



## BALBOA YACHT BASIN

829 Harbor Island Drive  
Newport Beach, CA 92660  
949-673-0360

### SLIP RENTAL AGREEMENT

THIS SLIP RENTAL AGREEMENT ("Agreement") is made as of this \_\_\_\_\_, by and between the CITY OF NEWPORT BEACH ("City") and \_\_\_\_\_ ("Vessel Owner"); if more than one, each shall be jointly and severally liable and all are collectively referred to as "Vessel Owner" herein. Vessel Owner must be the legal owner of the Vessel, or such owner's registered agent.

City hereby grants Vessel Owner a limited license and permission to moor its vessel at THE BALBOA YACHT BASIN ("Basin") in Slip No. \_\_\_\_\_ and Vessel Owner hereby agrees to accept the Slip, defined herein, for the term specified, subject to all of the terms and provisions set forth below:

1. OWNER:  
Name(s): \_\_\_\_\_

If Vessel Owner is a corporation or other entity,  
Name of Registered Agent in California: \_\_\_\_\_

Residence Address: \_\_\_\_\_  
\_\_\_\_\_ Zip \_\_\_\_\_

Business Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: Home #: \_\_\_\_\_ Business #: \_\_\_\_\_ Cell #: \_\_\_\_\_

Driver's License Info: State: \_\_\_\_\_ Number: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Billing Address: \_\_\_\_\_ Zip: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Emergency Contact Name: \_\_\_\_\_ Emergency Phone #: \_\_\_\_\_

Legal Owner of Vessel: \_\_\_\_\_  
Bank, Lienholder, or other name appearing on evidence of title

2. VESSEL DESCRIPTION:

Vessel Name: \_\_\_\_\_ Reg. CF/Doc. No.: \_\_\_\_\_  
("Vessel") Please provide a copy of current Documentation/Registration for file.

Type (Power/Sail): \_\_\_\_\_ Builder: \_\_\_\_\_

Total Length \_\_\_\_\_ Beam \_\_\_\_\_ Draft \_\_\_\_\_  
(including bowsprit, boom, boomkin, pulpit, swim step, boarding step outboard(s), outdrive(s), davits/dinghy in davits, etc.)

Port/State of Registration: \_\_\_\_\_

Insurance Carrier: \_\_\_\_\_ Insurance Agent: \_\_\_\_\_

Phone #: \_\_\_\_\_ Insurance Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
Please provide a copy of current insurance certificate for file.

Vessel Owner agrees to give City written notice of any change in any of the above information within five (5) days after the occurrence of any such change.

Vessel Owner agrees to produce evidence of licensing, registration and insurance coverage for the Vessel and provide copies of such certificates for the City's files when such coverage or registration are changed or renewed or at the City's request. A photocopy of the current year's registration is to be received by the City no later than March 31<sup>st</sup> of each year.

3. DEFINITION AND TERMS:

Slip No.: \_\_\_\_\_ ("Slip") Slip Length: \_\_\_\_\_

Term: Month-to-Month, commencing on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("Commencement Date")

Slip Rate/Linear Foot: \$ \_\_\_\_\_

Monthly Slip Fee: \$ \_\_\_\_\_ ("Slip Fee")  
(Monthly slip fee is based on the longer of the slip length OR the actual measured LOA of the Vessel.)

First Month Prorated Slip Fee (if applicable): \$ \_\_\_\_\_

Security Deposit: \$ \_\_\_\_\_ ("Security Deposit")  
(Deposit equal to one months slip fee – Deposit requirement may be increased at any time at the discretion of Harbor Resources.)

Key Deposit: \$ \_\_\_\_\_ # of Keys: \_\_\_\_\_ Total Key Deposit: \$ \_\_\_\_\_

4. CITY: Notices to the City shall be sent to:

Basin Marine Inc.  
829 Harbor Island Drive  
Newport Beach, CA 92660

5. TERM: This Agreement shall be for a term of one (1) month, plus any partial month if the Commencement Date is on a date other than the first day of a calendar month, and shall continue on a month-to-month basis unless sooner terminated. City may terminate this Agreement without cause and in City's absolute discretion, by providing thirty (30) days prior written notice to the Vessel Owner.

