



Port Owen Marina Authority (npc)

Reg # 1999/010199/08

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PRIVATE JETTY RIGHTS/RAMP AGREEMENT

Entered into by and between

PORT OWEN MARINA AUTHORITY

(Formally known as Port Owen Marina Association)

(Hereinafter referred to as POMA)

and

Name:

(ID/Registration Number:)

(The Owner of Stand No.:, Laaiplek)

(hereinafter referred to as OWNER)

WHEREAS:

In accordance with the terms of the Deed of Sale between the curators of Owen Wiggins Trust Weskus (Pty) Ltd and the then Velddrif Municipality, a Notarial Deed of Lease was subsequently entered into between the Municipality and the Port Owen Marina Association (NPC) in terms of which POMA is responsible for the administration and control of the waterways and any boating activities thereon. The waterways include the walkways around the marina and the private open spaces that form part of the property leased from the Municipality.

NOW THEREFORE IT IS AGREED AS FOLLOWS BETWEEN POMA AND THE OWNER:

1. Rights and Obligations

1.1 The OWNER acknowledges and accepts the rights of POMA relating to the waterways as recorded above.

1.2 It is agreed that the OWNER will be permitted to exercise the right to place a private jetty/ramp in the waterways provided that he/she formally enters into this agreement with POMA and that the right will subsist for as long as the OWNER complies with the terms and conditions of this agreement.

- 1.3 Should the OWNER exercise the right to place a jetty/ramp in the waterways, he/she accepts that POMA will determine where the jetty is to be sited. POMA will be prepared to consider the OWNER's proposal in this regard but the OWNER accepts that the final decision rests with POMA.
- 1.4 In many instances the OWNERS of stands with a common boundary would be obliged to share a private jetty/ramp in the waterway in such a manner that both OWNERS have reasonable access to their craft and the waterway. This situation would typically apply in the case of erven one row back from the waterfront but with a so-called "panhandle" access to the waterway. In such instances the OWNERS of these erven accept that a signed written agreement must be concluded between them that they share the jetty/ramp before a private jetty/ramp agreement can be concluded with POMA. In addition, the situation may occur where a private jetty and moored boat encroaches on projected boundary of a neighbour. Both neighbours shall enter into a signed written agreement to deal with the use of the jetty and water before a private jetty/ramp agreement can be concluded with POMA. Refer to POMA document "Private Jetty Location Detail".
- 1.5 Both OWNERS of a shared jetty/ramp must indicate their agreement to clause 1.4 above by noting such agreement on the applicable jetty plan as referred in clause 3.2 below. They accept that their agreement must, inter alia, deal with issues related to the cost of building or purchasing the jetty/ramp, costs and arrangement for the maintenance of the jetty, the payment of the fees to POMA referred to in section 2 below, and that it will be subject to approval by POMA.
- 1.6 Should the OWNERS referred to in clause 1.4 above be unable to reach agreement as contemplated in clause 1.5 above, then POMA would undertake, on request, to attempt to mediate an appropriate settlement. Any decisions regarding the terms of such an agreement between the OWNERS however rests with the OWNERS.

2. Fees

- 2.1 The OWNER agrees that if he/she exercises the right to place a private jetty/ramp in the waterways, he/she shall pay a fee (hereinafter referred to as "the Fee") to POMA. This fee is levied by POMA to defray costs it is compelled to incur in executing its obligations of maintaining and controlling the waterways, boating and ancillary facilities at Port Owen Marina, and is reviewed annually.
- 2.2 In terms of clause 2.1 above, the OWNER hereby acknowledges that he/she is indebted to POMA for the amount of the fee, together with Value Added Tax if any, and penalty interest thereon as provided for in clause 2.3 below.
- 2.3 The OWNER agrees that where the OWNER is in default of his/her obligations under this agreement, the Fees shall bear interest at 3% (three per centum) above the prime overdraft rate of interest charged by ABSA Limited from time to time, calculated and compounded monthly in arrear and reckoned from the date on which the payment of the Fees became due and payable until the date of payment thereof.
- 2.4 The OWNER can pay either an annual fee in advance or monthly instalments at the beginning of each month.

2.5 All amounts to be paid in terms hereof shall be paid to POMA free of exchange and without deduction or set-off at POMA's address as provided for in clause 8.1 of this agreement.

