THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY
(Lessor)

AND

FOREST ADVENTURES SOUTH WEST PTY LTD
ACN 613 111 881
(Lessee)

AND

MICHAEL BROWN
(Guarantor)

DEED OF LEASE
LEASE NO. 2483/97
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THIS DEED OF LEASE is made the 12th day of October 2016

BETWEEN

The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY of Locked Bag 104 Bentley Delivery Centre in the State of Western Australia (in this lease called "the Lessor" which expression where the context so admits includes the person for the time being entitled to the reversion immediately expectant upon the termination of the term hereby created) of the first part

AND

FOREST ADVENTURES SOUTH WEST PTY LTD ACN 613 111 881 of 16 South Street, West Busselton, Western Australia 6280 (in this lease called "the Lessee" which expression where the context so admits includes its successors and permitted assigns) of the second part

AND

Michael Brown of 16 South Street, West Busselton, Western Australia 6280.

(hereinafter called ("Guarantor") of the third part.

RECITALS

A. Pursuant to Section 155 (2) of the amended Conservation and Land Management Act 1984 ("the Act") the land in State Forest No. 2 (Ludlow State Forest) ("the Land") is vested in the Conservation and Parks Commission.

B. Pursuant to Section 97 of the Act, the Chief Executive Officer (CEO) has power to lease the Land for the purpose of Recreation for a term for a term as he/she thinks fit.

C. Section 36 of the Act allows for the Conservation and Land Management Executive Body ("Executive Body") to be established and to be governed by the CEO.

D. Section 37 of the Act allows for the Executive Body, as a body corporate, to perform functions of the CEO.

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

F. 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.

G. The Guarantors have agreed with the Lessor to guarantee the obligations of the Lessee under this lease.

H. Pursuant to Section 97(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.

NOW THIS DEED witnesses as follows -
1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this lease unless the contrary intention appears:

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

"Address for Payment" means Department of Parks and Wildlife, 17 Dick Perry Avenue Kensington Western Australia 6151 or such other Place as the Lessor may from time to time nominate;

"Annexure 1" means the Sustainability Performance and Audit Schedule as described in clause 3.72.

"Approvals" means the approval of the Lessor and all other approvals consents permissions and licences of any local or other competent authority which may from time to time be necessary for the Lessee to commence and to carry out the Works and each and every stage phase or part of the Works and (if the same are destroyed or damaged) to reinstate the Works whether by statute or otherwise pursuant to this lease and "Approval" shall be construed accordingly;

"Asbestos Management Plan" means the Plan prepared by Plan Solution Management Pty Ltd in October 2009 for the Leased Area in Ludlow State Forest No. 2.

"Asbestos Register" means the asbestos photo report prepared by Plan Solution Management Pty Ltd in October 2009 for the Leased Area in Ludlow State Forest No. 2 which identifies asbestos material, reports on the condition and provides recommendations based on the visual inspection of the site.

"Authority" means any legal entity person or group of persons empowered by Statute, subsidiary legislation or otherwise to perform the regulatory administrative and/or executive functions of Commonwealth, State or Local Government;

"Building Documents" means all specifications accompanying those plans, working drawings and specifications approved pursuant to clause 3.9 and all conditions subject to which any Approvals are given and other documents developed agreed and approved defining or further defining any aspect of the Works;

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

"Commencement Date" means the first day of October 2016;

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

"Financial Year" means each of:

(a) the period from and including the Commencement Date to and including 30 June 2017
(b) the following periods of 12 consecutive months ending on and including 30 June; and

c) if this lease does not end on any 30 June, the period from and including the last 1 July before this lease ends to and including the date this lease ends.

"Goods and Services Tax" means the tax system described in clause 3.7;

"Gross Receipts" means the aggregate amount for any period under consideration of the prices charged or chargeable and other remuneration received or receivable or credit made available in any form to the Lessee for all merchandise sold leased hired or otherwise disposed of, services either sold or performed or both and all business of any nature whatever conducted in at from or upon the Leased Area by the Lessee and other occupiers of the Leased Area or any part of the Leased Area. Without in any way limiting the generality of the foregoing the term includes:-

a) sales made or services provided which originate or are accepted at or from the Leased Area but delivery of which is made from the Leased Area to at in or upon any place other than the Leased Area;

b) sales made or services provided which originate at any place other than the Leased Area but delivery of which is made at or from the Leased Area;

c) mail, telephone or similar orders received or filled at or from the Leased Area;

d) all deposits taken and not refunded to customers;

e) sales made or services provided by means of mechanical or vending devices at or from the Leased Area;

f) sales made or services provided or both by any concessionaire or licensee at in from or upon the Leased Area;

g) sales made as a result of solicitation of business off the Leased Area conducted by persons operating from or reporting to the Leased Area; and

h) service, finance or interest charges made on any type of account which itself was or should have been included within Gross Receipts,

The term does not include or if they have been initially included there will be deducted:

(i) the net amount of discounts actually allowed to any customer reasonably and properly allowed in the usual course of business;

(ii) uncollectable credit accounts to the extent that they are written off PROVIDED that if such accounts are subsequently recovered then the amount recovered must be included within the gross receipts of the year in which they were recovered;

(iii) returns to shippers, wholesalers or manufacturers;

(iv) credit and charge card commissions; and

(v) any amounts which represent the charging or collection of any value added tax, consumption tax or sales tax, imposed by any governmental authority
over and above the amounts which represent the charging or collection of any value added tax, consumption tax or sales tax imposed by any governmental authority, it being the intention of the parties that Gross Receipts will not include any new tax which has the effect of increasing gross receipts without increasing gross profits. Each sale on an instalment basis including lay-bys hire purchase credit sales and any other sales on credit or terms is to be treated as a sale for the full price at the time at which the sale is made irrespective of the time of payment;

"Gross Turnover" means the total Gross Receipts received by the Lessee in a Year;

"Leased Area" means the area of about 7.05 hectares - -which is delineated and hachured on the Lease Plan annexed hereto together with all buildings, structures, installations, improvements, fixtures and fittings now and hereafter thereon and whether brought thereon by or on behalf of the Lessor or the Lessee, including (without limitation) plant, equipment, electricity plant and water treatment plant;

Lessee means the parties named on page 1 of the lease and includes the Lessee's successors and assignee, a sub-Lessee or any other person having a right to possess, use or occupy the Leased Area.

"Lessee's Business" means the business of a high ropes course and associated facilities;

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

"Lessor's Auditor" means the Auditor General or other auditor appointed by the Lessor and engaged at the expense of the Lessor;

"Master Plan" means the Lessee's written proposal approved by the Lessor for the development and operation of the Leased Area, a true copy of which forms part of this lease and is annexed hereto and marked "Master Plan".

"Plan" means the plan which is annexed hereto;

"Quarter" means a period of 3 calendar months commencing on the first day of January, April, July or October in any year within the Term and the first Quarter is that in which the Commencement Date falls;

"Quarterly Gross Turnover" means the total Gross Receipts received by the Lessee in a Quarter;

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

"Rates and Taxes" means any tax, levy or any other charge imposed at any time during the Term of the lease by any State, local or Federal governmental body, authority, department or instrumentality or any other authority of any kind, in relation, to the supply or use of the Leased Area or anything under or in connection with the lease;
"Rent" means the rent calculated as provided in clause 3.2 and payable pursuant to the provisions of clause 3.1;

"Remedial Works" means the corrective works outlined in the Master Plan.

"Restricted Access Area" means the area hatched in blue on the Plan annexed hereto.

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

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

"Schedule" means the Schedule to this lease;

"State forest" means State Forest No. 2 (Ludlow State Forest)

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

"Term" means the period of twenty one (21) years from and including the Commencement Date;

"Works" means any proposed or future buildings, alterations to buildings, improvements, installations and structures to be constructed and carried out within the Leased Area as set forth in clauses 3.9 and 3.10 together with site works, landscaping, the supply and installation of all fixtures, fittings, plant and equipment, and such other obligations which the Lessee must undertake pursuant to the provisions of this lease, whether set forth in those clauses or Plans or not, which the Lessor shall nominate in writing and require the Lessee to undertake on the Leased Area simultaneously with the construction and carrying out of all or any part of the said buildings, alterations to buildings, improvements and structures.

1.2 Interpretation

In this lease unless the contrary intention appears:-

a) words importing one gender include all other genders;

b) words in the singular number include the plural and vice versa;

c) monetary references are references to Australian currency;

d) clause and subclause headings and the list of contents are inserted for ease of reference only and are to be disregarded in the interpretation or construction of this lease;

e) any agreement or obligation entered into or undertaken by more than one person binds those persons jointly and each of them severally; and
f) reference to:-

(i) an Act by name is a reference to an Act of the Parliament of Western Australia;

(ii) an Act whether by name or otherwise includes the amendments to the Act for the time being in force and also any Act passed in substitution for it and all subsidiary legislation for the time being in force under it;

(iii) this lease includes the Schedules and Annexures to this lease;

(iv) a person includes a corporation and vice versa;

(v) a Schedule or Annexure means a Schedule or Annexure to this lease;

(vi) the Law Society, the Australian Institute of Valuers and Land Economists Inc (Western Australian Division), the Institute of Chartered Accountants and any other authorities, associations and bodies whether statutory or otherwise, in the event of any such authority, association or body ceasing to exist or being re-constituted or re-named or replaced or the powers or functions thereof being transferred to any other authority, association or body established or constituted in lieu thereof or (as nearly as may be) succeeding to the powers or functions thereof; and

(vii) a provision of this lease prohibiting the Lessee from doing a thing shall require the Lessee to ensure compliance therewith by the Lessee's employees, agents, contractors, sub-tenants, licensees and invitees.

2. GRANT OF LEASE

a) The Lessor hereby leases to the Lessee and the Lessee hereby takes on lease the Leased Area for the Term subject to the payment of the Rent and the observance and performance by the Lessee of the Lessee’s Covenants.

b) If for any reason by law this lease requires the consent of the Western Australian Planning Commission in respect to Part 3 of the Planning and Development Act 2005 then this lease shall be expressly subject to and conditional upon the granting of such consent.

