

ANACORTES MARINA MOORAGE AGREEMENT

The undersigned berth owner ("Licensor") hereby grants to the undersigned boat owner ("Licensee") without representation or warranty, a license to use the berth space designated below ("Berth") at the Anacortes Marina ("Marina") during the License Period for moorage of the boat designated below, and the nonexclusive right of pedestrian access to the Berth over the common areas of the Marina, on the following terms and conditions:

1. **License Period; Surrender.** Licensee's right to use the Berth shall begin on the Commencement Date indicated below. Notwithstanding the foregoing, however, Licensee's right to use the Berth shall not commence, until this Moorage Agreement has been approved in writing by an authorized agent of the Anacortes Marina Owners Association. Subject to paragraph 10 below, Licensee's right to use the Berth shall terminate automatically on the date that is twelve (12) months after the Commencement Date, unless earlier terminated by a writing signed by both parties. Upon termination of Licensee's right to use the Berth, Licensee shall (i) have no further right to use the Berth or any other portion of the Marina, (ii) remove the boat and all of Licensee's personal property from the Marina, and (ii) leave the Berth in good, neat and clean condition, free from damage caused by Licensee.

2. **DNR Lease.** The Marina is located on aquatic lands leased from the Washington Department of Natural Resources ("DNR") pursuant to Aquatic Lands Lease No. 22-A02510 ("DNR Lease"). Licensee acknowledges that (i) this Moorage Agreement is subject to all the terms and conditions of the DNR Lease, (ii) if the terms of this Moorage Agreement conflict with the terms of the DNR Lease, the terms of the DNR Lease shall control, (iii) this Moorage Agreement shall terminate immediately upon termination of the DNR Lease, (iv) Licensee acknowledges receipt of a copy of the DNR Lease, (v) Licensee acknowledges that there is no privity of contract between Licensee and DNR, and (vi) Licensee must meet all obligations of the tenant under section 10 of the DNR Lease.

3. **Monthly Use Fee; Utilities & Services.** Licensee shall pay the monthly use fee set forth below. In addition to the monthly use fee, Licensee shall pay, for all utilities and services furnished to Licensee or Licensee's boat at the established rates provided by the then applicable schedule of rates posted by the Anacortes Marina, or if not covered by such a posted schedule, as established by Licensor. Licensor does not warrant that any services or utilities will be free from interruption or that any services or utilities (including electricity) will be compatible with the boat's electric circuit protector. Interruption of services or utilities shall not be deemed an eviction or interruption of Licensee's use of the Berth, shall not relieve Licensee of any obligations hereunder and shall not render Licensor liable to Licensee for damages or loss of any kind.

4. **Payment of Fees and Charges.** Licensee shall pay the monthly use fee and all fees and charges for utilities and services, without notice, deduction, set-off or counterclaim, in advance on or before the 1st day of each calendar month at Licensor's address below. Any monthly use fee, fees or charges for utilities and services, or any other amount due under this Moorage Agreement not received when due shall accrue interest from the due date until paid the rate of 10% per annum, or the highest rate permitted by applicable law, whichever is less.

5. **Use of Premises; Compliance with Laws.** Licensee has inspected the Berth and is satisfied that the Berth is adequate for safe mooring of Licensee's boat. Licensee will use the Berth only for moorage of Licensee's boat. Licensee shall not use the Berth for any commercial purpose without the prior written consent of Licensor. Licensee shall keep the boat, the Berth and adjacent areas in neat, clean and orderly condition. Licensee shall not use or store any flammable or hazardous substances in the boat or Marina other than fuel within the boat's fuel tanks or small quantities of ordinary cleaning products available at retail and in a safe and lawful manner. Licensee shall not cause or permit the use, storage, disposal or release of hazardous substances (other than as set forth in the previous sentence) anywhere in the Marina. Licensee shall not permit any hazardous substances to contaminate any portion of the Marina. Licensee shall not perform do or permit anything to be done, or bring or keep anything, in or about the Marina that (i) may damage any portion of the Marina, (ii) may cause injury to other users of the Marina, (iii) may constitute a nuisance or otherwise interfere with the quiet enjoyment of other users of the Marina, (iv) overloads any utility system, or (v) increases Licensor's insurance premiums. Licensee shall not make any alterations to the Berth or any other adjacent portion of the Marina. Licensee shall comply with all applicable federal, state, and local laws, statutes, ordinances rules and regulations applicable to Licensee's use of the Berth, and all rules, regulations and special instructions adopted by Licensor. Further, Licensee shall comply with the DNR Lease, the Condominium Declaration for Anacortes Marina Condominium and all rules, regulations and special instructions adopted by Licensor or the Anacortes Marina Owners Association. Licensee shall provide proof of vessel registration for the boat, a written statement of intent to register the boat, or a proper affidavit of exemption from Washington registration requirements. **Chartering, renting or any**

commercial use are not allowed under this Moorage Agreement without written approval by Anacortes Marina Owners Association.

