

CONSENT TO SUBLEASE

THIS CONSENT TO SUBLEASE (Consent) is executed by THE CITY OF SAN DIEGO, a California municipal corporation (City), to be effective upon approval by the San Diego City Attorney (Effective Date).

RECITALS

- A. City and BRAEMAR PARTNERSHIP, a California limited partnership (Lessee) are parties to that certain City of San Diego Percentage Lease and License Agreement (Lease), filed in the Office of the San Diego City Clerk as Document No. RR-310779 on November 15, 2016, and relating to certain City-owned real property (Premises) located in Mission Bay Park in San Diego, California, as further described in the Lease.
- B. Lessee now desires to sublease a portion of the Premises to Action Beach & Bay Rentals, Inc., a California Corporation (Sublessee).
- C. The Lease requires City's prior written consent to the sublease of any portion of the Premises.

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

- 1. Subject to the terms and conditions here, City hereby consents to Lessee's request to sublease a portion of the Premises to Sublessee. By granting this Consent, City is merely consenting to Lessee's request to sublease. All terms and conditions of the Lease shall control and supersede any inconsistent or contrary provisions in any sublease executed between Lessee and the Sublessee, except as otherwise approved herein; and
- 3. City's consent is conditioned upon Sublessee's written agreement that it will assume all rights and obligations as a sublessee under the Lease and this Consent, as applicable to Sublessee as the sublessee of that certain portion of the Premises set forth in any sublease agreement; and
- 4. By granting this Consent, City does not release, discharge or modify Lessee's obligations to City under the Lease. As set forth in applicable law, Lessee's obligations under the Lease shall survive said sublease and shall continue through the termination date of the Lease, as set forth therein; and
- 5. This Consent does not constitute consent to any subsequent subleasing of any interest in and to the Premises.
- 6. Lessee shall pay City all applicable processing and/or administrative fee(s) for processing this Consent.
- 7. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the sublease. Further, Lessee shall agree 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 the sublease, or 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: 5/31/17

By: [Signature]
Cybele Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

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

Date: 6-1-17

By: [Signature]
Name: Alyssa Muto
Title: Deputy Director
Planning Department

Approved as to form this 1st
day of June, 2017

MARA W. ELLIOT, City Attorney

BY: [Signature]
Name: Hilda R. Mendoza
Title: Deputy City Attorney



Date of Notice: May 11, 2017

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to Sublease, Braemar Partnership, a California limited partnership

COMMUNITY PLAN AREA: Mission Bay Park

COUNCIL DISTRICT: 2

LOCATION: 3999 Mission Boulevard, San Diego, CA 92109

PROJECT DESCRIPTION: Consent to sublease between Braemar Partnership and Action Beach & Bay Rentals, Inc., a California Corporation allowing the subleasing of a portion of the existing dock and adjacent City-owned property to provide rental of various small boats and watercraft, instruction related to the rental of small boats and watercraft, operation of excursion boat/water taxi to Sea World, and rental of bicycles and beach equipment as approved by lessee and City to the patrons of the Catamaran Resort 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
Real Estate Assets Department

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

PHONE NUMBER: (619) 235-5248

On May 11, 2017, 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 (**May 25, 2017**). 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: 5/11/17

REMOVED: 5/26/17

POSTED: M. Hermann

AMENDED AND RESTATED SUBLEASE AGREEMENT

This Sublease Agreement ("**Sublease**"), dated as of March 1, 2017, by and between **BRAEMAR PARTNERSHIP**, a California limited partnership, d/b/a The Catamaran Resort Hotel ("**Sublandlord**"), and **ACTION BEACH & BAY RENTALS, INC.**, a California corporation ("**Subtenant**").

WITNESSETH:

WHEREAS, The City of San Diego, as Master Lessor, and Sublandlord, as Tenant, were parties to that certain lease dated December 8, 1992 (as amended and supplemented from time to time, "**Old Master Lease**") for certain real property located in the City of San Diego, State of California, as more particularly described in the Master Lease.

WHEREAS, Sublandlord sublet a portion of that certain real property under the Old Master Lease in that certain Sublease Agreement between Sublandlord and Subtenant dated October 1, 2015.

WHEREAS, The City of San Diego, as Master Lessor, and Sublandlord, as Tenant, entered into a new Percentage Lease and License Agreement dated December 14, 2016 ("**New Master Lease**") for certain real property located in the City of San Diego, State of California, as more particularly described in the New Master Lease ("**Property**").

WHEREAS, Sublandlord and Subtenant wish to amend and restate that certain Sublease Agreement dated October 1, 2015 to acknowledge and conform with to the New Master Lease;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained in this Sublease, Sublandlord and Subtenant hereby agree as follows:

Subtenant hereby subleases the Subleased Premises (as hereinafter defined) from Sublandlord, and Sublandlord hereby subleases the Subleased Premises to Subtenant, upon, and subject to, the terms and conditions hereinafter set forth in this Sublease.

1. BASIC SUBLEASE PROVISIONS AND DEFINITIONS.

In addition to other terms defined in this Sublease, the following terms, whenever used in this Sublease with the first letter of each word capitalized, shall have only the meanings set forth in this **Section 1**, unless such meanings are expressly modified, limited or expanded elsewhere herein.

(a) **Subleased Premises**: A portion of the Boat Rental Stand at the Catamaran dock together with exterior space as may be appropriate and agreed upon by Sublandlord located at the Hotel (as defined in **Section 1(j)** below).

(b) **Floor Area**: Approximately one hundred seventy-five (175) square feet.

(c) **Commencement Date**: March 1, 2017.

(d) **Expiration Date**: September 30, 2018.

(e) **Sublease Term**: Commencing on the Commencement Date and ending at 11:59 p.m. on the Expiration Date.

(f) **Rent**: Twenty five percent (25%) of Gross Sales related to Permitted Uses, monthly and One Hundred percent (100%) of Gross Sales related to unpermitted or otherwise unauthorized uses.

(g) **Security Deposit**: None.

(h) **Permitted Use:** Rental of various small boats and watercraft, instruction related to the rental of small boats and watercraft, operation of an excursion boat / water-taxi to SeaWorld, and rental of bicycles and beach equipment to patrons of the Hotel and the general public.

(i) **Business Hours:**

High Season (June 15 through Labor Day): 8:00 a.m. to 7:00 p.m.

Low Season (day after Labor Day through June 14): 9:00 a.m. to 5:00 p.m.

(j) **Hotel:** The Catamaran Resort Hotel addressed at 3999 Mission Boulevard, San Diego, California.

(k) **Sublandlord's Notice Address:**

Braemar Partnership
c/o of Evans Hotels
998 West Mission Bay Drive
San Diego, California 92109
Attn: Ms. Julia I. De Beers

(l) **Subtenant's Notice Address:**

Action Beach & Bay Rentals, Inc.
2580 Ingraham Street
San Diego, California 92109
Attn: Mr. Steven Pinard

The following Addendum and Exhibits are hereby incorporated into this Sublease and made a part of this Sublease for all purposes:

Addendum:

Section 30.

Exhibit(s):

Exhibit "A" Site Plan

Exhibit "B" Service and Operations Standards

Exhibit "C" Vessels Approved to Rent (by City of San Diego)

2. SUBLEASED PREMISES, SUBLEASE TERM AND SUBLEASE YEAR.

(a) **Commencement of Sublease Term and Rent; Sublease Years.** The Subleased Premises is deemed to contain the square feet of Floor Area set forth in **Section 1(b)**, and Sublandlord and Subtenant hereby agree that the Floor Area set forth in **Section 1(b)** is conclusive for all purposes of this Sublease and waive any claims of ambiguity. The Sublease Term shall commence on the Commencement Date. Subtenant's duty to pay Rent shall commence on the Commencement Date. The Sublease Term shall expire without notice on the Expiration Date. Each Sublease Year shall commence on October 1 and end on September 30 (i.e., October 1, 2016 until September 30, 2017).

(b) **Changes to Site Plan.** Subtenant acknowledges that **Exhibit "A"** attached hereto may not remain as shown and Sublandlord may relocate, increase, reduce or otherwise change the dimensions, location, exits and entrances of the Subleased Premises and any walkways and Hotel common areas adjacent to the Subleased Premises as may be necessary, whether (i) in order to obtain governmental approvals in a timely manner, (ii) in the event that changes to the Subleased Premises or the layout of the same need to be made to accommodate either (A) the development of the Hotel in general, or (B) the development of other Hotel-related facilities and amenities, or (iii) otherwise.

3. RENT.

(a) **Rent.** Subtenant shall pay Rent in arrears on the first day of each calendar month in the amount specified in **Section 1(f)**. If the Commencement Date is not the first of the month, the Rent for that month shall be prorated. Should any Sublease Year contain more or less than twelve (12) months, or a partial calendar month, Rent and other charges for such Sublease Year or calendar month, as applicable, shall be appropriately prorated. All other payments to be made by Subtenant pursuant to this Sublease are in addition to Rent and shall be "other rent" for all purposes under this Sublease. Subtenant shall pay Rent and any such "other rent" to Sublandlord, or its designated agent, at the address Sublandlord designates, without Sublandlord making any demand.

(b) **Gross Sales.** For purposes of calculating Rent, "**Gross Sales**" means the gross selling or rental price of all merchandise or services (of any kind or nature including gift certificates redeemed at the Subleased Premises, notwithstanding where the gift certificate itself was purchased) sold, leased, rented, licensed, or delivered in or from the Subleased Premises by Subtenant, its licensees, or concessionaires, including, without limitation, rental of various watercraft, bicycles and beach equipment to the public and sport fishing charter activities, whether for cash or on credit (whether collected or not), including the gross amount received by reason of orders taken on the Subleased Premises although filled elsewhere, including (by way of example and not in limitation) orders via electronic, telephonic, video, computer or other technology-based systems now existing or developed in the future, and whether made by store personnel or vending machines. Any transaction on an installment basis, including, without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Sales.

Gross Sales shall not include, or if included there shall be deducted (but only to the extent they have been included), the following:

(i) The selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise; and

(ii) Sales and use taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes, and other similar taxes now or in the future imposed on the sale or rental of merchandise or services, but only if such taxes are added to the selling or rental price, separately stated, collected separately from the selling or rental price of merchandise or services, and collected from customers.

(c) **Statement of Gross Sales.** Within five (5) days following the end of each calendar month, commencing with the first calendar month following the Commencement Date, Subtenant shall furnish to Sublandlord a statement of Gross Sales, for the preceding calendar month ("**Subtenant's Monthly Statement**") certified by Subtenant to be true and correct and applicable to the month to which such Subtenant's Monthly Statement applies. Subtenant shall keep at the Subleased Premises full and accurate books of account, records, cash receipts and other pertinent data showing its Gross Sales. Subtenant shall install and maintain accurate receipt-printing cash registers or computers and shall record on the cash registers or computers every sale and other transaction made from the Subleased Premises. Subtenant shall also furnish to Sublandlord copies of its quarterly California sales and use tax returns at such time each is filed with the State of California. Such books of account, records, cash receipts and other pertinent data shall be kept for a period of three (3) years after the end of each calendar year or the time required by the City of San Diego pursuant to the New Master Lease or any successor lease agreement. The receipt by Sublandlord of any Subtenant's Monthly Statement or payment of any percentage of Gross Sales shall not bind Sublandlord as to the correctness of the Subtenant's Monthly Statement or the payment. Sublandlord shall be entitled during the Sublease Term and within three (3) years after the expiration or earlier termination of this Sublease to inspect and examine all Subtenant's books of account, records, cash receipts and other pertinent data to determine Subtenant's Gross Sales by a certified public accountant to be designated by Sublandlord. The audit shall be limited to the determination of Gross Sales and shall be conducted during usual business hours at the Subleased Premises. If the audit shows that

there is a deficiency in the payment of any percentage of Gross Sales, the deficiency shall become immediately due and payable. The costs of the audit shall be paid by Sublandlord unless the audit shows that Subtenant understated Gross Sales by more than two percent (2%), in which case Subtenant shall pay all Sublandlord's costs of the audit. Subtenant will fully cooperate with any audit requested by the City of San Diego.

(d) **Late Rent.** Any Rent not paid within five (5) days following the date when due shall bear interest on the payable amount from the date when due until paid at the Default Interest Rate (as defined in **Section 22(b)**). In addition, Subtenant shall pay Sublandlord a late charge in the amount of ten percent (10%) of the amount due for each payment that Sublandlord does not receive on the date due under the provisions of this Sublease. Notwithstanding anything to the contrary in this Sublease, the late charge and any interest for late Rent under this Section are not triggered/owing until the sixth (6) day following the date when the Rent is due.

(e) **No Offset.** Notwithstanding any alleged defense, counterclaim or offset against Rent, Subtenant shall continue to pay Sublandlord all Rent faithfully when due, including (by way of example and not in limitation) during the continuance of any dispute or legal action, subject to reimbursement if directed by any court with proper jurisdiction. Subtenant hereby consents to the entry in any court action of an order requiring Subtenant to make Rent payments during the pendency of the lawsuit. All Rent due to Sublandlord under this Sublease shall, unless and to the extent expressly otherwise provided herein, be due and payable without any notice, demand, offset, credit, deduction or abatement.

