

Lease of a portion of Reserve 24308, Naval Base Holiday Park

City of Cockburn

COPY



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway
CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

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Details

Parties

City of Cockburn

of PO Box 1215, Bibra Lake, Western Australia
(Lessor)

XXX

(Lessee)

Background

- A. The Lessor is the management body of the Land under a management order.
- B. The Lessor has the power to lease the Land, subject to the prior written approval of the Minister for Lands.
- C. The Lessee is the occupier of the Site.
- D. The Lessor has agreed to lease, and the Lessee has agreed to take a lease of the Site upon the terms and conditions contained in this document.

Agreed terms

1. Definitions

Unless otherwise required by the context or subject matter the following words have these meanings in this Agreement:

Amounts Payable means the Lease Fee and any other money payable by the Lessee under this Lease;

Basic Consideration means all consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Site and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

Caravan connection means a removable hose that is above ground, and used to connect a shack to one of the communal external water connections.

Commencement Date means the date of commencement of the Term specified in **Item 4** of the Schedule;

Common Areas means all those parts of the Land not leased to any lessee and intended for use by the lessees of the Land in common with each other including all parking areas, roads, walkways, toilet block, and shower blocks in on or about the Land;

Contaminated Sites Act means the *Contaminated Sites Act 2003*;

Contamination has the meaning given in section 4 of the Contaminated Sites Act;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics or its equivalent;

Demolition Levy means the bond described in **clause 5.2** and **Item 7** of the Schedule as varied from time to time under this Lease;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title for the Land;

Environmental Contamination has the same meaning as the word “contaminated” in the Contaminated Sites Act;

Environmental Harm has the same meaning as that term is defined in the EPA;

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

EPA means the *Environmental Protection Act 1986*;

Expiration of the Term means the date of determination of the Term;

Further Term means the further term specified in **Item 11** of the Schedule;

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Input Tax Credit has the meaning that it bears in section 195-1 of the GST Act;

Interest Rate means the rate at the time the payment falls due being the interest rate in the adopted municipal budget called the penalty interest rate;

Land means the land described at **Item 2** of the Schedule;

Lease means this deed as supplemented, amended or varied from time to time;

Lease Fee means the Lease Fee specified in **Item 6** of the Schedule as varied from time to time under this Lease;

Lessee’s Agents includes:

- (a) the sublessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Site by the authority of a person specified in paragraph (a);

Lessee's Obligations means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessee;

Lessor's Covenants means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be performed and observed by the Lessor;

Minister for Lands means the Minister for Lands in her or his capacity as the body corporate continued under section 7 of the *Land Administration Act 1997*;

Motor Vehicle means any vehicle used or intended to be used in a business or trade which has a tare weight in excess of 3.5 tonnes, and excludes vehicles directly associated with conduct of a rural pursuit, business or trade on the lot for which the vehicle or vehicles are used;

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Party means the Lessor or the Lessee according to the context;

Permitted Purpose means the purpose set out in **Item 9** of the Schedule;

Persistent Breach occurs when the Lessee has received three or more default notices during the Term of this Lease irrespective of whether the notices are for the same default or otherwise;

Pollution means any thing that is pollution within the meaning of that term as defined in the EPA;

Remediation and **Remediate** has the same meaning as that expression is given in the Contaminated Sites Act and includes the management of any contaminated site.

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

Schedule means the Schedule to this Lease;

Site means the Site described at **Item 3** of the Schedule;

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

Term means the term of years specified in **Item 4** of the Schedule;

Termination means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over; and

Written Law includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority.

2. Minister for Lands' Consent

This Lease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*. A copy of the Minister for Lands' consent is annexed hereto as **Annexure 2**.

3. Grant of lease

The Lessor, subject to **clause 2** of this Lease, leases to the Lessee the Site for the Term subject to:

- (a) the Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Obligations.

4. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the management body of the Site, and subject to the performance and observance of the Lessee's Obligations the Lessee may quietly hold and enjoy the Site during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

5. Lease Fee and other payments

5.1 Lease Fee

The Lessee covenants with the Lessor to pay to the Lessor the Lease Fee in the manner set out at **Item 6** of the Schedule on and from the Commencement Date clear of any deductions.

5.2 Demolition Levy

- (1) The Lessee covenants with the Lessor to pay to the Lessor the Demolition Levy in the manner set out at **Item 7** of the Schedule on and from the Commencement Date clear of any deductions.
- (2) The Lessee acknowledges that the Demolition Levy will be refunded or returned to the current lessee of the Site in accordance with **clause 22.4**.

5.3 Outgoings

- (1) The Lessee covenants to punctually pay to the Lessor or to such person as the Lessor may from time to time direct all the following outgoings or charges, assessed or incurred in respect of the Site:
 - (a) local government services and other charges, including but not limited to rubbish collection charges and the emergency services levy, determined upon the basis of an occupancy restriction of 120 days in every financial year;
 - (b) telephone, gas and other power charges including but not limited to meter rents and the cost of installation of any meter, wiring or telephone connection; and
 - (c) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Site (unless otherwise addressed in this clause).

- (2) If the Site is not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in paragraph (1) above being the proportion that the Site bears to the total area of the Land included in the charge or assessment.
- (3) If any charges increase by more than 10% in any one year, the Lessor may recover these costs by charging the Lessee a proportionate part of those charges being the proportion that the Site bears to the total area of the Land included in the charge or assessment.

