

## PORT OF KENNEWICK MOORAGE AGREEMENT

This Moorage License Agreement ("Agreement") is made on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between Port of Kennewick, a Washington municipal corporation ("Port"), and the undersigned Vessel owner ("Owner") under the following terms and conditions:

### Basic Moorage Agreement Provisions

The following Basic Moorage Agreement Provisions are hereby incorporated herewith as part of this Agreement:

- A. Owner Name(s):
- . Vessel Owner Mailing Address:
- B. Vessel Owner Home Address:
- C. Vessel Owner Phone Contact:  Cell:  Home:  Work:
- D. Vessel Owner E-Mail:
- E. Vessel Owner Employer:
- F. Emergency Contact:
- G. Vessel Description:  Make:  Model:  Year:  Color:  Length:
- WN:
- H. Dock /BH Dock:  Slip #:  Boathouse:  Boathouse Width:
- I. Term: This Agreement will commence on January 1, 2020 and end on December 31, 2020. This Agreement will **automatically renew** for subsequent 12-month terms unless terminated by the Port as set forth below or by Owner providing written notice to the Port on or before **NOVEMBER 30TH** of Owner's intent to terminate the Agreement at the end of the current terms. NOTE: No partial year term are allowed without written consent of the Port. \_\_\_\_\_ **Initials**
- J. Monthly License Fee Total Per Month  \$  (See Attached Clover Island Marina Rate Schedule)
- K. Due Date: Moorage payments are due at the Port office on or before the first day of each month. \_\_\_\_\_ **Initials**

1. **Grant of License.** The Port grants a license to Owner to use the moorage space for moorage of the Vessel, all in accordance with the terms of this Agreement.
2. **Monthly License Fee.** Owner shall pay Port in advance, on or before the first day of each month, the monthly license fee set forth above. See also the Clover Island Marina Rate Schedule. All payments shall be made payable to Port and delivered to the Port's address, or at such other address as Port may hereafter designate. Payments by check or cash only. Credit/debit cards are not accepted at this time.
3. **Utilities.** At Owner's request, and subject to the payment of utility fees provided for herein, Port shall make available to Owner at the moorage space electrical power, water, and such other utility services generally made available to owners at the dock. Port does not warrant the availability of utility services, and shall not be responsible for any damage or injury due to the interruption or unavailability of utility services. Without limiting the generality of the foregoing, Owner acknowledges that water service may be discontinued between Fall and Spring, on a schedule as determined by the Port. In addition, Port does not warrant that the utility services will be compatible with the utility service requirements of any vessel to be moored at the dock (including electrical interconnection requirements or the effect of electrolytic action), and Owner assumes all risk in this regard. Owner shall be responsible for ascertaining that the available electrical and other utility services to the moorage space are suitable for Owner's needs. All utilities shall be furnished to the moorage space at the established rates provided by the applicable utility provider's current rates. Owner shall be solely responsible for the payment of all utility charges applicable to the moorage space, which utilities shall be measured by a separate meter where applicable and billed on a quarterly basis. \_\_\_\_\_ **Initials**
4. **Late Fee; Interest; NSF Charge.** If Owner shall fail to pay when due any monthly license fee or any other sums due under this Agreement on or before the fifteenth (15th) day of any month, a late charge equal to the greater of (i) \$50, or (ii) five percent (5%) of the overdue amount shall be payable by Owner to reimburse the Port for costs relating to collecting and accounting for said late payment(s). In addition to any applicable late fees, 12% APR interest (1% per month), shall be applied to the total unpaid balances beginning the sixteenth (16<sup>th</sup>) day of any month. If an Owner check is returned by the bank for any reason, Owner shall pay a fifty (\$50) dollar fee for the Port's administrative costs and shall pay any associated bank fees. Future payments may be required to be made by cash or money order. The Port and Owner hereby agree that these charges represent a fair and reasonable estimate of what the Port might incur by reason of Owner's late or NSF payment. These fees are due and payable with the current rent payment. Port's

acceptance of any late charge, interest or NSF fee shall not be deemed an extension of the date license fees are due or prevent the Port from exercising any other rights or remedies under this Agreement. The Port reserves the right to revise its policy regarding late payment and NSF check charges without notice. Owner may also be subject to additional fees related to collection, chain up, haul out, impound, storage and auction. Initials

