



CONTRACT FOR PRIVATE WHARFAGE - ADDITIONAL TERMS

1. Operation. The Marina operates, leases and maintains a private marina at San Diego, California, for the provision of dock space to vessel owners and operators and for its own use, but it is not engaged in the business of public wharfing. Due to high demand, appropriately sized and located slips are not always available to those who desire one. Therefore, the Marina may for its own convenience elect, but is not required, to maintain a "wait list" of vessels/owners desiring slips of various sizes and locations. If it does so, it reserves the right to place any person above another on any such list.
2. Space Assignment. The slip assigned by the Marina and any associated storage box (collectively the "Slip") is 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. Owner agrees and acknowledges that the Marina shall have the right, in its sole discretion, at all times during the term of the Agreement, upon thirty (30) days written notice to Owner, to reassign Owner 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. Owner understands that he/she is not allowed under the terms of this Agreement to bring any Vessel other than the one described in this Agreement, and one dinghy into the assigned Slip. No part of the Vessel or any dinghy may protrude beyond the confines of the Slip without the written permission of the Marina.
3. Total Monthly Term, Fee Structure, Fee/Deposit Increases, Non-Refundable Initial Payment, Late Fees, Returned Checks, Agreement to Abide By All Terms Contained Herein. The wharfage fee structure is based upon the location and size of the Slip assigned and the overall length of Vessel, including but not limited to her swim step, anchor support, bow sprit, davits, etc., whichever is longer. 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 agrees Marina may board the Vessel for purposes of measuring her length. If at any time it is determined the length of the Vessel is longer than represented herein, wharfage fees shall be recalculated from the first day the Vessel occupied a slip to determine the amount of underpayment, which Owner shall pay immediately following demand for payment. Wharfage fees shall accrue beginning the commencement date of the Agreement term. Owner understands that the Marina may increase the fees at any time upon thirty (30) days notice to Owner. While Owner may elect to provide notice of fee increases by First Class U.S. Mail, Owner may alternatively (or additionally) elect to provide notice by way of posting notice on the bulletin board located at the Marina Office. If notice is provided by mail, it shall become effective on the date the notice is deposited into the mails. If notice is provided by way of posting on the bulletin board outside the Marina Office, it shall become effective upon posting. In the event Owner fails to pay any new fee after its effective date, Marina may terminate this Agreement as of the effective date.

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 pursuant to this Agreement and if he/she makes timely monthly payment of fees as provided herein. Fees are payable in advance at the time of the execution of the Agreement and on the FIRST DAY of the calendar month, commencing the first calendar day of the month following execution of this Agreement, and on the FIRST DAY of each succeeding calendar month thereafter. Owner shall pay, upon the execution of the Agreement, the sum representing 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 an assigned Slip, to abide by all covenants and conditions hereof.

Owner understands and agrees payments received after the FIRST DAY of each month due shall be regarded as late. Payments received after the fifth (5th) calendar day shall be deemed delinquent, in which event a late fee in the amount of ten percent (10%) of the delinquent amount shall be payable by Owner. If Owner tenders payment by check, and for any reason it is returned as unpayable, Owner shall pay, in addition to all other sums due, all charges incurred by the Marina in connection with the check, plus an administrative fee in the amount of twenty five dollars (\$25.00). If payment due under this Agreement is not timely paid, the Marina may elect to terminate this Agreement immediately.

Owner shall provide credit card information, and he/she specifically authorizes the Marina to utilize such information to make charges against the listed 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.

