

Kyl. Mason
Kerren McNamara
Director General - Department of Environment and Conservation

1716

FORM APPROVAL B2568

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TENURE CODE:

WESTERN AUSTRALIA
CONSERVATION AND LAND MANAGEMENT ACT 1984
TRANSFER OF LAND ACT 1893 AS AMENDED

LEASE OF CROWN LAND (L)

DESCRIPTION OF LAND (NOTE 1)

EXTENT

VOLUME

FOLIO

Portion

ENCUMBRANCES (NOTE 2)

Nil

LESSOR/S (NOTE 3)

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of Hackett Drive Crawley

LESSEE/S (NOTE 4)

SHIRE OF WEST ARTHUR, of Burrowes Street, DARKAN, WESTERN AUSTRALIA 6392

TERM OF LEASE (NOTE 5)

Ten (10) Years, commencing from the 1st Day of October 2008

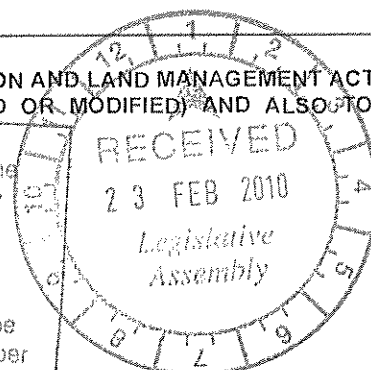
THE LESSOR LEASES TO THE LESSEE the land above described subject to the encumbrances shown hereon (note 6)

For the above term for the clear yearly rental of \$204.82 payable in advance commencing on
1st day of October 2008 and thereafter on the 1st day of October during the remainder of the Term and subject to
the stated Rent Reviews.

SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE CONSERVATION AND LAND MANAGEMENT ACT 1984
& 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

23 FEB 2010

This paper should not be
removed from the Chamber

d/f

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THIS LEASE is made the 5th day of October 2009

BETWEEN:

THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT, a body corporate constituted by the *Conservation and Land Management Act 1984 (Act)* of Hackett Drive, Crawley, Western Australia (the Lessor)

AND

The Party whose name and other particulars are set out in item 1 of the Schedule (the Lessee)

RECITALS

- A. The Lessee wishes to secure a lease for the purpose of public recreation and aquatic sports.
- B. Land at Reserve 24917 has a dual purpose of aquatic sports and conservation of flora and fauna, and is vested in the National Parks and Nature Conservation Authority.
- C. Since 30 September 1963 the Lessee has occupied a portion of the Reserve for the said purpose, under a lease or other formal arrangement.
- D. Pursuant to section 100 of the Act, the Lessor may grant a lease of land within the Reserve.

OPERATIVE WORDS

Definitions:

1(1) In this lease unless inconsistent with the context or subject matter -

Authority means any legal entity person or group of persons empowered by Statute, subsidiary legislation or otherwise to perform the regulatory administrative and/or executive functions of Commonwealth State or Local Government;

Commencement Date means the date set out in item 2 of the Schedule;

Insolvency Event means the happening of any of the following events:

- (a) an application is made to a court for an order that a corporation be wound up or an order is made that a corporation be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a corporation or one of them is appointed, whether or not under an order; or
- (c) an administrator is appointed in respect of a corporation or a receiver, or a receiver and manager, is appointed to any of a corporation's assets;
- (d) a meeting is convened or a resolution is passed to appoint an administrator in respect of a corporation; or

- (e) a corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (f) a corporation resolves to wind itself up, or otherwise dissolve itself, or gives notice of its intention to do so or is otherwise wound up or dissolved; or
- (g) a corporation is or states that it is unable to pay its debts when they fall due or is otherwise insolvent or deemed to be insolvent under the Corporations Law; or
- (h) a corporation takes any steps to obtain protection or is granted protection from its creditors under any applicable legislation; or
- (i) a corporation is, or makes a statement from which it may be reasonably deduced by the Lessor that the corporation is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Law; or
- (j) a corporation fails to comply with a statutory demand for payment of any debt within the time specified in any statute;
- (k) a person becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or
- (l) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any jurisdiction;

Lake means Lake Towerrinning which forms part of the Leased Premises;

Land means the land described in item 3 of the Schedule;

Lease means the lease granted hereby;

Leased Premises means part of the Land which part:

- (i) is set out and bordered in green on the plan annexed to this Lease and marked with the letter "A"; and
- (ii) includes all buildings, improvements, constructions and erections now or in the future existing thereon;

Lessee includes the successors and permitted assigns of the Lessee;

Lessee's Covenants means the covenants contained or implied in this lease on the part of the Lessee to be observed and performed;

Lessor includes the reversioner for the time being immediately expectant on the expiration of the Term;

Month means a calendar month;

Party depending on the context means the Lessor or the Lessee; and

Parties means both of them;

Rent means the rent set out in Item 4 of the Schedule as varied under this lease;

Schedule means the Schedule to this Lease which forms part of this Lease;

Term means the term described in Item 5 of the Schedule and any extensions or renewals thereof;

Interpretation:

1(2) In this lease unless inconsistent with the context or subject matter -

- (a) a reference to a person includes that person's legal personal representatives, assigns and successors;
- (b) an obligation on the part of two or more parties binds them jointly and severally and a right in favour of two or more parties is for the benefit of them jointly and severally;
- (c) words importing any gender include the other genders;
- (d) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (e) the singular include the plural and vice versa;
- (f) the word **person** includes a corporation;
- (g) a reference to this Lease or any other document includes the document as varied or replaced, and notwithstanding any change in the identity of the parties thereto;
- (h) a reference to a statute or other law includes regulations under it and amendments, consolidations, re-enactments and replacements of any of them;
- (i) no rules of construction shall apply to disadvantage a Party on the basis of that Party being responsible for the preparation of this Lease or any part of it;
- (j) reference to a thing includes a part of that thing.

