

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

LOAN COPY

I hereby certify that the within is a true and correct copy of Lease  
No. 2270/100.

*Kj M Nana*  
Mr Keiran McNamara  
Director General - Department of Environment and  
Conservation

2404

## LEASE OF CROWN LAND (L)

### DESCRIPTION OF LAND (NOTE 1)

Part Reserve 50325

### EXTENT

Part

### VOLUME

### FOLIO

### ENCUMBRANCES (NOTE 2)

Nil

### LESSOR/S (NOTE 3)

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of Hackett Drive Crawley, Western  
Australian

### LESSEE/S (NOTE 4)

HYPERMARKET PTY LTD of 143 Knight Terrace, Denham, Western Australia

### TERM OF LEASE (NOTE 5)

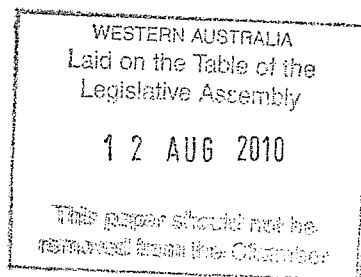
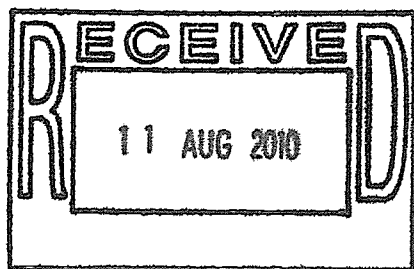
TWENTY ONE (21) Years with one option to renew for a further 21 years.

THE LESSOR LEASES TO THE LESSEE the land above described subject to the encumbrances shown hereon

#### RENTAL (note 7 & 8)

For the first year of above term for the yearly rental of \$4,000.00 in accordance with the provisions of clause 3  
of the lease and then each year in accordance with the terms and conditions contained in the lease.

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.



7500 11A01

2010

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY  
(Lessor)

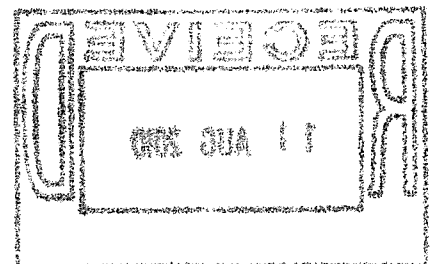
AND

HYPERMARKET PTY LTD  
(Lessee)

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DEED OF LEASE  
LEASE NO. 2270/100

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THIS DEED OF LEASE is made the                      day of JUNE

2010

## BETWEEN

The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of 17 Dick Perry Avenue, Kensington, Western Australia (in this lease called "the Lessor" which expression where the context so admits includes the person for the time being entitled to the reversion immediately expectant upon the termination of the term hereby created) of the first part

## AND

HYPERMARKET PTY LTD of 143 Knight Terrace, Denham, Western Australia (in this lease called "the Lessee" which expression where the context so admits includes its successors and permitted assigns) of the other part.

## RECITALS

- A. Pursuant to Section 155 (2) of the amended *Conservation and Land Management Act 1984* ("the Act") the land in Reserve Number 50325 ("the Land") is vested in the Conservation Commission of Western Australia.
- B. Pursuant to Section 100 of the Act, the Chief Executive Officer (CEO) has power to lease the Land for the purpose of Recreation for a term not exceeding 21 years and to grant an option to renew the lease for a term not exceeding 21 years.
- C. Section 36 of the Act allows for the Conservation and Land Management Executive Body ("**Executive Body**") to be established and to be governed by the CEO.
- D. Section 37 of the Act allows for the Executive Body, as a body corporate, to perform functions of the CEO.
- E. Under an "Agreement in relation to Dirk Hartog Island" signed on 18 July 2005 between the State of Western Australia and the Lessee, the parties acknowledged that a lease (Turtle Bay Lease) is to be granted to the Lessee through the Shire of Shark Bay substantially on the terms set out in Schedule 2 of the Agreement. A "Deed of Variation – Dirk Hartog Island" dated 29 July 2007 varied the original agreement by inserting CALM (DEC) as the Lessor but leaving the terms of the lease unchanged from those included within the original document. The Lessor has agreed to a lease of a portion of Dirk Hartog Island together with all the Lessee's Property which will include buildings erections and other improvements now on or where the context requires hereafter erected thereon (collectively "**the Leased Premises**").
- F. The Lessor has agreed to lease the Leased Premises to the Lessee for the term and at the rental respectively set out hereto and upon and subject to all the covenants agreements and stipulations contained in this lease.

NOW THIS DEED witnesses as follows -

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this lease unless the contrary intention appears: -

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

"Address for Payment" means Department of Conservation and Land Management, 17 Dick Perry Avenue Kensington Western Australia 6152 or such other Place as the Lessor may from time to time nominate;

"Annexure" means an annexure to this Lease;

"Approvals" means the approval of the Lessor, of the Shire of Shark Bay by its health officer or inspector and by its building officer or inspector, of the Water Corporation, of a licensing authority under the *Liquor Licensing Act 1988* and all other approvals consents permissions and licences of any local or other competent authority which may from time to time be necessary for the Lessee to commence and to carry out any development work;

"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 Day" means any day other than a Saturday, Sunday or State public holiday in Western Australia;

"Business Plan" means an outline of the proposed business (Turtle Bay Ecotourism), with a full financial and operating statement, showing 5 and 10 year projections of the Lessee's proposed business undertaking that will be supplied to the Lessor within two (2) years of the submission of the Master Development Plan;

"Calendar Year" means the period commencing on 1 January and ending on 31 December;

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

"Crown" means the Crown in the right of the State of Western Australia and includes agencies and instrumentalities of the Crown;

"DEC" means the Department of Environment and Conservation and its employees;

"Development" means the Turtle Bay Ecotourism facility to be constructed on the Leased Premises being a low impact development comprising:

- (a) up to 20 accommodation units in total, to accommodate a maximum of 45 guests; and
- (b) services necessary to service or support facilities referred to in subclause (a);

"Dirk Hartog Island" means the island of that name on which the Leased Premises is situated;

"Ecotourism" means ecologically sustainable tourism with a primary focus on experiencing natural areas that fosters environmental and cultural understanding, appreciation and conservation;

"Encumbrances" means the encumbrances shown on the front page of this Lease;



"Equipment" means all fixtures, fittings (including mechanical, electrical and gas fixtures and fittings), floor coverings, plant, machinery, equipment, installations, furniture, furnishings and other chattels installed and provided within the Leased Premises (whether by or on behalf of the Lessor or the Lessee) and all items subsequently substituted therefor and all items subsequently added thereto;

"Further Term" means the further term of 21 years of the lease specified in clause 2.2 of the lease;

"Goods and Services Tax" means the tax system described in clause 3.3;

"Governmental Agency" means any government or any governmental, Local Government or authority, semi-governmental, administrative, fiscal or judicial body, department, commission, statutory body corporate established for a public purpose, authority, tribunal, agency or entity;

"Improvement" means any building, fixture, facility, structure or improvement on the Leased Premises constructed after Commencement Date including without limitation the foregoing, the services and the structures, improvements, fixtures and fittings constructed pursuant to the Works;

"Insurance Policies" means each of the insurance policies required to be taken out by the Lessee under clause 3.46;

"Law" includes any Town Planning Scheme, requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether local, state, federal or otherwise;

"Lease" means this lease, as it is amended from time to time, varied, supplemented, replaced, extended, renewed or assigned, as permitted by this Lease, and includes any deed of variation of this lease;

"Leased Premises" means the area of approximately 2.5 hectares situated within the Dirk Hartog Island National Park which is shown hatched on the plan annexed hereto ;

**Lessees Agents** means:

- (a) the permitted sub lessees, permitted assignees, employees, agents, contractors, invitees and licensees of the lessee and
- (b) any person on the leased premises by the authority of a person specified in sub clause (a)

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

"Lessee's Property" means any accommodation, cabins, signs, buildings, fixtures, fittings, plant, equipment, goods, chattels or other articles brought onto the Leased Premises by the Lessee;

"Master Development Plan" means the overall concept plan of the Turtle Bay Ecotourism facility which is to be developed by the Lessee within two (2) years of the Commencement Date and is held in the office of the Department of Environment and Conservation at 17 Dick Perry Avenue, Kensington, and approved

by the Lessor, with such consideration and approval not being unreasonably delayed;

**"National Park"** means Reserve Number 50325 – Dirk Hartog Island National Park;

**"Permitted Use"** means the use of the Leased Premises described in clause 3.23 of the Lease;

**"Rate"** means that rate of interest which is 2% per annum higher than the loan reference rate published from time to time by the Commonwealth Bank of Australia, Perth or if that loan reference rate is no longer published, such rate of interest which is 2% per annum higher than the rate of interest which is in the opinion of the General Manager of the Perth Capital office of the Commonwealth Bank of Australia equivalent to that loan reference rate;

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

**"Rent"** means the rent set out on page 1 hereof as varied under this lease;

**"Rent Review Date"** means every third anniversary of the completion of the Works;

**"Services"** means all utility services including water supply, gas, sewerage, waste disposal, drainage, electricity, gas reticulation and telecommunication facilities;

**"Site Development Plan"** means the approved drawings, plans, specifications and details for the Development, including those matters specified in the approved Master Development Plan;

**"subsidiary legislation"** includes any proclamation, regulation, rule, by-law, local law, order, ordinance, notice, rule of court, 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 Criteria Schedule"** means the schedule developed jointly between the Lessor and the Lessee which sets out benchmarks for the Lessee as provided in clause 3.65 and comprises Annexure 1 to this lease;

**"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;

**"Termination Date"** means the expiry of the Term or expiry of a renewed Term or the nominated date in accordance with Clause 5.2;

**"Works"** means the buildings, alterations to buildings, improvements, installations and structures (including but not limited to water reticulation systems, bollards and shade shelters) to be constructed and carried out within the Leased Premises as set forth in clauses 3.4 and 3.5 and detailed in the approved Master Development Plan and Site Development Plan, together with siteworks, landscaping, the supply and installation of all fixtures, fittings, plant and equipment, and such other obligations which the Lessee must undertake pursuant to the provisions of this lease;

## 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 Schedules and Annexures to this lease;
  - (iv) a person includes a corporation and vice versa;
  - (v) a Schedule or Annexure means a Schedule or Annexure to this lease;
  - (vi) the Law Society, the Australian Institute of Valuers and Land Economists (Inc.) (Western Australian Division), the Institute of Chartered Accountants and any other authorities, associations and bodies whether statutory or otherwise, in the event of any such authority, association or body ceasing to exist or being re-constituted or re-named or replaced or the powers or functions thereof being transferred to any other authority, association or body established or constituted in lieu thereof or (as nearly as may be) succeeding to the powers or functions thereof; and
  - (vii) 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-Lessees, licensees and invitees.

## 2. GRANT OF LEASE

### 2.1 Lease

- (a) 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 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 3 of the *Town Planning and Development Act* then this lease shall be expressly subject to and conditional upon the granting of such consent.

### 2.2 Option

If the Lessee shall at least three (3) months prior to the end of the Term but not earlier than six (6) months prior to the end of the Term give to the Lessor written notice of the desire of the Lessee to renew the Term hereby created subject to the prior completion of all the Works by the Lessee in accordance with clauses 3.4 and 3.5 and the prior achievement by the Lessee of the environmental/ecological benchmarks in accordance with clause 3.66 and PROVIDED THAT the Lessee shall not at the time of giving such notice be in default in performing and observing the covenants and conditions to be performed and observed by the Lessee hereunder and PROVIDED specifically that the Lessee shall not at the time of giving such notice be in rental arrears then the Lessor shall extend and renew this lease of the Leased Premises and the Term hereby created 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) as are herein contained or implied but at an annual rent which shall be determined in the manner provided in clause 3.2.

## 3. COVENANTS BY LESSEE

The Lessee COVENANTS with the Lessor:-

### 3.1 To Pay Rent

To pay to the Lessor the amount of Rent set out on page 1 in two half yearly instalments, the first payment to be paid on the Commencement Date; the second payment to be paid 6 months after the Commencement Date. Payment of Rent for each of the following years of the Term will be on the anniversary of each initial payment dates.

### 3.2 Rent Review

#### CPI

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

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

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

Where :

- A = the amount of the reviewed rent which is payable from (and including) the relevant CPI Review Date.
- B = the last quarterly CPI Index Number published before the relevant CPI Review Date.
- C = the last quarterly CPI Index Number published before the previous rent review date (or in the case of the first review, before the Commencement Date).
- D = the amount of the rent applying immediately before the relevant CPI Review Date.

### Interpretation

In this Lease :

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

**CPI Review Date** means each third anniversary of the completion of the Works.  
**rent review date** includes each CPI Review Date.

### 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 dates for review of the rent specified in this clause 3.

## 3.3 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 and services under the lease.

(d) **Reimbursements**

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

**3.4 Lessee's Development Obligations**

The Lessee shall develop the Leased Premises in accordance with the approved Site Development Plan.

**3.5 Completion of Works**

Without limiting the generality of clause 3.4 the Lessee shall in accordance with the approved Site Development Plan and to the reasonable satisfaction of the Lessor complete the Works in the following manner:

(a) **Drawings and Specifications**

The Lessee shall submit to the Lessor for approval working drawings and specifications including drawings of sections, construction details and landscaping and details of finishes with respect to each part of the Works prior to commencement, construction or installation of that part of the Works PROVIDED THAT any approval of a plan design or specification given by the Lessor hereunder shall be construed only as an acknowledgment that such plan, design or specification is in general accord with the Lessor's requirements hereunder, but shall not constitute an acknowledgment or admission that such plan, design or specification is correct in detail as to measurement, dimensions, materials or in any other particular the responsibility for which shall remain with the Lessee. All structures, plant and equipment shall be designed to provide a consistent visual theme throughout the Leased Premises consistent with the ecological, environmental and conservation values of the National Park.

(b) **Approvals**

The Lessee shall apply for and do all things necessary to obtain with respect to each part of the Works, all Approvals prior to commencement of each respective part PROVIDED that if, notwithstanding the Lessee's efforts in this regard, any Approvals required for the Works cannot possibly be obtained, the Lessee shall not be obliged to carry out the Works for which Approvals cannot possibly be obtained.

(c) **Execute Works**

Subject to all Approvals from time to time necessary being obtained and continuing in force, the Lessee shall at its own expense diligently carry out and complete each and every part of the Works:

- (i) in a proper and workmanlike manner and with sound materials of their respective kinds and, unless otherwise approved by the Lessor, shall provide all new materials in carrying out the Works and ensure that all materials and workmanship are of the highest quality and comply with the relevant standard or standards of the Standards Association of Australia;
- (ii) in accordance with the terms of all Approvals and otherwise in compliance with all conditions subject to which Approvals are granted; and
- (iii) in conformity with the provisions of all applicable laws, Acts, statutes, rules, regulations, bylaws, orders and ordinances (State, Federal or local); and
- (iv) otherwise in accordance with the provisions of this lease;

(d) **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 secure all materials and building plant and equipment which are immediately required. Other materials (as determined by the Lessor) may be placed within the Leased Premises, but only in accordance with directions and conditions prescribed by the Lessor;

(e) **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;

(f) **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;

(g) **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;

(h) **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;

(i) **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 government, local government or other competent 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 any of its obligations under this lease, including (without limitation) under clauses 3.4 and 3.5;

(j) **No representation - Site**

The Lessee acknowledges that no representation is made or warranty given by the Lessor that the Leased Premises or any other part of the Leased Premises is fit or suitable for the carrying out of the Works or any part thereof or for conducting the Lessee's business or activities thereon and no defect which may be found to exist in the site of any part of the Works shall in any way relieve release reduce lessen or affect the obligations of the Lessee under this lease;

(k) **Latent Conditions**

- (i) The Lessee shall inform itself of all relevant information relating to the site of the Works to be carried out, constructed or erected within the Leased Premises and of all services within and in the vicinity of the Leased Premises associated with those Works and of all relics and artefacts including historic, prehistoric, archaeological, indigenous and aboriginal and of all matters of mythological, cultural, indigenous, aboriginal, or heritage significance and shall make its own assessment of all risks and of all 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 shall 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;
- (iii) The existence of any Latent Condition shall not affect the Lessee's liability to carry out and complete the Works and shall not impose



any burden, obligation, liability, duty or responsibility whatsoever on the Lessor.

(l) **Water and Electricity Services**

To provide and connect all necessary water and electricity services to the various portions of the Leased Premises from Sammy's Well or other water sources provided by the Lessee and the electrical installation provided by the Lessee. The Lessee acknowledges and agrees that the water obtainable from the bore outside the Leased Premises is not potable and the Lessor gives no warranty, representation, undertaking or assurance with respect to the quality, potability, suitability or fitness of the water for drinking or any other use, purpose or consumption whatsoever. The provisions of clause 3.48 apply in respect of the use or consumption of the water by the Lessee and any other person.

(m) **Expansion of Water and Electrical Services**

If the capacity of the water service or the electricity supply or the sewerage installation now provided by the Lessee or provided in accordance with the terms of this lease by the Lessee in future to any portion of the Leased Premises is insufficient or unsuitable for the requirements of the Lessee, the Lessor shall not be required, obliged or responsible to provide any increase in such capacity or to provide any contribution to the Lessee's costs of expanding the capacity of such a water service, electricity supply or sewerage installation, and the Lessee shall not have or make or bring any action, suit, claim, demand or proceeding against the Lessor in respect of the foregoing, and shall indemnify and keep indemnified the Lessor from any action, suit, claim, demand or proceeding by any other person in respect thereof or in consequence thereof. The Lessor will however give consideration to any reasonable request by the lessee for access to water off the Leased Premises to meet such a requirement.

(n) **Sewerage Installation**

At the cost of the Lessee to install an ecologically acceptable sewerage disposal system or sewerage disposal systems approved by the Lessor within a site or sites approved by the Lessor as part of the Works to be undertaken by the Lessee on the Leased Premises.

(o) **Sewerage Capacity**

The said system or systems shall be constructed to service the Leased Premises.

(p) **Gas Installations**

- (i) As part of the Works and subject to all Approvals to install at the Lessee's expense, gas storage tanks within the Leased Premises;
- (ii) To install the approved gas storage tanks with adequate screens and in a location and in a manner and to a standard approved by the Lessor.

(q) **Maintain Installations**

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

(r) **Property in Works**

All Works listed in paragraphs (a) and (b) of this clause 3.5 shall be and become the absolute property of the Lessor upon the date of completion of each of those Works and shall thereafter comprise part of the Leased Premises.

(s) **Fencing**

The Lessee:

- (i) must, prior to the commencement of the Works, fence or otherwise mark out so as to permanently identify the external boundaries of the Leased Premises to the satisfaction of the Lessor;
- (ii) must maintain and keep in good repair any fence or other marker around or on the perimeter of the Leased Premises, to the satisfaction of the Lessor.

**3.6 To pay outgoings**

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 any business conducted at or from the Leased Premises, 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, (instead of the Lessee being assessed to pay land tax in respect of the Leased Premises, which will be the case immediately following the Commencement Date) then the Lessee will only be obliged to pay land tax 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*), and the Lessor agrees to pay or discharge the balance (if any) of any land tax imposed upon the Lessor.

**3.7 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.

### **3.8 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.

### **3.9 Comply with Acts**

At all times during the Term to duly and punctually 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 hereafter in force and all requirements and orders of any authority (statutory or otherwise) 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;

### **3.10 Compliance with Local Government Act**

Notwithstanding that the *Local Government Act 1995* and the subsidiary legislation made under it, including the *Building Regulations 1989*, 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* 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 such requirement which is waived in writing by the Lessor. The Lessor may engage any local government, consultant, or expert to advise it whether or not the Works to be carried out by the Lessee pursuant to this lease meet those requirements;

### **3.11 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 local or public authority or by order or in pursuance of any statute or subordinate or subsidiary legislation (State, local or Federal) now or hereafter in force including (without limitation) all structural, electrical, telecommunications and plumbing works, alterations and improvements;

### **3.12 To Transmit Notices**

To furnish within seven days of the receipt of the same a copy of all notices received by the Lessee (whether from any licensing, local or other competent 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.

### **3.13 Visitors' Statutory Duty**

At all times during the Term to use its best 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 now or hereafter in force and all requirements and orders of any authority (statutory or otherwise) which relate to the duty of any person entering or who has entered the Leased Premises;

### **3.14 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 the preceding subclause and immediately inform the Lessor of any such exclusion and of any other non-compliance within the Park of which the Lessee is aware, to give the Lessor the opportunity to respond thereto as the Lessor in its discretion sees fit.

### **3.15 Maintenance of Leased Premises**

At the Lessee's own expense to keep and maintain the Leased Premises and every part thereof and all buildings structures pavements improvements fixtures and fittings (both internal and external) comprised and situated therein and any addition thereto 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 promptly replace all broken and faulty electric light globes and tubes and all cracked and broken glass AND to keep all gardens and grounds forming part of the Leased Premises well tended, neat, safe, in good order and condition and in accordance with the landscape design approved as part of the Site Development Plan.;

### **3.16 Provide fixtures fittings and chattels**

At all times during the Term to provide and install fixtures, fittings, mechanical, electrical and gas fixtures and fittings, floor coverings, plant, machinery, equipment, furniture, and other chattels within and to the Leased Premises which are safe and of good quality and standard consistent with the standard expected of a good quality facility which is open to the public, to enable the business of the Lessee to be conducted throughout the Term in accordance with standards principles and methods applicable from time to time;

### **3.17 Maintain and replace**

To keep and maintain all the items provided and installed pursuant to the preceding subclause 3.16 and all parts thereof (including fixtures and fittings within the Leased Premises) and all replacements in good, safe and substantial repair order and condition and (where applicable) in good working order and condition, properly oiled, adjusted, serviced, covered, protected, painted and in a fully operating and functioning condition AND to replace with articles of the same nature, of equal value and in good, safe condition all items and parts thereof which during the Term of this lease shall have been lost damaged or destroyed or in any way rendered unserviceable or useless or which shall have ceased to be in good, safe and sound repair, working order and condition;

### **3.18 To paint and decorate**

At appropriate times as the need arises but in any event during or before each successive seventh (7<sup>th</sup>) year from completion of the development works with paints and in colours first approved of in writing by the Lessor, to paint with at least 2 good 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 health authorities and the local government;

### **3.19 To Refit and Refurbish**

Notwithstanding the provisions of clause 3.2.1 during each ninth year of the Term and of any renewed term calculated from the completion date of the works in consultation with the Lessor with the Lessor acting reasonably to refurbish the Leased Premises, which refurbishment (without limiting the generality of the foregoing) shall include removal, repair and replacement (as appropriate) of corroded, worn, weathered building fabric, materials and surfaces including structural fabric and materials removal and repairs of electrical wiring and electrical fixtures and fittings repainting replacement of signs and refurbishing of the fixtures and fittings within the Leased Premises, replacement of floor coverings and window treatments, furniture, furnishings, painting, colouring, varnishing and papering all parts which have previously been painted, coloured, varnished or papered to ensure that the Leased Premises including ceilings, walls, floors, fixtures, fittings and signs maintain a high standard of presentation, appearance and design, unless otherwise approved by the Lessor;

### **3.20 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 shall as soon as practicable, diligently rebuild, replace or repair, as the case requires, those buildings and improvements in order to maintain continuity of the Lessee's business of an ecotourist facility at the Leased Premises.

### **3.21 Not to damage buildings**

Except with the prior written consent of the Lessor, not to cut maim or injure any walls or timbers of the buildings from time to time on the Leased Premises unless for the purpose of making good any defect in the buildings for which the Lessee is responsible.

### **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 *Conservation and Land Management Act 1984*. 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 that Act.

- (b) The Lessor may after giving at least 48 hours 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 equipment or facilities in or on the Leased Premises;
- (iii) maintain, repair, alter or remove any electricity, gas, water, sewerage, drainage or telecommunications services ("the 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 or has not been done properly;
- (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 obligations under this lease

- (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); and
- (ii) use its best endeavour to minimise disruption to the Lessee's business; and
- (iii) make good any damage to the Lessee's Property (other than minor damage) caused by the Lessor.

### **3.23 Use of Leased Premises**

To actively use the Leased Premises for the purpose of carrying on in a proper, efficient, prudent and businesslike manner in accordance with its Business Plan and this lease the business of a short term low impact ecotourism facility and for such other purposes as are incidental to the carrying on of that 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, with respect to the use of which each of the individual parts of the Leased Premises must be put in accordance with the Lessee's Covenants:-

- (a) to manage, conduct and control at all times in good faith and to a prompt, efficient and high standard and in an orderly and reputable manner, each

business and activity thereon and each provision of service to the public, limited in some cases 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;
- (c) to meet the realistic and reasonable expectations of the public.

### **3.25 Inadequacy of Service**

If the standard of service provided by the Lessee, is in the reasonable opinion of the Lessor, not of a standard which meets the requirements of the immediately preceding subclause, the Lessor shall notify the Lessee and detail its concerns and give the Lessee the opportunity to agree and remedy such concerns as soon as possible. Should a satisfactory resolution not be reached, then the Lessor may give written notice to the Lessee ("the Notice of Inadequacy") requiring the Lessee to provide a service that meets the required standard and giving particulars of the way in which the services provided is inadequate to meet the said standard. The Lessee shall promptly comply with the Notice of Inadequacy.

### **3.26 Staff Accommodation Numbers**

The Lessee must ensure that only the number of staff reasonably needed to service visitors and tourists using the Leased Premises to remain and reside on the Leased Premises (as identified in the Approved Site Development Plan) on a long term basis;

### **3.27 Not to Pollute**

To do all things necessary to prevent, and not to do or permit or suffer to be done anything likely to cause, pollution, degradation or contamination of the Leased Premises by garbage, refuse, waste matter, oil, liquid fuels, noise, sewage or other pollutants or 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, to regularly collect and dispose 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 Lessor or by the authorities (State Federal and local) having control over the disposal of waste matter and the protection of the environment from time to time, and to remove all garbage refuse and waste from the Leased Premises at regular intervals by means of the service provided by the local government or a contractor engaged and paid for by the Lessee.

### **3.28 Ground Water**

To take all necessary measures and precautions to prevent the pollution of the ground water whether caused by sewage or by fertilizer leaching from fertilized lawns and gardens or from any other substance or source;

### **3.29 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 the garden purposes or any plants or any vegetable material unless prior to the introduction of soil, mulch, plants, vegetable or any other material a certificate of a qualified person approved by the

Lessor 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 the purpose that the substance, plant or material to be introduced is free from any pollutant or contaminant and free from any plant disease, weed or fungus;

### **3.30 Handling of Pollutants**

- (a) 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;
- (b) To construct effective bunding for all fuel storage and pumping installations on the Leased Premises to prevent the accidental discharge of pollutants, contaminants, or other material into the water table;
- (c) Not to store or use flammable or explosive substances in the Leased Premises except those normally used for any activity included in the Permitted Use but then only if they are stored in proper containers and used only in accordance with all relevant Laws and the requirements of any relevant Governmental Agency;

### **3.31 Not to Overload**

Not to do or permit or suffer to be done upon the Leased Premises anything which might result in excessive stress, strain, or floor loading to any building on the Leased Premises.

### **3.32 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 in a normal appliance ordinarily used in connection with a business or use authorised by the Lessor to be carried on upon the Leased Premises.

### **3.33 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 local or public authority, body or person or within the meaning of any law, statute or subordinate or subsidiary legislation (local, 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 Leased Premises or the use or occupancy of the Leased Premises AND forthwith to abate any such nuisance and to carry out and comply with all the provisions of all such laws, statutes and subordinate or subsidiary legislation and of every requisition and order of any local or other public authority relating to such nuisance.

### **3.34 Not to cause or permit nuisance**

Not to leave, do, exercise or carry on or permit or suffer any other person or persons to leave, do, exercise or carry on in the Leased Premises or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling or any act, matter or thing whatsoever which by sight, sound or smell shall or may be or become or cause annoyance, nuisance, grievance, damage or disturbance to any person within or beyond the Leased Premises.



### **3.35 Not to permit violent behaviour**

Not to encourage, permit or suffer any violence abuse or offensive behaviour by any person to arise or continue within the Leased Premises and to promptly remove or arrange the removal from the National Park of any violent, abusive or offensive person.

### **3.36 Pay Lessor's expenses in relation to Lessee's Covenants**

To pay to the Lessor on demand all reasonable 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 rectifying any pollution or contamination referred to in the preceding provisions of this lease and which contrary to the agreement therein contained the Lessee neglects or fails to perform discharge execute abate or rectify and to pay those sums of money to the Lessor notwithstanding that by any statute by-law or regulation the Lessor is 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 thereof.

### **3.37 Assignment (Works in progress)**

From the Commencement Date until completion execution and provision of all the Works defined in the approved Site Development Plan and all works associated therewith which the Lessee must complete and execute prior to the time specified in clause 3.4, not to assign, sub-let, license, sublicense 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 without the prior consent of the Lessor.

### **3.38 Assignment (Works not in progress) and Mortgage**

Subject to the preceding subclause 3.37 not to assign, sub-let, license, sublicense, 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, sublicense, sublease, mortgage, charge or other encumbrance or parting with possession or disposition other than in terms of this clause 3.38 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 sublicense 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 should the Lessor in its absolute discretion choose to make separate enquiries) that the

proposed assignee, sublessee, licensee or sublicensee has suitable skills and expertise to conduct the commercial ecotourism 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 sublicense (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 sublicense 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 to duly observe perform and comply with 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 the respectability, responsibility, suitability and solvency of any proposed assignee, sublessee, licensee or sublicensee;
- (c) if the proposed assignee, sub-lessee, 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 moneys payable by the Lessee arising from this lease; or
  - (ii) in the case of a sub-lease, 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, sub-lessee, 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.

### **3.39 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. In the event that the lease is assigned, the Lessee shall only be liable to the extent of 10 years from the transfer of the lease or the balance of the current Term whichever is the lesser.

### **3.40 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 this clause.

### **3.41 Property Law Act 1969**

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

### **3.42 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;
  - (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;
- (f) no notice under section 63 of the *Trustees Act 1962* or any equivalent provision has been published in connection with the trust.

### **3.43 Pay Lessor's Costs**

To pay on demand the Lessor's solicitors agreed costs of and incidental to the preparation execution and stamping of this lease and all copies of it (including all proper instruction fees, drafts, amendments and redrafts) and to pay to the Lessor on demand by it all agreed costs (including legal costs), charges and expenses for which the Lessor becomes liable in consequence of or in connection with any default by the Lessee in performing or observing any covenants conditions or stipulations contained or implied in this lease and on the part of the Lessee to be performed or observed including (but without limiting the generality of the foregoing) 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 requiring the Lessee to remedy a breach of the covenants conditions or stipulations contained or implied in this lease notwithstanding that forfeiture for such breach is avoided otherwise than by relief granted by a court of competent jurisdiction.

### **3.44 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 of the Lessee is of a commercial nature and will entail the affixing or display of signs and notices of a reasonable and appropriate nature.

### **3.45 Indemnities**

#### **(a) By the Lessee**

The Lessee shall 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 such liability loss damage illness or injury is caused or contributed to by:

- (i) the act, negligence, omission or default of the Lessee or a Lessee's Agent; or
- (ii) some risk danger or hazard created, assumed or accepted by the Lessee or a Lessee's Agent, 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 shall 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);
- (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 clause 3.45(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 hereafter have or but for this clause 3.45(c) might have had against the Lessor.

(d) **Interpretation**

For the purposes of this clause 3.45 the expression "in upon or near the Leased Premises" shall be deemed to include (without limitation) the area of National Park surrounding the Leased Premises.

**3.46 Insurance**

To insure and keep insured in the name of the Lessee under a policy of insurance on which the interest of the Lessor is noted the erections buildings structures and improvements now or at any time during the Term on the Leased Premises against loss destruction or damage by fire flood earthquake lightning storm and tempest and such other risks as the Lessor may from time to time reasonably require including but not limited to damage to or destruction of any plate glass windows screens mirrors doors advertisements and other parts of such erections buildings structures and improvements to their full reinstatement and replacement (new for old) value with a reputable and substantial insurance office and to pay the premiums necessary for the above purposes on or before the days on which the same respectively become due and whenever so requested to produce to the Lessor or its agents the policy or several policies of such insurance and the receipts for the current year's premiums AND to cause all moneys received by virtue of such insurance to be laid out in repairing rebuilding or reinstating the Leased Premises so lost damaged or destroyed and to make up any deficiency out of the Lessee's own money PROVIDED ALWAYS that if the Lessee fails to effect and maintain any such insurance the Lessor may from time to time at its discretion effect and keep on foot such insurance and the Lessee must on demand repay to the Lessor all agreed sums of money expended by the Lessor for that purpose.

### **3.47 Not to Invalidate Insurances**

Not to do or permit or suffer to be done anywhere any act omission neglect or thing 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 thereunder may be increased or the coverage thereunder may be reduced.

### **3.48 Public Risk Insurance**

To effect and keep effected in respect of the Leased Premises adequate public risk insurance 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 such higher amount in substitution for the first mentioned amount as may be agreed or determined from time to time under this provision) with an insurance company approved by the Lessor (which approval must not be unreasonably withheld) and to notify the Lessor of the details of that public risk insurance and to ensure that such insurance conforms to the reasonable requirements from time to time of the Lessor of which the Lessee is given notice and:-

- (a) if required by the Lessor to produce the policy of insurance to the Lessor;
- (b) to deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a valid certificate of currency in respect of such insurance policy issued by the insurance company with which the policy has been effected; and
- (c) not to alter the terms or conditions of such policy without the prior written approval of the Lessor and to forthwith deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in respect of any insurance policy effected by the Lessee pursuant to this clause,

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 specified above in this clause (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 5.7.

### **3.49 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 contained in this lease.

### **3.50 To Remove Moveable Property on request**

- (a) At or prior to the expiration of the Term or forthwith upon the earlier termination of the Term to take remove and carry away from the Leased Premises any of the Lessee's Property brought into or onto the Leased Premises by or on behalf of the Lessee as the Lessee shall decide or the Lessor shall in writing require the Lessee to remove;

- (b) The Lessee must on such removal forthwith rehabilitate those areas of the Leased Premises to the condition at the beginning of the lease term to the reasonable satisfaction of the Lessor;
- (c) Not at any time prior to the expiration of the Term or the earlier termination of the Term to remove any plant, equipment, installations, fixtures or fittings or articles or Lessee's fixtures including mechanical, electrical, water and gas plant, equipment, installations, fixtures and fittings and the accommodation, without the prior written consent of the Lessor, EXCEPT for the purpose of repair, maintenance or replacement thereof.
- (d) SUBJECT to the provisions of paragraphs (a) and (b) of this clause 3.49 all property brought onto the Leased Premises by or on behalf of the Lessee and not removed by the Lessee in accordance with those paragraphs shall be and remain the absolute property of the Lessor.

### **3.51 Lessor's Alterations and Improvements**

To permit the Lessor and the agents of the Lessor at any time during the Term with the approval of the Lessee with such approval not unreasonably withheld, to carry out such agreed alterations and improvements to the Leased Premises or any part of the Leased Premises the Lessor reasonably requires (without abatement of rent or liability for compensation) and for that purpose and after communication with the Lessee for the purpose of minimising inconvenience, to enter with or without contractors, agents, workmen, servants and others into and upon such parts of the Leased Premises as are necessary or convenient for the purpose of executing and completing such alterations and improvements PROVIDED that the Lessor in exercising this power must use reasonable endeavours to ensure that the Lessee does not suffer any undue inconvenience.

### **3.52 Not to hold Auctions**

Not to hold on the Leased Premises nor advertise as being held on the Leased Premises nor permit or suffer any person to hold or advertise as being held on the Leased Premises any sale by auction (public or private) of any, real or personal property whatsoever.

### **3.53 Fire Prevention**

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

- (a) the *Bush Fires Act 1954* 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.

### **3.54 Fire Control**

To immediately:

- (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.

### **3.55 Prohibited Fires**

Not to do anything which causes or may cause a fire on the Leased Premises which is prohibited by law or by a direction of the Lessor or of an Authority or which is dangerous or not properly controlled or is likely to become dangerous.

### **3.56 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.

### **3.57 Timber**

This lease does not grant to the Lessee any rights to forest produce as defined in the *Conservation and Land Management Act 1984* and the provisions of Section 96(4) of the *Conservation and Land Management Act 1984* are hereby expressly excluded.

### **3.58 Trees and Vegetation**

SUBJECT as hereinafter provided, to take all reasonable actions measures and precautions necessary to protect the 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 3.59, 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*, in relation to the Leased Premises, as required by that Act.

### **3.59 Dangers or Threats to the Public**

To generally take any measures necessary to prevent accidents and to protect the safety of the public on the Leased Premises.

### **3.60 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. The Lessee must not bring onto the Leased Premises any fill soil sand or other material from outside the Leased Premises without the prior written approval of the Lessor.



### **3.61 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; or
- (b) clearing or removing trees or other vegetation from the Leased Premises by any means; or
- (c) altering the contours of the surface of the Leased Premises; or
- (d) depositing any earth, fill or other similar materials on the Leased Premises; or
- (e) altering the natural drainage onto, on or from the Leased Premises; or
- (f) introducing any new flora or fauna to the Leased Premises; or
- (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.

### **3.62 Notify the Lessor of Threats**

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

### **3.63 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. Without limiting the generality of the foregoing, the Lessee must comply with the applicable provisions of the *Environmental Protection Act 1986*, the *Conservation and Land Management Act 1984*, the *Wildlife Conservation Act 1950* and all Rules, Regulations, Notices and Orders thereunder.

### **3.64 Specific obligations**

Without limiting the preceding clause, 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; and
- (b) not cause or allow any pollutant or contaminant material or substance 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.

### **3.65 Access to the Leased Premises**

The Lessee must establish and maintain a track from the Leased Premises to the track through the National Park between Sammy's Well and Turtle Bay Beach, at the Lessee's expense. The location and condition of the access track is to the Lessor's specifications.

### **3.66 Environmental/ecological Benchmarks**

- (a) During the Term of this lease the Lessee will use its best endeavours to achieve the benchmarks for the sustainability of the lease and the continued use by the Lessee of the Leased Premises which are itemised in Annexure 1 of the Sustainability Criteria Schedule attached to and forming part of this lease.
- (b) The Lessor shall have the right to monitor and audit the Lessee's performance, attainment and achievement of the requirements, obligations and standards specified in the Sustainability Criteria Schedule at the times and in the manner specified in paragraph (c) of this clause.
- (c) During the Term and following the completion of Works, the Lessee will be audited annually against sustainability benchmarks listed under Annexure 1. The mechanism and cost, including travel costs for auditing will be reviewed and agreed in consultation with the Lessee by December of each year of the Term.
- (d) The Lessee shall pay to the Lessor on demand the agreed 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 Criteria Schedule.
- (f) The Lessor shall, upon completion of each audit of the Lessee's performance as aforesaid, review and, by notice in writing to the Lessee, set a meeting date to negotiate any amendment, variation, modification, new items or benchmarks that the Lessor sees fit to amend or include in the Sustainability Criteria Schedule. The Lessee must respond to the Lessor's request for a meeting within fourteen (14) days after the date of the Lessor's notice hereinbefore referred to.
- (g) The Lessor shall provide a varied Sustainability Criteria Schedule within thirty (30) days of those items agreed to under 3.66(f) and the variations, modifications, new items or benchmarks shall take effect and become binding on the Lessee on receipt of that aforementioned varied Schedule.

### 3.67 Specific Requirements relating to the Protection of Turtles and Their Environment

- (a) The Lessee acknowledges that:
  - (i) the beach areas surrounding the Leased Premises are used for nesting by the Loggerhead Turtle, which is listed as "endangered" under the *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)* and "rare and likely to become extinct" under the *Wildlife Conservation Act 1950*;
  - (ii) artificial light is a cause of disturbance to nesting female loggerhead Turtles and unnatural mortality to hatchling Turtles.
- (b) In order to minimize impacts on the Turtle and Turtle nesting sites and to generally protect the environment, the Lessee must:
  - (i) ensure that the Development and any improvements to be constructed on the Leased Premises are set back from the boundary of the Leased Premises so that no artificial light emitting from any source on the Leased Premises is directly or indirectly visible from any Turtle nesting beach or site, or 1 nautical mile out to sea from any such beach or site;
  - (ii) ensure that any structures to be constructed on the Leased Premises are designed with a minimum use of outdoor light;
  - (iii) ensure that all outdoor lights are sensor operated and have covers to deflect light downwards, to prevent light being directed into the sky;
  - (iv) ensure that all ablution facilities in the Leased Premises are self-contained with no leaching of nutrients to the external environment;
  - (v) ensure that information is given to Lessees' Agents about appropriate access and activity on Turtle nesting beaches near the Leased Premises (including vessels and vehicles) to avoid impact on Turtle breeding activities as may be required by the DEC District Manager from time to time and the Lessee shall observe all instructions in relation to protection of nesting Turtles and rookeries, issued by the DEC District Manager from time to time.

### 3.68 Care of the National Park

- (a) **Flora and Fauna**

To protect and not cause damage to flora, fauna and improvements and natural features within the National Park.
- (b) **Vegetation**

Not to, and to ensure that its employees do not, cut-down, fell, injure, top, lop or destroy any living or dead vegetation standing or growing within the National Park without the prior consent in writing of the Lessor (SUBJECT to clause 3.61(b)).

(c) **Only Indigenous Plants**

Not to plant on nor bring onto the Leased Premises or National Park any plants or seeds which are not indigenous to the locality, except where such plants or seeds may be specified by the Lessor.

(d) **Comply with Directions**

Within the Leased Premises to take active and appropriate steps and to comply with the directions of the Lessor to assist the proper growth, development and welfare of all natural flora and fauna, the prevention of erosion and to cooperate in implementing control measures with regard thereto.

(e) **Notify Risk**

To immediately notify the Lessor of any environmental accident or pollution risk of which the Lessee is aware.

**3.69 Danger and First Aid**

(a) **Eliminate Danger**

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

(b) **First Aid Facilities**

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

**3.70 Fire Control and Emergency Procedures**

(a) **Fire Control**

To undertake all appropriate fire control measures within the Leased Premises, including the provision of appropriate fire fighting equipment pursuant to the relevant Act, fire alarms, appointment of a fire warden, establishment and supervision of evacuation procedure, notices to the Public and to the Lessor, communication with the Lessor and compliance with requirements of the Lessor's fire warden in carrying out procedures for fire prevention fire control and evacuation.

(b) **Preventative Procedures**

To provide and implement work procedures to minimise risk of fire to bush, due to use of machinery and other causes and risk of fire due to any other activities of the Lessee pursuant to this lease and to immediately report situations of fire risk and identified fire sources to the Lessor's fire warden.

(c) **Emergency Procedures**

To comply with the Lessor's directions and to initiate procedures subject to the Lessor's directions for control and evacuation and to fully inform all the public within the Leased Premises in the event of a fire emergency.

### 3.71 Animals

(a) **Unwanted Animals**

Not to permit any domestic, exotic and feral animals (including birds and fish) onto the Leased Premises or the National Park and to endeavour to capture any such animal which is within the Leased Premises and to remove it from the National Park.

(b) **Report**

To report to the Lessor the presence of any domestic, exotic or feral animal (including birds and fish) within the Leased Premises which has been observed by the Lessee or its employees or agents.

(c) **Exclusion**

To co-operate with the Lessor to exclude from the Leased Premises any person who is accompanied by an animal (provided that guide dogs for the blind and animals engaged in search and rescue may be admitted when under active supervision).

## 4. COVENANTS BY LESSOR

The Lessor COVENANTS with the Lessee

(a) **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.

(b) **Exceptions**

The disclosure of any information -

- (i) which is now or hereafter comes into the public domain or which is properly obtainable with reasonable diligence from sources other than the parties;
- (ii) which is required by law to be disclosed to any person who is authorised by law to receive it;
- (iii) by the Minister of the Crown charged with the administration of the Act or of the Lessor to the Parliament of Western Australia, or by any employee of the Lessor or of the State of Western Australia to any other employee of the Lessor or of the State of Western Australia for the purposes of and pursuant to their employment;
- (iv) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the Lessor is a party;

- (v) to any lawyers, accountants, consultants or advisers to the Lessor who have in writing agreed for the benefit of the Lessee to be bound by this clause as though they were a party to this lease; or
- (vi) for the purpose of enforcing the Lessor's rights and remedies under this lease;

is not subject to the restriction imposed by subclause (b) of this clause 4.

## **5. MUTUAL COVENANTS**

The Lessor and the Lessee MUTUALLY COVENANT AGREE AND DECLARE

### **5.1 (a) Default by Lessee**

That if during the Term the Rent payable or any part of it is at any time unpaid for 60 days after becoming due whether formally demanded or not; or if 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 if 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 subclause (b) of this clause is given by the Lessor; or if 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 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 (not being a failure to pay Rent or other money payable to the Lessor under this lease) is capable of being remedied by the Lessor; then 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; and

### **(b) Content of Notice**

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

### **5.2 Termination of Lease by Lessee**

That in the event the Lessee deems the lease is unviable, then the Lessee may give the Lessor twelve (12) months written notice to vacate the Leased Premises. The Lessee must comply with the Lessor's direction for rehabilitation of the Leased Premises.

### **5.3 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.

### **5.4 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 shall 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.

### **5.5 Holding Over**

That 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 or the Further Term the Lessee will hold the Leased Premises as a monthly Lessee at a rent equal to the Rent calculated as prescribed in clause 3 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, unless otherwise agreed, be terminated by one month's notice given by either party which notice may be given so as to expire at any time.

### **5.6 Lessor may Remedy Lessee's Default**

That 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.

### **5.7 Arbitration**

- (a) 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 Promises 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 in the contrary be referred to and settled by the

arbitration of a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* 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 shall not apply to any case where the Lessor is by this lease given either expressly or implied a discretionary power.

**5.8 Force Majeure**

This lease is made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of continuing obligations hereunder that may be caused by or arise from circumstances beyond the power or control of the party responsible for the performance of those obligations (unless caused in whole or in part by the fault or privity of the party responsible for such performance) including, without limiting the generality of the foregoing, delays or any such temporary suspensions 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 events that could not reasonably have been foreseen but excluding inability to obtain finance or financial assistance PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the abovementioned events must promptly give written notice to the other party of the event and must use its best endeavours to minimise the effects of such event as soon as possible after the occurrence.

**5.9 Extension**

If a party gives a notice under the preceding subclause 0 and that party's performance of obligations is affected by any of the events mentioned in that subclause, 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.

**5.10 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 on page one 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.

**5.11 Variation of Lease**

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



## **5.12 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.

## **5.13 Severability**

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

## **5.14 Condition as to Disclosure by Lessee**

It is a condition of this lease that the Lessee has disclosed in writing to the Lessor prior to this lease:

- (a) any litigation or proceeding whatsoever, actual or threatened, against the Lessee;
- (b) the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the lessee; and
- (c) matters relating to the commercial, technical or financial capacity of the Lessee or of any contractor or agent proposed to be engaged in respect of this Lease;

being matters materially affecting the Lessee's ability to perform any of its obligations under this lease, and the Lessee shall promptly notify and fully disclose to the Lessor in writing any event or occurrence actual or threatened during the Term of this lease which would materially affect the Lessee's ability to perform any of its obligations under this lease.

## **5.15 Applicable Law**

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

## **5.16 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.

#### **5.17 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 such index.

#### **5.18 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.

#### **5.19 Performance of Functions by Lessor**

All acts and things which the Lessor is required or empowered to do under this lease may be done by the Lessor or the Lessor's delegate.

#### **5.20 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, such 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 absolute discretion and may be given subject to such conditions as the Lessor may determine unless otherwise provided in this lease or by statute and which will not be unreasonably withheld.

The Lessee agrees that any failure by the Lessee to comply with or perform a condition imposed under paragraph (a) of this clause will constitute a breach of a condition or covenant under this lease.

#### **5.21 Special Conditions**

The special terms, covenants and conditions (if any) set out in a Schedule or an Annexure shall be deemed to be incorporated into this lease as if fully set out in the body of this lease and, in the event of there being any inconsistency with the terms, covenants and conditions contained in the body of this lease, then the terms, covenants and conditions set out in the Schedule or Annexure shall prevail.

## ANNEXURE 1

### SUSTAINABILITY CRITERIA

#### 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 DEC District Manager, the Lessee will develop the area accurately and in accordance with the proposed development plans
2. The Lessee will ensure the Works in the development plans and any improvements, additions, modifications, alterations or changes to the Works on the area:
  - i. Comply with and are maintained according to these Lease conditions; and
  - ii. Comply with and are maintained to the Shire of Shark Bay health standards and receive the approval of the Shire of Shark Bay.
  - iii. Have due regard to minimise impacts on the area's natural visual landscape values and scenic quality.

##### MAINTENANCE OF NATURAL ECOLOGY (NEC)

3. At the commencement of construction and for the duration of the Term, the Lessee with the provision of guidelines from DEC will 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 of supplies at delivery and storage phases) to be included in the Lessee's Staff Training Manual;
  - 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 area; and
  - iv. Weed eradication using DEC approved methods.
4. The Lessee will in consultation with DEC:
  - 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 construction;
  - iii. Implement benchmarking mechanisms (including a vegetation and photographic survey) to assess construction impact;
  - iv. Plant only indigenous vegetation in or around the area after consultation and approval of the District Manager prior to planting any vegetation;
  - v. 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
  - vi. Not feed or allow any employee, agent, contractor or guests to feed or disturb 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 the accommodation component of the Lease 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.
6. The Lessee will monitor and manage (including to take actions to prevent, limit and remedy) soil loss, compaction and erosion in the area. The Lessee will ensure that:
  - i. Site design and layout controls pedestrian impact
  - ii. All structures have foundations that minimise soil disturbance;

- iii. Vehicles remain in the designated vehicle areas and access to the area is restricted to the designated road;
- iv. There is no soil movement around the area after the construction phase as it applies to each stage;
- v. Minimal loss and clearing of vegetation occurs and that revegetation and rehabilitation of the site occurs in consultation with the District Manager;
- vi. Dust generating activities are avoided and dust suppression procedures are in place;
- vii. All pedestrian paths and vehicle areas are defined with stable materials; and
- viii. In the event of any soil loss, compaction or erosion of the area, remedial action is undertaken immediately with the approval of the District Manager.

#### WATER USE (NEC) & WASTE WATER (BEC)

- 7. The Lessee will:
  - i. Acknowledge that DEC does not guarantee the quality and supply of water from the existing bore in the National Park;
  - ii. Ensure ablution and waste water facilities are self contained with no leaching of nutrients to the external environment;
  - iii. Monitor and record water consumption on a per customer basis by installing and using water usage meters on main pipeline and routinely checking services for leaks and faults.
  - iv. From commencement of operation, ensure that water consumption does not exceed the target of 140 litres per guest per night, averaged over a 12 month period, and will not exceed this benchmark following the first year audit;
  - v. From the commencement of operation, use best endeavours to ensure that water consumption for all other activities, including staff usage, does not exceed an agreed predetermined limit, averaged over a 12 month period;
  - vi. Following the first year of operation, develop a strategy to reduce the water consumption to 100 litres per guest per night;
  - vii. Only use environmentally sensitive detergents and soaps in the Leased Premises and ensure their use is minimised;
  - viii. Implement water saving food handling and cooking methods
- 8. From commencement of operation and for the duration of the Term, the Lessee will:
  - i. Develop and implement a water conservation policy to identify and implement opportunities for reducing waste water and water use, and maximising waste water treatment and reuse (for example through new technology) where possible;
  - ii. Install an approved waste water treatment system according to the requirements and approval of the Shire of Shark Bay and DEC and develop and implement a maintenance routine;
  - iii. Install and use only low water use shower heads
  - iv. Install and use low water use appliances that are the most highly rated commercially available appliances at the time of purchase;
  - v. Install a grey water treatment system - level of treatment to be agreed with DEC;
  - vi. Install signage at water points to indicate potable/non potable water to DEC standard as approved by the District Manager.

#### SOLID WASTE (NEC) & WASTE STORAGE AND DISPOSAL (BEC)

- 9. The Lessee will:
  - i. For the duration of the Lease, develop and implement a policy to minimise solid waste production by preferential purchase (where possible) of:
    - a. bulk goods;
    - b. dry goods;
    - c. goods with soft packaging and aluminium rather than glass packaging; and
    - d. recycled goods.
  - ii. Fit grease traps to all kitchens in accordance with Shire of Shark Bay Health Department requirements;
  - iii. Establish a collection point for guests to deposit recyclable materials;
  - iv. Monitor, record and use best endeavours to annually reduce the volume of organic, non organic, wet and dry waste, and total waste generated by the Operations;
  - v. Separate wastes, and sort and crush recyclable containers and cans;
  - vi. Store and transport waste in a manner that prevents vermin, odour and spillage; and
  - vii. Ensure that all (human and non human) organic waste is composted and that the compost and all composted organic and inorganic solid waste is transported out of the National Park as required or as directed by the District Manager. Waste must be disposed of at a licensed facility and where possible at a recycling facility.

#### TOILET FACILITY STANDARDS (BEC)

10. The Lessee will:
- i. Install ablution facilities that are self contained with no leaching of nutrients to the external environment; and
  - ii. Be responsible for cleaning and maintaining toilets and associated equipment in good working order.

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

11. The Lessee will:
- i. For the duration of the Lease, develop and implement a policy to minimise and annually reduce non-renewable energy consumption and 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;
  - iv. Endeavour to ensure that 50% of all power being used in the Operation, will be from renewable energy with a target of less than six (6) hours per day, averaged over a 12 month period, of use from a back up generator; and
  - v. By the tenth year of operation, 75% of the power is to be from renewable energy, with up to an average of four (4) hours per day, averaged over a 12 month period, of use from a back up generator unless otherwise agreed.

#### ENVIRONMENTAL STEWARDSHIP (NEC)

12. The Lessee will:
- i. Minimise, manage and monitor the Operation's environmental impact;
  - ii. Report incidence of damage or risk within the National Park;
  - iii. Pay fees and charges promptly;
  - iv. Actively and cooperatively participate in any research associated with the Operation or the National Park;
  - v. Support DEC in emergency situations with the provision of resources at the request of the District Manager.

#### REDUCED VEHICLE USE (NEC)

13. The Lessee will:
- i. Develop and implement a policy on introducing vehicles that run on renewable energy as a major form of transport in the National Park, dependent upon availability, reliability and affordability;
  - ii. Minimise vehicle use and numbers of vehicles consistent with requirements of the national park management plan and as approved by the District Manager; and
  - iii. Monitor and record vehicle use and actively investigate means to reduce vehicle use.

#### LIGHT SPILL (NEC)

14. The Lessee will:
- i. Except in an emergency or with the approval of the District Manager, not use floodlights in the Operations;
  - ii. Provide a lighting plan for approval by DEC to be included in the development plans to ensure natural ambient light conditions prevail 50 metres outside the site;
  - iii. Minimise outdoor light provision whilst still ensuring safe Operations by using low voltage mushroom lights or similar suitable lights to illuminate pathways and using best practice fixtures in accommodation structures for the renewable power source provided;
  - iv. Ensure that the development and any improvements to the Leased Premises allow no artificial light emitting from any source on the Leased Premises is directly or indirectly visible from any turtle nesting beach or site, or one nautical mile out to sea from any such beach or site;
  - v. Ensure that any structures to be constructed on the Leased Premises are designed with a minimum use of outdoor light; and
  - vi. Ensure that all outdoor lights are sensor operated and have covers to deflect light downwards to prevent light being directed into the sky.

#### NOISE LEVELS (NEC)

15. The Lessee will:
- i. Develop and implement a policy to minimise noise from generators and other equipment and operations.

#### CHEMICAL/FUEL STORAGE AND HANDLING (BEC)

16. 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 in the service area;
  - iii. Maintain a register of chemicals and fuels on site (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 District Manager;
  - 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.

#### PROVISION OF INTERPRETIVE MATERIALS (NEC, BEC & SEC)

17. The Lessee will:
- i. Provide on site interpretation on the local environment and in consultation and approval of the Malgana People;
  - ii. Provide reference books and interpretative information for guests;
  - iii. Offer interpretive information as part of marketing material by updating the Hypermarket website to include National Park information, sustainability principles and natural area focus;
18. The Lessee will develop and deliver educational and interpretation materials (where appropriate) for the Lessee's employees, agents, contractors and guests on the following matters (including on-site verbal and written communications and signage) and incorporate these into a staff manual that includes:
- i. Major environmental issues at the area and those affecting the National Park (erosion, soil loss, compaction, vegetation damage and impacts on turtle breeding);
  - ii. Local ecological conditions, Indigenous culture and low impact nature based tourism principles developed and in consultation and approval of the Malgana People;
  - iii. Responsible behaviour in the natural environment developed in consultation with DEC Shark Bay District;
  - iv. Water conservation principles in consultation with DEC, the Shire of Shark Bay and in consultation and approval of the Malgana People;
  - v. Waste management, minimising packaging in the National Park and solid waste reduction issues, initiatives and methods;
  - vi. Energy conservation initiatives and methods;
  - vii. Reducing vehicle use initiatives and methods;
  - viii. Lessee's policy on low level lighting and natural light preference;
  - ix. Lessee's policy on natural ambient sounds;
  - x. Waste water minimisation and reuse;
  - xi. Fuel and chemical risk management behaviour and handling, storage and emergency response training in accord with the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992* and the Worksafe Guidance Note;
  - xii. Recycling initiatives and appropriate use of toilets and ablution facilities to minimise water use;
  - xiii. Culturally sensitive behaviour; and
  - xiv. Any risks in the National Park and all safety rules.

