



## 2020 DOCKING SEASON AGREEMENT

TO: THE NIAGARA PARKS COMMISSION (“NPC”)

### Definitions

1. In this Agreement:
  - (a) “Boat” means the boat described in the Dockage Assignment Form attached hereto and forming part of this Agreement, the related trailer or cradle together with all personal property of every nature, kind and description 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;
  - (b) “Boater” means the registered owner(s) of the Boat, the lessee(s) of the Boat, the duly authorized agent(s) of the owner(s) or lessee(s) of the Boat or any other person who has the permission of the owner(s) to be in possession of the Boat and has signed the Dockage Assignment Form attached hereto and forming part of this Agreement;
  - (c) “Claims” means all liability, losses, damages, costs and expenses (including legal fees and disbursements), causes of action, actions, claims, demands, lawsuits and other proceedings;
  - (d) “Indemnified Parties” means NPC and its directors, officers, employees, agents and contractors;
  - (e) “Marina” means the Niagara Parks Marina at Miller’s Creek and the area encompassed by the Marina facilities including but not limited to the water in front of the seawall, mooring basins, docking facilities, launch ramps, buildings, washrooms, grounds (including trees and landscaping), parking lots with public access, secured dockages with gates & key pad lock, parking area between the Niagara River Parkway and the Marina and the designated temporary storage area west of the Niagara River Parkway;
  - (f) “Marina Operator” means NPC;
  - (g) “NPC” means the corporation of The Niagara Parks Commission; and



- (h) “2020 Docking Season” means the period between May 1st and October 31st, or such other shorter period as may be agreed upon, in writing, between the Boater and the Marina Operator.

## **Slip Licence**

2. Subject to the terms of this Agreement, NPC hereby agrees to provide the Boater with a slip for the Boat at the Marina, as assigned by the Marina Operator, for the 2020 Docking Season. The Marina Operator will issue a sticker to the Boater to be placed on the Boat where visible by the Marina Operator, Niagara Parks Police and Customs and Border Security which shall easily identify the Boat as approved and licensed by the Marina Operator. Removal of the sticker shall only take place at the end of the 2020 Docking Season.
3. The rights conferred hereunder to the Boater do not constitute an interest in land and shall only be construed as a bare licence which is strictly personal in nature. The Boater shall not assign any rights conferred hereunder and shall not sub-licence the slip or any part thereof to any other person.
4. In exercising its rights hereunder, the Boater shall comply with this Agreement, all applicable laws (including the Niagara Parks Act (Ontario) and all regulations thereunder) and the rules and regulations posted from time to time in the Marina by the Marina Operator.
5. 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 without the prior written approval of the Marina Operator.

## **Terms and Conditions**

6. The Boater represents and warrants that the Boat: (i) is a pleasure craft, registered, identified and equipped in accordance with Canadian shipping laws and all other laws in effect in the Province of Ontario; and (ii) is in good mechanical and cosmetic condition, with fully operating engines. The Boater agrees to operate the Boat under its own power in the Marina in accordance with safe boating principles and practices.
7. The Boater agrees to properly secure the Boat in its berth in a manner acceptable to the Marina Operator, and if it fails to do so, then the Marina Operator may, but shall not be obligated to, secure the Boat and charge a fee for doing so. It is the sole responsibility of the Boater to ensure that its mooring lines are in good condition and used in sufficient quantity to secure the Boat under all conditions. The Marina Operator shall not be responsible for the



inspection of mooring lines on Boats moored at the Marina. The Indemnified Parties shall not be liable for any damage caused by the failure of a mooring line.

8. The Boater agrees that, on entering the Marina, the Boat shall be placed where directed by the Marina Operator. Boaters shall not switch slips without the prior permission of the Marina Operator. The Boater acknowledges the Marina Operator's right to reassign the Boat to a different slip from time to time during the 2020 Docking Season.
9. The Boater agrees to notify the Marina Operator when leaving the Marina for a period of time in excess of 24 hours. The Marina Operator reserves the right to rent that Boater's slip to another boater during the Boater's absence, and all revenue earned therefrom shall be the property of the Marina Operator.
10. The Boater agrees not to engage at any business activity, whether revenue generating or not, in connection with the Boat including, but not limited to, rental, time-share, hotel, tours and/or the boat brokerage business in or around the Marina or any other NPC location, and that the address of the Marina shall not be used for any business purpose.
11. The Boater agrees that the painting, scraping, repairing and changing of oil of its Boat at the Marina is strictly prohibited. The extent of Boat repairs and maintenance permitted at the Marina shall be in the sole discretion of the Marina Operator.
12. The Boater shall not introduce onto the Marina any toxic or hazardous substance, including boat cleaner or anti-freeze used for winterizing a Boat, or any substance which if it were to remain on or escape onto the Marina, would contaminate the Marina or any other property in which it came in contact. The Boater shall immediately notify the Marina Operator of any toxic or hazardous substance spillage or damage caused to the Marina and shall remedy any such damage to the satisfaction of the Marina Operator, at the Boater's sole cost and expense.
13. The Boater agrees that the dockage gates shall always be locked and that only Boaters shall obtain a lock combination or pass code from the Marina Operator for their use during the 2020 Docking Season. The Boater acknowledges that the pass code issued by the Marina Operator is for their sole use only and shall not be provided to any other parties, failing which the Marina Operator shall terminate this Agreement without further notice.
14. The Marina Operator reserves the right to modify the issued pass code at its sole discretion at any time or times throughout the 2020 Docking Season for security purposes. The Marina Operator agrees to notify the Boater of the modified pass code within 24 hours.



