

DATED

24-10- 2000

MINISTER FOR TRANSPORT

AND

SHIRE OF ROEBOURNE

**LEASE OF BREAKWATER & BOAT RAMPS
POINT SAMSON JOHNS CREEK**

OWEN LEGAL & CORPORATE

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THIS LEASE is made on the _____ day of _____

BETWEEN

1. **DENNIS RODNEY FORTE**, Executive Director Maritime Division of the Department of Transport of the State of Western Australia for the time being as the delegate of the Minister for Transport, a body corporate, under an instrument of delegation pursuant to Section 18 of the Marine and Harbours Act 1981 ("Lessor");

AND

2. **SHIRE OF ROEBOURNE**, Welcome Road, Karratha Western Australia 6714 ("Lessee").

RECITALS:

- A. The Lessee wishes to take a lease of the Lessor's Property and to undertake the Lessee's Improvements.
- B. The Lessor is empowered by the Marine and Harbours Act 1981 to lease the Lessor's Property on such terms as it thinks fit.
- C. The Lessor has agreed to grant to the Lessee a lease of the Lessor's Property on the terms and conditions set out in this Lease and to permit the Lessee, as far as it is within the Lessor's power to do so, to undertake the Lessee's Improvements and to use the Premises for the Permitted Use.

AGREED:

1. INTERPRETATION

1.1 Definitions

In this Lease:

Act means any present or future Act of Parliament (Federal or State) and reference to an Act, or any section of it, includes any amendment or re-enactment of it for the time being in force and includes by-laws and regulations made or issued under any Act and also every requisition made or issued by, or under, any such by-law or regulation and/or any such Act.

Approved Plans and Specifications means detailed plans and specifications in relation to the Lessee's Improvements which have been approved by the Lessor and any relevant Authority and includes any modifications, amendments or variations to those plans and specifications which have been approved by the Lessor and all relevant Authorities.

Associate in respect of the Lessee means a person who would be an associate of the Lessee for the purpose of section 76A(3)(c) of the Stamp Act 1921 or the Corporations Law.

Authorised Officer means, in respect of the Lessor, such person or persons as the Lessor notifies to the Lessee from time to time and, in respect of the Lessee, such person as the Lessee notifies to the Lessor from time to time.

Authority means any Federal, State or Local governmental or other public body or authority of any kind, including any relevant Minister of the Crown having jurisdiction in relation to the Premises, any Permitted Use or the Lessee's Employees, Agents and Customers under any Act.

Business Day means a day on which banks are open for general banking business in Perth.

Commencement Date means that date stipulated in Item 6 of the Schedule.

Corporations Law means the Corporations Law of Western Australia.

Crown means the Crown in the right of the State of Western Australia, its servants and agents, all instrumentalities of the Crown and the servants and agents of those instrumentalities.

Encumbrance means any mortgage, charge, lien, pledge, easement, writ, warrant, caveat (and the claims stated in the caveat) or other right or interest of any third party affecting the Premises.

Event of Default means any of the events specified in clause 13 or as otherwise provided in this Lease.

Facility means all facilities, fittings, plant, appliances and equipment used in the provision of any Service in or on the Premises.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F of the Corporations Law, or it is deemed to be unable to pay its debts under section 585 of the Corporations Law;
- (b) an application is made, a resolution passed or a meeting is convened for the purpose of considering a resolution;
- (c) for the appointment of an administrator to its affairs;
- (d) it admits, in writing, its inability to pay its debts;

- (e) it enters into any form of arrangement with its creditors, whether formal or informal or an application is made to Court for an order summoning a meeting of any class of creditors;
- (f) a controller, as defined by the Corporations Law, is appointed in respect of any of its property or assets;
- (g) a mortgagee takes possession of any of its property;
- (h) an execution or similar process is made against the Premises or any of its property;
- (i) being a natural person, it commits an act of bankruptcy; or
- (j) it becomes insolvent under administration as defined in section 9 of the Corporations Law.

Interest Rate means the rate of interest which is 2% per annum higher than the maximum rate of interest charged from time to time by the Commonwealth Trading Bank, Perth on overdrawn accounts of less than \$100,000.00.

Lease means this Lease, including the Schedule, as it may be varied from time to time.

Lessee includes a reference to an assignee a sub-lessee or any other person having a right to possess, use or occupy the Premises.

Lessee's Employees, Agents and Customers means each of the Lessee's employees, officers, agents, contractors, service suppliers, sub-lessees, licensees, concessionaires, customers and those other persons who at any time are under the control of the Lessee and are in or on the Premises or its surrounds with the consent (express or implied) of the Lessee but does not include the Lessor, its employees and agents.

Lessee's Covenants means the covenants, agreements and obligations contained or implied in this Lease or imposed by law which are to be observed and performed by the Lessee.

Lessee's Improvements means those improvements and works described in Item 3 of the Schedule.

Lessee's Rights means the right to use:

- (a) the Lessors Improvements; and
- (b) the Facilities in, and Services supplied to, the Premises;
- (c) all other rights contained or implied in this Lease in favour of the Lessee.

Lessor's Covenants means the covenants, agreements and obligations contained or implied in this Lease or imposed by law which are to be observed and performed by the Lessor.

Lessor's Improvements means those improvements described in Item 2 of the Schedule.

Lessor's Property means the land described in Item 1 of the Schedule.

Lessor's Rights means the unfettered right of the Lessor or the Crown to:

- (a) resume and enter into possession of any part of the Premises as may be necessary for roads, railways, irrigation or generally for any other works or purposes of public utility or convenience with or without compensation as the Lessor may determine;
- (b) enter upon the Premises and cut, mine or excavate any timber, stone or other material and remove that material for works or other purposes of public utility or convenience with or without compensation as the Lessor may determine;
- (c) unencumbered legal and beneficial title to all mines of metals, ore and minerals including all gems, precious stones, coal, mineral oil and other phosphatic substances in and under the Premises with full liberty to enter upon the Premises to search for, and remove, all and any such materials with or without compensation as the Lessor may determine;
- (d) unencumbered legal and beneficial title to all petroleum (as defined in the Petroleum Act 1967) on or below the surface of the Premises including the right of access to the Premises for the purpose of searching for, and obtaining, petroleum subject to, and in accordance with, the Petroleum Act 1967.

Losses includes claims, liabilities, damages, costs and expenses.

Outgoings means the amounts expended or incurred by the Lessor for the Rental Year:

- (a) in respect of the provision of the Services utilised by, and the installation, maintenance and operation of the Facilities in the Premises; and
- (b) the Rates and Taxes

Permitted Use means the use specified in Item 4 of the Schedule or any other use which the Lessor and other relevant Authorities may, from time to time, approve.

Premises means the Lessor's Property, the Lessor's Improvements and all the Lessee's Improvements.

Rates means rates, land taxes and other charges assessed or imposed by any Authority in relation to this Lease or the Premises together with any interest, penalties, fines and expenses in connection with them PROVIDED THAT if the Premises are not separately rated then a proportionate part of Rates assessed or imposed being the proportion that the area of the Premises bears to the total area of the premises rated (as certified by the Lessor or its Authorised Officer).

Rent means that amount specified in Item 5 of the Schedule to be paid by the Lessee to the Lessor in accordance with the provisions of this Lease.

Rental Year means the period of each subsequent 12 months commencing on the Commencement Date or anniversary of the Commencement Date.

Services means any services running through or servicing the Premises including power, heating, cooling, drainage, sewerage, telecommunications, lighting, water or other like services;

Taxes means taxes, levies, charges and duties assessed or imposed by any Authority in relation to this Lease or the Premises including stamp and transaction duties and goods and services taxes, together with any related interest, penalties, fines and expenses in connection with them, except if assessed on the overall net income or capital gains of the Lessor PROVIDED THAT if the Premises are not separately taxed then a proportionate part of Taxes assessed or imposed being the proportion that the area of the Premises bears to the total area of the premises taxed (as certified by the Lessor or its Authorised Officers).