5.4 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, the Lessee covenants to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 14 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

5.5 Costs

The Lessee covenants with the Lessor to pay to the Lessor all reasonable costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:

- (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
- (b) any breach of the Lessee's obligations by the Lessee or the Lessee's Agents;
- (c) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
- (d) any work done at the Lessee's request for which the Lessee is responsible; and
- (e) any action or proceedings arising out of or incidental to any matters referred to in this clause or any matter arising out of this Lease.

5.6 Payment of Amounts Payable

- (1) Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in this Lease or as otherwise directed by the Lessor by Notice from time to time.
- (2) Amounts Payable accrue on a daily basis.

6. Review of Lease Fee & Demolition Levy

6.1 Lease Fee and Demolition Levy to be reviewed

The Lease Fee and Demolition Levy will be reviewed on and from each Review Date to determine the Lease Fee and the Demolition Levy to be paid by the Lessee until the next Review Date.

6.2 Lease Fee to be increased by CPI

The reviewed Lease Fee payable on and from the Review Date shall be the amount of the Lease Fee payable during the immediately preceding period increased by a percentage equal to the percentage increase in the CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Review Date. If the CPI is discontinued or suspended at any time or its method of computation is substantially altered the Lessor shall

nominate the substitution of another appropriate CPI, provided that the reviewed Lease Fee shall in no case be less than then the Lease Fee payable during the immediately preceding period.

6.3 Demolition Levy to be increased by CPI commencing at the renewal date.

The reviewed Demolition Levy shall be the amount of Demolition Levy payable during the immediately preceding period increased by a percentage equal to the percentage increase in the CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Review Date. If the CPI is discontinued or suspended at any time or its method of computation is substantially altered the Lessor shall nominate the substitution of another appropriate CPI, provided that the reviewed Demolition Levy shall in no case be less than then the Demolition Levy payable during the immediately preceding period.

7. Insurance

7.1 Public Liability Insurance

The Lessee must effect and maintain adequate public liability insurance with respect to the Site for a sum not less than the sum set out at **Item 10** of the Schedule in respect of any one claim noting the respective interests of the Lessor and Lessee in the Site.

7.2 Details and receipts

In respect of the insurances required by this clause the Lessee must -

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately-
 - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

7.3 Not to invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Site which might -

- (a) render any insurance effected under this clause, or any adjoining site, void or voidable; or
- (b) cause the rate of a premium to be increased for the Site or any adjoining site (except insofar as an approved development may lead to an increased premium).

7.4 Settlement of claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by this clause.

8. Indemnity

8.1 Lessee responsibilities

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Site.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Site and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

8.2 Indemnity

The Lessee indemnifies, and shall keep indemnified, the Lessor and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor and the Minister for Lands, or brought, maintained or made against the Lessor and the Minister for Lands, in respect of:

- (a) any loss whatsoever (including loss of use);
- (b) injury or damage of, or to, any kind of property or thing; and
- (c) the death of, or injury suffered by, any person,

caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

- (d) the use or occupation of the Site by the Lessee or the Lessee's Agents;
- (e) any work carried out by or on behalf of the Lessee on the Site;
- (f) the Lessee's activities, operations or business on, or other use of any kind of, the Site;
- (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Site or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's Obligations or obligations under this Lease; or
- (i) an act or omission of the Lessee.

8.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 8.2** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

8.4 No indemnity for Lessor's negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

8.5 Release

(1) The Lessee:

- (a) agrees to occupy and use the Site at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Site or arising from the Lessee's use or occupation of the Site by;
 - (ii) loss of or damage to the Site or personal property of the Lessee; and
 - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Site or surrounding area

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

(2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

9. Maintenance, repair and cleaning

9.1 Maintenance

- (1) The Lessee agrees during the Term and for so long as the Lessee remains in possession or occupation of the Site to maintain, replace, repair, clean and keep the Site (which for the avoidance of doubt includes any building constructed on the Site) clean and in Good Repair.
- (2) The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Site.

9.2 Cleaning

The Lessee must at all times keep the Site clean, tidy, unobstructed and free from dirt and rubbish.

9.3 Repair

The Lessee must promptly repair at its own expense to the satisfaction of the Lessor any damage to the Site, including damage of a structural nature, regardless of how it is caused.

9.4 Pest control

The Lessee must keep the Site free of any vermin or any other recognised pests and the cost of extermination will be borne by the Lessee.

9.5 No obligation to Lessor to repair or maintain

The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements comprising the Site, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Site.

9.6 Acknowledgement of state of repair of Site

- (1) The Lessee accepts the Site in its present condition relying upon its own enquiries and investigations.
- (2) The site is provided to the Lessee as is. The Lessor provides no guarantee that the site is suitable for the Lessee's proposed use.

10. Building Requirements

10.1 No alterations or building without Lessor's prior approval

- (1) The Lessee must not without prior written consent:
 - (a)
 - (i) from the Lessor;
 - (i) from any other person from whom consent is required under this Lease; and
 - (ii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a local planning scheme of the Lessee and where applicable any Building/Demolition Permit as required under the Building Act 2011 and associated legislation;
 - (b) erect or remove any buildings, structures, alterations, additions or improvements on the Site; or
 - (c) remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Site or the Land.
- (2) The Lessee acknowledges and agrees that the Lessor will not consent to the alteration, construction or addition to the Site, unless such alteration, construction or addition is strictly in conformity with the building requirements of the *Building Act 2011* and associated legislation.
- (3) If the Lessor consents to any matter referred to in paragraph (1) above, the Lessor may:
 - (a) consent subject to conditions, and
 - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (ii) require that any alteration be carried out to the reasonable satisfaction of the Lessor under the supervision of an engineer or other consultant; and
 - (b) if the Lessor consents to any matter referred to in this clause:
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

10.2 Cost of Works

All works undertaken under this clause will be carried out at the Lessee's expense.

