



**ANCHORAGE
MARINA**
PORT STEPHENS

BERTHING AND MOORING AGREEMENT

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This agreement between the Marina and the Boat Owner is subject to the Terms and Conditions as detailed in Schedule B. It is not binding on the Marina until executed by the owner or agent of the boat. **Please read carefully** the said Terms and Conditions before signing. **You are invited to take legal advice.**

Schedule A

Item 1 The Marina Corlette Point Marina Holdings Pty Ltd (A.C.N. 134 149 661) as trustee for the Anchorage Marina Unit Trust (A.B.N. 76 614 910 829), Corlette Point Road, Corlette NSW 2315 ("Marina")

Item 2 The Boat Owner Client Name _____ D.O.B _____ / _____ / _____

Address (P.O. Boxes not permitted) _____

ABN (If Boat Owner is a company) _____ Drivers Licence # _____

Phone (H) _____ (M) _____ (B) _____ (F) _____

Email _____ Boat Licence # _____

Item 3 Arrival Date _____ **Departure Date** _____ **Total Nights** _____

Item 4 Vessel Details Vessel Name _____ Make _____ Model _____

Length Overall _____ Vessel Beam _____ Draft _____

Registration # _____ Expiry Date _____

Hull Identification # (HIN) _____

CIRCLE THE FOLLOWING AS APPLICABLE:

INBOARD / OUTBOARD / STERN DRIVE / SAIL / SINGLE HULL / TWIN HULL / PETROL / DIESEL / FIBREGLASS / ALUMINIUM / TIMBER / Other

Insurance Company _____ Policy # _____ Expiry Date _____

Item 5 Berth # _____ **Mooring #** _____

Item 6 (please tick) Permanent Casual Recreational Commercial

Item 7 Hire Fee (Quarterly Fee inclusive of GST and payable in advance) \$ _____

Item 8 Privacy Statement. Anchorage Marina is committed to the protection of your personal information. The data we collect will be handled sensitively and securely in accordance with our privacy policies which comply with our legal obligations.

Item 9 This agreement is made on the _____ day of _____ 20____ between THE MARINA (being the company named in Item 1 of Schedule A) and THE BOAT OWNER (being the person or company named in Item 2 of Schedule A).

SIGNED FOR AND ON BEHALF of _____]
THE BOAT OWNER by its duly _____]
authorised agent in the presence _____]
of (witness) _____]
Boat Owner _____
Witness _____

SIGNED FOR AND ON BEHALF of the _____]
Anchorage Marina Unit Trust _____]
(A.B.N. 76 614 910 829) _____]
in the presence of (witness) _____]
Anchorage Marina _____
Witness _____

Schedule B: Berthing & Mooring Agreement Terms & Conditions ("T&Cs")

