



COUNTY OF ORANGE
OC DANA POINT HARBOR/OC SAILING & EVENTS CENTER

AREA USE LICENSE

THIS AREA USE LICENSE (the "License") is made and entered into on January 1, 2016, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter referred to as "County") without regard to number and gender, and WESTWIND SAILING (hereinafter referred to as "Licensee") without regard to number and gender. County and Licensee may be referred to herein individually as a "Party," or collectively as the "Parties."

1. TERM

The term of this License shall become effective upon the date first above written, and continue in effect until March 31, 2016.

2. TERMINATION

This License shall be revocable by either County or Licensee at any time; however, as a courtesy, the terminating Party will endeavor to give the other Party at least thirty (30) days written notice prior to revocation.

3. LICENSE AREA

County grants to Licensee the non-exclusive right to use that certain property as hereinafter referred to as "License Area," shown on Exhibit A, attached hereto and by reference made a part hereof.

Licensee shall have a right to ingress and egress to and from License Area during normal business hours of the OC Sailing & Events Center ("Facility"). Notwithstanding the foregoing, access to the License Area by Licensee may be restricted by County with reasonable discretion because of the occurrence of natural disasters, or other "events" deemed by County to be of an emergency nature. The Director of OC Dana Point Harbor, or designee ("Director"), has the right to relocate, change or alter the alignment, size or location of the License Area at any time if space requirements of County make such action necessary for any reason including special events, emergencies, or any OC Dana Point Harbor needs. County shall provide Licensee as much notice as possible of any such relocation, change or alteration that becomes necessary.

4. NO ASSIGNMENT

The License granted hereby is personal to Licensee and any assignment of this License by Licensee, voluntarily or by operation of law, shall automatically terminate the License granted hereby.

5. USE (AMLC-5.1 S)

Licensee's use of the License Area shall be limited to dock space as outlined in Exhibit A, for the use of sailing classes and clinics, family sailing and adaptive sailing programs, sailing rides, water based and sailing day camps,

1 and stand up paddleboard and kayak classes. County shall have the right to enter upon and inspect the License
3 Area at any time to verify Licensee's use conforms to the terms herein.

5 Licensee agrees not to use the License Area for any other purpose nor to engage in or permit any other activity
7 within the License Area. Licensee will ensure no more than six (6) passengers are on any one vessel at one time,
9 and that the vessels will not leave the Harbor breakwater boundaries. Licensee understands that leaving the
11 Harbor entrance will require consultation and prior approval by the Director as well as modification to insurance
13 requirements. Licensee further agrees not to conduct or permit to be conducted any public or private nuisance in,
15 on, or from the License Area, not to commit or permit to be committed any waste within the License Area, and to
17 comply with all governmental laws and regulations in connection with the License Area. Licensee agrees not to
19 construct, maintain, or allow any signs, banners, flags, etc., upon License Area except as approved by County in
21 writing. Unapproved signs, banners, flags, etc., may be removed.

13 Upon termination of this License, Licensee shall redeliver possession of said License Area to County in
15 substantially the same condition that existed immediately prior to Licensee's entry thereon, reasonable wear and
17 tear, flood, earthquakes, war, and any act of war excepted.

19 NO ALCOHOLIC BEVERAGES OR TOBACCO PRODUCTS SHALL BE SOLD OR CONSUMED WITHIN
21 THE LICENSE AREA.

21 6. DISPOSITION OF ABANDONED PERSONAL PROPERTY

23 If Licensee abandons the License Area or is dispossessed thereof by process of law or otherwise, title to any
25 personal property belonging to Licensee and left on the License Area ten (10) days after such event shall be
27 deemed, at County's option, to have been transferred to County. County shall have the right to remove and to
dispose of such property without liability to Licensee or to any person claiming under Licensee, and shall have no
need to account therefor.

29 7. PERMITS AND LICENSES

31 Licensee shall be required to obtain any and all permits and/or licenses which may be required in connection with
33 the operation of the License Area as set out herein. No permit, approval, or consent given hereunder by County,
35 in its governmental capacity, shall affect or limit Licensee's obligations hereunder, nor shall any approvals or
consents given by County, as a Party to this License Agreement, be deemed approval as to compliance or
conformance with applicable governmental codes, laws, rules, or regulations.

