

**SAN DIEGO YACHT CLUB
LIVE-ABOARD AGREEMENT**

San Diego Yacht Club, Inc. ("SDYC") and _____ the undersigned SDYC member ("**Member**") agree as follows:

1. **LIVE-ABOARD STATUS.** SDYC grants Member Live-Aboard status. Such grant represents a revocable license for only the persons identified in Member's Formal Application To the Board of Directors for "Live-Aboard" Status, dated ____, (the "Application") to live aboard the vessel Lifestyle (the "vessel"), which is berthed in and/or assigned to **Slip Number** ___ at SDYC's anchorage, 1101 Anchorage Way, San Diego, California, 92106. Such grant is subject to the terms and conditions contained herein, in Member's Slip Agreement and the SDYC Bylaws, Club Rules and Regulations (the "SDYC Rules") and the Application. The license granted hereby shall commence on _____.

2. **FEE.** Member agrees to pay to SDYC a monthly Live-Aboard fee of \$140.00 for one person and \$75.00 for each additional Live-Aboard person. The Live-Aboard fee may be increased by SDYC from time to time. The Live-Aboard fee is due in advance on the first day of every month, free of offset, claim or demand. Live-Aboard fees and charges may be charged to Member's SDYC membership account.

3. **CLUB RULES AND SLIP AGREEMENT A PART.** The Slip Agreement which is in effect between SDYC and the Member sets forth the obligations and rights of the Member with respect to mooring the vessel at SDYC. The Slip Agreement and this agreement shall be read so as to compliment each other and shall be interpreted to give the greatest effect to the provisions of each. However, in the event such an interpretation cannot be made, then the terms and provisions of this agreement and the SDYC Rules shall control in respect of the issue or issues which are the subject of such interpretation.

4. **RULES AND REGULATIONS.** At all times Member shall comply and shall cause all persons living aboard the vessel to comply with all applicable laws, codes, orders, rules and regulations of governmental authorities, including but not limited to the California Harbors and Navigation Code, U.S. Coast Guard safety regulations, as well as the SDYC Rules, as in effect from time to time.

5. **INSURANCE.** Notwithstanding any contrary provision in the SDYC Rules or Slip Agreement, Member shall at all times maintain public liability, protection and indemnity insurance of at least \$500,000 combined single limit per occurrence, sufficient to protect Member and SDYC from all risks arising from Member's obligations hereunder and under the Slip Agreement ("Primary Coverage"). In addition to the Primary Coverage, Member shall also maintain excess or umbrella coverage of at least \$1,000,000.00 ("Excess Coverage"). The Primary Coverage and Excess Coverage insurance shall be issued by reputable companies licensed in good standing in California, with a most recent Best's Insurance Guide rating of A VII or better, shall provide primary and non-contributing coverage, and shall name SDYC as an additional insured with a waiver of subrogation in favor of SDYC. Member shall furnish SDYC with an insurance certificate evidencing the required coverages upon execution of this Agreement, and upon each policy change or renewal date. Member's maintenance of the above-

required insurance shall be a condition precedent to the bringing or assertion of any claim by Member against SDYC.

6. **ASSUMPTION OF RISK.** Member acknowledges that there are risks associated with boating and the use of SDYC's facilities. Member hereby assumes knowingly and freely all risks, including the risks of boat damage, personal property damage, personal and physical injury, and death to persons as well as unforeseen risks. Member has examined the slip and the SDYC facilities and accepts them "AS IS". SDYC makes no warranty as to the condition of its docks, floats, walkways, hoists or any other property or facilities, and disclaims any and all implied warranties. SDYC shall not be liable for the death of or injury to any person or any property loss or damage except as directly caused by SDYC's sole gross negligence, willful misconduct or fraud, whether arising from the condition of SDYC's facilities or otherwise. Member shall be fully responsible and promptly pay for loss or damage caused by Member, the licensees or invitees of Member, including all persons and/or pets living aboard the vessel.

7. **RELEASE AND INDEMNITY.** To the fullest extent permitted by law, Member waives all claims, forever releases and agrees to hold harmless and indemnify SDYC, its affiliates, directors, officers, employees and agents from any liability, loss, damage, cost or expense, including attorney fees, in connection with the death of, or injury to any person or property loss or damage arising from, out of, or in respect of any activity engaged in, or pursued pursuant to this license, or occurring on SDYC premises, even if caused by the active or passive negligence of SDYC, or any other person. This paragraph shall survive any termination of this Agreement.

