



LEED CERTIFIED MARINA a clean and sustainable facility

APPLICATION AND MARITIME CONTRACT FOR PRIVATE WHARFAGE
SUN HARBOR MARINA

Name of Vessel Owner(s):

Note: Vessel may be owned by no more than two owners.

Co-Owner (If Any):

Owner's Mailing Address:

Email:

Owner's Driver License No.: Owner's Social Security No.:

Slip Number:

Vessel Name:

Length: Beam: Draft:

Make: Hull No.: Year:

CF OR DOCUMENTATION NUMBER:

Dinghy Information.: (Length) (Beam) (Color)

Type (Circle One): Hard Bottom/Inflatable

Check one: [ ] Power, Single Screw [ ] Power, Twin Screw
[ ] Sail Rigging Gas/Diesel (Circle One)

Vehicles: (Make & Model) License Plate
(Make & Model) License Plate

Previous Mooring Location Bank Reference: (Name/Branch)

Owner's Telephone Number (Home) (Work) (Cell)

Term of Contract: Month-to-Month

Fees/Deposits: Wharfage Fees Prorated for First Month \$
Subsequent Monthly Wharfage Fee \$
Security Deposit \$
Key Deposit \$



Monthly Fee for Approved Live Aboard\* \$ \_\_\_\_\_

(\*Living Aboard Does Not Create Residential Tenancy and Is Not Permitted Without Marina Permission and Execution of a Live Aboard Agreement)

Identify Holders of Mortgage

& Other Liens Against Vessel \_\_\_\_\_ (Name) \_\_\_\_\_ (Address)

Vessel Insured By: \_\_\_\_\_ (Insurance Co. Name)

Insurance Agent: \_\_\_\_\_ (Name) \_\_\_\_\_ (Address)

This Maritime Contract for Private Wharfage (the "Agreement") is executed this \_\_\_ day of \_\_\_\_\_, 202\_\_, between Sun Harbor Marina Partnership, dba Sun Harbor Marina (the "Marina") and the Owner(s) identified above, and whose signature(s) appears below. This Agreement does not become effective or enforceable until Owner's application has been approved and this Agreement has been executed by an authorized Marina representative. It is understood and agreed this Agreement is a *commercial contract* and does not create a bailment or a residential landlord-tenant relationship. The terms of this Agreement appear herein, and the attached Contract For Private Wharfage - Additional Terms, and in the Rules and Regulations, all of which are integral parts of the Agreement and are fully incorporated herein. It is understood that this Agreement specifies rights and obligations of the parties to this Agreement, and that it contains important term, including ones limiting the Marina's liability or exonerating it from liability. By signing below Owner affirms he/she is legally permitted and authorized by all owners of the above described Vessel (the "Vessel") to enter into this Agreement for their benefit and the benefit of the above Vessel. Owner shall signify by signing where indicated below that he/she has received a complete copy of this Agreement, has read it and agrees to abide by all its terms. In addition, for the convenience of vessel owners, copies of this Agreement are available at the Marina Office upon request by the Owner.

In the event the Vessel is owned by a corporation or other business entity rather than a single individual, the person whose signature appears below denotes he or she agrees to be held personally and severally liable, together with such business entity, for satisfaction of the duties of the Owner and Vessel hereunder, including but not limited to the obligations pertaining to payment of wharfage and other fees.

Dated: \_\_\_\_\_, 202\_\_ \_\_\_\_\_  
Vessel Owner's Signature

Dated: \_\_\_\_\_, 202\_\_ \_\_\_\_\_  
Authorized Marina Representative



## **CONTRACT FOR PRIVATE WHARFAGE – ADDITIONAL TERMS**

1. Space Assignment/Slip Use and Condition. The Marina hereby assigns to Owner the Slip identified above for Owner's exclusive use in connection with the Vessel described herein. Owner may relocate to another slip only upon obtaining the advance express written permission of the Marina. Marina shall have the right at any time, in its sole discretion and without compensation to Owner, to reassign Owner's Vessel to a different slip. Owner further agrees that Marina shall have the right, in the event of emergency or operational necessity, to immediately, and without prior notice to Owner, relocate Owner's Vessel to another suitable slip or end tie. Owner hereby grants to Marina permission to board the Vessel for the purpose of moving the Vessel to another slip, in which event it is understood and agreed neither the Marina, nor its employees, officers or agents shall be liable for any loss/damage resulting from such movement of the Vessel, or failure to move her. Owner shall not commit or permit any waste or nuisance to be committed in the slip or other place on the Marina's premises, and neither he/she nor his/her guests, agents or invitees may commit any act of waste or nuisance, indecorous conduct or any other act which might disturb the quiet and peaceful use of the premises by others at the Marina. Vessel Owner hereby acknowledges that he/she has inspected the Slip, its surrounding environs and those portions of the Marina associated with the Slip, including without limitation, the floats, walks, and gangways, and that that they are in good and safe order, and that no statement or representation as to condition has been made by the Marina. *Owner understands the Marina does not warrant the condition of the slip or surrounding environs, and that, except as otherwise provided herein, users of the docks, ramps and all other waterfront areas do so at their own sole risk.*

2. Monthly Term, Fee Structure, Fee/Deposit Increases, Non-Refundable Initial Payment, Agreement to Abide By All Terms. The wharfage fee structure is based in part upon the maximum allowable vessel size of the slip assigned. All Vessels are subject to measurement by the Marina, and the wharfage fee will be determined by computations using the then-current fee schedule in effect. Owner grants permission for the Marina to board the Vessel, without liability, for purposes of verifying measurements of her length and beam. If at any time it is determined the length of the Vessel is longer than the length represented in Attachment A, wharfage fees shall be recalculated from the first day the Vessel occupied a slip to determine the amount of underpayment, which Owner shall immediately pay following demand therefor.

Electricity is individually metered for each slip. Owner shall pay the sum invoiced for electricity to the Marina no later than the FIRST (1st) calendar day of each month, together with wharfage and any other fees due. Owner agrees to pay the base charge, even if his or her Vessel is not plugged in. Owner agrees that if he or she challenges the accuracy of the meter used to quantify the electricity used, he/she will pay all costs associated with verifying the accuracy of the meter. Owner understands that the Marina may increase wharfage and/or other fees at any time upon thirty (30) days notice to Owner. Notice of fee increases shall be deemed effective 10 calendar days after posting notice on the bulletin board, which is located at the main public entrance to the docks. The Marina may elect, alternatively or additionally, to provide notice of any fee increase by way of written notification tendered through the U.S. mail, in which event fee increases shall become effective thirty (30) calendar days after the written notification is deposited in the U.S. mails. Adjustments in slip fees shall become effective on the first day of the calendar month next following. For example, if notice of an increase is provided on January



15, the new rates would become effective March 1. Upon notification of an increase in fees, Owner may elect to provide 30 days written notice of termination of this Agreement. In the event that Owner fails to pay any new slip fee after its effective date, the parties agree that such failure shall constitute a material breach, and that the Marina may immediately terminate this Agreement as of the effective date of the fee increase. If the Marina elects to increase fees as herein provided, Owner may be required to either execute a new Contract for Private Wharfage or (at the Marina's option) execute an Amendment or other writing evidencing the new rate and any new or revised terms.

Owner's contractual right to occupy his/her assigned slip is *not automatically renewable*, but can only be renewed if Owner abides by each and all of his/her contractual duties detailed in this Agreement, including the duty to make timely monthly payment of fees. Fees are payable in advance at the time of the execution of the Agreement and on the FIRST (1st) DAY of each calendar month commencing \_\_\_\_\_, 202\_\_ [date this Agreement signed by Owner], and each succeeding calendar month thereafter. In addition the card key and security deposits described herein, Owner shall upon the execution of the Agreement and the assignment of a berthing space, tender \$\_\_\_\_\_, which sum represents prorated fees due for the remaining portion of the calendar month the Agreement is executed, on the basis of a 30-day month. This payment is non-refundable. Owner further agrees, in consideration of the use of the assigned slip, to abide by all covenants and conditions hereof, and all of the Rules and Regulations herein incorporated.

