

## EXCLUSIVE (CENTRAL) LISTING AGREEMENT

THIS AGREEMENT is made by and between the broker identified above (“Broker”) and the following “Seller”:

SELLER(S):			
Address:		Work Phone:	
E-mail:		Cell Phone:	
Fax:		Home Phone:	

1. Exclusive Right to Sell. Seller hereby employs and grants Broker the exclusive and irrevocable right to sell, exchange, or lease-option all right, title and interest in and to the following vessel, together with all of its gear, machinery, equipment, furnishings, boats, dinghys, trailers, appurtenances and other articles (except personal effects), aboard and ashore (collectively, the “Vessel”), subject to the terms and conditions of this Exclusive / Central Listing Agreement (hereinafter, this “Agreement”):

Name of Vessel:		Hull ID Number:	
Year:		Make, Type, and Length:	ft.
Registration No. or Official No.:		Flag or Reg. State:	
Home Port (Documented Vessel):	HVDC	Hailing Port:	
Dinghy:	SR#	Trailer:	SR#

Seller covenants, represents, and warrants that there are no brokerage agreements in effect relating to the Vessel other than this Agreement, that Seller will make no other brokerage agreements during the Listing Period, and that this Agreement is intended to supercede, replace and revoke any other brokerage agreements relating to the Vessel. Seller shall take whatever action is necessary to ensure that any other brokerage agreements are terminated and of no effect.

2. Listing Period. Broker’s exclusive right to sell, exchange, trade or lease-option the Vessel shall commence on \_\_\_\_\_ and end at 11:59 p.m. on \_\_\_\_\_ (the “Listing Period”), unless such a transaction is pending at the time of termination (in which case the Listing Period shall be extended to the date of the closing of such transaction), or unless extended by authorization from Seller or terminated as provided in this Agreement.

3. Price. The gross asking price for the Vessel shall be: US \$ \_\_\_\_\_ (\_\_\_\_\_ dollars), and no other price shall be quoted without authorization from Seller.

4. Compensation to Broker. Seller shall pay Broker as compensation for services (irrespective of agency relationships) a commission of \$3,000 or TEN percent (10%) of the initial gross asking price, or, if a purchase agreement is entered into, of the Vessel purchase price, or a commission in the amount stated in Paragraph 24 below. The commission shall be calculated as a percentage of the purchase price initially agreed to between the Seller and the buyer of the Vessel, without regard to any adjustments or allowances subsequently agreed to by the parties.

Seller's Initials: \_\_\_\_\_

The commission also shall be due and payable if, during the Listing Period, a buyer appears who is ready, willing and able to purchase, trade, exchange, or lease-option the Vessel on terms agreeable to Seller, irrespective of whether Broker, any cooperating broker, Seller or anyone else produced the buyer. The commission also shall be due and payable if, within one (1) year after expiration of the Listing Period, the Vessel is sold, traded, exchanged, or lease-optioned to anyone who, during the Listing Period, communicated with Broker or a cooperating broker about the Vessel.

Broker shall within fifteen (15) days of Seller's request provide a list of known prospective buyers with whom the Broker communicated about the Vessel during the Listing Period.

5. **Broker's and Seller's Duties.** Broker shall exercise reasonable effort to achieve the purposes of this Agreement. Unless Seller gives Broker written instructions to the contrary, Broker is authorized to advertise and market the Vessel in any medium that Broker deems appropriate, including the Internet. Seller agrees to consider all offers presented by Broker, and to cooperate and act in good faith to achieve the purposes of this Agreement. Seller shall refer to Broker inquiries of any party interested in the Vessel, shall schedule all showings of the Vessel through Broker, and shall arrange for any offers on the Vessel known to Seller to be presented to Broker. Seller shall be responsible for determining the price at which to sell the Vessel.

6. **Availability of Vessel.** Seller shall upon request make the Vessel available for photographing, inspection, boarding, showing, trial run, survey, and haul-out at any reasonable times. Seller shall be deemed to have exclusive care, custody and control of the Vessel during any inspection, boarding, trial run, survey and haul out, and all operations of the Vessel shall be at Seller's sole risk and expense.

