

CONSENT TO SUBLEASE

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 (Lessee/Sublessor), to be effective upon execution by City and approval by the San Diego City Attorney (Effective Date), as follows:

RECITALS

- A. City and Lessee/Sublessor are parties under the City of San Diego Lease Agreement, filed as Document No. RR-300863, on September 27, 2005, in the Office of the San Diego City Clerk (Agreement), as assigned, under the City of San Diego Consent to Assignment dated September 6, 2012, relating to 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 Tailwalker Sportfishing, a Sole Proprietorship, operated by Rich Robert Gallegos (Sublessee).
- C. The Agreement requires City's consent to the sublease of any portion of the Lessee/Sublessor's right, right and/or interest in the Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, City provides its consent subject to the following:

- 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 Agreement to Sublessee. By giving this Consent, City is merely consenting to the requested subleasing. All terms and conditions of the Agreement shall control and supersede any inconsistent or contrary provisions in any sublease agreement executed between Lessee/Sublessor and the Sublessee, except as otherwise approved herein; and
- 2. City's Consent is conditioned upon: (1) the City's receipt, prior to the Effective Date hereof, of Sublessee's written agreement that it will assume all rights and obligations under the Agreement, pursuant to Section 5.1 thereof, as applicable to Sublessee as the sublessee of that certain portion of the Premises set forth in the Sublessee's agreement with Lessee/Sublessor; and (2) (i) the City's receipt, prior to the Effective Date hereof, of Sublessee's written agreement that it will, by separate endorsements, name, in addition to "City", the City's "elected officials, officers representatives, agents and employees" as additional insured on all required insurance policies, pursuant to section 7.2 b. (1) of the Agreement, and (ii) the City's receipt, prior to the commencement of the sublease, of copies of all certificates, endorsements and all other documents required by section 7.2 of the Agreement; and
- 3. City does not release, discharge or modify Lessee/Sublessor's obligations to City under the Agreement. As set forth in applicable law, Lessee/Sublessor's obligations under the Agreement shall survive said sublease and shall continue through the termination dates of the Agreement, as set forth therein; and

4. This Consent does not constitute consent to any subsequent subleasing of any interest in and to the Agreement.
5. Lessee/Sublessor agrees to pay City any applicable processing and/or administrative fee(s) for processing this Consent.
6. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the sublease. 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.

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

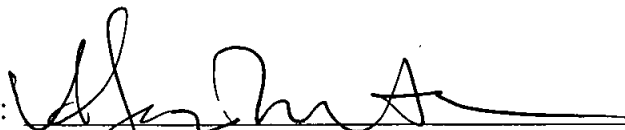
Date: 9/22/16

By: 
Cybele Thompson
Director, Real Estate Assets Department

Planning Department - Environmental Clearance:

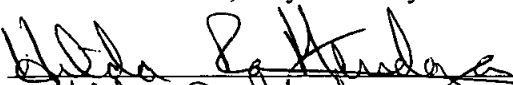
This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities).

Date: 9/1/16

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

Approved as to form this 5th
day of October, 2016.

JAN I. GOLDSMITH, City Attorney

By: 
Name: Helga R. Mendoza
Title: Deputy City Attorney



Date of Notice: September 1, 2016

NOTICE OF RIGHT TO APPEAL

ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Sublease, CHSP Mission Bay LLC, a Delaware limited liability company

COMMUNITY PLAN AREA: Mission Bay Park

COUNCIL DISTRICT: 2

LOCATION: 1441 Quivira Road, San Diego, CA 92109

PROJECT DESCRIPTION: Consent to sublease between CHSP Mission Bay LLC, d.b.a. Hyatt Regency Mission Bay Spa and Marina and Tailwalker Sportfishing, a sole proprietorship, operated by Rich Robert Gallegos, allowing the subleasing of a portion of the Hyatt Regency Mission Bay Spa and Marina dock to provide charter sportfishing, whale watching, eco tours, and bay cruises, as approved by lessee and City, to the patrons of the hotel and the general public.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego Mayor-Appointed Designee

ENVIRONMENTAL DETERMINATION: CEQA Exemption Section 15301- Existing facilities

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee, Environment & Policy Analysis, Planning Department

