



Lake McClure – Lake McSwain

Marina Resorts & Recreation
 8044 Lake McClure Road, Snelling, CA 95369
 (855) 222-5253 (lake) FAX (209) 378-2519

No.

LAKE McCLURE MOORING
 McCLURE POINT MARINA
 BARRETT COVE MARINA

VESSEL REMAINING ON THE LAKE DURING SEVERE DROUGHT AGREEMENT

This VESSEL REMAINING ON THE LAKE DURING SEVERE DROUGHT AGREEMENT (hereinafter “Agreement”) is made as of this date: _____ (the “Commencement Date”) by and between the marina slip, mooring and storage operator, Twin Lakes Management Company Inc. (hereinafter (“TLMC” or “Marina”) and the Vessel Owner(s) identified below (hereinafter “Vessel Owner”).

If more than one Vessel Owner is identified below, each shall be jointly and severally liable for performance of the obligations hereunder and all are collectively referred to as “Vessel Owner” herein.

Pursuant to the terms of this Agreement, Vessel Owner and Marina agree that Vessel Owner **may continue** to moor the vessel described below (hereinafter "Vessel") at the slip or mooring identified below (hereinafter "Slip") within the prescribed premises of Lake McClure (hereinafter the “Premises”), **despite the fact that Lake McClure and the area surrounding Lake McClure is facing and is expected to continue to face a severe drought and therefore very low lake levels**, subject to all of the terms and provisions set forth below in this Agreement.

Vessel Owner understands and agrees that a current and valid Merced Irrigation District (“MID”) Lake Boat Permit must be maintained for the entire period of this Agreement, and that all such fees and terms of that Permit are in addition to any fees and terms associated with this Agreement. Vessel Owner also understands and agrees that a Vessel Slip Agreement must be maintained in full, force and effect for the entire period of this Agreement, and that all such fees and terms of the Vessel Slip Agreement are **in addition** to any terms associated with this Agreement.

Vessel:

MID Permit #: _____

Boat CF #: _____
(Certificate of Registration REQUIRED)

Hull #: _____

Boat Name: _____

Boat Brand: _____

Year Made: _____

Length: _____ Width: _____
(Including all protrusions, swim platforms, bow pulpits, etc)

Engine Brand: _____

Drive Type: _____ HP: _____

Registered Vessel Owner(s):

Name

Name

Name

Billing / Mailing Address

City / State / Zip

Telephone

Other Phone

Email

LEGAL Owner (Bank, Lienholder, or other appearing on Title)

Other Users – Guests - Crew: *(see Section 6i)*

Vessel Insurance: *(see Section 6k)*

Policy Number *(Certificate of Insurance REQUIRED for file)*

Carrier / Agent

Address / City / State / Zip Telephone

Movement/Storage Locations:

Marina Slip # Vessel: _____

Term: Month-to-Month, Commencing on the 15th day of May, 2014

Payment Plan Selected: N/A Period Ending / Renewal Date: Annual Renewal

Keys Issued: NA Gate Code Issued (?): NA Key Deposit Amount: NA

TERMS & CONDITIONS

1. Information Changes:

Vessel Owner agrees to give Marina written notice of any change in the information provided in the above Sections, including but not limited to Vessel Owner's contact information and address, Vessel registration, insurance carrier, agent information and policy number, within five (5) days after the occurrence of any such changes. Notice of any changes shall be sent in writing to Marina as outlined below.

Vessel Owner agrees to provide evidence of current licensing, registration and insurance coverage for the Vessel in the form of a Certificate of Insurance and appropriate Endorsement provided by the insurance carrier, and shall provide copies of such Certificates and Endorsements for the Marina files upon request and when said coverage or the Vessel registration are changed or renewed. Notice of any changes or updates are to be sent in writing to Marina as outlined below.

2. Marina: Twin Lakes Management Company, Inc.

Notice Address for Marina:
Twin Lakes Management Company, Inc.
8044 Lake McClure Road
Snelling, CA 95369

3. Term:

The term of this Agreement shall commence on the Commencement Date and continue on a pre-paid calendar month-to-month basis. Either party may terminate this Agreement by giving the other party at least thirty (30) days written notice. Should such notice be provided by either party, the Vessel Owner expressly agrees to remove the Vessel from the Marina, or from the Premises (as the case may be) before the end of the thirty (30) day-notice period.

