lessee is designated as the 1/2 day charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make two (2) one-half day fishing trips daily, the first trip departing from the Landing at approximately 6:00 a.m. and returning at approximately 11:30 a.m. and the second trip departing from the Landing at approximately 12:30 p.m. and returning at approximately 5:30 p.m. Lessee may schedule the second daily trip as a Twilight charter departing the landing at approximately 6:00 p.m. and returning approximately at 10:00 p.m. If the Lessee is designated as the 3/4 day charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make one three-quarter day fishing trips daily, the first trip departing from the Landing at approximately 5:30 a.m. and returning at approximately 5:00 p.m. If the Lessee is designated as an overnight charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make one fishing trip daily, departing from the Landing at approximately 10:00 p.m. and returning approximately 7:00 p.m. to 9:00 p.m. the following evening. If the Lessee is designated as a whale watching boat/bay cruise boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make two (2) whale watching trips daily, the first departing from the Landing at approximately 10:00 a.m. and the second departing at approximately 1:00 p.m.; each such trip shall be for a duration of two to three hours. The parties to this Agreement agree Management shall have the right to, from time to time, set a the minimum number of passengers required for each type of vessel excursion (for example, to require a 1/2 day charter boat depart in the event two passengers wish to engage in such excursion).
- (e) Lessee shall at all times cause the Vessel to be docked and operated so as to cause no damage to the Landing or any other part of Management's property. Lessee shall notify Management immediately in the event he/she becomes

aware of damage to Management's property. Lessee shall notify Management immediately in the event he/she becomes aware of damage sustained by any part of Management's premises, irrespective of whether such damage is caused by Lessee, his/her crew, his/her passenger(s) or other person. Lessee shall indemnify and hold Management harmless from, and reimburse Management for, all costs, expenses, damages, claims, demands, liabilities and lawsuits (including reasonable attorney's fees incurred by Management in investigating or defending such lawsuits) arising solely out of any action or inaction on the part of the Lessee, its agents or employees, or any passenger. Lessee shall bear full responsibility, and shall reimburse Management, for any and all damages caused by the Vessel or her crew or passengers to the Landing or any other part of Management's property due to improper operation of the Vessel, seaworthiness of the Vessel, rough seas and/or bad weather.

- (f) Lessee shall provide a suitable picture of the Vessel to Management upon signing and by December 1st of each year thereafter, together with a copy of current U.S. Coast Guard Certificate of Documentation.
- (g) Lessee shall keep the Vessel's designated dock area maintained and free from debris, or any hazardous materials, at all times. Lessee shall, after returning to the Landing following each excursion, spray with water and take all other necessary actions to thoroughly clean the dock areas adjacent to the Vessel.
- (h) Lessee shall refrain from renting fishing equipment on the Vessel, except if necessary to provide replacement gear or if the Landing does not have available equipment.
- (i) Lessee shall provide his own bait.
- (j) Lessee shall strictly enforce courteous behavior by crewmembers and PROHIBIT THE FOLLOWING:
 - (i) the drinking of alcoholic beverages, possession OR USE of illicit drugs or narcotics by crew members BEFORE, DURING OR AFTER TRIPS, OR ANY TIME on board the Vessel;
 - (ii) crew members from boarding the Vessel AT ANY TIME while under the influence of alcohol or drugs; and
 - (iii) fishing by crewmembers.
 - (iv) Profane language or other indecorous conduct.
- (k) Crew members must wear appropriate attire designating them as crewmembers.
- (l) Upon execution of this Agreement, and yearly on the anniversary of execution of this Agreement, Lessee shall provide Management and the City with

certificates of insurance, issued by a California admitted insurance carrier, covering the Vessel and Lessee (and naming Management and The City of San Diego as additional insureds), showing \$ 5,000,000.00 Dollars of liability insurance in effect provided by a company acceptable to Management and the City, and in accordance with all Public Utility Commission requirements and all other governmental requirements. A copy of the policy of insurance shall be filed with the City. Said policy shall specify that the policy may not be terminated, altered, or cancelled without thirty (30) days prior written notice to Management and the City by the insurance company. Both the Management and the City of San Diego shall be named as additional assureds.

- (m) Lessee shall obey all laws, rules and regulations of Mexico when operating in Mexican waters, including but not limited to licensing and permits, and obey all laws, rules and regulations of the United States and California and all governmental entities/agencies with respect to activities undertaken therein.
- (n) Lessee shall at all times cause the Vessel to be operated by properly licensed personnel in compliance with U.S. Coast Guard requirements.
- (o) Lessee shall at all times operate the Vessel so as to be a credit to the Landing. Lessee shall cooperate with Management in providing reasonable free passage from time to time for writers, photographer's, news personnel and other persons designated by Management.
- (p) Upon termination, Lessee, at his/her expense, shall remove any and all stored goods, equipment and all other items, and return Management's spaces formerly used by Lessee for such storage to its original condition.
- (q) In the event Management elects to provide security at its premises, it is understood and agreed such security is provided solely for the purpose of protecting Management's property, and not for the benefit of the Lessee, who it is agreed shall be solely responsible for the safety and security of the Vessel and her appurtenances, and for the safety of Lessee's crewmembers, officers and passengers.
- (r) Lessee shall not post any signs on the Vessel or Management's premises without the advance written approval of the Management.
- (s) The Vessel shall not be used by any person for purposes of living aboard.
- (t) The Lessee shall, upon request by the Management, permit placement of a dye tablet into all holding tanks.
- (u) Lessee understand agrees Management maintains Rules and Regulations which are incorporated herein as though fully set forth in this Agreement, and that Management reserves the right to add new Rules and Regulations or modify existing Rules and Regulations from time to time, which shall become effective upon notice of revised Rules and Regulations via written notice of

changes tendered via first class mail to the Lessee's address identified in Paragraph 8 hereof.

- (v) Lessee shall maintain a log identifying by name and date each passenger who boards the Vessel, and shall make such log available for inspection by Management upon two business days advance notice.
- (w) Overboard discharges of heads or holding tanks are forbidden by law and by this Agreement. Violation of this term or any other term hereof is grounds for eviction and termination of this Agreement.
- (x) Lessee is solely responsible for the safety of his/her Vessel, and Lessee agrees that the Management shall have no obligation whatever to take action(s) in advance of or during a storm to preserve or protect Lessee's Vessel. It is further agreed, however, that the Management may, at its sole election, undertake such actions during or in advance of a storm as it alone deems appropriate and/or necessary to preserve or protect any or all vessels located on its premises; in such event it is agreed that Lessee shall indemnify and hold the Management harmless for any and all personal injury or property damage occurring in connection with the Management's efforts to preserve or protect vessels during or in advance of a storm. It is further agreed that if the Lessee provides such preservative/protective services during or in advance of a storm, all costs associated with such rendering of such services shall be apportioned equally among all vessel owners, including Lessee.
- (y) Management has no obligation whatever to dewater or provide any salvage services to the Vessel should she spring a leak or otherwise need assistance in remaining afloat or in seaworthy condition. Nevertheless, it is agreed that in such event the Management may, but is not required to, provide dewatering or other salvage services for the benefit of the Vessel. In the event the Management elects to provide salvage services, it is agreed Lessee shall be obligated to pay all material/labor costs associated with such services, or \$150 for each hour such services are provided, whichever sum is greater. Payment in such event is not contingent upon the success of such salvage or other such services.
- (aa) Lessee shall ensure all fish cleaning operations aboard the Vessel cease once the Vessel has passed the breakwater leading to Management's premises.
- (bb) Lessee shall not permit anyone, apart from a qualified diver hired for the purpose of cleaning the Vessel's bottom, to enter the water from Management's Landing or from any other place located on Management's premises.
- (cc) Apart from ordinary maintenance, no work involving the Vessel may be accomplished while at the dock or otherwise on Management's premises. Prohibited work includes, but is not limited to, painting, heavy sanding, and use of paint remover, spray guns, or the burning of paint on the topsides or above the decks. Work of any kind to the exterior of the Vessel, including

routine maintenance, to be undertaken by other than Management, must be approved in advance of such work, in writing, by the Marina. Contractors hired by Management to work on the Vessel must be approved by the Marina in writing prior to the commencement of such work, and each such contractor must maintain and provide proof of liability insurance in an amount of at least \$ 2,000,000.00.

(dd) The Vessel may under no circumstances be refueled dockside and may be refueled only at a duly licensed commercial fueling station.

(ee) Lessee shall not store anything on the Landing without Management's advance written permission.

(ff) Lessee shall not operate engines or generators or other noisy equipment between the hours of 10:00 p.m. and 6:00 a.m., unless absolutely and immediately necessary in connection with making the Vessel ready for a scheduled excursion or in the event of an emergency.

4. **Distribution of Funds Collected.** The funds specified in Section 3(e) above (the "Funds") shall be distributed by Management as follows:

(a) An additional charge, equal to the amount payable by Management to the City of San Diego because of such passage or use (currently seven (7%) percent of the charges), shall be retained by Management.

(b) Any amounts advanced or incurred by Management for Lessee's benefit with Lessee's prior written consent or approved invoice, for supplies, equipment, advertising, commissions, etc., shall be invoiced to Lessee.

(c) Remittance to Management shall be paid on a monthly basis on or before the fifteenth (15th) day of each month (or, if such days fall on a weekend or holiday, the first working day thereafter) with respect to Landing fees collected covering the periods from the first (1st) to the last day of each respective previous month.

5. **Non-Exclusive Agreement.** It is expressly acknowledged and agreed by Lessee that this Agreement may be one of a number of agreements between Management and the Lessees of other vessels (including, but not limited to, those which are operated as Sailing, Whalewatching, Sportfishing). As a result, Lessee's right to use of the Landing and the Vessel's slip thereat is non-exclusive and Lessee shall have no right to exclude any other vessel (including a competitor vessel) from the Landing. Lessee acknowledges and agrees that this Agreement gives Lessee its rights herein only with respect to the Vessel (or its substitute under Section 3(a) above). As a result, Lessee shall not dock or operate any other vessel at the Landing without Management's prior written consent.

