

# Ground Lease for Wave Park Surf Sports Recreation & Leisure Facility: Lot 39 (No. 596) Canning Hwy, Alfred Cove

City of Melville

URBNSURF (Perth) Pty Ltd



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# Details

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## Parties

### **City of Melville**

of Locked Bag 1, Booragoon, Western Australia 6954  
(Lessor)

### **URBNSURF (Perth) Pty Ltd (ACN 615 307 572)**

of 2, 15 Ogilvie Road, Mount Pleasant, Western Australia 6153  
(Lessee)

## Background

- A The Lessor is:
- (a) registered as proprietor of an estate in fee simple in Lot 39; and
  - (b) the management body of Lot 9789 under the Management Order.
- B The Lessor has agreed to lease and the Lessee has agreed to take a lease of a portion of the Land, being more particularly the Premises, upon the terms and conditions contained in this Lease.

## Agreed terms

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### 1. Definitions & Interpretation

#### 1.1 Definitions


In this Lease, unless otherwise required by the context or subject matter:

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

**Authority** means every governmental or semi-governmental body, municipal council and any other board person or authority now or in the future exercising under any Act any control or jurisdiction over or power in connection with the Premises or with any business at any time conducted on or from the Premises and **Authorities** shall have a corresponding meaning;

**AHD** means the Australian Height Datum;

**Building Permit** means a building permit issued under the *Building Act 2011* by a relevant permit Authority for the construction of the Development;

Handwritten signature and initials in the bottom right corner of the page.

**Bowling Club Premises** means the clubhouse bowling greens and ancillary structures constructed on the Premises;

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

**Car Park Works** means any works necessary to construct and complete the Public Car Park;

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

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

**Conditions Precedent** means the conditions precedent contained in **clause 2.1**;

**Contaminated Materials** is defined in **clause 9.6(2)**;

**Contaminated Sites Act** means the *Contaminated Sites Act 2003 (WA)* as amended from time to time;

**Contamination Costs** is defined in **clause 9.6(2)**;

**Corporations Act** means the *Corporations Act 2001 (Cth)* as amended from time to time;

**CPI** means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics or its equivalent determined in accordance with **clause 6.3**;

**CPI Review** means the rent review process described in **clause 6.3** or the process described in **clause 13.4** (as the case may be);

**Date for Completion** means the date being 24 months from the Commencement Date;

**Demolition Permit** is defined in **clause 2.1(b)(vi)**;

**Development** means the construction of the Wave Park in accordance with the Plans and Specifications;

**Development Approvals** means all approvals and permits from any relevant Authority which the Lessee requires to construct the Development including approvals under the City of Melville Local Planning Scheme No .6;

**Dispute** means any dispute, controversy or claim arising out of or in relation to this Lease;

**Dispute Notice** means a written notice served under **clause 24(2)**;

**Dispute Resolution Representative** means the Lessee's Dispute Resolution Representative or the Lessor's Chief Executive Officer and a reference to Dispute Resolution Representatives is a reference to both of them;

**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 Premises on the date of this Lease;

**Expert** means any one of:



- (a) a quantity surveyor who is a member of the Western Australian Chapter of the Australian Institute of Quantity Surveyors; or
- (b) a civil engineer who is a member of the Western Australian Division of Engineers Australia; or
- (c) a qualified demolition contractor based in Western Australia,

each of whom shall have at least ten years of appropriate experience, appointed by the Lessor pursuant to **clause 13.5(1)**;

**First Further Term** means the initial Further Term specified in **Item 3(a)** of the Schedule;

**Further Terms** means the further terms specified in **Item 3** of the Schedule;

**Improvements** mean all constructions, buildings and fixtures, erected on the Premises by the Lessee during the Term and includes the improvements forming the Development;

an **Insolvency Event** occurs in respect of a person when that person:

- (a) informs its creditors generally that it is insolvent;
- (b) has a meeting of its creditors called with a view to entering a scheme of arrangement or executing a deed of company arrangement;
- (c) enters a scheme of arrangement except for reconstruction whilst solvent;
- (d) executes a deed of company arrangement with creditors;
- (e) has a controller or liquidator (as those terms are defined in the Corporations Act) of its property or part of its property appointed;
- (f) is the subject of an application to a court for its winding up, which application is not stayed within ten (10) Business Days;
- (g) has a winding up order made in respect of it;
- (h) has an administrator appointed under section 436A, 436B or 436C of the Corporations Act;
- (i) enters into voluntary liquidation; or
- (j) fails to comply with, or apply to have set aside, a statutory demand within fourteen (14) days of the time for compliance and:
  - (i) if the corporation applies to have the statutory demand set aside within fourteen (14) days of the time for compliance, the application to set aside the statutory demand is unsuccessful; and
  - (ii) the corporation fails to comply with the statutory demand within seven (7) days of the order of the court dismissing the application;

**Interest Rate** means the rate at the time the payment falls due being the interest rate adopted by the City on money owing to the local government each year for its annual budget. For the 2016-2017 financial year the interest rate was 8%;

**Land** means the land described at **Item 1** of the Schedule;

**Lagoon** means man made water body within which surfable waves are generated for the purpose of surfing activities;

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

**Lease Deposit** means the amount of \$100,000.00;

**Lease Deposit Due Date** means the date that the Lease is executed by the Parties;

**Lease Guarantee** means the bank guarantee in favour of the Lessor:

- (a) authorising the Lessor to draw on the money guaranteed:
  - (i) if any Amounts Payable remain unpaid for 7 days after becoming due, in relation to which a demand or Notice been given to the Lessee; or
  - (ii) to recover the cost to the Lessor of rectifying any breach of any of the Lessee's Covenants (other than the covenant to pay the Amounts Payable) which has not been rectified by the Lessee within 14 days of being notified of the breach; and
- (b) for the amount specified in **Item 8** of the Schedule;

**Lessee's Agents** includes:

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

**Lessee'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 Lessee;

**Lessee's Dispute Resolution Representative** means the person nominated by the Lessee from time to time to be the Lessee's dispute resolution representative;

**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;

**Living Stream** means the open drain located on Lot 9789 which currently runs north/south adjacent to the building commonly known as the "Atwell Art Gallery" and into the Swan River at Alfred Cove;

**Lot 39** is defined in **Item 1(1)(a)** of the Schedule;

**Lot 9789** is defined in **Item 1(2)(b)** of the Schedule;

**Management Order** means a vesting order published in the Government Gazette under the former Lands Act 1933 (which now has the status of a Management Order made by the Minister for Lands under section 46 of the *Land Administration Act 1997*), or a Management Order made under section 46 of the *Land Administration Act 1997*, under which Lot 9789 was vested in the Lessor to be held for the purpose of 'Recreation';

**Market Review** means the rent review process specified in **clause 6.4**;

**Minister for Lands** means the Minister for Lands as the body corporate contained under section 7 of the *Land Administration Act 1997*;

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

**Part of Lot 9789** means part of Lot 9789 on Deposited Plan 182892 being part of the land comprised in Crown Land Title LR3141 Folio 868 and as shown in **Annexure 1**;

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

**Plans and Specifications** means the plans and specifications relating to the Development or the Public Car Park as approved by the Lessor (in its capacity as landlord which approval must not be unreasonably withheld or delayed), and any relevant Authorities;

**Premises** means the premises described in **Item 1(2)** of the Schedule;

**Premises Plan** means the plan of the Premises, annexed to this Lease as **Annexure 2**;

**Public Car Park** means the public car park to be constructed on Lot 9789 by the Lessee on the location shown on the plan annexed hereto as **Annexure 3**;

**Rehabilitation Cost** means the cost of and incidental to:

- (a) removing any Improvements, buildings, fittings and fixtures constructed or located on the Premises; and
- (b) restoring the Premises and ground levels (RL and AHD) to a condition consistent with the condition of the land prior to the erection of such Improvements, buildings, fixtures and fittings, following the removal of any Improvements, buildings, fixtures and fittings in accordance with paragraph (a);

**Rehabilitation Guarantee** means the bank guarantee(s) provided by the Lessee in favour of the Lessor, in the sum(s) specified in **Item 9** of the Schedule, and authorising the Lessor to draw on the money guaranteed for any Rehabilitation Cost incurred by the Lessor

**Rehabilitation Review** is defined in **clause 13.5(1)**;

**Rent** means the rent specified in **Item 5** of the Schedule as varied from time to time under this Lease;

**Rent Commencement Date** is defined in **Item 11.3** of the Schedule;

**Rent Review Date** means a date identified in **Item 6** of the Schedule;

**Required Purpose** means the permitted purpose specified in **Item 7** of the Schedule;

**Review Date** means a date identified in **Item 10** of the Schedule;

**RL** means the reduced level;

**Second Further Term** means the second Further Term specified in **Item 3(b)** of the Schedule;

**Schedule** means the Schedule to this Lease;

**Service Infrastructure** includes any works in, on or over the Premises for the provision or passage of electricity, water, sewerage, drainage or communications and includes roads, and excludes all above ground structures not related to the provision of utilities;

**Term** means the term of years specified in **Item 2** of the Schedule and any Further Term;

**Termination** means expiry by effluxion of time or sooner determination of the Term or any period of holding over;

**Valuer** means an independent valuer who:

- (a) is a fellow or an associate, of not less than 10 years' standing, of the Australian Property Institute and is practising and licensed under the *Land Valuers Licensing Act 1978* (WA) at the time of appointment; and
- (b) has had not less than 5 years practical experience in Western Australia in the valuation of ground leases of premises of the same general classification as the Premises;

**WAPC** means the Western Australian Planning Commission;

**Wave Park** means a surf sports, recreation and leisure facility incorporating a surf lagoon (**Lagoon**), together with ancillary built forms and amenities to be constructed on the Premises; 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.

