

I hereby certify that the within is a true and correct copy of Deed  
of Amendment of Lease 1900/100



Mark Webb  
Director General – Department of Biodiversity Conservation and  
Attractions

**2018**

**THE CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY**  
(Lessor)

**AND**

**COJAH PTY LTD TRADING AS COALMINE BEACH HOLIDAY PARK**  
(Lessee)

**PHILLIP BUTLIN**  
(Guarantor)

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**DEED OF  
AMENDMENT NO. 1900/100**

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THIS DEED OF LEASE is made the 25<sup>th</sup> day of January in the year 2019.

## BETWEEN

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

## AND

COJAH PTY LTD 52 818 671 212 trading as Coalmine Beach Holiday Park, Walpole (in this lease called "the Lessee" which expression where the context so admits includes their successors and permitted assigns) of the other part.

## AND

MR PHILLIP BUTLIN, Coalmine Beach Caravan Park, PO Box 96, WALPOLE (in this lease called "the Guarantor" which expressions where the context so admits includes its successors and permitted assigns) of the other part.

## RECITALS

- A. Pursuant to Section 7 of the amended *Conservation and Land Management Act 1984* ("the Act") the land in Reserve Number 49220 Walpole-Nornalup National Park ("the Land") is vested in the Conservation Commission of Western Australia.
- B. Pursuant to Section 100 of the Act, the Chief Executive Officer (CEO) has power to lease the Land for a term not exceeding 99 years on such terms and conditions 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 Premises").
- F. The Lessor has agreed to lease the Leased Premises to the Lessee for the term and at the rental respectively set out hereto and upon and subject to all the covenants agreements and stipulations contained in this lease.
- G. Pursuant to Section 100(3) of the Act the lease shall be laid before each House of Parliament within 14 sitting days of its execution by all parties and will be incorporated into Hansard.
- H. The Guarantors have agreed with the Lessor to guarantee the obligations of the Lessee under this lease.

I. With 18 years left on the original term the Lessee sought approval for an extended term of 24 years expiring in 2059 which was agreed by the Lessor.

J. This Deed of Amendment supersedes the following agreements with effect from the Effective Date:

Lease dated 8 November 1993

Deed of Assignment dated 3 July 1998

Deed of Amendment dated 18 April 2001

Deed of Variation dated 23 April 2003

Deed of Assignment dated 27 January 2004

Deed of Assignment and Variation dated 29 January 2010

Deed of Variation dated 26 March 2013

Extension of lease letter dated 2 September 2014

Deed of Assignment and Variation of Lease dated 2 April 2015

NOW THIS DEED witnesses as follows -

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this lease unless the contrary intention appears: -

**"Accommodation Facility"** means a tourist accommodation facility comprising any combination of self-contained cabins, caravan and glamping/camping sites and associated facilities;

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

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

**"Approvals"** means the approval of all relevant Authorities whose approval is required including the Lessor, and, but not limited to the Shire of Manjimup by its health officer or inspector and by its building officer or inspector, of the Water Corporation, of a licensing authority under the *Liquor Licensing Act 1988* and all other approvals consents permissions and licences of any local or other competent authority which may from time to time be necessary for the Lessee to commence and to carry out 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;

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

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

**"Commencement Date"** means the date 1 November 1993;

**"Effective Date"** means the date this deed is executed;

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

**"Financial Year"** means each of:

- (a) the period from and including the Commencement Date to and including 30 June;
- (b) each of the following period 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 3.8;

**"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 accommodation fees, either sold or performed or both and all accommodation business of any nature whatever conducted in at from or upon the Leased Premises by the Lessee and other occupiers of the Leased Premises or any part of the Leased Premises. Without in any way limiting the generality of the foregoing the term includes:-

- (a) Reservations which originate and paid for at any place other than the Leased Premises but delivery of which is made at or from the Leased Premises;
- (b) mail telephone or similar orders received or filled at or from the Leased Premises;
- (c) all deposits taken and not refunded to customers;
- (d) sales made as a result of solicitation of business off the Leased Premises conducted by persons operating from or reporting to the Leased Premises; and
- (e) 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) credit and charge card commissions; and
- (iv) 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.

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

**"Lease Purpose"** means the carrying on in a proper, efficient, prudent and businesslike manner the business of a caravan park for such other purposes as are

incidental to the carrying on of that business and not to use the Leased Premises for any other purpose without the prior written consent of the Lessor;

**"Leased Premises"** means the area of land situated within the Walpole-Nornalup National Park which is shown as hachured on the Plan annexed hereto together with all non-transportable 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) accommodation, plant and equipment;

**"Lessee's Agent"** means any employee, agent or contractor engaged by the Lessee;

**"Lessee's Business"** means the business of a tourist accommodation facility comprising any combination of self-contained cabins, caravan and camping sites 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;

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

**"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 "Coalmine Beach – A Long Term Development Proposal" dated September 2016 and with the approval of Lessor may be changed from time to time;

**"National Park"** means Reserve Number 31362 – Walpole-Nornalup National Park;

**"Plan"** means the plan which is annexed hereto;

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

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

**"Rent"** means the rent calculated as provided in clause 3;

**"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 dockets, 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 Premises;

**"State"** means Western Australia;

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

**"Sustainability Performance and Audit Schedule"** means the schedule developed jointly between the Lessor and the Lessee which sets out benchmarks for the Lessee as provided in clause 3.64 and comprises Annexure 1 to this lease;

**"Term"** means the initial term of forty-two (42) years from and including the Commencement Date plus any extension or renewal of a further term in accordance with clause 2.2;

**"Visitor"** means visitor, guest or customer of the Lessee staying at the Leased Premises;

**"Works"** means any proposed or future buildings, alterations to buildings, improvements, installations and structures (including but not limited to water reticulation systems, bollards and shade shelters) to be constructed and carried out within the Leased Premises in accordance with clause 3.10 and includes any siteworks, landscaping, the supply and installation of all fixtures, fittings, plant and equipment, and such other obligations which the Lessee elects to undertake on the Leased Premises.

## 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 Property Institute (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' employees, agents, contractors, sub-tenants, licensees and invitees.

## **2. GRANT OF LEASE**

### **2.1 Lease**

- (a) The Lessor hereby leases to the Lessee and the Lessee hereby takes on the Leased Premises for the Term subject to the payment of the Rent and the observance and performance by the Lessee of the Lessee's Covenants.
- (b) If for any reason by law this lease requires the consent of the Western Australian Planning Commission under the *Planning and Development Act, 2005* then this lease shall be expressly subject to and conditional upon the granting of such consent.

### **2.2 Option**

If the Lessee gives to the Lessor written notice, such notice to be at least three (3) months prior to the end of the Term, of the desire of the Lessee to renew the Term hereby created subject to the prior achievement by the Lessee of the environmental/ecological benchmarks in accordance with clause 3.70 and PROVIDED THAT the Lessee shall not at the time of giving such notice be in default in performing and observing the covenants and conditions to be performed and observed by the Lessee hereunder (but the Lessor must have previously given the Lessee notice of the default and an opportunity to remedy the default in accordance with clause 5.1) and PROVIDED specifically that the Lessee shall not at the time of giving such notice be in rental arrears (but the Lessor must have previously given the Lessee notice of the rental arrears and an opportunity to pay the arrears in accordance with clause 5.1) then the Lessor shall extend and renew this lease of the Leased Premises and the Term hereby created for a further term of twenty four (24)

years from the expiration of the original Term on the same covenants conditions and stipulations (except this option of renewal) as are herein contained or implied but at an annual rent which shall be determined in the manner provided in clause 3.3.

