

SCHEDULE 18 - LEASE TO BAINES RIVER INVOLVING MG CORPORATION

**SCHEDULE 18 – LEASE OF PART OF RESERVE 31165 TO BAINES RIVER
INVOLVING MG CORPORATION**

FORM LIC

FORM APPROVAL No. LAA-1022

TENURE CODE

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

LEASE OF CROWN LAND (L)

DESCRIPTION OF LAND (NOTE 1)

King Location 374 on Deposited Plan 93740 being portion of Reserve 31165

EXTENT

Part

VOLUME

3022

FOLIO

360

LIMITATIONS, INTERESTS, ENCUMBRANCES and NOTIFICATIONS (NOTE 2)

Nil

LESSOR/LESSORS (NOTE 3)

Water and Rivers Commission
Hyatt Centre, 3 Plain Street
East Perth WA 6004

MG Corporation

LESSEE/LESSEES (NOTE 4)

Baines River Cattle Company Pty Ltd ACN 009 603 516
3rd Floor, 54 - 58 Park Street
Sydney NSW 2000

TERM OF LEASE (NOTE 5)

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

For the above term for the clear yearly rental of (Note 7) forty thousand dollars payable (Note 8) per annum

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

Lease

THE MANAGEMENT BODY

And

**BAINES RIVER CATTLE COMPANY
PTY LTD**

ACN 009 603 516

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THIS LEASE

is made on 2006 between the following parties:

1. **The Management Body** as defined herein
("Lessor")

and

2. **Baines River Cattle Company Pty Ltd** ACN 009 603 516 of 3rd Floor, 54-58 Park Street, Sydney NSW 2000
("Lessee")

and

3. Minister for Lands referred to in section 7 of the *Land Administration Act 1997* (WA)
("Minister for Lands")

and

4. [MG Corporation]

RECITALS

- A. The Lessor has the care, control and management of the Land with power to lease for any term not exceeding 21 years, subject to the consent of the Minister for Lands.
- B. The Lessor has agreed to grant to the Lessee and the Lessee has agreed to take a lease of the Leased Land for the Term and at the Rent and on the terms and conditions of the Lease.

THE PARTIES COVENANT AND AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Lease, unless the contrary intention appears:

Annual Pastoral Lease Plan means the plan referred to in clause 4.2(o) of the lease.

Business Day means every day which is not a Saturday, Sunday or public holiday in Western Australia.

Commencement Date means the commencement date in item 3(a) of the reference schedule.

Conditional Access has the meaning in clause 5.4(b).

Conditional Use has the meaning in clause 5.4(b)

CPI means the consumer price index compiled by the Australian Bureau of Statistics for Perth (Capital City) (all groups index numbers) or any substitute for that index accepted by the Government of the Commonwealth of Australia from time to time provided that if the index number base adopted by the Australian Statistician for the index number at any time is updated the index number is to be appropriately adjusted as from the same time.

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Dawang means the country of a local (or estate) group within the broader country of the MG People.

Dawawang means the members of the local (or estate) groups with primary responsibility for the Local Dawang according to the traditional laws and customs of the MG People.

Excluded Person has the meaning in clause 5.3(a).

Interest Rate means:

- (a) the overdraft index rate published by the Commonwealth Bank of Australia; or
- (b) if for any reason that rate ceases to be published, the normal commercial overdraft rate charged by the Lessor's bankers.

Land means the land described in item 1 of the reference schedule.

Lease means this lease between the Lessor and the Lessee in relation to the Leased Land as evidenced by this document including any variation of, and any schedule or annexure to, the Lease.

Leased Land means all that portion of the Land described in item 2 of the reference schedule and more particularly shown as being bordered red on the attached plan.

Lessee's Obligations means the covenants, agreements and obligations contained or implied in the Lease to be observed and performed by the Lessee.

Limitation Notice has the meaning in clause 5.4(a)

Local Dawang means those Dawang wholly or partly covered by the Land.

Management Body means the Water and Rivers Commission and any other person during the term of the Lease in whom the Minister for Lands has placed the care, control and management of reserve 31165 pursuant to section 46(1) of the *Land Administration Act 1997*.

MG People means:

- (a) MG#1 Native Title Holders and, where the context requires, the MG#1 PBC; and
- (b) the MG#4 Native Title Claim Group; and any other persons who hold native title in the MG#4 Claim Area.

MG#1 Determination means the determination of native title made by the Full Court of the Federal Court by consent of the parties in proceedings WAG 6293, 6292, 6294, 6295 and 6296 of 1998;

MG#1 Native Title Holders means Aboriginal persons who are the common law holders under the MG#1 Determination, but not including those persons who are common law holders solely on the basis that they identify themselves as Balanggarra (as defined in the MG#1 Determination) in relation to their native title interests in Lacrosse Island and who are so identified by other members of the Balanggarra group.

MG#1 PBC means the Miriuwung and Gajerrong#1 (Native Title Prescribed Body Corporate) Aboriginal Corporation registered by the Office of the Registrar of Aboriginal Corporations on 8 April 2005, determined by the Full Federal Court of Australia to be a prescribed body corporate in relation to the MG#1 Determination on

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26 July 2005 and entered on the Register of Native Title on 31 August 2005 as the registered native title body corporate for the MG#1 Determination area.

MG#4 Claim means Federal Court of Australia native title determination application WAD 124 of 2004, or if such application is discontinued, dismissed or struck out, any other application which replacing application WAD 124 of 2004

MG#4 Claim Area means the land and waters the subject of the MG#4 Claim.

MG#4 Native Title Claim Group means Aboriginal persons who are members of the native title claim group (as that term is defined in the NTA) for the MG#4 Claim.

