

WESTERN AUSTRALIA
LAND ADMINISTRATION ACT 1997
TRANSFER OF LAND ACT 1893 as amended

LEASE OF CROWN LAND (L)

DESCRIPTION OF LAND (NOTE 1)

DESCRIPTION OF LAND (NOTE 1)	EXTENT	VOLUME	FOLIO
Site [insert] on Deposited Plan [insert]	Whole	LR[X]	[XXX]

LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS (NOTE 2)

Management Order E383992.

LESSOR/LESSORS (NOTE 3)

CITY OF GREATER GERALDON of PO Box 101, Geraldton WA 6531.

LESSEE/LESSEES (NOTE 4)

[insert full name and address of the Lessee(s). If there are two lessees, insert "as joint tenants".]

TERM OF LEASE (NOTE 5)

21 years commencing on the Commencement Date as set out in the Lease.

THE LESSOR HEREBY LEASES TO THE LESSEE the land above described to the encumbrances as shown hereon (Note 6)

For the above term for the clear yearly rental of (Note 7): see lease payable (Note 8): see lease

SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE LAND ADMINISTRATION ACT 1997 AND THE TRANSFER OF LAND ACT 1893 AS AMENDED (UNLESS HEREBY NEGATED OR MODIFIED) AND ALSO TO THE COVENANTS AND CONDITIONS CONTAINED HEREIN

Lease of a portion of Reserve 25459, Point Moore Beach Cottages

City of Greater Geraldton

The person(s) named in Item 1 of the Schedule



McLEODS

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Details

Parties

City of Greater Geraldton

of PO Box 101, Geraldton Western Australia 6531

(Lessor)

The person or persons mentioned in Item 1 of the Schedule

(Lessee)

Background

- A. The Lessor is the management body of the Land under a management order.
- B. The Lessor has the power to lease the Land, subject to the prior written approval of the Minister for Lands.
- C. The Lessee, or the Lessee's predecessor in title, has constructed a residential dwelling on a portion on the Land.
- D. The Lessor has agreed to lease, and the Lessee has agreed to take a lease of a portion of the Land, being the Site, upon the terms and conditions contained in this document.

Agreed terms

1. Definitions

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

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

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

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

Commencement Date means the date of commencement of the Term specified in **Item 5** of the Schedule;

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

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

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

Demolition Levy means the demolition and rehabilitation bond described in **clause 4.2** and **Item 7** of the Schedule;

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

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

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

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

EPA means the *Environmental Protection Act 1986*;

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

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

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

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

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

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

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

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

Inundation & Coastal Processes Study means the study prepared by M P Rogers & Associates in December 2015 and entitled “*Point Moore Inundation & Coastal Processes Study*” a copy of which has previously been provided to the Lessee;

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

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

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

Lessee’s Agents includes:

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

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

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

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

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

On-site Effluent Treatment and Disposal Study means the study prepared by GHD in November 2016 and entitled “*Point Moore Residential Onsite Effluent Treatment and Disposal Study*”, a copy of which has previously been provided to the Lessee;

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

Permitted Purpose means the purpose set out in **Item 8** of the Schedule;

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

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

Review Date means each date specified in **Item 9** of the Schedule;

Schedule means the Schedule to this Lease;

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

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

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

Termination means the date of:

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

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

2. Grant of lease

- (1) Subject to paragraph (2), the Lessor of this Lease, leases to the Lessee the Site for the Term subject to:
 - (a) the Encumbrances;
 - (b) the payment of the Amounts Payable and any other amounts owing to the Lessor; and
 - (c) the performance and observance of the Lessee’s Obligations.
- (2) This Lease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*. A copy of the Minister for Lands’ consent letter is annexed hereto as **Annexure 1**.

3. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the management body of the Site, and subject

to the performance and observance of the Lessee's Obligations the Lessee may quietly hold and enjoy the Site during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

4. Lease Fee and other payments

4.1 Lease Fee

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

4.2 Demolition Levy

- (1) The Lessee covenants with the Lessor to pay to the Lessor the Demolition Levy in the manner set out at **Item 7** of the Schedule on and from the Commencement Date clear of any deductions.
- (2) For the avoidance of doubt, the Lessee acknowledges that if the Demolition Levy is increased following a review, the Lessee will be required to provide supplementary payment within 14 days of written notice from the Lessor so that the Demolition Levy held by the Lessor equals the reviewed Demolition Levy amount.
- (3) The Lessee acknowledges that the Demolition Levy is non-refundable and will be used by the Lessor to remove all improvements from the Site upon Termination of the Lease.

4.3 Outgoings

The Lessee covenants to punctually pay to the Lessor or to such person as the Lessor may from time to time direct all the following outgoings or charges, assessed or incurred in respect of the Site:

- (a) telephone, gas and other power charges including but not limited to meter rents and the cost of installation of any meter, wiring or telephone connection; and
- (b) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Site (unless otherwise addressed in this clause).

4.4 Interest

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

4.5 Costs

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

- (a) the preparation, negotiation, execution and registration of this Lease and the surrender of the previous lease, or the proportion of those costs attributable to the Lessee;
- (b) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
- (c) any breach of the Lessee's obligations by the Lessee or the Lessee's Agents;
- (d) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;

- (e) any work done at the Lessee's request for which the Lessee is responsible; and
- (f) any action or proceedings arising out of or incidental to any matters referred to in this clause or any matter arising out of this Lease.

4.6 **Payment of Amounts Payable**

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

5. **Review of Lease Fee**

5.1 **Lease Fee to be reviewed**

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

5.2 **Lease Fee to be increased by CPI**

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

6. **Insurance**

6.1 **Public Liability Insurance**

The Lessee must effect and maintain adequate public liability insurance with respect to the Site for a sum not less than the sum set out at **Item 10** of the Schedule (or such greater amount as the Lessor may from time to time reasonably require) in respect of any one claim noting the respective interests of the Lessor and Lessee in the Site.

6.2 **Details and receipts**

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

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

6.3 Not to invalidate

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

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

6.4 Settlement of claim

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

7. Indemnity

7.1 Lessee responsibilities

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

7.2 Indemnity

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

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

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

- (d) the use or occupation of the Site by the Lessee or the Lessee's Agents;
- (e) any work carried out by or on behalf of the Lessee on the Site;
- (f) the Lessee's activities, operations or business on, or other use of any kind of, the Site;
- (g) any of the matters or issues referred to in **clause 10**;
- (h) coastal inundation resulting from acute storm events, chronic erosion, sea level rise or other coastal processes;
- (i) the presence of any Contamination, Pollution or Environmental Harm in on or under the Site or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (j) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's Obligations or obligations under this Lease; or

- (k) an act or omission of the Lessee.

7.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 7.2** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

7.4 No indemnity for Lessor's negligence

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

7.5 Release

(1) The Lessee:

- (a) agrees to occupy and use the Site at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor and the Minister for Lands from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Site or arising from the Lessee's use or occupation of the Site by;
 - (ii) loss of or damage to the Site or personal property of the Lessee; and
 - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Site or surrounding area;
 - (iv) any of the matters or issues referred to in **clause 10**; and
 - (v) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) coastal inundation resulting from acute storm events, chronic erosion, sea level rise or other coastal processes,

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

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

7.6 Limit of Lessor's liability

- (1) The Lessor and the Minister for Lands will not be liable for loss, damage or injury to any person or property in or about the Site however occurring.
- (2) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the

Lessor is the management body of the Site under the Management Order.

- (3) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

8. Maintenance, repair and cleaning

8.1 Maintenance

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

8.2 Septic System Bi-Annual Certificates

The Lessee must, during the Term of the Lease, provide to the Lessor a bi-annual certificate from a licensed plumber certifying that the Site's septic or effluent disposal system(s) is in a functional state and in good working order. The first certificate must be provided on or before the second anniversary of the Commencement Date.