4. Continued Mooring of the Vessel at the Marina; Assumption of Risk, Release, Hold Harmless, Waiver and Indemnity:

Vessel Owner understands and expressly agrees that Marina is agreeing to allow the Vessel to remain moored on the Marina – as opposed to terminating the Vessel Slip Fee Agreement between the parties, or agreeing with Vessel Owner to haul out the Vessel and placing the Vessel in storage – *as an option for the Vessel Owner consider and elect to take advantage of*, despite the fact that severe and unprecedented drought conditions and very low lake levels presently exist, and may continue to exist, on Lake McClure and Lake McSwain (the "Twin Lakes") and in and around the Twin Lakes area.

Vessel Owner acknowledges and expressly agrees that it is impossible to estimate or foresee the length or severity of the present unprecedented drought conditions that exist, and may continue to exist, on the Twin Lakes, and in and around the Twin Lakes area.

Vessel Owner also acknowledges and expressly agrees there are inherent risks in continuing to moor the Vessel on the Lake during a severe and unprecedented drought, which risks include but are not limited to moorings grounding, or becoming damaged or destroyed. As a result, vessels becoming unmoored, drifting, grounding, listing, being blown over, or colliding with other vessels, rocks, outcroppings, trees, stumps, wrecks, docks, buoys or other objects, or settling or coming to rest on such objects. As a result, vessels can become damaged or destroyed; cause damage to or destroy other vessels, docks and other property; and even cause personal injury or death to persons.

As a result of the risks inherent in the Vessel Owner electing to continue to moor the Vessel at the Marina in the face of a severe and unprecedented drought, Vessel Owner acknowledges, understands and expressly agrees that Marina is allowing Vessel Owner to continue mooring the Vessel at the Marina during this severe and unprecedented drought at no upfront cost to Vessel Owner.

Nevertheless, should Marina be able to install a low-water mooring for the Vessel so that the Vessel can continue to remain moored somewhere on the water, Vessel Owner agrees to reimburse Marina for the cost of installing the low-water mooring, as well as all costs Marina may incur to move the Vessel to the low-water mooring. Vessel Owner understands and acknowledges that Marina does not know whether it will be able to install a low-water mooring for the Vessel and if so, what the exact cost of installing a low-water mooring for the Vessel might be at the time this Agreement is executed by the parties.

Should Marina believe, in Marina's sole discretion, it is prudent to pull the Vessel from the water; or if Vessel Owner requests that Marina pull the Vessel from the water and place the Vessel in storage (and such is still reasonably possible), Vessel Owner agrees that Vessel Owner will be responsible for reimbursing Marina the cost of pulling, storing and re-launching the Vessel.

Marina agrees to provide Vessel Owner additional information regarding the cost of pulling, storing and re-launching the Vessel after Marina determines the exact cost of hauling, storing and re-launching the Vessel. Vessel Owner understands and acknowledges that Marina does not know what the exact cost of hauling, storing and re-launching the Vessel might be at the time this Agreement is executed by the parties.

Marina understands the financial hardship this drought may cause. Therefore, Marina expects to be able to (but does not guarantee to) offer Vessel Owner payment options similar to the options that the Marina provides the Vessel Owner for payment of annual mooring fees, (i.e. lump sum payment, monthly or quarterly payments, and/or some other equitable arrangement).

As a result, Vessel Owner understands and agrees that in consideration for the service and other considerations that Marina is providing (through the Marina itself, its agents, or by means of an authorized contractor), Vessel Owner is agreeing to reimburse Marina for the costs Marina incurs in the event Marina is able to install a low-water mooring for the Vessel. Alternatively, if the Vessel can be or is pulled from the water, stored and re-launched, Vessel Owner is agreeing to reimburse Marina for the costs Marina incurs to pull, store and re-launch the Vessel.

Vessel Owner further agrees to the terms and conditions contained in this Agreement, including but not limited to the Vessel Owner agreeing to the terms and conditions contained in this Agreement, including but not limited to agreeing to expressly assume the risk, release, indemnify and hold harmless the Twin Lakes Management Company, Inc., the Merced Irrigation District and its authorized contractor from and against any and all claims or liability (including claims for subrogation by any insurer) that arise out of or relate to any property damage, personal injury or death (including all reasonable attorney's fees incurred in defending any action) that may occur as result of the Vessel remaining at the Marina during this unprecedented drought, or as a result of any service Marina may perform to pull, haul or re-launch the Vessel (should such be requested or deemed necessary) even if it is claimed that such property damage, personal injury or death is claimed to have occurred solely or partially as a result of the Marina, MID or its authorized contractor, or any agents of Marina, MID or its authorized contractor.

5. Slip Fees:

Vessel Owner agrees to continue to pay Marina the Slip / Mooring Fee set forth in the current annual Marina Rate Schedule, as agreed in the Mooring/Fee Agreement presently in place between the parties.

