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1 August 2012

The Research Director  
 State Development, Infrastructure and Industry Committee  
 Parliament House  
 George Street  
 BRISBANE QLD 4000

**Submission: Future And Continued Relevance Of Government Land Tenure  
 Across Queensland**

Watdev 2 Pty Ltd (a 100% owned company of Watpac Limited ASX: WTP) are the owners of Fisherman's Wharf Marina and Slipway located at 864 Boat Harbour Drive, Urangan, Hervey Bay.

The property comprises Leasehold land described as Lease E on SP168821. Lease E is a sub Lease over part of Lot 253 on SP168821, County of March, Parish of Urangan.

A copy of this Lease is attached for your information in **Annexure A**.

There is a significant issue with the way this Queensland Transport (QT) Lease has been drafted together with its interpretation by QT officers. This issue refers to the "ratchet" provision, namely that the rent will not be less than the previous year.

Our view is that this "ratchet" provision would be limited to those years where the rent is to be reviewed in line with CPI (as opposed to also applying when a valuation review takes place). The following supports this interpretation;

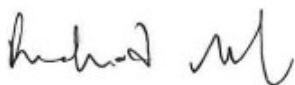
1. The fundamental basis of determining rental for the AHWM Lease area is linked to valuation. The applicable rate being 9%. The procedure for determining rental for the AHWM Lease area states:-
  - a. How often the valuation will be carried out, namely every 3 years; and
  - b. How the rent is to be reviewed in the intervening years, namely in accordance with increases in CPI (if any).
2. The intended purpose of the 3 year valuation is to bring the rent in line with the market.
3. The rent payable by Queensland Transport (QT) under its head Lease in accordance with the Land Act does not comprise a "ratchet" component.
4. The sublease comes within the jurisdiction of the Land Act and we strongly argue that not only are "ratchet" provisions not contemplated by the Act, QT's purported use of the "ratchet" provision (when rent is determined based on valuation) is contrary to public policy.
5. The use of the words in the Lease "*provided that following such reassessment the annual rent is not less than the previous years assessed rent amount*" is consistent with the wording throughout the Lease which follows on from the provision in the Lease dealing with reviews of rent to CPI.

6. The current interpretation of the use of this "ratchet" provision for a valuation review is significantly increasing the cost of the AHWM Lease payments, significantly above the proposed 9% of valuation under this Lease.
7. The Land Act has set the rental for leasehold land at 6% of valuation.
8. Please refer to **Annexure B** for the QT invoice for Fisherman's Wharf Marina and Slipway for the current half year. The rental for the AHWM component is \$132,151+GST or \$264,303+GST for the full year. The current AHWM valuation for this property is \$1,900,000 (valuation attached in **Annexure C**). Therefore the annual rental (excluding GST) for the AHWM component of the Lease currently equates to 13.91% of the valuation (as opposed to 9% required by the Lease and 6% as per the Land Act).
9. It is currently forecast the valuations for Hervey Bay will not increase again for the foreseeable future (and if fact may continue to drop). Therefore, given QT's officers current interpretation of the "ratchet" provision, the percentage of rent to valuation will continue to exponentially increase, hitting 18% in 10 years. Please refer to **Annexure D** for the calculations. A rental of this level is 3 x times the 6% contemplated by the Land Act and is unsustainable for any business.
10. A rental being 14% of the valuation equates to paying the freehold value of the land approximately every 7 years, and at 18% of the valuation equates to paying the freehold value of the land every 5.5 years.

As demonstrated this is a significant issue which is required to be addressed in the current review of Government Land Tenure Across Queensland.

Should you wish to discuss this matter in further detail please contact myself on [REDACTED] or [REDACTED].

Yours sincerely  
Watpac Developments Pty Ltd



Richard Sefton  
Senior Development Manager

QUEENSLAND LAND REGISTRY  
Land Title Act 1994, Land Act 1994 and Water Act 2000

## LEASE/SUB LEASE

FORM 7 Version 5  
Page 1 of 35

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Allens Arthur Robinson

1. Lessor	Lodger (Name, address & phone number)	Lodger Code
The State of Queensland as represented by the Department of Transport	Queensland Transport GPO Box 1412 Brisbane Qld 4001	2430

2. Lot on Plan Description	County	Parish	Title Reference
Lot 253 on SP141605	March	Urangan	40034910

3. Lessee Given names	Surname/Company name and number	(include tenancy if more than one)
Orsay Holdings Pty Ltd	ABN 79 002 616 382	

4. Interest being leased  
Perpetual Lease No. 218207

5. Description of premises being leased

Lease 7 on SP168821

6. Term of lease	7. Rental/Consideration
Commencement date 01 / 01 / 04 *Expiry date: 30 / 06 / 32 **Options on page nil *not required for leases in a retirement village **insert nil if no option	As set out in the Particulars Schedule and Special Conditions attached to this Lease

## 8. Grant/Execution

The Lessor leases the premises described in item 5 to the lessee for the term stated in item 6 subject to the covenants and conditions contained in:-

The Particulars Schedule and Special Conditions and the Schedule attached to this Lease

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

Witnessing Officer	Execution Date	Lessor's Signature
.....signature	/ /	See Enlarged Panel
.....full name		
.....qualification		

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

## 9. Acceptance

The lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

Witnessing Officer	Execution Date	Lessee's Signature
.....signature	/ /	See Enlarged Panel
.....full name		
.....qualification		

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

**SCHEDULE / ENLARGED PANEL /  
ADDITIONAL PAGE / DECLARATION**

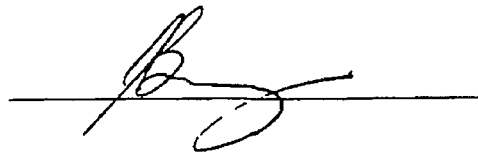
Title Reference [40034910 ]

**8. Grant/Execution**

The Lessor leases the Property described in Item 5 to the Lessee for the term stated in Item 6 subject to the covenants and conditions contained in the Particulars Schedule and Special Conditions and the Schedule attached to this Lease.

SIGNED, SEALED AND DELIVERED on )  
the 17th day of June 2004 )  
on behalf of the STATE OF QUEENSLAND )  
acting through the DEPARTMENT OF )  
TRANSPORT by )

CATHERINE GILLBERT BRUNTON  
, a duly authorised officer, in the presence of:

  
Witness

PAUL NOEL CONNOR  
Name

**9. Acceptance**


The Lessee accepts the Lease and acknowledges the amount payable or other considerations for the Lease.

THE COMMON SEAL of Orsay Holdings )  
Pty Ltd A 88 79 108 614 38 was affixed to )  
this document in the presence of: )

Secretary/Director

GLEN CHALEY DORN

Name

 BOBBIE HAYTER  
Witness

**Queensland Transport**

**Held Boat Harbour  
Lands**

**Standard Lease Terms**

**Registered Document No.**

**706372726**

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**Recitals**

- A. The Landlord is the lessee of the Property under the Head Lease.
- B. The Tenant wishes to lease the Property.
- C. The Landlord leases to the Tenant and the Tenant agrees to lease from the Landlord the Property on the terms of this Lease and any applicable Particulars Schedule.
- D. To secure the obligations of the Tenant under this Lease, the Guarantors have guaranteed the performance of the Tenant.

**1. Grant of lease**

- 1.1 The Landlord grants to the Tenant exclusive possession of the Property on the terms of this Lease.
- 1.2 The various parts of this Lease (being the Form 7, these Standard Lease Terms, the Particulars Schedule and any other documents which the parties agree to form part of this Lease) are to be read together and form one document.
- 1.3 The documents forming part of this Lease, unless the parties agree otherwise, shall be interpreted in accordance with the following order of precedence, so that in the event of any inconsistency between the provisions in various parts, the provision in the document referred to first below shall prevail to the extent of the inconsistency:
  - 1.3.1 the Form 7;
  - 1.3.2 the Particulars Schedule;
  - 1.3.3 any other document agreed by the parties to form part of this Lease; and
  - 1.3.4 the Standard Lease Terms document.

**2. The Head Lease**

- 2.1 The Tenant acknowledges that this Lease is a sublease of the Head Lease, and that the Tenant has been given and has read and understood, a copy of the Head Lease.
- 2.2 The parties acknowledge and agree that:
  - 2.2.1 this Lease is subject to all reservations contained in the Head Lease; and
  - 2.2.2 if the Head Lease terminates for any reason, this Lease automatically terminates, effective from the date of termination of the Head Lease. The Landlord must give the Tenant notice in writing of the date of termination.



2.3 The Tenant will not do or permit to be done, any act or omission which constitutes a breach of the terms of the Head Lease. If the Tenant does or permits to be done an act or omission in breach of the Head Lease, it will be in default under this Lease, entitling the Landlord to the remedies in clause 36.

2.4 If any inconsistency arises between the terms of this Lease and the Head Lease, then the terms of the Head Lease will prevail.

**3. Term**

3.1 The Landlord leases the Property to the Tenant for the Term on and from the Commencement Date.

**4. Holding over**

4.1 If, with the Landlord's consent, the Tenant remains in occupation of the Property after expiry of the Term, this Lease continues as a monthly tenancy.

4.2 The monthly tenancy:

- (a) commences on the day which immediately follows expiry of the Term;
- (b) is on the same terms as this Lease, except for those terms which are inapplicable to a monthly tenancy;
- (c) is terminable by either party on one month's written notice (without reason);
- (d) will continue for a maximum of six (6) months after the expiry of the Term; and
- (e) will be at the rate of rent to be determined at the sole discretion of the Landlord, calculated on a six monthly basis, and payable in advance.

**5. Rent**

5.1 The Tenant must during the Term pay the Rent in the amounts and at the times specified in the Particulars Schedule.

5.2 The Tenant must pay rent in advance, by electronic transfer of cleared funds unless otherwise agreed by the Landlord at its sole discretion. The Tenant must specify its bank account details for payment of rent to the Landlord.

5.3 There will be no abatement of Rent for any reason.

**6. GST**

6.1 Rent and all other amounts payable under this Lease are exclusive of GST (if any).

- 6.2 If a GST is levied or imposed on any Supply made (or deemed to have been made) under or in accordance with this Lease, the amounts payable or the value of the consideration provided for that Supply (or deemed Supply) ("Payment") shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the imposition of GST.
- 6.3 Where any amount is payable to a party being a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred by that party, then such amount shall be reduced by the amount of any input tax credit available to that party and, if a taxable Supply, shall be increased by the GST payable in relation to that Supply.
- 6.4 All GST payable shall be payable at the time any payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it shall be payable within 10 days of a Tax Invoice being issued by the party making the Supply.
- 6.5 Where in relation to this Lease a party makes a taxable Supply, that party shall provide a Tax Invoice in respect of that Supply before the GST payable in respect of that Supply becomes due.

**7. Rates, taxes, fees and charges**

- 7.1 The Tenant must pay any GST, stamp duty, registration fees, rates or any other government tax, fee or charge, including any future tax, fee or charge, in relation to the Property and this Lease and the Tenant's occupancy and use of the Property.

**8. Services**

- 8.1 Except as otherwise provided in this Lease, the Tenant must pay for all utilities and services provided to the Property, including without limitation:
  - 8.1.1 electricity, fuel, gas and oil;
  - 8.1.2 water;
  - 8.1.3 telephone;
  - 8.1.4 garbage removal; and/or
  - 8.1.5 sanitation and waste disposal.
- 8.2 In the event that the Tenant fails to pay any utility or service provider, the Landlord may pay the utility or service provider and recover the amount paid from the Tenant.
- 8.3 If required, the Tenant must permit utility or service providers to install meters to measure the quantity of service or utility provided to the Property.

**9. Costs**

**9.1 The Tenant must pay:**

- 9.1.1 for any survey or valuation of the Property in connection with this Lease;
- 9.1.2 the Landlord's costs of negotiation, preparation, signing, stamping and registration of this Lease on a full indemnity basis;
- 9.1.3 stamp duty on this Lease and any variation or extension of this Lease; and/or
- 9.1.4 the costs of registration of this Lease and any variation or extension of this Lease.

**9.2 The Tenant agrees to pay the Landlord's costs and expenses that are incurred in connection with:**

- 9.2.1 obtaining the Landlord's consent under this Lease or approval of any renewal of this Lease;
- 9.2.2 any breach or default by the Tenant under this Lease; and/or
- 9.2.3 the exercise by the Landlord of any right, power or remedy against the Tenant or any Guarantor to enforce the Tenant's obligations under this Lease.

**9.3 The Tenant must pay to the Landlord all extra or excess premiums or other charges for insurance effected by the Landlord where extra risk is caused by the Tenant's use and occupancy of the Property.**

**10. No set-off or counterclaim**

- 10.1 The Tenant must not withhold any payment, or part of any payment to the Landlord under this Lease, by way of deduction, set-off or counterclaim.

**11. Interest on unpaid moneys**

- 11.1 The Tenant must pay interest to the Landlord if the Tenant is late in payment of Rent or any other amount due to the Landlord.

**11.2 Interest is calculated:**

- 11.2.1 from the day immediately following the day on which each liability was due for payment, at a daily rate, until the liability is paid;
- 11.2.2 on the amount remaining unpaid, including any capitalised interest; and
- 11.2.3 at the rate set out in Clause 11.4.

- 11.3 The Landlord may, at its sole discretion, capitalise any unpaid interest at the end of each calendar month.

- 11.4 The rate of interest is, at the Landlord's sole discretion, either:
- 11.4.1 a rate of interest which is 2% higher than the highest overdraft rate charged by the Commonwealth Bank on loans of \$100,000 during the relevant period; or
  - 11.4.2 12% per annum.
- 11.5 The Tenant must pay the Landlord's reasonable costs, both internal and external, in connection with the collection of interest or any other amount under this Lease.

**12. Enforcement of Performance**

- 12.1 On or before the Commencement Date or at any time during the term of this Lease, the Tenant must, if required by the Landlord, provide security against breach of this Lease by providing an unconditional bank guarantee in favour of the Landlord for an amount not less than the Security Amount, notified by the Landlord, from time to time, from a bank approved by the Landlord. To remove any doubt, the Landlord may increase the amount of the unconditional bank guarantee required at any time during the term of this Lease.
- 12.2 If the Tenant fails to pay rent or other moneys payable under this Lease or if the Landlord suffers loss or damage because of any other breach of the Lease by the Tenant, the Landlord may (at its sole discretion):
- 12.2.1 apply the amount payable under the bank guarantee towards the arrears of rent or other moneys or towards the loss or damage; and/or
  - 12.2.2 recover the amount payable towards the arrears of rent or other moneys or towards the loss or damage, as a debt, due and owing, from the Tenant.
- In doing so, the Landlord will not waive the Tenant's breach and will not waive any other right or remedy arising from the breach.
- 12.3 If the Landlord applies the amount payable under the bank guarantee, it may notify the Tenant that it has done so. Within 14 days of the date of notification, the Tenant must extend or renew the bank guarantee for the amount applied.
- 12.4 At the expiry or assignment of this Lease, if the Tenant is not indebted to or otherwise liable to the Landlord for breach of the Lease, the Landlord will consent to the discharge of the bank guarantee.
- 12.5 If the Landlord transfers its interest in the Property, it may assign to the transferee the benefit of the bank guarantee. After doing so and notifying the Tenant of the fact, the Landlord will be discharged from all further liability to the Tenant or any other person with respect to the bank guarantee.

