



CONTRACT FOR PRIVATE WHARFAGE

600 Convention Way, San Diego, CA 92101 | +1(619)704-2550 | dock@fifthavenuelanding.com

Vessel Name: _____ Power Req'd: _____

Length: _____ Beam: _____ Draft: _____

Arrival Date/Time: _____ #of Days Requested: _____

CF OR DOCUMENTATION NUMBER: _____

Name of Vessel Owner: _____

Mailing Address: _____

Phone (Primary) _____ (Mobile) _____

Email Address _____

This Maritime Necessaries Contract for Private Wharfage (the "Agreement") is executed this _____ day of _____, 20_____, between Fifth Avenue Landing, LLC ("Marina") and the Owner(s) identified above, and whose signature(s) appears below. This Agreement 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 the Rules and Regulations, all of which are integral parts of the Agreement and are fully incorporated herein. By signing below Owner affirms (s)he is legally permitted and authorized by all vessel owners to enter into this Agreement for the benefit of the above Vessel. Owner further affirms (s)he has received a complete copy of this Agreement and all of its parts. Copies of this Agreement are available at the Marina Office upon request by the Owner.

Date: _____
Vessel Owner/Authorized Rep's Signature

Role: _____
Print Name

AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH DEBITS)

COMPANY NAME: FIFTH AVENUE LANDING

I (we) hereby authorize the COMPANY, to charge my credit card listed below in advanced of the above arrival date for days of dockage requested and/or if the Depository refuses to honor any/all charges relating to the CONTRACT FOR PRIVATE WHARFAGE.

(MASTERCARD, VISA or AMERICAN EXPRESS)

Credit Card#: _____ Expiration: _____

NOTE: DEBIT AUTHORIZATION MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.



ATTACHMENT TO 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.
2. Space Assignment. The slip assigned by the Marina (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 one (1) day 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. *NOTE Yacht Tenders moored at FAL shall be charged daily rate.
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. 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 one (1) day notice to Owner.

Owner's contractual right to occupy his/her assigned Slip is not automatically renewable.

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 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. 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.

9. 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.

10. 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 necessaries 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."

11. 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 daily period, it can only be terminated by either party by giving one (1) day notice of termination to the other.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Liability and Indemnity:



a. 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.

b. 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).

c. 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.

d. 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.

20. **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 San Diego Unified Port District, 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.

21. 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.

22. 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. Violation of this clause will result in the vessel being immediately removed.

23. 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.

24. 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.



25. 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.

26. 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.

27. 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).

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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: Fifth Avenue Landing, 600 Convention Way, San Diego, CA 9210.

37. 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.

38. 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.

39. 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.



ATTACHMENT TO CONTRACT FOR PRIVATE WHARFAGE RULES AND REGULATIONS

1. **Safe Mooring.** All boats shall be moored in a safe manner.
2. **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.
3. **Fishing/Swimming.** Fishing or swimming from Marina premises shall not be permitted.
4. **Bicycles/Skates.** No person shall roller skate, skateboard, ride bicycles or motorcycles on the docks or gangways located at the Marina. Bicycles and motorcycles may not be stored on the docks.
5. **Projections Beyond End of Berth.** The maximum distance by which any boat (including all extensions such as swim steps, booms, etc.) may project beyond the end of the berth shall be 3 feet. No part of the boat shall extend over the main head walk. All boat berthing spaces must be occupied by an appropriate size boat.
6. **Electrical Connections.** The use of electrical extensions is 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 electrical appliance. All shorelines, adapters and dockside male plugs **MUST** be equipped with an acceptable ground weather-proofing, in compliance with Article 555 of the National Electrical Code. Owner may not open or otherwise tamper with electrical boxes or any component of the Marina's electrical system.
7. **Utility Lines.** Water, telephone, cable or power lines shall not cross main head walks.
8. **Children.** Children under 12 years are not permitted on floats without the immediate presence of their parents or other responsible adults
9. **Notification of Unsafe Conditions.** Owner shall promptly notify Marina of any unsafe or hazardous condition that comes to their attention.
10. **Hazardous Activities.** All high-risk fire hazards, i.e., refueling boats at dock side, storing flammable material in dock boxes, etc. are strictly prohibited.
11. **Discharges from Vessels/Disposal of Liquids.** No Owner shall throw, discharge or deposit from any boat or float any refuse matter, oil, spirits, inflammable liquid, oily bilges in the harbor. All such matter shall be deposited in appropriately marked containers within the Marina.
12. **Laundry.** There shall be no laundering or drying of wearing apparel on deck or rigging at the Marina. Washers and dryers are available at the restroom facilities.
13. **Equipment Noise.** Except for entering or leaving the Slip, main engines, power-generation equipment, or other noise-making machinery shall not be operated between the hours of 7:00 p.m. and 9:00 a.m.
14. **Engine Operation.** Engines may not be operated in gear while boats are secured to dock.
15. **Speed Limit.** Vessel shall not be operated in such a manner as to create a wake while on Marina's premises.
16. **Improper Vessel Handling.** Improper or unsafe boat handling shall be just cause for immediate termination of the Owner's Contract for Private Wharfage.
17. **Use of Floats.** The use of floats to store or place supplies, materials, accessories, or gear of any kind shall not be permitted within the Marina except in lockers provided.
18. **Boarding Steps.** Any steps used for ingress to and egress from a vessel shall not be wider than one-half (1/2) of the width of the finger to which the Vessel is moored. The steps must be of a lightweight construction and approved in advance by the Marina. The steps may *not* be used as a storage locker.



