

**YARINGA BOAT HARBOUR SOMERVILLE
BERTHING AGREEMENT**

THIS AGREEMENT is made between:

Ref No.

WESTERNPORT BOAT HARBOUR PTY. LTD. ("The Owner") trading as YARINGA BOAT HARBOUR ("The Marina") including YARINGA BOAT SERVICES (DIFAU PTY LTD) whose registered offices are C/o SEAR HAWKINS PTY. LTD., 95A Riversdale Road, Hawthorn, Vic., 3122

and

whose address is

Ph: _____ ("the Tenant")

Date of signing Agreement is the _____ day of _____

Concerning the berth _____ whilst the vessel is located at the Marina at 1-4 Lumeah Rd, Somerville VIC 3912.

Commencing on _____

known as _____ ("the vessel")

Particulars of the vessel are:

Length overall	Draft	Beam	Reg No.
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Description _____

Vessel delivered by _____ on the _____ day of _____

Denotes details required to be given by the owner under the warehousemen's Lien Act 1958 (Vic) for the purpose of the lien claimed under Schedule C hereof.

Rental payable in advance as per current scheduled rates.

WHEREAS:

- A. The Owner is proprietor of YARINGA BOAT HARBOUR at Somerville and is desirous of letting out parts for the purpose of mooring craft.
- B. The Tenant agrees to lease the berth described above subject to certain terms and conditions.
- c. The Tenant warrants
 - (1) the ownership of the vessel
 - (2) authorisation to enter this agreement

NOW THIS AGREEMENT WITNESSES:

This Owner leases and the Tenant accepts a lease giving the Tenant exclusive possession to the berth upon payment of the rental in advance and subject to the covenants and terms and conditions contained in Schedule A hereto. The Tenant acknowledges as the evidence by execution of this agreement that the owner shall not be responsible, under any circumstances for any injuries, act or default by way of its employees, servants, agents or guests nor shall the owner be responsible for any loss caused to the vessel or its contents or the owner through burglary, theft, fire, flood, tides, storm, or through collision by the vessel with any other vessel or with any part of the Marina or through any other cause.

SIGNED by the Tenant

SIGNED by the Owner or authorised representative

SCHEDULE B.

**Yaringa Boat Harbour - Rules & Regulations.
ALL BOATS, CARS & EQUIPMENT ARE STORED
& OPERATED AT THE OWNER'S RISK AT ALL TIMES.**

1. **Speed.** The speed limit in both the harbour and the access channel is set at 5.0 kilometres per hour and is actively policed. The road speed limit in both the car park, driveways and entrance gate to Yaringa is 5.0 kilometres per hour.
2. **Waste.** The disposal of any waste in the harbour is not permissible including the pumping of bilges/sinks/toilets.
3. **Walkways.** The floating walkways are only for walking on, not storing of equipment or as a workshop.
4. **Fish Cleaning.** Cleaning of fish is not permitted.
5. **Security.** Valuable items should be stored under lock. Fences and gates are not to be climbed over.
6. **Mooring Lines.** These are the responsibility of the owners.
7. **Engine Exhaust.** Engine exhaust should not project waste over walkways or other boats.
8. **Refuelling.** Refuelling is only permitted at the fuelling wharf, not on the main walkway.
9. **Mooring Buoy.** The mooring in Watsons Inlet is provided for all customers to use on a casual basis.
10. **Power Supply.** The electric power supply on the walkway is only to be used for lighting and small power tools. Electrical resistance type heaters are not permitted.
11. **Propeller Wash.** Propellers are not to be engaged whilst boats are securely moored.
12. **Noise.** As the boat harbour is an environmentally sensitive area, excessive noise is not permitted.
13. **Maintenance.** Major maintenance is not permitted in the mooring area.
14. **Animals.** No animals permitted within the Harbour area.

