

LOAN COPY

1201.

WESTERN AUSTRALIA  
CONSERVATION AND LAND MANAGEMENT ACT 1984  
TRANSFER OF LAND ACT 1893 as amended

I hereby certify that the within is a true and correct copy of Lease  
No. 2280/97

*Keiran McNamara*  
Keiran McNamara  
Director General

## LEASE OF CROWN LAND (L)

## DESCRIPTION OF LAND (NOTE 1)

Portion of State forest No. 22

## EXTENT

Ptn

## VOLUME

## FOLIO

## LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS (NOTE 2)

Nil

## LESSOR/LESSORS (NOTE 3)

The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of 17 Dick Perry Avenue,  
Kensington, Western Australia 6152

## LESSEE/LESSEES (NOTE 4)

SHIRE OF SERPENTINE-JARRAHDALE of 6 Paterson Street Mundijong WA 6123.

## TERM OF LEASE (NOTE 5)

FIVE (5) Years Commencing from the 1st Day of June 2009.

THE LESSOR HEREBY LEASES TO THE LESSEE the Land above described subject to the encumbrances  
as shown hereon (Note 6)

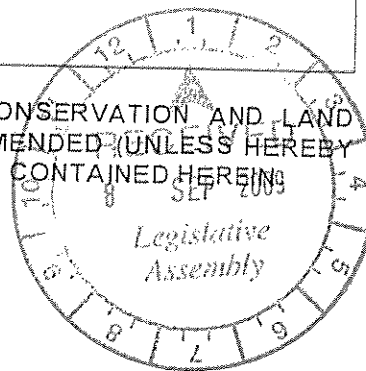
For the above term for the yearly rental of \$500.00 payable in advance commencing on the 1<sup>st</sup> day of June 2009 and  
subject to any future rent reviews thereafter on the 1st day of June during the remainder of the Term.

SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE CONSERVATION AND LAND  
MANAGEMENT ACT 1984 AND THE TRANSFER OF LAND ACT 1893 AS AMENDED (UNLESS HEREBY  
NEGATED OR MODIFIED) AND ALSO TO THE COVENANTS AND CONDITIONS CONTAINED HEREIN

WESTERN AUSTRALIA  
Laid on the Table of the  
Legislative Assembly

8 SEP 2009

This paper should not be  
removed from the Chamber



**LEASE**

**LEASE NO 2280/97**

**PUBLIC RECREATION**

**PART OF STATE FOREST NO. 22**

**THE CONSERVATION AND LAND  
MANAGEMENT EXECUTIVE BODY**  
(The Landlord)

and

**SERPENTINE-JARRAHDALE SHIRE**  
(Tenant)

**Schedule**

1. Landlord
2. Tenant
3. Leased Area
4. Term
5. Rent
6. Permitted Use of the Leased Area
7. Minimum Public Liability Insurance Cover

**Terms and Conditions**

1. Grant
2. Rent
3. Rent Review
4. Outgoings
5. Building Work and Cleaning
6. Use of Leased Area
7. Fires and Environmental Protection
8. General Obligations and Restrictions
9. Indemnity and Insurance
10. Management of the Leased Area
11. Assignment and Subletting
12. Holding Over
13. Default
14. Tenant's Obligations on Termination
15. Costs and Expenses
16. Miscellaneous
17. Power of Attorney
18. Notices
19. Trustee Provisions
20. Definitions and Interpretation

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**1. THE LANDLORD**

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THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY – 17 DICK PERRY AVENUE KENSINGTON WA 6152

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**2. Tenant**

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SERPENTINE-JARRAHDALE SHIRE – 6 PATERSON STREET MUNDIJONG WA 6123

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**3. Leased Area**

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SEE ATTACHED LEASE DIAGRAM

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**4. Term**

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The period of 5 years from the Commencement Date to the Expiry Date

4.1 *Commencement Date:* 1 JUNE 2009

4.2 *Expiry Date:* 31 MAY 2014

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**5. Rent**

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\$500.00 per annum excluding GST

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**6. Permitted Use of the Leased Area**

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PUBLIC RECREATION

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**7. Minimum Public Liability Insurance Cover**

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\$10,000,000

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**1. GRANT**

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**1.1 Grant of Lease**

The Landlord leases the Leased Area to the Tenant for the Term subject to the terms and conditions of this Lease.

**1.2 Quiet Enjoyment**

For as long as the Tenant complies with the Tenant's obligations under this Lease, the Tenant may occupy and use the Leased Area during the Term without disturbance or interference by the Landlord except as permitted by this Lease or by law.

**1.3 Termination by the Landlord or the Tenant By Twelve Months Notice**

Despite any other provision of this Lease, the Landlord or the Tenant may at any time terminate this Lease by giving 12 months written notice of termination.

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**2. RENT**

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**2.1 Amount of the Rent**

The annual rent payable under this Lease from the Commencement Date is the amount specified in item 5 of the Schedule.

**2.2 Manner of Payment**

The Tenant must pay the rent by equal annual instalments in advance. The first instalment is to be paid on the Commencement Date and subsequent instalments are to be paid on each anniversary of the Commencement Date. Rent payable for part of a year is to be proportionately adjusted on a daily basis.

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**3. RENT REVIEW**

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**3.1 CPI**

With effect from (and including) each date specified in this clause 3 as a "CPI Review Date", the rent must be reviewed on the basis that the reviewed rent is to be the higher of:

- (1) The rent applying immediately before the relevant CPI Review Date; and
- (2) the amount calculated by using the following formula:

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

Where:

A = the amount of the reviewed rent which is payable from (and including) the relevant CPI Review Date.

B = the last quarterly CPI Index Number published before the relevant CPI Review Date.

- C = the last quarterly CPI Index Number published before the previous rent review date (or in the case of the first review, before the Commencement Date).
- D = the amount of the rent applying immediately before the relevant CPI Review Date.

### 3.2 *Market*

With effect from (and including) each date specified in this clause 3 as a "Market Review Date", the Landlord can require that the rent be reviewed on the following basis.

If the Tenant has not agreed in writing to the amount of the reviewed rent proposed by the Landlord by 1 month before the relevant Market Review Date, the amount of the reviewed rent is to be the higher of:

- (1) the rent applying immediately before the relevant Market Review Date; and
- (2) the market rent for the Leased Area determined by a valuer licensed under the *Land Valuers Licensing Act 1978*:
  - (a) agreed to by each of the parties; or
  - (b) if they cannot agree, appointed by the President of the Australian Institute of Valuers and Land Economists (WA Division) at the request of either party.

The parties must each pay half the fees charged by any valuer appointed under this Lease to determine the market rent for the Leased Area.