Term means the term prescribed by Item 6 of the Schedule commencing on the Commencement Date (or later date as agreed by the Lessor) and includes a reference to any shorter term in the event of the early termination of the Term and, when the context so requires, includes any period of holding over and any additional term granted by way of the Option or otherwise.

Total Moneys Payable means the Rent and Outgoings, and any other money payable by the Lessee under this Lease.

1.2 Interpretation

In this Lease, unless the contrary intention appears:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the Commencement Date;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes a firm, a body corporate, an unincorporated association or an Authority;
- (d) a reference to the "Lessor" or the "Lessee" includes a reference to its executors, administrators, successors and assigns;
- (e) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;

- (f) an obligation of, or a representation or warranty by, two or more persons binds them jointly and severally;
- (g) a reference to a clause or a Schedule is a reference to a clause or a schedule of this Lease;
- (h) a reference to any thing (including any amount or the Premises) is a reference both to the whole and any part of it;
- (i) each obligation of the Lessor or the Lessee to the other of them has effect as a covenant;
- (j) when the day, or last day, for doing any thing is not a Business Day, the day, or last day, for doing that thing will be the next following Business Day;
- (k) a covenant by the Lessee not to do, or omit to do, any act or thing includes a covenant not to suffer that act or thing to be done, or omitted to be done, by any of the Lessee's Employees, Agents and Customers and a covenant to do every thing necessary to ensure that that act or thing is not done, or omitted to be done; and
- (l) a reference to a month is a reference to a calendar month.
- (m) Where in this Lease, the word "including" or "include" is used, it is to be taken to be followed immediately by the words, "but not limited to" or "but are not limited to" as the case requires.

2. OPERATIVE PART

In consideration of, and subject to, the Lessee's Covenants and the payment of the Total Moneys Payable, the Lessor leases the Lessor's Property to the Lessee, and grants the Lessee's Rights, for the Term but reserving to the Lessor the Lessor's Rights.

3. RENT

The Lessee will pay the Rent to the Lessor in the amounts and manner as set out in the Schedule, clear of all deductions whatsoever commencing on the Commencement Date subject always to the remaining provisions of clause 4 relating to Rent review.

4. RENT REVIEW

4.1 Definitions

In this clause:

Consumer Price Index means the Consumer Price Index published by the Australian Bureau of Statistics for Perth City (All Groups Index Numbers) or any appropriate Index as substituted for it;

Current CPI means the Consumer Price Index number most recently published prior to relevant CPI Rent Review Date;

Current Market Rent means the annual current market rental which can reasonably be obtained for the Premises on the basis that:

- (a) the Premises are available for leasing with vacant possession by a willing lessor to a willing lessee for a term equal to the Term;
- (b) on the terms and conditions contained in this Lease;
- (c) all of the Lessee's Covenants have been fully observed and performed as at the relevant Rent Review Date,

and taking into consideration:

- (d) current minimum rent values of new tenancies of vacant premises similar to the Premises which are being required by the Lessor; and
- (e) current rent values in respect of rent reviews during current tenancies of premises similar to the Premises and of which the Lessor is the proprietor or the lessor,

but ignoring:

- (f) the value of any goodwill created by the Lessee's occupation of the Premises;
- (g) the value of the Lessee's Improvements; and
- (h) any rent free period, financial, or other contribution, allowance or inducement, or any other concession offered to the Lessee or any prospective tenants of the Lessor's Property.

Previous CPI means the Consumer Price Index number currently published as at the CPI Rent Review Date immediately preceding the relevant CPI Rent Review Date, or the Commencement Date whichever is relevant;

Rent Review Date means each date specified in Item 8 of the Schedule; and

Valuer means an independent licensed valuer who is a member of the Australian Property Institute.

4.2 Review Method

On each Rent Review Date, as specified in Item 8 of the Schedule the Rent will be reviewed and will be adjusted to equate to the Lessor's minimum standard rental current at the relevant Rent Review.

4.3 Lessor's Notice and Dispute

- (a) At any time not earlier than three months prior to each Rent Review Date the Lessor may, by notice in writing to the Lessee, review and fix the Rent which, in the opinion of the Lessor, is payable in accordance with clause 4.2 above.
- (b) Unless the Lessee objects, by notice in writing, to the Lessor's calculations of the Rent to be payable as of any Rent Review Date within 21 days of service of the Lessor's notice described in sub-clause 4.3(a) above (time being of the essence in respect of the Lessee's notice of objection) then the Lessee is deemed to have agreed to, and accepted, the reviewed Rent nominated by the Lessor.
- (c) If the Lessee objects to the proposed reviewed Rent for the Premises in accordance with clause 4.3(b) then the matter will be referred to, and determined by, a Valuer appointed by the Lessor, acting as an expert and not as an arbitrator, whose decision will be binding on, and whose costs will be borne equally by, both parties.
- (d) Rent calculated, agreed or determined as provided above is payable from each Rent Review Date and failure by the Lessor to calculate or nominate a reviewed Rent in respect of any Rent Review Date in accordance with sub-clause 4.3(a) does not preclude the Lessor from reviewing the Rent to apply from each Rent Review Date at any time thereafter.
- (e) Until the reviewed Rent in respect of any Rent Review Date is agreed upon or determined, the Lessee will continue to pay the Rent at the same rate and in the same manner as was payable immediately prior to that Rent Review Date and upon agreement or determination, the Lessee will pay to the Lessor, with the next Rent payment due, that sum owing as if the reviewed Rent had been determined on that relevant Rent Review Date.

5. COSTS AND STAMP DUTY

5.1 Lessor's Costs and Expenses to be Shared Equally

The Lessee will pay or reimburse the Lessor on demand for half of all costs and expenses of the Lessor in:

- (a) the negotiation, preparation, and execution, stamping and registration of this Lease and any counterpart or any other document or instrument required to be prepared and executed pursuant to the terms of this Lease;

- (b) the exercise or enforcement by the Lessor of any right under the Lease and the preparation and service of a notice under section 81 of the Property Law Act 1969;
- (c) obtaining or giving any consent or approval under this Lease, or a variation or surrender of this Lease;
- (d) any act or omission by the Lessee causing cost or expense to the Lessor.

5.2 Costs Include

The costs and expenses referred to in clause 5.1 include, at all times;

- (a) the Lessor's costs and expenses of engaging any consultant or agent; and
- (b) the Lessor's legal costs and expenses on a full indemnity basis;

5.3 Stamp Duty

All stamp duty, taxes and fees (including fines and penalties in respect of any of them) which may be payable in connection with this Lease.

6. THE LESSEE'S IMPROVEMENTS

- (a) Subject to the terms and conditions of this Lease, and especially clause 6, the Lessor hereby consents to the Lessee undertaking and constructing the Lessee's Improvements.
- (b) The Lessee's Improvements will, at all times, be undertaken, constructed and completed in strict accordance with the Approved Plans and Specifications and all reasonable directions, requests and requirements of all relevant Authorities.
- (c) Any breach of the requirements of clause 6(b) will be deemed to be an Event of Default.

7. APPROVALS

The Lessee will ensure that all necessary approvals, consents, permissions and licences required for the Lessee's Improvements by any Authority are received by the appropriate time for commencement and completion of the Lessee's Improvements.

8. LESSEE'S COVENANTS

The Lessee covenants with the Lessor, on its own behalf and on behalf of the Lessee's Employees, Agents and Customers, that throughout the Term it will:

8.1 Rates and Taxes

Pay to the Lessor, or as the Lessor may from time to time direct, all (if any) Rates and Taxes payable in respect of the Premises before they become overdue.

