

# Section 9.2.6(i)

## DANA POINT HARBOR DRY-STORAGE LICENSE AGREEMENT

THIS DRY STORAGE LICENSE AGREEMENT (the “License” or “Agreement”) is effective as of Effective Date as that term is defined in Attachment A attached to this Agreement and incorporated herein between Dana Point Harbor Partners Drystack, LLC (the “Company”), and the **Vessel Owner** (as such term is defined below in Paragraph 1 of this Agreement) and is made and entered into with reference to the following:

- A. The Company’s affiliate controls the Dana Point Harbor located in Dana Point, California (the “Harbor”). Located within the Harbor is a public dry-storage area known as the Dana Point Harbor Dry-Storage Facility (the “Dry-Storage Facility”).
- B. Vessel Owner desires to License from the Company a Dry-Storage Space located in the Dry-Storage Facility for the Vessel (as such term is defined in Paragraph 1 of this Agreement).

**NOW, THEREFORE, COMPANY AND VESSEL OWNER AGREE TO AND ACCEPT THE FOLLOWING TERMS AND CONDITIONS WITH RESPECT TO VESSEL OWNER’S LICENSE, USE AND ENJOYMENT OF THE DRY-STORAGE FACILITY:**

### 1. Definitions for Certain Terms Used in this Agreement.

- a. **“Dry-Storage Fee” or “Dry-Storage Fees”** shall mean the sum for the use of the Dry-Storage Space of the Vessel by the Vessel Owner in the Dry-Storage Facility as identified in Attachment A. Said Dry-Storage Fee is subject to adjustment as provided in this Agreement. Dry-Storage Fees are payable in advance at the time of the execution of the Agreement and on the FIRST (1st) DAY of each calendar month thereafter. In addition to the key and security deposit described herein, Vessel Owner shall upon the execution of the Agreement and assignment of a Dry-Storage Space, tender the prorated Dry-Storage Space Fees due for the remaining portion of the calendar month the Agreement is effective. This payment is non-refundable.
- b. **“Dry-Storage Facility”** shall mean the Dana Point Harbor Dry-Storage Facility, a boat storage facility used for boater access purposes, composed of multi-level, steel dry-storage spaces, dry-storage boat-trailer spots, marina bulls, boat launch area, dock improvements (headwalks, pilings, fingers, landings, gangways, floatation, gates, utility supply connections, fire suppression stations, pump-outs, etc.), Slips, navigation channels, an amenity and office building (restrooms, lounge, etc.), walkways and parking areas.
- c. **“Dry-Storage Space”** shall mean placement for vessels stored and licensed by Vessel Owner on out-of-water racks or on trailers as assigned and identified in Attachment A hereto.
- d. **“Harbor”** shall mean that certain public recreational and commercial craft harbor commonly known as Dana Point Harbor, Dana Point, California.
- e. **“Manager”** shall mean the \_\_\_\_\_, the Company’s agent(s) for managing the Dry-Storage Facility.
- f. **“Rules and Regulations”** shall mean those certain rules and regulations for the Dry-Storage Facility, the current version of which is attached to this Agreement as Attachment “B” and incorporated herein. Said Rules and Regulations are subject to further revision and modification from time to time as provided for in Paragraph 11 of this Agreement.
- g. **“Security Deposit”** means the sum identified in Attachment A and shall be used by Company and subject to adjustment as provided for in Paragraph 7 of this Agreement.
- h. **“Slip”** shall mean that certain water space located between dock fingers, end-tie, side-tie, etc. and all points of tie-down on the docks designated by the Manager for securing the Vessel after launch from its Dry-Storage Space and prior to return to its Dry-Storage Space.
- i. **“Vessel Owner”** shall mean that Person(s) identified in Attachment A. Vessel Owner shall be (1) the individual or individuals who are named on the wait list maintained by the Manager for the Dry-Storage Facility (if the wait list was used in connection with this Agreement) and (2) the registered, legal owner(s) of the Vessel. **IF THE VESSEL OWNER IS AN ENTITY, THEN THE SINGLE AUTHORIZED PERSON/SIGNATORY IDENTIFIED IN EXHIBIT A SHALL AT ALL TIMES BE AT LEAST A TWENTY PERCENT (20%) LEGAL EQUITY OWNER OF THE VESSEL, PROVIDED THAT IN NO EVENT SHALL ANY OTHER CO-EQUITY OWNER OF THE VESSEL OWNER HOLD A LEGAL INTEREST IN THE VESSEL THAT IS GREATER THAN SUCH AUTHORIZED SIGNATORY/PERSON’S. FOR PURPOSES OF THIS AGREEMENT, EACH EQUITY OWNER SHALL BEAR ALL THE RESPONSIBILITIES OF A VESSEL OWNER.**

# Option Agreement Section 9.2.6(ii) Deliverable

j. “Vessel” shall mean the vessel identified on Attachment A.

## 2. **Services Provided.**

- a. License of Space; Reassignment of Space. The Company hereby licenses a Dry-Storage Space to Vessel Owner and Vessel Owner accepts and agrees to the License of a Dry-Storage Space. Company may, without notice, relocate Vessel temporarily or permanently to another suitable Dry-Storage Space within the Dry-Storage Facility at any time in its sole and absolute discretion. The Company reserves the sole right to inspect the Vessel and determine whether or not the Vessel is suitable for the Dry-Storage Space. Vessel Owner hereby grants to Company permission to board the Vessel for the purpose of moving the Vessel to another Dry-Storage Space. Vessel Owner hereby acknowledges that he/she has inspected (or had an opportunity to inspect) the Dry-Storage Space, its surrounding environs and those portions of the Dry-Storage Facility associated with the Dry-Storage Space, including without limitation, the docks, floats, water level, walkways and gangways. Vessel Owner understands the Company does not warrant the condition of the Dry-Storage Space, Dry-Storage Facility or surrounding environs, and that users of the Dry-Storage Space and Dry-Storage Facility do so at their own sole risk. Vessel Owner agrees to accept the Dry-Storage Space in its AS-IS condition.
- b. Optional Services. Pursuant to this Agreement, Company may also provide other optional services, including but not limited to launching and valet services to assist in the placement of the Vessel in the Harbor for Owner (“Optional Services”). These Optional Services shall be provided pursuant to the fee schedule as provided by Company and attached hereto in Attachment A, and shall be governed by all of the terms of this Agreement, including but not limited to Section 17, hereafter

3. **Use of Dry-Storage Facility.** The Dry-Storage Facility is for Vessel Owner's exclusive use in connection with the Vessel. Vessel Owner further agrees that the Vessel and the Dry-Storage Facility shall be used for recreational purposes only and not in any commercial undertaking or purposes, including but not limited to rental, chartering or brokerage operations, without the prior written approval of the Company. Vessel Owner shall not commit or permit any waste or nuisance to be committed in the Dry-Storage Facility, on the Vessel or other place on or in the Dry-Storage Facility or the Harbor, and neither he/she nor his/her guests, agents or invitees may commit any act of waste or nuisance, indecorous conduct or any other act which might disturb the quiet and peaceful use of the Dry-Storage Facility or the Harbor by others. Vessel Owner agrees no improvements shall be erected, placed upon, operated, nor maintained within or from the Dry-Storage Space or Dry-Storage Facility, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Agreement, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency, having jurisdiction. This Agreement and the rights and privileges granted Vessel Owner in and to the Dry-Storage Facility are subject to all covenants, conditions, restrictions, and exceptions of record or apparent from a physical inspection of the Dry-Storage Space and Dry-Storage Facility and including those which are set out in the Tidelands Grant by the State of California to the County of Orange (Chapter 321, Statutes of 1961, State of California). Nothing contained in this Agreement or in any document related hereto shall be construed to imply the conveyance to Vessel Owner of rights in the Dry-Storage Space and Dry-Storage Facility which exceed those owned by Company.

4. **Term.** This Agreement shall create a license commencing on the Effective Date and shall continue from the first day of the month immediately following on the basis outlined in Exhibit A until terminated by either party by timely, prior written notice or until default by Vessel Owner. Any notice to terminate this Agreement by either party shall require not less than thirty (30) days prior written notice, unless the notice to terminate is given due to a default by Vessel Owner. Vessel Owner's contractual right to occupy his/her assigned Slip is not automatically renewable and can only be renewed if Vessel Owner abides by each and all of his/her contractual duties detailed in this Agreement, including the duty to make timely monthly payment of fees, including, but not limited to, the Dry-Storage Fee.

## 5. **Dry-Storage Fees.**

- a. The Dry-Storage Fee structure for this Agreement is based upon the greater of the length of the vessel overall or the size of the rack assigned. The Vessel is subject to measurement by the Company and the Dry-Storage Fee will be determined by computations using the then-current Dry-Storage Fee schedule in effect. If at any time it is determined the length of the Vessel is longer than allowed in the rack, or as initially determined by Company, whether caused by previous inaccurate measurement or by modification of the Vessel, additional Dry-Storage Fees may be assessed against the Vessel and shall be paid by Vessel Owner. In addition, should the Company, in its sole and absolute discretion, determine at any time that the overall Vessel length is a safety or navigational hazard, this Agreement, at Company's option, shall be subject to immediate termination.
- b. Owner understands that the Company may increase the Dry-Storage Fee and/or other fees at any time upon thirty (30) days notice to Vessel Owner. Notice of fee increases shall be deemed effective thirty (30) calendar days after posting notice on the bulletin board located at the office of the Company or at the office of the Company's onsite Manager. The Company

# Option Agreement Section 9.2.6(ii) Deliverable

may elect, alternatively or additionally, to provide notice of any fee increase by way of written notification tendered through the U.S. mails or by e-mail as provided by Vessel Owner. Adjustments in Dry-Storage Fees shall become effective on the first day of the calendar month next following said notice. Upon notification of an increase in any fee including the Dry-Storage Fee, Vessel Owner may elect to provide 30 days written notice of termination of this Agreement. In the event that Vessel Owner fails to pay any new Dry-Storage Fee after its effective date, the parties agree that such failure shall constitute a material breach and that the Company may immediately terminate this Agreement as of the effective date of the Dry-Storage Fee increase. If the Company elects to increase fees as herein provided, Vessel Owner may be required to either execute a new Agreement or (at the Company's option) execute an amendment or other writing evidencing the new rate and any new or revised terms.