### 3. COVENANTS BY LESSEE

The Lessee COVENANTS with the Lessor:-

#### 3.1 To Pay Rent

To pay Rent monthly in arrears within fifteen (15) Business Days of receipt of a Lessor initiated tax invoice.

#### 3.2 Rent Payable

The Rent for each year of the first Term is a sum equal to ten (10) per cent of Annual Gross Receipts for that year.

#### 3.3 Crown Land Rent Review

- (a) With effect from (and including) each date specified in this clause as a Crown Land Rental Review Date, the Lessor can require that the Rent be reviewed in the manner set out in this clause.
- (b) The Lessor must provide a notice to the Lessee (**Lessor Notice**) of what the Lessor considers to be the current market percentage rate of Gross Receipts to comprise the Rent on and from the Crown Land Rental Review Date (by way of example, the market percentage rate from the Crown Land Rental Review Date could be more or less than 10% of Gross Receipts) applicable during the term.
- (c) If the Lessee has not agreed in writing to the percentage rate of Gross Receipts proposed by the Lessor to comprise the Rent within 20 Business Days of receiving the Lessor Notice, the relevant percentage rate is to be the higher of:
  - (1) the rent applying immediately before the relevant Crown Land Rental Review Date;
  - (2) the percentage rate determined by a valuer licensed under the Land Valuers' Licensing Act:
    - (A) agreed to by each of the parties; or
    - (B) where the parties cannot agree on the appointment of the valuer within 30 Business Days of the Lessor Notice, a valuer appointed by the President for the time being of the Australian Property Institute (WA Division) at the request of either party,  
  
which valuer must have at least 5 years' experience in valuing premises of a similar nature to the Leased Premises and must be instructed to determine the percentage rate within 20 Business Days of being appointed.

- (d) The Lessor must pay the fees charged by any valuer appointed under this lease to determine the percentage rate of Gross Receipts to comprise the Rent from the Crown Land Rental Review Date.
- (e) In determining the market percentage rate of Gross Receipts to comprise the Rent from the Crown Land Rental Review Date, the parties must instruct the valuer appointed under this clause to take into account:
  - (i) the rent in respect of new tenancies of vacant premises, of rent reviews under current tenancies of premises and of renewals of existing tenancies of premises of a similar nature to the Leased Premises;
  - (ii) the approved use and utility conferred under this lease;
  - (iii) the nature of the Lessee. In this regard the Lessee is required to keep proper and audited books of account and these books of accounts for the current and past three years will be made available to the Lessor upon request for the purpose of assisting in the determination of the rent. Average management of the organisation will be assumed;
  - (iv) the provisions of this lease;
  - (v) the period which will elapse between the current Crown Land Rental Review Date and the next Crown Land Rental Review Date or, if there is not one, the termination of this Lease;
  - (vi) the full length of the Term and the benefit of any option to renew; and
  - (vii) any improvements to the Leased Premises,  
but disregarding:
    - (viii) the consequences of any default by the Lessee under this lease which may have adversely affected the condition or rental value of the Leased Premises;
    - (ix) any part of the term that has expired; and
    - (x) (the value of the Works carried out by, or other property or improvements erected or installed by, the Lessee on the Leased Premises and any goodwill created by the Lessee's Business or activities to the Leased Premises.
- (f) **Crown Land Rental Review Date** means the first day of any extended Term of this lease granted under clause 2.2.

### 3.4 Delay

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

### **3.5 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 Premises 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.

### **3.6 Lessee's Accountant's Certificate**

To furnish to the Lessor within 30 days after the 30th day of September in each Financial Year during the Term and within 30 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 the preceding Financial 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.

### **3.7 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 Premises 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 Premises. 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 there from. 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 reasonable 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 reasonably 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 Premises so as to satisfy himself as to the correctness of the certificate referred to in clause 3.6;
- (b) to investigate and monitor all processes, procedures and practices involved in the creation, formation and maintenance of accurate Sales Evidence and Sales Records;

subject to the Lessor's Auditor first giving at least 2 days prior notice to the Lessee of its intention to undertake the activities prescribed in subclauses (a) and (b).

### **3.8 Goods and Services Tax**

#### **(a) Definitions**

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

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

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

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

#### **(b) Adjustment for GST**

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

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

#### **(c) Tax Invoices**

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

#### **(d) Reimbursements**

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

### **3.9 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 (acting reasonably) 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 3.6. If such audit discloses that its Gross Receipts are

understated by more than 2% in any certificate given pursuant to clause 3.6 (“**Discrepancy**”), the Lessee must promptly pay to the Lessor the reasonable cost of the audit determined under a mandatory whole of Government agreement, but otherwise the audit shall be completed at the expense of the Lessor;

- (c) Should any Discrepancy be established by an audit under subclause 3.9(b), the Lessee shall pay to the Lessor on demand all Rent properly due together with interest calculated on such unpaid Rent at the Rate and computed from the date on which such unpaid Rent became due and payable in accordance with the provisions hereof until the date on which all such monies are paid.

### **3.10 Works**

#### **(a) Approvals**

- (i) The Lessee shall apply for and do all things necessary to obtain with respect to any Works, all Approvals prior to commencement of each respective part.
- (ii) The Lessee must obtain the Lessor’s approval prior to commencing any Works where the Works require an Approval.

#### **(b) Execute Works**

Subject to all Approvals from time to time necessary being obtained and continuing in force (and any approval of the Lessor being obtained where required under this lease), 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 and, where required in keeping with the heritage aesthetics of the buildings on the Leased Area, recycled 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 any approval of the Lessor where required under this lease), and otherwise in compliance with all conditions subject to which Approvals (or any approval of the Lessor) are granted; and
- (iii) in conformity with the provisions of all applicable laws, Acts, statutes, rules, regulations, bylaws, orders and ordinances (State, Federal or local); and
- (iv) otherwise in accordance with the provisions of this lease.

#### **(c) Materials etc - location**

Not to deposit or permit or suffer to be deposited within the Leased Premises any materials or building plant or equipment which are not immediately required for the carrying out of the Works and to place and keep 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 Premises, but only in accordance with directions and conditions prescribed by the Lessor.

(d) **Not to remove earth**

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

(e) **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.

(f) **Indemnity - materials**

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

(g) **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 this clause 3.10, except to the

extent that any liability, loss, damage, cost or expense is caused by the act, neglect, default or omission of the Lessor or its officers, employees or agents.

(i) **No representation - Site**

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

(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 Premises and of all services within and in the vicinity of the Leased Premises associated with those Works and of all relics and artefacts including historic, prehistoric, archaeological, indigenous and aboriginal and of all matters of mythological, cultural, indigenous, aboriginal, or heritage significance and shall make its own assessment of all risks and of all latent and patent conditions contingencies claims and other circumstances which may affect its works and activities and the carrying out, construction and completion of the Works ("Latent Conditions");
- (ii) The Lessee shall undertake and assume full responsibility for and bear the full cost of all works, actions and conditional considerations which must be executed and brought to bear in order to resolve any problems claims contingencies difficulties or instability revealed before, after or during the progress of the Works by any Latent Condition;
- (iii) The existence of any Latent Condition shall not affect the Lessee's liability to carry out and complete the Works and shall not impose any burden, obligation, liability, duty or responsibility whatsoever on the Lessor.

