

Keiran McNamara

Mr Keiran McNamara

Director General – Department of Environment and Conservation

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

LEASE OF CROWN LAND (L)

DESCRIPTION OF LAND (NOTE 1)

EXTENT

VOLUME

FOLIO

Timber Reserve 148/25

Part

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS (NOTE 2)

Nil

LESSOR/LESSORS (NOTE 3)

The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of Locked Bag 104, Bentley
 Delivery Centre 6983

LESSEE/LESSEES (NOTE 4)

SHIRE OF BODDINGTON of 39 Bannister Road, Boddington, Western Australia 6390

TERM OF LEASE (NOTE 5)

5 years

0 Months

0 Days

Commencing from the first day of November in the year 2010 with two options to renew for a further
 term of 5 years each.

THE LESSOR HEREBY LEASES TO THE LESSEE the land above described subject to the
 encumbrances (if any) shown hereon (Note 6)

For the above term for the clear yearly rental of (Note 7) SEE BODY OF LEASE

Payable (Note 8) SEE BODY OF LEASE

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

LEASE dated this 9th day of November 2011

BETWEEN the Conservation and Land Management Executive Body of Locked Bag 104, Bentley Delivery Centre 6983 in the State of Western Australia (hereinafter 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 one part and

SHIRE OF BODDINGTON having its office at 39 Bannister Road, Boddington (hereunder the 'Lessee' which expression includes its successors and permitted assigns) of the other part.

In consideration, among other things, of the mutual promises contained in the Lease, the Lessor and the Lessee agree as follows:

1.0 DEFINITION AND INTERPRETATION

1.1 Defined Terms

In the Lease:

Adjoining 'Land' means that portion of the Land which is within a 100 metre radius of the centre of the Premises.

'Australian Communication Authority' means the Commonwealth agency, for the time being, responsible for the licensing of parties to operate communication facilities from a specified location on a specified transmission frequency, and includes its successor or any future statutory authority having the same authority.

'Business Day' means any day in the State which is not a Saturday, Sunday or Public Holiday;

'Date of Commencement' means the date stated in **Item 2** of the Reference Schedule;

'Date of Expiration' means the date stated in **Item 3** of the Reference Schedule;

'Facility' has the same meaning as in the Telecommunications Act 1997 (Cth);

'Fixed Review Date' means each anniversary of the Commencement Date during the Term.

'Forest' means the natural vegetation present from time to time on the Adjoining Land.

'Government Agency' means any government or any governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

'Land' means Timber Reserve 148/25;

'Lease' means the lease or tenancy that exists between the Lessor and the Lessee in relation to the Premises of whatever nature and whether at law or in equity as evidenced in whole or in part by this document;

'Lessee' means the Lessee described on page one of the Lease and its successors and assigns or, if the Lessee is a natural person, its executors, administrators and assigns and in either case its employees, agents and contractors;

'Lessee's Covenants' means the covenants and agreements contained or implied in the lease to be observed and performed by the Lessee;

'Lessor' means the Lessor described on page one of the Lease and its successors and assigns and its employees, agents and contractors;

'Market Review Date' means the anniversary of the Commencement Date that occurs every 5 years during the term, which shall be counted consecutively across the Term.

'Month' means calendar month;

'Premises' means the Premises described in **Item 1** of the Reference Schedule;

'Rates and Taxes' means any separately assessed rate, tax, levy or any other charge imposed at any time during the Term of the Lease by any State, local or Federal governmental body, authority, department or instrumentality or any other authority of any kind, in relation to the Premises or any thing under or in connection with the Lease;

'Reference Schedule' means the schedule so described which is included in this document;

'Related Body Corporate' where the Lessee is a holding company of another body corporate, a subsidiary of another body corporate or a subsidiary of a holding company of another body corporate means that other body corporate;

'Rent' means the amount stated in **Item 5** of the Reference Schedule;

'Rent Payment Date' means the Commencement date and thereafter the anniversary of the Commencement Date of every year during the Term.

'Rent Review Date' means the anniversary of the Commencement Date of every year during the Term.

'State' means the State of Western Australia in which the Premises and adjoining land are situated;

'Statute' means any statute, regulation, proclamation, ordinance or by-law of the Commonwealth of Australia or the State, and includes all statutes, regulations, proclamation, ordinances or by-laws varying consolidating or replacing them and all regulations, proclamations, ordinances and by-laws issued under that statute;

'Term' means the term of the Lease set out in **Item 4** of the Reference Schedule.