10.3 Conditions

Where the Lessee is required to carry out any other works pursuant to this Lease, any written law, or any consent or approval given to the Lessee, then the Lessee must at the option of the Lessor either:

- (a) carry out those other works at the Lessee's expense; or
- (b) permit the Lessor to carry out those other works at the Lessee's expense,

in accordance with the Lessor's reasonable requirements.

10.4 Conditions

In the event the Lessee fails to obtain written consent for any building alterations or additions the Lessor may issue a Notice to remove any such alterations or additions and if the Lessee fails to comply with that Notice within the reasonable time prescribed by that Notice, the Lessor may immediately terminate this Lease and the provisions of **clause 22** will apply and no compensation or other consideration shall be payable or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease pursuant to this clause.

11. Unsafe or dangerous building or structures

11.1 Unsafe or dangerous buildings or structures

- (1) Notwithstanding any other provision of the Lease, in the event the Lessor, acting reasonably, determines that any building or structure erected on the Site is unsafe or dangerous the Lessor may issue the Lessee a Notice requiring the Lessee within a reasonable period of time to either:
 - (a) remove the unsafe or dangerous structure or building from the Site; or
 - (b) undertake rectification works to make the building or structure safe.
- (2) In the event the Lessee fails to comply with the Notice issued pursuant to paragraph (1) within the time specified in the Notice, the Lessor may immediately terminate this Lease and the provisions of **clause 22** will apply and no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease pursuant to this clause.

11.2 Smoke Detectors and Gas Certificates

- (1) Within 60 days of the Commencement Date, the Lessee must install to the Lessor's reasonable satisfaction a lithium ion battery smoke detector or any other approved detector as specified in the relevant legislation in any building or structure erected or located upon the Site.
- (2) The Lessee must provide to the Lessor gas safety certificates for any gas installation on the Site.

12. Restrictions on use

12.1 Generally

- (1) The Lessee must not and must not suffer or permit a person to -

- (a) (i) use the Site or any part of it for any purpose other than for the purpose set out at **Item 9** of the Schedule; or
 - (i) use the Site for any purpose which is not permitted under any local planning scheme or any law relating to health;
 - (b) do or carry out on the Site any harmful, offensive or illegal act, matter or thing;
 - (c) do or carry out on the Site any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties;
 - (d) store any dangerous compound or substance on or in the Site;
 - (e) interfere with the reasonable peace, comfort and privacy of neighbours; or
 - (f) display from or affix any signs, notices or advertisements on the Site without the prior authorisation of the Lessor (other than “for sale” signs).
- (2) The Lessee, and the Lessee’s Agents, must when on the Site, the Common Areas or the Land strictly comply with all local laws.

12.2 Lessor may issue notice

- (1) Notwithstanding any other provision of the Lease, in the event the Lessor, acting reasonably, determines that the Lessee has suffered or permitted any person to do any of the above as detailed in **clause 12.1**, the Lessor may issue the Lessee a Notice requiring the Lessee within a reasonable period of time to either remove or cease the action.
- (2) In the event the Lessee fails to comply with the Notice issued pursuant to **clause 12.2(1)** within the time specified in the Notice, the Lessor may immediately terminate this Lease and the provisions of **clause 22** will apply and no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease pursuant to this clause.

12.3 Short term accommodation only

- (1) The Lessee acknowledges and agrees that the Site may only be utilised for short term holiday accommodation.
- (2) The Lessee must not and must not suffer or permit a person to occupy the Site for over 120 days in aggregate within any 12 month period.
- (3) The Lessee must maintain a detailed occupancy log, detailing the dates and times the Lessee, or any of the Lessee’s agents, is in attendance or occupation at the Site. The occupancy log is to be made available for inspection by the Lessor’s representative at all times on demand.
- (4) The Lessee acknowledges and agrees that this clause is an essential provision of the Lease, and in the event of non-compliance the Lessor may immediately terminate this Lease and the provisions of **clause 22** will apply and no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease pursuant to this clause.

12.4 No Toilets or showers; kitchen sink only

- (1) The Lessee must not and must not suffer or permit within the Site a toilet or shower or plumbing which will permit the installation of a toilet or shower.

- (2) The Lessee must remove any permanent existing toilet or shower and/or plumbing which permits the installation of a toilet or shower within 30 days of the commencement of this Lease.
- (3) The Lessee and Lessor acknowledge and agree that the Lessee may install a kitchen sink on the nominated Site. A semi-permanent hose connected to the external water tap (similar to a **caravan connection**) is acceptable with the outlet tap located over a kitchen sink only. The sink will discharge via a trapped waste pipe to a soakwell. The expectation is that when the Site is unoccupied the hose will be disconnected from the water supply.
- (4) The Lessee may install, with the Lessor's prior written consent, a single 600mm soakwell with a concrete lid upon the Site. The soakwell will be for kitchen grey water only. Any application must include an appropriate quality sketch depicting the proposed location of the soakwell. The soakwell must be protected from vehicular traffic due to its location, or the installation of bollards.
- (5) The Lessee acknowledges and agrees that no portable toilets are permitted on the Site, and the Lessee must promptly remove any portable toilets located on the Site.
- (6) The Lessee may with the Lessors prior written approval install an external (beach) shower. The external beach showers will be connected to a semi-permanent hose connected to an external water tap (similar to a **caravan connection**). The expectation is that when the Site is unoccupied the hose will be disconnected from the water supply.