### 3.3 *Interpretation*

In this Lease:

**CPI Index Number** means the Consumer Price Index (All Groups) for Perth published by the Australian Bureau of Statistics. If that index ceases to exist, "CPI Index Number" means the index which replaces it or (if none does) the index which most closely measures changes in the cost of living in Perth, Western Australia as nominated by a senior officer of the Australian Bureau of Statistics.

**CPI Review Date** means each anniversary of the Commencement Date other than each anniversary which is a Market Review Date.

**market rent** means the rent that a sitting tenant would be prepared to pay and an owner of the Leased Area would be prepared to accept taking into account:

- (1) the highest and best use of the Leased Area;
- (2) the provisions of this Lease;
- (3) the period which will elapse between the current rent review date and the next rent review date or, if there is not one, the termination of this Lease;
- (4) the full length of the Term and the benefit of any option to renew;
- (5) any improvement to the Leased Area by the Landlord;

but disregarding:

- (6) the consequences of any default by the Tenant of this Lease which may have adversely affected the condition, rental value or market rent of the Leased Area;
- (7) any part of the Term which has expired;
- (8) the value of the Tenant's Property and any goodwill created by the Tenant's business or activities on the Leased Area;

Market Review Date means the first day of July 2011.

Rent review date includes each CPI Review Date and Market Review Date.

**Delay**

No delay by the Landlord in enforcing any review of the rent prevents the Landlord from requiring at any time that the rent must be reviewed with effect from the dates for review of the rent specified in this clause 3.

#### **4. OUTGOINGS**

##### **4.1 Rates and Taxes**

The Tenant must pay the Rates and Taxes either to the relevant Authority before those Rates and Taxes become overdue or, in the case of any Rates and Taxes imposed on the Landlord, to the Landlord as required by the Landlord whenever the Rates and Taxes become payable.

##### **4.2 Goods and Services Tax**

###### **(1) Definition**

GST means a goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Act or otherwise on a supply.

GST Act means A New Tax System (*Goods and Services Tax*) Act 1999 (Cth).

Tax Invoice includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

###### **(2) Adjustment for GST**

(a) Unless expressly included, the consideration for any supply made by the Landlord under or in connection with this lease does not include GST.

(b) GST is payable on any supply of goods and services under this lease.

###### **(3) Tax Invoices**

The Landlord must issue a Tax Invoice to the Lessee in respect of any supply of goods and services under the lease.

###### **(4) Reimbursements**

If the Landlord is entitled under the lease to be reimbursed or indemnified by the Tenant for a cost or expense incurred in connection with the lease, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Landlord.

**4.3 Other property included**

If Rates and Taxes are not assessed separately on the Leased Area but also on other property which includes the Leased Area, the amount which the Landlord can require the Tenant to pay is the same proportion of those Rates and Taxes as the area of the Leased Area bears to the area of the property the subject of the assessment.

**4.4 Energy Services**

The Tenant must pay the charges of any Energy Supplier and any other costs in respect of the supply of energy services to the Leased Area either to the Energy Supplier before those charges become overdue or, in the case of any such charges imposed on the Landlord, to the Landlord as required by the Landlord whenever the charges become payable.

**4.5 Water**

The Tenant must pay the charges imposed by the Water Supplier in connection with water supplied to the Leased Area either to the Water Supplier before those charges become overdue or, in the case of any such charges imposed on the Landlord, to the Landlord as required by the Landlord whenever the charges become payable.

**4.6 Service Charges**

The Tenant must pay all charges for all other Services which are imposed in respect of the Leased Area either to the supplier before those charges become overdue or, in the case of any such charges imposed on the Landlord, to the Landlord as required by the Landlord whenever the charges become payable.

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**5. BUILDING WORK AND CLEANING**

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**5.1 General Obligations**

The Tenant must:

- (1) maintain the Leased Area to a reasonable standard subject to the Landlord's satisfaction; and
- (2) promptly repair any damage to the Leased Area; and
- (3) maintain the Tenant's Property (including signs) located on the Leased Area in good condition.

**5.2 Building Work**

If the Tenant constructs anything on the Leased Area or carries out any other work on the Leased Area, including work relating to Services or work required by any Authority or any law, the Tenant must:

- (1) before carrying out the work, obtain the Landlord's written approval to the carrying out of the work, including if relevant, written approval of the plans and specifications for the work; and
- (2) comply with all relevant requirements of each Authority and all laws and applicable standards in relation to the work; and
- (3) carry out the work in a safe and proper manner; and



- (4) use only good quality materials; and
- (5) utilise the services of a qualified and competent overseer who has been approved by the Landlord; and
- (6) pay to the Landlord when the Landlord requests any expenses incurred by the Landlord in approving the work, including fees paid to architects, engineers, contractors or other advisors.

### 5.3 *Cleaning*

The Tenant must:

- (1) keep the Leased Area clean and tidy and free of vermin; and
- (2) regularly remove rubbish accumulating on the Leased Area to an appropriate rubbish disposal site; and
- (3) comply with the Landlord's reasonable directions in connection with cleaning and the disposal of rubbish in relation to the Leased Area.

### 5.4 *Specific obligations*

Without limiting the preceding clause, the Tenant must:

- (1) keep the surrounds of the Leased Area for a distance of 10 metres from the boundary clean and tidy and free of vermin as if the surrounds form part of the Leased Area;
- (2) not cause or allow any pollutant or contaminant material or substance over which the Tenant has control to be released into or affect the Leased Area; and
- (3) not dispose of rubbish from the Leased Area in any bins provided by the Landlord for public use in forest or nature conservation areas.

## 6. *USE OF LEASED AREA*

### 6.1 *Permitted Use*

The Tenant may only use the Leased Area for the Permitted Use unless the Landlord consents to another use.

### 6.2 *Tenant's Own Enquiries*

The Tenant has relied on the Tenant's own enquiries about how the Leased Area may be used and not on any representation from the Landlord. The Tenant has made the Tenant's own enquiries about:

- (1) the suitability of the Leased Area for any use to which it is to be put; and
- (2) all planning and any other requirements prohibitions or restrictions applying to the Leased Area under any law or as a result of the requirements or orders of any Authority.

### 6.3 *No Warranty by Landlord*

The Landlord does not give any warranty of any kind that the Leased Area is suitable for any purpose for which the Tenant intends to use it. Any warranty in relation to the Leased Area which is implied by law is excluded to the extent that the law permits the warranty to be excluded.

**6.4     *The Landlord Not Liable***

The Landlord is not liable to the Tenant and the Tenant will not make a claim against the Landlord in respect of any Liability resulting from any accident, death, injury, damage (including water damage), malfunction or other event in or affecting the Leased Area unless caused by the negligence of the Landlord or any employee, contractor or agent of the Landlord.