4. Performance Fee. Owner shall pay to the Marina a Performance Fee as stated on page 1 upon execution of this Agreement, as a performance fee (the "Deposit"). Owner may not use the Deposit as, nor deduct it from, the Slip fee for any month. However, the Marina shall be entitled to apply any or all of the Performance Fee to wharfage fee arrearages, in which event Owner shall immediately tender such sum as is necessary to replenish the Performance Fee so that it equals the total before deducting wharfage fee arrearages. 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 keys and/or 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. Should Owner transfer 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. Owner understands and agrees that in the event the monthly wharfage rate is increased pursuant to the terms of this Agreement, there shall be a corresponding proportionate increase in the Deposit.
5. Key Deposit. Dock entrances and rest rooms are accessed by use of an access card. Owner, upon execution of this Agreement, shall tender a key deposit for each key card provided at the then current rate set by the Marina. This deposit shall be refundable upon return of the key(s) at the termination of the Agreement. A charge will be imposed for each key replaced, at the then current rate set by the Marina.
6. Disclosure of Existing Liens. Owner represents and warrants that, apart from any disclosed in this Agreement, there is no existing lien, sales or other agreement, such as a mortgage or other finance agreement, which would limit the Marina's ability to impose or enforce its maritime liens. Owner further represents he/she 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 Federal Maritime Lien Act or pursuant to state law.
7. Marina Rights To Interrupt Utility Services During Construction, Renovation, Other Construction. It is understood that, from time-to-time, in order to maintain, replace, and/or improve the docks, ramps and other components of Marina, it will be necessary to interrupt power and other utility services provided to slips. Owner therefore represents and warrants the Vessel does not leak and is otherwise seaworthy in all respects, and that all Vessel batteries used to power her bilge pump(s) or other dewatering equipment shall be maintained in a fully charged condition, sufficient that the vessel can be unplugged from dockside electricity for a minimum of 21 days, with sufficient battery power to drive bilge pump(s) and any other dewatering equipment aboard the Vessel. Owner also understands it is possible refrigeration systems might be temporarily inoperable during periods of construction or renovation, and that Owner's responsibility to remove perishable food items from refrigerators/freezers during such periods. Owner shall hold Marina harmless from and against liability arising or potentially arising as a result of damage to the Vessel caused or occasioned by power interruptions.

8. Marina Rights to Move Vessel During Construction, Renovation, Other Construction. Owner understands and agrees that in order to accomplish maintenance, replacement and/or improvements to the docks, ramps and other Marina components, from time to time it will be necessary to move the Vessel temporarily to a location other than the assigned Slip to another location designated by the Marina. During such periods it might be necessary to move the Vessel to a less desirable location, and/or to secure the Vessel to another vessel. In the event it becomes necessary or desirable to move Owner's Vessel during such work, Marina shall provide Owner notice. Within three (3) calendar days following Owner's receipt of such notice, which will be presumed three (3) days after mailing, Owner shall either: (1) within the period specified in the notice move his or her Vessel to the space designated at the Marina; or (2) permit the Marina or its authorized agent to move the Vessel to the designated space, with actual costs to be borne by Owner. Whether Owner moves the Vessel or the Marina or its authorized agent does so, Owner shall indemnify, protect, defend and hold Marina harmless from and against any and all actual or potential liability that might arise in connection with such movements. If Owner elects not to move his Vessel or fails to do so within the period specified in the notice, Marina and/or its designated agent shall be permitted to do so, without further notice to Owner. Owner understands that in order to best accommodate the hundreds of vessel owners with yachts at the Marina, it will be necessary during the course of such work to temporarily locate Owner's Vessel to another place either the Kona Kai Marina or the Kona Marina, and that during such period the Vessel might be side-tied to a wharf or rafted together with another vessel or vessels, and that as a result the Vessel might not be readily accessible during the temporary period of relocation. Owner agrees to indemnify, protect and defend Marina from and against all actual or potential liability arising or potentially arising as a result of the relocation, side-tying or rafting of the Vessel with other vessels. Owner further agrees that, in the event his/her Vessel is not readily accessible, he/she shall contact the Marina Office at least 24 hours in advance of intended use to obtain assistance in gaining access.

Owner further understands that during periods of construction, renovation or other construction it will be difficult or impossible to accurately predict how long such work will take, or how long the Vessel will be located in temporary accommodations, and therefore he/she agrees Marina shall be held harmless from and against any liability actually or potentially arising from such temporary displacement, including but not limited to liability for loss of use. The Marina reserves the right, following completion of such work, to assign the Vessel to any slip or space it deems suitable

