

I hereby certify that the within is a true and correct copy of lease 2268/100



Mr Peter Dans
Acting Director General
Department of Biodiversity, Conservation and Attractions

2023

**CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY
(LESSOR)**

AND

**BILLINGJUL ABORIGINAL CORPORATION
(LESSEE)**

LIVING AREA LEASE 2268/100

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PARTIES

This Deed of Lease is made on the 29th day of August 2023
between the following parties:

1. Conservation and Land Management Executive Body of 17 Dick Perry Avenue, Kensington Western Australia (Lessor)
2. Billingjul Aboriginal Corporation (Indigenous Corporation Number 7776) of 213 Wellmen Road, Halls Creek Western Australia (Lessee)

RECITALS

- (a) The Lessor is a body corporate established under section 36 of the *Conservation and Land Management Act 1984* (CALM Act) through which the CEO can perform any of the CEO's functions under the CALM Act that can more conveniently be performed by a body corporate than an individual.
- (b) The CEO is empowered by section 100 of the CALM Act to grant a lease of any land to which Division 2 of Part VIII of the CALM Act applies.
- (c) The Lessee is a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). The Rule Book of the Lessee states that an objective of the corporation is to allow the Gudja Gnarna DJARU Traditional Owners to live/reside on living area leases and develop eco-tourism ventures within and adjacent to Purnululu National Park.
- (d) Purnululu National Park (Reserve 39897) was reserved for the purpose of "National Park" pursuant to section 29 of the *Land Act 1933* (WA) on 6 March 1987. It is a national park for the purposes of the CALM Act, which is vested in the Conservation and Parks Commission, pursuant to sections 6(3)(b) and 7(2) of the CALM Act. It is land to which Division 2 of Part VIII of the CALM Act applies.
- (e) The Lessor has agreed to grant to the Lessee and the Lessee has agreed to take a lease of the Land, which is within the Purnululu National Park, on the terms and conditions of this Lease.
- (f) Pursuant to Section 100(3) of the CALM Act, the lease shall be laid before each House of Parliament within 14 sitting days of its execution by all parties and will be incorporated into Hansard.

AGREEMENT

It is agreed, on the Terms and Conditions, as follows:

1. The Lessor leases the Land to the Lessee.
2. The Lessee accepts the Lease from the Lessor.

TERMS AND CONDITIONS

These terms and conditions are incorporated into, and form part of, the Lease and are referred to as the **Terms and Conditions**.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease, the following definitions apply unless the contrary intention appears:

Approved Caretaker/s means a person or persons who are in charge of maintaining the Land and any Improvement as agreed by the Lessee and Lessor.

Authority means any governmental or other public body, local authority or other authority of any kind.

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

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

CEO has the meaning given in the CALM Act.

Commencement Date means the date of execution of this Agreement by the last party to sign.

Contamination is the state of being contaminated as that term is defined in the *Contaminated Sites Act 2003* (WA).

Department means the Department of the Public Service principally assisting in the administration of the CALM Act.

Environmental Harm has the meaning given in the *Environmental Protection Act 1986* (WA).

Environmental Law means all planning, environmental, Contamination or Pollution Laws.

Environmental Notice means any Notice in connection with any Environmental Law.

Event of Default means an event specified in clause 11.1(a).

Further Term means a period of 21 years following the Initial Term.

GST has the meaning given in section 195-1 of the GST Act.

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

GST Law has the meaning given in section 195-1 of the GST Act.

Improvement means any building, facility or structure on the Land.

Initial Term means a period of 21 years from the Commencement Date.

Land means the area of land identified on the plan in this Lease.

Law includes statutes and Subsidiary Legislation, whether State, Federal or otherwise.

Lawful Authority means a licence, permit, approval, consent, registration or other authority issued, granted, conferred or given under a written law.

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.

Lessee's Visitors means each of:

- (a) the Permitted Residents who temporarily or seasonally live and camp on the Lease;
- (b) the Lessee's and the Permitted Residents' employees, agents, contractors, service suppliers, sub-contractors, sub-lessees and visitors; and
- (c) any other person who is allowed or permitted to be on the Land by the Lessee or a Permitted Resident.

Living Area means an area of the Land that Permitted Residents return to and temporarily or seasonally live and camp on, for cultural, spiritual, economic, or land management reasons.

Management Plan means the management plan in force from time to time in respect of the National Park pursuant to the CALM Act.

Minister means the Minister to whom the administration of the CALM Act is committed.

National Park means the Purnululu National Park (Reserve 39897).

Notice means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action, of an Authority, whether written or oral and whether served on the Lessor or Lessee.

