



HYANNIS MARINA INC
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**DOCKAGE/STORAGE LICENSE AGREEMENT
(SELF EXTENDING/SELF RENEWING)**

Rack Service: Memorial Day - Columbus Day
Summer Season: 15 April - 15 October • **Winter Season:** 16 October - 14 April

VESSEL OWNER'S NAME: _____ Email: _____
MAILING ADDRESS: _____ City _____ STATE _____ ZIP: _____
SUMMER ADDRESS: _____ City _____ STATE _____ ZIP: _____

BUSINESS () _____ HOME () _____
SUMMER () _____ FAX () _____
CELL () _____ BOAT CELL () _____

VESSEL'S NAME: _____ HAIL: _____
DOCUMENT NO: _____ STATE REG. NO. _____
LENGTH O/A: _____ MFG: _____ YEAR: _____ MODEL: _____ DRAFT: _____
HULL MATERIAL: _____ HULL NUMBER: _____

This License Agreement ("Agreement") is made as of this date _____ by Hyannis Marina, Inc. ("HMI", "Hyannis Marina" or "Marina") and the party named herein as Owner ("Owner"). HMI grants the Owner a revocable license to use a slip or storage space for the Vessel for beginning with the [] Rack Service [] Summer [] Winter Season subject to the terms (including renewal and/or extension) set forth in the following 5 pages and Sections 1 through 22 of this Agreement. **THE OWNER ACKNOWLEDGES HAVING READ, UNDERSTOOD AND AGREED TO ALL THE PROVISIONS OF THIS AGREEMENT.** In construing this Agreement, the definitions and terms of construction contained in Paragraph 22 of this Agreement shall apply.

Executed as a contract under seal.

MARINA _____ OWNER _____

BY: _____ DATE: _____ BY: _____ DATE: _____

- 1. ENTIRETY:** This Agreement is the entire agreement between the foregoing parties and there is no other agreement, either written or oral, except work orders, transient dockage agreements, the annual seasonal dockage or storage rate sheets and HMI rules and regulations.
- 2. BARGAINING POWER:** The Owner stipulates that the bargaining power of the parties with respect to the terms of this License Agreement is equal, that the Owner has been offered the option of negotiating a different agreement on more favorable terms at higher prices, and does not seek to enter into such an agreement.
- 3. SELF EXTENDING/SELF RENEWING CONTRACT:** This License Agreement (unless the Owner pays all amounts due and removes the Vessel from the marina within five days of the end of a Season; or, if this Agreement is terminated by HMI) will automatically extend itself for the next Season and automatically renews itself for consecutive Summer Seasons, consecutive Winter Seasons, Rack Storage or year round use as the case may be, all subject to the HMI's then current charges for dockage and storage. This Agreement may be terminated by the Owner by written notice given at least thirty days prior to the end of any Season (if all amounts due HMI are paid in full and the Vessel is thereafter removed from the marina and/or boatyard within five days of the end of a Season). HMI may, without cause, terminate the license provided under this Agreement by reasonable written notice to the Owner prior to the end of any applicable season. HMI may terminate the license provided under this Agreement at any time with cause.
- 4. BAILEE/LIMITATION OF LIABILITY:** The Owner acknowledges that HMI is neither a bailee nor an insurer of the Vessel. In consideration of the rates charged for services, the Owner agrees HMI is not liable for any damage to the Vessel or any personal injury, property damage or economic loss to the Owner, unless caused by intentional wrongdoing of HMI. The Owner agrees that HMI does not offer security for Vessels without additional compensation and a specific signed written agreement extraneous to this Agreement. HMI assumes no responsibility for any loss or damage to the Vessel, its engines or articles left on board in case of fire, theft, animals,

damage, exposure to the elements, acts of God, or any other cause however arising. The Owner agrees to have the Vessel insured by complete marine insurance coverage including adequate liability coverage.