## 1.2 Interpretation

In this Lease, unless expressed to the contrary:

- (a) words importing:
  - (i) the singular includes the plural and vice versa; and
  - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to:
  - (i) a natural person includes a body corporate or local government;
  - (ii) a body corporate or local government includes a natural person;
  - (iii) a professional body includes a successor to or substitute for that body;
  - (iv) 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;
  - (v) a statute includes an ordinance, code, regulation, award, local planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
  - (vi) a right includes a benefit, remedy, discretion, authority or power;

- (vii) 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;
  - (viii) this Lease or provision of this Lease or any other deed, agreement, instrument or contract includes a reference to:
    - (A) both express and implied provisions; and
    - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
  - (ix) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
  - (x) 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; and
  - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- (d) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include:
- (i) covenants not to permit that act or thing to be done or omitted to be done by the Lessee's Agents; and
  - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them 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.

### 1.3 Headings

Except in the Schedule, headings do not affect the interpretation of this Lease.

## 2. Conditions Precedent

### 2.1 Conditions Precedent

- (1) The Lessor and the Lessee agree that this Lease (with the exception of **clauses 2.1 - 2.5** (inclusive), **7, 12, 13, 24 and 30**) is conditional upon:
- (a) the Lessor satisfying the following conditions precedent (**Lessor's Conditions Precedent**):
    - (i) the Bowling Club Premises being vacated, and all other property interests relating to the Premises being terminated, by 1 October 2018;

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- (ii) the termination of all other leases, licences and other property interests relating to the Premises;
- (iii) the Lessor obtaining the unconditional approval of the relevant Authority of only one of the following:
  - (A) firstly, agreement by the Lessor and the Department of Lands to the transfer of Part of Lot 9789 to the Lessor, or, if this is not able to be achieved;
  - (B) secondly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 30 years, or, if this is not able to be achieved;
  - (C) thirdly, to the granting of the lease by the Lessor to the Lessee of Part of Lot 9789 for a term of 21 years,
- (b) the Lessee satisfying the following conditions precedent (**Lessee's Condition Precedent**):
  - (i) the Lessee being reasonably satisfied with the results of its additional feasibility studies and investigations and technical enquiries and tests in respect of the Premises, including in particular the results of on-site geotechnical and environmental investigations;
  - (ii) the WAPC consenting to the Lease pursuant to the requirements of the *Planning & Development Act 2005*;
  - (iii) the Lessee entering into appropriate arrangements with services providers (including Western Power and the Department of Water) for the provision of essential services to operate the Wave Park;
  - (iv) the Lessee obtaining the Development Approvals on terms satisfactory to the Lessee and the Lessor (each acting reasonably);
  - (v) the Lessee obtaining 100% of the required unconditional project finance to construct the Development to operating stage, on terms satisfactory to the Lessee in its absolute discretion together with a project budget detailing construction costs for the Development;
  - (vi) a demolition permit being issued to the Lessee for the demolition of the Bowling Club Premises (**Demolition Permit**);
  - (vii) the Lessee obtaining a Building Permit enabling the commencement of the Development; and
  - (viii) the Lessee providing to the Lessor the Lease Guarantee and the Rehabilitation Guarantee,

by 28 February 2019, or such later date as may be agreed by the Parties in writing and subject to the prior approval of the Council of the Lessor (**Sunset Date**).

## 2.2 Lessee's Obligations

The Lessee must take all reasonable steps to obtain the fulfilment of the Lessee's Conditions Precedent, including but not limited to:

- (a) preparing and submitting to the responsible Authorities the Development Approvals;

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- (b) preparing and submitting an application to demolish the Bowling Club Premises; and
- (c) executing all necessary documents to satisfy the Conditions Precedent.

## 2.3 Lessor's Obligations

- (1) The Lessor must take all reasonable steps to obtain the fulfilment of the Lessor's Conditions Precedent including but not limited to:
  - (a) submitting the Lease to the WAPC for approval; and
  - (b) seeking possession of the Bowling Club Premises, and termination of all other property interests relating to the Premises, by no later than 1 October 2018.
- (2) Subject always to **clause 25**, the Lessor agrees to provide reasonable assistance to the Lessee in satisfying the remaining Conditions Precedent, including executing all necessary documents, or arranging for execution of documents to satisfy the Conditions Precedent, including without limitation signing forms or applications necessary for the Lessee to obtain the Development Approvals and the Demolition Permit.
- (3) Upon reasonable notice, the Lessor agrees to permit access to the Lessee and any person authorised by the Lessee with all necessary plant and equipment access to the Premises (save and except the Bowling Club Premises until vacated) for the purpose of undertaking the investigations and studies referred to in **clause 2.1(b)(i)** on the following terms and conditions:
  - (a) the Lessee must use its best endeavours to carry out the investigations and studies in a manner which causes as little inconvenience as is reasonably possible to the Lessor and any user or tenant of the Premises;
  - (b) the Lessee must, at its sole cost, repair any damage caused to the Premises and/or any services by the Lessee or any of the Lessee's Agents:
    - (i) while carrying out works and exercising rights under this clause; and
    - (ii) arising out of or in any way connected to the testing/investigations; and
    - (iii) as a result of a breach of its obligations under this clause,as soon as possible after the damage occurs and the Lessee must promptly notify the Lessor in writing of any such damage;
  - (c) following completion of each test or investigation, the Lessee must leave the Premises in a neat and tidy condition;
  - (d) the Lessee agrees with the Lessor that it is responsible and liable for all loss, damage, cost, liability, expense or payment (including of an economic or consequential nature) arising from or any way related to the testing or investigations, or access granted pursuant to this clause, including without limitation any damage caused to the Premises and/or any services;
  - (e) the Lessee must at all times fully comply with the requirements of all legislation and all regulations, and with the requirements of public, local and other authorities in any way affecting or applicable to the testing/investigations; and
  - (f) prior to accessing the Premises, the Lessee must provide evidence to the Lessor that it (or its subcontractors or agents) have appropriate and adequate insurance in respect of the proposed test or investigation.

## 2.4 Satisfaction of Conditions

Each Party must give written notice to the other Party of the fulfilment of each of the Conditions Precedent as soon as possible after the condition has been satisfied.

## 2.5 Conditions Precedent unsatisfied

- (1) If any of the Conditions Precedent will not be satisfied by the dates provided for in **clause 2.1** or in any event by the Sunset Date then the Parties will meet as soon as reasonably practicable prior to the expiration of such time limit and where possible no later than 3 months prior to the Sunset Date to negotiate in good faith and acting reasonably to agree on a new date for satisfying that Conditions Precedent. To avoid doubt, the Parties acknowledge and agree that any extension to the Sunset Date must first be approved by the Council of the Lessor.
- (2) If the Parties (acting reasonably and in good faith) do not agree to extend such time limit or the Conditions Precedent are not satisfied within the agreed extended time period, then the Parties agree:
  - (a) either Party not being in default may terminate this Lease by giving at least 14 days written notice to that effect to the other Party; and
  - (b) upon such termination:
    - (i) no Party will have any right against or obligation to the other Party under or in relation to the Lease, except with respect to any right of action which accrues in favour of that Party prior to the termination of the Lease; and
    - (ii) the Lessee must:
      - (A) remove any improvement, fittings or property constructed or located on the Premises by the Lessee; and
      - (B) following the removal any improvement, fittings or property in accordance with **clause 2.5(2)(b)(ii)(A)** restore and rehabilitate the Premises and any surrounding land, to the same or substantially the same condition as it was immediately prior to the erection or construction of any improvement, fittings or property.
- (3) A Party may not terminate its involvement in this Lease pursuant to **clause 2.5(2)(a)** unless it has reasonable and bona fide grounds to believe and does believe that the defaulting Party has not taken all reasonable steps to comply with its specific obligations under **clause 2** of this Lease.

## 3. Grant of lease

The Lessor leases to the Lessee the Premises for the Term subject to:

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the Lease and observance of the Lessee's Covenants.

## 4. Quiet enjoyment

Except as provided in the Lease, subject to the Lease and observance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or



disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

## 5. Rent and other payments

### 5.1 Rent

The Lessee covenants with the Lessor to pay to the Lessor the Rent in the manner set out at **Item 5** of the Schedule.

