

TERMS OF THE BOAT HANDLING & STORAGE AGREEMENT

1. **Agreement:** The Boat Handling and Storage Agreement must be signed by either the Owner or by the vessel's master (captain), manager or other person presumed to have authority to procure "necessaries" under Title 46 U.S.C. § 31341(a). All prior statements and representations made by CRBY are merged into this Agreement so that it encompasses the full and complete understanding of the Parties. Amendments to this Agreement must be in writing and signed by the Parties. If a Court declares that one or more of the terms or conditions of this Agreement are void or unenforceable for any reason, then the remaining terms and conditions shall survive and be fully enforceable. No act or forbearance by CRBY shall be deemed a waiver of any terms or conditions of this Agreement. CRBY's pursuit of any one of the remedies set forth herein shall not preclude it from pursuing any of the other remedies provided under this Agreement. CRBY reserves the right to terminate the Agreement upon five (5) days' notice. Upon termination of the agreement it is the vessels Owner or representative's obligation to pay all current and past due outstanding invoices and remove the vessel from the premises of CRBY.

2. **Definitions:** "CRBY" means Charleston Boatyard Marina L.L.C. d/b/a "Cooper River Boatyard", which is a South Carolina limited liability company. The "vessel" means the yacht or boat that is the subject of this Agreement. "Owner" means the legal owner of the vessel. If the Owner is a corporation, limited liability company, trust or estate, then "Owner" includes the equitable owners of the vessel. "Equitable owners" includes the: (a) shareholders of the vessel owning corporation; (b) members of a limited liability company owning the vessel; (c) partners in a partnership owning the vessel; and/or (d) beneficiaries of a trust or estate owning the vessel. "Parties" refers to any legal entity and/or person that signs this Agreement. The phrase "legal entities" refers to corporations, limited liability companies, partnerships, trusts or estates. "Independent contractor" means a person or company that is hired by or on behalf of the Owner, a representative of the owner or CRBY to provide maintenance, repairs, services or supplies. "Tenant" or "tenants" means the person or persons and/or legal entities that lease space at the Cooper River Boatyard. Tenants at the Cooper River Boatyard are independently owned and operated businesses that are unrelated to CRBY and have no authority to bind CRBY. "The Cooper River Boatyard" refers to the premises a/k/a real property that contains the boat yard. "Necessaries" means the services (e.g. boat handling, dockage, dry storage and other services) and supplies provided to the vessel. "Third parties" means all persons and legal entities that are not a party to this Agreement.

3. **Storage:** The storage period begins when the vessel arrives at the Cooper River Boatyard. All charges must be paid by cash, check, wire transfer, or ACH in accordance with CRBY's payment terms, which are set forth in the Estimate, Rates and Tariffs, Invoices and Statements. If the Owner obtains CRBY's agreement to pay by credit card, the Owner agrees to pay CRBY a 3.5% administrative fee for each credit card transaction; and Owner waives its right to instruct its credit card company to perform a charge back to CRBY. This Agreement does not create a bailment between the Owner and CRBY.

4. **Choice of Law:** The Parties have purposefully selected federal maritime law or South Carolina law to govern specific terms of this Agreement. The last sentence of each numbered paragraph can contain the Parties' choice of law for the contractual terms described therein. If there is a term that does not expressly identify the law that applies to it, then federal maritime law governs it. If there is no federal maritime law applicable to a particular term, then South Carolina law governs it.

5. **Access:** CRBY limits access to the Cooper River Boatyard through entrance and exit rules. The Owner must provide CRBY the names of the master, crew, manager, and independent contractors who need to enter the facility to service the vessel. Owner is responsible for securing the vessel and all other personal property brought to the Cooper River Boatyard. CRBY does not have a duty to provide security for the Owner's vessel or personal property.

6. **Liability: Owner's Release and Covenant Not to Sue CRBY.** If a court determines CRBY's fault is the sole cause of damage to the vessel, then it may be held liable for the reasonable cost of repairs up to the maximum limit described in paragraph 11. In regard to all other kinds of damages and losses, Owner releases CRBY, its members, managing members, managers, employees and agents from liability for any and all claims and causes of action of every kind arising from any and all physical or emotional injuries, death and/or damages which may happen to Owner. Owner covenants not to sue CRBY, its members, managing members, managers, employees and agents to recover any kind of damages, losses or expenses that are caused in whole or in part by either the Owner, its employees including the vessel's captain and crew, guests, agents, independent contractors, and/or tenants. Owner waives any and all claims and causes of action of every kind against CRBY, its members, managing members, managers, employees and agents concerning every kind of damages that is caused in whole or in part by theft, vandalism, collision, allision, windstorm, hurricane, flood, lightning strike, fire, or Acts of God. The terms contained in this paragraph are governed by South Carolina law.