4. **TAXES.** Subtenant shall pay in the entirety: all taxes attributable to its signs, personal property and leasehold interests; all taxes allocable or attributable as designated on the tax bill or as allocated by Sublandlord at Sublandlord's discretion, to any improvements made by Subtenant to the Subleased Premises; all occupancy taxes or other taxes on its right to occupy the Subleased Premises; all taxes on its Rent (including (by way of examples and not in limitation) sales taxes on rents if the Subleased Premises is in any other jurisdiction imposing a tax on rents); and other taxes imposed on tenants generally.

5. **SECURITY DEPOSIT.** Reserved.

6. **ACCEPTANCE OF SUBLEASED PREMISES.** On the Commencement Date, Subtenant shall fully staff and stock the Subleased Premises, and open for business. SUBTENANT ACCEPTS THE SUBLEASED PREMISES AND ALL THE EQUIPMENT, APPARATUS, MECHANICAL, ELECTRICAL, PLUMBING, HEATING, AIR CONDITIONING, ELECTRIC, WATER, WASTE DISPOSAL AND OTHER SYSTEMS RELATING THERETO "AS IS", "WHERE IS" AND WITH ALL FAULTS IN ITS CONDITION AS OF THE EXECUTION OF THIS SUBLEASE and Subtenant acknowledges that neither Sublandlord nor any agent of Sublandlord has made any representation as to the condition of the Subleased Premises or the suitability of the Subleased Premises for Subtenant's intended use, including, without limitation, the release or presence of hazardous wastes or substances or compliance with the Americans with Disabilities Act and regulations promulgated thereunder. Subtenant represents and warrants that Subtenant has made its own inspection of and inquiry regarding the condition of the Subleased Premises and is not relying on any representations of Sublandlord or any broker with respect thereto. Except as expressly provided in **Section 7(d)**, Sublandlord is not obligated with respect to the Subleased Premises to make any improvements, changes, installations, do any work, make any alterations, repairs or replacements, clean out the Subleased Premises, obtain any permits, licenses or governmental approvals, or spend any money either to put Subtenant in possession or to permit Subtenant to open for business. If any Alterations are required to the Subleased Premises for Subtenant's permitted use thereof, Subtenant shall perform all such Alterations pursuant to the requirements of **Section 8(e)**. Except for signs, merchandise counters or other easily removable similar trade fixtures installed by Subtenant at Subtenant's expense, all Alterations, decorations, additions and improvements made by Subtenant to the Subleased Premises, including (by way of examples and not in limitation) all heating and air conditioning units, equipment and apparatus at the Subleased Premises and other fixtures such as ceiling tiles and grids, lighting fixtures, electric panel boxes, plumbing, boilers, floor and wall coverings, alarm systems, lights, toilet fixtures, partitions, doors and utilities, shall be deemed attached to the real property constituting the Subleased Premises and be Sublandlord's property upon the expiration or other termination of the Sublease, except as otherwise directed by Sublandlord in accordance with **Section 17**.

7. USE OF SUBLEASED PREMISES.

(a) **Permitted Use.** Subtenant agrees that the Subleased Premises will be used and occupied by Subtenant and/or any assignees, sublessees or other occupants (which reference to assignees, sublessees and other occupants shall not be deemed to give Subtenant any rights to assign or sublet not specifically set forth in this Sublease), or permitted to be used and occupied by Subtenant or any other such parties only for the Permitted Use (as defined in **Section 1(h)**), and for no other use or purpose. Subtenant shall not use the Subleased Premises for providing food and/or beverage services or the sale of gift shop items that compete with the services and products sold by the Hotel. No rental of wave runners, jet skis or other motorized personal watercraft shall be permitted.

(b) **Subtenant's Business Operations.** Subtenant shall diligently and continually conduct its business on the Subleased Premises to reasonably maximize "Gross Sales," as defined by this Agreement. Subtenant shall provide competent management of the Permitted Uses to Sublandlord and the City of San Diego's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within Subtenant's industry for the management and operation of activities substantially similar to the Permitted Uses and in compliance with all laws, rules and regulations of competent governmental authority, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent of financial malfeasance. Subtenant shall keep the Subleased Premises open and shall operate from the entirety of the Subleased Premises during the entire Sublease Term unless prevented from doing so by any unavoidable delay (as defined in **Section 23** below). Subtenant shall operate continuously for business during the Business Hours. Subtenant shall continuously operate its business at the Subleased Premises with diligence, fully staffed with personnel, throughout the Sublease Term, and in compliance with the service and operations standards set forth in **Exhibit "B"** attached hereto, and in compliance with the approved vessel rental list set forth in **Exhibit "C"** attached hereto. Subtenant agrees for its part: no auction, fire, bankruptcy, going out of business or similar sale will be conducted or advertised; no merchandise will be kept, displayed or sold or business solicited at the Hotel outside the Subleased Premises; no nuisance will be permitted; nothing shall be done which is unlawful, offensive or contrary to any Applicable Law, or which may be injurious to or adversely affect the quality of the Subleased Premises or the Hotel; no part of the Subleased Premises (especially the electric and plumbing systems, the floor and walls) will be overloaded, damaged or defaced; no holes will be drilled in the stone or brickwork or in concrete; and no emission of any objectionable odors, sounds or vibrations will be permitted. Subtenant shall procure all licenses and permits required for the use or occupancy of the Subleased Premises and the business being conducted therein; the storefront, show windows and signs will be repaired, kept clean, in good condition and lighted; all garbage, waste and refuse will be kept stored temporarily inside the Subleased Premises and then regularly removed at Subtenant's expense and, if Sublandlord opts, only by a contractor designated by Sublandlord, provided its price is competitive. Subtenant will comply with the requirements of Applicable Law and any requests of governmental agencies or Sublandlord in its recycling program, if any. Subtenant shall comply with all environmental statutes, regulations or ordinances now or hereinafter enacted by any local, state or federal government authorities. Subtenant shall not permit the release, emission, disposal, dumping or storage of hazardous wastes (as defined in any such Applicable Law) into the septic tanks, sewers, or other waste disposal facilities of the Subleased Premises, or permit same to be brought into the Subleased Premises at any time, and the provisions of this sentence shall survive the expiration of the Sublease Term. Subtenant shall keep the Subleased Premises in a clean, orderly and sanitary condition and free of rodents, vermin, insects and other pests, and provide regular exterminator services at its own expense, and, if Sublandlord opts, only by an exterminator designated by Sublandlord provided its price is competitive. Subtenant agrees that nothing will be done or omitted which may either prevent the obtaining by Sublandlord of insurance on any part of the Shopping Center or on any personal property thereon, or which may make void or voidable any such insurance, or which may create any extra premiums for any insurance carried by Sublandlord or other tenants. Subtenant will comply with all requirements and recommendations of Sublandlord's and Subtenant's insurance companies and any rating bureau or similar organization, including (by way of example and not in limitation) maintaining and servicing fire extinguishers. Subtenant agrees to: stock only merchandise Subtenant intends to offer for rental or sale at retail at the Subleased Premises; use for office or other non-selling purposes only incidental space required for Subtenant's retail business conducted at the Subleased Premises; not permit preparation of food or any cooking, baking or frying in the Subleased Premises. Subtenant shall keep the sidewalks, curbs and ramps (if any) adjacent to the Subleased Premises (and also all delivery areas, ramps,

loading areas and docks used exclusively by Subtenant) in good and safe condition and free from rubbish. Subtenant will not make or suffer any waste of the Subleased Premises. Sublandlord shall not be liable for the act of any other tenant or person who may cause damage to or who may interfere with Subtenant's use or occupancy of the Subleased Premises or Subtenant's business.

(c) **Protection of Environment.** Subtenant shall, at Subtenant's sole cost and expense:

(i) Take all reasonable precautions to prevent pollution or littering of the atmosphere, land and water on, from, in or about the Subleased Premises, including without limitation the discharge of petroleum products, directly or indirectly into Mission Bay;

(ii) Maintain noise levels on the Subleased Premises to prevent a nuisance to persons and property in and in the vicinity of Mission Bay Park and the Hotel; and

(iii) **Operating Plan – Lifeguard Division Approval.** At least sixty (60) days prior to each October 1 during the term of this Agreement, Subtenant shall, at its sole cost and expense, submit to Sublandlord and the City of San Diego a written, annual operating plan describing how Subtenant intends to conduct each of the Permitted Uses in the waters of Mission Bay for the following calendar year beginning in October. Each such operating plan shall be in form and contain content reasonably satisfactory to the City of San Diego. Except as required by law, Subtenant shall not make any changes to an existing Sublandlord and City of San Diego-approved operating plan without the City of San Diego's prior written approval in each instance, which approval may not be unreasonably withheld or delayed. Subtenant shall conduct each Permitted Use in the waters of Mission Bay in accordance with its most recently City of San Diego-approved operating plan.

(d) **Compliance with Law.** Subtenant shall not operate its business nor use the Subleased Premises or permit Subtenant's employees, contractors or other agents to do anything in or about the Subleased Premises or the Hotel in conflict with any federal, state or local law, statute, ordinance, regulation, zoning restriction, rule, or other requirement of any duly constituted public authorities or court now in force or which may hereafter be in force, including, without limitation, the City of San Diego's regulations on non-discrimination and EEO compliance, equal benefits, disabled access compliance, or the requirements of the Board of Fire Underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Subleased Premises, Subtenant or the operation of Subtenant's business (collectively, "**Applicable Law**"). Except as expressly provided below in this **Section 7(d)**, if any Applicable Law requires any capital improvement to the Subleased Premises as the result of Subtenant's particular use or change in use of the Subleased Premises or other Alterations made to the Subleased Premises by or on behalf of Subtenant, then Subtenant shall be responsible for the same (or at the election of Sublandlord, for reimbursing Sublandlord for the cost of performing the same). Subtenant shall not commit any public or private nuisance or any other act or practice which might or would disturb the quiet enjoyment of any other tenant of Sublandlord or any occupant of nearby properties. Subtenant shall place no loads upon the floors, walls or ceilings in excess of the maximum designed load determined by Sublandlord or which endanger the structure; nor place any harmful liquids in the drainage systems; nor dump or store waste materials or refuse or allow such to remain outside the Subleased Premises, except in the enclosed trash areas provided. Subtenant shall not store or permit to be stored or otherwise placed any material of any nature whatsoever outside the Subleased Premises. Notwithstanding anything to the contrary contained in this **Section 7(d)**, if as a result of any use or change in use of the Subleased Premises by Subtenant or any Alteration made to the Subleased Premises by or on behalf of Subtenant, any capital improvements are required to the Subleased Premises under this section (including, but not limited to, as a result of the Americans with Disabilities Act and regulations promulgated thereunder), (i) Subtenant shall be responsible for any capital improvements consisting of Subtenant's fixtures and equipment in the Subleased Premises (or at the election of Sublandlord, for reimbursing Sublandlord for the cost of performing the same), and (ii) Sublandlord shall be responsible for any capital improvements involving the building or structural components of the Subleased Premises; provided, however, if the capital improvements for which Subtenant is responsible under clause (i) above costs in excess of Twenty Thousand Dollars (\$20,000) cumulatively over the Sublease Term, Subtenant may terminate the Sublease

with no less than one hundred twenty (120) days prior written notice to Sublandlord. Notwithstanding anything to the contrary in this Sublease, Subtenant is not responsible for (i) any preexisting hazardous wastes or substances, (ii) preexisting building or structural components which are not in compliance with Americans with Disabilities Act and regulations promulgated thereunder, or (iii) other pre-existing violations of Applicable Law.

(i) Equal Opportunity. Subtenant shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. Subtenant shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. Upon the City of San Diego's request, Subtenant shall submit a current Workforce Report and, if authorized by law and required by the City of San Diego, an Equal Opportunity Plan which set forth the actions Subtenant will take to achieve the City of San Diego's goals for the employment of African Americans, Native Americans, Asians, Latinos, women and people with disabilities. BRAEMAR acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in City of San Diego contracts for a period of not less than one (1) year.

(ii) Equal Benefits. Subtenant shall comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. Subtenant shall certify that it will maintain such equal benefits throughout the term of this Agreement. Subtenant's failure to maintain equal benefits shall be a default of this Agreement.

(iii) Disabled Access Compliance. Subtenant shall, as applicable to the Subleased Premises and Subtenant's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. Subtenant's compliance shall include without limitation the following: Subtenant shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of Subtenant.

(iv) Drug-free Workplace. Subtenant shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug- workplace by doing all of the following:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Property and specifying the actions that will be taken against employees for violations of the prohibition; and

(2) Establish a drug-free awareness program to inform employees about all of the following: The dangers of drug abuse in the workplace; Subtenant's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug abuse.

8. CONDITION OF SUBLEASED PREMISES.

(a) Utilities.

(i) Commencing on the Commencement Date, Sublandlord shall be responsible and pay for all costs, fees and deposits associated with any utilities and services (e.g., domestic water or sanitary sewer services) supplied to the Subleased Premises to the extent not separately metered, other than janitorial services. Sublandlord makes no representation or warranty as to the suitability of the utilities or services for Subtenant's requirements.

(ii) Commencing on the Commencement Date, Subtenant shall be responsible and pay for all costs, fees and deposits associated with telephone and internet service to the Subleased Premises.