1(3) Headings are inserted for convenience and do not affect the interpretation of this lease.

DEMISE

- 2. The Lessor hereby leases to the Lessee and the Lessee hereby takes on lease the Leased Premises for the Term subject to the payment of the Rent to the Lessor and the observance and performance of the covenants and conditions contained in this Lease.

3. The Lessee COVENANTS with the Lessor-

To Pay Rent

- (1) To pay to the Lessor the Rent in the manner mentioned in Item 4 of the Schedule without any prior demand and without any abatement or deduction whatsoever;

To Pay Outgoings

- (2) To pay for water, electricity and gas consumed on the Leased Premises and all meter rentals within fourteen (14) days of having received any account;

Rates, Taxes etc

- (2a) To pay by the due date all rates, taxes, levies and imposts (howsoever described) that are levied against or in respect of the Leased Premises and/or the use thereof;

Alterations and Improvements

- (3) Not to erect or build or permit or cause to be erected or built on the Lease Premises any buildings or improvements or to make any alteration of or additions to the buildings and other improvements on the Leased Premises without the approval in writing of the Lessor first had and obtained and then only in strict accordance with plans and specifications first approved of by the Lessor;

Comply With Acts

- (4) At all times during the Term to duly and punctually comply with observe and carry out and conform to the provisions of all Acts now or hereafter in force and all requirements and orders of any authority statutory or otherwise which affect the Leased Premises or the use thereof or which impose any duty or obligation upon the owner or occupier thereof;

Lessor's Right Of Entry Upon Leased Premises

- (5) To permit the Lessor by its agents or servants with or without workmen and others at all reasonable times (except in the case of emergency) with the giving of reasonable notice (except in the case of emergency) to enter upon and inspect the condition of the Leased Premises and forthwith (so far as the Lessee is liable) to execute all repairs and works required to be done by written notice given by the Lessor provided always that if the Lessee does not within seven (7) days after service of such notice commence and proceed diligently with the execution of the repairs and works mentioned in such notice it shall be lawful for the Lessor by its servants and agents to enter upon the Leased Premises and execute such repairs and works and the cost thereof shall be a debt due from the Lessee to the Lessor and be forthwith recoverable by action in a court of competent jurisdiction;

Report To Lessor

- (6) That upon becoming aware of any defect breakage or fault (damage) in respect of the Leased Premises the Lessee shall promptly notify the Lessor of the damage and take all reasonable steps to remedy and rectify the damage and minimise any harmful consequences caused thereby;

Temporary Closure

- (7) To permit the Lessor to temporarily interrupt the operation or business of the Lessee in on or about the Leased Premises so that repairs and works referred to in subclause 3(5) can be executed or for any other reason or purpose sufficient in the reasonable opinion of the Lessor provided always that the Lessor shall use its best endeavours to minimise the inconvenience to the Lessee caused thereby;

Use Of Leased Premises

- (8) To use the Leased Premises for the purposes specified in item 6 of the Schedule and uses reasonably incidental thereto and not to use the Leased Premises for any other purpose without the consent in writing of the Lessor first had and obtained (which consent may be arbitrarily withheld);

To Repair and Replace

- (9) At all times during the Term at its own cost and expense in all things to keep and maintain -
- (a) the Leased Premises well cleansed and drained and in a good, safe and sanitary condition; and
 - (b) all buildings fences gates and other improvements now or hereafter comprising the Leased Premises in good, tenantable and safe repair order and condition; Not To Pollute
- (10) To do all things necessary to prevent and not to do or permit or suffer to be done anything likely to cause pollution or contamination of the Leased Premises or the surrounding areas (the Surrounding Areas) by garbage refuse waste matter oil and other pollutants whether by stormwater or other run-off or arising from use of the Leased Premises and in particular but without limiting the generality of the Lessee's obligations under this clause 3(10), to collect and dispose or arrange for the collection and disposal of all garbage refuse waste, solid and liquid, oil and other pollutants from the Leased Premises at a place and in a manner required or approved by the authorities State and Local having control over the disposal of waste matter and the protection of the environment and if contrary to the covenants by the Lessee contained in this clause 3(10) any garbage refuse waste matter oil or other pollutants escape from the Leased Premises into Surrounding Areas, but without prejudice to any other right or remedy of the Lessor, clear the Surrounding Areas thereof, and to otherwise minimise and neutralise the effect of the escape. The Lessee will immediately report to the Lessor the occurrence of any incidents where any garbage refuse waste matter oil or other pollutants escape into the Leased Premises or the Surrounding Areas;