Owner shall, if requested by the Marina, provide credit card information for purposes of completing Attachment A, and he/she *specifically authorizes the Marina to utilize such information to make charges against the listed credit card, should Owner's account become two or more months in arrears*, and he/she specifically authorizes charges to continue to such card as necessary to maintain the account current.

3. Removal of Vessels During Boat Shows. It is understood and agreed that in the event the Marina participates in a boat show or similar event which requires its use of slips occupied by vessels, and the Marina provides 60 or more days advance notice, the Owners of such vessels shall be required to temporarily relocate such vessels for a period not to exceed one week, to accommodate such show or similar event. If a vessel is required to be moved pursuant to this term, the impacted owners will not be charged wharfage fees for the period their vessels are required to be absent from the Marina, and each such owner will be provided a credit on his/her account equal to two week's worth of wharfage fees.

4. Security Deposits. Owner shall pay to the Marina the sum of \$\_\_\_\_\_ upon execution of this Agreement, as a security deposit (the "Deposit"). Upon termination of this Agreement, but only after and upon the condition that Owner has vacated the space in an undamaged condition (save ordinary wear and tear) and performed all of Owner's promises under the Agreement (including payment of all fees, utility charges and other charges) and returned all access cards, the Marina shall refund to Owner the total Deposit received by Owner, less any amount necessary to pay for repairing or cleaning the Slip or any other fees or charges owed by Owner. Owner may not use the Deposit as, nor deduct it from, the slip fee for any month. However, the Marina may elect at any time to apply any security deposit to wharfage or other account arrearages, or for purposes of effecting repairs necessary due to damage to the Marina's property caused by Owner (or his/her guest/invitee), in which event the Owner shall immediately



become obligated to tender the sum necessary to replace any security deposit funds applied to wharfage fee or other arrearages, or used for such repairs and/or cleaning. Should Marina increase the monthly wharfage fee or Owner transfers to a larger slip, there will be a proportional increase in the amount of the Deposit to correspond with the new monthly fee. Owner acknowledges and agrees that no interest shall be payable by the Marina on any Deposit held by the Marina, and that Owner shall not be required to keep the Deposit separate from its general funds.

5. Key Deposit. Owner shall upon execution of this Agreement pay a \$50.00 deposit for each dock card key issued to Owner, and \$5.00 for each metal key issued. Marina reserves the right to limit the number of keys issued. This deposit shall be refundable upon return of the key(s) at the termination of the Agreement. A \$50.00 charge will be imposed for each dock card key replaced, and \$5.00 for each metal key replaced.

6. Total Sum Due -- First Month. The total due by Owner to Marina upon execution of this Agreement shall be \$\_\_\_\_\_ (i.e., \$\_\_\_\_\_ (prorated wharfage fees for first month), plus \$\_\_\_\_\_ (security deposit) plus \$\_\_\_\_\_ (key deposit).

7. Time and Place for Payment of Monthly Wharfage Fees. Owner shall tender all payments hereunder to Marina at its office or via mail addressed to: Sun Harbor Marina, 5000 North Harbor Drive, San Diego, California 92106, or such other place as may be designated. ***Payments of all fees and charges are due on the FIRST (1st) Day of each month.*** Owner further agrees to pay as any additional fees any and all excise or other taxes that may be excised or levied on or against the Vessel by any governmental agency and to maintain such taxes current. All Slip Fees not paid by the TENTH (10th) Day of the month shall be delinquent, and such delinquency shall constitute a material breach of this Agreement, in which event the Marina may immediately terminate this Agreement and pursue all remedies available in admiralty, at law or in equity. ***This Agreement shall terminate automatically and without further notice if for any reason the account for the Vessel becomes two or more months in arrears, in which event Owner shall immediately remove his/her Vessel from the Marina's premises. If the Vessel is not so removed, she will be regarded as a trespasser and wharfage fees will be assessed at the then current transient vessel rates.***

8. Failure to Pay Fees Due; Wharfage Fee Payments & Remedies for Non-Payment & Returned Checks. All fees/charges are due and payable by the FIRST (1st) DAY of each calendar month, with or without a billing statement. There will be a \$25.00 administrative fee charged for any check returned as un-payable, for any reason. After tender of a returned check Marina may require Owner to thereafter tender payment by bank check or money order. Failure to pay fees due by the TENTH (10TH) DAY of the month will result in a charge to Owner of 10 percent of all open charges. A failure to timely pay wharfage and other fees due will result in enforcement of the Marina's rights and remedies, including as appropriate those under this contract and pursuant to admiralty law.

Owner understands the maritime law provides a vessel may be arrested by the U.S. Marshal to satisfy a maritime lien arising from the provision of maritime "necessaries," including wharfage services. *Owner specifically agrees that if fees due are not paid by the TENTH (10th) calendar day of each month or if the Owner in Marina's opinion has abandoned the Vessel, the*



*Marina shall become entitled, without providing advance notice, to chain the Vessel to the slip where she lies, otherwise disable her, and/or move the Vessel to any other location in the water or on land and chain the vessel at her new location. Owner specifically agrees that if the Marina elects to move, chain or otherwise disable the vessel as herein provided, Owner shall indemnify, defend and hold the Marina harmless from and against all liability arising from or in any way connected with the chaining, disablement or movement of the Vessel. Owner shall in such event remain liable for the full amount of the monthly fees as they become due, notwithstanding the vessel has been moved and/or chained or disabled. In the event Owner fails to pay all fees due by the FIRST (1st) DAY of a month, the Marina may, at its sole election, take all measures available to enforce its remedies available in admiralty, at law and/or equity, including vessel arrest or attachment, sale of the Vessel pursuant to federal maritime law, the California Boaters Lien Law, and any other available remedy, without prior notice to Owner, and may exercise other rights herein detailed. By execution of this Agreement, Vessel Owner acknowledges that pursuant to Harbors and Navigation Code Section 501 and by the terms of this Agreement, the Marina shall have a lien on the Vessel for money which may become due under this Agreement. Owner agrees the Marina has the right to take possession and control of and remove and store the Vessel, at Owner's sole risk and expense, for the purpose of perfecting and executing upon Marina's statutory lien rights in the Vessel. Owner further understand and agrees that if all fees due are not paid by the tenth day of a month in which they are due, the Marina may, without advance notice or liability to Owner, disable Owner's access key(s). In such event, if for any reason Owner requires access to his/her Vessel, it can be obtained by personally requesting access at the Marina Office.*

*Owner understands that ordinarily when a vessel is arrested based on a maritime necessities lien for slip services provided but not paid for, attorneys' fees incurred in seeking satisfaction of such lien are not recoverable against the vessel directly, and are recoverable only against the owner of the vessel. Notwithstanding this usual rule, Owner specifically agrees that in the event the Marina causes the arrest of the Vessel in order to satisfy any maritime lien it holds encumbering the Vessel and no other liens subsist against her, attorneys' fees shall be recoverable against the vessel as part of the lien directly against the Vessel, or the proceeds derived in the event she is sold pursuant to state or federal law. Nothing in this paragraphs shall be construed as limiting Owner's personal duty to pay attorneys' fees specified elsewhere in this Agreement.*

9. Termination/Removal of Vessel Upon Breach. *All terms of this Agreement are deemed by the parties to be material and fundamental to its purposes. The Marina's obligation to provide wharfage under the Agreement may be unilaterally and immediately terminated by the Marina in the event of Owner's breach of any term herein, at which time Marina may pursue any or all of its legal, equitable and/or admiralty remedies. If Vessel Owner fails to perform any of the terms, conditions and promises as set forth in this Agreement, Vessel Owner immediately shall remove the Vessel from the Slip, shall remove all other of its personal property, if any, from the Marina, and shall surrender to the Marina the Slip and all keys to the Marina. If after termination of this Agreement by the Marina the Owner fails to remove his or her Vessel, such Vessel shall be regarded as a trespasser and wharfage fees will, without waiving objections to the Vessel's trespass, be charged based on the then current transient rate. Assuming Owner has not breached any term of the Agreement (in which event the Marina may immediately terminate this Agreement) and the Agreement is for a monthly period, it can only be terminated by either party*



by giving thirty (30) days written notice of termination to the other. In terminating the Agreement pursuant to 30 days advance notice, the party terminating the Agreement is not required to specify any cause for the termination. Deposit of a letter, postage prepaid, in the United States mail, postmarked to allow normal first class delivery to the Marina within the thirty (30) day notification period, or addressed to Owner at the address given in Attachment A to this Agreement, shall constitute notice to Owner. Oral termination of this Agreement shall NOT be effective. In the event the Vessel is vacated without the required 30 days notice, Owner shall be liable for thirty (30) days wharfage fees above any fees owing at the time of the Vessel's removal.

