

Fairwinds Terms of Use

Please read the following carefully.

Welcome to the Fairwinds website (the "Site") which is managed by FW Enterprises Ltd. ("**Fairwinds**", "**We**", "**Our**", "**Us**"). We are pleased that you ("**You**") wish to visit Our Site and to obtain information about Our resort, community development, marina and golf course as described on the Site (collectively, the "**Information**"). Any person who wants to use the Site must accept these terms and conditions of use ("**Terms of Use**") without change. **Please read them carefully.** **By continuing to use this Site and the Information, You agree to be bound by these Terms of Use, and all related policies and guidelines of the Site, if any, as indicated in these Terms of Use are incorporated by reference.**

Fairwinds reserves the right to change any of these Terms of Use or any other policies or guidelines governing the Site at any time and in its sole discretion. Any changes will be effective upon the posting of the revisions on the Site. Your use of the Site will be subject to the most current version of the Terms of Use posted on the Site at the time of such use. **Your continued use of this Site and the Information following Fairwinds' posting of any changes will constitute your acceptance of such changes or modifications. If You do not agree to any changes to these terms of use, please immediately discontinue use of the Site and the Service.**

1. LICENSE AND USE OF THE SITE CONTENT

- (a) The Site contains text (including Information), graphics, logos, icons, photographs, underlying HTML and other software codes and other materials ("Site Content") furnished by Fairwinds. The Site Content is protected by Canadian and other international copyright and trade-mark laws. All Site Content, including the collection, arrangement, and assembly of such content, is the exclusive property of Fairwinds. You may not copy, sell, reproduce, distribute, retransmit, publish, modify, display, prepare derivative works based on, re-post or otherwise use any of the Site Content in any way for any public or commercial purpose without the prior written consent of Fairwinds.
- (b) You are hereby granted a limited license to display on your computer, download, use and make one printed copy of the Site Content for your own private, non-commercial use, so long as
- (i) You do not modify any such Site Content;
 - (ii) You include the following copyright notice: "Copyright 2015, FW Enterprises Ltd. All rights reserved"; and
 - (iii) Any other copyright or trade-mark notices contained in the specific Site Content are retained. You acknowledge and agree that nothing in the limited license confers any ownership rights in the Site Content from Fairwinds.
- (c) Should You wish to use Site Content for purposes other than your personal use, or to modify the Site Content, You understand that You must contact Fairwinds by sending an e-mail to info@fairwinds.ca and provide the following information to Fairwinds:
- (i) A description of the Site Content that You wish to use;
 - (ii) How and where the Site Content will be used (i.e. in a newsletter);
 - (iii) Where, how and to what target audience copies of the Site Content will be distributed;
 - (iv) How many copies of the Site Content will be produced and distributed;
 - (v) Where You intend to publish the Site Content;
 - (vi) Other third party content that will be associated with the Site Content;
 - (vii) Your name, title, company, address, e-mail address and telephone numbers (business and residence); and
 - (viii) A mock-up of the intended use of the Site Content (either as a file attached to your e-mail or by sending the draft by fax to Us at (250) 468-9840.

2. LICENSE AND USE OF THE THIRD-PARTY CONTENT

For greater clarity, You expressly understand, acknowledge and agree that:

(a) Certain content on this Site, including, but not limited to text, graphics, logos, icons and photographs (collectively, "Third Party Content") is owned or provided by persons or entities other than Fairwinds (collectively, "Third Party Providers"). You understand that You have no proprietary rights in the Third Party Content and that the Third Party Providers retain all proprietary right, title or interest, including copyright, in their respective Third Party Content.

(b) You may not copy, sell, reproduce, distribute, retransmit, publish, modify, display, prepare derivative works based on, re-post or otherwise use any of the Site Content, re-post or otherwise make available or otherwise use any of the Third Party Content in any way for any public or commercial purpose without the prior written consent of the Third Party Providers. You shall use your best efforts to stop any such copying or distribution immediately after You become aware of such use.

(c) You are granted a limited license to display on your computer, download, use and make one printed copy of the Third Party Content for your own private, non-commercial use only, so long as (i) You do not modify any such Third Party Content; and (ii) You ensure that any copyright or trade-mark notices contained in the specific Third Party Content are retained. You acknowledge and agree that nothing in the limited license confers any ownership rights in the Third Party Content from any third party who has ownership rights in the Third Party Content available on the Site.

(d) For permission to use the Third Party Content for purposes other than your own personal use, please contact the respective Third Party Provider.