Ord Final Agreement means a deed entitled Ord Final Agreement entered into by the State of Western Australia, the Western Australian Land Authority, the Conservation Commission of Western Australia, the Miriwung and Gajerrong #1 (Native Title Prescribed Body Corporate) Aboriginal Corporation, Ben Ward, Kim Aldus, Frank Chulung, Sheba Dignari, Maggie John, Chocolate Thomas, Danny Wallace, Carol Hapke, Nancy Dilyai, Pamela Simon, Jerry Moore and Paddy Carlton, Kimberley Land Council Aboriginal Corporation, Consolidated Pastoral Company Pty Ltd, Carlton Hill Pty Ltd, Crosswalk Pty Ltd, Baines River Cattle Co Pty Ltd, Ord River District Cooperative Ltd and JJ McDonald and Sons Engineering Pty Ltd on [insert date].

Permitted Use means the use of the Leased Land described in item 5 of the reference schedule.

Reference Schedule means the schedule attached to this lease.

Rent means the rent specified in item 6 of the reference schedule payable and reviewable at the times and in the manner stated in the Lease and as varied from time to time in accordance with the Lease.

Rent Review means each of the dates upon which the rent is to be reviewed as specified in item 7 of the reference schedule.

R31165 Management Committee has the meaning in R31165 Management Agreement.

R31165 Management Agreement means the Agreement so titled and set out in Schedule 14 of the Ord Final Agreement.

Term means the term commencing on the Commencement Date and terminating on the Termination Date.

Termination Date means the date set out in item 3(b) of the reference schedule.

Water and Rivers Commission means the body corporate pursuant to the Water and Rivers Commission Act 1995 of Hyatt Centre, 3 Plain Street, East Perth.

1.2 Interpretation

In the Lease, headings and boldings are for convenience only and do not affect the interpretation of the Lease and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;

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- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (d) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (e) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, the Lease;
- (f) A reference to a sub-clause is a reference to a sub-clause in the clause in which the reference occurs;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to the Lessor includes a reference to the Lessor's successors and assigns and the person who is, from time to time, the registered proprietor of the Land;
- (i) a reference to the Lessee includes the Lessee's successors and permitted assigns;
- (j) no provision of the Lease will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Lease or that provision; and
- (k) a covenant or agreement on the part of two or more persons binds them jointly and severally.

1.3 Business Day

Where the day on which any thing is to be done is not a Business Day, that thing must be done on the next succeeding Business Day.

1.4 Bodies and associations

Reference to any body other than a party to this document (including, without limitation, an institute, association or authority), whether or not it is a statutory body:

- (a) which ceases to exist; or
- (b) whose powers or functions are transferred to any other body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions

2. GRANT OF LEASE

2.1 Grant of Lease

The Lessor hereby grants to the Lessee who takes from the Lessor a lease of the Leased Land save and excepting any portion or portions of the Leased Land now or hereafter proclaimed reserved declared or dedicated as a road for the Term

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(determinable however as hereinafter provided) and at the Rent and upon the terms and conditions of the Lease.

2.2 Exclusion of TLA Provisions

The covenants and powers implied in every lease in accordance with the Transfer of Land Act 1893 (WA):

- (a) will not apply to the Lease except to the extent that those powers and covenants are incorporated in the Lease; and
- (b) except to the extent that the implied covenants and powers are incorporated in the Lease in accordance with sub-clause (a), the covenants and powers implied in every lease in accordance with the Transfer of Land Act 1893 (WA) are hereby expressly negated and excluded.

3. RENT AND OTHER PAYMENTS

3.1 Manner of payment

All payments of Rent and other moneys to be made under the Lease are to be made:

- (a) free of all deductions,
- (b) without any abatement,
- (c) without demand from the Lessor,
- (d) at the place and in the manner notified by the Lessor in writing at any time or in the absence of that direction, by the Lessee's cheque made payable to the Water and Rivers Commission sent to the address of the Waters and Rivers Commission set out in the Lease

3.2 Rent

The Lessee is to pay the Rent to the Lessor during the Term:

- (a) by consecutive yearly payments in advance,
- (b) before or on the Commencement Date and thereafter before or on each anniversary of this date during the Term, and
- (c) reviewable at the times and in the manner stated in clause 3.3.

3.3 Rent Review

- (a) The Lessor may increase the annual rental of the Leased Land at the end of the third year of the term of the Lease and at each successive third anniversary of that date thereafter. Such rental shall be increased by the same proportion as the CPI has increased since the preceding rent review but such increase shall not exceed 5% per annum. Such rental shall not be less than the rental paid in the previous year. The method of calculating the adjusted rental shall be as follows:

$$R = \frac{CR \times CCPI}{PCPI}$$

Where:

R = the re-appraised rental payable from the Review Date

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- CR = the rental payable for the review period immediately preceding the Review Date in question;
- CCPI = the CPI most recently published before the Review Date;
- PCPI = the CPI most recently published before the previous Review Date (or, in the case of the first review, as most recently published prior to the Commencement Date).

- (b) Upon a re-appraisal of the rent being made pursuant to paragraph (a) of this clause the Lessor shall give written notice of the amount thereof to the Lessee and such re-appraised rent shall be payable in the manner hereinbefore provided in respect of the Leased Land from the date set out in the said notice and thereupon in all respects the Leased Land shall be continued to be held by the Lessee on the same covenants and conditions as are herein contained provided always that upon receipt of notice of such re-appraised rent the Lessee shall be at liberty within thirty days thereafter to terminate the Lease by giving thirty days notice to that effect to the Lessor in which event the Lessee shall vacate the Leased Land within a period of six months from the date of the giving of such notice of termination and shall pay to the Lessor by way of rent an amount which shall be equal to one half of the amount of the annual rent for the land prior to such re-appraisal.

