



MOORAGE AGREEMENT

THIS MOORAGE AGREEMENT, made this ___ day of _____, 2010

BETWEEN:

LADYSMITH MARITIME SOCIETY
616 Oyster Bay Drive,
P.O. Box 1030, , Ladysmith, BC, V9G 1A7

(Hereinafter referred to as "LMS")

OF THE FIRST PART

AND:

(Insert name of owner of moored vessel)

(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**"; and
- B. The Owner has legal right to and/or an insurable interest in the vessel, boathouse and and/or floathome, hereinafter referred to as "**the Marine Asset**", described in **Schedule B**, 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. Rules and regulations for the Marina are compiled in **Schedule A** to this Agreement attached hereto and form part of this Moorage Agreement.
- F. The rules and regulations of the Marina are subject to change from time to time as directed by LMS and any new and amended rules and regulations 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, 2010 and shall continue in effect until March 31, 2011 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 B** and pursuant to the following terms:

- a. Monthly payments shall be by way of post-dated cheques;
- b. Changes in Moorage Fees shall be subject to a 30 day notice provided by LMS in accordance with the notice provisions of this Agreement;
- c. Interest shall be charged on unpaid Moorage Fees at a rate of 12% per annum, calculated monthly;
- d. Dishonored cheques shall be subject to a \$15.00 fee per dishonored cheque and payable in addition to Moorage Fees.

5. Owner's Responsibilities

- a. The Owner agrees to abide by the rules and regulations of the Marina as set out in the attached **Schedule A**, 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. Repairs to or replacement of portions of Marine Asset, including but not limited to, mooring lines, will be undertaken by the Owner, at his/her expense, within a reasonable period of time of being requested to do so by LMS. The Owner agrees to be responsible for all costs incurred by LMS to affect these repairs if, after reasonable notice is given to the Owner by LMS, LMS is required to undertake these repairs on behalf of the Owner;
- e. 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;
- f. The Owner shall provide proof of liability insurance of his/her Marine Asset in the minimum face value amount of \$1,000,000 with an insurance carrier acceptable to LMS and an accepted policy form providing marine protection and indemnity coverage. The Owner further agrees he/she shall be responsible for requesting that his/her insurance agency provides information to LMS in the case of modification, cancellation or non-renewal;
- g. The Owner acknowledges and agrees that this Agreement and his/her Moorage Berth may not be assigned to anyone without the prior written consent and approval of LMS;
- h. 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, whether by negligence or otherwise;

- i. The Owner may elect to terminate this Agreement, provided however, that 30 days written notice be provided to LMS prior to termination.

6. Boathouse Construction

Although the parties acknowledge the Boathouses are the separate property of the Owner, it is agreed that the following specific terms and conditions apply to the use of enjoyment of the Boathouses:

- a. No construction, alteration, replacement or addition to any Boathouse in a designated Moorage Berth shall occur without the prior written consent and approval of L.M.S;
- b. Approval of such action by LMS will not be unreasonably withheld, however, LMS shall be entitled to any and all information, including plans and specifications from the Owner before approval or consent is given, and LMS shall be entitled to request from the Owner written assurance from a qualified builder, whose qualifications have been accepted by LMS, as to the acceptable quality of construction to be undertaken;
- c. If the construction fitness of a Boathouse becomes a concern to LMS, then LMS shall be entitled to request, and the Owner shall provide, a letter confirming the construction fitness of a particular Boathouse from a duly qualified builder, whose qualifications are acceptable to LMS;
- d. The Owner of a Boathouse shall be entitled to keep the Boathouse locked, however, a duplicate copy of a Boathouse key shall be left with the Wharfinger or other appropriate authorized representative of LMS so that access to a Boathouse may be undertaken by LMS in the event of any emergency;
- e. The Owner shall allow inspections of their Boathouses by LMS with reasonable notice to the Owner by LMS and save and except for emergency situations and for inspections, the Owner shall be entitled to quiet use and enjoyment of their Boathouse without interference or intrusion by LMS

7. Rights/Responsibilities of LMS

The parties acknowledge and agree that LMS may immediately terminate this Agreement with notice in any of the following circumstances:

- a. Breach or non-observance by the Owner of the terms of this Agreement, including the Marina rules and regulations (**Schedule A**);
- b. Non-payment of moorage fees past due 60 days or more;
- c. Non-compliance with the Owner's responsibilities as outlined in clause 5 above;
- d. Termination of the License Agreement between LMS and DL 2016 Holdings Corporation concerning the Marina;
- e. 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 the preservation of persons, property or the environment;
 - iii. optimization of moorage configuration; or
 - iv. facilitation of Marina construction or repairs.
- f. In the event a Marine Asset must be moved or removed by LMS for any reason as outlined above, save and except items 7e(iii) and 7e(iv), the Owner shall be invoiced moving fees at a rate of \$20.00 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.
- g. 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 owned by the Owner.

8. Miscellaneous Provisions

- a. During the term of this Agreement, the Owner has the right to park a single vehicle in the parking lot adjacent to the Marina while the Owner is visiting the Marina or Marine Asset. Parking shall be limited to a maximum of 72 consecutive hours per visit between June 1st and October 1st. Parking in the lower lot is restricted to a maximum of 12 consecutive hours. Parking that requires more than 12 consecutive hours is available in the upper lot.
- 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 the first page of this Agreement 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. LMS may make 15 amp power available to the Owner at a flat rate of \$20.00 per month provided the Owner agrees to the following:
 - i. only designated 15 amp outlets may be used as directed and approved by LMS;
 - ii. electrical cords and plugs to be of acceptable electrical code standards;
 - iii. non-acceptable electrical cords and plugs may be removed by LMS at its discretion.