1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) where an association, body or authority, statutory or not, ceases to exist or is reconstituted, renamed, or replaced or its powers and functions are transferred to any other association, body or authority, a reference to that association, body or authority means the association, body or authority (as the case may be) established or constituted in its place or assuming its powers and functions;
- (f) a reference to any thing includes a part of that thing;
- (g) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of and a party, annexure, exhibit and schedule to the Lease;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done, on or by the next succeeding day which is a Business Day;
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (j) a covenant or agreement on the part of two or more persons binds them jointly and severally.
- (k) where pursuant to this Lease but subject to any express provision to the contrary:
 - (i) one party is required to pay to the other any fees, costs, charges or similar expenses, such fees, costs, charges or similar expenses are to be limited to reasonable fees, costs charges or similar expenses likely to be incurred in the particular circumstances;
 - (ii) one party is given a discretion, then such discretion is to be acted upon in good faith and as is reasonable in the circumstances;
 - (iii) the opinion of a party or someone engaged or contracted by that party is relevant in determining any fact or obligation of either the Lessor or the Lessee then the opinion is to be formed in good faith and reasonable in the circumstances. In the event of a dispute, then such opinion is to be prima facie evidence of that fact only;
 - (iv) one party's discretion, or opinion, or consent or specification is required, such discretion, or opinion, or consent or specification is to be given within a reasonable time after the other party's request.

2.0 EXCLUSION OF IMPLIED COVENANTS AND CONTRAVENTION OF STATUTE

2.1 *Inclusion of Implied Covenants*

Any covenants and powers implied in the Lease by any law apply to the extent they are consistent with the terms of the Lease and not excluded by law.

3.0 GRANT TERM OF LEASE AND HOLDING OVER

3.1 *Grant of Lease*

The Lessor leases the Premises to the Lessee for the Term and subject to the terms and conditions of this Lease.

3.2 *Term of Lease*

The Term commences on the Date of Commencement as detailed in Item 2 of the Reference Schedule and expires on the Date of Expiration as detailed in Item 3 of the Reference Schedule subject to the provisions of the Lease.

3.3 *Option to Extend*

3.3.1 *First Option Period*

If a period is specified in Item 6 of the Schedule, the Lessee has the option to extend this Lease for the First Option Period, but only if:

- (1) the Lessee notifies the Lessor in writing that the Lessee wants to extend this Lease for that period at least 3 months before the Expiry Date (but not earlier than 6 months before that date); and
- (2) the Lessee is not in default under this Lease as extended when the option is exercised.

3.3.2 *Second Option Period*

If a period is specified in Item 6 of the Schedule, the Lessee has the option to extend this Lease for the Second Option Period, but only if:

- (1) the Lessee notifies the Lessor in writing that the Lessee wants to extend this Lease for that period at least 3 months before the last day of the First Option Period (but not earlier than 6 months before that date); and
- (2) the Lessee is not in default under this Lease as extended when the option is exercised.

3.3.3 *Terms & Conditions*

If this Lease is extended under clause 3.3.1 all the provisions of this Lease continue to apply, except the option in clause 3.3.1. If this Lease is further extended under clause 3.3.2 all the provisions of this Lease continue to apply, except the options in clauses 3.3.1 and 3.3.2.

3.3.4 *Rent during Option Term*

The rent payable by the Lessee from the beginning of any extended term of this Lease is to be the same rent payable immediately before the date of commencement of the extended term unless that date is a rent review date, in which case the rent is to be reviewed with effect from that date, and the rent is subject to further review during the extended term as provided in this Lease.

3.3.5 *Default after Exercise of Option*

If the Lessee defaults under this Lease after exercising an option to extend the term of this Lease, the Lessor is not prevented from exercising any rights, including the right to terminate this Lease. If this Lease is terminated, the Lessor is not under any obligation to grant a lease of the Premises to the Tenant for any extended term.

3.3.6 *Definitions*

In this Lease:

First Option Period means the period (if any) specified in Item 6 of the Schedule.

Second Option Period means the period (if any) specified in Item 6 of the Schedule.

3.4 *Holding Over*

If the Lessee occupies the Premises after the Date of Expiration (other than pursuant to the grant of a further lease) the Lessee must do so as a twelve-monthly Lessee for twelve-monthly terms thereafter on the same terms and conditions as the Lease as far as they apply to a twelve-monthly tenancy.

4.0 **RENT**

4.1 *Amount of the Rent*

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

4.2 *Manner of Payment*

- (a) The Lessee must pay the rent by equal annual instalments in advance. The first instalment is to be paid on each part payment date. Rent payable for part of a year is to be proportionately adjusted on a daily basis.
- (b) The Lessee may pay the Rent by Electronic Funds Transfer ('EFT') to the account nominated in Item 6 of the Reference Schedule on receipt of a GST inclusive invoice. The Lessor may notify another account in Australia to which payment may be made by EFT to replace the account stated in Item 6. The notification must be at least 30 days prior to the date for payment of Rent

Payment by EFT by the Lessee's bank to the relevant nominated account by the due date is a full discharge for the payment.

- (c) The Lessee must provide the Lessor with formal notification when the payment has been made.
- (d) On the 31 October of each year, the Lessee is required to submit a true and certified statement to the Lessor showing the rental to be charged and or received for the use of the tower, less GST, for all sub-leases and or licences for the next calendar year. The statement is to be certified by the Secretary/Financial Controller of the Shire of Boddington.

4.3 **Rent Review**

4.3.1 **CPI**

With effect from (and including) each date specified in this clause 4 as a "**CPI Review Date**", the rent must be reviewed on the basis that the reviewed rent is to be the higher of:

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

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

Where:

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

- (3) The amount calculated by increasing the rental by 5%.

