

WESTPOINT HARBOR

BOAT OWNER LICENSE AGREEMENT

I. REGISTERED OWNER

Name _____

Home address _____

City/State/Zip _____

Home telephone _____ Cell _____

Email _____

Business address _____

Business telephone _____ Driver's license _____

Emergency contact _____

II. MORTGAGEE OR LEGAL OWNER

Name _____

Address _____

Telephone _____

III. DESCRIPTION OF VESSEL

Vessel name _____

DMV/Doc number _____

Year Built _____ Value _____

Prior Marina _____

Vessel type _____

Vessel make _____ Color _____

Length (LOA) _____ Draft _____

IV. INSURANCE CARRIER

Company _____ Agent _____

Policy number _____ Term _____

Coverage type _____ (Marina must be named as additional insured)

Pollution coverage _____ Liability coverage _____ Limits _____

V. TERM Month-to-month commencing _____

VI. FIRST FULL MONTH SLIP FEE \$ _____

VII. SLIP DEPOSIT (1.5X total monthly rate) \$ _____

VIII. LIVEABOARD/EXTENDED STAY FEE \$ _____

IX. ASSIGNED SLIP NUMBER _____

THIS LICENSE AGREEMENT (the “**Agreement**”) is made as of _____, 20__ between Westpoint Harbor (the “Marina” or “Harbor”) and the signatory(ies) below who warrant that they are the **registered owner(s)** of the vessel as described in Section I above (the “**Vessel**”) and is hereinafter referred to as “**Owner**” of the vessel under the terms and conditions set forth below:

Owner and Westpoint Harbor hereby agree:

1. **Vessel.** Owner warrants that he/she is the owner of the Vessel and is authorized to bind all joint owners of the Vessel to the terms of this Agreement. If the person signing this agreement is an agent for the owner or any joint owners, the agent represents and warrants that he/she is authorized to enter in to this agreement on behalf of the Owner and to bind any and all joint owners of the Vessel.
2. **Vessel Documentation.** Owner warrants that the Vessel will, prior to its entry into the slip contemplated by this Agreement, be properly documented or registered as set forth in Section III above and be in compliance with all applicable California and U.S. Coast Guard safety regulations.
3. **Vessel Condition.** Owner represents and warrants that the Vessel will be maintained in a seaworthy, operable condition and will maintain the Vessel’s appearance including regular cleaning, maintenance and replacement of painted and varnished surfaces, all rigging, safety equipment and other appurtenances of the Vessel. Westpoint Harbor shall be the sole judge of the adequacy of the Vessel’s condition, maintenance and appearance.
4. **Vessel Inspection and Approval.** The Vessel shall be inspected and approved by Westpoint Harbor upon its arrival. Failure to obtain Westpoint Harbor approval shall automatically terminate this Agreement. Failure to cure any deficiencies in the Vessel’s condition or appearance as required under this Agreement within 15 days of notice shall automatically terminate this Agreement.
5. **Slip and Surrounding Area.** Westpoint Harbor licenses to owner the use of the Slip set forth in Section IX above (the “Slip”), its storage box and associated utilities under the terms contained herein. Owner shall use the Slip only for mooring the Vessel and for no other purpose, and the Vessel shall be used solely for the recreational purposes of the Owner, Owners family and guests.
6. **Limitation of Renting Slip or Vessel to Others.** Owner warrants that while the Vessel is moored at Westpoint Harbor, Owner will not rent or charter the Vessel or the Slip for any purpose, and will

not engage in any commercial activity with the Vessel or within the Harbor, nor allow any other person to use the Vessel or Slip for such purposes.

7. **Right to Move Vessel.** Westpoint Harbor reserves the right to reassign the Vessel to another slip in the Harbor for safety, security or other emergency reasons at any time and to relocate the Vessel thereto at the Owner's expense and risk. Harbor shall not be responsible for and the Owner shall hold the Harbor harmless from any claim of damage to Vessel resulting from such relocation.
8. **Temporary Re-assignment of Slip.** Owner agrees that Westpoint Harbor may temporarily reassign the Slip when the Owner is not using it without compensation for short-term activities such as transient vessels and yacht club cruises, for periods of one week or less. For periods beyond one week Westpoint Harbor will credit the Owner 50% of the regular berth fee for the period the Slip is reassigned.