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; and where the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effect 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 September 1, 2016, 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 made by staff (including the City Manager) 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 (**September 16, 2016**). 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: 9/1/16

REMOVED: 09/23/2016

POSTED: M. Hermann

CHARTER BOAT LESSEE AGREEMENT

THIS CHARTER BOAT LESSEE AGREEMENT (the "Agreement") is made and entered into on 2/1/2016, 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 Tailwalker Sportfishing, (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: Tailwalker
Cal. DMV CF#:
Federal Document #: 1226720
Length Overall: 28' Beam: 21' Draft: 4'

The Vessel shall provide Sport fishing, Whale Watching
Bay Cruises + Eco-Tourism
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: **\$364.00**. 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 ejectment 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 Sportfishing
Whale watching, Eco Tour Bay Cruise

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

Ecotour, Sport fishing, whale watching
Bay Cruises + Eco tourism

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 Tailwalker. Parking spaces are for use for passengers while they are embarked on the Tailwalker. 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:

Tailwalker Sportfishing
Rich Gallegos
Box 82304 SD CA 92138

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 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.

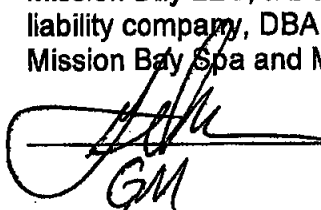
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

OWNER:

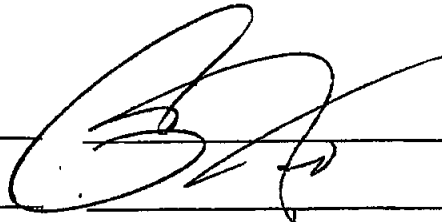
Hyatt Corporation, as agent of CHSP
Mission Bay LLC, a Delaware limited
liability company, DBA Hyatt Regency
Mission Bay Spa and Marina

LESSEE:

Tailwalker Sportfishing



Hyatt Regency Mission Bay



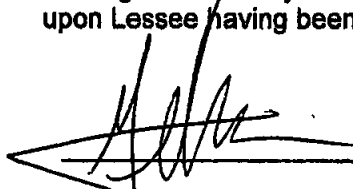
owner

Tailwalker Sport Fishing

2/1/2012

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.

 9/30/16

Printed Name:

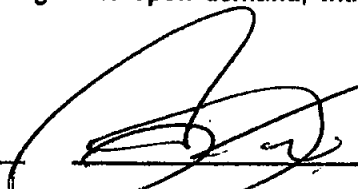
Greg Nomura/GM

Address:

1441 Quinra Road
SD, CA 92109

Telephone:

619.224.1234

 9/29/2016

Printed Name:

Richard Gallegos

owner/operator

Address:

Box 82304
San Diego, CA 92138

Telephone:

619.549.2503



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/28/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Gallagher Charter Lakes 3455 East Paris Ave SE Grand Rapids, MI 49512	CONTACT NAME: Tanya Fisher		
	PHONE (A/C, No, Ext): 616-975-3500 x 102	FAX (A/C, No): 616-975-0670	
	E-MAIL ADDRESS: tanya_fisher@ajg.com		
INSURED Richard Gallegos PO Box 82304 San Diego CA 92138	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: XL Specialty Insurance Company		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDC SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR ☒ Passenger Vessel Liability (P&I) GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	X	XLC0002677	07/16/2016	07/16/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS					
	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE	X	XLX0000092	07/16/2016	07/16/2017	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ PER STATUTE ☐ OTH-ER ☐
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Charter Fishing Vessel: 2006 25' Parker 2520 XL HIN# PXM6J009A606 "Tailwalker"

Dockside Liability is included in the P&I for passengers embarking and disembarking the vessel.

City of San Diego, its elected officials, officers, representatives, agents, and employees is named as an additionally insured.

CERTIFICATE HOLDER**CANCELLATION**

City of San Diego, Real Estate Assessment Dept
1200 3rd Ave, Suite 1700
San Diego, CA 92101

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.