**13. Guarantee and indemnity**

- 13.1 In consideration of the Landlord entering into the Lease at the request of the Guarantors, each Guarantor agrees to give this guarantee to the Landlord.
- 13.2 The Guarantor:
- 13.2.1 guarantees to the Landlord:
- (a) the due and punctual payment by the Tenant of the Rent and any other amounts which may be payable under the Lease; and
  - (b) the due performance of all the Tenant's obligations under the Lease; and
- 13.2.2 indemnifies and will keep indemnified, the Landlord from any loss which the Landlord may suffer by reason of the Tenant's default under the Lease.
- 13.3 If any amount appears in the Particulars Schedule for the Guarantee Limit then the Guarantor's liability under this guarantee will not exceed the Guarantee Limit. If no amount appears in the Particulars Schedule for the Guarantee Limit, this guarantee is unlimited in amount.
- 13.4 This guarantee is a continuing guarantee and indemnity and remains in force until all the obligations of the Tenant under the Lease have been performed or satisfied.
- 13.5 If the Guarantor comprises more than one person:
- 13.5.1 each is liable even if the others do not execute the guarantee;
- 13.5.2 each becomes liable as soon as he, she or the entity executes the guarantee; and
- 13.5.3 the liability of those that execute the guarantee will be joint and several.
- 13.6 The Guarantor:
- 13.6.1 is deemed to be a principal debtor and is jointly and severally liable with the Tenant to discharge the obligations under the Lease;
- 13.6.2 warrants and acknowledges that:
- (a) the Guarantor has capacity to enter into this guarantee;
  - (b) the Guarantor has obtained independent financial and legal advice in relation to the giving of this guarantee; and

- (c) the Guarantor has not relied upon, or been induced to enter into this Guarantee by any representation of the Landlord;
- 13.6.3 agrees that the Guarantor will not be released from liability under this guarantee by any:
  - (a) variation or assignment of the Lease;
  - (b) grant of additional time to pay, release, waiver or any other indulgence or compromise granted to the Tenant or any guarantor;
  - (c) discharge or other dealing with any other security by the Landlord; or
  - (d) negligence or delay of the Landlord; and
- 13.6.4 authorises the Landlord, should the Tenant become insolvent, to place any amounts the Landlord receives in a suspense account and appropriate them at the Landlord's sole discretion until the Landlord has been paid 100 cents in the dollar for all amounts payable by the Tenant or the Guarantor to the Landlord.
- 13.7 For so long as the Tenant or Guarantor has any liability to the Landlord, the Guarantor may not, without the Landlord's prior written consent:
  - 13.7.1 take over any of the Landlord's rights as creditor;
  - 13.7.2 require the Landlord to resort to any other security before it resorts to the Guarantor;
  - 13.7.3 seek the benefit or transfer of any other security from any co-guarantor; or
  - 13.7.4 recover any amount in competition with the Landlord against the Tenant, any co-guarantor or other surety by way of contribution or indemnity or otherwise.
- 13.8 Without limiting the foregoing, the Guarantor waives all or any of its rights as surety, whether legal, equitable or statutory, which may be inconsistent with Clauses 13.1 to 13.7.

#### 14. Tenant's indemnity

- 14.1 The Tenant hereby indemnifies and will keep indemnified the Landlord from any loss which the Landlord may suffer, directly or indirectly, by reason of:
  - 14.1.1 the Tenant's default under the Lease; or
  - 14.1.2 the occupation or use of the Property by the Tenant or the Tenant's tenants, agents, employees or invitees.

#### 15. Quiet enjoyment

- 15.1 If the Tenant pays the Rent and all other moneys payable under this Lease and duly and punctually performs all of its other obligations under this Lease, the Tenant may peaceably possess and enjoy the Property during the Term without any interruption or disturbance from the Landlord or the Landlord's employees and agents.

16. Use of the Property

- 16.1 The Tenant must not, without the Landlord's prior written consent, use or permit the Property to be used, for any purpose other than the Agreed Use.
- 16.2 The Tenant must, in using and occupying the Property, comply with all laws and requirements of any governmental authority.
- 16.3 The Tenant acknowledges that the Landlord has not made any representation or warranty regarding the present or future lawfulness, suitability or adequacy of the Property for:
- 16.3.1 the Agreed Use;
  - 16.3.2 the Tenant's proposed particular use and occupation of the Property; or
  - 16.3.3 the business to be conducted by the Tenant from the Property.
- 16.4 The Tenant must, at its own expense:
- 16.4.1 initially obtain;
  - 16.4.2 maintain during the Term; and
  - 16.4.3 comply with in all respects
- all approvals, consents and licences required to conduct the Tenant's business, use and occupation of the Property.
- 16.5 The Tenant must operate its business on the Property in a proper and businesslike manner and obtain all approvals, consents and licences required by relevant authorities for the Tenant's business on the Property.
- 16.6 The Tenant must not:
- 16.6.1 allow the Property to be used for any illegal, immoral, dangerous, noxious or offensive purpose, activity or occupation;
  - 16.6.2 interfere with any of the Landlord's equipment, storage facilities, navigational aids or other Improvements which are located either on the Property or in the Boat Harbour;

- 16.6.3 use or store, or allow to be used or stored, on the Property any material of a dangerous, flammable or explosive nature unless such use or storage is necessary for the conduct of the Tenant's business within the Agreed Use and provided also that all requirements of legislation or standards relating to the use or storage of dangerous goods are complied with;
- 16.6.4 allow any filth, sewage, oily waste or other refuse from the Property or any ship moored on the Property or any ship using the facilities located on the Property but which is moored with the Landlord's consent partly or wholly outside the Property:
  - (a) onto the Property;
  - (b) into any water on the Property;
  - (c) onto any adjacent areas; or
  - (d) into water adjacent to the Property;
- 16.6.5 use plant or machinery on the Property so as to constitute a nuisance or disturbance to the Landlord or owners or occupiers of adjacent areas;
- 16.6.6 permit any ship using the facilities located on the Property, to be moored partly or wholly outside the Property without the Landlord's prior written consent;
- 16.6.7 remove quarry material, earth or rock from the Property without the Landlord's prior written consent.
- 16.6.8 otherwise use the Property in any manner which would cause damage, nuisance or disturbance to the Landlord or to the owners or occupiers of adjacent areas due to noise, vibration, odours or otherwise.

**17. Regional Harbour Master's directions**

- 17.1 The Tenant must, at its own expense, comply with all lawful directions given by the Regional Harbour Master or the Regional Harbour Master's delegate or authorised representative in relation to the Tenant's activities on the Property or in the Boat Harbour.

**18. Structures**

- 18.1 The Tenant warrants that any Improvement on the Property is and at all times will:
  - 18.1.1 be reasonably clean, safe and, having regard to the intended purpose of the Improvement, fit to use;
  - 18.1.2 comply with any building law or code or requirements of any State and local governments whether the Improvement is under construction or to be constructed, placed or installed, on the Property;



- 18.1.3 be properly maintained and repaired;
- 18.1.4 be used only for its intended and lawful purpose.
- 18.2 The Tenant shall, when using the Property comply, and ensure any Improvement on the Property complies, with all relevant laws including without limitation:
  - 18.2.1 the *Transport Infrastructure (Public Marine Facilities) Regulation 2000*;
  - 18.2.2 all Environmental Laws; and
  - 18.2.3 all health and safety laws and regulations relating to access, use and occupation of the Property.
- 18.3 The Tenant shall submit to the Landlord for the written consent of the Landlord before the construction, installation, material alteration or replacement of any Improvements is commenced, the plans (including layout plans) and specifications in reasonable detail so as to specify the nature and extent of the work.
- 18.4 The plans and specifications shall conform in all respects with the reasonable requirements of the Landlord.
- 18.5 Notwithstanding any written consent given by the Landlord to any such plans or specifications the Landlord shall not thereby be or become in any way liable to the Tenant for any loss or damage or expense whatsoever in such plans and specifications or any construction, installation, landscaping or Improvement made in accordance with the plans and specifications.

**19. Maintenance, repair & replacement**

- 19.1 The Tenant must, at its own expense:
  - 19.1.1 keep the Property, and any Improvement thereon, in good condition and repair;
  - 19.1.2 keep the Property clean, tidy and free from rubbish and pests;
  - 19.1.3 keep the Property free from noxious plants;
  - 19.1.4 immediately remove from the waters of the Boat Harbour any spillage of any environmentally harmful substance originating from the Property;
  - 19.1.5 keep the Property and any Improvement thereon in a safe and accessible state and comply with all health and safety laws and regulations relating to access, use and occupation of the Property; and
  - 19.1.6 immediately repair, renew or replace any Improvements on the Property in the event of damage to, or destruction of that Improvement.

**20. Vehicle parking**

- 20.1 The Tenant must, at its own expense, provide and maintain during the Term vehicle parking facilities within the Property for itself and its employees, agents and invitees to the reasonable satisfaction of the Landlord and the Local Government.

**21. Landscaping and fencing**

- 21.1 The Tenant must, in accordance with the Landlord's requirements and the requirements of the Local Government relevant to the Property from time to time, but at the Tenant's expense:
- 21.1.1 beautify and landscape the Property;
  - 21.1.2 securely fence the Property; and
  - 21.1.3 throughout the Term, maintain the landscaping and fences.

**22. Navigational aids**

- 22.1 The Tenant must, at its own expense provide, erect and maintain during the Term those navigation lights or marks which the Regional Harbour Master or the Regional Harbour Master's delegate or authorised representative determines, in that person's absolute discretion, are necessary or desirable for the guidance of ships in the approaches to or within the Property.
- 22.2 The Tenant must ensure that it keeps the sight line for any navigational lights or marks free from obstruction.

**23. Fire fighting facilities**

- 23.1 The Tenant must, at its own expense, provide fire fighting facilities upon the Property which comply with the requirements of any applicable standard for such facilities.

**24. Dredging**

- 24.1 If the Property contains or will contain, facilities designed or intended for use by ships, the Tenant, at the cost and expense of the Tenant, will be obliged to:
- 24.1.1 carry out any dredging required to enable ships using the facilities constructed within the Property to navigate freely:
    - (a) the waters within the Property; and
    - (b) the waters extending from the Property to the main navigation channel or internal public channels; and
  - 24.1.2 thereafter maintain such dredged areas; and
  - 24.1.3 dispose of the dredge material; and

24.1.4 obtain all relevant approvals before commencing the works referred to in Clauses 24.1.1, 24.1.2 or 24.1.3 above.

24.2 The Tenant must, at its own expense, maintain the water depth to enable safe use by ships, for all areas of the Boat Harbour for which the Tenant is responsible under Clause 24.1.

**25. Security of the Property**

25.1 The Tenant must take reasonable action, at its own expense, to secure the Property and any Improvements or equipment on the Property against unauthorised entry or use.

25.2 The Tenant must, at its own expense, keep the Property illuminated during hours of darkness to permit safe occupation and use of the Property during those hours.

**26. Signs**

26.1 The Tenant must not affix or erect any signs, notices or advertisements to any part of the Property without the Landlord's prior written consent.

26.2 The Tenant must:

26.2.1 ensure that any signs comply with all laws, and requirements of the Local Government, in relation to signage;

26.2.2 maintain any signs in good repair and condition throughout the Term; and

26.2.3 remove all signs prior to ceasing occupation of the Property.

**27. No Compensation for Improvements**

No compensation for any Improvements is payable by the Landlord.

**28. Environmental obligations**

28.1 If required by the Landlord, the Tenant must, at its own expense, provide facilities for the disposal ashore of human waste and other refuse from ships moored on the Property which comply with any governmental authority requirements.

28.2 The Tenant must comply with the Environmental Laws that apply to the Property and take all reasonable action to prevent or minimise any environmental damage, Environmental Nuisance or Environmental Harm occurring to, on, or adjacent to the Property arising from the use and occupation of the Property.

28.3 The Landlord may require the Tenant, at the Tenant's expense, to:

28.3.1 formulate;

28.3.2 implement; and

28.3.3 continuously maintain during the Term,

an environmental compliance and management plan which the Landlord is reasonably satisfied addresses the Tenant's obligations under the Environmental Laws.

28.4 The Landlord may, at the Tenant's expense, conduct an environmental audit or investigation of the whole, or part of, the Property upon the expiry, assignment or termination of this Lease or any sub-lease under this Lease. The Tenant must allow the Landlord and the Landlord's employees or agents access to conduct the audit.

28.5 The Tenant must, at its own expense, immediately remedy any environmental damage, Environmental Nuisance or Environmental Harm revealed by the audit under Clause 28.4, regardless of whether this Lease has expired or been assigned or terminated or subleased.

**29. Confidentiality**

29.1 Subject to Clauses 29.2 and 29.5, the parties agree that the information contained in the Particulars Schedule is confidential and must not be divulged to anyone who is not a party to this Lease without the prior written consent of the other party to this Lease.

29.2 The obligations of confidentiality in Clause 29.1 shall not apply to any information which:

29.2.1 is or becomes public knowledge other than through a breach of this Lease;

29.2.2 the receiving party can demonstrate was publicly known prior to the disclosure by the other party;

29.2.3 is obtained by the other party from a third party having the legal right to disclose to others; or

29.2.4 is disclosed by order of any court, tribunal or other governmental authority acting within the scope of its powers.

29.3 The Tenant acknowledges that the Landlord may obtain injunctive relief against the Tenant or the Tenant's agent, employee or sub-tenant for any breach of Clauses 29.1 and 29.2.

29.4 The provisions of Clauses 29.1 to 29.3 will not merge on expiry, assignment or termination of this Lease, but shall, to the extent they are capable of doing so, continue in full force.

29.5 The parties acknowledge that the identity of the parties, the Term and the real property description of, and area of, the Property will be publicly available information following registration of this Lease.

**30. Statistics and information**

- 30.1 The Tenant must, at its own expense, collect and provide to the Landlord in a timely manner such reasonable statistics and other information which the Landlord may request in relation to the movement of passengers, fuel, cargo, shipping or any other matters occurring within the Boat Harbour arising from the use and occupation of the Property.
- 30.2 If the Landlord requests any information from the Tenant in respect of the Lease, the Tenant must promptly give such information to the Landlord.

**31. Compliance with laws**

- 31.1 The Tenant must, at its own expense, comply with all laws, regulations and by-laws that apply to the Property and the Tenant's use or occupation of the Property.

**32. Risk**

- 32.1 The Tenant occupies and uses the Property at the Tenant's sole risk.

**33. Insurance**

- 33.1 Before the Commencement Date the Tenant must obtain, and thereafter maintain during the Term, the following insurances to the satisfaction of the Landlord:

- 33.1.1 a public liability insurance policy:

- (a) for the Public Liability Limit;
- (b) providing the Tenant indemnity from any liability arising due to death, personal injury or property damage suffered by the Tenant, any sub-tenant and the Tenant's or sub-tenant's agents, employees or invitees on or near the Property; and
- (c) which extends to include claims, risks and events covered under the various indemnities provided by the Tenant to the Landlord under this Lease;

- 33.1.2 an unlimited workers' compensation policy as required by law; and

- 33.1.3 a comprehensive policy:

- (a) for the full replacement value of any of the Tenant's or Landlord's property which may be on the Property at any time and from time to time;
- (b) which provides compensation to the Tenant in the event of interruption to the Tenant's capacity to conduct its business from the Property; and

- (c) against loss or damage by fire, storm, tempest, earthquake, lightning, explosion, flood, burglary and other risks usually covered under such a policy.

33.2 The Landlord:

33.2.1 has absolute discretion under Clause 33.1 to refuse to be satisfied as to scope and adequacy of any insurance policy; and

33.2.2 must be listed on the policies required under Clauses 33.1.1 and 33.1.3 as co-insured with the Tenant.

33.3 If required by the Landlord, the Tenant must deliver to the Landlord:

33.3.1 a copy of the insurance policies required under Clause 33.1, at least seven days before the Commencement Date;

33.3.2 a copy of any certificate of renewal or further policy, within seven days of receipt of the certificate or policy;

33.3.3 after the expiry of any policy, satisfactory evidence that the policy has been renewed.

33.4 The Tenant must not do anything, or allow its sub-tenants, agents, employees or invitees to do anything that may permit the Tenant's insurer to avoid liability under any insurance policy.

33.5 The Tenant must pay to the Landlord any extra or excess premiums and other charges for any insurances effected by the Landlord where extra risk is caused by the Tenant's use and occupation of the Property.

33.6 All moneys received from an insurer in respect of destruction of or damage to the Property or any Improvement on the Property shall be applied forthwith to reinstating the Property and Improvement so far as the moneys will extend unless the Tenant otherwise requests and the Landlord in its sole discretion agrees.

**34. Assignment, subletting, parting with possession and mortgaging lease**

34.1 Without the Landlord's prior written consent, the Tenant must not, in respect of the whole or part of the Property:

34.1.1 assign or transfer;

34.1.2 sublet;

34.1.3 grant any licence to occupy the Property to any person or otherwise part with possession;

34.1.4 grant any franchise over the Tenant's business conducted from the Property which would entitle any other person to use, occupy or trade from the Property; or

34.1.5 mortgage, charge or encumber this Lease.

- 34.2 The Landlord's consent under Clause 34.1.1 will not be unreasonably withheld.
- 34.3 If the Tenant is a corporation, it will be treated as assigning this Lease, for the purposes of Clause 34.1.1 if the person or persons who beneficially own or control a majority of the Tenant's voting shares cease to do so, except as a result of transmission on the death of a shareholder. This clause will not apply if the tenant is a corporation, the voting shares of which are listed on a Stock Exchange in Australia.
- 34.4 As a condition of granting consent to subletting of the Property under Clause 34.1.2, the Landlord requires:
- 34.4.1 The proposed sub-tenant to agree to abide by the terms of this Lease;
- 34.4.2 That the Tenant acknowledges that the provisions of the *Land Act 1994* which refer to subleases shall apply; and
- 34.4.3 The Tenant and sub-tenant to execute a form of sub-letting agreement containing terms and conditions which are acceptable to the Landlord.

The Landlord may provide the Tenant with its written consent to a form of sub-letting agreement, at any time during the Term, and provided that form is used for any subsequent sub-letting agreement, the Landlord's requirements under Clause 34.4.3 will be deemed to have been satisfied in relation to that sub-letting agreement.