(e) You understand that the Third Party Content is provided "AS IS". EACH THIRD PARTY PROVIDER DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE TERMS OF USE, THE THIRD PARTY CONTENT AND ALL PERFORMANCE HEREUNDER. Third Party Providers make no warranties or conditions regarding the completeness, accuracy or availability of the Third Party Content.

(f) In no event shall any Third Party Provider be liable to You or any other person or entity for any direct, indirect, special, exemplary or consequential damages, including lost profits, arising under these Terms of Use or the Third Party Content based in contract, negligence, strict liability or otherwise, whether or not such Third Party Provider had any knowledge, actual or constructive, that You might incur such damages.

(g) You shall indemnify and hold harmless each Third Party Provider against any claim, damages, loss, liability or expense, including legal fees, arising out of your use of the Third Party Content in any way contrary to this Terms of Use.

(h) The rights and limitations in this Section 2 are for the benefit of each Third Party Provider, each of which shall have the right to enforce its rights under this section directly and on its own behalf.

3. PROTECTION OF TRADE-MARKS

(a) "Fairwinds" and the "Fairwinds" logo are unregistered trade-marks of Fairwinds (the "Trade-marks"). The Site also contains other trade-marks of Third Party Providers and other third parties which may be identified with a "TM" symbol, ("Third Party Marks") and the Third Party Marks are the property of their respective owners. Nothing contained on the Site should be construed as granting, by implication or otherwise, any license to use the Trade-marks or the Third Party Marks except as otherwise described in the limited license grants under Section 1(b) and Section 2(c) without the written permission of Fairwinds or the owners of the Third Party Marks.

(b) You may not frame or utilize framing techniques to enclose any Site Content, any Trade-marks, any Third Party Marks or other proprietary information of Fairwinds without Fairwinds' express written consent. You may not use any meta-tags or any other "hidden text" utilizing Fairwinds' name, the Trade-marks or the Third Party Marks without the express written consent of Fairwinds.

4. USE OF THE INFORMATION

(a) The Site contains Information concerning Fairwinds' restaurant (including but not limited to rates for wedding and banquet packages, descriptions of food and beverage services, activities, promotions and upcoming events), the Fairwinds development community, the marina (including but not limited to rates for overnight moorage), and the golf course. You understand and agree that the Information made available to You through the Site is provided "AS IS" and that Fairwinds assumes no responsibility for the timeliness, truthfulness, accuracy, reliability or completeness of any Information made available to You or for the misdelivery of any Information downloaded by You. You acknowledge that any reliance on the Information will be at your own risk and that You must evaluate and bear all risks associated with the use of any Information, including any reliance on the accuracy, completeness, or usefulness of such content.

(b) Under no circumstances will Fairwinds be liable in any way to You for any Site Content or Third Party Content, including, but not limited to, any errors or omissions in such Site Content or Third Party Content, or for any loss or damage of any kind incurred as a result of the use of any Site Content or Third Party Content downloaded, e-mailed or otherwise transmitted to You via the Site.

5. CONDUCT AND USE OF E-MAIL AND THE SITE

(a) You may also have the opportunity to provide feedback on the Site or otherwise engage in dialogue with representatives of Fairwinds through the sending of e-mail to the Site.

(b) You agree that any postings, ideas, notes, suggestions, concepts or other material (collectively, "Materials") submitted to the Site by You will become the property of Fairwinds throughout the world and You grant Fairwinds and its successors and assigns a non-exclusive, worldwide, royalty-free, perpetual right and license to use, adapt, publish, distribute, translate, reproduce and create works derived from or based upon such Materials in any and all media, whether now known or hereafter devised, including for advertising and promotion purposes, without any duty to account to You. In addition, You irrevocably waive all of your moral rights as author in respect of such Materials, however arising.

(c) As stated, You also understand and agree that Fairwinds shall have the right, but not the obligation, to monitor the content of this Site to determine compliance with these Terms of Use and any operating rules established by Fairwinds and to satisfy any law, regulation or authorized government request. Fairwinds shall have the right, in its sole discretion, to edit, refuse to post or remove any Materials submitted to or posted on this Site. Without limiting the foregoing, Fairwinds shall have the right to remove any Materials that it, in its sole discretion, finds to be in violation of the provisions hereof or otherwise objectionable.

