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SAFE HARBOR MARINAS

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## Winter Yard Rules and Conditions

**DEFINITIONS:** When capitalized and used herein, the term **Marina** shall refer to the boatyard or marina named above, its owner, operator and any affiliates or successors; the term **Owner** refers to the Vessel's owner, owner's agents and/or representatives; the term **Vessel** refers to the vessel's hull, equipment and all other vessel related property of the Owner when the vessel is stored at the Marina; and the term **Slip** refers to the Marina slip assigned to the Owner.

**LAWS APPLICABLE:** The parties to this contract are governed by applicable federal, state and local laws and regulations, including those of EPA, OSHA and state environmental offices.

**MARINA RULES AND REGULATIONS:** Owner agrees to comply with all Marina rules and regulations as updated from time-to-time.

**SLIP.** Owner may use the Slip only to moor the Vessel, and for no other purpose. Use of the Marina or the Slip for the purpose of conducting business, including chartering or otherwise renting the Vessel, is prohibited unless authorized in writing by the Marina.

**APPARENT OBLIGATION AND SEVERABILITY:** Due to the magnitude of potential liability, no language in the Marina's contract or associated documents authorizing the Marina to take specific actions on the Owner's behalf shall be construed to create an obligation on the Marina's behalf. The parties agree that if any part of this contract is deemed unenforceable by an administrative agency or court of law, the remainder of this document shall remain in full effect and binding upon the parties.

**APPARENT AUTHORITY:** The Marina is unable to police the various representatives of an Owner. Therefore, the Owner agrees that unless the Marina is notified in writing beforehand, anyone in possession or apparent charge of the Vessel shall be deemed to have the authority to act on behalf of the Owner, and the Marina shall be entitled to accept and act in reliance upon orders or requests of such persons for services, supplies, work or other materials of any kind for the benefit of the Vessel.

**OWNERSHIP BY ENTITY:** In the event that Ownership of a Vessel is a corporation or entity other than an individual, the person signing this contract on behalf of the Ownership shall be jointly and personally liable for all obligations of the Owner under this contract.

**ABSENCE OF SECURITY:** This contract contains no provision or obligation for the providing of on-site security, guard service or surveillance by the Marina. While the Marina will make reasonable efforts to provide as secure a facility as possible, the Owner agrees that the Marina shall not be held liable for theft or vandalism or other criminal acts taking place at the Marina.

**CONDITION OF VESSEL:** By signing this contract, the Owner represents that the Vessel is seaworthy and safe to be worked on by the Marina's employees, unless specifically stated otherwise in this contract and initialed by Marina staff. The Owner and the Vessel will be liable to the Marina for any loss, damage or injuries attributable to any such causes not disclosed and that were not reasonably foreseeable by nature of the work involved.

**WHEN VESSEL IS IN DANGER:** If the Vessel is in danger as defined below, the Owner hereby authorizes the Marina to take reasonable and appropriate actions, at the Owners expense, to mitigate the danger. A Vessel shall be deemed to be in danger when it poses a threat of sinking, burning, capsizing, causing a hazard to navigation, causing unlawful pollution, causing damage to Marina property or that of other Marina customers, or if, in the Marina's judgment, the Vessel poses any similar threat. The Owner agrees to be bound by the Marina's actions and shall be fully responsible for all related expenses incurred.

**INSURANCE REQUIREMENTS:** Owner shall maintain insurance in the following amounts with responsible insurance companies reasonably acceptable to Marina: (i) Liability Policy, covering bodily injury and property damage, personal and adverting injury, and pollution liability with minimum limits of \$1,000,000 per occurrence; and (ii) Hull coverage of at least market value of the Vessel. Proof of insurance as well as a valid copy of the Vessel's state registration or federal documentation must be filed annually at the Marina office. Owner understands that such insurance amounts are minimum requirements and are not intended in any way to limit Owner's liability. The liability policy shall name Marina, Safe Harbor Marinas, LLC, and International Marina Group I, LP (entity which employs marina personnel), as Additional Insureds, as its/their interest(s) may appear. Owner's insurance shall be primary and non-contributory as to Marina's policies. Owner shall obtain a written obligation on the part of each insurer to notify Marina at least 30 days before cancellation or a material change of any such insurance policies. Owner shall provide evidence satisfactory to Marina of the maintenance of all insurance coverages required under this Agreement prior to the commencement date and at least 15 days prior to each renewal of said policies. This section shall survive the termination or expiration of this Agreement.

