

THE SCHEDULE ABOVE REFERRED TO.

THIS LEASE made the 4th day of March One thousand nine hundred and sixty-eight pursuant to the *St. Kilda Land Act 1965* B e t w e e n PORT PHILLIP CITY COUNCIL of corner of Carlisle Street and Brighton Road, St Kilda, Victoria 3182 as the Committee of Management of the land hereinafter referred to (hereinafter called “the Landlord” which expression shall where the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the term hereby created) of the one part and AUSTRALIAN MARINAS (A/ASIA) PROPRIETARY LIMITED of Dalmore Park, Ferntree Gully Road, Scoresby, Victoria 3179 (hereinafter called “the Tenant” which expression shall where the context so admits include the heirs executors administrators and permitted assigns of the Tenant) of the other part WITNESSETH as follows:

[New demise inserted – see clause 2.1 of new interim lease]

[New definitions inserted as follows]

1968 Lease means the lease for the Premises between the Landlord and the Tenant constituted by the following documents, copies of which are attached to this Lease as [Attachment 2 of new interim lease]:

lease dated 4 March 1968;

first supplemental agreement dated 4 March 1968;

second supplemental agreement dated 7 August 1968;

third supplemental agreement dated 28 April 1969; and

fourth supplemental agreement dated 25 May 1981.

Act means the *St Kilda Land Act 1965* (Vic).

Boat Storage Infrastructure means the Wet Pens, security fencing for the Wet Pens and the dry storage boat mounts.

Gross Receipts has the meaning set out in clause 1 of the 1968 Lease.

Lease means this lease executed by the parties.

RLA Maintenance means any maintenance work for which the Landlord is responsible under s 52 of the *Retail Leases Act 2003* (Vic).

Wet Pens has the meaning set out in the fourth supplemental agreement dated 25 May 1981 (referred to in the definition of 1968 Lease above).

1968 Lease means the lease for the Premises between the Landlord and the Tenant constituted by the following documents, copies of which are attached to this Lease as [Attachment 2 of new interim lease]:

[New clauses inserted dealing with landlord's capacity, Governor in Council approval and inconsistency – see clauses 2.2, 2.3 and 2.4 of new interim lease]

[New clause inserted dealing with condition report – see clause 2.5 and Attachment 3 of new interim lease]

[New GST clause inserted – see clause 3 of new interim lease][New interpretation clauses inserted – see clauses 4 and 5 of new interim lease]

1. The Tenant must:
 - a) pay to the Landlord a yearly rent of \$134,000 plus GST (**Basic Annual Rent**) payable in advance by equal quarterly payments, the first of such payments to be made on 1 May 2019 and subsequent payments to be made quarterly in advance thereafter, with such Basic Annual Rent to be adjusted on 1 May each year in the manner set out in the Third Schedule of the fourth supplemental agreement dated 25 May 1981 referred to in the definition of 1968 Lease;
 - b) pay to the Landlord, in addition to the Basic Annual Rent, as additional percentage rent, a sum equivalent to 7% of the Gross Receipts. The said additional rent shall be payable quarterly without any set off or deduction whatsoever and shall become due

and payable fifteen days after the last day of each three-month period of the term of the Lease and be calculated on receipts during the said three months, the first of such payments being in respect of the three-month period commencing on 1 May 2019; and

- c) use the Premises only for the purposes of a Marina as defined in the *St. Kilda Land Act 1965* but subject to the following limitations:
 - (i) with respect to the Harbour Area, the Tenant may only use the Harbour Waters for pleasure boating purposes by members of the public; and
 - (ii) with respect to the surrounding land, the Tenant's occupation and use of the surrounding land shall be limited to the surface and down to a depth of fifty feet below the surface.