(d) You agree that You shall use this Site for lawful purposes only and represent and warrant that You will not use the Site or the Information to:

- (i) download, post, e-mail or otherwise transmit any Materials that are unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, including but not limited to any Materials which encourages conduct that would constitute a criminal offence, violate the laws of others or otherwise violates any applicable local, provincial, national or international law;
- (ii) download, post, e-mail or otherwise transmit any Materials that You do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- (iii) download, post, e-mail or otherwise transmit any Materials that infringe, misappropriate, or otherwise violate any third party's copyright, patent, trade-mark, or other proprietary right of publicity or privacy, or encourages or enables any other party to do so;

- (iv) use the Site or any Site Content or Third Party Content downloaded through the Site to post, e-mail or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation;
 - (v) upload, post, e-mail or otherwise transmit any Materials to the Site that contains software viruses or any other computer code, files or programs designed to interrupt, destroy, alter, or limit the functionality of any computer software or hardware or telecommunications equipment;
 - (vi) interfere with or disrupt the Site nor servers or networks connected to the Site including attempting to interfere with the access of any other user, host or network, including without limitation, overloading, engaging in "denial of service" attacks, "spamming", "crashing", or "mail-bombing" the Site or disobeying any requirements, procedures, policies or regulations of networks connected to the Site;
 - (vii) use the Site or the Information for any public or commercial purposes, without the express prior written permission of Fairwinds;
 - (viii) intentionally or unintentionally violate any applicable local, provincial, national or international law, rule or regulation applicable in connection with the Site;
 - (ix) modify, adapt, sublicense, translate, sell, reverse engineer, decompile or disassemble any portion of the Site; or
 - (x) collect or store personal data about other users.
- (e) You hereby agree to release Fairwinds, its directors, officers, shareholders, employees, affiliates, subsidiaries, agents or advisors from any and all liability whatsoever or arising from your use of the Site, including any e-mail to the Site, and You agree that if You are unhappy with the Information that your sole remedy is to cease using it.

6. FAIRWINDS PRIVACY POLICY

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(b) If You are interested in creating hypertext links to this Site, You must contact info@fairwinds.ca. In establishing hypertext links, You must not represent in any way, expressly or by implication, that You have received the endorsement, sponsorship or support of this Site or Fairwinds, including its representatives, employees, agents, directors, officers, shareholders, affiliates or subsidiaries.

10. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND YOU EXPRESSLY AGREE THAT:

(a) EVERYTHING ON THE SITE, INCLUDING THE SITE CONTENT AND THE THIRD PARTY CONTENT, IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT. THE SITE MAY INCLUDE INACCURACIES OR TYPOGRAPHICAL ERRORS.

(b) FOR GREATER CLARITY, FAIRWINDS MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS REGARDING THE SITE CONTENT OR THE THIRD PARTY CONTENT MADE AVAILABLE THROUGH THE SITE, AND SPECIFICALLY DISCLAIMS ANY WARRANTY AND CONDITION AS TO THE SUITABILITY, RELIABILITY, TIMELINESS OR ACCURACY OF THE SITE CONTENT OR THE THIRD PARTY CONTENT MADE AVAILABLE THROUGH THE SITE FOR ANY PURPOSE.

(c) FAIRWINDS MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS THAT: (I) THE INFORMATION WILL MEET YOUR REQUIREMENTS; (II) THE INFORMATION WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE, ANY SITE CONTENT OR THE THIRD PARTY CONTENT WILL BE ACCURATE OR RELIABLE; AND (IV) THE QUALITY OF ANY SITE CONTENT OR THIRD PARTY CONTENT OBTAINED BY YOU THROUGH THE SITE WILL MEET YOUR EXPECTATIONS.

(d) ANY SITE CONTENT OR THIRD PARTY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE IS DONE AT YOUR RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOADING OF ANY SUCH MATERIAL.

(e) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM FAIRWINDS OR THROUGH THE SITE SHALL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY MADE HEREIN.

(f) FAIRWINDS EXPRESSLY DISCLAIMS ANY AND ALL SUCH ABOVE WARRANTIES AND CONDITIONS TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR CONDITIONS OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