5. OWNER'S RESPONSIBILITY:

A. **GENERAL/INDEMNIFICATION:** It shall be the Owner's obligation to keep independently apprised of weather predictions and conditions and other circumstances which may affect the welfare of the Vessel. When high winds are predicted, the Owner agrees to secure the Vessel with extra storm lines and to add additional storm lines directly to pilings. Owner agrees to operate, and to be responsible for the safe operation of the Vessel and to tie up and secure the Vessel (and all other watercraft owned or controlled by the Owner) in a careful and safe manner at all times so as not to cause damage to HMI's facilities or to any other vessels and shall be responsible for damage caused by Owner's Vessel (and all other watercraft owned or controlled by the Owner) regardless of weather conditions. The Owner shall have an affirmative duty to moor the Vessel in accordance with HMI's Rules and Regulations, to inspect the slip and the lines between the slip cleats or other points of attachment to the Vessel, and, to provide chafing protection for said lines in order to assure that chafing, damage or any deleterious conditions are not developing. The Owner shall be obligated to provide immediate notice to HMI of any such deleterious conditions that are discovered by the Owner. In the absence of any such notice to HMI (except in the case of HMI's intentional wrongdoing), it shall be conclusively presumed that the slip provided by HMI is in good order and condition. If the Vessel shall break away or be found away from her slip, it shall be conclusively presumed that the Vessel was improperly secured by the Owner. The Vessel shall be maintained in a safe and seaworthy condition, and shall not constitute (or be) a public or private nuisance, nor shall it cause any interference with the peaceful enjoyment of Marina facilities by others; nor, shall it be a source of environmental pollution. The Owner shall indemnify and hold HMI harmless from any and all damages, expense, cost, claims, demands, actions and causes of action (including, without limitation, HMI's reasonable litigation costs and attorney's fees, arising out of any action or failure to act of the Owner, whether caused by negligence or not. In the event HMI in its sole discretion determines that the Vessel appears to be in danger of sinking, causing a hazard to navigation, or becoming a fire, pollution, or other hazard, from any cause whatsoever, the Owner authorizes HMI to take reasonable and appropriate actions at the Owner's expense, including removing the Vessel from the water to deal with the perceived risk.

B. **HAZARDOUS WEATHER CONDITIONS:** In case of a hurricane, tropical storm or other hazardous weather conditions, the Owner agrees to promptly remove the Vessel from the marina, or HMI may haul the Vessel at the Owner's expense, in accordance with HMI's Hurricane Regulations. However, nothing herein shall require HMI to haul boats from the water or to take any action and nothing herein shall make HMI, its management or employees liable for failing to take action under the above-mentioned circumstances. HMI shall have the right, in its sole discretion, to decide to haul or not to haul boats or watercraft based on the information available and provided to HMI as to storm prediction and tracking. The Owner stipulates and agrees that HMI must avoid commencing hauling boats, until all storm tracking models demonstrate that the marina is in definite danger of a direct hit by a hurricane and, if HMI's decision is to commence hauling, that available labor, high winds, sea conditions, other weather conditions or other limitations may hamper or create an inability to move, haul, handle or otherwise secure all boats or watercraft and that any decision to haul or not haul boats or watercraft, or the resultant limitations, does not constitute negligence.

C. **UPON TERMINATION:** Upon termination of this License Agreement, whether by expiration of its term or otherwise, the Owner shall, after paying all sums due HMI, immediately remove the Vessel from the marina in a careful, seamanlike manner, leaving HMI's property in good order and condition, reasonable wear and tear excepted. In the event the Owner fails to remove the Vessel and any other property upon termination of this License Agreement, HMI may at its sole option: 1.) charge the Owner's account a daily fee for each day or part thereof that the Vessel or other property of the Owner remains on the property of HMI; 2.) subject to applicable law, take over the Vessel or other property of the Owner and dispose of same as HMI sees fit; 3.) secure the Vessel or property to the space occupied or haul the vessel from the water and store it in any other location.; 4) remove and hold any components from the Vessel; 5.) avail itself of any other available lawful remedy.