**7.     FIRES AND ENVIRONMENTAL PROTECTION**

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**7.1     *Fire Prevention***

Without limiting any other provision of this Lease, the Tenant must in relation to the Leased Area promptly comply with:

- (1)     the *Bush Fires Act 1954* and any other laws relating to the prevention and control of fires; and
- (2)     all proper directions concerning fire prevention and control given to the Tenant by the Landlord or any Authority.

**7.2     *Fire Control***

The Tenant must immediately:

- (1)     notify the Landlord as soon as a fire is detected on the Leased Area;
- (2)     take all reasonable and safe action which the Tenant is able to take to try to extinguish any unauthorised or uncontrolled fire on the Leased Area.

**7.3     *Authorised Fires***

The Tenant must not do anything which causes or may cause a fire on the Leased Area unless the fire is:

- (1)     not prohibited by law or by a direction of the Landlord or an Authority; and
- (2)     the fire is not dangerous and is properly controlled so that it cannot become dangerous.

**7.4     *Liability for Fires***

The Tenant is responsible for and must pay or reimburse the Landlord for all Liabilities as a result of any fire which starts on the Leased Area unless the Tenant can prove to the reasonable satisfaction of the Landlord that the fire:

- (1)     was not caused by the Tenant's negligent or unlawful act or omission or the Tenant's default under this Lease; or
- (2)     was started by a cause beyond the Tenant's reasonable control.

**7.5     *Timber***

- (1)     This lease does not grant to the Tenant any rights to forest produce as defined in the *Conservation and Land Management Act 1984* and the provisions of Section 96(4) of the *Conservation and Land Management Act 1984* are hereby expressly excluded.
- (2)     Subject to the written authority of the Landlord, the Tenant may fell cut and utilise timber on the Leased Area as the Tenant may require for the erection of fencing or other authorised improvements thereon.

**7.6 Trees and Vegetation**

The Tenant must take all reasonable actions necessary to protect the trees and other vegetation growing on the Leased Area and take reasonable actions necessary to prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Leased Area. Without limitation, unless required by clause 7.7, the Tenant may not cut down or damage or otherwise interfere with anything growing on the Leased Area without the written consent of the Landlord. The Tenant must also control declared plants and declared animals as defined in the *Agriculture and Related Resources Protection Act 1976*, in relation to the Leased Area, as required by that Act.

**7.7 Dangers or Threats to the Public**

The Tenant must:

- (1) regularly check the condition of trees and other vegetation on the Leased Area;
- (2) subject to the Landlord's consent, prune or remove any tree or other vegetation which is in a dangerous condition or which may threaten the safety of any person;
- (3) take adequate action to warn the public of any danger or threat constituted by any tree or other vegetation; and
- (4) generally take any measures necessary to prevent accidents and to protect the safety of the public on the Leased Area.

**7.8 Prevention of Disease**

The Tenant must comply with the Landlord's reasonable directions relating to the prevention of the spread of disease, particularly *Phytophthora Cinnamomi* (Jarrah dieback) in connection with the Leased Area, including arranging for the washing of vehicles and equipment and other similar measures.

**7.9 No Interference with Land**

The Tenant acknowledges that the Leased Area may be environmentally sensitive and that the Landlord has a general duty to protect the environment. Accordingly, the Tenant must not, without first obtaining the consent of the Landlord, do anything to damage or otherwise interfere with the natural environment on the Leased Area, including:

- (1) removing rocks, earth, soil or other material from the Leased Area; or
- (2) clearing or removing trees or other vegetation from the Leased Area by any means; or
- (3) altering the contours of the surface of the Leased Area; or
- (4) depositing any earth fill or other similar materials on the Leased Area; or
- (5) altering the natural drainage on the Leased Area; or
- (6) introducing any new flora or fauna to the Leased Area; or
- (7) harming or endangering any flora or fauna on the Leased Area; or
- (8) anything else which in connection with the Leased Area may be harmful to the environment.

**7.10 *Notify the Landlord of Threats***

The Tenant must immediately notify the Landlord if the Tenant becomes aware of anything which causes or could cause pollution (as defined in the *Environmental Protection Act 1986*) on or affecting the Leased Area.

**7.11 *Environmental Protection Laws***

Unless otherwise stated, this Lease is not to be taken as exempting the Tenant from or limiting the obligation of the Tenant to comply with any law relating to the protection of the environment.

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**8. GENERAL OBLIGATIONS AND RESTRICTIONS**

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**8.1 *Obligations***

The Tenant must:

- (1) conduct the Tenant's business or activities in the Leased Area in a proper manner; and
- (2) comply with all relevant requirements of any Authority and every law in connection with the Leased Area and the Tenant's Property except where such requirements relate to work of a structural nature, unless rendered necessary by the nature of the Tenant's business or activities in the Leased Area; and
- (3) withdraw any 'subject to claim' caveat lodged to protect the Tenant's interest under this Lease at the termination, or on an assignment, of this Lease; and
- (4) promptly give the Landlord a copy of every notice from any Authority received by the Tenant relating to the Leased Area; and
- (5) immediately notify the Landlord if the Tenant becomes aware of anything which is a threat to the Leased Area and comply with the Landlord's directions for the purpose of protecting property or persons in the Leased Area; and
- (6) promptly inform the Landlord after becoming aware of any damage to the Leased Area or of the faulty operation of any Services.

**8.2 *Restrictions***

In connection with the Leased Area, the Tenant must not (and may not permit anyone else to) except with the Landlord's consent:

- (1) modify or interfere with the facilities for the provisions of Services to the Leased Area or any equipment connected to those facilities; or
- (2) interfere with or obstruct the operation of or access to the Services; or
- (3) cause damage to the Leased Area; or
- (4) store or use inflammable or explosive substances in the Leased Area except those normally used for any activity included in the Permitted Use but then only if they are stored in proper containers and used only in accordance with all relevant laws and the requirements of any Authority; or
- (5) use any facilities in or near the Leased Area, including the toilets and drains, for any improper purpose; or

- (6) put any signs or advertisements outside the Leased Area or within the Leased Area, except as required by this Lease; or
- (7) permit any other person to carry on business on or from the Leased Area; or
- (8) use the Leased Area as a residence, other than a caretaker's residence, or for any activity which is dangerous, offensive, illegal or immoral or which is or may become a nuisance or annoyance to anyone; or
- (9) create any noise or other disturbance which interferes with the use by any other person of land which adjoins or is near to the leased Area; or
- (10) abandon the Leased Area; or
- (11) create a security interest over this Lease in favour of any person or give another person any right to occupy or use the Leased Area; or
- (12) lodge an absolute caveat to protect the Tenant's interest under this Lease.

