



Real Estate Assets Department
SDC003

CHSP Mission Bay LLC
P201RD-085-A01

Document Type

LEGAL DOCUMENTS



Sub - Category

SUBLEASES



81

CONSENT TO CHARTER BOAT LESSE AGREEMENT

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

RECITALS

- A. City and Lessee/Sublessor entered into a City of San Diego Lease Agreement (Agreement), filed as document RR-300863 in the Office of the San Diego City Clerk, as assigned to Lessee/Sublessor under the City of San Diego Consent to Assignment dated September 6, 2012, 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 San Diego Whale Watching, LLC, a California Corporation, d.b.a. San Diego Whale Watch (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:

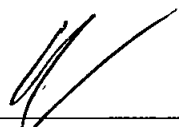
- 1. Subject to the terms and conditions herein, City hereby consents to Lessee/Sublessor's request to issue a charter boat lease agreement to use a portion of its right, title and interest in and to the Agreement to Sublessee. By giving this Consent, City is merely consenting to the requested charter boat lease agreement. All terms and conditions of the Agreement shall control and supersede any inconsistent or contrary provisions in any charter boat lease 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 charter boat lease agreement 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 charter boat lease agreement. Further, Lessee/Sublessor agrees to protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, and employees harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee.

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

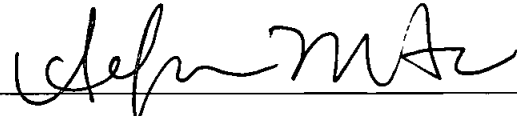
Date: 6/20/16

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: 6/16/16

BY: 

Name: Alyssa M. Muto

Title: Deputy Director, Environmental and Policy Analysis,
Planning Department

Approved as to form this 30th
day of JUNE, 2016.

JAN I. GOLDSMITH, City Attorney

BY: 

Name: David L. Powell

Title: Deputy City Attorney



Date of Notice: June 14, 2016

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Charter Boat Lessee Agreement, 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 charter boat lessee agreement between CHSP Mission Bay LLC, d.b.a. Hyatt Regency Mission Bay Spa and Marina and San Diego Whale Watching LLC., a California Corporation, d.b.a. San Diego Whale Watch allowing the subleasing of a portion of the Hyatt Regency Mission Bay Spa and Marina dock to provide sightseeing tours, private event's charters, sportfishing or other water activities and tours 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 June 14, 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 (**June 28, 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: 6/14/16 _____

REMOVED: _____

POSTED: M. Hermann



SANDIE3

OP ID: PP

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/31/2016

PRODUCER Douglas Maritime Ins. Brokers 1825 State Street, 3rd Floor Santa Barbara, CA 93101 Douglas Lambert, Lic #0663578		Phone: 805-563-6388		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED San Diego Whale Watching, LLC 2535 Camino Del Rio South #112 San Diego, CA 92108		INSURERS AFFORDING COVERAGE		NAIC #	
		INSURER A: Argonaut Insurance Company			
		INSURER B: Endurance American			
		INSURER C:			
		INSURER D:			
		INSURER E:			

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
X		GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR ☒ Protection and Indemnity GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO- JECT ☐ LOC	KDH-1026-W16	04/20/2016	04/20/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (PER PERSON) \$ BODILY INJURY (PER ACCIDENT) \$ PROPERTY DAMAGE (PER ACCIDENT) \$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AUTO ONLY: AGG \$
		EXCESS / UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				WC STATU- TORY LIMITS ☐ OTH- ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B		OTHER Excess P&I	OMX10006892901-COMMANDER	04/20/2016	04/20/2017	1,000,000
B		Excess P&I	OMX10006892901-OHANA	04/20/2016	04/20/2017	4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Please See Addendum A Attached-For Vessel: OHANA & COMMANDER
Location: 1441 Quivira Road, Dock A-Slp #2, Mission Bay, San Diego, CA
92109

CERTIFICATE HOLDER

HYATTSD

Hyatt Regency
Mission Bay
1441 Quivira Road
San Diego, CA 92109

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ADDENDUM "A"

INSURED: SAN DIEGO WHALE WATCHING, LLC
VESSEL: OHANA AND COMMANDER

CERTIFICATE OF INSURANCE
DATED: May 31, 2016

PRIMARY POLICY NO.: KDH-1026-W16
PRIMARY POLICY TERM: EFFECTIVE DATE: 04/20/16 EXPIRATION DATE: 04/20/17

EXCESS POLICY NO.: OMX10006892901
EXCESS POLICY TERM: EFFECTIVE DATE: 04/20/16 EXPIRATION DATE: 04/20/17

ADDITIONAL INSURED ENDORSEMENT

CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED UNDER THIS POLICY, BUT ONLY AS RESPECTS TO NEGLIGENT ACTS OR OMISSIONS OF THE NAMED INSURED AND ONLY FOR OCCURRENCES, CLAIMS OR COVERAGES NOT OTHERWISE EXCLUDED IN THE POLICY.

IT IS FURTHER AGREED THAT SHOULD NO COVERAGE APPLY HEREIN FOR THE NAMED INSURED, NEITHER COVERAGE NOR DEFENSE SHALL BE AFFORDED TO THE ABOVE-IDENTIFIED ADDITIONAL INSURED.

MOREOVER, IT IS UNDERSTOOD AND AGREED THAT BY NAMING THE CERTIFICATE HOLDER AS AN ADDITIONAL INSURED THIS POLICY DOES NOT ASSUME ANY OBLIGATION WHATSOEVER THAT THE ADDITIONAL INSURED MAY INCUR TO IT'S EMPLOYEES INCLUDING BUT NOT LIMITED TO WORKER'S COMPENSATION, STATE DISABILITY, SICK PAY, OR ANY OTHER EMPLOYER OBLIGATIONS.

THIS ENDORSEMENT IS NOT INTENDED TO LIMIT THE NAME INSURED'S LIABILITY TO ITS PASSENGERS.



SANDIE3

OP ID: PP

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/31/2016

PRODUCER Douglas Maritime Ins. Brokers 1825 State Street, 3rd Floor Santa Barbara, CA 93101 Douglas Lambert, Lic #0653578		Phone: 805-563-6388		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED San Diego Whale Watching, LLC 2535 Camino Del Rio South #112 San Diego, CA 92108		INSURERS AFFORDING COVERAGE		NAIC #	
		INSURER A: Argonaut Insurance Company			
		INSURER B: Endurance American			
		INSURER C:			
		INSURER D:			
		INSURER E:			

COVERAGES

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INSR / ADDL LTR / INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
X	GENERAL LIABILITY	KDH-1026-W16	04/20/2016	04/20/2017	EACH OCCURRENCE \$ 1,000,000	
	☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$	
	☐ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person) \$	
	☒ Protection and Indemnity				PERSONAL & ADV INJURY \$	
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$	
	☐ POLICY ☐ PROJECT ☐ LOC				PRODUCTS - COMP/OP AGG \$	
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$	
	☐ ANY AUTO				BODILY INJURY (PER PERSON) \$	
	☐ ALL OWNED AUTOS				BODILY INJURY (PER ACCIDENT) \$	
	☐ SCHEDULED AUTOS				PROPERTY DAMAGE (PER ACCIDENT) \$	
	☐ HIRED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$	
	☐ ANY AUTO				OTHER THAN EA ACC AGG \$	
	EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE \$	
	☐ OCCUR ☐ CLAIMS MADE				AGGREGATE \$	
					\$	
					\$	
					\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y ☐ N				E.L. EACH ACCIDENT \$	
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$	
					E.L. DISEASE - POLICY LIMIT \$	
B	OTHER	OMX10006892801-COMMANDER	04/20/2016	04/20/2017	1,000,000	
	Excess P&I				4,000,000	
B	Excess P&I	OMX10006892901-OHANA	04/20/2016	04/20/2017		

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Please See Addendum A Attached-For Vessel: OHANA & COMMANDER
Location: 1441 Quivira Road, Dock A-Slip #2, Missiona Bay, San Diego, CA 92109

CERTIFICATE HOLDER

SANDI-1

City of San Diego, its elected officials, officers,, representatives, agents and employees

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ADDENDUM "A"

INSURED: SAN DIEGO WHALE WATCHING, LLC
VESSEL: OHANA AND COMMANDER

CERTIFICATE OF INSURANCE
DATED: May 31, 2016

PRIMARY POLICY NO.: KDH-1026-W16
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EXCESS POLICY NO.: OMX10006892901
EXCESS POLICY TERM: EFFECTIVE DATE: 04/20/16 EXPIRATION DATE: 04/20/17

ADDITIONAL INSURED ENDORSEMENT

CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED UNDER THIS POLICY, BUT ONLY AS RESPECTS TO NEGLIGENT ACTS OR OMISSIONS OF THE NAMED INSURED AND ONLY FOR OCCURRENCES, CLAIMS OR COVERAGES NOT OTHERWISE EXCLUDED IN THE POLICY.

IT IS FURTHER AGREED THAT SHOULD NO COVERAGE APPLY HEREIN FOR THE NAMED INSURED, NEITHER COVERAGE NOR DEFENSE SHALL BE AFFORDED TO THE ABOVE-IDENTIFIED ADDITIONAL INSURED.

MOREOVER, IT IS UNDERSTOOD AND AGREED THAT BY NAMING THE CERTIFICATE HOLDER AS AN ADDITIONAL INSURED THIS POLICY DOES NOT ASSUME ANY OBLIGATION WHATSOEVER THAT THE ADDITIONAL INSURED MAY INCUR TO IT'S EMPLOYEES INCLUDING BUT NOT LIMITED TO WORKER'S COMPENSATION, STATE DISBILITY, SICK PAY, OR ANY OTHER EMPLOYER OBLIGATIONS.

THIS ENDORSEMENT IS NOT INTENDED TO LIMIT THE NAME INSURED'S LIABILITY TO ITS PASSENGERS.

CHARTER BOAT LESSEE AGREEMENT

THIS CHARTER BOAT LESSEE AGREEMENT (the "Agreement") is made and entered into on 4/1/2016, 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 Christopher Switzer, Ulkka Pandya, Mark Gillette, owners of San Diego Whale Watching, LLC, a California Corporation, d.b.a. San Diego Whale Watch, (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: Ohana

Cal. DMV CF#:

Federal Document #: 283508

Length Overall: 65' **Beam:** 29' **Draft:** 5'

The Vessel shall provide Sightseeing Tours, Private Event's charters, Sportfishing or other water actives/tours, 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 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 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 for sightseeing
trips, private charters, sportfishing and the like.

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

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

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

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

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

- (m) Lessee shall obey all laws, rules and regulations of Mexico when operating in Mexican waters, including but not limited to licensing and permits, and obey all laws, rules and regulations of the United States and California and all governmental entities/agencies with respect to activities undertaken therein.
- (n) Lessee shall at all times cause the Vessel to be operated by properly licensed personnel in compliance with U.S. Coast Guard requirements.
- (o) Lessee shall at all times operate the Vessel so as to be a credit to the Landing. Lessee shall cooperate with Management in providing reasonable free passage from time to time for writers, photographer's, news personnel and other persons designated by Management.
- (p) Upon termination, Lessee, at his/her expense, shall remove any and all stored goods, equipment and all other items, and return Management's spaces formerly used by Lessee for such storage to its original condition.
- (q) In the event Management elects to provide security at its premises, it is understood and agreed such security is provided solely for the purpose of protecting Management's property, and not for the benefit of the Lessee, who it is agreed shall be solely responsible for the safety and security of the Vessel and her appurtenances, and for the safety of Lessee's crewmembers, officers and passengers.
- (r) Lessee shall not post any signs on the Vessel or Management's premises without the advance written approval of the Management.
- (s) The Vessel shall not be used by any person for purposes of living aboard.
- (t) The Lessee shall, upon request by the Management, permit placement of a dye tablet into all holding tanks.
- (u) Lessee understand agrees Management maintains Rules and Regulations which are incorporated herein as though fully set forth in this Agreement, and that Management reserves the right to add new Rules and Regulations or modify existing Rules and Regulations from time to time, which shall become effective upon notice of revised Rules and Regulations via written notice of changes tendered via first class mail to the Lessee's address identified in Paragraph 8 hereof.