(k) **Water and Electricity Services**

- (i) At the Lessee's cost, to maintain all existing water and electricity services to the various portions of the Leased Premises to the reasonable satisfaction of the Lessor and the Shire of Manjimup, including undertaking any required repairs or maintenance.
- (ii) For clarity, the Lessee may, but is not required to, undertake any works to upgrade any water and electricity infrastructure or services existing as at the Commencement Date, except where any upgrade is required by law, in which case the Lessee must undertake that upgrade.

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

If the capacity of the water service or the electricity supply or the sewerage installation currently provided to any portion of the Leased Premises is insufficient or unsuitable for the requirements of the Lessee, the Lessor shall not be required, obliged or responsible to provide any increase in such capacity or to provide any contribution to the Lessee's costs of expanding the capacity of such a water service, electricity supply or sewerage installation, and the Lessee shall not have or make or bring any action, suit, claim, demand or proceeding against the Lessor in respect of the foregoing, and shall indemnify and deep indemnified the Lessor from any action, suit, claim, demand or proceeding by any other person in respect thereof or in consequence thereof. Nothing in this clause requires the Lessee to undertake any works to upgrade any infrastructure or services existing as at the Commencement Date, except where any upgrade is required by law, in which case the Lessee must undertake that upgrade.

(m) **Sewerage System**

(i) From the Commencement Date, the Lessee is to ensure that the existing sewerage system serving the Leased Premises meets all standards as may be required by the Lessor, the Shire of Manjimup or any statutory authority including undertaking any required repairs or maintenance.

(ii) For clarity, the Lessee may, but is not required to, undertake any works to upgrade any sewerage infrastructure or services existing as at the Commencement Date, except where any upgrade is required by law, in which case the Lessee must undertake that upgrade.

(n) **Maintain Installations**

(i) To maintain the sewerage system or sewerage systems and all and any gas installations including tanks and associated screens, plant, equipment, pipes and wires installed on the Leased Premises 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.

(ii) For clarity, the Lessee may, but is not required to, undertake any works to upgrade any sewerage or gas infrastructure or services existing as at the Commencement Date, except where any upgrade is required by law, in which case the Lessee must undertake that upgrade.

(o) **Property in Works**

The Lessor shall have no interest whatsoever in any Works undertaken by the Lessee and listed in this clause 3.10 and the Works shall vest absolutely in the Lessee upon the date of completion of the Works by the Lessee.

### **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 Premises or the use or occupation of the Leased Premises or any part of the Leased Premises or any business conducted at or from the Leased Premises, and all accounts for water, electricity, gas or telecommunications services consumed on or provided to the Leased Premises and all meter rentals (whether assessed in the name of the Lessor or of the Lessee) but if the Lessee's obligation to pay land tax under this provision arises due to a change in the law whereby the Lessor is assessed to pay land tax in respect of the Leased Premises, (instead of the Lessee being assessed to pay land tax in respect of the Leased Premises, which will be the case immediately following the Commencement Date) then the Lessee will only be obliged to pay land tax on the basis that the Leased Premises are the only land of which the Lessor is the owner (within the meaning of that term in the *Land Tax Assessment Act 1976*), and the Lessor agrees to pay or discharge the balance (if any) of any land tax imposed upon the Lessor.

### **3.12 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 Premises any buildings, structures or improvements or to make any alteration or additions to the buildings, structures and other improvements from time to time on the Leased Premises without:

- (1) obtaining all required Approvals and then only in strict accordance with the plans and specifications contained with any Approval; and
- (2) where an Approval is required, without also obtaining the prior written approval of the Lessor, and then only in strict accordance with plans and specifications first approved in writing by the Lessor with such approval not to be unreasonably withheld or delayed.

### **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 Premises or the use of the Leased Premises or which impose any duty or obligation upon the owner or occupier of the Leased Premises including the provisions of the *Western Australian Building Act 2011 and Building Regulations 2012* when conducting building operations within the Leased Premises to ensure that any development works and all activities and operations of the Lessee within the Leased Premises pursuant to this lease meet the requirements of the *Building Act 2011 and Building Regulations 2012*. The Lessor may engage a 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.

### **3.15 Compliance with Local Government Act**

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

### **3.16 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 the Leased Premises or any part of the Leased Premises as are or may be legally required or directed to be performed, discharged, executed or done (whether the direction is given to 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 Premises or any part of the Works, non compliance with which would or may adversely affect the Lessor's interest in the Leased Premises or which relate to any breach of duty or obligation of the Lessee or of the Lessor.

### **3.18 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 any other persons on the Leased Premises of the provisions of all statutes (State or Federal) and all subsidiary legislation now or hereafter in force and all requirements and orders of any authority (statutory or otherwise) which relate to the duty of any person entering or who has entered the Leased Premises.

### **3.19 Exclusion of Persons**

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

### **3.20 Maintenance of Leased Premises**

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

### **3.21 Provide Fixtures Fittings and Chattels**

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

### **3.22 Maintain and Replace**

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

### **3.23 To Paint and Decorate**

At appropriate times as the need arises but in any event during or before each successive tenth year of the Term with paints and in colours first approved of in writing by the Lessor, to paint with at least 2 good coats of paint to the reasonable satisfaction of the Lessor all the outside wood metal iron and cement work of all buildings, structures and erections upon the Leased 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.

### **3.24 To Refit and Refurbish**

Notwithstanding the provisions of clause 3.23 and any permanent building structures and erections which are the Lessor's responsibility (except when damage is caused by the Lessee or the Lessee's contractors, agents or employees) during each tenth (10<sup>th</sup>) year of the Term or as required at the direction of the Lessor with the Lessor acting reasonably, to refurbish the Leased Premises, which refurbishment (without limiting the generality of the foregoing) shall include removal, repair and replacement

(as appropriate) of corroded, worn, weathered building fabric, materials and surfaces including structural fabric and materials removal and repairs of electrical wiring and electrical fixtures and fittings repainting replacement of signs and refurbishing of the fixtures and fittings within the Leased Premises, replacement of floor coverings and window treatments, furniture, furnishings, painting, colouring, varnishing and papering all parts which have previously been painted, coloured, varnished or papered to ensure that the Leased Premises including ceilings, walls, floors, fixtures, fittings and signs maintain a high standard of presentation, appearance and design, unless otherwise approved by the Lessor.

### **3.25 Rebuilding on Destruction or Damage**

- (a) Subject to clause 3.25(b), if the buildings and improvements upon or within the Leased Premises or any parts of those buildings and improvements, or any replacements of them are wholly or substantially destroyed or damaged, by any cause whatsoever (including flooding), the Lessee shall promptly and diligently rebuild, replace or repair, as the case requires and as mutually agreed between the Lessor and Lessee, those buildings and improvements in order to maintain continuity of the Lessee's Business at the Leased Premises.
- (b) If the damage to those buildings and improvements is too great for the Lessee to rebuild, and the Lessee is unable to claim full reinstatement costs through its insurance policy, then the Lessor will not unreasonably refuse a request from the Lessee to terminate the lease by giving the Lessor at least three months written notice and yield up the Leased Premises to the Lessor in accordance with clauses 3.54 and 3.55.