### 8.3 *Local Government Act 1995 Requirements*

Even though the *Local Government Act 1995* and subsidiary legislation, including any building regulations, may not apply in respect of the Leased Area, the Tenant must comply with that Act and subsidiary legislation as if it did apply, except to the extent that the Landlord waives any requirement. The Tenant must pay to the Landlord on request the fees or other costs charged to the Landlord by any consultant or other competent person who provides advice to the Landlord in relation to the Tenant's compliance with the *Local Government Act 1995* and any subsidiary legislation.

## 9. INDEMNITY AND INSURANCE

### 9.1 *Indemnity*

The Tenant is responsible for and indemnifies the Landlord against any Liability resulting from:

- (1) any loss or damage to property or any injury to or death of any person occurring in the Leased Area or caused by the Tenant wherever occurring; or
- (2) any reasonable action taken by the Landlord to remedy a default by the Tenant.

This indemnity does not apply to the extent that the Liability is contributed to by the Landlord.

### 9.2 *Insurance*

The Tenant must maintain with a reputable insurer:

- (1) public liability insurance of at least the amount specified in item 7 of the Schedule for each accident or event in the Leased Area, and
- (2) insurance for the Tenant's Property and any insurance required by law as a result of the Tenant's use of the Leased Area.

### 9.3 *Variation of Insurance amount*

The Landlord may by notice to the Tenant at any time require the Tenant to increase the minimum cover for the Tenant's public liability insurance if in the circumstances it is reasonable for the cover to be increased.

#### 9.4 *Insurance obligations*

The Tenant must also:

- (1) pay each premium due under the insurance policies taken out by the Tenant before the due date and, when reasonably requested by the Landlord, provide evidence of payment; and
- (2) when reasonably requested by the Landlord, provide evidence of currency for each insurance policy certified by the insurer; and
- (3) immediately notify the Landlord if an event occurs which may give rise to a claim under any insurance or which could adversely affect it or if an insurance policy is cancelled; and
- (4) if required by the Landlord, ensure that the Landlord's interests are noted on the policy of public liability insurance.

#### 9.5 *Landlord's insurance*

Unless the Landlord consents, the Tenant must not:

- (1) do or allow anything to be done which could adversely affect any insurance taken out by the Landlord in connection with the Leased Area or which could increase the cost of obtaining that insurance; or
- (2) settle, compromise or waive any claim under any policy of insurance relating to the Leased Area.

### 10. *MANAGEMENT OF THE LEASED AREA*

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#### 10.1 *Managing Agent*

The Landlord may appoint a managing agent to manage the Leased Area and represent the Landlord in relation to this Lease. If the Landlord appoints a managing agent, the managing agent may exercise the rights and powers of the Landlord under this lease. The Landlord may at any time vary or terminate the authority of the managing agent. Decisions of the Landlord override those of the managing agent if there is any inconsistency between them.

#### 10.2 *Exercise of Rights under the Conservation and Land Management Act 1984*

The Landlord reserves the right to enter the Leased Area at any time in order to exercise any right, power or authority which the Landlord has under the *Conservation and Land Management Act 1984*. The Tenant is not entitled to any compensation or to make any other claim against the Landlord for anything done by the Landlord on the Leased Area in the exercise of any right or authority under that Act.

#### 10.3 *Right to Enter*

The Landlord may after giving reasonable notice to the Tenant (or in an emergency, without notice) enter the Leased Area to do any one or more of the following things:

- (1) inspect the state of repair and condition of the Leased Area;

- (2) maintain or repair the Leased Area and equipment or facilities in the Leased Area;
- (3) maintain, repair, alter or remove the Services;
- (4) carry out structural work to the Leased Area or any other work required by an Authority;
- (5) remove anything which is harmful or dangerous;
- (6) anything which should have been done by the Tenant but which has not been done properly;
- (7) anything else which the Landlord is required to do by law or is permitted to do under this Lease;

without affecting the Tenant's obligations under this Lease.

#### 10.4 *Minimise disruption*

If the Landlord does anything permitted by the preceding clause the Landlord must:

- (1) give the Tenant reasonable notice of the intended action before it is taken (except in an emergency); and
- (2) use its best endeavours to minimise disruption to the Tenant's business; and
- (3) make good any damage to the Tenant's Property (other than minor damage) caused by the Landlord.

#### 10.5 *Dealing with the Leased Area*

The Landlord reserves the right to deal with the Leased Area by granting easements, licences or other rights or interests of any kind to any person over it at any time so long as this does not unreasonably interfere with the Tenant's use of the Leased Area for the Permitted Use. The rights which the Landlord may grant include the right to cut down and remove timber or other vegetation from the Leased Area, the right to draw water or the right to excavate and remove rocks, earth, soil or other materials from the Leased Area. The Tenant is not entitled to any compensation or to make any other claim against the Landlord in relation to the proper exercise of any right given to another person by the Landlord. The Tenant is responsible for and indemnifies the Landlord against any Liability resulting from any claim made by a person to whom a right or interest has been granted by the Landlord in connection with any negligent act or omission of the Tenant or any default by the Tenant under this Lease.

### 11. **ASSIGNMENT AND SUBLETTING**

#### 11.1 *Consent Required*

Unless the Landlord consents under the next clause, the Tenant may not assign this Lease or sublet the Leased Area.

#### 11.2 *Requirements for Consent*

The Tenant may assign this Lease or sublet the Leased Area if the Landlord consents and if the Tenant:

- (1) complies with the next clause; and

- (2) supplies to the Landlord evidence acceptable to the Landlord that the proposed assignee or subtenant is able and qualified to use the Leased Area for the Permitted Use, is financially sound and has a good reputation; and
- (3) remedies any default under this Lease unless it has been waived by the Landlord; and
- (4) if requested by the Landlord, arranges for the proposed assignee or subtenant to obtain from one or more persons, as reasonably nominated by the Landlord, a guarantee of the obligations under this Lease to be assumed by the proposed assignee or subtenant in a form prepared or approved by the Landlord's solicitors.

#### 11.3 ***Obligations on Assignment or Sublease***

If the Tenant assigns this Lease or sublets the Leased Area, the Tenant must:

- (1) deliver to the Landlord, before the date that the proposed assignment or sublease is to take effect, a completed agreement in the form of a deed prepared or approved by the Landlord's solicitors, by which the proposed assignee or subtenant agrees with the Landlord to be bound by this Lease as from the date the assignment or sublease takes effect; and
- (2) pay to the Landlord on request the Landlord's expenses, including legal costs:
  - (a) incurred in making reasonable enquiries about the proposed assignee or subtenant; and
  - (b) in connection with the preparation, completion and stamping of the assignment or sublease documents and any other related documents, (including the stamp duty on those documents).