(iii) If Subtenant wishes to secure internet access through the Hotel's network, Subtenant will pay as other rent the market-based rate for such access, which rate shall be mutually agreed upon by Sublandlord and Subtenant.

(iv) Subtenant waives any claim for rent abatement, rent reduction, loss of business or damages arising out of any temporary inconvenience or diminution in Subtenant's use and enjoyment of the Subleased Premises allegedly experienced by Subtenant during an interruption of utility services provided by Sublandlord as described in **Section 8(a)(i)**. Sublandlord shall have no responsibility or liability for any such interruption of services, unless such interruption of utility services was caused by Sublandlord's gross negligence.

(b) Sublandlord's Repairs. Weather permitting, if practical, and subject to Section , Sublandlord shall, within thirty (30) days after receiving written notice from Subtenant, commence to make repairs, if necessary, to the foundation, the roof, the exterior of the perimeter demising walls, and the load-bearing structural columns and beams in the Subleased Premises, except that if those repairs or replacements arise from (i) repairs, installations, alterations, or improvements by or for Subtenant or anyone claiming under Subtenant, or (ii) the fault or misuse of Subtenant or anyone claiming under Subtenant, or (iii) default under this Sublease by Subtenant, then Subtenant shall make such repairs or replacements or, if Sublandlord elects, Sublandlord may perform the work on Subtenant's account and Subtenant shall promptly reimburse Sublandlord for expenses incurred within ten (10) days after receipt of such written notice from Sublandlord. In determining Sublandlord's repair obligations, the expression "roof" does not include the roof membrane, rooftop heating or air conditioning units or other structures or apparatus on the roof serving the Subleased Premises, and "exterior of walls" does not include the storefront, any glass, windows, window sashes or frames, doors, door frames or hardware, trim or closure devices, or any part of the interior side of perimeter walls, all of which shall be Subtenant's duty to repair, maintain, and replace. In any event, Sublandlord's obligation shall be only to make the repairs for which it is hereby obligated, and Sublandlord shall not be liable for loss of business, loss of sales, loss of profits or for any consequential damages or for damage to or loss of personal property, fixtures or any interior elements of the Subleased Premises which are Subtenant's responsibility to maintain or repair.

(c) Subtenant's Repairs. Subject only to **Section 8(b)**, Subtenant shall maintain, in good order, condition and repair, and make all repairs and alterations of every kind with respect to the Subleased Premises (including (by way of example and not in limitation) necessary replacements) to keep it in good condition (including (by way of examples and not in limitation) the storefront, glass, signs, ceilings, interior walls, interior side of perimeter walls, floor, floor coverings, exterior and interior of all doors, door locks, plumbing, electric, heating and air conditioning, sprinklers and lighting fixtures), and do all repairs or alterations required by any Applicable Law. From the point they serve the Subleased Premises exclusively, whether located inside or outside, Subtenant shall make all repairs, replacements and alterations necessary to maintain in good condition all lines, apparatus, and equipment relating to utilities (including (by way of examples and not in limitation) heating, air conditioning, water, gas, electricity and sewerage).

(d) **Signs.**

(i) Subtenant shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without Sublandlord and the City of San Diego's prior written consent. If any such unauthorized item is found, Subtenant shall remove the item at its expense within twenty-four (24) hours after notice by Sublandlord or the City of San Diego, or Sublandlord and/or the City of San Diego may thereafter remove the item at Subtenant's cost.

(ii) Subtenant shall install its signage at its sole cost and in compliance with this Sublease, the New Master Lease, and any successor to the New Master Lease.

(iii) All costs and expenses in connection with Subtenant's signage shall be at Subtenant's sole cost and expense, including (by way of examples and not in limitation) costs of design, installation, maintenance, repair and removal. Subtenant shall maintain all signage in good condition and repair at all times and shall remove such signage upon the expiration or earlier termination of this Sublease, at Subtenant's sole cost, and repair any damage caused by removal. The design, shape and size of Subtenant's proposed signage shall require Sublandlord's and the City of San Diego's written approval.

(e) **Alterations.** No alteration, installation, improvement or addition ("Alteration") will be made to the Subleased Premises by Subtenant that (i) costs in excess of Ten Thousand Dollars (\$10,000) cumulatively over the Sublease Term, (ii) involves structural changes or additions, (iii) affects the exterior (including (by way of examples and not in limitation) the exterior walls), the storefront, the fire sprinkler systems, any other utility system serving the Subleased Premises, the floor slab, or the roof of the Subleased Premises, (iv) requires or results in any penetration of the roof, demising walls or floor slab of the Subleased Premises, or (v) requires any capital improvements to the Subleased Premises as a result of required compliance with the American with Disabilities Act and regulations promulgated thereunder, without first obtaining the written consent of Sublandlord thereto, which consent shall not be unreasonably withheld, and Sublandlord and Subtenant agreeing on a budget for Subtenant's proposed Alterations. All Alterations shall be performed at Subtenant's sole cost and expense. Subtenant shall provide Sublandlord with not less than ten (10) days' prior written notice of the commencement of any Alterations in the Subleased Premises and Sublandlord shall have the right to enter upon the Subleased Premises to post customary notices of non-responsibility with respect thereto. If Subtenant shall perform any Alterations, Subtenant shall carry "Special Form – Causes of Loss" or "Builder's All Risk" insurance in an amount reasonably determined by Sublandlord covering the construction of such Alterations and such other insurance as Sublandlord may reasonably require. Within thirty (30) days after the completion of any Alterations, Subtenant shall deliver to Sublandlord a set of "as built" plans depicting the Alterations as actually constructed or installed. All Alterations, whether by Sublandlord, Subtenant or any other person (except only sign panels and movable trade fixtures and equipment) shall become, when made, a part of Sublandlord's real estate, and on the expiration or earlier termination of the Sublease Term, subject to the provisions of **Section 17**, shall be surrendered with the Subleased Premises in good condition. Subtenant shall not have the right to remove sign boxes. Subtenant shall defend, indemnify and hold Sublandlord harmless from and against all claims for injury, loss or damage to person or property caused by or resulting from doing any work in, on or appurtenant to the Subleased Premises. For any work that involves penetration of the roof surface or alterations to the sprinkler system, Subtenant shall employ Sublandlord's contractor and do such work only with prior written permission from Sublandlord, which permission may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall take no action that may void any roof warranty.

(f) **Inspections.** Sublandlord or the City of San Diego may at all times enter and inspect the Subleased Premises and the operations conducted on the Subleased Premises. Sublandlord and City of San Diego's right to entry and inspection of the Lease Premises, in the absence of any emergency or other proper authorization, shall require reasonable notice and be limited to reasonable business hours.

(g) **Permits; Liens.** All repairs, Alterations, and demolition and/or removals by Subtenant will be done in a good and workmanlike manner, in accordance with Sublandlord approved plans

and specifications, by duly qualified and licensed persons or entities, using first grade materials, without interference with or disruption to the Hotel operations and only after Subtenant has procured all permits and obtained Sublandlord's approval. Subtenant shall comply with all Applicable Law and with all Sublandlord's and Subtenant's insurance requirements and with insurance inspection or rating bureaus; and the work shall not adversely affect the structure of the building in which the Subleased Premises is located. Subtenant shall pay promptly when due all charges for labor and materials in connection with any work done by or for Subtenant or anyone claiming under Subtenant. Subtenant may not commence any of the above described work without first giving Sublandlord ten (10) days prior written notice in order to allow Sublandlord to post the Subleased Premises with Notices of Non-Responsibility, and Subtenant shall ensure that such notice remains posted throughout the period of such work. Subtenant shall remove, by payment, bonding or otherwise, within ten (10) days after notice, all liens placed on the public record or in any way against Sublandlord's interest or the Hotel resulting from any act of Subtenant or from labor or materials being alleged to have been supplied at the request of Subtenant or anyone claiming under Subtenant, failing which Sublandlord may remove such lien and collect all expenses incurred from Subtenant, together with interest at the Default Interest Rate, as other rent. Subtenant shall, defend, hold harmless and indemnify Sublandlord, Sublandlord's mortgagee and any fee owner of the Subleased Premises from and against all losses, claims, liabilities, injuries, expenses (including (by way of examples and not in limitation) attorneys' fees, court costs and fees of experts), lawsuits and damages arising out of any lien described above.

(h) **Additional Requirements.** In the event that the Subleased Premises is sold during construction of any improvements or less than ninety (90) days after the Subtenant's receipt of a conformed copy of a Notice of Completion, in statutory form, with regard to improvements constructed by Subtenant, then Subtenant will also promptly provide to Sublandlord if required by Sublandlord's title company, Subtenant's personal financials, a cost breakdown of the improvements and a mechanic's lien indemnity in favor of Sublandlord's title company in connection with the improvements.

9. INDEMNITY; INSURANCE.

(a) **Subtenant's Indemnity.** Subtenant shall defend, hold harmless and indemnify Sublandlord and its affiliates, owners, officers, directors, employees, successors, assigns and agents from and against all losses, claims, liabilities, injuries, expenses (including (by way of examples and not in limitation) actual expenses of investigating or defending against the same, including attorneys' fees, court costs and fees of experts), lawsuits and damages of whatever nature either (i) claimed to have been caused by or resulted from any act, omission or negligence of Subtenant or its subtenants, concessionaires, employees, contractors and invitees no matter where occurring, or (ii) arising from or in connection with any activities of Subtenant occurring in the Subleased Premises, except if caused by Sublandlord's gross negligence or willful misconduct or the gross negligence or willful misconduct of Sublandlord's employees or agents. For the purpose of clarity, Subtenant does not have an obligation to indemnify Sublandlord for preexisting pollution incidents. Sublandlord shall not be liable under any circumstances for any injury or any loss or damage to or interference with any merchandise, equipment, fixtures, furniture, furnishings or other personal property or the business operations of Subtenant or anyone in the Subleased Premises occasioned by (A) the act or omission of persons occupying other premises, or (B) any defect, latent or otherwise, in any building or the equipment, machinery, utilities, or apparatus, or (C) any breakage or leakage of the roof, walls, floor, pipes or equipment, or (D) any backing up, seepage or overflow of water or sewerage, or (E) flood, rain, snowfall or other elements or Acts of God, or (F) any criminal activity of third parties.

(b) **Subtenant's Insurance.** From the Commencement Date or earlier occupancy of the Subleased Premises by Subtenant, to the Expiration Date of this Sublease, Subtenant shall maintain with financially responsible insurance companies with a Best Rating of not less than A-VIII licensed to do business in the state where the Subleased Premises is located: (i) a commercial general liability insurance policy with respect to the Subleased Premises and its appurtenances; (ii) an all-risk property insurance policy insuring all merchandise, leasehold improvements, furniture, fixtures and other personal property, all at their replacement cost; (iii) business interruption insurance; (iv) Workers Compensation insurance as required by law; (v) employment practices liability insurance and (vi) other insurance required by Sublandlord or Sublandlord's insurer, which insurance policies shall be for such amounts and on such terms that are reasonably satisfactory to Sublandlord and Sublandlord's insurer, as those requirements may be

modified and updated from time to time by Sublandlord and/or Sublandlord's insurer, provided that such modifications and updates are reasonable in light of industry standards and practices. Should the cost of the modified or updated insurance coverage be excessively burdensome, Sublandlord and Subtenant will negotiate in good faith regarding the types and amounts of coverage and the scope of permitted uses of the Subleased Premises. If Sublandlord and Subtenant cannot come to an agreement regarding the modified or updated insurance coverage, Subtenant may terminate the lease with at least one hundred twenty (120) days' notice.. Subtenant shall deliver these insurance policies and/or certificates thereof, naming (A) Sublandlord, its affiliates and (B) The City of San Diego, its elected officials, officers, employees, representatives and agents as additional insureds and in form otherwise satisfactory to Sublandlord, issued by the insurance company to Sublandlord with premiums prepaid on the signing of this Sublease and thereafter at least thirty (30) days prior to each expiring policy. Subtenant's failure to deliver the policies and/or certificates shall constitute a default. All policies of insurance required of Subtenant shall have terms of not less than one (1) year.

10. ACCESS TO SUBLEASED PREMISES. Sublandlord, its agents, employees and contractors shall have the right (but shall not be obligated) to enter the Subleased Premises upon reasonable notice (and in case of emergency without notice) to inspect or to show the Subleased Premises to prospective purchasers, mortgagees or tenants, or to make any repairs, alterations, or improvements. Commencing six (6) months prior to expiration of the Sublease Term, Sublandlord may maintain "For Rent" signs on the front or any other part of the exterior of the Subleased Premises and during such period Sublandlord may show the Subleased Premises and all parts thereof to prospective tenants during normal business hours. Sublandlord further reserves to itself the exclusive right at any time to use all or any part of the roof, foundation or exterior walls of the Subleased Premises (other than Subtenant's storefront) for placing of signs or equipment or for purpose of additional construction.

11. FIRE OR OTHER CASUALTY.

(a) **Notice of Casualty.** Subtenant shall give prompt notice to Sublandlord in case of fire or other damage to the Subleased Premises.

