

MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN

BERGRIVIER MUNICIPALITY
(Hereinafter referred to as the "municipality")

AND

PORT OWEN MARINA AUTHORITY
(Hereinafter referred to as "POMA")



Whereas the municipality owns certain erven comprising the waterways, private open spaces, parking areas and servitudes within the Port Owen development, and which, together with the improvements thereon are referred to in the context of this agreement as the marina;

Whereas the municipality desires to maintain its assets but does not have the capacity to do so;

Whereas POMA leases certain of these assets from the municipality with the purpose of maintaining these assets and administering and controlling the boating activities taking place thereon, together with all ancillary facilities; and

Whereas the Municipality is one of the members of POMA and has representation on the board of directors of POMA;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

In this agreement, unless a contrary intention clearly appears:

1.1 Words importing:

- a) any one gender includes the other gender;
- b) the singular includes the plural and vice versa; and
- c) natural persons include created entities (corporate or non-corporate) and vice versa;

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- 1.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:-

"accounting officer" means the municipal manager of the municipality;

"agreement" means this document together with any annexure thereto;

"effective date" means the last date of signature of this agreement by the parties;

"financial year" means the period from the 1st day of July of any one year to 30th day of June of the next year, this being the financial year of both parties;

"leased property" means the property leased to POMA by the Municipality in terms of the lease agreement of November 2000 and any addendum thereto;

"marina" means the erven comprising the waterways, private open spaces connected thereto, parking areas and servitudes within the Port Owen development owned by the municipality and leased to POMA, together with all improvements thereon such as jetties, walkways, slipway, etc., which collectively comprise a facility for the use of boat owners;

"month" means a calendar month, and more specifically:

- (a) in reference to a number of months from a specific date, a calendar month commencing on that date or the same date of any subsequent month; and
- (b) in any other context, a month of the calendar, that is, one of the 12 months of the calendar, and "monthly" has a corresponding meaning;

"the parties" means the municipality and POMA;

"private open spaces" means the private open spaces directly connected to the waterways, excluding those on Admiral Island and Pelican Bay, but including the parking areas and servitudes which form part of the leased property;

"waterways" means the erven comprising the main basin and the loop canal which are normally covered by water and which form part of the leased property, being erven 923, 1974, and such other erven as may be agreed between the parties from time to time.

- 1.3 When any number of days is prescribed in this agreement, it shall be reckoned exclusively of the first and inclusively of the last day;

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1.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

2. DURATION

This agreement will come into effect upon the effective date and shall, unless otherwise provided for in this agreement, remain in force for a period of three (3) years. It may by mutual consent be renewed or revised from time to time as necessary.

3. RIGHTS, DUTIES AND OBLIGATIONS OF POMA

3.1 POMA will be responsible for maintaining, managing and controlling all waterways at the marina, together with all ancillary facilities including private open spaces adjacent to the waterways, and administering and controlling the boating activities taking place thereon.

3.2 Pursuant to its maintenance obligations, POMA undertakes, subject to the financial means at its disposal, to execute the following maintenance work:-

- a) Dredging of the waterways to facilitate the passage of vessels;
- b) Repair of walkways and pathways;
- c) Repair of slipway;
- d) Repair of retaining walls and embankment supports;
- e) Maintenance, repair and renovation of jetties;
- f) Maintenance of navigation aids, lighthouses, buoys, etc within the marina;
- g) Care of private open spaces forming part of the leased property;
- h) Repair and replacement of lights, electrical installation and water reticulation located on the leased property; and
- i) Maintenance of brick paved parking areas and servitudes on the leased property.

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3.3 POMA shall be entitled to the benefit of all income-earning activities that may be derived from the leased property comprising the waterways and private open spaces.

3.4 POMA shall be entitled to charge such reasonable fees as may be determined by the Board of Directors from time to time for the berthing of vessels, the use of jetties and slipways, the placement of private jetties in the waterways, the use of private open spaces and other services.

3.5 It is noted that, in terms of the original lease agreement, the Timeshare Companies and their invitees will have free use of the slipway, in return for which they undertake to maintain the jetties and embankment supports adjacent to their properties. This undertaking shall not detract from POMA's responsibilities in this regard.