7. **Indemnity and Hold Harmless Agreement:** Owner shall indemnify and hold harmless CRBY, its members, managing members, managers, employees and agents from and against any and all claims and causes of action of every kind arising from any and all physical or emotional injuries, death and/or damages caused in whole or in part by the negligence or fault of Owner, its employees, representatives including the vessel's captain and crew, guests, agents and independent contractors. The term contained in this paragraph is governed by South Carolina law.

8. **Owner's Insurance Obligations.** Owner warrants that it has and will maintain the following kinds of insurance at all times while the vessel is at the Cooper River Boatyard: (a) hull coverage for the fair market value of the vessel; and (b) liability coverage, or protection and indemnity coverage, for personal injury, wrongful death and property damage claims with liability limits based on the length of the vessel as follows: (i)

Vessels that are 90' or less must have a minimum of U.S. \$1 million of liability coverage; (ii) Vessels that are 91' to 115' must have a minimum of U.S. \$2 million of liability coverage; (iii) Vessels that are 116' to 140' must have a minimum of \$5 million of liability coverage; (iv) Vessels that are 141' or larger must have a minimum of \$10 million of liability coverage. The Owner's liability or protection and indemnity insurance shall include, but not be limited to, coverage for Jones Act claims, seaman's unseaworthiness claims, seaman's maintenance and cure claims, Longshoreman and Harbor Workers' Act claims, and tort claims. **Owner shall obtain an endorsement from its insurance company adding CRBY as an "additional insured" to the Owner's liability or protection and indemnity insurance while the vessel is at the Cooper River Boatyard.** If Owner fails to procure and maintain the insurance required by this Agreement, then Owner assumes the duties and obligations covered by this paragraph and shall be responsible for indemnifying CRBY for all losses. Owner warrants it will hire contractors who have liability insurance, workers compensation and/or Federal Longshoreman and Harbor Workers compensation insurance with coverage limits as required by South Carolina law or federal law, as applicable. The terms contained in this paragraph are governed by South Carolina law.

9. **Owner Warrants the Vessel's Structural Integrity.** Owner acknowledges there are intrinsic risks involved in hauling, storing and launching vessels. Lifting vessels out of the water with slings and storing them on land using blocks and jack stands puts significant stress on vessels. CRBY will use a crane, travel lift, and slings to lift the vessel from the water and drive it over land to a designated storage location where the vessel will be put on blocks and held up by jack stands. Owner warrants it hired a qualified expert (i.e. a licensed engineer surveyor or marine architect) to inspect the vessel prior to haul out and/or dry storage and informed its expert about all prior structural damages to the vessel. Owner warrants its expert confirms the vessel is structurally sound and capable of withstanding the stresses of lifting from the water and put in dry storage. Owner must inform CRBY in writing about the vessel's prior accidents or casualties before CRBY lifts the vessel from the water. If Owner does not retain a qualified expert to confirm the vessel is structurally sound for the haul-out, dry storage and/or re-launch services, then Owner waives and forfeits all claims it may have against CRBY concerning damages sustained by the vessel. By not hiring a qualified expert to inspect the vessel and confirm it is structurally sound, Owner assumes all risks associated with the haul-out, blocking, dry storage and re-launch services. The terms of this paragraph are governed by South Carolina law.

10. **Owner's Haul-Out and Dry Storage Responsibilities.** Owner must provide CRBY a copy of the vessel's haul-out and/or docking plan. The vessel's haul-out and/or docking plan usually consists of a drawing(s) showing where the vessel's bulkheads and support points are located. Owner shall have its qualified expert or representative present in authorized areas during the vessel's haul-out, blocking (dry storage preparation), and re-launch services to direct CRBY's employees on where to place the slings (straps) to lift the vessel; and where to place the blocks and jack stands to support the vessel while it is in dry storage. If the Owner does not comply with the aforementioned responsibilities and Owner asks CRBY to proceed forward with the haul-out, blocking and/or re-launch services, then Owner waives and forfeits all rights and claims it may have against CRBY regarding every kind of damages the vessel sustains. The terms of this paragraph are governed by South Carolina law.