### 5.2 Rates, Charges and Outgoings

- (1) The Lessee covenants with the Lessor that the Lessee shall from the Commencement Date 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 Premises:
  - (a) local government services and other charges, including but not limited to rubbish collection charges and the emergency services levy;
  - (b) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
  - (c) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection AND the Lessee shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee;
  - (d) land tax; and
  - (e) 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 Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 5.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

### 5.3 Interest

Without affecting the rights, powers and remedies of the Lessor under this Lease, the Lessee covenants with the Lessor 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.

### 5.4 Costs

- (1) The Lessee covenants with the Lessor to pay to the Lessor on demand:
  - (a) all duty (including fines and penalties but only to the extent the fines and penalties are payable because of the Lessee's delay) payable under the *Duties Act* 2008 and other statutory duties or taxes payable on or in connection with this Lease;
  - (b) all registration fees in connection with this Lease;
  - (c) the fee imposed by the WAPC to provide its consent to this Lease; and

- (d) any other fees and duties that become payable.
- (2) The Lessee covenants with the Lessor to pay to the Lessor all reasonable costs, legal fees, disbursements and payments reasonably incurred by or for which the Lessor is liable in connection with:
  - (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
  - (b) any breach of covenant by the Lessee or the Lessee's Agents; and
  - (c) the preparation and service of a notice under section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach.
- (3) The Parties must pay their own costs of and incidental to the instructions for and the preparation, negotiation and execution of this Lease.

## **5.5 Payment of Money**

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.

## **5.6 Accrual of amounts payable**

Amounts Payable accrue on a daily basis.

# **6. Rent Review**

## **6.1 Rent to be Reviewed**

The Rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next Rent Review Date.

## **6.2 Methods of Review**

The review will be either based on CPI or a Market Review. The basis for each rent review is as identified for each Rent Review Date in **Item 6** of the Schedule.

## **6.3 CPI Review**

- (1) A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date.
- (2) If there is a decrease in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date, the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period.
- (3) Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the Parties shall endeavour to agree upon the substitution of the CPI with an

equivalent index, or failing agreement by the Parties, the substitution shall be made by a Valuer appointed in accordance with **clause 6.4(3)(a)**.

- (4) For the sake of clarity, the Rent to be paid following a CPI review will be calculated as follows:

$$\text{Rent} = \frac{A \times B}{C}$$

where –

A = Rent payable for the Lease year last concluded;

B = CPI for the last quarter immediately preceding the first day of the Lease year under review;  
and

C = CPI for the last quarter immediately precedent the first day of the Lease year last concluded.

## **6.4 Market Review**

### **(1) Market Rent Review**

- (a) A rent review based on market rent will establish the current market rent for the Premises by agreement between the Parties and failing agreement, will be determined in accordance with the following provisions.
- (b) In this **clause 6.4**, “current market rent” means the rent obtainable for the Premises in a free and open market if the Premises was unoccupied and offered for rental for the use for which the Premises is permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:
  - (i) any improvements made or effected to the Premises by the Lessee; and
  - (ii) any rent free periods, discounts or other rental concessions.

### **(2) Lessor’s Market Rent Notice**

- (a) The Lessor must advise the Lessee in writing of the amount it considers to be the current market rent for the Premises at least thirty days prior to the relevant Rent Review Date (**Market Rent Notice**). To avoid doubt, the current market rent for the Premises will be determined by reference to an independent market valuation report prepared by the Lessor at its cost.
- (b) The Lessee must give notice to the Lessor to advise that the Lessee accepts, disputes or rejects the current market rent within fourteen (14) days of service of the Market Rent Notice.
- (c) If the Lessee does not give the notice specified in **clause 6.4** the Lessee will be deemed to have accepted the current market rent as specified in the Market Rent Notice.

### **(3) Lessee’s Valuation Report**

- (a) If the Lessee disputes or rejects the current market rent specified in the Market Rent Notice then within fourteen (14) days of the Market Rent Notice, the Lessee shall at the expense of the Lessee request a valuer (**Valuer**) licensed under the *Land Valuers Licensing Act 1978*, to be appointed by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the

Commencement Date by that Institute) to prepare a valuation report to determine the current market rent for the Premises (**Lessee's Valuation Report**).

- (b) The Lessee must provide a copy of the Lessee's Valuation Report to the Lessor within five (5) days of the date of the Lessee's Valuation Report.
- (c) The Lessor must give notice to the Lessee to advise that the Lessor accepts, disputes or rejects the current market rent as specified in the Lessee's Valuation Report within fourteen (14) days of service of the Lessee's Valuation Report.
- (d) If the Lessor does not give the notice specified in **clause 6.4** the Lessor will be deemed to have rejected the current market rent specified in the Lessee's Valuation Report.

(4) **Joint Valuation**

If the Lessor disputes or rejects the current market rent specified in the Lessee's Valuation Report then the Parties shall, in the first instance, request that their respective Valuers re-assess their valuations in order to reach a consensus.

(5) **Final Valuer**

- (a) If the Valuers are unable to reach a consensus in accordance with **clause 6.4(4)**, then the current market rent for the Premises will be determined by a third Valuer (**Final Valuer**), at the request of both Parties.
- (b) If requested by the Lessor, the Lessee must pay to the Lessor up to half of the costs for the Final Valuer.
- (c) The Final Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the Parties. The Parties will be entitled to make submissions to the Final Valuer.

**6.5 Rent will not decrease upon review**

Notwithstanding the provisions in this clause, the Rent payable from any Rent Review will not be less than the Rent payable on and from the period immediately preceding such Rent Review as adjusted in accordance with the CPI. .

**6.6 Lessor's right to review**

Within 6 months after the relevant Rent Review Date, the Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made. For the avoidance of doubt, the lessor shall not be able to implement a Market Rent Review if the review has not been initiated within 6 months after the relevant Rent Review Date.

## **7. Insurance**

**7.1 Lessee's responsibility to insure**

- (1) The Lessor and Lessee agree that as the Lessee occupies the Premises pursuant to this Lease as if it were the owner of the Premises and in that regard:

- (a) the Lessee is required to take out and maintain all insurances that in the Lessor's reasonable opinion a prudent landowner would take out and maintain in respect of the Premises; and
  - (b) the Lessor is not required to take out or maintain any insurance in respect of the Premises and the Improvements.
- (2) Notwithstanding **clause 7.1(1)**, the Lessee must at a minimum effect and keep current during the Term and any holding over period policies of insurance:
- (a) to cover the full replacement costs of the Improvements and Lessee's fixtures, on the Premises to their full insurable value against all usual risks against which in the reasonable opinion of the Lessor from time to time a lessee should ordinarily insure;
  - (b) for public liability with a cover of not less than \$20,000,000 in respect of any one occurrence; and
  - (c) an insurance policy covering the risk of spillage of fuels, oils, chemicals, dangerous compounds or substances or any other pollutants on or from the Premises and the cost of rectifying and compensating relevant Parties for, any resultant damages to adjacent land and waterways.

## 7.2 Policies

The insurance policies that the Lessee takes out pursuant to **clause 7.1** must:

- (a) be with a reputable insurer;
- (b) note the Lessor's interest on the policy; and
- (c) cover events occurring while the policy is current regardless of when claims are made.

## 7.3 Evidence of insurance and renewal

The Lessee must on demand produce to the Lessor proper evidence of the policies and their renewal.

## 7.4 Variation and voiding Lessee's insurance policies

- (1) The Lessee may not materially vary or surrender, nor cancel any of the policies referred to in **clause 7.1** without the Lessor's consent, which consent may be withheld in the Lessor's absolute discretion.
- (2) The Lessee must not do or allow to be done anything in or near the Premises as a result of which any insurances in respect of the Premises taken out by the Lessor or the Lessee may be invalidated or avoided or the rate of premium on any insurance may be liable to be increased (except insofar as an approved development may lead to an increased premium) or any claim under that insurance may be lawfully refused in whole or in part.
- (3) If the Lessee or the Lessee's Agents do or permit to be done anything which has the effect of invalidating or avoiding any policy of insurance taken out by the Lessor or the Lessee or by virtue of which the insurer may lawfully refuse a claim in whole or in part, then the Lessee is responsible for and must pay on demand any resulting damage or loss which the Lessor suffers or incurs and (without limiting any other rights of the Lessor) must pay to the Lessor on demand any increased amount of premium over the existing premium which may be charged on any such insurance.

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## 7.5 Notification

The Lessee must notify the Lessor immediately if something happens which could give rise to a claim under or could prejudice any insurance policy or an insurance policy is cancelled.

## 7.6 Claims and application of insurance monies

The Lessee must as soon as reasonably practicable expend all money recovered in respect of any insurance under **clause 7.1** in the satisfaction of the payment of damages or the reinstatement or replacement of the items for which that money is received to the extent that that money is sufficient for that purpose, including but not limited to the reinstatement or reconstruction of the Improvements in accordance with **clause 23**.

## 7.7 Lessee affecting insurance

- (1) In respect of any policy of insurance the Lessor has taken out the Lessee must not do anything:
  - (a) which may prejudice that insurance; or
  - (b) which may increase the premiums for that insurance without the consent of the Lessor.
- (2) If the Lessee does anything which increases the premium payable under any of the Lessor's insurances of the Improvements or any other insurance in respect of the Improvements or the contents of the Improvements the Lessee must reimburse to the insured Party affected the amount of the increase.