3.6 POMA shall procure all licenses and permits that may be necessary for the conduct of its business and shall ensure due compliance with all laws relating thereto.

3.7 POMA declares that it has the capacity and agrees-

- a) for the period of the agreement to comply with all reporting, financial management and auditing requirements as may be stipulated in this agreement;
- b) to submit its audited financial statements for its financial year to the accounting officer promptly; and
- c) to implement effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement.

4 RIGHTS, DUTIES AND OBLIGATIONS OF THE MUNICIPALITY

4.1 The municipality undertakes to contribute an amount per year towards the cost of maintenance, which amount shall be approved in the municipality's

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annual budget and transferred to POMA, subject to the conditions of this agreement and the original lease where applicable.

- 4.2 Before transferring funds of the municipality to POMA, the accounting officer may take all reasonable steps to satisfy him or herself that POMA:-
- a) has the capacity and has agreed to comply with clause 3.7 above.
 - b) has in respect of previous similar transfers complied with all the requirements of clause 3.7

4.3 If there has been a failure by POMA to comply with the requirements of clause 3.7 in respect of a previous transfer, the municipality may, despite clause 4.2(b), make a further transfer to POMA provided that-

- (a) clause 3.7 is complied with; and
- (b) the provincial treasury has approved the transfer.

4.4 Any authorized person of the municipality may at all reasonable times enter upon or inspect the marina in order to satisfy himself that the terms of this agreement are properly observed and carried out and POMA undertakes to afford such person all reasonable access and facilities for such inspection. Such person, whilst making use of the said facilities, shall be bound to comply with all safety-regulations laid down by POMA.

5. FUNDING

5.1 In January of each year, POMA shall present to the municipality a complete income and expenditure budget and a cash-flow budget detailing the cost of the maintenance works to be undertaken during the forthcoming financial year, together with the anticipated funds it will have available to meet these costs.

5.2 The amount of the grant to POMA by the municipality will be reviewed annually once the budgets referred to in clause 5.1 have been agreed by both parties.

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5.3 Subject to paragraph 4.2, the municipality will make bi-annual payments to POMA according to the cash flow budget submitted by POMA or upon dates agreed by both parties.

6. GENERAL

6.1 In the implementation of this agreement, the parties undertake to act in good faith and warrant that in their dealings with each other they shall not do anything or refrain from doing anything which might prejudice or detract from their rights, assets or interest or each other in terms of this agreement.

SIGNED at Piketberg this 12 day of

January 2010

AS WITNESSES:

1. Pieterse

EC Liebenberg
MUNICIPAL MANAGER

2. Grand

SIGNED at VELDRIJF this 20TH day of

JANUARY 2010

AS WITNESSES:

1. [Signature]

[Signature]
POMA CHAIRPERSON

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ADDENDUM TO THE MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN

BERGRIVIER MUNICIPALITY
(Hereinafter referred to as the "Municipality")

AND

PORT OWEN MARINA AUTHORITY
(Hereinafter referred to as "POMA")

Whereas the Memorandum of Agreement entered into between the parties on 20 January 2010 came to an end on 19 January 2013; and

Whereas both parties mutually consent to the extension of the agreement in terms of section 2 of the Memorandum of Agreement; and

Whereas the Municipality is authorised to do so, in terms of an approved deviation from the Supply Chain Management Policy.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. That the Memorandum of Agreement between the Municipality and POMA entered into on 20 January 2010, and expired on 19 January 2013, be extended to 19 January 2014 for a period of a further 12 (twelve) months.
2. That the rights, duties and obligations of both parties stay the same as in the main agreement.
3. That both parties agree and confirm that they are still able and willing to perform the duties and obligations as stated in the Memorandum of Agreement.

SIGNED AT Veldrif THIS 30th DAY OF January 2013.

[Signature]
MUNICIPAL MANAGER

[Signature]
WITNESS

SIGNED AT Veldrif THIS 30th DAY OF January, 2013 2013.

