



HOUT BAY YACHT CLUB
MARINA

Lot 82, Hout Bay Harbour, Cape Town, 7806
Club House +27 21 790 3110
www.hbyc.co.za
Marina +27 82 5777735
marina@hbyc.co.za

MOORING RIGHTS AGREEMENT

(Registration number: 2021/546021/08)
being a non-profit company with Members
("the Company")

DESIGNATED HBYC MARINA MOORING MD XX

The berth having the followings dimensions:

Maximum vessel Beam: **XXX**
Maximum Length Overall (LOA): **XXX**
Between:

HOUT BAY YACHT CLUB ("the Company")

Herein represented by **KRIS JARZEBOWSKI** in his capacity as Commodore for the time being of the Company, he being duly authorised thereto

And : **FIRST NAME SECOND NAME SA ID OR PASSPORT # 0000000000.**
(Hereinafter referred to as the MOORING RIGHT HOLDER)

1. DEFINITIONS

In this Agreement, unless repugnant to the context, words importing the singular shall include the plural and visa versa, words importing the masculine gender shall include the other two genders and the following words and phrases shall have the meaning ascribed to them, viz;

- a. Company shall mean the Hout Bay Yacht Club represented by its General Committee in office from time to time
- b. MARINA shall mean the walk-on marina structure and the access bridge. The MARINA shall be managed by the Company who may appoint a MARINA MANAGER to oversee the day-to-day operations of the MARINA.
- c. MOORING RIGHT HOLDER may be a natural person or an incorporated person whether as a Close Corporation, Company or Trust ("Legal Entity"). A Legal Entity shall nominate at least one duly authorised natural person to conduct all of the aforementioned legal person's affairs, of whatsoever nature, at the Company. The Mooring Right Holder shall have rights of use only.
- d. VESSEL shall mean the vessel owned by the MOORING RIGHT HOLDER named :

- e. with residential address at _____
- f. which complies with the Beam and Length Overall restrictions of the DESIGNATED MOORING.
- g. SUBSTITUTE VESSEL shall mean any vessel other than the MOORING RIGHT HOLDER'S original VESSEL which complies with the Beam and Length Overall of the DESIGNATED MOORING.
- h. MOORING AREA shall mean the area of water in Hout Bay Harbour allocated for the use of the Company and shall also include any area within the harbour over which the Company may either now or in the future exercise control.

- i. DESIGNATED MOORING shall mean the specific mooring space allocated to the MOORING RIGHT HOLDER for the mooring of the VESSEL, including any substitution thereof in terms of Clause 9.0.
- j. HARBOUR DUES shall mean the fee in force and payable as determined by the regulatory authority of the STATE from time to time.
- k. MOORING RIGHT LEVY shall mean the fee in force from time to time which covers maintenance, security, insurance cover, electricity, administration, as determined by the Company and payable by the MOORING RIGHT HOLDER, which fee shall include all such amounts as the Company may decide to cover including, but not limited to, general staff employment costs, day-to-day maintenance costs of the MARINA and insurance premiums.
- l. REFURBISHMENT LEVY shall mean the fee in force from time to time as determined by the Company payable by the MOORING RIGHT HOLDER. This fee shall cover any refurbishment of the MARINA required due to its deterioration over time including due to the harsh marine environment in which the MARINA is located.
- m. SPECIAL LEVY shall mean the fee determined by the Company from time to time payable by the MOORING RIGHT HOLDER, which fee shall include any extraordinary expenses related to the maintenance of the MOORING AREA not covered by the MARINA MAINTENANCE LEVY.
- n. MEMBER shall mean a Temporary, Ordinary or Life Member of the Company, provided that nothing herein shall be construed as prohibiting the Company in the exercise of its reasonable discretion of including any other class of member.
- o. STATE shall mean the Government of South Africa represented by the Department of Public Works, Sea Fisheries or Dept of Environmental Affairs or their respective successors in title with whom the Company has a formal agreement in respect of their usage regarding the MOORING AREA.
- p. COMMERCIAL VENTURE shall mean the active management or operation of a business, provision of goods and services, or practice of a profession.