Vessel Owner also agrees that Marina may increase the amount of Slip / Mooring Fee charged and payable monthly hereunder upon thirty (30) days written notice.

6. Haul Out and Storage of the Vessel Should Vessel Owner Request It Or Marina Believes It Is Prudent or Necessary To Do So; Assumption of Risk, Release, Hold Harmless, Waiver And Indemnity:

Vessel Owner and Marina expressly agree that during the term of this Agreement, as the drought conditions that exist in and around the Twin Lakes continue and/or become even more severe, Vessel Owner may request that Marina haul the Vessel out of the water and place the Vessel in a storage space on Marina's Premises (the "Premises"); or in Marina's sole discretion, Marina may believe it is prudent or necessary to haul the Vessel out of the water and place the Vessel in a storage space on the Premises.

In the event Vessel Owner requests that Marina haul the Vessel out of the water and place the Vessel in a storage space on Marina's Premises (the "Premises"), or in the event that in the sole discretion of Marina, Marina believes it is either prudent or necessary to remove the Vessel from the water, Vessel Owner expressly agrees and authorizes Marina and/or its authorized contractor to do whatever Marina or its authorized contractor may deem desirable or necessary, including boarding the Vessel, moving, pulling, towing, raising, cribbing, hauling, holding or placing the Vessel, utilizing auxiliary pumps or taking any other action to move, pull, tow, raise, crib, haul or hold the Vessel and/or remove the Vessel from the water and/or place the Vessel at a storage space located at the Premises; or if Marina deems it necessary, for the Marina for any reason to provide any other service or perform any work of any kind or nature. Vessel Owner also expressly agrees that Marina nor its authorized contractor assumes any responsibility for the

safety of the Vessel and neither Marina nor its authorized contractor shall be liable for fire, theft or any damage to the Vessel, its equipment or appurtenances, or any other property of the Vessel Owner or others that may be in or on the Vessel by reason of Marina or its authorized contractor taking any action (or failing to take any action) with respect to the Vessel, its equipment, appurtenances or any personal property that may be aboard the Vessel.

Should Marina elect in the sole discretion of Marina to remove the Vessel from the water for any reason, a reasonable effort will be made to notify the Vessel Owner of the movement of the Vessel.

To be clear, Vessel Owner expressly assumes the risk, releases and agrees to hold harmless and indemnify Marina, MID and/or its authorized contractor and their agents from any and all claims or liability of any kind (including claims for subrogation by any insurer) that might arise out of or relate to any request by Vessel Owner to have the Vessel hauled out and stored at a space on the Premises; any decision by the Marina to haul the Vessel out and store it at a space on the Premises (or not to do so); and any work or service that Marina and/or its authorized contractor may perform or provide with respect to the Vessel, including but not limited to claims or liability for property damage, personal injury or death, without limitation and including all reasonable attorney's fees incurred in defending any action, that may occur as result of any service that Marina or its authorized contractor may provide (or decide not to provide) with respect to boarding, moving, pulling, towing, hauling, cribbing, raising, holding or placing the Vessel, even if it is claimed that such property damage, personal injury or death occurred solely or partially as a result of negligence by Marina, MID or its authorized contractor, or any agents of Marina, MID or its authorized contractor.

a. Storage of the Vessel in a Storage Space on the Premises; Assumption of Risk, Release, Hold Harmless, Waiver and Indemnity:

Should Vessel Owner request that the Vessel be hauled out and stored at a space on the Premises, or should Marina in its sole discretion decide to haul the Vessel out and store it at a space on the Premises, Vessel Owner hereby expressly acknowledges and agrees that the Vessel Owner has either inspected (or had the opportunity to inspect) the Premises and those portions of the Premises associated with storing the Vessel, including without limitation, the storage space, gates, fences, and lights on the Premises, and Vessel Owner either knows the condition of the same or has had the opportunity to inspect same, and hereby accepts the Premises in their existing condition 'AS IS' and agrees that no statement, representation or warranty as to the condition of the Premises or any storage space that may be assigned to the Vessel has been made by the Marina to Vessel Owner.

Vessel Owner expressly agrees that Marina does not warrant that any utility services, if any, that may be available on the Premises will be compatible with the utility service requirements of the Vessel, including electrical interconnection and polarity or the effect of electrolytic action on the Vessel.

Vessel Owner expressly agrees that Marina has permission to store the Vessel at any space on the Premises, within Marina's sole discretion, and that such storage is and shall be at the Vessel Owner's sole risk, and that neither Marina, MID or its authorized contractor has any responsibility for care, protection, storage or maintenance of the Vessel or any other personal property of the Vessel Owner or others aboard the Vessel.