- 34.5 The Landlord need not consider a request for consent under Clause 34.1.5 unless the purpose of the proposed loan to be secured is to enable the Tenant to acquire, continue or expand the Tenant's business, or proposed business, to be conducted from the Property.
- 34.6 In respect of any proposed mortgage the Tenant acknowledges:
- 34.6.1 The provisions of the *Land Act 1994* which refer to mortgages of leases or subleases shall apply;
- 34.6.2 The mortgagee will be entitled to enter into possession of the mortgaged Property and sell the Property if:
- (a) the Mortgagor defaults under the mortgage;
- (b) the mortgagee has entered into possession of the mortgaged lease or is exercising a power of sale under the mortgage;
- The mortgagee must notify the Landlord within 28 days of entering into possession of the mortgaged Property;
- 34.6.3 If the mortgaged Property is sold by a mortgagee in possession a Statutory Declaration signed by the incoming Tenant must be lodged with the Landlord, stating the incoming Tenant is aware of:-
- (a) The condition of the Property; and

- (b) The conditions of lease and the level of compliance with these conditions.

34.6.4 Disposal of the proceeds of the sale shall be applied as follows:

- (a) Firstly, to the payment of all costs, charges and expenses properly incurred by the mortgagee for the sale or any attempted sale;
- (b) Secondly, to payment of charges on the Property, including any rent or penalty interest, owing to the Landlord;
- (c) Thirdly, to payment of any amount owing to the mortgagee or, if more than 1 mortgagee, according to their priorities;
- (d) Fourthly, if the mortgagee is selling in possession to payment of expenses incurred by the Landlord to rectify any damage caused to the Property by the Tenant;
- (e) Lastly, to the Tenant

**35. Landlord's entry**

35.1 The Landlord and the Landlord's employees and agents may at any reasonable time enter the Property to view the repair, cleanliness and state of the Property and any Improvements thereon and to otherwise investigate whether the Tenant has complied with the terms of this Lease.

35.2 Following inspection of the Property under Clause 35.1, the Landlord may, by written notice, require the Tenant to immediately remedy any defects in the repair, cleanliness and state of the Property or Improvements or other breaches of this Lease in accordance with this Lease.

35.3 If the Tenant fails to comply with a notice under Clause 35.2 within a reasonable time, the Landlord may enter the Property, remedy the defect or default under this Lease and recover the cost of remediation at the Landlord's sole discretion from:

- (a) the bank guarantee required under Clause 12; or
- (b) the Tenant as a debt.

35.4 Right of Entry to Government Authorities



The Tenant shall after reasonable prior notice, or in the event of an emergency, immediately, permit the Commonwealth and Queensland Government, relevant Local Government and Statutory Authorities and, in each case, their officers servants agents and employees to enter and remain upon the Property and any Improvements thereon for the purpose of carrying out the duties and responsibilities required of any of those bodies under Statute and/or all by-laws and regulations for the time being in force thereunder.

### 36. Termination

36.1 The Landlord may terminate this Lease in the manner set out below in the following circumstances:

- 36.1.1 if the Rent or any part of it, or other moneys owing to the Landlord under this Lease is or are in arrears for 14 days, whether formally demanded or not;
- 36.1.2 if the Tenant breaches any other provision of this Lease;
- 36.1.3 if defects notified under Clause 35.2 are not remedied within the time specified in the notice or, if no time is specified, within a reasonable time;
- 36.1.4 if the Tenant is a corporation and an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
- 36.1.5 if the Tenant is a corporation and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- 36.1.6 if the Tenant is a corporation and is placed under official management under the *Corporations Act 2001* or enters into a composition or scheme of arrangement;
- 36.1.7 if the Tenant is the subject of a Court Order to enforce a judgement against the Tenant and the enforcement action includes the sale of the Tenant's interests in the Lease;
- 36.1.8 if the Tenant or any person claiming through the Tenant conducts any business from the leased premises after the Tenant has committed an act of bankruptcy.
- 36.1.9 if the Tenant surrenders, or attempts, purports, or offers to surrender this Lease.
- 36.1.10 if the Tenant abandons or vacates the Property.

36.2 In the circumstances set out in Clause 36.1, the Landlord may at its sole discretion terminate the lease by:

- 36.2.1 notifying the Tenant in writing to that effect; or

- 36.2.2 re-entering the Property, with force if necessary, and ejecting the Tenant and all other persons from the Property and repossessing the Property; or
- 36.2.3 doing both the acts specified in sub-clauses 36.2.1 and 36.2.2.
- 36.3 If the Landlord terminates this Lease under Clause 36.1, the Tenant will not be released from liability for any prior breach of this Lease and other remedies available to the Landlord for recovery of arrears of rent or for breach of this Lease will not be prejudiced.
- 36.4 If the Landlord terminates this Lease under Clause 36.1, or the Tenant fails to remove its property under Clause 37.1, the Landlord may remove the Tenant's property and store it at the Tenant's expense without being liable to the Tenant for trespass, detinue, conversion or negligence. After storing the Tenant's property for at least one month, the Landlord may sell or dispose of the property, by auction, private sale, gift, distribution or otherwise. The Landlord may at its sole discretion then apply any proceeds towards any arrears of rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.
- 36.5 If the Landlord terminates this Lease under Clause 36.1, the Landlord may at its sole discretion, in addition to any other rights and remedies which the Landlord might have, recover from the Tenant damages for the loss of the benefit of so much of the Lease as would have subsisted but for the termination.

**37. Tenant's obligations on expiry or termination**

- 37.1 On or before the date of expiry or upon termination of this Lease the Tenant must, at the Tenant's cost:
  - 37.1.1 deliver up the Property in a safe, stable, clean, tidy and uncontaminated condition.
- 37.2 At the expiration or sooner termination of the lease Term but (subject to the provisions of the *Transport Infrastructure Act 1994* or any other relevant legislation) the Tenant shall, in accord with the following conditions, have the right to remove the Moveable Improvements placed or erected on the Property by the Tenant within a period of three (3) months from the expiration of the lease term.

The conditions which the Tenant must meet are:

- (a) all moneys due by the Tenant to the Landlord on any account whatsoever have been paid; and
- (b) the Tenant has duly observed, performed and fulfilled all the covenants, terms and conditions herein contained or implied and on the part of the Tenant to be observed and fulfilled; and

- (c) such removal can be effected without causing substantial or irreparable damage to the Property,
- 37.3 Notwithstanding Clause 37.2 if the Tenant does not so remove then the Landlord may at its sole discretion require the Tenant to remove all or any such Moveable Improvements.
- 37.4 Tenant will Bear Cost of Removal

The Tenant agrees to make good all damage to the Property or Improvements and to the Landlord's property arising from or caused by the removal provided for in Clauses 37.2 and 37.3.
- 37.5 If the Tenant fails to carry out such removal or fails to carry out such removal to the reasonable satisfaction of the Landlord then the Landlord may at its sole discretion –
  - (a) carry out or complete (as the case may be) the removal of all or any part or parts of the Moveable Improvements and:
    - (i) deduct the cost thereof from the bank guarantee required under Clause 12; or
    - (ii) charge the cost thereof to the Tenant which shall pay the same to the Landlord forthwith upon demand; and/or
  - (b) elect to retain all or any part or parts of such Moveable Improvements which upon such election shall become the sole property of the Landlord.
- 37.6 The Landlord acknowledges that all the Moveable Improvements brought on to the Property by or on behalf of the Tenant shall be and remain the property of the Tenant provided always that any part thereof which has not been removed in accordance with this Clause shall thereafter vest in the Landlord.
- 37.7 Removal of Obsolete or Derelict Improvement
  - 37.7.1 At the expiration or sooner termination of the Lease the Landlord may by written notice to the Tenant require the Tenant to remove all or any obsolete or derelict Improvement from the Property.
  - 37.7.2 The Tenant shall at its cost and within a reasonable time after receiving the Landlord's notice arrange for the safe and orderly demolition, dismantling or removal of obsolete and derelict Improvements, the stopping, capping of any services or utilities.
  - 37.7.3 The Tenant agrees to make good all damage to the Property or Improvements and to the Landlord's property arising from or caused by the removal.

37.7.4 If the Tenant fails to carry out such removal or fails to carry out such removal to the reasonable satisfaction of the Landlord then the Landlord may at its sole discretion –

(a) carry out or complete (as the case may be) the removal of all or any part or parts of the obsolete or derelict Improvements and:

(i) deduct the cost thereof from the bank guarantee required under Clause 12; or

(ii) charge the cost thereof to the Tenant which shall pay the same to the Landlord forthwith upon demand.

37.8 For the purposes of this Lease "obsolete or derelict Improvement" is any Improvement on the Property which has ceased to be functional, useful, operational, safe or which is abandoned or no longer fit for its intended use.

37.9 To remove any doubt the Landlord:

37.9.1 owns and has all right, title and interest to any Improvement on the Property at the expiration or sooner termination of the lease term;

37.9.2 may still require the Tenant to remove the Improvement in accordance with this Clause 37.

**38. Governing law and submission to jurisdiction**

38.1 This Lease will be construed in accordance with the law of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals therefrom.

**39. Exclusion of statutory provisions**

39.1 No statutory provisions apply to this Lease, including without limitation the *Property Law Act 1974* (Qld), unless the relevant statute provides that certain provisions apply and cannot be excluded by agreement.

**40. Severability**

40.1 If any part of this Lease is unenforceable for any reason that part will be removed from this Lease and the enforceability of the remaining provisions will not be affected.

**41. No waiver**

- 41.1 Failure by the Landlord to require strict compliance with a provision of this Lease will not constitute a waiver of the Landlord's rights to later enforce that provision.

**42. Entire agreement**

- 42.1 The provisions contained in this Lease exclusively and completely state the rights of the Landlord and the Tenant with respect to the use and occupation of the Property. This Lease supersedes all negotiations and prior agreements, whether written or oral, in respect of the use and occupation of the Property.

**43. Time essential**

- 43.1 Time is of the essence concerning matters in this Lease.

**44. Parties to give effect to Lease**

- 44.1 Each party will do all things and sign all documents as may be reasonably necessary or desirable to give effect to the terms and intention of this Lease.

**45. Power of attorney**

- 45.1 The Tenant appoints the Landlord as the Tenant's attorney with the powers set out in Clauses 45.2 to 45.3.
- 45.2 This power of attorney is:
  - 45.2.1 irrevocable;
  - 45.2.2 granted by the Tenant in consideration of the grant by the Landlord of the Lease to the Tenant; and
  - 45.2.3 to secure the performance of the Tenant's obligations and the Landlord's proprietary interest in the Property, but may not be exercised unless the Tenant is in default under this Lease.
- 45.3 As the Tenant's attorney, the Landlord may, in the name of and on behalf of the Tenant:
  - 45.3.1 grant subleases, on such terms as the Landlord thinks fit, over the Property if the Tenant has vacated or abandoned the Property;
  - 45.3.2 in addition to the powers in Clause 36.4, remove from the Property, store and sell, any Improvement left on the Property by the Tenant after the Tenant has vacated or abandoned the Property or this Lease has expired or been terminated;
  - 45.3.3 transfer this Lease to an assignee of the Lease and execute any other documents which may be necessary for the transfer if the Tenant vacates or abandons the Property;

45.3.4 surrender this Lease, after becoming entitled to terminate this Lease when the Tenant vacates or abandons the Property; and

45.3.5 withdraw any caveat lodged by the Tenant in respect of this Lease.

45.4 For the avoidance of doubt, Clauses 27, 37, 45.2 and 45.3 will not merge on the expiry, assignment or termination of this Lease but will continue in full force and effect for the benefit of the Landlord for six years after the expiry, assignment or termination.

**46. Counterparts**

46.1 This Lease may consist of a number of counterparts and the counterparts taken together constitute one agreement.

**47. Variations in writing**

47.1 This Lease may only be varied in writing signed by the Landlord and Tenant and any Guarantor.

**48. Notices**

48.1 Notices under this Lease:

48.1.1 may be given by hand delivery, ordinary pre-paid post, facsimile or e-mail; and

48.1.2 must be given to the relevant party at their addresses set out in the Particulars Schedule or:

(a) such other address as that party may have notified to the other; or

(b) the address on the most recent item of correspondence from the relevant party.

48.2 Notices are deemed to be given:

48.2.1 at the time and date of hand delivery;

48.2.2 two business days after deposit in the mail with postage prepaid;

48.2.3 upon confirmation of successful transmission if sent by facsimile; or

48.2.4 upon sending if sent by e-mail.

**49. Dispute Resolution**

49.1 Scope

This Clause applies to all disputes between the Landlord and Tenant.

Any dispute between the Landlord and Tenant shall be resolved as follows:

**49.2 Parties to Attempt Resolution**

The Landlord and Tenant agree that any dispute to be referred to the dispute resolution procedure set out in this Clause may be referred to a person authorised to make a decision about the dispute and nominated by each party for resolution. Failing such referral or, if a referral is made, failing a resolution within 10 Business Days of that referral, then either party may refer the dispute for determination by an Independent Expert under this Clause.

**49.3** If the Tenant decides to refer the dispute for determination by an Independent Expert, the Tenant must refer the dispute within 28 days of the dispute first arising.

**49.4 Independent Expert Determination**

**49.4.1** Where any dispute or matter is referred to an Independent Expert pursuant to Clause 49.2, then the appointment of an Independent Expert shall be made by the President for the time being of the Institute of Arbitrators and Mediators Australia (Queensland Chapter).

The President must appoint as an Independent Expert, a person who has:

- (i) at least five years experience; and
  - (ii) the requisite skills and knowledge,
- in the area the subject of the dispute.

**49.4.2** Any Independent Expert so appointed pursuant to this Clause must, by the terms of the appointment, be required to:

- (i) promptly fix a reasonable time and place for receiving submissions or information from the Landlord and Tenant or from any other persons as the Independent Expert may think fit;
- (ii) accept oral or written submissions from the Landlord and Tenant as to the subject matter of the dispute within fourteen (14) Business Days of, or as soon as is reasonably practicable after, the Independent Expert's appointment;
- (iii) not be bound by the rules of evidence;
- (iv) decide only in relation to matters expressly referred to the Independent Expert in accordance with Clause 49.2 and will have no discretion to come to any other decision on any matter except with the prior agreement of the Landlord and Tenant;
- (v) give a determination in writing within 28 days of, or as soon as reasonably practicable after, receiving submissions;

- (vi) undertake to keep confidential matters coming to the Independent Expert's knowledge by reason of the appointment and performance of the Independent Expert's duties;

- (vii) conduct the matter as expeditiously as possible.

49.4.3 The Independent Expert will have the following powers:

- (i) to acquire information independently as to facts and if necessary technical and/or financial matters to which the dispute relates;
- (ii) to receive written submissions, sworn and unsworn written statements and photocopy documents and to act upon those submissions, statements and documents;
- (iii) to consult with such other professionally qualified persons as the Independent Expert in the Independent Expert's sole discretion thinks fit; and
- (iv) to take such measures as the Independent Expert thinks fit to expedite the completion of the dispute resolution.

49.4.4 Any person nominated as an Independent Expert hereunder is deemed not to be an arbitrator but an expert and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990* (Qld), will not apply to that Independent Expert or the Independent Expert's determination or the procedures by which the Independent Expert may reach his determination.

49.4.5 The dispute resolution will be held in Brisbane, Queensland unless the Landlord and Tenant otherwise agree.

49.4.6 Subject to Clauses 49.6 and 49.7, and in the absence of manifest error, the decisions of the Independent Expert will be final and binding upon the Landlord and Tenant.

49.4.7 The costs of the Independent Expert and any advisers to the Independent Expert must be borne by:

- (i) the Party referring the matter to the Independent Expert; or
- (ii) the Party whom the Independent Expert determines should bear the costs.

49.4.8 The Parties must give the Independent Expert all information and assistance that the Independent Expert may reasonably require. The Parties will be entitled to be legally represented in respect of any oral or written representations that they may wish to make to the Independent Expert.



49.4.9 The Parties shall enter into a deed in favour of the Independent Expert releasing and indemnifying the Independent Expert from and against any claims of negligence, bias or misconduct (other than actual fraud) or any other claims in respect of the performance of the Independent Expert's functions.

**49.5 Independent Expert's Determination**

The determination of the Independent Expert will be final and binding on each party:

49.5.1 if the Independent Expert's determination requires a party to pay an amount less than \$5,000 such amount being exclusive of the Independent Expert's costs and the costs of any advisors to the Independent Expert; and

49.5.2 in all other cases, unless a party gives notice to the other party of its intention to initiate proceedings in respect of the Independent Expert's determination in a court or other tribunal within seven (7) days of the determination.

The Landlord and Tenant shall nevertheless give effect to the Independent Expert's determination unless and until it is reversed, or modified by any subsequent court or tribunal determination.