## 6. Time and Place for Payment of Monthly Fees.

- a. Vessel Owner shall tender all payments hereunder to Company via ACH or at the Manager's office or via mail addressed to \_\_\_\_\_, Dana Point, CA 92629, or such other place as may be designated from time to time. **PAYMENTS OF ALL FEES AND CHARGES ARE DUE ON THE FIRST (1ST) DAY OF EACH MONTH WITH OR WITHOUT A BILLING STATEMENT AND ALL SLIP FEES NOT PAID BY THE FIFTH (5TH) DAY OF THE MONTH SHALL BE DELINQUENT AND INCUR A 10% PENALTY.** Any failure to make payments when due under this Agreement shall constitute a material breach of this Agreement. If Vessel Owner is in breach of this Agreement, the Company may immediately terminate this Agreement and pursue all remedies available in admiralty, at law or in equity.
- b. There will be a \$25.00 for the first and \$35.00 for the second administrative fee charged for any check or automatic clearing house (ACH) charge returned as unpayable, for any reason. After tender of a returned check, Company may require Vessel Owner to thereafter tender payment by ACH, bank check or money order. A minimum \$100.00 administrative fee will be charged to the account of the Vessel Owner and his/her Vessel on any occasion when the Company prepares legal documents to recover the amounts due and/or possession of the Dry-Storage Space.

7. **Security Deposits.** Upon execution of this Agreement, Vessel Owner shall pay to the Company the Security Deposit provided in Attachment A of this Agreement. Upon termination of this Agreement, but only after and upon the condition that Vessel Owner has vacated the Dry-Storage Space and surrounding Dry-Storage Facility areas in an undamaged condition (save ordinary wear and tear) and performed all of Vessel Owner's obligations under the Agreement (including payment of all fees, utility charges and other charges) and returned all access keys and/or cards, the Company shall refund to Vessel Owner the total Security Deposit received by Company, less any amount necessary to pay for restoring the Dry-Storage Space to a leasable condition, or any other fees or charges owed by Vessel Owner. Vessel Owner may not use the Security Deposit as, nor deduct it from, the Dry-Storage Fee for any month. However, the Company may elect at any time, at its option, to apply all or any portion of the Security Deposit to the Dry-Storage Fee or other account arrearages, or for purposes of effecting repairs necessary due to damage to the Company's property caused by Vessel Owner (or his/her guest/invitee), in which event the Vessel Owner shall immediately become obligated to tender the sum necessary to replace any of the Security Deposit funds applied to such arrearages, or used for such repairs and/or cleaning. Should Company increase the monthly Dry-Storage Fee or Vessel Owner transfers to a larger rack space within the Dry-Storage Facility, there will be an increase in the amount of the Security Deposit to correspond with the new monthly Dry-Storage Fee. Vessel Owner acknowledges and agrees that no interest shall be payable by the Company on any Security Deposit held by the Company, and that Company shall not be required to keep the Security Deposit separate from its general funds.

8. **Key, Card Fees & Access.** Dry-Storage Facility entrances and/or other areas of the Dry-Storage Facility are limited access and may be entered by use of a card, key or other electronic means. Vessel Owner shall upon execution of this Agreement pay a fee per access keys issued, a fee per parking lot/bathrooms card and/or may be required to pay a fee for membership/inclusion in a security system app. Means of access shall be strictly controlled by Company and the rules, regulations and manner by which access is granted may change from time to time at the sole and absolute discretion of Company. Any replacements or changes to keys, cards or other means of access shall require additional administrative fees. All cards/keys/codes/apps shall be deactivated at the termination of this Agreement. Company reserves the right to limit the number of keys/cards/codes/apps issued and/or revise fees at any time.

9. **Default Under this Agreement By Vessel Owner.** Vessel Owner shall be in default under this Agreement in the event:

- a. Vessel Owner fails to make any payment of Dry-Storage Fees when due;
- b. Vessel Owner attempts to make or suffers to be made any transfer or assignment of this Agreement or the Dry-Storage Space;
- c. Vessel Owner attempts to make or suffers to be made any sublicense of the Dry-Storage Space;
- d. Vessel Owner fails to provide the insurance in the form and in the amounts required under Paragraph 18 hereof within five (5) days after written notice from Company;
- e. Vessel Owner vacates the Dry-Storage Space for longer than thirty (30) days other than as provided in Section 22 below or Vessel Owner abandons the Dry-Storage Space; or

# Option Agreement Section 9.2.6(ii) Deliverable

- f. Vessel Owner fails to observe, keep, perform or, if curable, then cure within fifteen (15) days after written notice from Company, any of the other terms, covenants, agreements or conditions contained in this Agreement, including, but not limited to, the Rules and Regulations (inclusive of applicable city, county, state and national laws and regulations).
10. **Company's Remedies.** Upon the occurrence of a default by Vessel Owner under this Agreement, in addition to and without waiving any other rights or remedies available to Company at law or in equity or otherwise provided in this Agreement, Company may, at its option, cumulatively or in the alternative, exercise all or any of the following remedies:
- a. **Maritime Lien.** Company may pursue all of its rights or remedies under state or federal law to attach the Vessel and sell the Vessel at auction to satisfy a maritime lien arising from the Vessel Owner's failure to pay for the wharfage services provided to Vessel Owner under this Agreement. Vessel Owner agrees that in the event of a default under this Agreement the Company shall become entitled, without providing advance notice, to chain the Vessel to the Dry-Storage Facility improvements where she lies or move the Vessel to any other location in the water or on land and chain the Vessel at her new location, charging impound fees at the greater of \$50 per day and the current market-rate for the storage or wharfage of the Vessel. Vessel Owner specifically agrees that if the Company elects to move or chain the Vessel as herein provided, Vessel Owner shall indemnify, defend and hold the Indemnified Parties (as defined in Section 17) harmless from and against all liability arising from or in any way connected with the chaining or moving of the Vessel. Vessel Owner shall in such event remain liable for the full amount of the Dry-Storage Fees as they become due, notwithstanding that the Vessel has been moved and/or chained.
  - b. **Other Lien Rights and Remedies.** Company may pursue, at its sole election, all other measures available to enforce its remedies available in admiralty, at law and/or equity, including vessel arrest or attachment, sale of the Vessel pursuant to federal maritime law, the California Boaters Lien Law, and any other available remedy, without prior notice to Vessel Owner, and may exercise other rights herein detailed. By execution of this Agreement, Vessel Owner acknowledges that pursuant to Harbors and Navigation Code Section 501 and by the terms of this Agreement, the Company shall have a lien on the Vessel for money which may become due under this Agreement. Vessel Owner agrees the Company has the right to take possession and control of and remove and store the Vessel, at Vessel Owner's sole risk and expense, for the purpose of perfecting and executing upon Company's statutory lien rights in the Vessel. Upon Company's commencement of actions to obtain a lien against the Vessel, Vessel Owner shall be charged a \$100 lien process fee.
  - c. **Right to Terminate.** The Company's obligation to provide wharfage under the Agreement may be unilaterally terminated by the Company in the event of Vessel Owner's default under this Agreement at which time Company may pursue any or all of its legal, equitable and/or admiralty remedies.
11. **Rules and Regulations.** Vessel Owner agrees that Company's Dry-Storage Facility/Slip Rules and Regulations attached hereto and incorporated as Attachment "B", as amended from time to time (the current version of the Rules and Regulations shall be posted at the Manager's office), are an integral part of this Agreement. Vessel Owner understands and agrees the Rules and Regulations may be modified by posting revised Rules and Regulations on the bulletin board located outside the Manager's office; in such event, the revised/modified Rules and Regulations shall become effective seven (7) calendar days after they are so posted. Vessel Owner understands and agrees that Company may provide notice of modifications to Rules and Regulations, alternatively, by way of written notification tendered by U.S. mail or by electronic means, in which event the modification(s) shall become effective the seventh (7th) calendar day after such notification is deposited into the U.S. mails or sent electronically. Vessel Owner shall comply, and shall cause Vessel Owner's family, agents, Vessel Owners and invitees to comply with the then current Company Rules and Regulations.
12. **Solicitors.** Vessel Owner shall not permit solicitors, brokers, or salesmen to access the Dry-Storage Facility except as otherwise approved in writing by Manager. **Vessel Owner shall not post any "For Sale" sign(s) or notices within the Dry-Storage Facility.**
13. **Non-Transferability of Agreement.**
- a. **THE AGREEMENT AND VESSEL OWNER'S RIGHTS HEREUNDER CANNOT BE ASSIGNED OR TRANSFERRED AND ANY ATTEMPT TO DO SO SHALL IMMEDIATELY VOID THIS AGREEMENT. In addition, the Agreement and Vessel Owner's rights hereunder cannot be sub-licensed by Vessel Owner. In the event Vessel Owner sells or parts with possession of the Vessel, the new owner and/or possessor of the Vessel shall have no right to the Dry-Storage Space previously occupied by the Vessel. Vessel Owner understands that he/she is not allowed under the terms of this Agreement to bring any Vessel other than the one described in Attachment A hereto to the Dry-Storage Facility. The Agreement is for the benefit of the Vessel Owner and Vessel together. A new contract must be negotiated if either the Vessel Owner or the Vessel mentioned herein is changed. Vessel Owner shall not represent that the Dry-Storage Space is transferable with the Vessel and shall indemnify, defend and hold Indemnified Parties harmless for any damages resulting from such representation.**