4.3.2 **Market**

With effect from (and including) each date specified in this clause 4 as a "**Market Review Date**", the Lessor can require that the rent be reviewed on the following basis.

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

- (1) the rent applying immediately before the relevant Market Review Date; and
- (2) the rent for the Premises based upon up to fifty (50) percent of revenue derived from sub-leasing arrangements

(3) the market rent for the Leased Area determined by a valuer licensed under the Land Valuers Licensing Act:

- (a) agreed to by each of the parties; or
- (b) if they cannot agree, appointed by the President of the Australian Institute of Valuers and Land Economists (WA Division) at the request of either party.

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

4.3.3 *Interpretation*

In this Lease:

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

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

Market Rent means the rent that a Lessee would be prepared to pay and an owner of the Leased Area would be prepared to accept taking into account:

- (1) the highest and best use of the Leased Area;
- (2) the provisions of this Lease;
- (3) the period which will elapse between the current rent review date and the next rent review date or, if there is not one, the termination of this Lease;
- (4) the full length of the Term and the benefit of any option to renew;
- (5) any improvement to the Leased Area by the Lessor;
but disregarding
- (6) the consequences of any default by the Lessee of this Lease which may have adversely affected the condition, rental value or market rent of the Leased Area;
- (7) any part of the Term which has expired;
- (8) the value of the Lessee's Property and any goodwill created by the Lessee's business or activities on the Leased Area;

Market Review Date means the first day of each term for which this Lease is extended.

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

4.3.4 *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 4.

4.4 **Goods and Services Tax**

4.4.1 *Definition*

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

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

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.

4.4.2 *Adjustment for GST*

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

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

4.4.3 *Tax Invoices*

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

4.4.4 *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 indemnify payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Lessor.

5.0 **USE OF PREMISES**

5.1 **Permitted Use**

The Lessee will use the Premises for the purpose of constructing, maintaining and operating a telecommunications network and telecommunications service and uses incidental thereto (non-residential). In doing so the Lessee will satisfy all technical

requirements of the Lessor having regard to the Lessee's use of the Premises (28 days notice of which must be given to the Lessee from time to time) and hold a current certificate issued by the Australian Communication Authority to operate at the Premises. In the event of any inconsistency between the Lessor's technical requirements and any licensing requirements the latter shall prevail.

5.2 Adjoining Land

5.2.1 Installation, Maintenance etc.

The Lessor grants to the Lessee the right to use the Adjoining Land in accordance with any reasonable stipulations by the Lessor during the installation, erection, construction, dismantling, repair, replacement, renewal, maintenance and operation of the Lessee's telecommunications network and the telecommunications service. After using the Adjoining Land on any specific occasion, the Lessee will restore the surface of the Adjoining Land as so used as near as practicably possible to its state prior to such use by the Lessee to the reasonable satisfaction of the Lessor. The provisions of clause 7.2 will apply to the exercise by the Lessee of its rights pursuant to this clause 5.2.1.

5.2.2 Guy Anchors & Guy Wires

Subject to the prior approval of the Lessor, the Lessee may during the term of the Lease use so much of the Adjoining Land to place and maintain guy anchors in such positions on the Adjoining Land and in such numbers as are reasonably required by the Lessee for the purpose of supporting its antennae support structure erected on the Premises and to run guy wires from those guy anchors to its antenna support structure. The provisions of clauses 5.3, 5.4, 7.0 and 8.0 will apply to any exercise by the Lessee pursuant to this clause 5.2.2.

5.3 Requirements of Government Agencies

The Lessee must comply promptly with any Statute in respect of the Lessee's use of the Premises and any requirements, notices or orders of any Government Agency having jurisdiction or authority in respect of the Premises or the use of the Premises provided that the Lessee is under no liability for structural alterations unless caused or contributed to by the Lessee's particular use or occupation of the Premises.

5.4 Fire Prevention

- (a) The Lessee will duly and faithfully observe perform and comply with the provisions of the Bush Fires Act, 1954 and amendments thereof and the regulations thereunder and any proclamations and orders made under the provisions thereof so far as the same apply to the Premises. Any breach of the said Act and/or Regulations shall be regarded as a breach of the conditions of this lease.
- (b) The Lessee will not light or cause to be lit or permit any person to light any fire on the Premises except to the extent necessary for the purpose referred to in clause 5.4(a) hereof and then only with the written approval of the Executive Director or any other person duly authorised by him to give such approval.

- (c) If the Lessee or its agents or workmen causes a fire to be lit on or at the Premises other than with permission granted in accordance with the provisions of this Lease, the Lessee shall, immediately upon becoming aware of the fire, take all reasonable measures at the Lessee's own expense to extinguish such fire and the Lessee shall be liable to reimburse to the Lessor any expenses incurred by the Lessor in taking measures to extinguish the fire in the event of the Lessee failing to do so.
- (d) The Lessee will clear firebreaks as directed and to the satisfaction of the Lessor.

