



# COOPER RIVER BOATYARD

## 2020 HURRICANE HAUL AGREEMENT

### OWNER INFORMATION

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact information: Cell Phone: \_\_\_\_\_ Home phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Emergency Contact Name and Phone: \_\_\_\_\_

### VESSEL INFORMATION

Name of Vessel: \_\_\_\_\_ Manufacturer: \_\_\_\_\_

Model: \_\_\_\_\_ Length overall: \_\_\_\_\_ Beam \_\_\_\_\_ Draft \_\_\_\_\_ Year Built: \_\_\_\_\_

HIN : \_\_\_\_\_ CG Doc No. or Registration: \_\_\_\_\_

Home Port: \_\_\_\_\_ Vessel Weight: \_\_\_\_\_

The Vessel Owner listed above (hereinafter "Owner") and Charleston Boatyard Marina, LLC d/b/a Cooper River Boatyard (hereinafter "Boatyard") agree to the terms and conditions set forth below. The CRBY "Terms of the Boat Handling & Storage Agreement", the CRBY "Facility Operational Practice Guidelines" as well as the CRBY "Insurance Requirements for Commercial Tenants, Maritime Tenants and Contractors" form an integral part of this agreement.

1. PRICING: Annual Plan fees are outlined below. At this time, the plan is limited to 25 Vessels and the spaces are reserved on a first-come, first-served basis. Owners who have held a Hurricane Haul Contract in the previous year will have right of first refusal before spaces are opened to new Owners. Owners must provide the following in order to have a space secured for their Vessel:
  - a. Payment of Annual Plan Fee
  - b. Receipt of copy of Vessel Insurance in compliance with item 12 below
  - c. Signed Hurricane Haul Agreement / Boat Handling & Storage agreement / Facility Operational Practice Guidelines / Insurance Requirements for Commercial Tenants, Maritime Tenants and Contractors

#### ANNUAL HURRICANE STORAGE FEE

25' to 35'	\$ 1790.00	36' to 45'	\$ 2699.00
46' to 58'	\$ 3295.00	Over 58'	\$ 4999.00 (must be under 80,000 lbs.)
*All catamarans add one tier level. For example, a 36' catamaran will pay the 46-58' tier.			