- A. The Marina is the operator of the Marina business at the Premises named in Item 1, Schedule A
- B. The Boat Owner is the owner or authorized Agent of the vessel, inc. equipment, machinery, sails and boats etc identified in Item 4, Schedule A.
- C. At the request of the Boat Owner, the Marina has agreed to let the berth or mooring identified in Item 5 of Schedule A from the Date in Item 3.
- 1. IT IS NOW AGREED AS FOLLOWS:**
- The Marina shall let the berth or mooring in Item 5 of Schedule A ("the Berth") to the Boat Owner and the Boat Owner shall hire the Berth from the Marina on the Terms & Conditions of this Agreement, provided that the Boat Owner's use of the Berth shall not be exclusive.
- 2. HIRE FEE AND OTHER MONEY:**
- 2.1 Upon the execution of this Agreement, the Boat Owner shall produce evidence to confirm ownership of the vessel. The Boat Owner shall pay to the Marina prior to the commencement date, a quarterly hire fee ("the Hire") as set out in Item 7 Schedule A or as agreed with the Marina.
- 2.2 The Marina may at any time increase the Hire. The amount of such increase shall be at the Marina's discretion provided that such increase does not take effect until the end of the quarterly period in which the increase has been notified to the Boat Owner.
- 2.3 The Boat Owner shall pay to the Marina, interest at the rate of 1.5% per month compounded monthly on all money due but unpaid by the Boat Owner from the due date for payment to the date of payment.
- 2.4 The Boat Owner shall pay for all costs incurred by the Marina to enforce its rights under this Agreement .
- 2.5 The Boat Owner shall pay for any damage to Marina or Hotel property including insurance excess in circumstances where the Boat owner is found to be responsible.
- 2.6 The Boat Owners obligation to pay the Hire and all other money payable shall be absolute and unconditional and shall not be affected by any defect in the Berth. Such obligation continues until this Agreement is terminated pursuant to its terms.
- 3. COMMENCEMENT DATE AND HOLDING OVER PERIOD:**
- 3.1 The Commencement Date is set out in Item 9 of Schedule A.
- 3.2 At the expiration of the current Hire period, the Hire term shall be quarterly and the Hire shall be quarterly in advance.
- 3.3 Unless either party notifies the other in writing with a month's notice, this Agreement will automatically renew for a further quarter and the Boat Owner must pay a further Hire fee as set out in Item 7 (or such amount as has been notified by the Marina).
- 3.4 Notwithstanding, Clause 3.3, the Marina is under no obligation to renew this Agreement.
- 4. OPERATIONAL MAINTENANCE AND STORAGE OF THE VESSEL AND OTHER EQUIPMENT:**
- 4.1 The boat owner at his own expense shall keep and maintain the vessel and its equipment including but not limited to the ropes and lines on or attached to the vessel in good working order and condition.
- 4.2 The Boat Owner shall operate, maintain and store the vessel and its equipment with due care and diligence.
- 4.3 The Boat Owner undertakes:
- (a) To comply with all relevant laws, regulations, rules and by-laws governing or relating to the registration, operation or licensing of the vessel and its equipment or the use thereof and to obtain and maintain in full force and effect all necessary licenses, permits, certificates and registrations relating to the vessel and its equipment or use and to pay promptly all requisite fees and charges upon demand and produce to the Marina receipts for the payment thereof.
- (b) To reimburse the Marina on demand for all money which the Marina has paid to make good any failure by the Boat Owner to comply with any obligation under this Agreement.
- (c) Not to cause or not to allow any of his servants, agents, invitees or guests to cause any disturbance in or around the Marina area in such a way to prevent the Marina, Boat Owner, or invitees the use and enjoyment of the facilities provided by the Marina. In the event of such disturbance the Marina in its absolute discretion (which the Boat Owner hereby acknowledges) may terminate this Agreement forthwith by written notice setting out the date and the time the Boat Owner is required to vacate the Berth.
- (d) Not to bring any pets or animals onto the premises owned or operated by the Marina without the Marinas consent.
- (e) Not to conduct any refueling of the vessel whilst the vessel is berthed or stored at the Marina other than in designated refueling areas.
- 4.4 The Boat Owner confirms that the vessel has the dimensions and displacement set out in Item 4 of Schedule A. The Boat Owner shall be liable for any damage or additional expense arising out of the failure of the vessel to have the said dimensions and displacement.
- 4.5 The Boat Owner agrees not to employ or engage contractors to work on the vessel at the marina location unless said contractors are licensed and approved by the Marina.
- 4.6 The Boat Owner will not bring fuel or other hazardous materials onto the property operated by the Marina or Peppers Anchorage Hotel.
- 5. LIENS AND ENCUMBRANCES:**
- 5.1 The Marina shall have a lien on the vessel identified in Item 4, Schedule A for the payment of all monies due to the Marina under this Agreement. The Boat Owner authorizes the Marina to take possession of the Vessel if the account remains unpaid for 21 days after demand for payment has been made in writing by the Marina to the Boat Owner.
- 6. RISK AND INSURANCE:**
- 6.1 The Boat Owner assumes all risk and liability for and in respect of the use of the facilities of the Marina and the use of his Vessel and equipment. Notwithstanding whether or not the Boat Owner has effected insurance with respect thereof, the Boat Owner will indemnify and release the Marina against and from any claims or demands resulting from loss of or damage to the facilities, other property or persons howsoever caused.
- 6.2 The Boat Owner shall deliver a copy of their boat insurance policy to the Marina and shall promptly pay all premiums which are necessary for effectively keeping such insurance in force. The Boat Owner shall on demand produce to the Marina a certificate of currency of the insurance. If the Boat Owner fails to keep the insurance current, or if any insurance becomes void or invalid, the Marina may without prejudice to its other rights and remedies hereunder, but is not obliged to, pay the premiums for such insurance and if so paid by the Marina the same shall be immediately recoverable by the Marina from the Boat Owner.
- 6.3 The Boat Owner shall advise the Marina forthwith in writing of any event which leads or might lead to a claim for compensation or payment under any insurance policy and shall comply with all instructions of the Marina in connection with its claim.

7. RELIANCES AND WARRANTIES:

- 7.1 The Boat Owner acknowledges by entering into this agreement that:
- (a) The Boat Owner has not relied in any way on the Marina's skill and judgment;
 - (b) The Boat Owner has satisfied himself as to the condition and suitability of Berth for the Boat Owner's purpose;
 - (c) The Boat Owner has examined and satisfied himself as to the condition and suitability, including but not limited to the piers, pontoons, gangways and ramps at the Marina and that they will use such as provided for berthing and parking spaces solely at your own risk; and
 - (d) The Marina may, at its sole discretion, board and move the Vessel and/or its equipment; at the Boat Owners risk and expense as required by emergencies or other operational requirements.
- 7.2 The Boat Owner acknowledges that whether or not these Terms and Conditions are signed, the Boat Owner of the Vessel will be deemed to have jointly and severally accepted them upon the earliest of being emailed and / or signing of these Terms and Conditions by the Boat Owner of the Vessel at the Marina.
- 7.3 The Boat Owner, with the exception of disposal of bottles and consumables used on a daily basis, is responsible for all rubbish associated with the Vessel and expressly agrees to pay for the cost of the removal of same. Rubbish includes, but is not limited to bilge , engine and other oils, discarded equipment, barnacles, marine growth, paint scraping, etc.