10. Rules and Regulations/Clean Marina Program. The Marina is committed to preserving the marine environment so others can continue to enjoy the unique and irreplaceable waters in which the Marina is situated. Accordingly, we participate in Clean Marina and other programs designed to preserve and protect waters in an around marinas. Many of the Rules and Regulations and other terms of this Agreement are intended to comport with best environmental practices, and to assure compliance with federal, state and local environmental protection statutes and regulations. Owner agrees that Marina's Rules and Regulations attached hereto and incorporated herein, and the *current version* of the Rules and Regulations posted at the Marina, and any amendments thereto, are *integral parts* of this Agreement. Owner understands and agrees the Rules and Regulations may be modified by posting revised Rules and Regulations on the bulletin board located outside the Marina office; in such event, the revised/modified Rules and Regulations shall become effective seven (7) calendar days after they are so posted. Owner understands and agrees that Marina may provide notice of modifications to Rules and Regulations, alternatively or additionally, by way of written notification tendered by U.S. mail, in which event the modification(s) shall become effective the TENTH (10th) calendar day after such notification is deposited into the U.S. mails. Owner shall comply, and shall cause Owner's family, agents, licensees and invitees to comply with the then current Marina Rules and Regulations. *Should any such person violate any Marina Rule or Regulation, Marina may at its election either provide a warning or alternatively terminate this Agreement immediately, and give Owner notice to remove the Vessel from the Slip.* If Owner fails to remove the Vessel from the Slip within five (5) business days following such notice, Marina may remove the Vessel from the Slip at Owner's risk and expense, retake possession of the Slip and take such other actions as provided herein and/or exercise remedies available at law, in equity and/or in admiralty. In the event a vessel is not removed from her slip following termination of this Agreement, she will be regarded as a trespasser and wharfage fees will accrue at the then current transient vessel rate.

11. Injury/Property Damage Caused by Irresistible Forces. Under no circumstances shall the Marina be held liable for any personal injury or property loss occasioned by fire, storm, theft, winds, acts of God or any other irresistible force.

12. Solicitors/Boarding of Vessels by Dockmaster/Independent Contractors. Owner shall not permit solicitors, other than regular employees of the Marina (and others authorized by the Marina for work deemed by it to be necessary) and full-time hands regularly employed on the Vessel while it is in the slip assigned hereunder, to access the Marina's premises. Owner shall not post any "For Sale" or similar sign(s) or notices on the Vessel or floats, gangways, docks or on any other Marina property. Dockmaster or any of his/her assistants may board any vessel at



any time, without prior notice, regardless of documentation, for health, environmental or safety purposes, or to protect the Marina or other property, and/or the public peace. Companies and/or workers hired by Owner to accomplish tasks aboard a vessel are required to sign in with the Marina office and execute a Premises Access Agreement. They are also required to carry liability insurance with minimum per occurrence policy limits of \$500,000, have a business license and provide workman's compensation insurance for employees. Owner shall verify the existence of such insurance prior before permitting work aboard his/her Vessel. The Marina does not engage in public wharfage. It is a private marina and it reserves the right to refuse access to the Marina with our without cause for any purpose that is not legally recognized as unlawfully discriminatory.

13. Assignment/Use of Slip Only By Designated Vessel. The Agreement and Owner's rights hereunder cannot be assigned or subleased by Owner without the advance written approval of the Marina. In the event Owner sells or parts with possession of the Vessel, the new owner and/or possessor shall have no right to the dock slip occupied by the Vessel, and the Agreement, at the Marina's option, may be immediately and without prior notice terminated. Owner understands that he/she is not allowed under the terms of this Agreement to locate any Vessel other than the one described in Attachment A hereto in the assigned slip, except that if (and only if) the assigned slip is *38-feet or longer* Owner may also maintain one dinghy in such Slip. The Marina must approve, in advance, all dinghies to be located in any slip. A new contract must be negotiated if either the Owner or the Vessel mentioned herein is changed. Owner shall not represent that the Slip is transferable with the Vessel and shall indemnify and hold Marina harmless for any damages resulting from such representation.

14. Marina Right to Interrupt Utilities During Repairs, Renovation, Construction and to Move Vessel In Connection with Such Purposes. In connection with the Marina's effort to maintain and improve the Marina it could be necessary to interrupt utility services and to move Owner's Vessel from her assigned slip to another location in marina. In the event the Marina determines it is necessary or appropriate for the above purposes to interrupt the power supply to the dock at which the Vessel is located the Marina shall, if practical, notify the Owner in advance of the prospective power interruption and the estimated duration of the power outage. In such event Owner shall verify the good condition of the Vessel's batteries and her bilge pump or other dewatering systems, and that they are capable of remaining operational without shore power for at least 10 days. In the event of such power interruption and notice by the Marina thereof, it shall be the Owner's responsibility to remove perishable items from any refrigerator or freezer. If the Marina deems it necessary or prudent to interrupt power for emergency or urgent repairs it may do so without prior notice to Owner. Owner agrees to indemnify the Marina from all actual or potential liability arising in connection with such power interruptions. If in connection with repairs, refurbishment or reconstruction of the Marina it is deemed necessary or prudent to move Owner's Vessel, Marina may do so at its sole cost, after first providing at least 40 days advance written notice of Owner; this notice is intended to permit Owner and opportunity to provide 30 days written notice of termination of this Agreement, should Owner object to the movement of his/her Vessel. Owner agrees to indemnify, protect and defend the Marina, and its owners, employees, officers and agents from and against all actual or potential liability arising in connection with such vessel movement, unless such liability is occasioned by its/their gross negligence or willful misconduct, which shall not be presumed and must be affirmatively proved.



15. Marina Security. The Marina provides no security protection and assumes no responsibility whatever for the personal safety of Owner or his/her guests, or for the safety of any vessels or their appurtenances. If the Marina elects to do so, it is understood such security is solely for the protection of the Marina's property.

16. Release From Soot, Smoke, Oil or Wake Damages. Owner does hereby release the Marina from any and all claims, damages or liabilities arising out of the injury or damage to Owner, his/her guests or employees, or his/her Vessel or her contents, from soot, smoke, oil, wake or any other substance existing upon, in or over waters in Owner's anchorage or other portion of its premises in San Diego, California. Owner further agrees to indemnify the Marina and save it harmless against any liabilities the Marina may now or hereafter incur, and to indemnify any third party against claims or expenses or loss out of injury or damage caused by such substances existing upon, in or over the water within Owner's anchorage or other portion of its premises at San Diego, California.

17. No General Waiver. Waiver of any provision or condition herein by the Marina shall not be deemed to be a continuing waiver or a waiver of any other provision or condition. The exercise for failure to exercise any remedy provided herein for any breach hereof shall not be deemed as a waiver of Marina's right to have that or any other remedy specified above for any other breach of the same or any other provision of this Agreement. Failure by Marina to exercise any of its rights under this Agreement or Marina's acceptance of fees or other monies after any default shall not be considered or construed to waive any right of the Marina or to affect any notice or legal proceedings theretofore given or commenced.

