

HINGHAM HARBOR MARINA
2009-2010 Winter Dry Storage Contract

Hingham Harbor Marina (“Marina”) and the individual identified below (“Licensee”), agree that the boat described below (“Boat”) may be placed ashore at the above address (“Premises”) for the duration of the 2009-2010 winter storage season, but **no later than May 15, 2010** — subject to the Terms and Conditions set forth below — upon receipt of the payment of the seasonal fee as set forth in the Marina’s Schedule of Fees.

Please Print

Licensee Name: _____
Street Address: _____
City/Town/State: _____ Zip: _____
E-mail: (1) _____; (2) _____; (3) _____
Telephone: Cell: _____; Work: _____; Home: _____
Vessel Name: _____; Max. Draft: _____
Reg. No.: MS/USCG Doc # _____ Hull Color: _____
Length over all: _____; Manuf'r: _____; Year/Model: _____
Circle all that apply: Sail Power Inboard Outboard Inboard/Outboard

PLEASE SIGN AT BOTTOM

TERMS AND CONDITIONS

- 1. Nature of Rights Granted.** This Contract is for the license of storage space only. The Licensee alone shall have full care, custody and control of the Boat and its associated property. The parties agree that no bailment, lease, or any other relationship other than a license is created by the presence of the Boat upon the premises of the Marina, or by this Contract. Licensee expressly waives any legal benefit that might otherwise operate in favor of a bailor.
- 2. Ownership and Authority.** Licensee represents that he/she has full authority to exercise custody, possession, and/or control over the Boat and to commit to the terms of this Contract with respect to it. Licensee further represents that he/she is the sole owner of the Boat, except to the extent otherwise disclosed on this Contract.
- 3. Licensee’s Duties.** Licensee acknowledges its duty during the storage term to avoid personal injury or property damage to others that involves the Boat, even through causes acting upon the Boat such as (without limitation) fire, heavy weather, misdeeds of third parties, or the like, and that the aforesaid duty is not diminished by any efforts that Marina may undertake (in its sole discretion) to mitigate adverse effects that may involve the Boat. Licensee shall at all times maintain the Boat in a safe condition, such that its presence does not present any risk of harm to others. In particular, but without limitation, and in furtherance of the same, Licensee shall: (1) ensure that any heat-producing device or appliance is detached from any fuel or power source; (2) ensure that batteries are removed from the boat or disconnected if left in place; and (3) (unless expressly authorized to the contrary in writing by the Marina) remove all flammable fluids or other materials from the Boat and the Premises, with the exception of motor fuels confined within manufactured fuel tanks. Licensee agrees to comply with all federal, state, and local laws, rules and regulations. Licensee agrees to insure that the premises shall remain completely clean, and is responsible for Marina’s expenses in cleaning up any debris attendant to the Boat that Marina may discover.
- 4. Storage at Licensee’s Sole Risk.** Storage of the Boat upon the Premises is at the sole risk and responsibility of Licensee and/or its insurer(s), as their interests may appear. Marina owes no duty of care to prevent harm to or by the Boat, except when Marina relocates boats by reason of needs of the Marina, in which case only the duty of reasonable care during the movement shall apply. In greater particular, but without limitation, Marina owes no duty of care to protect the Boat from harm or loss due to any cause, including without limitation fire, theft, vandalism, weather, extraordinary sea conditions, or acts of others. Without diminishing the effect of the foregoing, Licensee agrees (1) that Marina, its officers, managers, agents, servants, and/or employees are hereby exonerated as to any damage to the Boat due to any alleged negligent acts or omissions of the Marina, other than through breach of obligations expressly undertaken in this Contract; and (2) Marina’s liability is limited in any event to the amount of the storage fee.
- 5. Emergency Actions.** In the event of an emergency or a threat to safety (including without limitation fire or the approach of heavy weather), the Marina is authorized (in its sole discretion) — but has no obligation — to attempt measures it deems appropriate to mitigate damage to the Boat, to Marina property, or the safety or property of others. Such measures include but are not limited to relocating the Boat to another location on or off the Premises, if the Marina (in its sole

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discretion) deems the same to be advisable in light of the circumstances, including considerations of safety of persons or property. Relocations or other actions for reasons of safety shall be at the expense of Licensee if the condition in question has been caused by the Boat or the Licensee, or appears to threaten the Boat or the interests of the Marina or others, or appears to be capable of mitigation by relocation of the Boat or other action involving it. By reason of the needs of marina operations, Marina shall have similar liberty, at its own expense, to relocate the Boat within the Premises.

6. Storage Space “As Is.” Licensee hereby represents that he/she (1) has made him/herself familiar with the conditions of the Premises, including the presence of unpaved or irregular areas of the grounds; and (2) is aware of and assumes the various types of risks that are associated with the storage of the Boat or property on the premises. Licensee accepts the conditions of the Premises “as is.”

7. Insurance. Licensee hereby acknowledges that Marina has no obligation to insure the Boat, and Licensee shall proceed on the assumption that Marina has not done so. Licensee warrants that the Boat will remain insured under an “all risk” policy, including hull insurance in an amount at least equal to the actual cash value of the Boat and liability coverage in an amount not less than \$500,000 with the Marina to be an additional insured, and hereby waives rights of subrogation as against Marina as to any cause other than a violation of a duty expressly undertaken by the Marina in this Contract. Licensee shall deliver proof of insurance to Marina upon request.

