

6 September 2019

The Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP
NSW 1240

Attention: Mr Ed Willett and Ms Deborah Cope

Dear Mr Willett and Ms Cope

RENTAL ARRANGEMENTS FOR TELECOMMUNICATIONS TOWERS ON CROWN LANDS

Thank you for your invitation to comment on the draft report for IPART's Review of Rental Arrangements for Communications Towers on Crown Land (**Draft Report**).

Axicom considers that the Draft Report has placed inadequate weight on compliance with clause 44 of Schedule 3 of the *Telecommunications Act 1997* (Cth) (**clause 44**) and, if the recommendations in the Draft Report are adopted by the NSW Government in their current form, this will result in a clear breach of the *Telecommunications Act 1997* (Cth) and, in our view, will be unlawful.

Our view is that the Draft Report has erred on two fundamental legal grounds:

1. firstly, that IPART has determined that the appropriate basis for setting rents is to set 'efficient rents' by reference to the private market. This is contrary to the Federal Court ruling in *Telstra Corporation vs Queensland* [2016] FCA 1213 (**Telstra Case**) against State Authorities using private market benchmarks to set rental arrangements on Crown land; and
2. secondly, that the Terms of Reference specifically require IPART to have regard to clause 44 but the question of whether there is discrimination, either directly or indirectly, against carriers when compared to other commercial users of Crown land has not been adequately or transparently addressed in the report.

1. Inappropriate Basis for Setting Rents

In relation to the setting of rents:

a) IPART's first draft recommendation:

'That the appropriate basis for setting rents for communication tower sites on Crown land is rents agreed in a workably competitive market - that is rents paid by commercial users of communication tower sites on private land are the best-available indicator of efficient prices'

is incorrect and inconsistent with the key findings of the Telstra case and legislation (clause 44) and the requirements of the Terms Of Reference.

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- b) The law is clear and unambiguous that State or Territory governments are expressly prohibited from regulating pricing for telecommunications sites in a manner which would be discriminatory (whether directly or indirectly). Any such law, regulation or State or Territory-based imposition with respect to communications sites will be invalid and any attempt to impose such an invalid regime would, accordingly, be unlawful.
- c) This IPART review should carefully consider the clearly established position at law. The Terms of Reference require IPART to have regard to clause 44 but, as we have already set out in our original submission and at the Round Table, the position at law has not been addressed by the Draft Report. Axicom believes this to be a fundamental flaw.
- d) Clause 44 (1) clearly, and without ambiguity, states that:
 - 1. *'a law of a State or Territory has no effect to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;*
 - 2. *without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally'.*
- e) The effect of clause 44 has been tested in the courts, most notably in the Telstra Case which specifically found that:
 - a. *'cl 44(1) provides protection for carriers against the effects of discriminatory laws, including protection against the imposition of discriminatory taxes, rents and charges';¹*
 - b. *'Clause 39 confirms the liability of a carrier to taxation under the laws of a State or Territory, but cl 44(1) prevents such laws from discriminating against carriers or having the effect of discriminating against carriers';¹*
 - c. *'Clause 44(1) is cast in broad and absolute terms. It does not...allow any exception to the prohibition against the law of the State or Territory discriminating against carriers. Nor is any such exception expressly contained in any other provision of the Telecommunications Act'.²*
- f) The Draft Report refers in a number of instances to the 'appropriateness' of applying private market principles and private market rents as appropriate comparators to reflect 'efficient prices in a workably competitive market' and seeks to underpin this rationale with private market rent evidence. A number of the submitting participants, including Axicom, provided evidence of private market rents in the interests of co-operation and transparency. However, the private

1. Telstra Corporation Queensland [2016] FCA 1213 [141]

2. Telstra Corporation Queensland [2016] FCA 1213 [142]

market should not be considered by IPART as the 'appropriate' benchmark and the Telstra Case was clear on this point.

g) The Telstra Case determined that:

- a. whilst the Telecommunications Act may not restrict the behaviour of an individual or private corporation, *'in contrast, cl44(1) expressly prohibits discrimination against carriers under State or Territory legislation'*; ¹
- b. *'It is clear that the legislative intention is to treat individuals and corporations differently from State and Territory governments. Individuals and corporations are free to charge carriers whatever rent the market commands' and 'Clause 44(1) is quite inconsistent with the submission that State and Territory governments are in the same position'*; ¹
- c. *'If State and Territory governments were intended to be free to charge carriers different rents on the basis that carriers are charged more rent in the private market, the exception would have been directly expressed'*; and
- d. *'In fact, price-gouging of this type by State and Territory governments seems precisely the type of conduct that cl 44(1) is designed to prevent.'* ²

h) IPART, as an independent body, has a responsibility to consider both the application of the law as well as other State or Territory-based jurisdictional regimes (and how the federal law has been applied in those regimes) in order to make comprehensive and informed recommendations on an independent basis.

i) With respect to the QLD government, the Telstra Case determined that the calculation of rent for Crown land which the government leased to communications tenants differentiated from that charged to other users of Crown lands and, for this reason, and in accordance with Court's judgement, the QLD government re-set its rents on communications sites to be consistent with the rental methodology used to calculate rents charged to other commercial users of Crown land.

j) In *Bayside City Council v Telstra Corporation Ltd* [2004] HCA 19 (**Bayside Case**) the Court considered the validity of certain NSW and VIC state legislation which imposed annual charges/rates on Telstra (and other carriers) but which exempted other tenants such as water supply authorities, rail, electricity networks and pipeline operators. The relevant legislative provisions (sections 154 and 155 in Part 8 of the *Local Government Act 1989* (VIC) and s611 of the *Local Government Act 1993* (NSW)) were considered and in each instance found to be discriminatory. The High Court determined that clause 44 is constitutionally valid and that the NSW and VIC legislation, in this case, discriminated against carriers.

k) If the State Government determines that it will adopt the recommendations of the Draft Report, contrary to the position at law, the regime is potentially invalid and therefore need not be complied with.

1. Telstra Corporation Queensland [2016] FCA 1213 [146]

2. Telstra Corporation Queensland [2016] FCA 1213 [147]

2. Discrimination and the Relevant Comparator

- a) The Terms of Reference specifically require IPART to have regard to clause 44. However, as stated, the fundamental question of whether there is discrimination, either directly or indirectly, against carriers when compared to other commercial users of Crown land has not been adequately or transparently addressed in the Draft Report, and our view is that it needs to be. (As outlined later in this paper, there does not appear to be parity between users of Crown land but rather, there appears to be a practice of discriminatory pricing).
- b) The position at law is clear and we reiterate that this means there should be no reference to private market benchmarks, but consistent treatment of all users of Crown land.
- c) In Axicom's original submission, and again at the Round Table on 22 July 2019, we invited the Land Management Agencies (LMAs) to provide evidence of the rents charged to other commercial users of Crown land. This is the only manner in which the LMAs can conceivably discharge their obligations of transparency and fairness, and to demonstrate compliance with clause 44.
- d) Regrettably, when considering the issue of potential discrimination, the Draft Report incorrectly refers to the appropriate comparator as being another user of a communications site on Crown land, and so comparing a carrier's use of the site with a non-carrier's use of the same site. The Draft Report does not include any evidence of rent charged and methodology used for calculating rent to other commercial users of Crown land.
- e) It is Axicom's view that IPART has taken too narrow a view in reaching its conclusion that a relevant comparator would make similar use (in nature and extent) of Crown land to the use made by the carriers. In limiting this to use of a communications site, IPART has failed to properly consider the case law and the fact that other similar uses include:
 - 1. other infrastructure style occupiers of Crown land e.g. water, electricity and gas utility companies; and
 - 2. other commercial users of Crown land.
- f) In both the Telstra case and the Bayside Case the issue of the appropriate comparator was fully considered. In his judgment in the Bayside Case Justice McHugh stated:

[77] Clause 44(1) prohibits discrimination against a particular carrier, class of carriers or carriers generally. If the discrimination alleged was against a particular carrier, the appropriate comparison would probably be other carriers. Where the discrimination is alleged to be against "carriers generally", however, the issue arises as to the appropriate entity with which "carriers" should be compared. Was the Full Court correct to conclude that the appropriate comparison here was between Optus and Telstra on the one hand and "other bodies which make a similar use of public places" on the other?

.....

[79] In cases like the present, the allegedly discriminatory law itself provides the comparator for the purpose of cl 44(1). The New South Wales and Victorian Acts confer a power to levy charges or rates on the owners or occupiers of public land, that is, land used for a public purpose. This indicates that the Full Court was correct in comparing the position of carriers with that of other owners or occupiers of public land. In turn, this invites a comparison with electricity suppliers, water suppliers, gas suppliers and other pipeline users. These entities resemble Telstra and Optus in their ownership and/or occupation and use of public land, a use which involves putting wires, cables or pipes over or under the land.'

- g) In the Telstra Case, the relevant comparator was other commercial users of Crown land, in particular Category 13 under the *Land Regulation 2009* (Qld). Section 30 of the Land Regulation provides that a lease is a category 13 lease if the lease is being used for a 'business, commercial or industrial' purpose.
- h) IPART acknowledged in the Draft Report that other commercial users of Crown land may pay different fees than carriers and refers in its example to uses such as agriculture, bee keeping and kiosks in National Parks. It then dismisses these uses as being "sufficiently different in nature and extent" so that they are not a relevant comparator.
- i) What IPART fails to do is consider this with the same broad view taken to the relevant comparator in the case law. Given this is a formal proceeding under which the State of NSW will elect to charge rent to telecommunication users of Crown land, we do not feel that any such decision can be legitimately made without full transparency of what the State charges other commercial users of Crown land.
- j) It is Axicom's view that the legislation itself makes a distinction between how carriers are treated on Crown land and how other commercial users are treated on Crown Land. Section 6.5 of the *Crown Land Management Act 2016* (NSW) (CLMA) specifies the general principles for rent determinations for holders of Crown land which includes that the rent is to be a market rent with certain factors taken into account and disregarded. Clause 6.5(4) then specifies that despite these general principles a recommendation can be made by IPART.

IPART only makes rent determinations for users of communications sites and, Axicom believes, one other user category. As a result, a distinction is being made between users of Crown land.
- k) In addition, section 6.8 of the CLMA allows holders of an interest in Crown land to object to the rent determination under section 6.4. However, section 6.8 (1)(c) expressly excludes a determination made by IPART from any such objection.
- l) IPART has an obligation to investigate whether the distinction that is made between carriers and other users of Crown land results in discriminatory burdens being imposed on carriers.
- m) The verbal submissions at the Round Table by two of the LMAs, the Department of Planning and Environment and National Parks and Wildlife Service (NPWS), were interesting and did great credit to the general principles by which those entities manage and administer Crown land for the State of NSW and its people. Consistent comments regarding the administration of Crown

land by these two entities for the benefit to the community at large, and our society generally were referenced repeatedly by both representatives.

To quote Ms Sam Williams, 'Crown lands provide the foundation for the delivery of some of the state's most important values, services and infrastructure' and 'Crown land provides a multitude of values that underpin the prosperity and wellbeing of our society'.¹ We unequivocally agree with these sentiments, particularly as they reference the critical benefits to the community of 'infrastructure'.

- n) Mr Schramm of NPWS echoed these sentiments and also pointed out the essential nature of 'public services' such as 'electricity, water and telecommunications.' We cannot escape the fact that telecommunications is universally considered an essential service in the same manner that power and water are (by government, the courts and the general public). The State's treatment of telecommunications should therefore mirror the State's treatment of other such essential services.
- o) In addition, Axicom's infrastructure houses equipment owned and operated by emergency services without which emergency services would not be able to operate, or operate efficiently, in these areas.
- p) As such, we reiterate that the State must be transparent in its treatment of all such essential services and provide evidence of rents, or the methodologies for determining rents in relation to these utilities and other commercial users. Failure by the LMAs to provide this evidence can only have the effect of hindering IPART's review process, limit IPART's ability to prepare a valid recommendation and raise the risk of legal challenge.
- q) We again invite the LMAs to disclose rents or fees charged to other commercial users of Crown Land, including fees for the granting of Easements in Gross to Prescribed Authorities. We note that Axicom is a Prescribed Authority as, we understand, are Telstra, Optus and Vodafone. We also note that a number of utilities providing essential services such as power and/or water are classified as Prescribed Authorities. A final report should not be released without this information being disclosed to the participants and giving them the ability to analyse and comment on those rents/fees.
- r) In the absence of any evidence being provided by the LMAs to date, Axicom has been forced to undertake its own investigations. Whilst it is extremely difficult to find recent evidence of rents paid by other commercial users of Crown land, we have identified:
 - 1. a lease from the State of NSW to Delta Electricity Australia Pty Ltd and Sunshine Renewable Energy Pty Limited dated 8 June 2005. A summary of lease terms is provided below and a full copy is provided at Annexure A;
 - 2. numerous leases from National Parks to hotel and ski lodge operators in the Kosciusko National Park. A sample of these leases is provided as evidence of rentals achieved from commercial users of National Park land. A brief summary of the commercial terms is

1 Pages 24-25 of the Transcript for the Round Table held on 22 July 2019

- outlined below and copies of those agreements are attached as Annexure B; and
3. a lease from the Minister administering the National Parks & Wildlife Act 1974 to the Health Administration Corporation dated 17 November 2010 for the ambulance station at Perisher Valley, a copy of which is annexed at Annexure C.
 4. An undated lease from the State of NSW to Eden Ice Supplies Pty Ltd, a copy of which is annexed at Annexure D; and
 5. A lease from the State of NSW to Twofold Bay Fisherman's Co-Operative Ltd dated 13 March 2009, a copy of which is annexed at Annexure E.

Utility Lease

Landowner	Lessee	Use	Start Date	Term	Start Rent	Review of Rent	Area (sqm)	Start Rent /sqmpa
State of NSW (Department of Industry)	Delta Electricity Australia Pty Ltd, Sunshine Renewable Energy Pty Ltd	Business Purposes (Biomass Co-generation Electricity Plant)	1-May-05	20 years + 20 year option	\$5,800	Annual CPI and 3 yearly market reviews	1664	\$3.49

Commercial Leases

Landowner	Lessee	Use	Start Date	Term	Start Rent	Review of Rent	Area (sqm)	Start Rent /sqmpa	Current Land Value	Approx. Current Rent /sqmpa
Minister Administering the National Parks and Wildlife Act on behalf of the State of NSW	Precision Holdings Pty Ltd	Commercial lodge providing accommodation to the general public and incidental uses	1/10/2012	15 years 10 months + 3 x 10 year options	\$23,083.12 based on 6% of market land value of \$384,719	Annual CPI reviews and every 10 years to Market (6% of Land Value)	1773	\$13.02	\$464,000	\$15.70
Minister Administering the National Parks and Wildlife Act	Shortland Alpine Club Co-Operative Limited	Ski Lodge for members... including accommodation for the general public	1/07/2008	20 years + 30 year option	\$16,005 based on 6% of market land value of \$266,750	Annual CPI reviews and review to 6% of Market Land Value at commencement of option and thereafter every 10 years	1418	\$11.29	\$310,000	\$13.12
The State of NSW	Sundeck Hotel Pty Ltd	A hotel for the accommodation if the general public and purposes reasonably incidental to that use including staff accommodation and the sale of liquor	1/07/2012 dated 4 September 2018	16 years + 30 year option	\$62,249 based on 6% of market land value of \$1,154,156.30	Annual CPI reviews and review to 6% of Market Land Value at commencement of option and thereafter every 10 years	5755	\$10.82	\$1,120,000	\$11.68
Minister Administering the National Parks and Wildlife Act	Health Administration Corporation	Constructing and maintaining an ambulance station	7 January 1986 and varied 20/12/2011	38 years and 358 days	\$1	n/a	1123	-	\$107,000	-
State of NSW	Eden Ice Supplies Pty	Ice Works	1-Sep-05	20 years	\$3,900	Annual CPI and 3 yearly market	257.6	\$15.14	\$115,000	\$21.04

	Ltd					reviews				
State of NSW	Twofold Bay Fishermen's Co-operative Ltd	Buildings (1)	13-Mar-09	15 years	\$6,750	Annual CPI and 3 yearly market reviews	555.5	\$12.15	\$195,000	\$15

- s) The existence of these agreements has the effect of setting an upper limit on the amount LMAs may charge the communications users on Crown land. Analysis of these leases indicates that existing rentals imposed on Axicom and other communications users significantly exceed the rents charged to other users of Crown land representing discriminatory behaviour that must be rectified by this IPART Review.

	Rent/sqmpa	Rent Comment
IPART Recommendation - Sydney	\$1,123	
IPART Recommendation - High	\$273	
IPART Recommendation - Medium	\$203	
Proposed rent for Axicom Perisher Site	\$126	Based on 106sqm at National Park rate
IPART Recommendation - Low	\$124	
Commercial User (National Park)	\$13.02	6% of land value
Commercial User Eden Waterfront (Dep't of Industry)	\$12.15	
Infrastructure User (Dept of Industry)	\$3.49	
Public Safety / Essential Service	\$1	\$1 p.a. if demanded

- t) In respect of the lease to Delta Electricity and Sunshine Renewable Energy we note:
- the lease is to a commercial enterprise and is used for infrastructure purposes including pumps, pipes and electrical services; and
 - the starting rent equates to \$3.49/m² pa.
- u) In respect of the leases within the Kosciusko National Park we note:
- some of the leases are as close as 500m from Axicom's Perisher Valley communications tower (which also hosts Optus and Vodafone and provides an essential safety service to Park users via the provision of wireless communications services)¹;
 - the existence of more than 120 similar leases in the Kosciusko National Park is a significant volume of evidence and indicates that calculating rents based on land value is an accepted and workable solution for determining 'fair, market based commercial returns' in line with the Terms of Reference;
 - the commencing rent is based on 6% of land value;
 - the rent is reviewed annually by CPI and periodically to a market rate, being 6% of the land value;
 - 6% of land value is consistent with Queensland's method of charging commercial users of Crown land, including telecommunications users;
 - a 6% return to the landowner represents a fair, market based commercial return in line with the Terms of Reference;
 - 'relevant land valuations' are taken into account in accordance with the Terms of Reference;

¹ Refer to the illustrations in Annexure F

- viii. Axicom's tower area is 106m², significantly less than the hotel and ski lodge lease areas;
 - ix. If additional land is required by the commercial tenants under these leases, the licence fee for this additional land is '\$1.00, if demanded';
 - x. based on an equivalent land value in 2018, rent under these leases for Axicom's communications tower area would be approximately \$1,500p.a. not \$13,500, as recommended in the Draft Report; and
 - xi. the lease from the State of NSW to the Health Administration Corporation for the ambulance station at Perisher Valley has been granted for the nominal sum of \$1.
- v) We note that the leases within Kosciusko National Park do include a separate and unrelated 'Turnover Rent' and 'Lease Grant Fee' in a manner similar to a retail lease or accommodation management arrangement. The improvements on the land, being the ski lodges, are owned by the Crown and managed by the tenant. The 'Lease Grant Fee' is a premium paid for the grant of the lease and the 'Turnover Rent' is a percentage of the audited gross revenue generated from the use of the improvements. These appear to be payable for the use by the tenant of the improvements on the land, in addition to the base rent for the use of the land.
- w) Additional rents such as these would not be appropriate on communication sites, as ownership of the improvements on the sites sits with the user not the Crown. We note that the LMAs do not own the communications towers on the land that they lease out nor have they contributed to the costs of the towers, their ongoing maintenance, fences, power, spectrum licences, antennas and other related infrastructure. Consequently, the imposition of turnover rent is not an appropriate imposition for the LMAs to make in circumstances where they have not made any investment.
- x) The tenure arrangements which Axicom and the other infrastructure owners and operators have with the LMAs are distinguishable in this regard in that the telecommunications towers, cabins, outdoor units, fencing and other ancillary equipment or fittings are owned, provisioned for, funded and managed by Axicom and the tenants, respectively. Axicom's telecommunications infrastructure belongs at all times to Axicom and we can only assume the other telecommunications tenancy arrangements provide for the same.
- y) The Perisher leases and the on-site ski lodges are clearly to be distinguished because the ski lodges are fixtures owned by, and are 'improvements' of, the Crown. The documents to which Axicom has been privy via public access (for example, a utility lease) clearly do not grant or vest any interest in such infrastructure to the Crown, nor would this be permissible. The Delta Energy lease is a clear example of this. In the same manner that such utilities are treated by the Crown, so should telecommunications infrastructure owners and entities be treated by the Crown. This includes the manner in which users of telecommunications sites are charged rent.
- z) Interestingly, we also note that the length of tenure granted under both the Delta Energy lease and the Ski Lodge leases are far greater than the tenure granted to Axicom under its current arrangements. Whilst we understand that the scope of this review does not intend to cover this issue, we would respectfully ask why this discrepancy occurs. There seems to be a practice by the Crown to treat telecommunications sites differently in other important aspects, not merely the imposition of differentiated rental regimes.

- aa) We draw your attention to the lease from the State of NSW to the Health Administration Corporation which operates under a peppercorn rent, presumably due to factors including public safety and provision of essential services. It would not be unreasonable to afford the same treatment to tenants of communications sites who enable the provision of essential services to the community, and in many cases this includes the operations of emergency services functions.
- bb) In respect of the leases to Eden Ice Supplies and Twofold Bay Fishermen's Co-operative we note:
- a) the leases are for commercial enterprises;
 - b) the starting rents relate to land value only;
 - c) commencing rentals are in the range of \$12/sqmpa to \$15/sqmpa;
 - d) the land is waterfront land within the town of Eden;
 - e) the land is significantly more valuable than the vast majority of land used for communications towers; and
 - f) approximate current rent as a % of current land value is between 4% and 5%.
- cc) We believe this evidence shows clearly that higher rents are charged for communication sites than other commercial users of Crown land and so clause 44 and the question of discrimination against carriers on Crown land cannot be ignored in IPART's final report.
- dd) Based on the Telco Act, the Telstra Case and the Crown land rental evidence provided by Axicom in this paper, the absolute upper limit that may lawfully be charged to Telecommunications users on Crown Land is 6% of the unimproved land value to be non discriminatory.
- ee) Any recommendation by IPART to charge an amount exceeding 6% of the unimproved land value would have to be justified by IPART in accordance with its obligations of independence, transparency and accuracy.
- ff) Rents set by reference to the unimproved land valuations are directly tied to the value of the underlying land, disregarding the tenant's improvements. We would respectfully request more information in relation to IPART's rationale as to why using an approach based on unimproved land valuations would 'not reflect fair, market based commercial returns'.
- gg) The unimproved land value is a well-used and acknowledged methodology for determining market value and the concept is underpinned by the CLMA.
- hh) The principles for rent determination, which include disregarding any improvements on the land that were made by the tenant, are clearly set out in s.6.5 of the CLMA. These principles should be applied consistently for all commercial users of Crown land. To apply them inconsistently potentially results in a breach of clause 44.
- ii) We respectfully request that IPART considers very carefully the comments of all the participants in the consultation process, with specific consideration to be given to compliance with the existing federal legislation and case law.

In respect of the balance of the Draft Report, we have some additional comments that we would like to raise.

3. Primary User Compound

A. Existing Sites

- a) If the recommendations in the Draft Report are adopted by the State government, disregarding the substantive changes recommended above, it is not clear to us from the Draft Report exactly how the primary user's compound will be defined. The inadequacy of the description as to how such a compound could be determined would create an ambiguity and uncertainty which would make the calculation of rent on a per square metre basis hard to implement.
- b) Given that co-users outside of the primary user's compound will have to pay a rate of rent per square metre in accordance with the Draft Report's current recommendation, this could produce wildly different rents for a site as a whole. This is driven and further complicated by the fact that communication compounds are often considerably larger than envisaged in the Draft Report.
- c) We attach in Annexure G a list of the approximate sizes of Axicom's compounds together with a couple of illustrations of our compounds. The average size for each of the location categories is as follows:

IPART Category	Average Compound Size
High	311m ²
Medium	188m ²
Low	410m ²

- d) Axicom, as an infrastructure provider, will typically have large compound sizes to accommodate the efficient colocation of multiple users. This is in line with federal Government policy which promotes colocation on infrastructure.
- e) Compounds can be large to accommodate, for example, tower footings, cabins, earthing mats, solar panels, guy mast anchors, elevated work platforms & generators. When additional carriers install, the Draft Report envisages a 7.5m² shelter being installed. However, it is not only the shelter which has to be installed, the area has to allow for safe access, fencing curtilage and access gates as well as appurtenant cabling and other infrastructure.
- f) The Draft Report refers in several places to the 'fenced compound' and it references the Department of Industry advising that the proponent determines the size of the compound and that it is defined by a number of parameters such as:
- the fenced compound;
 - the area included in a bushfire Asset Protection Zone; or
 - an access track leading to the site.

- g) If the rent is determined in accordance with IPART's draft recommendations, what is within or outside the primary user's compound is a crucial component in determining the total amount of rent payable for the site.
- h) Some analysis undertaken on our sites indicates that the LMAs could receive double or triple the primary user rent if the compound is not taken to be the whole of the fenced compound as it stands at 1 July 2020.
- i) If IPART declines to make the more substantive changes recommended above, it is Axicom's view that any user within its fenced compound as a 1 July 2020 should be included in the primary user fee and that this should be clearly set out in the final report. If IPART determines (as it has by the analysis it has presented) that most sites (75%) are 'within' the primary user's compound, then grandfathering all current users is a reasonable position.

B. New Sites

- a) Axicom, as an infrastructure provider, has operated successfully for 20 years with a business model to deliver communications infrastructure and improvements at sites which are co-locatable. Axicom partners with all of the major carriers as well as smaller operators, emergency services and government (at various levels) in providing, operating and maintaining critical communications infrastructure.
- b) Axicom builds communications infrastructure at a site with at least one anchor tenant and the potential to accommodate future users.
- c) IPART's current recommendation does not recommend a cap on new sites at the primary user rate for that location. If there is no cap for new sites this could result in either:
 - i. Axicom paying more for a new site than it currently pays for existing sites of similar size (for example Axicom's Undercliffe site in Sydney is 110m² and under the current IPART recommendations a new site of the same size would result in a ground rent of \$123,000 per annum which is clearly outrageous); or
 - ii. Axicom seeking to minimise the size of the initial compound and each co-user having to acquire additional land at a per square metre rate; or
 - iii. Axicom (or other operators) declining to provide communications coverage to the area because the penal rental charges do not allow an ability to generate a commercial return.
- d) This would result in unnaturally high rents being imposed on communications users for these sites which do not reflect the rents (we believe) are paid by other commercial users of Crown land.

- e) This will discourage investment in new infrastructure on Crown land by companies such as Axicom and this is contrary to Government directives that are actively trying to promote the installation of, and colocation on, communications infrastructure throughout the state, particularly in regional areas. One only has to look at the Black Spots Programme initiative by the government to understand how critical this initiative is and the emphasis on the colocation model to deliver choice and utility to the community.
- f) As a result of this, if IPART declines to make the more substantive changes recommended above, Axicom recommends that a cap is imposed on new sites for macro towers in the same way that a cap has been recommended for SCAX sites, at the flat rent per site for primary users in that location.

4. Infrastructure Provider Discount Removed

If we put aside the fact that the rate of rent recommended by IPART in the Draft Report is not agreed by Axicom, the removal of the infrastructure provider discount should be separated into new sites and existing sites as the position is different with respect to each as set out below:

A. New Sites

- a) For new sites, if:
 - i. Axicom is permitted to decide on the size of the compound that it wishes to build and users within this compound either pay nothing or a minimum rent; and
 - ii. a cap on the primary user rate of the flat rate for primary users in that category is imposed,

Axicom has no issue with the fact that the infrastructure provider discount is removed. In this case, Axicom would pay the same rates on the same basis as the other users of the land.

- b) If there is no cap on the primary user rate for new builds, this particular model, with the high rates per square metre, would effectively punish infrastructure providers, and therefore be discriminatory against infrastructure providers, whose main objective is to operate/create sites with the capacity for multiple users.

B. Existing Sites

- a) For existing sites, Axicom has existing contracts in place which were entered into shortly after IPART was introduced on the dependence on and understanding of, an agreed rent with a relatively commonplace form of periodic market rent review. Market rent reviews were therefore included in the agreements but a combination of the removal of the infrastructure provider discount (which means a rent increase of 30% on sites), plus a further 20% increase in relation to the re-setting of the low category, increases the rent by 50% on some sites.
- b) In our view this is a unilateral change to fundamental terms of those contracts which were relied on by Axicom when they were entered into. Generally, at law, a counterparty is not

permitted to make fundamental and unilateral changes to a contract without the counterparty's consent (to which that counterparty is not compelled to agree). Accordingly, Axicom will have to consider its position in relation to this issue and reserves its rights in this regard.

- c) The removal of the Infrastructure Provider discount on these sites results in an unjustified windfall to the LMAs at the significant expense of Axicom and other infrastructure providers in the same situation.

5. Co-user fees

- a) In relation to co-user fees generally, Axicom was a strong advocate for the removal of the co-user fees in our submission. Co-user fees do not exist in the private market and this practice was something introduced by the Government in 2005.
- b) As a direct result of this, customers have chosen not to co-locate on Axicom's sites and this is contrary to federal Government policy that promotes colocation.
- c) The fact that a fee has been retained for users who are within the primary user's compound is illogical as:
 - i. the primary user is already paying rent for using this land; and
 - ii. the primary user is the key contracting party responsible for the site and already provides the State with the relevant protections, obligations and indemnities.
- d) A fee from a co-user in compound, no matter how small, is still 'double dipping' and, as shown by the evidence, it does not happen in the private market. It also creates an additional administrative step for both the LMAs and co-users where an additional licence has to be agreed and executed. This simply slows down deployment that is an anathema to both the communal and government mandates to require and ensure efficient and cost effective rollouts.
- e) This fee does not seem to be justified. If the reason for the fee is because there is arguably additional administration for the LMAs in processing applications to allow an entity to share the site, this should be a one off application fee. If the reason for the fee is due to the additional use on the access roads etc, we understand from the Draft Report that this is included in the primary user's fee.
- f) Our view therefore is that co-user fees are a discriminatory annexing of value from the improvements funded by the user of the site, tantamount to a tax impost, and bear no relationship to and are not reflective of the unimproved land value.
- g) We would respectfully ask that IPART reconsider whether the co-user fee principle, other than a one off administration fee, can be justified.

6. High Value sites and NPWS

- a) The unilateral decision by the NPWS to increase all of its rents by one category higher is a clear example of discrimination against the owners of communication sites unless it can be established that a similar increase exists for other commercial users of land owned by NPWS. This does not appear to be the case in the evidence presented with Axicom's submission.
- b) Rather than endorsing this decision by NPWS, IPART should be asking whether all commercial users of National Parks land pay an increased rate of rent (in some cases double) to reflect the 'social, cultural and environmental values' of National Park land.
- c) This additional charge is a charge levied against the user of the land as opposed to a charge imposed for the use of the land. Unless a similar regime is in place for other commercial users of National Park land, it has the potential to be discriminatory.

Concluding Comments

In summary, the Round Table was useful in identifying two key recurring themes in relation to this review, namely:

- 1. IPART's approach in the Draft Report, in light of clause 44 and the application of the laws in relation to discriminatory pricing, is fundamentally flawed for the reasons set out in this further submission. Our understanding is that this view was shared by virtually all participants at the Round Table for similar reasons; and
- 2. a number of other key proposals (particularly with respect to the delineation and identification of compounds) require further work to establish certainty and avoid future ambiguity and potential conflict.

In relation to the first point, we reinforce that there has been a fundamental shift in the industry following the Federal Court's decision in the Telstra Case and the clear result is that the private market is not to be considered when determining comparable rents for telecommunications sites on Crown land. Whilst the Terms of Reference list clause 44 as a matter for consideration by IPART, due weight and attention to the implications of clause 44 and the relevant case law has not been given, particularly in light of the changes made to the regime on Crown land in Queensland.

The evidence that has been provided by Axicom suggests strongly that the LMAs are engaging in discriminatory pricing with respect to telecommunication sites. The evidence we have provided illustrates that rents charged by the LMAs to other commercial users of Crown land are in the range of \$1 per annum for uses benefitting the public, \$3.49 per square metre for infrastructure users and 6% of the market value of the underlying unimproved land for commercial users. Compliance with the provisions of the Telecommunications Act dictates that any rent charged for telecommunications sites cannot exceed that charged to other commercial users. These facts, along with the relevant comparison to the regime on Crown Land in Queensland (in the aftermath of the Telstra Case) should strongly compel IPART to reconsider its approach in this review.

In order to address this issue adequately, with sufficient transparency to minimize the risk of downstream challenges, the LMAs should be compelled to disclose the manner in which they charge rents to other commercial users. Without this evidence, the only conclusion possible is that the LMAs are, and will be, charging discriminatory pricing in relation to telecommunications sites if the current recommendations of the Draft Report are implemented.

We urge IPART to request the LMAs to provide the relevant rental evidence to adequately address this issue before proceeding with this review.

If you require any further information on the issues raised in this submission, please do not hesitate to contact me.

Director, Property & Asset Management

Axicom Pty Limited

T: 02 9495 9019

F: 02 9495 9119

E: jane.pollard@axicom.com.au

Encl:

- Annexure A - Lease between the State of NSW and Delta Electricity Australia Pty Ltd and Sunshine Renewable Energy Pty Limited dated 8 June 2005
- Annexure B - Various Leases between Minister Administering the National Parks and Wildlife Act 1974 and various commercial entities
- Annexure C - Lease from the Minister administering the National Parks & Wildlife Act 1974 to the Health Administration Corporation dated 17 November 2010
- Annexure D - Undated lease between State of NSW and Eden Ice Supplies Pty Ltd
- Annexure E - Lease between the State of NSW and Twofold Bay Fishermen's Co-operative Limited dated 13 March 2009
- Annexure F - Illustrations of Site locations/Rent Rates
- Annexure G - List of Axicom's compound sizes & illustrations of typical compounds

Annexure A

Lease between the State of NSW and Delta Electricity Australia Pty Ltd and Sunshine Renewable Energy Pty Limited dated 8 June 2005



Form number: 01-117L
Lease number: LE 341566

LEASE

Real Property Act. 1900

AB564738S

Office of State Revenue use only

NEW SOUTH WALES DUTY
09-06-2005 0002718067-001
SECTION 179-DUPLICATE
NO DUTY PAYABLE

(A) **PROPERTY LEASED**

Show no more than 20 References to Title.
Specify the part or premises if appropriate.

Folio Identifier(s) 12/1074083,13/1074083

(B) **LODGED BY**

LTO Box	Name, Address or DX and Telephone
469S	Grafton District Office Department of Lands Level 1, 76 Victoria Street GRAFTON NSW 2460 REFERENCE: GF02H125

(C) **LESSOR**

STATE OF NEW SOUTH WALES

(D) The lessor leases to the lessee the property described above subject to the following **ENCUMBRANCES**

1. 2. 3. 4.

(E) **LESSEE**

L	DELTA ELECTRICITY AUSTRALIA PTY LTD, SUNSHINE RENEWABLE ENERGY PTY LTD (ACN 074 408 923) (ACN 095 991 638) Lvl 12 201 Sussex St SYDNEY NSW 2000
	TENANCY: tenants in common <i>IN EQUAL SHARES</i>

(G) 1. **TERM:** 20 years

2. **COMMENCING DATE:** 1st May, 2005

3. **TERMINATING DATE:** 30th April, 2025

4. With an **OPTION TO RENEW** for a period of 20 YEARS set out in SCHEDULE 2

5. With an **OPTION TO PURCHASE** set out in [NOT APPLICABLE]

6. Together with and reserving the **RIGHTS** set out in [NOT APPLICABLE]

7. Incorporates the provisions set out in ANNEXURE "A" hereto

8. Incorporates the provisions set out in MEMORANDUM No. [NOT APPLICABLE]

CHECKED BY (office use only)



(H) DATE 8 June 2005 We certify this dealing correct for the purposes of the Real Property Act, 1900

Signed in my presence by the lessor who is
personally known to me

Signature of Witness

Signat

WAYNE MCINTYRE

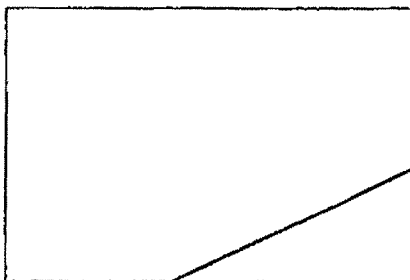
Name of Witness (BLOCK LETTERS)

Phillip Fogarty by delegation pursuant to section 180 of
the Crown Lands Act 1989 and with authority under
section 13L of the Real Property Act 1900 from the
Minister administering the Crown Lands Act 1989 on
behalf of the State of New South Wales

C/- 36 MARINA DRIVE COFFS HARBOR

Address of Witness

The Common Seal of was affixed in accordance with the articles of association
in the presence of:



Signature

Signature

Position

Position

Date

Date

See Annexure "B" for execution

Lease No.:LE 341566

ANNEXURE "A"

This and the following pages comprise Annexure "A" referred to in the Lease between the STATE OF NEW SOUTH WALES as Lessor and DELTA ELECTRICITY AUSTRALIA PTY LTD. SUNSHINE RENEWABLE ENERGY PTY LTD as Lessee.

Witness

Lessee

Phillip Fogarty by delegation to section 180 of the Crown Lands Act 1989 and with authority under section 13L of the Real Property Act 1900 from the Minister administering the Crown Lands Act 1989 on behalf of the State of New South Wales

see Annexure "B"

Lessee

see Annexure "B"

Lessee

(A Table of Contents appears at the end of this Annexure) (4.001)

Holder

The Lessor and the ~~Lessee~~ hereby covenant and agree the one with the other as follows:-

1. Authority for Grant of Lease

The Holder acknowledges that -

- (a) the Land is Crown land within the meaning of the CLA;
- (b) the State of New South Wales is recorded as registered proprietor of the Land by virtue of the provisions of section 13D of the Real Property Act 1900;
- (c) the Minister is authorised by section 34 of the CLA to grant a lease of Crown land on behalf of the Crown;
- (d) the Minister has executed this Lease on behalf of the State of New South Wales as authorised by section 13L of the Real Property Act 1900;
- (e) this Lease has been granted pursuant to section 34 of the CLA and is a "holding" for the purposes of that Act and the provisions of that Act relating to holdings apply to this lease; and
- (f) the holder is a "holder" for the purposes of the CLA and the provisions of that Act relating to holders apply to the holder. (4.002)

2. Definitions

In this Lease unless the contrary intention appears:

"CLA" means the Crown Lands Act 1989.

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"Commencement Date" means the date of commencement of the Term as referred to on the front page of this Lease.

"Holder" means the Lessee or its permitted assigns or permitted transferee and where not repugnant to the context its agents employees invitees and licensees.

"Improvements" means all buildings structures facilities works and equipment situated on or in the land or which under the terms of this Lease are to be constructed effected erected or undertaken on or in the land.

"Land" means the land (including any submerged land and waterway) described on the front page of this Lease or where the context so admits any part thereof.

"Lease" means this Lease including the Schedules and Annexures hereto.

"Lessee" means the Lessee or its permitted assigns or permitted transferee and where not repugnant to the context its agents employees invitees and licensees.

"Lessor" means the State of New South Wales being the Crown in the right of New South Wales.

"Minister" means the Minister of the Crown for the time being administering the CLA or any Act replacing or consolidating that Act.

"Premises" means the Land, the Improvements and the Lessee's Plant and where the context so permits any part of the foregoing.

"Rent" means the rent hereby reserved.

"Schedule 1" means schedule 1 of this Lease.

"Term" means the term of this Lease as shown on page one of this Lease.

"Termination Date" means the date of expiration of the Term as referred to on the front page of this Lease or where this Lease is determined (by forfeiture or otherwise) on a date earlier than that date then that earlier date. (4.003)

3. Plurals and Genders

- (a) Words importing the singular number shall include plural and vice versa.
- (b) Words importing the masculine gender shall include the feminine or neuter and vice versa.
- (c) Any reference to a person shall be deemed to include a reference to a corporation and vice versa. (4.005)

4. Contra Proferentum

In the interpretation of this lease no rule of construction shall apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Lease or any part of it. (4.006)

5. Headings Code Numbers and References

- (a) Headings (and subheadings within clauses) marginal notes the matter appearing in Column 1 of Schedule 1 and the Table of Contents have been included for guidance only and shall be deemed not to form any part of this Lease.
- (b) The code number appearing at the end of each clause of the Lease shall be deemed not to form part of the Lease.

Lease No.:LE 341566

- (c) References to Clauses Parts and Schedules are references to clauses parts and schedules of this Lease. (4.007)

6. Statutes

- (a) A reference to a statute or statutory instrument includes amendments to that statute or statutory instrument whether by subsequent statutes or statutory instruments or otherwise and any statute or statutory instrument passed in substitution for the statute or statutory instrument referred to or incorporating any of its provisions.
- (b) Without limiting the operation of paragraph (a) where any clause of this Lease contains a reference to a specific provision in a statute or statutory instrument which is repealed the Lessor may by notice in writing served on the Holder specify that a provision of any statute or statutory instrument replacing the abovementioned provision shall be substituted for the abovementioned provision and the clause shall be read and construed to that effect.
- (c) A reference to a statute includes a reference to any statutory instrument made thereunder. (4.008)

7. Provisions to be construed as Covenants

Such of the provisions and conditions herein contained as require or prescribe anything to be done or not to be done by the Holder shall in addition to being read and construed as conditions of this Lease shall be also read and construed as covenants and agreements whereby the Holder for itself and its assigns agrees with the Lessor to observe and perform such provisions and conditions. (4.009)

8. Application of Conveyancing Act

Pursuant to the provisions of section 43 of the CLA the provisions of sections 84, 84A, 85, 86, 129, 130, 131, 132, 133, 133A and 133B of the Conveyancing Act 1919 shall not apply to this Lease. (4.011)

9. Performance of Functions etc.

The Lessor and the Holder expressly agree that -

- (a) any power authority duty or function conferred or imposed upon the Lessor under any provision of this lease may be exercised or performed by the Minister as if the power authority duty or function had been conferred or imposed by this Lease on the Minister;
- (b) any power authority duty or function exercised or performed by the Minister pursuant to this clause may be exercised or performed in the name of the Minister with or without any reference to the Lessor;
- (c) the Minister may authorise a person to exercise or perform any power authority duty or function which this clause or this lease authorises or requires the Minister to exercise or perform;
- (d) a person shall be taken to have been validly authorised by the Minister to exercise or perform any power authority duty or function if that person is authorised to exercise any power authority duty or function conferred or imposed in any lease granted under section 34 of the CLA or any such lease of a specific type or any such lease within a specified locality. (4.012)

10. Lessor as Public Authority

The Holder acknowledges that nothing in this Lease can in any way restrict or otherwise affect the Lessor's or the Minister's unfettered discretion as to the use of the Lessor's or the Minister's statutory powers as a public authority. (4.013)

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11. Approval by the Lessor or the Minister

- (a) In any case where pursuant to this Lease the doing or executing of any act matter or thing by the Holder is dependent upon the approval or consent of the Lessor or the Minister such approval or consent shall not be effective unless given in writing and may be given or withheld by the Lessor or the Minister in its or the Minister's absolute discretion and may be given subject to such conditions as it or the Minister may determine unless otherwise herein provided.
- (b) The Holder expressly agrees that any failure by the Holder to comply with or perform a condition imposed pursuant to this clause will constitute a failure by the Holder to comply with or perform a condition of this Lease. (4.014)

12. Opinion of the Lessor or the Minister

Any opinion to be formed by the Lessor or the Minister for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor or the Minister determines to be sufficient after consultation if the Lessor or the Minister deems it necessary with any New South Wales Government Department or other public authority the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Lessor or the Minister shall be deemed to be exercising merely administrative functions. (4.015)

13. Time to be of the essence

Where in any provision of this Lease -

- (a) the Holder is given or allowed a specified time or period within which to undertake or do any act or thing;
- (b) any power or authority is conferred on the Lessor the Minister or the Holder after the lapse of a specified time or period; or
- (c) any event occurs after the lapse of a specified time or period

the Lessor and the Holder expressly agree that time shall be of the essence of this contract in that regard. (4.016)

14. Holder to pay Cost of Work

Whenever the Holder is required by this Lease to do or effect any act matter or thing or to undertake any work then the doing of such act matter thing or work shall unless this Lease otherwise provides be at the sole risk cost and expense of the Holder. (4.017)

15. Notices

- (a) A reference in this clause to a notice required to be served includes a reference to any -
 - (i) requirement in this lease for a notice or other communication to be given;
 - (ii) notice or other communication which may be convenient to be given or served in connection with this Lease; and
 - (iii) notice or other communication which may be required to be given or served or which may be convenient to be given or served under any condition of any approval consent or permission which the Lessor or the Minister may give under this Lease.
- (b) All notices which are required to be served by the Lessor or the Minister to or upon the Holder under this Lease shall be sufficiently given or served if left at or sent by ordinary post addressed to the Holder

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at the address specified in Column 2 of Item 1 of Schedule 1 or at the Premises or at such other place as notified in writing by the Holder to the Lessor.

- (c) All notices which are required to be served by the Holder to or upon the Lessor or the Minister under this Lease shall be sufficiently given or served if left at or sent by ordinary post addressed to the Minister at the address specified in Column 2 of Item 2 of Schedule 1.
- (d) Any notice or communication given or served by post shall be deemed to have been duly given or served at the time when it would in the ordinary course be delivered.
- (e) Subject to any other provision of this Lease to the contrary where the Holder is a corporation any notice or other communication required to be served or given or which may be convenient to be served or given under or in connection with this Lease shall be sufficiently executed if signed by the Secretary or other principal permanent officer of the corporation. (4.018)

16. Manner of Payment of Rent and Other Moneys

The rent and other moneys payable in accordance with this Lease shall be paid to the person and at the address specified in Column 2 of Item 3 of Schedule 1 or to such other person or at such other address as the Lessor may from time to time direct by notice in writing served on the Holder. (4.019)

17. Waiver

No waiver by the Lessor of one breach of any provision of this Lease shall operate as a waiver of another breach of the same or of any other provision. (4.020)

18. Severability of Provisions

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of this Lease or affecting the validity or enforceability of such provision in any other jurisdiction. (4.021)

19. Applicable Law

This Lease shall be construed and interpreted in accordance with the law of New South Wales. (4.022)

20. Exclusion of Warranties

The Holder acknowledges having inspected the Premises and that in entering into this Lease the Holder has not relied on any statement representation or warranty (other than those implied by or deemed to have been given by law and which cannot be contracted out of) by or on behalf of the Lessor whether expressed or implied other than the statements representations and warranties expressly set out in this Lease. (4.023)

21. Payment of Rent (CPI)

- (a) For the purposes of this clause:

"Initial Rent" means the rent for the first year of this Lease specified or referred to in Column 2 of Item 6 of Schedule 1.

"Base Annual Rent" means -

- (i) the Initial Rent where the rent has not been redetermined in accordance with subclauses (e) (f) or (g) or

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- (ii) in any other case - the rent as last redetermined in accordance with those provisions.

"Due Date" means each anniversary date of the Commencement Date.

"Market Rent Review Date" means -

- (i) the date specified or referred to in Column 2 of Item 7 of Schedule 1 (either being a Due Date or another date); and
- (ii) thereafter the date of the expiration of each period of years as specified or referred to in Column 2 of Item 8 of Schedule 1 as calculated from the date specified or referred to in Column 2 of Item 7 of Schedule 1.

"Market Rent Review Period" means the period between each Market Rent Review Date as specified or referred to in Column 2 of Item 8 of Schedule 1.

- (b) The Holder covenants with the Lessor that the Holder will during the whole of the Term pay to the Lessor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever the rent hereinafter provided.
- (c) The Holder will pay to the Lessor on the Commencement Date the Initial Rent and thereafter shall pay on each Due Date rent in advance adjusted as hereinafter provided.
- (d) (i) On the Due Date the rent shall be adjusted in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where:

R represents the adjusted rent;

B represents the Base Annual Rent;

C represents the Consumer Price Index number for the last quarter for which such a number was published before the Due Date; and

D represents the Consumer Price Index number for the last quarter for which such a number was published -

- (1) before the Commencement Date where the rent has not been adjusted in accordance with subclauses (e) (f) or (g) or
- (2) in any other case - before the Due Date being the effective Due Date of the last adjustment of rent as defined in subclauses (h) and (i).
- (ii) In this clause "Consumer Price Index number" in relation to a quarter means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician. In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
- (iii) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (iv) Any rent adjusted under this subclause shall be adjusted to the nearest whole dollar.

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- (e) In addition to the rent adjustment provided for in subclause (d) on the first Market Rent Review Date after the Commencement Date and thereafter on each Market Rent Review Date the rent may be adjusted by the Minister redetermining the rent pursuant to the provisions of sections 142 and 143 of the CLA.

A redetermination of rent for the purposes of this subclause shall be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before the Market Rent Review Date.

- (f) Where the Minister does not redetermine the rent as provided for in subclause (e) he may adjust the rent by redetermining the rent pursuant to the provisions of sections 142 and 143 of the CLA at any time prior to the next Market Rent Review Date and no succeeding Market Rent Review Date shall be postponed by reason of the operation of this subclause.
- (g) Where the Minister does not adjust the rent on the first Market Rent Review Date or a Market Rent Review Date as provided for in subclause (e) the Holder may by notice in writing served on the Minister require that the Minister redetermine the rent pursuant to the provisions of sections 142 and 143 of the CLA. Where the Holder requires the Minister to redetermine the rent under this subclause he shall pay on demand the costs of the Minister (or so much of the cost as the Minister may require) in making that determination.
- (h) A redetermination of rent made as provided for in subclause (e) shall take effect and be due and payable on the next Due Date following the date of issue of the notice of redetermination (or where the said Due Date and the date of issue of the notice of redetermination are the same - then that date) even if an objection or appeal under section 142 of the CLA has been lodged. On the completion of the objection and appeal process any necessary adjustments shall be made.

For the purposes of this subclause the term "next Due Date" does not include a Due Date falling between the date of issue of the notice of redetermination and the relevant Market Rent Review Date.

- (i) A redetermination of rent as provided for in subclauses (f) and (g) shall take effect and be due and payable from the next Due Date following the date of issue of the notice of redetermination under section 142 of the CLA even if an objection or appeal under that Section has been lodged. On the completion of the objection and appeal process any necessary adjustments shall be made.
- (j) The Holder acknowledges that the Minister may make a direction under section 152 (alteration of due date) of the CLA in respect of any rent payable under this Lease. (4.028)

22. Continuing Obligation

The obligation of the Holder to pay the Rent shall be a continuing obligation during the term of this Lease and shall not abate in whole or in part or be affected by any cause whatsoever. (4.038)

23. No Reduction in Rent

Subject to the other provisions of this Lease, the Holder will not without written consent of the Lessor by any act matter or deed or by failure or omission impair reduce or diminish directly or indirectly the Rent hereby reserved or imposed or cause or permit to be imposed on the Lessor any liability of the Holder under or by virtue of this Lease even though entitled so to do whether by statutory instrument proclamation order or moratorium (present or future) or otherwise. (4.039)

24. Holder to Pay Rates etc.

The Holder will when the same become due for payment pay all (or in the first and last year of the term of this Lease the appropriate proportionate part) rates taxes (including Land Tax) assessments duties charges and fees whether municipal local government statutory or otherwise which are at any time during the currency of this Lease lawfully charged upon imposed or levied in respect of the Premises or on the Lessor or the Holder on

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account thereof and will if required by the Lessor produce to the Lessor the receipts for such payments within ten business days after the respective due dates for payment AND in case such rates taxes duties and fees so covenanted to be paid by the Holder are not paid when the same shall become due the Lessor may if it thinks fit pay the same and any such sum or sums so paid may be recovered by the Lessor as if such sums were rent in arrears. (4.040)

25. Goods and Services Tax

(a) Definitions

In this clause the expressions "GST", "supply", and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

(b) Amounts GST Exclusive

With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable under this Lease are exclusive of GST.

(c) Responsibility for GST

- (i) Despite any other provision in this Lease, if GST is imposed on any supply made under this Lease, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (ii) The recipient must pay the amount referred to in subclause (c)(i) in addition to and at the time payment for the taxable supply is required to be made under this Lease.

(d) Valuer/Umpire to return GST Exclusive Value

Any valuer or umpire returning a valuation must return a GST exclusive market value for it in any case where the valuation is for the purpose of determining a supply value to which GST is to be added under this Lease. (4.040A)

26. Holder to Pay for Services

The Holder will as and when the same become due for payment pay to the Lessor or to any other person or body authorised to supply the same all proper charges for gas electricity water sewage or other services supplied to or consumed in or on the Premises and will also pay all charges in respect of any telephone services connected to the Premises. (4.041)

27. Holder not to Impose Liability on Lessor

Subject to any other provision of this Lease the Holder will not without the written consent of the Lessor by any act matter or deed or by failure or omission cause or permit to be imposed on the Lessor any liability of the Holder under or by virtue of this Lease even though the Holder is entitled so to do under any law (present or future) or otherwise. (4.042)

28. Permitted Use

- (a) This Lease confers on the Holder a right to occupy and use the Premises for the purpose specified or referred to in Column 2 of Item 36 of Schedule 1.
- (b) The Holder will not use the Premises or allow them to be used for any purpose other than the purpose specified in Column 2 of Item 36 in Schedule 1. (4.043)

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29. No Residence on Premises

The Holder will not reside or permit any other person to reside on the premises. (4.045)

30. Lessor's Consent to Development Application

The Holder covenants with the Lessor that the Holder will obtain the Lessor's consent to the lodgement of any development application in respect of the Land. (4.047)

31. Holder not to undertake Development without consent notwithstanding any other provision of this Lease

The Holder will not undertake any development within the meaning of the Environmental Planning and Assessment Act 1979 contrary to the provisions of that Act or in breach of any restriction condition or prohibition imposed by an Environmental Planning Instrument or condition of a development consent. (4.048)

32. Development Consent

- (a) The Holder will not undertake any activity on or within the Premises for which consent is required under the Environmental Planning and Assessment Act 1979 or any Instrument made thereunder without first obtaining such consent.
- (b) Where the Holder obtains consent in accordance with the provisions of this clause the Holder will not undertake any activity on or within the Premises except in accordance with any conditions or requirements of that consent. (4.049)

33. Compliance with Statutes

- (a) The Holder will comply with the requirements of all statutes regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the premises.
- (b) The Holder will forthwith on being served with a notice by the Lessor comply with any notice or direction served on the Lessor or the Minister by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises. (4.050)

34. Occupational Health and Safety Act 1983

The Holder accepts responsibility for the control of the whole of the Premises for the purposes of the Occupational Health and Safety Act 2000 and agrees to keep and maintain the Premises in the manner which complies with the said Act. (4.051)

35. Lessor may Charge Fee

The Lessor may charge such fees as may be prescribed in the Regulations made under the CLA for dealing with any application by the Holder for consent to assign transfer sublease or otherwise part with possession of the Premises. (4.055)

36. Provision of Guarantees

In the case of an application for consent to a proposed assignment transfer or declaration of trust of this Lease in favour of a company the Lessor may require guarantees by such persons and in such form as the Lessor requires. (4.056)

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37. Forfeiture

- (a) The Holder expressly acknowledges that this Lease may be forfeited pursuant to the provisions of section 129(1) of the CLA in the circumstances set out in that section.
- (b) For the purposes of this Lease the Holder will be taken not to have failed to comply with a condition covenant or provision of this Lease until a period of 28 days (or such further period as may be specified in the notice) has elapsed after the service of a notice in writing on the Holder specifying the covenant conditions or provision which the Holder has failed to comply with.
- (c) The Lessor and the Holder expressly acknowledges that if one or both of the events specified hereunder occurs the Holder will for the purposes of this clause and for the purpose of section 129(1) of the CLA be taken to have failed to comply with a provision of this Lease and the provision of subclause (b) shall not apply to such a default.
 - (i) **Winding Up**

the Holder (being a company) - an order is made or a resolution is effectively passed for the winding up of the Holder (except where such winding up is for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld); or
 - (ii) **Liquidation**

the Holder goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts or if execution is levied against the Holder and not discharged within 30 days.
- (d) Demand or acceptance of Rent or any other money due under this Lease by the Lessor after forfeiture does not operate as a waiver of forfeiture. (4.059)

38. Abandonment

If the Holder vacates or abandons the Premises during the continuance of this Lease (whether or not the Holder ceases to pay the Rent and other amounts payable pursuant to this Lease) then in the absence of written notice by the Lessor accepting the surrender of the Holder's interest under this Lease or the forfeiture of the Lease neither acceptance of the keys nor entry into the Premises by the Lessor or by any person on the Lessor's behalf for the purpose of inspection or for the purpose of showing the Premises to prospective lessees or licencees nor the advertising of the Premises for re-letting shall constitute a waiver of the Lessor's rights to recover in full all Rent and other amounts from time to time payable by the Holder pursuant to this Lease and this Lease shall be deemed to continue in full force and effect until the date on which any forfeiture thereof takes effect or the date of expiration of the term whichever shall first occur. (4.060)

39. Interest on Overdue Money

The Holder shall pay interest on any money due and payable under this Lease at the rate prescribed from time to time under the provisions of section 148 of the CLA and any such interest shall for the purposes of this Lease be deemed to be Rent in arrears. (4.061)

40. Failure to Pay Money or Undertake Works

- (a) For the purposes of this clause the word "cost" shall include any sums paid for any insurance indemnities under the laws relating to workers' compensation.
- (b) Where under this Lease the Holder is required to pay any money to a third party and neglects to do so for a period of 14 days after the money became due and payable it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any rights and powers arising from such default) to pay such

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money as if it were the Holder and the Holder will reimburse the Lessor in respect of any such payments on demand.

- (c) Where under this Lease the Holder is required to do or cause to be done any work or thing and the Holder neglects to do the work or thing for a period of 14 days after that work or thing was due or required to be done it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any rights and powers arising from such default) to do or effect such work or thing as if the Lessor were the Holder and for that purpose the Lessor the Lessor's officers agents contractors and workmen may enter upon the whole or any part of the Premises and there remain for the purposes of doing or effecting any such work or thing and the Holder will reimburse the Lessor for the cost of the doing or effecting the work or thing on demand.
- (d) The Holder expressly agrees that any money or cost payable to the Lessor under this clause shall constitute a debt owed by the Holder to the Crown in the right of the State of New South Wales and may be recovered accordingly.
- (e) Where the Premises has a common boundary with other land owned leased or held by the Holder (hereinafter called the "other land") the Holder irrevocably grants to the Lessor the Lessor's officers agents contractors and workmen a Licence to enter upon the said other land for the purpose of gaining access to the Premises or for the purpose of undertaking any work or thing authorised permitted or contemplated by this Lease.

In exercising any power conferred by this subclause the Lessor the Lessor's servants employees and agents will not be liable for any reasonable damage suffered or occasioned to the other land or anything constructed thereon.

- (f) The Holder expressly agrees that the provisions of this clause shall continue after the expiration or sooner determination of this Lease and the Lessor may make any payment or effect any work or thing authorised by this clause after the expiration or sooner determination of this Lease as if such expiration or sooner determination had not taken place. (4.062)

41. Holder to take as if Owner

The Holder shall take and be subject to the same responsibilities in regard to persons and property and otherwise to which the Holder would be subject as if during the Term the Holder was the owner of the freehold of the Premises. (4.063)

42. Release of Lessor from Accident Damage

- (a) For the purposes of this clause the term Lessor shall include Her Majesty the Queen Her Heirs and Successors the Minister and the agents servants employees and contractors of the Lessor Her Majesty Her Majesty's Heirs and Successors and the Minister.
- (b) The Holder agrees to occupy use and keep the Premises at the risk of the Holder and hereby releases to the full extent permitted by law the Lessor from all claims and demands of every kind resulting from any accident damage or injury occurring therein and the Holder **EXPRESSLY AGREES** that the Lessor shall have no responsibility or liability for any loss of or damage to fixtures and/or the personal property of the Holder.
- (c) The Holder expressly agrees that the obligations of the Holder under this clause shall continue after the expiration or other determination of this Lease in respect of any act deed matter or thing occurring before such expiration or determination. (4.064)

43. Indemnities

- (a) For the purposes of this clause the term Lessor shall include Her Majesty the Queen Her Heirs and Successors the Minister and the agents servants employees and contractors of the Lessor Her Majesty Her Majesty's Heirs and Successors and the Minister.
- (b) The Holder covenants with the Lessor to indemnify and keep indemnified the Lessor from and against all claims for injury loss or damage suffered by any person or body using or being in or upon the Premises or any adjoining land or premises of the Lessor arising out of the Holder's use of the Premises and against all liabilities for costs charges and expenses incurred by the Lessor in respect of the claim of any such person or body except to the extent that any such claims and demands arise wholly from any negligence or wilful act or omission on the part of the Lessor.
- (c) The indemnity contained in this clause applies notwithstanding that this Lease authorised or required the Holder to undertake or perform the activity giving rise to any claim for injury loss or damage.
- (d) The Holder expressly agrees that the obligations of the Holder under this clause shall continue after the expiration or sooner determination of this Lease in respect of any act deed matter or thing occurring before such expiration or determination. (4.065)

44. Insurance - Public Risk

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Lease) forthwith take out and thereafter during the Term keep current a public risk insurance policy for the amount not less than that specified in Column 2 of Item 39 of Schedule 1 for any one claim (or such other reasonable amount as the Lessor may from time to time specify in writing to the Holder) whereby the Lessor shall during the continuance of this Lease be indemnified against all actions suits claims demands proceedings losses damages compensation costs charges and expenses mentioned or referred to in this Lease to which the Lessor shall or may be liable. (4.066)

45. Insurance - Workers Compensation

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Lease) forthwith take out and thereafter during the Term keep current insurance against any liability which may arise at common law or by virtue of any relevant workers compensation legislation in connection with the performance of work or provision of services on or about the Premises and the operation thereof so that the Lessor will be indemnified against all claims for death or bodily injury by any person at all times. (4.067)

46. Construction of Improvements

- (a) For the purposes of this clause "Improvement" means any building structure facility or work.
- (b) The Holder may construct effect erect or undertake any Improvements specified or referred to in Column 2 of Item 40 of Schedule 1.
- (c) Any Improvements constructed erected effected or undertaken shall be constructed erected effected or undertaken in accordance with the plans conditions and specifications contained or referred to in Column 2 of Item 41 of Schedule 1.
- (d) The Holder will not construct effect erect or undertake any Improvements on the Premises other than the Improvements specified or referred to in Column 2 of Item 40 of Schedule 1 or which may be authorised or required under any other provision of this Lease. (4.077)

47. Improvements to be Property of Holder

- (a) For the purpose of this Clause -

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"Constructed" means constructed, erected, effected or undertaken.

"Improvement" means any building, structure, facility, work, equipment or pontoon.

"Remove" means to demolish and take away.

- (b) The Lessor and the Holder acknowledge that subject to subclause (d) the Improvements specified or referred to in Column 2 of Item 54A of Schedule 1 constructed on the Premises by the Holder shall be the property of the Holder.
- (c) The Holder shall within the period after the Termination Date specified or referred to in Column 2 of Item 54B of Schedule 1 (or such further period as the Minister may allow) remove the Improvements specified or referred to in subclause (b) and rehabilitate the land in the manner specified or referred to in Column 2 of Item 54C of Schedule 1.
- (d) Where the holder fails to remove the Improvements referred to in subclause (b) within the time provided for in subclause (c) the property in the Improvements shall become the property of the Lessor after the lapse of 28 days from the end of the period provided for in subclause (c) and the Holder shall not be entitled to any compensation in respect thereof. (4.091A)

48. Removal of Plant on Expiration of Term

- (a) The Holder will (unless the Lessor and Holder otherwise agree in writing) remove from the Land all Holder's Plant within one month (or within such further period as the Lessor may allow) after the expiration of the Term of this Lease and make good any damage to the Premises caused by such removal. The property in any of the Holder's Plant not removed within that time shall upon the expiration of the said period automatically pass to and vest in the Lessor without compensation.
- (b) For the purposes of this Clause the term "Holder's Plant" shall mean such plant and equipment as is specified or referred to in Column 2 of Item 58 of Schedule 1. (4.095)

49. Removal of Plant on Forfeiture

- (a) If this Lease is forfeited by the Lessor or is abandoned by the Holder the Holder will (unless agreed otherwise in writing) not be entitled to remove any of the Holder's Plant and upon such forfeiture of the Lease or abandonment the property in the Holder's Plant shall automatically pass to and vest in the Lessor without compensation PROVIDED THAT if the Lessor requires the Holder to remove the Holder's Plant or any part thereof and notifies the Holder in writing of such requirement the Holder will within 30 days after such written notification remove the Holder's Plant or the part thereof and make good any damage to the Premises caused by such removal and in default thereof the Lessor may remove such Holder's Plant at the expense of the Holder and sell the Holder's Plant so removed and the proceeds of such sale shall vest in the Lessor.
- (b) For the purposes of this clause the term "Holder's Plant" shall mean such plant and equipment as is specified or referred to in Column 2 of Item 59 of Schedule 1. (4.096)

50. Removal of Signs

Upon the Termination Date the Holder will at the Holder's expense remove any signs advertisements lights embellishments names notices or hoardings erected painted displayed affixed or exhibited upon to or within the Premises by or on behalf of the Holder and make good any damage or disfigurement caused by reason of such erection painting displaying affixing exhibiting or removal thereof. (4.097)

51. Premises to be kept in clean and tidy condition

The Holder will at all times during the Term keep the Premises in a clean and tidy condition and will (subject to any other provision of this Lease) on the Termination Date leave the Premises in a clean and tidy condition. (4.104)

52. Lessor's Right to Enter Inspect and Repair

The Lessor and the Lessor's agents may at all reasonable times upon giving to the Holder reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Premises and view the state of repair thereof and may serve upon the Holder a notice in writing of any defect (the repair of which is the Holder's obligation hereunder) requiring the Holder within 14 days to repair the same. (4.106)

53. Notification of Accident

The Holder will give to the Lessor prompt notice in writing of any serious accident to or serious defect or want of repair in any of the Improvements facilities devices contrivances services to or fittings in the Premises which in any way is likely to cause any serious danger risk or hazard to the Premises or any person therein unless such defect unsafeness weakness or want of repair is capable of being and is promptly remedied by the Holder. (4.115)

54. Relics

- (a) Unless authorised to do so by a permit under section 87 or a consent under section 90 of the National Parks and Wildlife Act 1974 and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Holder will not knowingly disturb destroy deface or damage any aboriginal relic or place or other item of archaeological significance within the Premises and shall take every precaution in drilling excavating or carrying out other operations or works in the Premises against any such disturbance destruction defacement or damage.
- (b) If the Holder becomes aware of any aboriginal relic or place or other item of archaeological significance within the Land the Holder will within 24 hours notify the Director National Parks and Wildlife Service of the existence of such relic place or item.
- (c) The Holder will not continue any operations or works on the Land likely to interfere with or disturb any relic place or item referred to in subclause (b) without the approval of the Director National Parks and Wildlife Service and the Holder will observe and comply with all reasonable requirements of the Director in relation to the carrying out of the operations or works. (4.120)

55. Artefacts

All fossils artefacts coins articles of value articles of antiquity structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall as between the Lessor and the Holder be deemed to be the absolute property of the Lessor and the Lessor shall be authorised by the Holder to watch and examine any excavations and the Holder will take every precaution to prevent such articles or things being removed or damaged and shall immediately upon discovery thereof notify the Minister of such discovery and carry out at the reasonable expense of the Holder the Lessor's orders as to the delivery up or disposal of such articles or things. (4.121)

56. Holder to provide Security

- (a) (a) The Lessor and the Holder agree that this clause shall apply during the period specified or referred to in Column 2 of Item 69A.
- (b) The Holder will on or before the date specified or referred to in Column 2 of Item 70 of Schedule 1 lodge with the Lessor a Bank Guarantee or Indemnity Guarantee for the sum specified or referred to in Column 2 of Item 71 of Schedule 1 as security for the fulfilment of the obligations of the Holder under

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this Lease. In the event that the Holder fails to fulfil any of his obligations under this Lease the said sum may be applied at the absolute discretion of the Lessor towards the cost of fulfilling such obligations. For the purpose of this clause the Holder will be taken to have failed to fulfil the Holder's obligations under this Lease if the Holder fails to comply with any condition covenant or provision of the Lease any provision of the CLA or any condition requirement or direction imposed or given pursuant to a condition covenant or provision of this Lease or any provision of the CLA.

- (c) (i) Subject to sub-paragraph (ii) the Lessor may after the expiration of the period of years specified or referred to in Column 2 of Item 72 of Schedule 1 from the Commencement Date of this Lease review at any time the amount of security required in accordance with subclause (b) hereof and by notice in writing served on the Holder increase or decrease the amount to be secured.
- (ii) Not more than one variation in the amount of security shall be made under sub-paragraph (i) during any period of years as specified or referred to in Column 2 of Item 73 of Schedule 1.
- (d) Where the amount of security has been increased or decreased pursuant to subclause (c) hereof the Holder will within two (2) months of being required so to do by the Lessor lodge a further security for the amount of security required in which case the Lessor shall release to the Holder the security previously lodged. (4.122.02)

57. Quiet Enjoyment

The Lessor covenants with the Holder that the Holder paying the rent and performing and observing the covenants and conditions herein shall and may peaceably and quietly possess and enjoy the Premises during the Term without any interruption from or by the Lessor or any person claiming from or under the Lessor. (4.214)

58. Holder not to remove Materials Except with Consent

- (a) The Holder will not mine remove extract dig up or excavate any sand stone gravel clay loam shell or similar substance or permit any other person to undertake any such action without the prior consent in writing of the Lessor and subject to such conditions as the Lessor may determine.
- (b) Subclause (a) shall not apply to any removal digging up or excavation as may be necessary to construct or undertake any improvement or alteration authorised by or under this Lease provided that any such removal digging up or excavation is undertaken in accordance with the requirements of that authority.
- (c) The Minister and the Holder expressly agree that a failure by the Holder to comply with any condition imposed pursuant to subclause (a) shall constitute a failure by the Holder to comply with a provision or covenant of this Lease. (4.227)

59. Holder Not to Consent to Encroachment

The Holder shall not during the Lease agree to or permit any encroachment or easement into upon over or against the Premises or any part thereof without the previous consent in writing of the Lessor. (4.229)

60. Holder to Give Notice of Encroachment

The Holder shall give immediate notice to the Lessor of any encroachment or attempted encroachment over or against the Premises or any part thereof and shall permit the Lessor to enter upon the Premises for the purpose of ascertaining the nature of the encroachment or attempted encroachment. (4.230)

61. Encroachment by Building - No Obligation on Lessor

The Lessor shall not be obliged to obtain any easement or other right in relation to any overhang or encroachment by the Premises onto any property including without limitation any street or road outside the Land. (4.231)

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62. Encroachment by Holder onto Public land

The Holder expressly agrees that the Holder will not construct erect or effect any building structure or work which encroaches onto any adjoining "public land" as defined in section 153 of the CLA. (4.231A)

63. No Moratorium

Unless application is mandatory by law no statute ordinance proclamation order regulation or moratorium present or future shall apply to this Lease so as to abrogate extinguish impair diminish fetter delay or otherwise prejudicially affect any rights powers remedies or discretions given or accruing to the Lessor or Holder. (4.234)

64. No Holding Out

The Holder will not in connection with the Premises or otherwise directly or indirectly hold out or permit to be held out to any member of the public any statement act deed matter or thing indicating that the Premises or the business conducted or operated thereon or any part or parts thereof are or is being carried on or managed or supervised by the Lessor or the Minister nor shall the Holder act as or represent itself to be the servant or agent of the Lessor or the Minister. (4.236)

65. Holder to Pay Costs of Lessor

The Holder shall pay in full the Lessor's legal costs the fees of all consultants and all duties fees charges and expenses incurred by the Lessor in consequence of or in connection with or incidental to:

- (a) any cost of registration and stamping of this Lease;
- (b) any variation to this Lease made otherwise than at the request of the Lessor; and
- (c) any application for the consent of the Lessor under this Lease; and
- (d) any and every failure to comply breach or default by the ^{Holder}~~Lessee~~ under this Lease; and
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease. (4.238)

66. Holder to Yield Up

The Holder will forthwith upon the determination of this Lease peaceably surrender and yield up to the Lessor the Premises in good condition reasonable wear and tear excepted together with all conveniences amenities and appurtenances relating thereto clear and free from rubbish and in good and substantial repair order and condition in every case having regard to the age of what is being surrendered or yielded up. (4.239)

67. No Right to Purchase etc.

The Holder expressly acknowledges that the grant of this Lease does not confer a right to purchase the land or to the grant of a further lease or to the grant of any licence. (4.242)

68. Special Conditions

The special conditions specified or referred to in Column 2 of Item 130 of Schedule 1 shall be deemed to be conditions and provisions of this Lease. (4.243)

***** End of Lease Clauses *****

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SCHEDULE 1

Item	Paragraph No	Column 1 (description of variable particulars)	Column 2 (particulars)
1	15	Holder's Address for service of notices	Paul Welch Secretary Sunshine Renewable Energy 117 Pacific Hway BROADWATER NSW 2472 Peter McIlveen Secretary Delta Electricity Australia L1 12 Darling Park, 201 Sussex Street Sydney NSW 2000
2	15	Lessor's or Minister's Address for service of notices	Department of Lands PO Box 272 GRAFTON NSW 2460
3	16	Person and address for payment of rent	The Cashier Department of Lands PO Box 2155 DANGAR NSW 2309
6	21	Initial Rent	\$5,800
7	21	Market Rent Review Date (First)	1 May 2008
8	21	Market Rent Review Period	3 years
36	28	Permitted Use	Business Purposes (Biomass Co-generation Electricity Plant)
39	44	Insurance - Public Risk	\$20 million
40	46	Improvements that may be constructed	Pumps, Pipes, Electrical Services, Debris Strainers and Service Walkways to carry liquid to and from the river to the cogeneration plant.
41	46	Improvements - plans conditions and specifications	See Richmond Valley Council - DA 2004.0505
54A	47	Improvements - to be Property of Holder	All improvements
54B	47	Improvements - period for removal	28 days
54C	47	Manner of rehabilitation of land	All improvements are to be removed and the site rehabilitated to the satisfaction of the Manager, Crown Lands NSW, Far North Coast or their equivalent.
58	48	"Holder's plant" - Removal on Termination	All plant and equipment

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Item	Paragraph No	Column 1 (description of variable particulars)	Column 2 - (particulars)
59	49	"Holder's Plant" - Removal on Forfeiture	All plant and equipment
69A	56	Period of Application of security clause	Whole of term of this lease
70	56	Date by which Security is to be provided	At the date of commencement of this lease
71	56	Amount of Security to be provided	\$10,000
72	56	First Security Review Period	Three (3) years from the date of commencement
73	56	Security Review Period	Three (3) years
130	68	Special conditions or provisions	See Schedule 2

***** End of Schedule 1 *****

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SCHEDULE 2

69. Several rights and obligations of the Holders

All rights and obligations of the Holder or Holders under this Lease however expressed are "several" and not "joint" or "joint and several". Accordingly notwithstanding anything else in this Lease:

- (a) if a provision of this Lease is expressed to require the Lessor to pay an amount to the Holders or to the Holder then that provision will be interpreted to require the Lessor to pay to each of the named Holders a proportion of that amount which corresponds with the named Holder's share in the Joint Venture; and
- (b) if a provision of this Lease is expressed to require the Holders or Holder to pay an amount to the Lessor then that provision will be interpreted to require each named Holder to pay the Lessor a proportion of that amount which corresponds with its share in the Joint Venture; and
- (c) if the Holder or Holders become liable to the Lessor for breach of an obligation in this Lease which is expressed to be the obligation of the Holder or Holders then the liability of each named Holder will be limited to a proportion of the total liability to the Lessor which corresponds with its share in the Joint Venture.

70. No Assignment, Sublease, Mortgage or other dealing with Lease except with consent

- (a) Subject to clause (i), (ii) & (iii), The Holder will not assign transfer demise sublease mortgage charge or otherwise deal with the Holder's interest in this Lease or demise sublease or part with the possession of the Premises or by any act or deed procure any of the foregoing except with the consent in writing of the Lessor.
- (b) Subject to clause (i), (ii) & (iii), In the case of an application for the consent of the Lessor to a proposed mortgage, charge or encumbrance the Lessor may require that the proposed mortgagee or chargee enter into a covenant with the Lessor in the form reasonably required by the Lessor that the mortgagee or chargee will notify the Lessor if the Holder is in default under the terms of the mortgage or charge and that should the mortgagee or chargee enter into possession of the Premises for the purpose of realising its security or otherwise then the said mortgagee or chargee will duly perform and keep the covenants and agreements on the Holder's part herein contained.

Clauses:

(i) Charge in favour of Financiers

The Holders may charge in favour of the Financiers, or any of them, all or any part of their rights and obligations under this Lease for the purpose of securing the performance by the Holders of their obligations under the Finance Agreements. The Lessor agrees to enter into any agreement or deed reasonably required by the Financiers (and in the form reasonably required by the Financiers) to record or confirm the Financiers' security over the Holders' rights and obligations under this Lease and to provide the Financiers with reasonable assurances regarding the operation of this Lease, the Holders' and Lessor's performance of their obligations under this Lease and the enforcement of the Financiers' rights against the Holders.

(ii) Deed of Assumption

Other than an assignment or transfer permitted under clause (iii), no assignment or transfer of a party's rights under this Lease has any force or effect until such time as:

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- (a) in the case of one of the Holders assigning or transferring its rights, the assignee or transferee has entered into a deed of assumption (under which the assignee or transferee assumes all of the obligations of that named Holder under this Lease) on terms and conditions reasonably acceptable to the other named Holder; and
- (b) in the case of the Lessor assigning or transferring its rights (or if such rights are assigned or transferred pursuant to any legislation), the assignee or transferee has entered into a deed of assumption (under which the assignee or transferee assumes all of the obligations of the Lessor under this Lease) on terms and conditions reasonably acceptable to the Holders.

(iii) Holder Assignment

Subject to the provisions of clauses (i) neither of the named Holders may assign or transfer its rights and obligations under this Lease without the prior written consent of the other named Holder. Either of the named Holders may withhold its consent to any proposed assignment or transfer of rights and obligations under this Lease if it considers on reasonable grounds that the proposed assignee or transferee is not capable of performing the other named Holder's obligations under this Lease.

71. Change in Shareholding

If one of the named Holders is a company, other than a company whose shares are listed on any Australian stock exchange, it will not without the prior written consent of the other named Holder, the Lessor and the Financiers, which consent will not in either case be unreasonably withheld, register, record or enter in its books any transfer of any share or shares in its capital or deal with any beneficial interest in any such share or shares or issue any new share or shares or take or attempt to take any action having the effect of altering its effective control or having the effect that its shareholders at the date hereof together beneficially hold or control less than 51% of the voting rights in its capital. Nothing in this clause 71 is intended to restrict or in any way prevent a named Holder registering, recording or entering in its books the transfer of any share or shares pursuant to the exercise by the Financiers of any rights they may have against either of the named Holders under an agreement, deed or other form of security of the kind referred to in or contemplated by Condition 70 clause (i).

72. Provisions re Policies

- (a) Notwithstanding anything expressed or implied in this Lease the following provisions apply to all policies of insurance required to be effected by the Holder under this Lease:
 - (i) All policies are to be placed with an Insurer and shall be for such amounts and cover such risks and contain such conditions endorsements and exclusions as are reasonably acceptable to or reasonably required by the Lessor having regard to insurance commonly effected in relation to the types of business or activity carried out on the Premises and the nature of the Premises.
 - (ii) All policies are to be taken out in the names of the Holders for their respective rights and interest (with the Lessor's interest noted on those policies) .
 - (iii) Duplicate or certified copies of the policies and all renewal certificates and endorsement slips are to be lodged by the Holder with the Lessor if required by the Lessor.
 - (iv) All premiums in respect of all such policies and renewals of policies are to be paid punctually by the Holder and the receipt for each premium payable in respect of each policy

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(or other proof of payment to the Lessor's satisfaction) is to be produced by the Holder to the Lessor at the request of the Lessor.

- (v) The Holder will not at any time during the Term do or bring upon the Premises anything whereby any insurance relating to the Premises against damage by fire and other risks may be rendered void or voidable. If the Holder brings anything onto the Premises whereby the rate of premium on such insurance shall be liable to be increased the Holder will obtain insurance cover for such increased risk and pay all additional premiums on the Premises (if any) required on account of the additional risk caused by the use to which the Premises are put by the Holder.
- (vi) The Holder will use all reasonable endeavours to ensure that full true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys thereunder.
- (b) The Lessor in its own name or as the attorney of the Holder in the name of the Holder shall be entitled to institute all proceedings against any office or company which issues a policy of insurance required by this Lease to recover from it any amount for loss damage or injury or other money payable under any indemnity in favour of the Lessor. The Holder hereby appoints the Lessor the attorney of the Holder for the purpose as aforesaid.

73. Maintenance of Ground Areas

The Holder will at all times during the Term keep the ground areas of the land in the order and condition that they were at the commencement of this lease. If the Holder fails to keep such grounds in the said condition in the reasonable opinion of the Lessor the Holder will at the request of the Lessor enter into a contract with an appropriate person skilled in maintaining and caring for grounds with a view to keeping the grounds clean tidy and in a healthy condition.

74. Holder not to transfer specified land separately from Lease except with consent

Subject to Condition 70 The Holder expressly agrees that the Holder will not transfer mortgage or grant a lease of the land or interest in the land without first notifying the Lessor provided that such notification shall not be required if the transfer mortgage or lease is to a person to whom the Holder has contracted to transfer mortgage or sublease this Lease to following notification that action as provided for by the terms of this Lease.

75. Dispute Resolution Procedure

In the event that the Lessor and the Holder are in dispute regarding any matter relating to or arising out of this Lease other than -

- (i) in respect of any approvals or consents to be granted by the Lessor to the Holder; or
- (ii) where the Lessor or the Minister is acting in a statutory capacity or statutory authority; or
- (iii) where the dispute concerns a determination of the rent payable under this Lease

the Minister may either on his own initiative or on the request of the Holder refer the dispute to the Local Land Board for inquiry and report pursuant to section 22 of the CLA.

- (b) For the purposes of this clause "Local Land Board" means the local land board constituted under section 20 of the CLA for the land district in which the Land is situated.

Lease No.:LE 341566

76. Option to Renew

If:

- (a) at the end of the Term the Holder wishes to enter into a further lease of the Premises for the term of 20 years; and
- (b) the Holder gives the Lessor not less than 6 months' notice in writing to that effect prior to the expiration of the Term; and
- (c) both at the date of giving notice to the Lessor and at the date of expiration of the Term, the Holder has duly performed and observed all the covenants and agreements contained in the Lease; and
- (d) the Holder has duly and punctually paid the rent at the times appointed in the Lease for payment therefore; and
- (e) the Minister is able to satisfy the requirements of Sections 34 and 35 of the Crown Lands Act 1989 and any other law then in force in relation to the granting of a further lease to the Holder;

then the Lessor will at the cost of the Holder grant to the Holder a lease of the Premises for the further term of 20 years (with a further option to renew the lease till 10 October 2051) commencing on the date following the date of expiration of the Term:

- (a) at a rent to be determined by the Lessor; and
- (b) otherwise subject to the same covenants, terms and conditions as are contained in the Lease except for this clause.

77. Mortgage in Favour of Contractor

Notwithstanding any other provision of this Lease, the Holders may mortgage and/or charge this Lease in favour of the Contractor.

78. Definition of Contractor

Contractor means Downer Energy Systems Pty Limited ACN 067 158 954 and Clyde Babcock - Hitachi (Australia) Pty Limited ACN 010 975 256 and their successors and assigns.

79. Amendments to Annexure A

The parties agree that Annexure A is amended as follows:

- (a) Inserting the following definitions into clause 2:

"Finance Agreements" means any loan agreements, related charge agreements and related interest rate or currency hedging instruments between each of the Holders and the third party lender or lenders, to provide funds or any other form of financial accommodation to the Holders which is reasonably necessary for the design, construction, maintenance and operation of the power generating plant on Lot 1 DP1048202;

"Financiers" means the lenders providing funds or financial accommodation to the Holders or under the Finance Agreements;

"Joint Venture" means the joint venture conducted between the Holders, as more particularly discussed in the Joint Venture Agreement;

"Joint Venture Agreement" means the agreement of that name between the Holders and Sunshine Electricity Management Pty Limited ACN 097 037 860 executed on 11 October 2001.

Lease No.:LE 341566

- (b) The definition of "Holder" in clause 2 is replaced with the following definition:
- "Holder" or "Holders" means the two lessees named on the front page of this Lease or their permitted assigns or permitted transferees and where not repugnant to the context their agents, employees, invitees and licensees and a reference to a "named Holder" refers to either one of the other of these named lessees.
- (c) The definition of "Lessee" in clause 2 is replaced with the following definition:
- "Lessee" means the two named lessees or their permitted assigns or permitted transferees and where not repugnant to the context their agents, employees, invitees and licensees.
- (d) The definition of "Premises" in clause 2 is replaced with the following definition:
- "Premises" means the Land and the Improvements (if any) and where the context so permits any part of the foregoing.
- (e) Clause 5(c) is amended by inserting the words "and Annexures" after the word "Schedules" in both places the word "Schedules" appears in line 1 and inserting the words "and to" after the word "of" in line 2.
- (f) Clause 12 is amended by inserting the word "similar" after the word "other" in line 4.
- (g) Clause 15(a)(i) is amended by replacing the word "lease" with the word "Lease" in line 1.
- (h) Clause 15(e) is amended by inserting the words "or corporations" after the words "corporation" in line 1 and line 4.
- (i) Clause 24 is amended by replacing the words "on account thereof" in line 4 with the words ", in each case on account of the Premises".
- (j) the following new clause is inserted as clause 46(e):
- "Notwithstanding clause 46(a)-(d), the Lessee may construct, erect, effect or undertake to be constructed Improvements on the Land otherwise than in accordance with the plans, conditions and specifications in Column 2 of Item 40 of Schedule 1 if the Lessee obtains:
- (i) the consent of the Lessor (which must not be unreasonably withheld); and
- (ii) development approval from the relevant consent authority to carry out the construction, erection, effecting or undertaking to construct."
- (k) Clause 56(b) is amended by inserting the words "(after being given reasonable notice)" after the word "comply" in line 7.
- (l) Clause 56(c)(i) is amended by inserting the words "(acting reasonably)" after the word "may" in line 1.
- (m) Clause 70(i) is amended by inserting the words "and mortgage" after the word "charge" in line 1.
- (n) Clause 73 is amended by replacing the word "lease" in line 2 with the word "Lease".

