

# Northern Beaches Council

2 year option  
signed Licence agreement..

**Licence  
Learn to Play Beach Volleyball  
Ocean Beach, Manly**

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DATED July 18<sup>th</sup> 2016

BETWEEN

NORTHERN BEACHES COUNCIL and NORTH STEYNE (D500078)  
RESERVE TRUST

and

Beach Volleyball.com.au Pty Ltd

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LICENSEE

DEED OF LICENCE  
FOR THE RIGHT TO  
OPERATE  
LEARN TO PLAY BEACH VOLLEYBALL  
ON MANLY BEACH

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MANLY NSW 2095

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**DEED OF LICENCE  
FOR THE RIGHT TO CONDUCT LEARN-TO-PLAY VOLLEYBALL  
INSTRUCTION CLINICS ON MANLY BEACH**

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**THIS DEED** dated

**PARTIES**

1. **NORTHERN BEACHES COUNCIL**, of 1 Belgrave Street, Manly in the State of New South Wales (the "**Council**") and **NORTH STEYNE (D500078) RESERVE TRUST** (the "**Reserve Trust**"), a body corporate taken to have been established pursuant to the Crown Lands Act 1989, the affairs of which are managed by the Council (collectively "**the Licensors**").
2. (the "**Licensee**") trading as Beach Volleyball.com.au Pty Ltd  
and
3. (the "**Guarantors**").

**RECITALS**

- A. For the purposes of the Crown Lands Act 1989, the second named Licensor is the respective owner in fee simple of the respective parts of the Beach.
- B. The Licensors have received an application by the Licensee for the right to carry on the Business at the Beach.
- C. At the request of the Guarantor, the Licensors have accepted such application upon and subject to the terms and conditions set out in this Deed.

**OPERATIVE CLAUSES**

**THIS DEED WITNESSES** as follows:

**1. INTERPRETATION**

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**1.1 Definitions**

The following meanings apply to capitalised terms used in this Deed unless the context otherwise requires:

"**Authorised Officer**" means a secretary, director, General Manager, or Manager of a party.

"**Beach**" means the certain land at Manly in the State of New South Wales comprised in (Attachment A):

- (a) Crown Plan 5120.3000, which was resumed and vested in the Council by the publication of a notice in the New South Wales Government Gazette on 9 March 1917,
- (b) Crown Plan 4156.3000, which was resumed and vested in the Council by the publication of a notice in the New South Wales Government Gazette on 10 September 1913,



- (c) Dedication D500078, dedicated for the public purpose of public recreation by notice in the New South Wales Government Gazette on 14 November 1879, of which North Steyne (D500078) Reserve Trust is the trustee pursuant to the Crown Lands Act; and

**"Business"** means the business of conducting Learn-to-Play Beach Volleyball instruction clinics at Manly Beach at the established volleyball courts.

**"Co-ordinator"** means the person appointed by the Council from time to time for the day-to-day coordination of the operations of Manly Beach, or any other person acting in that capacity.

**"Council"** means a party to this Deed named as such, both in its own name and right and as the Manager of the Reserve Trusts.

**"Crown Land Act"** means the Crown Lands Act 1989 of the State of New South Wales.

**"GST"** has the meaning prescribed in the GST Act.

**"GST Act"** means Goods and Services Tax Act, 1999 of the Commonwealth of Australia.

**"Instructors"** mean the qualified instructors engaged by the Licensee for the giving of the type of instruction or coaching services contemplated by this Deed, whether specifically at the Beach or generally.

**"Licence Fee"** means fee specified in clause 3 of this Deed.

**"Licensors"** mean the parties to this Deed named as such, and include the Council both in its own name and as the Manager of the Reserve Trusts.

**"Minister"** means the Minister of New South Wales for the time being and from time to time administering the Crown Lands Act.

**"the Rights"** mean the rights to:-

- (a) enter into contracts with any person who may wish to learn to play beach volleyball at an instruction clinic at Manly Beach, such contracts to be personal as between the Licensee and such person,
- (b) charge reasonable fees to be payable by such persons to the Licensee in return for the receipt of lessons in beach volleyball at an instruction clinic at Manly Beach to this Deed;

**"Term"** means the following term:

The term of three (3) years commencing on 1 October 2016 and terminating on 30 September 2019, inclusive of both dates. Subject to satisfactory performance, the term may be extended for an option period of two (2) years. Any such extension shall be at the expense of the Licensee and is conditional upon the Licensee not being in breach of any of the terms and conditions of this Deed. The Licensee must provide to Council two (2) months' notice in writing prior to the end of the term of the then current licence period that an extension is requested. The terms and conditions of any extended licence shall be the same terms and conditions as contained in the Deed (other than as to the licence period and the quantum of the Licence Fee).



