



**BAL HARBOUR ASSOCIATION
BAL HARBOUR MARINA
BOAT SLIP LICENSE AGREEMENT**

STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

This License Agreement made between BAL HARBOUR ASSOCIATION, INC. (hereinafter called "BHA"), and _____
_____(hereinafter called "Licensee"), will begin on
the _____ day of _____, 20____ and shall expire (subject to Section 2) on the
_____ day of _____, 20____.

Subject to and upon the terms, provisions, covenants, and conditions hereinafter set forth, BHA does hereby grant to Licensee the right and license to use a boat slip situated in Bal Harbour Cove, a subdivision in Harris County, Texas to be designated for Licensee's use by BHA as set out hereafter.

The Licensee agrees to abide by the most current BHA Marina and Canal Rules (hereinafter called the "Marina Rules"), which constitute a part of this License Agreement, as approved by the Yacht Committee, and ratified by the BHA Board of Directors. The Marina and Canal Rules will provide for, but are not limited to, the assignments of the boat slips, use of such boat slips, and the general care and maintenance of the marine facilities.

1. BOAT SLIP

The boat slip consists of an area encompassed by four (4) mooring pilings and the adjacent bulkhead, pier or catwalk and the non-exclusive right to use (in common with Licensees of adjacent boat slips, BHA and the respective Licensees, guests, and invitees of each) one or more catwalks between one or more mooring pilings and the bulkhead of the pier. At certain locations, the boat slip may contain, at BHA's option, a power boat lift.

2. TERM

The term of the License hereby granted shall commence upon the date hereof and continue until the expiration date. Upon expiration of the Term, (a) this License Agreement shall continue, on a month-to-month basis (from the first of each month), for the Monthly Rental at \$20.00 over market rate, until (1) a new License Agreement is signed, or (2) the License Agreement is terminated by either party hereto as set out in this paragraph or unless sooner terminated by BHA in accordance with the other provisions hereof. Either party hereto may terminate the License granted hereby. at the expiration of the term, by giving written notice of termination as hereinafter provided, which notice shall state a date, not less than thirty (30) days from the date of the giving of such notice (but which date need not be the first or last day of any particular month), and the License hereby granted shall terminate upon the date so stated. The Licensee's deposit shall be retained if (a) Licensee does not fulfill the lease term, and/or (b) if thirty (30) days' notice is not given by the Licensee before vacating the slip at the end of the term.

3. DESIGNATION OF BOAT SLIP

The boat slip which is the subject of this License Agreement (hereinafter called the "boat slip") is boat slip # _____ of Pier _____ area of Bal Harbour. Licensee shall be permitted to moor a sail/motor vessel of approximately _____ feet in length and a beam width of _____ feet in the boat slip but may not use the boat slip for the mooring of any other vessel or for any other use or purpose without the prior written consent of BHA. Use of the boat slip to moor any other vessel, without the prior written consent of the BHA, shall be considered a breach of this agreement.

4. BOAT SLIP FEE

As consideration for the License hereby granted, Licensee agrees to pay to BHA, at the office at Bal Harbour or such other address in Harris County, Texas as BHA may designate, the sum of \$ _____ per month,

monthly in advance on the first day of each month (a pro-rata fee will be charged for the first month if boat comes into marina on a date other than the first date of a calendar month). A late charge of \$35.00 will be assessed if not paid within 20 days of the due date each month. BHA reserves the right to increase the boat slip fee called for herein at the end of the License Agreement term, provided the Licensee is given (30) days written notice of said increase, and Licensee will either agree to pay said increased fee or vacate said boat slip. BHA also reserves the right to charge a Licensee a reasonable deposit equal to one (1) month's boat slip fee. Licensee has been offered the following special: _____

_____.

If Licensee does not fulfill the full term of the License Agreement, Licensee shall be liable for (and shall pay to BHA) all discounted amount(s), and otherwise pay to BHA those savings and/or other amounts which would have been paid by Licensee if no such special were offered or accepted. In addition, Licensee's deposit will be retained.

5. REPAIRS

Licensee shall not commit waste upon nor damage the boat slip. Licensee shall maintain the boat slip and the equipment contained therein in a clean and attractive condition. Upon termination of this License Agreement, Licensee shall surrender and deliver up the boat slip and its equipment attached thereto to BHA in the same (or better) condition in which it existed at the commencement of this License Agreement, excepting ordinary wear and tear, damage arising from acts of God and damage required thereunder to be repaired by BHA.

