LEASE

LEASE NO. 2489/100

PUBLIC SWIMMING ENCLOSURE AND ASSOCIATED SHARK BARRIER

PART OF MARMION MARINE PARK

MARINE RESERVE NUMBER 1

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY
(The Lessor)

and

CITY OF JOONDALUP (A.B.N. 64 245 472 416)
(The Lessee)
LEASE

TERMS AND CONDITIONS

Schedule

1. The Lessor
2. The Lessee
3. Leased Area
4. Term
5. Rent
6. Permitted Use of the Leased Area
7. Minimum Public Liability Insurance Cover

Terms and Conditions

1. Grant
2. Rent
3. Outgoings
4. Building Work
5. Use of Leased Area
6. Environmental Protection
7. General Obligations and Restrictions
8. Indemnity and Insurance
9. Management of the Leased Area
10. Assignment and Subletting
11. Holding Over
12. Default
13. Lessee’s Obligations on Termination
14. Costs and Expenses
15. Miscellaneous
16. Notices
17. Trustee Provisions
18. Definitions and Interpretation
1. The Lessor

THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY – LOCKED BAG 104, BENTLEY DELIVERY CENTRE, WESTERN AUSTRALIA 6983

2. The Lessee

CITY OF JOONDALUP (A.B.N. 64 245 472 416) – BOAS AVENUE JOONDALUP WA 6027 (PO BOX 21 JOONDALUP WA 6919)

3. Leased Area

SEE ATTACHED LEASE DIAGRAM

4. Term

The period of 15 years from the Commencement Date to the Expiry Date

4.1 Commencement Date: 1 OCTOBER 2016

4.2 Expiry Date: 30 SEPTEMBER 2031

5. Rent

$1.00 IF AND WHEN DEMANDED.

6. Permitted Use of the Leased Area

PUBLIC SWIMMING ENCLOSURE AND ASSOCIATED SHARK BARRIER

7. Minimum Public Liability Insurance Cover

$10,000,000
RECITALS

A. Pursuant to Section 155 (2) of the amended Conservation and Land Management Act 1984 ("the Act") the Marmion Marine Park is vested in the Conservation and Parks Commission.

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 99 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.

D. The Lessee has applied to the Lessor for a lease of that portion of the Marmion Marine Park above described together with all erections and other improvements now or hereafter erected thereon (collectively "the Leased Area").

E. The Lessor has agreed to lease the Leased Area 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.

F. Pursuant to Section 100(3) of the 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.

1. GRANT

1.1 Grant of Lease

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

1.2 Quiet Enjoyment

For as long as the Lessee complies with the Lessee's obligations under this Lease, the Lessee may occupy and use the Leased Area during the Term without disturbance or interference by the Lessor except as permitted by this Lease or by law.

1.3 Termination by Three (3) Months' Notice

Despite any other provision of this Lease, the Lessor or the Lessee may at any time terminate this Lease by giving three (3) months written notice of termination.

2. RENT

2.1 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.

2.2 Manner of Payment

If demanded by the Lessor, the Lessee must pay the rent by equal annual instalments in advance. The first instalment is to be paid on the Commencement Date and subsequent instalments are to be paid on each anniversary of the Commencement Date.
3. OUTGOINGS

3.1 Rates and Taxes

The Lessee must pay the Rates and Taxes either to the relevant Authority before those Rates and Taxes become overdue or, in the case of any Rates and Taxes imposed on the Lessor, to the Lessor as required by the Lessor whenever the Rates and Taxes become payable.

3.2 Goods and Services Tax

(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.


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.

(2) Adjustment for GST

(a) 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.

(3) Tax Invoices

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

(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 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.

3.3 Other property included

If Rates and Taxes are not assessed separately on the Leased Area but also on other property which includes the Leased Area, the amount which the Lessor can require the Lessee to pay is the same proportion of those Rates and Taxes as the area of the Leased Area bears to the area of the property the subject of the assessment.

