



South Beach Harbor
Port of San Francisco
BERTHING LICENSE AGREEMENT



ACCOUNT NO. _____

Owner / Licensee

Name (<i>Owner/Licensee</i>)		Phone
Residential Address (<i>Street, City</i>)		State & Zip
Email		California Boater Card No.
Business Entity Name (<i>Corp., LLC</i>)	Business Address	Business Phone
Auto License/ID (<i>State & No.</i>)	Partnership Name (if any)	Business Email
Emergency Contact Name	Emergency Contact Address	
Emrg. Contact Email	Emrg. Cnt. Phone	

Boat

Boat Name	No. CF/USCG Documentation	Length	Beam	Draft
Engine Make/Builder/Year	Gas or Diesel/Horsepower	Power or Sail		
Hull Material	Color: Hull	Radio Call		

Insurance

Insurance Carrier	Policy Number	Expiration Date
Agent Name	Agent Address	Agent Phone and Email

Licensee represents and warrants that the information listed above is true and accurate, and acknowledges that any inaccuracy or misrepresentation, including but not limited to the failure to update any changes to the information listed above, constitutes a default and may result in termination of this License.

Initial

(Name of Owner/Licensee)

**South Beach Harbor
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BERTHING LICENSE AGREEMENT**

Commencement Date	Expiration Date
Monthly Berthing Fee	Berth Assignment

This berthing license agreement (“**License**”) is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), operating by and through the SAN FRANCISCO PORT COMMISSION (“**Port**”), as licensor and the individual or entity named as “Owner/Licensee” above as Licensee (“**Licensee**”).

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

TERMS AND CONDITIONS

- 1. Grant of License.** In consideration of the terms and conditions stated in this License, Port hereby grants to Licensee a revocable, personal, non-assignable, and non-possessory privilege to enter and use the Harbor to berth the vessel listed above at the initial berth location indicated during the term, or another berth location as directed by the Harbormaster.
- 2. Parking / Locker** (if applicable). In connection with the berthing activity allowed under this License, Licensee may apply for an annual permit to park a vehicle in a designated parking area at the Harbor and/or for use of a storage locker in the Pier 40 Shed building. There is an annual fee of \$100.00 for locker usage under a separate agreement. If the Harbormaster issues a parking permit to Licensee or allows the use of a locker, such uses are subject to all the terms and conditions of this License and shall automatically terminate upon the expiration or early termination of this License. Storage of any vehicle is allowed up to seventy-two (72) hours. After seventy-two (72) hours, Harbormaster approval is required.
- 3. Term.** This License shall commence on the Commencement Date shown above and shall continue for five (5) years until the Expiration Date, unless earlier terminated. Except as provided in Section 15 of this License, Port will give thirty (30) days’ prior written notice to terminate this License. Without limiting any of Port's rights under this License, Licensee agrees and acknowledges that Port may, in its sole and absolute discretion, revoke or terminate this License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Licensee.
- 4. Notice to Vacate/Termination.** Licensee may terminate this License with fifteen (15) days’ prior written notice in accordance with ***Section 8*** of the South Beach Harbor Rules and Regulations attached hereto as ***Exhibit A***.
- 5. Fees.** Licensee agrees to pay to Port the fees set forth above and as described in the Rules and Regulations and attached Fee Schedule (collectively, “**Fees**”), each as applicable to Licensee’s activities. Berthing Fees, Locker Fees, and/or Parking Fees are due in advance of the first day of each calendar month; Fees are delinquent if not received by the 15th day of each month. All sums payable by Licensee to Port shall be paid in cash or by good check to the Port and delivered to Port's address as specified in the Rules and Regulations or such other place as Port may designate in writing. Licensee agrees that Port's exercise of its rights regarding the

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Harbor and other Port property in the vicinity of the Harbor will not entitle Licensee to any abatement or diminution of Fees.

a. Late Fees. Licensee acknowledges that late payment will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Licensee fails to pay Fees on the date due, such failure shall be subject to a ten percent (10%) late charge for all delinquent Fees and constitutes a default under Section 16 of this License.