5. **Use.** Owner may use the moorage space only for purposes of moorage of the Vessel and minor vessel maintenance, and for no other purpose whatsoever. Commercial use is prohibited. Use of and access to the moorage space and/or dock shall be subject to Port or Port's employees', agents', or contractors' right to demand proof of ownership of the Vessel. Port or its employees, agents, or contractors shall have the right to deny access to the moorage space and/or dock if Owner fails to provide such proof of ownership upon demand. Owner's vessel length must be within the guidelines established by the Port. Prior to any change of vessels, Owner shall obtain written authorization of such change by the Port. The Port shall have the right to inspect the new vessel for size and condition prior to determining whether authorization shall be granted to moor the substitute vessel. If the Port authorizes the substitution of vessels, all other terms and conditions of this Agreement shall remain in full force and effect.

6. **Renovations.** The parties acknowledge that Port may elect in its sole discretion to (i) construct one or more new buildings, as well as piers and pilings, in and around the dock and on adjacent parcels, and (ii) perform major repairs and renovations to the dock and adjacent buildings and improvements and that such repairs and work may create noise, dust, vibrations, other construction-related impacts, including periodic limits on access to the dock.

7. **Care of Moorage Space; Maintenance.** Owner shall keep and maintain the moorage space in a clean and sanitary condition at all times, and in accordance with the Port's dock rules and regulations. The Port does not accept Owner's vessel for storage or as a bailee. Owner shall notify the Port in advance of the employment of outside commercial labor and report work performed on the vessel or boathouse. Upon termination of this Agreement, Owner shall surrender the moorage space in good order and repair, other than normal wear and tear resulting from ordinary use. Under no circumstances, nor at any time, may Owner change, modify, or alter the moorage space or any other portion of the dock. Owner shall not install or place any personal property, dinghies, equipment, boxes, or lockers of any type on any portion of the dock or walkways. Owner acknowledges that discharge by Owner of sewage, toxic materials or other liquids or solids, which could be considered pollutants is illegal, and deemed to be a default under this Agreement, and Owner hereby indemnifies Port against any expense incurred by Port, including attorneys' fees, in connection with cleaning up or rectifying any such discharge. Owner shall also utilize a mooring system adequate to provide safe berth for the Vessel plus safe and efficient handling of passengers and goods. Owner shall not refuel or engage in major repairs or maintenance of any vessel at the dock. Owner shall not utilize the dock as a boat launch. Owner shall maintain the seaworthy condition of any vessel using the moorage space. Owner shall maintain any boathouse covered by this Agreement pursuant to all applicable federal, state, local laws, regulations and codes. Owner shall comply with Best Management Practices ("BMPS") relating to the use of the dock as promulgated by Washington State Department of Ecology from time to time. The current BMPS are hereby incorporated into this Agreement as they exist and as they may be modified or supplemented. Owner shall cause owner's agents, licensees and invitees to comply with such dock rules and regulations and the BMPS. From time to time, Port maintenance staff may be assisted by supervised Department of Corrections' work crews.

8. **Transfer & Assignment.** This Agreement and Owner's rights hereunder are not transferable or assignable without the prior written approval of Port, which approval may be withheld by Port in its sole discretion. In addition, Owner may not assign or sublet the right to use the moorage space. In this respect, this Agreement is personal to Owner and may not be used or transferred to any other person. A \$50.00 transfer fee shall apply for any tenant requested slip transfers.

