

**UNITED STATES COAST GUARD**

**LICENSE #HSCGG1-12-6-0004**

**To *TOWN OF CHILMARK, MA***

**TO USE PROPERTY LOCATED ON COAST GUARD  
*STATION MENEMSHA***

THE COMMANDANT OF THE COAST GUARD, hereinafter referred to as “Grantor”, acting under the authority of 14 U.S.C. § 93(a)(14), hereby grants to *Tim Carroll et al, Town of Chilmark, PO Box 119, 401 Middle Road, Chilmark, MA 02535-0119* , hereinafter referred to as “Grantee”, a License at will for *dredging and small boat floating docks* at *Station Menemsha basin*, hereinafter referred to as “Installation”, identified in **EXHIBIT A** attached hereto and made a part hereof, hereinafter referred to as the “Premises”. Grantor and Grantee, when referred to together, are hereinafter referred to as the “Parties”. For purposes of this License, Grantor includes the United States Government and the United States Coast Guard. The purpose of this License is to allow the Grantee to *extend its personal and commercial transient vessel berthing*.

**THIS LICENSE** is granted subject to the following conditions.

**1. Term.** This License shall be effective beginning on *October 1, 2011* and shall remain in effect until *September 30, 2016*, unless sooner terminated by Grantor. The obligations of Grantee (excluding those of Condition 2), including those regarding remediation of environmental damage and removal of structures, facilities, and equipment installed by Grantee, shall remain in effect after the termination of this License unless otherwise agreed to by the Parties.

## **2. Consideration and Costs.**

(a) There are no fees associated with this action due to the municipality usage of the premises.

(b) The use, operation, and occupation of the Premises pursuant to this License shall be without cost or expense to the United States Coast Guard.

**3. Correspondence.** All correspondence to be sent and notices to be given pursuant to this License shall be addressed, if to Grantee, to *Tim Carroll, Executive Secretary, PO Box 119, 401 Middle Road, Chilmark, MA 02535-0119, 508-645-2101* and, if to Grantor, to *Bruce Herman, U.S. Coast Guard, CEU Providence, 300 Metro Center Blvd., Warwick, RI 02886-1710, (401)736-1726* or as may from time to time otherwise be directed by the Parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, deposited, postage prepaid, and postmarked in a post office regularly maintained by the United States Postal Service.

## **4. Access**

(a) The use, operation, and occupation of the Premises are subject to the general supervision and control of the Installation's commander or his duly authorized representative, hereinafter referred to as "said officer".

(b) In accepting the rights, privileges, and obligations established hereunder, Grantee recognizes that the Installation serves homeland security and that Grantor will not permit the Grantee to interfere with the Installation's military mission. Access to the Installation is subject to the control of its commanding officer and is governed by such regulations and orders as have been lawfully promulgated or approved by the Secretary of Homeland Security, the Commandant of the Coast Guard or by any designated military commander. Any access granted to Grantee, its officers, employees, contractors of any

tier, agents, and invitees is subject to such regulations and orders. This License is subject to all regulations and orders currently promulgated or which may be promulgated by lawful authority as well as all other conditions contained in this License. Violation of any such regulations, orders, or conditions may result in the termination of this License. Such regulations and orders may, by way of example and not by way of limitation, include restrictions on who may enter, how many may enter at any one time, when they may enter, and what areas of the Installation they may visit, as well as requirements for background investigations, including those for security clearances, of those entering. Grantee is responsible for the actions of its officers, employees, contractors of any tier, agents, and invitees while on the Installation and acting under this License.

(c) In the event all or any portion of the Premises shall be needed by the United States or in the event the presence of Grantee's property shall be considered detrimental to governmental activities, Grantee shall, from time-to-time and at Grantee's expense, upon notice to do so, and as often as so notified, remove or relocate its property to such other location or locations on the Premises (or substitute land of Grantor which shall then become part of the Premises) as may be designated by said officer, and in the event Grantee's property shall not be removed or relocated within thirty (30) days after any aforesaid notice, the United States may cause the same to be done at the expense of the Grantee.

**5. Termination.** This License may be terminated at will by the Grantor and such termination shall not create any liability on the part of Grantor for Grantee's costs, anticipated profits or fees, and costs of construction, installation, maintenance, upgrade, and removal of facilities, or any other costs, profits, or fees, and any such costs and anticipated profits or fees will not be recoverable from Grantor.