6. **VACANCIES AND DOCKMASTER NOTIFICATION:** In the interest of minimizing slip fees, HMI will engage in the customary practice of re-renting slips to transient boaters when a seasonal customer is away overnight or longer, without compensation to the seasonal slip customer. No dinghies, tenders, inflatables or personal watercraft, etc. will be left in the slip or anywhere else unassigned to it when the Vessel is out of the slip. HMI shall have the right to remove any such dinghy, tender, inflatable or personal watercraft at the Owner's expense and/or to charge an additional fee for water or land space occupied by such craft. The Owner agrees he will inform HMI by notice to the Dockmaster in advance, which in this circumstance may be oral notice, whenever the Vessel will be away overnight. If the Vessel is not at its slip by 6 PM on any day HMI will consider the slip available for nightly rental. HMI shall not be liable to the Owner or the Vessel if the Vessel returns earlier than scheduled, but shall make a good faith effort to provide alternate slip space or rafting arrangements for the Vessel to use until its regular slip space is scheduled to be available (according to said notice). Failure to notify the Dockmaster may result in the Owner being charged the transient dockage fee for alternate slip space for the nights the slip is left empty after 7 PM.

7. **SLIP ASSIGNMENTS AND ASSIGNABILITY:** Slips are assigned by HMI and can be reassigned at any time during the course of business in the sole discretion of HMI. The slip space is assigned only to the Vessel, is not assignable or transferable by the Owner to any other vessels or owners and does not include water space for a dinghy, tender, inflatable, or personal watercraft, etc.

8. **SELF SERVICE/OUTSIDE VENDORS:** HMI's policy is to allow the Owner to supply his own labor through outside vendors under the following terms: Vendors shall be liable for all harm or damage resulting from use of HMI facilities or presence at the marina or

boatyard. The Owner shall indemnify Hyannis Marina, Inc. against any claims by any party for such resulting harm or damage and/or claims by the vendors themselves. The Owner is responsible to ensure that the vendor has insurance covering against personal injury, property damage, business interruption and workers compensation with the same policy limits and coverage as carried by HMI under its own insurance policies. All policies providing such coverage shall provide for Hyannis Marina, Inc. as an additional insured party. Upon request, a certificate of insurance detailing such coverage shall be provided by the Owner and/or the vendor. The Owner agrees that failure of the Owner to ensure that the outside vendor is insured as required herein shall result in the Owner being responsible to defend, indemnify and save Hyannis Marina, Inc. harmless from any resulting harm or damage and/or claims, demands, liability, causes of action, judgments and executions, costs or expenses (inclusive of litigation costs and attorney's fees) arising directly or indirectly from use of HMI facilities or presence at the marina or boatyard or out of any actions by the vendor and/or the Owner. The outside vendor may be required to pay an hourly fee for a proportionate share of HMI's overhead for vendor's use of HMI's facilities. The Owner shall not paint the hull with antifouling paint, nor shall the Owner adjust or interfere with or attach anything to jack stands in any manner at any time while at the marina or boatyard.

9. **WINTER WET STORAGE:** In cases of wet storage, HMI is not obligated to supply (but the Owner may supply at its sole cost and expense) some form of deicing equipment, subject to the approval of HMI. The Owner shall be liable for any damage caused for any reason by said equipment. HMI may supply electrical power at the Owner's expense but shall not be liable for any loss of electrical power. HMI shall not supply water during this period. The Owner agrees that no one will live aboard the Vessel. The Owner will take the responsibility of maintaining (and totally caring for the Vessel during the winter or will separately and specifically in writing) contract with HMI for additional fees to accept those responsibilities.

