



Terms and Conditions

Ivy Lea Wharf Access

WHEREAS the Corporation of the Township of Leeds and the Thousand Islands (the “Township”) owns the marine facility known as the Ivy Lea Wharf which includes the water lot, docks, structures, boat ramp and grounds (collectively, the “Wharf”), available for use by individuals and organizations;

AND WHEREAS the Applicant, identified above has requested that the Township grant access for the Applicant’s use of part of the Wharf for the loading and unloading of equipment and other property onto or from the Vessel on the terms and conditions set out below;

AND WHEREAS the Township agrees to grant access for the Applicant’s use in accordance with such terms and conditions;

NOW THEREFORE THAT in consideration of the Township’s granting access to the Ivy Lea Wharf, the Applicant agrees as follows:

Definitions - When used in this agreement, the following words or expressions have the following meanings:

“**Access**” means the entry upon access controlled the main deck area of the Ivy Lea Wharf for the purpose of loading and unloading of equipment and/or materials onto the Vessel;

“**Access Period**” means the dates specified above between the hours of 7:00 a.m. and 8:00 p.m., falling between March 15th and November 15th unless terminated earlier or otherwise amended in accordance with this agreement;

“**Contact Person**” means the individual, address, phone number, and email address representing the Applicant as set out above in this agreement;

“**Contaminant**” has the same meaning as in *the Environmental Protection Act, R.S.O. 1990, c. E. 19* (the “*Environmental Protection Act*”);

“**Emergency**” means an unexpected occurrence which poses an imminent danger, requiring prompt action to prevent or mitigate the loss or impairment of life, health, property, or essential public services;

“**Indemnified Parties**” means the Township, its elected officials, directors, officers, agents, employees and volunteers;



“**Pollutant**” has the same meaning as in the *Environmental Protection Act*;

“**Related Persons**” includes the Applicant’s directors, officers, employees, agents, partners, affiliates, volunteers, guests, invitees, visitors, passengers, crew, participants, contractors, service providers and subcontractors;

“**Requirements of Law**” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions and agreements with all authorities that now or at any time hereafter may be applicable either to this agreement or the Applicant’s use of the Ivy Lea Wharf, including but not limited to:

- *Canada Shipping Act, 2001, S.C. 2001, c. 26 (the “Canada Shipping Act, 2001”);*
- *Wrecked, Abandoned or Hazardous Vessels Act, S.C. 2019, c. 1 (the “Wrecked, Abandoned or Hazardous Vessels Act”);*
- *Technical Standards and Safety Act, 2000, S.O. 2000, c. 16; (the “Technical Standards and Safety Act”);*
- *Human Rights Code, R.S.O. 1990, c. H.19;*
- *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4;*
- *Gaming Control Act, 1992, S.O. 1992, c.24;*
- *Liquor Licence and Control Act, 2019 S.O. 2019, c. 15;*
- *Occupiers’ Liability Act, R.S.O. 1990, c. O.2;*
- *Occupational Health and Safety Act, RSO 1990, c O.1; and*
- *Criminal Code, R.S.C., 1985, c. C-46.*

“**Rules**” mean the regulations, policies and procedures regarding the Ivy Lea Wharf operation created or amended and provided to the Applicant by the Township from time to time;

“**Spill**” has the same meaning as in the *Environmental Protection Act*; and

“**Vessel**” has the meaning given to it in the *Canada Shipping Act, 2001* except that in this agreement it means the vessel owned, licensed or registered by the Applicant or Related Person, as particularized above in this agreement.

1. In consideration of the Township granting access to the Ivy Lea Wharf for the Applicant’s use, the Applicant agrees to indemnify and save harmless the Indemnified Parties from all losses, claims, damages, actions, causes of action, costs and expenses that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after the Applicant’s access to or use of the Ivy Lea Wharf or this agreement ends, including for third party bodily injury (including death), personal injury and property damage, arising or



occurring, directly or indirectly, by reason of any act or omission of the Applicant or any Related Persons, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Applicant in accordance with this agreement and shall survive this agreement.

