



OFFSHORE MARINA, INC. | BOX 330330, LAKE POWELL, UT 84533 | 435-788-2142 PHONE | 435-788-2303 FAX

**BOAT STORAGE AND SECURITY AGREEMENT**

THIS **BOAT STORAGE AND SECURITY AGREEMENT** (“Agreement”), dated as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is by and between Owner, as defined below, and OFFSHORE MARINA, INC., a Utah corporation (“OSM”).

WHEREAS, Owner desires to rent from OSM storage space for the Boat, as defined below, at OSM’s dry storage shop or OSM’s shop located near mile marker 30 on Highway 276, Garfield County, State of Utah.

Owners’ Printed Name (“Owner”): \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Home Telephone: \_\_\_\_\_  
Mobile Telephone: \_\_\_\_\_ Fax #: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Boat Year: \_\_\_\_\_ Boat Make: \_\_\_\_\_ Boat Color: \_\_\_\_\_  
Hull Number: \_\_\_\_\_  
Boat’s State Registration: \_\_\_\_\_ Boat Length: \_\_\_\_\_  
Trailer Year: \_\_\_\_\_ Trailer Make: \_\_\_\_\_ Trailer Color: \_\_\_\_\_  
Trailer License #: \_\_\_\_\_ Trailer Length: \_\_\_\_\_

The above described boat is hereinafter referred to as the “Boat” and is defined to include the boat described above, its contents, attachments, equipment and trailer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by all parties hereto, the parties agree as follows:

\_\_\_\_\_**Storage Rental:** OSM hereby leases to Owner, and Owner hereby rents from OSM, a dry dock storage space for the Boat, at the Storage Rate, defined below. OSM’s authorized personnel shall park the Boat in the above-described dry dock space and store the same. It is understood that all Open Storage space is uncovered and exposed to the elements and all Covered Storage space has limited cover from the elements, and that the Boat will be similarly exposed. Owner shall take whatever precautions which he deems necessary and prudent to protect his Boat from damage caused by the elements, and OSM shall have no liability whatsoever for any damage caused thereby. The dry dock storage space shall be open during the hours of 8:00 a.m. to 5:00 p.m.; with exceptions for holidays and other arrangements, acceptable to OSM, that are made in advance by the Customer, there shall not be a dry dock attendant available to accept or release the Boats at any other time. At customer’s request, OSM will “set out” customer’s boat in a non-secured area of OSM’s facility so that customer may have access to the boat after the secured dry dock area has been closed. (See WAIVER OF LIABILITY AND INDEMNIFICATION paragraph).

The storage area is provided in an “AS IS” condition. For “Open Storage,” “Covered Storage,” and “Enclosed Storage,” storage shall be limited to one boat per space. Only the Boat described above, registered in the name of the Owner, shall be stored pursuant to this Agreement. Customer shall not use the storage rental space for the storage of any other personal property. Although Owner shall be entitled to the exclusive occupancy of a storage space at the OSM facility, at OSM’s convenience, and from time to time, OSM may move the Boat to different equivalent spaces located within OSM’s facilities. Notice of such movement will not be provided to Owner.

\_\_\_\_\_**Storage Rate:** The Owner shall pay to OSM an amount equal to \$\_\_\_\_\_ per month / per year for the storage services provided by OSM to Owner (“Storage Rate”). The Storage Rate is exclusive of any applicable sales

tax. OSM retains the right to change the Storage Rate at its sole discretion. As of the date first stated above, the Owner has submitted a payment for the first month's / year's full amount of \$\_\_\_\_\_. The Storage Rate, either monthly or annual, is payable in advance and **is non-refundable**. Payment of all invoices related to the Storage Rate are due upon receipt by Owner and all accounts must be paid by Owner in full before the Boat may be removed from OSM's premises. Non-receipt of an invoice shall be no defense for liability to make payment for the rental of the storage space as specified herein. Owner shall have personal responsibility and liability for, and the Boat shall serve as security for, all costs, demands, charges and accounts due and owing to OSM from services provided in relation to the use and/or storage of the Boat by Owner, his invitee, guests or other authorized persons. All services provided to authorized persons utilizing the Boat shall be deemed to have been incurred directly by Owner, and shall constitute his personal obligation.