# Option Agreement Section 9.2.6(ii) Deliverable

14. **Dry-Storage Facility Security.** The Company provides no security protection and assumes no responsibility whatever for the personal safety of Vessel Owner or his/her guests, or for the safety of any vessels or their appurtenances. If the Company elects to do so, it is understood such security is solely for the protection of the Company's property.
15. **Release From Soot, Smoke, Oil or Wake Damages.** Vessel Owner does hereby release the Indemnified Parties from any and all claims, damages or liabilities arising out of the injury or damage to Vessel Owner, his/her guests or employees, or his/her Vessel or her contents, from soot, smoke, oil, wake or any other substance existing upon, in or over waters in the Dry-Storage Facility or the Harbor or from the water depth of the Dry-Storage Facility or the Harbor.
16. **No Interference with Company Lien Rights.** Both possessory and non-possessory liens arise in favor of the Company by operation of both state and federal law respectively. Vessel Owner represents and warrants that there is no existing sales agreement or other agreement, such as a finance agreement, which would limit the Company's ability to impose or enforce such liens, and that Vessel Owner is fully authorized to enter into contractual agreements such as the instant one which may give rise to a lien upon the Vessel under the Federal Maritime Lien Act or pursuant to state law, such as the California "Boaters Lien Law". If Vessel Owner is without such authority or is unsure as to his/her authority then the following must be supplied: the name, address and telephone number of the individual or agency, if any, whom Vessel Owner believes should be contacted and informed of the possibility of imposition of liens encumbering the Vessel.
17. **Liability and Indemnity.**
- a. During the term of this Agreement or while the Vessel remains in the Dry-Storage Facility or in the possession of the Company or its assignee, all risk of loss of or damage to the Vessel shall be upon Vessel Owner. Subject to subsection (b) below, and in addition to all other liability limitation and indemnity provisions herein contained, Vessel Owner, as a material part of the consideration to be rendered Company under this Agreement, hereby waives all claims, causes of action, liabilities, losses, and damages, whether direct or consequential (collectively "Claims") against Company, County of Orange and their officers, agents, affiliates, subsidiaries, managers, directors, (including Manager) and employees (collectively "Indemnified Parties") for (i) Claims arising from interruption of or interference with service, (ii) all Claims for damage to the Vessel, her gear and her equipment, vehicles, or any goods, wares, or equipment in, upon, or about the Vessel or the Dry-Storage Facility or the Harbor, and (iii) Claims for injuries or death to persons including, but not limited to, Vessel Owner, his/her family, agents, employees, invitees, or others occurring on, in or about the Vessel, the Dry-Storage Facility or the Harbor including landside areas within the Harbor, from any cause whatsoever arising at any time including, but not limited to, theft, fire, acts of God, riots, strikes, collision, water levels, insufficiencies involving the electrical and other utility systems, chaffing, sinking, dock maintenance or faulty repair occasioned by ordinary negligence or other causes. Vessel Owner agrees to hold harmless, indemnify, protect and defend the Indemnified Parties from and against all such Claims for loss, damage, injury or death.
  - b. The liability of the Indemnified Parties may be established only by way of an affirmative showing of gross negligence or willful misconduct. Their liability, if so established by way of such showing, shall be strictly limited to direct costs, and in no event shall Indemnified Parties be liable for any consequential damages whatsoever.
18. **Insurance.**
- a. Vessel Owner agrees to purchase all required insurance at Vessel Owner's expense and to provide the Company certificates of insurance, including all endorsements required herein, necessary to satisfy the Company that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates and endorsements current and in-force during the entire term of this Agreement. This Agreement shall automatically terminate at the same time Vessel Owner's insurance coverage is terminated. If within ten (10) business days after termination under this Clause Vessel Owner obtains and provides evidence of the required insurance coverage acceptable to Company, this Agreement may be reinstated at the sole and absolute discretion of Company. Vessel Owner shall pay Company \$100 for processing the reinstatement of this Agreement.
  - b. Vessel Owner agrees that Vessel Owner shall not operate on the Dry-Storage Facility area at any time if the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Company. In no cases shall assurances by Vessel Owner, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Company will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Vessel Owner also agrees that upon cancellation, termination, or expiration of Vessel Owner's insurance, Company may take whatever steps are necessary to interrupt any operation from or on the Agreement Area until such time as the Company reinstates the Agreement.

# Option Agreement Section 9.2.6(ii) Deliverable

- c. If Vessel Owner fails to provide Company with a valid certificate of insurance and endorsements, or binder at any time during the term of the Agreement, Company and Vessel Owner agree that this shall constitute a material breach of the Agreement. Whether or not a notice of default has or has not been sent to Vessel Owner, said material breach shall permit Company to take whatever steps necessary to interrupt any operation from or on the Agreement Area, and to prevent any persons, including, but not limited to, members of the general public, and Vessel Owner's employees and agents, from entering the Agreement Area until such time as Company is provided with adequate evidence of insurance required herein. Vessel Owner further agrees to hold Company harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the Company's action.
- d. All insurance policies required by this Agreement shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by Manager. Vessel Owner shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the certificate of insurance. If the Vessel Owner fails to maintain insurance acceptable to the Company for the full term of this Agreement, the Company may terminate this Agreement.
- e. The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or approved to issue insurance on a non-admitted basis. Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category). The policy or policies of insurance maintained by the Vessel Owner shall provide the minimum limits and coverage as set forth below:  
  
**Coverages - Protection and Indemnity Insurance (P & I)**  
  
**Minimum Limits -** \$1,000,000 for any boat over 32 feet in length or \$500,000 for any boat under 32 feet in length
- f. The Company, Manager and County of Orange shall be added as an additional insured on all liability insurance policies required by this Agreement. An additional insured endorsement evidencing that the Company is an additional insured shall accompany the certificate of insurance.
- g. All insurance policies required by this Agreement shall be primary insurance, and any insurance maintained by the Company shall be excess and non-contributing with insurance provided by these policies.
- h. All insurance policies required by this Agreement shall give the Company thirty (30) days' notice in the event of cancellation. This shall be evidenced by an endorsement separate from the certificate of insurance.
- i. All insurance policies and coverages required by this Agreement or maintained by the Vessel Owner shall waive all rights of subrogation against the Company, Manager and County of Orange.
- j. The Vessel Owner is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Vessel Owner will comply with such provisions and shall furnish the Company satisfactory evidence that the Vessel Owner has secured, for the period of this Agreement, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence for any Vessel Owner employees subject to the act. Further, any employed crew of the vessel will be insured for Jones Act claims with minimum limits of \$5,000,000.
- k. Insurance certificates should be forwarded to the Company address provided in the Clause (NOTICES) below or to an address provided by Company. Vessel Owner has ten (10) business days to provide adequate evidence of insurance or this Agreement may be cancelled. Company expressly retains the right to require Vessel Owner to increase or decrease insurance of any of the above insurance types or require additional types of insurance as circumstances warrant throughout the term of this Agreement. Any additional coverage, increase or decrease in insurance will be as deemed by Company in its sole and absolute discretion to adequately protect Company.
- l. Company shall notify Vessel Owner in writing of changes in the insurance requirements. If Vessel Owner does not deposit copies of acceptable certificates of insurance and endorsements with Company incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Vessel Owner, and Company shall be entitled to all legal remedies.
- m. The procuring of such required policy or policies of insurance shall not be construed to limit Vessel Owner's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

# Option Agreement Section 9.2.6(ii) Deliverable

19. **Physical Inspection.** Vessel Owner agrees at the commencement of this Agreement, and from time to time thereafter as the Company or its Manager may in its sole and absolute discretion determine is necessary for purposes of health and/or safety, the Vessel and space shall be subjected to physical inspection and approval by the Company; failure to permit such inspections will be regarded as a material breach of the Agreement.

20. **Documentation/Registration and Condition of Vessel.** A current copy of the California Vessel Registration (D.M.V.) or United States Coast Guard Documentation must be on file in the Manager's office, together with a current photograph of the Vessel. **Vessel registration/documentation shall list the Vessel Owner(s) and all Company approved partners or equity owners.** Vessel Owner shall tender to the Company on a yearly basis, with or without prior demand therefore, a true and correct copy of the Vessel's then current state registration or federal documentation. Vessel Owner warrants that the Vessel is properly documented or registered pursuant to the laws of the United States and/or the State of California and that the Vessel is in compliance with all applicable U.S. Coast Guard safety regulations. Vessel Owner shall maintain the Vessel in a Seaworthy manner (as that term is defined in Exhibit B). Company shall be the sole judge of the adequacy of the Vessel's Seaworthiness.

21. **No Living Aboard or Over-night Occupancy.** **Vessel Owner understands and agrees that living aboard the Vessel by the Vessel Owner or any other person is strictly prohibited.** Further, over-night occupancy of the Vessel in the Dry-Storage Facility is also strictly prohibited. Slip space is strictly to be used for the staging, launch and re-spacing of the Vessel. In the event Vessel Owner violates these restrictions, then at Company's option this Agreement may terminate automatically, without notice, the Vessel will be regarded as a trespasser with current wharfage rates imposed, and the Vessel Owner shall immediately remove the Vessel from the Dry-Storage Facility.

22. **Space Vacancy/Extended Absence.** Vessel Owner agrees that Company may use the Dry-Storage Space when temporarily not in use by Vessel Owner. Vessel Owner shall notify the Company in writing if the Vessel will not be in the assigned space at the Dry-Storage Facility for any period exceeding thirty consecutive (30) days. In such event, Vessel Owner agrees Company may assign another vessel to the Dry-Storage Space during the period of the absence of Vessel Owner's Vessel and if Company collects Dry-Storage Fees during such absence, then Company shall share the proceeds from the temporary berthing on a 50/50 basis with Vessel Owner. If another vessel is so assigned to the Dry-Storage Space during such period of temporary absence, Vessel Owner understands and agrees Vessel Owner will remain responsible for payment of the current monthly Dry-Storage Fees regardless of any additional fees collected by the Company for said Dry-Storage Space. To assure the Dry-Storage Space is available upon a Vessel's return, in the event the Vessel is absent from the Dry-Storage Facility for thirty (30) or more consecutive days, Vessel Owner is required to provide Company at least 72 hours advance notice of the date and time the Vessel will return to the Dry-Storage Facility.