XL Specialty Insurance Company

ADDITIONAL INSURED

This endorsement forms a part of:

Policy Sym. and No.:	XLC0002677
Issued To:	Richard Gallegos
Effective on and after:	7/16/2016 to 7/16/2017
Agent:	Gallagher Charter Lakes

Liability Limit: \$ 1,000,000

It is hereby mutually understood and agreed that under **PART B: LIABILITY COVERAGE** of this policy,

City of San Diego, its elected officials, officers, representatives, agents, and employees
City of San Diego, Real Estate Assessment Dept.,
1200 3rd. Ave, Suite 1700, San Diego, CA, 92101

is an additional insured on this policy, but only as their interest may appear in the vessel described herein and for the liability arising out of the negligence of the insured, per the terms and conditions of the policy. It is further agreed that the additional insured is named as such for the purpose of bodily injury and property damage liability in connection with the insured's ownership, operation and maintenance of the Insured Vessel(s).

By issuance of this endorsement, the company does not waive its right of subrogation. The coverage afforded by this endorsement shall arise out of liability that rests solely with the insured. In the event of non-renewal or cancellation of this policy, the additional insured shown above shall receive Sixty (60) days (10 days for non-payment of premium) written notice prior to any such termination from the company.

All other terms and conditions remain unchanged.

Gallagher Charter Lakes
3455 East Paris Ave SE
Grand Rapids, MI 49512

Form CL-7: Rev 1/20/16

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Page 1 of 1



Tailwalker Sportfishing (TWSF) Operation Plan.

Operational Period:

Tailwalker Sportfishing intends to be operational year round. Peak Season is July through October.

Concession and Site location:

All charters and water commuter services shall originate from a Mission Bay Sport Center location, or 1010 Santa Clara Place, San Diego.

CPR, First Aid and USCG Licenses:

An American Red Cross First Aid Kit shall be kept on all vessels.

All operators and/or crew of any vessel run through Tailwalker Sportfishing shall have the following:

Master Operators (Captains):

Shall possess a Valid USGC Master license, of not less than 50 Gross Tons. All will be STCW and TWIC certified and also possess a current American Red Cross CPR certificate.

TWIC = Federal Govt. Background Checked and approved to operate as a transportation worker.

Crew and/or Deckhands:

Shall possess an American Red Cross CPR Certificate. Shall be fully trained in the daily operation of all vessels operated by Tailwalker Sportfishing.

Vessels:

All Vessels operated by Tailwalker Sportfishing are built in the USA and USCG Documented and/or California DMV Registered. (M/V Tailwalker Document # 1226720)

Department of Fish And Game (DFG PERMITS):

All vessels are DFG Licensed (M/V Tailwalker license# FG07067). Current permits included PAX Vessel Permit, Commercial 6 pack Permit. Also licensed by "The Port of San Diego". Port Sticker on board.

Safety equipment:

In addition to being equipped with all required USCG safety equipment (i.e., Life Jackets, Life Ring, Flares etc...) all vessels are also equipped with EPIRB units, Radar, and MMSI capable Digital Radios.



Emergency Response Plan:

The following plan is the minimum level of response and readiness for Tailwalker Sportfishing during emergency situations. All operators and mates employed by TWSF will read the plan and cover all aspects of the plan with each employee working under the TWSF lease agreement with the city of San Diego.

Ocean and Bay conditions:

All Masters/Deckhands & Crew are trained to check weather/sea conditions and keep the highest regard to safety as per USCG requirements.

General Rescue Procedures for Water emergencies

1. Survey the scene
2. The rescuer should consider his/her ability prior to attempting a rescue
3. Ensure proper use of all rescue equipment
4. Safely approach and determine if the victim(s) is in distress
5. Perform rescue based on American Red Cross training
6. Move the victim(s) to safety OR
7. Remove the victim(s) from the water
8. Perform a primary survey
9. If an emergency exists, ensure someone calls 911 and requests San Diego Lifeguard and/or USCG assistance
10. Provide First Aid until emergency medical services (EMS) arrive

General Rescue Procedures for Land Emergencies

1. Survey the scene
2. Approach the victim when it is safe for the rescuer
3. Perform a primary survey
4. Provide First Aid until emergency medical services (EMS) arrive



Communications:

TWSF will keep VHF radio Watch at all times on channel 16 on all vessels. In addition, Captains and crew have cellular phones to call in any emergency when in range.