b. Fee Increases. The Initial Monthly Berthing Fee may increase annually by the annual change in the consumer price index applicable to San Francisco, as published by the U.S. Department of Labor, Bureau of Labor Statistics and as interpreted by the Port in its sole and absolute discretion (“CPI Increase”). Port shall provide Licensee timely notice of the CPI Increase; failure to promptly pay the CPI Increase after timely notice shall be subject to a late charge for delinquent Fees and constitute a default under Section 16 of this License. Licensee acknowledges that the Port may increase or otherwise change Parking Fees and Locker Fees at any time and by any amount in its sole and absolute discretion; Licensee expressly acknowledges and agrees that upon notice of a change in Parking Fee and/or Locker Fee, Licensee may either: (i) accept and pay the increased Parking Fee and/or Locker Fee, or (ii) notify the Port of Licensee’s objection to the increase and discontinue parking and/or use of the locker no later than the last day for which Licensee has prepaid the Parking Fee and/or Locker Fee. Licensee acknowledges that failure to pay the increased Fee will result in the forfeiture of the Parking Permit and/or Locker designation and that a future parking permit or locker assignment may not be available.

6. Security Deposit. Prior to the Commencement Date, Licensee shall provide to Port a security deposit in an amount equal to the Monthly Berthing Fee as security for Licensee’s faithful performance of its obligations under this License. Licensee agrees that Port may apply the security deposit to: (i) pay any sum due to Port under this License, (ii) compensate Port for any damage to the Harbor caused or permitted by Licensee or its invitees, or (iii) cure any default or failure to pay or otherwise comply with the License. Port’s obligation with respect to the security deposit is solely that of debtor and not trustee. Licensee shall not be entitled to any interest on such security deposit and Port shall not be required to keep the security deposit separate from its general funds. Nothing contained in this section shall in any way diminish or be construed as waiving any of Port’s remedies under this License or provided by law or equity.

a. Increase; Obligation to Replenish. Licensee shall provide additional funds to Port when the monthly Berthing Fee increases to ensure the security deposit equals the applicable monthly Berthing Fee. If Port uses any portion of the security deposit, Licensee shall replenish the security deposit to the original amount within twenty-four (24) hours of Port’s notice of the amount due.

b. Waiver; Return. Licensee expressly waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, and agrees that Port may apply the security deposit in payment of sums reasonably necessary to compensate Port for other loss or damage, foreseeable or unforeseeable, caused by an act or omission of Licensee or any Invitee of Licensee, and that following a default by Licensee, the security deposit may be retained by Port and applied to future damages pending determination of the same. If Licensee is not in default at the expiration or termination of this License, Port shall return the unused balance of the security deposit to Licensee after Licensee vacates the Harbor.

7. Renewal. This License may be renewed for successive five (5) year periods, subject to Port’s prior express written consent and in accordance with the following procedure. Licensee must give the Harbormaster written notice that it wishes to extend its License for a five (5) year period no later than thirty (30) days prior to the Expiration Date and include: (a) a current Statement of Ownership, (b) current proof of insurance, and (c) any other information reasonably

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requested by the Port and Harbormaster. The Harbormaster will accept a written request to extend the term and shall offer an extension agreement or current Berthing License Agreement (including any updated terms and conditions, and then-current Fees), to the Licensee prior to the Expiration Date unless: (i) the request for renewal fails to include necessary documentation, (ii) Licensee is in default or otherwise not in good standing under this License or any other agreement with the Port, or (iii) other good cause, including but not limited to violations of federal, state, or City law that in the Port's judgment is relevant to whether the Licensee would perform its obligations under the license in a lawful manner. If a new Berthing License Agreement is offered by the Port but not executed by Licensee within ten (10) days, the Port's offer to enter the agreement shall be deemed revoked and the Port shall be under no further obligation to enter a new agreement or extend the License term. If the License is not extended or otherwise renewed, it will automatically terminate as of the Expiration Date without further notice and Licensee shall vacate the berth and Harbor.

8. Noncommercial Activity. This License authorizes berthing for noncommercial purposes. Commercial activity, including charters, sport fishing, tours, and every other activity for hire, requires additional permits and approvals; performing or permitting any commercial activity without necessary permits or approvals constitutes a default under this License.

9. Compliance with Rules and Regulations. Licensee agrees that Licensee and Licensee's guests, agents, and invitees shall comply with the terms and conditions of this License, including the Rules and Regulations applicable to the Harbor, as they may be amended from time to time and which are hereby incorporated as a part of this License (the current version of which are attached as **Exhibit A**), and as further directed and authorized by the Harbormaster.