Owner warrants that he/she will maintain walkways, gangways and docks around the Slip in a clean, unobstructed condition at all times.

9. **Term & Termination.** This Agreement shall create a license commencing on the date set forth in Section V above and shall continue from the first day of the month immediately following on a month-to-month basis until default under the provisions of this license or until terminated by either party in writing. Written notice of termination shall be no less than thirty days prior to the effective date. Owner shall surrender the Slip immediately upon the expiration of the term in the same condition it was upon the commencement of the term, subject to normal wear and tear. Upon termination or default, Owner agrees to remove the Vessel from the Slip within 7 calendar days. If Owner fails to do so, Owner hereby grants Westpoint Harbor the right to remove the Vessel, with notice to Owner within 24 hours after removal, at Owner's sole risk and expense for the purpose of relocating the Vessel to another slip or dry storage area. In the event of such relocation following a post-termination failure by Owner to remove the Vessel, **Owner shall hold harmless, indemnify and defend Westpoint Harbor from and against any claims for damages, including subrogation, arising out of or relating to removal, relocation or storage of Vessel.** Owner also agrees to pay all expenses and charges arising out of or related to the surveying, inspection, maintenance and preservation charges. For each day after termination or default that the Vessel remains on marina premises, Owner agrees to pay a holdover fee equal to the current daily guest fees as established by the Harbor.
10. **Slip Fees.** For each calendar month, Owner agrees to pay Westpoint Harbor the monthly slip fee then in effect based on the length of slip or vessel LOA, which ever is greater, in advance on the first day of each month. Owner also agrees to pay as an additional fee all excises and taxes that may be levied by a government agency and to maintain such taxes current. All slip fees not paid by the tenth day of the same month shall be deemed delinquent.
11. **Fees for Late Payment or Returned Checks.** Owner agrees to Pay Westpoint Harbor a \$25.00 fee for late payment of slip fees. Fees paid by means of a returned check shall not constitute timely payment, and Owner agrees to pay a \$20.00 fee for returned checks. Late fees will be charged until all slip fees are paid, and repeated late fees or returned checks may result in default or termination.
12. **Adjustment of Fees.** Westpoint Harbor may change the slip fee at the end of any calendar month by notifying the Owner in writing at least thirty days in advance of the effective date of the change. In the event the Owner fails to pay any new slip fee after its effective date, Westpoint Harbor may terminate this Agreement.
13. **Slip Deposit.** At the commencement of this Agreement, Owner shall pay Westpoint Harbor a deposit calculated at 1.5 X then-current Slip Fee (the "Slip Deposit"), including live-aboard or extended stay fees. Owner agrees to pay any additional sum necessary for the Owner's Slip Deposit to equal the currently posted Slip Deposit. If the Owner fully and timely performs Owner's obligation, Westpoint Harbor agrees that upon termination of this Agreement and after Vessel has vacated the Slip, Westpoint Harbor will refund the deposit paid less amounts necessary to clean or repair the Slip,

or any other fees owed by the Owner. Owner may not use the deposit as, or deduct it from, the slip fee for any month.

14. **Liens.** Westpoint Harbor shall have all liens provided for in the California Harbors and Navigation Code and such other liens, rights and remedies, including the right to sell the Vessel at public auction, and under California or Federal Law, as each may be applicable in the event of uncured Owner default under this Agreement. In such circumstances, Westpoint Harbor shall have the right to take the Vessel into its possession to secure all sums that become due under this Agreement. Owner hereby agrees that Westpoint Harbor may assign its liens and possessory and other rights and remedies to a third party provided that Westpoint Harbor gives written notice of such assignment (including indicating who the assignee is and the scope of the assignment) within 7 calendar days.
15. **Liveaboard and Extended Stay.** Owner agrees that no person shall reside (“liveaboard”) on the Vessel at any time without written permission from Westpoint Harbor. In the event that written permission to live aboard is granted an additional monthly fee shall apply. The term “liveaboard” is defined as any Vessel that is occupied in excess of three days in a seven day period. “Extended Stay” is defined as periodic stays not exceeding three days in a seven day period, and Owner maintains a separate permanent residence.