#### 11.4 ***Tenant Remains Liable***

The Tenant remains fully liable under this Lease even if the Tenant assigns this Lease or sublets the Leased Area or gives any right in relation to this Lease or the Leased Area to any other person.

#### 11.5 ***Change in Control***

If the Tenant is a company, and there is a change in control of the Tenant the Landlord may require the Tenant to obtain from the persons who have acquired control, as reasonably nominated by the Landlord, a guarantee of the Tenant's obligations under this Lease in a form prepared or approved by the Landlord's solicitors. If the Tenant is a subsidiary company a change in control includes a change in control of its holding company.

In this clause:

- (1) **company** does not include a company which is listed on the Australian Stock Exchange or is wholly owned by such a company; and
- (2) **control** means control of the composition of the board of directors or control of more than 20% of the shares with the right to vote at general meetings; and
- (3) words defined in the Corporations Law have the meanings given to them by that Law

#### 11.6 ***Exclusion of Statutory Provisions***

The provisions of sections 80 and 82 of the *Property Law Act 1969* do not apply to this Lease.



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11.7 *Fees*

The Tenant must reimburse the Landlord on request for all fees paid by the Landlord to any agent or consultant engaged by the Landlord in connection with a proposed assignment or subletting by the Tenant.

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12. *HOLDING OVER*

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If the Landlord consents to the Tenant continuing to occupy the Leased Area after the Expiry Date or after the end of any extended term, the Tenant is a monthly tenant of the Leased Area and:

- (1) the monthly tenancy may be terminated by either party giving to the other at least one month's notice which may expire on any day; and
- (2) the rent is the same rent payable immediately before the Expiry Date or after the end of any extended term; and
- (3) all the other provisions of this Lease apply to the monthly tenancy except any option to extend this Lease.

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13. *DEFAULT*

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13.1 *Re-entry*

The Landlord may terminate this Lease by notice to the Tenant or by re-entering the Leased Area if:

- (1) the Tenant repudiates this Lease; or
- (2) the Tenant abandons the Leased Area; or
- (3) the Tenant ceases to use the Leased Area for the Permitted Use other than for a temporary period;
- (4) or the rent or any other money payable by the Tenant is unpaid for longer than 3 months after it is due to be paid; or
- (5) the Tenant is in default under this Lease and, if the default can be remedied, the Tenant has not remedied the default within 3 months after receiving a notice from the Landlord specifying the default and requiring it to be remedied; or
- (6) an Insolvency Event occurs; or
- (7) the Tenant defaults under the Permit.

Except for the notice given under subclause (5) and except for any notice otherwise required by law the Landlord does not need to give notice to the Tenant before re-entering the Leased Area.

**13.2 Essential Terms and Damages**

Every obligation of the Tenant under this Lease:

- (1) to pay money; or
- (2) not to do something without the Landlord's consent; or
- (3) relating to damage to the Leased Area or to the state of repair or condition of the Leased Area,

is an essential term of this Lease. (This clause does not prevent other obligations being essential terms).

If the Tenant defaults by not performing or complying with any obligation which is an essential term, The Landlord is entitled to recover damages for losses over the whole Term, including losses caused by the non-payment of money by the Tenant over that period, even if this Lease is terminated by the Landlord as a result of the Tenant's default before the Expiry Date.

This clause is not to be taken as relieving the Landlord of any duty to mitigate losses which is imposed by law.

**13.3 Right to Damages not Affected**

The Landlord's right to recover damages is not affected if:

- (1) the Landlord accepts the Tenant's repudiation of this Lease; or
- (2) the Landlord terminates this Lease by notice or re-entry; or
- (3) the Tenant has abandoned the Leased Area; or
- (4) there is a surrender of this Lease by law.

**13.4 Interest on Overdue Money**

The Tenant must pay interest on any money which is not paid by the due date. Interest is to be the higher of:

- (1) 15%; or
- (2) the current reference rate or other base rate charged by the Commonwealth Bank on overdraft loans of less than \$100,000 plus 2%,

and is to be calculated on a daily basis from the due date until the money is paid. The interest is to be paid when requested by the Landlord.

**13.5 Acceptance of Rent or Mitigation**

The acceptance of rent or other money owing under this Lease or an attempt by the Landlord to mitigate losses is not to be taken as a waiver of a default by the Tenant under this Lease or a surrender by law.

**13.6 Cross Default**

Where an Event of Default occurs, the Tenant will also be taken to be in default under the Permit.

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**14. TENANT'S OBLIGATIONS ON TERMINATION**

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**14.1 *Tenant to Move Out***

The Tenant must move out of the Leased Area and remove all the Tenant's Property from the Leased Area by the end of the Term except that if this Lease is terminated before that date, the Tenant must move out and remove the Tenant's Property as soon as reasonably possible after this Lease is terminated.

**14.2 *Abandonment of Tenant's Property***

If the Tenant does not remove all the Tenant's Property when the Tenant has to move out of the Leased Area the Tenant is deemed to have abandoned the Tenant's Property remaining in the Leased Area and the Tenant's Property will become the property of the Landlord.

**14.3 *Risk***

The Tenant's Property is at the Tenant's risk at all times before and after the termination of this Lease.

**14.4 *Damage Caused by Moving Out***

The Tenant must repair any damage to the Leased Area caused by moving out of the Leased Area or removing the Tenant's Property.

**14.5 *Reinstatement***

If the Tenant has made any improvements or alterations to the Leased Area or carried out any work on the Leased Area or done anything else to change the Leased Area if the Landlord requires, the Tenant must reinstate the Leased Area before the end of the Term so that the Leased Area is returned to the condition it was in before the improvements or alterations were made, or the work carried out or the other changes were made. The Tenant's obligations under this clause include removing any building or other structure erected in the Leased Area by the Tenant unless the Landlord agrees otherwise or unless this Lease provides otherwise.

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**15. COSTS AND EXPENSES**

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**15.1 *Costs and Expenses***

The Tenant must pay or reimburse the Landlord on request for all the Landlord's costs and expenses (including legal costs and expenses) in relation to:

- (1) arranging for any survey or demarcation drawing necessary to identify the Leased Area; and
- (2) negotiating, preparing, signing and stamping of this Lease and any document assigning, varying or surrendering this Lease; and
- (3) any proposed or actual assignment or subletting by the Tenant including the engagement by the Landlord of any agent or consultant in connection with the proposed or actual assignment or subletting; and
- (4) enforcing any right under this Lease including giving a notice of default under section 81 of the *Property Law Act 1969*; and
- (5) any default by the Tenant which causes loss to the Landlord; and

- (6) giving any consent or approval under this Lease.