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

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

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

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

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

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

As a result, Lessee's right to use of the Landing and the Vessel's slip thereat is non-exclusive and Lessee shall have no right to exclude any other vessel (including a competitor vessel) from the Landing. Lessee acknowledges and agrees that this Agreement gives Lessee its rights herein only with respect to the Vessel (or its substitute under Section 3(a) above). As a result, Lessee shall not dock or operate any other vessel at the Landing without Management's prior written consent.

6. **Rights of Lessee.** During the term of this Agreement, Lessee shall be provided by Management with the following at no cost or charge to Lessee except as specified herein:
- (a) Use of a slip agreed upon with the Management (at a location suitable for the size of the Vessel) during such time as the Vessel is present at the Landing. Management shall have the right to make boat location changes, as it in its unfettered discretion deems necessary or prudent.
 - (b) Water and electrical hook-up supplied to the slip. At Management's sole discretion, Management shall have the right to separately meter (at Lessee's expense) Lessee's use of water and electricity and charge Lessee therefor. If Management does so, Lessee shall pay all such charges upon demand.
 - (c) Management may establish a maintenance fund and shall utilize the funds therein for painting and general maintenance of the slip in a first class condition at all times, as determined by Management in its sole discretion (excluding any damage caused to the slip by Lessee or its agents or employees, which shall be repaired by Lessee at its sole cost and expense, or in the event of Lessee's failure to do so, by Management and any costs therefore, plus a fifteen percent (15%) administration fee. Management shall not be required to provide any funds for such purposes in excess of those supplied to the maintenance fund pursuant to Section 3(e) above.
 - (d) Management shall establish a Landing advertising and promotions program to advertise and promote the Landing and the activities thereat in such manner and at such times as Management may determine in its sole discretion. Management shall not be required to provide any funds for such purposes in excess of those supplied by Lessee pursuant to Section 4(d) above together with funds from such other persons as Management may cause to contribute to such fund.
 - (e) The right to the use of an available gear locker, with Lessee assuming all responsibility for all items stored in the locker. No flammable or hazardous materials shall be stored in the lockers or on the docks at any time.
 - (f) Operation under such general Mexican fishing licenses that Management may have from time to time, based on Lessee's proper registration of the Vessel with Mexican authorities and paying any fees required.
 - (g) Management shall provide 53 parking spaces on management property for use by passengers of the Ohana. Parking spaces are for use for passengers while they are embarked on the Ohana. 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:

Christopher Switzer, Ulka Pandya,
Mark Gillette - owner of San Diego Whale
Watching, LLC

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

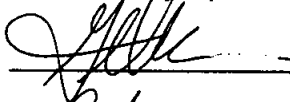
SUCH LEGAL SERVICES SHALL BE RECOVERABLE AGAINST LESSEE PERSONALLY AND AS PART OF THE LANDING'S LIEN AGAINST THE VESSEL *IN REM*. Notwithstanding the general rule that attorneys' fees incurred in connection with a necessities lien are not recoverable directly against the Vessel, it is understood and 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 _____, 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



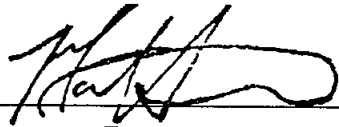
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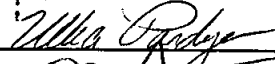
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LESSEE:

Christopher Switzer, Ulkka Pandya, Mark
Gillette, owners of San Diego Whale
Watch LLC





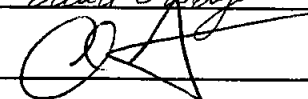


EXHIBIT A

CRUISE SAN DIEGO OPERATING PLAN

Cruise San Diego is a locally owned and operated company providing passengers with 90 minute bay cruises that highlight the beauty, wildlife and history of Mission Bay.

A. Description of Operations

Cruise San Diego, LLC herein after referred to as (Cruise SD) and/or (Operator). In addition to the operating plan outlined below, the operator will observe rules as provided by the Code of Federal Regulations (CFRs) for T-boats as mandated by the United States Coast Guard (USCG).

Term of operating plan: June 1st, 2016 through December 31st, 2017.

1. Cruise SD will only conduct operations during the operating term.
2. Cruise SD will only utilize vessels with state of the art safety equipment, VHF radios, radar, chart plotter and depth finder.
3. Cruise SD will only conduct operations between the Mission Bay Channel North Jetty Entrance circumnavigating Ski Islands.
 - See Exhibit 1 for Route Map
4. The vessel crewmembers will at all-time strive to conduct themselves as professional and courteous to other mariners.
5. The operators will observe all applicable local, state and federal laws pertaining to commercial vessel operations.
6. The operator will permit the Lifeguard Division to inspect the vessel(s) at any time including during operation and agree to cease operating for a reasonable period of time to facilitate inspection when directed by supervising Lifeguard personnel.
7. The operator agrees to at all-times keep a safe minimum distance from other vessels.

8. Cruise SD understands the City reserves the right to make changes to operational and safety requirements at any time and will adhere to any/all changes made by the City. In addition, Operator recognizes the City will provide continuous and ongoing quality control oversight and will review Operator's operations annually during the term of each Agreement and will review it with Operator. Cruise SD will submit an annual operating plan to be reviewed by the Lifeguard Division. The Operator acknowledges that based on the results of any such review, the City may in its sole discretion make any changes to operations it deems necessary.

9. Hours of Operation

Cruise San Diego will operate 365 days per year, weather permitting. Cruise times may vary throughout the year depending on demand and sunset times.

- Summer Season (June 1st to Sept 15th)
 - Two – 90 minute Bay Cruises
 - 12:30 pm – 2:00 pm
 - 3:00 pm – 4:30 pm
 - Sunset Cruise
 - 6:45 pm – 8:15 pm
 - Summer Nights Cruise
 - 8:45 pm – 10:15 pm
- Fall – Spring Season (Sept 16th – May 31st)
 - Two – 90 minute Bay Cruises
 - 12:30 pm – 2:00 pm
 - 3:00 pm – 4:30 pm
 - Sunset Cruise
 - 5:45 pm – 7:15 pm (winter months) OR 6:45 - 8:15 pm

10. Type of Vessel

- a. Cruise SD intends to operate one 65 foot Chaffee Motor Vessel boat certified to carry up to one hundred and thirty-three passengers (133). Operator may however elect to place a second vessel into service at any-time.

11. Vessel Operations

- a. Cruise SD will conduct all operations in strict accordance with all applicable USCG regulations.

- b. Cruise SD will at all times maintain close and constant radio communications with all other vessels and/or traffic in the area.
- c. Cruise SD may from time to time conduct operations and safety training in the area, such training may include incident simulation and/or rescue drills. Careful consideration shall be given to surrounding conditions and lifeguard services will be notified prior to conducting such training.
- d. While operating on the water, Operator will obey all no wake, speed limit and other traffic scheme buoys. In addition, USCG "Rules Of The Road" guidelines will be observed.
- e. Employ a zero tolerance pollution policy. All trash, whether on land or on the vessel, will be placed in a properly secured receptacle and disposed of in a dumpster at the end of each business day. No polluted liquid will be dumped into the water at any time.
 - See Exhibit 2 for Waste Management Plan
- f. At all-time respect the quiet enjoyment of those located around us.
- g. All passengers shall be thoroughly briefed on safety prior to trip departure.
- h. The vessel is equipped with outdoor navigation stations on both sides to allow for unobstructed visibility by vessel captains.
- i. All crew members will assist passengers as they embark and disembark from the vessel.
- j. The PA/audio system used on the vessel is for use by the captain for cruise/passenger information. Cruise SD will not play music loud enough to disrupt the surrounding environment in the bay.

B. Safety

1. Safety Equipment/Location

- a. Individual life jackets in benches of the galley
- b. Life ring and EPIRB on port side, upper deck
- c. Life rafts on the roof of the wheelhouse
- d. Bell outside of the wheelhouse

- e. PA system in the wheelhouse
- f. Five fire extinguishers located throughout the vessel
- g. Emergency bilge pumps in the engine room
- h. Automatic fire extinguishers in the engine room
- i. Saltwater fire hoses on the starboard side, upper deck
- j. First Aid Kit in the wheelhouse
- k. Drinkable water in the galley

2. Safety Briefing

Once the customers are aboard the vessel, the Captain will provide a safety briefing. This safety briefing is written out and located in the wheelhouse to ensure a consistent message.

- See Exhibit 3 for Verbal Safety Briefing

3. Maximum/Minimum Operating Specifications

- a. Maximum vessel speed
 - i. Cruise SD always considers safety first. It generally limits its vessels operations to no more than 6 knots.
- b. Maximum Sea State Conditions
 - i. Cruise SD will not operate in actual sea state conditions in excess of six (6) feet or any other condition deemed by the vessels captain as unsuitable or unsafe to conduct operations.
- c. Minimum Depth of Operation
 - i. Cruise SD will not operate in any water shallower than 5.4 feet (0.9 fathoms).

4. Identifying Markers

Operator's vessel shall be readily identifiable. The vessel Captain and crew shall wear attire containing the company logo, making them readily identifiable to clients, first responders and law enforcement.

5. Ocean Conditions and Safety

Bay Cruises shall only be conducted in the area identified in Exhibit 1.

Operator will check the Beach and Weather Report maintained by the San Diego Fire-Rescue Lifeguards (available by calling (619) 221-8824) each day before beginning operations. Operator will continuously monitor weather reports throughout each day of operations to monitor wind and water conditions on Mission Bay and the Pacific Ocean.

Cruise SD and its employees, agents and/or affiliates will adhere to all directions provided by Lifeguards, Park Rangers, other representatives of the CITY, or any other officer with authority to enforce local, state or federal law. In the case of disputes, supervisory personnel may be summoned, but the decision of Lifeguards regarding any particular matter on a given day is final and should be brought to the attention of the area Lifeguard Lieutenant as necessary at a later time.

Cruise SD understands that Lifeguards and Park Rangers reserve the right to terminate any operation based on safety considerations.

6. Accidents, Injuries and Reports

In the event of any accident or injury, regardless of severity, the Operator shall notify the lifeguard supervisor on duty as soon as possible. All rescues and medical aids involving customers or other personnel must be documented on the Operator's company reports.

7. Alcohol Policy

In an effort to promote a safe cruise environment, all passenger IDs will be checked to ensure a minimum age of 21. The bartender and all Cruise SD staff members will utilize their best judgment when choosing to serve alcohol to guests. The general rule for passengers will be to limit alcoholic beverages to two per person. If a passenger is visibly intoxicated prior to boarding the vessel, the crew member is to immediately notify the Captain. At which time, the Captain will determine if the passenger can board the vessel.

8. Anchoring the vessel in the Bay

At no time during a bay cruise or any other chartered/private event will the vessel be anchored or will guests be allowed to enter into the water.

9. Route for Cruises

The route map in Exhibit 1 is provided as a general route description for all cruise types. However, during high traffic days like weekends and holidays, Cruise SD will adjust the cruise routes so as to not interfere with other small vessels in the bay. This will include removing Fiesta Bay from the tour routes during the hours of 10:00 am to 6:00 pm on high traffic days.

10. Guest to Employee Ratio

The vessel carries a Certificate of Inspection of 133 passengers. This includes 128 guests and 5 crew members. Cruise SD will operate every cruise with 5 crew members.

C. Captain and Crew Qualifications and Requirements

1. Minimum Captain Qualifications

- a. Must be USCG Licensed for the appropriate operating area waters and vessel type, size, tonnage and passenger limitations as required by USCG. (or applicable equivalent outside U.S.)
- b. Must be current in certification of CPR and First Aid.
- c. Must be proficient in all aspects of emergency techniques and proper use of safety equipment and procedures.
- d. Must be currently enrolled in an approved random Drug testing program.