8.3 Cleaning

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

8.4 Repair

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

8.5 Pest control

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

8.6 No obligation to Lessor to repair or maintain

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

8.7 Acknowledgement of state of repair of Site

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

9. Building Requirements

9.1 No alterations or building without Lessor's prior approval

- (1) The Lessee must not without prior written consent:

- (a) (i) from the Lessor;
 - (ii) from any other person from whom consent is required under this Lease; and
 - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a local planning scheme of the Lessee and where applicable any Building/Demolition Permit as required under the *Building Act 2011* and associated legislation; and
 - (b) erect or remove any buildings, structures, alterations, additions or improvements on the Site.
- (2) The Lessee acknowledges and agrees that the Lessor will not consent to the alteration, construction or addition to the Site, unless such alteration, construction or addition is strictly in conformity with the building requirements of the *Building Act 2011* and associated legislation.
- (3) If the Lessor consents to any matter referred to in paragraph (1) above, the Lessor may:
- (a) consent subject to conditions, and
 - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (ii) require that any alteration be carried out to the reasonable satisfaction of the Lessor under the supervision of an engineer or other consultant; and
 - (b) if the Lessor consents to any matter referred to in this clause:
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

9.2 Cost of Works

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

9.3 Conditions

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

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

in accordance with the Lessor's reasonable requirements.

9.4 Removal of building alterations or additions which do not have the Lessor's approval

In the event the Lessee fails to obtain written consent for any building alterations or additions the Lessor may issue a Notice to remove any such alterations or additions and if the Lessee fails to comply with that Notice within the reasonable time prescribed by that Notice, the Lessor may immediately terminate this Lease and the provisions of **clause 17** will apply and no compensation or other consideration shall be payable or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease pursuant to this clause.

10. Site and Land Issues

10.1 Unsafe or dangerous building, structures

- (1) Notwithstanding any other provision of the Lease, in the event the Lessor, acting reasonably, determines that any building or structure erected on the Site is unsafe or dangerous the Lessor may issue the Lessee a Notice requiring the Lessee within a reasonable period of time to either:
 - (a) remove the unsafe or dangerous structure or building from the Site; or
 - (b) undertake rectification works to make the building or structure safe.
- (2) In the event the Lessee fails to comply with the Notice issued pursuant to paragraph (1) within the time specified in the Notice, the Lessor may immediately terminate this Lease and the provisions of **clause 17** will apply and no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease pursuant to this clause.

10.2 Coastal Inundation and Erosion

- (1) The Lessee acknowledges that the Lessee has been provided with a copy of the Inundation & Coastal Processes Study.
- (2) The Lessee acknowledges that:
 - (a) the Site is located in close proximity to the Indian Ocean coastline and as a consequence erosion and/or rising sea levels may adversely impact the future use and enjoyment of the Site and any buildings or improvements erected or constructed on the Site;
 - (b) the Land and the Site are located in an area which has been identified by the Department of Planning, Lands and Heritage as having an unacceptable inundation risk from an extreme events;
 - (c) the Site is at risk from a 1:100 and a 1:500 year inundation event;
 - (d) under State Government Guidelines new development is not permitted on the Land because of the inundation and erosion risk; and
 - (e) rising sea levels may impact the groundwater of the Land which may lead to inundation of the Site through up-welling.

10.3 Onsite Effluent Treatment and Disposal

- (1) The Lessee acknowledges that the Lessee has been provided with a copy of the On-site Effluent Treatment and Disposal Study.
- (2) The Lessee acknowledges that:
 - (a) the groundwater at the Land is contaminated by faecal matter;
 - (b) there is a potential health risk associated with direct contact with groundwater when undertaking land based activities, such as excavation or trenching works;
 - (c) the Site and its on-site effluent disposal system may not comply with the requirements of the *Health (Miscellaneous Provisions) Act 2011*, and it may be open for the relevant authority to take action against the owner or occupier of the Site or Land for such non-compliance; and
 - (d) rising sea levels will have an impact on the effectiveness, and compliance, of the Site's on-site effluent disposal system.