9. Utilities. In addition to the slip fee, Owner agrees to pay all utility charges for electric service and other such services. Any failure to pay such charges when due shall constitute a fundamental breach of this Agreement, allowing Marina to terminate this Agreement. Marina reserves the right to charge a fee for the provision of secondary metered electrical service, as permitted by applicable statutes and/or regulations.
10. Living Aboard. Owner's Vessel shall not be used by any person for purposes of living aboard without prior written approval by Marina. Occupancy of the Vessel by the Owner or others in excess of an aggregated 90 days within any one year period or continuous periods of three (3) days or more (or such other time periods as shall be designated from time to time by any governmental authority) shall constitute living aboard the Vessel for purposes hereof. It is specifically understood and agreed this Agreement is a commercial contract which may be terminated by either party upon 30 days' advance notice, with or without cause, and is not intended to, and does not, create or confer any type of residential landlord-tenant relationship.
11. Wharfage Fee Payments and Remedies for Non-Payment. In the event fees are not tendered when required by this Agreement, such failure shall constitute a material breach of this Agreement, entitling the Marina to immediately terminate it. Such a failure to tender timely payment will result in enforcement of the Marina's rights and remedies under this contract and pursuant to admiralty law, including but not limited to THE VESSEL BEING ARRESTED, PLACED IN STORAGE, AND/OR CHAINED. Owner agrees the Marina may secure the Vessel to the dock in the event of non-payment of fees due under this Agreement. In the event Owner fails or refuses to timely pay wharfage fees due pursuant to this Agreement Owner agrees and gives his/her permission for the Marina to move the Vessel from her assigned Slip to another slip, to dry storage, another suitable place, or to the premises of a U.S. Marshal or duly appointed substitute custodian if the Vessel is arrested, without prior notice to Owner and solely at Owner's expense. In the event of a failure to pay or untimely payment, Marina may, at its sole election, undertake all measures available and appropriate to enforce its remedies at law, in equity and/or in admiralty, 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.

12. Lien Rights. Both possessory and non-possessory liens arise 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 such fees are not ordinarily recoverable as part of a necessities lien. It is agreed that if Owner fails to pay any obligation due hereunder the Marina may place a notice upon the Vessel that states:

"NOTICE: A POSSESSORY LIEN HAS BEEN PLACED UPON THIS VESSEL IN ACCORDANCE WITH CALIFORNIA LAW AS AUTHORIZED BY CALIFORNIA HARBORS AND NAVIGATION'S CODE. THE HARBORS AND NAVIGATION CODE STATES THAT IT IS A CRIMINAL OFFENSE . . . FOR ANY PERSON TO OBTAIN POSSESSION OF ANY VESSEL OR PART THEREOF SUBJECT TO A LIEN PURSUANT TO THE PROVISIONS OF THIS CHAPTER BY TRICK, FRAUD, OR DEVICE."

13. Termination. All terms of this Agreement are deemed by the parties to be material. Marina's obligation to provide wharfage services 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 remedies available at law, in equity and/or in admiralty. Assuming Owner has not breached any term of the 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. 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, and addressed to Owner at the address given herein, shall constitute notice to Owner.

14. Rules and Regulations/Clean Marina Program. The Marina is dedicated to providing a clean, attractive and highly desirable environment for yacht owners who choose to berth their vessels at the Marina. It is likewise committed to working with vessel owners and governmental agencies toward maintaining and improving the marine environment in and around the Marina, including active participation in "Clean Marina" programs. To these ends, the Marina has established Rules and Regulations, which are attached and fully incorporated hereto as Exhibit B, and posted on the bulletin board located at the Marina Office. These Rules and Regulations, and any amendments thereto, are an integral part 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 at 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 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 terminate this Agreement immediately, and give Owner written notice to remove the Vessel from the Slip. If Owner fails to remove the Vessel from the Slip within five (5) business days following the notice, Marina may, in addition to other available remedies, remove the Vessel from the Slip and store her at Owner's risk and expense, and retake possession of the Slip.

15. Liability for 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.

16. Assignment and Subleasing. The Agreement and Owner's rights hereunder cannot be assigned or subleased by Owner. 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. In the event that Owner sells the Vessel and that the new owner shall be permitted to lease a slip in the marina, Owner shall be responsible for all obligations under the Wharfage agreement until a new Wharfage agreement is executed between new owner and Marina. The Agreement is for the benefit of the Owner and Vessel together. 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.

17. Marina Security. The Marina provides no security protection and assumes no responsibility whatsoever for the personal safety of Owner or his/her guests, or for the safety of any vessels or their appurtenances. Any security provided is solely for the protection of the Marina's property.