2. CPR and First Aid Requirements

Vessel Captain and crew must each possess any one (1) of the following CPR certifications:

1. American Red Cross
2. American Heart Association
3. Any other nationally recognized basic CPR training with certification

Additionally, the Captain and crew must each possess any one (1) of the following certifications:

1. Emergency Medical Technician (EMT)
2. American Red Cross Emergency Response
3. American Red Cross First Aid Basic
4. Any other nationally recognized first aid course with certification.

3. Minimum Age Requirements

Vessel Captain and crew must be at least eighteen (18) years of age.

4. Transportation Worker Identification Credential (TWIC)

All Vessel Captain must have a valid TWIC card while conducting operations.

D. Community Partnership

The owners of Cruise SD also own and operate other motor vessels all with an A rating from the USCG. The owners are passionate about the waters that surround San Diego and the environment in which they live. That is why is Cruise SD will continue to partner with the local community to minimize its impact on residents and other businesses by implementing Best Management Practices (BMPs). Such BMPs will be focused on but not limited to safe boating practices, water pollution prevention and preserving the quiet enjoyment of persons in and around the area.

Cruise SD will also remain active in local beach clean-ups, its support of wildlife conservation programs, the American Cetacean Society and other programs as it continues to grow its community outreach program.

EXHIBIT 1

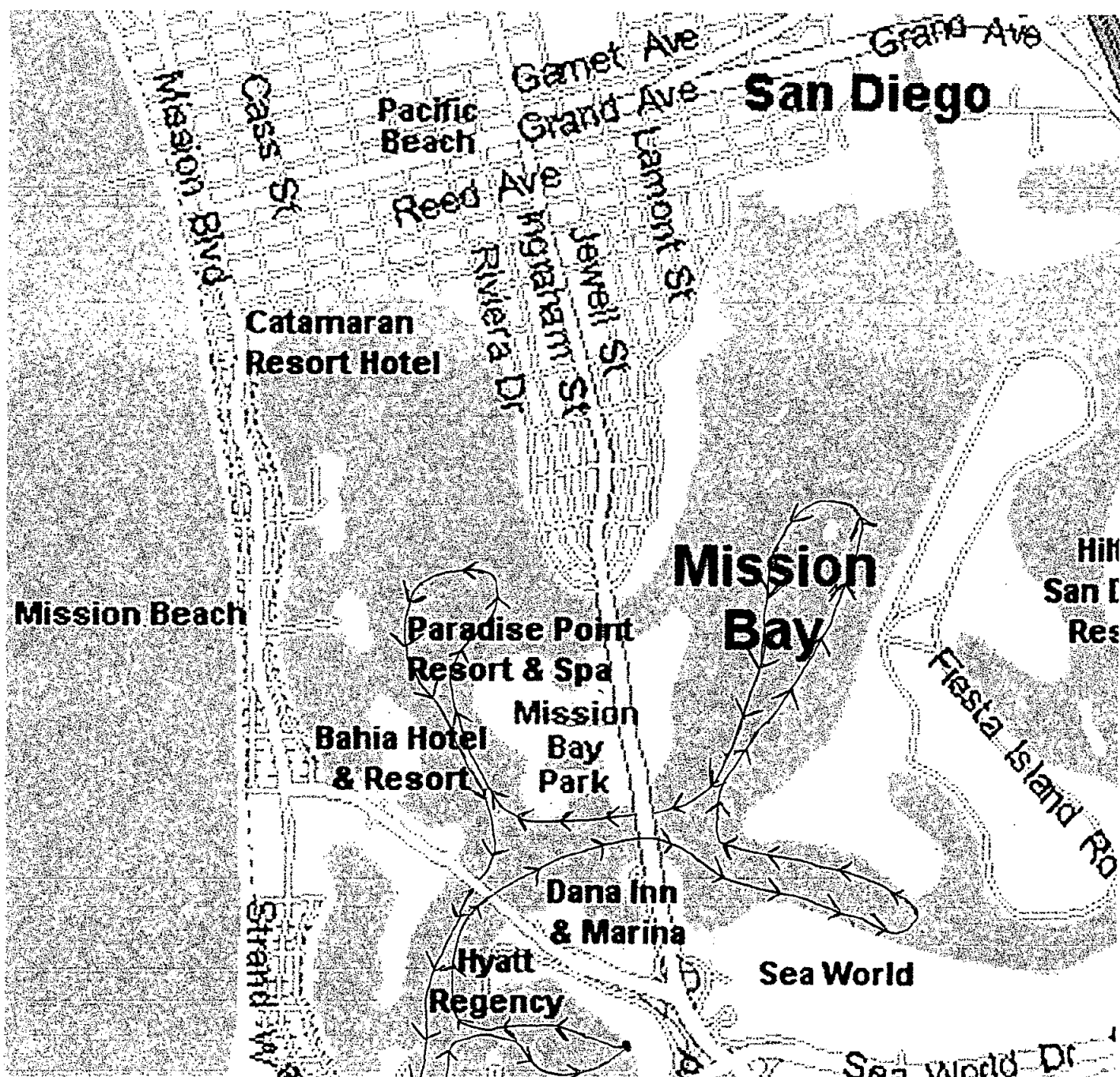


EXHIBIT 2

WASTE MANAGEMENT PLAN

All of the garbage generated on the vessel is placed into garbage bags and disposed of in trash containers at the end of each day. All crew members have been oriented to the requirements of MARPOL ANNEX V by the Captain and all new crewmen are specifically shown the MARPOL V PLACARD and told to keep all refuse stowed aboard. Passenger orientation to the vessel includes being shown the locations of the trash receptacles and mention of refuse discharge regulations.

EXHIBIT 3

VERBAL SAFETY BRIEFING

" Welcome aboard the Ohana. First I'd like to introduce the crew to you. On deck you have _____ and _____, in the galley, you have _____, and I am your captain, my name is _____. Before we get into trip details, I need everyone's attention so that I can go over mandatory Coast Guard Safety information with you. All individual life jackets are located in the benches marked in the galley, Life rafts are on the roof of the bridge and will be deployed if necessary and life ring in on the port side (the left side) of the upper deck. In the case of someone falling overboard, please grab the life ring and throw it in the direction of the person who fell over board and yell 'Man Overboard!' loudly and continuously until that person is safely back aboard the vessel. To keep yourself or someone else from going overboard, please hold on to the railings while walk around the boat, do not lean over past your waist and parents please hold on to your children's hands at all times. In the event of fire or any other type of emergencies, please remain calm and grab the nearest crewmember immediately. Inside the galley on the port (left) side, there is a placard demonstrating how to put on a life jacket, if needed. Please draw your attention to the nearest crewmember right now as they are demonstrating how to properly secure yourself in a lifejacket. We do not anticipate any emergencies, but in the event of one, please remain calm and take immediate instruction from the crew.

If you have any further questions, or concerns about the safety of the vessel or where safety equipment is located, please speak with a crew member anytime throughout the trip and they will assist you.

The Ohana is a drug free vessel, and any use of illegal substances will be reported to Harbor Patrol, Life guards and/or the United States Coast guard before we return to the dock.

We look forward to great journey with you. Sit back, relax and welcome aboard Ohana."

EXHIBIT 4

EMERGENCY RESPONSE PLAN

Although each emergency situation is unique in nature, the following minimum Emergency Response Plan will be followed in any occurrence:

A. Rough Weather at Sea or Crossing Hazardous Bars

1. Close all watertight and weathertight doors, hatches and air ports to prevent taking water aboard.
2. Keep bilges dry to prevent loss of stability.
3. Keep passengers seated and evenly distributed.
4. Have passengers put on life jackets if the going becomes very rough or if crossing a hazardous bar.
5. If assistance is needed, use the international distress call over the radiotelephone or call the Coast Guard.
6. Prepare life floats for launching.

B. Man Overboard

1. Throw a ring buoy overboard as close to the person as possible.
2. Post a lookout to keep the person overboard in sight.
3. Maneuver the vessel to keep the person in the water.
4. Have a crewman put on a life jacket, attach a safety line to him, and have him standby to jump in and assist the person overboard if necessary.
5. If the person is not immediately located, notify the Coast Guard and other vessels in the area by radiotelephone.
6. Continue the search until released by the Coast Guard.

C. Fire at Sea

1. Cut off the air supply to the fire. Close hatches, ports, doors, ventilators, etc.
2. Immediately use portable extinguishers at the base of flames for flammable liquid or grease fires and use water for fires in ordinary combustible materials.



3. If the fire is in machinery spaces, shut off fuel supply and ventilation and discharge fixed CO2 if installed.
4. Maneuver the vessel to minimize the effect of wind on the fire.
5. If unable to control the fire, notify the Coast Guard immediately and other boats in the area by radiotelephone.
6. Move passengers away from the fire, have them put on life jackets, and if necessary, prepare to abandon ship.

D. Operator's Responsibility

1. Nothing in these emergency instructions shall in any way exempt the operator from exercising good judgment in any emergency situation.
2. In case of emergency, call 911 or VHF radio "May Day" as necessary.

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):

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

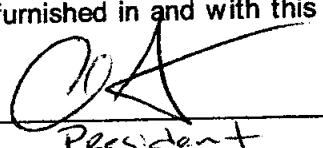
Exact name of existing Sublessee (complete only if applicable):

SAN Diego whale watching, LLC.

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

Date this Questionnaire completed: Feb 22nd, 2016.

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

Signature: 

Title: President

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:

San Diego Whale Watching, LLC

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

2535 Camino Del Rio South Suite 112

San Diego, CA 92108

Telephone No.: 858-610-8844

Fax. No.: (619) 269-0170

E-mail Address: onzeak@gmail.com

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

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:

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

N.A

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:

1. Type of corporation: C () Subchapter S ()

N.A

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: _____

N.A

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____

Title: _____

Address: _____

No. of Shares: _____

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

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

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

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

N.A

LIMITED LIABILITY COMPANY STATEMENT

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

1. Date of Organization: March 18th 2011
2. Where Organized: San Diego, CA
3. Is the Company authorized to do business in California?
 - a. Yes (☒) No (☐)
 - b. If so, as of what date? March 18th 2011
4. Has the Company conducted business in San Diego County?
 - a. Yes (☒) No (☐)
 - b. If so, when? March 2011 + Present
 - c. If so, where? San Diego
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 %
member	Vika B. Pandya	5427 Thunderbird Ln La Jolla 92037	34
member	Christophe A. Suter	Same as above	33
member	Mark D. Gillette	6666 Regency St San Diego 92120	33

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

REFERENCES FOR PROPOSED (SUB)LESSEE

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

REFERENCE NO. 1

Name: Bank of America

Firm: _____

Title: _____

Address: 1275 Roscreans

Telephone: 619-221-6613

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

Cred Issuing Bank (credit card business)
All Business Banking conducted at this location

REFERENCE NO. 2

Name: Bipin Pandya

Firm: Pro Tech Consulting

Title: President / CEO

Address: 711 Hollingda way Sugar Land, TX 77479

Telephone: 713-504-9860

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

Loans / Business consulting

REFERENCE NO. 3

Name: Leah Yam
Firm: Marine Group Boat Works
Title: Director of Communications
Address: 997 G St. San Diego, CA 91910
Telephone: 619-942-0964

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

Shipyard Repair Facility Estimated 100,000+
in annual work done with this vendor.

REFERENCE NO. 4

Name: Leonard Martinez
Firm: Jacob Brakham
Title: owner
Address: 3463 State Street #501 Santa Barbara, Ca 93105
Telephone: 805-453-5421

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

Contractor for Boat. Just updated
Electrical on Boat : paid out \$100,000 in 2015.

