

# WESTPOINT HARBOR

## DRY STORAGE LICENSE AGREEMENT

### I. REGISTERED OWNER

Name \_\_\_\_\_

Home address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Home telephone \_\_\_\_\_ Cell \_\_\_\_\_

Email \_\_\_\_\_

Driver's License# \_\_\_\_\_

Emergency contact \_\_\_\_\_

### II. MORTGAGEE OR LEGAL OWNER

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

### III. DESCRIPTION OF TRAILER/VESSEL

Vessel name \_\_\_\_\_

DMV/Doc number \_\_\_\_\_

Year built \_\_\_\_\_ Value \_\_\_\_\_

Vessel type \_\_\_\_\_

Vessel make \_\_\_\_\_ Color \_\_\_\_\_

Length (LOA) \_\_\_\_\_

**IV. INSURANCE CARRIER**

Company \_\_\_\_\_

Agent \_\_\_\_\_

Policy number \_\_\_\_\_

Term \_\_\_\_\_

Coverage type \_\_\_\_\_

Limits \_\_\_\_\_ (minimum \$300,000 required)  
(Westpoint Harbor must be named as additionally named insured)

**V. TERM** Month-to-month commencing \_\_\_\_\_

**VI. FIRST FULL MONTH STORAGE FEE** \$ \_\_\_\_\_

**VII. DEPOSIT FOR KEY FOBS (\$25.00 ea)** \$ \_\_\_\_\_ **FOB #'s** \_\_\_\_\_

**VIII. ASSIGNED SPACE 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 trailer/vessel as described in Section I above (the “**Trailer/Vessel**”) and is hereinafter referred to as “**Owner**” of the trailer and/or vessel under the terms and conditions set forth below:

**Owner and Westpoint Harbor hereby agree:**

1. **Trailer/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 Trailer/Vessel.
2. **Trailer/Vessel Documentation.** Owner warrants that the Trailer/Vessel will, prior to its entry into dry storage 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. **Trailer/Vessel Condition.** Owner represents and warrants that the Trailer/Vessel will be maintained in a seaworthy and/or road operable condition and will maintain the appearance including regular cleaning, maintenance and replacement of painted and

varnished surfaces, all rigging, will keep the tires inflated, safety equipment and other appurtenances of the Trailer/Vessel. Appropriate covers will be well maintained. Westpoint Harbor shall be the sole judge of the adequacy of the Trailer/Vessel's condition, maintenance and appearance.

4. **Trailer/Vessel Inspection and Approval.** The Trailer/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. **Storage and Surrounding Area.** Harbor licenses to owner the use of the Space set forth in Section IX above (the "Space") under the terms contained herein. Owner shall use the Space only for storage of the Trailer/Vessel and for no other purpose, and the Trailer/Vessel shall be used solely for the recreational purposes of the Owner, Owners family and guests.
6. **Limitation of Renting Space to Others.** Owner warrants that while the Trailer/Vessel is stored at Westpoint Harbor, Owner will not rent or charter the Vessel or the Space for any purpose, and will not engage in any commercial activity with the Trailer/Vessel within the Harbor, nor allow any other person to use the Trailer/Vessel for such purposes.
7. **Right to Move Trailer/Vessel.** Westpoint Harbor reserves the right to reassign the Trailer/Vessel to another space in the Harbor for safety, security or other emergency reasons at any time and to relocate the Trailer/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 Trailer/Vessel resulting from such relocation.
8. **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 Space 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 Trailer/Vessel from the Space within 7 calendar days. If Owner fails to do so, Owner hereby grants Westpoint Harbor the right to remove the Trailer/Vessel, with notice to Owner within 24 hours after removal, at Owner's sole risk and expense for the purpose of relocating the Trailer/Vessel to another dry storage area. In the event of such relocation following a post-termination failure by Owner to remove the Trailer/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 Trailer/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 Trailer/Vessel remains on marina premises, Owner agrees to pay a holdover fee equal to the current daily dry storage fees as established by the Harbor.

- 9. Space Fees.** For each calendar month, Owner agrees to pay Westpoint Harbor the monthly fee then in effect based on the length of the trailer/vessel, 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 dry storage fees not paid by the tenth day of the same month shall be deemed delinquent.
- 10. Fees for Late Payment or Returned Checks.** Owner agrees to Pay Westpoint Harbor a \$25.00 fee for late payment of dry storage 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 dry storage fees are paid, and repeated late fees or returned checks may result in default or termination.
- 11. Adjustment of Fees.** Westpoint Harbor may change the dry storage 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 storage fee after its effective date, Westpoint Harbor may terminate this Agreement.
- 12. Liens.** Westpoint Harbor shall have all liens provided for in the California Harbors and Navigation Code and/or Vehicle Code and such other liens, rights and remedies, including the right to sell the Trailer/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 Trailer/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.
- 13. Liability and Indemnity. *IMPORTANT--PLEASE READ CAREFULLY.*** As used in this Paragraph 13, "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 trailers/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 and trailer/vessel collisions.

**Owner Initials** \_\_\_\_\_

As a result of the Owner's recognition of the risks associated with being present in or around 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 Trailer/Vessel or its appurtenances, or for injury or death to Owner or Owner-associated Persons, that may occur on, in or about the Trailer/Vessel or common areas, or arises out of, or is caused, whether directly or indirectly, by the Trailer/Vessel or Owner's, or an Owner-

associated Person's, use of any Harbor area or facility in, on, or around the Trailer/Vessel, 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. Releasor 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 Space 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 (\$300,000 minimum coverage required). 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' dry storage fee, whichever is greater.

**Owner Initials**\_\_\_\_\_

**E.** Should the Owner wish to be relieved of the effects of Paragraph 13 A-D, Owner may do so by agreeing to an increased storage rental rate of 100% of the otherwise applicable monthly storage 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 13 of the Agreement as written, otherwise the increased rental fee appearing in Paragraph 13 E will be assessed.

**Owner Initials**\_\_\_\_\_

**14. 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 Trailer/Vessel, or in any corporate or partnership or joint venture entity which owns the Trailer/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 Space are not transferable, and will hold the Harbor harmless from any claims, including subrogation, resulting from any such representation.

**15. The parties hereby agree that with the exception of claims for possession of the Dry Storage Space or satisfaction of liens against the Trailer/Vessel (i.e. unlawful detainer, ejection and actions for sale of the Trailer/Vessel to satisfy the Harbor's rights in Paragraph 13, 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.**

**Owner Initials**\_\_\_\_\_

16. **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.
  
17. **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 comply, and shall cause the Owners' family, invitees, agents, and licensees to comply with the then current Harbor Rules and Regulations. Should any person violate any Harbor rule or regulation, Harbor may 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.
  
18. **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.
  
19. **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** \_\_\_\_\_