Note: a 3% credit card fee applies if a credit card is used for payment

2. The term for this Hurricane Haul Contract is for the hurricane season ending December 31 of the stated year.

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3. In the event of the issuance of a hurricane or tropical storm warning by the National Hurricane Center, the customer must contact the Boatyard and schedule a time slot for removal of the Vessel in accordance with the provisions of this agreement. The Boatyard anticipates the last scheduled haul out will be no later than 48 hours before the prediction of landfall by the National Weather Service. Any Owner not at the Boatyard dock at the time of the scheduled haul out will be required to reschedule the haul out and risks the possibility that remaining time slots may not exist. The Boatyard is absolved from any liability should a new time is unable to be scheduled due to weather conditions.
4. Should an Owner choose to not have his/her Vessel hauled out during any named storm, the Owner MUST submit, in writing, his/her decision to not haul out the Vessel listed above prior to the named storm making landfall. Should the Owner not submit the decision to haul out in writing prior to the named storm making landfall, all terms of this agreement become void. The Boatyard is not liable for any damages sustained should an Owner make the decision not to haul his/her Vessel.
5. There will be no refunds of the Annual Hurricane Haul Out Fees. If the service is not required in the current hurricane season, 25% of the paid amount can be used towards work performed on the Vessel listed above between December 1, 2020 to April 1, 2021 at the Boatyard.
6. The Boatyard will only provide the Owner with a storage space, blocking and jack stands for the Vessel. The Boatyard will not provide any other hooks, anchors, tie downs, lines, rigging and/or any other equipment necessary to secure the Vessel to the ground, or to protect the Vessel from any hurricane, storm surge or other weather conditions.
7. **NO GUARANTEE / NO LIABILITY.** It is expressly agreed that the Boatyard is not responsible for the safety or security of the Vessel during any hurricane or storm and that the Owner is solely responsible for securing or protecting the Vessel during any hurricane or storm. The Hurricane Haul Contract is an agreement on a best efforts basis to place the Vessel on the yard but is not, either written or implied, a guaranty as to the safety of the Vessel. The Owner, not the Boatyard, will be solely responsible for making sure that the Vessel is properly secured to withstand or survive any hurricane or storm. The Owner is responsible for securing any loose items from the Vessel. It is strongly recommended that all valuable items be removed from the Vessel prior to storage and the Boatyard is not responsible for the loss of any items left on board.
8. **OTHER CHARGES.** In addition to the Hurricane Haul Contract fees, all other standard yard fees will apply, including, but not limited to, haul out and storage fees. Haul out fees are \$12 - \$20 per foot with a \$500 minimum for each Vessel. Refer to the Rate Chart at the end of this agreement for specific pricing. All Vessel's measured length will include the bow pulpit, sprints, engines, davits, platforms, etc. The Owner agrees to pay all haul out charges upon arrival at the Boatyard.
9. The Vessel must be removed from Boatyard, including the dock area, within seventy-two (72) hours of any hurricane or storm's departure from Charleston County. In the event that a Vessel is located at Boatyard, including at the dock area, upon the expiration of the seventy-two (72) hour period, then the Owner is required to pay Boatyard's posted daily storage fee (or do-it-yourself storage fee), the said fee to haul or launch the Vessel, and any other charges for services provided by Boatyard. Owner expressly authorizes the payment of such storage fees to be charged to the credit card provided. Docks at the Boatyard is designed for temporary docking and the Boatyard is not responsible for any damages sustained by a Vessel being left at the transient docks.
10. **BOAT PLUGS. OWNER IS REQUIRED TO ENSURE ALL PLUGS ARE REMOVED SO THAT THE VESSEL WILL NOT COLLECT WATER WHILE AT THE BOATYARD. OWNER IS RESPONSIBLE FOR INSURING PLUGS ARE INSTALLED PRIOR TO RE-LAUNCHING THE VESSEL.**
11. **INSURANCE REQUIREMENTS. NO BOAT SHALL BE HAULED OUT WITHOUT PROPER INSURANCE IN PLACE. NO EXCEPTIONS!** Owner warrants and represents that the vessel is and will remain insured with marine protection and indemnity insurance at least equal to the value of the Vessel and equipment during the term of this agreement. Owner shall instruct its insurer to add the Boatyard as an additional insurance on the Owner's insurance policy. Owner acknowledges that the Boatyard and its subcontractors do not provide or maintain any type of insurance coverage for the benefit of the Owner or its Vessel. Proper evidence of such insurance shall be furnished by Owner to Boatyard upon commencement of this Agreement.

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12. INSURANCE REIMBURSEMENT. Some insurers cover the cost of Hurricane haul out. The Boatyard will not collect from the insurance company under your policy. It is each Vessel Owner's responsibility to pay the Boatyard and receive reimbursement from their insurer directly.
13. Boatyard is not responsible for any damage or loss to any items attached to the Vessel. Further, Boatyard is not responsible for any manufacturer's imperfections or hull weakness. Owner shall insure that any equipment be maintained during the time the Vessel is at the Boatyard. Boatyard is not responsible for the care or maintenance of any equipment on the Vessel.
14. The person signing below does hereby certify that the description of the Vessel as set forth above is correct and that he/she is the lawful owner of the Vessel, or is an authorized agent of the Owner and is authorized to subject the Vessel to the provisions of this agreement.
15. Additional Agreements:

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The parties have executed this agreement and their seals affixed the day and year first above written

\_\_\_\_\_  
 Boatyard Representative Signature

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Vessel Owner / Assignee

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Date

***ACH / CREDIT CARD INFORMATION AND AUTHORIZATION REQUIRED FOR HURRICANE HAULOUT***

## ACH AUTHORIZATION FORM

I authorize Cooper River Boatyard ("CRBY") to electronically debit the below specified bank account (and, if necessary, electronically credit the account to correct erroneous debits) for the rent and expenses specifically associated with this Hurricane Haul Agreement for the Boat Name / Account Name

\_\_\_\_\_ as frequently as needed and in accordance with CRBY's payment terms.

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

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

ACH Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

Account Type:    Checking    Savings    Business (only if the checking/savings account is a business account.)

I certify that I am authorized cardholder of record and that I have full authority to make purchases on behalf of the account listed above. I agree that a facsimile/email copy of my signature is as valid as an original for the charges.

