

BOAT SLIP LICENSE AGREEMENT

THIS BOAT SLIP LICENSE AGREEMENT (the "License" or "License Agreement") is dated for reference purposes as of this ____ day of Aug, 20____, between the County of Orange, a political subdivision of the State of California (the "County"), and the Licensee (as such term is defined below in Paragraph 1 of this License) and is made and entered into with reference to the following:

A. The County is the owner of the Dana Point Harbor located in Dana Point, California (the "Harbor"). Located within the Harbor is a public marina known as the West Basin Marina (the "Marina").

B. Licensee desires to license from the County a boat slip located in the Marina for the Vessel (as such term is defined in Paragraph 1 of this License)

NOW, THEREFORE, COUNTY AND LICENSEE AGREE TO AND ACCEPT THE FOLLOWING TERMS AND CONDITIONS WITH RESPECT TO LICENSEE'S LICENSING, USE AND ENJOYMENT OF THE SLIP:

1. **Definitions for Certain Terms Used in this License Agreement.**

(a) "County" shall mean the County of Orange, a political subdivision of the State of California.

(b) "Director" shall mean the Director of the County's Dana Point Harbor Department or his or her designee. Director shall exercise all authority of the County under this License as provided for under Paragraph 52 below.

(c) "Harbor" shall mean that certain public recreational and commercial craft harbor owned and operated by the County, and commonly known as Dana Point Harbor, Dana Point, California, a portion of which includes the West Basin Marina as more completely defined in Section (f) "Marina" of this Paragraph.

(d) "Licensee" shall mean _____. Licensee shall be (1) the individual or individuals who are named on the wait list maintained by the Manager for the Slip (if a wait list was used in connection with this License) and (2) the registered, legal owner of the Vessel. **LICENSEE SHALL AT ALL TIMES BE AT LEAST A TWENTY PERCENT (20%) LEGAL OWNER OF THE VESSEL, PROVIDED THAT IN NO EVENT SHALL ANY OTHER CO-OWNER OF THE VESSEL HOLD A LEGAL INTEREST IN THE VESSEL THAT IS GREATER THAN LICENSEE'S.**

(e) "Manager" shall mean TBW Company, the County's agent for managing the Marina.

(f) "Marina" shall mean the West Basin Marina, a boat berthing facility used in common for boater access purposes, composed of dock improvements (headwalks, pilings, fingers, landings, gangways, flotation, gates, utility supply connections, fire suppression stations, etc), navigation channels, service buildings (restrooms, showers, laundry facility, etc.), walkways and parking areas.

(g) "Rules and Regulations" shall mean those certain rules and regulations for the Marina, the current version of which is attached to this License as Attachment "B". Said Rules and Regulations are subject to further revision and modification from time to time as provided for in Paragraph 12 of this License.

(h) "Security Deposit" means the sum of \$_____ and shall be used by County and subject to adjustment as provided for in Paragraph 7 of this License.

(i) "Slip" shall mean that certain water space located between dock fingers including a three-foot extension of water space beyond the end of the dock fingers, all points of tie-down on the docks designated by the Manager for securing the Vessel, and one dock storage box (locker). The term "Slip" shall additionally mean, if applicable to assigned berthing, that certain water space within the Marina (end-tie, inside-tie, or side tie) located at the end of the dock or adjacent to the headwalk. The Slip licensed hereunder is identified by the County as Slip Number ____ (reference Attachment A).

(j) "Slip Fee" or "Slip Fees" shall mean the sum of \$_____ Dollars for the monthly licensing of the Slip and wharfage of the Vessel by the Licensee in the Marina. Said Slip Fee is subject to adjustment as provided in this License. Slip Fees are payable in advance at the time of the execution of the License and on the FIRST (1st) DAY of each calendar month commencing _____, 20____ [date this License signed by Licensee], and each succeeding calendar month thereafter. In addition to the key and security deposits described herein, Licensee shall upon the execution of the License and assignment of a Slip, tender \$_____, which sum represents prorated Slip Fees due for the remaining portion of the calendar month the License is executed, on the basis of a 30-day month. This payment is non-refundable.

(k) "Vessel" shall mean the vessel identified on Attachment "A" attached to this License and incorporated herein.

2. **License of Slip; Reassignment of Slip.** The County hereby licenses the Slip to Licensee and Licensee accepts and agrees to the license of the Slip. Licensee may relocate to another slip within the Marina only upon obtaining the advance express written permission of the County. The County reserves the sole right to inspect the Vessel and determine whether or not the Vessel is suitable for the slip. County shall have the right at any time, in its sole discretion, to reassign Licensee's Vessel to a different slip. Licensee further agrees that County shall have the right, in the event of emergency or operational necessity, to immediately, and without prior notice to Licensee, relocate Licensee's Vessel to another slip or other tie. Licensee hereby grants to County permission to board the Vessel for the purpose of moving the Vessel to another slip, in which event it is understood and agreed neither the County, nor its employees, officers or agents, shall be liable for any loss/damage resulting from such movement of the Vessel, or failure to move her. Licensee hereby acknowledges that he/she has inspected (or had an opportunity to inspect) the Slip, its surrounding environs and those portions of the Marina associated with the Slip, including without limitation, the docks, floats, water level, walkways and gangways. Licensee understands the County does not warrant the condition of the Slip, Marina or surrounding environs, and that users of the Slip and Marina do so at their own sole risk. Licensee agrees to accept the Slip in its AS-IS condition.