15. The Boater acknowledges that the washrooms are available to the public during the Marina operating hours. After hours, the washrooms will be locked and unavailable to the public, however, Boaters will be provided access the washrooms for their personal use. The Indemnified Parties are not responsible for any items left in the shower or general washroom area or for any lost or stolen items.
16. The Boater acknowledges that the Marina does not provide on-site supervision, monitoring cameras or other security equipment for the Boat in the Marina, nor does it supervise, regulate or control, or attempt to supervise, regulate or control, the movement of any person(s) (including other Boaters), or the movement, management or control of any boat(s) in the Marina, whether in proximity to the Boat, regardless of whether any such person(s) has entered into a dockage agreement with the Marina.
17. The Boater shall not store equipment, supplies, accessories, debris or other materials at the Marina, and shall not permanently affix to the docks, or to any other Marina property, any carpets, lines, restrainers, fixtures or cleats securing equipment or paint or deface Marina property in any manner, without the prior approval of the Marina Operator, which may be withheld in its sole discretion.
18. The Boater agrees to keep noise to a minimum at all times and to exercise reasonable discretion in the operation of generators, engines, radios and other equipment, in order to avoid causing a nuisance to others.
19. The Boater shall not cause or permit any garbage to be thrown overboard or otherwise discarded at the Marina and shall ensure that all garbage is properly disposed of in the bins supplied for that purpose. The Boater shall not cause or permit any oil, flammable liquids or other liquids to be discharged in the Marina.
20. The Boater agrees that only Marina Operator-installed barbeques may be used at the Marina and that no personal barbeques or open fires shall be permitted on the Boat, docks, boardwalk or otherwise at the Marina. This prohibition does not extend to propane cook tops or other galley equipment installed by the boat manufacturer or a professional technician on the Boat itself.
21. The Boater shall not cause or permit toilets or holding tanks to be discharged in the Marina except at approved pump out stations.
22. The Boater agrees that all power and auxiliary powered vessels shall be operating with such power when leaving and entering the Marina and that no boat shall exceed the speed of 5 mph in the Marina, including approach channels.



23. The Boater agrees that all fishing, swimming, diving, and water-skiing are strictly prohibited in Marina waters.
24. The Boater shall not cause or permit laundry to be hung out on docks, piers or otherwise in the Marina and shall not leave personal items (such as chairs, dock boxes and coolers) on the docks without the prior written approval of the Marina Operator. All personal items left at the Marina at the end of the 2020 Docking Season shall be disposed of by the Marina Operator and all costs associated with such disposal may be charged to the Boater at the Marina Operator's discretion. The Indemnified Parties shall not be responsible in any way for any damage to any such personal items left at the Marina.
25. The Boater agrees that all young children in its charge shall be accompanied by adults at all times and shall wear life jackets in or near the water.
26. The Boater agrees that domestic household pets are permitted at the Marina if they are always secured on a leash and supervised by the Boater. No other pets are permitted at the Marina. The Boater shall properly remove and dispose of all pet waste, failing which the Marina Operator reserves the right to require the Boater to remove the pet from the Marina. The Boater shall be solely responsible for all damage and liability howsoever caused by the pet.
27. The Boater agrees to notify the Marina Operator at least five (5) Business Days in advance of the proposed dates and times of any proposed work to be undertaken and performed by any outside contractors. All contractors are to be approved in advance by the Marina Operator and are not otherwise permitted at the Marina. The Boater will provide the contractor's name and contact information including cell phone numbers where they may be reached outside of normal business hours, if necessary, in connection with the proposed work to be completed. All contractors are required to adhere to NPC's Code of Conduct and will be required to sign in and out of the Marina when present.
28. The Boater shall comply with all instructions received from Marina fuel dock attendants. The Marina Operator reserves the right to refuse fuelling any boat that it deems unsafe. No boat shall be refueled at any dock except at the gas dock and only while a Marina fuel dock attendant is on duty.
29. The Boater shall be wholly responsible to NPC for the actions of its passengers, crew and guests and shall be responsible for ensuring that its passengers, crew and guests comply with all provisions of this Agreement applicable to such passengers, crew and guests.