37 8. LICENSE FEE

39 Licensee agrees to pay County from and after the effective and/or commencement date of this License the sum of
41 four thousand and two hundred and forty six dollars (\$4,246.00) per month. Said monthly License fee shall be
43 payable without prior notice or demand, on the twenty-eighth day of each following calendar month while this
45 License is in effect without deduction or offset in lawful money of the United States.
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1 9. AMENDMENTS

3 This License is the sole and only agreement between the Parties regarding the subject matter hereof; other
5 agreements, either oral or written, are void. Further, this License is the entire agreement between the Parties and
7 there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to
9 herein. Any changes to this License shall be in writing and shall be properly executed by both Parties.

If any term, covenant, condition, or provision of this License 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.

11 10. PAYMENT PROCEDURE

13 All payments shall be delivered to the OC Dana Point Harbor, 24650 Dana Point Harbor Drive, Dana Point, CA
15 92629. The designated place of payment may be changed at any time by County upon ten (10) days written
17 notice to Licensee. Fee payments may be made by check payable to the "County of Orange." Licensee assumes
all risk of loss if payments are made by mail.

No payment by Licensee or receipt by County of a lesser amount than the payment due shall be deemed to be
other than on account of the payment due, nor shall any endorsement or statement on any check or any letter
accompanying any check or payment as payment be deemed an accord and satisfaction, and County shall accept
such check or payment without prejudice to County's right to recover the balance of said payment or pursue any
other remedy in this License.

23 11. INDEMNIFICATION

25 Licensee hereby waives all claims and recourse against County including the right of contribution for loss or
27 damage of persons or property arising from, growing out of, or in any way connected with or related to this
License except claims arising from the concurrent active or sole negligence of County, its officers, agents, and
29 employees. Licensee hereby agrees to indemnify, hold harmless, and defend with counsel acceptable to County,
its officers, agents, and employees against any and all claims, loss, demands, damages, cost, expenses, or liability
31 costs arising out of the operation, use, or maintenance of the property described herein, and/or Licensee's exercise
of the rights under this License, except for liability arising out of the concurrent active or sole negligence of
33 County, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

In the event County is named as co-defendant, Licensee shall notify County of such fact and shall represent
County with counsel acceptable to County in such legal action unless County undertakes to represent itself as
35 co-defendant in such legal action, in which event Licensee shall pay to County its litigation costs, expenses, and
37 attorney's fees. In the event judgment is entered against County and Licensee because of the concurrent active
negligence of County and Licensee, their officers, agents, or employees, an apportionment of liability to pay such
39 judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.

41 12. INSURANCE

43 Licensee agrees to purchase all required insurance at Licensee's expense and to deposit with the County
45 certificates of insurance, including all endorsements required herein, necessary to satisfy the County that the
insurance provisions of this License have been complied with and to keep such insurance coverage and the
47 certificates and endorsements therefore on deposit with the County during the entire term of this License. This
License shall automatically terminate at the same time Licensee's insurance coverage is terminated. If within ten
49 (10) business days after termination under this Clause Licensee obtains and provides evidence of the required

1 insurance coverage acceptable to Director, this License may be reinstated at the sole discretion of Director.
Licensee shall pay County \$100 for processing the reinstatement of this License.

3 Licensee agrees that Licensee shall not operate on the License Area at any time the required insurance is not in
5 full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an
7 official binder being in the possession of OC Dana Point Harbor. In no cases shall assurances by Licensee, its
9 employees, agents, including any insurance agent, be construed as adequate evidence of insurance. OC Dana
11 Point Harbor will only accept valid certificates of insurance and endorsements, or in the interim, an insurance
binder as adequate evidence of insurance. Licensee also agrees that upon cancellation, termination, or expiration
of Licensee's insurance, County may take whatever steps are necessary to interrupt any operation from or on the
License Area until such time as the Director reinstates the License.