7. **Boarding, Trial Run, Survey and Haul Out.** Subject to the terms and conditions of this Agreement, Seller shall release, hold harmless and indemnify Broker, any cooperating broker, and their salespersons and employees, of and any and all disputes, actions, proceedings, claims, demands, liabilities, judgments, and attorneys fees, which arise directly or indirectly from boarding, trial run, survey, and/or haul out of the Vessel, howsoever caused. Broker, any cooperating broker, and their salespersons and employees, shall not be obligated to inspect, board, trial run, survey, or haul out the Vessel, or to verify, interpret, or report any facts with respect to the Vessel, nor shall they be liable for any errors or omissions related thereto.

8. **Care of Vessel.** Seller shall remain fully responsible for the care, custody, and control of the Vessel during the Listing Period, and Broker shall not be delegated care, custody or control of the Vessel at any time under any circumstances. Seller shall at all times maintain sufficient hull and liability insurance to protect Seller's interest in the Vessel, and shall, upon request, provide Broker with a copy of such policies. Broker shall not be liable for loss, damage or theft of the Vessel under any circumstances, even if it is stored or docked at Broker's premises. Unless otherwise agreed in writing, Seller shall remain solely responsible for all costs for maintenance, repairs, fuel, provisions, storage, inspection, insurance, and slip fees, and all other costs related to the Vessel.

9. **Vessel Information.** Seller shall provide particulars, specifications, photographs, drawings and other detailed information about the Vessel to Broker. Seller covenants, represents and warrants that Seller believes in good faith that all information Seller provides about the Vessel is true and correct. Seller agrees to indemnify, defend and hold harmless Broker, any cooperating broker, and their salespersons and employees, from all actions, proceedings, claims, disputes, litigation, liability, judgments and attorneys' fees arising from any incorrect information supplied by Seller, whether contained or omitted in any document or otherwise, and from any material fact which Seller knows or should know but fails to disclose to Broker.

10. **Cooperating Brokers.** Seller authorizes Broker to enter into agreements with other yacht brokers ("cooperating brokers") under which Broker will share a portion of the commission in exchange for their assistance in procuring buyers for the Vessel. Seller agrees to cooperate with such other brokers to achieve the purposes of this Agreement.

11. **Dual Agency.** Broker may act as an agent for both Seller and the buyer or other party in any transaction under this Agreement. Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent, and Seller

Seller's Initials: \_\_\_\_\_



hereby consents to such representation and any related additional compensation to Broker from the other party. Seller understands and agrees: (i) that Broker shall not, without the express permission of Seller, disclose to the buyer that Seller is willing to sell the Vessel at a price less than the asking price; (ii) that Broker shall not, without the express permission of the buyer, disclose to Seller that the buyer is willing to pay a price greater than the offered price; and except for (i) and (ii) above, that Broker, as a dual agent, must disclose to both parties facts known to the Broker materially affecting the value or desirability of the Vessel, unless such facts are known to or within the diligent attention and observation of those parties. Seller understands that Broker may have or obtain listings for other vessels, and that potential buyers may consider, make offers on, or purchase through Broker, vessels the same or similar to the Vessel. Seller consents to Broker's representation of sellers and buyers of such other vessels before, during and after this Agreement.

12. Breach. If sale of the Vessel is not completed because Seller materially breaches any purchase or sale agreement for the Vessel, the full commission shall be due and payable, and Seller shall promptly reimburse Broker for any advances made or expenses incurred on behalf of Seller. If sale is not completed because the buyer materially breaches the agreement, Seller agrees that any deposit by the buyer may be deemed liquidated damages and applied first to pay the expenses incurred in the course of the transaction, with any remainder being divided equally between Broker and Seller, provided that Broker's share shall not exceed the commission set forth in this Agreement.

13. ARBITRATION OF DISPUTES. Any Dispute, Claim or Controversy arising out of or relating to this Agreement, or the invalidity, interpretation, performance or breach thereof, directly or indirectly, shall be decided by binding arbitration under the Rules of the California Yacht Brokers Association, or of the Maritime Arbitration Association of the United States, pursuant to the rules that are in effect for such organizations on the date arbitration is requested. The arbitral organization where arbitration is first commenced shall administer all arbitral proceedings covered by this agreement. If any provision of this Agreement conflicts with such Rules, this Agreement shall control. Buyer and Seller agree to give up any rights they might possess to have the dispute litigated in a court or jury trial, and their judicial rights to discovery and appeal. If either party refuses to submit to arbitration, such party may be compelled to arbitrate under law. Arbitration shall be conducted in the county of Broker's Place of business handling this transaction. The prevailing party may be awarded attorneys' fees and costs of arbitration. Judgment may be entered upon the arbitration award and enforced in any court having jurisdiction thereof.