2. The Applicant acknowledges and understands that its access and use of the Ivy Lea Wharf may be inherently dangerous and could result in personal injury or death. In consideration of the Township reserving time and space for the Applicant's use, the Applicant hereby assumes all risk of accidents, personal injury, death and property loss or damage sustained or incurred as a result of its presence at the Ivy Lea Wharf, including those caused as a result of negligence, breach of contract, or breach of any statutory or other duty of care, including any duty of care owed under the *Occupiers' Liability Act*, on the part of the Indemnified Parties, on behalf of itself and all Related Persons.

3. In consideration of the Township permitting the Applicant's access to the Ivy Lea Wharf, the Applicant agrees to waive any and all claims that the Applicant may have or may have in the future against the Indemnified Parties and to release the Indemnified Parties from any and all liability resulting from the Applicant's or any Related Persons' use of or presence on the Ivy Lea Wharf due to any cause whatsoever, including negligence, breach of contract, or breach of any statutory or other duty of care, including any duty of care owed under the *Occupiers' Liability Act*, on the part of the Indemnified Parties, including the failure on the part of any or all of the Indemnified Parties to safeguard or protect the Applicant from the risks, dangers and hazards of using the Ivy Lea Wharf .

The Vessel, and all of the Applicant's ancillary equipment and other property placed, stored, docked or moored at or upon the Wharf, will be solely at the Applicant's risk, and the Township will not be responsible under any circumstances for any loss or damage caused thereto whether caused by the negligence of the Township, any of the Indemnified Parties, the acts of third parties, or otherwise. All vehicles parked at the Ivy Lea Wharf or on the Township's property and the contents therein are left at the Applicant's risk. At no time shall the Applicant moor place, store or leave the Vessel or any equipment or other property at or on the Ivy Lea Wharf.

4. The Applicant shall only use the Ivy Lea Wharf during the Access Period and only for the purpose of loading and unloading of the Vessel from time to time. The Applicant shall not use the Ivy Lea Wharf or the Vessel while at the Ivy Lea Wharf as a permanent residence and the Applicant acknowledges that the Township does not operate the Ivy Lea Wharf as a



permanent residence, a rental unit, a mobile home park, a land lease home community, or any other type of residential complex, as those terms are defined in the *Residential Tenancies Act, 2006, S.O. 2006, C. 17*.

5. The Applicant accepts Ivy Lea Wharf in its condition “as is” and shall not call upon the Township to do or pay for any work or supply any equipment to make the Ivy Lea Wharf more suitable for any proposed use by the Applicant. Without limiting the generality of the foregoing, the Applicant acknowledges that notwithstanding the access granted herein, the Township will not provide any electricity or water service at the Ivy Lea Wharf at any time.

6. In the event of an Emergency, the Township or a person designated by the Township, at the Township’s sole option, may order the Applicant to move the Vessel and any property or equipment of the Applicant, at the Applicant’s sole cost, in order to prevent or mitigate loss or impairment of life, health, property, or essential public services. The Township shall not be liable or responsible for any damage to the Vessel, property or equipment or loss of the Vessel, property or equipment or any other costs or damage incurred by the Applicant arising from the Township ordering the moving of the Vessel, property or equipment.

7. The Applicant shall ensure that its use and all Related Persons’ use of the Ivy Lea Wharf does not in any way interfere with the day-to-day operations of the Ivy Lea Wharf, including public access, maintenance or renovations. Without limiting the generality of the foregoing, the Applicant shall not and shall not permit any Related Person to obstruct, store personal property in, or decorate any common areas of the Ivy Lea Wharf.

8. The Applicant shall ensure that it and all Related Persons attending the Ivy Lea Wharf during the Applicant’s use of the Ivy Lea Wharf conduct themselves in a respectful, orderly manner and comply with all Requirements of Law and the Rules, including but not limited to ensuring that the Applicant and all Related Persons:

- do not consume or serve alcohol in or near the Ivy Lea Wharf;
- do not litter any rubbish or refuse in or near the Ivy Lea Wharf;
- do not throw any rubbish or refuse into the water at the Ivy Lea Wharf;
- keep all rubbish and refuse on the Vessel;
- do not discharge into the water any Contaminant;
- only carry out emergency repairs or maintenance in a way which does not permit the discharge of any debris, rubbish, refuse, paint scrapings, paint dust or other