10.4 Trigger point for further investigations

The Lessee and the Lessor acknowledge and agree that the Lessor intends to undertake further investigations (and will be permitted by the Lessee to undertake such investigations) into the onsite effluent and treatment systems compliance and efficiencies of Residential Onsite Effluent Treatment for the Land if three consecutive samples from the Lessor's summer/autumn period monthly beach water quality monitoring program exceed 500 **Enterococci/100ml* at Page Beach North, Point Moore North and Separation Point as per the National Health and Medical Research Guidelines for Managing Risk in Recreational Water, as amended from time to time.

10.5 No further term

As a result of the Land and Site issues described in this clause, the Lessee acknowledges and agrees that the Lessor will not in any circumstances grant an extension or further term to this Lease.

11. Restrictions on use

11.1 Generally

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

- (a) (i) use the Site or any part of it for any purpose other than for the Permitted Purpose; or
- (ii) use the Site for any purpose which is not permitted under any local planning scheme or any law relating to health;
- (b) do or carry out on the Site any harmful, offensive or illegal act, matter or thing;
- (c) do or carry out on the Site any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties;
- (d) store any dangerous compound or substance on or in the Site;
- (e) interfere with the reasonable peace, comfort and privacy of neighbours; or
- (f) display from or affix any signs, notices or advertisements on the Site without the prior authorisation of the Lessor.

11.2 Lessor may issue notice

Notwithstanding any other provision of the Lease, in the event the Lessor, acting reasonably, determines that the Lessee has suffered or permitted any person to do any of the above as detailed in **clause 11.1** the Lessor may issue the Lessee a Notice requiring the Lessee within a reasonable period of time to either:

11.3 Remove or cease the action

In the event the Lessee fails to comply with the Notice issued pursuant to **clause 11.2** within the time specified in the Notice, the Lessor may immediately terminate this Lease and the provisions of **clause 17** will apply and no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease pursuant to this clause.

11.4 Owner occupier accommodation only

(1) The Lessee acknowledges and agrees that:

- (a) occupation and use of the Site is restricted to the Lessee and the Lessee's immediate family; and
- (b) the Lessee must not in any circumstances rent, hire or let the Site to any person,

unless otherwise approved by the Lessor and the Minister for Lands in writing.

- (2) The Lessee acknowledges and agrees that **clause 11.4** is an essential provision of the Lease, and in the event of non-compliance the Lessor may immediately terminate this Lease and the provisions of **clause 17** will apply and no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the termination of the Lease pursuant to this clause.

11.5 **No Warranty**

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

11.6 **Residential Tenancy Act does not apply**

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

12. Lessor's right of entry

12.1 **Entry on Reasonable Notice**

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

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

12.2 **Costs of Rectifying Breach**

All reasonable costs and expenses incurred by the Lessor as a result of any breach referred to at clause **14.1(b)(v)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

12.3 **Lessor to make good**

The Lessor must, at its cost, make good any damage caused to the Site or the Lessee's property as a result of the Lessor exercising its rights under **clause 12**.

13. Statutory obligations and notices

13.1 Comply with Statutes

The Lessee must:

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

13.2 Safety & Testing Obligations

- (1) The Lessee acknowledges and agrees that it is fully responsible at its costs for ensuring that the Site and any fixtures or fittings (including without limitation the Site's septic or effluent disposal systems) are regularly tested, maintained and inspected to ensure that the Site and such fixtures and fittings comply with all statutory requirements and are safe for use.
- (2) To comply with its obligation pursuant to paragraph (1) above, the Lessee acknowledges that it will be required to, amongst other things:
 - (a) comply with the requirements of the *Occupational Safety and Health Act 1984*, including without limitation the requirement for all portable plug-in electrical equipment and residual current devices to be safe and appropriately inspected, tested and maintained by a competent person; and
 - (b) comply with all relevant requirements of the Fire & Emergency Services Authority of Western Australia (**FESA**), including without limitation the requirement to ensure that all fire protection and fire fighting equipment located, or installed at the Site, is tested regularly for compliance with Australian Standards and FESA's requirements.