I understand that this authorization will remain in full force and effect until I notify CRBY in writing that I wish to revoke this authorization. I understand that CRBY requires at least 5 business days prior notice in order to cancel authorization.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

## CREDIT CARD AUTHORIZATION FORM

I authorize Cooper River Boatyard to debit my credit card (AMERICAN EXPRESS, MASTERCARD, VISA or DISCOVER CARD) for yard/dockage fees associated with the vessel, (BOAT / ACCOUNT NAME) \_\_\_\_\_

I certify that I am the authorized cardholder of record and that I have full authority to make purchases on behalf of the account listed above. I agree that a facsimile/email copy of my signature is as valid as an original for the charges.

NAME (As it appears on credit card): \_\_\_\_\_

BILLING ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

CONTACT NUMBER: \_\_\_\_\_ EMAIL: \_\_\_\_\_

(PLEASE CHECK ONE CARD TYPE)

CREDIT CARD TYPE:    AMEX                      MASTERCARD                      VISA                      DISCOVER

CREDIT CARD NUMBER # \_\_\_\_\_ EXPIRATION DATE \_\_\_\_/\_\_\_\_

CID 3 / 4 DIGIT CODE ON FRONT / BACK OF CARD \_\_\_\_\_

AUTHORIZED CARD HOLDER SIGNATURE: \_\_\_\_\_

AUTHORIZED CARD HOLDER'S NAME (PLEASE PRINT): \_\_\_\_\_

# 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.

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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.

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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.
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.

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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.

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# FACILITY OPERATIONAL PRACTICE GUIDELINES

Welcome to Cooper River Boatyard. It is our goal to ensure your stay with us is an exceptional and productive experience. Due to the nature of our business and the work environment, we must outline our operational practices to guarantee a safe and environmentally friendly work environment for all our customers.

The following is a list of operational practices enforced by Cooper River Boatyard. Many of these practices are required to maintain our environmental responsibilities. We ask your cooperation in helping us keep our facility a clean and safe environment for all.

1. **Facility Cleanliness:** We have made a significant investment in our facility to make the boatyard visit as enjoyable as possible. While the facility features are meant to make for an efficient yard period, we ask that you help us protect our investment by exercising common sense and follow these guidelines at a minimum:

- Please place all trash in supplied trash receptacles.
- Cooper River Boatyard is a NO SMOKING facility.
- The area around the vessel should always be kept organized and clean. Failure to keep a clean work area will result in a cleanup charge.

2. **Facility Access:** We limit access to the facility to those working within the CRBY property. The following are access requirements which might be changed or updated from time to time at the sole discretion of CRBY.

- Only crew members, vessel owners, vessel management representatives and Cooper River Boatyard approved contractors will be allowed access to the facility.

Vessels Owner or representative must notify the CRBY office of any vessel guests requesting access with the reason for the visit prior to arrival.

Vessel Owner or representative must notify the CRBY office of any contractors who will be performing work on the vessel. These outside contractors must be on the Cooper River Boatyard Authorized Contractor list. Any contractor that is not on the authorized list will require CRBY certification and/or approval prior to being granted access and commencement of work.

Overnight stays on premises and/or vessels are strictly prohibited. Violations will result in immediate and permanent eviction from CRBY properties.

3. **Haul and Launch Process**

- CRBY will assign a haul date and time at the acceptance of the reservation to haul the vessel.
- If the vessel cannot make the original date/time committed, CRBY will assign the first available date/time to haul the vessel. CRBY will make every effort to meet the vessel's request for a new date/time but will first consider other committed vessels.
- CRBY requires a minimum of 5 days' notice to launch the vessel. Please note that the vessel will be placed in the queue upon notice, but the actual launch date/time will be based on current availability and circumstances.
- If a vessel will not be able to make a scheduled haul out or launch, CRBY requires a minimum of 72 hours' notice. Failure to provide the required 72 hours' notice will result in boat launch charges at the current valid rates and tariffs.
- Upon launch, the vessel must vacate the loading dock without delay.
- Survey hauls are scheduled for a maximum of three (3) hours from entering the haul out slip to exit of haul out slip. Additional time will result in an hourly boat lift charge at the current valid hourly rate.

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4. **Working Yard:**

- Our shipyard dry dock is not equipped to handle black and gray water discharge. If you require discharge capabilities, you must notify CRBY to arrange for waste tank service subject to availability.
- Pressure washing of your vessel may only be contracted through CRBY.
- Boat washing of your vessel is only permitted with the use of biodegradable soaps in minimal amounts.
- Boarding devices must be contracted through CRBY subject to availability
- Waste tanks and waste tank pumping must be contracted through CRBY subject to availability. No other companies are authorized to perform this service.
- Cooling towers must be contracted through CRBY subject to availability. No other companies are authorized to provide this service.