4. BUILDING WORK AND CLEANING

4.1 General Obligations

The Lessee must:

(1) maintain the Leased Area to a reasonable standard subject to the Lessor’s satisfaction; and

(2) promptly repair any damage to the Leased Area; and

(3) maintain the Lessee’s Property (including signs) located on the Leased Area in good condition.
4.2 **Building Work**

If the Lessee constructs anything on the Leased Area or carries out any other work on the Leased Area, including work required by any Authority or any law, the Lessee must:

1. before carrying out the work, obtain the Lessor's written approval to the carrying out of the work, including if relevant, written approval of the plans and specifications for the work; and
2. comply with all relevant requirements of each Authority and all laws and applicable standards in relation to the work; and
3. carry out the work in a safe and proper manner; and
4. use only good quality materials; and
5. utilise the services of a qualified and competent overseer who has been approved by the Lessor; and
6. pay to the Lessor when the Lessor requests any reasonable expenses incurred by the Lessor in approving the work, including fees paid to architects, engineers, contractors or other advisors.

4.3 **Cleaning**

The Lessee must:

1. keep the Leased Area clean and tidy; and
2. regularly remove any rubbish accumulating on the Leased Area to an appropriate rubbish disposal site; and
3. comply with the Lessor's reasonable directions in connection with cleaning and the disposal of rubbish in relation to the Leased Area.

4.4 **Specific obligations**

Without limiting the preceding clause, the Lessee must:

1. not cause or allow any pollutant or contaminant material or substance over which the Lessee has control to be released into or affect the Leased Area; and

5. **USE OF LEASED AREA**

5.1 **Permitted Use**

The Lessee may only use the Leased Area for the Permitted Use unless the Lessor consents to another use.

5.2 **Lessee's Own Enquiries**

The Lessee has relied on the Lessee's own enquiries about how the Leased Area may be used and not on any representation from the Lessor. The Lessee has made the Lessee’s own enquiries about:

1. the suitability of the Leased Area for any use to which it is to be put; and
(2) all planning and any other requirements prohibitions or restrictions applying to the Leased Area under any law or as a result of the requirements or orders of any Authority.

5.3 No Warranty by Lessor

The Lessor does not give any warranty of any kind that the Leased Area is suitable for any purpose for which the Lessee intends to use it. Any warranty in relation to the Leased Area which is implied by law is excluded to the extent that the law permits the warranty to be excluded.

5.4 The Lessor Not Liable

The Lessor is not liable to the Lessee and the Lessee will not make a claim against the Lessor in respect of any Liability resulting from any accident, death, injury, damage, malfunction or other event in or affecting the Leased Area unless caused by the negligence of the Lessor or any employee, contractor or agent of the Lessor.

6. ENVIRONMENTAL PROTECTION

6.1 Dangers or Threats to Public Users and Divers

The Lessee must generally take any measures necessary to prevent accidents and to protect the safety of authorised public users and appropriately qualified divers in the Leased Area.

6.2 No Interference with Environment

The Lessee acknowledges that the Leased Area may be environmentally sensitive and that the Lessor has a general duty to protect the environment. Accordingly, subject to the Permitted Use the Lessee must not, without first obtaining the consent of the Lessor, knowingly or negligently do anything to damage or otherwise interfere with the natural environment on the Leased Area, including:

(1) harming or endangering any flora or fauna on the Leased Area; or

(2) anything else which in connection with the Leased Area that may be harmful to the environment.

6.3 Notify the Lessor of Threats

The Lessee must 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 Area.

6.4 Environmental Protection Laws

Unless otherwise stated, this Lease is not to be taken as exempting the Lessee from or limiting the obligation of the Lessee to comply with any law relating to the protection of the environment.