30. The Boater agrees to pay all fees and charges for dockage and other marina services to the Marina Operator immediately following demand and, in any event, not later than the expiry or earlier termination of this Agreement.
31. The Boater agrees that this Agreement is for the provision of a boat slip and related services only, and such slip and related equipment and facilities shall be used entirely at the risk of the Boater and of any passenger, crew or guest of the Boater. The Indemnified Parties shall not be liable for the care or protection of either the Boat or the Boater, or of any passenger, crew or guest of the Boater, or for any loss, theft, damage or injury (including death) occasioned to the Boat or to the person or property of the Boater, or of any passenger, crew or guest of the Boater howsoever caused. Anything stored by the Boater at the Marina (including the Boat), shall be at the sole risk of the Boater.
32. The Boater agrees that it shall be solely responsible for Customs clearance.

### **Claims, Insurance and Indemnification**

33. The Indemnified Parties shall not be liable for any claims, whether founded in tort or in contract and including claims for consequential damages, arising out, occasioned by, or attributed to the nature, construction, design, condition or state of repair of the Marina or of the space and premises herein licensed and used by the Boater or by any person visiting the same.
34. The Boater agrees to forthwith pay to the Marina Operator the costs of all damages to the Marina, property owned by the Marina Operator and the property of other Marina boaters, resulting directly or indirectly from the Boater's negligence.
35. The Boater shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, demands, losses, costs, expenses, injury, damages, actions, suits, negligence and other proceedings by whomsoever made, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, theft of property, in any manner based on, occasioned by or attributable to anything done or omitted to be done by the Boater and/or its 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 passengers, crew or guests.
36. The Boater shall put into effect and maintain for the duration of this Agreement, at its own cost, with insurers acceptable to the Marina, complete marine coverage insurance for the Boat including:



- (a) Protection and Indemnity, Hull and Machinery with full collision liability with an inclusion limit of not less than \$1,000,000.00 per occurrence; Protection and Indemnity to also include collision with Fixed and Floating Objects, Wreck Removal and Pollution Liability.
- (b) Insurer Waiver of Subrogation against the Marina Operator and the Marina for loss or damage to the vessel howsoever caused.
- (c) Marina Operator and Marina added as an Additional Insured under the Boaters Protection and Indemnity policy.

The Boater shall provide an estimate of the value of the Boat including items stored on the Boat together with proof of such coverage to the Marina Operator upon signing this Agreement, failing which the Marina Operator reserves the right to immediately terminate this Agreement without fault or liability.

## **Termination and Removal**

- 37. The Marina Operator reserves the right to terminate this Agreement and require the removal of any Boat from the Marina that appears to be unseaworthy or constitute a hazard, in the opinion of the Marina Operator, in its sole discretion, on twenty-four (24) hours' written notice to the Boater. If the Boater fails to remove the Boat, then the Marina Operator may remove the Boat at the Boater's sole expense and risk and repossess the slip, and the costs thereof shall be a debt due from the Boater to the Marina Operator under this Agreement.
- 38. In the event that the Boat sinks at the dock or elsewhere in the Marina, the Boater agrees to remove such wreck forthwith. If the Boater fails to do so, then the Marina Operator may remove the wreck at the Boater's sole expense and risk, and the costs thereof shall be a debt due from the Boater to the Marina Operator under this Agreement. The Marina Operator reserves the right to terminate this Agreement and repossess the slip in the event of a sinking.
- 39. In the event that the Boater and/or its passengers, crew or guests breach any terms of this Agreement, or any of the posted rules and regulations, then the Marina Operator may, without fault or liability, on twenty-four (24) hours' written notice to the Boater, terminate this Agreement and may immediately after the expiration of the period of notice, cause the Boat to be removed from the Marina at the Boater's sole risk and expense and repossess the slip.
- 40. Notwithstanding the foregoing, the Boater agrees that the Marina Operator reserves the right, without fault, liability or notice, to immediately terminate this Agreement if, in the



opinion of the Marina Operator, the Boater or any of its passengers, crew or guests engage(s) in any illegal conduct, disorderly conduct or other conduct that has endangered or would likely endanger safety, has injured or would likely injure any person, has caused or would likely cause damage to property or has harmed or would likely harm the reputation of the Indemnified Parties. In the event of such termination the Marina Operator may immediately remove the Boat, the Boater and any passengers, crew, and guests of the Boater from the Marina, at the Boater's sole risk and expense, and retake possession of the slip.