**15.2 Duties and Fees**

The Tenant must pay or reimburse the Landlord on request for all stamp duty and fees (including fines and penalties attributable to the Tenant) payable in connection with this Lease.

**16. MISCELLANEOUS**

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**16.1 Remedies Cumulative**

The rights, powers and remedies in this Lease are in addition to the rights, powers and remedies provided by law independently of this Lease.

**16.2 Accrued Rights**

The termination of this Lease for any reason does not affect the rights of the Landlord in relation to a default by the Tenant before termination.

**16.3 Severance**

If any part of this Lease or the application of that part to any person or circumstance is or becomes unenforceable, the other provisions of this Lease are not affected but continue to be enforceable.

**16.4 Payments**

The Tenant must make all payments under this Lease without set-off, counterclaim or deduction. Payments by the Tenant under this Lease are to be made to the Landlord or any other person nominated by the Landlord. The Landlord need not make a demand for payment of any amount required to be paid by the Tenant under this Lease unless required by law. If this Lease does not specify when a payment is due, it is due within 14 days after the Landlord requests payment.

**16.5 Transfer of Land Act 1893**

The covenants and powers implied in every lease made under the *Transfer of Land Act 1893* are implied in this Lease, whether registered under that Act or not, except:

- (1) to the extent that they are modified by this Lease; and
- (2) the implied covenant set out in section 92(ii), which is excluded.

**16.6 Cost of Complying with Obligations**

Unless otherwise stated in this Lease, the Tenant must pay the cost of performing or complying with every obligation of the Tenant under this Lease.

**16.7 The Landlord Can Comply**

If the Tenant does not perform or comply with an obligation under this Lease the Landlord may do what is necessary for the obligation to be performed or complied with. The Tenant must reimburse the Landlord for any reasonable costs or expenses incurred in ensuring the Tenant's obligations are performed or complied with.

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**17. POWER OF ATTORNEY**

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The Tenant for valuable consideration irrevocably appoints the Landlord and every corporate executive officer of the Landlord (jointly and severally) the Tenant's attorney for the purpose of:

- (1) withdrawing any caveat which the Tenant is obliged to withdraw but does not; and
- (2) doing anything else the Tenant is obliged to do but does not do.

In this clause "**senior officer**" means every person designated by the Landlord as a senior officer.

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**18. NOTICES**

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**18.1 Form and Address**

A notice or other communication in connection with this Lease must be in writing and may be signed by the relevant party or its solicitors or agents.

The notice or other communication may be:

- (1) left at or posted to the address of the addressee as set out in the Schedule or any other address notified to the sender as an address for the giving of notices; or
- (2) sent by facsimile transmission to any facsimile number used by the addressee.

**18.2 Receipt**

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

- (1) if left at the address of the addressee, the next Business Day after the day it is left;
- (2) if posted, on the third Business Day after posting; and
- (3) if sent by facsimile transmission, on the next Business Day after the facsimile was sent.

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**19. TRUSTEE PROVISIONS**

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If the Tenant has entered into this Lease in the capacity of trustee whether or not the Landlord has any notice of the trust, the Tenant:

- (1) is taken to enter into this Lease both as trustee and in the Tenant's personal capacity and acknowledges that the Tenant is personally liable for the performance of the Tenant's obligations under this Lease; and
- (2) is personally liable for the performance of the Tenant's obligations under this lease; and
- (3) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Landlord for any default by the Tenant; and
- (4) will assign to the Landlord any right of indemnity the Tenant has against the assets of the trust to the extent of the liability of the Tenant under this Lease; and

- (5) warrants that the Tenant has the power and authority under the terms of the trust to enter into this Lease.

## 20. DEFINITIONS AND INTERPRETATION

### 20.1 Definitions

In this Lease:

**Authority** means any governmental or public authority of any kind.

**Business Day** means a day on which banks are open for business in Perth other than a Saturday or a Sunday.

**CALM Act** means the *Conservation and Land Management Act 1984 (WA)*.

**Commencement Date** means the date in item 4.1 of the Schedule.

**Energy Supplier** means any Authority, company or other body which supplies, at the Landlord's request, gas, electricity or other sources of energy to the Leased Area.

**Environmental Laws** means all laws regulating or otherwise relating to the environment including laws relating to land use planning, heritage, pollution, contamination, public and occupational health and safety, or any other aspect of protection of environment.

**Event of Default** means the occurrence of any of the events referred to in clause 13.1.

**Expiry Date** means the date in item 4.2 of the Schedule.

**Insolvency Event** means the happening of any of the following events in relation to the Tenant:

- (1) the Tenant is unable to pay all the Tenant's debts as and when they become due and payable or the Tenant has failed to comply with a statutory demand as provided in section 459F of the Corporations Law, or the Tenant is deemed to be unable to pay the Tenant's debts under section 585 of the Corporations Law;
- (2) a meeting is convened to place the Tenant in voluntary liquidation or to appoint an administrator;
- (3) an application is made to a court for an order or an order is made that the Tenant to be wound up;
- (4) the appointment of a controller (as defined in section 9 of the Corporations Law) of any of the Tenant's assets;
- (5) the Tenant proposes to enter into or enters into any form of arrangement (formal or informal) with the Tenant's creditors or any of them, including a deed of company arrangement; or
- (6) the Tenant becomes an insolvent under administration, as defined in section 9 of the Corporations Law.

**Leased Area** means the area of land described in item 3 of the Schedule and includes all buildings and other improvements on that area of land unless this Lease provides that ownership of any buildings or improvements constructed by the Tenant on the Leased Area remains in or vests in the Tenant.

**Liability** includes any obligation to pay money or other loss, cost or expense of any kind.

**Permit** means the permit attached to this lease under Special Provisions.

**Permitted Use** means the use described in item 6 of the Schedule.

**Rates and Taxes** means any rate, tax, levy or any other charge imposed at any time during the Term of the Lease by any State, local or Federal governmental body, authority, department or instrumentality or any other authority of any kind, in relation to the supply or use of the Leased Area or any thing under or in connection with the Lease.

**Services** means all services to the Leased Area or parts of the Leased Area including air conditioning, electric power, gas, water, sewerage, telecommunications and fire sprinkler services.

**Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

**Tenant** means the person or persons named in item 2 of the Schedule and includes the Tenant's successors and an assignee, a subtenant or any other person having a right to possess, use or occupy the Leased Area.

**Tenant's Property** means any buildings, fences, plant or equipment or other property which the Tenant constructs on or brings in to the Leased Area.