7. GENERAL OBLIGATIONS AND RESTRICTIONS

7.1 Obligations

The Lessee must:
(1) conduct the Lessee's business or activities in the Leased Area in a proper manner; and
(2) comply with all relevant requirements of any Authority and every law in connection with the Leased Area and the Lessee's Property except where such requirements relate to work of a structural nature, unless rendered necessary by the nature of the Lessee's business or activities in the Leased Area; and
(3) withdraw any 'subject to claim' caveat lodged to protect the Lessee's interest under this Lease at the termination, or on an assignment, of this Lease; and
(4) promptly give the Lessor a copy of every notice from any Authority received by the Lessee relating to the Leased Area; and
(5) immediately notify the Lessor if the Lessee becomes aware of anything which is a threat to the Leased Area and comply with the Lessor's directions for the purpose of protecting property or persons in the Leased Area; and
(6) promptly inform the Lessor after becoming aware of any damage to the Leased Area; and
(7) 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, Commonwealth 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 Area or the use of the Leased Area or which impose any duty or obligation upon the owner or occupier of the Leased Area.

7.2 Restrictions

In connection with the Leased Area, the Lessee must not (and may not permit anyone else to) except with the Lessor's consent:

(1) cause damage to the Leased Area; or
(2) put any signs or advertisements outside the Leased Area or within the Leased Area, except as required by this Lease; or
(3) permit any other person to carry on business on or from the Leased Area; or
(4) abandon the Leased Area; or
(5) create a security interest over this Lease in favour of any person or give another person any right to occupy or use the Leased Area; or
(6) lodge an absolute caveat to protect the Lessee's interests under this Lease.

7.3 Local Government Act 1995 Requirements

Even though the Local Government Act 1995 and subsidiary legislation, including any building regulations, may not apply in respect of the Leased Area, the Lessee must comply with that Act and subsidiary legislation as if it did apply, except to the extent that the Lessor waives any requirement. The Lessee must pay to the Lessor on request the fees or other costs charged to the Lessor by any consultant or other competent person who provides advice to the Lessor in relation to the Lessee's compliance with the Local Government Act 1995 and any subsidiary legislation.
8. INDEMNITY AND INSURANCE

8.1 Indemnity

The Lessee agrees to release and indemnify, and keep indemnified, the State of Western Australia (State), the Chief Executive Officer of the Department of Parks and Wildlife (the Department) and each of the employees, contractors and agents of the State (the Indemnified Parties) from and against all claims, demands, actions, suits, and proceedings (whether under the law of contract, tort, a written law or otherwise); and damages, liabilities, losses, costs (including legal costs) and expenses, which may be made or brought against, suffered or incurred by any of the Indemnified Parties arising in any way from, or in connection with the conduct of the Lessee or any of its employees, agents, contractors, service suppliers sub-contractors, sub-lessees, lessees, customers licensees and other visitors and any other person who at any time is on the Leased Area with or without the consent of the Lessee, the subject of this Lease, except to the extent that any claims, actions, demands, suits, proceedings, damages, liabilities, losses or costs made or brought against, suffered or incurred by the Indemnified Parties are as a result of the Indemnified Parties negligence:

(1) on any lands to which the Conservation and Land Management Act 1984 applies; or
(2) in relation to the activities the subject of this application; or
(3) in relation to some risk, danger or hazard created, assumed or accepted whether or not the existence of that risk, danger or hazard was or ought to have been known to the Lessee.

8.2 Insurance

The Lessee must maintain with a reputable insurer:

(1) public liability insurance of at least the amount specified in item 7 of the Schedule for each accident or event in the Leased Area; and
(2) insurance for the Lessee's Property and any insurance required by law as a result of the Lessee's use of the Leased Area.

8.3 Variation of Insurance amount

The Lessor may at any time on three (3) months' notice to the Lessee require the Lessee to increase the minimum cover for the Lessee's public liability insurance if in the circumstances it is reasonable for the cover to be increased.