**RELEASE:** Owner agrees that Marina, its lessor, and its designated property management company, and their respective partners, members, affiliates and subsidiaries, and all of their respective officers, trustees, directors, shareholders, employees, servants, partners, representatives, insurers and agents (collectively, "Marina Indemnitees") shall not be liable to Owner or to any party claiming by, through or under Owner for (and Owner hereby releases Marina Indemnitees from any claim or responsibility for) any injury (including death) to persons or damage to or destruction, loss, or loss of use, or theft of any property of Owner or of Owner's officers, directors, employees, agents, representatives, Owners, invitees, customers, assignees, subtenants, or contractors, or contractors (collectively, "Boat Owner Parties") located in or about the Marina or of any injury (including death) of any Boat Owner Parties caused by casualty, theft, fire, third parties or any other matter or cause, **EVEN IF SUCH LIABILITIES ARE CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF ANY MARINA INDEMNITEE, BUT NOT TO THE EXTENT SUCH LIABILITIES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SUCH MARINA INDEMNITEE.** Owner acknowledges that Marina will not carry insurance on, and



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shall not be responsible for damage to, any property of a Boat Owner Party. This section shall survive the termination or expiration of this Agreement.

**INDEMNIFICATION:** Subject to the waiver of subrogation below, Owner hereby agrees to indemnify, protect, defend and hold harmless the Marina Indemnitees for, from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from (in whole or part) (i) Owner's use, occupancy or enjoyment of the Slip and Marina, (ii) any activity, work or other things done, permitted or suffered by a Boat Owner Party in or about the Slip and Marina, (iii) any breach or default in the performance of any of Owner's obligations under this Agreement, (iv) any act, omission, negligence or willful misconduct of a Boat Owner Party, or (v) any damage to a Boat Owner Party's property; **EVEN IF SUCH LIABILITIES ARE CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF ANY MARINA INDEMNITEE, BUT NOT TO THE EXTENT SUCH LIABILITIES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY SUCH MARINA INDEMNITEE.**

**WAIVER OF SUBROGATION:** Marina and Owner hereby mutually waive any and all rights of recovery against one another based upon the negligence of either party or their agents or employees for real or personal property loss or damage occurring to the Slip, the Vessel, or to the Marina or any personal property located on the Marina or in the Slip from perils which are paid or reimbursed by an insurer of Marina or Owner under any fire, extended coverage or other property insurance policy maintained by Owner or Marina (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect). Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party. This section shall survive the termination or expiration of this Agreement.

**AFFILIATE TRANSFER:** Notwithstanding anything in this Agreement to the contrary, Marina hereby reserves the right to transfer and/or assign (in whole or in part) the rights, duties and obligations of Marina under this Agreement to any affiliate of Marina without the consent or approval of Owner. In the event of any such transfer and/or assignment (in whole or in part) to any such affiliate of Marina, Marina may continue to collect and receive all or any portion of the amounts payable hereunder by Owner as agent for and on behalf of such affiliate-transferee/assignee and notify Owner thereof in writing.

**INVOICES AND PAYMENTS:** Invoices shall be mailed monthly and are due and payable at the time they are rendered. An interest charge not greater than 1.5% monthly (18% annually) or the highest rate allowed by law will be applied to any balance greater than thirty (30) days past due. The Marina reserves the right to retain the Vessel without additional legal action until such time as all debts are satisfied. Any expense associated with such retention shall accrue to the unpaid balance due and payable before release. If a Vessel leaves the Marina with an outstanding invoice due, the Marina in no way relinquishes its claim to payment or right to regain possession of the Vessel until all debts are satisfied. In addition, the Marina retains full ownership rights in all tangible property installed as part of its work on the Vessel until payment for such work is made in full, including the right to physically remove any such equipment from the Vessel. All payments shall be final and non-refundable.

