

BRISBANE MARINA LICENSE AGREEMENT

THIS AGREEMENT dated _____, is made by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and _____ ("Licensee").

1. GRANT OF BERTH LICENSE

City grants to Licensee a revocable license to use Berth No. _____ at the Brisbane Marina ("the Marina"), subject to the terms and conditions of this Agreement. This license is granted based upon the information set forth in the Application for Berth submitted by Licensee to the City, a copy of which is attached hereto and incorporated herein by reference.

2. TERM – MONTH TO MONTH

The term of this License shall be month-to-month. If the commencement date is other than the first day of the month, the initial term shall be the period from the commencement date to the last day of that month.

3. MONTHLY LICENSE FEE

Licensee shall pay the Marina in advance, before the first day of each month, the Monthly License Fee in the amount of \$ _____. All payments shall be made at the Brisbane Marina, 400 Sierra Point Parkway, Brisbane, CA 94005. If the commencement date is other than the first day of the month, the Monthly License Fee shall be prorated for the initial month. The Marina may revise the Monthly License Fee effective on the first day of the month upon not less than 30 days advance written notice to Licensee.

4. ADDITIONAL CHARGES

(a) **Late Charge:** If any Monthly License Fee or other charge payable by Licensee is not paid on the day the same becomes due, the Marina shall be entitled to collect a late charge in an amount equal to 10% of the delinquent month's rent.

(b) **Returned Checks:** Licensee shall pay the Marina a \$41 penalty for every check returned by the Licensee's bank for insufficient funds or for any other reason. The dollar amount of this penalty is subject to change.

(c) **Transfer Fee:** The Marina maintains a transfer list for current licensees wishing to move into a different berth. There is a \$25 non-refundable transfer fee charged when the licensee is assigned a new berth.

(d) **Utilities:** The Marina shall make available to Licensee electrical power and water. The Marina does not warrant the availability of utility services, and shall not be responsible for any damage or injury due to the interruption or unavailability of utility services. Without limiting the foregoing, Licensee acknowledges that utility services may be discontinued, reduced or restricted during inclement weather, drought or for maintenance or repairs. Brisbane Marina does

not warrant that the utility services will be compatible with the utility service requirements for the vessel (including electrical interconnection requirements or the effect of electrolytic action).

5. DEPOSITS

(a) **Security Deposit:** Upon the execution of this Agreement, Licensee will pay to the Marina a Security Deposit equivalent to one month's Monthly License Fee. If Licensee defaults with respect to any provision of this Agreement, the Marina may use, apply or retain all or any part of the Security Deposit to cure such default or to compensate the Marina for all damages resulting from Licensee's default. Licensee acknowledges that the Security Deposit constitutes a separate and distinct fund to secure Licensee's performance hereunder and such deposit may not be utilized by Licensee for payment of the Monthly License Fee. If Licensee shall fully and faithfully perform every provision of this Agreement to be performed by Licensee, the Security Deposit or any balance thereof shall be refunded to Licensee, without interest, within 60 days after termination of this License.

(b) **Key Deposit:** In addition to the Security Deposit mentioned above, upon the execution of this Agreement Licensee will also pay to the Marina a Key Deposit of thirty dollars (\$30.00) for each gate key assigned to Licensee. Gate keys allow access to various Marina facilities and may be used by Licensee pursuant to Marina Rules and Regulations. Upon the termination of this License by either party, the gate keys shall be disabled by the Marina. The Key Deposit shall be refunded to Licensee, without interest, within 60 days after return of gate key. Failure to return the gate keys upon termination of this License and lost keys shall result in forfeiture of the Key Deposit.

6. LIENS/IMPOUNDMENT

Pursuant to Section 502 of the Harbors and Navigation Code of the State of California, the City shall have a possessory lien on the vessel identified in the attached Application for any delinquent License Fees and charges payable under this Agreement and any other charges for storage, supplies, and services furnished in connection with the vessel. The lien may be foreclosed in the manner provided by law if such fees and charges are not paid when due.

7. LAWS, RULES AND REGULATIONS

Licensee acknowledges receipt of a copy of the current Rules and Regulations of the Brisbane Marina and agrees to abide by said Rules and Regulations and all applicable ordinances of the City of Brisbane, as now existing or hereafter amended. In the event of any conflict or inconsistency between the Rules and Regulations and the provisions of this License Agreement, the provisions of this Agreement shall be controlling.