18. Lien Rights/Appointment of Marina As Attorney In Fact to Record Lien. Both possessory and non-possessory liens may arise against Owner's Vessel in favor of the Marina, by operation of both state and federal law respectively. *Owner agrees and understands that attorneys' fees and all other costs associated with collecting sums due under this Maritime Contract for "necessaries" shall be deemed for all purposes as part of the Marina's lien against the Vessel, notwithstanding the general rule providing attorneys' fees arising from actions based on necessaries liens are not ordinarily recoverable directly against a vessel.*

Owner represents and warrants that there is no existing sales agreement or other agreement, such as a finance agreement, which would limit the Marina's ability to impose or enforce such liens, and that Owner is fully authorized to enter into contractual agreements such as the instant one which may give rise to a lien upon the Vessel under the Commercial Instruments and Federal Maritime Lien Act or pursuant to state law. If Owner is without such authority or is unsure as to his/her authority then the following must be supplied: the name, address and telephone number of the individual or agency, if any, whom Owner believes should be contacted and informed of the possibility of imposition of liens encumbering the Vessel.

If Owner's vessel is not documented with the United States Coast Guard but instead is registered by the State of California or another State, and Owner fails to timely tender wharfage fees, it is agreed that the Marina shall be entitled to cause a lien to be recorded against Owner's Vessel and reflected on State Motor Vehicle records. The Marina reserves the right to require Owner to execute a Limited Power of Attorney to facilitate the recordation of such lien, and Owner agrees to do so within 10 calendar days following written request therefor.



19. No Waiver of Lien Rights. No action taken by the Marina in equity or at law, whether in state or federal court, shall be construed as a waiver of the Marina's maritime statutory or contractual or other rights at law, in equity or in admiralty, including its right to recover as part of its lien directly against the Vessel all costs incurred in connection with collection of fees due under the Agreement, including attorneys' fees.

20. Registration/Documentation Proof. A copy of the California Vessel Registration (D.M.V.) or United States or foreign documentation must be on file in the Marina office, together with a current photograph of the Vessel. Vessel Owner shall tender to the Marina on a yearly basis, with or without prior demand therefore, a true and correct copy of the Vessel's then current state registration or federal documentation.

21. Liability and Indemnity:

a. ***During the term of this Agreement or while the Vessel remains on the Marina's premises or in the possession of the Marina or its assignee, all risk of loss or damage to property and of personal injury and/or death shall be upon the Owner.*** Additional to all other liability limitation and indemnity provisions herein contained, Owner, as a material part of the consideration to be rendered to the Marina under this Agreement, hereby waives all claims against Marina and its officers, agents and employees for interruption of or interference with utilities, claims for damage to the Vessel, her gear and her equipment, or any goods, wares, or equipment in, upon, or about the Vessel or the Common Areas, and for injuries or death to persons including, but not limited to, Owner's family, agents, licensees or invitees, including those occurring on, in or about the Vessel or the Common Areas from any cause whatsoever arising at any time including, but not limited to, theft, fire, storm, riots, strikes, collision, insufficiencies involving the electrical and other utility systems, chaffing, sinking, Marina negligence or otherwise. Owner agrees to indemnify, protect and defend the Marina from and against all such claims. Solely for the purpose of this Paragraph, the term "Common Areas" shall include but not be limited to all areas in, on or around the Vessel, the Slip, the dock areas, the walks, floats, ramps, gangways, convenience facilities, parking areas, walkways, and roads in, around and leading to and around Marina's premises.

b. ***In the absence of gross negligence or willful misconduct by the Marina, which shall not be presumed must be affirmatively established, neither it nor its respective officers, directors, agents or employees shall under any circumstances whatsoever be charged with or liable for direct, consequential or any other damages sustained, no matter how occurring, by Owner or his/her family, employees, invitees, charterers or underwriters, including but not limited to loss of or damage to the Vessel or any other personal property caused by theft, fire, collision, chafing, dock maintenance or faulty repair, or by reason of any other cause, or for personal injury or death, even if occasioned by the negligence of the Marina or its employees, officers or agents. Owner agrees to indemnify, protect and defend the Marina from and against any and all actual or potential liability arising or potentially arising from any such damage, injury, death or other loss by Owner and/or his her/family, employees, invitees, charterers and/or underwriters. In the event Owner does not wish to be bound by the exonerations from and limitations of liability inuring to the benefit of the Marina hereunder, the Marina shall and***



*does agree not to enforce any such provisions herein, provided Owner agrees to and does pay wharfage fees in a sum equal to the transient rates currently in effect, or twice the current usual wharfage fees for non-transient vessels, whichever fee is higher. If the Owner elects to pay the higher fee and “opt out” of the said exoneration and limitation terms, it is understood all other terms and conditions herein shall remain fully enforceable, including the right to terminate this Agreement without cause upon providing 30 days advance notice.*

c. Marina contracts for wharfage and sets wharfage rates only upon the basis of insured and limited liabilities as set forth herein. It is therefore agreed that in the event any exoneration of liability provided herein in favor of the Marina is determined by a Court of competent jurisdiction to be unenforceable, or determines damages have occurred as a result of the Marina's gross negligence or willful misconduct, the Marina's liability shall be strictly limited to a sum equal to the per occurrence limit of the policy of insurance which the Owner is required hereunder to obtain naming the Marina as an additional insured. Owner is strongly encouraged to consult with his/her broker as to the advisability of maintaining coverage limits and types additional to those required hereunder. In no event shall Marina be liable for any consequential damages whatsoever, including, but without limitation, delay, loss of use, detention, demurrage, towing and pilotage.

22. Insurance/Proof of Current Registration. Owner shall have in effect bodily injury, property damage, pollution and salvage insurance for the protection of the Marina and others with a minimum coverage limit of \$500,000 per occurrence. Owner shall, before locating his/her Vessel at the Marina, provide an original or a true and correct copy of the Vessel's Certificate of Insurance evidencing such coverage, with a combined minimum limit of \$500,000 per occurrence. The Marina, including its employees and agents, and the Port of San Diego shall be named as additional insured. The policy or policies obtained by Owner as required hereunder shall be primary to any policy of insurance maintained by the Marina. A current Certificate of Insurance shall be maintained on file with the Marina at all times during the term of the Agreement, and Owner agrees it is his/her sole responsibility to ensure a current Certificate of Insurance is tendered to the Marina. Such insurance policies shall provide for notice to be given to the Marina in the event the policy is canceled or not renewed. Owner shall be responsible, with or without demand, for tendering a copy of the Vessel's current registration/documentation and Certificate of Insurance, so current copies are always maintained by the Marina. Owner agrees to provide written notice to Marina of any change in insurance carrier, insurance agent or policy number, within 5 days of the occurrence of any such change.

23. Physical Inspection. Owner agrees that upon the arrival of his/her Vessel, and from time to time thereafter as the Marina may in its sole discretion determine is necessary for purposes of health and/or safety, the Vessel shall be subjected to physical inspection and approval by the Marina; failure to permit such inspections will be regarded as a fundamental breach of the Agreement and such failure will automatically terminate the Marina's obligation under the Agreement to provide wharfage services.

24. Documentation/Registration and Condition of Vessel. Owner shall keep his or her Vessel in a clean, well maintained and operable condition at all times during the term of the Agreement. The determination of adequacy of a vessel's appearance is within the *sole discretion*



*of the Marina.* If equipped with an engine or motor, it must be operable and capable of producing sufficient way to make the Vessel maneuverable. If the Vessel is a sailboat without an engine, she must be equipped with sails, and her standing and running rigging must be seaworthy. Owner warrants that the Vessel is properly documented or registered pursuant to the laws of the United States and/or the State of California, or a foreign nation, and that the Vessel is in compliance with all applicable U.S. Coast Guard safety regulations. Owner shall maintain the Vessel's appearance, including regular cleaning, maintenance and replacement of all painted and varnished surfaces, all bright work, rigging, safety equipment and any other appurtenances of the Vessel. Marina shall be the sole judge of the adequacy of the Vessel's condition and maintenance.