Permitted Resident means a person permitted by the Lessee to reside on the Land under clause **Error! Reference source not found.**

Permitted Use means the use of the Land described in clause 4.1(a).

Pollution means anything that is pollution within the meaning of that term as defined in the *Environmental Protection Act 1986* (WA) that is not authorised under any Law.

Rates means rates and other charges assessed or imposed by an Authority in relation to the Land and Improvements.

Relevant Land means the Land and Surrounding Area.

Rent means one dollar.

Security Interest means every mortgage, charge, sub-demise, lien, trust or power, which is a security for the payment of money or the compliance with any other obligation.

Services include all public and private utility services including roads, footpaths, water supply, sewerage, drainage, electricity and gas reticulation and telecommunications equipment.

State means the State of Western Australia.

Subsidiary Legislation means any proclamation, regulation, rule, local law, by-law, order, notice, rule of court, local or region planning scheme, resolution, or other instrument, made under any written law and having legislative effect.

Surrounding Area means any land or water adjacent to the Land and the air generally above the Land.

Tax Invoice has the meaning given in section 195-1 of the GST Act.

Taxable Supply has the meaning given in section 195-1 of the GST Act.

Taxes means every tax, charge or duty, including land tax, stamp duty and fines or penalties assessed or imposed by an Authority in relation to the Land and Improvements.

Term means the term for which the Land is let by the Lessor to the Lessee, including:

- (d) the Initial Term;
- (e) if the Lease is renewed, the Further Term; and
- (f) every period of holding over.

1.2 Interpretation

In this Lease, unless the context otherwise requires:

- (a) words expressed in one gender include the other genders;
- (b) words expressed in the singular include the plural and vice versa;
- (c) headings or subheadings are inserted for guidance only and do not govern the meaning or construction of this Lease or of any provision contained in this Lease;
- (d) references to statutes and Subsidiary Legislation when contained in this Lease include amendments, re-enactments or consolidations of any of

them and a reference to a statute includes any Subsidiary Legislation made under that statute;

- (e) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate;
- (f) references to parts, clauses and parties are references to parts and clauses of, and parties to, this Lease;
- (g) a reference to a party to this Lease includes that party's successors and permitted assigns and in the case of a natural person also includes that person's personal representatives and administrators;
- (h) a reference to the Lessor includes any person authorised by the Lessor to represent the Lessor in connection with the Lease;
- (i) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (j) reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (k) no rules of construction apply to the disadvantage of a party because that party was responsible for the drafting of this Lease or of any of the provisions of this Lease.

2. RENT

The Lessee must pay to the Lessor the Rent, if demanded.

3. OTHER PAYMENTS BY LESSEE

3.1 Payment of rates, taxes, etc

- (a) Subject to subclause (b), the Lessee must pay to the Lessor all Rates and Taxes which the Lessor has paid within 10 Business Days after the Lessor requests payment.
- (b) If any Rates or Taxes are assessed or imposed in respect of other property as well and not only in respect of the Land, the Lessee must pay a proportion of those Rates and Taxes to the Lessor within 10 Business Days after the Lessor requests payment. The proportion is the proportion the area of the Land bears to the area of the property the subject of the assessment or imposition.

3.2 Service charges

The Lessee must pay all charges for any Services which are imposed in respect of the Land and any Improvements either to the supplier before those charges

become overdue or to the Lessor within 10 Business Days after the Lessor requests payment.

4. LESSEE'S GENERAL OBLIGATIONS

4.1 Permitted Use

- (a) The Lessee and its Permitted Residents may use the Land throughout the term solely for the following purposes:
 - (i) the temporary or seasonal living and camping by Permitted Residents for cultural, spiritual, economic, or land management reasons;
 - (ii) conducting nature and culture-based tourism related to the activities listed in Schedule 1 subject to the Lessee obtaining any relevant Lawful Authority; and
 - (iii) as a residence for Approved Caretaker/s.
- (b) The Lessee must only use the Land for the Permitted Use and the Lessee must not use the Land for any other purpose unless the Lessor consents in writing to a variation of Schedule 1.

4.2 Improvements

The Lessee must not construct, effect, erect or undertake any Improvement on the Land, or permit any other person to construct, effect, erect or undertake any Improvement on the Land except:

- (a) in accordance with the Management Plan; and
- (b) with the Lessor's consent.

4.3 Compliance with Law

- (a) The Lessee must comply with all Laws and Notices in connection with the Lessee's use of the Land.
- (b) Without limiting subclause (a), the Lessee must:
 - (i) comply with the provisions of the *Aboriginal Heritage Act 1972* (WA) and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth); and
 - (ii) obtain and keep current all permits, licences, approvals and consents required (including any permits, licences, approvals and consents required under the CALM Act) to construct, effect, erect or undertake any Improvements on the Land.