2. TERMS

AND WHEREAS the Parties have agreed that:

- a. The MOORING RIGHT HOLDER shall have the sole and exclusive right to the DESIGNATED MOORING, subject to the Beam and Length Overall (LOA) restrictions as stated herein not being exceeded or such amended restrictions that may have been agreed to in writing by the Company
- b. The MOORING RIGHT HOLDER shall have a right to access the MARINA from land to the DESIGNATED MOORING AREA via floating jetties.
- c. The MOORING RIGHT HOLDER shall have a right to dispose of the aforesaid rights to a third party subject to the terms of this Agreement.
- d. Should any MOORING RIGHT HOLDER hold more than one MOORING RIGHT, such holder shall only be entitled to one vote at any MOORING RIGHT HOLDERS' meeting.
- e. The MOORING RIGHT HOLDERS shall have an obligation, in conjunction with the MOORING RIGHT HOLDER, to fund the MOORING RIGHT LEVY, the REFURBISHMENT LEVY and any SPECIAL LEVY required to operate and maintain the MARINA at a level determined by the Company.
- f. The owners of all vessels moored on the Marina are liable and obliged to pay for all HARBOUR DUES at a rate as gazetted from time to time by the State. A MOORING RIGHT HOLDER who has a VESSEL moored at the MARINA, or has privately sub-let his/her DESIGNATED MOORING, shall be liable for and pay all the applicable HARBOUR DUES pertaining to the relevant MOORING RIGHT.

3. DURATION

- a. The rights granted herein shall, subject to the conditions herein set forth, endure for so long as the MOORING RIGHT HOLDER is not in breach of the provisions of this

Agreement and/or for so long as the Company continues to enjoy control over the MOORING AREA, whichever period is shorter.

- b. Notwithstanding anything to the contrary herein contained, upon the death of a MOORING RIGHT HOLDER, his/her Executor shall on behalf of the MOORING RIGHT HOLDER'S Estate be entitled to exercise the MOORING RIGHT HOLDERS' rights as set out in this Agreement.

4. PAYMENT OF ANNUAL MOORING RIGHT LEVIES, SPECIAL LEVIES AND HARBOUR DUES

The MOORING RIGHT HOLDER undertakes to and shall be liable to pay his/her pro rata share of the MOORING RIGHT LEVY, the REFURBISHMENT LEVY, the HARBOUR DUES and any SPECIAL LEVY within 30 days of the date of delivery of the relevant account sent by email, SMS or other delivery (including by courier) to the latest known address in each case available to the Company. The aforesaid fee shall attract interest or penalties at a rate determined by the Company provided that such interest rate shall not exceed the ruling prime rate permissible by South African law.

5. MOORING REGULATIONS

- a. The Company may from time to time issue MOORING REGULATIONS in regard to the use and maintenance of vessels berthed on the MARINA, the minimum acceptable mooring standards (whether in respect of maintenance, safety, access and/or usage) and any other matters as determined from time to time by the Company Committee
- b. The MOORING RIGHT HOLDER undertakes to comply at all reasonable times with such MOORING REGULATIONS forthwith on receipt of same.
- c. All MOORING REGULATIONS shall be displayed on the Marina Notice Board and a copy shall be emailed/hand delivered to all MOORING RIGHT HOLDERS and shall be deemed to come into effect within 10 days of the copy thereof having been delivered or deemed to be delivered.