SCHEDULE A

TENANT'S COVENANTS

1. This agreement is subject and conditional upon that adherence by the Tenant to certain covenants namely:
 - 1.1 to pay to the Owner the rental in advance as from the date of signing this agreement;
 - 1.2 not to assign, sub-let or part with possession of the berth and the Tenant shall be deemed to part with possession of the whole or part of the berth where a person other than the Tenant or a member of his family uses or occupies with the consent of the Tenant or a member of his family the whole or part of the berth;
 - 1.3 not to use the berth other than the mooring of the vessel nominated by the Tenant as specified in this agreement to the Owner;
 - 1.4 (a) to comply with the provisions of all the relevant Acts of Parliament and Regulations there under when in or in the vicinity of the Marina;
(b) to comply with all reasonable policy directives made from time to time by the Owners of the Marina when in or in the vicinity of the Marina;
 - 1.5 to pay to the Owner the cost of making good damage where the Tenant or other person responsible for navigating the boat damages (whether negligently or not) a part of the Marina or any other vessel;
 - 1.6 to indemnify the Owner and his servants, agents and guests from all claims and actions howsoever arising directly or indirectly from either the Tenant, the Tenant's servants or agents or guests and in the management and control of his vessel in the Marina or its vicinity or in the use of the facilities of the Marina and without limiting the general meaning of this Clause to indemnify the Owner, its servants and agents against all actions for damages to the Tenant's vessel however arising whether;
 - 1.7 (a) the Tenant's vessel is held in dry storage or parked in the Marina
(b) the Tenant's vessel is parked or in transit with or on or in the vicinity of the shipping within the Marina
(c) the Tenant's vessel is parked in the vicinity of the marina to or from the Marina
(d) the Tenant's vessel is moored or in transit on the waterway in the Marina
(e) arising from any other circumstance whatsoever.
 - 1.8 to insure the vessel for comprehensive marine cover including public liability and the Tenant shall produce evidence of the currency of such insurance on demand being made by the Owner.
 - 1.9 to comply with all the rules of the Marina from time to time; the rules as currently applicable to the Marina at the time of the execution of this agreement are set out in Schedule B.
 - 2.0 The Owner shall have a lien over the vessel and its appurtenances for;
 - (a) unpaid rent.
 - (b) sums due to the Owner for any damage caused to any part of this Marina by the vessel or by the owner or his agent employees or guests.
 - 2.1 Where the Tenant pays the rent and observes and performs the terms of this agreement the Owner agrees with the Tenant to permit the Tenant to enjoy peacefully the berth without disturbance from or by the Owner or person claiming under or in trust for him.
 - 2.2 Subject to Clause 2.0 the Landlord confers upon the Tenant the following rights:
 - (a) the right to access to walkways, gangways and pedestrian ramps;
 - (b) the right to affix and maintain mooring lines to bollards and other devices as specified by the owner on the piers for the purpose of mooring and securing any boat of the tenant within the berth; and
 - (c) to pass over the waterways of the Marina for the purpose of access to and from the berth and the navigable waters outside the Marina subject to the terms and conditions set out in the schedule to this agreement which are agreed to be incorporated by the Owner and Tenant to form part of this agreement;
 - (d) to have a right of access and way over all parts of the Marina other than those parts of the Marina which are subject to separate berthing agreements.
 - 3 But not withstanding any clause in this agreement to the contrary the parties agree this agreement may be terminated by the Owner if:
 - (a) the Tenant breaches any of the terms and conditions of this agreement;
 - (b) the berth becomes un-useable for any reason;
 - (c) the Marina is destroyed whether by act of God or otherwise, that the Owner may give the Tenant written notice to the effect and on the expiry of seven (7) days from that day from the date of service the tenancy terminates and in this event the Owner agrees with the Tenant to pay the Tenant an amount calculated by reference to the period that unexpired portion of the period bears to the period of the tenancy; this agreement shall be terminated pursuant to clause (a),(b),(c) hereof upon service of notice of termination in writing by the Owner to the Tenant, termination being effective immediately. On termination of this agreement the Owner may remove the vessel from the berth at the Tenant's risk and expense and may grant the right and use of that berth to another person.
 - 3.1 the entering of this agreement by the Owner does not give rise to any warranty implied or otherwise by the Owner to the Tenant or to any other person that piers, walkways, gangways, pedestrian ramps, mooring gear and the slipway are fit for the purposes for which they are normally used.

WHERE:

 - (a) the whole or part of the rent is unpaid for 5 days after becoming payable (with expressly demanded or not); or
 - (b) the Tenant fails to comply with any provision on his part contained in the agreement the Owner may re-enter upon the berth and immediately the tenancy shall absolutely determine without prejudice to the rights remedies of the Owner in respect of prior claims and breaches of the terms of the agreement on his part contained herein.
 - 4 Notices are sufficiently served in the following instances:
 - 4.1 In the case of a notice to be served on the Tenant if it is:
 - (a) left addressed to him by name or as Tenant of the nominated boat at the berth, or
 - (b) sent to him by post in a prepaid envelope bearing the words "The Tenant" or his name at the address specified in this agreement; and
 - 4.2 In the case of a notice to be served on the Owner if it is sent to him by post in a pre-paid envelope with the name of the Owner
C/o Yaringa Boat Harbour,
1 Lumeah Road, Somerville, 3912.
 - 4.3 The determination of the facts relating to any matters arising of an incidental to this agreement or of and incidental to any other matter relating to the Marina's sole prerogative and discretion of the Owner.
 - 4.4 In the event of any dispute not being resolved satisfactorily between the Owner and the Tenant then the Owner shall be at Liberty to direct the Tenant to remove his vessel from the harbour within 7 days of serving a written notice and in the event of non-compliance by the Tenant to the notice the Owner may remove the Tenant's vessel from the Marina at the Tenant's cost and the Tenant and those claiming through him shall have no recourse whether by action for damages or how otherwise arising against the Owner which may otherwise have been taken by the Tenant but for this clause and the Tenant shall indemnify the Owner against all actions of Third Parties which may flow as a consequence of the Owners removal of the vessel pursuant to this clause.
 - 4.5 The Owner by this agreement is hereby authorised to act as agent for and on behalf of the Owner and to act at his own discretion in relation to the vessel in the event of any emergency howsoever arising, the Owner having sole discretion to determine whether a state of emergency exists and the Owner shall be indemnified by the Tenant for all action taken by the Owner pursuant to this clause.

SCHEDULE C

- 1 The owner claims a lien pursuant to the Warehousemen's Liens Act 1958 (VIC) (The Act) with respect to the vessel. The tenant agrees that it has received the notice required under the Act.