12.5 Water restrictions

- (1) The Lessee must keep in good repair all of the Lessee's hoses and hose fittings. The Lessee must promptly repair any damage or deterioration of its hoses or hose fittings (including the repair of any leaking hose fittings) as soon as practicable, and in any event within 7 days of written request from the Lessor.
- (2) In the event the Lessee fails to comply with the requirements of the Lessee's notice referred to in **clause 12.5(1)**, the Lessor may enter the Site and remove, or repair such hose or hose fitting, and the costs of such removal or repair is a liquidated debt recoverable from the Lessee in a court of competent jurisdiction.
- (3) The Lessee must strictly comply with the Water Corporation's watering days and restrictions when using water at the Site or the Land, including the use of any sprinklers on the Site. For the purposes of the Water Corporation's watering days, the last digit of the Site number will constitute the 'last digit of street or lot number' for the purposes of determining the watering day for each Site. The Lessee acknowledges and agrees that any breach of the Water Corporation's watering days and restrictions (including using sprinklers on non-watering days/hours), will be a breach of the terms of this Lease.

12.6 Gas Locker

- (1) The Lessee must only install a gas locker with the Lessor's prior written consent.
- (2) Any application to install a gas locker must specify the details and specifications of the proposed gas locker.

12.7 Vehicles, Boats, Trailers & Caravans

- (1) The Lessee must not and must not suffer or permit a person to park a motor vehicle exceeding 3.5 tonnes in gross weight on the Reserve unless prior permission has been provided by the Lessor. The Lessee may park a Motor Vehicle, boat and/or trailer upon the Site or any part of the Common Areas which is set aside by signs for parking provided that:
 - (a) the Lessee is in current occupation of the Site; and

- (b) in relation to parking on the Site the boat, trailer or Motor Vehicle is located within the boundary of the Site and does not encroach into the adjoining land.
- (2) If any Motor Vehicle, caravan, trailer or boat is parked or stored on the Site or the Land in breach of this clause, the Lessor may immediately remove such Motor Vehicle, trailer, boat or caravan.

12.8 No generators

- (1) Subject to paragraph (2) below, the Lessee must not and must not suffer or permit a person to use a generator on the Site or Land.
- (2) The Lessor may permit, in its absolute discretion, a generator to be utilised for construction purposes for a specified period of time. If the Lessee wishes for a generator to be utilised for construction purposes it must obtain the prior written approval of the Lessor.

12.9 Solar and Wind Power Sources

- (1) The Lessee may only install, with, solar panels, wind turbines and other non-electrical power sources with the Lessor's prior written consent.
- (2) Any application to the Lessor for consent to install solar panels, wind turbines or other non-electrical power sources must specify the details and specifications of the proposed devices.

12.10 No fence

- (1) Subject to paragraph (2), the Lessee must not and must not suffer or permit a person to erect a permanent fence or similar structure or obstruction on the Site or the Land.
- (2) The Lessee may place temporary fencing on the Site, provided that any such fencing:
 - (a) is not permanently affixed or erected on the Site and is able to be removed at any time;
 - (b) is entirely comprised within the boundaries of the Site;
 - (c) does not cause any obstruction to any other part of the Land; and
 - (d) does not cause or create any risk, danger, or hazard to any other users or occupiers of the Land.
- (3) All existing fences and structures which do not comply with paragraph (2) must be removed by the Lessee within thirty (30) days of the Commencement Date, unless the Lessor has approved such fences or structures in writing.

12.11 No Warranty

The Parties agree that the Site shall be provided to the Lessee on an 'as is' basis and that the Lessor provides no guarantee that the Site is suitable for the Lessee's intended use.

12.12 Acknowledgement - located in close proximity to Alcoa Refinery

The Lessee acknowledges that the Land and the Site are located close to Alcoa Kwinana Refinery, and as a consequence the amenity of the Land and the Site could be adversely impacted.

12.13 Residential Tenancy Act does not apply

The Lessee and the Lessor acknowledges that the Land and the Site are not subject to the provisions of the *Residential Tenancy Act 1987* or the *Residential Parks (Long-Stay Tenants) Act 2006*.

12.14 Acknowledgement – termination rights under this clause

For clarity, the parties acknowledge and agree that the rights of termination pursuant to this clause are supplementary to, and in addition to any rights the Lessor may have in **clause 23**.

12.15 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all reasonable costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this clause.

13. Common Areas

13.1 Comply with Rules and Regulations in relation to Common Areas and the Land

The Lessee must comply with all rules and regulations made by the Lessor, from time to time, with respect to the Common Areas and/or the Land provided that the Lessor gives the Lessee seven (7) days prior written notice of any amendments to such rules and regulations. For information purposes, the current rules and regulations in annexed hereto as **Annexure 3**.

13.2 Damage to common areas

The Lessee must make good any breakage defect or damage to the Land, the Common Areas or the Site and any appurtenance or equipment therein caused by want of care misuse or abuse on the part of the Lessee or the Lessee's Agents or by any breach of this Lease by the Lessee.

