



GOOLWA REGATTA YACHT CLUB INC.
FOUNDED 1854

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MARINA AGREEMENT
Revised November 2009

THIS AGREEMENT is made thisday of
BETWEEN GOOLWA REGATTA YACHT CLUB INC. of Barrage Road, Goolwa, in the State of South Australia (hereinafter called "the Club" which expression shall include its successors and assigns) of the one part and THE MEMBER named and described in Item 1 of the Schedule hereto (hereinafter called "the Member" which expression shall include his executors, administrators and assigns) of the other part.

WHEREAS

- A The Club has now erected a marina adjacent to its Clubhouse (hereinafter called "the said marina") with berths at the said marina including in each such berth rub strips, mooring cleats or rings and such other improvements as may be agreed between the Club and the Member and access to water and electrical outlets (hereinafter called "the said improvements").
- B The Club is granting the right to use the berths to members of the Club upon the terms and conditions hereinafter contained.
- C The Member is a Senior Member of the Club.

NOW THIS AGREEMENT WITNESSES that in consideration of the Member entering into the covenants hereinafter contained the Club hereby grants to the Member subject to determination as hereinafter provided the right to use the said berth for a term commencing on the date hereof or upon completion of the marina whichever shall first occur and expiring on the 31st day of October, 2185, upon and subject to the following terms and conditions: -

- 1 The Member shall pay to the Club the sum described in Item 2 of the Schedule hereto in the manner and at the times described in Item 3 of the Schedule hereto and shall upon completion of such payment be entitled to occupy the berth described in Item 4 of the Schedule hereto (hereinafter together with such part of the said improvements as form part of the berth called "the said berth") and the said berth shall be more particularly delineated on a plan to be held by the Secretary of the Club called the "Marina Berth Licensees Plan".
- 2 If Item 3 of the Schedule hereto shall provide for payment of the sum mentioned in Item 2 of the Schedule hereto by more than one instalment and this agreement shall be determined by reason of an act, default or breach on the part of the Member prior to the payment of the final instalment by the Member then the Club may retain for its own use absolutely any sum previously paid by the Member pursuant to this agreement until another agreement upon terms and conditions substantially the same as this agreement shall have been made between the Club and another Member for the use and occupation of the said berth.
- 3 The member shall at all times while the Member remains the licensee pursuant to this licence remain a Senior Member of the Club and will not transfer or assign or attempt to transfer or assign the Member's interest in this licence, except by a transfer or assignment in accordance with the provisions of this agreement.
- 4.01 The Club shall from time to time apportion between the Member and the other licensees from time to time of berths at the said marina the outgoings reasonably assessed or incurred by the Club in operating managing and maintaining the said marina including (but without limiting the generality of the foregoing) sinking funds or other provisions of a like nature for the replacement of the said marina and the said improvements or any part or parts thereof.

- 4.02 Every such apportionment shall be made on the basis that the amount payable by the Member shall bear the same proportion to the total outgoings reasonably assessed or incurred by the Club as the width of the said berth bears to the total width of all berths in the said marina, except that the Club shall make such allowance or weighting in relation to any berths as the Club may deem fit.
- 4.03 The Member shall pay the Member's proportion of the said total outgoings (which portion of the said total outgoings is hereinafter called "the said outgoings") calculated in accordance with the preceding sub-clause hereof by instalments payable at the times and in the manner determined from time to time by the Club.
- 5 The member will: -
- (a) use the said berth only for the storage of a boat or other water going vessel of a length and beam not exceeding that which the said berth has been designed to accommodate and related equipment. For the purpose of this clause the determination of the Club of the length and beam of any boat shall be binding on the Member and the Club shall be entitled to take into account in determining the length of any such boat any bow sprits, pulpit rails, stern davits and/or swim platforms and any other overhanging portion of such boat.
 - (b) at all times comply with and observe the rules and regulations from time to time made by the Club relating to the use of the said berth and the said marina and the surrounding area
 - (c) at the Member's expense repair and replace in each case with materials of comparable quality such parts of the said berth as are damaged as a result of the negligence of the Member or one of the Member's crew.
 - (d) at the Member's expense maintain and keep such of the said improvements as form part of the said berth in good and substantial repair and condition
 - (e) keep the said berth in a thorough state of cleanliness
 - (f) forthwith notify the Club of any accident to or defect or want of repair in the said berth likely to be or cause any danger or hazard to the said marina or any person or boat thereon or in the vicinity thereof
 - (g) keep any boat moored at the said berth in good order and condition and will not allow any such boat to be or become in an unsightly, dilapidated or dangerous condition
 - (h) indemnify and keep indemnified the Club from and against all actions, claims, demands, losses, damages, costs and expenses for which the Club shall or may suffer or may be or may become liable in respect of or arising out of any loss, damage or injury from any cause whatsoever to person or property either on the said berth or on the said marina or on surrounding area caused or contributed to by the Member or any servant, agent, sub-licensee in virtue of or any other person entering on to the said berth or the said marina or any boat moored in or adjacent to the said marina with the approval or consent of the Member or any servant, agent, sub-licensee, invitee or other person as aforesaid;
 - (i) take out and maintain in the names of the Member and any other person who shall have an interest in any boat moored or permitted to be moored in the said berth a policy of indemnity insurance with a reputable insurance company for the sum of not less than \$5 million or such other sum as the Club may from time to time determine in respect of the indemnity given by the Member in the preceding sub-clause, which policy of insurance shall contain a cross-liability clause allowing each party comprising the Insured under the policy to claim as if that party were the only person named as the Insured.
 - (j) upon request of the Club, promptly produce to the Club the said policy or policies of insurance and a receipt for payment of the current premiums or a certificate of currency for the insurance and will not cancel or allow the policy to be cancelled or to lapse without the prior consent of the Club;
 - (k) in the event of the Member failing to insure any boat moored at the said berth in accordance with this clause or if the Member fails to produce evidence of current insurance in accordance with

