

MOORING RIGHT AGREEMENT
Between
ROYAL CAPE YACHT CLUB

(Herein represented by in his capacity as Commodore of the Club he being duly authorised hereto by a resolution of the General Committee passed at a meeting held on the 26th March 1985).

And

1. INTERPRETATION

In this agreement, unless repugnant to the context, words importing the singular shall include the plural and vice versa, words importing the masculine gender shall include the other two genders and the following words and phrases shall have the meanings ascribed to them . viz. : -

- 1.1 CLUB shall mean Royal Cape Yacht Club represented by its Committee in office from time to time;
- 1.2 OWNERS shall mean and shall include any successor to the rights herein granted in terms of paragraph 6.2.
- 1.3 YACHT shall mean the OWNER'S YACHT "", which is recorded to be in Category "" and shall include any replacement thereof in terms of paragraph 9.
- 1.4 CATEGORY shall mean the category of yacht into which the YACHT falls, it being recorded that all yachts on Club moorings are divided into the following categories, viz.:
 - CATEGORY A : Yachts of an overall length up to and including 8 metres.
 - CATEGORY B : Yachts of an overall length of more than 8 metres up to and including 11.5 metres and with a displacement not exceeding 10 metric tons.
 - CATEGORY C : Yachts of an overall length of more than 11.5 metres up to and including 15 metres and with a displacement not exceeding 10 metric tons.
 - CATEGORY D : Yachts of an overall length of more than 11.5 metres up to and including 15 metres and with a displacement exceeding 10 metric tons but not exceeding 15 metric tons.
 - CATEGORY E : Yachts of an overall length of 20 metres and yachts with a displacement not exceeding 20 metric tons.

Bowsprits and/or bumpkins exceeding in total 1m in length shall be included in the measurements of length overall.

CATAMARAN MARINAS:

- CATEGORY A : Catamarans of an overall length up to and including 8 metres.
- CATEGORY B : Catamarans of an overall length of more than 8 metres up to and including 11.5 metres.
- CATEGORY C : Catamarans of an overall length of more than 11.5 metres up to and including 15 metres with a displacement not exceeding 10 metric tonnes.
- CATEGORY D : Catamarans of an overall length of more than 11.5 metres up to and including 15 metres with a displacement exceeding 10 metric tonnes but not exceeding 15 metric tonnes.

- 1.5 MOORING RIGHT shall comprise all rights granted to the OWNER in terms of this agreement.
- 1.6 YACHT BASIN shall mean the **SMALL CRAFT BASIN** Cape Town harbour and shall include all areas within the Table Bay Harbour limits area over which the CLUB may either now or in the future exercise control.
- 1.7 DESIGNATED SPACE shall mean the specific mooring space in the YACHT BASIN allocated to the OWNER for the mooring of his YACHT, including any substitution thereof in terms of paragraphs 9 or 10.
- 1.8 ALLOCATION FEE shall mean the fee in force from time to time as determined by the CLUB which shall be payable by a MEMBER of the Club upon location to him of a mooring space for a particular category of yacht.
- 1.9 ANNUAL MOORING FEES shall mean the fee in force from time to time as determined by the CLUB payable by members of the CLUB annually for the mooring of yachts in the YACHT BASIN which fee shall include such amounts as the CLUB may decide to cover harbour dues, maintenance costs of moorings, marinas, anchors, chains, plant and machinery, equipment, compulsory insurance premiums, contribution to a fund for ultimate replacement and such other items as the CLUB in its discretion may from time include but excluding the costs of the mooring lines referred to in paragraphs 5.2 and 5.3.
- 1.10 MEMBER shall mean an Ordinary member, a Life member or an Honorary Life member of the CLUB provided that nothing herein shall be construed as prohibiting the CLUB in the exercise of its reasonable discretion of including any other class of member.
- 1.11 MARINA shall mean the pontoon walkways and finger jetties alongside which members are allocated mooring places in the YACHT BASIN.
- 1.12 LIVING-A-BOARD

No mooring right gives the Owner/Third Parties the right to live aboard any vessel in the Royal Cape Yacht Club Basins. The right to live aboard a yacht can only be granted by the General Committee on application, which reserves the right to charge a fee that may vary from time to time.

2. MOORING RIGHT

By reason of the existing allocation the Club hereby grants the OWNER the right to moor his YACHT in the DESIGNATED SPACE number “.....” which is recorded to be in CATEGORY “.....“ previously owned by who sold his rights to the OWNER during January 2010.