1A. Despite anything to the contrary in the 1968 Lease:

- (a) the improvements at the Premises which were owned by the Tenant immediately prior to the expiry of the 1968 Lease (**Existing Tenant Improvements**) will continue to be owned by the Tenant during the term of this Lease;
- (b) at the expiry or earlier termination of this Lease, ownership of the Existing Tenant Improvements will revert to the Landlord at no cost to the Landlord;
- (c) the Tenant must ensure that the Premises, the Existing Tenant Improvements and all other improvements at the Premises are:
 - (i) maintained throughout the term of this Lease; and
 - (ii) delivered up to the Landlord at the expiry or earlier termination of this Lease,

in a condition consistent with that which would have been required under the 1968 Lease, had the 1968 Lease continued and remained on foot during the term of this Lease; and

- (d) for the purposes of this clause 1A, Existing Tenant Improvements specifically excludes any fit out, fixtures, fittings or other installations which are the property of the Tenant's various sublessees recited in clause 5 hereof.

2. The Tenant for himself and his assigns covenants with the Landlord as follows:

- (a) To pay the said reserved rents on the days and in manner aforesaid.
- (b) To pay all existing and future rates taxes charges duties burdens assessment and outgoings whatsoever whether parliamentary local or otherwise which now are or shall at any time hereafter during the said term be charged rated assessed or imposed upon or in respect of the premises hereby demised or any part thereof or on the Landlord or Tenant in respect thereof respectively.
- (c) Not to build or permit to be built or erected or to make any additions or alterations to any buildings on the land hereby demised (whether erected prior to or subsequent to the date hereof) except in accordance with plans elevations and specifications previously approved by the City Engineer of St. Kilda for the time being.
- (d) At all times during the continuance of the terms to keep in good and substantial tenantable order repair and condition having regard to the age thereof all buildings installations structures and erections on the land hereby demised (including the Boat Harbour Area) and all sewers and drains and gardens within the demised premises and the fences surrounding the boat harbour area and all other buildings and erections which at any time during the said term may be upon any part of the land hereby demised.
- (e) As often as the Landlord shall reasonably require to paint grain varnish and colour all the external wood and iron work and parts usually painted grained varnished and coloured of the buildings installations structures and erections standing on the demised premises and all the inside of the said buildings installations structures and erections for the time being upon the demised premises and to notify the City Engineer the date of commencement and completion of such painting operations.

- (f) At the end or other sooner determination of the said term peaceably to surrender up to the Landlord the land hereby demised including the Harbour Area together with the said buildings installations structures and erections well and substantially repaired painted and decorated in accordance with the covenant hereinbefore contained together with all Landlord's fixtures safe undefaced and fit for use.
- (g) To permit the Landlord and its architects or agents with or without workmen and others twice or oftener in every year during the said term at reasonable times in the daytime to enter upon the land hereby demised and the buildings thereon and every part thereof to view the state and condition of the same and thereupon the Landlord may serve upon the Tenant notice in writing specifying any repairs or painting necessary to be done and require the Tenant forthwith to execute the same and if the Tenant shall not within ten days after the service of such notice proceed diligently with the execution of such repairs then to permit the Landlord to enter the demised premises and execute such repairs and the cost thereof shall be a debt due from the Tenant to the Landlord and be forthwith recoverable by action.
- (h) To insure and keep insured all buildings installations structures or erections which during the said term may be upon the land hereby demised from loss or damage by fire (and during the continuance of, any war between this country and any foreign state against bombardment or by missiles or projectiles from or fired at aircraft) to the full value thereof (such value to be determined by the City Engineer for the time being) in some insurance office to be approved in writing by the landlord in the joint names of the Landlord and the Tenant and to pay all premiums and sums of money necessary for that purpose within fourteen days before the same shall respectively become payable and on demand to produce to the Landlord the policy or Policies of such insurance and the receipt for every such payment.
- (i) As often as the said buildings installations structures or erections on the land hereby demised shall be destroyed or damaged as aforesaid forthwith to rebuild and reinstate the same under the direction and to the satisfaction of the City Engineer for the time

being of the landlord it being hereby agreed that all moneys to be received by virtue of any such insurance as aforesaid shall be applied so far as the same shall extend in so rebuilding and reinstating the said buildings installations structures or erections and in case the same shall be insufficient for that purpose then the Tenant shall make up the deficiency out of the Tenants own moneys.

