

# SHELTER ISLAND MARINA INC.

6911 Graybar Road, Richmond, B.C. V6W 1H3 Marina Tel: 604-270-6272 Fax: 604-273-6282 Toll Free: 877-270-6272

## DRY STORAGE CONTRACT

(Not Transferable)

CUSTOMER NUMBER

GST 104830385

The undersigned (the "Owner") hereby applies for permission to use the dry storage facilities (the "Storage Facilities") located at Shelter Island Marina (the "Marina") to store the vessel (the "Vessel") described below from \_\_\_\_\_ to \_\_\_\_\_. The Owner hereby agrees to the provisions of this Contract as set out on this page and appearing on the succeeding pages of this Contract and to abide by all Marina rules and regulations (collectively, the "Terms") and to pay to Shelter Island Marina Inc. (the "Company") for the use of the Storage Facilities the following fees:

<input type="checkbox"/> Daily	Storage Fee:	\$ _____
<input type="checkbox"/> Monthly	Utility Fee:	\$ _____
<input type="checkbox"/> Semi Annual (6 months)	GST:	\$ _____
	Plus Security Deposit	\$ _____
	<b>Total (payable in advance):</b>	<b>\$ _____</b>

provided that the Owner will pay to the Company such increased fees for the use of the Storage Facilities as the Company shall from time to time charge. **THE COMPANY MAY CHANGE THE FEES AT ANY TIME IN ITS SOLE AND ABSOLUTE DISCRETION**, but shall provide written notice of material changes to fees. Posting an updated fee or rate schedule at the Marina office shall constitute effective written notice to the Owner. The Owner will pay the total set out in advance for the applicable time period, and will promptly pay as billed or when requested by the Company the amounts which become owing by the Owner for use of the Storage Facilities. The Company agrees, subject to the observance by the Owner of the Terms, to allow the Owner to store the Vessel at the Storage Facilities for the period applied for.

### VESSEL LIFT: IF APPLICABLE, CHECK BOX

The Owner hereby requests that the Company use its vessel lifting facilities (the "Lift Facilities") located at the Marina to lift the Vessel to or from the water or otherwise as directed by the Owner (the "Lift Services") on each occasion requested. The Owner hereby agrees to pay immediately the fee requested by the Company at the time of each use of the Lift Facilities to lift the Vessel.

The Owner HEREBY REPRESENTS AND WARRANTS that the information in this application is accurate and HEREBY AUTHORIZES the Company and its agents to obtain such credit reports or other information as required to complete a credit investigation. This consent is given pursuant to Section 7 of the B.C. *Personal Information Protection Act* and amendments thereto.

**PLEASE MAKE CHEQUES PAYABLE TO SHELTER ISLAND MARINA INC. THE OWNER IS ADVISED TO CHECK THE VESSEL REGULARLY. ANY VESSEL STORED WITHOUT A SIGNED CONTRACT MAY BE IMPOUNDED. ELECTRICITY AND GARBAGE DISPOSAL AND OTHER SERVICES ARE NOT INCLUDED IN THE STORAGE FEE. THE COMPANY ASSUMES NO RESPONSIBILITY FOR THE CARE, SECURITY OR PROTECTION OF THE VESSEL.**

**RENEWAL NOTICES MUST BE RECEIVED BY THE 20<sup>TH</sup> OF THE LAST MONTH UNDER CONTRACT. 45 DAYS' NOTICE IS REQUIRED TO VACATE THE STORAGE FACILITIES.**

**THIS CONTRACT CONTAINS TERMS WHICH EXCLUDE LIABILITY OF THE COMPANY FOR DAMAGE AND PERSONAL INJURY AND WHICH PROVIDE AN INDEMNITY TO THE COMPANY.**

Accepted by Shelter Island Marina Inc.