## **1.2 General**

The following rules of interpretation apply in this Deed unless the context otherwise requires:

- (a) **(headings)**: headings and subheadings are for convenience only and shall not affect interpretation;
- (b) **(plurality)**: words denoting the singular number include the plural, and the converse also applies;
- (c) **(gender)**: words denoting any gender include all genders;
- (d) **(cross-references)**: a reference to a clause, schedule, annexure or exhibit is a reference to a clause of, or schedule, annexure or exhibit to, this Deed;
- (e) **(legal personality)**: a reference to a person includes a natural person, company, corporation, trust, partnership, joint venture, or any other incorporated or unincorporated body, society, association or entity;
- (f) **(writing)**: a reference to "writing" and cognate expressions includes a facsimile transmission and any other means of reproducing words in a tangible and permanently visible form;
- (g) **(document parties)**: a reference to a party to any document or agreement includes its successors and permitted assigns and substitutes by way of assignment or novation;
- (h) **(document amendment)**: a reference to any agreement or document includes that agreement or document as amended, varied, novated, supplemented or replaced from time to time; and
- (i) **(GST)**: for the purposes of clause 9, words and expressions used in this deed which are defined in the GST Act have the same meanings as is prescribed in that Act.

## **1.3 Liability**

When two or more persons are named as a party to this Deed, any agreement, representation or warranty expressed to be given or made by that party pursuant to this Deed shall be a joint and several liability of each named person.

## **2. GRANT OF LICENCE**

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- 2.1** In consideration of the payment by the Licensee to the Licensors of the Licence Fee, the Licensors hereby grant the Licensee, subject to the consent of the Minister, a licence for the Licensee, its instructors and servants, to enter the Beach and to exercise during the Term the Rights for the purpose of carrying on the Business at the Beach.
- 2.2** The grant of the licence conferred by this Licence only confers the rights, entitlements, privileges and concessions expressly granted by or under the Licence and no other permission or authority is granted for or in respect of the doing or carrying out of any other activity or thing (including but not limited to carrying out any business, trade, profession or other commercial activity) other than that expressly permitted by this Licence and the Licensee may not, except pursuant to an express grant of licence granted by the Licensors, do or carry out any such activity or thing.



### 3. LICENCE FEE

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3.1 In consideration of the licence granted pursuant to this Deed, the Licensee must pay to the Licensors a licence fee of \$12,000 per annum (which is hereby expressed to be exclusive of GST), as follows:-

- (a) The Licensee must pay the Licence Fee to the Licensors by equal quarterly instalments in advance, with each successive instalment to be paid on or before 1 October, 1 January, 1 April and 1 July each year during the Term.

The Licensors require the first instalment to be paid prior to the commencement of any business.

Refer to Clause 9.2 as to liability for GST.

### 3.2 CPI Rent Review

- (a) On each annual anniversary of the date of commencement of this Licence (each such date being a "Review Date"), the annual Rent payable under this Licence shall be varied so that the annual Rent payable from the Review Date shall be the amount calculated by applying the following formula:

$$F = \frac{A \times C}{B}$$

Where:

F is the annual Rent to be payable from the Review Date;

A is the Australian Statistician's Consumer Price Index (All Groups) figure for Sydney last published before the Review Date;

B is the Australian Statistician's Consumer Price Index (All Groups) figure for Sydney last published before the date of commencement of this Licence, or before the previous Review Date (whichever is the later);

C is the Rent payable immediately before the Review Date.

- (b) If:
- (i) the Consumer Price Index is discontinued or suspended the annual Combined Rental shall be varied by applying such factor or index replacing or approximating the Consumer Price Index as the Licensor or the Trust chooses, or
- (ii) The Australian Statistician updates the reference base of the Consumer Price Index; the intended continuity of calculation shall be preserved by applying the appropriate factor as chosen by the Licensor or the Trust to such updated reference base.
- (c) In no event shall the annual Rent be varied on a Review Date to be less than the Rent payable immediately before the Review Date.



- 3.3 In the event of extreme sand erosion resulting in the loss of availability of all or some of the volleyball courts for a period of more than two consecutive weeks and no alternate location is available as determined and allocated by Council's Beach Coordinator, an adjustment to the licence fee may apply. The amount of loss will be determined by calculating the total average usage time for the three months immediately preceding the unavailability of the volleyball courts against the total average usage time when some or all of the courts were unavailable. This calculated loss will then be deducted from the licence fee payable for the next period.

#### **4. COVENANTS BY LICENSEE**

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##### **4.1 Availability**

The Licensee hereby covenants with the Licensors that it will, during the term of the licence, during the hours specified within this clause, make its services available to persons requesting the service of the business at times reasonably determined by the licensee and subject to the weather being suitable.

