

STATE OF MISSISSIPPI
COUNTY OF HARRISON

Amended Date: 17 July, 2014

BERTHING AGREEMENT

This BERTHING AGREEMENT made and entered into on the day and year herein noted by and between the Long Beach Port Commission, hereinafter referred to as the "Commission", and the following identified Boat Owner as follows, to-wit:

BOAT OWNER OR OWNERS: _____

ADDRESS OR ADDRESSES: _____

BILLING ADDRESS IF DIFFERENT FROM ABOVE ADDRESS:

HOME PHONE: _____ EMERGENCY PHONE: _____

WORK PHONE: _____ CELL PHONE: _____

EMPLOYER: _____

TYPE OF VESSEL: _____ I.D.# _____

BOAT NAME: _____ DOC.# _____

MFG. OF BOAT: _____ HULL I.D.# _____

LENGTH: _____ A/C: # of UNITS _____ NO _____

SLIP NO: _____ PIER NO: _____

RATE PER MO: _____ PRO-RATED 1ST MO.: _____

LIEN HOLDER: _____

LIEN HOLDER ADDRESS: _____

LIEN HOLDER PHONE: _____

INSURANCE COMPANY _____ POLICY # _____ EXPIRES _____

AS A CONDITION PRECEDENT to the placement of any vessel in the harbor, the Boat Owner shall provide the Harbor Master with proof of ownership and a current home state registration for the vessel or a copy of the US Coast Guard vessel documentation certificate indicating actual Over All Length (OAL) to determine slip rent for the vessel. In addition, a copy of an active insurance policy for the vessel shall be provided when the initial agreement is enacted. The Harbor Master's initials certifying proof of ownership, current registration or vessel documentation certificate, and active insurance shall be affixed to the original Berthing Agreement below:

Harbormaster's Initials _____

1. BERTHING AND FEES: Boat Owner shall pay to Commission and/or its duly appointed representative for the use of the above described slip together with utilities and air conditioning charge(s) as required as provided herein and a limited license to use the adjacent areas herein provided as follows, to-wit:
 - A. Mississippi Residents: Rent to be calculated at the rate of \$ 4.20 per linear foot of the above described vessel.
 - B. Harrison County Residents: Rent to be calculated at the rate of \$ 3.50 per linear foot of the above described vessel.
 - C. Out of State Residents: Rent to be calculated at the rate of \$ 6.30 per linear foot of the above described vessel.
 - D. Air-conditioning: Any vessel that has an air-conditioner shall be charged an additional sum of \$ 25.00 per month for each air conditioning unit aboard.
 - E. Utility Fee: Boat Owners shall pay the sum of \$ 30.00 per month for costs of utilities.
 - F. Daily Rate: Boat Owners who rent a slip on a daily basis shall pay the sum of \$ 1.00 per foot of boat length per day through day 5. Day 6 through day 15, Boat Owner shall pay ½ of the rent based on the aforesaid A. – E. Boat Owners exceeding 15 days shall pay a monthly rate as calculated on the aforesaid A – E. Space and Slip availability is at the sole discretion of the Harbor Master.

The monthly lease rate for the above described vessel based upon the information provided by Boat Owner shall be payable in advance on or before the first day of each and every month hereafter, The first month rent shall be pro-rated. In the event the Boat Owner elects to pay his month-to-month lease rate annually in advance, the Boat Owner will receive a ten percent (10%) discount for said yearly rate, payment to be non-refundable. The above described [payments (i.e., daily, monthly, yearly, etc.) shall be payable in advance at the Long Beach City Hall, Jeff Davis Ave. Long Beach, Mississippi, on or before the first day of each and every month hereafter, unless paid in advance.