11. **Limitation of Compensatory Damages.** If a court determines CRBY's fault is the sole cause of damages to the Owner's vessel, then Owner agrees that the maximum amount of compensatory damages the Owner may recover from CRBY in no case more than one hundred thousand dollars (\$100,000.00), cumulative for any accident/incident. "CRBY" means Charleston Boatyard Marina, L.L.C. d/b/a Cooper River Boatyard including its members, managing members, managers, employees and agents. If a court determines the liability limit for a tort claim described herein is against public policy or unenforceable for any reason, then the Parties agree the court shall limit CRBY's liability for a tort claim to the lowest amount permissible under South Carolina law. Owner agrees CRBY's liability for breach of contract is limited to the amount Owner pays for the services provided under this Agreement. If a court determines the liability limit for CRBY's breach of contract is against public policy or unenforceable for any reason, then the Parties agree the court shall limit CRBY's liability for breach of contract to the lowest amount permissible under South Carolina law. The terms of this paragraph are governed by South Carolina law.

12. **Exclusion of Consequential, Special and Punitive Damages.** Under no circumstances shall CRBY be liable for consequential or special damages such as: loss of use of the vessel; loss of charter hire; the cost of chartering or hiring a replacement vessel; diminution in the vessel's fair market value; demurrage charges; loss of pre-paid transportation expenses for the vessel; captain and crew wages; captain and crew repatriation expenses; surveyor's fees; expert witnesses' fees; salvage expenses; and sue and labor expenses. Owner waives its right to recover consequential damages, special damages or punitive damages from CRBY. The terms of this paragraph are governed by South Carolina law.

13. **CRBY is not Liable for Independent Contractors' Work, Repairs or Supplies.** Owner acknowledges CRBY is not liable for any kind of damages caused in whole or in part by the independent contractors' fault. Owner acknowledges CRBY is not liable for the independent contractors' workmanship, materials or supplies furnished to the vessel while it is at the Cooper River Boatyard. The terms of this paragraph are governed by South Carolina law.

14. **CRBY's DISCLAIMER OF EXPRESS AND IMPLIED WARRANTIES.** CRBY does not provide any written, express or implied warranties concerning the work, services or supplies provided by independent contractors or tenants at CRBY's facility. **CRBY expressly disclaims all written, express and implied warranties, including the implied warranty of merchantability, the implied warranty of fitness for a particular purpose, and the implied warranty of workmanlike performance in regard to the work, products, services and supplies provided and/or sold by independent contractors or tenants.** The terms of this paragraph are governed by South Carolina law.