6. **Rights of Lessee.** During the term of this Agreement, Lessee shall be provided by Management with the following at no cost or charge to Lessee except as specified herein:

- (a) Use of a slip agreed upon with the Management (at a location suitable for the size of the Vessel) during such time as the Vessel is present at the Landing. Management shall have the right to make boat location changes, as it in its unfettered discretion deems necessary or prudent.
- (b) Water and electrical hook-up supplied to the slip. At Management's sole discretion, Management shall have the right to separately meter (at Lessee's expense) Lessee's use of water and electricity and charge Lessee therefor. If Management does so, Lessee shall pay all such charges upon demand.
- (c) Management may establish a maintenance fund and shall utilize the funds therein for painting and general maintenance of the slip in a first class condition at all times, as determined by Management in its sole discretion (excluding any damage caused to the slip by Lessee or its agents or employees, which shall be repaired by Lessee at its sole cost and expense, or in the event of Lessee's failure to do so, by Management and any costs therefore, plus a fifteen percent (15%) administration fee. Management shall not be required to provide any funds for such purposes in excess of those supplied to the maintenance fund pursuant to Section 3(e) above.
- (d) Management shall establish a Landing advertising and promotions program to advertise and promote the Landing and the activities thereat in such manner and at such times as Management may determine in its sole discretion. Management shall not be required to provide any funds for such purposes in excess of those supplied by Lessee pursuant to Section 4(d) above together with funds from such other persons as Management may cause to contribute to such fund.
- (e) The right to the use of an available gear locker, with Lessee assuming all responsibility for all items stored in the locker. No flammable or hazardous materials shall be stored in the lockers or on the docks at any time.
- (f) Operation under such general Mexican fishing licenses that Management may have from time to time, based on Lessee's proper registration of the Vessel with Mexican authorities and paying any fees required.
- (g) Management shall provide 10 parking spaces on management property for use by passengers of the Commander. Parking spaces are for use for passengers while they are embarked on the Commander. Management is not responsible for damage to, or loss of, personal property or personal vehicles using the parking lot.

7. **Indemnity.** Lessee shall protect, defend, indemnify, and hold Hyatt Corporation, CHSP Mission Bay LLC, a Delaware limited liability company, DBA Hyatt Regency Mission Bay Spa and Marina, the City, and their respective members, affiliates, officers, directors, agents and employees harmless from and against any and all claims, demands, liabilities, costs, expenses, damages and lawsuits (including reasonable attorney's fees incurred by Management, and/or the City, in

officers, directors, agents and employees harmless from and against any and all claims, demands, liabilities, costs, expenses, damages and lawsuits (including reasonable attorney's fees incurred by Management, and/or the City, in investigating or defending same) for personal injury, death, property damage or any other claim not occasioned by Management's gross negligence or willful misconduct, made by or on behalf of any customer, passenger, officer or crewmember, or other person permitted by Lessee to be on or around the Vessel, resulting from any cause whatsoever, occurring while such person is on or about the Vessel, including embarking or disembarking to or from the Vessel, whether the Vessel is docked or underway, or occurring during the course of any dive or other activity conducted by or participated in by Lessee, and from any such claims by other persons arising out of the use, or operation of, the Vessel.

Lessee further waives, releases and discharges any claims, demands, actions or causes of action against Management, and/or the City, for damages to person or property, including but not limited to claims for injuries or damages to employees, agents or subcontractors of Lessee, arising from any cause whatsoever. Notwithstanding the foregoing, this waiver, release, and indemnity shall not apply to any damage or loss resulting solely from the gross negligence or willful misconduct of Management, and/or the City.

8. **General Provisions.**

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

To the Lessee:

(Personal)
____ (individually) Robert Civitane / Lance Dwyer

5101 1/2 Lotus St SAN DIEGO CA 92107

(Business) * Sail Mission Bay

To the Management:

Hyatt Corporation, as agent of CHSP Mission Bay LLC, a Delaware limited liability company, DBA Hyatt Regency Mission Bay Spa and Marina
Attention: General Manager
1441 Quivira Road San Diego, California 92109

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

- (c) If any part, term, or provision of the Agreement is held invalid, such invalidity shall not affect other parts, terms, or provisions of this Agreement which can be given effect without the portion held invalid, and to that extent the parts, terms and provisions of this Agreement are severable. Any waiver of any term hereof shall not be deemed to be a continuing waiver and consent to any one waiver and shall not be deemed to be the consent to any other waiver.
- (d) This Agreement constitutes the entire understanding between the parties with regard to its subject matter and supersedes all other agreements, written or oral, between the parties with respect to such subject matter. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of anyone, which are not contained in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding. The terms of this Agreement may not be terminated, waived, or amended except by a written agreement signed by all of the parties to this Agreement or their successors.
- (e) In the event of any action or litigation to enforce or interpret this Agreement or otherwise arising under or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party any and all reasonable attorney's fees and costs incurred.
- (f) This Agreement shall be governed and construed in accordance with the laws of California. All legal actions brought in connection with this Agreement shall be filed and tried in San Diego County, California.

- 9. **Assignment and Subleasing.** Lessee shall not assign the Agreement or sublet the premises or any part thereof without the prior written consent of the Management and the City. An assignment by operation of law shall automatically terminate this Agreement.
- 10. **Legal Proceedings.** Failure to pay wharfage services rendered under the Agreement gives rise automatically, by operation of Maritime law, to a maritime lien that may be enforced personally against the Lessee and against the Vessel (*in rem*) as though it were in fact a person. LESSEE SPECIFICALLY AGREES THAT LEGAL SERVICES RENDERED IN CONNECTION WITH THE ENFORCEMENT AGAINST LESSEE OF ANY CONTRACTUAL OR OTHER LEGAL RIGHT OR REMEDY AVAILABLE TO THE LANDING SHALL BE DEEMED PART OF THE MARITIME WHARFAGE "NECESSARIES" PROVIDED, AND THEREFORE ALL SUCH LEGAL SERVICES SHALL BE RECOVERABLE AGAINST LESSEE PERSONALLY AND AS PART OF THE LANDING'S LIEN AGAINST THE VESSEL *IN REM*. Notwithstanding the general rule that attorneys' fees incurred in connection with a necessities lien are not recoverable directly against the Vessel, it is understood and agreed that if any legal action is required to enforce the terms

of this Agreement or to enforce the Landing's lien rights as existing under both federal and state law, the prevailing party shall be entitled to reasonable attorneys' fees and costs, and all other costs of enforcement, in addition to any other relief to which it or he may be entitled, and that if the Landing prevails, attorneys' fees shall be recoverable both *in personam* (against the Management) and *in rem* (against the Vessel).

11. **Subordination.** This Agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated FEB, 3, 2018, as amended between the Management herein and the City of San Diego. This Agreement is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

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

OWNER:

Hyatt Corporation, as agent of CHSP
Mission Bay LLC, a Delaware limited
liability company, DBA Hyatt Regency
Mission Bay Spa and Marina

Sail Mission Bay
Capt. Robert Civitano
Lane Phuyetter

[Signature]

LESSEE:

[Signature]
[Signature]

GUARANTY

The undersigned, being the owner(s) of Lessee, hereby unconditionally and irrevocably guarantee the performance by Lessee of all its duties and obligations under the Agreement, as it may be modified from time to time. Such guarantee shall be joint and several among the undersigned, who agree to satisfy such duties and obligations upon demand, without prior demand upon Lessee having been made.

Robert Civitano

Printed Name: Robert Civitano

5105 1/2 Lotus St San Diego

Address:

5105 1/2 Lotus St

SAN Diego CA 92107

Telephone:

619, 577-5750

Lance Droyveller

Printed Name:

LANCE Droyveller

Address:

9034 St.

SAN Diego CA, 94977

Telephone:

619, 548, 7714

Sail Mission Bay

Operational Plan

Sail Mission Bay herein referred to as SMB and/or Operator. SMB is a general partnership between Robert Civitano and Lance Dhuyvetter. SMB is a family oriented sailing charter business on Mission Bay. We provide a fun, adventurous, one of a kind experience, for the first time sailor or even an experienced mariner. We providing lasting memories for all who come aboard.

Description of Operations

a. Terms of operations. Operations shall begin after consent to operate is approved and shall continue through the length of the sub-lease agreement with the Hyatt Regency Spa and Marina and the city of San Diego.

b. SMB will utilize vessels which are in full compliance with USCG regulations for safety equipment, vessel command (licensed captain), electronic equipment, and passenger liability insurance.

c. SMB will conduct operations within Mission Bay for the majority of its chartering but may occasionally go into open ocean waters within a 5 mile range of California shore as well.

d. SMB will at all times strive to conduct themselves as professional and courteous mariners.

e. SMB will observe all applicable local, state, and federal laws pertaining to commercial vessels operations in the US waters.

f. The operator of each vessel will permit the Lifeguard Division to inspect the vessel at any time including during operation and agree to cease operating, for a reasonable period of time to facilitate inspection when directed by supervising Lifeguard personal.

g. SMB partner/co owner Robert Civitano has current and valid Master Near Coastal 100 ton credential with a sailing and towing endorsement. He will be captaining the Anna Rose, conducting charters, and day to day operations on the water. Captain Civitano will act as first captain due to his over 25 years of merchant mariner experience and his familiarity with the water ways of Mission Bay.

Hour of Operation

a. SMB anticipates hours of operation to typically be from 10 am to one hour after sunset (seasonal time variation) 7 days a week. Operations will decrease during winter months Though subject to change.

SMB will observe regulations of the Hyatt Marina Dock Rules at all times.

b. Sailing charters will be scheduled days in advance typically for between several hours to full day durations.

Type of Vessel

a. SMB owns the Anna Rose a 25' McGregor sail boat and plans to acquire additional sail boats in the future.

b. Vessels will be stored off site at separate facilities.

c. All vessels will comply with all USCG rules and safety regulations.