3.4 Rates and Taxes

- (a) The Lessee shall pay and discharge on the due dates for payment thereof all present and future rates taxes charges assessments duties impositions penalties and other outgoings whatsoever which now are or during the term hereby granted shall be assessed and charged upon or in respect of the Leased Land.
- (b) Land tax shall be calculated on the basis that the Land is the only land of which the Lessor is the owner within the meaning of the Land Tax Assessment Act 1976 (WA).

4. LESSEE'S COVENANTS

The Lessee agrees with the Lessor as follows:

4.1 Permitted use

- (a) Not to use or, subject to clause 5, permit the Leased Land to be used otherwise than for the purpose of grazing cattle thereon and purposes incidental thereto and the carrying out of works associated therewith.
- (b) At all times during the Term to use the Leased Land for the purpose aforesaid in a proper and husbandlike manner and according to the most sound and approved methods of pastoral husbandry in relation to cattle and to the management conservation and regeneration of pasture for pastoral purposes that prevail in the district where the Leased Land is situated.

4.2 Conduct of operations on Leased Land

- (a) At all times during the Term at its own cost and expense in all things to keep and maintain all buildings erections boundary and internal dividing fences gates

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stock crossings dams wells windmills pumps troughs piping and other improvements now or hereafter standing or being on the Leased Land in good tenatable repair order and condition;

- (b) Not to cut down fell injure or destroy or cause or subject to clause 5 permit to be cut down felled injured or destroyed any growing or living timber or timber like trees or any bush or shrub standing or being upon the Leased Land except for the purpose of the construction of fences, stockyards and similar improvements on the Leased Land without the consent of the Lessor first had and obtained;
- (c) At all times to maintain on the Leased Land good and improving soil and plant conditions;
- (d) Not to permit to be depastured on the Leased Land a number of cattle which, in the opinion of the Lessor (acting reasonably) is excessive having regard to the grazing condition of the Leased Land from time to time, and within one month of service by the Lessor of a notice so to do or such longer period as the Lessor may in its sole discretion allow to reduce the number of cattle depastured on the Leased Land to the number specified on such notice provided that if the Lessee disputes the cattle numbers prescribed by the Lessor, either party may refer the matter to the Commissioner of Soils under the Soil and Land Conservation Act 1945 whose decision shall be binding;
- (e) If any part of the Leased Land is flooded or is to be inundated and required for such purpose as part of the Ord River Water and Irrigation Works, within one month or such longer period as the Lessor may in its sole discretion allow of service by the Lessor on the Lessee of a notice so to do to remove all cattle from such part of parts of the Leased Land as may be specified in the notice and thereafter to do all such things as may be necessary to prevent cattle from being or grazing thereon until the expiration of such period as may be specified in the notice or if no period is so specified until such time as the Lessor may approve. The Rent shall be reduced proportionate to the area of land from which the Lessee is required to remove cattle;
- (f) Forthwith to remove from the adjoining part of Reserve 31165 any cattle escaping thereto from the Leased Land AND if the Lessee shall fail to comply with and observe this covenant it shall be lawful for the Lessor (but without prejudice to the other rights and remedies of the Lessor hereunder) after first giving the Lessee not less than three days written notice of its intention so to do to destroy such cattle and the Lessor shall not be liable to pay to the Lessee compensation for cattle so destroyed;
- (g) Not to erect or make any buildings or improvements or permit or allow any buildings or improvements to be erected or made on the Leased Land except in the case of fences watering yards and other improvements of a usual and normal nature on pastoral properties not exceeding in cost the sum of \$10,000.00 without the previous consent in writing of the Lessor first had and obtained and with each application for consent therefore if required by the Lessor so to do, to submit to the Lessor plans and specifications of the proposed building or improvement and to make complete and carry out the same strictly in accordance with plans and specifications approved by the Lessor;

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- (h) Not without the consent in writing of the Lessor first had and obtained to pull down demolish or remove or cause to be pulled down demolished or removed during the Term except to the extent mentioned in the preceding paragraph (g) any building or improvement erected upon the Leased Land;
- (i) At all times during the Term duly and punctually to comply with observe and carry out and conform to the provisions of all statutes now or hereafter in force and all ordinances regulations and by-laws thereunder and all requirements and orders of any authority statutory or otherwise which affect the Leased Land or the use thereof or which impose any duty or obligation upon the owner or occupier of the Leased Land AND in particular without derogating from the generality of the foregoing to comply with the provisions of Soil and Land Conservation Act 1945, Local Government Act 1995, Agriculture and Related Resources Protection Act 1976 and the Environmental Protection Act 1986 and the amendments thereof for the time being in force and the regulations made thereunder for the time being in force in so far as they affect the Leased Land or owner or occupier thereof;
- (j) To permit the Lessor by its agents or servants at all reasonable times to enter upon and view the condition of the Leased Land and forthwith (so far as the Lessee is liable) to execute all repairs and works required to be done by written notice given by the Lessor provided always that if the Lessee shall not within a space of fourteen days after service of such notice commence and proceed diligently with the execution of the repairs and works mentioned in such notice it shall be lawful for the Lessor to enter upon the Leased Land and execute such repairs and works and the cost thereof shall be a debt due from the Lessee to the Lessor and be forthwith recoverable by action;
- (k) Not to carry on or permit or suffer to be carried on in or upon the Leased Land or any part thereof any noxious noisome or offensive trade or business occupation or calling or do or omit to be done or permit or suffer to be done or omit any act matter or thing whatsoever which shall at any time during the Term be or become a nuisance annoyance or disturbance to the occupiers or owners of adjoining lands and properties;
- (l) To perform discharge and execute all requisitions and works and do and perform all such acts and things upon and unto the Leased Land or any part thereof as are or may be required or directed to be executed or done (whether by the Lessor or Lessee) by any Local Authority or by any other government local or public authority or by order or in pursuance of any Statute (State or Federal) now or hereafter in force or by order or in pursuance of any by-law or regulation under any such statute;
- (m) Not to do or leave undone or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any local or public authority body or person or within the meaning or any statute (State or Federal) now or hereafter in force or any regulations or by-laws made thereunder may exist arise or continue upon or in connection with the Leased Land or any business carried on upon the same or the use or occupation thereof AND forthwith to abate any such nuisance or alleged nuisance and carry out and comply with all the provisions of every such