***** End of Schedule 2 *****

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***** End of Table of

LESSOR

Phillip Fogarty by delegation pursuant to section 180
 of the Crown Lands Act 1989 and with authority under
 section 13L of the Real Property Act 1900 from the
 Minister administering the Crown Lands Act 1989 on
 behalf of the State of New South Wales

LESSEE

ANNEXURE "B"

This page comprises Annexure "B" referred to in the Lease between the STATE OF NEW SOUTH WALES as Lessor and DELTA ELECTRICITY AUSTRALIA PTY LTD, SUNSHINE RENEWABLE ENERGY PTY LTD as Lessee.

Executed by Delta Electricity Australia Pty)
Ltd in accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)
)

.....
Signature of director

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

.....
Name (please print)

Executed by Sunshine Renewable Energy)
Pty Ltd in accordance with section 127(1) of the)
Corporations Act 2001 (Cth):)
)

.....
Signature of director

.....
Signature of director or company secretary*
*delete whichever does not apply

.....
Name (please print)

.....
Name (please print)

Annexure B

Various Leases between Minister Administering the National Parks and Wildlife Act 1974 and various commercial entities



Form: 07L
Release: 4-1

LEASE
New South Wales
Real Property Act 1900

AH549166Y

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only	NEW SOUTH WALES DUTY 19-12-2012 0006922113-002 TRANSFER DUTYABLE AMOUNT \$ 8908300850,527.00 DUTY \$ 8000088775.50
----------------------------------	--

(A) TORRENS TITLE

Property leased Folio Identifier 1/1172991 and known as Valhalla Lodge, Cathago PERISHER VALLEY

(B) LODGED BY

Document Collection Box 813E	Name, Address or DX, Telephone, and Customer Account Number if any Crown Solicitor's Office DX 19 SYDNEY 9224 5079 Reference: CEA 1235890 201200736 D2012/517468	CODE L
--	---	------------------

(C) LESSOR

MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974 ON BEHALF OF THE STATE OF NEW SOUTH WALES

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

LYNETTE JACQUELINE INGHAM, DEBRA NORMA KEPITIS,
ROBERT CHRISTOPHER INGHAM and JOHN ANDREW INGHAM

(F)

TENANCY: **JOINT TENANTS**

(G) 1. TERM 15 YEARS 10 MONTHS

2. COMMENCING DATE 1 OCTOBER 2012

3. TERMINATING DATE 30 JUNE 2028

4. With ~~an~~ ^{3x} OPTION TO RENEW for a period of 10 YEARS + 10 YEARS + 10 YEARS
set out in clause 16 of ANNEXURE "A"

5. With an OPTION TO PURCHASE set out in clause N.A. of N.A.

6. Together with and reserving the RIGHTS set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in ANNEXURE(S) "A" hereto.

8. Incorporates the provisions set out in N.A.
No. N.A.

9. The RENT is set out in clause No. 2 of SCHEDULE 2

DATE 4 DECEMBER 2012.

- (H) I certify I am an eligible witness and that the lessor signed this dealing in my presence.
[See note* below].

Signature of witness:

Name of witness:
Address of witness:

LINDA SCOTT
43 BRIDGE ST
MURSTOWN

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signed by the delegate of the Minister
Administering the National Parks and
Wildlife Act 1974 on behalf of the
State of New South Wales:
Signature of lessor:

Ann King
Head of National Parks &
Wildlife Service

- I certify I am an eligible witness and that the lessee signed this dealing in my presence.
[See note* below].

Signature of witness:

Name of witness:
Address of witness:

ER GRINTER
NOTARY PUBLIC
THOMSONS LAWYERS
1 O'CONNELL STREET
SYDNEY NSW 2000

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of lessee:

(I) STATUTORY DECLARATION*

I

solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales on _____

in the presence of _____ of _____

☐ Justice of the Peace (J.P. Number: _____) ☐ Practising Solicitor

☐ Other qualified witness [specify] _____

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Only ID No.]

Signature of witness: _____

Signature of applicant: _____

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

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EXECUTED as a Deed84

THIS IS ANNEXURE 'A' TO THE LEASE BETWEEN

THE HONOURABLE ROBYN PARKER, Minister for the Environment being for the time being the **MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974** on behalf of **THE STATE OF NEW SOUTH WALES** (Lessor)

and

LYNETTE JACQUELINE INGHAM, DEBRA NORMA KEPITIS, ROBERT CHRISTOPHER INGHAM and **JOHN ANDREW INGHAM** (Lessee)

DATED the 4th day of DECEMBER 2012

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease unless the contrary intention appears:

Aboriginal Object shall have the same meaning as that term has in the Act;

Act means the *National Parks and Wildlife Act 1974*.

Accommodation Register means an accommodation register in a form and with the content approved by the Department, that contains full information on persons staying overnight at the Premises including:

- a) the name of the Premises; and
- b) the Maximum Number of Persons Overnight; and
- c) the names of all Persons referred to in b) above and the room numbers of all Persons so accommodated; and
- d) the numbers of all persons being under five (5) years of age; and
- e) the time and dates the Persons referred to in c) above arrive at and depart from the Premises.

Additional Beds Allocation means an approval by the Lessor to the Lessee for the Lessee to use the number of additional beds in the Premises specified in Item 4A of the Reference Schedule subject to compliance with the terms of this Lease, in particular, clause 5.3 of this Lease and the Additional Beds Allocation Schedule. For the sake of clarity, if Item 4A of the Reference Schedule is marked 'NA' there is no Additional Bed Allocation.

Additional Beds Allocation Fee means the amount of money payable by the Lessee to the Lessor pursuant to clause 3.3A and as specified at Item 24 of the Reference Schedule.

Additional Beds Allocation Schedule means Schedule 5 of this Lease.

Additional Covenants Schedule means Schedule 3 of this Lease.

Adjoining Licence Area means any area or areas of land immediately adjoining or in the vicinity of the Premises, which is described at Item 10 of the Reference Schedule. For the sake of clarity, if Item 10 of the Reference Schedule is marked 'NA' there is no Adjoining Licence Area.

Assistance Animal means an animal referred to in section 9 (guide dogs, hearing assistance dogs and trained animals) in the *Disability Discrimination Act 1992* of the Commonwealth.

Australian Standards means any relevant Australian Standard developed by Standards Australia as amended, revised or replaced from time to time.

Authorised Officer means the Director-General and the Deputy Director-General and any other person performing the functions of either of them or any other person nominated by the Minister, the Director-General or the Deputy Director-General to act as an authorised officer for the purpose of this Lease.

Authority means a document issued by the Director General that identifies the Authorised Officer and which authorises that person to exercise the rights of the Lessor under this Lease.

Bank means the bank that provides the Bank Guarantee pursuant to clause 3.6.

Bank Guarantee means the bank guarantee required by clause 3.6 and from a bank and in a form approved by the Lessor for the sum stated at Item 2 of the Reference Schedule (which amount may be reviewed by the Lessor from time to time and may be increased as shall be determined by the Lessor having regard to all matters relevant in the opinion of the Lessor to the sufficiency of the security) to be held by the Lessor for the due and proper performance by the Lessee of all its obligations under this Lease or such other security as set out in clause 3.6.7.

Bed means a piece or a part of a piece of furniture on which a person may sleep.

Bed Numbers means the number of Beds stipulated at Item 4 of the Reference Schedule as may be increased as provided in clause 6.1.6 which may be used for the purpose of accommodating the Maximum Number of Persons Overnight on any given night. For the purposes of determining Bed Numbers:

- (a) a Bed that is designed to accommodate one (1) Person shall count as one (1) Bed; and
- (b) a Bed that is designed to accommodate two (2) or more Persons shall count as two or more Beds.

Breach means a breach, default or failure by the Lessee and/or the Lessee's Employees and Agents to comply with a term, covenant or obligation in this Lease including where relevant to the context, a default as described in clause 14.4.

Building Code means the building and development control codes, policies, regulations and requirements of a Relevant Authority which apply from time to time in respect to structures and improvements forming part of, or which are constructed or situated on, or within the Premises.

Commencing Date means the commencing date of this Lease stipulated at Item (G) 2 on the Lease cover page.

Consent Authority means the Relevant Authority, in each case vested with the authority

and mandate to grant development consent or approval under Part 4 or Part 5 of the *Environmental Planning and Assessment Act 1979*.

Community Service Contribution means a contribution by the Lessee for the cost of maintaining any community service in the Park, including but not limited to all expenses in connection with:

- a) the provision of medical services in the Perisher Range Resorts;
- b) snow clearing and road maintenance;
- c) the disposal of waste, water, sewerage; and
- d) water supply.

Contamination means any toxic or hazardous substance, gas liquid or material, any waste or discharge (other than properly and lawfully discharged sewerage) or any pollutant.

Department means the Office of Environment and Heritage, Department of Premier and Cabinet which context includes any department or authority replacing same.

Director-General means the Director-General of the Department of Premier and Cabinet, and includes any person for the time being acting as such or in such alternative position or office as the Lessor may notify from time to time.

Environmental Research and Rehabilitation Contribution means the amount at Item 21 of the Reference Schedule as a contribution to the cost of environmental monitoring, research and rehabilitation of ski resorts in the Park.

Exotics and Ornamentals means any exotic or ornamental plants or seeds not indigenous to the locality.

Filming Activity has the same meaning as that phrase has in the *Filming Approval Act 2004*.

Fire Safety Measures has the same meaning as in the Environmental Planning and Assessment Regulation 2000.

Food Premises Charges means the amounts as are assessed by the Lessor from time to time pursuant to the Act for the cost of food-safety inspections of the Premises, food safety training and consultations, guidance and advice to assist the Lessee and the Lessee's Employees and Agents in complying with the Law in relation to food safety and developing safe working practices in relation to food storage and preparation.

Further Lease means a lease granted by the Lessor pursuant to the exercise of the Option by the Lessee.

Further Term means the term of the Further Lease noted at Item 13 of the Reference Schedule.

Historic Relic shall have the same meaning as the term 'relic' as defined in the *Heritage Act 1977*; and

Hydrocarbon Storage Systems means one or more completely buried, partially buried or above ground tanks and any pipes to and from or associated with the tanks that contain or are intended to contain hydrocarbon product (for example, diesel, heating oil, petroleum).

Improvements means all buildings structures improvements erections and Services and includes any alteration or addition to the same which are constructed, installed or brought on the Premises, whether by the Lessee or Lessor, whether before or after the Commencing Date, whether in accordance with the covenants of this Lease or otherwise and whether completed or uncompleted, but does not include the Lessee's Fixtures.

Law means any law whether common law or any law under any statute, ordinance, regulation or code applicable in the State of New South Wales.

Lease means this Lease and all annexures plans and schedules to this Lease and any variations of this Lease.

Lease Grant Fee means the amount of money payable by the Lessee to the Lessor pursuant to clause 3.3 and as specified in Part C of the Rent Schedule and at Item 22 of the Reference Schedule.

Lease Grant Fee Payment Option means the Lease Grant Fee payment option elected by the Lessee as specified at Item 23 of the Reference Schedule.

Lessee means the Lessee stipulated as the Lessee on the lease cover page and means the successors and permitted assigns of the Lessee and where not repugnant to the context includes the Lessee's Employees and Agents.

Lessee's Employees and Agents means each of the Lessee's employees, agents, officers, contractors, service suppliers, sublessees, concessionaires, invitees and those persons who at any time are under the control of and in or on the Premises with the consent of the Lessee (expressed or implied).

Lessee's Fixtures means all fixtures and fittings constructed or installed on the Premises by the Lessee or brought onto the Premises by the Lessee and include: plant machinery, furnishings, equipment, utensils, shelving, counters, safes or other articles in the nature of trade or tenant's fixtures, but does not include the Improvements.

Lessor means the Minister for the time being administering the Act and includes his or her successors in office and where not repugnant to the context includes the servants and agents of the Lessor.

Licence Fee means the amount of money payable by the Lessee to the Lessor, if any, as determined by the Lessor from time to time, initially being the amount set out at Item 12 of the Reference Schedule.

Liquor has the same meaning as in the *Liquor Act 1982* (NSW).

Maximum Number of Persons Overnight means the maximum number of Persons permitted to remain at the Premises on any given night (including guests of the Lessee, the public, members, associates, agents, employees or contractors of the Lessee) stipulated at Item 5 of the Reference Schedule.

Minister shall mean the Minister for the time being administering the Act and includes his or her successors in office.

Native Title has the same meaning as in the *Native Title Act (Cth) 1993*.

NA means not applicable.

Objects shall mean Aboriginal Objects and/or Historic Relics.

Option means the option to take a Further Lease as provided in clause 16.

Outgoings means all amounts, costs, expenses of any kind whatsoever assessed, incurred or levied in relation to the Premises or upon the Lessor or the Lessee on account thereof including:

- a) Rates, Taxes and other charges imposed by any Relevant Authority;
- b) charges for the supply (including charges for installation and connection) of Services to the Premises;
- c) supplying, renting, operating, maintaining, servicing, repairing and replacing Services and upgrading Services to comply with requirements or orders of Relevant Authorities or any Law;
- d) Community Service Contribution;
- e) Environmental Research and Rehabilitation contribution; and
- f) Food Premises Charges.

Oversnow vehicle means such vehicles as snow cats, skidoos and other machines as approved by the Lessor for the transport of persons or freight over snow.

Park means the area of land permanently reserved under the Act and for the time being known as Kosciuszko National Park.

Perisher Range Resorts means those areas of the Park known as Perisher Valley, Smiggin Holes, Guthega and Blue Cow and, for the purposes of this Lease, also means Wilson's Valley, Diggers Creek and Kosciuszko Mountain Retreat.

Perisher Range Resorts Environmental Management System means the document or documents that specifies the Lessor's environmental management system for the Perisher Range Resorts applicable from time to time or such other document or documents that replaces it and fulfils in substance the same functions.

Permitted Use means the use prescribed at Item 3 of Reference Schedule.

Permitted Use of the Adjoining Licensed Area means the use prescribed at Item 11 of Reference Schedule.

Person means any human being whether man, woman or child who has attained five (5) years of age.

Plan of Management means the plan of management prepared and adopted for the Park by the Lessor as amended from time to time pursuant to the Act or such other plan that replaces it and fulfils in substance the same functions.

Plumbing Facilities means the toilets, sinks and sewerage and drainage system (including pipes, lines and connections) on, in or under the Premises.

Premises means the land described as the Premises at Item 1 of the Reference Schedule and where this Lease provides or the context of this Lease so admits any part of that land and includes any structures and improvements on that land (and includes the Improvements and the Lessee's Fixtures) and may by virtue of clause 17 of this Lease include the Adjoining Licence Area.

Prescribed Rate means the rate prescribed under the Act for overdue monies payable in respect to leases.

Rates means rates, land taxes, levies, assessments and other charges (including charges for consumption and garbage and waste removal), together with any interest, fines and penalties in connection with them.

Reference Schedule means Schedule 1 of this Lease.

Regulations means the Regulations, from time to time, made under the Act.

Relevant Authority means, in respect to a particular context or circumstances, any government, administrative or judicial body, department, commission, public authority, tribunal or entity having jurisdiction and responsibility in respect to that context or circumstance including but not limited to a Consent Authority and where not repugnant to the context includes the Lessor.

Rent means the rent as determined in accordance with Part A of the Rent Schedule.

Rent Schedule means Schedule 2 of this Lease.

Services means the services running through or servicing the Premises including but not limited to air conditioning, electricity, power, gas, oil, water, sewerage, telecommunications, fire hydrant, fire service sprinkler and public address and includes all pipes, wires, cables, ducts and other conduits in connection with them.

Taxes means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any authority (including stamp and transaction duties), (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income or capital gains of the Lessor.

Term means the Term of this Lease stipulated at Item (G) 1 on the Lease cover page.

Terminating Date means the terminating date of this Lease stipulated at Item (G) 3 on the Lease cover page.

Works means all works with respect to the Improvements (whether to the exterior or interior), and/or the Lessee's Fixtures and/or any other part of the Premises including, where the context of the provisions of this Lease so permits, installations, construction, repairs, renovations, maintenance, restoration, alterations (including structural alterations), additions, renovations and improvements, demolition and works to the Services.

There may also be other words, which have a prescribed meaning for the purposes of this Lease, which are set out in the Rent Schedule and Additional Covenants Schedule.

1.2 Interpretation

In this Lease unless the context otherwise requires:

- 1.2.1 words denoting the singular number shall include the plural and vice versa;
- 1.2.2 words denoting any gender shall include all genders;
- 1.2.3 words denoting individuals shall include corporations and vice versa;
- 1.2.4 reference to any Act of Parliament or regulation or ordinance or to any section or provision thereof shall include any statutory modification or re-enactment thereof or any statutory provision substituted therefore and ordinances, by-laws, regulations and other statutory instruments issued there under;

- 1.2.5 references to clauses, annexures and schedules are references to clauses, annexures and schedules of this Lease;
- 1.2.6 references to any deed, agreement, licence, instrument or any document or register shall be deemed to include references to that deed, agreement, licence, instrument or document or register as amended, novated, supplemented or replaced from time to time;
- 1.2.7 where a Schedule contains covenants or obligations of the Lessee or the Lessor then the covenant or obligation so expressed shall be read and construed and shall constitute a covenant or obligation on the part of the Lessee or the Lessor, as the case may be, to be performed or observed under this Lease;
- 1.2.8 a reference to any party or to a Relevant Authority or to any other person, corporation or association shall be a reference to them as so constituted from time to time and shall include their successors and permitted assigns and in the case of a Relevant Authority means the body which at the relevant time substantially fulfils the functions of the Relevant Authority;
- 1.2.9 a reference to anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.
- 1.2.10 where a clause specifies that the Lessor has a right remedy action or power over or in relation to the Lessee such a clause is not to be construed as restricting limiting or prejudicing any other right remedy action or power of the Lessor arising from any Law or this Lease.

1.3 Headings

Headings are for ease of reference only and does not affect the construction of this Lease.

1.4 Currency

Unless otherwise stated all currencies referred to in this Lease are in Australian dollars.

1.5 Governing Law

This Lease is governed by, and construed in accordance with the law of New South Wales and the parties submit to the jurisdiction of the Courts of New South Wales.

1.6 Entire Agreement

This Lease constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior negotiations, understandings and discussions between the parties. No modifications to this Lease shall be effective unless in writing signed by the parties.

1.7 Performance on Next Working Day

Where under or pursuant to this Lease or anything done hereunder the day on or by which

any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in New South Wales, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

1.8 Joint and Several Liability

Any covenant or agreement on the part of or in favour of two or more persons shall be deemed to bind them or be in favour of them jointly and each of them severally.

1.9 Exclusion of Implied Covenants and Powers

The covenants and powers implied in every lease by virtue of Sections 84, 85, 132, 133, 133A and 133B of the *Conveyancing Act 1919* shall not apply or be implied in this Lease except in so far as the same or some part or parts thereof are expressly included in the covenants contained in this Lease or are incapable by law of exclusion.

1.10 Director-General

For the purposes of administering this Lease, the Director-General, the Deputy Director-General and any authorised delegate of the Minister, Director-General or the Deputy Director-General have authorisation to act on the Lessor's behalf and exercise the Lessor's authority pursuant to the provisions of this Lease.

1.11 Counterparts

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

1.12 Lessee's Employees and Agents

If this Lease prohibits the Lessee from doing a thing, then:

- 1.12.1 the Lessee must do everything necessary to ensure that the Lessee's Employees and Agents do not do that thing; and
- 1.12.2 the Lessee must not allow or cause any person to do that thing.

2 GRANT

2.1 Grant

2.1.1 Pursuant to the provisions of Section 151 of the Act the Lessor leases to the Lessee the Premises and the Lessee hereby accepts the lease subject to the provisions of this Lease.

2.1.2 The Lessor grants to the Lessee for the Term or sooner termination or surrender of this Lease:

- a) exclusive possession of the Premises subject to this Lease and the Law;

- b) use and enjoyment of the Improvements and Lessee's Fixtures; and
- c) the non-exclusive use of the Adjoining Licence Area subject to such restrictions as are specified by Law or this Lease and in accordance with clause 17 of this Lease.

2.1.3 The Lessee acknowledges and agrees that the Lessor reserves the right at any time to resurvey the area of the Premises and if that resurvey discloses any variation from the area of the Premises previously surveyed or a variation in the position of the boundaries of the Premises:

- a) the Lessee agrees to enter into a new lease for the balance of the Term then remaining unless otherwise agreed by the parties on the same terms and conditions as this Lease except that the definition of Premises shall be varied to reflect the correct area or boundary;
- b) the Lessee is not required to enter into a new lease as provided in clause 2.1.3 a) if in the opinion of the Lessee, reasonably held, the variation of the area or boundary has a material adverse effect upon the Lessee's business conducted on the Premises and if such is the case the Lessee must promptly execute and provide to the Lessor an executed surrender of Lease;
- c) the Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind this Lease nor have any other rights in respect to such variation except the right to surrender the Lease pursuant to clause 2.1.3 b).

2.1.4 The Lessee acknowledges and agrees that if the Lessor wishes to upgrade any adjoining road or track for the purposes of establishing a formed road, the Lessor reserves the right at any time to resurvey the area of the Premises to exclude the land on which the road (and its ancillary services) are located; and

- a) in the case where the area of the Premises is affected to a minor degree, the Lessee agrees to enter into a new lease for the balance of the Term then remaining unless otherwise agreed by the parties on the same terms and conditions as this Lease except that the definition of Premises shall be varied to exclude the land on which the road (and its ancillary services) are located;
- b) in the event that the Lessor does not require the Lessee to enter into a new lease as provided in clause 2.1.4 a) then if in the opinion of the Lessee, reasonably held, the variation of the area or boundary has a material adverse effect upon the Lessee's business conducted on the Premises and if such is the case the Lessee may promptly execute and provide to the Lessor an executed surrender of Lease;
- c) the Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind this Lease nor have any other rights in respect to such variation except the right to surrender the Lease pursuant to clause 2.1.4 b).

- 2.1.5 Where the Lessor forms the opinion, reasonably held, that easements or restrictions are required to be created to burden or benefit the Premises for the benefit of other lessees in the Park, the public, utility providers or the Lessor and serves a notice on the Lessee to that effect, then the Lessee must promptly execute all necessary documents evidencing consent to the creation of such easements or restrictions as described in that notice and will not prevent or hinder the Lessor in procuring the creation of the same by way of caveat or otherwise.
- 2.1.6 The Lessee must permit access to adjoining lessees in the Park and their invitees over such part of the Premises as is determined by the Lessor. The Lessor must only exercise his or her rights under this clause to enable the adjoining lessees to access their premises and only over such paths, tracks or roads traversing the Premises that are in existence as at the Commencing Date and which have been used by such lessees for sometime prior to the Commencing Date.
- 2.1.7 The Lessee permits the Lessor its agents, contractors and employees to enter and occupy the Premises for the purpose of performing maintenance works and works caused by the failures or faults in the Services or pipes and/or for purposes of performing works for the relocation of the Lessor's Services or pipes. To this end, the Lessor its agents, contractors and employees may operate, repaint, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other thing the Lessor considers are necessary or appropriate to any of its Services or to construct new Services and for these purposes the Lessor and the Lessor's employees agents and contractors may carry out any work on, below or above the surface of the Land. For the purposes of this clause, the Lessor will give the Lessee such reasonable notice requesting access as the nature of the situation requires and in the case of emergency no notice is required.
- 2.1.8 The Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind or terminate this Lease nor have any other rights if the Lessor exercises its rights under this clause 2, except where the Lessor exercises its rights under clause 2.1.3 or clause 2.1.4 and then the Lessee may exercise its right to surrender the Lease pursuant to clause 2.1.3 b) or clause 2.1.4 b) as the case may be.

2.2 Term

This Lease is granted for the Term unless otherwise terminated in accordance with this Lease.

2.3 Representations

The Lessee represents and warrants that:

- 2.3.1 it has power to enter into and observe its obligations under this Lease; and
- 2.3.2 it has in full force and effect the authorisations necessary to enter into this Lease, observe obligations under it, and allow it to be enforced; and

- 2.3.3 its obligations under this Lease are valid and binding and are enforceable against it in accordance with its terms; and
- 2.3.4 this Lease does not contravene its constituent documents (when the Lessee is a company) or any Laws or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or, when the Lessee is a company, the powers of its directors, to be exceeded.

3 LEASE PAYMENTS

3.1 To Pay Rent

The Lessee must pay to the Lessor the yearly Rent without any deduction whatsoever.

3.2 Manner of Payment of Rent

The Lessee must pay all Rent and other monies payable by the Lessee to the Lessor at the address nominated by the Lessor from time to time and in such manner as the Lessor shall in writing direct.

3.3 Lease Grant Fee

In consideration of the Lessor agreeing to grant this Lease, the Lessee must pay to the Lessor the Lease Grant Fee. The Lease Grant Fee is not refundable in any circumstances including without limitation, if the Lease is terminated or surrendered.

3.4 3.3A Additional Beds Allocation Fee

If the Lessor grants to the Lessee an Additional Beds Allocation, in consideration of the Lessor agreeing to that grant, the Lessee must pay to the Lessor the Additional Beds Allocation Fee. The Additional Beds Allocation Fee is not refundable in any circumstances including without limitation, if the Lease is terminated or surrendered.

3.5 Outgoings

- 3.5.1 The Lessee must pay all Outgoings as and when Outgoings become due for payment.
- 3.5.2 The Lessee must, if required by the Lessor, produce to the Lessor receipts for payment of any Outgoing. If the Lessee fails to pay any Outgoing the Lessor may pay such amount and any amount paid by the Lessor may be recovered by the Lessor from the Lessee as if the amount was rent in arrears.
- 3.5.3 The Lessor may, at the cost of the Lessee, install meters on the Premises to determine the consumption of Services supplied to the Premises. Until such time as appropriate meters are installed, the Lessee must pay such amount as may be reasonably determined by the Lessor for such Services.

3.6 Unpaid Monies

- 3.6.1 On each and every occasion on which the Lessee omits or neglects (for a period of not less than twenty-eight (28) days from the date on which the Lessee is obliged to do the same) to pay any money which the Lessee has covenanted in this Lease to pay then the Lessor may (without prejudice to any rights and powers arising from such default) pay such money and all monies referred to in this clause 3.5.1 and 3.5.2 are recoverable on demand by the Lessor and a certificate by the Lessor as to any amount payable by the Lessee pursuant to this clause is prima facie evidence of the amount payable by the Lessee.
- 3.6.2 The Lessee must pay interest on any unpaid monies due under this Lease at the higher of the Prescribed Rate and the rate of three per cent (3%) per annum above the current overdraft rate from time to time charged by an Australian trading bank nominated by the Lessor, on such amounts as may be nominated by the Lessor computed from the due date for the payment of such monies until payment of such monies in full.

3.7 Bank Guarantee

The Lessee will promptly, upon execution of this Lease, provide to the Lessor the Bank Guarantee provided that:

- 3.7.1 the Bank Guarantee is a continuing obligation in favour of the Lessor until the obligations and liabilities of the Lessee under this Lease have in all respects been performed, observed and discharged;
- 3.7.2 the Lessor may claim against the Bank under his or her guarantee for any liabilities which may be incurred by the Lessor arising from any Breach without the Lessor having made any claim or instituting any proceedings against the Lessee in respect to such claims and Breaches;
- 3.7.3 the Lessor will inform the Bank that the guarantee is no longer required by the Lessor within a reasonable time after the expiration or other determination of the Lease or the expiration or other determination of any extension or renewal thereof;
- 3.7.4 the giving of such a guarantee by the Bank does not operate to relieve the Lessee from any of the obligations on its part under any other provision of this Lease nor does the guarantee limit the right of the Lessor to recover from the Lessee in full all monies payable to the Lessor under any other provision of this Lease;
- 3.7.5 in the event of the Bank making any payment or payments to the Lessor in full or partial discharge of the Bank Guarantee the Lessee must immediately provide to the Lessor a substitute Bank Guarantee for an amount not less than the amount specified at Item 2 of the Reference Schedule or as determined by the Lessor;
- 3.7.6 the Lessee must provide a fresh Bank Guarantee for any Further Term if the Lessee exercises its right to renew this Lease prior to the grant of the Further Lease or within twenty-eight (28) days of the grant of the Further Lease; and

- 3.7.7 the Lessor may, in circumstances where a Bank is no longer able to issue a Bank Guarantee in the form required by the Lessor, accept some other security from the Lessee that guarantees the Lessee's performance of the obligations under this Lease including but not limited to a bond or a personal guarantee.

4 GOODS AND SERVICES TAX

4.1 Consideration Exclusive of GST

Any consideration or payment obligation arising under or in connection with this Lease is exclusive of GST unless stated otherwise.

4.2 Taxable Supply

- 4.2.1 This clause applies if a Supply made under or in connection with this Lease is a Taxable Supply.
- 4.2.2 If this clause applies, the consideration for the Supply is increased by an additional amount equal to the amount of that consideration multiplied by the relevant GST rate.
- 4.2.3 The additional amount under paragraph 4.2.2 is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.

4.3 Tax Invoice

A party who makes a Taxable Supply must provide a Tax Invoice within twenty-eight (28) days of a request.

4.4 Payments

Unless otherwise stated in this Lease, the following principles apply when determining the amount of a payment under this Lease:

- 4.4.1 if a party is entitled under this Lease to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Lease, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and
- 4.4.2 if a party sets off an amount under this Lease, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph 4.4.1.

4.5 GST Terms

In this clause 4:

- 4.5.1 GST means goods and services tax under the GST Law;
- 4.5.2 GST Law has the same meaning as that expression has in *A New Tax System Goods and Services Tax Act 1999*, and
- 4.5.3 a term or expression starting with a capital letter which is defined in the GST Law but not defined in these terms has the same meaning as in the GST Law.

5 USE OF PREMISES

5.1 Use of Premises

- 5.1.1 The Lessee must use the Premises for the Permitted Use, in accordance with the terms of this Lease.
- 5.1.2 The Lessee must not use or permit the use of the Premises for any purpose other than the Permitted Use in particular the Lessee must not undertake or allow any other person to undertake any ski tuition that is for a commercial purpose, ski equipment hire and sales of ski equipment on the Premises.
- 5.1.3 The Lessee represents and warrants that:
 - a) it has not relied on any representation by or on behalf of the Lessor as to how the Premises may be used; and
 - b) it has made its own appraisal of the suitability of the Premises for the Lessee's business and the Permitted Use; and
 - c) it is aware of all prohibitions and restrictions applying to the Premises in accordance with the requirements and orders of all Relevant Authorities and all Laws.

5.2 Onus of Proof as to Usage

The Lessee acknowledges that in the matter of proof of whether the Lessee is complying or has complied with the provisions of this Lease as to the Permitted Use the onus of proof shall be on the Lessee.

5.3 Compliance with Statutory Requirements

- 5.3.1 The Lessee must at the Lessee's expense observe and comply with and cause to be observed and complied with in respect to the Premises, any business conducted on the Premises, the conduct of any person using or on the Premises, or the Permitted Use of the Premises:
 - a) the requirements of all Laws and of any Relevant Authority;
 - b) the requirements of relevant Building Codes and Australian Standards applicable to new works;

- c) all notices orders and directions which may be given in accordance with the Laws or by any Relevant Authority referred to in clause 5.3.1 a);
- d) any Plan of Management for the Park;
- e) the requirements of all planning instruments, controls and policies whether federal, state or local; and
- f) the reasonable directions, special conditions and performance standards imposed by the Lessor where they relate to furthering the objects of the Act.

5.3.2 The Lessee acknowledges and agrees that in complying with this clause and all Laws in connection with the Premises, the Lessee may be required to effect structural or capital works, alterations and additions to the Premises.

5.4 No Noxious Use

The Lessee must not:

- 5.4.1 carry on or permit or suffer to be carried on in or upon the Premises any unlawful noxious or offensive use act trade business occupation or calling;
- 5.4.2 permit or suffer any riotous, disorderly, offensive or improper conduct upon or near the Premises or permit or suffer any person who is drunk or behaving in a riotous, disorderly, offensive or improper manner to be or remain upon or near the Premises;
- 5.4.3 cause, allow or suffer to occur any annoyance, nuisance, injury, disturbance or obstruction to the Lessor or other persons rightfully using or being upon the Premises or in the Park;
- 5.4.4 carry on or allow any activities of a standard or kind which are not in keeping with the purposes of this Lease, may adversely affect the use and enjoyment of the Premises by the public, or in the Lessor's reasonable opinion are unsuitable or objectionable or may damage the image of the Premises or the Department.

5.5 Conduct of Business

5.5.1 The Lessee must ensure:

- a) that the Premises are actively managed, maintained, conducted, controlled and promoted at all times in good faith and in a proper, orderly, efficient, reputable and businesslike manner for the purposes authorised by this Lease;
- b) courtesy and promptness in dealing with reasonable requests by the public relating to the use of the Premises, and courtesy and due care in controlling or directing persons using or otherwise upon the Premises;
- c) The Lessee must not use any logo or emblem of the Department without

the prior approval of the Lessor.

5.6 Security of Premises

The Lessee must keep all doors, windows, trapdoors, skylights and other means of access to each building on the Premises securely fastened when the building is not occupied by the Lessee or the Lessee's Employees and Agents, and will be responsible for the maintenance in good working order of any security alarm system installed on the Premises.

5.7 Movement of Vehicles

The Lessee, the Lessee's Employees and Agents and all persons authorised by it or them must comply with the reasonable directions of the Lessor and his or her officers in relation to the movement and parking of vehicles within the Premises, the Adjoining Licence Area and the Park.

5.8 Public Access

The Lessee must allow the public to have access to all parts of the Premises which have been provided or intended for the use of and enjoyment by the public except in so far as such access might prevent the Lessee from providing reasonable protection to buildings, structures, equipment, services and facilities on the Premises or which might prevent the Lessee from ensuring the safety and good behaviour of persons using or otherwise upon the Premises.

5.9 Use of Inflammables, Chemicals and Explosives

5.9.1 Except as may reasonably be necessary for lighting, heating, cleaning or maintenance purposes upon the Premises, the Lessee must not use or store inflammable liquids or gas, explosives, volatile oils compounds or substances, insecticides, herbicides or other toxic chemicals or fertilisers within the Park without the prior written consent of the Lessor.

5.9.2 Where the Lessee does use or store the things referred to in clause 5.9.1 in accordance with its provisions, the Lessee must comply with all Laws and requirements of Relevant Authorities relating to the storage conveyance and use of such materials and any special conditions determined by the Lessor.

5.10 Contamination

5.10.1 The Lessee must not take any action which has the effect, whether direct or indirect, of causing any Contamination of the Premises or the Park and in particular without limitation the Lessee must not:

- a) place, tip or discharge (or allow or suffer to be placed, tipped or discharged) upon any land or in any water or watercourse within the Park any refuse, garbage, night soil, petroleum products, trade waste, building material, earth fill or any offensive or polluting matter or liquid whatsoever; and

- b) place (or allow or suffer to be placed) any obstructing matter on any land or in any water or watercourse or otherwise act or fail to act so as to cause any flow of water to be restricted, obstructed or diverted and will act or comply with any requirement of the Lessor regarding a watercourse.

5.10.2 Without affecting the liability of the Lessee for damages or in relation to any other remedy available to the Lessor the Lessee must remedy to the satisfaction of the Lessor at its own expense any damage caused to the Park by the Lessee any Breach of this clause or otherwise, including by the spillage of petroleum products or other pollutants or the deposition of polluting or obstructive materials within the Park.

5.11 Fire Safety

The Lessee must comply with all requirements of the Lessor and all other Relevant Authorities in relation to fire safety and must in particular ensure that:

- 5.11.1 all reasonable precautions are taken to minimise the risk of fire on the Premises and in particular in any building on the Premises;
- 5.11.2 adequate devices and appliances to prevent or retard the spread of fire are provided and maintained in good working order and condition and kept readily available for use on the Premises to the satisfaction of all Relevant Authorities;
- 5.11.3 any cleared vegetation is with the prior approval of the Lessor removed from the Park and destroyed as directed by the Lessor;
- 5.11.4 no burning of timber, grass, cleared vegetation or other combustible matter is undertaken without the prior consent of the Lessor and subject to such conditions as the Lessor and any Relevant Authority may determine;
- 5.11.5 the Lessee or the Lessee's Employees and Agents must not do or suffer to be done any act, matter or thing within the Park whereby the risk of fire might be increased and shall comply with the Laws and codes of any Relevant Authority in respect to fires, including Building Codes and in the event of the Park or the Premises being damaged by fire which is shown to be the result of a Breach or of the Lessee's negligence in or arising from the Lessee's activities or use of the Premises the Lessee will meet all reasonable and proper costs associated with suppression of the fire and all costs of making good such damage;
- 5.11.6 it complies, at its cost, with all requirements imposed upon it as occupier or owner of the Premises under the *Rural Fires Act 1997*.

5.12 No Livestock or Domestic Pets

The Lessee must not allow any livestock or other domestic, native or exotic animal to be brought onto or kept on the Premises, unless the animal is an Assistance Animal or the Lessor has given written authorisation to that person for the caring of an injured or orphaned native animal.

5.13 Removal of Native Trees

The Lessee must not cut down, fell, injure, lop, treat with chemical, destroy or remove any living or dead native trees on the Premises without the prior written consent of the Lessor.

5.14 No Exotic or Ornamental Plants and Weed Control and Eradication

- 5.14.1 The Lessee must not plant in the ground or in containers within the Premises any Exotics or Ornamentals without the prior approval of the Lessor except where such Exotics or Ornamentals may be approved by a Consent Authority for use in any revegetation works.
- 5.14.2 The Lessee must remove all Exotics or Ornamentals in the ground or in containers on the Premises unless given written approval by the Lessor to permit such Exotics or Ornamentals on the Premises and subject to such conditions and/or requirements as the Lessor may from time to time impose.
- 5.14.3 If, in the Lessor's opinion, there are weeds on the Premises then the Lessor may either:
- a) enter the Premises along with such employees contractors or agents as is considered by the Lessor to be reasonably necessary and remove the weeds and the costs incurred by the Lessor in such removal must be paid by the Lessee within a reasonable time upon being notified of the same; or
 - b) direct the Lessee in the manner of the removal of the weeds and any costs associated with such direction must be paid by the Lessee within a reasonable time upon being notified of the same and the Lessee must comply with any such direction.
- 5.14.4 Subject to clause 5.14.6, the Lessee must use all reasonable endeavours to ensure that all the Premises are kept clear of weeds.
- 5.14.5 For the purpose of clause 5.14.3, a notice by the Lessor of the costs associated with the removal of the weeds or the costs associated with any direction to remove the weeds is prima facie evidence of such costs.
- 5.14.6 The Lessee must comply with any weed control or eradication program implemented by the Lessor in respect to weed control or eradication in relation to the Premises.

5.15 Fences

The Lessee must not without the prior written consent of the Relevant Authority or Lessor carry out or permit the carrying out of any fencing work on or about the Premises.

5.16 Signs

- 5.16.1 The Lessee:
- a) must not without the prior written approval of the Relevant Authority or Lessor erect display affix paint or exhibit on or to the Premises or elsewhere within the Park any sign advertisement notice or hoarding or

allow or suffer any of the foregoing to be done, and any such approval may be revoked without notice by the Lessor;

- b) must not make any permanent marking upon any tree plant or rock in the Park;
- c) upon vacating the Premises or otherwise at the request of the Lessor, must remove any signs advertisements notices hoarding or markings put in place by or on behalf of the Lessee;
- d) must make good any damage or disfigurement caused by the placement or removal of any such sign advertisement notice hoarding or marking;
- e) must comply with any requirements for notices set out in the Additional Covenants Schedule.

5.16.2 Notwithstanding clause 5.16.1:

- a) the Lessee must display a sign in a form and size approved by the Lessor in a conspicuous public area within the Premises and such sign must include information showing the Maximum Number of Persons Overnight and contact details of the Department to which suspected breaches of clause 6.1 can be reported; and
- b) the Lessee must display other signs in relation to the Premises as are required by Law or this Lease.

5.17 Amplified Sound

The Lessee must not operate or permit to be operated on the Premises any apparatus or device for the amplification of music announcements or other sound to a degree which is objectionable in the opinion of the Lessor. Lessees must comply with the reasonable requests of an Authorised Officer to reduce the volume level to a level acceptable to the Authorised Officer.

5.18 Lessor's Right of Entry

5.18.1 The Lessee acknowledges that the Lessor has specific powers and functions with respect to public health and safety, including powers in relation to the state of repair, condition and cleanliness of the Premises and, in relation to shared accommodation, of ensuring compliance with the Maximum Number of Persons Overnight under the Act.

5.18.2 The Lessee further acknowledges that the Lessor in the exercise of its functions in relation to public health has power to do, among others, the following:

- a) make an order requiring the Lessee to take the action that is necessary to bring the Premises into compliance with public health standards;
- b) enter the Premises after the Lessor has given written reasonable notice (unless the giving of the notice would defeat the purpose of the exercise of

this power) of his or her intention to enter the Premises and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises;

- c) if entry is required urgently or there is the existence or reasonable likelihood of a serious risk to health or safety - enter the Premises without written notice to the Lessee and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises; and
- d) inspect the Premises.

5.18.3 If the Lessor enters the Premises for the purpose of making an inspection in relation to the Lessor's public health functions and the Lessor requires any work to be carried out on or in the Premises as a result of that inspection, the Lessor may recover from the Lessee the reasonable costs and expenses of the entry and inspection.

5.18.4 Apart from the Lessor's right of entry as set out elsewhere in this Lease or by Law, the Lessor and his or her agents reserve the right at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency or where the Lessor reasonably forms a view that the Lessee has breached clause 6.1 of this Lease when no notice shall be required) enter upon the Premises for the purposes of:

- a) observing the manner in which the Permitted Use of the Premises is being conducted;
- b) ascertaining whether the Lessee is complying with the provisions of this Lease; or
- c) undertaking the proper management of the Premises which form part of the State's assets including but not limited to undertaking valuations of the Premises and asset inspections and identification.

5.18.5 For the purposes of an inspection under clauses 5.18.4 a) or b), the Lessee will cooperate with the Lessor and provide the Lessor with such information and material as the Lessor reasonably requires relating to the Lessee's compliance with its obligations under this Lease and provide copies of such documents upon request.

5.18.6 If the Lessee fails to allow the Lessor to exercise its right of entry in the case where the Lessor's purpose of entry is to determine whether the public health and safety of Persons in the Premises is endangered having regard to the Law and the provisions of this Lease, then the Lessor may regard the Lessee's failure as a repudiation of this Lease pursuant to clause 14.3.

5.18.7 In exercising its rights under this clause, the Lessor must take reasonable care and do as little damage as possible in effecting entry to the Premises.

5.18.8 If the Lessor causes any damage to the Premises as a result of effecting entry to the Premises, then the Lessor will pay reasonable compensation to the Lessee

for such damage unless entry was for the purpose of securing the Premises from a risk of substantial damage.

- 5.18.9 In exercising its rights under this clause, the Lessor or his or her Authorised Officer must be in the possession of an Authority, which he or she must produce, if demanded, by the Lessee. A copy of such Authority will be sufficient for the purposes of the Lessor complying with this clause.

5.19 Waste Management

- 5.19.1 The Lessee must ensure that there be available on the Premises adequate facilities to encourage guests and the Lessee's Employees and Agents to recycle materials accepted through the recycling services provided by the Lessor.

- 5.19.2 The Lessee must take all reasonable precautions to prevent animals from scavenging through waste bins.

5.20 Maintenance of Ground Areas

The Lessee must:

- 5.20.1 keep the ground areas of the Premises appropriately landscaped and in good and tidy order and condition to the reasonable satisfaction of the Lessor;
- 5.20.2 keep the ground areas of the Premises free of exotic plants and weeds to the satisfaction of the Lessor and by such means as approved by the Lessor and in accordance with clause 5.14 of this Lease;
- 5.20.3 take reasonable precautions to minimise damage to the Park and to prevent soil erosion on or adjacent to the Premises;
- 5.20.4 remedy any erosion or other environmental damage or deterioration of the Premises caused as a result of its works or use of the Premises and rehabilitate and revegetate all disturbed ground surfaces to the satisfaction of the Lessor;
- 5.20.5 take reasonable precautions to minimise waste which may alter or affect the nature of the Premises;
- 5.20.6 not undertake any excavation or other work which involves interference with the native vegetation or existing ground surface without:
- a) the prior written consent of the Relevant Authority or Lessor;
 - b) ascertaining the location of existing underground infrastructure;
 - c) considering the likely effect of the excavation upon the stability of the Premises and adjacent area;
 - d) considering the environmental impact of the excavation upon the Premises and the Park; and

- e) determining if development consent is required.

5.21 Use of Plumbing Facilities

- 5.21.1 The Lessee acknowledges that it has made enquiries about and is aware of the way the Plumbing Facilities operate and in particular the possible environmental impact upon the Park of a misuse of the Plumbing Facilities.
- 5.21.2 The Lessee must not permit the introduction or discharge of any materials which without limitation includes spa, pool or other deoxygenated or chlorinated water, into the Plumbing Facilities or the Park's drainage and sewer system which may interfere with proper functioning of the Plumbing Facilities or the Park's drainage and sewer system or which may have an adverse effect upon the Park.
- 5.21.3 The Lessee must comply with all directions or notices given by the Lessor relating to the use of the Plumbing Facilities and in particular:
 - a) directions or notices in respect to the discharge of spa, pool, deoxygenated or chlorinated water; and
 - b) directions or notices for a staggered discharge program in respect to the water referred to in clause 5.21.3 a); and
 - c) directions or notices in respect to the discharge of any other materials or chemicals the Lessor reasonably considers could have an adverse affect upon the Plumbing Facilities or the Park's drainage and sewer system or the Park.
- 5.21.4 The Lessee must immediately make good any damage to the Plumbing Facilities caused by a Breach of this clause or by misuse or neglect of the Plumbing Facilities.
- 5.21.5 The Lessee indemnifies the Lessor for all damage to the Plumbing Facilities and the Park's drainage and sewer system and the Park resulting either directly or indirectly from a Breach of this clause.

5.22 Infectious Illness

The Lessee must in the event of any infectious illness occurring in the Premises forthwith give notice thereof to the Lessor and to the Relevant Authorities and thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and such Relevant Authorities and otherwise comply with their reasonable and lawful requirements in regard to same.

5.23 No Pest Affected Fittings or Furniture, Effects, Timber or Firewood

The Lessee must not bring or suffer to be brought upon the Premises any pest affected fittings, fixtures, furniture, effects, timber or firewood and will forthwith remove from the Premises any such items, which may be affected by pests. The Lessor may remove and destroy any pest affected fittings, furniture, effects, timber or firewood at the cost of the Lessee and no compensation shall be payable to the Lessee for such removal or destruction.

5.24 Animals, Vermin and Pests

- 5.24.1 The Lessee must take all reasonable precautions to keep the Premises free of rodents, vermin and insect pests by preventing access, including through chimney and vents, keeping the Premises clean and securing food items.
- 5.24.2 The Lessee must not bait or otherwise interfere with any animal on the Premises without the Lessor's consent.
- 5.24.3 The Lessee must not trap or control animals entering or on the Premises, unless the Lessee traps and controls such animals in accordance with the Lessor's pest control policy in force at the time or if no such policy is in force, as directed by the Lessor.
- 5.24.4 The Lessee may and, if required by the Lessor in writing must, control insect pests chemically by an appropriately licensed pest exterminator and with chemicals or such other methods as may be approved by the Lessor for this purpose.
- 5.24.5 The Lessee must take all reasonable precautions to prevent nesting opportunities for pest bird species, including the common starling, on the Premises. If such pest bird species are on the Premises, the Lessee must remove the nests.
- 5.24.6 The Lessee must take all reasonable precautions to prevent the Lessee's Employees and Agents feeding or handling any native or exotic animals on the Premises.

5.25 Environmental Management System

- 5.25.1 The Lessee must implement from the Commencing Date an environmental management system for its activities on the Premises, which is consistent with the Perisher Range Resorts Environmental Management System.
- 5.25.2 The Lessee agrees that for the purpose of ensuring compliance with its obligations under clause 5.25.1 it must do whatever is required by the Lessor to that end, including without limitation:
 - a) reasonably participate in any necessary audits enquiries and investigations and gather any information requested by the Lessor;
 - b) ensuring the Lessee or the Lessee's Employees and Agents (as appropriate) participate in any activities or training requested by the Lessor, acting reasonably, in matters arising from the Perisher Range Resorts Environmental Management System;
 - c) complete and return to the Lessor, any records reports forms or other documentation specified by the Lessor dealing with compliance with the Perisher Range Resorts Environmental Management System;
 - d) permitting entry by the Lessor to the Premises for the purposes of

ensuring that the Lessee is complying with the Perisher Range Resorts Environmental Management System; and

- e) comply with minimum environmental performance standards and procedures as set out in the Perisher Range Resorts Environmental Management System in order to achieve certification under a scheme relevant to the tourism industry.

5.25.3 The Lessee must pay any reasonable costs or contribution associated with complying with the Perisher Range Resorts Environmental Management System.

5.25.4 If the Lessee does not comply with this clause 5.25, then the Lessor may carry out the necessary enquiries, audits, investigations and engagements, collect the necessary records and otherwise take all necessary steps to ensure the Lessee is in compliance with the Perisher Range Resorts Environmental Management System.

5.26 Environmental Research and Rehabilitation

5.26.1 The Lessee will pay an annual Environmental Research and Rehabilitation Contribution identified at Item 21 of the Reference Schedule. The contribution will be indexed annually to the CPI and will be derived by multiplying the contribution paid in the previous year with the fraction set out in clause 3(b)(i) of Schedule 2. If the contribution so determined is less than the contribution for the previous year, then the contribution shall remain the same as the immediately preceding year.

5.26.2 For the purposes of this clause, the word "CPI" has the same meaning as defined in Schedule 2.

5.27 Geotechnical Fault

5.27.1 The Lessee acknowledges and agrees that the area in which the Premises are located may contain geotechnical or geological faults or may otherwise be unstable or unsuitable for construction or support of improvements.

5.27.2 The Lessee must take all reasonable steps to identify any risk of geotechnical fault on the Premises and must undertake all necessary works to remedy any geotechnical faults on the Premises. In that regard the Lessee agrees it is solely responsible for ensuring that:

- a) the Premises upon which the buildings, structures or improvements are erected are suitable for the Permitted Use, including without limitation, to properly support the buildings, structures and improvements on the Premises or to be erected on the Premises;
- b) the buildings, structures and improvements erected on the Premises or to be erected on the Premises are or will be suitable for the Permitted Use; and

- c) any remedial works deemed necessary by the Lessor or a Relevant Authority to stabilise the Premises or otherwise remedy a fault are expeditiously carried out at the Lessee's cost, to the satisfaction of the Lessor and any Relevant Authority.

5.27.3 If the Lessee is of the opinion that the Premises or buildings, structures and improvements on the Premises are not suitable for the Permitted Use:

- a) it must take all necessary action to ensure the safety of persons using or on the Premises, which may include, without limitation, arranging for the Premises to be vacated;
- b) it must give written notice of its opinion to the Lessor, and if the Lessor agrees with the Lessee's opinion and the Lessee causes the Premises to be vacated pursuant to clause 5.27.3 a) the Lessor agrees that Rent payable by the Lessee is to abate for the period commencing on the date of vacation of the Premises and ending on the earlier of the date that the remedial work referred to in clause 5.27.2 c) is completed or if in the Lessor's reasonable opinion the remedial work is not carried out expeditiously, such earlier date as specified by the Lessor.

5.27.4 If the Lessor is of the opinion that the Premises or buildings structures or improvements on the Premises are not suitable for the Permitted Use the Lessor is entitled but not obliged to issue directions to the Lessee to take the action referred to in clause 5.27.3 a).

5.28 No Detrimental Impact to Significant Features

5.28.1 The Lessee must ensure that it has identified any significant features identified in the Plan of Management or as otherwise identified by the Lessor from time to time such as plants or inanimate objects that are on the Premises.

5.28.2 The Lessee must not remove or otherwise interfere with any significant features referred to in clause 5.28.1 without the Lessor's written consent.

5.29 Aboriginal Objects and Historic Relics

5.29.1 The Lessee shall immediately report to the Director-General the discovery of any Aboriginal Object or Historic Relic during the course of any construction work and in such event such work shall cease immediately and the Lessee shall comply with all directions made by the Director-General in relation to the Objects in accordance with the Act.

5.29.2 The Lessee shall satisfactorily carry out and perform all necessary protection or salvage works specified by the Director-General in connection with all known Objects affected by the Lessee's activities.

5.30 Work Health and Safety

5.30.1 The Lessee acknowledges that it is an occupier of the Premises, within the

meaning of the *Work Health and Safety Act 2011* or any act replacing same.

- 5.30.2 The Lessee shall carry out the Permitted Use on the Premises in a safe and reliable manner and must comply with the *Work Health and Safety Act 2011*, its amendments and regulations.
- 5.30.3 The Lessee shall notify the Lessor of any natural events or activities on the Premises or the surrounding area, which it becomes aware of, which may endanger the public.
- 5.30.4 The Lessee shall take all reasonable steps to protect the safety of all persons present on the Premises and shall, without limitation, take all reasonable steps to eliminate any dangers to persons that may arise as a result of the Lessee's activities and, subject to clause 5.16, erect signage warning the public of any dangers they may encounter as a result of the Lessee's activities where those dangers cannot be eliminated.

5.31 Filming Within Premises

- 5.31.1 The Lessee must not carry out a Filming Activity on the Premises without the approval of the Lessor in accordance with the *Filming Approval Act 2004*.

5.32 No Auctions

- 5.32.1 The Lessee will not without the prior written consent of the Lessor expose or offer for sale or permit to be exposed or offered for sale by auction on the Premises any articles goods, materials or things whatsoever.

5.33 Native Fauna

- 5.33.1 The Lessee acknowledges and accepts that the Premises are located within a national park and that as a result, native fauna may from time to time be found on the Premises. The Lessee shall not be entitled to any compensation for any damage or loss caused to the Lessee or the Lessee's Employees and Agents (including the Lessee's business and property) attributable to such native fauna being on the Premises.

5.34 Commission for Children and Young People Act 1998

- 5.34.1 The Lessee acknowledges to the Lessor that the Lessee is aware of the provisions of the *Commission for Children and Young People Act 1998* and that it is an offence to employ a prohibited person in child-related employment.
- 5.34.2 The Lessee indemnifies the Crown in right of New South Wales, the Lessor, the Department and Director-General in respect of any claim arising out of alleged or actual offences committed against children or young people on the Premises in connection with the Lease.
- 5.34.3 The Lessee acknowledges that it has received a copy of the Office of Environment and Heritage Child Safe and Friendly Environment Policy

(May 2010).

6 BED NUMBERS AND MAXIMUM PERSONS STAYING OVERNIGHT ON THE PREMISES

6.1 Bed Numbers and Maximum Persons Staying Overnight on the Premises

6.1.1 The Lessee shall not exceed the Bed Numbers as stipulated at Item 4 of the Reference Schedule without the Lessor's prior written consent. However, provided that the Maximum Number of Persons Overnight limit at Item 5 is not exceeded, the Lessee is not in breach of this clause 6.1.1 and clause 6.1.3 b) if it obtains the Lessor's written consent to have a number of Beds in storage on the Premises to be used to facilitate variations to room configuration. The Lessee must use the additional Beds strictly in the accordance with the terms and conditions of the Lessor's consent pursuant to this clause. Any consent can be given and/or revoked at the absolute discretion of the Lessor.

6.1.2 The Lessee must not exceed the Maximum Number of Persons Overnight without the written consent of the Lessor.

6.1.3 If the Lessor has consulted with the Lessee and satisfied himself or herself that the Lessee has:

- a) exceeded the Maximum Number of Persons Overnight at the Premises stipulated at Item 5 of the Reference Schedule, or
- b) exceeded the Bed Numbers stipulated at Item 4 of the Reference Schedule,

then a notice by the Lessor that the Lessee has breached this clause 6 is final and conclusive.

6.1.4 The Lessee must do the following as required by the Lessor and within a reasonable period as notified by the Lessor:

- a) provide written documentation in a form acceptable to the Lessor confirming that the Lessee is aware of and has made the Lessee's Agents and Employees aware of, or, in the case of clause 6.1.4 a) iv) and v), producing the originals of documents confirming:
 - i) the Bed Numbers in the Premises; and
 - ii) that the Lessee and the Lessee's Employees and Agents are aware of the limitations on the Bed Numbers for the Premises and the Maximum Number of Persons Overnight; and
 - iii) that the Lessee and the Lessee's Employees and Agents are aware of

the requirements to grant access to the Lessor in accordance with clause 6.18 and this clause; and

iv) Accommodation Registers, registers of temporary shelter and staff lists; and

v) signage required by this Lease.

b) submit a sample of their proposed Accommodation Register.

6.1.5 The Lessee must not refuse or permit to be refused to any person temporary shelter on the Premises in any circumstances of adverse weather or in any case of injury or other like emergency or hardship provided that the Lessee shall keep a register of the names and addresses of persons who are provided with temporary shelter pursuant to this clause and the date the temporary shelter was provided. Any provision of temporary shelter pursuant to this clause does not constitute a Breach of the provisions of this clause 6.1 if by that reason alone the Lessee breaches the provisions of clause 6.1 for that temporary period.

6.1.6 Despite anything in this Lease, where Item 4A of the Reference Schedule specifies that the Lessor has granted to the Lessee approval for an Additional Beds Allocation, provided the Lessee has complied with the terms of this Lease, in particular clause 5.3 of this Lease and the Additional Beds Allocation Schedule, the Bed Numbers will be increased by the number of beds in the Additional Beds Allocation.

6.2 Accommodation Register

6.2.1 The Lessee must keep upon the Premises an Accommodation Register.

6.2.2 The Lessee must:

a) grant to the Lessor its agents and employees free access to the Accommodation Register for the purpose of perusing or taking extracts of entries made in the Accommodation Register and will upon request supply to the Lessor a certified copy of the Accommodation Register together with such information and details of the booking arrangements for the Premises as the Lessor may reasonably require for the purpose of establishing that the Lessee is complying with the requirements of this Lease; and

b) provide to the Lessor within 48 hours of the Lessor's demand, the telephone numbers and addresses of persons residing overnight on the premises on a particular date or dates if the Lessor, acting reasonably, is of the opinion that there may be a Breach.

6.2.3 The Accommodation Register must clearly display the purpose for which the information is being collected in a form and with the content approved by the Lessor as: 'To enable the Department to monitor from time to time Lessee compliance with the maximum number of persons permitted to reside overnight on these premises' or such other statement required by the Lessor from time to time.

6.2.4 The Lessee must comply at all times with the relevant Law for collecting, storing and disseminating personal information, including but not limited to the *Privacy Act 1988* (Commonwealth).

6.2.5 If the Lessee is not able to comply with the provision of an Accommodation Register, it may apply to the Lessor and the Lessor may consider an alternate arrangement that fulfils the purpose of clause 6.2.2. The Lessor may approve such an alternate arrangement in its absolute discretion.

6.3 Lessor's Right of Entry

6.3.1 The Lessee further acknowledges that the Lessor may, so as to determine whether the Lessee is in compliance with this clause 6:

- a) make an order requiring the Lessee to take the action that is necessary to bring the Premises into compliance with this clause;
- b) enter the Premises after the Lessor has given written reasonable notice (unless the giving of the notice would defeat the purpose of the exercise of this power) of his or her intention to enter the Premises and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises;
- c) if entry is required urgently or there is the existence or reasonable likelihood of a serious risk to health or safety - enter the Premises without written notice to the Lessee and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises; and
- d) inspect the Premises.

6.3.2 In exercising the powers under this clause, the parties agree that clauses 5.18.5 to 5.18.9 inclusive apply as if they had been included within this clause but only in the context of the Lessor determining whether the Lessee has complied with clauses 6.1 and 6.2.

7 CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATIONS, ETC

7.1 Condition of Premises at Commencement of Lease

Notwithstanding any other provision of this Lease, but without limiting similar provisions of this Lease:

7.1.1 no warranty is given by the Lessor as to the condition or state of repair of the Improvements (if any) on the Premises as at the commencement of this Lease or the suitability of the Premises for the purposes for which they are to be used and the Lessee has not relied in any way upon any representations or assurance by the Lessor or on his or her behalf in entering into this Lease;

7.1.2 the Lessee accepts any Improvements on the Premises in their present condition and state of repair and subject to all defects (if any) whether latent or patent;

- 7.1.3 the Lessor is under no obligation or liability of any kind to maintain replace repair or rebuild the whole or any part of such Improvements.

7.2 Repair and Maintenance

In accordance with clause 8 of this Lease, the Lessee must at its own cost maintain repair replace rebuild paint renew the Improvements and the Lessee's Fixtures and keep the whole of the Premises in good and substantial repair order and condition, damage by fire flood lightning storm tempest and impact only excepted. Reference to repair in this clause 7.2 includes structural repair and to repair which entails capital expenditure.

7.3 Repair on Termination of Lease

Subject to clause 8, the Lessee must at the expiration or sooner determination of this Lease peaceably surrender and yield up the Premises in good and substantial repair order and condition and in a clean and sanitary state in all respects.

7.4 Painting

The Lessee must keep the interior and exterior of the Premises in good repair and condition. So often as the Lessor may reasonably require the Lessee must colour, paint, paper, stain or treat with such materials and to such standards and colours as may reasonably be determined by the Lessor such parts of the interior and exterior of the Premises as are normally so treated.

7.5 Cleaning

The Lessee must:

- 7.5.1 cause the interior and exterior of the Premises to be cleaned in a proper and workmanlike manner and kept clean and free from dirt rubbish and inflammable materials;
- 7.5.2 provide and keep in good order and condition proper refuse bins and other containers of such style and in such numbers and locations as are approved by the Lessor; and
- 7.5.3 remove and take away or cause to be removed and taken away from the Premises and the adjacent areas of the Park all refuse debris ground litter and building materials in accordance with the reasonable requirements of the Lessor.

7.6 Lessee's Equipment

The Lessee must keep and maintain clean and in good order repair and condition all fittings, floor coverings, wall, floor and ceiling finishes, plant furnishings and equipment and appliances of the Lessee on the Premises.

7.7 Breakages

The Lessee must make good any breakage defect or damage to any facility or appurtenance of the Lessor within the Park occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's Employees and Agents or other persons claiming through or under

the Lessee or otherwise occasioned by any Breach.

7.8 Building, Construction and Development Works

- 7.8.1 The Lessee must, where it proposes to carry out works for which development consent or approval is required under the *Environmental Planning and Assessment Act 1979*, obtain the appropriate consent or approval.
- 7.8.2 The Lessee must ensure that all building, addition, alteration, modification or replacement building works are carried out in accordance with plans and specifications previously approved in writing by the Relevant Authority and in accordance with development consent or approval and to the reasonable satisfaction of the Relevant Authority and in accordance with the requirements of any applicable Building Code and Relevant Authority.
- 7.8.3 The Lessee must not undertake any development or construction work road works or landscaping of any kind prior to the Relevant Authority providing approval for such works.
- 7.8.4 The Lessee must comply with all requirements and directions of the Relevant Authority in regard to the construction or alteration of buildings improvements and other structures, earthworks, hydraulic works, underground works, landscaping, restoration, erosion mitigation, and drainage works.
- 7.8.5 The Lessee must comply with requirements of the Act or other legislation relating to the Premises.
- 7.8.6 In respect of works described in this clause which do not require development consent from a Consent Authority the Lessee must observe and comply with the requirements of all policies and guidelines of the Lessor as amended from time to time relating to the carrying out of any works:
- a) on the land that comprises the Premises; and
 - b) to the external part of a building on the Premises.

7.9 Premises Fire Safety, Services and Installations Certification

- 7.9.1 The Lessee must engage appropriately qualified and experienced contractors to do the inspections, tests and Works necessary to obtain the compliance certificates listed in this clause 7.9.1. The compliance certificates must comply with industry standards (where applicable) and be provided on the dates stated below unless the Lessor, in his or her absolute discretion, gives his or her written permission for such compliance certificates to be provided at a later date:
- a) a statement showing that the Fire Safety Measures on the Premises have been inspected, tested and found to be installed and working in accordance with the *Environmental Planning and Assessment Act 1979* and its regulations and/or any Building Code by 1 July of each year following the Commencing Date;

- b) a certificate showing that the electrical installations are safely installed and in good working order on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter;
- c) a certificate showing the gas installations are safe and in good working order on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter;
- d) a certificate showing that the Premises are free from any pests which are capable of damaging the Premises (such as termites) on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter;

7.9.2 The Lessee must also provide such other compliance certificates of a similar nature to the compliance certificates listed in clause 7.9.1 as may be reasonably required by the Lessor from time to time.

7.10 Standard of Work

All work carried out by the Lessee or the Lessee's Employees and Agents must be carried out at the Lessee's expense with every reasonable care and in a proper expeditious and workmanlike manner using good quality materials and in accordance with the approvals, issued by the Relevant Authorities, including but not limited to development consent.

7.11 Reporting of Defects, etc

The Lessee must immediately inform the Lessor of:

- 7.11.1 any act or omission of itself or the Lessee's Employees and Agents, or
- 7.11.2 any defect, failure, want of repair, accident or hazard associated with or in the vicinity of the Premises or any structures or Improvements thereon, or
- 7.11.3 any other circumstances,

where any of the above has caused or may cause any danger or risk to the Park or any person within the Park or has caused or may cause any environmental damage to the Premises or the Park.

7.12 Lessor's Right of Entry to do Certain Works

The Lessor and his or her servants, agents and contractors may at all times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Premises for the purpose of:

- 7.12.1 carrying out any necessary enquiries and investigations, collecting any necessary records or documents, carrying out any Works, and otherwise effecting anything which the Lessee is required by this Lease to do but has failed within a reasonable time to do so; or
- 7.12.2 carrying out any Works to the Premises otherwise deemed necessary or desirable by the Lessor; or

- 7.12.3 carrying out any Works on the Premises ordered, requested or required by any public authority having jurisdiction over the Premises which the Lessor elects to do and for which the Lessee is not liable under this Lease, provided always that:
- 7.12.4 in the exercise of the Lessor's powers under this clause the Lessor shall endeavour to exercise its powers with minimum interference with the Lessee's business; and
- 7.12.5 the Lessee must pay, within a reasonable time, all costs and expenses (including any costs associated with engaging suitably qualified contractors and all reasonable legal costs and disbursements) associated with the Lessor otherwise exercising his or her rights under this clause 7.12 and a certificate or notice by the Lessor as to any amount payable pursuant to this clause and served upon the Lessee shall be prima facie evidence thereof.

7.13 Services

- 7.13.1 No public utility or community services constructed or laid within the Premises by any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor are to be removed or interfered with in any way by the Lessee without the prior written consent of the Lessor.
- 7.13.2 Any necessary additional public utility or community services may be constructed or provided within the Premises by any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor with the approval of the Lessor upon one (1) month's written notice to the Lessee and with no undue inconvenience to the Lessee and no compensation is payable by the Lessor, the Lessor's contractor or the Relevant Authority to the Lessee as a result of the construction or provision of such services.
- 7.13.3 The Lessee must permit the servants and agents of any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor in respect to the supply of electricity, water, sewerage, gas, telephone, fire sprinkler and fire alarm systems, at all reasonable times to enter the Premises with all necessary materials and appliances for the purposes of carrying out any inspections, readings, repairs, alterations, works or adjustments which any such authority may consider necessary or desirable to the ducts, wires, pipes, cables, meters, switchboards, fire sprinkler alarm systems and other installations in the Premises.

8 IMPROVEMENTS AND LESSEE'S FIXTURES

8.1 All Improvements are Lessor's

In consideration of the promises made in this Lease, all Improvements are the unfettered property of the Lessor and the Lessee shall not be entitled to any compensation in respect thereof. This clause 8.1 shall not merge upon expiration, termination or surrender of this Lease.

8.2 Placing and Removal of Lessee's Fixtures

- 8.2.1 The Lessee may at any time erect or place or cause to be erected or placed in or on the Premises such Lessee's Fixtures as may be reasonably necessary for the Permitted Use of the Premises.
- 8.2.2 Upon the expiration or sooner determination of this Lease the Lessee may (and if required by the Lessor by notice in writing must) remove from the Premises all the Lessee's Fixtures brought upon the Premises by the Lessee.
- 8.2.3 The Lessee must in such removal do no damage to the Premises or shall forthwith make good any such damage occasioned by such removal.
- 8.2.4 The Lessee must ensure compliance with the following requirements when installing or replacing the following appliances and fittings:
- a) Wood burning appliances – emissions will comply with any relevant Australian Standard for domestic solid fuel burning appliances;
 - b) Chimneys – any chimney will be constructed and maintained in accordance with all applicable Australian Standards and to encourage smoke emissions to travel vertically;
 - c) Water appliances and fittings – have a star rating equivalent to a high level of water efficiency under the National Water Conservation Rating and Labelling Scheme or any scheme of a similar nature replacing the same;
 - d) Electricity appliances – have a AAA star rating equivalent to a high level of energy efficiency under the National Energy Labelling Program or any program of a similar nature replacing the same; and
 - e) Gas appliances - have a star rating equivalent to a high level of energy efficiency under the Australian Gas Association Gas Energy Rating and Labelling Scheme or any scheme of a similar nature replacing the same.

8.3 Repair and Maintenance

The Lessee acknowledges and agrees that notwithstanding that the Improvements may be or become the unfettered property of the Lessor, the Lessee must maintain and repair the Improvements at its own cost as provided in clause 7.

9 TANK MANAGEMENT

9.1 Hydrocarbon Storage Systems

- 9.1.1 The Lessee must take all reasonable precautions to ensure that the design installation operation maintenance testing repair and re-use of operational Hydrocarbon Storage Systems:

- a) prevents product escaping from the system;
- b) enables the detection of leaks; and
- c) prevents spills and leaks during filling.

9.1.2 Leaks and spills from Hydrocarbon Storage Systems are considered Contamination for the purpose of clause 5.10.

9.1.3 The Lessee must ensure that Hydrocarbon Storage Systems no longer in use are decommissioned to the satisfaction of the Lessor and within a timeframe determined by the Lessor.

9.1.4 The Lessor reserves the right to prohibit the installation of new Hydrocarbon Storage Systems and require the decommissioning of existing Hydrocarbon Storage Systems without compensation to the Lessee.

9.2 Burying and Screening of Tanks

The Lessee must cause all tanks on the Premises to be buried below the surface of the ground or to be screened in a manner and to a standard satisfactory to the Lessor and with the written consent of the Lessor.

10 COVENANTS BY THE LESSOR

10.1 Quiet Enjoyment

10.1.1 Subject to this Lease and the Lessee duly and punctually observing and performing the covenants and obligations of this Lease, the Lessee may peaceably possess and enjoy the Premises for the Term hereby granted without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by from or under the Lessor.

10.1.2 The Lessee expressly acknowledges and agrees that the Lessor exercising its rights under any Law or under this Lease (and of in particular, exercising its rights of entry onto the Premises under this Lease or the Law) is not derogating from the Lessee's right to quiet enjoyment.

10.2 Holding Over

If the Lessee with the consent of the Lessor remains in possession of the Premises after the expiration of the term of this Lease, the Lessee shall remain as a tenant from month to month at the then current yearly rate of Rent. The Lessor may vary this Rent upon one (1) month's written notice to the Lessee. Such tenancy shall be terminable at any time by either party giving to the other not less than one (1) month's notice in writing to the other. The same conditions of this Lease shall apply as are not inconsistent with a monthly tenancy.

11 INSURANCES

11.1 Required Insurances

11.1.1 The Lessee must effect and maintain in respect to the Premises from the Commencing Date of this Lease the following insurances:

- a) insurance of the Premises against loss, damage or destruction from any insurable risk reasonably required by the Lessor including (but not limited to) loss, damage or destruction by fire, lightning, storm, tempest and impact for the full reinstatement cost of the Premises (including extra costs reinstatement);
- b) insurance of all plate glass, fixed glass and windows in the Premises for its reinstatement cost (including extra costs reinstatement) from loss, damage or injury caused by explosion, earthquake, aircraft, fire, lightning, storm, tempest, impact, act of God and any other insurance risk reasonably required by the Lessor;
- c) a public liability policy covering personal injury and property damage, including financial, economic or consequential loss arising as a result of such personal injury or property damage (in an amount of not less than the amount noted at Item 6 of the Reference Schedule or such other higher amount as the Lessor may from time to time require, being the amount which may be paid arising out of any one single accident or event) in connection with the activities of the Lessee in relation to this Lease whereby the Lessor, the Director-General, the Department and the Crown in right of New South Wales shall be included as joint insured parties, such insurance to cover against all actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, charges and expenses referred to in clause 12.3 and clause 5.27 and elsewhere in this Lease;
- d) insurance against any liability which may arise at common law or by virtue of any relevant workers' compensation legislation in connection with the Premises; and
- e) such other special insurances as may be appropriate and required by the Lessor from time to time.

11.1.2 Before commencement of any works in relation to the Premises, the Lessee must in addition to any insurances referred to above ensure that there is effected and maintained a contract works insurance policy covering the usual risks including loss or damage to:

- a) the works (including any associated temporary works); and
- b) the Premises; and
- c) all materials and things brought into or in storage on the Premises by the Lessee or the Lessee's Employees and Agents for the purpose of the

works; and

- d) all materials and things in storage off-site or in transit to the Premises;
occurring during the period when the Lessee is responsible for their care.

11.1.3 The insurance cover referred to in clause 11.1.2 must be for an amount of not less than the full value of the works on a full reinstatement and replacement basis (including costs of demolition and removal of debris and an amount necessary to cover fees to all consultants), which amount must be approved by Lessor.

11.2 Required Arrangements

The following provisions must apply to all policies of insurance referred to in clause 11.1:

- 11.2.1 all such policies of insurance shall be effected with an insurance office or company approved by the Lessor (which approval shall not be unreasonably withheld) and shall be for such amounts and cover such risks and contain such conditions, endorsements and exclusions as are reasonably acceptable to or required by the Lessor; and
- 11.2.2 no exclusions, endorsements or alterations are to be made in or to any such policy of insurance unless first approved in writing by the Lessor (which approval shall not be unreasonably withheld); and
- 11.2.3 subject to clause 11.1.1 c), all such policies are to be taken out in the names of the Lessor and the Lessee for their respective rights and interests; and
- 11.2.4 duplicate or certified copies of all such policies and all renewal certificates and endorsement slips are to be lodged by the Lessee with the Lessor immediately on receipt by the Lessee; and
- 11.2.5 the Lessee must provide full true and particular information to the office or company with which such policies are effected on all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or payment of any monies thereunder; and
- 11.2.6 the Lessee must punctually pay all premiums and other monies payable in respect to all such policies on or before the due date for payment of the same and shall in respect to any such policy of insurance produce to the Lessor receipts for the payment of each premium and any other monies payable thereunder (or other proof of payment to the Lessor's satisfaction); and
- 11.2.7 the Lessee must not do or permit to be done any act, matter or thing upon or in the vicinity of the Premises whereby any insurance policy may be vitiated or rendered void or voidable or (except with the written approval of the Lessor) whereby the rate of premium for any such insurance shall be liable to be increased; and
- 11.2.8 the Lessor is entitled in his or her own name and as the attorney of the Lessee in

the name of the Lessee or otherwise to institute all proceedings against any such office or company to recover from it any amount for loss, damage, destruction or injury or other monies payable under any indemnity in favour of the Lessor or the Crown in right of New South Wales.

11.3 Lessor May Insure

In default of the Lessee effecting any or all of the insurances referred to in clause 11.1 the Lessor may effect such insurances and charge the Lessee for the costs of the premiums and the Lessee must upon demand reimburse the Lessor for such costs.

11.4 Lessor's Entitlement to Insurance Monies

11.4.1 In the event that the Premises are destroyed or substantially damaged by fire, lightning, storm, tempest, impact or other occurrence the whole of the monies which shall be recovered or received for or in respect to any insurance policy referred to in clause 11.1.1 must be paid to the Lessor and subject to clause 11.5 may be retained by him or her for his or her own use absolutely.

11.4.2 With reference to clause 11.4.1, in the case of minor damage then the Lessor at his or her option may determine whether the monies recovered or received are to be paid to the Lessor or otherwise.

11.5 Reinstatement

11.5.1 Total Destruction of Premises

In the event of the Premises being totally destroyed or damaged so extensively as to render the repair of or making good such damage impractical or undesirable the following alternatives shall apply:

a) First Alternative - Rebuild to Original Design

The Lessee may and must if so required by the Lessor from the insurance monies available (and to the extent that the same may be insufficient, from its own monies) reinstate the Premises in accordance with the original design within two (2) years from the date of such damage or destruction. If the Lessee is to rebuild or reinstate the Premises pursuant to this clause, the provisions of clause 7 applies.

b) Second Alternative - Rebuilding to Different Design

If the Lessor and the Lessee agree that the Premises are to be rebuilt to a different design then the Lessee must from the insurance monies available and (to the extent the same may be insufficient) from its own monies proceed with the rebuilding of the Premises in accordance with the agreed plans and specifications and clause 7. The Lessee and the Lessor acknowledge that such different design will incorporate sleeping accommodation for the same number of Persons as permitted by this Lease unless the parties are prevented from so doing by statutory regulations and ordinances applicable at the time. Such rebuilding will be completed within two (2) years of the date of such destruction

or as otherwise agreed by the parties, acting reasonably, given the extent and scale of the damage.

c) Third Alternative - Premises not to be Rebuilt

If the Lessor and the Lessee agree that the Premises need not be reinstated by the Lessee and the Second Alternative is not adopted the Lessee must promptly remove the remaining structures and any debris and restore the area to the satisfaction of the Lessor and all Relevant Authorities and subject to the Lessee not being in default under any provision of this Lease the Lessee shall then deliver to the Lessor a surrender of this Lease duly executed by the Lessee and duly stamped and the Lessor shall accept the same. Surrender as aforesaid shall be without prejudice to any claim the Lessor may have against the Lessee immediately prior to the date of such surrender. .

11.5.2 Partial Damage to Premises

In the event of the Premises being partially destroyed or damaged the Lessee must from the insurance monies available and (to the extent that the same may be insufficient) from its own monies and in accordance with clause 7 repair, replace and make good the whole of the destroyed or damaged portion of the Premises as nearly as possible to the condition in which it was immediately prior to such damage or destruction with such modifications as the Lessee may seek and the Lessor approve or as may be required by Relevant Authorities.

11.5.2 Application of Insurance Monies

All monies received by the Lessor and the Lessee in settlement of any claim under the insurances referred to herein shall be applied by the Lessor in the following order of priority:

- a) first, in payment to the Lessor on account of expenditure by the Lessor in respect to any work due to be done by the Lessee but not commenced and completed within a reasonable time; and as to any balance;
- b) second, in payment to the Lessor of all expenditure whether direct or indirect associated with the completion of the Premises or demolition and removal work; and as to any balance;
- c) third, in payment progressively to the Lessee in reimbursement of the Lessee's costs as work progresses in the rebuilding or demolishing and clearing or repair, replacement and making good as the case may be of the Premises such progress payments to be made expeditiously after receipt of insurance monies and details of the Lessee's costs aforesaid provided that a minimum of at least 10% of the amount of insurance monies held by the Lessor shall not be paid to the Lessee until final completion of all work to the Lessor's satisfaction; and as to any balance;
- d) fourth, such amount shall be credited to the Lessee's instalment of Rent next falling due and any other amounts owing by the Lessee to the Lessor under the provisions of this Lease; and as to any balance;
- e) fifth, such balance shall be equitably apportioned between the Lessor and the

Lessee having regard to their respective interests in the Premises at the day immediately prior to the incident giving rise to the insurance claim and to the terms and conditions of this Lease.

12 INDEMNITIES AND RELEASE

12.1 Acknowledgment

The Lessee acknowledges that the exercise of its rights under this Lease is at the risk of the Lessee.

12.2 Release

12.2.1 The Lessee releases to the full extent permitted by law the protected persons from all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of the Lessee's operation from, occupation or use of the Premises the subject of this Lease.

12.2.2 The Lessee's obligations under this clause continue after the termination, expiration or other determination of this Lease in respect to any matter or thing happening before such termination, expiration or determination.

12.2.3 In this clause:

'protected person(s)' means

- a) the Lessor;
- b) the Director-General;
- c) the employees or officers of the Director-General;
- d) any other person acting under the direction or control of the Lessor or the Director-General for any purpose;
- e) the Crown in right of New South Wales.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses to which the protected persons or any one thereof is or may become liable in respect to loss of or damage to the fixtures or property of the Lessee, financial or economic loss, loss of opportunity or other consequential loss of the Lessee, injury to or death of any person claiming through the Lessee of any kind and however sustained and whether sustained on or outside the Premises the subject of this Lease.

12.2.4 It is immaterial to the obligations of the Lessee under this clause that a claim or demand arises out of any act, event or thing that the Lessee is authorised or obliged to do under this Lease or that any time waiver or other indulgence has been given to the Lessee in respect to any such obligation under this Lease.

- 12.2.5 The obligations of the Lessee under this clause do not apply to the extent that the loss, damage, injury or death arises from or is contributed to by any wilful or negligent act, default or omission on the part of any protected person except as provided in subclause 12.2.6.
- 12.2.6 The obligations of the Lessee under this clause do apply to loss, damage, injury or death arising from or contributed to or occurring in connection with:
- a) the carrying out of any fire management activity by or on behalf of the protected persons;
 - b) the failure to carry out any fire management activity by or on behalf of the protected persons;
 - c) any other act or omission of the Lessor or any protected person, whether or not negligent, in respect to the management of fire hazards in the Park.

12.3 Indemnity

- 12.3.1 The Lessee indemnifies and will keep indemnified the protected persons from and against all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of:
- a) the Lessee's operation from, occupation or use of the Premises the subject of this Lease; or
 - b) any wilful or negligent act, default or omission by the Lessee, the Lessee's Employees and Agents or any person acting under the control or at the direction of the Lessee either in the Premises the subject of this Lease or in the Park.
- 12.3.2 The Lessee's obligations under this clause continue after the termination, expiration or other determination of this Lease in respect to any matter or thing happening before such termination, expiration or determination.
- 12.3.3 In this clause:
- 'protected person(s)' means
- a) the Lessor;
 - b) the Director-General;
 - c) the employees or officers of the Director-General;
 - d) any other person acting under the direction or control of the Lessor or the Director-General for any purpose;
 - e) the Crown in right of New South Wales.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and

expenses to which the protected persons or any one thereof is or may become liable in respect to loss of or damage to the fixtures or property of any person, financial or economic loss, loss of opportunity or other consequential loss of any person, injury to or death of any person of any kind and however sustained and whether sustained on or outside the Premises the subject of this Lease.

- 12.3.4 It is immaterial to the obligations of the Lessee under this clause that a claim or demand arises out of any act, event or thing that the Lessee is authorised or obliged to do under this Lease or that any time waiver or other indulgence has been given to the Lessee in respect to any such obligation under this Lease.
- 12.3.5 The obligations of the Lessee under this clause do not apply to the extent that the loss, damage, injury or death arises from or is contributed to by any wilful or negligent act, default or omission on the part of any protected person.

13 ASSIGNMENT

13.1 General Restrictions on Assignment

Subject to this Lease, the Lessee must not assign transfer mortgage charge demise sublet licence or part with possession of the Premises or any part thereof or by any act or deed procure any of the foregoing without first:

- 13.1.1 producing to the Lessor such particulars and information, documentary or otherwise, evidencing or relating to the transaction and the proposed assignee or incoming party as may be required by the Lessor; and
- 13.1.2 complying with all requirements of the Lessor in respect to such transaction and the Lessee's application for consent thereto; and
- 13.1.3 complying with any covenant or condition of this Lease which is in default at the date of the Lessee's application; and
- 13.1.4 procuring lodgement with the Lessor of such guarantees by the proposed assignee or incoming party of its performance of the Lessee's covenants under this Lease as the Lessor may require; and
- 13.1.5 receiving the prior written consent of the Lessor thereto; and
- 13.1.6 procuring payment of the Lessor's reasonable legal and administrative costs of and incidental to the giving of such consent,

provided that no fine or sum of money in the nature of a fine shall be payable for or in respect to any such consent and provided further that such consent may not be requested by the Lessee prior to the completion of the Works and matters (if any) as may be required by the Lessor to the satisfaction of the Lessor.

13.2 Subleases, Licences and Mortgages

13.2.1 Notwithstanding the last proviso of clause 13.1 of this Lease the Lessee may at any time request the consent of the Lessor to:

- a) the grant of subleases or licences over or in respect to the Premises or any part thereof for purposes approved by the Lessor;
- b) the assignment or sub demise of the Premises by way of mortgage.

13.2.2 Any sublease or licence entered into by the Lessee must be made in such terms as to enable the Lessee freely to discharge the obligations imposed upon the Lessee by this Lease.

13.3 Application in Respect to Corporate Assignee

In relation to an application for consent to a proposed transfer or assignment of the Lessee's interest in this Lease in favour of a company (other than a publicly listed company), the Lessor may require the directors or controlling shareholders of such a company to enter into a deed, in a form acceptable to the Lessor, guaranteeing the performance by that company of the Lessee's covenants under this Lease.

13.4 Company Changes

The Lessee being a company (other than a publicly listed company) must not other than in accordance with clause 13.1 of this Lease:

- 13.4.1** permit any transfer of shares in its capital to be recorded in the books of the company if as a result of such transfer any share having voting rights shall become vested in any persons firms or corporations other than those persons firms or corporations who held shares in its capital having voting rights before such transfer;
- 13.4.2** issue or allot any new shares in its capital to any persons firms or companies not already shareholders of the Lessee;
- 13.4.3** by any act or omission on its part cause or render liable the control of the undertaking and affairs of the Lessee to pass from the directors and members of the Lessee whether pursuant to the terms of any debenture equitable charge or other deed or agreement or in any other way whatsoever.

14 DEFAULT AND TERMINATION

14.1 Lessee's Obligation to Yield up Premises

The Lessee agrees, immediately upon the expiry or legally effective termination of this Lease, to yield up possession and control over the Premises to the Lessor, in the condition and state of repair as required under this Lease.