8.4 Insurance obligations

The Lessee must also:

(1) pay each premium due under the insurance policies taken out by the Lessee before the due date and, when reasonably requested by the Lessor, provide evidence of payment; and
(2) when reasonably requested by the Lessor, provide evidence of currency for each insurance policy certified by the insurer; and
(3) immediately notify the Lessor if an event occurs which may give rise to a claim under any insurance or which could adversely affect it or if an insurance policy is cancelled; and
(4) if required by the Lessor, ensure that the Lessor's interests are noted on the policy of public liability insurance.
8.5 **Lessor's insurance**

Unless the Lessor consents, the Lessee must not:

(1) do or allow anything to be done which could adversely affect any insurance taken out by the Lessor in connection with the Leased Area or which could increase the cost of obtaining that insurance; or

(2) settle, compromise or waive any claim under any policy of insurance relating to the Leased Area.

9. **MANAGEMENT OF THE LEASED AREA**

9.1 **Managing Agent**

The Lessor may appoint a managing agent to manage the Leased Area and represent the Lessor in relation to this Lease. If the Lessor appoints a managing agent, the managing agent may exercise the rights and powers of the Lessor under this lease. The Lessor may at any time vary or terminate the authority of the managing agent. Decisions of the Lessor override those of the managing agent if there is any inconsistency between them.

9.2 **Exercise of Rights under the Conservation and Land Management Act 1984**

The Lessor reserves the right to enter the Leased Area at any time in order to exercise any right, power or authority which the Lessor has under the *Conservation and Land Management Act 1984*. The Lessee is not entitled to any compensation or to make any other claim against the Lessor for anything done by the Lessor on the Leased Area in the exercise of any right or authority under that Act.

9.3 **Right to Enter**

The Lessor may after giving reasonable notice to the Lessee (or in an emergency, without notice) enter the Leased Area to do any one or more of the following things:

(1) inspect the state of repair and condition of the Leased Area;

(2) maintain or repair the Leased Area and equipment in the Leased Area;

(3) carry out structural work to the Leased Area or any other work required by an Authority;

(4) remove anything which is harmful or dangerous;

(5) anything which should have been done by the Lessee but which has not been done properly;

(6) 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.

9.4 **Minimise disruption**

If the Lessor does anything permitted by the preceding clause the Lessor must:

(1) give the Lessee reasonable notice of the intended action before it is taken (except in an emergency); and

(2) use its best endeavours to minimise disruption to the Lessee's business; and
(3) make good any damage to the Lessee's Property (other than minor damage) caused by the Lessor.

9.5 **Dealing with the Leased Area**

The Lessor reserves the right to deal with the Leased Area by granting easements, licences or other rights or interests of any kind to any person over it at any time so long as this does not unreasonably interfere with the Lessee's use of the Leased Area for the Permitted Use. The Lessee is not entitled to any compensation or to make any other claim against the Lessor in relation to the proper exercise of any right given to another person by the Lessor. The Lessee is responsible for and indemnifies the Lessor against any Liability resulting from any claim made by a person to whom a right or interest has been granted by the Lessor in connection with any negligent act or omission of the Lessee or any default by the Lessee under this Lease.

10. **ASSIGNMENT AND SUBLETTING**

10.1 **Consent Required**

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

10.2 **Requirements for Consent**

The Lessee may assign this Lease or sublet the Leased Area if the Lessor consents and if the Lessee:

(1) complies with the next clause; and

(2) supplies to the Lessor evidence acceptable to the Lessor that the proposed assignee or sublessee are able and qualified to use the Leased Area for the Permitted Use, is financially sound and has a good reputation; and

(3) remedies any default under this Lease unless it has been waived by the Lessor; and

(4) 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.

10.3 **Obligations on Assignment or Sublease**

If the Lessee assigns this Lease or sublets the Leased Area, 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 takes 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).
10.4 **Lessee Remains Liable**

The Lessee remains fully liable under this Lease even if the Lessee assigns this Lease or sublets the Leased Area or gives any right in relation to this Lease or the Leased Area to any other person.