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statute regulation or by-law and of every requisition and order of any local or public authority in reference thereto;

- (n) To pay to the Lessor on demand all sums of money which the Lessor may at any time and from time to time hereinafter pay or expend or be called upon to repay in or about or in connection with performing discharging or executing any requisitions or works or abating any nuisance or alleged nuisance referred to in the preceding paragraphs hereof and which contrary to the agreement therein contained the Lessee neglects or fails to perform discharge or execute;
- (o) To submit to the Lessor an Annual Pastoral Lease Plan in a form approved by the Lessor by 30 November in each year of the Term which summarises the previous year's lease operations including stocking rates, monitoring and maintenance works. The Annual Pastoral Lease Plan must also outline a lease operations plan proposal for the forthcoming year including stocking rates, pasture improvements and regeneration works and maintenance programs and any other matters pertaining to the Leased Land.

4.3 Indemnities

At all times to indemnify and keep indemnified the Lessor:

- (a) Against all damages to any property of the Crown and the State of Western Australia or any instrumentality of the Crown and the State of Western Australia caused by or arising out of or in relation to or incidental to the use by the Lessee or any of its servants workmen or agents of the Leased Land or by any fire on the Leased Land or escaping therefrom as a result of the negligent act or omission of the Lessee or any of its servants workmen or agents or arising out of or in relating to or incidental to the carrying out by the Lessee or any of its servants workmen and agents or any works of any nature whatsoever upon the Leased Land;
- (b) Against all actions proceedings suits claims demands and costs which may be made at any time or times by any person or corporation arising out of or in relation to or incidental to the use by the Lessee or any of its servants workmen and agents of the Leased Land or of a fire on the Leased Land or escaping therefrom as a result of the negligent act or omission of the Lessee or any of its servants workmen or agents or arising out of or in relation to or incidental to the carrying out by the Lessee of any works of any nature whatsoever on the Leased Land;

PROVIDED THAT nothing in this sub-clause 4.3 shall require the Lessee to indemnify the Lessor against any loss or damage arising out of the negligence of the Lessor or its servants or agents whilst acting in the course of their employment;

4.4 Not to Assign

- (a) Not to assign underlet encumber or part with the possession of the Leased Land or any part thereof without the consent in writing of the Lessor first had and obtained which consent shall not be unreasonably withheld if the Lessee at the time at which such consent is sought is not then in default in the observance or performance of any covenant agreement condition or proviso herein contained or implied and on its part to be observed or performed and which has not been excused or waived by the Lessor AND in the event of the Lessor giving such consent as aforesaid the Lessee will cause such assignee or sublessee to

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forthwith execute a Deed of Covenant to be prepared by the Lessor's Solicitors at the expense of such assignee or sublessee binding such assignee to all the covenants agreements conditions and provisos herein contained or implied such Deed of Covenant to contain such covenants as the Lessor's Solicitors may reasonably require;

- (b) The provisions of Section 80 of the *Property Law Act* 1969 are expressly excluded from the Lease;

4.5 Permit Lessor to Enter

To permit the Lessor or a Minister or Ministers of the Crown and the State of Western Australia by its or their agents or servants with or without workmen vehicles plant machinery and equipment at any time and from time to time to enter and remain upon the Leased Land and to make any survey or examination thereof and to construct and maintain thereon any work which is a Government Work or Public Work within the meaning of those expressions as appearing in the *Public Works Act* 1902;

4.6 Pay Costs

- (a) To pay on demand the Lessor's Solicitor's costs of and incidental to the preparation execution and stamping of the Lease and all counterparts thereof;
- (b) The Lessee must pay all stamp duty assessed and payable in respect of this Lease and all Titles Office registration fees in respect of the registration of this Lease; and
- (c) The Lessee must pay to the Lessor any legal costs incurred by the Lessor arising from any breach by the Lessee of the Lessee's Obligations;

4.7 Yield Up

To yield up the Leased Land and all buildings erections fixtures fittings and other improvements thereon (other than those other improvements erected by the Lessee but excluding fencing which the Lessee is by the Lease required to erect) at the expiration or sooner determination of the Lease in such good and tenantable repair and condition as shall be in accordance with the Lessee's covenants herein contained;

4.8 Release of Lessor

The Lessee:

- (a) agrees to occupy, use and keep the Leased Land at its own risk; and
- (b) releases, to the extent not excluded by law, the Lessor and its contractors from any:
 - (i) claims and demands of any kind;
 - (ii) liability which may arise in respect of any accident or damage to property or death of or injury to any person, of any nature in or near the Leased Land; and
 - (iii) loss of or damage to fixtures or personal property of the Lessee,

except to the extent that, the damage, death or injury is caused by the wilful action, negligence, default or misconduct of the Lessor or the Lessor's contractors.

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4.9 Contamination of the Leased Land

The Lessee is not to cause or permit any Contamination of the Leased Land or of the Environment as a result of anything brought on to, or done on, the Leased Land by the Lessee or an invitee of the Lessee.