6. PAYMENT OF FEES: Vessel Owner agrees to pay the Slip Fee of \$ \_\_\_\_\_ per month to the City's Finance Office at 3300 Newport Blvd., P.O. Box 1768, Newport Beach, CA, or at any such other place as may from time to time be designated by City in writing. The Slip Fee for the first full or partial calendar month of the Term shall be paid to City by Vessel Owner concurrently with the execution of this Agreement. All Slip Fees are payable in advance and all fees and charges are due by the first (1<sup>st</sup>) of the month and delinquent on the fifteenth (15<sup>th</sup>) of the month. Upon not less than sixty (60) days' prior written notice to Vessel Owner, City may alter, at any time, the amount of Slip Fees, Late Fee, Returned Check Fees, Key Deposit, and/or Security Deposit payable under this Agreement.

7. LATE PAYMENTS. Any Slip Fee or other sum due under this Agreement that is not paid to City when due shall be charged ten percent (10%) interest per month as a late fee, from the date due until fully paid

("Late Fee"). In addition, Vessel Owner acknowledges that such late payment will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult and impracticable to ascertain. If an account is processed for collection or lien due to late payments, an additional charge of thirty percent (30%) of the amount due will be assessed against Vessel Owner. If Vessel Owner does not pay the Slip Fee when due two (2) or more times during the term of this Agreement, City may, at City's sole discretion, require Vessel Owner to enroll in City's Automatic Payment Processing ("APP") program to ensure Vessel Owner's timely payment. If Vessel Owner refuses to enroll in City's APP program, City may, at City's sole discretion, immediately terminate this Agreement.

8. RETURNED CHECKS: A Twenty-Five and 00/100 Dollar (\$25.00) fee will be assessed against Vessel Owner for the first (1<sup>st</sup>) returned check. Any additional returned checks in the same calendar year shall be assessed a Thirty-Five and 00/100 Dollar (\$35.00) fee (collectively, "Returned Check Fees").
9. SECURITY DEPOSIT: Upon execution hereof, Vessel Owner shall also pay to City a Security Deposit as security for the faithful performance of Vessel Owner's obligations hereunder. Such Security Deposit shall not be in lieu of any dockage or slip fee. Said Security Deposit shall be equal to one month's rent plus fifty dollars (\$50.00):\_\_\_\_\_. City may, at its option, claim from the Security Deposit such amounts as are reasonably necessary to remedy Vessel Owner's monetary defaults in the payment of Slip Fees and other charges, to repair damages to the Slip or the Basin caused by Vessel Owner, exclusive to normal wear and tear, or to clean the Slip, if necessary, upon termination of this Agreement. In the event this Security Deposit or any portion thereof shall be applied as provided herein, Vessel Owner agrees to deposit with City within ten (10) days after written demand from City an amount sufficient to restore said Security Deposit to its original amount, and failure to do so shall constitute a breach of this Agreement. City shall have the right to commingle the Security Deposit with other funds of the City and no interest shall accrue or be paid with respect to the Security Deposit. Within thirty (30) days after the Vessel has been permanently removed from the Slip and all keys to the Basin have been returned to the City, City shall furnish Vessel Owner with an itemized written statement of the basis for and the amount of any amounts applied in accordance with this Agreement, and City shall return any remaining portion of such Security Deposit, without interest, to the Vessel Owner.
10. KEY DEPOSIT: In addition to the Security Deposit, Vessel Owner shall also deliver to City, upon execution hereof, a Key Deposit in the initial amount set forth in Section 3 above, which shall be held by City as security for the key/access card to the Basin provided to Vessel Owner. The Key Deposit shall be refundable to Vessel Owner when such access device is returned to City upon termination of this Agreement. The Key Deposit shall be permanently retained by City in the event the access device is lost or damaged by Vessel Owner, in which event Vessel Owner shall be required to deliver to City an additional key deposit in the amount then-currently charged by City for a replacement access device.
11. CONDITIONS OF USE: Vessel Owner shall perform and abide by each and every condition of use contained in this Agreement and the attached Rules and Regulations. At all times, Vessel Owner shall comply with all laws, rules and regulations of federal, state, and local entities, including, but not limited to, municipal codes, environmental laws and regulations and all regulations of the U.S. Coast Guard. Vessel Owner shall not cause or allow the Slip to be used for any purpose other than the mooring or berthing of the specific Vessel described in Section 2 above, and for other uses consistent with this Agreement.
  - (a) Liveaboards. No person, including Vessel Owner, shall live aboard the Vessel while the Vessel is moored at the Basin. A person shall be deemed to be living aboard the Vessel if such person occupies the Vessel for more than seventy-two (72) hours per month. Living aboard the Vessel and/or providing false information with regard to live-aboard status shall be grounds for immediate termination of this Agreement and all privileges at the Basin.
  - (b) Discharge of Waste/Hazardous Waste.