Safety

a. All crew for SMB are trained in basic safety procedures. The captain will give a safety orientation to all passengers before every trip and inform each person of the location of all safety equipment including but not limited to life jackets and fire extinguishers.

b. Safety orientation will include but will not be limited to precautions for rough water, procedures for man overboard, emergency procedures for fire, and vessel taking on water.

c. Passenger will be offered the option to wear USGC approved PFD for the entirety of the charter. That choice will ultimately be at their discretion unless they indicate they can't swim or they are under 13 years of age.

d. All vessels will be under the command of USCG licensed captains.

e. All captains and crew will check weather/sea conditions prior to daily operation and maintain the highest regard for safety.

General Rescue Procedures for Water Emergencies

- a. Survey the scene
- b. The rescuer should consider his/her ability prior to attempting a rescue
- c. Ensure proper use of all rescue equipment
- d. Safely approach and determine if the victim(s) is in distress
- e. Perform rescue based on American Red Cross training
- f. Move the victim(s) to safety or remove the victim(s) from the water
- g. Perform a primary survey
- h. If an emergency exists ensure someone calls 911 and request San Diego Lifeguard and/or USCG assistance.
- i. Provide First Aid until emergency medical services (EMS) arrives.

CITY OF SAN DIEGO

LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE FOR ALL LEASES, ASSIGNMENTS AND SUBLEASES

Pursuant to the City of San Diego City Charter Section 225: "Mandatory Disclosure of Business Interests," before the City will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub)Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of existing Lessee (always complete):

Robert Civitano (Sail Mission Bay)

Exact name of proposed Lessee (complete only if applicable):

Lance Duyvetter

Exact name of existing Sublessee (complete only if applicable):

Exact name of proposed Sublessee (complete only if applicable):

Date this Questionnaire completed: FEB 3, 2018

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature:

R. Civitano

Title:

Owner

Owner

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate Assets if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

PROPOSED (SUB)LESSEE

1. Name of proposed (Sub) Lessee exactly as it will appear on the actual tenancy document:

Sail Mission Bay, Robert Civitano
& Lance Dhuyvetter

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

9034 Alvarado St
Spring Valley CA 91977
(619) 548-7714

Telephone No.: 619.577.5750 Fax. No.: NA

E-mail Address: SailMissionBay@gmail.com

3. Billing Address (*only if different from Mailing Address*):

(619) 548-7714
Telephone No.: 619.577.5750 Fax. No.: NA

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship (); Partnership (☒); Corporation ();

Limited Liability Company (); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable): _____

PARTNERSHIP STATEMENT

If proposed (Sub)Lessee is a partnership, please answer the following:

1. Date of Organization: 11.20.2017

2. General Partnership ☒ ()

Limited Partnership ()

Other () Explain _____

3. Statement of Partnership recorded: Yes ☒ () No ()

11.20.2017 OFFICE OF TREASURER, SAN DIEGO
Date Book Page County

4. Has the partnership conducted business in San Diego County?

Yes () No ☒ If so, when? _____

If so, where? _____

5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

General/Limited	Name	Address	Share %
General	Robert Cuitano Jr	5105 1/2 Lotus St ⁹²¹⁰⁷ SAN DIEGO	50%
General	LANCE DHUYVELER	9034 AKARD ST ^{Spring Valley} 91977	50%

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C () Subchapter S ()
2. When incorporated? _____
3. Where incorporated? _____
4. Is the corporation authorized to do business in California? Yes () No ()
If so, as of what date? _____
5. The corporation is held:
 - a. Publicly () Privately ()
 - b. If publicly held, how and where is the stock traded?

- | | | | |
|-------------------------------------|-------------------|---------------|--------------------|
| 6. Please list the following: | <u>Authorized</u> | <u>Issued</u> | <u>Outstanding</u> |
| a. Number of voting shares: | _____ | _____ | _____ |
| b. Number of nonvoting shares: | _____ | _____ | _____ |
| c. Number of shareholders: | | | _____ |
| d. Value per share of Common Stock: | | Par | \$ _____ |
| | | Book | \$ _____ |
| | | Market | \$ _____ |

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Above N/A

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

8. Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment thereto, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in

Above 10/2

the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: _____
2. Where Organized: _____
3. Is the Company authorized to do business in California?
 - a. Yes () No ()
 - b. If so, as of what date? _____
4. Has the Company conducted business in San Diego County?
 - a. Yes () No ()
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer/ Member	Name	Address	Share %

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

N/A

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes () No (☒)
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes () No (☒)
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to **ANY** pending litigation?
 - a. Yes () No (☒)
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes () No (☒)
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUB)LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

* New Business

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Business can't start
until consent and lease
approval.

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 2

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 3

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 4

Name: _____

Firm: _____

Title: _____

Address: _____

Telephone: _____

Nature and magnitude of purchase, sale, loan, business, association, etc.:

N/A

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name	<u>Robert C CNitano Jr.</u>
Date of Birth	<u>12 . 02 . 78</u>
Place of Birth	<u>Peekskill, New York</u>
Social Security Number	<u>125-72-6226</u>
Driver's License Number/State	<u>CA, F2271705</u>
Home Address	<u>5105 1/2 Lotus St</u> <u>SAN DIEGO CA 92107</u>
Previous Address	<u>3262 BAYSIDE LANE</u> <u>SAN DIEGO, CA. 92109</u>
Home Telephone No.	<u>619. 577-5750</u>
Employer	<u>SAIL MISSION BAY</u>
Occupation	<u>Merchant Marine Captain</u>
Business Address	<u>9034 ARARD ST. Spring valley CA. 91977</u>
Business Telephone No.	<u></u>
Business Fax No.	<u>NA</u>

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date FEB 2, 2018 Signed 

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

Robert CNitano (Sail Mission Bay)

METHOD OF OPERATION

Please describe your proposed business operation on the property to be (Sub)Leased.
Discuss any optional services and uses which you propose to provide.

* Please refer to Operational Plan

**PROPOSED METHOD OF FINANCING
DEVELOPMENT OR LEASEHOLD PURCHASE**

Describe the method of financing for the Leasehold purchase or any new or additional development on the Leasehold. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

N/A

ESTIMATE OF GROSS RECEIPTS

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

Year of Operation	Uses (Identify Each Use)				
	Sailing Charters				
1	\$ 156k	\$	\$	\$	\$
2	312k				
3	312k				
4	312k				
5	312k				

* This is an estimate (on the low side)

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

I Robert Civitano Have over 25 years of Merchant Mariner experience, specializing in sailing vessel. I have Acted as a charter captain. For over 8 years on the waters of San Diego Bay + Mission Bay for numerous charter companies. I managed the Rental fleet and Sailing School at Both the Catamaran and Bahia Resorts for 5 yrs. I currently hold A USCG 100 ton Master Captain Near Coastal License with a Sailing and Towing endorsement. I also possess A Current CPR, First Aid, Heart Saver Certificate From the Red Cross and have First Responder EMT Training.

* See BACK

I Lanea Dhuyvetter will be in charge of management and development of Sail Mission Bay. I have co owned several businesses and have over 10 years of business management experience. My experience consists of but is not limited to, entity creation, tax law, customer service, shipping/receiving, financial management, ~~and~~ marketing/advertising, etc.

**TERMS AND CONDITIONS OF PURCHASE, SALE,
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease assignment.)

Please summarize the terms and conditions of the purchase, sale, or transfer of Leasehold interest(s) which requires City consent, as specified in the Assignment-Sublease provisions of the City Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE (Consent) is provided by THE CITY OF SAN DIEGO, a California municipal corporation (City), to CHSP MISSION BAY LLC, a Delaware limited liability company, d.b.a. Hyatt Regency Mission Bay Spa and Marina (Lessee/Sublessor), to be effective upon execution by City and approval by the San Diego City Attorney, as follows:

RECITALS

- A. City and Lessee/Sublessor's predecessor-in-interest entered into a City of San Diego Lease Agreement (Agreement), filed as document RR-300863 in the Office of the San Diego City Clerk, which was assigned to Lessee/Sublessor under the City of San Diego Consent to Assignment dated September 6, 2012, (Assignment) (the Agreement and Assignment are hereafter jointly referred to as the Master Agreement) relating to that certain City-owned real property located at 1441 Quivira Road, San Diego, California 92109, commonly known as "Hyatt Regency Mission Bay Spa and Marina," and more particularly described in the Agreement (Premises).
- B. Lessee/Sublessor now desires to sublease a portion of the Premises to Aqua Lounge San Diego, LLC, a California limited liability company (Sublessee) by entering into a certain Charter Boat Lessee Agreement.
- C. The Master Agreement requires that Lessee/Sublessor obtain City's consent to sublease the Premises or any portion thereof.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, and with the incorporation of the above-listed Recitals into this Consent, the City consents to the sublease of a portion of the Premises, provided that all of the following conditions are and remain true throughout the term of the sublease:

- 1. Subject to the terms and conditions herein, City hereby consents to Lessee/Sublessor's request to sublease a portion of its right, title and interest in and to the Premises to Sublessee. By giving this Consent, City is merely consenting to the sublease request, and is not consenting to, approving, accepting or agreeing to be bound by any term or condition of the Charter Boat Lessee Agreement which Lessee/Sublessor and Sublessee enter into.
- 2. All terms and conditions of the Master Agreement shall control and supersede any inconsistent or contrary provisions in any Charter Boat Lease Agreement executed between Lessee/Sublessor and the Sublessee. City shall not be bound by any term or condition of the Charter Boat Lease Agreement which in any way conflicts with the City's rights or would otherwise result in increasing the City's obligations or decreasing the Lessee/Sublessor's obligations under the Master Agreement; and
- 3. City's Consent is conditioned upon Sublessee's written agreement that it will assume all rights and obligations, and that it will keep and perform all covenants, conditions and provisions of the Master Agreement applicable to the rights acquired as a "Lessee" under the Master Agreement, (which rights and obligations include, but are not limited to, the Sublessee's obligation to indemnify the City in the manner set forth in Section 7.1 of the Master

Agreement, and to comply with all insurance requirements in the manner set forth in Section 7.2 of the Master Agreement); and

4. City does not release, discharge or modify Lessee/Sublessor's obligations to City under the Master Agreement. As set forth in applicable law, Lessee/Sublessor's obligations under the Master Agreement shall survive said Charter Boat Lease Agreement and shall continue through the termination dates of the Master Agreement, as set forth therein; and
5. This Consent does not constitute consent to any subsequent subleasing of any interest in and to the Premises subject to the Master Agreement.
6. Lessee/Sublessor agrees to pay City any applicable processing and/or administrative fee(s) for processing this Consent.
7. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Charter Boat Lease Agreement. Further, Lessee/Sublessor agrees to protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, and employees harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee.