13.3 Lessor's obligations

The Lessor must, at its own cost:

- (a) maintain to a good standard all roads on the Land;
- (b) maintain in good order and condition all Common Areas, toilets on the Land and all services to the Land; and
- (c) effect and maintain public liability insurance with respect to Common Areas and the Land (other than the Site) for a sum not less than the sum set out at **Item 10** of the Schedule in respect of any one claim.

14. Limit of Lessor's liability

- (1) The Lessor will not be liable for loss, damage or injury to any person or property in or about the Site however occurring.
- (2) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the management body of the Site under the Management Order.
- (3) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

15. Lessor's right of entry

15.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor, or any person authorised by the Lessor onto the Site without notice in the case of an emergency, and otherwise upon reasonable notice:

- (a) (i) at all reasonable times;
- (i) with or without workmen and others; and
- (ii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes:
 - (iii) to inspect the state of repair of the Site and to ensure compliance with the terms of this Lease;
 - (iv) to undertake an external audit of the building or other structure, constructed or erected on the Site;
 - (v) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (vi) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Site for which the Lessor is liable; and
 - (vii) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

15.2 Costs of Rectifying Breach

All reasonable costs and expenses incurred by the Lessor as a result of any breach referred to at clause 15.1(b)(v) together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

15.3 Lessor to make good

The Lessor must, at its cost, make good any damage caused to the Site or the Lessee's property as a result of the Lessor exercising its rights under clause 15.

16. Statutory obligations and notices

16.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Site, including without limitation all relevant laws relating to occupational health and safety and the health and safety of all persons entering upon the Site;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Site; and
- (c) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Site.

16.2 Safety & Testing Obligations

- (1) The Lessee acknowledges and agrees that it is fully responsible at its costs for ensuring that the Site and any fixtures or fittings are regularly tested, maintained and inspected to ensure that the Site and

such fixtures and fittings comply with all statutory requirements and are safe for use.

- (2) To comply with its obligation pursuant to paragraph (1) above, the Lessee acknowledges that it will be required to, amongst other things:
 - (a) comply with the requirements of the *Occupational Safety and Health Act 1984*, including without limitation the requirement for all portable plug-in electrical equipment and residual current devices to be safe and appropriately inspected, tested and maintained by a competent person; and
 - (b) comply with all relevant requirements of the Department of Fire and Emergency Services (**DFES**), including without limitation the requirement to ensure that all fire protection and firefighting equipment located, or installed at the Site, is tested regularly for compliance with Australian Standards and DFES's requirements.
- (3) The Lessor acknowledges and agrees that it is responsible for all items installed in the Common Areas and will be responsible for testing and maintaining the firefighting equipment installed in the Common Areas.

16.3 Indemnity if Lessee Fails to Comply

If the Lessee fails to perform, discharge or execute any of the items referred to in **clause 16.1** and **clause 16.2** the Lessee indemnifies the Lessor against any claims, demands, reasonable costs or other payments incurred by the Lessor of or incidental to any of the items referred to in **clause 16.1** and **clause 16.2**.

17. Report to Lessor

The Lessee shall as soon as practicable report to the Lessor:

- (a) any act of vandalism or any incident which occurs on or near the Site which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;
- (b) any occurrence or circumstances in or near the Site of which it becomes aware, which might reasonably be expected to cause, in or on the Site, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee, and which affect the Site and immediately deliver them to the Lessor.

18. Restrictions on Assignment; No sub-letting or charging

18.1 No subletting

The Lessee must not sublet, licence or part with possession of the Site without the Lessor's and the Minister for Land's prior written consent.

18.2 No assignment or sub-letting without consent

The Lessee must not assign or sell the leasehold estate in the Site or dispose of the Site or any part of the Site without the prior written consent of the Lessor and the Minister for Lands' consent which may be withheld in their absolute discretion.

18.3 Minimum Conditions for Lessor's consent to assignment

The Lessee acknowledges that the Lessor will not provide its consent to the transfer, sale or

assignment of the leasehold estate in the Site, unless:

- (a) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Obligations;
- (b) the Lessee procures the execution by the proposed assignee of a deed of assignment to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (c) the assignment contains a covenant by the assignee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Obligations.

18.4 Consents of assignee supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Obligations and will not release the assigning lessee from the Lessee's Obligations.

18.5 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

18.6 Costs for assignment

If the Lessee wishes to assign the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to any consents required under this Lease or at law, and all other matters relating to the proposed assignment whether or not the assignment proceeds.

18.7 No mortgage or charge

The Lessee must not mortgage nor charge the Site.

19. Option to renew

If the Lessee at least three months, but not earlier than six months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and:

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained;
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in:
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Covenants,
- (c) the Council of the Lessor determines in its absolute discretion that it is prepared to grant the Lessee a lease of the Site for the Further Term;

the Lessor will grant to the Lessee a lease for the Further Term at the Lease Fee and on the same terms and conditions other than this **clause 19** and on such other terms and conditions as the Lessor may consider appropriate.

20. Damage or destruction

- (1) If the Site or any part thereof is totally or partially destroyed so as to require major rebuilding either party may within 2 months of the destruction, or the damage terminate the Term with immediate effect by giving Notice to the other party.
- (2) If this Lease is terminated in accordance with this clause, **clause 22** will apply.