5. **Scope of Work:**

- Work below the waterline must be communicated to Cooper River Boatyard before it commences to ensure proper scheduling.
- Bottom painting is only permitted by CRBY or its on-site contractors.
- Exterior refinishing is only permitted by an CRBY Authorized Paint Contractor.
- Welding or metal cutting is only permitted by an CRBY Authorized Hot Work Contractor.
- Any work involving blasting or cutting of metal requires a containment tent to capture all airborne particles.

6. **Outside Contractors:**

We allow vessels to employ qualified contractors to perform work on the vessel under the following conditions:

- Contractors must be listed on the CRBY approved contractor list. A list of authorized contractors is available from the service office.
- Contractors who are not listed as approved must be directed to our Service Office to determine eligibility to work in the facility. Contractors cannot operate before their eligibility has been approved.
- Contractors must meet the CRBY minimum insurance requirements. Contractors are required to provide proof of coverage prior to admittance into the facility.
- All contractors must register with the CRBY office enter to confirm eligibility for entry and follow CRBY guidelines.

7. **Day Workers:** Day workers must meet the following criteria:

- The yacht/boat must include these individuals on their crew manifest and must insure them under the vessel's policy. Copies of the insurance policy, listing the day workers must be furnished prior to work commencing.
- Day workers may enter the facility only after registering with the CRBY office.

8. **Storage Containers:** Upon request a storage container or storage space may be supplied for your use subject to availability. The following applies to storage container rental:

- Crew members are not allowed to use storage containers as industrial spaces to conduct painting or other hazardous work. A lock will be issued upon commencement of the rental.
- Storage containers are only for the use of storage of non-flammable items.
- Storage containers may be moved periodically so please ensure all contents are secured.

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9. **On-site storage** for tenders, jet skis, trailers, containers, etc. is limited and must be coordinated through the CRBY service office prior to bringing any of these items into the facility. Storage prices will apply to all these items based on the current CRBY rate card.
10. **Fluid Transfers and Tank Work:** We ask that vessels do not transfer fuel, change oil, or perform any tank work without coordinating those activities through the CRBY office.
11. **Owner/Crew Parking:** Designated parking areas are provided for owners, crew and contractors. Please park in a designated space. Parking in the service yard next to vessels with private vehicles is prohibited.
12. **Contractor Parking:** Contractors must park in designated parking areas. If a need occurs to drop off or pick up parts or tools, vehicles must be returned to the designated parking spaces thereafter.
13. **Anchor/tackle:** All anchoring equipment must be tagged out and secured in a way that it cannot be released or cause any harm.
14. **Shore Power:** Access to shore power is subject to availability and must be agreed and scheduled with the CRBY office. Hook ups have to be performed by CRBY personnel. Usage will be charged according to valid rates and tariffs. at the time of use. It will be Owners responsibility the to ensure the boat is on line and functioning properly at all times and will not be monitored by CRBY personnel. The use of shore power plugs, wires etc., which are not returned will be charged to the vessel.
15. **Potable Water:** We ask that you conserve potable water while at Cooper River Boatyard. We do not regulate or meter the potable water outlets in the yard but please use this natural resource with discretion.
- Black & Grey Water Pump Out:** Black and grey water must not be pumped overboard into boatyard, the dock area or intercostal waters. Discharge of these fluids into the waterway violates State and Federal law. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.
16. **Bilge Water:** Bilge water contaminated with oil, fuel, or other regulated contaminants may not be discharged onto surface waters or on the upland. Turn off your bilge pumps prior to dry docking your boat as necessary. In case of spills please immediately contact the CRBY office. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.
17. **Petroleum, Waste Oil and Filters:** If you have a need to dispose of waste oil products or waste solvents, please contact the CRBY office. Waste oil, engine oil, gear oil, transmission oil, hydraulic oil and antifreeze must be disposed of in proper containers and not in dumpsters or sewer drains. Oil barrels, pumps or other fueling equipment used on piers must have absorbents under them and be monitored by the boat so as not to stain or damage the pier. A disposal fee will be assessed. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.
18. **Waste Gasoline:** Cooper River Boatyard can arrange for disposal by local licensed hauler. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.
19. **Paints & Solvents:** Expended solvents must be disposed of in proper containers, not in the dumpster or sewer. A disposal fee will be assessed. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.