# 8. Indemnity

## 8.1 Lessee responsibilities

The Lessee occupies and enters and uses the Premises at its own risk in all respects.

## 8.2 Indemnity

- (1) 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, or brought, maintained or made against the Lessor or 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:
  - (i) the use or occupation of the Premises by the Lessee;
  - (ii) any work carried out by or on behalf of the Lessee on the Premises or the Public Car Park;
  - (iii) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;

- (iv) any default by the Lessee in the observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
  - (v) any negligent act or omission or wilful misconduct of the Lessee.
- (2) The Lessee's indemnity does not apply to the extent that the Lessor caused or contributed to the loss, injury, damage or death by the negligent act or omission or wilful misconduct of the Lessor or its servants, agents, contractors or invitees.

### **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 this clause 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 any negligent act or omission or wilful misconduct of the Lessor, or its servants, agents, contractors or invitees.

### **8.5 Release**

- (1) The Lessee releases to the full extent permitted by law, the Lessor and the Minister for Lands from:
  - (a) 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 Premises or arising from the Lessee's use or occupation of the Premises; and
  - (b) loss of or damage to the Premises or personal property of the Lessee,

except to the extent that such loss or damage arises out of any negligent act or omission or wilful misconduct 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.

### **8.6 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 Premises however occurring, except to the extent that such loss or damage arises out of any negligent act or omission or wilful misconduct of the Lessor or its servants, agents, contractors or invitees.

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- (2) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor:
- (a) is registered as the proprietor in fee simple of the Land; and
  - (b) remains the management body of Lot 9789 under a management order.

## **9. Development of Wave Park**

### **9.1 Construction of Public Car Park**

- (1) Prior to completion of the Development, the Lessee covenants and agrees with the Lessor to construct, at its cost, the Public Car Park to the satisfaction of the Lessor (acting reasonably).
- (2) The Lessor agrees that the Lessee and its contractors may have access to Lot 9789 from the Commencement Date, with all necessary plant and equipment, for the purpose of carrying out the Car Park Works. The Lessee must comply with all reasonable directions of the Lessor in respect of access to Lot 9789 and security of Lot 9789.
- (3) Following completion of the Public Car Park, the Parties agree that:
- (a) the Lessee and its invitees will have the right in common with members of the public to use the Public Car Park for parking; and
  - (b) the Lessee will reimburse the Lessor, within 14 days of receipt of an invoice from the Lessor, half of any cost reasonably incurred by the Lessor in repairing and maintaining the Public Car Park.

### **9.2 Development**

- (1) The Parties acknowledge and agree that:
- (a) the Lessee intends to construct the Development on the Premises; and
  - (b) the Premises will be provided to the Lessee on an "as is" basis.
- (2) The Lessee covenants and agrees to obtain all necessary approvals for the Development and the construction of the Public Car Park, including without limitation a Development Approval from the Lessor in its capacity as the responsible local authority.
- (3) The Lessee must submit all plans, specifications and procedures for the Development and the Public Car Park, including the Plans and Specifications, to the Lessor (in its capacity as landlord and not as responsible authority) for approval prior to seeking the Development Approvals, which approval the Lessor may not unreasonably withhold or delay, but may impose reasonable conditions upon.
- (4) The Lessee must carry out and complete the construction of the Public Car Park and the Development by the Date for Completion in accordance with:
- (a) the Plans and Specifications;
  - (b) and any other reasonable directions or approvals given or granted by the Lessor (in its capacity as landlord); and
  - (c) any Development Approval.



- (5) For information purposes a general timeline of the milestones for the Development is annexed hereto as **Annexure 4**.

### 9.3 Standard of works

- (1) The Lessee must ensure that all works which the Lessee carries out or is required to carry out are carried out only:
- (a) by contractors and tradesmen of a standard consistent with the construction of a first-class development;
  - (b) in a proper and workmanlike manner;
  - (c) in accordance with the Plans and Specifications; and
  - (d) in accordance with all laws and requirements of all Authorities.
- (2) Upon reasonable request, the Lessee must provide the Lessor with updates regarding the works conducted pursuant to the Development and the Public Car Park.
- (3) At the completion of the Development and the Public Car Park, the Lessee must provide a copy of all certificates from relevant Authorities evidencing that the works comply with all laws and the requirements of Authorities and remove any refuse in connection with the Lessee's works from the Premises and the Land.

### 9.4 Insurance obligations for Development

The Lessee, in relation to the Development and the Car Park Works, must ensure that its contractors maintain at all times during the carrying out of the Development and the Car Park Works:

- (a) the insurance required by any Written Law in respect of all persons employed by the contractors in connection with the Development or the Car Park Works;
- (b) public risk insurance for a sum of not less than \$20,000,000.00 in respect of any one claim, in the name of the Lessee and the Lessor for their respective rights and interests; and
- (c) a "contractor's all risks" (or equivalent) policy in respect of the Development and the Car Park Works (to the full value of the Development and the Car Park Works) which policies are to remain in force until the last to expire of any defects liability periods stipulated in the Lessee's relevant building contract(s) for the Development and the Car Park Works.

### 9.5 Cost of Development

- (1) Subject to **clause 9.6(2)**, the Lessee acknowledges that it is fully responsible for all works necessary to construct the Development and the Public Car Park, including without limitation:
- (a) the provision of essential services to the Premises, including Western Power High Voltage power upgrades, groundwater abstraction and reinjection costs (physical, professional and statutory) and connection to water, sewer and natural gas; and
  - (b) design and development costs of the Development.
- (2) For the avoidance of doubt, the Lessor is not required to connect, provide or procure the connection of any services to the Premises or the Land.

## 9.6 Demolition of Bowling Club Premises

- (1) Subject to **clause 9.6(2)**, the Lessee acknowledges and agrees with the Lessor that it will be responsible for, and bear the cost of, the demolition and removal of the Bowling Club Premises and any other infrastructure or other improvements located on the Bowling Club Premises.
- (2) Subject to **clause 9.6(3)**, the Lessor agrees to reimburse the Lessee for any cost reasonably incurred by the Lessee which directly relate to the removal of contaminated soil or similar material (**Contaminated Materials**) from the area of the Bowling Club Premises in respect of which the Bowling Club clubhouse building and outbuildings is constructed, including costs associated with the excavation, handling, treatment, off-site disposal, certification and management of such Contamination Materials (**Contamination Costs**) capped to a maximum amount of \$200,000.00 (including GST).
- (3) The Lessee must provide the Lessor with details, to its reasonable satisfaction, of the Contaminated Materials and the Contamination Costs, including without limitation the provision of invoices and similar such information and details.

## 9.7 Water Allocation

- (1) The Lessee must secure its own water licence and water allocation for the Development and the operation of the Development.

## 9.8 Lessee owns improvements

Any improvements constructed on the Premises by the Lessee remain the property of the Lessee during the Term, such that the Lessee owns and is completely responsible for such improvements.

# 10. Maintenance and repair

## 10.1 Generally

The Lessee agrees during the Term and for so long as the Lessee remains in possession or occupation of the Premises to:

- (a) keep the Premises and the Improvements in good substantial and functional repair, order and condition;
- (b) expeditiously repair and make good any damage to the Premises or the Improvements to the reasonable satisfaction of the Lessor; and
- (c) maintain drains, pipes and other conduits originating in or connected to the Premises in a clean and free flowing condition.

## 10.2 Acknowledgement of state of repair of Premises

- (1) Subject to **clause 10.2(3)**, the Lessee accepts the Premises in its present condition relying upon its own enquiries and investigations.
- (2) The Lessor does not expressly or impliedly warrant that the Premises are now or will remain suitable or adequate for all or any of the purposes of the Lessee or for the business which the Lessee is authorised to conduct thereon and to the extent permitted by law, all warranties (if any) as to suitability and adequacy of the Premises implied by law are hereby expressly negated.
- (3) The Lessor agrees to provide to the Lessee copies of regulatory correspondence and consulting reports it has in respect of the Contaminated Sites Act and the Premises being classified as

“remediated for restricted use”, save and except any report or correspondence that the Lessor (acting reasonably) deems to be confidential.

### **10.3 No obligation on Lessor to repair or maintain**

- (1) The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements on the Premises, 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 on the Premises.
- (2) Any development proposed on the Premises during the Term shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained all necessary statutory approvals.

## **11. Use**

### **11.1 Restrictions on use**

The Lessee must not and must not suffer or permit a person to:

- (a)
  - (i) use the Premises or any part of it for any purpose other than for the Required Purpose; or
  - (ii) use the Premises 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 Premises any harmful, offensive or illegal act, matter or thing;
- (c) do or carry out on the Premises anything which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties (however, the Lessor acknowledges and agrees that the Premises will be used for a Wave Park, and therefore some noise is to be expected);
- (d) store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:
  - (i) any such storage must comply with all relevant statutory provisions;
  - (ii) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
  - (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
  - (iv) upon the request of the Lessor, the Lessee will provide a manifest of all dangerous compounds or substances stored on the Premises.