3. DURATION

The rights herein granted shall, subject to the conditions herein set forth, endure for so long as the OWNER remains a MEMBER of the CLUB in good standing or for so long as the CLUB continues to enjoy control over the YACHT BASIN, whichever period is the shorter.

4. ANNUAL MOORING FEES

The OWNER undertakes to pay the annual mooring fees on due date.

5. MOORING OF YACHT

- 5.1 The OWNER undertakes to comply with such rules and regulations as the CLUB or competent authority may from time to time prescribe for the proper mooring of yachts.
- 5.2 The OWNER undertakes to maintain the lines with which he attaches his yacht to his mooring in good and proper condition, whether such mooring consists of a marina space or of a trot mooring.
- 5.3 The OWNER agrees that in the event of the CLUB considering it necessary to replace any part of the lines with which he attaches his yacht to his mooring, it shall be entitled to do so at the expense of the OWNER who undertakes to settle the amount involved upon demand.

Notwithstanding anything herein contained it is recorded that the OWNER shall at all times remain solely responsible for the proper securing of his yacht to his mooring.

5.4 Duties of an owner

- 5.4.1 A yacht moored in terms of this agreement must
 - (a) at all times hold a valid and current Certificate of Fitness issued as required by SAMSA regulations where required and complies with the RCYC safety requirements and
 - (b) sail from the harbour at least 5 times in any 12 month period.
- 5.4.2 Failure to comply with either or both of the above will entitle the Club to issue a notice requiring the owner to comply by procuring a valid and current Certificate of Fitness and/or by causing the yacht to sail from the harbour within 3 calendar months of the issuing of such notice.
- 5.4.3 Should the notice referred to in clause 5.4.2 above not be complied with within 3 months from the date thereof, the Club shall have the right to remove the yacht from the water and to store it at the expense of the owner. All costs and expenses incurred by the Club in respect of removal, transport, storage and the like shall be payable and/or recoverable from the owner on demand. The Club will in these circumstances have the right to terminate the agreement without further notice to the owner and to regain possession and/or occupation of the mooring without refunding the allocation fee.
- 5.4.4 The owner of any yacht that has been removed from the water and stored in terms of clause 5.4.3 above, shall remove the yacht from storage within 30 days of the yacht having been placed in storage and within the same period settle any unpaid mooring fees or any other amounts owed to the Club by the owner.
- 5.4.5 If the owner does not remove the yacht within the aforesaid 30 days or if the owner remains in default of any payment of any amount to the Club, the Club shall be entitled without further notice to the owner to sell the said yacht by whatever means it chooses and to recover all costs and expenses incurred including the costs of auction from the amount so recovered and to recover the balance, if any, from the owner.

- 5.4.6 Any surplus after deduction of the costs incurred by the Club in removing, transporting, storing and selling the yacht as well as any unpaid mooring fees, shall be paid to the owner.

An owner may be exempt from complying with the above terms only if permission is obtained from the Club in writing."

6. DISPOSAL OF YACHT

- 6.1 Should the Owner dispose of his YACHT but wish to retain his MOORING RIGHT he may do so provided that -

- (a) he notifies the CLUB thereof in writing;
- (b) he continues to pay the ANNUAL MOORING FEE attaching to his DESIGNATED SPACE;

in which event the CLUB shall be entitled to make use of the DESIGNATED SPACE in such manner as it pleases, including the right to delegate the use thereof for its benefit until the OWNER again requires its use for the mooring of his own YACHT.

- 6.2 Should the OWNER dispose of his YACHT and wish to include the MOORING RIGHT in such disposal he may do so, provided that -

- (a) he notifies the CLUB thereof in writing;
- (b) the person who acquires his YACHT is a MEMBER of the CLUB or becomes a MEMBER of the CLUB within four (4) months of such acquisition or within such brief extended period as the CLUB may in its reasonable discretion decide;
- (c) the person who acquires his YACHT agrees to be bound by all the terms and conditions of this agreement;

in which event this agreement shall be endorsed by the CLUB to indicate that all the OWNER'S rights in terms hereof shall have passed to the person who so acquired the YACHT.

- 6.3 Notwithstanding anything to the contrary herein contained upon the death of the OWNER his Executor shall on behalf of the OWNER'S estate be entitled to exercise the OWNER'S rights as set out in paragraph 6.2.