### **3.26 Not to damage buildings**

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

### **3.27 Lessor's right of entry upon Leased Premises**

- (a) To permit the Lessor to enter the Leased Premises upon the Lessor giving at least 2 days notice to the Lessee of the Lessor's requirement to enter the Leased Premises (except in the case of an emergency or where the Lessor has a reasonable suspicion that the Lessee is in breach of this Lease or currently committing a negligent act, in which case no notice is required) 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*.
- (b) The Lessor may after giving at least 2 days notice to the Lessee (or in an emergency, without notice) enter the Leased Premises to do any one or more of the following things:
  - (i) inspect the state of repair and condition of the Leased Premises;
  - (ii) maintain or repair the Leased Premises and Equipment or facilities in or on the Leased Premises;

- (iii) maintain, repair, alter or remove any electricity, gas, water, sewerage, drainage or telecommunications services ("the Services");
- (iv) carry out structural work to the Leased Premises or any other work required by an Authority;
- (v) remove anything which is unsafe, harmful or dangerous;
- (vi) anything which should have been done by the Lessee but which has not been done or has not been done properly;
- (vii) anything else which the Lessor is required to do by law or is permitted to do under this lease;

without affecting the Lessee's obligations under this lease

- (c) If the Lessor does anything permitted by the preceding clause the Lessor must:
  - (i) give the Lessee reasonable notice of the intended action before it is taken (except in an emergency);
  - (ii) use its best endeavour to minimise disruption to the Lessee's Business; and
  - (iii) make good any damage to the Lessee's property caused by the Lessor.

### **3.28 Use of Leased Premises**

To actively and continuously use the Leased Premises for the purpose of carrying on in a proper, efficient, prudent and businesslike manner in accordance with this lease 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 Premises for any other purpose without the prior written consent of the Lessor.

### **3.29 Standard of Service**

At all times during the Term, with respect to the use of which each of the individual parts of the Leased Premises must be put in accordance with the Lessee's Covenants:-

- (a) to manage, conduct and control at all times in good faith and to a prompt, efficient and high standard and in an orderly and reputable manner, each business and activity thereon and each provision of service to the public, limited in some cases to specific hours of operation;
- (b) not in any way to damage or cause a detraction from the reputation of the National Park or its facilities; and
- (d) to meet the realistic and reasonable expectations of the public with respect to the Lessee's Business conducted from the Leased Premises, having regard to the realistic and reasonable standards of comparable caravan and tourist parks in the State of Western Australia.

### **3.30 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 (having regard to the realistic and reasonable standards of comparable caravan and tourist parks in the State of Western Australia), the Lessor may give 7 days 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.

### **3.31 Furnish Equipment and Staff**

To keep the Leased Premises properly furnished equipped and staffed for the said use to the reasonable satisfaction of the Lessor, having regard to the realistic and reasonable standards of comparable caravan and tourist parks in the State of Western Australia.

### **3.32 Not to Pollute**

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

### **3.33 Ground Water**

Not to do or permit or suffer to be done anything on the Leased Premises which causes the ground water below or near the Leased Premises to be polluted.

### **3.34 Introduced Material and Plants**

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

### **3.35 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 National Park in accordance with the provisions of subclause 3.32.

### **3.36 Not to Overload**

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

### **3.37 Chemicals**

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

### **3.38 Not to Obstruct or Cause Nuisance**

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

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

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

### **3.40 Not to permit violent behaviour**

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

### **3.41 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.

### 3.42 Assignment and Mortgage

The Lessee must not assign, sub-let, license, sublicense, mortgage, charge or otherwise encumber or part with the possession of or dispose of the Leased Premises or any part of the Leased Premises or the benefit at law or in equity of this lease without the prior written consent of the Lessor which the Lessor must not unreasonably withhold or delay providing that the following is satisfied:-

- (a) if the Lessee wishes to mortgage charge or encumber the whole of this lease and the Leased Premises on the 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 3.42 and subject to any reasonable undertakings required by the Lessor being given by the Lessee or any other person;
- (b) if the Lessee wishes to assign the whole of the Leased Premises and the benefit of this lease or if the Lessee wish to sublease, licence or sublicense the whole of the Leased Premises and in either of those cases if:-
  - (i) the proposed assignee, sublessee, licensee or sublicensee is a respectable, responsible and solvent person and the Lessor is satisfied (acting reasonably), 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 Lessee's Business on the Leased Premises in accordance with this lease and has adequate capital backing in the opinion of the Lessor acting reasonably;
  - (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 (as applicable) 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 has 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 written 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) in the case of an assignment, if the proposed assignee, is a company not listed on any Australian Stock Exchange and the Directors of that company guarantee to the Lessor 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; and
- (d) if the covenants and agreements on the part of any proposed 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.

### **3.43 Costs and Expenses**

The Lessee must pay or reimburse the Lessor on request for all the Lessor's reasonable legal costs and expenses in relation to negotiating, preparing and signing any document assigning, varying or surrendering this lease.

### **3.44 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.

### **3.45 Change in Shareholding or Unitholding**

- (a) 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.
- (b) Clause 3.45(a) does not apply where the Lessee is a public company.

### **3.46 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.

### 3.47 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):-
  - (vi) 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;
  - (vii) the vesting date under the provisions of the trust deed has not and will not be determined during the Term;
  - (viii) no restrictions on the rights of subrogation of the trustee of the trust will be created;
- (b) the Lessee is presently the only trustees 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 (other than in the case of fraud);
- (e) the trustee of the trust, as at the date of this lease is not in default with respect to the trust fund of the trust; and
- (f) no notice under section 63 of the *Trustees Act 1962* or any equivalent provision has been published in connection with the trust as at the date of this Lease.

### 3.48 Pay Lessor's Costs

To pay to the Lessor on demand by it all reasonable 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.

### 3.49 Signs and notices

Not to affix or exhibit or cause or permit to be affixed or exhibited on any part of the Leased Premises any poster sign or other advertisement without the prior written consent of the Lessor, except for any bulletin boards or other signs or notices of a reasonable and appropriate nature that are necessary for the business carried on by the Lessee on the Leased Premises, which may be erected by the Lessee without the Lessor's consent.

### **3.50 Indemnity**

- (1) Subject to subclause 3.50(3) below, the Lessee agrees to release the Lessor and the State of Western Australia and all its officers, agents, emanations and instrumentalities (collectively, "the State") from and in respect of any liability (in negligence or howsoever) the State would incur or would otherwise incur directly on account of being the owner of, or having the possession or control of, the Leased Area or in relation to the activities the subject of this Lease.
- (2) Subject to subclause 3.50(3), the Lessee agrees to indemnify the State from, against and in respect of all loss, claims, lawsuits, proceedings, causes of action, damage, liability, costs, expenses, demands and the like suffered or incurred by or brought, made or alleged against the State to the extent caused or contributed by –
  - i any contractual breach, by or on behalf of the Lessee; or
  - ii any tortious, civil or actionable wrong by or on behalf of the Lessee or any officer, employee, agent, contractor or their sub-contractor, or licensee or invitee of the Lessee; or
  - iii the conduct of the Lessee or any of its employees, agents, contractors or their sub-contractors in relation to the activities the subject of the Lease, but only to the extent that the relevant risk, hazard or danger (which caused or gave rise to, or related to, any such loss, claim, lawsuit, proceedings, cause of action, damage, liability, costs, expenses, demands or the like) was or should have been known by the Lessee taking into account all relevant factors including, to the extent such matters are relevant, the location, nature and physical characteristics of the area the subject of the Lease.
- (3) The release in subclause 3.50(1) and indemnity in subclause 3.50(2) above will not apply to the extent that any claims, actions demands, suits, proceedings, damages, liabilities, losses or costs made or brought against, suffered or incurred by the State are caused or contributed to by the State's own negligence, act, default or omission.
- (4) The Lessee agrees that the Lessee's public liability insurer is aware of the conditions that apply to this lease and the indemnity granted above and that the Lessee's public liability policy covers the activities that are specified in this Lease.