3. COVENANTS BY LESSEE

The Lessee COVENANTS with the Lessor:-

3.1 To Pay Rent

To pay Rent quarterly on receipt of a Lessor initiated invoice. The Lessee shall supply to the Lessor within fifteen (15) days of the end of each Quarter of the Term a Quarterly Statement showing Quarterly Gross Turnover, certified to be true and correct by the Lessee's Business Manager for that quarter just ended (or part of a quarter if applicable). The Quarterly Statement must be in such a form as approved by the Lessor and must contain such information, detail and breakdown as the Lessor reasonable requires.
3.2 Rent Payable

(a) First Period - From 1st October 2016 to 30 September 2017

The Rent for each Quarter of the First Period of the Term is a sum equal to three and one half (3.5) per cent of Quarterly Gross Receipts for that Quarter.

(b) Second Period - From 1st October 2017 to 30 September 2037

The Rent for each Quarter of the second Period of the Term is a sum equal to five (5) per cent of Quarterly Gross Receipts for that Quarter.

3.3 Delay

No delay by the Lessor in enforcing any review of the rent prevents the Lessor from requiring at any time that the rent must be reviewed with effect from the dates for review of the rent specified in this clause 3.3.

3.4 Lessee to Keep Records

a) To keep proper Sales Records including cash register rolls or records or permanent electronic records or similar permanent and instantaneous records of all cash received and credit given and to keep available for at least two years after the expiration of the period to which the Sales Records relate, all Sales Evidence upon which those Sales Records are based and;

b) To bring into and incorporate into its said accounts and records all financial transactions of the Lessee as the case may be either directly or through any related body corporate subsidiary or agent relating to the carrying on or in any way in connection with the business and activities of the Lessee upon the Leased Area AND for the purposes of this covenant the terms "related body corporate" and "subsidiary" shall have the same meanings as in the Corporations Law of the State of Western Australia for the time being and shall include any company, body or enterprise the affairs of which the Lessee has the power or ability (directly or indirectly) to control.

3.5 Lessee’s Accountant’s Certificate

To furnish to the Lessor within 60 days after the 30th day of June in each year during the Term and within 60 days after the expiry or sooner termination of the Term a financial statement, certified to be true and correct by the Lessee and an independent Certified Practising Accountant or Chartered Accountant of recognised standard, as to the Gross Receipts for that year (or part of a year if applicable). The certificate of the independent Certified Practising Accountant or Chartered Accountant shall be in the form of Accountant’s Certificate annexed to this lease and shall be duly completed. The financial statement and certificate by the Lessee must be in such form and style and must contain such information, detail and breakdown as the Lessor reasonably requires.

3.6 Right to Examine Books

To enter and keep in suitable books and records during the Term or continuance of this lease at a proper office on the Leased Area or at such other place or office as may be the Lessee’s principal business office from time to time, true particulars and
complete accounts and records of all Gross Receipts arising from the carrying on of its business and activities upon or in connection with the Leased Area. Such books and records shall at all reasonable times be open to inspection by the Lessor and the Lessor's Auditor who may take copies thereof and extracts therefrom. The Lessee shall at all times render to the Lessor and the Lessor's Auditor all and every assistance and explanation in making such inspection and taking such copies and extracts, shall verify and prove to the satisfaction of the Lessor or the Lessor's Auditor such entries accounts books and records and for such purposes will furnish the Lessor or the Lessor's Auditor, with all such information as the Lessor or the Lessor's Auditor shall demand concerning Gross Receipts. In particular the Lessor's Auditor has the right at any time during business hours:

a) to examine the Sales Records and Sales Evidence in respect of any business conducted in, at, on or from the Leased Area so as to satisfy himself as to the correctness of the certificate referred to in clause 3.5;

b) to investigate and monitor all processes, procedures and practices involved in the creation, formation and maintenance of accurate Sales Evidence and Sales Records.

3.7 Goods and Services Tax

a) Definitions

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


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

"Tax Invoice" includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

b) Adjustment for GST

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

(ii) GST is payable on any supply of goods and services under this lease.

c) Tax Invoices

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

d) Reimbursements

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

3.8 Processes and Audit

(a) That the Lessee shall carry out all processes procedures and practices and shall install and operate all systems and additional systems which shall be specified by the Lessor's Auditor in his professional judgement as being appropriate for the purpose of achieving accuracy, permanency and control in the creation, formation and maintenance of Sales Evidence and Sales Records.

(b) That at its option the Lessor may cause at any reasonable time upon giving seven (7) days written notice to the Lessee, a complete audit to be made of Sales Records relating to the period covered by any certificate furnished pursuant to clause 3.5. If such audit discloses that its Gross Receipts are understated by more than 2% in any certificate given pursuant to clause 3.5, the Lessee must promptly pay to the Lessor the cost of the audit, but otherwise the audit shall be completed at the expense of the Lessor;

(c) Should any discrepancy be established by an audit under subclause 3.8(b) the Lessee shall pay to the Lessor on demand all Rent properly due together with interest calculated on such Rent at the Rate and computed from the date on which such Rent became due and payable in accordance with the provisions hereof until the date on which all such monies are paid.

3.9 Lessee's Development Obligations

The Lessee shall:

a) develop the Leased Area in accordance with the approved Master Plan, unless approval for other works by the Lessor is granted in accordance with clause 3.13;

b) subject to the Approvals, commence the Works within three months of the Commencement Date, time being of the essence;

c) complete in all respects each part of the Works and shall clear, clean and tidy up the site of each such part on or before the date shown in the lease as the date for completion of that part, time being of the essence;

d) fully complete in all respects all the Works in Stage 1 within twelve (12) months from the date of commencement of the Works including clearing, cleaning and tidying up the site of each part and the removal of surplus and used and unused plant, equipment, materials and chattels, time being of the essence;

e) fully complete in all respects all the Works in Stage 2 within 2 years from the date of commencement of the Works including clearing, cleaning and tidying up the site of each part and the removal of surplus and used and unused plant, equipment, materials and chattels, time being of the essence;

f) notify the Lessor of the commencement of the Stage 2 Works as soon as possible after their commencement;
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3.9 Development Obligations

If the Lessee's development obligations under this clause 3.9 are delayed by events beyond the control of the Lessee, including:

1) inclement weather;

2) loss or damage by fire, fusion, explosion, earthquake, lightning, flood, storm, tempest, water damage, smoke damage, vehicles, impact, riot, civil disturbance, malicious damage, or other like cause; or

3) delay by the local council or any other relevant authority in giving any necessary approval or consent or in carrying out any necessary inspection;

then the Lessor must not unreasonably refuse a request from the Lessee to extend the date for the Lessee's development obligations to a later date. The Lessee shall use all reasonable endeavours to overcome any delays.

3.10 Completion of Works

Without limiting the generality of clause 3.9 the Lessee shall complete the works in accordance with the approved Master Plan and to the reasonable satisfaction of the Lessor in the following manner:

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

b) Approvals

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

c) Execute Works

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

(i) in a proper and workmanlike manner and with sound materials of their respective kinds and, unless otherwise approved by the Lessor,
shall provide all new materials in carrying out the Works and ensure that all materials and workmanship are of the highest quality and comply with the relevant standard or standards of the Standards Association of Australia;

(ii) in accordance with the terms of all Approvals and otherwise in compliance with all conditions subject to which Approvals are granted; and

(iii) in accordance with the drawings and specifications referred to in this clause 3.10; and

(iv) in conformity with the provisions of all applicable laws, Acts, statutes, rules, regulations, bylaws, orders and ordinances (State, Federal or local); and

(v) otherwise in accordance with the provisions of this lease;

d) Materials etc - location

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

e) Not to remove earth

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

f) Artefacts

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

g) Indemnity - materials

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

Protection

During the progress of each part of the Works the Lessee shall at its own expense maintain the Works in good order and condition and shall take all necessary measures and precautions for the protection, safety and security of the Works, including (without limitation);
(i) to protect the Works from damage by fire; and

(ii) to keep each part of the Works for the time being in progress, under construction or in the course of execution, and the site thereof in accordance with Worksafe Western Australia standards and requirements;

h) **Works Indemnity**

(i) To pay, and to indemnify the Lessor against, all fees, charges, costs, duties, taxes, accounts, assessments and other payments whatever which may at any time be payable to any government, local government or other competent authority in respect of the Works; and

(ii) To indemnify the Lessor against all actions suits costs claims demands proceedings and liability whatever in relation to any failure by the Lessee to comply with any of its obligations under this lease, including (without limitation) under clauses 3.9 and 3.10;

i) **No representation - Site**

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

j) **Latent Conditions**

(i) The Lessee shall inform itself of all relevant information relating to the site of the Works to be carried out, constructed or erected within the Leased Area and of all services within and in the vicinity of the Leased Area associated with those Works and of all relics and artefacts including historic, prehistoric, archaeological, indigenous and aboriginal and of all matters of mythological, cultural, indigenous, aboriginal, or heritage significance and shall make its own assessment of all risks and of all latent and patent conditions contingencies claims and other circumstances which may affect its works and activities and the carrying out, construction and completion of the Works ("Latent Conditions");

(ii) The Lessee shall undertake and assume full responsibility for and bear the full cost of all works, actions and conditional considerations which must be executed and brought to bear in order to resolve any problems claims contingencies difficulties or instability revealed before, after or during the progress of the Works by any Latent Condition;

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

(i) As part of the Works and subject to all Approvals to install at the Lessee’s expense, gas storage tanks within the Leased Area;

(ii) To install the approved gas storage tanks with adequate screens and in a location and in a manner and to a standard approved by the Lessor.

l) **Maintain Installations**

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

m) **Property in Works**

All Works listed in the approved Master Plan shall be and become the absolute property of the Lessor upon the date of completion of each of those Works and shall thereafter comprise part of the Leased Area.

3.11 **To pay outgoings**

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

3.12 **Interest on Overdue Money**

Without limiting any right, power, or remedy of the Lessor, to pay to the Lessor on demand interest at the Rate on any money due, owing, payable and unpaid for 14 days after the due date for payment, computed from the due date for payment until the date of receipt by the Lessor.