#### SAFETY EQUIPMENT AND PROCEDURES (SEC)

19. The Lessee will:
- Ensure that information is given to Lessees' Agents about appropriate access and activity on turtle nesting beaches near the Leased Premises (including vessels and vehicles) to avoid impact on turtle breeding activities as may be required by the DEC District Manager from time to time and the Lessee shall observe all instructions in relation to protection of nesting turtles and rookeries, issued by the DEC District Manager from time to time.
20. The Lessee will have, at all times:
- Fully functioning emergency communication equipment;
  - Basic search and rescue, incident and emergency protocols, contingency plans for emergency situations and a management plan for high risk activities;
  - A written operations strategy for dealing with disruptive or violent visitors;
  - First aid equipment on site;
  - A copy of the DEC Emergency Response Plan on site; and
  - Visible signage indicating the location of fire extinguishers, fire blanket and first aid kit.
21. The Lessee will:
- Ensure that at all times there is on duty a minimum of one employee who holds a current Level 2 Senior First Aid Certificate.
  - Ensure that all employees working in the Leased Premises shall receive appropriate certified First Aid training within 2 months of their commencing work.
  - Provide training to employees on the DEC Emergency Response Plan.

#### VISITOR FEEDBACK (SEC)

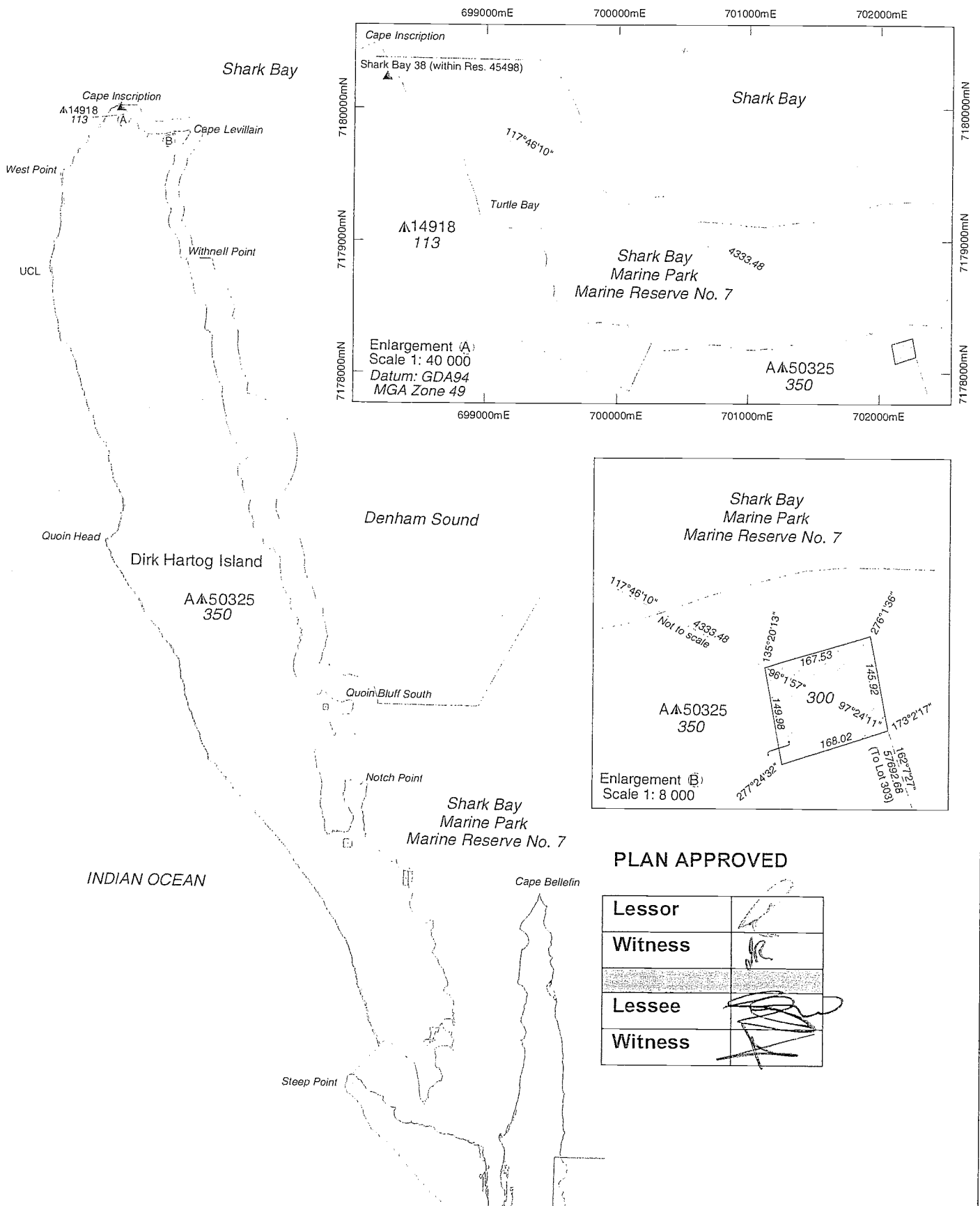
22. The Lessee will:
- Within the first year of the completion of the development and for the duration of the Lease, develop and implement a policy to maximise visitor satisfaction and continual improvement through obtaining guest feedback;
  - Survey guests to assess visitor satisfaction in at least the areas of perceived value for money, standard of cleanliness, level of comfort, staff competency and manner, accuracy of marketing, natural focus of operation, provision of conservation initiatives (group transport, renewable energy, water conservation, recycling etc), level of educational opportunities and level of cultural sensitivity; and
  - Internally audit services and facilities through quality management tools.

#### PERCENTAGE OF VISITORS INDUCTED (SEC)

23. The Lessee will:
- Develop an induction manual in a written format suitable for distribution to guests and inclusion on the web site;
  - Include environmental, cultural and sustainability best practices in the Hypermarket Visitor Induction Sheet and review annually;
  - Ensure all guests fill out a visitor's register;
  - Provide all employees with ongoing product training; and
  - Develop a full induction package to educate visitors regarding environmental, cultural and sustainability best practice principles.

#### CONTENT OF MARKETING MATERIAL (SEC)

24. On all promotional material the Lessee will provide background information on sustainability principles in natural areas, and will provide accurate descriptions of tours, park fees payable to DEC, facilities and level of service, park features and activities available.



PLAN APPROVED

Lessor	
Witness	
Lessee	
Witness	

## LEASE 2270/100 - Dirk Hartog Island

LESSEE

HYPERMARKET PTY LTD

LGA

SHIRE OF SHARK BAY

AREA

Abt 2.465ha

LAND DISTRICT

EDEL

DRAWN

JLF 19.11.09

DEC DISTRICT

SHARK BAY

CHECKED

RD 20-11-09

PLAN

SHARK BAY (SG 49-8) 1:250 000

FILE No. 2008/000864-2

SCALE 1 : 400 000



Department of  
Environment and  
Conservation

Our environment. our future



ATTESTATION SHEET

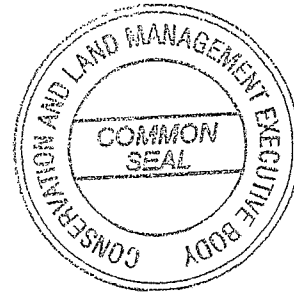
Executed by the parties as a Deed on the

day of

in the year 2010

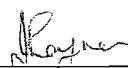
LESSOR/LESSORS SIGN HERE (NOTE 9)

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

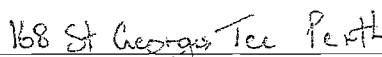


  
CHIEF EXECUTIVE OFFICER

in the presence of:

  
Witness


  
Occupation of Witness


  
Address of Witness

LESSEE/LESSEES SIGN HERE (NOTE 9)

THE COMMON SEAL of )  
HYPERMARKET PTY LTD )  
was hereunto affixed by the authority of its )  
Directors in the presence of: )



  
Director

  
Director/Secretary

## 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.