

HUMBOLDT BAY HARBOR,
RECREATION, AND CONSERVATION DISTRICT
P.O. BOX 1030, EUREKA, CA 95502-1030
(707) 443-0801

BERTHING PERMIT AND RENTAL AGREEMENT
FOR WOODLEY ISLAND MARINA

(30 days or more)

Date Filed: 27 March 2023

Legal Owner of Vessel: Humboldt County Sheriff Department Primary Phone: 707-476-2432 Business Office

Legal Owner Home Address:

City: State: Zip Code:

Legal Owner Mailing Address: 826 4th Street

City: Eureka State: CA Zip Code: 95501

Home Phone: Cellular Phone: Work Phone: 707-445-7319 Dispatch Email: sheriffbusinessoffice@co.humboldt.ca.us

Name of Operator: Phone:

Address of Operator:

City: State: Zip Code:

Name of Vessel: V 2325 Home Port: Humboldt Bay Vessel Cellular:

Registration or

Documentation No.: CF 4662 XC Length: 23 Beam: 8 Draft: 2 Year Built: 2004 Builder: Pacific

Type: Inboard Hull: Wood Engine: Gas
 Outboard Metal Diesel
 Sail Fiber Glass Other
 Inboard/Outboard Ferro/Concrete

Propellers: Single Twin Make of Engine: Honda H.P.: Radio Call Letters: Liveaboard: Yes No

Vessel Trailer License Number: State:

Emergency Contact Name: Sheriff Dispatch Emergency Contact Phone: 707-445-7319

THIS AGREEMENT between the undersigned (hereafter called "Lessee") and the Humboldt Bay Harbor, Recreation, and Conservation District (hereafter called "District") is made with reference to the following agreed facts:

- A. The District operates and maintains a marina or moorage facility at Woodley Island, Humboldt Bay, California.
- B. Lessee has read and is familiar with the terms and conditions herein.

NOW, THEREFORE, IT IS AGREED:

1. Premises

District leases to Lessee and Lessee leases from District pursuant to this Agreement Slip No. **D-10** at the Woodley Island Marina, Woodley Island, Humboldt Bay, California, (hereafter called "premises") for the use by Lessee for moorage by Lessee of Lessee's vessel described above.

2. Terms

The term of the lease shall commence at 8:00 a.m. on the 1st day of **July, 2023** to 8:00 a.m. the 1st of the next calendar month following the commencement date and thereafter the term shall be a periodic month to month tenancy from 8:00 a.m. on the first day of each successive calendar month to 8:00 a.m. on the first day of the month following. This tenancy may be terminated by either party by the giving of **30 days** prior written notice. District may revoke immediately any berthing assignment permit when Lessee violates any one of the Marina Rules and Regulations or any one of the terms and conditions contained herein.

3. Rent

a) Lessee shall pay as rent to the District the sum of \$ ___ per calendar month, including all utility, dredge and float replacements surcharge, as well as any other fees as set by the Board of Commissioners, due and payable in advance on the first day of each calendar month, with no prior notice or demand and free of all claims or off sets, in lawful money of the United States of America. A late charge shall be applied to accounts not paid in full on or before the tenth (10th) of the month. One percent (1%) interest shall be applied to the accounts not paid in full by the end of the month. The sum of \$ **3930.00** is due and payable to the District upon execution of this Agreement, of which \$ **NA** is the pro-rate portion of the rent from the commencement date to the first day of the month following the commencement date, plus \$ **NA Gov't Agency** as a *security deposit* refundable to Lessee upon 30-day notice of termination of the term and upon Lessee's faithful performance of all the terms, covenants and conditions of this Agreement. The security deposit shall be a sum equal to one month's rental charge. It is understood that District may change or increase the moorage rates for said slip by giving Lessee 30 days' notice and Lessee shall pay District the new moorage rates 30 days after said notice by District.

b) Inflation Escalation: Without limiting the right of the Board of Commissioners to further adjust the rent described in subsection "a", above, from time-to-time, the rent (inclusive of the applicable fees) shall be increased annually, on July 1, by a percentage equal to the percentage change in the Consumer Price Index published by the United States Bureau of Labor Statistics of the United States Department of Labor for the most recent twelve months available thirty (30) days prior to the beginning of the fiscal year using the index entitled U.S. City Average—All Items and Major Group Figures for All Urban Consumers (1982-84=100), or the nearest comparable data on changes in the cost of living if such index is no longer published.