**6. Condition of Premises.**

(a) Grantee has inspected and knows the condition of the Premises. Subject to Condition 15, the Premises are granted in an “as is, where is” condition without any warranty, representation, or obligation on the part of Grantor to make any alterations, repairs, improvements, or corrections to defects whether patent or latent. At such times and for such part of the Premises as said officer may determine, the Parties will sign a Physical Condition Report to reflect the condition of the Premises prior to the Premises being disturbed by the activities of Grantee. Such Report shall be used to indicate the condition of the Premises prior to their being disturbed in order to compare them with the Premises subsequent to the activities of Grantee to ensure Grantee has returned the Premises to the condition required by this License.

(b) The Grantor may require an Environmental Baseline Survey and/or documentation of compliance with the requirements of the National Environmental Policy Act prior to the issuance of this license. The cost of environmental work performed as a precondition to the issuance of the license shall be borne by the Grantee and shall be paid upon issuance of the license. Environmental documentation shall be appended and incorporated into this license at Exhibit B.

**7. Protection of Premises.** As regards the Grantee’s use of the Premises and its property on the Premises, Grantee shall, at all times, protect, repair, and maintain the Premises in good order and condition at its own expense and without cost or expense to Grantor. Grantee shall exercise due diligence in protecting the Premises against damage or destruction by fire, vandalism, theft, weather, or other causes related to Grantee’s activities. Any property on the Premises damaged or destroyed by Grantee incident to the exercise of the rights and privileges herein granted shall be promptly repaired or replaced by Grantee to the satisfaction of said officer.

**8. Coast Guard Property.** Any interference with the use of or damage to property under control of the United States Coast Guard, incident to the exercise of the rights and privileges herein granted shall be promptly corrected by Grantee to the satisfaction of said officer. If Grantee fails to promptly repair or replace any such property after being

notified to do so by said officer, said officer may repair or replace such property and Grantee shall be liable for the costs of such repair or replacement.

**9. Restoration of Premises.** On or before (or, in the case of abandonment, after) the date of expiration of this License or its termination by the Grantor, Grantee shall vacate the Premises, remove its property therefrom, and restore the Premises to their original condition without expense to the United States. Such restoration shall include, if applicable, removal of contamination caused by Grantee.

**10. Alteration of Premises.** No additions to or alterations of the Premises shall be made without the prior written approval of said officer.

**11. Costs of Services.** As regards the Grantee's use of the Premises and its property on the Premises, Grantee is responsible for all utilities, janitorial services, building maintenance, and grounds maintenance for the Premises without cost to the United States Coast Guard. The Coast Guard may, if its capabilities permit, consent to provide certain of these services to Grantee on a reimbursable basis.

**12. Environmental Compliance.** In its activities under this License, Grantee shall comply with all applicable environmental requirements, and in particular those requirements concerning the protection and enhancement of environmental quality, pollution control and abatement, safe drinking water, and solid and hazardous waste. Responsibility for compliance with such requirements rests exclusively with Grantee, including liability for any fines, penalties, or other similar enforcement costs.

**13. Safety and Hazardous Waste Disposal.** Grantee, at its expense, shall comply with all applicable laws on occupational safety and health, the handling and storage of hazardous materials, and the proper handling and disposal of hazardous wastes and hazardous substances generated by its activities. Responsibility for the costs of proper handling and disposal of hazardous wastes and hazardous substances discovered on the Premises is governed by applicable law. The terms hazardous materials, hazardous

wastes, and hazardous substances are as defined in the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Clean Air Act, and the Toxic Substances Control Act, and their implementing regulations, as they have been or may be amended from time to time.

**14. Historic Preservation.** Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the Premises, Grantee shall cease its activities at the site and immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed. Any costs resulting from this delay shall be the responsibility of Grantee.

**15. Transfer, Assignment, Leasing, or Disposal.** Grantee shall not transfer, permit, license, assign, lease, or dispose of in any way, including, but not limited to, voluntary or involuntary sale, merger, consolidation, receivership, or other means (all referred to in this Condition 20 as “transfer”), this License or any interest therein or any property on the Premises, or otherwise create any interest therein.

**16. Liens And Mortgages.** Grantee shall not engage in any financing or other transaction creating any mortgage upon the Premises, place or suffer to be placed upon the Premises any lien or other encumbrance, or suffer any levy or attachment to be made on Grantee's interest in the Premises under this License. On the date of the execution or filing of record of any such mortgage, encumbrance, or lien, regardless of whether or when it is foreclosed or otherwise enforced, this License shall terminate without further action by Grantor.

