

# Marina at Marble Island, LLC



## 2012 RACK SERVICE AGREEMENT TERMS AND CONDITIONS

For purposes of this Agreement, Marina at Marble Island, LLC, shall be referred to as "The Marina". The individual(s) executing this agreement shall be referred to together as the "Owner".

1. The Marina will furnish a boat rack and lift services at the cost indicated on The Marina's Rack Service Agreement for the Owner's benefit of storing a boat at The Marina. Interest will accrue on any amounts not paid at the rate of one and one-half percent (1 ½ %) per month. All payments are non-refundable.

2. The valet rack service season shall run from May 14, 2012 to October 1, 2012. The Owner shall be responsible to remove the boat from the rack at the end of the season. Additional charges of \$12.00 per day will apply for each day after October 1st that the boat remains at The Marina and any agreements to extend must be made in advance.

3. The Owner acknowledges and agrees that the boat identified in this Agreement shall be a pleasure boat used for non-commercial purposes only. The Owner shall use the rack and other facilities of The Marina solely for non-commercial, pleasure boating purposes only.

4. The Owner shall not sell, transfer, assign, or permit others to use the rack space without the prior consent of The Marina, which consent may be withheld in the absolute discretion of The Marina. **Partners or shared ownership in vessel is not permitted. Shared use of the membership is not permitted.**

5. If sold during the term of this agreement, the sale shall be reported to The Marina immediately. The new owner will be required to execute an Agreement with The Marina if they intend to keep the boat in a rack or slip there.

6. The Owner shall keep the rack, slip, harbor and dock area, and all other resort facilities clear of all gear, tackle, and other property that might obstruct access to the facilities. The Owner shall not dispose of waste or trash, including, without limitation, treated or untreated sewage from heads or holding tanks, in the harbor or docking area. The Owner shall not cause damage to the rack, slip or dock facility through improper use or excessive wear and tear. **Fueling of vessels in rack area or harbor is prohibited.**

7. The Owner acknowledges and agrees that The Marina shall have the right from time to time to establish rules and regulations in order to promote the safe and efficient use of its facilities and protect the rights of all authorized users of these facilities. The Owner, and the Owner's family and permitted guests and permitted contractors, shall abide by The Marina's rules and regulations, as amended from time to time. The Owner shall not create or permit any disturbance or nuisance that unreasonably interferes, in the judgment of The Marina, with the safe and efficient use of its facilities or the ability of other users to use and enjoy the facilities.

8. All boats with marina toilets must be equipped with holding tanks and otherwise comply with any local, state, or federal regulations and requirements.

9. The use of through-transom exhaust systems is prohibited unless equipped with a muffler system approved in advance by The Marina.

10. The Owner shall comply with all laws, regulations, permits, and orders of all governmental entities having jurisdiction over the boat, the slip, or the Marina facilities. **As a means of identifying the boat along with the registration number, a copy of the boat's registration is required to be copied for the file at the Harbor House.**

11. The Owner may work on the Owner's boat at the rack or temporary slip as long as such work does not interfere with the operation of The Marina or the rights of other users of The Marina facilities. If the Owner wishes to have an outside contractor work on the Owner's boat in The Marina, the Owner shall inform marina staff and obtain approval before the service representative may enter the dock area or marina property. Such approval will be granted only if the outside contractor can deliver to The Marina a certificate showing adequate worker's compensation insurance and a minimum of \$500,000 in liability insurance coverage. The approval by The Marina shall not be deemed any endorsement or guaranty of the service work performed by the outside contractor. The Marina shall have the right to charge a fee for outside contractor work conducted at The Marina.

12. The Owner shall assure The Marina that the boat is covered by a full marina insurance package, including hull, indemnity, and liability, and agrees to maintain that insurance coverage in place throughout the term of this Agreement. The owner is responsible for damages to the rack area, automobiles, persons or other boats in The Marina, from fluids leaking from or objects falling from their vessel.

13. Neither The Marina, nor its officers, employees, owners, agents, or affiliates, shall have any responsibility or liability to the Owner, or the Owner's family, guests, or contractors, for any personal injury, death, or loss or damage to property arising out of the use of The Marina's slip or marina facilities, including, without limitation, injury, death, loss, or damage resulting from theft, fire, vandalism, hail, lightning, high/low water, wind, ice, rain, collisions, any act of God, or any act or omission of any other user of The Marina, unless caused by the gross negligence or willful misconduct of The Marina, and the Owner hereby releases The Marina, and its officers, employees, owners, agents, and affiliates, from any such responsibility or liability.