6. **No Living Aboard.** No person may live-aboard the Vessel when moored at the slip without the prior written consent of the Anacortes Marina Owners Association, which it may withhold at its sole discretion. Persons authorized to live-aboard a vessel must execute a separate Live-Aboard agreement with Licensor. A person shall be deemed living aboard the vessel if such person occupies the vessels in excess of 96 hours over a two week period.

7. **Licensor's Reserved Rights.** Licensor reserves full rights to control the use of the Berth and to control the Marina, including without limitation, the following rights (without any obligation hereunder to do so): (i) to limit or prevent access to the Berth or any portion of the Marina in the case of casualty, damage, emergency, dangerous condition, or civil disorder, (ii) to take preventative measures for the safety of Marina users or the protection of improvements or property, and (iii) to perform repairs and maintenance, to make alterations, additions, improvements or replacements to the Marina. In addition, Licensee shall allow Licensor and its agents free access at all times to Licensee's boat or tackle for the purpose of inspection, fighting fire or remedying or preventing any casualty or potential hazard, mooring or moving of boat in emergency or for maintenance or construction. Licensor will attempt to contact Licensee prior to moving the boat if time permits.

8. **Insurance.** At all times during the term of this Moorage Agreement, Licensee shall carry in full force and effect with insurance companies authorized to do business in the state of Washington, marine insurance policies providing coverage for (i) general liability, (ii) legal liability, (iii) collision and allision, and (iv) pollution liability, arising from Licensee's use of the Berth or the boat, with limits of at least \$300,000 per occurrence. The insurance policies shall cover damage done to the Berth, the Marina, and any other boats or equipment and shall satisfy the requirements for vessel insurance under Chapter 88.26 RCW. The insurance policies shall name Licensor, Anacortes Marine Enterprises, Inc. and Anacortes Marina Owners Association as additional insureds and shall include a waiver of subrogation in favor of Licensor, Anacortes Marine Enterprises, Inc., and Anacortes Marina Owners Association. Licensee shall not be entitled to moor Licensee's boat at the Berth until evidence of insurance satisfactory to Licensor and Anacortes Marine Enterprises, Inc. has been provided to each of them. Upon request of Licensor, Anacortes Marine Enterprises, Inc. or Anacortes Marina Owners Association, Licensee shall provide copies of Licensee's insurance policies to the requester.

9. **No Bailment.** This contract is not a bailment of the Licensee's boat but a license to use the Berth. It is mutually agreed that neither Licensor nor the Anacortes Marina Condominium Association accepts Licensee's boat for storage and neither shall be liable or responsible in any manner for its safe keeping or the condition of its tackle, apparel, fixtures, equipment, and/or furnishings.

10. **Licensee's Default.** If any amount due from Licensee is not received by Licensor when due, Licensor shall have such liens as are allowed under Chapter 60.36 RCW, and Licensor may take possession and control of, remove, and sell the boat, its tackle, apparel, fixtures, equipment, and furnishings, pursuant to Chapter 88.26 RCW. In addition, if Licensee violates any of the terms of this agreement, Licensor may on five (5) day written notice mailed to Licensee's billing address stated below, terminate Licensee's rights to use the Berth under this agreement but without prejudice to Licensor's right to collect fees, charges or other amounts under this agreement until such time as the boat is removed from the Marina. In any action or proceeding for the collection of any sums that become payable hereunder, Licensee agrees to pay to Licensor upon demand, in addition to the unpaid balance due, an amount equal to any charges paid by Licensor for said collection. If by reason of any act on the part of the Licensee, it becomes necessary for Licensor to employ an attorney, the Licensee agrees to pay in addition to the aforesaid collection charges, all reasonable attorneys' fees incurred by Licensor. The remedies provided in this paragraph are in addition to and not in lieu of any remedies available to Licensor for damages, injunction or otherwise at law or equity, in admiralty, or by virtue of statute.

11. **Cumulative Remedies, No Waiver.** Licensor's rights and remedies hereunder are not exclusive and are cumulative in nature, and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available by statute, at law or in equity. No waiver or forbearance of a violation of this Moorage Agreement shall be construed as a waiver or forbearance of any other or subsequent violation, and the acceptance of any performance hereunder, or the payment of any amount after the same has become due or at a time when any other violation exists shall not constitute a waiver of the right to demand payment of all other amounts owed or a waiver of any other violation then or thereafter existing.