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

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

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

First, Middle, & Last Name	<u>Christopher Alau Switzer</u>
Date of Birth	<u>07-25-1977</u>
Place of Birth	<u>Subic Bay, Philippines</u>
Social Security Number	<u>576-37-1840</u>
Driver's License Number/State	<u>B4651724</u>
Home Address	<u>5427 Thunderbird Lane</u> <u>La Jolla, CA 92037</u>
Previous Address	<u>7914 Calico Street</u> <u>San Diego, CA 92126</u>
Home Telephone No.	<u>858-610-8844</u>
Employer	<u>San Diego Whale Watching, LLC</u>
Occupation	<u>President</u>
Business Address	<u>2535 Camino Del Rio South Suite 112</u> <u>SD CA 92</u>
Business Telephone No.	<u>858-610-8844</u>
Business Fax No.	<u>619-269-0170</u>

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

Date 2-22-2014 Signed 

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

San Diego Whale Watching, LLC

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

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

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

First, Middle, & Last Name	<u>Ulka Bipin Pandya</u>
Date of Birth	<u>07-29-1976</u>
Place of Birth	<u>Lafayette, Louisiana</u>
Social Security Number	<u>438-27-6248</u>
Driver's License Number/State	<u>E2245837</u>
Home Address	<u>5427 Thunderbird Lane</u> <u>La Jolla, CA 92037</u>
Previous Address	<u>5210 Fiore Terrace Apt L303</u> <u>San Diego, CA 92122</u>
Home Telephone No.	<u>858-531-0577</u>
Employer	<u>Gateway Health Partners</u>
Occupation	<u>Pharmacist</u>
Business Address	<u>5427 Thunderbird Lane La Jolla, CA 92037</u>
Business Telephone No.	<u>858-531-0577</u>
Business Fax No.	<u>619-269-0170</u>

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

Date 2-22-2016 Signed Ulka Pandya

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

SAN DIEGO WHALE WATCHING, LLC.

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 MARK DICKEY GILLETTE
Date of Birth FEBRUARY 6, 1979
Place of Birth WHITTIER, CA
Social Security Number 559-79-8351
Driver's License Number/State B6010686
Home Address 6666 BURGUNDY ST
SAN DIEGO, CA 92120
Previous Address _____
Home Telephone No. 619-578-8701
Employer SELF
Occupation TOURISM
Business Address 2535 CAMINO DEL RIO S #112, SD, CA 92108
Business Telephone No. 619-578-8701
Business Fax No. _____

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

Date 2/24/2016

Signed _____

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

SAN DIEGO WHALE WATCHING, LLC

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.

INITIAL OPERATION WILL BE 90-MINUTE BAY CRUISES, WITH POTENTIAL
EXPANSION INTO WHALE WATCHING + DOLPHIN/SEAL TOURS.

Same ownership as Eclipse Sport Fishing, LLC
Additional Sublease application to follow.

**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.

- NA -

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)				
	BAY CRUISE				
1	\$ 822,000	\$	\$	\$	\$
2	904,200				
3	994,120				
4	1,094,082				
5	1,203,490				

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.

MARK GILLETTE AND CHRIS SWITZER EACH COME WITH OVER 20 YEARS OF BOATING EXPERIENCE. MARK HAS BEEN A CAPTAIN OF 100 TON VESSELS + CHRIS FOR 10 YEARS. THEY HAVE BEEN BUSINESS PARTNERS FOR OVER A DECADE + THEIR FIRST BOATING BUSINESS COMMENCED IN 2008 WITH ECURSE SPORTFISHING. SINCE THEN, MARK + CHRIS HAVE ADDED A YEAR ROUND WHALE WATCHING COMPANY (SAN DIEGO WHALE WATCH) AND ANOTHER SPORTFISHING VESSEL (COMMANDER SPORTFISHING) TO THEIR BUSINESS PORTFOLIO.

ULKA PANDYA BRINGS A WEALTH OF KNOWLEDGE IN THE BUSINESS OPERATIONS/ FINANCE SIDE. AS SHE HAS BEEN PART OF THE SENIOR LEADERSHIP TEAMS FOR MANY MAJOR COMPANIES IN THE US. HER MBA, COUPLED WITH HER EXPERIENCE, ALLOWS HER TO WORK ON THE STRATEGIC PLANS, FINANCIAL STATEMENTS + EMPLOYEE MANAGEMENT FOR THE COMPANIES.

**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).

San Diego Whale Watch, LLC
Profit & Loss
 January through December 2015

	<u>Jan - Dec 15</u>
Ordinary Income/Expense	
Total Income	1,275,962.08
Cost of Goods Sold	
Booking Fees	179,123.79
City Boat Fees	83,652.12
Subcontracted Services	5,009.83
Total COGS	<u>267,785.74</u>
Gross Profit	1,008,176.34
Expense	
Guarentee Payments	76,000.00
Retirement Contribution	700.00
Automobile Expense	21,237.53
Bank & Merchant Service Charges	4,982.93
Boat Expense	
Coast Guard Inspection	4,670.38
License, Permits, Fees	3,341.47
Overflow	69,000.00
Crew	191,337.06
Galley	45,229.66
Fuel	39,338.50
Repairs & Maintenance	30,179.32
SAC	8,365.21
Storage	2,457.15
Supplies	20,464.26
Uniforms	1,494.38
Total Boat Expense	<u>415,877.39</u>
Business Taxes	11,500.00
Charitable Donation	2,075.00
Depreciation Expense	72,755.28
Insurance Expense	19,188.98
Interest Expense	15,018.02
Marketing Expense	45,552.23
Meals and Entertainment	1,005.54
Medical Expense	631.89
Office Expenses	4,055.83
Payroll Expenses	49,437.98
Professional Fees	33,696.58
Rent Expense	9,896.37
Travel Expense	325.94
Total Expense	<u>783,937.49</u>
Net Income	<u><u>224,238.85</u></u>

San Diego Whale Watch, LLC
Balance Sheet
As of February 22, 2016

Feb 22, 16

ASSETS

Current Assets

Total Checking/Savings	141,044.51
Other Current Assets	
Employee Advance	1,333.50
Due from (to) Eclipse	-73,000.00
Due from (to) Pacific Bancard	-15,000.00
Total Other Current Assets	<u>-86,666.50</u>
Total Current Assets	<u>54,378.01</u>

Fixed Assets

Life Rafts	16,349.28
Whale Watching Boat	
Accumulated Depreciation	-83,536.32
Whale Watching Boat - Other	268,509.00
Total Whale Watching Boat	184,972.68
Capital Boat Improvements	
Accumulated Depreciation	-196,233.36
Capital Boat Improvements - Other	793,048.91
Total Capital Boat Improvements	<u>596,815.55</u>
Total Fixed Assets	<u>798,137.51</u>

TOTAL ASSETS	<u><u>852,515.52</u></u>
---------------------	--------------------------

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Total Accounts Payable	61,765.82
Total Credit Cards	12,359.29
Other Current Liabilities	
Total Payroll Tax Liability	118.52
Seaforth Payable (Receivable)	-9,231.52
Total Member Loans	316,511.95
Total Other Current Liabilities	307,398.95
Total Current Liabilities	<u>381,524.06</u>

Total Liabilities

381,524.06

Equity

Member Equity - Ulka	30,980.55
Member Equity - Gillette	30,979.56
Member Equity - Switzer	30,981.60
Member Contributions	130,068.25
Retained Earnings	225,111.21
Net Income	<u>22,870.29</u>
Total Equity	<u>470,991.46</u>

TOTAL LIABILITIES & EQUITY	<u><u>852,515.52</u></u>
---------------------------------------	--------------------------

OPERATING AGREEMENT

OF

**SAN DIEGO WHALE WATCHING LLC.,
a California limited liability company**

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS	1
ARTICLE 2: FORMATION	5
2.1 <u>Organization</u>	5
2.2 <u>Agreement</u>	5
2.3 <u>Name</u>	5
2.4 <u>Effective Date</u>	5
2.5 <u>Term</u>	5
2.6 <u>Registered Agent and Office</u>	5
2.7 <u>Principal Office and Branch Offices</u>	6
2.8 <u>Management Not By Manager or Managers</u>	6
2.9 <u>Withdrawal Constitutes Breach</u>	6
ARTICLE 3: NATURE OF BUSINESS	6
ARTICLE 4: ACCOUNTING AND RECORDS	6
4.1 <u>Records To Be Maintained</u>	6
4.2 <u>Reports To Members</u>	7
4.3 <u>Accounts</u>	7
ARTICLE 5: NAMES AND ADDRESSES OF MEMBERS	7
ARTICLE 6: RIGHTS AND DUTIES OF MEMBERS	7
6.1 <u>Management Rights</u>	7
6.2 <u>Majority Defined</u>	8
6.3 <u>Meetings of Members</u>	8
6.4 <u>Liability of Members</u>	8
6.5 <u>Indemnification</u>	8
6.6 <u>Representations and Warranties</u>	9
6.7 <u>Conflicts Of Interest</u>	9
ARTICLE 7: MANAGEMENT BY MEMBERS	10
7.1 <u>Management By Members</u>	10
7.2 <u>Authority Of Members To Bind Company</u>	10
7.3 <u>Actions of the Members</u>	12
7.4 <u>Reimbursement of the Members</u>	12
7.5 <u>Member's Standard of Care</u>	12
7.6 <u>Officers</u>	12
ARTICLE 8: CONTRIBUTIONS AND CAPITAL ACCOUNTS	13
8.1 <u>Contributions</u>	13
8.2 <u>Additional Contributions</u>	13
8.3 <u>Enforcement of Commitments</u>	14
8.4 <u>Maintenance of Capital Accounts</u>	14
8.5 <u>Distribution of Assets</u>	14
8.6 <u>Sale or Exchange of Interest</u>	14
8.7 <u>Compliance With Section 704(b) of the Code</u>	14

ARTICLE 9: ALLOCATIONS AND DISTRIBUTIONS.....	15
9.1 Allocations of Net Profits and Net Losses From Operations	15
9.2 Company Minimum Gain Chargeback	15
9.3 Member Minimum Gain Chargeback	15
9.4 Qualified Income Offset.....	15
9.5 Interim Distributions.....	15
9.6 Limitations on Distributions.....	16
ARTICLE 10: TAXES.....	16
10.1 Elections	16
10.2 Taxes of Taxing Jurisdictions	16
10.3 "Tax Matters Partner"	16
10.4 Method of Accounting	16
ARTICLE 11: DISPOSITION OF MEMBERSHIP INTERESTS.....	16
11.1 Disposition	16
11.2 Right of First Refusal	17
11.3 [Intentionally Deleted]	17
11.4 Dispositions to Permitted Transferees	17
11.5 Non-Complying Dispositions Are Void	17
ARTICLE 12: DISSOCIATION OF A MEMBER	17
12.1 Dissociation	17
12.2 Rights of Dissociating Member.....	18
ARTICLE 13: DISSOLUTION AND WINDING UP	18
13.1 Dissolution	18
13.2 Effect of Dissolution.....	19
13.3 Distribution of Assets on Dissolution	19
13.4 Winding Up and Certificate of Cancellation.....	19
ARTICLE 14: AMENDMENT	19
14.1 Operating Agreement May Be Modified	19
14.2 Amendment or Modification of Operating Agreement	19
ARTICLE 15: MISCELLANEOUS PROVISIONS	19
15.1 No Partnership Intended For Non-Tax Purposes	19
15.2 Rights of Creditors and Other Persons Under Operating Agreement.....	19
15.3 Arbitration	20
15.4 Attorneys' Fees.....	20
15.5 Burden and Benefit.....	20
15.6 Applicable Law	20
15.7 Submissions To Members	20
15.8 Descriptive Headings.....	20
15.9 Interpretation	20
15.10 Counterparts	20
15.11 Severability of Provisions	20
15.12 Entire Agreement.....	21
15.13 Saving Clause	21

**OPERATING AGREEMENT
OF
SAN DIEGO WHALE WATCHING LLC.,
a California limited liability company**

This Operating Agreement of SAN DIEGO WHALE WATCHING LLC., a limited liability company organized pursuant to the Beverly-Killea Limited Liability Company Act of the State of California, is entered into and shall be effective as of the Effective Date, by and among the Company and the persons signing this Agreement as Members.