21. Minister for Lands may terminate upon notice

- (1) Notwithstanding any other provision of this Lease, the Lessor and Lessee covenant and agree that the Minister for Lands may terminate this Lease for any reason upon six months written notice to the Lessee and Lessor.
- (2) No compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of this Lease by the Minister for Lands.
- (3) If this Lease is terminated in accordance with this clause, **clause 22** will apply.

22. Obligations upon Termination

22.1 Yield up Site

On Termination the Lessee must:

- (a) peacefully surrender and yield up to the Lessor the Site in a condition consistent with the observance and performance of the Lessee's Obligations under this Lease; and
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing access to or within the Site held by the Lessee whether or not provided by the Lessor.

22.2 Remove all improvements, structures and property

Unless otherwise agreed by the Lessor in writing pursuant to **clause 22.5**, the Lessee must at its cost and to the Lessor's satisfaction prior to expiration of the Term or within 30 days of the earlier determination of the Term:

- (a) remove:
 - (i) any improvements, buildings, fixtures and all septic tanks, drains and soakwells constructed or located on the Site, including without limitation all concrete floors and asbestos sheeting, if any. The removal of any asbestos must be in strict accordance with the *Health (Asbestos) Regulations 1992*; and
 - (ii) all chattels or goods belonging to the Lessee located on the Site or the Land;
- (b) following the removal of any improvements, buildings and fixtures and all septic tanks, drains and soakwells in accordance with paragraph (a), level the Site and clear it of all materials; and
- (c) remove any contaminated soil from the Site and make good the Site to the satisfaction of the Lessor.

22.3 Failure to remove or restore

- (1) If the Lessee fails to comply with **clause 22.2** within 60 days following termination or determination of the Lease the Lessor may at its option:
 - (a) remove all improvements, buildings and fixtures and all septic tanks, drains and soakwells from the Site;
 - (b) restore the Site; or
 - (c) remove any contaminated soil and make good the Site.
- (2) For clarity, if the Lessee fails to remove any chattels or goods belonging to the Lessee in accordance with **clause 22.2** the Lessor may elect to treat such chattels or goods of the Lessee as abandoned by the Lessee and such property shall then become the property of the Lessor absolutely.
- (3) In respect of any cost or expense incurred by the Lessor in undertaking any works pursuant to this clause the Lessee authorises the Lessor to draw upon the Demolition Levy without notice. If the Demolition Levy is insufficient to cover such cost, then any amount in excess of the Demolition Levy shall be a liquidated debt recoverable from the Lessee by the Lessor in a court of competent jurisdiction.

22.4 Return of Demolition Levy

- (1) If the Lessee complies with its obligations pursuant to this clause to the Lessor's reasonable satisfaction, the Lessor will return to the Demolition Levy to the Lessee with thirty (30) days of the Lessor being satisfied.
- (2) If the Lessor exercises its rights pursuant to clause **22.3(2)** and draws upon the Demolition Levy, in the event a portion of the Demolition Levy remains after the completion of such works by the Lessor, the Lessor will return the remaining amount of the Demolition Levy to the Lessee within thirty (30) days.

22.5 Limited right for structures to remain

- (1) The Lessor may permit in its absolute discretion some or all improvements, buildings and fixtures and septic tanks, drains and soakwells to remain on the Site following determination of this Lease. The Lessor will only permit structures or buildings to remain if:
 - (a) the Lessee is to be granted a further lease of the Site; and
 - (b) all structures on the Site comply with the requirements of the *Building Act 2011* and associated legislation.
- (2) The Lessor's permission pursuant to paragraph (1) above must be obtained at least three months prior to the expiry of the Term.

22.6 Clause to survive termination

The Lessee's obligations in this clause shall survive Termination.

23. Default

23.1 Events of Default

A default occurs if:

- (a) the Lessee is in breach of any of the Lessee's Obligations for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) any execution or similar process is made against the Site on the Lessee's property;
- (c) the Site is permanently vacated; and
- (d) a person other than the Lessee or assignee is in occupation or possession of the Site or in receipt of a rent and profits.

23.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 23.1** the Lessor may:

- (a) without prior notice and at any time enter and take possession of the Site and, where that occurs, the Lease shall be terminated immediately from that date of entry; and
- (b) give notice to the Lessee terminating the Lease and the Lease shall be terminated immediately from the date of that notice;

and, where the Lessor terminates the Lease under this clause, the Lessor will retain all of its rights in respect of any other breach by the Lessee of the Lessee's Obligations and the Lessee will not be released from any liability in respect of the Lessee's Obligations.

23.3 Lessor may remedy breach

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Obligations,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's reasonable costs and expenses of remedying each breach or default.

23.4 Acceptance of Amount Payable by Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers conferred on the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

23.5 Essential Terms

- (1) Each of the Lessee's Obligations in **clauses 5** (Lease Fee and other payments), **7** (Insurance), **8** (Indemnity), **9** (Maintenance, repair and cleaning), **10** (Building Requirements); **12** (Restrictions on use), **clause 13** (Common Areas); **16** (Statutory Obligations and notices); **18** (Restrictions on Assignment; No sub-letting or charging), are essential terms of this Lease but this **clause 23.5** does not mean or imply that there are no other essential terms in this Lease.