14.2 Essential Terms of this Lease

14.2.1 The following clauses are essential terms of this Lease:

- a) the covenant for the Lessee to enter into a new Lease or surrender this Lease where a boundary adjustment is required (clause 2.1.3);
- b) the covenant for the Lessee to enter into a new Lease or surrender this Lease where the Lessor wishes to upgrade any adjoining road or track for the purposes of establishing a formed road (clause 2.1.4);
- c) the covenant for the Lessee to create easements or restrictions over the Premises where required by the Lessor (clause 2.1.5);
- d) the covenant for the Lessee to permit access over the Premises to adjoining lessees (clause 2.1.6);
- e) the covenant to pay Rent Outgoings and charges throughout the Term of this Lease at a date not later than twenty-eight (28) days after the due date for the payment of each yearly instalment of Rent (clause 3);
- f) the covenant dealing with the use of the Premises (clause 5.1);
- g) the covenant dealing with Bed Numbers and Maximum Persons Staying Overnight (clause 6);
- h) the covenant dealing with compliance with statutory requirements (clause 5.3);
- i) the covenant dealing with Occupational Health and Safety (clause 5.30);
- j) the covenants dealing with assignment and subletting (clause 13); and
- k) any further terms that are stated to be essential terms in a Schedule to this Lease.

14.2.2 This clause does not limit other terms being essential terms in this Lease.

14.3 Repudiation of this Lease

14.3.1 The Lessee acknowledges that:

- a) the Director-General is legally responsible for ensuring compliance with specific public health and safety matters in the Park and for implementing the Plan of Management;
- b) exceeding the Maximum Number of Persons Overnight contravenes the Plan of Management and may compromise fire safety and public health; and
- c) the Lessor grants this Lease on the basis that the Lessee must at all times comply with clause 6.1 of this Lease.

14.3.2 The Lessee specifically agrees that if the Lessee or the Lessee's Employees and Agents:

- a) willingly Breach clause 6.1 of this Lease to the extent that in the Lessor's opinion acting reasonably and having regard to the Law and the provisions of this Lease, such a breach endangers the health and safety of Persons in the Premises; and
- b) in the opinion of the Director-General acting reasonably and having regard to the obligations of the Lessee under clause 5.30 of this Lease, the Lessee has failed to ensure the health and safety of any person present on the Premises

then such a Breach amounts to a repudiation by the Lessee of this Lease.

14.3.3 The Lessee may also repudiate this Lease if the Lessee is unwilling or unable to perform other significant obligations or otherwise defaults under this Lease.

14.3.4 The Lessor may, in his or her absolute discretion, not accept the Lessee's repudiation of this Lease in which case this Lease will not be terminated. Where the Lessee has repudiated this Lease and the Lessor has not accepted such repudiation the Lessee must perform all the obligations contained in this Lease and remains liable to the Lessor for any loss or damage to person or property caused by actions or omissions that constituted the repudiation. Further, any non-acceptance of the Lessor of the Lessee's repudiation does not amount to a waiver of the Lessor's right to accept any subsequent repudiation by the Lessee.

14.4 Termination of Lease for Default

Each of the following constitutes a default by the Lessee under this Lease:

- 14.4.1 the rent hereby reserved or any part thereof is unpaid for a period of twenty-eight (28) days after any day on which the same ought to have been paid in accordance with this Lease (whether or not a formal demand has or has not been made); or
- 14.4.2 any serious, persistent and continuing Breach; or
- 14.4.3 failure to comply with an essential term of this Lease; or
- 14.4.4 (the Lessee being a company) an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld); or
- 14.4.5 the Lessee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts or if execution is levied against the Lessee and is not discharged within thirty (30) days; or
- 14.4.6 the Lessee (being an individual) becomes bankrupt or commits an act of bankruptcy or brings his or her estate within the operation of any law relating to bankrupts.

14.5 Termination after Default

The Lessor may terminate this Lease after a default by the Lessee after the Lessor has served a legally effective notice in accordance with clause 14.6 (if applicable) and to effect the termination of this Lease, the Lessor may:

- 14.5.1 re-enter and take possession of the Premises, using reasonable force to secure possession; and/or
- 14.5.2 serve on the Lessee written notice terminating this Lease; and/or
- 14.5.3 institute proceedings for possession against the Lessee; and/or
- 14.5.4 take such actions and/or proceedings as the Lessor may deem appropriate.

14.6 Notice of Default

14.6.1 Apart from where the Lessee has repudiated this Lease, the Lessor must not terminate this Lease unless the Lessor serves on the Lessee a notice:

- a) specifying the particular default complained of; and
- b) if the default is capable of remedy, requiring the Lessee to remedy the default; and
- c) in case the Lessor claims compensation in money for the default, requiring the Lessee to pay such compensation.

14.6.2 If the Lessee fails within a reasonable time (as determined by the Lessor in his or her absolute discretion) of receipt of that notice by the Lessee (or the Lessee's Employees or Agents or any person claiming under the Lessee) to remedy the default to the reasonable satisfaction of the Lessor, if it is capable of remedy, or fails to pay that compensation where compensation in money is required to be paid, then the Lessor may terminate this Lease in accordance with clause 14.5.

14.7 Damages

14.7.1

- a) In the event that the Lessee's conduct (whether acts or omissions) constitutes:
 - i) a repudiation of this Lease (or of the Lessee's obligations under this Lease);
 - ii) a Breach of any Lease covenant; or
 - iii) a Breach of an essential term of this Lease;the Lessee covenants to compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation or Breach, whether this Lease is or is not terminated for the repudiation, Breach or on

any other ground.

- b) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.
- c) The Lessor is entitled to recover damages against the Lessee in respect to the repudiation or Breach of covenant or essential term for the loss suffered by the Lessor in connection with such repudiation or Breach (including reasonable legal costs and disbursements) during the Term of this Lease, as well as other monies that would have become due and payable to the Lessor under this Lease for the unexpired residue of the Term of this Lease.
- d) The Lessor's entitlement to recover damages is not affected or limited by any of the following:
 - i) if the Lessee abandons or vacates the Premises;
 - ii) if the Lessor elects to re-enter the Premises or to terminate the Lease;
 - iii) if the Lessor accepts the Lessee's repudiation;
 - iv) if the parties' conduct constitutes a surrender by operation of Law.

14.7.2 The Lessor's entitlement to damages is in addition to:

- a) the entitlement to recover Rent, Rates, Taxes, Outgoings and operating expenses until the date of expiry or termination of this Lease;
- b) interest on payments in accordance with this Lease;
- c) costs of any Breach , including the costs of termination.

14.7.3 The Lessor must take all reasonable steps to mitigate his or her loss.

14.8 Power of Attorney by Lessee to Lessor

14.8.1 The Lessee appoints the Lessor (and his or her successors and assigns, being the owner of the Premises for the time being) the Lessee's attorney with the powers contained in this clause.

14.8.2 This power of attorney is:

- a) irrevocable by the Lessee; and
- b) granted by the Lessee for valuable consideration (the grant of this Lease by the Lessor), to secure the performance of the Lessee's obligations and the Lessor's proprietary interest over the Premises.

14.8.3 The Lessor as the Lessee's attorney and in the name and on behalf of the Lessee

may:

- a) remove from the Premises, store and sell, any of the Lessee's Fixtures or any other property owned by the Lessee, left on the Premises by the Lessee, after the Lessee has vacated the Premises and this Lease is terminated or has expired;
- b) surrender this Lease, after
 - i) the Lessor has become entitled to terminate this Lease; and
 - ii) the Lessee vacates or abandons the Premises; or
 - iii) the Lessor terminates this Lease by serving notice of termination;
- c) withdraw any caveat lodged by the Lessee in respect to this Lease, after the Lessor effectively terminates this Lease.

14.8.4 The Lessor may:

- a) act as attorney under this clause during the continuance of this Lease and during the period of the six (6) months after the termination of this Lease;
- b) register this Lease (or lease provision) as a power of attorney, at any time including after the termination of this Lease, if that is required for the exercise of any power;
- c) ratify and confirm any power when exercised under this clause, as attorney and agent for the Lessee.

14.9 Waiver

After the Lessee is in Breach under this Lease, including in Breach of an essential term of this Lease, the demand or acceptance from the Lessee by the Lessor of arrears or of any late payment of Rent, Taxes, Outgoings, charges, operating expenses, or other financial obligations does not:

- 14.9.1 preclude the Lessor from exercising any rights or remedies under this Lease, including enforcing or terminating this Lease;
- 14.9.2 constitute a waiver of the essentiality of the Lessee's obligation to make those payments;
- 14.9.3 waive the Lessee's continuing obligation to make those payments during the Term.

14.10 Lessor's Entitlements after Lessee Vacates during Lease Term

If the Lessee vacates or abandons the Premises during the Term of this Lease in Breach of the Lessee's obligations under this Lease, the Lessor may:

- a)

- i) accept the keys to the Premises from the Lessee;
 - ii) renovate, restore and clean the Premises;
 - iii) change the locks and secure the Premises; and
 - iv) permit prospective tenants to inspect the Premises;
- b) take any action in paragraph a) without the Lessor's conduct constituting:
- i) a re-entry or termination of this Lease; or
 - ii) the acceptance of a surrender of this Lease.

14.11 Removal of Improvements

- 14.11.1 Notwithstanding anything in clause 8.1 of this Lease, the Lessor, at his or her election, may by notice given to the Lessee at any time within thirty (30) days after the expiration or termination of this Lease require the Lessee within the time stated in such notice to remove any of the Improvements and/or to fill in all or any excavations made by the Lessee and in such case the Lessee must in accordance with such notice effect such removal and fill in such excavations.
- 14.11.2 The Lessee must not cause any damage to standing timber or to the surface of the ground while removing the Improvements and must leave the Premises clean and tidy after the removal.
- 14.11.3 The Lessee must make good to the satisfaction of the Lessor any damage caused to the Premises or the Park as a result of the removal of the Improvements and any earthworks and correct any condition likely to result in soil erosion to the Premises or the Park.
- 14.11.4 The Lessee is responsible for and indemnifies the Lessor in respect to any loss or damage caused by the Lessee or the Lessee's Employees and Agents arising from the removal of the Improvements.

14.12 Lessee to Accept Responsibility for Lessee's Employees and Agents

The Lessee accepts full responsibility for the acts and omissions of the Lessee's Employees and Agents within or in the vicinity of the Premises and in the event of Breach by any such person this Lease shall apply against the Lessee as if such Breach was a Breach by the Lessee itself and the Lessee shall remedy any such Breach or where applicable, indemnify the Lessor in respect to such Breach.

14.13 Disconnection of Community Services

In addition to any other rights and remedies available to the Lessor under this Lease, the Lessor is entitled in the event that and for so long as the Lessee is in default of any provision under this Lease to terminate interrupt or discontinue the provision of any community service provided by the Lessor to the Premises and in such event the Lessor shall not incur any liability for any loss or damage of whatsoever kind or nature (whether

consequential or reasonably foreseeable or otherwise) suffered by the Lessee or any of the Lessee's Employees and Agents as a result of or arising out of any such termination interruption or discontinuance.

14.14 Requirement of Premises or part for Community or Public Purposes

14.14.1 If the Lessor requires possession of the Premises or any part thereof for works for any public or community purpose or any works subsidiary or ancillary to any such work or for the purpose of the care control and management of the Park and to put an end to this Lease and the Lessor gives to the Lessee six (6) calendar months' notice in writing expiring at any time then this Lease shall cease and determine without prejudice nevertheless to any then existing remedy which the Lessor may have against the Lessee for arrears of Rent or for any Breach.

14.14.2 In the event of the Lessor exercising its powers under this clause 14.14 and provided that the Lessee has duly complied with any covenant or conditions of this Lease of which the Lessee was in default at the date of the expiration of the notice referred to in cl.14.14.1 then the Lessee shall be entitled to such compensation as shall be determined by the Valuer General or a valuer nominated by the Valuer General as the value of the estate or interest of the Lessee in the Premises or affected part or parts thereof at the date of acquisition.

14.15 Native Title

14.15.1 The Lessee acknowledges that this Lease is validly granted under Part 2, Division 3, Subdivision J of the *Native Title Act 1993* (Cth) (CNTA), but acknowledges that in the event that native title rights and interests are, or would be, affected by the grant of this Lease and this Lease is not authorised by Subdivision J, or otherwise under the CNTA, such may be invalid within the meaning of the CNTA. If the Lease is invalid the parties agree that the valid parts of this Lease continue in force unaffected by the Invalid parts.

14.15.2 If there is or is likely to be a native title claim over or in relation to the Premises or the Park, the Lessee must continue to perform the obligations of this Lease and must carry on the business or other operation of the Premises for the Permitted Use unless otherwise:

- a) directed by the Lessor;
- b) ordered by any Court or Tribunal; or
- c) required by Law.

15 PROCEDURAL MATTERS

15.1 Time for Determining Rights and Obligations

This Lease for the purpose of determining the rights and obligations of the parties shall be construed as if it had been executed on the date from which the Term is expressed to run.

15.2 Variation or Waiver

None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by the Lessor unless by his or her express consent in writing. No waiver by the Lessor of any Breach of any condition contained or implied in this Lease shall operate as a waiver of another Breach of the same or of any other condition in this Lease.

15.3 Provisions to be Construed as Covenants

Such of the provisions and conditions herein contained as require or prescribe anything to be done or not to be done by the Lessee shall in addition to being read and construed as conditions of the Lease hereby granted be also read and construed as covenants and agreements whereby the Lessee for itself and its assigns covenants with the Lessor to observe and perform such provisions and conditions.

15.4 Consents Permissions or Approvals

Where anything in this Lease may be done with the approval, permission or consent of the Lessor (including where such approval, permission or consent may be revoked by the Lessor) the Lessor may:

15.4.1 unless otherwise expressly provided in this Lease, give, withhold or revoke his or her approval, permission or consent in his or her unfettered discretion; and

15.4.2 impose conditions on that approval, consent or revocation.

Unless otherwise provided the consent, permission or approval may be given by the Director-General or an Authorised Officer.

15.5 Opinions by Lessor

Any opinion to be formed by the Lessor for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor determines to be sufficient.

15.6 Lessee Not Agent of Lessor

The Lessee will not directly or indirectly hold out or permit to be held out to any member of the public any statement act deed matter or thing indicating or tending to indicate that the Premises or any business conducted thereon is being conducted managed or supervised by the Lessor, the Director-General, the Department or the Crown in right of New South Wales nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor, the Director-General, the Department or the Crown in right of New South Wales.

15.7 Communication with Lessee

The Lessee's contact details are set out at Item 8B of the Reference Schedule. The Lessee must at all times inform the Lessor of any amendment to the contact details set out at Item 8B of the Reference Schedule as soon as practicable after the Lessee's contact details have

been changed.

15.8 Notices

Any notice or other communication to be given under this Lease is sufficiently served on the Lessee if signed by an Authorised Officer for the time being of the Lessor and if forwarded by post or facsimile or left addressed to the Lessee at the address set out at Item 8A of the Reference Schedule or the principal office of the Lessee last known to the Lessor, and shall be sufficiently served on the Lessor if addressed to the Lessor and left at or sent by post or facsimile addressed to the Lessor at the Lessor's address specified in this Lease at Item 9 of the Reference Schedule or such other address that the Lessor may notify to the Lessee from time to time. A notice sent by post shall be deemed to be given at the time when it ought to be delivered in due course of post and a notice sent by facsimile shall be deemed to be given upon confirmation of the transmission.

15.9 Costs of Lease

The Lessee must pay:

- 15.9.1 the Lessor's reasonable legal costs and all duties fees charges and expenses of or incidental to the preparation completion stamping and registration of this Lease and any variation thereto, and any application for the consent of the Lessor hereunder, and of or incidental to any Breach by the Lessee hereunder, and of or incidental to the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor hereunder;
- 15.9.2 the fees of all professional consultants properly incurred by the Lessor in consequence of or in connection with any Breach;
- 15.9.3 all expenses reasonably incurred by the Lessor in any entry inspection examination consultation or the like which discloses a Breach;
- 15.9.4 all expenses reasonably incurred by the Lessor in the examination of plans drawings and specifications for any building structure or improvement constructed or to be constructed or other work to be carried out on the Premises and the inspection thereof both during and after completion;
- 15.9.5 all survey and site valuation fees incurred by the Lessor in connection with the Premises for the purposes of this Lease including valuation fees incurred by the Lessor in connection with the Premises for any rent review; and
- 15.9.6 all costs of carrying out any requirement or obligation imposed upon the Lessee by this Lease.

15.10 Licences

- 15.10.1 The Lessee must apply for and take all steps required to obtain all such licences or renewals thereof as may in the opinion of the Lessor be necessary for the proper conduct of the Premises and the Lessee will not do or suffer to be done any act matter or thing whereby any such licence may be or become liable to be forfeited or suspended or the renewal thereof refused.

- 15.10.2 The Lessee must at the expiration or sooner determination of this Lease sign and give such notice or notices and allow such notice or notices of renewal or transfer of any licence to be affixed to the Premises and generally do and perform all such further acts matters and things as shall be necessary to enable the Lessor or any person authorised by him or her to obtain the renewal of any licence or licences or any new licence or licences or the transfer of any licence or licences then existing and in force.

15.11 Inspection by Prospective Lessees

The Lessee must at all reasonable times within the three (3) months immediately preceding the termination of this Lease permit the Lessor to exhibit the Premises to prospective tenants and will at all times during that period of three (3) months allow the Lessor to affix and exhibit where the Lessor shall think fit an appropriate notice facilitating enquiries to the Lessor and/or his or her agent and the Lessee shall not remove any such notice without the written consent of the Lessor.

15.12 Disclosure of Information

- 15.12.1 The Lessee acknowledges that the Lessor is required by section 151J of the Act to maintain a register on which certain information concerning this Lease is to be recorded and made publicly available and consents to the disclosure of such information.
- 15.12.2 The Lessee agrees that the Lessor may, without the consent of the Lessee, disclose to an incoming lessee of the Premises such financial information of the Lessee as has been provided to the Lessor by the Lessee but only for the purposes of disclosing to any incoming lessee the nature and scope of the commercial operation conducted on the Premises by the Lessee.

16 OPTION

16.1 Further Lease

- 16.1.1 This clause 16 operates only if at Item 13 of the Reference Schedule a Further Term is identified.
- 16.1.2 If the Lessee wishes to take a lease of the Premises for any Further Term specified at Item 13 of the Reference Schedule and:
- a) not less than six (6) months and not more than twelve (12) months before the expiration of the then current Term gives notice in writing to the Lessor to that effect; and
 - b) as at the date of the notice the Lessee is not in subsisting Breach of a provision of this Lease; and
 - c) has not at the date of the notice been previously issued with more than three (3) notices from the Lessor to remedy a Breach of an essential term

of this Lease identified at clause 14.2.1,

then the Lessor must grant the Further Lease for the Further Term at an annual Rent as determined by Part A of the Rent Schedule and otherwise on the same conditions as are contained in this Lease, except as provided by clause 16.2.

16.2 Terms of Further Lease

The Further Lease must be amended as follows:

- 16.2.1 the Commencing Date shall be the date immediately following the Terminating Date of this Lease;
- 16.2.2 the Terminating Date shall be inserted, given the term of the Further Lease;
- 16.2.3 the number of Options contained in the Reference Schedule and Lease cover page shall be reduced by one;
- 16.2.4 if no further Options for a Further Term are stipulated at Item 13 of the Reference Schedule, clause 16.1 and 16.2 shall be omitted from the Further Lease;
- 16.2.5 Item 14B of the Reference Schedule shall be omitted from the Further Lease;
- 16.2.6 any clause or paragraph in Part A of the Rent Schedule that is specified in Part A of the Rent Schedule as to be omitted from the Further Lease, shall be omitted from the Further Lease;
- 16.2.7 Part B of the Rent Schedule shall be omitted from the Further Lease;
- 16.2.8 Part C of the Rent Schedule and all references to the Lease Grant Fee shall be omitted from the Further Lease; and
- 16.2.9 The Additional Bed Allocation Schedule and all references to Additional Bed Allocation and Additional Beds Allocation Fee shall be omitted from the Further Lease.

17 ADJOINING LICENCE AREA

17.1 Adjoining Licence Area

If the Lessor has granted to the Lessee a licence over an Adjoining Licence Area under clause 2.1.2 of this Lease, then where not repugnant to the context the definition of Premises in this Lease includes the Adjoining Licence Area.

17.2 Adjoining Licence Area Conditions

The conditions for the use and occupation by the Lessee of an Adjoining Licence Area are set out in Schedule 4.

18 ADDITIONAL COVENANTS

The Lessee must comply with the covenants and obligations contained in the Additional Covenants Schedule.

SCHEDULE 1 REFERENCE SCHEDULE

Item 1 (clause 1.1)	Premises	The land stipulated at Item (A) on the Lease cover page.
Item 2 (clauses 1.1 and 3.6)	Bank Guarantee	\$10,000.00
Item 3 (clauses 1.1 and 5.1)	Permitted Use of Premises	Commercial Lodge providing accommodation to the general public and purposes reasonably incidental to that use.
Item 4 (clauses 1.1 and 6)	Bed Numbers	30
Item 4A (clause 1.1 and Schedule 5)	Additional Beds Allocation	NA
Item 5 (clauses 1.1 and 6)	Maximum Number of Persons Overnight	30
Item 6 (clause 11.1)	The minimum amount which may be paid arising out of any one single accident or event	\$10,000,000.00
Item 7	Not applicable	
Item 8A (clause 15.8)	Lessee's address for service	Lynette Ingham PO Box 649 CASTLE HILL NSW 1765
Item 8B (clause 15.7)	Lessee's contact details	Lynette Ingham c/- Garry Huggett, Solicitor Last & Maxwell Shop 34, Nuggets Crossing JINDABYNE NSW 2627 Phone: (02) 6457 1666 Fax: (02) 6457 1611 Email: lastmaxj@bigpond.com
Item 9 (clause 15.8)	Lessor's address for service	Chief Executive Officer Head - National Parks and Wildlife Office of Environment and Heritage Department of Premier and Cabinet 43 Bridge Street, Hurstville NSW 2220 PO Box 1967, Hurstville NSW 1481

Item 10 (clauses 1.1 and 17 and Schedule 4)	Adjoining Licence Area	That land shown in the photograph (Ref RELIS – AP 18 April 2012) of the Premises that adjoin the Premises and is outlined in yellow, incorporated into this Lease by reference.
Item 11 (clauses 1.1 and 17 and Schedule 4)	Permitted Use of Adjoining Licence Area	Premises parking but excluding the parking of any vehicle (except snow mobiles) during the ski season being between the June long weekend and the October long weekend in each and every year.
Item 12 (clauses 1.1 and 17 and Schedule 4)	Licence Fee	\$1.00, if demanded.
Item 13A (clauses 1.1 and 16)	Further Term	1 July 2028 to 30 June 2038
Item 13B (clauses 1.1 and 16)	Further Term	1 July 2038 to 30 June 2048
Item 13C (clauses 1.1 and 16)	Further Term	1 July 2048 to 30 June 2058
Item 14A (clause 3 and Rent Schedule)	Market Land Value	\$384,718.66 and thereafter as determined in accordance with clause 7 of the Rent Schedule
Item 14B	Base Rent	\$23,083.12
Item 14C (clause 3 and Rent Schedule)	Base Rent Percentage	6.0% for the first year of the Term and thereafter as determined by the Lessor in accordance with clause 8 of the Rent Schedule
Item 15 (Rent Schedule)	Turnover Rent Percentage	6.0% for the first year of the Term and thereafter as determined in accordance with clause 4 of the Rent Schedule
Item 16	Not Applicable	
Item 17 (Additional Covenants Schedule)	Management company	NA

Item 18 (Rent Schedule)	Date of end of annual accounting period (day and month)	30 June
Item 19 (Rent Schedule)	Date of end of Lease year (day and month)	30 June
Item 20 (Additional Covenants Schedule)	Oversnow vehicles	2
Item 21 (clause 5.26)	Environmental Research and Rehabilitation Contribution	\$11.05 per Bed CPI adjusted annually.
Item 22 (Rent Schedule)	Lease Grant Fee	\$45,688.31 exclusive of GST.
Item 23 (Rent Schedule)	Lease Grant Fee Payment Option	One payment on the Commencing Date
Item 24 (Schedule 5)	Additional Beds Allocation Fee	NA
Item 25 (Schedule 5)	Additional Beds Allocation Fee Payment Option	NA

SCHEDULE 2 RENT SCHEDULE

PART A (Rent)

1 DEFINITIONS

Annual Adjustment Notice means a written notice from the Lessor to the Lessee stating:

- a) the Turnover Rent for the relevant period of the Auditor's Certificate; and
- b) the amount paid by the Lessee on account of Base Rent for such period.

Audited Gross Revenue means Gross Revenue the amount of which has been duly audited and certified by the Lessee's auditor who shall be a registered auditor.

Auditor's Certificate means a written statement by a registered auditor certifying the Audited Gross Revenue for each year of the Term.

Base Rent means the amount determined by multiplying the Market Land Value by the Base Rent Percentage applicable for the year as reviewed by, and subject to the terms of, this Schedule.

Base Rent Percentage means the percentage specified at Item 14C of the Reference Schedule and for the Further Term as determined in accordance with clauses 6 and 8 of this Schedule.

Base Rent Percentage Review Date means the Commencing Date of the Further Term and every tenth anniversary thereof.

CPI means the Consumer Price Index for Sydney (All Groups) published by the Australian Bureau of Statistics (or its successors). If the Consumer Price Index is suspended or discontinued the index to be used shall be the index advised by the Australian Statistician, which reflects the basic change in the cost of living in Sydney during any year.

Dispute Notice means a written notice from the Lessee to the Lessor to the effect that the Lessee disputes the Lessor's assessment of the Market Land Value Base Rent Percentage or Turnover Rent Percentage as the case may be.

Dispute Period means the period from the date each Market Land Value Review Notice or Lessor's Assessment is served on the Lessee until twenty-one (21) days thereafter.

Gross Revenue means all monies received or brought to account by the Lessee, its assigns, successors, sublessees and licensees arising from the carrying on of its and their business upon or in connection with the Premises or any part thereof and includes all rental and other monies received by the Lessee from its licensees and sublessees.

Lease Grant Fee means the premium payable by the Lessee to the Lessor for the grant of this Lease as set out in Part C of this Schedule and as specified at Item 22 of the Reference Schedule.

Lease Grant Fee Payment Option means the Lease Grant Fee payment option elected by the Lessee as specified at Item 23 of the Reference Schedule.

Lessor's Assessment means a written notice from the Lessor to the Lessee of a revised Base Rent Percentage or revised Turnover Rent Percentage as the case may be.

Market Land Value means the market value of the fee simple of the land, excluding the improvements, identified at item (A) on the Lease cover page. The Market Land Value is, at the Commencing Date of this Lease, specified at Item 14A of the Reference Schedule and thereafter is determined in accordance with clause 7 of this Schedule.

Market Land Value Review Date means the Commencing Date of the Further Term and every tenth anniversary thereof.

Market Land Value Review Notice means a written notice from the Lessor to the Lessee of the amount, which the Lessor considers to be the Market Land Value as at the Market Land Value Review Date.

Turnover Rent means the amount determined by multiplying the Audited Gross Revenue by the Turnover Rent Percentage applicable for the year.

Turnover Rent Percentage means the percentage specified at Item 15 of the Reference Schedule for the first year of the Term and for each subsequent year until the first Turnover Rent Review Date and thereafter as determined by clause 4 of this Schedule.

Turnover Rent Percentage Review Date means 1 July 2018, and in relation to the Further Term means the Commencing Date of the Further Term and every tenth anniversary thereafter.

Year means in this Schedule a period of twelve months commencing 1 July in each calendar year.

2 RENT

- a) The Lessee will pay as Rent to the Lessor for each year of the Term the greater of the Base Rent or Turnover Rent applicable for that year.
- b) For the first year of the Term the Base Rent shall be the amount set out in Item 14B of the Reference Schedule.
- c) For each year of the Term the Lessee must pay the applicable Base Rent in advance on the Commencing Date and each anniversary thereof.
- d) The Lessee shall pay the Rent to the Lessor at the address nominated by the Lessor from time to time and in such manner as the Lessor shall direct.
- e) Despite the provisions of this Schedule, for the first 9 months of the Term of this Lease the Lessee will only be required to pay as Rent the Base Rent applicable for each year. This clause does not apply to any Further Lease.

3 REVIEW OF BASE RENT - CPI

- a) For the first 9 months of the Term the Market Land Value is specified at Item 14A of the Reference Schedule.

b) **CPI Review**

- i) On 1 July 2013 and on each anniversary of that date during the Term the Base Rent shall be reviewed (except for an anniversary that is also a Market Land Value Review Date) of the Lease and shall be derived by multiplying the Base Rent payable for the year last concluded by the fraction A/B where:
 - A = the CPI figure last published prior to the first day of the year under review.
 - B = the CPI figure last published prior to the first day of the year immediately preceding the year under review.
- ii) If the Base Rent determined in accordance with clause 3 b) i) is less than the Base Rent for the immediately preceding year the Base Rent for the year under review shall be equivalent to the Rent for the immediately preceding year.

4 REVIEW OF TURNOVER RENT PERCENTAGE

- a) The Turnover Rent Percentage shall be reviewed on each Turnover Rent Percentage Review Date in accordance with clause 4 b) and such reviewed Turnover Rent Percentage shall apply for the year commencing on that date and for each subsequent year (subject to clause 5) until the year commencing on the next Turnover Rent Percentage Review Date.
- b)
 - i) During the six (6) calendar months preceding a Turnover Rent Percentage Review Date the Lessor may serve on the Lessee a Lessor's Assessment setting out the Turnover Rent Percentage to apply from that Turnover Rent Percentage Review Date.
 - ii) The Turnover Rent Percentage determined by the Lessor shall be consistent with the turnover based rent percentages applicable to alpine ski resort premises that are comparable to the Premises in this Lease but also having regard to the turnover based rent percentages applicable to other tourist accommodation considered relevant.
 - iii) If the Lessee does not agree with the Turnover Rent Percentage determined by the Lessor then the Lessee must, if it wishes to dispute such Turnover Rent Percentage, serve a Dispute Notice on the Lessor within the Dispute Period.
 - iv) If the Lessee does not serve a Dispute Notice within the Dispute Period, the Turnover Rent Percentage stated in the Lessor's Assessment will be the revised Turnover Rent Percentage.
 - v) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period then

the provisions of clause 7 b) iv)-vii) apply with the references to Market Land Value in such clauses being read as references to Turnover Rent Percentage. The valuer must determine the Turnover Rent Percentage to be consistent with the turnover based rent percentages applicable to Alpine Ski resort premises that are comparable to the Premises in this Lease but also having regard to the turnover based rent percentages applicable to other tourist accommodation that the valuer considers relevant. The valuer must not determine the revised Turnover Rent Percentage less than the Turnover Rent Percentage applicable to the Premises immediately prior to the Turnover Rent Percentage Review Date.

- vi) Where the revised Turnover Rent Percentage has not been determined by the Turnover Rent Percentage Review Date the Turnover Rent Percentage applicable to the year immediately preceding the Turnover Rent Percentage Review Date shall be used to determine the Turnover Rent for the year under review. Once the revised Turnover Rent Percentage is determined the Turnover Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.
 - vii) If the Lessor fails to exercise his or her rights to require the Turnover Rent Percentage to be revised before any Turnover Rent Percentage Review Date then this right may be exercised at any time prior to the next Turnover Rent Percentage Review Date and the revised Turnover Rent once determined will still be payable from the last Turnover Rent Percentage Review Date. No succeeding Turnover Rent Percentage Review Date will be postponed because of the operation of this clause.
- c) The Turnover Rent Percentage will be capped at 7% for the first review only during the Term of the Lease.

5 BASE RENT AND TURNOVER RENT PERCENTAGE NEVER LESS THAN PRECEDING YEAR

Whenever there is to be a review of the Base Rent or Turnover Rent Percentage in accordance with this Schedule and the resulting Base Rent or Turnover Rent Percentage (as the case may be) is less than for the immediately preceding year such Base Rent or Turnover Rent Percentage shall be replaced by the Base Rent or Turnover Rent Percentage for the immediately preceding year.

6 DETERMINATION OF RENT FOR FURTHER LEASE

- a) Where the Lessee has complied with the provisions of clause 16.1 of this Lease and the Lessor has agreed to grant a Further Lease in accordance with clause 16.1 of this Lease the Rent to apply for the Further Lease shall be determined in accordance with this clause.
- b) Clause 2 shall apply except to the extent that it is modified by the reviews provided for in this clause and a reference to Term in that clause shall be taken to mean

Further Term.

- c) The Market Land Value shall be reviewed at the Commencing Date of the Further Term and on each Market Land Value Review Date in accordance with clause 7.
- d) The Base Rent Percentage shall be reviewed at the Commencing Date of the Further Term and on each Base Rent Percentage Review Date in accordance with clause 8.
- e) The Turnover Rent Percentage shall be reviewed on the Commencing Date of the Further Term and each Turnover Rent Percentage Review Date.
- f) The Base Rent shall be reviewed for the second and each subsequent year of the Further Term in accordance with clause 3 b) (but not including a Market Land Value Review Date).
- g) Clauses 2 e), 4 c) and 5 do not apply for the purposes of any Further Term.

7 MARKET LAND VALUE REVIEW FOR FURTHER TERM

- a) The Market Land Value shall be reviewed in accordance with clause 7 b) and such reviewed Market Land Value shall apply for the year commencing on that date until the year commencing on the next Market Land Value Review Date.
- b) Market Land Value Review
 - i) During the six (6) calendar months preceding a Market Land Value Review Date the Lessor may serve on the Lessee a Market Land Value Review Notice setting out what he or she considers to be the Market Land Value to apply from that Market Land Value Review Date.
 - ii) If the Lessee does not agree with the Market Land Value determined by the Lessor then the Lessee must, if it wishes to dispute the Lessor's assessment of the revised Market Land Value, serve a Dispute Notice on the Lessor within the Dispute Period.
 - iii) If the Lessee does not serve a Dispute Notice within the Dispute Period, the amount stated in the Market Land Value Review Notice will be the revised Market Land Value.
 - iv) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period, the Lessor must within twenty-one (21) days of receiving the Dispute Notice refer the matter to the president or other principal officer for the time being of the Australian Property Institute Inc (New South Wales Division) (or any association replacing the same) to appoint a valuer to determine the revised Market Land Value.

- v) The revised Market Land Value determined by the valuer will be final and binding on the parties.
 - vi) The costs incurred in the determination of the revised Market Land Value must be shared equally between the parties.
 - vii) In determining the revised Market Land Value the valuer must:
 - A be a full member of not less than five (5) years standing of the Australian Property Institute Inc (New South Wales Division);
 - B be the holder of a licence to practice as a valuer in New South Wales of the kind of premises demised by this Lease;
 - C have at least five (5) years experience in valuing that kind of premises and be active in that market at the time of the appointment;
 - D have due regard to any evidence submitted by the parties as to their assessments of the revised Market Land Value;
 - E give in writing his or her determination providing complete details of comparable evidence, the evaluation of that evidence, and details of the basis for the determination;
 - F be deemed to be acting as an expert (whose decision shall be final and binding on the parties) and not as an arbitrator.
 - viii) In determining the revised Market Land Value the valuer must determine the Market Land Value for the Premises unaffected by any interest in the land as at the Market Land Value Review Date and must value the land according to the maximum potential for the development of the land, the position of the site relative to existing or proposed infrastructure and facilities, the availability of services to the site, the Bed Numbers and all other uses permitted on the Premises by this Lease and the Premises as being subject to the Plan of Management applicable at the Market Land Value Review Date.
 - ix) Where the revised Market Land Value has not been determined by the Market Land Value Review Date the Market Land Value applicable to the year immediately preceding the Market Land Value Review Date shall be used to determine the Base Rent for the year under review. Once the revised Market Land Value is determined the Base Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.
- c) If the Lessor fails to exercise his or her rights to require the Market Land Value to be revised before any Market Land Value Review Date then this right may be exercised at any time prior to the next date the Market Land Value is to be reviewed and the revised Base Rent once determined will still be payable from the last Market Land Value Review Date. No succeeding Market Land Value Review Date will be postponed because of the operation of this clause.

8 REVIEW OF BASE RENT FOR FURTHER TERM – BASE RENT PERCENTAGE

- a) The Base Rent Percentage shall be reviewed in accordance with clause 8 b) and such reviewed Base Rent Percentage shall apply for the year commencing on that date and for each subsequent year (subject to clause 5) until the year commencing on the next Base Rent Percentage Review Date.
- b)
- i) During the six (6) calendar months preceding a Base Rent Percentage Review Date the Lessor may serve on the Lessee a Lessor's Assessment setting out what he or she considers to be the Base Rent Percentage to apply from that Base Rent Percentage Review Date.
 - ii) The Lessor must determine the Base Rent Percentage as the percentage that when multiplied by the applicable Market Land Value results in an amount that would be equal to the market rate of return that would be reasonably expected for a lease of the land the subject of this Lease and for the same Term between a willing lessor and a willing lessee in an arms length transaction wherein the parties both acted knowledgeably, prudently and without compulsion.
 - iii) If the Lessee does not agree with the Base Rent Percentage determined by the Lessor then the Lessee must, if it wishes to dispute such Base Rent Percentage, serve a Dispute Notice on the Lessor within the Dispute Period.
 - iv) If the Lessee does not serve a Dispute Notice within the Dispute Period, the Base Rent Percentage stated in the Lessor's Assessment will be the revised Base Rent Percentage.
 - v) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period then the provisions of clauses 7 b) iv)-vii) apply with the references to Market Land Value in such clauses being read as references to Base Rent Percentage. The valuer must determine the Base Rent Percentage as the percentage that when multiplied by the applicable Market Land Value results in an amount that would be equal to the market rate of return that would be reasonably expected for a lease of the land the subject of this Lease and for the same Term between a willing lessor and a willing lessee in an arms length transaction wherein the parties both acted knowledgeably, prudently and without compulsion. In determining the Base Rent Percentage the Valuer must have regard to (but is not limited by) rental evidence of leases of land having permitted uses similar or comparable to those of this Lease as well as of leases of land with permitted uses reasonably considered by the valuer as providing a similar market rate of return as is provided by leases of snowfield and tourist related uses.
 - vi) Where the revised Base Rent Percentage has not been determined by the Base Rent Percentage Review Date the Base Rent Percentage applicable to the year immediately preceding the Base Rent Percentage Review Date shall

be used to determine the Base Rent for the year under review. Once the revised Base Rent Percentage is determined the Base Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.

- c) If the Lessor fails to exercise his or her rights to require the Base Rent Percentage to be revised before any Base Rent Percentage Review Date then this right may be exercised at any time prior to the next Base Rent Percentage Review Date and the revised Base Rent once determined will still be payable from the last Base Rent Percentage Review Date. No succeeding Base Rent Percentage Review Date will be postponed because of the operation of this clause.

9 STATEMENTS OF GROSS REVENUE

The Lessee must give the Lessor, in the form which the Lessor reasonably requires, an Auditor's Certificate or other form of audit certification acceptable to the Lessor prior to 31 October of each calendar year.

10 ANNUAL ADJUSTMENT OF RENT

- a) Within one (1) month of the Lessor receiving each Auditor's Certificate or other form of audit certification acceptable to the Lessor, the Lessor must give the Lessee an Annual Adjustment Notice.
- b) The Lessee shall pay within fourteen (14) days of the date of the Annual Adjustment Notice the amount, if any, set out in the Annual Adjustment Notice by which the Turnover Rent for the relevant period exceeds the Base Rent paid by the Lessee for such period.

11 GOODS AND SERVICES TAX

GST is payable in addition to the amounts noted in this Schedule.

12 ACCOUNTS AND RECORDS

- a) Keeping of Accounts and Records

The Lessee will keep its accounts and records and ensure that those of its sublessees, licensees and managers are adequately kept to permit a true and accurate determination of the Gross Revenue during any Year to be obtained by audit for the purposes of computing the rent payable by the Lessee as herein provided and to permit payment of such rent within the times herein provided.

b) Accounting Period

Neither the Lessee nor any of its sublessees or licensees or other person claiming through or under the Lessee will without the prior written consent of the Lessor adopt any other accounting period than that ending upon the date at Item 18 of the Reference Schedule in each Year.

c) All Transactions to be Incorporated

The Lessee must bring into and incorporate into its accounts and records, and procure to be brought into and incorporated into the accounts and records of its sublessees or licensees, all financial transactions of the Lessee and/or of such sublessees or licensees as the case may be either directly or through any subsidiary or agent relating to the carrying on or in any way in connection with the business of the Lessee or any sublessee or licensee of the Lessee upon the Premises and for the purposes of this covenant the term 'subsidiary' shall have the same meaning as in the *Corporations Act 2001* (Cth) and shall include any company body or enterprise the affairs of which it is within the power of the Lessee to directly or indirectly control.

d) Accounts and Records to be Made Available for Inspection

The Lessee must:

- i) duly enter and keep in suitable books and records to be kept in the English language for that purpose at a proper office on the Premises (or such other place as the Lessor may approve) true particulars and complete accounts and records of all its Gross Revenue arising from the carrying on of its business upon or in connection with the Premises;
- ii) keep the books and records referred to in clause d) i) at all times open for inspection by the Lessor;
- iii) permit the Lessor or any person authorised by the Lessor to take copies and extracts from those books and records referred to in clause d) i);
- iv) at all times render to the Lessor and every person authorised by the Lessor all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove such entries, accounts, books and records to the satisfaction of the Lessor and any authorised person in such manner as he or she may direct; and
- v) furnish the Lessor or any authorised person with all such information as either shall demand concerning Gross Revenue;
- vi) obtain from each of its sublessees and licensees a return showing the certified gross revenue of such sublessee or licensee in any financial year during the continuance of this Lease;
- vii) include in any sublease, licence or any other management agreement or like arrangement entered into by the Lessee the following clauses:

- A a clause requiring the sublessee or licensee or other person to duly enter and keep in suitable books and records to be kept during the continuance of the sublease or licence at its/their business office of the true particulars and complete accounts and records of all the Gross Revenue of the sublessee or licensee arising from the carrying on of the business of the sublessee or licensee upon or in connection with the Premises or any part thereof;
- B a clause requiring that such books and records must at all times be open for inspection by the Lessor or any person authorised by him or her and authorising the Lessor or any such person to take copies and extracts of such books and records;
- C a clause requiring that the sublessee or licensee or other person will at all times render to the Lessor and every such person all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove such entries accounts books and records to the satisfaction of the Lessor and such authorised person in such manner as he or she may direct and furnish the Lessor or such authorised person with all information.

e) No Deductions from Gross Revenue

No monies paid or credited by the Lessee or any person, firm or company claiming through or under the Lessee or debited against the Lessee or any such person, firm or company, nor any monies paid or payable by the Lessee or any such person, firm or company as aforesaid to any other person, firm or company for management expenses shall be deducted or otherwise taken into account in arriving at the amount of any certified Gross Revenue.

f) Balance Sheet and Profit and Loss Account

The Lessee will furnish to the Lessor prior to 31 October in each and every year of the Term of this Lease or as otherwise required by the Lessor true copies of the duly certified balance sheet and profit and loss account of all business of the Lessee relating to the Premises for the year ending on the date in Item 18 of the Reference Schedule provided that in respect to the Lessee's business during the final year of the Term copies of the balance sheet and profit and loss account shall be furnished by the Lessee within ninety (90) days after the date of expiration of this Lease.

g) Understated Gross Revenue

In the event that after inspection by the Lessor or any person authorised by him or her the certified statement of Gross Revenue provided by the Lessee shall be found to be understated by more than two per cent (2%) the Lessee must pay the costs of the Lessor in establishing the discrepancy and for the purposes of this clause and clause 12 h) the certificate of the Lessor's appointed auditor shall be final and binding.

h) Interest to be Paid if Discrepancy

Should any discrepancy be established as referred to in clause 12 g) then in addition to the payment of the Lessee to the Lessor of any rent rightfully due the Lessee shall also pay to

the Lessor interest calculated in accordance with the provisions of clause 3.5 of this Lease.

Part B – Table of Rent and Rent Reviews

The following tables summarise the applicable Rent and Rent Reviews in this Lease as a guide only. In the event of any inconsistency, the provisions of Part A of this Schedule 2 apply.

Initial Term of Lease (to be deleted if the Lease is renewed)

Rent/Rent Review	Details
Rent (cl.2)	The greater of Base Rent or Turnover Rent
Base Rent (cl.1)	6% of Market Land Value at Commencing Date
Base Rent for the first year of Term	\$23,083.13
CPI Reviews of Base Rent (cl.3 b)	Every year - ratchet applies
Turnover Rent Percentage Review (cl.4 and 5)	1 July 2018 then every 10 years however limited to 7% maximum – ratchet applies

Further Term of Lease

Rent/Rent Review	Details
Market Land Value Review (cl.6 and 7)	Commencing Date of Further Term and every 10 years thereafter – no ratchet applies
Base Rent Percentage Review (cl.6 and 8)	Commencing Date of Further Term and every 10 years thereafter – no ratchet applies
Turnover Rent Percentage Review (cls.4 and 7)	Commencing Date of Further Term and every 10 years thereof – no ratchet applies
CPI Review of Base Rent (cl.3 and 7)	Every year except Market Land Value Review years - ratchet applies

PART C (Lease Grant Fee)

13 LEASE GRANT FEE

- a) The Lease Grant Fee is the amount specified in Item 22 of the Reference Schedule.
- b) The Lessee must pay the Lease Grant Fee to the Lessor at the address nominated by the Lessor, in such a manner as the Lessor shall direct and otherwise in accordance with this clause.
- c) Where Item 23 of the Reference Schedule specifies that the Lease Grant Fee Payment Option is one payment on the Commencing Date, the Lessee must pay the Lease Grant Fee to the Lessor on the Commencing Date.
- d) This clause 13 is an essential term for the purposes of clause 14 of the Lease.

SCHEDULE 3 ADDITIONAL COVENANTS SCHEDULE

COMMERCIAL LODGES

1A ACCOMMODATION AVAILABILITY

The Lessee must not:

- a) conduct in respect to the operation of the Premises any form of accommodation booking system which results or could result in accommodation preference being given to any particular group of users provided that this clause will not operate:
 - i) to prohibit conventional commercial operations of the nature of coach bookings or organised package holiday tours; or
 - ii) to prohibit the Lessee accepting bona fide forward bookings of accommodation up to three (3) years in advance for not more than one third of the available accommodation at that time;
- b) conduct or allow by any means any sale or grant of such matters as memberships, units, shares or any similar interests in the Lessee or otherwise howsoever the consideration or any part of the consideration for any such matter or matters being entitlement or entitlements to accommodation on the Premises;
- c) make it or allow it to be made a requirement for obtaining accommodation at the Premises that an applicant for such accommodation is the holder of or is required to acquire a membership or memberships of a unit or units or a share or shares in the Lessee or otherwise howsoever.

1B

- a) No person, other than bona fide on-site managers and/or staff of the premises, shall occupy the accommodation for more than six weeks in any snow season nor for more than twenty-six weeks in any year.
- b) Bona fide on-site managers and/or staff are only permitted to occupy the accommodation for purposes associated with the actual management of the accommodation where a full-time presence is essential. Lessees will be required to obtain the Lessor's approval for any long-term occupancy for either management or staff. Occupancy of the accommodation on the basis of private, residential premises is not permitted.
- c) For the purposes of this Lease, occupation of any Premises by the spouse or any descendant, parent, brother, sister or any descendant of the brother or sister of the

Lessee or any sublessee, or where the Lessee or sublessee is a company by a director thereof or a shareholder therein or any descendant, parent, brother, sister or any descendant of the brother or sister of the director or shareholder, or any person authorised by the Lessee or sublessee is deemed to be occupation by the Lessee or sublessee respectively.

2 PROMOTION AND MARKETING OF ACCOMMODATION

The Lessee must:

- a) use its best endeavours to actively market and promote the accommodation on the Premises by appropriate means including the use of advertising and travel agency outlets, and shall use its best endeavours to secure the booking and use of such accommodation by the general public;
- b) keep upon the Premises a register recording details of all marketing, advertising and promotional activities in relation to accommodation and use by the general public of the Premises and will afford to the Lessor or his or her agent free access to such register for the purpose of perusing or taking extracts of entries made therein;
- c) comply with the manual in respect to the matters referred to in clauses 3 a) and 3 b) provided that until such time as the manual is provided to the Lessee, the Lessee agrees that it will comply with the advertising, marketing and promotion guidelines and policies of the Lessor, which the Lessee must ascertain from the Lessor.

3 LESSEE'S MEMORANDUM AND ARTICLES OF ASSOCIATION OR CONSTITUTION

Where the Lessee is a company:

- a) its Memorandum and Articles of Association or constitution and/or other governing or management charter or like document must at all times conform and remain in conformity with the reasonable requirements for the time being of the Lessor in relation to performance of the covenants of this Lease by the Lessee;
- b) the Memorandum and Articles of Association or constitution of such company will not be altered, modified, added to or reduced or varied in any way which will in the reasonable opinion of the Lessor bestow upon a shareholder or director rights or entitlements to occupy or use exclusively or otherwise the whole or any part of the Premises;
- c) neither the company nor any director nor shareholder of the company will enter into or be a party to any arrangement or agreement whether written or oral whether express or implied with any person or company whereby that other person or company is given any right or entitlement to occupy or use exclusively or otherwise the whole or any part of the Premises.

4 OVERSNOW VEHICLES

- a) The Lessee must not:
- i) directly or indirectly operate or allow to be operated any oversnow vehicle except an oversnow vehicle authorised in conformity with subsisting operating procedures for the time being of the Lessor and any Relevant Authority (which may include the Roads and Traffic Authority or its successor) including the requirement to prominently display on such vehicle an authorised label issued by the Lessor which is appropriate to the Premises;
 - ii) allow any oversnow vehicle to be operated by a person who does not hold a consent issued by the Lessor and a licence issued by the Roads and Traffic Authority or its successor for the operation of such vehicles;
 - iii) use or allow to be used any such authorised oversnow vehicle within the Park other than upon those routes specified in the consent issued by the Lessor and other than for management purposes incidental to the conduct of the Premises excluding recreational use and the towing of skiers;
 - iv) operate or allow to be operated or kept in connection with the Premises more than the number of oversnow vehicles stipulated at Item 20 of the Reference Schedule at any one time or allow any sublessee or licensee to operate any additional oversnow vehicles in connection with its use of the Premises; nor
 - v) charge a fee to any person for the use of any such authorised oversnow vehicle without the prior approval in writing of the Lessor and any other Relevant Authority.
- b) For the purposes of this clause 4, 'Oversnow Vehicle' means such vehicles as snow cats, skidoos and other machines as approved by the Lessor for the transport of persons or freight over snow.

5 LIQUOR LICENCE

- a) The Lessee must not without the prior written consent of the Lessor sell, offer for sale, supply or deliver any liquor on the Premises nor apply for any licence to do so.
- b) Where the Lessor has given written consent to the Lessee to sell liquor on the Premises the Lessee must obtain all of the licences and approvals required by the *Liquor Act 1982* and any other relevant statute and must pay such fees including liquor licence fees as may be payable in order to obtain and maintain such licences and approvals.

6 NO GAMBLING FACILITIES

The Lessee must not operate or permit to be operated upon the Premises any poker machine or other gambling device or facility of a similar nature nor apply for any licence, permit or authority to install or operate such devices or facilities.

7 SIGNS

- a) Subject to clause 5.16 of this Lease, the Lessee must erect and display a sign at the entrance to the Premises stating the approved trading hours of the business conducted on the Premises and during the said hours display a sign outside the entrance indicating that the Premises are open for business.
- b) In addition to the sign referred to clause 5.16.2 of this Lease, the Lessee must affix a sign in accordance with the Local Government (Orders) Regulation 1999 as may be varied from time to time.

8 EMPLOYEES

The Lessee must employ a sufficient number of thoroughly trained competent staff to enable operation of the business in a professional businesslike manner and ensure that such employees are not under the influence of or affected by liquor or drugs and will conduct themselves in a sober and proper manner and are cleanly and suitably attired having regard to the nature of work to be performed.

9 TRADING NAMES

The Lessee must ensure that no trading names are used in respect to any business conducted on the Premises without the prior consent of the Lessor to each name.

10 ESSENTIAL TERMS

The following clauses of this Schedule are, in addition to the terms set out in clause 14.2 of this Lease, essential terms of this Lease:

- a) clause 5 (Liquor Licence); and
- b) clause 6 (No Gambling Facilities).

**SCHEDULE 4
ADJOINING LICENCE AREA
SCHEDULE**

1 LEASE TERMS TO APPLY

- a) All the provisions of this Lease with respect to the Premises are the terms of the licence of the Adjoining Licence Area, except as set out in this Schedule 4.

2 MODIFICATION OF LEASE TERMS

- a) In addition to clauses 3, 4 and 5 below, the following obligations and promises in this Lease with respect to the Premises are modified as follows in respect to the Adjoining Licence Area:
- i) there is no grant of exclusive possession or anything in the nature of a grant of a leasehold interest over the Adjoining Licence Area;
 - ii) there is no obligation for the Lessee to pay Rent or the Lease Grant Fee to the Lessor;
 - iii) the Lessee must pay:
 - A the Outgoings;
 - B the costs set out in clause 15.9 of this Lease excepting those costs for the preparation completion stamping and registration of the Lease and any variation of it as set out in clause 15.9.1;with respect to the Adjoining Licence Area;
 - iv) the Lessee must use the Adjoining Licence Area for the Permitted Use of the Adjoining Licence Area rather than the Permitted Use for the Premises and the Lessee must not use or permit the use of the Adjoining Licence Area for any other purpose;
 - v) the Lessee is not obliged to place any signs on the Adjoining Licence Area in addition to those signs required on the Premises under clause 5.16 of this Lease;
 - vi) the Lessor does not rely upon its statutory right of entry or its rights of entry under this Lease to enter the Adjoining Licence Area as the Lessor, his or her agents, employees and invitees may at all times enter the Adjoining Licence Area for any reason whatsoever;

- vii) the licence over the Adjoining Licence Area is terminable at will by the Lessor and the Lessor is not obliged to serve a notice of breach of covenant upon the Lessee;
- viii) there is no grant of quiet enjoyment and the holding over provisions do not apply to the Adjoining Licence Area;

3 FURTHER LICENCE OF ADJOINING LICENCE AREA

If the Lessor grants the Lessee a Further Lease in respect to the Premises, then the Lessor grants a licence for the Term of the Further Lease in respect to the Adjoining Licence Area.

4 ADJOINING LICENCE AREA MAINTENANCE

- a) The Lessee shall be jointly and severally liable with such other lessees that have been permitted to use the Adjoining Licence Area by the Lessor to maintain the Adjoining Licence Area and any improvements and structures thereon in accordance with clause 7 of this Lease.
- b) The costs associated with such maintenance shall be apportioned between the users of the Adjoining Licence Area equally for their use of that part of the Adjoining Licence Area which is shared.
- c) If the Lessor is of the view, reasonably held, that the Lessee and other lessees have not adequately maintained the Adjoining Licence Area then he or she may maintain the Adjoining Licence Area and all costs associated with the Lessor exercising its rights under this clause 4(c) shall be borne in equal parts by the Lessee and other such lessees for their use of the Adjoining Licence Area.

5 ADJOINING LICENCE AREA FEE

- a) The Lessee must pay to the Lessor the Licence Fee on the Commencing Date and on each anniversary after the Commencing Date for the Term of this Lease and any Further Term.

6 WORKS UNDERTAKEN IN AN ADJOINING LICENCE AREA

- a) The Lessee must perform such works on the Adjoining Licence Area (such as for the purposes of creating car parking, stairs, pathways, plinths and hardstands) as are reasonably required by the Lessor and within a reasonable time, depending upon the nature of the works to be performed.

SCHEDULE 5 ADDITIONAL BED ALLOCATION SCHEDULE

1 ADDITIONAL BEDS ALLOCATION FEE

- a) The Additional Beds Allocation Fee is the amount specified in Item 24 of the Reference Schedule.
- b) The Lessee must pay the Additional Beds Allocation Fee to the Lessor at the address nominated by the Lessor, in such a manner as the Lessor shall direct and otherwise in accordance with this clause.
- c) Where Item 25 of the Reference Schedule specifies that the Additional Beds Allocation Fee Payment Option is one payment on the Commencing Date, the Lessee must pay the Additional Beds Allocation Fee to the Lessor on the Commencing Date.
- d) This clause 1 is an essential term for the purposes of clause 14 of the Lease.

2. REQUIREMENT PRIOR TO USE OF THE ADDITIONAL BEDS ALLOCATION

Despite that the Lessor has granted approval for the Lessee to use the number of additional beds in the Premises specified in Item 4A of the Reference Schedule, the Lessee may not use those beds for the purpose of accommodating Persons overnight unless and until the Lessee complies with the terms of this Lease, in particular the provisions of clause 5.3 and clauses 7.8, 7.9 and 7.10.

EXECUTED as a Deed

EXECUTED for and on behalf of the
MINISTER ADMINISTERING THE NATIONAL
PARKS AND WILDLIFE ACT 1974 by his or
her duly appointed officer in the presence of:

Witness

Officer

Name of Witness (print)

Name of Officer (print)

EXECUTED by LYNETTE JACQUELINE INGHAM
in the presence of:

Witness

Signature of Lynette Jacqueline Ingham

Name of Witn

EXECUTED by DEBRA NORM KEPITIS in the
presence of:

Witness

Signature of Debra Norma Kepitis

Name of Witness (Print)

EXECUTED by ROBERT CHRISTOPHER
INGHAM in the presence of:

Witness

Signature of Robert Christopher Ingham

Name of witness (Print)

EXECUTED by JOHN ANDREW INGHAM in the presence of:

Witness

Signature of John Andrew

Name of winner:

Form: 07L
Release: 2.6
www.lands.nsw.gov.au

LEASE
New South Wales
Real Property Act 1900



AE640762X

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only	NEW SOUTH WALES DUTY 01-04-2009 0005360129-00 LEASE - LEASE/PREMIUM TOTAL LEASE PREMIUM \$ *****\$36,960.00 DUTY \$ *****\$537.50
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(A) FOLIO OF THE REGISTER

Property leased
Folio Identifier 271/859661
and known as Mulubinba Lodge, Perisher Valley

(B) LODGED BY

Document Collection Box 813E	Name, Address or DX, Telephone, and LLPN if any Crown Solicitor's Office DX 19, Sydney 9224 - 5079 Reference: CEA 1235890 200801829	CODE L
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(C) LESSOR

MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

SHORTLAND ALPINE CLUB CO-OPERATIVE LIMITED
ABN 42 791 472 128

(F)

TENANCY:

- (G) 1. TERM** 20 years
2. COMMENCING DATE 1 July 2008
3. TERMINATING DATE 30 June 2028
4. With an **OPTION TO RENEW** for a period of 30 years
set out in clause 16 of Annexure "A"
5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.
7. Incorporates the provisions or additional material set out in **ANNEXURE(S) "A"** hereto.
8. Incorporates the provisions set out in N.A. in the Department of
Lands, Land and Property Information Division as No. N.A.
9. The **RENT** is set out in clause No. 2 of Schedule 2

DATE 12 MARCH 2009

(H) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 lessor

Signature of witness: *Claire Edith Armour*
60-70 Elizabeth St Sydney

EXECUTED by me, Vince Rago, Manager, Bus
Name of witness: Operations Unit, Department of Environment and
Address of witness: Climate Change for and on behalf of the MINISTER
ADMINISTERING THE NATIONAL PARKS AND
WILDLIFE ACT, 1974 as duly authorised delegate.

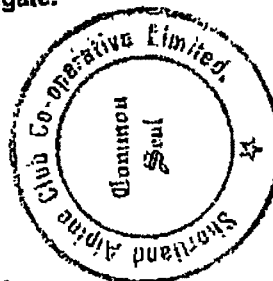
CROWN SOLICITOR'S OFFICE

LEVEL 5

60-70 ELIZABETH STREET, SYDNEY 2000
GPO BOX 26 SYDNEY, DX 18 SYDNEY

Certified correct for the purposes of the Real Property Act 1900 by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Corporation: **SHORLAND ALPINE CLUB CO-OPERATIVE LIMITED**
Authority: **Section 144 of the Corporations Act 1992**



Signature of authorised person.

Signature of authorised person

Name of authorised person: **FLORENCE MARGARET HAYES**
Office held: **DIRECTOR**

Name of authorised person: **STUART SEAFREY BEAL**
Office held: **DIRECTOR**

(I) STATUTORY DECLARATION*

I

solemnly and sincerely declare that—

1. The time for the exercise of option to in expired lease No has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at
on

in the State of New South Wales
in the presence of—

Signature of witness:

Signature of lessor:

Full name of witness:

Address of witness:

Qualification of witness: [tick one]

- ☐ Justice of the Peace
- ☐ Practising Solicitor
- ☐ Other qualified witness [specify]

* As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment of the form at Land and Property Information Division.

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THIS IS ANNEXURE 'A' TO THE LEASE BETWEEN

THE HONOURABLE CARMEL TEBBUTT, Minister for Climate Change and the Environment
being for the time being the **MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974** (Lessor)

and

SHORTLAND ALPINE CLUB CO-OPERATIVE LIMITED (Lessee)

DATED the 12th day of MARCH 2008

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease unless the contrary intention appears:

Aboriginal Object shall have the same meaning as that term has in the Act;

Act means the *National Parks and Wildlife Act 1974*.

Accommodation Register means an accommodation register in a form and with the content approved by the Department, that contains full information on persons staying overnight at the Premises including:

- a) the name of the Premises; and
- b) the Maximum Number of Persons Overnight; and
- c) the names of all Persons referred to in b) above and the room numbers of all Persons so accommodated; and
- d) the numbers of all persons being under five (5) years of age; and
- e) the time and dates the Persons referred to in c) above arrive at and depart from the Premises.

Additional Covenants Schedule means Schedule 3 of this Lease.

Adjoining Licence Area means any area or areas of land immediately adjoining or in the vicinity of the Premises, which is described at Item 10 of the Reference Schedule. For the sake of clarity, if Item 10 of the Reference Schedule is marked 'NA' there is no Adjoining Licence Area.

Assistance Animal means an animal referred to in section 9 (guide dogs, hearing assistance dogs and trained animals) in the *Disability Discrimination Act 1992* of the Commonwealth.

Australian Standards means any relevant Australian Standard developed by Standards Australia as amended, revised or replaced from time to time.

Authorised Officer means the Director-General and the Deputy Director-General and any other person performing the functions of either of them or any other person nominated by the Minister, the Director-General or the Deputy Director-General to act as an authorised officer for the purpose of this Lease.

Authority means a document issued by the Director General that identifies the Authorised Officer and which authorises that person to exercise the rights of the Lessor under this Lease.

Bank means the bank that provides the Bank Guarantee pursuant to clause 3.6.

Bank Guarantee means the bank guarantee required by clause 3.6 and from a bank and in a form approved by the Lessor for the sum stated at Item 2 of the Reference Schedule (which amount may be reviewed by the Lessor from time to time and may be increased as shall be determined by the Lessor having regard to all matters relevant in the opinion of the Lessor to the sufficiency of the security) to be held by the Lessor for the due and proper performance by the Lessee of all its obligations under this Lease or such other security as set out in clause 3.6.7.

Bed means a piece or a part of a piece of furniture on which a person may sleep.

Bed Numbers means the number of Beds stipulated at Item 4 of the Reference Schedule as may be increased as provided in clause 6.1.6 which may be used for the purpose of accommodating the Maximum Number Of Persons Overnight on any given night. For the purposes of determining Bed Numbers:

- (a) a Bed that is designed to accommodate one (1) Person shall count as one (1) Bed; and
- (b) a Bed that is designed to accommodate two (2) or more Persons shall count as two or more Beds.

Breach means a breach, default or failure by the Lessee and/or the Lessee's Employees and Agents to comply with a term, covenant or obligation in this Lease including where relevant to the context, a default as described in clause 14.4.

Building Code means the building and development control codes, policies, regulations and requirements of a Relevant Authority which apply from time to time in respect to structures and improvements forming part of, or which are constructed or situated on, or within the Premises.

Commencing Date means the commencing date of this Lease stipulated at Item (G) 2 on the Lease cover page.

Consent Authority means the Relevant Authority, in each case vested with the authority and mandate to grant development consent or approval under Part 4 or Part 5 of the *Environmental Planning and Assessment Act 1979*.

Community Service Contribution means a contribution by the Lessee for the cost of maintaining any community service in the Park, including but not limited to all expenses in connection with:

- a) the provision of medical services in the Perisher Range Resorts;
- b) snow clearing and road maintenance;
- c) the disposal of waste, water, sewerage; and

d) water supply.

Contamination means any toxic or hazardous substance, gas liquid or material, any waste or discharge (other than properly and lawfully discharged sewerage) or any pollutant.

Department means the Department of Environment and Climate Change.

Deputy Director-General means the Deputy Director-General Parks and Wildlife Group of the Department of Environment and Climate Change and includes any person for the time being acting as such or in such alternative position or office as the Lessor may notify from time to time.

Director-General means the Director-General of the Department of Environment and Climate Change and includes any person for the time being acting as such or in such alternative position or office as the Lessor may notify from time to time.

Environmental Research and Rehabilitation Contribution means the amount at Item 21 of the Reference Schedule as a contribution to the cost of environmental monitoring, research and rehabilitation of ski resorts in the Park.

Exotics and Ornamentals means any exotic or ornamental plants or seeds not indigenous to the locality.

Filming Activity has the same meaning as that phrase has in the *Filming Approval Act 2004*.

Fire Safety Measures has the same meaning as in the Environmental Planning and Assessment Regulation 2000.

Food Premises Charges means the amounts as are assessed by the Lessor from time to time pursuant to the Act for the cost of food-safety inspections of the Premises, food safety training and consultations, guidance and advice to assist the Lessee and the Lessee's Employees and Agents in complying with the Law in relation to food safety and developing safe working practices in relation to food storage and preparation.

Further Lease means a lease granted by the Lessor pursuant to the exercise of the Option by the Lessee.

Further Term means the term of the Further Lease noted at Item 13 of the Reference Schedule.

Historic Relic shall have the same meaning as the term 'relic' as defined in the *Heritage Act 1977*: and

Hydrocarbon Storage Systems means one or more completely buried, partially buried or above ground tanks and any pipes to and from or associated with the tanks that contain or are intended to contain hydrocarbon product (for example, diesel, heating oil, petroleum).

Improvements means all buildings structures improvements erections and Services and includes any alteration or addition to the same which are constructed, installed or brought on the Premises, whether by the Lessee or Lessor, whether before or after the Commencing Date, whether in accordance with the covenants of this Lease or otherwise and whether completed or uncompleted, but does not include the Lessee's Fixtures.

Law means any law whether common law or any law under any statute, ordinance, regulation or code applicable in the State of New South Wales.

Lease means this Lease and all annexures plans and schedules to this Lease and any variations of this Lease.

Lease Grant Fee means the amount of money payable by the Lessee to the Lessor pursuant to clause 3.3 and as specified in Part C of the Rent Schedule and at Item 22 of the Reference Schedule.

Lease Grant Fee Payment Option means the Lease Grant Fee payment option elected by the Lessee as specified at Item 23 of the Reference Schedule.

Lessee means the Lessee stipulated as the Lessee on the lease cover page and means the successors and permitted assigns of the Lessee and where not repugnant to the context includes the Lessee's Employees and Agents.

Lessee's Employees and Agents means each of the Lessee's employees, agents, officers, contractors, service suppliers, sublessees, concessionaires, invitees and those persons who at any time are under the control of and in or on the Premises with the consent of the Lessee (expressed or implied).

Lessee's Fixtures means all fixtures and fittings constructed or installed on the Premises by the Lessee or brought onto the Premises by the Lessee and includes plant machinery furnishings equipment utensils shelving counters safes or other articles in the nature of trade or tenant's fixtures, but does not include the Improvements.

Lessor means the Minister for the time being administering the Act and includes his or her successors in office and where not repugnant to the context includes the servants and agents of the Lessor.

Licence Fee means the amount of money payable by the Lessee to the Lessor, if any, as determined by the Lessor from time to time, initially being the amount set out at Item 12 of the Reference Schedule.

Liquor has the same meaning as in the *Liquor Act 1982* (NSW).

Maximum Number of Persons Overnight means the maximum number of Persons permitted to remain at the Premises on any given night (including guests of the Lessee, the public, members, associates, agents, employees or contractors of the Lessee) stipulated at Item 5 of the Reference Schedule.

Minister shall mean the Minister for the time being administering the Act and includes his or her successors in office.

Native Title has the same meaning as in the *Native Title Act* (Cth) 1993.

NA means not applicable.

Objects shall mean Aboriginal Objects and/or Historic Relics.

Option means the option to take a Further Lease as provided in clause 16.

Outgoings means all amounts, costs, expenses of any kind whatsoever assessed, incurred or levied in relation to the Premises or upon the Lessor or the Lessee on account thereof including:

- a) Rates, Taxes and other charges imposed by any Relevant Authority;
- b) charges for the supply (including charges for installation and connection) of Services to the Premises;

- c) supplying, renting, operating, maintaining, servicing, repairing and replacing Services and upgrading Services to comply with requirements or orders of Relevant Authorities or any Law;
- d) Community Service Contribution;
- e) Environmental Research and Rehabilitation contribution; and
- f) Food Premises Charges.

Oversnow vehicle means such vehicles as snow cats, skidoos and other machines as approved by the Lessor for the transport of persons or freight over snow.

Park means the area of land permanently reserved under the Act and for the time being known as Kosciuszko National Park.

Perisher Range Resorts means those areas of the Park known as Perisher Valley, Smiggin Holes, Guthega and Blue Cow and, for the purposes of this Lease, also means Wilson's Valley, Diggers Creek and Kosciuszko Mountain Retreat.

Perisher Range Resorts Environmental Management System means the document or documents that specifies the Lessor's environmental management system for the Perisher Range Resorts applicable from time to time or such other document or documents that replaces it and fulfils in substance the same functions.

Permitted Use means the use prescribed at Item 3 of Reference Schedule.

Permitted Use of the Adjoining Licensed Area means the use prescribed at Item 11 of Reference Schedule.

Person means any human being whether man, woman or child who has attained five (5) years of age.

Plan of Management means the plan of management prepared and adopted for the Park by the Lessor as amended from time to time pursuant to the Act or such other plan that replaces it and fulfils in substance the same functions.

Plumbing Facilities means the toilets, sinks and sewerage and drainage system (including pipes, lines and connections) on, in or under the Premises.

Premises means the land described as the Premises at Item 1 of the Reference Schedule and where this Lease provides or the context of this Lease so admits any part of that land and includes any structures and improvements on that land (and includes the Improvements and the Lessee's Fixtures) and may by virtue of clause 17 of this Lease include the Adjoining Licence Area.

Prescribed Rate means the rate prescribed under the Act for overdue monies payable in respect to leases.

Rates means rates, land taxes, levies, assessments and other charges (including charges for consumption and garbage and waste removal), together with any interest, fines and penalties in connection with them.

Reference Schedule means Schedule 1 of this Lease.

Regulations means the Regulations, from time to time, made under the Act.

Relevant Authority means, in respect to a particular context or circumstances, any

government, administrative or judicial body, department, commission, public authority, tribunal or entity having jurisdiction and responsibility in respect to that context or circumstance including but not limited to a Consent Authority and where not repugnant to the context includes the Lessor.

Rent means the rent as determined in accordance with Part A of the Rent Schedule.

Rent Schedule means Schedule 2 of this Lease.

Services means the services running through or servicing the Premises including but not limited to air conditioning, electricity, power, gas, oil, water, sewerage, telecommunications, fire hydrant, fire service sprinkler and public address and includes all pipes, wires, cables, ducts and other conduits in connection with them.

Taxes means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any authority (including stamp and transaction duties), (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income or capital gains of the Lessor.

Term means the Term of this Lease stipulated at Item (G) 1 on the Lease cover page.

Terminating Date means the terminating date of this Lease stipulated at Item (G) 3 on the Lease cover page.

Works means all works with respect to the Improvements (whether to the exterior or interior), and/or the Lessee's Fixtures and/or any other part of the Premises including, where the context of the provisions of this Lease so permits, installations, construction, repairs, renovations, maintenance, restoration, alterations (including structural alterations), additions, renovations and improvements, demolition and works to the Services.

There may also be other words, which have a prescribed meaning for the purposes of this Lease, which are set out in the Rent Schedule and Additional Covenants Schedule.

1.2 Interpretation

In this Lease unless the context otherwise requires:

- 1.2.1 words denoting the singular number shall include the plural and vice versa;
- 1.2.2 words denoting any gender shall include all genders;
- 1.2.3 words denoting individuals shall include corporations and vice versa;
- 1.2.4 reference to any Act of Parliament or regulation or ordinance or to any section or provision thereof shall include any statutory modification or re-enactment thereof or any statutory provision substituted therefore and ordinances, by-laws, regulations and other statutory instruments issued there under;
- 1.2.5 references to clauses, annexures and schedules are references to clauses, annexures and schedules of this Lease;
- 1.2.6 references to any deed, agreement, licence, instrument or any document or register shall be deemed to include references to that deed, agreement, licence, instrument or document or register as amended, novated, supplemented or replaced from time to time;

- 1.2.7 where a Schedule contains covenants or obligations of the Lessee or the Lessor then the covenant or obligation so expressed shall be read and construed and shall constitute a covenant or obligation on the part of the Lessee or the Lessor, as the case may be, to be performed or observed under this Lease;
- 1.2.8 a reference to any party or to a Relevant Authority or to any other person, corporation or association shall be a reference to them as so constituted from time to time and shall include their successors and permitted assigns and in the case of a Relevant Authority means the body which at the relevant time substantially fulfils the functions of the Relevant Authority;
- 1.2.9 a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.
- 1.2.10 where a clause specifies that the Lessor has a right remedy action or power over or in relation to the Lessee such a clause is not to be construed as restricting limiting or prejudicing any other right remedy action or power of the Lessor arising from any Law or this Lease.

1.3 Headings

Headings are for ease of reference only and does not affect the construction of this Lease.

1.4 Currency

Unless otherwise stated all currencies referred to in this Lease are in Australian dollars.

1.5 Governing Law

This Lease is governed by, and construed in accordance with the law of New South Wales and the parties submit to the jurisdiction of the Courts of New South Wales.

1.6 Entire Agreement

This Lease constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior negotiations, understandings and discussions between the parties. No modifications to this Lease shall be effective unless in writing signed by the parties.

1.7 Performance on Next Working Day

Where under or pursuant to this Lease or anything done hereunder the day on or by which any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in New South Wales, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

1.8 Joint and Several Liability

Any covenant or agreement on the part of or in favour of two or more persons shall be deemed to bind them or be in favour of them jointly and each of them severally.

1.9 Exclusion of Implied Covenants and Powers

The covenants and powers implied in every lease by virtue of Sections 84, 85, 132, 133, 133A and 133B of the *Conveyancing Act 1919* shall not apply or be implied in this Lease except in so far as the same or some part or parts thereof are expressly included in the covenants contained in this Lease or are incapable by law of exclusion.

1.10 Director-General

For the purposes of administering this Lease, the Director-General, the Deputy Director-General and any authorised delegate of the Minister, Director-General or Deputy Director-General have authorisation to act on the Lessor's behalf and exercise the Lessor's authority pursuant to the provisions of this Lease.

1.11 Counterparts

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

1.12 Lessee's Employees and Agents

If this Lease prohibits the Lessee from doing a thing, then:

- 1.12.1 the Lessee must do everything necessary to ensure that the Lessee's Employees and Agents do not do that thing; and
- 1.12.2 the Lessee must not allow or cause any person to do that thing.

2 GRANT

2.1 Grant

- 2.1.1 Pursuant to the provisions of Section 151 of the Act the Lessor leases to the Lessee the Premises and the Lessee hereby accepts the lease subject to the provisions of this Lease.
- 2.1.2 The Lessor grants to the Lessee for the Term or sooner termination or surrender of this Lease:
 - a) exclusive possession of the Premises subject to this Lease and the Law;
 - b) use and enjoyment of the Improvements and Lessee's Fixtures; and
 - c) the non-exclusive use of the Adjoining Licence Area subject to such restrictions as are specified by Law or this Lease and in accordance with clause 17 of this Lease.
- 2.1.3 The Lessee acknowledges and agrees that the Lessor reserves the right at any time to resurvey the area of the Premises and if that resurvey discloses any variation from the area of the Premises previously surveyed or a variation in the

position of the boundaries of the Premises:

- a) the Lessee agrees to enter into a new lease for the balance of the Term then remaining unless otherwise agreed by the parties on the same terms and conditions as this Lease except that the definition of Premises shall be varied to reflect the correct area or boundary;
- b) the Lessee is not required to enter into a new lease as provided in clause 2.1.3 a) if in the opinion of the Lessee, reasonably held, the variation of the area or boundary has a material adverse effect upon the Lessee's business conducted on the Premises and if such is the case the Lessee must promptly execute and provide to the Lessor an executed surrender of Lease;
- c) the Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind this Lease nor have any other rights in respect to such variation except the right to surrender the Lease pursuant to clause 2.1.3 b).

2.1.4 The Lessee acknowledges and agrees that if the Lessor wishes to upgrade any adjoining road or track for the purposes of establishing a formed road, the Lessor reserves the right at any time to resurvey the area of the Premises to exclude the land on which the road (and its ancillary services) are located; and

- a) in the case where the area of the Premises is affected to a minor degree, the Lessee agrees to enter into a new lease for the balance of the Term then remaining unless otherwise agreed by the parties on the same terms and conditions as this Lease except that the definition of Premises shall be varied to exclude the land on which the road (and its ancillary services) are located;
- b) in the event that the Lessor does not require the Lessee to enter into a new lease as provided in clause 2.1.4 a) then if in the opinion of the Lessee, reasonably held, the variation of the area or boundary has a material adverse effect upon the Lessee's business conducted on the Premises and if such is the case the Lessee may promptly execute and provide to the Lessor an executed surrender of Lease;
- c) the Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind this Lease nor have any other rights in respect to such variation except the right to surrender the Lease pursuant to clause 2.1.4 b).

2.1.5 Where the Lessor forms the opinion, reasonably held, that easements or restrictions are required to be created to burden or benefit the Premises for the benefit of other lessees in the Park, the public, utility providers or the Lessor and serves a notice on the Lessee to that effect, then the Lessee must promptly execute all necessary documents evidencing consent to the creation of such easements or restrictions as described in that notice and will not prevent or hinder the Lessor in procuring the creation of the same by way of caveat or

otherwise.

- 2.1.6 The Lessee must permit access to adjoining lessees in the Park and their invitees over such part of the Premises as is determined by the Lessor. The Lessor must only exercise his or her rights under this clause to enable the adjoining lessees to access their premises and only over such paths, tracks or roads traversing the Premises that are in existence as at the Commencing Date and which have been used by such lessees for sometime prior to the Commencing Date.
- 2.1.7 The Lessee permits the Lessor its agents, contractors and employees to enter and occupy the Premises for the purpose of performing maintenance works and works caused by the failures or faults in the Services or pipes and/or for purposes of performing works for the relocation of the Lessor's Services or pipes. To this end, the Lessor its agents, contractors and employees may operate, repaint, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other thing the Lessor considers are necessary or appropriate to any of its Services or to construct new Services and for these purposes the Lessor and the Lessor's employees agents and contractors may carry out any work on, below or above the surface of the Land. For the purposes of this clause, the Lessor will give the Lessee such reasonable notice requesting access as the nature of the situation requires and in the case of emergency no notice is required.
- 2.1.8 The Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind or terminate this Lease nor have any other rights if the Lessor exercises its rights under this clause 2, except where the Lessor exercises its rights under clause 2.1.3 or clause 2.1.4 and then the Lessee may exercise its right to surrender the Lease pursuant to clause 2.1.3 b) or clause 2.1.4 b) as the case may be.

2.2 Term

This Lease is granted for the Term unless otherwise terminated in accordance with this Lease.

2.3 Representations

The Lessee represents and warrants that:

- 2.3.1 it has power to enter into and observe its obligations under this Lease; and
- 2.3.2 it has in full force and effect the authorisations necessary to enter into this Lease, observe obligations under it, and allow it to be enforced; and
- 2.3.3 its obligations under this Lease are valid and binding and are enforceable against it in accordance with its terms; and
- 2.3.4 this Lease does not contravene its constituent documents (when the Lessee is a company) or any Laws or any of its obligations or undertakings by which it or any

of its assets are bound or cause a limitation on its powers or, when the Lessee is a company, the powers of its directors, to be exceeded.

3 LEASE PAYMENTS

3.1 To Pay Rent

The Lessee must pay to the Lessor the yearly Rent without any deduction whatsoever.

3.2 Manner of Payment of Rent

The Lessee must pay all Rent and other monies payable by the Lessee to the Lessor at the address nominated by the Lessor from time to time and in such manner as the Lessor shall in writing direct.

3.3 Lease Grant Fee

In consideration of the Lessor agreeing to grant this Lease, the Lessee must pay to the Lessor the Lease Grant Fee. The Lease Grant Fee is not refundable in any circumstances including without limitation, if the Lease is terminated or surrendered.

3.4 Outgoings

3.4.1 The Lessee must pay all Outgoings as and when Outgoings become due for payment.

3.4.2 The Lessee must, if required by the Lessor, produce to the Lessor receipts for payment of any Outgoing. If the Lessee fails to pay any Outgoing the Lessor may pay such amount and any amount paid by the Lessor may be recovered by the Lessor from the Lessee as if the amount was rent in arrears.

3.4.3 The Lessor may, at the cost of the Lessee, install meters on the Premises to determine the consumption of Services supplied to the Premises. Until such time as appropriate meters are installed, the Lessee must pay such amount as may be reasonably determined by the Lessor for such Services.

3.5 Unpaid Monies

3.5.1 On each and every occasion on which the Lessee omits or neglects (for a period of not less than twenty-eight (28) days from the date on which the Lessee is obliged to do the same) to pay any money which the Lessee has covenanted in this Lease to pay then the Lessor may (without prejudice to any rights and powers arising from such default) pay such money and all monies referred to in this clause 3.5.1 and 3.5.2 are recoverable on demand by the Lessor and a certificate by the Lessor as to any amount payable by the Lessee pursuant to this clause is prima facie evidence of the amount payable by the Lessee.

3.5.2 The Lessee must pay interest on any unpaid monies due under this Lease at the higher of the Prescribed Rate and the rate of three per cent (3%) per annum

above the current overdraft rate from time to time charged by an Australian trading bank nominated by the Lessor, on such amounts as may be nominated by the Lessor computed from the due date for the payment of such monies until payment of such monies in full.

3.6 Bank Guarantee

The Lessee will promptly, upon execution of this Lease, provide to the Lessor the Bank Guarantee provided that:

- 3.6.1 the Bank Guarantee is a continuing obligation in favour of the Lessor until the obligations and liabilities of the Lessee under this Lease have in all respects been performed, observed and discharged;
- 3.6.2 the Lessor may claim against the Bank under his or her guarantee for any liabilities which may be incurred by the Lessor arising from any Breach without the Lessor having made any claim or instituting any proceedings against the Lessee in respect to such claims and Breaches;
- 3.6.3 the Lessor will inform the Bank that the guarantee is no longer required by the Lessor within a reasonable time after the expiration or other determination of the Lease or the expiration or other determination of any extension or renewal thereof;
- 3.6.4 the giving of such a guarantee by the Bank does not operate to relieve the Lessee from any of the obligations on its part under any other provision of this Lease nor does the guarantee limit the right of the Lessor to recover from the Lessee in full all monies payable to the Lessor under any other provision of this Lease;
- 3.6.5 in the event of the Bank making any payment or payments to the Lessor in full or partial discharge of the Bank Guarantee the Lessee must immediately provide to the Lessor a substitute Bank Guarantee for an amount not less than the amount specified at Item 2 of the Reference Schedule or as determined by the Lessor;
- 3.6.6 the Lessee must provide a fresh Bank Guarantee for any Further Term if the Lessee exercises its right to renew this Lease prior to the grant of the Further Lease or within twenty-eight (28) days of the grant of the Further Lease; and
- 3.6.7 the Lessor may, in circumstances where a Bank is no longer able to issue a Bank Guarantee in the form required by the Lessor, accept some other security from the Lessee that guarantees the Lessee's performance of the obligations under this Lease including but not limited to a bond or a personal guarantee.

4 GOODS AND SERVICES TAX

4.1 Consideration Exclusive of GST

Any consideration or payment obligation arising under or in connection with this Lease is exclusive of GST unless stated otherwise.

4.2 Taxable Supply

- 4.2.1 This clause applies if a Supply made under or in connection with this Lease is a Taxable Supply.
- 4.2.2 If this clause applies, the consideration for the Supply is increased by an additional amount equal to the amount of that consideration multiplied by the relevant GST rate.
- 4.2.3 The additional amount under paragraph 4.2.2 is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.

4.3 Tax Invoice

A party who makes a Taxable Supply must provide a Tax Invoice within twenty-eight (28) days of a request.

4.4 Payments

Unless otherwise stated in this Lease, the following principles apply when determining the amount of a payment under this Lease:

- 4.4.1 if a party is entitled under this Lease to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Lease, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and
- 4.4.2 if a party sets off an amount under this Lease, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph 4.4.1.

4.5 GST Terms

In this clause 4:

- 4.5.1 GST means goods and services tax under the GST Law;
- 4.5.2 GST Law has the same meaning as that expression has in *A New Tax System Goods and Services Tax Act 1999*; and
- 4.5.3 a term or expression starting with a capital letter which is defined in the GST Law but not defined in these terms has the same meaning as in the GST Law.

5 USE OF PREMISES

5.1 Use of Premises

- 5.1.1 The Lessee must use the Premises for the Permitted Use, in accordance with the terms of this Lease.
- 5.1.2 The Lessee must not use or permit the use of the Premises for any purpose other than the Permitted Use in particular the Lessee must not undertake or allow any other person to undertake any ski tuition that is for a commercial purpose, ski equipment hire and sales of ski equipment on the Premises.
- 5.1.3 The Lessee represents and warrants that:
- a) it has not relied on any representation by or on behalf of the Lessor as to how the Premises may be used; and
 - b) it has made its own appraisal of the suitability of the Premises for the Lessee's business and the Permitted Use; and
 - c) it is aware of all prohibitions and restrictions applying to the Premises in accordance with the requirements and orders of all Relevant Authorities and all Laws.

