



Real Estate Assets Department

SDC003

CHSP MISSION BAY LLC

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21

Document Type

LEGAL DOCUMENTS



Sub - Category

SUBLEASES



CONSENT TO SUBLEASE

(CHSP MISSION BAY LLC: Cloudia Adventures LLC)

THIS CONSENT TO SUBLEASE ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("City"), and CHSP MISSION BAY LLC, a Delaware limited liability company, d.b.a. Hyatt Regency Mission Bay Spa and Marina ("Lessee"), to be effective upon the respective authorized representatives of City and Lessee all signing this Consent and the form of this Consent being approved by the San Diego City Attorney. This Consent is made and entered into in reference to the following recited facts:

RECITALS

- A. City and Lessee'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 under the City of San Diego Consent to Assignment dated September 6, 2012 ("Assignment" and together with the Agreement, the "Master Lease"), 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 (the "Premises").
- B. Lessee now desires to sublease a portion of the Premises (the "Sublease Premises") to Cloudia Adventures, a California limited liability company ("Sublessee"), by entering into a certain Charter Boat Lessee Agreement (the "Sublease").
- C. Section 5.1 of the Master Lease requires that Lessee obtain City's consent to sublease the Premises or any portion thereof.
- D. Lessee and Sublessee acknowledge that the City's act of consenting to the Sublease will not relieve Lessee or Sublessee from any requirements under the Master Lease and Sublease including but not limited to the timely payment of rent.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Lessee agree as follows:

1. City Consent to Sublease: Subject to the terms and conditions of this Consent and the Master Lease, City consents to Lessee subleasing to Sublessee the Sublease Premises (identified as the "Premises" in the Sublease). All terms and conditions of the Master Lease shall control and supersede all inconsistent or contrary provisions in the Sublease.

2. Sublessee Assumption of Lessee's Obligations: City's consent to the Sublease is conditioned upon Sublessee's written agreement in the Sublease to assume and perform all obligations of Lessee under the Master Lease applicable to the Sublease Premises. Sublessee's failure to perform one or more of these assumed obligations shall be a material default and breach under the Master Lease and may subject the Master Lease to termination by City.

3. Sublessee Acknowledgment of this Consent. This Consent is conditioned on City's receipt of an "Acknowledgement of Receipt of Consent to Sublease" in substantially the form of Exhibit "B" attached to this Consent signed by the authorized representative(s) of Sublessee.

4. No Effect on Master Lease. Notwithstanding any provision of this Consent to the contrary, this Consent does not release, discharge, or modify any obligation of Lessee under the Master Lease.

5. Subsequent Subleasing. This Consent does not constitute City's consent to any subsequent assignment, sublease, or license under the Master Lease or relating to the Premises or any portion thereof, including the Sublease Premises, and does not relieve Lessee or any person claiming under or through Lessee of the obligation to obtain City's consent to any future assignment, sublease, or license pursuant to the Master Lease.

6. Processing Fees. Lessee agrees to pay City all applicable processing and/or administrative fee(s) charged by City for processing this Consent.

7. Brokerage Commissions or Finder's Fees. Lessee acknowledges and agrees that City will not be liable for any brokerage commission or finder's fee in connection with the consummation of the Sublease. Lessee agrees to protect, defend, indemnify, and hold City harmless from any brokerage commission or finder's fee in connection with the consummation of the Sublease or this Consent, and from any cost or expense (including attorneys' fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 7 shall survive the expiration or earlier termination of the Master Lease, the Sublease, or this Consent.

8. Consideration for Sublease: Lessee represents and warrants to City that a true, correct, and complete copy of the Sublease is attached to this Consent as Exhibit "A." Lessee further represents and warrants to City that there are no additional payments of rent or any other consideration of any type that has been paid or provided or is payable or to be provided by Sublessee or any other person to Lessee in connection with the Sublease or the Sublease Premises, other than as disclosed in the Sublease.

9. Subordination. The Sublease is subject to and subordinate to the terms, covenants and conditions of the Master Lease. The Sublease may only be in effect while the Master Lease is in effect. Nothing in this Consent modifies the expiration date of the Master Lease or Sublease. Lessee represents and warrants to City that Lessee provided Sublessee a true, correct, and complete copy of the Master Lease before Sublessee entered into the Sublease.

10. Lessee Estoppels. Lessee certifies the following to City as of the date of this Consent:

10.1 Lessee has not assigned its interest (or any portion thereof) in the Master Lease or otherwise transferred its interest (or any portion thereof) in the Master Lease to any third party;

10.2 City does not owe Lessee any money or other performance under the Master Lease;

10.3 City is not in default under the Master Lease;

10.4 The Master Lease is in full force and effect; there have been no amendments, modifications, changes, or additions to the Master Lease since its execution; and

10.5 Lessee is not in default or breach under the Master Lease and no event has occurred that would constitute a default or breach under the Master Lease by Lessee, without regard for any requirement to give notice and/or due to the passage of time.

11. CEQA. City's compliance with the California Environmental Quality Act ("CEQA") with respect to this Consent is set forth in Attachment "B," attached hereto and incorporated herein by reference.

12. No Fee Title Encumbrance. Nothing in this Consent or any document referenced in this Consent is intended to create or authorize the creation of any transfer, lien, or encumbrance affecting the fee title to the Master Premises.

[Remainder of page intentionally blank. Signatures appear on the following page.]