18. No General Waiver. A 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.

19. Appointment of Marina as Attorney In Fact To Place Lien On Vessel. In the event Owner fails or refuses to pay wharfage fees in full when due, the Marina may place a notice of lien on any and all documents constituting, referring or relating to title to the Vessel, reflecting the sum due and specifying that a maritime lien exists against the vessel for the sum then due, and further the Marina may at its discretion, from time to time, modify such lien notice or take any other action necessary to reflect the current lien amount due. If Owner's Vessel is registered with the California Department of Motor Vehicles or a similar agency of another state, Owner agrees, if requested by the Marina, to execute a Limited Power of Attorney confirming: (1) Owner's appointment of Marina as his/her Attorney in Fact for the limited purpose, where payment has not been received in full when due, of obtaining from the California Department of Motor Vehicles (or other similar agency of another state) any and all documents necessary of useful in connection with placing a lien against Owner's vessel, including but not limited to forms required to obtain a copy or new original title to the Vessel; and (2) Owners authority for the Marina Manager to sign any and all of such documents in the place and stead of the Owner, as his Attorney in Fact, with full authority to bind the Owner.
20. No Waiver of Lien Rights. No action taken by the Marina at equity or at law, whether in state or federal court, shall be construed as a waiver of the Marina's lien rights, 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.
21. Registrations. 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.
22. Liability and Indemnity: During the term of this Agreement or while the vessel remains on 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 Owner. Additional to all other liability limitation and indemnity provisions herein contained, Owner, as a material part of the consideration to be rendered Marina under this Agreement, hereby waives all claims against Marina and its owners, officers, directors, agents and employees, 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, occurring on, in or about the Vessel or the Common Areas from any cause whatsoever arising at any time including, but not limited to, negligence, theft, fire, storm, collision, chaffing, or sinking, or otherwise, unless such harm is occasioned by Marina's gross negligence or willful misconduct 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, rest rooms and other convenience facilities, parking areas, and roads in, around and leading to Marina's premises.

Marina is not liable for damage to the Vessel or for any loss sustained by its Owner, Charterer, or underwriters, or parties in interest, directly and/or indirectly, in contract, tort or otherwise, unless that damage or loss is caused solely by the gross negligence or willful misconduct of Marina's employees, which negligence shall not be presumed but must be affirmatively established. Marina's liability, if any, is strictly limited to five thousand dollars (\$5,000) or one month's fees, which ever is greater.

Owner hereby agrees to indemnify and hold Marina exempt and harmless for and on account of any 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, or any personal injury, death or property damage whether sustained by Owner or any other person, firm or corporation by reason of any matter, thing or occurrence arising out of or relating to the operation, occupancy or possession by Owner or Owner's family, agents, licensees or invitees of any boat or Vessel or any slip, or arising from the use of the Common Areas by Owner or Owner's family, agents, licensees or invitees, or arising from the failure of Owner to keep the Vessel in safe and proper condition, or to keep the Slip or surrounding areas neat, clean and unobstructed as herein provided.

Owner agrees to pay Marina for all damage to the Slip or to other Common Areas caused by Owner's misuse or neglect of the Slip or other Common Areas, or their appurtenances or the misuse, use or disuse of any equipment thereon by Owner, Owner's family, agents, licensees or invitees. Owner acknowledges that Marina has not made any representations or warranties with respect to the nature, suitability, or condition of the Common Areas, except as expressly set forth herein, and that no such warranties or representations shall be implied.

23. Insurance. Owner shall have effective bodily injury and property damage insurance for the protection of the Marina and others. Owner shall, before locating his/her Vessel at the Marina, provide an original or a true and correct copy of a Certificate of Insurance evidencing such coverage, with a combined minimum limit of \$500,000. The Marina, The City of San Diego, the San Diego Unified Port District, Cahuenga Associates II and Kona Kai Managers, LLC, shall be named as additional assureds. 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 that at least 30 days' written notice be given to the Marina in the event the policy is canceled or not renewed.
24. Documentation/Registration and Condition of Vessel. Owner shall keep Vessel in seaworthy condition at all times during the term of the Agreement. The determination of seaworthiness 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 another State of the United States, and that the Vessel and her equipment are 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 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. In the event the Marina permits the Owner to engage in a charter or other commercial operation, it is agreed Owner shall not permit alcohol to be served to, or consumed by, guests or others while on the docks or other areas located on the Marina's premises.
26. Working on Vessel. 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, topside painting, sanding, use of paint remover, spray guns, or the burning of paint on the topsides or above the decks. 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. No vessel equipment, gear or any other part of a vessel may be staged, stored or otherwise located on the docks or other Marina property at any time, including while vessel work is being undertaken. Contractors hired by Owner to work on the Vessel must be approved by the Marina in writing prior to the commencement of such work, and each such contractor must maintain and provide proof of liability insurance in an amount of at least \$500,000. Owner further agrees to comply with all posted Rules and Regulations of the Marina, the San Diego Unified Port District, the City of San Diego the State of California 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.
27. Slip Vacancy/Extended Absence. Owner agrees that Marina may use the Slip when not in use by Owner, without compensation to Owner. Owner shall notify the Marina if the Vessel described in this Agreement will not be in the assigned space at the Marina for any period exceeding three days. During such period of non-occupancy by Owner, the Marina may assign the Vessel's assigned Slip to another Vessel or otherwise use the Slip for the period of time during which Owner has specified that the Vessel will be gone, without payment to Owner of any compensation or reimbursement. In the event Owner returns prior the end of the specified period, Marina reserves the right to assign Owner to a temporary slip in the Marina.
28. 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 eviction and immediate termination of the Marina's obligations to Owner under the Agreement.
29. Reporting of Damage. Any damage to Marina property or another's property located on Marina property caused by Owner's Vessel must be reported by her Owner to the Marina immediately.
30. Damage to Marina Property. In the event Marina property is damaged (beyond ordinary wear and tear) or destroyed by any conduct by Owner or 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).

