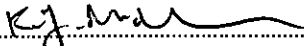


LOAN COPY

I hereby certify that the within is a true and correct copy of Lease
No. 2202/100.


Mr Keiran McNamara
Director General - Department of Environment and
Conservation

DATED THE 26th DAY OF March 2010

2065

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY
(Lessor)

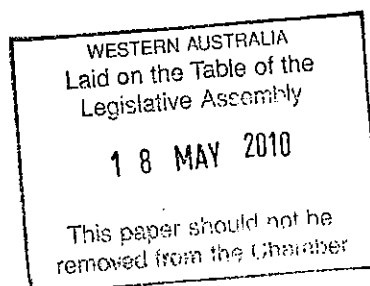
AND

THE NATIONAL TRUST OF AUSTRALIA (WA)
(Lessee)

DEED OF LEASE

WELLINGTON DAM HYDRO POWER STATION
WELLINGTON NATIONAL PARK

LEASE NO. 2202/100



2805

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THIS DEED OF LEASE is made the 26th day of March 2010.

BETWEEN

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of 17 Dick Perry Avenue, Kensington, Western Australia ("Lessor") of the one part

AND

THE NATIONAL TRUST OF AUSTRALIA (WA) of Old Observatory 4 Havelock Street, West Perth ("Lessee") of the other part.

BACKGROUND

- A. Pursuant to Section 155(2) of the amended *Conservation and Land Management Act 1984* ("Act") the land in Reserve Number 46213 ("Land") is vested in the Conservation Commission of Western Australia.
- B. Pursuant to Section 100 of the Act, the Chief Executive Officer ("CEO") is empowered to lease the Land for a term not exceeding 21 years and to renew the term for a further term not exceeding 21 years.
- C. Section 36 of the Act establishes the Conservation and Land Management Executive Body ("**Executive Body**") as a body corporate with perpetual succession and to be governed by the CEO.
- D. Section 37 of the Act establishes the Executive Body to provide a body corporate through which the CEO can perform any of the CEO's functions under the Act.
- E. The Lessee has applied to the Lessor for a lease of that portion of the Land together with all improvements now or at any time erected on the Land ("**Leased Premises**").
- F. The Lessor has agreed to lease the Leased Premises to the Lessee for the Term and at the Rent upon and subject to all the covenants agreements and stipulations contained in this Lease.

NOW THIS DEED witnesses -

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease unless the contrary intention appears: -

"**Accountant's Certificate**" means a certificate prepared by the Lessee's accountant in accordance with clause 3.5 and in the form set out in Annexure 2.

"**Act**" means the *Conservation and Land Management Act 1984 (WA)* as amended;

"**Address for Payment**" means Department of Conservation and Land Management, 17 Dick Perry Avenue Kensington Western Australia 6151 or such other place as the Lessor may from time to time by Notice inform the Lessee;

"**Approval**" means the approval of the Lessor, of the Shire of Collie and all other approvals, consents, permissions and licences of any Authority which may from time to time be necessary for the Lessee to commence and to carry out the Works;

"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;

"Business" means the business of a hydroelectric power station to be carried on by the Lessee on the Leased Premises;

"Commencement Date" means the date on which this Lease is executed;

"Community Grants Fund" means the program outlined in the Lessee's Initial Business Case to allow for disbursement of Generated Revenue, less costs, generated from the Leased Premises;

"Equipment" means all fixtures, fittings (including mechanical and electrical fixtures and fittings), plant, machinery, equipment, installations including but not limited to pen stock comprising pipes from dam wall to power station and all items subsequently substituted for any of them;

"Generated Revenue" means the aggregate amount for any period under consideration of the moneys received from electricity generation and renewable energy certificates;

"Goods and Services Tax" means the tax system described in clause 3.8;

"Initial Business Case" means the document so entitled dated November 2008 prepared by the Lessee and submitted to the Lessor before the execution of this Lease;

"Leased Premises" means the area of approximately 0.5 hectares situated within the Wellington National Park which is delineated and shown hatched on the Tenancy Plan together with all Equipment;

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

"National Park" means Reserve Number 46213 – Wellington National Park;

"Proposal" means the Lessee's proposal for the restoration, commissioning and continued operation of the hydroelectric power station forming part of the Leased Premises;

"Rate" means a rate of interest per annum equal to the benchmark rate of the 90 day bank bill rate as published in the Monday edition of *The West Australian* newspaper each week, or if *The West Australian* is not published on that day or the 90 day bank bill rate does not appear in it, then as published on the next day on which the 90 day bank bill rate appears in *The West Australian*. If that doesn't happen within seven (7) days, or if that rate ceases to exist, it means the 90 day bank bill rate as published by the Lessor's bank.

"Rates and Taxes" means any tax, levy or any other charge imposed at any time during the Term of this 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 Premises or any thing under or in connection with this Lease;

"Rent" means the rent as provided in clause 3.2 and payable pursuant to clause 3.1;

"Rent Review Date" means the first day of November in the years 2014, 2019, 2024;

"Sales Evidence" means all supporting dates for the Sales Records and includes amongst other things sales slips, sales records, credit and charge card slips, sales dockets, cash and bank or other financial institution deposit records;

"Sales Records" means books of account and manual and hard copy and electronic and other records and data (including computer tapes, discs, and other storage systems, cash register summary records, bank statements, and all records made and maintained by the Lessee pursuant to the *Liquor Control Act 1988*) relating to all transactions in the course of all businesses carried on in, at, from or on the Leased Premises;

"State" means the state of Western Australia;

"Subsidiary Legislation" includes any proclamation, regulation, rule, by-law, local law, order, ordinance, town planning scheme, resolution, or other instrument, made under any Act or Subsidiary legislation for the time being in force and having legislative effect;

"Sustainability Performance and Audit Schedule" means the schedule developed jointly between the Lessor and the Lessee which sets out benchmarks for the Lessee as provided in clause 3.58 and comprises Annexure 1 to this Lease;

"Tenancy Plan" means the plan of the Leased Premises annexed to this Lease as Annexure 3;

"Term" means the period of twenty-one (21) years from and including the Commencement Date and, where the context admits, includes any extension or renewal of the Term; and

"Works" means the restoration of the Wellington Dam Hydroelectric Power Station as set out in the Initial Business Case.

1.2 Interpretation

In this Lease unless the contrary intention appears:

- (a) words importing one gender include all other genders;
- (b) words in the singular number include the plural and vice versa;
- (c) monetary references are references to Australian currency;
- (d) clause and subclause headings and the list of contents are inserted for ease of reference only and are to be disregarded in the interpretation or construction of this Lease;
- (e) any agreement or obligation entered into or undertaken by more than one person binds those persons jointly and each of them severally; and

(f) reference to:

- (i) an Act by name is a reference to an Act of the Parliament of Western Australia;
- (ii) an Act whether by name or otherwise includes the amendments to the Act for the time being in force and also any Act passed in substitution for it and all Subsidiary Legislation for the time being in force under it;
- (iii) this Lease includes the Annexures to this Lease;
- (iv) a person includes a corporation and vice versa;
- (v) an Annexure means an Annexure to this Lease;
- (vi) a provision of this Lease prohibiting the Lessee from doing a thing shall require the Lessee to ensure compliance therewith by the Lessee's employees, agents, contractors, sub-tenants, licensees and invitees.

(g) the use of "includes" or cognate terms does not limit the sense or meaning to those listed things.

2. GRANT OF LEASE

2.1 Lease

- (a) The Lessor leases to the Lessee and the Lessee takes on lease the Leased Premises for the Term subject to the payment of the Rent and the observance and performance by the Lessee of the Lessee's Covenants.
- (b) If for any reason by law this Lease requires the consent of the Western Australian Planning Commission in respect to Part 10 of the *Planning and Development Act 2005* then this Lease shall be expressly subject to and conditional upon the granting of that consent.

2.2 Option

If the Lessee, at least three (3) months before the end of the Term but not earlier than six (6) months before the end of the Term, gives to the Lessor notice of the Lessee's desire to renew the Term PROVIDED THAT the Lessee shall not at the time of giving that notice be in default in performing and observing the covenants and conditions to be performed and observed by the Lessee under this Lease and PROVIDED specifically that the Lessee shall not at the time of giving that notice be in rental arrears then the Lessor must extend and renew this Lease for a further term of twenty-one (21) years from the expiration of the original Term on the same covenants conditions and stipulations (except this option of renewal) and at the same Rent as is payable during the original Term.