2.6 If the OWNER:
fails to pay any amount payable in terms hereof on due date for payment thereof; or
breaches any of the terms or conditions hereof; or
is provisionally or finally sequestered; or
allows a judgement granted against him to remain unsatisfied for a period of 7 (seven) days after it has been granted; or
surrenders his/her estate;

Then in any such event the whole of the OWNER's indebtedness in terms hereof to POMA shall immediately become due and payable, whether or not such amounts are then due and without prejudice to any other right which POMA may have as a result of any such breach.

A certificate signed by any Director of POMA:
setting out the amount of the Owner's indebtedness to POMA shall, together with this agreement, be prima facie proof thereof and shall be valid as a liquid document in any Court of competent jurisdiction for the purpose of obtaining provincial sentence or summary judgement against the OWNER; and

stating that any act or failure to act has occurred, shall be prima facie proof that such Act or failure occurred.

2.7 POMA undertakes to give the OWNER written notice of at least 2 (two) calendar month before any fee increase or decrease becomes effective.

3. Construction, Maintenance and Removal of Jetties/Ramps

3.1 Over the years a number of fixed jetties have been built and placed in the waterways. POMA agrees that these fixed jetties may remain in the waterways if this is the wish of their OWNERS. With effect from 1st July 2003 however POMA will generally permit only floating jetties/ramps to be placed in the waterways. These floating jetties/ramps must comply with POMA's Minimum Jetty/Ramps Specifications and Requirements (as per Appendix A & C Private Jetties and Appendix B Ramps). The OWNER accepts that no new fixed jetty will be permitted unless, in the view of POMA, there are compelling practical reasons to permit a new fixed jetty at the site concerned.

3.2 Prior to building and placing a new jetty/ramp in the waterways the OWNER agrees to submit his/her jetty/ramp plans (showing the design of the jetty/ramp, the jetty'/ramp location relative to the applicable erven, the number and approximate sizes of craft he/she plans to moor on the jetty and the manner in which the jetty will be attached behind the retaining walls of the waterways) to POMA for formal approval. The OWNER agrees that no jetty/ramp will be placed in the waterways until formal written approval has been granted by POMA. The OWNER further agrees that no major alterations will be made to a jetty/ramp already placed in the waterways without first obtaining POMA's written approval of the proposed changes.

- 3.3 The OWNER notes that a jetty/ramp plan approved by POMA is valid for 1 (one) year from the date of approval only. Should the OWNER for whatever reason not install his/her jetty/ramp within that time, then POMA's approval thereof automatically expires and OWNER must re-submit his/her jetty/ramp plan for approval.
- 3.4 The OWNER acknowledges that he/she will be responsible for the maintenance of the jetty/ramp so that it does not become unsafe or unsightly. If in the opinion of POMA, the jetty/ramp has become unsafe or unsightly, the OWNER will be requested, in writing, to do the necessary repair and/or maintenance. Should the necessary repairs and/or maintenance not be completed within 60 (sixty) days, then POMA will in writing request the OWNER to remove the jetty/ramp from the waterways. Should the OWNER not comply with this request within 30 (thirty) days, the OWNER accepts that POMA has the right to remove the jetty/ramp, the cost of which will be for the account of the OWNER.
- 3.5 Should the OWNER decide to install an electrical power point and/or water tap to service the jetty, the OWNER accepts that the cost of installing these services and the cost of consumption will be for the account of the OWNER. The OWNER also agrees that any electrical installation work is to be done by a qualified electrician who holds the appropriate certificate of competency. Under no circumstances will the OWNER be permitted to connect his/her electrical and/or water installation to POMA's supply.
- 3.6 The OWNER agrees that if he/she sells his/her property, the private jetty/ramp placed in the waterways in terms of this agreement shall be removed from the waterways unless the private jetty/ramp has been sold to the purchaser of the OWNER's property and the new Owner agrees to enter into an agreement with POMA, as stipulated in clause 3.7 below. The owner remains liable for the jetty fees payable until the new owner signs an agreement with POMA.
- 3.7 If the OWNER sells his/her private jetty/ramp as referred to in clause 3.6 above, he/she undertakes to advise the new Owner that he/she will be required to enter into a new agreement with POMA and that if he/she declines to enter into this agreement, POMA will request him/her to remove the jetty/ramp from the waterway within 30 days, failing which POMA will remove the jetty/ramp at the new owner's expense.
- 3.8 No boat of any type will be allowed to be tied up to the Ramp. Only canoes and non-powered (rowing boats) will be allowed to be launched from the ramp.

4. Sub-letting of Jetty

- 4.1 The OWNER may sublet his/her private jetty to a third party but remain liable for the payment of the requisite jetty fees to POMA.
- 4.2 Up to 3 boats will be allowed to berth at a private jetty, subject to the prior written approval of POMA regarding the size of the boat/s. The length of permanently moored boats will be added to determine the fees payable to POMA.