(b) **Termination Right.** If (i) the Subleased Premises are damaged to the extent of more than fifty percent (50%) of the replacement cost, or (ii) the Subleased Premises are damaged and Subtenant is not operating for business as required by **Section 7(b)** at the time the damage occurs, or (iii) the Subleased Premises are damaged and less than six (6) months of the Sublease Term remains unexpired at the time of the fire or other casualty; then in any of such events, Sublandlord may terminate this Sublease by notice to Subtenant within ninety (90) days after such event, and on the date specified in the notice this Sublease shall terminate. If the damage renders the Subleased Premises wholly or partially untenable, there shall be a fair and equitable proportionate abatement of Rent during that period. Unless this Sublease is terminated as aforesaid, this Sublease shall remain in effect.

(c) **Continuation of Sublease; Restoration of Subleased Premises.** If this Sublease is not terminated by Sublandlord, this Sublease shall continue in full force and effect (Subtenant waives any right conferred by any Applicable Law to terminate this Sublease based on the damage), and Subtenant shall, immediately on notice from Sublandlord, remove its fixtures, other property and debris as required by Sublandlord, and then Sublandlord shall rebuild the Subleased Premises to the condition existing when the Subleased Premises was originally delivered to Subtenant; and on completion thereof Subtenant shall restore Subtenant's property and promptly reopen for business. Subtenant shall use the proceeds of any recovery on Subtenant's insurance policies for restoration of improvements made by Subtenant to the Subleased Premises, and for restoration and/or replacement of Subtenant's equipment, trade fixtures and inventory, and to cover any business interruption loss.

(d) **Definition of Replacement Cost.** The "replacement cost" as used in **Section 11(b)** above shall be determined by a reputable contractor selected by Sublandlord.

(e) **Uninsured Casualty.** If the Subleased Premises are damaged as a result of any casualty not covered by insurance carried by Sublandlord, then Sublandlord, within ninety (90) days following the date of such damage, shall begin to rebuild the Subleased Premises to the condition existing when the Subleased Premises was originally delivered to Subtenant and shall proceed with reasonable

diligence to complete such work or Sublandlord may elect within said 90-day period not to rebuild the damaged property, in which event, at Sublandlord's option, this Sublease shall terminate upon the expiration of such 90-day period. If Sublandlord rebuilds the Subleased Premises, then on completion of such work, Subtenant shall restore Subtenant's property and promptly reopen for business.

(f) **Waiver of Statutory Rights.** The provisions of this Sublease relating to casualty constitute an express agreement between Sublandlord and Subtenant with respect to any and all damage to, or destruction of, all or any part of the Subleased Premises. As a result, any statute or regulation with respect to any rights or obligations of a landlord or a tenant concerning damage or destruction to a leased premises in the absence of an express agreement between the parties, now or hereafter in effect, shall have no application to this Sublease or any damage or destruction to all or any part of the Subleased Premises.

12. EMINENT DOMAIN.

(a) **Entire Taking.** If the whole of the Subleased Premises are taken in connection with eminent domain, the Sublease Term shall expire when Sublandlord shall be divested of its title, and Rent shall be apportioned as of that date.

(b) **Partial Taking.** If only part of the Subleased Premises is taken in connection with eminent domain, and the ground floor area of the Subleased Premises is reduced by more than twenty percent (20%) and the part remaining shall not be reasonably adequate for the operation of Subtenant's business, Sublandlord or Subtenant may terminate this Sublease by giving the other notice within thirty (30) days after such taking, effective as of the date possession of the taken part shall be required for public use; and Rent shall be apportioned as of that date.

(c) **Award.** Subtenant shall not have any claim for an award based on the loss of its leasehold estate. Sublandlord shall be entitled to all damages in connection with eminent domain. Subtenant shall execute any instrument required by Sublandlord for the recovery of damages and to remit to Sublandlord any damage proceeds recovered, except, however, Subtenant may recover for itself damages for movable trade fixtures which were installed by Subtenant, provided Sublandlord's award is not reduced thereby.

(d) **Waiver of Statutory Rights.** The provisions of this Sublease relating to eminent domain constitute an express agreement between Sublandlord and Subtenant with respect to a taking of any part of the Subleased Premises through eminent domain. As a result, any statute or regulation with respect to any rights or obligations of a landlord or tenant concerning an eminent domain of a leased premises in the absence of an express agreement between the parties, now or hereafter in effect, shall have no application to this Sublease or any taking of all or any part of the Subleased Premises through eminent domain.

13. DEFAULTS AND REMEDIES.

(a) **Definition of Default.** Any one of the following shall be a default by Subtenant: (i) if Subtenant fails to pay Rent, other rent or any other charge to be paid by Subtenant as required by this Sublease and thereafter within five (5) days after receipt of written notice thereof from Sublandlord, or (ii) if Subtenant defaults under any other lease, sublease or occupancy agreement between Subtenant and Sublandlord or an affiliate of Sublandlord, or (iii) if Subtenant fails (A) to provide an insurance policy and/or a certificate of insurance or (B) to provide an estoppel certificate as required by this Sublease, and thereafter within three (3) days after receipt of written notice from Sublandlord of Subtenant's failure to provide such estoppel certificate, or (iv) if Subtenant's leasehold interest is levied on, attached or taken by any process of law, or (v) if Subtenant makes an assignment of its property for the benefit of creditors, or (vi) if any bankruptcy, insolvency or reorganization proceeding or arrangement with creditors (whether through court or by proposed composition with creditors) is commenced by or against Subtenant (and such proceeding is not dismissed within thirty (30) days), or (vii) if a receiver or trustee is appointed for any of Subtenant's property (and possession of such property is not restored within thirty (30) days), or (viii) if this Sublease is transferred to or devolves on, or the Subleased Premises is occupied by, anyone other than Subtenant, except if specifically permitted by this Sublease, or (ix) if Subtenant after opening, closes the Subleased

Premises or ceases doing business at the Subleased Premises, or (x) if Subtenant uses the Subleased Premises for any use other than the Permitted Use; or (xi) if Subtenant fails to perform or observe any agreement or condition on its part to be performed or observed, other than the defaults mentioned above, within ten (10) days after receipt of written notice thereof from Sublandlord (provided, however, if the breach is curable, but cannot be rectified or cured within such ten (10) day period, the breach shall be deemed to be rectified or cured if Subtenant, within such ten (10) day period, shall have commenced to rectify or cure the breach and shall thereafter diligently and continuously prosecute same to completion). When this Sublease requires service of a default notice, such notice shall be in lieu of, and not in addition to, any statutory notice required (including (by way of example and not in limitation) Section 1161 of the California CODE OF CIVIL PROCEDURE or any similar or successor statute).

(b) **Sublandlord's Remedies.** On the occurrence of any default by Subtenant as set forth in **Section 13(a)** above, Sublandlord may, at any time thereafter, with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy allowed by Applicable Law, including (by way of examples and not in limitation) the following:

(i) Terminate Subtenant's right to possession of the Subleased Premises by any lawful means, and terminate this Sublease, in which event Subtenant shall immediately surrender possession of the Subleased Premises to Sublandlord. In such event, Sublandlord shall be entitled to recover from Subtenant all damages incurred by Sublandlord by reason of Subtenant's default, including (by way of examples and not in limitation) (A) the worth at the time of the award of the unpaid Rent, other rent and any other charges which Sublandlord had earned at the time of the termination; (B) the worth at the time of the award of the amount by which the unpaid Rent, other rent and any other charges which Sublandlord would have earned after termination until the time of the award exceeds the amount of such rental loss that Subtenant proves Sublandlord could have reasonably avoided; (C) the worth at the time of the award of the amount by which the unpaid Rent, other rent and any other charges which Subtenant would have paid for the balance of the Sublease Term after the time of award exceeds the amount of such rental loss that Subtenant proves Sublandlord could have reasonably avoided; and (D) any other amount necessary to compensate Sublandlord for all the detriment proximately caused by Subtenant's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including (by way of examples and not in limitation) any costs or expenses Sublandlord incurs in maintaining or preserving the Subleased Premises after such default, the cost of recovering possession of the Subleased Premises, expenses of reletting, including (by way of examples and not in limitation) necessary renovation or alteration of the Subleased Premises, Sublandlord's reasonable attorneys' fee incurred in connection therewith, and any real estate commission paid or payable. As used in clauses (A) and (B) of this **Section 13(b)(i)**, the "worth at the time of the award" is computed by allowing interest on unpaid amounts at the rate of eighteen percent (18%) per annum, or such lesser amount as may then be the maximum lawful rate. As used in clause (C) of this **Section 13(b)(i)**, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). If Subtenant has abandoned the Subleased Premises, Sublandlord shall have the option of retaking possession of the Subleased Premises and recovering from Subtenant the amount specified in this clause (A) or (B) of this **Section 13(b)(i)**;

(ii) Terminate Subtenant's right to possession of the Subleased Premises by any lawful means or maintain Subtenant's right to possession and not terminate this Sublease, in which case this Sublease shall continue in effect whether or not Subtenant is in possession of the Subleased Premises. In such event, Sublandlord shall be entitled to enforce all of Sublandlord's rights and remedies under this Sublease, including (by way of example and not in limitation) the right to recover the Rent as it becomes due. In addition, Sublandlord shall have the remedy described in California CIVIL CODE Section 1951.4 (Sublandlord may continue this Sublease in effect after Subtenant's breach and abandonment and recover rent as it becomes due), if Subtenant has the right to sublet or assign, subject only to reasonable limitations;

(iii) Pursue any other remedy now or hereafter available to Sublandlord in equity or under Applicable Law or judicial decisions of the State of California, excluding conflict of law principles;

(iv) In addition to the foregoing, in the event Subtenant defaults under any other lease, sublease or occupancy agreement between Subtenant and Sublandlord or an affiliate of Sublandlord and Sublandlord exercises its right to terminate this Sublease under this **Section 13**, such termination of this Sublease shall effect the concurrent termination of such other lease, sublease or occupancy agreement with no further action by Sublandlord.

This Sublease shall not terminate in the event of a material default by Subtenant unless Sublandlord expressly terminates it.

(c) **Damages**. In any case where Sublandlord shall have the right to hold Subtenant liable monthly, Sublandlord may elect to declare all the aggregate Rent for the remaining balance of the Sublease Term, as well as all accrued Rent, to be immediately due and payable, and to recover immediately against Subtenant all such Rent (for loss of a bargain and not as a penalty).

(d) **Threatened Breach**. In the event of a breach or threatened breach of this Sublease by Subtenant, Sublandlord shall have the right of injunction and the right to invoke any remedy allowed by Applicable Law or in equity. Mention or pursuit of any particular remedy shall not preclude Sublandlord from any other remedy available under Applicable Law or in equity.

(e) **Subtenant Waivers**. Subtenant waives service of notice of intention to re-enter or institute legal proceedings to that end. Subtenant waives any rights of redemption as to the Subleased Premises granted by any present or future Applicable Law. The words "re-enter" and "re-entry" are not restricted to their technical legal meaning. Notwithstanding the foregoing, Sublandlord may use force to dispossess Subtenant only in the following situations: (i) it is pursuant to Applicable Law or a court order, judgment or decree; or (ii) Subtenant has not been operating its business at the Subleased Premises open to the public as required by **Section 7(b)** of this Sublease for more than seven (7) business days; or (iii) the Subleased Premises is deemed to be abandoned by Subtenant.

(f) **Waiver of Jury Trial**. To the extent permitted by Applicable Law, Sublandlord and Subtenant mutually agree that they hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other as to any matters arising out of or in any way connected with this Sublease, or their relationship as Sublandlord and Subtenant, or Subtenant's use or occupancy. Subtenant agrees that no counterclaim or setoff will be interposed in any action by Sublandlord based on non-payment of Rent, even if such counterclaim or setoff is based on Sublandlord's alleged breach of a duty to repair or alleged breach of quiet enjoyment, or any other allegation.

14. SUBORDINATION

(a) **Subordination to Financing and Ground Lease**. This Lease is and shall be subject and subordinate to (i) all ground or underlying leases and all deeds of trust, mortgages or any other security instruments now or hereafter affecting such leases, and (ii) all deeds of trust, mortgages or other security instruments now or hereafter affecting the fee title of the Subleased Premises and/or Hotel, and (iii) all renewals, modifications, consolidations, replacements and extensions of any such ground or underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessee or by any mortgagee. In confirmation of such subordination, Subtenant agrees to execute promptly any instrument that Sublandlord may request. However, at the option of Sublandlord or such mortgagee or ground lessor or secured party, by written notice from any such party to Subtenant, this Sublease shall be paramount to such mortgage or ground or underlying lease or other security instrument.

(b) **Transfer of Sublandlord's Interest in Subleased Premises**. If Sublandlord transfers its interest in the Subleased Premises, or proceedings are brought for foreclosure of any such mortgage or in case of sale in lieu thereof, or termination of any such ground or underlying lease, Subtenant

shall, if requested, attorn to the transferee, mortgagee, ground or underlying lessor and deliver, without charge, instruments acknowledging the attornment.

(c) **Subtenant's Notice to Lender.** Provided Subtenant was given notice in writing of the names and addresses to which the notices should be sent, Subtenant shall give prompt written notice of any default by Sublandlord to the holder of all mortgages, ground or underlying leases and security holders if the default is such as to give Subtenant a right to (i) terminate this Sublease, or (ii) reduce the Rents or any other sums reserved, or (iii) credit or offset any amounts against Rents. Any mortgagee, ground lessor or security interest holder shall have the right to cure Sublandlord's default within sixty (60) days after receipt of Subtenant's notice; and no such rights or remedies shall be exercised by Subtenant until the expiration of said sixty (60) days (or such additional time reasonably required to cure such default).