Violation of the Liveaboard or Extended Stay rules are cause for removal from the harbor as required by California Law. For purposes of this section it is assumed that a person or persons are staying overnight on their vessel if they are on their vessel after 10:00P.M. In addition, violation of this section will result in a modification of the slip rate to a “Guest” (\$1.00 per foot per day) until such time as the vessel is removed from the harbor at the discretion of the Harbormaster.

Owner Initials _____

16. **Liability and Indemnity. *IMPORTANT--PLEASE READ CAREFULLY.*** As used in this Paragraph 16, “Westpoint Harbor” includes Westpoint Harbor, its officers, directors, members, partners, joint venturers, owners, shareholders, attorneys, agents, employees, subsidiaries and affiliates.
- A.** Owner, as a material part of the consideration to be rendered by Westpoint Harbor, expressly agrees that vessels, marina and area in and around marinas can be hazardous to both property and persons, thereby posing a substantial risk of damage and injury. Such hazards include but are not limited to slips, falls, drowning, prop wash damage, winds, waves, storms, fires, vessel collisions and vessel sinking.

Owner Initials _____

As a result of the Owner’s recognition of the risks associated with being present in or around vessels, Westpoint Marina and its common areas, Owner expressly agrees to assume any and all risk for, release, waive any rights against, hold harmless, and indemnify Westpoint Harbor from and against, any and all claims, including subrogation by Owner’s insurer, against the Harbor for damages to the Vessel or its appurtenances, or for injury or death to Owner or Owner-associated Persons, that may occur on, in or about the Vessel or common areas, or arises out of, or is caused, whether directly or indirectly, by the Vessel or Owner’s, or an Owner-associated Person’s, use of any Harbor area or facility in, on, or around the Vessel, Slip, dock areas, walks, floats, gangways, boatyard, dry storage area, restrooms, other convenience facilities, parking areas, and roads in, around, and leading to Westpoint Harbor. The forgoing waiver includes any and all claims, damages or injuries that may be caused solely or partially as a result of premises liability or the negligence of the Harbor and asserted by Owner or an Owner-associated Person.

This LICENSE AGREEMENT Release extends to and includes any and all claims, liabilities, injuries, damages, and causes of action that the parties do not presently anticipate, know, or suspect to exist, but that may develop, accrue, or be discovered in the future. **RELEASOR EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES:**

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Releasor represents and warrants that Releasor has considered the possibility that claims, liabilities, injuries, damages, and causes of action that Releasor does not presently know or suspect to exist in Releasor's favor may develop, accrue, or be discovered in the future and that Releasor voluntarily assumes that risk as part of the consideration received for this Release. Releasor is familiar with the risks associated with marinas, including without implied limitation boats, boating activity, docks, launch ramps, rip-rap, tides, tidal effects and changes, watercraft, water, conductive and corrosive salt water, parking facilities and incimate weather that can affect the area. Releaser understands that the risks associated with the marina operations and facilities can lead to death, dismemberment and other serious injury to humans, animals and property, and knowingly indemnifies WESTPOINT HARBOR and its owners, officers, directors, members and agents from such claims by Owner or Owner-associated Person, but in addition, hereby releases them from all such claims and hereby knowingly waives Section 1542.

Owner Initials _____

B. Owner acknowledges that Westpoint Harbor has not made any representations or warranties with respect to the nature, suitability, merchantability, fitness or condition of the Slip or common areas, except as expressly set forth herein, and that no such warranties or representations shall be implied.

C. Owner shall, at his/her own cost and expense, maintain liability and property damage insurance (which shall provide primary rather than secondary coverage) with liability limits in amounts sufficient to ensure performance by owner of all of the exemption, waiver, hold harmless and indemnity provision contained in this Agreement, **including claims involving premises liability or the Harbor's negligence, and shall have Westpoint Harbor expressly identified in the insurance policy as an additional named insured.** Owner shall, in any event, carry liability insurance and property damage insurance, with accidental pollution coverage, with limits of at least \$500,000. The

Harbor requires Owner to provide satisfactory evidence of compliance with Owner's obligations to insure. Owner's failure to comply with or demonstrate compliance with this provision does not in any way constitute a waiver by Westpoint Harbor of this provision.

