

Western Sydney Parklands Trust

Sydney Zoo Pty Ltd

**[Financier]**

## Consent Deed - Agreement For Lease and Lease

Bungarribee Park Sydney Zoo

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This Deed is made on

### Parties

- 1 **Western Sydney Parklands Trust** (ABN 85 202 544 800) of Level 7, 10 Valentine Avenue, Parramatta NSW 2150 (the **Landlord**);
- 2 **Sydney Zoo Pty Ltd** (ACN 168 970 090) of \_\_\_\_\_ (the **Grantor**);  
and
- 3 **[Financier]** (ACN [\*]) of [\*] (the **Secured Party**).

### Recitals

- A The Landlord and Grantor will enter into a lease of [Part of Lot 101, Deposited Plan 1195067] (the **Lease**) pursuant to an Agreement for Lease dated [\*] between the Landlord and the Grantor (the **Agreement for Lease**).
- B The Grantor has granted a security interest in its rights under and interest in the Agreement for Lease and the Lease in favour of the Secured Party by deed dated [\*] (the **Security Interest**).
- C The Grantor requests that the Landlord consents to the Security Interest.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Authorised Officer** means

- (a) in respect of the Grantor, any director or secretary, or any person from time to time nominated as an Authorised Officer by the Grantor by a notice to the Secured Party accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Secured Party or the Contractor, any person whose title or acting title includes the word **Chief, Counsel, Executive, Head, Director, Manager** or **President** or cognate expressions, or any secretary or director.

**Default** means any breach by the Grantor of any of its obligations under the Agreement for Lease or Lease or any Event of Default (as defined in the Agreement for Lease or the Lease, as applicable) which, alone or with the lapse of time or notice or both, would entitle the Landlord to terminate or rescind the Agreement for Lease or the Lease or treat it as repudiated.

**Enforcing Party** means the Secured Party or any receiver, receiver and manager, administrator, agent or attorney appointed under the Security Interest.

**Facility Agreement** means the facility agreement dated [\*] between [\*] and [\*].

**Guarantee** means an obligation or offer to provide funds (including by subscription or purchase) or otherwise be responsible in respect of an obligation or indebtedness, or the financial condition or solvency, of another person. It includes a guarantee, indemnity, letter of credit or legally binding letter of comfort, or an obligation or offer to purchase an obligation or indebtedness of another person.

**Power** means any right, discretion, power or remedy, whether express or implied. It includes accepting repudiation and granting waivers.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPSA Deemed Security Interest** means an interest of the kind referred to in section 12(3) of the PPSA where the transaction concerned does not, in substance, secure payment or performance of an obligation.

**Security** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

It does not include a PPSA Deemed Security Interest.

**Security Default** means any breach by the Grantor of any of its obligations under the Security or any Event of Default (as defined in the Security) which, alone or with the lapse of time or notice or both, would entitle the Secured Party to terminate the Facility Agreement or any other finance arrangement with the Grantor, or to exercise any Power under the Security.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The meaning of terms is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (c) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural and the converse.
  - (ii) A gender includes all genders.
  - (iii) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - (v) A reference to a clause or schedule is a reference to a clause of, or schedule to, this Deed.
  - (vi) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted substitutes or assigns.
  - (vii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation, statutory instrument, code or other thing issued under it.
  - (viii) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
  - (ix) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
  - (x) A reference to **remedy** of a Default includes, where the Default is not capable of remedy within the time allowed under this Deed or the Agreement for Lease or the Lease, the making of other arrangements reasonably satisfactory to the Landlord including the payment of reasonable compensation.

- (xi) A reference to an amount for which a person is **contingently liable** includes an amount which that person may become actually or contingently liable to pay if a contingency occurs, whether or not under an existing obligation.
- (xii) All references to **time** are to Sydney time.

### 1.3 Document or agreement

A reference to:

- (a) an **agreement** includes a Security, Guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing; and
- (b) a **document** includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes it as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

### 1.4 Inconsistency

In the event of any inconsistency between this Deed and the Agreement for Lease or the Lease, this Deed will prevail.

### 1.5 Definitions in Deed

Definitions in the Agreement for Lease and the Lease apply in this Deed unless the terms is otherwise defined in this Deed or the context requires otherwise.