3.13 **Alterations and Improvements**

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

3.14 Comply with Acts

At all times during the Term to duly and punctually comply with, observe, carry out and conform to the provisions of all laws, Acts and statutes (State, Federal or local) and all subsidiary legislation now or hereafter in force and all requirements and orders of any authority (statutory or otherwise) which affect the Leased Area or the use of the Leased Area or which impose any duty or obligation upon the owner or occupier of the Leased Area;

3.15 Compliance with Local Government Act

Notwithstanding that the Local Government Act 1995 and the subsidiary legislation made under it, including the Building Regulations 1989, may not govern activities and building operations within the Leased Area, to ensure that all the Works and all activities and operations of the Lessee within the Leased Area pursuant to this lease meet the requirements of the Local Government Act 1995 and the subsidiary legislation in force under it which the Lessee would have to meet if that Act and subsidiary legislation did have full force and effect within the Leased Area, except for any such requirement which is waived in writing by the Lessor. The Lessor may engage any local government, consultant, or expert to advise it whether or not the Works to be carried out by the Lessee pursuant to this lease meet those requirements;

3.16 Comply with Orders, Regulations

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

3.17 To Transmit Notices

To furnish within seven days of the receipt of the same a copy of all notices received by the Lessee (whether from any licensing, local or other competent authority) which relate to the Leased Area or any part of the Works, non-compliance with which would or may adversely affect the Lessor’s interest in the Leased Area or which relate to any breach of duty or obligation of the Lessee or of the Lessor.

3.18 Visitors’ Statutory Duty

At all times during the Term to use its best endeavours to procure the performance and observance by the employees agents and contractors of the Lessee and by the Public of the provisions of all statutes (State or Federal) and all subsidiary legislation now or hereafter in force and all requirements and orders of any authority (statutory or otherwise) which relate to the duty of any person entering or who has entered the Leased Area;
3.19 Exclusion of Persons

To exclude from the Leased Area any person who does not comply with the provisions of any statute, subsidiary legislation requirement or order referred to in the preceding subclause and immediately inform the Lessor of any such exclusion and of any other non-compliance within the Park of which the Lessee is aware, to give the Lessor the opportunity to respond thereto as the Lessor in its discretion sees fit.

3.20 Maintenance of Leased Area

At the Lessee's own expense to keep and maintain the Leased Area and every part thereof and all buildings, structures, pavements, improvements, fixtures and fittings (both internal and external) comprised and situated therein and any addition thereto in good, safe and substantial repair order and condition, including the maintenance of mechanical, electrical and electronic fixtures and fittings within the Leased Area in good repair and operating condition AND to promptly replace all broken and faulty electric light globes and tubes and all cracked and broken glass AND to keep all gardens and grounds and carparks, informal or otherwise, forming part of the Leased Area well-tended, neat, safe, in good order and condition and in accordance with the landscape design approved in writing by the Lessor;

3.21 Termite Control

Ensure that, following the completion of the remedial works, the buildings located within the Leased Area are:-

(i) inspected on an annual basis for the presence of termites and other pests;
(ii) treated with chemicals by a registered pest controller and in accordance with the Department of Health standards and stipulations of the Lessor; and
(iii) made good and repaired following any damage from termite attack;
(iv) supply upon request to the Lessor, a certificate in respect to each annual pest control inspection and treatment.

The requirements of clause 3.21 do not apply to the Restricted Access Area until such time as the Lessee has obtained the written consent of the lessor for this Area to be actively occupied.

3.22 Provide fixtures, fittings and chattels

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

3.23 Maintain and replace

To keep and maintain all the items provided and installed pursuant to the preceding subclause 3.22 and all parts thereof (including fixtures and fittings within the Leased Area)
Area) and all replacements in good, safe and substantial repair order and condition and (where applicable) in good working order and condition, properly oiled, adjusted, serviced, covered, protected, painted and in a fully operating and functioning condition AND to replace with articles of the same nature, of equal value and in good, safe condition all items and parts thereof which during the Term of this lease shall have been lost damaged or destroyed or in any way rendered unserviceable or useless or which shall have ceased to be in good, safe and sound repair, working order and condition;

3.24 To paint and decorate

At appropriate times as the need arises but in any event during or before each successive ninth (9th) year of the Term with paints and in colours first approved of in writing by the Lessor, to paint with at least two good coats of paint to the reasonable satisfaction of the Lessor all the outside wood metal iron and cement work of all buildings, structures and erections upon the Leased Area (where appropriate) and all other external parts of such buildings structures and erections as are hereafter painted and also all of the inside parts usually painted of all such buildings structures and erections on the Leased Area, and at all times to keep the walls and ceilings clean and washed to the satisfaction of the health authorities and the local government.

3.25 To Refit and Refurbish

Notwithstanding the provisions of clauses 3.23 and 3.24 during each ninth year of the Term at the direction of the Lessor with the Lessor acting reasonably to refurbish the Leased Area, which refurbishment (without limiting the generality of the foregoing) shall include removal, repair and replacement (as appropriate) of corroded, worn, weathered building fabric, materials and surfaces including structural fabric and materials removal and repairs of electrical wiring and electrical fixtures and fittings repainting replacement of signs and refurbishing of the fixtures and fittings within the Leased Area, replacement of floor coverings and window treatments, furniture, furnishings, painting, colouring, varnishing and papering all parts which have previously been painted, coloured, varnished or papered to ensure that the Leased Area including ceilings, walls, floors, fixtures, fittings and signs maintain a high standard of presentation, appearance and design, unless otherwise approved by the Lessor.

3.26 Rebuilding on Destruction or Damage

If the buildings and improvements upon or within the Leased Area or any parts of those buildings and improvements, or any replacements of them are destroyed or damaged, by any cause whatsoever (including flooding), the Lessee shall promptly and diligently rebuild, replace or repair, as the case requires, those buildings and improvements in order to maintain continuity of the Lessee's business of a high ropes course at the Leased Area.

3.27 Not to damage buildings

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

a) To permit the Lessor to enter the Leased Area at any time in order to exercise any right, power or authority which the Lessor has under this lease or under the Conservation and Land Management Act 1984. The Lessee is not entitled to any compensation or damages or to take or make any other action, suit, demand or claim against the Lessor for anything done or omitted by the Lessor on the Leased Area in the exercise of any right or authority under this lease or that Act.

b) 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:

(i) inspect the state of repair and condition of the Leased Area.

(ii) maintain or repair the Leased Area and equipment or facilities in or on the Leased Area;

(iii) maintain, repair, alter or remove any electricity, gas, water, sewerage, drainage or telecommunications services ("the Services");

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

(v) remove anything which is unsafe, harmful or dangerous;

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

(vii) anything else which the Lessor is required to do by law or is permitted to do under this lease;

without affecting the Lessee's obligations under this lease.

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

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

(ii) use its best endeavour to minimise disruption to the Lessee's business; and

(iii) make good any damage to the Lessee's Property (other than minor damage) caused by the Lessor.

3.29 Use of Leased Area

a) To actively and continuously use the Leased Area for the purpose of carrying on in a proper, efficient, prudent and businesslike manner the Lessee's Business and for such other purposes as are incidental to the carrying on of that business and not to use the Leased Area for any other purpose without the prior written consent of the Lessor;

b) In connection with the Restricted Access Area, the Lessee must not (and may not permit anyone else to, except with the Lessor's consent):
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(i) occupy the Restricted Access Area until the agreed remedial works to make the Area safe for the purpose of public access are completed by the Lessee and approved by the Lessor;

(ii) enter the Restricted Access Area unless in relation to the completion of remedial works and in doing so must be in accordance with Worksafe Western Australia standards.

3.30 Fences

a) The Lessee must as soon as reasonably practicable after the Commencement Date, fence off the area of the Restricted Access Area with good quality materials, to the Lessor's reasonable satisfaction.

b) During the Term the Lessee must:

(i) maintain the fence referred to in subclause (a) in good and safe repair and condition; and

(ii) erect and maintain such warning signs, necessary to render and keep the Leased Area safe and free from hazard or danger to any person or, using or occupying any land adjacent to the Leased Area.

3.31 Asbestos Management

Notwithstanding any other provision in this Lease to the contrary:

a) The Lessor and the Lessee acknowledges that the Leased Area contains asbestos as identified in the Asbestos Register. The Lessor and the Lessee and their employees, agents and contractors must not at any time do anything to disturb the asbestos on the Leased Area, unless that disturbance is in accordance with the Asbestos Management Plan;

b) The Lessor and the Lessee must at all times comply with and adhere to the Asbestos Management Plan;

c) The Lessee at its cost must ensure that the location of any asbestos at the Leased Area is tagged as soon as reasonably possible;

d) Any works required under the Asbestos Management Plan shall be carried out by the Lessee at the Lessee's costs;

e) The Lessee, at its cost must immediately repair or reinstate the Leased Area to the extent that the Leased Area has been damaged or affected by any works required to be completed by the Lessor or as a result of any other action taken under this clause 3.31;

f) The Asbestos Management Plan and the Asbestos Register must be reviewed at least three yearly by the Lessor. The Lessee must pay all costs, including remedial action, associated with this review.

3.32 Standard of Service

At all times during the Term, with respect to the use of which each of the individual parts of the Leased Area must be put in accordance with the Lessee's Covenants:-
a) to manage, conduct and control at all times in good faith and to a prompt, efficient and high standard and in an orderly and reputable manner, each business and activity thereon and each provision of service to the public, limited in some cases to specific hours of operation;

b) not in any way to damage or cause a detraction from the reputation of the State forest or its facilities;

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

3.33 Inadequacy of Service

If the standard of service provided by the Lessee, is in the reasonable opinion of the Lessor, not of a standard which meets the requirements of the immediately preceding subclause, the Lessor may give written notice to the Lessee ("the Notice of Inadequacy") requiring the Lessee to provide a service that meets the required standard and giving particulars of the way in which the services provided is inadequate to meet the said standard. The Lessee shall promptly comply with the Notice of Inadequacy.

