



Ladysmith Maritime Society

www.ladysmithmaritimesociety.ca

P.O. Box 1030, Ladysmith, B.C., V9G 1A7

Tel: 250-245-0109 Fax: 250-245-0108

MOORAGE AGREEMENT

THIS MOORAGE AGREEMENT, made this ____ day of _____, 2011

BETWEEN:

LADYSMITH MARITIME SOCIETY
610 Oyster Bay Drive,
P.O. Box 1030, Ladysmith, B.C. V9G 1A7

(Hereinafter referred to as "LMS")

OF THE FIRST PART

AND:

(Insert name of owner/s of moored Marine Asset)

(hereinafter referred to as "Owner")

OF THE SECOND PART

WHEREAS:

- A. LMS is a non-profit society, organized under the Society Act of British Columbia, engaged, among other things, in the operation and maintenance of a Community Marina located at Block C of District Lot 2016, Cowichan Land District, hereinafter referred to as "**the Marina**";
- B. The Owner has legal right to and/or an insurable interest in the vessel, boathouse and/or floathome, hereinafter referred to as "**the Marine Asset**", described in Schedule A, which is attached hereto and forms part of this Moorage Agreement;
- C. The Owner wishes moorage for his/her Marine Asset at the Marina;
- D. LMS is willing to allow the Owner access to moorage on the terms and conditions set out in this Agreement;
- E. Attached hereto and forming part of this Moorage Agreement as applicable are:
 - i. Schedule A – Moorage Fees;
 - ii. Schedule B – Marina Rules and Regulations;
 - iii. Schedule C – Power Agreement;
 - iv. Schedule D – Boathouse Standards Agreement;
 - v. Schedule E – Liveaboard Agreement; and
- F. This Moorage Agreement is subject to change from time to time as directed by LMS and any new or amended clauses will be provided to the Owner with appropriate notice as prescribed by this Agreement.

NOW THEREFORE IN PURSUANCE OF THE PREMISES and in consideration of the covenants hereinafter contained, the parties agree as follows:

1. Applicable Law

The property law of this Agreement shall be the law of British Columbia and this Agreement shall also be deemed to be valid and enforceable in accordance with the law of any other jurisdiction. The parties intend all of their affairs and property to be governed by this contract and the law of British Columbia.

2. Term

This Moorage Agreement shall commence on the first day of April, 2011, or such later date as noted on page 1 of this agreement, and shall continue in effect until March 31, 2012 or until terminated in accordance with the terms and conditions of this Agreement, whichever date shall first occur. The Agreement may be renewed for further one year terms at the discretion of LMS, however, the Owner acknowledges there is no right to a renewal on the part of the Owner.

3. Moorage Berth

The parties agree that the Owner shall be assigned a Moorage Berth and the Owner shall utilize only that berth to moor his/her Marine Asset unless, however, the Owner has prior written consent of LMS to moor elsewhere in the Marina.

4. Moorage Fees

The Owner shall pay moorage fees to LMS for his/her Moorage Berth in accordance with Schedule A and pursuant to the following terms:

- a. Moorage shall be paid in advance;
- b. Monthly payments shall be by way of post-dated cheques dated the first of each month for the term of this contract;
- c. Interest shall be charged on unpaid Moorage Fees at a rate of 12% per annum, calculated monthly; and
- d. Dishonored cheques shall be subject to a \$15.00 fee per dishonored cheque and payable in addition to Moorage Fees.

5. Rights/Responsibilities of Owner

- a. The Owner agrees to abide by the rules and regulations of the Marina as set out in the attached Schedule C, as amended from time to time, and to ensure that his/her guests will do so as well;
- b. The Owner shall be responsible for ensuring that his/her Marine Asset is in good and safe condition imposing no hazard or risk to itself or to other Marine Assets in the Marina, or to the environment;
- c. The Owner agrees that environmental pumping of his/her Marine Asset and snow removal will be the responsibility of the Owner, and failure to honor that responsibility which results in LMS incurring costs to ensure these duties are met, will result in the associated costs of LMS being added to the Owner's Moorage Fees;
- d. Outside the normal maintenance of the Marine Asset such as washing, cleaning and waxing there will be no major refitting undertaken. This includes, but in no way limits, such things as grinding, spray painting, fiber glassing, or general wood construction. The definition of normal maintenance will be determined at the sole discretion of LMS, and if a cease and desist notice is given and not complied with, the Moorage Agreement will be cancelled and the Owner instructed to remove his/her Marine Asset from the Marina;
- e. Repairs to or replacement of portions of the Marine Asset will be undertaken by the Owner, at his/her expense, within thirty (30) days of being requested to do so by LMS. The Owner agrees to be responsible for all costs incurred by LMS should LMS be required to undertake emergency remedial work on behalf of the Owner;
- f. Nothing in this paragraph shall be construed as relieving the Owner from his/her responsibility to ensure that the Marine Asset is safe and secure;