Comply With Orders, Regulations

- (11) To perform discharge and execute all requisitions and works and do and perform all such acts and things upon and to the Leased Premises or any part thereof as are or may be required or directed to be executed or done (whether by the Lessor or Lessee) by any Local Authority Health Board Health Commissioner the Water Corporation or any other water resources statutory body corporate or by any other local or public authority or by order or in pursuance of any Act (State or Federal) now or hereafter in force;

Not To Obstruct Or Cause Nuisance

- (12) Not to do or leave undone any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any local or public authority body or person or within the meaning of any Act (State or Federal) now or hereafter in force may exist arise or continue upon or in connection with the Leased Premises or any business carried on upon the same or the use or occupancy thereof and forthwith to abate any such nuisance or alleged nuisance and to carry out and comply with all the provisions of every such Act and of every requisition and order of any local or other public authority in reference thereto;

Pay Lessor's Expenses In Relation To Lessee's Covenants

- (13) To pay to the Lessor on demand all sums of money which the Lessor may at any time and from time to time hereafter pay or expend or be called upon to pay in or about or in connection with performing discharging or executing any requisition or works or abating any nuisance or alleged nuisance referred to in the preceding clauses and which contrary to the agreement therein contained the Lessee neglects or fails to perform discharge or execute and to pay the same to the Lessor notwithstanding that by any Act the Lessor is liable alone or jointly with others or jointly with the Lessee and others to perform discharge execute or pay for the same or any part thereof;

Assignment

- (14) Not to assign sub-let mortgage charge or otherwise encumber or part with the possession of or dispose of the Leased Premises or any part thereof or the benefit at law or in equity of this Lease without the consent in writing of the Lessor first had and obtained which the Lessor may (but shall not be obliged to) give -
- (a) in respect of a sub-lease of the Leased Premises or any part thereof (being except for the term and rent a sub-lease not inconsistent in its terms with any of the covenants terms and conditions contained in this lease) to a respectable responsible and solvent person;
 - (aa) on condition that the sub-lessee pays to the Lessor a portion of the rent payable to the Lessee (as sub-lessor under the sub-lease) or other monies as stipulated by the Lessor;
 - (b) if the Lessee wishes to assign the whole of the Leased Premises and the benefit of this Lease if -

- (i) the proposed assignee is a respectable responsible and solvent person;
 - (ii) the Lessee procures the execution by the proposed assignee of a Deed of Assignment of this lease to which the Lessor and the Lessee are parties in a form approved by the Lessor's solicitors at the cost of the Lessee or the assignee in all respects;
 - (iii) all Rent then due and payable has been paid and there is not any existing unremedied breach of any of the Lessee's Covenants in respect of which the Lessor has previously given notice;
 - (iv) the assignment contains a covenant by the proposed assignee with the Lessor that the proposed assignee shall at all times during the continuance of the Term duly perform and observe all the Lessee's Covenants; and
 - (v) the Lessee first pays to the Lessor all proper and reasonable costs charges and expenses incurred by the Lessor of and incidental to any enquiries which may be made by or on behalf of the Lessor as to respectability responsibility and solvency of any proposed assignee;
- (c) if the proposed assignee is a company not listed on any Australian Stock Exchange or if the sub-lessee is a proprietary company if the Directors of that company guarantee to the Lessor-
- (i) in the case of an assignment the observance and performance by the proposed assignee of the Lessee's Covenants and the payment of any moneys payable by the Lessee arising from this Lease; or
 - (ii) in the case of a sub-lease (the form of which shall be subject to the approval of the Lessor) the observance and performance by the sub-lessee of the Lessee's Covenants other than the covenants by the Lessee hereunder to pay the Rent reserved by this lease; and
- (d) if the covenants and agreements on the part of any proposed assignee or sub-lessee shall be deemed to be supplementary to the Lessee's Covenants and shall not in any way relieve or be deemed to relieve the Lessee from any of the Lessee's Covenants

PROVIDED THAT if the Lessee is a company any change at any time or times after the Commencement Date (whether by transfer allotment or otherwise and whether as the result of one or more transactions) in the beneficial ownership of 20% or more of the issued shares from time to time of the Lessee or if the Lessee is the trustee of a Unit Trust any change at any time or times after the Commencement Date (whether by transfer allotment or otherwise and whether as the result of one or more transactions) in the beneficial ownership of 20% or more of the issued units from time to time in that Unit Trust other than for the purpose of reconstruction shall be deemed to be an assignment of the Lessee's interest in this Lease for the purposes of this clause 3(14) AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED that the provisions of Sections 80 and 82 of the Property Law Act 1969 are excluded from and do not apply to this Lease;