**49.6 Obligations Continuing**

Despite any reference of a dispute to a dispute resolution procedure under Clause 49, the Landlord and Tenant must continue to perform and comply with their respective obligations under this Lease.

**49.7 Interlocutory Relief**

Clause 49 does not prevent any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect its rights.

**50. Definitions**

**50.1 In this Lease:**

"Agreed Use"	means the purpose for which the Tenant is allowed to use and occupy the Property, as specified in the Particulars Schedule.
"Boat Harbour"	means the boat harbour specified in the Particulars Schedule.
"Environmental Harm"	has the same meaning as in the <i>Environmental Protection Act 1994</i> (Qld).
"Environmental Nuisance"	has the same meaning as in the <i>Environmental Protection Act 1994</i> (Qld).

<b>"Environmental Laws"</b>	<p>means any statute, regulation, policy or standard which relates to the protection or conservation of the environment, the contamination of land, water or air and the discharge, use or control of hazardous or polluting substances and includes, without limitation the:</p> <ul style="list-style-type: none"><li>• <i>Beach Protection Act 1968</i> (Qld);</li><li>• <i>Coastal Protection and Management Act 1995</i> (Qld);</li><li>• <i>Environmental Protection Act 1994</i> (Qld);</li><li>• <i>Environmental Protection Regulation 1998</i> (Qld);</li><li>• <i>Environmental Protection (Interim Waste) Regulation 1996</i> (Qld);</li><li>• <i>Environmental Protection (Air) Policy 1997</i>;</li><li>• <i>Environmental Protection (Noise) Policy 1997</i>;</li><li>• <i>Environmental Protection (Waters) Policy 1997</i>;</li><li>• <i>Transport Operations (Marine Pollution) Regulation 1995</i></li><li>• <i>Transport Operations (Marine Pollution) Act 1995</i>.</li></ul>
<b>"Expiry Date"</b>	<p>Means the date identified as the expiry date in item 6 of the Form 7.</p>
<b>"Form 7"</b>	<p>Means the <i>Land Titles Act 1994</i> Form 7 executed by the parties for this Lease.</p>
<b>"GST Law"</b>	<p>means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).</p>
<b>"GST"</b>	<p>means GST imposed by the GST Law as that term is defined in the GST Law.</p>
<b>"Guarantor"</b>	<p>means a person specified as guarantor in the Particulars Schedule.</p>
<b>"Head Lease"</b>	<p>means the Head lease referred to in the Form 7.</p>
<b>"Improvement"</b>	<p>means any building, developmental work, fixture, fitting, structure, boarding, sign, fencing, landscaping tree or plant, or other improvement including improvements owned by the Landlord and improvements owned by the Tenant (including Moveable Improvements).</p>

- "Independent Expert"** means the Independent Expert appointed pursuant to Clause 49.3 of this Lease.
- "input tax credit"** has the same meaning as in the GST Law.
- "Landlord"** means the State of Queensland, as represented by the Department of Transport.
- "Lease"** means this document, the Form 7 and the relevant Particulars Schedule. For the purposes of any guarantee and indemnity which may be granted to the Landlord under Clauses 13.1 to 13.8, the term "Lease" will include:
- the leasehold estate arising on the execution or registration of this document or associated documents;
  - any other legal or equitable interest, such as an agreement for lease, an equitable lease, a periodical tenancy, a tenancy at will or other tenancy, arising from entry into possession of the leased premises and/or the payment or acceptance of money for the right to occupy and use the leased premises under, resulting from or relating to this document, the leasehold estate or any agreement, arrangement or negotiations relating to this document or the leasehold estate;
  - any renewal of this Lease; and
  - if the tenant holds over under Clauses 4.1 and 4.2 at the end of the Term, the leasehold estate during the holding-over period.
- "Moveable Improvement"** means any chattel, device, equipment, machinery, plant or shelter which is portable or designed and intended for relocation, and which is:
- brought on to the Property by the Tenant;
  - not a fixture or building;
  - not the Landlord's property at the start of the Term.
- "Particulars Schedule"** means the document titled "Particulars Schedule and Special Conditions" executed by the Landlord and the Tenant for this Lease.
- "Property"** means the land identified as the premises being leased in item 5 of the Form 7, and includes the

Improvements.

- "Public Liability Limit"** means the amount specified in the Particulars Schedule as the minimum level of insurance cover required to be held by the Tenant.
- "Rent"** means the amount of rent specified in the Particulars Schedule, as that amount may be increased, in accordance with this Lease or in the Particulars Schedule.
- "Security Amount"** means the amount specified in the Particulars Schedule as the minimum amount for the bank guarantee.
- "Ship"** has the same meaning as in the *Transport Operations (Marine Safety) Act 1994*.
- "Supply"** has the same meaning as in the GST Law.
- "Tax Invoice"** has the same meaning as in the GST Law.
- "Tenant"** means the person identified as tenant in item 3 of the Form 7.
- "Term"** means the period of time (which period is listed in the Particulars Schedule as the term of the Lease) between the Commencement Date and the Expiry Date.

**51. Interpretation**

- 51.1 Where any word is given a defined meaning, any other part of speech or grammatical form in respect of that word has a corresponding meaning.
- 51.2 All references in this Lease to monetary amounts are to Australian dollars.
- 51.3 Words which indicate the singular include the plural and vice versa, words indicating any gender indicate the appropriate gender and references to a person are to be construed as references to an individual, a body corporate, a partnership, an unincorporated association, a joint venture, a government or a government agency.
- 51.4 A person includes the trustee, executor, administrator, successor in title and permitted assign of that person.

- 51.5 A reference to any legislation or mandatory code of conduct includes any regulation or instrument made under it and where amended or replaced means that amended or replaced legislation or code of conduct.
- 51.6 A reference to any deed, agreement, licence, document or other instrument (including this Lease) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
- 51.7 A reference to a clause, schedule, annexure or exhibit is a reference to a clause of, annexure to, schedule to or exhibit to this Lease.
- 51.8 Where a party to this Lease is constituted by more than one person, the obligations of that party bind each of the people constituting the party separately and every two or more of them jointly.
- 51.9 Headings must be ignored in the interpretation of this Lease.
- 51.10 Where a period of time is specified and dates from a given day or the day of an act or event, it must be calculated without counting that day.
- 51.11 Each person executing this Lease as attorney for a party, by so doing, warrants to the other parties that as at the date of their signing the person has not received any notice of revocation of the power of attorney appointing that person.
- 51.12 Where something is done or received after 5:00 pm on any day it will be taken to have been done or received on the following day.
- 51.13 Where a provision in this Lease requires anything to be done or regards anything as having been done on a Saturday, Sunday or public holiday, that matter or thing may be done or will be taken to have been done on the next succeeding day which is not a Saturday, Sunday or public holiday.

GENERAL CONSENT

1. Lot on Plan Description	County	Parish	Title Reference
Lot 253 on Survey Plan 141605	March	Urangan	40034910

2. Instrument being consented to

Instrument type GENERAL AUTHORITY TO SUBLEASE .....

Dated / /

Names of parties The State of Queensland (represented by the Department of Transport) .....

3. Instrument under which consent required

Dealing Type Section 333 of the Land Act 1994 .....

Dealing No. ....

Name of consenting party The State of Queensland (represented by the Department of Natural Resources, Mines & Energy – South East Region) .....

4. Execution by consenting party

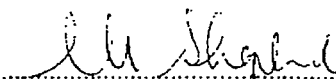
The party identified in item 3 consents to the registration of the instrument identified in item 2.

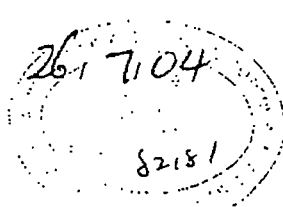
Witnessing officer must be aware of his/her obligations under section 161 of the Land Title Act 1994

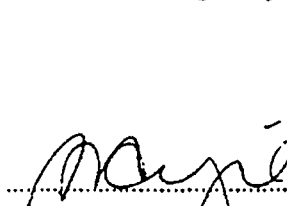
Witnessing Officer

Execution Date

Consenting Party's Signature

 signature  
MARK ELTON SHEPHERD full name  
JP QUALIFIED qualification





(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Stephen McKenzie, Manager - North  
Land Management and Use as Delegate  
of the Minister for Natural Resources, Mines &  
Energy as authorised under Land Act  
(Ministerial) Delegation (No.1) 2003.

SUBJECT TO: The Sublease must be subject to the terms and conditions contained in standard terms document 706372726.



Privacy Statement

The information from this form is collected under the authority of the Land Title Act 1994, the Land Act 1994 and the Water Act 2000 and is used for the purpose of maintaining the publicly searchable registers in the land registry and the water register.

**Queensland Transport**

**Held Boat Harbour  
Lands**

**Particulars Schedule  
and  
Special Conditions**

*For use with Queensland Transport Held Boat Harbour Lands  
– Standard Lease Terms Registered Document No. 706372726*

34436.

Terms defined in Standard Lease Terms Registered Document No 706372726 ("the Standard Terms") have the same meaning when used in this Particulars Schedule and special conditions.

<b>Property to be leased:</b> (refer Annexure A)	To be advised
<b>Boat Harbour:</b>	Urangan Boat Harbour
<b>Tenant:</b>	Orsay Holdings Pty Ltd ABN 79 002 616 382
<b>Commencement Date:</b>	1 January 2004
<b>Term of lease:</b>	The period on and from the Commencement Date until 30 June 2032
<b>Rent:</b>	<ol style="list-style-type: none"> <li>1. Rent for the period 1 January 2004 to 30 June 2004 plus any applicable GST payable six monthly in advance is \$35,541.85.  It is acknowledged that the rent for the period 1 January 2004 to 30 June 2004 has been paid by the Tenant and received by the Landlord.</li> <li>2. <b>Rent for the period 1 July 2004 to 30 June 2005</b> plus any applicable GST <b>payable six monthly in advance</b> is as follows: <ol style="list-style-type: none"> <li>(a) Above high water mark (AHWM) is \$79,625.00; plus</li> <li>(b) Below high water mark (BHWB) will be escalated from the annual rental of \$22,009.50 in accordance with the change in the Consumer Price Index (All Groups) for the City of Brisbane (CPI) between March 2003 and March 2004, provided that following reassessment the annual rental is not less than \$22,009.50.</li> </ol> </li> <li>3. <b>The annual rent for the period 1 July 2005 to 30 June 2008 and thereafter</b> plus any applicable GST <b>is payable six monthly in advance</b> and will be calculated and payable as follows:- <ol style="list-style-type: none"> <li>(a) AHWM  At the rate of 9% of the unimproved value of the area AHWM (excluding the Landlord's Improvements, if any) as determined by a licensed valuer appointed by the Landlord, plus any applicable GST. This valuation will be reassessed every 3 years commencing 1 July 2005 by a licensed valuer appointed by the Landlord and in</li> </ol> </li> </ol>



the intervening years the rent will be escalated in accordance with the CPI, plus any applicable GST, provided that following such reassessment the annual rent is not less than the previous year's assessed rent amount.

For the valuation to be carried out as at 1 July 2014 or any subsequent valuations, any costs incurred by the Tenant or any previous Tenant relating to any reclamation, filling or associated works undertaken on the area AHWM or referred to in the following paragraph, will not be taken into account.

For the purposes of valuation, the area AHWM will include any loading and services wharf area situated BHWM and any landings, decking or boardwalk type structures constructed in the future BHWM which can be used as if the area was land AHWM (other than structures referred to in 6(b) and used primarily for the mooring of ships); plus

(b) BHWM

Any walk on walk off mooring facility containing 10 or more berths attracts a rent of \$349.35 per berth per annum (as at 1 July 2003), plus any applicable GST. This rent per berth is made up of a \$237.50 regulated private mooring fee and a \$111.85 mooring fee (which is subject to annual reassessment by the CPI), plus any applicable GST, provided that following reassessment, of each component of the annual rent that each component is not less than the previous year's assessed rent amount; and/or

For individual structures such as pontoons, jetties and the like where ships are able to moor, a rent of \$121.20 (as at 1 July 2003) per metre (or part thereof rounded to the next highest metre, eg. 11.2 metres would equate to 12 metres) of berthing face of the structure, per annum with the rent reassessed annually according to the CPI, plus any applicable GST, provided that following reassessment the annual rent is not less than the previous year's assessed rent amount; and/or

For structures such as slipways and the like, a rent of \$121.20 (as at 1 July 2003) per metre (or part thereof rounded to the next highest metre, eg. 11.2 metres would equate to 12 metres) of structure per annum, with the rent reassessed annually according to the CPI, plus any applicable GST, provided that following reassessment the annual rent is not less than the previous year's assessed rent amount; and/or

	<p>For structures such as boat ramps, barge ramps, lift out facilities and the like, a rent of \$121.20 (as at 1 July 2003) per metre (or part thereof rounded to the next highest metre, eg. 11.2 metres would equate to 12 metres) of ship per annum which on average would use the structure with the rent reassessed annually according to the CPI, plus any applicable GST, provided that following reassessment the annual rent is not less than the previous year's assessed rent amount.</p>
<b>Time for payment:</b>	6 monthly in advance
<b>Agreed Use:</b>	Provide marina berthing, minor maintenance and refuelling facilities for commercial and recreational ships, operate a slipway and hardstand for maintenance of ships, storage and construction of ships, sale of associated marine items, take-away food shop and associated offices, management and administration.
<b>Insurance:</b>	<ul style="list-style-type: none"> <li>• Public Liability Limit: <ul style="list-style-type: none"> <li># <del>\$5m</del></li> <li># \$10m</li> <li># <del>\$20m</del></li> <li># <del>\$25m</del></li> <li># <del>Other</del></li> </ul> </li> </ul> <p># delete inapplicable</p> <p>Comprehensive Risk Limit: \$**m</p> <p>The comprehensive policy is to provide for:</p> <ul style="list-style-type: none"> <li>(a) the full replacement value of any of the Tenant's or Landlord's property which may be on the Property at any time and from time to time;</li> <li>(b) compensation to the Tenant in the event of interruption to the Tenant's capacity to conduct its business from the Property; and</li> <li>(c) cover any loss or damage by fire, storm, tempest, earthquake, lightning, explosion, flood, burglary and other risks usually covered under such a policy</li> </ul>
<b>Bank Guarantee:</b>	<p>Bank Guarantee</p> <p>Bank: Name: Address:</p>

	<p>Amount:</p> <p>Note:- Clause 12 of the Lease permits the Landlord to require, and to increase the amount of, a Bank Guarantee, at any time during the Lease.</p>
--	---

<b>Guarantors:</b>	<b>Guarantors</b>		<b>Guarantee Limit</b> (unlimited if no figure inserted below)
	Guarantor 1: Nil		
	Guarantor 2:		
	Guarantor 3:		
	Guarantor 4:		
<b>Address for Notices:</b>	Landlord:		
	• Hand delivery:	Floor B2 Spring Hill Office Complex 477 Boundary Street Spring Hill Qld 4000	
	• Postal address:	State Boat Harbour Unit Finance Branch Queensland Transport GPO Box 1412 Brisbane Qld 4001	
	• Facsimile:	07 3834 5927	
	• e-mail address:		
	Tenant:		
	• Hand delivery:	Orsay Holdings Pty Ltd 864 Boat Harbour Drive Urangan Qld 4655	
	• Postal address:	864 Boat Harbour Drive Urangan Qld 4655	
	• Facsimile:	07 4128 9794	
	• e-mail address:		

## **Special Conditions**

### **Cooperation By Tenant**

### **Surrender of Existing Tenures**

### **Miscellaneous Construction Provisions**

1. The Tenant:
  - 1.1 acknowledges the restrictive nature of the water area of the Property
  - 1.2 will cooperate with the Landlord and other tenants of the Landlord in the usage of the Property, so as not to cause any undue interruption or disturbance to the business of an adjoining tenant.
2. From the date of this Lease the Tenant surrenders the Tenant's rights, privileges and interests existing under any prior tenures which the Tenant held over the Property.
3. The surrender by the Tenant in Special Condition 2 above shall not alter or affect the provisions, rights and obligations contained in any:
  - 3.1 Existing subleases in respect of the Property; and
  - 3.2 Existing mortgages over the Property.
4.
  - 4.1 **SHIPS ON THE PROPERTY NOT TO BE USED FOR HABITATION**

Save and except for the circumstances listed in this Special Condition 4.2 and 4.3, the Tenant shall not permit any ship:

    - 4.1.1 moored on the Property; or
    - 4.1.2 using the facilities located on the Property but which is moored with the Landlord's consent partly or wholly outside the Property,

to be used for permanent or semi permanent human habitation.
  - 4.2 **TEMPORARY HABITATION OF SHIPS ON THE PROPERTY**

Providing the Tenant ensures the conditions in Special Condition 4.3 are promptly and satisfactorily performed, the Tenant may permit a ship of the kind mentioned in Special Condition 4.1.1 or 4.1.2 and which is;

    - 4.2.1 in the normal course of its voyage; or
    - 4.2.2 undergoing emergency maintenance or repairs in the course of a voyage,

to be temporarily used as place of human habitation for any period of time not exceeding 4 months.