13 If Licensee fails to provide OC Dana Point Harbor with a valid certificate of insurance and endorsements, or
15 binder at any time during the term of the License, County and Licensee agree that this shall constitute a material
breach of the License. Whether or not a notice of default has or has not been sent to Licensee, said material
17 breach shall permit County to take whatever steps necessary to interrupt any operation from or on the License
Area, and to prevent any persons, including, but not limited to, members of the general public, and Licensee's
19 employees and agents, from entering the License Area until such time as OC Dana Point Harbor is provided with
adequate evidence of insurance required herein. Licensee further agrees to hold County harmless for any damages
21 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 County's action.

23 All contractors performing work on behalf of Licensee pursuant to this License shall obtain insurance subject to
the same terms and conditions as set forth herein for Licensee. Licensee shall not allow contractors or
25 subcontractors to work if contractors have less than the level of coverage required by the County from the
Licensee under this License. It is the obligation of the Licensee to provide written notice of the insurance
27 requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work
within the License Area. Such proof of insurance must be maintained by Licensee through the entirety of this
29 License and be available for inspection by a County representative at any reasonable time.

31 All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no
SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of
33 coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability),
shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

35 If the Licensee fails to maintain insurance acceptable to the County for the full term of this License, the County
37 may terminate this License.

39 **Qualified Insurer**

41 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 have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial
43 Size Category) as determined by the most current edition of the **Best's key Rating Guide/Property-
Casualty/United States or ambest.com.**

45 If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating
47 of A-/VIII, the CEO /Risk management retains the right to approve or reject a carrier after a review of the
company's performance and financial ratings.

1 The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of
3 subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed
officials, officers, agents and employees.

5 Licensee shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for
7 non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written
notice of cancellation may constitute a material breach of the License, upon which the County may suspend or
terminate this License.

9 The Commercial General Liability policy shall contain a severability of interests clause, also known as a
11 "separation of insureds" clause (standard in the ISO CG 001 policy)

13 Insurance certificates should be forwarded to the County address provided in the Clause (NOTICES) below or to
15 an address provided by Director. Licensee has ten (10) business days to provide adequate evidence of insurance
or this License may be cancelled. County expressly retains the right to require Licensee to increase or decrease
17 insurance of any of the above insurance types throughout the term of this License. Any increase or decrease in
insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

19 County shall notify Licensee in writing of changes in the insurance requirements. If Licensee does not
21 deposit copies of acceptable certificates of insurance and endorsements with County incorporating such
changes within thirty (30) days of receipt of such notice, this License may be in breach without further notice
to Licensee, and County shall be entitled to all legal remedies.

23 The procuring of such required policy or policies of insurance shall not be construed to limit Licensee's
25 liability hereunder nor to fulfill the indemnification provisions and requirements of this License, nor in any
way to reduce the policy coverage and limits available from the insurer.

27 13. OPERATIONS

29 Licensee shall, to the satisfaction of County, keep and maintain the License Area in a safe, clean, wholesome, and
31 sanitary condition. It shall be Licensee's responsibility to take all steps necessary or appropriate to maintain such
standard of condition.

33 14. LIMITATION OF THE LICENSE

35 This License and the rights and privileges granted Licensee in and to the License Area are subject to all
37 covenants, conditions, restrictions, and exceptions of record or apparent from a physical inspection of the License
Area. Nothing contained in this License or in any document related hereto shall be construed to imply the
39 conveyance to Licensee of rights in the License Area which exceed those owned by County.

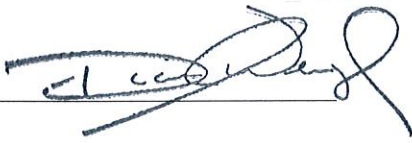
41 15. TAXES AND ASSESSMENTS

43 Although not anticipated, should this License create a possessory interest which is subject to the payment of taxes
45 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 in connection with this License or upon fixtures,
47 equipment, or other property used in connection with this License, shall be the full responsibility of Licensee, and
Licensee shall cause said taxes and assessments to be paid promptly.

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IN WITNESS WHEREOF, the Parties have executed this License the day and year first above written.