25. Use of Vessel for Pleasure Only. Owner shall use the Slip for the Vessel only. Owner further warrants that the Vessel will be used for pleasure purposes only and not in any commercial undertaking, including but not limited to chartering operations, and that the Owner will not engage in any commercial purpose without prior written permission of the Marina. Owner agrees to vacate the Vessel from the Marina's premises whenever said Vessel is used for other than pleasure purposes, unless such use is expressly authorized in advance, in writing, by the Marina.

26. No Living Aboard/Limited Overnight Accommodations. In the absence of the written permission of the Marina, living aboard the Vessel by the Owner or any other person is strictly prohibited. For purposes of this Paragraph, being aboard a Vessel after 10:00 p.m. shall be construed and regarded for all purposes as being aboard "overnight." Staying overnight aboard a vessel for a collective total of 10 days in any 30 day period shall be regarded as "living aboard," and shall constitute a fundamental breach of this Agreement. In such event, this Agreement shall terminate automatically, without notice, the Vessel will be regarded as a trespasser with current transient wharfage rates imposed, and the Owner shall immediately remove the vessel from the Marina's premises. If the Marina permits living aboard the Owner will be required to execute a separate Live Aboard Agreement and to pay an associated fee which may be changed in the same manner specified for changes in wharfage rates. Unless otherwise permitted by the Marina in writing, only adults (18 years or older) may live aboard any vessel, no more than two people may live aboard a vessel, and no one may live aboard a vessel less than 35-feet in length.

27. Slip Vacancy/Extended Absence. Owner agrees that Marina may use the Slip when temporarily not in use by Owner, without compensation to Owner. Further, Owner shall notify the Marina in writing if the Vessel will not be in the assigned space at the Marina for any period exceeding seven consecutive (7) days. In such event, Owner agrees Marina may assign another vessel to the Slip during the period of the absence of Owner's Vessel; if another vessel is so assigned to the Slip during such period of temporary absence, Owner understands and agrees Owner will remain responsible for payment of the current monthly slip fees. To assure the assigned slip is available upon a Vessel's return, in the event the Vessel is absent from her slip for seven (7) or more consecutive days, Owner is required to provide Marina at least 72 hours advance notice of the date and time the Vessel will return to her slip. In the event the Vessel is absent from her assigned slip for a period exceeding 30 days, and the Owner has failed to notify the Marina of an extended absence as herein required, the Marina may elect to terminate this



Agreement without advance notice and assign the slip or wharf space to another vessel. In such event of non-notification, Owner shall remain liable, in addition to other fees then owing, to tender a sum equal to 30 days wharfage fees.

28. Electrical Extensions/Dock Power Connections. All electrical cords and adaptors connected to the dockside power receptacle must be of a type approved for marine use. The use of electrical extensions, cords, connectors and similar items are at the sole risk of Owner or other user and the Marina shall not be liable for damages caused by or as a result of the use of any such item or any electrical appliance. All shorelines, adapters and dock-side male plugs MUST be equipped with an acceptable ground and weather-proofing in accordance with Article 555 of the National Electrical Code. GFI protection is not provided at the electrical pedestal. The owner is responsible for providing GFI protection when using the provided electricity.

29. Overboard Discharges. Overboard discharges of heads or holding tanks is forbidden by law and by Marina's rules; violation of these terms is grounds for immediate eviction and termination of the Marina's obligations to Owner under the Agreement. If the Vessel is equipped with a head or other permanent installation designed to hold human waste, the Vessel must be equipped with a marine holding tank. Owner agrees to permit inspection of such heads/installations upon demand by Marina.

30. Reporting of Damage. Any damage to Marina property or another's property located on Marina property caused by Owner's Vessel or Owner's guests/invitees must be reported by Owner to the Marina immediately.

31. Securing Vessel. At all times during which the Vessel is berthed at the Slip, Vessel Owner shall cause it to be safely and properly secured to its Slip in a manner acceptable to the Marina. This is the Owner's duty alone. However, if the Marina deems it necessary to re-secure the Vessel for any reason, Vessel Owner agrees to pay the Marina a reasonable service charge, in the minimum amount of \$25.00, for doing so plus the cost of all materials used therefore. However, the Marina assumes no responsibility for the safety of the Vessel and will not be liable for fire, theft or any damage to said Vessel, its equipment, or any property in or on said Vessel by reason of Marina's decision either to re-secure said Vessel or to not re-secure said Vessel.

32. Damage to Marina Property by Owner, Etc. In the event Marina property is damaged or destroyed by any negligent conduct by Owner or his/her guests or invitees, or the negligent failure of Owner to maintain or operate his/her Vessel, Owner shall immediately, upon demand by the Marina and presentation to Owner of a statement of damages, tender full payment to the Marina to cover the cost of such damage(s) or loss(es).

33. Effect of Damage or Destruction. In the event of damage to or destruction of the Marina or the Slip by fire, flood, earthquake, or any other cause or causes, the Marina shall have the option to: (1) treat this Agreement as continuing and repair or restore the Marina or Slip to their condition before such damage or destruction within thirty (30) days of the occurrence of the same or, if insured, within thirty (30) days after the Marina received permission from the insurer to proceed with repair or restoration; or (2) terminate this Agreement and all further



obligations hereunder of either party by written notice to Vessel Owner. After the occurrence of such damage or destruction, the Vessel Owner's obligation to pay fees hereunder shall be abated in an amount which the Marina, in its sole discretion, shall determine to be proportionate to the area of the Slip tendered unfit for use by Vessel Owner during the period of repair or restoration.

34. Apportionment of Costs Incurred in Providing Storm Protection. Owner is solely responsible for the safety of his/her Vessel, and Owner agrees that the Marina shall have no obligation whatever to take action(s) in advance of or during a storm, or otherwise, to preserve or protect Owner's Vessel. It is further agreed, however, that the Marina may, at its sole election, undertake such actions during or in advance of a storm or other threatened unfavorable weather as it alone deems appropriate and/or necessary to preserve or protect any or all vessels located on its premises. In such event it is agreed that Owner shall indemnify and hold the Marina harmless for any and all personal injury or property damage occurring in connection with the Marina's efforts to preserve or protect vessels during or in advance of a storm. It is further agreed that if the Marina provides such preservative/protective services during or in advance of a storm, all costs associated with such rendering of such services shall be apportioned equally among all Vessel owners.

35. Removal of Unseaworthy Vessel or Vessel In Disrepair. If Owner's Vessel is in a sinking condition, in a state of disrepair as determined by the Marina, or if she is deemed by the Marina to pose a health, safety or pollution risk, the Marina may, but is not required to, remove the Vessel from the water and dry store her, both at Owner's sole risk and expense.

36. Failure to Vacate. If Owner fails to pay wharfage or other fees as required herein, or if he/she fails to remove the vessel from the Marina's premises following termination of this Agreement, it is agreed the Vessel will be regarded for all purposes as a trespasser. It is agreed that in such event the Marina shall charge wharfage fees for the Vessel at the then current transient vessel rates until such time as the Vessel is removed or disposed of as provided by state and/or federal law.

37. Vessel Abandonment -- Disposal At Owner Cost. In the event Marina terminates this Agreement by providing written notice to Owner (at his/her last known address) of such termination, or in the event of an automatic termination of this Agreement as provided for above, Owner shall immediately remove his/her Vessel from the Marina's premises. After the date of such termination wharfage rates for the Vessel, which will be regarded as a trespasser, will be calculated at the then current transient vessel rate. If for any reason the Vessel is not removed within 60 days of the date of termination of this Agreement it is agreed the Vessel shall be conclusively regarded for all purposes as having been abandoned. The Vessel shall also be conclusively deemed abandoned if wharfage fees are two or more months in arrears, unless the Owner notifies the Marina in writing the Vessel has not been abandoned; in such event the Vessel shall be deemed abandoned if the Owner fails to remove the Vessel from the Marina within 30 days of the date the Owner provides notification the Vessel is not abandoned. If the Vessel is deemed abandoned as provided herein, the Marina shall become entitled to dispose of the vessel in any manner, including but not limited to destruction, public or private sale, or any other means. If the Vessel is disposed of in such manner, Owner shall indemnify, protect and defend the Marina and its employees, officers and agents from and against all actual or potential



liability (including but not limited to legal claims, liens and judgments) arising from or in any way pertaining to such Vessel disposal. If the Marina elects to dispose of a Vessel by way of destruction it will cause an in water condition and valuation survey to be completed in advance, and will cause public notice of the intended disposal to be published in a publication of general circulation in San Diego County, California for at least seven (7) days in advance of such disposition. In addition to wharfage fees, the Owner shall be liable for and indemnify the Marina from and against all actual or potential liability relating in any way to the removal and/or disposal of Owner's Vessel, and for the costs of such disposal, including but not limited to surveying costs, disposal costs, storage costs, and legal fees.