8.2 Payment of Outgoings

Pay on demand to the Lessor, or where demand is made by any Authority, to that Authority all Outgoings assessed or charged in respect of the supply of each Service to the Premises or otherwise in respect of the existence or operation of the Premises.

8.3 Interest

Without affecting the rights, powers and remedies of the Lessor pursuant to this Lease, the Lessee must pay to the Lessor on demand interest on all arrears of the Total Moneys Payable which remain unpaid as at the due date for payment at the Interest Rate from the respective times at which those moneys fall due until payment.

8.4 Compliance with Legislation and Notices

Comply with and perform all requisitions and all works as are required of, or directed to be done by, the Lessee (as occupier or otherwise) pursuant to any Act affecting the Premises or part thereof or affecting any business ever carried on upon the Premises and/or by the direction of any Authority, including any structural works or alterations required or directed, AND will indemnify the Lessor from and against being required to comply with and perform any such requisitions or work and from any claims, moneys and expenses relating, and incidental, to any such requisitions or work.

8.5 Licences and Permits

Keep in force all licences, permits and permissions required for the carrying on of the Permitted Uses conducted by the Lessee or any other authorised party in or upon the Premises.

8.6 Maintenance

Maintain the Premises, the Facilities and the Lessee's Improvements in good condition to the satisfaction of the Lessor and will replace any damaged items.

8.7 Replacement

If the Lessee is liable to replace any of the Lessor's Improvements, the Facilities or the Lessee's Improvements:

- (a) replace that Lessor's Fixture, Facility or Lessee's Fixture with an item of similar quality, colour and design; and
- (b) carry out the replacement to the satisfaction of the Lessor.

8.8 Repair

Promptly repair to the satisfaction of the Lessor any damage to the Premises for which the Lessee is liable and, if repair has not commenced within seven days of receiving notice, or if work does not proceed diligently, then the Lessor may arrange for all necessary work to be done at the sole expense of the Lessee and all moneys due for that work will be deemed to be a debt due from the Lessee to the Lessor.

8.9 Cleanliness

Keep the Premises and immediate surroundings in a thorough state of cleanliness and:

- (a) will not allow the accumulation of any rubbish, trade wastes, containers or useless property within the Premises;
- (b) will not allow, and will do all things to prevent, any pollution or contamination of the Premises or any land, water or air surrounding the Premises which emanates from the Premises (whether by run-off or arising from the Permitted Use of the Premises or otherwise) and,

will do, and pay for, all things required to fulfil its obligations under this clause and, in particular, to remove any pollution or contamination of the Premises or any land, water or air surrounding the Premises at the cost of the Lessee as soon as possible after a breach of this clause has occurred.

8.10 Use of Facilities

Not to use any Facilities for any purpose other than that for which they were constructed and not to do anything that might choke or otherwise affect or damage them.

8.11 Additions by Lessee

Not, subject to clauses 6, 8.4, 8.6, 8.7 and 8.8 make any external addition or alteration to any part of the Premises whatsoever without the Lessor's, and any relevant Authority's, previous written consent. The Lessor undertakes to consent to or deny any such application within at least 21 Business Days from the date of written application from the Lessee to do so. All permitted alterations or additions shall be made completed and carried out to the entire satisfaction of, and the materials used therein shall be approved by, the Lessor and any relevant Authority.

8.12 Negligent Use of Premises

Not commit, or permit, anything whereby any insurance taken out in respect of the Premises may be rendered void or voidable or whereby an insurance premium relating to the Premises or any business or activity conducted upon or around the Premises is increased.

8.13 Use of Premises

Not use, or permit the use, of the Premises for any purpose other than the Permitted Use or for any purpose which is not permitted under any Act or by any Authority without the consent of the relevant Authority.

8.14 Not to Create a Nuisance

Not carry on, or permit or suffer to be carried on, any offensive, noisome, harmful, illegal or noxious activities matter or thing nor permit or suffer anything to be done on the Premises that may be, or become, obnoxious or objectionable or a nuisance to the Lessor, adjoining tenants, invitees or to the public. The Lessee will indemnify the Lessor from and against all losses (on a full indemnity basis) incurred by the Lessor by reason of any claim made, whether justifiably or not, in relation to any of the matters referred to in this clause.

8.15 Notices to be delivered to Lessor

Deliver copies of all notices, orders, requisitions, directions and summonses which affect the Premises or surrounding areas in any way, save for notices relating to Outgoings, to the Lessor immediately upon receipt of the same.

8.16 Not to Overload Floors

Always take all steps reasonably necessary to ensure that the floors of the buildings and/or any walls or pillars or other parts of the construction comprising the Premises are not broken, strained or damaged by overloading of floors or from any other cause.

8.17 Yield Up and Removal of Lessee's Property

- (a) In accordance with the Lessor's directions or requests, yield up the Lessee's Improvements at the expiration, or earlier determination, of the Term in accordance with the lessee's obligations of maintenance and repair under this Lease and leave the Lessor's Property in a clean and tidy condition.
- (b) If any of the Lessee's Improvements are not maintained, repaired or replaced as required upon expiration, or earlier determination of the Lease, then the Lessor may require the Lessee to remove those particular Improvements and to fill in, consolidate and level off all excavation caused thereby.
- (c) Everything required to be done by this clause is to be done entirely at the expense of the Lessee, and if the Lessee fails to fulfil any of its obligations then the Lessor may do or cause to be done all things which are required to be done by the Lessee by this clause at the sole cost of the Lessee.
- (d) This clause is a continuing covenant and will not be merged or extinguished by the expiration, surrender or termination of this Lease.

8.18 Entry by Lessor

Permit the Lessor, its servants and agents, to enter the Premises at any reasonable time for the following purposes or any of them:

- (a) to inspect and view the Premises;
- (b) to do, or cause to be done, all things necessary to rectify any breach by the Lessee of any of the terms, conditions, covenants and agreements on its part in this Lease (without the Lessor being under any obligation to do so and without prejudice to the Lessor's other rights, powers, remedies or discretions) and all costs and expenses incurred by the Lessor resulting from such breach (including the wage, fees and remuneration of any workmen, servants, agents, solicitors, surveyors or architects employed or engaged in that respect) together with interest will be a debt due and payable by the Lessee to the Lessor upon demand;
- (c) to execute any works or improvements to the Premises, any or any surrounding areas but so as not to interfere unreasonably with the Lessee in the ordinary course of its business except in so far that it cannot be avoided.

8.19 Encumbrances, Subletting and Assignment

Subject to any specific provision of this Lease to the contrary, not assign, transfer or part with possession of the Premises, or any part thereof, this Lease or any estate or interest in this Lease, to any person without the Lessor's written consent which it will not unreasonably withhold if:

- (a) the proposed assignee or transferee is a person or corporation of high financial standing and with at least equal trading and turnover potential to that of the Lessee, the onus of providing which facts shall be upon the Lessee to the satisfaction of the Lessor;
- (b) the Lessee procures the execution of an assignment or transfer of these presents to which the Lessor is a party in a form which the Lessor and its solicitors approve;
- (c) all Rent and other moneys due and payable under this Lease have been paid and there is not any existing unremedied breach of the covenants conditions and agreements of this Lease;
- (d) the proposed assignee or transferee will only conduct its business on the Premises in strict accordance with the Permitted Use;
- (e) any assignment or transfer is prepared by the solicitors for the Lessor at the cost and expense in all respects of the Lessee; and

- (f) the Lessee pays to the Lessor all proper costs, charges and expenses incurred by the Lessor of, and incidental to, any enquires which may be made by or on behalf of the Lessor as to the responsibility, solvency, fitness and suitability of any proposed sublessee, assignee or transferee.
- (g) The covenants and agreements on the part of any assignee or transferee will be deemed to be supplementary to these presents and will not in any way relieve, or be deemed to relieve, the Lessee from its liability hereunder.
- (h) Where the proposed assignee or transferee is a corporation the Lessor may, as a condition of its consent to such assignment or transfer, require that the covenants of the assignee or transferee are guaranteed by the directors and/or principal shareholders of such company.
- (i) The Lessee will not allow any Encumbrance over, nor subletting of, the Premises, or any part of it, without the prior written consent of the Lessor which consent may be given or withheld, in the absolute discretion of the Lessor and without giving any reason for that decision or upon any terms or conditions which the Lessor considers desirable.
- (j) Sections 80 and 82 of the Property Law Act 1969 are hereby expressly excluded.