Upon the condition precedent that Licensee shall have given BHA written notice of the items needing repair, BHA will repair the mooring pilings, catwalk and bulkhead or pier forming or adjacent to the boat slip within a reasonable time after being so notified (except that if damage to any one of such structures is caused by one or more acts or omissions of Licensee, its guests or invitees, Licensee shall bear the cost of such repairs).

BHA shall have the right, but not the obligation, to enter upon any part of the boat slip at all reasonable hours to inspect same and to make repairs thereto, and in connection with the making of repairs, to temporarily relocate any vessel moored therein. If BHA considers necessary any maintenance, cleaning or repairs required by the provisions of this License Agreement to be made by Licensee, BHA may request Licensee to make such repairs or maintenance or perform such cleaning and, upon Licensee's failure or refusal to do so, within ten (10) days (or in case of an emergency whether or not BHA shall have requested or obtained Licensee's prior consent) BHA shall have the right (but no obligation) to perform such maintenance or make such repairs whereupon Licensee shall, upon demand by BHA, be responsible to reimburse BHA for the cost of such repairs. Any sum for which Licensee shall become liable to reimburse BHA shall be deemed to be a portion of the boat slip fee due and owing by the Licensee to BHA for purposes of determining BHA's remedies in the event of failure to pay such sum to BHA.

Licensee shall make no additions or changes in and/or to the pilings, the catwalk, the dock or bulkhead (and without limiting the generality of the foregoing, shall not install any lights, hoists, sheds, covers, storage lockers, nor other structures / items) without the prior written consent of BHA.

6. UTILITY SERVICES

If BHA shall have caused electric and water lines to be extended to the boat slip, Licensee hereby agrees to pay for any and all water and electricity used from such water and electricity lines upon any reasonable basis selected by BHA (specifically including, without limitation, the pro rata assessment of all boat slips connected to single meter for any such electric or water services, if each boat slip is not separately metered). No interruption or malfunction of any utility services provided by BHA shall constitute an eviction or disturbance of Licensee's use and possession of the boat slip or a breach by BHA of any obligation thereunder, nor shall BHA at any time

be liable for any damage in connection with such interruption or malfunction. BHA shall use reasonable diligence to restore such service in circumstances in which such interruption is caused by BHA.

7. SUBLETTING AND ASSIGNMENT

The License hereby granted may not be conveyed, sublet or assigned without prior written consent of BHA and any property conveyance, sub-letting or assignment in violation of the terms hereof shall be void and of no force or effect.

8. USE

Licensee will use the boat slip solely for the purpose of mooring and storage of one boat owned by or leased or chartered to Licensee and will not use or permit use of the boat slip for any other purpose without the prior written consent of BHA. Licensee shall comply with all Federal, State, Municipal, maritime and other laws, ordinances, rules and regulations applicable to the use of the boat slip by Licensee; will comply with such reasonable regulations as the Yacht Committee or BHA may promulgate regarding sanitation, cleanliness and other matters affecting users of boat slips at Bal Harbour generally, including removal of trash, garbage and other waste. Licensee shall not make any unlawful use of the boat slip nor permit any unlawful use thereof, nor use any loud speaker, phonograph, radio or sound amplifier heard outside of the boat slip or the boat housed therein. Licensee shall not commit any act which is a nuisance or annoyance to BHA, to Licensees of other boat slips or occupants of Bal Harbour, or which might appreciably do damage to and/or negatively affect the good will of Bal Harbour.

9. RELEASE FROM LIABILITY

A. GENERAL INDEMNITY, RELEASE AND INSURANCE.

THE FOLLOWING SECTIONS 9.B THROUGH 9.E SET FORTH AND GOVERN THE RIGHTS, AGREEMENTS, AND OBLIGATIONS OF THE PARTIES PERTAINING TO: (1) INDEMNIFICATION AND HOLD HARMLESS PROVISIONS INCLUDING PROVISIONS WHEREBY ONE PARTY MAY BE REQUIRED TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY FOR CLAIMS ARISING FROM SUCH OTHER PARTY'S NEGLIGENCE OR STRICT LIABILITY; (2) RELEASE OF CLAIMS AND LIABILITY PROVISIONS; AND (3) INSURANCE REQUIREMENTS.