Standing Of Trust

- (15) That if the Lessee enters into this lease as or hereafter holds this Lease as Trustee of any Trust,
- (a) that except with the written consent of the Lessor first had and obtained (which consent the Lessor may not unreasonably withhold) -
 - (i) the Lessee will not be removed from nor retire as a trustee of the Trust and no new or additional trustee of the Trust shall be appointed;
 - (ii) the vesting date under the provisions of the Trust Deed has not and will not be determined;
 - (iii) no restrictions on the rights of subrogation of the Trustee of the Trust will be created;
 - (b) the Lessee is presently the only trustee of the Trust;
 - (c) no vesting date has been appointed under the provisions of the Trust Deed;
 - (d) there are no restrictions on the right of the Trustee to be indemnified out of the Trust assets of the Trust;
 - (e) the Trustee of the Trust is not in default to the Trust Fund of the Trust; and
 - (f) no notice under Section 63 of the Trustees Act 1962 has been published in connection with the Trust;

Pay Costs

- (16) To pay on demand the reasonable legal costs of the Lessor incurred in connection with the preparation execution and stamping of any renewal or extension of this lease and all counterparts thereof and to pay to the Lessor on demand by it all legal costs charges and expenses for which the Lessor shall become liable in consequence of or in connection with any default by the Lessee in performing or observing any covenants conditions or stipulations herein contained or implied and on the part of the Lessee to be performed or observed including (but without limiting the generality of the foregoing) all reasonable costs charges and expenses solicitors costs and surveyors fees incurred by the Lessor for the purposes of and incidental to the preparation and service of a notice under Section 81 of the Property Law Act 1969 requiring the Lessee to remedy a breach of the covenants conditions or stipulations herein contained or implied notwithstanding forfeiture for such breach shall be avoided otherwise than by relief granted by the Court;

Signs and Notices

- (17) Not to affix or exhibit or cause or permit to be affixed or exhibited on any part of the Leased Premises any poster signboard neon sign or other advertisement except as shall be first approved in writing by the Lessor;

Indemnity

- (18) At all times to indemnify and keep indemnified the Lessor and its employees and agents:
- (a) against all damage to any property of the Lessor caused by or arising out of or in relation to the occupation or use of the Leased Premises by the Lessee or any of its employees workmen contractors agents sublessees licensees or invitees; and
 - (b) against all actions suits demands claims expenses and costs which may be made against or incurred by the Lessor arising out of or in relation to or incidental to the occupation or use of the Leased Premises by the Lessee or any of its employees workmen contractors agents sublessees licensees or invitees;

Public Liability Insurance

- (19) To insure in an amount of not less than TEN MILLION DOLLARS (\$10,000,000.00) or such greater amount as the Lessor at any time and from time to time after notice to the Lessee may reasonably require in an insurance office approved by the Lessor in respect of any and all liabilities incurred by the Lessee under clause 3(18) and produce or cause to be produced to the Lessor the relevant policy or policies of insurance and premium receipts therefor AND if the Lessee fails to effect and maintain any such policy the Lessor may effect and maintain the same and any amount so paid by the Lessor shall be payable by the Lessee to the Lessor on demand;

Not To Invalidate Insurances

- (20) Not to do or permit or suffer to be done in about or upon the Leased Premises any act or thing whereby any policy of insurance referred to herein may become void or voidable;

To Yield Up

- (21) At the expiration or sooner termination of the Term or any extension thereof to yield up the Leased Premises in such state of repair and condition as shall be consistent with the proper performance by the Lessee of the covenants herein contained, provided that if the Lessor requires the Lessee to do one, some or all of the following:
- (i) remove from the Leased Premises all improvements that were made to the Leased Premises by the Lessee or had been purchased by the Lessee;
 - (ii) reinstate and level off the Leased Premises and leave the Leased Premises in a clean and tidy state, free from rubbish and useless debris; and
 - (iii) plant trees where the removed improvements were located and otherwise rehabilitate the Leased Premises so that the state of the Leased Premises is similar to the state they were in before occupation by the Lessee hereunder,

then the Lessee must comply with such request within a reasonable timeframe

(being no greater than 60 days after the expiration or termination of this Lease);

Interest On Overdue Payments

- (22) That if the Lessee shall fail to pay to the Lessor any money which is payable by the Lessee to the Lessor within twenty eight (28) days from the due date for payment of that money the Lessee shall pay to the Lessor interest on that money or on so much of it as shall remain unpaid from the due date or dates for the payment of such money until the same shall be actually paid and also upon any judgment which the Lessor may obtain against the Lessee from the date of any such judgment until the same shall be satisfied. For the purposes of this clause "interest" means the then current reference rate or other base rate per annum charged by the Commonwealth Bank of Australia Perth on overdraft loans of less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) plus two per centum (2%). A certificate signed by or on behalf of the Lessor specifying the relevant rate of interest charged at any time shall be conclusive evidence of the matters stated therein except in the case of manifest error.

No Reclamation

- (23) Not to carry out or cause or permit to be carried out any reclamation of the shoreline of the Lake nor to interfere with or cause or permit to be interfered with the natural growth of vegetation in the Lake or along the shores of the Lake without the consent in writing of the Lessor first had and obtained and then only in strict accordance with the requirements of the Lessor which the Lessor shall set out in the consent;

No Alteration to Lake Water Level

- (24) Not to raise or lower or permit to be raised or lowered the natural level of water in the Lake by any means whatsoever without the consent of the Lessor first had and obtained.

