



- (b) registered lease N104190 dated 22 November 1982 between the Minister for Lands and the Lessee, for a term of 99 years commencing 2 November 1979, in respect of that part of the Premises comprising land area.

"Lessee's Covenants" means the covenants, agreements and obligations contained or implied in the Lease or imposed by law or equity to be observed and performed by the Lessee;

"Lessor's Covenants" means the covenants, agreements and obligations contained or implied in the Lease or imposed by law or equity to be observed and performed by the Lessor;

"Premises" means the premises known as the Fremantle Sailing Club, comprising approximately 7.84 ha of land and 26.67 ha of seabed and being more particularly described in the Leases;

"New Lease" means a new land and seabed lease in respect of the Premises with a commencement date of 1 January 2022 and being in a form agreed by the parties prior to the date of this Deed;

"Rent Review Notice" means a notice dated 10 April 2019 given by McGees Property on behalf of the Lessor, to the Lessee, pursuant to the Leases, by which the Lessor advised that it considers the rent payable under the Leases with effect from 1 January 2019 to be \$760,000.00 plus GST per annum;

"Term" means the term of each of the Leases.

## 2. **CONDITION PRECEDENT**

This Deed is subject to and conditional on:

- (a) the contemporaneous execution by the parties of the New Lease; and
- (b) the New Lease being of full force and effect on and from 1 January 2022 (for the avoidance of doubt, notwithstanding that those documents are executed after 1 January 2022).

## 3. **SETTLEMENT**

- (a) In consideration of the parties entering into the New Lease, the Lessor and the Lessee release each other from all claims the subject matter of the Arbitration, including any claims for costs of the Arbitration.
- (b) Without limiting the generality of clause 3(a) of this Deed, the Lessor:
- (i) releases the Lessee from any obligation under the Leases to pay the rent specified in the Rent Review Notice (but only to the extent that rent exceeds \$34,700.00 plus GST); and
- (ii) agrees that the Lessee may, in full discharge of its liability to pay rent under the Leases, pay rent in the sum of \$34,700.00 plus

GST per annum up to 31 December 2021 and otherwise in the manner provided in the Leases.

- (c) Upon execution of this Deed and the New Lease:
- (i) the Lessee must pay to the Lessor all arrears of rent due under the New Lease (for the avoidance of doubt, being the full amount of rent payable under the New Lease on and from 1 January 2022 to the date of execution of the New Lease);
  - (ii) the parties must:
    - (1) advise the Arbitrator that the Arbitration has been settled;
    - (2) do all things necessary to cause the Arbitration to be discontinued with no order as to costs, including by consenting to the Arbitrator making orders to that effect; and
    - (3) in the event that the Arbitrator renders any additional invoices in respect of the Arbitration, the parties agree to pay those invoices in equal shares; and
  - (iii) the parties must do all things reasonably required to effect the registration at Landgate of:
    - (1) the surrender of the Leases pursuant to this Deed; and
    - (2) the New Lease.

#### **4. SURRENDER**

On the Date of Surrender:

- (a) the Lessee surrenders to the Lessor the unexpired residue of the Term and releases and discharges the Lessor from any obligation to observe and perform the Lessor's Covenants after the Date of Surrender;
- (b) the Lessor releases and discharges the Lessee from any obligation to observe and perform the Lessee's Covenants after the Date of Surrender; and
- (c) all the rights of the Lessee under the Leases determine and the unexpired residue of the Term merges in the estate vested in the Lessor.

#### **5. PRESERVATION OF LESSOR'S RIGHTS**

Nothing in clause 4:

- (a) releases the Lessee from the obligation to observe and perform the Lessee's Covenants before the Date of Surrender;
- (b) affects any claim or demand which the Lessor has, or but for the execution of this Deed, would have against the Lessee in respect of a

breach of the Lessee's Covenants before the Date of Surrender, except as expressly provided in clause 3 of this Deed; or

- (c) is evidence that the Lessee's Covenants have been observed and performed.

## **6. COSTS**

- (a) Each party must pay its own costs associated with the preparation and execution of this Deed.
- (b) The Lessee must pay all registration costs and any transfer duty associated with this Deed and the registration at Landgate of the documents contemplated by clause 3(c)(iii) of this Deed.

## **6. REFERENCES TO A PARTY**

A reference to a person includes a reference to the person's executors, administrators, successors, substitutes, including but without limitation persons taking by novation, and assigns.

## **7. GOVERNING LAW AND JURISDICTION**

This Deed is to be governed by and take effect and be construed in accordance with the laws in force in Western Australia and all parties submit to the jurisdiction of the Courts of Western Australia.

## **8. ENTIRE AGREEMENT**

This Deed constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, undertakings and agreements, whether written or oral, relating to the subject matter of this Deed.



- 2023 -

**THE MINISTER FOR TRANSPORT**

Lessor

and

**THE FREMANTLE SAILING CLUB INC**

Lessee

**SURRENDER OF LEASE**

**Fremantle Sailing Club**



**LAWTON GILLON**  
LAWYERS

Level 7, 16 St Georges Terrace, Perth, WA 6000

**P:** (08) 9221 5445 | **F:** (08) 9221 4224

**W:** [www.lawtongillon.com.au](http://www.lawtongillon.com.au)