4.4 Information

The Lessee must promptly supply to the Lessor any reasonable information requested by the Lessor from time to time in relation to the Lessee's use of or activities on the Land.

4.5 Mark boundary

The Lessee must, within 12 months from the Commencement Date or other date agreed with the Lessor, mark the boundary of the Land by means of corner pegs and, if necessary, other pegs to the satisfaction of the Lessor.

4.6 Dangers or threats to the public

The Lessee must take all measures necessary to prevent accidents and to protect the safety of the Lessee's Visitors and the public generally on the Leased Area, including warning the public of any actual or potential dangers or threats.

4.7 Disposal of refuse

The Lessee must dispose of rubbish, waste, litter and other refuse in a manner approved by the Lessor and which is consistent with the Management Plan.

4.8 Domestic animals

The Lessee must take all reasonable measures to ensure that:

- (a) no domestic cats are kept, or allowed on, the Land; and
- (b) domestic animals other than cats belonging to the Lessee or any person permitted on the Land by the Lessee are confined to the Land, unless the person has lawful authority to take the animal into the National Park issued under the CALM Act in accordance with the Management Plan.

4.9 Feral animals, fire, soil erosion and declared weeds and diseases

The Lessee must, in conjunction with the Department and any other relevant Authorities, participate in the determination and implementation of co-operative measures designed to:

- (a) prevent the introduction and spread of feral animals on the Land;
- (b) eradicate or control feral animals on the Land;
- (c) lessen soil erosion on the Land;
- (d) prevent the introduction and spread of declared weeds and diseases on the Land;
- (e) eradicate or control declared weeds and diseases on the Land; and
- (f) mitigate the risk and spread of bushfire.

4.10 Keep clean and in good repair

The Lessee must at the Lessee's expense:

- (a) keep and maintain the Land, Improvements and any machinery, plant, equipment, fixtures and fittings in or on the Land, in good and safe repair and condition; and
- (b) keep and maintain the Land clean and tidy.

4.11 Nuisance

In connection with the Lessee's use of the Land, the Lessee must not, and must not allow anyone else to do, anything which is illegal, offensive or a nuisance.

4.12 Cost of Lessee's obligations

Unless this Lease provides otherwise, anything that must be done by the Lessee under this Lease, whether or not at the request of the Lessor, must be done at the risk and cost of the Lessee.

5. LESSEE'S ENVIRONMENTAL OBLIGATIONS

(a) The Lessee:

(i) must not cause or permit any Contamination, Pollution or Environmental Harm of the Relevant Land;

(ii) must notify the Lessor immediately on becoming aware of:

A. the existence of any Contamination affecting the Relevant Land which relates to or arises from the Lessee's use of the Land;

B. any Pollution affecting the Relevant Land which relates to or arises from the Lessee's use of the Land;

C. an Environmental Notice being served on the Lessee or any other person which relates to or arises from the Lessee's use of the Land; or

D. the making of a complaint to any person, including but not limited to, the Lessee or the commencement of proceedings against the Lessee relating to an alleged failure by the Lessee to observe or perform an obligation under an Environmental Law; and

(iii) must, at the Lessee's cost, comply with every Environmental Notice issued in respect of, arising from or relating to, the Lessee's use of the Land.

(b) Without:

(i) affecting the obligations of the Lessee in this clause; or

(ii) limiting any right of, or indemnity in favour of, the Lessor,

if any Contamination, Pollution or Environmental Harm occurs in breach of subclause (a), the Lessee must do everything necessary to minimise the effect of the Contamination, Pollution or Environmental Harm as soon as reasonably practicable and must remediate any resultant damage and harm, to the reasonable satisfaction of the Lessor and in compliance with any Environmental Notice or Environmental Law.

(c) The obligations of the Lessee under this clause continue after the expiry or termination of this Lease.

6. DEALING WITH THE LAND

6.1 Dealings with the Land

Unless the Lessor consents (such consent not to be unreasonably withheld), the Lessee may not:

- (a) assign this Lease or a sub-lease, or sublet the Land or grant a licence in respect of the Land;
- (b) give any person a Security Interest in the Land; or
- (c) otherwise, part with possession, assign, dispose of, deal with, transfer, mortgage, charge or otherwise encumber its estate or interest in the Land or its rights or powers as Lessee under this Lease.