3.34 Furnish Equipment and Staff

To keep the Leased Area properly equipped and staffed for the said use to the reasonable satisfaction of the Lessor.

3.35 Not to Pollute

To do all things necessary to prevent, and not to do or permit or suffer to be done anything likely to cause, pollution, degradation or contamination of the Leased Area by garbage, refuse, waste matter, oil, liquid fuels, noise, sewage or other pollutants or by stormwater or other run-off or arising from use of the Leased Area and in particular but without limiting the generality of the Lessee's obligations under this clause, to regularly collect and dispose of all garbage refuse waste (solid and liquid) oil and other pollutants from the Leased Area at a place and in a manner required or approved by the Lessor or by the authorities (State Federal and local) having control over the disposal of waste matter and the protection of the environment from time to time, and to remove all garbage refuse and waste from the Leased Area at regular intervals by means of the service provided by the local government or a contractor engaged and paid for by the Lessee.

3.36 Ground Water

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

3.37 Introduced Material and Plants

Not to introduce or bring into the State forest any soil, either for garden or building purposes, or any mulch or other material for the garden purposes or any plants or any vegetable material unless prior to the introduction of soil, mulch, plants, vegetable or any other material a certificate of a qualified person approved by the Lessor has first been obtained from the supplier of the same or from a qualified person approved by the Lessor and engaged by the Lessee for the purpose that the substance, plant or material to be introduced is free from any pollutant or contaminant and free from any plant disease or fungus;
3.38 Handling of Pollutants

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

3.39 Not to Overload

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

3.40 Chemicals

Not to use, permit or suffer to be used any chemical, inflammable gas or fluid, or other liquid fuels or other dangerous substance, in or upon the Leased Area except in a normal appliance ordinarily used in connection with a business or use authorised by the Lessor to be carried on upon the Leased Area.

3.41 Not to obstruct or cause nuisance

Not to do or leave undone any act matter or thing whereby a nuisance or anything in the nature of, or which may be determined to be, a nuisance by any local or public authority, body or person or within the meaning of any law, statute or subordinate or subsidiary legislation (local, State or Federal) now or hereafter in force, may exist arise or continue upon or in connection with the Leased Area or any business carried on upon the Leased Area or the use or occupancy of the Leased Area AND forthwith to abate any such nuisance and to carry out and comply with all the provisions of all such laws, statutes and subordinate or subsidiary legislation and of every requisition and order of any local or other public authority relating to such nuisance.

3.42 Not to cause or permit nuisance

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

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

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

To pay to the Lessor on demand all sums of money which the Lessor may at any time and from time to time hereafter pay or expend or be called upon to pay in or about or in connection with performing discharging or executing any requisition or works or abating any nuisance or rectifying any pollution or contamination referred to in the preceding provisions of this lease and which contrary to the agreement therein contained the Lessee neglects or fails to perform discharge execute abate or rectify and to pay those sums of money to the Lessor notwithstanding that by any statute by-law or regulation the Lessor is liable alone or jointly with others or jointly
with the Lessee and others to perform discharge execute abate rectify or pay for the same or any part thereof.

3.44 Assignment (Works in progress)

From the Commencement Date until completion execution and provision of all the Works defined in the approved Master Plan and all works associated therewith which the Lessee must complete and execute prior to the time specified in clause 3.9, not to assign, sub-let, license, sublicense or part with the possession of or dispose of the Leased Area or any part or the Leased Area or the benefit at law or in equity of this lease.

3.45 Assignment (Works not in progress) and Mortgage

Subject to the preceding subclause 3.44 not to assign, sub-let, license, sublicense, mortgage, charge or otherwise encumber or part with the possession of or dispose of the Leased Area or any part of the Leased Area or the benefit at law or in equity of this lease without the prior written consent of the Lessor which the Lessor must not unreasonably withhold or delay:-

a) if the Lessee wishes to mortgage charge or encumber the whole of this lease and the Leased Area on condition that there must be no further assignment, licence, sublicense, sublease, mortgage, charge or other encumbrance or parting with possession or disposition other than in terms of this clause 3.45 and subject to any reasonable undertakings required by the Lessor being given by the Lessee or any other person;

b) if the Lessee wishes to assign the whole of the Leased Area and the benefit of this lease or if the Lessee wishes to sublease, licence or sublicense the whole of the Leased Area and in either of those cases if:-

(i) the proposed assignee, sublessee, licensee or sublicensee is a respectable, responsible and solvent person and the Lessor is satisfied as a result of perusing evidence data and particulars provided by the Lessee at the expense of the Lessee (and as a result of the Lessor's own enquiries should the Lessor in its absolute discretion choose to make separate enquiries) that the proposed assignee, sublessee, licensee or sublicensee has suitable skills and expertise to conduct the high ropes course and camping area on the Leased Area in accordance with this lease and has adequate capital backing in the opinion of the Lessor in its absolute discretion;

(ii) the Lessee procures at the cost of the Lessee or the assignee, sublessee, licensee or sublicense (as the case may be) in all respects the execution by the proposed assignee, sublessee, licensee or sublicensee of a Deed of Assignment of this lease, a Deed of Sublease, a Licence or Sublicence to which the Lessor is a party and which is in a form approved by the Lessor's solicitors;

(iii) all Rent then due and payable for the period up to the date on which the assignment, sublease, licence, or sublicense takes effect been paid and there is no existing or unremedied breach of any of the Lessee's Covenants in respect of which the Lessor has previously given notice;
(iv) the assignment, sublease, licence or sublicense contains a covenant by the proposed assignee, sublessee, licensee or sublicensee with the Lessor whereby the proposed assignee sublessee, licensee or sublicensee undertakes at all times during the continuance of the Term to duly observe perform and comply with all the Lessee’s Covenants; and

(v) the Lessee first pays to the Lessor all proper and reasonable costs, charges and expenses incurred by the Lessor of and incidental to any enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility, suitability and solvency of any proposed assignee, sublessee, licensee or sublicensee;

c) if the proposed assignee, sublessee, licensee or sublicensee is a company not listed on any Australian Stock Exchange and the Directors of that company guarantee to the Lessor:

(i) in the case of an assignment, the due and punctual observance and performance by the proposed assignee of the Lessee’s Covenants and the due and punctual payment by the proposed assignee of any Rent and other moneys payable by the Lessee arising from this lease; or

(ii) in the case of a sub-lease, licence or sublicence (the form of which shall be subject to the prior written approval of the Lessor, which approval must not be unreasonably withheld or delayed) the observance and performance by the sub-lessee, licensee or sublicensee of the Lessee’s Covenants other than the covenants to pay the Rent; and

d) if the covenants and agreements on the part of any proposed assignee, sub-lessee, licensee or sublicensee, are expressed to be supplementary to the Lessee’s Covenants and not in any way to relieve or be deemed to relieve the Lessee from any of the Lessee’s Covenants,

3.46 Lessee Remains Liable

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

3.47 Change in Shareholding or Unitholding

If the Lessee is a company, any change at any time or times after the Commencement Date (whether by transfer, allotment or otherwise and whether as the result of one or more transactions) in the beneficial ownership of 20% or more of the issued shares from time to time of the Lessee, or if the Lessee is the trustee of a unit trust, any change at any time or times after the Commencement Date (whether by transfer, allotment or otherwise and whether as the result of one or more transactions) in the beneficial ownership of 20% or more of the issued units from time to time in that unit trust, other than for the purpose of a reconstruction to which the Lessor has given its prior written consent (which must not be unreasonably withheld or delayed), or if the beneficial owner of any units in such a unit trust is a company, any change whatever at any time after the Commencement Date (whether by transfer, allotment or otherwise and whether as the result of one or more transactions) in the beneficial ownership of any of the issued shares from
time to time of that company, is deemed to be an assignment of the Lessee’s interest in this lease for the purposes of this clause.

3.48 Property Law Act 1969

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

3.49 Standing of Trust

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

a) except with the prior written consent of the Lessor (which consent the Lessor may not unreasonably withhold):-
   (i) the Lessee will not be removed from nor retire as a trustee of the trust and no new or additional trustee of the trust shall be appointed;
   (ii) the vesting date under the provisions of the trust deed has not and will not be determined;
   (iii) no restrictions on the rights of subrogation of the trustee of the trust will be created;

b) the Lessee is presently the only trustee of the trust;

c) no vesting date has been appointed under the provisions of the trust deed;

d) there are no restrictions on the right of the trustee to be indemnified out of the trust assets of the trust;

e) the trustee of the trust is not in default with respect to the trust fund of the trust;

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

3.50 Pay Lessor’s Costs

To pay on demand the Lessor’s solicitors costs of and incidental to the preparation execution of this lease and all copies of it (including all proper instruction fees, drafts, amendments and redrafts) and to pay to the Lessor on demand by it all costs (including legal costs), charges and expenses for which the Lessor becomes liable in consequence of or in connection with any default by the Lessee in performing or observing any covenants conditions or stipulations contained or implied in this lease and on the part of the Lessee to be performed or observed including (but without limiting the generality of the foregoing) architect’s fees and all costs charges expenses solicitors costs and surveyors fees incurred by the Lessor for the purposes of and incidental to the preparation and service of a notice under section 81 of the Property Law Act 1969 requiring the Lessee to remedy a breach of the covenants conditions or stipulations contained or implied in this lease notwithstanding that forfeiture for such breach is avoided otherwise than by relief granted by a court of competent jurisdiction.
3.51 Signs and notices

Not to affix or exhibit or cause or permit to be affixed or exhibited on any part of the Leased Area any poster signboard neon sign or other advertisement except as has been first approved in writing by the Lessor, which approval may be withheld in the absolute discretion of the Lessor with respect to any proposed neon sign but which approval must not otherwise be unreasonably withheld, and the Lessor acknowledges that the business of the Lessee is of a commercial nature and will entail the affixing or display of signs and notices of a reasonable and appropriate nature.