13.3 Indemnity if Lessee Fails to Comply

If the Lessee fails to perform, discharge or execute any of the items referred to in **clause 13.1** and **clause 13.2** the Lessee indemnifies the Lessor against any claims, demands, reasonable costs or other payments incurred by the Lessor of or incidental to any of the items referred to in **clause 13.1** and **clause 13.2**.

14. Report to Lessor

The Lessee shall as soon as practicable report to the Lessor any occurrence or circumstances in or near the Site of which it becomes aware, which might reasonably be expected to cause, in or on the Site, pollution of the environment.

15. No hire, subletting or assignment

15.1 No hire, subletting or assignment

The Lessee acknowledges and agrees that this Lease is personal to the Lessee and the Lessee must not in any circumstances:

- (a) assign its interest in this Lease;
- (b) sublet its interest in this Lease;
- (c) part with or otherwise dispose of possession of the Site; or
- (d) hire the Site to any person,

unless otherwise approved by the Lessor and the Minister for Lands in writing.

15.2 No mortgage or charge

The Lessee must not mortgage nor charge the Site without the consent of the Lessor and the Minister for Lands.

15.3 No Absolute Caveat

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

16. Termination Rights

16.1 Minister for Lands may terminate

- (1) Notwithstanding any other provision of this Lease, the Lessor and Lessee covenant and agree that the Minister for Lands may terminate this Lease for any reason upon six months written notice to the Lessee and the Lessor.
- (2) No compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor or the Minister for Lands for or arising out of the termination of this Lease by the Minister for Lands.
- (3) If this Lease is terminated in accordance with this subclause, **clause 17** will apply.

16.2 Lessee may terminate

- (1) The Lessor agrees that the Lessee may terminate this Lease upon two months' written notice to the Lessor.
- (2) If this Lease is terminated by the Lessee in accordance with this subclause, **clause 17** will apply.

16.3 Lessor's termination right for immediate risk to public health

- (1) Notwithstanding any other provision of this Lease, the Lessee acknowledges and agrees that the Lessor may terminate this Lease upon six months written notice to the Lessee if the Lessor is ordered or directed in writing by the Chief Health Officer or the Minister for Health to undertake actions due to immediate risk to public health pursuant to the requirements of the *Health (Miscellaneous Provisions) Act 1911*.
- (2) No compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor or the Minister for Lands for or arising out of the termination of this Lease by the Lessor.
- (3) If this Lease is terminated in accordance with this subclause, **clause 17** will apply.

16.4 Lessor's termination right for inundation/erosion risks

- (1) Notwithstanding any other provision of this Lease, the Lessee acknowledges and agrees that the Lessor may terminate this Lease upon six months written notice to the Lessee if:

- (a) the most landward limit of the horizontal shoreline datum (HSD) is within 25 metres of any structures on the Site;
 - (b) a public road is no longer available, or unable to provide safe and/or legal access, to the Site due to coastal hazards;
 - (c) within any twelve month period any part thereof the Site is flooded or inundated to a depth of 0.3 metres or greater from two or more separate hazard events;
 - (d) the Site (and any buildings on the Site) has sustained damage to the extent that it is deemed irreparable or a total loss or is rendered uninhabitable for an extended period of time;
 - (e) water or electricity to the Site is no longer available because the relevant authority has removed or decommissioned access to water or electricity to the Site.
- (2) No compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor or the Minister for Lands for or arising out of the termination of this Lease by the Lessor.
- (3) If this Lease is terminated in accordance with this subclause, **clause 17** will apply.