8. HARBOR MASTER AUTHORITY

Licensee acknowledges that the Harbor Master shall have full authority in the interpretation and enforcement of all Rules and Regulations pertaining to the Marina, and Licensee agrees to obey all orders of the Harbor Master issued in the performance of his/her duties. Licensee agrees that the Harbor Master may take such action and impose such charges to Licensee's vessel as may be necessary for any work or services or for any storage or safekeeping performed for prevention of damage, pollution, sinking or to prevent the vessel from becoming a menace to navigation.

9. **INSURANCE**

Licensee, at Licensee's sole expense, shall at all times during the term of this Agreement, maintain in full force and effect, with an insurance company acceptable to the Harbor Master, a policy of comprehensive general liability insurance with limits of not less than \$300,000 and a deductible of not more than \$10,000 per occurrence, naming the City of Brisbane as additionally insured. Licensee shall also maintain a Hull and Machinery policy covering at least 100% of the present, actual cash value of the vessel, with endorsements for extended perils, damage by fire, electrolysis and/or stray current, corrosion, vandalism and burglary.

10. **CHANGE OF ADDRESS/PHONE NUMBER**

All notice or other mailings to Licensee shall be sent to the address of Licensee shown on the attached Application. Licensee shall notify the Marina of any change of address or telephone number within ten days of said change.

11. **USE OF SLIP**

(a) **Limitations on Use:** Licensee may use the berth only for purposes of moorage of the vessel, and for no other purposes whatsoever unless specifically provided herein. The use of the berth designated above is for the sole moorage of the vessel designated in the attached Application. In the event Licensee desires to use the berth for another vessel, Licensee's use shall be subject to first obtaining written permission from the Marina, and complying with all the terms and conditions of this License.

(b) **Maintenance:** Licensee shall keep and maintain the berth in a clean and sanitary condition at all times, and in accordance with this License. Under no circumstance, nor at any time may Licensee change, modify or alter the berth or any portion thereof including dock box and utility hook-ups. Licensee shall not install or stow any personal property, dinghies, equipment, boxes or lockers of any type on the float. Licensee shall keep the berth and adjacent finger float neat and clean at all times, and shall not dump or discharge waste, petroleum products, garbage or other pollutants into the Marina waters. Licensee assumes all responsibility for petroleum or other products spilled or released from Licensee's vessel.

(c) **Platforms:** Platforms used for boarding with the approval of the Harbor Master shall not be over eighteen (18) inches wide, and shall be commercially produced and not of the home-made variety.

(d) **Recreational Use:** Licensee covenants that the vessel is for recreational and pleasure purposes only and shall not be used for commercial purposes except as authorized in writing by the Marina.

12. **BOAT MAINTENANCE**

(a) Vessel maintenance work shall be limited to that ordinarily required to keep the vessel seaworthy and in good condition. Minor repairs to and routine maintenance of a vessel may be made or accomplished in the assigned berthing space, provided all work is done within the confines of the vessel and not carried on in any manner whatsoever upon the floats or piers.

(b) Spray painting is strictly prohibited.

(c) Major repairs which include, but are not limited to, construction, repair, or replacement of structural members or portions of the vessel or propulsion system, or scraping or sanding of paint are prohibited when the vessel is in an assigned space.

(d) Use of welding equipment, burning torch or other open flame apparatus requires written permission from the Harbor Master.

(e) Sandblasting is strictly prohibited.

(f) All vessels are required to be maintained and in operable condition as designed by the manufacturer. The Harbor Master may require, on ten days' written notice, a demonstration of the vessel's operability. An inoperable vessel may be expelled from the Marina and the license terminated.

(g) Always follow Brisbane Marina's Best Management Practices which are available free at the Marina office.

13. **LIVEBOARDS**

THE MARINA DOES NOT ALLOW LIVEBOARDS. The maximum allowable number of nights that may be spent on any vessel is limited to three nights per each seven day period. Proof of residency may be demanded by the Harbor Master at any time.

14. **PETS/LEASH LAW**

Except when on board a Licensee's vessel, animals shall be on a leash no longer than six feet in length. No animals shall be tethered or tied to or upon public property. All animal waste must be cleaned up immediately and disposed of properly.