- (j) Throughout the term hereby created to carry on and conduct upon the demised premises in an enterprising and efficient manner the business of a Marina as defined in the *St. Kilda Land Act 1965* and to keep open for business on every day of the week and for the maximum number of hours in every such day from time to time permitted by law and to provide a twenty-four hour safety patrol service on every day of the week and to provide two berths for boat units of the Water Police Organization located in the position shown on the said plan.
- (k) To comply with the provisions of any Act Regulation or By-law relating to or affecting the demised premises or the business carried on thereon and with all orders directions requirements or requests of the Department of Crown Lands & Survey Department of Public Works Melbourne and Metropolitan Board of Works Port Officer in Victoria Country roads Board Tourist Development Authority and of all public authorities and other authorities and with all regulations (if any) for the time being in force relating to or affecting the carrying on of business upon the demised premises and to pay all licence fees from time to time payable in connection with the said business or any part thereof Provided that and notwithstanding anything hereinbefore contained the Tenant shall not be required to comply with any by-laws and regulations of the Landlord which are inconsistent with the terms and conditions of this agreement.
- (l) Not to form or permit the formation of clubs or associations for boating or other purposes and not to grant to any clubs or the members thereof any special or exclusive facilities and not to hold or conduct or allow any regatta or organized race meeting to be conducted or held on the demised premises and in particular within the Harbour Area and not to do or permit to be done upon the demised premises

(including the Harbour Area) anything which may be to the annoyance damage or disturbance of the Landlord or the neighbourhood Provided that nothing herein contained shall prevent the Tenant from carrying on the normal operations of a Marina.

- (m) Not to use or permit to be used any portion of the demised premises or anything connected therewith as an advertising station or for the display of neon signs boards posters or notices without the written approval of the Landlord.
- (n) To keep true and accurate accounts records books and data with respect to the gross receipts from entrance and admission fees and charges for car parking boat launching rental of boat pens parking of cars with trailers and dry storage rental and to have them at all times properly posted up and to deliver to the Landlord on the tenth day of each month a written statement prepared by the bookkeeping staff of the Tenant showing the gross receipts of the Tenant during the preceding month from the aforesaid sources and on the fifteenth day after each three month period to deliver to the Landlord a written statement prepared and certified by the Tenant's certified public accountant showing in detail and analysed month by month the gross receipts of the Tenant from the aforesaid sources.
- (o) To allow the Landlord and its agents at all reasonable times access to the accounts records books and data referred to in the preceding clause for the purpose of verifying the said monthly and quarterly statements and in the event that such inspection shall disclose that there is a material variation between the monthly and quarterly reports and the actual gross receipts the cost of the Landlord's examination shall be paid for by the Tenant. Any such material variation shall be deemed a substantial violation and breach of this lease entitling the Landlord in addition to any other remedies to cancel this lease.
- (p) To preserve all books and records referred to in Clause (o) for at least three years and if the Landlord shall so require to introduce and give effect to any accounting systems including but not limited to registers or methods of receiving cash.

- (q) To provide and keep in force for the benefit of the Landlord on the one hand or part and the Crown in the right of the State of Victoria and the Port Officer in Victoria on the other hand or part separate general accident and separate public liability insurance policies protecting the Landlord on the one hand or part and the Crown in the right of the State of Victoria and the Port Officer in Victoria on the other hand or part against any and all liability occasioned by accident or disaster occurring or happening in on or about the demised premises and/or the Harbour Area and/or at the approaches to the Harbour Area in such amounts as may from time to time be fixed by and in terms to be agreed with the Landlord for the benefit and protection of the Landlord in respect to any one accident or disaster and in respect of injuries to or the death of any one person and in such amounts as may from time to time be fixed by and in terms to be agreed upon with the Port Officer in Victoria for the benefit and protection of the Crown in the right of the State of Victoria and the Port Officer in Victoria in respect to any one accident or disaster and in respect of injuries to or the death of any one person the intention being that separate policies shall be provided and kept in force for the Landlord in the one case and the Crown in the right of the State of Victoria and Port Officer in Victoria in the other case.
- (r) To deliver to the Landlord the said policy or policies of insurance and annual premium receipts and in the event that the Tenant shall fail to arrange such insurance or to deliver the said policies and premium receipts to the Landlord it shall be lawful for the Landlord (without prejudice to its other rights) to arrange such insurance and bills for the premiums therefor shall be rendered by the Landlord to the Tenant at such times as the Landlord may elect and shall be due and payable by the Tenant when rendered.
- (s) Not at any time during the said term to mortgage assign sublet underlet part with the possession or grant licences or declare trusts in respect of the demised premises or any part thereof or this lease without the written consent of the Landlord such consent not to be unreasonably withheld in the case of an assignment or sub-lease to a respectable responsible solvent and suitable person PROVIDED ALWAYS that the