### **3.51 Insurance**

To insure and keep insured in the name of the Lessee under a policy of insurance on which the interest of the Lessor is noted the erections buildings structures and improvements now or at any time during the Term on the Leased Premises against loss destruction or damage by fire flood earthquake lightning storm and tempest and such other risks as the Lessor may from time to time reasonably require including but not limited to damage to or destruction of 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 a certificate of currency or memorandum of insurance for the relevant insurance policy AND to cause all moneys received by virtue of such insurance to be laid out in repairing rebuilding or reinstating the Leased Premises so lost damaged or destroyed and to make up any deficiency out of the Lessee's own money PROVIDED ALWAYS that if the Lessee fail 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 reasonable sums of money expended by the Lessor for that purpose.

### **3.52 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 are 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.

### **3.53 Public Risk Insurance**

To effect and keep effected in respect of the Leased Premises adequate public risk insurance noting the Lessor's interests in an amount not less than \$20,000,000 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 a certificate of currency or memorandum of insurance 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 or memorandum of insurance in respect of such insurance policy issued by the insurance company or an insurance broker with which the policy has been effected; and
- (c) not to alter the terms or conditions of such policy that affects this lease and the Leased Premises 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.

### **3.54 To yield up**

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

### **3.55 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 3.55, 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.

### **3.56 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 Premises or any part of the Leased Premises the Lessor reasonably requires (without abatement of rent or liability for compensation) and for that purpose and after communication with the Lessee for the purpose of minimising inconvenience, to enter with or without contractors, agents, workmen, servants and others into and upon such parts of the Leased Premises as are necessary or convenient for the purpose of executing and completing such alterations and improvements PROVIDED that the Lessor in exercising this power must use reasonable endeavours to ensure that the Lessee does not suffer any undue inconvenience and the Lessor has previously approved the alterations and improvements to be undertaken (such approval not to be unreasonably withheld).

### **3.57 Not to hold Auctions**

Not to hold on the Leased Premises nor advertise as being held on the Leased Premises nor permit or suffer any person to hold or advertise as being held on the Leased Premises any sale by auction (public or private) of any, real or personal property whatsoever without written approval from the Lessor. Such applications for advertising or holding an auction must be received by the Lessor at least 28 days prior to the event.

### **3.58 Fire Prevention**

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

- (a) the *Bush Fires Act 1954* and any other laws relating to the prevention and control of fires; and
- (b) all proper directions concerning fire prevention and control given to the Lessee by the Lessor or by any Authority.

### **3.59 Fire Control**

To promptly:

- (a) notify the appropriate emergency authority as soon as a fire is detected on the Leased Premises; and
- (b) use all appropriate and safe endeavours to extinguish any unauthorised or uncontrolled fire on the Leased Premises.

### **3.60 Prohibited Fires**

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

### **3.61 Liability for Fires**

To indemnify and keep indemnified the Lessor against all loss, injury, damage or destruction of property of the Lessor and all actions, suits, claims, demands and proceedings of third parties for loss, injury, damage or destruction of property or personal injury or loss of life in consequence of, arising out of or as a result of any fire occurring on the Leased Premises except where 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.

### **3.62 Timber**

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

### **3.63 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 Premises from and against all loss, injury, damage, harm or destruction and to take reasonable actions, measures and precautions necessary to prevent, rectify or ameliorate any erosion, drift or movement of sand or soil from the Leased Premises. Without limitation, unless required by clause 3.64, the Lessee must not

cut down, injure, damage, destroy, remove or otherwise interfere with or harm anything growing on the Leased Premises without the prior written consent of the Lessor. The Lessee must also control declared plants and declared animals as defined in the *Agriculture and Related Resources Protection Act 1976*, in relation to the Leased Premises, as required by that Act.

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

- (a) to regularly check the condition of trees and other, vegetation on the Leased Premises;
- (b) to prune, lop or remove any tree or other vegetation on the Leased Premises 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 on the Leased Premises; and
- (d) to generally take any reasonable measures necessary to prevent accidents and to protect the safety of the public on the Leased Premises

### **3.65 Prevention of Weed Introduction**

To comply with the Lessor's reasonable directions relating to the prevention of the spread of weeds on, onto and from the Leased Premises.

### **3.66 No Interference with Environment**

The Lessee acknowledges that the Leased Premises form part of an environmentally and ecologically sensitive National Park and that the Lessor has a general duty to protect the environment. Accordingly, except for the purpose of undertaking any Works in accordance with this lease or any repairs and maintenance or works required by an Authority, the Lessee must not, without first obtaining the consent of the Lessor, do anything to damage, alter, affect or otherwise interfere with the natural environment and ecology of the Leased Premises and the National Park, including:

- (a) removing rocks, earth, soil or other materials from the Leased Premises; or
- (b) subject to clauses 3.63 and 3.64, clearing or removing trees or other vegetation from the Leased Premises by any means; or
- (c) altering the contours of the surface of the Leased Premises; or
- (d) depositing any earth, fill or other similar materials on the Leased Premises; or
- (e) altering the natural drainage onto, on or from the Leased Premises; or
- (f) introducing any new flora or fauna to the Leased Premises; or
- (g) harming or endangering any flora or fauna on the Leased Premises; or
- (h) anything else in connection with the Leased Premises which the Lessee should reasonably know may be harmful to the environment or the ecology thereof.

### **3.67 Notify the Lessor of Threats**

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

### **3.68 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.

### **3.69 Specific obligations**

Without limiting the preceding clause, the Lessee must:

- (a) keep the area of the National Park surrounding the Leased Premises for a distance of 10 metres measured away from the boundary clean and tidy and free of rubbish as if the area formed part of the Leased Premises; and
- (b) not cause or allow any pollutant or contaminant material or substance over which the Lessee has control to be released upon the Leased Premises or to affect the Leased Premises; and
- (c) not dispose of rubbish from the Leased Premises in any bins provided by the Lessor for public use in the National Park.
- (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 National Park. 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.

### **3.70 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 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 National Parks 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.
- (k) 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.

### **3.71 Care of the National Park**

(a) **Flora and Fauna**

- (i) To protect the flora, fauna and improvements and natural features within the Leased Premises from damage.
- (ii) Not cause any damage to the flora, fauna and improvements and natural features within the Leased Premises or the National Park.

(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 National Park without the prior consent in writing of the Lessor (SUBJECT to clause 3.64).

(c) **Only Indigenous Plants**

Not to plant on nor bring onto the Leased Area or National Park 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 Premises to take active and appropriate steps and to comply with the reasonable 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 promptly notify the Lessor of any environmental accident or pollution risk on or in respect of the Leased Premises of which the Lessee is aware.