The Licensee hereby covenants with the Licensors that:

- (a) The agreement is only for the purpose of teaching individual persons or groups of primary and high school student's volleyball skills.
- (b) The National Volleyball Association and its affiliates such as Northern Beaches Volleyball Association (NBVA) tournaments or major events booked through Council's booking system take precedence over the Licensee's access to operate. At times when the courts are not required for these events the Licensee shall have access to:-
  - Three (3) permanent courts being the three (3) most northern courts.
  - When an event does not require all eight (8) courts the licensee may have access to any or all of the three (3) most northern unused courts.
  - If an event does require the use of all eight (8) courts then the Licensee may set up one (1) temporary court adjacent to the most northern permanent court.
- (c) Operating hours each day are from 7.00am to no later than 6.00pm during Eastern Standard Time and 7.00am to 7.00pm during Daylight Saving Time.
- (d) The flood lights are not available for use by the Licensee for the purpose of the Business.
- (e) A 3 x 3 metre shade tent is permitted only during the hours of business. This tent must be on the sand against the promenade wall and adjacent to one of the courts being used. The tent is not to be erected on the promenade or grass reserve.
- (f) No corporate, commercial or business bookings for activities are permitted.
- (g) The Licensee will not, without the consent of the Licensors, erect signs, notices and advertisements.
- (h) No other facilities, storage or parking permits are provided.
- (i) If in the process of setting up, the Licensee drives a vehicle onto the promenade, posing a risk to the public walking along the promenade, the licensee is required to take the necessary risk management steps to prevent any injury.



- (j) Compliance with Council's Smoke Free Policy and the Alcohol Free Zone and Alcohol Prohibited Area regulations under the relevant Acts are observed at all times under the Deed of License.

#### **4.2 Equipment and Employees**

The Licensee hereby covenants with the Licensors that it will, at its own cost and expense:

- (a) engage such servants; and
- (b) provide all equipment,

as is or are necessary or reasonable to enable the Licensee to efficiently and effectively conduct the Business at the Beach pursuant to this Deed, and shall remove such equipment from the promenade at the Beach on the expiry or the earlier termination of the licence granted pursuant to this Deed.

#### **4.3 Payment of Instructors and Servants**

The Licensee hereby covenants with the Licensors that it will punctually pay to its servants their wages and remuneration as they become due, and will keep the Licensors indemnified against all claims for accident or injury by itself and its servants, whether such claims be at common law or under the Workers Compensation Act or otherwise.

#### **4.4 Decorum, etc.**

The Licensee hereby covenants with the Licensors that:-

- (a) The Licensee and its servants will at all times conduct themselves with proper courtesy and decorum towards all persons attending the Beach.
- (b) The Licensee will hold a Certificate for Self Employed People in Child Related Employment
- (b) In the event that the Licensee or any of the Licensee's servants shall be:-
  - (i) guilty of misconduct on or in the vicinity of the Beach (whether in contravention of subclause (a) or otherwise); or
  - (ii) guilty of any dishonesty,or if in the opinion of Council's Beach Co-ordinator the Licensee or any of the servants shall not be of the type or standard required for the purposes of this Deed, then
  - (iii) The Licensors may require the Licensee forthwith to cease to employ such servants on the Beach or otherwise in connection with the purposes of this Deed.
  - (iv) The Licensors or Council's Beach Co-ordinator may cause that servant to be removed from the Beach.
  - (v) The Licensee shall forthwith determine the employment of such Instructor or servant in connection with the purposes of this Deed, and shall not employ such person in connection therewith without the previous written consent of the Licensors.



**PROVIDED ALWAYS** that the Licensors, or their servant shall not in any case be under any liability whatsoever in respect of any claim made by any such Instructor or servant for wages or damages, and the Licensee shall indemnify the Licensors and its servants against every such claim.

#### **4.5 Compliance with Directions**

The Licensee hereby covenants with the Licensors that it and its servants will at all times comply with and co-operate with any reasonable direction of the Co-ordinator, with a view to ensuring the efficient conduct of the Beach as a public swimming facility and public reserve and shall have regard to the degree of public attendance at the Beach from time to time **PROVIDED THAT** in giving such directions to the Licensee the Co-ordinator shall have regard to the enjoyment of the Licensee of its rights under this Deed.

#### **4.6 Workers Compensation Insurance**

The Licensee hereby covenants with the Licensors that it will effect and maintain throughout the Term, with an insurance office to be approved by the Licensors, insurance on itself and its Instructors and servants for the purpose of the Workers Compensation Act for the time being in force, and will furnish to the Licensors on demand evidence of the currency of such insurance and receipts for the premiums from time to time paid by the Licensee:

- (a) before the commencing date of the term;
- (b) upon renewal of the insurance policy and;
- (c) whenever otherwise requested by the Licensors.

#### **4.7 Public Liability Insurance**

The Licensee hereby covenants with the Licensors that it will effect and maintain throughout the Term with an insurance company whose name appears in the APRA Register of Authorised Insurers:

- (i) A public and products liability insurance policy for a limit of indemnity not less than twenty million dollars (\$20,000,000.00) or such higher amount as the Licensors may reasonably require from time to time, in respect of the Business on which the Licensors are to be named as an interested party;
- (ii) the Licensee agrees it will furnish to the Licensors evidence of the currency of such insurance before the commencement date of the Term; and upon each anniversary of the commencement date of the Term.

#### **4.8 Release**

The Licensee unconditionally releases the Licensors from all claims, suits, demands, actions or proceedings (whether at law, in equity or arising under any statute) arising out of or in connection with an act, default or omission of the Licensee or any of the Licensee's agents. The Licensee agrees not to sue or make any claim or demand against the Licensors in response to matters covered by this release.