**17. Other Grants of Access.** This License is subject to all outstanding easements, rights-of-way, leases, permits, licenses, and uses for any purpose with respect to the Premises. Grantor shall have the right to grant additional easements, rights-of-way,

leases, permits, and licenses, and make additional uses with respect to the Premises without regard to this License.

**18. Compliance With Laws.** Grantee shall comply with all applicable Federal, state, interstate, and local laws, regulations, and requirements. This may include the need for Grantee to obtain permits to engage in its activity. Grantor is not responsible for obtaining permits for Grantee nor for allowing Grantee to use permits obtained by Grantor.

**19. Availability of Funds.** The obligations of Grantor under this License shall be subject to the availability of appropriated funds. No appropriated funds are obligated by this License.

**20. Amendments.** This License may only be modified or amended by the written agreement of the Parties, duly signed by their authorized representatives.

**21. Liability.**

(a) Grantor shall not be responsible for damage to property or injuries to persons which may arise from, or be attributable or incident to, the condition or state of repair of the Premises, due to its use and occupation by Grantee. Grantee agrees that it assumes all risks of loss or damage to property and injury or death to persons, whether to its officers, employees, contractors of any tier, agents, invitees, or others, by reason of or incident to Grantee's use of the Premises, and its activities conducted under this License. Grantee shall, at its expense, pay any settlements of or judgments on claims arising out of its use of the Premises.

(b). Grantee shall indemnify and hold Grantor harmless against any and all judgments, expenses, taxes, liabilities, claims, and charges of whatever kind or nature that may arise as a result of the activities of Grantee, whether tortious, contractual, or

other, except to the extent such claim or charge is cognizable under the Federal Tort Claims Act.

## **22. Insurance.**

(a) During the entire period this License shall be in effect, the Grantee, at no expense to the Grantor, shall carry and maintain and require its contractors of any tier performing work on the Premises to carry and maintain—

(1) Comprehensive general liability insurance on an “occurrence basis” against claims for “personal injury,” including without limitation, bodily injury, death, or property damage, occurring upon, in, or about the Premises including any buildings thereon and adjoining sidewalks, streets, and passageways, such insurance to afford immediate minimum protection at all times during the term of this License, with limits of liability in amounts approved from time to time by Grantor, but not less than ONE MILLION DOLLARS (\$1,000,000) in the event of bodily injury and death to any one or more persons in one accident, and not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for property damage. Such insurance shall also include coverage against liability for bodily injury or property damage arising out of the acts or omissions by or on behalf of Grantee by any invitee or any other person or organization, or involving any owned, non-owned, or hired automotive equipment in connection with Grantee's activities.

(2) If and to the extent required by law, workers' compensation and employer's liability or similar insurance in form and amounts required by law.

(b) All policies of insurance which this License requires Grantee to carry and maintain or cause to be carried or maintained pursuant to this Condition 29 shall be effected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this License, issued by insurers of recognized responsibility. All such policies of insurance shall be for the mutual benefit of Grantor and Grantee. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Grantee or Grantor or any other

person; provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by Grantor of written notice thereof; provide that the insurer shall have no right of subrogation against Grantor; and be reasonably satisfactory to Grantor in all other respects. In no circumstances will Grantee be entitled to assign to any third party rights of action which Grantee may have against Grantor. The foregoing notwithstanding, any cancellation of insurance coverage based on nonpayment of the premium shall be effective after fifteen (15) days written notice to Grantor. Grantee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by Grantee under this Condition 29 will constitute a failure to comply with the terms of the License.

(c) Grantee shall deliver or cause to be delivered upon execution of this License (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Condition 29) to Grantor a certificate of insurance evidencing the insurance required by this License.

(d) If Grantee is a self-insured entity, Grantee shall provide a letter to that fact, and shall not be responsible for separate insurance.

**23. Entire Agreement.** It is expressly understood and agreed that this written instrument embodies the entire agreement between the Parties regarding the use of the Premises by the Grantee, and there are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein.

**24. Condition and Paragraph Headings.** The headings contained in this License, its Attachments, and Exhibits are to facilitate reference only and shall not in any way affect the construction or interpretation hereof.

IN WITNESS whereof, I have hereunto set my hand by authority of the Commandant of the Coast Guard, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE UNITED STATES OF AMERICA,  
by the Commandant of the Coast Guard

BY: \_\_\_\_\_

This License is also executed by Grantee this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*Town of Chilmark*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Print Name)*

\_\_\_\_\_  
*(Title)*

**EXHIBIT A—MAP OF PREMISES**