3. **Use of Slip.** The Slip is for Licensee's exclusive use in connection with the Vessel. Licensee further agrees that the Vessel and the Slip shall be used for recreational purposes only and not in any commercial undertaking or purposes, including but not limited to chartering or brokerage operations, without the prior written approval of the County. Except as provided in this Paragraph 3 (Use of Slip), Licensee agrees not to use the Slip or Marina for any other purpose nor to engage in or permit any other activity within or from the Slip or Marina. Licensee shall not commit or permit any waste or nuisance to be committed in the Slip, on the Vessel or other place on or in the Marina or the Harbor, and neither he/she nor his/her guests, agents or invitees may commit any act of waste or nuisance, indecorous conduct or any other act which might disturb the quiet and peaceful use of the Marina or the Harbor by others. Licensee agrees no improvements shall be erected, placed upon, operated, nor maintained within or from the Slip or Marina, nor any business conducted or carried on therein or therefrom, in violation of the terms of this License, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency, having jurisdiction. This License and the rights and privileges granted Licensee in and to the Slip and Marina are subject to all covenants, conditions, restrictions, and exceptions of record or apparent from a physical inspection of the Slip and Marina, and including those which are set out in the Tidelands Grant by the State of California to the County of Orange (Chapter 321, Statutes of 1961, State of California). Nothing contained in this License or in any document related hereto shall be construed to imply the conveyance to Licensee of rights in the Slip and Marina which exceed those owned by County

4. **Month To Month Term.** This License shall create a license commencing on the date set forth above and shall continue from the first day of the month immediately following on a month to month basis until terminated by either party by timely, prior written notice or until default by Licensee. Any notice to terminate this License by either party shall require not less than thirty (30) days prior written notice, unless the notice to terminate is given due to a default by Licensee. Licensee's contractual right to occupy his/her assigned Slip is not automatically renewable, but can only be renewed if Licensee abides by each and all of his/her contractual duties detailed in this License, including the duty to make timely monthly payment of fees, including, but not limited to, the Slip Fee.

5. **Slip Fees.**

(a) The Slip Fee structure for this License is based upon the size of the slip assigned. The Vessel is subject to measurement by the County and the Slip Fee will be determined by computations using the then-current Slip Fee schedule in effect. If at any time it is determined the length of the Vessel is longer than allowed in the Slip, or as initially determined by County, whether caused by previous inaccurate measurement or by modification of the Vessel, additional Slip Fees may be assessed against the Vessel and shall be paid by Licensee. In addition, should the County, in its sole discretion, determine at any time that the overall Vessel length is a safety or navigational hazard, this License, at County's option, shall be subject to immediate termination.

(b) Licensee understands that the County may increase the Slip Fee and/or other fees at any time upon thirty (30) days notice to Licensee. Notice of fee increases shall be deemed effective thirty (30) calendar days after posting notice on the bulletin board located at the office of the County or at the office of the County's onsite Marina Manager. The County may elect, alternatively or additionally, to provide notice of any fee increase by way of written notification tendered through the U.S. mails. Adjustments in Slip Fees shall become effective on the first day of the calendar month next following said notice. Upon notification of an increase in any fee including the Slip Fee, Licensee may elect to provide 30 days written notice of termination of this License. In the event that Licensee fails to pay any new Slip Fee after its effective date, the parties agree that such failure shall constitute a material breach and that the County may immediately terminate this License as of the effective date of the Slip Fee increase. If the County elects to increase fees as herein provided, Licensee may be required to either execute a new License or (at the County's option) execute an amendment or other writing evidencing the new rate and any new or revised terms.

6. **Time and Place for Payment of Monthly Fees.**

(a) Licensee shall tender all payments hereunder to County of Orange at the Marina Manager's office or via mail addressed to 24500 Dana Point Harbor Drive, Dana Point, CA 92629, or such other place as may be designated from time to time. **PAYMENTS OF ALL FEES AND CHARGES ARE DUE ON THE FIRST (1ST) DAY OF EACH MONTH WITH OR WITHOUT A BILLING STATEMENT AND ALL SLIP FEES NOT PAID BY THE FIFTH (5TH) DAY OF THE MONTH SHALL BE DELINQUENT** Any failure to make payments when due under this License shall constitute a material breach of this License. If Licensee is in breach of this License, the County may immediately terminate this License and pursue all remedies available in admiralty, at law or in equity.

(b) There will be a \$25.00 for the first and \$35.00 for the second administrative fee charged for any check or automatic clearing house (ACH) charge returned as unpayable, for any reason. After tender of a returned check County may require Licensee to thereafter tender payment by ACH, bank check or money order. Failure to pay fees by the FIFTH (5TH) DAY of the month will result in a charge to Licensee of a late charge in the amount of SIX PERCENT (6%) per month of the outstanding amount due until the account is brought fully current. In addition, a minimum \$100.00 administrative fee will be charged to the account of the Licensee and his/her Vessel on any occasion when the County prepares legal documents to recover the amounts due and/or possession of the Slip. A failure to timely pay the Slip Fee and any other fees and costs then due may result in enforcement of the County's rights and remedies, including as appropriate those under this contract and pursuant to admiralty law.