6. DISPOSAL OF MOORING RIGHT

Should a MOORING RIGHT HOLDER wish to dispose of his Mooring Right, together with or excluding his vessel, he/she may do so, provided that:

- a. The Proposed Sale of Mooring Right form is completed in full and submitted to the MARINA MANAGER.
- b. The proposed purchaser of the MOORING RIGHT is a member of the Company or agrees in writing to become a member of the Company.
- c. No special dispensation granted to a MOORING RIGHT HOLDER with respect to the Beam and Length Overall (LOA) restrictions of a DESIGNATED MOORING may be on sold. Upon the sale of a DESIGNATED MOORING, the original restrictions shall apply and any special dispensations (if any) required by the purchaser of a Mooring Right must be agreed to in writing by the Vice Commodore Operations and MOORING RIGHT HOLDER.
- d. The purchase price of the MOORING RIGHT as agreed between the seller and the purchaser shall be paid to the Company by the purchaser by electronic funds transfer into the Marina Bank account as nominated by the Company.
- e. The Company shall then:
 - i. Deduct all amounts owing to the MARINA by the Seller (if any).
 - ii. Deduct a 5% Administration fee from the balance; and
 - iii. Pay the balance to the Seller within 30 days, or credit the account of the Seller, if requested in writing.

- iv. Should any dispute arise over the fair market value of the MOORING RIGHT, then such dispute shall be referred to a panel of three arbitrators, two of whom shall be appointed by the Company, both being Mooring Right owners, and one of whom shall be appointed by South African Sailing (SAS).

7. RENTAL POOL

- a. The MOORING RIGHT HOLDER may elect to enter his/her DESIGNATED MOORING into the Rental Pool administered by the MARINA MANAGER provided that;
 - i. The Rental Pool Form is completed in full and submitted to the MARINA MANAGER. Alternatively, an email may be sent to the Marina Manager at marina@hbyc.co.za, stating in advance the start date of the rental pool participation and duration. No retrospective dates shall be permitted.
 - ii. The Company Accounts Department shall collect all rentals.
- b. A % contribution to the Keelboat fund and a % Administration Fee shall be deducted by the Company from all mooring rentals collected. The total amount deducted shall not exceed 15%. The "Keel Boat" fund will be utilised as set out in the HBYC Marina rules and bye-laws.
- c. Where a DESIGNATED MOORING AREA has been in the pool for a period of less than twelve (12) months then the relevant MOORING RIGHT HOLDER shall receive a pro-rata credit.
- d. No private sub-letting of a DESIGNATED MOORING AREA shall be permitted. Where existing private letting agreements are in place, these will be honoured until such time as the mooring right is sold or the private letting agreement is terminated, whichever is earlier.
- e. Where the Mooring Rights Holder is in "Debit" to the Company (i.e. in arrears), the berth shall NOT receive any rental pool monies for the period that the account remains in arrears.

8. CALCULATION OF RENTAL DISTRIBUTION

- a. Distribution is calculated annually, normally on 31 December for the immediately preceding year.
- b. The amount for distribution is determined by the Company committee and will be based on a percentage of the total rental revenue received, i.e. excluding outstanding rentals at that time.
- c. Legal costs to recover rental pool monies, litigation costs are to be deducted from the total rental revenue before distribution.
- d. Should outstanding rentals or bad debts be collected post the distribution date, these will form part of the rental pool revenue in the year that these are collected (i.e. distributions will not be back-dated).
- e. Should a member have left the rental pool or sold his/her mooring right, any claim to a portion of the distribution in respect of rentals collected for past year(s), shall be forfeited.
- f. The Rental Pool Distribution is based on an annual accumulation of rental pool income for all berth owners who have participated for the relevant year.
- g. The rental pool calculation allows for a number of categories of marina berth for which rental is determined annually. Whilst the percentage distribution is the same, more expensive berths will receive a greater pro-rata allocation based on the rentals earned for the category of marina berth. The categories of marina berths are as follows:
 - a. MDA to MD 30
 - b. MD 66 to MD `E`
 - c. MD67 to MD 90
 - d. MD114 to MD100
 - e. MD 101 to MD99

Rates are reviewed annually by the Company and set as effective at 01 January of each year as published in the HBYC Marina Rate Card.

9. CONDUCTING OF A COMMERCIAL VENTURE ON THE MARINA OR A VESSEL WHILST BERTHED ON THE MARINA

- a. The conduct of a commercial venture for the benefit of the MOORING RIGHT HOLDER or any RENTER of the mooring, either on the marina or from a vessel whilst it is berthed on the marina, is prohibited.
- b. For the purposes of this clause the care and maintenance of a vessel not owned by the MOORING RIGHT HOLDER or any RENTER of the mooring shall not be deemed to be a commercial venture.