3. COVENANTS BY LESSEE

The Lessee COVENANTS with the Lessor:

3.1 To Pay Rent

To pay Rent annually on each anniversary of the Commencement Date during the Term and any renewal of the Term.

3.2 Rent Payable

The rent is \$150.00 per annum, subject to adjustment in accordance with Clause 3.3.

3.3 Rent Review

That on each Rent Review Date the Lessor shall consider the Accountant's Certificate to ensure the appropriateness of the allocation of the Community Grants Fund. If, in the Lessor's reasonable view, the Community Grants Fund has not been administered in accordance with the Initial Business Case, the Lessor reserves the right to vary the Rent after consultation with the Lessee and any dispute arising under this clause will be dealt with in accordance with the provisions of clause 5.6.

3.4 Lessee to Keep Records

- (a) To keep proper Sales Records including permanent electronic records or similar permanent and instantaneous records of all Generated Revenue and credit given and to keep available for at least six years after the expiration of the period to which the Sales Records relate, all Sales Evidence upon which those Sales Records are based; and
- (b) To bring into and incorporate into its accounts and records all financial transactions of the Lessee as the case may be either directly or through any related body corporate, subsidiary or agent relating to the carrying on or in any way in connection with the business and activities of the Lessee upon the Leased Premises AND for the purposes of this covenant the terms "related body corporate" and "subsidiary" shall have the same meanings as in the *Corporations Act 2001 (Cth)* and shall include any company, body or enterprise the affairs of which the Lessee has the power or ability (directly or indirectly) to control.

3.5 Lessee's Accountant's Certificate

To furnish to the Lessor within 30 days after the 30th day of September in each fifth year during the Term and within 30 days after the expiry or sooner termination of the Term a financial statement, certified to be true and correct by the Lessee and an independent Certified Practising Accountant or Chartered Accountant of recognised standard, as to the Generated Revenue for that year (or part of a year if applicable). The certificate of the independent Certified Practising Accountant or Chartered Accountant shall be in the form of Accountant's Certificate annexed to this Lease and shall be duly completed. The financial statement and certificate by the Lessee must be in such form and style and must contain such information, detail and breakdown as the Lessor reasonably requires.

3.6 Right to Examine Books

To enter and keep suitable books and records during the Term or continuance of this Lease at the Lessee's principal business office from time to time, true

particulars and complete accounts and records of all Generated Revenue arising from the carrying on of its business and activities upon or in connection with the Leased Premises. Such books and records shall at all reasonable times (after giving reasonable notice) be open to inspection by the Lessor and the Lessor's auditor who may take copies thereof and extracts therefrom. The Lessee shall at all times render to the Lessor all and every assistance and explanation in making such inspection and taking such copies and extracts, shall verify and prove to the satisfaction of the Lessor such entries accounts books and records and for such purposes will furnish the Lessor, with all such reasonable information as the Lessor shall demand concerning Generated Revenue. In particular the Lessor has the right at any time during business hours after giving reasonable notice:

- (a) to examine the Sales Records and Sales Evidence in respect of any business conducted in, at, on or from the Leased Premises so as to satisfy himself as to the correctness of the Accountant's Certificate; and
- (b) to investigate and monitor all processes, procedures and practices involved in the creation, formation and maintenance of accurate Sales Evidence and Sales Records.

3.7 Delay

No delay by the Lessor in enforcing any review of the Rent prevents the Lessor from requiring at any time that the Rent must be reviewed with effect from the relevant Rent Review Date.

3.8 Goods and Services Tax

(a) Definitions

"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).

"New Tax System changes" has the same meaning as in section 75AT of the *Trade Practices Act 1974* (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.

(b) Adjustment for GST

- (i) Unless expressly included, the consideration for any supply made by the Lessor under or in connection with this Lease does not include GST.
- (ii) GST is payable on any supply of goods and services under this Lease.

(c) Tax Invoices

The Lessor must issue a Tax invoice to the Lessee in respect of any supply of goods or services under this Lease.

(d) **Reimbursements**

If the Lessor is entitled under this Lease to be reimbursed or indemnified by the Lessee for a cost or expense incurred in connection with this 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 Lessor.

3.9 Lessee's Development Obligations

The Lessee must:

- (a) restore to working order and condition the hydroelectric power station originally commissioned on 3 July 1956 but latterly abandoned in accordance with the Initial Business Case; and

- (b) not assign, transfer or dispose of or attempt to assign, transfer or dispose of this Lease or sublet the Leased Premises until the Works have been completed.

(c) **Materials etc - location**

Not to deposit or permit or suffer to be deposited within the Leased Premises any materials or building plant or equipment which are not immediately required for the carrying out of the Works and to place and keep all materials and building plant and equipment which are immediately required, within proper security fencing surrounding that part of the Works for the time being in progress, under construction or in the course of erection. Other materials (as determined by the Lessor) may be placed within the Leased Premises, but only in accordance with directions and conditions reasonably prescribed by the Lessor.

(d) **Not to remove earth**

Not to sell or dispose of any earth clay sand gravel or other material from the Leased Premises nor permit or suffer the same to be removed except so far as shall be necessary for the carrying out of any of the Works or as otherwise approved in writing by the Lessor.

(e) **Artefacts**

To notify the Lessor immediately if any articles of value or of historic or prehistoric interest are discovered in the course of carrying out the Works or otherwise so that (subject to the rights of the State) the Lessor shall have the sole property in any such articles, which shall be dealt with as the Lessor shall reasonably direct.

(f) **Indemnity - materials**

To indemnify the Lessor against all claims by unpaid suppliers in respect of any goods or materials from time to time brought within the Leased Premises by or on behalf of the Lessee.

(g) **Protection**

During the progress of each part of the Works the Lessee shall at its own expense maintain the Works in good order and condition and shall take all necessary measures and precautions for the protection, safety and security of the Works, including (without limitation):

- (i) to protect the Works from damage by fire; and
- (ii) to keep each part of the Works for the time being in progress, under construction or in the course of execution, and the site thereof in accordance with WorkSafe Western Australia standards and requirements.

(h) **Works Indemnity**

- (i) To pay, and to indemnify the Lessor against all fees, charges, costs, duties, taxes, accounts, assessments and other payments whatever which may at any time be payable to any Authority in respect of the Works; and
- (ii) To indemnify the Lessor against all actions, suits, costs, claims, demands, proceedings and liability whatever in relation to any failure by the Lessee to comply with the Lessee's Covenants, including under this clause 3.9.

(i) **No representation**

The Lessee acknowledges that no representation is made or warranty given by the Lessor that any part of the Leased Premises is fit or suitable for the carrying out of the Works or for conducting the Business and no defect which may be found to exist in the Leased Premises or any part of the Works will in any way relieve, release, reduce, lessen or affect the Lessee's Covenants.

(j) **Latent Conditions**

- (i) The Lessee will inform itself of all relevant information relating to the site of the Works to be carried out, within the Leased Premises and of all services within and in the vicinity of the Leased Premises associated with the Works and of all relics and artefacts including historic, prehistoric, archaeological and indigenous and of all matters of mythological, cultural, indigenous, aboriginal, or heritage significance and will make its own assessment of all risks and latent and patent conditions, contingencies, claims and other circumstances which may affect its works and activities and the carrying out, construction and completion of the Works ("Latent Conditions");
- (ii) The Lessee must undertake and assume full responsibility for and bear the full cost of all works, actions and conditional considerations which must be executed and brought to bear in order to resolve any problems, claims, contingencies, difficulties or instability revealed before, after or during the progress of the Works by any Latent Condition; and

- (iii) The existence of any Latent Condition will not affect the Lessee's liability to carry out and complete the Works and will not impose any burden, obligation, liability, duty or responsibility whatsoever on the Lessor.

(k) **Water and Electricity Services**

To provide and connect all necessary water and electricity services to the Leased Premises.

(l) **Sewerage Installation**

At the cost of the Lessee, to install an ecologically acceptable sewerage disposal system or sewerage disposal systems if required and approved by the Lessor within a site or sites approved by the Lessor as part of the Works.