Check on (1) where applicable:

- (A) Monthly rental for *exclusive* possession or use of such berth is the sum of \$ _____ per foot, or **25% higher** than non-exclusive possession, based upon the length of the slip, length of Lessee's vessel, or combined length of vessels, whichever is greater plus surcharges as set by the Board of Commissioners.
- (B) Monthly rental for *non-exclusive* possession or use of berth is the sum of \$ _____ per foot based upon the length of the slip used, length of Lessee's vessel, or combined length of vessels, whichever is greater plus surcharges as set by the Board of Commissioners.
- (C) The sum of \$ _____ which equals twelve (12) months advance payment of \$ _____ per month plus \$ _____ security deposit for *exclusive* possession and use of such berth is the sum of \$ _____ per foot, or **25% higher** than *non-exclusive* possession, based upon the length of the slip used, length of lessee's vessel or combined length of vessels, whichever is greater plus surcharges as set by the Board of Commissioners. It is agreed that payment of advance monthly payments shall remain at all times a month-to-month tenancy. In the event lessee quits the premises for any reason there shall be no refund of any advance monies paid to the District, except there shall be a pro-rate refund if the vessel is destroyed or ownership is sold or transferred.

- (D) The sum of \$ 3930.00 for FY July 1, 2023- June 30, 2024 which equals twelve (12) months advance payment of \$ 327.50 per month plus \$ NA security deposit for *non-exclusive* possession and use of such berth is the sum of \$ 78.60 per foot based upon the length of the slip used, length of Lessee's vessel or combined length of vessels, whichever is greater plus surcharges as set by the Board of Commissioners. It is agreed that payment of advance monthly payments shall remain at all times a month-to-month tenancy. In the event Lessee quits the premises for any reason there shall be no refund of any advance monies paid to the District, except there shall be a pro-rate refund if the vessel is destroyed or ownership is sold or transferred.

4. Holding Over

If the Lessee holds possession of the premises after notice of termination by the District, Lessee's rental obligation to the District shall be at the transient daily rental rate for lessee's size vessel, until Lessee actually vacates said slip and otherwise upon all of the Agreements herein contained.

5. Notice of Possessory Interest Tax

The Lessee is hereby notified by District that this Permit and Rental Agreement or property interest created herein, if any, may be subject to a possessory interest tax or property taxation if created pursuant to Sections 107 and 108 of the California Revenue and Taxation Code and that Lessee and /or party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

6. Non-Exclusive Use of Berth.

In the event Lessee's use is based upon a monthly rental for non-exclusive use as designated in paragraph 3 above, possession of the above slip is granted for non-exclusive possession or use of such berth. Non-exclusive possession or use of the slip or berth means a right to the use of a specific slip or berth when such specific slip or berth is also used intermittently by other, even though such possession or right to use such slip or berth is paramount to any use by others. District reserves the right to assign to others the right to use such facility.

In the event Lessee's vessel will be absent from the slip for a stated period of time of 5 days or more, District may, at its sole option, allow use or sublet of the slip by another vessel for such stated period and District may in its sole and absolute discretion collect moorage fees from another vessel and Lessee shall receive no credit or reimbursement from District except as set forth hereafter. Prior to Lessee's vessel departure from the slip for a stated period of 5 days or more, Lessee shall notify District of the vessel's intended schedule and the District shall have the right to rent the slip to other vessels, including but not limited to transient vessels during Lessee's absence. The District is under no obligation to have the slip clear for Lessee prior to the intended estimated time of arrival unless Lessee notifies the District at least 24 hours in advance of his arrival.