Emergency Signals

Pre-designated signals will be used to communicate with the crew in the event that emergency assistance is needed. Two (2) hands waving from side to side will indicate that an emergency exists and immediate assistance is needed. Both Captain and crew will be diligent in watching for any sign of emergency.



Accident or Incident Report
(The following is available in a separate form)

Tailwalker Sportfishing Incident Report

Date: _____

Employee:

Manager:

Name: _____

Name: _____

Title/Position: _____

Title/Position: _____

Incident:

Date: _____

Time: _____

Location: _____

Description of incident:

Employee explanation:

Witnesses:

Action to be taken: (Medical attention required, Repairs etc...)

Employee

Manager

Date

Date

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):

Hyatt Regency Mission Bay Marina

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

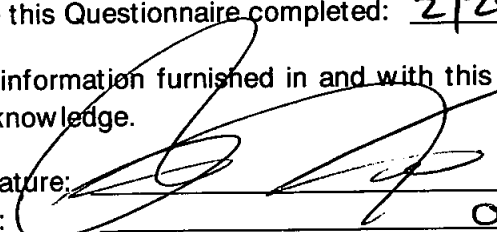
Exact name of existing Sublessee (complete only if applicable):

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

TAILWALKER Sport Fishing

Date this Questionnaire completed: 2/29/2016

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

Signature: 

Title:

OWNER / OPERATOR

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:

TAILWALKER Sport Fishing

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

Box 82304

SAN Diego, CA 92138

Telephone No.: 619.549.2503

Fax. No.: _____

E-mail Address: richg888@hotmail.com

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

Same

Telephone No.: _____

Fax. No.: _____

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: N/A

1. Date of Organization: _____
2. General Partnership ()
Limited Partnership ()
Other () Explain _____

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

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 %

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:

N/A

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: _____

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

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

N/A

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.

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 (X)
 - 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 (X)
 - 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 (X)
 - 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 (X)
 - 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

Name: JOE
Firm: Huatt Fuel dock
Title: Dock Master
Address: 1441 Quivira way S.D. CA. 92109
Telephone: 619.224.1234

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

5K-8K / yr Fuel Sales

REFERENCE NO. 2

Name: Robby Gordon
Firm: Boating Dynamics
Title: OWNER
Address: 1500 Quivira way S.D. CA. 92109
Telephone: 619.225.1690

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

Boat Repair / maintenance

REFERENCE NO. 3

Name: Joey
Firm: Squidco (Bait + Tackle)
Title: Owner
Address: 3518 Barnett Ave. S.D. CA. 92110
Telephone: 619. 222. 8955

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

Bait Tackle + Supplies

REFERENCE NO. 4

Name: Customer Service
Firm: Navy Federal
Title: Large Bank
Address: Liberty Station S.D. CA.
Telephone: 888. 842. 6328

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

Tailwalkin Sport Company Bank

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 Rich Robert Gallegos
Date of Birth 11/11/1969
Place of Birth SALT LAKE CITY
Social Security Number 605-07-1947
Driver's License Number/State C6003512
Home Address Box 82304
SAN DIEGO, CA 92138
Previous Address _____
Home Telephone No. 619.549.2503
Employer ~~THE~~ SELF
Occupation CAPTAIN
Business Address Box 82304 S.D. CA 92138
Business Telephone No. 619.549.2503
Business Fax No. N/A

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

Date 2/29/2014

Signed _____

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

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.

① 4-6 Pack charter Fishing
charter Boat

**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)				
	2016	2017	2018	2019	2020
1	\$ 15K	\$ 15K	\$ 15K	\$ 15K	\$ 15K
2					
3					
4					
5					

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.

- ① Licensed 100 ton Master (USCG) Captain
30 yrs experience OFFSHORE / INSHORE
operation.
- ② owner / operator
- ③ 20 yrs Corporate MGMT.