9. **Insurance.** At all times during the term of this Agreement, Owner shall carry in full force and effect, with insurance companies authorized to do business in the State of Washington, **bodily injury and property damage liability insurance** with limits of a least \$1,000,000 per occurrence and vessel pollution coverage in compliance with the Oil Protection Act of 1990. A Certificate of Insurance or copy of Owner's insurance policy showing **evidence of insurance** will be delivered to the Port annually and the Port will be notified thirty (30) days in advance of any cancellation either by an endorsement to Owners policy or personally by written notice by owner. The foregoing insurance shall cover damage done to the dock, the port, and any other boats or equipment (including fishing boats and equipment) in the vicinity of the dock. Owner shall not be entitled to moor any vessels at the moorage space until evidence of insurance satisfactory to port has been provided by owner. At all times during the term of this agreement, owner shall also carry in full force and effect with insurance companies authorized to do business in the state of Washington **comprehensive watercraft liability insurance** for each vessel owned or operated by owner and located at the dock with limits of at least \$1,000,000 per occurrence for property damage and bodily injury and death, and which shall protect against damage done to the dock and other boats and equipment in the vicinity of the dock. The issuing insurer will provide port with not less than thirty (30) days' prior written notice of any material change or cancellation. Except for the port's deductible amount, each party hereby waives, and each party shall cause their respective property insurance policy or policies to include a waiver of such carrier's entire right of recovery (i.e., subrogation) against the other party, and the officers, directors, agents, representatives, employees, successors and assigns of the other party, for all claims which are covered or would be covered by the property insurance required to be carried hereunder or which is actually carried by the waiving party. Initials

10. **Indemnity.** Port shall not be liable to Owner or any other person for any loss, injury, death or damage to persons or property (including the Vessel) that may arise at the Dock, on in or around the water adjacent thereto, except for loss, injury, death or damage caused by the willful misconduct or gross negligence of Port or its agents or employees. Owner agrees to indemnify, defend and hold Port harmless from and against all loss, cost, liability, damage and expense, including but not limited to reasonable attorneys' fees, penalties and fees, incurred in connection with or arising from (a) any default by Owner of the terms and conditions of this Agreement, (b) the use of the Dock by Owner and its guests, invitees, visitors and agents, (c) acts, omissions or negligence of Owner or its guests, invitees, visitors and agents in or around the Dock, (d) the use of or operation any vessel on or about the Dock by Owner and its guests, invitees, visitors and agents, or (e) any claims by any other person by reason of loss, injury, death or damage to persons or property due to an act, occurrence or omission set forth in (a), (b), (c), or (d) above. Owner acknowledges that any vessels moored at the Dock (and any personal property contained therein) and all personal property of Owner are located at the Dock at Owner's sole risk, and Port shall not be liable for any loss or damage thereto. Furthermore, Owner shall be solely responsible and liable for, and shall indemnify, defend and hold harmless Port for, from and against any and all hazardous substances existing at the Dock on in or around the water adjacent thereto or present in or on the air, ground

water, soil, buildings or other improvements or otherwise in, on, under or about the Dock or any other property, resulting from Owner's handling of hazardous substances during the period of this Agreement.

11. **Damage, Destruction, or Condemnation.** If the Dock or any portion thereof is at any time destroyed or damaged by a casualty, or if any portion of the Dock or adjacent parcels are taken pursuant to the exercise or threatened exercise of the power of eminent domain (including a conveyance in lieu thereof), Port may elect to terminate this Agreement.

12. **No Liens.** Owner will not permit any mechanics' liens or other liens to be placed upon the Dock or any adjacent properties. Nothing herein shall be deemed or construed in any way as constituting the consent or request of Port, express or implied, by inference or otherwise, to any person for the performance of any labor or the furnishing of any materials to the Dock or any part thereof, nor as giving Owner any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to any mechanic's or other liens against the Dock or any adjacent parcels. In the event any such lien is attached thereto, then, in addition to any other right or remedy of Port, Port may, but shall not be obligated to, discharge the same, and any amount paid by Port for any of the aforesaid purposes including, but not limited to, reasonable attorneys' fees, shall be paid by Owner to Port promptly on demand. If any lien is recorded in connection with Owner's work at the Dock or materials provided thereat, Owner shall, within ten (10) business days after request, post such bond as will release the affected property from such lien.