5.2 Onus of Proof as to Usage

The Lessee acknowledges that in the matter of proof of whether the Lessee is complying or has complied with the provisions of this Lease as to the Permitted Use the onus of proof shall be on the Lessee.

5.3 Compliance with Statutory Requirements

- 5.3.1 The Lessee must at the Lessee's expense observe and comply with and cause to be observed and complied with in respect to the Premises, any business conducted on the Premises, the conduct of any person using or on the Premises, or the Permitted Use of the Premises:
- a) the requirements of all Laws and of any Relevant Authority;
 - b) the requirements of relevant Building Codes and Australian Standards applicable to new works;
 - c) all notices orders and directions which may be given in accordance with the Laws or by any Relevant Authority referred to in clause 5.3.1 a);
 - d) any Plan of Management for the Park;
 - e) the requirements of all planning instruments, controls and policies whether federal, state or local; and
 - f) the reasonable directions, special conditions and performance standards imposed by the Lessor where they relate to furthering the objects of the Act.
- 5.3.2 The Lessee acknowledges and agrees that in complying with this clause and all

Laws in connection with the Premises, the Lessee may be required to effect structural or capital works, alterations and additions to the Premises.

5.4 No Noxious Use

The Lessee must not:

- 5.4.1 carry on or permit or suffer to be carried on in or upon the Premises any unlawful noxious or offensive use act trade business occupation or calling;
- 5.4.2 permit or suffer any riotous, disorderly, offensive or improper conduct upon or near the Premises or permit or suffer any person who is drunk or behaving in a riotous, disorderly, offensive or improper manner to be or remain upon or near the Premises;
- 5.4.3 cause, allow or suffer to occur any annoyance, nuisance, injury, disturbance or obstruction to the Lessor or other persons rightfully using or being upon the Premises or in the Park;
- 5.4.4 carry on or allow any activities of a standard or kind which are not in keeping with the purposes of this Lease, may adversely affect the use and enjoyment of the Premises by the public, or in the Lessor's reasonable opinion are unsuitable or objectionable or may damage the image of the Premises or the Department.

5.5 Conduct of Business

5.5.1 The Lessee must ensure:

- a) that the Premises are actively managed, maintained, conducted, controlled and promoted at all times in good faith and in a proper, orderly, efficient, reputable and businesslike manner for the purposes authorised by this Lease;
- b) courtesy and promptness in dealing with reasonable requests by the public relating to the use of the Premises, and courtesy and due care in controlling or directing persons using or otherwise upon the Premises;
- c) The Lessee must not use any logo or emblem of the Department without the prior approval of the Lessor.

5.6 Security of Premises

The Lessee must keep all doors, windows, trapdoors, skylights and other means of access to each building on the Premises securely fastened when the building is not occupied by the Lessee or the Lessee's Employees and Agents, and will be responsible for the maintenance in good working order of any security alarm system installed on the Premises.

5.7 Movement of Vehicles

The Lessee, the Lessee's Employees and Agents and all persons authorised by it or them must comply with the reasonable directions of the Lessor and his or her officers in relation to

the movement and parking of vehicles within the Premises, the Adjoining Licence Area and the Park.

5.8 Public Access

The Lessee must allow the public to have access to all parts of the Premises which have been provided or intended for the use of and enjoyment by the public except in so far as such access might prevent the Lessee from providing reasonable protection to buildings, structures, equipment, services and facilities on the Premises or which might prevent the Lessee from ensuring the safety and good behaviour of persons using or otherwise upon the Premises.

5.9 Use of Inflammables, Chemicals and Explosives

5.9.1 Except as may reasonably be necessary for lighting, heating, cleaning or maintenance purposes upon the Premises, the Lessee must not use or store inflammable liquids or gas, explosives, volatile oils compounds or substances, insecticides, herbicides or other toxic chemicals or fertilisers within the Park without the prior written consent of the Lessor.

5.9.2 Where the Lessee does use or store the things referred to in clause 5.9.1 in accordance with its provisions, the Lessee must comply with all Laws and requirements of Relevant Authorities relating to the storage conveyance and use of such materials and any special conditions determined by the Lessor.

5.10 Contamination

5.10.1 The Lessee must not take any action which has the effect, whether direct or indirect, of causing any Contamination of the Premises or the Park and in particular without limitation the Lessee must not:

a) place, tip or discharge (or allow or suffer to be placed, tipped or discharged) upon any land or in any water or watercourse within the Park any refuse, garbage, night soil, petroleum products, trade waste, building material, earth fill or any offensive or polluting matter or liquid whatsoever; and

b) place (or allow or suffer to be placed) any obstructing matter on any land or in any water or watercourse or otherwise act or fail to act so as to cause any flow of water to be restricted, obstructed or diverted and will act or comply with any requirement of the Lessor regarding a watercourse.

5.10.2 Without affecting the liability of the Lessee for damages or in relation to any other remedy available to the Lessor the Lessee must remedy to the satisfaction of the Lessor at its own expense any damage caused to the Park by the Lessee any Breach of this clause or otherwise, including by the spillage of petroleum products or other pollutants or the deposition of polluting or obstructive materials within the Park.

5.11 Fire Safety

The Lessee must comply with all requirements of the Lessor and all other Relevant Authorities in relation to fire safety and must in particular ensure that:

- 5.11.1 all reasonable precautions are taken to minimise the risk of fire on the Premises and in particular in any building on the Premises;
- 5.11.2 adequate devices and appliances to prevent or retard the spread of fire are provided and maintained in good working order and condition and kept readily available for use on the Premises to the satisfaction of all Relevant Authorities;
- 5.11.3 any cleared vegetation is with the prior approval of the Lessor removed from the Park and destroyed as directed by the Lessor;
- 5.11.4 no burning of timber, grass, cleared vegetation or other combustible matter is undertaken without the prior consent of the Lessor and subject to such conditions as the Lessor and any Relevant Authority may determine;
- 5.11.5 the Lessee or the Lessee's Employees and Agents must not do or suffer to be done any act, matter or thing within the Park whereby the risk of fire might be increased and shall comply with the Laws and codes of any Relevant Authority in respect to fires, including Building Codes and in the event of the Park or the Premises being damaged by fire which is shown to be the result of a Breach or of the Lessee's negligence in or arising from the Lessee's activities or use of the Premises the Lessee will meet all reasonable and proper costs associated with suppression of the fire and all costs of making good such damage;
- 5.11.6 it complies, at its cost, with all requirements imposed upon it as occupier or owner of the Premises under the *Rural Fires Act 1997*.

5.12 No Livestock or Domestic Pets

The Lessee must not allow any livestock or other domestic, native or exotic animal to be brought onto or kept on the Premises, unless the animal is an Assistance Animal or the Lessor has given written authorisation to that person for the caring of an injured or orphaned native animal.

5.13 Removal of Native Trees

The Lessee must not cut down, fell, injure, top, treat with chemical, destroy or remove any living or dead native trees on the Premises without the prior written consent of the Lessor.

5.14 No Exotic or Ornamental Plants and Weed Control and Eradication

- 5.14.1 The Lessee must not plant in the ground or in containers within the Premises any

Exotics or Ornamentals without the prior approval of the Lessor except where such Exotics or Ornamentals may be approved by a Consent Authority for use in any revegetation works.

- 5.14.2 The Lessee must remove all Exotics or Ornamentals in the ground or in containers on the Premises unless given written approval by the Lessor to permit such Exotics or Ornamentals on the Premises and subject to such conditions and/or requirements as the Lessor may from time to time impose.
- 5.14.3 If, in the Lessor's opinion, there are weeds on the Premises then the Lessor may either:
- a) enter the Premises along with such employees contractors or agents as is considered by the Lessor to be reasonably necessary and remove the weeds and the costs incurred by the Lessor in such removal must be paid by the Lessee within a reasonable time upon being notified of the same; or
 - b) direct the Lessee in the manner of the removal of the weeds and any costs associated with such direction must be paid by the Lessee within a reasonable time upon being notified of the same and the Lessee must comply with any such direction.
- 5.14.4 Subject to clause 5.14.6, the Lessee must use all reasonable endeavours to ensure that all the Premises are kept clear of weeds.
- 5.14.5 For the purpose of clause 5.14.3, a notice by the Lessor of the costs associated with the removal of the weeds or the costs associated with any direction to remove the weeds is prima facie evidence of such costs.
- 5.14.6 The Lessee must comply with any weed control or eradication program implemented by the Lessor in respect to weed control or eradication in relation to the Premises.

5.15 Fences

The Lessee must not without the prior written consent of the Relevant Authority or Lessor carry out or permit the carrying out of any fencing work on or about the Premises.

5.16 Signs

- 5.16.1 The Lessee:
- a) must not without the prior written approval of the Relevant Authority or Lessor erect display affix paint or exhibit on or to the Premises or elsewhere within the Park any sign advertisement notice or hoarding or allow or suffer any of the foregoing to be done, and any such approval may be revoked without notice by the Lessor;

- b) must not make any permanent marking upon any tree plant or rock in the Park;
- c) upon vacating the Premises or otherwise at the request of the Lessor, must remove any signs advertisements notices hoarding or markings put in place by or on behalf of the Lessee;
- d) must make good any damage or disfigurement caused by the placement or removal of any such sign advertisement notice hoarding or marking;
- e) must comply with any requirements for notices set out in the Additional Covenants Schedule.

5.16.2 Notwithstanding clause 5.16.1:

- a) the Lessee must display a sign in a form and size approved by the Lessor in a conspicuous public area within the Premises and such sign must include information showing the Maximum Number of Persons Overnight and contact details of the Department to which suspected breaches of clause 6.1 can be reported; and
- b) the Lessee must display other signs in relation to the Premises as are required by Law or this Lease.

5.17 Amplified Sound

The Lessee must not operate or permit to be operated on the Premises any apparatus or device for the amplification of music announcements or other sound to a degree which is objectionable in the opinion of the Lessor. Lessees must comply with the reasonable requests of an Authorised Officer to reduce the volume level to a level acceptable to the Authorised Officer.

5.18 Lessor's Right of Entry

5.18.1 The Lessee acknowledges that the Lessor has specific powers and functions with respect to public health and safety, including powers in relation to the state of repair, condition and cleanliness of the Premises and, in relation to shared accommodation, of ensuring compliance with the Maximum Number of Persons Overnight under the Act.

5.18.2 The Lessee further acknowledges that the Lessor in the exercise of its functions in relation to public health has power to do, among others, the following:

- a) make an order requiring the Lessee to take the action that is necessary to bring the Premises into compliance with public health standards;
- b) enter the Premises after the Lessor has given written reasonable notice (unless the giving of the notice would defeat the purpose of the exercise of this power) of his or her intention to enter the Premises and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises;

c) if entry is required urgently or there is the existence or reasonable likelihood of a serious risk to health or safety - enter the Premises without written notice to the Lessee and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises; and

d) inspect the Premises.

5.18.3 If the Lessor enters the Premises for the purpose of making an inspection in relation to the Lessor's public health functions and the Lessor requires any work to be carried out on or in the Premises as a result of that inspection, the Lessor may recover from the Lessee the reasonable costs and expenses of the entry and inspection.

5.18.4 Apart from the Lessor's right of entry as set out elsewhere in this Lease or by Law, the Lessor and his or her agents reserve the right at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency or where the Lessor reasonably forms a view that the Lessee has breached clause 6.1 of this Lease when no notice shall be required) enter upon the Premises for the purposes of:

- a) observing the manner in which the Permitted Use of the Premises is being conducted;
- b) ascertaining whether the Lessee is complying with the provisions of this Lease; or
- c) undertaking the proper management of the Premises which form part of the State's assets including but not limited to undertaking valuations of the Premises and asset inspections and identification.

5.18.5 For the purposes of an inspection under clauses 5.18.4 a) or b), the Lessee will cooperate with the Lessor and provide the Lessor with such information and material as the Lessor reasonably requires relating to the Lessee's compliance with its obligations under this Lease and provide copies of such documents upon request.

5.18.6 If the Lessee fails to allow the Lessor to exercise its right of entry in the case where the Lessor's purpose of entry is to determine whether the public health and safety of Persons in the Premises is endangered having regard to the Law and the provisions of this Lease, then the Lessor may regard the Lessee's failure as a repudiation of this Lease pursuant to clause 14.3.

5.18.7 In exercising its rights under this clause, the Lessor must take reasonable care and do as little damage as possible in effecting entry to the Premises.

5.18.8 If the Lessor causes any damage to the Premises as a result of effecting entry to the Premises, then the Lessor will pay reasonable compensation to the Lessee for such damage unless entry was for the purpose of securing the Premises from a risk of substantial damage.

- 5.18.9 In exercising its rights under this clause, the Lessor or his or her Authorised Officer must be in the possession of an Authority, which he or she must produce, if demanded, by the Lessee. A copy of such Authority will be sufficient for the purposes of the Lessor complying with this clause.

5.19 Waste Management

- 5.19.1 The Lessee must ensure that there be available on the Premises adequate facilities to encourage guests and the Lessee's Employees and Agents to recycle materials accepted through the recycling services provided by the Lessor.
- 5.19.2 The Lessee must take all reasonable precautions to prevent animals from scavenging through waste bins.

5.20 Maintenance of Ground Areas

The Lessee must:

- 5.20.1 keep the ground areas of the Premises appropriately landscaped and in good and tidy order and condition to the reasonable satisfaction of the Lessor;
- 5.20.2 keep the ground areas of the Premises free of exotic plants and weeds to the satisfaction of the Lessor and by such means as approved by the Lessor and in accordance with clause 5.14 of this Lease;
- 5.20.3 take reasonable precautions to minimise damage to the Park and to prevent soil erosion on or adjacent to the Premises;
- 5.20.4 remedy any erosion or other environmental damage or deterioration of the Premises caused as a result of its works or use of the Premises and rehabilitate and revegetate all disturbed ground surfaces to the satisfaction of the Lessor;
- 5.20.5 take reasonable precautions to minimise waste which may alter or affect the nature of the Premises;
- 5.20.6 not undertake any excavation or other work which involves interference with the native vegetation or existing ground surface without:
- a) the prior written consent of the Relevant Authority or Lessor;
 - b) ascertaining the location of existing underground infrastructure;
 - c) considering the likely effect of the excavation upon the stability of the Premises and adjacent area;
 - d) considering the environmental impact of the excavation upon the Premises and the Park; and
 - e) determining if development consent is required.

5.21 Use of Plumbing Facilities

- 5.21.1 The Lessee acknowledges that it has made enquiries about and is aware of the way the Plumbing Facilities operate and in particular the possible environmental impact upon the Park of a misuse of the Plumbing Facilities.
- 5.21.2 The Lessee must not permit the introduction or discharge of any materials which without limitation includes spa, pool or other deoxygenated or chlorinated water, into the Plumbing Facilities or the Park's drainage and sewer system which may interfere with proper functioning of the Plumbing Facilities or the Park's drainage and sewer system or which may have an adverse effect upon the Park.
- 5.21.3 The Lessee must comply with all directions or notices given by the Lessor relating to the use of the Plumbing Facilities and in particular:
- a) directions or notices in respect to the discharge of spa, pool, deoxygenated or chlorinated water; and
 - b) directions or notices for a staggered discharge program in respect to the water referred to in clause 5.21.3 a); and
 - c) directions or notices in respect to the discharge of any other materials or chemicals the Lessor reasonably considers could have an adverse affect upon the Plumbing Facilities or the Park's drainage and sewer system or the Park.
- 5.21.4 The Lessee must immediately make good any damage to the Plumbing Facilities caused by a Breach of this clause or by misuse or neglect of the Plumbing Facilities.
- 5.21.5 The Lessee indemnifies the Lessor for all damage to the Plumbing Facilities and the Park's drainage and sewer system and the Park resulting either directly or indirectly from a Breach of this clause.

5.22 Infectious Illness

The Lessee must in the event of any infectious illness occurring in the Premises forthwith give notice thereof to the Lessor and to the Relevant Authorities and thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and such Relevant Authorities and otherwise comply with their reasonable and lawful requirements in regard to same.

5.23 No Pest Affected Fittings or Furniture, Effects, Timber or Firewood

The Lessee must not bring or suffer to be brought upon the Premises any pest affected fittings, fixtures, furniture, effects, timber or firewood and will forthwith remove from the Premises any such items, which may be affected by pests. The Lessor may remove and destroy any pest affected fittings, furniture, effects, timber or firewood at the cost of the Lessee and no compensation shall be payable to the Lessee for such removal or destruction.

5.24 Animals, Vermin and Pests

- 5.24.1 The Lessee must take all reasonable precautions to keep the Premises free of rodents, vermin and insect pests by preventing access, including through chimney and vents, keeping the Premises clean and securing food items.
- 5.24.2 The Lessee must not bait or otherwise interfere with any animal on the Premises without the Lessor's consent.
- 5.24.3 The Lessee must not trap or control animals entering or on the Premises, unless the Lessee traps and controls such animals in accordance with the Lessor's pest control policy in force at the time or if no such policy is in force, as directed by the Lessor.
- 5.24.4 The Lessee may and, if required by the Lessor in writing must, control insect pests chemically by an appropriately licensed pest exterminator and with chemicals or such other methods as may be approved by the Lessor for this purpose.
- 5.24.5 The Lessee must take all reasonable precautions to prevent nesting opportunities for pest bird species, including the common starling, on the Premises. If such pest bird species are on the Premises, the Lessee must remove the nests.
- 5.24.6 The Lessee must take all reasonable precautions to prevent the Lessee's Employees and Agents feeding or handling any native or exotic animals on the Premises.

5.25 Environmental Management System

- 5.25.1 The Lessee must implement from the Commencing Date an environmental management system for its activities on the Premises, which is consistent with the Perisher Range Resorts Environmental Management System.
- 5.25.2 The Lessee agrees that for the purpose of ensuring compliance with its obligations under clause 5.25.1 it must do whatever is required by the Lessor to that end, including without limitation:
- a) reasonably participate in any necessary audits enquiries and investigations and gather any information requested by the Lessor;
 - b) ensuring the Lessee or the Lessee's Employees and Agents (as appropriate) participate in any activities or training requested by the Lessor, acting reasonably, in matters arising from the Perisher Range Resorts Environmental Management System;
 - c) complete and return to the Lessor, any records reports forms or other documentation specified by the Lessor dealing with compliance with the Perisher Range Resorts Environmental Management System;

- d) permitting entry by the Lessor to the Premises for the purposes of ensuring that the Lessee is complying with the Perisher Range Resorts Environmental Management System; and
- e) comply with minimum environmental performance standards and procedures as set out in the Perisher Range Resorts Environmental Management System in order to achieve certification under a scheme relevant to the tourism industry.

5.25.3 The Lessee must pay any reasonable costs or contribution associated with complying with the Perisher Range Resorts Environmental Management System.

5.25.4 If the Lessee does not comply with this clause 5.25, then the Lessor may carry out the necessary enquiries, audits, investigations and engagements, collect the necessary records and otherwise take all necessary steps to ensure the Lessee is in compliance with the Perisher Range Resorts Environmental Management System.

5.26 Environmental Research and Rehabilitation

5.26.1 The Lessee will pay an annual Environmental Research and Rehabilitation Contribution identified at Item 21 of the Reference Schedule. The contribution will be indexed annually to the CPI and will be derived by multiplying the contribution paid in the previous year with the fraction set out in clause 3(b)(i) of Schedule 2. If the contribution so determined is less than the contribution for the previous year, then the contribution shall remain the same as the immediately preceding year.

5.26.2 For the purposes of this clause, the word "CPI" has the same meaning as defined in Schedule 2.

5.27 Geotechnical Fault

5.27.1 The Lessee acknowledges and agrees that the area in which the Premises are located may contain geotechnical or geological faults or may otherwise be unstable or unsuitable for construction or support of improvements.

5.27.2 The Lessee must take all reasonable steps to identify any risk of geotechnical fault on the Premises and must undertake all necessary works to remedy any geotechnical faults on the Premises. In that regard the Lessee agrees it is solely responsible for ensuring that:

- a) the Premises upon which the buildings, structures or improvements are erected are suitable for the Permitted Use, including without limitation, to properly support the buildings, structures and improvements on the Premises or to be erected on the Premises;
- b) the buildings, structures and improvements erected on the Premises or to be erected on the Premises are or will be suitable for the Permitted Use; and

- c) any remedial works deemed necessary by the Lessor or a Relevant Authority to stabilise the Premises or otherwise remedy a fault are expeditiously carried out at the Lessee's cost, to the satisfaction of the Lessor and any Relevant Authority.

5.27.3 If the Lessee is of the opinion that the Premises or buildings, structures and improvements on the Premises are not suitable for the Permitted Use:

- a) it must take all necessary action to ensure the safety of persons using or on the Premises, which may include, without limitation, arranging for the Premises to be vacated;
- b) it must give written notice of its opinion to the Lessor, and if the Lessor agrees with the Lessee's opinion and the Lessee causes the Premises to be vacated pursuant to clause 5.27.3 a) the Lessor agrees that Rent payable by the Lessee is to abate for the period commencing on the date of vacation of the Premises and ending on the earlier of the date that the remedial work referred to in clause 5.27.2 c) is completed or if in the Lessor's reasonable opinion the remedial work is not carried out expeditiously, such earlier date as specified by the Lessor.

5.27.4 If the Lessor is of the opinion that the Premises or buildings structures or improvements on the Premises are not suitable for the Permitted Use the Lessor is entitled but not obliged to issue directions to the Lessee to take the action referred to in clause 5.27.3 a).

5.28 No Detrimental Impact to Significant Features

5.28.1 The Lessee must ensure that it has identified any significant features identified in the Plan of Management or as otherwise identified by the Lessor from time to time such as plants or inanimate objects that are on the Premises.

5.28.2 The Lessee must not remove or otherwise interfere with any significant features referred to in clause 5.28.1 without the Lessor's written consent.

5.29 Aboriginal Objects and Historic Relics

5.29.1 The Lessee shall immediately report to the Director-General the discovery of any Aboriginal Object or Historic Relic during the course of any construction work and in such event such work shall cease immediately and the Lessee shall comply with all directions made by the Director-General in relation to the Objects in accordance with the Act.

5.29.2 The Lessee shall satisfactorily carry out and perform all necessary protection or salvage works specified by the Director-General in connection with all known Objects affected by the Lessee's activities.

5.30 Occupational Health and Safety

5.30.1 The Lessee acknowledges that it is an occupier of the Premises, within the

meaning of the *Occupational Health and Safety Act 2000*.

- 5.30.2 The Lessee shall carry out the Permitted Use on the Premises in a safe and reliable manner and must comply with the *Occupational Health and Safety Act 2000*.
- 5.30.3 The Lessee shall notify the Lessor of any natural events or activities on the Premises or the surrounding area, which it becomes aware of, which may endanger the public.
- 5.30.4 The Lessee shall take all reasonable steps to protect the safety of all persons present on the Premises and shall, without limitation, take all reasonable steps to eliminate any dangers to persons that may arise as a result of the Lessee's activities and, notwithstanding clause 5.16, erect signage warning the public of any dangers they may encounter as a result of the Lessee's activities where those dangers cannot be eliminated.

5.31 Filming Within Premises

- 5.31.1 The Lessee must not carry out a Filming Activity on the Premises without the approval of the Lessor in accordance with the *Filming Approval Act 2004*.

5.32 No Auctions

- 5.32.1 The Lessee will not without the prior written consent of the Lessor expose or offer for sale or permit to be exposed or offered for sale by auction on the Premises any articles goods, materials or things whatsoever.

5.33 Native Fauna

- 5.33.1 The Lessee acknowledges and accepts that the Premises are located within a national park and that as a result, native fauna may from time to time be found on the Premises. The Lessee shall not be entitled to any compensation for any damage or loss caused to the Lessee or the Lessee's Employees and Agents (including the Lessee's business and property) attributable to such native fauna being on the Premises.

6 BED NUMBERS AND MAXIMUM PERSONS STAYING OVERNIGHT ON THE PREMISES

6.1 Bed Numbers and Maximum Persons Staying Overnight on the Premises

- 6.1.1 The Lessee shall not exceed the Bed Numbers as stipulated at Item 4 of the Reference Schedule without the Lessor's prior written consent. However, provided that the Maximum Number of Persons Overnight limit at Item 5 is not exceeded, the Lessee is not in breach of this clause 6.1.1 and clause 6.1.3 b) if it obtains the Lessor's written consent to have a number of Beds in storage on the

Premises to be used to facilitate variations to room configuration. The Lessee must use the additional Beds strictly in the accordance with the terms and conditions of the Lessor's consent pursuant to this clause. Any consent can be given and/or revoked at the absolute discretion of the Lessor.

6.1.2 The Lessee must not exceed the Maximum Number of Persons Overnight without the written consent of the Lessor.

6.1.3 If the Lessor has consulted with the Lessee and satisfied himself or herself that the Lessee has:

- a) exceeded the Maximum Number of Persons Overnight at the Premises stipulated at Item 5 of the Reference Schedule, or
- b) exceeded the Bed Numbers stipulated at Item 4 of the Reference Schedule,

then a notice by the Lessor that the Lessee has breached this clause 6 is final and conclusive.

6.1.4 The Lessee must do the following as required by the Lessor and within a reasonable period as notified by the Lessor:

- a) provide written documentation in a form acceptable to the Lessor confirming that the Lessee is aware of and has made the Lessee's Agents and Employees aware of, or, in the case of clause 6.1.4 a) iv) and v), producing the originals of documents confirming:
 - i) the Bed Numbers in the Premises; and
 - ii) that the Lessee and the Lessee's Employees and Agents are aware of the limitations on the Bed Numbers for the Premises and the Maximum Number of Persons Overnight; and
 - iii) that the Lessee and the Lessee's Employees and Agents are aware of the requirements to grant access to the Lessor in accordance with clause 6.18 and this clause; and
 - iv) Accommodation Registers, registers of temporary shelter and staff lists; and
 - v) signage required by this Lease.
- b) submit a sample of their proposed Accommodation Register.

6.1.5 The Lessee must not refuse or permit to be refused to any person temporary shelter on the Premises in any circumstances of adverse weather or in any case of injury or other like emergency or hardship provided that the Lessee shall keep a register of the names and addresses of persons who are provided with temporary shelter pursuant to this clause and the date the temporary shelter was

provided. Any provision of temporary shelter pursuant to this clause does not constitute a Breach of the provisions of this clause 6.1 if by that reason alone the Lessee breaches the provisions of clause 6.1 for that temporary period.

6.2 Accommodation Register

6.2.1 The Lessee must keep upon the Premises an Accommodation Register.

6.2.2 The Lessee must:

- a) grant to the Lessor its agents and employees free access to the Accommodation Register for the purpose of perusing or taking extracts of entries made in the Accommodation Register and will upon request supply to the Lessor a certified copy of the Accommodation Register together with such information and details of the booking arrangements for the Premises as the Lessor may reasonably require for the purpose of establishing that the Lessee is complying with the requirements of this Lease; and
- b) provide to the Lessor within 48 hours of the Lessor's demand, the telephone numbers and addresses of persons residing overnight on the premises on a particular date or dates if the Lessor, acting reasonably, is of the opinion that there may be a Breach.

6.2.3 The Accommodation Register must clearly display the purpose for which the information is being collected in a form and with the content approved by the Lessor as: 'To enable the Department of Environment and Climate Change to monitor from time to time Lessee compliance with the maximum number of persons permitted to reside overnight on these premises' or such other statement required by the Lessor from time to time.

6.2.4 The Lessee must comply at all times with the relevant Law for collecting, storing and disseminating personal information, including but not limited to the *Privacy Act 1988* (Commonwealth).

6.2.5 If the Lessee is not able to comply with the provision of an Accommodation Register, it may apply to the Lessor and the Lessor may consider an alternate arrangement that fulfils the purpose of clause 6.2.2. The Lessor may approve such an alternate arrangement in its absolute discretion.

6.3 Lessor's Right of Entry

6.3.1 The Lessee further acknowledges that the Lessor may, so as to determine whether the Lessee is in compliance with this clause 6:

- a) make an order requiring the Lessee to take the action that is necessary to bring the Premises into compliance with this clause;
- b) enter the Premises after the Lessor has given written reasonable notice (unless the giving of the notice would defeat the purpose of the exercise of this power) of his or her intention to enter the Premises and, use no more

force than is reasonably necessary for the purpose of gaining entry to the Premises;

- c) if entry is required urgently or there is the existence or reasonable likelihood of a serious risk to health or safety - enter the Premises without written notice to the Lessee and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises; and
- d) inspect the Premises.

6.3.2 In exercising the powers under this clause, the parties agree that clauses 5.18.5 to 5.18.9 inclusive apply as if they had been included within this clause but only in the context of the Lessor determining whether the Lessee has complied with clauses 6.1 and 6.2.

7 CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATIONS, ETC

7.1 Condition of Premises at Commencement of Lease

Notwithstanding any other provision of this Lease, but without limiting similar provisions of this Lease:

- 7.1.1 no warranty is given by the Lessor as to the condition or state of repair of the Improvements (if any) on the Premises as at the commencement of this Lease or the suitability of the Premises for the purposes for which they are to be used and the Lessee has not relied in any way upon any representations or assurance by the Lessor or on his or her behalf in entering into this Lease;
- 7.1.2 the Lessee accepts any Improvements on the Premises in their present condition and state of repair and subject to all defects (if any) whether latent or patent;
- 7.1.3 the Lessor is under no obligation or liability of any kind to maintain replace repair or rebuild the whole or any part of such Improvements.

7.2 Repair and Maintenance

In accordance with clause 8 of this Lease, the Lessee must at its own cost maintain repair replace rebuild paint renew the Improvements and the Lessee's Fixtures and keep the whole of the Premises in good and substantial repair order and condition, damage by fire flood lightning storm tempest and impact only excepted. Reference to repair in this clause 7.2 includes structural repair and to repair which entails capital expenditure.

7.3 Repair on Termination of Lease

Subject to clause 8, the Lessee must at the expiration or sooner determination of this Lease peaceably surrender and yield up the Premises in good and substantial repair order and condition and in a clean and sanitary state in all respects.

7.4 Painting

The Lessee must keep the interior and exterior of the Premises in good repair and condition. So often as the Lessor may reasonably require the Lessee must colour, paint, paper, stain or treat with such materials and to such standards and colours as may reasonably be determined by the Lessor such parts of the interior and exterior of the Premises as are normally so treated.

7.5 Cleaning

The Lessee must:

- 7.5.1 cause the interior and exterior of the Premises to be cleaned in a proper and workmanlike manner and kept clean and free from dirt rubbish and inflammable materials;
- 7.5.2 provide and keep in good order and condition proper refuse bins and other containers of such style and in such numbers and locations as are approved by the Lessor; and
- 7.5.3 remove and take away or cause to be removed and taken away from the Premises and the adjacent areas of the Park all refuse debris ground litter and building materials in accordance with the reasonable requirements of the Lessor.

7.6 Lessee's Equipment

The Lessee must keep and maintain clean and in good order repair and condition all fittings, floor coverings, wall, floor and ceiling finishes, plant furnishings and equipment and appliances of the Lessee on the Premises.

7.7 Breakages

The Lessee must make good any breakage defect or damage to any facility or appurtenance of the Lessor within the Park occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's Employees and Agents or other persons claiming through or under the Lessee or otherwise occasioned by any Breach.

7.8 Building, Construction and Development Works

- 7.8.1 The Lessee must, where it proposes to carry out works for which development consent or approval is required under the *Environmental Planning and Assessment Act 1979*, obtain the appropriate consent or approval.
- 7.8.2 The Lessee must ensure that all building, addition, alteration, modification or replacement building works are carried out in accordance with plans and specifications previously approved in writing by the Relevant Authority and in accordance with development consent or approval and to the reasonable satisfaction of the Relevant Authority and in accordance with the requirements of any applicable Building Code and Relevant Authority.
- 7.8.3 The Lessee must not undertake any development or construction work road

works or landscaping of any kind prior to the Relevant Authority providing approval for such works.

7.8.4 The Lessee must comply with all requirements and directions of the Relevant Authority in regard to the construction or alteration of buildings improvements and other structures, earthworks, hydraulic works, underground works, landscaping, restoration, erosion mitigation, and drainage works.

7.8.5 The Lessee must comply with requirements of the Act or other legislation relating to the Premises.

7.8.6 In respect of works described in this clause which do not require development consent from a Consent Authority the Lessee must observe and comply with the requirements of all policies and guidelines of the Lessor as amended from time to time relating to the carrying out of any works:

- a) on the land that comprises the Premises; and
- b) to the external part of a building on the Premises.

7.9 Premises Fire Safety, Services and Installations Certification

7.9.1 The Lessee must engage appropriately qualified and experienced contractors to do the inspections, tests and Works necessary to obtain the compliance certificates listed in this clause 7.9.1. The compliance certificates must comply with industry standards (where applicable) and be provided on the dates stated below unless the Lessor, in his or her absolute discretion, gives his or her written permission for such compliance certificates to be provided at a later date:

- a) a statement showing that the Fire Safety Measures on the Premises have been inspected, tested and found to be installed and working in accordance with the *Environmental Planning and Assessment Act 1979* and its regulations and/or any Building Code by 1 July of each year following the Commencing Date;
- b) a certificate showing that the electrical installations are safely installed and in good working order on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter;
- c) a certificate showing the gas installations are safe and in good working order on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter;
- d) a certificate showing that the Premises are free from any pests which are capable of damaging the Premises (such as termites) on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter.

7.9.2 The Lessee must also provide such other compliance certificates of a similar nature to the compliance certificates listed in clause 7.9.1 as may be reasonably required by the Lessor from time to time.

7.10 Standard of Work

All work carried out by the Lessee or the Lessee's Employees and Agents must be carried out at the Lessee's expense with every reasonable care and in a proper expeditious and workmanlike manner using good quality materials and in accordance with the approvals, issued by the Relevant Authorities, including but not limited to development consent.

7.11 Reporting of Defects, etc

The Lessee must immediately inform the Lessor of:

- 7.11.1 any act or omission of itself or the Lessee's Employees and Agents, or
- 7.11.2 any defect, failure, want of repair, accident or hazard associated with or in the vicinity of the Premises or any structures or Improvements thereon, or
- 7.11.3 any other circumstances,

where any of the above has caused or may cause any danger or risk to the Park or any person within the Park or has caused or may cause any environmental damage to the Premises or the Park.

7.12 Lessor's Right of Entry to do Certain Works

The Lessor and his or her servants, agents and contractors may at all times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Premises for the purpose of:

- 7.12.1 carrying out any necessary enquiries and investigations, collecting any necessary records or documents, carrying out any Works, and otherwise effecting anything which the Lessee is required by this Lease to do but has failed within a reasonable time to do so; or
- 7.12.2 carrying out any Works to the Premises otherwise deemed necessary or desirable by the Lessor; or
- 7.12.3 carrying out any Works on the Premises ordered, requested or required by any public authority having jurisdiction over the Premises which the Lessor elects to do and for which the Lessee is not liable under this Lease, provided always that:
- 7.12.4 in the exercise of the Lessor's powers under this clause the Lessor shall endeavour to exercise its powers with minimum interference with the Lessee's business; and
- 7.12.5 the Lessee must pay, within a reasonable time, all costs and expenses (including any costs associated with engaging suitably qualified contractors and all reasonable legal costs and disbursements) associated with the Lessor otherwise exercising his or her rights under this clause 7.12 and a certificate or notice by the Lessor as to any amount payable pursuant to this clause and served upon

the Lessee shall be prima facie evidence thereof.

7.13 Services

- 7.13.1 No public utility or community services constructed or laid within the Premises by any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor are to be removed or interfered with in any way by the Lessee without the prior written consent of the Lessor.
- 7.13.2 Any necessary additional public utility or community services may be constructed or provided within the Premises by any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor with the approval of the Lessor upon one (1) month's written notice to the Lessee and with no undue inconvenience to the Lessee and no compensation is payable by the Lessor, the Lessor's contractor or the Relevant Authority to the Lessee as a result of the construction or provision of such services.
- 7.13.3 The Lessee must permit the servants and agents of any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor in respect to the supply of electricity, water, sewerage, gas, telephone, fire sprinkler and fire alarm systems, at all reasonable times to enter the Premises with all necessary materials and appliances for the purposes of carrying out any inspections, readings, repairs, alterations, works or adjustments which any such authority may consider necessary or desirable to the ducts, wires, pipes, cables, meters, switchboards, fire sprinkler alarm systems and other installations in the Premises.

8 IMPROVEMENTS AND LESSEE'S FIXTURES

8.1 All Improvements are Lessor's

In consideration of the promises made in this Lease, all Improvements are the unfettered property of the Lessor and the Lessee shall not be entitled to any compensation in respect thereof. This clause 8.1 shall not merge upon expiration, termination or surrender of this Lease.

8.2 Placing and Removal of Lessee's Fixtures

- 8.2.1 The Lessee may at any time erect or place or cause to be erected or placed in or on the Premises such Lessee's Fixtures as may be reasonably necessary for the Permitted Use of the Premises.
- 8.2.2 Upon the expiration or sooner determination of this Lease the Lessee may (and if required by the Lessor by notice in writing must) remove from the Premises all the Lessee's Fixtures brought upon the Premises by the Lessee.
- 8.2.3 The Lessee must in such removal do no damage to the Premises or shall

forthwith make good any such damage occasioned by such removal.

8.2.4 The Lessee must ensure compliance with the following requirements when installing or replacing the following appliances and fittings:

- a) Wood burning appliances – emissions will comply with any relevant Australian Standard for domestic solid fuel burning appliances;
- b) Chimneys – any chimney will be constructed and maintained in accordance with all applicable Australian Standards and to encourage smoke emissions to travel vertically;
- c) Water appliances and fittings – have a star rating equivalent to a high level of water efficiency under the National Water Conservation Rating and Labelling Scheme or any scheme of a similar nature replacing the same;
- d) Electricity appliances – have a AAA star rating equivalent to a high level of energy efficiency under the National Energy Labelling Program or any program of a similar nature replacing the same; and
- e) Gas appliances - have a star rating equivalent to a high level of energy efficiency under the Australian Gas Association Gas Energy Rating and Labelling Scheme or any scheme of a similar nature replacing the same.

8.3 Repair and Maintenance

The Lessee acknowledges and agrees that notwithstanding that the Improvements may be or become the unfettered property of the Lessor, the Lessee must maintain and repair the Improvements at its own cost as provided in clause 7.

9 TANK MANAGEMENT

9.1 Hydrocarbon Storage Systems

9.1.1 The Lessee must take all reasonable precautions to ensure that the design installation operation maintenance testing repair and re-use of operational Hydrocarbon Storage Systems:

- a) prevents product escaping from the system;
- b) enables the detection of leaks; and
- c) prevents spills and leaks during filling.

9.1.2 Leaks and spills from Hydrocarbon Storage Systems are considered Contamination for the purpose of clause 5.10.

9.1.3 The Lessee must ensure that Hydrocarbon Storage Systems no longer in use are decommissioned to the satisfaction of the Lessor and within a timeframe determined by the Lessor.

- 9.1.4 The Lessor reserves the right to prohibit the installation of new Hydrocarbon Storage Systems and require the decommissioning of existing Hydrocarbon Storage Systems without compensation to the Lessee.

9.2 Burying and Screening of Tanks

The Lessee must cause all tanks on the Premises to be buried below the surface of the ground or to be screened in a manner and to a standard satisfactory to the Lessor and with the written consent of the Lessor.

10 COVENANTS BY THE LESSOR

10.1 Quiet Enjoyment

- 10.1.1 Subject to this Lease and the Lessee duly and punctually observing and performing the covenants and obligations of this Lease, the Lessee may peaceably possess and enjoy the Premises for the Term hereby granted without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by from or under the Lessor.
- 10.1.2 The Lessee expressly acknowledges and agrees that the Lessor exercising its rights under any Law or under this Lease (and of in particular, exercising its rights of entry onto the Premises under this Lease or the Law) is not derogating from the Lessee's right to quiet enjoyment.

10.2 Holding Over

If the Lessee with the consent of the Lessor remains in possession of the Premises after the expiration of the term of this Lease, the Lessee shall remain as a tenant from month to month at the then current yearly rate of Rent. The Lessor may vary this Rent upon one (1) month's written notice to the Lessee. Such tenancy shall be terminable at any time by either party giving to the other not less than one (1) month's notice in writing to the other. The same conditions of this Lease shall apply as are not inconsistent with a monthly tenancy.

11 INSURANCES

11.1 Required Insurances

- 11.1.1 The Lessee must effect and maintain in respect to the Premises from the Commencing Date of this Lease the following insurances:
- a) insurance of the Premises against loss, damage or destruction from any insurable risk reasonably required by the Lessor including (but not limited to) loss, damage or destruction by fire, lightning, storm, tempest and impact

for the full reinstatement cost of the Premises (including extra costs reinstatement);

- b) insurance of all plate glass, fixed glass and windows in the Premises for its reinstatement cost (including extra costs reinstatement) from loss, damage or injury caused by explosion, earthquake, aircraft, fire, lightning, storm, tempest, impact, act of God and any other insurance risk reasonably required by the Lessor;
- c) a public liability policy covering personal injury and property damage, including financial, economic or consequential loss arising as a result of such personal injury or property damage (in an amount of not less than the amount noted at Item 6 of the Reference Schedule or such other higher amount as the Lessor may from time to time require, being the amount which may be paid arising out of any one single accident or event) in connection with the activities of the Lessee in relation to this Lease whereby the Lessor, the Director-General, the Department and the Crown in right of New South Wales shall be included as joint insured parties, such insurance to cover against all actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, charges and expenses referred to in clause 12.3 and clause 5.27 and elsewhere in this Lease;
- d) insurance against any liability which may arise at common law or by virtue of any relevant workers' compensation legislation in connection with the Premises; and
- e) such other special insurances as may be appropriate and required by the Lessor from time to time.

11.1.2 Before commencement of any works in relation to the Premises, the Lessee must in addition to any insurances referred to above ensure that there is effected and maintained a contract works insurance policy covering the usual risks including loss or damage to:

- a) the works (including any associated temporary works); and
- b) the Premises; and
- c) all materials and things brought into or in storage on the Premises by the Lessee or the Lessee's Employees and Agents for the purpose of the works; and
- d) all materials and things in storage off-site or in transit to the Premises; occurring during the period when the Lessee is responsible for their care.

11.1.3 The insurance cover referred to in clause 11.1.2 must be for an amount of not less than the full value of the works on a full reinstatement and replacement basis (including costs of demolition and removal of debris and an amount

necessary to cover fees to all consultants), which amount must be approved by Lessor.

11.2 Required Arrangements

The following provisions must apply to all policies of insurance referred to in clause 11.1:

- 11.2.1 all such policies of insurance shall be effected with an insurance office or company approved by the Lessor (which approval shall not be unreasonably withheld) and shall be for such amounts and cover such risks and contain such conditions, endorsements and exclusions as are reasonably acceptable to or required by the Lessor; and
- 11.2.2 no exclusions, endorsements or alterations are to be made in or to any such policy of insurance unless first approved in writing by the Lessor (which approval shall not be unreasonably withheld); and
- 11.2.3 subject to clause 11.1.1 c), all such policies are to be taken out in the names of the Lessor and the Lessee for their respective rights and interests; and
- 11.2.4 duplicate or certified copies of all such policies and all renewal certificates and endorsement slips are to be lodged by the Lessee with the Lessor immediately on receipt by the Lessee; and
- 11.2.5 the Lessee must provide full true and particular information to the office or company with which such policies are effected on all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or payment of any monies thereunder; and
- 11.2.6 the Lessee must punctually pay all premiums and other monies payable in respect to all such policies on or before the due date for payment of the same and shall in respect to any such policy of insurance produce to the Lessor receipts for the payment of each premium and any other monies payable thereunder (or other proof of payment to the Lessor's satisfaction); and
- 11.2.7 the Lessee must not do or permit to be done any act, matter or thing upon or in the vicinity of the Premises whereby any insurance policy may be vitiated or rendered void or voidable or (except with the written approval of the Lessor) whereby the rate of premium for any such insurance shall be liable to be increased; and
- 11.2.8 the Lessor is entitled in his or her own name and as the attorney of the Lessee in the name of the Lessee or otherwise to institute all proceedings against any such office or company to recover from it any amount for loss, damage, destruction or injury or other monies payable under any indemnity in favour of the Lessor or the Crown in right of New South Wales.

11.3 Lessor May Insure

In default of the Lessee effecting any or all of the insurances referred to in clause 11.1 the Lessor may effect such insurances and charge the Lessee for the costs of the premiums and

the Lessee must upon demand reimburse the Lessor for such costs.

11.4 Lessor's Entitlement to Insurance Monies

11.4.1 In the event that the Premises are destroyed or substantially damaged by fire, lightning, storm, tempest, impact or other occurrence the whole of the monies which shall be recovered or received for or in respect to any insurance policy referred to in clause 11.1.1 must be paid to the Lessor and subject to clause 11.5 may be retained by him or her for his or her own use absolutely.

11.4.2 With reference to clause 11.4.1, in the case of minor damage then the Lessor at his or her option may determine whether the monies recovered or received are to be paid to the Lessor or otherwise.

11.5 Reinstatement

11.5.1 Total Destruction of Premises

In the event of the Premises being totally destroyed or damaged so extensively as to render the repair of or making good such damage impractical or undesirable the following alternatives shall apply:

a) **First Alternative - Rebuild to Original Design**

The Lessee may and must if so required by the Lessor from the insurance monies available (and to the extent that the same may be insufficient, from its own monies) reinstate the Premises in accordance with the original design within two (2) years from the date of such damage or destruction. If the Lessee is to rebuild or reinstate the Premises pursuant to this clause, the provisions of clause 7 applies.

b) **Second Alternative - Rebuilding to Different Design**

If the Lessor and the Lessee agree that the Premises are to be rebuilt to a different design then the Lessee must from the insurance monies available and (to the extent the same may be insufficient) from its own monies proceed with the rebuilding of the Premises in accordance with the agreed plans and specifications and clause 7. The Lessee and the Lessor acknowledge that such different design will incorporate sleeping accommodation for the same number of Persons as permitted by this Lease unless the parties are prevented from so doing by statutory regulations and ordinances applicable at the time. Such rebuilding will be completed within two (2) years of the date of such destruction or as otherwise agreed by the parties, acting reasonably, given the extent and scale of the damage.

c) **Third Alternative - Premises not to be Rebuilt**

If the Lessor and the Lessee agree that the Premises need not be reinstated by the Lessee and the Second Alternative is not adopted the Lessee must promptly

remove the remaining structures and any debris and restore the area to the satisfaction of the Lessor and all Relevant Authorities and subject to the Lessee not being in default under any provision of this Lease the Lessee shall then deliver to the Lessor a surrender of this Lease duly executed by the Lessee and duly stamped and the Lessor shall accept the same. Surrender as aforesaid shall be without prejudice to any claim the Lessor may have against the Lessee immediately prior to the date of such surrender.

11.5.2 Partial Damage to Premises

In the event of the Premises being partially destroyed or damaged the Lessee must from the insurance monies available and (to the extent that the same may be insufficient) from its own monies and in accordance with clause 7 repair, replace and make good the whole of the destroyed or damaged portion of the Premises as nearly as possible to the condition in which it was immediately prior to such damage or destruction with such modifications as the Lessee may seek and the Lessor approve or as may be required by Relevant Authorities.

11.5.2 Application of Insurance Monies

All monies received by the Lessor and the Lessee in settlement of any claim under the insurances referred to herein shall be applied by the Lessor in the following order of priority:

- a) first, in payment to the Lessor on account of expenditure by the Lessor in respect to any work due to be done by the Lessee but not commenced and completed within a reasonable time; and as to any balance;
- b) second, in payment to the Lessor of all expenditure whether direct or indirect associated with the completion of the Premises or demolition and removal work; and as to any balance;
- c) third, in payment progressively to the Lessee in reimbursement of the Lessee's costs as work progresses in the rebuilding or demolishing and clearing or repair, replacement and making good as the case may be of the Premises such progress payments to be made expeditiously after receipt of insurance monies and details of the Lessee's costs aforesaid provided that a minimum of at least 10% of the amount of insurance monies held by the Lessor shall not be paid to the Lessee until final completion of all work to the Lessor's satisfaction; and as to any balance;
- d) fourth, such amount shall be credited to the Lessee's instalment of Rent next falling due and any other amounts owing by the Lessee to the Lessor under the provisions of this Lease; and as to any balance;
- e) fifth, such balance shall be equitably apportioned between the Lessor and the Lessee having regard to their respective interests in the Premises at the day immediately prior to the incident giving rise to the insurance claim and to the terms and conditions of this Lease.

12 INDEMNITIES AND RELEASE

12.1 Acknowledgment

The Lessee acknowledges that the exercise of its rights under this Lease is at the risk of the Lessee.

12.2 Release

12.2.1 The Lessee releases to the full extent permitted by law the protected persons from all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of the Lessee's operation from, occupation or use of the Premises the subject of this Lease.

12.2.2 The Lessee's obligations under this clause continue after the termination, expiration or other determination of this Lease in respect to any matter or thing happening before such termination, expiration or determination.

12.2.3 In this clause:

'protected person(s)' means

- a) the Lessor;
- b) the Director-General;
- c) the employees or officers of the Director-General;
- d) any other person acting under the direction or control of the Lessor or the Director-General for any purpose;
- e) the Crown in right of New South Wales.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses to which the protected persons or any one thereof is or may become liable in respect to loss of or damage to the fixtures or property of the Lessee, financial or economic loss, loss of opportunity or other consequential loss of the Lessee, injury to or death of any person claiming through the Lessee of any kind and however sustained and whether sustained on or outside the Premises the subject of this Lease.

12.2.4 It is immaterial to the obligations of the Lessee under this clause that a claim or demand arises out of any act, event or thing that the Lessee is authorised or obliged to do under this Lease or that any time waiver or other indulgence has been given to the Lessee in respect to any such obligation under this Lease.

12.2.5 The obligations of the Lessee under this clause do not apply to the extent that the loss, damage, injury or death arises from or is contributed to by any wilful or negligent act, default or omission on the part of any protected person except as provided in subclause 12.2.6.

12.2.6 The obligations of the Lessee under this clause do apply to loss, damage, injury or death arising from or contributed to or occurring in connection with:

- a) the carrying out of any fire management activity by or on behalf of the protected persons;
- b) the failure to carry out any fire management activity by or on behalf of the protected persons;
- c) any other act or omission of the Lessor or any protected person, whether or not negligent, in respect to the management of fire hazards in the Park.

12.3 Indemnity

12.3.1 The Lessee indemnifies and will keep indemnified the protected persons from and against all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of:

- a) the Lessee's operation from, occupation or use of the Premises the subject of this Lease; or
- b) any wilful or negligent act, default or omission by the Lessee, the Lessee's Employees and Agents or any person acting under the control or at the direction of the Lessee either in the Premises the subject of this Lease or in the Park.

12.3.2 The Lessee's obligations under this clause continue after the termination, expiration or other determination of this Lease in respect to any matter or thing happening before such termination, expiration or determination.

12.3.3 In this clause:

'protected person(s)' means

- a) the Lessor;
- b) the Director-General;
- c) the employees or officers of the Director-General;
- d) any other person acting under the direction or control of the Lessor or the Director-General for any purpose;
- e) the Crown in right of New South Wales.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses to which the protected persons or any one thereof is or may become liable in respect to loss of or damage to the fixtures or property of any person, financial or economic loss, loss of opportunity or other consequential loss of any

person, injury to or death of any person of any kind and however sustained and whether sustained on or outside the Premises the subject of this Lease.

- 12.3.4 It is immaterial to the obligations of the Lessee under this clause that a claim or demand arises out of any act, event or thing that the Lessee is authorised or obliged to do under this Lease or that any time waiver or other indulgence has been given to the Lessee in respect to any such obligation under this Lease.
- 12.3.5 The obligations of the Lessee under this clause do not apply to the extent that the loss, damage, injury or death arises from or is contributed to by any wilful or negligent act, default or omission on the part of any protected person.

13 ASSIGNMENT

13.1 General Restrictions on Assignment

Subject to this Lease, the Lessee must not assign transfer mortgage charge demise sublet licence or part with possession of the Premises or any part thereof or by any act or deed procure any of the foregoing without first:

- 13.1.1 producing to the Lessor such particulars and information, documentary or otherwise, evidencing or relating to the transaction and the proposed assignee or incoming party as may be required by the Lessor; and
- 13.1.2 complying with all requirements of the Lessor in respect to such transaction and the Lessee's application for consent thereto; and
- 13.1.3 complying with any covenant or condition of this Lease which is in default at the date of the Lessee's application; and
- 13.1.4 procuring lodgement with the Lessor of such guarantees by the proposed assignee or incoming party of its performance of the Lessee's covenants under this Lease as the Lessor may require; and
- 13.1.5 receiving the prior written consent of the Lessor thereto; and
- 13.1.6 procuring payment of the Lessor's reasonable legal and administrative costs of and incidental to the giving of such consent,

provided that no fine or sum of money in the nature of a fine shall be payable for or in respect to any such consent and provided further that such consent may not be requested by the Lessee prior to the completion of the Works and matters (if any) as may be required by the Lessor to the satisfaction of the Lessor.

13.2 Subleases, Licences and Mortgages

- 13.2.1 Notwithstanding the last proviso of clause 13.1 of this Lease the Lessee may at any time request the consent of the Lessor to:

- a) the grant of subleases or licences over or in respect to the Premises or any part thereof for purposes approved by the Lessor;
- b) the assignment or sub demise of the Premises by way of mortgage.

13.2.2 Any sublease or licence entered into by the Lessee must be made in such terms as to enable the Lessee freely to discharge the obligations imposed upon the Lessee by this Lease.

13.3 Application in Respect to Corporate Assignee

In relation to an application for consent to a proposed transfer or assignment of the Lessee's interest in this Lease in favour of a company (other than a publicly listed company), the Lessor may require the directors or controlling shareholders of such a company to enter into a deed, in a form acceptable to the Lessor, guaranteeing the performance by that company of the Lessee's covenants under this Lease.

13.4 Company Changes

The Lessee being a company (other than a publicly listed company) must not other than in accordance with clause 13.1 of this Lease:

- 13.4.1 permit any transfer of shares in its capital to be recorded in the books of the company if as a result of such transfer any share having voting rights shall become vested in any persons firms or corporations other than those persons firms or corporations who held shares in its capital having voting rights before such transfer;
- 13.4.2 issue or allot any new shares in its capital to any persons firms or companies not already shareholders of the Lessee;
- 13.4.3 by any act or omission on its part cause or render liable the control of the undertaking and affairs of the Lessee to pass from the directors and members of the Lessee whether pursuant to the terms of any debenture equitable charge or other deed or agreement or in any other way whatsoever.

14 DEFAULT AND TERMINATION

14.1 Lessee's Obligation to Yield up Premises

The Lessee agrees, immediately upon the expiry or legally effective termination of this Lease, to yield up possession and control over the Premises to the Lessor, in the condition and state of repair as required under this Lease.

14.2 Essential Terms of this Lease

- 14.2.1 The following clauses are essential terms of this Lease:

- a) the covenant for the Lessee to enter into a new Lease or surrender this Lease where a boundary adjustment is required (clause 2.1.3);
- b) the covenant for the Lessee to enter into a new Lease or surrender this Lease where the Lessor wishes to upgrade any adjoining road or track for the purposes of establishing a formed road (clause 2.1.4);
- c) the covenant for the Lessee to create easements or restrictions over the Premises where required by the Lessor (clause 2.1.5);
- d) the covenant for the Lessee to permit access over the Premises to adjoining lessees (clause 2.1.6);
- e) the covenant to pay Rent Outgoings and charges throughout the Term of this Lease at a date not later than twenty-eight (28) days after the due date for the payment of each yearly instalment of Rent (clause 3);
- f) the covenant dealing with the use of the Premises (clause 5.1);
- g) the covenant dealing with Bed Numbers and Maximum Persons Staying Overnight (clause 6);
- h) the covenant dealing with compliance with statutory requirements (clause 5.3);
- i) the covenant dealing with Occupational Health and Safety (clause 5.30);
- j) the covenants dealing with assignment and subletting (clause 13); and
- k) any further terms that are stated to be essential terms in a Schedule to this Lease.

14.2.2 This clause does not limit other terms being essential terms in this Lease.

14.3 Repudiation of this Lease

14.3.1 The Lessee acknowledges that:

- a) the Director-General is legally responsible for ensuring compliance with specific public health and safety matters in the Park and for implementing the Plan of Management;
- b) exceeding the Maximum Number of Persons Overnight contravenes the Plan of Management and may compromise fire safety and public health; and
- c) the Lessor grants this Lease on the basis that the Lessee must at all times comply with clause 6.1 of this Lease.

14.3.2 The Lessee specifically agrees that if the Lessee or the Lessee's Employees and Agents:

- a) willingly Breach clause 6.1 of this Lease to the extent that in the Lessor's opinion acting reasonably and having regard to the Law and the provisions of this Lease, such a breach endangers the health and safety of Persons in the Premises; and
- b) in the opinion of the Director-General acting reasonably and having regard to the obligations of the Lessee under clause 5.30 of this Lease, the Lessee has failed to ensure the health and safety of any person present on the Premises

then such a Breach amounts to a repudiation by the Lessee of this Lease.

14.3.3 The Lessee may also repudiate this Lease if the Lessee is unwilling or unable to perform other significant obligations or otherwise defaults under this Lease.

14.3.4 The Lessor may, in his or her absolute discretion, not accept the Lessee's repudiation of this Lease in which case this Lease will not be terminated. Where the Lessee has repudiated this Lease and the Lessor has not accepted such repudiation the Lessee must perform all the obligations contained in this Lease and remains liable to the Lessor for any loss or damage to person or property caused by actions or omissions that constituted the repudiation. Further, any non-acceptance of the Lessor of the Lessee's repudiation does not amount to a waiver of the Lessor's right to accept any subsequent repudiation by the Lessee.

14.4 Termination of Lease for Default

Each of the following constitutes a default by the Lessee under this Lease:

- 14.4.1 the rent hereby reserved or any part thereof is unpaid for a period of twenty-eight (28) days after any day on which the same ought to have been paid in accordance with this Lease (whether or not a formal demand has or has not been made); or
- 14.4.2 any serious, persistent and continuing Breach; or
- 14.4.3 failure to comply with an essential term of this Lease; or
- 14.4.4 (the Lessee being a company) an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld); or
- 14.4.5 the Lessee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts or if execution is levied against the Lessee and is not discharged within thirty (30) days; or
- 14.4.6 the Lessee (being an individual) becomes bankrupt or commits an act of bankruptcy or brings his or her estate within the operation of any law relating to bankrupts.

14.5 Termination after Default

The Lessor may terminate this Lease after a default by the Lessee after the Lessor has served a legally effective notice in accordance with clause 14.6 (if applicable) and to effect the termination of this Lease, the Lessor may:

- 14.5.1 re-enter and take possession of the Premises, using reasonable force to secure possession; and/or
- 14.5.2 serve on the Lessee written notice terminating this Lease; and/or
- 14.5.3 institute proceedings for possession against the Lessee; and/or
- 14.5.4 take such actions and/or proceedings as the Lessor may deem appropriate.

14.6 Notice of Default

14.6.1 Apart from where the Lessee has repudiated this Lease, the Lessor must not terminate this Lease unless the Lessor serves on the Lessee a notice:

- a) specifying the particular default complained of; and
- b) if the default is capable of remedy, requiring the Lessee to remedy the default; and
- c) in case the Lessor claims compensation in money for the default, requiring the Lessee to pay such compensation.

14.6.2 If the Lessee fails within a reasonable time (as determined by the Lessor in his or her absolute discretion) of receipt of that notice by the Lessee (or the Lessee's Employees or Agents or any person claiming under the Lessee) to remedy the default to the reasonable satisfaction of the Lessor, if it is capable of remedy, or fails to pay that compensation where compensation in money is required to be paid, then the Lessor may terminate this Lease in accordance with clause 14.5.

14.7 Damages

14.7.1

- a) In the event that the Lessee's conduct (whether acts or omissions) constitutes:
 - i) a repudiation of this Lease (or of the Lessee's obligations under this Lease);
 - ii) a Breach of any Lease covenant; or
 - iii) a Breach of an essential term of this Lease;the Lessee covenants to compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation or Breach, whether this Lease is or is not terminated for the repudiation, Breach or on any other ground.

- b) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.
- c) The Lessor is entitled to recover damages against the Lessee in respect to the repudiation or Breach of covenant or essential term for the loss suffered by the Lessor in connection with such repudiation or Breach (including reasonable legal costs and disbursements) during the Term of this Lease, as well as other monies that would have become due and payable to the Lessor under this Lease for the unexpired residue of the Term of this Lease.
- d) The Lessor's entitlement to recover damages is not affected or limited by any of the following:
 - i) if the Lessee abandons or vacates the Premises;
 - ii) if the Lessor elects to re-enter the Premises or to terminate the Lease;
 - iii) if the Lessor accepts the Lessee's repudiation;
 - iv) if the parties' conduct constitutes a surrender by operation of Law.

14.7.2 The Lessor's entitlement to damages is in addition to:

- a) the entitlement to recover Rent, Rates, Taxes, Outgoings and operating expenses until the date of expiry or termination of this Lease;
- b) interest on payments in accordance with this Lease;
- c) costs of any Breach, including the costs of termination.

14.7.3 The Lessor must take all reasonable steps to mitigate his or her loss.

14.8 Power of Attorney by Lessee to Lessor

14.8.1 The Lessee appoints the Lessor (and his or her successors and assigns, being the owner of the Premises for the time being) the Lessee's attorney with the powers contained in this clause.

14.8.2 This power of attorney is:

- a) irrevocable by the Lessee; and
- b) granted by the Lessee for valuable consideration (the grant of this Lease by the Lessor), to secure the performance of the Lessee's obligations and the Lessor's proprietary interest over the Premises.

14.8.3 The Lessor as the Lessee's attorney and in the name and on behalf of the Lessee may:

- a) remove from the Premises, store and sell, any of the Lessee's Fixtures or any other property owned by the Lessee, left on the Premises by the Lessee, after the Lessee has vacated the Premises and this Lease is terminated or has expired;
- b) surrender this Lease, after
 - i) the Lessor has become entitled to terminate this Lease; and
 - ii) the Lessee vacates or abandons the Premises; or
 - iii) the Lessor terminates this Lease by serving notice of termination;
- c) withdraw any caveat lodged by the Lessee in respect to this Lease, after the Lessor effectively terminates this Lease.

14.8.4 The Lessor may:

- a) act as attorney under this clause during the continuance of this Lease and during the period of the six (6) months after the termination of this Lease;
- b) register this Lease (or lease provision) as a power of attorney, at any time including after the termination of this Lease, if that is required for the exercise of any power;
- c) ratify and confirm any power when exercised under this clause, as attorney and agent for the Lessee.

14.9 Waiver

After the Lessee is in Breach under this Lease, including in Breach of an essential term of this Lease, the demand or acceptance from the Lessee by the Lessor of arrears or of any late payment of Rent, Taxes, Outgoings, charges, operating expenses, or other financial obligations does not:

- 14.9.1 preclude the Lessor from exercising any rights or remedies under this Lease, including enforcing or terminating this Lease;
- 14.9.2 constitute a waiver of the essentiality of the Lessee's obligation to make those payments;
- 14.9.3 waive the Lessee's continuing obligation to make those payments during the Term.

14.10 Lessor's Entitlements after Lessee Vacates during Lease Term

If the Lessee vacates or abandons the Premises during the Term of this Lease in Breach of the Lessee's obligations under this Lease, the Lessor may:

- a)
 - i) accept the keys to the Premises from the Lessee;

- ii) renovate, restore and clean the Premises;
 - iii) change the locks and secure the Premises; and
 - iv) permit prospective tenants to inspect the Premises;
- b) take any action in paragraph a) without the Lessor's conduct constituting:
- i) a re-entry or termination of this Lease; or
 - ii) the acceptance of a surrender of this Lease.

14.11 Removal of Improvements

- 14.11.1 Notwithstanding anything in clause 8.1 of this Lease, the Lessor, at his or her election, may by notice given to the Lessee at any time within thirty (30) days after the expiration or termination of this Lease require the Lessee within the time stated in such notice to remove any of the Improvements and/or to fill in all or any excavations made by the Lessee and in such case the Lessee must in accordance with such notice effect such removal and fill in such excavations.
- 14.11.2 The Lessee must not cause any damage to standing timber or to the surface of the ground while removing the Improvements and must leave the Premises clean and tidy after the removal.
- 14.11.3 The Lessee must make good to the satisfaction of the Lessor any damage caused to the Premises or the Park as a result of the removal of the Improvements and any earthworks and correct any condition likely to result in soil erosion to the Premises or the Park.
- 14.11.4 The Lessee is responsible for and indemnifies the Lessor in respect to any loss or damage caused by the Lessee or the Lessee's Employees and Agents arising from the removal of the Improvements.

14.12 Lessee to Accept Responsibility for Lessee's Employees and Agents

The Lessee accepts full responsibility for the acts and omissions of the Lessee's Employees and Agents within or in the vicinity of the Premises and in the event of Breach by any such person this Lease shall apply against the Lessee as if such Breach was a Breach by the Lessee itself and the Lessee shall remedy any such Breach or where applicable, indemnify the Lessor in respect to such Breach.

14.13 Disconnection of Community Services

In addition to any other rights and remedies available to the Lessor under this Lease, the

Lessor is entitled in the event that and for so long as the Lessee is in default of any provision under this Lease to terminate interrupt or discontinue the provision of any community service provided by the Lessor to the Premises and in such event the Lessor shall not incur any liability for any loss or damage of whatsoever kind or nature (whether consequential or reasonably foreseeable or otherwise) suffered by the Lessee or any of the Lessee's Employees and Agents as a result of or arising out of any such termination interruption or discontinuance.

14.14 Requirement of Premises or part for Community or Public Purposes

14.14.1 If the Lessor requires possession of the Premises or any part thereof for works for any public or community purpose or any works subsidiary or ancillary to any such work or for the purpose of the care control and management of the Park and to put an end to this Lease and the Lessor gives to the Lessee six (6) calendar months' notice in writing expiring at any time then this Lease shall cease and determine without prejudice nevertheless to any then existing remedy which the Lessor may have against the Lessee for arrears of Rent or for any Breach.

14.14.2 In the event of the Lessor exercising its powers under this clause 14.14 and provided that the Lessee has duly complied with any covenant or conditions of this Lease of which the Lessee was in default at the date of the expiration of the notice referred to in cl.14.14.1 then the Lessee shall be entitled to such compensation as shall be determined by the Valuer General or a valuer nominated by the Valuer General as the value of the estate or interest of the Lessee in the Premises or affected part or parts thereof at the date of acquisition.

14.15 Native Title

14.15.1 The Lessee acknowledges that this Lease is validly granted under Part 2, Division 3, Subdivision J of the *Native Title Act 1993* (Cth) (CNTA), but acknowledges that in the event that native title rights and interests are, or would be, affected by the grant of this Lease and this Lease is not authorised by Subdivision J, or otherwise under the CNTA, such may be invalid within the meaning of the CNTA. If the Lease is invalid the parties agree that the valid parts of this Lease continue in force unaffected by the invalid parts.

14.15.2 If there is or is likely to be a native title claim over or in relation to the Premises or the Park, the Lessee must continue to perform the obligations of this Lease and must carry on the business or other operation of the Premises for the Permitted Use unless otherwise:

- a) directed by the Lessor;
- b) ordered by any Court or Tribunal; or
- c) required by Law.

15 PROCEDURAL MATTERS

15.1 Time for Determining Rights and Obligations

This Lease for the purpose of determining the rights and obligations of the parties shall be construed as if it had been executed on the date from which the Term is expressed to run.

15.2 Variation or Waiver

None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by the Lessor unless by his or her express consent in writing. No waiver by the Lessor of any Breach of any condition contained or implied in this Lease shall operate as a waiver of another Breach of the same or of any other condition in this Lease.

15.3 Provisions to be Construed as Covenants

Such of the provisions and conditions herein contained as require or prescribe anything to be done or not to be done by the Lessee shall in addition to being read and construed as conditions of the Lease hereby granted be also read and construed as covenants and agreements whereby the Lessee for itself and its assigns covenants with the Lessor to observe and perform such provisions and conditions.

15.4 Consents Permissions or Approvals

Where anything in this Lease may be done with the approval, permission or consent of the Lessor (including where such approval, permission or consent may be revoked by the Lessor) the Lessor may:

15.4.1 unless otherwise expressly provided in this Lease, give, withhold or revoke his or her approval, permission or consent in his or her unfettered discretion; and

15.4.2 impose conditions on that approval, consent or revocation.

Unless otherwise provided the consent, permission or approval may be given by the Director-General or an Authorised Officer.

15.5 Opinions by Lessor

Any opinion to be formed by the Lessor for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor determines to be sufficient.

15.6 Lessee Not Agent of Lessor

The Lessee will not directly or indirectly hold out or permit to be held out to any member of the public any statement act deed matter or thing indicating or tending to indicate that the Premises or any business conducted thereon is being conducted managed or supervised by the Lessor, the Director-General, the Department or the Crown in right of New South Wales nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor, the Director-General, the Department or the Crown in right of New South Wales.

15.7 Communication with Lessee

The Lessee's contact details are set out at Item 8B of the Reference Schedule. The Lessee must at all times inform the Lessor of any amendment to the contact details set out at Item 8B of the Reference Schedule as soon as practicable after the Lessee's contact details have been changed.

15.8 Notices

Any notice or other communication to be given under this Lease is sufficiently served on the Lessee if signed by an Authorised Officer for the time being of the Lessor and if forwarded by post or facsimile or left addressed to the Lessee at the address set out at Item 8A of the Reference Schedule or the principal office of the Lessee last known to the Lessor, and shall be sufficiently served on the Lessor if addressed to the Lessor and left at or sent by post or facsimile addressed to the Lessor at the Lessor's address specified in this Lease at Item 9 of the Reference Schedule or such other address that the Lessor may notify to the Lessee from time to time. A notice sent by post shall be deemed to be given at the time when it ought to be delivered in due course of post and a notice sent by facsimile shall be deemed to be given upon confirmation of the transmission.

15.9 Costs of Lease

The Lessee must pay:

- 15.9.1 the Lessor's reasonable legal costs and all duties fees charges and expenses of or incidental to the preparation completion stamping and registration of this Lease and any variation thereto, and any application for the consent of the Lessor hereunder, and of or incidental to any Breach by the Lessee hereunder, and of or incidental to the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor hereunder;
- 15.9.2 the fees of all professional consultants properly incurred by the Lessor in consequence of or in connection with any Breach;
- 15.9.3 all expenses reasonably incurred by the Lessor in any entry inspection examination consultation or the like which discloses a Breach;
- 15.9.4 all expenses reasonably incurred by the Lessor in the examination of plans drawings and specifications for any building structure or improvement constructed or to be constructed or other work to be carried out on the Premises and the inspection thereof both during and after completion;
- 15.9.5 all survey and site valuation fees incurred by the Lessor in connection with the Premises for the purposes of this Lease including valuation fees incurred by the Lessor in connection with the Premises for any rent review; and
- 15.9.6 all costs of carrying out any requirement or obligation imposed upon the Lessee by this Lease.

15.10 Licences

- 15.10.1 The Lessee must apply for and take all steps required to obtain all such licences or renewals thereof as may in the opinion of the Lessor be necessary for the

proper conduct of the Premises and the Lessee will not do or suffer to be done any act matter or thing whereby any such licence may be or become liable to be forfeited or suspended or the renewal thereof refused.

- 15.10.2 The Lessee must at the expiration or sooner determination of this Lease sign and give such notice or notices and allow such notice or notices of renewal or transfer of any licence to be affixed to the Premises and generally do and perform all such further acts matters and things as shall be necessary to enable the Lessor or any person authorised by him or her to obtain the renewal of any licence or licences or any new licence or licences or the transfer of any licence or licences then existing and in force.

15.11 Inspection by Prospective Lessees

The Lessee must at all reasonable times within the three (3) months immediately preceding the termination of this Lease permit the Lessor to exhibit the Premises to prospective tenants and will at all times during that period of three (3) months allow the Lessor to affix and exhibit where the Lessor shall think fit an appropriate notice facilitating enquiries to the Lessor and/or his or her agent and the Lessee shall not remove any such notice without the written consent of the Lessor.

15.12 Disclosure of Information

- 15.12.1 The Lessee acknowledges that the Lessor is required by section 151D of the Act to maintain a register on which certain information concerning this Lease is to be recorded and made publicly available and consents to the disclosure of such information.
- 15.12.2 The Lessee agrees that the Lessor may, without the consent of the Lessee, disclose to an incoming lessee of the Premises such financial information of the Lessee as has been provided to the Lessor by the Lessee but only for the purposes of disclosing to any incoming lessee the nature and scope of the commercial operation conducted on the Premises by the Lessee.

16 OPTION

16.1 Further Lease

- 16.1.1 This clause 16 operates only if at Item 13 of the Reference Schedule a Further Term is identified.
- 16.1.2 If the Lessee wishes to take a lease of the Premises for any Further Term specified at Item 13 of the Reference Schedule and:
- a) not less than six (6) months and not more than twelve (12) months before the expiration of the then current Term gives notice in writing to the Lessor to that effect; and
 - b) as at the date of the notice the Lessee is not in subsisting Breach of a

provision of this Lease; and

- c) has not at the date of the notice been previously issued with more than three (3) notices from the Lessor to remedy a Breach of an essential term of this Lease identified at clause 14.2.1,

then the Lessor must grant the Further Lease for the Further Term at an annual Rent as determined by Part A of the Rent Schedule and otherwise on the same conditions as are contained in this Lease, except as provided by clause 16.2.

16.2 Terms of Further Lease

The Further Lease must be amended as follows:

- 16.2.1 the Commencing Date shall be the date immediately following the Terminating Date of this Lease;
- 16.2.2 the Terminating Date shall be inserted, given the term of the Further Lease;
- 16.2.3 the number of Options contained in the Reference Schedule and Lease cover page shall be reduced by one;
- 16.2.4 if no further Options for a Further Term are stipulated at Item 13 of the Reference Schedule, clause 16.1 and 16.2 shall be omitted from the Further Lease;
- 16.2.5 Item 14B of the Reference Schedule shall be omitted from the Further Lease;
- 16.2.6 any clause or paragraph in Part A of the Rent Schedule that is specified in Part A of the Rent Schedule as to be omitted from the Further Lease, shall be omitted from the Further Lease;
- 16.2.7 Part B of the Rent Schedule shall be omitted from the Further Lease; and
- 16.2.8 Part C of the Rent Schedule and all references to the Lease Grant Fee shall be omitted from the Further Lease.

17 ADJOINING LICENCE AREA

17.1 Adjoining Licence Area

If the Lessor has granted to the Lessee a licence over an Adjoining Licence Area under clause 2.1.2 of this Lease, then where not repugnant to the context the definition of Premises in this Lease includes the Adjoining Licence Area.

17.2 Adjoining Licence Area Conditions

The conditions for the use and occupation by the Lessee of an Adjoining Licence Area are set out in Schedule 4.

18 ADDITIONAL COVENANTS

The Lessee must comply with the covenants and obligations contained in the Additional Covenants Schedule.

SCHEDULE 1 REFERENCE SCHEDULE

Item 1 (clause 1.1)	Premises	The land stipulated at Item (A) on the Lease cover page.
Item 2 (clauses 1.1 and 3.6)	Bank Guarantee	\$5,000.00
Item 3 (clauses 1.1 and 5.1)	Permitted Use of Premises	Ski lodge providing accommodation for members' family and guests in accordance with the Lessee's Memorandum and Articles of Association or constitution and purposes reasonably incidental to that use (including the accommodation of on-site managers and/or staff of the Lessee). The Lessee may also provide accommodation to the general public as specified in clause 5 of Schedule 3.
Item 4 (clauses 1.1 and 6)	Bed Numbers	24
Item 5 (clauses 1.1 and 6)	Maximum Number of Persons Overnight	NA
Item 6 (clause 11.1)	The minimum amount which may be paid arising out of any one single accident or event	\$10,000,000.00
Item 7	Not applicable	
Item 8A (clause 15.8)	Lessee's address for service	C/- Thomas Mitchell Partners 1 st Floor 587 Pacific Highway Belmont NSW 2280
Item 8B (clause 15.7)	Lessee's contact details	Ms Florence Margaret Lloyd Chairman PO Box 5040 Kahibah NSW 2290
Item 9 (clause 15.8)	Lessor's address for service	Deputy Director-General Head - National Parks and Wildlife Department of Environment and Climate Change PO Box 1967, Hurstville NSW 1481 43 Bridge Street, Hurstville NSW 2220

Item 10 (clauses 1.1 and 17 and Schedule 4)	Adjoining Licence Area	That land shown in the photograph, of the Premises - Plan showing Shortland Lodge, Lot 27, Perisher Valley (Ref 3292) that adjoin the Premises and is outlined in yellow, incorporated into this Lease by reference.
Item 11 (clauses 1.1 and 17 and Schedule 4)	Permitted Use of Adjoining Licence Area	Access Driveway.
Item 12 (clauses 1.1 and 17 and Schedule 4)	Licence Fee	\$1.00, if demanded.
Item 13 (clauses 1.1 and 16)	Further Term	1 July 2028 to 30 June 2058
Item 14A (clause 3 and Rent Schedule)	Market Land Value	\$266,743.00 for the first year of the Term and thereafter as determined in accordance with clause 7 of the Rent Schedule
Item 14B	Base Rent for first year of Term	\$16,005.00
Item 14C (clause 3 and Rent Schedule)	Base Rent Percentage	6.0% for the first year of the Term and thereafter as determined by the Lessor in accordance with clause 8 of the Rent Schedule
Item 15 (Rent Schedule)	Turnover Rent Percentage	6.0% for the first year of the Term and thereafter as determined in accordance with clause 4 of the Rent Schedule
Item 16	Not Applicable	
Item 17 (Additional Covenants Schedule)	Management company	NA
Item 18 (Rent Schedule)	Date of end of annual accounting period (day and month)	31 December

Item 19 (Rent Schedule)	Date of end of Lease year (day and month)	30 June
Item 20 (Additional Covenants Schedule)	Oversnow vehicles	1
Item 21 (clause 5.26)	Environmental Research and Rehabilitation Contribution	\$10.00 per Bed CPI adjusted annually.
Item 22 (Rent Schedule)	Lease Grant Fee	\$33,600.00 exclusive of GST.
Item 23 (Rent Schedule)	Lease Grant Fee Payment Option	One payment on the Commencing Date.

SCHEDULE 2 RENT SCHEDULE

PART A (Rent)

1 DEFINITIONS

Annual Adjustment Notice means a written notice from the Lessor to the Lessee stating:

- a) the Turnover Rent for the relevant period of the Auditor's Certificate; and
- b) the amount paid by the Lessee on account of Base Rent for such period.

Audited Gross Revenue means Gross Revenue the amount of which has been duly audited and certified by the Lessee's auditor who shall be a registered auditor.

Auditor's Certificate means a written statement by a registered auditor certifying the Audited Gross Revenue for each Trading Period during the Term.

Base Rent means the amount determined by multiplying the Market Land Value by the Base Rent Percentage applicable for the year as reviewed by, and subject to the terms of, this Schedule.

Base Rent Percentage means the percentage specified at Item 14C of the Reference Schedule and for the Further Term as determined in accordance with clauses 6 and 8 of this Schedule.

Base Rent Percentage Review Date means the Commencing Date of the Further Term and every tenth anniversary thereof.

CPI means the Consumer Price Index for Sydney (All Groups) published by the Australian Bureau of Statistics (or its successors). If the Consumer Price Index is suspended or discontinued the index to be used shall be the index advised by the Australian Statistician, which reflects the basic change in the cost of living in Sydney during any year.

Dispute Notice means a written notice from the Lessee to the Lessor to the effect that the Lessee disputes the Lessor's assessment of the Market Land Value Base Rent Percentage or Turnover Rent Percentage as the case may be.

Dispute Period means the period from the date each Market Land Value Review Notice or Lessor's Assessment is served on the Lessee until twenty-one (21) days thereafter.

Gross Revenue means all monies received or brought to account by the Lessee, its assigns, successors, sublessees and licensees arising from the carrying on of its and their business upon or in connection with the Premises or any part thereof and includes all rental and other monies received by the Lessee from its licensees and sublessees.

Lease Grant Fee means the premium payable by the Lessee to the Lessor for the grant of this Lease as set out in Part C of this Schedule and as specified at Item 22 of the Reference Schedule.

Lease Grant Fee Payment Option means the Lease Grant Fee payment option elected by the Lessee as specified at Item 23 of the Reference Schedule.

Lessor's Assessment means a written notice from the Lessor to the Lessee of a revised Base Rent Percentage or revised Turnover Rent Percentage as the case may be.

Market Land Value means the market value of the fee simple of the land, excluding the improvements, identified at item (A) on the Lease cover page. The Market Land Value is, at the Commencing Date of this Lease, specified at Item 14A of the Reference Schedule and thereafter is determined in accordance with clause 7 of this Schedule.

Market Land Value Review Date means the Commencing Date of the Further Term and every tenth anniversary thereof.

Market Land Value Review Notice means a written notice from the Lessor to the Lessee of the amount, which the Lessor considers to be the Market Land Value as at the Market Land Value Review Date.

Trading Period means the period set out in Item 18 of the Reference Schedule being the 12 month financial period of the Lessee for the purposes of complying with the financial reporting requirements of any Law.

Turnover Rent means the amount determined by multiplying the Audited Gross Revenue by the Turnover Rent Percentage applicable for the year.

Turnover Rent Percentage means the percentage specified at Item 15 of the Reference Schedule for the first year of the Term and for each subsequent year until the first Turnover Rent Review Date and thereafter as determined by clause 4 of this Schedule.

Turnover Rent Percentage Review Date means the tenth anniversary of the Commencing Date of the Lease and every tenth anniversary thereafter, and in relation to the Further Term means the Commencing Date of the Further Term and every tenth anniversary thereafter.

Year means in this Schedule a year of the Term or Further Term, as the case may be.

2 RENT

- a) The Lessee will pay as Rent to the Lessor for each year of the Term the greater of the Base Rent or Turnover Rent applicable for that year.
- b) For the first year of the Term the Base Rent shall be the amount set out in Item 14B of the Reference Schedule.
- c) For each year of the Term the Lessee must pay the applicable Base Rent in advance on the Commencing Date and each anniversary thereof.
- d) The Lessee shall pay the Rent to the Lessor at the address nominated by the Lessor from time to time and in such manner as the Lessor shall direct.
- e) Despite the provisions of this Schedule, for the first five years of this Lease the Lessee will only be required to pay as Rent the Base Rent applicable for each year. This clause does not apply to any Further Lease.

3 REVIEW OF BASE RENT - CPI

- a) For the first year of the Term the Market Land Value is specified at Item 14A of the Reference Schedule.
- b) CPI Review
 - i) For the second and each subsequent year of the Term the Base Rent shall be reviewed on each anniversary of the Commencing Date (except for an anniversary that is also a Market Land Value Review Date) of the Lease and shall be derived by multiplying the Base Rent payable for the year last concluded by the fraction A/B where:
 - A = the CPI figure last published prior to the first day of the year under review.
 - B = the CPI figure last published prior to the first day of the year immediately preceding the year under review.
 - ii) If the Base Rent determined in accordance with clause 3 b) i) is less than the Base Rent for the immediately preceding year the Base Rent for the year under review shall be equivalent to the Rent for the immediately preceding year.

4 REVIEW OF TURNOVER RENT PERCENTAGE

- a) The Turnover Rent Percentage shall be reviewed on each Turnover Rent Percentage Review Date in accordance with clause 4 b) and such reviewed Turnover Rent Percentage shall apply for the year commencing on that date and for each subsequent year (subject to clause 5) until the year commencing on the next Turnover Rent Percentage Review Date.
- b)
 - i) During the six (6) calendar months preceding a Turnover Rent Percentage Review Date the Lessor may serve on the Lessee a Lessor's Assessment setting out the Turnover Rent Percentage to apply from that Turnover Rent Percentage Review Date.
 - ii) The Turnover Rent Percentage determined by the Lessor shall be consistent with the turnover based rent percentages applicable to alpine ski resort premises that are comparable to the Premises in this Lease but also having regard to the turnover based rent percentages applicable to other tourist accommodation considered relevant.
 - iii) If the Lessee does not agree with the Turnover Rent Percentage determined by the Lessor then the Lessee must, if it wishes to dispute such Turnover

Rent Percentage, serve a Dispute Notice on the Lessor within the Dispute Period.

- iv) If the Lessee does not serve a Dispute Notice within the Dispute Period, the Turnover Rent Percentage stated in the Lessor's Assessment will be the revised Turnover Rent Percentage.
 - v) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period then the provisions of clause 7 b) iv)-vii) apply with the references to Market Land Value in such clauses being read as references to Turnover Rent Percentage. The valuer must determine the Turnover Rent Percentage to be consistent with the turnover based rent percentages applicable to Alpine Ski resort premises that are comparable to the Premises in this Lease but also having regard to the turnover based rent percentages applicable to other tourist accommodation that the valuer considers relevant. The valuer must not determine the revised Turnover Rent Percentage less than the Turnover Rent Percentage applicable to the Premises immediately prior to the Turnover Rent Percentage Review Date.
 - vi) Where the revised Turnover Rent Percentage has not been determined by the Turnover Rent Percentage Review Date the Turnover Rent Percentage applicable to the year immediately preceding the Turnover Rent Percentage Review Date shall be used to determine the Turnover Rent for the year under review. Once the revised Turnover Rent Percentage is determined the Turnover Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.
 - vii) If the Lessor fails to exercise his or her rights to require the Turnover Rent Percentage to be revised before any Turnover Rent Percentage Review Date then this right may be exercised at any time prior to the next Turnover Rent Percentage Review Date and the revised Turnover Rent once determined will still be payable from the last Turnover Rent Percentage Review Date. No succeeding Turnover Rent Percentage Review Date will be postponed because of the operation of this clause.
- c) The Turnover Rent Percentage will be capped at 7% for the first review only during the Term of the Lease.

5 BASE RENT AND TURNOVER RENT PERCENTAGE NEVER LESS THAN PRECEDING YEAR

Whenever there is to be a review of the Base Rent or Turnover Rent Percentage in accordance with this Schedule and the resulting Base Rent or Turnover Rent Percentage (as the case may be) is less than for the immediately preceding year such Base Rent or Turnover Rent Percentage shall be replaced by the Base Rent or Turnover Rent Percentage for the immediately preceding year.