8.20 Continuation

Only remain in possession of the Premises after the expiration of the Term with the consent of the Lessor and as a monthly tenant upon the same terms and conditions, including those relating to Rent and other payments, as provided or implied by this Lease so far as they may be applicable.

8.21 Caveats and Registration of Lease

- (a) Not permit, without the prior written consent of the Lessor, the lodgement of any absolute caveat in respect of the Premises to protect the interests of the Lessee and in the event of any such caveat being registered or lodged the Lessee, in consideration of the Lessor having granted this Lease to the Lessee, hereby irrevocably appoints the Lessor and its Authorised Officers, jointly and severally, as the agent and attorney of the Lessee to surrender or withdraw any such caveat, and any "subject to claim" caveat which has not been withdrawn within 7 days of the assignment, or expiry, of the Term, and all costs incurred by the Lessor in doing so will be borne and paid by the Lessee.
- (b) In addition, the Lessee will deliver to the Lessor an executed withdrawal of caveat, in respect of any "subject to claim" caveat which may have been lodged over the Premises, within seven days of receipt of notice from the Lessor requiring it and that withdrawal of caveat will be held by the Lessor's solicitor to

be lodged upon expiration of the Term or in the event of changes to the boundaries of the Land. If the withdrawal of caveat is lodged due to boundary changes to the Land, the Lessee may lodge a further "subject to claim" caveat on the terms contained in this clause.

8.22 Notices that Premises Becoming Vacant

Permit the Lessor, during the last 3 months of the Term, to fix a notice on or against any outside wall of the Premises advertising that the Premises are to become vacant and are available for letting and during this period the Lessor will be at liberty to show prospective tenants over the Premises after giving to the Lessee not less than six hours prior notice of its intention so to do.

8.23 Facilities

Comply with and observe the reasonable requirements of the Lessor relating to the Facilities and must not use any Facility or any part of the Lessor's or Lessee's Improvements for a purpose other than that which it was designed or do anything which might interfere with, or impair, the efficient operation of the Facilities.

8.24 Electrical Circuits

Not install any electrical equipment on the Premises which might overload the cables, switchboards or sub-boards through which electricity is connected to the Premises without prior written consent of the Lessor and subject to any conditions which may be imposed by the Lessor.

8.25 Jetty Licence

Duly and punctually comply with the terms and conditions of any jetty licence issued to the Lessee in respect of, or in conjunction with, the Premises or any area, terrestrial or seabed, surrounding or adjacent to the Premises.

8.26 Survey of Premises

At the Lessee's sole cost and expense, furnish to the Lessor prior to the commencement of the Term a survey plan prepared by a licensed surveyor identifying the boundaries of the Lessor's Property and the position and dimension of all improvements constructed, or to be constructed, upon it, including all the Lessee's Improvements, and will furnish a further "as constructed" survey plan to the Lessor following completion of the Lessee's Improvements.

9. INSURANCE

9.1 Joint Insurance

The Lessee will insure, and keep insured, with a reputable insurance office approved by the Lessor, in the joint names of the Lessor and the Lessee for the respective rights and interests:

- (a) the Premises against loss or damage by fire, storm, tempest, explosion, collision, strikes, riots, civil commotion, malicious damage, flood, impact, water damage, earthquake and any other risks which the Lessor considers reasonable and notifies to the Lessee from time to time, to the full replacement value thereof;
- (b) in respect of all claims based on what is commonly known as public liability so as, in particular, to insure the Lessor against all claims which may be made against the Lessor by any person arising out of any defect in the Premises, in an amount of not less than \$10 million;
- (c) in respect of all indemnities given by the Lessee pursuant to clause 10 in an amount of not less than \$10 million;
- (d) in respect of all claims arising from the Permitted Use so as to indemnify the Lessor up to an amount of not less than \$10 million or such other sum as the Lessor may notify from time to time in writing.

9.2 Insurance Obligations

In respect of all policies of insurance effected pursuant to this clause, the Lessee will:

- (a) ensure that they will not be cancelled prior to 14 days after provision of written notice to the Lessor;
- (b) produce each policy or certificate of insurance and each receipt for premiums or certificates of currency issued by any relevant insurance company or broker upon request by the Lessor;
- (c) ensure that each policy contains provisions for cross liability and waiver of subrogation rights in favour of the Lessor;
- (d) not alter the terms or conditions of any policy without the prior written approval of the Lessor;
- (e) deliver promptly to the Lessor any particulars of alteration to the terms and conditions of each policy within 7 days of such alteration.

9.3 Application of Insurance Monies

In addition to the provisions outlined above it is acknowledged by the Lessee that all moneys received from any insurance policy will be applied, in priority, as directed by the Lessor in respect of the fulfilment of the Lessee's Covenants.

10. LESSEE'S INDEMNITIES

10.1 Indemnity Unaffected

The various obligations of the Lessee to indemnify the Lessor under this Lease, or under any other law, are unaffected by the obligation of the Lessee to effect insurance and the obligation of the Lessee to indemnify is paramount.

10.2 Lessee's Indemnity

Subject to clause 10.3 the Lessee indemnifies, and holds harmless, the Lessor and the Crown against all Losses for which the Lessor or the Crown becomes liable in respect of any loss or damage to property or death or injury of any nature or kind, however or wherever occurring:

- (a) caused or contributed to by the use or occupancy of the Premises except to the extent caused or contributed to by the act or omission of the Lessor;
- (b) resulting from an act or omission of the Lessee or the Lessee's Employees' Agents and Customers; or
- (c) resulting from a notice, claim or demand to pay or any act or omission on the part of the Lessee under this Lease except to the extent that the Lessor is obliged under the provisions of this Lease to pay for, or contribute to, that cost.

10.3 Relief

The Lessee's obligation under clause 10.2 is relieved to the extent that payment of insurance money under the Lessee's insurance policy in respect of that obligation is:

- (a) received by the Lessor; or
- (b) refused or reduced by reason of an act or default of the Lessor.

11. LESSEE'S WARRANTIES

The Lessee warrants and represents to the Lessor, and it is a condition of this Lease that, at the date of this Lease and at all times during the Term:

- (a) the execution and delivery of this Lease has been properly authorised by all necessary corporate and other action of the Lessee;

- (b) the Lessee has full power and lawful authority to execute and deliver this Lease and to perform, or cause to be performed, all of its obligations, rights, duties and authorities under this Lease;
- (c) this Lease constitutes a legal, valid and binding obligation of the Lease enforceable in accordance with its terms by appropriate legal remedy; and
- (d) this Lease and any action required or authorised by this Lease does not conflict with, or result in a breach of, or default under any provision of, any agreement, deed, writ, order, injunction, judgement, law (whether legislative or otherwise), rule or regulation to which the Lessee is a party, or is subject, or by which it is bound.

12. LESSOR'S COVENANT

12.1 Quiet Enjoyment

So long as the Lessor remains the proprietor of the Lessor's Property, and subject to the Lessee duly paying the Rent and observing and performing the covenants, agreements and conditions required by this Lease, the Lessee will peaceably hold and enjoy the Premises throughout the Term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor.

