

This **DEED OF LICENCE** is made on the _____ day of _____ 2020
Between the following parties:

SHIRE OF DENMARK of 953 South Coast Highway, Denmark, Western Australia (the Licensor)

and

HANG GLIDING AND PARAGLIDING ASSOCIATION OF WESTERN AUSTRALIA INC. of PO Box 146 Midland Western Australia (the Licensor)

Recitals:

- (A) The Land comprises reserves No. 20928 and No. 39668.
- (B) Reserve No. 20928 is reserved for the purposes of camping and recreation. The Licensor holds management order K980481 which confers upon the Licensor the power to lease (or sub lease or licence).
- (C) Reserve No. 39668 is managed by the Shire of Denmark for the purpose of a quarry site.
- (D) The Licensor has agreed to License the Site to the Licensee at the Rent and upon the terms and conditions contained in this Licence.
- (E) The Minister for Lands has consented to the grant of this Licence.

Operative part:

1 DEFINITIONS

In this Deed, these definitions apply unless they are inconsistent with the context.

'Commencement Date' means the Commencement Date specified in the Schedule.

'Contamination' means anything which makes the Site or the Environment:

- (a) unsafe or unfit for humans;
- (b) degraded in any way, including in its capacity to support plant life; or
- (c) materially diminished in value;

or is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003*.

'Environment' has the meaning given to it in the *Environmental Protection Act 1986*.

'Expiration Date' means the Expiration Date specified in the Schedule.

'Land' means the Land specified in the Schedule.

'Licensee's Property' means all plant, equipment, goods, signs, structures or other property belonging to the Licensee or brought onto the Site by the Licensee or any of the Licensee's Visitors.

'Licensee's Visitors' means each of the Licensee's members, employees, agents, contactors, services suppliers, sub-contractors, customers and other visitors and any other person who at any time is at the Site with the express or implied consent of the Licensee.

'Permitted Use' means the permitted use specified in the Schedule.

'Rent' means the rent specified in the Schedule and the rent payable under this Licence from time to time.

'Site' means that part of the Land described in the Schedule and all improvements fixtures and fittings at the Site.

'Term' means the term of this Licence specified in the Schedule commencing on the Commencement Date and terminating on the Expiration Date.

'Termination Date' means the earlier of:

- (a) the Expiration Date; or
- (b) if a power to terminate is given to either party then the date upon which a notice served in accordance with Clause 3.1 is received or taken to be received under Clause 3.2.

'This Licence' means this licence and any variations to it agreed between the parties.

2 INTERPRETATION

These rules apply unless they are inconsistent with the context.

- (a) Clause headings have been included, but the Licence is not to be construed or interpreted by reference to them.
- (b) References in the singular number include the plural number and vice versa.
- (c) References to any gender include any other gender.
- (d) When two or more Licensees are parties to this Licence the covenants and agreements on their part shall bind them and any two or greater number of them jointly and severally.

3 NOTICES

3.1 Service

A notice or other communication in connection with this Licence must be in writing and:

- (a) may be personally delivered to the relevant party or any authorised officer of that party or its solicitor or agent; and
- (b) may be emailed, posted to or sent by facsimile to the email address, postal address or facsimile number of the recipient, respectively, as set out in this Licence or to any other email address, postal address or facsimile number previously notified to the sender.

3.2 Effective Time

Unless a later time is specified in it, a notice or other communication takes effect from the time it is received. It is taken to be received:

- (a) in the case of a posted letter, on the third day after posting; and
- (b) in the case of an email, on production of a delivery report from the server from which the email was sent that indicates that the email was sent to the email address of the recipient; and
- (c) in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent that indicates that the facsimile was sent to the facsimile address of the recipient.

4 CONDITIONS ATTACHING TO LICENCE

This Licence does not confer any right of exclusive occupation of the Site to the Licensee and the Licensor may at any time and at all times and from time to time exercise all of its rights in respect of the Site including the rights to use and possess and enjoy the whole or any part of the Site save only in so far as such rights shall not:

- (a) prevent the operation of this Licence and rights with respect to the Site granted to the Licensee, and
- (b) be inconsistent with the express provisions of this Licence.

5 GRANT OF LICENCE

The Licensor licenses the Site to the Licensee for the Term at the Rent and otherwise upon the terms and conditions contained in this Licence.

6 RENT

The Licensee shall pay the Rent to the Licensor annually in advance commencing on the Commencement Date and on each anniversary of the Commencement Date.