6 DETERMINATION OF RENT FOR FURTHER LEASE

- a) Where the Lessee has complied with the provisions of clause 16.1 of this Lease and the Lessor has agreed to grant a Further Lease in accordance with clause 16.1 of this Lease the Rent to apply for the Further Lease shall be determined in accordance with this clause.
- b) Clause 2 shall apply except to the extent that it is modified by the reviews provided for in this clause and a reference to Term in that clause shall be taken to mean Further Term.
- c) The Market Land Value shall be reviewed at the Commencing Date of the Further Term and on each Market Land Value Review Date in accordance with clause 7.
- d) The Base Rent Percentage shall be reviewed at the Commencing Date of the Further Term and on each Base Rent Percentage Review Date in accordance with clause 8.
- e) The Turnover Rent Percentage shall be reviewed on the Commencing Date of the Further Term and each Turnover Rent Percentage Review Date.
- f) The Base Rent shall be reviewed for the second and each subsequent year of the Further Term in accordance with clause 3 b) (but not including a Market Land Value Review Date).
- g) Clauses 2 e), 4 c) and 5 do not apply for the purposes of any Further Term.

7 MARKET LAND VALUE REVIEW FOR FURTHER TERM

- a) The Market Land Value shall be reviewed in accordance with clause 7 b) and such reviewed Market Land Value shall apply for the year commencing on that date until the year commencing on the next Market Land Value Review Date.
- b) Market Land Value Review
 - i) During the six (6) calendar months preceding a Market Land Value Review Date the Lessor may serve on the Lessee a Market Land Value Review Notice setting out what he or she considers to be the Market Land Value to apply from that Market Land Value Review Date.
 - ii) If the Lessee does not agree with the Market Land Value determined by the Lessor then the Lessee must, if it wishes to dispute the Lessor's assessment of the revised Market Land Value, serve a Dispute Notice on the Lessor within the Dispute Period.

- iii) If the Lessee does not serve a Dispute Notice within the Dispute Period, the amount stated in the Market Land Value Review Notice will be the revised Market Land Value.
- iv) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period, the Lessor must within twenty-one (21) days of receiving the Dispute Notice refer the matter to the president or other principal officer for the time being of the Australian Property Institute Inc (New South Wales Division) (or any association replacing the same) to appoint a valuer to determine the revised Market Land Value.
- v) The revised Market Land Value determined by the valuer will be final and binding on the parties.
- vi) The costs incurred in the determination of the revised Market Land Value must be shared equally between the parties.
- vii) In determining the revised Market Land Value the valuer must:
 - A be a full member of not less than five (5) years standing of the Australian Property Institute Inc (New South Wales Division);
 - B be the holder of a licence to practice as a valuer in New South Wales of the kind of premises demised by this Lease;
 - C have at least five (5) years experience in valuing that kind of premises and be active in that market at the time of the appointment;
 - D have due regard to any evidence submitted by the parties as to their assessments of the revised Market Land Value;
 - E give in writing his or her determination providing complete details of comparable evidence, the evaluation of that evidence, and details of the basis for the determination;
 - F be deemed to be acting as an expert (whose decision shall be final and binding on the parties) and not as an arbitrator.
- viii) In determining the revised Market Land Value the valuer must determine the Market Land Value for the Premises unaffected by any interest in the land as at the Market Land Value Review Date and must value the land according to the maximum potential for the development of the land, the position of the site relative to existing or proposed infrastructure and facilities, the availability of services to the site, the Bed Numbers and all other uses permitted on the Premises by this Lease and the Premises as being subject to the Plan of Management applicable at the Market Land Value Review Date.
- ix) Where the revised Market Land Value has not been determined by the Market Land Value Review Date the Market Land Value applicable to the year immediately preceding the Market Land Value Review Date shall be used to determine the Base Rent for the year under review. Once the revised Market

Land Value is determined the Base Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.

- c) If the Lessor fails to exercise his or her rights to require the Market Land Value to be revised before any Market Land Value Review Date then this right may be exercised at any time prior to the next date the Market Land Value is to be reviewed and the revised Base Rent once determined will still be payable from the last Market Land Value Review Date. No succeeding Market Land Value Review Date will be postponed because of the operation of this clause.

8 REVIEW OF BASE RENT FOR FURTHER TERM – BASE RENT PERCENTAGE

- a) The Base Rent Percentage shall be reviewed in accordance with clause 8 b) and such reviewed Base Rent Percentage shall apply for the year commencing on that date and for each subsequent year (subject to clause 5) until the year commencing on the next Base Rent Percentage Review Date.
- b)
 - i) During the six (6) calendar months preceding a Base Rent Percentage Review Date the Lessor may serve on the Lessee a Lessor's Assessment setting out what he or she considers to be the Base Rent Percentage to apply from that Base Rent Percentage Review Date.
 - ii) The Lessor must determine the Base Rent Percentage as the percentage that when multiplied by the applicable Market Land Value results in an amount that would be equal to the market rate of return that would be reasonably expected for a lease of the land the subject of this Lease and for the same Term between a willing lessor and a willing lessee in an arms length transaction wherein the parties both acted knowledgeably, prudently and without compulsion.
 - iii) If the Lessee does not agree with the Base Rent Percentage determined by the Lessor then the Lessee must, if it wishes to dispute such Base Rent Percentage, serve a Dispute Notice on the Lessor within the Dispute Period.
 - iv) If the Lessee does not serve a Dispute Notice within the Dispute Period, the Base Rent Percentage stated in the Lessor's Assessment will be the revised Base Rent Percentage.
 - v) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period then the provisions of clauses 7 b) iv)-vii) apply with the references to Market Land Value in such clauses being read as references to Base Rent Percentage. The valuer must determine the Base Rent Percentage as the percentage that when multiplied by the applicable Market Land Value results in an amount that would be equal to the market rate of return that would be reasonably expected for a lease of the land the subject of this Lease and for the same

Term between a willing lessor and a willing lessee in an arms length transaction wherein the parties both acted knowledgeably, prudently and without compulsion. In determining the Base Rent Percentage the Valuer must have regard to (but is not limited by) rental evidence of leases of land having permitted uses similar or comparable to those of this Lease as well as of leases of land with permitted uses reasonably considered by the valuer as providing a similar market rate of return as is provided by leases of snowfield and tourist related uses.

vi) Where the revised Base Rent Percentage has not been determined by the Base Rent Percentage Review Date the Base Rent Percentage applicable to the year immediately preceding the Base Rent Percentage Review Date shall be used to determine the Base Rent for the year under review. Once the revised Base Rent Percentage is determined the Base Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.

c) If the Lessor fails to exercise his or her rights to require the Base Rent Percentage to be revised before any Base Rent Percentage Review Date then this right may be exercised at any time prior to the next Base Rent Percentage Review Date and the revised Base Rent once determined will still be payable from the last Base Rent Percentage Review Date. No succeeding Base Rent Percentage Review Date will be postponed because of the operation of this clause.

9 STATEMENTS OF GROSS REVENUE

The Lessee must give the Lessor, in the form which the Lessor reasonably requires, an Auditor's Certificate or other form of audit certification acceptable to the Lessor prior to 31 October of each calendar year.

10 ANNUAL ADJUSTMENT OF RENT

- a) Within one (1) month of the Lessor receiving each Auditor's Certificate or other form of audit certification acceptable to the Lessor, the Lessor must give the Lessee an Annual Adjustment Notice.
- b) The Lessee shall pay within fourteen (14) days of the date of the Annual Adjustment Notice the amount, if any, set out in the Annual Adjustment Notice by which the Turnover Rent for the relevant period exceeds the Base Rent paid by the Lessee for such period.

11 GOODS AND SERVICES TAX

GST is payable in addition to the amounts noted in this Schedule.

12 ACCOUNTS AND RECORDS

a) Keeping of Accounts and Records

The Lessee will keep its accounts and records and ensure that those of its sublessees, licensees and managers are adequately kept to permit a true and accurate determination of the Gross Revenue during any Trading Period to be obtained by audit for the purposes of computing the rent payable by the Lessee as herein provided and to permit payment of such rent within the times herein provided.

b) Accounting Period

Neither the Lessee nor any of its sublessees or licensees or other person claiming through or under the Lessee will without the prior written consent of the Lessor adopt any other accounting period than that ending upon the date at Item 18 of the Reference Schedule in each Year.

c) All Transactions to be Incorporated

The Lessee must bring into and incorporate into its accounts and records, and procure to be brought into and incorporated into the accounts and records of its sublessees or licensees, all financial transactions of the Lessee and/or of such sublessees or licensees as the case may be either directly or through any subsidiary or agent relating to the carrying on or in any way in connection with the business of the Lessee or any sublessee or licensee of the Lessee upon the Premises and for the purposes of this covenant the term 'subsidiary' shall have the same meaning as in the *Corporations Act 2001* (Cth) and shall include any company body or enterprise the affairs of which it is within the power of the Lessee to directly or indirectly control.

d) Accounts and Records to be Made Available for Inspection

The Lessee must:

- i) duly enter and keep in suitable books and records to be kept in the English language for that purpose at a proper office on the Premises (or such other place as the Lessor may approve) true particulars and complete accounts and records of all its Gross Revenue arising from the carrying on of its business upon or in connection with the Premises;
- ii) keep the books and records referred to in clause d) i) at all times open for inspection by the Lessor;
- iii) permit the Lessor or any person authorised by the Lessor to take copies and extracts from those books and records referred to in clause d) i);
- iv) at all times render to the Lessor and every person authorised by the Lessor all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove such entries, accounts, books and records to the satisfaction of the Lessor and any authorised person in such manner as he or she may direct; and

- v) furnish the Lessor or any authorised person with all such information as either shall demand concerning Gross Revenue;
- vi) obtain from each of its sublessees and licensees a return showing the certified gross revenue of such sublessee or licensee in any financial year during the continuance of this Lease;
- vii) include in any sublease, licence or any other management agreement or like arrangement entered into by the Lessee the following clauses:
 - A a clause requiring the sublessee or licensee or other person to duly enter and keep in suitable books and records to be kept during the continuance of the sublease or licence at its/their business office of the true particulars and complete accounts and records of all the Gross Revenue of the sublessee or licensee arising from the carrying on of the business of the sublessee or licensee upon or in connection with the Premises or any part thereof;
 - B a clause requiring that such books and records must at all times be open for inspection by the Lessor or any person authorised by him or her and authorising the Lessor or any such person to take copies and extracts of such books and records;
 - C a clause requiring that the sublessee or licensee or other person will at all times render to the Lessor and every such person all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove such entries accounts books and records to the satisfaction of the Lessor and such authorised person in such manner as he or she may direct and furnish the Lessor or such authorised person with all information.

e) No Deductions from Gross Revenue

No monies paid or credited by the Lessee or any person, firm or company claiming through or under the Lessee or debited against the Lessee or any such person, firm or company, nor any monies paid or payable by the Lessee or any such person, firm or company as aforesaid to any other person, firm or company for management expenses shall be deducted or otherwise taken into account in arriving at the amount of any certified Gross Revenue.

f) Balance Sheet and Profit and Loss Account

The Lessee will furnish to the Lessor prior to 31 October in each and every year of the Term of this Lease or as otherwise required by the Lessor true copies of the duly certified balance sheet and profit and loss account of all business of the Lessee relating to the Premises for the year ending on the date in Item 18 of the Reference Schedule provided that in respect to the Lessee's business during the final year of the Term copies of the balance sheet and profit and loss account shall be furnished by the Lessee within ninety (90) days after the date of expiration of this Lease.

g) Understated Gross Revenue

In the event that after inspection by the Lessor or any person authorised by him or her the certified statement of Gross Revenue provided by the Lessee shall be found to be understated by more than two per cent (2%) the Lessee must pay the costs of the Lessor in establishing the discrepancy and for the purposes of this clause and clause 12 h) the certificate of the Lessor's appointed auditor shall be final and binding.

h) Interest to be Paid if Discrepancy

Should any discrepancy be established as referred to in clause 12 g) then in addition to the payment of the Lessee to the Lessor of any rent rightfully due the Lessee shall also pay to the Lessor interest calculated in accordance with the provisions of clause 3.5 of this Lease.

Part B – Table of Rent and Rent Reviews

The following tables summarise the applicable Rent and Rent Reviews in this Lease as a guide only. In the event of any inconsistency, the provisions of Part A of this Schedule 2 apply.

Initial Term of Lease (to be deleted if the Lease is renewed)

Rent/Rent Review	Details
Rent (cl.2)	The greater of Base Rent or Turnover Rent
Base Rent (cl.1)	6% of Market Land Value at Commencing Date
Base Rent for the first year of Term	\$16,005.00
CPI Reviews of Base Rent (cl.3 b)	Every year - ratchet applies
Turnover Rent Percentage Review (cl.4 and 5)	Every 10 years (namely, in 2018) however limited to 7% maximum – ratchet applies

Further Term of Lease

Rent/Rent Review	Details
Market Land Value Review (cl.6 and 7)	Commencing Date of Further Term and every 10 years thereafter – no ratchet applies
Base Rent Percentage Review (cl.6 and 8)	Commencing Date of Further Term and every 10 years thereafter – no ratchet applies
Turnover Rent Percentage Review (cls.4 and 7)	Commencing Date of Further Term and every 10 years thereof – no ratchet applies
CPI Review of Base Rent (cl.3 and 7)	Every year except Market Land Value Review years - ratchet applies

PART C (Lease Grant Fee)

13 LEASE GRANT FEE

- a) The Lease Grant Fee is the amount specified in Item 22 of the Reference Schedule.
- b) The Lessee must pay the Lease Grant Fee to the Lessor at the address nominated by the Lessor, in such a manner as the Lessor shall direct and otherwise in accordance with this clause.
- c) Where Item 23 of the Reference Schedule specifies that the Lease Grant Fee Payment Option is one payment on the Commencing Date, the Lessee must pay the Lease Grant Fee to the Lessor on the Commencing Date.
- d) Where Item 23 of the Reference Schedule specifies that the Lease Grant Fee Payment Option is three payments over 2 years, the Lessee must pay the Lease Grant Fee to the Lessor as follows:
 - i) one third of the Lease Grant Fee on the Commencing Date,
 - ii) one third of the Lease Grant Fee on 1 July 2009 together with 12 months interest on the balance of the Lease Grant Fee outstanding as at 2 July 2008 calculated at the TCorp Bonds rate for December 2010 as applicable on 1 July 2008 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report, and
 - ii) one third of the Lease Grant Fee on 1 July 2010 together with 12 months interest on the balance of the Lease Grant Fee outstanding as at 2 July 2009 calculated at the TCorp Bonds rate for December 2010 as applicable on 1 July 2009 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report.

- e) Where Item 23 of the Reference Schedule specifies that the Lease Grant Fee Payment Option is four payments over 3 years, the Lessee must pay the Lease Grant Fee to the Lessor as follows:
- i) one quarter of the Lease Grant Fee on the Commencing Date,
 - ii) one quarter of the Lease Grant Fee on 1 July 2009 together with 12 months interest on the balance of the Lease Grant Fee outstanding as at 2 July 2008 calculated at the TCorp Bonds rate for December 2010 as applicable on 1 July 2008 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report,
 - iii) one quarter of the Lease Grant Fee on 1 July 2010 together with 12 months interest on the balance of the Lease Grant Fee outstanding as at 2 July 2009 calculated at the TCorp Bonds rate for December 2010 as applicable on 1 July 2009 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report, and
 - iv) one quarter of the Lease Grant Fee on 1 July 2011 together with 12 months interest on the balance of the Lease Grant Fee outstanding as at 2 July 2010 calculated at the TCorp Bonds rate for December 2010 as applicable on 1 July 2010 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report.
- f) This clause 13 is an essential term for the purposes of clause 14 of the Lease.

**SCHEDULE 3
ADDITIONAL COVENANTS
SCHEDULE**

SKI CLUBS

1 OCCUPATION OF PREMISES

- a) No person, other than bona fide on-site managers and/or staff of the premises, shall occupy the accommodation for more than six weeks in any snow season nor for more than twenty-six weeks in any year;
- b) Bona fide on-site managers and/or staff are only permitted to occupy the accommodation for purposes associated with the actual management of the accommodation where a full-time presence is essential. Lessees will be required to obtain the Lessor's approval for any long-term occupancy for either management or staff. Occupancy of the accommodation on the basis of private, residential premises is not permitted;
- c) For the purposes of this Lease, occupation of any Premises by the spouse or any descendant, parent, brother, sister or any descendant of the brother or sister of the Lessee or any sublessee, or where the Lessee or sublessee is a company by a director thereof or a shareholder therein or any descendant, parent, brother, sister or any descendant of the brother or sister of the director or shareholder, or any person authorised by the Lessee or sublessee is deemed to be occupation by the Lessee or sublessee respectively.

2 OVERSNOW VEHICLES

- a) The Lessee will not:
 - i) directly or indirectly operate or allow to be operated any oversnow vehicle except an oversnow vehicle authorised in conformity with subsisting operating procedures for the time being of the Lessor and the Roads and Traffic Authority or its successor including the requirement to prominently display on such vehicle an authorised label issued by the Lessor which is appropriate to the Premises;
 - ii) allow any oversnow vehicle to be operated by a person who does not hold a consent issued by the Lessor and a licence issued by the Roads and Traffic Authority or its successor for the operation of such vehicles;

- iii) use or allow to be used any such authorised oversnow vehicle within the Park other than upon those routes specified in the consent issued by the Lessor and other than for management purposes incidental to the conduct of the Premises excluding recreational use and the towing of skiers;
 - iv) operate or allow to be operated or kept in connection with the Premises more than the number of oversnow vehicles stipulated at Item 20 of the Reference Schedule at any one time or allow any sublessee or licensee to operate any additional oversnow vehicles in connection with its use of the Premises; nor
 - v) charge a fee to any person for the use of any such authorised oversnow vehicle without the prior approval in writing of the Lessor.
- b) For the purposes of this clause 2, 'Oversnow Vehicle' means such vehicles as snow cats, skidoos and other machines as approved by the Lessor for the transport of persons or freight over snow.

3 RULES OR MEMORANDUM AND ARTICLES OF ASSOCIATION

The affairs of the Lessee shall be governed by rules, a Memorandum and Articles of Association or a constitution as the case may be AND such rules, Memorandum and Articles of Association or constitution shall be made in accordance with the statutory provisions relating to cooperative societies under the *Co-operatives Act 1992* or incorporated associations under the *Associations Incorporation Act 1984* or corporations under the *Corporations Act 2001 (Commonwealth)* and shall contain such additions or variations as may be reasonably required by the Lessor having regard to current policy with respect to the constitution and operation of ski clubs within the Park PROVIDED that such additions or variations shall not be inconsistent with the aforesaid statutory provisions AND the Lessee shall if requested by the Lessor furnish to the Lessor certified copies of its rules, Memorandum and Articles of Association or constitution AND FURTHER the Lessee shall not without the prior consent in writing of the Lessor make any addition, alteration or amendment to or deletion from its rules, Memorandum and Articles of Association or constitution.

4 NUMBER OF MEMBERS AND VOTING RIGHTS

The number of members of the Lessee will not at any time be less than the number stipulated in the table below being persons over the age of sixteen (16) years and no member shall be entitled to exercise more than one tenth of the voting rights at any meeting of the Lessee's members AND for the purpose of determining whether any member is exercising more than one tenth of the voting rights at a meeting the votes attaching to the member's spouse, descendants, parents, brothers and sisters shall be deemed to form part of the voting rights of that member AND FURTHER the Lessee will supply the Lessor upon request with such details as the Lessor may reasonably require for the purpose of establishing that the Lessee is complying with the clause.

Lodge size	Minimum Number of Members
10 beds or fewer	50 members
11-15 beds	75 members
16-20 beds	100 members
21-25 beds	125 members
26-30 beds	150 members
31-35 beds	175 members
Over 35 beds	200 members

5 UNUSED ACCOMMODATION

The Lessee may offer to the general public accommodation which has not been taken up by members provided in so doing the Lessee does not exceed the limit specified at Item 5 of the Reference Schedule.

6 LIQUOR LICENCE

The Lessee shall not without the prior written consent of the Lessor sell, offer for sale, supply or deliver any liquor on the Premises nor apply for any licence to do so. Where the Lessor has given written consent to the Lessee to sell liquor on the Premises the Lessee must obtain all of the licences and approvals required by the *Liquor Act 1982* and any other relevant statute and must pay such fees including liquor licence fees as may be payable in order to obtain and maintain such licences and approvals.

7 NO GAMBLING FACILITIES

The Lessee shall not operate or permit to be operated upon the Premises any poker machine or other gambling device or facility of a similar nature nor apply for any licence, permit or authority to install or operate such devices or facilities. The Lessee shall observe these requirements.

8 ESSENTIAL TERMS

The following clauses of this Schedule are, in addition to the terms set out in clause 14.2 of this Lease, essential terms of this Lease:

- a) Clause 6 (Liquor Licence) and
- b) Clause 7 (No Gambling Facilities).

**SCHEDULE 4
ADJOINING LICENCE
AREA SCHEDULE**

1 LEASE TERMS TO APPLY

- a) All the provisions of this Lease with respect to the Premises are the terms of the licence of the Adjoining Licence Area, except as set out in this Schedule 4.

2 MODIFICATION OF LEASE TERMS

- a) In addition to clauses 3, 4 and 5 below, the following obligations and promises in this Lease with respect to the Premises are modified as follows in respect to the Adjoining Licence Area:
- i) there is no grant of exclusive possession or anything in the nature of a grant of a leasehold interest over the Adjoining Licence Area;
 - ii) there is no obligation for the Lessee to pay Rent or the Lease Grant Fee to the Lessor;
 - iii) the Lessee must pay:
 - A the Outgoings;
 - B the costs set out in clause 15.9 of this Lease excepting those costs for the preparation completion stamping and registration of the Lease and any variation of it as set out in clause 15.9.1;with respect to the Adjoining Licence Area;
 - iv) the Lessee must use the Adjoining Licence Area for the Permitted Use of the Adjoining Licence Area rather than the Permitted Use for the Premises and the Lessee must not use or permit the use of the Adjoining Licence Area for any other purpose;
 - v) the Lessee is not obliged to place any signs on the Adjoining Licence Area in addition to those signs required on the Premises under clause 5.16 of this Lease;
 - vi) the Lessor does not rely upon its statutory right of entry or its rights of entry under this Lease to enter the Adjoining Licence Area as the Lessor, his or her agents, employees and invitees may at all times enter the Adjoining Licence Area for any reason whatsoever;

- vii) the licence over the Adjoining Licence Area is terminable at will by the Lessor and the Lessor is not obliged to serve a notice of breach of covenant upon the Lessee;
- viii) there is no grant of quiet enjoyment and the holding over provisions do not apply to the Adjoining Licence Area;

3 FURTHER LICENCE OF ADJOINING LICENCE AREA

If the Lessor grants the Lessee a Further Lease in respect to the Premises, then the Lessor grants a licence for the Term of the Further Lease in respect to the Adjoining Licence Area.

4 ADJOINING LICENCE AREA MAINTENANCE

- a) The Lessee shall be jointly and severally liable with such other lessees that have been permitted to use the Adjoining Licence Area by the Lessor to maintain the Adjoining Licence Area and any improvements and structures thereon in accordance with clause 7 of this Lease.
- b) The costs associated with such maintenance shall be apportioned between the users of the Adjoining Licence Area equally for their use of that part of the Adjoining Licence Area which is shared.
- c) If the Lessor is of the view, reasonably held, that the Lessee and other lessees have not adequately maintained the Adjoining Licence Area then he or she may maintain the Adjoining Licence Area and all costs associated with the Lessor exercising its rights under this clause 4(c) shall be borne in equal parts by the Lessee and other such lessees for their use of the Adjoining Licence Area.

5 ADJOINING LICENCE AREA FEE

- a) The Lessee must pay to the Lessor the Licence Fee on the Commencing Date and on each anniversary after the Commencing Date for the Term of this Lease and any Further Term.
- b) The Licence Fee will be reviewed in accordance with this clause 5.
- c) For the first year of the Term the Licence Fee shall be the amount set out in Item 12 of the Reference Schedule.

- d) For the second and each subsequent year of the Term the Licence Fee shall be reviewed on each anniversary of the Commencing Date in accordance with the clause 3 b) of Schedule 2 as if a reference to Rent in that clause were a reference to the Licence Fee.
- e) At the Commencing Date of any Further Term and every 10 years thereafter, the Licence Fee will be reviewed to a current market value in accordance with clause 5 f) and in the case of such a review, clause 5 d) shall not apply.
- f) During the six (6) calendar months preceding the dates in clause 5 e), the Lessor may serve on the Lessee an assessment setting out what he or she considers to be the current market value of the Licence Fee. If the Lessee does not agree with the assessment the Lessee will serve a dispute notice on the Lessor within 28 days of receiving the assessment. If the Lessee does not serve a dispute notice within the 28 days then the Licence Fee will become the current market value of the Licence Fee as set out in the assessment. If the Lessee does serve a dispute notice within the relevant period, then the Licence Fee will be determined in accordance with the provisions of clause 7 b) (iv) – (viii) of Schedule 2 and all references to Market Land Value in that clause shall be read as Licence Fee and references to Market Land Value Review Date shall be read as the dates set out in this clause 5 e).

6 WORKS UNDERTAKEN IN AN ADJOINING LICENCE AREA

- a) The Lessee must perform such works on the Adjoining Licence Area (such as for the purposes of creating car parking, stairs, pathways, plinths and hardstands) as are reasonably required by the Lessor and within a reasonable time, depending upon the nature of the works to be performed.

EXECUTED by me, Vince Rago, Manager, Business Operations Unit, Department of Environment and Climate Change for and on behalf of the MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT, 1974 as duly authorised delegate.

EXECUTED as a Deed

EXECUTED for and on behalf of the MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974 by his or her duly appointed officer in the presence of:

Witness

Name of Witness (print)

Officer

Name of Officer (print)

EXECUTED by SHORTLAND ALPINE CLUB CO-OPERATIVE LIMITED

SIGNED for and on behalf of SHORTLAND

ALPINE CLUB CO-OPERATIVE LTD
(insert name of Lessee)

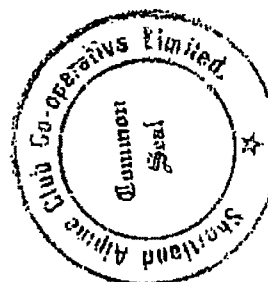
A.C.N. ABN 42 791 472 128.
(insert Lessee A.C.N.)
pursuant to section 47 of the Co-operatives Act 1992)

by FLORENCE MARGARET LLOYD.
(insert name of Director)

in the presence of STUART SEANAN BASAL
(insert name of witness not a party to this Lease)

and by Denise Paterson.
(insert name of Director or Company Secretary)

in the presence of STUART SEANAN BASAL
(insert name of witness not a party to this Lease)



(signature of Director)

director
(signature of witness)

(signature of Director or Company Secretary)

director
(signature of witness)

Form: 07L
Release: 4-5

LEASE

New South Wales
Real Property Act 1900



AN946514N

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Revenue NSW use only

NEW SOUTH WALES DUTY

26-10-2018

0009445491-002

TRANSFER

DUTYABLE AMOUNT \$ *****138,600.00

DUTY \$ *****3,341.00

(A) TORRENS TITLE

Property leased

Folio Identifier 613/1158018

and known as Sundeck Hotel, Perisher Valley

(B) LODGED BY

Document
Collection
Box

813E

Name, Address or DX, Telephone, and Customer Account Number if any

Lea Armstrong, Crown Solicitor

DX 19 SYDNEY

Tel: 9224-5079 LLPN: 123589U

Reference: 200801744 T5:CEA D2018/482264

CODE

L

(C) LESSOR

~~MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974~~
~~ON BEHALF OF THE STATE OF NEW SOUTH WALES~~ (ABN 30 841 387 271)

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

SUNDECK HOTEL PTY LTD
ACN 051 092 490

(F)

TENANCY:

(G) 1. TERM 16 years

2. COMMENCING DATE 1 July 2012

3. TERMINATING DATE 30 June 2028

4. With an **OPTION TO RENEW** for a period of 30 years
set out in clause 16 of Annexure "A"

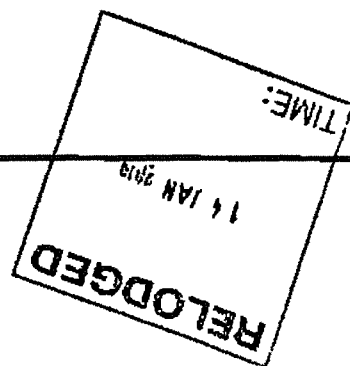
5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** "A" hereto.

8. Incorporates the provisions set out in N.A.
No. N.A.

9. The **RENT** is set out in clause No. 2 of Schedule 2



I am authorised to make this amendment. *Lea Armstrong, Crown Solicitor* 11/01/19

DATE 4 September 2018

(H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence.
[See note* below].

Signature of witness:

Name of witness: JOOI WEINBERGER
Address of witness: 59-61 GOULBURN ST
SYDNEY 2000

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of authorised officer:

Authorised officer's name: Stuart Schramm
Authority of officer: Delegate
Signing on behalf of: Minister administering
the National Parks & Wildlife Act 1974
on behalf of the State of New South Wales
Director, Property & Commercial Branch &
National Parks & Wildlife Service

I certify I am an eligible witness and that the lessee signed this dealing in my presence.
[See note* below].

Signature of witness:

Name of witness:
Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the lessee. AND EXECUTED BY THE COMPANY NAMED BELOW BY ITS AUTHORISED OFFICER PURSUANT TO SP27 OF THE REGULATIONS 2001

Signature of lessee:

NAME OF AUTHORISED OFFICER: CLARENDON WILKES
OFFICE H&O: SALE DIRECTOR/SECRETARY
COMPANY: SUNOBER HOTEL PTY LIMITED
AC N: 051092490

(I) STATUTORY DECLARATION*

I

solemnly and sincerely declare that—

1. The time for the exercise of option to in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on
in the presence of of

☐ Justice of the Peace (J.P. Number:) ☐ Practising Solicitor

☐ Other qualified witness [specify]

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a [Omit ID No.]

Signature of witness:

Signature of applicant:

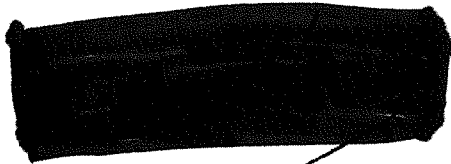
* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

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THIS IS ANNEXURE 'A' TO THE LEASE BETWEEN

THE HONOURABLE GABRIELLE UPTON, Minister for the Environment being for the time being the **MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974** on behalf of **THE STATE OF NEW SOUTH WALES** (Lessor)

and

SUNDECK HOTEL PTY LIMITED ACN 051 092 490 (Lessee)

DATED the 4th day of September 2018

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease unless the contrary intention appears:

Aboriginal Object shall have the same meaning as that term has in the Act;

Act means the *National Parks and Wildlife Act 1974*.

Accommodation Register means an accommodation register in a form and with the content approved by the Department, that contains full information on persons staying overnight at the Premises including:

- a) the name of the Premises; and
- b) the Maximum Number of Persons Overnight; and
- c) the names of all Persons referred to in b) above and the room numbers of all Persons so accommodated; and
- d) the numbers of all persons being under five (5) years of age; and
- e) the time and dates the Persons referred to in c) above arrive at and depart from the Premises.

Additional Beds Allocation means an approval by the Lessor to the Lessee for the Lessee to use the number of additional beds in the Premises specified in Item 4A of the Reference Schedule subject to compliance with the terms of this Lease, in particular, clause 5.3 of this Lease and the Additional Beds Allocation Schedule. For the sake of clarity, if Item 4A of the Reference Schedule is marked 'NA' there is no Additional Bed Allocation.

Additional Beds Allocation Fee means the amount of money payable by the Lessee to the Lessor pursuant to clause 3.3A and as specified at Item 24 of the Reference Schedule.

Additional Beds Allocation Schedule means Schedule 5 of this Lease.

Additional Covenants Schedule means Schedule 3 of this Lease.

Adjoining Licence Area means any area or areas of land immediately adjoining or in the

vicinity of the Premises, which is described at Item 10 of the Reference Schedule. For the sake of clarity, if Item 10 of the Reference Schedule is marked 'NA' there is no Adjoining Licence Area.

Assistance Animal means an animal referred to in section 9 (guide dogs, hearing assistance dogs and trained animals) in the *Disability Discrimination Act 1992* of the Commonwealth.

Australian Standards means any relevant Australian Standard developed by Standards Australia as amended, revised or replaced from time to time.

Authorised Officer means the Chief Executive and any other person performing the functions of the Chief Executive or any other person nominated by the Minister, the Secretary or the Chief Executive to act as an authorised officer for the purpose of this Lease.

Authority means a document issued by the Secretary that identifies the Authorised Officer and which authorises that person to exercise the rights of the Lessor under this Lease.

Bank means the bank that provides the Bank Guarantee pursuant to clause 3.6.

Bank Guarantee means the bank guarantee required by clause 3.6 and from a bank and in a form approved by the Lessor for the sum stated at Item 2 of the Reference Schedule (which amount may be reviewed by the Lessor from time to time and may be increased as shall be determined by the Lessor having regard to all matters relevant in the opinion of the Lessor to the sufficiency of the security) to be held by the Lessor for the due and proper performance by the Lessee of all its obligations under this Lease or such other security as set out in clause 3.6.7.

Bed means a piece or a part of a piece of furniture on which a person may sleep.

Bed Numbers means the number of Beds stipulated at Item 4 of the Reference Schedule as may be increased as provided in clause 6.1.6 which may be used for the purpose of accommodating the Maximum Number Of Persons Overnight on any given night. For the purposes of determining Bed Numbers:

- (a) a Bed that is designed to accommodate one (1) Person shall count as one (1) Bed; and
- (b) a Bed that is designed to accommodate two (2) or more Persons shall count as two or more Beds.

Breach means a breach, default or failure by the Lessee and/or the Lessee's Employees and Agents to comply with a term, covenant or obligation in this Lease including where relevant to the context, a default as described in clause 14.4.

Building Code means the building and development control codes, policies, regulations and requirements of a Relevant Authority which apply from time to time in respect to structures and improvements forming part of, or which are constructed or situated on, or within the Premises.

Chief Executive means the Chief Executive of the Office of Environment and Heritage, National Parks and Wildlife Service and includes any person for the time being acting as such or in such alternative position or office as the Lessor may notify from time to time.

Commencing Date means the commencing date of this Lease stipulated at Item (G) 2 on the Lease cover page.

Consent Authority means the Relevant Authority, in each case vested with the authority

and mandate to grant development consent or approval under Part 4 or Part 5 of the *Environmental Planning and Assessment Act 1979*.

Community Service Contribution means a contribution by the Lessee for the cost of maintaining any community service in the Park, including but not limited to all expenses in connection with:

- a) the provision of medical services in the Perisher Range Resorts;
- b) snow clearing and road maintenance;
- c) the disposal of waste, water, sewerage; and
- d) water supply.

Contamination means any toxic or hazardous substance, gas liquid or material, any waste or discharge (other than properly and lawfully discharged sewerage) or any pollutant.

Department means the Office of Environment and Heritage.

Environmental Research and Rehabilitation Contribution means the amount at Item 21 of the Reference Schedule as a contribution to the cost of environmental monitoring, research and rehabilitation of ski resorts in the Park.

Exotics and Ornamentals means any exotic or ornamental plants or seeds not indigenous to the locality.

Filming Activity has the same meaning as that phrase has in the *Filming Approval Act 2004*.

Fire Safety Measures has the same meaning as in the Environmental Planning and Assessment Regulation 2000.

Food Premises Charges means the amounts as are assessed by the Lessor from time to time pursuant to the Act for the cost of food-safety inspections of the Premises, food safety training and consultations, guidance and advice to assist the Lessee and the Lessee's Employees and Agents in complying with the Law in relation to food safety and developing safe working practices in relation to food storage and preparation.

Further Lease means a lease granted by the Lessor pursuant to the exercise of the Option by the Lessee.

Further Term means the term of the Further Lease noted at Item 13 of the Reference Schedule.

Historic Relic shall have the same meaning as the term 'relic' as defined in the *Heritage Act 1977*.

Hydrocarbon Storage Systems means one or more completely buried, partially buried or above ground tanks and any pipes to and from or associated with the tanks that contain or are intended to contain hydrocarbon product (for example, diesel, heating oil, petroleum).

Improvements means all buildings structures improvements erections and Services and includes any alteration or addition to the same which are constructed, installed or brought on the Premises, whether by the Lessee or Lessor, whether before or after the Commencing Date, whether in accordance with the covenants of this Lease or otherwise and whether

completed or uncompleted, but does not include the Lessee's Fixtures.

Law means any law whether common law or any law under any statute, ordinance, regulation or code applicable in the State of New South Wales.

Lease means this Lease and all annexures plans and schedules to this Lease and any variations of this Lease.

Lease Grant Fee means the amount of money payable by the Lessee to the Lessor pursuant to clause 3.3 and as specified in Part C of the Rent Schedule and at Item 22 of the Reference Schedule.

Lease Grant Fee Payment Option means the Lease Grant Fee payment option elected by the Lessee as specified at Item 23 of the Reference Schedule.

Lessee means the Lessee stipulated as the Lessee on the lease cover page and means the successors and permitted assigns of the Lessee and where not repugnant to the context includes the Lessee's Employees and Agents.

Lessee's Employees and Agents means each of the Lessee's employees, agents, officers, contractors, service suppliers, sublessees, concessionaires, invitees and those persons who at any time are under the control of and in or on the Premises with the consent of the Lessee (expressed or implied).

Lessee's Fixtures means all fixtures and fittings constructed or installed on the Premises by the Lessee or brought onto the Premises by the Lessee and includes plant machinery furnishings equipment utensils shelving counters safes or other articles in the nature of trade or tenant's fixtures, but does not include the Improvements.

Lessor means the Minister for the time being administering the Act and includes his or her successors in office and where not repugnant to the context includes the servants and agents of the Lessor.

Licence Fee means the amount of money payable by the Lessee to the Lessor, if any, as determined by the Lessor from time to time, initially being the amount set out at Item 12 of the Reference Schedule.

Liquor has the same meaning as in the *Liquor Act 1982* (NSW).

Maximum Number of Persons Overnight means the maximum number of Persons permitted to remain at the Premises on any given night (including guests of the Lessee, the public, members, associates, agents, employees or contractors of the Lessee) stipulated at Item 5 of the Reference Schedule.

Minister shall mean the Minister for the time being administering the Act and includes his or her successors in office.

Native Title has the same meaning as in the *Native Title Act* (Cth) 1993.

NA means not applicable.

Objects shall mean Aboriginal Objects and/or Historic Relics.

Option means the option to take a Further Lease as provided in clause 16.

Outgoings means all amounts, costs, expenses of any kind whatsoever assessed, incurred or levied in relation to the Premises or upon the Lessor or the Lessee on account thereof including:

- a) Rates, Taxes and other charges imposed by any Relevant Authority;
- b) charges for the supply (including charges for installation and connection) of Services to the Premises;
- c) supplying, renting, operating, maintaining, servicing, repairing and replacing Services and upgrading Services to comply with requirements or orders of Relevant Authorities or any Law;
- d) Community Service Contribution;
- e) Environmental Research and Rehabilitation contribution; and
- f) Food Premises Charges.

Oversnow vehicle means such vehicles as snow cats, skidoos and other machines as approved by the Lessor for the transport of persons or freight over snow.

Park means the area of land permanently reserved under the Act and for the time being known as Kosciuszko National Park.

Perisher Range Resorts means those areas of the Park known as Perisher Valley, Smiggin Holes, Guthega and Blue Cow and, for the purposes of this Lease, also means Wilson's Valley, Diggers Creek and Kosciuszko Mountain Retreat.

Perisher Range Resorts Environmental Management System means the document or documents that specifies the Lessor's environmental management system for the Perisher Range Resorts applicable from time to time or such other document or documents that replaces it and fulfils in substance the same functions.

Permitted Use means the use prescribed at Item 3 of Reference Schedule.

Permitted Use of the Adjoining Licensed Area means the use prescribed at Item 11 of Reference Schedule.

Person means any human being whether man, woman or child who has attained five (5) years of age.

Plan of Management means the plan of management prepared and adopted for the Park by the Lessor as amended from time to time pursuant to the Act or such other plan that replaces it and fulfils in substance the same functions.

Plumbing Facilities means the toilets, sinks and sewerage and drainage system (including pipes, lines and connections) on, in or under the Premises.

Premises means the land described as the Premises at Item 1 of the Reference Schedule and where this Lease provides or the context of this Lease so admits any part of that land and includes any structures and improvements on that land (and includes the Improvements and the Lessee's Fixtures) and may by virtue of clause 17 of this Lease include the Adjoining Licence Area.

Prescribed Rate means the rate prescribed under the Act for overdue monies payable in respect to leases.

Rates means rates, land taxes, levies, assessments and other charges (including charges for consumption and garbage and waste removal), together with any interest, fines and penalties in connection with them.

Reference Schedule means Schedule 1 of this Lease.

Regulations means the regulations, from time to time, made under the Act.

Relevant Authority means, in respect to a particular context or circumstances, any government, administrative or judicial body, department, commission, public authority, tribunal or entity having jurisdiction and responsibility in respect to that context or circumstance including but not limited to a Consent Authority and where not repugnant to the context includes the Lessor.

Rent means the rent as determined in accordance with Part A of the Rent Schedule.

Rent Schedule means Schedule 2 of this Lease.

Secretary means the Secretary of the Department of Premier and Cabinet and includes any person for the time being acting as such or in such alternative position or office as the Lessor may notify from time to time.

Services means the services running through or servicing the Premises including but not limited to air conditioning, electricity, power, gas, oil, water, sewerage, telecommunications, fire hydrant, fire service sprinkler and public address and includes all pipes, wires, cables, ducts and other conduits in connection with them.

Taxes means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any authority (including stamp and transaction duties), (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income or capital gains of the Lessor.

Term means the Term of this Lease stipulated at Item (G) 1 on the Lease cover page.

Terminating Date means the terminating date of this Lease stipulated at Item (G) 3 on the Lease cover page.

Works means all works with respect to the Improvements (whether to the exterior or interior), and/or the Lessee's Fixtures and/or any other part of the Premises including, where the context of the provisions of this Lease so permits, installations, construction, repairs, renovations, maintenance, restoration, alterations (including structural alterations), additions, renovations and improvements, demolition and works to the Services.

There may also be other words, which have a prescribed meaning for the purposes of this Lease, which are set out in the Rent Schedule and Additional Covenants Schedule.

1.2 Interpretation

In this Lease unless the context otherwise requires:

- 1.2.1 words denoting the singular number shall include the plural and vice versa;
- 1.2.2 words denoting any gender shall include all genders;
- 1.2.3 words denoting individuals shall include corporations and vice versa;
- 1.2.4 reference to any Act of Parliament or regulation or ordinance or to any section or provision thereof shall include any statutory modification or re-enactment thereof or any statutory provision substituted therefore and ordinances, by-laws, regulations and other statutory instruments issued there under;

- 1.2.5 references to clauses, annexures and schedules are references to clauses, annexures and schedules of this Lease;
- 1.2.6 references to any deed, agreement, licence, instrument or any document or register shall be deemed to include references to that deed, agreement, licence, instrument or document or register as amended, novated, supplemented or replaced from time to time;
- 1.2.7 where a Schedule contains covenants or obligations of the Lessee or the Lessor then the covenant or obligation so expressed shall be read and construed and shall constitute a covenant or obligation on the part of the Lessee or the Lessor, as the case may be, to be performed or observed under this Lease;
- 1.2.8 a reference to any party or to a Relevant Authority or to any other person, corporation or association shall be a reference to them as so constituted from time to time and shall include their successors and permitted assigns and in the case of a Relevant Authority means the body which at the relevant time substantially fulfils the functions of the Relevant Authority;
- 1.2.9 a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.
- 1.2.10 where a clause specifies that the Lessor has a right remedy action or power over or in relation to the Lessee such a clause is not to be construed as restricting limiting or prejudicing any other right remedy action or power of the Lessor arising from any Law or this Lease.

1.3 Headings

Headings are for ease of reference only and does not affect the construction of this Lease.

1.4 Currency

Unless otherwise stated all currencies referred to in this Lease are in Australian dollars.

1.5 Governing Law

This Lease is governed by, and construed in accordance with the law of New South Wales and the parties submit to the jurisdiction of the Courts of New South Wales.

1.6 Entire Agreement

This Lease constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior negotiations, understandings and discussions between the parties. No modifications to this Lease shall be effective unless in writing signed by the parties.

1.7 Performance on Next Working Day

Where under or pursuant to this Lease or anything done hereunder the day on or by which

any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in New South Wales, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

1.8 Joint and Several Liability

Any covenant or agreement on the part of or in favour of two or more persons shall be deemed to bind them or be in favour of them jointly and each of them severally.

1.9 Exclusion of Implied Covenants and Powers

The covenants and powers implied in every lease by virtue of Sections 84, 85, 132, 133, 133A and 133B of the *Conveyancing Act 1919* shall not apply or be implied in this Lease except in so far as the same or some part or parts thereof are expressly included in the covenants contained in this Lease or are incapable by law of exclusion.

1.10 Secretary

For the purposes of administering this Lease, the Secretary, the Chief Executive and any authorised delegate of the Minister, the Secretary or the Chief Executive have authorisation to act on the Lessor's behalf and exercise the Lessor's authority pursuant to the provisions of this Lease.

1.11 Counterparts

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

1.12 Lessee's Employees and Agents

If this Lease prohibits the Lessee from doing a thing, then:

- 1.12.1 the Lessee must do everything necessary to ensure that the Lessee's Employees and Agents do not do that thing; and
- 1.12.2 the Lessee must not allow or cause any person to do that thing.

2 GRANT

2.1 Grant

2.1.1 Pursuant to the provisions of section 151 of the Act the Lessor leases to the Lessee the Premises and the Lessee hereby accepts the lease subject to the provisions of this Lease.

2.1.2 The Lessor grants to the Lessee for the Term or sooner termination or surrender of this Lease:

- a) exclusive possession of the Premises subject to this Lease and the Law;

- b) use and enjoyment of the Improvements and Lessee's Fixtures; and
- c) the non-exclusive use of the Adjoining Licence Area subject to such restrictions as are specified by Law or this Lease and in accordance with clause 17 of this Lease.

2.1.3 The Lessee acknowledges and agrees that the Lessor reserves the right at any time to resurvey the area of the Premises and if that resurvey discloses any variation from the area of the Premises previously surveyed or a variation in the position of the boundaries of the Premises:

- a) the Lessee agrees to enter into a new lease for the balance of the Term then remaining unless otherwise agreed by the parties on the same terms and conditions as this Lease except that the definition of Premises shall be varied to reflect the correct area or boundary;
- b) the Lessee is not required to enter into a new lease as provided in clause 2.1.3 a) if in the opinion of the Lessee, reasonably held, the variation of the area or boundary has a material adverse effect upon the Lessee's business conducted on the Premises and if such is the case the Lessee must promptly execute and provide to the Lessor an executed surrender of Lease;
- c) the Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind this Lease nor have any other rights in respect to such variation except the right to surrender the Lease pursuant to clause 2.1.3 b).

2.1.4 The Lessee acknowledges and agrees that if the Lessor wishes to upgrade any adjoining road or track for the purposes of establishing a formed road, the Lessor reserves the right at any time to resurvey the area of the Premises to exclude the land on which the road (and its ancillary services) are located; and

- a) in the case where the area of the Premises is affected to a minor degree, the Lessee agrees to enter into a new lease for the balance of the Term then remaining unless otherwise agreed by the parties on the same terms and conditions as this Lease except that the definition of Premises shall be varied to exclude the land on which the road (and its ancillary services) are located;
- b) in the event that the Lessor does not require the Lessee to enter into a new lease as provided in clause 2.1.4 a) then if in the opinion of the Lessee, reasonably held, the variation of the area or boundary has a material adverse effect upon the Lessee's business conducted on the Premises and if such is the case the Lessee may promptly execute and provide to the Lessor an executed surrender of Lease;
- c) the Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind this Lease nor have any other rights in respect to such variation except the right to surrender the Lease pursuant to clause 2.1.4 b).

- 2.1.5 Where the Lessor forms the opinion, reasonably held, that easements or restrictions are required to be created to burden or benefit the Premises for the benefit of other lessees in the Park, the public, utility providers or the Lessor and serves a notice on the Lessee to that effect, then the Lessee must promptly execute all necessary documents evidencing consent to the creation of such easements or restrictions as described in that notice and will not prevent or hinder the Lessor in procuring the creation of the same by way of caveat or otherwise.
- 2.1.6 Deleted.
- 2.1.7 The Lessee permits the Lessor its agents, contractors and employees to enter and occupy the Premises for the purpose of performing maintenance works and works caused by the failures or faults in the Services or pipes and/or for purposes of performing works for the relocation of the Lessor's Services or pipes. To this end, the Lessor its agents, contractors and employees may operate, repaint, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other thing the Lessor considers are necessary or appropriate to any of its Services or to construct new Services and for these purposes the Lessor and the Lessor's employees agents and contractors may carry out any work on, below or above the surface of the Land. For the purposes of this clause, the Lessor will give the Lessee such reasonable notice requesting access as the nature of the situation requires and in the case of emergency no notice is required.
- 2.1.8 The Lessee is not entitled to make any objection or claim compensation from the Lessor or to rescind or terminate this Lease nor have any other rights if the Lessor exercises its rights under this clause 2, except where the Lessor exercises its rights under clause 2.1.3 or clause 2.1.4 and then the Lessee may exercise its right to surrender the Lease pursuant to clause 2.1.3 b) or clause 2.1.4 b) as the case may be.

2.2 Term

This Lease is granted for the Term unless otherwise terminated in accordance with this Lease.

2.3 Representations

The Lessee represents and warrants that:

- 2.3.1 it has power to enter into and observe its obligations under this Lease; and
- 2.3.2 it has in full force and effect the authorisations necessary to enter into this Lease, observe obligations under it, and allow it to be enforced; and
- 2.3.3 its obligations under this Lease are valid and binding and are enforceable against it in accordance with its terms; and
- 2.3.4 this Lease does not contravene its constituent documents (when the Lessee is a company) or any Laws or any of its obligations or undertakings by which it or any

of its assets are bound or cause a limitation on its powers or, when the Lessee is a company, the powers of its directors, to be exceeded.

3 LEASE PAYMENTS

3.1 To Pay Rent

The Lessee must pay to the Lessor the yearly Rent without any deduction whatsoever.

3.2 Manner of Payment of Rent

The Lessee must pay all Rent and other monies payable by the Lessee to the Lessor at the address nominated by the Lessor from time to time and in such manner as the Lessor shall in writing direct.

3.3 Lease Grant Fee

In consideration of the Lessor agreeing to grant this Lease, the Lessee must pay to the Lessor the Lease Grant Fee. The Lease Grant Fee is not refundable in any circumstances including without limitation, if the Lease is terminated or surrendered.

3.3A Additional Beds Allocation Fee

If the Lessor grants to the Lessee an Additional Beds Allocation, in consideration of the Lessor agreeing to that grant, the Lessee must pay to the Lessor the Additional Beds Allocation Fee. The Additional Beds Allocation Fee is not refundable in any circumstances including without limitation, if the Lease is terminated or surrendered.

3.4 Outgoings

3.4.1 The Lessee must pay all Outgoings as and when Outgoings become due for payment.

3.4.2 The Lessee must, if required by the Lessor, produce to the Lessor receipts for payment of any Outgoing. If the Lessee fails to pay any Outgoing the Lessor may pay such amount and any amount paid by the Lessor may be recovered by the Lessor from the Lessee as if the amount was rent in arrears.

3.4.3 The Lessor may, at the cost of the Lessee, install meters on the Premises to determine the consumption of Services supplied to the Premises. Until such time as appropriate meters are installed, the Lessee must pay such amount as may be reasonably determined by the Lessor for such Services.

3.5 Unpaid Monies

3.5.1 On each and every occasion on which the Lessee omits or neglects (for a period of not less than twenty-eight (28) days from the date on which the Lessee is obliged to do the same) to pay any money which the Lessee has covenanted in this Lease to pay then the Lessor may (without prejudice to any rights and powers arising from such default) pay such money and all monies referred to in

this clause 3.5.1 and 3.5.2 are recoverable on demand by the Lessor and a certificate by the Lessor as to any amount payable by the Lessee pursuant to this clause is prima facie evidence of the amount payable by the Lessee.

- 3.5.2 The Lessee must pay interest on any unpaid monies due under this Lease at the higher of the Prescribed Rate and the rate of three per cent (3%) per annum above the current overdraft rate from time to time charged by an Australian trading bank nominated by the Lessor, on such amounts as may be nominated by the Lessor computed from the due date for the payment of such monies until payment of such monies in full.

3.6 Bank Guarantee

The Lessee will promptly, upon execution of this Lease, provide to the Lessor the Bank Guarantee provided that:

- 3.6.1 the Bank Guarantee is a continuing obligation in favour of the Lessor until the obligations and liabilities of the Lessee under this Lease have in all respects been performed, observed and discharged;
- 3.6.2 the Lessor may claim against the Bank under his or her guarantee for any liabilities which may be incurred by the Lessor arising from any Breach without the Lessor having made any claim or instituting any proceedings against the Lessee in respect to such claims and Breaches;
- 3.6.3 the Lessor will inform the Bank that the guarantee is no longer required by the Lessor within a reasonable time after the expiration or other determination of the Lease or the expiration or other determination of any extension or renewal thereof;
- 3.6.4 the giving of such a guarantee by the Bank does not operate to relieve the Lessee from any of the obligations on its part under any other provision of this Lease nor does the guarantee limit the right of the Lessor to recover from the Lessee in full all monies payable to the Lessor under any other provision of this Lease;
- 3.6.5 in the event of the Bank making any payment or payments to the Lessor in full or partial discharge of the Bank Guarantee the Lessee must immediately provide to the Lessor a substitute Bank Guarantee for an amount not less than the amount specified at Item 2 of the Reference Schedule or as determined by the Lessor;
- 3.6.6 the Lessee must provide a fresh Bank Guarantee for any Further Term if the Lessee exercises its right to renew this Lease prior to the grant of the Further Lease or within twenty-eight (28) days of the grant of the Further Lease; and
- 3.6.7 the Lessor may, in circumstances where a Bank is no longer able to issue a Bank Guarantee in the form required by the Lessor, accept some other security from the Lessee that guarantees the Lessee's performance of the obligations under this Lease including but not limited to a bond or a personal guarantee.

4 GOODS AND SERVICES TAX

4.1 Consideration Exclusive of GST

Any consideration or payment obligation arising under or in connection with this Lease is exclusive of GST unless stated otherwise.

4.2 Taxable Supply

4.2.1 This clause applies if a Supply made under or in connection with this Lease is a Taxable Supply.

4.2.2 If this clause applies, the consideration for the Supply is increased by an additional amount equal to the amount of that consideration multiplied by the relevant GST rate.

4.2.3 The additional amount under paragraph 4.2.2 is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.

4.3 Tax Invoice

A party who makes a Taxable Supply must provide a Tax Invoice within twenty-eight (28) days of a request.

4.4 Payments

Unless otherwise stated in this Lease, the following principles apply when determining the amount of a payment under this Lease:

4.4.1 if a party is entitled under this Lease to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Lease, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and

4.4.2 if a party sets off an amount under this Lease, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph 4.4.1.

4.5 GST Terms

In this clause 4:

4.5.1 GST means goods and services tax under the GST Law;

4.5.2 GST Law has the same meaning as that expression has in *A New Tax System Goods and Services Tax Act 1999*; and

4.5.3 a term or expression starting with a capital letter which is defined in the GST Law

but not defined in these terms has the same meaning as in the GST Law.

5 USE OF PREMISES

5.1 Use of Premises

5.1.1 The Lessee must use the Premises for the Permitted Use, in accordance with the terms of this Lease.

5.1.2 The Lessee must not use or permit the use of the Premises for any purpose other than the Permitted Use in particular the Lessee must not undertake or allow any other person to undertake any ski tuition that is for a commercial purpose, ski equipment hire and sales of ski equipment on the Premises.

5.1.3 The Lessee represents and warrants that:

- a) it has not relied on any representation by or on behalf of the Lessor as to how the Premises may be used; and
- b) it has made its own appraisal of the suitability of the Premises for the Lessee's business and the Permitted Use; and
- c) it is aware of all prohibitions and restrictions applying to the Premises in accordance with the requirements and orders of all Relevant Authorities and all Laws.

5.2 Onus of Proof as to Usage

The Lessee acknowledges that in the matter of proof of whether the Lessee is complying or has complied with the provisions of this Lease as to the Permitted Use the onus of proof shall be on the Lessee.

5.3 Compliance with Statutory Requirements

5.3.1 The Lessee must at the Lessee's expense observe and comply with and cause to be observed and complied with in respect to the Premises, any business conducted on the Premises, the conduct of any person using or on the Premises, or the Permitted Use of the Premises:

- a) the requirements of all Laws and of any Relevant Authority;
- b) the requirements of relevant Building Codes and Australian Standards applicable to new works;
- c) all notices orders and directions which may be given in accordance with the Laws or by any Relevant Authority referred to in clause 5.3.1 a);
- d) any Plan of Management for the Park;
- e) the requirements of all planning instruments, controls and policies whether

federal, state or local; and

- f) the reasonable directions, special conditions and performance standards imposed by the Lessor where they relate to furthering the objects of the Act.

5.3.2 The Lessee acknowledges and agrees that in complying with this clause and all Laws in connection with the Premises, the Lessee may be required to effect structural or capital works, alterations and additions to the Premises.

5.4 No Noxious Use

The Lessee must not:

- 5.4.1 carry on or permit or suffer to be carried on in or upon the Premises any unlawful noxious or offensive use act trade business occupation or calling;
- 5.4.2 permit or suffer any riotous, disorderly, offensive or improper conduct upon or near the Premises or permit or suffer any person who is drunk or behaving in a riotous, disorderly, offensive or improper manner to be or remain upon or near the Premises;
- 5.4.3 cause, allow or suffer to occur any annoyance, nuisance, injury, disturbance or obstruction to the Lessor or other persons rightfully using or being upon the Premises or in the Park;
- 5.4.4 carry on or allow any activities of a standard or kind which are not in keeping with the purposes of this Lease, may adversely affect the use and enjoyment of the Premises by the public, or in the Lessor's reasonable opinion are unsuitable or objectionable or may damage the image of the Premises or the Department.

5.5 Conduct of Business

5.5.1 The Lessee must ensure:

- a) that the Premises are actively managed, maintained, conducted, controlled and promoted at all times in good faith and in a proper, orderly, efficient, reputable and businesslike manner for the purposes authorised by this Lease;
- b) courtesy and promptness in dealing with reasonable requests by the public relating to the use of the Premises, and courtesy and due care in controlling or directing persons using or otherwise upon the Premises;
- c) The Lessee must not use any logo or emblem of the Department without the prior approval of the Lessor.

5.6 Security of Premises

The Lessee must keep all doors, windows, trapdoors, skylights and other means of access to each building on the Premises securely fastened when the building is not occupied by the

Lessee or the Lessee's Employees and Agents, and will be responsible for the maintenance in good working order of any security alarm system installed on the Premises.

5.7 Movement of Vehicles

The Lessee, the Lessee's Employees and Agents and all persons authorised by it or them must comply with the reasonable directions of the Lessor and his or her officers in relation to the movement and parking of vehicles within the Premises, the Adjoining Licence Area and the Park.

5.8 Public Access

The Lessee must allow the public to have access to all parts of the Premises which have been provided or intended for the use of and enjoyment by the public except in so far as such access might prevent the Lessee from providing reasonable protection to buildings, structures, equipment, services and facilities on the Premises or which might prevent the Lessee from ensuring the safety and good behaviour of persons using or otherwise upon the Premises.

5.9 Use of Inflammables, Chemicals and Explosives

5.9.1 Except as may reasonably be necessary for lighting, heating, cleaning or maintenance purposes upon the Premises, the Lessee must not use or store inflammable liquids or gas, explosives, volatile oils compounds or substances, insecticides, herbicides or other toxic chemicals or fertilisers within the Park without the prior written consent of the Lessor.

5.9.2 Where the Lessee does use or store the things referred to in clause 5.9.1 in accordance with its provisions, the Lessee must comply with all Laws and requirements of Relevant Authorities relating to the storage conveyance and use of such materials and any special conditions determined by the Lessor.

5.10 Contamination

5.10.1 The Lessee must not take any action which has the effect, whether direct or indirect, of causing any Contamination of the Premises or the Park and in particular without limitation the Lessee must not:

- a) place, tip or discharge (or allow or suffer to be placed, tipped or discharged) upon any land or in any water or watercourse within the Park any refuse, garbage, night soil, petroleum products, trade waste, building material, earth fill or any offensive or polluting matter or liquid whatsoever; and
- b) place (or allow or suffer to be placed) any obstructing matter on any land or in any water or watercourse or otherwise act or fail to act so as to cause any flow of water to be restricted, obstructed or diverted and will act or comply with any requirement of the Lessor regarding a watercourse.

- 5.10.2 Without affecting the liability of the Lessee for damages or in relation to any other remedy available to the Lessor the Lessee must remedy to the satisfaction of the Lessor at its own expense any damage caused to the Park by the Lessee any Breach of this clause or otherwise, including by the spillage of petroleum products or other pollutants or the deposition of polluting or obstructive materials within the Park.

5.11 Fire Safety

The Lessee must comply with all requirements of the Lessor and all other Relevant Authorities in relation to fire safety and must in particular ensure that:

- 5.11.1 all reasonable precautions are taken to minimise the risk of fire on the Premises and in particular in any building on the Premises;
- 5.11.2 adequate devices and appliances to prevent or retard the spread of fire are provided and maintained in good working order and condition and kept readily available for use on the Premises to the satisfaction of all Relevant Authorities;
- 5.11.3 any cleared vegetation is with the prior approval of the Lessor removed from the Park and destroyed as directed by the Lessor;
- 5.11.4 no burning of timber, grass, cleared vegetation or other combustible matter is undertaken without the prior consent of the Lessor and subject to such conditions as the Lessor and any Relevant Authority may determine;
- 5.11.5 the Lessee or the Lessee's Employees and Agents must not do or suffer to be done any act, matter or thing within the Park whereby the risk of fire might be increased and shall comply with the Laws and codes of any Relevant Authority in respect to fires, including Building Codes and in the event of the Park or the Premises being damaged by fire which is shown to be the result of a Breach or of the Lessee's negligence in or arising from the Lessee's activities or use of the Premises the Lessee will meet all reasonable and proper costs associated with suppression of the fire and all costs of making good such damage;
- 5.11.6 it complies, at its cost, with all requirements imposed upon it as occupier or owner of the Premises under the *Rural Fires Act 1997*.

5.12 No Livestock or Domestic Pets

The Lessee must not allow any livestock or other domestic, native or exotic animal to be brought onto or kept on the Premises, unless the animal is an Assistance Animal or the Lessor has given written authorisation to that person for the caring of an injured or orphaned native animal.

5.13 Removal of Native Trees

The Lessee must not cut down, fell, injure, lop, treat with chemical, destroy or remove any living or dead native trees on the Premises without the prior written consent of the Lessor.

5.14 No Exotic or Ornamental Plants and Weed Control and Eradication

- 5.14.1 The Lessee must not plant in the ground or in containers within the Premises any Exotics or Ornamentals without the prior approval of the Lessor except where such Exotics or Ornamentals may be approved by a Consent Authority for use in any revegetation works.
- 5.14.2 The Lessee must remove all Exotics or Ornamentals in the ground or in containers on the Premises unless given written approval by the Lessor to permit such Exotics or Ornamentals on the Premises and subject to such conditions and/or requirements as the Lessor may from time to time impose.
- 5.14.3 If, in the Lessor's opinion, there are weeds on the Premises then the Lessor may either:
- a) enter the Premises along with such employees contractors or agents as is considered by the Lessor to be reasonably necessary and remove the weeds and the costs incurred by the Lessor in such removal must be paid by the Lessee within a reasonable time upon being notified of the same; or
 - b) direct the Lessee in the manner of the removal of the weeds and any costs associated with such direction must be paid by the Lessee within a reasonable time upon being notified of the same and the Lessee must comply with any such direction.
- 5.14.4 Subject to clause 5.14.6, the Lessee must use all reasonable endeavours to ensure that all the Premises are kept clear of weeds.
- 5.14.5 For the purpose of clause 5.14.3, a notice by the Lessor of the costs associated with the removal of the weeds or the costs associated with any direction to remove the weeds is prima facie evidence of such costs.
- 5.14.6 The Lessee must comply with any weed control or eradication program implemented by the Lessor in respect to weed control or eradication in relation to the Premises.

5.15 Fences

The Lessee must not without the prior written consent of the Relevant Authority or Lessor carry out or permit the carrying out of any fencing work on or about the Premises.

5.16 Signs

- 5.16.1 The Lessee:
- a) must not without the prior written approval of the Relevant Authority or Lessor erect display affix paint or exhibit on or to the Premises or elsewhere within the Park any sign advertisement notice or hoarding or allow or suffer any of the foregoing to be done, and any such approval may be revoked without notice by the Lessor;

- b) must not make any permanent marking upon any tree plant or rock in the Park;
- c) upon vacating the Premises or otherwise at the request of the Lessor, must remove any signs advertisements notices hoarding or markings put in place by or on behalf of the Lessee;
- d) must make good any damage or disfigurement caused by the placement or removal of any such sign advertisement notice hoarding or marking;
- e) must comply with any requirements for notices set out in the Additional Covenants Schedule.

5.16.2 Notwithstanding clause 5.16.1:

- a) the Lessee must display a sign in a form and size approved by the Lessor in a conspicuous public area within the Premises and such sign must include information showing the Maximum Number of Persons Overnight and contact details of the Department to which suspected breaches of clause 6.1 can be reported; and
- b) the Lessee must display other signs in relation to the Premises as are required by Law or this Lease.

5.17 Amplified Sound

The Lessee must not operate or permit to be operated on the Premises any apparatus or device for the amplification of music announcements or other sound to a degree which is objectionable in the opinion of the Lessor. Lessees must comply with the reasonable requests of an Authorised Officer to reduce the volume level to a level acceptable to the Authorised Officer.

5.18 Lessor's Right of Entry

5.18.1 The Lessee acknowledges that the Lessor has specific powers and functions with respect to public health and safety, including powers in relation to the state of repair, condition and cleanliness of the Premises and, in relation to shared accommodation, of ensuring compliance with the Maximum Number of Persons Overnight under the Act.

5.18.2 The Lessee further acknowledges that the Lessor in the exercise of its functions in relation to public health has power to do, among others, the following:

- a) make an order requiring the Lessee to take the action that is necessary to bring the Premises into compliance with public health standards;
- b) enter the Premises after the Lessor has given written reasonable notice (unless the giving of the notice would defeat the purpose of the exercise of this power) of his or her intention to enter the Premises and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises;

- c) if entry is required urgently or there is the existence or reasonable likelihood of a serious risk to health or safety - enter the Premises without written notice to the Lessee and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises; and
 - d) inspect the Premises.
- 5.18.3 If the Lessor enters the Premises for the purpose of making an inspection in relation to the Lessor's public health functions and the Lessor requires any work to be carried out on or in the Premises as a result of that inspection, the Lessor may recover from the Lessee the reasonable costs and expenses of the entry and inspection.
- 5.18.4 Apart from the Lessor's right of entry as set out elsewhere in this Lease or by Law, the Lessor and his or her agents reserve the right at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency or where the Lessor reasonably forms a view that the Lessee has breached clause 6.1 of this Lease when no notice shall be required) enter upon the Premises for the purposes of:
 - a) observing the manner in which the Permitted Use of the Premises is being conducted;
 - b) ascertaining whether the Lessee is complying with the provisions of this Lease; or
 - c) undertaking the proper management of the Premises which form part of the State's assets including but not limited to undertaking valuations of the Premises and asset inspections and identification.
- 5.18.5 For the purposes of an inspection under clauses 5.18.4 a) or b), the Lessee cooperate with the Lessor and provide the Lessor with such information and material as the Lessor reasonably requires relating to the Lessee's compliance with its obligations under this Lease and provide copies of such documents upon request.
- 5.18.6 If the Lessee fails to allow the Lessor to exercise its right of entry in the case where the Lessor's purpose of entry is to determine whether the public health and safety of Persons in the Premises is endangered having regard to the Law and the provisions of this Lease, then the Lessor may regard the Lessee's failure as a repudiation of this Lease pursuant to clause 14.3.
- 5.18.7 In exercising its rights under this clause, the Lessor must take reasonable care and do as little damage as possible in effecting entry to the Premises.
- 5.18.8 If the Lessor causes any damage to the Premises as a result of effecting entry to the Premises, then the Lessor will pay reasonable compensation to the Lessee for such damage unless entry was for the purpose of securing the Premises from a risk of substantial damage.
- 5.18.9 In exercising its rights under this clause, the Lessor or his or her Authorised

Officer must be in the possession of an Authority, which he or she must produce, if demanded, by the Lessee. A copy of such Authority will be sufficient for the purposes of the Lessor complying with this clause.

5.19 Waste Management

- 5.19.1 The Lessee must ensure that there be available on the Premises adequate facilities to encourage guests and the Lessee's Employees and Agents to recycle materials accepted through the recycling services provided by the Lessor.
- 5.19.2 The Lessee must take all reasonable precautions to prevent animals from scavenging through waste bins.

5.20 Maintenance of Ground Areas

The Lessee must:

- 5.20.1 keep the ground areas of the Premises appropriately landscaped and in good and tidy order and condition to the reasonable satisfaction of the Lessor;
- 5.20.2 keep the ground areas of the Premises free of exotic plants and weeds to the satisfaction of the Lessor and by such means as approved by the Lessor and in accordance with clause 5.14 of this Lease;
- 5.20.3 take reasonable precautions to minimise damage to the Park and to prevent soil erosion on or adjacent to the Premises;
- 5.20.4 remedy any erosion or other environmental damage or deterioration of the Premises caused as a result of its works or use of the Premises and rehabilitate and revegetate all disturbed ground surfaces to the satisfaction of the Lessor;
- 5.20.5 take reasonable precautions to minimise waste which may alter or affect the nature of the Premises;
- 5.20.6 not undertake any excavation or other work which involves interference with the native vegetation or existing ground surface without:
 - a) the prior written consent of the Relevant Authority or Lessor;
 - b) ascertaining the location of existing underground infrastructure;
 - c) considering the likely effect of the excavation upon the stability of the Premises and adjacent area;
 - d) considering the environmental impact of the excavation upon the Premises and the Park; and
 - e) determining if development consent is required.

5.21 Use of Plumbing Facilities

- 5.21.1 The Lessee acknowledges that it has made enquiries about and is aware of the way the Plumbing Facilities operate and in particular the possible environmental impact upon the Park of a misuse of the Plumbing Facilities.
- 5.21.2 The Lessee must not permit the introduction or discharge of any materials which without limitation includes spa, pool or other deoxygenated or chlorinated water, into the Plumbing Facilities or the Park's drainage and sewer system which may interfere with proper functioning of the Plumbing Facilities or the Park's drainage and sewer system or which may have an adverse effect upon the Park.
- 5.21.3 The Lessee must comply with all directions or notices given by the Lessor relating to the use of the Plumbing Facilities and in particular:
- a) directions or notices in respect to the discharge of spa, pool, deoxygenated or chlorinated water; and
 - b) directions or notices for a staggered discharge program in respect to the water referred to in clause 5.21.3 a); and
 - c) directions or notices in respect to the discharge of any other materials or chemicals the Lessor reasonably considers could have an adverse affect upon the Plumbing Facilities or the Park's drainage and sewer system or the Park.
- 5.21.4 The Lessee must immediately make good any damage to the Plumbing Facilities caused by a Breach of this clause or by misuse or neglect of the Plumbing Facilities.
- 5.21.5 The Lessee indemnifies the Lessor for all damage to the Plumbing Facilities and the Park's drainage and sewer system and the Park resulting either directly or indirectly from a Breach of this clause.

5.22 Infectious Illness

The Lessee must in the event of any infectious illness occurring in the Premises forthwith give notice thereof to the Lessor and to the Relevant Authorities and thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and such Relevant Authorities and otherwise comply with their reasonable and lawful requirements in regard to same.

5.23 No Pest Affected Fittings or Furniture, Effects, Timber or Firewood

The Lessee must not bring or suffer to be brought upon the Premises any pest affected fittings, fixtures, furniture, effects, timber or firewood and will forthwith remove from the Premises any such items, which may be affected by pests. The Lessor may remove and destroy any pest affected fittings, furniture, effects, timber or firewood at the cost of the Lessee and no compensation shall be payable to the Lessee for such removal or destruction.

5.24 Animals, Vermin and Pests

- 5.24.1 The Lessee must take all reasonable precautions to keep the Premises free of rodents, vermin and insect pests by preventing access, including through chimney and vents, keeping the Premises clean and securing food items.
- 5.24.2 The Lessee must not bait or otherwise interfere with any animal on the Premises without the Lessor's consent.
- 5.24.3 The Lessee must not trap or control animals entering or on the Premises, unless the Lessee traps and controls such animals in accordance with the Lessor's pest control policy in force at the time or if no such policy is in force, as directed by the Lessor.
- 5.24.4 The Lessee may and, if required by the Lessor in writing must, control insect pests chemically by an appropriately licensed pest exterminator and with chemicals or such other methods as may be approved by the Lessor for this purpose.
- 5.24.5 The Lessee must take all reasonable precautions to prevent nesting opportunities for pest bird species, including the common starling, on the Premises. If such pest bird species are on the Premises, the Lessee must remove the nests.
- 5.24.6 The Lessee must take all reasonable precautions to prevent the Lessee's Employees and Agents feeding or handling any native or exotic animals on the Premises.

5.25 Environmental Management System

- 5.25.1 The Lessee must implement from the Commencing Date an environmental management system for its activities on the Premises, which is consistent with the Perisher Range Resorts Environmental Management System.
- 5.25.2 The Lessee agrees that for the purpose of ensuring compliance with its obligations under clause 5.25.1 it must do whatever is required by the Lessor to that end, including without limitation:
 - a) reasonably participate in any necessary audits enquiries and investigations and gather any information requested by the Lessor;
 - b) ensuring the Lessee or the Lessee's Employees and Agents (as appropriate) participate in any activities or training requested by the Lessor, acting reasonably, in matters arising from the Perisher Range Resorts Environmental Management System;
 - c) complete and return to the Lessor, any records reports forms or other documentation specified by the Lessor dealing with compliance with the Perisher Range Resorts Environmental Management System;

- d) permitting entry by the Lessor to the Premises for the purposes of ensuring that the Lessee is complying with the Perisher Range Resorts Environmental Management System; and
- e) comply with minimum environmental performance standards and procedures as set out in the Perisher Range Resorts Environmental Management System in order to achieve certification under a scheme relevant to the tourism industry.

5.25.3 The Lessee must pay any reasonable costs or contribution associated with complying with the Perisher Range Resorts Environmental Management System.

5.25.4 If the Lessee does not comply with this clause 5.25, then the Lessor may carry out the necessary enquiries, audits, investigations and engagements, collect the necessary records and otherwise take all necessary steps to ensure the Lessee is in compliance with the Perisher Range Resorts Environmental Management System.

5.26 Environmental Research and Rehabilitation

5.26.1 The Lessee will pay an annual Environmental Research and Rehabilitation Contribution identified at Item 21 of the Reference Schedule. The contribution will be indexed annually to the CPI and will be derived by multiplying the contribution paid in the previous year with the fraction set out in clause 3(b)(i) of Schedule 2. If the contribution so determined is less than the contribution for the previous year, then the contribution shall remain the same as the immediately preceding year.

5.26.2 For the purposes of this clause, the word "CPI" has the same meaning as defined in Schedule 2.

5.27 Geotechnical Fault

5.27.1 The Lessee acknowledges and agrees that the area in which the Premises are located may contain geotechnical or geological faults or may otherwise be unstable or unsuitable for construction or support of improvements.

5.27.2 The Lessee must take all reasonable steps to identify any risk of geotechnical fault on the Premises and must undertake all necessary works to remedy any geotechnical faults on the Premises. In that regard the Lessee agrees it is solely responsible for ensuring that:

- a) the Premises upon which the buildings, structures or improvements are erected are suitable for the Permitted Use, including without limitation, to properly support the buildings, structures and improvements on the Premises or to be erected on the Premises;
- b) the buildings, structures and improvements erected on the Premises or to be erected on the Premises are or will be suitable for the Permitted Use; and

- c) any remedial works deemed necessary by the Lessor or a Relevant Authority to stabilise the Premises or otherwise remedy a fault are expeditiously carried out at the Lessee's cost, to the satisfaction of the Lessor and any Relevant Authority.

5.27.3 If the Lessee is of the opinion that the Premises or buildings, structures and improvements on the Premises are not suitable for the Permitted Use:

- a) it must take all necessary action to ensure the safety of persons using or on the Premises, which may include, without limitation, arranging for the Premises to be vacated;
- b) it must give written notice of its opinion to the Lessor, and if the Lessor agrees with the Lessee's opinion and the Lessee causes the Premises to be vacated pursuant to clause 5.27.3 a) the Lessor agrees that Rent payable by the Lessee is to abate for the period commencing on the date of vacation of the Premises and ending on the earlier of the date that the remedial work referred to in clause 5.27.2 c) is completed or if in the Lessor's reasonable opinion the remedial work is not carried out expeditiously, such earlier date as specified by the Lessor.

5.27.4 If the Lessor is of the opinion that the Premises or buildings structures or improvements on the Premises are not suitable for the Permitted Use the Lessor is entitled but not obliged to issue directions to the Lessee to take the action referred to in clause 5.27.3 a).

5.28 No Detrimental Impact to Significant Features

5.28.1 The Lessee must ensure that it has identified any significant features identified in the Plan of Management or as otherwise identified by the Lessor from time to time such as plants or inanimate objects that are on the Premises.

5.28.2 The Lessee must not remove or otherwise interfere with any significant features referred to in clause 5.28.1 without the Lessor's written consent.

5.29 Aboriginal Objects and Historic Relics

5.29.1 The Lessee shall immediately report to the Secretary the discovery of any Aboriginal Object or Historic Relic during the course of any construction work and in such event such work shall cease immediately and the Lessee shall comply with all directions made by the Secretary in relation to the Objects in accordance with the Act.

5.29.2 The Lessee shall satisfactorily carry out and perform all necessary protection or salvage works specified by the Director-General in connection with all known Objects affected by the Lessee's activities.

5.30 Work Health and Safety

5.30.1 The Lessee acknowledges that it is an occupier of the Premises, within the

meaning of the *Work Health and Safety Act 2011*, or any act replacing same.

- 5.30.2 The Lessee shall carry out the Permitted Use on the Premises in a safe and reliable manner and must comply with the *Work Health and Safety Act 2011*, its amendments and regulations.
- 5.30.3 The Lessee shall notify the Lessor of any natural events or activities on the Premises or the surrounding area, which it becomes aware of, which may endanger the public.
- 5.30.4 The Lessee shall take all reasonable steps to protect the safety of all persons present on the Premises and shall, without limitation, take all reasonable steps to eliminate any dangers to persons that may arise as a result of the Lessee's activities and, subject to clause 5.16, erect signage warning the public of any dangers they may encounter as a result of the Lessee's activities where those dangers cannot be eliminated.

5.31 Filming Within Premises

- 5.31.1 The Lessee must not carry out a Filming Activity on the Premises without the approval of the Lessor in accordance with the *Filming Approval Act 2004*.

5.32 No Auctions

- 5.32.1 The Lessee will not without the prior written consent of the Lessor expose or offer for sale or permit to be exposed or offered for sale by auction on the Premises any articles goods, materials or things whatsoever.

5.33 Native Fauna

- 5.33.1 The Lessee acknowledges and accepts that the Premises are located within a national park and that as a result, native fauna may from time to time be found on the Premises. The Lessee shall not be entitled to any compensation for any damage or loss caused to the Lessee or the Lessee's Employees and Agents (including the Lessee's business and property) attributable to such native fauna being on the Premises.

5.34 Commission for Children and Young People Act 1998

- 5.34.1 The Lessee acknowledges to the Lessor that the Lessee is aware of the provisions of the *Commission for Children and Young People Act 1998* and that it is an offence to employ a prohibited person in child-related employment.
- 5.34.2 The Lessee indemnifies the Crown in right of New South Wales, the Lessor, the Department and Secretary in respect of any claim arising out of alleged or actual offences committed against children or young people on the Premises in connection with the Lease.
- 5.34.3 The Lessee acknowledges that is has received a copy of the Office of

Environment and Heritage Child Safe and Friendly Environment Policy (May 2011).

6 BED NUMBERS AND MAXIMUM PERSONS STAYING OVERNIGHT ON THE PREMISES

6.1 Bed Numbers and Maximum Persons Staying Overnight on the Premises

6.1.1 The Lessee shall not exceed the Bed Numbers as stipulated at Item 4 of the Reference Schedule without the Lessor's prior written consent. However, provided that the Maximum Number of Persons Overnight limit at Item 5 is not exceeded, the Lessee is not in breach of this clause 6.1.1 and clause 6.1.3 b) if it obtains the Lessor's written consent to have a number of Beds in storage on the Premises to be used to facilitate variations to room configuration. The Lessee must use the additional Beds strictly in the accordance with the terms and conditions of the Lessor's consent pursuant to this clause. Any consent can be given and/or revoked at the absolute discretion of the Lessor.

6.1.2 The Lessee must not exceed the Maximum Number of Persons Overnight without the written consent of the Lessor.

6.1.3 If the Lessor has consulted with the Lessee and satisfied himself or herself that the Lessee has:

- a) exceeded the Maximum Number of Persons Overnight at the Premises stipulated at Item 5 of the Reference Schedule, or
- b) exceeded the Bed Numbers stipulated at Item 4 of the Reference Schedule,

then a notice by the Lessor that the Lessee has breached this clause 6 is final and conclusive.

6.1.4 The Lessee must do the following as required by the Lessor and within a reasonable period as notified by the Lessor:

- a) provide written documentation in a form acceptable to the Lessor confirming that the Lessee is aware of and has made the Lessee's Agents and Employees aware of, or, in the case of clause 6.1.4 a) iv) and v), producing the originals of documents confirming:
 - i) the Bed Numbers in the Premises; and
 - ii) that the Lessee and the Lessee's Employees and Agents are aware of the limitations on the Bed Numbers for the Premises and the Maximum Number of Persons Overnight; and
 - iii) that the Lessee and the Lessee's Employees and Agents are aware of the requirements to grant access to the Lessor in accordance with clause 6.18 and this clause; and

- iv) Accommodation Registers, registers of temporary shelter and staff lists; and
 - v) signage required by this Lease.
 - b) submit a sample of their proposed Accommodation Register.
- 6.1.5 The Lessee must not refuse or permit to be refused to any person temporary shelter on the Premises in any circumstances of adverse weather or in any case of injury or other like emergency or hardship provided that the Lessee shall keep a register of the names and addresses of persons who are provided with temporary shelter pursuant to this clause and the date the temporary shelter was provided. Any provision of temporary shelter pursuant to this clause does not constitute a Breach of the provisions of this clause 6.1 if by that reason alone the Lessee breaches the provisions of clause 6.1 for that temporary period.
- 6.1.6 Despite anything in this Lease, where Item 4A of the Reference Schedule specifies that the Lessor has granted to the Lessee approval for an Additional Beds Allocation, provided the Lessee has complied with the terms of this Lease, in particular clause 5.3 of this Lease and the Additional Beds Allocation Schedule, the Bed Numbers will be increased by the number of beds in the Additional Beds Allocation.
- 6.2 Accommodation Register**
- 6.2.1 The Lessee must keep upon the Premises an Accommodation Register.
- 6.2.2 The Lessee must:
- a) grant to the Lessor its agents and employees free access to the Accommodation Register for the purpose of perusing or taking extracts of entries made in the Accommodation Register and will upon request supply to the Lessor a certified copy of the Accommodation Register together with such information and details of the booking arrangements for the Premises as the Lessor may reasonably require for the purpose of establishing that the Lessee is complying with the requirements of this Lease; and
 - b) provide to the Lessor within 48 hours of the Lessor's demand, the telephone numbers and addresses of persons residing overnight on the premises on a particular date or dates if the Lessor, acting reasonably, is of the opinion that there may be a Breach.
- 6.2.3 The Accommodation Register must clearly display the purpose for which the information is being collected in a form and with the content approved by the Lessor as: 'To enable the Office of Environment and Heritage to monitor from time to time Lessee compliance with the maximum number of persons permitted to reside overnight on these premises' or such other statement required by the Lessor from time to time.
- 6.2.4 The Lessee must comply at all times with the relevant Law for collecting, storing and disseminating personal information, including but not limited to the *Privacy*

Act 1988 (Commonwealth).

- 6.2.5 If the Lessee is not able to comply with the provision of an Accommodation Register, it may apply to the Lessor and the Lessor may consider an alternate arrangement that fulfils the purpose of clause 6.2.2. The Lessor may approve such an alternate arrangement in its absolute discretion.

6.3 Lessor's Right of Entry

- 6.3.1 The Lessee further acknowledges that the Lessor may, so as to determine whether the Lessee is in compliance with this clause 6:

- a) make an order requiring the Lessee to take the action that is necessary to bring the Premises into compliance with this clause;
- b) enter the Premises after the Lessor has given written reasonable notice (unless the giving of the notice would defeat the purpose of the exercise of this power) of his or her intention to enter the Premises and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises;
- c) if entry is required urgently or there is the existence or reasonable likelihood of a serious risk to health or safety - enter the Premises without written notice to the Lessee and, use no more force than is reasonably necessary for the purpose of gaining entry to the Premises; and
- d) inspect the Premises.

- 6.3.2 In exercising the powers under this clause, the parties agree that clauses 5.18.5 to 5.18.9 inclusive apply as if they had been included within this clause but only in the context of the Lessor determining whether the Lessee has complied with clauses 8.1 and 6.2.