4.10 Insurance policies

- (a) The Lessee must take out and keep in force
 - (i) Public risk insurance for an amount of not less than \$10,000,000; and
 - (ii) A policy covering the improvements on the Land for the replacement value against loss or damage by fire, lightning, thunderbolt, storm, tempest, rainwater, water, earthquake, flood, impact, explosion, aircraft, riots, strikes and other malicious acts and removal of debris.
- (b) In respect of all policies of insurance which the Lessee must effect under this Lease, the Lessee must:
 - (i) on request by the Lessor, arrange for a certificate to be issued by its insurance broker confirming that the Lessee is covered for the risks referred to in paragraph (a) and confirming that the interests of the Lessor have been noted by the insurance broker;
 - (ii) on request by the Lessor, a certificate from the Lessee's insurance broker confirming that premiums have been paid up to date; and
 - (iii) punctually pay all premiums and other charges in respect of those policies and renewals of them.

4.11 Insurance not to be avoided

The Lessee must not:

- (a) do or omit to do;
- (b) permit or suffer to be done permitted or omitted,
any act, matter or thing, including, but not limited to, bringing or keeping of anything on the Leased Land, as a result of which any insurance in respect of the Leased Land against damage by fire and other risks may be rendered void or voidable.

4.12 GST

- (a) In this clause:
 - (i) 'GST' has the same meaning as it has in section 195-1 of the GST ACT;
 - (ii) 'GST Act' means A New Tax System (Goods and Services Tax) Act 1999;
 - (iii) 'Input Tax' means an amount equal to the amount of GST paid or payable by the Lessor in relation to a Supply;
 - (iv) 'Primary Payment' means any payment by the Lessee to the Lessor under this Lease;

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- (v) 'Supply' has the same meaning as it has in section 9-10 of the GST Act and excludes an 'GST-free supplies' and the 'input taxed supplies' as those terms are defined in section 195-1 of the GST Act; and
- (vi) 'Tax Invoice' has the same meaning as it has in section 195-1 of the GST Act and in the A New Tax System (Goods and Services Tax) Act 1999;
- (b) The Lessor and the Lessee acknowledge and agree that the amount of all Primary Payments specified in this Lease are exclusive of GST.
- (c) Subject to paragraph (d), if the Lessor is liable by law for any GST on any Primary Payment, the Lessee must pay to the Lessor the amount of the GST;
- (d) For the purpose of calculating GST payable by the Lessee to the Lessor on the Supply of Outgoings by the Lessor to the lessee, the amount of any GST which the Lessor paid its supplier and is entitled to claim under the GST Act as Input Tax is to be excluded;
- (e) Subject to paragraph (f), the Lessee must pay to the Lessor any GST it is required to pay to the Lessor under this Lease at the same time and in the same manner as the Lessee is required to pay the Primary Payment to which the amount of GST relates;
- (f) Despite any provision of this clause, the Lessee is not liable to pay any GST in respect of Rent and Outgoings to the Lessor unless and until the Lessee receives a Tax Invoice from the Lessor. The Lessor must give the Lessee a Tax Invoice for GST paid in respect of Primary Payment (other than Rent and Outgoings) within 7 days of Lessee paying the GST to the Lessor.
- (g) The Lessor warrants that the amounts referred to in any Tax Invoice the Lessor gives to the Lessee are correct.

5. QUIET ENJOYMENT

5.1 Lessee's Right

Subject to clause 5.2, while the Lessee is paying the Rent and duly and punctually observing the Lessee's Obligations, the Lessee is entitled to peaceably possess and enjoy the Leased Land during the Term without any interruption or disturbance from:

- (a) the Lessor, or
- (b) any other person lawfully claiming by, from or under the Lessor.

5.2 MG People's Right

To the extent that it is not inconsistent with the Lessee's grazing activities, MG People have the right to access and use the Leased Land at any time during the Term provided that the access and use is:

- (a) in accordance with traditional laws acknowledged and traditional customs and cultural practices observed by the MG People; and
- (b) not inconsistent with the Annual Pastoral Lease Plan.

SCHEDULE 18 - LEASE TO BAINES RIVER INVOLVING MG CORPORATION

5.3 Access to MG People only

- (a) If the Lessee has a bona fide reason to believe that any person purporting to access the Leased Land under clause 5.2 is not a member of the MG People, the Lessee may refuse access to that person ("Excluded Person") until notification under paragraph (c) is given by the MG Corporation that the Excluded Person is a member of the MG People
- (b) If the Lessee refuses access to the Leased Land by a person purporting to access the Leased Land under clause 5.2, the Lessee must, within 2 days, give notice in writing to the MG Corporation, setting out the reasons for the refusal of access, and where possible, the name of the Excluded Person.
- (c) If the MG Corporation notifies the Lessee in writing that, in accordance with the traditional laws and customs of the MG People, the Excluded Person is a member of the MG People, the Lessee must permit that person's entry to the Leased Land in accordance with clause 5.2.

5.4 Inconsistency with Grazing Activities

- (a) If the purported exercise of the right of access and use, pursuant to clause 5.2, by the MG People, when viewed reasonably and objectively, is inconsistent with the Lessee's grazing activities or the Annual Pastoral Lease Plan, the Lessee may give notice in writing to the MG Corporation ("Limitation Notice") setting out:
 - (i) any area of the Leased Land where there is no right of access by the MG People by virtue of the inconsistency ("Exclusive Area"); or
 - (ii) any use of the Leased Land by the MG People where there is no right of use by virtue of the inconsistency ("Inconsistent Use").
- (b) Notwithstanding anything in clause 5.4(a), the Lessee may revocably consent to access to an Exclusive Area ("Conditional Access") or an Inconsistent Use ("Conditional Use") by the MG People for any period of time and on any conditions it sees fit.
- (c) On receipt of a Limitation Notice, and in the absence of the Lessee consenting to Conditional Access or Conditional Use under clause 5.4(b), the MG People must cease:
 - (i) to access the Exclusive Area; or
 - (ii) the Inconsistent Use,

as provided in the Limitation Notice until a resolution is passed or a determination is made under clauses 5.5(a)(ii), 5.6(c)(ii), or 5.7(b)(ii) varying the Limitation Notice.