38. Mediation, Arbitration, Attorneys' Fees, Choice of Law, No Restriction on Marina's Right to Seek Vessel Arrest if Abandoned or In Arrears. In the event a claim arises under or pertaining in any way to this Agreement that is not resolved informally between them, Owner and the Marina agree they shall submit such dispute for consideration by a mediator to be selected mutually by the parties within 10 calendar days of the date either party requests mediation. Mediation shall take place at the earliest mutually convenient time in San Diego County, California. This does not include any claims the Marina has *against the vessel* for her debts or torts. If the parties are unable to agree on a mediator, they shall each submit three nominations to the American Arbitration Association and request it randomly select a mediator from these nominations. Mediation shall take place as soon as reasonably possible. If the matter is not resolved to the satisfaction of both parties following such mediation, it is agreed the dispute shall thereafter be submitted as soon as reasonably possible for decision by way of binding arbitration, to occur in San Diego County, California under the auspices of the American Arbitration Association. Mediation and arbitration fees shall be shared equally by the parties. It is agreed that in the event Owner or Marina refuses to submit a dispute for resolution as described in this paragraph, and instead institutes a lawsuit, such party shall not recover attorneys' fees from the other party, even if the former prevails in the litigation. If the matter is submitted for decision by way of binding arbitration, it is agreed the Arbitrator shall be charged by the parties with determining which party is the "prevailing party," and with awarding reasonable attorneys' fees and all costs incurred in connection with the arbitration to such party. This determination shall be within the Arbitrator's unfettered discretion. In resolving any dispute between Owner and the Marina the Mediator or Arbitrator shall apply the statutory and General Maritime Law of the United States; to the extent such federal law does not exist, California law shall be applied. The parties may elect to provide the Mediator and/or Arbitrator with confidential briefs, the body of which shall be double spaced and shall not exceed 15 pages in length. ***Notwithstanding anything to the contrary herein, nothing in this Agreement shall be construed to limit in any way the Marina's right to seek recovery directly against the vessel in an in rem action in a U.S. District Court for liens based on the debts and/or torts of the Vessel; unless the Marina agrees to do so in writing, such claims against the Vessel are not restricted by or subject to the mediation and arbitration provisions herein.*** The intention of this Paragraph is to require mediation and arbitration only of claims the Owner(s) might have against the Marina, or claims the Marina might have against the Owner(s), and not claims the Marina might have against the Vessel.

39. Marina's Right to Eject Owner for Noncompliance With Terms of the Agreement. Each and every term herein contained is fundamental to the Agreement, and it is therefore agreed



that if Owner fails to comply with any provision herein contained, such failure shall be deemed a fundamental breach of the Agreement. It is agreed that, in such event, the Marina shall have the unfettered right to immediately terminate this Agreement and require the Owner to remove the Vessel from the Marina's premises.

Except as otherwise provided herein, in the event Owner fails to comply with any term appearing in any part of this Agreement, the Marina shall be entitled to require the Owner to vacate his/her vessel within 24 hours of the time of the notice. In the event Owner breaches any term of this Agreement which in the Marina's sole opinion results in an actual or potential hazard or security risk to persons or property located at the Marina, the Marina may require Owner to remove his/her Vessel immediately and without further notice. In addition to other remedies available to it and without waiving such remedies, if the Marina requires a Vessel Owner to remove his/her Vessel from the Marina and the Owner fails to do so after demand is made pursuant to the terms of this Agreement, the Marina may elect to move the Vessel to another location either in or out of the water and store her there, all at Owner's sole risk and expense. In such event, Owner shall indemnify, protect and defend the Marina from and against all actual or potential liability related in any way to such vessel movement and/or storage.

40. Salvage Services. The Marina has no obligation whatever to dewater or provide any salvage service to the Vessel should she spring a leak or otherwise need assistance in remaining afloat or in seaworthy condition. It is agreed that the Marina, in its sole election, may elect to dewater or provide the Vessel with other salvage services. In the event the Marina determines the Vessel is in need of dewatering or other salvage services and the Marina elects to provide such services, Owner shall be obligated to pay all material/labor costs associated with the rendering of such services or \$150 plus material costs for each hour such services are provided, whichever sum is greater, and Owner shall indemnify, protect and defend the Marina from and against all actual or potential liability there from arising or relating.

41. Tender of Required Notice(s). All written notices to Owner required by this Agreement shall be mailed first class regular mail to the Owner's address indicated on Exhibit A. It is Owner's sole responsibility to notify Marina of any change of this address, and Owner agrees that notice sent to the Owner's address as listed in Exhibit A shall be conclusively deemed as legally effective. Notice by Owner to Marina shall be mailed via First Class U.S. mail to: Sun Harbor Marina, 5000 North Harbor Drive, San Diego, California 92106. Marina reserves the right to change its address for notification purposes by providing written notice of such change to Owner at his/her last known address.

42. Agreement As Complete Expression Parties' Understandings. The Agreement contains a complete expression of the Agreement between the parties hereto and there are no promises, representation, agreements, warranties or inducements except such as are made herein and fully set forth. No alterations of any of its terms, covenants or conditions shall be binding unless reduced to writing and signed by the parties hereto. It is agreed that all of the rights, remedies and benefits provided by the Agreement shall be cumulative, and shall not be exclusive of any other of said rights, remedies, and benefits, or of any other rights, remedies and benefits allowed by law. The subject heading of the Sections of the Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.



43. Waiver & Severability. The failure of Marina to insist upon the performance of any term hereof, or the waiver of any breach of any term hereof, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provisions. In the event any term or condition herein contained is held to be invalid, the parties agree the remaining provisions shall be deemed to be in full force and effect, as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

44. Owner's Legal Capacity. The person signing below as the "Owner" attests that he/she is legally entitled to bind the Vessel and all of her owners to all terms of this Agreement, that in the event the person signing below is not the sole owner of the Vessel he/she has obtained the express permission of all persons with an ownership or equitable interest in the Vessel, and that he/she at the time of reviewing/executing this Agreement is not under the influence of alcohol or any legal or illicit drug, and that he/she has reached the legal age of majority, and that he/she is not legally incapacitated or otherwise unable to fully understand and appreciate the terms contained herein.

Owner's Initials or Signature: \_\_\_\_\_



## RULES AND REGULATIONS

Note: These Rules and Regulations constitute an integral part of the Contract for Private Wharfage. They are for the benefit the Marina and all of all those who maintain a vessel at the Marina. Boat owners are requested to notify the Marina of any unsafe or hazardous conditions that come to their attention.