11. LIMITATION OF LIABILITY

(a) YOU EXPRESSLY UNDERSTAND AND AGREE THAT IN NO EVENT SHALL FAIRWINDS, ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, AFFILIATES, SUBSIDIARIES, AGENTS OR ADVISORS BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF INCOME, REVENUES, LOSS OF ANTICIPATED SALES, LOSS OF OPPORTUNITIES, BUSINESS INTERRUPTION, FAILURE TO REALIZE UNEXPECTED SAVINGS, DAMAGE TO PROPERTY, CLAIMS OF THIRD PARTIES, LOSS OF GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF FAIRWINDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER IN TORT, NEGLIGENCE, STATUTE, CONTRACT, COMMON LAW, EQUITY, STRICT LIABILITY OR OTHERWISE), RESULTING FROM: (I) YOUR USE OR THE INABILITY TO USE THE SITE, THE SITE CONTENT OR ANY THIRD PARTY CONTENT OR ANY SITE TO WHICH YOU HYPERLINK FROM THE SITE; (II) ANY THIRD PARTY CLAIMS THAT THE USE BY YOU OF THE SITE, THE SITE CONTENT OR THE THIRD PARTY CONTENT VIOLATES ANY INTELLECTUAL PROPERTY RIGHT; (III) ANY FAILURE OF PERFORMANCE OF THE SITE, THE SITE CONTENT OR ANY THIRD PARTY CONTENT, WHETHER RELATED TO ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUSES OR LINE FAILURE; OR (IV) ANY OTHER MATTERS RELATING TO THE SITE, THE SITE CONTENT OR THE THIRD PARTY CONTENT.

(b) YOU SPECIFICALLY ACKNOWLEDGE THAT FAIRWINDS IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, FAIRWINDS SHALL HAVE NO LIABILITY TO YOU FOR ANY SITE CONTENT OR THIRD PARTY CONTENT DOWNLOADED FROM THE SITE.

12. INDEMNITY

You agree to indemnify and hold harmless Fairwinds and its officers, directors, shareholders, employees, affiliates, subsidiaries, agents and advisors from and against any claims, losses, judgments, damages, costs and expenses (including, without limitation, reasonable legal fees), incurred by any of the foregoing parties due to or resulting from your use of the Site, the Site Content or the Third Site Content or your violation of these Terms of Use.

13. VIOLATIONS

Please report any violations of these Terms of Use to Fairwinds at info@fairwinds.ca.

14. APPLICABLE LAW

This Site can be accessed from all provinces and territories of Canada as well as from countries around the world. By accessing this Site, You agree that all matters relating to the use of this Site, the Site Content or the Third Party Content shall be governed, controlled, interpreted and defined by and under the laws of the Province of British Columbia and the federal laws of Canada applicable therein without giving effect to any principles of conflicts of laws. The United Nations Convention on the International Sale of Goods is explicitly excluded from this agreement. You also agree that any action at law or in equity arising out of or relating to these Terms of Use or your use of the Site, the Site Content or the Third Party Content will be filed only in a court located in Vancouver, British Columbia, Canada, and You hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts for the purpose of any such action. Your use of the Site is void where prohibited by laws in jurisdictions to which You are otherwise subject, and You agree not to visit or use the Site, the Site Content or the Third Party Content in any such circumstances.

15. LANGUAGE

English shall be the language of this Site, and all transactions occurring in connection with this Site, and You waive any right to rely upon any other language, or translations. Il est de la volonté express des parties que le présent site et tous les affaires qui s'y rapportent soient rédigé en langue anglaise, exception faite des documents pour lesquels la loi exige l'usage exclusif du français.

16. ENTIRE AGREEMENT

These Terms of Use constitute the entire agreement between You and Fairwinds relating to the subject matter hereof and supersede any prior understandings or agreements (whether oral or written), claims, representations, and understandings of the parties regarding such subject matter and the Terms of Use may not be amended or modified except in writing or by making such amendments or modifications available on this Site.

17. NO AGENCY; THIRD-PARTY BENEFICIARY

Fairwinds is not your agent, fiduciary, trustee or other representative. Nothing expressed or mentioned in or implied from these Terms of Use is intended or will be construed to give to any person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to these Terms of Use. These Terms of Use and all of the representations, warranties, covenants, conditions, and provisions hereof are intended to be and are for the sole and exclusive benefit of Fairwinds, You, and relying Third Party Providers.

18. ASSIGNMENT

You may not assign, convey, subcontract or delegate your rights, duties or obligations hereunder.

19. SEVERABILITY

If any provision of the Terms of Use is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms of Use remain in full force and effect.

20. LIMITATION

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site, the Site Content, the Third Party Content or the Terms of Use must be filed within one (1) year after such claim or cause of action arose or be forever barred.

21. NO WAIVER

Fairwinds will not be considered to have waived any of its rights or remedies described in these Terms of Use unless the waiver is in writing and signed by Fairwinds. No delay or omission by Fairwinds in exercising its rights or remedies will impair or be construed as a waiver. Any single or partial exercise of a right or remedy will not preclude further exercise of any other right or remedy. Fairwinds' failure to enforce the strict performance of any provision of these Terms of Use will not constitute a waiver of Fairwinds' right to subsequently enforce such provision or any other provisions of these Terms of Use.

22. HEADINGS

The headings used in these Terms of Use are included for convenience only and have no legal or contractual effect.