

SCHEDULE 3 - Berth Licence Terms

1. INTERPRETATION

1.1. In these Berth Licence Terms, unless the context otherwise requires, the following terms shall have the meanings ascribed to them:

"**Berth**" means the specified Berth which a Licensee is entitled to use and enjoy by virtue of the Licensee being a Residential Berth Member of the Association.

"**Licensee**" means a Residential Berth Member, as holder of a licence to use and enjoy the Berth, together with the Licensee's Occupiers and Invitees and any Berth Sublicensee.

"**rule**" means a rule in these Berth Licence Terms.

"**Shared Areas**" means the land in each of the bodies corporate within the Gulf Harbour Marine Village that is owned in common by the Members of that body corporate, and includes the security gates, entrances, courtyards between the garages & car ports, visitor parking, and the passageways between the buildings within each body corporate.

2. RESTRICTION ON USE

2.1. Licence for use only by Nominated Boat

The Licensee's Berth is only available to and shall only be used by the Licensee for the purpose of berthing the particular boat nominated in writing to the Association by the Licensee, which shall be individually and beneficially owned by the Licensee, except as authorised by the Association pursuant to section 3 of the Berth Licence Terms. The Licensee may at any time or times by notice in writing to the Association nominate a different boat, providing the boat so nominated complies with the relevant requirements of sections 2 and 3 of the Berth Licence Terms.

2.2. Recreational boats only

The Licensee shall use the Berth only for berthing the Nominated Boat while that boat is used for recreational boating purposes. The Berth shall not be used to berth charter boats, commercial fishing boats, boats carrying passengers for hire, work boats, commercial freight carriers or for any other commercial or industrial purpose.

2.3. No alterations

The Licensee shall not in any way alter or modify the Licensee's Berth.

3. MAXIMUM DIMENSIONS OF BOAT

3.1. Maximum dimensions

The Licensee shall at no time allow any part of any vessel using or moored in the Berth (including any dinghy, tender or the like whether fixed on board the vessel or moored in the water adjacent to the vessel) to extend beyond the maximum permitted dimensions of the Berth as determined by the Association in its sole discretion with the length being measured from the Berth face of the walkway.

4. PERMITTED SUBLICENSING

4.1. Right to sublicense

The Licensee may sublicense the Berth, subject to the conditions and restrictions in the provisions set out below.

4.2. Prior notice to Association

Before entering into any Sublicensing Agreement the Licensee shall give prior written notice to the Association setting out the full name, address, email address and telephone number of the proposed Berth Sublicensee specifying the term of the proposed sublicense and the terms and conditions of the proposed Sublicense Agreement. Such sublicensing shall be subject to the approval of the Association, but the Association's approval shall not be unreasonably withheld where:

- (a) the proposed sublicensing is for a period which will not exceed 12 months or any combination of periods which will not exceed 12 months in the aggregate;
- (b) the Sublicense Agreement contains a provision prohibiting the Berth Sublicensee, any agent of the Berth Sublicensee, or any invitee of the Berth Sublicensee from driving or permitting any vehicle to be driven onto or over the Shared Areas;
- (c) the Sublicense Agreement contains a provision allowing the Association to enforce the Sublicense Agreement directly and to terminate the Berth Sublicense if the Berth Sublicensee breaches the Constitution or the terms of the Sublicense Agreement.

4.3. Nominated Boat

Subject to the Licensee having obtained consent as provided in rule 4.2, the Licensee shall give the Association notice in writing nominating a particular boat which is to occupy the Berth pursuant to the Sublicensing Agreement. Such boat shall comply with the requirements of sections 2 and 3 of the Berth Licence Terms.

4.4. Consent strictly limited

The Association's approval of any specific sublicensing agreement shall not extend to any other sublicensing agreement and shall be strictly limited to the period, Berth Sublicensee and boat approved. If the Licensee wishes to extend the period of sublicensing beyond the initial period, the Licensee shall make further written application to the Association, which may grant or withhold approval in its absolute discretion.