(m) **Maintain Installations**

To maintain the sewerage system and all gas tanks and associated screens, plant, equipment, pipes and wires painted and in good and sound functioning condition in every respect and to repair and replace the structure, pipes and parts which become broken, worn out or otherwise unserviceable or dilapidated.

(n) **Property in Works**

All Works will be and become the absolute property of the Lessor upon the date of completion of the Works and will thereafter comprise part of the Leased Premises.

3.10 To pay outgoings

Subject to any statutory exemption enjoyed by the Lessee, to pay and discharge on or before the due date for payment all present and future rates, taxes, charges, assessments, fees, duties, impositions, penalties and other outgoings whatever which now or at any time during the Term are assessed and charged upon or in respect of the Leased Premises or the use or occupation of the Leased Premises or any part of the Leased Premises or the Business, and all accounts for water, electricity, gas or telecommunications services consumed on or provided to the Leased Premises and all meter rentals (whether assessed in the name of the Lessor or of the Lessee) but if the Lessee's obligation to pay land tax under this provision arises due to a change in the law whereby the Lessor is assessed to pay land tax in respect of the Leased Premises, then the Lessee will, subject to any statutory exemption enjoyed by the Lessee, be obliged to pay land tax only on the basis that the Leased Premises are the only land of which the Lessor is the owner (within the meaning of that term in the *Land Tax Assessment Act 1976 (WA)*), and the Lessor agrees to pay or discharge the balance (if any) of any land tax imposed upon the Lessor.

3.11 Interest on Overdue Money

Without limiting any right, power, or remedy of the Lessor, to pay to the Lessor on demand interest at the Rate on any money due, owing, payable and unpaid for 14

days after the due date for payment, computed from the due date for payment until the date of receipt by the Lessor.

3.12 Alterations and Improvements

Not to construct, erect or build or permit or cause to be constructed, erected or built on the Leased Premises any buildings, structures or improvements or to make any alteration or additions to the buildings, structures and other improvements from time to time on the Leased Premises without the prior written approval of the Lessor and then only in strict accordance with plans and specifications first approved in writing by the Lessor.

3.13 Comply with Acts

At all times during the Term duly and punctually to comply with, observe, carry out and conform to the provisions of all laws, Acts and statutes (State, Federal or local) and all Subsidiary Legislation now or in the future in force and all requirements and orders of any Authority which affect the Leased Premises or the use of the Leased Premises or which impose any duty or obligation upon the owner or occupier of the Leased Premises.

3.14 Compliance with Local Government Act

Notwithstanding that the *Local Government Act 1995 (WA)* and the Subsidiary Legislation made under it, including the *Building Regulations 1989 (WA)*, may not govern activities and building operations within the Leased Premises, to ensure that all the Works and all activities and operations of the Lessee within the Leased Premises pursuant to this Lease meet the requirements of the *Local Government Act 1995 (WA)* and the Subsidiary Legislation in force under it which the Lessee would have to meet if that Act and Subsidiary Legislation did have full force and effect within the Leased Premises, except for any requirement waived in writing by the Lessor. The Lessor may engage any local government, consultant, or expert to advise it whether or not the Works meet those requirements.

3.15 Comply with Orders, Regulations

To perform, discharge and execute all requisitions and works and do and perform all such acts and things upon, to and in respect of and the Leased Premises or any part of the Leased Premises as are or may be legally required or directed to be performed, discharged, executed or done (whether by the Lessor or Lessee) by any local government, the Health Department of Western Australia, any Health Commissioner or by the Water Corporation or, by any other Authority or by order or in pursuance of any Law or statute or Subsidiary Legislation (State or Federal) now or hereafter in force including (without limitation) all structural, electrical, telecommunications and plumbing works, alterations and improvements.

3.16 To Transmit Notices

To furnish within seven days after receipt, a copy of all notices received by the Lessee from any Authority which relate to the Leased Premises or any part of the Works, non compliance with which would or may adversely affect the Lessor's interest in the Leased Premises, or which relate to any breach of duty or obligation of the Lessee or of the Lessor.

3.17 Visitors' Statutory Duty

At all times during the Term to use reasonable endeavours to procure the performance and observance by the employees, agents and contractors of the Lessee and by the public of the provisions of all statutes (State or Federal) and all Subsidiary Legislation in force and all requirements and orders of any Authority which relate to the duty of any person entering the Leased Premises.

3.18 Exclusion of Persons

To exclude from the Leased Premises any person who does not comply with the provisions of any statute, Subsidiary Legislation, requirement or order referred to in clause 3.18 and immediately inform the Lessor of any such exclusion and of any other non-compliance within the National Park of which the Lessee is aware, to give the Lessor the opportunity to respond as the Lessor in its discretion sees fit.

3.19 Maintenance of Leased Premises

At the Lessee's own expense to keep and maintain the Leased Premises in good, safe and substantial repair, order and condition, including the maintenance of mechanical, electrical and electronic fixtures and fittings within the Leased Premises in good repair and operating condition AND to keep all grounds forming part of the Leased Premises well tended, neat, safe and in good order and condition to ensure shapes, colours, textures and designs are compatible with the landscape, indigenous and European heritage and in accordance with the landscape design approved in writing by the Lessor.

3.20 To paint and decorate

At appropriate times as the need arises but in any event during or before each successive seventh (7th) year of the Term with paints and in colours first approved of in writing by the Lessor, to paint with at least 2 coats of paint to the reasonable satisfaction of the Lessor all the outside wood metal iron and cement work of all buildings, structures and erections upon the Leased Premises (where appropriate) and all other external parts of such buildings structures and erections as are hereafter painted and also all of the inside parts usually painted of all such buildings structures and erections on the Leased Premises, and at all times to keep the walls and ceilings clean and washed to the satisfaction of the relevant Authorities.

3.21 Rebuilding on Destruction or Damage

If the buildings and improvements upon or within the Leased Premises or any parts of those buildings and improvements, or any replacements of them are destroyed or damaged, by any cause whatsoever (including flooding), the Lessee must promptly and diligently rebuild, replace or repair, as the case requires, those buildings and improvements in order to maintain continuity of the Business at the Leased Premises.

3.22 Lessor's right of entry upon Leased Premises

- (a) To permit the Lessor to enter the Leased Premises at any time in order to exercise any right, power or authority which the Lessor has under this Lease or under the Act. The Lessee is not entitled to any compensation or damages or to take or make any other action, suit, demand or claim against the Lessor for anything done or omitted by the Lessor on the

Leased Premises in the exercise of any right or authority under this Lease or the Act.

- (b) The Lessor may after giving reasonable notice to the Lessee (or in an emergency, without notice) enter the Leased Premises to do any one or more of the following things:
- (i) inspect the state of repair and condition of the Leased Premises;
 - (ii) maintain or repair the Leased Premises and the Equipment;
 - (iii) maintain, repair, alter or remove any electricity, gas, water, sewerage, drainage or telecommunications services ("Services");
 - (iv) carry out structural work to the Leased Premises or any other work required by an Authority;
 - (v) remove anything which is unsafe, harmful or dangerous;
 - (vi) anything which should have been done by the Lessee but which has not been done at the expiration of reasonable notice calling upon the Lessee to do that thing or has not been done properly; and
 - (vii) anything else which the Lessor is required to do by law or is permitted to do under this Lease,

without affecting the Lessee's Covenants.

- (c) If the Lessor does anything permitted by the preceding clause the Lessor must:
- (i) give the Lessee reasonable notice of the intended action before it is taken (except in an emergency);
 - (ii) use its best endeavours to minimise disruption to the Business; and
 - (iii) make good any damage to any property of the Lessee caused by the Lessor.

3.23 Use of Leased Premises

Actively and continuously to use the Leased Premises for the purpose of carrying on the Business and for such other purposes as are incidental to the carrying on of the Business and not to use the Leased Premises for any other purpose without the prior written consent of the Lessor.

3.24 Standard of Service

At all times during the Term:

- (a) to manage, conduct and control in good faith and to a prompt, efficient and high standard and in an orderly and reputable manner, the Business and

provision of service to the public, limited as the Lessee may decide, to specific hours of operation;

(b) not in any way to damage or cause a detraction from the reputation of the National Park or its facilities; and

(c) to meet the realistic and reasonable expectations of the public.

3.25 Furnish Equipment and Staff

To keep the Leased Premises properly maintained and staffed for the conduct of the Business to the Lessor's reasonable satisfaction.

3.26 Not to Contaminate

To do all things necessary to prevent, and not to do or permit or suffer to be done anything likely to contaminate the Leased Premises within the meaning of section 4 of the *Contaminated Sites Act 2003 (WA)* or cause contamination outside the Leased Premises.

3.27 Introduced Material and Plants

Not to introduce or bring into the National Park any soil, either for garden or building purposes, or any mulch or other material for garden purposes or any plants or any vegetable material unless prior to its introduction a certificate has first been obtained from the supplier of the same or from a qualified person approved by the Lessor and engaged by the Lessee for that purpose confirming that the same is free from any pollutant or contaminant and free from any plant disease or fungus.

3.28 Handling of Pollutants

To use care in the handling of fuels, oils and other pollutants, to limit spillage, to safely store minimum quantities only of fuels, oils and other pollutants and to dispose of unwanted residues outside the National Park.

3.29 Chemicals

Not to use, permit or suffer to be used any chemical, inflammable gas or fluid, or other liquid fuels or other dangerous substance, in or upon the Leased Premises except as ordinarily used in connection with the Business or use authorised by the Lessor.

3.30 Not to obstruct or cause nuisance

Not to do or leave undone any act matter, or thing whereby a nuisance or anything in the nature of, or which may be determined to be, a nuisance by any Authority, may exist, arise or continue upon or in connection with the Leased Premises or the Business or the use or occupancy of the Leased Premises AND immediately to abate any nuisance and to carry out and comply with the provisions of all laws and orders of any Authority relating to the nuisance.

3.31 Pay Lessor's expenses in relation to Lessee's Covenants

To pay to the Lessor on demand all money which the Lessor may at any time pay or be called upon to pay in connection with performing, discharging or executing any

requisition or works or abating any nuisance or rectifying any pollution referred to in this Lease and which, contrary to the agreement contained, the Lessee neglects or fails to perform, discharge, execute, abate or rectify and to pay that money to the Lessor despite any statute or Subsidiary Legislation making the Lessor liable alone or jointly with others, or jointly with the Lessee and others, to perform, discharge, execute, abate, rectify or pay for the same or any part of the same.

3.32 Assignment (Works in progress)

From the Commencement Date until completion, execution and provision of all the Works, not to assign, sub-let, licence, sublicence or part with the possession of or dispose of the Leased Premises or any part or the Leased Premises or the benefit at law or in equity of this Lease.

3.33 Assignment (Works not in progress) and Mortgage

After completion of the Works, not to assign, sub-let, licence, sublicence, mortgage, charge or otherwise encumber or part with the possession of or dispose of the Leased Premises or any part of the Leased Premises or the benefit at law or in equity of this Lease without the prior written consent of the Lessor which the Lessor must not unreasonably withhold or delay:

- (a) if the Lessee wishes to mortgage charge or encumber the whole of this Lease and the Leased Premises on condition that there must be no further assignment, licence, sublicence, sublease, mortgage, charge or other encumbrance or parting with possession or disposition other than in terms of this clause and subject to any reasonable undertakings required by the Lessor being given by the Lessee or any other person;
- (b) if the Lessee wishes to assign the whole of the Leased Premises and the benefit of this Lease or if the Lessee wishes to sublease, licence or sublicence the whole of the Leased Premises and in either of those cases if:
 - (i) the proposed assignee, sublessee, licensee or sublicensee is a respectable, responsible and solvent person and the Lessor is satisfied as a result of perusing evidence, data and particulars provided by the Lessee at the expense of the Lessee (and as a result of the Lessor's own enquiries, if the Lessor in its absolute discretion chooses to make separate enquiries) that the proposed assignee, sublessee, licensee or sublicensee has suitable skills and expertise to conduct the Business on the Leased Premises in accordance with this Lease and has adequate capital backing in the opinion of the Lessor in its absolute discretion;
 - (ii) the Lessee procures at the cost of the Lessee or the assignee, sublessee, licensee or sublicensee (as the case may be) in all respects the execution by the proposed assignee, sublessee, licensee or sublicensee of a Deed of Assignment of this Lease, a Deed of Sublease, a Licence or Sublicence to which the Lessor is a party and which is in a form approved by the Lessor's solicitors;
 - (iii) all Rent then due and payable for the period up to the date on which the assignment, sublease, licence, or sublicence takes effect been paid and there is no existing or unremedied breach of

any of the Lessee's Covenants in respect of which the Lessor has previously given notice;

- (iv) the assignment, sublease, licence or sublicense contains a covenant by the proposed assignee, sublessee, licensee or sublicensee with the Lessor whereby the proposed assignee sublessee, licensee or sublicensee undertakes at all times during the continuance of the Term duly to observe and perform all of 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 the respectability, responsibility, suitability and solvency of any proposed assignee, sublessee, licensee or sublicensee;
- (c) if the proposed assignee, sublessee, licensee or sublicensee is a company not listed on any Australian Stock Exchange and the directors of that company guarantee to the Lessor:
- (i) in the case of an assignment, the due and punctual observance and performance by the proposed assignee of the Lessee's Covenants and the due and punctual payment by the proposed assignee of any Rent and other money payable by the Lessee arising from this Lease; or
 - (ii) in the case of a sublease, licence or sublicense (the form of which shall be subject to the prior written approval of the Lessor, which approval must not be unreasonably withheld or delayed) the observance and performance by the sub-lessee, licensee or sublicensee of the Lessee's Covenants other than the covenants to pay the Rent; and
- (d) if the covenants and agreements on the part of any proposed assignee, sublessee, licensee or sublicensee, are expressed to be supplementary to the Lessee's Covenants and not in any way to relieve or be deemed to relieve the Lessee from any of the Lessee's Covenants.

3.34 Lessee Remains Liable

The Lessee shall remain fully liable under this Lease notwithstanding that the Lessee may have granted an interest in the Leased Premises, or any part of it or in this Lease to any person whether or not with the Lessor's consent.

3.35 Change in Shareholding or Unitholding

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 a reconstruction to

which the Lessor has given its prior written consent (which must not be unreasonably withheld or delayed), or if the beneficial owner of any units in such a unit trust is a company, any change whatever at any time 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 any of the issued shares from time to time of that company, is deemed to be an assignment of the Lessee's interest in this Lease for the purposes of clauses 3.32 and 3.33.

3.36 Property Law Act 1969

The provisions of sections 80 and 82 of the *Property Law Act 1969 (WA)* are excluded from and do not apply to this Lease.

3.37 Standing of Trust

That if the Lessee enters into this Lease as, or hereafter holds this Lease as, trustee of any trust:

- (a) except with the prior written consent of the Lessor (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; and
 - (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 with respect to the trust fund of the trust; and
- (f) no notice under section 63 of the *Trustees Act 1962 (WA)* or any equivalent provision has been published in connection with the trust.

3.38 Pay Lessor's Costs

To pay on demand the Lessor's solicitors costs of and incidental to any default by the Lessee in performing or observing the Lessee's Covenants including architect's fees and all costs, charges, 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 (WA)* requiring the Lessee to remedy a breach of this Lease notwithstanding that forfeiture for breach is avoided otherwise than by relief granted by a court of competent jurisdiction.

3.39 Signs and notices

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 has been first approved in writing by the Lessor, which approval may be withheld in the absolute discretion of the Lessor with respect to any proposed neon sign but which approval must not otherwise be unreasonably withheld, and the Lessor acknowledges that the Business is of a commercial nature and will entail the affixing or display of signs and notices of a reasonable and appropriate nature.

3.40 Indemnities

(a) By the Lessee

The Lessee must indemnify and keep indemnified the Lessor from and against any liability or loss arising from, and any costs, charges and expenses incurred in connection with any damage to the Leased Premises or any loss or destruction of or damage to anything in, upon or near the Leased Premises, or any injury to, illness or death, of any person in, upon or near the Leased Premises to the extent that that liability, loss, damage, illness or injury is caused or contributed to by:

- (i) the act, negligence, omission or default of the Lessee or an agent of the Lessee; or
- (ii) some risk, danger or hazard created, assumed or accepted by the Lessee or an agent of the Lessee, whether or not the existence of that risk, danger or hazard was or ought to have been known to the Lessee.

(b) Lessor not liable

The Lessor will not be liable for or in respect of any liability, loss, cost, expense, illness, injury or damage resulting from or for:

- (i) any act, neglect, default or omission of any person upon or near the Leased Premises (whether there lawfully or not); or
- (ii) damage to or loss or destruction of any thing or injury to, illness or death of any person, in upon or near the Leased Premises,

due to any cause other than the negligence or default of the Lessor or any employee or agent of the Lessor.

(c) Release

Subject to subclauses 3.40(a) and (b), the Lessee releases the Lessor from all liability to the Lessee and from all actions, suits, claims, demands and proceedings for loss, costs, charges and expenses in connection with the damage to or loss or destruction of any thing or injury to, illness or death of any person occurring in, upon or near the Leased Premises which the Lessee now has or may at any time in the future have or but for this clause 3.40(c) might have had against the Lessor.

(d) **Interpretation**

For the purposes of this clause 3.40 the expression "in upon or near the Leased Premises" is deemed to include the area of National Park surrounding the Leased Premises.

3.41 Insurance

To insure and keep insured the Leased Premises with RiskCover in the name of the Lessee under a policy of insurance on which the interest of the Lessor is noted for the risks usually covered by the Lessee.

3.42 Not to Invalidate Insurances

Not to do or permit or suffer to be done anything whereby any policy of insurance which the Lessor has effected or the Lessee is required by law or this Lease to effect may become void or voidable or the premiums payable may be increased or the coverage may be reduced.

3.43 Public Risk Insurance

To effect and keep effected in respect of the Leased Premises adequate public risk insurance with RiskCover in the names of the Lessor and the Lessee for their respective rights and interests in an amount not less than \$15,000,000 in respect of any one claim (or any higher amount as may be agreed from time to time) and to notify the Lessor of the details of that public risk insurance and ensure that it conforms to the reasonable requirements from time to time of the Lessor of which the Lessee is given notice PROVIDED ALWAYS that on and from the 1st day of July in every third year of the Term the amount of public risk insurance cover (as increased from time to time in accordance with this clause) shall be increased to such other amount as the parties agree upon, or failing agreement by 31 August in that year, to such reasonable amount as is determined by arbitration under clause 5.6.

3.44 To yield up

At the expiration or sooner termination of the Term to yield up the Leased Premises to the Lessor in such state of repair and condition as is consistent with the proper performance by the Lessee of the Lessee's Covenants.

3.45 To Remove Moveable Property on request

(a) At or prior to the expiration of the Term or immediately upon the earlier termination of the Term to take, remove and carry away from the Leased Premises such of the Equipment brought onto the Leased Premises by or on behalf of the Lessee as the Lessor may in writing require the Lessee to remove, and the Lessee must on that removal immediately make good to the reasonable satisfaction of the Lessor any damage which is occasioned by the removal.

(b) Not at any time to remove any plant, equipment, installations, fixtures or fittings or articles in the nature of trade or Lessee's fixtures including mechanical, electrical, water and gas plant, equipment, installations, fixtures and fittings and the tent accommodation, without the prior written

consent of the Lessor, EXCEPT for the purpose of their repair, maintenance or replacement.

- (c) SUBJECT to the provisions of paragraphs (a) and (b) of this clause, all property brought onto the Leased Premises by or on behalf of the Lessee and not removed by the Lessee will be and remain the absolute property of the Lessor.

3.46 Fire Prevention

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

- (a) the *Bush Fires Act 1954 (WA)*, *Fire and Emergency Services Authority of Western Australia Act 1998 (WA)* and any other laws relating to the prevention and control of fires; and
- (b) all proper directions concerning fire prevention and control given to the Lessee by the Lessor or by any Authority.

3.47 Prescribed Burning

The Lessee will cooperate with all reasonable requirements and restrictions due to the preparation and conduct of prescribed burning. The Lessee will temporarily adjust procedures, routines and operations in the event of smoke accumulations due to prescribed burning activity without penalty to the Lessor.

3.48 Fire Control

Immediately to:

- (a) notify the Lessor as soon as a fire is detected on the Leased Premises; and
- (b) use all appropriate and safe endeavours to extinguish any unauthorised or uncontrolled fire on the Leased Premises.

3.49 Liability for Fires

To indemnify and keep indemnified the Lessor against all loss, injury, damage or destruction of property of the Lessor and all actions, suits, claims, demands and proceedings of third parties for loss, injury, damage or destruction of property or personal injury or loss of life in consequence of, arising out of or as a result of any fire occurring on the Leased Premises unless the Lessee can prove to the reasonable satisfaction of the Lessor that the fire:

- (a) was not caused by the Lessee's negligent or unlawful act or omission or the Lessee's breach or default under this Lease; or
- (b) was started by a cause beyond the Lessee's control.

3.50 Timber

This Lease does not grant to the Lessee any rights to forest produce as defined in the Act and the provisions of section 96(4) of the Act are expressly excluded.

3.51 Trees and Vegetation

SUBJECT as hereinafter provided, to take all reasonable actions, measures and precautions necessary to protect the trees and other vegetation growing on the Leased Premises from and against all loss, injury, damage, harm or destruction and to take reasonable actions, measures and precautions necessary to prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Leased Premises. Without limitation, unless required by clause 3.52, the Lessee must not cut down, injure, damage, destroy, remove or otherwise interfere with or harm anything growing on the Leased Premises without the prior written consent of the Lessor. The Lessee must also control declared plants and declared animals as defined in the *Agriculture and Related Resources Protection Act 1976 (WA)*, in relation to the Leased Premises, as required by that Act.

3.52 Dangers or Threats to the Public

- (a) Regularly to check the condition of trees and other, vegetation on the Leased Premises;
- (b) To prune, lop or remove any tree or other vegetation which is in a dangerous condition or which may threaten the safety of any person;
- (c) To take adequate action to warn the public of any danger or threat constituted by any tree or other vegetation; and
- (d) Generally to take any measures necessary to prevent accidents and to protect the safety of the public on the Leased Premises

3.53 Prevention of Weed Introduction

To comply with the Lessor's reasonable directions relating to the prevention of the spread of weeds on, onto and from the Leased Premises, including the washing of vehicles and equipment and other similar measures. The Lessee must not bring onto the Leased Premises any fill, non-indigenous plants (including ornamental plants), soil, sand or other material from outside the Leased Premises without the prior written approval of the Lessor.

3.54 No Interference with Environment

The Lessee acknowledges that the Leased Premises are an environmentally and ecologically sensitive national park and that the Lessor has a general duty to protect the environment. Accordingly, the Lessee must not, without first obtaining the consent of the Lessor, do anything to damage, alter, affect or otherwise interfere with the natural environment and ecology of the Leased Premises and the National Park, including:

- (a) removing rocks; earth, soil or other materials from the Leased Premises;
- (b) clearing or removing trees or other vegetation from the Leased Premises by any means;
- (c) altering the contours of the surface of the Leased Premises;
- (d) depositing any earth, fill or other similar materials on the Leased Premises;

- (e) altering the natural drainage onto, on or from the Leased Premises;
- (f) introducing any new flora or fauna to the Leased Premises;
- (g) harming or endangering any flora or fauna on the Leased Premises; or
- (h) anything else in connection with the Leased Premises which may be harmful to the environment or the ecology thereof.

3.55 Notify the Lessor of Threats

Immediately to notify the Lessor if the Lessee becomes aware of anything which causes or could cause pollution (as defined in the *Environmental Protection Act 1986 (WA)*) on or affecting the Leased Premises.

3.56 Environmental Protection Laws

Nothing contained or implied in this Lease is to be taken as exempting, relieving or releasing the Lessee from or limiting the obligation of the Lessee to comply with any law relating to the protection of the environment. The Lessee must comply with the applicable provisions of the *Environmental Protection Act 1986 (WA)*, the Act, the *Wildlife Conservation Act 1950 (WA)* and all Subsidiary Legislation.

3.57 Specific obligations

The Lessee must:

- (a) keep the area of the National Park surrounding the Leased Premises for a distance of 10 metres measured away from the boundary clean and tidy and free of vermin as if the area formed part of the Leased Premises;
- (b) not cause or allow any pollutant or contaminant over which the Lessee has control to be released upon the Leased Premises or to affect the Leased Premises; and
- (c) not dispose of rubbish from the Leased Premises in any bins provided by the Lessor for public use in the National Park.

3.58 Environmental/Ecological Benchmarks

- (a) During the Term of this Lease the Lessee must achieve the benchmarks for the sustainability of the Lease and the continued use by the Lessee of the Leased Premises which are itemised in the Sustainability Performance and Audit Schedule.
- (b) The Lessor will have the right to monitor and audit the Lessee's performance, attainment and achievement of the requirements, obligations and standards specified in the Sustainability Performance and Audit Schedule at the times and in the manner specified in paragraph (c) of this clause.
- (c) During the Term, the Lessee may be audited annually against sustainability benchmarks consistent with the Initial Business Case.

- (d) The Lessee must pay to the Lessor on demand the total cost of the annual audit (including auditor travel costs) charged to the Lessor by the auditor.
- (e) The Lessee must co-operate fully with the Lessor and the Lessor's personnel and auditors and assist them in and about the exercise of the Lessor's rights under the Sustainability Performance and Audit Schedule.
- (f) The Lessor will be entitled, upon completion of each audit of the Lessee's performance, to review and, by notice to the Lessee, to amend, vary or modify in any way as the Lessor reasonably sees fit, any item or items in the Sustainability Performance and Audit Schedule, including by the addition of new items or benchmarks, and those amendments, variations or modifications will take effect and become binding on the Lessee fourteen (14) days after the date of the Lessor's notice.

3.59 Danger and First Aid

(a) Eliminate Danger

The Lessee must take preventative measures to eliminate danger and hazard to the public within the Leased Premises.

(b) First Aid Facilities

The Lessee must provide adequate first aid facilities and shall ensure trained staff are available for rendering first aid to sick and injured persons.

4. COVENANTS BY LESSOR

The Lessor COVENANTS with the Lessee:

Quiet Enjoyment

That the Lessee paying the Rent reserved by this Lease and observing and performing the Lessee's Covenants may peaceably hold and enjoy the Leased Premises during the Term without any interruption or disturbance by the Lessor or any person rightfully claiming under or in trust for the Lessor.

5. MUTUAL COVENANTS

The Lessor and the Lessee MUTUALLY COVENANT AGREE AND DECLARE:

5.1 Default by Lessee

- (a) If during the Term:
 - (i) the Lessee makes default which the Lessor reasonably considers material in the due performance or observance of any of the Lessee's Covenants and such default is incapable of remedy; or
 - (ii) the Lessee makes default in the due performance or observance of any of the Lessee's Covenants and such default is capable of being remedied but is not remedied within 30 days after a default

notice as provided in paragraph (b) of this clause is given by the Lessor; or

- (iii) the Lessee goes into liquidation (other than a voluntary for the purpose of reconstruction with the prior written consent of the Lessor),

THEN and in any of such events the Lessor may by written notice to the Lessee terminate this Lease and the rights of the Lessee under this Lease PROVIDED THAT if the default is capable of remedy and has not been remedied after such default notice and the default is capable of being remedied by the Lessor, the Lessor may elect not to terminate this Lease because of the default but may itself remedy the default or cause it to be remedied (for which purpose the Lessor by agents workmen or otherwise has full power to enter upon the Leased Premises) and the costs and expenses incurred by the Lessor in remedying the default or causing it to be remedied are a debt payable by the Lessee to the Lessor on demand and the Lessee must pay interest to the Lessor on those costs and expenses at the Rate from the date they were incurred by the Lessor to the date they are paid by the Lessee to the Lessor.

- (b) The Lessor must specify in the default notice to be given by the Lessor pursuant to paragraph (a) of this clause the nature of the default or other ground entitling the Lessor to exercise the right of termination.

5.2 Lessor May Act by Agent

Each act or thing which the Lessor is required or empowered to do under this Lease may be done by the Lessor or the duly authorised representative, solicitor, agent, contractor, or employee, of the Lessor.

5.3 No waiver

- (a) The acceptance of Rent or other money by the Lessor or 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 by the Lessor 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 acceptance payment, performance, or observance.
- (b) A waiver by either party in respect of a breach of a provision of this Lease by the other Party will not be deemed to be a waiver in respect of any other breach and the failure of either party to enforce at any time a provision of this Lease shall in no way be interpreted as a waiver of such provision.

5.4 Holding Over

If the Lessee remains in possession of the Leased Premises with the express or implied permission of the Lessor after the expiration or sooner termination of the Term the Lessee will hold the Leased Premises as a monthly tenant at the same rent payable at the end of the Term and subject to all the covenants and conditions contained in this Lease so far as they are applicable to a monthly tenancy and the

tenancy so constituted may be terminated by one month's notice given by either party which notice may be given so as to expire at any time.

5.5 Lessor may Remedy Lessee's Default

If the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has expressly or impliedly in this Lease covenanted to pay do or effect then on each and every such occasion and without prejudice to any rights or powers arising from such default, the Lessor may (but is not obliged to) pay such money or do or effect such thing by itself, its employees, agents or contractors as if it were the Lessee and for that purpose the Lessor may enter upon and remain on the Leased Premises for the purpose of doing or effecting any such thing and the Lessee must pay the Lessor any money so expended by the Lessor upon demand.

5.6 Arbitration

(a) Arbitration

Any dispute or difference arising between the parties in respect of any of the matters referred to in this Lease, or any matter relating to the Leased Premises, or any matter (relating to the Leased Premises or this Lease) on which either party seeks the agreement of the other, or in respect of the meaning or construction of any of the provisions contained in this Lease, shall in default of agreement between the parties and in the absence of any provision in this Lease to the contrary be referred to and settled by the arbitration of a single arbitrator under the provisions of the *Commercial Arbitration Act 1985 (WA)* and either party may if it so desires and at its own cost be represented by a qualified legal practitioner or other, representative.

(b) Lessor's Discretion

Except where otherwise provided in this Lease the provisions of this clause do not apply to any case where the Lessor is by this Lease given either expressly or impliedly a discretionary power.

5.7 Force Majeure

This Lease is made subject to any delays in performance that may be caused by or arise from circumstances beyond the power or control of the party responsible for that performance (unless caused in whole or in part by the fault or privity of that party) including, delays caused by or arising from acts of God, earthquakes, floods, storms, tempest, washaways, fire, act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, factors due to action taken by or on behalf of any government or governmental authority (other than the Lessor or Lessee) or events that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of these events must promptly give written notice to the other party of the event and must use its best endeavours to minimise the effects of the event as soon as possible after it occurs.

5.8 Extension

If a party gives a notice under clause 5.7 and that party's performance of obligations is affected by any of the events mentioned in clause 5.7, any period specified in this Lease for the performance of obligations by that party and any date specified in this Lease by which that party is to perform any obligation is automatically extended by the same period as the period during which that party's performance of obligations is so affected.

5.9 Notices

That any notice to be served by the Lessor on the Lessee under this Lease is duly served by or on behalf of the Lessor if sent in a prepaid letter forwarded by security post addressed to the Lessee at the address of the Lessee appearing in this Lease or at its registered office for the time being and any notice served by the Lessee on the Lessor under this Lease is duly served if sent in a prepaid letter forwarded by security post addressed to the Lessor at the Address for Payment. A notice sent by post is 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.

5.10 Variation of Lease

The provisions of this Lease may not be varied either in law or in equity except by agreement in writing signed by the Lessor and the Lessee.

5.11 Entire Agreement

This Lease constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

5.12 Severability

Each and every provision of this Lease shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision, or as separate and severable parts, so that if any provision, or part, is void or otherwise unenforceable for any reason, then that provision, or part, as the case may be, shall be severed and the remainder will be read and construed as if the severable provision, or part, had never existed.

5.13 Applicable Law

This Lease is to be governed by, and construed in accordance with, the laws of the State, and the parties agree that the courts of the State have jurisdiction to entertain any action in respect of or arising out of this Lease and submit themselves to the jurisdiction of those courts.

5.14 Headings

Headings and sub-headings have been included for ease of reference and none of the terms, covenants, conditions or restrictions within those headings or sub-headings appearing are to be construed or interpreted by reference to such headings or sub-headings.

5.15 Index

The index at the beginning of the Lease is not be read as part of this document and none of the terms, covenants, conditions and restrictions with Lease appearing are to be construed or interpreted by reference to the index.

5.16 Business Days

Where pursuant to this Lease the day on or by which any act, matter or thing is to be done is a Saturday or a Sunday or a public holiday, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

5.17 Approval by the Lessor

- (a) In any case where under this Lease the doing or executing of any act matter or thing by the Lessee is dependent on the approval or consent of the Lessor, that approval or consent will not be effective unless it is given in writing and may be given or withheld by the Lessor in the Lessor's reasonable discretion and may be given subject to such conditions as the Lessor may reasonably determine unless otherwise provided in this Lease or by statute.
- (b) The Lessee agrees that any failure by the Lessee to comply with or perform a condition imposed by the Lessor in giving its approval under paragraph (a) will constitute a breach of Lessee's Covenants.

5.18 Special Conditions

The special terms, covenants and conditions (if any) set out in the Annexures are deemed to be incorporated into this Lease as if fully set out in the body of this Lease and, if there is any inconsistency with the terms, covenants and conditions contained in the body of this Lease, then the terms, covenants and conditions set out in any Annexure will prevail.

THE COMMON SEAL of
THE CONSERVATION AND LAND
MANAGEMENT EXECUTIVE BODY
was hereunto affixed by
authority of its Council
in the presence of:



Ky. Munson

CEO

KEIRAN MUNSARA

Full name of CEO

THE COMMON SEAL of
THE NATIONAL TRUST
OF AUSTRALIA (WA)
was hereunto affixed by
authority of its Council
in the presence of:



John Alexander Cowdell
Signature

JOHN ALEXANDER COWDELL
Full name and position

PRESIDENT

Helen Logan
Signature

HELEN LOGAN
Full name and position

SECRETARY

Annexure 1

SUSTAINABILITY PERFORMANCE AND AUDIT SCHEDULE

ANNEXURE 1

SUSTAINABILITY PERFORMANCE AND AUDIT

DEFINITIONS

In this Annexure, unless the context otherwise requires:

BEC means Build Environment Criteria.

NEC means Natural Environment Criteria.

SEC means Social Environment Criteria.

LESSEE SPECIFIC SUSTAINABILITY PERFORMANCE

SITE DESIGN AND LAYOUT (BEC)

1. In consultation with and approval of the Lessor, the Lessee will develop the Leased Premises accurately and in accordance with the any proposed development plans including the Initial Business Case.
2. The Lessee will ensure that the Works:
 - i. Comply with and are maintained according to the provisions contained in this Annexure; and
 - ii. Comply with and are maintained to the health standards of the Shire of Collie and the Shire of Dardanup and receive the approval of the Shire of Collie and the Shire of Dardanup.

MAINTENANCE OF NATURAL ECOLOGY (NEC)

3. Within the first year of the Commencement Date and for the duration of the Term, the Lessee will develop and implement a weed management program to include:
 - i. Introduction and monitoring compliance with protocols for the prevention of the introduction of non-endemic plant species (including inspection and daily wash down of vehicles, inspection of supplies at delivery and storage phases);
 - ii. Education of employees, agents and contractors in the inspection for and disposal of weed seeds;
 - iii. Annual weed monitoring (including formal assessment of weed status) of the Leased Premises; and
 - iv. Weed eradication using methods approved by the Lessor.
4. The Lessee will:
 - i. Develop and implement protocols for the prevention of the introduction of non-endemic species of all types;
 - ii. Develop and implement protocols to minimise damage to native vegetation, soil loss and compaction during any construction;
 - iii. Implement benchmarking mechanisms (including a vegetation and photographic survey) to assess construction impact;
 - iv. Plant only indigenous vegetation in or around the Leased Premises after consultation and approval of the Lessor prior to planting any vegetation;
 - v. In consultation with the Lessor, rehabilitate areas within and adjacent to the Leased Premises and revegetate areas not utilised for structures, services and facilities or access areas;
 - vi. Assist the Lessor in its programs of weed eradication and land rehabilitation of the Leased Premises (planting and maintenance of endemic species) at the request of the Lessor;
 - vii. Not allow its own pets or those of its employees, agents, contractors or guests into the National Park and include this on verbal and written promotional material; and
 - viii. Not feed or allow any employee, agent, contractor or guests to feed animals in the National Park and encourage the disposal of rubbish and food scraps in sealed bins.

EROSION, SOIL LOSS, COMPACTION AND VEGETATION DAMAGE (NEC)

5. The Lessee will ensure that any development of the Leased Premises is limited to the footprint only and that no disturbance to vegetation or landforms outside the designated area occurs through the provision of sensitive design, education or signage. The Lessee will control grass growth within the Leased Premises to the satisfaction of the Lessor.
6. The Lessee will monitor and manage (including to take actions to prevent, limit and remedy) soil loss, compaction and erosion in the Leased Premises. The Lessee will ensure that:
 - i. The design and layout of the Leased Premises controls pedestrian impact and avoids compaction under trees;
 - ii. Vehicles remain in the designated vehicle areas and access to the Leased Premises is restricted to the designated road;

- iii. Minimal loss and clearing of understorey vegetation occurs and that revegetation and rehabilitation of the Leased Premises occurs, and in consultation with the Lessor;
- iv. Dust generating activities are avoided and dust suppression procedures are in place;
- v. All pedestrian paths and vehicle areas are defined with stable materials; and
- vi. In the event of any soil loss, compaction or erosion of the Leased Premises, remedial action is undertaken immediately with the approval of the Lessor.

WATER USE (NEC) & WASTE WATER (BEC)

- 7. The Lessee will:
 - i. Acknowledge that the Lessor does not guarantee the quality and supply of water in the National Park;
 - ii. Ensure effluent and waste water is treated to best possible standards before leaching occurs in accordance with the requirements and approval of the Shire of Collie and the Shire of Dardanup;
 - iii. Only use environmentally sensitive detergents and soaps in the Leased Premises and ensure their use is minimised; and
 - iv. Ensure that only sub surface disposal of treated waste water occurs.

ENERGY CONSUMPTION (NEC) & METHOD OF ENERGY CONSUMPTION (BEC)

- 8. The Lessee will:
 - i. Within the first year of the Commencement Date and for the duration of the Term, develop and implement a policy to minimise and annually reduce non-renewable energy consumption, maximise use of renewable energy sources;
 - ii. Ensure building design minimises energy requirements (solar passive where possible);
 - iii. Only use energy efficient appliances and lighting equipment and minimise the use of high energy use appliances.

ENVIRONMENTAL STEWARDSHIP (NEC)

- 9. The Lessee will:
 - i. Minimise, manage and monitor the Business's environmental impact;
 - ii. Keep records and supply information to the Lessor on any matter it requests;
 - iii. Report incidence of damage or risk within the National Park;
 - iv. Actively and cooperatively participate in any research associated with the Business or the National Park;
 - v. Support and assist the Lessor with the rehabilitation and repair of roads and parking infrastructure within the Leased Premises; and
 - vi. Support the Lessor in emergency situations with the provision of resources at the request of the Lessor.

NOISE LEVELS (NEC)

- 10. The Lessee will:
 - i. Within the first year of the Commencement Date and for the duration of the Term, develop and implement a policy to minimise noise.

CHEMICAL/FUEL STORAGE AND HANDLING (BEC)

- 11. The Lessee will:
 - i. Display a commitment to using environmentally sensitive products wherever possible;
 - ii. At all times, store chemicals in a designated locked structure and store fuel in a designated signed location;
 - iii. Maintain a register of chemicals and fuels on the Leased Premises (quantity, use and storage), management requirements and any spill events;
 - iv. Ensure signage and storage complies with Australian Standards and the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992* and the Worksafe Guidance Note;
 - v. At all times, ensure all designated chemical and fuel storage structures have impermeable bund;
 - vi. At all times, have spill response equipment and spillage recovery equipment in place in accord with the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992*;
 - vii. Not conduct vehicle maintenance within the National Park, except in emergency situations and with the approval of the Lessor;
 - viii. Dispose of chemicals outside the National Park in an environmentally appropriate manner and as required by law; and
 - ix. Monitor soils, ground and surface water.

LEVEL OF INDIGENOUS OWNERSHIP/EMPLOYMENT (SEC)

12. The Lessee will:
 - i. Encourage employment of local Indigenous people and subject to all selection criteria being met, prioritise local Indigenous people when job opportunities arise.
13. The Lessee will develop a close working relationship with the local Indigenous community by:
 - i. Inviting the local indigenous community to visit the Leased Premises annually; and
 - ii. Notifying the local Indigenous community of employment opportunities and traineeship positions to request applications.

CULTURALLY SENSITIVE BEHAVIOUR (SEC)

14. The Lessee will:
 - i. Acknowledge the importance of Indigenous people, culture and heritage to the National Park in all written interpretive and promotional material;
 - ii. Adhere to sacred site restrictions and obtain the appropriate permission from the local Indigenous community;
 - iii. Ensure that appropriate permission is sought from the local Indigenous community for the use of images and other cultural material used in the Business.

SAFETY EQUIPMENT AND PROCEDURES (SEC)

15. The Lessee will have, at all times:
 - i. Fully functioning emergency communication equipment;
 - ii. First aid equipment on the Leased Premises;
 - iii. A copy of the Lessor's Emergency Response Plan on the Leased Premises; and
 - iv. Visible signage indicating the location of fire extinguishers, fire blanket and first aid kit.

Annexure 2

ACCOUNTANT'S CERTIFICATE

TO: Chief Executive Officer of the
Department of Environment and Conservation

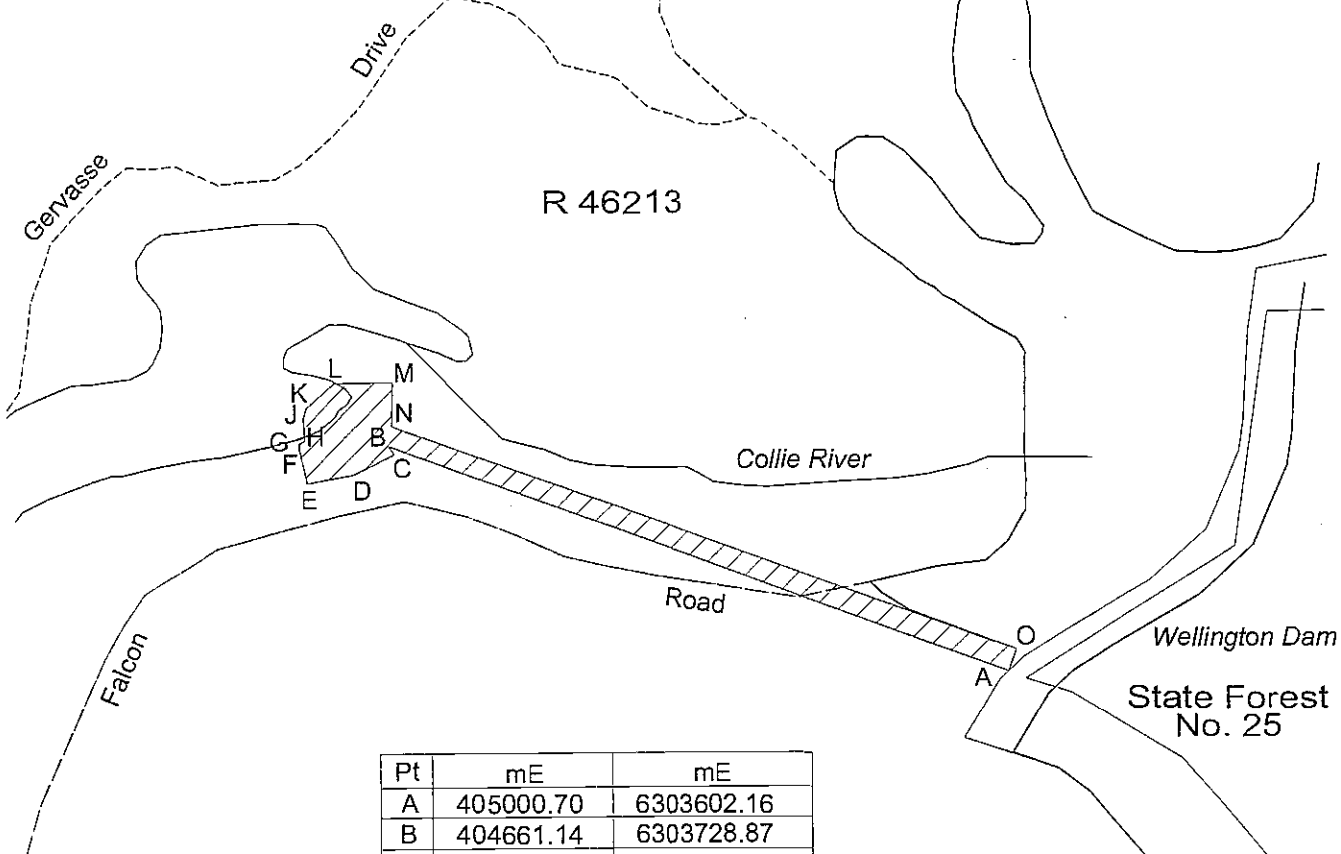
1. We have examined the statement of Generated Revenue and Community Grants Fund of the Lessee (a copy of which is enclosed with this certificate) relating to the carrying on of the businesses and activities of the Lessee within the Leased Premises as detailed in the Deed of Lease BETWEEN The **CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY** ("the Lessor") of the first part and (TRADING NAME OF LESSEE) ("the Lessee") of the other part.
2. Expressions used in this Certificate have the same meaning as in the said Deed.
3. We have acquainted ourselves with the accounting methods and procedures for recording and processing each item relevant to Generated Revenue and Community Grant Fund.
4. On the basis of our examination and of the explanations given to us, we report that, in our opinion:
 - (a) the attached statement of Generated Revenue and Community Grants Fund, relating to the carrying on of the business of the Lessee, upon or in connection with the Leased Premises for the 5-year period ended 30 June [] amounting to \$[] is in accordance with accounting and other records relating to operations carried out on or in connection with the Leased Premises.
 - (b) such records have been properly maintained so as to record all revenues received by the Lessee.
 - (c) the records kept and all practices procedures processes systems and controls for keeping records of all Generated Revenue and Community Grants Fund and of all transactions relevant to Generated Revenue and Community Grants Fund:
 - [A] are adequate for the purpose of achieving integrity and completeness of record.
 - OR
 - [B] need modification to achieve the purpose of integrity and completeness of record as follows:
[].

(Signed)
Registered and certified
practising public accountant(s)

- NOTE - Certificate to be provided on accountancy firm's official letterhead
- Paragraph [A] or paragraph [B] may be deleted.
 - Please complete paragraph [B] if it is not deleted.

Annexure 3
TENANCY PLAN

WELLINGTON NATIONAL PARK



Pt	mE	mE
A	405000.70	6303602.16
B	404661.14	6303728.87
C	404664.65	6303723.95
D	404641.67	6303712.97
E	404616.20	6303708.48
F	404612.15	6303727.00
G	404612.17	6303730.49
H	404614.64	6303732.08
J	404614.18	6303744.49
K	404615.64	6303750.07
L	404631.32	6303763.56
M	404663.87	6303763.88
N	404663.12	6303739.80
O	405005.23	6303614.40

KE

Coordinates 'about' only - based on GPS field survey supplied by Wellington District.

FOREST LEASE 2202/100				 SCALE 1 : 4 000
LESSEE	The National Trust of Australia (WA)			
LGA	SHIRE OF DARDANUP & SHIRE OF COLLIE	AREA	Abt 0.67ha	 Department of Environment and Conservation
LAND DISTRICT	WELLINGTON	DRAWN	CB 11/11/09	
DEC DISTRICT	WELLINGTON	CHECKED	RD 12-11-09	
PLAN	2031-2 (BUREKUP) - ER.59	FILE No.	2009/002752-1	