

PORT OF ANACORTES

Moorage Agreement PART I

This agreement is entered into between the Port of Anacortes, hereinafter referred as "Port", and the undersigned, hereinafter referred to as "Permittee". The following terms covenants and conditions are the basis of this agreement:

1. **GRANT OF PERMIT.** The Port grants to Permittee a permit to moor at Cap Sante Boat Haven, Anacortes, Washington, as hereinafter designated, for the vessel designated below, on a month to month basis, for the monthly sum designated below, plus any applicable taxes and charges. This permit shall not become effective until Permittee pays the Port the initial **non-refundable** monthly fee indicated below. Said fee shall be paid monthly to the Port in advance on or before the date designated below and each and every month thereafter until this agreement is terminated, and shall be payable at such place as the Port may hereinafter designate. Any unpaid fees will be subject to an interest charge. In the event any fee becomes 10 days delinquent, this agreement is cancelable and the moorage may, be reassigned. Permittee shall pay all charges applicable so long as the vessel is moored or stored at or by the Port. All sums designated below are subject to change as made effective by the Port's posted Schedule of Rules, Regulations and Charges Applying to Cap Sante Boat Haven, hereinafter referred to as "Regulations." Permittee acknowledges the Port's reserved right to change the Regulations from time to time.

2. **SUBSTITUTION OF VESSEL.** If Permittee intends to substitute a different vessel for that referred to below, the Port gives no assurance that the berthage assignment designated below will accommodate such other vessel or that another berthage assignment will be available. Therefore, no vessel shall be substituted for that referred to below without the prior approval of the Port. If the vessel represented below is moored in another berth, it will be subject to transient moorage fee assessment unless specifically authorized by the Port.

3. **PORT REGULATION.** This agreement is subject to Regulations as the same may be amended from time to time and the Regulations are hereby adopted by this reference as part hereof. It is a condition of this Permit that Permittee shall abide by all Port rules as provided in said regulations, and secure the compliance of his or her agents, guests, invitee, and employees therewith. The provisions of the Regulations are in addition to the provisions of this agreement and in the event of conflict between the provisions of the Regulations and this agreement, the Regulations shall control.

4. **CONTRACTUAL RELATIONSHIP.** The Port does not accept the vessel designated below for storage, shall not be held liable in any manner for the safekeeping or condition of the same, and is not responsible therefore as a warehouseman. The Port shall not be held responsible or liable for any damage or loss to, or of, the said boat, tackle, gear, equipment, or property either upon said vessel or upon the premises of the Port, from any cause whatever, or for injury to the Permittee, his or her agents, guests, invitee, or employees occasioned by any cause, upon the Port premises or adjacent thereto, except as hereinafter specified in paragraph 6.

5. **ELECTRICITY.** Fee for base service of 110 volts, 20, 30 or 50 amps, is the monthly sum designated below, due and payable as is the moorage fee provided for in paragraph 1 above. If Permittee is provided electrical service in excess of the base service, he or she shall pay for the excess service as billed for the same. Should electrical service bills remain unpaid for 10 days, the Port shall have the right to disconnect all power until such time as the Permittees' account is paid in full. Permittee agrees to pay all connecting and disconnecting charges relative to electrical service. The Port does not guarantee the continuity or characteristics of electrical service and its compatibility with the vessel's electric circuit protector, if any, or any effects of electrolytic action. All shore power cords must be three wire grounded type of an adequate size, and with the proper sized plug ends, to handle the amperage being used. Shore power cords Improper cords will be impounded by the Port and will be returned only when a proper cord has been fitted.