7. **Security Deposits.** Upon execution of this License, Licensee shall pay to the County the Security Deposit provided in Paragraph 1 of this License. Upon termination of this License, but only after and upon the condition that Licensee has vacated the Slip and surrounding Marina areas in an undamaged condition (save ordinary wear and tear) and performed all of Licensee's obligations under the License (including payment of all fees, utility charges and other charges) and returned all access keys and/or cards, the County shall refund to Licensee the total Security Deposit received by County, less any amount necessary to pay for restoring the Slip to a licensable condition, or any other fees or charges owed by Licensee. Licensee may not use the Security Deposit as, nor deduct it from, the Slip Fee for any month. However, the County may elect at any time, at its option, to apply all or any portion of the Security Deposit to the Slip Fee or other account arrearages, or for purposes of effecting repairs necessary due to damage to the County's property caused by Licensee (or his/her guest/invitee), in which event the Licensee shall immediately become obligated to tender the sum necessary to replace any of the Security Deposit funds applied to such arrearages, or used for such repairs and/or cleaning. Should County increase the monthly Slip Fee or Licensee transfers to a larger slip within the Marina or obtains a live-aboard permit, there will be a proportional increase in the amount of the Security Deposit to correspond with the new monthly Slip Fee. Licensee acknowledges and agrees that no interest shall be payable by the County on any Security Deposit held by the County, and that County shall not be required to keep the Security Deposit separate from its general funds.

8. **Key Deposit and Card Fees.** Dock entrances and/or other areas of the Marina are accessed by use of key. Licensee shall upon execution of this License pay a \$50 deposit per dock gate key issued. All keys shall be returned to the marina office at the termination of this License. County reserves the right to limit the number of keys issued and/or revise key deposit fees at any time. Key deposits shall be refundable upon return of the key(s) at the termination of the License.

9. **Utilities.** Each Slip is provided electrical and water connections for Licensee's use. However, County reserves the right to install separate electrical and/or water metering for the Slip and Licensee shall be responsible for payment of all electrical and/or water charges indicated by such separate meter promptly upon presentation of a bill for same from County. No other utilities are provided to the Slip under this License. Telephone and cable television service may be available for Licensee's use at Licensee's cost through separate contract arranged by Licensee, at Licensee's option, with local providers. Licensee acknowledges and agrees that County has no responsibility for said other utilities and disclaims any representation or warranty as to their adequacy or suitability for any purpose. All costs associated with such other utilities, including, but not limited to maintenance and repair costs, shall be the sole responsibility of Licensee. In the event Licensee desires additional utilities for its Slip that shall require the installation of connections, hardware and/or the making of any improvements, alterations or changes to the Slip or the Marina, Licensee must first obtain the prior written consent of the County.

10. **Default Under this License By Licensee.** Licensee shall be in default under this License in the event:

- (a) Licensee fails to make any payment of Slip Fees when due;
- (b) Licensee attempts to make or suffers to be made any transfer or assignment of this License or the Slip;
- (c) Licensee attempts to make or suffers to be made any sublicensing of the Slip without the prior written consent of the County;
- (d) Licensee fails to provide the insurance in the form and in the amounts required under Paragraph 19 hereof within five (5) days after written notice from County;

(e) Licensee vacates the Slip for longer than thirty (30) days without the prior written consent of the County or Licensee abandons the Slip; or

(f) Licensee fails to observe, keep, perform or cure within fifteen (15) days after written notice from County any of the other terms, covenants, agreements or conditions contained in this License.

11. **County's Remedies.** Upon the occurrence of a default by Licensee under this License, in addition to and without waiving any other rights or remedies available to County at law or in equity or otherwise provided in this License, County may, at its option, cumulatively or in the alternative, exercise all or any of the following remedies:

(a) **Maritime Lien.** County may pursue all of its rights or remedies under state or federal law to attach the Vessel and sell the Vessel at auction to satisfy a maritime lien arising from the Licensee's failure to pay for the wharfage services provided to Licensee under this License. Licensee agrees that in the event of a default under this License the County shall become entitled, without providing advance notice, to chain the Vessel to the Marina improvements where she lies, or move the Vessel to any other location in the water or on land and chain the Vessel at her new location, charging impound fees of \$50 per day. Licensee specifically agrees that if the County elects to move or chain the Vessel as herein provided, Licensee shall indemnify, defend and hold the County harmless from and against all liability arising from or in any way connected with the chaining or moving of the Vessel. Licensee shall in such event remain liable for the full amount of the Slip Fees as they become due, notwithstanding that the Vessel has been moved and/or chained.

(b) **Other Lien Rights and Remedies.** County may pursue, at its sole election, all other measures available to enforce its remedies available in admiralty, at law and/or equity, including vessel arrest or attachment, sale of the Vessel pursuant to federal maritime law, the California Boaters Lien Law, and any other available remedy, without prior notice to Licensee, and may exercise other rights herein detailed. By execution of this License, Licensee acknowledges that pursuant to Harbors and Navigation Code Section 501 and by the terms of this License, the County shall have a lien on the Vessel for money which may become due under this License. Licensee agrees the County has the right to take possession and control of and remove and store the Vessel, at Licensee's sole risk and expense, for the purpose of perfecting and executing upon County's statutory lien rights in the Vessel. Upon County's commencement of actions to obtain a lien against the Vessel, Licensee shall be charged a \$100 lien process fee.

(c) **Right to Terminate.** The County's obligation to provide wharfage under the License may be unilaterally terminated by the County in the event of Licensee's default under this License at which time County may pursue any or all of its legal, equitable and/or admiralty remedies.

12. **Rules and Regulations.** Licensee agrees that County's Marina/Slip Rules and Regulations attached hereto and incorporated as Attachment "B", as amended from time to time (the current version of the Rules and Regulations shall be posted at the Marina Manager's office), are an integral part of this License. Licensee understands and agrees the Rules and Regulations may be modified by posting revised Rules and Regulations on the bulletin board located outside the Manager's office; in such event, the revised/modified Rules and Regulations shall become effective seven (7) calendar days after they are so posted. Licensee understands and agrees that County may provide notice of modifications to Rules and Regulations, alternatively, by way of written notification tendered by U.S. mail, in which event the modification(s) shall become effective the tenth (10th) calendar day after such notification is deposited into the U.S. mails. Licensee shall comply, and shall cause Licensee's family, agents, licensees and invitees to comply with the then current County Rules and Regulations

13. **Solicitors/Boarding of Vessels.** Licensee shall not permit solicitors, brokers, salesmen or workmen, other than regular employees of the County (and others authorized by the County for work deemed by it to be necessary) and hands regularly employed on the Vessel while it is in the Slip assigned hereunder, to access the Marina except as otherwise approved in writing by Manager. **Licensee shall not post any "For Sale" sign(s) or notices on floats, gangways, docks or on any other County property.** The Manager or any of his/her assistants may board the Vessel at any time, without prior notice, regardless of documentation, for health, environmental or safety purposes, or to protect the Marina or other County property, and/or the public peace.

14. **Non-Transferability of License.**

(a) **THE LICENSE AND LICENSEE'S RIGHTS HEREUNDER CANNOT BE ASSIGNED OR TRANSFERRED AND ANY ATTEMPT TO DO SO SHALL IMMEDIATELY VOID THIS LICENSE.** In addition, the License and Licensee's rights hereunder cannot be sublicensed by Licensee without the advance written approval of the County. In the event Licensee sells or parts with possession of the Vessel, the new owner and/or possessor of the Vessel shall have no right to the Slip previously occupied by the Vessel. Licensee understands that he/she is not allowed under the terms of

this License to bring any Vessel other than the one described in Attachment A hereto and one dinghy into the assigned Slip. The License is for the benefit of the Licensee and Vessel together. A new contract must be negotiated if either the Licensee or the Vessel mentioned herein is changed. Licensee shall not represent that the Slip is transferable with the Vessel and shall indemnify, defend and hold County harmless for any damages resulting from such representation.

(b) Notwithstanding the forgoing, subject to the prior written consent of the Manager, Licensee may permit another vessel to temporarily occupy its Slip on the following conditions:

(1) Any temporary absence from the Slip by Licensee's Vessel may not exceed ninety (90) days unless written approval is obtained from Manager. Prior to expiration of said initial ninety (90) day period, Manager may approve a second temporary absence not to exceed ninety (90) days. In no event shall the Vessel be permitted to be cumulatively absent from the Slip for more than one hundred eighty (180) days per calendar year under this Paragraph 14.

(2) Temporary absences from the Slip by the Vessel shall be permitted only for reasons of long term cruising, repair and/or sale of the Vessel.

(3) A dated, fully executed copy of the County's standard form temporary occupancy agreement, as the same may be revised from time to time, shall be delivered to and on file with the Manager concurrent with the commencement of any such temporary occupancy of the Slip.

_____ Initials

15. **Marina Security.** The County provides no security protection and assumes no responsibility whatever for the personal safety of Licensee or his/her guests, or for the safety of any vessels or their appurtenances. If the County elects to do so, it is understood such security is solely for the protection of the County's property.

16. **Release From Soot, Smoke, Oil or Wake Damages.** Licensee does hereby release the County from any and all claims, damages or liabilities arising out of the injury or damage to Licensee, his/her guests or employees, or his/her Vessel or her contents, from soot, smoke, oil, wake or any other substance existing upon, in or over waters in the Marina or the Harbor or from the water depth of the Marina or the Harbor.

17. **No Interference with County Lien Rights.** Both possessory and non-possessory liens arise in favor of the County by operation of both state and federal law respectively. Licensee represents and warrants that there is no existing sales agreement or other agreement, such as a finance agreement, which would limit the County's ability to impose or enforce such liens, and that Licensee is fully authorized to enter into contractual agreements such as the instant one which may give rise to a lien upon the Vessel under the Federal Maritime Lien Act or pursuant to state law. If Licensee is without such authority or is unsure as to his/her authority then the following must be supplied: the name, address and telephone number of the individual or agency, if any, whom Licensee believes should be contacted and informed of the possibility of imposition of liens encumbering the Vessel.