- (1) No substance or material of any kind, including without limitation, waste matter from sinks, toilets, marine heads, holding tanks, bilges, or any other receptacles shall be discharged into the waters of the Basin. If the Vessel is equipped with a toilet, a marine head, or any other permanent or temporary receptacle for human body wastes, then the Vessel must be equipped with a holding tank designed to retain all contents deposited in the receptacle until such time as the contents can be discharged into a sanitary sewer system or discharged otherwise in accordance with law. All sewage systems on Vessel must meet U.S. Coast Guard guidelines and must be locked "shut" while Vessel is berthed at the Basin. Vessel Owner hereby agrees to permit City to deposit dye tablets into and to inspect such holding tanks from time to time upon demand by City. Vessel Owner shall not release or permit to be released into the water or upon the docks or land, by action or inaction, any waste or environmentally objectionable substances including, but not limited to, oil, paint or gasoline. Vessel Owner shall immediately report any release to all appropriate government agencies and to the Basin Manager, and shall immediately implement necessary clean up and disposal of any waste. Vessel Owner shall be responsible for the prompt payment of all costs associated with clean up and disposal including costs of absorbent pads and booms, oversight by government agencies and Harbor Resources personnel, fines, penalties and legal fees. If City is not satisfied, at City's sole discretion, with Vessel Owner's actions in reporting and cleaning up a release, City may take any and all action it deems appropriate. Vessel Owner shall be liable for all costs and expenses associated with the City's actions which shall be payable to the City immediately upon receipt of an invoice from the City.
- (2) Vessel Owner shall not engage in any activity at or about the Basin that violates any Environmental Law (as defined below), and shall promptly, at Vessel Owner's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly by Vessel Owner. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Basin, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 et seq.; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq.; (iii) California Health and Safety Code Sections 25100 et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317 et seq.; (viii) California Water Code Section 1300 et seq.; and (ix) California Civil Code Section 3479 et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Vessel Owner shall provide prompt written notice to City of the existence of Hazardous Materials maintained by Vessel Owner at the Basin and all notices of violation of the Environmental Laws received by Vessel Owner.
- (c) Signs. No signs for the purpose of advertising or display, including but not limited to "For Sale" and brokerage signs, shall be placed on the Vessel or the dock.