### **3.72 Danger and First Aid**

(a) **Eliminate Danger**

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

(b) **First Aid Facilities**

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

### **3.73 Fire Control and Emergency Procedures**

(a) **Fire Control**

To undertake all appropriate fire control measures within the Leased Premises, including the provision of fire extinguishers, fire alarms,

appointment of a fire warden, establishment and supervision of evacuation procedure, notices to the Public and to the Lessor, communication with the Lessor and compliance with requirements of the Lessor's fire warden in carrying out procedures for fire prevention fire control and evacuation.

(b) **Preventative Procedures**

To provide and implement work procedures to minimise risk of fire to bush, due to use of machinery and other causes and risk of fire due to any other activities of the Lessee pursuant to this lease and to promptly report situations of fire risk and identified fire sources on or in respect of the Leased Premises to the appropriate emergency authority.

(c) **Emergency Procedures**

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

### 3.74 Animals

(a) **Unwanted Animals**

Not to permit any domestic, exotic and feral animals (except for domestic birds and fish) onto the Leased Premises.

(b) **Report**

To report to the Lessor the presence of any domestic, exotic or feral animal (including birds and fish) within the National Park which has been observed by the Lessee or its employees or agents, but, for clarity, the Lessee is not required to undertake any monitoring or other activities to detect or identify the presence of any domestic, exotic or feral animal within the National Park.

(c) **Exclusion**

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

## 4. COVENANTS BY LESSOR

### 4.1 The Lessor COVENANTS with the Lessee:

(a) **Quiet Enjoyment**

That the Lessee paying the Rent reserved by this lease and observing and performing the Lessee's Covenants may peaceably hold and enjoy the Leased Premises during the Term without any interruption or

disturbance by the Lessor or any person rightfully claiming under or in trust for the Lessor.

**(b) 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.

**(c) Exceptions**

The disclosure of any information -

- (i) which is now or hereafter comes into the public domain or which is properly obtainable with reasonable diligence from sources other than the parties;
- (ii) which is required by law to be disclosed to any person who is authorised by law to receive it;
- (iii) by the Minister of the Crown charged with the administration of the Act or of the Lessor to the Parliament of Western Australia, or by any employee of the Lessor or of the State of Western Australia to any other employee of the Lessor or of the State of Western Australia for the purposes of and pursuant to their employment;
- (iv) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the Lessor is a party;
- (v) to any lawyers, accountants, consultants or advisers to the Lessor who have in writing agreed for the benefit of the Lessee to be bound by this clause as though they were a party to this lease; or
- (vi) for the purpose of enforcing the Lessor's rights and remedies under this lease;

is not subject to the restriction imposed by subclause (b) of this clause 4.1.

**5. MUTUAL COVENANTS**

The Lessor and the Lessee MUTUALLY COVENANT AGREE AND DECLARE

**5.1 (a) Default by Lessee**

That if during the Term the Rent payable or any part of it is at any time unpaid for 60 days after becoming due and after formally demanded by the Lessor; or if the Lessee make 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 and the Lessee does not pay compensation to the Lessor in respect of that breach within 30 days of a default notice being issued by the Lessor to the Lessee in respect of the breach; 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 (or any longer period

as agreed between the Lessor and the Lessee) after a default notice as provided in subclause (b) of this clause is given by the Lessor; or if the Lessee goes into liquidation (other than a voluntary for the purpose of reconstruction with the prior written consent of the Lessor); THEN and in any of such events the Lessor may by notice to the Lessee terminate this lease and the rights of the Lessee under this lease PROVIDED THAT if the default is capable of remedy and has not been remedied after such default notice and the default (not being a failure to pay Rent or other money payable to the Lessor under this lease) is capable of being remedied by the Lessor; then the Lessor may elect not to terminate this lease because of the default but may itself remedy the default or cause it to be remedied (for which purpose the Lessor by agents workmen or otherwise has full power to enter upon the Leased Premises) and the costs and expenses incurred by the Lessor determined under a mandatory whole of Government agreement 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 remain in possession of the Leased Premises with the express or implied permission of the Lessor after the expiration or sooner termination of the Term the Lessee will hold the Leased Premises as a monthly tenant at a rent equal to the Rent calculated as prescribed in clause 3.2 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 three month's written 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 omit or neglects to pay any money or to do or effect anything which the Lessee have expressly or impliedly in this lease covenanted to pay do or effect then on each and every such occasion and without prejudice to any rights or powers arising from such default, the Lessor may (but is not obliged to) pay such money or do or effect such thing by itself, its employees, agents or contractors as if it were the Lessee and for that purpose the Lessor may enter upon and remain on the Leased Premises for the purpose of doing or effecting any such thing and the Lessee must pay the Lessor all reasonable amounts expended by the Lessor upon demand, provided that the Lessor first gives the Lessee at least 10 days written notice (or any longer period as may be reasonable in the circumstances) to pay the amount required to be paid or do the thing required to be done and the Lessee fails to pay the money or do the thing within that time.

## **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 3.6 or as disclosed by the results of an audit pursuant to clause 3.7 (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 expert'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 to be borne equally. 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 prepared by the solicitors for the Lessor at the joint cost of the Lessor and the Lessee to be borne equally.

## **5.7 Arbitration**

- (a) Any dispute or difference arising between the parties in respect of any of the matters referred to in this lease, or any matter relating to the Leased Premises, or any matter (relating to the Leased 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 to 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 registered 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 registered 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 material 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) material matters relating to the commercial, technical or financial capacity of the Lessee or 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 or to carry on the business conducted on the Leased Premises 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 must not be unreasonably withheld or delayed by the Lessor and may be given subject to such conditions as the Lessor may determine (acting reasonably) unless otherwise provided in this lease or by statute.
- (b) The Lessee agree 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 Statutory Functions**

Nothing contained in or implied by this Lease or any document contemplated by this Lease has the effect of constraining the Lessor or placing any fetter on its statutory rights duties power and functions, including those contained or referred to in any law.

## **5.22 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 occupier; or
  - (ii) holds an equitable interest in the Premises under an agreement for Lease or as a periodical lessee; oruntil 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;
- (b) acquiescence, delay, acts or omissions by the Lessor;
- (c) a variation of the Lease with or without the consent of the Guarantor;
- (d) the death, dissolution or other incapacity of the Lessee or a Guarantor;
- (e) an Insolvency Event occurs in respect of the Lessee or a Guarantor;
- (f) the fact that a Guarantor may never execute the Lease or that the execution of the Lease by a Guarantor is void or voidable;
- (g) the invalidity or unenforceability of an obligation or liability of the Lessee under the Lease;
- (h) the disclaimer of the Lease by a liquidator or trustee of the Lessee; or
- (i) the Lessor releasing, disposing of, or dealing in any other way with, any other Security Interest it may hold given by the Lessee or any other 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 transferred or 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 transferee or 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 Premises as detailed in the Deed of Lease BETWEEN **The CONSERVATION AND LAND MANAGEMENT EXECUTIVE BODY** ("the Lessor") of the first part and **COJAH PTY LTD** ("the Lessee") of the second part and **MR PHILLIP BUTLIN, COALMINE BEACH HOLIDAY PARK** ("the Guarantor")
  
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 Premises for the year ended 30 June ... amounting to \$.... is in accordance with accounting and other records relating to operations carried out on or in connection with the Leased Premises.