13. EVENTS OF DEFAULT

An Event of Default occurs if:

- (a) the Lessee repudiates or commits a fundamental breach of this Lease;
- (b) if the Rent, or any other of the Total Moneys Payable, is, or are, at any time in arrears and unpaid for 14 days after written demand from the Lessor; or
- (c) the Lessee does not comply with any of its other obligations under this Lease and such non-compliance continues for 14 days, or such longer period as is reasonable for rectification, having regard to the nature of the non-compliance after receipt of written notice from the Lessor to effect compliance.
- (d) if, a judgment, order or an Encumbrance is enforced against the Lessee's interest in this Lease by any person taking possession of the Premises as against the Lessee if such person does not, within 14 days of taking possession either covenant in favour of the Lessor to be bound by the terms of this Lease or withdraw from the Premises or a stay of execution is obtained by the Lessee; or
- (e) if, an Insolvency Event occurs.

14. LESSOR'S RIGHTS TO TERMINATE

14.1 Default

If an Event of Default occurs, the Lessor may terminate this Lease by:

- (a) re-entering the Premises without notice, or
- (b) notice to the Lessee.

14.2 Rights in Addition

The Lessor's rights in paragraph 14.1 are in addition to any other rights the Lessor may have against the Lessee under this Lease or at law.

14.3 Liability not Extinguished

If the Lessee has incurred any liability to the Lessor which liability is, or should have been, covered by insurance effected, or which should have been effected, pursuant to the terms of this Lease, then that liability shall not be extinguished by the termination of this Lease.

14.4 Effect of Termination

A termination of this Lease under clause 14.1 entitles the Lessor to all unpaid moneys due at the date of termination together with all costs, expenses and damages arising from, termination, re-entry, re-letting the Premises or the Lessor's Property, removal of the Lessee's Property and loss of Rent and all other moneys due under this Lease from the date of termination to the date of re-letting together with all ancillary and incidental costs, fees and charges.

15. ESSENTIAL TERMS

15.1 Essential Terms of Lessee

Each of the following covenants by the Lessee are essential terms of this Lease;

- (a) the covenants to pay Rent, Rates and Taxes, costs and Outgoings throughout the Term by the due date for payment in each case (clauses 3, 5, 8.1 and 8.2);
- (b) not to Encumber, assign, sublet or part with the possession or occupation of the Premises without the prior written consent of the Lessor (clause 8.19);
- (c) to use the Premises only for the Permitted Uses (clause 8.13) and
- (d) to insure the Premises (clause 9);
- (e) to maintain and repair the Premises (clauses 8.6, 8.7 and 8.8)

15.2 Acceptance No Waiver

The acceptance by the Lessor of arrears or of any late payment of Rent does not constitute a waiver of the essentiality of the Lessee's obligation to pay Rent and interest or of the Lessee's continuing obligation to pay Rent during the balance of the Term.

15.3 Compensation

The Lessee covenants to compensate the Lessor in respect of any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of those breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this Lease).

16. REPUDIATION BY LESSEE**16.1 Compensation**

If the Lessee's conduct (whether via acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes an Event of Default of any covenants of this Lease, it is agreed that the Lessee will compensate the Lessor for the loss or damage suffered by reason of the repudiation or Event of Default.

16.2 Damages

The Lessor is entitled to recover damages against the Lessee in respect of any repudiation of this Lease or Event of Default for the damage suffered by the Lessor during the Term.

16.3 Damages Not Limited

The Lessor's entitlement to recover damages is not affected or limited if:

- (a) the Lessee abandons or vacates the demised Premises;
- (b) the Lessor elects to re-enter or to terminate this Lease;
- (c) the Lessor accepts the Lessee's repudiations: or
- (d) the parties' conduct constitutes a surrender by operation of law.

16.4 Legal Proceedings

The Lessor will be entitled to institute legal proceedings claiming damages against the Lessee in respect of the whole Term, including the periods before and after the Lessee has vacated the Premises and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in clause 16.3, whether the proceedings are instituted before or after such conduct.

16.5 Duty to Mitigate

If the Lessee vacates the Premises, with or without the Lessor's consent, the Lessor is obliged to take reasonable steps to mitigate its damages and to endeavour to lease the Premises, or if the Lessee's Improvements is removed then the Lessor's Property, at a reasonable rent and on reasonable terms. The Lessor's entitlement to damages will be assessed on the basis that the Lessor must observe the obligation to mitigate damages contained in this clause. The Lessor's conduct will not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

17. TOTAL OR PARTIAL DESTRUCTION**17.1 Rent Reduction**

If the Premises, or any part thereof, is damaged or destroyed by any risk covered by insurance so as to be unfit for use, whether partially or totally, and the relevant policy or policies of insurance have not been invalidated, or payment of the policy moneys refused in consequence of some act or default, or alleged act or default, of the Lessee or its Employees, Agents and Customers, then a fair and just proportionate reduction of the Rent, based on the nature and extent of the actual damage done, will be allowed by the Lessor until the Premises are rendered fit for occupation and use.

17.2 Destruction

If the Premises are destroyed or damaged so as to be unfit for use, whether partially or totally and whether by any insured risk or otherwise, and work has not commenced upon their reinstatement within three months, or such longer period as is reasonable having regard to the extent of the damage, any delay in proceeding with any insurance claim through no fault of the Lessee or any other cause which is reasonably beyond the control of the Lessee then the Lessor may, by notice in writing to the Lessee, determine the Lease and the Lessee will pay the balance of the Rent due up to the date of determination, subject to clause 17.1.

17.3 Full Rent Payable until Determined

Where Rent is to abate until the amount of Rent to be paid has been mutually agreed or determined, the full Rent is payable without deduction and the Lessor will subsequently refund the amount (if any) paid by the Lessee in excess of the amount later agreed or determined.

17.4 No Proceedings if Rent in Arrears

The Lessee is not entitled to institute or continue arbitration proceedings on this or any question if Rent is in, or falls into, arrears.

18. SUPPLY OF SERVICES

If the Lessor supplies Services to the Premises, the Lessor is not responsible for any failure to provide the supply of a Services due to the default of the relevant Authority or due to the failure of any plant, equipment, facilities or otherwise beyond the reasonable control of the Lessor unless due to the Lessor's default or negligence.

19. WAIVER

Waiver by the Lessor of the Lessee's breach or non-observance of any of the covenants or conditions of this Lease will not be construed as a general waiver and any waiver will relate only to the particular breach or non-observance in respect of which it was made. Acceptance by the Lessor of any Rent or other moneys payable under this Lease does not constitute a waiver by the Lessor.

20. EXCLUSION OF WARRANTY**20.1 Lessee's Acknowledgment**

The Lessee acknowledges and declares that no promise, representation, warranty or undertaking has been given by, or on behalf of, the Lessor in respect to the suitability or viability of the Permitted Use or the likelihood or timing of any grant, or refusal, of any approvals, licences or permission's for the Permitted Use.

20.2 Lessee's Acceptance

The Lessee accepts this Lease with full knowledge of, and subject to, the state and condition of the Lessor's Property and any prohibition or restriction on the use or development of it by any Act and will not initiate any proceeding, action, suit or claim against the Lessor in respect of any prohibitions, restrictions or the grant, or refusal, of any approvals, licences or permission's relating to the Lessor's Property or the Permitted Use.

21. LIMIT OF LESSOR'S LIABILITY**21.1 No Liability if Beyond Control**

The Lessor will not be liable for any failure to perform or observe the Lessor's Covenants due to any reason beyond the direct control of the Lessor.

21.2 No Liability Without Negligence

The Lessor will not be liable for loss, damage, or injury to any person or property in or about the Premises however occurring unless occurring by the negligence of the Lessor or its employees.

22. NO AGENCY OR PARTNERSHIP

Nothing contained or implied in this Lease constitutes the Lessee the agent or partner of the Lessor in relation to any arrangement entered into in relation to the Premises or anything done in the course thereof.