**4.3 CONDITIONS FOR TEMPORARY HABITATION OF SHIPS**

The Tenant shall not permit a ship of the kind mentioned in Special Condition 4.1.1 or 4.1.2 to be used as a temporary place of human habitation unless all of the following conditions are first met or performed:

- 4.3.1 any relevant local government approval (or any other governmental authority approval) for the use of the ship as a temporary place of human habitation is sought and obtained;
- 4.3.2 the conditions of any local government approval (or any other governmental authority approval) and Relevant laws to the use of the ship as a temporary place of human habitation are complied with at all times and in all respects;
- 4.3.3 the occupants of the ship use it exclusively as a place of domestic human habitation and do not conduct any business or commercial enterprise or operation from the ship;
- 4.3.4 the occupants of the ship:
- 4.3.5 comply with the Regional Harbour Master's directions; and
- 4.3.6 comply with all laws or other legal requirements of any local government or other governmental authority that apply to a ship of the kind mentioned in Special Condition 4.1.1 or 4.1.2; and
- 4.3.7 do not obstruct the sight line for any navigational lights or marks; and
- 4.3.8 do not erect any signs, notices or advertisements on or near the ship or on the Property; and
- 4.3.9 properly and carefully dispose ashore in the receptacles or facilities designed for their receipt and disposal, all rubbish, plastics, nets, refuse of all kinds and human or animal waste; and
- 4.3.10 do not use the ship in such a way as to cause a nuisance to others; and
- 4.3.11 comply with all Relevant laws that apply to the use of a ship of the kind mentioned in Special Condition 4.1.1 or 4.1.2 as a temporary place of human habitation,

and at the expiration of the period of temporary habitation, the ship resumes its voyage and does not return to the Property or Boat Harbour for a period of 30 consecutive days.

**4.4 MOORING FOR NON-HABITATION PERMITTED**

Providing it is in accord with this Lease and is otherwise lawful, if at any time during the period of 4 months in which temporary

human habitation is permitted, a ship of the kind mentioned in Special Condition 4.1.1 or 4.1.2 ceases to be used as a temporary place of human habitation, the Tenant may permit the ship to be moored on the Property in accord with the normal operations of the Tenant's Agreed Use.

**4.5 REQUIREMENTS OF AGENCIES ADMINISTERING ERA'S**

The Tenant shall ensure that it and the occupants of any ship being temporarily used as a place of human habitation comply with the ERA requirements and Relevant laws at all times and in all respects.

**4.6 ORDER OF PRECEDENCE OF LEASE AND OTHER LAWS**

If this Lease and the ERA Requirements and Relevant laws impose any obligations in respect of a ship of the kind mentioned in Special Condition 4.1.1 or 4.1.2 then the Tenant must ensure the ship and its occupants comply with the obligations of each of; this Lease; the ERA Requirements and the Relevant laws.

The necessity to comply with both this Lease and the ERA Requirements and the Relevant laws continues despite any differences in the extent, strictness, or stringency of the obligation contained in this Lease or the ERA Requirements and the Relevant laws. To remove any doubt, if this Lease contains an obligation which mandates a higher standard of performance or imposes a stricter prohibition on a ship than the ERA Requirements and Relevant laws, then the Tenant must ensure the ship and its occupants comply with this Lease, notwithstanding compliance with the ERA Requirements and Relevant laws has been achieved.

**4.7 DISPUTES ABOUT TEMPORARY SHIP HABITATION**

If any complaint, grievance or dispute arises by, through or in connection with a ship of the kind mentioned in Special Condition 4.1.1 or 4.1.2 being used temporarily as a place of human habitation, the complaint, grievance or dispute shall be referred to and managed by the Tenant.

The Tenant shall, having regard to the terms of this Lease, use all reasonable endeavors to resolve the complaint, grievance or dispute.

**4.8 MEANING OF WORDS IN THIS SPECIAL CONDITION.**

**"Occupants"** means all persons aboard the ship including any of; the owner, master, crew, passengers, and the invitees of each of those persons or any other person present aboard a ship of the kind mentioned in Special Condition 4.1.1 or 4.1.2.

**"Relevant laws"** means any law or other legal requirement of any local government or other governmental authority with responsibility for administering, regulating or controlling the use of ships at mooring facilities, including floating "walk-on walk off" marinas.

**"ERA Requirements"** means the terms and conditions of any applicable environmental authority or license issued in respect of

Environmentally Relevant Activity No. 73 – operating a commercial marina, including any land based buildings or works used in association with the marina, by any local government or other governmental authority.

**“obligation”** in Special Condition 4.6 means any burden, demand, duty, liability, necessity, prescription, prerequisite requirement, stipulation, prohibition, restriction or similar injunction contained in a Relevant law, an ERA Requirement or this Lease.

5. The Tenant will complete to the satisfaction of the Landlord the development (including an appropriate ship sewage pump out facility) of the Property in line with the works schedule and timetable for construction as outlined in the Tenant's letter to the Landlord dated 24 March 2004, unless otherwise agreed to by the Landlord.
6. Upon completion of the development of the Property mentioned in Special Condition 5, the Tenant will arrange, at the Tenant's sole cost, for the preparation and registration of a new survey plan of the leased Property (to the satisfaction of the Landlord) to reflect the actual leased Property area of the "as constructed" development works (including suitable mooring areas for ships moored to structures below high water mark) to replace the initial survey plan of the leased Property as referred to in Annexure A.
7. The Tenant acknowledges and accepts that the marina associated with the tourist terminal is the principal place for the loading and unloading of passengers from and to commercial ships in the Boat Harbour and that the unloading and loading of passengers from and to commercial ships at the Tenant's marina is limited to commercial ships with a carrying capacity in partially smooth waters under the *Transport Operations (Marine Safety) Regulation 1995* of up to 25 persons.

**8. Execution – Tenant**

**THE COMMON SEAL of ORSAY )**  
**HOLDINGS PTY LTD ABN 79 002 616 )**  
382 was affixed to this document in the )  
presence of:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name

**Execution – Landlord**

**The State of Queensland** as represented )  
by the Department of Transport in the )  
presence of: )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
A duly authorised officer

\_\_\_\_\_  
Name



**Annexure A – Plan of Property (leased area)**

**Queensland Transport**

**Held Boat Harbour  
Lands**

**Standard Lease Terms**

**Registered Document No.**

**706372726**

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## **Recitals**

- A. The Landlord is the lessee of the Property under the Head Lease.
- B. The Tenant wishes to lease the Property.
- C. The Landlord leases to the Tenant and the Tenant agrees to lease from the Landlord the Property on the terms of this Lease and any applicable Particulars Schedule.
- D. To secure the obligations of the Tenant under this Lease, the Guarantors have guaranteed the performance of the Tenant.

## **1. Grant of lease**

- 1.1 The Landlord grants to the Tenant exclusive possession of the Property on the terms of this Lease.
- 1.2 The various parts of this Lease (being the Form 7, these Standard Lease Terms, the Particulars Schedule and any other documents which the parties agree to form part of this Lease) are to be read together and form one document.
- 1.3 The documents forming part of this Lease, unless the parties agree otherwise, shall be interpreted in accordance with the following order of precedence, so that in the event of any inconsistency between the provisions in various parts, the provision in the document referred to first below shall prevail to the extent of the inconsistency:
  - 1.3.1 the Form 7;
  - 1.3.2 the Particulars Schedule;
  - 1.3.3 any other document agreed by the parties to form part of this Lease; and
  - 1.3.4 the Standard Lease Terms document.

## **2. The Head Lease**

- 2.1 The Tenant acknowledges that this Lease is a sublease of the Head Lease, and that the Tenant has been given and has read and understood, a copy of the Head Lease.
- 2.2 The parties acknowledge and agree that:
  - 2.2.1 this Lease is subject to all reservations contained in the Head Lease; and
  - 2.2.2 if the Head Lease terminates for any reason, this Lease automatically terminates, effective from the date of termination of the Head Lease. The Landlord must give the Tenant notice in writing of the date of termination.

2.3 The Tenant will not do or permit to be done, any act or omission which constitutes a breach of the terms of the Head Lease. If the Tenant does or permits to be done an act or omission in breach of the Head Lease, it will be in default under this Lease, entitling the Landlord to the remedies in clause 36.

2.4 If any inconsistency arises between the terms of this Lease and the Head Lease, then the terms of the Head Lease will prevail.

**3. Term**

3.1 The Landlord leases the Property to the Tenant for the Term on and from the Commencement Date.

**4. Holding over**

4.1 If, with the Landlord's consent, the Tenant remains in occupation of the Property after expiry of the Term, this Lease continues as a monthly tenancy.

4.2 The monthly tenancy:

- (a) commences on the day which immediately follows expiry of the Term;
- (b) is on the same terms as this Lease, except for those terms which are inapplicable to a monthly tenancy;
- (c) is terminable by either party on one month's written notice (without reason);
- (d) will continue for a maximum of six (6) months after the expiry of the Term; and
- (e) will be at the rate of rent to be determined at the sole discretion of the Landlord, calculated on a six monthly basis, and payable in advance.

**5. Rent**

5.1 The Tenant must during the Term pay the Rent in the amounts and at the times specified in the Particulars Schedule.

5.2 The Tenant must pay rent in advance, by electronic transfer of cleared funds unless otherwise agreed by the Landlord at its sole discretion. The Tenant must specify its bank account details for payment of rent to the Landlord.

5.3 There will be no abatement of Rent for any reason.

**6. GST**

6.1 Rent and all other amounts payable under this Lease are exclusive of GST (if any).

- 6.2 If a GST is levied or imposed on any Supply made (or deemed to have been made) under or in accordance with this Lease, the amounts payable or the value of the consideration provided for that Supply (or deemed Supply) ("Payment") shall be increased by such amount as is necessary to ensure that the amount of the Payment net of GST is the same as it would have been prior to the imposition of GST.
- 6.3 Where any amount is payable to a party being a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred by that party, then such amount shall be reduced by the amount of any input tax credit available to that party and, if a taxable Supply, shall be increased by the GST payable in relation to that Supply.
- 6.4 All GST payable shall be payable at the time any payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it shall be payable within 10 days of a Tax Invoice being issued by the party making the Supply.
- 6.5 Where in relation to this Lease a party makes a taxable Supply, that party shall provide a Tax Invoice in respect of that Supply before the GST payable in respect of that Supply becomes due.

**7. Rates, taxes, fees and charges**

- 7.1 The Tenant must pay any GST, stamp duty, registration fees, rates or any other government tax, fee or charge, including any future tax, fee or charge, in relation to the Property and this Lease and the Tenant's occupancy and use of the Property.

**8. Services**

- 8.1 Except as otherwise provided in this Lease, the Tenant must pay for all utilities and services provided to the Property, including without limitation:
- 8.1.1 electricity, fuel, gas and oil;
  - 8.1.2 water;
  - 8.1.3 telephone;
  - 8.1.4 garbage removal; and/or
  - 8.1.5 sanitation and waste disposal.
- 8.2 In the event that the Tenant fails to pay any utility or service provider, the Landlord may pay the utility or service provider and recover the amount paid from the Tenant.
- 8.3 If required, the Tenant must permit utility or service providers to install meters to measure the quantity of service or utility provided to the Property.

**9. Costs**

**9.1 The Tenant must pay:**

- 9.1.1 for any survey or valuation of the Property in connection with this Lease;
- 9.1.2 the Landlord's costs of negotiation, preparation, signing, stamping and registration of this Lease on a full indemnity basis;
- 9.1.3 stamp duty on this Lease and any variation or extension of this Lease; and/or
- 9.1.4 the costs of registration of this Lease and any variation or extension of this Lease.

**9.2 The Tenant agrees to pay the Landlord's costs and expenses that are incurred in connection with:**

- 9.2.1 obtaining the Landlord's consent under this Lease or approval of any renewal of this Lease;
- 9.2.2 any breach or default by the Tenant under this Lease; and/or
- 9.2.3 the exercise by the Landlord of any right, power or remedy against the Tenant or any Guarantor to enforce the Tenant's obligations under this Lease.

**9.3 The Tenant must pay to the Landlord all extra or excess premiums or other charges for insurance effected by the Landlord where extra risk is caused by the Tenant's use and occupancy of the Property.**

**10. No set-off or counterclaim**

- 10.1 The Tenant must not withhold any payment, or part of any payment to the Landlord under this Lease, by way of deduction, set-off or counterclaim.**

**11. Interest on unpaid moneys**

- 11.1 The Tenant must pay interest to the Landlord if the Tenant is late in payment of Rent or any other amount due to the Landlord.**

**11.2 Interest is calculated:**

- 11.2.1 from the day immediately following the day on which each liability was due for payment, at a daily rate, until the liability is paid;
- 11.2.2 on the amount remaining unpaid, including any capitalised interest; and
- 11.2.3 at the rate set out in Clause 11.4.

- 11.3 The Landlord may, at its sole discretion, capitalise any unpaid interest at the end of each calendar month.**



- 11.4 The rate of interest is, at the Landlord's sole discretion, either:
- 11.4.1 a rate of interest which is 2% higher than the highest overdraft rate charged by the Commonwealth Bank on loans of \$100,000 during the relevant period; or
  - 11.4.2 12% per annum.
- 11.5 The Tenant must pay the Landlord's reasonable costs, both internal and external, in connection with the collection of interest or any other amount under this Lease.

## **12. Enforcement of Performance**

- 12.1 On or before the Commencement Date or at any time during the term of this Lease, the Tenant must, if required by the Landlord, provide security against breach of this Lease by providing an unconditional bank guarantee in favour of the Landlord for an amount not less than the Security Amount, notified by the Landlord, from time to time, from a bank approved by the Landlord. To remove any doubt, the Landlord may increase the amount of the unconditional bank guarantee required at any time during the term of this Lease.
- 12.2 If the Tenant fails to pay rent or other moneys payable under this Lease or if the Landlord suffers loss or damage because of any other breach of the Lease by the Tenant, the Landlord may (at its sole discretion):
- 12.2.1 apply the amount payable under the bank guarantee towards the arrears of rent or other moneys or towards the loss or damage; and/or
  - 12.2.2 recover the amount payable towards the arrears of rent or other moneys or towards the loss or damage, as a debt, due and owing, from the Tenant.
- In doing so, the Landlord will not waive the Tenant's breach and will not waive any other right or remedy arising from the breach.
- 12.3 If the Landlord applies the amount payable under the bank guarantee, it may notify the Tenant that it has done so. Within 14 days of the date of notification, the Tenant must extend or renew the bank guarantee for the amount applied.
- 12.4 At the expiry or assignment of this Lease, if the Tenant is not indebted to or otherwise liable to the Landlord for breach of the Lease, the Landlord will consent to the discharge of the bank guarantee.
- 12.5 If the Landlord transfers its interest in the Property, it may assign to the transferee the benefit of the bank guarantee. After doing so and notifying the Tenant of the fact, the Landlord will be discharged from all further liability to the Tenant or any other person with respect to the bank guarantee.