**Late or Non-Payment of Storage Fee.** All amounts due under this Agreement shall be subject to a FINANCE CHARGE OF 3.99% PER MONTH, if not received by OSM on their due date. At its sole option, OSM may sell or otherwise dispose of the Boat stored under the terms of this Agreement after thirty (30) days of receipt by Customer of demand for payment of past due amounts and Owner has not delivered full payment of said amounts to OSM. Any funds in excess of the amount due and reasonable costs resulting from the sale or disposition of the Boat will be forwarded to the Owner within twelve (12) months of sale or disposition of boat.

**Term.** This Agreement is for a term of twelve (12) months beginning with the month stated on the front of this Agreement. This Agreement will automatically renew from year to year unless canceled by either party by providing written notice of such cancellation to the other party not less than thirty (30) days in advance of the end of the annual term. In the event the Owner does not remove the Boat from the premises upon the expiration of the term of this Agreement, the Agreement shall continue on a month-to-month basis, provided Owner is not otherwise in default and Owner shall prepay the monthly storage charge.

**Insurance Requirement.** Owner's storage of the Boat shall at OSM's facilities shall be at Owner's sole risk. Owner shall at all times maintain adequate insurance on the Boat and shall take any and all necessary precautions to secure the Boat while stored on OSM's premises. Owner acknowledges it is Owner's responsibility to obtain reimbursement for all insurance claims.

**OSM's Possessory Lien.** Owner hereby grants to OSM a security interest and possessory lien upon the Boat stored pursuant to this Agreement regarding any unpaid fees due and owing for rental of the storage space or for repairs or other services provided in relation to said Boat. Owner further agrees that the lien may be foreclosed under the terms and conditions of set forth in the Utah Code, Title 38, Chapter 8, in the event enforcement and foreclosure of this consensual lien becomes necessary. This Agreement may also be considered a security agreement within the meaning of the Utah Uniform Commercial Code, Secured Transactions, with the Boat being held as security by OSM for payment of all amounts due for storage hereunder, as well as all other charges and assessments made by OSM for services and products provided by the operations described in this Agreement. OSM shall have the right to retain the Boat in its possession and to exercise all rights and remedies with respect to the Boat secured hereby as set forth under either Utah Code, Title 38, Chapter 8 or the Utah Uniform Commercial Code, including, but not limited to, the right to sell the Boat or make other disposition thereof to pay all outstanding obligations on the part of Owner to OSM. The Owner agrees financing statements and other documents as shall be required to perfect its security interest in the Boat to pay for the charges set forth in this Agreement, including but not limited to appropriate disposition of, and notation on, the title to said Boat. The Owner hereby certifies that the following lien holders are the only persons with any interests in the Boat other than Owner:

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**WAIVER OF LIABILITY AND INDEMNIFICATION:** OWNER'S STORAGE OF THE BOAT SHALL BE AT OWNER'S SOLE RISK. OSM, ITS EMPLOYEES AND OFFICERS SHALL HAVE NO LIABILITY TO OWNER FOR THE THEFT, DAMAGE OR VANDALISM OF THE BOAT OR ITS CONTENTS WHILE IN THE DRY DOCK COMPOUND OR WHILE BEING TRANSPORTED BY OSM. OWNER HEREBY HOLDS OSM, ITS EMPLOYEES AND OFFICERS HARMLESS AND INDEMNIFIES OSM, ITS EMPLOYEES AND OFFICERS AGAINST ANY AND ALL LOSSES, DAMAGES, OR CAUSES OF ACTION ASSOCIATED WITH THE STORAGE AND/OR TRANSPORTATION OF THE BOAT. OWNER AGREES TO HOLD HARMLESS AND INDEMNIFIES OSM, ITS EMPLOYEES AND OFFICERS FROM ANY AND ALL LOSSES, DAMAGES, DEMANDS, ACTIONS, CAUSES OF ACTION, OR LIABILITY OF ANY KIND FOR INJURIES TO ANY PERSON OR PROPERTY RESULTING FROM THE STORAGE AND/OR TRANSPORTATION OF THE BOAT; AND OWNER HEREBY AGREES TO HOLD HARMLESS AND INDEMNIFY OSM, ITS EMPLOYEES AND OFFICERS FROM ANY AND ALL LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION OR LIABILITIES TO ANY PERSON OR ENTITY BY REASON OF ANY ACT OR FAILURE TO ACT ON THE PART OF OWNER, HIS AGENTS, EMPLOYEES, INVITEE OR GUESTS IN THE USE OR STORAGE OF THE BOAT.