18. **Liability and Indemnity.**

(a) In addition to all other liability limitation and indemnity provisions herein contained, Licensee, as a material part of the consideration to be rendered County under this License, hereby waives all claims, causes of action, liabilities and losses (collectively "claims") against County, and its elected officials, officers, agents (including 2005 Dana West Marina) and employees (collectively "County parties") for interruption of or interference with service, and all claims for damage to the Vessel, her gear and her equipment, vehicles, or any goods, wares, or equipment in, upon, or about the Vessel or the Marina or the Harbor, and for injuries or death to persons including, but not limited to, Licensee's family, agents, licensees or invitees, including occurring on, in or about the Vessel, the Marina or the Harbor including landside areas within the Harbor, from any cause whatsoever arising at any time including, but not limited to, theft, fire, acts of God, riots, strikes, collision, water levels, insufficiencies involving the electrical and other utility systems, chaffing, sinking, dock maintenance or faulty repair occasioned by ordinary negligence or other causes. Licensee agrees to indemnify, protect and defend the County parties from and against all such claims

(b) During the term of this License or while the Vessel remains in the Marina or in the possession of the County or its assignee, all risk of loss of or damage to the Vessel shall be upon Licensee. In the absence of gross negligence or willful misconduct by any of the County parties, which must be affirmatively established, no County party shall under any circumstances whatsoever be charged with or liable for direct or consequential damages sustained by Licensee or his/her family, employees, invitees, charterers or underwriters by reason of the loss of or damage to the Vessel caused by theft, fire, act of God, riots, strikes, collision, water levels, insufficiencies involving the electrical and other utility systems, chaffing, sinking, dock maintenance or faulty repair occasioned by ordinary negligence, or by reason of any other cause, or for property damage/loss of any kind, or for personal injury or death. Licensee agrees to indemnify, protect and defend the County parties from and against any and all actual or potential liability

arising or potentially arising from any such damage, injury, death or loss.

(c) The liability of the County may be established only by way of an affirmative showing of gross negligence or willful misconduct. Its liability, if so established by way of a such showing, shall be strictly limited to the cost of repair, correction or replacement, and in no event shall County be liable for any consequential damages whatsoever, including, but without limitation, delay, detention, demurrage, towing and pilotage.

19. **Insurance.**

(a) Licensee agrees to purchase all required insurance at Licensee's expense and to deposit with the County certificates of insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this License have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the County during the entire term of this License. This License shall automatically terminate at the same time Licensee's insurance coverage is terminated. If within ten (10) business days after termination under this Clause Licensee obtains and provides evidence of the required insurance coverage acceptable to County, this License may be reinstated at the sole discretion of County. Licensee shall pay County \$100 for processing the reinstatement of this License.

(b) Licensee agrees that Licensee shall not operate on the License Area at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of County. In no cases shall assurances by Licensee, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. County will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Licensee also agrees that upon cancellation, termination, or expiration of Licensee's insurance, County may take whatever steps are necessary to interrupt any operation from or on the License Area until such time as the County reinstates the License.

(c) If Licensee fails to provide County with a valid certificate of insurance and endorsements, or binder at any time during the term of the License, County and Licensee agree that this shall constitute a material breach of the License. Whether or not a notice of default has or has not been sent to Licensee, said material breach shall permit County to take whatever steps necessary to interrupt any operation from or on the License Area, and to prevent any persons, including, but not limited to, members of the general public, and Licensee's employees and agents, from entering the License Area until such time as County is provided with adequate evidence of insurance required herein. Licensee further agrees to hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the County's action.

(d) All contractors performing work on behalf of Licensee pursuant to this License shall obtain insurance subject to the same terms and conditions as set forth herein for Licensee. Licensee shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the County from the Licensee under this License. It is the obligation of the Licensee to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the License Area. Such proof of insurance must be maintained by LICENSEE through the entirety of this License and be available for inspection by a County representative at any reasonable time.

(e) All insurance policies required by this License shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County's County Executive Office (CEO)/Office of Risk Management. Licensee shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the certificate of insurance. If the Licensee fails to maintain insurance acceptable to the County for the full term of this License, the County may terminate this License.

(f) The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category). If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. The policy or policies of insurance maintained by the Licensee shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Protection and Indemnity Insurance (P & I)	\$300,000 combined single limit per occurrence.

(g) All liability insurance required by this License shall be at least \$300,000 combined single limit per occurrence. Professional Liability, if required, may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial

General Liability policy shall be \$2,000,000.

(h) The County of Orange And Dana West Marina shall be added as an additional insured on all insurance policies required by this License with respect to work done by the Licensee under the terms of this License (except Workers' Compensation/Employers' Liability, Professional Liability (if required) and Employee Dishonesty Coverage (if required)). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the certificate of insurance. The County of Orange shall be a Loss Payee/Obligee on the Employee Dishonesty Coverage (if required)

(i) All insurance policies required by this License shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Licensee's insurance is primary and non-contributing shall specifically accompany the certificate of insurance for the Commercial General Liability and Sexual Misconduct Liability (if required).

(j) All insurance policies required by this License shall give the County thirty (30) days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the certificate of insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

(k) All insurance policies required by this License shall waive all rights of subrogation against the County and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment. If Licensee's Professional Liability policy (if required) is a "claims made" policy, Licensee shall agree to maintain professional liability coverage for two (2) years following completion of License. The Commercial General Liability policy shall contain a severability of interests clause.