(d) **Subordination to Matters of Record.** Subtenant acknowledges that Sublandlord's estate in the Subleased Premises may be subject to (i) covenants, conditions, restrictions, easements, ground leases, mortgages or deeds of trust and all other matters of record (collectively, "**Agreements**"); (ii) the effect of any special plan, community plan, other land use plan and Applicable Law (including (by way of examples and not in limitation) any requirement to obtain a conditional use permit) (collectively, "**Entitlement Requirements**"); and (iii) general and special taxes not presently delinquent. Subtenant agrees that, at all times during the Sublease Term, and at Subtenant's sole cost and expense, (A) as to its leasehold estate, it and all persons in possession or holding under it, will strictly conform to and will not violate those terms of the Agreements, the Entitlement Requirements, or any other matters of record; and (B) this Sublease is and shall remain subordinate to the Agreements; provided, however, respecting any document which would be an Agreement but for the fact that it is not recorded as of the date of this Sublease (an "**Unrecorded Agreement**"), then this Sublease shall automatically become subordinate to such Unrecorded Agreement upon recordation of such Unrecorded Agreement provided such Unrecorded Agreement does not prevent Subtenant from using the Subleased Premises for the Permitted Use set forth in **Section 1(h)**. Subtenant further agrees to execute and return to Sublandlord, within ten (10) days after written demand by Sublandlord, an agreement in recordable form subordinating this Sublease to any of the Agreements or Unrecorded Agreements and to all advances made upon the security thereof, which contains a non-disturbance agreement ensuring Subtenant's right to continued quiet enjoyment of the Subleased Premises under this Sublease.

15. WAIVER OF SUBROGATION. Subtenant hereby releases Sublandlord and all other persons claiming by, through, or under Sublandlord from any and all liability for loss or damage, even if the loss is brought about by the fault or negligence of Sublandlord or of any persons claiming by, through, or under Sublandlord. Subtenant will cause its insurance companies to endorse its insurance policies to permit this waiver of subrogation.

16. ASSIGNMENT OR SUBLETTING.

(a) **Sublandlord's Consent Required.** Subtenant shall not assign, mortgage, pledge, or otherwise transfer or encumber this Sublease or any interest therein, either voluntarily or by operation of law or otherwise, or further sublet the whole or any part of the Subleased Premises, or permit occupancy by anyone else (a "**Transfer**") without obtaining on each occasion Sublandlord's prior written consent. The transferee of any such Transfer may be referred to hereafter as a "**Transferee**". If Subtenant is a corporation which is not a public corporation, or is an unincorporated association, limited liability company or partnership, the transfer, assignment or hypothecation, whether in one (1) transaction or a series of transactions, of any stock or interest in such corporation, association, limited liability company or partnership in excess of an aggregate of forty-nine percent (49%) shall be deemed a Transfer within the meaning of this **Section 16**. In any assignment, the assignee must assume this Sublease in writing on Sublandlord's form. Any request for Sublandlord's consent to a Transfer shall be accompanied by payment of Sublandlord's reasonable administrative and attorneys' fees relating thereto. Notwithstanding the foregoing, Sublandlord shall not be required to consider any such request if Subtenant is in default of this Sublease, or in any way not in compliance with this Sublease. Consent by Sublandlord to any Transfer shall not constitute a waiver of the requirement for such consent to any subsequent Transfer. Sublandlord shall not be liable for any money damages to Subtenant or the proposed Transferee for refusal to consent to any proposed Transfer; Subtenant's sole remedy shall be specific performance.

(b) **No Release of Subtenant.** Notwithstanding any Transfer, Subtenant shall not be released (nor shall any of Subtenant's constituents, partners, or members be released) from any obligations, liabilities or covenants under this Sublease and shall continue to remain responsible. Sublandlord shall have the right to collect Rent from any Transferee without releasing Subtenant or waiving any right against Subtenant for its default under this **Section 16** and without accepting the payor as a permitted Transferee and the same shall not be deemed to be a waiver of any right or remedy of Sublandlord hereunder. In no event shall any assignment of this Sublease that may otherwise be approved by Sublandlord release any guarantor of this Sublease unless a release is specifically provided for in writing and signed by Sublandlord.

(c) **Procedures.** Should Subtenant desire to enter into a Transfer, Subtenant shall request, in writing, Sublandlord's consent to the proposed Transfer at least sixty (60) days before the intended effective date of the proposed Transfer, which request shall set forth in writing the details of the proposed Transfer, including (by way of examples and not in limitation): (i) the effective date, terms and conditions of the proposed Transfer, (ii) detailed financial information regarding the proposed Transferee, including (by way of example and not in limitation) a description of net worth, (iii) a description of the previous business experience of the proposed Transferee, (iv) a complete business plan prepared by the proposed Transferee (unless Transferee operates twenty-five (25) or more stores under the same trade name and concept as proposed for the Subleased Premises, in which case a business plan shall not be required), and (v) any further information relevant to the proposed Transfer which Sublandlord shall reasonably request. Within thirty (30) days after receipt of Subtenant's request for consent to the proposed Transfer together with all of the above-required information, Sublandlord shall respond and shall have the right either to: (A) consent to the proposed Transfer; (B) refuse to consent to the proposed Transfer; or (C) terminate this Sublease, such termination to be effective thirty (30) days after Subtenant's receipt of Sublandlord's notice electing to so terminate. Subtenant shall have the right to void Sublandlord's termination by notifying Sublandlord in writing that Subtenant is withdrawing its request for consent, such notice to be delivered, to be effective, within ten (10) days after Subtenant's receipt of the termination notice. If Sublandlord shall exercise its termination right hereunder, Sublandlord shall have the right to enter into a sublease or other occupancy agreement directly with the proposed Transferee, and Subtenant shall have no right to any of the rents or other consideration payable by such proposed Transferee under such other sublease or occupancy agreement. A consent to one (1) Transfer by Sublandlord shall not be deemed to be a consent to any subsequent Transfer to any other party.

(d) **Standard for Consent.** Subtenant agrees that Sublandlord may refuse its consent to the proposed Transfer on any grounds, and (by way of example and without limitation) Subtenant agrees that it shall be reasonable for Sublandlord to withhold its consent if any of the following situations exist or may exist: (i) the proposed Transferee proposes to change the use of the Subleased Premises from the Permitted Use; (ii) the proposed Transferee's financial condition is inadequate to support the financial and other obligations of Subtenant under this Sublease; (iii) the business reputation or character of the proposed Transferee is not reasonably acceptable to Sublandlord; (iv) the proposed Transferee is not likely to conduct a business on the Subleased Premises of a quality substantially equivalent to that conducted by Subtenant; (v) the nature of the proposed Transferee's proposed or likely use of the Subleased Premises would impose an increased burden on the Hotel common area, or increase the risk of the release of hazardous wastes or substances; (vi) Sublandlord has not received assurances acceptable to Sublandlord in its sole discretion that all past due amounts owing from Subtenant to Sublandlord, if any, will be paid and all other defaults on the part of Subtenant, if any, will be cured prior to the effective date of the proposed Transfer; (vii) the City of San Diego does not approve the proposed Transferee; and (viii) in Sublandlord's reasonable business judgment, the Transfer would breach any covenant of Sublandlord respecting radius, location, or use relating to the Hotel.

(e) **Transfer Premium.** If Subtenant enters into a Transfer hereunder, Subtenant shall pay to Sublandlord one hundred percent (100%) of any "**Transfer Premium**" (as hereinafter defined). In the event of a subletting, "**Transfer Premium**" shall mean all rent, additional rent or other consideration payable by such subtenant to Subtenant or on behalf of Subtenant in connection with the subletting in excess of the Rent, other rent and other sums payable by Subtenant under this Sublease during the term of the sublease on a per square foot basis if less than all of the Subleased Premises is subleased, less the reasonable costs actually incurred by Subtenant to secure the sublease. In the event of any Transfer other than a subletting, "**Transfer Premium**" shall mean any consideration paid by the assignee to Subtenant in

connection with such Transfer which Sublandlord reasonably determines is allocable to the leasehold value of this Sublease, less the reasonable costs actually incurred by Subtenant to secure the Transfer.

17. SURRENDER AND HOLDING OVER.

(a) **Surrender of Subleased Premises.** At the expiration or earlier termination of the tenancy hereby created, Subtenant shall surrender the Subleased Premises in the same condition as the Subleased Premises were in upon delivery of possession thereof to Subtenant, reasonable wear and tear excepted, and damage by unavoidable casualty excepted to the extent that the same is covered by Sublandlord's property insurance policy, and Subtenant shall surrender all keys for the Subleased Premises to Sublandlord and shall inform Sublandlord of all combinations on locks, safes and vaults, if any, in the Subleased Premises. Prior to the expiration or sooner termination of this Sublease, Subtenant, without causing any damage to the Subleased Premises, shall remove any and all moveable trade fixtures, equipment, furniture and other unattached items which Subtenant may have installed, stored or left in the Subleased Premises. Subtenant shall not remove any Alterations, any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, floor coverings (including (by way of example and not in limitation) wall-to-wall carpeting), walls or ceilings, or any fixtures or machinery that were furnished or paid for by Sublandlord (whether initially installed or replaced), all of which shall be deemed to constitute a part of the freehold and/or leasehold interest of Sublandlord. Subtenant shall repair all damage to the Subleased Premises resulting from Subtenant's vacation of the Subleased Premises at the expiration of the Sublease Term (or earlier termination of the Sublease). The Subleased Premises shall be left in a broom-clean condition. If Subtenant shall fail to remove its trade fixtures or other property as provided in this **Section 17**, such fixtures and other property not removed by Subtenant shall be deemed abandoned by Subtenant and at the option of Sublandlord shall become the property of Sublandlord, or at Sublandlord's option may be removed by Sublandlord at Subtenant's expense, or placed in storage at Subtenant's expense, or sold or otherwise disposed of, in which event the proceeds of such sale or other disposition shall belong to Sublandlord. In the event Subtenant does not make any repairs as required by this **Section 17(a)**, Subtenant shall be liable for and agrees to pay Sublandlord's costs and expenses in making such repairs. Subtenant's obligations and covenants under this **Section 17(a)** shall survive the expiration or earlier termination of this Sublease.

(b) **Holding Over.** If Subtenant or anyone claiming under Subtenant remains in possession of the Subleased Premises after the expiration of the Sublease Term, such holding over shall not constitute a renewal or extension of this Sublease or give Subtenant any rights under this Sublease. In such event, Sublandlord may, in its sole and absolute discretion, treat Subtenant or such person's occupancy as a "month to month" tenancy; and during such holding over, Rent shall be one and one-half (1 1/2) times the rate which was in effect immediately prior to the Sublease Term expiration, which Sublandlord may collect without admission that Subtenant's estate is more than a "month-to-month" tenancy. Additionally, Subtenant shall be liable to Sublandlord for all actual, consequential, indirect and speculative damages incurred by Sublandlord in connection with such holdover. Sublandlord reserves the right to pursue any and all remedies of Sublandlord under this Sublease and available pursuant to Applicable Law or in equity. All other provisions of this Sublease shall apply in full force and effect during any such "month-to-month" tenancy.

18. NO WAIVERS BY SUBLANDLORD. No waiver by Sublandlord of any breach by Subtenant or requirement of obtaining Sublandlord's consent shall be deemed a waiver of any other provision of this Sublease or any subsequent breach of the same provision or a waiver of any necessity for further consent. No payment by Subtenant or acceptance by Sublandlord of a lesser amount than due from Subtenant shall be deemed to be anything but payment on account, and Subtenant's payment of a lesser amount with a statement that the lesser amount is payment in full shall not be deemed an accord and satisfaction. Sublandlord may accept the payment without prejudice to recover the balance due or pursue any other remedy. Sublandlord may accept payments even after default by Subtenant without prejudice to subsequent or concurrent rights or remedies available to Sublandlord under this Sublease, pursuant to Applicable Law or in equity. Any acceptance by Sublandlord of any payment by Subtenant after termination or expiration of the Sublease Term shall not constitute an acceptance of Rent but rather a payment to Sublandlord on account of Subtenant's use and occupancy of the Subleased Premises. All rights and remedies which Sublandlord may have under this Sublease, pursuant to Applicable Law or in

equity shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and any or all of such rights and remedies may be exercised at the same time.

19. RULES AND REGULATIONS. Subtenant shall observe and comply with, and cause its employees, agents, subtenants and concessionaires, and their employees and agents, to observe and comply with all reasonable rules and regulations promulgated now or in the future by Sublandlord ("**Rules and Regulations**"). By notice to Subtenant, Sublandlord reserves the right to create, amend or change said Rules and Regulations as Sublandlord sees fit in its sole discretion and such Rules and Regulations shall have the same force and effect as if the same were in force and effect on the Commencement Date.