**SIGNATURE PAGE
TO
CONSENT TO SUBLEASE
(CHSP MISSION BAY LLC: Cloudia Adventures LLC)**

IN WITNESS WHEREOF, this Consent is made and entered into by and through the signatures of the respective authorized representative(s) of City and Lessee, as set forth below:

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: Mar 9, 2023

By: *Penny Maus*
Penny Maus (Mar 9, 2023 07:38 PST)
Penny Maus, Director
Department of Real Estate and Airport
Management

Approved as to form on Mar 9, 2023

MARA W. ELLIOTT
City Attorney

By: *Brian Byun*
Brian Byun (Mar 9, 2023 10:01 PST)
Deputy City Attorney

CHSP MISSION BAY LLC, a Delaware
limited liability company, d.b.a. Hyatt Regency
Mission Bay Spa and Marina

Date: 2/13/2023

By: *Chad Edings*
Name: CHAD EDINGS
Title: GM

**EXHIBIT A
TO
CONSENT TO SUBLEASE
(CHSP MISSION BAY LLC: Cloudia Adventures LLC)**

SUBLEASE

[Attached behind this cover page]

CHARTER BOAT LESSEE AGREEMENT

THIS CHARTER BOAT LESSEE AGREEMENT (the "Agreement") is made and entered into on 11 July 2022, 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 Cloudia Adventures 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: S/V Cloudia

Cal. DMV CF#:

Federal Document #: 559347

Length Overall: 71 ft **Beam:** 16 ft **Draft:** 7.5 ft

The Vessel shall provide Private Charters, Ecotourism, Dinner Cruises, Sunset Tours,

Wedding Parties, Daytime Sailing Tours, Pirate Shows, Ash Scatterings.

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 of 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: \$ 2200.00 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 _____

Private Charters, Ecotourism, Dinner Cruises, Sunset Tours,

Wedding Parties, Daytime Sailing Tours, Pirate Shows, Sea Burials.

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 2 parking spaces for use by passengers of the Cloudia. Parking spaces are for use for passengers while they are embarked on the Cloudia. 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's elected officials, officers representatives, agents and employees 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:

Cloudia Adventures LLC
15454 Pendragon Road
Poway, CA 92064

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 **filed as Document No. 300863 in the Office of the City Clerk on September 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

Chad C...
8/22/22

LESSEE:

Cloudia Adventures LLC

Richard H. Haas Operator S/V Cloudia

Richard H. Haas

ADDENDUM TO CHARTER BOAT LEASE AGREEMENT

The CHARTER BOAT LESSEE AGREEMENT between
Cloudia Adventures LLC and Hyatt
Corporation, as agent of CHSP Mission Bay LLC, a Delaware limited liability company, DBA
Hyatt Regency Mission Bay Spa and Marina (the "Management") dated 11 July 2022 is
subject to the following addendum:

Lessee is informed and aware that the Management is bound by the terms of a master use
agreement with the City of San Diego (the CITY).

- (a) sublessee will assume all rights and obligations as a "lessee" to the master use agreement
with the CITY under the lease as applicable;
- b) sublessee will provide the CITY separate endorsements to name the City's "elected officials,
officers representatives, agents and employees" as additional insured on all required insurance
policies, as stated in master lease.

SO, AGREED:

Richard H. Haas for Cloudia Adventures LLC

Dated: 11 July 2022

LESSEE:

MANAGEMENT

Dated:

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.

Richard H. Haas

Printed Name:

Richard H. Haas

Address:

15454 Pendragon Road

Poway, CA 92064

Telephone:

858-679-8666

Printed Name:

Address:

Telephone:

EXHIBIT B
TO
CONSENT TO SUBLEASE
(CHSP MISSION BAY LLC: Cloudia Adventures LLC)

ACKNOWLEDGMENT OF RECEIPT OF CONSENT TO SUBLEASE

(CHSP MISSION BAY LLC: Fun & Safe Charters LLC)

Cloudia Adventures LLC, a California Limited Liability Company ("Sublessee"), makes the following acknowledgments, representations, and warranties for the benefit of The City of San Diego, a California municipal corporation ("Master Landlord"), as "Lessor" under that certain Lease Agreement, filed as document RR-300863 in the Office of the San Diego City Clerk ("Master Lease"), relating to that certain City-owned real property described in Exhibit "C" attached to the Master Lease ("Master Premises"), entered into by CHSP MISSION BAY LLC, a Delaware limited liability company, d.b.a. Hyatt Regency Mission Bay Spa and Marina, as the "Lessee":

1. Sublessee acknowledges entering into that certain Sublease with Lessee, dated _____ ("Sublease"), for Lessee to sublease to Sublessee that certain portion of the Master Premises consisting of:

- (a) Marina boat slip for a vessel named Cloudia...
Cal. DMV CF#: 559347
Length Overall: 77 ft

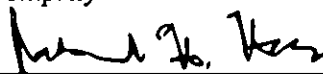
2. Sublessee acknowledges receipt of a copy of that certain Consent to Sublease (CHSP MISSION BAY LLC: Cloudia Adventures LLC), dated 2/13/23, between Master Landlord and Lessee relating to the Sublease ("Consent").

3. Sublessee further acknowledges receipt of a copy of the Master Lease prior to entering into the Sublease.

4. Sublessee further acknowledges, represents, and warrants that a true and correct copy of the Sublease is attached as Exhibit "A" to the Consent.

Date: 13th Feb 2023

Cloudia Adventures LLC, a California Limited Liability Company

By: 

02/09/2023

Attachment B

Environmental Determination (NORA)	
Environmental Planner	Zaira Marquez (zmarquez@sanidiego.gov)
Project Name	Consent to Sublease - CHSP MISSION BAY LLC, d.b.a. Hyatt Regency Mission Bay Spa and Cloudia Adventures LLC
Environmental Determination	This activity is categorically exempt from California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities).
Date NORA Posted	01/26/2023
Date NORA Removed	02/09/2023