B. Definitions, For the purpose of this Section, the following definitions and general provisions shall apply.

The term "**Bal Harbour Group**" shall mean Bal Harbour Association, Inc., its parent, subsidiaries, affiliated companies, co-owners, (excluding any member of Lessee Group), attorneys and each of their respective insurers, consultants, officers, directors and employees, and the term "**Lessee Group**" shall mean the Lessee, their family members, invitees, licensees, contractors and subcontractors of every tier and each of their respective insurers.

In the event Bal Harbour Group must bring legal action in order to enforce an indemnification, all reasonable costs and expenses related to that action shall be included as part of the indemnification.

If a claim is asserted against one of the parties to this Agreement that may give rise to a claim for indemnity against the other party hereto, the party against whom the claim is first asserted shall immediately notify the potential indemnitor in writing and give the potential indemnitor the right to defend the defense of the claim.

Notwithstanding anything stated in the Agreement to the contrary, all release and indemnity provisions hereof shall survive the termination or expiration of this Agreement, without limit in time, except time limits imposed by the applicable statutes of limitations or prescriptive periods.

For this purpose of this Agreement, the term "Gross Negligence" shall be defined to mean such lack of care by a party or a person as to indicate a conscious indifference and reckless disregard for the safety of people and/or property.

For the purpose of this Agreement, the phrase "Regardless of Fault" shall mean without regard to the cause(s) thereof, including, without limitation, preexisting conditions, imperfection of material, defect or failure of equipment, ultra hazardous activity, strict liability, breach of statutory duty, breach of safety requirement or the negligence of any party or parties (including the negligence of the indemnitee, Bal Harbour Group), **whether such negligence be sole, joint, contributory, or concurrent**, active or passive, but expressly not including Gross Negligence or willful misconduct.

In the event any provision of this Contract is inconsistent with or contrary to any applicable federal, state or local law, rule, ordinance or regulation, said provision shall be deemed to be modified to the extent required to comply with said law, rule, ordinance or regulation, and as so modified said provision and this Contract shall continue in full force and effect.

C. LESSEE'S INDEMNITY OBLIGATION.

LESSEE AGREES TO DEFEND, INDEMNIFY, AND HOLD BAL HARBOUR GROUP HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, FINES, PENALTIES, LIABILITIES, AND/OR CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING COSTS OF LITIGATION, ATTORNEYS' FEES AND REASONABLE EXPENSES IN CONNECTION THEREWITH, ON ACCOUNT OF BODILY INJURY TO, ILLNESS OR DEATH OF ANY FAMILY MEMBER, INVITEE, GUEST, LICENSEE, EMPLOYEE, AGENT AND/OR REPRESENTATIVE OF LESSEE GROUP, AND FOR DAMAGE TO PROPERTY (WHETHER REAL OR PERSONAL, OWNED OR LEASED) OF LESSEE GROUP THAT ARISES OUT OF, IN CONNECTION WITH, INCIDENT TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE USE OF DOCK/BOAT SLIP AND/OR COMMON AREAS USED BY LESSEE GROUP, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, AND REGARDLESS OF FAULT. THE FOREGOING DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS OF LESSEE SHALL NOT APPLY TO THE EXTENT THAT SUCH BODILY INJURIES, ILLNESS, DEATH OR DAMAGE TO PROPERTY ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFULL MISCONDUCT OF ANY MEMBER OF BAL HARBOUR GROUP.

D. LESSEE OBLIGATION AS TO THIRD PARTY LIABILITIES.

LESSEE, ON BEHALF OF ITSELF AND LESSEE GROUP, SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD BAL HARBOUR GROUP HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DEMANDS, FINES, PENALTIES, LIABILITIES AND/OR CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING COSTS OF LITIGATION, ATTORNEYS' FEES, AND REASONABLE EXPENSES IN CONNECTION THEREWITH, OF ANY THIRD PARTY PERSON AND/OR THIRD PARTY ENTITY FOR, RESULTING FROM OR ON ACCOUNT OF (i) PERSONAL INJURY TO, ILLNESS OR DEATH OF ANY THIRD PARTY AND/OR (ii) DAMAGE TO PROPERTY OF ANY THIRD PARTY.