10. **TERMINATION/NUISANCE:**

A. HMI may terminate this License Agreement for cause, and such termination for cause shall not entitle the Owner to any refund or proration of amounts paid hereunder. The term "cause" shall include, but not be limited to, violation of this Agreement or law, criminal misconduct, creation of a nuisance, creation of a pollution potential or hazard, or other offensive behavior or other situations which pose a risk of danger, harm or damage, or annoyance. Termination shall be effective upon seven (7) days' notice in writing, except for emergency situations in which HMI, the marina or boatyard, persons lawfully thereon, or other vessels may face a serious and immediate risk, in which case no advance notice shall be required and termination shall be immediate.

B. Whenever the Owner or Vessel are, by any act or omission, in violation of any applicable local, state, or federal laws or regulations, or of HMI's Rules & Regulations, or whenever (in the sole judgment of HMI) the Owner or Vessel interferes with the peaceful use and enjoyment of the marina by others, HMI may terminate the license provided by this Agreement and expel the Owner and Vessel forthwith, without refund or compensation to the Owner; and, at HMI's option in the event of such termination, HMI may haul the Vessel from the water or otherwise remove the boat from the marina without resort to judicial intervention and at the Owner's expense.

11. **REFUNDS: Seasonal Slip Fees or Deposits Are Not Refundable.** No refund shall be paid in connection with a slip for the Vessel which is unused (for any reason) during all or any part of any season. No refund shall be paid for any lack of services caused by or resulting from weather conditions, fires, acts of God, vandalism or other unanticipated events or emergencies, and HMI shall not be obliged to make any refunds to the Owner for lack of services as a result of any such circumstance.

12. **INDEMNIFICATION:** The Owner and Vessel shall defend, indemnify and save Hyannis Marina, Inc. harmless from any damages, claims, demands, liability, causes of action, judgments and executions arising directly or indirectly out of (a.) any actions or failure to act by the Owner (including without limitation, any actions or omissions relating to operation of motorized vehicles or machinery within the marina or boatyard); or, (b.) the Owner's use of the Vessel. The Owner shall not make Hyannis Marina, Inc. a party to litigation against others without first obtaining the express written consent of Hyannis Marina, Inc. The Owner (and any other person signing this Agreement on behalf of the Owner) hereby covenants and agrees to defend and indemnify Hyannis Marina, Inc., its agents, servants, employees, representatives and insurers against any such litigation, claims or demands, including without limitation, subrogation actions by the Owner's insurance company.

13. **COLLECTIONS AND FINANCE CHARGES:** All invoices under this Agreement shall be due and payable at the time rendered and HMI shall have the option of requiring payment in full, in cash, wire or by certified check, before the Vessel is allowed to leave the marina or the boatyard or be launched into the water. In the event that there are any outstanding charges for goods or services unpaid at the time of the Vessel's or Owner's departure from the marina, the Owner, by signing this License Agreement, expressly authorizes HMI to submit said charges against the Owner's credit card. HMI reserves the right and shall have the power to retain possession and control of the Vessel or any of its engine(s), equipment, accessories, dinghy, inflatable, etc., without resort to judicial intervention, with the power to hold said Vessel by hauling same from the water or otherwise securing it to the docks or disabling the Vessel at the sole expense of the Owner. In cases where HMI deems it necessary to hold the Vessel on land as the most secure, convenient or economical means of holding her until payment has been received, HMI shall not be obligated to restore the Vessel to the water or release the Vessel until all charges are paid in full. The Owner and Boatyard agree and stipulate that if the Vessel leaves HMI's facilities, with or without HMI's consent, prior to full payment of all amounts currently due, HMI shall not lose any of its rights to regain possession in a peaceable manner (with or without judicial intervention) and to hold it again thereafter until paid in full. The Owner further covenants and agrees to pay a finance charge at the rate of 1.5% per month on any unpaid balances. The Owner further agrees that in the event that HMI shall retain an attorney to take any kind of action to collect any balances due hereunder, including without limitation suits or

legal proceedings to enforce liens against the Vessel, a reasonable attorney's fee shall be assessable as part of HMI's damages (regardless of whether any legal proceeding is commenced) in addition to the other balances due.