- (d) Overhangs. No part of the Vessel shall at any time extend over any portion of any dock at Balboa Yacht Basin. No Vessel or part of the Vessel may extend more than ten percent (10%) of the length of the Slip beyond the end of the Slip. Additionally, the beam (width) of the Vessel may not exceed, in any area of the Vessel, more than ninety percent (90%) of the width of the Slip and must allow for installation of adequate bumpers and appropriate other dock/vessel protection.
- (e) Securing Vessel. At all times during which the Vessel is berthed at the Slip, Vessel Owner shall cause it to be safely and properly secured to its berth in a manner acceptable to City. In case of an emergency, City is authorized to do whatever City deems appropriate, including boarding the Vessel, moving the Vessel, utilizing auxiliary pumps or taking any other action. If City deems it necessary to re-secure the Vessel for any reason, Vessel Owner agrees to pay City a reasonable service charge for doing so plus the cost of all materials used therefor. However, City assumes no responsibility for the safety of the Vessel and Vessel Owner agrees to release City, and hold City harmless, from any liability for damage to the Vessel, its equipment, and/or any property in or on the Vessel, by reason of City's efforts to re-secure said Vessel or City's decision not to re-secure Vessel.
- (f) Condition of Slip. Vessel Owner hereby acknowledges that Vessel Owner has inspected the Slip and those portions of the Basin associated with the Slip, including, without limitation, the floats, walks, gangways, ramps and utilities, and knows the condition of the same, hereby accepts the same in their existing condition "As Is" and agrees that no statement, representation or warranty as to their condition has been made by the City. City does not warrant that the utility services will be compatible with the utility service requirements of the Vessel, including electrical interconnection and polarity or the effect of electrolytic action on the Vessel.
- (g) Vessel Owner's Care of Mooring and Docks. Vessel Owners shall not store or install any lockers or boxes, small boats, dinghies, skiffs, bait tanks, boat gear, racks, power lines, water hoses or other personal property whatsoever at the Slip (other than aboard the Vessel), or on the docks or gangways adjacent to the Slip. Vessel Owner shall keep the Slip, docks and gangways in a neat, clean and orderly condition, free and clear of all such items other than approved power lines and water hoses in use connected to proper receptacles at the Slip. No wheels, fenders, rubbing strips or other cushioning devices may be attached to a dock for the purpose of protecting hulls, without the prior written approval of City. No alterations may be made to the docks by the Vessel Owner. No flammable, combustible or otherwise hazardous materials shall be stored or left on the docks, including in approved dock boxes and lockers, in the Basin. Vessel Owner agrees to promptly make a written report to City of any conditions existing on or about the Basin which Vessel Owner believes to be a dangerous condition or which might develop into a dangerous condition.
- (h) Commercial Enterprise. Vessel Owner will not conduct or allow the Vessel to be used for any commercial enterprise, including, but not limited to, the chartering of Vessel, during the existence of this Agreement without the prior written approval of City.
- (i) Guests. Vessel Owner shall be responsible for the conduct and control of all guests, agents, contractors, employees, hired personnel and other invitees (collectively, "Guests") while at the Basin. City reserves the right to regulate entry into the Basin by yacht brokers, contractors and yacht service personnel, and City may require written authorization from Vessel Owner. City may take reasonable steps to ascertain that persons aboard the Vessel are authorized by Vessel Owner to be aboard.
- (j) Change of Slip. City reserves the right to move or to require a Vessel Owner to move the Vessel from the Slip to another slip within the Basin, either temporarily or permanently, at any time for any reason whatsoever, including, without limitation, for construction, emergency, safety or other operational reasons. Vessel Owner hereby grants City permission to board the Vessel for said

purpose. Vessel Owner agrees to release the City and its officers, agents or employees from any liability for loss or damage resulting or alleged to result from any such movement of the Vessel or from any failure to move the Vessel.