#### **4.9 Indemnity**

The Licensee indemnifies the Licensors from and against all actions, claims, costs, losses, expenses and damages (including the costs of defending or settling any action or claim) in respect of:-

- loss of, loss of use of, or damage to property of the Licensors; or
- personal injury (including death) or illness to any person or loss of, loss of use of, or damage to any property resulting from or by reason of anything done or omitted to be done by the Licensee arising out of the Licensee's activities undertaken at or near the Licensors' facility.

The Licensee's liability to indemnify the Licensors is reduced proportionally to the extent that a negligent act or omission of the Licensors or its employees has contributed to the injury, damage or loss.

#### **4.10 Insurance**

The Licensee hereby covenants with the Licensors that it will not do or permit or suffer to be done or committed on the Beach any act matter or thing which would or might prejudicially affect the Licensors or the Licensors' rights under any policy of insurance for or in relation to the Beach or any part thereof.

#### **4.11 Compliance with Laws**

The Licensee hereby covenants with the Licensors that they will:-

- (a) comply with all laws and requirements of any relevant authority regulating the conduct of the Business at the Beach, or the exercise of the Rights at the Beach, including obtaining (and where relevant maintaining) any permit(s), consent(s) or license(s) required by those laws or authorities;
- (b) make themselves fully acquainted with all statutes ordinances and regulations which may now or from time to time hereafter affect this Deed, the licence granted by this Deed, the conduct of the Business at the Beach, or the exercise of the Rights at the Beach;
- (c) comply with Child Protection laws and Acts as pertains to this licensed activity.

#### **4.12 Protection of Persons and Property**

The Licensee hereby covenants with the Licensors that the Licensee:

- (a) will provide, erect and maintain all barricades, guards, fencing, temporary roadways and footpaths, signs and lighting;
- (b) provide watchmen and traffic flagmen;

lawfully required by any public, municipal or other authority or by the Licensors or necessary for the protection of property or for the safety and convenience of the public and others, and shall remove the same when no longer required.

The Licensee shall provide temporary protection for, and shall not interfere with or damage, property, roadways, footpaths, drains, water courses, public utility and other services which are visible or the location which can be ascertained by the Licensee from the appropriate authority of from the Licensee and at his own cost shall have reinstated all damage caused by him, his employees, agents, sub-Licensees, or



employees or any such agents or sub-Licensees. If the Licensee fails to do all or any of these things the Licensors has the right to have the remedial work carried out at the Licensee's cost.

#### **4.13 Urgent Repairs**

The Licensee hereby covenants with the Licensors that if at any time during the currency of the Licence the Licensors determines that any remedial or other like action is urgently necessary to prevent loss of or damage to the Beach or to any property or to prevent personal injury to any person, the Licensee shall carry out the Licensors' instructions as soon as practicable, and, unless the Licensors determine otherwise, at the Licensee's own cost.

#### **4.14 Notification of Claims**

The Licensee hereby covenants with the Licensors that the Minister and the Licensors shall not be liable upon any claim by the Licensee in respect of any matter arising out of this Licence unless notification of the general nature of the claim is lodged, in writing, with the Licensors not later than ten ordinary working days after the date of the occurrence of the events or circumstances on which the claim is to be based and the claim with full particulars thereof is lodged in writing with the Licensors not later than one month, or such longer period as the Licensors may determine, after that date, but in any case before the expiration of the Licence.

#### **4.15 Environmental Protection**

The Licensee hereby covenants with the Licensors that the Licensee will ensure at all times the requirements of all the relevant Acts concerning noise, air, water and other pollution are fully observed. The Licensee will not dispose of rubbish by burning the same. Prior to commencement of any operation at the Beach, suitable pollution control measures will be implemented by the Licensee to the satisfaction of the Licensors.

#### **4.16 Work Health and Safety**

The Licensee hereby covenants with the Licensors that the Licensee will ensure at all times that the requirements of the Work Health and Safety Act 20011 and its regulations are fully observed. The Licensee in particular will ensure that Division 4 of the Work Health and Safety Act 2011 is constantly observed. The Licensee shall be liable for any fees or levies required by the Department of Industrial Relations or Workcover or any other relevantly applicable governmental authority in relation to any of the foregoing.

#### **4.17 Waste Management and Minimisation**

The Licensee hereby covenants with the Licensors that the Licensee will on commencement of the Term develop and submit for Licensors' approval a comprehensive waste management and minimisation program for any waste generated by the activities of the Licensee, the method of disposal of such waste, and actions to be taken to avoid the creation of such waste in the first instance. The Licensee will comply with the program pending approval, and shall amend the program if required by Licensors as a condition of approval. The Licensee shall comply with any amended program.



#### **4.18 Cleaning**

The Licensee hereby covenants with the Licensors that the Licensee will be responsible for keeping clean and tidy during and at the end of each day the part on the promenade next to the Beach on or from which the Licensee operates and should they fail to comply with this condition any necessary work will be undertaken by the Licensors at full cost to the Licensee.

#### **4.19 Contact Details**

The Licensee hereby covenants with the Licensors that the Licensee shall provide to the Licensors contact details (phone number, fax number, email address etc of the person) to whom instructions can be given regarding day to day management of the Licence.

### **5. DISPUTE RESOLUTION**

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In the event that any difference or dispute shall arise between the licensee or its servants or the Co-ordinator and not be resolved within two (2) business days then the parties shall refer such dispute for resolution to an expert agreed between them. If the parties cannot agree upon an expert within three (3) business days of the first nomination of any expert by one of the parties then either party may request the executive officer or secretary of Australian Commercial Dispute Centre to appoint an expert. The expert so agreed or appointed shall be entitled to resolve the dispute and his decision shall be final on the issue will be final and binding upon the parties. The costs of any expert appointed under this clause shall be paid equally by the parties unless the expert determines otherwise in which case the costs shall be paid by the party nominated by the expert.

### **6. TERMINATION**

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**6.1** Notwithstanding anything herein contained it is hereby agreed and declared that if:-

- (a) the Licence Fee herein reserved, or any instalment thereof, shall be in arrears and unpaid for a space of fourteen (14) days next after any of the days whereon the same ought to be paid as aforesaid (whether formally demanded or not); or
- (b) the Licensee shall make default in or neglect or fail to perform, observe and fulfil any of the covenants, conditions, agreements or stipulations contained or implied in this Deed and which are or ought to be performed or observed by the Licensee and that default shall continue for a space of fourteen (14) days next after service on the Licensee of notice in writing to rectify that default, neglect or failure; or
- (c) in the Licensors' reasonable opinion the Licensee becomes, for any reason, unable to perform, observe and fulfil any of the covenants, conditions, agreements or stipulations contained or implied in this Deed and which are or ought to be performed or observed by the Licensee; or
- (d) the Licensee or a Guarantor, shall become bankrupt

then and in any of the said cases it shall be lawful for the Licensors immediately, or at any time thereafter, without further notice or demand, and notwithstanding that the Licensors may have waived any previous default in the performance by the Licensee of the covenants, conditions, agreement and stipulations set forth in this Deed, to



forthwith determine this Deed and the licence granted pursuant to this Deed by notice in writing to the Licensee.

- 6.1 Any termination by the Licensors of this Deed or the licence granted pursuant to this Deed shall be without prejudice to, and shall not release the Licensee from, any liability in respect of the payment of any monies due to the Licensors or any antecedent breach or non-observance of any of the covenants, conditions, agreements or stipulations, set forth in this Deed.

## **7. RIGHTS ON EXPIRY OR TERMINATION**

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- 7.1 If, with the consent of the **Licensors** the Licensee continues to exercise the Rights, other than under a new License, the Licensee will do so on a monthly licence on the same terms and conditions of this Licence ("the Monthly Licence") which may be terminated by either party by one (1) month's notice in writing. Any holding over period will not exceed 12 months.
- 7.2 Under the Monthly Licence the Licensee must pay a licence fee equal to one twelfth of the Licence Fee on the first day of each month.
- 7.3 If on expiry or termination of this Licence the Licensee does not become a licensee the Licensee must, prior to the expiry or termination of the Term or earlier termination of this Licence, remove the Licensee's property to make good any damage resulting from that removal.
- 7.4 If the Licensee fails to remove the Licensee's property in accordance with the requirements of this clause, it becomes the property of the Licensors who may keep it or dispose of it and recover from the Licensee the cost of such removal or disposal.

### **7.5 Early Revocation**

Notwithstanding anything herein contained, the Council may at any time prior to the expiry of the Term revoke the Approval in either of the following circumstances, namely:

- (a) at any time, and without notice, during the first 6 months of the Term; or
- (b) at any other time during the Term, after giving the Proprietor not less than 21 days' notice.

The Approval shall be deemed to have been revoked by the operation of any law whereby the Council's power to grant the Approval is revoked or lost.

If the Approval is revoked pursuant to this Condition the Proprietor shall have no right to compensation or damages from the Council.

## **8. POWERS OF THE COUNCIL**

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Nothing in this Deed shall be deemed to take away, curtail or diminish the powers of the Council under the Local Government Act 1993 or any regulations made there under, but such powers shall be available to the Council in respect of the Beach as full and effectively as if there were no agreements between the parties in respect of the same.



## **9. GOODS AND SERVICES TAX**

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### **9.1 Amounts GST Exclusive**

Unless otherwise stated, the price payable by a party under this Deed for a supply represents the value of the taxable supply for which the price is to be paid (exclusive of GST).

### **9.2 Liability to pay GST**

9.2.1 Subject to this clause, if a party makes a taxable supply to the other party under this Deed the recipient of the taxable supply must pay (at the same time and in the same manner as the price is due to be paid) the amount of any GST payable in respect of the taxable supply.

9.2.2 If a price is expressed to include GST, no additional GST shall be payable by a party in respect of the supply for which that price is provided.