10. Compliance with Laws. Licensee shall comply with all laws relating to or affecting the condition and use of its vessel and the Harbor. Licensee shall comply with the City and Port Requirements listed in **Exhibit B**, which are incorporated as a part of this License, to the extent that such ordinances are applicable. Licensee understands and agrees that its failure to comply with such City and Port Requirements constitutes a default under this License, in addition to any penalties under the applicable ordinance.

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

12. No Bailment. This License is for use of assigned dockage space and associated Harbor facilities (including designated parking areas and/or locker, if applicable). This License does not create a bailment of the vessel, its equipment, personal effects, or any vehicle or other personal property. If at any time keys are left with the Harbor Office, Licensee agrees that such will not constitute the assumption of a bailee relationship by Port.

13. Condition of Berth and Facilities. Licensee acknowledges that Licensee has inspected the assigned berth space and is satisfied that such facilities are adequate for the safe and secure dockage of Licensee's vessel and use. Licensee shall immediately notify the Harbormaster of any observed dangerous condition requiring attention by the Port. Licensee shall not alter docks, pilings or any Harbor facilities. There is no warranty of any kind as to the condition of the berths, floats, dock boxes, lockers, walks, gangways, ramps, or mooring gear, or any other part of the Harbor and Licensee accepts the berth space in its "As Is" condition and as being suitable for the conduct of Licensee's activities.

14. Waiver, Indemnification, and Assumption of Risk. Licensee, as a material part of the consideration to be rendered to Port, acknowledges and agrees that berthing space and Harbor facilities are used at the user's sole risk, and that Port shall not be responsible for or liable to Licensee or Licensee's guests, employees, contractors, invitees, or agents (collectively,

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“Licensee Parties”) for any and all losses relating to any injury, accident or death of any person, or theft, loss or damage to any property, including vehicles or vessels, in or about the Harbor from any cause whatsoever. Accordingly and to the fullest extent allowed by law, Licensee hereby waives all rights against the City and County of San Francisco and the San Francisco Port Commission and their officers, directors, employees, and agents (collectively, “City Parties”), and releases the City Parties from any and all losses relating to any injury, accident or death of any person, or theft, loss or damage to any property, including vehicles or vessels, in or about the licensed berth or the Harbor from any cause whatsoever. The City Parties shall not be liable under any circumstances for any consequential, incidental, or punitive damages.

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

The foregoing obligation of Licensee includes indemnification from all loss and liability, including reasonable fees of attorneys, consultants and experts, and court costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the City Parties, damages for decrease in the value of the Harbor, and Claims for damages or decreases in the value of adjoining property. The provisions of this Section 12 shall survive the expiration or earlier termination of this License .

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

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.**

Initial

(Name of Owner/Licensee)

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

15. Insurance. Licensee shall maintain throughout the Term, at Licensee's expense, a minimum coverage of Five Hundred Thousand (\$500,000) marine liability and Five Hundred Thousand (\$500,000) vessel pollution liability, including hull replacement and general liability. Hull value will be based on the National Automobile Dealers Association (NADA) or similar for the marine industry. The policy shall be in form and substance satisfactory to the Harbormaster and shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best, or comparable, rating of not less than A-VIII and authorized to do business in the State of California.

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

Licensee shall deliver certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of the Harbormaster using EXIGIS or another internet-based insurance compliance tracking system as directed by the Harbormaster on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Licensee shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

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

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

16. Default; Termination.

a. Curable Default. The occurrence of one or more of the following events shall constitute a default by Licensee. Upon Licensee's failure to cure during the cure period indicated below, this License shall terminate and Licensee shall immediately vacate and discontinue its use of the Harbor.

i. Failure by Licensee to pay any Fees and/or all other charges due hereunder, including replenishing the Security Deposit, within three (3) calendar days after written notice to cure; or

ii. Failure to comply with any other provision of this License within seven (7) calendar days of notice in writing by the Harbormaster of such non-compliance, including but not limited to: (1) compliance with the Rules and Regulations, (2) failure to provide satisfactory

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proof of insurance, and (3) failure to provide the Port written notice within seven (7) calendar days of any change to the information disclosed on Page 1 of this License, regardless of notice from or request by Port.

iii. An uncured default by Licensee under the terms of any other agreement with Port, including but not limited to terms and conditions applicable to Port's lending to and Licensee's borrowing from Port equipment or materials, shall constitute a default of this License.