7 LICENSEE'S COVENANTS

THE LICENSEE COVENANTS with the Licensor as follows:

7.1 Payment of Rent

To pay the Licensor the Rent reserved by this Licence at the times and in the manner provided in this Licence.

7.2 Maintenance and Repair

- (a) Except as provided in subclause (b) of this clause, at the Licensee's own expense during the Term and at all times to keep and maintain every part of the Site and all additions to the Site, including but not limited to drainage and access tracks, in good repair to a standard acceptable to the Licensor.
- (b) The Licensor will undertake occasional maintenance at its own expense of the access track from the locked gate to the Bill Pinnering lookout but is not under any obligation to the Licensee to ensure that the access track is passable or maintained to any particular standard.

7.3 Cleaning

At the Licensee's own expense during the Term and at all times to ensure that the Site is kept clean and free from rubbish, refuse and disused material of any kind, to a standard acceptable to the Licensor.

7.4 Environmental Protection

- (a) To respect the fragile coastal environment that exists at the Site and to use the Site in a responsible and sympathetic manner at all times.
- (b) Not to remove or damage native vegetation.
- (c) Not to cause or permit any Contamination of or damage to the Site or the Environment as a result of anything brought on to, or done on, the Site by the Licensee or the Licensee's Visitors.
- (d) To ensure that the Licensee and the Licensee's Visitors stay on any existing vehicular or foot tracks at the Site as directed by the Licensor from time to time.
- (d) Without affecting:
 - (i) the obligation of the Licensee in this clause; or
 - (ii) limiting any right of, or any indemnity in favour of, the Licensor,if any Contamination or damage occurs, the Licensee will immediately report that Contamination or damage to the Licensor, and do everything necessary to minimise the effect of the Contamination or damage and must make good any damage including any damage caused by the Contamination.
- (e) To ensure that gates preventing public vehicular access to the Site are kept closed and locked at all times other than to permit access by the Licensee or the Licensee's Visitors.

7.5 Abatement of Nuisances

- (a) Not to do or leave undone any act matter or thing which may be deemed to be a nuisance under any Western Australian Act or regulation or under any local laws or regulations applicable to the Site or to the use or occupation of the Site by the Licensee, and immediately to abate any such nuisance or alleged nuisance.
- (b) To ensure that the Site is not used in any manner by the Licensee or the Licensee's Visitors which may be or become a nuisance, disturbance or annoyance to the quiet and comfort of any occupier of land in the vicinity of the Site and on being required to do so by the Licensor or any officer of the Licensor to immediately abate any such nuisance, disturbance or annoyance.

7.6 Compliance with Statutes and Licences

To take out and keep current any permits or licences required in connection with any activities carried out on or from the Site including without limitation ensuring that all users of the Site have a current Sport Aviation Federation of Australia licence issued for the purposes of hang gliding and paragliding.

7.7 Compliance with Directions

To comply with any lawful directions given by the Licensor about the use of or access to the Site that are consistent with this Licence.

7.8 Permitted Use

To use the Site solely for the Permitted Use.

7.9 Prohibited Use

Not to use the Site for any illegal purpose nor for any commercial use without the prior written consent of the Licensor.

7.10 Access

- (a) To access the site solely through the existing, locked gate.
- (b) To supply, issue and maintain all keys and locks for that gate.
- (c) To issue two keys to the Licensor.
- (d) Except for the keys issued in accordance with subclause (c) of this clause, to ensure that access keys are only issued to the Licensee's members.
- (e) To permit no more than two vehicles to access the Site at any one time.
- (d) To ensure that any and all keys to the access gate are given or returned to the Licensor upon the termination of this Licence.
- (e) To ensure that other permitted users of the access track can obtain access through the locked gate.

7.11 Insurance

- (a) To take out and keep in force during the Term a public liability policy of insurance in the amount of not less than \$10,000,000 for any one event or such greater amount as the Licensor may require and to produce to the Licensor on request a certificate of the currency of that policy.
- (b) Not to do or permit to be done anything whereby any policy of insurance in respect of the Site may become void or voidable or by which the rate or premium on it may be increased and if any increased premium shall be payable by reason of any acts or defaults of the Licensee under this sub-clause then to immediately pay the amounts by which the premium shall be increased.