41. The Boater shall have the right to cancel this Agreement at any time prior to May 10th with full refund, less a cancellation charge to a maximum of 10% of the dockage fee or \$50.00, whichever is less. If the Boater cancels after May 10th, no refund shall be provided to the Boater under any circumstances. Boaters who will not have their Boats at the Marina by June 1st must notify the Marina Operator, in writing, in advance, advising when their Boat is scheduled to arrive. The Marina Operator reserves the right to rent the slip to other boaters until such time as the Boat is scheduled to arrive (with all revenue earned therefrom being the property of the Marina Operator).
42. The Boater understands and agrees that in the event of an emergency or when deemed necessary by the Marina Operator for any other circumstance, the Boater shall move the Boat (or boat trailer if stored on the Marina Operator's lands) immediately in accordance with the Marina Operator's instructions. The Boater agrees that in the event of an emergency, the Marina Operator may move an unattended Boat from its slip to any other mooring space at the Boater's sole risk and expense.

The Marina Operator may from time to time move stored boat trailers without notification to the Boater, to facilitate grounds maintenance in the trailer storage area.

43. The Boater agrees that the Boat and all personal property of the Boater shall be removed from the Marina immediately upon the expiry or earlier termination of this Agreement, failing which the Marina Operator may, in its absolute discretion, remove the Boat and all personal property of the Boater without liability, at the Boater's sole risk and expense, to another mooring facility within the Marina or to a place of storage within the Marina or elsewhere. The Boater further agrees to pay all expenses, storage fees and amounts owing as a result of any of the above, to the Marina Operator on demand.





## General

44. The Marina Operator reserves the right to amend the Marina rules and regulations from time to time by posting the amended rules and regulations in a prominent location at the Marina.
45. This Agreement does not require the Marina Operator to perform any act of service for the Boater or any act of service to or in respect of the Boat.
46. This Agreement shall be in force and effect only in respect of the 2020 Docking Season, subject to any earlier termination in accordance. NPC is in no way obligated to enter into a docking agreement for any future seasons.
47. This Agreement shall become null and void upon the occurrence of an event (including fire, storm and other calamity) which destroys all or substantially all of the Marina.
48. This Agreement is not an agreement of bailment. The Boater is not the bailor of the Boat, nor is the Marina Operator the Bailee of the Boat. At all material times as between the Boater and the Marina Operator, the Boat shall be and shall be deemed to be in the possession of the Boater, notwithstanding that the Marina Operator may, as herein provided, move, cause to be moved or otherwise handle the Boat and all such moving or handling shall be deemed not to remove the Boat from the possession of the Boater.
49. The Boater acknowledges that the Marina Operator 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, by its passengers, crew or guests, or by its Boat, and for any expenses incurred by the Marina Operator on behalf of the Boater or other debts of the Boater due to the Marina Operator under the terms of this Agreement. The Marina Operator may give notice of the lien to the Boater, subject to the Repairs and Storage Liens Act.
50. No failure by NPC to exercise any right under this Agreement or to insist upon full compliance by the Boater with its obligations under this Agreement shall constitute a waiver of any provision of this Agreement.
51. The Boater acknowledges that the Marina Operator is not obligated to provide winter storage at the Marina. Any winter storage offered by the Marina Operator shall be subject to a winter storage agreement and fee with the Marina Operator. In the event that winter storage is not offered/or entered into by the Boater, then the Boater shall be required to make arrangements to remove its Boat from the Marina on or before November 1, 2020.



52. The Boater acknowledges receipt of the following emergency contact telephone numbers:

- Fire Department 905-684-4311
- Niagara Parks Police 905-356-1338
- Niagara Health System 905-378-4647
- Environmental Spills Report 1-800-268-6060

53. Any notice required to be given to the Boater pursuant to the terms of this Agreement shall be in writing and may either be posted on the Boat or posted at the assigned slip at the Marina or sent by prepaid registered mail to the address on the Dockage Assignment Form attached hereto. The notice shall be deemed given immediately upon posting, or if sent by prepaid registered mail, on the second (2nd) Business Day after the date of such mailing.

54. This Agreement constitutes the entire agreement with respect to the subject-matter hereof and supersedes all prior agreements, communications and understandings, both written and oral.

55. This Agreement and all disputes or other matters arising out of it shall be governed by and construed in accordance with the laws in effect within the Province of Ontario.

I have read and agree to the terms of this agreement.

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**BOATER:**

Per:

\_\_\_\_\_  
Name: