

**Terms and Conditions**

**1. Use Conditions:**

Vessel Owner, and those acting on his or her behalf, will perform or abide by each and every condition of use contained in this Agreement, including the current Marina Rules and Regulations (“Marina Rules”) attached hereto as Exhibit “A” and incorporated herein by this reference. City reserves the right to modify or amend the Marina Rules from time-to-time without notice and Vessel Owner agrees to comply with all modified and amended Marina Rules. Vessel Owner further agrees to comply with all laws, rules and regulations of federal, state, and local entities, including municipal codes, environmental laws and regulations and all regulations of the U.S. Coast Guard with respect to the Slip, the Marina or the harbor or with respect to use of any other City facilities. 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, and for other uses consistent with this Agreement. City may add to or change the Marina Rules by posting new ones or by otherwise notifying Vessel Owner of the change. Should any fine be assessed against Vessel Owner and/or City due to any failure by Vessel Owner or its licensees, guests, employees or contractors to comply with the provisions of this Paragraph, Vessel Owner shall be solely responsible therefore and shall pay same within five (5) calendar days following demand.

**2. Change of Slip:**

Vessel shall be berthed only in the Slip assigned by City. The Slip is subject to change at the discretion of the City. Vessel Owner will promptly move the Vessel upon request from City. Failure to do so may result in the City moving or causing the moving of the Vessel and charging the Vessel Owner for that move and any other associated costs.

**3. Indemnity:**

To the fullest extent permitted by law, Vessel Owner shall indemnify, defend (with counsel satisfactory to City) and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, 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, administrative orders of any nature, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney’s fees, disbursements and court costs) of every kind and nature (individually, a Claim; collectively, “Claims”), which may arise from or in any manner relate (directly or indirectly) to this Agreement (including the negligent and/or willful acts, errors and/or omissions of Vessel Owner, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, invitees, licensees, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) and the following: (i) Vessel Owner’s use, occupancy or possession of the Slip and Marina facilities, (ii) the entry by Vessel Owner, or any of its invitees on the Marina property, and (iii) Vessel Owner’s breach or failure to comply with any provision of this Agreement or the law, or both. Vessel Owner shall be obligated under this indemnity regardless of any active or passive negligence or strict liability of obligations under this paragraph are joint and several with any person or entity owing any duty to indemnify, defend and hold harmless the Indemnified Parties, except as otherwise provided herein.

Notwithstanding the foregoing, nothing herein shall be construed to require Vessel Owner

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to indemnify the Indemnified Parties from any Claim arising from the sole 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 Vessel Owner.

#### **4. 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 coverage with limits not less than Three Hundred Thousand Dollars (\$300,000) per occurrence. Vessel Owner shall also maintain a hull and general vessel protection policy covering at least one hundred percent (100%) of the actual cash value of the Vessel with endorsements for extended perils, damage by fire, electrolysis, stray current, corrosion, vandalism, theft and burglary, in accordance with the requirements herein this Agreement. Said insurance shall also provide for liability, workers' compensation and, if applicable, crew or longshoreman's coverage for any and all crew or other employees granted access to the docks and the Vessel at any time.

The insurance required per this Agreement shall be in a form and substance satisfactory to City and shall be placed with responsible underwriters, having a Best financial rating of at least VIII and a Best policyholder rating of A- or better.

Vessel Owner shall provide City with copies of the certificates of insurance evidencing the required coverage prior to the commencement of this Agreement, which evidence shall be a precondition to Vessel Owner's use of the Slip. Vessel Owner shall deliver new certificates evidencing the required coverage prior to the expiration or termination of any policy.

All insurance policies shall expressly provide that they shall not be cancelled or materially amended for nonpayment of premium or any cause whatsoever unless City is given thirty (30) days advance written notice by the insurance company.

The insurance shall provide that the City shall have no obligation to pay calls, assessments, premiums or any other charges in connection with any insurance.

Vessel Owner shall also be responsible to ensure that all contractors and others employed by the Vessel Owner comply with all Marina Rules, properly register with the Marina office prior to beginning any work, and provide proof of adequate workers' compensation and longshoreman's insurance coverage and general liability insurance coverage with a limit not less than \$500,000, per occurrence.

#### **5. Shore Power:**

There has been a National Electrical Code (NEC) change for Marina shore power. The Code requires installation of a ground-fault protection device on each slip's feeder circuit or main feeder circuit. New Marina Construction building permits requires that all National Electrical Codes be implemented. If the shore power shuts off on your power pedestal, the breaker has tripped indicating there is an electrical problem on the boat or in the power cord. Please have a licensed marine electrician trouble shoot the issue. Do not disassemble any part of the power pedestal. This will void the warranty and you will be responsible for the replacement of the power pedestal.

#### **6. Compliance with Laws:**

Vessel Owner agrees to comply with all Marina Rules and applicable local, State and

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Federal laws and ordinances and understands that failure to do so may result in immediate termination of this Agreement. A copy of the Marina Rules is attached hereto as "Exhibit A" and Vessel Owner hereby acknowledges receipt and review of same.

### **7. Condition of Slip:**

Vessel Owner hereby acknowledges that the Vessel Owner has inspected the Slip and those portions of the Marina associated with the Slip, including without limitation, the gates, floats, walks, gangways, ramps and utilities, and knows the condition of the same, and 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 or any of its representatives, agents or employees. 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.

### **8. Discharge of Waste and Hazardous Materials:**

No waste matter from sinks, toilets, marine heads, holding tanks bilges or any other receptacles shall be discharged into the waters of the Marina. If the Vessel is equipped with a toilet, a marine head, or any other permanent or temporary receptacle for human or other wastes, then the Vessel must also be equipped with a holding tank designed to retain all wastes deposited in the receptacles until such time as the wastes can be discharged into a sanitary sewer system or discharged otherwise in accordance with the law. Vessel Owner agrees to permit City to inspect such holding tanks from time to time upon demand by City.

### **9. Term:**

The allowable stay in the Marina is 30 consecutive days under the terms of this Agreement. Maximum rental is 60 days in a 180-day period. The 180-day period shall begin on the first day's rental. Vessels arriving between midnight and sunrise will be charged in full for the previous day. Terms are subject to the Harbormaster's approval.

### **9. Vehicles:**

Vessel Owner is allowed to park one (1) vehicle overnight at the Marina Park Main Lot during his/her stay at the Marina. Additional vehicle parking permits may be available for purchase through the City at the current parking rate.

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### EXHIBIT "A"

#### Marina Rules and Regulations

The staff and management of the marina commonly referred to as Marina Park ("Marina") want you to enjoy your boat and your recreation time at the Marina and its related facilities. These Marina Rules and Regulations ("Marina Rules") are intended to enhance your experience and enjoyment of the Marina and its related facilities by providing guidelines for boating and environmental practices in the Marina. Violation of these Marina Rules may result in the immediate expulsion of the Vessel, the Vessel Owner and guests from the Marina and may also subject the Vessel Owner to fines or penalties or both, as indicated below. All capitalized terms have the meaning set out in the Slip Rental Agreement, unless otherwise defined here.

All Vessels docked at the Marina are required to have the following documentation on file at the marina office:

- A current and complete Guest Slip Agreement ("Agreement"), as applicable;
- Proof of current and valid registration or documentation. Current Vessel registration or documentation must be displayed on the hull of the Vessel according to applicable local, state, and federal regulations; and
- Proof of current Vessel insurance coverage (as required by the Agreement) providing a minimum of \$300,000 in liability protection and naming City together with its City Council, boards and commissions, officers, agents, volunteers, and employees as an additional insured as set out in the Agreement.

Check in time is 1:00 p.m. and check out time is 11:00 a.m.

Reservations may be canceled by giving 72 hours notice. Cancellation processing fee is \$13.00.

City may change or amend your slip assignment at any time. Only City is authorized to assign slips.

No Smoking. No person shall smoke or be smoking in a park, park facility, beach, or oceanfront boardwalk or within 100 feet of a park, park facility, or beach while the person is located on public property.