10.5 **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.

10.6 **Exclusion of Statutory Provisions**

The provisions of sections 80 and 82 of the *Property Law Act 1969* do not apply to this Lease.

10.7 **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.

11. **HOLDING OVER**

If the Lessor consents to the Lessee continuing to occupy the Leased Area after the Expiry Date or after the end of any extended term, the Lessee is a monthly tenant of the Leased Area and:

(1) 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; and

(2) the rent is the same rent payable immediately before the Expiry Date or after the end of any extended term; and

(3) all the other provisions of this Lease apply to the monthly tenancy except any option to extend this Lease.

12. **DEFAULT**

12.1 **Re-entry**

The Lessor may terminate this Lease by notice to the Lessee or by re-entering the Leased Area if:
(1) the Lessee repudiates this Lease; or
(2) the Lessee abandons the Leased Area; or
(3) the Lessee ceases to use the Leased Area for the Permitted Use other than for a temporary period;
(4) or any money payable by the Lessee is unpaid for longer than 3 months after it is due to be paid; or
(5) the Lessee is in default under this Lease and, if the default can be remedied, the Lessee has not remedied the default within 3 months after receiving a notice from the Lessor specifying the default and requiring it to be remedied; or
(6) an Insolvency Event occurs; or
(7) the Lessee defaults under the Permit.

Except for the notice given under subclause (5) and except for any notice otherwise required by law the Lessor does not need to give notice to the Lessee before re-entering the Leased Area.

12.2 Essential Terms and Damages

Every obligation of the Lessee under this Lease:

(1) to pay money; or
(2) not to do something without the Lessor's consent; or
(3) relating to damage to the Leased Area or to the state of repair or condition of the Leased Area,

is an essential term of this Lease. (This clause does not prevent other obligations being essential terms).

If the Lessee defaults by not performing or complying with any obligation which is an essential term, The Lessor is entitled to recover damages for losses over the whole Term, including losses caused by the non-payment of money by the Lessee over that period, even if this Lease is terminated by the Lessor as a result of the Lessee's default before the Expiry Date.

This clause is not to be taken as relieving the Lessor of any duty to mitigate losses which is imposed by law.

12.3 Right to Damages Not Affected

The Lessor's right to recover damages is not affected if:

(1) the Lessor accepts the Lessee's repudiation of this Lease; or
(2) the Lessor terminates this Lease by notice or re-entry; or
(3) the Lessee has abandoned the Leased Area; or
(4) there is a surrender of this Lease by law.

12.4 Interest on Overdue Money

The Lessee must pay interest on any money which is not paid by the due date. Interest is to be the higher of:
(1) 10%; or

(2) the current reference rate or other base rate charged by the Commonwealth Bank on
overdraft loans of less than $100,000 plus 2%,

and is to be calculated on a daily basis from the due date until the money is paid. The interest
is to be paid when requested by the Lessor.

12.5 Acceptance of Rent or Mitigation

The acceptance of rent or other money owing under this Lease or an attempt by the Lessor to
mitigate losses is not to be taken as a waiver of a default by the Lessee under this Lease or a
surrender by law.

13. LESSEE'S OBLIGATIONS ON TERMINATION

13.1 Lessee to Move Out

The Lessee must move out of the Leased Area and remove all buoys and moorings from the
Leased Area by the end of the Term except that if this Lease is terminated before that date, the
Lessee must move out and remove all buoys and moorings as soon as reasonably possible
after this Lease is terminated.

13.2 Abandonment of Lessee's Property

If the Lessee does not remove all the Lessee's Property when the Lessee has to move out of
the Leased Area the Lessee is deemed to have abandoned the Lessee's Property remaining in
the Leased Area and the Lessee's Property will become the property of the Lessor.

13.3 Risk

The Lessee's Property is at the Lessee's risk at all times before and after the termination of this
Lease.