16.5 Lessor's termination right for residential on-site effluent treatment risks

- (1) Notwithstanding any other provision of this Lease, the Lessee acknowledges and agrees that the Lessor may terminate this Lease upon six months written notice to the Lessee if an assessment of the onsite effluent system for the Site, via the biannual licensed plumber report or from a formally lodged complaint, determines that the system is failing and cannot be repaired/upgraded to the current (at date of failure) requirements of the Australian New Zealand Standard 1547:2012 Onsite Domestic Waste Water Management, *Health (Miscellaneous Provisions) Act 1911, Health (Treatment of Sewerage and Disposal of Effluent and Liquid Waste) Regulations 1974* and the Draft Country Sewer Policy WA, as amended from time to time.
- (2) No compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor or the Minister for Lands for or arising out of the termination of this Lease by the Lessor.
- (3) If this Lease is terminated in accordance with this subclause, **clause 17** will apply.

17. Obligations upon Termination

17.1 Yield up Site

On Termination, the Lessee must:

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

17.2 Remove Lessee's Property prior to Termination

Prior to Termination, unless otherwise mutually agreed between the parties, the Lessee must remove from the Premises all property of the Lessee which is not a fixture.

17.3 Lessor can Remove Lessee's Property on Re-Entry

If the Lessee fails to remove any fittings and any other chattels, goods or property belonging to the Lessee in accordance with **clause 17.2** within fourteen (14) days from the determination of the Term, the Lessor

may at elect to treat any such fittings and any other chattels, goods or property of the Lessee to be deemed abandoned by the Lessee and such property shall then be and become the property of the Lessor absolutely.

17.4 **Clause to survive termination**

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

18. **Default**

18.1 **Events of Default**

A default occurs if:

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

18.2 **Forfeiture**

On the occurrence of any of the events of default specified in **clause 18.1** the Lessor may:

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

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

18.3 **Lessor may remedy breach**

If the Lessee:

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

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

18.4 **Acceptance of Amount Payable By Lessor**

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

18.5 Essential Terms

Each of the Lessee's Obligations in **clauses 4** (Lease Fee and other payments), **6** (Insurance), **8** (Indemnity), **8** (Maintenance, repair and cleaning), **10** (Site and Land Issues); **11** (Restrictions on use), **15** (No hire, subletting or assignment), are essential terms of this Lease but this clause does not mean or imply that there are no other essential terms in this Lease.

18.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor:

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

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

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

19. GST

19.1 Lessee must Pay

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

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

19.2 Increase in GST

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

19.3 GST invoice

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

20. Notice

20.1 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.

20.2 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 20.1**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 20.1**, on the second business day following the date of posting of the Notice.

20.3 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.

21. General Provisions

21.1 No Fetter

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

21.2 Acts by agents

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

21.3 Statutory powers

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

21.4 Severance

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

21.5 Variation

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

21.6 Moratorium

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

21.7 Further assurance

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

21.8 Payment of money

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

21.9 Waiver

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

21.10 Governing law

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

Schedule

Item 1 Lessee

The person or persons listed on the front page of this Lease as the “Lessee”.

Item 2 Land

Reserve 25459 comprised of

- (a) Lot 2579 on Plan 181945 being the land comprised within Crown Land Title LR3119 Folio 8 and
- (b) Lot 1734 on Plan 208315 being the land comprised within Crown Land Title LR3119 Folio 110.

Item 3 Site

The Site more particularly described on the front page of the Lease in the “Description of Land” section.

Item 4 Term

21 years commencing on 1 July 2018 and expiring on 30 June 2039.