**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).

N (A

CONSENT TO SUBLEASE

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 (Lessee/Sublessor), to be effective upon execution by City and approval by the San Diego City Attorney, as follows:

RECITALS

- A. City and KenCal Ownership LLC, a California limited liability company, entered into that certain 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, 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 Art Ponce, an individual, d.b.a. Osprey Yacht Charters (Sublessee).
- C. The Agreement requires City to consent to the sublease of any other person of any portion of the Premises.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, City provides its consent subject to the following:

- 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 Agreement to Sublessee. By giving this Consent, City is merely consenting to the requested sublease. All terms and conditions of the Agreement shall control and supersede any inconsistent or contrary provisions in any sublease agreement executed between Lessee/Sublessor and the Sublessee, except as otherwise approved herein; and
- 2. City's Consent is conditioned upon Sublessee's written agreement that it will assume all rights and obligations as a "Lessee" under the Agreement, as applicable; and
- 3. City does not release, discharge or modify Lessee/Sublessor's obligations to City under the Agreement. As set forth in applicable law, Lessee/Sublessor's obligations under the Agreement shall survive said sublease and shall continue through the termination dates of the Agreement, as set forth therein; and
- 4. This Consent does not constitute consent to any subsequent subleasing of any right, title and/or interest in and to the Agreement.
- 5. Lessee/Sublessor agrees to pay City any applicable processing and/or administrative fee(s) for processing this Consent.

6. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the sublease. 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.

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

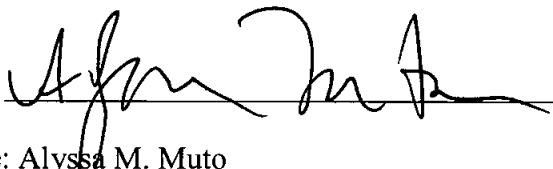
Date: 8/8/16

By: 
Cybele Thompson
Director, Real Estate Assets Department

Planning Department - Environmental Clearance:

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

Date: August 4, 2016

BY: 

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

Approved as to form this 10th
day of August, 2016.

JAN I. GOLDSMITH, City Attorney

BY: 
Name: Hilda R. Mondora
Title: Deputy City Attorney



Date of Notice: July 21, 2016

NOTICE OF RIGHT TO APPEAL

ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Sublease, CHSP Mission Bay LLC, a Delaware limited liability company

COMMUNITY PLAN AREA: Mission Bay Park

COUNCIL DISTRICT: 2 (Zapf)

LOCATION: 1441 Quivira Road, San Diego, CA 92109

PROJECT DESCRIPTION: Consent to sublease between CHSP Mission Bay LLC, d.b.a. Hyatt Regency Mission Bay Spa and Marina (Lessee/Sublessor) and Art Ponce, an individual, d.b.a. Osprey Yacht Charters (Sublessee), allowing the subleasing of a portion of the Hyatt Regency Mission Bay Spa and Marina dock to provide sportfishing, bay cruises, and vacation charters as approved by Lessee and City to the patrons of the hotel and the general public.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego Mayor-Appointed Designee

ENVIRONMENTAL DETERMINATION: CEQA Exemption Section 15301- Existing facilities

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

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; and where the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effect 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. This permit will allow use of a limited area within an existing facility where no environmental impacts would result.

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 July 21, 2016, 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 made by staff (including the City Manager) 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 (**August 4, 2016**). 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: 7/21/2016

REMOVED: 8/5/2016

POSTED: M. Hermann

CHARTER BOAT LESSEE AGREEMENT

THIS CHARTER BOAT LESSEE AGREEMENT (the "Agreement") is made and entered into on 3/1/2016, 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 Art Ponce (Individual) DBA Osprey Yacht Charters, (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: Osprey
Cal. DMV CF#:
Federal Document #: 693681
Length Overall: 65' **Beam:** 21' **Draft:** 6'

The Vessel shall provide sport fishing, bay cruise,
vacation charters

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 been 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: **\$845.00**. 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 sportfishing,
bay cruises, vacation charters

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

sportfishing, bay cruises,
vacation charters

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 on management property for use by passengers of the Osprey. Parking spaces are for use for passengers while they are embarked on the Osprey. 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:

ART PONCE (individually) _____

DBA OSPREY YACHT
CHARTERS _____

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.