20. FAILURE OF PERFORMANCE BY SUBTENANT. If Subtenant shall default under this Sublease, Sublandlord may, at its election, immediately or at any time thereafter, without waiving any claim for breach of agreement, and within three (3) days' prior notice (and in case of emergency without notice) to Subtenant, cure such default or defaults for the account of Subtenant, and the cost to Sublandlord thereof plus interest at the Default Interest Rate shall be deemed to be other rent. Subtenant shall pay all actual expenses, including, without limitation, attorneys' fees, court costs and expense of experts incurred by Sublandlord in enforcing or interpreting the provisions of this Sublease, suing to collect Rent or to recover possession of the Subleased Premises, whether the lawsuit or other action was commenced by Sublandlord or by Subtenant.

21. LIMITATIONS ON SUBLANDLORD'S LIABILITY.

(a) **Definitions; Release of Liability.** "Subtenant" includes the persons named expressly as Subtenant and its transferees, successors and assigns. Except as otherwise provided in the next sentence, the agreements and conditions contained in this Sublease shall be binding on and inure to the benefit of the parties hereto and their transferees, legal representatives, successors and assigns. "Sublandlord" means only the then-owner of the lessor's interest in this Sublease, and in the event of a transfer by Sublandlord of its interest in this Sublease, the Subleased Premises or the Hotel, the transferor shall be automatically released from all liability and obligations as Sublandlord subsequent to the transfer.

(b) **Exculpation.** Notwithstanding anything to the contrary, Subtenant agrees it will look solely to Sublandlord's estate in the Subleased Premises as the sole asset for collection of any claim, judgment or damages or enforcement of any other judicial process requiring payment of money. Subtenant agrees that no other assets of Sublandlord shall be subject to levy, execution or other procedures to satisfy Subtenant's rights or remedies and Subtenant agrees that it shall not look to any affiliate, owner, officer, director, employee, successor or agent for any recovery for collection of any claim, judgment or damage or enforcement of any other judicial process.

22. MISCELLANEOUS PROVISIONS.

(a) **Entire Agreement; Miscellaneous.** This Sublease contains the entire agreement between the parties. No oral statements or representations or written matter not contained in this Sublease shall have any force or effect. This Sublease cannot be modified or terminated orally, but only by a writing signed by Sublandlord and Subtenant, except for a termination expressly permitted by this Sublease. If more than one party executes this Sublease as "Subtenant", the liability of all such signatories shall be joint and several. Neither this Sublease nor any memorandum, assignment or memorandum of assignment thereof shall be recorded in any public records without Sublandlord's prior written consent. Any obligation of any person shall be performed at its sole cost and expense unless a contrary intent is expressly stated herein. Each provision of this Sublease shall be valid and enforced to the fullest extent permitted by law. However, if any provision or the application thereof to any person or circumstance shall to any extent be declared by a court to be invalid, the remainder of this Sublease shall not be affected. If Subtenant is not an individual, the person signing this document on behalf of Subtenant represents and warrants (by such signature) that he or she has been duly authorized by Subtenant to execute this document and that such signature creates a binding obligation of Subtenant. If Subtenant is comprised of more than one legal entity, then each such entity shall be jointly and severally liable under this Sublease.

(b) **Default Interest Rate.** The term "**Default Interest Rate**" as used in this Sublease shall mean eighteen (18%) percent per annum or the maximum interest rate permitted by Applicable Law, whichever is lower.

(c) **Relocation of the Subleased Premises.** Notwithstanding any other provision in this Sublease, Sublandlord in its sole and absolute discretion shall have the option at any time to relocate Subtenant from the Subleased Premises ("**Present Premises**") into other premises in the Hotel ("**New Premises**"). Sublandlord shall give Subtenant at least forty-five (45) days' notice of the approximate date Subtenant is to move to the New Premises. Sublandlord shall prepare the New Premises to the same extent that Sublandlord prepared the Present Premises. The New Premises will have at least the same amount of square foot area as the Present Premises. Sublandlord shall pay for moving Subtenant's inventory, fixtures, equipment and storefront sign to the New Premises. Subtenant shall cooperate with Sublandlord. Subtenant will move its business operations to the New Premises within forty-eight (48) hours after Sublandlord notifies Subtenant that it has substantially completed its preparation of the New Premises. The New Premises will become the Subleased Premises (instead of the Present Premises) and the Rent and all the other terms and provisions of this Sublease shall be transferred to and continue to apply, without interruption, to the New Premises from and after the date Subtenant is required to move pursuant to this **Section 22(c)**.

(d) **Submission of Sublease for Review; Not an Offer.** The submission of this Sublease to Subtenant for review or Subtenant's signature does not constitute a reservation of, or option for, the Subleased Premises or a representation that the business terms have been approved by executive officers of Sublandlord or Sublandlord's management. This Sublease shall become effective as a sublease or agreement only upon mutual execution and delivery. A sublease which is not fully executed and delivered cannot be enforced in any manner and cannot give rise to any rights or remedies.

(e) **Interpretation of Sublease.** The provisions of this Sublease shall be construed, in all respects, without reference to any rule or canon requiring or permitting the construction of provisions of documents against the interest of the party responsible for the drafting of the same, it being the intention and agreement of the parties that this Sublease be conclusively deemed to be the joint product of both parties and their counsel.

(f) **Quiet Enjoyment.** Sublandlord covenants that, upon Subtenant's payment of the Rent required hereunder and its performance of all of the terms and conditions of this Sublease, Subtenant's peaceful and quiet enjoyment of the Subleased Premises shall not be disturbed by Sublandlord or anyone properly claiming by, through or under Sublandlord. Notwithstanding the foregoing, this provision is subject to all agreements, mortgages, encumbrances, easements and underlying leases to which this Lease may be or become subordinate.

(g) **Documentation Fee for Amendments/Assignments.** If Subtenant requests that Sublandlord prepare, review or execute an amendment to or an assignment or further sublease of this Sublease, a waiver of subordination or any other document relating to this Sublease or the Subleased Premises (except for Estoppel Certificates), then Subtenant shall pay Sublandlord a reasonable fee, not exceeding One Thousand and 00/100 Dollars (\$1,000.00) as reimbursement for the administrative and legal expenses incurred by Sublandlord in connection with such document. Subtenant shall pay such fee within thirty (30) days after billing therefore, and such fee shall be considered other rent.

(h) **Documentation Fee for Subtenant's Failure to Submit Documents.** Subtenant acknowledges that Subtenant's failure to submit any required document, certificate, report, insurance policy or certificate as and when required in this Sublease will cause Sublandlord to incur additional costs of administration, and agrees that in the event Subtenant fails to submit any required document, certificate, report, statement of Gross Sales, insurance policy or certificate as and when required in this Sublease, Subtenant shall pay to Sublandlord a "**Service Charge**" in the amount of One Hundred Dollars (\$100.00) for each week or portion thereof that said failure continues. Subtenant agrees that such Service Charge shall not constitute damages, and that neither Subtenant's payment of such Service Charge nor Sublandlord's acceptance of such payment shall result in a cure of any default under this Sublease, or waiver of any default under this Sublease by Sublandlord.

(i) **Counterparts.** This Sublease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

(j) **Financial Statements.** At any time during the Sublease Term (as may be extended), Subtenant shall, upon ten (10) days' prior written notice from Sublandlord, provide Sublandlord or any institutional lender which is negotiating with Sublandlord for interim, construction or permanent financing with a confidential current financial statement, dated not more than ninety (90) days prior to the date Subtenant receives Sublandlord's notice, and financial statements for each of the two (2) years prior to the then current fiscal statement year. Such current statement shall be prepared in accordance with generally accepted accounting principles, certified by Subtenant as being true and accurate and, if such is the normal practice of Subtenant, shall be audited by an independent certified public accountant.

23. UNAVOIDABLE DELAYS. Where either party hereto is required to do any act but is untimely in completing the act, the time attributable directly to delays caused by, but not limited to, Acts of God, hurricane, tornado, rain, snow, cold or other weather, war, civil commotion, fire or other casualty, labor difficulties, or shortages of labor, materials or equipment, government regulations, or governmental delay in approving applications or issuance of permits, or other causes (except financial) beyond such party's reasonable control shall not be counted in determining the time during which such act is to be completed. In any case where work is to be paid for out of insurance proceeds or condemnation awards, due allowance shall be made for delays in the collection of such proceeds and awards. The provisions of this **Section 23** shall not be applicable at all to excuse or permit delay of the time for Subtenant to pay Rent or other money or to obtain and maintain insurance policies.

24. SOLE BROKER. Each of Sublandlord and Subtenant represents to the other that no broker, finder, or other person entitled to compensation was involved in this Sublease, and that no conversations or prior negotiations were had with any broker, finder or other possible claimant concerning the renting of the Subleased Premises. Each of Sublandlord and Subtenant shall defend, indemnify and hold the other harmless against any claims for compensation arising out of any conversations or negotiations had by such party with a broker, finder or other person entitled to compensation.

25. ESTOPPEL CERTIFICATES AND SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT. From time to time, within ten (10) days following written notice, Subtenant shall deliver to Sublandlord a signed and acknowledged written statement in a form as may be required by Sublandlord, certifying: the date of this Sublease and that this Sublease is in full force and effect and unmodified except as stated; the monthly Rent payable during the Sublease Term; the date to which the Rent and other payments have been paid; whether Sublandlord is in default, or if there are any offsets, defenses, or counterclaims claimed by Subtenant, and if a default, offset, defense, or counterclaim is claimed, specifying the specific nature and default; and stating any additional matters requested by Sublandlord or a mortgagee. If Subtenant fails to provide such certificate within ten (10) days after request by Sublandlord, Subtenant shall be deemed to have approved the contents of any such certificate submitted to Subtenant by Sublandlord and Sublandlord is hereby authorized to so certify. Additionally, Subtenant shall execute and deliver to Sublandlord within ten (10) days following written notice, a subordination, non-disturbance and attornment agreement from Sublandlord's mortgagee subordinating Subtenant's interest in this Sublease to such mortgagee, providing Subtenant attorns to such mortgagee in the event Sublandlord's interest in this Sublease and/or the Subleased Premises is foreclosed by such mortgagee and such mortgagee agrees not to disturb Subtenant's tenancy.

26. HOTEL CONSTRUCTION AND CHANGES. Neither **Exhibit "A"** nor this Sublease is a warranty by Sublandlord that the Leased Premises or the Hotel will remain as shown. Sublandlord may relocate, increase, reduce or otherwise change the number, dimensions, or locations of the parking areas, drives, exits, entrances, walks and other common area or buildings. Sublandlord reserves the right to use portions of common area for construction-related activities and to erect temporary scaffolding in front of the Subleased Premises. Subtenant waives any claim for rent abatement, rent reduction, loss of business or damages arising out of any reasonable and temporary inconvenience or diminution in Subtenant's use and enjoyment of the Subleased Premises allegedly experienced by Subtenant during the course of any alteration, improvement, redevelopment or modernization, or during any repair activities in which

Sublandlord is engaged. No such activities by Sublandlord described in this **Section 26** shall constitute a breach of this Sublease by Sublandlord.

27. NOTICES. All notices intended to impose liability on the other party or exercise a right ("Notice") shall be in writing and sent by certified or registered mail, return receipt requested, or delivered by a nationally recognized overnight courier (such as FedEx or UPS) and in order to be effective a copy of any notice of Sublandlord's default must be sent by Subtenant to the holders of any mortgages. Notices shall be sent to the address set forth in **Section 1** or to such other address as may be designated by notice. Notices shall be effective the day after the notice was sent, or if by courier delivery, the day delivered. The purported giving of notice or exercise by Subtenant of any right, option or privilege by any means other than written notice given in strict compliance with this **Section 27** shall be null, void and of no force or effect, even if any such other means of communication succeeds in conveying actual notice. If courier delivery is refused or not able to be made, the day delivery was first attempted shall be deemed the delivery date.

28. CITY APPROVAL. The terms of this Sublease shall be subject to the approval of the City of San Diego. Sublandlord shall have absolutely no obligation to execute this Sublease or to agree to the terms set forth herein unless and until Sublandlord receives such necessary approval. Any processing fees associated with obtaining such necessary approval shall be paid by Subtenant. If Sublandlord executes this Sublease and fails to obtain such approval, Sublandlord may terminate this Sublease at any time prior to delivery of the Subleased Premises to Subtenant. Pursuant to San Diego City Charter section 225, Subtenant shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved or interested in the New Master Lease, and in any sublease, sublicense or assignment, and the precise nature of all interests of all such persons. Every person or entity proposed to have an interest in the New Master Lease must be reviewed and approved by the City of San Diego, in its sole discretion.

29. CONFIDENTIALITY. Subtenant agrees to keep this Sublease and the terms hereof confidential and hereby commits not to disclose the terms of this Sublease, whether orally or in writing, to any third party, including (by way of examples and not in limitation) other tenants or prospective tenants of the Subleased Premises, without the prior written consent of Sublandlord. However, Subtenant may disclose such terms to the employees, accountants, attorneys, lenders and other necessary advisors or governmental authorities having jurisdiction over the Subleased Premises, to the extent necessary to further the transaction contemplated by this Sublease, or as required by Applicable Law. Any failure by Subtenant to abide by this provision shall be a material default under this Sublease.

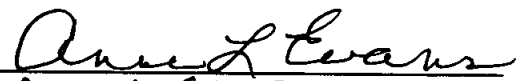
SIGNATURE PAGE TO FOLLOW

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Sublease under their respective hands and seals as of the day and year first above written.