13. **Default Remedies.** If Owner violates the terms of this Agreement, and such failure continues for a period of three (3) days after Port has given Owner written notice thereof, Owner shall be in default hereunder. Upon default, Port may exercise any and all remedies available to Port hereunder or otherwise provided by law including, but not limited to the remedies set forth in RCW 53.08.320 or according to the summary procedure authorized in RCW 60.36.010. Without limiting the foregoing, Port may immediately terminate this Agreement without limiting the liability of Owner for all amounts due hereunder. Upon termination of this Agreement, and if Owner has not already done so, Port shall be authorized to remove any vessels moored at the Dock and all property of Owner from the Dock and to make repairs to any vessels if necessary in connection therewith, all at the cost, expense and risk of Owner. If any vessel remains at the Dock or in the Port following termination of this Agreement, and without limiting the other remedies of Port hereunder, Owner shall be deemed, at Port's election, to be holding over pursuant to this Agreement and shall be subject to the provisions of paragraph 24 "Holding Over" below.

14. **Cumulative Remedies, No Waiver.** Port's rights and remedies hereunder 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 in law. No waiver or forbearance of a default of this Agreement shall be construed as a waiver or forbearance of any other or subsequent breach, 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 default exists shall not constitute a waiver of the right to demand payment of all other amounts owed or a waiver of any other default then or thereafter existing.

15. **Vessels.** Owner agrees to keep accurate records of all vessels that use the Dock, including records of the Vessels' owners, Vessels' license numbers, state registration number, and U.S. Coast Guard Certificate. A current registration number and valid decal must be prominently displayed on vessel.

16. **Electronic Gate Cards.** Port shall issue to Owner no more than two (2) Electronic Gate Cards ("Cards") to provide access to the Dock and the Moorage Space. The Cards shall be surrendered to Port upon termination of this Agreement. Cards shall remain the property of Port at all times, and Port may revoke the right of Owner to use the Cards if Owner is in default under this Agreement. Cards are for the personal use of Owner and may not be transferred to or used by any other parties. Owner agrees to notify Port immediately if any Card is lost or stolen. A replacement fee of \$25 shall be charged for any lost or stolen Card. Port reserves the right to revise its policy regarding gate card replacement fee without notice. **Initials**

17. **Limitation of Liability.** If Port is in default hereunder, Port's liability shall be limited to its right, title and interest in the Dock. The Port and any agent, officer, director, official, or employee of the Port shall not be personally liable hereunder.

18. **Access to Vessels.** Port shall have the right with reasonable notice to inspect the Moorage Space and/or board any vessels moored at the Dock to determine if the Moorage Space and/or such vessels are in compliance with the terms of this Agreement and the Port's Dock Rules and Regulations.

19. **No Living Aboard.** No person may live aboard or stay aboard for extended periods of time the Vessel when moored at the Dock. Tenants may stay for a maximum of 3 consecutive nights on vessel when moored at the Dock. **Initials**

20. **Parking.** Outside of designated areas, parking on Clover Island is for DAY USE ONLY. Violators shall be towed at owner's expense. Extended use parking permits, for a specific period of time, may be obtained at the Port office and will be issued at Port discretion. **Initials**

21. **Port's Right to Terminate.** Notwithstanding anything to the contrary elsewhere in this Agreement, Port shall have the right to terminate this Agreement at any time for any reason or for no reason at all by providing at least thirty (30) days' prior written notice of termination to Owner, in which notice Port shall specify its desired Early Termination Date. If Port elects to terminate the Agreement early as provided herein, the Early Termination Date chosen by Port shall operate as if that date were the time originally fixed for the expiration of the Agreement. The parties recognize that the foregoing early termination right is important to Port and that any delay caused by the failure of Owner to vacate the Moorage Space pursuant to this paragraph when required can cause irreparable harm to the Port and future Owners. Therefore, Port and Owner agree that time is of the essence of this paragraph and that if any dispute arises between Port and Owner with respect to the provisions of this paragraph, any other provisions of this Agreement notwithstanding, Owner will vacate the Moorage Space upon early termination of the Agreement as provided above, and Owner shall be deemed to have waived any rights in law or equity to possession of the Moorage Space. The Port shall have the right to relocate the vessel to wet or dry storage if Owner has not removed the vessel within ten (10) days after termination of the Agreement and the Owner shall be deemed, at Port's election, to be holding over pursuant to this Agreement and shall be subject to the provisions of paragraph 24 "Holding Over" below.