COVENANTS BY THE LESSOR

4. The Lessor COVENANTS with the Lessee that:

Quiet Enjoyment

- (1) the Lessee paying the Rent hereby reserved and observing and performing the Lessee's Covenants may peaceably hold and enjoy the Leased Premises during the Term or any extension thereof without any interruption or disturbance by the Lessor or any person rightfully claiming under or in trust for the Lessor;

Break Provision

- (2) despite anything expressed or implied to the contrary in this lease the Lessee may for any or no reason whatsoever terminate this lease with the giving of six (6) months written notice to the Lessor.

MUTUAL AGREEMENTS

5. IT IS HEREBY MUTUALLY AGREED AND DECLARED by the Parties-

Default By Lessee

- (1) (a) Subject at all times to clause 5(1)(b) that if during the Term -
- (i) the Lessee fails to comply with a notice given in accordance with Section 81 (1) of the Property Law Act 1969 in respect of a breach of any Lessee's Covenant within the time specified in such notice; or
 - (ii) the provisions of Section 81 (1) of the Property Law Act 1969 are repealed or amended and if the Lessee breaches any Lessee's Covenant and the Lessor whether by complying with the terms of any statutory enactment or otherwise become by virtue of such breach entitled to terminate the Term; or
 - (iii) an Insolvency Event occurs in respect of the Lessee; or
 - (iv) the interest of the Lessee under this Lease is attached or taken in the execution of any legal process,

THEN the Lessor and the Lessee expressly acknowledge and agree that in respect of each such occurrence described in sub-paragraphs (i) (ii) (iii) and (iv) above the Lessee will have breached an essential term or essential terms of the contract made between the Lessor and the Lessee evidenced by this Lease and in any event in respect of each such occurrence described in sub-paragraphs (i) (ii) (iii) and (iv) the Lessee will be deemed to have committed an Operative Default for the purposes of paragraph (b) of this subclause 5(1);

- (b) If the Lessee commits an Operative Default or any other breach of an essential term then unless the Lessor has expressly waived the Operative Default by notice in writing to the Lessee and without limiting any right or remedy the Lessor has by operation of law or equity the Lessor may at its option -
- (i) without any prior demand or notice re-enter and take possession of the Leased Premises or any part thereof in the name of the whole (and eject the Lessee and all other persons therefrom) and repossess and enjoy the same as of its former estate therein and thereupon the Term will terminate absolutely; or
 - (ii) by notice in writing to the Lessee terminate the Term and from the date of giving notice the Term will be terminated absolutely;

Parties May Act By Agents

- (2) Each act or thing which a Party is required or empowered to do under this Lease may be done by that Party or its representative solicitor agent contractor or employee;

Rectification By Lessor

- (3) If the Lessee shall fail to pay any moneys or charges as required by this Lease to any person other than the Lessor or if the Lessee shall fail to perform any affirmative covenant on the part of the Lessee under this Lease the Lessor may at its option as the agent of the Lessee make any such payment or do all such acts and things and incur such expenses as may be necessary to perform such covenants and the full amount of any payments made or of the cost and expense entailed shall constitute a liquidated debt due and owing by the Lessee to the Lessor and shall be payable by the Lessee to the Lessor on demand by the Lessor;

No Waiver

- (4) A payment by the Lessor of money or the performance by the Lessor of an obligation direction or order which should be paid performed or observed by the Lessee is not a waiver of a default or breach of the Lessee and does not prevent the Lessor from exercising the Lessor's rights and powers notwithstanding any prior waiver delay or neglect in exercising the Lessor's rights and powers and no demand or notice made or given will be waived by a subsequent payment performance or observance;

Holding Over

- (5) That if the Lessee shall hold the Leased Premises with the express or implied permission of the Lessor after the expiration or sooner termination of the Term the Lessee shall be deemed to hold the Leased Premises as a monthly tenant at a monthly rent equal to the total of the rent paid or payable by the Lessee for the last month of the Term preceding such termination and subject to all the covenants and conditions contained in this lease so far as the same shall be applicable to a monthly tenancy and the tenancy so constituted may be terminated by one (1) month's notice to quit given by either party which notice may be given so as to expire at any time;

No Warranty As To Use

- (6) (a) The Lessor gives no warranty (and the Lessee hereby acknowledges that no promise representation warranty assurance or undertaking has been given by or on behalf of the Lessor) as to the use to which the Leased Premises may be put or in respect of the development or business to be made or carried on thereon or in respect of the grant or refusal by any competent authority of approval to any development of the Leased Premises proposed by the Lessee or in respect of the time within which any such development approval may be granted or refused or in respect of the fixtures fittings furnishings finish plant machinery and equipment of in or upon the Leased Premises.
- (b) The Lessee accepts the Leased Premises for the Term with full knowledge of and subject to the state and condition thereof and any prohibition or restriction on the use or development thereof under or pursuant to any Act or other legislation and if the development use or business proposed to be carried out made or conducted by the Lessee at the Leased Premises is permissible only with consent pursuant to any Act or other legislation the Lessee shall obtain that consent at its own expense and shall have or make no action suit claim or demand against

the Lessor in respect of the need for or refusal of such consent or any delay in or conditions attached to the grant of such consent;