5.5 Interference

- (a) The Lessee covenants and agrees with the Lessor that it will take all necessary steps to ensure that the operation of its equipment on the Premises does not result in radio communications interference to any installation or use of radio or telecommunications equipment by the Lessor or other users of the Adjoining Land in existence at the date of the Lease and that it will indemnify the Lessor against any loss suffered by it as a direct result of the Lessee's equipment causing any such interference.
- (b) The Lessee covenants and agrees with the Lessor that it will carry out a radio frequency test within 28 days of commencing its use of its equipment on the Premises to assess whether the operation of its equipment causes radio communications interference to any installation or use of radio or telecommunications equipment by the Lessor or other users of the Adjoining Land in existence at the date of the Lease and, subject to the test confirming that the Lessee's equipment is not causing such interference, the Lessor shall provide that Lessee with a written acknowledgment signed on behalf of the Lessor and the other users of the Adjoining Land to that effect.
- (c) The Lessor covenants and agrees with the Lessee that it will take all necessary action to ensure that its installation or use of radio or telecommunication equipment does not result in radio communications interference to the facility of the Lessee and to ensure that any structure or installation which it erects or installs within or upon the Adjoining Land does not interfere with the Lessee's use or enjoyment of the Premises.
- (d) The Lessor covenants and agrees with the Lessee that after receiving due and proper notification it will take all reasonable measures to ensure that all radio and telecommunications equipment on the Adjoining Land ('other equipment') will be turned off during servicing of the Lessee's equipment if the radio frequency level of the other equipment exceeds recommended occupational health and safety standards as published from time to time.

5.6 Other

The Lessee will not :-

- (a) do anything in or about the Premises (notwithstanding any other consent given by the Lessor under this Lease) which in the reasonable opinion of the Lessor is noxious, offensive or audibly or visually a nuisance;
- (b) behave in a riotous, disorderly, offensive or improper manner or to perform any illegal act in or on the Premises;

- (c) fix or place signs, notices or advertisements either inside or outside the Premises unless it is consistent with the purpose of this Lease and acceptable to the Lessor; or
- (d) plant in or otherwise introduce to the Premises or the Forest any plant not indigenous to the Forest.

6.0 ACCESS TO THE PREMISES

6.1 Access

The Lessor consents to the Lessee and persons authorised by the Lessee with or without materials, plant and other apparatus and vehicles entering the Land for the purpose of using the Premises and exercising its rights under the Lease at all times of the day and night during the Term.

6.2 Notwithstanding clause 6.1 the Lessee shall observe all instructions issued by the Lessor or his nominee regarding the prevention or spread of plant disease, in particular *Phytophthora* species. This shall include the washing down of vehicles and equipment and such other measures as may be required from time to time. Any cost involved in the carrying out of such measures shall be borne by the Lessee.

6.3 The Lessee shall permit the Lessor and its agents at all reasonable times (subject to giving the Lessee not less than 48 hours prior written notice) to enter upon the Premises to view the condition of any buildings or improvements at any time sanctioned to be erected thereon.

6.4 The Lessee shall permit the Lessor and its agents and workman at all times to enter upon and carry out such duties and exercises such powers upon the Premises as it may be necessary or expedient to carry out or exercise in the administration or for the purposes of the Conservation and Land Management Act, 1984 or any other enactment or any regulation made thereunder and the Lessee shall not be entitled to any compensation by reason of any inconvenience or disturbance or loss occasioned by such action on the part of the Lessor.

7.0 INSURANCE, INDEMNITIES AND RELEASE

7.1 *Obligation to Insure*

The Lessee will self-insure against any loss or damage which could be covered by public risk or liability insurance in respect to the Premises.

or

The Lessee will insure against any loss or damage which could be covered by public risk or liability insurance of at least \$10,000,000 for each accident or event in respect of the Premises with a reputable and substantial insurance office and pay the premiums necessary for the above purposes on or before the days on which the same respectively become due and whenever so requested produce to the Lessor or its agents the policy or several policies of such insurance and the receipts for the current year's premiums.

7.2 Indemnity

The Lessee indemnifies the Lessor and its employees and agents and the Government of the State of Western Australia from and against any liability or loss arising from and any costs charges and expenses incurred in connection with:

- (a) any damage to the Premises or any loss or damage to anything in the Premises; and
- (b) any injury to any person in or near the Premises caused or contributed to by:
 - (i) the act, common negligence or default of the Lessee or the Lessee's agent; or
 - (ii) some danger created by the Lessee or the Lessee's agent whether or not the existence of that danger was or ought to have been known to the Lessee,
- (c) but excluding where such liability, loss, costs, charges, or expenses were caused or contributed to by the act, negligence or default of the Lessor, its servants or agents.

7.3 Lessee's Assumption of Responsibilities

The Lessee agrees to take and be subject to the same responsibilities to which it would be subject in respect of persons and property if, during the Term, it was the owner or occupier of the freehold of the Premises.

- 7.4** The Lessee will take adequate precautions to ensure that equipment installed on the Premises is protected against theft or damage and the Lessor shall not be held responsible for any removal or damage which may occur to such equipment during the term other than removal or damage caused by an act or omission of the Lessor.