8. Licensee’s Responsibilities for Personal Injury; Indemnification. Armed with the aforesaid familiarity with the Premises, Licensee undertakes to advise, inform, warn, guide, accompany, and control all persons who may come to be on the Premises by reason of any association or connection with the Licensee, the Boat, or this Contract (Licensee’s People”), so as to avert risks of personal injury to any person or property. Licensee acknowledges that he/she is in a superior position to accomplish the same and agrees that he/she has the sole responsibility to do so. Licensee acknowledges that the consideration paid to the Marina for storage of the Boat is disproportionately small in comparison to the value of the Boat and to risks of harm. Accordingly, as part of the consideration for the storage space afforded: (1) on behalf of him/herself, his/her heirs, estate, personal representative(s), successors in interest, and any persons who may or might be dependent upon him/her, Licensee: (a) does hereby release, discharge, and exonerate Marina (and its officers, managers, agents, servants, and/or employees (“Marina’s People”)) as to liability for death or injury to the person of the Licensee from any cause, including any allegedly negligent acts or omissions of the Marina and/or the Marina’s People (except those that exceed ordinary negligence); and (b) agrees that the liability of the Marina and/or the Marina’s People shall be limited in any event to the amount of the storage fee; and (2) with respect to Licensee’s People, Licensee hereby agrees and covenants to indemnify and hold the Marina and the Marina’s People harmless from any liability arising out of death or injury to the person of any of the Licensee’s People — from any cause, including any the allegedly negligent acts or omissions (except those that exceed ordinary negligence) of Marina and/or the Marina’s People.

9. Indemnification as to Prohibited Suits. Licensee covenants to assert no claim, suit, demand, etc., at odds with the provisions of this Contract, and further covenants to indemnify and hold Marina and the Marina’s People harmless in respect of any such claim, expressly including, without limitation, payment of Marina’s legal fees and costs.

10. Scope of License and Licensee’s Obligations. Licensee agrees to use the space solely for the storage of the Boat in support of recreational uses, and for no other purpose. The Boat, and any other boat or other property (including, without limitation, any vehicle) of the Licensee present at the Premises at any time — even if in violation of this Contract or before or after the time frame of the license granted herein — shall be subject to these Terms and Conditions in the same way that they apply to the Boat. These Terms and Conditions shall likewise apply with respect to the presence of the Licensee or Licensee’s People at the Marina at any time. No prospective buyers, brokers, or the like — or display of signs or markings — are permitted on the Premises. No work to be done on the Premises, with the following sole exceptions: (1) clearing boat of accumulation of snow, ice, rainwater, etc.; (2) washing of Boat with water or soap (but no other substances); no outside vendors, mechanics, contractors, repairmen, etc. are permitted.

11. Payment and Holding Over. Payment of 100% of the storage fee for the season is due not later than the time that the Boat is placed upon the Premises. Storage fees for the storage season are deemed to be fully earned upon placement of the Boat upon the Premises. No refunds will be made, except as expressly provided herein, even should the Licensee relinquish the licensed space prior to the end of the term of the Contract. Licensee agrees to pay all other fees within 30 days of the issuance of the Marina’s invoice for the same, when mailed to Licensee at the above address. Licensee agrees that these Terms and Conditions shall be automatically extended to cover any holdover period, unless an agreement supplanting this one becomes effective. Additional charges apply to any holdover period as per Marina’s rates.

12. Attorney’s Fees/Lien Rights/Abandonment & Disposition. Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Contract. Licensee agrees that any sums due to Marina under this Contract (or otherwise by reason of the Licensee’s use of or presence at the Marina), including the Marina’s legal fees and expenses of arrest, repossession, disposition of the Boat, or other action of enforcement of any debt or lien, shall constitute a federal

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maritime lien (as well as a lien pursuant to applicable sections of Massachusetts General Laws Chapter 255 and other provisions of state law) against the Boat. Failure of Licensee to remove the Boat from the Marina's facilities within 30 days of the last day of the license granted in this Contract shall constitute an abandonment of the Boat for purposes of Marina's disposition of the same pursuant to Massachusetts General Laws Chapter 255 §§14 through 22.

13. Cancellation/Renewal/ No Assignment. The Marina may cancel the license granted by this Contract on 30 days' notice and payment of a *pro rata* refund of the storage fee. The grant of this license does not obligate the Marina to accommodate Licensee in the future or to provide any other service for the Boat. No assignment or transfer of Licensee's rights under this Contract is permitted or valid without prior approval by the Marina, and any attempt to extend rights under this Contract to others shall render void any otherwise-existing rights of Licensee, at the sole option of Marina.

14. Interpretation. This is an integrated document, final in all respects, expressing the entire agreement of the parties, and overtakes and supersedes all prior communications, all of which are deemed to be merged herein. It can be modified only by a written instrument signed by both parties. This document does not create any rights in third parties — its sole beneficiaries are as expressly identified herein. No waiver of any right by Marina shall serve to diminish Marina's rights hereunder thereafter, nor create any right to repetition of same. Should any provisions(s) of this contract be found to be invalid, such invalidity shall not be deemed to impair or affect in any way the validity, enforceability or affect the remainder of this contract, and, in such event, all of the other provisions of this contract shall continue in full force and affect as if such invalid provisions(s) had never been included herein. Any legal action is to be brought in a court located in Massachusetts, whose law shall govern as to all issues as to which admiralty law looks to the law of some individual state. Bold headings in this Contract are for convenience only and without legal effect.

15. Notices. All notices and other communications required or permitted by this Contract shall be deemed given if made in writing and, in the case of notice to the Licensee, sent to the postal or email address set forth above or delivered by hand to a responsible person on board the Boat.

By his/her signature Licensee hereby acknowledges that he or she: (1) has fully read this Contract, (2) fully understands the foregoing Terms and Conditions; and (3) agrees to be bound by and fully comply with all of the provisions of this Contract.

Licensee: _____ DATE: _____