sub-clause (j) of this clause the Club may take out insurance in respect of such boat for the ensuing 12 months in which event the cost of such insurance and any other expense incurred by the Club in taking out that insurance shall be a debt due by the Member to the Club and shall be payable to the Club on written demand;

- (l) not at any time during the term of this Agreement do, permit or suffer to be done, any act, matter or thing whereby any insurance in respect of the marina or required to be taken out by the Member pursuant to this clause may be vitiated or rendered void or voidable or whereby the rate of premium o any such insurance shall be liable to be increased.

6 The Member will not without the prior written consent of the Club: -

- (a) make or permit to be made any alterations or additions of any kind in or to the said berth.
- (b) use the said berth or any boat or other water going vessel moored at the said berth for residential purposes.

7.01 The Club may require the member by notice in writing to remove from the said berth any boat that in the reasonable opinion of the Club is unsightly, dilapidated or dangerous.

7.02 If the Member does not remove any such boat from the said berth within seven days of the service of such notice then the Club may at the cost of the Member remove such boat from the said berth and deposit such boat at such place as the Club may determine.

7.03 The Member hereby grants the Club authority to deposit such boat in the name and at the expense of the Member with a warehouseman selected by the Club.

7.04 The Club shall not be liable or responsible for loss or damage to or warehousing expenses in respect of such boat which shall be at the Member's risk at all times and all costs and expenses incurred by the Club in such removal and deposit shall be and be deemed to be a liquidated debt payable by the Member to the Club upon demand.

7.05 The Club in the event of any emergency at its own and sole discretion may move any boat at the said berth to any other berth at the risk and expense of the Member.

8.01 The Club shall forthwith enter into and during the term of this agreement will maintain a public liability policy in respect of the said marina.

8.02 If the said berth is rendered substantially unfit for use by the Member by reason of an occurrence then the Club shall be under no obligation to restore the said berth and the Club may by one month's notice to the Member determine this agreement, but such determination shall be without prejudice to any claim by either party against the other in respect of any antecedent breach of any term or condition herein contained. Within three months of the occurrence rendering the berth unfit for use the Club shall determine whether it will restore the berth so as to make it fit for use in which event the Club shall as soon as practicable restore the said berth. If the Club determines not to restore the said berth or within three months fails to determine to restore the berth or having determined to restore the said berth fails to proceed to restore it as soon as reasonably practical then the Member may by notice in writing to the Club terminate this Agreement but such termination shall be without prejudice to any claim by either party against the other in respect of any antecedent breach or any term or condition of this Agreement.