8.0 INSTALLATION AND MAINTENANCE

8.1 Repair and Maintenance

The Lessee must maintain the Premises in good repair, order and condition during the Term.

8.2 Construction and Alterations

- 8.2.1** The Lessee may at the Lessee's option and expense during the Term after complying with the requirements of any Government Agency having jurisdiction in the matter to the extent required by law with the prior consent of the Lessor install, erect, construct, dismantle, repair, replace, renew and maintain upon the Premises any building or buildings as necessary now or in the future to shelter telecommunications equipment and a free standing monopole, guy tower or three-sided antenna structure or other antenna support structure or sufficient height now or in the future to meet the Lessee's telecommunications requirements and all necessary connecting appurtenances provided that any such building to be erected or constructed shall be of a similar quality to and not incompatible with other buildings on the land.

8.2.2 The Lessee will not without obtaining the prior written consent of the Lessor on each occasion and then only in accordance with such conditions as the Lessor shall reasonably impose:-

- (i) bulldoze, clear or remove any trees, shrubs or other vegetation growing on the Premises; or
- (ii) remove rocks, earth or soil from the Premises; or
- (iii) alter the contour of the surface of the Premises; or
- (iv) deposit any earth, fill or material on the Premises; or
- (v) construct outlets for surface drainage on the Premises; or
- (vi) erect or install any improvements on the Premises.

8.3 Fence

The Lessee may at the Lessee's option and expense with the prior consent of the Lessor (which must not be unreasonably withheld) and having complied with the requirements of any relevant Government Agency having jurisdiction in the matter to the extent required by law erect around the perimeter of the Premises a security fence using materials as may be legally required and approved by the Lessor.

8.4 Cabling

For the purpose of the operation of the Lessee's telecommunications network and telecommunications service the Lessee may, subject to any reasonable conditions set by the Lessor, install, maintain and use above or below ground cabling to and from the Premises and where necessary to construct support for that cabling. In exercising its rights under the clause the Lessee must:

- (a) not cause any lasting material damage to the Land or material interference with the Lessor, and
- (b) within a reasonable time period after the works are completed restore the surface of the Land as so used as nearly as practically possible to its state prior to use by the Lessee to the reasonable satisfaction of the Lessor.

The Lessor reserves the right to require that the cabling be either below ground or aerial cabling.

9.0 ELECTRICITY SUPPLY

9.1 Electricity Connection

For the purposes of carrying out the Lessee's use of the Premises the Lessee must arrange at its cost and if required to connect the Premises to an electricity supply (including making provision for and allowing connection to emergency back-up power) and to install on the Land such earthing apparatus as is necessary for the safe continuous use of the Lessee's equipment on the Premises. The supply of this electricity must be made through a dedicated usage meter so that the Lessee is directly accountable to the relevant authority for payment of electricity consumed by it on the Premises.

10.0 TERMINATION

10.1 Events of Termination

If:

- (a) the Premises are damaged or destroyed or if there is interruption to access to the Premises so as to render the Premises or any part of the Premises wholly or substantially unfit for the occupation or use of the Lessee or inaccessible by any means of access;
- (b) the Lessee commits a material breach of any of the Lessee's Covenants and has not remedied that breach within a reasonable period having regard to the nature of the breach;
- (c) any application for a required consent to a permit for the installation and use of the Premises as part of a telecommunications network and telecommunications service is finally rejected or is cancelled, lapses or is otherwise terminated and no further or replacement consent or permit can reasonably be obtained; or
- (d) the Premises are rendered unfit for the Lessee's use by reason of the emergence of significant radio-communications interference;

then the Lease may be terminated immediately by written notice by the Lessee in the case of subclauses (a), (c) and (d) and by the Lessor in the case of subclause (b).

10.2 Effect on Rights or Liabilities

Termination of the Lease does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to termination.

10.3 Lessee to Yield Up

The Lessee must at the expiration or sooner termination of the Term yield up the Premises in good repair and clean condition.

10.4 Removal of Lessee's Fixtures and Chattels

The Lessee must at or prior to the Date of Expiration (unless there is in place after this Lease a further lease between the Lessor and the Lessee, and in any event subject to clause 14.3), earlier termination of the Lease or such other date as the Lessor and the Lessee agree in writing, remove from the Premises and the Adjoining Land all above-ground fixtures, fittings, plant, machinery, cables and other equipment erected or brought by it onto the Premises and the Adjoining Land and rehabilitate the Premises and the Adjoining Land as near as reasonably practicable to their condition as at the Date of Commencement, such rehabilitation to commence within 60 days of the Date of Expiration or earlier termination, as the case may be.

10.5 Termination of Holding Over

Either the Lessor or the Lessee may terminate the twelve monthly tenancy under clause 3.4 by giving the other 30 days prior written notice.

11.0 NOTICES

11.1 Method of Service

Any notice to be given under this Lease by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by facsimile addressed to the receiving party at the address set out in Item 7 of the Reference Schedule in the case of the Lessor and in Item 8 of the Reference Schedule in the case of the Lessee.

