

TERMS AND CONDITIONS

1. DEFINITIONS

“Agreement” refers to the Summer Mooring Agreement and includes these Terms and Conditions.

“Boat” means the boat described on the front page of this Agreement, the trailer or cradle together with any and all personal property of every nature, kind or description, including, without limiting the generality of foregoing credit cards and instruments financial securities and cash, located in or upon the boat or located in the proximity of the boat and owned by or in lawful possession of the Boater or any other person who has been permitted by the Boater to board the boat or to be in the vicinity of the boat;

“Boater” means the registered owner of the Boat, the lessee of the Boat, the duly authorized agent of the owner to be in possession of the Boat;

“Claims” means any liability, loss, damages, costs and expenses (including legal fees), causes of action, actions, claims demands, lawsuits or other proceedings;

“Harassment” includes a course of vexatious comment or conduct, based on one or more of the prohibited grounds (race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability) under the Human Rights Code, R.S.O. 1990, c. H.19, as amended;

“Marina” means Hamilton Port Authority and/or Harbour West in the City of Hamilton incorporated under the laws of the Province of Ontario;

“Marina Areas” includes the James Street Marina area, McNab St Marina area, and the area encompassed by the Marina facilities in the Marina Areas, including buildings, grounds, mooring facilities, harbours, and the approach channels designated, marked and buoyed by the Marina;

“Month” means any period of 30 consecutive days;

“Harbour West/Hamilton Port Authority” means the lands owned by Hamilton Port Authority or leased Hamilton Port Authority land and includes 605 James Street, 210 Hillyard and the 1 Guise St Marina Areas;

“Payment Terms” means the terms found under “Payment Terms and Conditions” relating to the slip rental, found on the first page of this Agreement;

“Rules and Regulations” means the rules and regulations posted at the Marina, as may be amended from time to time;

“Season” means May 1st to October 31st in the case of a seasonal rental and the case of a monthly rental, the period of times specified on the first page of this Agreement;

2. This Agreement is not valid unless: (a) it is signed by the authorized representatives of the Marina AND the Boater; and (b) the Boater has paid all outstanding fees owed to the Marina under previous mooring or storage agreements. Subject to the Terms and Conditions of this Agreement, the Marina shall provide a slip for the Boat designated by the slip number indicated on the front page of this Agreement for the Season.

3. This Agreement is only valid for the Season. The Marina is no way obligated to enter into a summer mooring agreement with the Boater for future seasons.

4. On signing this Agreement, the Boater shall provide the Marina with the following written documentation to the satisfaction of the marina: (a) a certificate of registration of the Boat; (b) a valid Certificate of Insurance and renewal replacement as may be necessary for the Boat, confirming the insurance coverage requirements and stating any pertinent exclusions as applicable, contained by the policy, and (c) and agency agreement between the registered owner of the boat and the authorized agent, where the Boater is an agent of the registered owner of the boat and the lessee, where the Boater is a lessee of the Boat.

5. When the Boat is in the Marina Areas, the boater shall comply with all laws and the Rules and Regulations, and the Boat shall be under the jurisdiction of the Marina. As such, the Boat will be subject to any emergency action that might be required on the part of the Marina in accordance with sections 9, 10, and 11. To allow the Marina to take any action necessary in the event that the Boater is unable to move the boat when required by the Marina, or in the event of any emergency, the Boater shall provide the Marina with a set of main door or a set of hatch keys.

6. The Boater represents and warrants that the Boat is a pleasure craft, registered, identified and equipped in accordance with Canadian shipping laws and that it shall be operated under its own power in the Marina Areas in accordance with safe boating principles.

7. The Boater shall not moor or cause or allow to be moored at the slip any boat or vessel other than the boat, and shall not transfer the Boat to another slip in the Marina Areas or to any other location at Hamilton Port Authority without prior written approval of the Marina.

8. The Boater acknowledges that the Marina does not provide supervision over or security for the Boat or any other boat or boats in the Marina Areas, nor does it supervise, regulate or control or attempt to supervise, regulate or control the movement of any person or persons or the movement, management, or control of any boat or boats in the Marina Areas whether in proximity to the boat and regardless of whether any such person has entered into an agreement with the Marina.

9. In the event of mechanical failure or other malfunction occurring to the gear, equipment, rigging, engine or hull of the Boat which, in the opinion of the Marina, constitutes an emergency or other threat to the safety of the Boat or other boats in the Marina Areas, then the Boater hereby authorizes the marina to make all such emergency repairs as may, in the absolute discretion of the Marina, be deemed necessary under the circumstances. These repairs shall be made as economically as possible and the Boater shall be liable for the cost thereof. The Boater acknowledges and agrees that the Marina is under no duty to perform such emergency repairs, and no liability shall attach to the marina whether or not it does so.