7. Exclusive Use of Berth

In the event Lessee's use is based upon a monthly rental for exclusive use or possession of such berth as designated in paragraph 3 above, District may not sublet the use of the slip to others so long as Lessee is not in default in any of the terms herein.

8. Use

(A) Lessee agrees at all times to use the premises exclusively for the moorage of vessel described herein.

Lessee further agrees at all times that (1) No vessel moored or berthed within the Woodley Island Marina shall be used as a place of residence and no person shall use the same as a place of residence except the holder of a Live Aboard Permit issued by the District. Living aboard or overnight occupancy of any vessel in the Harbor for more than 3 consecutive nights by any person or persons at any time is strictly prohibited, except for the holder of a Live Aboard Permit issued by the District. No vessel shall be used as a residence except a transient vessel occupying a berth under a temporary assignment for less than thirty (30) days or the holder of a Live Aboard Permit issued by the District. For the purpose of this regulation, any vessel used as an overnight accommodation for 1 or more persons in excess of 3 nights in any 7-day period shall be considered a residence. (2) No children under the age of 13 years are permitted on or about the premises unless accompanied and supervised by an adult at all times. (3) No unleashed dogs or other pets are permitted on or about the premises at any time. Dogs, cats and other pets are prohibited at all times on vessels holding a Live Aboard Permit. Any person or vessel holding a Live Aboard Permit shall remove all dogs, cats and other pets from the vessel. (4) Major repairs or servicing of the vessel on the premises are prohibited except upon the prior written authorization of the District. (5) No electronic sound amplification instruments or equipment shall be operated on or about the premises. (6) No brokers, peddlers, agents, or solicitations shall be permitted on the premises except with the prior written consent of the District. (7) No release or discharge shall be made or permitted from the vessel into any waters of any matter whatsoever while the vessel is in or about the premises. Each live aboard vessel shall comply with all local, federal and State of California laws, rules and regulations, including those pertaining to navigational, marine sanitation devices and safety equipment. Live aboard vessels in the Woodley Island Marina equipped with holding tanks shall deposit all sewage and waste water in to the sewage pumping system provided by the District. (8) No business or commercial enterprise, including charters, shall be operated in or about the premises. (9) That no assignment transfer, sublease or other disposition of this Agreement or any rights hereunder shall be made by Lessee and any attempt to do so shall be null and void. Vessels shall not be leased or rented to third parties for the purpose of residency. Any transfer, assignment or subletting of the Live Aboard Permit without the written consent of the District is prohibited.

(B) Any non-transient commercial or recreational vessel leasing a berth for a period of 30 days or more shall be required to make application to the District for an annual Live Aboard Permit prior to persons residing or living aboard a vessel. The application shall identify the persons who shall live aboard the vessel.

(C) Lessee agrees that (1) Upon filing of an application for live aboard, an inspection of the vessel's suitability for live aboard. Live aboard vessels shall be in a seaworthy (ocean cruising) condition and of a design suitable for recreational or commercial operation on the waters of the Pacific Ocean. Live Aboard Permits shall not be granted for vessels such as houseboats, barges, floating homes, or other vessels not designed for or safely capable of navigating open waters. Vessels holding a Live Aboard Permit shall be inspected upon reasonable notice by the District at any time to determine if the vessel complies with all local, federal, State of California or District laws, rules and regulations. (2) The location of the live aboard vessel's berth shall be designated by the District and shall be at the convenience of the Marina. The number of permitted live aboard vessels shall not exceed twenty-four (24) in the Woodley Island Marina. (3) Only the registered owner of the vessel, the registered owner's family and crew members and employees of the owner shall be allowed to live on permitted vessels to the numerical limit set by the District. The District shall have the right in the Live Aboard Permit to limit the maximum number of persons living aboard a vessel. (4) No appurtenances, structures, or writings shall be placed on the exterior of a permitted live aboard vessel without the written permission of the District. (5) Holders of Live Aboard Permits shall agree to enhance Woodley Island Marina security and surveillance assistance to the District by calling attention of District attendant or staff to damage to any vessels on docks, unauthorized persons visiting docks or possible violations of the law. (6) District may issue an annual permit for live aboard upon a vessel. District may at any time forthwith terminate the Live Aboard Permit Agreement or live aboard status of the vessel for cause, non-compliance with the conditions of this Ordinance or the Live Aboard Permit Agreement or by giving thirty (30) days written notice of termination to the Permittee/Lessee.