23.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease or upon the occurrence of a Persistent Breach, in addition to any other remedy or entitlement of the Lessor:

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term;
- (c) the Lessee covenants with the Lessor that if the Term is determined -
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by effluxion of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Site; and

- (d) the Lessee agrees that the covenant set out in this clause will survive termination or any deemed surrender at law of the estate granted by this Lease.

24. Disputes

24.1 Referral of Dispute: Phase 1

Except as otherwise provided any dispute arising out of this Lease is to be referred in the first instance in writing to the lessor's representative as nominated in writing by the Lessor from time to time (**Lessor's Representative**) who shall convene a meeting within 10 days of receipt of such notice from the Lessee or such other period of time as is agreed to by the parties between the Lessor's Representative and an officer of the Lessee for the purpose of resolving the dispute (**Original Meeting**).

24.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 24.1** of this Lease then the dispute shall be referred in writing to the CEO of the Lessor who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the parties between the CEO and the Lessee for the purpose of resolving the dispute.

24.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 24.2** of this Lease then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 2012* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

24.4 Payment of Amounts Payable

The Lessee must continue to pay the Amounts Payable in full until the date of the Arbitrator's decision or the date of an agreement between the Parties, whichever event is the earlier, and if upon resolution of the dispute the Lessee is deemed to have paid more than required, the Lessor will refund to the Lessee any such overpayment.

25. No Absolute Caveat

The Lessee nor any person on behalf of the Lessee will, without the prior written consent of the Lessor, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

26. Goods and services tax

26.1 Lessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the sublease of the Site or any goods, services or other Taxable Supply supplied under this Lease then, as from the date of any such introduction or application:

- (e) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (f) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

26.2 Increase in GST

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with this clause.

26.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to this clause the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

27. Notice

27.1 Form of delivery

A Notice to a Party must be in writing and may be given or made:

- (a) by delivery to the Party personally;
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by Notice to the other.
- (c) by addressing it to the Party and emailing it to the email address appearing in this Lease or any other email address nominated by a Party by Notice to the other.

27.2 Service of notice

A Notice to a Party is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 27.1** at the time of leaving the Notice, provided the Notice is left during normal business hours; and

- (c) if by post to an address specified in **clause 27.1**, on the third business day following the date of posting of the Notice; and
- (d) if by email, when despatched by email to an email address specified in **clause 27.1** of this Lease unless the time of dispatch is not on a Business Day or after 5 pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day.

27.3 Signing of notice

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 2015*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

28. General provisions

28.1 No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any Written Law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

28.2 Acts by agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

28.3 Statutory powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

28.4 Severance

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

28.5 Variation

This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.

28.6 Moratorium

The provisions of a statute which would, in any respect, affect the terms of this do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

28.7 Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

28.8 Payment of money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

28.9 Waiver

- (1) Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.
- (2) A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

28.10 Governing law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

28.11 Interpretation

In this Lease, unless expressed to the contrary:

- (a) Words using:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender includes each gender;
- (b) A reference to:
 - (i) a natural person includes a body corporate or local government; and
 - (ii) a body corporate or local government includes a natural person;
- (c) A reference to a professional body includes a successor to or substitute for that body;
- (d) A reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;

- (e) A reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) A reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) A reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) A reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to:
 - (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) Any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (k) If a Party comprises two or more persons:
 - (i) the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them; and
 - (ii) unless otherwise specified in **Item 1** of the Schedule it will be presumed that each person will have an equal shares in the Lease and hold their share as a tenant in common.
- (l) The agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include:
 - (i) an agreement not to permit that act or thing to be done or omitted to be done by the Lessee's Agents; and
 - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done; and
- (m) Except in the Schedule headings do not affect the interpretation of this Lease.

Schedule

Item 1. Lessee

XXX

Item 2. Land

Reserve 24308 being Lot 373 on Deposited Plan 219595 being the land comprised within Crown Land Title LR 3107 Folio 425.

Item 3. Site

That part of the Land depicted on the sketch annexed hereto as **Annexure 1**, and known as ["Shack X"].

Item 4. Term

5 years commencing on the Commencement Date

Item 5. Commencement Date

As soon as practical after obtaining Minister for Lands consent

Item 6. Lease Fee

To be paid annually in advance, with the first payment due on the Commencement date at the below rates:

- (a) \$2,900 per annum for year one;
- (b) \$3,100 per annum for year two;
- (c) \$3,250 per annum for year three;

to be increased annually by CPI after year three.

Item 7. Demolition Levy

\$200 per annum payable annually in advance, with the first payment due on the Commencement Date. To be increased annually by CPI.

Item 8. Review Date

- a) Subject to **Item 8(b)**, the Lease Fee and the Demolition Levy will be increased by CPI annually on the anniversary of the Commencement Date, in every year of the Term and any further term.
- b) The lease fee will follow the outlined increment increases in Item 6 for the first 3 years of the Term. The Lease Fee will be increased by CPI thereafter.

Item 9. Permitted Purpose

Short term holiday accommodation.

Item 10. Public Liability Insurance

Twenty million dollars (20,000,000.00).

Item 11. Further Term

5 years commencing on the expiry of the First Term as outlined in Item 4.

