

The term "Marina" shall refer to the Town of Danvers-Crane River Marina, in Danvers, MA. The term "Owner" shall refer to the lawful Owner of the Vessel, or the person acting as the authorized agent for the Owner of the Vessel named on this Dockage Contract. The term "Vessel" shall include any outboard engine, equipment, appurtenances, etc. of the Vessel named on this Dockage Contract if left separately to be the subject of this Contract, wherever the context admits, and any maritime services on them shall be deemed to be rendered to the Vessel as a whole.

1. THE OWNER REPRESENTS BY HIS SIGNATURE ON THE REVERSE SIDE OF THIS DOCKAGE CONTRACT THAT HE HEREBY REQUESTS PERMISSION TO BERTH AND DOCK HIS VESSEL AT THE MARINA for the period of time described on this contract for the benefit of the Owner and the Vessel, subject to the terms and conditions set forth below which are made part of this contract. The Owner hereby warrants and represents that he is in fact and in law the true Owner of the Vessel, and has full power and right to enter into this contract for himself and for the Vessel. The Owner further agrees that this contract is not assignable to any other vessel or owner unless agreed to in writing by the Marina, and does not apply to any tender, dinghy or runabout belonging to the Vessel except at the discretion of the Marina. It is stipulated that there are other sources of the same services in this area and that the Owner and Vessel have freely chosen to do business within the terms and conditions hereof, and understand them and agree to be bound by them.

2. THE SIGNATURE OF THE OWNER ON THIS CONTRACT SHALL CREATE A BINDING CONTRACT between the Owner and the Vessel on the one hand, and the Marina on the other. The rights of the Marina shall vest at that point in all respects. It is expressly stipulated that the Vessel and its maritime equipment have been and are engaged in maritime activity on waters which are navigable in interstate and foreign commerce within the scope of Federal admiralty and maritime jurisdiction.

3. THE OWNER COVENANTS AND WARRANTS THAT THE VESSEL IS IN ALL RESPECTS SEAWORTHY AND IN SAFE CONDITION unless otherwise stated in writing on this contract. The Owner and Vessel shall be directly liable to the Marina for any loss, damage or injuries suffered by reason of any unsafe or un-seaworthy condition not disclosed and which is not foreseeable by reason of the nature of the work, etc. ordered herein.

4. THE OWNER COVENANTS AND WARRANTS THAT THE VESSEL WILL BE FULLY INSURED FOR ALL LOSS OR DAMAGE TO THE VESSEL, MARINA FACILITIES OR OTHER PROPERTY DURING THE TERM OF THE CONTRACT, or that the Owner will be a self-insurer of any loss or damage to the extent that the Owner does not procure and maintain adequate commercial insurance, and that the Marina shall not be required to provide insurance for the Vessel during the contract period. All such insurance shall be written by marine insurance companies duly qualified to do business as insurance companies in Massachusetts, and shall include a General Liability policy in the amount of no less than One Hundred Thousand Dollars (\$100,000) naming the Town of Danvers as additional insured. All insurance covering the vessel shall provide that the Marina shall not be barred from making claim against said policies by reason of being an otherwise covered party under said insurance, to the extent that the vessel shall cause damage to facilities or persons at the Marina. The Marina shall not be liable for any loss, damage or injury to, or caused by the Vessel arising from any cause whatever during the term of this contract. The Owner further agrees that no outside contractor or boat broker will work on or show the vessel while it is at the Marina without checking in first at the Marina office, signing, and complying with the Outside Contractors Policy agreement before working begins.

5. LIMITED WARRANTY TO APPLY – The Owner and Marina agree that by reason of the nature of a saltwater harbor environment and the attributes of a Marina and marine service operations, the Marina can not anticipate or predict when, where or how specific causes will arise to disrupt service, cause parts failures, servicing difficulties, defects in materials and breakdowns in equipment functions. The Owner and the Marina therefore agree that the Marina shall not be liable for any loss or diminishment of services for any reason, regardless of the nature or duration thereof. The marina shall not be obligated to make any refunds to the Owner as a result thereof.