14. Upon any breach of terms or conditions this Agreement by the Owner, The Marina shall have the right to terminate this Agreement, which termination shall be effective ten (10) days after the Owner's receipt of said notice.

15. The Owner shall keep all pets on a leash and maintain control of pets at all times. The Marina shall have the right to prohibit pets that create a safety risk or unreasonably interfere with the rights of others to use and enjoy their boats and The Marina facilities. The Owner shall pick up and dispose of animal waste deposits.

16. The **Owner and only family members identified in the Rack Agreement** shall have access to the pool area. Guests are **not allowed use of these facilities**. Use of this area is "At your own risk" as lifeguards are not provided. No one under the age of 16 is permitted in the area without adult supervision. The Marina reserves the right to limit the number of member guests using the tented BBQ area. **Failure to abide by these rules will result in termination of this agreement by The Marina.**

17. The Owner hereby agrees to indemnify and hold harmless The Marina, and its officers, employees, owners, agents, and affiliates, from and against any and all claims, damages, expenses (including attorneys' fees), causes of action, or liability of whatsoever kind or nature resulting from the negligence, gross negligence, or willful misconduct of the Owner, or the Owner's family, guests, agents, or employees, or resulting from a breach by the Owner of the Owner's obligations under this Agreement.

18. Personal property not securely affixed to the boat or stored in a secure should be removed by the Owner for safekeeping. The Marina cannot be held responsible for items of personal property left on the boat.

19. The Marina shall make every effort to provide a short-term tie-up facility after launching as part of the service provided. **Owners must provide at least two quality lines 30 feet in length and two fenders for the protection of the boat during the temporary dockage.** Marina staff may move the boat as necessary for the safe and efficient use of the service docks. During peak periods, it may be necessary to raft boats together.

20. **One hour notice is required to launch a vessel from the dry rack system.** Lift service may not be available within the first or last half-hour of The Marina operating hours. The boatlift will only be operated in daylight. On advance request, boats can be placed in the water overnight for use prior to posted marina operating hours.

21. The Owner is responsible for the removal and reinstallation of drain plugs. The owner is responsible for any and all trim tab and/or ladder damage resulting from failure to raise such items upon returning from use.

22. The Owner acknowledges and agrees that The Marina shall have the right to remove any paints, thinners, solvents, LP gas cylinders, alcohol containers, kerosene containers, oily rags, and other items of a hazardous or combustible nature from any boat, if The Marina, in its discretion, believes that this is necessary or advisable for the protection of the Owner or others using The Marina facilities or the protection of the harbor or marina facilities.

23. Where there is more than one Owner, the obligations of each under this Agreement shall be joint and several.

24. The Marina shall have the absolute right to assign this Agreement to a third party provided that the third party shall assume The Marina's obligations and, upon such assignment, The Marina shall be released from any further obligations to the Owner and the Owner shall look solely to the assignee.

25. In the event that any dispute arises related in any manner to the rights, obligations, and remedies of the parties pursuant to this Agreement, then, at the request of either party, the parties agree to immediately submit the dispute to final and binding arbitration. A single arbitrator shall conduct the arbitration if the parties are able to agree upon a single arbitrator. If the parties are unable to agree upon a single arbitrator, each party shall choose an arbitrator and those arbitrators shall select a third arbitrator and the three arbitrators shall hear the dispute and shall render a decision by a majority of the panel. The cost of such arbitration shall be shared equally by the parties, provided, however, that the arbitrator or panel of arbitrators may, in their discretion, direct the non-prevailing party to reimburse the prevailing party for its share of the cost of arbitration, its reasonable attorney's fees and its other reasonable costs of the arbitration. The arbitrator or arbitrators also shall have the power and authority to determine the reasonableness of such attorney's fees, costs, and expenses. Unless the parties agree otherwise, such arbitration shall be governed by the rules and procedures of the American Arbitration Association for commercial disputes.

#### **ACKNOWLEDGMENT OF ARBITRATION**

**The Owner understands that this Agreement contains an agreement to arbitrate. The Owner understand that he or she will not be able to bring a lawsuit concerning certain disputes that may arise that are covered by this arbitration agreement, unless the dispute involves a question of constitutional or civil rights. Instead, the parties agree to submit such dispute to an impartial arbitrator or panel of arbitrators.**

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Signature of Owner(s)

Date: \_\_\_\_\_