

# Marina Village

YACHT HARBOR

1030 Marina Parkway  
Alameda, California 94501  
Tel: 510 521-0905 Fax: 510 521-7032  
info@marinavillageharbor.com

## BERTH LICENSE AGREEMENT

Please print and complete in full. Read this Agreement and any Addendum before you sign it.

This Berth License Agreement (the "Agreement") is between SRM Marina Investors, LLC doing business as Marina Village Yacht Harbor (the "Marina") and the boat owner(s) named below ("Boat Owner") for use of a certain marina berth by the boat named below (the "Boat"), under the following terms and conditions:

Commencement Date: \_\_\_\_\_

Berth No: \_\_\_\_\_ Meter No: \_\_\_\_\_

Boat Owner(s) Names: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Home Address: \_\_\_\_\_  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

Do you prefer to receive your statements via:

Print  Email

Phone Numbers:

Home: \_\_\_\_\_

Work: \_\_\_\_\_

Mobile: \_\_\_\_\_

### LEGAL OWNER/LIENHOLDER OF BOAT

Name: \_\_\_\_\_

Address: \_\_\_\_\_

### IN CASE OF EMERGENCY NOTIFY

*(other than boat owner(s))*

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Phone Numbers:

Home: \_\_\_\_\_

Work: \_\_\_\_\_

Mobile: \_\_\_\_\_

Monthly License Fee: \$ \_\_\_\_\_

Security Deposit: \$ \_\_\_\_\_

Key Deposit: \$ \_\_\_\_\_

Monthly Dock Box Fee: \$ \_\_\_\_\_

Monthly Live Aboard Fee: \$ \_\_\_\_\_

### VESSEL DESCRIPTION

Boat Name: \_\_\_\_\_

Make/Class: \_\_\_\_\_ Year: \_\_\_\_\_

Hull Material \_\_\_\_\_

Color Hull/Trim: \_\_\_\_\_  Power  Sail

Length: \_\_\_\_\_ Beam: \_\_\_\_\_ Draft: \_\_\_\_\_

*(including bowsprit, swim platform, etc.)*

Sanitation:  Holding Tank  Porta Potty

Motor:  Inboard  Outboard

Fuel:  Diesel  Gas

Registration/Doc# \_\_\_\_\_

Proof of registration/documentation furnished

### INSURANCE

Company: \_\_\_\_\_

Policy No.: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

Amount of PD/PL: \_\_\_\_\_

Broker: \_\_\_\_\_

Phone: \_\_\_\_\_

Proof of insurance furnished

Other Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Boat Owner represents that the above information is accurate, and agrees to notify Marina of any changes to such information as same may occur