22. **Port's Right to Relocate.** During the term of this Agreement, Port shall have the right, for any reason, to relocate the Owner's Moorage Space to another location at the Dock. In the event Port so elects to relocate Owner, Port shall notify Owner and propose the new moorage space location to Owner. Owner shall have fifteen (15) days from the receipt of said notice to elect to accept said relocation. In the event that the relocation proposal is accepted by Owner, Port and Owner shall revise this Agreement to reflect the new moorage space. Upon such relocation, such new space shall be deemed the "Moorage Space" hereunder for all purposes and the Agreement shall be deemed amended to that effect without further formality. Monthly License Fee rates for the new space shall be the same as those agreed to in the original Agreement, subject to adjustment for additional or less moorage space, as applicable. All other terms and conditions of the original Agreement shall remain in full force and effect. In the event that Owner elects not to accept the relocation of its Moorage Space, Owner shall so notify Port in writing. Port shall then have the option for thirty (30) days to terminate Owner's Agreement or to allow Owner to remain in its present Moorage Space. In the event that Port elects to terminate the Agreement, Owner shall be given thirty (30) days' notice.
23. **No Warranties.** Port makes no warranties, express or implied, as to the condition of the Dock (including floats, walkways, gangways, ramps, gear and related items) or the suitability of the Moorage Space for Owner's intended purposes. Port makes no representations or warranties, express or implied, regarding the draft of the Dock or that the approaches to the Dock, or the moorage space itself, will be free from wreckage or debris. Owner acknowledges that Owner has had an opportunity to inspect the Moorage Space and the Dock prior to execution of this Agreement and agrees to accept same in their current condition.
24. **Holding Over.** If Owner fails to remove the Vessel from the Dock upon termination of this Agreement, and without otherwise limiting the rights of Port hereunder, Owner shall pay Port the applicable daily rate for transient moorage (as determined by Port acting in its sole discretion) for each day the Vessel continues to be moored at the Dock. The Port shall have the right to elect to chain up, remove, impound, store and/or auction Vessel at Owner's expense.
25. **Notices.** Any notices hereunder shall be given in writing and be addressed to the parties' respective address for notices as follows:
- |                                    |   |
|------------------------------------|---|
| Port of Kennewick                  | Owner   |
| 350 Clover Island Drive, Suite 200 | Mailing Address Set Forth in Basic Provisions Above |
| Kennewick, WA 99336                |   |
26. **Removal of Vessel in Emergency.** In case of emergency, Port is authorized to move any or all vessels without liability for damages or loss of any kind. Owner agrees to pay Port reasonable compensation for moving the vessels under such circumstances.
27. **Section Headings.** The section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the Sections they introduce.
28. **Dock Rules and Regulations.** Owner shall comply in all respects with the Dock Rules and Regulations adopted by Port, which Dock Rules and Regulations may be revised by Port from time to time at the Port's sole discretion. Dock Rules and Regulations will be posted on the Port's website and will be provided to Owner upon Owner's request. Failure to comply with the Dock Rules and Regulations shall constitute a default hereunder.
29. **Binding on Heirs.** This Agreement and the terms and conditions hereof are binding upon and shall inure to the benefit of the successors and assigns of Port and the heirs, executors, administrators and, to the extent permitted hereunder, the assigns of Owner.
30. **Attorneys' Fees.** In the event that any action or other legal proceeding is brought to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs plus reasonable attorneys' fees from the non-prevailing party (including proceedings on appeal or in arbitration).
31. **Severability.** If any provision of this Agreement shall be found to be void, such determination shall not affect any other provision of this Agreement.
32. **Venue.** The Port and Owner agree that venue for any litigation involving this Agreement is proper in state court situated in Benton County, Washington, or any federal court situated in Spokane County, Washington.
33. **Amendments.** This Agreement constitutes the entire understanding and agreement of Port and Owner as to the matters set forth herein. No alteration of or amendment to this Agreement shall be effective unless in writing and signed by both the Port and the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

PORT OF KENNEWICK

OWNER

By: \_\_\_\_\_  
Tana Bader-Inglima, Deputy CEO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name