- (k) Assignment and Subletting. This Agreement grants to Vessel Owner a limited personal right, without any possessory interest, to berth the Vessel. Accordingly, Vessel Owner shall have no right or power to assign this Agreement or sublet the Slip or any part thereof to any other person or party whatsoever for use by any other vessel whatsoever. No attempted transfer or assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy, or otherwise, and no attempted subletting, shall be valid or effective, but shall automatically terminate this Agreement. If any vessel other than the Vessel described in Section 2 is moored at the Slip at any time, unless such vessel is moored pursuant to a Temporary Slip Agreement with the City during that period of time in Vessel Owner's notification pursuant to Section 11(l) below, it shall constitute an immediate breach of this Agreement, and City may, at its option, without waiving any other remedies it may have, immediately terminate this Agreement upon written notice to Vessel Owner.
- (l) Use of Space by City. Vessel Owner shall notify City, in writing, when Vessel Owner expects the Vessel to be away from the Slip for periods in excess of thirty (30) days. Such notification shall include the date the Vessel will leave the Slip and the date the Vessel will return. City shall have the right to allow use of the Slip by another vessel on a temporary basis without liability, credit or compensation to Vessel Owner during such periods. If Vessel Owner returns prior to the scheduled return date, City shall have the right to supply a substitute slip to Vessel Owner.
- (m) Extended Vessel Absence.
- (1) Vacancy without Notice: Continuous vacancy of the Slip for more than thirty (30) days is conclusively presumed to constitute both an abandonment of the Slip by Vessel Owner and an immediate termination of this Agreement, unless Vessel Owner notifies City of its intent to temporarily remove the Vessel from the Slip pursuant to Section 11(l) above, and of Vessel Owner's intention to maintain this Agreement in full force and effect.
- (2) Continuous Vacancy: This Agreement shall automatically terminate without notice to Vessel Owner if the Vessel does not occupy the Slip for six (6) consecutive months.
- (n) Balboa Yacht Basin Rules and Regulations. Vessel Owner agrees to use the Slip and the Basin in accordance with City's Rules and Regulations, which, by this reference, is made a part hereof. In the event of a conflict between said Rules and Regulations and this Agreement, the terms of this Agreement shall apply. City reserves the right to modify its Rules and Regulations from time to time and Vessel Owner agrees to comply with all such modified Rules and Regulations. Vessel Owner further agrees to comply with all laws, ordinances, rules, regulations and orders of any government authority with respect to the Slip and the Basin. Should any fine be assessed against Vessel Owner and/or City due to any failure by Vessel Owner or its Guests to comply with the provisions of this Section, Vessel Owner shall be solely responsible therefor and shall pay same within five (5) days following demand.
- (o) Electricity. Electricity shall be supplied to the Slip and shall be billed to Vessel Owner on a monthly basis.
- (p) TAXES, LICENSES AND OTHER OBLIGATIONS
- Payment of Taxes. Vessel Owner acknowledges that this Agreement may create a possessory interest subject to taxation. Vessel Owner shall pay, before delinquency, all taxes, assessments, license fees and other charges ("Taxes") that are levied or assessed Vessel Owner's interest in this Agreement or any fixture, improvement, equipment and other property

in and around the Slip. Vessel Owner shall pay directly to the appropriate taxing authorities all Taxes at least ten (10) days before delinquency and before any fine, interest or penalty is due or imposed by operation of law. At City's request, Vessel Owner shall provide City with proof of payment of Taxes. Vessel Owner shall not be required to pay any Taxes based on City's ownership interest in the Slips.

Payment of Obligations. Vessel Owner shall promptly pay, when due, any and all bills, debts, liabilities and obligations incurred by or charged to Vessel Owner in connection with Vessel Owner's occupation and use of the Slip. However, the provisions of this subsection shall not prevent Vessel Owner from contesting the validity of any lien, claim or demand, provided that in such event, Vessel Owner shall, at its expense, defend itself and City against the same and shall pay and satisfy any adverse judgment that may be rendered before enforcement against City or the Slip.

Challenge to Taxes. Vessel Owner shall have the right in good faith, at its sole cost and expense, to contest the amount or legality of any Taxes including the right to apply for reduction. If Vessel Owner contests payment of Taxes, Vessel Owner's failure to pay the Taxes shall not constitute a default as long as Vessel Owner complies with the provisions of this Section. City shall not be required to join in any proceeding or contest brought by Vessel Owner unless the Law requires joinder of the City and in that case City shall join in the proceeding, permit it to be brought in City's name and shall execute any necessary or appropriate document necessary so long as City is not required to bear any cost or liability for payment of Taxes. Vessel Owner shall, on final determination of the proceeding or contest, immediately pay such disputed tax and also discharge any decision or judgment rendered, together with all related costs, charges, interest and penalties and provide City with proof of Vessel Owner's payment. Vessel Owner shall Indemnify and hold harmless the City and its officers and employees from and against any liability, claim, demand, penalty, cost or expense arising out of or in connection with any contest or proceeding prosecuted by Vessel Owner pursuant to this Section.