10. The Marina may require the Boater to move the Boat to a different slip in order to accommodate certain events. In such circumstances, the Marina shall give the Boater ten (10) days notice to move the Boat. If the Boater does not move in the specified time, the Marina will have the right to move the Boat without further notice, whether or not the Boater has read the notice (e.g. the boater is away from Boat). Such movement may require the Marina to tow the boat out of the designated slip. If the Marina is required to move the boat, it shall take reasonable care in doing so. Unless negligent, the Marina shall not be responsible for any damage or mechanical failure to the Boat that may occur during the moving of the Boat.

11. In the event that the Boat sinks at the slip or elsewhere in the Marina Areas, the Boater shall remove the Boat forthwith. If the Boater fails to do so, the Boater agrees that the Marina may remove the boat at the Boater’s expense. Upon removal of the Boat, the Marina may terminate this Agreement immediately.

12. The Marina, its directors, officers, employees, agents and contractors shall not be liable for the care or protection either of the Boat or Boater, or of any partner, director, officer, employee, agent, contractor, passenger, crew or guest of the Boater, or for any loss, theft, damage, or injury (including death) occasioned to the Boat or person or the property of the Boater, or of any partner, director, officer, employee, agent, contractor, passenger, crew or guest of the Boater whatsoever caused.

13. The Boater hereby shall indemnify and hold harmless the Marina, its directors, officers, employees, agents, and contractors, from and against Claims, by whomever made, sustained or brought, including for third party bodily injury (including death), personal injury and property damage, in any way based up, occasioned by or attributed to anything done or omitted to be done by the Boater, or by its partners, directors, officers, employees, agents, contractors, passengers, crew or guests, in connection with the use of the slip or any of the Marina services, equipment or other facilities used by the Boater, or by its partners, directors, officers, employees, agents, contractors, passengers, crew or guests.

14. The Boat shall put into effect and maintain for the duration of this Agreement, at its own cost and expense, with Insurers acceptable to the Marina, complete marine coverage insurance for the Boat including Protection & Indemnity, to an inclusion limit of not less than \$2,000,000 per occurrence. The Policy is to include Hamilton Port Authority as an Additional insured. The Boater shall furnish proof of coverage to the Marina upon signing this Agreement.

15. Any amounts of owing under this Agreement and demanded by the Marina shall be a debt due and owing to the Marina by the Boater and the Boater shall pay such debts immediately. If no demand is made, such debts become due and payable without demand upon the termination or expiration of this Agreement.

16. The Boater acknowledges that the Marina may place a lien against any Boat and its contents for amounts due in respect of the use of the slip, the cost of repairs for any damage caused to any Marina property by the Boater, his or her passengers, crew or guests, or by his or her Boat, and for any expenses incurred by the Marina on behalf of the Boater due to the marina under the terms of this Agreement. The Marina may give notice of the lien to the Boater, subject to the repairs and Storage Liens Act, R.S.O. 1990, c. R.25

17. (1) The Marina shall cease operations in the Marina Areas one day prior to the last day of the Season and the Marina Areas shall be closed after 11:00 a.m. on the last day of the Season. (2) The Boater shall remove the Boat from the Marina Areas and any other location at Hamilton Port Authority upon the expiration of termination of this Agreement, and if he or she fails to remove the Boat by 11:00 a.m. on the last day of the Season, HPA may consider extending this Agreement in accordance with Section 18, and if approved, the Boater shall pay the regular daily dockage rate as specified as in the Marina Fee Schedule in respect of each subsequent day during which the boat remains in the Marina Area or elsewhere at Hamilton Port Authority. At any time after 11:00 a.m. on the last day of the Season, and at the Boater’s expense, the Marina has the right to move the Boat to another mooring facility within Hamilton Port Authority or elsewhere, without any liability to the Marina howsoever caused. (3) If the Boater fails to remove the Boat by 5:00 p.m. November 15, the Boater shall pay to the Marina as liquidated damages, dockage fees in an amount equal to twice the daily dockage rate as specified in the Marina Fee Schedule in respect of each subsequent day during which the Boat remains in the Marina Areas or elsewhere at Hamilton Port Authority. The Boater shall pay all such expenses, dockage fees and amounts owing as liquidated damages to the Marina upon demand. (4) The Boat shall remove all personal property from the Marina Areas or from any other location at Hamilton Port Authority upon expiration or termination of this Agreement.