- (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

practicing 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.

**NEC** means Natural Environment Criteria.

**SEC** means Social Environment Criteria.

#### **LESSEE SPECIFIC SUSTAINABILITY PERFORMANCE SITE DESIGN AND LAYOUT (BEC)**

1. The Lessee will ensure the Works in any approved development plan and any improvements, additions, modifications, alterations or changes to the Works on the area:
  - i. Comply with and are maintained according to these Lease conditions; and
  - ii. Comply with and are maintained to the Shire of Manjimup's health standards and receive the approval of the Shire of Manjimup.

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

2. Within the first year of the Commencement Date and for the duration of the Term, the Lessee will develop and implement a weed management program to include:
  - i. Introduction and monitoring compliance with protocols for the prevention of the introduction of non-endemic plant species (including inspection of supplies at delivery and storage phases) to be included in a training manual;
  - ii. Education of employees, agents and contractors in the inspection for and disposal of weed seeds;
  - iii. Annual weed monitoring and management of area in consultation with the Lessor;
  - iv. Weed eradication using the Lessor's approved methods.
3. 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 any construction;
  - iii. Plant only indigenous vegetation in or around the area after consultation and approval of the Lessor's District Operations Coordinator prior to planting any vegetation;
  - iv. In consultation with the Lessor's District Operations Coordinator, rehabilitate areas within and adjacent to the area and revegetate areas not utilised for structures, services and facilities or access areas;
  - v. Assist the Lessor in its programs of weed eradication and land rehabilitation of the area (planting and maintenance of endemic species) at the request of the Lessor's District Operations Coordinator;
  - vi. Not feed or allow any employee, agent, contractor or guests to feed animals in the Leased Area.
  - vii. Will encourage the disposal of rubbish and food scraps in sealed bins.

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

4. The Lessee will ensure that the buildings and facilities component of the Lease is limited to the footprint only and that no disturbance to vegetation or landforms outside the designated area occurs through the provision of sensitive design, education or signage. The Lessee will control grass growth within the area to the satisfaction of the Lessor's District Operations Coordinator.
5. 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. All structures have concrete or raised timber foundations;
  - ii. There is no soil movement around the area after any construction;
  - iii. Minimal loss and clearing of understorey vegetation occurs and that revegetation and rehabilitation of the site occurs, and in consultation with the Lessor's District Operations Coordinator;
  - iv. All pedestrian paths and vehicle areas are defined with stable materials; and

- v. In the event of any soil loss, compaction or erosion of the area, remedial action is undertaken immediately with the approval of the Lessor's District Operations Coordinator.

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

6. The Lessee will:
- i. Acknowledge that the Lessor does not guarantee the quality and supply of water from within the Leased Area;
  - ii. Ensure effluent and waste water is treated to best possible standards in accordance with the Shire of Manjimup's, Department of Water and Water Corporation requirements and approvals;
  - iii. Only use environmentally sensitive detergents and soaps in the Leased Area and ensure their use is minimised; and
  - iv. Implement water saving methods.
7. Within the first year of the Commencement Date and for the duration of the Term, the Lessee will:
- i. Develop and implement a water conservation policy to identify and implement opportunities for reducing waste water and water use, and maximising waste water treatment and reuse (for example through new technology) where possible;
  - ii. Install and use only low water use shower heads and spring loaded automatic shut-off taps in any ablution blocks;
  - iii. Install and use low water use appliances. Such appliances are to be amongst the most highly rated commercially available appliances at the time of purchase; and
  - iv. Install signage at water points to indicate potable/non-potable water to the Lessor's standard and to the satisfaction of the Lessor's District Operations Coordinator.

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

8. The Lessee will:
- i. Within the first year of the Term 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. goods with soft packaging and aluminium rather than glass packaging; and
    - d. recycled goods.
  - ii. Within the first 12 months of the Term (if required) to fit grease traps to any kitchen facilities in accordance with Shire of Manjimups and Health Department requirements;
  - iii. Within the first year of the Term, establish a collection point for the depositing of recyclable materials;
  - iv. Store and transport waste in a manner that prevents vermin, odour and spillage; and
  - v. Ensure that all (human and non-human) organic waste is composted and that the compost and all composted organic and inorganic solid waste is transported out of the Leased Area as required or as directed by the Lessor's District Operations Coordinator. Waste must be disposed of at a licensed facility and where possible at a recycling facility.

**TOILET FACILITY STANDARDS (BEC)**

9. The Lessee will:
- i. Be responsible for cleaning and maintaining toilets and associated equipment in good working order.

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

10. The Lessee will:
- i. Within the first year of the Term and for the duration of the Lease, develop and implement a policy to minimise and annually reduce non-renewable energy consumption, maximise use of renewable energy sources;
  - ii. Ensure any new building design minimises energy requirements (solar passive where possible);
  - iii. Only use energy efficient appliances and lighting equipment and minimise the use of high energy use appliances where possible.

**ENVIRONMENTAL STEWARDSHIP (NEC)**

11. The Lessee will:
- i. Minimise, manage and monitor the Operation's environmental impact;
  - ii. Keep records and supply information to the Lessor on any matter it requests;
  - iii. Report incidence of damage or risk within the Leased Area;
  - iv. Pay fees and charges promptly; and
  - v. Support the Lessor in emergency situations with the provision of resources at the request of the Lessor's District Operations Coordinator, and
  - vi. Support and assist Lessor with the rehabilitation and repair of roads and parking infrastructure within the area.

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

12. The Lessee will:
- i. Display a commitment to using environmentally sensitive products wherever possible;
  - ii. At all times, store material quantities of chemicals in a designated locked structure and store fuel in a designated signed location in the service area;
  - iii. Maintain a register of material chemicals and fuels on site (quantity, use and storage), management requirements and any spill events;
  - iv. Ensure signage and storage complies with Australian Standards and the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992* and the Worksafe Guidance Note;
  - v. At all times, ensure all designated chemical and fuel storage structures have impermeable bund;
  - vi. At all times, have spill response equipment and spillage recovery equipment in place in accord with the *Explosives and Dangerous Goods (Dangerous Goods Handling and Storage) Regulations 1992*;
  - vii. Not conduct vehicle maintenance within the Leased Area, except in emergency situations and with the approval of the Lessor's District Operations Coordinator;
  - viii. Dispose of chemicals outside the Leased Area in an environmentally appropriate manner and as required by law; and
  - ix. Monitor soils, ground and surface water.

#### **LEVEL OF INDIGENOUS INVOLVEMENT (SEC)**

13. The Lessee will develop a close working relationship with the local indigenous community by inviting the local indigenous community to visit the site annually.

#### **CULTURALLY SENSITIVE BEHAVIOUR (SEC)**

14. The Lessee will:
- i. Acknowledge the importance of Indigenous people, culture and heritage to the Leased Area in all verbal and written interpretive and promotional material; and
  - ii. Adhere to sacred site restrictions and obtain the appropriate permission from the local indigenous community.
  - iii. Ensure that appropriate permission is sought from Traditional Owners for the use of images and other cultural material used in the operation; and
  - iv. Ensure active involvement (consultation, endorsement and/or presentation) by the Traditional Owners in indigenous interpretation so that social and financial benefits are provided.