## 12. INSURANCE

Vessel Owner agrees to obtain and maintain during the term of this Agreement a policy of complete Marine Insurance including Protection and Indemnity Liability with limits not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence. Vessel Owner shall also maintain Hull and General Vessel Protection policy covering at least 100% of the actual cash value of the Vessel with endorsements for extended perils, damage by fire, electrocution, and/or stray current, corrosion, vandalism, theft and burglary, in accordance with the following:

The insurance shall be in form and substance satisfactory to the City and shall be placed with responsible underwriters, which have an assigned policyholder's rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of the Best's Key Rating Guide, and which are currently authorized by the Insurance Commissioner to transact business in the State of California.

The Vessel Owner shall provide City with copies of the certificates of insurance with original endorsements evidencing coverage prior to the commencement of this Agreement, which evidence shall be a precondition to Vessel Owner's use of the Slip. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies. Vessel Owner shall deliver new certificates evidencing the required coverage prior to the expiration or termination of any policy, or upon City's request for such certificates.

All insurance policies shall be endorsed with the following specific language:

- (a) The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds.
- (b) This policy shall be considered primary insurance with respect to the City, its elected or appointed officers, officials, employees, agents and volunteers with respect to all claims, losses, or liability arising directly or indirectly from the Agreement. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
- (c) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- (d) The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.
- (e) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.
- (f) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days written notice has been received by City.
- (g) City shall have no obligation to pay assessments, premiums or other charges in connection with any insurance.

Vessel Owner shall give City prompt and timely notice of claim made or suit instituted arising out of or resulting from this Agreement.

Vessel Owner shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for Vessel Owner's protection.

Vessel Owner shall also be responsible to ensure that all contractors employed by Vessel Owner comply with all Basin Rules and Regulations, properly register with Harbor Resources prior to beginning any work, and provide proof of adequate general liability insurance coverage with a limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, naming the City as an "additional insured" in a form approved by the City's Risk Manager.

### 13. INDEMNIFICATION

To the fullest extent permitted by law, Vessel Owner shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to this Agreement; the damage or destruction to the Slip, Basin, or any part thereof or any vessel in the Basin resulting from any operation or movement of Vessel; and/or Vessel Owner's (or its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, Guests, anyone employed directly or indirectly by any of them, or any person on the Vessel, the Slip or Basin claiming to be present through or under the permission or authority of Vessel Owner or for whose acts they may be liable or any or all of them) breach of any term of this Agreement, negligence, willful acts, failure to comply with any law, rule and/or regulation of a federal, state, and/or local entity, failure to comply with any of the attached Rules and Regulations, and/or other acts or omissions including, but not limited to, Claims related to improperly connecting electrical service from the common outlet to the Vessel, failure to turn off electrical, water or

other utility appliances or lights when not in use, and/or littering of the Slip or adjoining water or common areas.

Notwithstanding the foregoing, nothing herein shall be construed to require Vessel Owner to indemnify the Indemnified Parties from any Claim arising from the active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Vessel Owner.

14. DAMAGE AND DESTRUCTION

- (a) Vessel Owner's Obligation. Vessel Owner hereby agrees to pay on demand all reasonable costs of repair or restoration resulting from any damage or destruction to the Slip, Basin and any part thereof, or any vessels in the Basin resulting from any operation or movement of the Vessel or any other act or omission of Vessel Owner and or any person on the Vessel or the Slip claiming to be present through or under the permission or authority of Vessel Owner, including without limitation, damage or destruction resulting from improperly connecting electrical service from the common outlet to the Vessel, failure to turn off electrical, water, or other utility appliances or lights when not in use, and littering of the Slip or adjoining water and common areas.
- (b) Effect of Damage or Destruction. In the event of damage to or destruction of the Basin or the Slip by fire, wind, flood, storm movement of water, accumulation of silt, earthquake, tidal wave or any other cause or causes, whether immediate or over a period of time, City shall have the option to:
  - (1) Treat this Agreement as continuing and repair or restore the Basin or Slip to its condition before such damage or destruction occurred within thirty (30) days of the occurrence of the same or, if insured, within thirty (30) days after City received permission from the insurer to proceed with repair or restoration; or
  - (2) Terminate this Agreement and all further obligations hereunder of either party by written notice to Vessel Owner.