Per: \_\_\_\_\_

Owner \_\_\_\_\_

### VESSEL INFORMATION (Please print)

Name of Vessel _____	Bay Number _____
Length _____ Beam _____	Licence or Registration No. _____
Owner of Vessel _____	Insured By _____
Type of Vessel _____	Policy No. _____

### OWNER INFORMATION (Please print)

Name _____	S.I.N. No. _____
Address _____	GST No. _____
_____	Name of Bank _____
Postal Code _____	Address of Bank _____
Phone No. (Residence) _____	_____
Phone No. (Office) _____	Person to contact in case of emergency _____
Fax No. _____	Phone No. _____

\*Email \_\_\_\_\_

\*valid email address required\*

**\*PLEASE READ FOLLOWING PAGES\***

## DRY STORAGE CONTRACT TERMS

1. **Consideration.** In consideration of the payment of \$10.00 by each party to the other, the Fees payable hereunder, the Company allowing the Owner to use a storage bay at the Marina on the provisions in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Owner agree as set out herein.
2. **Storage of Vessel.** The Vessel shall only be stored at the bay designated on the face of this Contract, provided that the Company may at any time and from time to time require that the Vessel be stored at a different location or bay at the Storage Facilities. This Contract is not a lease. Neither the bay nor the Vessel when stored at the berth may be used as living quarters or a residence or otherwise for residential accommodation. The Owner shall have no proprietary rights whatsoever to any bay. The Company shall have the right at any time and from time to time, without any notice to the Owner and at the sole risk of the Owner, to rearrange the position or orientation, or change the location, of the Vessel and the Owner hereby appoints the Company as its agent for such purposes. The Owner hereby acknowledges that it bears sole responsibility for the adequacy of any blocking or bracing of the Vessel, whether performed by the employees of the Company or otherwise, and for the maintenance, storage conditions/materials, weather protection, and covering of the Vessel, and the Owner will from time to time inspect the same and ensure the integrity and safety of the blocking and bracing and the general condition of the Vessel and any structures or materials used to store same, and ensure that the Vessel is stored properly to the satisfaction of the Owner.
3. **Description of Vessel.** The Owner represents and warrants that the description of the Vessel on the face page of this Contract is accurate and complete. If, in the sole and absolute discretion of the Company, the description of the Vessel is inaccurate or incomplete in any respect, whether material or not, the Company may refuse to allow the Vessel to be stored at the Marina or, if the Vessel is already stored at the Marina, the Company may exercise its right of termination pursuant to Section 10 of this Contract. In the event the Owner is storing a container or items or materials other than a vessel (the “**Item**”) pursuant to this Contract, the parties shall attach an addendum to this Contract, which shall form part hereof, describing the Item in detail, and any additional terms relating thereto, and the provisions of this Contract shall apply to the Item and be read as though, in each use of the word “Vessel” the word “Item” were used instead.
4. **Lift Services.** The time of the providing of any Lift Services shall be entirely at the discretion of the Company, and without limitation, the Company shall not be required to provide Lift Services in any circumstances that it considers dangerous or unsafe, in its sole and absolute discretion.
5. **Utility Fees.** The Owner shall promptly pay, as an additional fee, all fees charged by the Company in respect of electricity, garbage disposal and other utilities and services, as the Company shall in its sole and absolute discretion consider reasonable. If the Owner fails to pay any such fees, the Company may at any time thereafter and without any notice, immediately or after such period of time as the Company determines in its sole and absolute discretion, terminate some or all of the utilities and services provided, without limiting any other remedies available to the Company as a result of the Owner’s failure to pay. The Company is entitled to change these fees, in its sole and absolute discretion, at any time, but will provide written notice of any material changes to the Owner. Posting an updated fee or rate schedule at the Marina office shall constitute effective written notice to the Owner.
6. **Accounts.** All storage is payable in advance and subject to applicable taxes. Storage fees for the applicable period set out on the face of this Contract must be paid in full immediately (upon execution of this Contract) by cash, credit card or cheque, or the daily rate will apply. All accounts are due immediately upon being issued by the Company. The Owner shall pay interest on all overdue accounts at a rate of two percent per month (twenty-four percent per year), compounded monthly. In the event an account is still unpaid by the 15th of the month, the Company in its sole discretion may elect to charge or continue charging interest as

INITIAL

aforesaid or to place the Vessel and storage on the daily rate. The Owner shall reimburse the Company on demand for all losses, costs and expenses incurred by the Company to collect overdue accounts, whether by legal action or otherwise.