3.52 Indemnities

a) By the Lessee

Agree 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 and the department (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 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:

- on any lands to which the CALM Act applies; or
- in relation to the activities the subject of this lease; or
- 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.

b) Lessor not liable

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

(i) any act neglect default or omission of any person upon or near the Leased Area (whether there lawfully or not);

(ii) damage to or loss or destruction of anything or injury to, illness or death of any person in upon or near the Leased Area;

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

c) Release

Subject to clause 3.50 the Lessee releases the Lessor from all liability to the Lessee and from all actions, suits, claims, demands and proceedings for loss costs charges and expenses in connection with the damage to or loss or destruction of anything or injury to, illness or death of any person
occurring in upon or near the Leased Area which the Lessee now has or may at any time hereafter have or but for this clause 3.52(c) might have had against the Lessor.

d) Interpretation

For the purposes of this clause 3.52 the expression "in upon or near the Leased Area" shall be deemed to include (without limitation) the area of the State forest immediately surrounding the Leased Area.

3.53 Insurance

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

3.54 Not to Invalidate Insurances

Not to do or permit or suffer to be done anywhere any act omission neglect or thing whereby any policy of insurance which the Lessor has effected or the Lessee is required by law or this lease to effect may become void or voidable or the premiums payable thereunder may be increased or the coverage thereunder may be reduced.

3.55 Public Risk Insurance

To effect and keep effected in respect of the Leased Area adequate public risk insurance in the names of the Lessor and the Lessee for their respective rights and interests in an amount not less than $10,000,000 in respect of any one claim (or such higher amount in substitution for the first mentioned amount as may be agreed or determined from time to time under this provision) with an insurance company approved by the Lessor (which approval must not be unreasonably withheld) and to notify the Lessor of the details of that public risk insurance and to ensure that such insurance conforms to the reasonable requirements from time to time of the Lessor of which the Lessee is given notice and:—

a) if required by the Lessor to produce the policy of insurance to the Lessor;

b) to deliver to the Lessor on or before the expiration of each year of the Term and at any other time upon the request of the Lessor a valid certificate of
currency in respect of such insurance policy issued by the insurance company with which the policy has been effected; and

c) not to alter the terms or conditions of such policy without the prior written approval of the Lessor and to forthwith deliver to the Lessor particulars of any change or variation of the terms and conditions or any other matter in respect of any insurance policy effected by the Lessee pursuant to this clause,

PROVIDED ALWAYS that on and from the 1st day of July in every third year of the Term the amount of public risk insurance cover specified above in this clause (as increased from time to time in accordance with this clause) shall be increased to such other amount as the parties agree upon, or failing agreement by 31 August in that year, to such reasonable amount as is determined by arbitration under clause 5.7.

3.56 To Yield Up

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

3.57 To Remove Moveable Property on request

a) At or prior to the expiration of the Term or forthwith upon the earlier termination of the Term to take remove and carry away from the Leased Area such of the goods, chattels and other items of moveable property brought into or onto the Leased Area by or on behalf of the Lessee as the Lessor shall in writing require the Lessee to remove.

b) The Lessee must on such removal forthwith rehabilitate those areas of the Leased Premises to the condition prior to commencement of the existing development occurring to the reasonable satisfaction of the Lessor;

c) Not at any time to remove any plant, equipment, installations, fixtures or fittings or articles in the nature of trade or tenant's fixtures including mechanical, electrical, water and gas plant, equipment, installations, fixtures and fittings and the tent accommodation, without the prior written consent of the Lessor, EXCEPT for the purpose of repair, maintenance or replacement thereof.

d) SUBJECT to the provisions of paragraphs (a) and (b) of this clause 3.57, all property brought onto the Leased Area by or on behalf of the Lessee and not removed by the Lessee in accordance with those paragraphs shall be and remain the absolute property of the Lessor.

3.58 Lessor's Alterations and Improvements

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

3.59 **Not to hold Auctions**

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

3.60 **Fire Prevention**

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

a) the *Bush Fires Act 1954* and any other laws relating to the prevention and control of fires; and

b) all proper directions concerning fire prevention and control given to the Lessee by the Lessor or by any Authority.

3.61 **Fire Control**

To immediately:

a) Call the 000 emergency number and report fire as soon as any fire is detected within the Leased Area or surrounding areas; and

b) notify the Lessor as soon as a fire is detected on the Leased Area; and

b) use all appropriate and safe endeavours to extinguish any unauthorised or uncontrolled fire on the Leased Area.

3.62 **Prohibited Fires**

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

3.63 **Liability for Fires**

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

a) was not caused by the Lessee's negligent or unlawful act or omission or the Lessee's breach or default under this lease; or

b) was started by a cause beyond the Lessee's control.

3.64 **Timber**

This lease does not grant to the Lessee any rights to forest produce as defined in the *Conservation and Land Management Act 1984* and the provisions of Section
3.65 **Trees and Vegetation**

SUBJECT as hereinafter provided, to take all reasonable actions, measures, and precautions necessary to protect the trees and other vegetation growing on the Leased Area from and against all loss, injury, damage, harm or destruction and to take reasonable actions, measures, and precautions necessary to prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Leased Area. Without limitation, unless required by clause 3.66 and unless in accordance with the approved Master Plan, the Lessee must not cut down, injure, damage, destroy, remove or otherwise interfere with or harm anything growing on the Leased Area without the prior written consent of the Lessor. The Lessee must also control declared plants and declared animals as defined in the *Agriculture and Related Resources Protection Act 1976*, in relation to the Leased Area, as required by that Act.

3.66 **Dangers or Threats to the Public**

a) to regularly check the condition of trees and other vegetation on the Leased Area;

b) to prune, lop or remove any tree or other vegetation which is in a dangerous condition or which may threaten the safety of any person;

c) to take adequate action to warn the public of any danger or threat constituted by any tree or other vegetation; and

d) to generally take any measures necessary to prevent accidents and to protect the safety of the public on the Leased Area

3.67 **Prevention of Weed Introduction**

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

3.68 **No Interference with Environment**

The Lessee acknowledges that the Leased Area forms part of an environmentally and ecologically sensitive State forest and that the Lessor has a general duty to protect the environment. Accordingly, the Lessee must not, without first obtaining the consent of the Lessor, unless in agreement with the approved Master Plan, do anything to damage, alter, affect or otherwise interfere with the natural environment and ecology of the Leased Area and the State forest, including:

a) removing rocks; earth, soil or other materials from the Leased Area; or

b) clearing or removing trees or other vegetation from the Leased Area by any means; or

c) altering the contours of the surface of the Leased Area; or

d) depositing any earth, fill or other similar materials on the Leased Area; or
altering the natural drainage onto, on or from the Leased Area; or

f) introducing any new flora or fauna to the Leased Area; or

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

h) anything else in connection with the Leased Area which may be harmful to the environment or the ecology thereof.

3.69 Notify the Lessor of Threats

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

3.70 Environmental Protection Laws

Nothing contained or implied in this Lease is to be taken as exempting relieving or releasing the Lessee from or limiting the obligation of the Lessee to comply with any law relating to the protection of the environment. Without limiting the generality of the foregoing, the Lessee must comply with the applicable provisions of the Environmental Protection Act 1986, the Conservation and Land Management Act 1984, the Wildlife Conservation Act 1950 and all Rules, Regulations, Notices and Orders thereunder.

3.71 Specific obligations

Without limiting the preceding clause, the Lessee must:

a) keep the area of the State forest surrounding the Leased Area for a distance of 10 metres measured away from the boundary clean and tidy and free of vermin as if the area formed part of the Leased Area; and

b) not cause or allow any pollutant or contaminant material or substance over which the Lessee has control to be released upon the Leased Area or to affect the Leased Area; and

c) not dispose of rubbish from the Leased Area in any bins provided by the Lessor for public use in the State Forest; and

d) where possible, inspect all vehicles and equipment to be taken onto the Leased Area and do all things reasonably necessary to ensure that no animals (as defined in the Wildlife Conservation Act 1950), in particular Bufo marinus, (Cane Toad) are introduced to the State forest. This includes the reporting requirements under the Agriculture and Related Resources Protection Act 1976. Any cost involved in the carrying out of such measures shall be borne by the Lessee.

3.72 Environmental/Ecological Benchmarks

a) During the Term of this lease and in relation to the Lessee's use of the Leased Premises, the Lessee must use reasonable endeavours to achieve the benchmarks for the sustainability of the lease and the continued use by the Lessee of the Leased Premises which are itemised in the Sustainability Performance and Audit Schedule set out in Annexure 1 to this lease ("Sustainability Performance and Audit Schedule").
b) The Lessor shall have the right to monitor and audit the Lessee's performance, attainment and achievement of the requirements, obligations and standards specified in the Sustainability Performance and Audit Schedule at the times and in the manner specified in paragraph (c) of this clause.

c) During the Term, the Lessee may be audited annually or, at the discretion of the Lessor but not less than annually, against sustainability benchmarks set out in the Sustainability Performance and Audit Schedule. The mechanism for auditing will be reviewed in consultation with the Lessee by December of each year of the Term.

d) The Lessee shall pay to the Lessor on demand the reasonable cost of the annual audit (including reasonable auditor travel costs) charged to the Lessor by the auditor.

e) The Lessee must co-operate fully with the Lessor and the Lessor's personnel and auditors and assist them in and about the exercise of the Lessor's rights under the Sustainability Performance and Audit Schedule.

f) The Lessee acknowledges and agrees that the Lessor and its Minister are responsible for the administration of legislation with respect to conservation, the environment, land management, wildlife, flora and fauna.

g) The Lessor shall be entitled to amend, vary, modify, alter, add to or replace the whole or any part, item or provision of the Sustainability Performance and Audit Schedule, including by the addition of new items or benchmarks, at any time and from time to time by notice in writing to the Lessee in such manner and to such extent as the Lessor considers reasonably necessary or appropriate for the proper performance and observance of, and compliance with, its responsibilities under the legislation referred to in paragraph (f) above, provided that such amendments are standard procedure of the Lessor for State forests generally.

h) The Lessee shall observe, perform and comply with all the terms, conditions, provisions, items and benchmarks contained in the Sustainability Performance and Audit Schedule in respect of the Leased Premises, as amended, varied, modified, altered, added to or replaced by the Lessor for the time being and from time to time, as if they were set out in full as covenants by the Lessee in the body of this Lease.

i) The provisions of the Sustainability Performance and Audit Schedule contained in Annexure 1 apply to and bind the Lessee on and from the Commencement Date in respect of the Leased Premises. Each amendment, variation, modification, alteration, addition, replacement or new item (as the case may be) shall apply to and bind the Lessee on and from the date of service of notice thereof under paragraph (g) above.

j) In the event of any conflict or any inconsistency between a provision of this Lease and a provision of the Sustainability Performance and Audit Schedule (as amended, varied, modified or replaced from time to time) the provision of the Sustainability Performance and Audit Schedule shall be paramount and prevail to the extent of the conflict or inconsistency.
For the avoidance of doubt, the requirements, obligations and standards specified in the Sustainability Performance and Audit Schedule are to apply in respect of the Lessee's use of the Leased Premises only.