23. **Electrical Extensions/Dock Power Connections.** The use of electrical extensions is at the sole risk of Vessel Owner or other user and the Company shall not be liable for damages caused by or as a result of the use of any electrical appliance.

24. **Overboard Sewage Discharges.** Overboard discharge of sewage, heads or holding tanks is forbidden by law and by Company's rules; violation of these terms is grounds for immediate eviction and termination of the Company's obligations to Vessel Owner under the Agreement. If the Vessel is equipped with a head or other permanent installation designed to hold human waste, the Vessel must be equipped with a marine holding tank. Vessel Owner agrees to permit inspection of such heads/installations upon demand by Company and agrees to the placement (at Company's discretion) of a dye tablet in the head's holding tank. Y-Valve must be placed in a closed and locked position within the Harbor.

25. **Reporting of Damage.** Any damage to Company property, the Dry-Storage Facility or another's property located at the Dry-Storage Facility or the Harbor caused by Vessel Owner's Vessel or Vessel Owner's guests/invitees must be reported by Vessel Owner to the Company immediately.

26. **Securing Vessel.** At all times during which the Vessel is berthed within the Dry-Storage Facility, Vessel Owner shall cause it to be safely and properly secured in a manner acceptable to the Company. This is the Vessel Owner's duty alone except in the case of staging before or after launch by the Company. The Company assumes no responsibility for the safety of the Vessel and will not be liable for fire, theft or any damage to said Vessel, its equipment, or any property in or on said Vessel by reason of Company's decision either to secure said Vessel or to not secure said Vessel.

27. **Damage to Company Property by Vessel Owner, Etc.** In the event Company property is damaged or destroyed by any negligent conduct by Vessel Owner or his/her guests or invitees, or the negligent failure of Vessel Owner to maintain or operate his/her Vessel, Vessel Owner shall immediately, upon demand by the Company and presentation to Vessel Owner of a statement of damages, tender full payment to the Company to cover the cost of such damage(s) or loss(es).

28. **Effect of Damage or Destruction.** In the event of damage to or destruction of all or a portion of the Dry-Storage Facility by fire, flood, earthquake, or any other cause or causes, the Company shall have the option to: (a) treat this Agreement as continuing and repair or restore the Dry-Storage Facility to its condition before such damage or destruction within thirty (30) days of the

# Option Agreement Section 9.2.6(ii) Deliverable

occurrence of the same or, if insured, within thirty (30) days after the Company receives permission from the insurer to proceed with repair or restoration; or (b) terminate this Agreement and all further obligations hereunder of either party by written notice to Vessel Owner. After the occurrence of such damage or destruction, the Vessel Owner's obligation to pay fees hereunder shall be abated in an amount which the Company, in its sole and absolute discretion, shall determine to be proportionate to the area of the Dry-Storage Facility tendered unfit for use by Vessel Owner during the period of repair or restoration.

29. **Apportionment of Costs Incurred in Providing Storm Protection.** Vessel Owner is solely responsible for the safety of his/her Vessel, and Vessel Owner agrees that the Company shall have no obligation whatsoever to take action(s) in advance of or during a storm, or otherwise, to preserve or protect Vessel Owner's Vessel. It is further agreed, however, that the Company may, at its sole election, undertake such actions during or in advance of a storm or other threatened unfavorable weather as it alone deems appropriate and/or necessary to preserve or protect any or all vessels located on its premises. In such event it is agreed that Vessel Owner shall indemnify, defend and hold the Indemnified Parties harmless for any and all personal injury or death or property damage occurring in connection with the Company's efforts to preserve or protect vessels during or in advance of a storm. It is further agreed that if the Company provides such preservative/protective services during or in advance of a storm, all costs associated with such rendering of such services shall be apportioned on a pro-rata basis among all vessel owners in the Dry-Storage Facility.

30. **Removal of Unseaworthy Vessel or Vessel In Disrepair.** If Vessel is not Seaworthy, is in a sinking condition, in a state of disrepair as determined in the sole and absolute discretion of Company, or if she is deemed by the Company to pose a health, safety or pollution risk, the Company may, but is not required to, remove the Vessel from the Dry-Storage Facility at Vessel Owner's sole risk and expense.

31. **Failure to Vacate.** If Vessel Owner fails to pay the Dry-Storage Fee or other fees as required herein, or if he/she fails to remove the Vessel from the Dry-Storage Facility following termination of this Agreement, it is agreed the Vessel will be regarded for all purposes as a trespasser. It is agreed that in such event the Company shall charge Dry-Storage Fees for the Vessel at the then current impound vessel rates until such time as the Vessel is removed or disposed of as provided by state and/or federal law.

32. **Vessel Abandonment -- Disposal At Vessel Owner Cost.** In the event Company terminates this Agreement by providing written notice to Vessel Owner (at his/her last known address or e-mail) of such termination, Vessel Owner shall immediately remove his/her Vessel from the Dry-Storage Facility. After the date of such termination, wharfage rates for the Vessel, which will be regarded as a trespasser, will be calculated at the then current impound vessel rate. If for any reason the Vessel is not removed within 60 days of the date of termination of this Agreement it is agreed the Vessel shall be conclusively regarded for all purposes as having been abandoned. In such event, the Company shall become entitled to dispose of the Vessel in any manner, including but not limited to destruction, public or private sale, or any other means. If the Vessel is disposed of in such manner, Vessel Owner shall indemnify, protect and defend the Indemnified Parties from and against all actual or potential liability (including but not limited to legal claims, liens and judgments) arising from or in any way pertaining to such Vessel disposal. The Vessel Owner shall be liable for all costs of such disposal, including but not limited to surveying costs, disposal costs, storage costs, and legal fees.

33. **Salvage Services.** The Company has no obligation whatsoever to dewater or provide any salvage service to the Vessel should she spring a leak or otherwise need assistance in remaining afloat or in Seaworthy condition. It is agreed that the Company, in its sole election, may elect to dewater or provide the Vessel with other salvage services. In the event the Company determines the Vessel is in need of dewatering or other salvage services and the Company elects to provide such services, Vessel Owner shall be obligated to pay all material/labor costs associated with the rendering of such services or \$150 plus material costs for each hour such services are provided, whichever sum is greater, and Vessel Owner shall indemnify, protect and defend the Indemnified Parties from and against all actual or potential liability therefrom arising or relating.

34. **Tender of Required Notice(s).** All notices by one party to the other under this Agreement shall be in writing and mailed via United States first class regular mail, postage prepaid or via electronic mail. Notice to the Vessel Owner shall be to the Vessel Owner's address or e-mail address indicated on Attachment "A". It is Vessel Owner's sole responsibility to notify Company of any change of these addresses, and Vessel Owner agrees that notice sent to either of the Vessel Owner's addresses as listed in Attachment "A" shall be conclusively deemed as legally effective. Company reserves the right to change its address for notification purposes by providing written notice of such change to Vessel Owner at his/her last known address. Notice by Vessel Owner to Company shall be mailed to:

\_\_\_\_\_  
\_\_\_\_\_  
Dana Point, CA 92629  
Attn: Manager

35. **Agreement As Complete Expression Parties' Understandings.** The Agreement contains a complete expression of the Agreement between the parties hereto and there are no promises, representation, agreements, warranties or inducements except such



# Option Agreement Section 9.2.6(ii) Deliverable

as are made herein and fully set forth. No alterations of any of its terms, covenants or conditions shall be binding unless reduced to writing and signed by the parties hereto other than as provided in Sections 5 and 11 hereof. It is agreed that all of the rights, remedies and benefits provided by the Agreement shall be cumulative and shall not be exclusive of any other of said rights, remedies, and benefits, or of any other rights, remedies and benefits allowed by law. The subject heading of the Sections of the Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

36. **Waiver & Severability.** The failure of Company to insist upon the performance of any term hereof, or the waiver of any breach of any term hereof, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No action taken by the Company in equity or at law, whether in state or federal court, shall be construed as a waiver of the Company's maritime statutory or contractual or other rights at law, in equity or in admiralty, including its right to recover as part of its lien directly against the Vessel all costs incurred in connection with collection of Dry-Storage Fees and other fees due under the Agreement.

37. **Termination of Prior Agreements.** It is mutually agreed that this Agreement shall terminate and supersede any prior agreements between parties hereto covering all or any portion of the Dry-Storage Facility. Notwithstanding the foregoing, this provision shall not release Vessel Owner from any obligations under any prior agreements to be performed through the effective date of this Agreement or from any obligations of indemnification based upon events occurring prior the effective date of this Agreement.

38. **Taxes and Assessments.** This Agreement may create a possessory interest, which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Dry-Storage Space, shall be the full responsibility of Vessel Owner, and Vessel Owner shall cause said taxes and assessments to be paid promptly.

39. **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby and the parties agree the remaining provisions shall be deemed to be in full force and effect, as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

40. **Disposition of Abandoned Personal Property.** If Vessel Owner abandons the Agreement Area or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to Vessel Owner (except for the vessel provisions of Paragraph 10 (Company's Remedies)) and left within the Dry-Storage Facility ten (10) days after such event shall be deemed, at the Managers' option, to have been transferred to Company. Manager shall have the right to remove and to dispose of such property without any Company liability therefore to Vessel Owner or to any person claiming under Vessel Owner and shall have no need to account for the property.