1. **LICENSE** Marina hereby grants a license to Boat Owner for use of the berth designated above (the "Berth") located in Marina Village Yacht Harbor for the Boat, as described above. Marina hereby grants use of the Berth for Boat Owner's use in storing the Boat and for no other purpose. There is no possessory interest granted and the right is personal to the Boat Owner(s) identified above and may not be assigned or sublet. If the Boat is owned by a corporation or other business entity, it is agreed that the person signing below on behalf of such business shall be personally and severally liable, together with such business entity, for satisfaction of payment and other obligations of the Boat Owner hereunder. In no event shall the vessel, any contents therein or any other property of Boat Owner be considered to be within the care, custody or control of Marina. Boat Owner further acknowledges that none of the other vessels within Marina Village Yacht Harbor, including those immediately adjacent to the Boat are within the care, custody and control of the Marina for any purpose. This Agreement confers no leasehold interest.
2. **TERM** The term of this Agreement is month-to-month for a minimum of one month, commencing on the date set forth above, and may be terminated by either Boat Owner or Marina upon at least thirty (30) days' prior written notice. Unless otherwise noted below, Marina may, with or without cause, terminate the Agreement for breach of any condition or term of this Agreement upon three (3) days written notice to Boat and/or Boat Owner. This Agreement shall terminate automatically and without further notice if for any reason the account for the Boat becomes 60 days in arrears, in which event Boat Owner shall immediately remove the Boat from the Marina's premises. If the Vessel is not so removed, she will be regarded as a trespasser and wharfage fees will be assessed, without waiving the Marina's objection to the Boat's trespass, at the then current daily/transient vessel rates.
3. **LICENSE FEE AND OTHER CHARGES** The monthly License Fee and other fees shall be paid to Marina at the address below by Boat Owner monthly in advance on the first day of the month, without deduction or offset. Marina may change the amount of the License Fee and other terms of this Agreement upon not less than thirty (30) days' prior notice to Boat Owner. Boat Owner shall pay a late charge in an amount set by Marina, but not less than ten (10%) percent of such overdue amount, as well as a service charge, of not less than \$25.00, for any check returned for insufficient funds.
4. **SECURITY DEPOSIT** Before the Boat may be docked in the Berth, Boat Owner shall pay to Marina a Security Deposit, in an amount equal to one month's License Fee, to secure the performance of Boat and/or the Boat Owner's obligations under this Agreement. Marina may commingle the Security Deposit with other funds held by Marina. If Boat Owner is in default on any payment due hereunder, Marina may use the Security Deposit to satisfy any sum due to Marina under this Agreement or to defray any expense or damage reasonably incurred by reason of the default. If Marina uses any part of the Security Deposit, Boat Owner shall immediately upon notification, pay to Marina a like sum to replenish the Security Deposit. The Security Deposit, without interest, shall be returned to Boat Owner within thirty (30) days after the termination of this Agreement, provided all the obligations of Boat Owner under the Agreement have been satisfied. Any costs incurred for damage or removal of materials from berth or any dock box and any outstanding amount due on Boat Owner's account at the date of termination may be offset against the Security Deposit.
5. **KEY DEPOSIT** Boat Owner shall deposit with Marina the sum set forth above as a Key Deposit for the use of a key or other access device to the dock area of Marina Village Yacht Harbor. All keys and access devices provided by Marina shall remain the property of Marina and must be returned upon request. Any additional keys and access devices requested by Boat Owner shall only be issued by Marina upon payment of an additional Key Deposit. The Key Deposit(s) shall be returned to Boat Owner only after Boat Owner returns all keys and access devices to Marina and the Boat has been removed from the Marina. If keys are not returned to the Marina within 30 days after the License Agreement is terminated and Boat has been removed from the Marina, any Key Deposit(s) shall be forfeited.
6. **USE OF THE BERTH**
  - a) This Agreement grants to Boat Owner a limited personal right, without any possessory interest, to use the Berth for mooring the Boat. Boat Owner may use the Berth only to moor the Boat, and for no other purpose. Marina reserves the right to exercise exclusive control over the use of the

Berth, dock space and adjoining walkways, and refuse to grant a license to any person for any reason. If Boat Owner sells the Boat and wants to use the Berth for another boat, Boat Owner must first get permission from, and register the new boat with, the Marina. Boat Owner represents that Boat Owner has an ownership interest in the Boat and/or Boat Owner is fully authorized to bind all owners of the Boat to the terms and conditions of this Agreement. Boat Owner's rights hereunder are not transferable. If Boat Owner elects to sell the Boat, the Boat Owner shall remove the Boat from the Marina before transferring ownership to a new owner, unless the new owner is, before transfer of ownership, approved by the Marina to maintain the Boat at the Marina and has executed a Berth License Agreement. If an agent of Boat Owner, including a Captain, is signing this Agreement, said person represents that he has the authority to bind the Boat Owner and agrees to provide written documentation of said authority.

