

Magic Carpet Ride LLC
Charter Agreement and Waiver of Liability

Date: _____

This Charter Agreement ("Agreement") is made between Magic Carpet Ride LLC ("Owner") and:

NAME: _____
(Charterer)

CONTACT PHONE#: _____

ADDRESS: _____

EMAIL: _____

- I HAVE READ AND UNDERSTOOD THE TERMS OF THIS AGREEMENT. I UNDERSTAND THAT BY MAKING AND SIGNING THIS AGREEMENT, I SURRENDER VALUABLE RIGHTS, INCLUDING, BUT NOT LIMITED TO, RIGHTS TO SUE ON BEHALF OF MINORS AND/OR MYSELF. I DO SO FREELY AND VOLUNTARILY.

Signature: _____

Captain Lisa Alvey
Magic Carpet Ride LLC

- Emergency Contact Name and Phone Number:

Name: _____

Phone Number: _____

Passenger List:

1. Services Provided and Total Fee: Owner agrees to provide (select one):

- Sunset Cruise
- Sightseeing Cruise
- Other _____

for a total fee of \$_____.

2. Payment: Payment in full is due upon completion of cruise.

3. **Cancellation:** All payments received are nonrefundable and are non-liquidated damages upon cancellation or default of the Agreement by Charterer on or before the start of the Charter Term.
4. **Cancellation Due to Inclement Weather:** Owner solely determines whether inclement weather exists to prevent charter. Charterer may not cancel due to inclement weather without mutual agreement by Owner. If Owner determines that inclement weather exists during Charterer's Charter Term, then Owner may cancel the charter. If Owner cancels a charter due to inclement weather, then Owner will try to reschedule the charter for the most convenient time for Charterer as long as there are reservation times available. Owner will make every attempt to reschedule the charter, but no refund is provided for cancellation due to inclement weather.

Inclement weather is defined generally, but NOT exclusively, by one of or a combination of the following:

 - i. Cold temperatures that would render uncomfortable boating even with appropriate clothing;
 - ii. Persistent rainy conditions (more than a passing shower);
 - iii. Threat of, or actual, thunderstorm activity that cannot be avoided safely;
 - iv. High winds or waves that would make boating unsafe;
 - v. Any other conditions deemed reasonably unsafe according to the Owner or Captain's experience and knowledge.
5. **Rescheduling:** If Charter needs to reschedule his or her initial reservation, Owner will make reasonable efforts to reschedule the planned trip.
6. **Captain:** Owner agrees to provide a USCG Licensed Captain. When necessary and at the sole discretion of the Owner and captain, a volunteer assistant may be provided.
7. **Captain's Authority:** The Captain shall be appropriately licensed, qualified, knowledgeable and familiar with the yacht and waters of the charter area and have sufficient expertise and experience to manage and handle the yacht safely and competently. The Captain shall direct the course of the voyage. The Captain has full authority to ensure safe navigation of the yacht and safe use of the equipment, furnishings, and appurtenances of the yacht. The Captain may prohibit any unsafe activities and unsafe use of equipment, furnishings, and appurtenances of the yacht. All persons on the yacht are required to follow the Captains' instructions regarding the safe operation of the yacht.
8. **Waiver of Liability & Assumption of Risk:** I understand and acknowledge that boating activities, by their very nature, pose the potential risk of serious injury/illness to individuals who participate. I understand and acknowledge that some of the injuries or illnesses, which may result from participating in these activities, include, but are not limited to broken bones, sprains, concussions, head or neck injuries, blindness, paralysis, and death. I understand and acknowledge that participation in a boating charter with Owner is completely voluntary. I agree to release Owner and its officers, directors, agents, employees and volunteers and to hold them harmless from any damages sustained by any person, or damage to any property arising out of or in any way connected with the operation of the yacht whether in on land, or afloat, or traveling to or from the program location and whether or not caused by the negligence of the Owner or any of its officers, directors, agents, employees or volunteers.
9. **Indemnification:** I agree to indemnify Owner and its officers, directors, agent's employees and volunteers against any and all liabilities imposed or claimed, including attorney's fees and other legal expenses, arising directly or indirectly from and act or failure of participants, including all claims relating to the injury or death of any person or damage to property, whether or not caused by the negligence of Owner or any of its officers, directors, agents employees and volunteers.
10. **Execution of Individual Waivers:** Prior to boarding the yacht and the Charter Term, Charterer and each of Charterer's guests are required to sign an individual waiver of liability and acknowledgement of Owner's drug and alcohol policy. No Charterer shall be allowed to board Owner's yacht until he or she has signed an individual waiver. Owner shall provide the individual waivers prior to boarding. Any Charterer refusing to sign the waiver will not be permitted to board the yacht. The entirety of the Waiver Agreement is hereby incorporated and merged into this Agreement and the two shall be construed as one document.
11. **Effect of Charterer's Negligence.** Charterer is responsible for the costs to repair or replace any property of the Owner that is damaged as a result of the negligence or intentional acts of Charterer or Charterer's guests during the Charter Term.
12. **Default or Termination After Commencement of Charter Term:**
 - a. **Default by Charterer:** If Charterer shall terminate or default by notice to Owner after Charter Term begins, all payments made or due shall be forfeited.