Non-authorized use of power and/or outlets or violation of these conditions for power use will be considered a violation of this Moorage Agreement and subject to action by LMS per clause 7 of this Agreement.

- e. 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;
- f. 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;
- g. The Owner acknowledges that there have been no representations made by LMS, which are not set out in this Agreement, and further acknowledges that this Agreement including Schedules "A" and "B" constitutes the entire Agreement between LMS and the Owner.

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

Schedule A

Marina Rules and Regulations

1. All Moorers and their guests use the Marina and adjacent parking lot at their own risk. An adult must accompany children at all times. Pets are to be leashed at all times and owners must clean up after their pets.
2. No running, pushing or horseplay is permitted at the Marina.
3. Excessive noise, alcohol consumption, drug use, profanity or rudeness will not be tolerated at the Marina.
4. Quiet hours are between 9:00 pm and 8:00 am.
5. Vessels are not to be used as permanent residences without the prior written consent of LMS Boathouses are not to be used for overnight accommodation.
6. Vessels approaching or leaving the Marina shall proceed in a considerate and professional manner, at a speed not to exceed three knots.
7. Owners of a Marine Asset must ensure that the assets are properly and safely moored with mooring lines sufficient for all weather conditions. Dinghies must be safely tethered so as not to interfere with other vessels. Boathouse shackles must be adequately secured at all times.
8. Docks and fingers must remain unobstructed at all times. No sails, lines, canvas covers, dinghies, gear or other paraphernalia shall be left or stored on the dock or fingers.
9. Fuel may be stored only in approved storage containers. Any mixing, transferring or pumping of fuel or any flammable material is strictly prohibited.
10. No waste, including sewage or polluted bilgewater, shall be pumped or otherwise released from any **Marine Asset** at the Marina. Discharge of these substances into the Marina will be cause for immediate cancellation of a moorage contract, and the offending Marine Asset will be required to leave the Marina.
11. Garbage and recyclables must be placed in the containers provided.
12. Wheelbarrows, hoses and other Marina-provided equipment must be returned to Marina storage areas immediately after use.
13. Heaters (radiant, electric, gas or oil) must be attended while in use.
14. Hoses must have automatic shut-off nozzles and may be connected to Marina water lines only while vessel owner is present.
15. Electrical service may be utilized only with prior payment arrangements in place. Double Boathouses will be charged for double power. No hard wiring of electrical connections is permitted.
16. Diving or swimming from docks or moored vessels is prohibited.
17. Parking permission extends to vessel owners only and is governed by item 10 of the Agreement.
18. Rafting boat-to-boat, or boat-to-boathouse, is not permitted without the prior approval of LMS.
19. It is the expectation of the LMS Community Marina that the Owners shall be respectful of the members of the community visiting the marina, LMS volunteers, the Wharfinger and LMS Executive Director. Foul language, rude behavior and disrespect towards LMS assets or destruction or damage to LMS assets or sustained disrespectful behavior will not be tolerated and will be considered a violation of this Moorage Agreement and subject to action by LMS per clause 7 of this Agreement.

THE FOLLOWING MARINA RULES AND REGULATIONS ARE IN ADDITION TO AND APPLY ONLY TO LIVEBOARD VESSELS MOORED AT THE MARINA.

1. No vessel owner shall live aboard his/her Marine Asset for more than seven (7) consecutive days or for a total of ten (10) or more days in any 30 day period as this will constitute permanent residency at the Marina and may not be done without the consent of LMS
2. Only vessel owners, to a maximum of two (2) persons per vessel, may stay overnight aboard a vessel moored at the Marina.
3. At the discretion of LMS, an Owner may obtain permission to live aboard a Marine Vessel, provided the following terms and conditions are complied with by the Owner:
 - a. The Owner must sign a Moorage Agreement and only persons named in the Agreement may reside aboard the Marine Vessel;
 - b. The authorization to live aboard does not alter the rights and obligations of the Owner as specified in the Moorage Agreement;
 - c. Liveaboard tenants agree to enhance marina security by calling to the attention of the Wharfinger or marina management damage to any vessel, pier, dock or marina facility, unauthorized persons in the Marina, possible theft, suspicious behavior, unsafe practices by tenants or visitors and/or any other incidents which threaten the safety and security of the Marina;
 - d. Liveaboard tenants agree to enhance and participate in marina safety by being available to notify and/or secure boats during weather conditions that could potentially cause damage to the Marina and other boats in the marina;
 - e. A vessel that is being used only to liveaboard and not for the purposes of navigation of local waters is not eligible for liveaboard status and subsequent moorage;
 - f. Liveaboard tenants must own and occupy the liveaboard vessel as a primary residence and subleasing vessels to others will not be permitted.
4. It is understood and agreed by the Owner that a breach of any of the aforesaid terms and conditions for liveaboard tenants will result in the entitlement of LMS, at its sole discretion, to terminate the liveaboard tenancy and move or remove the Marine Asset as contemplated in the Moorage 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