(l) The Licensee is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Licensee will comply with such provisions and shall furnish the County satisfactory evidence that the Licensee has secured, for the period of this License, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

(m) Insurance certificates should be forwarded to the County address provided in the Clause (NOTICES) below or to an address provided by County. Licensee has ten (10) business days to provide adequate evidence of insurance or this License may be cancelled. County expressly retains the right to require Licensee to increase or decrease insurance of any of the above insurance types throughout the term of this License. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Licensee in writing of changes in the insurance requirements. If Licensee does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this License may be in breach without further notice to Licensee, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Licensee's liability hereunder nor to fulfill the indemnification provisions and requirements of this License.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements. .

20. **Physical Inspection.** Licensee agrees at the commencement of this License, and from time to time thereafter as the County or its Manager may in its sole discretion determine is necessary for purposes of health and/or safety, the Vessel and Slip shall be subjected to physical inspection and approval by the County; failure to permit such inspections will be regarded as a material breach of the License.

21. **Documentation/Registration and Condition of Vessel.** A current copy of the California Vessel Registration (D.M.V.) or United States Coast Guard Documentation must be on file in the Manager's office, together with a current photograph of the Vessel. **Vessel registration/documentation shall list the Licensee and all County approved partners.** Licensee shall tender to the County on a yearly basis, with or without prior demand therefore, a true and correct copy of the Vessel's then current state registration or federal documentation. Licensee warrants that the Vessel is properly documented or registered pursuant to the laws of the United States and/or the State of California and that the Vessel is in compliance with all applicable U.S. Coast Guard safety

regulations. Licensee shall maintain the Vessel in a seaworthy, operable condition, and shall maintain the Vessel's appearance; including regular cleaning, maintenance and replacement of all painted and varnished surfaces, all bright-work, rigging, safety equipment and any other appurtenances of the Vessel. County shall be the sole judge of the adequacy of the Vessel's condition and maintenance. If equipped with an engine or motor, it must be operable and capable of producing sufficient way to make the Vessel maneuverable. If the Vessel is a sailboat without an engine, she must be equipped with sails, and her standing and running rigging must be seaworthy. The Vessel shall at all times be in compliance with the then applicable regulations, rules, orders, statutes and laws pertaining to water quality. The County may, at their own discretion require Licensee to provide proof of compliance by current inspection from the U.S. Coast Guard.

22. **No Living Aboard.** Licensee understands and agrees that living aboard the Vessel by the Licensee or any other person is strictly prohibited unless otherwise approved, in advance, in writing by the County, which approval the County may grant or withhold in the exercise of its good faith discretion. Occupancy of the Vessel for periods in excess of (a) 48 hours in any seven day period or (b) three (3) weeks of vacation per calendar year shall be regarded as "living aboard," and shall constitute a material breach of this License. Notwithstanding the foregoing, the permitted time periods for occupying the Vessel provided for in the immediately preceding sentence may be extended by a period not to exceed 24 hours due to any major state or federal holiday occurring before or after said permitted Vessel occupancy period. In the event Licensee violates the live aboard restrictions contained in this License, then at County's option this License may terminate automatically, without notice, the Vessel will be regarded as a trespasser with current wharfage rates imposed, and the Licensee shall immediately remove the Vessel from the Marina. Licensee may obtain from the Manager of the Marina a copy of the then current County of Orange live aboard policies, but said policies are not to be considered by anyone as an authorization by the County to permit living aboard a vessel in the Marina or the Harbor.

_____ Initials

23. **Slip Vacancy/Extended Absence.** Licensee agrees that County may use the Slip when temporarily not in use by Licensee, without compensation to Licensee. Further, Licensee shall notify the County in writing if the Vessel will not be in the assigned space at the Marina for any period exceeding seven consecutive (7) days. In such event, Licensee agrees County may assign another vessel to the Slip during the period of the absence of Licensee's Vessel; if another vessel is so assigned to the Slip during such period of temporary absence, Licensee understands and agrees Licensee will remain responsible for payment of the current monthly slip fees regardless of any additional fees collected by the County for said Slip. To assure the assigned Slip is available upon a Vessel's return, in the event the Vessel is absent from her Slip for seven (7) or more consecutive days, Licensee is required to provide County at least 72 hours advance notice of the date and time the Vessel will return to her Slip. In the event the Vessel is absent from her assigned Slip for a period exceeding 30 days, and the Licensee has failed to notify the County of an extended absence as herein required, the County may elect to terminate this License without advance notice and assign the Slip to another vessel. In such event of non-notification, Licensee shall remain liable, in addition to other fees then owing, to tender a sum equal to 30 days Slip Fees.

24. **Electrical Extensions/Dock Power Connections.** The use of electrical extensions is at the sole risk of Licensee or other user and the County shall not be liable for damages caused by or as a result of the use of any electrical appliance. All shorelines, adapters and dock-side male plugs MUST be equipped with an acceptable ground weather-proofing in accordance with Article 555 of the National Electrical Code.

25. **Overboard Discharges.** Overboard discharge of heads or holding tanks is forbidden by law and by County's rules; violation of these terms is grounds for immediate eviction and termination of the County's obligations to Licensee under the License. If the Vessel is equipped with a head or other permanent installation designed to hold human waste, the Vessel must be equipped with a marine holding tank. Licensee agrees to permit inspection of such heads/installations upon demand by County and agrees to the placement (at County's discretion) of a dye tablet in the head's holding tank.

26. **Reporting of Damage.** Any damage to County property, the Marina or another's property located at the Marina or the Harbor caused by Licensee's Vessel or Licensee's guests/invitees must be reported by Licensee to the County immediately.