Contaminants into the water, air, or any other part of the Ivy Lea Wharf or natural environment;

- use environmentally-friendly products whenever and wherever practicable;
- do not discharge grey water into the water;
- at all times show respect for the natural environment and treat animals humanely;
- do not feed wild animals;
- do not discharge the Vessel's heads, toilets, portable toilets, holding tanks, or contaminated bilge water into the water;
- do not make excessive noise, create a nuisance for other Ivy Lea Wharf users or residents of Ivy Lea, interfere with Ivy Lea Wharf programs or events, or breach any provision of the Township's Noise By-law No. 22-049, and in any event do not make any noise between 11:00 pm and 7:00 am;
- do not swim, dive, paddle board, fish, operate a remotely piloted aircraft system in or near the Ivy Lea Wharf;
- do not permit pets to be unleashed in or near the Ivy Lea Wharf and do not permit pets to create a nuisance or threat to other users of the Ivy Lea Wharf or residents of Ivy Lea; and
- do not use profane or abusive language in or near the Ivy Lea Wharf.

10. The Applicant shall ensure that its use of the Ivy Lea Wharf and any Related Person's use of the Ivy Lea Wharf is consistent with all Rules and Township policies, including the Township's policies regarding accessibility and ensuring marine facilities are safe, welcoming, and inclusive.

11. The Applicant shall ensure that at all times the Vessel is at the Ivy Lea Wharf, the Vessel is seaworthy. The Applicant shall maintain the Vessel structurally, mechanically and shall keep it clean and presentable both inside and outside to a standard satisfactory to the Township in its sole discretion.

12. The Applicant shall ensure that at all times the Vessel is docked at the Ivy Lea Wharf, the Vessel is tied, secured and fendered in a manner satisfactory to the Township so as to protect the Ivy Lea Wharf and other Township property and other Vessels at the Ivy Lea Wharf for all local seasonal and severe weather, wind and water conditions. The Applicant



shall be solely responsible for all damage to the Vessel, the Ivy Lea Wharf, and any other Township property caused by or arising from the Applicant's failure to tie, secure and fender the Vessel so as to protect the Ivy Lea Wharf, other Township property and other Vessels on the Ivy Lea Wharf.

13. In the event of any mechanical failure, malfunction or damage to the Vessel or any other condition of the Vessel which in the opinion of the Township constitutes a hazard or threat to the Vessel, another Vessel at the Ivy Lea Wharf, to the Ivy Lea Wharf itself, to any other Township property, or to any person's health or safety, the Applicant shall as soon as practicable upon notice of such from the Township remove the Vessel from the Ivy Lea Wharf using professional marine services.

14. In the event the Applicant fails to fulfill its obligations under section 13, at the Township's sole option the Township may order the Applicant to leave the Ivy Lea Wharf. In such an event, the Applicant shall be responsible for all costs to leave the Ivy Lea Wharf. The Township shall not be liable or responsible for any damage to the Vessel or loss of the Vessel or any other costs or damage incurred by the Applicant arising from ordering the Vessel to leave the Wharf.

15. In the event the Vessel should sink at the Wharf, the Applicant shall at its sole expense remove the Vessel from the Ivy Lea Wharf and fulfill any of its resulting obligations under the *Environmental Protection Act*, the *Wrecked, Abandoned or Hazardous Vessels Act* and other applicable legislation.

16. In the event the Applicant fails to fulfill its obligations under section 15, the Township may at its sole option take such steps as it deems prudent to remove the Vessel from the Ivy Lea Wharf and fulfill any resulting obligations under the *Environmental Protection Act*, the *Wrecked, Abandoned or Hazardous Vessels Act* and other applicable legislation. In such an event, the Applicant shall be responsible for all costs incurred by the Township in doing so and shall reimburse the Township for all such costs immediately upon demand. The Township shall not be liable or responsible for any damage to the Vessel or loss of the Vessel or any other costs or damage incurred by the Applicant arising from the Township taking any such steps.