After the occurrence of such damage or destruction, the Vessel Owner's obligation to pay Slip Fees hereunder may be abated in an amount which City, in its sole discretion, shall determine to be proportionate to the area of the Slip rendered unfit for use by Vessel Owner during the period of repair or restoration. All repairs or restoration must be completed within thirty (30) days of the damage or destruction, must be approved by the City and must be completed in a manner acceptable to the City.

15. WASTE, QUIET ENJOYMENT. Vessel Owner shall not commit or permit any waste upon the Slip or any nuisance or other act or thing which may disturb the quiet enjoyment of any other vessel owner or person in or about the Basin. Violation of this provision shall be grounds for immediate termination of this Agreement at the option of City. Vessel Owner shall not use in any wasteful, unreasonable or hazardous manner, any of the utilities furnished by the City.

16. LIMITATIONS ON CITY'S LIABILITY

- (a) Injury, Loss or Damage. Vessel Owner agrees that City, its City Council, boards, commissions, directors, officers, officials, employees, volunteers and agents shall not be liable for any injury, including death, to Vessel Owner or any person, caused by any use of the Slip or the Basin, or arising from any accident, fire or casualty thereon or from any other cause whatsoever; nor shall City, its City Council, boards, commissions, directors, officers, employees, volunteers and agents be liable for any loss of, or any damage to, any property or article belonging to Vessel Owner.

- (b) Other Limitations. Vessel Owner also agrees that City shall not be liable for, and this Agreement shall not be terminated by, any interruption or interference with services or accommodations due Vessel Owner caused by strike, riot, orders or acts of public authorities, acts of other vessel owners, accident, the making of necessary repairs to the Basin, or any other cause beyond City's control.

17. DEFAULT

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

- (a) The vacating or abandonment of the Slip by Vessel Owner;
- (b) Failure of Vessel Owner to make any payment of Slip Fees or any other payment required to be made by Vessel Owner hereunder as and when due where such failure shall continue for a period of three (3) days after written notice thereof from City to Vessel Owner.
- (c) Failure by Vessel Owner to observe or perform any of the covenants, conditions and terms of this Agreement to be observed or performed by Vessel Owner other than described in (b) immediately above, where such failure shall continue for a period of seven (7) days after written notice thereof from City to Vessel Owner.

18. REMEDIES FOR DEFAULT

- (a) Possessory Lien. By execution of this Agreement, Vessel Owner acknowledges that pursuant to Harbors and Navigation Code Sections 491, 501 and/or the Federal Maritime Lien Act (46 U.S.C. Sections 31301 *et seq.*) and by the terms of this Agreement, City shall have a lien on the Vessel for money, which may become due under this Agreement. Pursuant to said statutory lien and the terms of this Agreement, City has the right to take possession and control of the Vessel, secure the Vessel to the Slip, remove the Vessel from the Slip, and/or store the Vessel at a location of the City's choosing. So long as City continues to hold the Vessel, Vessel Owner shall be deemed to be responsible for all continuing charges and expenses.

- (b) Other Remedies.

If Vessel Owner fails to pay Slip Fees, cost of repair or restoration or other charges to be borne by Vessel Owner or, in the event of any other default of this Agreement by Vessel Owner, City may, at its option, regard this Agreement as continuing in force and recover from Vessel Owner damages caused by the Vessel Owner's breach, including, without limitations, the right to recover the Slip Fees due under this Agreement as the same shall accrue, and/or terminate Vessel Owner's right to use the Slip. The remedies herein above provided are not exclusive and City may pursue any one or more of such remedies or any other remedies provided by law.

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

In the event of Vessel Owner's default or termination of this Agreement without removal of the Vessel, the City may suspend the right of the Vessel Owner to obtain access to the Basin, the Slip and the Vessel without the necessity of the initiation of any legal proceedings.