41. **Time is of the Essence.** Time is of the essence in the Agreement. Failure to comply with any time requirements of this Agreement shall constitute a material breach of this Agreement.

42. **Governing Law, Venue, Costs and Attorney Fees.** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. In the event of litigation relating to the subject matter of this Agreement, the prevailing party shall be entitled to receive from the other party its reasonable attorneys' fees and costs.

43. **Vessel Owner's Legal Capacity.** The person signing below as the "Vessel Owner" attests that he/she is legally entitled to bind the Vessel and all of her owners to all terms of this Agreement, that in the event the person signing below is not the sole owner of the Vessel he/she has obtained the express permission of all persons with an ownership or equitable interest in the Vessel, and that he/she at the time of reviewing/executing this Agreement is not under the influence of alcohol or any legal or illicit drug, and that he/she has reached the legal age of majority, and that he/she is not legally incapacitated or otherwise unable to fully understand and appreciate the terms contained herein.

44. **Authority of Manager.** The Company maintains all authority under this Agreement, which may be exercised through its Manager.

**THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU AND THE COMPANY. THIS AGREEMENT DOES NOT CREATE A BAILMENT OR LANDLORD-TENANT RELATIONSHIP BETWEEN YOU AND THE COMPANY. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY. ANY AGENT OR EMPLOYEE OF THE COMPANY, INCLUDING, BUT NOT LIMITED**

# Option Agreement Section 9.2.6(ii) Deliverable

**TO THE MANAGER OR ITS EMPLOYEES, IS NOT AUTHORIZED TO PROVIDE LEGAL ADVICE TO YOU REGARDING THIS AGREEMENT. BY SIGNING AND DATING BELOW, YOU WILL BE SIGNIFYING TO THE COMPANY THAT YOU HAVE READ, UNDERSTAND AND FULLY AGREE TO ABIDE BY EACH TERM OF THE AGREEMENT.**

VESSEL OWNER/LICENSEE:

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Vessel Owner Signature

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_ General Manager \_\_\_\_\_

# Option Agreement Section 9.2.6(ii) Deliverable

## ATTACHMENT A

### DANA POINT HARBOR DRY-STORAGE LICENSE AGREEMENT

1.) **EFFECTIVE DATE** \_\_\_\_\_, subject to physical inspection and approval of Vessel by Manager.

#### 2.) **VESSEL OWNER**

NAME(S) \_\_\_\_\_

If Vessel Owner is a corporation or other entity,  
NAME OF SINGLE AUTHORIZED SIGNING PERSON \_\_\_\_\_

OWNERS/AGENTS HOME ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

HOME PH: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ CELL PH: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

DRIVERS LICENSE: STATE \_\_\_\_\_ NUMBER \_\_\_\_\_

BILLING ADDRESS: \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

WORK PH: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

EMERGENCY CONTACT \_\_\_\_\_

EMERGENCY PH: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

LEGAL OWNER OF VESSEL \_\_\_\_\_

(Bank, lienholder, or other name appearing on the evidence of title)

If more than one person is identified above, each shall be jointly and severally liable for performance of the obligations hereunder. "Vessel Owner" is defined in Section 2 of the Agreement. Identify % ownership of all interested parties.

#### 3.) **VESSEL DESCRIPTION**

VESSEL NAME \_\_\_\_\_ BUILDER \_\_\_\_\_ L.O.A. \_\_\_\_\_

BEAM \_\_\_\_\_ DRAFT \_\_\_\_\_

(Length overall- including bow pulpit, outdrives,  
swim platform, etc. – tip to tail measurement)

REGISTRATION CF/DOCUMENTATION # \_\_\_\_\_ EXP. DATE \_\_\_\_\_

PORT/STATE OF REGISTRATION \_\_\_\_\_

INSURANCE CARRIER \_\_\_\_\_

INSURANCE AGENT \_\_\_\_\_ PH (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

POLICY # \_\_\_\_\_ EXP. DATE \_\_\_\_\_

Please provide a copy of current insurance certificate for file with Company as additional insured

#### 4.) **DEFINITIONS AND TERMS**

DRY-STORAGE SPACE # \_\_\_\_\_ SPACE LENGTH \_\_\_\_\_

TERM: Month-to-Month, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

# Option Agreement Section 9.2.6(ii) Deliverable

SPACE RATE/LINEAR FOOT: \$ \_\_\_\_\_

MONTHLY DRY-STORAGE FEE: \$ \_\_\_\_\_  
(Monthly Dry-Storage Fee is based on the longer of the space length or actual measured L.O.A. of the vessel)

FIRST MONTH PRORATED PERIOD \_\_\_\_\_

PRORATED DRY-STORAGE FEE: \$ \_\_\_\_\_

SECURITY DEPOSIT: \$ \_\_\_\_\_  
(Deposit equal to one month's Dry-Storage Fee)

KEY FEE: \$ \_\_\_\_\_/each # OF KEYS \_\_\_\_\_ TOTAL KEY FEE: \$ \_\_\_\_\_

PARKING PASS FEE: \$ \_\_\_\_\_/each # OF PASSES: \_\_\_\_\_ TOTAL PARKING FEE: \$ \_\_\_\_\_

**OTHER AUTHORIZED USERS/GUESTS/CREW (IF ANY) ALLOWED TO BOARD AND USE YOUR VESSEL WITHOUT YOU BEING PRESENT, INCLUDING FAMILY MEMBERS**

---

---

---

5.) MAX HEIGHT \_\_\_\_\_ DRY WEIGHT \_\_\_\_\_ WET WEIGHT \_\_\_\_\_  
(From bottom of keel to top of superstructure)

**6.) DRY-STACK ONLY:**

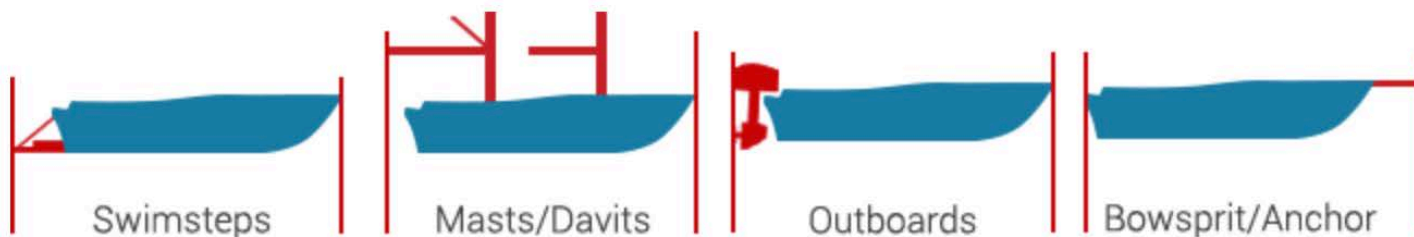
An additional charge of \$25.00 per month will be added to all electric boats.

SERVICES INCLUDE: UNLIMITED LAUNCHES, ALL ENGINE FLUSH, WATER LINE WASH DOWN, COVER AND UNCOVER BOAT

**7.) DRY-TRAILER ONLY:**

OPTIONAL SERVICES: \$ \_\_\_\_\_ HOIST SERVICE, \$ \_\_\_\_\_ JEEP SERVICE

DETERMINING L.O.A.:





# Option Agreement Section 9.2.6(ii) Deliverable

## ATTACHMENT B RULES AND REGULATIONS

These Rules and Regulations are an attachment to and incorporated in the Agreement. These Rules and Regulations are for the benefit all of all those who maintain a Vessel at the Dry-Storage Facility. Vessel Owners are required to notify the Company or Manager of any unsafe or hazardous conditions that come to their attention. A breach of any of these Rules and Regulations shall constitute a breach of the Agreement and shall permit Company to exercise all rights and remedies permitted at law or in equity to remedy said breach, including, but not limited to, a termination of the Agreement.

1. **Water/Power Lines.** Water or power lines shall not cross main headwalks and be in good/safe condition.
2. **Safe Mooring.** All boats shall be moored in a safe manner.
3. **Vessel Inspections.** The Company reserves the right to inspect all boats to determine if they are properly identified and equipped for safe operation in accordance with Coast Guard Regulations and other applicable regulations. The Company may, at their discretion require a current inspection by the U.S. Coast Guard. Further, the Company, Manager or its staff may question whether an individual is authorized to be aboard any vessel or in the Dry-Storage Facility.
4. **Seaworthiness.** Vessels must be (i) able to actively navigate seas or open waters, (ii) be maintained as to appearance, including, but not limited to, regular cleaning, maintenance and replacement of all painted and varnished surfaces, all bright-work, rigging, safety equipment and any other appurtenances, (iii) if equipped with an engine or motor, it must be operable and capable of producing sufficient way to make the Vessel maneuverable in accord with (i) above, (iv) if the Vessel is a sailboat without an engine, she must be equipped with sails, and her standing and running rigging must make her capable of producing sufficient way to make the Vessel maneuverable in accord with (i) above, and (v) at all times in compliance with the then applicable regulations, rules, orders, statutes and laws pertaining to water quality and safety. The Company may, at their own sole and absolute discretion require Vessel Owner to provide proof of compliance by current inspection from the U.S. Coast Guard. Houseboats are expressly deemed not Seaworthy.
5. **Fishing/Swimming.** Fishing or swimming within Dry-Storage Facility, including fishing from boats within the Dry-Storage Facility shall not be permitted.
6. **Bicycles/Skates, Etc.** No person shall roller skate, roller blade, skateboard, ride bicycles, go-peds (or other motorized or non- motorized scooter, skateboard, mini-bike or similar type device) or motorcycles on the docks or gangways located at the Dry-Storage Facility.
7. **Berth & Vessel Size Restrictions.** All Dry-Storage Spaces must be occupied by an appropriate size Vessel.
8. **Electrical Connections.** In accordance with the Orange County Fire Code No. 419 and Article 555 of the National Electrical Code, all connections made to the Dry-Storage Facility receptacles shall be grounded and U.L. or similar testing authority listed. Shore cords must be of adequate size for the power provided. **Shore power receptacles will be provided with ground fault circuit interrupter type circuit breakers, and vessel Owners must prevent "stray" current or current "leaking" into the water or the circuit breaker may trip and vessel will be without power.** The Company is not responsible for any loss due to lack of power. Electrical shore-power connections must be marine grade and be in good, safe condition. Electrical cords may not be affixed or secured to the docks or be allowed to hang into the water.
9. **Children.** Children under 12 years are not permitted in the Dry-Storage Facility without the immediate presence of their parents or other responsible adults.
10. **Non-swimmers.** It is highly recommended that non-swimmers and toddlers wear approved life jackets when on the docks or boat decks.
11. **Notification of Unsafe Conditions.** Vessel Owner and all other Vessel Owners of the Dry-Storage Facility, their guests and invitees shall promptly notify Company or Manager of any unsafe or hazardous condition that comes to their attention. **IN CASE OF FIRE OR OTHER EMERGENCY, CALL 911 IMMEDIATELY.**
12. **Hazardous Activities/Barbecues.** All high-risk fire hazards, i.e., refueling boats at dock side, storing flammable or hazardous material in vessels, welding, etc. is strictly prohibited. Barbecues are strictly prohibited in all Dry-Storage Facility areas.
13. **Discharges from Vessels/Disposal of Liquids.** No Vessel Owner of the Dry-Storage Facility shall throw, discharge or deposit from any vessel, dock or premises any refuse matter, sewage, oil, spirits, inflammable liquid, oily bilges in the harbor. All such matter shall be deposited in appropriately-marked containers within the Dry-Storage Facility. Orange County Ordinance No. 2073 provides it is unlawful to throw, discharge or deposit from any vessel or float any refuse, oily