7 CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATIONS, ETC

7.1 Condition of Premises at Commencement of Lease

Notwithstanding any other provision of this Lease, but without limiting similar provisions of this Lease:

- 7.1.1 no warranty is given by the Lessor as to the condition or state of repair of the Improvements (if any) on the Premises as at the commencement of this Lease or the suitability of the Premises for the purposes for which they are to be used and the Lessee has not relied in any way upon any representations or assurance by the Lessor or on his or her behalf in entering into this Lease;
- 7.1.2 the Lessee accepts any Improvements on the Premises in their present condition and state of repair and subject to all defects (if any) whether latent or patent;
- 7.1.3 the Lessor is under no obligation or liability of any kind to maintain replace repair

or rebuild the whole or any part of such Improvements.

7.2 Repair and Maintenance

In accordance with clause 8 of this Lease, the Lessee must at its own cost maintain repair replace rebuild paint renew the Improvements and the Lessee's Fixtures and keep the whole of the Premises in good and substantial repair order and condition, damage by fire flood lightning storm tempest and impact only excepted. Reference to repair in this clause 7.2 includes structural repair and to repair which entails capital expenditure.

7.3 Repair on Termination of Lease

Subject to clause 8, the Lessee must at the expiration or sooner determination of this Lease peaceably surrender and yield up the Premises in good and substantial repair order and condition and in a clean and sanitary state in all respects.

7.4 Painting

The Lessee must keep the interior and exterior of the Premises in good repair and condition. So often as the Lessor may reasonably require the Lessee must colour, paint, paper, stain or treat with such materials and to such standards and colours as may reasonably be determined by the Lessor such parts of the interior and exterior of the Premises as are normally so treated.

7.5 Cleaning

The Lessee must:

- 7.5.1 cause the interior and exterior of the Premises to be cleaned in a proper and workmanlike manner and kept clean and free from dirt rubbish and inflammable materials;
- 7.5.2 provide and keep in good order and condition proper refuse bins and other containers of such style and in such numbers and locations as are approved by the Lessor; and
- 7.5.3 remove and take away or cause to be removed and taken away from the Premises and the adjacent areas of the Park all refuse debris ground litter and building materials in accordance with the reasonable requirements of the Lessor.

7.6 Lessee's Equipment

The Lessee must keep and maintain clean and in good order repair and condition all fittings, floor coverings, wall, floor and ceiling finishes, plant furnishings and equipment and appliances of the Lessee on the Premises.

7.7 Breakages

The Lessee must make good any breakage defect or damage to any facility or appurtenance of the Lessor within the Park occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's Employees and Agents or other persons claiming through or under the Lessee or otherwise occasioned by any Breach.

7.8 Building, Construction and Development Works

- 7.8.1 The Lessee must, where it proposes to carry out works for which development consent or approval is required under the *Environmental Planning and Assessment Act 1979*, obtain the appropriate consent or approval.
- 7.8.2 The Lessee must ensure that all building, addition, alteration, modification or replacement building works are carried out in accordance with plans and specifications previously approved in writing by the Relevant Authority and in accordance with development consent or approval and to the reasonable satisfaction of the Relevant Authority and in accordance with the requirements of any applicable Building Code and Relevant Authority.
- 7.8.3 The Lessee must not undertake any development or construction work road works or landscaping of any kind prior to the Relevant Authority providing approval for such works.
- 7.8.4 The Lessee must comply with all requirements and directions of the Relevant Authority in regard to the construction or alteration of buildings improvements and other structures, earthworks, hydraulic works, underground works, landscaping, restoration, erosion mitigation, and drainage works.
- 7.8.5 The Lessee must comply with requirements of the Act or other legislation relating to the Premises.
- 7.8.6 In respect of works described in this clause which do not require development consent from a Consent Authority the Lessee must observe and comply with the requirements of all policies and guidelines of the Lessor as amended from time to time relating to the carrying out of any works:
- a) on the land that comprises the Premises; and
 - b) to the external part of a building on the Premises.

7.9 Premises Fire Safety, Services and Installations Certification

- 7.9.1 The Lessee must engage appropriately qualified and experienced contractors to do the inspections, tests and Works necessary to obtain the compliance certificates listed in this clause 7.9.1. The compliance certificates must comply with industry standards (where applicable) and be provided on the dates stated below unless the Lessor, in his or her absolute discretion, gives his or her written permission for such compliance certificates to be provided at a later date:
- a) a statement showing that the Fire Safety Measures on the Premises have been inspected, tested and found to be installed and working in accordance with the *Environmental Planning and Assessment Act 1979* and its regulations and/or any Building Code by 1 July of each year following the Commencing Date;
 - b) a certificate showing that the electrical installations are safely installed and

in good working order on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter;

- c) a certificate showing the gas installations are safe and in good working order on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter;
- d) a certificate showing that the Premises are free from any pests which are capable of damaging the Premises (such as termites) on the Commencing Date and subsequently on every tenth anniversary since the last statement thereafter;

7.9.2 The Lessee must also provide such other compliance certificates of a similar nature to the compliance certificates listed in clause 7.9.1 as may be reasonably required by the Lessor from time to time.

7.10 Standard of Work

All work carried out by the Lessee or the Lessee's Employees and Agents must be carried out at the Lessee's expense with every reasonable care and in a proper expeditious and workmanlike manner using good quality materials and in accordance with the approvals, issued by the Relevant Authorities, including but not limited to development consent.

7.11 Reporting of Defects, etc

The Lessee must immediately inform the Lessor of:

- 7.11.1 any act or omission of itself or the Lessee's Employees and Agents, or
- 7.11.2 any defect, failure, want of repair, accident or hazard associated with or in the vicinity of the Premises or any structures or Improvements thereon, or
- 7.11.3 any other circumstances,

where any of the above has caused or may cause any danger or risk to the Park or any person within the Park or has caused or may cause any environmental damage to the Premises or the Park.

7.12 Lessor's Right of Entry to do Certain Works

The Lessor and his or her servants, agents and contractors may at all times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Premises for the purpose of:

- 7.12.1 carrying out any necessary enquiries and investigations, collecting any necessary records or documents, carrying out any Works, and otherwise effecting anything which the Lessee is required by this Lease to do but has failed within a reasonable time to do so; or
- 7.12.2 carrying out any Works to the Premises otherwise deemed necessary or desirable by the Lessor; or
- 7.12.3 carrying out any Works on the Premises ordered, requested or required by any

public authority having jurisdiction over the Premises which the Lessor elects to do and for which the Lessee is not liable under this Lease, provided always that:

- 7.12.4 in the exercise of the Lessor's powers under this clause the Lessor shall endeavour to exercise its powers with minimum interference with the Lessee's business; and
- 7.12.5 the Lessee must pay, within a reasonable time, all costs and expenses (including any costs associated with engaging suitably qualified contractors and all reasonable legal costs and disbursements) associated with the Lessor otherwise exercising his or her rights under this clause 7.12 and a certificate or notice by the Lessor as to any amount payable pursuant to this clause and served upon the Lessee shall be prima facie evidence thereof.

7.13 Services

- 7.13.1 No public utility or community services constructed or laid within the Premises by any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor are to be removed or interfered with in any way by the Lessee without the prior written consent of the Lessor.
- 7.13.2 Any necessary additional public utility or community services may be constructed or provided within the Premises by any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor with the approval of the Lessor upon one (1) month's written notice to the Lessee and with no undue inconvenience to the Lessee and no compensation is payable by the Lessor, the Lessor's contractor or the Relevant Authority to the Lessee as a result of the construction or provision of such services.
- 7.13.3 The Lessee must permit the servants and agents of any Relevant Authority, any utility service provider operating under any approval from the Lessor or any contractor of the Lessor in respect to the supply of electricity, water, sewerage, gas, telephone, fire sprinkler and fire alarm systems, at all reasonable times to enter the Premises with all necessary materials and appliances for the purposes of carrying out any inspections, readings, repairs, alterations, works or adjustments which any such authority may consider necessary or desirable to the ducts, wires, pipes, cables, meters, switchboards, fire sprinkler alarm systems and other installations in the Premises.

8 IMPROVEMENTS AND LESSEE'S FIXTURES

8.1 All Improvements are Lessor's

In consideration of the promises made in this Lease, all Improvements are the unfettered property of the Lessor and the Lessee shall not be entitled to any compensation in respect thereof. This clause 8.1 shall not merge upon expiration, termination or surrender of this Lease.

8.2 Placing and Removal of Lessee's Fixtures

- 8.2.1 The Lessee may at any time erect or place or cause to be erected or placed in or on the Premises such Lessee's Fixtures as may be reasonably necessary for the Permitted Use of the Premises.
- 8.2.2 Upon the expiration or sooner determination of this Lease the Lessee may (and if required by the Lessor by notice in writing must) remove from the Premises all the Lessee's Fixtures brought upon the Premises by the Lessee.
- 8.2.3 The Lessee must in such removal do no damage to the Premises or shall forthwith make good any such damage occasioned by such removal.
- 8.2.4 The Lessee must ensure compliance with the following requirements when installing or replacing the following appliances and fittings:
- a) Wood burning appliances – emissions will comply with any relevant Australian Standard for domestic solid fuel burning appliances;
 - b) Chimneys – any chimney will be constructed and maintained in accordance with all applicable Australian Standards and to encourage smoke emissions to travel vertically;
 - c) Water appliances and fittings – have a star rating equivalent to a high level of water efficiency under the National Water Conservation Rating and Labelling Scheme or any scheme of a similar nature replacing the same;
 - d) Electricity appliances – have a AAA star rating equivalent to a high level of energy efficiency under the National Energy Labelling Program or any program of a similar nature replacing the same; and
 - e) Gas appliances - have a star rating equivalent to a high level of energy efficiency under the Australian Gas Association Gas Energy Rating and Labelling Scheme or any scheme of a similar nature replacing the same.

8.3 Repair and Maintenance

The Lessee acknowledges and agrees that notwithstanding that the Improvements may be or become the unfettered property of the Lessor, the Lessee must maintain and repair the Improvements at its own cost as provided in clause 7.

9 TANK MANAGEMENT

9.1 Hydrocarbon Storage Systems

- 9.1.1 The Lessee must take all reasonable precautions to ensure that the design installation operation maintenance testing repair and re-use of operational Hydrocarbon Storage Systems:

- a) prevents product escaping from the system;
- b) enables the detection of leaks; and
- c) prevents spills and leaks during filling.

9.1.2 Leaks and spills from Hydrocarbon Storage Systems are considered Contamination for the purpose of clause 5.10.

9.1.3 The Lessee must ensure that Hydrocarbon Storage Systems no longer in use are decommissioned to the satisfaction of the Lessor and within a timeframe determined by the Lessor.

9.1.4 The Lessor reserves the right to prohibit the installation of new Hydrocarbon Storage Systems and require the decommissioning of existing Hydrocarbon Storage Systems without compensation to the Lessee.

9.2 Burying and Screening of Tanks

The Lessee must cause all tanks on the Premises to be buried below the surface of the ground or to be screened in a manner and to a standard satisfactory to the Lessor and with the written consent of the Lessor.

10 COVENANTS BY THE LESSOR

10.1 Quiet Enjoyment

10.1.1 Subject to this Lease and the Lessee duly and punctually observing and performing the covenants and obligations of this Lease, the Lessee may peaceably possess and enjoy the Premises for the Term hereby granted without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by from or under the Lessor.

10.1.2 The Lessee expressly acknowledges and agrees that the Lessor exercising its rights under any Law or under this Lease (and of in particular, exercising its rights of entry onto the Premises under this Lease or the Law) is not derogating from the Lessee's right to quiet enjoyment.

10.2 Holding Over

If the Lessee with the consent of the Lessor remains in possession of the Premises after the expiration of the term of this Lease, the Lessee shall remain as a tenant from month to month at the then current yearly rate of Rent. The Lessor may vary this Rent upon one (1) month's written notice to the Lessee. Such tenancy shall be terminable at any time by either party giving to the other not less than one (1) month's notice in writing to the other. The same conditions of this Lease shall apply as are not inconsistent with a monthly tenancy.

11 INSURANCES

11.1 Required Insurances

11.1.1 The Lessee must effect and maintain in respect to the Premises from the Commencing Date of this Lease the following insurances:

- a) insurance of the Premises against loss, damage or destruction from any insurable risk reasonably required by the Lessor including (but not limited to) loss, damage or destruction by fire, lightning, storm, tempest and impact for the full reinstatement cost of the Premises (including extra costs reinstatement);
- b) insurance of all plate glass, fixed glass and windows in the Premises for its reinstatement cost (including extra costs reinstatement) from loss, damage or injury caused by explosion, earthquake, aircraft, fire, lightning, storm, tempest, impact, act of God and any other insurance risk reasonably required by the Lessor;
- c) a public liability policy covering personal injury and property damage, including financial, economic or consequential loss arising as a result of such personal injury or property damage (in an amount of not less than the amount noted at Item 6 of the Reference Schedule or such other higher amount as the Lessor may from time to time require, being the amount which may be paid arising out of any one single accident or event) in connection with the activities of the Lessee in relation to this Lease whereby the Lessor, the Secretary, the Department and the Crown in right of New South Wales shall be included as joint insured parties, such insurance to cover against all actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, charges and expenses referred to in clause 12.3 and clause 5.27 and elsewhere in this Lease;
- d) insurance against any liability which may arise at common law or by virtue of any relevant workers' compensation legislation in connection with the Premises; and
- e) such other special insurances as may be appropriate and required by the Lessor from time to time.

11.1.2 Before commencement of any works in relation to the Premises, the Lessee must in addition to any insurances referred to above ensure that there is effected and maintained a contract works insurance policy covering the usual risks including loss or damage to:

- a) the works (including any associated temporary works); and
- b) the Premises; and
- c) all materials and things brought into or in storage on the Premises by the Lessee or the Lessee's Employees and Agents for the purpose of the

works; and

d) all materials and things in storage off-site or in transit to the Premises;
occurring during the period when the Lessee is responsible for their care.

11.1.3 The insurance cover referred to in clause 11.1.2 must be for an amount of not less than the full value of the works on a full reinstatement and replacement basis (including costs of demolition and removal of debris and an amount necessary to cover fees to all consultants), which amount must be approved by Lessor.

11.2 Required Arrangements

The following provisions must apply to all policies of insurance referred to in clause 11.1:

- 11.2.1 all such policies of insurance shall be effected with an insurance office or company approved by the Lessor (which approval shall not be unreasonably withheld) and shall be for such amounts and cover such risks and contain such conditions, endorsements and exclusions as are reasonably acceptable to or required by the Lessor; and
- 11.2.2 no exclusions, endorsements or alterations are to be made in or to any such policy of insurance unless first approved in writing by the Lessor (which approval shall not be unreasonably withheld); and
- 11.2.3 subject to clause 11.1.1 c), all such policies are to be taken out in the names of the Lessor and the Lessee for their respective rights and interests; and
- 11.2.4 duplicate or certified copies of all such policies and all renewal certificates and endorsement slips are to be lodged by the Lessee with the Lessor immediately on receipt by the Lessee; and
- 11.2.5 the Lessee must provide full true and particular information to the office or company with which such policies are effected on all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or payment of any monies thereunder; and
- 11.2.6 the Lessee must punctually pay all premiums and other monies payable in respect to all such policies on or before the due date for payment of the same and shall in respect to any such policy of insurance produce to the Lessor receipts for the payment of each premium and any other monies payable thereunder (or other proof of payment to the Lessor's satisfaction); and
- 11.2.7 the Lessee must not do or permit to be done any act, matter or thing upon or in the vicinity of the Premises whereby any insurance policy may be vitiated or rendered void or voidable or (except with the written approval of the Lessor) whereby the rate of premium for any such insurance shall be liable to be increased; and
- 11.2.8 the Lessor is entitled in his or her own name and as the attorney of the Lessee in

the name of the Lessee or otherwise to institute all proceedings against any such office or company to recover from it any amount for loss, damage, destruction or injury or other monies payable under any indemnity in favour of the Lessor or the Crown in right of New South Wales.

11.3 Lessor May Insure

In default of the Lessee effecting any or all of the insurances referred to in clause 11.1 the Lessor may effect such insurances and charge the Lessee for the costs of the premiums and the Lessee must upon demand reimburse the Lessor for such costs.

11.4 Lessor's Entitlement to Insurance Monies

11.4.1 In the event that the Premises are destroyed or substantially damaged by fire, lightning, storm, tempest, impact or other occurrence the whole of the monies which shall be recovered or received for or in respect to any insurance policy referred to in clause 11.1.1 must be paid to the Lessor and subject to clause 11.5 may be retained by him or her for his or her own use absolutely.

11.4.2 With reference to clause 11.4.1, in the case of minor damage then the Lessor at his or her option may determine whether the monies recovered or received are to be paid to the Lessor or otherwise.

11.5 Reinstatement

11.5.1 Total Destruction of Premises

In the event of the Premises being totally destroyed or damaged so extensively as to render the repair of or making good such damage impractical or undesirable the following alternatives shall apply:

a) First Alternative - Rebuild to Original Design

The Lessee may and must if so required by the Lessor from the insurance monies available (and to the extent that the same may be insufficient, from its own monies) reinstate the Premises in accordance with the original design within two (2) years from the date of such damage or destruction. If the Lessee is to rebuild or reinstate the Premises pursuant to this clause, the provisions of clause 7 applies.

b) Second Alternative - Rebuilding to Different Design

If the Lessor and the Lessee agree that the Premises are to be rebuilt to a different design then the Lessee must from the insurance monies available and (to the extent the same may be insufficient) from its own monies proceed with the rebuilding of the Premises in accordance with the agreed plans and specifications and clause 7. The Lessee and the Lessor acknowledge that such different design will incorporate sleeping accommodation for the same number of Persons as permitted by this Lease unless the parties are prevented from so doing by statutory regulations and ordinances applicable at the time. Such rebuilding will be completed within two (2) years of the date of such destruction

or as otherwise agreed by the parties, acting reasonably, given the extent and scale of the damage.

c) Third Alternative - Premises not to be Rebuilt

If the Lessor and the Lessee agree that the Premises need not be reinstated by the Lessee and the Second Alternative is not adopted the Lessee must promptly remove the remaining structures and any debris and restore the area to the satisfaction of the Lessor and all Relevant Authorities and subject to the Lessee not being in default under any provision of this Lease the Lessee shall then deliver to the Lessor a surrender of this Lease duly executed by the Lessee and duly stamped and the Lessor shall accept the same. Surrender as aforesaid shall be without prejudice to any claim the Lessor may have against the Lessee immediately prior to the date of such surrender.

11.5.2 Partial Damage to Premises

In the event of the Premises being partially destroyed or damaged the Lessee must from the insurance monies available and (to the extent that the same may be insufficient) from its own monies and in accordance with clause 7 repair, replace and make good the whole of the destroyed or damaged portion of the Premises as nearly as possible to the condition in which it was immediately prior to such damage or destruction with such modifications as the Lessee may seek and the Lessor approve or as may be required by Relevant Authorities.

11.5.2 Application of Insurance Monies

All monies received by the Lessor and the Lessee in settlement of any claim under the insurances referred to herein shall be applied by the Lessor in the following order of priority:

- a) first, in payment to the Lessor on account of expenditure by the Lessor in respect to any work due to be done by the Lessee but not commenced and completed within a reasonable time; and as to any balance;
- b) second, in payment to the Lessor of all expenditure whether direct or indirect associated with the completion of the Premises or demolition and removal work; and as to any balance;
- c) third, in payment progressively to the Lessee in reimbursement of the Lessee's costs as work progresses in the rebuilding or demolishing and clearing or repair, replacement and making good as the case may be of the Premises such progress payments to be made expeditiously after receipt of insurance monies and details of the Lessee's costs aforesaid provided that a minimum of at least 10% of the amount of insurance monies held by the Lessor shall not be paid to the Lessee until final completion of all work to the Lessor's satisfaction; and as to any balance;
- d) fourth, such amount shall be credited to the Lessee's instalment of Rent next falling due and any other amounts owing by the Lessee to the Lessor under the provisions of this Lease; and as to any balance;
- e) fifth, such balance shall be equitably apportioned between the Lessor and the

Lessee having regard to their respective interests in the Premises at the day immediately prior to the incident giving rise to the insurance claim and to the terms and conditions of this Lease.

12 INDEMNITIES AND RELEASE

12.1 Acknowledgment

The Lessee acknowledges that the exercise of its rights under this Lease is at the risk of the Lessee.

12.2 Release

12.2.1 The Lessee releases to the full extent permitted by law the protected persons from all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of the Lessee's operation from, occupation or use of the Premises the subject of this Lease.

12.2.2 The Lessee's obligations under this clause continue after the termination, expiration or other determination of this Lease in respect to any matter or thing happening before such termination, expiration or determination.

12.2.3 In this clause:

'protected person(s)' means

- a) the Lessor;
- b) the Secretary;
- c) the employees or officers of the Secretary;
- d) any other person acting under the direction or control of the Lessor or the Secretary for any purpose;
- e) the Crown in right of New South Wales.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses to which the protected persons or any one thereof is or may become liable in respect to loss of or damage to the fixtures or property of the Lessee, financial or economic loss, loss of opportunity or other consequential loss of the Lessee, injury to or death of any person claiming through the Lessee of any kind and however sustained and whether sustained on or outside the Premises the subject of this Lease.

12.2.4 It is immaterial to the obligations of the Lessee under this clause that a claim or demand arises out of any act, event or thing that the Lessee is authorised or obliged to do under this Lease or that any time waiver or other indulgence has been given to the Lessee in respect to any such obligation under this Lease.

- 12.2.5 The obligations of the Lessee under this clause do not apply to the extent that the loss, damage, injury or death arises from or is contributed to by any wilful or negligent act, default or omission on the part of any protected person except as provided in subclause 12.2.6.
- 12.2.6 The obligations of the Lessee under this clause do apply to loss, damage, injury or death arising from or contributed to or occurring in connection with:
- a) the carrying out of any fire management activity by or on behalf of the protected persons;
 - b) the failure to carry out any fire management activity by or on behalf of the protected persons;
 - c) any other act or omission of the Lessor or any protected person, whether or not negligent, in respect to the management of fire hazards in the Park.

12.3 Indemnity

- 12.3.1 The Lessee indemnifies and will keep indemnified the protected persons from and against all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of:
- a) the Lessee's operation from, occupation or use of the Premises the subject of this Lease; or
 - b) any wilful or negligent act, default or omission by the Lessee, the Lessee's Employees and Agents or any person acting under the control or at the direction of the Lessee either in the Premises the subject of this Lease or in the Park.
- 12.3.2 The Lessee's obligations under this clause continue after the termination, expiration or other determination of this Lease in respect to any matter or thing happening before such termination, expiration or determination.
- 12.3.3 In this clause:
- 'protected person(s)' means
- a) the Lessor;
 - b) the Secretary;
 - c) the employees or officers of the Secretary;
 - d) any other person acting under the direction or control of the Lessor or the Secretary for any purpose;
 - e) the Crown in right of New South Wales.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and

expenses to which the protected persons or any one thereof is or may become liable in respect to loss of or damage to the fixtures or property of any person, financial or economic loss, loss of opportunity or other consequential loss of any person, injury to or death of any person of any kind and however sustained and whether sustained on or outside the Premises the subject of this Lease.

12.3.4 It is immaterial to the obligations of the Lessee under this clause that a claim or demand arises out of any act, event or thing that the Lessee is authorised or obliged to do under this Lease or that any time waiver or other indulgence has been given to the Lessee in respect to any such obligation under this Lease.

12.3.5 The obligations of the Lessee under this clause do not apply to the extent that the loss, damage, injury or death arises from or is contributed to by any wilful or negligent act, default or omission on the part of any protected person.

13 ASSIGNMENT

13.1 General Restrictions on Assignment

Subject to this Lease, the Lessee must not assign transfer mortgage charge demise sublet licence or part with possession of the Premises or any part thereof or by any act or deed procure any of the foregoing without first:

13.1.1 producing to the Lessor such particulars and information, documentary or otherwise, evidencing or relating to the transaction and the proposed assignee or incoming party as may be required by the Lessor; and

13.1.2 complying with all requirements of the Lessor in respect to such transaction and the Lessee's application for consent thereto; and

13.1.3 complying with any covenant or condition of this Lease which is in default at the date of the Lessee's application; and

13.1.4 procuring lodgement with the Lessor of such guarantees by the proposed assignee or incoming party of its performance of the Lessee's covenants under this Lease as the Lessor may require; and

13.1.5 receiving the prior written consent of the Lessor thereto; and

13.1.6 procuring payment of the Lessor's reasonable legal and administrative costs of and incidental to the giving of such consent,

provided that no fine or sum of money in the nature of a fine shall be payable for or in respect to any such consent and provided further that such consent may not be requested by the Lessee prior to the completion of the Works and matters (if any) as may be required by the Lessor to the satisfaction of the Lessor.

13.2 Subleases, Licences and Mortgages

13.2.1 Notwithstanding the last proviso of clause 13.1 of this Lease the Lessee may at any time request the consent of the Lessor to:

- a) the grant of subleases or licences over or in respect to the Premises or any part thereof for purposes approved by the Lessor;
- b) the assignment or sub demise of the Premises by way of mortgage.

13.2.2 Any sublease or licence entered into by the Lessee must be made in such terms as to enable the Lessee freely to discharge the obligations imposed upon the Lessee by this Lease.

13.3 Application in Respect to Corporate Assignee

In relation to an application for consent to a proposed transfer or assignment of the Lessee's interest in this Lease in favour of a company (other than a publicly listed company), the Lessor may require the directors or controlling shareholders of such a company to enter into a deed, in a form acceptable to the Lessor, guaranteeing the performance by that company of the Lessee's covenants under this Lease.

13.4 Company Changes

The Lessee being a company (other than a publicly listed company) must not other than in accordance with clause 13.1 of this Lease:

- 13.4.1 permit any transfer of shares in its capital to be recorded in the books of the company if as a result of such transfer any share having voting rights shall become vested in any persons firms or corporations other than those persons firms or corporations who held shares in its capital having voting rights before such transfer;
- 13.4.2 issue or allot any new shares in its capital to any persons firms or companies not already shareholders of the Lessee;
- 13.4.3 by any act or omission on its part cause or render liable the control of the undertaking and affairs of the Lessee to pass from the directors and members of the Lessee whether pursuant to the terms of any debenture equitable charge or other deed or agreement or in any other way whatsoever.

14 DEFAULT AND TERMINATION

14.1 Lessee's Obligation to Yield up Premises

The Lessee agrees, immediately upon the expiry or legally effective termination of this Lease, to yield up possession and control over the Premises to the Lessor, in the condition and state of repair as required under this Lease.

14.2 Essential Terms of this Lease

14.2.1 The following clauses are essential terms of this Lease:

- a) the covenant for the Lessee to enter into a new Lease or surrender this Lease where a boundary adjustment is required (clause 2.1.3);
- b) the covenant for the Lessee to enter into a new Lease or surrender this Lease where the Lessor wishes to upgrade any adjoining road or track for the purposes of establishing a formed road (clause 2.1.4);
- c) the covenant for the Lessee to create easements or restrictions over the Premises where required by the Lessor (clause 2.1.5);
- d) the covenant for the Lessee to permit access over the Premises to adjoining lessees (clause 2.1.6);
- e) the covenant to pay Rent Outgoings and charges throughout the Term of this Lease at a date not later than twenty-eight (28) days after the due date for the payment of each yearly instalment of Rent (clause 3);
- f) the covenant dealing with the use of the Premises (clause 5.1);
- g) the covenant dealing with Bed Numbers and Maximum Persons Staying Overnight (clause 6);
- h) the covenant dealing with compliance with statutory requirements (clause 5.3);
- i) the covenant dealing with Work Health and Safety (clause 5.30);
- j) the covenants dealing with assignment and subletting (clause 13); and
- k) any further terms that are stated to be essential terms in a Schedule to this Lease.

14.2.2 This clause does not limit other terms being essential terms in this Lease.

14.3 Repudiation of this Lease

14.3.1 The Lessee acknowledges that:

- a) the Secretary is legally responsible for ensuring compliance with specific public health and safety matters in the Park and for implementing the Plan of Management;
- b) exceeding the Maximum Number of Persons Overnight contravenes the Plan of Management and may compromise fire safety and public health; and
- c) the Lessor grants this Lease on the basis that the Lessee must at all times

comply with clause 6.1 of this Lease.

14.3.2 The Lessee specifically agrees that if the Lessee or the Lessee's Employees and Agents:

- a) willingly Breach clause 6.1 of this Lease to the extent that in the Lessor's opinion acting reasonably and having regard to the Law and the provisions of this Lease, such a breach endangers the health and safety of Persons in the Premises; and
- b) in the opinion of the Secretary acting reasonably and having regard to the obligations of the Lessee under clause 5.30 of this Lease, the Lessee has failed to ensure the health and safety of any person present on the Premises

then such a Breach amounts to a repudiation by the Lessee of this Lease.

14.3.3 The Lessee may also repudiate this Lease if the Lessee is unwilling or unable to perform other significant obligations or otherwise defaults under this Lease.

14.3.4 The Lessor may, in his or her absolute discretion, not accept the Lessee's repudiation of this Lease in which case this Lease will not be terminated. Where the Lessee has repudiated this Lease and the Lessor has not accepted such repudiation the Lessee must perform all the obligations contained in this Lease and remains liable to the Lessor for any loss or damage to person or property caused by actions or omissions that constituted the repudiation. Further, any non-acceptance of the Lessor of the Lessee's repudiation does not amount to a waiver of the Lessor's right to accept any subsequent repudiation by the Lessee.

14.4 Termination of Lease for Default

Each of the following constitutes a default by the Lessee under this Lease:

- 14.4.1 the rent hereby reserved or any part thereof is unpaid for a period of twenty-eight (28) days after any day on which the same ought to have been paid in accordance with this Lease (whether or not a formal demand has or has not been made); or
- 14.4.2 any serious, persistent and continuing Breach; or
- 14.4.3 failure to comply with an essential term of this Lease; or
- 14.4.4 (the Lessee being a company) an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld); or
- 14.4.5 the Lessee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts or if execution is levied against the Lessee and is not discharged within thirty (30) days; or

- 14.4.6 the Lessee (being an individual) becomes bankrupt or commits an act of bankruptcy or brings his or her estate within the operation of any law relating to bankrupts.

14.5 Termination after Default

The Lessor may terminate this Lease after a default by the Lessee after the Lessor has served a legally effective notice in accordance with clause 14.6 (if applicable) and to effect the termination of this Lease, the Lessor may:

- 14.5.1 re-enter and take possession of the Premises, using reasonable force to secure possession; and/or
- 14.5.2 serve on the Lessee written notice terminating this Lease; and/or
- 14.5.3 institute proceedings for possession against the Lessee; and/or
- 14.5.4 take such actions and/or proceedings as the Lessor may deem appropriate.

14.6 Notice of Default

- 14.6.1 Apart from where the Lessee has repudiated this Lease, the Lessor must not terminate this Lease unless the Lessor serves on the Lessee a notice:
- a) specifying the particular default complained of; and
 - b) if the default is capable of remedy, requiring the Lessee to remedy the default; and
 - c) in case the Lessor claims compensation in money for the default, requiring the Lessee to pay such compensation.
- 14.6.2 If the Lessee fails within a reasonable time (as determined by the Lessor in his or her absolute discretion) of receipt of that notice by the Lessee (or the Lessee's Employees or Agents or any person claiming under the Lessee) to remedy the default to the reasonable satisfaction of the Lessor, if it is capable of remedy, or fails to pay that compensation where compensation in money is required to be paid, then the Lessor may terminate this Lease in accordance with clause 14.5.

14.7 Damages

- 14.7.1
- a) In the event that the Lessee's conduct (whether acts or omissions) constitutes:
 - i) a repudiation of this Lease (or of the Lessee's obligations under this Lease);
 - ii) a Breach of any Lease covenant; or

iii) a Breach of an essential term of this Lease;

the Lessee covenants to compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation or Breach, whether this Lease is or is not terminated for the repudiation, Breach or on any other ground.

- b) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.
- c) The Lessor is entitled to recover damages against the Lessee in respect to the repudiation or Breach of covenant or essential term for the loss suffered by the Lessor in connection with such repudiation or Breach (including reasonable legal costs and disbursements) during the Term of this Lease, as well as other monies that would have become due and payable to the Lessor under this Lease for the unexpired residue of the Term of this Lease.
- d) The Lessor's entitlement to recover damages is not affected or limited by any of the following:
 - i) if the Lessee abandons or vacates the Premises;
 - ii) if the Lessor elects to re-enter the Premises or to terminate the Lease;
 - iii) if the Lessor accepts the Lessee's repudiation;
 - iv) if the parties' conduct constitutes a surrender by operation of Law.

14.7.2 The Lessor's entitlement to damages is in addition to:

- a) the entitlement to recover Rent, Rates, Taxes, Outgoings and operating expenses until the date of expiry or termination of this Lease;
- b) interest on payments in accordance with this Lease;
- c) costs of any Breach, including the costs of termination.

14.7.3 The Lessor must take all reasonable steps to mitigate his or her loss.

14.8 Power of Attorney by Lessee to Lessor

14.8.1 The Lessee appoints the Lessor (and his or her successors and assigns, being the owner of the Premises for the time being) the Lessee's attorney with the powers contained in this clause.

14.8.2 This power of attorney is:

- a) irrevocable by the Lessee; and
- b) granted by the Lessee for valuable consideration (the grant of this Lease

by the Lessor), to secure the performance of the Lessee's obligations and the Lessor's proprietary interest over the Premises.

14.8.3 The Lessor as the Lessee's attorney and in the name and on behalf of the Lessee may:

- a) remove from the Premises, store and sell, any of the Lessee's Fixtures or any other property owned by the Lessee, left on the Premises by the Lessee, after the Lessee has vacated the Premises and this Lease is terminated or has expired;
- b) surrender this Lease, after
 - i) the Lessor has become entitled to terminate this Lease; and
 - ii) the Lessee vacates or abandons the Premises; or
 - iii) the Lessor terminates this Lease by serving notice of termination;
- c) withdraw any caveat lodged by the Lessee in respect to this Lease, after the Lessor effectively terminates this Lease.

14.8.4 The Lessor may:

- a) act as attorney under this clause during the continuance of this Lease and during the period of the six (6) months after the termination of this Lease;
- b) register this Lease (or lease provision) as a power of attorney, at any time including after the termination of this Lease, if that is required for the exercise of any power;
- c) ratify and confirm any power when exercised under this clause, as attorney and agent for the Lessee.

14.9 Waiver

After the Lessee is in Breach under this Lease, including in Breach of an essential term of this Lease, the demand or acceptance from the Lessee by the Lessor of arrears or of any late payment of Rent, Taxes, Outgoings, charges, operating expenses, or other financial obligations does not:

- 14.9.1** preclude the Lessor from exercising any rights or remedies under this Lease, including enforcing or terminating this Lease;
- 14.9.2** constitute a waiver of the essentiality of the Lessee's obligation to make those payments;
- 14.9.3** waive the Lessee's continuing obligation to make those payments during the Term.

14.10 Lessor's Entitlements after Lessee Vacates during Lease Term

If the Lessee vacates or abandons the Premises during the Term of this Lease in Breach of the Lessee's obligations under this Lease, the Lessor may:

- a)
 - i) accept the keys to the Premises from the Lessee;
 - ii) renovate, restore and clean the Premises;
 - iii) change the locks and secure the Premises; and
 - iv) permit prospective tenants to inspect the Premises;
- b) take any action in paragraph a) without the Lessor's conduct constituting:
 - i) a re-entry or termination of this Lease; or
 - ii) the acceptance of a surrender of this Lease.

14.11 Removal of Improvements

- 14.11.1 Notwithstanding anything in clause 8.1 of this Lease, the Lessor, at his or her election, may by notice given to the Lessee at any time within thirty (30) days after the expiration or termination of this Lease require the Lessee within the time stated in such notice to remove any of the Improvements and/or to fill in all or any excavations made by the Lessee and in such case the Lessee must in accordance with such notice effect such removal and fill in such excavations.
- 14.11.2 The Lessee must not cause any damage to standing timber or to the surface of the ground while removing the Improvements and must leave the Premises clean and tidy after the removal.
- 14.11.3 The Lessee must make good to the satisfaction of the Lessor any damage caused to the Premises or the Park as a result of the removal of the Improvements and any earthworks and correct any condition likely to result in soil erosion to the Premises or the Park.
- 14.11.4 The Lessee is responsible for and indemnifies the Lessor in respect to any loss or damage caused by the Lessee or the Lessee's Employees and Agents arising from the removal of the Improvements.

14.12 Lessee to Accept Responsibility for Lessee's Employees and Agents

The Lessee accepts full responsibility for the acts and omissions of the Lessee's Employees and Agents within or in the vicinity of the Premises and in the event of Breach by any such person this Lease shall apply against the Lessee as if such Breach was a Breach by the Lessee itself and the Lessee shall remedy any such Breach or where applicable, indemnify the Lessor in respect to such Breach.

14.13 Disconnection of Community Services

In addition to any other rights and remedies available to the Lessor under this Lease, the Lessor is entitled in the event that and for so long as the Lessee is in default of any provision under this Lease to terminate interrupt or discontinue the provision of any community service provided by the Lessor to the Premises and in such event the Lessor shall not incur any liability for any loss or damage of whatsoever kind or nature (whether consequential or reasonably foreseeable or otherwise) suffered by the Lessee or any of the Lessee's Employees and Agents as a result of or arising out of any such termination interruption or discontinuance.

14.14 Requirement of Premises or part for Community or Public Purposes

14.14.1 If the Lessor requires possession of the Premises or any part thereof for works for any public or community purpose or any works subsidiary or ancillary to any such work or for the purpose of the care control and management of the Park and to put an end to this Lease and the Lessor gives to the Lessee six (6) calendar months' notice in writing expiring at any time then this Lease shall cease and determine without prejudice nevertheless to any then existing remedy which the Lessor may have against the Lessee for arrears of Rent or for any Breach.

14.14.2 In the event of the Lessor exercising its powers under this clause 14.14 and provided that the Lessee has duly complied with any covenant or conditions of this Lease of which the Lessee was in default at the date of the expiration of the notice referred to in cl.14.14.1 then the Lessee shall be entitled to such compensation as shall be determined by the Valuer General or a valuer nominated by the Valuer General as the value of the estate or interest of the Lessee in the Premises or affected part or parts thereof at the date of acquisition.

14.15 Native Title

14.15.1 The Lessee acknowledges that this Lease is validly granted under Part 2, Division 3, Subdivision J of the *Native Title Act 1993* (Cth) (CNTA), but acknowledges that in the event that native title rights and interests are, or would be, affected by the grant of this Lease and this Lease is not authorised by Subdivision J, or otherwise under the CNTA, such may be invalid within the meaning of the CNTA. If the Lease is invalid the parties agree that the valid parts of this Lease continue in force unaffected by the invalid parts.

14.15.2 If there is or is likely to be a native title claim over or in relation to the Premises or the Park, the Lessee must continue to perform the obligations of this Lease and must carry on the business or other operation of the Premises for the Permitted Use unless otherwise:

- a) directed by the Lessor;
- b) ordered by any Court or Tribunal; or
- c) required by Law.

15 PROCEDURAL MATTERS

15.1 Time for Determining Rights and Obligations

This Lease for the purpose of determining the rights and obligations of the parties shall be construed as if it had been executed on the date from which the Term is expressed to run.

15.2 Variation or Waiver

None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by the Lessor unless by his or her express consent in writing. No waiver by the Lessor of any Breach of any condition contained or implied in this Lease shall operate as a waiver of another Breach of the same or of any other condition in this Lease.

15.3 Provisions to be Construed as Covenants

Such of the provisions and conditions herein contained as require or prescribe anything to be done or not to be done by the Lessee shall in addition to being read and construed as conditions of the Lease hereby granted be also read and construed as covenants and agreements whereby the Lessee for itself and its assigns covenants with the Lessor to observe and perform such provisions and conditions.

15.4 Consents Permissions or Approvals

Where anything in this Lease may be done with the approval, permission or consent of the Lessor (including where such approval, permission or consent may be revoked by the Lessor) the Lessor may:

15.4.1 unless otherwise expressly provided in this Lease, give, withhold or revoke his or her approval, permission or consent in his or her unfettered discretion; and

15.4.2 impose conditions on that approval, consent or revocation.

Unless otherwise provided the consent, permission or approval may be given by the Secretary or an Authorised Officer.

15.5 Opinions by Lessor

Any opinion to be formed by the Lessor for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor determines to be sufficient.

15.6 Lessee Not Agent of Lessor

The Lessee will not directly or indirectly hold out or permit to be held out to any member of the public any statement act deed matter or thing indicating or tending to indicate that the Premises or any business conducted thereon is being conducted managed or supervised by the Lessor, the Secretary, the Department or the Crown in right of New South Wales nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor, the Secretary, the Department or the Crown in right of New South Wales.

15.7 Communication with Lessee

The Lessee's contact details are set out at Item 8B of the Reference Schedule. The Lessee must at all times inform the Lessor of any amendment to the contact details set out at Item 8B of the Reference Schedule as soon as practicable after the Lessee's contact details have been changed.

15.8 Notices

Any notice or other communication to be given under this Lease is sufficiently served on the Lessee if signed by an Authorised Officer for the time being of the Lessor and if forwarded by post or facsimile or left addressed to the Lessee at the address set out at Item 8A of the Reference Schedule or the principal office of the Lessee last known to the Lessor, and shall be sufficiently served on the Lessor if addressed to the Lessor and left at or sent by post or facsimile addressed to the Lessor at the Lessor's address specified in this Lease at Item 9 of the Reference Schedule or such other address that the Lessor may notify to the Lessee from time to time. A notice sent by post shall be deemed to be given at the time when it ought to be delivered in due course of post and a notice sent by facsimile shall be deemed to be given upon confirmation of the transmission.

15.9 Costs of Lease

The Lessee must pay:

- 15.9.1 the Lessor's reasonable legal costs and all duties fees charges and expenses of or incidental to the preparation completion stamping and registration of this Lease and any variation thereto, and any application for the consent of the Lessor hereunder, and of or incidental to any Breach by the Lessee hereunder, and of or incidental to the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor hereunder;
- 15.9.2 the fees of all professional consultants properly incurred by the Lessor in consequence of or in connection with any Breach;
- 15.9.3 all expenses reasonably incurred by the Lessor in any entry inspection examination consultation or the like which discloses a Breach;
- 15.9.4 all expenses reasonably incurred by the Lessor in the examination of plans drawings and specifications for any building structure or improvement constructed or to be constructed or other work to be carried out on the Premises and the inspection thereof both during and after completion;
- 15.9.5 all survey and site valuation fees incurred by the Lessor in connection with the Premises for the purposes of this Lease including valuation fees incurred by the Lessor in connection with the Premises for any rent review; and
- 15.9.6 all costs of carrying out any requirement or obligation imposed upon the Lessee by this Lease.

15.10 Licences

- 15.10.1 The Lessee must apply for and take all steps required to obtain all such licences or renewals thereof as may in the opinion of the Lessor be necessary for the proper conduct of the Premises and the Lessee will not do or suffer to be done any act matter or thing whereby any such licence may be or become liable to be forfeited or suspended or the renewal thereof refused.
- 15.10.2 The Lessee must at the expiration or sooner determination of this Lease sign and give such notice or notices and allow such notice or notices of renewal or transfer of any licence to be affixed to the Premises and generally do and perform all such further acts matters and things as shall be necessary to enable the Lessor or any person authorised by him or her to obtain the renewal of any licence or licences or any new licence or licences or the transfer of any licence or licences then existing and in force.

15.11 Inspection by Prospective Lessees

The Lessee must at all reasonable times within the three (3) months immediately preceding the termination of this Lease permit the Lessor to exhibit the Premises to prospective tenants and will at all times during that period of three (3) months allow the Lessor to affix and exhibit where the Lessor shall think fit an appropriate notice facilitating enquiries to the Lessor and/or his or her agent and the Lessee shall not remove any such notice without the written consent of the Lessor.

15.12 Disclosure of Information

- 15.12.1 The Lessee acknowledges that the Lessor is required by section 151D of the Act to maintain a register on which certain information concerning this Lease is to be recorded and made publicly available and consents to the disclosure of such information.
- 15.12.2 The Lessee agrees that the Lessor may, without the consent of the Lessee, disclose to an incoming lessee of the Premises such financial information of the Lessee as has been provided to the Lessor by the Lessee but only for the purposes of disclosing to any incoming lessee the nature and scope of the commercial operation conducted on the Premises by the Lessee.

16 OPTION

16.1 Further Lease

- 16.1.1 This clause 16 operates only if at Item 13 of the Reference Schedule a Further Term is identified.
- 16.1.2 If the Lessee wishes to take a lease of the Premises for any Further Term specified at Item 13 of the Reference Schedule and:
- a) not less than six (6) months and not more than twelve (12) months before

the expiration of the then current Term gives notice in writing to the Lessor to that effect; and

- b) as at the date of the notice the Lessee is not in subsisting Breach of a provision of this Lease; and
- c) has not at the date of the notice been previously issued with more than three (3) notices from the Lessor to remedy a Breach of an essential term of this Lease identified at clause 14.2.1,

then the Lessor must grant the Further Lease for the Further Term at an annual Rent as determined by Part A of the Rent Schedule and otherwise on the same conditions as are contained in this Lease, except as provided by clause 16.2.

16.2 Terms of Further Lease

The Further Lease must be amended as follows:

- 16.2.1 the Commencing Date shall be the date immediately following the Terminating Date of this Lease;
- 16.2.2 the Terminating Date shall be inserted, given the term of the Further Lease;
- 16.2.3 the number of Options contained in the Reference Schedule and Lease cover page shall be reduced by one;
- 16.2.4 if no further Options for a Further Term are stipulated at Item 13 of the Reference Schedule, clause 16.1 and 16.2 shall be omitted from the Further Lease;
- 16.2.5 Item 14B of the Reference Schedule shall be omitted from the Further Lease;
- 16.2.6 any clause or paragraph in Part A of the Rent Schedule that is specified in Part A of the Rent Schedule as to be omitted from the Further Lease, shall be omitted from the Further Lease;
- 16.2.7 Part B of the Rent Schedule shall be omitted from the Further Lease;
- 16.2.8 Part C of the Rent Schedule and all references to the Lease Grant Fee shall be omitted from the Further Lease; and
- 16.2.9 The Additional Bed Allocation Schedule and all references to Additional Bed Allocation and Additional Beds Allocation Fee shall be omitted from the Further Lease.

17 ADJOINING LICENCE AREA

17.1 Adjoining Licence Area

If the Lessor has granted to the Lessee a licence over an Adjoining Licence Area under clause 2.1.2 of this Lease, then where not repugnant to the context the definition of Premises in this Lease includes the Adjoining Licence Area.

17.2 Adjoining Licence Area Conditions

The conditions for the use and occupation by the Lessee of an Adjoining Licence Area are set out in Schedule 4.

18 ADDITIONAL COVENANTS

The Lessee must comply with the covenants and obligations contained in the Additional Covenants Schedule.

SCHEDULE 1 REFERENCE SCHEDULE

Item 1 (clause 1.1)	Premises	The land stipulated at Item (A) on the Lease cover page.
Item 2 (clauses 1.1 and 3.6)	Bank Guarantee	\$40,000.00
Item 3 (clauses 1.1 and 5.1)	Permitted Use of Premises	A hotel for the accommodation of the general public and purposes reasonably incidental to that use including staff accommodation and the sale of liquor.
Item 4 (clauses 1.1 and 6)	Bed Numbers	90
Item 4A (clause 1.1 and Schedule 5)	Additional Beds Allocation	Nil
Item 5 (clauses 1.1 and 6)	Maximum Number of Persons Overnight	Without an Additional Beds Allocation: 90 With an Additional Beds Allocation: (but only if the Lessee has complied with the provisions of Schedule 5): 90
Item 6 (clause 11.1)	The minimum amount which may be paid arising out of any one single accident or event	\$10,000,000.00
Item 7	Not applicable	
Item 8A (clause 15.8)	Lessee's address for service	Sundeck Hotel Pty Ltd PO Box 58 Perisher Valley NSW 2824 or c/- Alpine Law PO Box 1027 Jindabyne NSW 2627
Item 8B (clause 15.7)	Lessee's contact details	Mr Clifford Wallis Director Sundeck Hotel PO Box 58 Perisher Valley NSW 2624 Telephone: 02 6457 5222
Item 9 (clause 15.8)	Lessor's address for service	Chief Executive Office of Environment and Heritage National Parks and Wildlife Service PO Box 1967, Hurstville NSW 1481 43 Bridge Street, Hurstville NSW 2220

Item 10 (clauses 1.1 and 17 and Schedule 4)	Adjoining Licence Area	That land shown in the photograph of the Premises – Plan showing Sundeck Hotel, Lot 224, Perisher Valley (Ref 3292) – that adjoin the Premises and is outlined in yellow, incorporated into this Lease by reference.
Item 11 (clauses 1.1 and 17 and Schedule 4)	Permitted Use of Adjoining Licence Area	Access area
Item 12 (clauses 1.1 and 17 and Schedule 4)	Licence Fee	\$1.00, if demanded.
Item 13 (clauses 1.1 and 16)	Further Term	1 July 2028 to 30 June 2058
Item 14A (clause 3 and Rent Schedule)	Market Land Value	\$1,154,156.30 for the first year of the Term and thereafter as determined in accordance with clause 7 of the Rent Schedule (subject to valuation)
Item 14B	Base Rent for first year of Term	\$62,249.38
Item 14C (clause 3 and Rent Schedule)	Base Rent Percentage	6.0% for the first year of the Term and thereafter as determined by the Lessor in accordance with clause 8 of the Rent Schedule
Item 15 (Rent Schedule)	Turnover Rent Percentage	6.0% for the first year of the Term and thereafter as determined in accordance with clause 4 of the Rent Schedule
Item 16	Not Applicable	
Item 17 (Additional Covenants Schedule)	Management company	NA
Item 18 (Rent Schedule)	Date of end of annual accounting period (day and month)	30 June
Item 19 (Rent Schedule)	Date of end of Lease year (day and month)	30 June

Item 20 (Additional Covenants Schedule)	Oversnow vehicles	2
Item 21 (clause 5.26)	Environmental Research and Rehabilitation Contribution	\$11.05 per Bed CPI adjusted annually.
Item 22 (Rent Schedule)	Lease Grant Fee	\$126,000.00 exclusive of GST.
Item 23 (Rent Schedule)	Lease Grant Fee Payment Option	One payment on the Commencing Date
Item 24 (Schedule 5)	Additional Beds Allocation Fee	NA
Item 25 (Schedule 5)	Additional Beds Allocation Fee Payment Option	NA

SCHEDULE 2 RENT SCHEDULE

PART A (Rent)

1 DEFINITIONS

Annual Adjustment Notice means a written notice from the Lessor to the Lessee stating:

- a) the Turnover Rent for the relevant period of the Auditor's Certificate; and
- b) the amount paid by the Lessee on account of Base Rent for such period.

Audited Gross Revenue means Gross Revenue the amount of which has been duly audited and certified by the Lessee's auditor who shall be a registered auditor.

Auditor's Certificate means a written statement by a registered auditor certifying the Audited Gross Revenue for each year of the Term.

Base Rent means the amount determined by multiplying the Market Land Value by the Base Rent Percentage applicable for the year as reviewed by, and subject to the terms of, this Schedule.

Base Rent Percentage means the percentage specified at Item 14C of the Reference Schedule and for the Further Term as determined in accordance with clauses 6 and 8 of this Schedule.

Base Rent Percentage Review Date means the Commencing Date of the Further Term and every tenth anniversary thereof.

CPI means the Consumer Price Index for Sydney (All Groups) published by the Australian Bureau of Statistics (or its successors). If the Consumer Price Index is suspended or discontinued the index to be used shall be the index advised by the Australian Statistician, which reflects the basic change in the cost of living in Sydney during any year.

Dispute Notice means a written notice from the Lessee to the Lessor to the effect that the Lessee disputes the Lessor's assessment of the Market Land Value Base Rent Percentage or Turnover Rent Percentage as the case may be.

Dispute Period means the period from the date each Market Land Value Review Notice or Lessor's Assessment is served on the Lessee until twenty-one (21) days thereafter.

Gross Revenue means all monies received or brought to account by the Lessee, its assigns, successors, sublessees and licensees arising from the carrying on of its and their business upon or in connection with the Premises or any part thereof and includes all rental and other monies received by the Lessee from its licensees and sublessees.

Lease Grant Fee means the premium payable by the Lessee to the Lessor for the grant of this Lease as set out in Part C of this Schedule and as specified at Item 22 of the Reference Schedule.

Lease Grant Fee Payment Option means the Lease Grant Fee payment option elected by the Lessee as specified at Item 23 of the Reference Schedule.

Lessor's Assessment means a written notice from the Lessor to the Lessee of a revised Base Rent Percentage or revised Turnover Rent Percentage as the case may be.

Market Land Value means the market value of the fee simple of the land, excluding the improvements, identified at item (A) on the Lease cover page. The Market Land Value is, at the Commencing Date of this Lease, specified at Item 14A of the Reference Schedule and thereafter is determined in accordance with clause 7 of this Schedule.

Market Land Value Review Date means the Commencing Date of the Further Term and every tenth anniversary thereof.

Market Land Value Review Notice means a written notice from the Lessor to the Lessee of the amount, which the Lessor considers to be the Market Land Value as at the Market Land Value Review Date.

Turnover Rent means the amount determined by multiplying the Audited Gross Revenue by the Turnover Rent Percentage applicable for the year.

Turnover Rent Percentage means the percentage specified at Item 15 of the Reference Schedule for the first year of the Term and for each subsequent year until the first Turnover Rent Percentage Review Date and thereafter as determined by clause 4 of this Schedule.

Turnover Rent Percentage Review Date means the sixth anniversary of the Commencing Date of the Lease and every tenth anniversary thereafter, and in relation to the Further Term means the Commencing Date of the Further Term and every tenth anniversary thereafter.

Year means in this Schedule a period of twelve months commencing 1 July in each calendar year.

2 RENT

- a) The Lessee will pay as Rent to the Lessor for each year of the Term the greater of the Base Rent or Turnover Rent applicable for that year.
- b) For the first year of the Term the Base Rent shall be the amount set out in Item 14B of the Reference Schedule.
- c) For each year of the Term the Lessee must pay the applicable Base Rent in advance on the Commencing Date and each anniversary thereof.
- d) The Lessee shall pay the Rent to the Lessor at the address nominated by the Lessor from time to time and in such manner as the Lessor shall direct.

3 REVIEW OF BASE RENT - CPI

- a) For the first year of the Term the Market Land Value is specified at Item 14A of the Reference Schedule.
- b) CPI Review
 - i) For the second and each subsequent year of the Term the Base Rent shall be reviewed on each anniversary of the Commencing Date (except for an anniversary that is also a Market Land Value Review Date) of the Lease and shall be derived by multiplying the Base Rent payable for the year last concluded by the fraction A/B where:

A = the CPI figure last published prior to the first day of the year under review.

B = the CPI figure last published prior to the first day of the year immediately preceding the year under review.
 - ii) If the Base Rent determined in accordance with clause 3 b) i) is less than the Base Rent for the immediately preceding year the Base Rent for the year under review shall be equivalent to the Rent for the immediately preceding year.

4 REVIEW OF TURNOVER RENT PERCENTAGE

- a) The Turnover Rent Percentage shall be reviewed on each Turnover Rent Percentage Review Date in accordance with clause 4 b) and such reviewed Turnover Rent Percentage shall apply for the year commencing on that date and for each subsequent year (subject to clause 5) until the year commencing on the next Turnover Rent Percentage Review Date.
- b)
 - i) During the six (6) calendar months preceding a Turnover Rent Percentage Review Date the Lessor may serve on the Lessee a Lessor's Assessment setting out the Turnover Rent Percentage to apply from that Turnover Rent Percentage Review Date.
 - ii) The Turnover Rent Percentage determined by the Lessor shall be consistent with the turnover based rent percentages applicable to alpine ski resort premises that are comparable to the Premises in this Lease but also having regard to the turnover based rent percentages applicable to other tourist accommodation considered relevant.
 - iii) If the Lessee does not agree with the Turnover Rent Percentage determined by the Lessor then the Lessee must, if it wishes to dispute such Turnover

Rent Percentage, serve a Dispute Notice on the Lessor within the Dispute Period.

- iv) If the Lessee does not serve a Dispute Notice within the Dispute Period, the Turnover Rent Percentage stated in the Lessor's Assessment will be the revised Turnover Rent Percentage.
 - v) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period then the provisions of clause 7 b) iv)-vii) apply with the references to Market Land Value in such clauses being read as references to Turnover Rent Percentage. The valuer must determine the Turnover Rent Percentage to be consistent with the turnover based rent percentages applicable to Alpine Ski resort premises that are comparable to the Premises in this Lease but also having regard to the turnover based rent percentages applicable to other tourist accommodation that the valuer considers relevant. The valuer must not determine the revised Turnover Rent Percentage less than the Turnover Rent Percentage applicable to the Premises immediately prior to the Turnover Rent Percentage Review Date.
 - vi) Where the revised Turnover Rent Percentage has not been determined by the Turnover Rent Percentage Review Date the Turnover Rent Percentage applicable to the year immediately preceding the Turnover Rent Percentage Review Date shall be used to determine the Turnover Rent for the year under review. Once the revised Turnover Rent Percentage is determined the Turnover Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.
 - vii) If the Lessor fails to exercise his or her rights to require the Turnover Rent Percentage to be revised before any Turnover Rent Percentage Review Date then this right may be exercised at any time prior to the next Turnover Rent Percentage Review Date and the revised Turnover Rent once determined will still be payable from the last Turnover Rent Percentage Review Date. No succeeding Turnover Rent Percentage Review Date will be postponed because of the operation of this clause.
- c) The Turnover Rent Percentage will be capped at 7% for the first review only during the Term of the Lease.

5 BASE RENT AND TURNOVER RENT PERCENTAGE NEVER LESS THAN PRECEDING YEAR

Whenever there is to be a review of the Base Rent or Turnover Rent Percentage in accordance with this Schedule and the resulting Base Rent or Turnover Rent Percentage (as the case may be) is less than for the immediately preceding year such Base Rent or Turnover Rent Percentage shall be replaced by the Base Rent or Turnover Rent Percentage for the immediately preceding year.

6 DETERMINATION OF RENT FOR FURTHER LEASE

- a) Where the Lessee has complied with the provisions of clause 16.1 of this Lease and the Lessor has agreed to grant a Further Lease in accordance with clause 16.1 of this Lease the Rent to apply for the Further Lease shall be determined in accordance with this clause.
- b) Clause 2 shall apply except to the extent that it is modified by the reviews provided for in this clause and a reference to Term in that clause shall be taken to mean Further Term.
- c) The Market Land Value shall be reviewed at the Commencing Date of the Further Term and on each Market Land Value Review Date in accordance with clause 7.
- d) The Base Rent Percentage shall be reviewed at the Commencing Date of the Further Term and on each Base Rent Percentage Review Date in accordance with clause 8.
- e) The Turnover Rent Percentage shall be reviewed on the Commencing Date of the Further Term and each Turnover Rent Percentage Review Date.
- f) The Base Rent shall be reviewed for the second and each subsequent year of the Further Term in accordance with clause 3 b) (but not including a Market Land Value Review Date).
- g) Clauses 4 c) and 5 do not apply for the purposes of any Further Term.

7 MARKET LAND VALUE REVIEW FOR FURTHER TERM

- a) The Market Land Value shall be reviewed in accordance with clause 7 b) and such reviewed Market Land Value shall apply for the year commencing on that date until the year commencing on the next Market Land Value Review Date.
- b) Market Land Value Review
 - i) During the six (6) calendar months preceding a Market Land Value Review Date the Lessor may serve on the Lessee a Market Land Value Review Notice setting out what he or she considers to be the Market Land Value to apply from that Market Land Value Review Date.
 - ii) If the Lessee does not agree with the Market Land Value determined by the Lessor then the Lessee must, if it wishes to dispute the Lessor's assessment of the revised Market Land Value, serve a Dispute Notice on the Lessor within the Dispute Period.

- iii) If the Lessee does not serve a Dispute Notice within the Dispute Period, the amount stated in the Market Land Value Review Notice will be the revised Market Land Value.
- iv) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period, the Lessor must within twenty-one (21) days of receiving the Dispute Notice refer the matter to the president or other principal officer for the time being of the Australian Property Institute Inc (New South Wales Division) (or any association replacing the same) to appoint a valuer to determine the revised Market Land Value.
- v) The revised Market Land Value determined by the valuer will be final and binding on the parties.
- vi) The costs incurred in the determination of the revised Market Land Value must be shared equally between the parties.
- vii) In determining the revised Market Land Value the valuer must:
 - A be a full member of not less than five (5) years standing of the Australian Property Institute Inc (New South Wales Division);
 - B be the holder of a licence to practice as a valuer in New South Wales of the kind of premises demised by this Lease;
 - C have at least five (5) years experience in valuing that kind of premises and be active in that market at the time of the appointment;
 - D have due regard to any evidence submitted by the parties as to their assessments of the revised Market Land Value;
 - E give in writing his or her determination providing complete details of comparable evidence, the evaluation of that evidence, and details of the basis for the determination;
 - F be deemed to be acting as an expert (whose decision shall be final and binding on the parties) and not as an arbitrator.
- viii) In determining the revised Market Land Value the valuer must determine the Market Land Value for the Premises unaffected by any interest in the land as at the Market Land Value Review Date and must value the land according to the maximum potential for the development of the land, the position of the site relative to existing or proposed infrastructure and facilities, the availability of services to the site, the Bed Numbers and all other uses permitted on the Premises by this Lease and the Premises as being subject to the Plan of Management applicable at the Market Land Value Review Date.
- ix) Where the revised Market Land Value has not been determined by the Market Land Value Review Date the Market Land Value applicable to the year immediately preceding the Market Land Value Review Date shall be used to determine the Base Rent for the year under review. Once the revised Market

Land Value is determined the Base Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.

- c) If the Lessor fails to exercise his or her rights to require the Market Land Value to be revised before any Market Land Value Review Date then this right may be exercised at any time prior to the next date the Market Land Value is to be reviewed and the revised Base Rent once determined will still be payable from the last Market Land Value Review Date. No succeeding Market Land Value Review Date will be postponed because of the operation of this clause.

8 REVIEW OF BASE RENT FOR FURTHER TERM – BASE RENT PERCENTAGE

- a) The Base Rent Percentage shall be reviewed in accordance with clause 8 b) and such reviewed Base Rent Percentage shall apply for the year commencing on that date and for each subsequent year (subject to clause 5) until the year commencing on the next Base Rent Percentage Review Date.
- b)
 - i) During the six (6) calendar months preceding a Base Rent Percentage Review Date the Lessor may serve on the Lessee a Lessor's Assessment setting out what he or she considers to be the Base Rent Percentage to apply from that Base Rent Percentage Review Date.
 - ii) The Lessor must determine the Base Rent Percentage as the percentage that when multiplied by the applicable Market Land Value results in an amount that would be equal to the market rate of return that would be reasonably expected for a lease of the land the subject of this Lease and for the same Term between a willing lessor and a willing lessee in an arms length transaction wherein the parties both acted knowledgeably, prudently and without compulsion.
 - iii) If the Lessee does not agree with the Base Rent Percentage determined by the Lessor then the Lessee must, if it wishes to dispute such Base Rent Percentage, serve a Dispute Notice on the Lessor within the Dispute Period.
 - iv) If the Lessee does not serve a Dispute Notice within the Dispute Period, the Base Rent Percentage stated in the Lessor's Assessment will be the revised Base Rent Percentage.
 - v) If the Lessee gives the Lessor a Dispute Notice within the Dispute Period then the provisions of clauses 7 b) iv)-vii) apply with the references to Market Land Value in such clauses being read as references to Base Rent Percentage. The valuer must determine the Base Rent Percentage as the percentage that when multiplied by the applicable Market Land Value results in an amount that would be equal to the market rate of return that would be reasonably expected for a lease of the land the subject of this Lease and for the same

Term between a willing lessor and a willing lessee in an arms length transaction wherein the parties both acted knowledgeably, prudently and without compulsion. In determining the Base Rent Percentage the Valuer must have regard to (but is not limited by) rental evidence of leases of land having permitted uses similar or comparable to those of this Lease as well as of leases of land with permitted uses reasonably considered by the valuer as providing a similar market rate of return as is provided by leases of snowfield and tourist related uses.

- vi) Where the revised Base Rent Percentage has not been determined by the Base Rent Percentage Review Date the Base Rent Percentage applicable to the year immediately preceding the Base Rent Percentage Review Date shall be used to determine the Base Rent for the year under review. Once the revised Base Rent Percentage is determined the Base Rent applicable for the year under review shall be redetermined by the Lessor and the Lessee shall pay any necessary adjustment within fourteen (14) days of receipt of the Lessor's written notice.
- c) If the Lessor fails to exercise his or her rights to require the Base Rent Percentage to be revised before any Base Rent Percentage Review Date then this right may be exercised at any time prior to the next Base Rent Percentage Review Date and the revised Base Rent once determined will still be payable from the last Base Rent Percentage Review Date. No succeeding Base Rent Percentage Review Date will be postponed because of the operation of this clause.

9 STATEMENTS OF GROSS REVENUE

The Lessee must give the Lessor, in the form which the Lessor reasonably requires, an Auditor's Certificate or other form of audit certification acceptable to the Lessor prior to 31 October of each calendar year.

10 ANNUAL ADJUSTMENT OF RENT

- a) Within one (1) month of the Lessor receiving each Auditor's Certificate or other form of audit certification acceptable to the Lessor, the Lessor must give the Lessee an Annual Adjustment Notice.
- b) The Lessee shall pay within fourteen (14) days of the date of the Annual Adjustment Notice the amount, if any, set out in the Annual Adjustment Notice by which the Turnover Rent for the relevant period exceeds the Base Rent paid by the Lessee for such period.

11 GOODS AND SERVICES TAX

GST is payable in addition to the amounts noted in this Schedule.

12 ACCOUNTS AND RECORDS

a) Keeping of Accounts and Records

The Lessee will keep its accounts and records and ensure that those of its sublessees, licensees and managers are adequately kept to permit a true and accurate determination of the Gross Revenue during any Year to be obtained by audit for the purposes of computing the rent payable by the Lessee as herein provided and to permit payment of such rent within the times herein provided.

b) Accounting Period

Neither the Lessee nor any of its sublessees or licensees or other person claiming through or under the Lessee will without the prior written consent of the Lessor adopt any other accounting period than that ending upon the date at Item 18 of the Reference Schedule in each Year.

c) All Transactions to be Incorporated

The Lessee must bring into and incorporate into its accounts and records, and procure to be brought into and incorporated into the accounts and records of its sublessees or licensees, all financial transactions of the Lessee and/or of such sublessees or licensees as the case may be either directly or through any subsidiary or agent relating to the carrying on or in any way in connection with the business of the Lessee or any sublessee or licensee of the Lessee upon the Premises and for the purposes of this covenant the term 'subsidiary' shall have the same meaning as in the *Corporations Act 2001* (Cth) and shall include any company body or enterprise the affairs of which it is within the power of the Lessee to directly or indirectly control.

d) Accounts and Records to be Made Available for Inspection

The Lessee must:

- i) duly enter and keep in suitable books and records to be kept in the English language for that purpose at a proper office on the Premises (or such other place as the Lessor may approve) true particulars and complete accounts and records of all its Gross Revenue arising from the carrying on of its business upon or in connection with the Premises;
- ii) keep the books and records referred to in clause d) i) at all times open for inspection by the Lessor;
- iii) permit the Lessor or any person authorised by the Lessor to take copies and extracts from those books and records referred to in clause d) i);
- iv) at all times render to the Lessor and every person authorised by the Lessor all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove such entries, accounts, books and records to the satisfaction of the Lessor and any authorised person in such manner as he or she may direct; and

- v) furnish the Lessor or any authorised person with all such information as either shall demand concerning Gross Revenue;
- vi) obtain from each of its sublessees and licensees a return showing the certified gross revenue of such sublessee or licensee in any financial year during the continuance of this Lease;
- vii) include in any sublease, licence or any other management agreement or like arrangement entered into by the Lessee the following clauses:
 - A a clause requiring the sublessee or licensee or other person to duly enter and keep in suitable books and records to be kept during the continuance of the sublease or licence at its/their business office of the true particulars and complete accounts and records of all the Gross Revenue of the sublessee or licensee arising from the carrying on of the business of the sublessee or licensee upon or in connection with the Premises or any part thereof;
 - B a clause requiring that such books and records must at all times be open for inspection by the Lessor or any person authorised by him or her and authorising the Lessor or any such person to take copies and extracts of such books and records;
 - C a clause requiring that the sublessee or licensee or other person will at all times render to the Lessor and every such person all and every assistance and explanation in making such inspection and taking such copies and extracts and will verify and prove such entries accounts books and records to the satisfaction of the Lessor and such authorised person in such manner as he or she may direct and furnish the Lessor or such authorised person with all information.

e) No Deductions from Gross Revenue

No monies paid or credited by the Lessee or any person, firm or company claiming through or under the Lessee or debited against the Lessee or any such person, firm or company, nor any monies paid or payable by the Lessee or any such person, firm or company as aforesaid to any other person, firm or company for management expenses shall be deducted or otherwise taken into account in arriving at the amount of any certified Gross Revenue.

f) Balance Sheet and Profit and Loss Account

The Lessee will furnish to the Lessor prior to 31 October in each and every year of the Term of this Lease or as otherwise required by the Lessor true copies of the duly certified balance sheet and profit and loss account of all business of the Lessee relating to the Premises for the year ending on the date in Item 18 of the Reference Schedule provided that in respect to the Lessee's business during the final year of the Term copies of the balance sheet and profit and loss account shall be furnished by the Lessee within ninety (90) days after the date of expiration of this Lease.

g) Understated Gross Revenue

In the event that after inspection by the Lessor or any person authorised by him or her the certified statement of Gross Revenue provided by the Lessee shall be found to be understated by more than two per cent (2%) the Lessee must pay the costs of the Lessor in establishing the discrepancy and for the purposes of this clause and clause 12 h) the certificate of the Lessor's appointed auditor shall be final and binding.

h) Interest to be Paid if Discrepancy

Should any discrepancy be established as referred to in clause 12 g) then in addition to the payment of the Lessee to the Lessor of any rent rightfully due the Lessee shall also pay to the Lessor interest calculated in accordance with the provisions of clause 3.5 of this Lease.

Part B – Table of Rent and Rent Reviews

The following tables summarise the applicable Rent and Rent Reviews in this Lease as a guide only. In the event of any inconsistency, the provisions of Part A of this Schedule 2 apply.

Initial Term of Lease (to be deleted if the Lease is renewed)

Rent/Rent Review	Details
Rent (cl.2)	The greater of Base Rent or Turnover Rent
Base Rent (cl.1)	6% of Market Land Value at Commencing Date
Base Rent for the first year of Term	\$62,249.38
CPI Reviews of Base Rent (cl.3 b)	Every year - ratchet applies
Turnover Rent Percentage Review (cl.4 and 5)	The sixth anniversary of the Commencing Date (namely, in 2018) however limited to 7% maximum – ratchet applies

Further Term of Lease

Rent/Rent Review	Details
Market Land Value Review (cl.6 and 7)	Commencing Date of Further Term and every 10 years thereafter – no ratchet applies
Base Rent Percentage Review (cl.6 and 8)	Commencing Date of Further Term and every 10 years thereafter – no ratchet applies
Turnover Rent Percentage Review (cls.4 and 7)	Commencing Date of Further Term and every 10 years thereof – no ratchet applies
CPI Review of Base Rent (cl.3 and 7)	Every year except Market Land Value Review years - ratchet applies

PART C (Lease Grant Fee)

13 LEASE GRANT FEE

- a) The Lease Grant Fee is the amount specified in Item 22 of the Reference Schedule.
- b) The Lessee must pay the Lease Grant Fee to the Lessor at the address nominated by the Lessor, in such a manner as the Lessor shall direct and otherwise in accordance with this clause.
- c) Where Item 23 of the Reference Schedule specifies that the Lease Grant Fee Payment Option is one payment on the Commencing Date, the Lessee must pay the Lease Grant Fee to the Lessor on the Commencing Date.
- d) This clause 13 is an essential term for the purposes of clause 14 of the Lease.

**SCHEDULE 3
ADDITIONAL COVENANTS
SCHEDULE**

HOTELS

PART A

1A ACCOMMODATION AVAILABILITY

The Lessee must not:

- a) conduct in respect to the operation of the Premises any form of accommodation booking system which results or could result in accommodation preference being given to any particular group of users provided that this clause will not operate:
 - i) to prohibit conventional commercial operations of the nature of coach bookings or organised package holiday tours; or
 - ii) to prohibit the Lessee accepting bona fide forward bookings of accommodation up to three (3) years in advance for not more than one third of the available accommodation at that time;
- b) conduct or allow by any means any sale or grant of such matters as memberships, units, shares or any similar interests in the Lessee or otherwise howsoever the consideration or any part of the consideration for any such matter or matters being entitlement or entitlements to accommodation on the Premises;
- c) make it or allow it to be made a requirement for obtaining accommodation at the Premises that an applicant for such accommodation is the holder of or is required to acquire a membership or memberships of a unit or units or a share or shares in the Lessee or otherwise howsoever.

1B

- a) No person, other than bona fide on-site managers and/or staff of the premises, shall occupy the accommodation for more than six weeks in any snow season nor for more than twenty-six weeks in any year.
- b) Bona fide on-site managers and/or staff are only permitted to occupy the accommodation for purposes associated with the actual management of the accommodation where a full-time presence is essential. Lessees will be required to obtain the Lessor's approval for any long-term occupancy for either management or staff. Occupancy of the accommodation on the basis of private, residential premises is not permitted.
- c) For the purposes of this Lease, occupation of any Premises by the spouse or any descendant, parent, brother, sister or any descendant of the brother or sister of the

Lessee or any sublessee, or where the Lessee or sublessee is a company by a director thereof or a shareholder therein or any descendant, parent, brother, sister or any descendant of the brother or sister of the director or shareholder, or any person authorised by the Lessee or sublessee is deemed to be occupation by the Lessee or sublessee respectively.

2 PROMOTION AND MARKETING OF ACCOMMODATION

The Lessee must:

- a) use its best endeavours to actively market and promote the accommodation on the Premises by appropriate means including the use of advertising and travel agency outlets, and shall use its best endeavours to secure the booking and use of such accommodation by the general public;
- b) keep upon the Premises a register recording details of all marketing, advertising and promotional activities in relation to accommodation and use by the general public of the Premises and will afford to the Lessor or his or her agent free access to such register for the purpose of perusing or taking extracts of entries made therein;
- c) comply with the manual in respect to the matters referred to in clauses 3 a) and 3 b) provided that until such time as the manual is provided to the Lessee, the Lessee agrees that it will comply with the advertising, marketing and promotion guidelines and policies of the Lessor, which the Lessee must ascertain from the Lessor.

3 LESSEE'S MEMORANDUM AND ARTICLES OF ASSOCIATION OR CONSTITUTION

Where the Lessee is a company:

- a) its Memorandum and Articles of Association or constitution and/or other governing or management charter or like document must at all times conform and remain in conformity with the reasonable requirements for the time being of the Lessor in relation to performance of the covenants of this Lease by the Lessee;
- b) the Memorandum and Articles of Association or constitution of such company will not be altered, modified, added to or reduced or varied in any way which will in the reasonable opinion of the Lessor bestow upon a shareholder or director rights or entitlements to occupy or use exclusively or otherwise the whole or any part of the Premises;
- c) neither the company nor any director nor shareholder of the company will enter into or be a party to any arrangement or agreement whether written or oral whether express or implied with any person or company whereby that other person or company is given any right or entitlement to occupy or use exclusively or otherwise the whole or any part of the Premises.

4 OVERSNOW VEHICLES

- a) The Lessee must not:
- i) directly or indirectly operate or allow to be operated any oversnow vehicle except an oversnow vehicle authorised in conformity with subsisting operating procedures for the time being of the Lessor and any Relevant Authority (which may include the Roads and Traffic Authority or its successor) including the requirement to prominently display on such vehicle an authorised label issued by the Lessor which is appropriate to the Premises;
 - ii) allow any oversnow vehicle to be operated by a person who does not hold a consent issued by the Lessor and a licence issued by the Roads and Traffic Authority or its successor for the operation of such vehicles;
 - iii) use or allow to be used any such authorised oversnow vehicle within the Park other than upon those routes specified in the consent issued by the Lessor and other than for management purposes incidental to the conduct of the Premises excluding recreational use and the towing of skiers;
 - iv) operate or allow to be operated or kept in connection with the Premises more than the number of oversnow vehicles stipulated at Item 20 of the Reference Schedule at any one time or allow any sublessee or licensee to operate any additional oversnow vehicles in connection with its use of the Premises; nor
 - v) charge a fee to any person for the use of any such authorised oversnow vehicle without the prior approval in writing of the Lessor and any other Relevant Authority.
- b) For the purposes of this clause 4, 'Oversnow Vehicle' means such vehicles as snow cats, skidoos and other machines as approved by the Lessor for the transport of persons or freight over snow.

5 LIQUOR LICENCE

- a) The Lessee acknowledges it must obtain and keep all of the licences and approvals required by the *Liquor Act 1982* and any other relevant Law and must pay all such fees including liquor licence fees as may be payable in order to obtain and maintain such licences and approvals.
- b) The Lessee will not without the prior written consent of the Lessor apply for any additional liquor licence. Where the Lessor has given written consent to the Lessee for any additional liquor licence on the Premises the Lessee must obtain and keep all of the licences and approvals required by the *Liquor Act 1982* and any other relevant Law and must pay all such fees including liquor licence fees as may be payable in order to obtain and maintain such licences and approvals.

- c) The Lessee must offer for sale liquor on the Premises in accordance with necessary licences referred to in clause 5 a) of this Schedule.
- d) If the Lessee's licence to sell liquor is revoked, or for any other reason the Lessee fails to sell liquor in accordance with its licence to sell liquor, then the Lessee acknowledges that this is a breach of an essential term of this Lease and the Lessor may exercise its rights under clause 14 of this Lease.
- e) The Lessee must at the expiration or sooner determination of the Lease transfer the liquor licences held in connection with this Lease to the Lessor and generally do and perform all such further acts matters and things as shall be necessary to enable the Lessor or any person authorised by him or her to obtain the transfer of the liquor licences then existing and in force.

6 GAMBLING FACILITIES

- a) The Lessor acknowledges that at the Commencing Date the Lessee or persons on behalf of the Lessee operate or permit to be operated upon the Premises poker machines, gaming machines listed in Part B of this Schedule and other gambling devices or facilities of a similar nature and holds the licences, permits or authorities to install or operate such devices or facilities. The Lessee shall not without the prior written consent of the Lessor apply for any additional licences, permits or authorities to install or operate such devices or facilities.
- b) Where the Lessor has consented to the Lessee operating poker machines, gaming machines or other gambling device or facility including the poker machines, gaming machines or other gambling device or facility as operate on the Premises at the Commencing Date, the Lessee must be the owner of, and the person having the rights to operate, such poker machines, gaming machines or other gambling device or facility including the relevant Poker Machine Entitlements, and must not transfer such ownership or rights to operate (including the Poker Machine Entitlements) to any person other than an assignee or transferee of this Lease unless the Lessor otherwise determines.
- c) The Lessee must at the expiration or sooner determination of this Lease transfer the licences, permits or authorities to install or operate poker machines, gaming machines and other gambling devices listed in Part B of this Schedule including the Poker Machine Entitlements together with any additional gaming and or poker machines approved under 6 b) to the Lessor and generally do and perform all such further acts matters and things as shall be necessary to enable the Lessor or any person authorised by him or her to obtain the transfer of those licences, permits, authorities or entitlements then existing and in force.
- d) For the purposes of this clause, Poker Machine Entitlement has the meaning given to that phrase in the *Gaming Machines Act 2001*.

7 SIGNS

- a) Subject to clause 5.16 of this Lease, the Lessee must erect and display a sign at the entrance to the Premises stating the approved trading hours of the business conducted on the Premises and during the said hours display a sign outside the entrance indicating that the Premises are open for business.
- b) In addition to the sign referred to clause 5.16.2 of this Lease, the Lessee must affix a sign in accordance with the Local Government (Orders) Regulation 1999 as may be varied from time to time.

8 EMPLOYEES

The Lessee must employ a sufficient number of thoroughly trained competent staff to enable operation of the business in a professional businesslike manner and ensure that such employees are not under the influence of or affected by liquor or drugs and will conduct themselves in a sober and proper manner and are cleanly and suitably attired having regard to the nature of work to be performed.

9 TRADING NAMES

The Lessee must ensure that no trading names are used in respect to any business conducted on the Premises without the prior consent of the Lessor to each name.

10 ESSENTIAL TERMS

The following clauses of this Schedule are, in addition to the terms set out in clause 14.2 of this Lease, essential terms of this Lease:

- a) clause 5 (Liquor Licence); and
- b) clause 6 (Gambling Facilities).

PART B – GAMING MACHINES

Number of machines at Commencing Date: Nil

**SCHEDULE 4
ADJOINING LICENCE AREA
SCHEDULE**

1 LEASE TERMS TO APPLY

- a) All the provisions of this Lease with respect to the Premises are the terms of the licence of the Adjoining Licence Area, except as set out in this Schedule 4.

2 MODIFICATION OF LEASE TERMS

- a) In addition to clauses 3, 4 and 5 below, the following obligations and promises in this Lease with respect to the Premises are modified as follows in respect to the Adjoining Licence Area:
- i) there is no grant of exclusive possession or anything in the nature of a grant of a leasehold interest over the Adjoining Licence Area;
 - ii) there is no obligation for the Lessee to pay Rent or the Lease Grant Fee to the Lessor;
 - iii) the Lessee must pay:
 - A the Outgoings;
 - B the costs set out in clause 15.9 of this Lease excepting those costs for the preparation completion stamping and registration of the Lease and any variation of it as set out in clause 15.9.1;with respect to the Adjoining Licence Area;
 - iv) the Lessee must use the Adjoining Licence Area for the Permitted Use of the Adjoining Licence Area rather than the Permitted Use for the Premises and the Lessee must not use or permit the use of the Adjoining Licence Area for any other purpose;
 - v) the Lessee is not obliged to place any signs on the Adjoining Licence Area in addition to those signs required on the Premises under clause 5.16 of this Lease;
 - vi) the Lessor does not rely upon its statutory right of entry or its rights of entry under this Lease to enter the Adjoining Licence Area as the Lessor, his or her agents, employees and invitees may at all times enter the Adjoining Licence Area for any reason whatsoever;

- vii) the licence over the Adjoining Licence Area is terminable at will by the Lessor and the Lessor is not obliged to serve a notice of breach of covenant upon the Lessee;
- viii) there is no grant of quiet enjoyment and the holding over provisions do not apply to the Adjoining Licence Area;

3 FURTHER LICENCE OF ADJOINING LICENCE AREA

If the Lessor grants the Lessee a Further Lease in respect to the Premises, then the Lessor grants a licence for the Term of the Further Lease in respect to the Adjoining Licence Area.

4 ADJOINING LICENCE AREA MAINTENANCE

- a) The Lessee shall be jointly and severally liable with such other lessees that have been permitted to use the Adjoining Licence Area by the Lessor to maintain the Adjoining Licence Area and any improvements and structures thereon in accordance with clause 7 of this Lease.
- b) The costs associated with such maintenance shall be apportioned between the users of the Adjoining Licence Area equally for their use of that part of the Adjoining Licence Area which is shared.
- c) If the Lessor is of the view, reasonably held, that the Lessee and other lessees have not adequately maintained the Adjoining Licence Area then he or she may maintain the Adjoining Licence Area and all costs associated with the Lessor exercising its rights under this clause 4(c) shall be borne in equal parts by the Lessee and other such lessees for their use of the Adjoining Licence Area.

5 ADJOINING LICENCE AREA FEE

- a) The Lessee must pay to the Lessor the Licence Fee on the Commencing Date and on each anniversary after the Commencing Date for the Term of this Lease and any Further Term.

6 WORKS UNDERTAKEN IN AN ADJOINING LICENCE AREA

- a) The Lessee must perform such works on the Adjoining Licence Area (such as for the purposes of creating car parking, stairs, pathways, plinths and hardstands) as are reasonably required by the Lessor and within a reasonable time, depending upon the nature of the works to be performed.

SCHEDULE 5 ADDITIONAL BED ALLOCATION SCHEDULE

1 ADDITIONAL BEDS ALLOCATION FEE

- a) The Additional Beds Allocation Fee is the amount specified in Item 24 of the Reference Schedule.
- b) The Lessee must pay the Additional Beds Allocation Fee to the Lessor at the address nominated by the Lessor, in such a manner as the Lessor shall direct and otherwise in accordance with this clause.
- c) Where Item 25 of the Reference Schedule specifies that the Additional Beds Allocation Fee Payment Option is one payment on the Commencing Date, the Lessee must pay the Additional Beds Allocation Fee to the Lessor on the Commencing Date.
- d) Where Item 25 of the Reference Schedule specifies that the Additional Beds Allocation Fee Payment Option is three payments over 2 years, the Lessee must pay the Additional Beds Allocation Fee to the Lessor as follows:
 - i) one third of the Additional Beds Allocation Fee on the Commencing Date,
 - ii) one third of the Additional Beds Allocation Fee on 1 July 2013 together with 12 months interest on the balance of the Additional Beds Allocation Fee outstanding as at 2 July 2012 calculated at the TCorp Bonds rate for December 2014 as applicable on 1 July 2012 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report, and
 - iii) one third of the Additional Beds Allocation Fee on 1 July 2014 together with 12 months interest on the balance of the Additional Beds Allocation Fee outstanding as at 2 July 2013 calculated at the TCorp Bonds rate for December 2015 as applicable on 1 July 2013 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report.
- e) Where Item 25 of the Reference Schedule specifies that the Additional Beds Allocation Fee Payment Option is four payments over 3 years, the Lessee must pay the Additional Beds Allocation Fee to the Lessor as follows:
 - i) one quarter of the Additional Beds Allocation Fee on the Commencing Date,
 - ii) one quarter of the Additional Beds Allocation Fee on 1 July 2013 together with 12 months interest on the balance of the Additional Beds Allocation Fee outstanding as at 2 July 2012 calculated at the TCorp Bonds rate for December 2014 as applicable on 1 July 2012 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report,

- iii) one quarter of the Additional Beds Allocation Fee on 1 July 2014 together with 12 months interest on the balance of the Additional Beds Allocation Fee outstanding as at 2 July 2013 calculated at the TCorp Bonds rate for December 2015 as applicable on 1 July 2013 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report, and
- iv) one quarter of the Additional Beds Allocation Fee on 1 July 2015 together with 12 months interest on the balance of the Additional Beds Allocation Fee outstanding as at 2 July 2014 calculated at the TCorp Bonds rate for December 2016 as applicable on 1 July 2014 and published in the New South Wales Treasury Corporation's Weekly Market and Economics Report.
- f) This clause 1 is an essential term for the purposes of clause 14 of the Lease.