6. **HOLD HARMLESS:** Permittee hereby agrees to protect, indemnify, defend and to hold and save harmless the Port, its elected officials, agents and employees, their successors and assigns, heirs, executors, and administrators from and against all liabilities, obligations, fines, claims, claims for mechanics liens, damages, penalties, causes of action, costs and expenses (including without limitation attorney's fees and expenses), and any and all claims by or on behalf of any person or persons, firm or corporation, in connection with any such items of actual or alleged injury or damage:

- arising out of acts or omissions of the permittee, its servants, agents, invitee, guests and employees on or about Port property, or
- arising out of the use of Port property or any part thereof, including but not limited to, floats, docks or piers, ramps and approaches, buildings, sidewalks, curbs, parking lots, streets or ways, or
- due to or arising out of any failure on the part of the Permittee to perform or comply with any rule, ordinance, or law to be kept and performed.

THE UNDERSIGNED PERMITTEE HEREBY WAIVES (GIVES UP) ITS IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT RCW TITLE 51 AND/OR THE LONGSHOREMEN'S AND HARBOR WORKS' COMPENSATION ACT.

THE UNDERSIGNED PERMITTEE HEREBY AGREES TO INDEMNIFY THE PORT FOR THE CONCURRENT NEGLIGENCE OF THE PORT AND THE UNDERSIGNED PERMITTEE.

This indemnity agreement does not apply when such damage or injury is caused solely by negligent or intentional acts of the Port, its elected officials, agents or employees.

7. **MAINTENANCE.** Marina premises adjacent to the berthage designated below have been inspected by Permittee and are accepted by Permittee in their present condition. Permittee shall keep the berthage designated below and adjacent finger float neat and clean at all times, and shall not dump or discharge waste, petroleum products, garbage or other pollutants into the waters of the Marina. Permittee shall at all times comply with federal, state, county, City and Port laws, ordinances and regulations, rules and special instructions issued by the Executive Director or his agents.

8. **USE.** This agreement includes the right to moor Permittee's vessel to the adjacent float. Use of this float is in common with others and Permittee shall not place equipment, structures, or other items on the float, nor shall Permittee alter, add to, damage, or otherwise disturb the float structure. No bumper materials shall be fastened to a float structure without the Harbormaster's prior approval. Permittee shall not maintain anything that may be dangerous to life, or limb, or permit any objectionable noise or odor on his or her boat, Marina premises, or premises adjacent thereto, or permit anything to be done on said premises which in any way will tend to create a nuisance or to disturb any other vessel owner, guest or permittee of the Port.

9. TRESPASSERS. The Port is not responsible for unauthorized persons using the berthage herein assigned or for the removal of such persons and their vessels therefrom.

10. ASSIGNMENT AND TRANSFER. Permittee shall not assign, transfer or sublet this agreement and/or the berthage designated below or any partnership or other interest in either and/or any partnership or other interest of record in the vessel without first obtaining an amendment to this agreement authorizing any such action. If Permittee is a corporation, Permittee further agrees that if at any time during the term of this agreement more than one-half (1/2) of the outstanding shares of any class of stock of Permittee shall belong to any stockholder other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the signing of this agreement, or other than members of their immediate families, such change in ownership of stock of Permittee shall be deemed an assignment of this agreement within the meaning of this paragraph. Use of the designated berthage is personal to Permittee and a person purchasing the vessel or any partnership or other interest therein from Permittee will not thereby acquire rights under this agreement, or rights to use the berthage in the absence of such an amendment. In the absence of express authorization by means of an amendment to this agreement, failure of Permittee to keep title to the vessel documented or registered under applicable Federal, State, or foreign law and regulations exclusively in the name of Permittee shall constitute a violation of this agreement subject to the termination provisions of paragraph 13 below. The Port reserves the right to withhold its consent to any future amendment to this agreement requested by Permittee even though on occasion it may consent to one or more such amendment. The Port may make the berthage designated below available for use by others for any period of its non-use by Permittee. So far as practicable, Permittee should notify the Port in advance if his or her berth will not be used for any extended period of time.

11. REASSIGNMENT. Moorage may be reassigned, at the option of the Port, to other berths or spaces within the Marina to accommodate repairs, improvements, maintenance, construction, emergencies, or when otherwise desirable in the Port's opinion. In the event of reassignment, Permittee shall receive a new berth or space as nearly comparable in location to the berthage designated below as is available.