**Term** means the period referred to in item 4 of the Schedule.

**The Landlord** means the statutory body described in item 1 of the Schedule and includes the Landlord's successors and an assignee of the reversion and, where the context permits, any person authorised by the Landlord to do any act on behalf of the Landlord for the purposes of this Lease, including a managing agent.

**Water Supplier** means any Authority, company or other body which supplies, at the Landlord's request, water or sewerage services to the Leased Area.

## 20.2 *Interpretation*

In this Lease, unless the contrary intention appears:

- (1) a reference to the Tenant includes the Tenant's employees, agents, contractors, subtenants, licensees, customers and any other person who is in the Leased Area with the Tenant's permission (direct or implied);
- (2) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the Commencement Date;
- (3) the singular includes the plural and vice versa;
- (4) the word "person" includes a firm, a body corporate, an unincorporated association or an Authority;
- (5) an obligation, representation or warranty;
- (6) in favour of 2 or more persons is for the benefit of them jointly and severally; and
- (7) on the part of 2 or more persons binds them jointly and severally;
- (8) each obligation of a party to this Lease has effect as a covenant given in favour of the party who may enforce the obligation;

- (9) if a period of time is expressed to be calculated from or after a specified day, that day is not included in the period;
- (10) a reference to a day is a reference to the 24 hour period commencing at midnight;
- (11) a reference to a month is to a calendar month and a reference to a year is a calendar year;
- (12) if the word 'including' or 'includes' is used, the words: "without limitation" are deemed to immediately follow;
- (13) a reference to the termination of this Lease includes the expiry of the Term; and
- (14) a reference to the Term in relation to any obligation of the Tenant is to be taken as including a reference to any period during which the Tenant occupies or uses the Leased Area with the Landlord's consent.

### 20.3 *Schedule*

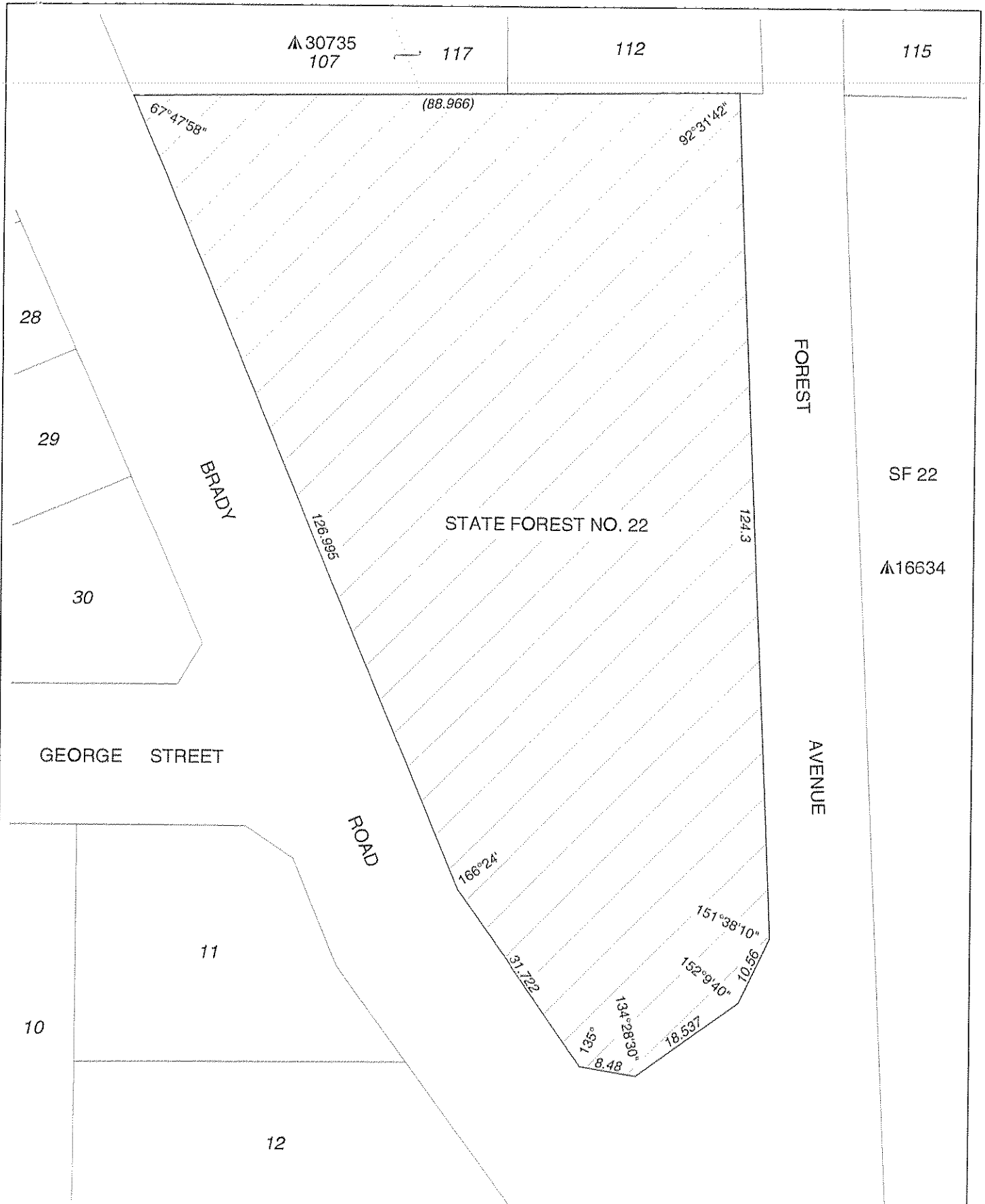
All the provisions in the Schedule at the front of this Lease are incorporated in and form part of this Lease.

### 20.4 *This Lease*

A reference to this Lease includes:

- (1) everything forming part of this document; and
- (2) any agreed changes to this document which are recorded in a separate document.





## FOREST LEASE 2280/97

LESSEE

SERPENTINE JARRAHDAL SHIRE

LGA

SERPENTINE JARRAHDAL

AREA

Abt 8723m<sup>2</sup>

LAND DISTRICT

COCKBURN SOUND

DRAWN

Original survey prepared by  
Brook & Marsh Pty Ltd  
Licensed Surveyors

DEC DISTRICT

PERTH HILLS

CHECKED

RD 5-5-09

PLAN

JARRAHDAL (BS.62); DEC COG 2133-23

FILE No.