10. SUBSTITUTION OF VESSEL

- a. The MOORING RIGHT HOLDER shall have the right to moor a SUBSTITUTE VESSEL on his DESIGNATED MOORING provided that such a vessel complies with the Beam and Length Overall (LOA) restrictions of that mooring and that the prior consent of the Company will have been obtained in writing prior to the mooring of the SUBSTITUTE VESSEL. The Company VC Operations shall not unreasonably withhold such consent.
- b. No person may live-aboard a SUBSTITUTE VESSEL for more than 72 hours.

11. RIGHT TO MOVE VESSEL

- a. The MARINA MANAGER has the right to request a MOORING RIGHT HOLDER to temporarily move his/her vessel for the purpose of maintenance, repair, refurbishment or safety reasons. In the event of the MOORING RIGHT OWNER failing to remove his VESSEL within seven (7) days of so being requested, the MARINA MANAGER shall be entitled to move the VESSEL at the MOORING RIGHT HOLDERS' risk.

12. ALTERATION TO MARINA

- a. The MOORING RIGHT HOLDER undertakes not to make any additions or alterations to the MARINA of which his DESIGNATED MOORING may form part without the prior consent of the MARINA MANAGER. Should the MOORING RIGHT HOLDER cause any damage to the MARINA then he/she shall be liable for the cost to the Company of making good such damage.

13. RE-SITING OF MARINA

- a. The Company shall be entitled, at the expense of the MOORING RIGHT HOLDERS, to move the MARINA to another part of the Hout Bay Harbour area to which the MARINA may be moved in terms of any agreement between the Company and the STATE.

14. PUBLIC LIABILITY INSURANCE

- a. It is recorded that the Company has taken out and maintains in force public liability cover in respect of the MARINA.
- b. The Company shall retain and maintain such cover and it shall be the responsibility of the Company to ensure that there is always valid and sufficient public liability cover in respect of the MARINA, the sufficiency of such public liability cover being at the discretion of the Company.
- c. The premiums in respect of such public liability cover shall be borne by the body of MOORING RIGHT HOLDERS and forms part of the Mooring Right Levy.

15. MARINA INSURANCE

- a. It is recorded that the Company has taken out insurance cover in respect of the MARINA structure.
- b. The Company shall retain and maintain such cover and it shall be the responsibility of the Company to ensure that there is always valid and sufficient cover in respect of the MARINA, the sufficiency of such cover being at the discretion of the CLUB.
- c. The premiums in respect of such MARINA cover shall be borne by the body of MOORING RIGHT HOLDERS and forms part of the Mooring Right Levy.