17. The Applicant shall ensure that, at all times the Vessel is moving in or near the Ivy Lea Wharf, the Vessel is moving at a low enough speed such that it creates no wake and such that the Vessel's wake causes no nuisance, discomfort, damage to property or injury or death to person and in any event to never permit the Vessel to move at a speed greater than



4 knots. The Applicant shall be solely responsible for all nuisance, discomfort, damage to property or injury or death to person caused by the Vessel's wake.

18. The Applicant shall be solely responsible for the safety of all Related Persons during its use of the Ivy Lea Wharf, including the provision of first aid supplies, the provision of persons appropriately trained in first aid and cardio-pulmonary resuscitation, and training Related Persons in proper emergency procedures.

19. The Applicant shall obtain all applicable permits, licenses, consents and approvals required for its proposed use of the Ivy Lea Wharf.

20. The Applicant represents and warrants that it has the experience, training and equipment to ensure that it will use the Ivy Lea Wharf safely and in accordance with this agreement. The Applicant shall not Spill any Pollutant or permit any person to Spill any Pollutant in or near the Ivy Lea Wharf. The Applicant shall have and implement reasonable measures to prevent or reduce the risk of Spills of Pollutants and to prevent, eliminate or ameliorate the adverse effects that result or may result from Spills of Pollutants. In the event that the Applicant Spills a Pollutant or permits a Spill of a Pollutant or becomes aware of any Spill of a Pollutant in or near the Ivy Lea Wharf, the Applicant shall immediately notify the Township, the Ministry of the Environment, Conservation and Parks, and in all other ways comply with its obligations under the *Environmental Protection Act* and other applicable legislation.

21. In the event the Applicant fails to fulfill its obligations under section 20, the Township may take such steps as it deems prudent to comply with any obligations under the *Environmental Protection Act* and other applicable legislation. In such an event, the Applicant shall be responsible for all costs incurred by the Township in doing so and shall reimburse the Township for all such costs immediately upon demand. The Township shall not be liable or responsible for any damage to the Vessel or loss of the Vessel or any other costs or damage incurred by the Applicant arising from the Township taking any such steps.

22. Prior to the end of each access to the Ivy Lea Wharf, the Applicant shall, at its sole cost and expense, restore the Ivy Lea Wharf as close as reasonably possible and appropriate to the condition of the Ivy Lea Wharf immediately prior to the Applicant's use of the Ivy Lea Wharf.

23. Should the Applicant fail to perform any of its obligations under section 22 of this agreement, the Township may, at its option, perform such obligations and the Applicant



shall immediately reimburse the Township for any costs incurred by the Township in doing so.

24. The Applicant shall be responsible for any damage to the Township's property caused during or as a result of its use or any Related Persons' use of the Ivy Lea Wharf.

25. The Applicant shall remove the Vessel from the Ivy Lea Wharf after it has completed the loading or unloading of people, equipment and other property. At no time shall the Applicant leave the Vessel moored overnight or leave equipment and other property unattended at the Ivy Lea Wharf. The Township requires the Ivy Lea Wharf to be vacant in order to perform certain maintenance and repair work, or in order to accommodate the use of the Ivy Lea Wharf by other users.

26. In the event the Applicant fails to fulfill its obligations under section 25, the Township may, at its sole option, remove and store the Vessel, equipment and other property. In such an event, the Applicant shall be responsible for all costs incurred by the Township in doing so and shall reimburse the Township for all such costs immediately upon demand. The Township shall not be liable or responsible for any damage to the Vessel, equipment or other property or loss of the Vessel, equipment or other property or any other costs or damage incurred by the Applicant arising from the Township removing or storing the Vessel, equipment or other property.

27. In the event this agreement requires the Township to notify the Applicant, the Township may deliver such notice to the Contact Person by personal delivery, prepaid registered mail, or e-mail. In the event that the Applicant wishes to change any of the information related to the Contact Person, the Applicant shall immediately notify the Township of such change in writing.

28. In the event that this agreement requires the Applicant to notify the Township or submit a written request to the Township, the Applicant shall deliver such notice or request by personal delivery, prepaid registered mail, or e-mail to the following:

Attention: Director of Operations and Infrastructure
The Township of Leeds and the Thousand Islands
1233 Prince Street, Lansdowne ON K0E 1L0

Email: directoroperations@townshipleeds.on.ca

29. In the event that the Applicant breaches any of its obligations under this agreement, in addition to any other remedies the Township may have under this Agreement or otherwise



at law, the Township may without any notice to the Applicant cancel this agreement. Further, the Township may refuse access to Ivy Lea Wharf for the Applicant in the future until the Applicant remedies its breach of this agreement.

