

DETERMINATION OF
LEASE IS 1.5.2019. 12.

HEAD LEASE.

300

THE SCHEDULE ABOVE REFERRED TO.

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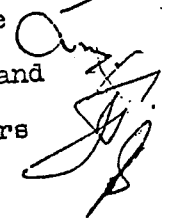
THIS LEASE made the ^{4TH} 26th day of ~~February~~ ^{MARCH} One thousand nine hundred and sixty-eight pursuant to the St. Kilda Land Act 1965 Between THE MAYOR COUNCILLORS AND CITIZENS OF THE CITY OF ST. KILDA of the Town Hall St. Kilda as the Committee of Management of the land hereinafter referred 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:

In consideration of the expense incurred and to be incurred by the Tenant in the erection of buildings and other improvements upon the land hereby demised and of the sum of One thousand dollars paid on the execution hereof by the Tenant lease premium and of the rent and covenants on the part of the Tenant hereinafter reserved and contained the Landlord hereby demises unto the Tenant to be used only for the purposes of a Marina as defined in the St. Kilda Land Act 1965 All that piece of land described in the Schedule hereto including the Harbour Area within the said boundaries but subject to the following limitations viz. that this demise shall in the case of the Harbour Area be restricted to the use of the Harbour Waters for pleasure boating purposes by members of the public and in the case of the surrounding land be limited to the surface and down to a depth of fifty feet below the surface Reserving to the Landlord rights similar to those reserved by Clause 1 of an Agreement dated the 4th day of March 1968 between the Landlord and the Tenant for the purpose of constructing or completing the construction of the works

RECEIVED
COURTNEY PLACE
3/3/68
DUTY ON 2/8-2/11/68
R. M. PHIBBS
VICTORIA COMPTROLLER OF STAMPS

Handwritten signature and initials at the bottom right of the document.

referred to in the said Clause To Hold the same unto the
 tenant from the _____ day of _____ One thousand
 nine hundred and sixty-_____ for the term of fifty years
 Yielding and Paying therefor throughout the term hereof
 the yearly rent of Ten thousand dollars being the annual
 rent offered by the Tenant when tenders for the lease of
 the demised premises were called for by the Landlord
 payable in advance by equal quarterly payments the first of
 such payments to be made on the date of commencement of
 this demise and subsequent payments to be made quarterly
 in advance thereafter, and Yielding and Paying therefor in
 addition to the yearly rent hereinbefore reserved payable
 as hereinbefore provided but with effect from the commencement
 of the sixth year of the term hereby created and throughout
 the remainder of the said term as additional percentage rent
 a sum equivalent to seven per centum of the gross
 receipts as hereinafter defined of the Tenant from the
 operation of the demised premises as a Marina. The said
 additional rent shall be payable quarterly as hereinafter
 provided 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 hereunder being in
 respect of the three month period commencing after the
 expiration of five years from the date of commencement
 of this lease. The expression "gross receipts" as herein
 used shall be construed as meaning the aggregate of all
 entrance and admission fees and charges made by the Tenant
 for car parking boat launching rental of boat pens
 parking of cars with trailers and dry storage rentals
 after deducting therefrom the rates and taxes paid by
 the Tenant pursuant to Clause 2(b) hereof and shall not
 include charges made by the Tenant to customers for
 retail sales of merchandise and/or services in from or

W.C.C. ✓


through the demised premises whether for cash or for credit all rents premiums and other payments whether received or not payable by sub-tenants licensees and concessionaires and any and all other receipts of the Tenant in the course of operating the Marina. And it is hereby expressly agreed and declared that neither this lease nor the provisions thereof with regard to the payment by the Tenant and the acceptance by the Landlord of a percentage rent is intended to nor shall the same ever be construed so as to create a partnership by and between the Landlord and the Tenant or make the Landlord and Tenant joint venturers or make the Landlord in any way responsible for the debts and/or losses of the Tenant.

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 assessments 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) To complete the construction in accordance with the provisions of an antecedent agreement between the parties hereto pursuant to which this lease is being granted of all improvements installations structures and buildings forming part of the development project referred to in such agreement and 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 term 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) In every third year of the said term or 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.

- (3)
- (i)
- (ii) 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.
- (iii) 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 commencing in the sixth year of the term hereby created 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.
- (I) (c) 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.

(b) To preserve all books and records referred to in Clause (a) 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.

(c) 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 in 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 by 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:

(1) 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.

- (11) 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 were 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. Notwithstanding anything hereinbefore contained it is hereby further agreed between the Landlord and the Tenant as follows:

- (a) the provision contained in Clause 1 hereof for the payment of a yearly rent of Ten thousand dollars shall be in abeyance until the 30th day of September 1970 (being the date set by the Tenant for the completion of the third phase of the proposed development) or the earlier completion of the said phase and in the meantime rent shall be payable as follows viz:-

- (1) from the 1st day of September 1968 or the earlier completion of the first phase of the proposed development until the 30th day of June 1969 or the earlier completion of the second phase of the proposed development - the yearly rent of Three thousand and nine dollars and sixty-one cents payable by quarterly instalments in advance and proportionately for part of a quarter.
- (ii) from the 1st day of July 1969 or the earlier completion of the second phase of the proposed development until the 30th day of September 1970 or the earlier completion of the third phase of the proposed development the yearly rent of Five thousand nine hundred and eighty-six dollars and four cents payable by quarterly instalments in advance and proportionately for part of a quarter.
- (iii) from the 1st day of October 1970 or the earlier completion of the third phase of the proposed development the yearly rent of Ten thousand dollars payable by quarterly instalments as provided in Clause 1 hereof and proportionately for part of a quarter.
- (b) the Tenant guarantees that the percentage rent payable from the commencement of the sixth year of the term will amount to not less than the sum of Three thousand dollars and covenants that if in any year the percentage rent falls below that sum the Tenant will make up the difference.

IN WITNESS whereof the parties have executed these presents

the day and year first above written.

THE COMMON SEAL of THE MAYOR
COUNCILLORS AND CITIZENS OF THE

CITY ST. KILDA was hereunto

affixed this 26th 18th

day of February March 1968

in the presence of:

[Signature]..... MAYOR

[Signature]..... COUNCILLOR

[Signature]..... TOWN CLERK

THE COMMON SEAL of AUSTRALIAN

MARINAS (A'ASIA) PROPRIETARY

LIMITED was hereunto affixed

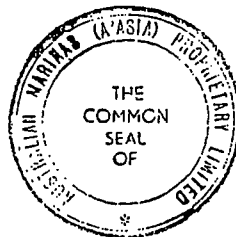
in accordance with its Articles

of association in the presence

of

[Signature]

[Signature]



APPROVED

BY THE GOVERNOR IN COUNCIL

- 9 APR 1968

[Signature]
CLERK OF THE EXECUTIVE COUNCIL

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 or 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 $84^{\circ}0'$ 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.