Therefore, to be clear, Vessel Owner expressly assumes the risk, releases and agrees to hold harmless and indemnify Marina, MID and/or its authorized contractor from any and all claims or liability of any kind (including claims for subrogation by any insurer) that might arise out of or relate to any storage of the Vessel that Marina, MID and/or its authorized contractor may perform or provide, including but not limited to claims or liability for property damage, personal injury or death, without limitation and including all reasonable attorney's fees incurred in defending any action, that may occur as result of any storage of the Vessel that Marina, MID or its authorized contractor may provide, even if it is claimed that such property damage, personal injury or death is claimed to have occurred solely or partially as a result of negligence of Marina, MID or its authorized contractor, or any agents of Marina, MID or its authorized contractor.

b. Guests, Contractors, and Employees On or Around the Premises; Assumption of Risk, Release, Hold Harmless, Waiver and Indemnity:

Should the Vessel be stored at a space on the Premises for any reason, Vessel Owner expressly agrees that Vessel Owner shall be responsible for the conduct and control of all guests, agents, contractors, employees and others on the Premises at the request or with the permission of the Vessel Owner. Vessel Owner agrees and assures that all guests, contractors, employees and other invitees will comply with the terms and conditions of this Agreement.

To be clear, Vessel Owner agrees to assume the risk, release, defend, indemnify and hold the Marina, MID as well as any agent or contractor authorized by the Marina or MID harmless from any loss, cost, expense, liability (including claims for subrogation by any insurer), property damage, personal injury or death, without limitation and including all reasonable

attorney's fees incurred in defending any action, arising out of the conduct, either passive or active, of Marina, MID or their agents or contractors with respect to injury, damage or death to Vessel Owner and Vessel Owner's guests, agents, contractors, employees and other invitees while in or around the Marina, or on or around the Premises, even if it is claimed that Marina, MID and/or their agent or contractors are or were solely or partially negligent.

Marina reserves the right to regulate the entry into the Premises by vessel brokers, contractors and vessel service personnel wishing to gain access to the Vessel. Vessel Owner expressly agrees that Vessel Owner shall be responsible to ensure that all contractors and other service providers employed by the Vessel Owner comply with all Marina Rules and Regulations. Vessel Owner understands and expressly warrants and agrees that all employees and other hired help of the Vessel Owner must be properly covered and insured under an appropriate Workers Compensation policy issued to and paid for by the Vessel Owner prior to accessing the Vessel and performing any labor or work within the premises of Lake McClure and the Marina.

Vessel Owner also understands and expressly agrees that all contractors, vendors, and other service providers wishing to gain access to the Vessel must be properly registered with the Marina, and have complied with all of the requirements of the TLMC Contractor Work Permit program prior to accessing the Vessel and performing any labor or work on any kind in or around the premises of Lake McClure and the Marina. Vessel Owner expressly agrees that Marina may take reasonable steps to ascertain whether persons within the Premises and/or aboard the Vessel are properly authorized by the Marina, and authorized by the Vessel Owner to be in, around, or aboard the Vessel.

c. Change of Storage Space and Further Movement(s) of the Vessel; Release, Hold Harmless, Waiver And Indemnity:

The Marina reserves the right to move the Vessel from a storage space to another storage space on the Premises; or if Marina in its sole discretion deems it necessary, to move the Vessel off the Premises to another storage space at another facility that is not on the Premises, either temporarily or permanently, at any time for any reason whatsoever, including without limitation for construction, emergency, safety or any operational reason whatsoever. Vessel Owner hereby grants to the Marina permission to board the Vessel for said purpose. A reasonable effort will be made to notify the Vessel Owner of the movement of his/her houseboat.

Vessel Owner agrees to release, defend, indemnify and hold the Marina, MID as well as any a contractor authorized by the Marina or MID or their agents harmless (including claims for subrogation by any insurer) from any loss, cost, expense, liability, property damage, personal injury or death (including all reasonable attorney's fees incurred in defending any action) arising out of the conduct, either passive or active, of Marina, MID or their agents or contractors with respect to any injury, damage or death to Vessel Owner and Vessel Owner's guests, agents, contractors, employees and other invitees while in or around the Marina, or on or around the Premises, even if it is claimed that Marina, MID and/or their agents or contractors are solely or partially negligent.

d. Vessel Insurance Requirement; Marina and MID As Additional Insureds:

Vessel Owner agrees to continue to maintain during the term of this Agreement a policy of complete Marine Insurance including Protection and Indemnity Liability with limits not less than Five Hundred Thousand Dollars (\$500,000) per occurrence, such insurance to include coverage for Sudden and Accidental Pollution and Raising of a (sunken) Vessel.

