

PORT OF POULSBO
P.O. BOX 732
POULSBO, WASHINGTON 98370

BOATHOUSE BERTHAGE TRANSFER AND RELEASE AGREEMENT

This Agreement is entered into this ____ day of _____, 20__ by and between the Port of Poulsbo, a Washington municipal corporation, (the "Port"); _____, (the "Current Moorage Licensee") and _____ (the "New Moorage Licensee") for assignment of Boathouse Berthage Space No. _____.

WHEREAS, the Current Moorage Licensee and the New Moorage Licensee have requested that the Port approve a transfer of the Berthage Space from the Current Moorage Licensee to the New Moorage Licensee in conjunction with a transfer of the boathouse located therein.

WHEREAS, the Port maintains a waiting list of individuals that desire moorage at the Poulsbo Marina.

WHEREAS, the parties hereto recognize that the Port has a legitimate interest in ensuring that boathouse transfers do not result in a windfall to the boathouse owner by, in essence, allowing the sale of a right to moorage at the Poulsbo Marina.

NOW THEREFORE, in consideration of an inducement for the Port to approve the assignment of the Berthage Space to the New Moorage Licensee the parties agree as follows;

1. **No Purchase of Berthage Space.** New Moorage Licensee has acquired the boathouse only and the acquisition of the boathouse does not include any right, title or interest in the Berthage Space. The authority to assign berthage spaces, including this Berthage Space, shall remain exclusively with the Port as set forth in the Poulsbo Marina Regulations as they now exist or are hereinafter amended (the "Port Regulations").

2. **Future Transfer of Boathouse.** If the New Moorage Licensee desires to assign the Berthage Space in conjunction with a transfer (by gift, sale or otherwise) of the ownership of a boathouse, the boathouse must first be offered as provided herein (an "In Marina Transfer"). The New Moorage Licensee shall notify the Port in writing in advance of any anticipated transfer (the "Written Notice"), and follow the applicable procedures in the Port Regulations. The transferee will be required to sign an agreement similar to this Agreement.

3. **Port's Right of First Refusal.** The Port shall have first right of refusal to acquire, for any sale or transfer, the boathouse under the terms and conditions provided herein and the applicable Port Regulations. The Port will exercise this right by making a decision at the next regularly scheduled Commission meeting after, or within thirty (30) days of, the receipt of the Written Notice. If the Port acquires the boathouse, it shall be transferred to the Port "as is" "where is" free and clear of all encumbrances and without warranty of any kind, except warranty of title. All Port charges, including applicable Washington state leasehold excise tax, through the date of transfer must be paid (or deducted from the price paid by the Port). The boathouse will be transferred via a bill of sale in a form reasonably acceptable to the Port.

4. **Port Declines to Purchase Boathouse.** If the Port declines to acquire the boathouse or does not provide a written response to the New Moorage Licensee within thirty (30) days of the receipt of the Written Notice, then the New Moorage Licensee must offer the boathouse in order as they appear from top of the list, to the moorage customers on the Boathouse Wait List giving each such moorage customer ten (10) days to respond to the offer. If none of the moorage customers on the Boathouse Wait List agree to buy the boathouse, the New Moorage Licensee can offer the boathouse to anyone.

5. **Future Changes to Port Regulations.** It is recognized that a substantial portion of the purchase price for the boathouse may include an amount reflecting the value of boathouse moorage (also known as the "Premium") at the Poulsbo Marina separate and apart from the value of the boathouse structure itself. The Port is investigating applicability of a fee to be charged at some future date that

captures, for the Port, all or part of said Premium. Nothing in this Agreement shall be construed to limit the Port's right to change the Port Regulations or provide any right, title, interest or claim of the New Moorage Licensee related to any change to the Port Regulations concerning the Premium or the terms of future transfers of the Berthage.

6. **Release of All Claims Against the Port.** For and in part consideration and as an inducement to the Port to enter into this Agreement, the Current Moorage Licensee and the New Moorage Licensee expressly and unconditionally waive any and all claims, demands, damages or causes of action, known or unknown, now and in the future, against the Port, its commissioners and employees arising from any diminution in value of the boathouse, including but not limited to, breach by the New Moorage Licensee of this Agreement, Port Regulations, constitutional claims of a taking, or diminution in value caused by any new Port Regulation addressing the Premium, or assessing any fee or charge for any sale/transfer of this boathouse after the authorizing date of this Agreement. This release is not merely a recital but a negotiated term of the overall economics of this Agreement and this release shall survive termination of this Agreement.

7. **Survivability.** All covenants, promises and performance which are not fully performed, shall survive termination as binding obligations.

8. **Amendment.** No modification, termination or amendment of this Agreement may be made except by written agreement signed by all affected parties, except as provided herein.

9. **Waiver.** No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

10. **Notices.** All notices to the Port required hereunder shall be made in writing to the Port at P.O. Box 732, Poulsbo, Washington, 98370 or such other address as the Port may provide. Notice to the affected parties shall be made to the address provided in the Port's Moorage License Agreement, by posting, or by hand delivery.

11. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12. **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

13. **Governing Law.** This Agreement, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in the Superior Court of Kitsap County, Washington.

14. **Moorage License Agreement.** Approval by the Port of a Moorage License Agreement is required. This Transfer Agreement is in addition to the Port's Moorage License Agreement.

15. **Entire Agreement.** The entire agreement between the parties hereto is contained in this Agreement, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

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

THIS AGREEMENT CONTAINS A RELEASE OF CLAIMS IN FAVOR OF THE PORT OF POULSBO. THE UNDERSIGNED CERTIFY THAT THEY HAVE READ AND UNDERSTAND THE TERMS OF THAT RELEASE

PORT OF POULSBO

Print Name: _____

CURRENT MOORAGE LICENSEE

Print Name: _____

NEW MOORAGE LICENSEE

Print Name: _____

If ownership other than individual, please provide the following information.

Authorizing Agent Signature: _____

Printed Name: _____

Title: _____

Business Name: _____

Business Type/Status: _____

EIN #: _____

Address: _____

Phone #: _____ Email: _____