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IN WITNESS WHEREOF, this Consent to sublease is executed by City acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO, a California municipal corporation

Date: 3/7/19

By: [Signature]
Cybele Thompson, RPA, FMA, CCIM, LEED AP
Director, Real Estate Assets Department

Planning Department - Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities).

Date: 4/15/19

BY: [Signature]

Name: Alyssa M. Muto
Title: Deputy Director, Environmental and Policy Analysis,
Planning Department

Approved as to form this 16th
day of April, 2019

MARA W. ELLIOT, City Attorney

BY: [Signature]
Name: Melissa Ables
Title: Deputy City Attorney



Date of Notice: February 15, 2019

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Sublease between CHSP Mission Bay LLC and Aqua Lounge San Diego LLC

COMMUNITY PLAN AREA: Mission Bay Park

COUNCIL DISTRICT: 2

LOCATION: 1441 Quivira Road, San Diego, CA 92109

PROJECT DESCRIPTION: Consent to sublease between Hyatt Corporation, an agent of CHSP Mission Bay LLC, d.b.a. Hyatt Regency Mission Bay Spa and Marina (Lessee) and Aqua Lounge San Diego LLC, a California Limited Liability Company, allowing the subleasing of a portion of the Hyatt Regency Mission Bay Spa and Marina dock to provide bay and ocean cruises, full service bar and food services as approved by Lessee and City to the patrons of the hotel and the general public.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: The City of San Diego conducted an environmental review and determined the project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities), which allows the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures or facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

PROJECT MANAGER: Vladimir Balotsky, SR/WA
Real Estate Assets Department

MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

PHONE NUMBER: (619) 235-5248

On February 15, 2019, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal CEQA determination to the City Council must be filed in the Office of the City Clerk within 10 business days from the date of the posting of this Notice (**March 5, 2019**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: February 15, 2019

REMOVED: March 7, 2019

POSTED: M. Hermann

CHARTER BOAT LESSEE AGREEMENT

THIS CHARTER BOAT LESSEE AGREEMENT (the "Agreement") is made and entered into on August 21, 2017, by and between Hyatt Corporation, as agent of CHSP Mission Bay LLC, a Delaware limited liability company, DBA Hyatt Regency Mission Bay Spa and Marina (the "Management") and **Aqua Lounge San Diego LLC**, (individually or jointly, "Lessee") with respect to the following facts:

- A. Management leases from the City of San Diego (hereinafter, "City"), and operates the marina, boat slips, docks, and landing located at 1441 Quivira Road. San Diego, California, USA, 92109 (collectively, the "Landing").
- B. Lessee owns and operates the "Vessel" as follows:

Name of Boat:

Cal. DMV CF#:

Federal Document #:

Length Overall: 75' Beam: 28' Draft: 6'

The Vessel shall provide **Bay & Ocean Cruiser Full reservice Bar & Food**, as agreed upon by Management and Lessee. Only the Vessel described in this paragraph, and no other vessel, may occupy the boat slip under this Agreement.

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

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

1. Recitals. The foregoing Recitals are incorporated in this Agreement as if fully set forth below.
2. Term of Agreement
 - (a) Subject to paragraph (b) below, the rights and duties of the parties under this Agreement shall commence on Upon Approval By The CITY. This agreement is for month to month tenancy. Written notice of termination shall be given thirty (30) days prior to the expiration of said term by either Management or Lessee, this Agreement will continue on a month-to-month basis and may be terminated by either party giving the other at least thirty (30) days prior written notice.
 - (b) Notwithstanding the provisions of Section 2(a) above, Management shall have the rights, as set forth in Section 2(c) below, on the occurrence of any of the following specified events (each an "Event of Default"):
 - (i) Bankruptcy, by voluntary or involuntary petition, or insolvency of Lessee;
 - (ii) Sale or transfer of more than fifty (50%) percent or more of the stock or beneficial interest in the stock of Lessee, or sale or transfer of substantially all of the assets of Lessee;
 - (iii) Destruction or seaworthiness of the Vessel, or her inoperability for a period longer than four (4) months, unless a substitute vessel approved in writing by Management is provided.
 - (c) Monthly Rate: Base rent 845.00 or 1.5% of the gross at maximum of \$10,000 per Month. Said rate is based on overall length of the vessel not waterline length.
 - (i) Seizure of the Vessel pursuant to Court order or non-judicial repossession as contractually permitted by a mortgage lien holder.
 - (ii) Breach of any term, provision or covenant contained in this Agreement, each of which is deemed to be material for all purposes herein.
 - (iii) Assignment or transfer of any interest, rights or duties under this Agreement other than as provided herein.
 - (iv) Abandonment of the Vessel by Lessee.
 - (v) Vacate the Landing.
 - (d) Upon the occurrence of the Event of Default, Management may:
 - (i) Immediately terminate and declare a forfeiture of this Agreement, whereby effective as of the termination date Management shall not have any further or future obligations under this Agreement except as may be required by applicable law. Pursuant to such termination, Management

may recover and take exclusive custody, possession and control of the Landing, remove the Vessel and all other personal property therefrom, remove all other personal property of Lessee from the dock adjacent to the Landing and elsewhere in the Landing area, store the Vessel at any location and recover from Lessee all damages resulting from any Event of Default, including, without limitation, the cost of recovery of the Landing, the cost of removal the Vessel and any other personal property therefrom, the cost of storing the Vessel.

- (ii) In the event that Management removes any personal property from the Landing, its adjacent docks and/or elsewhere in the Landing area, other than or in addition to the Vessel, Management may store such property at any location at the sole expense and risk of Lessee or other owner thereof, and may sell or otherwise dispose of such property as provided by applicable law.
 - (iii) Immediately take exclusive custody, possession and control of the Vessel, including, without limitation, any and all fixtures, engine(s), equipment, rigging, gear and other personal property thereon or appurtenant thereto (collectively, the "Gear"), and physically impound and secure the Vessel, together with any Gear, at any location for the purposes, inter alia, of enforcing, perfecting and executing upon Management's statutory lien rights in or upon the Vessel, e.g., (i) pursuant to the California Harbors and Navigation Code Section 490, et seq., and Section 500, et seq. (the "California Boaters Lien Law"), and/or (ii) pursuant to the Federal Maritime Lien Act, 46 U.S.C. Section 31341, et seq. (collectively, the "Boat Liens"). The Boat Liens (as applicable, depending upon whether California law or Federal maritime law controls in the premises) shall cover and apply to, as the case may be, any and all necessities (e.g., wharfage, moorage, towage and repairs subject to Federal statutory maritime liens) and/or any and all other items consisting of services and/or storage (e.g., rentals, materials, labor and goods subject to California statutory boaters liens), which shall have been provided or rendered to the Vessel and/or purchased or obtained by, or provided to, Lessee in respect of the Vessel pursuant to or in connection with this Agreement. Management's rights to physically impound and secure the Vessel, as described above, shall include, without limitation, securing the Vessel in the Landing, removing and transferring the Vessel from the Landing to any other location, securing the Vessel at any other location and/or otherwise berthing, docking, mooring and/or storing the Vessel at any location.
- (1) In the event that Management takes exclusive custody, possession and control of the Vessel including its Gear, and physically impounds, secures and stores the Vessel including its Gear, as described above, the impounding, securing and storing of the Vessel including its Gear, and any other actions taken by Management, shall be at the sole expense and risk of Lessee or other owner of the Vessel, and Lessee hereby waives any claims against Management and any of its officers, employees or agents

for failure to maintain the safekeeping of the Vessel including its Gear, except for any duty of safekeeping imposed by statutory law that cannot be waived by Lessee as a matter of law.

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

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

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

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

- (b) Lessee shall at all times cause the Vessel to be operated in a safe and lawful manner and in compliance with all Rules of Management which are incorporated herein in this Agreement, and all applicable federal, state or local statutes, regulations or directives.
- (c) Lessee shall at all times cause the Vessel to provide at least such services as are customarily provided by other charter fishing boats of a similar size.
- (d) If the Lessee is designated as the 1/2 day charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make two (2) one-half day fishing trips daily, the first trip departing from the Landing at approximately 6:00 a.m. and returning at approximately 11:30 a.m. and the second trip departing from the Landing at approximately 12:30 p.m. and returning at approximately 5:30 p.m. Lessee may schedule the second daily trip as a Twilight charter departing the landing at approximately 6:00 p.m. and returning approximately at 10:00 p.m. If the Lessee is designated as the 3/4 day charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make one three-quarter day fishing trips daily, the first trip departing from the Landing at approximately 5:30 a.m. and returning at approximately 5:00 p.m. If the Lessee is designated as an overnight charter fishing boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make one fishing trip daily, departing from the Landing at approximately 10:00 p.m. and returning approximately 7:00 p.m. to 9:00 p.m. the following evening. If the Lessee is designated as a whale watching boat/bay cruise boat, then, subject to weather conditions, the Vessel (or its substitute as provided for in paragraph (a) above) shall make two (2) whale watching trips daily, the first departing from the Landing at approximately 10:00 a.m. and the second departing at approximately 1:00 p.m.; each such trip shall be for a duration of two to three hours. The parties to this Agreement agree Management shall have the right to, from time to time, set a the minimum number of passengers required for each type of vessel excursion (for example, to require a 1/2 day charter boat depart in the event two passengers wish to engage in such excursion).
- (e) Lessee shall at all times cause the Vessel to be docked and operated so as to cause no damage to the Landing or any other part of Management's property. Lessee shall notify Management immediately in the event he/she becomes

aware of damage to Management's property. Lessee shall notify Management immediately in the event he/she becomes aware of damage sustained by any part of Management's premises, irrespective of whether such damage is caused by Lessee, his/her crew, his/her passenger(s) or other person. Lessee shall indemnify and hold Management harmless from, and reimburse Management for, all costs, expenses, damages, claims, demands, liabilities and lawsuits (including reasonable attorney's fees incurred by Management in investigating or defending such lawsuits) arising solely out of any action or inaction on the part of the Lessee, its agents or employees, or any passenger. Lessee shall bear full responsibility, and shall reimburse Management, for any and all damages caused by the Vessel or her crew or passengers to the Landing or any other part of Management's property due to improper operation of the Vessel, seaworthiness of the Vessel, rough seas and/or bad weather.