Vessel Owner shall also maintain a Hull and General Vessel Protection policy covering either: 1) the replacement value or actual cash value of the vessel, or 2) no less than \$50,000. Any such agreement shall be attached to this Agreement, and shall become incorporated as part hereof.

The said insurance shall be in a form and substance satisfactory to the Marina and shall be placed with responsible underwriters, which have a Best financial rating of at least 8 and a Best policyholder rating of A or better.

Vessel Owner shall provide the Marina with Certificates of Insurance evidencing the specified insurance coverage prior to the commencement of this Agreement, which evidence shall be a continuing precondition to Vessel Owner's use of the Slip. Vessel Owner shall deliver new Certificates evidencing the required coverage prior to the expiration or termination of any policy. The said insurance shall name the "Twin Lakes Management Company, Inc, and The Merced Irrigation District" as "Additional Insured" with appropriate Endorsement for all coverages, and shall provide that it fully insures the interests of the Marina and MID regardless of any breach or violation by the Vessel Owner or any person of any warranties, declarations or conditions contained in such policy. The insurance policy shall provide that the Marina shall have no obligation to pay calls, assessments, premiums or other charges in connection with any insurance.

Vessel Owner shall immediately notify the Marina of any material change to the Vessel Owners' insurance coverage policy, including but not limited to any notice of potential termination, cancellation or non-renewal of said policy. **Vessel Owner is hereby strongly encourage to consult with Vessel Owner's insurer to determine what coverage issues, if any, may arise as a result of Vessel Owner agreeing to any term or condition contained in this Agreement.**

Vessel Owner shall also be responsible to ensure that all contractors and others employed by the Vessel Owner comply with all Marina Rules and Regulations, properly register with the Marina prior to accessing the premises and beginning any work, and provide proof of statutory Workers Compensation insurance coverage and general liability insurance coverage with a limit not less than \$1,000,000, per occurrence and \$2,000,000 aggregate naming the "Twin Lakes Management Company, Inc. and Merced Irrigation District" as "additional insured" with appropriate Endorsements.

6. Assignment and Subletting:

The Marina, through this Agreement, grants to Vessel Owner a limited personal right, without any possessory interest, to have the Vessel hauled out and stored. Vessel Owner shall have no right or power to transfer or assign this Agreement or to assign or sublet any storage space that Marina may provide, or any part thereof, to any person or party whatsoever or for use by any other vessel or person whatsoever.

No transfer or assignment of this Agreement, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy, or otherwise, shall be valid or effective. Any attempted transfer or assignment of this Agreement shall, at the election of the Marina, automatically terminate this Agreement.

7. Assumption of the Risk, Release, Hold Harmless, Waiver and Indemnity for Damage and/or Destruction of Space, Vessel, Other Vessels, Marina or Premises:

Vessel Owner hereby expressly agrees to assume the risk of, release, defend (with counsel acceptable to Marina), indemnify and hold harmless (including claims for subrogation by any insurer) Marina, MID, and its authorized contractor from and against (and to pay on demand) all costs for repair or restoration resulting from any damage or destruction to the slip, mooring or storage space on which the Vessel may be located, the Premises or the Marina or any part of the Marina, or any vessels located in or around the slip, mooring or storage space on which the Vessel may be located, or on the Premises, or in the Marina, that may result from the Vessel's presence in, on or around the slip, mooring or storage space, Premises or Marina; any movement or operation of the Vessel in, on or around the slip, mooring, storage space, Premises or Marina; or the Vessel Owner or any person being present in, on or around the Vessel, slip, mooring, storage space, Premises or Marina, including, without limitation, damage or destruction to the Vessel or any property aboard the Vessel while being the Vessel is being moved, pulled, towed, hauled, raised, placed, or stored (including damage or destruction resulting from improperly connecting electrical service from the common outlet to the Vessel, failure to turn off electrical, water, or other utility appliances or lights when not in use) and pollution of the mooring, slip, storage space, Premises or Marina, or adjoining water and common areas.

a. Effect of Damage or Destruction:

In the event of damage to or destruction of the Marina, the Slip or the Premises (as the case may be) by fire, wind, storm movement of water, accumulation of silt, earthquake, wave or any other cause or causes, whether immediate or over a period of time, Marina shall have the option to:

1. Treat this Agreement as continuing and repair or restore the Marina, Slip or Premises; or
2. Terminate this Agreement and all further obligations hereunder of either party by written notice to Vessel Owner.