#### **SAFETY EQUIPMENT AND PROCEDURES (SEC)**

15. The Lessee will have, at all times:
- i. Fully functioning emergency communication equipment;
  - ii. A written operations strategy for dealing with disruptive or violent visitors;
  - iii. An employee available with first aid training;
  - iv. First aid equipment on site;
  - v. A copy of the Lessor's Emergency Response Plan on site; and
  - vi. Visible signage indicating the location of fire extinguishers, fire blanket and first aid kit.

#### **VISITOR FEEDBACK (SEC)**

16. The Lessee will:
- i. Within the first year of the Lease and for the duration of the Lease, develop and implement a policy to maximise visitor satisfaction and continual improvement through obtaining guest feedback;
  - ii. Survey guests 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; and
  - iii. Internally audit services and facilities through quality management tools.

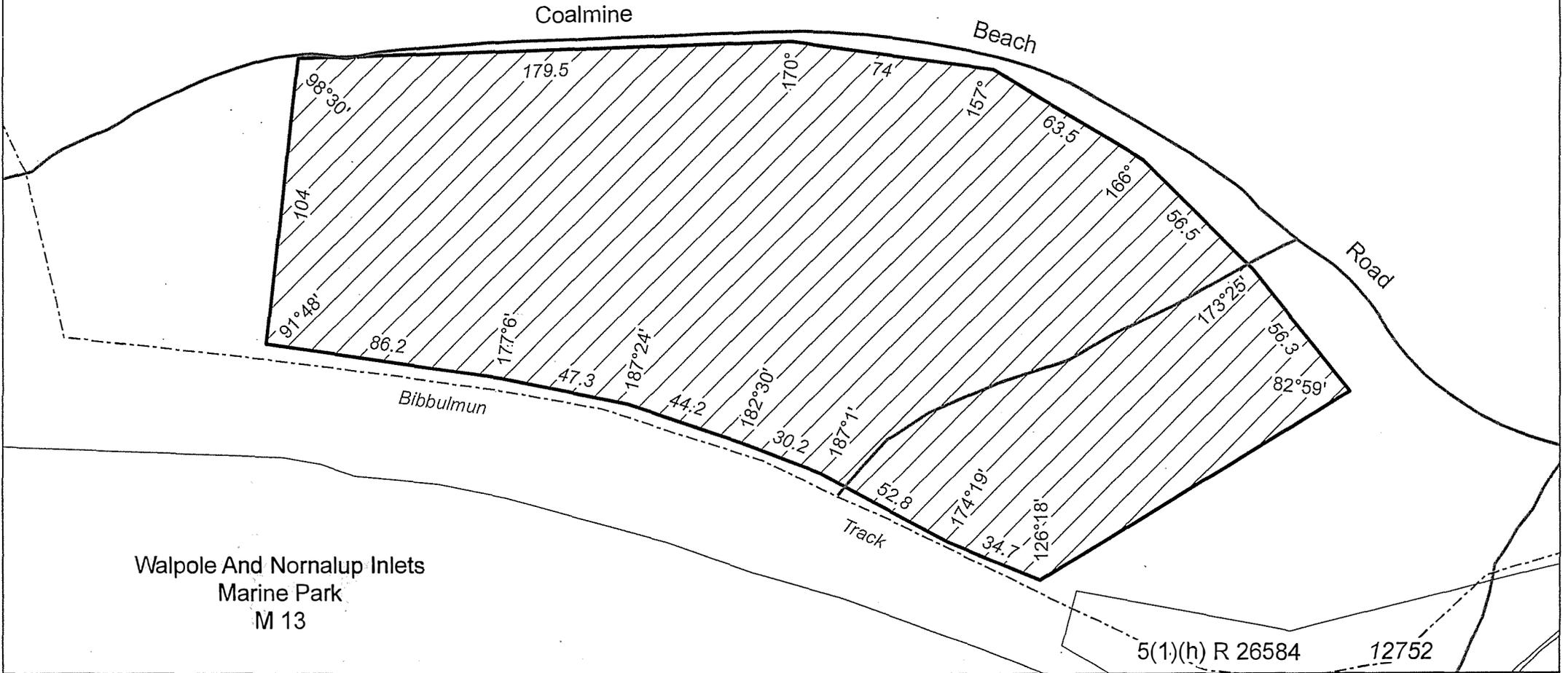
#### **EXPENDITURE FROM LOCAL BUSINESS (SEC)**

17. The Lessee will develop and implement a policy to commit to local expenditure wherever possible and demonstrate support of local wholesale outlets and service providers.

#### **MEMBERSHIP OF LOCAL ASSOCIATIONS**

18. The Lessee will, throughout the Lease period, maintain membership with the local National tourism organisation and the local visitor centre or similar.

Walpole-Nornalup National Park  
A 31362



**LEASE No. 1900/100**  
**Coalmine Beach Holiday Park**

LEASE PLAN APPROVAL

<b>LESSEE</b>	PHILLIP BUTLIN T/A COJAH PTY LTD
DBCA REGION	WARREN
DBCA DISTRICT	FRANKLAND
LGA	SHIRE OF MANJIMUP
PLAN REF.	DPaW COG PLAN: 2228-2 & 3 (KA.105)
ORTHO PHOTO	N/A

LESSEE	
WITNESS	
LESSEE	
WITNESS	
AREA	Abt 4.9ha
DRAWN	CJLB 26/10/2018
CHECKED	RD 22-10-18
FILE No.	2015/001813-1
DATUM	GDA94, MGA Zone 50

N

SCALE: 1:2,000

Department of  
Biodiversity, Conservation  
and Attractions

EXECUTED as a Deed.

The Common Seal of the  
**CONSERVATION AND LAND  
MANAGEMENT EXECUTIVE BODY**  
was affixed in the presence of:



[Handwritten Signature]

Chief Executive Officer

in the presence of:

[Handwritten Signature]

Signature of witness

CARLIE RYBURN E

Full name of witness

17 DICK PERRY AVE, KENSINGTON  
Address of witness WA 6050

PUBLIC SERVANT  
Occupation of witness

[Handwritten Signature]

Signature of witness

CAMPBELL YOUNGSON

Full name of witness

17 DICK PERRY AVENUE, KENSINGTON  
Address of witness WA 6050

PUBLIC SERVANT  
Occupation of witness

EXECUTED by  
**COJAH PTY LTD**  
**ABN 52 818 671 212**  
in the presence of :

[Handwritten Signature]

Director

[Handwritten Signature]

Signature of witness

SARAH LOUISE BUTLIN  
Full name of witness

25 BEACH ST, COTTESLOE, PERTH  
Address of witness

DIRECTOR  
Occupation of witness

[Handwritten Signature]

Director/Secretary

[Handwritten Signature]

Signature of witness

SARAH LOUISE BUTLIN  
Full name of witness

25 BEACH ST, COTTESLOE, PERTH  
Address of witness

DIRECTOR  
Occupation of witness

EXECUTED by  
PHILLIP BUTLIN



\_\_\_\_\_  
Signature of Guarantor

in the presence of:



\_\_\_\_\_  
Signature of witness

SARAH LOUISE BUTLIN

\_\_\_\_\_  
Full name of witness

26 BACH ST, COTTESLOE, PERTH

\_\_\_\_\_  
Address of witness

DIRECTOR

\_\_\_\_\_  
Occupation of witness