### **11.2 Signs**

Other than in accordance with approved Plans and Specifications, the Lessee must not affix any signs on or in the Land without first obtaining the written approval of the Lessor which approval must not be unreasonably withheld or delayed.

### **11.3 Environmental protection**

If the Lessee pollutes the Land, the Lessee must promptly:

- (a) undertake all audits, tests, surveys and other investigations necessary to determine the nature and extent of the pollution;
- (b) notify the Lessor of the nature and extent of the pollution and the steps the Lessee proposes to take to control and remove the pollution;
- (c) do everything necessary to control and remove the pollution from the Land; and
- (d) notify the relevant Authorities of the nature and extent of the pollution and the steps the Lessee proposes to take to control and remove the pollution; and
- (e) pay the Lessor's reasonable costs, charges and expenses in connection with:
  - (i) monitoring the Lessee's actions; and
  - (ii) satisfying the Lessor that the Lessee has complied with the Lessee's obligations, under this **clause 11.3**.

#### **11.4 No Smoking**

The Lessee must not suffer or permit a person to smoke on the Premises.

#### **11.5 No Pollution**

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, water matter, oil and other pollutants.

#### **11.6 No Warranty**

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

#### **11.7 Operation of Lagoon**

The Lessee must ensure that the Lagoon is operational and functioning at all times with the exception of those times that the Lessee undertakes scheduled and unscheduled maintenance and repair of the Wave Park as required.

#### **11.8 Exclusivity of Use**

In respect of land owned by or managed by the Lessor, the Lessor agrees with the Lessee not to grant an interest to any third party or use such land for a Lagoon for the first fifteen (15) years of the Term of this Lease. To avoid doubt, the exclusion will only apply to the land within the existing municipal boundaries of Lessor as at the Commencement Date of this Lease.

### **12. Lease Guarantee**

#### **12.1 Provision of Lease Guarantee**

Prior to the Commencement Date, the Lessee must provide to the Lessor the Lease Guarantee.

#### **12.2 Amount and Review of Lease Guarantee**

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For the avoidance of doubt, the Lessee acknowledges that if Rent is increased following a Rent Review or if the Lessor draws upon the Lease Guarantee at any time during the Term, the Lessee will be required to provide a supplementary or replacement bank guarantee such that the amount of the Lease Guarantee is calculated in accordance with in **Item 8** of the Schedule.

### 12.3 Requirements of Lease Guarantee

Any bank guarantee required pursuant to the terms of this clause must be:

- (a) an unconditional and irrevocable undertaking from a bank or financial institution authorised to carry on banking in Australia under the *Banking Act*;
- (b) in a form that is reasonably satisfactory to the Lessor (acting reasonably); and
- (c) enforceable at all times for:
  - (i) the Term of the Lease;
  - (ii) any further term, extension or holding over; and
  - (iii) a period of three months after termination of the Lease.

### 12.4 Lessor to retain and may draw down on Lease Guarantee

The Lessee acknowledges and agrees that at any time, the Lessor may without notice draw against any bank guarantees provided under this **clause 12**:

- (a) in the event the Lessee fails to comply with its obligations under this Lease to maintain and repair the Premises and/or the Improvements, after the Lessor has given the Lessee a notice requiring the Lessee to rectify the failure, and the Lessee has not complied with the notice within the period specified in the notice, which must be a reasonable period having regard to the nature of the maintenance and repairs required, the reasonable costs and expenses reasonably incurred by the Lessor in connection with the maintenance of and repairs to the Premises and/or the Improvements; or
- (b) in the event the Lessee fails to comply with any of its covenants or obligations under this Lease, after the Lessor has given the Lessee a notice requiring the Lessee to rectify the failure, and the Lessee has not complied with the notice within the period specified in the notice, which must be a reasonable period having regard to the nature of the non-compliance with the covenant or obligation, the reasonable costs and expenses reasonably incurred by the Lessor arising as a result of non-compliance with any of the Lessee's covenants or obligations under this Lease to the extent such costs and expenses are not caused by the Lessor.

### 12.5 Acknowledgement

- (1) The Lessee COVENANTS AND AGREES with the Lessor, that any security provided under this **clause 12** shall be without prejudice to the right of the Lessor to recover from the Lessee any further amount owing pursuant to this Lease which exceeds the security, and to any other remedy the Lessor may have against the Lessee.
- (2) Without limiting subclause (1), the Lessee COVENANTS AND AGREES with the Lessor that if any amount for which it is liable to the Lessor and which exceeds the amount of any security held by the Lessor under this Lease shall be a liquidated debt recoverable by the Lessor from the Lessee in a court of competent jurisdiction.



## 12.6 Return of Lease Guarantee

- (1) The Lessor and the Lessee agree that the Lessee shall be entitled to the return of the Lease Guarantee within 3 months after the Termination Date subject to:
  - (a) the Lessee not being in breach of this Lease and having paid all moneys properly due and payable as at the Termination Date;
  - (b) there being no unremedied default or breach under this Lease; and
  - (c) the financial institution which provided the Lease Guarantee under this Lease having made payable to the Lessor pursuant to all outstanding requests by the Lessor to draw down on the Lease Guarantee.
- (2) When all of the circumstances referred to in **clause 12.6(1)** are satisfied, the Lessor agrees to return the Lease Guarantee (or any unused portion of the Lease Guarantee) to the Lessee.

## 13. Rehabilitation Guarantee

### 13.1 Provision of Rehabilitation Guarantee

Prior to the Commencement Date, the Lessee must provide to the Lessor the Rehabilitation Guarantee.

### 13.2 Rehabilitation Review

The amount of the Rehabilitation Guarantee will be reviewed on and from each Review Date to determine the amount of the required Rehabilitation Guarantee until the next Review Date.

### 13.3 Methods of Review

The review of the Rehabilitation Guarantee will be either based on CPI or a Rehabilitation Review. The basis for each review is as identified, for each Review Date in **Item 10** of the Schedule.

### 13.4 CPI Review

- (1) A review of the Rehabilitation Guarantee based on CPI will increase the amount of the Rehabilitation Guarantee during the immediately preceding period by the percentage of any increase in 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. Within 30 days of the Lessee being advised of the reviewed Rehabilitation Guarantee amount, the Lessee must provide to the Lessor a replacement bank guarantee to the Lessor for the reviewed Rehabilitation Guarantee amount.
- (2) If there is a decrease in 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 Rent Review Date, the amount of the Rehabilitation Guarantee will not change and no further or supplementary Rehabilitation Guarantee will be required.

### 13.5 Rehabilitation Review

- (1) The Lessor will appoint an Expert to review and estimate the reasonable Rehabilitation Cost no more than once every five years during the Term (**Rehabilitation Review**), and in that regard the Parties agree:

- (a) the Lessor will be the principal for any contract entered into in respect of the Expert; and
  - (b) the Lessee agrees to reimburse the Lessor for the Expert's reasonable costs.
- (2) If following a Rehabilitation Review, the Rehabilitation Cost as certified by the Expert exceeds the amount specified in the initial Rehabilitation Guarantee, or any subsequent bank guarantee provided by the Lessee under this **clause 13.5**, the Lessee must within 30 days of such review provide a replacement bank guarantee to the Lessor for the amount certified by the Expert.
- (3) The Lessor must return the bank guarantee (or any unused portion) it holds in exchange for any replacement bank guarantee provided by Lessee under **clause 13.4(1)** or **clause 13.5(2)**.

### 13.6 Requirements of Rehabilitation Guarantee

Any bank guarantee required pursuant to the terms of this clause must be:

- (a) an unconditional and irrevocable undertaking from a bank or financial institution authorised to carry on banking in Australia under the *Banking Act*;
- (b) in a form that is reasonably satisfactory to the Lessor (acting reasonably); and
- (c) enforceable at all times for:
  - (i) the Term of the Lease;
  - (ii) any further term, extension or holding over; and
  - (iii) a period of three months after termination of the Lease.

### 13.7 Return of Rehabilitation Guarantee

- (1) The Lessor and the Lessee agree that the Lessee shall be entitled to the return of the Rehabilitation Guarantee following the expiration of 12 months after the Termination Date subject to:
- (a) the Lessee not being in breach of this Lease and having paid all moneys properly due and payable as at the Termination Date;
  - (b) there being no unremedied default or breach under this Lease; and
  - (c) the financial institution which provided the Rehabilitation Guarantee under this Lease having made payable to the Lessor pursuant to all outstanding requests by the Lessor to draw down on the Rehabilitation Guarantee.
- (2) When all of the circumstances referred to in **clause 13.7(1)** or **clause 22.2** (as the case may be) are satisfied, the Lessor agrees to return the Rehabilitation Guarantee (or any unused portion of the Lease Guarantee) to the Lessee.