6.2 Consent to sub-lease

- (a) The Lessor's consent will not be unreasonably withheld to a proposed sub-lease for nature and culture-based tourism purposes.
- (b) If the Lessor consents to a proposed sub-lease, the Lessor may be a party to the sub-lease.
- (c) For the grant of a sub-lease then, within a reasonable time before the proposed date of change in possession, the Lessee must:
 - (i) supply to the Lessor evidence reasonably acceptable to the Lessor that the proposed sub-lessee is respectable, responsible, solvent, fit and proper and able to perform all the sub-lessee's obligations under the sub-lease;
 - (ii) deliver to the Lessor a deed executed by the proposed sub-lessee in a form prepared by, or approved by, the Lessor, by which the proposed sub-lessee agrees to be bound by the Lease from the date that the sub-lease takes effect; and
 - (iii) comply with any other reasonable requirement of the Lessor,and the Lessor's consent is taken to be conditional on the Lessee complying with the obligations in this clause.

6.3 Consent to assignment

- (a) The Lessor's consent will not be unreasonably withheld to a proposed assignment of the Lease to a body corporate all the members of which are Traditional Owners who have, in accordance with Aboriginal tradition, social, economic or spiritual affiliations with, and responsibilities for, the Land or any part of it, including any person who holds or who may be found at law or in equity to hold native title over the Land or any part of it.
- (b) If the Lessor consents to a proposed assignment under 6.3(a) then, within a reasonable time before the proposed date of change in possession, the Lessee must:
 - (iv) supply to the Lessor evidence reasonably acceptable to the Lessor that the proposed assignee is respectable, responsible, solvent, fit and proper and able to perform all the Lessee's obligations under the Lease;
 - (v) deliver to the Lessor a deed executed by the proposed assignee in a form prepared by, or approved by, the Lessor, by which the proposed assignee agrees to be bound by the Lease from the date that the sub-lease takes effect; and
 - (vi) comply with any other reasonable requirement of the Lessor,and the Lessor's consent is taken to be conditional on the Lessee complying with the obligations in this clause.

6.4 Property Law Act provisions

The provisions of sections 80 and 82 of the *Property Law Act 1969* (WA) are hereby excluded.

7. INDEMNITIES, RELEASE AND INSURANCE

7.1 Lessee 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 were the owner and occupier of the freehold of the Land.

7.2 Indemnity

- (a) The Lessee indemnifies and must keep indemnified the Lessor, the State, the Minister and each of their employees, officers, contractors and agents from and against all expenses, losses, liability, actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be suffered, incurred, brought, maintained or made against the Lessor, the State, the Minister and each of their employees, officers, contractors and agents in respect of:

- (i) damage to the Land, Improvements or other property (including the property of third parties); or
 - (ii) any death of, illness of or injury to, any person,
directly or indirectly caused by, contributed to, arising out of, or in connection with:
 - (iii) any breach of the Lease by the Lessee;
 - (iv) any work carried out by or on behalf of the Lessee under this Lease;
 - (v) any negligent or other tortious act or omission of the Lessee or the Lessee's Visitors;
 - (vi) any use or occupation of the Land by the Lessee or the Lessee's Visitors;
 - (vii) the Lessee's activities, operations or other use of the Land of any kind under this Lease;
 - (viii) any danger created by the Lessee or the Lessee's Visitors; or
 - (ix) the presence of any Contamination, Pollution or Environmental Harm in on or under the Relevant Land caused or contributed to by a negligent or other tortious act or omission of the Lessee or the Lessee's Visitors;
- (b) The obligations of the Lessee under this clause continue after the expiry or termination of this Lease in respect of any act, deed, matter or thing occurring before the expiry or termination of this Lease.

7.3 Release

- (a) The Lessee:
 - (i) agrees to occupy, use and keep the Land at the risk of the Lessee;
 - (ii) releases to the full extent permitted by law the Lessor, the State, the Minister and each of their employees, officers, contractors and agents from:
 - A. any liability which may arise in respect of any accident or damage to property or death or injury to, or illness of, any person, of any nature on the Land;
 - B. loss of or damage to Improvements, machinery, plant, equipment, fixtures, fittings or personal property of the Lessee or the Lessee's Visitors; and
 - C. all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or

indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Relevant Land at any time throughout the Term,

except to the extent that such loss or damage is caused by the negligence of the Lessor, the State, the Minister and each of their employees, officers, contractors and agents.

- (b) The obligations of this Lessee under this clause continue after the expiry or termination of this Lease in respect of any act, deed, matter or thing occurring before the expiry or termination of this Lease.