9. Parking

- (A) Lessee may park one motor vehicle only in parking areas designated by the District for boat owners. The District has the right to regulate parking of motor vehicles including guests and invitees of Lessee. The use by Lessee of the District parking areas shall be as a licensee only. Lessee assumes all risk of loss or damage to persons or property, including any motor vehicle, while on District premises.
- (B) Vessel Trailers and work trailers shall not be permitted without approval from the District. All trailers must be checked in with the District office and pay the associated parking fee or will be subject to removal at owners' expense. Trailers shall be parked in designated areas. The District has the right to regulate parking of trailers.

10. Default

(A) In the event of any default by Lessee in the payment of rent or Lessee's other obligations hereunder, the District may forthwith terminate this Agreement and Lessee's rights hereunder without further notice in which event Lessee shall promptly surrender the premises, remove the vessel and pay to the District all sums to which the District may be entitled, including damages, damage to District's property, reasonable attorney's fees or other expenses or liability incurred by the District by reason of any such default.

(B) As an additional remedy to the District for any such default by Lessee, the District may, without terminating this Agreement, re-enter the slip and take possession thereof; provided, however, that no such re-entry shall be construed as an election to terminate unless written notice to this effect is given by the District to Lessee and the District may remove all persons on the vessel and property therefrom, transfer such property or vessel to a public warehouse, anchorage or elsewhere at the expense of Lessee and relet the premises for the account of Lessee. Lessee shall be responsible to the District for all cost of re-entry, repossession, handling, storage and anchorage charges, attorney's fees, marshal's or sheriff's fees, advertising and any other cost or expense to the District incurred by the District by reason of any default hereunder by Lessee or by reason of the District exercising any of its rights hereunder.

(C) Lessee acknowledges that the District has a lien upon the vessel and any property of Lessee located on the premises or under the control of the District to secure payment and performance of all obligations of Lessee hereunder which lien may be enforced by the District by using the procedure for enforcement of liens for documented vessels.

(D) In the event it is necessary to institute legal proceedings to enforce any of the terms herein, or in the event of the breach of this Agreement by Lessee, Lessee shall pay to District its reasonable attorney's fees as fixed by the court.

11. District Non-Responsibility

(A) The District shall not be liable in any manner or for any cause whatsoever for Lessee's vessel or its contents, gear and equipment thereof, or any loss or damage thereto howsoever occasioned and any use of District facilities, including moorage or storage, shall be at the sole risk of Lessee. Lessee acknowledges and agrees that the District has made and makes no warranties or representations, either expressed or implied, with respect to the present of future suitability or condition of District slips, facilities, walks, ramps, equipment, building, premises or other property under the control of the District. Lessee understands that District premises and facilities are located on lands owned by the District and Lessee agrees to indemnify and hold harmless the District, the Economic Development Administration, the California Department of Boating and Waterways and their respective officers, agents, and employees from and against all claims, demands, liability, damage and loss including attorney's fees actually incurred for injuries or death to persons, or property (including the District) by reason of any matter, act, failure, to act or omission arising out of or relating to the operation, use or possession of Lessee's vessel, this slip or District premises or facilities or parcel leased by Lessee, Lessee's family, agents, employees, business visitors or invitees occurring at any time during the existence of this Agreement.