7.12 Indemnity

To indemnify the Licensor and keep the Licensor indemnified against any cost, expense, loss or other liability resulting from:

- (a) any damage to the Site or other property; or
- (b) the death or illness of, or injury to, any person;
caused or contributed to by:
- (c) any breach of this Licence; or
- (d) the use of the Site by the Licensee or the Licensee's Visitors; or

- (e) any work carried out by or on behalf of the Licensee under this Licence; or
- (f) the Licensee's activities, operations, business or other use of any kind under this Licence; or
- (g) any wilful, negligent or other unlawful act or omission of the Licensee or the Licensee's Visitors; or
- (h) any danger created by the Licensee or the Licensee's Visitors.

7.13 Release

- (a) To occupy, use and keep the Site at the risk of the Licensee.
- (b) To release to the full extent permitted by law the Licensor from:
 - (i) any liability which may arise in respect of any accident or damage to property or death or injury to, or illness of, any person, of any nature in or near the Site; and
 - (ii) loss of or damage to fixtures or personal property of the Licensee;
 - (iii) any cost, expense, loss or other liability resulting from any accident, loss of life, injury, damage, malfunction or other event in, or affecting, the Site; except to the extent that such loss or damage is caused by the negligence of the Licensor.
- (c) The obligations of the Licensee under this clause continue after the expiration or earlier determination of this Licence in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of this Licence.

7.14 Signage, Alterations and Improvements

Not without the prior written consent of the Licensor to erect or suffer to be erected any placard, sign, hoarding or advertisement, or any fixture, fitting, building or structure at the Site nor to make or suffer to any improvements to the Site nor to remove any such improvements at the Site.

7.15 Legal Costs

To pay the costs (on the scale applicable to the Licensor) of and incidental to the negotiations and instructions for and the preparation, completion and stamping of this Licence and all copies of this Licence and also all costs, charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Licensor for the purpose of or incidental to any default of the Licensee under this Licence.

8 GENERAL PROVISIONS

8.1 Default by Licensee

If:

- (a) the Rent or other moneys payable by the Licensee under this Licence are not paid within seven days after becoming due (whether formally demanded or not); or
- (b) the Licensee breaches any of the Licensee's Covenants and the breach continues for 14 days after notice has been served on the Licensee by the Licensor; or
- (c) the Licensee being an incorporated association:
 - (i) is wound up or resolves to be wound up voluntarily,
 - (ii) without the prior consent of the Licensor, changes its name, objects, rules or constitution,
 - (iii) is convicted of an offence under the *Associations Incorporations Act 2015*;

then and in any of such cases the Licensor may at its option and at any time after that event and without any notice or demand save service of a notice under Clause 3 of this Licence, terminate the Licence but without prejudice to any other of the rights and remedies of the Licensor under this Licence and without releasing the Licensee from liability in respect of the Licensee's Covenants.

8.2 Licensor May Perform Licensee's Covenants

If the Licensee shall fail to duly and punctually observe or perform any of the Licensee's Covenants the Licensor shall be entitled to carry out the observance or performance of such covenant, condition or agreement and the cost and expense incurred in such observance or performance together with interest thereon at the rate of 16% per annum shall be a debt due by the Licensee to the Licensor and shall be payable on demand and may be recovered by the Licensor in the same manner as if such debt were for rent due under the Licence in arrear by action in law.

8.3 Licensee's Obligations on Termination

- (a) The Licensee's rights to use the Site ceases on the Termination Date, and the Licensee shall not use the Site for any purpose, or use the Site after that date.
- (b) The Licensee shall remove the Licensee's Property immediately on the termination of this Licence and make good any damage caused by its removal except that when the termination is before the end of the Term, the Licensee is to remove the Licensee's Property within 3 days after the termination.
- (c) If the Licensee does not comply with subclauses (a) and (b) of this clause, the Licensor may remove the Licensee's Property from the Site and either store it at the risk and cost of the Licensee or treat the Licensee's Property as abandoned and deal with it in any manner the Licensor chooses.
- (d) The Licensee's Property remains at the Licensee's risk at all times before and after the termination of the Licence.

- (e) On termination of this Licence, the Licensee is to leave the Site in good repair and condition in accordance with the obligations of the Licensee under the Licence.