14. Attorney's Fees. In any action, proceeding, or arbitration between Seller and Broker arising from or relating to this Agreement, or the invalidity, interpretation, performance, or breach thereof, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs. If Broker is a prevailing party in any action or proceeding arising out of or relating to this Agreement, or if Broker brings an inter-pleader action, or if Broker provides assistance in any dispute, Broker also shall be entitled to an award, judgment or payment including Broker's attorneys' fees and costs. Seller authorizes Broker to deduct such attorneys' fees and costs from the funds in any inter-pleader action, and from the funds of any person against whom Broker has prevailed.

15. Governing Law. This Agreement shall be deemed executed in the State of California. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, without regard to its conflicts of law provisions. In the event that any provision herein in any way contravenes the laws of the State of California, or of any other state or jurisdiction, that provision shall be deemed not to be part of this Agreement in such state or jurisdiction, but the remaining provisions shall remain in full force and effect.

16. Entire Agreement. This written Agreement, and any attachments hereto, contain all of the agreements, understandings, promises, covenants, representations, terms, conditions and warranties made by or between the parties hereto with respect to the subject matter hereof. This Agreement terminates and supersedes any and all prior agreements, understandings, promises, covenants, commitments, representations, terms, conditions, warranties, discussions and negotiations, if any. The parties acknowledge and agree that they enter into this Agreement solely in reliance upon the representations expressly stated herein. Any and all modifications and amendments to this Agreement must be in writing and signed by the party against whom enforcement is sought. This Agreement shall be deemed drafted by both parties, and shall not be construed against either party, or against Broker or anyone else.

Seller's Initials: \_\_\_\_\_



Exclusive Listing

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17. Charitable Donation. If Seller decides to donate the Vessel to a tax-exempt organization during the Listing Period or within six (6) months thereafter, Seller shall not be obligated to pay Broker a brokerage commission, but instead shall authorize Broker to handle the donation on Seller's behalf and to retain any finder's fee paid by the tax-exempt organization. Seller shall be solely responsible for the tax consequences of any such donation. Broker recommends that Seller obtain the advice of a qualified tax professional before making any such donation.

18. Authority. Seller covenants, represents and warrants that Seller has authority to sell, trade, exchange, and lease-option the Vessel free and clear of all claims, liens and encumbrances. Seller and Broker, and every person signing, initialing, or otherwise authenticating this Agreement on their behalf, covenant, represent and warrant that he, she or it has full authority and ability to execute, deliver and perform this Agreement. If the consent or approval of any spouse, partner, member, board of directors, shareholder, or other person is required for a party, the individual signing this Agreement on behalf of such party covenants, represents and warrants that such consent or approval has been obtained.

19. Execution. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Delivery of an original, faxed or e-mailed signature, which may include a handwritten signature, initials or other authentication of a party, shall be sufficient to bind such party to this Agreement. Seller acknowledges having read and understood the terms of this Agreement; and that Seller has received a signed copy of this Agreement.

20. Successors and Assigns. This Agreement is binding on and shall inure to the benefit of the heirs, executors, successors, and assigns of the parties.

21. Further Acts. The parties shall promptly execute and deliver all documents and do all things necessary and appropriate to effectuate the purposes of this Agreement.

22. Boat Location:   
Key or Combo:

23. Seller elects additional advertising, Seller's Initials: \_\_\_\_\_ at a monthly rate of \$  to be paid at closing or termination of this contract. Seller declines additional advertising, Seller's Initials: \_\_\_\_\_

24. Other (Lender information, Personal effects, etc.):

ACKNOWLEDGED AND AGREED:

SELLER(s) (printed name and title, if applicable):

Signature(s): \_\_\_\_\_ Date:

FOR BROKER (printed name and title):

Signature(s): \_\_\_\_\_ Date:

Seller's Initials: \_\_\_\_\_

