



LOST KEYS ARE \$20

**South Beach Harbor
Port of San Francisco
TRANSIENT BERTHING USE AGREEMENT**

Pre-Registered
Transient/Guest
Acct # _____
Berth # _____

Transient/Guest

Please fill out the Highlighted Yellow areas

PLEASE PRINT

_____	_____	_____	_____
Boat Owner/Licensee Name	Boat Name	USCG/DMV #	Expiration Date
_____	_____	_____	_____
Residence Address	Cell Phone #	Length	Beam Draft
_____	_____	_____	_____
Home Phone	Hull Material	Power	Sail
_____	_____	_____	_____
Email address	Color: Hull	Radio Call	Gas Diesel
_____	_____	_____	_____
Business Address	Business Phone	Owner's Auto Lic. No.	
_____	_____	_____	
Insurance Carrier	Insurance Policy #	Partnership Name if (any)	
_____	_____	_____	
Insurance Agent Name, Address and Phone			

Emergency Contact Name, Address and Phone			

Commencement Date _____ (Check in date)

Expiration Date _____ (Check out date)

Berth assignment _____

This use agreement ("**Agreement**") is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), and the individual named as the "**Owner**". Terms

not defined herein have the meaning provided in the South Beach Harbor Rules and Regulations (“**Rules and Regulations**”) attached hereto as *Exhibit A*.

TERMS AND CONDITIONS

1. USE. In consideration of the terms and conditions stated in this Agreement, Port hereby grants Owner a temporary, revocable, personal, non-assignable, and non-possessory privilege to enter and use the Harbor to berth the vessel listed above at the berth location indicated or another berth location directed by the Harbormaster for a maximum period of fourteen (14) consecutive days. This Agreement shall expire at **11:00 a.m.** on the Expiration Date. All uses are subject to the attached Rules and Regulations (which are hereby incorporated) and as further directed and authorized by the Harbormaster. Owner agrees for itself and its Invitees to comply with the attached Rules and Regulations.

Owner agrees to pay to Port the Fees set forth in the Fee Schedule in cash or by good check to the Port at the Harbor Office. Other Fees are due in as specified in the Fee Schedule.

Licensee acknowledges that late payment will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a ten percent (10%) late charge.

2. MARITIME LIEN. In accordance with Division 3, Chapter 2 (§490 et. seq.) of the California Harbors and Navigation Code, outstanding charges for berthing Fees or other harbor services constitute a lien upon a vessel. Port may foreclose its maritime lien, including selling the vessel at a public auction in accordance with the provisions of the Rules and Regulations or as otherwise provided by Law.

3. NO BAILMENT. This Agreement is for use of assigned dockage space and associated Harbor facilities. This Agreement does not create a bailment of the vessel its equipment or personal effects or a vehicle parked at the Harbor. If at any time keys are left with the Harbor Office for the convenience of Owner, Owner agrees that such will not constitute the assumption of a bailee relationship by Port.

4. COMPLIANCE WITH LAWS. Owner shall comply with all Laws relating to or affecting the condition and use of its vessel and the Harbor. Owner shall comply with the City Requirements listed in *Exhibit B*, which are hereby incorporated, to the extent that such ordinances are applicable. Owner understands and agrees that its failure to comply with such City Requirements shall be a material breach of this Agreement and may give rise to penalties under the applicable ordinance.

5. CONDITION OF BERTH AND FACILITIES. Owner acknowledges that it has inspected the assigned berth space and is satisfied that such facilities are adequate for the safe and secure dockage of Owner's vessel and use. Owner shall immediately notify the Harbormaster of any observed dangerous condition requiring attention by the Port. Owner shall not alter docks, pilings or any Harbor facilities. There is no warranty of any kind as to the condition of the berths, floats, dock boxes, Lockers, walks, gangways, ramps or mooring gear, or any other part of the Harbor and Owner accepts the berth space in its "As Is" condition and as being suitable for the conduct of Owner's activity thereon.

6. WAIVER, INDEMNIFICATION AND ASSUMPTION OF RISK. Owner, as a material part of the consideration to be rendered to Port, acknowledges and agrees that Harbor facilities are used at the user's sole risk, and that Port shall not be responsible for or liable to Owner or Owner's Invitees for loss or damage to any property, including vehicles or vessels, in or about the Harbor from any cause whatsoever. Accordingly, to the fullest extent allowed by law, Owner hereby waives all rights against the City and County of San Francisco, the San Francisco Port Commission and its officers, employees and agents (collectively, "**City Parties**"), and releases the

City Parties from any and all losses relating to any injury, accident or death of any person or theft, loss or damage to any property, including vehicles or vessels, in or about the Harbor from any cause whatsoever. The City Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

Owner agrees to hold harmless, indemnify, and if requested, defend, the City Parties, from any and all liabilities, injuries, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind (collectively, "Claims") arising directly or indirectly arising out of (a) any injury to or death of any person, including but not limited to Owner's Invitees, or damage to or destruction of any property occurring in, on or about the Harbor, or any part thereof, or the approaches thereto from any cause whatsoever, (b) any failure by Owner or its Invitees in the observance or performance of any of the terms, covenants or conditions of this Agreement, or (c) the use, occupancy or condition of the Harbor or the activities therein or the approaches thereto by Owner or Owner's Invitees. This Indemnity shall be enforceable regardless of the active, concurrent or passive negligence of any of the City Parties, and regardless of whether liability without fault is imposed or sought to be imposed on any of the City Parties. This Indemnity shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Agreement. This Indemnity shall exclude Claims resulting solely and exclusively from the willful misconduct of the City Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Owner or Owner's Invitees. The foregoing provision is an allocation of risks whereby Owner agrees to look solely to Owner's own insurer as to risks associated with use of the Harbor and its berthing and other facilities.