13.4 Damage Caused by Moving Out

The Lessee must repair any damage to the Leased Area caused by moving out of the Leased
Area or removing the Lessee's Property.

13.5 Reinstatement

If the Lessee has made any improvements or alterations to the Leased Area or carried out any
work on the Leased Area or done anything else to change the Leased Area if the Lessor
requires, the Lessee must reinstate the Leased Area before the end of the Term so that the
Leased Area is returned to the condition it was in before the improvements or alterations were
made, or the work carried out or the other changes were made. The Lessee's obligations under
this clause include removing any building or other structure erected in the Leased Area by the
Lessee unless the Lessor agrees otherwise or unless this Lease provides otherwise.

14. COSTS AND EXPENSES

14.1 Costs and Expenses

The Lessee must pay or reimburse the Lessor on request for all the Lessor's costs and
expenses (including legal costs and expenses) in relation to:
(1) arranging for any survey or demarcation drawing necessary to identify the Leased Area; and

(2) negotiating, preparing, signing and stamping of this Lease and any document assigning, varying or surrendering this Lease; and

(3) any proposed or actual assignment or subletting by the Lessee including the engagement by the Lessor of any agent or consultant in connection with the proposed or actual assignment or subletting; and

(4) enforcing any right under this Lease including giving a notice of default under section 81 of the Property Law Act 1969; and

(5) any default by the Lessee which causes loss to the Lessor; and

(6) giving any consent or approval under this Lease.

14.2 **Duties and Fees**

The Lessee must pay or reimburse the Lessor on request for all stamp duty and fees (including fines and penalties attributable to the Lessee) payable in connection with this Lease.

15. **MISCELLANEOUS**

15.1 **Remedies Cumulative**

The rights, powers and remedies in this Lease are in addition to the rights, powers and remedies provided by law independently of this Lease.

15.2 **Accrued Rights**

The termination of this Lease for any reason does not affect the rights of the Lessor in relation to a default by the Lessee before termination.

15.3 **Severance**

If any part of this Lease or the application of that part to any person or circumstance is or becomes unenforceable, the other provisions of this Lease are not affected but continue to be enforceable.

15.4 **Payments**

The Lessee must make all payments under this Lease without set-off, counterclaim or deduction. Payments by the Lessee under this Lease are to be made to the Lessor or any other person nominated by the Lessor. The Lessor need not make a demand for payment of any amount required to be paid by the Lessee under this Lease unless required by law. If this Lease does not specify when a payment is due, it is due within 14 days after the Lessor requests payment.

15.5 **Transfer of Land Act 1893**

The covenants and powers implied in every lease made under the Transfer of Land Act 1893 are implied in this Lease, whether registered under that Act or not, except:

(1) to the extent that they are modified by this Lease; and

(2) the implied covenant set out in section 92(ii), which is excluded.
15.6 Lessee’s Environmental Obligations

(1) The Lessee:

(i) must obtain any authorisation required, for any conduct, activity or use undertaken by the Lessee on the Leased Area, including the Permitted Use before that conduct, activity or use is undertaken and to keep all such authorisations in full force and effect throughout the term; and

(ii) must use the Leased Area in a manner which complies with each Environmental Law and each Authorisation held by the Lessee in accordance with sub-clause 15.6(1)(i);

(iii) must not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Leased Area or any conduct or activity relating to the use of the Leased Area;

(iv) must not cause or permit any Contamination, Pollution or Environmental Harm of the Leased Area;

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

(A) the existence of any Contamination;

(B) any Pollution affecting the Leased Area;

(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 Leased Area; 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 or Authorisation;

(vi) 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 Leased Area, whether the notice is served on Lessor or the Lessee.

(2) Without affecting:

(i) 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 sub-clause 15.6(1), 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 absolute satisfaction of the Lessor and in compliance with any Environmental Notice or Environmental Law.

(3) The obligations of the Lessee under this clause continue after the expiry or earlier determination of this Lease.