Notices

- (7) That any notice to be served by the Lessor on the Lessee under this Lease shall be deemed to have been duly served by or on behalf of the Lessor if sent in a letter forwarded by prepaid post addressed to the Lessee at its address hereinbefore appearing or at its registered office for the time being in Western Australia and any notice to be served by the Lessee on the Lessor under this lease shall be deemed to have been duly served if sent in a letter forwarded by prepaid post addressed to the Lessor at its address hereinbefore appearing. A notice sent by post shall be deemed to have been given at the time when in due course of post it would be delivered at the address to which it is sent;

Variation Of Lease

- (8) This Lease may be varied only by written agreement between the Parties;

Rent Review

- (9) That on the dates specified in Item 7 of the Schedule (each of which respective dates fixed for review is hereinafter called **the Rent Review Date**) the Rent for the time being reserved hereunder shall be reviewed in relation to the amount of Rent to be paid by the Lessee until the next succeeding date specified in Item 7 of the Schedule (or where there is no next succeeding date then to the end of the Term or the Further Term whichever the case may be) and from and including that Rent Review Date shall be an amount equal to the Rent payable immediately prior to that Rent Review Date plus an increment equal to the same percentage thereof as the percentage increase in the Consumer Price Index for the four quarters ending on the last day of the quarter immediately preceding that Rent Review Date;

CPI

- (10) For the purposes of this Lease the expression **Consumer Price Index** shall mean the consumer price index compiled by the Australian Bureau of Statistics for the Perth (Capital City) area (all groups) or any substitute therefore accepted by the government of the Commonwealth of Australia from time to time. If at any time either or both such consumer price index and the index number is discontinued or suspended or in the reasonable opinion of the Lessor substantially altered there shall be substituted therefore such alternative method of computing changes in the cost of living as in the reasonable opinion of the Lessor most closely reflects changes in the cost of living for the Perth Metropolitan Area during the 12 months immediately preceding the relevant Rent Review Date;

Additional Terms etc

- (11) The additional terms set out in Item 8 of the Schedule (if any) shall be deemed to be incorporated in this Lease as if fully set out herein but in the event of there being an inconsistency between the terms and conditions of this Lease (excluding the additional terms) and the additional terms then the additional terms shall prevail to the extent of that inconsistency;

Regulations

- (12) The Lessee may with the consent of the Lessor first had and obtained make rules for the regulation of the use of the Leased Premises;

Governing Law and Jurisdiction

- (13) (a) This Lease is governed by and is to be construed in accordance with the laws in force in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

SCHEDULE**ITEM 1**

Name of Lessee: Shire of West Arthur
 Address of Lessee: Burrowes Street, Darkan, Western Australia

ITEM 2 (Clause 1(1))

Commencement Date: 1 October 2008

ITEM 3 (Clause 1(1))

Land: Reserve 24917

ITEM 4 (Clause 1(1))

Rent: TWO HUNDRED AND FOUR DOLLARS AND EIGHTY TWO CENTS (\$204.82) per annum

ITEMS 5 (Clause 1(1))

Term: Ten (10) years

ITEM 6 (Clause 3(8))

Use of Leased Premises: Public recreation and aquatic sports

ITEM 7 (Clause 5(9))

Rent Review Dates: Every anniversary of the Commencement Date

ITEM 8 (Clause 5(11))

Additional Terms:

1. Fire Prevention

1.1 Without limiting clause 3(4) on pages 4 and 5 of the main body of this lease the Lessee shall comply with:

- (i) all laws relating to fire prevention and/or control (including without limitation the Bush Fires Act) so far as the same apply to the Leased Premises; and

- (ii) all lawful directions concerning fire control and/or prevention given to the Lessee by the Lessor or any statutory authority.

1.2.1 The Lessee shall immediately:

- (i) notify the Lessor of any detected fires;
- (ii) take all reasonable measures to extinguish any dangerous, potentially dangerous or uncontrolled fires on the Leased Premises;
- (iii) (if unable to comply with paragraph 1.2(ii) hereof notify the Lessor of such inability.

1.2.2 The Lessee shall ensure that any firefighters employed by it for the purposes of paragraph 1.2.1 (ii) shall be adequately trained and protected.

1.3 The Lessee shall be liable to the Lessor for all expense loss liability and damage incurred or sustained by the Lessor on account of or in the course of having to fight any fire which originated on or from the Leased Premises unless the Lessee can prove to the satisfaction of the Lessor that such fire:

- (i) was not caused by any:
 - (a) negligent or other unlawful act or omission; or
 - (b) contractual breach;

of by or on the part of the Lessee or any officer agent employee contractor licensee or invitee the Lessee; and
- (ii) occurred through some cause beyond the Lessee's control.

2. Timber

- 2.1 Nothing in this lease confers on the Lessee any right to the timber wood or other vegetation growing or located on the Leased Premises.
- 2.2 Without limiting paragraph 2.1 hereof the Lessee shall not bulldoze or clear the Leased Premises or remove therefrom any trees or other vegetation without the Lessor's prior permission.

3. No Compensation

At no time whensoever shall compensation be payable to the Lessee for any fences or other improvements made by the Lessee on or to the Leased Premises.