**ARTICLE 1:
DEFINITIONS**

For purposes of this Operating Agreement (as defined below), unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Act" means the Beverly-Killea Limited Liability Company Act of the State of California and all amendments to the Act.

"Additional Member" means a Member other than an Initial Member or a Substitute Member who has acquired a Membership Interest from the Company.

"Admission Agreement" means the Agreement between an Additional Member and the Company described in Article 8.

"Affiliate" means (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; and (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity.

"Articles" means the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State.

"Bankrupt Member" means a Member who (1) has become the subject of an order for relief under the United States BANKRUPTCY CODE; or (2) has initiated, either in an original proceeding or by way of answer in any state insolvency or receivership proceedings, an action for liquidation arrangement, composition, readjustment, dissolution or similar relief.

"Business Day" means any day other than Saturday, Sunday or any legal national holiday observed in the State of California.

"Capital Account" means the account maintained for a Member determined in accordance with Article 8.

"Capital Contribution" means any contribution of Property, services or the obligation to contribute Property or services made by or on behalf of a Member.

"Code" means the INTERNAL REVENUE CODE of 1986 as amended from time to time.

"Commitment" means the Capital Contributions that a Member is obligated to make.

"Company" means San Diego Whale Watching LLC., a California limited liability company formed under the Act, and any successor limited liability company. The Company is the successor-by-conversion of San Diego Whale Watching Inc., a California corporation, which was converted to the Company on the Effective Date.

"Company Liability" means any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

"Company Minimum Gain" means an amount determined by first computing for each Company Non-Recourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the minimum gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with §704 of the Code, and the Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year equals the sum of non-recourse deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a Non-Recourse Liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors' in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Non-Recourse Liabilities.

"Company Non-Recourse Liability" means a Company Liability to the extent that no Member or Related Person bears the economic risk or loss (as defined in §1.752-2 of the Regulations) with respect to the Company Liability.

"Company Property" means any Property owned by the Company.

"Contributing Members" means those Members making contributions as a result of the failure of a Delinquent Member to make the contributions required by the Commitment as described in Article 8.

"Default Interest Rate" means the lower of (a) the highest rate allowed by applicable law; or (b) the then-current annual reference rate quoted by Bank of America N.T.&S.A. plus three percent (3%) per annum.

"Delinquent Member" means a Member who has failed to meet the Commitment of that Member.

"Disposition" ("Dispose"; "Disposing"; and other conjugations and declensions) means any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation or other transfer, absolute or as security or encumbrance (including Dispositions by operation of law).

"Dissociation" ("Dissociate"; "Dissociating"; and other conjugations and declensions) means any action which causes a Person to cease to be a Member as described in Article 12.

"Dissolution Event" means an event the occurrence of which results in a dissolution of the Company under Article 13.

"Distribution" ("Distribute"; and other conjugations and declensions) means a transfer of Property to a Member on account of a Membership Interest as described in Article 9.

"Effective Date" means the date the Articles are filed and accepted by the Secretary of State.

"Immediate Family" means a Member's spouse, children (including natural, adopted and stepchildren), grandchildren and parents.

"Initial Capital Contribution" means a Capital Contribution agreed to be made by an Initial Member pursuant to Article 8.

"Initial Members" means those Persons identified on Exhibit "A" attached hereto and made a part hereof by this reference, who have signed this Operating Agreement.

"Majority" is defined in Article 6.

"Member" means an Initial Member, a Substitute Member or an Additional Member.

"Member Minimum Gain" means an amount determined by first computing for each Member Non-Recourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding Taxable Year with the minimum gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with §704 of the Code, and the Regulations issued thereunder, as the same may be issued and interpreted from time to time.

"Member Non-Recourse Liability" means any Company Liability to the extent the liability is non-recourse to the Company under California law, and on which a Member or Related Person bears the economic risk of loss under §1.752-2 of the Code because, for example, the Member or Related Person is the creditor of the Company or a guarantor of the Company Liability.

"Membership Interest" means the rights of a Member pursuant to the Act and this Operating Agreement.

"Money" means cash or other legal tender of the United States of America, or any obligation that is immediately reducible to legal tender without delay or discount. Money shall be considered to have a fair market value equal to its face amount.

"Net Losses" means the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

"Net Profits" means the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

"Non-Recourse Liabilities" means either or both of Company Non-Recourse Liabilities and Member Non-Recourse-Liabilities.

"Notice" ("Notify") means notice delivered in writing. All Notices, requests, demands and other communications required to or permitted to be delivered under this Agreement shall be in writing and

shall be conclusively deemed to have been duly delivered and received (a) when hand delivered to the recipient; or (b) when received when sent by telex or facsimile at the address and number reflected in this Operating Agreement unless the Member has notified the Company of a different address and number (provided, however, that Notices sent by facsimile shall not be effective unless either (i) a duplicate copy of such facsimile Notice is promptly sent by depositing the Notice in the United States mail with first-class postage prepaid and addressed to the recipient, or (ii) the recipient delivers a written confirmation of receipt of such Notice either by facsimile or any other method permitted under this provision; additionally, any Notice sent by telex or facsimile shall be deemed received on the next Business Day if such Notice is received after 5:00 p.m. (recipient's time) or is received on a non-Business Day; or (c) two (2) Business Days after the Notice has been deposited in the United States mail with first-class or certified mail return receipt requested postage prepaid and addressed to the recipient; or (d) the next business day after the Notice has been deposited with a national overnight delivery service reasonably approved by the parties (UPS, Federal Express and DHL WorldWide Express being deemed approved by the Members), delivery charges prepaid, addressed to the recipient with next-business-day delivery guaranteed, provided that the sender receives a confirmation of delivery from the delivery service.

"Offsettable Decrease" means any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the Taxable Year to which the allocation relates, attributable to depletion allowances under §1.704(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §704(e)(2) or §706 of the Code or under §1.751-1 of the Regulations, or Distributions that, as of the end of the year are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during (or prior to) the Taxable Years in which such Distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

"Operating Agreement" means this Operating Agreement, including all Admission Agreements and amendments adopted in accordance with this Operating Agreement and the Act.

"Organization" means a Person other than a natural person. "Organization" includes, without limitation, corporations (both nonprofit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies and unincorporated associations, but does not include joint tenancies or tenancies in common.

"Organization Expenses" means those actual fees, costs and expenses incurred in organizing the Company, including the costs of preparing this Operating Agreement and the Articles.

"Percentage Interest" means the percentage interest in Net Profits and Net Losses and Distributable Cash Flow of each Member set forth on Exhibit "A" attached to this Agreement.

"Permitted Transferee" means any member of the Member's Immediate Family, or an Organization controlled by such Member or by members of the Member's Immediate Family.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign, permitted to be a member of a limited liability company under the Act.

"Proceeding" means any administrative, judicial or other adversary proceeding, including, without limitation, litigation, arbitration, administrative adjudication, mediation, and appeal or review of any of the foregoing.

"Property" means any property, real or personal, tangible or intangible, including Money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Regulations" means, except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary Regulations of the Department of the Treasury under the Code, as such Regulations may be lawfully changed from time to time.

"Related Person" means a Person having a relationship to a Member that is described in §1.752-4(b) of the Regulations.

"Substitute Member" means a Transferee who has been admitted as a Member and who therefore has all of the rights and obligations of membership pursuant to this Operating Agreement.

"Taxable Year" means the Taxable Year of the Company as determined pursuant to §706 of the Code.

"Taxing Jurisdiction" means any state, local or foreign government that collects tax, interest or penalties, however designated, on any Member's share of the income or gain attributable to the Company.

"Transferee" means a Person who has acquired a Membership Interest in the Company in accordance with the terms of this Operating Agreement, but who has not been admitted as a Substitute Member.

ARTICLE 2: FORMATION

2.1 Organization. The Members hereby organize the Company as a limited liability company pursuant to the provisions of the Act.

2.2 Agreement. For and in consideration of the mutual covenants contained in this Operating Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Initial Members hereby agree to the terms and conditions of this Operating Agreement, as it may from time to time be amended according to its terms. It is the express intent of the Members that this Operating Agreement shall be the sole source of agreement of the Members; and, except to the extent a provision of this Operating Agreement expressly incorporates federal income tax law by reference to sections of the Code or the Regulations or is expressly prohibited by or is ineffective under the Act, this Operating Agreement shall govern, even when inconsistent with, or different from, the provisions of the Act or any other law or rule. In the event the Act is subsequently amended or interpreted in such a way as to make valid any provision of this Operating Agreement that was formerly invalid, such provision shall be considered to be valid from and after the effective date of such interpretation or amendment.

2.3 Name. The name of the Company is San Diego Whale Watching LLC., a California limited liability company, and all business of the Company shall be conducted under that name or under any other name, but in any case, only to the extent permitted by applicable law.

2.4 Effective Date. This Operating Agreement shall be or become effective on the Effective Date.

2.5 Term. The Company shall be dissolved and its affairs wound up in accordance with the Act and this Operating Agreement, on a date determined by the Members.

2.6 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles as filed with the Secretary of State. The Members may from time to time change the registered agent or office through appropriate filings with the Secretary of State. In the event the registered agent ceases to act as such for any reason or the registered office changes, the Members shall promptly designate a replacement registered agent or

file a notice of change of address as the case may be. If the Members fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address; and any Member taking any such action shall Notify the other Members of the action taken.

2.7 Principal Office and Branch Offices. The Principal Office of the Company shall be located at 1717 Quivira Road, San Diego, California 92109. The Company may establish such branch offices as the Members from time to time deem reasonable and necessary to conduct the business of the Company.

2.8 Management Not By Manager or Managers. The Articles shall not contain the statement described in §17151(b) of the Act to the effect that the Company is to be managed by one or more managers.

2.9 Withdrawal Constitutes Breach. Any Member that withdraws from the Company prior to the dissolution of the Company without the consent of the remaining Members pursuant to Subsection 12.1.1 shall be in breach of this Operating Agreement.

ARTICLE 3: NATURE OF BUSINESS

Subject to the terms and conditions of this Operating Agreement, the Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary, proper or convenient to accomplish its purpose and operate its business as described in this Article 3. The specific initial purpose of the Company is: (i) to provide whale watching boat charter services; (ii) subject to the consent of all of the Members, to provide other boat charter services, including without limitation, dive and other recreational water activity charters, sightseeing, business functions, weddings and party events, and sport fishing charters, catering, entertainment and ancillary services; (iii) enter into such contracts, agreements, instruments and other documents as may be necessary and desirable to effectuate the foregoing purposes; and (iv) engage in any and all activities related to, incidental to, or in furtherance of the foregoing purposes.

The provisions of this Article 3 shall require the unanimous written consent of the Members to amend or modify in any respect. The Company exists only for the purpose specified in this Article 3, and shall not conduct any other business without the prior written consent of all of the Members. The authority granted under this Operating Agreement to the Members to bind the Company shall be limited to actions necessary, proper or convenient to the business purpose stated in this Article 3.

ARTICLE 4 ACCOUNTING AND RECORDS

4.1 Records To Be Maintained. The Company shall maintain the following records at the Principal Office:

4.1.1 A current list of the full name and last known business or residence address of each Member and of each Transferee set forth in alphabetical order, together with the Capital Contribution and the share in Net Profits and Net Losses of each Member and each Transferee.

4.1.2 A copy of the Articles and all amendments thereto, together with any powers of attorney pursuant to which the Articles or any amendments thereto were signed and entered into.

4.1.3 The books and records of the Company as they relate to the internal affairs of the Company for at least the current and past four (4) fiscal years.

4.1.4 Copies of the Company's federal, state, local and foreign income tax returns and reports, if any, for the six (6) most recent fiscal years.

4.1.5 Copies of this Operating Agreement, including all amendments thereto, together with any powers of attorney pursuant to which this Operating Agreement or any amendments thereto were signed and entered into.