7. **Marina Use and Safety.**

a) The Owner and the Owner’s agents, guests, employees, invitees, licensees, contractors, and any other person at the Marina in connection with the Vessel or the Owner’s use of the Marina, or for whom the Owner is responsible at law (collectively, with the Owner, referred to as the “**Owner Parties**”) shall not carry on any business at the Marina without the prior written consent of the Company, which consent may be withheld by the Company in its sole and absolute discretion.

b) The Owner Parties shall not carry on any activity at the Marina or on the Vessel while it is stored at the Marina that may be deemed by the Company, in the Company’s sole and absolute discretion, to be a nuisance or unsafe.

c) The Owner Parties shall not permit any garbage, bilge contents, petroleum products or other organic or inorganic wastes, contaminants or pollutants to be emptied overboard or escape from the Vessel or be deposited anywhere within the Marina except into receptacles provided for that purpose. The Owner Parties shall comply with all environmental laws. Without the express written consent of the Company, the Owner Parties shall not bring any contaminants or pollutants onto the Marina excepting only fuel and lubricants in the fuel tanks, engine and operating parts of the Vessel. **The Owner shall notify the Company promptly of any breach or suspected breach of this Section and shall indemnify the Company against all loss and expense arising therefrom.**

INITIAL

d) No litter or debris shall be left on the Marina except that refuse may be placed in the containers provided for that purpose.

e) If the Vessel is a hazard to other vessels or the Marina, as determined by the Company in its sole and absolute discretion, the Owner at the Owner’s expense must remove the Vessel from the Marina. **The Company may, but is not obligated to, arrange for the removal from the Marina of any vessel or other item which, in the Company’s opinion, in its sole and absolute discretion, appears to be a hazard to other vessels or the Marina, in which case the Owner will indemnify the Company for the costs of such removal. The Company shall not be liable for any loss suffered by the Owner Parties or damage to the Vessel by reason of removing the Vessel from the Marina.**

INITIAL

8. **Terms, Rules, and Regulations.** The Owner Parties shall comply with the Terms, and with such additional or changed terms, rules or regulations as are from time to time made by the Company, in its sole and absolute discretion. The Terms include, without limitation, the provisions set out in this Contract and on the face page, the Marina Rules and Regulations, the Boat Yard Rules and Regulations, the Contractors’ Rules and Regulations, and any additional or changed terms, rules or regulations, and all of the foregoing are hereby incorporated as provisions of this Contract. **The Owner shall ensure that the Owner Parties comply with the Terms and agrees to indemnify the Company for any failure of any of the Owner Parties to comply with the Terms.** The Company is entitled to change the Rules and Regulations, in its sole and absolute discretion, at any time, but will provide written notice of any material changes. Posting the updated Rules and Regulations at the Marina office shall constitute effective written notice to the Owner.

INITIAL

9. **Lien and Sale of Vessel.**

a) The Company shall have a possessory and a charging lien upon the Vessel for all amounts which are or become owing to the Company by the Owner under this Contract or otherwise (collectively, the “**Fees**”).

- b) The word “Owner” when used in this Contract means the person or entity signing this Contract as “Owner” regardless of whether such person or entity actually owns the Vessel. The Owner represents and warrants to the Company that it is the owner of the Vessel, or that the Vessel is being stored and deposited at the Storage Facilities “by the owner’s authority” as that phrase is used in the B.C. *Warehouse Lien Act* and amendments thereto (the “WLA”). The Owner acknowledges and agrees that the Company has a warehouse’s lien on the Vessel in accordance with the WLA and represents and warrants that there are no parties to which notice of such lien must be provided under that statute, including, without limitation, the owner of the Vessel, or any party who has registered a financing statement with respect to a security interest in the Vessel as at the date the Vessel is stored in the Storage Facilities. If any party has registered or registers a financing statement, the Owner shall forthwith provide the Company with notice thereof.
- c) **If any Fees are outstanding for 45 days, the Vessel may be seized and impounded by the Company. In such event, the Owner authorizes the Company to lift the Vessel and store it elsewhere in the Company’s boat yard or Storage Facilities, or any other impoundment facilities, and the Owner will indemnify the Company for the costs of the same. The Company shall not be liable for any loss suffered by the Owner Parties or damage to the Vessel by reason of seizing, lifting, or impounding the Vessel in accordance herewith, or selling it under Section 9(d) below, or otherwise enforcing any rights or remedies of a creditor.**
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| INITIAL |
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- d) To realize any Fees, the Company may, in its sole and absolute discretion:
- i) upon 45 days’ notice to the Owner, in any manner sell and absolutely dispose of the Vessel (including, without limitation a disposition by way of destruction, or sale for scrap) pursuant to its contractual lien; or
  - ii) effect a sale or disposition of the Vessel in accordance with the provisions of the WLA pursuant to its warehouse’s lien,