7. TEMPORARY VACATING OF MOORING SPACE

- 7.1 Should the OWNER wish to temporarily vacate his DESIGNATED SPACE for a period in order to go cruising or for any other reason, he may retain his MOORING RIGHT provided that he continues to pay the ANNUAL MOORING FEE attaching to his DESIGNATED SPACE in which event the CLUB shall be entitled to make use of his DESIGNATED SPACE in such manner as it pleases including the right to delegate the use thereof for its benefit until the OWNER again requires its use for the mooring of his own YACHT.

- 7.2 Should the OWNER intend vacating his mooring for more than three (3) months he shall, in addition, be obliged to notify the CLUB in writing of his intention to do so and shall, prior to his return, give the CLUB not less than two weeks notice of his expected date of return. Nothing herein contained shall be construed as preventing the CLUB from delegating the use of the DESIGNATED SPACE as it deems fit for its own benefit in the event of the OWNER failing to comply with any of the above provisions.

8. TERMINATION OF MOORING RIGHT

- 8.1 Should the OWNER at anytime wish to give up his MOORING RIGHT he shall notify the CLUB

of that fact in writing in which event -

- (a) the CLUB shall be entitled to terminate this agreement against payment to the OWNER of the then current allocation fee; or
 - (b) if the CLUB does not exercise its right so to terminate, the OWNER shall be entitled to dispose of his MOORING RIGHT to any other MEMBER of the CLUB and upon such disposal this agreement shall be endorsed by the CLUB to indicate that all the OWNER'S rights in terms hereof shall have passed to the purchaser to whom the rights are sold, provided that such purchaser shall agree in writing to be bound by all the terms and conditions of this agreement.
- 8.2 This agreement shall, subject to the provisions of paragraph 8, terminate immediately upon termination of the OWNER'S membership of the Club.
- 8.3 Should this agreement be terminated for any reason whatsoever the provisions of paragraph 8.1 shall mutatis mutandis apply as if the OWNER had given up his MOORING RIGHT.

9. REPLACEMENT OF YACHTS

- 9.1 Should the OWNER wish to replace his YACHT he may do so in the following circumstances:-
- 9.1.1. if the replacement yacht fits into the DESIGNATED SPACE (as to which the decision of the CLUB shall be final) he may do so as of right provided the replacement yacht is not of a greater category than the former yacht.
 - 9.1.2. if the replacement yacht is too large for the DESIGNATED SPACE but there is another mooring space of the same CATEGORY as the DESIGNATED SPACE available into which the replacement yacht fits (as to which the decision of the Club shall be final), the CLUB shall substitute the latter space for the DESIGNATED SPACE at no extra charge to the OWNER.
 - 9.1.3. if the replacement yacht is too large for the DESIGNATED SPACE and there is not immediately another mooring space available provided the replacement yacht is of the same CATEGORY as the former yacht, the CLUB shall give the OWNER preference in regard to the allocation of a substitute space once it becomes available over MEMBERS who do not have mooring rights and upon such allocation the provisions of paragraph 9.1.2 shall apply.
 - 9.1.4. if the replacement yacht is of a CATEGORY of larger yachts than the category of the former yacht, the OWNER shall not enjoy any allocation preference.

Upon the CLUB being able to allocate a larger mooring space, the MEMBER shall pay the CLUB the difference between the then prevailing mooring allocation fee pertaining to the CATEGORY of the replacement yacht and the then prevailing mooring allocation fee pertaining to the CATEGORY of the former yacht, whereupon the new space will be substituted for the original DESIGNATED SPACE.

- 9.2 In all cases where a yacht is replaced the OWNER shall provide the CLUB with such information in writing in respect of the replacement yacht as the CLUB may require and upon such replacement the CLUB shall endorse this agreement to reflect the name of the replacement yacht and, if applicable, the number of the new DESIGNATED SPACE.

10. CHANGE OF DESIGNATED SPACE

The Club shall be entitled from time to time rearrange the subdivision of mooring spaces within the

YACHT BASIN and shall further be entitled, if necessary, and for good cause to allocate a different mooring space to the OWNER in the same category as the OWNER then has, in which event -

- (a) the YACHT shall be moved to the new position after reasonable notice to the OWNER;
- (b) where applicable the new mooring space shall be substituted in the place of the old as the OWNER'S DESIGNATED SPACE and this agreement shall be endorsed by the CLUB to that effect.

11. NO SPECULATION

It is recorded that the CLUB disapproves of trafficking in MOORING RIGHTS and wishes to prevent speculation therein. The OWNER accordingly undertakes to refrain from any dealings in connection with his mooring right save within the spirit of this agreement.