2. REQUIREMENT PRIOR TO USE OF THE ADDITIONAL BEDS ALLOCATION

Despite that the Lessor has granted approval for the Lessee to use the number of additional beds in the Premises specified in Item 4A of the Reference Schedule, the Lessee may not use those beds for the purpose of accommodating Persons overnight unless and until the Lessee complies with the terms of this Lease, in particular the provisions of clause 5.3 and clauses 7.8, 7.9 and 7.10.

*Sign
Deemed last page
(Not execution
page)*

The State of New South Wales by

EXECUTED as a Deed

EXECUTED for and on behalf of the MINISTER
ADMINISTERING THE NATIONAL PARKS AND
WILDLIFE ACT 1974 by his or her duly appointed
officer in the presence of:

Witness

JODI WEINBERGER

Name of Witness (print)

EXECUTED by SUNDECK HOTEL PTY LIMITED

ACN 051 092 490

in accordance with section 127 of the Corporations
Act 2001 (Cth)

by CLIFFORD WALLIS

(insert name of Director) SOLE DIRECTOR

and by CLIFFORD WALLIS

(insert name of Director or Company Secretary)

Officer

SEAN SCHRAMM

Name of Officer (print)

(signature of Director)

(signature of Director or Company Secretary)

of Sole Director / Secretary

Annexure C

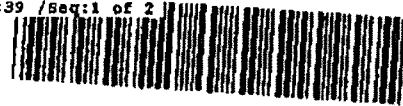
Lease from the Minister administering the National Parks & Wildlife Act 1974 to the Health Administration Corporation dated 17 November 2010

Form: 07VL
Release: 2.4
www.lpma.nsw.gov.au

VARIAION OF LEAS

New South Wales

Real Property Act 1900



AG736005H

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the use of this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

261/812714

(B) HEAD LEASE

Number

Torrens Title

(C) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

685L

Glorame Pty Ltd, Legal Searchers & Agents
Box 4356 GPO Sydney

123504 G

Reference:

VL

(D) LESSOR

Minister Administering the National Parks and Wildlife Act, 1974

(E) LEASE VARIED

AG57509

(F) LESSEE

Health Administration Corporation

- (G) 1. The rent is N.A. to S.N.A. . N.A. per N.A. on and as from N.A.
2. The term is N.A. to N.A. years N.A. months and N.A. days so as to expire on N.A.
3. The provisions of the lease are varied as set out in annexure A hereto.

DATE

- (H) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
Address of witness:

Penny McLennan
Kosciuszko Road
Jindabyne NSW 2627

Authorised officer's name:
Authority of officer: Andrew Harrigan
Signing on behalf of: Delegate
Minister Administering

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
Address of witness:

Natalie Brown
Locked Bag 105
Rozelle 2039.

Authorised officer's name: Mike Willis
Authority of officer: Delegate
Signing on behalf of: Health Administration Corporation

This is Annexure A to the Variation of Lease between MINISTER
ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974 (as
Lessor) and HEALTH ADMINISTRATION CORPORATION (as Lessee)

DATE: 20/12/2011

Variation to Lease

1. The Lessor and the Lessee agree that on and from the date of this Variation of
Lease the Lease is varied as follows:

1.1 That clause 4.26 of the Lease be replaced with the following:

The building erected on the demised premises including any approved
extensions thereto shall provide total sleeping accommodation by way of beds
for not more than Four (4) persons AND the Lessee will not without the prior
consent in writing of the Lessor first had and obtained vary the number of beds
or sleeping accommodation available on any part of the demised premises.

RECEIVED
20 DEC 2011
N.P.W.S. SNOWY MTNS

Form: 07L
Release: 2.3
www.lands.nsw.gov.au

LEASE
New South Wales
Real Property Act 1900



AG57509M

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) FOLIO OF THE REGISTER

Property leased

FOLIO IDENTIFIER 261/812714

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and LLPN if any	CODE
813E	Claine Armour 9224 5079 Crown Solicitors Office Sydney LLPN 123589U	L
	Reference: NPW10700643	

(C) LESSOR

~~MINISTER FOR CLIMATE CHANGE AND THE ENVIRONMENT~~
MINISTER ADMINISTERING THE NATIONAL PARKS AND WILDLIFE ACT 1974

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

HEALTH ADMINISTRATION CORPORATION

(F)

TENANCY: CLICK & PICK >>>

- (G) 1. TERM** 34 years + 358 days
2. COMMENCING DATE 7 January 1986
3. TERMINATING DATE 31 DECEMBER 2025
4. With an **OPTION TO RENEW** for a period of N/A
set out in clause of N/A
5. With an **OPTION TO PURCHASE** set out in clause N/A of
6. Together with and reserving the **RIGHTS** set out in clause N/A of
7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A hereto.
8. Incorporates the provisions set out in N/A in the Department of
Lands, Land and Property Information Division as No.
9. The **RENT** is set out in No. of
SECOND SCHEDULE

DATE 17 November 2010

(H) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer: For execution by

Name of witness:

Authorised officer's name:

Address of witness:

Authority of officer:

Signing on behalf of:

Lessor see page 40

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:

Authorised officer's name:

Address of witness:

Authority of officer:

Signing on behalf of:

Bryson Wilson

73 Miller St, North Sydney

Dennis Jenner

Delegate

Health Administration Corporation

(I) STATUTORY DECLARATION *

I,

solemnly and sincerely declare that—

1. The time for the exercise of option to in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900

and I certify this lease correct for the purposes of the Real Property Act 1900.

Made and subscribed at in the State of New South Wales

on in the presence of—

Signature of witness:

Signature of lessor:

Full name of witness:

Address of witness:

Qualification of witness: (tick one)

☐ Justice of the Peace

☐ Practising Solicitor

☐ Other [specify]

* As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment of the form at Land and Property Information Division.

(431)

6077

"A" New South Wales Government



National Parks and Wildlife Service



DATED

29th October 1986

BETWEEN

THE MINISTER FOR PLANNING AND ENVIRONMENT
~~NOW BEING RE-APPOINTED FOR CLIMATE CHANGE AND ENVIRONMENT~~

the Minister administering OF THE ONE PART
the National Parks and Wildlife Act 1974

AND

HEALTH ADMINISTRATION CORPORATION

OF THE OTHER PART

DOCUMENT

DEED OF LEASE

189-193 Kent Street,
Sydney. N.S.W. 2000

P.O. Box N189,
Grosvenor Street,
Sydney. N.S.W. 2000

LEASE SYNOPSIS

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Term of
Lease:

THIS DEED made the 29th day
of October One thousand nine hundred and
eighty six BETWEEN THE HONOURABLE ROBERT JOHN
CARR, the Minister for Planning and
Environment of the State of New South Wales
being the Minister for the time being
administering the National Parks and Wildlife
Act, 1974 (hereinafter called "the Lessor"
which expression shall where the context
admits be deemed to include his successors in
office) of the one part and the Health
Administration Corporation (hereinafter
called "the Lessee") of the other part
WITNESSETH that in consideration of the
rent and covenants hereinafter reserved and
contained and on the part of the Lessee to be
paid observed and performed the Lessor in
pursuance of the provisions of Section 151 of
the aforementioned Act DOETH HEREBY DEMISE AND
LEASE unto the Lessee ALL THAT piece or parcel
of land described in the First Schedule hereto
TOGETHER WITH the improvements (if any)
erected thereon TO HOLD the same unto the
Lessee for a term of commencing on 7th January 1986
and ending on 31st December 2025.
YIELDING AND PAYING THEREFOR unto the Lessor
yearly in advance the rent set forth in
the Second Schedule hereto.

1. INTERPRETATION:

In this Lease unless the contrary intention
appears:-

"the Act" means the National Parks and
Wildlife Act, 1974 and any Regulations and By-
laws from time to time in force thereunder.

"the Lessor" means the Minister for the time
being administering the Act and where not
repugnant to the context includes the servants
and agents of the Lessor.

"the Lessee" means the Lessee and the
successors and permitted assigns and sub-
tenants of the Lessee and where not repugnant
to the context includes the servants and
agents of the Lessee.

"demised premises" or "premises" means the
land hereinbefore described and where the
context so admits any part of the land and
includes the structures and improvements and
any fixtures fittings plant machinery

furnishings and equipment now erected or installed or placed or to be erected or installed or placed thereon during the term of this Lease by the Lessee for the exclusive use of the Lessee.

"the Park" means the area of land permanently reserved under the Act as a National Park and known as Kosciusko National Park and where the context so admits any part of such land.

"the Director" means the Director of National Parks and Wildlife appointed under the Act and includes any person for the time being acting as such.

"the Regional Manager" means the officer of the National Parks and Wildlife Service appointed as Regional Manager, South Eastern Region and includes any person for the time being acting as such.

"the Superintendent" means the officer of the National Parks and Wildlife Service in charge of the Kosciusko District and includes any person for the time being acting as such.

"the Regulations" means the Regulations and By-Laws made under the Act applying either generally or specifically to the Park.

"month" means calendar month.

"Plan of Management" means the plan of management prepared and adopted for the Park as amended from time to time pursuant to the Act.

"Building Code" means the building code of the National Parks and Wildlife Service or any code replacing same as amended from time to time.

Words importing the singular number shall include plural and the masculine gender the feminine or neuter and vice versa.

Any reference to a person shall be deemed to include a corporate body and vice versa.

Any covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.

Headings of clauses and marginal notes have

been inserted for guidance only and shall not be deemed to form any part of the context.

Any reference to the First Schedule is a reference to the First Schedule of this Lease and any reference to the Second Schedule or Third Schedule has a corresponding meaning.

Any reference to a Statute or Ordinance (including the Act) includes all regulations under and amendments to that statute or ordinance whether by subsequent statutes or ordinances or otherwise and a statute or ordinance passed in substitution for the Act referred to or incorporating any of its provisions.

Where under or pursuant to this Lease or anything done hereunder the day on or by which any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in New South Wales such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or such a public holiday.

2. EXCLUSION OF IMPLIED COVENANTS AND POWERS:

The covenants and powers implied in every Lease by virtue of Sections 84 and 85 of the Conveyancing Act, 1919 (as amended) shall not apply or be implied in this Lease except in so far as the same or some part or parts thereof are included in the covenants hereinafter contained.

3. RENT AND OTHER PAYMENTS:

The Lessee hereby expressly COVENANTS with the Lessor that:-

To Pay
Rent:

3.1 The Lessee will during the whole of the term pay to the Lessor the yearly rental hereby reserved in the manner herein mentioned free of exchange and without any deduction whatsoever.

Capital
Community
Services
contribution:

3.2 The Lessee will pay to the Director as a capital community services contribution a cash sum of seven thousand five hundred dollars (\$7500.00) such sum to be paid on the grant of Building Approval of the works

referred to in clause 4.1 of this Lease

Manner of
Payment of
Rent:

3.3 Unless and until the Lessor shall otherwise direct the Lessee in writing the Lessee shall pay all rent and other moneys payable by the Lessee to the Lessor or the Director under this Lease to the Superintendent at his Office located at the Visitor Information Centre at Sawpit Creek or by post addressed to the Superintendent, Private Mail Bag, Cooma or to such other person and/or at such other place as the Lessor shall in writing direct.

Community
Services
Charges:

3.4 The Lessee will in addition to the rent hereinbefore reserved pay to the Director such amount as may be assessed by the Director on the Lessee from time to time pursuant to Section 140 of the Act as the contribution of the Lessee to the cost of providing and maintaining any community service in the Park.

Rates
and
Taxes:

3.5 The Lessee will as and when the same become due for payment pay all rates taxes (including Land Tax) and assessments whatsoever whether municipal local government parliamentary or otherwise which are at any time during the said term charged upon the demised premises or upon the Lessor or the Lessee on account thereof.

Electricity
Water,
Sewerage,
etc.,
Charges:

3.6 The Lessee will in addition to the rent hereinbefore reserved pay to the Director or to any other person or body authorised to supply the same all charges levied from time to time for services which may be supplied to the demised premises (including charges for installation connection maintenance and engineering work) such as water sewerage gas electricity garbage disposal or telephone services.

4. USE OF DEMISED PREMISES BY LESSEE:

The Lessee FURTHER COVENANTS with the Lessor as follows:-

Use of
Demised
Premises:

4.1 The Lessee will not use or permit the use of the demised premises for any purpose other than constructing and maintaining an ambulance

station and for no other purpose whatsoever and will conduct and manage the activities carried on thereon or therefrom in a proper quiet and orderly lawful manner in all respects to the

satisfaction of the Lessor and subject to such conditions as may be imposed by the Lessor.

Onus of
Proof as
to Usage:

4.2 The Lessee acknowledges that in the matter of proof of whether the Lessee is complying or has during the term of this Lease complied with the provisions of this Lease as to usage of the demised premises the onus of proof shall be on the Lessee.

No Noxious
Use etc.:

4.3 The Lessee shall not at any time during the continuance of this Lease:-

4.3.1 use exercise or carry on or permit or suffer to be used exercised or carried on in or upon the demised premises or any part thereof or within the Park any noxious noisome or offensive act trade business occupation or calling;

4.3.2 do or permit to be done in or upon the demised premises or any part thereof any act matter or thing which shall or may be or grow to the annoyance nuisance grievance damage or disturbance of the Lessor or other persons otherwise lawfully therein or in the Park.

Observance
of
Statutory
Provisions:

4.4 The Lessee will from time to time and in all respects and at his own expense observe and comply with the requirements of the Act and the Regulations thereunder and with all other statutes ordinances proclamations orders or regulations present or future and all notices orders and directions which may be given under the same whether relating to or affecting the Park any business or operations conducted by the Lessee in or from the demised premises or to the conduct of any person using or upon the demised premises or otherwise.

Improper
Conduct:

4.5 The Lessee will not permit or suffer any riotous disorderly offensive or improper conduct at upon or near the demised premises or permit or suffer any person who is drunk or behaving in a riotous disorderly offensive or improper manner to be or remain at upon or near the demised premises.

No Illegal
or Unlawful
Acts:

4.6 The Lessee will not permit or suffer any illegal or unlawful act to be performed or done on the demised premises.

Inflammable
Liquids and
Explosive
Substances:

4.7 Without prejudice to the generality of any other provision of this Lease the Lessee will not keep any inflammable liquid or gas or explosive substance on the demised premises or any part thereof except as may reasonably be necessary for use in appliances for lighting and heating within the demised premises or otherwise in connection with the use of the premises pursuant to sub-clause 4.1 hereof AND the Lessee will from time to time and in all respects observe and comply with the requirements of all relevant statutory provisions and all ordinances proclamations regulations and by-laws thereunder and all notices orders and directions which may be given under the same present or future affecting or relating to the keeping conveyance sale and use of inflammable liquid on or about the demised premises.

Lessee not
to Pollute:

4.8 The Lessee will not place or tip or allow to be placed or tipped upon any land or on the bank in the bed or in the water of any water course or in any drain within the Park any refuse garbage night soil petroleum products trade waste or any offensive or polluting matter or liquid whatsoever nor shall the Lessee without the consent of the Superintendent place any obstruction matter or deposit in the bed or in the water of any water course stream or drain so as to cause the flow of such water to be restricted obstructed or diverted AND without affecting the liability of the Lessee for damages or in relation to any other remedy available to the Lessor the Lessee shall remedy to the satisfaction of the Superintendent at its own expense any damage caused to the demised premises or the Park by the spillage of petroleum products or other pollutants upon the demised premises or within the Park.

No Auction
Sales:

4.9 The Lessee will not without the prior written consent of the Superintendent expose or offer for sale or permit to be exposed or offered for sale by auction on the demised premises any articles goods materials or things whatsoever.

Burying
and
Screening
of Gas and

4.10 The Lessee will cause all fuel and oil storage tanks and all septic tanks and sewerage installations and all other tanks on the demised premises to be buried below the surface of the

- Oil Tanks: ground or to be screened in a manner and to a standard satisfactory to the Regional Director.
- No Livestock or Domestic Pets: 4.11 The Lessee shall not keep or permit or suffer to be kept on the demised premises any poultry pigs horses or other livestock nor any dog cat or other domestic or exotic animal.
- No Cutting of Timber: 4.12 The Lessee will not cut down fell injure top lop or destroy any living trees standing on the demised premises or within the Park without the prior consent in writing of the Regional Director.
- No Exotic Plants: 4.13 The Lessee will not plant within the demised premises any plants or seeds which are not indigenous to the locality, except where such plants or seeds may be specified by the Regional Manager for use in revegetation works.
- Fences: 4.14 The Lessee will not without the prior consent in writing of the Regional Manager carry out or permit the carrying out of any fencing work on or about the demised premises.
- Exterior Signs: 4.15 The Lessee will not without the prior approval in writing of the Regional Manager erect display affix or exhibit or suffer to be erected displayed affixed or exhibited on or to the demised premises or any part thereof or any other part of the Park any signs advertisements name notice or hoarding and any such approval given by the Regional Manager may be revoked by the Regional Manager at any time in his absolute discretion and upon the Lessee vacating the demised premises or otherwise at the request of the Regional Manager the Lessee will remove any signs names advertisements notices or hoardings erected painted displayed affixed or exhibited upon to or within the demised premises or the Park by or on behalf of the Lessee and will make good any damage or disfigurement caused by such erection painting displaying affixing exhibiting or removal.
- Fire Safety Standards: 4.16 The Lessee will comply with all requirements as may be notified from time to time to the Lessee by the Lessor and/or the Board of Fire Commissioners of New South Wales lessee in relation to fire safety

upon the demised premises.

**Fire
Fighting
Appliances:**

4.17 The Lessee will provide and maintain in good order and condition and keep readily available for use upon the demised premises and every part thereof proper and sufficient fire fighting and fire extinguishing appliances to the satisfaction of the Regional Manager and the Board of Fire Commissioners of New South Wales in all respects.

**Conduct of
Premises:**

4.18 The Lessee will at all times during the term of the Lease ensure that the demised premises are managed conducted and controlled at all times in good faith and in accordance with the best methods and in an orderly and reputable manner and the lessee will include in the letterhead of any stationery printed for use in connection with the demised premises and in any advertisements published in relation thereto the words "Kosciusko National Park".

**No Liquor
Sales:**

4.19 The Lessee shall not:

4.19.1 sell offer for sale supply or deliver any liquor on the demised premises; or

4.19.2 apply for a licence to sell offer for sale supply or deliver any liquor on the demised premises.

In this sub-clause the word "liquor" shall have the same meaning as is given to the word in the Liquor Act, 1912.

**No Gambling
Devices:**

4.20 The Lessee shall not operate or permit to be operated upon the demised premises any poker machine or other gambling device of a similar nature nor apply for any licence permit or authority to instal or operate such devices.

**Movement of
Vehicles:**

4.21 The Lessee its servants agents and all persons authorised by it or them shall at all times comply with the reasonable directions of the Superintendent and his authorised officers in relation to the movement of vehicles in out and around the demised premises and the standing of such vehicles thereon.

Incinerator:

4.22 The Lessee shall if required so to do by the Superintendent at the Lessee's own expense supply and maintain on the demised premises an

- incinerator or incinerators of a design size and standard approved by the Superintendent.
- Security of Premises:** 4.23 The Lessee shall keep all doors windows trapdoors sky-lights and other means of access to each building on the demised premises securely fastened when the building is not occupied by the Lessee or its employees.
- Conform with Plan of Management:** 4.24 The Lessee shall not use or permit the use of the demised premises in any manner contrary to the Plan of Management.
- Provide Shelter in Emergencies:** 4.25 The Lessee shall not refuse or permit to be refused to any person temporary shelter on the premises in any circumstances of adverse weather or in any case of injury or other like emergency or hardship.
- Sleeping Accommodation:** 4.26 The building erected on the demised premises including any approved extensions thereto shall provide total sleeping accommodation by way of beds for not more than Three (3) persons AND the Lessee will not without the prior consent in writing of the Lessor first had and obtained vary the number of beds or sleeping accommodation available on any part of the demised premises.
- Oversnow Vehicles:** 4.27 The Lessee will not during the currency of this Lease in connection with the use of the demised premises:-
- 4.27.1 directly or indirectly operate or allow to be operated any oversnow vehicle except an oversnow vehicle authorised in conformity with subsisting operating procedures for the time being of the Superintendent and the Commissioner for Motor Transport or his successor including the requirement to prominently display on such vehicle an authorised label issued by the Superintendent which is appropriate to the demised premises;
- 4.27.2 allow any oversnow vehicle to be operated by a person who does not hold a consent issued by the Superintendent and a licence issued by the Commissioner for Motor Transport or his successor for the operation of such vehicles;
- 4.27.3 use or allow to be used any such authorised oversnow vehicle within the

Park other than upon those routes specified in the consent issued by the Superintendent and other than for management purposes incidental to the conduct of the demised premises excluding recreational use and the towing of skiers;

4.27.4 operate or allow to be operated or kept in connection with the demised premises oversnow vehicles other than those approved by the Superintendent; nor

4.27.5 charge a fee to any person for the use of any such authorised oversnow vehicle as aforesaid without the prior approval in writing of the Director.

In this sub-clause the words "oversnow vehicle" shall include such vehicles as snow cats skidoos and other machines as approved by the Superintendent for the transport of persons freight or equipment oversnow.

5. MAINTENANCE, REPAIR, ALTERATIONS, ETC:

The Lessee FURTHER COVENANTS with the Lessor as follows:-

Repair of
Premises
During
Lease:

5.1 The Lessee will during the said term and otherwise so long as the Lessee may remain in possession or occupation when where and so often as need shall be maintain replace repair rebuild and keep the whole of the demised premises in good and substantial repair order and condition damage by fire flood lightning storm tempest and impact only excepted.

Repair on
Termination
of Lease:

5.2 The Lessee will at the expiration or sooner determination of the term peaceably surrender and yield up to the Lessor the demised premises and every part thereof in good substantial repair order and condition and in a tidy clean sanitary and wholesome state in all respects.

Specific
Obligations
as to State
of Repair:

5.3 Without affecting the generality of the preceding sub-clauses 5.1 and 5.2 of this clause the Lessee will at his own expense:-

Painting:

5.3.1 so often as the Lessor may reasonably require during the term

colour paint paper or stain with such materials and to such standards and colours as may reasonably be determined by the Regional Manager such parts of the interior and exterior of the structures on the demised premises as are normally so treated;

Cleaning of
Premises:

5.3.2 cause the interior and exterior of the demised premises to be cleaned and maintained in a clean tidy and wholesome state to the satisfaction of the Superintendent and during the whole of the term of this Lease to be kept clean and free from dirt and rubbish and inflammable materials and will provide and keep in good order and condition proper refuse bins or other containers of a pattern approved by the Superintendent and of such number as may be deemed necessary by the Superintendent AND FURTHER from time to time will remove and take away or cause to be removed or taken away from the demised premises and the adjacent areas of the Park all refuse in accordance with the requirements of the Superintendent;

Lessee's
Equipment:

5.3.3 keep and maintain clean and in good order repair and condition all fittings plant furnishings and equipment of the Lessee;

Breakages:

5.3.4 from time to time make good any breakage defect or damage to any facility or appurtenance of the Lessor within the Park occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's servants agents contractors or other persons claiming through or under the Lessee or otherwise occasioned by any breach or default of the Lessee hereunder;

Compliance
with Statutes
as to Use of
Premises:

5.3.5 from time to time forthwith comply with all statutes ordinances proclamations orders or regulations present or future affecting or relating to the demised premises or any part thereof and with all requirements which may be made or notices or orders which may be given by any governmental semi-governmental city municipal health

licensing civic or other authority having jurisdiction or authority over or in respect of the use of the demised premises or any part thereof and will keep the Lessor indemnified in respect of all such matters in this paragraph referred to.

Erection of 5.4
Buildings,
Structures and
Improvements:

The Lessee shall:-

5.4.1 not erect or construct or cause or suffer to be erected or constructed upon the demised premises or any part thereof any building structure or improvement nor carry out nor permit to be carried out any alteration to any building structure or improvement on the demised premises or any part thereof except with the consent in writing of the Regional Manager first had and obtained and in accordance with and subject to the Building Code AND any such building structure or improvement erected by the Lessee on the demised premises or any alteration to any building structure or improvement upon the demised premises shall be erected or carried out at the expense and cost of the Lessee in accordance with plans and specifications previously approved in writing by the Regional Manager and to the satisfaction in all respects of the Regional Manager and in accordance with the requirements if any of the local municipal or shire council;

5.4.2 submit all proposals for building or other developmental works to the Regional Manager sufficiently in advance of the desired date of commencement of such work as to allow reasonable time for all aspects of proposals to be fully examined by the Regional Manager AND no approval will be given by the Regional Manager to any development which might adversely affect the environment before an adequate environmental impact appraisal has been completed and presented in accordance with the requirements of the Environmental Planning and Assessment Act, 1979;

5.4.3 not undertake any developmental or construction work of any kind prior to the issue of a Building Approval by the Regional Manager;

5.4.4 comply with all reasonable directions of the Regional Manager or the Superintendent in regard to the construction of buildings and other structures, earthwork, paving, kerbing, hydraulic works, underground works, landscaping and drainage works and the Lessee covenants that neither the Minister the Director the Regional Manager the Superintendent nor the Government of the State of New South Wales shall be held responsible to the Lessee for any unnecessary or misdirected expenditure arising from error or misunderstanding of directions to the Lessee its servants contractors and agents and that no dispute which may arise in respect thereof shall be referred to arbitration;

5.4.5 plan and carry out all landscaping works in accordance with properly drawn measured plans submitted to the Regional Manager for his approval prior to the date of commencement of that work AND any consent given by the Regional Manager shall be deemed to have been given conditionally upon the proper completion and carrying out in every respect to the satisfaction of the Regional Manager of the duly approved landscaping works.

Cost of
Connection of
Services:

5.5 The Lessee will be responsible for the payment of all costs associated with the installation and connection of water and sewerage services from existing mains to the demised premises and the provision of access from Main Road 286 to the demised premises.

Cost of
Snowclearing:

5.6 The Lessee will be responsible for the payment of all costs associated with any snowclearing to be carried out to maintain vehicular access or for any other purpose in connection with the operation of the demised premises.

Lessor's

5.7 The Lessor and his agents may at all

Right to
Inspect:

reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) enter upon the demised premises and view the state of repair condition and cleanliness thereof and may serve upon the Lessee a notice in writing of any defect which it is the Lessee's obligation hereunder to remedy requiring the Lessee within a reasonable time (which shall in no case exceed six months) to remedy the same and in default of the Lessee so doing it shall be lawful for the Lessor from time to time to enter and execute the required repairs and cleaning as if he were the Lessee and for that purpose the Lessor his architects contractors workmen and agents may enter upon the whole or any part of the demised premises and there remain for the purpose of doing erecting or effecting any such thing AND any expenses and costs of carrying out such repairs or cleansing shall forthwith be payable by the Lessee to the Lessor and a notice served upon the Lessee by the Lessor setting out the amount of such expenses and costs shall upon proof of service be prima facie evidence of the liability of the Lessee for payment of such amount.

Lessor's
Right of
Entry to
Repair:

5.8 The Lessee will permit the Lessor and his agents at all times on reasonable notice to enter and carry out repairs renovations maintenance restoration or alterations to the demised premises or to any part thereof deemed necessary or desirable by the Lessor PROVIDED ALWAYS that in the exercise of the Lessor's powers under this paragraph no undue inconvenience shall be caused to the Lessee.

Use of
Conveniences:

5.9 The Lessee shall not use permit or suffer to be used the lavatories toilets sinks and drainage and other plumbing facilities in the demised premises for any purpose other than those for which they were constructed or provided and shall not deposit or permit to be deposited therein any sweepings rubbish or other material nor shall he so use such facilities within the Park and any damage to such facilities caused by such misuse shall be made good by the Lessee forthwith AND the Lessee shall so maintain and keep in good order the sewerage lines upon the demised premises so that no nuisance or annoyance is caused thereby or arises therefrom whether upon the demised premises or other areas of the Park.

- Infectious Illness:** 5.10 The Lessee will in the event of any infectious illness occurring in the demised premises forthwith give notice thereof to the Regional Manager and to the proper Public Authorities and at the expense of the Lessee will thoroughly fumigate and disinfect the demised premises to the satisfaction of the Regional Manager and such Public Authorities and otherwise comply with their reasonable and lawful requirements in regard to the same.
- No Borer-affected Fittings, Furniture etc.:** 5.11 The Lessee will not bring or suffer to be brought upon the demised premises any borer-affected fittings fixtures furniture effects timber or firewood and will forthwith remove from the demised premises any fittings fixtures furniture effects timber or firewood which may at any time be or become affected by borers.
- Vermin and Pests:** 5.12 The Lessee will take all reasonable precautions to keep the interior of the demised premises free of rodents vermin insect pests birds and other animals and will in the event of failing so to do if required by the Regional Manager but at the cost of the Lessee employ from time to time or periodically pest exterminators approved by the Regional Manager to eradicate such vermin and pests and in the event of the Lessee failing so to do the Lessor and his agents may enter upon the demised premises and carry out such work and a notice served by the Lessor upon the Lessee stating the cost of such work shall upon proof of service be prima facie evidence of the liability of the Lessee for payment of such amount.
- Notice of Defect:** 5.13 The Lessee will give to the Superintendent prompt notice in writing of any accident to or defect or want of repair in any services to or fitting in the demised premises and of any other circumstances likely to be or cause any danger risk or hazard to the demised premises or any person therein.
- Erosion:** 5.14 The Lessee shall in connection with its use and occupation of the demised premises:
- 5.14.1 remedy any erosion upon the demised premises or within the Park caused as a result of its works or use of the demised premises and will revegetate all disturbed ground surfaces

to the satisfaction of the Regional Manager and within a time limit laid down by the Regional Director and all such works will be maintained to the satisfaction of the Regional Director;

5.14.2 before commencing any work which involves interference with the natural vegetation or the existing surface of the ground either on the demised premises or within the Park submit to the Regional Manager details showing the nature and location of the work the transport method proposed to be adopted both during construction and subsequent maintenance of the work and the methods proposed to be adopted for erosion mitigation;

5.14.3 not interfere with the natural vegetation or existing ground surface until the proposals as in paragraph

5.14.2 of this sub-clause have been approved by the Regional Manager and no departure from the approved proposals shall be made without the prior written approval of the Regional Manager;

5.14.4 undertake no excavation digging cutting of slopes or laying of duckboards without the prior written consent of the Regional Manager;

5.14.5 heavily grass and lay down gravel strips to the satisfaction of the Regional Manager to prevent wear where land is exposed to water dripping from roofs down pipes or any other source whatsoever;

5.14.6 wherever sloping land has lost its grass surface thatch or sow grass on the affected area to the satisfaction of the Regional Manager and take steps to protect the same from damage by pedestrian or other traffic or other disturbance howsoever arising during the period of its establishment.

Lessee to
Meet Cost

5.15 If the Lessee fails to comply with the requirements of the Regional Manager in any

of Remedial
Works and
Revegetation: matter relating to erosion to the satisfaction
of the Regional Manager within the time limit
laid down by the Regional Manager as
hereinbefore provided or if the Regional
Manager (whether the said time limit shall
have expired or not) shall be of the opinion
that irreparable injury or damage will result
to the demised premises or to any part of the
Park unless remedial work or revegetation is
carried out immediately then and in any of
such cases the Lessor and his agents shall be
entitled to enter upon the demised premises
and to carry out such remedial work and/or
revegetation at the cost and expense of the
Lessee who hereby covenants and agrees to pay
to the Lessor such costs and expenses forthwith
upon being requested by the Lessor so to do.

Weeds: 5.16 The Lessee will keep the premises free
of noxious and other undesirable weeds to the
satisfaction of the Superintendent and by
such means as the Superintendent may
approve.

Requirements
of Public
Authorities: 5.17 If at any time during the said term any
public authority having jurisdiction or authority
over or in respect of the demised premises or
the user thereof requests requires notifies or
orders any structural alterations additions
conversions improvements or other works to be
made to the demised premises which the Lessor
elects to do during the term including any
holding over period and for which the Lessee is
not liable under its covenants herein contained
the Lessor his architects contractors workmen
servants and others and the servants and workmen
of any of their contractors may enter into and
on the demised premises at all times for the
purpose of making any such structural alterations
additions conversions improvements or other works
or any of them as aforesaid PROVIDED ALWAYS that
in the exercise of the Lessor's powers under this
paragraph no undue inconvenience shall be caused
to the Lessee.

6. INSURANCES:

The Lessee FURTHER COVENANTS with the Lessor that:-

- Insurance of Premises:** 6.1 The Lessee will ensure that the demised premises are at all times appropriately insured by inclusion in the applicable Treasury Fire Risk policy or otherwise against all insurable risks including loss damage or injury by fire lightning storm tempest or impact and where such cover does not extend to any of the risks hereinbefore mentioned that the Lessee's fund for coverage in respect of such risks is adequate and sufficient.
- Public Risk Insurance:** 6.2 Without in any way limiting the liability of the Lessee under sub-clause 7.2 herein the Lessee will during the continuance of this Lease ensure that its funds for Public Risk Compensation is adequate and sufficient whereby the Lessor the Director and the government of the said State shall during the cotinuanace of this Lease be indemnified against all actions suits claims demands proceedings losses damages compensation costs charges and expenses mentioned or referred to in sub-clause 7.2 herein to which the Lessor the Director or the said government shall or may be liable.
- Plate Glass Insurance:** 6.3 The Lessee will upon the installation of any plate glass in the improvements erected upon the demised premises ensure that such plate glass is adequately insured or that the Lessee's own fund for coverage in respect of all insurable risks is adequate and sufficient.
- Workers' Compensation Insurance:** 6.4 The Lessee will forthwith take out and thereafter during the continuance of this Lease keep on foot a standard Workers' Compensation policy of insurance:-
- 6.4.1 in the name of the Lessee,
 - 6.4.2 for the full amount of the Lessee's liability under the Workers' Compensation Act 1926 as amended in respect of each person employed by the Lessee in the premises who is a "worker" as defined by that Act, and
 - 6.4.3 for an unlimited amount (or lesser amount stipulated by the Lessor from time to time) in respect of the Lessee's legal liability independently of that Act for any injury to any

person employed by the Lessee.

Lessee's
Action Not
to Void
Insurance:

6.5 The Lessee will not at any time during the said term do permit or suffer to be done any act matter or thing upon the demised premises or in the Park whereby any insurance in respect of the property of the Lessor or of any lessee tenant occupier of or visitor to any part of the Park or of any other person whosoever may be vitiated or rendered void or voidable or (except with the approval in writing of the Lessor) whereby the rate of premium on any insurance in respect of the demised premises shall be liable to be increased.

Payment of
Premiums
and
Production
of
Documents:

6.6 The Lessee will pay all premiums and other moneys payable in respect of any policy of insurance to be effected hereunder as the same shall become due and payable and will in respect of any such policy of insurance within one month of the due date of renewal of such policy produce to the Superintendent the certificate of renewal or the policy of insurance and the receipts for the payment of the last premium and any other moneys payable thereunder AND in default it shall be in the discretion of the Lessor to pay any or all of such premiums or moneys payable and the Lessee shall upon demand reimburse the Lessor for the same.

Payment of
Additional
Premiums:

6.7 The Lessee will from time to time as and when required by notice in writing from the Lessor forthwith pay all extra premiums of insurance if any be required on account of extra risk caused by the use to which the demised premises are put by the Lessee and approved by the Lessor.

Approved
Insurers:

6.8 All policies of insurance liable or required to be effected by the Lessee hereunder whether in respect of the property or risk of the Lessor or the Lessee shall be taken out in a form and with an insurance office or company approved by the Lessor.

Disclosures:

6.9 The Lessee will give full true and particular information to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or payment of all or any moneys thereunder.

Lessor as Attorney: 6.10 The Lessor shall be entitled in his own name and as the attorney of the Lessee in the name of the Lessee or otherwise to institute all proceedings against any such office or company to recover from it any amount for loss damage or injury or other money payable under any indemnity in favour of the Lessor the Director or the said Government.

7. INDEMNITIES, ETC:

The Lessee FURTHER COVENANTS with the Lessor that:-

Release: 7.1 The Lessee agrees to occupy use and keep the demised premises at the risk of the Lessee and hereby releases to the full extent permitted by law the Lessor and his agents servants contractors and employees in the absence of any negligence on their part from all claims and demands of every kind resulting from any accident damage or injury occurring therein and the Lessee EXPRESSLY AGREES that in the absence of any such negligence as aforesaid the Lessor shall have no responsibility or liability for any loss of or damage to fixtures or personal property of the Lessee.

Indemnities: 7.2 The Lessee will indemnify and keep indemnified the Lessor and the Director from and against all actions claims demands proceedings losses damages compensation costs (including solicitor and client costs) charges and expenses whatsoever to which the Lessor or the Director shall or may be or become liable in respect of or arising from:-

7.2.1 the negligent use misuse waste or abuse by the Lessee or any servant agent sub-tenant of or any other person claiming through or under the Lessee of the water gas electricity oil lighting and other services and facilities of the demised premises.

7.2.2 overflow or leakage of water (including rain water) in or from the demised premises but having origin within the demised premises or caused or contributed to by any act or omission on the part of the Lessee its servants agents sub-tenants or other

persons as aforesaid;

7.2.3 loss damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the demised premises by the Lessee or any servant agent sub-tenant or other person as aforesaid;

7.2.4 loss damage or injury from any cause whatsoever to property or person within or in the vicinity of the demised premises occasioned or contributed to by any act omission neglect breach or default of the Lessee or any servant agent sub-tenant or other person as aforesaid;

PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED that it shall be immaterial that any of such actions suits claims demands proceedings losses damages compensation costs charges and expenses as are hereinbefore referred to shall have resulted from any act or thing which the Lessee may be authorised or obliged to do under these presents and that any time waiver or other indulgence has been given to the Lessee in respect of any obligation of the Lessee under this Lease AND IT IS FURTHER AGREED AND DECLARED that the obligations of the Lessee under this clause shall continue after the expiration or other determination of this Lease in respect of any act deed matter or thing happening before such expiration or determination.

8. COVENANTS BY THE LESSOR:

The Lessor COVENANTS with the Lessee that:-

Quiet
Enjoyment
of Premises
by Lessee:

8.1 The Lessee paying the rent hereby reserved and duly and punctually observing and performing the covenants obligations and provisions in the Lease on the part of the Lessee to be observed and performed shall and may peaceably possess and enjoy the demised premises for the term hereby granted without any interruption or disturbance from the Lessor the Director or any other person or persons lawfully claiming by from or under the Lessor.

Removal of

8.2 The Lessee may at or prior to the

Lessee's
Fixtures:

expiration of the Lease take remove and carry away from the demised premises all fixtures fittings plant machinery utensils shelving counters safes or other articles upon the demised premises in the nature of trade or tenant's fixtures brought upon the demised premises by the Lessee but the Lessee shall in such removal do no damage to the demised premises or shall forthwith make good any such damage which it may occasion thereto PROVIDED ALWAYS that this clause shall not apply to any building erection or installation or any appurtenances to any building or erection or installation on the demised premises or any heating lighting or electrical power equipment PROVIDED FURTHER HOWEVER and notwithstanding the provisions of sub-clause 10.1 of clause 10 hereunder the Lessor may by notice given to the Lessee at any time within thirty (30) days after the termination of this Lease require the Lessee within the time stated in such notice to remove any buildings structures erections and other fixtures erected by the Lessee and/or to fill in all or any excavations made by the Lessee and in such case the Lessee shall in accordance with such notice and within the time therein stated effect such removal and fill in such excavations and in all such cases no damage shall be done to standing timber or to the surface of the ground and the Lessee shall forthwith make good to the satisfaction of the Lessor any damage which it may occasion thereto and correct to the satisfaction of the Regional Manager any condition likely to result in soil erosion and on failure by the Lessee to comply with the provisions of this sub-clause in any respect the Lessor may by himself or his agents or servants make good the failure of the Lessee at the expense and cost of the Lessee and such expense and costs shall be repaid by the Lessee to the Lessor on demand.

Holding
Over of
Premises:

8.3 In the event of the Lessee holding over after the expiration or sooner determination of the term granted by this Lease with the consent of the Lessor the Lessee shall become a monthly tenant only of the Lessor at a monthly rental equivalent to a monthly proportion of the total annual rent payable hereunder at the expiration or sooner determination of such term and otherwise on the same terms and conditions mutatis mutandis as those herein contained so far as applicable.

9. DEFAULT, TERMINATION ETC:

The Lessor and the Lessee COVENANT AND AGREE that:-

Default of
Lessee:

9.1 If the rent hereby reserved or any part thereof shall be unpaid for the space of fourteen (14) days after any of the days on which the same ought to have been paid in accordance with the covenant for payment of rent herein contained (although no formal or legal demand shall have been made therefor) or if the Lessee commits permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants obligations and provisions of this Lease or if the Lessee shall fail to comply with the requirements of any notice given by the Lessor the Director the Regional Manager or the Superintendent under this Lease or if (the Lessee being a company) an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld) or if the Lessee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts within the meaning of any relevant Companies Act or Ordinance or if execution is levied against the Lessee and not discharged within thirty (30) days or if the Lessee (being an individual) becomes bankrupt or commits an act of bankruptcy or brings his estate within the operation of any law relating to bankrupts then and in any one or more or either of such events the Lessor at any time or times thereafter shall have the right to declare by notice in the New South Wales Government Gazette that the Lease hereby granted is cancelled and forfeited (whereupon the Lease hereby granted shall determine) and to re-enter into and upon the demised premises or any part thereof in the name of the whole and to have again repossess and enjoy the same as of his former estate anything herein contained to the contrary notwithstanding but without prejudice to any action or other remedy which the Lessor has or might or otherwise could have for arrears of rent or breach of covenant or for damages as a result of any such event PROVIDED HOWEVER that the Lessor shall not declare the Lease cancelled and forfeited as

aforesaid unless the Lessee has failed to remedy the breach or default (if capable of remedy) within a reasonable time after notice thereof has been given to the Lessee by the Lessor.

Right of
Lessor to
Remedy
Lessee's
Defaults:

9.2 On each and every occasion on which the Lessee omits or neglects for a period of not less than fourteen (14) days from the date on which the Lessee is obliged to do the same to pay any money or to do or effect any thing which the Lessee has herein covenanted to pay do or effect then it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any rights and powers arising from such default) to pay such money or to do or effect such thing by himself his agents contractors and workmen as if it were the Lessee and for that purpose the Lessor his architects contractors workmen and agents may enter upon the whole or any part of the demised premises and there remain for the purpose of doing or effecting any such thing and the Lessor may recover the amount of expenses and costs of such payment doing or effecting forthwith with interest at the rate mentioned in sub-clause 3.5 of clause 3 of this Lease such interest to be calculated on a daily basis and computed from the date upon which such expenses and costs were incurred until payment of such monies in full and to be recoverable by the Lessor in like manner as rent in arrears AND a certificate by the Regional Manager as to any amount payable by the Lessee pursuant to this clause shall be prima facie evidence thereof.

10. IMPROVEMENTS:

The Lessor and the Lessee COVENANT AND AGREE that:-

All
Improvements
are Lessor's:

10.1 Upon the expiration or sooner determination of this Lease all buildings structures erections and improvements upon the land hereby demised both at the commencement of this Lease and thereafter constructed or erected thereon whether by the Lessor or by the Lessee and whether in accordance with the covenants of this Lease or otherwise and whether completed or uncompleted after the commencement and before the expiration or sooner determination of this Lease and any alteration

or addition to any such buildings structures erections or improvements shall be and become the absolute property of the Lessor and the Lessee shall not be entitled to any compensation in respect thereof.

Condition of
Premises at
Commencement
of Lease:

10.2 Notwithstanding any other conditions or stipulations of this Lease:-

10.2.1 no warranty is given by the Lessor as to the condition or state of repair of the improvements (if any) on the demised premises at the commencement of this Lease or the suitability of the demised premises for the purpose for which they are to be used and the Lessee has not relied in any way upon any representations or assurances by the Lessor or on his behalf in entering into this Lease, and

10.2.2 the Lessor shall be under no obligation or liability of any kind to maintain, replace, repair or rebuild the whole or any part of such improvements.

11. PROCEDURAL MATTERS:

The Lessor and the Lessee FURTHER COVENANT AND AGREE that:-

Waiver:

11.1 No waiver by the Lessor of any breach of any covenant obligation or provision in this Lease contained or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Lease contained or implied.

Provisions to
be Construed
as Covenants:

11.2 Such of the provisions and conditions herein contained as require or prescribe anything to be done or not to be done by the Lessee shall in addition to being read and construed as conditions of the Lease hereby granted be also read and construed as covenants and agreements whereby the Lessee for itself and its assigns covenants with the Lessor to observe and perform such provisions and conditions.

Notices:

11.3 In this Lease it is acknowledged that:-

11.3.1 without prejudice to any other means of giving notice any notice demand requisition consent or election required to be served hereunder shall be sufficiently served on the Lessee if signed by the Director or other authorised officer for the time being of the Lessor and if served personally on the Lessee's agent or employee at the demised premises or if not attended by prepaid post addressed to the Secretary Department of Health McKell Building, Rawson Place, Sydney and shall be sufficiently served on the Lessor if addressed to the Lessor and left at or sent by pre-paid post addressed to the Director of National Parks and Wildlife Service at the office of the National Parks and Wildlife Service and a notice sent by post shall be deemed to be given at the time when it ought to be delivered in due course of post;

11.3.2 any notice direction assessment approval order requirement consent nomination or authority to be given or made or any discretion to be exercised by the Lessor hereunder shall be sufficiently given made or exercised by the Director.

Costs of
Lease, etc.:

11.4 The Lessee will pay:-

11.4.1 the Lessor's legal costs and all duties fees charges and expenses of or incidental to the preparation completion stamping and registration of this Lease and any renewal thereof and any application for the consent of the Lessor hereunder and of or incidental to any and every breach or default by the Lessee hereunder and in or incidental to the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease and the fees of all professional consultants properly incurred by the Lessor in consequence of or in connection with any breach or default by the Lessee hereunder;

11.4.2 all expenses reasonably incurred by the Lessor in any entry inspection

examination consultation or the like which discloses a breach by the Lessee of any covenant of this Lease;

11.4.3 all expenses reasonably incurred by the Lessor in the examination of plans drawings and specifications of any building structure erection or improvement erected or constructed or to be erected or constructed on the demised premises and the inspection thereof both during and after completion;

11.4.4 all survey and site valuation fees incurred by the Lessor in connection with the demised premises for the purposes of this Lease.

Lessee to
Pay Cost
of Work:

11.5 Whenever the Lessee is obliged or required hereunder to do or effect any act matter or thing then the doing of such act matter or thing shall unless this Lease otherwise provides be at the sole risk cost and expense of the Lessee.

Consent or
Approval of
Lessor:

11.6 In any case where pursuant to these presents the doing or executing of any act matter or thing by the Lessee is dependent upon the approval or consent of the Lessor such approval or consent may be given or withheld by the Lessor in his complete and absolute discretion unless otherwise herein provided.

Opinions by
Lessor:

11.7 Any opinion to be formed by the Lessor under this Lease may be formed by him on such materials as he himself may think sufficient and in such case the Lessor shall be deemed to be exercising merely administrative functions and any decision which the Lessor shall be empowered to make under any covenant of this Lease may be made by him at his complete and absolute discretion.

Time for
Determining
Rights and
Obligations:

11.8 This Lease for the purpose of determining the rights and obligations of the parties shall be construed as if it had been executed on the date from which the term is expressed to run.

Discharge or
Release to be
in Writing:

11.9 None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by the Lessor unless by his express consent in writing.

- Lessee Not Agent of Lessor: 11.10 The Lessee will not in connection with the demised premises or otherwise directly or indirectly hold out nor permit to be held out to any member of the public any statement act deed matter or thing indicating that the demised premises or any business conducted thereon is being conducted managed or supervised by the Lessor or the Director nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor or the Director.
- Licences: 11.11 The Lessee will from time to time during the continuance of this Lease at the proper time for that purpose apply for and take all steps required to obtain at his own expense all such licences or renewals thereof as may in the opinion of the Lessor be necessary for the proper conduct of the demised premises AND THAT the Lessee will not do or suffer to be done any act matter or thing in or about the demised premises whereby any such licence may be or become liable to be forfeited or suspended or the renewal thereof refused.
- Transfer of Licences: 11.12 The Lessee will at the expiration or sooner determination of this Lease sign and give such notice or notices and allow such notice or notices of renewal or transfer of any licence to be affixed to the premises and generally do and perform all such further acts matters and things as shall be necessary to enable the Lessor or any person authorised by him to obtain the renewal of any licence or licences or any new licence or licences or the transfer of any licence or licences then existing and in force.
- Lessee to Exhibit Regulations: 11.13 If the Lessor shall so require the Lessee will exhibit and keep exhibited in a conspicuous place on the demised premises a copy or copies of the Regulations and such other notice or notices as the Lessor from time to time may reasonably require.
- Construction of Public and Community Services: 11.14 Any necessary public or community services may be constructed or laid on the demised premises and either above or below the surface thereof PROVIDED that the Lessee shall first have been given not less than one month's notice in writing of the intention to construct or provide for any such public or community services and so that no undue inconvenience shall be caused to the Lessee PROVIDED FURTHER that no compensation whether by reduction of rent or

otherwise shall be payable by the Lessor to the Lessee as a result of the construction or laying or existence of such public or community services.

- Communication with Lessee: 11.15 The Lessee shall at all times keep the Director the Regional Manager and the Superintendent informed of names addresses and telephone numbers sufficient for the purpose of communication with the Lessee if at any time a responsible representative of the Lessee is not readily available at the premises.
- Reporting of Environmental Damage etc: 11.16 The Lessee shall immediately inform the Superintendent of any act or omission of itself its servants agents or contractors or of any defect failure or hazard associated with the demised premises or otherwise of which it may become aware and which has caused or may tend to cause environmental damage or danger to the public whether upon the demised premises or within the Park generally AND in the event of such occurring the Lessee shall forthwith carry out such remedial works and measures as may be deemed necessary by the Superintendent to rectify any such damage defect failure or hazard AND FURTHER such remedial works and measures shall be carried out at the cost of the Lessee and to the complete satisfaction of the Superintendent and within the time limits specified by the Superintendent.
- Lessee to Accept Responsibility for Agents Etc: 11.17 The Lessee shall in its performance and observance of the covenants terms and conditions of this Lease accept full responsibility for the acts and omissions of its servants agents and contractors and its sub-lessees and licensees and the servants agents and contractors of such sub-lessees and licensees associated with the use of the demised premises for an ambulance station in the Park AND in the event of breach by any such person or body as the case may be of any such covenant term or condition the provisions of this Lease shall apply against the Lessee as if such breach were a breach by the Lessee itself AND FURTHER the Lessee shall make good any acts or omissions of such persons that contravene the terms and conditions of this Lease or the provisions of the Plan of Management.
- Survey Plan: 11.18 This Lease is entered into subject to the approval, checking and charting by the Director

and the local Land Board Office of the survey plan showing the land comprised in the demised premises AND the Lessee agrees to take the premises as finally approved checked and charted and will raise no objection to any minor variations or alterations in the survey plan as finally approved checked and charted from the plan presently annexed hereto and marked "A".

**Restriction
on Assignment**

11.19 The Lessee will not during the continuance of the Lease assign transfer mortgage charge demise sublet license or part with the possession of the demised premises or any part thereof or by any act or deed procure the demised premises or any part thereof to be assigned transferred demise sublet licensed or put into possession of any person or persons without receiving the prior consent in writing of the Lessor thereto.

**Access to
Premises**

11.20 The Lessee shall obtain access to the Ambulance Station by way of the driveway giving access to the Perisher Valley Fire Station and shall enter into an agreement with the Board of Fire Commissioners regarding the sharing of responsibility for maintenance and snowclearing of that part of the said driveway affected by the access arrangements.

FIRST SCHEDULE

All that piece or parcel of land in the Parish of Guthega
County Wallace ~~comprising the area shown in the~~ ~~Plan annexed hereto and marked "A".~~ ~~hatched in black~~

BEING LOT 261 IN DEPOSITED PLAN 812 714

SECOND SCHEDULE

COMPUTATION AND PAYMENT OF RENT

1. The Lessee will pay as rent to the Lessor for each
year of the period commencing on 1st January ~~1984~~ 1986
and ending on 31st December 2025 an amount of \$1.00
per annum on demand.


IN WITNESS whereof the parties hereto have executed this Deed
the day and year first above written.

The Common Seal of the
Health Administration
Corporation

was hereunto affixed by
authority of

in the presence of:

.....

Signed By me  as delegate of the HEALTH ADMINISTRATION CORPORATION, pursuant to Section 21 (1) Health Administration Act, 1992 and I hereby certify that I have no notice of the revocation of such delegation.


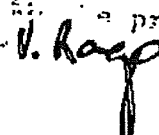
Signed in the presence of the said

R. HUGGECOR

(Name)

who 

(Witness),

~~STAMPED AND DELIVERED~~ by me MICHAEL PAUL
~~BOOTH~~, Officer-in-Charge Concessions and
~~Leasing~~, National Parks and Wildlife Service for
~~and on behalf of the MINISTER FOR PLANNING AND~~
~~ENVIRONMENT~~ for the State of New South Wales
~~deputy~~  in the presence of
 presence of

Annexure D

Undated lease between State of NSW and Eden Ice Supplies Pty Ltd

Form number: 01-117L
Lease number: LE 383693

LEASE

Real Property Act, 1900



AC683303Q

NEW SOUTH WALES DUTY
05-07-2005 0002780896-001
SECTION 179-DUPPLICATE
NO DUTY PAYABLE

(A) **PROPERTY LEASED:** 2301-2305 1/11/11
Show no more than 20 References to Title
Specify the part or premises if appropriate.

Folio Identifier(s) 1738477

Part 1/738477 being 13/790681

(B) **LODGED BY**

LTO Box

469S

Name, Address or DX and Telephone

Nowra District Office
Department of Lands
5 O'Keefe Avenue. PO Box 309 Nowra NSW 2541

REFERENCE: NA03H190

(C) **LESSOR**

STATE OF NEW SOUTH WALES

(D) The lessor leases to the lessee the property described above subject to the following **ENCUMBRANCES**

(E) **LESSEE**

L

EDEN ICE SUPPLIES PTY LTD (ACN 062 252 073)
PO Box 209 EDEN NSW 2551

(F)

TENANCY: not applicable

(G) 1. **TERM:** 20 years

2. **COMMENCING DATE:** 1ST SEPTEMBER 2005

3. **TERMINATING DATE:** 31ST AUGUST 2025

4. With an **OPTION TO RENEW** for a period of [NOT APPLICABLE]

5. With an **OPTION TO PURCHASE** set out in N/A

6. Together with and reserving the **RIGHTS** set out in N/A

7. Incorporates the provisions set out in **ANNEXURE "A"** hereto

8. Incorporates the provisions set out in **MEMORANDUM No.** [NOT APPLICABLE]

CHECKED BY (office use only)



1/27

(H) DATE No Date : We certify this dealing correct for the purposes of the Real Property Act, 1900

Signed in my presence by the lessor who is personally known to me



Signature of Witness

BRETT ANDREW LAWSON

Name of Witness (BLOCK LETTERS)

32 WEST ST, NOWRA, 2541

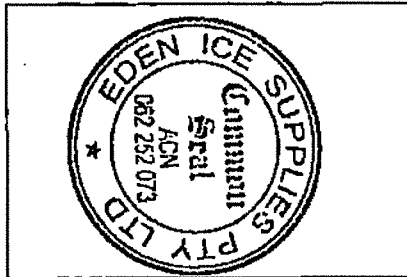
Address of Witness

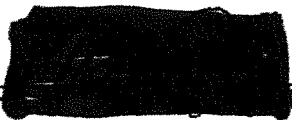


Signature of Lessor

Alan Bailey by delegation pursuant to section 180 of the Crown Lands Act 1989 and with authority under section 13L of the Real Property Act 1900 from the Minister administering the Crown Lands Act 1989 on behalf of the State of New South Wales

The Common Seal of EDEN ICE SUPPLIES PTY LTD was affixed in accordance with the articles of association in the presence of:







Position

1-9-05

Date



Signature

Director

Position

1-9-05

Date

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ANNEXURE "A"

This and the following pages comprise Annexure "A" referred to in the Lease between the STATE OF NEW SOUTH WALES as Lessor and EDEN ICE SUPPLIES PTY LTD as Lessee.

Witness

Lessor

Alan Bailey by delegation pursuant to section 180 of the Crown Lands Act 1989 and with authority under section 13L of the Real Property Act 1900 from the Minister administering the Crown Lands Act 1989 on behalf of the State of New South Wales

Lessee

(A Table of Contents appears at the end of this Annexure) (4.001)

The Lessor and the Lessee hereby covenant and agree the one with the other as follows:-

1. Authority for Grant of Lease

The Holder acknowledges that -

- (a) the Land is Crown land within the meaning of the CLA;
- (b) the State of New South Wales is recorded as registered proprietor of the Land by virtue of the provisions of section 13D of the Real Property Act 1900;
- (c) the Minister is authorised by section 34 of the CLA to grant a lease of Crown land on behalf of the Crown;
- (d) the Minister has executed this Lease on behalf of the State of New South Wales as authorised by section 13L of the Real Property Act 1900;
- (e) this Lease has been granted pursuant to section 34 of the CLA and is a "holding" for the purposes of that Act and the provisions of that Act relating to holdings apply to this lease; and
- (f) the holder is a "holder" for the purposes of the CLA and the provisions of that Act relating to holders apply to the holder. (4.002)

2. Definitions

In this Lease unless the contrary intention appears:

"CLA" means the Crown Lands Act 1989.

"Commencement Date" means the date of commencement of the Term as referred to on the front page of this Lease.

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"**Holder**" means the Lessee or its permitted assigns or permitted transferee and where not repugnant to the context its agents employees invitees and licencees.

"**Improvements**" means all buildings structures facilities works and equipment situated on or in the land or which under the terms of this Lease are to be constructed effected erected or undertaken on or in the land.

"**Land**" means the land (including any submerged land and waterway) described on the front page of this Lease or where the context so admits any part thereof.

"**Lease**" means this Lease including the Schedules and Annexures hereto.

"**Lessee**" means the Lessee or its permitted assigns or permitted transferee and where not repugnant to the context its agents employees invitees and licensees.

"**Lessor**" means the State of New South Wales being the Crown in the right of New South Wales.

"**Minister**" means the Minister of the Crown for the time being administering the CLA or any Act replacing or consolidating that Act.

"**Premises**" means the Land, the Improvements and the Lessee's Plant and where the context so permits any part of the foregoing.

"**Rent**" means the rent hereby reserved.

"**Schedule 1**" means schedule 1 of this Lease.

"**Term**" means the term of this Lease as shown on page one of this Lease.

"**Termination Date**" means the date of expiration of the Term as referred to on the front page of this Lease or where this Lease is determined (by forfeiture or otherwise) on a date earlier than that date then that earlier date. (4.003)

3. Interpretation - Extractive Resources

In this Lease unless the contrary intention appears:

"**Extract**" means to remove win dig up mine or take away a material on or from the Land and the words "Extraction" "Extracted" and "Extracting" have the same meaning.

"**Material**" means the substance authorised by this Lease to be extracted from the land and includes any other substance necessarily taken by the Holder when extracting such first mentioned substance. (4.004)

4. Plurals and Genders

- (a) Words importing the singular number shall include plural and vice versa.
- (b) Words importing the masculine gender shall include the feminine or neuter and vice versa.
- (c) Any reference to a person shall be deemed to include a reference to a corporation and vice versa. (4.005)

5. Contra Proferentum

In the interpretation of this lease no rule of construction shall apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Lease or any part of it. (4.006)

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[Redacted signature]

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6. Headings Code Numbers and References

- (a) Headings (and subheadings within clauses) marginal notes the matter appearing in Column 1 of Schedule 1 and the Table of Contents have been included for guidance only and shall be deemed not to form any part of this Lease.
- (b) The code number appearing at the end of each clause of the Lease shall be deemed not to form part of the Lease.
- (c) References to Clauses Parts and Schedules are references to clauses parts and schedules of this Lease. (4.007)

7. Statutes

- (a) A reference to a statute or statutory instrument includes amendments to that statute or statutory instrument whether by subsequent statutes or statutory instruments or otherwise and any statute or statutory instrument passed in substitution for the statute or statutory instrument referred to or incorporating any of its provisions.
- (b) Without limiting the operation of paragraph (a) where any clause of this Lease contains a reference to a specific provision in a statute or statutory instrument which is repealed the Lessor may by notice in writing served on the Holder specify that a provision of any statute or statutory instrument replacing the abovementioned provision shall be substituted for the abovementioned provision and the clause shall be read and construed to that effect.
- (c) A reference to a statute includes a reference to any statutory instrument made thereunder. (4.008)

8. Provisions to be construed as Covenants

Such of the provisions and conditions herein contained as require or prescribe anything to be done or not to be done by the Holder shall in addition to being read and construed as conditions of this Lease shall be also read and construed as covenants and agreements whereby the Holder for itself and its assigns agrees with the Lessor to observe and perform such provisions and conditions. (4.009)

9. Joint and Several Covenants

Any covenant or agreement in this Lease on the part of two or more persons shall be deemed to bind them jointly and severally. (4.010)

10. Application of Conveyancing Act

Pursuant to the provisions of section 43 of the CLA the provisions of sections 84, 84A, 85, 86, 129, 130, 131, 132, 133, 133A and 133B of the Conveyancing Act 1919 shall not apply to this Lease. (4.011)

11. Performance of Functions etc.

The Lessor and the Holder expressly agree that -

- (a) any power authority duty or function conferred or imposed upon the Lessor under any provision of this lease may be exercised or performed by the Minister as if the power authority duty or function had been conferred or imposed by this Lease on the Minister;
- (b) any power authority duty or function exercised or performed by the Minister pursuant to this clause may be exercised or performed in the name of the Minister with or without any reference to the Lessor;
- (c) the Minister may authorise a person to exercise or perform any power authority duty or function which this clause or this lease authorises or requires the Minister to exercise or perform;

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- (d) a person shall be taken to have been validly authorised by the Minister to exercise or perform any power authority duty or function if that person is authorised to exercise any power authority duty or function conferred or imposed in any lease granted under section 34 of the CLA or any such lease of a specific type or any such lease within a specified locality. (4.012)

12. Lessor as Public Authority

The Holder acknowledges that nothing in this Lease can in any way restrict or otherwise affect the Lessor's or the Minister's unfettered discretion as to the use of the Lessor's or the Minister's statutory powers as a public authority. (4.013)

13. Approval by the Lessor or the Minister

- (a) In any case where pursuant to this Lease the doing or executing of any act matter or thing by the Holder is dependent upon the approval or consent of the Lessor or the Minister such approval or consent shall not be effective unless given in writing and may be given or withheld by the Lessor or the Minister in its or the Minister's absolute discretion and may be given subject to such conditions as it or the Minister may determine unless otherwise herein provided.
- (b) The Holder expressly agrees that any failure by the Holder to comply with or perform a condition imposed pursuant to this clause will constitute a failure by the Holder to comply with or perform a condition of this Lease. (4.014)

14. Opinion of the Lessor or the Minister

Any opinion to be formed by the Lessor or the Minister for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor or the Minister determines to be sufficient after consultation if the Lessor or the Minister deems it necessary with any New South Wales Government Department or other public authority the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Lessor or the Minister shall be deemed to be exercising merely administrative functions. (4.015)

15. Time to be of the essence

Where in any provision of this Lease -

- (a) the Holder is given or allowed a specified time or period within which to undertake or do any act or thing;
- (b) any power or authority is conferred on the Lessor the Minister or the Holder after the lapse of a specified time or period; or
- (c) any event occurs after the lapse of a specified time or period

the Lessor and the Holder expressly agree that time shall be of the essence of this contract in that regard. (4.016)

16. Holder to pay Cost of Work

Whenever the Holder is required by this Lease to do or effect any act matter or thing or to undertake any work then the doing of such act matter thing or work shall unless this Lease otherwise provides be at the sole risk cost and expense of the Holder. (4.017)



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17. Notices

- (a) A reference in this clause to a notice required to be served includes a reference to any -
- (i) requirement in this lease for a notice or other communication to be given;
 - (ii) notice or other communication which may be convenient to be given or served in connection with this Lease; and
 - (iii) notice or other communication which may be required to be given or served or which may be convenient to be given or served under any condition of any approval consent or permission which the Lessor or the Minister may give under this Lease.
- (b) All notices which are required to be served by the Lessor or the Minister to or upon the Holder under this Lease shall be sufficiently given or served if left at or sent by ordinary post addressed to the Holder at the address specified in Column 2 of Item 1 of Schedule 1 or at the Premises or at such other place as notified in writing by the Holder to the Lessor.
- (c) All notices which are required to be served by the Holder to or upon the Lessor or the Minister under this Lease shall be sufficiently given or served if left at or sent by ordinary post addressed to the Minister at the address specified in Column 2 of Item 2 of Schedule 1.
- (d) Any notice or communication given or served by post shall be deemed to have been duly given or served at the time when it would in the ordinary course be delivered.
- (e) Subject to any other provision of this Lease to the contrary where the Holder is a corporation any notice or other communication required to be served or given or which may be convenient to be served or given under or in connection with this Lease shall be sufficiently executed if signed by the Secretary or other principal permanent officer of the corporation. (4.018)

18. Manner of Payment of Rent and Other Moneys

The rent and other moneys payable in accordance with this Lease shall be paid to the person and at the address specified in Column 2 of Item 3 of Schedule 1 or to such other person or at such other address as the Lessor may from time to time direct by notice in writing served on the Holder. (4.019)

19. Waiver

No waiver by the Lessor of one breach of any provision of this Lease shall operate as a waiver of another breach of the same or of any other provision. (4.020)

20. Severability of Provisions

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of this Lease or affecting the validity or enforceability of such provision in any other jurisdiction. (4.021)

21. Applicable Law

This Lease shall be construed and interpreted in accordance with the law of New South Wales. (4.022)

22. Exclusion of Warranties

The Holder acknowledges having inspected the Premises and that in entering into this Lease the Holder has not relied on any statement representation or warranty (other than those implied by or deemed to have been given

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by law and which cannot be contracted out of) by or on behalf of the Lessor whether expressed or implied other than the statements representations and warranties expressly set out in this Lease. (4.023)

23. Condition of and Damage to Premises

The Holder acknowledges that the Holder has inspected the Premises and accepts them in their condition and state of repair as at the Commencement Date. (4.024)

24. Whole Agreement

- (a) The provisions contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties.
- (b) It is expressly agreed and declared that no further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Lease or to arise between the parties hereto by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by any party hereto to another on or prior to the execution of this Lease.
- (c) The existence of any such implication or collateral or other agreement is hereby negated. (4.025)

25. Payment of Rent (CPI)

- (a) For the purposes of this clause:

"Initial Rent" means the rent for the first year of this Lease specified or referred to in Column 2 of Item 6 of Schedule 1.

"Base Annual Rent" means -

- (i) the Initial Rent where the rent has not been redetermined in accordance with subclauses (c) (f) or (g) or
- (ii) in any other case - the rent as last redetermined in accordance with those provisions.

"Due Date" means each anniversary date of the Commencement Date.

"Market Rent Review Date" means -

- (i) the date specified or referred to in Column 2 of Item 7 of Schedule 1 (either being a Due Date or another date); and
- (ii) thereafter the date of the expiration of each period of years as specified or referred to in Column 2 of Item 8 of Schedule 1 as calculated from the date specified or referred to in Column 2 of Item 7 of Schedule 1.

"Market Rent Review Period" means the period between each Market Rent Review Date as specified or referred to in Column 2 of Item 8 of Schedule 1.

- (b) The Holder covenants with the Lessor that the Holder will during the whole of the Term pay to the Lessor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever the rent hereinafter provided.
- (c) The Holder will pay to the Lessor on the Commencement Date the Initial Rent and thereafter shall pay on each Due Date rent in advance adjusted as hereinafter provided.
- (d) (i) On the Due Date the rent shall be adjusted in accordance with the following formula:

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$$R = B \times \frac{C}{D}$$

where:

R represents the adjusted rent;

B represents the Base Annual Rent;

C represents the Consumer Price Index number for the last quarter for which such a number was published before the Due Date; and

D represents the Consumer Price Index number for the last quarter for which such a number was published -

(1) before the Commencement Date where the rent has not been adjusted in accordance with subclauses (e) (f) or (g) or

(2) in any other case - before the Due Date being the effective Due Date of the last adjustment of rent as defined in subclauses (h) and (i).

(ii) In this clause "Consumer Price Index number" in relation to a quarter means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician. In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.

(iii) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.

(iv) Any rent adjusted under this subclause shall be adjusted to the nearest whole dollar.

(e) In addition to the rent adjustment provided for in subclause (d) on the first Market Rent Review Date after the Commencement Date and thereafter on each Market Rent Review Date the rent may be adjusted by the Minister redetermining the rent pursuant to the provisions of sections 142 and 143 of the CLA.

A redetermination of rent for the purposes of this subclause shall be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before the Market Rent Review Date.

(f) Where the Minister does not redetermine the rent as provided for in subclause (e) he may adjust the rent by redetermining the rent pursuant to the provisions of sections 142 and 143 of the CLA at any time prior to the next Market Rent Review Date and no succeeding Market Rent Review Date shall be postponed by reason of the operation of this subclause.

(g) Where the Minister does not adjust the rent on the first Market Rent Review Date or a Market Rent Review Date as provided for in subclause (e) the Holder may by notice in writing served on the Minister require that the Minister redetermine the rent pursuant to the provisions of sections 142 and 143 of the CLA. Where the Holder requires the Minister to redetermine the rent under this subclause he shall pay on demand the costs of the Minister (or so much of the cost as the Minister may require) in making that determination.

(h) A redetermination of rent made as provided for in subclause (e) shall take effect and be due and payable on the next Due Date following the date of issue of the notice of redetermination (or where the said Due Date and the date of issue of the notice of redetermination are the same - then that date) even if an objection or appeal under section 142 of the CLA has been lodged. On the completion of the objection and appeal process any necessary adjustments shall be made.

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For the purposes of this subclause the term "next Due Date" does not include a Due Date falling between the date of issue of the notice of redetermination and the relevant Market Rent Review Date.

- (i) A redetermination of rent as provided for in subclauses (f) and (g) shall take effect and be due and payable from the next Due Date following the date of issue of the notice of redetermination under section 142 of the CLA even if an objection or appeal under that Section has been lodged. On the completion of the objection and appeal process any necessary adjustments shall be made.
- (j) The Holder acknowledges that the Minister may make a direction under section 152 (alteration of due date) of the CLA in respect of any rent payable under this Lease. (4.028)

26. Continuing Obligation

The obligation of the Holder to pay the Rent shall be a continuing obligation during the term of this Lease and shall not abate in whole or in part or be affected by any cause whatsoever. (4.038)

27. No Reduction in Rent

Subject to the other provisions of this Lease, the Holder will not without written consent of the Lessor by any act matter or deed or by failure or omission impair reduce or diminish directly or indirectly the Rent hereby reserved or imposed or cause or permit to be imposed on the Lessor any liability of the Holder under or by virtue of this Lease even though entitled so to do whether by statutory instrument proclamation order or moratorium (present or future) or otherwise. (4.039)

28. Holder to Pay Rates etc.

The Holder will when the same become due for payment pay all (or in the first and last year of the term of this Lease the appropriate proportionate part) rates taxes (including Land Tax) assessments duties charges and fees whether municipal local government statutory or otherwise which are at any time during the currency of this Lease lawfully charged upon imposed or levied in respect of the Premises or on the Lessor or the Holder on account thereof and will if required by the Lessor produce to the Lessor the receipts for such payments within ten business days after the respective due dates for payment AND in case such rates taxes duties and fees so covenanted to be paid by the Holder are not paid when the same shall become due the Lessor may if it thinks fit pay the same and any such sum or sums so paid may be recovered by the Lessor as if such sums were rent in arrears. (4.040)

29. Goods and Services Tax

(a) Definitions

In this clause the expressions "GST", "supply", and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

(b) Amounts GST Exclusive

With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable under this Lease are exclusive of GST.

(c) Responsibility for GST

- (i) Despite any other provision in this Lease, if GST is imposed on any supply made under this Lease, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (ii) The recipient must pay the amount referred to in subclause (c)(i) in addition to and at the time payment for the taxable supply is required to be made under this Lease.

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(d) Valuer/Umpire to return GST Exclusive Value

Any valuer or umpire returning a valuation must return a GST exclusive market value for it in any case where the valuation is for the purpose of determining a supply value to which GST is to be added under this Lease. (4.040A)

30. Holder to Pay for Services

The Holder will as and when the same become due for payment pay to the Lessor or to any other person or body authorised to supply the same all proper charges for gas electricity water sewage or other services supplied to or consumed in or on the Premises and will also pay all charges in respect of any telephone services connected to the Premises. (4.041)

31. Holder not to Impose Liability on Lessor

Subject to any other provision of this Lease the Holder will not without the written consent of the Lessor by any act matter or deed or by failure or omission cause or permit to be imposed on the Lessor any liability of the Holder under or by virtue of this Lease even though the Holder is entitled so to do under any law (present or future) or otherwise. (4.042)

32. Permitted Use

- (a) This Lease confers on the Holder a right to occupy and use the Premises for the purpose specified or referred to in Column 2 of Item 36 of Schedule 1.
- (b) The Holder will not use the Premises or allow them to be used for any purpose other than the purpose specified in Column 2 of Item 36 in Schedule 1. (4.043)

33. Holder Not to Commit Nuisance etc.

The Holder will not at any time during the term of this Lease :

- (a) carry on or permit to be carried on at the premises any noxious nuisance or offensive trade business or calling;
- (b) do or permit to be carried on at the Premises any act matter or thing which results in nuisance damage or disturbance to the Lessor or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the premises for any illegal activity. (4.044)

34. No Residence on Premises

The Holder will not reside or permit any other person to reside on the premises. (4.045)

35. Lessor's Consent to Development Application

The Holder covenants with the Lessor that the Holder will obtain the Lessor's consent to the lodgement of any development application in respect of the Land. (4.047)

36. Holder not to undertake Development without consent notwithstanding any other provision of this Lease

The Holder will not undertake any development within the meaning of the Environmental Planning and Assessment Act 1979 contrary to the provisions of that Act or in breach of any restriction condition or prohibition imposed by an Environmental Planning Instrument or condition of a development consent. (4.048)

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37. Development Consent

- (a) The Holder will not undertake any activity on or within the Premises for which consent is required under the Environmental Planning and Assessment Act 1979 or any Instrument made thereunder without first obtaining such consent.
- (b) Where the Holder obtains consent in accordance with the provisions of this clause the Holder will not undertake any activity on or within the Premises except in accordance with any conditions or requirements of that consent. (4.049)

38. Compliance with Statutes

- (a) The Holder will comply with the requirements of all statutes regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the premises.
- (b) The Holder will forthwith on being served with a notice by the Lessor comply with any notice or direction served on the Lessor or the Minister by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises. (4.050)

39. No Assignment, Sublease, Mortgage or other dealing with Lease except with consent

- (a) The Holder will not assign transfer demise sublease mortgage charge or otherwise deal with the Holder's interest in this Lease or demise sublease or part with the possession of the Premises or by any act or deed procure any of the foregoing except with the consent in writing of the Lessor.
- (b) In the case of an application for the consent of the Lessor to a proposed mortgage, charge or encumbrance the Lessor may require that the proposed mortgagee or chargee enter into a covenant with the Lessor in the form required by the Lessor that the mortgagee or chargee will notify the Lessor if the Holder is in default under the terms of the mortgage or charge and that should the mortgagee or chargee enter into possession of the Premises for the purpose of realising its security or otherwise then the said mortgagee or chargee will duly perform and keep the covenants and agreements on the Holder's part herein contained. (4.053)

40. Lessor may Charge Fee

The Lessor may charge such fees as may be prescribed in the Regulations made under the CLA for dealing with any application by the Holder for consent to assign transfer sublease or otherwise part with possession of the Premises. (4.055)

41. Provision of Guarantees

In the case of an application for consent to a proposed assignment transfer or declaration of trust of this Lease in favour of a company the Lessor may require guarantees by such persons and in such form as the Lessor requires. (4.056)

42. Forfeiture

- (a) The Holder expressly acknowledges that this Lease may be forfeited pursuant to the provisions of section 129(1) of the CLA in the circumstances set out in that section.
- (b) For the purposes of this Lease the Holder will be taken not to have failed to comply with a condition covenant or provision of this Lease until a period of 28 days (or such further period as may be specified



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in the notice) has elapsed after the service of a notice in writing on the Holder specifying the covenant conditions or provision which the Holder has failed to comply with.

- (c) The Lessor and the Holder expressly acknowledges that if one or both of the events specified hereunder occurs the Holder will for the purposes of this clause and for the purpose of section 129(1) of the CLA be taken to have failed to comply with a provision of this Lease and the provision of subclause (b) shall not apply to such a default.

(i) Winding Up

the Holder (being a company) - an order is made or a resolution is effectively passed for the winding up of the Holder (except where such winding up is for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld); or

(ii) Liquidation

the Holder goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts or if execution is levied against the Holder and not discharged within 30 days.

- (d) Demand or acceptance of Rent or any other money due under this Lease by the Lessor after forfeiture does not operate as a waiver of forfeiture. (4.059)

43. Abandonment

If the Holder vacates or abandons the Premises during the continuance of this Lease (whether or not the Holder ceases to pay the Rent and other amounts payable pursuant to this Lease) then in the absence of written notice by the Lessor accepting the surrender of the Holder's interest under this Lease or the forfeiture of the Lease neither acceptance of the keys nor entry into the Premises by the Lessor or by any person on the Lessor's behalf for the purpose of inspection or for the purpose of showing the Premises to prospective lessees or licencees nor the advertising of the Premises for re-letting shall constitute a waiver of the Lessor's rights to recover in full all Rent and other amounts from time to time payable by the Holder pursuant to this Lease and this Lease shall be deemed to continue in full force and effect until the date on which any forfeiture thereof takes effect or the date of expiration of the term whichever shall first occur. (4.060)

44. Interest on Overdue Money

The Holder shall pay interest on any money due and payable under this Lease at the rate prescribed from time to time under the provisions of section 148 of the CLA and any such interest shall for the purposes of this Lease be deemed to be Rent in arrears. (4.061)

45. Failure to Pay Money or Undertake Works

- (a) For the purposes of this clause the word "cost" shall include any sums paid for any insurance indemnities under the laws relating to workers' compensation.
- (b) Where under this Lease the Holder is required to pay any money to a third party and neglects to do so for a period of 14 days after the money became due and payable it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any rights and powers arising from such default) to pay such money as if it were the Holder and the Holder will reimburse the Lessor in respect of any such payments on demand.
- (c) Where under this Lease the Holder is required to do or cause to be done any work or thing and the Holder neglects to do the work or thing for a period of 14 days after that work or thing was due or required to be done it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any rights and powers arising from such default) to do or effect such work or thing as if the Lessor were

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the Holder and for that purpose the Lessor the Lessor's officers agents contractors and workmen may enter upon the whole or any part of the Premises and there remain for the purposes of doing or effecting any such work or thing and the Holder will reimburse the Lessor for the cost of the doing or effecting the work or thing on demand.

- (d) The Holder expressly agrees that any money or cost payable to the Lessor under this clause shall constitute a debt owed by the Holder to the Crown in the right of the State of New South Wales and may be recovered accordingly.
- (e) Where the Premises has a common boundary with other land owned leased or held by the Holder (hereinafter called the "other land") the Holder irrevocably grants to the Lessor the Lessor's officers agents contractors and workmen a Licence to enter upon the said other land for the purpose of gaining access to the Premises or for the purpose of undertaking any work or thing authorised permitted or contemplated by this Lease.

In exercising any power conferred by this subclause the Lessor the Lessor's servants employees and agents will not be liable for any reasonable damage suffered or occasioned to the other land or anything constructed thereon.

- (f) The Holder expressly agrees that the provisions of this clause shall continue after the expiration or sooner determination of this Lease and the Lessor may make any payment or effect any work or thing authorised by this clause after the expiration or sooner determination of this Lease as if such expiration or sooner determination had not taken place. (4.062)

46. Holder to take as if Owner

The Holder shall take and be subject to the same responsibilities in regard to persons and property and otherwise to which the Holder would be subject as if during the Term the Holder was the owner of the freehold of the Premises. (4.063)

47. Release of Lessor from Accident Damage

- (a) For the purposes of this clause the term Lessor shall include Her Majesty the Queen Her Heirs and Successors the Minister and the agents servants employees and contractors of the Lessor Her Majesty Her Majesty's Heirs and Successors and the Minister.
- (b) The Holder agrees to occupy use and keep the Premises at the risk of the Holder and hereby releases to the full extent permitted by law the Lessor from all claims and demands of every kind resulting from any accident damage or injury occurring therein and the Holder **EXPRESSLY AGREES** that the Lessor shall have no responsibility or liability for any loss of or damage to fixtures and/or the personal property of the Holder.
- (c) The Holder expressly agrees that the obligations of the Holder under this clause shall continue after the expiration or other determination of this Lease in respect of any act deed matter or thing occurring before such expiration or determination. (4.064)

48. Indemnities

- (a) For the purposes of this clause the term Lessor shall include Her Majesty the Queen Her Heirs and Successors the Minister and the agents servants employees and contractors of the Lessor Her Majesty Her Majesty's Heirs and Successors and the Minister.
- (b) The Holder covenants with the Lessor to indemnify and keep indemnified the Lessor from and against all claims for injury loss or damage suffered by any person or body using or being in or upon the Premises or any adjoining land or premises of the Lessor arising out of the Holder's use of the Premises and against all liabilities for costs charges and expenses incurred by the Lessor in respect of the claim of



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any such person or body except to the extent that any such claims and demands arise wholly from any negligence or wilful act or omission on the part of the Lessor.

- (c) The indemnity contained in this clause applies notwithstanding that this Lease authorised or required the Holder to undertake or perform the activity giving rise to any claim for injury loss or damage.
- (d) The Holder expressly agrees that the obligations of the Holder under this clause shall continue after the expiration or sooner determination of this Lease in respect of any act deed matter or thing occurring before such expiration or determination. (4.065)

49. Insurance - Public Risk

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Lease) forthwith take out and thereafter during the Term keep current a public risk insurance policy for the amount not less than that specified in Column 2 of Item 39 of Schedule 1 for any one claim (or such other reasonable amount as the Lessor may from time to time specify in writing to the Holder) whereby the Lessor shall during the continuance of this Lease be indemnified against all actions suits claims demands proceedings losses damages compensation costs charges and expenses mentioned or referred to in this Lease to which the Lessor shall or may be liable. (4.066)

50. Insurance - Workers Compensation

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Lease) forthwith take out and thereafter during the Term keep current insurance against any liability which may arise at common law or by virtue of any relevant workers compensation legislation in connection with the performance of work or provision of services on or about the Premises and the operation thereof so that the Lessor will be indemnified against all claims for death or bodily injury by any person at all times. (4.067)

51. Insurance - Against Fire and Other Risks

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Lease) forthwith take out and thereafter during the Term keep current insurance against loss damage or destruction of the Premises by fire lightning riots strike malicious damage sprinkler failure plumbing leakage storm and tempest explosion earthquake impact by vehicles Acts of God and against such other risks (if any) as the Lessor may from time to time reasonably direct by notice in writing served on the Holder to the full insurable value thereof permitted by the Insurer on a replacement and/of reinstatement basis including extra costs or reinstatement cost of removal of debris and all professional fees incurred in replacing and/or reinstating the Premises. (4.070)

52. Total Destruction

- (a) In the event of the Improvements being Totally Destroyed one of the following alternatives shall apply:

First Alternative - Rebuild to original Design

The Holder may and shall if so required by the Lessor from the insurance moneys available (and to the extent that the same may be insufficient from its own moneys) reinstate the Improvements substantially in accordance with their original design.

Second Alternative - Rebuild to different Design

If the Lessor and the Holder agree that the Improvements are to be rebuilt made or installed to a different design and agree upon the plans and specifications relating thereto then the Holder will from the insurance moneys available (and to the extent the same may be insufficient from its own moneys) prepare the Land for the new improvements and then construct make and install the improvements in accordance with the agreed plans and specifications.



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Third Alternative - Improvements not to be rebuilt

If the Lessor and the Holder agree that the Improvements need not be reinstated by the Holder and the Second Alternative is not adopted the Holder will promptly demolish the Improvements and clear the Land of all improvements structures rubbish and debris and following such demolition and clearance being carried out to the Lessor's satisfaction and the Lessor so certifying in writing to the Holder and the Holder at that time not being in default under any provision of this Lease the Holder will then deliver to the Lessor a duly stamped surrender of the Lease and the Lessor shall accept the same. The surrender as aforesaid shall be without prejudice to any claim the Lessor may have against the Holder immediately prior to the date of such surrender.

- (b) For the purposes of this clause "Totally Destroyed" means destroyed or damaged so extensively that in the opinion of the Lessor reasonably held it would be impractical or not commercially viable to make good such damage. (4.071)

53. Partial Destruction

In the event of the Improvements being partially destroyed or damaged the Holder will from the insurance moneys available (and to the extent that the same may be insufficient from the Holder's own moneys) repair replace and make good the whole of the destroyed or damaged portion of the Improvements as nearly as possible to the condition in which it was immediately prior to such damage or destruction with such modifications as the Holder may seek and the Lessor approve (such approval not to be unreasonably withheld) or as may be required by some competent authority and approved by the Lessor (such approval will not be unreasonably withheld). (4.072)

54. Application of Insurance Proceeds

- (a) All moneys received by the Lessor or the Holder in settlement of any claim under any insurance policy in respect of the damage to or destruction of the Premises shall be paid into a bank agreed upon by the Lessor and the Holder (or in default of agreement a bank nominated by the Lessor) in an account (the "Trust Account") in the name of the Lessor and such moneys shall be held in that account and shall be applied by the Lessor in the following order of priorities:

Firstly - in payment to the Lessor on account of expenditure by the Lessor in respect of any work required by this Lease to be undertaken by the Holder but not commenced and completed within a reasonable time; and as to any balance.