and the Owner hereby appoints the Company as its attorney to do all things and sign all documents necessary for such sale or disposition. Without limiting the foregoing, the Owner covenants and agrees to provide the Company, upon demand, with all documents of title for the Vessel, registry papers, “blue book” etc., as necessary and an executed bill of sale, and, if applicable, an executed bill of sale/transfer form in the form required by and registrable at the Ship’s Registry/Transport Canada and signed by the registered owner (the “**Registry Transfer**”), in order to effect such sale or disposition as contemplated hereunder.

- e) The Company shall be entitled to deduct from the proceeds of any sale or disposition hereunder, in addition to the Fees, all costs and expenses of every nature whatsoever incurred by the Company in connection with such sale (including without limitation legal fees on a solicitor and own client basis and any costs or expenses incurred by the Company in connection with obtaining a declaration in any court regarding the rights of the Company under this Section 9 or the validity of a sale or proposed sale of the Vessel pursuant to this Contract) and in the event that such costs and expenses are incurred in connection with an uncompleted sale, the Company shall be entitled to recover from the Owner the costs and expenses incurred by the Company in connection with such uncompleted sale.
- f) If the Vessel is a federally registered Vessel, the Company may, in its sole and absolute discretion, require the Owner to provide the Company with an executed Registry Transfer in advance of, and for the duration or any portion thereof, of the moorage or storage of the Vessel at the Marina, and the Owner covenants to provide the Company with the same upon demand. The Company covenants to make no use of the Registry Transfer except in accordance with a sale or disposition hereunder; and, provided that the Owner pays in full to the Company all Fees, the Company

covenants to return the Registry Transfer to the Owner unused when the Owner removes the Vessel from the Marina, or, if applicable, claims the Vessel from any impoundment facilities.

10. **Termination by Company.** The Company may terminate this Contract by giving 48 hours' notice to vacate to the Owner if:
- a) any of the Owner Parties breach any of the provisions of this Contract or fail to abide by any of the Terms at any time;
  - b) the Owner fails to pay when due any sums the Owner owes to the Company on any account; or
  - c) the conduct of any of the Owner Parties or the Owner Parties' use of the Storage Facilities is, in the sole and absolute discretion of the Company, prejudicial to the orderly and safe operation of the Marina, the safety of other persons or their property, or constitutes a nuisance or annoyance to the Company or its customers.

Otherwise, the Company may at any time and for any reason terminate this Contract by giving 30 days' notice to vacate. Upon receiving a notice to vacate, the Owner shall, at the Owner's expense, vacate the Marina on or before the date specified in the notice. Any unpaid Fees accruing due or to become due for the balance of the term of the storage shall thereupon become payable immediately.

11. **Termination by Owner.** If the Owner wishes to vacate the Marina, the Owner must give 45 days' written notice of intention to vacate to the Company and the effective date that the Owner vacates must be the last day of a calendar month.
12. **Survival.** Notwithstanding anything in this Contract to the contrary, this Contract shall survive the vacating of the Marina by the Owner or Vessel, and the issuance of a notice to vacate for cause or otherwise by either party to this Contract in no way terminates or rescinds any of the terms, conditions, releases, indemnities or exclusions agreed to herein.
13. **Renewal.** The Owner may apply to renew this Contract by sending a written renewal notice to the Company. All renewal notices shall be delivered to the Company by the 20<sup>th</sup> day of the last month in which this Contract expires. The decision to renew is at the sole and absolute discretion of the Company. As a condition of renewal, the Company may at its sole and absolute discretion vary the provisions of this Contract.
14. **Overholding.** If the Vessel continues to be stored at the Storage Facilities after the period applied for on the face of this Contract or otherwise after the termination of the right of the Owner to store the Vessel at the Storage Facilities, the Owner shall promptly pay to the Company for such unauthorized storage 150% of the highest daily rate charged by the Company in respect of vessels having the similar specifications as the Vessel. The provisions of this Contract shall apply to such unauthorized storage, except that the Company shall not be deemed to have consented to or permitted such storage, and such storage shall be month-to-month.
15. **No Refund.** No refund shall be made of any paid storage fees in any circumstances.
16. **Limitation of Liability.** The Owner acknowledges that boating and the maintenance of a marine vessel involve many inherent risks, dangers and hazards and hereby agrees and acknowledges that:
- a) **the Owner fully assumes and accepts all such risks, dangers and hazards, including without limitation the possibility of personal injury, death, and loss or theft of the Vessel, its contents, and personal property. The Vessel, its contents and any personal property moored or stored at the Marina are done so at the Owner's sole and exclusive risk;**