SUBLANDLORD:

BRAEMAR PARTNERSHIP, a California limited partnership, d/b/a The Catamaran Resort Hotel

By: 
Name: Anne L. Evans
Title: Chairman, 9th Braemar Inc
its Managing General Partner

SUBTENANT:

ACTION BEACH & BAY RENTALS, INC., a California corporation

By: 
Name: Steven Pinard
Title: Vice President

ADDENDUM TO FOLLOW

ADDENDUM

This Addendum ("**Addendum**") is attached to and made a part of the Sublease. The terms used in this Addendum shall have the same definitions as set forth in the Sublease. Notwithstanding anything provided herein, if there is any discrepancy between the Sublease and this Addendum, the terms of this Addendum shall control.

30. STATUTORY DISCLOSURE. To Sublandlord's actual knowledge, the property being subleased or rented under this Sublease has not undergone inspection by a Certified Access Specialist. The foregoing disclosure does not affect Sublandlord's or Subtenant's respective responsibilities for compliance of construction-related accessibility standards as specifically provided in this Sublease.

END OF ADDENDUM

EXHIBIT "A"

Site Plan

"A"-1



MAP NOT TO SCALE



MISSION BOULEVARD

EXHIBIT "B"

Service and Operations Standards

Service Standards: Subtenant recognizes that it will provide a service at or in association with the Hotel to the Hotel's customers. As such, the management and operation of Subtenant's business is a reflection on the Hotel and Sublandlord's business. Subtenant acknowledges that it is of primary importance that its operation be run in a first-class manner that reflects positively on Sublandlord's business. This includes including (by way of example and not in limitation) the quality and condition of Subtenant's equipment, the appearance of the Subleased Premises, the quality of and service provided by Subtenant's employees, and attention to the overall customer-driven focus of Sublandlord's business.

1. **Required Services:** Subtenant will provide the following services:
 - (a) Watercraft rentals: Sail boats, pontoon boats, power boats, windsurfing boats, SUP boards, kayaks, paddle boats, fun cats and aquacycles.
 - (b) Instruction related to watercraft rentals and paddleboard yoga.
 - (c) Water taxi to SeaWorld, subject to a service term of one (1) year commencing in 2016 and subject to one (1) year renewals thereafter upon the mutual agreement of Sublandlord and Subtenant.
 - (d) Bicycle rentals: Beach cruisers, children's bikes, baby trailers/jogging strollers, surreys, tandem surreys, scooters, baskets and helmets. All bicycle rentals must include an appropriate lock.
 - (e) Beach equipment: Boogie boards, surf boards, SUP boards, wetsuits, fins, mask and snorkel sets, beach mats and other requested items.
2. **Equipment Quality Standards:** The rental equipment will be top quality and maintained in first-class working order.
3. **Safety Standards:** Subtenant will develop and implement a robust safety program, designed to ensure that its employees and agents are properly trained in the use of the equipment and that proper training is given to persons renting the equipment. The overall goal shall be to provide rentals in as safe a manner as possible. The safety program shall be subject to the prior written approval of Sublandlord, which approval shall not be unreasonably withheld. Sublandlord reserves the right, at any time, to rescind approval for particular services provided by Subtenant if Sublandlord determines in its sole discretion that Subtenant is in any way endangering the safety of its employees, persons renting the equipment, or Sublandlord's guests, agents or employees.
4. **Boat/Vessel Rental Standards:** All vessels for rent which are required by law to be registered with the California Department of Motor Vehicles shall be currently registered as rental vessels and carry proper registration numbers and stickers. All vessels for rent shall be identified through the use of distinctive markings or logos. Each rental vessel shall be equipped with a waterproof map detailing all current regulations and activity zones for Mission Bay, along with all safety equipment required by law. At all times when Subtenant is renting a vessel or vessels, Subtenant shall have at least one operational chase boat and staff available to operate the chase boat on the waters of Mission Bay. Unless otherwise allowed, no rental vessel may be stored on public property outside the Lease Premises. Sublandlord or The City of San Diego may immediately terminate any of Subtenant's rental activities which are not in compliance with this Agreement or boating laws and regulations.

5. Customer Service Training Program: Subtenant will develop and implement a robust customer service training program for its employees, subject to the prior written approval of Sublandlord, which approval shall not be unreasonably withheld.
6. Personal Appearance Standards: Subtenant's employees working on the Subleased Premises will adhere to Sublandlord's personal appearance standards. Sublandlord and Subtenant will mutually agree to a standard employee uniform, which may be altered from time to time by the mutual agreement of Sublandlord and Subtenant. Sublandlord will notify Subtenant of any of Subtenant's employees who fail to adhere to Sublandlord's personal appearance standards, and Sublandlord has the right to request Subtenant to suspend or terminate such employee's employment at the Subleased Premises.

Operations Standards:

1. Location Manager: Subtenant will have an assigned manager and primary point of contact for its business operations at the Subleased Premises.
2. Website: Subtenant will create a dedicated webpage for the Subleased Premises, subject to Sublandlord's prior written approval, which approval shall not be unreasonably withheld. Such website pages will include links to the Hotel's websites.
3. Business Plan: Prior to January 1 of each year, Subtenant will submit to Sublandlord, a business plan for Subtenant's operations at the Subleased Premises. The business plan will include plans for, as applicable, (a) advertising and marketing initiatives, (b) maintenance of existing equipment, (c) planned new equipment purchases, (d) items proposed for retail sale, (e) hours of operation, (f) changes to safety and risk procedures, (g) recruiting, hiring and training procedures, (h) employee pay scales, (i) a staffing guide and (j) a revenue budget.
4. Guest Charges: At a Hotel guest's request, Sublandlord and Subtenant will allow Subtenant's rental charges to be added to such Hotel guest's bill or portfolio with the Hotel. Subtenant will submit a charge slip form to the Hotel front desk. Sublandlord will add the charge to the Hotel guest's bill or portfolio with the Hotel. On a monthly basis, Sublandlord will pay the gross receipts for those rental charges, less three percent (3%) for credit card commissions. Subtenant will be responsible for all chargebacks on Subtenant's rentals.
5. Accidents and Injuries: Subtenant shall immediately report to Sublandlord any accident causing property damage or injury to persons on the Property. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

EXHIBIT "C"

Vessels Approved to Rent (by City of San Diego)

Catamaran Resort Equipment list November 2015

- 1 X 17' Rinker motorboat
- 1 X 19 Rinker motorboat
- 1 X 20' Hurricane motorboat
- 1 X 20 Pontoon boat
- 4 X 14' Sailboat
- 1 X 18' Sailboat
- 1 X 22' Sailboat
- 25 X Stand Up Paddleboards
- 5 X paddleboats
- 12 X Kayak
- 5 X Fun Cat electric lounge chair



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/22/2016

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PRODUCER Giddings, Corby, Hynes, Inc. PO Box 3231 Modesto CA 95353	CONTACT NAME: Sharon M. Lagier, CIC, AIS	
	PHONE (A/C, No, Ext): 209-550-3788	FAX (A/C, No): 209-550-3796
	E-MAIL ADDRESS: slagier@capax.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED Action Beach & Bay Rentals, Inc. Steve Pinard 2580 Ingraham Street San Diego CA 92106	INSURER A: Scottsdale Insurance	
	INSURER B: Liberty Mutual Insurance Corp	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 1812568575

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Liquor GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	Y		OMO0016431	8/29/2016	8/29/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$1,000,000 Liquor \$1,000,000
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☒ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y		BAA56365275	4/20/2016	4/20/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$	Y		XLO0020599	8/29/2016	8/29/2017	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				WC STATU-TORY LIMITS ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	MOLL P&I S&A Pollution	Y Y Y		OMO0016431	8/29/2016	8/29/2017	MOLL Limit \$1,000,000 P&I Limit \$1,000,000 S&A Pollution Limit \$1,000,000

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

Certificate holder is additional insured, but only with respects to Liability arising out of the operations of the named insured.

CERTIFICATE HOLDER

CANCELLATION

9th and A Ltd., a California limited partnership
DBA: Catamaran Resort Hotel and Spa
998 West Mission Bay Drive
San Diego CA 92109

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

AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/22/2016

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

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PRODUCER Giddings, Corby, Hynes, Inc. PO Box 3231 Modesto CA 95353	CONTACT NAME: Sharon M. Lagier, CIC, AIS	
	PHONE (A/C, No, Ext): 209-550-3788	FAX (A/C, No): 209-550-3796
	E-MAIL ADDRESS: slagier@capax.com	
INSURED Action Beach & Bay Rentals, Inc. Steve Pinard 2580 Ingraham Street San Diego CA 92106	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Scottsdale Insurance	
	INSURER B: Liberty Mutual Insurance Corp	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 2066932479

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Liquor GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	Y		OMO0016431	8/29/2016	8/29/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$1,000,000 Liquor \$1,000,000
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	Y		BAA56365275	4/20/2016	4/20/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y		XLO0020599	8/29/2016	8/29/2017	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	MOLL P&I S&A Pollution	Y Y Y		OMO0016431	8/29/2016	8/29/2017	MOLL Limit \$1,000,000 P&I Limit \$1,000,000 S&A Pollution Limit \$1,000,000

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

Certificate holder is additional insured, but only with respects to Liability arising out of the operations of the named insured.

CERTIFICATE HOLDER

BH Partnership
DBA: Bahia Resort Hotel
998 West Mission Bay Drive
San Diego CA 92109

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Don Charles B...

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CERTIFICATE OF LIABILITY INSURANCE

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8/22/2016

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PRODUCER Giddings, Corby, Hynes, Inc. PO Box 3231 Modesto CA 95353	CONTACT NAME: Sharon M. Lagier, CIC, AIS	
	PHONE (A/C, No, Ext): 209-550-3788	FAX (A/C, No): 209-550-3796
	E-MAIL ADDRESS: slagier@capax.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Scottsdale Insurance	
	INSURER B: Liberty Mutual Insurance Corp	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

INSURED
Action Beach & Bay Rentals, Inc.
Steve Pinard
2580 Ingraham Street
San Diego CA 92106

ACTIO-7

COVERAGES

CERTIFICATE NUMBER: 815905152

REVISION NUMBER:

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

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A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Liquor GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	Y		OMO0016431	8/29/2016	8/29/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$1,000,000 Liquor \$1,000,000
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☒ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y		BAA56365275	4/20/2016	4/20/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$	Y		XLO0020599	8/29/2016	8/29/2017	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	MOLL P&I S&A Pollution	Y Y Y		OMO0016431	8/29/2016	8/29/2017	MOLL Limit \$1,000,000 P&I Limit \$1,000,000 S&A Pollution Limit \$1,000,000

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

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CERTIFICATE HOLDER

CANCELLATION

Braemer Partnership
DBA: Catamaran Resort Hotel and Spa
998 West Mission Bay Drive
San Diego CA 92109

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

AUTHORIZED REPRESENTATIVE

Don Charles Bahr

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PRODUCER Giddings, Corby, Hynes, Inc. PO Box 3231 Modesto CA 95353		CONTACT NAME: Sharon M. Lagier, CJC, AIS PHONE (A/C No. Ext): 209-550-3788 E-MAIL ADDRESS: slagier@capax.com FAX (A/C No.): 209-550-3796	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Scottsdale Insurance	
		INSURER B: Liberty Mutual Insurance Corp	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 91239552 **REVISION NUMBER:**

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

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A	GENERAL LIABILITY	Y		OMO0016431	8/29/2016	8/29/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$1,000,000 Liquor \$1,000,000
	☒ COMMERCIAL GENERAL LIABILITY						
	☐ CLAIMS-MADE ☒ OCCUR						
	☒ Liquor						
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	☐ POLICY	☐ PRO-JECT	☐ LOC				
B	AUTOMOBILE LIABILITY	Y		BAA56365275	4/20/2016	4/20/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ ANY AUTO						
	☐ ALL OWNED AUTOS	☒ SCHEDULED AUTOS					
	☒ HIRED AUTOS	☒ NON-OWNED AUTOS					
A	☒ UMBRELLA LIAB	☒ OCCUR	Y	XL00020599	8/29/2016	8/29/2017	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000 \$
	☐ EXCESS LIAB	☐ CLAIMS-MADE					
	☐ DED	☐ RETENTION \$					
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N					WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH)	☐	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
A	MOLL P&I S&A Pollution	Y Y Y		OMO0016431	8/29/2016	8/29/2017	MOLL Limit \$1,000,000 P&I Limit \$1,000,000 S&A Pollution Limit \$1,000,000

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

Certificate holder is additional insured, but only with respects to Liability arising out of the operations of the named insured.

CERTIFICATE HOLDER

Evans Hotels, LLC 998 West Mission Bay Drive San Diego CA 92109	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--

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998 WEST MISSION BAY DRIVE SAN DIEGO, CALIFORNIA 92109 PHONE: (858) 488-0551

March 2, 2017

U.S. MAIL

Mr. Vladimir Balotsky
City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101
(619) 235-5248
vbalotsky@sandiego.gov

Re: Sublease Application for Catamaran Pier

Dear Mr. Balotsky,

Enclosed please find the Sublease Application and associated documents for the Catamaran Pier.