8. **HOLD DISTRICT HARMLESS.** Member acknowledges that the SDYC anchorage is located on lands owned by the San Diego Unified Port District ("District"), and Member agrees, in consideration of the grant of this license and for the express benefit of said District, not to file any claim or action, directly or indirectly against said District arising out of the death, injury or damage to Member, any member of Member's family or any pet of Member, as well as the agents, employees, licensees or guests of member or other persons living aboard the vessel or to the vessel, its contents, gear or equipment, or that of any person, and Member shall defend, indemnify and hold the District harmless against any liability that the District may incur by reason of any claims or expenses arising out of any such death, injury or damage.

9. **PERSONAL ENTITLEMENT.** This revocable license is personal and shall not be assigned by Member, and any such attempted assignment shall be void.

10. **TERMINATION.** Either party may terminate this Agreement for any reason or no reason upon thirty (30) days prior written notice. If Member is in breach, SDYC may terminate this Agreement after giving Member five (5) days notice and the breach is not cured within those five (5) days. This Agreement shall terminate automatically upon termination of Member's SDYC membership. Upon termination, all persons living aboard the vessel shall vacate the vessel immediately and in addition to SDYC's other remedies, Member shall pay SDYC a fee of three (3) times the then-current monthly license fee for the number of persons granted Live-Aboard status hereunder, pro-rated for each day until all Live-Aboards have vacated the vessel. This paragraph shall survive any termination of this Agreement.

11. **FORCE MAJEURE.** SDYC shall not be liable for any failure or delay in its performance due to fire, earthquake, flood, power failure, labor action, riot, civil insurrection, terrorism, war, weather, waves, acts of God, governmental actions whether in their sovereign capacity or otherwise, or any other cause beyond SDYC's control, or cessation of business or commercial impracticability.

12. **NOTICES.** All notices hereunder shall be in writing and deemed given when hand delivered to a party, or when sent by confirmed facsimile, or three days after posting in the U.S. Mail first class postage prepaid to a party's last known address, or, for notices to Member, when posted on Member's boat.

13. **LIMITATION ON CLAIMS, DAMAGES.** The parties hereto agree to final and binding arbitration of any and all disputes arising under this Agreement including, but not limited to, the interpretation, enforceability and breach of this Agreement. Said arbitration must be conducted pursuant to the rules of the San Diego Judicial Arbitration and Mediation Service ("JAMS") with an arbitrator selected from JAMS. Any such arbitration by Member, whether arising in contract, tort or otherwise, must be served on SDYC within one year from the date the cause of action arose or it shall be conclusively deemed waived and forever barred, regardless of any statute of limitations. If Member brings legal action or commences an arbitration in violation hereof, including any cross-complaint, SDYC shall be entitled to an immediate dismissal of the entire action or arbitration with prejudice. In no case shall the total liability in contract, tort or otherwise of SDYC affiliates and the directors, officers, employees and agents of any of them exceed the amount of license fees paid by Member to SDYC in the one-year period immediately preceding the date Member commences arbitration. SDYC and its related parties listed above will not be liable for any indirect, special, consequential or incidental damages, exemplary or punitive damages.

14. **MISCELLANEOUS.** This Agreement may be modified only in a writing signed by the General Manager of SDYC and the Member. The terms of this Agreement shall be interpreted in such a way so as to render them valid whenever possible, and shall not be strictly construed against any party. If any part of this Agreement is held to be invalid by a court or arbitrator having jurisdiction, the remainder shall continue in full force and effect. SDYC's failure or delay in exercising any right shall not be deemed a waiver of any right. Any waiver by SDYC must be in writing to be effective. SDYC's waiver of any default shall not be deemed a waiver of any continuing or subsequent default. In any arbitration proceeding instituted by one party against the other, the party prevailing in the proceeding, as determined by the arbitrator, as the case may be, shall be entitled to recover its costs and reasonable attorneys fees incurred in such proceeding. The paragraph headings of this Agreement are for convenience only.

MEMBER

SAN DIEGO YACHT CLUB

Signature

Marina Manager

Print Name

Dated: _____

Dated: _____