4.1.6 Any financial statements of the Company for the six (6) most recent fiscal years.

4.1.7 A writing, or other data compilation from which information can be obtained through retrieval devices into reasonably usable form, setting forth the following:

(a) The amount of Money and a description and statement of the agreed value of the other Property or services contributed by each Member and which each Member has agreed to contribute.

(b) The times at which or events on the happening of which any additional Commitments agreed to be made by each Member are to be made.

(c) Any right of a Member to receive, or of the Company to make, Distributions to a Member, including a return of all or any part of the Member's Capital Contribution.

4.2 Reports To Members.

4.2.1 The Members shall cause reports to be provided at least annually to the Members, at such time and in such manner as the Members may reasonably determine. This provision does not apply to Transferees who are not Substitute Members.

4.2.2 The Members shall cause all Members to be provided with those information returns required by the Code and California law.

4.3 Accounts. The Members shall maintain a record of each Member's Capital Account in accordance with Article 8.

ARTICLE 5 NAMES AND ADDRESSES OF MEMBERS

The names and addresses of the Initial Members are as reflected on Exhibit "A" attached hereto and by this reference made a part hereof as if fully set forth herein.

ARTICLE 6: RIGHTS AND DUTIES OF MEMBERS

6.1 Management Rights. All Members who have not Dissociated shall be entitled to vote on any matter submitted to a vote of the Members. The following actions require the consent of all of the Members:

6.1.1 Any amendment to the Articles or to this Operating Agreement.

6.1.2 Approval of the transfer of a Membership Interest and admission of a Transferee as a Substitute Member.

6.1.3 The continuation of the business of the Company after a Dissolution Event.

In all other matters in which a vote of the Members is required, a vote of all of the Members shall be sufficient, unless expressly provided to the contrary herein.

6.2 Majority Defined. Whenever any matter is required or allowed to be approved by a Majority of the Members or by a Majority of the remaining Members under the Act or this Operating Agreement, such matter shall be considered approved, consented to or ratified upon the receipt of the affirmative approval or consent, either in writing or at a meeting of the Members, of Members having Percentage Interests ("voting interest") in excess of one-half ($\frac{1}{2}$) of the total of the Percentage Interests of the Members entitled to vote on a particular matter. In the case of approvals to the withdrawal of a Member or Members in which the consent of the remaining Members is required, the Dissociating Member or Members shall not be considered Members entitled to vote for the purpose of determining a Majority. In the case of a Member who has Disposed of that Member's entire Membership Interest to a Transferee, but the Transferee has not been accepted as a Substitute Member, the Member's voting interest shall be considered in determining a Majority and such Member's vote or consent shall be determined by such voting interest.

6.3 Meetings of Members. The Members are not required to hold meetings. In the event that Members wish to hold a formal meeting ("Meeting") for any reason, the following procedures shall apply:

6.3.1 Any two (2) Members may call a Meeting of the Members by giving Notice of the time and place of the Meeting at least forty-eight (48) hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Company.

6.3.2 A Majority of Members shall constitute a quorum for the transaction of business at any Meeting of the Members; provided, however, that the consent of any and all Member(s) not present at such Meeting shall be required, either before or after the Meeting, to authorize the transactions of the Members taken at the Meeting, unless such transactions are required or allowed to be approved by a Majority of the Members or by a Majority of the remaining Members under the Act or this Operating Agreement.

6.3.3 The transactions of the Members at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Member not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

6.3.4 Members may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Members participating in the Meeting can hear one another.

6.3.5 The Members shall keep or cause to be kept with the books and records of the Company full and accurate minutes of all Meetings, Notices and waivers of Notices of Meeting, and all written consents in lieu of Meetings.

6.4 Liability of Members. No Member shall be liable as such for Company Liabilities. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Operating Agreement or the Act shall not be grounds for imposing personal liability on the Members or on the officers (if any) for any or all Company Liabilities.

6.5 Indemnification. To the fullest extent provided or allowed by California law, the Company shall indemnify, defend, protect and hold the Members the officers, if any, the employees and the agents of the Company harmless for any and all costs, losses, liabilities and damages incurred, paid

or accrued by such Member, officer, employee or agent arising from, out of or in connection with the business of the Company.

6.6 Representations and Warranties. Each Member, and in the case of an Organization, each Person signing this Operating Agreement on behalf of the Organization, hereby represents and warrants to the Company and to each other Member that:

6.6.1 The Member or Person is cognizant of the limitation on transferability of the Interests provided by the Securities Act of 1933 and the Securities Act Rule 147, and agrees to be bound thereby. Each Member or Person further represents that he is a resident of the State of California.

6.6.2 He or she is purchasing his or her Membership Interest for his or her own account and not on behalf of any other Person or Persons and not with a view to or for sale in connection with any distribution of the Membership Interest.

6.6.3 THE MEMBERSHIP INTERESTS PURCHASED IN THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE ON THE INTRASTATE OFFERING EXEMPTION CONTAINED IN SECTION 3(a)(11) OF THAT ACT AND RULE 147 PROMULGATED UNDER THAT RULE. IT IS UNLAWFUL TO SELL OR OTHERWISE TRANSFER THESE SECURITIES OR AN INTEREST IN THEM TO ANY PERSON WHO IS NOT A BONA FIDE RESIDENT OF THE STATE OF CALIFORNIA FOR A PERIOD OF NINE (9) MONTHS FROM THE LAST SALE BY THE ISSUER OF SUCH MEMBERSHIP INTERESTS.

6.7 Conflicts Of Interest.

6.7.1 Subject to the following terms and conditions, the Members and their partners, agents, employees and their Affiliates, may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company. Neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. Notwithstanding the foregoing to the contrary, however, each Member (a "**Notifying Member**") shall be obligated to notify the other Members of any investment opportunity or prospective economic advantage ("**Business Opportunity**") which becomes known to the Notifying Member, is of a character that may reasonably be taken advantage of by the Company, and is consistent with the Company's business purpose stated in Article 3, before the Notifying Member may pursue such Business Opportunity for his or her own account or recommend such Business Opportunity to Persons other than the Company. The Notifying Member shall give written notice to the other Members in reasonable detail of the Business Opportunity (a "**Business Opportunity Notice**"). A Majority of Members may elect to have the Company pursue such Business Opportunity by causing the Company to so notify the Notifying Member in writing ("**Business Opportunity Election Notice**") within ten (10) days after receiving the Business Opportunity Notice. If a Majority of Members fails to cause the Company to give a Business Opportunity Election Notice to the Notifying Member within such ten (10) day period, or if, after timely giving a Business Opportunity Election Notice, the Company fails to take material steps to take advantage of such Business Opportunity within thirty (30) days after receipt of the Business Opportunity Notice, then the Notifying Member shall have the right to retain such Business Opportunity for his or her own account or to recommend such opportunity to Persons other than the Company. Without limiting the foregoing terms and conditions: (i) each Member acknowledges that the other Members and their Affiliates own and/or manage other businesses, including businesses that may compete with the Company and for the Members' time; (ii) each Member hereby waives any and all rights and claims which they may otherwise have against the other Members and their partners, agents, employees and Affiliates, as a result of any of such activities; and (iii) each Member, for himself or herself, hereby warrants and represents to the other Member(s) that he or she understands and acknowledges that (A) except as provided herein, he or she is waiving what would otherwise be the fiduciary duty of a Member to bring business opportunities to this Company and being informed of such waiver, he or she still voluntarily consents to the provisions of this Section 6.7.1, and (B) this Company's business is intended to be limited to conducting the specific business purpose together with the general authority

specified in Article 3. The Members acknowledge and agree that (x) Initial Members Christopher Switzer ("Switzer") and Mark Gillette ("Gillette") are also members of Eclipse Sport Fishing, LLC, a California limited liability company ("Eclipse"), through which they own and operate a charter fishing business doing business in San Diego, California, and Pacific Bancard, LLC, a California limited liability company ("Pacific Bancard"), through which they own and operate a credit card processing business in San Diego, California, (y) neither Eclipse, Pacific Bancard nor their respective businesses shall be deemed Business Opportunities for purposes of this Section 6.7.1, and (z) the continued ownership and operation of Eclipse and Pacific Bancard by Switzer and Gillette shall not constitute a violation of this Section 6.7.1.

6.7.2 Notwithstanding the foregoing, Members shall account to the Company and hold as trustee for it any property, profit or benefit derived by the Member without the consent of the other Members in the conduct and winding up of the Company business or from a use or appropriation by the Member of Company Property, including information developed exclusively for the Company and opportunities expressly offered to the Company.

6.7.3 A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if either (i) the transaction is fair to the Company; or (ii) all of the disinterested Members, knowing the material facts of the transaction and the Member's interest, authorize, approve or ratify the transaction.

ARTICLE 7: MANAGEMENT BY MEMBERS

7.1 Management By Members. The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Members.

7.2 Authority Of Members To Bind Company. The Members hereby agree that only the Members as the authorized agents of the Company shall have the authority to bind the Company. No Member shall take any action as a Member to bind the Company, and shall indemnify the Company for any liabilities, costs or damages incurred by the Company as a result of the unauthorized action of such Member; provided, however, any one (1) Member signing alone shall have the authority to bind the Company to a contract the price, amount, consideration or other value of which is (i) \$5,000 or less on a one-time basis, or (ii) \$10,000 in the aggregate or less for contracts with installment, periodic or recurring charges or payment obligations (each, a "Threshold Amount"). Any contract the price, amount, consideration or other value of which exceeds the Threshold Amount shall bind the Company only if signed by all of the Members. To carry out its purpose, and not in limitation thereof, the Company is empowered and authorized to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of its purpose; and for the protection and benefit of the Company, the Members have the power, on behalf of the Company, to do all things necessary, proper or convenient to carry out the business and affairs of the Company including, without limitation:

7.2.1 Instituting, prosecuting and defending any Proceeding in the Company's name, including compromising, submitting to arbitration, suing on or defending all claims in favor of or against the Company.

7.2.2 Purchasing, receiving, leasing, otherwise acquiring, owning, holding, improving, using, managing, operating, maintaining, protecting, preserving and otherwise dealing with Property (including Company Property), wherever located.

7.2.3 [Intentionally Omitted]

7.2.4 Selling, conveying, mortgaging, pledging, leasing, exchanging and otherwise disposing of Company Property, and realizing the economic benefit of Company Property.

7.2.5 Negotiating and entering into contracts and guaranties; incurring liabilities; borrowing money, issuing notes and other obligations and evidences of indebtedness; securing Company Liabilities by mortgage or pledge of any Company Property or income; acquiring all assets and services necessary or proper in furtherance of the Company's business, including retaining attorneys, accountants, financial advisers and other professional advisers and consultants.

7.2.6 Lending money, investing and reinvesting the Company's funds, and receiving and holding Property as security for repayment, including, without limitation, lending money to, and otherwise helping, Members, officers, employees and agents of the Company.

7.2.7 Conducting the Company's business, establishing Company offices and exercising the powers of the Company within or without the State.

7.2.8 Appointing employees and agents of the Company, defining their duties and establishing their compensation.

7.2.9 Paying pensions and establishing pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of the current or former Members, employees and agents of the Company.

7.2.10 Making donations to the public welfare or for religious, charitable, scientific, literary or educational purposes.

7.2.11 Making payments or donations, or performing any other acts that further the business and affairs of the Company.

7.2.12 Paying compensation or additional compensation to any or all Members and employees on account of services previously rendered to the Company, whether or not an agreement to pay such compensation was made before such services were rendered.

7.2.13 Purchasing insurance on the life of any of its Members or employees for the benefit of the Company.

7.2.14 Participating in partnership agreements, joint ventures or other associations of any kind with any Person.

7.2.15 Indemnifying Members or any other Person.

7.2.16 Making and revoking any election or elections which any Taxing Jurisdiction permits or entitles the Company to make or revoke.

7.2.17 Paying or reimbursing the Organization Expenses.

7.2.18 Engaging in any kind of activity and performing and carrying out contracts of any kind necessary or proper to, or in connection with or incidental to accomplishing the purposes of the Company, as may be lawfully carried on or performed by a Company under the laws of California and each state in which the Company is then qualified to do business.