27. **Securing Vessel.** At all times during which the Vessel is berthed within the Slip, Licensee shall cause it to be safely and properly secured to its Slip in a manner acceptable to the County. This is the Licensee's duty alone. However, if the County deems it necessary to secure the Vessel for any reason, Licensee agrees to pay the County a reasonable service charge, in the minimum amount of \$25.00, for doing so plus the cost of all materials used therefore. However, the County assumes no responsibility for the safety of the Vessel and will not be liable for fire, theft or any damage to said Vessel, its equipment, or any property in or on said Vessel by reason of County's decision either to secure said Vessel or to not secure said Vessel.

28. **Damage to County Property by Licensee, Etc.** In the event County property is damaged or destroyed by any negligent conduct by Licensee or his/her guests or invitees, or the negligent failure of Licensee to maintain or operate his/her Vessel,

Licensee shall immediately, upon demand by the County and presentation to Licensee of a statement of damages, tender full payment to the County to cover the cost of such damage(s) or loss(es).

29. **Effect of Damage or Destruction.** In the event of damage to or destruction of all or a portion of the Marina or the Slip by fire, flood, earthquake, or any other cause or causes, the County shall have the option to: (a) treat this License as continuing and repair or restore the Marina or Slip to their condition before such damage or destruction within thirty (30) days of the occurrence of the same or, if insured, within thirty (30) days after the County receives permission from the insurer to proceed with repair or restoration; or (b) terminate this License and all further obligations hereunder of either party by written notice to Licensee. After the occurrence of such damage or destruction, the Licensee's obligation to pay fees hereunder shall be abated in an amount which the County, in its sole discretion, shall determine to be proportionate to the area of the Slip tendered unfit for use by Licensee during the period of repair or restoration.

30. **Apportionment of Costs Incurred in Providing Storm Protection.** Licensee is solely responsible for the safety of his/her Vessel, and Licensee agrees that the County shall have no obligation whatsoever to take action(s) in advance of or during a storm, or otherwise, to preserve or protect Licensee's Vessel. It is further agreed, however, that the County may, at its sole election, undertake such actions during or in advance of a storm or other threatened unfavorable weather as it alone deems appropriate and/or necessary to preserve or protect any or all vessels located on its premises. In such event it is agreed that Licensee shall indemnify, defend and hold the County harmless for any and all personal injury or death or property damage occurring in connection with the County's efforts to preserve or protect vessels during or in advance of a storm. It is further agreed that if the County provides such preservative/protective services during or in advance of a storm, all costs associated with such rendering of such services shall be apportioned equally among all vessel owners in the Marina.

31. **Removal of Unseaworthy Vessel or Vessel In Disrepair.** If Licensee's Vessel is in a sinking condition, in a state of disrepair as determined by the County, or if she is deemed by the County to pose a health, safety or pollution risk, the County may, but is not required to, remove the Vessel from the water and dry store her, both at Licensee's sole risk and expense.

32. **Failure to Vacate.** If Licensee fails to pay the Slip Fee or other fees as required herein, or if he/she fails to remove the Vessel from the Marina following termination of this License, it is agreed the Vessel will be regarded for all purposes as a trespasser. It is agreed that in such event the County shall charge Slip Fees for the Vessel at the then current impound vessel rates until such time as the Vessel is removed or disposed of as provided by state and/or federal law.

33. **Vessel Abandonment -- Disposal At Licensee Cost.** In the event County terminates this License by providing written notice to Licensee (at his/her last known address) of such termination, Licensee shall immediately remove his/her Vessel from the Marina. After the date of such termination wharfage rates for the Vessel, which will be regarded as a trespasser, will be calculated at the then current impound vessel rate. If for any reason the Vessel is not removed within 60 days of the date of termination of this License it is agreed the Vessel shall be conclusively regarded for all purposes as having been abandoned. In such event, the County shall become entitled to dispose of the Vessel in any manner, including but not limited to destruction, public or private sale, or any other means. If the Vessel is disposed of in such manner, Licensee shall indemnify, protect and defend the County and its employees, officers and agents from and against all actual or potential liability (including but not limited to legal claims, liens and judgments) arising from or in any way pertaining to such Vessel disposal. The Licensee shall be liable for all costs of such disposal, including but not limited to surveying costs, disposal costs, storage costs, and legal fees.

37. **Salvage Services.** The County has no obligation whatsoever to dewater or provide any salvage service to the Vessel should she spring a leak or otherwise need assistance in remaining afloat or in seaworthy condition. It is agreed that the County, in its sole election, may elect to dewater or provide the Vessel with other salvage services. In the event the County determines the Vessel is in need of dewatering or other salvage services and the County elects to provide such services, Licensee shall be obligated to pay all material/labor costs associated with the rendering of such services or \$150 plus material costs for each hour such services are provided, whichever sum is greater, and Licensee shall indemnify, protect and defend the County from and against all actual or potential liability therefrom arising or relating.