### 1.6 [Capacity of Secured Party

- (a) The Secured Party enters this Deed solely in its capacity as trustee of the [\*] Security Trust, as referred to in the Security Interest. Recourse against it is limited to its rights of indemnity against the assets of the [\*] Security Trust except to the extent that indemnity is lost or limited by reason of its wilful default or gross negligence.
- (b) If the Secured Party is replaced as security trustee, it will be released from its obligations under this Deed when it delivers to the Landlord a deed poll under which its replacement agrees to be bound by this Deed as Secured Party.] **[Note: delete this clause if there is no Security Trustee]**

## 2 Consent and Acknowledgment

### 2.1 By the Landlord

The Landlord consents to the creation of the Security Interest and acknowledges that:

- (a) **(no default)** neither the creation of the Security Interest nor the exercise of any Powers under the Security Interest will of itself contravene or constitute a default under the Agreement for Lease or the Lease or entitle the Landlord to exercise any Power (including of termination) under it either the Agreement for Lease or the Lease;
- (b) **(enforcement)** at any time after commencement of enforcement of the Security Interest any Enforcing Party may exercise all or any of the Powers, and perform all or any of the obligations, of the Grantor under or in relation to the Agreement for Lease and the Lease as if it were the Grantor;
- (c) **(not liable)** without limiting the liabilities of the Grantor (which continues to be responsible for the performance of its obligations under the Agreement for Lease and the Lease), no Enforcing Party will be liable, or taken to have assumed liability, for any liability of the

Grantor under the Agreement for Lease or the Lease by reason only of its entry into this Deed, the Security Interest or the exercise in accordance with the Security Interest of any of the Grantor's Powers under the Agreement for Lease or the Lease or of any of the Secured Party's rights under this Deed; and

- (d) **(ineffective)** the Grantor cannot:
- (i) amend, vary, terminate, rescind, repudiate (otherwise than by breach) or accept any termination, rescission or repudiation of the Agreement for Lease or the Lease;
  - (ii) grant any waiver or release under or in relation to the Agreement for Lease or the Lease; or
  - (iii) enter into any document or agreement in relation to the Agreement for Lease or the Lease (including any document or agreement which has the effect of varying or supplementing the Agreement for Lease or the Lease), other than a notice or other document contemplated by the Agreement for Lease or Lease,

without the prior written consent of the Secured Party. Any such thing without that consent will be ineffective as between the Grantor and the Secured Party.

## 2.2 By the Grantor

The Grantor is bound by, and shall co-operate in the implementation of, this Deed. It acknowledges that this Deed is only intended to benefit the Secured Party.

## 3 General Undertakings

The Landlord undertakes to the Secured Party as follows, except to the extent the Secured Party otherwise consents.

- (a) **(Document)** It will duly and punctually perform its obligations under the Agreement for Lease and the Lease.
- (b) **(Amendments)** It will not amend or vary the Agreement for Lease or the Lease in any material respect except with the prior written consent of the Secured Party such consent not to be unreasonably withheld or delayed.
- (c) **(Assignment)** It will not assign any of its rights under the Agreement for Lease or the Lease unless the assignee covenants to be bound by this Deed as if it were the Landlord in a deed satisfactory to the Secured Party acting reasonably.

## 4 Default

### 4.1 Notification by the Landlord

- (a) If the Landlord becomes aware of any Default, and proposes to take action against the Grantor in relation to that Default, the Landlord shall promptly notify the Secured Party.
- (b) The Landlord shall promptly give the Secured Party copies of all documents issued by the Landlord to the Grantor under the Agreement for Lease or the Lease in any way relating to, or arising out of, any Default.

### 4.2 Secured Party's cure rights

- (a) On becoming aware of any Default an Enforcing Party may take steps to remedy, or procure the remedy of, that Default.

- (b) To the extent reasonably requested by an Enforcing Party for the purpose of exercising its Powers under this Deed the Landlord shall promptly:
  - (i) provide that Enforcing Party with any information in its possession (including details of any steps which the Landlord considers appropriate to be taken to remedy the Default); and
  - (ii) (to the extent it is able to do so) provide that Enforcing Party with all necessary access to the Premises and allow it to inspect the Premises.

#### **4.3 Landlord not to terminate for Default**

Despite anything in the Agreement for Lease or the Lease, the Landlord shall not terminate or accept any repudiation of the Agreement for Lease or the Lease in relation to any Default unless it has given the Secured Party copies of all documents issued by the Landlord to the Grantor under the Agreement for Lease or Lease in relation to that Default and the Default has not been remedied within the time allowed under the Agreement for Lease or Lease for the Grantor to remedy the Default.

#### **4.4 Agreement for Lease Sunset Dates**

- (a) For the avoidance of doubt, clause 4.3 does not apply to any failure by the Grantor referred to in clause 14.1(a) of the Agreement for Lease. If any such failure occurs, the Landlord shall promptly give the Secured Party copies of all documents issued by the Landlord to the Grantor under the Agreement for Lease in relation to such failure.
- (b) The Landlord may not terminate the Agreement for Lease in relation to such failure unless it has given the Secured Parties copies of all such documents and the relevant requirement referred to in clause 14.1(a) of the Agreement for Lease has not been satisfied in the time allowed under clause 14.1 of the Agreement for Lease for the Grantor to satisfy that requirement.