Secondly - in payment progressively to the Holder in reimbursement of the Holder's costs in the rebuilding or demolishing and clearing or repair or replacement and making good as the case may be of the Premises; and as to any balance.

Thirdly - an amount shall be credited to the Holder's instalment of the rent next falling due and any other amounts owing by the Holder to the Lessor under the provisions of this Lease; and as to any balance.

Fourthly - such balance shall be equitably apportioned between the Lessor and the Holder having regard to their respective interests in the Premises at the day immediately prior to the incident giving rise to the insurance claim.

- (b) The Holder expressly agrees that the provisions of this clause shall continue after the expiration or other determination of this Lease. (4.073)

55. Provisions re Policies

- (a) Notwithstanding anything expressed or implied in this Lease the following provisions apply to all policies of insurance required to be effected by the Holder under this Lease:

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- (i) All policies are to be placed with an Insurer approved by the Lessor in writing (whose approval will not be unreasonably withheld) and shall be for such amounts and cover such risks and contain such conditions endorsements and exclusions as are reasonably acceptable to or reasonably required by the Lessor having regard to insurance commonly effected in relation to the types of business or activity carried out on the Premises and the nature of the Premises.
 - (ii) All policies are to be taken out in the names of the Lessor and the Holder for their respective rights and interests and in the name of such other parties having an insurable interest as the Lessor may require.
 - (iii) Duplicate or certified copies of the policies and all renewal certificates and endorsement slips are to be lodged by the Holder with the Lessor if required by the Lessor.
 - (iv) All premiums in respect of all such policies and renewals of policies are to be paid punctually by the Holder and the receipt for each premium payable in respect of each policy (or other proof of payment to the Lessor's satisfaction) is to be produced by the Holder to the Lessor at the request of the Lessor.
 - (v) The Holder will use all reasonable endeavours to ensure that the company or office which issues a policy advises the Lessor of any failure by the Holder to renew any policy or pay any premium in respect thereof.
 - (vi) The Holder will not at any time during the Term do or bring upon the Premises anything whereby any insurance relating to the Premises against damage by fire and other risks may be rendered void or voidable. If the Holder brings anything onto the Premises whereby the rate of premium on such insurance shall be liable to be increased the Holder will obtain insurance cover for such increased risk and pay all additional premiums on the Premises (if any) required on account of the additional risk caused by the use to which the Premises are put by the Holder.
 - (vii) The Holder will use all reasonable endeavours to ensure that full true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys thereunder.
- (b) The Lessor in its own name or as the attorney of the Holder in the name of the Holder shall be entitled to institute all proceedings against any office or company which issues a policy of insurance required by this Lease to recover from it any amount for loss damage or injury or other money payable under any indemnity in favour of the Lessor. The Holder hereby appoints the Lessor the attorney of the Holder for the purpose as aforesaid.
- (c) The Holder will use its best endeavours (including the payment of any reasonable premium) to have any policy of insurance required under the Lease endorsed to the intent that the Insurer under such policy waives the Insurer's right to avoid the policy or any liability of the Insurer under that policy on account of or by reason of any non-disclosure or any inaccurate disclosure in the proposal relating to that policy. (4.074)

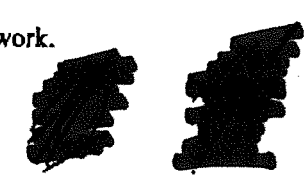
56. Construction of Improvements Permitted with Consent

- (a) For the purposes of this clause "Improvement" means any building structure facility or work.
- (b) The Holder will not construct effect erect or undertake any Improvements on the Premises other than with the prior consent in writing of the Lessor or which may be authorised or required by a provision of this Lease. (4.076)

57. Improvements - No Demolition without Consent

- (a) For the purposes of this clause "Improvement" means any building structure facility or work.

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- (b) The Holder will not demolish destroy remove take away or pull down any Improvements on the Premises without the written consent of the Lessor. (4.080)

58. Improvements - Improvements constructed under this Lease - No Demolition ..

The Holder will not demolish, destroy, remove, take away or pull down any improvement authorised or required to be constructed erected or effected pursuant to a provision of this Lease without the written consent of the Lessor. (4.080A)

59. Carrying out of Alteration

- (a) For the purposes of this clause the word "alteration" shall mean a change to the fabric or structure of the Premises but does not include a change to the painting or papering scheme of the Premises.
- (b) The Holder will not make or undertake any alteration to the Premises unless full and proper plans and specifications shall have been previously submitted to and approved by the Lessor in writing and all work in connection thereto shall be carried out by and at the expense of the Holder and to the satisfaction of the Lessor using contractors or workmen previously approved by the Lessor whose approval shall not be unreasonably withheld and subject thereto the Holder will observe and comply with:
- (i) all requirements of the Lessor the Local Council and any other statutory authority having jurisdiction over the Premises; and
 - (ii) the plans and specifications approved by the Lessor the Council and any other statutory authority.
- (c) The Lessor may appoint such consultants as it may reasonably deem proper to inspect any work undertaken by the Holder pursuant to this clause and the Holder will comply with the reasonable directions of such consultants and shall pay the whole of their fees charges and expenses in relation thereto. (4.084)

60. Ownership of Improvements

- (a) For the purposes of this clause "Improvement" means any building structure facility or work.
- (b) The Holder expressly acknowledges that on the Termination Date any Improvements constructed erected effected or undertaken on the Premises during the Term hereof shall become the property of the Lessor and the Holder will not be entitled to any compensation in respect thereof. (4.089)

61. Removal of Plant on Expiration of Term

- (a) The Holder will (unless the Lessor and Holder otherwise agree in writing) remove from the Land all Holder's Plant within one month (or within such further period as the Lessor may allow) after the expiration of the Term of this Lease and make good any damage to the Premises caused by such removal. The property in any of the Holder's Plant not removed within that time shall upon the expiration of the said period automatically pass to and vest in the Lessor without compensation.
- (b) For the purposes of this Clause the term "Holder's Plant" shall mean such plant and equipment as is specified or referred to in Column 2 of Item 58 of Schedule 1. (4.095)

62. Removal of Signs

Upon the Termination Date the Holder will at the Holder's expense remove any signs advertisements lights embellishments names notices or hoardings erected painted displayed affixed or exhibited upon to or within the



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Premises by or on behalf of the Holder and make good any damage or disfigurement caused by reason of such erection painting displaying affixing exhibiting or removal thereof. (4.097)

63. Repair and Replacement

The Holder will make all repair and replacements to the Premises necessary to preserve all parts thereof in good working order and condition in all respects and in a state of repair consistent with that to be expected in a well maintained building or complex of the type described or referred to in Column 2 of Item 60 Schedule 1. Without prejudice to the foregoing provisions of this clause or to any other provisions of this Lease:

- (a) The Holder will as and when necessary renew repair or replace any substructure seawalls retaining walls wires pipes drains conduits ducts doors fastenings water closets cisterns water apparatus rails fences and other parts of the Premises which cease to function effectively.
- (b) The Holder will as and when necessary replace or repair any part of the Improvements which becomes worn out unsound dilapidated out of alignment broken damaged unsightly or unsafe.
- (c) The Holder will maintain the roof walls windows and entrances on and to the Improvements so as not to allow rain water to penetrate through the same or into any damp course.
- (d) The Holder will as and when necessary paint re-paint clean or otherwise appropriately treat in a proper and workmanlike manner those parts of the Premises usually so treated.
- (e) The Holder will maintain in good working order and condition all plant of whatever nature on or within the Premises. (4.099)

64. Renovation and Restoration

Without prejudice to any other provision of this Lease the Holder will from time to time during the Term and as and when reasonably required by the Lessor carry out renovations and restoration work in relation to the Premises so as to re-establish the Premises consistent with standards then applicable to a well maintained building or complex of the type described or referred to in Column 2 of Item 62 of Schedule 1. (4.101)

65. Painting

Without prejudice to any other provision of this Lease the Holder will within the period specified or referred to in Column 2 of Item 65 of Schedule 1 at the Holder's expense and thereafter at intervals of not less than the period specified or referred to in Column 2 of Item 66 of Schedule 1 and otherwise whenever necessary or reasonably required by the Lessor paint re-paint clean or otherwise appropriately treat in a proper and workmanlike manner those parts of the Premises usually so treated. (4.103)

66. Premises to be kept in clean and tidy condition

The Holder will at all times during the Term keep the Premises in a clean and tidy condition and will (subject to any other provision of this Lease) on the Termination Date leave the Premises in a clean and tidy condition. (4.104)

67. Maintenance of Ground Areas

The Holder will at all times during the Term keep the ground areas of the land landscaped and in good order and condition. If the Holder fails to keep such grounds in the said condition in the reasonable opinion of the Lessor the Holder will at the request of the Lessor enter into a contract with an appropriate person skilled in landscaping maintaining and caring for grounds with a view to keeping the grounds professionally landscaped clean tidy and in a healthy condition. (4.105)

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68. Lessor's Right to Enter Inspect and Repair

The Lessor and the Lessor's agents may at all reasonable times upon giving to the Holder reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Premises and view the state of repair thereof and may serve upon the Holder a notice in writing of any defect (the repair of which is the Holder's obligation hereunder) requiring the Holder within 14 days to repair the same. (4.106)

69. Use by Public of Defective Structures

The Holder will not at any time during the Term permit or suffer members of the public to be upon or use any building structure facility installation contrivance or other thing in or upon the Premises which has to the knowledge of the Holder or in the opinion of the Lessor the Council or any other public or local authority having jurisdiction in the matter become seriously defective unsafe weakened out of repair or faulty in any way PROVIDED HOWEVER the Lessor shall not be held liable or responsible for any failure to notify the Holder of any such defect unsafeness weakness out of repair or fault. (4.108)

70. Holder to Erect Barricades etc.

Where the Premises or any part of the Premises become unsafe hazardous or dangerous the Holder will forthwith erect such warning signs and barricades as may be necessary until the Premises are rendered safe. (4.109)

71. Rodents and Vermin

The Holder will take all reasonable precautions to keep the Premises free of rodents vermin insects and pests and will in the event of failing so to do if required by the Lessor but at the cost of the Holder employ from time to time pest exterminators approved by the Lessor (whose approval shall not be unreasonably withheld). In performing the Holder's obligations pursuant to this clause the Holder and any one acting on the Holder's behalf will not use any substance prohibited by Statute. (4.111)

72. Breakages

The Holder will immediately at the Holder's expense make good any breakage defect or damage to the Improvements (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Lessor occasioned by want of care misuse or abuse on the part of the Holder or the Holders sub-tenants or other persons claiming through or under the Holder or otherwise occasioned by any breach or default of the Holder hereunder. (4.112)

73. Use of Plumbing

The Holder will not use permit or suffer to be used the lavatories toilets sinks and drainage and other plumbing facilities in the Premises for any purpose other than those for which they were constructed or provided and shall not deposit or permit to be deposited any sweepings rubbish or other material and any damage thereto caused by such misuse shall be made good by the Holder forthwith. (4.114)

74. Notification of Accident

The Holder will give to the Lessor prompt notice in writing of any serious accident to or serious defect or want of repair in any of the Improvements facilities devices contrivances services to or fittings in the Premises which in any way is likely to cause any serious danger risk or hazard to the Premises or any person therein unless such defect unsafeness weakness or want of repair is capable of being and is promptly remedied by the Holder. (4.115)



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75. Fire Safety Equipment

- (a) For the purposes of this clause the term "Fire Control Authority" means the New South Wales Fire Brigades, or any other authority or body responsible for fire safety or the certification of fire fighting equipment or fire plans.
- (b) The Holder will:
- (i) provide and maintain at the Premises and keep readily available for use proper fire extinguishing appliances and the Holder will not use permit suffer or allow the same to be used for other than fire extinguishing purposes;
 - (ii) take all necessary steps to obtain from the Fire Control Authority and furnish to the Lessor prior to the first day of July in each and every year during the Term and also after any alteration and/or addition to any new Improvements at the Premises and/or a change in user of the premises a Certificate that the fire extinguishing appliances at the Premises provide in their nature number and location a reasonable standard of fire protection of such premises (and of any vessel which may from time to time be moored thereat or adjacent thereto) and shall at all reasonable times and on reasonable prior notice during the Term allow all persons authorised by the Fire Control Authority to enter the Premises to ascertain whether the fire extinguishing appliances thereat comply with the provisions of this clause;
 - (iii) keep all fire extinguishing appliances at the Premises in good and efficient condition at all times; and
 - (iv) make application to the Fire Control Authority for and do all things necessary to endeavour to obtain the abovementioned certificates and shall pay the Fire Control Authority all fees payable in respect of the issuing of such Certificates. (4.116)

76. Quiet Enjoyment

The Lessor covenants with the Holder that the Holder paying the rent and performing and observing the covenants and conditions herein shall and may peaceably and quietly possess and enjoy the Premises during the Term without any interruption from or by the Lessor or any person claiming from or under the Lessor. (4.214)

77. Encroachment by Holder onto Public land

The Holder expressly agrees that the Holder will not construct erect or effect any building structure or work which encroaches onto any adjoining "public land" as defined in section 153 of the CLA. (4.231A)

78. Dispute Resolution Procedure

- (a) In the event that the Lessor and the Holder are in dispute regarding any matter relating to or arising out of this Lease other than -
- (i) in respect of any approvals or consents to be granted by the Lessor to the Holder; or
 - (ii) where the Lessor or the Minister is acting in a statutory capacity or statutory authority; or
 - (iii) where the dispute concerns a determination of the rent payable under this Lease

the Minister may either on his own initiative or on the request of the Holder refer the dispute to the Local Land Board for inquiry and report pursuant to section 22 of the CLA and the Lessor the Minister and the Holder hereby expressly agree to observe and be bound by the terms of any such report by the Local Land Board.

- (b) For the purposes of this clause "Local Land Board" means the local land board constituted under section 20 of the CLA for the land district in which the Land is situated. (4.232)

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79. No Moratorium

Unless application is mandatory by law no statute ordinance proclamation order regulation or moratorium present or future shall apply to this Lease so as to abrogate extinguish impair diminish fetter delay or otherwise prejudicially affect any rights powers remedies or discretions given or accruing to the Lessor or Holder. (4.234)

80. Holder to keep Proper Business Records

The Holder will keep and maintain proper business records of the income and expenditure pertaining to any business calling or undertaking carried out on the Premises and shall permit the Lessor or any person authorised by the Lessor to inspect from time to time the said records. (4.235)

81. No Holding Out

The Holder will not in connection with the Premises or otherwise directly or indirectly hold out or permit to be held out to any member of the public any statement act deed matter or thing indicating that the Premises or the business conducted or operated thereon or any part or parts thereof are or is being carried on or managed or supervised by the Lessor or the Minister nor shall the Holder act as or represent itself to be the servant or agent of the Lessor or the Minister. (4.236)

82. No Liability for Failure of Services

The Lessor will not be under any liability for any loss injury or damage sustained by the Holder or any other person at any time as a result of or arising in any way out of the failure of the electricity telephones gas water supply sewerage drainage or any other services or facilities provided by the Lessor or enjoyed by the Holder in conjunction with the Premises or this Lease provided that such failure is not due to the wilful act or wilful omission of the Lessor. (4.237)

83. Holder to Pay Costs of Lessor

The Holder shall pay in full the Lessor's legal costs the fees of all consultants and all duties fees charges and expenses incurred by the Lessor in consequence of or in connection with or incidental to:

- (a) any cost of registration and stamping of this Lease;
- (b) any variation to this Lease made otherwise than at the request of the Lessor; and
- (c) any application for the consent of the Lessor under this Lease; and
- (d) any and every failure to comply breach or default by the Lessee under this Lease; and
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease. (4.238)

84. Holder to Yield Up

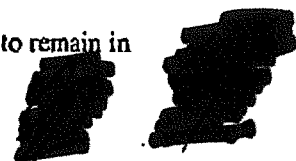
The Holder will forthwith upon the determination of this Lease peaceably surrender and yield up to the Lessor the Premises in good condition reasonable wear and tear excepted together with all conveniences amenities and appurtenances relating thereto clear and free from rubbish and in good and substantial repair order and condition in every case having regard to the age of what is being surrendered or yielded up. (4.239)

85. Holding Over by Holder

- (a) At the expiration of this Lease the Holder shall be entitled with the consent of the Lessor to remain in possession of the Premises on the following terms and conditions -

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- (i) the Holder shall become a monthly tenant of the Lessor at a monthly rental equivalent to a one twelfth proportion of the annual rent payable at the time of the expiration or sooner determination of this Lease;
 - (ii) the Holder shall comply with and be bound by the terms and conditions of this Lease insofar as the terms and conditions are applicable provided that the Lessor may from time to time by notice in writing served on the Holder direct that any particular condition not apply or be amended in the manner set out in the Notice.
- (b) The Lessor and the Holder expressly agree that where any provision of this Lease confers any right duty power or obligation on a party upon the expiration or determination of this Lease or on the Termination Date and the Holder is authorised to remain in possession of the Premises pursuant to a consent granted under this clause the emergence of the right duty power or obligation shall be postponed until such time as the Holder ceases to be entitled to possession pursuant to this clause.
- (c) The tenancy created by operation of this clause may be determined by the Lessor serving on the Holder a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.
- (d) The tenancy created by operation of this clause may be determined by the Holder serving on the Lessor a notice stating that as from a date specified in the notice the tenancy is surrendered. (4.241)

86. No Right to Purchase etc.

The Holder expressly acknowledges that the grant of this Lease does not confer a right to purchase the land or to the grant of a further lease or to the grant of any licence. (4.242)


87. Special Conditions

The special conditions specified or referred to in Column 2 of Item 130 of Schedule 1 shall be deemed to be conditions and provisions of this Lease. (4.243)

***** End of Lease Clauses *****

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SCHEDULE 1

Item	Paragraph No	Column 1 (description of variable particulars)	Column 2 - (particulars)
1	17	Holder's Address for service of notices	PO Box 209 EDEN NSW 2551
2	17	Lessor's or Minister's Address for service of notices	Department of Lands PO Box 309 NOWRA NSW 2541
3	18	Person and address for payment of rent	The Cashier Department of Lands PO Box 2155 DANGAR NSW 2309
6	25	Initial Rent	\$3,900.00
7	25	Market Rent Review Date (First)	3 Years from the Commencement date of the lease.
8	25	Market Rent Review Period	3 years
36	32	Permitted Use	Ice Works
39	49	Insurance - Public Risk	Ten Million Dollars (\$10,000,000.00)
58	61	"Holder's plant" - Removal on Termination	All Plant
60	63	Repair and Replacement - Description of building or complex	Ice Works
62	64	Renovation - Description of Building or complex	Ice Works
65	65	Initial Painting - period	5 Years
66	65	Painting - period	5 Years
130	87	Special conditions or provisions	Annexed as Schedule 2

***** End of Schedule 1 *****

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SCHEDULE 2

88. Occupational Health and Safety Act 2000

The Holder accepts responsibility for the control of the Whole of the Premises for the purposes of the Occupational Health and Safety Act 2000 and agrees to keep and maintain the Premises in the manner which complies with the said Act.

89. Protection of the Environment Operations Act 1997

The Holder shall not be exempt from any provision of the Protection of the Environment Operations Act 1997 that are applicable to the operations carried out on the land leased and shall at all times comply with the requirements of that Act.

90. Anti-Pollution Measures

The Holder will ensure that satisfactory measures are taken to prevent pollution of Twofold Bay or its foreshores arising out of the use of the Premises.

91. Removal of Improvements

On forfeiture surrender or other determination of the Lease the Lessor reserves the right to direct the Holder to remove all improvements on the Premises at the Holders expense.

92. Building Maintenance

The Holder shall within one year of the granting of this lease provide to the Manager South Coast a schedule of works to be undertaken to bring the improvements on the Premises up to a safe and suitable condition and complete the works specified in such schedule.

***** End of Schedule 2 *****

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Witness

Lessor

Alan Bailey by delegation pursuant to section 180 of the Crown Lands Act 1989 and with authority under section 13L of the Real Property Act 1900 from the Minister administering the Crown Lands Act 1989 on behalf of the State of New South Wales

Lessee

Lessee

Annexure E

Lease between the State of NSW and Twofold Bay Fishermen's Co-operative Limited dated 13 March 2009



Form: 07L

Licence: 98M111

Edition: 0308

LEASE
New South Wales
Real Property Act 1900

AE595282L

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased: ~~1/738477~~ Part 1/738477 BEING LOT 14 DP790681

NS SF
Wf

(B) LODGED BY

Delivery
Box
469S

Name, Address or DX and Telephone

Department of Lands
LLPN: 123334 F

REFERENCE: 08/11244

CODE

CH
L

(C) LESSOR

STATE OF NEW SOUTH WALES

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

1. Nil 2. 3. 4.

(E) LESSEE

TWOFOLD BAY FISHERMEN'S CO-OPERATIVE LTD
Weecoon St EDEN NSW 2551



(F)

TENANCY: not applicable

09/10/2019

- (G)**
1. TERM 15 years
 2. COMMENCING DATE 13 MARCH 2009
 3. TERMINATING DATE 12 MARCH 2024
 4. With an OPTION TO RENEW for a period of [NOT APPLICABLE]
 5. With an OPTION TO PURCHASE set out in [NOT APPLICABLE]
 6. Together with and reserving the RIGHTS set out in [NOT APPLICABLE]
 7. Incorporates the provisions or additional material set out in ANNEXURE(S) "A" hereto
 8. Incorporates the provisions set out in MEMORANDUM filed / LEASE registered in the Department of Lands, Land and Property Information Division as No [NOT APPLICABLE]
 9. The RENT is set out in item / clause 6 / 20



DATE 13 / 03 / 2009
dd mm yyyy

(H) I certify that the lessor, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

Signature of witness:

Name of witness:

PETER GILSON

Address of witness:

5 O'KEEFE AVE
NOWRA NSW
2541

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of

By delegation pursuant to section 180 of the Crown Lands Act 1989 and with authority under section 131 of the Real Property Act 1900 from the Minister administering the Crown Lands Act 1989 on behalf of the State of New South Wales

Note: where applicable, the lessor must complete the statutory declaration below.

I certify that the lessee, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

Signature of witness:

Name of witness:

Kaylene Fursey

Address of witness:

Ruggs Rd,
Nethercote NSW

Signature of witness:

Name of witness:

Kaylene Fursey

Address of witness:

Ruggs Road,
Nethercote NSW

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of lessee:

Signature of lessee:

GLEN RICHARDSON

SECRETARY / MANAGER

TWOFOLD BAY FISHERMEN'S
COOPERATIVE LTD

UNDER SEC 127 OF THE CORPORATIONS

SHANNON FANTHAM

(CHAIRPERSON and
DIRECTOR)

TWOFOLD BAY FISHERMEN'S
COOPERATIVE LTD

UNDER SEC 127 OF THE
CORPORATIONS ACT 2001

JOHN FLARRETY SGR 84.

(I) STATUTORY DECLARATION *

I

solemnly and sincerely declare that—

1. The time for the exercise of option to renew / option to purchase in expired lease No.....has ended;
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed atin the State of

On.....in the presence of—

Signature of witness: Signature of lessor:

Name of witness:

Address of witness:
.....
.....

Qualification of witness: *[tick one]*
☐ Justice of the Peace
☐ Practising Solicitor
☐ Other *[specify]*

* As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgement of the form at Land and Property Information Division.

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ANNEXURE "A"

This and the following 20 pages comprise Annexure "A" referred to in the Lease between the STATE OF NEW SOUTH WALES as Lessor and TWOFOLD BAY FISHERMEN'S CO-OP as Lessee.

CO-OPERATIVE LTD


Witness


Lessor

John Flarrey by delegation pursuant to section 180 of the Crown Lands Act 1989 and with authority under section 13L of the Real Property Act 1900 from the Minister administering the Crown Lands Act 1989 on behalf of the State of New South Wales


Lessee


Lessee

(A Table of Contents appears at the end of this Annexure) (4.001)

The Lessor and the Lessee hereby covenant and agree the one with the other as follows:-

1. Definitions

In this Lease unless the contrary intention appears:

"CLA" means the Crown Lands Act 1989.

"Commencement Date" means the date of commencement of the Term as referred to on the front page of this Lease.

"Holder" means the Lessee or its permitted assigns or permitted transferee and where not repugnant to the context its agents employees invitees and licencees.

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"Improvements" means all buildings structures facilities works and equipment situated on or in the land or which under the terms of this Lease are to be constructed effected erected or undertaken on or in the land.

"Land" means the land (including any submerged land and waterway) described on the front page of this Lease or where the context so admits any part thereof.

"Lease" means this Lease including the Schedules and Annexures hereto.

"Lessee" means the Lessee or its permitted assigns or permitted transferee and where not repugnant to the context its agents employees invitees and licensees.

"Lessor" means the State of New South Wales being the Crown in the right of New South Wales.

"Minister" means the Minister of the Crown for the time being administering the CLA or any Act replacing or consolidating that Act.

"Premises" means the Land, the Improvements and the Lessee's Plant and where the context so permits any part of the foregoing.

"Rent" means the rent hereby reserved.

"Schedule 1" means schedule 1 of this Lease.

"Term" means the term of this Lease as shown on page one of this Lease.

"Termination Date" means the date of expiration of the Term as referred to on the front page of this Lease or where this Lease is determined (by forfeiture or otherwise) on a date earlier than that date then that earlier date. (4.003)

2. Plurals and Genders

- (a) Words importing the singular number shall include plural and vice versa.
- (b) Words importing the masculine gender shall include the feminine or neuter and vice versa.
- (c) Any reference to a person shall be deemed to include a reference to a corporation and vice versa. (4.005)

3. Contra Proferentum

In the interpretation of this lease no rule of construction shall apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Lease or any part of it. (4.006)

4. Headings Code Numbers and References

- (a) Headings (and subheadings within clauses) marginal notes the matter appearing in Column 1 of Schedule 1 and the Table of Contents have been included for guidance only and shall be deemed not to form any part of this Lease.
- (b) The code number appearing at the end of each clause of the Lease shall be deemed not to form part of the Lease.
- (c) References to Clauses Parts and Schedules are references to clauses parts and schedules of this Lease. (4.007)

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5. Statutes

- (a) A reference to a statute or statutory instrument includes amendments to that statute or statutory instrument whether by subsequent statutes or statutory instruments or otherwise and any statute or statutory instrument passed in substitution for the statute or statutory instrument referred to or incorporating any of its provisions.
- (b) Without limiting the operation of paragraph (a) where any clause of this Lease contains a reference to a specific provision in a statute or statutory instrument which is repealed the Lessor may by notice in writing served on the Holder specify that a provision of any statute or statutory instrument replacing the abovementioned provision shall be substituted for the abovementioned provision and the clause shall be read and construed to that effect.
- (c) A reference to a statute includes a reference to any statutory instrument made thereunder. (4.008)

6. Provisions to be construed as Covenants

Such of the provisions and conditions herein contained as require or prescribe anything to be done or not to be done by the Holder shall in addition to being read and construed as conditions of this Lease shall be also read and construed as covenants and agreements whereby the Holder for itself and its assigns agrees with the Lessor to observe and perform such provisions and conditions. (4.009)

7. Joint and Several Covenants

Any covenant or agreement in this Lease on the part of two or more persons shall be deemed to bind them jointly and severally. (4.010)

8. Application of Conveyancing Act

Pursuant to the provisions of section 43 of the CLA the provisions of sections 84, 84A, 85, 86, 129, 130, 131, 132, 133, 133A and 133B of the Conveyancing Act 1919 shall not apply to this Lease. (4.011)

9. Lessor as Public Authority

The Holder acknowledges that nothing in this Lease can in any way restrict or otherwise affect the Lessor's or the Minister's unfettered discretion as to the use of the Lessor's or the Minister's statutory powers as a public authority. (4.013)

10. Approval by the Lessor or the Minister

- (a) In any case where pursuant to this Lease the doing or executing of any act matter or thing by the Holder is dependent upon the approval or consent of the Lessor or the Minister such approval or consent shall not be effective unless given in writing and may be given or withheld by the Lessor or the Minister in its or the Minister's absolute discretion and may be given subject to such conditions as it or the Minister may determine unless otherwise herein provided.
- (b) The Holder expressly agrees that any failure by the Holder to comply with or perform a condition imposed pursuant to this clause will constitute a failure by the Holder to comply with or perform a condition of this Lease. (4.014)

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11. Opinion of the Lessor or the Minister

Any opinion to be formed by the Lessor or the Minister for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor or the Minister determines to be sufficient after consultation if the Lessor or the Minister deems it necessary with any New South Wales Government Department or other public authority the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Lessor or the Minister shall be deemed to be exercising merely administrative functions. (4.015)

12. Time to be of the essence

Where in any provision of this Lease -

- (a) the Holder is given or allowed a specified time or period within which to undertake or do any act or thing;
- (b) any power or authority is conferred on the Lessor the Minister or the Holder after the lapse of a specified time or period; or
- (c) any event occurs after the lapse of a specified time or period

the Lessor and the Holder expressly agree that time shall be of the essence of this contract in that regard. (4.016)

13. Holder to pay Cost of Work

Whenever the Holder is required by this Lease to do or effect any act matter or thing or to undertake any work then the doing of such act matter thing or work shall unless this Lease otherwise provides be at the sole risk cost and expense of the Holder. (4.017)

14. Notices

- (a) A reference in this clause to a notice required to be served includes a reference to any -
 - (i) requirement in this lease for a notice or other communication to be given;
 - (ii) notice or other communication which may be convenient to be given or served in connection with this Lease; and
 - (iii) notice or other communication which may be required to be given or served or which may be convenient to be given or served under any condition of any approval consent or permission which the Lessor or the Minister may give under this Lease.
- (b) All notices which are required to be served by the Lessor or the Minister to or upon the Holder under this Lease shall be sufficiently given or served if left at or sent by ordinary post addressed to the Holder at the address specified in Column 2 of Item 1 of Schedule 1 or at the Premises or at such other place as notified in writing by the Holder to the Lessor.
- (c) All notices which are required to be served by the Holder to or upon the Lessor or the Minister under this Lease shall be sufficiently given or served if left at or sent by ordinary post addressed to the Minister at the address specified in Column 2 of Item 2 of Schedule 1.
- (d) Any notice or communication given or served by post shall be deemed to have been duly given or served at the time when it would in the ordinary course be delivered.
- (e) Subject to any other provision of this Lease to the contrary where the Holder is a corporation any notice or other communication required to be served or given or which may be convenient

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to be served or given under or in connection with this Lease shall be sufficiently executed if signed by the Secretary or other principal permanent officer of the corporation. (4.018)

15. Manner of Payment of Rent and Other Moneys

The rent and other moneys payable in accordance with this Lease shall be paid to the person and at the address specified in Column 2 of Item 3 of Schedule 1 or to such other person or at such other address as the Lessor may from time to time direct by notice in writing served on the Holder. (4.019)

16. Waiver

No waiver by the Lessor of one breach of any provision of this Lease shall operate as a waiver of another breach of the same or of any other provision. (4.020)

17. Severability of Provisions

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of this Lease or affecting the validity or enforceability of such provision in any other jurisdiction. (4.021)

18. Applicable Law

This Lease shall be construed and interpreted in accordance with the law of New South Wales. (4.022)

19. Exclusion of Warranties

The Holder acknowledges having inspected the Premises and that in entering into this Lease the Holder has not relied on any statement representation or warranty (other than those implied by or deemed to have been given by law and which cannot be contracted out of) by or on behalf of the Lessor whether expressed or implied other than the statements representations and warranties expressly set out in this Lease. (4.023)

20. Payment of Rent (CPI)

(a) For the purposes of this clause:

"Initial Rent" means the rent for the first year of this Lease specified or referred to in Column 2 of Item 6 of Schedule 1.

"Base Annual Rent" means -

- (i) the Initial Rent where the rent has not been redetermined in accordance with subclauses (e) (f) or (g) or
- (ii) in any other case - the rent as last redetermined in accordance with those provisions.

"Due Date" means each anniversary date of the Commencement Date.

"Market Rent Review Date" means -

- (i) the date specified or referred to in Column 2 of Item 7 of Schedule 1 (either being a Due Date or another date); and

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- (ii) thereafter the date of the expiration of each period of years as specified or referred to in Column 2 of Item 8 of Schedule 1 as calculated from the date specified or referred to in Column 2 of Item 7 of Schedule 1.

"Market Rent Review Period" means the period between each Market Rent Review Date as specified or referred to in Column 2 of Item 8 of Schedule 1.

- (b) The Holder covenants with the Lessor that the Holder will during the whole of the Term pay to the Lessor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever the rent hereinafter provided.
- (c) The Holder will pay to the Lessor on the Commencement Date the Initial Rent and thereafter shall pay on each Due Date rent in advance adjusted as hereinafter provided.
- (d) (i) On the Due Date the rent shall be adjusted in accordance with the following formula:
- $$R = B \times \frac{C}{D}$$
- where:
- R represents the adjusted rent;
- B represents the Base Annual Rent;
- C represents the Consumer Price Index number for the last quarter for which such a number was published before the Due Date; and
- D represents the Consumer Price Index number for the last quarter for which such a number was published -
- (1) before the Commencement Date where the rent has not been adjusted in accordance with subclauses (e) (f) or (g) or
- (2) in any other case - before the Due Date being the effective Due Date of the last adjustment of rent as defined in subclauses (h) and (i).
- (ii) In this clause "Consumer Price Index number" in relation to a quarter means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician. In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
- (iii) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (iv) Any rent adjusted under this subclause shall be adjusted to the nearest whole dollar.
- (e) In addition to the rent adjustment provided for in subclause (d) on the first Market Rent Review Date after the Commencement Date and thereafter on each Market Rent Review Date the rent may be adjusted by the Minister redetermining the rent pursuant to the provisions of sections 142 and 143 of the CLA.

A redetermination of rent for the purposes of this subclause shall be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before the Market Rent Review Date.

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- (f) Where the Minister does not redetermine the rent as provided for in subclause (e) he may adjust the rent by redetermining the rent pursuant to the provisions of sections 142 and 143 of the CLA at any time prior to the next Market Rent Review Date and no succeeding Market Rent Review Date shall be postponed by reason of the operation of this subclause.
- (g) Where the Minister does not adjust the rent on the first Market Rent Review Date or a Market Rent Review Date as provided for in subclause (e) the Holder may by notice in writing served on the Minister require that the Minister redetermine the rent pursuant to the provisions of sections 142 and 143 of the CLA. Where the Holder requires the Minister to redetermine the rent under this subclause he shall pay on demand the costs of the Minister (or so much of the cost as the Minister may require) in making that determination.
- (h) A redetermination of rent made as provided for in subclause (e) shall take effect and be due and payable on the next Due Date following the date of issue of the notice of redetermination (or where the said Due Date and the date of issue of the notice of redetermination are the same - then that date) even if an objection or appeal under section 142 of the CLA has been lodged. On the completion of the objection and appeal process any necessary adjustments shall be made.

For the purposes of this subclause the term "next Due Date" does not include a Due Date falling between the date of issue of the notice of redetermination and the relevant Market Rent Review Date.

- (i) A redetermination of rent as provided for in subclauses (f) and (g) shall take effect and be due and payable from the next Due Date following the date of issue of the notice of redetermination under section 142 of the CLA even if an objection or appeal under that Section has been lodged. On the completion of the objection and appeal process any necessary adjustments shall be made.
- (j) The Holder acknowledges that the Minister may make a direction under section 152 (alteration of due date) of the CLA in respect of any rent payable under this Lease. (4.028)

21. Continuing Obligation

The obligation of the Holder to pay the Rent shall be a continuing obligation during the term of this Lease and shall not abate in whole or in part or be affected by any cause whatsoever. (4.038)

22. No Reduction in Rent

Subject to the other provisions of this Lease, the Holder will not without written consent of the Lessor by any act matter or deed or by failure or omission impair reduce or diminish directly or indirectly the Rent hereby reserved or imposed or cause or permit to be imposed on the Lessor any liability of the Holder under or by virtue of this Lease even though entitled so to do whether by statutory instrument proclamation order or moratorium (present or future) or otherwise. (4.039)

23. Holder to Pay Rates etc.

The Holder will when the same become due for payment pay all (or in the first and last year of the term of this Lease the appropriate proportionate part) rates taxes (including Land Tax) assessments duties charges and fees whether municipal local government statutory or otherwise which are at any time during the currency of this Lease lawfully charged upon imposed or levied in respect of the Premises or on the Lessor or the Holder on account thereof and will if required by the Lessor produce to the Lessor the receipts for such payments within ten business days after the respective due dates for payment AND in case such rates taxes duties and fees so covenanted to be paid by the Holder are not paid when the same shall become due the Lessor may if it thinks fit pay the same and any

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such sum or sums so paid may be recovered by the Lessor as if such sums were rent in arrears.
(4.040)

24. Goods and Services Tax

(a) Definitions

In this clause the expressions "GST", "supply", and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

(b) Amounts GST Exclusive

With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable under this Lease are exclusive of GST.

(c) Responsibility for GST

(i) Despite any other provision in this Lease, if GST is imposed on any supply made under this Lease, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.

(ii) The recipient must pay the amount referred to in subclause (c)(i) in addition to and at the time payment for the taxable supply is required to be made under this Lease.

(d) Valuer/Umpire to return GST Exclusive Value

Any valuer or umpire returning a valuation must return a GST exclusive market value for it in any case where the valuation is for the purpose of determining a supply value to which GST is to be added under this Lease. (4.040A)

25. Holder to Pay for Services

The Holder will as and when the same become due for payment pay to the Lessor or to any other person or body authorised to supply the same all proper charges for gas electricity water sewage or other services supplied to or consumed in or on the Premises and will also pay all charges in respect of any telephone services connected to the Premises. (4.041)

26. Holder not to Impose Liability on Lessor

Subject to any other provision of this Lease the Holder will not without the written consent of the Lessor by any act matter or deed or by failure or omission cause or permit to be imposed on the Lessor any liability of the Holder under or by virtue of this Lease even though the Holder is entitled so to do under any law (present or future) or otherwise. (4.042)

27. Permitted Use

(a) This Lease confers on the Holder a right to occupy and use the Premises for the purpose specified or referred to in Column 2 of Item 36 of Schedule 1.

(b) The Holder will not use the Premises or allow them to be used for any purpose other than the purpose specified in Column 2 of Item 36 in Schedule 1. (4.043)

28. Holder Not to Commit Nuisance etc.

The Holder will not at any time during the term of this Lease :

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- (a) carry on or permit to be carried on at the premises any noxious nuisance or offensive trade business or calling;
- (b) do or permit to be carried on at the Premises any act matter or thing which results in nuisance damage or disturbance to the Lessor or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the premises for any illegal activity. (4.044)

29. No Residence on Premises

The Holder will not reside or permit any other person to reside on the premises. (4.045)

30. Lessor's Consent to Development Application

The Holder covenants with the Lessor that the Holder will obtain the Lessor's consent to the lodgement of any development application in respect of the Land. (4.047)

31. Holder not to undertake Development without consent notwithstanding any other provision of this Lease

The Holder will not undertake any development within the meaning of the Environmental Planning and Assessment Act 1979 contrary to the provisions of that Act or in breach of any restriction condition or prohibition imposed by an Environmental Planning Instrument or condition of a development consent. (4.048)

32. Development Consent

- (a) The Holder will not undertake any activity on or within the Premises for which consent is required under the Environmental Planning and Assessment Act 1979 or any Instrument made thereunder without first obtaining such consent.
- (b) Where the Holder obtains consent in accordance with the provisions of this clause the Holder will not undertake any activity on or within the Premises except in accordance with any conditions or requirements of that consent. (4.049)

33. Compliance with Statutes

- (a) The Holder will comply with the requirements of all statutes regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the premises.
- (b) The Holder will forthwith on being served with a notice by the Lessor comply with any notice or direction served on the Lessor or the Minister by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises. (4.050)

34. Occupational Health and Safety Act 2000

The Holder accepts responsibility for the control of the whole of the Premises for the purposes of the Occupational Health and Safety Act 2000 and agrees to keep and maintain the Premises in the manner which complies with the said Act. (4.051)



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35. Lessor may Charge Fee

The Lessor may charge such fees as may be prescribed in the Regulations made under the CLA for dealing with any application by the Holder for consent to assign transfer sublease or otherwise part with possession of the Premises. (4.055)

36. Provision of Guarantees

In the case of an application for consent to a proposed assignment transfer or declaration of trust of this Lease in favour of a company the Lessor may require guarantees by such persons and in such form as the Lessor requires. (4.056)

37. Forfeiture

- (a) The Holder expressly acknowledges that this Lease may be forfeited pursuant to the provisions of section 129(1) of the CLA in the circumstances set out in that section.
- (b) For the purposes of this Lease the Holder will be taken not to have failed to comply with a condition covenant or provision of this Lease until a period of 28 days (or such further period as may be specified in the notice) has elapsed after the service of a notice in writing on the Holder specifying the covenant conditions or provision which the Holder has failed to comply with.
- (c) The Lessor and the Holder expressly acknowledges that if one or both of the events specified hereunder occurs the Holder will for the purposes of this clause and for the purpose of section 129(1) of the CLA be taken to have failed to comply with a provision of this Lease and the provision of subclause (b) shall not apply to such a default.
 - (i) Winding Up

the Holder (being a company) - an order is made or a resolution is effectively passed for the winding up of the Holder (except where such winding up is for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld); or
 - (ii) Liquidation

the Holder goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts or if execution is levied against the Holder and not discharged within 30 days.
- (d) Demand or acceptance of Rent or any other money due under this Lease by the Lessor after forfeiture does not operate as a waiver of forfeiture. (4.059)

38. Abandonment

If the Holder vacates or abandons the Premises during the continuance of this Lease (whether or not the Holder ceases to pay the Rent and other amounts payable pursuant to this Lease) then in the absence of written notice by the Lessor accepting the surrender of the Holder's interest under this Lease or the forfeiture of the Lease neither acceptance of the keys nor entry into the Premises by the Lessor or by any person on the Lessor's behalf for the purpose of inspection or for the purpose of showing the Premises to prospective lessees or licencees nor the advertising of the Premises for re-letting shall constitute a waiver of the Lessor's rights to recover in full all Rent and other amounts from time to time payable by the Holder pursuant to this Lease and this Lease shall be deemed to continue in full force and effect until the date on which any forfeiture thereof takes effect or the date of expiration of the term whichever shall first occur. (4.060)

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39. Interest on Overdue Money

The Holder shall pay interest on any money due and payable under this Lease at the rate prescribed from time to time under the provisions of section 148 of the CLA and any such interest shall for the purposes of this Lease be deemed to be Rent in arrears. (4.061)

40. Failure to Pay Money or Undertake Works

- (a) For the purposes of this clause the word "cost" shall include any sums paid for any insurance indemnities under the laws relating to workers' compensation.
- (b) Where under this Lease the Holder is required to pay any money to a third party and neglects to do so for a period of 14 days after the money became due and payable it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any rights and powers arising from such default) to pay such money as if it were the Holder and the Holder will reimburse the Lessor in respect of any such payments on demand.
- (c) Where under this Lease the Holder is required to do or cause to be done any work or thing and the Holder neglects to do the work or thing for a period of 14 days after that work or thing was due or required to be done it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any rights and powers arising from such default) to do or effect such work or thing as if the Lessor were the Holder and for that purpose the Lessor the Lessor's officers agents contractors and workmen may enter upon the whole or any part of the Premises and there remain for the purposes of doing or effecting any such work or thing and the Holder will reimburse the Lessor for the cost of the doing or effecting the work or thing on demand.
- (d) The Holder expressly agrees that any money or cost payable to the Lessor under this clause shall constitute a debt owed by the Holder to the Crown in the right of the State of New South Wales and may be recovered accordingly.
- (e) Where the Premises has a common boundary with other land owned leased or held by the Holder (hereinafter called the "other land") the Holder irrevocably grants to the Lessor the Lessor's officers agents contractors and workmen a Licence to enter upon the said other land for the purpose of gaining access to the Premises or for the purpose of undertaking any work or thing authorised permitted or contemplated by this Lease.

In exercising any power conferred by this subclause the Lessor the Lessor's servants employees and agents will not be liable for any reasonable damage suffered or occasioned to the other land or anything constructed thereon.

- (f) The Holder expressly agrees that the provisions of this clause shall continue after the expiration or sooner determination of this Lease and the Lessor may make any payment or effect any work or thing authorised by this clause after the expiration or sooner determination of this Lease as if such expiration or sooner determination had not taken place. (4.062)

41. Holder to take as if Owner

The Holder shall take and be subject to the same responsibilities in regard to persons and property and otherwise to which the Holder would be subject as if during the Term the Holder was the owner of the freehold of the Premises. (4.063)

42. Release of Lessor from Accident Damage

- (a) For the purposes of this clause the term Lessor shall include Her Majesty the Queen Her Heirs and Successors the Minister and the agents servants employees and contractors of the Lessor Her Majesty Her Majesty's Heirs and Successors and the Minister.

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- (b) The Holder agrees to occupy use and keep the Premises at the risk of the Holder and hereby releases to the full extent permitted by law the Lessor from all claims and demands of every kind resulting from any accident damage or injury occurring therein and the Holder **EXPRESSLY AGREES** that the Lessor shall have no responsibility or liability for any loss of or damage to fixtures and/or the personal property of the Holder.
- (c) The Holder expressly agrees that the obligations of the Holder under this clause shall continue after the expiration or other determination of this Lease in respect of any act deed matter or thing occurring before such expiration or determination. (4.064)

43. Indemnities

- (a) For the purposes of this clause the term Lessor shall include Her Majesty the Queen Her Heirs and Successors the Minister and the agents servants employees and contractors of the Lessor Her Majesty Her Majesty's Heirs and Successors and the Minister.
- (b) The Holder covenants with the Lessor to indemnify and keep indemnified the Lessor from and against all claims for injury loss or damage suffered by any person or body using or being in or upon the Premises or any adjoining land or premises of the Lessor arising out of the Holder's use of the Premises and against all liabilities for costs charges and expenses incurred by the Lessor in respect of the claim of any such person or body except to the extent that any such claims and demands arise wholly from any negligence or wilful act or omission on the part of the Lessor.
- (c) The indemnity contained in this clause applies notwithstanding that this Lease authorised or required the Holder to undertake or perform the activity giving rise to any claim for injury loss or damage.
- (d) The Holder expressly agrees that the obligations of the Holder under this clause shall continue after the expiration or sooner determination of this Lease in respect of any act deed matter or thing occurring before such expiration or determination. (4.065)

44. Insurance - Public Risk

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Lease) forthwith take out and thereafter during the Term keep current a public risk insurance policy for the amount not less than that specified in Column 2 of Item 39 of Schedule 1 for any one claim (or such other reasonable amount as the Lessor may from time to time specify in writing to the Holder) whereby the Lessor shall during the continuance of this Lease be indemnified against all actions suits claims demands proceedings losses damages compensation costs charges and expenses mentioned or referred to in this Lease to which the Lessor shall or may be liable. (4.066)

45. Insurance - Workers Compensation

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Lease) forthwith take out and thereafter during the Term keep current insurance against any liability which may arise at common law or by virtue of any relevant workers compensation legislation in connection with the performance of work or provision of services on or about the Premises and the operation thereof so that the Lessor will be indemnified against all claims for death or bodily injury by any person at all times. (4.067)

46. Insurance - Against Fire and Other Risks

The Holder will (without in any way limiting the liability of the Holder under any other provision of this Lease) forthwith take out and thereafter during the Term keep current insurance against loss damage or destruction of the Premises by fire lightning riots strike malicious damage sprinkler failure plumbing

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leakage storm and tempest explosion earthquake impact by vehicles Acts of God and against such other risks (if any) as the Lessor may from time to time reasonably direct by notice in writing served on the Holder to the full insurable value thereof permitted by the Insurer on a replacement and/of reinstatement basis including extra costs or reinstatement cost of removal of debris and all professional fees incurred in replacing and/or reinstating the Premises. (4.070)

47. Total Destruction

- (a) In the event of the Improvements being Totally Destroyed one of the following alternatives shall apply:

First Alternative - Rebuild to original Design

The Holder may and shall if so required by the Lessor from the insurance moneys available (and to the extent that the same may be insufficient from its own moneys) reinstate the Improvements substantially in accordance with their original design.

Second Alternative - Rebuild to different Design

If the Lessor and the Holder agree that the Improvements are to be rebuilt made or installed to a different design and agree upon the plans and specifications relating thereto then the Holder will from the insurance moneys available (and to the extent the same may be insufficient from its own moneys) prepare the Land for the new improvements and then construct make and install the improvements in accordance with the agreed plans and specifications.

Third Alternative - Improvements not to be rebuilt

If the Lessor and the Holder agree that the Improvements need not be reinstated by the Holder and the Second Alternative is not adopted the Holder will promptly demolish the Improvements and clear the Land of all improvements structures rubbish and debris and following such demolition and clearance being carried out to the Lessor's satisfaction and the Lessor so certifying in writing to the Holder and the Holder at that time not being in default under any provision of this Lease the Holder will then deliver to the Lessor a duly stamped surrender of the Lease and the Lessor shall accept the same. The surrender as aforesaid shall be without prejudice to any claim the Lessor may have against the Holder immediately prior to the date of such surrender.

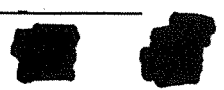
- (b) For the purposes of this clause "Totally Destroyed" means destroyed or damaged so extensively that in the opinion of the Lessor reasonably held it would be impractical or not commercially viable to make good such damage. (4.071)

48. Partial Destruction

In the event of the Improvements being partially destroyed or damaged the Holder will from the insurance moneys available (and to the extent that the same may be insufficient from the Holder's own moneys) repair replace and make good the whole of the destroyed or damaged portion of the Improvements as nearly as possible to the condition in which it was immediately prior to such damage or destruction with such modifications as the Holder may seek and the Lessor approve (such approval not to be unreasonably withheld) or as may be required by some competent authority and approved by the Lessor (such approval will not be unreasonably withheld). (4.072)

49. Application of Insurance Proceeds

- (a) All moneys received by the Lessor or the Holder in settlement of any claim under any insurance policy in respect of the damage to or destruction of the Premises shall be paid into a bank agreed upon by the Lessor and the Holder (or in default of agreement a bank nominated



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by the Lessor) in an account (the "Trust Account") in the name of the Lessor and such moneys shall be held in that account and shall be applied by the Lessor in the following order of priorities:

Firstly - in payment to the Lessor on account of expenditure by the Lessor in respect of any work required by this Lease to be undertaken by the Holder but not commenced and completed within a reasonable time; and as to any balance.

Secondly - in payment progressively to the Holder in reimbursement of the Holder's costs in the rebuilding or demolishing and clearing or repair or replacement and making good as the case may be of the Premises; and as to any balance.

Thirdly - an amount shall be credited to the Holder's instalment of the rent next falling due and any other amounts owing by the Holder to the Lessor under the provisions of this Lease; and as to any balance.

Fourthly - such balance shall be equitably apportioned between the Lessor and the Holder having regard to their respective interests in the Premises at the day immediately prior to the incident giving rise to the insurance claim.

- (b) The Holder expressly agrees that the provisions of this clause shall continue after the expiration or other determination of this Lease. (4.073)

50. Provisions re Policies

- (a) Notwithstanding anything expressed or implied in this Lease the following provisions apply to all policies of insurance required to be effected by the Holder under this Lease:

- (i) All policies are to be placed with an Insurer approved by the Lessor in writing (whose approval will not be unreasonably withheld) and shall be for such amounts and cover such risks and contain such conditions endorsements and exclusions as are reasonably acceptable to or reasonably required by the Lessor having regard to insurance commonly effected in relation to the types of business or activity carried out on the Premises and the nature of the Premises.
- (ii) All policies are to be taken out in the names of the Lessor and the Holder for their respective rights and interests and in the name of such other parties having an insurable interest as the Lessor may require.
- (iii) Duplicate or certified copies of the policies and all renewal certificates and endorsement slips are to be lodged by the Holder with the Lessor if required by the Lessor.
- (iv) All premiums in respect of all such policies and renewals of policies are to be paid punctually by the Holder and the receipt for each premium payable in respect of each policy (or other proof of payment to the Lessor's satisfaction) is to be produced by the Holder to the Lessor at the request of the Lessor.
- (v) The Holder will use all reasonable endeavours to ensure that the company or office which issues a policy advises the Lessor of any failure by the Holder to renew any policy or pay any premium in respect thereof.
- (vi) The Holder will not at any time during the Term do or bring upon the Premises anything whereby any insurance relating to the Premises against damage by fire and other risks may be rendered void or voidable. If the Holder brings anything onto the Premises whereby the rate of premium on such insurance shall be liable to be increased the Holder will obtain insurance cover for such increased risk and pay all additional

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premiums on the Premises (if any) required on account of the additional risk caused by the use to which the Premises are put by the Holder.

- (vii) The Holder will use all reasonable endeavours to ensure that full true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys thereunder.
- (b) The Lessor in its own name or as the attorney of the Holder in the name of the Holder shall be entitled to institute all proceedings against any office or company which issues a policy of insurance required by this Lease to recover from it any amount for loss damage or injury or other money payable under any indemnity in favour of the Lessor. The Holder hereby appoints the Lessor the attorney of the Holder for the purpose as aforesaid.
- (c) The Holder will use its best endeavours (including the payment of any reasonable premium) to have any policy of insurance required under the Lease endorsed to the intent that the Insurer under such policy waives the Insurer's right to avoid the policy or any liability of the Insurer under that policy on account of or by reason of any non-disclosure or any inaccurate disclosure in the proposal relating to that policy. (4.074)

51. Construction of Improvements Permitted with Consent

- (a) For the purposes of this clause "Improvement" means any building structure facility or work.
- (b) The Holder will not construct effect erect or undertake any Improvements on the Premises other than with the prior consent in writing of the Lessor or which may be authorised or required by a provision of this Lease. (4.076)

52. Improvements - Improvements constructed under this Lease - No Demolition ..

The Holder will not demolish, destroy, remove, take away or pull down any improvement authorised or required to be constructed erected or effected pursuant to a provision of this Lease without the written consent of the Lessor. (4.080A)

53. Exterior Signs

The Holder will not without the consent of the Lessor erect paint display affix or exhibit upon the exterior of the Premises or upon the interior of the Premises so as to be visible from the outside of the Premises any signs advertisements lights embellishments names notices or hoardings. (4.083)

54. Carrying out of Alteration

- (a) For the purposes of this clause the word "alteration" shall mean a change to the fabric or structure of the Premises but does not include a change to the painting or papering scheme of the Premises.
- (b) The Holder will not make or undertake any alteration to the Premises unless full and proper plans and specifications shall have been previously submitted to and approved by the Lessor in writing and all work in connection thereto shall be carried out by and at the expense of the Holder and to the satisfaction of the Lessor using contractors or workmen previously approved by the Lessor whose approval shall not be unreasonably withheld and subject thereto the Holder will observe and comply with:
 - (i) all requirements of the Lessor the Local Council and any other statutory authority having jurisdiction over the Premises; and

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- (ii) the plans and specifications approved by the Lessor the Council and any other statutory authority.
- (c) The Lessor may appoint such consultants as it may reasonably deem proper to inspect any work undertaken by the Holder pursuant to this clause and the Holder will comply with the reasonable directions of such consultants and shall pay the whole of their fees charges and expenses in relation thereto. (4.084)

55. Ownership of Improvements - CLA

The Holder acknowledges that the provisions of section 174 of the CLA apply to this Lease. (4.088)

56. Ownership of Improvements

- (a) For the purposes of this clause "Improvement" means any building structure facility or work.
- (b) The Holder expressly acknowledges that on the Termination Date any Improvements constructed erected effected or undertaken on the Premises during the Term hereof shall become the property of the Lessor and the Holder will not be entitled to any compensation in respect thereof. (4.089)

57. Removal of Signs

Upon the Termination Date the Holder will at the Holder's expense remove any signs advertisements lights embellishments names notices or hoardings erected painted displayed affixed or exhibited upon to or within the Premises by or on behalf of the Holder and make good any damage or disfigurement caused by reason of such erection painting displaying affixing exhibiting or removal thereof. (4.097)

58. General Covenant to Repair

Without prejudice to any specific obligation contained in this Lease the Holder will to the satisfaction of the Lessor at all times during the Term keep the Premises in good repair and properly maintained in all respects. (4.098)

59. Premises to be kept in clean and tidy condition

The Holder will at all times during the Term keep the Premises in a clean and tidy condition and will (subject to any other provision of this Lease) on the Termination Date leave the Premises in a clean and tidy condition. (4.104)

60. Lessor's Right to Enter Inspect and Repair

The Lessor and the Lessor's agents may at all reasonable times upon giving to the Holder reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Premises and view the state of repair thereof and may serve upon the Holder a notice in writing of any defect (the repair of which is the Holder's obligation hereunder) requiring the Holder within 14 days to repair the same. (4.106)

61. Use by Public of Defective Structures

The Holder will not at any time during the Term permit or suffer members of the public to be upon or use any building structure facility installation contrivance or other thing in or upon the Premises which has to the knowledge of the Holder or in the opinion of the Lessor the Council or any other public or local authority having jurisdiction in the matter become seriously defective unsafe weakened out of

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· repair or faulty in any way PROVIDED HOWEVER the Lessor shall not be held liable or responsible for any failure to notify the Holder of any such defect unsafeness weakness out of repair or fault. (4.108)

62. Holder to Erect Barricades etc.

Where the Premises or any part of the Premises become unsafe hazardous or dangerous the Holder will forthwith erect such warning signs and barricades as may be necessary until the Premises are rendered safe. (4.109)

63. Rodents and Vermin

The Holder will take all reasonable precautions to keep the Premises free of rodents vermin insects and pests and will in the event of failing so to do if required by the Lessor but at the cost of the Holder employ from time to time pest exterminators approved by the Lessor (whose approval shall not be unreasonably withheld). In performing the Holder's obligations pursuant to this clause the Holder and any one acting on the Holder's behalf will not use any substance prohibited by Statute. (4.111)

64. Infectious Illness

The Holder will in the event of any infectious illness occurring on the premises forthwith give notice thereof to the Lessor and to the proper public authorities and at the Holder's own expense the Holder will thoroughly fumigate and disinfect such part or parts of the Premises as are affected by any such infectious illness to the satisfaction of the Lessor and such public authorities and otherwise comply with their reasonable and lawful requirements in regard to the same. (4.113)

65. Use of Plumbing

The Holder will not use permit or suffer to be used the lavatories toilets sinks and drainage and other plumbing facilities in the Premises for any purpose other than those for which they were constructed or provided and shall not deposit or permit to be deposited any sweepings rubbish or other material and any damage thereto caused by such misuse shall be made good by the Holder forthwith. (4.114)

66. Notification of Accident

The Holder will give to the Lessor prompt notice in writing of any serious accident to or serious defect or want of repair in any of the Improvements facilities devices contrivances services to or fittings in the Premises which in any way is likely to cause any serious danger risk or hazard to the Premises or any person therein unless such defect unsafeness weakness or want of repair is capable of being and is promptly remedied by the Holder. (4.115)

67. Additional Provisions - Commercial Leases

The Holder will use its best endeavours to ensure that at all times during the Term all rentable parts of the Premises not required by the Holder for its own use as manager of the Premises are occupied or managed by respectable sub-lessees concessionaires lessees or managers at the best rents occupation fees or management fees reasonably obtainable. (4.210)

68. Operation of Premises

The Holder will use all reasonable endeavours to ensure that the Premises are operated in accordance with sound business methods and in a reputable manner. (4.211)



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69. Holder not to remove Materials Except with Consent

- (a) The Holder will not mine remove extract dig up or excavate any sand stone gravel clay loam shell or similar substance or permit any other person to undertake any such action without the prior consent in writing of the Lessor and subject to such conditions as the Lessor may determine.
- (b) Subclause (a) shall not apply to any removal digging up or excavation as may be necessary to construct or undertake any improvement or alteration authorised by or under this Lease provided that any such removal digging up or excavation is undertaken in accordance with the requirements of that authority.
- (c) The Minister and the Holder expressly agree that a failure by the Holder to comply with any condition imposed pursuant to subclause (a) shall constitute a failure by the Holder to comply with a provision or covenant of this Lease. (4.227)

70. Holder Not to Consent to Encroachment

The Holder shall not during the Lease agree to or permit any encroachment or easement into upon over or against the Premises or any part thereof without the previous consent in writing of the Lessor. (4.229)

71. Holder to Give Notice of Encroachment

The Holder shall give immediate notice to the Lessor of any encroachment or attempted encroachment over or against the Premises or any part thereof and shall permit the Lessor to enter upon the Premises for the purpose of ascertaining the nature of the encroachment or attempted encroachment. (4.230)

72. Encroachment by Holder onto Public land

The Holder expressly agrees that the Holder will not construct erect or effect any building structure or work which encroaches onto any adjoining "public land" as defined in section 153 of the CLA. (4.231A)

73. Dispute Resolution Procedure

- (a) In the event that the Lessor and the Holder are in dispute regarding any matter relating to or arising out of this Lease other than -
 - (i) in respect of any approvals or consents to be granted by the Lessor to the Holder; or
 - (ii) where the Lessor or the Minister is acting in a statutory capacity or statutory authority; or
 - (iii) where the dispute concerns a determination of the rent payable under this Lease

the Minister may either on his own initiative or on the request of the Holder refer the dispute to the Local Land Board for inquiry and report pursuant to section 22 of the CLA and the Lessor the Minister and the Holder hereby expressly agree to observe and be bound by the terms of any such report by the Local Land Board.

- (b) For the purposes of this clause "Local Land Board" means the local land board constituted under section 20 of the CLA for the land district in which the Land is situated. (4.232)

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74. No Moratorium

Unless application is mandatory by law no statute ordinance proclamation order regulation or moratorium present or future shall apply to this Lease so as to abrogate extinguish impair diminish fetter delay or otherwise prejudicially affect any rights powers remedies or discretions given or accruing to the Lessor or Holder. (4.234)

75. Holder to keep Proper Business Records

The Holder will keep and maintain proper business records of the income and expenditure pertaining to any business calling or undertaking carried out on the Premises and shall permit the Lessor or any person authorised by the Lessor to inspect from time to time the said records. (4.235)

76. No Holding Out

The Holder will not in connection with the Premises or otherwise directly or indirectly hold out or permit to be held out to any member of the public any statement act deed matter or thing indicating that the Premises or the business conducted or operated thereon or any part or parts thereof are or is being carried on or managed or supervised by the Lessor or the Minister nor shall the Holder act as or represent itself to be the servant or agent of the Lessor or the Minister. (4.236)

77. No Liability for Failure of Services

The Lessor will not be under any liability for any loss injury or damage sustained by the Holder or any other person at any time as a result of or arising in any way out of the failure of the electricity telephones gas water supply sewerage drainage or any other services or facilities provided by the Lessor or enjoyed by the Holder in conjunction with the Premises or this Lease provided that such failure is not due to the wilful act or wilful omission of the Lessor. (4.237)

78. Holder to Pay Costs of Lessor

The Holder shall pay in full the Lessor's legal costs the fees of all consultants and all duties fees charges and expenses incurred by the Lessor in consequence of or in connection with or incidental to:

- (a) any cost of registration and stamping of this Lease;
- (b) any variation to this Lease made otherwise than at the request of the Lessor; and
- (c) any application for the consent of the Lessor under this Lease; and
- (d) any and every failure to comply breach or default by the Lessee under this Lease; and
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease. (4.238)

79. Holder to Yield Up

The Holder will forthwith upon the determination of this Lease peaceably surrender and yield up to the Lessor the Premises in good condition reasonable wear and tear excepted together with all conveniences amenities and appurtenances relating thereto clear and free from rubbish and in good and substantial repair order and condition in every case having regard to the age of what is being surrendered or yielded up. (4.239)

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80. No Right to Hold Over

At the expiration or sooner determination of this Lease the Holder shall not be entitled to hold over.
(4.240)

81. No Right to Purchase etc.

The Holder expressly acknowledges that the grant of this Lease does not confer a right to purchase the land or to the grant of a further lease or to the grant of any licence. (4.242)

82. Special Conditions

The special conditions specified or referred to in Column 2 of Item 130 of Schedule 1 shall be deemed to be conditions and provisions of this Lease. (4.243)

***** End of Lease Clauses *****

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SCHEDULE 1

Item	Paragraph No	Column 1 (description of variable particulars)	Column 2 - (particulars)
1	14	Holder's Address for service of notices	Weecoon St EDEN NSW 2551
2	14	Lessor's or Minister's Address for service of notices	Department of Lands PO Box 309 NOWRA NSW 2541
3	15	Person and address for payment of rent	The Cashier Department of Lands PO Box 2155 DANGAR NSW 2309
6	20	Initial Rent	\$6750.00
7	20	Market Rent Review Date (First)	3 years from Date of Commencement
8	20	Market Rent Review Period	3 years
36	27	Permitted Use	Buildings (1)
39	44	Insurance - Public Risk	Ten Million Dollars (\$10,000,000.00)
130	82	Special conditions or provisions	Annexed as Schedule 2

***** End of Schedule 1 *****

SCHEDULE 2

83. No Assignment, Sublease, Mortgage or other dealing except with consent

For the purposes of this Lease:

- (a) The Holder must not:
 - (i) assign, sublet, licence, part with possession or otherwise deal with any part of the Premises or this Lease; or
 - (ii) create or allow to come into existence any charge, mortgage or a security interest affecting the Holder's estate or interest in the Premises, without the prior consent of the Landlord, which must not be unreasonably withheld.
- (b) Notwithstanding the previous sub-clause 86(a), the Holder may assign this Lease or interest in this Lease with the prior consent of the Lessor, which will not be unreasonably withheld or refused, only if before the Holder assigns or sublets:
 - (iii) the Holder is not in breach of this Lease;
 - (iv) the proposed new Holder is shown to the satisfaction of the Lessor and the Minister to be respectable, responsible and financially sound;
 - (v) the proposed new Holder is shown to the satisfaction of the Lessor and the Minister to be of sufficient financial standing and capable of adequately undertaking the Permitted Use and performing the obligations of the Holder under this Lease;
 - (vi) the proposed new Holder signs a deed in a form reasonably required by the Lessor and the Minister agreeing to be bound by this Lease;
 - (vii) any personal or corporate guarantee including a guarantee by directors or shareholders of the proposed new Holder required by the Lessor is provided;
 - (viii) any bank guarantee required by the Lessor is provided; and
 - (ix) the Holder pays the Lessor's reasonable legal costs of giving the consent.
- (c) Change of Control of Tenant
 - (x) Where the Holder is a corporation other than a listed public company a change in shareholding (including any variation in the beneficial ownership of the shares) of the Holder or its holding company (unless the holding company is a listed public company) that gives control of the Holder to a different person or group of persons will be deemed to be an assignment of this Lease with the proposed new shareholders, beneficial owners or management treated as the proposed new lessee.
 - (xi) Where the Holder is a trustee other than a trustee of a unit trust listed on an Australian Stock Exchange any change in the beneficiaries of the trust, the appointor or other similar position effectively altering the control of the trust to a different person or group of persons will be deemed to be an assignment of this Lease with the proposed new beneficiaries, appointor or other person treated as the proposed new lessee.
 - (xii) This clause does not apply to any change in shareholding, issue or redemption of shares (or similar transaction) associated with a company title scheme where shares are sold, issued or traded to or between potential owners or occupiers of improvements comprising the development on the Premises.

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(d) Change of Landlord

If the Lessor transfers its interest in the Premises or grants a concurrent lease over the Premises the Holder and the Guarantor under clause 38 of this lease must at the request of the Lessor:

- (xiii) enter into those documents the Lessor may reasonably require to enable the transferee or lessor in its name to enforce the benefits of the Holder's obligations under this Lease; and
- (xiv) provide a replacement Bank Guarantee Amount in favour of the transferee or lessor as nominated by the Lessor.

84. Continuation Of Use

The Lessee must, subject to any restrictions imposed by law, keep the Premises operational and open for business during business hours usual for the type of business conducted therein by the Lessee but having regard to the nature and location of the Premises. The Lessee must also, but subject to any such restriction and to the provisions of this Lease, ensure that it does actually continuously use the Premises throughout the Term for the purpose permitted under "Permitted Use" Clause 27.

85. Program of Works

The Holder will undertake and complete a redevelopment of the harbour premises known as the Co-Operative building in accordance with plans and specifications approved by the Bega Valley Shire Council in June 2008 under Development Application 2008.0213.

The holder will be the recipient of a Federal Government grant from the Department of Agriculture & Fisheries subject to provisions, and tenure of the new lease.

***** End of Schedule 2 *****

Lease No.:LE 430470

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Witness


Lessor

John Elarrey by delegation pursuant to section 180 of the Crown Lands Act 1989 and with authority under section 13L of the Real Property Act 1900 from the Minister administering the Crown Lands Act 1989 on behalf of the State of New South Wales


Lessee


Lessee

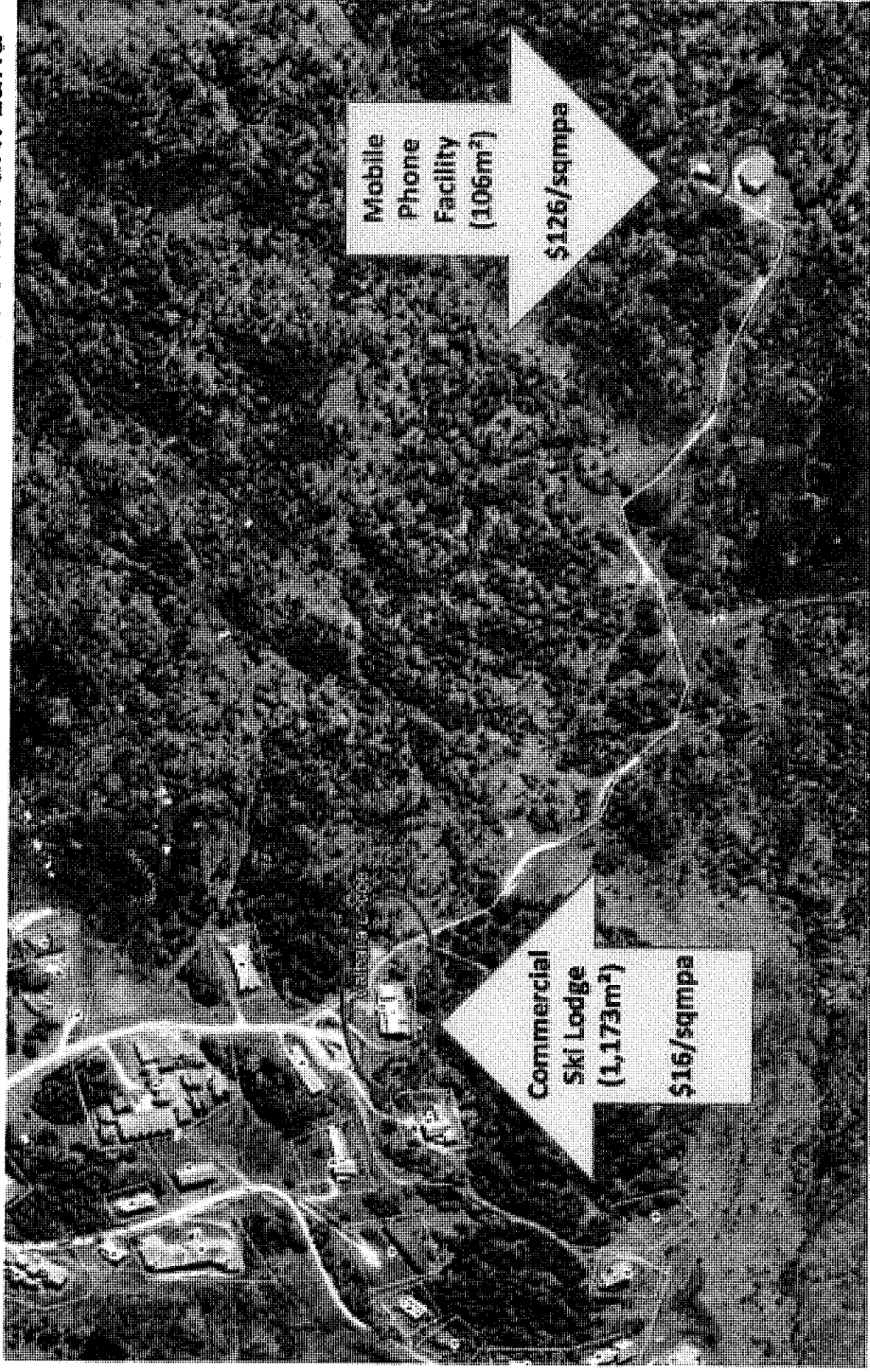


Annexure F

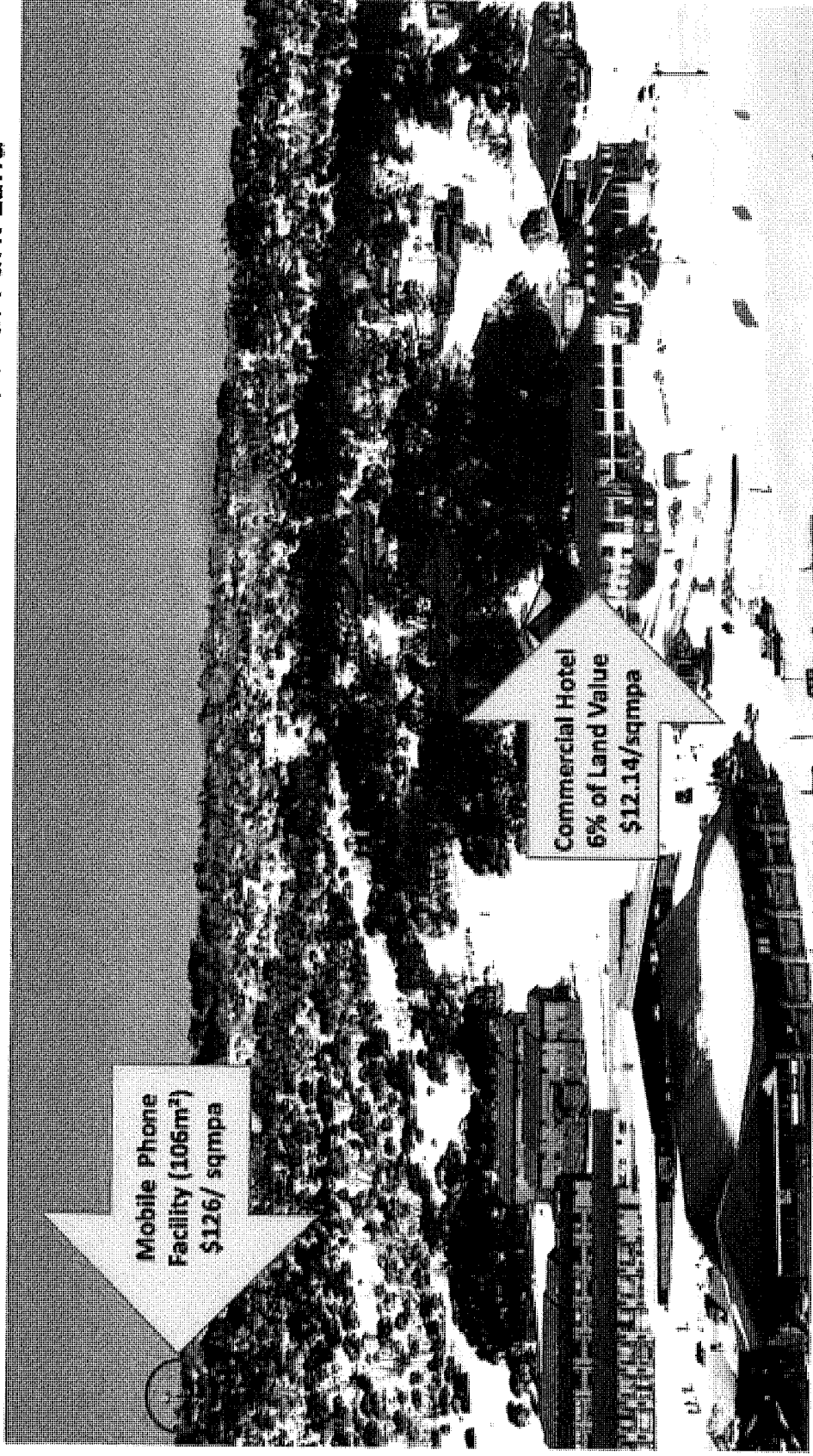
Illustrations of Site locations/Rent Rates

Annexure F

Rental Comparison – Communication Sites vs Other Commercial Users of National Park Land



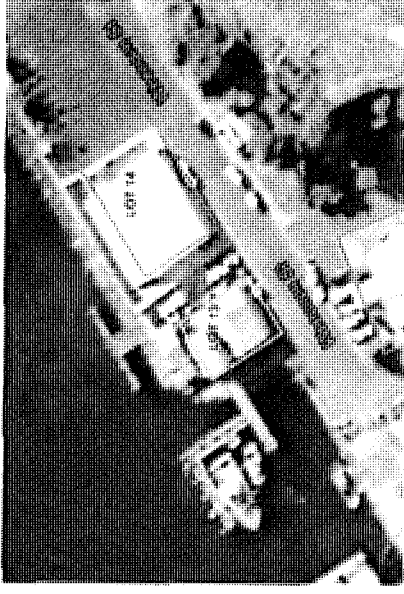
**Rental Comparison –
Communication Sites vs Other Commercial Users of National Park Land**



**Rental Comparison – Communication Sites vs Other Commercial Users of State Land
(\$/sqmpa)**



Infrastructure Use = \$3.49



Commercial Use = \$15.14



Commercial Use = \$12.15



Communications Tower Low Rate = \$124

Communications Tower Sydney Rate = \$1,123

Annexure G

List of Axicom's compound sizes & illustrations of typical compounds

Annexure C - Axlcom Compound Sizes

#	Site Name	Current site classification	Landlord	Approximate Compound size (sq. m)
1	KANGY ANGY	High	Department of Industry	234
2	BAULKHAM HILLS	High	Department of Industry	128
3	FORESTVILLE	High	Department of Industry	158
4	Cowan	High	Department of Industry	207
5	KINCUMBER	High	Department of Industry	317
6	Russell	High	Department of Industry	445
7	WATERFALL	High	Department of Industry	324
8	GLENHAVEN VF	High	Department of Industry	144
9	UNDERCLIFFE VF	High	Department of Industry	109
10	EAST LINDFIELD VF	High	Department of Industry	114
11	UMINA VF	High	Department of Industry	120
12	COMO VF	High	Department of Industry	757
13	SEAFORTH OVAL	High	Department of Industry	508
14	ILLAWONG	High	Department of Industry	795
15	Forster	Medium	Department of Industry	174
16	PORT MACQUARIE	Medium	Department of Industry	123
17	KIAMA	Medium	Department of Industry	134
18	Griffith	Medium	Department of Industry	129
19	NORTH WAGGA	Medium	Department of Industry	134
20	KIAMA VF	Medium	Department of Industry	68
21	BROKEN HILL VF	Medium	Department of Industry	1016
22	One Tree Hill	Medium	Department of Industry	129
23	One Tree Hill	Medium	Department of Industry	376
24	Willans Hill	Medium	Department of Industry	496
25	ROCKY MOUNTAIN	Medium	Forestry Corporation NSW	160
26	BROKEN BACK	Medium	Forestry Corporation NSW	222
27	Taree	Medium	Forestry Corporation NSW	195
28	COFFS HARBOUR	Medium	Forestry Corporation NSW	100
29	BATEMANS BAY SOUTH	Medium	Forestry Corporation NSW	202
30	NAMBUCCA HEADS	Medium	Forestry Corporation NSW	159
31	Klanga	Medium	Forestry Corporation NSW	64
32	GLENUGIE	Medium	Forestry Corporation NSW	135
33	GREGHAMSTOWN	Medium	Forestry Corporation NSW	137
34	WALLAROO HILL VF	Medium	Forestry Corporation NSW	240
35	TELEGRAPH POINT (SOLAR)	Medium	Forestry Corporation NSW	100
36	East Boyd	Medium	Forestry Corporation NSW	196
37	Cullendulla (Solar)	Medium	Forestry Corporation NSW	60
38	Bruxner Park (Radio)	Medium	Forestry Corporation NSW	179
39	Bruxner Park (TV)	Medium	Forestry Corporation NSW	210
40	Mt Brokenback	Medium	Forestry Corporation NSW	65
41	CULLENDULLA	Medium	National Parks & Wildlife Service	57
42	JERRAWANGALA VF	Medium	National Parks & Wildlife Service	150
43	TUMUT VF	Medium	National Parks & Wildlife Service	121
44	PEAK ALONE VF	Medium	National Parks & Wildlife Service	160
45	MT YARRAHAPINNI	Medium	National Parks & Wildlife Service	300
46	LOKA	Medium	National Parks & Wildlife Service	124
47	Pertsher	Medium	National Parks & Wildlife Service	106
48	Nerong	Medium	National Parks & Wildlife Service	186
49	Mt Talawahl	Low	Department of Industry	497
50	Merimbula	Low	Department of Industry	223
51	ARDLETHAN	Low	Department of Industry	243
52	BLACK TRIG VF	Low	Department of Industry	157
53	TALLABUNG MOUNTAIN	Low	Department of Industry	181
54	BUJUNGUM VF	Low	Department of Industry	108
55	Braidwood	Low	Department of Industry	99
56	YASS	Low	Department of Industry	102
57	KYEAMBA	Low	Department of Industry	147
58	FREESTONE	Low	Department of Industry	227
59	Mt Lambie	Low	Department of Industry	205
60	MACLEAN	Low	Department of Industry	117
61	Eden	Low	Department of Industry	111
62	MUNDOONEN	Low	Department of Industry	149
63	GUNDAGAI	Low	Department of Industry	266
64	Cooma	Low	Department of Industry	170
65	LEMON TREE PASSAGE	Low	Department of Industry	525
66	Bellingen	Low	Department of Industry	559
67	MURWILLUMBAH VF	Low	Department of Industry	112
68	MT CAIRNCROSS VF	Low	Department of Industry	1016
69	BURNGODGEE VF	Low	Department of Industry	132
70	MT RAVEN VF	Low	Department of Industry	112
71	Blaxland	Low	Department of Industry	69
72	Wheel of Fortune	Low	Department of Industry	173
73	Wortmerlie Street	Low	Department of Industry	924
74	Nali Can Hill	Low	Department of Industry	60
75	Banyabba 42m	Low	Forestry Corporation NSW	450
76	Newell Hwy 6 (Solar)	Low	Forestry Corporation NSW	1054
77	Mt Sugarloaf	Low	National Parks & Wildlife Service	129
78	Mount Nardi	Low	National Parks & Wildlife Service	1098
79	Mount Moombil Land	Low	National Parks & Wildlife Service	2420
80	Yarrhapinni Land	Low	National Parks & Wildlife Service	1297

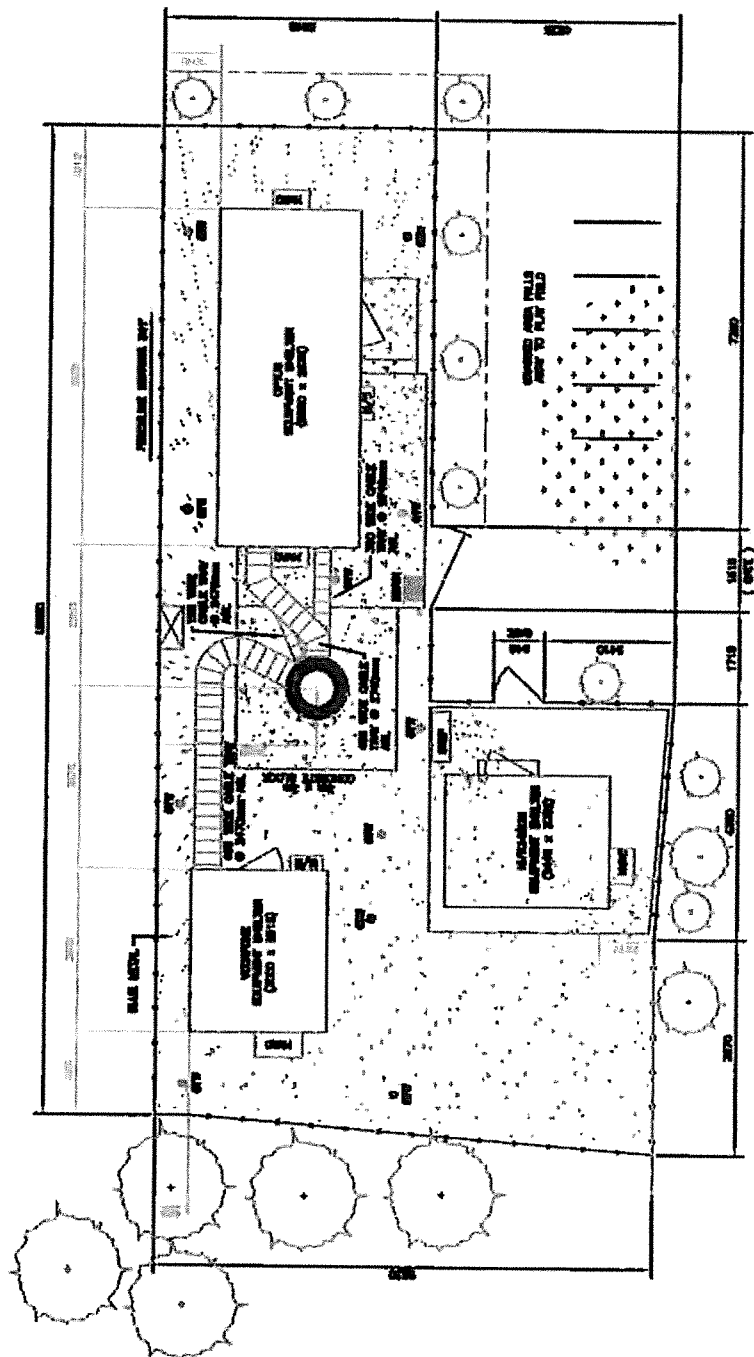
Total Average Area - High	311
Total Average Area - Medium	188
Total Average Area - Low	410
Total Average Area	299



UNIFORM REPORT

FUNERAL SERVICE

PAVED AREA



伊人與紅衫劍客 人皆說他

PLAY FILM