12. CLUB'S RIGHT OF VARIATION

12.1 Notwithstanding anything to the contrary herein contained the CLUB shall be entitled at anytime to vary the terms of this agreement provided that such variations are first approved and ratified by a Resolution passed at a special meeting of boat owners of the CLUB of which not less than thirty (30) days notice, specifying the variation for which ratification is sought, has been given and such Resolution is passed by not less than two thirds of the number of boat owners present at the meeting, either in person or by proxy.

12.2 For the purpose of paragraph 12.1 -

12.2.1 Notice of a meeting shall be deemed to have been duly given if sent by ordinary prepaid mail to the domicilium citandi et executandi as stipulated in the relevant agreement of each MEMBER of the CLUB with whom their then subsists a Mooring Right Agreement ;

12.2.2. A MEMBER wishing to be represented by a proxy at any such meeting shall, prior to the commencement of the meeting, lodge with the secretary of the CLUB, a written proxy, signed by himself, authorising the person stipulated in such proxy document to represent him at the meeting, and there to vote on his behalf.

13. MOORING LISTS AND REGULATIONS, SCALE OF FEES AND VALUATIONS

13.1 The CLUB shall maintain up to date lists that shall be available to all MEMBERS during normal office hours as follows:-

13.1.1. Awaiting mooring lists in each category.

13.1.2. Rules and regulations regarding the mooring of yachts as envisaged in 5.1.

13.1.3. Scales of ANNUAL MOORING FEES as envisaged in 1.9.

13.1.4. ALLOCATION FEE as envisaged in 1.8 and 8.1 (a).

13.2 The scale of fees applicable from time to time in respect of the mooring allocation and the ANNUAL MOORING FEE shall be determined by the General Committee of the CLUB.

14. CLUB'S RIGHT TO MOVE YACHT

The CLUB shall be entitled from time to time move the YACHT from the DESIGNATED SPACE to any

other place in the YACHT BASIN for purposes of maintaining or repairing the yacht's mooring or the marina of which the mooring forms part or for any other good cause.

15. MAINTENANCE OF MARINAS

15.1 The CLUB shall, subject to 5.2 and 5.3 be responsible for the maintenance of all moorings and MARINAS but shall not be liable to the owner as a result of any failure to do so.

15.2 The OWNER undertakes not to make any additions or alterations to any marina of which his DESIGNATED SPACE may form part without the prior consent of the CLUB. Should the OWNER cause any damage to the marina he shall be liable for the cost to the CLUB of making good such damage.

16. SOLE AGREEMENT

This agreement reflects the full relationship between the CLUB and the MEMBER in regard to the MEMBER'S right to moor a yacht in the YACHT BASIN and supersedes all previous agreements, arrangements and understandings.

17. RESTRICTION ON ENCUMBERING OF MOORING RIGHT

The OWNER acknowledges that he shall not be entitled to cede, pledge or in any other way encumber the mooring right and agrees that should he purport to do so, this agreement shall immediately be at an end and no further force and effect.

18. WARRANTING OF INFORMATION

18.1 It is recorded that the MOORING RIGHT has been granted by the CLUB on the basis of the information contained in the mooring application, copy attached, submitted by the OWNER, which information the OWNER hereby warrants to be true and correct.

18.2 The OWNER warrants that he, either by himself or in conjunction with other MEMBERS of the CLUB has the sole and exclusive use and control of the yacht and that no person who is not a member of the CLUB enjoys or will in the future be permitted to enjoy any beneficial interest in the MOORING RIGHT.

19. BREACH OF AGREEMENT

The OWNER acknowledges that the CLUB shall be entitled without prejudice to any other rights, which it may have to treat any breach of this agreement as if it were a breach of the CLUB'S Rules and Bye-Laws.

20. LEGAL AUTHORITY

The OWNER acknowledges he is bound by the Merchant Shipping Act (No. 57 of 1951 as amended). The Regulations for The Harbours of South Africa and any other law or regulation of competent authority.

21. DOMICILIUM

The OWNER hereby chooses domicilium citandi et executandi for all purposes in terms of this agreement at his last known address available to the CLUB, as entered in the CLUB'S records.

22. COSTS

The OWNER agrees to pay the sum of R 100,00 to the Royal Cape Yacht Club as a contribution towards the costs of this agreement.

OWNER

DATED at this day of 2010.

AS WITNESSES

1. _____

2. _____

ROYAL CAPE YACHT CLUB