E. Insurance Generally. The lessee shall obtain and maintain general liability insurance coverage in the amount of not less than \$300,000.00 and shall have Bal Harbour Association, Inc., named as an additional insured on such policy. In addition to naming Bal Harbour Association, Inc., as an additional insured, for boats under 26 feet in overall length or boats of any length powered by a motor of 25 horsepower or less, BHA requires minimum Liability Insurance Coverage of \$100,000.00. The insolvency, bankruptcy, or failure of any insurance company, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate, nor waive any of the provisions of this Agreement. Lessee shall cause its subcontractors to carry and maintain insurance of the type and in not less than that amount which Lessee is required to carry and maintain hereunder. Lessee acknowledges and agrees that the indemnity and insurance obligations contained within this

Agreement are separate and apart from each other, such that failure to fulfill any indemnity obligation shall neither alter nor eliminate the insurance obligations, and vice versa.

10. TITLE

BHA does not have fee simple title to some or all of the boat slips located in or adjacent to Bal Harbour, and this license is granted subject to one or more leases between BHA and the State of Texas and the Laws of the State of Texas with respect to use of public waters of the State. In the event that the right of BHA to the exclusive use of the areas in which the boat slip is located is terminated, for whatever reason or cause, then the License hereby granted shall also be terminated, without liability, cost nor penalty to BHA.

11. DEFAULT AND REMEDIES

In the event of the failure or refusal of Licensee to pay in a timely manner the rental and/or other monetary charges due to be paid to BHA when due, or in the event of Licensee's failure to perform or observe any other covenant or condition of this License Agreement, the License herein granted and the benefits hereof to Licensee shall, at the option of BHA, immediately terminate without further notice of such termination. BHA may enter upon and take possession of the boat slip and expel or remove Licensee and any other occupant therefrom. After termination of the License herein granted, BHA may remove any vessel moored in the boat slip therefrom and store or arrange for the storage of such vessel at Licensee's sole expense, for which purpose Licensee hereby grants BHA a Power of Attorney to arrange for and bind Licensee to pay for such storage. All claims by Licensee against BHA for damages by reason of any such removal of a vessel from the boat slip are hereby EXPRESSLY WAIVED IN ALL RESPECTS.

In the event of termination of the License hereby granted notwithstanding such termination, Licensee shall be liable for and shall pay to BHA at the same place provided for the payment of the boat slip fee, the sum of all unpaid boat slip fees, other charges and other indebtedness which has accrued in connection herewith, through and including the date of such termination.

The remedies set out above shall be cumulative and shall be in addition to BHA's remedies at law and/or in equity, and Licensee shall pay BHA's expenses incurred in the pursuit and/or enforcement of of all such remedies pertaining to any default of Licensee, including but in no way limited to, BHA's reasonable attorney's fees.

12. HURRICANES

In the event that the Galveston-Houston area is put under a hurricane watch or hurricane warning by the United States Weather Service, Licensee shall, without any requirement of notification by BHA, remove any vessel moored in a boat slip on "A", "B", or "C" piers and store such vessel at a location other than Bal Harbour or, if space is available, in a vacant boat slip in the "D" or "E" pier areas of Bal Harbour canals for the duration of any such hurricane watch or hurricane warning. In the event that a hurricane warning is issued for the Galveston-Houston area and Licensee has failed or refused to remove the vessel moored in the boat slip, BHA shall have the right, but no obligation, to move such vessel to a location (on land or in water) selected by BHA at Licensee's sole cost, expense and risk. Licensee hereby RELEASES AND HOLDS HARMLESS BHA, in such circumstances, from any and all claims of whatever kind which Licensee may have due to any damage or loss of the vessel.

13. MISCELLANEOUS

Any notice which may be given under the terms of this License Agreement shall be in writing and shall be either delivered by hand or sent by United States Certified or Registered Mail, postage prepaid, if for BHA to its President, addressed to his or her attention at: 123 Lakeside Lane, Houston, Texas 77058 or if to Licensee, at the address set out below.



**BAL HARBOUR ASSOCIATION
BAL HARBOUR MARINA
BOAT SLIP LICENSE AGREEMENT**

Either party's address may be changed from time to time by such party giving notice as provided above. All such notices shall be conclusively deemed received four days after deposited in the United States Mail or upon delivery if delivered by hand.

This License Agreement shall be binding upon and shall accrue to the benefit of BHA, its successors and assigns, and Licensee, its successors, assigns, heirs, executors, and administrators.

LICENSEE:

BAL HARBOUR ASSOCIATION, INC.

Signature

By: _____
Manager's Signature

Signature

Address

City, State, Zip

Phone number