(B) Lessee understands, acknowledges, and agrees that the depth of the Humboldt Bay at, near, and around the premises is subject to tidal influence and/or other causes (including, without limitation, natural sediment buildup) that may limit or prevent access to and from the premises using the waterways, depending on the size and depth of the vessel. Lessee understands and accepts such potential limitation on access to and from the premises and further agrees that the District shall not be liable for any such limitation of access to and from the premises. Lessee further understand, acknowledges, and agrees that the District has no obligation to remove any sediment buildup at, near, or around the premises to guarantee access to the premises with any frequency or schedule and that any such decision to remove sediment buildup at, near, or around the premises is left to the sole and absolute discretion of the Board of Commissioners, taking into account, among other considerations, budgetary demands, regulatory approvals, or the availability of equipment or labor.

12. Rules and Regulations

At all times Lessee shall comply and shall obtain the compliance of Lessee's family, agents, employees, business visitors and invitees with all laws, ordinances, rules and regulations including those of the Federal and State Government, the City of Eureka, and the District and the herein Agreement. Furthermore, Lessee shall, at all times, keep and maintain Lessee's vessel in an operational, seaworthy, safe and clean condition while said vessel is in said slip. Lessee irrevocably authorizes and appoints the District to remove Lessee's vessel and/or to remove any contents, gear or equipment from said slip to any other slip/berth or mooring in Humboldt Bay, or to place the same in storage at Lessee's expense if, in the discretion of the District, it may be necessary for the safety or security of the vessel or District property, or to repair District's facilities or for any other reason and the District shall have no liability for any loss or damage resulting therefrom or for any failure to move the same.

13. Indemnification

District does not hereby assume custody or possession of the vessel nor any responsibility whatsoever for the care or protection of same. Rather, Lessee hereby assumes all risk associated with the use and occupancy of the slip and agrees that District, its Directors, officers, agents and employees shall not be liable for any injury, including death, to any person caused by any use or occupancy of the slip or arising from any accident or fire or other casualty therein or thereabout or from any other cause whatsoever, nor shall District, its Directors, officers, agents or employees be liable for any loss of or damage to any vessel, gear, equipment, fittings, fixtures, contents and other articles belonging to Lessee or located in or about the slip or the marina. Lessee hereby agrees to indemnify and hold District, its Directors, officers, agents and employees harmless from all liability for any such injury, loss, damage, or claim, including, without limitation, reasonable attorney's fees and court costs.

14. Discharge of Waste

No person shall discharge human waste, fish parts, bilge water, garbage or refuse into the water of Humboldt Bay or upon the marina.

15. Securing Vessel

At all times during which vessel is berthed at the slip, Lessee shall cause it to be safely and properly secured in a manner acceptable to District. If District deems it necessary to resecure the vessel for any reason, Lessee agrees to pay a reasonable service charge for doing so plus the cost of all materials used therefor. However, District assumes no responsibility for the safety of the vessel and shall not be liable for fire, theft, or any damage to the vessel, its equipment, or any property in or on the vessel by reason of District's decision either to resecure the vessel or to not resecure the vessel.

16. Lessee's Care of Slip and Docks

Lessee shall not, without prior approval from the District, store any small boats, dinghies, skiffs, bait tanks, boat gear, power lines, water hoses or other personal property whatsoever at the slip (other than aboard the vessel) or on the docks or gangways adjacent to the slip, but shall keep the slip and said docks and gangways in a neat, clean and orderly condition, free and clear of all such items other than power lines and water hoses in use. No wheels, fenders, rubbing strips or other cushioning devices may be attached to a dock for the purpose of protecting hulls, without the prior approval of District. No alterations may be made to the docks by Lessee. No flammable or combustible materials shall be stored or left on the docks of the Marina. Lessee agrees to make a written report to District of any conditions existing on or about the marina which Lessee believes to be a hazardous condition, or which might develop into a hazardous condition.

17. Risk of Lessee

This permit and Agreement is for rental of space only, such space to be used at the sole risk of lessee and the Owner of the afore described vessel, and neither the District nor its Board of Harbor Commissioners, its Harbor Master, Marina Manager, employees or representatives, shall be responsible or liable to any extent or in any manner for the care or protection of the afore described vessel or its gear, equipment, or contents, or for any loss or damage of whatever kind or nature to said vessel, her gear, equipment, or contents howsoever caused or occasioned. Lessee hereby releases the District from all claims and causes of action therefore that exist or may arise in the future.