Item 5 Commencement Date

1 July 2018.

Item 6 Lease Fee

- (a) Subject to paragraph (b) below, \$[to be inserted] per annum payable annually in advance, with the first payment due on the Commencement Date and as reviewed from time to time in accordance with clause 5.2
- (b) *If the Lessee is eligible for a rebate on local government rates in accordance with the *Rates and Charges (Rebates and Deferments) Act 1992*, and is the owner/occupier, the Lessor agrees that the Lessee will be entitled to a rebate on the Lease Fee calculated in the same manner as the rebate as the rebate for local government rates.*

Item 7 Demolition Levy

\$250 per annum payable annually in advance, with the first payment due on the Commencement Date.

Item 8 Permitted Purpose

Beach cottage accommodation

Item 9 Review Date

The Lease Fee will be reviewed by CPI on the 3rd anniversary of the Commencement Date, and every 3 years thereafter, in accordance with **clause 5** of the Lease.

Item 10 Public Liability Insurance

Twenty million dollars (\$20,000,000.00).

Annexure 1 – Minister for Lands' Consent

ATTESTATION SHEET

Executed by the parties as a Deed on the

day of

in the year 2018

LESSOR/LESSORS SIGN HERE (NOTE 9)

THE **COMMON SEAL** of the **CITY OF**)
GREATER GERALDTON was hereunto affixed)
in the presence of:)

Mayor

Print Full Name

Chief Executive Officer

Print Full Name

LESSEE/LESSEES SIGN HERE (NOTE 9)

SIGNED by the said **[insert name]** in)
the presence of:)

Witness sign:

Witness name:

Address:

Occupation:

SIGNED by the said **[insert name]** in)
the presence of:)

Witness sign:

Witness name:

Address:

Occupation:

INSTRUCTIONS

- 1 If insufficient space in any section, Additional Sheet Form B1 should be used with appropriate headings. The boxed sections should only contain the words "See Annexure".
- 2 Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by parties.
- 3 No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being installed by the person signing this document and their witnesses.
- 4 Duplicates are not issued for Crown Land Titles.

NOTES

1 DESCRIPTION OF LAND
 Lot and Diagram/Plan number or Location name and number to be stated.
 Extent- Whole, part or balance of the land comprised in the Certificate of Crown Land Title to be stated.
 The Certificate of Crown Land Title Volume and Folio number to be stated.

2 LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS
 In this panel show (subject to the next paragraph) those limitations, interests, encumbrances and notifications affecting the land being leased that are recorded on the crown land title:
 a) In the Second Schedule;
 b) If no Second Schedule, that are encumbrances.
 (Unless to be removed by action or document before registration hereof)

Do not show any:

- a) Easement Benefits or Restrictive/Covenant Benefits; or
- b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg, if a mortgage is shown, do not show any partial discharges or any document affecting either).

The documents shown are to be identified by nature and number. The plan/diagram encumbrances shown are to be identified by nature and relevant plan/diagram. If none show "nil".

3 LESSOR
 State full name and address of Lessor/Lessors and the address/addresses to which future notices can be sent.

4 LESSEE
 State full name of Lessee/Lessees and the address/addresses to which future notices can be sent. If two or more state tenancy eg. Joint Tenants, Tenants in Common. If Tenants in Common specify shares.

5 TERM OF LEASE
 Term to be stated in years, months and days.
 Commencement date to be stated. Options to renew to be shown.

6 RECITE ANY EASEMENTS TO BE CREATED
 Here set forth Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".

7 State amount of yearly rental in words.

8 State term of payment.

9 EXECUTION
 A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of witnesses must be stated.

EXAMINED

Office Use Only

LEASE OF CROWN LAND (L)

LODGED BY: City of Greater Geraldton

ADDRESS: PO Box 101
Geraldton WA 6531

PHONE NO: (08) 9956 6600

FAX NO: (08) 9956 6674

REFERENCE:

ISSUING BOX NO:

PREPARED BY: McLeods

ADDRESS: 220-222 Stirling Highway
Claremont WA 6010

PHONE NO: 9383 3133

FAX NO: 9383 4935

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- 1 _____ Received Items
- 2 _____ Nos.
- 3 _____
- 4 _____ Receiving Clerk
- 5 _____
- 6 _____

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.