15. **ASSIGNMENT AND SUBLETTING**

This License and Licensee's rights hereunder are not transferable nor assignable. Licensee may not sublet or assign the right to use the slip.

16. **TRANSFER OF OWNERSHIP OF VESSEL (REASSIGNMENT OF BERTH)**

If ownership of the vessel is transferred, Licensee cannot transfer the berth to the transferee unless a request for reassignment of the berth is made in writing to the Harbor Master. The request shall be accompanied by a new application completed and signed by the transferee. If the application is approved, the transferee will be required to sign a new License Agreement.

17. **INDEMNIFICATION**

Licensee agrees to indemnify, defend, and hold harmless the City of Brisbane, its officers, officials, agents, employees and volunteers against and from any and all costs, expenses (including attorney's fees), liability, claims, suits or causes of action for death, injury or damage to any property, occurring or in any manner arising out of the use of the Marina by Licensee, or the use or operation of the Licensee's vessel therein.

18. RELEASE OF LIABILITY

Licensee agrees that the City of Brisbane, and its officers, officials, agents, employees and volunteers shall not be liable or responsible for injury, loss or damage to the vessel or any other property of Licensee while in the Marina and Licensee hereby releases the City of Brisbane and its officers, officials, agents, employees and volunteers from any and all claims, demands, and causes of action therefore for such injury, loss or damage that exist or may arise in the future, unless caused by the sole negligence or willful misconduct by the City or any of its officers, officials, agents, employees or volunteers. In addition, Licensee hereby releases the City of Brisbane from any and all claims, demands, and causes of action for damage to any vessel or its contents from soot, smoke, oil, wake, storm or any foreign substance existing upon, in or over waters in the approach channel, landing and fairways of the berth at the Marina.

19. NO WARRANTIES

This Agreement is for the use of space only; such space to be used at the sole risk of Licensee and the City shall not be responsible or liable whatsoever for the care or protection of vessels (including gear, equipment and contents) or any loss or damage of whatever kind or nature to vessels, their gear, contents or equipment howsoever occasioned. There is no warranty of any kind as to the condition of the floats, walks, gangways, ramps mooring, gear or other improvements, nor shall the City be responsible therefore or for injuries to persons or property occurring thereon or in any part of the Marina for any other reason whether herein specifically stated or not.

20. TERMINATION OF LICENSE

(a) **Right to Terminate:** This License may be terminated by either the Marina or Licensee at any time, and for any reason whatsoever, by giving at least thirty (30) days written notice of termination to the other party. Licensee shall continue to be responsible for all Monthly License Fees and other applicable charges to the effective date of termination. Notwithstanding the foregoing, in the event of any breach of this Agreement by Licensee, or any violation by Licensee of the City's Municipal Code, or any state law, the license granted by this Agreement may be revoked, effective immediately.

(b) **Removal of Vessel:** Upon termination or revocation of this License, Licensee shall remove the boat from the assigned berth and, shall remove all other personal property belonging to Licensee or in Licensee's care, custody or control, and shall surrender the berth, assigned dock box and utility hook ups to the Marina in as good order and condition as existed on the Effective Date of this License, other than normal wear and tear resulting from ordinary use, together with all keys and parking permits to the Marina. If the boat remains in the berth after termination of this License, it shall be considered abandoned, and shall be subject, at the Marina's option, to the then applicable provisions of the California Harbors and Navigation Code pertaining to disposition of abandoned vessels. License Fees shall continue to accrue on a prorated basis until the vacation of the berth.

21. **ATTORNEY'S FEES**

In the event legal action between City and Licensee shall become necessary in order to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.

22. **WAIVER**

No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by City of any performance by Licensee after the time the same shall have become due shall not constitute a waiver by City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by City in writing. The receipt and acceptance by City of delinquent Monthly License Fees shall constitute only a waiver of timely payment for the particular payment involved.

23. **ENTIRE AGREEMENT.**

This Agreement together with the Application attached hereto constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether written or oral. This Agreement can only be modified by a written amendment executed by both parties.

24. **SEVERABILITY.**

If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, City and Licensee have executed this Lease as of the day and year first above written.

THE CITY OF BRISBANE,
a municipal corporation

LICENSEE:

By: _____
Harbor Master
Date: _____

Date: _____