The foregoing obligation of Owner includes indemnification from all loss and liability, including attorneys' and consultants' fees, court costs, investigation and remediation costs, all other reasonable costs and expenses incurred by the City Parties, damages for decrease in the value of the Harbor, and Claims for damages or decreases in the value of adjoining property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Owner understands and expressly accepts and assumes the risk that any facts concerning any and all Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Agreement shall remain effective. Therefore, with respect to all Claims released in this Agreement, Owner waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Owner specifically acknowledges and confirms the validity of the release made above and the fact that Owner was represented by counsel who explained the consequences of the release at the time this Agreement agreement was made, or that Owner had the opportunity to consult with counsel, but declined to do so.

Initials: Owner: _____

7. INSURANCE.

Owner shall maintain a minimum coverage of Five Hundred Thousand (\$500,000) in marine liability and Five Hundred Thousand (\$500,000) vessel pollution liability, including hull replacement and general liability. Hull value will be based on the National Automobile Dealers Association (NADA) or similar for the marine industry. The policy shall be in form and substance satisfactory to the Harbormaster and shall be placed with responsible underwriters,

which have an assigned policyholder's rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of the "Best's Key Rating Guide", and which are currently authorized by the Insurance Commissioner to transact business in the State of California.

The policy must contain a cross-liability clause, shall name as additional insureds by written endorsement the "CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Agreement, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

Owner shall deliver certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of the Harbormaster using EXIGIS or another internet-based insurance compliance tracking system as directed by the Harbormaster. Owner shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

Owner shall also maintain, at Owner's expense, any additional insurance coverage which in Owner's own judgment may be necessary for vessel's protection.

Notwithstanding anything to the contrary contained herein, Port and Owner (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to this Agreement, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Agreement or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Harbor; provided, the failure to obtain any such endorsement shall not affect the above waiver.

8. DEFAULT; TERMINATION.

The occurrence of any default by Licensee shall result in the termination of this License without an opportunity to cure or prior notice by Port. The Harbormaster will provide the Licensee prompt written notice of such termination and Licensee shall immediately vacate and discontinue its use of the Harbor.

9. PORT'S REMEDIES UPON TERMINATION OR EXPIRATION. Upon expiration or earlier termination, Owner shall immediately vacate and discontinue its use of the Harbor and Port may take any and all action to enforce Owner's obligations. Owner shall indemnify Port from and against any and all loss or liability resulting from its delay in vacating the Harbor.

Port shall have the following remedies in its sole discretion: (i) remove the vessel to a location within or outside the Harbor, in which case Owner shall be liable for costs of storage and other costs incurred by Port; and/or (ii) commence the attachment and auction process under the California Harbors and Navigation Code and Section 14 of the Rule and Regulations.

If Owner's vessel is moved whether within or outside the Harbor, as to such relocation and during the period of storage and final disposition, all indemnity and exculpatory clauses of this Agreement pertaining to Owner and the vessel, including but not limited to Sections 6 and 12, shall continue in effect and inure to the benefit of Port and its agents.

Without any prior notice, Port may elect to retain or dispose of Owner's personal property, other than his or her vessel and any other property not subject to a maritime lien, that Owner does not remove from the Harbor prior to the expiration or earlier termination of this Agreement. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Owner waives all Claims against Port for any damages resulting

from Port's retention, removal and disposition of such property; provided, however, that Owner shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned property and repairing any damage to the Harbor resulting from such removal. Owner agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Owner. Owner hereby waives the benefits of California Civil Code Section 1993 et seq., to the extent applicable.

10. TIME OF ESSENCE. Time is of the essence in performance of the obligations set forth in this Agreement.

11. REMEDIES CUMULATIVE; SEVERABILITY. All remedies available under this Agreement are cumulative and not exclusive. The terms and conditions of this Agreement are independent and the failure of one or several shall not invalidate the entire Agreement.

12. NON-LIABILITY OF PORT OFFICIALS, EMPLOYEES AND AGENTS. No elective or appointive board, commission, member, officer, employee or other agent of Port shall be personally liable to Owner, its successors and assigns, in the event of any default or breach by Port or for any amount which may become due to Owner, its successors and assigns, or for any obligation of Port under this Agreement or otherwise.

13. ATTORNEYS' FEES. If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of Port shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding Port's use of its own attorneys.

14. MISCELLANEOUS.

(a) Except as expressly provided in Section 3H of the Rules and Regulations, neither party shall act as the agent of the other party in any respect hereunder. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

15. NOTICES. All notices required under this Agreement shall be provided in the manner specified in Section 30 of the Rules and Regulations.

[Remainder of Page Left Blank]

16. PUBLIC RECORD. This Agreement is a public record subject to disclosure under the California Public Records Act. Please initial below if you wish to waive your privacy rights to the personal information contained in this Agreement.

Yes, I authorize the Port to disclose my personal residence address, phone, and e-mail information listed in this form to any member of the public upon request.

Owner: _____

I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREE TO THEM.

IN WITNESS WHEREOF, Port and Owner have executed this Agreement as of the last date set forth below

Owner: _____
Print Name

Signature

Date signed: _____

Port: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: _____
Joe Monroe
SBH Harbormaster

Date signed: _____