7.4 Public liability insurance

- (a) The Lessee must during the continuance of the Lease effect, maintain and keep current with an insurer approved by the Lessor a public liability insurance policy in respect of the Land for an amount no less than \$20,000,000 for any one claim unlimited in the aggregate, which covers all claims and losses howsoever arising or caused, including but not limited to:
 - (i) those in respect of:
 - A. any injury of, or illness to, or death of, any person;
 - B. any loss, damage or destruction to any property including to the property of the Lessor;
 - C. the loss of use of any property, including the property of the Lessor; and
 - D. any claims, risks and events covered under the indemnities provided by the Lessee to the Lessor under this Lease; and
 - (ii) liability arising out of any Contamination, Pollution or Environmental Harm of the Relevant Land;
- (b) The Lessee must:
 - (i) give to the Lessor a copy of a certificate of currency in relation to the Insurance Policy at the Commencement Date; and
 - (ii) submit evidence to the Lessor on each anniversary of the Commencement Date during the Term, or as otherwise requested by the Lessor (which must not be more than twice every 12 months during the Term), which shows that the Insurance Policy remains current.
- (c) The Lessee is:
 - (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the Insurance Policy;

- (ii) to notify the Lessor immediately if an event occurs which gives rise or might give rise to a claim under the Insurance Policy or which could prejudice the Insurance Policy;
- (iii) to comply with the requirements of any Authority, the Insurance Council of Australia and any insurer in relation to fire protection of any Improvements, when they are being, or are constructed;
- (iv) to ensure that under the Insurance Policies the insurer has no rights of subrogation against the Lessor or the State and the Lessee indemnifies the Lessor and the State against any loss arising from a breach of this subclause; and
- (v) to ensure that all premiums in respect of the Insurance Policies and renewals of Insurance Policies are paid punctually.

8. QUIET ENJOYMENT

If the Lessee complies with the Lessee's obligations under the Lease, then the Lessee may occupy and use the Land during the Term without interruption by the Lessor, except as provided in the Lease or by Law.

9. RIGHTS OF ACCESS BY LESSEE

The Lessor shall at all times during the Term allow the Lessee, the Permitted Residents, Approved Caretaker/s and their invitees access to and from the Land from the public roads in the National Park, over and upon those tracks and roads shown on the plan in this lease, unless the tracks and roads are closed by an Authority due to a fire in the National Park or for any other reason.

10. SERVICES

The Lessee acknowledges that this Lease does not confer on the Lessee any right or entitlement to the connection, provision, maintenance or repair of any Services to the Land by the Lessor, the State or any Authority.

11. DEFAULT AND TERMINATION

11.1 Default notice

- (a) An Event of Default occurs if the Lessee fails to perform or comply with any of the terms and conditions of this Lease or if the Lessee repudiates the Lease.
- (b) If an Event of Default occurs, the Lessor may serve the Lessee with a default notice specifying the failure complained of and the time by which the Lessor requires the Lessee to remedy the relevant Event of Default, which must be a reasonable time having regard to the nature of the breach and in any event must not be less than one month after the date of the default notice.

11.2 Termination of Lease

- (a) In addition to any other ground for termination at law, and subject to section 81(1) of the *Property Law Act 1969* (WA) if it applies, this Lease may be terminated by the Lessor:
 - (i) if the Lessor serves the Lessee with a default notice under clause 11.1 and the Lessee fails to remedy the breach within the reasonable time specified in the default notice; or
 - (ii) if the Lessee goes into liquidation, whether voluntary or otherwise, or an order is made or a resolution is passed for its winding up, or a liquidator or receiver (in both cases whether provisional or otherwise) is appointed.
- (b) This Lease may be terminated under subclauses (a)(i) and (a)(ii) either by the Lessor giving notice to the Lessee or by the Lessor re-entering the Land without notice.

12. EXTENSION AND HOLDING OVER

12.1 Option to renew

Subject to clause 12.2, the Lessee has an option to renew the Lease for the Further Term on the same Terms and Conditions in the Lease, which is exercisable by the Lessee giving written notice to the Lessor not earlier than 12 months and not later than 3 months before the end of the Initial Term.

12.2 Loss of option

If, when the Lessee notifies the Lessor under clause 12.1, or at the end of the Initial Term, an Event of Default has occurred and it has not been remedied by the Lessee or waived by the Lessor, the option to renew the Lease for the Further Term ceases to have effect and the Lessee ceases to be entitled to an extension of the Lease.

12.3 Holding over

If, after the expiry of the Term, the Lessee, with the consent of the Lessor, continues to use or occupy the Land or to allow, permit or suffer the Land to be used or occupied for the Permitted Use, the Lessee is a monthly lessee of the Land and:

- (a) all the provisions of the Lease apply to the monthly tenancy except the option to extend; and
- (b) the monthly tenancy may be terminated by either party giving to the other at least one month's notice which may expire on any day.

