

Commercial Marina Permit

- (1) Commercial Marina Permittee: This Permit is issued on _____ to _____ (“Permittee”) to operate a commercial marina located upon City of Newport Beach (“City”) tidelands, as more particularly described in Attachment 1 and depicted in Attachment 2 (“Premises”). Both Attachment 1 and Attachment 2 are incorporated by reference into this Permit. By acceptance of this Permit, the Permittee agrees to be bound by the terms contained in this Permit.
- (2) Term: This Permit shall be valid for a period of twelve (12) calendar months beginning on March 1, 20____ and expiring on February __, 20____, unless terminated earlier as provided herein.
- (3) Rent: Rent shall be calculated pursuant to Resolution No. 2012-____, or any successor/amended resolution. Resolution No. 2012-____ and any successor/amended resolution are automatically incorporated by reference into this Permit, without any further action by the parties, when adopted by the Newport Beach City Council.
- (A) Periodic Payment of Rent: One-twelfth (1/12) of annual rent for a particular year shall be payable on the first (1st) day of each month during the term.
- (B) Place for Payment of Rent: All payments of rent shall be made in lawful money of the United States of America and shall be paid to City in person or by United States’ mail, or overnight mail service, at the Cashier’s Office located at 100 Civic Center Drive, Newport Beach, CA 92660, or to such other address as City may from time to time designate in writing to the Permittee. If requested by City, the Permittee shall make payments electronically (at www.newportbeachca.gov) or by wire transfer (at the Permittee’s cost). The Permittee assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by the City regardless of the method of transmittal.
- (C) Late Charges: A ten percent (10%) late charge, or the maximum rate allowable under State law, shall be added to all payments due but not received by City with fifteen (15) calendar days following the due date. In addition, all unpaid amounts shall accrue at a delinquency rate of one and a half percent (1½%) per month or any portion of a month until paid in full.
- (4) Utilities and Taxes: The Permittee is solely responsible for obtaining all utilities and paying all taxes, fees and assessments for the Premises or improvements located thereon.
- (5) Possessory Interest Tax Notice: The City hereby gives notice to the Permittee, pursuant to Revenue and Tax Code Section 107.6 that this Permit may create a possessory interest that is the subject of property taxes levied on such interest, the payment of which taxes shall be the sole obligation of the Permittee. The Permittee

shall advise in writing any sublessee, licensee, concessionaire or third party using the Premises of the requirements of Section 107.6.

(6) Compliance With Applicable Laws: The Permittee is required at its sole expense to comply with all applicable City, County, State and Federal laws and regulations.

(7) Maintenance: The Permittee assumes full responsibility for operation and maintenance and repair of the Premises and associated improvements throughout the term of this Permit at its sole cost, and without expense to the City.

(8) Transfer/Assignment: This Permit may not be transferred or assigned by the Permittee without the City's prior written consent. Transfer/assignment without the City's prior written consent is null and void.

(9) Termination: This Permit may be terminated for cause (e.g., failure to abide by the terms of this Permit, etc.) by the City with no less than seven (7) calendar days prior written notice to the Permittee. In the event of termination under this section, the City shall owe no compensation to the Permittee and the Permittee shall remove all improvements from the Premises within ninety (90) calendar days. The Permittee shall continue to pay rent to the City during the period in which the improvements are removed. Alternatively, the Permittee, with the City's prior written consent, may quitclaim all fixtures, equipment, and improvements on the Premises to the City. Notwithstanding any other provision of this Permit as permitted by California Public Resources Code Section 6312, or any successor statute, the parties agree that upon expiration or earlier termination of this Permit the City shall have no liability or obligation to pay compensation for any improvements made to the Premises.

(10) Inspection: Upon seventy-two (72) hours notice, the City may enter the Premises, and all improvements thereon, including a right of reasonable access to the Premises across the Permittee's owned or occupied lands adjacent to the Premises, to inspect the Premises for compliance with the terms of this Permit.

(11) Indemnification: To the fullest extent permitted by law, Permittee shall indemnify, defend (with counsel selected by the City) and hold harmless the City, its elected officials, officers, employees, agents, attorneys, volunteers and representatives from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses of every kind and nature whatsoever (individually, a "Claim" or collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to this Permit including, but not limited to, Permittee's occupancy and use, or Permittee's guests, invitees, sublessees, or licensees occupancy and use, of the Premises, or improvements including, but not limited to, any use involving petroleum based products, hazardous materials, hazardous waste and/or other hazardous substances as defined by City, County, State or Federal laws and regulations. The Permittee's obligations in this section shall not extend to the degree any Claim is proximately caused by the sole negligence or willful misconduct of the City, subject to any immunities which may apply to the City with respect to such

Claims. This indemnification provision and any other indemnification provided elsewhere in this Permit shall survive the termination of this Permit and shall survive for the entire time that any third party can make a Claim.

(12) Insurance: The Permittee shall maintain insurance for the Premises during the term of this Permit, issued by a company authorized to transact business in California with a rating of A- (or higher) and Financial Size Category Class VII (or larger), in at least the following amounts: (i) workers' compensation insurance providing statutory benefits and employer's liability insurance in an amount not less than \$1 million; (ii) commercial general liability insurance in an amount not less than \$2 million per occurrence and \$4 million general aggregate for bodily injury, personal injury, and property damage; (iii) contractor's pollution liability insurance, in an amount of no less than \$3 million, for contractors or subcontractors performing construction work providing coverage for liability arising out of a sudden, accidental and gradual pollution; and (iv) Pollution legal liability, of no less than \$1 million, applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from the Premises. The City (*i.e.*, its elected or appointed officers, officials, employees, agents and volunteers) shall be named as an additional insured on all insurance policies required by this section.

(13) No Damages: The Permittee acknowledges the City would not have issued this Permit if it were to be liable for damages under, or relating to, this Permit. The parties agree that declaratory relief, injunctive relief, mandate and specific performance shall be the Permittee's sole and exclusive judicial remedies.

(14) Uplands Support: The location of the parking spaces serving the Premises as required by NBMC Section 20.40.040, or any successor statute, shall be depicted on Attachment 2.

Attachment 1

Description of Premises

SAMPLE

Attachment 2

Depiction of Premises & Uplands Support

SAMPLE