9.01 The Member shall not without the consent in writing of the Club (which consent may be withheld by the Club in the interest of the members of the Club) permit any boat to be moored at the said berth for a period longer than seven continuous days unless it is owned by the Member PROVIDED HOWEVER that where: -

- (a) a boat is owned by a company in which the Member has a controlling interest

- (b) a boat is owned by the Member and no more than one other person jointly and so that the Member retains at least 50% of the ownership of such boat it shall not be necessary for the Member to obtain the consent in writing of the Club.
- 9.02 The Member shall when applying for the consent of the Club furnish the Club with such information as the Club shall require and without limiting the generality thereof, with such information as the Club shall require to determine the conditions that are to apply if the Club shall grant its consent.
- 9.03 If the Club grants its consent to a boat being owned other than as aforesaid then the Club may grant such consent subject to any conditions whatsoever as the Club may see fit.
- 9.04 The Club may at any time require the Member to provide evidence that the boat moored at the said berth is:-
- (a) owned by the Member, or
- (b) owned by the persons, corporation or corporations set out in Clause 9.01 hereof
- (c) owned by the person or persons, corporation or corporations for whom the Club has granted consent and that all the conditions on which the said consent was granted have been complied with.
- 9.05 If a boat moored at the said berth is not: -
- (a) owned by the Member, or
- (b) owned by the persons, corporation or corporations set out in Clause 9.01 hereof, or
- (c) owned by the person or persons, corporation or corporations, for whom the Club has granted consent and if all the conditions on which the said consent was granted have not been complied with or, if the Member fails or neglects to prove to the Club any of the matters set out in Clause 9.04 hereof, or if the Member fails or neglects to give the Club any information which it shall reasonably require concerning any boat moored at the said berth, then the Club may by notice in writing require the Member to remove any such boat from the said berth, and if the Member does not remove any such boat from the said berth within seven days of the service of such notice then the Club may at the cost of the Member remove such boat from the said berth and deposit such boat at such place as the Club may determine and Clauses 7.03 and 7.04 shall apply to any removal of a boat pursuant to this Clause.
- 10.01 The Member shall not mortgage or charge this agreement or grant a sub-licence without the previous consent in writing of the Club. Subject to compliance with clause 10.07.02 hereof the Club will not unreasonably withhold its consent to a sub-licence to another Senior Member of the Club. Such sub-licence shall be personal to the sub-licensee and shall not be assignable and the outgoings payable there under shall not be less than the said outgoings. Such sub-licence shall contain covenants by the sub-licensee to perform and observe similar terms and conditions to those herein contained so far as the same may be capable of observance and performance by a sub-licensee and a proviso for determination similar to that herein contained and for ipso facto determination in the event of and contemporaneously with the determination of this licence. Within seven days after the grant of any such sub-licence the Member shall furnish the Club with an executed copy thereof.
- 10.02 If the said outgoings shall be in arrear and unpaid for a period of fourteen days after the same shall have become payable or any other money shall be due and payable by the Member to the Club pursuant to this agreement and such money shall not be paid within fourteen days after payment thereof shall have been demanded by notice in writing or if the Member shall commit or allow to be committed a breach of any of the other covenants herein contained and on the part of the Member to be performed or observed and shall not remedy such breach within twenty-eight days after notice is given to the Member by the Club requiring such remedy or if the Member shall become bankrupt or commit any act of bankruptcy or compound or make any arrangement with his creditors the Club shall be at liberty by notice in writing to determine this agreement but such determination shall be without prejudice to any claim by either party against the other in respect to any antecedent breach of any term or condition herein contained and to the provision of Clauses 10.03 to 10.09 hereof.

10.03 If: -

- (a) the member wishes to transfer or assign the Member's interest in this agreement
- (b) the Member dies and the person succeeding to the Member's interest in this agreement is not a Senior Member of the Club
- (c) the Member's membership of the Club is determined for any reason whatsoever, or,
- (d) this Agreement is determined pursuant to the provisions of Clause 10.02 hereof

then the Member (or in the event of the Member's death the Member's personal representatives who are for the purposes of this Clause included in the expression "the Member") may subject to the provisions of clause 10.06.01 and 10.06.02 (hereof transfer or assign the said berth to another person (which expression shall not include a company or a corporation) or to the Club.

10.04 In order to ascertain whether any person (which expression shall not include a company or a corporation) is willing to accept a transfer or assignment of the said berth the Member may give notice in writing to the Club that the Member desires to transfer or assign the said berth. Such notice shall constitute the Club the agent of the Member for the transfer or assignment of the said berth with authority to enter into a contract to transfer or assign the said berth on behalf of the Member. The Member shall not appoint any other person as the agent of the Member for the transfer or assignment of the said berth without the prior consent in writing of the Club.