**VESSEL'S LEFT AT MARINA BEYOND ORIGINAL CONTRACT PERIOD:** In the event the Owner does not arrange to have the Vessel removed from the Marina property at the end of the contract period, the Marina may, but will have no obligation to, continue to store the Vessel in a manner most convenient for the Marina, and the rates charged for such storage will be the then-prevailing rates. In such an instance, all terms and conditions regarding collection costs and expenses, including the recovery of attorney's fees, will continue to apply.

**ENVIRONMENTAL SURCHARGE:** The Marina shall have the right to assess a 1.5% surcharge on all invoices to offset the cost of complying with environmental laws and regulations pertaining to the disposal of hazardous materials originating on customers' boats and to the operation of the Marina in compliance with such laws and regulations.

**LEGAL RIGHTS OF THE MARINA:** The Owner stipulates and agrees that any and all services provided by the Marina give rise to federal maritime and state liens against the Vessel for the period of time that a debt is owed under this contract. **THE VESSEL AND ITS CONTENTS MAY BE SOLD AT PUBLIC AUCTION FOR THE SATISFACTION OF THESE LIENS**, and the minimum bid for such auction may be set by the Marina in its sole discretion at an amount sufficient to cover all outstanding debts under this contract, including all expenses, attorney's fees and interest. The proceeds of any sale shall be applied first to the outstanding amount due and then to the expenses of such sale, including attorney's fees, with the remainder, if any, being disbursed to the Owner.

**DISPUTE RESOLUTION:** The Owner acknowledges that the withholding of payment shall not be an acceptable form of dispute resolution. In the event that the Owner and Marina are unable to agree on the amount due for work performed or services rendered, such disagreement shall be settled as follows: Any complaint about the quality, adequacy or totality of work performed shall obligate the Marina to nothing more than the correcting of such validly demonstrated defects at no additional cost to the Owner. Any claim of unreasonable charges shall entitle the Owner solely to a detailed written and itemized accounting of the charges. In the event that the Vessel has left the Marina, the Owner accepts full financial responsibility for returning it to the Marina for complaints to be assessed and repairs, if any, to be made. In cases in which work is performed by another company to repair an alleged inadequacy of the Marina's work, excluding repairs that are immediately necessary to the safety and welfare of the Vessel and its crew, that work shall indisputably release the Marina from any obligation to correct or discount the work initially performed. This section shall survive the termination or expiration of this Agreement.



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**DEFAULT:** If Owner breaches any term of this Agreement, all of which are a material inducement to Marina entering into this Agreement, Owner shall be in default. Upon a default by Owner, in addition to any other rights or remedies available to Marina, Marina may elect to immediately terminate this Agreement, without refund, by notice to Owner, whereupon Owner shall immediately pay all sums due to Marina and remove the Vessel from the Marina.

**RIGHT NOT TO RENEW:** The Marina retains the right not to renew this contract and/or the right to assign it to a third party.

**DAMAGE TO OTHER BOATS IN THE MARINA:** In the event the Owner's Vessel causes damage to other Vessels in the Marina or Marina property as a result of fire, sinking, capsize, pollution, improper operation by anyone other than Marina staff, or from any other cause not within the direct control of the Marina, including Acts of God, the Owner agrees to be responsible for such damage.