30. In addition to any other rights it may have, the Township may immediately and without notice cancel access to the Ivy Lea Wharf and terminate this agreement if the Applicant becomes insolvent or commits any act of insolvency or makes any assignment for the benefit of creditors.

31. The Township may cancel access or terminate this agreement or both for any reason whatsoever in its sole discretion upon providing the Applicant with at least 1 month's notice of such cancellation or termination, notwithstanding that the Applicant might not be in default under this agreement. Upon receipt of such termination notice, the Applicant shall immediately cease its use of the Ivy Lea Wharf and remove the Vessel, equipment and other property from the Ivy Lea Wharf and shall not permit any Related Persons to use the Ivy Lea Wharf in accordance with and to the extent specified in the termination notice. The express rights of cancellation and termination in this agreement are in addition to and will in no way limit any rights or remedies of the Township under the agreement, at law or in equity.

32. The Applicant shall put into effect and keep in effect the following insurance:

(1) Commercial General Liability

The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

(a) A limit of liability of not less than \$5,000,000/occurrence with an aggregate of not less than \$5,000,000

(b) Add the Township as an additional insured with respect to the operations of the Named Insured

(c) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured

(d) Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96)

(f) Broad Form Property Damage

(g) Contractual Liability



(h) Owners and Contractors Protective

(i) The policy shall provide 30 days prior notice of cancellation

(2) Marine Liability insurance of at least \$3,000,000 including:

(a) Hull and Machinery, and

(b) Protection and Indemnity with the following

- loss of life and bodily injury
- damage to other vessels
- damage to fixed or movable objects
- pollution that allows for claims against the Named Insured by the Additional Insured

33. This agreement sets forth the entire agreement between the parties with regard to the Applicant's access and use of the Ivy Lea Wharf and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in this agreement.

34. If any term or condition of this agreement, or the application thereof, is to any extent invalid or unenforceable, the remainder of the agreement, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), will not be affected.

35. Neither party shall be liable for damages caused by delay or failure to perform its obligations under this agreement where such delay or failure is caused by an event beyond its reasonable control, such as natural disasters, acts of war, insurrection, terrorism, breakages of or accidents to the Ivy Lea Wharf or its machinery, or the Township's use of the Ivy Lea Wharf in accordance with the Township's Emergency Response Plan. If a party seeks to rely on a force majeure event, that party shall immediately notify the other party of the reason for and anticipated period of any delay.

36. This section and sections 1, 2, 3, 14, 24, 39, 40 and 41 will survive the termination or expiry of this agreement, as will any other provision which by its nature ought to reasonably survive such termination or expiry.



37. The Applicant shall not assign or subcontract this agreement in whole or in part without the prior written consent of the Township. In any event, no assignment of this agreement will relieve the Applicant from any obligation under the agreement or impose any liability upon the Township unless otherwise agreed to in writing by the Township. The Applicant shall not share or divulge the Access Code, noted above, to any third party, save and except to Related Persons.

38. The failure of either party at any time to require performance by the other party of any provision of this agreement will in no way affect that party's right thereafter to otherwise enforce such provision or to seek damages for the breach thereof.

39. The Applicant represents and warrants that it has the full right and power to enter into this agreement and there is no agreement with any other party that would in any way interfere with the rights of the Township under this agreement.

40. The Applicant will have no power or authority to bind the Township or to assume or create any obligation or responsibility, express or implied, on behalf of the Township. The Applicant shall not hold itself out as an agent, partner or employee of the Township. Nothing in the Booking or this agreement will have the effect of creating an employment, partnership or agency relationship between the Township and the Applicant or any Related Persons.

41. The Applicant agrees that it is liable for the acts and omissions of all Related Persons. The Applicant shall advise all Related Persons of their obligations under this agreement and shall ensure their compliance with the applicable terms of this agreement.

42. This agreement, when executed by the Applicant, will constitute a binding agreement. This agreement can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.