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- 20. **Paint Chips & Sanding Spoils:** Removed paint chips and sanding debris must be captured and collected. Please contact the Operations Manager to arrange removal and disposal. This debris must not be allowed to enter the water or lay on the ground and may not be left where it might be exposed to rainwater. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.
- 21. **Fueling Operations:** All fueling must be coordinated through CRBY and through an approved vendor. We allow outside fueling at this facility but only through approved fueling companies. Please contact the or the CRBY office for approval. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.
- 22. **Spills & Clean up:** We are obligated to abide by all USCG and South Carolina EPA regulations and report spills as required. Clean up activities and USCG fines can be very costly. In the event we find it necessary to perform clean up or containment, charges will be assessed directly to the responsible party. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.
- 23. **Boat Washing:** Washing of your vessel is only permitted with the use of biodegradable soaps in minimal amounts. These products can be purchased from CRBY subject to availability.
- 24. **Diving Operations:** All diving operations need to be cleared by the CRBY office. An Alpha flag has to be flown from the mast as a visual indicator that a diver is in the water. All engines/generators will have to be secured and there may be no blowing or venting of tanks or discharges to the sea while diving. The contracted diver will also have to place portable signs on the dock at the bow and stern to alert for active diving.
- 25. **Hot Work:** All boats must obtain a gas free certificate from an approved marine chemist prior to approval for hot work. Once approved, hot work may be subject to inspections and access must be available to these at all times of the day and night to support that safe procedures are followed.
- 26. **Trash Disposal:** Trash receptacles have been provided throughout the facility for your use. Please help us keep CRBY clean by properly disposing of trash. Hazardous waste must be lawfully disposed. The lawful handling of any pollutant or hazardous material is the sole responsibility of the vessels owner to include any activities by representatives, contractors, crew or other persons associated with the vessel.
- 27. **Hurricane Preparedness Plan:** It is the owner's sole responsibility to have an appropriate hurricane preparedness plan available for their vessel.

**Points of Contact:**

The CRBY Service Office is located at 1300 Pierside Street building. The hours of operation are Monday through Friday from 8:00am to 5:00pm.

<b>Department:</b>	<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Boatyard Operations	NATE WEST	843-554-7775	NATE@COOPERRIVERBOATYARD.COM
Service	PAUL YOUNG	843-554-7775	<a href="mailto:SERVICE@COOPERRIVERBOATYARD.COM">SERVICE@COOPERRIVERBOATYARD.COM</a>
Accounting	HELEN BREEN	843-554-7775	ACCOUNTS@COOPERRIVERBOATYARD.COM

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## INSURANCE REQUIREMENTS FOR COMMERCIAL TENANTS, MARITIME TENANTS, & CONTRACTORS