12. EMERGENCY AUTHORITY. In the event the Permittee's vessel, or a vessel in an adjacent berthage is, in the sole judgment of the Port, subject to loss, destruction, or damage from any cause, the Port may, but is not required, to carry out any procedure which the Port deems reasonable to endeavor to prevent any such loss, destruction or damage, including removing the vessel to dry land storage. Dry land storage fee and the cost of haul-out will be charged to Permittee's account. Any costs so incurred by the Port shall be for the order of the Permittee and the Permittee shall hold the Port harmless from all such costs or expenses so incurred. For the purpose of carrying out any procedures as contemplated by this paragraph and/or for the purposes of incurring any expenses as hereinafter contemplated, the Permittee does hereby hold the Port harmless from any loss, destruction, or damage to the vessel described below and personal property located thereon. The authority granted in this paragraph shall be exercised only at times when, in the sole judgment of the Port, an emergency is deemed to exist, and such authority may be carried without notice to the Permittee.

13. TERMINATION

Mutual Termination. Either party may terminate this agreement without cause by giving written notice that is received by the other party more than thirty (30) days prior to the scheduled termination date.

Termination By Port. If the Permittee shall fail to keep and perform any of the terms, covenants or conditions herein contained or made reference to, and shall fail to remedy any such default within ten (10) days after written notice thereof by the Port to the Permittee, or make any false disclosure herein, the Port may at its option declare this permit canceled and forfeited, and the Permittee's right to possession ended, without further notice to Permittee and may re-enter said berthage and adjacent float without process of law, using force as may be necessary to remove all chattels therefrom and the Port shall not be liable for any damage by reason of such re-entry for forfeiture. All notices to Permittee shall be considered delivered to Permittee upon such notices being deposited in the United States mail, postage prepared, registered mail, return receipt requested, addressed to the Permittee at his or her address set forth below. If by reason of any default on the part of the Permittee in the performance of any of the provisions of this permit and/or the Regulations, it becomes necessary for the Port to employ an attorney, the Permittee agrees to pay all costs, expenses and attorney fees expended or incurred by the Port in connection therewith. Termination by the Port shall not prejudice the right of the Port to collect all money owing for whatever has been provided in exchange for the debt incurred.

14. FIRST MONTH PRORATED. The initial nonrefundable sum described in Section 5, Subsection I(A)(2) of the Rules, Regulations and Charges shall be applied to the first month's moorage on a prorata basis beginning the first day the vessel is in the Marina or designated arrival date, whichever is sooner. The remainder of the sum shall be credited to the following month's moorage fee.

15. AUTHORITY GRANTED. Permittee hereby grants the Port and its agents and employees free access at all times to the vessel for purposes of inspection for compliance with this agreement, movement of the vessel pursuant to Paragraph 12 above, fighting of fire or other casualty or, in the discretion of the Port, preventing any casualty or potential hazard. However, as provided in paragraph 4, the Port does not assume any responsibility for the vessel on the basis of the foregoing rights.

16. NONWAIVER. Nothing contained in this agreement shall be construed as a waiver by the Port of any rights and privileges created by this agreement nor a waiver by the Port of any other right or remedy under the laws of the State of Washington.

17. TIME OF THE ESSENCE. Time is of the essence of this agreement.

18. PARAGRAPH HEADINGS. The captions and paragraph headings in this agreement are for the convenience of the parties only and do not limit, restrict or otherwise amend the text language of any sentences of paragraphs.

19. INVALIDITY OF PARTICULAR PROVISIONS. If any term or provision of this agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

20. TOTAL AGREEMENT. This agreement expresses the complete understanding of the parties hereto. No modification or amendment of this agreement shall be valid unless evidenced in writing and signed by both parties.

21. DISCLOSURE. The Permittee warrants that the following information relative to the vessel to be moored at said berthage and those associated with its ownership and operation is correct.