[Signature]
POMA CHAIRPERSON

[Signature]
WITNESS

[Signature] @ X

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OOREENKOMS

(Ten opsigte van die oordrag van fondse deur die Munisipaliteit aan 'n buite regeringsfeer, organisasie of liggaam in terme van Art 67 van die MFMA)

aangegaan deur en tussen-

BERGRIVIER MUNISIPALITEIT

hierin verteenwoordig deur **Hanlie Linde**
in haar hoedanigheid as Munisipale Bestuurder

(hierna genoem die "Munisipaliteit")

en **PORT OWEN MARINA AUTHORITY (POMA)**

hierin verteenwoordig deur **Abé Uys**

in sy hoedanigheid as _____
wat waarborg dat hy behoorlik daartoe gemagtig is

(hierna genoem die "Begunstigde")

NADEMAAL die Munisipaliteit 'n Munisipaliteit is soos bedoel in die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, Wet nr. 56 van 2003; (hierna genoem die "Wet")

EN NADEMAAL die Begunstigde 'n organisasie of liggaam is buite enige regeringsfeer soos bedoel in Artikel 67 van die Wet;

EN NADEMAAL die Munisipaliteit 'n 99-jaar huurooreenkoms het met die begunstigde wat strek vanaf 2000 tot 2099 en die begunstigde in terme van die huurooreenkoms (aangeheg) verantwoordelik is vir die onderhoud en instandhouding van sekere eiendom van die Munisipaliteit;

EN NADEMAAL die Munisipaliteit jaarliks fondse beskikbaar stel in die goedgekeurde begroting om aan die Begunstigde oor te dra en die begunstigde begerig is om die fondse in ontvangs te neem;

EN NADEMAAL dit nie 'n kommersiële of ander besigheidstransaksie is nie;

EN NADEMAAL Artikel 67 van die Wet sekere vereistes stel waaraan voldoen moet word voordat die fondse aan die Begunstigde oorgedra word;

NOU DERHALWE kom die partye soos volg ooreen:

1. Die Begunstigde onderneem om so spoedig moontlik bewys tot tevreedenheid (in die uitsluitlike deskressie) van die rekenkundigebeampte van die Munisipaliteit (hierna genoem die "rekenkundige beampte") aan die

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Munisipaliteit te lewer dat die Begunstigde beskik oor die kapasiteit en ingestem het om:

- 1.1 Aan die bepalings van hierdie ooreenkoms te voldoen;
- 1.2 Vir die termyn van hierdie ooreenkoms te voldoen aan alle verslaggewings-, finansiële bestuur- en ouditvereistes wat in hierdie ooreenkoms gestipuleer mag word;
- 1.3 Ten minste jaarliks aan die rekenkundige beampte verslag te doen oor die werklike besteding teen die oordrag;
- 1.4 Onverwyld geouditeerde finansiële state vir enige finansiële jaar wat die rekeningpligte beampte mag verlang aan die rekenkundige beampte voor te lê;
- 1.5 Effektiewe, doeltreffende en deursigtige finansiële bestuur - en interne beheerstelsels te implementeer om teen bedrog, diefstal en finansiële wanbestuur te waak, tot die tevredenheid van die rekenkundige beampte;
2. Die Begunstigde bevestig dat hy met betrekking tot vorige soortgelyke oordragte aan al die vereistes van Artikel 67 van die Wet voldoen het.
3. Hierdie ooreenkoms neem 'n aanvang op 1 Julie 2018 en eindig op 30 Junie 2019.
4. Die Begunstigde bevestig dat hy daarvan bewus is dat indien die Begunstigde op enige wyse versuim het om met betrekking tot 'n vorige oordrag van fondse te voldoen aan die vereistes van Artikel 67(1) van die Wet, die Munisipaliteit alleenlik 'n verdere oordrag van fondse aan die Begunstigde kan maak mits:
 - 4.1 Die Begunstigde aan Artikel 67(1)(a) en (b) voldoen, en
 - 4.2 Die betrokke oordrag goedgekeur is.
5. Die Begunstigde onderneem om te alle tye voor en na ontvangs van die fondse en totdat die fondse in totaal aangewend is en die Begunstigde nie meer in besit van enige gedeelte van die fondse is nie, stiptelik te voldoen aan al die bepalings van hierdie ooreenkoms en van die Wet vir sover as wat dit van toepassing mag wees en spesifiek aan die bepalings van Artikel 67 daarvan en soos vervat in hierdie ooreenkoms.
6. Die fondse wat die Munisipaliteit beoog om aan die Begunstigde oor te dra is onderhewig aan 'n goedgekeurde begroting deur die Raad van Bergrivier Munisipaliteit en die bedrag soos vermeld (indien enige) word deur die Munisipaliteit aan die Begunstigde oorbetaal op die wyse en datum(s) soos aangetoon op **Aanhangsel A**.
7. Sou die Begunstigde versuim om aan enige bepalings van hierdie ooreenkoms of van die Wet te voldoen sal die Munisipaliteit geregtig wees:

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- 7.1 Om deur middel van 'n kennisgewing aan die Begunstigde te bepaal dat die fondse of enige oorblywende gedeelte daarvan op geen wyse verder meegehandel mag word nie totdat die Munisipaliteit skriftelik daartoe toestem;
- 7.2 Om te vereis dat die fondse of enige balans daarvan onmiddellik aan die Munisipaliteit terugbetaal word om in veilige bewaring te hou totdat die Munisipaliteit skriftelik toestem dat die Begunstigde verder met die fondse mag handel;
- 7.3 Om enige verdere oordrag van fondse aan die Begunstigde permanent op te skort of totdat die Begunstigde aan die Munisipaliteit se vereistes voldoen het tot tevreedenheid van die Munisipaliteit volgens die rekenkundige beampste van die Munisipaliteit se uitsluitlike diskresie;
- 7.4 Om enige geregtelike stappe in te stel om die bepalinge vervat in hierdie klousule af te dwing en om die Begunstigde te dwing om te voldoen aan die bepalinge van hierdie ooreenkoms of die Wet.
8. Die partye stem hiermee toe tot die jurisdiksie van die landdroshof in verband met enige aksie ontstaande uit of in verband met hierdie ooreenkoms en hierdie klousule sal geag word die skriftelike toestemming te wees wat vir daardie doel deur enige wet vereis mag word.
9. Die partye kies vir alle doeleindes van hierdie ooreenkoms hul domicilli citandi et executandi die volgende adresse:

Die Munisipaliteit: Die kantoor van die Munisipale Bestuurder, Berggrivier Munisipaliteit, Kerkstraat 13, Piketberg, 7320.

Begunstigde: Port Owen Marina Centre, Port Owen, Velddrif, 7365 Western Cape

10. Hierdie ooreenkoms is die volle ooreenkoms tussen die partye en geen wysiging daarvan (insluitende van hierdie klousule) sal van krag wees nie tensy op skrif gestel en deur beide partye geteken.
11. Die Begunstigde onderneem om onmiddellik op aanvraag aan die Munisipaliteit te lewer enige dokumente wat betrekking het op die ontvangs, bewaring en aanwending van die fondse.
12. Die opskrifte van hierdie ooreenkoms word slegs gebruik vir doeleindes van verwysing en beïnvloed geensins die uitleg of vertolking van hierdie ooreenkoms nie.
13. Die enkelvoud sluit die meervoud in en andersom, woorde wat 'n manlike geslag aandui is ook van toepassing op die vroulike geslag en woorde wat betrekking het op individue sluit ook regspersone in.
14. Indien die Munisipaliteit enige toegewing aan die Begunstigde maak of enige uitstel aan die Begunstigde verleen vir die nakoming van enige van sy

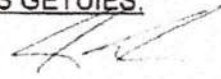
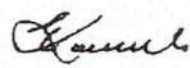
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verpligtinge kragtens hierdie ooreenkoms of nalaat om enige van sy regte kragtens hierdie ooreenkoms af te dwing of afstand doen van enige een of meer van sy regte sal dit geensins as 'n estoppel teen die Begunstigde geld nie en in besonder verhoed dit nie die Munisipaliteit om sy regte kragtens hierdie klousule af te dwing nie.