## 14. Alterations

### 14.1 Restriction

Following completion of the Development, the Lessee must not without prior written approval:

- (a) from the Lessor (in its capacity as landlord) who must not withhold its consent unreasonably;

- (b) required under any Written Law, including but not limited to the planning approval of the Lessor under a local planning scheme of the Lessor:
  - (i) install any new external signs which require statutory approval from the Lessor (in its capacity as responsible local authority); and
  - (ii) make or allow to be made any major alteration, demolition, structural addition or improvements to or demolish any part of the Premises. For the purpose of completeness the Parties acknowledge and agree that an alteration, demolition, structural addition or improvement will be “major”, and require consent under this clause, if a development approval is required for such alteration, demolition, structural addition or improvement.

## 14.2 Consent

If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 14.1** 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, acting reasonably; and
  - (ii) require that any alteration be carried out to the reasonable satisfaction of the Lessor under the supervision of a qualified person; and
- (b) if the Lessor consents to any matter referred to in **clause 14.1**:
  - (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.

## 14.3 Cost of Works

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

## 14.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, 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.

## 15. Lessor's right of entry

### 15.1 Entry on Reasonable Notice

- (1) The Lessor or any person authorised by the Lessor may enter the Premises without notice in the case of an emergency, and otherwise upon reasonable written notice (which must be no less than 2



Business Days):

- (a)
    - (i) at all reasonable times;
    - (ii) with or without workmen and others;
    - (iii) with or without plant, equipment, machinery and materials; and
  - (b) for each of the following purposes:
    - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
    - (ii) to carry out any survey or works which the Lessor (acting reasonably) 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;
    - (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any Authority in respect of the Premises for which the Lessor is liable; and
    - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease (provided the Lessor has first given the Lessee a notice requiring the Lessee to remedy the breach and the Lessee has failed to remedy the breach within the reasonable time set out in the notice), 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.
- (2) The Lessor must, when exercising rights under this clause, cause as little inconvenience as is reasonably possible to the Lessee.

## 15.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to in **clause 15.1(1)(b)(iv)** 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.

## 16. Statutory obligations and notices

### 16.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all Written Law from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the Required Purpose; and
- (c) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

### 16.2 Report to Lessor

The Lessee must as soon as reasonably practicable provide to the Lessor all notices, orders and summonses received by the Lessee and which affect the Premises and are relevant to the Lessor.

## 17. Default

### 17.1 Events of Default

A default occurs if:

- (a) any Amounts Payable remain unpaid for 14 days after becoming due, for which Notice of failure to pay has been given to the Lessee and the Lessee has failed to comply with the Notice;
- (b) the Lessee is in breach of any of the Lessee's Covenants (other than the covenant to pay the Amounts Payable) for 20 Business Days (or such longer period as is reasonable in the circumstances) after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (c) an order is made or a resolution effectively passed for the winding up of the Lessee unless the winding up is for the purpose of amalgamation or reconstruction;
- (d) a controller, as defined by the *Corporations Act 2001* (Cth), is appointed in respect of the property of the Lessee under this Lease;
- (e) the Lessee suffers an Insolvency Event;
- (f) the Premises are vacated;
- (g) any application is made or notice given or any other procedure started by which the registration of the Lessee is to be cancelled or dissolved under the *Corporations Act 2001* (Cth);
- (h) the Lessee fails to maintain and operate the Required Purpose.

### 17.2 Default Dispute Notice

(1) If:

- (a) any of the events of default specified in **clause 17.1** occurs; or
- (b) the Lessor has exercised a right under **clause 17.5** and the Lessee has failed to pay to the Lessor the Lessor's cost of rectifying the Lessee's default or the award of damages within a reasonable time after demand for payable or failed to comply with an order of the court in relation to specific performance or an injunction (as the case may be),

the Lessor may issue the Lessee a dispute notice (**Default Dispute Notice**).

- (2) A representative of the Lessor and a representative of the Lessee must endeavor to resolve the dispute as soon as practicable, but if the dispute is not resolved within ten (10) Business Days after service of the Default Dispute Notice, the Parties agree that the dispute will be automatically escalated to the CEO of the Lessor and the Managing Director of the Lessee for resolution.
- (3) The CEO of the Lessor and the Managing Director of the Lessee must endeavour to resolve the dispute as soon as practicable, but if the dispute is not resolved within ten (10) Business Days after the dispute is escalated for resolution or such later time as the Parties may agree in writing then subject to **clause 17.3**, the Parties agree that the Lessor may terminate this Lease in accordance with **clause 17.4**.

### 17.3 Termination

- (1) In the event the Expert determines the Default Dispute Notice cannot be resolved, the Lessor may, subject to **clause 17.3(2)**, terminate this Lease by reasonable notice to the Lessee but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.
- (2) In providing the Lessee with reasonable notice of its intention to terminate this Lease in accordance with **clause 17.3(1)**, the Lessor must have regard to the Lessee's obligations in **clause 21** in respect of the Premises.

### 17.4 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 Covenants,

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 having regard to the nature of the breach, 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 cost and expenses of remedying each breach or default.

### 17.5 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.

### 17.6 Essential Terms

Each of the Lessee's Covenants in **clauses 5** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **9** (Development of Wave Park), **10** (Maintenance and repair), **11** (Use), **11.7** (Operation of Lagoon) and **20** (Assignment, Subletting and Charging) is an essential term of this Lease but this **clause 17.6** does not mean or imply that there are no other essential terms in this Lease.

### 17.7 Breach of Essential Terms

- (1) If the Lessee breaches an essential term of this Lease and the Term is determined then, in addition to any other remedy or entitlement of the Lessor, 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 Premises.
- (2) The Lessee agrees that the covenant set out in **clause 17.7(1)** will survive termination or any deemed surrender at law of the estate granted by this Lease.
- (3) The Lessee may deduct from the amounts referred to in **clause 17.7(1)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time.

- (4) The Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms.

## 18. Repudiation by Lessee

### 18.1 Compensation

In the event that the Lessee's conduct (whether by acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any Lease covenants, it is agreed that:

- (a) the Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach; and
- (b) the Lessor shall be entitled to recover damages against the Lessor in respect of the repudiation or breach of covenant for the damage suffered by the Lessor during the entire Term of this Lease.

### 18.2 Entitlement to Recover Damages

The Lessor's entitlement to recover damages shall not be affected or limited in the event that:

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

### 18.3 Legal Proceedings

The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Lease 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 18.2**, whether the proceedings are instituted either before or after such conduct.

### 18.4 Lessor to mitigate losses

Notwithstanding any other provision of this Lease, the Lessor must take reasonable steps to mitigate its losses and endeavor to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

## 19. Further Terms

### 19.1 First Further Term

- (1) 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 First Further Term and:
- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
  - (b) there is no subsisting material default by the Lessee at the date of service of the Notice in:

- (i) the payment of Amounts Payable; or
- (ii) the Lease or observance of the Lessee's Covenants,

the Lessor shall grant to the Lessee a lease for the First Further Term at the Rent and on the same terms as this Lease other than this clause in respect of the Further Terms previously taken and other than any rent free periods.

Upon the valid exercise to extend this Lease for the First Further Term, the Lessee shall, prior to the expiration of the then current Term, execute a deed recording the extension of this Lease. The deed shall be prepared by the Lessor's solicitors in a form approved by the Lessor at the reasonable expense of the Lessee in all respects including payment of all stamp duty and the Lessor's solicitors' reasonable costs and disbursements.

## 19.2 Second Further Term

- (1) If the Lessee at least three months, but not earlier than six months, prior to the date for the commencement of the Second Further Term, gives the Lessor a Notice to request the grant of a new lease for the Second Further Term and:
  - (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
  - (b) there is no subsisting material default by the Lessee at the date of service of the Notice in:
    - (i) the payment of the Amounts Payable; or
    - (ii) the Lease or observance of the Lessee's Covenants;
  - (c) the Lessor's Council (in its absolute discretion) agrees to the grant of the Second Further Term,

the Lessor, in its absolute discretion, may grant to the Lessee a lease for the Second Further Term at the Rent and on the same terms and conditions as this Lease other than this clause in respect of the Further Terms previously taken and other than any rent free periods.

- (2) Upon the Lessor granting to the Lessee a lease for the Second Further Term, the Lessee shall, prior to the expiration of the then current Term, execute a deed recording the extension of this Lease. The deed shall be prepared by the Lessor's solicitors in a form approved by the Lessor at the reasonable expense of the Lessee in all respects including payment of all stamp duty and the Lessor's solicitors' reasonable costs and disbursements.

## 20. Assignment, sub-letting and charging

### 20.1 No assignment or sub-letting without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other person whose consent is required under this Lease or at law.



## 20.2 Lessor's Consent to Assignment and Subletting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the Required Purpose then the Lessor may not unreasonably withhold, delay or condition its consent to the assignment or subletting of the leasehold estate created by this Lease if:

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing, capable of adequately carrying on the business permitted to be carried out on the Premises and capable of complying with all of the Lessee's Covenants; and
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied material breach of the Lessee's Covenants, which has been notified by the Lessor to the Lessee in writing ;
- (c) the Lessee procures the execution by:
  - (i) the proposed assignee of a deed of assignment; or
  - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) in the case of an assignment, the deed of assignment contains a covenant by the assignee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.