11.2 Time of Service

Any notice given in accordance with this Lease will be deemed to have been duly served in the case of posting at the expiration of 2 business days after the date of posting and in the case of facsimile, on the first business day after the date of transmission (providing the sending party received a facsimile machine verification report indicating that the notice has been transmitted).

11.3 Change of Address

A party may at any time change its address, postal address or facsimile number by giving written notice to the other party.

12.0 ASSIGNMENT AND SUBLEASING

12.1 Consent Required

Unless the Lessor consents under the next clause, the Lessee may not assign this Lease or sublet the Premises.

12.2 Requirements for Consent

Subject to Clause 13.4 of this lease the Lessee may assign this Lease or sublet the Premises if the Lessor consents and if the Lessee:

- (1) complies with the next clause; and
- (2) agrees with the Lessor in relation to proposed rental charged if the proposed assignee or subLessee is deemed to be an Emergency Service; and
- (3) supplies to the Lessor evidence acceptable to the Lessor that the proposed assignee or subLessee is able and qualified to use the Premises for the Permitted Use, is financially sound and has a good reputation; and
- (4) remedies any default under this Lease unless it has been waived by the Lessor; and
- (5) if requested by the Lessor, arranges for the proposed assignee or subLessee to obtain from one or more persons, as reasonably nominated by the Lessor, a guarantee of the obligations under this Lease to be assumed by the proposed assignee or subLessee in a form prepared or approved by the Lessor's solicitors.

12.3 Obligations on Assignment or Sublease

If the Lessee assigns this Lease or sublets the Premises, the Lessee must:

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

12.4 Lessee Remains Liable

The Lessee remains fully liable under this Lease even if the Lessee assigns this Lease or sublets the Premises or gives any right in relation to this Lease or the Premises to any other person, except that in respect to any assignment of this Lease, the Lessee is from the date of assignment released from all future obligations under the Lease except in respect of any prior breach or default.

12.5 Change in Control

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

In this clause:

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

12.6 Exclusion of Statutory Provisions

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

12.7 Fees

The Lessee must reimburse the Lessor on request for all fees paid by the Lessor to any agent or consultant engaged by the Lessor in connection with a proposed assignment or sub-letting by the Lessee.

13.0 LESSOR'S COVENANTS

13.1 *Quiet Enjoyment*

The Lessor covenants that the Lessee may peaceably hold and enjoy the Premises during the Term without any interruption by the Lessor or any person rightfully claiming through the Lessor.

13.2 *Restriction on Lessor's Use of the Adjoining Land*

The Lessor must not itself knowingly nor will it knowingly permit any third party to do anything on the Adjoining Land which is likely to cause radio frequency interference which obstructs, interrupts or impedes the use or operation of the Lessee's telecommunications network and telecommunications service and in the event of the Lessee advising the Lessor of any breach of this clause, the Lessor will, in good faith, use its every best endeavours to cause removal of such interference, to the extent that it is within its power to do so.

13.3 *Lessor's Covenant*

The Lessor covenants that the Lessor will not itself knowingly, nor will it knowingly permit any third party to, store on, dispose of on or transport to or over the Adjoining Land any hazardous substance which is likely to cause interference with the Lessee's use of the Premises provided that if the Lessee advises the Lessor of any breach by the Lessor of its covenant the Lessor will, to the extent that it is within its power to do so, use its every best endeavours at its expense to forthwith remedy such breach.

13.4 *Lessor's Acknowledgement - Use of Premises by Third Parties: Co-location of Communication Network*

The Lessor HEREBY COVENANTS AND AGREES with the Lessee that the Lessee may permit up to ten carriers/service providers to use the Premises at any one time for the purpose of using the Lessee's communications network on the Premises ("the Communications Network") and notwithstanding clause 8.2.2 erecting an equipment cabin to facilitate collocation of the Communications Network without the need for those carriers/service providers to enter into a sublease agreement with the Lessor and the Lessee to obtain the consent of the Lessor in accordance with clause 12 of this Lease on each occasion that a carrier/service provider wishes to use the Premises. The erection of any equipment cabins must comply with the Lessor's specifications in respect to colour and materials used.

14.0 MISCELLANEOUS

14.1 *Lessee to Pay Costs and Disbursements*

The Lessee must pay all stamp duty (including penalties and fines other than penalties and fines due to the default of the Lessor) and all the Lessor's reasonable legal and other costs charges and expenses or which the Lessor may reasonably suffer or incur in consequence of and incidental to the preparation, completion, stamping and registration of the Lease, and costs of surveying and pegging the Premises.

14.2 Costs on Default

The Lessee will pay all reasonable costs, charges and expenses (including solicitor's costs and surveyors' and valuers' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice or notices under section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach of any of the Lessee's Covenants notwithstanding that forfeiture for any such breach is waived by the Lessor or is avoided otherwise than by relief granted by the courts or from which the Lessee shall be relieved under the provisions of the *Property Law Act 1969* and all reasonable costs, charges and expenses (including fees for architects and clerks of works) incurred by the Lessor for supervising, inspecting and approving any works or repairs carried out to the Premises by or on behalf of or in consequence of the default of the Lessee under any of the Lessee's Covenants.