### **9.3 Reimbursements**

9.3.1 If this Deed requires the Licensee to reimburse the Licensors for an acquisition that the Licensors makes, the amount required to be reimbursed will be the amount paid or payable by the Licensors for the acquisition (exclusive of any GST payable in respect of the acquisition), plus any GST payable under clause 9.2.

9.3.2 The Licensee will have reciprocal rights in respect of any acquisitions the Licensee makes and for which the Licensors is required under this Deed to reimburse to the Licensee.

### **9.4 Costs, Claims etc**

If a party is required under this Deed to pay the other party's costs or expenses for doing something, or to indemnify the other party in respect of anything, the party must also pay any GST payable on such costs, expenses or things.

### **9.5 Tax Invoice**

Each party making a taxable supply must render a tax invoice for that supply to the recipient of the supply in accordance with the requirements of the GST Law.

### **9.6 Adjustments**

9.6.1 If the amount of GST recovered by a supplier from the recipient of any taxable supply under this Deed differs for any reason from the amount of GST paid or payable by the supplier in respect of that supply, including by reason of:

- (a) a change in the value of a taxable supply;
- (b) an amendment to the GST Law;
- (c) the issue of or an alteration in a ruling or advice from the Commissioner of Taxation;



- (d) the allowance to the supplier of a refund of GST; or
- (e) a decision of any tribunal or court,

then the amount of the difference between the two said amounts shall be determined and the supplier must, within 14 days after it becomes aware of the change, give the recipient of the taxable supply an adjustment note.

9.6.2 If the adjustment reduces the amount of GST payable by the recipient of the supply to the supplier, the supplier must refund the overpaid GST to the recipient of the supply when it gives the adjustment note.

9.6.3 If the adjustment increases the amount of GST payable by the recipient of the supply to the supplier, the recipient of the supply must pay the additional GST to the supplier within 14 days after it has received the adjustment note.

## **9.7 Penalties and Interest**

If a party incurs any penalties or interest as a result of late payment of GST where that late payment is caused solely by the failure of the recipient of the supply to comply with this clause then the recipient of the supply must pay to the supplier on demand the amount of the penalties and interest.

## **10. COSTS**

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The Licensee shall pay or bear all costs or expenses incurred by the Licensors in connection with:-

10.1 **(documentation):** the preparation, negotiation, execution, delivery, completion or amendment or registration of, this Deed or of any consent, request, requisition or waiver given or made pursuant to or in respect of this Deed; and

10.2 **(performance):** a default by the Licensee in the performance of its obligations, covenants or agreements arising under this Deed including, but not limited to, enforcement costs.

## **11. DUTIES**

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The Licensee shall promptly within the applicable period prescribed by law pay any duty payable in relation to the execution, delivery, completion, performance and registration of this Deed, or any agreement or document executed or effected pursuant to this Deed, whether pursuant to the *Duties Act 1997* or otherwise.

## **12. LICENCE IS PERSONAL**

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### **12.1 Licensee may not assign or subcontract**

The Licence granted pursuant to this Deed is personal to the Licensee and may not be assigned, mortgaged, charged and encumbered.



**12.2 No lease, etc.**

This Deed and the Licence granted pursuant to this Deed, does not confer upon the Licensee any estate or interest in the Beach or in or to any premises of the Licensors, or any part thereof. The legal possession and control of the Beach shall at all times remain vested in the Licensors. No part of this Deed shall operate so as to demise or constitute any contract of tenancy of the Beach, or any part thereof.

**12.3 No employment relationship**

Nothing in this Deed shall create or be deemed or construed or intended to create any contract of employment between the Licensors and the Licensee or any of the Licensee's servants.

**12.4 Interpretation of Deed**

In the consideration and interpretation of this Deed this clause 12.4 shall be paramount and the other clauses hereof shall be construed and interpreted so as not to be inconsistent with this clause. In the event and to the extent that any other clause or clauses of this Deed cannot be construed and interpreted so as to avoid any such inconsistency, then such other clause or clauses shall, to such extent, be void and of no effect, but otherwise this Deed shall remain in full force and effect.

**13. DAMAGE BOND**

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The Licensee shall, upon the execution of this Licence pay to the Licensors the sum of \$5,000 which sum shall be held by the Licensors as a bond. The Licensors shall be entitled to apply the same towards any expenditure incurred by the Licensors arising out the Licensee's default and if there be none shall refund the bond to the Licensee at the expiration of the Licence.

**14. PERFORMANCE BOND**

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The Licensee shall pay to the Licensors upon the execution of the Licence, the sum of \$2,000.00 which will be held by the Licensors as a Performance Bond. The Licensors shall be entitled to retain from any breach default of the conditions contained within the Licence, as liquidated damages, if it so wishes, at the rate of \$200.00 of the bond for each breach. The Licensors shall have sole discretion in determining what constitutes a breach under the Lease and any such decision shall be conveyed to the Licensee in writing within 14 days. If no breaches occur the bond shall be refunded to the Licensee at the expiration of the Licence. A warning for each breach must be issued in writing prior to this clause being invoked.