Owner Initials _____

D. Even if every other subparagraph contained in this agreement is deemed invalid, inapplicable or unenforceable, Owner nevertheless agrees that Westpoint Harbor's liability for any claim that arises out of or relates to this Agreement, including claims based on the Harbor's negligence, shall be expressly limited to no more than \$1,000 or one month' slip fee, which ever is greater.

Owner Initials _____

E. Should the Owner wish to be relieved of the effects of Paragraph 16 A-D, Owner may do so by agreeing to an increased slip rental rate of 100% of the otherwise applicable monthly slip fees to cover the additional potential liability that the Harbor may incur, and the insurance the Harbor will have to purchase in order to accept such potential liability. Owner must initial acceptance of the terms of this Paragraph 16 of the Agreement as written, otherwise the increased rental fee appearing in Paragraph 16 E will be assessed.

Owner Initials _____

17. **Utilities.** In addition to slip fees, the Harbor reserves the right to charge for utilities. Owner agrees to pay all utilities charges for electric service and other such services. If owner fails to pay such charges when due, Owner agrees to pay a \$25 late fee in addition to the charges, and understand that

failure to pay such charges constitutes a violation of this Agreement, and the Harbor may cancel the Agreement.

18. **Transfer and Ownership.** No right of owner associated with this Agreement may be assigned or transferred, and any attempt to do so shall give Westpoint Harbor the right, but not the obligation, to terminate this Agreement. If Owner sells, charters, or transfers all or any portion of the Owner's interest in or possession of the Vessel, or in any corporate or partnership or joint venture entity which owns the Vessel, all Owner's rights under this Agreement shall terminate automatically. Owner warrants that he/she will represent to third parties that Owner's rights in the Slip are not transferable, and will hold the Harbor harmless from any claims, including subrogation, resulting from any such representation.
19. **The parties hereby agree that with the exception of claims for possession of the Slip or satisfaction of liens against the Vessel (i.e. unlawful detainer, ejection and actions for sale of the Vessel to satisfy the Harbor's rights in Paragraph 14, etc) any dispute, claim or controversy arising out of or relation to this Agreement must be settled by binding arbitration pursuant to the Rules and Procedures of the American Arbitration Association ("AAA"), then in effect in San Mateo County, California.**

The parties also hereby waive their right to discovery (except as allowed under AAA rules), a trial by jury and the right of appeal that would normally apply to court proceedings and judgments. The substantive and evidentiary law applicable to all controversies decided by Arbitration shall be the Federal Maritime Law and the Federal Rules of Evidence. This Agreement shall be enforceable and judgment upon any award rendered by any AAA Arbitrator may be entered by any court having jurisdiction.

Initials _____

20. **Attorney's Fees.** If either Westpoint Harbor or Owner obtain legal counsel or bring an action against the other based on any dispute arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs.
21. **Rules and Regulations.** Owner agrees that **Westpoint Harbor Rules and Regulations** attached hereto as Exhibit A, are an integral part of this Agreement. Owner shall observe, and shall cause the Owners' family, invitees, agents, and licensees to observe the current Harbor Rules and Regulations. Should any person violate any Harbor rule or regulation, Harbor has the right to terminate this agreement immediately, remove the Vessel from the Slip at Owner's risk and expense, and retake possession of the Slip. The Harbor reserves the right to modify, amend or supplement the Harbor Rules and Regulations from time to time upon written notice to the Owner.
22. **Parking.** Owner shall comply with all vehicle parking restrictions set forth in the then current Harbor Rules and Regulations. Westpoint Harbor, its officers, agents and employees shall not be liable to the Owner or Owner's agents for any loss or damage to any motor vehicle or other personal property in or on the building, parking areas, or other Harbor premises.
23. **Entire Agreement.** This Agreement and the Rules and Regulations set forth in Exhibit A constitute the entire Agreement and understanding between the parties. Should any portion of this Agreement be ruled invalid, such invalidity shall in no way affect the validity of this Agreement or any other portion thereof.

Each signatory to this Agreement represents and warrants that he or she is fully authorized to execute this Agreement, either for himself or herself, or on behalf of his or her principle.

Westpoint Harbor

Owner or Owner's Authorized Agent

By _____

By _____

Title: _____

Title: _____

Date _____

Date _____