13. RIGHTS AND OBLIGATIONS AT TERMINATION OF LEASE

13.1 Yielding up

- (a) In the event of expiry of the Term or termination of this Lease, unless the Lessor has granted the Lessee a new lease of the Land, the Lessee must, to the reasonable satisfaction of the Lessor:
- (i) surrender peaceably and yield up possession of the Land to the Lessor:
 - A. clean;
 - B. free from rubbish;
 - C. in a state of good repair and condition; and
 - D. in a condition which is consistent with the Lessee's obligations under this Lease;
 - (ii) fill in, consolidate and level off any unevenness, excavation caused by the Lessee or by the Lessee's Visitors;
 - (iii) remove any Improvements, machinery, plant, equipment, fixtures, fittings or any other property on the Land as may be required by the Lessor;
 - (iv) promptly make good any damage caused by the removal in subclause (a)(iii); and
 - (v) promptly make good and rehabilitate the Land and remediate any Contamination, Pollution or Environmental Harm of or to the Relevant Land arising from, or connected with, the use and occupation of the Land by the Lessee or the Lessee's Visitors, whether such use and occupation is or was under the terms of this Lease or some other lease, licence or agreement.
- (b) The obligations of the Lessee under this clause continue after the expiry or termination of this Lease.

14. LESSOR'S RIGHTS

14.1 Right to Enter

- (a) The Lessor or any person authorised by the Lessor may enter on to the Land upon giving not less than 7 days' notice to the Lessee with all necessary plant, equipment and materials:
- (i) to inspect the Land;
 - (ii) to perform such duties and exercise such powers as are necessary to be performed or exercised in the administration of or for the purpose of the CALM Act or any other Law;

- (iii) to remedy a default by the Lessee under clause 14.2;
 - (iv) to maintain, repair, alter or remove any Services to the Land;
 - (v) to comply with the requirements of any Authority; and
 - (vi) for the purpose of passing or re-passing over the Land as may be reasonably required to access areas located adjacent to the Land.
- (b) In the event of an emergency, including but not limited to a fire in the National Park, the Lessor or any person authorised by the Lessor:
- (i) is not required to give notice to the Lessee before entering on to the Land; and
 - (ii) is entitled to unrestricted use of any water bores on the Land.

14.2 Remedy Lessee's Default

The Lessor may, but is not obliged to, remedy any default by the Lessee of its obligations under this Lease, including the payment of any moneys payable by the Lessee under this Lease.

14.3 Recover Costs from Lessee

If the Lessor remedies a default under clause 14.2, the Lessee is to pay to the Lessor on demand all debts, costs and expenses, including legal costs and expenses, incurred by the Lessor as a result of carrying out those works or remedying that default.

15. GENERAL PROVISIONS

15.1 Conflict with Laws

- (a) Despite any other provision of this Lease, nothing in or arising out of this Lease in any way:
- (i) fetters any discretion or any exercise of functions or powers, of the State, the Lessor or any Authority or officer of the State or an Authority under any Law; or
 - (ii) precludes the State or any Authority or an officer of the State or an Authority from accessing, relying upon or using any of their rights, powers, defences, immunities, indemnities or limitations of liability under any Law.
- (b) If there is any inconsistency between anything in this Lease and anything in a Law, the Law will prevail.

15.2 Lessor's approval

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, unless

otherwise specified in this Lease, 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.

15.3 Exclusion of warranties

- (a) The Lessee acknowledges having inspected the Land and any existing Improvements and that in entering into this Lease the Lessee has not relied on any statement, representation or warranty (other than those implied by or deemed to have been given by Law and which cannot be contracted out of) by or on behalf of the Lessor whether express or implied, other than the statements representations and warranties expressly set out in this Lease.
- (b) The Lessor does not expressly or impliedly warrant that:
 - (i) the Land is suitable to be used for the Permitted Use;
 - (ii) any Improvements on the Land on the Commencement Date are suitable to be used for the Permitted Use; or
 - (iii) the Land may lawfully be used for the Permitted Use.

15.4 Waiver

- (a) Failure to exercise or delay in exercising any right, power or privilege in this Lease by the Lessor does not operate as a waiver of that right, power or privilege.
- (b) A single or partial exercise of any right, power or privilege does not preclude:
 - (i) any other or further exercise of that right, power or privilege; or
 - (ii) the exercise of any other right, power or privilege.

15.5 Severability of provisions

If a court decides that any part of this Lease is void, voidable, illegal or unenforceable or this Lease would be void, voidable or unenforceable unless a part is severed from this Lease, then that part is severed from this Lease and does not affect the continued operation of the rest of this Lease unless this would materially change the intended effect of this Lease.