LICENSEE

By: 

Date: 12-14-15

COUNTY

COUNTY OF ORANGE

BY: 

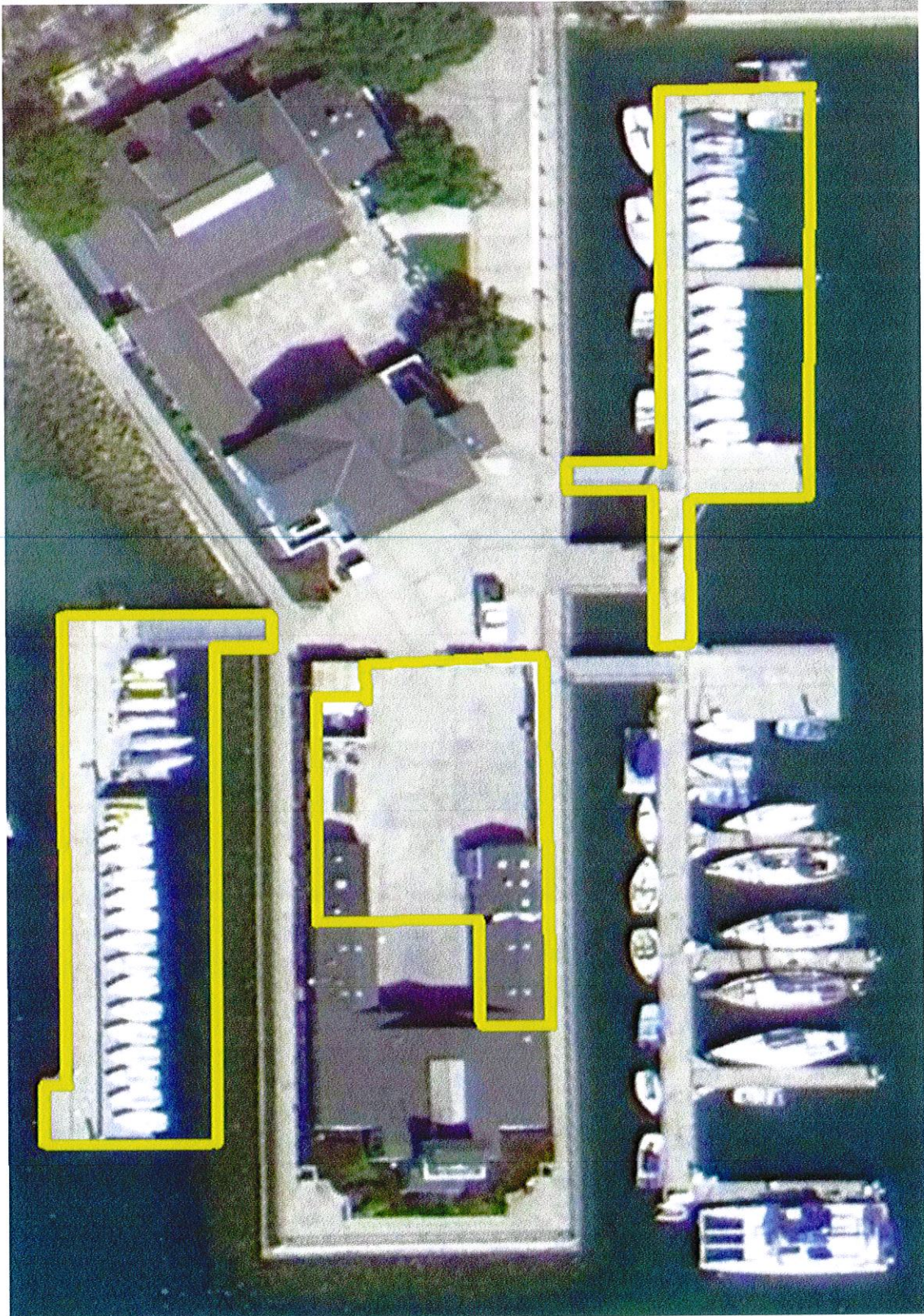
Brad Gross, Director
OC Dana Point Harbor

Date: 12-16-15

APPROVED AS TO FORM:
COUNTY COUNSEL

By _____
Deputy

EXHIBIT A



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