6. THE OWNER COVENANTS AND AGREES THAT HE, THE VESSEL, AND THOSE IN PRIVY WITH EITHER OF THEM, WILL COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS CONTRACT and with all of the rules and regulations of the Marina, as well as the rules, by-laws and regulations of the Town of Danvers, the Commonwealth of Massachusetts and the United States of America to the extent that they may be applicable. The Owner warrants and covenants that the Vessel will be operated, and secured when not in operation, in a safe, careful manner so as not to cause damage to the Marina's facilities or to any other vessels, and shall be maintained in a safe and seaworthy condition and shall not be a public or private nuisance or interfere with the peaceful enjoyment of the Marina by others or be a source of environmental pollution. Unless the Owner states otherwise in writing, the Marina is entitled to rely on the apparent authority of anyone in possession or apparent charge of the Vessel. In the event that the Owner or other authorized person is unavailable, or is available but refuses to act, and if the vessel is in danger of sinking, causing any hazard to navigation, becoming a fire, explosion or pollution hazard, or of causing damage to the Marina's facilities or, in the Marina's judgment presents a present or foreseeable hazard or danger, the Owner authorizes the Marina to take reasonable and appropriate actions, at the Owner's sole risk and expense to abate, mitigate and otherwise deal with the apparent danger and to protect the Marina's facilities and other vessels using them or being stored there, as well as protect the general public and private property and vessels using Danvers Harbor and its environs. The Owner agrees to be bound by the Marina's actions and to be fully and solely responsible for all expenses. Notwithstanding the above, nothing herein shall be construed to create any duty, obligation or responsibility to act on the part of the Marina; and nothing shall be construed to create any liability on the part of the Marina for failing to act in such circumstances; and nothing herein shall be construed to create any exception or waiver of the general conditions, restrictions, waivers, exonerations, etc. set forth herein in favor of the Marina.

7. THE OWNER AGREES THAT THE MARINA SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS WHICH OCCURS TO THE VESSEL FROM CAUSE BEYOND THE IMMEDIATE, DIRECT CONTROL OF THE MARINA. This includes, but is not limited to, actions or negligence of other vessel owners or business visitors or guests; failure of utilities, buildings or equipment; extreme weather damage; tidal or wave damage; fire; explosion; dry rot, mildew or inherent vice or defects of any of the vessel's materials or appurtenances; or acts of God. The Owner also agrees that the Marina shall not be responsible for damage, deterioration, or other loss on the vessel during the term of this contract, and that it is the Owner's responsibility, in every instance, to determine how, when and to what extent the Vessel shall be maintained, operated, repaired and serviced during the term of this contract. Further, it is agreed and stipulated that the services included in this contract do not include any type of on site security, guard services, watchmen, etc., and that the Marina shall not be liable to the Owner or vessel for any intrusion, theft, vandalism, arson or other criminal acts of any kind.

8. THE PARTIES HEREBY STIPULATE THAT THE OWNER RETAINS FULL CARE, CUSTODY AND CONTROL OF THE VESSEL AT ALL TIMES, and that the Marina is not acting, nor has it contracted to act as, a storage facility, bailee, nor in any capacity of care, custody and control of the vessel. Further, it is stipulated that the Owner places his vessel at the Marina in the full knowledge that no such facility can economically deliver and perform under NFPA 303, nor does the Owner expect warehouse action, format or responsibility from the Marina and the Owner will indemnify the Marina against any claim for damages against it under care, custody, control, warehouse, bailee statutes and regulations affected by the recommendations of NFPA 303.

9. THE OWNER WARRANTS AND COVENANTS THAT AT ALL TIMES WHEN THE VESSEL IS AT, NEAR OR IS USING THE FACILITIES OF THE MARINA, THE VESSEL SHALL NOT HAVE ABOARD ANY DANGEROUS OR ILLEGAL DEVICES, APPLIANCES OR MATERIALS unless they are U.S. Coast Guard or other appropriate government agency, or Underwriters Laboratories or equivalent, approved in respect to the use being made of them. No open flame devices may be used at the Marina. No hazardous materials may be disposed of or abandoned on the property in any way. All children under the age of 12 years old must be accompanied by an adult and must wear a USCG approved personal flotation devices while on or around the dock areas. The Owner and any of his guests shall act reasonably so as not to disturb others, shall observe quiet times, shall not operate generators or motors continuously after hours. Docks, ramps and piers shall be clear of obstructions. The Owner shall not store supplies, materials, accessories, hoses or debris, lobster gear, or any electrical cords upon any walkway or fasten thereon any lockers, chests cabinets, steps, ramps or similar structures unless authorized by the Marina. Additionally, the Owner and any of his guests shall park their vehicles only in designated areas, shall not cause injury to the docks or piles, shall not operate or conduct commercial business from the Marina and shall comply with any other Rules and Regulations that might be, from time to time, promulgated by the Marina. Failure to comply with these conditions shall be grounds for the Marina to cancel this Contract.

