

THIS DEED is made the day of 2023

BETWEEN:

THE MINISTER FOR TRANSPORT being a body corporate pursuant to the provisions of the Marine and Harbours Act 1981 of 5 Newman Court, Fremantle, Western Australia ("Lessor")

AND

FREMANTLE SAILING CLUB INC (ABN 83 047 756 642) of 151 Marine Terrace, Fremantle, Western Australia ("Lessee")

RECITALS:

- A. By the Lease, the Lessee has a leasehold estate in the Premises for the Term.
- B. The Lessee wishes to grant Facilities Leases on the terms and conditions of the Standard Form Documents.
- C. The Lessee has requested the Lessor to irrevocably consent, for the duration of the Term (including any Further Term), to the grant of Facilities Leases on the terms and conditions of the Standard Form Documents.
- D. The Lessor has agreed to grant that consent on the terms and conditions contained in this Deed.

The Parties COVENANT and AGREE:

1. DEFINITIONS

Unless otherwise required by the context or subject matter:

"Facilities Lease" means a lease or sub-lease for a boat pen, Garage or hardstand bay, within the Premises;

"Further Term" has the meaning given to that term in the Lease;

"Garage" has the meaning given to that term in the Lease;

"Lease" means a lease executed contemporaneously with this Deed by the Lessor and the Lessee, in respect of the Premises, for a term of 24 years commencing 1 January 2022 together with an option to renew the term for 34 years commencing on 1 January 2046 and a further option to renew the term for 21 years commencing 1 January 2080.

"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 Lease;

"Standard Form Documents" means documents in the form attached to this Deed as Annexures "A" to "F", or as amended from time to time in accordance with clause 4; and

"Term" means the term of the Lease.

2. CONSENT OF LESSOR

- (a) The Lessor, with effect from the date of this Deed and for the duration of the Term (including any Further Term), irrevocably consents, for the purposes of clause 32.1 of the Lease and for all other purposes, to the terms and conditions of the Standard Form Documents, and to the grant by the Lessee of Facilities Leases, on the terms and conditions of any of the Standard Form Documents.
- (b) The Lessor's consent to any Facilities Lease will be deemed to have been given immediately before the execution by all parties to such an agreement (for the avoidance of doubt, provided that Facilities Lease is in the form of a Standard Form Document).
- (c) Nothing in this Deed constitutes a consent by the Lessor to the grant by the Lessee of any lease, sub-lease, licence or other interest in any part of the Premises:
 - (i) other than strictly on the terms and conditions of a Standard Form Document; and
 - (ii) in any event, in respect of any part of the Premises other than a boat pen, garage or hardstand bay.

3. LESSEE'S COVENANTS WITH LESSOR

- (a) The Lessee covenants with the Lessor not to grant any Facilities Lease during the Term (including any Further Term) except strictly on the terms and conditions of a Standard Form Document provided that the Lessee may in all cases add the names and addresses of the other parties, and complete the schedules by adding the relevant particulars, to any of those agreements.
- (b) The Lessee must promptly, and in any event on demand, provide the Lessor's managing agent from time to time, which as at the date of this Deed is McGees Property of 26 Clive Street, West Perth, Western Australia, with a copy of each Facilities Lease which the Lessor has entered into following the date of this Deed.
- (c) The Lessee acknowledges and agrees that nothing contained in this Deed affects the obligation of the Lessee to observe and perform its covenants, agreements and obligations contained or implied in the Lease.

4. AMENDMENTS TO STANDARD FORM DOCUMENTS

- (a) The Lessee may from time to time by written notice to the Lessor propose amendments to any of the Standard Form Documents for approval by the Lessor (such approval not to be unreasonably withheld) (“Amendment Notice”).
- (b) Upon the receipt of an Amendment Notice:
 - (i) the Lessor must as soon as practicable and in any event within 60 days of the date of an Amendment Notice, at its own cost, consider the proposed amendments in good faith; and
 - (ii) if the Lessor objects to the Amendment Notice (on a basis that would entitle the Lessor to withhold its approval under clause 4(a)) give written notice of the objection to the Lessee.
- (c) If the Lessor fails to give a written notice of objection under clause 4(b)(ii), the Lessor will be deemed to have given its approval of the amendments proposed in the Amendment Notice.
- (d) On and with effect from the date that an Amendment Notice is approved (“Effective Date”), the Standard Form Documents inclusive of the amendments specified in the Amendment Notice shall, for the purposes of this Deed, be treated as Standard Form Documents.
- (e) For the avoidance of doubt:
 - (i) an Amendment Notice (or the approval thereof) does not affect Facilities Leases granted by the Lessee before the Effective Date or the Lessor’s consent to the same; and
 - (ii) the Lessee is under no obligation to procure that existing holders of Facilities Leases agree to the terms and conditions recorded in the amended Standard Form Documents.