**OVERBOARD DISCHARGE/HAZARDOUS MATERIALS:** The Vessel must be equipped with a sewage holding tank for all toilets, which tank shall not allow toilet wastes to be discharged into the water of the Marina. Marina shall be entitled to require that Owner insert a dye tablet in the Vessel's holding tank. Owner shall not store, release or permit to be released, by action or inaction, any hazardous waste or environmentally objectionable substances, including oil, gasoline or untreated sewage ("Hazardous Substances") into the water or lands of the Marina. Owner hereby indemnifies, defends and saves Marina harmless from all liabilities, claims, losses, expenses and obligations arising from the use, storage or placement of any Hazardous Substances upon the Slip or the Marina (if brought, placed thereon, or released by Owner, its agents, employees, contractors, or invitees), which obligations shall survive the expiration or termination of this Agreement. Owner shall be responsible for immediately reporting and cleaning up any such release. Owner shall immediately report any release to the appropriate government authorities and to the Marina manager and shall keep Marina informed on a daily basis of Owner's actions with respect to any clean up. If Marina is not satisfied, at Marina's sole discretion, with Owner's actions in reporting and cleaning up a release, Marina may take any action it deems appropriate regarding the release, at Owner's expense.

**USE OF MARINA DUMPSTERS:** Only household waste generated at the Marina shall be put in Marina dumpsters.

**USE OF OUTSIDE CONTRACTORS:** Owner acknowledges that the Marina is engaged in an entirely private business and is free to exercise its own independent discretion as to the parties with whom it will deal or to whom it will grant access to its premises. Owner acknowledges that the Marina has an interest in the safety of all boats stored or docked on its premises and therefore it has established specific policies with regard to access and insurance requirements. Accordingly, independent contractors or outside labor must check in at the Marina office before working on a Vessel. Upon checking in, all contractors will be required to demonstrate proof of insurance as outlined in Brewer Yacht Yard Group's Subcontractor Policies (available upon request). The Marina reserves the right to require all subcontractors to bill through the Marina or to pay the Marina an hourly fee for use of Marina facilities. The fee will be set by the Marina Manager on an individual basis after considering the size and nature of the work to be conducted by the subcontractor. A Owner found to be in violation of these policies will be subject to immediate termination of this contract. The Owner acknowledges that he has been advised of this policy, and consents to the enforcement of this policy. Owner further acknowledges that the Marina does not purport to control Owner's right to utilize the third party of his choosing to perform work on Owner's boat, so long as that work is not performed at the marina. For liability reasons, outside contractors, Owners and captains shall not use Marina ladders or scaffolding or other similar equipment.

**EXCLUDED WORK:** With the exception of shrink wrapping, Owners are allowed to conduct maintenance or improvement work to the Vessel named on the Winter or Summer Contract only. *Shrink wrapping by anyone other than employees of the Marina is expressly forbidden at all times.* In addition, Owners agree to abide by all terms and conditions herein when they conduct any type of work to their Vessels. All sanding of bottom paints shall be done only with a vacuum ("dustless") sander that captures all sanding residue. All other work must be conducted in accordance with all environmental best practices and rules and regulations in effect. Owners are responsible for educating themselves about the appropriate rules, regulations and best practices, and failure to do so shall not be acceptable reason for non-compliance with all such standards.

**FUELING:** For pollution prevention reasons, Owners, their representatives and/or guests may not fill fuel tanks from portable containers at any time while on Marina property. All refueling must take place at the Marina fuel dock (if equipped) under staff supervision.

**STORAGE OF NON-VESSELS:** No trailers, campers or other vehicles may be stored on Marina property without a signed storage agreement.

**CHILDREN:** Young children shall be accompanied by an adult at all times and the Marina recommends that all non-swimmers wear lifejackets near the water.

**PETS:** Pets must be kept on a short lead at all times. Owners must clean up after their pets. Any pets found to be a nuisance to other Marina customers may be required to leave the property at the Marina Manager's discretion.

**QUIET ENJOYMENT:** Owner shall not make or allow any disturbing noises in the Marina. No generators, stereos, radios, televisions or parties are permitted outside the confines of interior cabin during quiet hours between 10:00 PM to 7:00 AM. Unbecoming or disorderly conduct, including public intoxication, abusive language, or physical threats or altercations directed at any other person will not be tolerated and are cause for immediate expulsion from the Marina.