15.7 Cost of Complying with Obligations

Unless otherwise stated in this Lease, the Lessee must pay the cost of performing or complying with every obligation of the Lessee under this Lease.
15.8 **The Lessor Can Comply**

If the Lessee does not perform or comply with an obligation under this Lease the Lessor may do what is necessary for the obligation to be performed or complied with. The Lessee must reimburse the Lessor for any reasonable costs or expenses incurred in ensuring the Lessee’s obligations are performed or complied with.

16. **POWER OF ATTORNEY**

The Lessee for valuable consideration irrevocably appoints the Lessor and every senior officer of the Lessor (jointly and severally) the Lessee’s attorney for the purpose of:

(1) withdrawing any caveat which the Lessee is obliged to withdraw but does not; and

(2) doing anything else the Lessee is obliged to do but does not do.

In this clause "senior officer" means every person designated by the Lessor as a senior officer.

17. **NOTICES**

17.1 **Form and Address**

A notice or other communication in connection with this Lease must be in writing and may be signed by the relevant party or its solicitors or agents.

The notice or other communication may be:

(1) left at or posted to the address of the addressee as set out in the Schedule or any other address notified to the sender as an address for the giving of notices; or

(2) sent by facsimile transmission to any facsimile number used by the addressee.

17.2 **Receipt**

Unless a later time is specified in it, a notice or other communication takes effect from the time it is taken to be received, which is:

(1) if left at the address of the addressee, the next Business Day after the day it is left;

(2) if posted, on the third Business Day after posting; and

(3) if sent by facsimile transmission, on the next Business Day after the facsimile was sent.

18. **TRUSTEE PROVISIONS**

If the Lessee has entered into this Lease in the capacity of trustee whether or not the Lessor has any notice of the trust, the Lessee:

(1) is taken to enter into this Lease both as trustee and in the Lessee’s personal capacity and acknowledges that the Lessee is personally liable for the performance of the Lessee’s obligations under this Lease; and

(2) is personally liable for the performance of the Lessee’s obligations under this lease; and
(3) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Lessor for any default by the Lessee; and

(4) will assign to the Lessor any right of indemnity the Lessee has against the assets of the trust to the extent of the liability of the Lessee under this Lease; and

(5) warrants that the Lessee has the power and authority under the terms of the trust to enter into this Lease.

19. **DEFINITIONS AND INTERPRETATION**

19.1 **Definitions**

In this Lease:

**Authority** means any governmental or public authority of any kind.

**Business Day** means a day on which banks are open for business in Perth other than a Saturday or a Sunday.

**Commencement Date** means the date in item 4.1 of the Schedule.

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

**CSA** means the *Contaminated Sites Act 2003*.

**Energy Supplier** means any Authority, company or other body which supplies, at the Lessor’s request, gas, electricity or other sources of energy to the Leased Area.

**Environmental Expert** means a reputable person who is suitably qualified and experienced in identifying and remediating Contamination, Pollution and Environmental Harm to the reasonable satisfaction of the Lessor.

**Environmental Harm** has the same meaning as that term is defined in the *Environmental Protection Act 1986*.

**Environmental Law** means all planning, environmental Contamination or Pollution Statutes and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

**Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.

**Environmental Sustainability** means maintaining the factors and practices that contribute to the quality of environment on a long-term basis.

**Event of Default** means the occurrence of any of the events referred to in clause 12.1.

**Expiry Date** means the date in item 4.2 of the Schedule.

**Insolvency Event** means the happening of any of the following events in relation to the Lessee:

(1) the Lessee is unable to pay all the Lessee’s debts as and when they become due and payable or the Lessee has failed to comply with a statutory demand as provided in
section 459F of the Corporations Law, or the Lessee is deemed to be unable to pay the Lessee's debts under section 585 of the Corporations Law;

(2) a meeting is convened to place the Lessee in voluntary liquidation or to appoint an administrator.