4.3 A permanently moored boat is defined as a boat that remains berthed at a jetty for longer than 20 consecutive days.

5. Commercial Operations

5.1 Commercial operations from a private jetty will be subject to prior written approval of POMA.

6. Waterway Regulations

6.1 The OWNER accepts that all craft moored at his/her jetty and using the Port Owen waterways are at all times subject to the applicable waterway regulations as contained in POMA's Berthing and Waterway Regulations. These regulations, are amended by POMA from time to time and posted on the POMA website (www.poma.co.za)

7. Costs

7.1 In the event of POMA having to enforce its rights against the OWNER for any reason whatsoever under this agreement, the OWNER will bear all of POMA's legal costs arising there from on an attorney and client scale.

7.2 The OWNER consents, at the election of POMA, to the jurisdiction of the Laaiplek Magistrate's Court in regard to any claim against him/her arising out of this agreement, notwithstanding that the amount of POMA's claim may exceed the jurisdiction of such court.

Waiver, Breach and Variations

7.3 This agreement supersedes all and any previous agreements entered into between the parties as to the subject matter thereof.

7.4 The waiver by POMA of any breach of any of the terms and condition of this agreement by the OWNER shall not prejudice any remedy by POMA in respect of any continuing or any other breach of the terms and conditions thereof.

7.5 If the OWNER is in material breach of any provisions of this agreement, he/she notes that he/she shall be advised in writing by POMA of the breach and requested to comply with the agreement fully or remove his/her jetty from the waterways within 30 (thirty) days. If at the expiry of this period the OWNER is still in breach of the agreement and the jetty/ramp is still in the waterways, the OWNER agrees that POMA has the right to remove the jetty forthwith. The OWNER agrees that the cost of the removal of the jetty/ramp will be for the account of OWNER.

7.6 No favour, delay, relaxation or indulgence on the part of POMA in exercising any power or right conferred on it in terms of this agreement shall operate as a waiver of such power or right, nor shall any single or partial excuse thereof or the exercise of any other power or right of this agreement.

7.7 The expiry or termination of this agreement shall not prejudice the rights of POMA in respect of any antecedent breach or non-performance by the OWNER of any of the terms or conditions thereof.

7.8 No variation, alteration, modification or waiver of any provisions, or consent to any departure there from, shall in any event be of any force or effect unless confirmed in writing and signed by both parties; and then such variations, amendment, modification, waiver or consent shall be effective only in the specific instance and for the purpose and to the extent to which made or given.

8. Indemnity

8.1 Without prejudice and in addition to any of the other rights of POMA arising from any of the provisions of this agreement, the OWNER hereby indemnifies and holds POMA harmless against all loss, liability, damage and or expense (including but not limited to POMA’s legal costs on an attorney and client scale) which POMA may suffer or incur as a result of, and which may be attributable to, any breach by the OWNER of the terms and conditions of this agreement and/or any exercise by POMA of its rights against the OWNER and/or his/her property and against any claims arising out of any loss or damage suffered or caused by the OWNER from exercising his/her rights in terms of this agreement.

9. Domicilium Citandi et Executandi

9.1 The parties choose as their respective domicilium citandi et executandi for all purposes of this agreement the following:

POMA:	Physical Address:- Marina Centre Port Owen Drive PORT OWEN Velddrif 7365	Postal Address:- PostNet Suit 2 Private Bag X1 Vredenburg 7380
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Telephone Number: 022 - 783 0943

E-mail: poma@poma.co.za

OWNER:	Physical Address	Postal Address

Telephone Number:

E-mail address:.....

9.2 The parties hereto shall be entitled to change their domicilium from time to time and any such change shall only be effected upon receipt of notice in writing by the other party of such change.

9.3 All payments to be made pursuant to this agreement, and all notices, demands or communications intended for either party, shall be made or given at such parties' postal address by prepaid registered post or the physical address by hand delivery, and, if forwarded by prepaid registered post, shall be deemed to have been made, given or received on the 5th (fifth) day after posting.

9.4 Notwithstanding anything to the contrary contained in this agreement, the OWNER acknowledges that entering into this agreement does not absolve the OWNER from the payment of any amounts due to POMA on the date the OWNER signs this agreement.

Thus done and signed by the OWNER at

This day of 20.....

OWNER Signature Witness

Witness

Thus done and signed by POMA at Port Owen,

This day of 20.....

POMA Signature Witness

Witness