- (d) The MG People must not carry out any activity inconsistent with a Limitation Notice unless and until varied under clauses 5.5(a)(ii), 5.6(c)(ii), or 5.7(b)(ii).
- (e) The MG Corporation must promptly ensure the MG Peoples' compliance with clauses 5.4(c) and 5.4(d).

5.5 Dispute Resolution - Water and Rivers Commission

- (a) Until such time as the R31165 Management Committee is established pursuant to the R31165 Management Agreement, where the MG Corporation disputes a

SCHEDULE 18 - LEASE TO BAINES RIVER INVOLVING MG CORPORATION

Limitation Notice issued under clause 5.4 the MG Corporation may refer it to the Water and Rivers Commission which must notify the Lessee in writing of the referral and determine that a Limitation Notice be:

- (i) accepted; or
- (ii) varied on the basis that:
 - A. an area is not an Exclusion Area; or
 - B. a use is not an Inconsistent Use,

which determination shall be final and binding on the Water and Rivers Commission, the MG Corporation and the Lessee. The Water and Rivers Commission must give prompt written advice to the Lessee of such determination.

- (b) A Limitation Notice varied under this clause 5.5 must not derogate from the Lessee's rights under clause 5.1.

5.6 Dispute Resolution - R31165 Management Committee

- (a) The MG Corporation or the Water and Rivers Commission may refer a Limitation Notice to the R31165 Management Committee for resolution under this clause 5.6 by issuing a notice to the R31165 Management Committee members:

- (i) convening the meeting of the R31165 Management Committee to be held within 21 days from the giving of that notice or such shorter period as may be agreed by the MG Corporation and WRC; and
- (ii) providing the R31165 Management Committee members with a copy of the Limitation Notice and setting out the terms of the matter to be resolved.

- (b) The Water and Rivers Commission and the MG Corporation will ensure that:

- (i) the Lessee is notified in writing of the referral;
- (ii) a meeting of the R31165 Management Committee convened under this clause 5.6 is held in accordance with the R31165 Management Agreement; and
- (iii) resolutions made by the R31165 Management Committee under this clause 5.6 are notified to the Lessee within 7 days of the meeting.

- (c) The R31165 Management Committee acting in accordance with the R31165 Management Agreement, may resolve under this clause 5.6 that a Limitation Notice be:

- (i) accepted; or
- (ii) varied on the basis that:
 - A. an area is not an Exclusive Area; or
 - B. a use is not an Inconsistent Use,

which determination shall be final and binding on the Water and Rivers Commission, the MG Corporation and the Lessee. The Water and Rivers

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Commission must give prompt written advice to the Lessee of such determination.

- (d) A Limitation Notice varied under this clause 5.6 must not derogate from the Lessor's rights under clauses 5.1.

5.7 Referral to Minister for Lands

- (a) Where the Management Committee fails to make a resolution under clause 5.6 or where the Lessee considers that a determination derogates from the Lessee's rights under clause 5.1, the Water and Rivers Commission must refer the matter to the Minister for Lands within 7 days of the meeting convened under clause 5.6(a) as if the matter were Referred Business under the R31165 Management Agreement and notify the Lessee in writing of the referral.

- (b) The Minister for Lands must make a determination that a Limitation Notice be:

- (i) accepted; or

- (ii) varied on the basis that:

- A an area is not an Exclusive Area; or

- B a use is not an Inconsistent Use,

within 28 days of receiving a referral under clause 5.7(a) and notify the Lessee, the Water and Rivers Commission and the MG Corporation of the determination within 5 days of making the determination.

- (c) A Limitation Notice varied under this clause 5.7 must not derogate from the Lessor's rights under clause 5.1.
- (d) A determination under clause 5.7(b) shall be deemed to be a resolution of the R31165 Management Committee and will be final and binding on the Water and Rivers Commission, the MG Corporation and the Lessee.

5.8 Procedural Fairness

- (a) The Parties agree that the Lessee and the MG People whose rights to access the Leased Land have been affected by the Limitation Notices, must be given an opportunity to:

- (i) be heard or make a written submission to the Water and Rivers Commission under clause 5.5;

- (ii) be heard or make a written submission to the R31165 Management Committee meeting convened under clause 5.6; and

- (iii) make a written submission to the Minister for Lands prior to any determination under clause 5.7(b).

- (b) The Parties agree that the MG Corporation and the Water and Rivers Commission must be given an opportunity to make a written submission to the Minister for Lands prior to any determination under clause 5.7(b).

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6. MG CORPORATION & INDEMNITIES

6.1 Lessee to Indemnify MG Corporation

The Lessee agrees to indemnify and keep indemnified the MG Corporation against all proceedings actions suits claims demands costs and losses (Losses) suffered or incurred by the MG Corporation to the extent such Losses are incurred by the MG Corporation or any of its members, as a result of the negligent or other tortious act or omission of the Lessee, or any of the Lessee's officers, employees, agents, or contractors in the purported exercise of rights or obligations under this Lease.

6.2 MG Corporation to Indemnify Lessee

The MG Corporation agrees to indemnify and keep indemnified the Lessee against all proceedings actions suits claims demands costs and losses (Losses) suffered or incurred by the Lessee to the extent such Losses are incurred by the Lessee or any of the Lessee's employees, agents or contractors, as a result of the negligent or other tortious act or omission of the MG People, arising out of access to or use of the Leased Land under clause 5.2.