b. Automatic Termination. The occurrence of one or more of the following events shall constitute a default by Licensee upon the occurrence of which this License shall terminate without an opportunity to cure and without prior notice by Port. The Harbormaster may provide the Licensee written notice of such termination if Licensee fails to vacate and Licensee shall immediately vacate and discontinue its use of the Harbor.

i. Transfer of this License by Licensee without the prior written approval of Port, including but not limited to: (1) any changes to a partnership that results in no original partners remaining on the Statement of Ownership, or (2) any changes, sales, or transfers of a business entity Licensee that results in the original entity or individual(s) holding less than fifty percent (50%) of the beneficial interest in the business entity Licensee;

ii. Absence from the Harbor for six (6) consecutive months, unless authorized by the Harbormaster in accordance with the Rules and Regulations;

iii. Failure to take the vessel out of the Harbor at least ten (10) times per year;

iv. When, in the Harbormaster's sole discretion, a default of this License poses a threat to health and/or safety, or is incapable of cure (including but not limited to a discharge of waste);

v. Delinquent payment of Fees after becoming a "habitual late payer" as defined in the Rules and Regulations;

vi. Failure to return from temporary suspension within the required period; or

vii. Either: (1) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (2) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (3) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

c. Cross Default. An uncured default by Licensee under the terms of any other agreement with Port shall constitute a default under this License.

17. Port's Remedies Upon Termination or Expiration. Upon expiration of the Term, Licensee's default and failure to cure during the cure period (if any), or automatic termination, this License shall terminate and Licensee shall immediately vacate and discontinue its use of the Harbor and Port may take any and all action to enforce Licensee's obligations. Licensee shall indemnify Port from and against any and all loss or liability resulting from Licensee's delay in vacating the Harbor.

If Licensee does not remove his or her vessel immediately upon termination or expiration without timely renewal of this License, no new license is created or shall be implied and the daily Transient Fee shall apply. Port shall have the following remedies in its sole and absolute discretion: (a) remove the vessel to a location within or outside the Harbor, in which case Licensee shall be liable for costs of storage and other costs incurred by Port; and/or (b) commence the attachment and auction process under the California Harbors and Navigation Code and in accordance with the Rules and Regulations.

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If Licensee's vessel is moved, whether within or outside the Harbor, as to such relocation and during the period of storage and final disposition, all indemnity and exculpatory clauses of this License pertaining to Licensee and the vessel, including but not limited to Section 13, shall continue in effect and inure to the benefit of Port and its agents.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property, other than his or her vessel and any other property not subject to a maritime lien that Licensee does not remove from the Harbor prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal, and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing, removing, and disposing of abandoned property and repairing any damage to the Harbor resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee. Licensee hereby waives the benefits of California Civil Code sections 1993 through 1993.09 (and any successor statute), if and to the extent applicable.

18. Temporary Absence/Temporary Suspension.

a. Licensee may request a temporary absence from the berth for a period of not less than sixty (60) days and not more than six (6) months. During the period of temporary absence, the Licensee Fee shall be one hundred percent (100%) of the Fee that is otherwise applicable, less fifty percent (50%) of any revenues Port generates from the sublicensing of the berth. For example, if Port allows a daily guest to use Licensee's berth, and such guest pays thirty dollars (\$30) to the Port for such privilege, Licensee will receive a credit against the Fee of \$15. Licensee must remove all skiffs, kayaks, vessel lines, fenders, docks, steps and all other appurtenances or equipment and, unless authorized in advance by the Harbormaster, all personal property from any dock box and locker (as applicable), prior to the effective date of the temporary absence period. The Harbormaster may approve extended temporary absence for up to an additional six (6) months upon satisfactory documentation that Licensee is on an extended voyage.

b. Upon a satisfactory showing by Licensee, the Harbormaster may temporarily suspend the License for a period of up to ninety (90) days if a vessel is destroyed by fire or other causes so Licensee may bring a replacement vessel of a permitted size for the berth into the berth assignment and continue to use the Harbor under this License as amended to reflect the replacement vessel. If Licensee fails to bring a replacement vessel into the Harbor within the 90-day period, this License shall automatically terminate. If a vessel is destroyed during a period of temporary suspension requested by Licensee, upon satisfactory showing by Licensee, the Harbormaster may extend the original temporary suspension period for up to ninety (90) days in order to allow Licensee to bring a replacement vessel of the same size into the Harbor. Licensee may also request authority to temporarily sublicense the berth during such ninety (90) to one hundred eighty (180)-day suspension period, as applicable, in which case the provisions of Section 18(a) above shall govern. Licensee's obligation to pay the Fee will not be relieved during such suspension period, but the Fee may be subject to offset as set forth in Section 18(a) above.

c. Unless otherwise specified, all other provisions of this License and the Rules and Regulations will continue to apply during a temporary suspension.