7.2.19 Exercising all of the powers otherwise granted to a limited liability company pursuant to the terms and conditions of the Act.

7.3 Actions of the Members. The Members have the power to bind the Company as provided in this Article 7. The act of the Members in carrying on the ordinary and customary business and affairs of the Company, including the exercise of the authority indicated in this Article 7, shall be deemed the valid act of the Company, and no person dealing with the Company shall have any obligation to inquire into the power or authority of the Members acting on behalf of the Company.

7.4 Reimbursement of the Members. Each Member shall be reimbursed for all reasonable expenses incurred in managing the Company.

7.5 Member's Standard of Care. A Member's duty of care in the discharge of the Member's duties to the Company and the Members is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law. In discharging a Member's duties, a Member shall be fully protected in relying in good faith upon the records required to be maintained under Article 4 and upon such information, opinions, reports or statements by the other Members, agents of the Company or by any other Person with respect to matters the Member reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements with respect to the value and amount of the assets, liabilities, profits or losses of the Company, or any other facts pertinent to the existence and amount of assets from which Distributions to Members might properly be paid.

7.6 Officers.

7.6.1 From time to time, the Members may designate one or more individuals to be officers of the Company. No officer need be a resident of the State of California or a Member. Any officers so designated shall have such authority and perform such duties as the Members may, from time to time, delegate. The Members may assign titles to particular officers, including, without limitation, a chair or a president, or both, a vice president, a secretary, a chief financial officer, and any other officers with such titles, powers, and duties as shall be specified in the Articles or this Operating Agreement, or as determined by the Members. Unless the Members decide otherwise, if the title is one commonly used for officers of a profit corporation formed under the California General Corporation Law in the California Corporations Code, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation or reservation of authority and delegation of duties made to such officer by the Members pursuant to the Members' assigning titles to particular officers. Each officer shall hold office until (i) a successor is duly designated and qualifies; (ii) until the officer's death or resignation; (iii) the officer is removed in the manner hereinafter provided; or (iv) the Members eliminate the office held by the officer. Any number of offices may be held by the same individual. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Members.

7.6.2 Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Members whenever in the Members' judgment the best interests of the Company will be served thereby; provided, however, such removal shall be without prejudice to the contract rights, if any, of the officer so removed under a written contract between the officer and the Company. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Members.

7.6.3 The Initial officers of the Company, including the office(s) held shall be as follows:

<u>Name</u>	<u>Position</u>
Chris Switzer	President and Secretary
Mark Gillette	Vice President
Ulka Pandya	Chief Financial Officer

Officers' salaries (if any), if approved and as determined by the Members, shall be paid, if applicable, when the available Money of the Company, in the reasonable determination of the Members, is sufficient to pay the salaries. Prior thereto, any salaries in effect shall accrue.

7.6.4 Any one (1) officer signing alone shall have the authority, without prior approval of the Members, to bind the Company to a contract the price, amount, consideration or other value of which is equal to or less than the Threshold Amount (as defined in Section 7.2). Any contract the price, amount, consideration or other value of which exceeds the Threshold Amount shall bind the Company only if signed by one or more offices after having been approved in advance in writing by all of the Members.

ARTICLE 8: CONTRIBUTIONS AND CAPITAL ACCOUNTS

8.1 Contributions.

8.1.1 Each Initial Member has previously contributed capital to the Company in the form of money or property and/or services, as more particularly specified in the books and records of the Company, which shall thereafter be deemed the Member's Initial Capital Contribution, and constitute the performance of that Member's Commitment.

8.1.2 No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Operating Agreement.

8.1.3 Each Additional Member shall make the Initial Capital Contribution described in the Admission Agreement. The value of the Additional Member's Initial Capital Contribution and the time for making such contribution shall be set forth in the Admission Agreement.

8.2 Additional Contributions. In addition to the Initial Capital Contributions and the Commitments, the Members may, but are not obligated to, determine from time to time that additional contributions are needed to enable the Company to conduct its business. Upon the Members' making such determination ("Funds Request"), each Member shall be entitled to contribute a proportionate share of such additional contribution on or before the date upon which the Members should contribute ("Contribution Date"), which share shall bear the same ratio to the total capital required by such Funds Request as such Member's Percentage Interest bears to the total Percentage Interests of all Members. No Member may elect to contribute less than his or her full proportionate share of the additional capital so required. Except to the extent of a Member's unpaid Commitment, no Member shall be obligated to make any such additional contributions. In the event any one or more Members do not make their additional contributions, the other Members shall be given the opportunity to make the additional contributions; and upon such other Member or Members making any such additional contributions, the Percentage Interests of all Members shall be adjusted pro rata based upon the relative proportions of their Capital Contributions. In no event shall this Operating Agreement be construed by the Parties hereto or by any third party to require that any Member loan or contribute any portion of any Funds Request or make any additional contribution whatsoever to the Company. If the Members choose to contribute their respective

shares of a Funds Request declared by the Members, they shall make their contributions in cash to the Company on or before the Contribution Date.

8.3 Enforcement of Commitments. If a Member is a Delinquent Member, the non-Delinquent Members shall cause to be delivered to the Delinquent Member a Notice of the Delinquent Member's failure to meet the Delinquent Member's Commitment. If the Delinquent Member fails to perform the Commitment (including any costs associated with the Company's failure to demand compliance with the Commitment and interest on such obligation at the Default Interest Rate) within ten (10) Business Days after the delivery of the Notice, the non-Delinquent Members may take such action, including, but not limited to, enforcing the Commitment in the court of appropriate jurisdiction. Each Member expressly consents to the jurisdiction and venue of such courts, but only for the enforcement of Commitments. The non-Delinquent Members may elect to allow Members other than the Delinquent Member to contribute the amount of the Delinquent Member's Commitment in proportion to such Members' Percentage Interests. The Members who so contribute ("Contributing Members") the additional amounts may collectively contribute an amount not to exceed the amount of the delinquent Commitment which is not contributed. The Contributing Members shall be entitled to treat the amounts contributed pursuant to this Section as a loan from the Contributing Members to the Delinquent Member, bearing interest at the Default Interest Rate and secured by the Delinquent Member's interest in the Company. Until they are fully repaid, the Contributing Members shall be entitled to all Distributions to which the Delinquent Member would have been entitled. Notwithstanding the foregoing, no Commitment or other obligation to make an additional contribution may be enforced by a creditor of the Company unless the Member expressly consents to such enforcement or to the assignment of the obligation to such creditor.

8.4 Maintenance of Capital Accounts. The Company shall establish and maintain Capital Accounts for each Member and Transferee. Each Member's Capital Account shall be increased by (a) the amount of any Money actually contributed by the Member to the capital of the Company; (b) the fair market value of any Property contributed, as determined by the Company and the Contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes title to such Property, within the meaning of §752 of the Code); and (c) the Member's share of Net Profits and of any separately allocated items of income or gain, except adjustments pursuant to the Code (including any loss or deduction and income from unrealized income with respect to accounts receivable allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member). Each Member's Capital Account shall be decreased by (i) the amount of any Money actually Distributed to the Member by the Company; (ii) the fair market value of any Property Distributed to the Member, as determined by the Company and the Member at arm's length at the time of Distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such Property, within the meaning of §752 of the Code); and (iii) the Member's share of Net Losses and of any separately allocated items of deduction or loss (including any loss or deduction allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member).

8.5 Distribution of Assets. If the Company at any time Distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share (as determined under Article 9) of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

8.6 Sale or Exchange of Interest. In the event of a sale or exchange of some or all of the Member's interest in the Company, the Capital Account of the transferring Member shall become the Capital Account of the Transferee, to the extent it relates to the portion of interest transferred.

8.7 Compliance With Section 704(b) of the Code. The provisions of this Article 8 as they relate to the maintenance of Capital Accounts are intended, and shall be construed and, if necessary, modified, to cause the allocations of profits, losses, income, gain and credit pursuant to Article 9 to have substantial economic effect under the Regulations promulgated under §704(b) of the Code, in light of the Distributions made pursuant to Articles 9 and 14 and the Capital Contributions made pursuant to this

Article 8. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation or otherwise personally obligate any Member to make a Capital Contribution in excess of the Member's Commitment.

ARTICLE 9: ALLOCATIONS AND DISTRIBUTIONS

9.1 Allocations of Net Profits and Net Losses From Operations. Except as may be required by §704(c) of the Code, and Sections 9.2, 9.3 and 9.4, Net Profits, Net Losses and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in proportion to their Percentage Interests. Notwithstanding any other provision in this Article 9, in accordance with Code §704(c) and the Regulations promulgated thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between (i) the adjusted basis of such property with respect to the Company for federal income tax purposes and (ii) its fair market value on the date of contribution.

9.2 Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a Taxable Year, each Member must be allocated items of income and gain for that Taxable Year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding Taxable Year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property, equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in Minimum Gain is caused by the revaluation. A Member is not subject to the "Company Minimum Gain Chargeback" requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Non-Recourse Liability, and the Member bears the economic risk of loss (within the meaning of §1.704-2(i) of the Regulations) for the newly guaranteed, refinanced or otherwise changed liability.

9.3 Member Minimum Gain Chargeback. If during a Taxable Year there is a net decrease in Member Minimum Gain, any Member with a share of Member Minimum Gain (as determined under §1.704-2(i)(5) of the Regulations) as of the beginning of that Taxable Year must be allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Member Minimum Gain is determined in a manner consistent with the provisions of the Code. A Member is not subject to the "Member Minimum Gain Chargeback", however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Non-Recourse Liability due to a conversion, refinancing or other change in the debt instrument that causes it to become partially or wholly a Company Non-Recourse Liability. The amount that would otherwise be subject to the Member Minimum Gain Chargeback is added to the Member's share of Company gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain Chargeback to the extent provided under the Regulations issued pursuant to §704(b) of the Code.

9.4 Qualified Income Offset. In the event any Member, in such capacity, unexpectedly receives an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of Company income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

9.5 Interim Distributions. From time to time the Members shall determine in the Members' reasonable judgment to what extent, if any, the Company's Money on hand exceeds the current and anticipated needs, including, without limitation, needs for operating expenses, debt service, acquisitions, reserves and mandatory distributions, if any. To the extent such excess exists, the Members may make Distributions to the Members in the following order of priority:

9.5.1 To the Members in proportion to their unreturned Capital Contributions until each Member has recovered his or her Capital Contribution; and

9.5.2 To the Members in accordance with their Percentage Interests.

Such distributions shall be in Money or Property or partly in both, and the allocations between Money and Property may vary from Member to Member, all as determined by the Members.

9.6 Limitations on Distributions. No Distribution shall be declared and paid unless, after the Distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their Capital Accounts.

ARTICLE 10: TAXES

10.1 Elections. The Members shall make any and all tax elections (including any revocations of previously-made elections) for the Company allowed under the Code or the tax laws of any state or other jurisdiction having Taxing Jurisdiction over the Company.

10.2 Taxes of Taxing Jurisdictions. To the extent that the laws of any Taxing Jurisdiction require, each Member will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, interest and penalty determined under the laws of the Taxing Jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a Distribution for purposes of Article 9. The Members may, where permitted by the rules of any Taxing Jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company, and pay the tax, interest and penalties of some or all of the Members on such income to the Taxing Jurisdiction, in which case the Company shall inform the Members of the amount of such tax, interest and penalties so paid.

10.3 "Tax Matters Partner" The Members shall select one Member to act as "tax matters partner" of the Company pursuant to §6231(a)(7) of the Code. If the Member selected is not eligible, the Members shall select a different Member. Any Member designated as "tax matters partner" shall take such action as may be necessary to cause a different Member to become a "notice partner" within the meaning of §6223 of the Code. Any Member who is designated "tax matters partner" may not take any action contemplated by §6222 through §6232 of the Code without the consent of the Members.

10.4 Method of Accounting. The records of the Company shall be maintained on a cash or accrual method of accounting as reasonably determined by the Members.