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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 May 30, 2016, 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

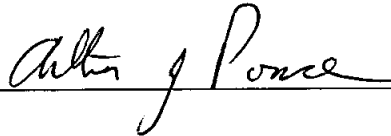


GM

5.23.16

LESSEE:

Art Ponce Osprey Yacht Charters



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.

Arthur J. Ponce

Printed Name:

Arthur J. Ponce

Printed Name:

Address:

1075 Waterwillie Lake
Rd., Chula Vista, Cal.

Address:

Telephone:

619-253-0420

Telephone:

Policy Change



Policy Number: SPD Y08908679

Policy Term: 3/21/2016 To 3/21/2017

Effective Date of Change: 3/21/2016

POLICY CHANGE

Agency Code, Name & Address

161758

OVERSEA INSURANCE AGENCY INC

1274 SCOTT STREET

SAN DIEGO, CA 92106

This is your Amended Declarations Page. Please review Policy Change Summary MA-3857h for a description of change(s).

The Company Providing This Insurance

ACE AMERICAN INSURANCE COMPANY
436 Walnut Street, P.O. Box 1000
Phila, PA 19106-3703

The Named Insured Under This Policy:

(NAME)

Arthur Ponce

Address:

1075 Waterville Lake Rd
Chula Vista, CA 91915

The Vessel Covered By This Policy

(NAME)

Osprey

(YEAR BUILT)

(LENGTH)

(MAKE)

(MODEL)

(DOC. OR HULL IDENT. NO.)

1986

62'

STRIKER

Sportfisher

Off# 893681

COVERAGE PROVIDED

PARTS COVERAGES

A Property Damage

AMOUNT OF
INSURANCE
\$ ACTUAL CASH VALUE
up to \$300,000

DEDUCTIBLE
AMOUNT
\$ 9,000

Windstorm Deductible

Commercial Towing & Assistance

\$ 500

\$ Not Applicable

B Liability Coverage

\$ 2,000,000

\$ 0

C Medical Payments

\$ 1,000

\$ 0

D Uninsured Boater

\$ 2,000,000

\$ 0

E L&HCA

\$ Statutory Limits

\$

F Trailer

\$ Not Covered

\$

G Personal Property

\$ 2,500

\$ 250

Premium Bearing Endt(s): See Attached Endorsements

NEW TOTAL ANNUALIZED PREMIUM

LIMITS ON USE: See Navigation Warranty MA-7N35

SUMMER MOORING LOCATION: San Diego, CA 92109

APPLICABLE FORMS AND ENDORSEMENTS: SEE FORMS SCHEDULE ON PAGE 2

LAY-UP WARRANTY: It is warranted the vessel will be laid up for part of the year, the dates are:

From noon:

To noon:

LOSS PAYEE: We will make payments for Part A: Property Damage losses to the Insured and

M&T Bank

PO Box 5793

Cincinnati, OH 45201

ADDITIONAL INSURED ENDORSEMENT

Named Insured Arthur Ponce			Endorsement Number Vessel 1
Policy Symbol SPD	Policy Number Y08908679	Policy Period 3/21/2016 TO 3/21/2017	Effective Date of Endorsement 3/21/2016
Issued By (Name of Insurance Company) ACE AMERICAN INSURANCE COMPANY			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

It is hereby agreed that the following is added as an additional insured on this Policy, but only as their interest may appear in the **Insured Vessel** and for the liability arising out of the negligence of the **Named Insured**, as defined in the Policy. The additional insured is named as such for the purpose of **Bodily Injury** and **Property Damage** liability in connection with the **Named Insured's** ownership, maintenance and operation of the **Insured Vessel** covered by this Policy.

Hyatt Regency Islandia

1441 Quivira Road

San Diego, CA 92109

With respect to the insurance afforded to the additional insured shown above, the following applies:

1. Inclusion of the additional insured shall not waive any right of subrogation we may have; and
2. In the event of non-renewal or cancellation of this Policy, written notice will be delivered to the additional insured shown above in accordance with the provisions of this Policy.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.