# Option Agreement Section 9.2.6(ii) Deliverable

bilge fluids, inflammable liquids and other contaminants into water or upon the premises. Vessels with automatic bilge pumps will be maintained in such a manner as to prevent the discharge of contaminants overboard. Vessel sewage pump-outs must not be used to pump out bilges. Marine sanitation devices must be free of leaks and discharges, and y-valve must be in closed and locked position.

14. **Use of Chlorinators.** Use of boat toilets not equipped with chlorinators or storage devices approved by the Orange County Health Department shall not be permitted within the Dry-Storage Facility. The Company reserves the right to inspect all boats for installation and operation of such devices.
15. **Laundry.** There shall be no laundering or drying of clothes on deck or rigging at the Dry-Storage Facility.
16. **Noise.** Except for entering or leaving the Slip, main engines, power-generation equipment, or other noise-making machinery shall not be operated between the hours of 7:00 p.m. and 9:00 a.m. Unnecessary operation of engines in the Dry-Storage Facility shall not be permitted.
17. **Engine Operation.** Engines may not be operated in gear while boats are secured to dock.
18. **Speed Limit.** The maximum speed limit within Dana Point Harbor shall be 5 mph (no wake permitted). The maximum speed limit within all Dry-Storage Facility parking lots shall be 5 mph and all unsafe driving is strictly prohibited.
19. **Improper Vessel Handling.** Improper or unsafe boat handling shall be just cause for immediate termination of the Vessel Owner's Agreement. Vessel Owner shall immediately report to the Company any and all vessel or vehicle accidents / damage occurring at Dry-Storage Facility
20. **Use of Docks/Floats.** The use of docks/floats to store or place supplies, materials, accessories, or gear of any kind shall not be permitted within the Dry-Storage Facility except in any lockers provided by the Company. Vessel Owner further agrees that the Company in its exclusive discretion may remove, impound and/or dispose of any such improperly stored items in which case the Company assumes no responsibility or liability.
21. **Boarding Steps.** Any steps used for ingress to and egress from a Vessel must allow reasonable dock access in the sole and absolute judgment of Manager. The steps must be of a light weight construction and may not be used as a storage locker.
22. **Vessel Repairs.** No rebuilding, hull painting, sander use, spray gun use, welding, overhauls or other vessel maintenance or refurbishment efforts are permitted while in the Dry-Storage Facility. However, minor maintenance and bright work may be permitted, but only upon "work racks", which may be provided by the Manager and subject to a separate set of rules and regulations. The types and extent of maintenance which will be permitted are within the sole and absolute discretion of the Company and Vessel Owner should contact the Manager with questions. Any damage caused to the premises by the Vessel Owner shall be repaired by the Company, at the expense of Vessel Owner.
23. **Damage to Company Property.** Each Vessel Owner in the Dry-Storage Facility will be held responsible for any damage to the Dry-Storage Facility and/or structures caused by a Vessel Owner, his or her guests, agents and/or employees. Vessel Owner shall immediately notify Company of any and all damages caused to Company property.
24. **Repair of Damages Caused by Vessel Owner.** Any damage to Slips, Dry-Storage Facility or Harbor by any Vessel Owner or his or her guests, agents and/or employees may, at the Company's option, be repaired, corrected or replaced solely by Company at the expense of said Vessel Owner.
25. **Offensive or Harmful Conduct.** Disorder, depredations or indecorous conduct by any Vessel Owner or his or her guests, agents and/or employees that might injure a person, disturb other Vessel Owners, cause damage to the Dry-Storage Facility or the Harbor or harm the reputation of the Company shall be just cause for immediate termination of this Agreement.
26. **Solicitations.** It is unlawful for any unauthorized person to solicit or advertise business or offer for sale goods, wares, merchandise or services, or solicit orders for such sales on the premises of the Dry-Storage Facility, including but not limited to the docks, buildings or parking or vehicles and vessels within the Dry-Storage Facility.
27. **Signs.** Unauthorized signs or banners are prohibited aboard any vessel in the Dry-Storage Facility or upon the Dry-Storage Facility premises.
28. **Commercial Use of Vessel.** Use of any Vessel stored at the Dry-Storage Facility for commercial purposes is not permitted without the prior written approval of the Company. Manager shall have the sole and absolute authority to approve, modify or deny all commercial use of slips including the availability, use and eligibility requirements of slips available for commercial fishing vessels.

# Option Agreement Section 9.2.6(ii) Deliverable

Manager may suspend or modify commercial fishing slip eligibility requirements, by way of fish tickets / landing receipts, according to changes in local fishing conditions.

29. **Small Boat Launch.** A “small boat” is defined as a sabot, inflatable, dinghy, jet skis or similar vessel with a LOA of 10 feet or less, or a SUP, canoe or kayak with a LOA of 15 feet or less. No small boats may be launched from Dry-Storage Facility docks at any time.
30. **Amendment of Rules/Statutes/Regulations.** The Rules and Regulations set forth herein and as they may be amended from time to time and all other laws, rules, statutes and regulations established by regulatory bodies having jurisdiction, including the City of Dana Point, County of Orange, State of California and the United States of America shall form a part of the Agreement as though printed herein. Manager shall have sole and absolute discretion to modify implementation and/or enforcement of all rules, regulations, fees, and eligibility criteria, up to and including suspension of enforcement.
31. **Television Antennas.** Aerial television antennas are not permitted on Vessels stored in the Dry-Storage Facility.
32. **Use of Approved Equipment/Alterations to Docks & Premises.** Vessel Owner may not install any equipment or in any way make alterations to the Dry-Storage Facility.
33. **Parking.** No vehicle may remain on the parking lots provided by the Company for Vessel Owner’s use or other parts of the Dry-Storage Facility for a period exceeding 72 hours unless prior written approval is obtained from the Manager. All types of trailers, RVs and vehicles longer than 23’ are prohibited in the Dry-Storage Facility parking lots without the prior written approval of the Manager. Failure to comply with these parking rules may result in the towing of vehicles, at their owner(s) sole expense and risk. No Company Parties shall be liable to Vessel Owner or Vessel Owner’s guests, employees, or agents for any loss of, or damage of any kind to any motor vehicles or other personal property in or on the buildings, parking lots, or other portions of the Dry-Storage Facility. All changes to parking regulations will be posted on the bulletin board outside the Manager’s office. The washing of any vehicle, vessel or apparatus is prohibited in the Dry-Storage Facility’s parking lots.
34. **Maintenance of Dry-Storage Facility and Surrounding Environs.** Vessel Owner agrees to maintain the Dry-Storage Facility, the walks, floats, ramps, gangways, piling and docks in, about and surrounding the Dry-Storage Facility in a neat, clean and unobstructed condition at all times. Should it become necessary for the Company to maintain the area in said condition, it will be done at Vessel Owner’s expense.
35. **Disposal of Refuse:** The Vessel Owner shall not deposit into any garbage can or other receptacle located on Dry-Storage Facility property any of the following: (1) paint, varnish, thinner, non-edible oil or other flammable or hazardous materials; (2) vessel parts, including but not limited to engine machinery parts, interior parts, fastenings or upholstery; or (3) any item weighing in excess of 20 pounds. For the location of household hazardous waste disposal sites, contact the Manager.
36. **Pets:** Orange County Ordinance No. 4-1-45 provides that all pets shall be on a leash not longer than 6 feet, at all times and under the direct control of an adult except when on a vessel, but never left unattended. Should any pet become a nuisance at the Dry-Storage Facility, Manager may require said pet to be removed from the Dry-Storage Facility. Animals are not permitted in the restrooms. Dogs without leashes will be considered a violation of this Agreement and grounds for termination. Animal droppings are required to immediately be cleaned up.
37. **Hose - Nozzles.** Automatic shut-off nozzles must be attached to hoses in order to conserve water. Water hoses shall not be left running in a manner that waste water.
38. **Vessel Maintenance / Contractors.** Apart from minor maintenance and bright work, no work involving the Vessel may be accomplished while on Dry-Storage Facility property. The determination of what constitutes minor maintenance and bright work will be at the sole and absolute discretion of the Manager and must be done on “work racks” provided for such purposes. Prohibited work includes, but is not limited to, painting, heavy sanding, use of paint remover, spray guns, welding or the burning of paint on the topsides or above the decks. Contractors hired by Vessel Owner to work on the Vessel must be registered with the Manager prior to the commencement of such work, and each such contractor must maintain and provide proof of liability insurance in an amount of at least \$1 million, a valid business license and a valid sales tax permit issued by the CDTEA, provided, however, Manager still must approve the contractor or vendor, by adding them to its approved contractor/vendor registry, which approval may be withheld or revoked at Manager’s sole and absolute discretion. Vessel Owner further agrees to comply with all applicable rules, regulations, orders, statutes and laws of the Company, the State of California and/or all other governmental entities with jurisdiction over the Harbor or the Dry-Storage Facility. Access will not be provided to un-registered contractors.