ARTICLE 11: DISPOSITION OF MEMBERSHIP INTERESTS

11.1 Disposition. Any Member or Transferee may dispose of all or a portion of the Membership Interest of that Member or Transferee upon compliance with this Section 11.1. No Membership Interest shall be Disposed of:

11.1.1 If such Disposition, alone or when combined with other transactions, would result in a termination of the Company within the meaning of §708 of the Code.

11.1.2 Without an opinion of counsel satisfactory to the Members that such assignment is (a) subject to an effective registration under the registration requirements of applicable state and federal securities laws; or (b) is exempt therefrom.

11.1.3 Unless and until the Company receives from the Transferee such information and agreements as the Members may reasonably require, including, but not limited to, any taxpayer identification number and any agreement that may be required by any Taxing Jurisdiction.

11.2 Right of First Refusal.

11.2.1 If a Member ("Offering Member") desires to sell, exchange or transfer for consideration the Offering Member's Membership Interest to a Person other than a Permitted Transferee, the Offering Member shall deliver written notice ("Notice of Intent") to each of the other Members. The Notice of Intent shall set forth the name of the proposed purchaser or transferee, the terms on which the Membership Interest is to be sold or exchanged, and the price. For thirty (30) days after the Notice of Intent is delivered, each of the other Members shall have the right to purchase, on the terms stated in the Notice of Intent, a portion of the Membership Interest of the Offering Member in the proportion that the Member's Capital Account bears to the total Capital Accounts of all of the Members who wish to participate in the purchase of the Membership Interest of the Offering Member; provided, however, that the participating Members may not, in the aggregate, purchase less than the entire Membership Interest of the Offering Member.

11.2.2 If no Member or Members exercise their rights to purchase the Membership Interest of the Offering Member, the Offering Member may, within ninety (90) days from the date the Notice of Intent is delivered and on the terms and conditions stated in the Notice of Intent, sell or exchange the Membership Interest of the Offering Member to the purchaser named in the Notice of Intent.

11.2.3 The purchaser of a Membership Interest pursuant to this Section 11.2 shall become a Substitute Member only in accordance with Section 6.1.

11.3 [Intentionally Deleted].

11.4 **Dispositions to Permitted Transferees.** Any Membership Interest or Transferee Interest may be transferred, subject to compliance with Section 11.1, to any Permitted Transferee; it being agreed that in executing this Agreement, each Member has consented to such transfers. Any Permitted Transferee shall take subject to any restrictions on Disposition imposed by this Agreement.

11.5 **Non-Complying Dispositions Are Void.** Any attempted Disposition of a Membership Interest, or any part thereof, not in compliance with this Article is null and void ab initio.

ARTICLE 12: DISSOCIATION OF A MEMBER

12.1 **Dissociation.** A Person ceases to be a Member upon any of the following events happening:

12.1.1 The withdrawal of a Member with the consent of all of the remaining Members prior to the dissolution of the Company.

12.1.2 The bankruptcy of a Member.

12.1.3 In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate.

12.1.4 In the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust; provided, however, the mere substitution of a trustee of a trust shall not cause the trust through its trustee(s) to cease to be a Member.

12.1.5 In the case of a Member that is an Organization other than a corporation, the dissolution and commencement of winding up of the Organization.

12.1.6 In the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter.

12.1.7 In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

12.1.8 In the case of a Member who is a natural person, the Member is convicted of or pleads *nolo contendere* to any felony.

12.2 Rights of Dissociating Member. In the event any Member Dissociates prior to the expiration of the term:

12.2.1 If the Dissociation causes a dissolution and winding up of the Company under Article 13, the Member shall be entitled to participate in the winding up of the Company to the same extent as any other Member, except that any Distributions to which the Member would have been entitled shall be reduced by the damages sustained by the Company as a result of the Dissociation and the resulting dissolution and winding up.

12.2.2 If the Dissociation does not cause a dissolution and winding up of the Company under Article 13, the Member shall be entitled to an amount equal to the value of the Member's Membership Interest in the Company, which shall be paid by the Company within six (6) months after the date of Dissociation. Notwithstanding the foregoing, if the Dissociation is other than a result of the death or incompetence of the Member, the Members may elect to have the Company pay the value of the Member's Membership Interest in the Company over a period not to exceed five (5) years, provided that the Dissociating Member shall be entitled to participate as a Transferee in the Company until the value of such Membership Interest (plus interest at the then-current annual reference rate quoted by Bank of America N.T. & S.A.) is paid in full. The value of the Member's Membership Interest shall include (a) the amount of any Distributions to which the Member is entitled under this Operating Agreement; and (b) the fair market value of the Member's Membership Interest as of the date of Dissociation based upon the Member's right to share in Distributions from the Company; reduced by (c) any damages sustained by the Company as a result of the Member's Dissociation.

ARTICLE 13: DISSOLUTION AND WINDING UP

13.1 Dissolution. The Company shall be dissolved and the affairs of the Company shall be wound up upon the first to occur of the following Dissolution Events:

13.1.1 The expiration of the term, if any, unless the Members agree pursuant to Subsection 6.1.3 to continue the business of the Company.

13.1.2 The written consent of a Majority of Members to dissolve the Company and wind up its affairs.

13.1.3 The Dissociation of a Member, unless within ninety (90) days after such Dissociation the remaining Members agree pursuant to Subsection 6.1.3 to continue the business of the Company.

13.2 Effect of Dissolution. Upon dissolution, the Company shall cease carrying on, as distinguished from winding up, the business of the Company. The Company is not terminated, but continues until the winding up of the affairs of the Company is completed and the Certificate of Cancellation has been issued by the Secretary of State.

13.3 Distribution of Assets on Dissolution. Upon winding up the Company, the Company Property shall be distributed:

13.3.1 To creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of the Company Liabilities.

13.3.2 To Members in accordance with positive Capital Account balances, taking into account all Capital Account adjustments for the Company's Taxable Year in which the liquidation occurs. Liquidation proceeds shall be paid within sixty (60) days after the end of the Company's Taxable Year or, if later, within ninety (90) days after the date of liquidation. Such distributions shall be in Money or Property or partly in both, and the allocations between Money and Property may vary from Member to Member, all as determined by the Members in the Members' discretion.

13.4 Winding Up and Certificate of Cancellation. The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining Property and assets of the Company have been distributed to the Members. Upon completion of winding up of the Company, a Certificate of Cancellation shall be delivered to the Secretary of State for filing. The Certificate of Cancellation shall set forth the information required by the Act.

ARTICLE 14: AMENDMENT

14.1 Operating Agreement May Be Modified. This Operating Agreement may be modified as provided in this Article 14 (as the same may from time to time be amended). No Member shall have any vested rights in this Operating Agreement which may not be modified through an amendment to this Operating Agreement.

14.2 Amendment or Modification of Operating Agreement. This Operating Agreement may be amended or modified from time to time only by a written instrument signed by all of the Members pursuant to Subsection 6.1.1.

ARTICLE 15: MISCELLANEOUS PROVISIONS

15.1 No Partnership Intended For Non-Tax Purposes. The Members have formed the Company under the Act, and expressly do not intend to form a partnership under either the California Uniform Partnership Act or the California Revised Uniform Limited Partnership Act. The Members do not intend to be partners one with another, or partners with any other Person. To the extent any Member by work or action represents to another Person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any and all other Members who incur personal liability by reason of such wrongful representation.

15.2 Rights of Creditors and Other Persons Under Operating Agreement. This Operating Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assigns. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or other Person shall have any rights under this Operating Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

15.3 Arbitration. Any dispute, controversy or claim arising from, out of or in connection with, or relating to, this Operating Agreement or any breach or alleged breach of this Operating Agreement, except allegations of violations of Federal or State securities laws, may upon the request of any party involved, if the parties agree in writing, be submitted to and settled by arbitration in the City of San Diego, California, pursuant to the then current Commercial Arbitration Rules of the American Arbitration Association (or at any other place or under any other form of arbitration mutually acceptable to the parties involved). Any award rendered shall be final, binding and conclusive upon the parties and shall be non appealable, and a judgment thereon may be entered in the highest court of the forum, State or Federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and attorneys' fees, except that in the discretion of the arbitrator, any award may include the costs, fees and expenses of a party's attorneys if the arbitrator expressly determines that the party against whom such award is entered caused the dispute, controversy or claim to be submitted to arbitration as a dilatory tactic.

15.4 Attorneys' Fees. In the event suit is brought to enforce or interpret any part of this Operating Agreement, the prevailing party shall be entitled to recover as an element of his costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for the purposes of determining whether a party is entitled to recover its costs or attorneys' fees.

15.5 Burden and Benefit. The covenants and agreements contained in this Operating Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, executors, administrators, successors and assigns.

15.6 Applicable Law. This Operating Agreement shall be construed and enforced in accordance with the laws of the State of California.

15.7 Submissions To Members. The Members shall cause all of the Members to be Notified of any proposal or other matter required by any provision of this Operating Agreement or by law to be voted upon by the Members for their consideration and approval.

15.8 Descriptive Headings. The table of contents and the headings of the Sections and Subsections of this Operating Agreement are inserted for convenience only, shall not be deemed to be a part of this Operating Agreement and in no way define, limit, extend or describe the scope or intent of any provisions of this Operating Agreement.

15.9 Interpretation. In this Operating Agreement, "herein", "hereunder", and references of similar import shall be interpreted as "in this Operating Agreement", "under this Operating Agreement" and generally as references to this entire Operating Agreement and all of its provisions, rather than as references to any particular section, subsection or provision of this Operating Agreement.

15.10 Counterparts. This Operating Agreement may be signed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one Operating Agreement, binding on all parties, notwithstanding that all the parties have not signed the same counterparts.

15.11 Severability of Provisions. Each provision of this Operating Agreement shall be considered severable, and if for any reason any provision which is not essential to effect the basic purposes of this Operating Agreement is determined to be invalid and contrary to any existing or future law, then such invalidity shall not impair the operation of or affect those provisions of this Operating Agreement which are valid.

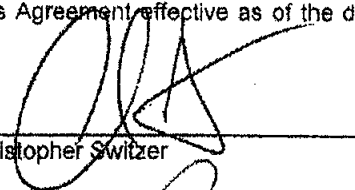
15.12 Entire Agreement. This Operating Agreement, including information and exhibits incorporated in this Operating Agreement by reference, sets forth all (and is intended by all parties to be an integration of all) of the representations, promises, agreements and understandings among all the parties with respect to the Company, the business of the Company and the Property, and there are no representations, promises, agreements or understandings, oral or written, express or implied, among them other than as set forth or incorporated in this Operating Agreement.

15.13 Saving Clause. If and to the extent any provision of this Operating Agreement is, or is found by an arbitrator or court of competent jurisdiction to be, prohibited under, contrary to or ineffective under the Act, this Operating Agreement shall be considered amended to the smallest degree necessary to make this Operating Agreement conform to the Act and effective under the Act.

[SIGNATURES FOLLOW ON NEXT PAGE]

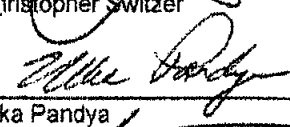
IN WITNESS WHEREOF, the undersigned have signed this Agreement effective as of the date set forth beside our names.

Dated as of: April 12, 2011



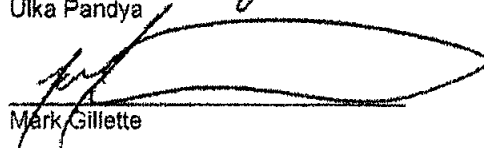
Christopher Switzer

Dated as of: April 12, 2011



Ulka Pandya

Dated as of: April 12, 2011



Mark Gillette

EXHIBIT "A"

MEMBER	INTERESTS
Christopher Switzer 1717 Quivira Road San Diego, California 92109	33%
Ulka Pandya 1717 Quivira Road San Diego, California 92109	34%
Mark Gillette 1717 Quivira Road San Diego, California 92109	33%