- b. **Default by Owner:** If Owner shall terminate or default, then Owner shall refund Charter Fee and other payments made by Charterer in full to Charterer. Owner will not refund any payments when Owner's termination of this Agreement is due to a breach by Charterer.
- 13. Drug, Alcohol, Tobacco, and Weapons Policy:** Owner is committed to providing a safe and enjoyable boating experience for each of its Charterers. Owner's drug, alcohol, tobacco, and weapons policy allows Owner to meet this commitment. This policy is part of the terms and conditions of the charter. Each Charterer is expected to adhere to the terms of this policy and must agree to these terms before boarding.
- a. **Zero Tolerance of Illegal Substances:** Owner does not permit the possession or use of any illegal substance aboard its vessels. Any person engaging in illegal substance use will result in an immediate termination of the charter with no refund. Owner will immediately notify appropriate law enforcement authorities. The Captain has the authority to search passengers and their belongings.
- b. **Alcohol Policy:** Owner does not sell alcoholic beverages aboard its vessels. Charterers are permitted to bring aboard a limited selection of alcoholic beverages for personal consumption. Owner is committed to a policy of safe and responsible drinking. Accordingly, Charterers must adhere to the following rules:
- i. Beverages must be in original packaging of either plastic bottles or aluminum cans. No glass containers are allowed; however, wine in the original bottle is permitted.
- ii. Beverages must be safely stored in shock resistant small coolers.
- iii. No mass containers of alcohol are allowed, including, but not limited to, kegs.
- iv. The quantities of alcohol brought aboard must be reasonable for safe and moderate consumption. Charterer has the responsibility to meet with Owner to determine an appropriate quantity. The Captain has the sole discretion to limit the quantity of alcohol brought aboard if deemed excessive.
- v. Owner reserves the right to confiscate and discard alcohol on board without compensation if, in the Captain's discretion, the consumption of alcohol is interfering with the safe operation of the vessel or disrupting other passengers.
- vi. Passengers may begin to consume alcohol once all passengers have boarded and the vessel has left the dock. All consumption of alcoholic beverages must cease 15 minutes before returning to the dock. Charterers may not depart the vessel with an open alcoholic beverage in hand.
- vii. Charterers acknowledge that the minimum age for possession and consumption of alcohol is 21. Charterer or any guests accompanying an underage Charterer agrees to supervise the underage guests to ensure this law is not violated.
- viii. Owner wishes its Charterers to enjoy their gatherings and celebrations aboard its yachts. However, behaviors resulting from excessive alcohol use that disturb other Charterers or interfere with the safety of the vessel will not be tolerated. The Captain reserves the right to cancel a charter at any time due to unruly behavior of passengers. Owner asks that you respect fellow Charterers, respect the yacht, and assist with providing a safe and enjoyable charter for all.
- c. **Tobacco Policy:** Owner does not permit the smoking/vaping/chewing of any tobacco products aboard its vessel.
- d. **Weapons Policy:** Owner does not permit any passengers aboard the vessel to carry firearms or weapons of any type.
- 14. Picture Release:** I hereby consent to and authorize Owner to use and/or reproduce any and all photographs, video footage, or other audio/visual materials recorded during the Charter Term for any other benefit of Owner.
- 15. Arbitration:** This Agreement will be governed by and interpreted in accordance with the laws of the State of Michigan. The Parties' sole and exclusive forum and remedy at law for any disputes arising out of or related to this Agreement, including the interpretation thereof, will be binding arbitration. Arbitration under this Agreement will be held in New Buffalo, Michigan and will be conducted by a single arbitrator who will be randomly selected from the American Arbitration Association National Roster of Arbitrators. The arbitrator will decide any and all claims in accordance with the laws and legal principals of the State of Michigan and the American Arbitration Association's most recently effective commercial arbitration rules and will have the authority to award costs and attorneys' fees. The losing party will be required to pay the prevailing party's costs and attorneys' fees. The Parties agree that the determination or award of any

such arbitrator or arbitration proceeding may be entered as a judgment in any court sitting within the State of Michigan that has jurisdiction over the subject matter of the dispute. The Parties understand and agree that they will be required to be present within the State of Michigan in order to perform their obligations under the terms of this Agreement. The Parties hereby submit to the exclusive personal and subject matter jurisdiction of any such arbitrator or arbitration proceeding.

- 16. Governing law:** This Agreement shall be governed in all respects by and construed in accordance with the laws of the State of Michigan without regard to any conflicts of law provisions
- 17. Severability:** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, and if the rights or obligations of either Party under this Agreement will not be materially and adversely affected, (i) said provision will be fully severable; (ii) this Agreement will be construed and enforced as if said provision had never comprised a part of this Agreement; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the severance of any provision; and (iv) there will be added a legal, valid, and enforceable provision as similar in terms to said provision as may be possible in lieu of said provision.
- 18. Force Majeure:** Except for the payment of monies due under this Agreement, neither party shall be in default of its obligations under this Agreement for any failure or delay in performance due to reasons of Force Majeure because of any cause or circumstances beyond its control and occurring without its fault. For purposes of this Agreement, Force Majeure shall mean any failures or delays in performance caused by fires, acts of God or a public enemy, riots, interference by civil or military authorities, compliance with the laws, orders or policies of any governmental authority, delays in transit or delivery on the part of transportation companies, failures of communication facilities or sources of raw materials, or any other condition beyond the parties' reasonable control and occurring without their fault. Each party shall use due diligence and all reasonable efforts to cure any such cause preventing its performance so as to resume performance as soon as reasonably possible.
- 19. Waiver:** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently require strict compliance with every provision of this Agreement.
- 20. Integration:** This Agreement and its attachments, including the Waiver Agreement, contain the entire understanding between the Parties.
- 21. Additional Terms:**
 - a. Children under the age of 12 must wear a personal flotation device at all times.
 - b. Children over 12 but under 18 must be accompanied by a parent or legal guardian.
 - c. No animals allowed on the vessel, except those required for service under the Americans with Disabilities Act.
- 22. Limitation of Liability:** In no event will Owner be liable for any type of special, indirect, incidental, or consequential damages, whether arising in contract or tort, exceeding the amount paid for the charter.