Parking. Designated Marina parking is expressly for the use of Vessel Owners and their guests. If a parking permit is required, the permit must be displayed per the parking requirements. Permits are valid from 6:00pm to 8:00am. Permits are not transferable and must be returned to the City upon termination of the Agreement. For your safety and the safety of others, there is no parking on Marina property for longer than 72 consecutive hours without prior written permission from the City. Vehicles and other personal property may not be washed or serviced in the Marina parking lots. No person may sleep overnight in any vehicle while on Marina property. Violators are subject to tow and fines at violator's expense.

Animals. For everyone's well-being and safety, pets must be on a leash at all times while on Marina property except while on a Vessel. To support a clean and attractive environment, pet owners must pick up after their pets immediately and no pet may be left

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unattended on Marina property at any time. The conduct of each pet is the responsibility of the pet owner at all times and all pets must be controlled per applicable law.

Personal Items. Please remember that for safety and environmental reasons, bicycles, motor scooters and motor bikes are not permitted on the docks. No skateboarding or rollerblading is permitted on Marina property, including in parking lots or on walkways and docks.

As a courtesy to your neighbors, and for safe emergency access, personal gear, including dinghies, lawn furniture, potted plants, etc., may not be stored on deck or left on the dock fingers or walkways at any time. Walkways must be kept clear at all times. Only approved dock boxes and boat stairs are allowed on the docks. Dinghies are not permitted to be tied to your Vessel or stored in slips without written City authorization.

Vessel Requirements. For safety and dock security reasons, no portion of any vessel may protrude over the headwalk. To protect the integrity of the docks and the security of all vessels, oversized vessels will not be allowed to occupy any slip. Oversized vessels are those vessels longer than 110% of the Slip length and wider than 90% of the Slip width.

Your Vessel must be maintained in a sound and seaworthy condition. City may perform periodic vessel inspections to determine compliance with environmental guidelines and the seaworthiness of your Vessel. Any findings that your Vessel is not in seaworthy or environmentally sound condition or presents any other potential hazard shall be corrected immediately in an appropriate manner at the expense of the Vessel Owner or Vessel Owner will be subject to fines and possible expulsion from the Marina.

Electrical. All connections made to Marina power must be made with UL Approved plugs and cords with the appropriate amperage capacity. No modifications to any electrical outlet or power receptacles may be made. There has been a National Electrical Code (NEC) change for Marina shore power. The Code requires installation of a ground-fault protection device on each slip's feeder circuit or main feeder circuit. New Marina Construction building permits requires that all National Electrical Codes be implemented. If the shore power shuts off on your power pedestal, the breaker has tripped indicating there is an electrical problem on the boat or in the power cord. Please have a licensed marine electrician trouble shoot the issue. Do not disassemble any part of the power pedestal. This will void the warranty and you will be responsible for the replacement of the power pedestal.

Maintenance. No maintenance or repair work may be conducted on your Vessel while in the Marina.

Vessels may only be washed with non-toxic biodegradable soaps and the amount of soap must be kept to a minimum. Vessel Owner shall not release or permit to be released into the water or upon the docks or land, by action or inaction, any hazardous waste or environmentally objectionable substances, including soap, oil, paint, gasoline, or sewage. Bilges must be checked for contaminants before activating the bilge pump and oil absorbent socks and pads must be used in all bilges to eliminate all potential pollution.

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Spills. Vessel Owner shall ***immediately*** report any release of hazardous waste or similar discharge to all appropriate local, state and federal government agencies and to City. In addition, Vessel Owner shall ***immediately*** implement necessary clean up and disposal of any hazardous spills and materials. Use of emulsifiers and detergents on fuel or oil spills is specifically prohibited.

Vessel Waste Pumpout. Vessel Owners are encouraged to use the designated pump-out stations and mobile pump-out services to dispose of all sewage and gray water. Emptying or cleaning portable boat heads (port-o-potties) in the Marina restrooms is prohibited. Violators will be subject to fine or expulsion from the Marina or both.