**13. Guarantee and indemnity**

- 13.1 In consideration of the Landlord entering into the Lease at the request of the Guarantors, each Guarantor agrees to give this guarantee to the Landlord.
- 13.2 The Guarantor:
  - 13.2.1 guarantees to the Landlord:
    - (a) the due and punctual payment by the Tenant of the Rent and any other amounts which may be payable under the Lease; and
    - (b) the due performance of all the Tenant's obligations under the Lease; and
  - 13.2.2 indemnifies and will keep indemnified, the Landlord from any loss which the Landlord may suffer by reason of the Tenant's default under the Lease.
- 13.3 If any amount appears in the Particulars Schedule for the Guarantee Limit then the Guarantor's liability under this guarantee will not exceed the Guarantee Limit. If no amount appears in the Particulars Schedule for the Guarantee Limit, this guarantee is unlimited in amount.
- 13.4 This guarantee is a continuing guarantee and indemnity and remains in force until all the obligations of the Tenant under the Lease have been performed or satisfied.
- 13.5 If the Guarantor comprises more than one person:
  - 13.5.1 each is liable even if the others do not execute the guarantee;
  - 13.5.2 each becomes liable as soon as he, she or the entity executes the guarantee; and
  - 13.5.3 the liability of those that execute the guarantee will be joint and several.
- 13.6 The Guarantor:
  - 13.6.1 is deemed to be a principal debtor and is jointly and severally liable with the Tenant to discharge the obligations under the Lease;
  - 13.6.2 warrants and acknowledges that:
    - (a) the Guarantor has capacity to enter into this guarantee;
    - (b) the Guarantor has obtained independent financial and legal advice in relation to the giving of this guarantee; and

- (c) the Guarantor has not relied upon, or been induced to enter into this Guarantee by any representation of the Landlord;
- 13.6.3 agrees that the Guarantor will not be released from liability under this guarantee by any:
  - (a) variation or assignment of the Lease;
  - (b) grant of additional time to pay, release, waiver or any other indulgence or compromise granted to the Tenant or any guarantor;
  - (c) discharge or other dealing with any other security by the Landlord; or
  - (d) negligence or delay of the Landlord; and
- 13.6.4 authorises the Landlord, should the Tenant become insolvent, to place any amounts the Landlord receives in a suspense account and appropriate them at the Landlord's sole discretion until the Landlord has been paid 100 cents in the dollar for all amounts payable by the Tenant or the Guarantor to the Landlord.
- 13.7 For so long as the Tenant or Guarantor has any liability to the Landlord, the Guarantor may not, without the Landlord's prior written consent:
  - 13.7.1 take over any of the Landlord's rights as creditor;
  - 13.7.2 require the Landlord to resort to any other security before it resorts to the Guarantor;
  - 13.7.3 seek the benefit or transfer of any other security from any co-guarantor; or
  - 13.7.4 recover any amount in competition with the Landlord against the Tenant, any co-guarantor or other surety by way of contribution or indemnity or otherwise.
- 13.8 Without limiting the foregoing, the Guarantor waives all or any of its rights as surety, whether legal, equitable or statutory, which may be inconsistent with Clauses 13.1 to 13.7.

#### **14. Tenant's indemnity**

- 14.1 The Tenant hereby indemnifies and will keep indemnified the Landlord from any loss which the Landlord may suffer, directly or indirectly, by reason of:
  - 14.1.1 the Tenant's default under the Lease; or
  - 14.1.2 the occupation or use of the Property by the Tenant or the Tenant's tenants, agents, employees or invitees.

#### **15. Quiet enjoyment**

- 15.1 If the Tenant pays the Rent and all other moneys payable under this Lease and duly and punctually performs all of its other obligations under this Lease, the Tenant may peaceably possess and enjoy the Property during the Term without any interruption or disturbance from the Landlord or the Landlord's employees and agents.

**16. Use of the Property**

- 16.1 The Tenant must not, without the Landlord's prior written consent, use or permit the Property to be used, for any purpose other than the Agreed Use.
- 16.2 The Tenant must, in using and occupying the Property, comply with all laws and requirements of any governmental authority.
- 16.3 The Tenant acknowledges that the Landlord has not made any representation or warranty regarding the present or future lawfulness, suitability or adequacy of the Property for:
- 16.3.1 the Agreed Use;
  - 16.3.2 the Tenant's proposed particular use and occupation of the Property; or
  - 16.3.3 the business to be conducted by the Tenant from the Property.
- 16.4 The Tenant must, at its own expense:
- 16.4.1 initially obtain;
  - 16.4.2 maintain during the Term; and
  - 16.4.3 comply with in all respects
- all approvals, consents and licences required to conduct the Tenant's business, use and occupation of the Property.
- 16.5 The Tenant must operate its business on the Property in a proper and businesslike manner and obtain all approvals, consents and licences required by relevant authorities for the Tenant's business on the Property.
- 16.6 The Tenant must not:
- 16.6.1 allow the Property to be used for any illegal, immoral, dangerous, noxious or offensive purpose, activity or occupation;
  - 16.6.2 interfere with any of the Landlord's equipment, storage facilities, navigational aids or other Improvements which are located either on the Property or in the Boat Harbour;

- 16.6.3 use or store, or allow to be used or stored, on the Property any material of a dangerous, flammable or explosive nature unless such use or storage is necessary for the conduct of the Tenant's business within the Agreed Use and provided also that all requirements of legislation or standards relating to the use or storage of dangerous goods are complied with;
- 16.6.4 allow any filth, sewage, oily waste or other refuse from the Property or any ship moored on the Property or any ship using the facilities located on the Property but which is moored with the Landlord's consent partly or wholly outside the Property:
  - (a) onto the Property;
  - (b) into any water on the Property;
  - (c) onto any adjacent areas; or
  - (d) into water adjacent to the Property;
- 16.6.5 use plant or machinery on the Property so as to constitute a nuisance or disturbance to the Landlord or owners or occupiers of adjacent areas;
- 16.6.6 permit any ship using the facilities located on the Property, to be moored partly or wholly outside the Property without the Landlord's prior written consent;
- 16.6.7 remove quarry material, earth or rock from the Property without the Landlord's prior written consent.
- 16.6.8 otherwise use the Property in any manner which would cause damage, nuisance or disturbance to the Landlord or to the owners or occupiers of adjacent areas due to noise, vibration, odours or otherwise.

**17. Regional Harbour Master's directions**

- 17.1 The Tenant must, at its own expense, comply with all lawful directions given by the Regional Harbour Master or the Regional Harbour Master's delegate or authorised representative in relation to the Tenant's activities on the Property or in the Boat Harbour.

**18. Structures**

- 18.1 The Tenant warrants that any Improvement on the Property is and at all times will:
  - 18.1.1 be reasonably clean, safe and, having regard to the intended purpose of the Improvement, fit to use;
  - 18.1.2 comply with any building law or code or requirements of any State and local governments whether the Improvement is under construction or to be constructed, placed or installed, on the Property;

- 18.1.3 be properly maintained and repaired;
- 18.1.4 be used only for its intended and lawful purpose.
- 18.2 The Tenant shall, when using the Property comply, and ensure any Improvement on the Property complies, with all relevant laws including without limitation:
  - 18.2.1 the *Transport Infrastructure (Public Marine Facilities) Regulation 2000*;
  - 18.2.2 all Environmental Laws; and
  - 18.2.3 all health and safety laws and regulations relating to access, use and occupation of the Property.
- 18.3 The Tenant shall submit to the Landlord for the written consent of the Landlord before the construction, installation, material alteration or replacement of any Improvements is commenced, the plans (including layout plans) and specifications in reasonable detail so as to specify the nature and extent of the work.
- 18.4 The plans and specifications shall conform in all respects with the reasonable requirements of the Landlord.
- 18.5 Notwithstanding any written consent given by the Landlord to any such plans or specifications the Landlord shall not thereby be or become in any way liable to the Tenant for any loss or damage or expense whatsoever in such plans and specifications or any construction, installation, landscaping or Improvement made in accordance with the plans and specifications.

## 19. Maintenance, repair & replacement

- 19.1 The Tenant must, at its own expense:
  - 19.1.1 keep the Property, and any Improvement thereon, in good condition and repair;
  - 19.1.2 keep the Property clean, tidy and free from rubbish and pests;
  - 19.1.3 keep the Property free from noxious plants;
  - 19.1.4 immediately remove from the waters of the Boat Harbour any spillage of any environmentally harmful substance originating from the Property;
  - 19.1.5 keep the Property and any Improvement thereon in a safe and accessible state and comply with all health and safety laws and regulations relating to access, use and occupation of the Property; and
  - 19.1.6 immediately repair, renew or replace any Improvements on the Property in the event of damage to, or destruction of that Improvement.

**20. Vehicle parking**

- 20.1 The Tenant must, at its own expense, provide and maintain during the Term vehicle parking facilities within the Property for itself and its employees, agents and invitees to the reasonable satisfaction of the Landlord and the Local Government.

**21. Landscaping and fencing**

- 21.1 The Tenant must, in accordance with the Landlord's requirements and the requirements of the Local Government relevant to the Property from time to time, but at the Tenant's expense:
- 21.1.1 beautify and landscape the Property;
  - 21.1.2 securely fence the Property; and
  - 21.1.3 throughout the Term, maintain the landscaping and fences.

**22. Navigational aids**

- 22.1 The Tenant must, at its own expense provide, erect and maintain during the Term those navigation lights or marks which the Regional Harbour Master or the Regional Harbour Master's delegate or authorised representative determines, in that person's absolute discretion, are necessary or desirable for the guidance of ships in the approaches to or within the Property.
- 22.2 The Tenant must ensure that it keeps the sight line for any navigational lights or marks free from obstruction.

**23. Fire fighting facilities**

- 23.1 The Tenant must, at its own expense, provide fire fighting facilities upon the Property which comply with the requirements of any applicable standard for such facilities.

**24. Dredging**

- 24.1 If the Property contains or will contain, facilities designed or intended for use by ships, the Tenant, at the cost and expense of the Tenant, will be obliged to:
- 24.1.1 carry out any dredging required to enable ships using the facilities constructed within the Property to navigate freely:
    - (a) the waters within the Property; and
    - (b) the waters extending from the Property to the main navigation channel or internal public channels; and
  - 24.1.2 thereafter maintain such dredged areas; and
  - 24.1.3 dispose of the dredge material; and

24.1.4 obtain all relevant approvals before commencing the works referred to in Clauses 24.1.1, 24.1.2 or 24.1.3 above.

24.2 The Tenant must, at its own expense, maintain the water depth to enable safe use by ships, for all areas of the Boat Harbour for which the Tenant is responsible under Clause 24.1.

**25. Security of the Property**

25.1 The Tenant must take reasonable action, at its own expense, to secure the Property and any Improvements or equipment on the Property against unauthorised entry or use.

25.2 The Tenant must, at its own expense, keep the Property illuminated during hours of darkness to permit safe occupation and use of the Property during those hours.

**26. Signs**

26.1 The Tenant must not affix or erect any signs, notices or advertisements to any part of the Property without the Landlord's prior written consent.

26.2 The Tenant must:

26.2.1 ensure that any signs comply with all laws, and requirements of the Local Government, in relation to signage;

26.2.2 maintain any signs in good repair and condition throughout the Term; and

26.2.3 remove all signs prior to ceasing occupation of the Property.

**27. No Compensation for Improvements**

No compensation for any Improvements is payable by the Landlord.

**28. Environmental obligations**

28.1 If required by the Landlord, the Tenant must, at its own expense, provide facilities for the disposal ashore of human waste and other refuse from ships moored on the Property which comply with any governmental authority requirements.

28.2 The Tenant must comply with the Environmental Laws that apply to the Property and take all reasonable action to prevent or minimise any environmental damage, Environmental Nuisance or Environmental Harm occurring to, on, or adjacent to the Property arising from the use and occupation of the Property.

28.3 The Landlord may require the Tenant, at the Tenant's expense, to:

28.3.1 formulate;



28.3.2 implement; and

28.3.3 continuously maintain during the Term,

an environmental compliance and management plan which the Landlord is reasonably satisfied addresses the Tenant's obligations under the Environmental Laws.

28.4 The Landlord may, at the Tenant's expense, conduct an environmental audit or investigation of the whole, or part of, the Property upon the expiry, assignment or termination of this Lease or any sub-lease under this Lease. The Tenant must allow the Landlord and the Landlord's employees or agents access to conduct the audit.

28.5 The Tenant must, at its own expense, immediately remedy any environmental damage, Environmental Nuisance or Environmental Harm revealed by the audit under Clause 28.4, regardless of whether this Lease has expired or been assigned or terminated or subleased.

## **29. Confidentiality**

29.1 Subject to Clauses 29.2 and 29.5, the parties agree that the information contained in the Particulars Schedule is confidential and must not be divulged to anyone who is not a party to this Lease without the prior written consent of the other party to this Lease.

29.2 The obligations of confidentiality in Clause 29.1 shall not apply to any information which:

29.2.1 is or becomes public knowledge other than through a breach of this Lease;

29.2.2 the receiving party can demonstrate was publicly known prior to the disclosure by the other party;

29.2.3 is obtained by the other party from a third party having the legal right to disclose to others; or

29.2.4 is disclosed by order of any court, tribunal or other governmental authority acting within the scope of its powers.

29.3 The Tenant acknowledges that the Landlord may obtain injunctive relief against the Tenant or the Tenant's agent, employee or sub-tenant for any breach of Clauses 29.1 and 29.2.

29.4 The provisions of Clauses 29.1 to 29.3 will not merge on expiry, assignment or termination of this Lease, but shall, to the extent they are capable of doing so, continue in full force.

29.5 The parties acknowledge that the identity of the parties, the Term and the real property description of, and area of, the Property will be publicly available information following registration of this Lease.

## **30. Statistics and information**

- 30.1 The Tenant must, at its own expense, collect and provide to the Landlord in a timely manner such reasonable statistics and other information which the Landlord may request in relation to the movement of passengers, fuel, cargo, shipping or any other matters occurring within the Boat Harbour arising from the use and occupation of the Property.
- 30.2 If the Landlord requests any information from the Tenant in respect of the Lease, the Tenant must promptly give such information to the Landlord.

**31. Compliance with laws**

- 31.1 The Tenant must, at its own expense, comply with all laws, regulations and by-laws that apply to the Property and the Tenant's use or occupation of the Property.

**32. Risk**

- 32.1 The Tenant occupies and uses the Property at the Tenant's sole risk.

**33. Insurance**

- 33.1 Before the Commencement Date the Tenant must obtain, and thereafter maintain during the Term, the following insurances to the satisfaction of the Landlord:
  - 33.1.1 a public liability insurance policy:
    - (a) for the Public Liability Limit;
    - (b) providing the Tenant indemnity from any liability arising due to death, personal injury or property damage suffered by the Tenant, any sub-tenant and the Tenant's or sub-tenant's agents, employees or invitees on or near the Property; and
    - (c) which extends to include claims, risks and events covered under the various indemnities provided by the Tenant to the Landlord under this Lease;
  - 33.1.2 an unlimited workers' compensation policy as required by law; and
  - 33.1.3 a comprehensive policy:
    - (a) for the full replacement value of any of the Tenant's or Landlord's property which may be on the Property at any time and from time to time;
    - (b) which provides compensation to the Tenant in the event of interruption to the Tenant's capacity to conduct its business from the Property; and

- (c) against loss or damage by fire, storm, tempest, earthquake, lightning, explosion, flood, burglary and other risks usually covered under such a policy.

33.2 The Landlord:

- 33.2.1 has absolute discretion under Clause 33.1 to refuse to be satisfied as to scope and adequacy of any insurance policy; and
- 33.2.2 must be listed on the policies required under Clauses 33.1.1 and 33.1.3 as co-insured with the Tenant.

33.3 If required by the Landlord, the Tenant must deliver to the Landlord:

- 33.3.1 a copy of the insurance policies required under Clause 33.1, at least seven days before the Commencement Date;
- 33.3.2 a copy of any certificate of renewal or further policy, within seven days of receipt of the certificate or policy;
- 33.3.3 after the expiry of any policy, satisfactory evidence that the policy has been renewed.

33.4 The Tenant must not do anything, or allow its sub-tenants, agents, employees or invitees to do anything that may permit the Tenant's insurer to avoid liability under any insurance policy.

33.5 The Tenant must pay to the Landlord any extra or excess premiums and other charges for any insurances effected by the Landlord where extra risk is caused by the Tenant's use and occupation of the Property.

33.6 All moneys received from an insurer in respect of destruction of or damage to the Property or any Improvement on the Property shall be applied forthwith to reinstating the Property and Improvement so far as the moneys will extend unless the Tenant otherwise requests and the Landlord in its sole discretion agrees.

**34. Assignment, subletting, parting with possession and mortgaging lease**

34.1 Without the Landlord's prior written consent, the Tenant must not, in respect of the whole or part of the Property:

- 34.1.1 assign or transfer;
- 34.1.2 sublet;
- 34.1.3 grant any licence to occupy the Property to any person or otherwise part with possession;
- 34.1.4 grant any franchise over the Tenant's business conducted from the Property which would entitle any other person to use, occupy or trade from the Property; or
- 34.1.5 mortgage, charge or encumber this Lease.

- 34.2 The Landlord's consent under Clause 34.1.1 will not be unreasonably withheld.
- 34.3 If the Tenant is a corporation, it will be treated as assigning this Lease, for the purposes of Clause 34.1.1 if the person or persons who beneficially own or control a majority of the Tenant's voting shares cease to do so, except as a result of transmission on the death of a shareholder. This clause will not apply if the tenant is a corporation, the voting shares of which are listed on a Stock Exchange in Australia.
- 34.4 As a condition of granting consent to subletting of the Property under Clause 34.1.2, the Landlord requires:
- 34.4.1 The proposed sub-tenant to agree to abide by the terms of this Lease;
- 34.4.2 That the Tenant acknowledges that the provisions of the *Land Act 1994* which refer to subleases shall apply; and
- 34.4.3 The Tenant and sub-tenant to execute a form of sub-letting agreement containing terms and conditions which are acceptable to the Landlord.

The Landlord may provide the Tenant with its written consent to a form of sub-letting agreement, at any time during the Term, and provided that form is used for any subsequent sub-letting agreement, the Landlord's requirements under Clause 34.4.3 will be deemed to have been satisfied in relation to that sub-letting agreement.