The following insurance requirements apply to all tenants of Cooper River Boatyard and their contractors, subcontractors and invitees, unless specifically waived in writing by CRBY. (A) General Liability: Commercial General Liability (CGL) insurance on a primary and non-contributory basis written on an occurrence policy form with coverage at least as broad as that provided by ISO Form CG 00 01 10 01 without material modification, providing coverage for bodily injury, property damage, personal injury and advertising injury, including premises-operations and product-completed operations, with limits of not less than a combined limit of liability in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. Contractor/Tenant shall provide and require each of its subcontractors or contractors hired or working on its behalf to maintain appropriate CGL insurance coverage and excess liability coverage to include the Owner; CRBY, its managing member, managers and employees as "additional insureds" for claims and any kind of damages caused in whole or in part by the fault or negligence of either the Tenant, Contractor and/or Sub-Contractor. The aforementioned shall remain additional insureds during the term of the agreement and until any and all claims and suits arising out of the Work and Project are barred by the applicable statutes of limitations and/or repose. (B) Auto Coverage including Non-owned and Hired Automobiles: Commercial or Business Automobile liability insurance on a primary and non-contributory basis, including, without limitation, liability arising out of "any Auto" or all owned, non-owned, leased, and hired automobiles, truck and trailer, or semi-trailers, including any machinery or apparatus attached thereto, with limits of not less than \$1,000,000.00 each accident. Tenants and/or Contractors shall require its Subcontractors to purchase the same automobile liability insurance. (C) Marine Operators Legal Liability (MOLL) or Ship Repairers Legal Liability: The Limit of Liability should reflect the amount that can be imposed on you by law for the repairs or replacement of any and all vessels in your care, custody or control at the time of loss. It shall be the Contractor's sole responsibility to make sure all sub-contractors working at the Cooper River Boatyard premises or under the direction of the Contractor where Landlord has exposure to make sure all of the sub-contractor's insurance policies meet these requirements. If any sub-contractors' limits do not meet the insuring criteria, the General or Hiring contractor agrees to be the primary carrier for all amounts in excess of the sub-contractors' underlying limits on a Primary basis. Minimum coverage limits will not be less than \$1,000,000.00 but can vary at Landlord's discretion based upon the nature and exposure to risk of the Contractor's operations. (D) Workers Compensation Coverage: Workers' compensation insurance on a primary and non-contributory basis (a) with statutory limits complying with the laws of the state of South Carolina (b) including "part B" employer's liability coverage with limits not less than \$500,000.00 per occurrence; and (c) All tenants, contractors and sub-contractors who are required to have U.S. Longshoreman and Harbor Workers coverage due to the length of vessels worked on must have proper coverage. Where permitted by law, the insurance required by this Section shall contain a waiver of subrogation in favor of CRBY and all its subsidiaries. Neither Tenants, Contractors or their sub-contractors nor any of their suppliers shall have a workers' compensation modification factor of greater than 1.35 (special accommodations can be made but only with the written approval from. Jones Act coverage is required on all vessels with captain and/or crew. (E) Vessel Liability Coverage: Contractors/Tenants and their sub-contractors will be responsible to making sure all vessels under their direction, care, custody or control will maintain Hull Coverage in an amount equal to the replacement value of such vessel, and Protection and Indemnity Coverage. They will notify, in writing, the Hull Carriers Insuring Company that the vessel is in for repairs at Cooper River Boatyard and will insure that: CRBY are added to the Hull and Protection and Indemnity (P & I) policies as an "Additional Insured" on a Primary and Non-Contributory basis. The minimum P & I coverage is \$1,000,000.00 but can vary at Landlord's discretion based upon the length of the vessel being worked on. USL&H and Jones Act coverage is required on all vessels with captain and/or crew. (F) Umbrella, Bumbershoot or Excess Liability Coverage: The minimum amount of coverage will not be less than \$2,000,000.00 but must provide coverage over the Marina Operators Legal Liability Coverage, Ship Repairers Legal Liability and Protection and Indemnity coverage. This limit can vary at Landlord's discretion based upon the nature and exposure to risk of the Contractor's operations. This form shall be in excess of all policies mentioned above and include Protection & Indemnity and MOLL where the exposure exists. For Contractor/Events on the water or involving boats we will also require: Protection and Indemnity Liability (P & I) with Minimum Limits of \$1,000,000.00 Note: Umbrella or Excess Policies should follow form including P & I and MOLL. Waiver of Subrogation: Contractors/Tenants and their sub-contractors agree to Secure from their insurance carriers and provide Waivers of Subrogation in favor of CRBY with regard to all coverage's required above, Contractors/Tenants and their sub-contractors agree to defend and indemnify CRBY against any and all actions and claims arising out of actions or operations performed by or on behalf of the Contractor/Tenant or Sub-Contractor Use of Site: Contractors/Tenants and their sub-contractors shall confine its operation at the site to areas permitted by the Contract Documents, and shall not unreasonably encumber the site with materials or equipment. ALL POLICIES must be written with an Insurance Company ADMITTED & LICENSED to-do business in the State of South Carolina and recognized by the South Carolina State Insurance Commissioner as such. All policies must be written with a carrier whose financial Rating must be "A rated or better as recognized by the A M Best Company. All policies must list CHARLESTON BOATYARD MARINA, L.L.C. and all subsidiaries: DBA Cooper River Boatyard as ADDITIONAL INSUREDS and contain a 30-day cancellation provision requiring that notice be sent to CRBY if policies are to be cancelled for any reason. All insurance certificates must be provided to the CBRY office prior to or at the time of vessel arrival. Failure to provide insurance information does not relieve owners of their responsibilities towards CRBY and/or any other parties and can lead to the termination of the Boat Handling and Storage Agreement.

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