Hazardous Materials. Storage of hazardous or flammable materials is not allowed on or about the docks or in dock boxes. Toxic chemicals, batteries, petroleum, etc. may not be placed in trash receptacles. Abandonment of hazardous or toxic material on Marina property is a violation of local, state and federal laws. Proper disposal of all hazardous materials is the sole responsibility of the Vessel Owner.

No Swimming. For your safety, swimming and/or diving in the slip areas or from the docks, walkway, bulkheads, gangways and any other structure or your Vessel is not permitted.

Fires. Fires and BBQ's are not permitted anywhere on or about the docks for the safety reasons. Propane-fueled covered BBQ's may be used on board your Vessel only. Briquettes and other open fuel fires are strictly prohibited. No ashes or other heated material may be emptied into the Marina, harbor or any trash container.

Fuel. Personal fueling of boats (carrying fuel cans, etc.) is not allowed on the docks. Certified in-slip fueling services are permitted if the service provider is properly registered with City. Storage of gasoline, diesel or other combustibles on or about the docks is strictly forbidden.

No Fishing. Fishing from the docks, gangways or bulkheads is prohibited. Fish cleaning is also strictly prohibited in the Marina. Please dispose of all excess bait while at sea to reduce potential pollution of the Marina waters.

Social Gatherings. Social gatherings must remain on your Vessel and not on the docks or gangways. Loud music is not welcome at any time. Vessel Owner is responsible for ensuring that all such gatherings comply with City's laws, rules, and regulations, including but not limited to those provisions regarding time of day and decibel restrictions on noise.

Commercial Activity. No commercial activity may be conducted anywhere at the Marina.

Generators. Generators may not be run at any time while your Vessel is in the Slip. Main engines may be run in the Slip only during arrival and departure of the Vessel. Please observe all Marina and harbor speed limits and "no wake" laws. Vessel Owners are responsible for damages caused by their Vessel wake regardless of compliance with posted speed limits.

Dock Carts. Dock carts are to be used to transport personal items to and from your

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Vessel and as a courtesy to your fellow boaters should be returned to the entrance gate area when not in use. Please do not use them to transport heavy gear or dirty waste.

### **As a courtesy to your neighbors:**

The restrooms and laundry are locked and access is restricted to registered Vessel Owners and their guests only. Key cards are distributed for your safety and security and the safety and security of other Vessel Owners. Please do not provide keys or access to others - doing so may subject you to liability due to their actions. Access to the docks and restrooms is allowed ONLY with the authorized use of the appropriate Marina key. Please be sure that all doors are closed firmly behind you. Climbing over or around fences or gates, blocking of doors or gates, and other means of unauthorized entry is strictly prohibited and may subject you to fines and eviction from the Marina.

An adult must accompany all children under the age of 12 at all times. City highly recommends that all children wear an approved personal flotation device at all times while onboard the Vessel and on the docks.

For your protection, City personnel may question any person to ascertain whether an individual is authorized to be aboard any vessel or on the Marina property and may ask unauthorized or unknown persons to leave the Marina. Vessel Owners must contact the City in advance if they anticipate any visitor or guest to be aboard their Vessel in their absence.

Drying or airing of laundry or apparel on the docks or the riggings of your Vessel is prohibited.

### **In case of fire or other emergency, call 911 immediately.**

Please contact the City if you would like information on local, state or federal environmental and other boater-related laws and regulations. City has a comprehensive list of local environmental and hazardous materials handling and disposal companies for your reference. City also has a complete list of registered and insured Marina service providers.

All Vessel Owners and their guests are subject to these Marina Rules and any changes hereto. Failure to comply with all Marina Rules and the terms of your Agreement may result in fines as described below and can result in the termination of your Agreement and expulsion from the Marina.

### **Schedule of fines for violation of Newport Beach Municipal Code and Slip Rental Agreement terms:**

1st violation \$100

2nd violation \$200 and forfeiture of all deposits and expulsion from the Marina

3rd violation \$500

Marina Rules may be amended or changed by City at any time without notice.