# Option Agreement Section 9.2.6(ii) Deliverable

39. **Flammable Materials and Use of Storage Lockers.** Neither Vessel Owner nor anyone acting on his/her behalf shall burn, paint or use flammable materials without the prior written consent of the Company. If provided, Vessel Owner agrees not to store any flammable or hazardous materials in a storage locker. The Company assumes no responsibility for the protection or safety of Vessel Owner's possessions, including but not limited to, belongings kept by Vessel Owner in a storage locker. If storage lockers are provided, their use will require an additional monthly fee.
40. **Fish Cleaning.** No fish cleaning is permitted within the Dry-Storage Facility or Harbor.
41. **Storage in Parking Lot.** The Dry-Storage Facility's parking lot is for the use of Vessel Owner and authorized visitors. Vessel Owner shall not store in the Dry-Storage Facility's parking lots any vehicle, trailer, camper or anything else without the prior express written approval of the Manager.
42. **Articles Left in Storage Locker.** The Company is not responsible for any article remaining in Vessel Owner's storage locker once Vessel Owner has moved his/her Vessel or abandoned his/her Vessel. Vessel Owner further agrees that the Company, in its exclusive discretion, may remove and dispose of any such articles left behind in which case all proceeds derived from such disposal, if any, shall become the sole property of the Company.
43. **Noise and Conduct.** Vessel Owner shall not make or allow any disturbing noises on the docks or anywhere on the premises, with particular emphasis between the hours of 7:00 p.m. and 9:00 a.m., either by Vessel Owner or his/her family or guests, nor shall Vessel Owner permit such persons to engage in any conduct which will interfere with the rights, comforts or convenience of others. The activities and conduct of Vessel Owner and/or Vessel Owner's family while on Dry-Storage Facility premises must be reasonable at all times. Vessel Owner assumes full responsibility for his/her guests' conduct and agrees to be held jointly and severally liable for all consequences of his/her guests actions or misconduct.
44. **Storage of Equipment.** Vessel Owner shall not store or leave any items on the floats, docks, fingers, landings or landside areas of the Dry-Storage Facility, including plants, bicycles, dinghies, kayaks, stand-up paddleboards (SUP's) or other items. Bicycles, kayaks, SUP's, dinghies and jetskis, must be stored on the Vessel. The Company strongly urges Vessel Owner secure all items, as the Company shall not be held liable for the loss or theft of any personal belongings.
45. **Additional Storage.** Company may but is not required to provide storage for dinghies, SUP's and/or kayaks. If Company elects to do so, then Vessel Owner is not assured he/she will be provided storage space. If dinghy, SUP and/or kayak storage space is provided, then Owner agrees to tender the then current dinghy/kayak/SUP storage fee no later than the first day of each month, together with other fees due.
46. **Halyard Noise.** Halyards shall be tied off to eliminate noise. Dock lines shall be maintained in a safe, unchafed, manner and shall be of adequate size for the Vessel.
47. **Sale of Vessel.** Should Vessel Owner sell or otherwise transfer interest in Vessel, Vessel Owner may upon written approval of Manager, continue renting the Slip provided Vessel Owner obtains a new vessel of size appropriate for the Slip within 90 days. Failure to purchase a new vessel within 90 days and/or provide adequate documentation of purchase transaction shall be considered grounds for immediate termination of this Agreement.
48. **Change of Ownership.** Vessel Owner shall notify Manager in writing within five (5) days of any change of ownership of Vessel resulting from a gift, sale, withdrawal, addition or substitution of partners, the sale or transfer of stock or change of directors or officers in a closely held corporation owning the vessel. Vessel Owner must maintain a minimum of 20% interest in Vessel and an interest in Vessel equal to or greater than that of all other parties.
49. **Transfer of Interest in Vessel.** Should Vessel Owner sell or otherwise transfer any interest in the Vessel, with the intent to continue to occupy the Dry-Storage Facility with the same Vessel, Vessel Owner shall provide Dry-Storage Facility with all bona fide purchase and sales information detailing the transaction. This may include but is not limited to purchase agreement, promissory notes, cancelled checks and tax receipts. Failure to provide adequate documentation of sales transaction including percentage of interest sold, shall be considered grounds for immediate termination of this Agreement. The sales transaction for a partial interest in a Vessel Owner vessel must detail sufficient and appropriate compensation in the sole judgement of the Manager for the purchased interest.



# Option Agreement Section 9.2.6(ii) Deliverable

All purchase and sales information must be provided to the Manager within five (5) days of the transaction or this Agreement may be immediately terminated.

50. **Purchase of Interest in a New Vessel.** Upon acquisition or purchase of an ownership interest in a new vessel, which Vessel Owner intends to occupy the Dry-Storage Facility, Vessel Owner shall provide Dry-Storage Facility with all bona fide purchase and sales information detailing the transaction. This may include but is not limited to purchase agreement, promissory notes, cancelled checks and tax receipts. The purchase transaction for a Vessel Owner's partial interest in a vessel must detail sufficient and appropriate compensation in the sole judgement of the Manager for the purchased interest.
51. **Dock Carts.** Are to be used to transport personal items to and from vessels and must then be returned to the Dry-Storage Facility entrance. Please do not use dock carts for heavy equipment, machinery, tools, or hazardous materials.
52. **False Information.** Providing false information or documentation to Manager or Company to obtain or maintain a space in Dry-Storage Facility shall be considered grounds for immediate termination of this Agreement.
53. **Registration and Insurance.** Vessel Owner shall provide Manager a copy of current vessel registration from the CA DMV or vessel documentation from US DOT. Registration or documentation must list all vessel owners and Dry-Storage Facility tenants of record. Before locating a vessel in Dry-Storage Facility, Vessel Owner shall provide Manager proof of current vessel insurance as required in this Agreement. Failure to provide current vessel registration / documentation and current vessel insurance for the entire term of the Agreement may result in termination of the Agreement.
54. **Parking Gates/Guest Access.** Access to each Dry-Storage Facility parking lot is controlled by an automated parking gate. Vessel Owner understands and agrees that the failure of Vessel Owner or of any of Vessel Owner's family, guests, agents, contractors or employees to follow posted parking gate instructions will result in severe tire damage. Company will not be liable for any damages sustained entering, exiting or using Dry-Storage Facility parking gates or Dry-Storage Facility parking lots. Company is not responsible for providing access to guests of Vessel Owner. It is recommended that Vessel Owner make arrangements to meet guests at a specific time or provide guests a means to contact Vessel Owner.
55. **Maintenance Best Management Practices.** Vessel Owner and Vessel Owner's contractors must adhere to the following procedures. Failure to follow these policies /procedures will result in immediate termination of the Vessel Owner's Agreement:
  - a. **General Policies.**
    - i. All contractors, independent contractors and self-employed boat workers hired by Vessel Owner must register with and receive prior approval from the Dry-Storage Facility and meet all Vendor requirements before beginning work on the Dry-Storage Facility's premises.
    - ii. The only approved power tools to be used on a vessel in the Dry-Storage Facility are vibrator sanders (maximum of 2), electric buffers, and electric drills.
    - iii. Vessel Owners may undertake basic boat projects as needed to maintain their vessel's safety, appearance and utility. The extent of such repairs and projects allowed in the Dry-Storage Facility shall be at the sole and absolute discretion of the Manager and/or Company.
    - iv. New or substantial work must be approved by the Dry-Storage Facility prior to undertaking the project.
    - v. Minor vessel maintenance projects should be limited to work on 25% or less of the vessels surface and not to exceed 5 days.
    - vi. All Vessel Owners are reminded that the Dry-Storage Facility is a recreational area and not a boat yard or repair facility. Boaters are required to protect water quality at all times
    - vii. Boaters are encouraged to use environmentally friendly cleaning products. Products should be phosphate free and be biodegradable. Avoid cleaners that contain lye, sodium hydrochloride, chlorine, or petroleum distillates.
    - viii. Boaters are encouraged to use non-toxic and legal paints. Use products that are low in VOCs (Volatile Organic Compounds) which are a source of air pollution.
    - ix. Utilize dry cleaning methods (e.g. sweeping). If washing is unavoidable, collect wash water for treatment and/or proper disposal.
  - b. **Engines and Bilges.**
    - i. Vessel Owners must use absorbent bilge pads to soak up oil and fuel in the bilge.
    - ii. Do not discharge bilge water if there is a sheen to it.
    - iii. Recycle oil and fuel products properly.
    - iv. Dispose of absorbent pads and filters properly.
    - v. Do not dispose of any fuel, paint, oil, absorbent pads/rags, batteries, engine parts, or other contaminated materials into the Dry-Storage Facility's trash receptacles or dumpsters.