INITIAL

b) **during the duration of this Contract, the Owner shall obtain insurance coverage for the full value of the Vessel, its contents and any personal property moored or stored at the Marina, which insurance shall include without limitation a minimum of \$1,000,000.00 third party liability coverage. The Owner acknowledges and agrees that the Company shall not be responsible for providing any insurance coverage;**

INITIAL

c) **subject to the rights granted to the Company under Section 9 of this Contract, the Company does not in any way take possession of, or undertake any duty to take care of, any vessel stored under this Contract or otherwise at the Marina. The Company does not represent that the bay or Storage Facilities are fit for any purpose. The Owner accepts the Marina premises on an “as is, where is” basis and acknowledges that, in its own judgment, the Storage Facilities and bay are suitable and appropriate for the Vessel;**

INITIAL

d) **the Company is not liable or responsible for, and the Owner hereby waives and releases the Company from, any loss, theft, damages or expenses, of any nature whatsoever (including without limitation those arising or resulting from personal injury, death, or loss or theft of or damage to vessels, contents, or personal property, and those suffered or incurred by any of the Owner Parties), however caused, whether by negligence of the Company or the acts of third parties, including without limitation contractors or vendors operating on Marina property, or otherwise;**

INITIAL

e) **the Owner shall hold harmless and indemnify the Company, and each of its directors, officers, agents, contractors and employees, in respect of any and all claims and liability of whatever nature, including without limitation claims or liability for personal injury, death, or loss of or damage to vessels or contents, suffered by the Company, any of the Owner Parties, or third parties (including without limitation to any children or minors under the supervision of the Owner Parties), as a result of or in connection with the Owner Parties’ attendance at the Marina or use of the Storage Facilities, or in connection with the Company providing the Storage Facilities or Lift Services, however caused, whether by negligence of the Company or the acts of third parties, including without limitation contractors or vendors operating on Marina property, or otherwise; and**

INITIAL

f) **the Owner further agrees to be liable for any loss, damage or destruction caused to the Company’s property, in whole or in part, by the Owner Parties or in connection with the Vessel or the Owner Parties’ use of the Storage Facilities, and to pay the cost and expenses incurred by the Company in respect of restoring such loss, damage or destruction, within 30 days of receiving an account for the same.**

INITIAL

17. **No Assignment by Owner.** This Contract is personal to the Owner. The Owner shall not assign this Contract or permit the bay to be occupied by any vessel other than the Vessel, in either case without the express prior written consent of the Company, which consent may be withheld in the Company’s sole and absolute discretion. A person purchasing the Vessel shall not acquire any of the rights arising under this Contract, which rights will automatically terminate (notwithstanding that the Owner’s obligations shall survive) upon any change in ownership of all or any part of the Vessel, unless the Company, in its sole and absolute discretion, agrees otherwise. Before selling the Vessel, the Owner shall bring this Section to the attention of the prospective purchaser and of any agents acting on behalf of either the Owner or the prospective purchaser, and shall advise the transferee to provide the Company with the Bill of Sale, and evidence of insurance for the Vessel, in connection with any request by the transferee to assume this Contract or enter into a new one with the Company.