7. DEFAULT, TERMINATION ETC.

7.1 Default

If the rent hereby reserved or any part thereof shall be unpaid after becoming payable (whether formally demanded or not) or if any covenant on the Lessee's part herein contained or implied shall not be performed or observed or if the Lessee shall go into liquidation either voluntarily or involuntarily (except for purposes of reconstruction of amalgamation) or if a Receiver or Receiver and Manager of the property of the Lessee shall be appointed or if the Lessee shall enter into a compromise or arrangement with either its creditors or members of any class thereof or if the Lessee shall suffer any execution to be levied on its goods then, in any of the said cases, the Lessor may give the Lessee written notice specifying the failure to pay rent or perform or observe the covenant or the other event as specified above and requiring the failure to be remedied or the event to be removed within twenty eight days after the notice. If the Lessee does not remedy that failure or cause that event to be removed within that twenty eight days, it shall be lawful for the Lessor at any time thereafter upon giving to the Lessee three months notice of its intention so to do, re-enter upon the Leased Land or any part thereof in the name of the whole and upon the expiration of such notice the Lease shall absolutely determine but without prejudice to any right of action of the Lessor for arrears of rent or damage for breach of covenant or otherwise howsoever.

7.2 Lessor's Right to Terminate

- (a) Notwithstanding anything to the contrary herein contained the Lessor shall be at liberty at any time and from time to time when ;
 - (i) The continuance of the Lease either as to the whole or any part of the Leased Land is significantly detrimental to the said Ord River Water and Irrigation Works;
 - (ii) The Leased Land or any part thereof is required for the purpose of carrying out any of the works mentioned in sub clause 4.5 or other

SCHEDULE 18 - LEASE TO BAINES RIVER INVOLVING MG CORPORATION

Government Purposes or is required for any purpose of public utility or for the purpose of facilitating the improvement and settlement of the State of Western Australia,

to give the Lessee not less than twelve months notice of its intention to determine the Lease either wholly or in part and upon service of such notice upon the Lessee the Lease shall forthwith determine either wholly or as to such part of the Leased Land as may be described in such notice as the case may be and the Lessor may at the expiration of such notice enter upon the Leased Land or such part thereof and take possession thereof without paying to the Lessee any compensation in respect of any loss or damage sustained by the Lessee by reason of such sooner determination except as hereinafter provided. A notice signed by the Lessor or a person authorised by the Lessor in that behalf stating all or any of the matters mentioned in sub-paragraphs (i) and (ii) hereof shall be conclusive evidence of the matters so stated;

- (b) In the event that the Lease is determined whether wholly or in part pursuant to the power conferred on the Lessor by paragraph (a) of this clause the Lessor shall pay to the Lessee the then current value of the fencing, yards and buildings standing upon the parts of the Leased Land of which the Lessee has as a result of such determination been deprived of the use and which fencing, yards or buildings were erected by the Lessee during the term of the Lease or the lease which preceded it AND in default of agreement between the Lessor and the Lessee as to the amount to be so paid the matter shall be determined by arbitration in the manner hereinafter provided AND if the Lease shall be partially determined the rent payable by the Lessee hereunder shall be reduced by an amount which bears the same proportion to the amount of rent payable hereunder prior to such determination as the proportion which the area of the Leased Land in respect of which the Lease is so determined bears to the total area of the Leased Land PROVIDED no such adjustment of rent shall be made unless the area of the Leased Land in respect of which the Lease is so determined exceeds one twentieth of the total area of the Leased Land.

7.3 Acceptance of Rent

Demand or acceptance of the Rent by the Lessor after default by the Lessee under this Lease is without prejudice to the exercise by the Lessor of:

- (a) the powers conferred upon it by clause 7.2; and
(b) any other right, power or privilege of the Lessor under this Lease,

and is not an election by the Lessor to either exercise or not exercise any of those rights, powers or privileges.

7.4 Interest on moneys due

The Lessee must pay the Lessor on demand interest on any moneys due and payable to the Lessor under the Lease and not paid within 5 Business Days of the due date at the rate of 2 per cent per annum above the Interest Rate applicable on the day the moneys were due and calculated from the date on which the moneys were due to be paid.

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7.5 Damages claimable after re-entry

- (a) The Lessor may on re-entry of the Leased Land arising out of the Lessee's failure to:
 - (i) pay money; or
 - (ii) otherwise perform or observe the Lessee's Obligations,recover as damages from the Lessee the difference between:
 - (i) any money which is, or would have been payable in respect of the unexpired part of the Term at the date of re-entry; and
 - (ii) any money the Lessor reasonably anticipates the Lessor will receive from any tenant of the Leased Land for that period.
- (b) Sub-clause (a) is in addition to any other right of action or remedy the Lessor has under this clause.
- (c) If the amount recoverable under sub-clause (a) constitutes an acceleration of an amount payable, it must be discounted for early receipt:
 - (i) by applying the discount rate in sub-clause (d); and
 - (ii) from the date the discounted amount is received by the Lessor in full.
- (d) The discount rate in sub-clause (d) is the Interest Rate at the date of re-entry by the Lessor.
- (e) This clause:
 - (i) is without prejudice to any other right of the Lessor to recover damages; and
 - (ii) continues to operate if the Lease is terminated.

8. HOLDING OVER

If the Lessee shall with the consent of the Lessor remain in possession of the Leased Land after the expiration of the Term or any renewal thereof the Lessee shall so remain as a monthly tenant only and upon and subject to all the covenants conditions and agreements herein contained.