4. Miscellaneous

4.1 The Lessee shall:

- (i) promptly inform the Lessor in writing of any damage to, defect in or problem with:
 - (a) the Leased Premises; or
 - (b) any equipment in the Lessee's control or possession which will, or is likely to, cause or contribute to the loss of or damage to property or

injury or illness to or the death of any person;

- (ii) not, without obtaining the prior written consent of the Lessor on each separate occasion and then only in accordance with such conditions as the Lessor shall impose:
 - (a) deposit any earth, fill or material on the Leased Premises; or
 - (b) construct outlets for surface drainage on the Leased Premises; or
 - (c) erect or install any improvements on the Leased Premises; and
- (iii) not deposit or permit or suffer to be deposited on the Leased Premises any litter rubbish abandoned vehicles residue or waste of any description.

4.2 The Lessee shall prepare and annually review:

- (i) An action plan detailing the procedure to be carried out in the event that any of the following occurs:
 - dangerous or potentially dangerous or uncontrolled fires;
 - medical emergency;
 - pollution to the Leased Premises involving but not limited to fuel, oil or pesticide;
 - fauna injury or death
 - significant environmental impact.
- (ii) A future development plan.

5. Acts of Other Persons

- (i) If this lease prohibits the Lessee from doing a thing:
 - (a) the Lessee shall do everything necessary to ensure that neither of its officers employees agents contractors licensees or invitees do that thing; and
 - (b) the Lessee may not authorise or suffer any person to do that thing.
- (ii) The Lessee shall do everything necessary to ensure that its officers employees contractors agents licensees and invitees comply with the provisions of this lease.

6. Access by Lessor

- 6.1 The Lessor may at any time and from time to time and without prior notice enter upon the Leased Premises to carry out such duties and exercise such powers as may be necessary, convenient or expedient to carry out or exercise in the administration, or for the purposes, of the Act.
- 6.2 The Lessor shall not be liable to the Lessee for any inconvenience or disturbance to the Lessee on account of the Lessor exercising its rights under paragraph 8.1

hereof provided that the Lessor shall at all times use its reasonable endeavours to minimise any such inconvenience or disturbance.

- 6.3 The Lessor may at any time and from time to time and without prior notice enter upon the Leased Premises and access any water supply for fire suppression and protection purposes.

7. Hazards

The Lessee shall:

- (i) at every place on, at or within the Leased Premises, which is actually or potentially hazardous or where an actual or potential hazard exists, erect a sign warning of the actual or potential hazard or hazardous thing;
- (ii) as and when reasonably necessary for safety reasons, restrict (through appropriate means including, without limitation, signage) the use of the lake or other water components of the Leased Premises;

Provided that such signage is in accordance with the Lessor's requirements:

- (iii) maintain the signage referred to in paragraphs (i) and (ii) in a good and legible condition and shall keep appropriate records of the placement of the said signage and shall advise the Lessor in writing of the placement of the said signage;
- (iv) notify the Lessor immediately if it is unable to comply with paragraph (iii) of this clause;
- (v) in respect to the Leased Premises, use its best endeavours to remove or otherwise render safe every actual or potential hazard; and
- (vi) regularly and as often as necessary conduct water sampling following approved practices to determine the suitability of the water for human contact and aquatic sports.

8. Written Report

The Lessee shall at intervals of no less than one (1) year during the Term provide the Lessor with a comprehensive and accurate written report (the format and details of which are to be agreed to by the Lessor prior to submission of the first report) detailing:

- (i) the state of repair and condition of any man-made structures on, at or within the Leased Premises;
- (ii) the efforts made and results achieved by the Lessee in respect to the maintenance and repair (or replacement) of the said structures during the preceding month;
- (iii) the water quality and suitability for human contact and aquatic activities; and
- (iv) the condition of the Leased Premises in respect to known hazards and safety standards

such report is to be received by the Lessor at its nominated address no later than