## 20.3 Assignor released upon assignment

If the Lessee assigns this Lease in accordance with its provisions, the Lessee is released from the Lessee's Covenants upon that assignment, except to the extent of any pre-existing breaches prior to the date of assignment.

## 20.4 Property Law Act 1969

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

## 20.5 Costs for assignment and sub-letting

If the Lessee wishes to assign or sub-let 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:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sub-letting,

whether or not the assignment or sub-letting proceeds.

## 20.6 Deemed assignments

An assignment of this Lease requiring the consent of the Lessor in the terms of this clause will be deemed to occur when:





- (a) any change in the principal shareholders of any corporate Lessee occurs which has the effect of altering the effective control of the Lessee within the meaning of the Corporations Act; or
- (b) the Lessee has executed this Lease as the trustee of a trust and any change in the persons beneficially entitled (or who may become beneficially entitled) to the trust assets occurs or in the case of a unit trust any units are transferred or any units (in addition to those issued at the Commencement Date) are issued.

## 20.7 No mortgage or charge

The Lessee must not mortgage or charge the leasehold interest in the Premises without the Lessor's prior written consent, which consent may be withheld at the Lessor's absolute discretion. The Parties acknowledge that the Lessor may impose reasonable terms and conditions in respect of any consent provided under this subclause.

## 21. Holding over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

## 22. Obligations Upon Termination

### 22.1 Remove all improvements, structures and property

Unless otherwise required by the Lessor in writing pursuant to **clause 22.3**, in the event this Lease is terminated or otherwise determined the Lessee must at its cost and to the Lessor's satisfaction:

- (a) remove any chattels, fittings, improvements, buildings and fixtures constructed or located on the Premises; and
- (b) following the removal of any improvements, the buildings and fixtures in accordance with **clause 22.1(a)**, restore the Premises and surrounding area to a condition consistent with the condition of the land prior to the erection of such improvements, the buildings and fixtures at the Lessee's cost.

### 22.2 Failure to remove or restore

If the Lessee fails to comply with **clause 22.1** within 60 days following the expiry of this Lease by effluxion of time (or within 90 days if this Lease is terminated or determined earlier), the Lessor may at its option:

- (a) remove and dispose of all chattels, fittings, improvements, buildings and fixtures constructed or located on the Premises;
- (b) restore the Premises and surrounding area to a condition consistent with the condition of the land prior to the erection of such chattels, fittings, improvements, buildings and fixtures constructed or located on the Premises; and
- (c) draw upon the Rehabilitation Guarantee for any Rehabilitation Cost and the Parties agree that any amount in excess of the Rehabilitation Guarantee will be a debt payable on demand.



### 22.3 Lessor may require improvements to remain

- (1) Subject to **clause 22.3(2)**, the Lessor may require by written notice that any improvements, buildings or fixtures or part thereof constructed or erected on the Premises as fixtures (including without limitation any Service Infrastructure) remain on the Premises, in which case such property in the improvements, buildings and fixtures shall vest in the Lessor following Termination of this Lease free of cost and without payment of compensation by the Lessor to the Lessee.
- (2) For the avoidance of doubt this **clause 22.3(1)** does not apply to any:
  - (a) chattels and fittings;
  - (b) the Lagoon; and
  - (c) the wave generator machinery and systems, and associated electrical, filtration and other equipment.
- (3) The Lessor acknowledges that such improvements, buildings or fixtures will be provided to the Lessor on an "as is" basis.

### 22.4 Obligations to Survive Termination

The Lessee's obligation under this clause will survive Termination.

## 23. Damage and destruction

- (1) If the Improvements are substantially damaged or destroyed, the Lessee must either:
  - (a) substantially commence the reinstatement of the Improvements within 18 months of the damage and destruction occurring and reinstate the Improvements to a standard consistent with the standard of Improvements which existed immediately prior to the event of damage or destruction; or
  - (b) terminate this Lease by notice to the Lessor.
- (2) Subject to **clause 23(4)**, if the Lessee does not substantially commence the reinstatement of the Improvements within 18 months of the damage and destruction occurring, the Lessor may terminate the Lease by notice to the Lessee.
- (3) In this clause substantially commencing the reinstatement of the Improvements is satisfied if the Lessee has commenced the construction of the required reinstatement works.
- (4) If Lessee considers, acting reasonably, that the damage or destruction of the Improvements renders it impractical or undesirable to reinstate the Improvements:
  - (a) the Lessee may surrender this Lease by giving such period of notice as is reasonably necessary to allow for remediation of the Land such that the Land is delivered up to the Lessor as a clean site; and
  - (b) the Lessee must demolish the Improvements and deliver the Land as a clean site to the Lessor in accordance with the requirements of **clause 22**;on completion of such works:
  - (i) this Lease will terminate; and





- (ii) the Lessee must give to the Lessor a signed surrender of lease and registration fees payable to enable that surrender of lease to be registered.
- (5) No fee or compensation shall be payable by the Lessor to the Lessee in relation to termination under this clause.

## 24. Dispute resolution

- (1) Until the Parties have complied with this clause, a Party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory or equitable relief from a court.
- (2) Where any Dispute arises, a Party may give notice in writing of the Dispute to the other Party's representative setting out the material particulars of the Dispute. The representatives must act in good faith to try to resolve the Dispute quickly.
- (3) If the Dispute has not been resolved within 14 days of the Dispute Notice (or any longer period the Representatives agree), each Party must refer the Dispute to its Dispute Resolution Representative who must act in good faith to try to resolve the Dispute quickly.
- (4) If the Parties have not:
  - (a) resolved the Dispute; or
  - (b) agreed to an alternative method of resolving the Dispute,within 14 days after the Dispute is referred to the Dispute Resolution Representatives (or any longer period the Dispute Resolution Representatives agree), either Party may submit the Dispute to mediation.
- (5) If the Dispute is submitted to mediation and the Parties do not, within 14 days (or any longer period the Parties agree) after the Dispute is submitted to mediation, agree on:
  - (a) a mediator and the mediator's compensation;
  - (b) the procedure for the mediation; or
  - (c) the timetable of each step of the procedure,the mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines in force at the time that the Dispute is referred.
- (6) If a Dispute is not resolved within 30 days after the Dispute Notice or, where a Party has submitted the dispute to mediation, 60 days after the Dispute Notice (or any longer period the Parties agree), either Party who has complied with this clause may end this dispute resolution process and commence court proceedings in relation to the Dispute.

## 25. No fetter of Lessor's discretion

The Lessee acknowledges and agrees:

- (a) the Lessor is a local government established by the *Local Government Act 1995* (WA);
- (b) in its capacity as a local government, the Lessor will be obliged to comply with statutory obligations imposed by law; and



- (c) no provision of this Lease may unlawfully restrict or otherwise fetter the discretion of the Lessor in the lawful exercise of any of its functions and powers as a local government (as distinct from a commercial participant under the terms and conditions of this Lease);

provided that this clause will not serve to relieve the Lessor from its obligations arising pursuant to this Lease, except to the extent necessary to avoid any unlawful restriction or fetter of the Lessor's discretion.

## 26. Notice

### 26.1 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; or
- (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.

### 26.2 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 26.1(b)**, 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 26.1(b)**, on the second Business Day following the date of posting of the Notice.

### 26.3 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 1987*, 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.

## 27. Goods and Services Tax

### 27.1 Interpretation

Except where the context suggests otherwise, terms used in this **clause 27** which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) have the same meaning in this **clause 27**.

## 27.2 General

- (1) Unless expressly included, the consideration for any supply under or in connection with this Lease does not include GST.
- (2) To the extent that any supply made under or in connection with this Lease is a taxable supply for which the supplier is liable for GST, the recipient must pay, in addition to the consideration provided under this Lease for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply. Subject to **clause 27.2(3)**, the recipient must pay the additional amount at the same time as the consideration to which it is referable.
- (3) The recipient need not pay the additional amount until the supplier gives the recipient a tax invoice.
- (4) If a Party is entitled under this Lease to be reimbursed or indemnified by the any other Party for a cost or expense incurred in connection with this Lease, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that an input tax credit may be claimed by the Party entitled to be reimbursed or indemnified, or by its representative member.

## 28. Registration of Lease

### 28.1 Registration of Lease

Upon satisfaction of the Conditions Precedent, the Lessor and the Lessee must each use all reasonable endeavours to register this Lease at Landgate. The Lessee must pay Landgate's registration fee in respect of this Lease.

### 28.2 Caveats

- (1) The Lessee must not at any time lodge an absolute caveat against the Lessor's title to the Land.
- (2) During the Term the Lessee may lodge a subject to claim caveat against the Lessor's title to the Land in order to protect the interests of the Lessee pursuant to this Lease.
- (3) At the expiration of the Term the Lessee must sign and give to the Lessor at the Lessee's expense, together with a cheque for registration fees, a proper registrable withdrawal of any caveat lodged against the Land by the Lessee and (where applicable) a registrable surrender of the Lease.

### 28.3 Lessor's mortgage

The Lessor agrees with the Lessee not to mortgage the Land, unless the mortgagee consents to the terms of this Lease.