Sincerely,



Julia De Beers
Vice President, Legal Affairs & General Counsel
Evans Hotels

Catamaran Resort Mission Bay - Action Sports

Action Sports has been in business on Mission Bay for over 23 years. The activities and rentals offered to the Resort guests has varied over the years as guest demands have changed and as new innovations have permitted. The items listed below reflect the present offerings at the Catamaran Resort on Mission Bay.

Action Sports has always emphasized the safety of our customers as our first and most important priority. This is evidenced by the selection of the equipment rented, the care for and maintenance of the equipment, and the instruction and guidance provided to our clientele

Areas of Operation: All on water rental operations are restricted to Mission Bay North of the West Mission Bay Drive Bridge. Exceptions are made when vessels are accompanied by Action Sport Employees or piloted by one of our Skippers. On Land Rentals (bikes etc.) are not restricted but are given a map of the area with recommended bike trails and paths. (see map attachment A)

Safety Equipment: All required safety equipment is provided for every rental. Safety equipment includes, but is not limited to USCG approved Personal Floatation Device (PFD), A type B1 fire extinguisher, and whistles and helmets. Any person 12 and under must wear a PFD. All vessels over 16' long must also have a type IV throw able life jacket on board the vessel. We recommend every renter that he/she wear the PFD although they may not be required to. In addition to type II we also have type III PFDs of all sizes from Infant to XXXL. The location and operation of the safety equipment is explained during the checkout of the vessel.

Chase Boat: A chase boat is available at all times during operating hours to help retrieve boaters that have broken down or need assistance. A second chase boat is also always available from Our Dana Landing location, which is also located on Mission Bay.

Requirements to Rent: All rentals require a signed rental agreement. All agreements must be signed by an individual at least 18 years of age with proper Identification. For rentals involving motorized equipment, a valid driver's license is also required. All power equipment rentals require the Operator be a minimum of 18 years old. All customers must sign an assumption of risk agreement. Some items require working knowledge of the equipment; others have size restrictions to insure the safety of the rental customer. We require that all operators have basic ability to speak and understand the English language, as this ensures that they not only understand our check out procedures, but that they can understand law enforcement while out on the water. The renter must also have the desire and ability to listen to and understand the instructions given by staff. We have terminated many rentals because the staff feels the renter is not paying attention or is unable to comprehend the safety operation information being explained. We do not rent to anyone we feel is under the influence of alcohol or drugs. After each vessel leaves the dock, the Action Sports staff watches the operation of the vessel, as how the renter immediately operates the vessel is a good indicator of their comprehension of the safety rules. If we feel an operator needs further instruction, we use air horns and whistles to hail the operator so to bring him/her back to the dock to review the instructions again. (See attachments B thru J)

Hours of Operation- We operate 365 days per year weather permitting. We only rent during daylight hours. Operating hours adjust during the year to make certain all boats and bikes can return before dark.

List of Present Rental Opportunities:

Sail Boat Rentals – Currently we have sail boats for rent ranging from 14 to 22 feet in length. These vessels have fixed keels. Renters must be able to demonstrate an operational knowledge of the vessel. Lessons and skippers are available. We offer lessons to teach basic sailing skills for those who want to learn to sail. (Attachment B)

Catamarans – 16' Hobie Wave. These are basic catamarans designed for watersport rentals. They are difficult to capsize and easy to sail. Type II or III required for all passengers. 12 years old and under must wear PFD. A type IV must also be on board. (see attachment B)

Paddle Boats & Aqua Cycles - Self-propelled by peddling. One Type II or Type III PFD required for all passengers. Under 18 must wear PFD. (see attachment C)

Stand Up Paddle Boards (SUP) – All SUPS are now required to have a PFD on the board. Anyone age 12 and under must wear a life-vest type III PFD when operating a SUP. All boards are equipped with leashes, which attach to the SUP and to the operator's ankle, thus allowing the operator to return to the board in the event he/she falls off.

Kayaks – Single and Tandem sit-on-top kayaks which are self-propelled by the use of a paddle. PFDs are required to be on board, and anyone 12 years old and under is required to wear the life-vest type III PFD (see attachment C)

Duffys & Fun Cats – Battery powered vessels with top speeds of approximately 6 mph. Duffy boats hold up to 10 people. The Fun Kats hold a maximum of two adults and a child. Type II PFD's are required on both boats. A type IV is required on the Duffy boat. (see attachment D & E)

Power Boats - Pontoon and Runabouts from 16 feet to 23 feet in length. Power is dependent upon the given type of vessel. Operators must be 18 years old or older to operate. At type II PFD must at least be onboard for every adult. A passengers 12 years old and under must wear a type III PFD. An additional type IV PFD and a whistle and Type B1 Fire extinguisher must be onboard. Our instructional checkout provides a comprehensive overview of the Bay, specifically reviewing the varied speed zones and restricted areas. Similar to our PWC checkout, each renter or operator is provided with one-on-one instruction on the safe operation of the motorboat. After going over the complete operation of the boat, we have the renter initial each paragraph on the "check out" sheet after it is explained and confirming the renter understands each item. Guests are familiarized with the use and location of the required safety equipment. A laminated map of Mission Bay with clearly marked speed zones and the safety check out sheet is given to every renter. A duplicate copy of the contract is given to the renter, which serves as his/her "registration" while on the water. Should the renter be stopped by law enforcement, he/she can show the copy of the contract to law enforcement, thus providing all of the information law enforcement should need. (see attachment D & E)

Water Skiing - Custom Ski Boat with licensed skipper. We have a Type I PFD for a people on the towboat. A 3 or 4 buckle type III PFD is required for anyone being towed. A spotter is required and must be at least 14 years old. This person is responsible to be facing the person being towed and raises an orange colored ski flag when anyone or anything is in the water. The flag is put down when the person "up" skiing. We do not allow towing by any vessel not piloted by one of our licensed skippers. We do NOT permit anyone to rent our boats and tow anything behind the boat. We do NOT rent "towables", as Action Sports feels many renters do not have enough experience to operate the boat and tow a person. I believe we are the ONLY rental company on Mission Bay that does **NOT** allow renters to tow persons behind the boat they have rented. During the high Season (Memorial Day through Labor Day), we only take guests out waterskiing from 6am-10am and from 5pm -7pm as Mission Bay is usually too busy to waterski safely or enjoyably during the peak hours of the day during the summer months.

Bikes - Bikes (beach cruisers, kids, multi speed, etc.), Surreys and Scooters. Helmets are provided and recommended for all rentals. Helmets are required to be worn by all renters under the age of 18. Maps are available with an overview of the area. We make certain that each renter is on a bike that fits them and is properly adjusted. The safe operation of the bikes as well as a review of restricted areas is reviewed during the checkout procedure. Locks and baskets are also available upon request. (see attachment H)

Segways – A Segway is a personal pedestrian device. Segway operators can be as young as 14 years old so long as a person within the group is at least 18 years old and is operating a separate Segway. All Segway rentals include a video demonstration explaining the safe operation and proper use of the Segway. There is no replacement for an actual one-on-one physical demonstration, instruction period so during check out, the operator gets on the Segway and we show him/her how to properly operate the Segway. Renters are not allowed to depart until both the renter and the Action Sports employee feel 100% comfortable with the renter's ability to operate the Segway. Helmets are required. Closed toe shoes are recommended on all rentals. (see attachment I & J)

Conclusion

We feel we have the some strictest safety rules on Mission Bay for the following reasons:

We do **NOT** allow renters to tow behind a boat they are operating. Most others rent "towables".

We do **NOT** allow rentals after dark.

I believe we are the only rental equipping our SUPs with leashes. Allows you to stay with board if you fall off.

We only allow waterskiing with our licensed captains. We do **NOT** offer waterskiing between 11am-5pm in the summer months. Mission Bay is often has too much boat traffic for safe waterskiing.

We carry a 5 million dollar insurance policy. The City only requires 2 Million dollars. This is important because our policy lists the City of San Diego as additionally insured.

We currently operate three location on Mission Bay and feel that we operate a very safe operation. I believe the Police and Lifeguards will agree that we have nice newer well maintained safe equipment. We are proud of our 23 history with very few accidents.

CITY OF SAN DIEGO
LESSEE'S QUESTIONNAIRE FOR ALL LEASES

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

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

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

Action Beach & Bay Rentals Inc.

Exact name of proposed Lessee:

2/23/17

Date this Questionnaire completed:

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

Signature:

ARP

Title:

Vice 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 14 pages.

PROPOSED LESSEE

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

Action Beach & Bay Rentals Inc.

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

2580 Ingraham St

San Diego, CA 92109

Telephone No.: 619 226 2929

E-mail Address: steve.c.danalanding Fax. No.: 619 226 1418

.com

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

Telephone No.: _____

Fax. No.: _____

4. Proposed Lessee intends to operate as a:

Sole Proprietorship ();

Partnership ();

Corporation (X);

Limited Liability Company ();

Other

PARTNERSHIP STATEMENT

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

1. Date of Organization:

2. General Partnership (☐) Limited Partnership (☐)
Other (☐) Explain

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

Date	Book	Page	County
------	------	------	--------

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

Yes (☐) No (☐) If so, when?

If so, where?

5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3, 4 and 6; or 6, as appropriate for such entity (type proposed 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 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 Lessee is a corporation, please answer the following:

1. Type of corporation: C (☒) Subchapter S ()
2. When incorporated? May 6 1993
3. Where incorporated? San Diego, CA 92109
4. Is the corporation authorized to do business in California? Yes ☒ No ()
If so, as of what date? 5/6/1993
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: | <u>31,000</u> | <u>31,000</u> | <u>0</u> |
| b. Number of nonvoting shares: | <u>0</u> | | |
| 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: Gary Pelzer
Title: President
Address: 2484 Dos Lomas
Fallbrook, CA 92028
No. of Shares: 20,667

Name: Steven Pinaud
Title: Vice President
Address: 1170 Tourmaline St SD, CA 92109
No. of Shares: 10,333

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

LIMITED LIABILITY COMPANY STATEMENT

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

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

Manager/Officer/ Member			Share %

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

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

OTHER INFORMATION:

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

1. **Surety Information** – Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
a. Yes () No (☒)
b. If yes, please attach a statement naming the surety 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?
Yes () No (☒)
b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED LESSEE

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

REFERENCE NO. 1

Name: Don Dennis

Firm: Mission Bay Hilton Resort

Title: General Manager

Address: 1775 E Mission Bay Drive

Telephone: 619-276-4010

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

GM of Resort that we have operated
from for 10 years

REFERENCE NO. 2

Name: Harry Hasselgesser

Firm: San Diego Police Dept.

Title: Community Relations Officer

Address: _____

Telephone: 858-552-1631

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

Harry was part of the Mission Bay Police Unit

REFERENCE NO. 3

Name: PAUL AZZI

Firm: SAN DIEGO PRIVATE BANK

Title: VICE PRESIDENT

Address: 9404 GENESSEE AVE. LA JOLLA 92037

Telephone: 858-875-6900

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

REFERENCE NO. 4

Name: Ron Lane

Firm: Fast Lane Kayak

Title: Owner

Address: 2586 Ingraham St SD, CA 92109

Telephone: 619-222-0766

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

Owens the store that we have purchased
all of our Sailboats, kayaks & SUPs
from over the past 24 years.

9

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

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

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

First, Middle, & Last Name	Steven Clark Pinar
Date of Birth	10/16/67
Place of Birth	Boston, MA
Social Security Number	025 64 4439
Driver's License Number/State	B4456676
Home Address	1170 Tourmaline St SD, CA
Previous Address	
Home Telephone No.	
Employer	Action Sports
Occupation	Watersport Rentals
Business Address	2580 Ingraham St SD, CA
Business Telephone No.	619 226 1418
Business Fax No.	226 2929

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

Date 2/23/17 [Signature] Signed

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

Action Beach & Bay Rentals

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

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

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

First, Middle, & Last Name	<u>GARY JAMES PELZER</u>
Date of Birth	<u>3/30/53</u>
Place of Birth	<u>COLUMBUS / OHIO USA</u>
Social Security Number	<u>560-94-3221</u>
Driver's License Number/State	<u>A0640466</u>
Home Address	<u>2484 DOS LOMAS</u> <u>FALLBROOK, CA 92028</u>
Previous Address	<u></u> <u></u> <u></u>
Home Telephone No.	<u>760-728-3059</u>
Employer	<u>ACTION SPORTS</u>
Occupation	<u>MANAGER</u>
Business Address	<u>2580 INGRAHAM ST SD 92109</u>
Business Telephone No.	<u>619-226-2929</u>
Business Fax No.	<u>619-226-1418</u>

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

Date 2/20/17 Signed [Signature]

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

Action Beach & Bay Rentals

METHOD OF OPERATION

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

PROPOSED METHOD OF FINANCING
LEASEHOLD DEVELOPMENT

Describe the method of financing for the Leasehold purchase or nay 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.

Pay Cash for everything

ESTIMATE OF GROSS RECEIPTS

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

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

Year of Operation	Uses (Identify Each Use)				
1	\$	\$	\$	\$	\$
2					
3					
4					
5					
6					
7					
8					
9					
10					

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.

Action Sports has been operating watersport rentals on Mission Bay at several locations for 24 years.