**Termination:** OSM shall have the right to terminate this Agreement for any reason or no reason upon **thirty (30)** days advance written notice to the Owner. Written notice thereof shall be given to Owner at the address set forth above. It is the Owner's responsibility to notify OSM of any changes to the address set forth above. If the termination notice is sent by OSM to Owner as a result of a default of Owner's obligation under this Agreement, Owner shall have seven (7) days from the date of such written notice to cure the default or violation. **Only one written notice of termination or any default or violation shall be given by OSM to Owner.** In the event OSM terminates this Agreement, rental payments will be prorated and any excess shall be refunded after the deduction of impound fees, costs incurred by OSM, and any other amounts owed to OSM by Owner. This Agreement may be canceled by either party by the sending of a written notice of termination thirty (30) days prior to the effective date of cancellation. All amounts due to OSM for, including, but not limited to, storage, maintenance, repairs, parts or other services must be paid by the Customer before the Boat can be removed, from OSM's facility. In the event the Boat remains at OSM's facility after the effective date of cancellation, Owner agrees to pay storage fees in effect at the time of termination.

**Release of the Boat to Persons Other Than the Owner.** The Boat will not be released to person except for the Owner, or lien holder with proper documentation, without written signed authorization from the Owner. OSM shall not be liable to Owner for releasing the Boat to a third-party if it has a good faith belief that Owner has authorized the release. The Owner authorizes OSM to release the Boat to the following individuals:

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**Compliance with Laws.** To assure on-site compliance with federal, state and local environmental regulations and in support of the National Park Service's mandate to protect the environmental integrity of Lake Powell, OSM restricts and controls the cleaning, repair, maintenance and construction activities the Owner may perform on the Boat while located at OSM's facilities. See Attachment A, incorporated by reference herein, for further detail. Owner covenants and agrees to fully comply with and observe the rules and regulations in Attachment A and to also observe any other policies and procedures imposed by OSM in furtherance of this provision. In addition, Owner acknowledges that it is subject to and shall comply with all applicable federal, state and local laws, rules and regulations. Owner also agrees that OSM may issue supplemental, amendatory or substitute sets of policies, rules and regulations and when written notice of the same is provided to Owner, the same shall have the full force and effect on the Owner as if the same were attached hereto as Attachment A.

**Entire Agreement.** This Agreement constitutes the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements, and understandings relating to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by either of the parties that is not embodied in this Agreement or in the documents referred to herein, and neither of the parties shall be bound by or be liable for any alleged representation, promise, inducement or statement of intention not set forth or referred to herein.

**Severability.** To the extent any provision of this Agreement shall be held, found or deemed to be unlawful or unenforceable, then any such provision or portion thereof shall be modified to the extent necessary so that any such provision or portion thereof shall be legally enforceable to the fullest extent permitted by applicable law. Any court of competent jurisdiction shall, and the parties hereto do hereby expressly authorize any court of competent jurisdiction to, enforce any such provision or portion thereof or to modify any such provision or portion thereof so that any such provision or portion thereof is enforced to the fullest extent permitted by applicable law.

**Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah, United States of America. Both parties hereby consent to venue and jurisdiction the in the federal or state courts of Utah.

**Amendments; Waiver.** Except as expressly provided above, this Agreement may not be amended, modified, superseded or cancelled, nor may any of the terms, covenants, representations, warranties, conditions or agreements herein be waived, except by a written instrument executed by the party against whom such amendment, modification, supercedure, cancellation or waiver is charged. No waiver by either of the parties of any condition, or of any breach of any term, covenant, representation, warranty, condition or agreement contained herein, shall be deemed to be or shall be construed to be a waiver or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term, covenant, representation, warranty, condition or agreement hereof.