3.73 Care of the State Forest

a) Flora and Fauna

To protect and not cause damage to flora, fauna and improvements and natural features within the State forest.

b) Trees

Not to, and to ensure that its employees do not, cut-down, fell, injure, top, lop or destroy any living or dead trees standing or growing within the State forest unless in accordance with the approved Master Plan or with the prior consent in writing of the Lessor, subject to clause 3.66 b).

c) Only Indigenous Plants

Not to plant on nor bring onto the Leased Area or State forest any plants or seeds which are not indigenous to the locality, except where such plants or seeds are in accordance with the approved Master Plan or may be specified by the Lessor.

d) Comply with Directions

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

e) Notify Risk

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

3.74 Danger and First Aid

a) Eliminate Danger

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

b) First Aid Facilities

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

3.75 Fire Control and Emergency Procedures

a) Fire Control

To undertake all appropriate fire control measures within the Leased Area, including the provision of, fire extinguishers, appointment of a fire warden, establishment and supervision of an emergency management plan including evacuation procedures, notices to the Public and to the Lessor,
communication with the Lessor and compliance with requirements of the Lessor in carrying out procedures for fire prevention, fire control and evacuation.

b) Preventative Procedures

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

c) Emergency Procedures

To comply with the Lessor's directions and to initiate procedures subject to the Lessor's directions for control and evacuation and to fully inform all the public within the Leased Area in the event of an emergency in accordance with the approved Emergency Management Plan.

4. COVENANTS BY LESSOR

The Lessor COVENANTS with the Lessee:

4.1 Quiet Enjoyment

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

4.2 Confidential

The Lessor and its auditor must keep the Sales Records and the Sales Evidence confidential, and must not disclose any part of the Sales Records or the Sales Evidence to any third person without the Lessee's prior written consent.

4.3 Exceptions

The disclosure of any information -

(a) which is now or hereafter comes into the public domain or which is properly obtainable with reasonable diligence from sources other than the parties;

(b) which is required by law to be disclosed to any person who is authorised by law to receive it;

(c) by the Minister of the Crown charged with the administration of the Act or of the Lessor to the Parliament of Western Australia, or by any employee of the Lessor or of the State of Western Australia to any other employee of the Lessor or of the State of Western Australia for the purposes of and pursuant to their employment;

(d) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the Lessor is a party;
(e) to any lawyers, accountants, consultants or advisers to the Lessor who have in writing agreed for the benefit of the Lessee to be bound by this clause as though they were a party to this lease; or

(f) for the purpose of enforcing the Lessor's rights and remedies under this lease;

is not subject to the restriction imposed by subclause (b) of this clause 4.3.

5. MUTUAL COVENANTS

The Lessor and the Lessee MUTUALLY COVENANT AGREE AND DECLARE

5.1 Default by Lessee

That if during the Term the Rent payable or any part of it is at any time unpaid for 60 days after becoming due whether formally demanded or not; or if the Lessee makes default which the Lessor reasonably considers material in the due performance or observance of any of the Lessee's Covenants and such default is incapable of remedy; or if the Lessee makes default in the due performance or observance of any of the Lessee's Covenants and such default is capable of being remedied but is not remedied within 30 days after a default notice as provided in subclause (b) of this clause is given by the Lessor; or if the Lessee goes into liquidation (other than a voluntary for the purpose of reconstruction with the prior written consent of the Lessor); THEN and in any of such events the Lessor may by notice to the Lessee terminate this lease and the rights of the Lessee under this lease PROVIDED THAT if the default is capable of remedy and has not been remedied after such default notice and the default (not being a failure to pay Rent or other money payable to the Lessor under this lease) is capable of being remedied by the Lessor; then the Lessor may elect not to terminate this lease because of the default but may itself remedy the default or cause it to be remedied (for which purpose the Lessor by agents workmen or otherwise has full power to enter upon the Leased Area) and the costs and expenses incurred by the Lessor in remedying the default or causing it to be remedied are a debt payable by the Lessee to the Lessor on demand and the Lessee must pay interest to the Lessor on those costs and expenses at the Rate from the date they were incurred by the Lessor to the date they are paid by the Lessee to the Lessor; and

(b) Content of Notice

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

5.2 Lessor May Act by Agent

Each act or thing which the Lessor is required or empowered to do under this lease may be done by the Lessor or the duly authorised representative, solicitor, agent, contractor, or employee, of the Lessor.
5.3 No waiver

a) The acceptance of Rent or other money by the Lessor or a payment by the Lessor of money or the performance by the Lessor of an obligation, direction, or order; which should be paid, performed, or observed by the Lessee is not a waiver by the Lessor of a default or breach of the Lessee and does not prevent the Lessor from exercising the Lessor's rights and powers notwithstanding any prior waiver, delay, or neglect, in exercising the Lessor's rights and powers AND no demand or notice made or given will be waived by a subsequent acceptance payment, performance, or observance.

(b) A waiver by either Party in respect of a breach of a provision of this lease by the other Party shall not be deemed to be a waiver in respect of any other breach and the failure of either Party to enforce at any time a provision of this lease shall in no way be interpreted as a waiver of such provision.

5.4 Holding Over

That if the Lessee remains in possession of the Leased Area with the express or implied permission of the Lessor after the expiration or sooner termination of the Term the Lessee will hold the Leased Area as a monthly tenant at a rent equal to the Rent calculated as prescribed in clause 3 and subject to all the covenants and conditions contained in this lease so far as they are applicable to a monthly tenancy and the tenancy so constituted may be terminated by one month's notice given by either party which notice may be given so as to expire at any time.

5.5 Lessor may Remedy Lessee's Default

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

5.6 Expert Adjustment of Gross Receipts

a) If either the Lessor or the Lessee considers that:-

(i) the Gross Receipts as certified in a certificate furnished to the Lessor pursuant to clause 3.5 or as disclosed by the results of an audit pursuant to clause 3.8 (in this subclause referred to as "the relevant Gross Receipts") are more than or less than they should be, taking into account the volume of sales and other business within the definition of "Gross Receipts" in clause 1.1 which was transacted during the period to which the certificate or the audit relates; and

(ii) the amount of the excess or deficiency in the relevant Gross Receipts is due to any factor (in this subclause referred to as a "distorting factor") affecting the relevant Gross Receipts in a manner or to an extent not foreseeable or contemplated by the Lessor or the Lessee, including but not limited to increases or decreases in tax rates, the
imposition of new taxes, or the removal of any existing tax, but excluding any normal movements in wholesale prices,

THEN either the Lessor or the Lessee may refer the relevant Gross Receipts to an independent chartered accountant (in this subclause referred to as "the expert") nominated, if the parties do not agree upon one, by the Chief Executive Officer for the time being of the Western Australian Division of the Institute of Chartered Accountants in Australia at the request of the Lessor or the Lessee, for the determination by that expert (acting as an expert and not as an arbitrator) of whether or not the relevant Gross Receipts have been, and if so to what extent, affected by any such distorting factors;

b) **Expert's Function**

The expert must hear submissions from the Lessor and the Lessee or either of them if they wish to make submissions. The expert may also institute and make enquiries which the expert considers necessary for determination of the question referred to the expert;

c) **Expert's Determination**

The expert must give a written determination within 6 weeks after the question has been referred to the expert. If the expert's determination is that the relevant Gross Receipts are affected by any distorting factor, the determination must specify the distorting factor or factors and include an amount which represents the expert's considered opinion of what the relevant Gross Receipts would have been if they had not been so affected, and this amount (in this subclause referred to as "Adjusted Gross Receipts") thereupon becomes the amount of the Gross Receipts for all purposes of this lease for the period to which the certificate or audit referred to in subclause (a) of this clause relates, in substitution for the amount of the relevant Gross Receipts;

d) **Determination Final**

Except as provided in subclause (e) of this clause, the parties agree to abide by the expert's determination, and the parties agree to pay and discharge the expert's costs and fees equally;

e) **Expert's Determination – Amendments to Lease**

If the export's determination includes an amount of Adjusted Gross Receipts, the expert may also include in the determination suggested amendments to this lease to take account of the distorting factor or factors in future, and, unless either party refers those suggested amendments to arbitration under clause 5.7 within 3 months following the expert giving the determination to the parties, the parties agree to execute a deed of variation of this lease to implement the expert's suggested amendments to this lease. The said deed of variation shall be prepared by the solicitors for the Lessor at the joint cost of the Lessor and the Lessee. If the expert's suggested amendments are referred to arbitration, the parties agree to abide by the arbitrator's award in respect of those suggested amendments, and to duly execute any deed of variation of this lease which the arbitrator's award directs the parties to execute, any such deed being
5.7 Arbitration

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

b) Lessor's Discretion

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

5.8 Force Majeure

This lease is made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of continuing obligations hereunder that may be caused by or arise from circumstances beyond the power or control of the party responsible for the performance of those obligations (unless caused in whole or in part by the fault or privity of the party responsible for such performance) including, without limiting the generality of the foregoing, delays or any such temporary suspensions caused by or arising from acts of God, earthquakes, floods, storms, tempest, washaways, fire, act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, factors due to action taken by or on behalf of any government or governmental authority (other than the Lessor) or events that could not reasonably have been foreseen but excluding inability to obtain finance or financial assistance PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the abovementioned events must promptly give written notice to the other party of the event and must use its best endeavours to minimise the effects of such event as soon as possible after the occurrence.