14.3 Without Prejudice

This Lease is without prejudice to the Lessee's rights under Schedule 3 of the *Telecommunications Act, 1997* (Cth).

14.4 Governing Law

This Lease is governed by the law in force in Western Australia.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 11.1.

14.5 Rates and Taxes

The Lessee must pay all rates, taxes and assessments charged upon the Premises by the due date for payment.

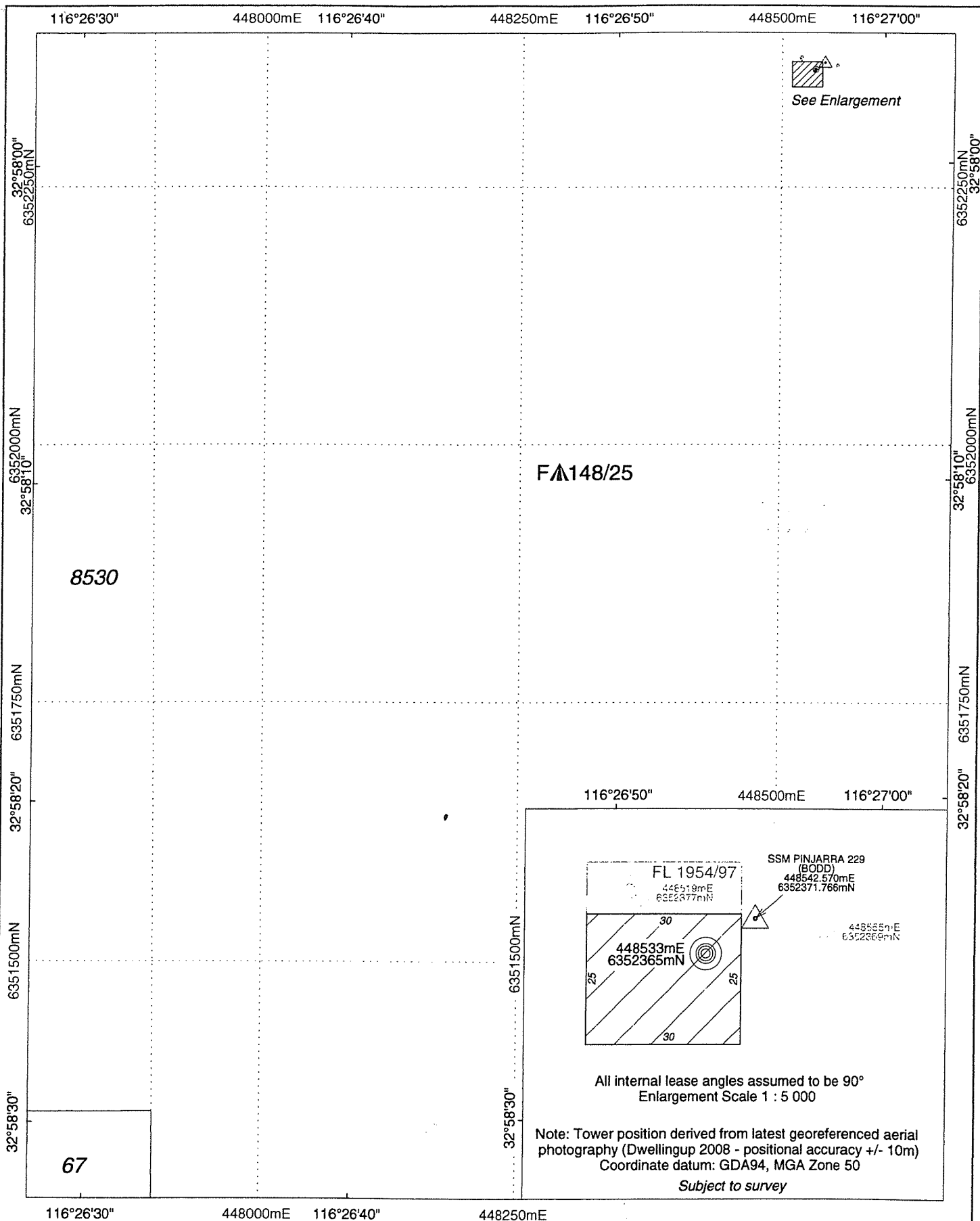
14.6 Arbitration

If at any time any dispute or difference arises between the parties in respect of any matters arising under or pursuant to the Lease or the meaning or construction of any of the provisions contained in it, such dispute or difference shall be referred to a single arbitrator to be appointed in accordance with the provisions of the *Commercial Arbitration Act 1985 (as amended)*. On any such arbitration, a party may, if it chooses, be represented by a duly qualified legal practitioner. The costs of the arbitration are to be borne equally by the parties regardless of the outcome but each party shall bear their own legal costs.