**Force Majeure.** Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, terrorism, sabotage, labor shortage or dispute or governmental act.

**Construction.** The captions and headings contained herein are for convenience of reference only, and shall not in any way affect the meaning or interpretation of this Agreement. Notwithstanding any rule of construction to the contrary, any ambiguity or uncertainty in this Agreement shall not be construed against either of the parties based upon authorship of any of the provisions hereof.

**Counterparts.** This Agreement may be executed by facsimile and may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

**No Third Party Beneficiary.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties and their respective successors or permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third person to either of the parties, nor shall any provision hereof give any third person any right of subrogation or action over or against either of the parties.

**Attorneys' Fees.** In the event either of the parties shall bring an action in connection with the performance, breach or interpretation of this Agreement, or in any action related to the subject matter hereof, the prevailing party in such action shall be entitled to recover from the non-prevailing party in such action all reasonable costs and expenses of such action, including, without limitation, attorneys' fees, costs of investigation, arbitration, accounting and other costs reasonably incurred or related to such action.

**Successors and Assigns.** This Agreement shall be binding on all successors and assigns of the parties.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the date first written above.

**OSM**

**CUSTOMER**

By: \_\_\_\_\_

By: \_\_\_\_\_

**Authorized by:**

Its: \_\_\_\_\_

\_\_\_\_\_

## Attachment "A"

### **Boat Owners Work Authorization Policy**

To assure on-site compliance with federal, state, and local safety and environmental regulations and in support of the National Park Service's mandate to protect the environmental integrity of Lake Powell OSM has adopted the following regulations for Owners who want to perform their own maintenance, repair, construction or deep cleaning on their Boats at our facility.

- I. Boat Owners must obtain written authorization from OSM's service department prior to performing any type of work on their Boats. A refundable performance deposit is required to receive authorization to work on a Boat. The deposit will be refunded if the work is completed in compliance with all requirements of this policy. In the event OSM determines any requirement of this policy has not been complied with, an amount to be determined solely by OSM will be withheld from the deposit, or at OSM's sole option the entire deposit will be forfeited and additional charges may be assessed. All charges must be paid in full before the Boat will be released from OSM's facility.

Authorization is not required for general Boat clean up when returning from the lake.

- II. Owners are responsible for all clean up costs and costs of environmental remediation associated with the work they perform on their Boats.
- III. The written authorization form must be displayed where it can be seen from outside the Boat whenever work is being performed on the Boat.
- IV. Only owners, their family members and invited guests are permitted to work on their Boats. Other than OSM's employees and sub-contractors, paid professionals, sub-contractors, employees of owners or others receiving compensation of any type are not permitted to work on any Boat located at OSM's facility.
- V. The following is not permitted:
  - A. The use of any type of chemical cleaning solution on Boat hulls;
  - B. In-board engine replacement;
  - C. Grit Blasting;
  - D. Pressure Washing;
  - E. Spray Painting of any type (including small spray cans);
  - F. Welding, brazing or soldering;
  - G. The use of acetylene, propane, butane or any type of open flame torch;
  - H. Draining Fuel Lines or Tanks;
  - I. Discharge of any type of non-potable water, fluids, solutions, cleaners or chemicals on to the ground. (If you need to run your engine, we have an engine cooling water re-circulating cart available for rent.);
  - J. Liquids of any type, construction materials, supplies and tools cannot be stored on the ground around or underneath the boat.
- VI. Adequate ground covers must be secured in place to capture all debris, drips or spills where there is a chance of anything falling or dripping onto the ground. In the event of wind blowing, all debris etc. falling onto the ground covers must be removed in a timely manner to prevent it from being blown off the ground cover. All debris must be removed from the ground covers and secured at the end of each work period.
- VII. Upon completion of the work, owners must clean up and remove from OSM's facility all trash, construction materials and supplies, cleaning solutions, discarded parts, used oil etc. associated with the work they have performed.