- (f) Lessee shall provide a suitable picture of the Vessel to Management upon signing and by December 1st of each year thereafter, together with a copy of current U.S. Coast Guard Certificate of Documentation.
- (g) Lessee shall keep the Vessel's designated dock area maintained and free from debris, or any hazardous materials, at all times. Lessee shall, after returning to the Landing following each excursion, spray with water and take all other necessary actions to thoroughly clean the dock areas adjacent to the Vessel.
- (h) Lessee shall refrain from renting fishing equipment on the Vessel, except if necessary to provide replacement gear or if the Landing does not have available equipment.
- (i) Lessee shall provide his own bait.
- (j) Lessee shall strictly enforce courteous behavior by crewmembers and PROHIBIT THE FOLLOWING:
 - (i) the drinking of alcoholic beverages, possession OR USE of illicit drugs or narcotics by crew members BEFORE, DURING OR AFTER TRIPS, OR ANY TIME on board the Vessel;
 - (ii) crew members from boarding the Vessel AT ANY TIME while under the influence of alcohol or drugs; and
 - (iii) fishing by crewmembers.
 - (iv) Profane language or other indecorous conduct.
- (k) Crew members must wear appropriate attire designating them as crewmembers.
- (l) Upon execution of this Agreement, and yearly on the anniversary of execution of this Agreement, Lessee shall provide Management and the City with

certificates of insurance, issued by a California admitted insurance carrier, covering the Vessel and Lessee (and naming Management and The City of San Diego as additional insureds), showing \$ 5,000,000.00 Dollars of liability insurance in effect provided by a company acceptable to Management and the City, and in accordance with all Public Utility Commission requirements and all other governmental requirements. A copy of the policy of insurance shall be filed with the City. Said policy shall specify that the policy may not be terminated, altered, or cancelled without thirty (30) days prior written notice to Management and the City by the insurance company. Both the Management and the City of San Diego shall be named as additional assureds.

- (m) Lessee shall obey all laws, rules and regulations of Mexico when operating in Mexican waters, including but not limited to licensing and permits, and obey all laws, rules and regulations of the United States and California and all governmental entities/agencies with respect to activities undertaken therein.
- (n) Lessee shall at all times cause the Vessel to be operated by properly licensed personnel in compliance with U.S. Coast Guard requirements.
- (o) Lessee shall at all times operate the Vessel so as to be a credit to the Landing. Lessee shall cooperate with Management in providing reasonable free passage from time to time for writers, photographer's, news personnel and other persons designated by Management.
- (p) Upon termination, Lessee, at his/her expense, shall remove any and all stored goods, equipment and all other items, and return Management's spaces formerly used by Lessee for such storage to its original condition.
- (q) In the event Management elects to provide security at its premises, it is understood and agreed such security is provided solely for the purpose of protecting Management's property, and not for the benefit of the Lessee, who it is agreed shall be solely responsible for the safety and security of the Vessel and her appurtenances, and for the safety of Lessee's crewmembers, officers and passengers.
- (r) Lessee shall not post any signs on the Vessel or Management's premises without the advance written approval of the Management.
- (s) The Vessel shall not be used by any person for purposes of living aboard.
- (t) The Lessee shall, upon request by the Management, permit placement of a dye tablet into all holding tanks.
- (u) Lessee understand agrees Management maintains Rules and Regulations which are incorporated herein as though fully set forth in this Agreement, and that Management reserves the right to add new Rules and Regulations or modify existing Rules and Regulations from time to time, which shall become effective upon notice of revised Rules and Regulations via written notice of

changes tendered via first class mail to the Lessee's address identified in Paragraph 8 hereof.

- (v) Lessee shall maintain a log identifying by name and date each passenger who boards the Vessel, and shall make such log available for inspection by Management upon two business days advance notice.
- (w) Overboard discharges of heads or holding tanks are forbidden by law and by this Agreement. Violation of this term or any other term hereof is grounds for eviction and termination of this Agreement.
- (x) Lessee is solely responsible for the safety of his/her Vessel, and Lessee agrees that the Management shall have no obligation whatever to take action(s) in advance of or during a storm to preserve or protect Lessee's Vessel. It is further agreed, however, that the Management may, at its sole election, undertake such actions during or in advance of a storm as it alone deems appropriate and/or necessary to preserve or protect any or all vessels located on its premises; in such event it is agreed that Lessee shall indemnify and hold the Management harmless for any and all personal injury or property damage occurring in connection with the Management's efforts to preserve or protect vessels during or in advance of a storm. It is further agreed that if the Lessee provides such preservative/protective services during or in advance of a storm, all costs associated with such rendering of such services shall be apportioned equally among all vessel owners, including Lessee.
- (y) Management has no obligation whatever to dewater or provide any salvage services to the Vessel should she spring a leak or otherwise need assistance in remaining afloat or in seaworthy condition. Nevertheless, it is agreed that in such event the Management may, but is not required to, provide dewatering or other salvage services for the benefit of the Vessel. In the event the Management elects to provide salvage services, it is agreed Lessee shall be obligated to pay all material/labor costs associated with such services, or \$150 for each hour such services are provided, whichever sum is greater. Payment in such event is not contingent upon the success of such salvage or other such services.
- (aa) Lessee shall ensure all fish cleaning operations aboard the Vessel cease once the Vessel has passed the breakwater leading to Management's premises.
- (bb) Lessee shall not permit anyone, apart from a qualified diver hired for the purpose of cleaning the Vessel's bottom, to enter the water from Management's Landing or from any other place located on Management's premises.
- (cc) Apart from ordinary maintenance, no work involving the Vessel may be accomplished while at the dock or otherwise on Management's premises. Prohibited work includes, but is not limited to, painting, heavy sanding, and use of paint remover, spray guns, or the burning of paint on the topsides or above the decks. Work of any kind to the exterior of the Vessel, including

routine maintenance, to be undertaken by other than Management, must be approved in advance of such work, in writing, by the Marina. Contractors hired by Management to work on the Vessel must be approved by the Marina in writing prior to the commencement of such work, and each such contractor must maintain and provide proof of liability insurance in an amount of at least \$ 2,000,000.00.

- (dd) The Vessel may under no circumstances be refueled dockside and may be refueled only at a duly licensed commercial fueling station.
- (ee) Lessee shall not store anything on the Landing without Management's advance written permission.
- (ff) Lessee shall not operate engines or generators or other noisy equipment between the hours of 10:00 p.m. and 6:00 a.m., unless absolutely and immediately necessary in connection with making the Vessel ready for a scheduled excursion or in the event of an emergency.

4. **Distribution of Funds Collected.** The funds specified in Section 3(e) above (the "Funds") shall be distributed by Management as follows:

- (a) An additional charge, equal to the amount payable by Management to the City of San Diego because of such passage or use (currently seven (7%) percent of the charges), shall be retained by Management.
- (b) Any amounts advanced or incurred by Management for Lessee's benefit with Lessee's prior written consent or approved invoice, for supplies, equipment, advertising, commissions, etc., shall be invoiced to Lessee.
- (c) Remittance to Management shall be paid on a monthly basis on or before the fifteenth (15th) day of each month (or, if such days fall on a weekend or holiday, the first working day thereafter) with respect to Landing fees collected covering the periods from the first (1st) to the last day of each respective previous month.

5. **Non-Exclusive Agreement.** It is expressly acknowledged and agreed by Lessee that this Agreement may be one of a number of agreements between Management and the Lessees of other vessels (including, but not limited to, those which are operated as _____

As a result, Lessee's right to use of the Landing and the Vessel's slip thereat is non-exclusive and Lessee shall have no right to exclude any other vessel (including a competitor vessel) from the Landing. Lessee acknowledges and agrees that this Agreement gives Lessee its rights herein only with respect to the Vessel (or its substitute under Section 3(a) above). As a result, Lessee shall not

dock or operate any other vessel at the Landing without Management's prior written consent.

6. **Rights of Lessee.** During the term of this Agreement, Lessee shall be provided by Management with the following at no cost or charge to Lessee except as specified herein:

- (a) Use of a slip agreed upon with the Management (at a location suitable for the size of the Vessel) during such time as the Vessel is present at the Landing. Management shall have the right to make boat location changes, as it in its unfettered discretion deems necessary or prudent.
- (b) Water and electrical hook-up supplied to the slip. At Management's sole discretion, Management shall have the right to separately meter (at Lessee's expense) Lessee's use of water and electricity and charge Lessee therefor. If Management does so, Lessee shall pay all such charges upon demand.
- (c) Management may establish a maintenance fund and shall utilize the funds therein for painting and general maintenance of the slip in a first class condition at all times, as determined by Management in its sole discretion (excluding any damage caused to the slip by Lessee or its agents or employees, which shall be repaired by Lessee at its sole cost and expense, or in the event of Lessee's failure to do so, by Management and any costs therefore, plus a fifteen percent (15%) administration fee. Management shall not be required to provide any funds for such purposes in excess of those supplied to the maintenance fund pursuant to Section 3(e) above.
- (d) Management shall establish a Landing advertising and promotions program to advertise and promote the Landing and the activities thereat in such manner and at such times as Management may determine in its sole discretion. Management shall not be required to provide any funds for such purposes in excess of those supplied by Lessee pursuant to Section 4(d) above together with funds from such other persons as Management may cause to contribute to such fund.
- (e) The right to the use of an available gear locker, with Lessee assuming all responsibility for all items stored in the locker. No flammable or hazardous materials shall be stored in the lockers or on the docks at any time.
- (f) Operation under such general Mexican fishing licenses that Management may have from time to time, based on Lessee's proper registration of the Vessel with Mexican authorities and paying any fees required.
- (g) Management shall provide 54 parking spaces on management property for use by passengers of the Commander. Parking spaces are for use for passengers while they are embarked on the Commander. Management is not responsible for damage to, or loss of, personal property or personal vehicles using the parking lot.

7. **Indemnity.** Lessee shall protect, defend, indemnify, and hold Hyatt Corporation, CHSP Mission Bay LLC, a Delaware limited liability company, DBA Hyatt Regency Mission Bay Spa and Marina, the City, and their respective members, affiliates, officers, directors, agents and employees harmless from and against any and all claims, demands, liabilities, costs, expenses, damages and lawsuits (including reasonable attorney's fees incurred by Management, and/or the City, in investigating or defending same) for personal injury, death, property damage or any other claim not occasioned by Management's gross negligence or willful misconduct, made by or on behalf of any customer, passenger, officer or crewmember, or other person permitted by Lessee to be on or around the Vessel, resulting from any cause whatsoever, occurring while such person is on or about the Vessel, including embarking or disembarking to or from the Vessel, whether the Vessel is docked or underway, or occurring during the course of any dive or other activity conducted by or participated in by Lessee, and from any such claims by other persons arising out of the use, or operation of, the Vessel.

Lessee further waives, releases and discharges any claims, demands, actions or causes of action against Management, and/or the City, for damages to person or property, including but not limited to claims for injuries or damages to employees, agents or subcontractors of Lessee, arising from any cause whatsoever. Notwithstanding the foregoing, this waiver, release, and indemnity shall not apply to any damage or loss resulting solely from the gross negligence or willful misconduct of Management, and/or the City.

8. **General Provisions.**

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

To the Lessee:

Aqua Lounge San Diego PO Box 90913
San Diego CA, 92167

To the Management:

Hyatt Corporation, as agent of CHSP Mission Bay LLC, a Delaware limited liability company, DBA Hyatt Regency Mission Bay Spa and Marina
Attention: General Manager
1441 Quivira Road
San Diego, California 92109

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

- (c) If any part, term, or provision of the Agreement is held invalid, such invalidity shall not affect other parts, terms, or provisions of this Agreement which can be given effect without the portion held invalid, and to that extent the parts, terms and provisions of this Agreement are severable. Any waiver of any term hereof shall not be deemed to be a continuing waiver and consent to any one waiver and shall not be deemed to be the consent to any other waiver.
 - (d) This Agreement constitutes the entire understanding between the parties with regard to its subject matter and supersedes all other agreements, written or oral, between the parties with respect to such subject matter. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of anyone, which are not contained in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding. The terms of this Agreement may not be terminated, waived, or amended except by a written agreement signed by all of the parties to this Agreement or their successors.
 - (e) In the event of any action or litigation to enforce or interpret this Agreement or otherwise arising under or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party any and all reasonable attorney's fees and costs incurred.
 - (f) This Agreement shall be governed and construed in accordance with the laws of California. All legal actions brought in connection with this Agreement shall be filed and tried in San Diego County, California.
9. **Assignment and Subleasing.** Lessee shall not assign the Agreement or sublet the premises or any part thereof without the prior written consent of the Management and the City. An assignment by operation of law shall automatically terminate this Agreement.
10. **Legal Proceedings.** Failure to pay wharfage services rendered under the Agreement gives rise automatically, by operation of Maritime law, to a maritime lien that may be enforced personally against the Lessee and against the Vessel (*in rem*) as though it were in fact a person. LESSEE SPECIFICALLY AGREES THAT LEGAL SERVICES RENDERED IN CONNECTION WITH THE ENFORCEMENT AGAINST LESSEE OF ANY CONTRACTUAL OR OTHER LEGAL RIGHT OR REMEDY AVAILABLE TO THE LANDING SHALL BE DEEMED PART OF THE MARITIME WHARFAGE "NECESSARIES" PROVIDED, AND THEREFORE ALL SUCH LEGAL SERVICES SHALL BE RECOVERABLE AGAINST LESSEE

of this Agreement or to enforce the Landing's lien rights as existing under both federal and state law, the prevailing party shall be entitled to reasonable attorneys' fees and costs, and all other costs of enforcement, in addition to any other relief to which it or he may be entitled, and that if the Landing prevails, attorneys' fees shall be recoverable both *in personam* (against the Management) and *in rem* (against the Vessel).

11. **Subordination.** This Agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated on the Master Lease 09/27/2005, as amended between the Management herein and the City of San Diego. This Agreement is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

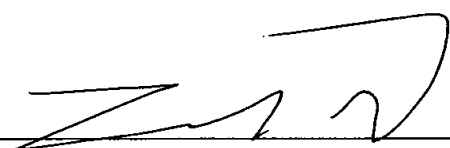
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

OWNER:

Hyatt Corporation, as agent of CHSP
Mission Bay LLC, a Delaware limited
liability company, DBA Hyatt Regency
Mission Bay Spa and Marina



LESSEE:



GUARANTY

The undersigned, being the owner(s) of Lessee, hereby unconditionally and irrevocably guarantee the performance by Lessee of all its duties and obligations under the Agreement and Master Lease Document # RR-300863 9/27/2005, as it may be modified from time to time. Such guarantee shall be joint and several among the undersigned, who agree to satisfy such duties and obligations upon demand, without prior demand upon Lessee having been made.

Paul Nardo

Printed Name:

[Signature]

Address:

3490A Bayside Lane

San Diego, CA 92109

Telephone:

619 246 1702

Printed Name:

Address:

Telephone:

CITY OF SAN DIEGO
LESSEE'S QUESTIONNAIRE FOR ALL LEASES

Pursuant to the City of San Diego City Charter Section 225: "Mandatory Disclosure of Business Interest," before the City will process requests to Lease, all information requested in this Questionnaire must be completed by the proposed Lessee.

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease.

In submitting this Questionnaire, the proposed Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of proposed Lessee: _____

8/24/17 Aqua Lounge San Diego LLC
Date this Questionnaire completed: _____

8/24/17
The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: [Signature] Title: Manager

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate Assets if they have any questions. Please return the completed Questionnaire with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 14 pages.

Please show the best estimate of the average annual gross sales for each significant use or

Average annual gross sales for each proposed significant use during each of the first ten operating

Operation

3					
5					
8					
10					

PROPOSED LESSEE

1. Name of proposed Lessee exactly as it will appear on the actual tenancy document:

Aqua Lounge San Diego LLC

2. Mailing Address of proposed Lessee for purposes of notice or other communication related to the proposed tenancy:

PO Box 90917
San Diego, CA 92169

Telephone No.: 619-246-1702

E-mail Address: _____ Fax. No.: —

3. Billing Address (only if different from Mailing Address):
Prada Aqua Lounge Events, com

Same

Telephone No.: —

Fax. No.: —

4. Proposed Lessee intends to operate as a:

Sole Proprietorship ();

Partnership ();

Corporation ();

Limited Liability Company ☒;

Other

Describe the method of financing for the Leasehold purchase or any new or additional development

LIMITED LIABILITY COMPANY STATEMENT

If the proposed Lessee is an LLC, please answer the following:

1. Date of Organization: 10/21/15
2. Where Organized: CA
3. Is the Company authorized to do business in California?
 - a. Yes (X) No ()
 - b. If so, as of what date? 10/21/15
4. Has the Company conducted business in San Diego County?
 - a. Yes () No (X)
 - b. If so, when? _____
 - c. If so, where? _____
5. Please furnish the name, address, and membership share held by each manager and officer, and each membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page.

Manager/Officer/ Member			Share
	<u>Paul Hunter</u>	<u>P.O. Box 90913 San Diego 92169</u>	<u>100%</u>

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

1. List the persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your

REFERENCE NO. 1

Address:

Nature and magnitude of purchase, sale, loan, business, association, etc.:

REFERENCE NO. 2

Firm:

Nature of magnitude of purchase, sale, loan, business, association, etc.:

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

Lessee, general partners of Lessee, owner-corporation of Lessee, members of Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of Lessee **must** attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition. The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION:

Each Lessee, each general partner of Lessee, each owner-corporation of Lessee, each owner-corporation of Lessee, each member of Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of Lessee, any person or entity owning more than a 10% interest of Lessee, and any guarantor of Lessee must answer the following questions:

1. **Surety Information** – Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
a. Yes () No (☒)
b. If yes, please attach a statement naming the surety of bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information**- Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
a. Yes () No (☒)
b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
a. Yes () No (☒)
b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
Yes () No (☒)
b. If yes, please provide detailed information for each claim, lien, or judgment.

1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 26

2 Yes () No ()

2. **Bankruptcy Information-** Have any of the individuals or entities ever been adjudicated

3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?

4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?

REFERENCES FOR PROPOSED LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: Turbin Niles

Firm: Bank of America

Title: Branch Manager

Address: 91d Garnet Ave San Diego CA 92109

Telephone: 858 490-2664

Nature and magnitude of purchase, sale, loan, business, association, etc.:

bank

REFERENCE NO. 2

Name: Michael Docktor

Firm: Marine Design, Naval Architecture

Title: owner

Address: 4603 Mirron Blvd #211 San Diego 92109

Telephone: 858 571-7585

Nature of magnitude of purchase, sale, loan, business, association, etc.:

boat architect 8

If the proposed Lessee is an LLC, please answer the following.

2. Where Organized: _____

b. If so, as of what date? _____

b. If so, when? _____

c. If so, where? _____

please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page.

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has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

REFERENCE NO. 3

Name: Wayne Rafterberger

Firm: —

Title: Lobbyist

Address: 7145 Saville San Diego, CA 92110

Telephone: 619 329 3541

Nature and magnitue of purchase, sale, loan, business, association, etc.:

Lobbyist

REFERENCE NO. 4

Name: Zach Funston

Firm: Mirrin Day Sports Center

Title: Manager

Address: 1010 Santa Clara Place SD 92109

Telephone: 619-952-0074

Nature and magnitue of purchase, sale, loan, business, association, etc.:

Address:

Name:

Address:

Name:

Address:

Lessee name (from page 2) on the top of each page].)

as the case may be), and any other applicable corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership

partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above

percentage of ownership or membership interest.

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to lease, must each complete this page before the tenancy request can be processed.
(You may reproduce and use copies of this page. If necessary)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name	<u>Reddy David Hunter</u>
Date of Birth	<u>4/8/75</u>
Place of Birth	<u>Port Moresby, PA</u>
Social Security Number	<u>767-94-8741</u>
Driver's License Number/State	<u>D1011601</u>
Home Address	<u>2490 A Bayridge Lane</u> <u>San Diego, CA 92109</u>
Previous Address	<u>1775 La Palma St #44</u> <u>San Diego, CA 92109</u>
Home Telephone No.	<u>619-246-1702</u>
Employer	<u>self</u>
Occupation	<u>business owner</u>
Business Address	<u>PO Box 90913 San Diego 92169</u>
Business Telephone No.	<u>619-246-1702</u>
Business Fax No.	<u>-</u>

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date 7/20/17 Signed [Signature]

Print or type exact name of proposed Lessee from page 2 of Questionnaire:

Aqua Lounge San Diego LLC

METHOD OF OPERATION

Please describe your proposed business operation on the property to be leased. Discuss any optional services and uses which you propose to provide.

refer to Operating Overview

AQUA lounge

a **UNIQUE** event venue

Operational Overview

Vessel Layout

The vessel is 75 feet long by 28 feet wide accommodating approximately 118 guests. There are two large restrooms, two bars, a galley, and a pool / hot tub measuring 22 feet by 15 feet and 3.5 feet deep. The pool can be covered to accommodate additional seating.



Products and Services

Our product offerings will be event based ranging from one to six hours in length offering both public and private events. We are targeting a mix of 70 percent public, 30 percent private events and will be working closely with all hotels / venues in the area.

Food and beverages will be sold on-site, the sale of alcoholic beverages will be closely monitored as we want to maintain a fun, relaxing family atmosphere. The vessel design, menu options, pricing and ambiance will be that of an upscale restaurant.

Kids Lounge - This is an all-ages family friendly event. Vessel will depart Hyatt dock at 11am and anchor between Bahia Hotel and Paradise Point (see Cruise Routes image below). Two taxi boats will shuttle guests to and from the vessel and various commercial docks on Mission Bay based on the guests needs. Guests can choose when they would prefer to board and depart the vessel.

Day Lounge - Same as above but all guests must be 21 and over.

Weekend Brunch - 2-hour bay cruise including food and drinks in the ticket price of the ticket. Departing the Hyatt docks at 9:30am and returning at 10:30am. Guests will be allowed to board the vessel at 9am and can stay until 11:00am.

Happy Hour / Sunset / Evening - 1-hour cruise on bay or ocean with food and beverages available for guests to purchase. Boat will depart the dock 10 minutes after the hour and return 10 prior to the hour making the actual cruise time 40 minutes.

Dawn Patrol - 2-hour surf and lounge including use of taxi boats. Vessel will depart Hyatt dock at 9am and head out to the ocean in the center of Mission Beach. Taxi boats will take guests to multiple surf locations and return to pick them up in one hour. Vessel will return to dock at 11am.

Hour of Operation

During the summer months, we'll run seven days a week between 9am and 10pm and three to four days a week in the off season.

Summer Schedule

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
9:00	Dawn Patrol	Dawn Patrol	Dawn Patrol	Dawn Patrol	Dawn Patrol	Brunch	Brunch
9:30							
10:00							
10:30							
11:00	Kids Lounge	Kids Lounge	Kids Lounge	Day Lounge	Day Lounge	Day Lounge	Day Lounge
11:30							
12:00							
12:30							
1:00							
1:30							
2:00							
2:30							
3:00							
4:00							
5:00							
5:30	Ocean	Ocean	Ocean	Ocean	Ocean	Ocean	Ocean
6:00	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour
6:30	Bay	Bay	Bay	Bay	Bay	Bay	Bay
7:00	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour	Happy Hour
7:30	Ocean	Ocean	Ocean	Ocean	Ocean	Ocean	Ocean
8:00	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
8:30	Bay	Bay	Bay	Bay	Bay	Bay	Bay
9:00	Evening	Evening	Evening	Evening	Evening	Evening	Evening
9:30							
10:00							

Off-Season Schedule

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
9:00							
9:30							
10:00						Brunch	Brunch
10:30							
11:00							
11:30							
12:00							
12:30							
1:00							
1:30							
2:00				Kids Lounge	Kids Lounge	Day Lounge	Day Lounge
2:30							
3:00							
3:30							
4:00							
4:30				Ocean	Ocean	Ocean	Ocean
5:00				Sunset	Sunset	Sunset	Sunset
5:30				Bay	Bay	Bay	Bay
6:00				Happy Hour	Happy Hour	Happy Hour	Happy Hour
6:30				Ocean	Ocean	Ocean	Ocean
7:00				Evening	Evening	Evening	Evening
7:30				Bay	Bay	Bay	
8:00				Evening	Evening	Evening	
8:30				Ocean	Ocean	Ocean	
9:00				Evening	Evening	Evening	
9:30							
10:00							

Daily Operations

The crew will arrive one hour prior to the first cruise to load supplies, prepare the boat for the day. All food will be delivered and loaded on boat by vendors 30 minutes prior to departure.

All passenger ticketing and food selection will be managed electronically via our website including same day ticket purchases. Staff will be available via phone and email during standard operating hours and will be in the passenger waiting area 15 minutes prior to departure.

We'll employ multiple Charter Boat Captains with a minimum qualification of National Mast of Self-Propelled Vessels of Less and 100 GRT Upon Near Coastal Waters. Deckhand requirements are specified by the Coast Guard when our COI is received. All crew members will be First Aid and CPR certified, dressed in crew uniforms and perform in-depth training. Detailed onboard safety and crew training information is outlined in our Training Manual.

Once all guests have boarded the captain will perform a safety briefing. Throughout the cruise guests are free to move about the vessel.

Life vests will be located throughout the vessel in accordance with USCG regulations. Upon returning to the dock all guests will depart and the crew will have 30 minutes to clean and resupply the boat for the next cruise.

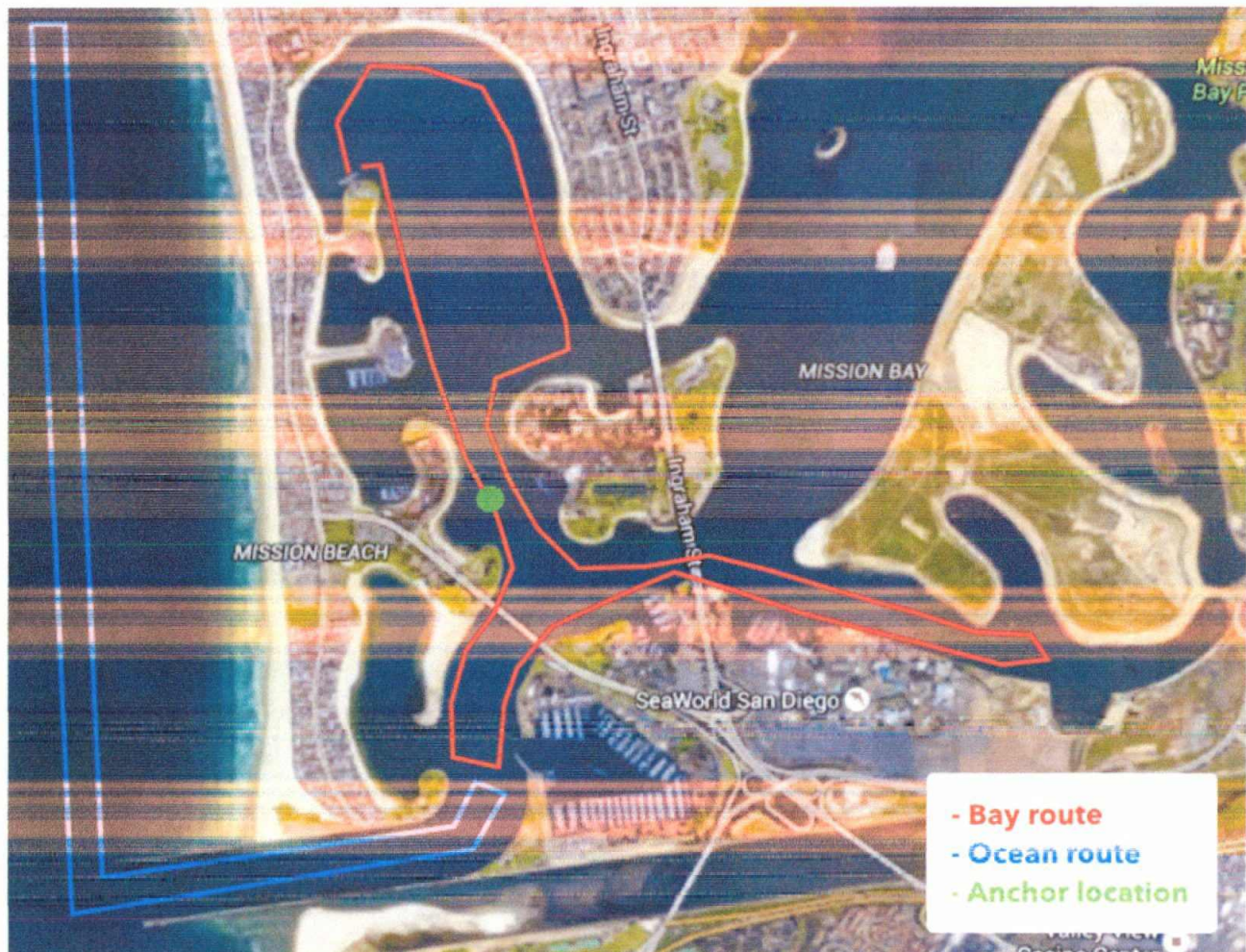
For several private events and some public cruises passengers will be arriving and departing from a different dock such as The Catamaran, Hyatt or Hilton Hotels. In these situations, the boat will arrive 15 minutes prior to departure and, if applicable, food will be loaded immediately.