1. **Water/Power Lines.** Water, telephone, cable or power lines shall not cross main head walks.
2. **Safe Mooring.** All boats shall be moored in a safe manner.
3. **Vessel Inspections.** The Marina reserves the right to inspect all boats to determine if they are properly identified and equipped for safe operation in accordance with Coast Guard Regulations and other applicable regulations.
4. **Fishing/Swimming.** Fishing or swimming from Marina premises shall not be permitted.
5. **Bicycles/Skates, Etc.** No person shall roller skate, roller blade, skateboard, ride bicycles, motor scooters or motorcycles on the docks or gangways located at the Marina.
6. **Projections Beyond End of Berth.** The maximum distance by which any boat (including alt extensions such as swim steps, booms, bait tanks, etc.) may project beyond the end of the berth into the waterway, unless otherwise authorized by the Marina in writing shall be 3 feet. No part of the boat shall extend over the main head walk.
7. **Electrical Connections.** In accordance with the National Electrical Code, Article 555, all connections made to the Marina receptacles shall be U.L. approved weatherproof, three wire, grounded type. Wiring must be of adequate size for the power provided. Cords may not be affixed to the docks.
8. **Children.** Children under 12 years are not permitted on floats without the immediate presence of their parents or other responsible adults. Non-swimmers or toddlers are requested to where life jackets when on the docks or boat decks. Children under 18 must have adult supervision while on the Marina docks.
9. **Notification of Unsafe Conditions.** Tenants shall promptly notify Marina of any unsafe or hazardous condition that comes to their attention.
10. **Hazardous Activities/Barbecues.** All high-risk fire hazards, i.e., refueling boats at dock side, storing flammable material on docks, etc. is strictly prohibited. Barbecues are strictly prohibited on all dock areas. Use of charcoal barbecues is not allowed on vessels.
11. **Discharges from Vessels/Disposal of Liquids.** No tenant shall throw, discharge or deposit from any boat or float any refuse matter, oil, spirits, inflammable liquid, oily bilges in to water or Marina premises. All such matter shall be deposited at appropriate disposal sites. Vessels with automatic bilge pumps shall be maintained in such a manner as to prevent the discharge of contaminants overboard. Marina prohibits the use of detergents and emulsifiers on fuel or oil spills. Marina requires tenants to use oil-absorbing materials in vessel bilges and in boat slips. In the event of a spill, the Vessel Owner is required to clean it immediately, and if necessary retain the services of a professional pollution response company. Marina prohibits open containers of paints or other maintenance supplies on the docks. Liquids must be stored only in sealed containers aboard the Owner's vessel or off the Marina's premises.
12. **Use of Chlorinators.** Use of boat toilets not equipped with chlorinators or effluent treatment or storage devices shall not be permitted within the Marina. The Marina reserves the right to inspect all boats for installation and proper operation of such devices.
13. **Laundry.** There shall be no laundering or drying of wearing apparel or towels on deck or rigging at the Marina. Washers and dryers are available at the restroom facilities near the Marina Office.



**14. Noise and Conduct.** Owner shall not make or allow any disturbing noises on the docks or anywhere on the premises, with particular emphasis between the hours of 10:00 p.m. and 7:00 a.m., either by Owner or his/her family or guests, nor shall Owner permit such persons to engage in any conduct which will interfere with the rights, comforts or convenience of others. The activities and conduct of Owner and/or Owner's family while on the Marina's property must be reasonable at all times. Except for entering or leaving the slip or as necessary in an emergency, main engines, power-generation equipment, or other noise-making machinery shall not be operated between the hours of 5:00 p.m. and 9:00 a.m. without prior permission from Marina. Halyards shall be secured to eliminate noise. Owner assumes full responsibility for his/her guests' conduct and agrees to be held jointly and severally liable for all consequences of his/her guests actions or misconduct. Owners are not permitted to have parties on the dock without prior consent of the Marina.

**15. Engine Operation.** Engines may not be operated in gear while boats are secured to dock. Unnecessary operation of engines in the slip shall not be permitted.

**16. Speed Limit.** The speed limit within Marina is steerage only, with no wakes and not greater than 5 knots.

**17. Improper Vessel Handling.** Improper or unsafe boat handling shall be just cause for immediate termination of the Owner's Maritime Wharfage Contract.

**18. Use of Floats.** The use of docks/floats to store or place supplies, materials, accessories, or gear of any kind shall not be permitted within the Marina.

**19. Boarding Steps and Other Dock Obstructions.** Anything left on docks or other areas of the Marina pose potential hazards to all on the premises. The safety of those on Marina property is a matter of paramount importance. Therefore, apart from approved boarding steps, nothing may be left on the docks or other places located on the Marina's premises. If not stored aboard Owner's Vessel, water hoses may be coiled and placed on the hook provided on the electrical pedestal. Hoses must be disconnected from the dockside connection and the vessel at all times when not actively being used. Power cords may not be placed on docks, and instead must be placed within raceways existing in the docks. Temporary, removable, non-affixed, non-secured dock steps used for ingress to and egress from a vessel shall not be wider than one-half ( $\frac{1}{2}$ ) of the width of the finger to which the Vessel is moored, and no more than three feet in length. The steps must be of a light weight construction and approved in advance by the Marina. The Marina reserves the right to prohibit storage within dock steps.

**20. Vessel Repairs.** Apart from work accomplished wholly below decks, no rebuilding, hull painting, sander use, spray gun use, overhauls or other refurbishment efforts are permitted. However, normal and customary maintenance shall be permitted.

**21. Damage to Marina Property.** Each tenant will be held responsible for any damage to the Marina premises and/or structures (including docks, ramps, electrical pedestals and/or utilities) caused by tenants, his guests, agents and/or employees.

**22. Repair of Damages Caused by Owner.** Such damage will be repaired or corrected solely by Marina at the expense of the tenant.

**23. Offensive or Harmful Conduct.** Disorder, depredations or indecorous conduct by tenant or his visitors that might injure a person, disturb other berth tenants, cause damage to the property or harm the reputation of the Marina shall be just cause for immediate termination of the Vessel Owner's Maritime Wharfage Contract.

**24. Solicitations.** It shall be unlawful for any unauthorized person to solicit business or offer for sale goods, wares, merchandise or services, or solicit orders for such sales on the premises of the Marina.

**25. Posting of Signs.** Unauthorized advertising signs, for sale signs or notices are prohibited aboard any boat in the Marina or on Marina premises.

**26. Commercial Use of Vessel.** Use of any boat moored at the Marina for commercial purposes is not permitted without the prior written approval of the Marina.

**27. Responsibility for Damages.** The Marina is not responsible for any losses on or damage to boats at the Marina. Each tenant will be held responsible for damage which he and/or his boat may cause to other boats or structures in the Marina.



**28. Small Boat Storage.** With respect to all slips under 38 feet in length, sabots, inflatables, kayaks, canoes, dinghies and other auxiliary craft must be stored on the Vessel. With respect to slips 38 feet and larger, Owner may place one dinghy in the slip, provided that it does not protrude beyond the confines of the slip. None of these types of small boats may be launched from Marina docks unless the Owner of such boat(s) is entitled as a party to a current and valid Maritime Wharfage Contract to use the Marina's dock space.

**29. Amendment of Rules/Statutes/Regulations.** The Harbor Ordinances, Marina Rules and Regulations set forth herein and as they may be amended from time to time and all other regulations established by regulatory bodies having jurisdiction shall form a part of the Maritime Wharfage Contract as though printed herein.

**30. Television Antennas.** No television antennas will be permitted on Boats moored in the Marina.

**31. Unauthorized Moorage.** No boat may be moored at Marina unless a current Maritime Wharfage Contract is in effect between the Owner of said boat and the Marina.

**32. Use of Approved Equipment/Alterations to Docks & Premises.** All equipment used on floats by tenants (dock wheels, boarding ladders, etc.) must be of a type approved by Marina. Boat Owners may not install additional dock lockers, fenders, bumpers, rub rails, rollers or in any way make alterations to the dock and fingers. All installations must be approved by the Marina on an individual basis. All installations on the floats shall be installed by Marina personnel. Cost of such additional installations will be charged to the slip tenant.

**33. Transfer of Interest in Vessel.** When a slip tenant sells or otherwise transfers his interest in his boat, he may, upon prior approval of the Marina, continue renting the slip providing he obtains another boat of appropriate size and condition within 30 days. Failure to do so, or otherwise make arrangements with the Marina, will result in the cancellation of Owners Boat Berthing Agreement.