18. Termination

If the Board of Harbor Commissioners of the District determines that Lessee has failed to comply with the terms and provisions of its permit and Agreement or with the ordinances, rules and regulations promulgated from time to time by the District, for the safety of District's Marina this Permit and Agreement may be terminated forthwith by said Board of Harbor Commissioners of the District upon being so notified in writing by the District, Lessee shall immediately remove his vessel from the assigned berth and out of and away from District's facility.

19. Hold Harmless

Lessee covenants and agrees to indemnify and save harmless the District, its Board of Harbor Commissioners, and its Harbor Master, employees, and representatives, against any and all damages to property or injuries or death of any person or persons arising from Lessee's use of the District's facilities, or from intentional, careless, or negligent acts of conduct (or failure to act) of Lessee or his agents, employees, guests or representatives, and to further defend, indemnify and save harmless the District, its Board of Harbor Commissioners, Harbor Master, Marina Manager, employees, and representatives, against any and all claims, actions, proceedings, expenses and liabilities whatsoever arising therefrom or connected therewith.

20. Damage to District Property

Lessee agrees to pay, on demand of District, for all damage done to District's property or facilities by Lessee or the afore described vessel or by Lessee's agents, employees, or representatives.

21. Assignment and Subletting

Lessee shall have no right or power whatsoever to assign this Agreement or sublet the slip or any part thereof to any person or party whatsoever or for use by any other vessel whatsoever. No attempted transfer or assignment, whether voluntary or involuntary, by operation of law, under legal process or

proceedings, by receivership, in bankruptcy, or otherwise, and no attempted subletting, shall be valid or effective, but shall automatically terminate this Agreement.

22. Sale of Vessel

Any sale or transfer of legal title in and to the vessel above described shall serve as an automatic termination of this Agreement and all rights of Lessee, the new owner of the vessel in and to this Agreement or the berth/slip shall cease and terminate.

23. Tampering with or Boarding Vessels

Lessee, its agents, crew members, and employees shall not injure, damage, break, remove or tamper with any part of any vessel in the Marina, harbor, or waterway in Humboldt Bay, or to climb into or upon any vessel without the consent of the owner unless in the performance of official duties or to protect life and/or property.

24. Miscellaneous

(A) Waiver of any provision hereof by the District shall not be deemed a continuing waiver or waiver of any other condition.

(B) No alteration, amendment or modification hereof shall be effective unless in writing signed by Lessee and the District.

(C) This is the only Agreement between the parties pertaining or related to the slip and/or Lessee's vessel and no oral agreements exist between the parties as to any matters whatsoever.

(D) All notices shall be deemed served 72 hours after deposit in the U.S. mails, postage prepaid, certified mail, return receipt requested, addressed to Lessee at the address respective parties as shown herein.

(E) This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns.

(F) District retains the right to add to, alter, amend or modify any of the terms and conditions contained herein and said addition, alteration, amendment or modification by District shall become binding upon Lessee forthwith.

25. Marina Regulations

Lessee agrees to all of the provisions, terms and conditions of the Woodley Island Marina Rules and Regulations as stated in Ordinance No.9 of the Humboldt Bay Harbor, Recreation and Conservation District, which Rules and Regulations are incorporated herein by this reference and may be amended from time-to-time by the Board of Commissioners.

26. Insurance Requirements

Lessee agrees to maintain General Liability (Protection and Indemnity) Marine Watercraft coverage, including wreck removal and pollution coverage, with a minimum policy limit of \$300,000 The Humboldt Bay Harbor, Recreation and Conservation District, its officials, employees, and agents shall be named as additional insured on this policy. A current certificate of insurance shall be submitted and maintained with the Harbor Master. If the required insurance is not maintained, a fee of \$100 per month will be added to your account, per resolution 2019-15.

Humboldt Bay Harbor, Recreation, and Conservation District

By 

Title Marina Manager

Date: 3/27/23

(Lessee)

Date: _____