Tenant shall have first performed the following which shall be conditions precedent to the Tenant obtaining such consent namely

- (i) payment to the Landlord of all moneys due owing and payable under the lease;
- (ii) the Tenant shall submit the name address and occupation of any proposed assignee or sub-tenant together with ample proof to the satisfaction of the Landlord that such person is respectable responsible solvent and suitable;
- (iii) the Tenant shall in the case of any assignment procure the execution by the assignee of an assignment of this lease to which the Landlord shall be a party in such form as the Landlord or its Solicitors shall approve of and which shall be repeated by such assignee with the Landlord the several covenants conditions agreements stipulations and powers herein expressed or contained or such of them as may be required by the Landlord or its Solicitors such assignment to be perused by the Landlord's Solicitors at the cost and expense in all respects of the person requiring such consent and an executed copy of such assignment duly stamped shall be delivered to the Landlord;
- (iv) the Tenant shall also pay to the Landlord all reasonable costs charges and expenses incurred by the Landlord of and incidental to the making of enquiries concerning the respectability responsibility solvency and suitability of any proposed assignee or sub-lessee and of and incidental to the perusing approving copying adding to examining and obtaining the execution of any such assignment of this lease or sub-lease.
- (t) To permit the Landlord during the three months immediately preceding the determination of the tenancy to affix and retain without interference upon any part of the demised premises a notice for reletting the same and during the said three months to permit persons with written authority from the Landlord or its agent at reasonable times of the day upon appointment made to view the demised premises.

- (u) Not to allow the erection of tents or temporary buildings on the demised premises except in the course of building operations and not to allow any persons to camp live in or pass the night in tents caravans motor vehicles or boats erected parked moored or afloat on the demised premises or within the Harbour Area and not to allow and to take adequate measures and precautions against the discharge of oil and petrol and inflammable combustible and noxious substances into the waters in the Harbour Area and against the fouling of the said waters.
- (v) To maintain the water depth in the Boat Harbour Area to the levels prescribed by the City Engineer and at the Tenants expense and whenever required by the City Engineer to carry-out-regular and frequent dredging and removal of sand and debris by pumping methods approved the City Engineer.
- (w) To construct erect and install a navigation light at the Boat Harbour entrance to the requirements of the Port Officer in Victoria and to arrange for the supply of electric current thereto and to maintain and keep the same at all times in proper order repair and condition and lighted during such hours as may be stipulated by the Port Officer or City Engineer.

3. The Landlord hereby covenants with the Tenant that the Tenant paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on the Tenant's part contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Landlord or any person rightfully claiming under or in trust for the Landlord PROVIDED ALWAYS and it is hereby expressly agreed as follows:

- (i) If the rents hereby reserved or either of such rents or any part thereof shall be unpaid for the space of twenty-one days next after any of the days hereinbefore appointed for payment thereof (whether the same shall have been lawfully demanded or not) or if default shall be made in the performance or observance of any of the covenants conditions or agreements on the part of the Tenant herein contained or if the Tenant or other the person in whom for the time being the term hereby created shall be vested shall become bankrupt or be placed in liquidation (whether voluntary or compulsory) or

enter into any composition with creditors or execute a deed of arrangement or suffer any distress or execution to be levied upon the goods of the Tenant then and in any such case it shall be lawful for the Landlord or any person or persons duly authorized by the Landlord in that behalf into and upon the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as in its first and former estate anything herein contained to the contrary notwithstanding and thereupon the term hereby created shall cease without prejudice to any right of action or remedy of the Landlord in respect of any antecedent breach of any of the covenants by the Tenant hereinbefore contained.