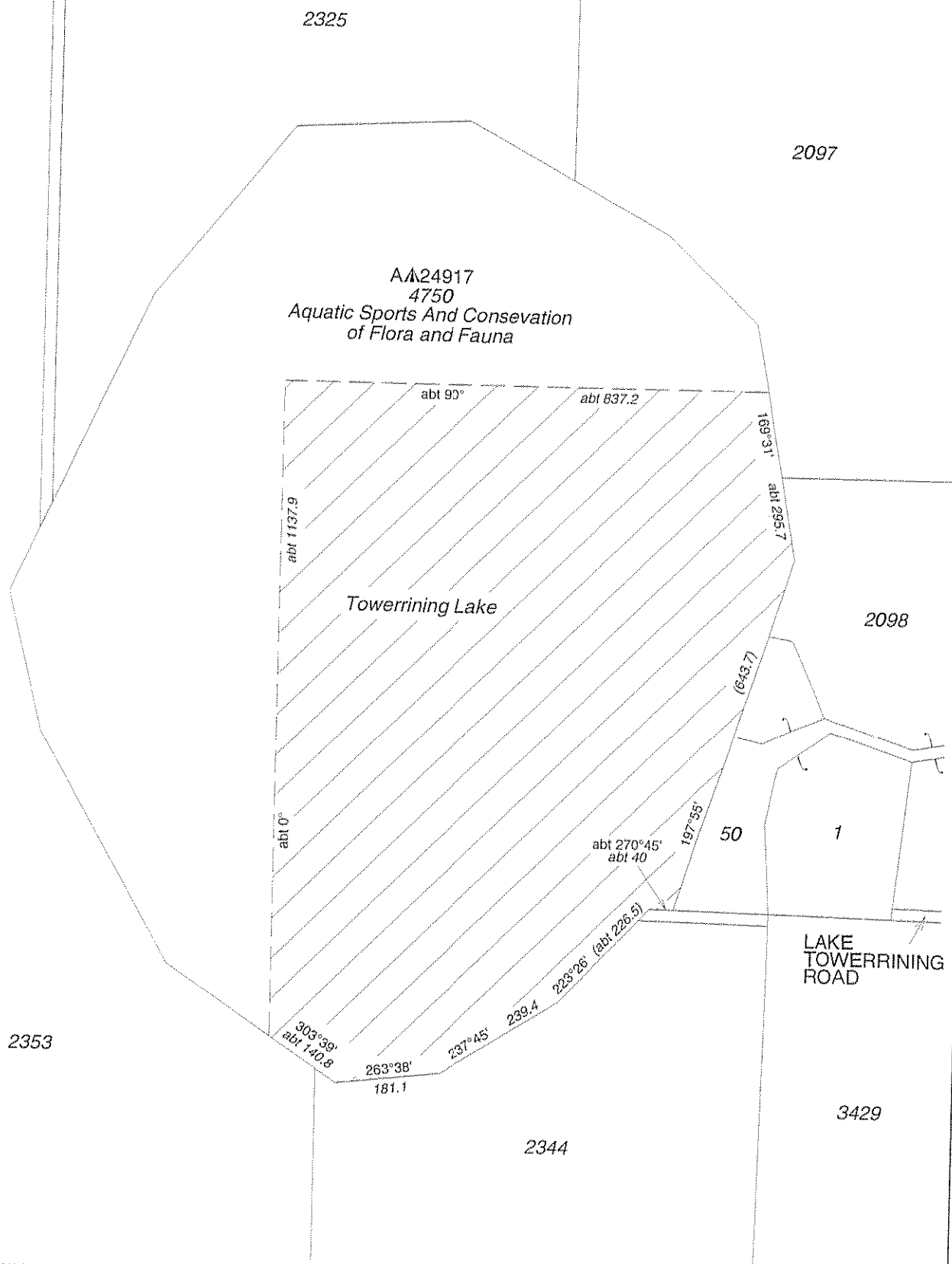
seven calendar days after the end of each year.

9. Laws

The Lessee shall ensure that all of its officers, employees, agents, contractors, licensees and invitees comply with all laws whilst at, on or at within the Leased Premises.

10. Interpretation

In paragraphs 1 to 9 inclusive hereof, unless the context requires otherwise, words and phrases have the same meanings ascribed to them by clause 1(1) on pages 1 to 3 inclusive of the main body of the Lease.



LEASE 1984/100 - Towerrining Lake

LESSEE

SHIRE OF WEST ARTHUR

LGA

SHIRE OF WEST ARTHUR

LAND DISTRICT

WELLINGTON

DEC DISTRICT

SOUTH WEST

PLAN

MOODIARRUP NW (2230 - 1 NW)

AREA

Abt 88.24ha

DRAWN

JLF 8.9.09

CHECKED

R.B. 9.9.09

FILE No.

2000F001074

SCALE 1 : 10 000



Department of
Environment and
Conservation



Our environment, our future

5th

day of

October

in the year

2009

LESSOR/LESSORS SIGN HERE (NOTE 9)

Ky-Mu-Nu

CHIEF EXECUTIVE OFFICER

in the presence of:

Witness

CAMPBELL Youngman

PUBLIC SERVANT

Occupation of Witness

168 ST GEORGE TCE PERTH WA 6000

Address of Witness

THE COMMON SEAL of
SHIRE OF WEST ARTHUR,
was hereunto affixed by the authority
of a resolution of the Council in the
presence of:

PRESIDENT

CHIEF EXECUTIVE OFFICER

LESSEE/LESSEES SIGN HERE (NOTE 9)

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 Crown Land Title to be stated.
The Certificate of Crown Land Title Volume and Folio number to be stated.

2. ENCUMBRANCES

To be identified by nature and number, if none show "nil".

3. LESSOR

State full name and address of Lessor(s) and the address(es) to which future notices can be sent.

4. LESSEE

State full name and address of Lessee(s) and the address(es) to which future notices can be sent.

5. TERM OF LEASE

Term to be stated in years, months and days.
Commencement date to be date, month and year. 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 in words.

8. PAYMENT TERMS

State terms of payment. Eg, by instalments of \$..... payable on the day of each month/the months of in each year, commencing with a payment of \$..... on or before the day of/execution of this lease by the Lessee.

9. EXECUTION

A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of witnesses must be stated.

EXAMINED

Office Use Only

LEASE OF CROWN LAND (L)

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 WA 6152

PHONE No. 9334 0333

FAX No. 9334 0253

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. _____	

7.

8.

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.