9. NOTICES

- (a) Any notice to be served by the Lessor on the Lessee under the Lease (other than a notice referred to in paragraph (e) and (f) of Clause 4.2 hereof) shall be deemed to have been duly served by or on behalf of the Lessor if sent in a pre-paid registered letter addressed to Lessee at its address appearing hereon or the other address of the Lessee last known to the Lessor and any notice served by the Lessee on the Lessor under the Lease shall be deemed to have been duly served if sent in a pre-paid registered letter addressed to the Lessor at its address hereinbefore given. A notice sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent;

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- (b) A notice of the kind referred to in paragraphs (e) and (f) of Clause 4.2 hereof may be given at any time and from time to time by the Lessor or any servant or agent of the Lessor acting with the authority either general or particular of the Lessor and shall be deemed to have been properly served on the Lessee if addressed to the Lessee at its registered office. A notice sent by post shall be deemed to have been served at the time when in due course of post it would be delivered to where it is sent, such notice if given by a person other than the Lessor shall be deemed to have been given with the authority of the Lessor and the Lessee shall not be concerned or entitled to enquire whether or in what circumstances such authority was given;

10. ARBITRATION

If at any time any dispute or difference shall arise between the parties hereto in respect of any of the matters hereinbefore referred to or the meaning or construction of any of the provisions herein contained such dispute or difference shall be referred to an arbitrator or umpire to be appointed in accordance with the provisions of the *Commercial Arbitration Act 1985* and its amendments and each party to the proceedings before an arbitrator or umpire may be represented by a duly qualified legal practitioner.

11. GENERAL

11.1 Waiver

No consent or waiver, express or implied by the Lessor to, or of a breach of any of the Lessee's Obligations will be treated as a consent or waiver to, or a breach of the same, or of any other of the Lessee's Obligations.

11.2 No merger

Nothing in this Lease merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right power authority discretion or remedy which the Lessor may have against the Lessee.

11.3 Moratorium

A provision of any legislation which at any time directly or indirectly:

- (a) lessens or otherwise varies or affects in favour of the Lessee any of the Lessee's Obligations; or
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by the Lessor of any of the Lessor's rights under this Lease,

is negated and excluded from this Lease and all relief and protection conferred on the Lessee by or under that legislation is also negated and excluded unless its application is mandatory by law.

11.4 Registration of Lease

This Lease must be registered at the Land Titles Office of Western Australia.

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11.5 Whole agreement

The covenants and provisions contained in this Lease cover and comprise the whole of the agreement between the parties in respect of its subject matter.

11.6 Severance

If any part of this Lease is or becomes void, voidable or unenforceable, this Lease is to be read and construed as if that part had been severed from this Lease so that all parts not void, voidable or unenforceable remain in full force and effect and unaffected by that severance.

11.7 Governing law

This Lease is governed by the laws of Western Australia.

11.8 Assurance

The Lessor and the Lessee must, at the request of the other, undertake all matters, and execute all documentation, as may be necessary to give effect to the provisions of this Lease.

11.9 Warranty as to use

The Lessor warrants to the Lessee that it can grant this Lease for the purposes herein and agrees to indemnify and keep indemnified the Lessee for any reasonable loss suffered by the Lessee if this warranty should be or becomes untrue.

11.10 Lessor's Consent

Except as otherwise specified, where Lessor's consent is required under this Lease, the consent of the Lessor must not be unreasonably withheld or delayed.

11.11 Cost of Party

Where a matter is required to be undertaken by a party to this Lease, that matter will be undertaken, unless a provision in this Lease otherwise expressly provides, by the party who is obliged to undertake the matter, at the cost and expense of that party in all respects.

11.12 Obligations throughout the Term

The obligations of the Lessor and the Lessee will continue and be binding on the Lessor and the Lessee, throughout out the Term

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Reference Schedule

Item 1 **Land**

The land described as reserve 31165 (LR 3022/360) set apart for the purpose of "(1) the protection of the water resource values of Lake Argyle and the Ord River dam; (2) the protection of Lake Argyle's wetland values; and (3) the maintenance and enhancement of the traditional culture of the MG people" and placed under the care, control and management jointly in the MG Corporation and the Water and Rivers Commission under the Land Administration Act 1997.

Item 2 **Leased Land**

The whole of King Location 374 being part of the land contained in Land Title 3022/ 360.

Item 3 **Term**

(a) **Commencement Date**

(b) **Termination Date**

30 June, 2015

Item 4 **First Option Term and Second Option Term**

(a) **First Option Term**

Not Applicable

Item 5 **Permitted Use**

(a) Grazing cattle and purposes incidental thereto and carrying out works associated therewith.

Item 6 **Rent**

A\$40,000 per annum.

Item 7 **Rent Review Date**

(a) **Initial Term**

The Rent Review Dates during the Initial Term are as follows:

Triannually on anniversary of commencement date

(b) **First Option Term**

Not Applicable

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ATTESTATION SHEET

Executed by the parties as a Deed on the day of in the year

LESSOR/LESSORS SIGN HERE (NOTE 9)

Signed	Signed
In the presence of	In the presence of

LESSEE/LESSEES SIGN HERE (NOTE 9)

Signed	Signed
In the presence of	In the presence of

SCHEDULE 18 - LEASE TO BAINES RIVER INVOLVING MG CORPORATION

INSTRUCTIONS

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

NOTES

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

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

Do not show any:

- (a) Easement Benefits or Restrictive/Covenant Benefits; or
 - (b) Subsidiary interests or changes affecting a limitation, etc, that is to be entered in the panel (eg, if a mortgage is shown, do not show any partial discharges or any document affecting either).
- The documents shown are to be identified by nature and number
 The plan/diagram encumbrances shown are to be identified by nature and relevant plan/diagram
 If none show "nil"

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

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

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

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

- 7. State amount of yearly rental in words

- 8. State term of payment

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

Office Use Only

LEASE OF CROWN LAND (L)

LODGED BY

ADDRESS

PHONE No

FAX No

REFERENCE No.

ISSUING BOX No

PREPARED BY State Solicitor's Office

ADDRESS 14 / 141 St George's Terrace
Perth WA 6000

PHONE No 9264 1888

FAX No. 9264 1440

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

TITLES, LEASES, DECLARATIONS ETC LODGED
HEREWITH

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

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

EXAMINED