- (ii) That it shall be lawful for the Landlord in the event of the happening of any disaster accident or mishap in on or about the demised premises (including the Harbour Area) or if any other event shall occur or any circumstances shall arise which in the opinion of the City Engineer would render it dangerous for the Marina to be kept open to persons who own or use boats and to members of the public to close the demised premises and to prevent access thereto by the aforesaid persons without thereby becoming liable to the Tenant in damages or to compensate the Tenant for any loss suffered by the Tenant by such closure or to allow the Tenant any remission or abatement of rent during the period of such closure Provided Always that such closure shall operate only during such period as it takes the Tenant to repair the consequences and results of the disaster accident or mishap or to remove the cause of danger.
- (iii) If with the consent of the Landlord the Tenant remains in possession of the demised premises after the expiration of the term hereby created the Tenant shall hold the premises as a monthly tenant subject to the payment of rent monthly and to all the provisions affecting the present tenancy as if that tenancy was expressed to be a monthly tenancy.
- (iv) Any notice under this Lease shall be in writing. Any notice to the Tenant shall be sufficiently served if left addressed to the Tenant on the demised premises or sent to

the Tenant by registered post at the last known address in the State of Victoria of the Tenant and any notice to the Landlord shall be sufficiently served if sent to the Landlord by registered post addressed to the Town Hall St. Kilda. A notice by the Landlord shall be sufficient if signed by the Town Clerk of the City of St. Kilda on behalf of the Landlord.

- (v) The Tenant shall bear pay and discharge the costs of engrossing this Lease in duplicate and all stamp duties from time to time payable thereon.

4. [Deleted]

5. The Tenant must negotiate in good faith with the following subtenants (which the parties acknowledge occupied parts of the Premises as at December 2018) and use its best endeavours to retain those subtenants in their existing locations at the Premises until the expiry of earlier termination of this Lease:

- (a) BP Australia Ltd (service station);
- (b) The Duck's Guts Pty Ltd (42A Marine Parade);
- (c) Skydive Holdings Pty Ltd (sub-sublease from The Duck's Guts Pty Ltd for part of 42A Marine Parade);
- (d) Savannah Victoria Pty Ltd (42B Marine Parade);
- (e) Manmic Australia Pty Ltd (42C Marine Parade);
- (f) Wirillda Pty Ltd (42D Marine Parade); and
- (g) The Australia Volunteer Coast Guard Association Inc (coast guard office).

6. The Tenant acknowledges and agrees that:

- (a) at any time prior to or after the end of the term of this Lease, the Landlord may (but is not required to) offer the Premises or any part of it to the public market pursuant to an

expression of interest process or other similar procurement process to appoint an operator under a new lease for the St Kilda Marina;

- (b) the Landlord may enter into a lease with the successful proponent under a procurement process of a type referred to in clause 6(a) at any time before or after the expiry date of this Lease, however, such a lease must not commence prior to the expiry or earlier termination of this Lease;
- (c) the Landlord makes no representation or warranty that the Tenant will be able to continue to occupy the Premises after the expiry or earlier termination of this Lease;
- (d) the Tenant shall not be entitled to receive any compensation by reason of anything referred to in this clause 6, or by reason of the Tenant having no right to occupy the Premises after the expiry or earlier termination of this Lease;
- (e) the Tenant releases the Crown in all of its capacities, the Landlord and its officers and agents from all claims arising from or in connection with any procurement process of a type referred to in clause 6(a) or any decision of the Landlord to enter into a new lease referred to in clause 6(b); and
- (f) as part of any procurement process of a type referred to in clause 6(a), the Landlord may, after giving the Tenant at least 7 days' prior written notice and during usual business hours, show prospective tenants through the Premises.