(3) an application is made to a court for an order or an order is made that the Lessee to be wound up;

(4) the appointment of a controller (as defined in section 9 of the Corporations Law) of any of the Lessee's assets;

(5) the Lessee proposes to enter into or enters into any form of arrangement (formal or informal) with the Lessee's creditors or any of them, including a deed of company arrangement; or

(6) the Lessee becomes an insolvent under administration, as defined in section 9 of the Corporations Law.

**Leased Area** means the area described in the Lease Plan, being three dimensional, including the airspace above and extending to the seabed below.

**Lease Plan** means the plan attached to this Lease.

**Lessee's Property** means any equipment or other property which the Lessee brings in to the Leased Area.

**Liability** includes any obligation to pay money or other loss, cost or expense of any kind.

**Permitted Use** means the use described in item 6 of the Schedule.

**Rates and Taxes** means any 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 supply or use of the Leased Area or any thing under or in connection with the Lease.

**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.

**Term** means the period referred to in item 4 of the Schedule.

**The Lessee** means the person or persons named in item 2 of the Schedule and includes the Lessee's successors and an assignee, a sublessee or any other person having a right to possess, use or occupy the Leased Area.

**The Lessor** means the statutory body described in item 1 of the Schedule and includes the Lessor's successors and an assignee of the reversion and, where the context permits, any person authorised by the Lessor to do any act on behalf of the Lessor for the purposes of this Lease, including a managing agent.

20.2 **Interpretation**

In this Lease, unless the contrary intention appears:

(1) a reference to the Lessee includes the Lessee's employees, agents, contractors, sublessees, licensees, customers and any other person who is in the Leased Area with the Lessee's permission (direct or implied);
2. a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the Commencement Date;

3. the singular includes the plural and vice versa;

4. the word "person" includes a firm, a body corporate, an unincorporated association or an Authority;

5. an obligation, representation or warranty:

6. in favour of 2 or more persons is for the benefit of them jointly and severally; and

7. on the part of 2 or more persons binds them jointly and severally;

8. each obligation of a party to this Lease has effect as a covenant given in favour of the party who may enforce the obligation;

9. if a period of time is expressed to be calculated from or after a specified day, that day is not included in the period;

10. a reference to a day is a reference to the 24 hour period commencing at midnight;

11. a reference to a month is to a calendar month and a reference to a year is a calendar year;

12. if the word 'including' or 'includes' is used, the words: "without limitation" are deemed to immediately follow;

13. a reference to the termination of this Lease includes the expiry of the Term; and

14. a reference to the Term in relation to any obligation of the Lessee is to be taken as including a reference to any period during which the Lessee occupies or uses the Leased Area with the Lessor's consent.

20.3 **Schedule**

All the provisions in the Schedule at the front of this Lease are incorporated in and form part of this Lease.

20.4 **This Lease**

A reference to this Lease includes:

1. everything forming part of this document; and

2. any agreed changes to this document which are recorded in a separate document.
LEASE No. 2489/100
Swimming Enclosure an Associated Shark Barrier

Coordinates supplied by City of Joondalup
Ref: MPP 2070-002-A

Marmion Marine Park
M1

30m buffer zone
(for sea anchors and chains)

Point Easting Northing
A 380852.318 6477715.880
B 380875.523 6477701.123
C 380902.618 6477696.423
D 380929.437 6477702.504

Coordinates supplied by City of Joondalup
Ref: MPP 2070-002-A
The Common Seal of the
CONSERVATION AND LAND
MANAGEMENT EXECUTIVE BODY
was affixed in the presence of:

Chief Executive Officer

in the presence of:

[Signature of witness]

[Full name of witness]

[Address of witness]

[Occupation of witness]

The Common Seal of the
CITY OF JOONDALUP was here unto
affixed by authority of its Council
in the presence of:

[Mayor]

[Chief Executive Officer]

[Print full name]

[Print full name]