38. **Tender of Required Notice(s).** All notices by one party to the other under this License shall be in writing and mailed via United States first class regular mail, postage prepaid. Notice to the Licensee shall be to the Licensee's address indicated on Attachment "A". It is Licensee's sole responsibility to notify County of any change of this address, and Licensee agrees that notice sent to the Licensee's address as listed in Attachment "A" shall be conclusively deemed as legally effective. County reserves the right to change its address for notification purposes by providing written notice of such change to Licensee at his/her last known address. Notice by Licensee to County shall be mailed to:

Dana West Marina
24500 Dana Point Harbor Drive

39. **License As Complete Expression Parties' Understandings.** The License contains a complete expression of the License between the parties hereto and there are no promises, representation, agreements, warranties or inducements except such as made herein and fully set forth. No alterations of any of its terms, covenants or conditions shall be binding unless reduced to writing and signed by the parties hereto. It is agreed that all of the rights, remedies and benefits provided by the License shall be cumulative, and shall not be exclusive of any other of said rights, remedies, and benefits, or of any other rights, remedies and benefits allowed by law. The subject heading of the Sections of the License are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

40. **Waiver & Severability.** The failure of County to insist upon the performance of any term hereof, or the waiver of any breach of any term hereof, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No action taken by the County in equity or at law, whether in state or federal court, shall be construed as a waiver of the County's maritime statutory or contractual or other rights at law, in equity or in admiralty, including its right to recover as part of its lien directly against the Vessel all costs incurred in connection with collection of Slip Fees and other fees due under the License. The invalidity of any portion of this License will not and shall not be deemed to affect the validity of any other provisions. In the event any term or condition herein contained is held to be invalid, the parties agree the remaining provisions shall be deemed to be in full force and effect, as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

41. **Termination of Prior Agreements.** It is mutually agreed that this License shall terminate and supercede any prior agreements between the parties hereto covering all or any portion of the Slip or Marina. Notwithstanding the foregoing, this provision shall not release Licensee from any obligations under any prior agreements to be performed through the effective date of this License or from any obligations of indemnification based upon events occurring prior to the effective date of this License.

42. **License Organization.** The various headings and numbers herein, the grouping of provisions of this License into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be otherwise considered.

43. **Amendments.** The License is a sole and only agreement between the parties regarding the subject matter hereof; other agreements either oral or written, are void. Any changes to this License shall be in writing and shall be properly executed by both parties.

44. **Taxes and Assessments.** This License may create a possessory interest, which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Slip, shall be the full responsibility of Licensee, and Licensee shall cause said taxes and assessments to be paid promptly.

45. **Partial Invalidity.** If any term, covenant, condition or provision of this License is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

46. **Disposition of Abandoned Personal Property.** If Licensee abandons the License Area or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to Licensee (except for the vessel provisions of Paragraph 11 (County's Remedies)) and left within the Slip or Marina ten (10) days after such event shall be deemed, at the Director's option, to have been transferred to County. Director shall have the right to remove and to dispose of such property without any County liability therefore to Licensee or to any person claiming under Licensee, and shall have no need to account for the property.

47. **Time is of the Essence.** Time is the essence of the License. Failure to comply with any time requirements of this License shall constitute a material breach of this License.

48. **Waiver of Jury Trials.** Each party acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this License and/or any claim of injury or damage.

49. **Governing Law and Venues.** This License has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this

License, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

50. **Child Support Enforcement Requirements.** At all times during the term of this License, Licensee shall comply with all County, State, and Federal reporting requirements for child support enforcement and comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment. In order for Licensee to comply with County of Orange requirements, Licensee shall provide to County the data and certifications concurrent with the execution of this License by County. Failure of Licensee to comply with all County, State, and Federal reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this License. Failure to cure such breach and upon notice from County shall constitute grounds for termination of this License.

51. **Licensee's Legal Capacity.** The person signing below as the "Licensee" attests that he/she is legally entitled to bind the Vessel and all of her owners to all terms of this License, that in the event the person signing below is not the sole owner of the Vessel he/she has obtained the express permission of all persons with an ownership or equitable interest in the Vessel, and that he/she at the time of reviewing/executing this License is not under the influence of alcohol or any legal or illicit drug, and that he/she has reached the legal age of majority, and that he/she is not legally incapacitated or otherwise unable to fully understand and appreciate the terms contained herein.

52. **Authority of Director.** The Director, through the County's Dana Point Harbor Department office ("County Harbor Administration Office"), shall exercise all authority of the County under this License unless Licensee is otherwise notified in writing. Said County Harbor Administration Office shall directly supervise the 2005 Dana West Marina, the County's authorized Manager of the Marina under this License.

THIS LICENSE IS A LEGAL CONTRACT BETWEEN YOU AND THE COUNTY OF ORANGE. THIS LICENSE DOES NOT CREATE A BAILMENT OR LANDLORD-TENANT RELATIONSHIP BETWEEN YOU AND THE COUNTY. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY. ANY AGENT OR EMPLOYEE OF THE COUNTY, INCLUDING, BUT NOT LIMITED TO THE MANAGER OR ITS EMPLOYEES, IS NOT AUTHORIZED TO PROVIDE LEGAL ADVICE TO YOU REGARDING THIS LICENSE. BY SIGNING AND DATING BELOW, YOU WILL BE SIGNIFYING TO THE COUNTY THAT YOU HAVE READ, UNDERSTAND AND FULLY AGREE TO ABIDE BY EACH TERM OF THE LICENSE.

Dated: _____, 20____
_____ Licensee

Dated: _____, 20____
COUNTY OF ORANGE

By: _____

Title: Operations Manager

TBW COMPANY

Dated: _____, 20____
By: _____