After the occurrence of such damage or destruction, the Vessel Owner's obligation to pay Slip Fees under the terms of the Slip/Mooring Agreement between the parties may be abated in an amount that Marina in its sole discretion, shall determine to be proportionate to the area of the Slip or storage space rendered unfit for use by Vessel Owner during the period from occurrence of damage or destruction through completion of repair or restoration.

8. Assumption of the Risk, Release, Hold Harmless Waiver and Indemnity of Marina's and MID's Liability:

Unless caused by the willful misconduct of Marina, and notwithstanding that there is a claim of sole or partial negligence on the part of Marina, MID or their authorized agents or contractors, either active or passive, Vessel Owner expressly assumes the risk and agrees that Marina, MID or their authorized agents or contractors shall not be liable on any claims of liability (including claims of subrogation by any insurer) for any injury, including but not limited to property damage, personal injury or death, to Vessel Owner or Vessel Owner's guests, agents, contractors, employees, and other invitees, or for any loss of or damage to the Vessel or any property or article belonging to Vessel Owner or his / her guests, agents, contractors, employees, and other invitees.

In addition, Vessel Owner hereby agrees to defend (with counsel acceptable to Marina), indemnify and hold harmless the Twin Lakes Management Company, Inc, and Merced Irrigation District from any and all claims, demands, penalties, losses, expenses, damages and liabilities asserted by anyone (including claims of subrogation by any insurer) for any injury, death, loss or damage to persons or property resulting from any work performed or service provided to or for the Vessel of any kind; the presence of the Vessel in or around the storage space on the Premises; the use of the mooring, slip Marina or Premises, or any damage, personal injury or death that may occur to any equipment or appurtenances of the Vessel, the Vessel Owner, or any licensees, guests, employees, agents or contractors of Vessel Owner, except to the extent that it is claimed that such damage, injury or death occurred solely as a result of the gross negligence or willful misconduct of Marina, MID or their authorized agents or contractors. For purposes of this Paragraph, references to "Marina" shall also include the officers, employees, shareholders, directors, agents and representatives of Twin Lakes Management Company, Inc., and Merced Irrigation District.

9. Other Limitations:

Vessel Owner also agrees that Marina shall not be liable for, and this Agreement shall not be terminated by, any interruption or interference with services or accommodations due Vessel Owner caused by strike, riot, orders or acts of public authorities, acts of other vessel owners, accident, the making of necessary repairs to the slip, mooring, storage space, Marina or the Premises, or any other cause beyond Marina's control.

10. Default/Termination:

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Vessel Owner:

- a. The vacating or abandonment of the mooring, slip, storage space or the Premises by the Vessel or Vessel Owner without proper notice as required under the terms of this Agreement.
- b. The failure by Vessel Owner to observe or perform any of the covenants, conditions or provisions of this Agreement, including the Marina Rules and Regulations, to be observed or performed by Vessel Owner where such failure shall continue for a period of seven (7) days after written notice thereof from Marina to Vessel Owner.

11. Remedies for Default:

a. Possessory Lien:

By execution of this Agreement, Vessel Owner acknowledges that pursuant to applicable law, including but not limited to California Harbors and Navigation Code Sections 491, 501, the Federal Maritime Lien Act (46 U.S.C. Sections 971 - 975), and by the terms of this Agreement, Marina shall have a lien on the Vessel and its equipment for money or damages, which may become due under this Agreement and that Owner is aware that Marina and its agents may enforce this lien through in rem proceedings.

A fee of \$1,000 will be assessed for initial processing of all such actions, including applicable attorney and other fees incurred by the Marina. Pursuant to said statutory lien, Marina has the right to take possession and control of the Vessel and remove and store the Vessel for the purpose of perfecting and executing upon Marina's statutory lien rights in the Vessel. So long as the Marina continues to hold the Vessel, Vessel Owner shall be deemed to be holding over and shall be responsible for any and all continuing charges and expenses.

b. Other Remedies:

In the event of default as described above by Vessel Owner, Marina may, at its option, regard this Agreement as continuing in force and recover from Vessel Owner damages caused by the Vessel Owner's default, including, without limitation, the right to recover the Slip Fees under the Vessel Slip Agreement between the parties as the same shall accrue, and/or terminate Vessel Owner's right to use the Slip or storage space (as the case may be) via a Notice of Unlawful Detainer and subsequent action. The remedies herein above provided are not exclusive and Marina may pursue any one or more of such remedies or any other remedies provided by law.

c. No Waiver:

Failure by Marina to exercise any of its rights under this Agreement or Marina's acceptance of money after any default under the Vessel Slip Agreement between the parties shall not be considered or construed to waive any right of Marina or to affect any notice or legal proceedings theretofore given or commenced. Nothing herein shall constitute a waiver of the rights of the Marina to a maritime lien under state law or under the Federal Maritime Lien Act.

d. Attorney's Fees:

In the event either Marina or Vessel Owner shall bring any action in connection with the enforcement of any term of this Agreement, the party prevailing therein shall be entitled to recover as part of such action reasonable attorney's fees, expert witness fees and court costs.

e. Late Payments:

Any sum, including charges for pump-outs, garbage pick-ups, repair or any other Marina services, that may become due under this Agreement or the Vessel Slip Agreement between the parties that is not paid to Marina within thirty (30) days of the date when due shall bear a finance charge of 1% per month, (12% per annum) from the date due until fully paid. Vessel Owner acknowledges that such late payment will cause Marina to incur costs not contemplated by this Agreement the Vessel Slip Agreement between the parties, the exact amount of which will be extremely difficult and impracticable to ascertain. Accordingly, if any sum due from Vessel Owner shall not be received by Marina within ten (10) days after the date due, then Vessel Owner shall pay to Marina, in addition to the finance charge provided above, a late charge in the amount of twenty-five dollars (\$25.00) for each delinquent payment. If an account is processed for collection or lien due to late payments an additional charge of \$1,000 will be assessed to all such accounts.

f. Insufficient Fund Checks:

A twenty-five dollar (\$25.00) insufficient fund check fee will be assessed against Vessel Owner for each returned check. NSF check fee is applied each time the check is returned to Marina due to insufficient funds.

12. Additional Termination Provisions:

This Agreement and the Vessel Slip Agreement between the parties shall, at the sole option of Marina, automatically and immediately terminate at such time as Vessel Owner sells, leases, charters or otherwise transfers any or all of its interest in the Vessel to any other party, whether or not such transfer is voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise.

If Vessel Owner fails to perform any of the terms, conditions and promises as set forth in this Agreement, the Vessel Slip Agreement between the parties, or the current Marina Rules and Regulations, Marina may, at its option, without waiving any other remedies it may have, immediately terminate this Agreement and the Vessel Slip Agreement between the parties upon written notice to Vessel Owner.

Upon termination of this Agreement and/or the Vessel Slip Agreement between the parties, Vessel Owner shall remove the Vessel from the space on which the Vessel is located at the Premises, shall remove all other items of its personal property, if any, from the space and Premises, and shall surrender to the Marina the space on the Premises occupied by the Vessels, and all keys to the Premises and/or Marina.

In the event of Vessel Owner's default or termination of this Agreement without removal of the Vessel, Marina may suspend the right of the Vessel Owner to obtain access to the Marina, to use the space the Vessel occupies on the Premises and the Vessel without the necessity of the initiation of any legal proceedings.

13. Arbitration:

With the except of *ex parte* applications, injunctions or collection actions, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Merced, California before three arbitrators. Each party shall appoint one individual to act as arbitrator, who then will jointly agree upon and appoint the third arbitrator. Unless the parties mutually agree to the contrary (or the Vessel Owner chooses another arbitration organization), the arbitration shall be administered pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, nor shall this clause prohibit the parties from coming to a mutual agreement to mediate any dispute prior to arbitration.

14. Notices:

All notices, demands and requests which may be or are required to be given pursuant to the provisions of this Agreement may be delivered in person or by reputable courier or overnight delivery service, or by posting and mailing pursuant to Section 1162 of the California Code of Civil Procedure, or by United States mail, certified or registered, postage prepaid. Any mailed notice shall be addressed as follows:

- a) If to Marina, at its address designated in this Agreement or to such other person or to such other address as Marina may hereafter designate by written notice.
- b) If to Vessel Owner, at the billing / mailing address designated in this Agreement or to such other address as Vessel Owner may hereafter designate by written notice.

EXCEPT AS EXPRESSLY PROVIDED ABOVE, MARINA DOES NOT HEREBY ASSUME CUSTODY OR POSSESSION OF THE VESSEL OR ANY RESPONSIBILITY WHATSOEVER FOR THE CARE OR PROTECTION OF SAME AND VESSEL OWNER ASSUMES ALL RISKS ASSOCIATED WITH THE USE AND OCCUPANCY OF THE SPACE, THE PREMISES OR THE MARINA, EVEN IF IT IS CLAIMED THAT MARINA OR MID OR THEIR AGENTS OR CONTRACTORS ARE SOLELY OR PARTIALLY NEGLIGENT.