12. **Licensee's Indemnity.** Licensee shall indemnify and defend Licensor, Anacortes Marine Enterprises, Inc., the Anacortes Marina Owners Association and their officers, directors, shareholders, members and agents from all claims, suits, losses, damages, fines, penalties, liabilities and expenses resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property arising out of or in connection with (i) the use of the Berth or Marina by Licensee, or its guests, invitees, assigns, agents or contractors, (ii) any breach of Licensee's obligations under this Moorage Agreement or (iii) any negligent act or omission of Licensee, or its guests, invitees, assigns, agents or contractors, in or about the Marina. This indemnity shall survive termination or expiration of this Moorage Agreement.

13. **Licensee's Release.** Licensee hereby waives and releases all rights of subrogation and all claims of any nature whatsoever against Licensor, Anacortes Marine Enterprises, Inc., Anacortes Marina Owners Association, and their officers, directors, members and agents for any losses or other damages sustained by Licensee or any person claiming through Licensee resulting from any accident or occurrence in or upon the Marina, including but not limited to: any defect in or failure of any improvement or equipment; any failure to make repairs; any defect, failure, surge in, or interruption of project facilities or services; any defect in or failure of common areas; any claim or damage resulting from Licensor's repair, maintenance or improvements to any portion of the Marina; or any act, omission or negligence of any other users of the Marina; provided only, that the release contained in this paragraph shall not apply to claims for actual damage to persons or property (excluding consequential damages) resulting directly and solely from Licensor's gross negligence or willful misconduct or from Licensor's breach of its express obligations under this Moorage Agreement which Licensor has not cured within a reasonable time after receipt of written notice of such breach from Licensee.

14. **Licensor's Liability.** Licensor shall not be in default hereunder, or subject to liability or damages, for failure to perform any obligation under this Moorage Agreement unless such failure continues for a period of 30 days after written notice thereof from Licensee. Licensee shall have no right to self-help and no right to withhold, set-off or abate any fees, charges or other amounts due, and no right to terminate this Moorage Agreement. Licensor shall in no event be liable for any consequential or punitive damages. Licensee agrees to look solely to Licensor's interest in the Marina for the enforcement of any money judgment, award, or order for Licensor's default under or in connection with this Moorage Agreement. Under no circumstances shall any present or future, direct or indirect, principals or investors, general or limited partners, officers, directors, shareholders, trustees, beneficiaries, participants, advisors, managers, employees, agents or affiliates of Licensor, or of any of the other foregoing parties, or any of their heirs, successors or assigns have any liability for any obligation of Licensor under this Moorage Agreement.

15. **Assignment; Subletting.** Licensee shall not, without Licensor's prior written consent (which Licensor may withhold or condition for any reason or no reason) assign any rights or obligations under this Moorage Agreement, including, without limitation, the right to use the Berth. Licensee may not sub-license any rights under this Moorage Agreement. Use of the Berth is personal to Licensee, and a person purchasing Licensee's boat will not thereby acquire rights under this Moorage Agreement. Any assignment or sub-license without Licensor's prior written consent shall be void.

16. **Notices.** All notices under this Moorage Agreement shall be in writing and delivered to the address of the recipient set forth below.

17. **Beneficiaries.** Anacortes Marine Enterprises, Inc. (if it is not the Licensor) and the Anacortes Marina Owners Association are beneficiaries of the Licensee's undertakings in this Agreement.

18. **Entire Agreement; Amendment.** This Moorage Agreement constitutes the entire agreement between the parties. No modification or amendment of this agreement shall be valid unless evidenced in writing and signed by both parties.

[Continued on Next Page]

LICENSEE'S NAME: _____

Address: _____

Phone (Primary) _____ (Secondary) _____ (Email) _____

Boat Name and/or No. _____ Beam _____ Power _____ Sail _____

Manufacturer _____ Boat Length (Including all Overhangs) Maximum _____

Berth Assignment _____ Commencement Date _____

Monthly Rate: \$ _____

Fee paid – First month \$ _____

Fee paid – Last month \$ _____

Deposit – Key card (2) \$ _____

Deposit – Electric \$ _____

Deposit on File \$(_____)

Total Due at Signing \$ _____

BOAT OWNER (LICENSEE):

BERTH OWNER (LICENSOR):

By: _____

By: _____

Name: _____

Name: _____

Approved by:

Address: _____

ANACORTES MARINA OWNERS ASSOCIATION

Phone: _____

By: _____

Name: _____

Date _____