15. In the event of a storm, high tides, acts of God, or for any other reason, CRBY reserves the right to move any vessel, its parts or owner's property that it deems necessary to protect its facility and/or other vessels at the Cooper River Boatyard. Owner agrees to pay CRBY its prevailing rates for this service. **CRBY, however, does not undertake a duty to move the Owner's vessel, its parts or owner's property under these circumstances.** The terms of this paragraph are governed by South Carolina law.
16. In the event of an emergency, CRBY may hire a contractor to perform necessary vessel repairs without Owner's prior written consent. CRBY reserves the right to move or haul-out the vessel if, in the opinion of CRBY, an emergency arises making such action necessary. Owner agrees to pay for CRBY's services provided under exigent circumstances at the prevailing rates. Owner also agrees to pay the contractors for their work at their prevailing rates, which was requested by CRBY under exigent circumstances. **CRBY, however, does not undertake a duty to inspect or monitor the Owner's vessel. CRBY does not undertake a duty to arrange emergency repairs to the Owner's vessel.** The terms of this paragraph are governed by South Carolina law.
17. If emergency conditions (hurricane, floods, fire, etc.) develop, thereby warranting standby crews, etc., or additional security measures, a charge may be made in addition to the regular rate. Owner shall abide by the General Manager's and/or Operation Manager's directions in the event of an emergency. The terms of this paragraph are governed by South Carolina law.
18. Vessels will be re-launched from dry storage on an order from Owner within a reasonable time frame upon three days advance notice and payment of the account balance in full by cash or other CRBY acceptable means of payment. CRBY's obligation to re-launch the Owner's vessel is subject to prior commitments in re-launching other vessels at the Cooper River Boatyard.
19. As a safety measure, boats in wet storage (if offered) need to have batteries on charge for bilge pump operation and adequate fuel for the vessel to make safe transit to a safe port of refuge.
20. All charges are due to be paid within the time periods stated on CRBY's invoices.
21. No pets will be permitted to roam the facility and must be kept on a leash at all times. Owners are responsible for cleaning up after their pets.
22. No contractors or sub-contractors will be admitted to CRBY or be allowed to work on any vessel covered by this contract, except those who meet the requirements for CRBY and have been authorized in writing by CRBY.
23. Owners "Do-It-Yourself" work limitations: (a) To protect the interest of all Owners, CRBY cannot allow start-up or movement-under-power of vessels located within any buildings or storage areas of CRBY, except under the supervision of CRBY's management and/or other CRBY authorized personnel and (b) wash down, interior cleaning, security checks and battery, bilge, oil and fuel maintenance checks may be performed by Owner or Owner's representative during normal CRBY business hours.
24. CRBY reserves the right to instruct any person to immediately leave its premises whose conduct, in its sole judgment, is detrimental to the orderly operation of CRBY. However, CRBY is under no obligation to monitor or control people's conduct while they are on the premises. CRBY does not owe a duty to monitor or control people's conduct on the premises under any circumstances. If a person refuses to leave CRBY's premises upon request, then such person is subject to prosecution for criminal trespass.
25. The cost of disposal of excessive refuse from work by Owner or its independent contractors will be charged to the Owner as an authorized add-on.
26. Cooper River Boatyard's hours are posted and/or can be obtained from the CRBY office. (CRBY reserves the right to change hours at any time without notice).
27. **Attorneys' Fees, Court Costs and Pre-Judgment Interest.** Owner shall reimburse CRBY for any and all expenses, including attorneys' fees, court costs, collection charges and fees incurred in enforcing any provision of this Agreement. Owner's obligation to pay CRBY's reasonable attorney's fees and court costs includes litigation at both the trial and appellate courts. Any charges that become past due five (5) days or more shall bear interest at the rate of eighteen (18%) percent per annum or 1.5% per month.
28. **CRBY's Maritime Lien against the Vessel for Necessaries.** The Commercial Instruments and Maritime Liens Act, Title 46 U.S.C. § 31301 et. seq. (the "Act"), provides CRBY a preferred maritime lien against the vessel, including its engines, tenders, personal watercraft, furniture, furnishings, fishing tackle and appurtenances for work, services and/or supplies (i.e. "necessaries") provided to the vessel. Under the federal maritime law, CRBY's preferred maritime lien exists the moment this Agreement is signed. CRBY has the statutory right to sue the vessel *in rem* to foreclose its preferred maritime lien. The *in rem* suit shall be filed in the federal district court that has jurisdiction over the area where the vessel is physically located. The Act also allows CRBY to sue the Owner to recover the amount due for necessaries provided to the vessel. The Parties agree that CRBY is entitled to recover all of its court costs, including *custodia legis* expenses, from the vessel *in rem* and/or the Owner *in personam* if CRBY recovers a minimum of \$1.00 on its claim. As a prevailing party, CRBY shall also be entitled to recover its reasonable attorneys' fees and litigation expenses from the vessel under a Supplemental Admiralty Rule B attachment. The terms of this paragraph are governed by the Commercial Instruments and Maritime Liens Act, Title 46 U.S.C. § 31301 et. seq. and federal maritime law.

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29. **CRBY's Right to Sell the Vessel under South Carolina Law.** South Carolina law provides CRBY an alternative remedy to the remedies provided under paragraph 28 above. South Carolina Law gives CRBY a possessory lien right against the vessel, its engines, tenders, personal watercraft, furniture, furnishings, fishing tackle and other appurtenances when the Owner fails to pay CRBY for its work and/or services. CRBY may, at its election, conduct a non-judicial sale of the vessel in accordance with South Carolina law. Owner agrees and understands it will not be allowed to work on its vessel(s) if any storage, service, or other charges by CRBY are in arrears. The terms of this paragraph are governed by South Carolina law.

30. This Agreement shall be binding on the heirs, successors, representatives or assigns of the parties hereto. This Agreement may not be assigned by the Owner without the express written consent of CRBY. If CRBY consents to the assignment of this Agreement, then the new vessel owner must sign a new agreement with CRBY.

31. No fueling of vessels is permitted at the Cooper River Boatyard without the prior approval of CRBY. **Owner acknowledges CRBY does not make any representations about fuel suppliers or their fuel and petroleum products. Owner is solely responsible for ordering fuel and petroleum products from the suppliers. Owner is solely responsible for measuring and testing the fuel and petroleum products delivered to the vessel by supplier. CRBY disclaims all written, express and implied warranties, including the implied warranty of merchantability and implied warranty of fitness for a particular purpose, regarding all suppliers' fuel and petroleum products.**

32. Owner shall comply with "Cooper River Boatyard Operational Practices Guidelines", and "Cooper River Boatyard Insurance Requirements for Commercial and Maritime Tenants and Contractors". **However, CRBY does not assume a duty to enforce its rules or regulations.**

33. In the event there is a conflict between the terms and conditions of the documents that form this Agreement, then the "Terms of the Boat Handling and Storage Agreement" shall govern the Parties' contractual relationship.

COOPER RIVER
BOATYARD