VESSEL OWNER AGREES AND UNDERSTANDS THAT THE MARINA SHALL NOT BE CONSIDERED AN INSURER OF THE VESSEL OR ANY PROPERTY OF THE OWNER OR OTHERS CONTAINED ON THE VESSEL, AT ANY SPACE THE VESSEL MAY OCCUPY, THE PREMISES OR THE MARINA. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT MARINA IS NOT A BAILEE OF THE VESSEL, AND DOES NOT HAVE CARE, CUSTODY OR CONTROL OF THE VESSEL.

VESSEL OWNER REPRESENTS AND WARRANTS THAT ALL STATEMENTS HEREIN ARE FULL, TRUE AND CORRECT. VESSEL OWNER ACKNOWLEDGES THAT THE MARINA HAS FULLY RELIED UPON THESE STATEMENTS IN EXECUTING THIS AGREEMENT.

THIS AGREEMENT SHALL NOT SUPERSEDE OR REPLACE ANY PRIOR AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO ANY SLIP AT THE MARINA THAT THE VESSEL MAY OCCUPY. RATHER, THIS AGREEMENT IS ONLY MEANT TO SUPPLEMENT THE PRESENT PERMIT AND SLIP AGREEMENT IN PLACE BETWEEN THE PARTIES. IF THERE IS A CONFLICT BETWEEN ANY OTHER AGREEMENT IN PLACE BETWEEN THE PARTIES AND THE PRESENT AGREEMENT, THE PARTIES EXPRESSLY AGREE THAT THE MORE SPECIFIC PROVISIONS OF THIS AGREEMENT WILL PREVAIL OVER ANY MORE GENERAL AGREEMENT CONTAINED IN ANY OTHER AGREEMENT BETWEEN THE PARTIES.

RELEASE OF LIABILITY – IN CONSIDERATION FOR THE AGREEMENTS AND CONSENTS HEREIN AND IN ADDITION TO ALL OTHER PROVISIONS CONTAINED HEREIN, THE VESSEL OWNER HEREBY RELEASES AND INDEMNIFIES THE TWIN LAKES MANAGEMENT COMPANY, AND THE MERCED IRRIGATION DISTRICT FROM ANY AND ALL LIABILITY FROM ANY AND ALL CLAIMS, INCLUDING BUT NOT LIMITED TO CLAIMS OF, INJURY, ILLNESS, DAMAGE OR ECONOMIC LOSS, EVEN IF SUCH IS CLAIMED TO HAVE BEEN CAUSED SOLELY OR PARTIALLY BY THE NEGLIGENCE OF TWIN LAKES MANAGEMENT COMPANY, THE MERCED IRRIGATION DISTRICT, OR THEIR AGENTS OR CONTRACTORS.

LIMITATION OF LIABILITY – IN THE EVENT THAT ANY CLAUSE OR CLAUSES IN THIS AGREEMENT IS DEEMED INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THE LIABILITY OF THE TWIN LAKES MANAGEMENT COMPANY, AND THE MERCED IRRIGATION DISTRICT IS LIMITED TO \$2,000 OR THREE MONTHS LICENSE FEES AGREED TO UNDER THE VESSEL SLIP AGREEMENT BETWEEN THE PARTIES, WHICHEVER IS LESS.

BY SIGNING BELOW VESSEL OWNER ACKNOWLEDGES AND CONSENTS TO ALL TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, THE CURRENT MARINA RULES AND REGULATIONS, MARIPOSA COUNTY ORDINANCE, AND THE CURRENT LAKE McCLURE HOUSEBOAT POLICIES.

BY SIGNING BELOW, VESSEL OWNER EXPRESSLY ACKNOWLEDGES AND CONSENTS TO THE RELEASE, WAIVER, INDEMNITY, HOLD HARMLESS AND ARBITRATION PROVISIONS CONTAINED HEREIN.

BY SIGNING BELOW, VESSEL OWNER UNDERSTANDS THAT THIS DOCUMENT IS WRITTEN TO BE AS BROAD AND INCLUSIVE AS LEGALLY PERMITTED BY THE STATE OF CALIFORNIA, AND FURTHER AGREES THAT IF ANY PORTION IS HELD INVALID OR UNENFORCEABLE, THE REMAINING TERMS AND CONDITIONS SHALL REMAIN IN FULL EFFECT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this day and year first above written.

VESSEL OWNER or Authorized Agent

Date: _____

For TWIN LAKES MANAGEMENT COMPANY, INC.

Date: _____