**VEHICLE PARKING:** Vehicles found to be improperly parked may be towed at the vehicle Owner's expense.



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**USE OF ELECTRICITY:** Outlets are provided throughout the Marina for customer use. In some cases, use of electricity will be subject to charge by the Marina. Burned out or otherwise damaged receptacles will be repaired by the Marina staff and charged to the Owner. Voltage regulation and surge protection shall be the sole responsibility of the Owner. All shore power, adapters and electrical plugs must be equipped with acceptable ground weather proofing in accordance with Article 555 of the National Code. In 220 volt, 50 amp systems, the neutral leg does not constitute a ground leg.

**ADVERTISING AND SOLICITING:** Advertising and/or soliciting shall not be permitted on Marina property without the written approval of the Marina manager.

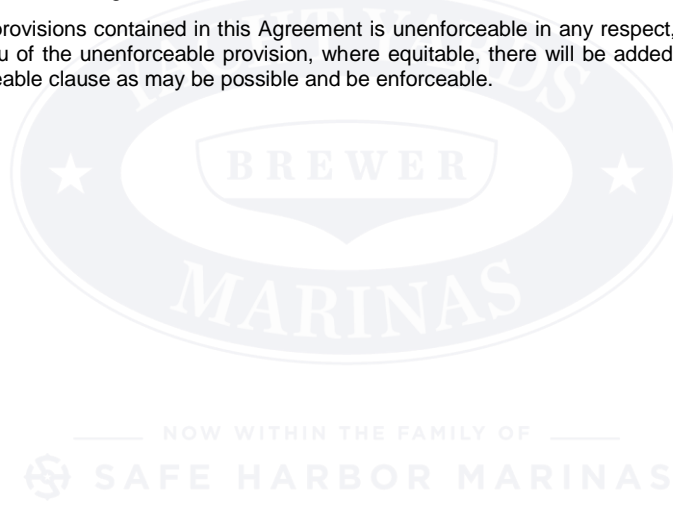
**PHOTOGRAPHS AND IMAGES:** From time to time, Marina staff and customers may take pictures of other customers on Marina property or Vessels. Owner consents for himself and Owner's guests that these images may be used by the Marina for purposes such as advertising and display in electronic media without further notification or compensation. All film negatives and positives and electronic images and data shall remain the property of the photographer except where otherwise specified by contract.

**MEASUREMENT OF VESSELS:** The Marina reserves the right to measure all Vessels for accurate billing purposes. Total length of a Vessel will be measured including any bow sprits or pulpits, swim platforms and/or similar protuberances or extensions.

**NATURE OF RELATIONSHIP:** Owner acknowledges and agrees that neither the rental of summer slip space nor on-land space for winter storage constitute either a landlord-tenant relationship or the bailment of the Vessel and as such the Marina shall have no responsibility or liability to Owner on such basis.

**GOVERNING LAW.** This Agreement and all disputes hereunder shall be governed by, and construed in accordance with, the laws of the state where the Marina is located without regard to the conflict of laws rules thereof.

**SEVERABILITY.** If any of the provisions contained in this Agreement is unenforceable in any respect, the remainder of this Agreement remains enforceable and, in lieu of the unenforceable provision, where equitable, there will be added to this Agreement a provision as similar in terms to the unenforceable clause as may be possible and be enforceable.





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In addition to the **GENERAL MARINA RULES AND CONDITIONS**, the terms of which shall apply to all contracts and agreements made between the Marina and a Vessel Owner and are hereby incorporated, the following Terms shall apply to the Marina's Winter Contract.

**PAPERWORK:** No Vessel will be hauled or placed into winter storage without a signed winter contract and deposit. All winter storage and work order bills must be paid in full before summer slip contracts are accepted. Vessels will not be launched or released from winter storage until all such bills are paid in full.

**DRY STORAGE WITH MAST UP:** The Marina recommends that all sailing Vessels and power Vessels so equipped unstep their masts prior to land storage in the winter. The Owner of a Vessel that is stored on land with its rig up hereby accepts responsibility for any damages to the Vessel or surrounding vessels that result from the mast being left up.

**MASTHEAD GEAR:** The Marina will not be responsible for damage to masthead gear when unstepping Vessel rigs. If gear is left on the masthead, the Owner agrees not to hold the Marina liable for any such damage.