- b) Continuous vacancy of the Berth for more than fifteen (15) days shall be conclusively deemed to constitute both an abandonment of the Berth by Boat Owner and cause for immediate termination of this Agreement, unless the Marina has been notified in writing prior to the commencement of said period of absence of Boat Owner's intention to maintain this Agreement in full force and effect. If Boat Owner gives written notice to Marina of Boat Owner's intent to leave the Berth vacant for a stated period, Marina may allow use of the Berth by another vessel for such stated period and shall credit towards Boat Owner's Monthly License Fee the lesser of 75% of the Monthly License Fee or 75% of the amount received by Marina for permitting the Berth to be used during such period.
- c) Neither Boat Owner nor any other person having an interest in the possession, use, occupancy, or utilization of any portion of the Berth shall enter into any lease, sublease, license, concession or other agreement for use, occupancy or utilization of space within the Berth without first obtaining Marina's prior written consent, which may be withheld in its sole discretion.
- d) Boat Owner shall maintain the Berth in a safe, neat and orderly condition throughout the term of this Agreement.
- e) Boat Owner shall neither make nor permit to be made any changes, alterations or additions to the Berth, the docks, fenders, floats or landings or the equipment attached thereto without the prior written consent of Marina. Upon expiration or earlier termination of this Agreement, Boat Owner shall return the Berth to Marina in the same condition as received, ordinary wear and tear and damage by fire, earthquake, act of God or the elements excepted. No personal property will be stored on the finger float or walkway, or obstruct free passage in anyway thereon. Dock steps must meet Marina criteria.
- f) Boat Owner agrees not to engage in loud, disruptive, indecorous conduct or other act or thing which may disturb the quiet enjoyment or any occupants in the adjacent area or berths. Boat Owner shall not use in any wasteful or unreasonable or hazardous manner any of the utilities furnished by Marina.
- g) Boat Owner agrees to keep the Berth and all property located on such Berth free from any liens arising out of any work performed, materials furnished or obligations incurred by or for Boat Owner. Boat Owner shall be solely responsible for any damage caused by third parties hired at Boat Owner's request and working on or about the Boat or Berth.
- h) No part of the Boat shall at any time extend over any portion of any dock in the Marina. If Marina, in its sole discretion, approves the vessel extending beyond the Berth and into the water area, Boat Owner shall pay additional License Fees based on the length of the extension and the standard per foot rate at such time. The Boat must be capable of self-propelled navigation, unless she is a sailboat that is not equipped with an engine. Such Sailboats must have rigging and sails in seaworthy condition.
- i) Boat Owner agrees not to undertake any commercial activity on the Boat or at Marina Village Yacht Harbor without the prior written consent of Marina.
- j) Unless prior written approval is given by Marina, no sign for the purpose of advertising or display shall be placed on the Boat or the dock.

7. **UTILITIES** At Boat Owner's request, Marina shall make available to Boat Owner at the Berth electrical power and water. Marina expressly does not warrant the availability of utility services, and shall not be responsible for any damage or injury due to the interruption or unavailability of utility services. Marina does not warrant that the utility services will be compatible with utility service requirements of the Boat (including electrical interconnection requirements or the effect of electrolytic action). Boat Owner is responsible for ensuring the adequacy of all electrical wiring/connections. Marina reserves the right to refuse connection of utility services to any electrical wiring/connections it deems inadequate or unsafe. Boat Owner agrees to pay for electricity and services supplied to the Berth. Electricity meters for berths and side ties will be read and billed monthly, or as otherwise designated by Marina, and charges shall consist of actual electricity cost, based on usage. Electricity services contracted for by Boat Owner will be billed at cost (labor and material), and emergency services may be billed, as determined by the Marina. Damage caused by Boat Owner and/or its invitees, necessitating repair, replacement or reconstruction by Marina Village Yacht Harbor property and/or equipment, will be billed to Boat Owner at cost (labor and material). If such damage results in an inability of the Marina to use the Berth or other marina property, Boat Owner shall be liable for loss of use and all other damages.
8. **LAWS, RULES AND REGULATIONS** In using Marina Village Yacht Harbor, Boat Owner shall comply with all laws, rules and regulations of federal, state and local entities, including environmental laws and rules and regulations of the U.S. Coast Guard. Boat Owner shall comply with all Marina Rules, which are fully incorporated into this Agreement. Owner understand and agrees the Rules may be modified by, at the Marina's election, either, providing 30 or more days advance written notice to Boat Owners, or by posting revised Rules on a bulletin board located outside the Marina office, in which event the revised Rules shall become effective seven (7) calendar days after they are so posted. As a courtesy the updated Rules shall also be posted on the Marina website.
9. **OPERATION AND BOARDING OF BOAT** Marina shall have the right, but not duty to enter upon Boat Owner's vessel at any time for emergency service and at all reasonable times for periodic inspections. Marina reserves the right but not the obligation to move or to require Boat Owner to move the vessel from the Berth to another mooring within the Marina at any time for any reason whatsoever. Marina shall have no liability for such activities.
10. **LIABILITY AND INDEMNITY** Boat Owner accepts the Berth, walks, floats, ramps, gangways, convenience facilities, walkways, roads in and around the Marina's premises, common areas, general facilities, and improvements in such areas, including but not limited to electricity and other utilities, in "as is" condition, and without written, implied or any other warranty or representation of any kind. Boat Owner agrees that during the term of this Agreement or while the Vessel remains on the Marina's premises or in the possession of the Marina or its assignee, and except as below provided, all risk of loss or damage to property and of personal injury and/or death shall be upon the Boat Owner. Boat Owner agrees that in the absence of gross negligence or willful misconduct by the Marina, which shall not be presumed but must be affirmatively established, neither it nor its respective officers, directors, agents or employees shall under any circumstances whatsoever be charged with or liable for direct, consequential or any other damages sustained by Owner or his/her family, employees, invitees, charterers or underwriters, no matter how occurring, including but not limited to loss of or damage to the Vessel or any other personal property caused by theft, fire, collision, chafing, dock maintenance or faulty repair, or by reason of any other cause, or for personal injury or death, even if occasioned by the negligence of the Marina or its employees, officers or agents. Owner agrees to indemnify, protect and defend the Marina from and against any and all actual or potential liability arising or potentially arising from any such damage, injury, death or other loss by Owner and/or his her/family, employees, invitees, charterers and/or underwriter. *In the event Owner does not wish to be bound by the exonerations from and limitations of liability inuring to the benefit of the Marina hereunder, the Marina shall and does agree not to enforce any such provisions herein, provided Owner agrees to and does pay license fees in a sum equal to the transient rates currently in effect, or twice the current usual fees for non-transient vessels, whichever fee is higher. If the Owner elects to pay the higher fee and opt out of the above exonerations and limitation terms, it is understood all other terms and conditions herein shall remain fully enforceable, including the right to terminate this Agreement without cause upon providing 30 days advance notice.*