18. **Notices.** Any notices to be given by the Owner in connection with this Contract shall be in writing and delivered to the Company’s office at the address on the face of this Contract. Any notices, billings or other communications to be given to the Owner by the Company may be given in writing to the Owner by

electronic mail to the Owner at the email address listed on the face page of this Contract, or by mailing it to the address on the face of this Contract, or by posting it on the Vessel. Notice given by mail or posting on the Vessel shall be deemed effectively given three days after being so posted on the Vessel or mailed to the Owner in accordance herewith. Notice given by electronic mail shall be deemed effectively given on the day of sending, if sent before 5:00 p.m. PST, and the next day, if sent after 5:00 p.m. PST, unless the Company receives an electronic notice of non-receipt or "bounceback". The Owner shall provide a valid email address. Notice may also be effectively given by posting publicly at the Marina office, as and where indicated in this Contract.

19. **Deposit.** Owner must deposit, in advance, the sum specified for a security deposit on the face page of this Contract (the "**Deposit**"). The Deposit will be held by the Company, without liability for interest, as security for the faithful performance by the Owner of all of the terms of this Contract, subject to the following terms and conditions:

- a) If at any time Fees are overdue and unpaid, or if the Owner fails to observe or perform any of the terms of this Contract, then the Company at its option may, in addition to any and all other rights and remedies provided for in this Contract or by law, appropriate and apply the entire Deposit, or so much thereof as is necessary to compensate the Company for loss or damage sustained or suffered due to such breach by the Owner.
- b) Should the entire Deposit, or any portion thereof be appropriated and applied by the Company in accordance herewith, then the Owner shall, upon demand, forthwith remit to the Company a sum sufficient in cash to restore the Deposit to the original sum deposited and the Owner's failure to do so within five days after receipt of such demand shall constitute a breach of this Contract.
- c) If the Owner complies with all of the terms of this Contract and promptly pays all Fees to the Company as and when due, the Deposit shall be returned to the Owner at the expiry of this Contract upon removal of the Vessel from the Marina.
- d) The Company will not be required to keep the Deposit separate from its general accounts. No trust relationship is created herein between the Company and the Owner with respect to the Deposit.

In addition, the Company shall be entitled, in its sole discretion, to treat any advance or prepaid storage fees as a Deposit hereunder and apply same (i) to overdue, unpaid Fees, or (ii) as is necessary to compensate the Company for loss or damage sustained or suffered due to a breach by the Owner. The Owner shall be required to, upon demand, forthwith remit to the Company a sum equal to the funds so applied so as to restore the advance or prepaid storage fees to the original sum deposited and the Owner's failure to do so within five days after receipt of such demand shall constitute a breach of this Contract. Section 19(d) also applies to advance or prepaid storage fees.

20. **Marina and Company.** The word "Marina" includes without limitation, the marina docks and berths, the Storage Facilities, and any property or waters owned or leased by the Company. **Where used in connection with an indemnity, or a release or waiver or limitation of liability, in each case in favour of the Company, the word "Company" shall include, and the indemnity, release or waiver or limitation of liability shall extend and apply to, the Company's affiliates, and to all directors, officers, principals, shareholders, employees and agents of the Company and its affiliates.**

INITIAL

21. **Criminal Interest Rate.** If any interest (including any fees, bonus, additional consideration or otherwise) stipulated herein, would, except for this clause, be or effectively be a criminal rate under the *Criminal Code* (Canada) or void for uncertainty, or unenforceable for any other reason, then the interest chargeable hereunder shall be one per cent less than the rate which would be a criminal rate (or a void or unenforceable rate), calculated in accordance with generally accepted actuarial practices and principles.

22. **No Contra Preferentum.** The language in this Contract shall in all cases be construed as a whole and neither strictly for nor strictly against any of the parties to this Contract.
23. **Governing Law.** This Contract shall be in all respects governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in the Province of British Columbia. Each of the parties hereto hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of British Columbia.
24. **Entire Agreement.** This Contract is the entire agreement between the Company and the Owner in respect of the subject matter of this Contract and in respect of any circumstances or events surrounding or arising in connection with the subject matter of this Contract. This Contract cannot be added to or altered except by agreement in writing. There are no representations, warranties, conditions, covenants, agreements or promises of any nature (implied, collateral, statutory or otherwise) binding upon the Company in connection with this Contract or the subject matter of this Contract, or in connection with any circumstances or events surrounding or arising in connection with the subject matter of this Contract, except as expressly set out herein.