COPY

Signing page

EXECUTED by the parties as a Deed

2024

Signed on behalf of the City of Cockburn by an)
officer authorised under section 9.49A(4) of)
the *Local Government Act 1995*)

_____ Manger Property Services Nadine Weller
(Signed) (Position) (Print Full Name)

_____ Head of Property & Assets Joseph Saraceni
(Signed) (Position) (Print Full Name)

SIGNED by the said XXX)
)

in the presence of:

Witness sign:

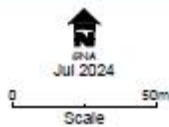
Witness print full name:

Address:

Occupation:

7_5599_001.docx

Annexure 1 - Sketch of Site



Naval Base Shacks

COPY

Annexure 2 – Minister for Lands’ consent



Department of Planning,
Lands and Heritage

Land Use Management

Case: 2401712
Our ref: File 50192-2004, IDA13835107.
Enquiries: Kevin Harrison, ph 9791 0860
Email kevin.harrison@dph.wa.gov.au

25th July 2024

Chief Executive Officer
City of Cockburn
PO Box 1215
Bibra Lake DC WA 6965

Email only eparkin@cockburn.wa.gov.au

Dear *Emily*

Section 18 Ministers Consent for proposed Lease Agreement Reserve 24308, City of Cockburn, Naval Base Shacks

Thank you for your recent correspondence regarding permission to Lease the Naval Base Shacks on Reserve 24308 which is set aside for the purpose of Recreation and Camping and managed by the City of Cockburn with power to lease for any term not exceeding 21 years subject to the consent of the Minister for Lands.

In accordance with section 18 of the *Land Administration Act 1997* (LAA) approval from the Minister for Lands is granted to the proposed Draft Lease Agreement provided to the Department of Planning, Lands and Heritage (DPLH) by email dated 26th June 2024 on the condition that the final document executed by the parties is on the same terms as that provided to DPLH with that email. If the final document executed by the parties is not on the approved terms, then it may be void under section 18 LAA.

Please note that this approval is for the purposes of section 18 LAA only and does not constitute an endorsement as to the terms and effect of the document. DPLH cannot provide any advice in respect of the Lease and recommends that each party obtain their own independent advice as to their rights and obligations under the Lease.

This approval is subject to the registration requirements of the *Transfer of Land Act 1893*. You will need to provide a copy of this letter to Landgate if the documents are to be lodged for registration at Landgate.

Postal address: Locked Bag 2506 Perth WA 6001 Street address: 140 William Street Perth WA 6000
Tel: (08) 6551 8002 info@dph.wa.gov.au www.dph.wa.gov.au
ABN 68 565 723 484

OFFICIAL

Should you have any enquiries please don't hesitate to contact me on any of the above details.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'K. Harrison', written in a cursive style.

Kevin Harrison
Senior Land Officer
Case Delivery

Annexure 3 – Rules in Relation to Common Areas

Boats, Caravans, or Trucks

(i) The Lessee must not and must not suffer or permit a person to park a boat, caravan or motor vehicle exceeding 3.5 tonnes in gross weight or 1.9 metres in height on the Land unless prior permission has been provided by the Lessor.

(ii) The Lessee must not and must not suffer or permit a boat to be parked on any other site within the Reserve, any boat parked must be parked within the lease area of the owner or users site.

(iii) The Lessee must not and must not suffer or permit a boat to be parked on any other site within the Reserve, any boat parked must be parked within the lease area of the lessee or users site.

(iv) The Lessee must not and must not suffer or permit a person to store a boat, caravan or motor vehicle on the Land

Dogs

(i) The Lessee acknowledges and agrees that it must at all times comply with the Dog Act 1976, including without limitation the requirement for all dogs to be on a leash at all times.

ii) City of Cockburn Rangers are to be contacted on 08 9411 3444 or in an emergency after hours 1300 658 877.

Anti-social or Noisy Behavior

(i) The City's CoSafe service regularly patrols the area for noisy or antisocial behaviour.

(ii) Concerns regarding the Naval Base Shacks can be reported to CoSafe on 1300 267 233 (24 hours), the Police on 131 444 or 000 in the event of an emergency.

Grassed Areas

(i) It is the Lessees responsibility to maintain the areas surrounding each shack.

(ii) All grassed areas must be kept clear to enable people to walk through with ease.

(iii) Vehicles, boats etc may only be parked on one side of each shack unless agreed to by the neighboring property.

(iv) Every site must be surrounded by grass unless prior written approval has been provided by the neighboring Lessees and formal approval provided by the City to replace the grass.

Water

(i) The Lessee must not and must not suffer or permit any person to extend the City's reticulated water system. Any illegal plumbing will be removed by the City at the cost of the Lessee.

Fire Restrictions

(i) No open fires are permitted on the Reserve at any time.

(ii) Wood Fired BBQ's are permitted during low fire risk times however any fire warnings must be strictly adhered too.

(iii) No rubbish is to be burnt off at anytime.

Roads

(i) The internal roads are to be used for the movement of licensed vehicles only. Any boat, caravan or motor vehicle exceeding 3.5 tonnes in gross weight or 1.9 metres in height will NOT be permitted on the roads unless prior permission has been provided by the Lessor.

Emergency Procedure

(i) These will be displayed on the Notice Boards installed at both the northern & southern ablution blocks.

In an Emergency telephone:

Fire Brigade, Police and Ambulance: 000

When you dial the emergency number:

- 1) Advise location
- 2) Provide your name and telephone number and any other information requested by operator

In a Non Emergency telephone:

Fire Brigade 1300 657 209

Police 131 444

Ambulance 131 233

City of Cockburn Contact Numbers:

Business hours 9411 3444

Rangers 9411 3444

Co-Safe 1300 267 233

Emergency After Hours Assistance 1300 658 877

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