11. **INSURANCE** Boat Owner shall secure and maintain, with an insurance company which is acceptable to Marina, at his/her own expense, a Protection and Indemnity policy of insurance with limits of not less than \$500,000.00 and a deductible of not more than ten (10%) percent of the present cash value of the Boat. Boat Owner shall also maintain a Hull and Machinery policy covering at least 100% of the present cash value of the Boat, with endorsements for extended perils, damage by fire, electrolysis and/or stray current, corrosion vandalism and burglary. Marina reserves the right, upon 30 days advance written notice to increase or otherwise alter Boat Owner's required coverage hereunder. Pollution coverage is strongly recommended. All required insurance shall (a) name Marina and SRM Associates as additional insured; (b) provide that the coverage under such insurance is primary and noncontributory as respects to any insurance maintained by Marina; and (c) provide thirty (30) days advance written notice to Marina in the event of cancellation of or reduction of coverage and at least ten (10) days' prior notice of lapse in coverage. Boat Owner shall provide evidence of such insurance upon signing this Agreement and no later than 30 days prior to policy expiration. All subcontractors employed by Boat Owner shall (a) register at the Marina Office prior to beginning work; (b) provide proof of insurance that is substantially in compliance with the terms of the policies noted above, naming Marina and SRM Associates, as additional insured; and (c) comply with all applicable laws and best business practices.
12. **DEFAULT** All terms herein are material. If Boat Owner breaches any term of this Agreement Boat Owner shall be in default. Upon default, Marina may exercise any and all remedies available hereunder, at law in equity, and/or in admiralty. A material default and breach of this Agreement by Boat Owner, includes, but is not limited to: (a) a failure to pay the License Fee or other sums due Marina and (b) a failure by Boat Owner to observe and perform any other provision of this Agreement or the Rules. Should Marina take action against Boat Owner to collect any sum due under this Agreement or enforce any obligations of Boat Owner hereunder, Boat Owner shall pay the costs of such action together with attorneys' fees. Boat Owner agrees that the obligation to pay License Fees, other charges due Marina and services and supplies provided by the Marina are secured by a lien with power of sale hereby granted by Boat Owner in favor of Marina against the Boat pursuant to the California Boater Lien Law. Boat Owner expressly agrees that Marina shall the right to exercise any and all rights available to it under applicable federal admiralty law, including but not limited to the right to arrest the Boat and recover any and all expenses incurred in so doing, including all legal and/or custodian expenses. If Boat Owner shall be delinquent for twenty (20) days in payment of the License Fee, Marina shall have the right, in addition to other remedies, to remove the vessel from the Berth and impound the same. Should this occur, Boat Owner shall pay an impound rate of fifty dollars (\$50.00) per day in addition to all collection and/or related costs. Owner agrees that if fees due are not paid by the 15<sup>th</sup> calendar day of each month or if the Boat Owner in Marina's opinion has abandoned the Vessel, the Marina shall become entitled, without providing advance notice, to chain the Vessel to the slip where she lies, otherwise disable her, and/or move the Vessel to any other location in the water or on land and chain the vessel at her new location, at the Boat Owner's risk and expense.
13. **CUMULATIVE REMEDIES; NO WAIVER** Marina's rights and remedies hereunder are cumulative. Pursuit of any remedy is not an election of remedies or a waiver of any other remedies. No waiver or forbearance relating to a breach of this Agreement shall be construed as a waiver of forbearance of rights or remedies related to any subsequent breach. The acceptance of performance hereunder, or the payment of any amount after the same has become due or at a time when any other default exists shall not constitute a waiver of the right to demand payment of all other amounts owed or a waiver of any other default then or existing thereafter.
14. **RESPONSIBILITY FOR DAMAGE** Boat Owner and Boat shall be responsible for and shall, upon demand, promptly pay Marina for any costs or damage incurred by the Marina or others due to acts or omissions of the Boat Owner, the Boat, or Boat Owner's agents or guests. Boat Owner shall not release or permit to be released, by action or inaction, any hazardous waste or environmentally objectionable substances, including oil, gasoline or sewage ("Hazardous Substances") into the water or land of Marina Village Yacht Harbor. In the event of a release of Hazardous Substances, the costs for which Boat Owner and Boat may be responsible include, but are not limited to, the costs of booms, absorbent pads, disposal of the Hazardous Substance, clean up oversight by governmental agencies and Marina personnel, and any legal fees, costs and penalties incurred in defense of or