19. **Vessel Repairs.** No rebuilding, hull painting, major repairs or overhauls shall be made on boats while moored at the Marina without written approval by Marina before any said repair, etc., shall have begun. Extent of such repairs shall be at the discretion of the Marina. Any damage caused to the premises shall be repaired or corrected solely by the Marina at the expense of the Owner.
20. **Damage to Marina Property.** Each Owner will be held responsible for any damage to the Marina premises and/or structures caused by Owner, his/her guest, agents and/or employees.
21. **Repair of Damages Caused by Owner.** Such damage will be repaired or corrected solely by Marina at the expense of the Owner.
22. **Offensive or Harmful Conduct.** Disorder, depredations or indecorous conduct by Owner or his visitors that might injure a person, disturb other berth occupants, cause damage to the property or harm the reputation of the Marina shall be just cause for immediate termination of the Vessel Owner's Contract for Private Wharfage.
23. **Solicitors/Posting of Signs/Boarding of Vessels by Dockmaster.** Except by mutual written agreement between them, neither the Marina nor Owner shall permit solicitors, brokers, salesmen or workmen, 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, to access the Marina's premises. Owner shall not post any "For Sale" sign(s), notices or advertisements on the Vessel or floats, gangways, docks or on any other Marina property. Dockmaster or any of his/her assistants may, without liability to Owner or his/her guests or any other person, 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.
24. **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.
25. **Responsibility for Damages.** The Marina is not responsible for any losses on or damage to boats at the Marina. Each Owner will be held responsible for damage which he and/or his Vessel may cause to other boats or structures in the Marina.
26. **Small Boat and Equipment Storage.** 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. Dinghies may only be stored on the Vessel or in the water adjacent to the bow of the Slip provided, however, that no part of a dinghy protrudes beyond the confines of the assigned Slip. The Marina strongly urges Owner to use a lock and chain, as the Marina shall not be held liable for the loss or theft of any dinghy. No other type of craft other than dinghies may be stored at the Marina without the Marina's prior written authorization.
27. **Amendment of Rules/Statutes/Regulations.** Ordinances and regulations governing or pertaining to the Marina, and amendments to them, shall form a part of the Contract for Private Wharfage.
28. **Television Antennas.** No television antennas, satellite dishes or any other device used to receive transmitted signals may be affixed to any Marina property.
29. **Current Contract Required.** No boat may be moored at the Marina unless a current Contract for Private Wharfage is in effect between the Owner of said boat and the Marina.
30. **Use of Approved Equipment/Alterations to Docks & Premises.** All equipment used on floats by vessel owners (dock wheels, boarding ladders, etc.) must be of a type approved by Marina. Vessel Owners may not install additional dock lockers, fenders, bumpers, rub rails, rollers, or cleats in any way make alterations to the dock and fingers. Boat bath installations that are tied to the boat and utilize built-in floats for support are approved by the Marina. All other 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 Owner of the Vessel occupying the Slip.

31. **Transfer of Interest in Vessel.** When a Slip occupant sells or otherwise transfers his interest in his boat, he may upon approval of the Marina continue renting the Slip providing he obtains another boat of appropriate size within 30 days and his/her original vessel is first vacated. Failure to do so, or otherwise make arrangements with the Marina, will result in the cancellation of Owner's Contract for Private Wharfage.

32. **Parking.** Owner shall comply with all vehicle-parking restrictions set forth in the then current Marina Rules and Regulations. The Marina reserves the right to charge a fee for parking, which shall be subject to change from time-to-time. Changes to parking regulations/fees will be posted on the bulletin board at the Marina office. The Marina, its officers, agents or employees shall not be liable to Owner or Owner's agents for any loss of, or damage of any kind to any motor vehicles or other personal property in or on the buildings, parking lots, or other Marina premises.

33. **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's expense.

34. **Disposal of Refuse.** The 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.

35. **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 days or more (or such other time periods as shall be designated from time to time by governmental authority) shall constitute living aboard the Vessel for purposes hereof.

36. **Hose - Nozzles.** Automatic shut-off nozzles must be attached to hoses in order to conserve water.

37. **Fishing, Bait Receivers, Fish Cleaning.** Unless otherwise posted by Marina, fishing is not permitted on Marina property. Fish cleaning is not permitted on Marina's premises. Parts of fish produced during cleaning aboard the Vessel may not be deposited into the water. Owner may not place a bait receiver, bait tank or similar device in the water, unless the Marina authorizes it in writing.

38. **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 Marina's premises. 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 wake, smoke, oil, or any other foreign substances existing upon, in or over the water within Marina's premises.