**15. GUARANTEE**

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In consideration of the Licensors granting the license(s) granted by this Deed, the Guarantor covenants and agrees with the Licensors that:

- (a) The Guarantor hereby guarantees to the Licensors the due and punctual performance and observance by the Licensee of each and every of the covenants terms obligations conditions and agreements contained or implied in this Deed including but not limited to the payment of the Licence Fee and other monies (if any) as and when the same shall become due and payable under this Deed in accordance with the terms of this Deed **AND** the Guarantor hereby agrees to and does hereby indemnify and agree to keep indemnified



the Licensors against all losses costs claims expenses and demands of any kind that may arise or be suffered by the Licensors directly or indirectly from any breach or the non-performance of the terms of this Deed by the Licensee.

- (b) Without prejudice to the generality of the foregoing the liability of the Guarantor in respect of this Deed shall not be affected by the granting of time or other indulgence by the Licensors to the Licensee or by any compromise release abandonment waiver or variation of any of the rights of the Licensors against the Licensee or by any neglect or omission to enforce such rights or by any other dealing matter or thing whatsoever or by any alteration modification variation or addition to this Deed including but not limited to any increases in the Licence Fee or other monies which shall by virtue of the provisions and covenants of this Deed be due and payable from time to time by the Licensee to the Licensors (and for the purposes of this Guarantee and the indemnity hereby given a Certificate executed by the Licensors' duly authorised Officer as to any Licence Fee or other monies whatsoever owing shall as at the date of such Certificate be prima facie evidence of the amount owing to the Licensors by the Guarantor under this Deed) or by any other matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor from his her or their obligations hereunder in respect of this Deed.
- (c) This Guarantee and indemnity hereby given are irrevocable and shall continue and are to remain in full force and effect (it being the intent of the Licensors and the Guarantor that the Guarantee and Indemnity and the obligations of the Guarantor hereunder shall be absolute and unconditional in all circumstances) until the Guarantor shall be expressly released in writing by the Licensors.
- (d) This Guarantee and the indemnity hereby given are in addition to and not in substitution for any other rights which the Licensors may have against the Licensee under or by virtue of this Deed and may be enforced against the Guarantor without the Licensors first having recourse to any such rights and without taking any steps or proceedings against the Licensee.
- (e) No transfer assignment sub-letting or other dealing by the Licensee under this Deed (whether permitted by this Deed or not, and whether with or without the consent of the Licensors) shall operate or be construed to limit or to qualify modify or otherwise affect in any way the obligations and covenants of the Guarantor hereunder unless and until the Guarantor shall be expressly released in writing by the Licensors.
- (f) All moneys received by the Licensors from or on account of the Licensee or from any other person for the purpose of being applied towards any indebtedness of the Licensee under this Deed shall so far as it is not prohibited by law be applied by the Licensors in reduction of such indebtedness in such manner as the Licensors deems fit and this guarantee shall apply to and secure the ultimate balance of the indebtedness and liability of the Licensee hereby guaranteed and such balance shall remain due by the Guarantor to the Licensors notwithstanding the discharge of the Licensee;
- (g) Any payment by the Licensee to the Licensors which may be later avoided by any statutory provisions, state or federal, shall not be deemed to discharge the liability of the Guarantor to the Licensors hereunder and in such event the rights and obligations of the Licensors and the Guarantor are to be deemed to be restored to the rights and obligations which each respectively would have had if the payments had not been made.



## **16. LIABILITY OF THE TRUSTS, THE MINISTER AND THE LICENSORS**

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The Minister and the Licensors shall not be liable for any cause of action loss claims or damages whatsoever whether under any law in respect of injury to or the death of any person or damage to real or personal property arising in any way whatsoever out of the use of the Premises or any part thereof by the Licensee or by any person corporation association body club or organisation suffered, authorised or permitted by the Licensee to use or be in occupation of or be upon the Beach or any part of the Beach.

## **17. TERMINATION OF DEED**

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### **17.1 Termination on Refusal of consent of the Minister**

Notwithstanding any other provision of this Deed, this Deed and the rights conferred upon the Licensee under this Deed are subject to the formal consent of the Minister. Should that consent not be given or, if given, be subsequently withdrawn by the Minister then, upon the Licensors giving to the Licensee written notice of the refusal or withdrawal of the Minister's consent, this Deed and all rights conferred upon the Licensee under this Deed shall as at the date of that notice cease and terminate. This Licensee shall have no claim whatsoever against the Licensors or the Licensors in respect of such cessation and termination by way of compensation damages or otherwise.

### **17.2 Termination on Revocation of Vesting**

Notwithstanding anything to the contrary in this Deed, whether contained or implied, if at any time during the currency of this Deed:

- (a) the vesting in the Licensors of the said Land under the Crown Lands Act 1989 is revoked (whether wholly or in part); or
- (b) it is held by any Court of competent jurisdiction that the execution of this Deed and/or the granting to the Licensee of the rights referred to in this Deed was ultra vires the powers of the Licensors; or
- (c) any governmental agency or person having the legal authority to do so lawfully requires the Licensors or their successors, either expressly or by implication, to terminate this Deed or in the use of the Premises by the Licensee; or
- (d) if any statute, present or future, prohibits such use or the continuation of such use,

the Licensors may on the happening of any of those events, or upon its becoming aware of the happening of any of those events, terminate this Deed and the rights granted to the Licensee under this Deed by one (1) calendar month's notice in writing to the Licensee. Upon termination pursuant to this subclause, the Licensee shall have no claim whatsoever against the Licensors in respect of that termination by way of compensation damages or otherwise.

