

HINGHAM HARBOR MARINA
2010 Summer Slip Contract

Hingham Harbor Marina (“Marina”) and the individual identified below (“Licensee”), agree that upon receipt of the payment of the seasonal fee as set forth in the Marina’s Schedule of Fees, the boat described below (“Boat”) may be kept in a slip (to be assigned by the Marina) at the Marina’s facilities at the above address (“Premises”) for the duration of the 2010 summer season, beginning May 1, 2010 and extending no later than October 15, 2010 — always subject to the Terms and Conditions set forth below.

Please Print

Licensee Name: _____
Street Address: _____
City/Town/State: _____ Zip: _____
E-mail: (1) _____; (2) _____; (3) _____
Telephone: Cell: _____; Work: _____; Home: _____
Vessel Name: _____; Max. Beam: _____
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 slip 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 at the facilities of the Marina, or by this Contract, or by any assistance or services that Marina may afford to Licensee or the Boat, for a fee or otherwise. 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 his/her duty to avoid and prevent personal injury or property damage (including without limitation harm from pollution) 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, and agrees to comply with all federal, state, and local laws, rules and regulations. Any condition of the Boat (including — for example only and without limitation — fire, sinking or incipient sinking, inadequate mooring provisions, pollution) that appears (in the sole judgment of the Marina) to threaten the interests of the Marina or others gives the Marina the authority to exercise powers as described in this Contract under “Emergencies,” at the expense of the Licensee. Licensee is to insure that the Marina facilities shall remain completely clean, and is responsible for Marina’s expenses in cleaning up any debris, etc., that Marina may discover that is associated with the Boat.
- 4. Marina’s Rules.** The Marina may from time to time prescribe rules governing the conduct of Licensees and other persons who may enter upon the Marina’s facilities or Premises. Licensee agrees to abide by any such Rules (or amendments thereto), and agrees to insure compliance with the same by all persons who may come to be on the Marina’s facilities or Premises by reason of any association or connection with the Licensee, the Boat, or this Contract (including without limitation family members and guests) (“Licensee’s People”), and to insure that all such persons conduct themselves with due consideration to the interests of others in a neighborly and seamanlike manner.
- 5. Presence at Marina at Licensee’s Sole Risk.** Presence of the Boat at the Marina’s facilities is at the sole risk and responsibility of Licensee and/or his/her insurer(s), as their respective 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 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,

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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 seasonal slip fee.

6. 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 at or away from the Marina's facilities, if the Marina (in its sole 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 range of its facilities.

7. Slip Space and Marina Conditions "As Is." Licensee hereby represents that he/she (1) has made him/herself familiar with the conditions, features, and procedures of the Marina, including (without limitation) the condition of the floats, ramps, etc., and the presence of unpaved or irregular areas of the grounds, the extent of installed lighting; and that the Marina does not maintain security patrols nor 24-hour staffing; and (2) is aware of and assumes the risks that are associated with the circumstances at the Marina. With a full understanding of the foregoing, Licensee accepts the circumstances of Marina, its facilities, and its Premises "as is."

8. Responsibility for Protection of Entry Combination. Licensee acknowledges the importance of the confidentiality of the combination to the lock on the door affording entry to the Marina's floats, and commits to maintain the secrecy of the same.

9. 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.

10. Licensee's Responsibilities for Personal Injury; Indemnification. Armed with the aforesaid familiarity with the facilities of the Marina, Licensee undertakes and promises to advise, inform, warn, guide, accompany, and control Licensee's People, and to conduct him/herself, all 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 affording slip space for 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 slip 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 slip 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: (a) 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; and (b) from any liability of the Marina or Marina's People for harm to third parties that arise out of the presence of the Licensee or Licensee's People at the Marina's facilities.

11. 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.

12. Scope of License and Licensee's Obligations. Licensee agrees to use the space solely for the keeping 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 Marina 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.

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- 13. Specific Prohibitions.** Licensee promises not to perform, or to cause or permit to be performed, any work on the Boat while at the Marina except in conformity with the rules of the Marina regarding same, and promises to cause or permit no contractor, vendor, repairer, servicer, mechanic or the like to perform any work on the Boat at the Marina other than in conformity with Marina's rules. Licensee promises that no prospective buyers, brokers, or the like — or display of signs or markings — are permitted at the Marina facilities.
- 14. Amenity Utility Services.** Fresh water and electrical services are provided as a courtesy amenity to slip customers assigned to slips where piping/wiring may extend and be in working order. Marina shall have no responsibility for any interruption in those utility services that it may ordinarily provide, and may withdraw the same or impose limitations on their use in the event of abuse of the amenity.
- 15. Absence of Boat From Assigned Slip.** If Marina becomes aware that the Boat will be absent from the assigned slip for a known period, Marina may permit other vessels to occupy the said slip during the absence.
- 16. Payment.** Payment of 100% of the fee for the season is due not later than the time that the Boat is for the first time made fast to any part of the Marina's facilities, and fees are deemed to be fully earned at that point. 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, charges, etc., within 30 days of the issuance of the Marina's invoice for the same, when mailed to Licensee at the above address.
- 17. Holding Over.** Licensee agrees that these Terms and Conditions shall be automatically extended to cover any holdover period, or during any use by Licensee of Marina facilities before or after the term of the license granted herein, unless a slip agreement supplanting this one becomes effective. Licensee agrees to pay any additional fee applicable to any such uses.
- 18. 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 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.
- 19. 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 season's 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.
- 20. 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.
- 21. 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: _____