31. 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 whatsoever to take action(s) in advance of or during a storm 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 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.
32. 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 in its sole discretion, or if she is deemed by the Marina to pose a health, safety or pollution risk, the Marina may remove the Vessel from the water and dry store her, both at Owner's expense.
33. Estoppel Certificate. Owner shall within fifteen (15) days after receiving written notification by the Marina of its request, provide Marina with a certificate stating this Agreement is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications and that there are no defaults under this Agreement, or stating the default and the nature thereof if defaults are claimed. The certificate shall state the monthly wharfage fee paid. Failure to deliver the certificate in a timely manner shall be conclusive upon the party failing to deliver the certificate for the benefit of the party requesting the certificate and any successor to such party, that this Agreement is in full force and effect and has not been modified except as may be represented by the party requesting the certificate. Execution of such certificate in favor of the Marina or Marina's lender shall not constitute a waiver of claims by either party against the other with respect to any purported default under the Agreement.
34. Failure to Vacate. In the event the Marina terminates this Agreement as provided for herein, and the Vessel is not removed from the Marina's premises, she will be regarded for admiralty law purposes as a trespasser, and accordingly she will be subject to arrest by the U.S. Marshal based on the tort of trespass. In such event, it is agreed Owner shall pay all costs of suit, including attorneys' fees, which shall be regarded for all purposes as part of the Marina's maritime tort lien. In addition, if Owner fails to timely pay wharfage, the Vessel may be placed (at Owner's sole risk and expense), in STORAGE OR CHAINED TO HER SLIP and/or the Marina may seek a temporary restraining order or other injunctive or other relief preventing the Vessel from remaining on the Marina's premises. Should the Marina be granted such relief, Owner shall pay all costs associated with suit, including attorneys' fees.
35. Attorneys' Fees. A failure to pay for wharfage services rendered under the Agreement gives rise automatically, by operation of Maritime law, to a maritime lien that may be enforced personally against the Vessel Owner and against the Vessel (in rem) as though it were in fact a person. OWNER SPECIFICALLY AGREES THAT LEGAL SERVICES RENDERED IN CONNECTION WITH THE ENFORCEMENT AGAINST OWNER OF ANY CONTRACTUAL OR OTHER LEGAL RIGHT OR REMEDY AVAILABLE TO THE MARINA SHALL BE DEEMED PART OF THE MARITIME WHARFAGE "NECESSARIES" PROVIDED, AND THEREFORE ALL SUCH LEGAL SERVICES SHALL BE RECOVERABLE AGAINST OWNER PERSONALLY AND AS PART OF THE MARINA'S LIEN AGAINST THE VESSEL, IN REM. If arbitration or legal action is required to enforce the terms of the Agreement or to enforce the Marina's lien rights as existing under both federal or state law, the prevailing party shall be entitled to reasonable attorneys' fees and costs, and all other costs of enforcement, in addition to any other relief to which it or he/she may be entitled.
36. Dispute Resolution By Mediation Or Arbitration; Forum Selection and Application of Maritime Law. If a dispute arises between Owner and the Marina concerning or pertaining to this Agreement and the obligations of the parties under it, or to any other matter whatsoever, it is understood and agreed such dispute shall be resolved solely as provided herein. The dispute shall first be submitted for consideration by a Mediator at the San Diego Mediation Center (or successor entity), with costs of mediation to be borne equally among the parties. If mediation is unsuccessful in resolving the dispute to the satisfaction of the parties, the matter shall be submitted for decision by way of binding arbitration at the San Diego Mediation Center (or successor entity), with costs of arbitration to be borne equally by the parties. The parties shall attempt to schedule arbitration to occur as soon as possible, but in any event within 60 days of the date of the mediation. The Arbitrator shall be empowered to determine which party, if any, is a "prevailing party" for purposes of awarding attorneys' fees, as provided for in this Agreement. The decision of the Arbitrator shall be final, conclusive and binding on the parties, and shall be reducible to a recordable judgment. The parties may elect to provide the Mediator and/or Arbitrator with confidential briefs, the body of which shall be double-spaced and not exceed 15 pages in length. It is further agreed the general maritime law of the United States and any applicable admiralty statutes shall be applied in interpreting this Agreement, including but not limited to the Commercial Instruments and Federal Maritime Lien Act and the Supplemental Rules for Certain Admiralty and Maritime Claims.