5. COSTS

Each party must pay its own costs associated with the preparation and execution of this Deed.

6. MISCELLANEOUS PROVISIONS

5.1 *Severance*

If any part of this Deed is or becomes void or unenforceable then that part will be severed from this Deed so that all parts that are not now or do not become void or unenforceable will remain in full force and effect and be unaffected by any severance.

5.2 *Proper Law*

This Deed is governed by and is to be interpreted in accordance with the law in force in Western Australia and where applicable the laws of the Commonwealth of Australia.

5.3 *Rules of interpretation*

- (a) The rules of interpretation contained in this clause apply to the interpretation of this Deed except where the context makes it clear that a rule is not intended to apply.
- (b) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning.
- (c) Headings are for convenience only and do not affect interpretation of this Deed.
- (d) A reference to a party includes that party's executors, administrators, personal representatives, successors and assigns and if a party comprises two or more persons, the executors, administrators, personal representatives, successors and assigns of each of those persons.
- (e) If a party comprises two or more persons, the covenants and agreements on their part bind them, and must be observed and performed by them, jointly and severally and may be enforced against any one or more of them.
- (f) A singular word includes the plural and vice versa.
- (g) If an example is given of anything (including a right, obligation or concept), such as by the use of the word "includes" or "including", the example does not limit its scope.
- (h) A reference to "cost" or "costs" means, on a full indemnity basis, costs, losses, liability, charges, expenses, fees, imposts, levies, duties, taxes, overheads, administrative costs, salaries and other amounts lawfully incurred or imposed (including fines and penalties).
- (i) A provision in this Deed is not to be construed against a party merely because that party was responsible for the instructions for the preparation of this Deed or any part of it.

5.4 *Time of the essence*

Time is of the essence in respect of the performance by the Lessee.

5.5 *Entire Agreement*

- (a) This Deed contains 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.
- (b) This Deed may only be amended by written agreement signed by all parties.

5.6 *Further Assurances*

Each party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Deed.

5.7 *Counterparts and execution*

- (a) This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (b) A counterpart may be executed electronically (including by DocuSign) or in wet-ink.
- (c) The electronic execution of this Deed by one or more parties and/or the exchange of this Deed by email or other electronic means are binding on the parties, notwithstanding that the original counterpart may never be provided.
- (d) This Deed is binding on each party who executes it notwithstanding the failure of any other person named as a party to execute it.

5.8 *Waivers*

- (a) Failure to exercise or delay in exercising any right, power or privilege in this Deed does not operate as a waiver of that right, power or privilege.
- (b) A single or partial exercise of any right, power or privilege does not preclude:
 - (i) any other or further exercise of that right, power or privilege; or
 - (ii) the exercise of any other right, power or privilege.

5.9 *Variation*

This Deed may be varied only by deed executed by the parties.

ANNEXURE A

Pen Lease Agreement – Part 1 Lease

ANNEXURE B

Pen Lease Agreement – Part 2 Lease

ANNEXURE C

Hardstanding Bay Lease Agreement

ANNEXURE D

Fourth Schedule – Garage Lease Agreement

ANNEXURE E
Hardstand Rental Agreement

ANNEXURE F

Pen Rental Agreement – Club Owned Pen

EXECUTED AS A DEED.

SIGNED by)
PETER WORONZOW, CHIEF EXECUTIVE)
OFFICER OF THE DEPARTMENT OF)
TRANSPORT of the State of Western)
Australia as the delegate of THE MINISTER)
FOR TRANSPORT in the presence of:)

.....
PETER WORONZOW

.....
Signature of witness

.....
Name of witness in full (print)

.....
Address

.....
Occupation

EXECUTED by)
THE FREMANTLE SAILING CLUB INC)
(ABN 83 047 756 642) by its chief executive)
officer for the time being in the presence of:)

.....
Craig Evans

.....
Signature of Witness

.....
Print full name of witness

.....
Address

.....
Occupation

- 2023 -



THE MINISTER FOR TRANSPORT

Lessor

and

THE FREMANTLE SAILING CLUB INC

Lessee



DEED OF CONSENT



Fremantle Sailing Club



LAWTON GILLON
LAWYERS

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