5.9 Extension

If a party gives a notice under the preceding subclause 5.8 and that party's performance of obligations is affected by any of the events mentioned in that subclause, any period specified in this lease for the performance of obligations by that party and any date specified in this lease by which that party is to perform any obligation is automatically extended by the same period as the period during which that party's performance of obligations is so affected.

5.10 Notices

That any notice to be served by the Lessor on the Lessee under this lease is duly served by or on behalf of the Lessor if sent in a prepaid letter forwarded by security
post addressed to the Lessee at the address of the Lessee appearing on page one or at its registered office for the time being and any notice served by the Lessee on the Lessor under this lease is duly served if sent in a prepaid letter forwarded by security post addressed to the Lessor at the Address for Payment. A notice sent by post is deemed to have been given at the time when in due course of post it would be delivered at the address to which it is sent.

5.11 Variation of Lease

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

5.12 Entire Agreement

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

5.13 Severability

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

5.14 Condition as to Disclosure by Lessee

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

a) any litigation or proceeding whatsoever, actual or threatened, against the Lessee;

b) the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the lessee; and

c) matters relating to the commercial, technical or financial capacity of the Lessee or of any contractor or agent proposed to be engaged in respect of this Lease;

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

5.15 Applicable Law

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

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

5.17 Index

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

5.18 Business Days

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

5.19 Performance of Functions by Lessor

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

5.20 Approval by the Lessor

a) In any case where under this lease the doing or executing of any act matter or thing by the Lessee is dependent on the approval or consent of the Lessor, such approval or consent will not be effective unless it is given in writing and may be given or withheld by the Lessor in the Lessor's absolute discretion and may be given subject to such conditions as the Lessor may determine unless otherwise provided in this lease or by statute.

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

5.21 Special Conditions

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

6. GUARANTEE AND INDEMNITY

6.1 Application

This clause applies if any Guarantor is a party to the Lease.

6.2 Guarantor’s Obligations

In consideration of the Lessor entering into the Lease at the Guarantor’s request, the Guarantor:
(a) unconditionally and irrevocably guarantees to the Lessor the due and punctual payment by the Lessee to the Lessor of all amounts payable by the Lessee under the Lease and the due compliance by the Lessee with all the Lessee's other obligations under the Lease; and

(b) as separate undertakings:

(i) unconditionally and irrevocably indemnifies the Lessor against all Loss, liability, cost or expense incurred or suffered by the Lessor arising from, or in connection with, any Event of Default or as a consequence of a disclaimer of the Lease by a liquidator or trustee of the Lessee; and

(ii) as principal debtor agrees to pay to the Lessor on demand a sum equal to the amount of any Loss, liability, cost or expense described in subparagraph (i).

6.3 Duration and Application

This guarantee and indemnity:

(a) continues in full force and effect while the Lessee:

(i) occupies or is entitled to occupy the Premises under the Lease or any other form of tenancy or right of occupation or as a trespasser or other unauthorised occcupier; or

(ii) holds an equitable interest in the Premises under an agreement for Lease or as a periodical lessee; or

until the Lessee complies with all its obligations under the Lease;

(b) extends to all extensions of the Lease and any new Lease of the Premises; and

(c) extends to claims by the Lessor for Loss arising from the repudiation of the Lease or breaches of the terms of the Lease by the Lessee, including the Lessor re-entering or terminating the Lease.

6.4 Waiver

The Guarantor waives:

(a) all the Guarantor's rights as a surety in respect of this guarantee and indemnity; and

(b) any right the Guarantor may have of first requiring the Lessor to commence proceedings or enforce rights against the Lessee before claiming under this guarantee and indemnity.

6.5 No Prejudice to Rights

The liability of the Guarantor and the rights of the Lessor under this clause are not prejudiced or otherwise affected by anything which might otherwise affect them in law or in equity, including one or more of the following:

(a) the Lessor granting time or other concession to, or compromising with, or partially releasing in any way, the Lessee or the Guarantor;
6.6 Restriction on Guarantor's Claims

The Guarantor may not, without the prior written consent of the Lessor:

(a) raise a set-off or counterclaim against the Lessee in reduction of the Guarantor's liability under this clause;

(b) prove or claim in any bankruptcy, liquidation, composition, arrangement or assignment of, or in relation to, the Lessee until the Lessor has received 100 cents in the dollar in respect of the money owing by the Lessee under the Lease; and the Guarantor holds in trust for the Lessor any proof or claim and any dividend received by it; or

(c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any other Security Interest held by the Lessor in connection with the Lease.

6.7 Lessor's Rights

If a claim that a payment to the Lessor in connection with the Lease is void or voidable under laws relating to insolvency or protection of creditors is upheld, conceded or compromised, the Lessor is immediately entitled as against the Guarantor to the rights to which it would have been entitled under this clause if all or part of the payment had not been made.

6.8 Costs and Expenses

The Guarantor agrees to pay to the Lessor on demand the Lessor's costs and expenses, including legal costs and expenses relating to any action in connection with this guarantee and indemnity, including its enforcement.

6.9 Assignment of Benefit of Lease

If the benefit of the Lease is assigned by the Lessor to any person, the benefit of this guarantee and indemnity extends to, and is to be taken to be assigned to, the assignee.
ACCOUNTANT'S CERTIFICATE

TO: Chief Executive Officer of the
Department of Parks and Wildlife

1. We have examined the statement of Gross Receipts of the Lessee (a copy of which
is enclosed with this certificate) relating to the carrying on of the businesses and
activities of the Lessee within the Leased Area as detailed in the Deed of Lease
BETWEEN The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY
("the Lessor") of the first part AND FOREST ADVENTURES SOUTH WEST PTY
LTD (A.C.N. 613 111 881) ("the Lessee) of the second part AND MICHAEL BROWN
("the Guarantor) of the third part.

2. Expressions used in this Certificate have the same meaning as in the said Deed.

3. We have acquainted ourselves with the accounting methods and procedures for
recording and processing each item relevant to Gross Receipts and each item of
Gross Receipts.

4. On the basis of our examination and of the explanations given to us, we report that,
in our opinion:

   (a) the attached statement of Gross Receipts, relating to the carrying on of the
       business of the Lessee, upon or in connection with the Leased Area for the
       year ended 30 September ... amounting to $.... is in accordance with
       accounting and other records relating to operations carried out on or in
       connection with the Leased Area.

   (b) such records have been properly maintained so as to record all revenues
       received by the Lessee.
(c) the records kept and all practices procedures processes systems and controls for keeping records of all Gross Receipts and of all transactions relevant to Gross Receipts

[A] are adequate for the purpose of achieving integrity and completeness of record.

[B] need modification to achieve the purpose of integrity and completeness of record as follows –

(Signed)

Registered and certified practising public accountant(s)

NOTE - Certificate to be provided on accountancy firm’s official letterhead

Paragraph [A] or paragraph [B] may be deleted.

Please complete paragraph [B] if it is not deleted.
ANNEXURE 1
SUSTAINABILITY PERFORMANCE AND AUDIT

DEFINITIONS

In this Annexure, unless the context otherwise requires:

BEC means Build Environment Criteria.
Lessor means the Department of Parks and Wildlife.
NEC means Natural Environment Criteria.
Park Management Committee means any park management committee as determined by the CEO of the Department of Parks and Wildlife.
SEC means Social Environment Criteria.
State forest means State Forest No. 2 (Ludlow State Forest)
Visitor means guest or customer of the Lessee at the Leased Premises.

SITE DESIGN AND LAYOUT (BEC)

1. The Lessee will ensure the facilities in the Master Development Plan and the Site Development Plan and any improvements, additions, modifications, alterations or changes to the facilities on the leased area:
   i. Comply with and are maintained according to these Lease conditions; and
   ii. Comply with, are maintained and approved to the City of Busselton health standards pursuant to health requirements.

MAINTENANCE OF NATURAL ECOLOGY (NEC)

2. The Lessee will:
   i. Develop and implement protocols for the prevention of the introduction of non-endemic species of all types;
   ii. Develop and implement protocols to minimise damage to native vegetation, soil loss and compaction during construction;
   iii. Plant only indigenous vegetation in or around the area after consultation and approval of the Lessor prior to planting any vegetation;
   iv. Ensure that dogs must be on a lead at all times;
   v. Not feed or allow any employee, agent, contractor or Visitors to feed animals in the State forest and encourage the disposal of rubbish and food scraps in sealed bins; and
   vi. Ensure that rubbish is disposed of at a local government approved rubbish site and not disposed of in bins provided in the State forest or surrounding State forest.
   vii. Display 'No feeding of Wildlife" signage within the lease area.

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

3. The Lessee will:
   i. ensure that the built structures component of the Lease is limited to the leased area only and that no disturbance to vegetation or landforms outside the designated area occurs through the provision of sensitive design, education or signage;
   ii. control grass growth within the area to the satisfaction of the Lessor.
4. The Lessee will monitor and manage (including to take actions to prevent, limit and remedy) soil loss, compaction and erosion in the area. The Lessee will ensure that:
   i. Site design and layout controls pedestrian impact and avoids compaction under trees;
   ii. Vehicles remain in the designated vehicle areas and access to the area is restricted to the designated road;
   iii. There is no soil movement around the area after the construction phase as it applies to each stage;
   iv. Minimal loss and clearing of understorey vegetation occurs and that revegetation and rehabilitation of the site occurs, and in consultation with the Lessor;
   v. Dust generating activities are avoided and dust suppression procedures are in place;
   vi. All pedestrian paths and vehicle areas are defined with stable materials;
   vii. In the event of any soil loss, compaction or erosion of the area, remedial action is undertaken immediately with the approval of the Lessor;
   viii. Ensure the site layout accommodates the natural drainage lines of the site; and
   ix. Only remove trees or vegetation with Lessor approval.