10. THE OWNER WARRANTS AND COVENANTS THAT NEITHER THE OWNER, THE VESSEL, NOR ANYONE IN PRIVY WITH EITHER WILL MAKE ANY CLAIMS, DEMANDS, CAUSES OF ACTION OF ANY KIND AND NATURE, or obtain or enforce any judgments, executions or levies thereon, directly or indirectly (including subrogation matters), against the Marina, the Town of Danvers, its employees or agents arising out of any damage, loss, personal injury or death suffered by them or those in privity with them or any damage, loss, personal injury or death suffered by other vessel owners, vessels, or persons in privity with them: for which third-party claims might otherwise be raised against the Marina, etc.. The Owner and Vessel agree and covenant that they will defend, indemnify and save the Marina harmless from any and all such claims and the Marina shall be entitled to reasonable attorney's fees in the event of breach of the Owner's covenant hereunder.

11. THE OWNER AGREES THAT HE WILL PLACE HIS VESSEL ONLY IN THE SPACE ASSIGNED TO IT and will allow no other vessel to occupy that space. If the Owner fails to comply with this agreement, he and his Vessel will be liable for triple the summer transient daily rates and for the expenses of removal of said vessels from such locations. Notwithstanding this, the Owner agrees that he will inform the Marina in advance whenever the Vessel will be away from said berth or dock overnight or longer. Upon receipt of such notice, the Marina shall have the right to place any other vessel in this place for the entire period of time that the Vessel is expected to be away, for the Marina's sole use and account and without allowance of any kind to the Owner. If the Owner has not notified the Marina that his Vessel will be away overnight, but the Vessel is not in its space at 7:00PM on any day, the Marina may assume that the Vessel will be away overnight until 7:00PM on the next day. If the Vessel returns earlier than scheduled, the Marina's only obligation shall be to make a good faith effort to provide alternate space for the Vessel to use until its regular space is scheduled to be available (according to said notice).

12. HURRICANE – The Owner and Marina stipulate that the Marina is not liable for loss, damage, third party damage or loss to property or person in the event of acts of God, storms, floods, high winds, gales or hurricanes. The Owner further agrees to evacuate the property of the Marina together with his Vessel when so instructed by the Marina since no such facility can guarantee/warranty safety in abnormal weather conditions. It shall be the Owner's responsibility to remove the Vessel in a timely manner or instruct the Marina to haul it at the Owner's expense if the Marina is able to do so, without liability to the Marina. The Owner shall bear total responsibility for damage to and caused by the Vessel under these circumstances. If the Owner does not cause the Vessel to be moved, it is stipulated that the Marina may do so, at full cost to the Owner, but with no responsibility on its part or on the part of the Marina's insurance underwriter, and that such refusal will immediately void this contract.

13. IT IS STIPULATED AND AGREED THAT VESSELS WHICH HOLD OVER AFTER THE END OF THE USUAL SUMMER SEASON ARE AN UNDESIRABLE BURDEN AT THE MARINA'S FACILITIES. Therefore, if the vessel is not removed at or before the end of this contract period (unless such delay is caused by the Marina's schedule), the Owner and Vessel shall be liable for a holdover charge at the rate of \$3.00 per linear foot (LOA) per day, payable in advance for each such month or fraction thereof of holding over. Notwithstanding the foregoing, all of the other terms and conditions of this agreement shall continue in effect during this holdover period, to the extent that they may be applicable.

14. THE MARINA SHALL HAVE THE RIGHT NOT TO RENEW THIS CONTRACT, TO REFUSE TO APPROVE OR PERMIT ASSIGNMENT OF THIS CONTRACT BY THE OWNER, AND/OR TO TERMINATE THIS CONTRACT. The Owner and vessel specifically disclaim any right, title or property interests of any kind in future renewals of this Contract.