10.05 If the Member's membership of the Club is determined or if this Agreement is determined pursuant to the provisions of Clause 10.02 hereof, then the notice from the Club informing the Member that the Member's membership of the Club is determined or the notice in writing determining this agreement mentioned in Clause 10.02 hereof shall be deemed to be the notice mentioned in Clause 10.04 hereof appointing the Club to transfer or assign the said berth as agent for the Member. The transfer price of the said berth shall be determined by the Club, which shall take into account in fixing the price the prices for which berths of the same length and beam as the said berth have been transferred. The decision of the Club as to the price for which the said berth shall be transferred shall be binding on the Member.

10.06.01 Any transfer or assignment of the said berth shall be subject to and any agreement for the same shall be expressed to be subject to: -

- (a) Notification to the Club by the Member of the price for which the said berth and has been agreed to be transferred.
- (b) If the transferee is not a Senior Member of the Club: -
 - (i) the transferee applying to become a Senior Member of the Club and the transferee's application to become a Senior Member being accepted by the Club
 - (ii) the transferee paying all entrance and membership fees required to be paid pursuant to the Constitution and the rules and regulations of the Club for the time being in force
- (c) The consent of the Club to the said transfer or assignment, which consent shall not unreasonably be withheld but may be given subject to such terms and conditions as the Club shall deem fit.

10.06.02 Any agreement for the transfer of the said berth shall also provide that if the transferee shall not within one month after being notified in writing by the Club that the Member's application to become a Senior Member of the Club has been approved pay all entrance and membership fees required to be paid pursuant to the Constitution and the rules and regulations of the Club for the time being in force, then such agreement shall become void and of no effect and the Member shall refund to such transferee all monies paid pursuant to such agreement.

10.07.01 On any transfer or assignment of the said berth the Member shall pay to the Club ten per centum (10%) of the fair value of the said berth as determined by the Club which shall take into account in fixing the fair value of the said berth the prices for which berths of the same length and beam as the said berth have been transferred. The decision of the Club as to the fair value of the said berth shall be binding on the Member.

- 10.07.02 On the grant of any sub-licence of the said berth the Member shall pay to the Club for each year or part thereof of the term of such sub-licence ten per centum (10%) of the fair annual rental value of the said berth as determined by the Club. The Club may at its absolute discretion waive payment of the amount payable pursuant to this clause.
- 10.08 Where the Club receives the proceeds of transfer of the said berth on behalf of a Member it shall be entitled to deduct from the proceeds of Transfer any indebtedness owing by the Member to the Club on any account whatsoever.
- 10.09 If in any case the Member or the Member's personal representatives after having become bound to transfer the said berth makes default in transferring the said berth, the Club may receive the purchase money and the Member shall be deemed to have appointed the Secretary of the Club as the Member's agent to execute an assignment of this agreement, and upon the execution of such assignment the Club shall hold the purchase money in trust for the Member. The receipt of the Club for the purchase money shall be a good discharge to the purchaser.
- 11 This agreement and the rights hereby granted shall cease and determine at the expiration of the term hereof or on the sooner determination hereof or if the site upon which the said marina is built is acquired by any statutory or other competent authority but such cessation and determination shall be without prejudice to the rights of either party against the other in respect of any antecedent claim for breach of covenant.
- 12 Any notice required or authorised to be given by either party to the other may be served by prepaid letter sent through the post to the last known place of business or place of residence of the other party and it shall operate and be deemed to have been served at the expiration of twenty four hours after the same shall have been posted and proof that the letter was properly addressed and posted shall be sufficient evidence of service.
- 13 The Club reserves the right to vary the terms of this licence on giving notice in writing of such variation to the Member.
- 14 The Club from time to time may make and vary such Rules and Regulations relating the use of the said berth and the marina and surrounding areas as it thinks fit.
- 15 In this agreement words importing the masculine gender only shall include the feminine gender and vice versa.

THE SCHEDULE

ITEM 1 Name and Description of Vendor:

..... of in the State of

ITEM 2 Consideration:

\$..... dollars

ITEM 3 Manner of and time for Payment:
Signing of Agreement

ITEM 4 The Said Berth

IN WITNESS whereof the parties hereto have executed this agreement on this day of 20.....

THE COMMON SEAL of GOOLWA REGATTA YACHT CLUB INC. was hereunto affixed by authority of a resolution of the Committee.

..... (SEAL HOLDER)

..... (Countersigned by Flag Officer:)

SIGNED by **THE MEMBER (Purchaser)**

.....Print

..... of in the State of

.....Sign

in the presence of:

.....

SIGNED by **THE MEMBER (Vendor)**

.....Print

.....Sign

in the presence of:

.....