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19. No Waiver. Failure to enforce any terms or conditions of this License or the Rules and Regulations shall not act as a waiver against enforcement of those same terms and conditions or any other provisions of this License or of the Rules and Regulations.

20. Miscellaneous.

a. Time of Essence. Time is of the essence in performance of the obligations set forth in this License.

b. Entire Agreement. All attachments, exhibits, and schedules are incorporated in this License by reference. This License constitutes the entire agreement between the parties, and the terms and conditions cannot be varied except in writing signed by the parties. Licensee expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised concession, abatement, or any other form of monetary consideration without a written agreement executed by Port.

c. Remedies Cumulative; Severability. All remedies available under this License are cumulative and not exclusive. The terms and conditions of this License are independent and the failure of one or several shall not invalidate the entire License

d. Interpretation. This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License shall be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including any presumption pursuant to California Civil Code section 1654) against the party responsible for drafting any part of this License.

e. Applicable Law; Venue. This License shall be construed and enforced according to the federal maritime laws of the United States and, where applicable, according to the laws of the State of California and the Charter of the City and County of San Francisco. Venue for any action shall be in the City and County of San Francisco.

f. Non-Liability of Port Officials, Directors, Employees, and Agents. No elective or appointive board, commission, member, officer, director, employee, or other agent of Port shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by Port or for any amount which may become due to Licensee, its successors and assigns, or for any obligation of Port under this License or otherwise.

g. Relationship of Parties. This License does not create a relationship between Port and Licensee other than that of licensor and licensee.

h. No Third-Party Beneficiary. This License is not intended, and shall not be construed, to create any third-party beneficiary rights in any third party, unless otherwise expressly provided.

i. Counterparts. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute one complete License.

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

k. Waiver of Relocation. Licensee hereby waives any and all rights, benefits, or privileges of the California Relocation Assistance Law (California Government Code section

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7260 *et seq.*), or under any similar law, statute, or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

l. Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is at the time of execution and at all times while this License is in effect will continue to be a duly authorized and existing entity and that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request, Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations, warranties, and covenants.

m. Survival of Indemnities. Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

21. Notices. All notices required under this License shall be provided in the manner specified in the Rules and Regulations.

22. Termination of Existing License. Notwithstanding the provisions of any existing berthing agreement to which Licensee is a party to the contrary (an "Existing License," if applicable), the Existing License shall terminate effective as of 12:00 midnight on the date immediately preceding the Commencement Date of this License; provided, however, that Licensee shall not be relieved of any of its obligations under the Existing License accruing prior to such termination of the Existing License and any indemnification and other obligations that survive expiration or termination of the Existing License shall survive such termination.

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

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

Initial

(Name of Owner/Licensee)

[Signature Page Follows]

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

In Witness Whereof, Port and Licensee have executed this License as of the last date set forth
below

Licensee: Signature: _____
 Name: _____
 Date: _____

Port: City and County of San Francisco,
 a municipal corporation, operating by and through the
 San Francisco Port Commission

By: _____
 Alvin L. Sonza
 Harbormaster, South Beach Harbor

Date: _____


Approved as to Form: DAVID CHIU, City Attorney
 (Effective September 1, 2024-August 31, 2025)
 
By: Michelle Sexton, Port General Counsel

Exhibit A

SOUTH BEACH HARBOR RULES AND REGULATIONS

[See Attached]

Exhibit B
City and Port Requirements

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this License are incorporated by reference as though fully set forth in this License. The descriptions below are not comprehensive but are provided for notice purposes only; Licensee is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Licensee understands and agrees that its failure to comply with any provision of this License relating to any such code provision shall be deemed a material breach of this License and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this License shall have the meanings ascribed to them in the cited ordinance.

1. NONDISCRIMINATION.

1.1 Covenant Not to Discriminate. In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapters 12B and 12C of the Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment Code against any employee of Licensee, any City and County employee working with Licensee, any applicant for employment with Licensee, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee in the City and County of San Francisco.

1.2 Sublicenses and Other Contracts. Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all sublicenses and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, Sections 12B.2 (a), 12B.2(c) - (k) and 12C.3 of the Administrative Code) and shall require all sublicensees and other contractors to comply with such provisions.