8. DEFAULT AND TERMINATION

- 8.1 Each of the following events is an Event of Default:
- (a) The Hire or any part thereof or other money payable under this Agreement remains unpaid for a period of twenty one (21) days or more after its due date of payment; or
 - (b) The Boat Owner fails to observe or perform any obligations, liability or other provision of this Agreement on its part and such failure continues for a period of fourteen (14) days or more after notice in writing by the Marina has been given requiring remedy or same; or
 - (c) The Marina ascertains that any undertaking, representation or statement made by the Boat Owner under or in connection with this Agreement has been false in any material respect; or
 - (d) An insurance policy in respect of the Vessel is cancelled or not renewed; or
 - (e) The Boat Owner commits or suffers to be committed any act of bankruptcy or, if a body corporate, a resolution is passed for its winding up, or an order is made by any Court for its winding up, dissolution, or an official manager or receiver and manager is appointed in respect of the whole or any of its assets or an inspector is appointed to investigate its affairs; or
 - (f) The Boat Owner enters or proposes to enter into any arrangement, reconstruction or composition with any of its creditors; or
 - (g) The Boat Owner, ceases or threatens to cease carrying on its business, or is unable to pay its debts as they fall due or suspends payment generally; or
 - (h) The Boat Owner, disposes or assigns or parts with all or a substantial part of the Vessel or attempts to do so; or
 - (i) The Boat Owner, if an individual, is declared mentally ill, is convicted of a criminal offence, or dies; or
 - (j) There is a material adverse change in the business or financial condition of the Boat Owner which could adversely affect the ability of the Boat Owner to meet its obligations under his Agreement.
- 8.2 If the Marina takes possession of the Vessel and/or its equipment, the Marina may retain such possession until the Marina is satisfied that the Event of Default giving rise to such taking of possession by the Marina has been remedied or in the Marina's opinion such event of default does not or would not prejudicially affect the Marina's rights under this Agreement.
- 8.3 This Agreement shall continue during this period of possession by the Marina and the Hire remains payable by the Boat Owner as if the Vessel and/or its equipment remained under that Boat Owner's control.

9. NON-ASSIGNMENT SUB-LICENSING

- 9.1 The non-exclusive license granted by the Marina to the Boat Owner by this Agreement shall be personal to the Boat Owner. The Boat Owner covenants with the Marina that the Boat Owner shall not assign, sub-license, or demand any fee or other valuable consideration from any person for the right to occupy the licensed premises, without the prior written consent of the Marina.
- 9.2 The Boat Owner certifies that he is the legal and beneficial owner or the duly authorized agent of the owner of the Vessel and that he will be personally liable for all fees, accounts, costs, claims or liabilities of whatsoever nature arising from the provisions of the Agreement.
- 9.3 Any change in the effective control of the Boat Owner (where a company or a partnership) from that existing at the date of commencement shall be deemed an assignment and shall be subject to the Marina's consent as aforesaid.
- 9.4 Where the Boat Owner is a company or a partnership, the Boat Owner shall appoint as the Boat Owner's nominee a person having the effective or managerial or financial control of the Boat Owner.

10. MISCELLANEOUS

- 10.1 This Agreement constitutes the Agreement of the Parties hereto with respect to the subject matter and supersedes any prior agreement.
- 10.2 If any provision of this Agreement is found to be void or unenforceable, the remaining provisions shall not be in any way affected.
- 10.3 Any notice by either Party in respect of this Agreement shall be deemed served if in writing, by prepaid mail, email or hand delivered to the respective addresses specified in Schedule A and shall be deemed effective 3 business days later.
- 10.4 The parties agree that the marina may make further Terms and Conditions from time to time giving one months notice in writing.
- 10.5 The Boat Owner agrees to abide by and comply with the Terms and Conditions as made, varied or amended by the Marina.

11. GOVERNING LAW

- 11.1 This Agreement shall be governed and construed in accordance with the laws of the State of NSW and the parties agree to submit to the jurisdiction of the courts of NSW.

**CORLETTE POINT MARINA HOLDINGS PTY LIMITED (A.C.N. 134 149 661)
AS TRUSTEE FOR THE ANCHORAGE MARINA UNIT TRUST**

ABN 76 614 910 829

Corlette Point Road, Corlette NSW 2315 Australia - Telephone: 02 4981 4975 Facsimile: 02 4981 5690