- 34.5 The Landlord need not consider a request for consent under Clause 34.1.5 unless the purpose of the proposed loan to be secured is to enable the Tenant to acquire, continue or expand the Tenant's business, or proposed business, to be conducted from the Property.
- 34.6 In respect of any proposed mortgage the Tenant acknowledges:
- 34.6.1 The provisions of the *Land Act 1994* which refer to mortgages of leases or subleases shall apply;
- 34.6.2 The mortgagee will be entitled to enter into possession of the mortgaged Property and sell the Property if:
- (a) the Mortgagor defaults under the mortgage;
- (b) the mortgagee has entered into possession of the mortgaged lease or is exercising a power of sale under the mortgage;
- The mortgagee must notify the Landlord within 28 days of entering into possession of the mortgaged Property;
- 34.6.3 If the mortgaged Property is sold by a mortgagee in possession a Statutory Declaration signed by the incoming Tenant must be lodged with the Landlord, stating the incoming Tenant is aware of:-
- (a) The condition of the Property; and



- (b) The conditions of lease and the level of compliance with these conditions.

34.6.4 Disposal of the proceeds of the sale shall be applied as follows:

- (a) Firstly, to the payment of all costs, charges and expenses properly incurred by the mortgagee for the sale or any attempted sale;
- (b) Secondly, to payment of charges on the Property, including any rent or penalty interest, owing to the Landlord;
- (c) Thirdly, to payment of any amount owing to the mortgagee or, if more than 1 mortgagee, according to their priorities;
- (d) Fourthly, if the mortgagee is selling in possession to payment of expenses incurred by the Landlord to rectify any damage caused to the Property by the Tenant;
- (e) Lastly, to the Tenant

### 35. Landlord's entry

35.1 The Landlord and the Landlord's employees and agents may at any reasonable time enter the Property to view the repair, cleanliness and state of the Property and any Improvements thereon and to otherwise investigate whether the Tenant has complied with the terms of this Lease.

35.2 Following inspection of the Property under Clause 35.1, the Landlord may, by written notice, require the Tenant to immediately remedy any defects in the repair, cleanliness and state of the Property or Improvements or other breaches of this Lease in accordance with this Lease.

35.3 If the Tenant fails to comply with a notice under Clause 35.2 within a reasonable time, the Landlord may enter the Property, remedy the defect or default under this Lease and recover the cost of remediation at the Landlord's sole discretion from:

- (a) the bank guarantee required under Clause 12; or
- (b) the Tenant as a debt.

35.4 Right of Entry to Government Authorities

The Tenant shall after reasonable prior notice, or in the event of an emergency, immediately, permit the Commonwealth and Queensland Government, relevant Local Government and Statutory Authorities and, in each case, their officers servants agents and employees to enter and remain upon the Property and any Improvements thereon for the purpose of carrying out the duties and responsibilities required of any of those bodies under Statute and/or all by-laws and regulations for the time being in force thereunder.

36. **Termination**

36.1 The Landlord may terminate this Lease in the manner set out below in the following circumstances:

- 36.1.1 if the Rent or any part of it, or other moneys owing to the Landlord under this Lease is or are in arrears for 14 days, whether formally demanded or not;
- 36.1.2 if the Tenant breaches any other provision of this Lease;
- 36.1.3 if defects notified under Clause 35.2 are not remedied within the time specified in the notice or, if no time is specified, within a reasonable time;
- 36.1.4 if the Tenant is a corporation and an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;
- 36.1.5 if the Tenant is a corporation and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- 36.1.6 if the Tenant is a corporation and is placed under official management under the *Corporations Act 2001* or enters into a composition or scheme of arrangement;
- 36.1.7 if the Tenant is the subject of a Court Order to enforce a judgement against the Tenant and the enforcement action includes the sale of the Tenant's interests in the Lease;
- 36.1.8 if the Tenant or any person claiming through the Tenant conducts any business from the leased premises after the Tenant has committed an act of bankruptcy.
- 36.1.9 if the Tenant surrenders, or attempts, purports, or offers to surrender this Lease.
- 36.1.10 if the Tenant abandons or vacates the Property.

36.2 In the circumstances set out in Clause 36.1, the Landlord may at its sole discretion terminate the lease by:

- 36.2.1 notifying the Tenant in writing to that effect; or

- 36.2.2 re-entering the Property, with force if necessary, and ejecting the Tenant and all other persons from the Property and repossessing the Property; or
- 36.2.3 doing both the acts specified in sub-clauses 36.2.1 and 36.2.2.
- 36.3 If the Landlord terminates this Lease under Clause 36.1, the Tenant will not be released from liability for any prior breach of this Lease and other remedies available to the Landlord for recovery of arrears of rent or for breach of this Lease will not be prejudiced.
- 36.4 If the Landlord terminates this Lease under Clause 36.1, or the Tenant fails to remove its property under Clause 37.1, the Landlord may remove the Tenant's property and store it at the Tenant's expense without being liable to the Tenant for trespass, detinue, conversion or negligence. After storing the Tenant's property for at least one month, the Landlord may sell or dispose of the property, by auction, private sale, gift, distribution or otherwise. The Landlord may at its sole discretion then apply any proceeds towards any arrears of rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.
- 36.5 If the Landlord terminates this Lease under Clause 36.1, the Landlord may at its sole discretion, in addition to any other rights and remedies which the Landlord might have, recover from the Tenant damages for the loss of the benefit of so much of the Lease as would have subsisted but for the termination.

**37. Tenant's obligations on expiry or termination**

- 37.1 On or before the date of expiry or upon termination of this Lease the Tenant must, at the Tenant's cost:
  - 37.1.1 deliver up the Property in a safe, stable, clean, tidy and uncontaminated condition.
- 37.2 At the expiration or sooner termination of the lease Term but (subject to the provisions of the *Transport Infrastructure Act 1994* or any other relevant legislation) the Tenant shall, in accord with the following conditions, have the right to remove the Moveable Improvements placed or erected on the Property by the Tenant within a period of three (3) months from the expiration of the lease term.

The conditions which the Tenant must meet are:

- (a) all moneys due by the Tenant to the Landlord on any account whatsoever have been paid; and
- (b) the Tenant has duly observed, performed and fulfilled all the covenants, terms and conditions herein contained or implied and on the part of the Tenant to be observed and fulfilled; and



- (c) such removal can be effected without causing substantial or irreparable damage to the Property,
- 37.3 Notwithstanding Clause 37.2 if the Tenant does not so remove then the Landlord may at its sole discretion require the Tenant to remove all or any such Moveable Improvements.
- 37.4 Tenant will Bear Cost of Removal  
The Tenant agrees to make good all damage to the Property or Improvements and to the Landlord's property arising from or caused by the removal provided for in Clauses 37.2 and 37.3.
- 37.5 If the Tenant fails to carry out such removal or fails to carry out such removal to the reasonable satisfaction of the Landlord then the Landlord may at its sole discretion –
  - (a) carry out or complete (as the case may be) the removal of all or any part or parts of the Moveable Improvements and:
    - (i) deduct the cost thereof from the bank guarantee required under Clause 12; or
    - (ii) charge the cost thereof to the Tenant which shall pay the same to the Landlord forthwith upon demand; and/or
  - (b) elect to retain all or any part or parts of such Moveable Improvements which upon such election shall become the sole property of the Landlord.
- 37.6 The Landlord acknowledges that all the Moveable Improvements brought on to the Property by or on behalf of the Tenant shall be and remain the property of the Tenant provided always that any part thereof which has not been removed in accordance with this Clause shall thereafter vest in the Landlord.
- 37.7 Removal of Obsolete or Derelict Improvement
  - 37.7.1 At the expiration or sooner termination of the Lease the Landlord may by written notice to the Tenant require the Tenant to remove all or any obsolete or derelict Improvement from the Property.
  - 37.7.2 The Tenant shall at its cost and within a reasonable time after receiving the Landlord's notice arrange for the safe and orderly demolition, dismantling or removal of obsolete and derelict Improvements, the stopping, capping of any services or utilities.
  - 37.7.3 The Tenant agrees to make good all damage to the Property or Improvements and to the Landlord's property arising from or caused by the removal.

37.7.4 If the Tenant fails to carry out such removal or fails to carry out such removal to the reasonable satisfaction of the Landlord then the Landlord may at its sole discretion –

(a) carry out or complete (as the case may be) the removal of all or any part or parts of the obsolete or derelict Improvements and:

(i) deduct the cost thereof from the bank guarantee required under Clause 12; or

(ii) charge the cost thereof to the Tenant which shall pay the same to the Landlord forthwith upon demand.

37.8 For the purposes of this Lease "obsolete or derelict Improvement" is any Improvement on the Property which has ceased to be functional, useful, operational, safe or which is abandoned or no longer fit for its intended use.

37.9 To remove any doubt the Landlord:

37.9.1 owns and has all right, title and interest to any Improvement on the Property at the expiration or sooner termination of the lease term;

37.9.2 may still require the Tenant to remove the Improvement in accordance with this Clause 37.

**38. Governing law and submission to jurisdiction**

38.1 This Lease will be construed in accordance with the law of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals therefrom.

**39. Exclusion of statutory provisions**

39.1 No statutory provisions apply to this Lease, including without limitation the *Property Law Act 1974* (Qld), unless the relevant statute provides that certain provisions apply and cannot be excluded by agreement.

**40. Severability**

40.1 If any part of this Lease is unenforceable for any reason that part will be removed from this Lease and the enforceability of the remaining provisions will not be affected.

**41. No waiver**

- 41.1 Failure by the Landlord to require strict compliance with a provision of this Lease will not constitute a waiver of the Landlord's rights to later enforce that provision.

**42. Entire agreement**

- 42.1 The provisions contained in this Lease exclusively and completely state the rights of the Landlord and the Tenant with respect to the use and occupation of the Property. This Lease supersedes all negotiations and prior agreements, whether written or oral, in respect of the use and occupation of the Property.

**43. Time essential**

- 43.1 Time is of the essence concerning matters in this Lease.

**44. Parties to give effect to Lease**

- 44.1 Each party will do all things and sign all documents as may be reasonably necessary or desirable to give effect to the terms and intention of this Lease.

**45. Power of attorney**

- 45.1 The Tenant appoints the Landlord as the Tenant's attorney with the powers set out in Clauses 45.2 to 45.3.
- 45.2 This power of attorney is:
  - 45.2.1 irrevocable;
  - 45.2.2 granted by the Tenant in consideration of the grant by the Landlord of the Lease to the Tenant; and
  - 45.2.3 to secure the performance of the Tenant's obligations and the Landlord's proprietary interest in the Property, but may not be exercised unless the Tenant is in default under this Lease.
- 45.3 As the Tenant's attorney, the Landlord may, in the name of and on behalf of the Tenant:
  - 45.3.1 grant subleases, on such terms as the Landlord thinks fit, over the Property if the Tenant has vacated or abandoned the Property;
  - 45.3.2 in addition to the powers in Clause 36.4, remove from the Property, store and sell, any Improvement left on the Property by the Tenant after the Tenant has vacated or abandoned the Property or this Lease has expired or been terminated;
  - 45.3.3 transfer this Lease to an assignee of the Lease and execute any other documents which may be necessary for the transfer if the Tenant vacates or abandons the Property;

45.3.4 surrender this Lease, after becoming entitled to terminate this Lease when the Tenant vacates or abandons the Property; and

45.3.5 withdraw any caveat lodged by the Tenant in respect of this Lease.

45.4 For the avoidance of doubt, Clauses 27, 37, 45.2 and 45.3 will not merge on the expiry, assignment or termination of this Lease but will continue in full force and effect for the benefit of the Landlord for six years after the expiry, assignment or termination.

**46. Counterparts**

46.1 This Lease may consist of a number of counterparts and the counterparts taken together constitute one agreement.

**47. Variations in writing**

47.1 This Lease may only be varied in writing signed by the Landlord and Tenant and any Guarantor.

**48. Notices**

48.1 Notices under this Lease:

48.1.1 may be given by hand delivery, ordinary pre-paid post, facsimile or e-mail; and

48.1.2 must be given to the relevant party at their addresses set out in the Particulars Schedule or:

(a) such other address as that party may have notified to the other; or

(b) the address on the most recent item of correspondence from the relevant party.

48.2 Notices are deemed to be given:

48.2.1 at the time and date of hand delivery;

48.2.2 two business days after deposit in the mail with postage prepaid;

48.2.3 upon confirmation of successful transmission if sent by facsimile; or

48.2.4 upon sending if sent by e-mail.

**49. Dispute Resolution**

49.1 **Scope**

This Clause applies to all disputes between the Landlord and Tenant.

Any dispute between the Landlord and Tenant shall be resolved as follows:

**49.2 Parties to Attempt Resolution**

The Landlord and Tenant agree that any dispute to be referred to the dispute resolution procedure set out in this Clause may be referred to a person authorised to make a decision about the dispute and nominated by each party for resolution. Failing such referral or, if a referral is made, failing a resolution within 10 Business Days of that referral, then either party may refer the dispute for determination by an Independent Expert under this Clause.

**49.3** If the Tenant decides to refer the dispute for determination by an Independent Expert, the Tenant must refer the dispute within 28 days of the dispute first arising.

**49.4 Independent Expert Determination**

**49.4.1** Where any dispute or matter is referred to an Independent Expert pursuant to Clause 49.2, then the appointment of an Independent Expert shall be made by the President for the time being of the Institute of Arbitrators and Mediators Australia (Queensland Chapter).

The President must appoint as an Independent Expert, a person who has:

- (i) at least five years experience; and
  - (ii) the requisite skills and knowledge,
- in the area the subject of the dispute.

**49.4.2** Any Independent Expert so appointed pursuant to this Clause must, by the terms of the appointment, be required to:

- (i) promptly fix a reasonable time and place for receiving submissions or information from the Landlord and Tenant or from any other persons as the Independent Expert may think fit;
- (ii) accept oral or written submissions from the Landlord and Tenant as to the subject matter of the dispute within fourteen (14) Business Days of, or as soon as is reasonably practicable after, the Independent Expert's appointment;
- (iii) not be bound by the rules of evidence;
- (iv) decide only in relation to matters expressly referred to the Independent Expert in accordance with Clause 49.2 and will have no discretion to come to any other decision on any matter except with the prior agreement of the Landlord and Tenant;
- (v) give a determination in writing within 28 days of, or as soon as reasonably practicable after, receiving submissions;

- (vi) undertake to keep confidential matters coming to the Independent Expert's knowledge by reason of the appointment and performance of the Independent Expert's duties;
  - (vii) conduct the matter as expeditiously as possible.
- 49.4.3 The Independent Expert will have the following powers:
- (i) to acquire information independently as to facts and if necessary technical and/or financial matters to which the dispute relates;
  - (ii) to receive written submissions, sworn and unsworn written statements and photocopy documents and to act upon those submissions, statements and documents;
  - (iii) to consult with such other professionally qualified persons as the Independent Expert in the Independent Expert's sole discretion thinks fit; and
  - (iv) to take such measures as the Independent Expert thinks fit to expedite the completion of the dispute resolution.
- 49.4.4 Any person nominated as an Independent Expert hereunder is deemed not to be an arbitrator but an expert and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990* (Qld), will not apply to that Independent Expert or the Independent Expert's determination or the procedures by which the Independent Expert may reach his determination.
- 49.4.5 The dispute resolution will be held in Brisbane, Queensland unless the Landlord and Tenant otherwise agree.
- 49.4.6 Subject to Clauses 49.6 and 49.7, and in the absence of manifest error, the decisions of the Independent Expert will be final and binding upon the Landlord and Tenant.
- 49.4.7 The costs of the Independent Expert and any advisers to the Independent Expert must be borne by:
- (i) the Party referring the matter to the Independent Expert; or
  - (ii) the Party whom the Independent Expert determines should bear the costs.
- 49.4.8 The Parties must give the Independent Expert all information and assistance that the Independent Expert may reasonably require. The Parties will be entitled to be legally represented in respect of any oral or written representations that they may wish to make to the Independent Expert.

49.4.9 The Parties shall enter into a deed in favour of the Independent Expert releasing and indemnifying the Independent Expert from and against any claims of negligence, bias or misconduct (other than actual fraud) or any other claims in respect of the performance of the Independent Expert's functions.

**49.5 Independent Expert's Determination**

The determination of the Independent Expert will be final and binding on each party:

49.5.1 if the Independent Expert's determination requires a party to pay an amount less than \$5,000 such amount being exclusive of the Independent Expert's costs and the costs of any advisors to the Independent Expert; and

49.5.2 in all other cases, unless a party gives notice to the other party of its intention to initiate proceedings in respect of the Independent Expert's determination in a court or other tribunal within seven (7) days of the determination.