23. LESSOR'S AUTHORISED OFFICER**23.1 Agent**

The Lessor's Authorised Officer may act for and on behalf of the Lessor as its agent and all things done and all actions taken by the Lessor's Authorised Officer pursuant to this clause will be deemed done and taken by the Lessor for the purposes of this Lease.

23.2 Agent's Authority

The Lessee and the Lessor agree that the Lessor's Authorised Officer is hereby authorised by the Lessor to do all acts under this Lease as agent on behalf of this Lessor which the Lessor is entitled to do under this Lease.

23.3 Payments to Agent

Any payments required to be made by the Lessee to the Lessor may be made by the Lessee to the Lessor's Authorised Officer whose receipt will be a full and sufficient satisfaction and discharge to the Lessee.

24. NOTICES**24.1 Notices to be in Writing**

A notice or other communication in connection with this Lease is to be in writing and:

- (a) may be given by an Authorised Officer of the relevant party; and
 - (b) may be left at the address of the addressee or sent by ordinary post to the address of the addressee or sent by facsimile to the facsimile number of the addressee, in each case, as set out in the Schedule or at, or to, any other address or facsimile number previously notified to the sender:
-

24.2 When Effective

Unless a later time is specified in it, a notice or other communication takes effect from the time it is received.

- (a) letter or facsimile is deemed to be received:
- (b) if left at the address of the addressee, at the time it is left;
- (c) in the case of a posted letter, on the third business day after posting; and
- (d) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent to the facsimile number of the recipient.

25. ARBITRATION

Save for any matter concerning Rent or reviewed Rent, any dispute or difference touching this Lease in any way will, in the absence of agreement, be determined by the award of a single arbitrator, if the parties can agree upon one, and if not as appointed by the President of the Law Society from time to time and in either case in accordance with the provisions of the Commercial Arbitration Act 1985 and either party may be represented by solicitors and/or counsel at any stage of arbitration proceedings.

26. OPTION**26.1 Renewal**

Subject to the conditions set out in this clause, the Lessee may renew the initial Term of this Lease for the further Term provided in Item 7 of the Schedule (the "Option period") commencing on the day following the expiration of the initial Term of this Lease.

26.2 Method of Renewal

The Lessee may only renew the Term of the Lease in accordance with this clause:

- (a) by serving on the Lessor (in accordance with the provisions of this Lease) in such a manner that service is effected or deemed to be effected on a day no earlier than 6 months but not later than 3 months before the expiry of the initial Term, a written notice of intention of the Lessee to renew the Term for the Option period;
- (b) if the Lessee is not in breach of the Lease at the time of service of the notice of intention to renew the Term or at any time thereafter up to and including the last day of the then current Term (whether or not the Lessor has given any notice in respect of that breach of the Lease).

26.3 Terms & Conditions Continue

The same terms and conditions will apply during the further Term as applied during the final year of the initial Term except that this clause as it relates to the option to renew will cease to apply.

27. SPECIAL CONDITIONS

Any Special Conditions contained in Item 9 of the Schedule will apply as if they were included in the body of this Lease and any contradiction occurring between the provisions of this Lease and the terms and conditions contained in Item 9 of the Schedule will be resolved by the terms and conditions of Item 9 of the Schedule taking precedence.

28. MISCELLANEOUS**28.1 Waiver and Variation**

A provision of or a right created under this Lease may not be waived except in writing signed by the party to be bound, or varied except in writing signed by the Lessor and the Lessee.

28.2 Remedies Cumulative

The rights, powers and remedies provided in this Lease are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Lease.

28.3 Set Off

At its sole discretion, the Lessor may apply, without notice, any funds held by the Lessor on account of the Lessee towards satisfaction of any amount then payable by the Lessee to the Lessor under this Lease.

28.4 Indemnities

In relation to each of the indemnities in this Lease:

- (a) the indemnity is a continuing obligation, separate and independent from the other obligations of the Lessee and survives the expiration or earlier termination of this Lease;
- (b) it is not necessary for the Lessor to incur expense or make payment before enforcing a right of indemnity; and
- (c) the Lessee must pay to the Lessor an amount equal to any loss, liability, costs or expenses suffered or incurred by any employee, officer or agent of the Lessor.

28.5 Further Assurances

If requested by any party, each other party is to execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the party so required and its successors under this Lease.

28.6 Severance

If any clause in this Lease or its application to any person or circumstance is or becomes invalid or unenforceable, then the remaining clauses of this Lease will not be affected and each remaining clause will be valid and enforceable to the fullest extent permitted by law.

28.7 Supervening Legislation

Any present or future legislation which operates to vary the obligations of the Lessor or the Lessee in connection with this Lease with the result that the rights, powers or remedies of another party are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

28.8 Western Australian Planning Commission Approval

If for any reason this Lease requires the consent of the Western Australian Planning Commission, then this Lease is made subject to, and conditional upon, the granting of that consent and it is the obligation of the Lessee solely to obtain that consent.

28.9 Payments

With respect to payments to be made under this Lease:

- (a) the Lessee is to make payments without deduction, set off or counterclaim;
and
- (b) the Lessor need not make demand for payment of any amount required to be paid by the Lessee unless a demand is expressly required.

28.10 Governing Law and Jurisdiction.

This Lease is governed by the law in force in Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

28.11 Counterparts

This Lease may consist of separate counterparts and the counterparts taken together constitute one and the same instrument.

29. GOODS & SERVICES TAX

29.1 Definitions

Unless the contrary intention appears, in this clause:

GST means a tax levied on the value of a good or service or property supplied, including but not limited to the value represented by the Rent and the amount of Variable Outgoings, Rates & Taxes or other money Payable to the Lessor for goods or services or property.

Supply means a good or service or property supplied under this document, including but not limited to the Premises and other goods or services or property the cost of which comprises part of the Variable Outgoings or Rates and Taxes.

29.2 Lessee must pay GST

The Lessee must pay to the Lessor the amount of any GST the Lessor pays or is liable to pay on a Supply.

29.3 Lessee must pay GST at the same time

The Lessee must pay to the Lessor the amount of the GST that the Lessee is liable to pay at the same time and in the same manner as the Lessee is obliged to pay for that Supply.

29.4 Prices do not include GST

The price for each Supply, including Rent, fixed or determined under this document does not include GST on that Supply and the Lessee must pay the amount of GST in addition to the price for that Supply.

29.5 Apportionment of GST

Where a Supply is not separately supplied to the Lessee, the liability of the Lessee for any amount for GST in relation to that Supply is determined by reference to the Lessee's Proportion of that Supply or, if applicable, on the same basis as the Lessee's Proportion of Variable Outgoings is determined.

29.6 Statement of GST paid is conclusive

A written statement given to the Lessee by the Lessor of the amount of GST that the Supplier pays or is liable to pay is conclusive as between the Parties except in the case of an obvious error.

29.7 Zero Rating

If this Lease is or may be zero rated for a particular period or for the Term of this Lease then, at the sole and absolute direction of the Lessor, the parties shall do all things

necessary, including the making of any elections required under the Act, to ensure that this Lease is zero rated for the maximum permissible period.