5. VACATION OF BERTH

5.1. Vacation of Berth

The Association shall be at liberty at any time to require the Licensee to vacate the Berth on a temporary basis, for the upgrading of or structural repairs to the Berth.

5.2. Emergencies and repairs

The Association further reserves the right to use the Berth in case of emergency, and also the right to require the Licensee to temporarily vacate the Berth if necessary, to allow repairs or maintenance to be carried out.

5.3. No compensation payable

The Association will not be liable to pay any compensation for requiring the Licensee to temporarily vacate the Berth or for using the Berth in an emergency.

6. WATER SPACE AND ACCESS RIGHTS ONLY

6.1. Allocated water space

This Licence relates only to:

- (a) the allocated water space of the Berth; and
- (b) the floating structures, fingers, jetties and other Berth structures comprising part of the Waterway, as outlined on the Waterway Plan.

6.2. Common access and use rights

In common with others, the Licensee shall have the right of making fast to the allocated Berth structures, and shall have the right to access to and the use of the Common Facilities, subject to such Rules as to access, and during such hours, as the Association may from time to time specify in the Waterway Rules or the Common Facilities Rules.

7. MAINTENANCE, FASTENINGS TO AND SECURITY OF VESSEL

7.1. Maintenance

The Licensee shall keep any vessel occupying the Berth in good serviceable condition and repair so as not to obstruct, interfere with or endanger other vessels navigating or berthing in the Waterway.

7.2. Standard mooring lines to be used

For the purpose of mooring any vessel to the Berth the Licensee shall use only the standard mooring lines provided by the Association, and the Licensee shall pay the cost of providing, fixing, repairing and replacing such lines from time to time, as required by the Association.

7.3. Notice to repair

Should the Licensee default in compliance with the provisions of rules 7.1 or 7.2, the Association may serve on the Licensee a notice requiring the Licensee, within the time specified in the notice, to repair the fastenings on any such vessel so as to ensure that they will safely secure the said vessel, or repair such vessel as required by rule 7.1, as appropriate.

7.4. Default in complying

Should the Licensee fail to comply with any such notice within the time specified, the Association may, without incurring any liability for so doing and without further notice, remove the boat and recover the cost of removal from the Licensee.

7.5. Association's lien

Where the Association removes any vessel in accordance with rule 7.4 it shall be entitled to a lien on the vessel to the extent of the costs of removal and storage.

7.6. Association's right to sell

Should the Licensee fail to claim such vessel and pay in full any costs owing to the Association under this rule within the period of one month after the date of such removal, the Association may at any time thereafter offer the same for sale and appropriate the proceeds of any resultant sale in satisfaction of such expenses as may be incurred in respect thereof.

7.7. Custodial arrangements

The Association may, if the Association thinks fit, place and maintain on any such vessel such number of custodians as may be necessary, and the Association shall be entitled to a lien on the vessel to cover the costs in so doing.

8. NO ALTERATIONS TO BERTH OR WATERWAY STRUCTURES

8.1. No alterations to Berth

The Licensee shall not alter or modify the Berth, nor make any additions to them or affix anything to them without the prior written approval of the Association.

9. USE OF FACILITIES

9.1. Use of services

The Licensee may use the water, power and any other facilities provided on the structures, in common with any other Berth Licensees. Any such services may be separately metered and charged to individual Licensees, as the Association may determine.

10. INDEMNITY

10.1. Association not to be liable

The Association shall not be liable to the Licensee or any other person, and accepts no responsibility, for:

- (a) loss or damage to boats, craft, third party property or persons using the same within the confines of, or near to, the Waterway;
- (b) the adequacy or otherwise of the Waterway, or of the Berth, or any other part of the facilities of the Waterway;
- (c) any loss or damage to property, or death, or personal injury incurred or suffered within the Waterway, however the same occurs, and whether or not attributable to the acts or defaults of the Association, or its servants, agents, contractors or otherwise howsoever.