18. Where a Boater makes a request to extend a monthly Agreement, the Marina may, in its sole discretion, extend the term of this Agreement for such period and at such daily or monthly rates as in its sole discretion, decides. Request and approvals regarding extensions shall be in writing. Monthly Agreements cannot extend beyond November 1st.

19. (1) The Marina may terminate this agreement on fifteen (15) days’ written notice without cause and without liability. (2) The Marina may, without fault or liability, terminate this agreement: (a) on one (1) days’ written notice to the Boater, where in the sole opinion of the Marina, the Boater, or any partner, director, officer, employee, agent, contractor, passenger, crew or guest of the Boater breaches any term of this Agreement, including but not limited to failure to have insurance of to meet Payment Terms, or the Rules and Regulations; or (b) immediately upon giving notice to the Boater where, in the sole opinion of the Marina, the Boater or any partners, directors, officers, employees, agents, contractors, passengers, crew, or guests engage(s) in : (i) any illegal conduct including but not limited to Harassment; (ii) any conduct toward Marina employees or any other person that may be considered threatening, including but not limited to yelling, and use of profane language when dealing with such employees or persons; or (iii) any disorderly, indecorous or other inappropriate conduct that has endangered or might endanger safety, has injured or might injure any person, has caused or might cause damage to the Marina property, or has harmed or might harm the reputation of the Marina. (3) On termination under paragraph (1) or (2), the Marina may: (i) evict or remove the Boat, the Boater and any partner, director, officer, employee, agent, contractor, passenger, crew, and guest of the boater from the Marina Areas or elsewhere at Hamilton Port Authority at the boater’s expense; (ii) repossess the slip and rent it out to any other person. Any outstanding fees shall be immediately payable to the Marina. (4) The Boater may terminate this Agreement at any time by giving fifteen (15) days’ written notice to the Marina. In such case, no refund of the fees will me made under any circumstances.

20. The Boater shall notify the Marina when leaving for an extended cruise or for a period of time in excess of twenty-four (24) hours. During such times, the Boater agrees that the Marina may rent the slip to another boater.

21. The Boater shall not retain outside contractors, service organizations, corporations or individuals to undertake any work on the Boat in the Marina Areas or at Hamilton Port Authority without prior written approval of the Marina. Prior to retaining any outside contractors, service organizations, corporations, or individuals (“Workers”) to undertake any work on the Boat in the Marina or at Hamilton Port Authority, the Boater shall get approval in writing from the Marina for the Workers to attend on specific days. Such approval is required for reasons of security. If Workers are attending on days not approved by the Marina, the Marina reserves the right to eject the Workers from the Marina. All work is required to be performed to “Clean Marine” standards.

22. The Boater understands and agrees that the Boat shall be subject to periodic safety inspection by the Marina who may, for this purpose board the Boat at any reasonable hour, and that the Boat may be boarded by the Marina in the event of an emergency which may in the sole opinion of the Marina, exist.

23. The Boater acknowledges that slip voltage/amperage provided by the Marina may not necessarily meet the voltage/amperage requirements of the Boat. The Boater shall obtain the written approval of the Marina prior to making any alterations to the slip, including, but not limited to slip voltage/amperage. The Boater shall assume all cost of such alterations.

24. The Boater covenants and agrees that:

(1) No refuse of any kind shall be thrown overboard and that he or she shall leave no refuse of any kind on the Boat, in the Marina Areas or at Hamilton Port Authority, and shall deposit garbage in the bins supplied for that purpose;

(2) No advertising or soliciting shall be permitted in, on, or from the Marina Areas or any other location at Hamilton Port Authority by the Boater without prior approval of the Marina;

(3) No business activity connected with boats or boating or both, including the boat brokerage business and any activity associated with such business, shall be carried on, in or from the Marina Areas or any other location at Hamilton Port Authority and the address of the Marina or Harbour West shall not be used for business purposes without the prior written approval of the Marina. Any such approval is entirely at the Marina’s discretion and may be subject to the Boater entering into an additional licence agreement and the payment of the licence fees or other conditions;

(4) Supplies, accessories, debris or other materials shall not be stored in the Marina Areas or any other location at Harbour West and shall not construct thereon any lockers, chests, or other structures.

(5) Painting, scraping, or repairing of gear shall not be permitted in the Marina are or any other location at Harbour West. The extent of repairs and/or maintenance to be made in any case shall be in the sole discretion of the Marina.