After the final cruise for the day the crew will stay for an additional 30 minutes to clean and store all items.

Docking Area



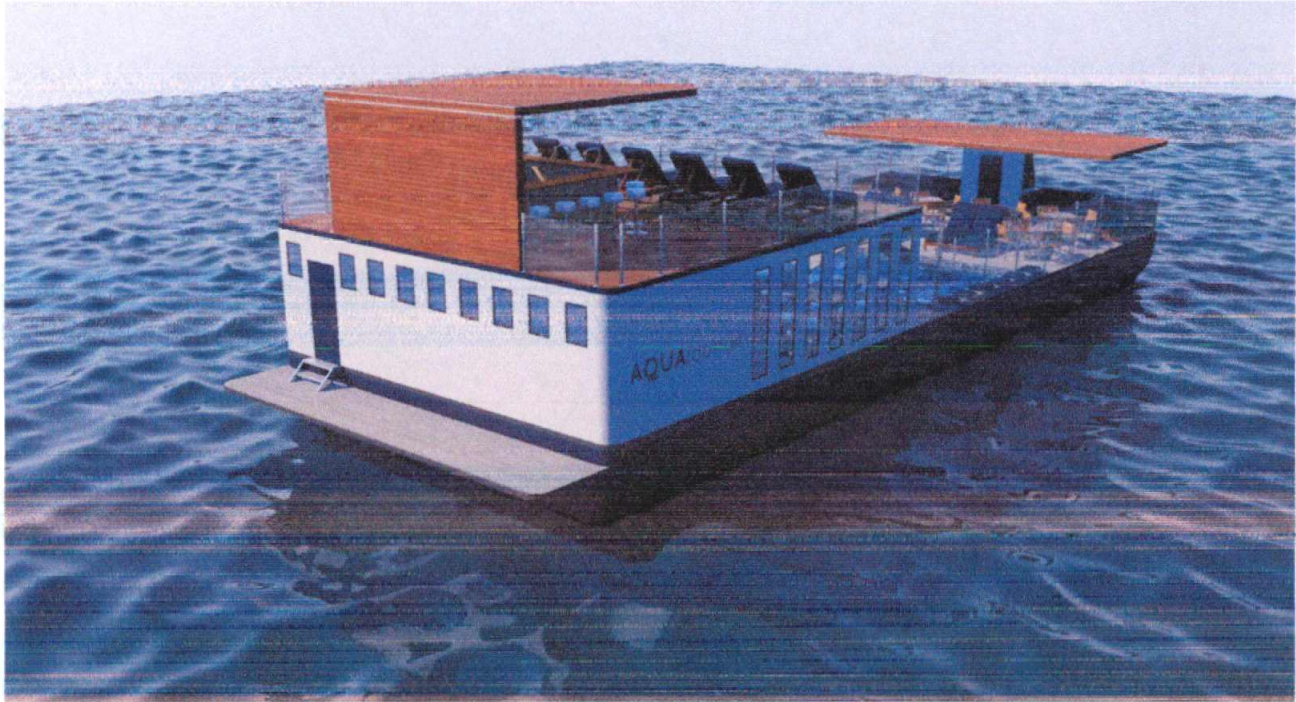
Cruise Routes



Parking and Transportation

Parking will be available to guests at hotel. For anchored events (Kid's and Day Lounge) we will utilize (2) 32 passenger (Coast Guard Certified) boats to ferry passengers to and from all approved commercial docks. Being stationary will allow us to minimize impact on the bay during the busier daytime hours as well parking disperse guest parking. The stern of the vessel will be utilized by guests to board / depart while anchored.

Stern Boarding Platform



Passenger pick up / drop off boat



PROPOSED METHOD OF FINANCING
LEASEHOLD DEVELOPMENT

Describe the method of financing for the Leasehold purchase or any new or additional development on the leasehold. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

N/A

ESTIMATE OF GROSS RECEIPTS

Please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. This data will be used by the City to analyze the proposed lease. The time periods shown should not be assumed to necessarily represent the term of a lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first ten operating years:

Year of Operation	Uses (Identify Each Use)				
1 2018	\$ 980,000	\$	\$	\$	\$
2 2019	1,600,000				
3 2020	1,700,000				
4 2021	1,800,000				
5 2022	1,900,000				
6 2023	2,000,000				
7 2024	2,100,000				
8 2025	2,200,000				
9 2026	2,200,000				
10 2027	2,200,000				

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

see attached

Experience Statement

President – Brad Hunter

Brad was raised in a family of entrepreneurs, graduated from Western Michigan University with a BA in Business Administration.

The first 10 years of his career were spent as COO of The Mobile Solution, a start-up wireless retailer. The company grew from 1 to 484 locations and \$400M in annual revenue. During that time, he created the structure for and managed several areas of the business including operations, training, recruiting, and real-estate.

His first company, Adventure West Expeditions, manages multiple vacation properties for over 10 years now and has recently become an AITAN certified travel agent.

In 2010 he founded Emerge Group, a software company specializing in commission reconciliation for wireless retailers. Today some of the nation's largest retailers are clients and the business continues to grow. Emerge Group is now developing applications for agriculture and looking at other industries.

Food and Beverage Director – Wes Fleming

Wes has over 25 years of experience managing the front and back office operations of various bar / restaurants and has spent the last 15 years managing one of Aspen, CO most reputable establishments, Eric's Bar.

He is a great depth of knowledge in hiring, training, and retaining employees as well as working with vendors, inventory loss prevention and maintain accurate financial records.

DEPOSIT SUMMARY
Location Real Estate Assets
PROCESSING FEE of \$90.00
Deposited on October 09, 2017

File Names:
 SAP Deposit Upload Real Estate Assets 9-Oct-17 \$90.00.xlsx
 SAP Deposit Summary Real Estate Assets 9-Oct-17 \$90.00.pdf
 SAP Deposit Summary Real Estate Assets 9-Oct-17 \$90.00.xlsx

[illegible]

Notes:
REMAINDER AMOUNT OWED FROM ORIGINAL CONSENT TO SUBLEASE PROCESSING FEE FOR CHSP MISSION BAY LLC FOR AQUA LOUNGE, AMOUNT: \$90.00, CHECK NO.: 17-647798409, CHECK DRAWN: WESTERN UNION, AGENT: VLADIMIR BALOTSKI
Deposited by: DAMAVIZCA 65512
Prepared by: DAMAVIZCA 65512
Reviewed by: SREDMAN 66988
Approved by:
Distribution:

[illegible]

CC: Vladimir
Balotsky

101428590

DEPOSIT SUMMARY
Location Real Estate Assets
PROCESSING FEE of \$900.00
Deposited on October 03, 2017.

[illegible]

File Names:
SAP Deposit Upload Real Estate Assets 3-Oct-17 \$900.00.xlsx
SAP Deposit Summary Real Estate Assets 3-Oct-17 \$900.00.pdf
SAP Deposit Summary Real Estate Assets 3-Oct-17 \$900.00.xlsx

Notes:

CONSENT TO SUBLEASE PROCESSING FEE, LESSEE: CHSP MISSION
BAY, DEPOSITOR: AQUA LOUNGE, AMOUNT: \$900.00, CHECK NO.
0911220097, CHECK DATED: 8/30/2017, CHECK DRAWN: BANK OF
AMERICA, AGENT: VLADIMIR BALOTSKY

Deposited by: DAMAVIZCA 65512

Prepared by: DAMAVIZCA 65512

Reviewed by: SREDMAN 66988

Approved by:

Distribution:

[illegible]

—सिद्धिनिर्वाहः—

Document Parked:

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**HYATT
REGENCY**
MISSION BAY
SPA & MARINA

New Marina Tenant Application

Please complete this form and return by US mail, e-mail or fax to:

Marina Manager

Hyatt Regency Mission Bay Spa & Marina

1441 Quivira Road, San Diego, CA 92109

Direct: 619.221.4858 Fax: 619.224.0348

Email: joseph.davis@hyatt.com

- Name of Vessel's Owner: First Paul Last Nylander
- Partners if Any: 0 Number of Partners 0 (Each owner must complete this form)
- Address: 3496A Bayridge Walk City San Diego
PO Box 90417
- State: CA Zip 92109 (NO P.O Boxes can be used)
- Phone numbers: HM () - -
Cell (619) 246 - 1702
Business () - -
- E-mail address: Paul@Aqua Lounge Events.com
- Name of vessel: TPD
- Cal. DMV CF # TPD
- Federal Document # TPD
- Make of vessel: Custom build
- Year of vessel: 2018
- Full Overall length: 25 (from bow-pulpit edge to swim step or stern edge)
- Beam: 28 Draft: 6 Power: 400 Single or Twin Screw: single
- Gas or Diesel: Diesel Sail: Inboard or Outboard: Inboard
- Insurance Company: TPD # () - -
Policy # Coverage Amount: - -
- Current location of vessel: Marina's Name TPD
Marina Manager # () - -

Once the Marina office has received this information and (2) Pictures of the vessel, (1) copy of ownership, (1) copy of the insurance, (2) References Marina & Personal. Then we will start processing your application.

Signature

Date

7/21/17