14. **SEVERABILITY:** The parties stipulate that should any section or part of this Agreement, as a matter of law, not be enforceable as written, it will be deemed to be separable and severable from the rest of the License Agreement and shall not affect the validity or enforceability of the rest of the License Agreement.

15. **NOTICES:** Notices to the Owner shall be deemed to be served properly if posted in writing and placed in an obvious place on the Vessel, or if sent to the Owner at the address set forth above, by certified mail or by email.

16. **ATTORNEY'S FEES, COSTS AND EXPENSE:** In the event that HMI is required to institute or defend legal proceedings to enforce any provision of this Agreement, or vindicate claims arising out of the Vessel's or Owner's presence at the marina, or to collect any amounts due, or that become due, hereunder, or to enforce any maritime or other liens, the Owner shall (unless a judgment is entered against HMI in favor of Owner for the complete relief sought by the Owner in any complaint), in addition to any other sums that may be recovered, pay HMI's reasonable costs, expenses and fees (including attorney fees and litigation expense and all costs related thereto). Interest shall accrue on all sums due and payable at one- and one-half times the statutory rate provided by Massachusetts General Laws Chapter 231, §6C.

17. **GOVERNING LAW AND VENUE:** The parties agree that this Agreement (a) is a contract which has been negotiated and entered into in the Commonwealth of Massachusetts; (b) the contacts between the parties have occurred primarily in the Commonwealth of Massachusetts; and (c) it is the intention of the parties that this Agreement shall be governed by, interpreted under, and enforced in accordance with the laws of the Commonwealth of Massachusetts. In the event of litigation, the parties agree all actions shall be brought only in the Commonwealth of Massachusetts, and that the venue of any such action shall be in the Barnstable Division of the District Court Department, or the Barnstable Superior Court in Barnstable, Massachusetts, or in the case of an admiralty in rem proceeding, in the United States District Court for the District of Massachusetts, in the Eastern Division sitting at Boston, and that all proceedings in any litigation, including but not limited to, all depositions and hearings, shall be conducted in Barnstable, except those which a Court requires to be held elsewhere.

18. **RULES AND REGULATIONS:** By entering into this License Agreement, the Owner hereby agrees to comply with all written rules and regulations promulgated by HMI which are available from HMI or Dockmaster. The Owner shall have the responsibility for keeping apprised of all such rules and regulations.

19. **INSURANCE/WAIVER:** It shall be the Owner's responsibility, at Owner's sole cost and expense, to have the Vessel covered by adequate hull insurance and to have the Vessel covered by usual forms of protection and indemnity insurance for all forms of damage caused by (or to) the Vessel or those aboard. The Owner acknowledges that it is the Owners sole responsibility to maintain adequate hull, property damage and indemnity insurance against all losses and claims. Owner represents that the Vessel is constructed primarily of fiberglass, metal, wood and other various related, materials. In contracting with Hyannis Marina, Inc., Owner recognizes and accepts that there are certain elements of risk that exist which could cause damage to the Vessel during the process of hauling, loading, storing, transporting, unloading, launching and/or operating the Vessel. Owner further recognizes and accepts that there could be damage to the Vessel as a result of the Vessel being transported (including without limitation, being transported over roads and highways). Owner will in no way hold Hyannis Marina, Inc. responsible for any such damage that may occur during the foregoing handling of the Vessel.