The Landlord and Tenant shall nevertheless give effect to the Independent Expert's determination unless and until it is reversed, or modified by any subsequent court or tribunal determination.

**49.6 Obligations Continuing**

Despite any reference of a dispute to a dispute resolution procedure under Clause 49, the Landlord and Tenant must continue to perform and comply with their respective obligations under this Lease.

**49.7 Interlocutory Relief**

Clause 49 does not prevent any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect its rights.

**50. Definitions**

50.1 In this Lease:

"Agreed Use" means the purpose for which the Tenant is allowed to use and occupy the Property, as specified in the Particulars Schedule.

"Boat Harbour" means the boat harbour specified in the Particulars Schedule.

"Environmental Harm" has the same meaning as in the *Environmental Protection Act 1994* (Qld).

"Environmental Nuisance" has the same meaning as in the *Environmental Protection Act 1994* (Qld).

<b>"Environmental Laws"</b>	<p>means any statute, regulation, policy or standard which relates to the protection or conservation of the environment, the contamination of land, water or air and the discharge, use or control of hazardous or polluting substances and includes, without limitation the:</p> <ul style="list-style-type: none"> <li>• <i>Beach Protection Act 1968</i> (Qld);</li> <li>• <i>Coastal Protection and Management Act 1995</i> (Qld);</li> <li>• <i>Environmental Protection Act 1994</i> (Qld);</li> <li>• <i>Environmental Protection Regulation 1998</i> (Qld);</li> <li>• <i>Environmental Protection (Interim Waste) Regulation 1996</i> (Qld);</li> <li>• <i>Environmental Protection (Air) Policy 1997</i>;</li> <li>• <i>Environmental Protection (Noise) Policy 1997</i>;</li> <li>• <i>Environmental Protection (Waters) Policy 1997</i>;</li> <li>• <i>Transport Operations (Marine Pollution) Regulation 1995</i></li> <li>• <i>Transport Operations (Marine Pollution) Act 1995</i>.</li> </ul>
<b>"Expiry Date"</b>	Means the date identified as the expiry date in item 6 of the Form 7.
<b>"Form 7"</b>	Means the <i>Land Titles Act 1994</i> Form 7 executed by the parties for this Lease.
<b>"GST Law"</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>"GST"</b>	means GST imposed by the GST Law as that term is defined in the GST Law.
<b>"Guarantor"</b>	means a person specified as guarantor in the Particulars Schedule.
<b>"Head Lease"</b>	means the Head lease referred to in the Form 7.
<b>"Improvement"</b>	means any building, developmental work, fixture, fitting, structure, boarding, sign, fencing, landscaping tree or plant, or other improvement including improvements owned by the Landlord and improvements owned by the Tenant (including Moveable Improvements).



<b>"Independent Expert"</b>	means the Independent Expert appointed pursuant to Clause 49.3 of this Lease.
<b>"input tax credit"</b>	has the same meaning as in the GST Law.
<b>"Landlord"</b>	means the State of Queensland, as represented by the Department of Transport.
<b>"Lease"</b>	<p>means this document, the Form 7 and the relevant Particulars Schedule. For the purposes of any guarantee and indemnity which may be granted to the Landlord under Clauses 13.1 to 13.8, the term "Lease" will include:</p> <ul style="list-style-type: none"> <li>• the leasehold estate arising on the execution or registration of this document or associated documents;</li> <li>• any other legal or equitable interest, such as an agreement for lease, an equitable lease, a periodical tenancy, a tenancy at will or other tenancy, arising from entry into possession of the leased premises and/or the payment or acceptance of money for the right to occupy and use the leased premises under, resulting from or relating to this document, the leasehold estate or any agreement, arrangement or negotiations relating to this document or the leasehold estate;</li> <li>• any renewal of this Lease; and</li> <li>• if the tenant holds over under Clauses 4.1 and 4.2 at the end of the Term, the leasehold estate during the holding-over period.</li> </ul>
<b>"Moveable Improvement"</b>	<p>means any chattel, device, equipment, machinery, plant or shelter which is portable or designed and intended for relocation, and which is:</p> <ul style="list-style-type: none"> <li>• brought on to the Property by the Tenant;</li> <li>• not a fixture or building;</li> <li>• not the Landlord's property at the start of the Term.</li> </ul>
<b>"Particulars Schedule"</b>	means the document titled "Particulars Schedule and Special Conditions" executed by the Landlord and the Tenant for this Lease.
<b>"Property"</b>	means the land identified as the premises being leased in item 5 of the Form 7, and includes the

Improvements.

<b>"Public Liability Limit"</b>	means the amount specified in the Particulars Schedule as the minimum level of insurance cover required to be held by the Tenant.
<b>"Rent"</b>	means the amount of rent specified in the Particulars Schedule, as that amount may be increased, in accordance with this Lease or in the Particulars Schedule.
<b>"Security Amount"</b>	means the amount specified in the Particulars Schedule as the minimum amount for the bank guarantee.
<b>"Ship"</b>	has the same meaning as in the <i>Transport Operations (Marine Safety) Act 1994</i> .
<b>"Supply"</b>	has the same meaning as in the GST Law.
<b>"Tax Invoice"</b>	has the same meaning as in the GST Law.
<b>"Tenant"</b>	means the person identified as tenant in item 3 of the Form 7.
<b>"Term"</b>	means the period of time (which period is listed in the Particulars Schedule as the term of the Lease) between the Commencement Date and the Expiry Date.

## **51. Interpretation**

- 51.1 Where any word is given a defined meaning, any other part of speech or grammatical form in respect of that word has a corresponding meaning.
- 51.2 All references in this Lease to monetary amounts are to Australian dollars.
- 51.3 Words which indicate the singular include the plural and vice versa, words indicating any gender indicate the appropriate gender and references to a person are to be construed as references to an individual, a body corporate, a partnership, an unincorporated association, a joint venture, a government or a government agency.
- 51.4 A person includes the trustee, executor, administrator, successor in title and permitted assign of that person.

- 51.5 A reference to any legislation or mandatory code of conduct includes any regulation or instrument made under it and where amended or replaced means that amended or replaced legislation or code of conduct.
- 51.6 A reference to any deed, agreement, licence, document or other instrument (including this Lease) includes a reference to that deed, agreement, licence, document or other instrument as renewed, extended, novated, varied or substituted from time to time.
- 51.7 A reference to a clause, schedule, annexure or exhibit is a reference to a clause of, annexure to, schedule to or exhibit to this Lease.
- 51.8 Where a party to this Lease is constituted by more than one person, the obligations of that party bind each of the people constituting the party separately and every two or more of them jointly.
- 51.9 Headings must be ignored in the interpretation of this Lease.
- 51.10 Where a period of time is specified and dates from a given day or the day of an act or event, it must be calculated without counting that day.
- 51.11 Each person executing this Lease as attorney for a party, by so doing, warrants to the other parties that as at the date of their signing the person has not received any notice of revocation of the power of attorney appointing that person.
- 51.12 Where something is done or received after 5:00 pm on any day it will be taken to have been done or received on the following day.
- 51.13 Where a provision in this Lease requires anything to be done or regards anything as having been done on a Saturday, Sunday or public holiday, that matter or thing may be done or will be taken to have been done on the next succeeding day which is not a Saturday, Sunday or public holiday.

Dept of Transport and Main Roads  
ABN 39407690291  
PO Box 2758  
Cairns Q 4870

# Tax Invoice

30 JUL 2012



Queensland  
Government

Page 1 of  
1

WATDEV2 PTY LTD  
T/AS FISHERMAN'S WHARF MARINA J/V  
P.O. Box 2053  
URANGAN QLD 4006  
Customer ABN : 48670178726

Invoice No. 6660180356  
Invoice Date 20.06.2012  
Reference HB01LS  
Customer No. RB000039  
Company Code MRCO  
Telephone Enquiries 07 4057 3062

Payment Due Date 20.07.2012

Payment Terms External Pay Due Net30 Days  
Lease E

Item	GST	Description	\$Value
002		Lease rental AHWM for period 01-07-12 to 31-12-12	145,367.00
003		Marina rental for period 01-07-12 to 31-12-12	9,907.50
004	*	Marina rental for period 01-07-12 to 31-12-12	21,005.00
005		Slipway rental for period 01-07-12 to 31-12-12	1,578.50
006		Lift out rental for period 01-07-12 to 31-12-12	868.00
007		Total GST Payable	15,772.10

Total Amount Payable(incl GST) \$ 194,498.10

\* These items do not attract GST

(GST is a Commonwealth Government imposed tax)

WATPAC PROPERTY		ACCOUNTS	
Entity		Supplier Numb	
Project Code		Amount (Excl. GST)	
WBS Code			
Value Agreed Y/N		GST	
Comment		Total Payable	Please detach here before sending
<b>Invoice Remittance Advice</b>			
Approved PAC	GM	Acc. Manager	Prepared by

Amount Payable \$ 194,498.10

Please detach and forward with your payment to:

Dept of Transport and Main Roads  
C/- Shared Service Agency  
PO Box 2758  
CAIRNS QLD 4870

## Office Use Only

Invoice No. 6660180356  
Company MRCO  
Customer No. RB000039  
Customer Name WATDEV2 PTY LTD  
Due Date 20.07.2012  
Date Received \_\_\_/\_\_\_/\_\_\_  
Receipt No. Issued \_\_\_\_\_

# Rental Valuation Report

**Prepared by:**  
State Valuation Service

**Client:**  
Dept Transport & Main Roads

**Property:**  
URANGAN BOAT HARBOUR  
URANGAN QLD 4655  
Lease E on SP166821



## Rental Valuation Report

**INSTRUCTION FROM** Department of Transport & Main Roads

**Business Unit Name (if applicable)**

Oriana Wyrozebska  
A / Manager (State Boat Harbours)

**Contact Number**

(07) 31207182

**Valuation prepared by**

State Valuation Service

**Address**

120 Lennox Street, Maryborough QLD 4650

**Owner Details**

Lessor - The State of Queensland (represented by the Department of Transport & Main Roads)  
Lessee - Watdev2 Pty Ltd - Fisherman's Wharf Marina

**Purpose of Valuation**

To assess the unimproved capital value of the land described for rental reassessment as at 1<sup>st</sup> July 2011.

**PROPERTY DETAILS**

**GLR Number (if applicable)**

N/A.

**Asset Number (if applicable)**

N/A.

**Property Name / Address**

Boat Harbour Drive and Jetty Street, Urangan Boat Harbour, Queensland

**Postcode**

4655

**Real Property Description**

<b>Lease</b>	E	<b>Plan</b>	SP168821

**Property Type**

Industrial

**Current Use**

Slipway

**Roads and Access**

Boat Harbour Dve & Jetty St are sealed bitumen dual width roads with concrete kerbing and channelling which provide good access to the site.

**Encumbrances**

Nil

**Area**

23,800m<sup>2</sup>  
(AHWM)

**Local Authority**

Fraser Coast Regional Council  
(Hervey Bay)

**Type of Improvement**

See below

**Zoning**

Zoned 'Particular Development' under the Hervey Bay City Planning Scheme gazetted on 15 December 2006.

**Brief Description of Improvement**

The subject property is improved with a slipway and associated marine facilities, industrial sheds catering for marine industries, retail premises fronting the harbour. All improvements are deemed to be the property of the Lessee.

The site is filled and levelled to an average depth of approximately 1 to 1.5 metres and under the terms of the lease these site works have been excluded from this valuation assessment. Under the terms of the lease works carried out by the Lessee up until 1/07/2014 are to be excluded from the rental valuation.

**Other Improvements**

Nil.

**Condition and Repair**

☐ Very Good

☐ Good

☒ Fair

☐ Poor

**Additional Comments in relation to the property and/or market.**

We have been instructed to assess the unimproved value of the subject land in accordance with the meaning of Unimproved value under section 434 Land Act 1994. In other words, **unimproved value** includes the value of improvements and development work to the land performed by the State and has not been paid by the lessee.

The subject property has been valued having regard to the following:

The Department of Transport currently leases the subject site to Watdev2 Pty Ltd. Under the terms of that lease the use of the subject site is for providing marina berthing, minor maintenance and refuelling facilities for commercial and recreational ships, operating a slipway, storage and construction of ships, sale of associated marine items, take-away food shop and associated offices management and administration. It should be noted that if the site was sub-leased the land may be used for purposes other than those specified if approval is given in writing.

It is considered that the current uses as allowed under the terms of the lease between the Department of Transport and Watdev2 Pty Ltd represents a number of the highest and best uses suitable for the site under the town planning designation. The site directly adjoins the Urangan Boat Harbour and enjoys all of the advantages of being located within a popular waterfront tourist destination and close to marina facilities. The whole of the lease is contained AHWM and is well located within the Urangan Boat Harbour industrial precinct.



## Rental Valuation Report

At the time of the previous rental assessment of the Urangan Boat Harbour properties in 2008, the property market in Hervey Bay was described as buoyant. However in the time since that assessment the property market in Hervey Bay has fallen significantly in most sectors. This has been primarily due to the Global Financial Crisis but other local factors have also impacted on values. The residential unit market was greatly impacted and this sector of the market is still quite depressed. The commercial and industrial markets also saw falls in value however there has continued to be some activity in these areas of the market.

In determining the unimproved value of the subject property we have used the direct comparison basis of valuation. Whilst we have been unable to locate directly comparable sales evidence of commercial/industrial property within the Urangan Boat Harbour precinct, the sales evidence provided represents the most comparable sales evidence available.

### SALES EVIDENCE

WTR No	Address	Sale Date	Price	Comments (similar/superior/inferior)
713146811	Corner Boat Harbour Drive and Honiton Street, Torquay	22/02/2010	\$1,200,000	Site Area: 7,851m <sup>2</sup> . \$140/m <sup>2</sup> . Aggregation of two adjoining lots forming a low density residential development site. Subject inferior on a rate per m <sup>2</sup> basis due to its significantly larger area.
713786422	Enterprise Court, Dundowran	6/08/2010	\$302,500	Site Area: 2,279m <sup>2</sup> . \$120/m <sup>2</sup> . Standard regular shaped industrial lot located in an established industrial estate in the suburb of Dundowran. Subject inferior on a rate per m <sup>2</sup> basis due to its much larger area.
713772557	Avrial Close, Dundowran	28/02/2011	\$285,000	Site Area: 3802m <sup>2</sup> . \$75/m <sup>2</sup> . Slightly irregular shaped cul-de-sac lot located in an established industrial estate in the suburb of Dundowran. Subject inferior on a rate per m <sup>2</sup> basis due to its much larger area.

### VALUATION

Date of Valuation	01/07/2011	Date of Inspection	7/09/2011
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### VALUATION

Industrial Land with Marina Frontage	23,800m <sup>2</sup>	@ \$80/m <sup>2</sup> =	\$1,904,000
<b>\$1,900,000</b> (One Million, Nine Hundred Thousand Dollars) Exclusive of GST			


### DISCLAIMER

I hereby certify that on the date below and have carried out a Restricted Valuation of the above property, as at that date. The valuation has been carried out in accordance with the Australian Property Institute's Restricted Valuation Supporting Memorandum. The instructing Party acknowledges and accepts the commercial risks in relying on the Restricted Valuation. The instructing party will not convey the Restricted Valuation or any part of it to third parties. This report is for the use only for the party to which it is addressed and is not to be used for any other purpose. No responsibility is accepted or undertaken to third parties in respect thereof. This report does not constitute a structural survey. There may be significant factors in relation to this property that warrant inspection, research or enquiry beyond the scope of a Restricted Valuation report. In this situation a full valuation report will be recommended, the instructing party will review its overall position if it requires a full valuation report.

### Valuers Signature

	Valuers Name / Qualification
	Noel Cronin AAPI Certified Practicing Valuer - No. 1485

### Authorising Signature

	Valuers File Ref Number
Anthony Hoffmann Specialist Coordinating Valuer, Maryborough State Valuation Services	MYBSVS01948





## Appendix B –Survey Plan



### Appendix C –Photographs



View of northern part of subject from Jetty Street



View of entrance to subject site from Boat Harbour Drive

## Rental Valuation Report

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View of sub-leased buildings on Boat Harbour Drive frontage

	Valuation	CPI	CPI	Valuation	CPI	CPI	Valuation	CPI	CPI	Valuation
	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022
<b>Annual Rental</b>	\$ 264,303	\$ 272,232	\$ 280,399	\$ 288,811	\$ 297,475	\$ 306,400	\$ 315,592	\$ 325,059	\$ 334,811	\$ 344,855
<b>AHWM Valuation</b>	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000	\$ 1,900,000
<b>Rental % of Valuation</b>	13.91%	14.33%	14.76%	15.20%	15.66%	16.13%	16.61%	17.11%	17.62%	18.15%

Note.

Assume valuation stays the same, however lease states a minimum of CPI at Valuation review

CPI assumed to be 3%