30. BANK GUARANTEE

In consideration of the Lessor agreeing to enter into this Lease with the Lessee, the Lessee hereby undertakes to provide to the Lessor within 7 days of being required to do so by the Lessor, a cash bond or a bank guarantee given by an Australian trading bank approved by the Lessor, in its absolute discretion, in favour of the Lessor, in the amount detailed in Item 10 of the Schedule (the "Guarantee") and the following terms are to apply:

- (a) if the Lessee defaults in the payment to the Lessor of any Rent or other moneys payable by the Lessee under or by virtue of this Lease the Lessor may apply the Guarantee towards satisfying the Lessor's claim against the Lessee upon demand; or
- (b) if the Lessee defaults in the performance or observance of any of the covenants, terms or conditions to be performed by the Lessee under this Lease the Lessor may apply the Guarantee towards satisfying, on demand, all Losses or incurred by, or any other portion of the Total Moneys Payable which became payable to, the Lessor by reason of that default; and
- (c) if the Lessor applies the Guarantee towards satisfying a claim against the Lessee pursuant to Clauses 30(a) or 30(b), then the Lessee is to pay to the Lessor, no later than 7 days after the Lessor applies the Guarantee, an amount equal to the amount applied by the Lessor towards satisfying the claim against the Lessee and the Lessor will utilise this further payment to reinstate the Guarantee to the amount required by this Lease.

31. PERSONAL GUARANTEE

31.1 Guarantor

In consideration of the Lessor agreeing, at the request and direction of the Guarantor, to enter into this Lease with the Lessee, the Guarantor, as defined in Item 12 of the Schedule, hereby guarantees the payment by the Lessee to the Lessor of the Total Moneys Payable and the performance and observance by the Lessee of the covenants, terms and conditions to be performed by the Lessee under this Lease and the Guarantor further undertakes to keep the Lessor indemnified against all losses which the Lessor may suffer by reason of any failure by the Lessee to pay any moneys or to perform and observe any covenant, term or condition and in addition, and without limitation, the Guarantor expressly agrees as follows:

- (a) If the Lessee defaults in the payment to the Lessor of any of the Total Moneys Payable the Guarantor will, upon demand, pay those moneys to the Lessor;
- (b) If the Lessee defaults in the performance or observance of any of the covenants, terms or conditions to be performed by the Lessee under this Lease the Guarantor will pay to the Lessor, on demand, all Losses suffered or incurred by the Lessor by reason of that default;
- (c) The liability of the Guarantor under this Lease will not be abrogated, prejudiced or affected by the death of any Guarantor or by the granting of time, credit or any indulgence or concession to the Lessee or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the Lessor's rights or by any omission or neglect or other dealing, matter or thing whatsoever (other than the due payment of all moneys payable under, and the performance of all covenants, terms and conditions of, the Lease) which but for this provision would or might operate to abrogate, prejudice or affect the guarantee;
- (d) No Guarantor will by reason of any payment made under this guarantee and indemnity prove for, or claim, any dividend out of the assets of the Lessee, in the event of the Lessee being unable to pay its creditors in full, in competition with the Lessor or so as to diminish the dividends to which, but for such proof or claim, the Lessor would or might be entitled;
- (e) Further, in consideration of the Lessor granting this Lease to the Lessee at the Guarantor's request and direction, the Guarantor hereby covenants with the Lessor that if the Lessee, being a natural person, becomes bankrupt or, being a corporation, is wound up and the trustee or the liquidator of the Lessee, as the case may be, lawfully disclaims this Lease at any time then, and in such event, the Guarantor will indemnify the Lessor from and against all Losses which the Lessor may suffer as the result of that disclaimer and, insofar as it may be necessary so to do in order to give full effect to this indemnity, the Guarantor will waive any rights of recourse the Guarantor might otherwise have, or have had, against the Lessee arising out of this indemnity and no disclaimer will operate so as to relieve the Guarantor of the Guarantor's obligations under this indemnity and it is expressly agreed that the provisions of this indemnity will survive any termination of the Lease arising out of any disclaimer;
- (f) This guarantee and indemnity (in this clause referred to as "this guarantee") is an irrevocable and continuing guarantee and indemnity and remains in full force and effect until all the obligations to be observed or performed by the Lessee under, or pursuant to or in connection with this Lease, have been observed and performed and this guarantee will not be abrogated, prejudiced or affected, and the Guarantor will not be released in whole or in part nor will the rights,

remedies or recourse of the Lessor be in any way restricted, by any delay, neglect, omission, dealing, matter or thing including (but without limitation) any of the following matters:

- (i) any part of this Lease being void, voidable, defective, unenforceable or informal or this guarantee being void, voidable, defective, unenforceable or informal;
- (ii) the fact that any negotiable instrument or other security may be in circulation or outstanding;
- (iii) any moratoriums staying, or suspending by Act or the order of any Court or other local or public authority, all or any of the Lessor's rights, remedies or recourse against the Lessee which, but for this provision, could or might operate to abrogate, prejudice or affect this guarantee or release the Guarantor, it being the intention of the parties to the Lease that this guarantee and the obligations of the guarantor be absolute and unconditional in any and all circumstances;
- (iv) any acceptance by the Lessor of the Lessee's breach or repudiation of the provisions of the Lease as terminating this Lease;
- (v) any change of name or place of business or any alteration or change in the constitution, status or method of operation of the Lessor, the Lessee or the Guarantor;
- (vi) by the death, insanity or certified mental illness of any Guarantor or by any notice of such death, insanity or certified mental illness;
- (vii) in the event of the failure by any Guarantor or other party to execute or be bound by this Lease and, as regards any of the remaining Guarantors, by the determination by any one or more of the Guarantors of its or their liability.

31.2 Service of Notices

That without prejudice to any of the other means of giving notice, any notice required to be served on the Guarantor will be sufficiently served if served personally or if addressed to any Guarantor by prepaid post to the address of that Guarantor provided in this Lease.

Schedule

Item 1. Lessor's Property

- (1) The Breakwater Causeway abutting Reserve No. 390027 (Lot 207) coloured green on the annexure hereto (the "Causeway");
- (2) The Public Boat Ramp abutting Reserve No. 39224 (Lot 198) coloured red on the annexure hereto including that part of the ramp lying below the high water mark; and
- (3) The Public Boat Ramp abutting Reserve No. 39224 (Lot 198) coloured blue on the annexure hereto including that part of the ramp lying below the high water mark.

Item 2. Lessor's Improvements

NIL

Item 3. Lessee's Improvements

All improvements erected or situated upon the Lessor's Property as at the Commencement Date together with all proposed further improvements upon, or developments to, the Lessor's Property.

Item 4. Permitted Use

The Lessee will assume responsibility for the Care, Control, Maintenance and Management of the Premises.

Item 5. Rent

Subject to the rent review provisions in Clause 4, the rent shall be one peppercorn per annum or one (1) dollar on demand.

Item 6. Term

Twenty (20) years

Commencement Date:

This Lease shall be deemed to have commenced on the date shown as the date of Lease on page 1.

Expiry Date:

Twenty (20) years from the Commencement Date.

Item 7. Option Term

Not Applicable.

Item 8. Rent Review Dates

The Rent will be reviewed every three (3) years, the first review taking place three (3) years from the Commencement Date but shall remain the Lessor's lowest concession rate applied to facilities leased by the Lessor.

Item 9. Special Conditions

- (1) Without derogating from the Lessee's obligation pursuant to any other provision of the Lease, the Lessee will ensure that its operation of the Causeway and the Boat Ramps will at all times comply with all standards and procedures recommended or required by Worksafe Western Australia;
- (2) The Lessee shall be responsible for the provision of all services (eg rubbish removal, signage, lighting and continuous environmental monitoring);
- (3) The Lessee shall be responsible for the provision of all equipment and materials associated with the maintenance of the Premises; and
- (4) The Lessee shall afford unfettered access at all times to the Lessor to enable the Lessor to fulfil its obligations with respect to the provision of and maintenance of the Lessor's navigational aids, cyclone anchors and related maritime facilities including, at the Lessor's absolute discretion, the provision of additional boat mooring pens (the "boat pens");
- (5) In the event that the Lessor provides additional boat pens as aforesaid and the Causeway is used to access those pens, the following conditions shall apply:
 - (a) If the Lessee shall have paid for construction works on any portion of the Causeway subsequently used to provide access to the boat pens, the Lessor shall, over a five (5) year period, reimburse the Lessee with the full cost incurred by the Lessee in respect of those works;
 - (b) If, in the opinion of the Lessor, the Causeway needs upgrading to provide access to the boat pens, all the costs of and associated with the upgrade shall be borne entirely by the Lessor;
 - (c) Following any upgrade of the Causeway as aforesaid, the ongoing maintenance costs associated with that portion of the Causeway used to access the boat pens shall be borne by the Lessor;

- (d) The Lessor and the Lessee shall share equally the cost of the Public Liability insurance referred to in clause 9.1(b); and
 - (e) The Lessor warrants that public access to, and use of, the Causeway for the purposes of recreational fishing shall be maintained at all times.
- (6) In the event that the Causeway is used for recreational purposes only (eg fishing) and the Lessor, during the course of its maintenance activities, damages any portion of the Causeway constructed by the Lessee, the Lessor shall pay for, and indemnify the Lessee in respect of, that damage.

