



**INDEPENDENT CONTRACTOR AGREEMENT**

This agreement (“Agreement”) is made by and between “Westpoint Harbor LLC” (hereinafter Harbor) and

**(NAME)** \_\_\_\_\_

**(ADDRESS)** \_\_\_\_\_

**(PHONE and FAX )** \_\_\_\_\_

**EMAIL** \_\_\_\_\_

**(hereinafter referred to as “Independent Contractor” or “Contractor”).**

In consideration for Harbor agreeing that Contractor, its employees, agents, contractors, family or guests may come onto Harbor’s premises for business or any other purposes, Contractor specifically agrees, for and on behalf of itself, its employees, agents, contractors, family and guests to the following terms and conditions:

1. Waiver and Indemnity. Contractor expressly agrees that vessels, ship yards, marinas and areas in and around shipyards, marinas and marine repair facilities can be hazardous to both property and persons, thereby posing a substantial risk of damage and injury to both property and persons. Such hazards include, but are not limited to slips, falls, flying and falling tools, vessels and other objects, toxic or noxious fumes, fires, explosions, falls overboard, drownings, prop wash, wave and wind damage, vessel collisions and vessel sinkings. Contractor expressly agrees, as a material part of the consideration for this Agreement, that Contractor hereby waives, expressly assumes the risk of, and releases Harbor from any and all liability for any claims, including subrogation, for damage, injury or death to Contractor, Contractor’s agents, employees, contractors, family, or guests that may occur for any reason whatsoever, even if said damage, injury or death occurs solely or partially as a result of negligence of Harbor, its agents, employees or contractors. Contractor also agrees to release, hold Harbor harmless and indemnify it from and against any and all damages or losses, expenses, fees for property damage or loss, including claims of subrogation, incurred or claimed solely or partially as a result of any negligence by Harbor, its agents, employees or contractors.
2. Insurance. Contractor shall at all times while it, its agents, employees, contractors, guests or family, and at Contractor’s own cost and expense, maintain liability, property damage and workers compensation insurance (which insurance shall provide primary rather than secondary coverage) with liability limits in amounts as required by law, if applicable, and sufficient to ensure

performance by Contractor of the hold harmless and indemnity provisions in Paragraph 1, and shall have Harbor expressly identified in the insurance policy as an additional named insured. Contractor shall, in any event, carry liability insurance and property damage insurance, with accidental pollution coverage, with limits of at least \$1,000,000.00. Harbor requires Contractor to provide evidence satisfactory to Harbor of compliance with Contractor's obligations to insure. Contractor's failure to comply with or demonstrate compliance with this provision, however, does not in any way constitute a waiver by Harbor of this provision.

3. Limitation on Damages If All Else Fails. The parties expressly agree that, even if the every other provision of this Agreement is deemed invalid, unenforceable or inapplicable, Harbor's liability, including on claims of subrogation, for loss or damage to any persons or property, including the Vessel, arising out of or relating to this Agreement shall have a maximum limit of no more than \$1,000, even if Harbor and/or its agents and/or employees are found to be partially or solely negligent.
4. Warranties and Exclusions. Contractor agrees that Harbor has excluded all warranties express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. Any warranties on the products sold or otherwise used by Harbor at any time and for any purpose are those made by the manufacturer, not Harbor. Contractor agrees that Harbor has not made any warranties whatsoever regarding anything, including but not limited to Harbor's premises, or any products sold or used, including but not limited to compliance with any applicable industry standards, or governmental regulations (OSHA, Coast Guard regulations, etc.) Harbor disclaims and excludes from this transaction any and all warranty obligations other than those which may be imposed by applicable law.
5. Notices. Any notice to either party to this Agreement by the other shall be deemed to have been properly given if sent by facsimile or mailed to said party by certified mail return receipt requested to the facsimiles or addresses appearing on the first page of this Agreement or such other facsimile or address or person as either party may designate by written notice to the other party hereunder. A notice hereunder shall be deemed to have been given as of the date it was received.
6. **DISPUTE RESOLUTION**. The parties expressly agree that to have all disputes, suits or claims arising out of or relating to this Agreement fully and finally decided by binding arbitration pursuant to the rules and procedures of the American Arbitration Association ("AAA") in San Mateo County, California. The parties expressly waive their right to a trial by jury and the right of appeal. The parties further agree that this Agreement shall be enforceable and any court having jurisdiction may enter a judgment upon any award rendered by the arbitrator(s).
7. No Joint Venture Or Agency. The parties hereto agree that this Agreement does not constitute a joint venture between the parties. Nothing herein contained shall be construed as constituting any party as the agent of the other party for any purpose.
8. Warranty of Authority/Parties to Agreement. Each party signing this Agreement warrants that he, she or it has the authority to bind the parties on whose behalf he, she or it is executing this Agreement, including those acting as agents or assignees of a party to this Agreement. Contractor agrees that all rights and obligations under this Agreement shall be binding upon Contractor's heirs, successors, assigns, insurers, principals, agents, employees, guests and

family members. This Agreement shall inure to the benefit of and be enforceable by Harbor and its respective successors and assigns.

- 9. Interpretation. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 10. Integration Clause. This Agreement constitutes the entire agreement and understanding between the parties concerning the subject matter hereof, and it supersedes and replaces any and all prior negotiations and agreements of any kind or nature whatsoever, written or oral.
- 11. Assignment. This Agreement may not be assigned by either party, nor may either delegate their duties under this Agreement, without the prior written consent of the other party given in such other party's sole discretion. Any assignee shall expressly assume in writing the performance of all the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date above stated.

**HARBOR:**

Westpoint Harbor LLC

By: Mark Sanders, President

(Signature) \_\_\_\_\_

**INDEPENDENT CONTRACTOR:**

By (Name) \_\_\_\_\_

(Title) \_\_\_\_\_

For and on behalf of (Company Name) \_\_\_\_\_

(Signature) \_\_\_\_\_

(Contractor's Insurer) \_\_\_\_\_

Policy Number \_\_\_\_\_

Expiration Date \_\_\_\_\_

**Certificate Naming Westpoint Harbor As Additional Insured Should Be Attached.**