2. Non-Payment and /or late payment: A charge of 10% of the monthly rent shall be added to any bill for monthly rent and fees not paid on or before the 15th of the month for which same is due and payable. In the event that the rent and other charges are not paid on or before the date such charges become due and payable, the Boat Owner shall be subject to having his vessel seized and sold according to the lien imposed by general maritime law and/or Section 85-7-9, Mississippi Code of 1972, annotated and amended, et. seq. Further, Boat Owner is hereby advised pursuant to the above referenced State Statute that “such lien shall be paramount to all other debts due and owing by such water craft or the owner thereof or other lien thereon, except as provided by section 85-7-7, Mississippi Code of 1972, annotated and amended. Further, and by mutual agreement Boat Owner shall be responsible for and pay a reasonable attorneys fee deemed to be at least \$400.00 or 25% of the total sum due and owing, which ever shall be greater if found to be in violation of any provision hereof and said matter is turned over to an attorney. Further, Boat Owner agrees that in the event that Boat Owner becomes delinquent in the payment of any sums owed Commission, that Commission and/or its duly appointed Harbor Master may use any reasonable method available included, but not limited to, chaining the vessel to the dock, removing the vessel to a secure storage facility or blocking the vessel in its berth, to impose its lien against the vessel itself. That Boat Owner specifically agrees and understands that some damage

may occur to the vessel and the Boat Owner agrees that Commission shall not be responsible for such consequential damages.

3. Term: This Berthing Agreement shall continue in effect from month to month, subject to termination upon fifteen (15) days written notice by either party.

4. Uses: Boat Owner shall not use nor permit the demised premises, or any portion thereof to be used for: (1) the conduct of any offensive, noisy, or dangerous activity or public nuisance, or against any law, or (2) in any manner which would infringe on the rights of other tenants of the Commission, or (3) in any manner contrary to the rules and regulations of the Commission, a current copy of which has been provided to Boat Owner and which may be amended from time to time without prior notice to Boat Owner. Boat Owner agrees to abide by all rules, regulations and directions of the United States Coast Guard, Mississippi Department of Marine Resources, Mississippi State Health Department, the U.S. Environmental Protection Agency and all other federal and state agencies, departments or political subdivisions thereof.

5. Indemnification of Commission: Boat Owner covenants to exercise due care in the occupation of the leased berthing slip and to vacate the same in good condition, reasonable wear and tear excepted. Boat Owner shall indemnify Commission it agents, employees, members and the City of Long Beach, Mississippi, against all claims, actions, proceedings, damages and liabilities, including attorneys' fees, costs, and other expenses arising from or connected with Boat Owners possession and use of the aforesaid berthing space and common areas, including, but not limited to those caused by or resulting from vandalism, theft, fire, weather, tides or wave action, Boat Owner does further agree to be responsible for and pay any and all damages to other craft and property caused by the above described vessel, Boat Owner, or guest.

6. Alteration and Improvements: Boat Owner shall make no alterations or improvements to the property of Commission without expressed written consent of Commission. Any and all improvements approved by Commission shall become property of Commission.

7. Limitation on Commissions Liability: Boat Owner acknowledges that he, she or it has inspected the berthing slip identified herein and has satisfied himself, herself, or itself that the berthing space is adequate for the safe berthing of Boat Owners vessel, Harbor assumes no responsibility for tending mooring lines or moving vessels from the berths assigned, Further, Boat Owner agrees to indemnify and hold Commission harmless from damages to vessel and/or injuries to Boat Owner's guest's, invitees or all others regarding occupancy of the berthing space and use of common areas not the direct negligence of Commission.

8. Cancellation of Berthing Agreement: Boat Owner agrees to give at least fifteen (15) days written notice of his intent to vacate; His failure to do so shall result in Boat Owner being responsible for payment of all monthly payments due on said slip until such time as written notice is given Commission. The removal of Boat Owners vessel from the slip shall not constitute notice to Commission of his intent to vacate, nor does it relieve Boat Owner from the obligation t pay according t the terms hereof.

9. Indemnification: Boat Owner agrees to hold harmless Commission, its members, the City of Long Beach, Mississippi, and/or its employees, agents and contractors against all damages, claims, and cost of defense occasioned by Boat Owner or Boat Owner's

guests, use of the slip and/or common areas by third parties for any injury or damage caused by the Boat Owner, his vessel, agents, servants, operators, crew or others.

10. Liability Insurance: Boat Owner agrees to provide liability insurance on their vessel in the amount of \$300,000.00. Boat Owner shall name the Long Beach Port Commission and the City of Long Beach as additional insureds on said policy and shall provide written proof of such insurance (i.e., such as declarations page), prior to placing vessel in harbor under the initial berthing lease and by January 1st of each year thereafter and upon request of any official of the Long Beach Harbor. Said proof of insurance shall provide proof of liability limits and the named insureds therein.