20. **ABANDONMENT:** Owner agrees to pay reasonable storage, dockage, or parking costs for all boats, equipment, trailers, vehicles, motorcycles, etc. left at the marina or the boatyard following the expiration of any license under this Agreement. If an Owner ignores or abandons a Vessel at the marina or the boatyard, for more than 8 months without making payment of monies due, the Owner hereby agrees to allow HMI to deliver the Vessel to the Owner's premises or place of employment/business, without further permission by the Owner, and agrees to pay a fair and reasonable fee for such delivery. Alternatively, if HMI or a surveyor appraises the Vessel and determines that the Vessel is valueless or worth less than the Owner's outstanding bill, HMI, after reasonable effort to notify the Owner, may sell, destroy, give away or otherwise dispose of the Vessel, and the Owner, shall (in addition to such outstanding bill) be liable for HMI's costs and expenses related to such disposal. Owner agrees that any delay by HMI in asserting any of its rights under this Agreement shall not provide the Owner with any defense (including any defense of laches) to HMI's claims under this Agreement.

21. **SERVICE AND REPAIR:** In the event the Owner or Vessel uses the services of HMI's Service Department, the Owner agrees that the provisions of HMI's work order are incorporated into this Agreement. A copy of the work order terms and conditions is available upon request.

22. **DEFINITION OF TERMS AND CONSTRUCTION OF AGREEMENT:** As used herein, where the context permits, the following definitions shall be construed to apply to this Agreement: "Owner" shall include the Owner identified above and shall include the Owner's agents, servants, guests, employees, contractors and any other person acting on the Owner's behalf or under the Owner's authority and any persons lawfully aboard the Vessel or traveling to and from the Vessel on HMI's property. "Vessel" includes the Vessel identified above and its engine(s) and all equipment and appurtenances, including without limitation, dinghies, tenders, trailers, inflatables, and personal watercraft. This Agreement shall be enforceable against the Vessel at the option of HMI. "Season" shall be construed to apply to one of the three above-referenced periods of time applicable to dockage or storage: (a.) Rack Service: Memorial Day - Columbus Day; (b.) Summer Season: 15 April - 15 October; and (c.) Winter Season: 16 October- 14 April. "HMI", "Hyannis Marina", "Hyannis Marine", "Boatyard", "Tugboats", "Trader Ed's", "Marina" shall be construed to apply to or mean Hyannis Marina, Inc. and its agents, servants,

employees, representatives and its insurers. The term "marina" as used herein (and where the context so admits) may be taken to refer to property upon which customary marina facilities are operated, conducted and maintained by HMI (including without limitation all docks, piers, slips, moorings, boatyards, storage facilities, retail, entertainment and dining establishments and facilities). The term "boatyard" as used herein (and where the context so admits) may be taken to refer to property upon which customary boatyard facilities are operated, conducted and maintained by Hyannis Marina, Inc. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and each executed counterpart shall have the same force and effect as an original instrument, as if the parties had signed the same instrument. Photocopies and facsimile/scanned copies of this Agreement shall be deemed an original and all of which together shall be one and the same instrument. This Agreement may be signed digitally, electronically or by facsimile and any such signature shall be valid and effective; and, this Agreement or any such signature may not be denied legal effect or enforceability solely because it is in electronic form in accordance with the provisions of the Federal Uniform Electronic Transactions Act (UTA) and the Massachusetts Electronic Transactions Act (M.G.L. c. 110G). The obligations of any Owner (if more than one) shall be joint and several and each does hereby irrevocably and unconditionally guarantee the performance of each other's obligations under this Agreement and hereby waives demand and notice of default or of nonpayment and all and every other demand or notice and all suretyship defenses. This Agreement shall be binding upon the parties hereto, their respective heirs, representatives, successors and assigns provided that this Agreement may not be assigned by any Owner without HMI's express written consent and any attempted or purported assignment in contravention of the terms herein shall be void ab initio and confer no rights upon any putative assignee. The captions are supplied herein for convenience only and shall not be deemed to be part of this Agreement for any purpose.

Ref: M:\Client Files\KURKER\DOCKAGE AGREEMENT\Dockage Agreement (full revision 09172020).docx