7. In the event that Australian Marinas (A/Asia) Proprietary Limited ACN 004 443 190 (or a related body corporate within the meaning of the *Corporations Act 2001* (Cth)) is not the successful proponent under a procurement process referred to in clause 6(a):

- (i) the Tenant agrees to sell to the Landlord; and
- (ii) the Landlord agrees to purchase,

the Boat Storage Infrastructure for the sum of \$620,000 plus GST, in which case, despite any provision to the contrary in the 1968 Lease, at the expiry or earlier termination of this Lease:

- (iii) the Tenant must not remove the Boat Storage Infrastructure, which will continue to remain in situ for the Landlord's benefit;
- (iv) the Tenant must provide any document which the Landlord may require in order to transfer unencumbered title to the Boat Storage Infrastructure to the Landlord; and
- (v) without limiting any of the Tenant's other obligations under this Lease, the Tenant must deliver the Boat Storage Infrastructure to the Landlord in operational order.

8. RLA Maintenance

- (a) The parties acknowledge that, under s 52 of the *Retail Leases Act 2003* (Vic), the Landlord is responsible for carrying out the RLA Maintenance.
- (b) The Landlord agrees that the Tenant may elect to manage the RLA Maintenance on behalf of the Landlord, subject to the remaining provisions of this clause 8.
- (c) Prior to managing an item of RLA Maintenance on behalf of the Landlord, the Tenant must obtain the Landlord's prior written consent to manage that item of RLA Maintenance and provide the following to the Landlord:
 - (i) reasonable details of the nature and scope of the proposed works;
 - (ii) for works costing less than \$10,000 (inclusive of GST), at least 1 written quotation;
 - (iii) for works costing between \$10,000 and \$50,000 (inclusive of GST), at least 2 written quotations;
 - (iv) for works costing more than \$50,000 (inclusive of GST), at least 3 written quotations; and

(v) such other information as the Landlord may require, to enable the Landlord to consider the request.

(d) The Landlord must act reasonably in considering a request for consent under clause 8(c) and shall be the contracting party for the purposes of undertaking the RLA Maintenance.

IN WITNESS whereof the parties have executed these presents the day and year first above written.

**Signed under delegated authority Port Phillip
City Council**)
)

.....
Signature of Council delegate

.....
Name

.....
Position

**Executed by Australian Marinas (A/Asia)
Proprietary Limited ACN 004 443 190 in
accordance with s 127(1) of the *Corporations Act
2001*:**)
)

.....
Signature of Director

.....
Signature of Director/Company Secretary

.....
Print full name

.....
Print full name

GOVERNOR IN COUNCIL ATTESTATION

Pursuant to section 6 of the *St Kilda Land Act 1965* (Vic), the Governor in Council approves the:

- grant of this Lease; and
- covenants, conditions, exceptions and reservations contained in this Lease.

(Signature)

Date: -----

THE SCHEDULE ABOVE REFERRED TO

ALL THAT piece of land having an area of 20 acres one rood and 30 perches shown on the plan of survey signed by the surveyor General on 6th September 1967 which piece of land is substantially the same as ALL THAT piece of land (including the boat harbour Area within the boundaries thereof) containing 20 acres more less situate at St. Kilda Parish of Melbourne South commencing at a point distant 157.6 links westerly from a point on the eastern alignment of Marine Parade 15.1 links southerly from the angle formed by that alignment and the southern alignment of Wordsworth Street: thence southerly by a line parallel to the eastern alignment of Marine Parade to a point in line with the southern alignment of Thackeray Street: thence westerly by a line forming a right angle with the alignment of Marine Parade to the south stone mole at high water mark on the shore of Port Phillip Bay: thence northerly by the south stone mole to its northern extremity: thence by a line bearing 84°0' to the face of the sheet piling at water edge: thence south easterly by that face and thence by a line forming a right angle with the alignment of Marine Parade to the commencing point described in Schedule 2 of the *St. Kilda Land Act*.