otherwise related to any violations. Boat Owner shall be responsible for immediately reporting and cleaning up any such release. Boat Owner shall immediately report any such release to all appropriate governmental authorities and the Marina and shall keep Marina informed on a daily basis of Boat Owner's actions in reporting and cleaning up a release. Marina may take any action it deems appropriated regarding the release, at Boat Owner's expense, liability and risk.

- 15. **ATTORNEYS' FEES** If Marina brings any legal action against Boat Owner for violation of the terms of this Agreement, the prevailing party shall be entitled to attorneys' fees and costs.
- 16. **LIVE-ABOARDS** Anyone who spends four (4) nights aboard a vessel berthed at Marina Village Yacht Harbor in any seven-day period, or more than 14 days in any 30-day period, shall be deemed to be living aboard the vessel. Anyone who lives aboard a vessel must be approved by Marina, shall execute a Live Aboard Addendum and shall pay the additional live aboard fee as set by Marina. Boat Owner expressly agrees to abide by this provision.
- 17. **NOTICES** Each Party shall promptly notify the other in writing in the event it changes its address from those reflected herein. All notices from one party to the other given pursuant to the terms of this Agreement shall be given in writing and shall be deemed to have been fully given when deposited in the U.S. mail, first class postage prepaid or sent by Federal Express or other recognized overnight courier and addressed to Boat Owner or Marina at the respective addresses listed above for Boat Owner and below for Marina:

SRM Marina Investors, LLC 1030 Marina  
Village Parkway Alameda, CA 94501

- 18. **ENTIRE AGREEMENT** This Berth License Agreement, including the Marina Rules, and attached exhibits (Live-Aboard Addendum, if applicable) contains the entire agreement between the parties. Boat Owner represents and warrants that all statements, including those in the attached application and as set forth herein, are true and correct. Boat Owner acknowledges that the Marina has fully relied upon these statements in executing this Agreement. Boat Owner acknowledges that he/she has received a copy of the Marina Rules and agrees to abide by such Rules, as same may be amended from time to time.

**MARINA**

SRM MARINA INVESTORS, LLC Boat Owner(s)  
a California limited liability company  
By: SRM Associates, as agent

Sign: \_\_\_\_\_

**BOAT OWNER(S)**

Print: \_\_\_\_\_  
Sign: \_\_\_\_\_  
Date: \_\_\_\_\_

Print: \_\_\_\_\_  
Sign: \_\_\_\_\_  
Date: \_\_\_\_\_