8.4 Damage or Destruction

- (a) If any part of the Site is damaged or destroyed so that the whole or a substantial part is unfit for use by the Licensee, the Licensor is to give a notice to the Licensee within 2 months after the damage or destruction which either:
 - (i) terminates the Licence; or
 - (ii) informs the Licensee of the Licensor's intention to make the Site fit for use by the Licensee.
- (b) If the Licensor gives a notice under subclause (a)(ii) of this clause and does not make the Site fit for use by the Licensee within a reasonable time, having regard to the extent of the damage and the time required to obtain all necessary approvals and to carry out the necessary work:
 - (i) the Licensee may give the Licensor a notice of the Licensee's intention to terminate the Licence if the Licensor does not make the Site fit for use by the Licensee within 1 month after the date the Licensor receives the notice; and
 - (ii) if the Licensor does not make the Site fit for use by the Licensee within that period the Licensee may terminate the Licence by a further notice to the Licensor.
- (c) Neither the Licensee or the Licensor is liable to the other solely because of the termination of the Licence under this clause.
- (d) Nothing in this clause imposes an obligation on the Licensor to repair or reinstate the Site or to relocate the Licensee or offer it alternative premises on account of the Site having been damaged, destroyed or rendered unfit in terms of subclause (a) of this clause.

8.5 GST

- (a) In this clause, 'GST' means a goods and services tax or like tax payable by the Licensor in respect of a supply under this Licence. All payments to be made by the Licensee under this Licence (including but not limited to Rent) are calculated without regard to GST.
- (b) If a payment by the Licensee to the Licensor under this Licence is for a supply by the Licensor under this Licence on which the Licensor must pay GST, the Licensee must pay the amount of the supply increased by the GST.
- (c) The Licensor shall provide the Licensee with a tax invoice as required by the relevant GST legislation within the time specified by the relevant GST legislation.

8.6 Dispute Resolution

- (a) No party to this agreement will start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this agreement (**dispute**) unless it has complied with this clause.
- (b) A party claiming that a dispute has arisen must notify the other parties, giving details of the dispute.
- (c) During the 21 day period after a notice is given under cl 8.6(b) (or longer period agreed in writing by the parties to the dispute) (**initial period**) each party to the dispute (**disputant**) must use its best efforts to resolve the dispute.
- (d) If the disputants are unable to resolve the dispute within the initial period, each disputant agrees that the dispute must be referred for mediation in accordance with the Mediation Rules of the Law Society of Western Australia, at the request of any disputant, to:
 - i. a mediator agreed on by the disputants; or
 - ii. if the disputants are unable to agree on a mediator within seven (7) days after the end of the initial period, a mediator nominated by the President of the Law Society of Western Australia or the President's nominee.
- (e) The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a disputant unless that disputant has so agreed in writing.
- (f) Any information or documents disclosed by a disputant under this clause:
 - i. must be kept confidential; and
 - ii. may not be used except to attempt to resolve the dispute.
- (g) Each disputant must bear its own costs of complying with this clause and the disputants must bear equally the costs of any mediator engaged.
- (h) After the initial period, a disputant that has complied with cll 8.6(a), (b) and (c) may terminate the dispute resolution process by giving notice to each other disputant.
- (i) If in relation to a dispute a disputant breaches any provision of cll 8.6 (a) to (f), each other disputant need not comply with cll 8.6 (a) to (f), in relation to that dispute.

SCHEDULE

1.	Land:	Parry Beach Reserve No. 20928, which includes Parry Beach and Hillier Bay, being the whole of the land in Lot 304 on Deposited Plan 49014, Certificate of Title Volume LR3157, Folio 594, and Reserve 39668 being the whole of the land in Lot 7553 on Deposited Plan 186775, Certificate of Title Volume LR3146, Folio 696
2.	Site:	That portion of Reserve No. 20928 and Portion of Reserve No 39668 as shown on Appendix 1 and Appendix 2
3.	Term:	10 years
4.	Commencement Date:	1 July 2020
5.	Expiration Date:	30 June 2020
6.	Rent:	\$200 per annum (ex GST)
7.	Permitted use:	To undertake hang gliding and paragliding activities from the Site by persons holding appropriate, current certification

EXECUTION

DATED this _____ day of _____ 2020

THE COMMON SEAL of **SHIRE OF DENMARK** was hereunto affixed by authority of resolution of the Council in the presence of)
)
)
)

.....
The Shire President

.....
Chief Executive Officer

The COMMON SEAL of **HANG GLIDING AND PARAGLIDING ASSOCIATION OF WESTERN AUSTRALIA INC.** is affixed in accordance with its constitution in the presence of:)
)
)

.....
President

.....
Name of President (print)

.....
Vice-President/Secretary

.....
Name of Vice-President/Secretary (print)

Appendix 1

Parry Beach Reserve No. 20928



Hang Gliding Club set up and launch area

Appendix 2

Set up area and take off area



Access track from carpark to set up and take off area