- (c) No Waiver. The exercise or failure to exercise any remedy provided herein or by law, for any breach of this Agreement shall not be deemed as a waiver of City's rights. Failure by City to exercise any of its rights under this Agreement or City's acceptance of money payment after

default shall not be considered or construed to waive any right of City or to affect any notice or legal proceedings given or commenced. Nothing herein shall constitute a waiver of the rights of the City to a maritime lien under state law or under the Federal Maritime Lien Act.

19. TERMINATION

- (a) In addition to the other rights of termination set forth herein, the parties agree that this Agreement may be terminated at any time by either party upon thirty (30) days written notice.
- (b) This Agreement shall, at the sole option of City, automatically and immediately terminate at such time as Vessel Owner sells, leases, charters or otherwise transfers any or all of its interest in the Vessel to any other party, whether or not such transfer is voluntary or involuntary by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise.

Upon termination of this Agreement, Vessel Owner shall remove the Vessel from the Slip, remove all other of its personal property, if any, from the Basin, and surrender to the City the Slip and all keys to the Basin.

20. NOTICES, DEMANDS, REQUESTS AND SERVICES OF PROCESS

- (a) Notices, Demands and Requests. All notices, demands and requests which may be, or are required to be, given pursuant to the provisions of this Agreement may be delivered in person, by reputable courier, by overnight delivery service, or by depositing in the U.S. Mail, first class postage prepaid, and addressed as follows:
  - (1) If to City, at its address designated in this Agreement or to such other person or to such other address as City may hereafter designate by written notice.
  - (2) If to Vessel Owner, to Vessel Owner at the residence, billing address and/or other address designated in this Agreement or to such other address as Vessel Owner may hereafter designate by written notice.
- (b) Service of Process on Owner. All other legal notices, demands and services of process to be given to City may be served as provided by law upon the authorized agent of City at the designated address or upon such other person or at such other address as City may hereafter designate by written notice.

21. MISCELLANEOUS PROVISIONS

- (a) Waiver: A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a difference character.
- (b) Integrated Agreement: This Agreement represents the full and complete understanding of every kind or nature whatsoever between the City and Vessel Owner, and all preliminary negotiations and other agreements of any kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.
- (c) Conflicts: In the event there are any conflicts or inconsistencies between this Agreement and any attachments, the terms of this Agreement shall govern.
- (d) Modification & Amendment: This Agreement may be modified or amended only by a written document executed by both Vessel Owner and City and approved as to form by the City Attorney.

- (e) Severability: If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
- (f) Controlling Law and Venue: The laws of the State of California, and applicable Federal law, shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.
- (g) Attorneys Fees: The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, shall not be entitled to recover its attorneys' fees.

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 11(e) AND 18(a) ABOVE, CITY DOES NOT HEREBY ASSUME CUSTODY OR POSSESSION OF THE VESSEL OR ANY RESPONSIBILITY WHATSOEVER FOR THE CARE OR PROTECTION OF SAME, AND VESSEL OWNER HEREBY ASSUMES ALL RISKS ASSOCIATED WITH THE USE AND OCCUPANCY OF THE SLIP.

VESSEL OWNER AGREES AND UNDERSTANDS THAT THE CITY AND THE BASIN SHALL NOT BE CONSIDERED AN INSURER OF THE VESSEL OR ANY PROPERTY OF THE OWNER AND OTHERS CONTAINED ON THE VESSEL OR AT THE BASIN.

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

THIS AGREEMENT SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT BETWEEN CITY AND VESSEL OWNER WITH REGARD TO THE SLIP. ALL SUCH PRIOR AGREEMENTS ARE HEREBY TERMINATED AND SHALL HAVE NO FURTHER FORCE OR EFFECT.

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

I have received a copy of the Balboa Yacht Basin's Rules and Regulations, which bear the revision date February 8, 2011. Initial \_\_\_\_\_

CITY OF NEWPORT BEACH

by: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

VESSEL OWNER(S):

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
SIGNATURE

Date: \_\_\_\_\_