**BILLABLE LENGTH:** All Vessels will be measured for accurate billing purposes.

**HOLDING TANKS:** All Vessels stored at the Marina for the winter should have their holding tanks pumped and winterized prior to storing. In the event that the Owner does not make arrangement for pumping and winterizing holding tanks, the Marina will attempt to do so at the Owner's expense and liability, but shall not be under any obligation or responsibility to do so.

**FUEL TANKS:** Fuel tanks shall not be topped off prior to winter storage, as spring temperatures may cause expansion and seepage from vents.

**HEATERS:** Absolutely no space heaters are allowed to be operated on Vessels in land storage for fire reasons.

**ELECTRICAL CORDS:** Electrical cords shall not be left plugged in on Vessels in dry storage.

**CLEANLINESS:** Owners shall keep the area surrounding their Vessel neat and free of debris or other impediments. If, in the judgment of the Marina, excess detritus is left surrounding a Vessel in storage, the Marina may remove it at the Owner's expense.

**BILGE DRAIN PLUG AND SEAWORTHINESS:** It shall be the Owner's responsibility to remove the bilge drain plug after hauling and reinstall it prior to launching. The Marina will do everything possible to safeguard a Vessel after it is launched. However, ultimate responsibility for the seaworthiness of a Vessel shall remain with the Owner at all times.

**WINTER COVERS AND BOAT STANDS:** Winter covers may not be tied to boat stands. Covers tied to boat stands will be removed at the Owner's expense. At no time may Owners attempt to adjust or reposition boat stands.

**SHRINKWRAP:** Customers may not shrinkwrap their own Vessels due to the lack of adequate insurance coverage.

**PROPANE CANISTERS:** All Vessels in inside storage must have their propane canisters removed and stored by the Marina at an additional cost.

**LADDERS:** Owners must provide their own ladders. The Marina does not loan ladders for liability reasons.

**RUNNING ENGINES:** Owners may not run engines while the Vessel is stored on land.

**INSIDE STORAGE:** Owners are not allowed to work on their Vessel while in inside storage.

**WET STORAGE:** The Marina shall not be held responsible for any ice related damage. All seacocks must be in serviceable condition and be closed during the winter months.

**LIVEBOARDS:** Liveboards will be allowed only after written permission has been received from the Marina. Liveboards shall comply with no discharge laws at all times and may be subject to additional fees.

**BOTTOM SANDING:** Due to environmental and insurance regulations, absolutely no work is to be performed on the Vessel without the prior written approval of the Marina management. No bottom sanding will be allowed on yard property without the use of a dustless sander. Please inquire at the Marina office whether dustless sanders are available for rental.

**END OF TERM:** The Owner agrees that arrangements will be made for the prompt removal of the Vessel at the end of the storage term. Boats left on land without arrangements after May 1<sup>st</sup> will be billed for summer storage and may be subject to movement within the yard at the Owner's



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expense. Boats left on land after September 1<sup>st</sup> without prior arrangements will be considered by the Marina to be abandoned and may be sold at public auction or otherwise disposed of by the Marina in accordance with applicable State and/or Federal laws.

**HOLDOVER:** If the Vessel remains on the Marina's premises after the expiration of the Term of this contract, or any written extension thereof, its continued presence will create a lease at will at the rate(s) and upon the Terms and Conditions specified herein and on the Marina's General Terms and Conditions (other than length of Term).

**LINES AND FENDERS/BILGE PUMPS:** Adequate lines and fenders must be aboard prior to launching and bilge pumps must be operational.

**HAULING AND LAUNCHING:** Owners should not plan to be present for hauling or launching. The Marina will make every effort to haul and launch the Vessel within a few days of the date of Owner's requested dates. The Marina cannot commit with certainty when a specific Vessel will be hauled or launched and shall not be responsible to Owner for any delay beyond a requested haul or launch date. The Marina shall not be held responsible for the safety or condition of Vessels in the water past the requested haul date.

**DOCKAGE AFTER LAUNCHING:** A maximum of three days free dockage will be allowed after launching for any Vessel not under contract for a summer slip at the Marina.



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