(6) The Boat’s toilets and holding tanks shall not be flushed in the Marina Areas. All toilet and holding tank waste must be disposed of in accordance with proper Marina procedures;

(7) No oil, inflammable liquids, oily bilges, or other liquids shall be discharged in the Marina Area;

(8) Only propane fuelled Marina barbeques (located at the Washroom and BBQ Area) are permitted for use within the Marina. All other open flame barbeque fires are prohibited for use on the docks, within the confines of the Marina Areas, or at any other location in Harbour West;

(9) Noise shall be kept to a minimum at all times and all boaters shall exercise good judgement in the operation of generators, engines, radios, etc. So as not to cause a nuisance to others;

(10) Swimming shall not be permitted in the Marina waters;

(11) Young children shall be accompanied by adults at all times and shall wear life jackets when near the water;

(12) Dogs/Cats are not allowed on any Harbour West property, including the Marina Areas, without permission of the Marina. Request for permission to have dogs/cats on Harbour West property shall be submitted to the Marina through the Marina’s “Pet Approval Form” prior to the signing of this Agreement. Should the Marina grant such permission, the Boater shall ensure that any dog/cat is kept on a leash and supervised, that the dog/cat is walked only in areas designated by the Marina, and that the dog/cat owner cleans up after his/her dog/cat. The Boater shall comply with any further rules in this regard as provided by the Marina at the time permission is granted. Harbour West can, without notice or cause, rescind permission for any pet at anytime on Hamilton Port Authority property.

(13) Laundry shall not be hung out on boats, docks, piers or other structures in the Marina Areas or any other location at Harbour West.

(14) All power and auxiliary powered vessels shall be under said power when entering or leaving the Marina Area and no boat shall exceed that speed of 4 miles per hour in the Marina Areas, including approach channel.

(15) Any passes issued by the Marina or by Hamilton Port Authority to the Boater, his or her passengers, crew, or guests remain the property of the Marina and all passes shall be used in accordance with the Marina Pass Regulations.

(16) Any equipment and other facilities located in the Marina shall be used entirely at the risk of the Boater and any partner, director, officer, employee, agent, contractor, passenger, crew, and guest of the Boater.

(17) Boaters and their guests must park vehicles in the assigned parking lot. Parking is only to be used by the Boaters and their guests while the Boat is in use. Boaters will not be permitted to park any vehicle if they are not on the Boat. Vehicle owners must display a valid parking permit in a manner that is visible from outside the vehicle. Failure to comply with this section will result in the vehicle being tagged and/or towed.

(18) It is the responsibility of the Boater to ensure that mooring line are in good condition and used in sufficient quantity to secure vessel under all conditions. The Marina is not responsible for the inspection of mooring lines on vessels moored at the Marina Areas. The Marina is not liable for any damage caused in the event of a mooring line breaking or falling.

(19) Personal items such as chairs, dock boxes, coolers, etc. will not be left on the docks after Oct 31st. If items are left on the dock the items will be removed and the Boater notified at which time the boater will have 7 days to pick up items or they will be disposed of.

25. The Boater shall not assign or pledge this Agreement or sub lease the slip or any part of such interest.

26. This Agreement is for the rental of a slip in the Marina only. This Agreement is not an Agreement of bailment and the Boater is not the bailor of the Boat nor is the Marina the bailee of the Boat. At all material times as between the Boater and the Marina, the Boat shall be and shall be deemed to be in the possession of the Boater notwithstanding that the Marina may, as herein provided, more or otherwise handle the Boat and any and all such moving or handling shall be deemed not to take the Boat out of the possession of the Boater.

27. The provisions of this Agreement do not constitute nor shall they be construed to constitute an employer – employee relationship, an agency relationship, or a partnership or joint venture between the parties.

28. The Agreement will expire on the last day of the Season, unless terminated earlier pursuant to this Agreement, or extended in accordance with section 18.

29. Neither party shall be liable to the other party for any failure to comply with or delay in the performance of the terms of this Agreement where such failure or delay, directly or indirectly or in whole or in part, arises from an event beyond its reasonable control such as (but not limited to) natural disasters, acts of war, insurrection, terrorism, or action taken by the government authority in hindering or defending against such occurrences, strikes, shutdowns, lockouts, or other labour or employee interruption or disturbances, whether involving employees of the Marina or of any other person over which the Marin has no reasonable control. A party seeking to rely on involving the employees of the Marina or of any other person over which the Marina has no reasonable control. A party seeking to rely on the provision of this section may do so only if notice in writing identifying the event relied on and the date of it occurrence is given to the other party within five (5) days of the occurrence of the event.

30. Sections 9, 10, 11, 12, 13, 15, 16, 17, 27, 29, and 30 and paragraphs 19(3), 24(18) and 24(19) survive the expiry or termination of this Agreement.