15.6 Applicable Law

- (a) This Lease shall be construed and interpreted in accordance with the laws in force in the State of Western Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of Western Australia.

15.7 Variation

A variation of any provision of this Lease must be in writing and signed by the parties.

15.8 Accrued Rights

The expiry or termination of this Lease (including without limitation, by way of forfeiture) does not affect the rights or remedies of the Lessor against the Lessee in relation to a breach of this Lease by the Lessee before the expiry or termination of the Lease.

16. NOTICES

16.1 Service of Notices

Any notice or other document required to be served on or given under this Lease may be effected by sending it by pre-paid post or facsimile to, or by leaving it at, the following address of the addressee, or at some other address of which written notice has been given to the other party in accordance with this clause:

The Lessor

The Department of Biodiversity, Conservation and Attractions, Kimberley Region Office, Post Office Box 942 Kununurra, Western Australia 6743.

Email: leasing@dbca.wa.gov.au.

The Lessee

Billingjul Aboriginal Corporation, P.O. Box 225 Halls Creek Western Australia 6770.

Email: virginia.o'neil@official.niaa.gov.au.

16.2 Requirements of notices served on the Lessor

A notice or other document required to be served on the Lessor by the Lessee under this Lease must be signed by a director, secretary, contact person, executive officer or solicitor of the Lessee.

16.3 Time of effectiveness of notice

A notice or other document required to be served or given under this Lease is taken to be received, unless the contrary is proved:

- (a) in the case of pre-paid post, on the expiration of 21 days after it has been posted; and
- (b) in the case of a facsimile, on production by the facsimile machine of the sender of a transmission report confirming that the facsimile was received without error by the facsimile machine of the recipient.

17. GOODS AND SERVICES TAX

17.1 Amounts payable exclusive of GST

Any amounts payable by the Lessee to the Lessor, under this Lease, are exclusive of GST.

17.2 Lessee to pay GST

The Lessee must pay additional to any other amounts payable by the Lessee, any GST payable by the Lessor in respect of a Taxable Supply made under this Lease.

17.3 Tax invoice

Where GST is payable, the Lessor shall provide to the Lessee, a Tax Invoice in the format and form required as set out in the GST Law.

17.4 Notification is conclusive

A written notification given to the Lessee by the Lessor of the amount of GST that the Lessor is liable to pay on a Taxable Supply made or to be made under this Lease is conclusive between the parties except in the case of an obvious error.

17.5 The lessee must pay GST at same time

The Lessee must pay to the Lessor the amount of the GST that the Lessee is liable to pay under this Lease:

(a) at the same time; and

(b) in the same manner,

as the Lessee is obliged to pay for the Taxable Supply.

17.6 Apportionment of GST

Where a Taxable Supply is not separately supplied to the Lessee, the liability of the Lessee for any amount for GST, in relation to that Taxable Supply, is determined on the same basis as the Lessee's proportion of that Taxable Supply is determined.

17.7 Other supplies

If there is a supply by any party, which is a Taxable Supply and is not covered by clause 17.2, then the consideration for the supply shall be increased by an amount calculated as:

A x R

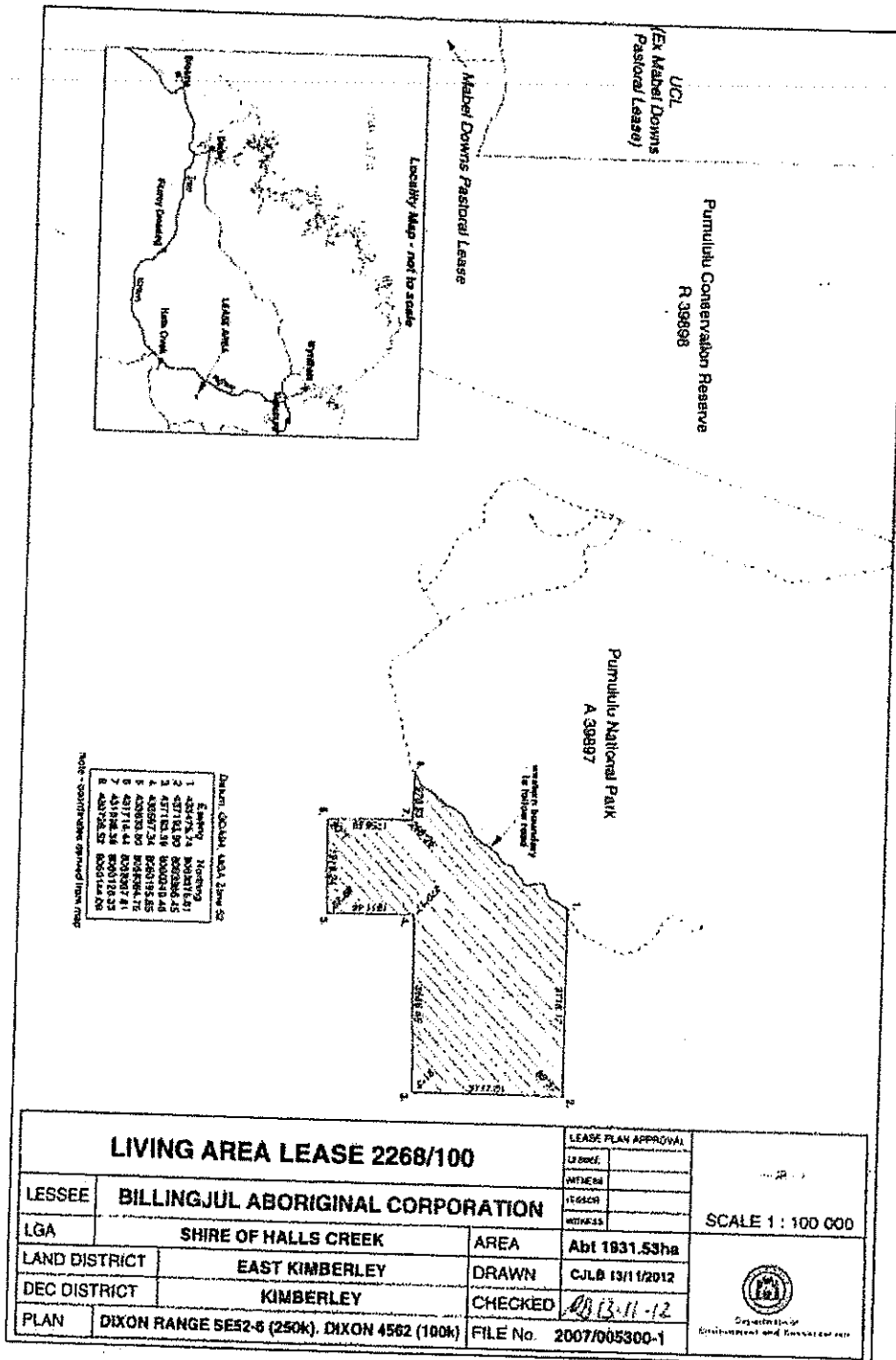
where:

A is the amount of the consideration for the supply apart from clause 14.2; and
R is the rate of GST applicable to the supply.

Schedule 1 – Nature and cultural tourism activities subject to consent of the Lessor and the Lessee obtaining any relevant Lawful Authority

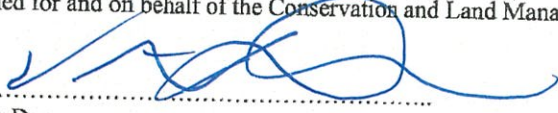
- a) Take, translocation and supply of flora, subject to lawful authority under the *Biodiversity Conservation Act 2016* and Biodiversity Conservation Regulations 2018.
- b) Take of water.
- c) Beekeeping, subject to lawful authority under the CALM Act.
- d) Selling of honey.
- e) Commercial tours.
- f) Commercial public camping facility and other purposes as are incidental to the carrying on of that business, in a proper, efficient, prudent and businesslike manner in accordance with any bona fide representation or proposal put forward by or on behalf of the Lessee (in connection with this Lease).

Lease Plan – Land




Executed by the parties as a Deed on the day, month and year set out above.

Signed for and on behalf of the Conservation and Land Management Executive Body by:


.....
Peter Dans
Deputy Director General
Department of Biodiversity, Conservation and Attractions
an officer of the Department of Biodiversity, Conservation and Attractions authorised under s38
of the *Conservation and Land Management Act 1984* as delegate of the Chief Executive Officer

in the presence of:

| | | |
|----------|---------------------------|---|
| Witness: | Signature |  |
| | Name (Please print) | <u>Vesna Mills</u> |
| | Occupation (Please print) | <u>Exec Officer</u> |
| | Address (Please print) | <u>23 Lawley Cres Mt Lawley</u> |

EXECUTED BY Billingjul Aboriginal Corporation (Indigenous Corporation Number 7776) in accordance with section 99-5(1) of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)

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Signature of Director

VINCENT EDWARDS
.....
Full name (Print)


.....
Signature of Director/Secretary

Virginia O'Neil
.....
Full name (Print)