11. Changes in Circumstances: Boat Owner agrees to promptly notify and provide the Commission or the Harbor Master with documentation of any and all changes to this agreement including, but not limited to, any change in ownership, liens, co-owners or vessels, Failure to do so constitutes grounds for immediate cancellation of this agreement.

12. Commission's Right to Use Slip: Boat Owner agrees to notify Commission of the intention to vacate slip for any period in excess of three (3) days, and Boat Owner agrees that Commission may make said slip available for transient or other use of the slip in Boat Owners absence without charge or credit. Boat Owner agrees to notify Commission or Harbor Master prior to 24 hours of the return of the vessel so that Commission can make alternate plans for any vessel using the said slip in the absence of Boat Owner.

13. Removal of Vessel by Boat Owner: If at any time the Boat Owner or Lessee is in any way concerned about the safety of his/her vessel, he/she should immediately remove said vessel from the harbor. Furthermore, in the event of eminent danger from hurricanes, tropical storms or other natural disasters and/or notification by Emergency Management officials, the Boat Owner agrees to immediately remove said vessel from the harbor. Failure to remove said vessel will result in possible liability of the Owner to other Boat Owners and the Long Beach Port Commission or property owners that may result in damage caused by boat owners.

14. Emergency Removal of Vessel: Boat Owner agrees that Commission may remove the vessel from the slip at the sole expense of Boat Owner in the event that said vessel becomes a nuisance, becomes unseaworthy, or in case of dangerous weather conditions such as hurricanes. "Expense" includes but is not limited to the removal and storage cost of said vessel. Boat Owner further agrees to hold harmless all parties involved in the removal and storage of vessel in the event of its Emergency Removal.

15. Alteration of Agreement: This Berthing Agreement shall constitute the whole agreement of the parties and cannot be altered except in writing and signed appropriately by the parties.

16. Sublease: Boat Owner may not sublease slip specified in this agreement.

17. Clean Marina practices: Boat Owner shall comply with guidelines in the Mississippi Clean Marina Program in order to protect the harbor resources from contamination and pollution as follows:

Sewage Handling:

- No raw sewage may be discharged and pump out stations are provided in the harbor for use with Marine Sanitation Devices (MSD).
- "Y" valves must be tied down and will be inspected periodically to ensure that no sewage can be discharged and appropriate chemicals are in use.
- Clean, functioning restrooms are available 24 hours a day

Fuel Control

- Fuel vendor will be responsible for pumping fuel into vessels.

Solid Waste

- Solid waste must be disposed of in the covered trash receptacles.
- Recycling containers are available for glass, plastic, and aluminum.
- Fish wastes cannot be disposed within the Harbor. A fish cleaning station and waste receptacle is provided for Harbor patrons.
- Cleaning of fish on docks and floats is not be permitted, unless fish wastes are contained (such as with a pan or plastic drop cloth) and disposed in the fish cleaning station.
- Rinse water drainage from fish cleaning areas must be free of solids and directed to a sand filter or sanitary sewer.

Vessel Cleaning and Repair

- Take proper precautions against spills, and use environmentally friendly materials. The following minor maintenance and cleaning activities may be conducted on board vessels while in the water:
 - Routine engine tune-ups, oil changes, and other minor servicing and repair
 - Routine care and cleaning of rigging and fittings, interior surfaces, and "bright work" providing these activities do not produce a wastewater
 - Painting/varnishing interior surfaces and bright work
 - Routine sanitary pump-outs and maintenance of sanitary wastewater facilities
 - Bilge pump repair
- All other maintenance activities must be conducted with the vessel out of the water at a proper repair facility specifically designed for the purpose, including hull scraping, sandblasting, or painting the hull exterior or drive units, cleaning the hull exterior with cleaning agents other than fresh water or natural seawater, and any other activities involving the potential risk of an uncontained discharge of oil, chemicals, nutrients, or other contaminants into the water.
- Minimize the use of soap and detergents within the Harbor. Use only phosphate-free and biodegradable cleaning products such as Simple Green and comparable products. The use of detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates, or lye is prohibited.

- Liquid wastes (including but not limited to solvents, detergents, and rinse water) cannot be discharged onto the ground, allowed to enter storm drains, or disposed of in dumpsters or trashcans. Contaminated bilge water cannot enter the water.
- Reuse or recycle waste oil in the containers provided in the harbor labeled as "Waste Oil Only."