39. **Physical Inspection.** Owner agrees that upon the arrival of his/her Vessel, and from time to time 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.

40. **Pets.** Pets are permitted with the written permission of the Marina only. Owner agrees not to permit any pets to be brought on the premises, by him/her or his/her guests, without a leash, or to commit any nuisance on the Marina's ramps, docks, Slips or fingers. No animal shall be tied to any part of the docks, including fingers, locker boxes or utility outlets. Any droppings on Marina property must be immediately removed. Violation may, in the Marina's sole discretion, constitute grounds for immediate termination of the Agreement.

41. **Boat Liners/Hydro lifts.** Neither boat liners nor hydro lift type devices are permitted in the absence of the prior written approval of the Marina.

42. **Flammable Materials and Use of Dock Boxes.** 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 in the dock box locker. The Marina assumes no responsibility for the protection or safety of Owner's possession, including but not limited to, belongings kept by Owner in a dock box. If Owner uses a lock on said dock box, he must provide the Marina with the combination or a duplicate key. The Marina shall keep the combination or duplicate key to enable the City fire inspector or such other authorized officials to make periodic checks on the contents of the lockers and to enable access to water hydrants or other water outlets.

43. **Noise, Conduct & Compliance with Statutes/Regulations.** Owner shall not make or allow any indecorous behavior at any time, and shall not make 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. 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. Children under age 12 must be accompanied/supervised by a responsible adult at all times. Owner shall also comply with and cause his/her guests, invitees and others on or near Owner's Vessel with Owner's permission to comply with, all applicable laws, codes, orders, Rules and Regulations of the Marina and governmental authorities, including but not limited to those promulgated by the San Diego Unified Port District. Owner shall not permit a helicopter or other aircraft to depart from or land on his/her Vessel while on the Marina premises.



ATTACHMENT TO CONTRACT FOR PRIVATE WHARFAGE CLEAN MARINA PROGRAM

The Marina is dedicated to providing a clean, attractive and highly desirable environment for Owners who choose to berth their vessels at the Marina. The Clean Marina Program is the foundation of our commitment toward working with Owners and governmental agencies toward maintaining and improving the marine environment in and around the Marina. Owners and Owner's contractors must adhere to the following policies procedures. Failure to follow these policies /procedures will result in immediate termination of the Owner's Contract for Private Wharfage.

1. **Engines and Bilges.** Absorbent bilge pads or socks must be used to soak up oil and fuel. Hazardous waste such as fuel, oil, absorbent pads, socks, rags, batteries, engine parts and other contaminated material must not be put into Marina trash receptacles or trash dumpsters. Hazardous waste must be disposed of at local Household Hazardous Waste collection sites. Detergents or emulsifiers must not be used on oil or fuel spills. Notify Dock Master of any spill that occurs.
2. **Underwater Boat Maintenance and Cleaning.** Bottom paints must be used that conform to California State Law and do not pollute the environment. Owners must observe at minimum the following policies.
 - Bottom Paint must be applied in the boat yard by professional applicators.
 - Wait for 90 days to elapse after new bottom paint application before the bottom is cleaned in order to allow the new paint to completely cure and bond.
 - A regularly scheduled bottom cleaning plan should be developed and followed utilizing a professional cleaning service.
 - Divers are required to use an assortment of cleaning pads that are designed to remove marine growth with the minimal amount of abrasive action.
 - Old zincs can be recycled. They must not be discarded in the water, left on the dock or thrown in the trash.
 - A diving service hired by the tenant to work on the vessel must be approved by the marina prior to the commencement of work and must provide proof of liability insurance in an amount of at least \$1 million.

The marina anticipates participating in various governmental sponsored experimental bottom protection and maintenance systems such as the promising ceramic bottom paint and other innovative bottom cleaning systems.

3. **Dock Storage.** Water hose, electrical service cord and dock steps may be stored on the dock or finger. All other articles must be stored on the vessel or in the dock box. Unattended open containers of paints and other maintenance supplies are prohibited.
4. **Solid and Liquid Waste Disposal.** Hazardous material such as paint, varnish, thinner, non-edible oil, fuel or other flammable or hazardous materials are not to be placed in trash or recyclable receptacles. Empty cans must be allowed to dry thoroughly before they are deposited in trash receptacles. Hazardous waste must be disposed of at local



Household Hazardous Waste collection sites.

5. **Fish Waste, Sewage, Grey Water and other Discharge Provisions.** Sewage and other pollutants must never be discharged into the harbor waters. On board sewage that is stored in holding tanks can be disposed of at a public pump out station or one provided by the marina. A mobile sewage pump out service can also be utilized for a vessel at its slip. Oily bilge water, oil, spirits, refuse matter, inflammable liquid and or any type of fuel shall not be discharged, thrown or otherwise deposited in the water. Fish cleaning is not permitted on marina's premises. Parts of fish produced during cleaning aboard the vessel may not be deposited into the water. Dead bait must not be put in the water.
6. **Parking Lots.** Vehicle washing and maintenance in marina parking lots is prohibited.