## 29. General Provisions

### 29.1 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.

## 29.2 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.

## 29.3 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.

## 29.4 Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

## 29.5 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.

## 29.6 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.

## 29.7 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.

## 29.8 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.

# 30. Lease Deposit

- (1) The Lessee must pay to the Lessor the Lease Deposit by the Lease Deposit Due Date.
- (2) If the Lease Deposit is not paid by the Lease Deposit Due Date, or it is paid (fully or in part) by a cheque which is dishonoured on its first presentation, the Parties agree that this Lease is null and void.
- (3) The Lessee and the Lessor acknowledge and agree that:
  - (a) the Lease Deposit will be held on trust by the Lessor; and
  - (b) in the event of a dispute, the Lessor agrees to hold the Lease Deposit and only deal with the Lease Deposit in accordance with a court order.



- (4) Subject to paragraph (5) of this clause, the Lease Deposit is non-refundable.
- (5) The Lessee acknowledges and agrees with the Lessor that the Lease Deposit may be refunded to the Lessee in the event that:
  - (a) the Lessor is unable to satisfy the Lessor's Conditions Precedent by the Sunset Date; or
  - (b) if any the Lessee's Conditions Precedent have not been satisfied by the Sunset Date, the Lessor is satisfied (acting reasonably) that the Lessee has used best endeavours to satisfy the Lessee's Conditions Precedents by the dates provided in **clause 2.1** or in any event by the Sunset Date. The Lessee must provide to the Lessor evidence within a reasonable period of time, as to the steps and actions taken by the Lessee to satisfy the Lessee's Conditions Precedent.
- (6) The Parties agree that the Lease Deposit will be repayable to the Lessee on satisfaction of the Lessee's Conditions Precedent by the Sunset Date.

### 31. Car Park Works

Notwithstanding the indicated location of the Car Park Works on the Premises Plan, the Lessor does not support the location of such Car Park Works on the north eastern corner boundary of the Premises Plan and will make comment to that effect to the relevant approval assessing agency at the appropriate time.



# Schedule

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## Item 1 Land & Premises

### (1) Land

- (a) Lot 39 on Diagram 17693 being the whole of the land comprised in Certificate of Title Volume 1185 Folio 584 (Lot 39); and
- (b) Reserve 35486, Lot 9789 being the land comprised in Crown Land Title LR3141 Folio 868 (Lot 9789).

### (2) Premises

- (a) Subject to paragraph (b) below, that part of the Land identified on the Premises Plan as "Lease Area" and having an approximate area of 4.1 hectares.
- (b) The Lessee and Lessor agree that:
  - (i) the Lessee must obtain, within 3 months of the Commencement Date, a survey of the Premises at its expense (**Survey**); and
  - (ii) upon approval of the Survey by the Lessor, this Lease will be varied such that the sketch annexed hereto as Annexure 2, will be replaced by the Survey and become the Premises Plan.

## Item 2 Term

If:

- (a) the Condition Precedent in **clause 2.1(a)(iii)(A) or (B)** is satisfied, the term for the lease of the Premises will be 30 years; or
- (b) the Condition Precedent in **clause 2.1(a)(iii)(C)** is satisfied, then the following will apply:
  - (i) the term for the lease of the Premises excluding Part of Lot 9789 will be 30 years; and
  - (ii) the term for the lease of Part of Lot 9789 will be 21 years.

## Item 3 Further Term

### (a) First Further Term

10 years.

### (b) Second Further Term

10 years.



#### Item 4 Commencement Date

10 Business Days from the date that all of the Conditions Precedent are satisfied.

#### Item 5 Rent

- (1) Subject to paragraph (2) below, \$700,000 (Seven hundred thousand dollars) per annum plus GST, payable monthly in advance and as varied from time to time in accordance with the terms of this Lease.
- (2) The Lessor agrees to provide the Lessee with a rent free period of 6 months commencing on the Date for Completion (**Rent Free Period**). Provided that should the Condition Precedent in **clause 2.1(a)(iii)(A)** be satisfied, the Lessor agrees to provide the Lessee with an additional rent free period of 4 months such that the Lessee will be granted a total rent free period of 10 months. To avoid doubt, the Rent Free Period shall commence on the Date for Completion and continue for a period of 6 months or 10 months (as the case may be), with rent payments commencing on the date that is 6 months or 10 months (as the case may be) from the Date for Completion (**Rent Commencement Date**).

#### Item 6 Rent Review Dates

##### **CPI Review dates**

Each anniversary of the Rent Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable), except the dates which are a Market Review Date.

##### **Market Review dates**

Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable) on the anniversary of the Rent Commencement Date.

#### Item 7 Required Purpose

Wave Park and any lawful ancillary use permitted in respect of the Premises under the provisions of the Metropolitan Region Scheme.

#### Item 8 Amount of Lease Guarantee

The amount of the Lease Guarantee shall be at any point in time during the Term or any Further Term equal 12 months Rent under this Lease. As at the Commencement Date, the required amount will be \$700,000.

#### Item 9 Rehabilitation Guarantee

**\$[to be determined by the Expert]**, as reviewed from time to time in accordance with the requirements of **clause 13**.

## Item 10 Review Dates – Rehabilitation Guarantee

### **CPI Review dates**

Each anniversary of the Commencement Date in each year of the Term (including any Further Term and any period of holding over, if applicable), except the dates which are a Market Review Date.

### **Rehabilitation Review dates**

Every fifth year of the Term (which includes any Further Term and any period of holding over, if applicable).

## Item 11 Additional Terms and Conditions

### **11.1 Living Stream**

- (1) Subject to paragraph (2) below, the Lessee agrees to pay to the Lessor \$50,000.00 (or such lesser amount as may be agreed between the Parties in writing) as a contribution towards the environmental costs incurred by the Lessor in connection with the upgrade of the “Living Stream” (**Living Stream Contribution**).
- (2) The Parties acknowledge and agree that the Living Stream Contribution will be offset against any additional cost that may be imposed by a relevant Authority in the Development Approval to the extent that it applies to the Living Stream Drain.

### **11.2 Cafe to be available to public**

The Lessee must ensure that the café facilities to be operated by the Lessee as part of the Development will have a general public access component at no cost at all times the Wave Park is open and operational.





# Signing page

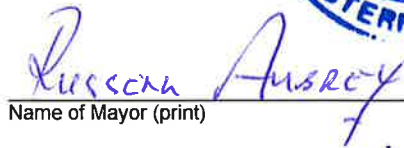
EXECUTED 11 APRIL

2017

THE COMMON SEAL of the City of Melville is  
affixed in the presence of -



Signature of Mayor



Name of Mayor (print)



Signature of Chief Executive Officer



Name of Chief Executive Officer

Executed by URBNSURF (Perth) Pty Ltd  
pursuant to section 127 of the Corporations Act



Signature of director



Name of director (print)

Signature of director/secretary

Name of director/secretary (print)

## Annexure 1 – Part of Lot 9789

To be included once determined by survey.

msl  
Add. 



MJA

LEVEL 1, SUITE 5, 23 MILWAY ROAD, SUBSACD WA 5008  
1300 558 933  
Drawing for the Swan River Water Treatment Plant Upgrade Project  
© 2016 MJA Studio Pty Ltd. All rights reserved. This is a confidential drawing and its use is restricted to the project for which it was prepared.

REV	DATE	AMENDMENT	BY
A	10.08.16	FOR DISCUSSION	MM
B	22.08.16	FOR DISCUSSION	JP

CLIENT  
WAVEPARK GROUP  
PROJECT  
TOMPKINS WAVEPARK  
PROJECT ADDRESS  
CANNING HIGHWAY  
APPLECROSS WA 6153  
N.A.P. PROJECT NUMBER  
16044  
TITLE NORTH

SCALE  
1:1000 @ A1  
STATUS  
FOR DISCUSSION  
DRAWING

CONTEXT PLAN  
DRAWING NO  
DA.00  
DRAFTER  
MM&LP  
CHECKED  
JT  
REV  
B



# Annexure 3 (Indicative)



PROPOSED - CONCEPT ONLY

*Handwritten signatures and initials.*

## Annexure 4 (Indicative)

### URBNSURF Perth Project Timeline (for information purposes)

Apr 2017	Lease executed
May 2017	Development Application supporting technical studies commenced (requiring periodic access to the site for physical site investigations)
Oct 2017	Development Application submitted to Department of Parks & Wildlife
Nov 2017	Development Application referred to other decision making authorities (assumed 6 months)
May 2018	Development Application considered and conditionally approved
May 2018	Detailed Design commences
Sep 2018	Demolition and Building Permit applied for
Oct 2018	Bowling club vacated
Nov 2018	Demolition works undertaken (assuming no remediation required)
Jan 2019	Construction (12 months with works staged to overlap): <ul style="list-style-type: none"><li>- Civil Works (6 months)</li><li>- Construction of structures &amp; fitout (6 months)</li><li>- Landscaping (3 months)</li></ul>
Jan 2020	Commissioning period (2 months)
Feb 2020	Certificate of occupancy issued
Mar 2020	Soft opening
Apr 2020	Formal opening

Handwritten signature and initials in the bottom right corner of the page.