REFERENCE SCHEDULE


- Item 1** Premises (clause 1.1). The area delineated and outlined green on the attached plan comprising an area of approximately 750m² and being a portion of Timber Reserve 148/25
- Item 2** **Date of Commencement** (clause 1.1)
First day of November 2010
- Item 3** **Date of Expiration** (clause 1.1)
Thirty first day of October 2015
- Item 4** **Term** (clause 1.1)
5 years
- Item 5** **Rent** (clause 1.1)

In the first part in accordance with clause 4.1 which is \$1050.00 (exclusive of GST) during the first year of the Term, increased thereafter on each anniversary of the Date of Commencement, as specified in Clause 4.3
AND
In the second part, 50% (exclusive of GST) of any revenue derived from sub-leasing arrangements for each year of the Term in accordance with information supplied as specified in Clause 4.2.
- Item 6** **Option** (clause 3.3)
Two further terms of five years each
- Item 7** **Contact at Lessor** (clause 11.1)
Name: Leasing Officer
Address: Locked Bag 104
BENTLEY DELIVERY CENTRE WA 6983
Telephone number : 9334-0333
Facsimile number : 9334-0253
- Item 8** **Contact at Lessee** (clause 11.1)
Name: Shire of Boddington
Address: 39 Bannister Road Boddington WA 6390
PO Box 4, Boddington WA
Telephone number: (08) 9883 8004
Facsimile number : (08) 9883 8347



FOREST LEASE 1916/97				LEASE PLAN APPROVAL	
- Communication Base				LESSEE	<i>[Signature]</i>
				WITNESS	<i>[Signature]</i>
LESSEE	SHIRE OF BODDINGTON			LESSOR	<i>[Signature]</i>
				WITNESS	<i>[Signature]</i>
LGA	SHIRE OF BODDINGTON		AREA	Abt 750m²	
LAND DISTRICT	WILLIAMS		DRAWN	<i>JLF 24.8.11</i>	
DEC DISTRICT	PERTH HILLS		CHECKED	<i>RD 24.8.11</i>	
PLAN REF.	DEC COG PLAN: 2132-23 (DM.86)		FILE No.	2010/004005-1	

SCALE 1 : 5 000



Department of
Environment and
Conservation

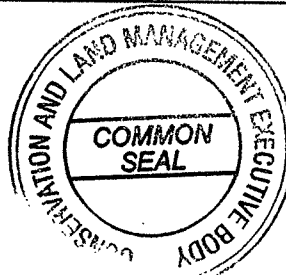
Our environment. our future.

ATTESTATION SHEET

Executed by the parties as a Deed on the 9th day of November in the year 2011

LESSOR/LESSORS SIGN HERE (NOTE 9)

THE COMMON SEAL of the
**CONSERVATION AND LAND
MANAGEMENT EXECUTIVE BODY**)
was hereunto affixed by



Kym Nae

Chief Executive Officer

in the presence of:

Witness: Signature

Name (please print)

Address (please print)

Occupation (please print)

[Signature]
CAMPBELL YOUNGSON
168 ST GEORGES TCE PERTH WA
PUBLIC SERVANT

LESSEE/LESSEES SIGN HERE (NOTE 9)

THE COMMON SEAL of the
SHIRE OF BODDINGTON was
hereunto affixed pursuant to a
Resolution of the Council:

[Signature] JA

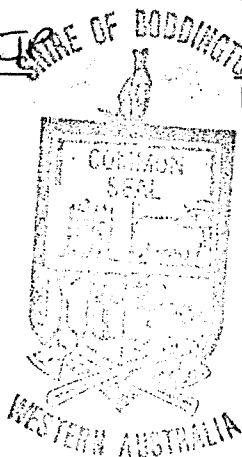
Signature of President

Paul Raymond Carrotts
Name of President

[Signature]

Signature of Chief Executive Officer

Gary Allan Sherry
Name of Chief Executive Officer



INSTRUCTIONS

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

NOTES

1. DESCRIPTION OF LAND

Lot and Diagram/Plan number or Location name and number to be stated.

Extent – Whole, part or balance of the land comprised in the Certificate of Title/Crown Land Title to be stated. The Certificate of Title/Crown Land Title Volume and Folio number to be stated.

2. LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS

The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and relevant plan/diagram. If none show "nil".

3. LESSOR

State full name and address of Lessor/Lessors and the address/addresses to which future notices can be sent.

4. LESSEE

State full name and address of Lessee/Lessees and the address/addresses to which future notices can be sent. If two or more, state tenancy eg Joint Tenants, Tenants in Common. If Tenants in Common specify shares.

5. TERM OF LEASE

Term to be stated in years, months and days. Commencement date to be stated. Options to renew to be shown.

6. RECITE ANY EASEMENTS TO BE CREATED

Here set forth Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".

7. RENTAL

State amount of yearly rental in words.

8. PAYMENT TERMS

State terms of payment

9. EXECUTION

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

EXAMINED

Office Use Only

LODGED BY

ADDRESS

PHONE No.

FAX No.

REFERENCE No.

ISSUING BOX No.

PREPARED BY Department of Environment and Conservation

ADDRESS Locked Bag 104, Bentley Delivery Centre WA 6983

PHONE No. 9423 2333

FAX No. 9423 2466

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

TITLES, LEASES, DECLARATIONS ETC LODGED
HEREWITH

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