37. Marina's Right to Eject Owner for Noncompliance With Terms of the Agreement. Each term herein contained is fundamental to the Agreement. If Owner fails to comply with any provision herein contained, such failure shall be deemed a fundamental breach of the Agreement. EXCEPT AS OTHERWISE PROVIDED HEREIN, IN THE EVENT OWNER FAILS TO COMPLY WITH ANY TERM HEREIN CONTAINED, THE MARINA SHALL HAVE AN ABSOLUTE RIGHT, WITH 24 HOURS ADVANCE NOTICE, TO REQUIRE OWNER TO IMMEDIATELY VACATE THE MARINA'S PREMISES. IF IN THE MARINA'S SOLE OPINION AN OWNER'S FAILURE TO COMPLY WITH A TERM OF THE AGREEMENT POSES AN ACTUAL OR POTENTIAL THREAT TO THE SAFETY OR SECURITY OF PERSONS OR PROPERTY ON THE MARINA'S PREMISES, THE MARINA SHALL HAVE AN UNFETTERED RIGHT TO IMMEDIATELY REQUIRE OWNER TO REMOVE HIS/HER VESSEL FROM SAID PREMISES, WITHOUT PRIOR NOTICE. IF THE MARINA EXERCISES ITS RIGHT PURSUANT TO THIS PARAGRAPH TO REQUIRE OWNER TO REMOVE HIS/HER VESSEL FROM THE MARINA'S PREMISES AND OWNER FAILS TO DO SO, MARINA MAY, AT ITS SOLE OPTION AND AT OWNER'S SOLE EXPENSE AND RISK, MOVE THE VESSEL TO ANOTHER SLIP OR OTHER LOCATION ON THE WATER, OR REMOVE HER FROM THE WATER AND PLACE HER IN DRY STORAGE.
38. Salvage Services. The Marina has no obligation whatsoever 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, at its sole election, may opt 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 for each hour such services are provided, whichever sum is greater.
39. 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 herein. It is Owner's sole responsibility to notify Marina of any change of the address, and Owner agrees that notice sent to the Owner's address as listed herein shall be deemed legally effective. Notice by Owner to Marina shall be mailed via First Class U.S. mail to: Marina Office, Post Office Box 60769, San Diego, California 92166.
40. Agreement As Complete Expression Parties' Understandings. The Agreement contains a complete expression of the Agreement between the parties hereto and there are no promises, representations, 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.
41. Owner's Legal Capacity. Owner attests that he/she is legally entitled to bind the Vessel to all terms of this Agreement, that he/she is not, at the time of reviewing/executing this Agreement, under the influence of alcohol or any legal or illicit drug, and that he/she has reached the legal age of majority and is not legally incapacitated or otherwise unable to fully understand and appreciate each and every term contained in this Agreement.
42. Reading/Understanding Entire Agreement. Owner acknowledges he/she has been afforded ample opportunity to read this Agreement and to consult counsel if desired, and that he/she understands this Agreement limits the liability of the Marina and affects Owner's legal rights. Owner shall signify he/she has read, understands and fully agrees to abide by each term of the Agreement