### **17.3 Termination is Without Prejudice**

Any termination pursuant to subclause 17.1 and/or subclause 17.2 shall be without prejudice to the rights of the Licensors and/or the Minister in respect of any indemnity hereunder or any antecedent breach or non-observance of any of the covenants terms conditions or stipulations hereof by the Licensee or other matter or thing herein contained. However, following termination under subclause 17.1 and/or 17.2 any



Licence Fee paid in advance and unused must be refunded to the Licence pro-rata.

## **18. NOTICES**

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All written notices to or by a party to this Deed shall:

- (a) **(authorised signatory)**: be signed by the sender or, if a company or other incorporated entity, an Authorised Officer of the sender; and
- (b) **(service)**: be deemed to be duly given or made:
  - (i) in the case of delivery in person or by post or transmission by facsimile, when delivered, left or received to or at the address or number of the recipient specified in this Deed or most recently notified to the sender; or
  - (ii) in the case of telex, on receipt by the sender of the answerback code of the recipient at the end of transmission; or
  - (iii) if served in any manner provided in the Local Government Act 1993 or the Conveyancing Act 1919,

but if delivery or receipt does not occur, or occurs later than 4 p.m. local time, on a business day in the place to which the written notice is sent, it shall be deemed to have been duly given or made at the commencement of the next business day in that place.

## **19. GOVERNING LAW AND JURISDICTION**

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### **19.1 Governing Law**

This Deed shall be governed by and construed in accordance with the laws of the State of New South Wales.

### **19.2 Jurisdiction**

Any legal action or proceedings with respect to this Deed against any party or any of its property and assets may be brought in the Courts of the State of New South Wales and, by execution and delivery of this Deed, that party accepts, for itself and in respect of its property and assets, generally and unconditionally the non-exclusive jurisdiction of the Courts of that State.

## **20. VARIATIONS**

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This Deed may be amended, varied, modified or as provided for in this Deed, extended by way of either another Deed or an exchange of letters following a written agreement to the change by all parties.

## **21. WAIVERS AND REMEDIES**

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### **21.1 Waivers**

The failure to exercise or delay in exercising by the Licensors of any right conferred by this Deed shall not operate as a waiver and the single or partial exercise of any right by the Licensors shall not preclude any other or further exercise of that or any other right by the Licensors.



### **21.2 Remedies**

The rights of the Licensors conferred by this Deed are cumulative and are not exclusive of any rights provided by law.

## **22. PRE-CONTRACTUAL NEGOTIATION**

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This Deed expresses and incorporates the entire agreement between the parties in relation to its subject-matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject-matter or any term of that agreement.

## **23. FURTHER ASSURANCE**

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Each party shall, whether prior or subsequent to performance of this Deed, execute all documents and perform all acts necessary to give full effect to this Deed.

## **24. CONTINUING PERFORMANCE**

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### **24.1 Merger Exclusion**

The provisions of this Deed shall not merge with any action performed or document executed or delivered by any party for the purposes of performance of this Deed.

### **24.2 Representations**

All representations and warranties in this Deed shall survive the execution and delivery of any document for the purposes of, and continue subsequent to, performance of this Deed.

### **24.3 Indemnities**

Each indemnity undertaken by any party pursuant to this Deed shall:

- (a) **(separate obligation):** constitute an obligation of that party separate and independent from its other obligations under this Deed or any other agreement; and
- (b) **(completion survival):** survive and continue subsequent to performance of this Deed.

## **25. SEVERABILITY**

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Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.



**26. COUNTERPARTS**

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This Deed may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same document.

**27. ATTORNEYS**

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Each attorney executing this Deed respectively certifies that the attorney has at the time of executing this Deed no notice of the revocation of the power of attorney pursuant to which the attorney executes this Deed.

**28. CROWN LANDS ACT**

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This Licence is subject to the provisions of the Crown Lands Act 1989, including Section 109 of that Act.



**EXECUTION CLAUSE**

**EXECUTED** as a Deed.

**EXECUTED** by Northern Beaches Council  
by its Public Officer under power sub  
delegated by the General Manager in  
accordance with Section 378 of the Local  
Government Act 1993 in the presence of:

\_\_\_\_\_  
Signature of Public Officer

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Full Name of Public Officer

\_\_\_\_\_  
Full Name of Witness

**EXECUTED BY** ..... in  
accordance with Section 127 of the  
Corporations Act 2001:

\_\_\_\_\_  
Signature of Director

N/A  
\_\_\_\_\_  
Signature of Secretary

\_\_\_\_\_  
Full Name of Director

N/A  
\_\_\_\_\_  
Full Name of Secretary

09/09/2019  
\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