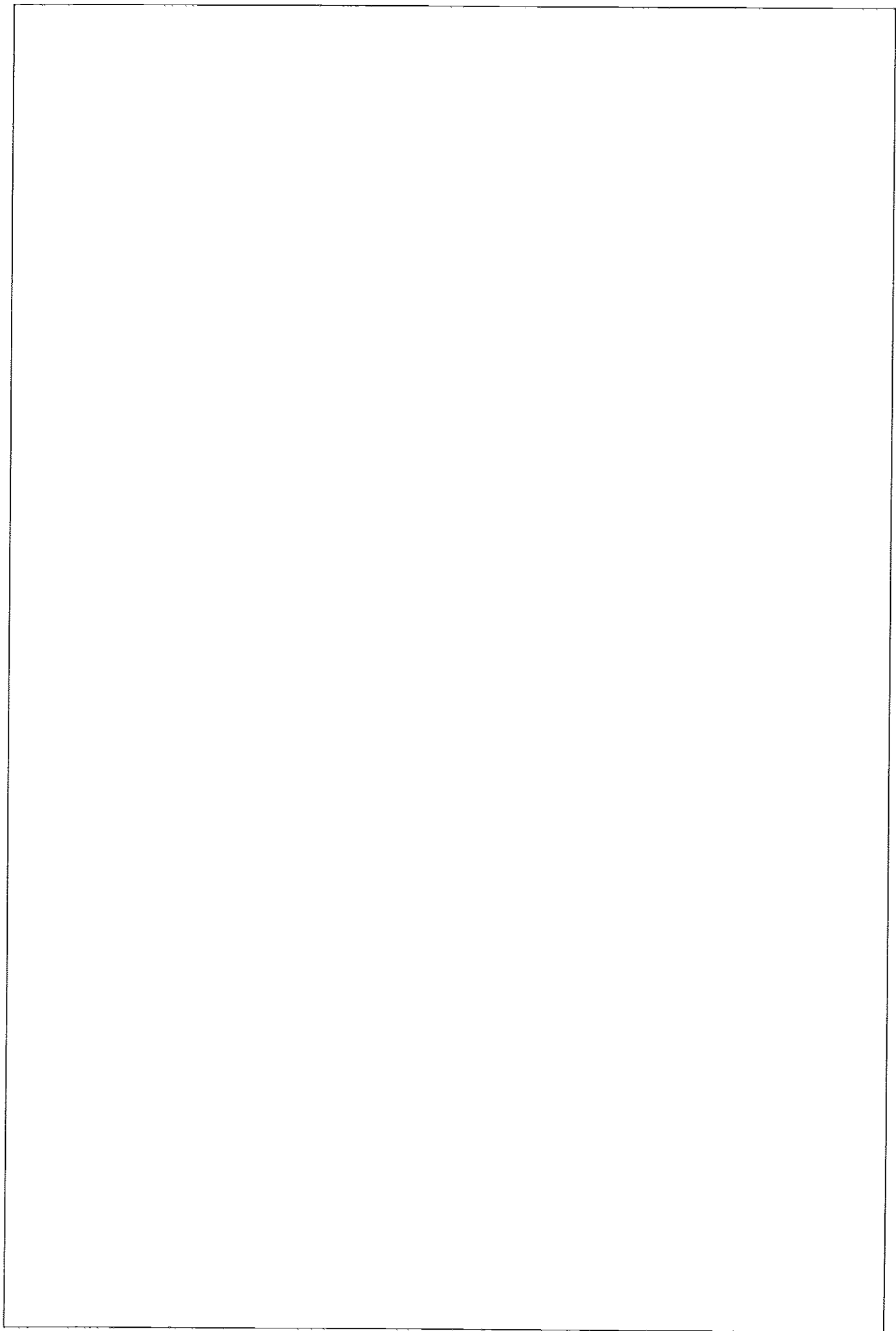
2008/004955-1

SCALE 1 : 750



Department of  
Environment and  
Conservation

Our environment, our future



ATTESTATION SHEET

Executed by the parties as a Deed on the

24th

day of

July

in the year

2009

LESSOR/LESSORS SIGN HERE (NOTE 9)

The Common Seal of the CONSERVATION  
AND LAND MANAGEMENT EXECUTIVE  
BODY was hereunto affixed by



K. J. [Signature]

CHIEF EXECUTIVE OFFICER

in the presence of:

[Signature]

Witness

Public Servant

Occupation of Witness

14, 168 St Georges Ter Perth

Address of Witness

LESSEE/LESSEES SIGN HERE (NOTE 9)

The Common Seal of the SHIRE OF  
SERPENTINE-JARRAHDALE  
Was hereunto affixed in the  
Presence of:

[Signature]  
Shire President

[Signature]

Chief Executive Officer

The Common Seal of the Shire of  
Serpentine-Jarrahdale appears here  
on the original document as an  
embossment, but has not reproduced  
on this copy.

### INSTRUCTIONS

1. If insufficient space in any section Additional Sheet Form B1 should be used with appropriate headings. The boxed sections should only contain the words "See Annexure".
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the person signing this document and their witnesses.
4. Duplicates are not issued for Crown Land Titles.

### NOTES

1. **DESCRIPTION OF LAND**  
Lot and Diagram/Plan number or Location name and number to be stated.  
Extent - Whole, part or balance of the land comprised in the Certificate of Title/Crown Land Title to be stated. The Certificate of Title/Crown Land Title Volume and Folio number to be stated.
2. **LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS**  
The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and relevant plan/diagram. If none show "nil".
3. **LESSOR**  
State full name and address of Lessor/Lessors and the address/addresses to which future notices can be sent.
4. **LESSEE**  
State full name and address of Lessee/Lesseees and the address/addresses to which future notices can be sent. If two or more, state tenancy eg Joint Tenants, Tenants in Common. If Tenants in Common specify shares.
5. **TERM OF LEASE**  
Term to be stated in years, months and days.  
Commencement date to be stated. Options to renew to be shown.
6. **RECITE ANY EASEMENTS TO BE CREATED**  
Here set forth Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".
7. **RENTAL**  
State amount of yearly rental in words.
8. **PAYMENT TERMS**  
State terms of payment
9. **EXECUTION**  
A separate attestation is required for every person signing this documents. Each signature should be separately witnessed by an Adult Person. The name, address and occupation of witnesses must be stated.

Office Use Only

LODGED BY

ADDRESS

PHONE No.

FAX No.

REFERENCE No.

ISSUING BOX No.

PREPARED BY Department of Environment and Conservation

ADDRESS 17 Dick Perry Avenue, Kensington, Western Australia 6152

PHONE No. 9423 2333

FAX No. 9423 2466

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED  
HEREWITH

- |    |       |                 |
|----|-------|-----------------|
| 1. | _____ | Received Items  |
| 2. | _____ | Nos.            |
| 3. | _____ |                 |
| 4. | _____ | Receiving Clerk |
| 5. | _____ |                 |
| 6. | _____ |                 |

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.

XAMINED