**34. Parking.** The Marina will upon request issue parking permits for each passenger vehicle owned by the Owner. However, only one parking space is provided and allowed for each slip at the Marina, unless otherwise authorized by the Marina in writing. Therefore, Vessel owners may park only one vehicle in a parking space, even if they have been issued more than one parking permit for multiple vehicles. If a vessel Owner will be aboard his or her Vessel but not occupying a parking space at the time, one guest of the Owner may be issued a temporary parking permit, which shall be available at the Marina Office. It is understood and agreed that any vehicle parked for more than 72 hours is subject to being towed at the owner's sole expense and risk. Parking is permitted only in spaces expressly marked for use by Sun Harbor Marina. Vehicles parked in any other spot, which are not controlled by the Marina, are subject to being immediately towed. The washing and maintenance of vehicles in the parking lot is prohibited.

**35. Maintenance of Slip and Surrounding Environs.** Owner agrees to maintain the Slip, the walks, floats, ramps, gangways and docks in, about and surrounding the Slip in a neat, clean and unobstructed condition at all times. Should it become necessary for Marina to maintain the area in said condition, it will be done at Owner expense.

**36. Disposal of Refuse:** Owner shall not deposit into any garbage can or other receptacle located on Marina property any of the following: (1) paint, varnish, thinner, non-edible oil or other flammable or hazardous materials; (2) vessel parts, including but not limited to engine machinery parts, interior parts, fastenings or upholstery; or (3) any item weighing in excess of 20 pounds.

**37. Pets.** No pet is permitted on the Marina's premises unless the Marina Manager meets and approves the presence of such pet, in advance. Before any approved pet shall be permitted on the Marina's premises the Owner shall first provide the Marina Manager with the following: (a) a photograph of the pet; and (b) a writing identifying the type and breed (if any) of the pet, and the license number (if license is required for the pet) and identity of entity issuing the license. Unless actually aboard Owner's Vessel, all pets must be attended at all times and shall be on a leash or in a cage during transit. No pet may be tied or otherwise secured to any part of the premises. Owner shall endeavor to prevent pets from defecating or urinating on Marina premises. If a pet fouls the premises despite the Owner's efforts to prevent it, Owner shall immediately clean the area and properly dispose of waste. Marina shall be the sole judge of whether owner's efforts to control animals and pets are adequate. Animals may not be left unattended aboard Owner's vessel for any period exceeding 12 hours. Any violation of this Rule pertaining to pets while on the Marina's premises shall be deemed material, and in such event Marina may immediately terminate any authority granted permitting the pet on the premises and/or immediately terminate the Owner's Contract for Private Wharfage.



38. **Hose - Nozzles.** Hoses present on a dock can present a trip hazard, and hoses can burst if deteriorated and the water is turned on. Hoses therefore may not be connected or placed on docks unless they are actively being used. When not in use they must be stored aboard the Owner's vessel. Automatic shut-off nozzles must be attached to hoses in order to conserve water.

39. **Working on Vessel.** That apart from ordinary maintenance, no work involving the Vessel may be accomplished while at the dock or otherwise on Marina property. Prohibited work includes, but is not limited to, hull painting, heavy sanding, use of paint remover, spray guns, or the burning of paint on the topsides or above the decks. Vessel Owners are required to recover and dispose of all sanding dust. Work of any kind aboard the Vessel, including routine maintenance (as limited above) to be undertaken by other than Owner, must be approved in advance of such work, in writing, by the Marina. Contractors hired by Owner to work on the Vessel must be approved by the Marina prior to the commencement of such work, and each such contractor must maintain and provide proof of liability insurance in an amount of at least \$500,000. and workman's compensation for employees. Owner further agrees to comply with all posted rules and regulations of the Marina and/or all other governmental entities insofar as such rules and regulations pertain to mooring, berthing and other uses of facilities and waters in the San Diego, California area.

40. **Flammable Materials.** Neither Owner nor anyone acting on his/her behalf shall burn paint or use flammable materials without the prior written consent of the Marina. Owner agrees not to store any flammable materials anywhere on the Marina premises, including within any boarding steps, except that as deemed necessary by the Owner such materials may be placed below decks aboard Owner's vessel, at his or her sole risk and liability.

41. **Fishing and Fish Cleaning.** Fishing is not allowed in the Marina under any circumstances from boats or docks. No fish cleaning is permitted on the docks or in the slips.

42. **Articles Left in Storage Locker.** The Marina is not responsible for any article remaining in Owner's storage locker once Owner has moved his/her Vessel or abandoned his/her Vessel. Owner further agrees that the Marina, in its exclusive discretion, may remove and dispose of any such articles left behind in which case all proceeds derived from such disposal, if any, shall become the sole property of the Marina.

43. **Storage of Equipment.** Owner shall not store or leave any items on the floats, docks, fingers or landings, including plants, bicycles, dinghies and other items. Bicycles must be stored on the Vessel or on any dedicated bike rack the Marina elects to provide.

44. **Maintenance Best Management Practices.** Owner and Owner's contractors must adhere to the following procedures. Sun Harbor Marina is a certified "Clean Marina" and failure to follow these policies /procedures will result in immediate termination of the Owner's Maritime Wharfage Contract:

**Policies.**

1. All contractors, independent contractors and self-employed boat workers hired by Owner must show proof of insurance in the amount of \$500,000, a current business license, workman's compensation for employees and register with and receive prior approval from the Marina before beginning work on the Marina's premises. Marina requires the use of Best Management Practices for a clean environment.

2. Owners may undertake basic boat projects as needed to maintain their vessel's safety, appearance and utility.

3. New or substantial work must be approved by the Marina prior to undertaking the project.

4. All Owners are reminded that the Marina is a recreational area and not a boat yard or repair facility.

**Engines and Bilges/Disposal of Contaminants, Parts, Etc..**

1. Use absorbent bilge pads to soak up oil and fuel.

2. Do not discharge bilge water if there is a sheen to it.

3. Recycle oil and fuel products properly.

4. Dispose of absorbent pads and filters properly.

5. Do not dispose of any fuel, paint, oil, other liquid waste, absorbent pads/rags, batteries, engine parts, or other contaminated materials into the Marina's trash dumpster. These materials must be removed from the Marina's premises and disposed of properly at a facility authorized to dispose of such materials.

**Painting, Varnishing and Bottom Paint.**

1. Limit the amount of open solvents or points on the docks to one (1) gallon at a time.



2. Always mix paints and epoxy over a tarp.
3. Always pan or drop cloth.
4. Use up remaining bits of paint by spreading it on an old board.
5. Spray painting is not allowed in the marina.
6. Do not dispose of any paint, oil, varnish, absorbent pads/rags or other contaminated material into the Marina's trash dumpster.
7. Marina recommends the use of non-toxic, biocide free bottom paints.
8. Bottom cleaning must utilize Best Management Practices to minimize discharge of bottom paint.
9. Vessel Owners are encouraged to use environmentally friendly hull cleaning companies who use Best Management Practices and monitor their divers.

**Surface Preparation.**

1. Use biodegradable soaps, cleaners and teak cleaners approved for ocean waters.
2. Liberally use tarps to capture all scrapings, debris and drips. No material may enter the water.
3. Use vacuum power sanders, vacuum all dust and debris. No material may enter the water.

**Sewage.**

1. Untreated sewage must never be discharged into the harbor waters.
2. Store sewage in holding tanks and dispose of sewage properly at pump-out stations.
3. Never discharge Type I sewage while moored in the Marina.
4. Use shore-side restrooms as often as possible, rather than toilets aboard vessels.

**Solid Waste Disposal.**

1. Dispose of all garbage in proper shore-side dumpster.
2. Let empty cans dry thoroughly before disposing of them into trash dumpster.
3. Please recycle green, brown and clear glass, newspapers and aluminum products.

**Chemical Storage.**

1. Purchase only the amount of chemicals/paints you need for a project.
  2. Review storage of paints, varnishes, solvents, and chemicals every six months.
- Properly dispose of old or unnecessary products.
3. Do not store more than two gallons (total) of these products on your Vessel.
  4. Never store any of these products in a dock steps.

**Contact the Marina Office for Recycling Locations, Pump-Out Station Locations, and Commercial Pump-Out Services**

Owner's Initials or Signature: \_\_\_\_\_