Item 10. Bank Guarantee

Not Applicable.

Item 11. Addresses For Notices

Lessor's address: 1 Essex Street Fremantle WA 6160
Lessor's Phone: (08) 9239 2399
Lessor's Facsimile: (08) 9239 2314
Lessee's address: PO Box 219, Karratha Western Australia 6714
Lessee's Fax: (08) 9185 1626

Item 12. Guarantor

NIL

IN WITNESS HEREOF the parties hereto have executed this Lease on the date first mentioned.

Approved, pursuant to an instrument of delegation dated 8 March 1999, for the purposes of Section 18 of *Land Administration Act 1997* by **DENNIS RODNEY FORTE** Executive Director Maritime, in the Department of Transport of the State of Western Australia for the time being as delegate of the Minister for Land in the presence of:



DENNIS RODNEY FORTE

Witness:

M. T. Raynor
MAUREEN T. RAYNOR

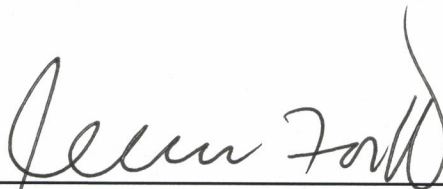
Name (please print)

Address

1 ESSEX ST
 FREMANTLE WA 6160
 EXECUTIVE ASSISTANT MARITIME

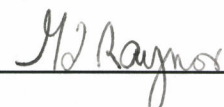
Occupation

SIGNED by DENNIS RODNEY FORTE
Executive Director, Maritime Division of the
Department of Transport of the State of
Western Australia for the time being as the
delegate of the Minister for Transport as a
body corporate in the presence of:



DENNIS RODNEY FORTE

Witness:



MAUREEN T. RAYNOR
Name (please print)

Address

1 ESSEX ST
FREMANTLE WA 6160

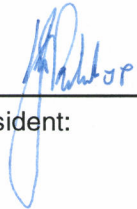
EXECUTIVE ASSISTANT MARITIME

Occupation

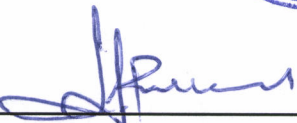
The **COMMON SEAL OF SHIRE OF ROEBOURNE** was hereby affixed pursuant
to a resolution of the Council in the presence
of:



Shire President:



Chief Executive Officer:



ANNEXURE 'A'

POINT SAMSON (JOHNS CREEK) BOAT HARBOUR
SEABED LEASE SITE PLAN

BREAKWATER CAUSEWAY COLOURED GREEN ABUTTING RESERVE 39027 (LOT 207)
AND BOAT RAMPS COLOURED RED AND BLUE ABUTTING RESERVE 39224 (LOT 198)

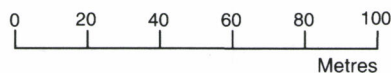
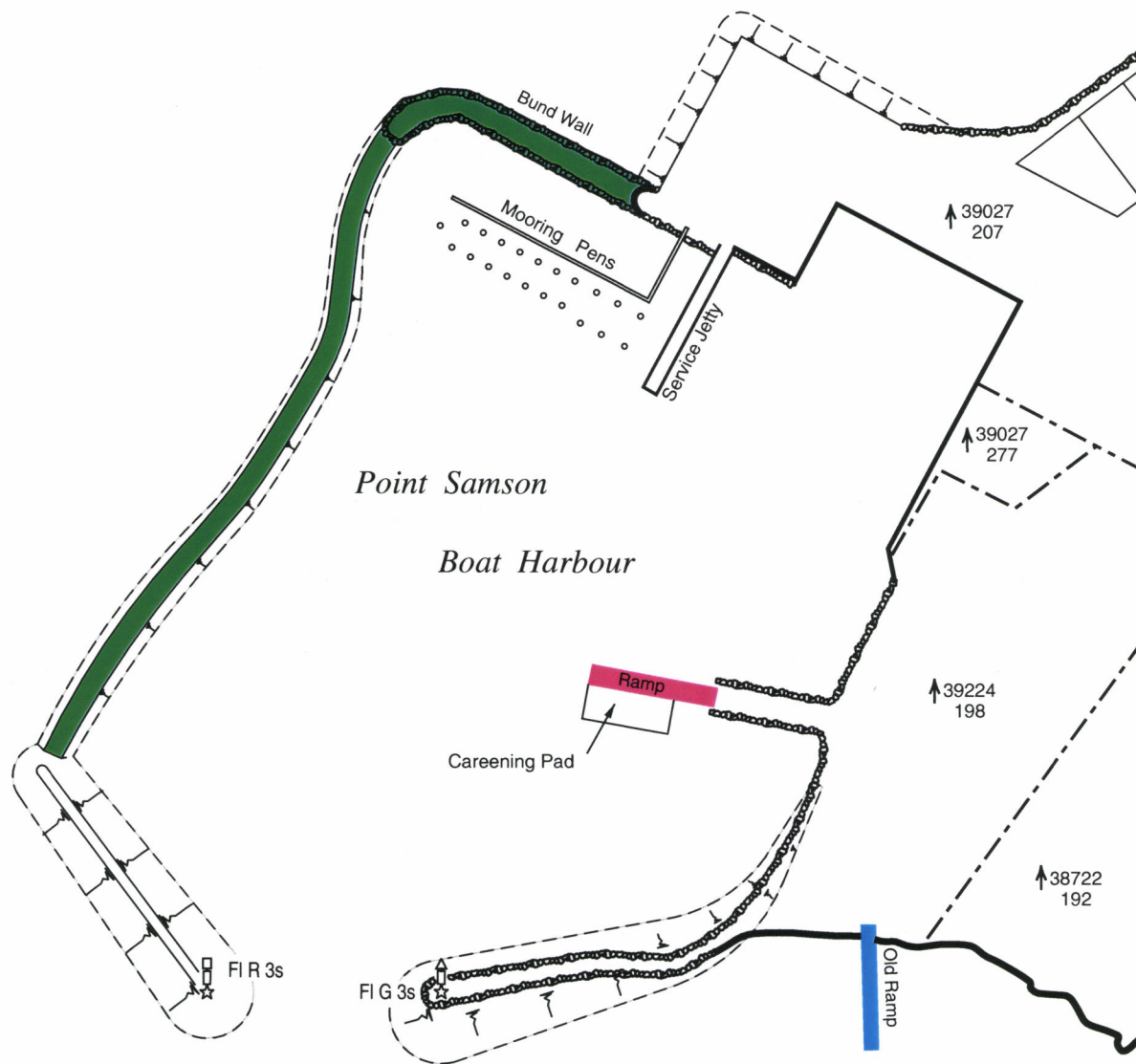


FIG 3s
No 5



EXAMINED

FOR S-10-00
SECTION LEADER

MARITIME GEOGRAPHIC INFORMATION SERVICES

PLAN 194 - 09 - 01