18. Stay aboard policy. No one shall stay aboard the vessel in the harbor more than 15 nights per month.

SO EXECUTED, this the _____ day of _____, 20_____

BOAT OWNER

COMMISSION by Harbor Master

Addendum to Berthing Agreement

This Addendum is incorporated into that certain Berthing Agreement executed _____, 20____ by and between the Long Beach Port Commission (“The Commission”) and _____ (“Boat Owner”). Unless expressly inconsistent with this Addendum, the Berthing Agreement and all of its terms and conditions shall remain in full force and effect and shall apply fully to this Addendum.

Living Aboard. The Commission hereby consents to the individuals identified in Exhibit A living aboard the Vessel identified in the Berthing Agreement, subject to the terms of this Addendum and the terms of the Berthing Agreement. Boat Owner understands and agrees that living aboard is a privilege granted at the Commission's option which may be revoked by the Commission at its discretion, as provided below. The Commission reserves the right to restrict the number of individuals who may live aboard a vessel and set a minimum vessel size which may be considered for the purpose of living aboard.

Living Aboard Does Not Give Rise to Residential Landlord Tenant Relationship/Right to Terminate Addendum or Berthing Agreement With or Without Cause. It is understood and agreed that the Berthing Agreement and this Addendum thereto collectively constitute a commercial contract only, and that living aboard the Vessel neither converts this commercial contracting into a residential lease, nor gives rise to any residential tenant rights whatever. Boat Owner represents and warrants that he or she, and all persons identified in Exhibit A hereto, will have available to them for their immediate use a dwelling or other abode in which they can reside, in the event this Addendum or Berthing Agreement is terminated. It is further understood and agreed that both this Addendum and Berthing Agreement may be terminated by either party *with or without cause*, by simply providing 30 days advance notice to the other party, in the manner described in the Berthing Agreement. Boat Owner further understands and agrees that in addition to the Commission's right to terminate this Addendum and/or the Berthing Agreement by providing 30 days advance notice, either may also be terminated immediately by the Commission in the event of any breach by the Boat Owner of the terms or conditions of the Berthing Agreement or this Addendum.

Fees. In consideration of the Commission's grant of permission to live aboard the Vessel, the Commission shall charge and invoice on a monthly basis, and the Boat Owner shall pay the fees set forth in Exhibit A hereto (the “Live Aboard Fees”). Such Live Aboard Fees are in addition to

any and all other fees and charges due by the Boat Owner to the Commission under the Berthing Agreement or otherwise. The Commission may increase or decrease the Live Aboard Fees by providing 30 days advance written notice to the Boat Owner. Live Aboard Fees are due and payable at the same time as the fees due payable under the Berthing Agreement.

Children. Boat Owner represents the individuals designated to live aboard the Vessel in Exhibit A are adults, and the Boat Owner represents and warrants that no person under the age of 18 shall be permitted to resign on the Vessel.

Sanitary Facilities. Unless the Vessel is equipped with a holding tank(s) specifically designed for marine use that is entirely functional in all respects and configured so that waste cannot be discharged overboard, all persons living aboard the Vessel shall utilize the sanitary facilities maintained by the Commission. The discharge of sewer or other contaminants prohibited by law shall be cause for immediate termination of this Addendum and Berthing Agreement. If a holding tank is used, the Commission reserves the right to require the Boat Owner to periodically deposit into holding tank(s) a dye tablet. Sanitary Pump Out facility is located at the fuel dock and a record is kept on Vessel usage.

Conduct. Persons living aboard a Vessel shall at all times behave in a courteous, respectful, decorous and neighborly manner, and shall comply with all noise abatement and other applicable laws and regulations, including those in the Berthing Agreement and incorporated Harbor Rules and Regulations. Violations of these standards, or any behavior which in the Commissions sole view creates a disturbance or interferes with the peaceful enjoyment or safety of the Harbors other occupants, shall be grounds for termination immediately of this Addendum and/or the Berthing Agreement.

By signing below, the Boat Owner confirms he/she has read, understands and agrees to be bound by all of the above terms and conditions, as well as those appearing in the incorporated Berthing Agreement and Harbor Rules and Regulations.

Dated: _____,20____ _____ _____
Vessel Owner's Name Printed Signature

Dated: _____,20____ _____
Harbormaster