WATER USE (NEC) & WASTE WATER (BEC)

5. The Lessee will:
   i. Acknowledge and accept that the Lessor does not provide any water; and
   ii. Only use environmentally sensitive cleaning products, detergents and soaps in the operations and ensure their use is minimised.

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

6. The Lessee will:
   i. Within the first year of the Lease and for the duration of the Lease, develop and implement a policy to minimise solid waste production by preferential purchase (where possible) of:
      a. bulk goods;
      b. dry goods;
      c. reusable storage;
      d. goods with soft packaging and aluminium rather than glass packaging; and
      e. recycled goods.
   ii. Adopt a policy of continual annual waste reduction;
   iii. Ensure that the Lease area is kept free of waste and in a presentable condition at all times; and
   iv. Store in a manner that prevents vermin, odour and spillage.

TOILET FACILITY STANDARDS (BEC)

7. The Lessee will:
   i. Be responsible for cleaning and maintaining toilets;
   ii. Ensure that toilets are pumped out by a licenced operator;
   iii. Ensure toilet structures are approved by the Lessor; and
   iv. Install sufficient new toilets in accordance with the approved Master Plan.

ENVIRONMENTAL STEWARDSHIP (NEC)

8. The Lessee will:
   i. Within the first year of the Lease and for the duration of the Lease, develop and implement a policy to manage and enhance environmental performance. This policy must include:
a. Minimising, managing and monitoring the operation’s environmental impact;
b. Ensuring the Lessee’s clients leave with an enhanced understanding and commitment to environmental issues and principles.

ii. Keep records and supply information to the Lessor on any matter it requests;
iii. Report incidence of damage or risk within the State forest;
iv. Pay fees and charges promptly;
v. Maintain entry/exit roads and carpark for its facility; and
vi. Support in emergency situations with the provision of resources at the request of the Lessor.

LIGHT SPILL (NEC)

9. The Lessee will, except in an emergency or with the approval of the Lessor:
   i. Not use floodlights in the Leased Area;
   ii. Provide a lighting plan for approval by the Lessor to be included in the Master Development Plan to ensure natural ambient light conditions prevail 50 metres outside the Leased Area; and
   iii. Minimise outdoor light provision, whilst still ensuring safe operations, by:
       a. Using bright lights only within closed structures;
       b. Using lighting under roofing or encased within a spill mantle in the dining room; and
       c. Using path lighting low to the ground and within a spill mantle.

NOISE LEVELS (NEC)

10. The Lessee will:
    i. Within the first year of the Lease and for the duration of the Lease, implement noise reduction measures;
    ii. Minimise vehicle noise where possible;
    iii. Mute telephone rings to a level satisfactory to the Lessor
    iv. Not play loud music or use loud speakers to broadcast 2-way radio transmissions during operations; and
    v. Commit to minimising noise by using solar/battery as the main source of power and limiting any use of a generator.

CHEMICAL/FUEL STORAGE AND HANDLING (BEC)

11. The Lessee will:
    i. Display a commitment to using environmentally sensitive products wherever possible;
    ii. At all times, store chemicals in a designated locked structure and store fuel in a designated signed location in the service area;
    iii. Maintain a register of chemicals and fuels on site (quantity, use and storage), management requirements and any spill events;
    iv. Ensure signage and storage complies with Australian Standards and the Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007 and the Worksafe Guidance Note;
    v. At all times, ensure all designated chemical and fuel storage structures have impermeable bund;
    vi. Ensure signage and storage complies with Australian Standards and the Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007 and the Worksafe Guidance Note;
    vii. Not conduct vehicle maintenance within the State forest, except in emergency situations and with the approval of the Lessor;
    viii. Dispose of chemicals and petrochemical waste outside the State forest in an environmentally appropriate manner and as required by law; and
    ix. Monitor soils around and surface water.
LEVEL OF INDIGENOUS OWNERSHIP/EMPLOYMENT (SEC)

12. The Lessee will:
   i. Provide employment and training opportunities to local Indigenous people; and
   ii. Encourage employment of local Indigenous people and subject to all selection criteria being met.

CULTURALLY SENSITIVE BEHAVIOUR (SEC)

13. The Lessee will:
   i. Acknowledge the importance of Indigenous people, culture and heritage to the State forest in all verbal and written interpretive and promotional material;
   ii. Ensure that appropriate permission is sought from Traditional Owners for the use of images and other cultural material used in the operation; and
   iii. Ensure active involvement (consultation, endorsement and/or presentation) by the Traditional Owners in indigenous interpretation and tour products so that social and financial benefits are provided.

PROVISION OF INTERPRETIVE MATERIALS (NEC, BEC & SEC)

14. For the duration of the Lease, the Lessee will develop and deliver educational and interpretation materials (where appropriate) for the Lessee's employees, agents, contractors and Visitors on the following matters (including on-site verbal and written communications and signage) and incorporate these into a staff manual:
   i. Major environmental issues at the lease site and those affecting the State forest;
   ii. Any risks in the State forest and all safety rules;
   iii. Appropriate behaviour in the environment, including but not limited to littering, toilets and protection of vegetation, soils and rocks;
   iv. Minimising the introduction and spread of weed seeds;
   v. Prohibiting the feeding of animals;
   vi. Waste management, minimising packaging in the State forest and solid waste reduction issues, principles and methods;
   vii. Minimising vehicle numbers, use and impacts, including but not limited to acceptable road safety, vehicle care and road impact;
   viii. Energy conservation principles and methods;
   ix. Noise and light minimisation;
   x. First aid responses delivered by an appropriately qualified professional; and
   xi. Fuel and chemical risk management behaviour and handling, storage and emergency response training in accord with Australian Standards and the Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007 and the Worksafe Guidance Note.

SAFETY EQUIPMENT AND PROCEDURES (SEC)

15. The Lessee will have, at all times:
   i. Fully functioning emergency communication equipment;
   ii. An up to date Critical Incident Plan (CIP) to be delivered in annual training. The CIP must contain a basic search and rescue, incident and emergency protocols, contingency plans for emergency situations and a management plan for high risk activities;
   iii. A Maintenance and Inspection Plan (the Plan) approved by the Lessor for trees, equipment, ropes and platforms. The Plan is to include daily, quarterly and annual visual checks to be carried out and reported in writing by employees and external third parties in accordance with the Plan.
   iv. An up to date Fire Risk Management Plan;
v. At least one (1) employee on duty at the site who holds a current first aid qualification of at least a Level 2 Senior First Aid certificate or equivalent;
vi. First aid equipment on site and in all vehicles with contents controlled through an incident control system as well as annual review; and
vii. Visible signage indicating the location of fire extinguishers, fire blanket and first aid kit.

16. The Lessee will:
   i. Develop and ensure health and hygiene protocols are adhered to by all employees, contractors and agents; and
   ii. Develop and implement occupational health and safety procedures.

VISITOR FEEDBACK (SEC)

17. The Lessee will:
   i. Survey customers to assess visitor satisfaction in at least the areas of perceived value for money, standard of cleanliness, level of cleanliness, level of comfort, staff competency and manner, accuracy of marketing, natural focus of operation, provision of conservation initiatives (group transport, renewable energy, water conservation, recycling etc), level of educational opportunities and level of cultural sensitivity and provide an annual report;
   ii. Provide international best practice standard of service and value for money; and
   iii. Demonstrate a commitment to visitor satisfaction and customer service through the provision of value adding initiatives to benefit customers and by implementing a policy of continual improvement by obtaining customer feedback.

CONTENT OF MARKETING MATERIAL (SEC)

18. The Lessee will accurately describe State forest features and activities available on promotional material or on interpretive information provided to clients.

EXPENDITURE FROM LOCAL BUSINESS (SEC)

19. The Lessee will develop and implement a policy to commit to local expenditure wherever possible during the building and operation.

MEMBERSHIP OF LOCAL ASSOCIATIONS (SEC)

20. The Lessee will, throughout the Lease period, maintain membership with the local Regional Tourism Organisation, the local Visitor Centre or similar and local Chamber of Commerce.

VISITOR RISK MANAGEMENT (SEC)

21. The Lessee will complete a risk assessment of trees in the Lease area, conducted by an arborist, annually and in the event of a major storm.

22. The Lessee will abide by Lessor instructions if the State forest is closed for any reason.

EVENTS (SEC)

23. The Lessee will seek approval from the Lessor for events planned that are outside the scope of normal operations. Details of the event including traffic management, numbers and infrastructure will be provided to the Lessor at least 6 weeks prior to the event to allow the Lessor to use its best endeavours to provide an answer to the Lessee at least four weeks in advance.
LEASE No. 2483/97

LESSEE: FOREST ADVENTURES SOUTH WEST PTY LTD

DPaW REGION: SOUTH WEST
DPaW DISTRICT: BLACKWOOD
LGA: CITY OF BUSSELTON
PLAN REF.: DPaW COG plan: 1930-1 & 4 (FG.30-31)

AREA: Abl 7.56ha
CHECKED: J.D. 29-9-16
FILE No.: 2016/003065-1
DATUM: GDA94; MGA Zone 59

Note - enlargements not to scale
Department of Parks and Wildlife Lease

EXECUTED as a Deed

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

Chief Executive Officer

in the presence of:

Signature of witness

Jane O'Neil

Full name of witness

17 Pine Perry Ave, Kensington WA 6151

Address of witness

Public Servant

Occupation of witness

THE LESSEE:

EXECUTED by FOREST ADVENTURES SOUTH WEST PTY LTD

ACN 613 111 881

In the presence of:

Signature of witness

Vicki Prince

Full name of witness

211 S Bowling St, Wilson

Address of witness

Retired

Occupation of witness

Forest Adventures South West Pty Ltd Lease No.2483/97

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THE GUARANTOR:
EXECUTED by  
MICHAEL BROWN

In the presence of:

Signature of witness

VICKI PRINCE
Full name of witness

21B Bow St, Wilson
Address of witness

RETIRED
Occupation of witness