15. Indien die Munisipaliteit 'n Prokureur opdrag gee weens enige versuim deur die Begunstigde betaal die Begunstigde al die Munisipaliteit se koste bereken op 'n Prokureur en kliënt skaal asook invorderingskommissie.
16. Enige kennisgewing ingevolge hierdie ooreenkoms gegee te word moet skriftelik gegee word en afgelewer word aan die party aan wie dit gerig is. Dit sal geag word dat 'n kennisgewing aan 'n party afgelewer is.
- 16.1 Op 'n dag 5 dae nadat dit per vooruitbetaalde geregistreerde pos vanaf 'n poskantoor binne 'n radius van 300 km van sy domicilium aan hom gepos is, of
- 16.2 Wanneer dit aan 'n verantwoordelike persoon by sy domicillium oorhandig word of by gebreke aan so 'n persoon wanneer dit teen die deur van die ingang tot die gebou by sy domicillium aangebring word.

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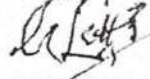
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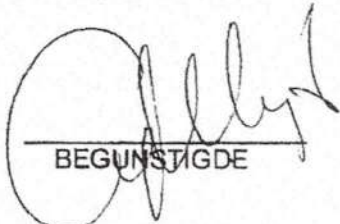
1.  G. G. ZATU
2.  E. KANKOWSKI


MUNISIPALITEIT

GETEKEN te Port Owen op die 6^{de} dag van Augustus 2018

AS GETUIES:

1. 
2. 


BEGUNSTIGDE



AANHANGSEL A

FINANSIËLE ONDERSTEUNING DEUR BERGRIVIER MUNISIPALITEIT
(sien ook paragraaf 6 van die Ooreenkoms)

BELASTINGSKEDULE FINANSIËLE JAAR: 1 JULIE 2018 TOT 30 JUNIE 2021	
TOTALE FINANSIËLE ONDERSTEUNING VIR DIE FINANSIËLE JAAR 1 JULIE 2018 TOT 30 JUNIE 2019	R 1 360 000.00. EEN MILJOEN, DRIE HONDERD EN SESTIG DUISEND RAND ALLEENLIK.
Betaalbaar in Julie 2018	R 1 360 000.00. EEN MILJOEN, DRIE HONDERD EN SESTIG DUISEND RAND ALLEENLIK.
Dienste soos per oorspronklike ooreenkoms	
AANDUIDENDE BEGROTING FINANSIËLE JAAR: 1 JULIE 2019 TOT 30 JUNIE 2020 (Onderhewig aan goedkeuring in die begroting deur die Raad van Bergrivier Munisipaliteit in Mei 2019)	
AANDUIDENDE FINANSIËLE ONDERSTEUNING VIR DIE FINANSIËLE JAAR 1 JULIE 2019 TOT 30 JUNIE 2020	R 1 433 000.00 EEN MILJOEN, VIER HONDERD, DRIE EN DERTIG DUISEND RAND ALLEENLIK.
Betaalbaar in Julie 2019	R 1 433 000.00 EEN MILJOEN, VIER HONDERD, DRIE EN DERTIG DUISEND RAND ALLEENLIK.
AANDUIDENDE BEGROTING FINANSIËLE JAAR: 1 JULIE 2020 TOT 30 JUNIE 2021 (Onderhewig aan goedkeuring in die begroting deur die Raad van Bergrivier Munisipaliteit in Mei 2020)	
AANDUIDENDE FINANSIËLE ONDERSTEUNING VIR DIE FINANSIËLE JAAR 1 JULIE 2020 TOT 30 JUNIE 2021	R 1 512 000.00 EEN MILJOEN, VYF HONDERD EN TWAALF DUISEND RAND ALLEENLIK.
Betaalbaar in Julie 2020	R 1 512 000.00 EEN MILJOEN, VYF HONDERD EN TWAALF DUISEND RAND ALLEENLIK.

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