- g. The Owner shall provide proof of insurance of his/her Marine Asset with an insurance carrier acceptable to LMS providing liability insurance in the minimum face value amount of \$2,000,000 and providing marine protection and indemnity coverage, which coverage must include bodily injury, property damage, removal of wrecks, and pollution. The Owner further agrees he/she shall be responsible for requesting that his/her insurance agency provide information to LMS in the case of modification, cancellation, or renewal of the insurance;
- h. The Owner acknowledges and agrees that this Agreement and his/her Moorage Berth shall not be assigned to anyone without the prior written consent and approval of LMS;
- i. The Owner acknowledges that he/she shall be responsible for paying or indemnifying LMS for any loss or damage to or disfigurement of LMS facilities, floats, wharfs, installations, premises and environment, howsoever caused, whether by the Owner, his or her guests, invitees, agents, servants, or Marine Asset; and
- j. The Owner may elect to terminate this Agreement, provided however, that 30 days written notice be provided to LMS prior to termination.

6. Rights/Responsibilities of LMS

- a. The parties acknowledge and agree that LMS may immediately terminate this Agreement with notice in any of the following circumstances:
 - i. breach or non-observance by the Owner of the terms of this Agreement including Schedules A, B, C, D, and E as applicable;
 - ii. non-payment of moorage fees past due 60 days or more;
 - iii. non-compliance with the Owner's responsibilities; or
 - iv. termination of the License Agreement between LMS and DL 2016 Holdings Corporation;
- b. The Owner and LMS acknowledge the right of LMS to move or remove the Owner's Marine Asset in one of the following circumstances:
 - i. breach or termination of this Agreement by the Owner as contemplated by this Agreement;
 - ii. in emergency situations as determined by LMS including when it is necessary for the protection and preservation of persons, property or the environment;
 - iii. optimization of moorage configuration; or
 - iv. facilitation of Marina construction or repairs;
- c. In the event a Marine Asset must be moved or removed by LMS for any reason as outlined above, save and except items 6b(iii) and 6b(iv), the Owner may be invoiced moving fees at a rate of \$25.00 per hour for each person involved in the move plus expenses incurred and these moving fees shall constitute additional Moorage Fees owed by the Owner; and
- d. It is understood by the parties that as security for payment of moorage fees, and all other obligations under this Agreement, the Owner grants to LMS a security interest in his/her Marine Asset and all personal property located on or about his/her Marine Asset and, if the Owner fails to pay Moorage Fees or other costs contemplated in this Agreement, LMS, may, at its option:
 - i. seize the Owner's Marine Asset and any personal property located on or about the Marine Asset;
 - ii. sell the Marine Asset and any personal property seized at public auction in the manner provided in the *Warehouse Lien Act* (British Columbia) without prejudice to all other rights and remedies of LMS including those remedies available under the *Personal Property Security Act* (British Columbia). All costs incurred by LMS (including lawyer's fees and disbursements) to recover Moorage Fees and other costs shall constitute additional Moorage Fees owed by the Owner.

7. Miscellaneous Provisions

- a. During the term of this Agreement, and subject to available space, the Owner may park a single vehicle in the lower parking lot adjacent to the Marina while the Owner is visiting the Marina or Marine Asset. Parking in the lower lot is restricted to a maximum of 18 consecutive hours. Parking for more than 18 consecutive hours is available in the upper lot. Violation may lead to the cancellation of this Agreement;
- b. Any notice or other communication required to be given under this Agreement shall be in writing, unless otherwise specified, and shall effectively be given if mailed in Canada by first class mail addressed or directed to the address specified on Schedule A or to such other address as the Owner may specify by notice in writing;
- c. The Owner acknowledges, accepts and agrees that the Owner and his/her guests are using the Marina at their own risk. The Owner agrees to be responsible for his/her guests;
- d. The Owner acknowledges receipt of full information and opportunity to examine the Marina and ask any related questions prior to executing this Agreement and accordingly, the Owner hereby releases and discharges LMS, its owners, directors, affiliates, employees and their successors, and assigns from any and all liabilities, suits, claims and demands, actions and damages (including lawyer's fees and disbursements) incurred by the Owner arising out of the use or intended use of the Marina including, without limitation, all claims for property damage, personal injuries or wrongful death. The Owner acknowledges this release is binding upon the Owner, his/her heirs, assigns and agents;
- e. The parties acknowledge and agree that this Agreement inure to the benefit of and be binding upon the parties and their respective heirs, administrators, personal representatives, successors, and assigns; and
- f. The Owner acknowledges that there have been no representations made by LMS which are not set out in this Agreement.

IN WITNESS WHEREOF the parties executed this Agreement on the ____ day of _____, 20__

LADYSMITH MARITIME SOCIETY

SIGNED AND DELIVERED BY OWNER

LMS Authorized Signatory

Marine Asset Owner Signature

Marine Asset Owner Signature