1.3 Nondiscrimination in Benefits. Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 131.2 of the Labor and Employment Code.

1.4 CMD Form. On or prior to the License Commencement Date, Licensee shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the CMD.

1.5 Penalties. Licensee understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of \$50.00 for each person for each calendar day during

which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

2. *REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES.*

For each Covered Employee Licensee shall provide the appropriate health benefit set forth in Section 121.3(d) of the HCAO.

2.1 Notwithstanding the above, if Licensee meets the requirements of a "small business" by the City pursuant to Section 121.3(e) of the HCAO, it shall have no obligation to comply with Section 22.2(a) above.

2.2 If, within 30 days after receiving written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

2.3 Any Sublicense or Contract regarding services to be performed on the License Area entered into by Licensee shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of Division II of the Labor and Employment Code. Licensee shall notify the Office of Labor Standards Enforcement ("OLSE") when it enters into such a Sublicense or Contract and shall certify to OLSE that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Licensee shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the License Area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor and Employment Code against Licensee based on the Sublicensee's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Licensee with notice and an opportunity to cure the violation.

2.4 Licensee shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

2.5 Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

2.6 Licensee shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

2.7 Upon request, Licensee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Sublicensees, Contractors, and Subcontractors.

2.8 Within ten (10) business days of any request, Licensee shall provide the City with access to pertinent records relating to any Licensee's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Licensee at any time during the Term. Licensee agrees to cooperate with City in connection with any such audit.

2.9 If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or

relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

3. FIRST SOURCE HIRING.

The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Licensee acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Licensee acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be default of this License.

4. LOCAL BUSINESS ENTERPRISES.

The Port Commission encourages the participation of local business enterprises ("LBEs") in Licensee's operations. Licensee agrees to consult with CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <http://sfgov.org/cmd/lbe-certification-0>.

5. PROHIBITION AGAINST TOBACCO ADVERTISING; PROHIBITION AGAINST TOBACCO PRODUCT SALES, MANUFACTURE, AND DISTRIBUTION.

Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Licensee acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the License Area and such prohibition must be included in all sublicenses or other agreements allowing use of the License Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

6. PROHIBITION OF ALCOHOLIC BEVERAGES ADVERTISING.

Licensee acknowledges and agrees that no advertising of alcoholic beverages is allowed on the License Area. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

7. GRAFFITI REMOVAL.

Licensee agrees to remove all graffiti from the License Area, including from the exterior of the Facility if included within the License Area, within forty-eight (48) hours of the earlier of Licensee's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "**Graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this License or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

8. RESTRICTIONS ON THE USE OF PESTICIDES.

Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee shall not use or apply or allow the use or application of any pesticides on the License Area, and shall not contract with any party to provide pest abatement or control services to the License Area, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee shall comply, and shall require all of Licensee's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Licensee to keep certain records and to report to City all pesticide use by Licensee's staff or contractors. If Licensee or Licensee's contractor will apply pesticides to outdoor areas, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state Law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

9. MACBRIDE PRINCIPLES NORTHERN IRELAND.

Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

10. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN.

Port and the City urge Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Licensee shall not provide any items to the construction of Alterations, or otherwise in the performance of this License which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Licensee fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Licensee shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

11. PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC.

Licensee may not purchase preservative-treated wood products containing arsenic in the performance of this License unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "**preservative-treated wood containing arsenic**" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

12. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS.

If this License is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 22.12 shall apply. Through its execution of this License, Licensee acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Licensee further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Licensee; and any subcontractor listed in the Licensee's bid or contract. Additionally, Licensee certifies that if this Section 22.12 applies, Licensee has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of each of the persons required to be informed.

13. SUNSHINE ORDINANCE.

In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after

a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

14. CONFLICTS OF INTEREST.

Through its execution of this License, Licensee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Licensee becomes aware of any such fact during the Term, Licensee shall immediately notify the Port.

15. DRUG-FREE WORKPLACE.

Licensee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

16. PREVAILING WAGES AND WORKING CONDITIONS.

Licensee shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Licensee shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Licensee agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Licensee shall include and shall require its sublicensees, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Licensee's failure to comply with its obligations under this Section shall constitute a material breach of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

17. PUBLIC TRANSIT INFORMATION.

Licensee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Licensee employed on the License Area, including, without limitation, the distribution to such employees of written materials explaining the convenience

and availability of public transportation facilities adjacent or proximate to the License Area and encouraging use of such facilities, all at Licensee's sole expense.