15. IT IS AGREED THAT ALL AMOUNTS PAYABLE AND PAID HEREUNDER ARE NONREFUNDABLE AFTER THEY HAVE BEEN RECEIVED BY THE MARINA IN GOOD FAITH, AND ALL INVOICES UNDER THIS CONTRACT SHALL BE DUE AND PAYABLE AT THE TIME RENDERED, AND MUST BE PAID BEFORE THE VESSEL OR ANY OF ITS EQUIPMENT, FURNITURE, GEAR OR APPURTENANCES LEAVE THE FACILITIES OF THE MARINA. The Marina shall have the right to refuse to release, surrender or deliver possession of the Vessel, etc., and to retain possession and control of the Vessel, etc. without process of law unless fully paid therefore. Any expenses involved in hauling, launching or storing said Vessel in the process of securing said payment shall be the responsibility of the Owner. It is stipulated that, if the Vessel leaves the Marina's facilities prior to full payment of all amounts currently due from time to time, the Marina shall not lose any of its rights to payment, to any liens under State or Federal (including maritime) laws against the Vessel, etc., or to regain possession (with or without process of law) and to hold again thereafter until paid in full. No release of possession of the Vessel by the Marina shall be construed as or operate to create a waiver or surrender of any rights or remedies hereunder by the Marina. The Owner further covenants and agrees that a service charge shall be payable on any balances due, at the rate of 2% per month on outstanding balances, commencing from the tenth day after the amounts become due and payable, which amounts of service charge shall be covered by the aforesaid lien rights. If the Marina shall employ an attorney to collect any balances due hereunder, including any actions upon liens against the Vessel, a reasonable attorney's fee shall be paid by the Owner as part of the damages of the Marina in addition to any other balances due for principle and service charges.

16. THE OWNER STIPULATES THAT THE SUBJECT OF THIS CONTRACT WILL PROVIDE A BENEFIT BOTH TO THE OWNER AND TO THE VESSEL, and will in every instance give rise to a maritime lien against the Vessel, as well as a State lien against the Vessel, in addition to any claims against the Owner or those in privity with him. The Owner hereby covenants that he will not deny or contest the existence or validity of such liens in any suit brought to enforce them, and that in any such suit the Marina shall be entitled to have any such defense summarily stricken. The Owner further waives any requirement of statute law, or rule of court, that prior notice be given as a condition of arrest of the Vessel pursuant to any in rem action which the Marina brings and stipulates and agrees that the Marina shall be entitled to be appointed custodian of the Vessel and to keep the Vessel for such purposes at its own facilities in the Commonwealth of Massachusetts, subject to the usual and customary expenses for similar services pending a final determination of such litigation. The Marina shall be entitled to obtain a court order for such an arrangement at the time when an in rem action or compatible action in State court is filed. Such expenses and charges shall be deemed to be an administrative expense of the litigation, charged against the Vessel while in the custody of the law. The Owner agrees that the Marina shall be entitled to bid at any sale of the Vessel by law or by agreement of the parties in settlement and shall be entitled to limit its bid to an amount less than the amount of its judgment including expenses, interest and attorney's fees. The Owner agrees that the proceeds of any such sale shall be applied first to the expenses of said sale, including attorney's fees connected with said sale, then to the payment of court costs and expenses (including administrative expenses), then to the payment of interest on the judgment, then to the payment of attorney's fees, then to payment of the amount of the judgment; and any balances thereafter shall be paid to the Owner.

17. THE PARTIES STIPULATE AND AGREE THAT DIFFERENCES OF OPINION ABOUT WHETHER PARTICULAR CHARGES ARE JUSTIFIABLE OR FAIR DO NOT AND SHALL NOT ENTITLE THE OWNER TO USE SUCH CLAIMED DIFFERENCE OF OPINION AS A BASIS FOR THE REFUSAL TO PAY ANY AMOUNTS CHARGED BY THE MARINA HEREUNDER, because that would give the Owner unreasonable economic power over the Marina in disputes between them where the facts are in good faith controverted by both sides.

18. IT IS STIPULATED AND AGREED BY THE PARTIES THAT THESE TERMS ARE DEEMED NECESSARY BY THE MARINA AND CONSIDERED ACCEPTABLE BY THE OWNER IN ORDER FOR THE MARINA TO MAINTAIN THE VIABILITY OF ITS BUSINESS EVEN THOUGH, IN SOME INSTANCES WHERE THE OWNER'S CLAIMS AND COMPLAINTS ARE FULLY JUSTIFIED, THE MARINA MAY DERIVE A TEMPORARY ADVANTAGE THEREFROM