# Option Agreement Section 9.2.6(ii) Deliverable

- vi. Use caution when fueling to avoid spills and potential hazardous situations. Fueling in the Marina Dry-Stack premises is prohibited. Avoid overfilling fuel tanks.
  - vii. Keep engines properly maintained for efficient fuel consumption and clean exhaust.
  - viii. The use of detergents and/or emulsifiers of fuel spills in the water is prohibited.
  - ix. Use oil absorbent pads while fueling at the fuel dock to catch any drips or spills.
  - x. Routinely check engines for leaks and use drip pans or absorbent pads under engines.
  - xi. Report all spills to the Dry-Storage Facility office immediately \_\_\_\_\_.
- c. **Painting and Varnishing – Hull Painting is Strictly Prohibited**
- i. Open containers of solvents or paints on the docks are strictly prohibited. Never leave open paints unattended.
  - ii. Always mix paints and epoxy over a tarp.
  - iii. Always use a pan or drop cloth.
  - iv. Use up remaining bits of paint by spreading it on an old board.
  - v. Spray painting or spraying of varnishes is prohibited in the Dry-Storage Facility.
  - vi. Do not dispose of any paint, oil, varnish, absorbent pads/rags or other contaminated material into the Dry-Storage Facility's trash cans or dumpsters. Paints, solvents and other hazardous materials must be disposed of legally at a household hazardous waste station (714)834-6752 or other appropriate disposal facility.
  - vii. Properly clean, store, and dispose of painting, finishing, and coating materials.
  - viii. Do not dispose of toxic substances or liquid wastes on the pavement, ground, or storm drain. 1
  - ix. Cover materials with a temporary waterproof covering made of polyethylene, polypropylene or hypalon.
  - x. Clean paint brushes and tools covered with water-based paints in sinks connected to sanitary sewers or in portable containers that can be poured into a sanitary sewer drain. Refer to fact sheet IC24 Wastewater Disposal for guidance on appropriate methods for disposal of wash water to the sanitary sewer.
  - xi. Clean paint brushes and tools covered with non-water-based paints, finishes, or other materials such that used solvents (e.g., paint thinner, turpentine, etc.) can be collected for recycling or proper disposal.
  - xii. Recycle paint, paint thinner, solvents, and other recyclable materials whenever possible.
- d. **Surface Preparation.**
- i. Use biodegradable soaps, cleaners and teak cleaners approved for ocean waters.
  - ii. Liberally use tarps to capture all scrapings, debris and drips. No material may enter the water.
  - iii. Only vibrator sanders (maximum of 2) with vacuum capture is allowed in the slips.
  - iv. Use a vacuum to remove all dust and debris. No material may enter the water.
- e. **Sewage.**
- i. Untreated sewage must never be discharged into the harbor waters.
  - ii. Marine sanitation devices must be kept free of leaks and discharges. While in the Harbor, the y-valve must be in closed and locked position.
  - iii. Store sewage in holding tanks and dispose of sewage properly at pump-out stations.
  - iv. Never discharge Type I sewage while moored in the Dry-Storage Facility.
  - v. Use shore-side restrooms whenever possible, rather than toilets aboard vessels.
- f. **Solid Waste Disposal.**
- i. Dispose of all garbage in proper shore-side dumpsters.
  - ii. Let empty cans dry thoroughly before disposing of them into trash dumpsters.
  - iii. Please recycle green, brown and clear glass, newspapers and aluminum products.
- g. **Chemical Storage.**
- i. Purchase only the amount of chemicals/paints you need for a project.
  - ii. Review storage of paints, varnishes, solvents, and chemicals every six months. Properly dispose of old or unnecessary products.
  - iii. Do not store more than one gallon (total) of these products on your Vessel.
  - iv. Keep chemicals in their original containers, if feasible.
  - v. Keep containers well labeled according to their contents (e.g., solvent, gasoline).
  - vi. Label hazardous substances regarding the potential hazard (corrosive, radioactive, flammable, explosive, poisonous).
  - vii. Prominently display required labels on transported hazardous and toxic materials (per US DOT regulations).
  - viii. Never store any of these products in a dock locker.
- h. **Hull Maintenance – Hull Painting is Strictly Prohibited**
- i. The use of hull paints approved by the U.S. Department of Pesticide Regulation is required (at a shipyard).
  - ii. Make sure that paints are applied properly and in accordance to manufacturer's recommendations.
  - iii. Wait 90 days after painting the hull before underwater cleaning.
  - iv. Hull bonding or painting problems should be properly repaired (at a shipyard).
  - v. Schedule regular hull cleaning & maintenance to eliminate the need for hard scrubbing. Soft scrubbing reduces environmental impact and extends the life of your hull paint.

# Option Agreement Section 9.2.6(ii) Deliverable

- vi. Choose a qualified hull cleaning company using Best Management Practices registered with the Dry-Storage Facility Manager.
- vii. Power scrubbers and pressure washers are prohibited at the Dry-Storage Facility.
- viii. Waste zinc anodes should be disposed of properly.

**Contact the Dry-Storage Facility Manager's Office for Recycling Locations, Pump-Out Locations, and Commercial Pump-Out Services**

56. **APPLICABLE LAWS.** The following laws and regulations are not meant to be exhaustive, they are being provided for convenience only, and each licensee is responsible for complying with **ALL** applicable laws and regulations, whether enacted by the City of Dana Point, the County of Orange, the State of California or the United States of America.

**OC PARKS (FORMERLY: HARBORS, BEACHES AND PARKS DISTRICT) Orange County Code**  
**Article 11. Harbor Sanitation**

**Sec. 2-2-163. Toilets and Refuse**

- a. No person shall discharge, or permit or allow any other person on a vessel under his control or command to discharge any human or animal excreta from any head, toilet or similar facility or otherwise from a vessel into the waters of a harbor.
- b. No person shall throw, discharge, deposit or leave or cause, suffer or permit to be thrown, discharged, deposited or left, either from the shore or from any pier or vessel or from any factory or elsewhere, any refuse matter of any description in the navigable waters of a harbor. (Code 1961, 22.111)

**Sec. 2-2-167. Discharge of Flammable Material.** No person shall pump or discharge from any vessel or tank into the waters of a harbor, oil, spirits or flammable liquid, or deposit any rubbish, refuse matter or articles of any offensive character therein or upon any pier or street leading to such facility. (Code 1961, 22.115).

**Sec. 2-2-168. Dead animals.** No person shall throw, place or leave any dead animal or putrefying matter into or in the waters of a harbor, on or along the shore thereof. (Code 1961, 22.116)

**Sec. 2-2-169. Vessel wastes.** No person shall own or operate a vessel equipped with any head (toilet) or receptacle from human body wastes in the waters of a harbor unless:

- 1) Said vessel is also equipped with a holding tank designed to retain all human body wastes deposited in said head or receptacle until such time as said sewage can be discharged otherwise in accordance with law; or
- 2) Said head or receptacle is connected directly to a sanitary sewer system; or
- 3) Said head or receptacle is connected to an on-board sewage treatment system which produces an effluent meeting such standards as may be approved by the County Health Officer for discharge into the waters of a harbor. (Code 1961, 22.117)

**FISH AND GAME CODE Division 6 Fish. Chapter 2. Pollution. Article 1. General. Section 5650**

- a. Except as provided in subdivision (b), it is unlawful to deposit in, permit to pass into, or place where it pass into the waters of this state any of the following:
  - 1. Any petroleum, acid, coal or oil, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance.
  - 2. Any refuse, liquid or solid, from any refinery, gas house, tannery, distillery, chemical works, or mill of any kind.
  - 3. Any sawdust, shavings, slabs or edgings.
  - 4. Any factory refuse, lime, or slag.
  - 5. Any cocculus indicus.
  - 6. Any substance or material deleterious to fish, plant life, or bird life.
- b. This section does not apply to the discharge or release that is expressly authorized pursuant to, and alliance with, the terms and conditions of waste discharge requirement pursuant to Section 13263 of Water Code or a waiver issued pursuant to subdivision (a) of Section 13269 of the Water Code.

**FISH AND GAME CODE Division 6 Fish. Chapter 2. Pollution. Article 1. General. Section 5652**

- a. It is unlawful to deposit, permit to pass into, or place where it can pass into the waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high-water mark of the waters of the state, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, or the viscera or carcass of any dead mammal, or the carcass of any dead bird.
- b. The abandonment of any motor vehicle in any matter that violates this section shall constitute a rebuttal presumption affecting the burden of producing evidence that the last registered owner of record, not having complied with Section 5900 of the Vehicle Code, is responsible for such abandonment and is thereby liable for the cost of removal and disposition of the vehicle. This section prohibits the placement of a vehicle body on privately owned property along a stream bank by the property owner or tenant for the purpose of preventing erosion of the stream bank.

# Option Agreement Section 9.2.6(ii) Deliverable

## **HARBORS AND NAVIGATION CODE Division 1.5 Navigable Waters. Chapter 3 Offenses. Section 133**

- a. Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, or as otherwise permitted by law, it is unlawful and constitutes a misdemeanor for any person to discharge, or suffer the discharge of oil by any methods, means, or manner, into or upon the navigable waters of the State from any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil in excess of that necessary for its lubricating requirements, and such as may be required under the laws and prescribed rules and regulations of the United States and this State.
- b. As used in this section, the term “oil” means oil of any kind or in any form, including fuel oil, oil sludge, and oil refuse, and the term, “navigable waters of the State,” means all portions of the sea within the territorial jurisdiction of the State, and all inland waters navigable in fact in which the tide ebbs and flows.

## **INTERNATIONAL TREATY TO PREVENT POLLUTION FROM SHIPS**

- a. MARPOL requires all boats 26 feet and over in length to display in a prominent place where the crew and passengers can read it, an information placard on the subject of plastics prohibitions. See [https://dbw.parks.ca.gov/pages/28702/files/pubs\\_marinepollution.pdf](https://dbw.parks.ca.gov/pages/28702/files/pubs_marinepollution.pdf) for the placard and more information.