18. FOOD SERVICE AND PACKAGING WASTE REDUCTION ORDINANCE.

Licensee agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this License, Licensee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Licensee agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this License was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Licensee's failure to comply with this provision.

19. CONSIDERATION OF CRIMINAL HISTORY IN HIRING AND EMPLOYMENT DECISIONS.

19.1 Licensee agrees to comply with and be bound by all of the provisions of San Francisco Labor and Employment Code Division II, Article 142 (formerly Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; “**Article 142**”), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area.

19.2 Licensee shall incorporate by reference the provisions of Article 142 in all sublicenses of some or all of the License Area, and shall require all sublicensees to comply with such provisions. Licensee’s failure to comply with the obligations in this subsection shall constitute a material breach of this License.

19.3 Licensee and sublicensees shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

19.4 Licensee and sublicensees shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Licensee and sublicensees shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

19.5 Licensee and sublicensees shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or sublicensee at the License Area, that the Licensee or sublicensee will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

19.6 Licensee and sublicensees shall post the notice prepared by the Office of Labor Standards Enforcement (“**OLSE**”), available on OLSE’s website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area occur. The notice shall be posted in English, Spanish, Chinese,

and any language spoken by at least 5% of the employees at the License Area or other workplace at which it is posted.

19.7 Licensee and sublicensees understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this License, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this License.

19.8 If Licensee has any questions about the applicability of Article 142, it may contact Port for additional information. Port may consult with the Director of the Purchasing Department who may also grant a waiver, as set forth in Section 142.8.

20. LOCAL HIRE.

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Licensee's improvements and alterations under this License are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Licensee agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Licensee's improvements or alterations, Licensee shall contact City's Office of Economic Workforce and Development ("OEWD") to determine the work is a Covered Project subject to the Local Hiring Requirements.

License shall include, and shall require its sublicensees to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Licensee shall cooperate, and require its sublicensees to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Licensee's failure to comply with its obligations under this Section shall constitute a material breach of this License. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

21. SAN FRANCISCO BOTTLED WATER ORDINANCE.

Licensee is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at City-permitted events held on the License Area with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

22. LABOR PEACE AGREEMENT.

The City has adopted a Labor Peace Agreement ordinance ("LPA Ordinance") codified at SF Administrative Code Section 23.70 et seq.) which requires among other things, Employers of Employees working in Excursion Vessel Operations to agree, upon request by their Employees' labor representative, to enter into a Labor Peace Agreement with a union seeking recognition containing specified minimum terms and to engage in mediation and arbitration if the parties are unable to agree on the terms of a Labor Peace Agreement within the specified timeframe and to make certain reports to the Office of Labor Standards and Enforcement ("OLSE"). Licensee shall comply with the requirements of the LPA Ordinance unless it: (i) employs fewer than forty (40) employees in vessel operations; (ii) is signatory to a valid and binding collective bargaining

agreement as to the union seeking recognition; or (iii) meets any of the other exemptions in the LPA Ordinance as determined by OLSE. In addition, Licensee shall include, as a material term in any Subcontract the following language: "San Francisco Administrative Code Chapter 23, Article VIII, commencing at Section 23.70, which applies to [Subcontractor], is incorporated herein by reference. To the extent [Subcontractor] employs Employees in Excursion Vessel Operations within the scope of Administrative Code Chapter 23, Article VIII, [Subcontractor] hereby agrees as a material condition of this subcontract to enter into and abide by a Labor Peace Agreement with a Labor Organization or Organizations that represents, or seeks to represent, [Subcontractor's] Employees, if and as required by Article VIII, and to otherwise fully comply with the requirements of that Article."

Licensee's failure to comply with the LPA Ordinance or this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.74 against the breaching party.

23. LICENSEE'S COMPLIANCE WITH CITY BUSINESS AND TAX REGULATIONS CODE.

Licensee acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Licensee under this License is withheld, then Port will not be in breach or default under this License, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section to Licensee, without interest, late fees, penalties, or other charges, upon Licensee coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

24. CONSIDERATION OF SALARY HISTORY.

Licensee shall comply with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K), the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Licensee for work that relates to this License or for work to be performed in the City or on City property, Licensee is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Licensee shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Licensee is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.