### **5 Security Default**

#### **5.1 Notification by the Secured Party**

- (a) If the Secured Party becomes aware of any Security Default, and proposes to take action against the Grantor, or to exercise any Power under the Security, in relation to that Security Default, the Secured Party shall promptly notify the Landlord.
- (b) The Secured Party shall promptly give the Landlord copies of all documents issued by the Secured Party to the Grantor under the Security or the Facility Agreement in any way relating to, or arising out of, any Security Default.

#### **5.2 Notification by Grantor**

The Grantor shall promptly give the Landlord copies of all documents issued by the Secured Party to the Grantor under the Security or the Facility Agreement in any way relating to, or arising out of, any Security Default, and must keep the Landlord informed of any action taken by an Enforcing Party in relation to a Security Default.

### **6 No extension of rights**

#### **6.1 No extension**

Unless expressly authorised under this Deed, nothing in this Deed:

- (a) authorises the Secured Party to do anything under the Agreement for Lease or Lease which the Grantor may not do under the Agreement for Lease or Lease;
- (b) operates to grant the Secured Party rights under or in relation to the Agreement for Lease or Lease greater than the rights of the Grantor under the Agreement for Lease or Lease; or
- (c) authorises the Secured Party to do any act or thing without the Landlord's consent where, under the Agreement for Lease or Lease, the Grantor requires the Landlord's consent to do such act or thing.

## **6.2 Exercise of Power**

The Secured Party must not exercise any Power, and must ensure that no Enforcing Party exercises any Power, in a manner which is inconsistent with this Deed.

## **7 Amendments and Further Security**

### **7.1 Amendments to Security Interest**

The parties to the Security Interest may amend, novate, supplement or replace the Security Interest without the consent of the Landlord.

### **7.2 Further Security Interest**

Any further security or assurance from the Grantor or under the Security Interest in favour of an Enforcing Party will be taken to be part of the Security Interest and governed by this Deed.

## **8 Severability of Provisions**

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

## **9 Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:

- (a) must be in writing signed by an Authorised Officer of the sender; and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address or fax number of the recipient shown in the schedule or to any other address or fax number which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been received at the commencement of business on the next day on which business is generally carried on in that place.

## **10 Entire Agreement**

This Deed contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter. Without limitation, the Secured Party is not obliged to do anything except as expressly set out in this Deed.

**11 Amendment**

This Deed may be amended only by another deed executed by all parties who may be affected by the amendment.

**12 No Waiver**

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

**13 Assignment by Secured Party**

- (a) The Secured Party may assign its rights under this Deed at any time, subject to the Security Interest. Any such assignment is ineffective unless the Secured Party gives notice of such assignment to the Landlord.
- (b) In exercise of its Powers under the Security Interest an Enforcing Party may assign the rights and interest of the Grantor in, to and under the Agreement for Lease or the Lease with the consent of the Landlord, that consent not to be withheld where all requirements under the Agreement for Lease or Lease for any such assignment by the Grantor have been satisfied.

**14 Duty and Costs**

The Grantor shall reimburse each other party for its costs (including legal fees on a full indemnity basis) arising out of the preparation and execution of this Deed and shall bear any duty (including stamp duty and any fines and penalties) chargeable on this Deed and on any instruments executed under this Deed. The Grantor shall indemnify each other party on demand against any liability for that duty.

**15 Termination**

This deed remains in full force and effect until the Secured Party determines that all of the liabilities to each Finance Party under the Finance Documents (as defined in the Facility Agreement) have been satisfied and it is not reasonably foreseeable that there could be any liabilities to be satisfied in the future, at which time this Deed will terminate.

**16 Moratorium Legislation**

To the full extent permitted by law, all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Landlord any obligation under this Deed; or
- (b) delays, prevents or prejudicially affects the exercise by the Secured Party of any right, power or remedy conferred by this Deed,

is excluded from this Deed.

**17 Governing Law and Jurisdiction**

This Deed is governed by the laws of New South Wales and of the Commonwealth of Australia applying there. To the extent permitted by law, so are all related matters, including any non-contractual matters. The Grantor irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

## **18 Counterparts**

This Deed may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.

## Schedule

### Notice Details

#### Landlord

Western Sydney Parklands Trust (ABN 85 202 544 800)

Address: Level 7, 10 Valentine Avenue, Parramatta NSW 2150

Fax number: [\*]

Attention: [\*]

#### Grantor

Sydney Zoo Pty Ltd (ACN 168 970 909)

Address:

Fax number: [\*]

Attention: [\*]

#### Secured Party

[\*]

Address: [\*]

Fax number: [\*]

Attention: [\*]

**Executed and delivered as a Deed in**

[\*]

**LANDLORD**

**Executed** as a deed in accordance with section 8 of the *Western Sydney Parklands Act 2006* by **Western Sydney Parkland Trust**

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

\_\_\_\_\_  
Delegate Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name: Suellen Fitzgerald

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Position: Director

**GRANTOR**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Sydney Zoo Pty Ltd**

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

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**SECURED PARTY**