16. BREACH, PENALTIES, AND TERMINATION OF MOORING RIGHTS

- a. All the rights granted to a MOORING RIGHT HOLDER may be rescinded, cancelled and terminated in any of the following events:
 - b. If a MOORING RIGHT HOLDER ceases for any reason to be a member of the Company.
 - c. If a MOORING RIGHT HOLDER fails to pay timeously on due date any HARBOUR DUES, MOORING RIGHT LEVIES, SPECIAL LEVIES or any other amount due to the MARINA or Company and thereafter fails for a further period of 21 days after receipt under cover of a hand delivered letter or email or SMS of a demand to make such payment including interest, if any.
 - d. If a MOORING RIGHT HOLDER commits a breach of any of the terms and conditions of this Agreement or breaches any of the MOORING REGULATIONS and fails to remedy such breach to the satisfaction of the Company within twenty one (21) days after due written notice will have been given to him/it calling upon him/it to do so.
 - e. Upon termination of a MOORING RIGHT HOLDER'S rights under this Agreement, then any vessel moored in the DESIGNATED MOORING shall be removed within seven (7) days after the date of termination failing which the vessel may be removed from the HBYC's Marina.
 - f. The removed vessel shall be placed in a location determined by the Marina Manager and the Company Directors who shall not be liable for any damages caused during the removal process. All costs and expenses of the MOORING RIGHT HOLDER by the Company shall be invoiced directly to the Mooring Right Holder who shall settle directly with the Company.
 - g. Upon termination of a MOORING RIGHT HOLDER's rights under this Agreement then the MOORING RIGHT HOLDER must, subject to compliance with Clause 6 of this Agreement, dispose of his DESIGNATED MOORING RIGHT within one (1) month of receipt of termination failing which it shall be sold out of hand or by public auction and only the net proceeds from such sale, after payment of all costs and outstanding monies including interest shall be paid to the MOORING RIGHT HOLDER.
 - h. Payment breach and Deceased Estate. In the event of a deceased estate, same as per clause above shall apply with the following exceptions:
 - a. If a payment plan has been provided in writing and approved by the main committee of HBYC, it may be applied for the given period. No defaulting against an approved payment plan will be permitted.
 - b. In the case of a deceased estate the executor has to notify the Company in writing / email and will be sent the monthly account with normal rates for rental and or any Marina fees that are applicable to the Berth and or marina. Normal overdue interest rates as determined by the committee will apply. The Berth(s) may be placed in the Rental Pool if requested for the duration of the sale or repossession of the Berth as per paragraph 6.0 of this MRA. Should the deceased bequeath the Berth (s) to a beneficiary, the normal membership application to HBYC will apply and if not successful the Berth will have to be sold as per above clause.

17. SOLE AGREEMENT

- a. This Agreement constitutes the whole agreement between the parties; and
- b. No undertaking or representations of any nature whatsoever, other than as set out herein have been given to or by either of the parties;
- c. No alteration or variation of this Agreement shall be of any force or effect unless it is recorded in writing and signed by the parties;
- d. This Agreement supersedes all previous agreements and understandings between the parties.

18. SPECIAL MEETING OF MOORING RIGHTS OWNERS

- a. A Special Meeting of MOORING RIGHT HOLDERS may be convened subject to the following conditions:
 - i. The Company represented by the directors arranges such a meeting.
 - ii. Such a meeting is called for by not less than 10% of the MOORING RIGHT HOLDERS in good financial standing. Such a request shall be submitted to the Company Secretary or Marina Manager in writing and shall be signed by all of the MOORING RIGHT HOLDERS requesting such a meeting. The request shall also contain the proposed resolution(s) to be considered and voted upon at the Special Meeting. The Company shall within fourteen (14) days of receipt of such a request issue a Notice of Special Meeting.
- b. For the purposes of clause above:
 - i. The Notice of the Special Meeting shall contain the resolution(s) to be considered and voted upon at the Special Meeting. Notice of a Special Meeting shall be deemed to have been duly given if sent by ordinary mail to all MOORING RIGHT HOLDERS at their last known address or by email to the last known email address entered in the Company's records provided no notice of non-delivery is received , not less than fourteen (14) clear days before the date of the meeting.
 - ii. The quorum at a Special Meeting shall be at least three 10% (Ten percent) of MOORING RIGHT HOLDERS, either present at such a meeting, or included by electronic presence or duly represented by proxy.
 - iii. Resolution(s) shall be passed if supported by 75% of the MOORING RIGHT HOLDERS present or duly represented at the meeting.
 - iv. A MOORING RIGHT HOLDER wishing to vote but whose account is in arrears will forfeit the right to vote. A member in good standing may vote by proxy, provided that he/she specifies on the proxy form signed by himself/herself his/her vote for or against the resolutions proposed and further may nominate a MOORING RIGHT HOLDER who attends the meeting to vote on his/her behalf at his/her discretion on any amended resolution. Such proxy form to be lodged with the Company Secretary before the commencement of the meeting.
 - v. No business other than that specified in the Notice of Meeting shall be voted upon at the meeting so called.

19. NO WAIVER

- a. No relaxation which any of the parties may permit any other party at any time in regard to the fulfilment of their obligations under this Agreement shall prejudice or be regarded as a waiver of any of their respective rights under this Agreement in any manner whatsoever.