10.2. Licensee's indemnity

The Licensee, in addition, shall indemnify the Association against any loss, expense, legal liability, claims and costs incurred by the Association arising as a result of the Licensee's acts or omissions, or the acts or omissions of others to which the Licensee has contributed, or the acts or omissions of any persons invited into the Waterway by the Licensee or Berth Sublicensee, including the costs of enforcing these Berth Licence Terms or the terms of any approved sublicense agreement.

11. INSURANCE

11.1. Licensee to insure

The Licensee shall at all times keep all boats, craft and any other property owned or brought into the Waterway by the Licensee and/or invitees of the Licensee fully insured while within the confines of, or near to, the Waterway against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, burglary, act of God and all other usual maritime risks.

11.2. Licensee to affect public liability cover

The Licensee shall also affect adequate public liability insurance against death and/or bodily injury to persons and loss or damage to property of others (including the Licensee) arising out of the use of watercraft and/or the use or occupation of the Waterway. The amount of such liability insurance shall be as specified by the Association from time to time.

11.3. Delivery of copies of policies

If requested, the Licensee shall provide the Association with a copy of the above insurance policies and evidence that they are in full force and effect.

11.4. Licensee not to invalidate insurance

The Licensee will not do anything or allow anything to be done which may render void or voidable any policy of insurance effected by the Association or the Licensee. If the Licensee shall do anything or allow anything to be done which may render any increase or extra premium payable in respect of any such insurance, the Licensee will forthwith on demand pay to the Association such increased or extra premium or premiums as the Association may be liable to pay.

12. COMMON FACILITIES RULES

12.1. Licensee to comply with Common Facilities Rules

The Licensee shall at all times, including when navigating through the Gulf Harbour Marina entrance channel and Fairway and the Waterway entrance, comply with the Common Facilities Rules and with any special instructions issued by the Association or the manager of the Gulf Harbour Marina.

12.2. Inconsistency

If there is any inconsistency between the provisions of these Berth Licence Terms and the Common Facilities Rules, the provisions of these Berth Licence Terms shall prevail.

13. MISCELLANEOUS

13.1. No discharge of sewage

The Licensee shall not discharge any sewage or otherwise empty any toilets, basins or sinks into the Waterway or the Gulf Harbour Marina waters, or otherwise dispose of any garbage, oil, fuel or other material whatsoever in the Waterway or the Gulf Harbour Marina waters, except into containers which may be provided by the Association. The failure of the Association to provide containers shall not derogate from the Licensee's obligations under this provision. If required by the Association, the Licensee shall install an approved sewage holding tank, and discharge it only at approved facilities. The Association can require, as a condition of its approval of any sublicense under rule 4.2, that the Berth Sublicensee's boat, if equipped with a toilet facility, is equipped with self-contained sewage holding tanks acceptable to the Association.

13.2. No living on board

The Licensee shall not live on board any boat in any berth or permit anyone else to do so. For the purposes of this rule the expression "living on board" shall mean sleeping overnight on the boat for two consecutive nights or more.

13.3. No noise nuisance

The Licensee shall ensure that all halyards, sheets, lines, ropes, rigging, flags, and wind generators on any vessel in the Berth are secured so that they shall not create any noise.

13.4. No storage on Waterway

The Licensee shall not permit or allow any property, gear or equipment under the control or direction of the Licensee to be stored in or on the Waterway, including the walkways, fingers or foreshore thereof, without the express permission of the Association.

13.5. Use of fire hoses

The Licensee shall not use firefighting equipment supplied by the Association for any purpose other than the fighting of fires.

13.6. Storage of flammable substances

The Licensee shall not store motor spirit, petroleum, petroleum products, fuel, oil, liquified petroleum gas, compressed natural gas, kerosene or goods of a similarly dangerous or similarly inflammable nature on any Waterway structure or area under the control of the Association without the prior approval of the Association.

13.7. Refueling

The Licensee shall not carry out any refueling of any boat or vessel other than at the fuel jetty and pumps located at the Gulf Harbour Marina, unless otherwise directed by the Association.