



Western Australia

## **Tourist Development (Secret Harbour) Agreement Act 1983**

Compare between:

[22 Dec 1983, 00-a0-02] and [30 Apr 1998, 00-b0-05]



## **Tourist Development (Secret Harbour) Agreement Act 1983**

**An Act to ratify an Agreement between the State of Western Australia and Secret Harbour Pty. Ltd. with respect to the establishment of a recreational boat harbour, a tourist resort and residential and commercial developments on certain lands and for incidental and other purposes.**

**[Assented to 22 December 1983]**

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

**1. Short title**

This Act may be cited as the *Tourist Development (Secret Harbour) Agreement Act 1983*.

**2. Interpretation**

In this Act —

**“the Agreement”** means the Agreement a copy of which is set forth in the Schedule to this Act and that Agreement as altered from time to time in accordance with its provisions;

**3. Agreement ratified**

- (1) The Agreement is hereby ratified.
- (2) The implementation of the Agreement is authorized.

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- (3) The Agreement shall operate and take effect according to its terms notwithstanding any other Act or law.

## **Schedule**

THIS AGREEMENT is made the 23rd day of November, 1983 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and SECRET HARBOUR PTY. LTD a company incorporated in the State of Western Australia and having its registered office at 115 Cambridge Street, Leederville (hereinafter called "the Company" in which term shall be included its successors and permitted assigns) of the other part.

WHEREAS:

- (a) the Company being the registered proprietor or entitled to be registered as the proprietor of the lands set forth in the First Schedule hereto (subject as therein provided) desires to establish a recreational boat harbour, tourist resort and residential and commercial development on those lands and certain adjoining lands generally in accordance with the Structure Plan;
- (b) the Company has carried out extensive investigations into the feasibility of the Project and has submitted to the Minister an environmental review and management programme and certain supplementary reports relating thereto and has provided all documents and reports required by the State prior to the date hereof in connection with the Project;
- (c) the Minister has endorsed the broad concepts expressed in the Structure Plan and the principles expressed in the said supplementary reports and, subject to the approval of proposals in accordance with this Agreement, the State has agreed to assist the Project upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH:

Definitions

1. In this Agreement subject to the context —

“advise”, “apply”, “approve”, “consent”, “certify”, “direct”, “notify”, “request”, or “require”, means advise, apply, approve, consent, certify, direct, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“Approved Proposal” means any proposal approved by the Minister or determined by arbitration under this Agreement;

“Breakwaters” means the breakwaters and other offshore structures shown on the Structure Plan to be constructed in accordance with Approved Proposals;

“Capital Fund” means the fund to be established and maintained pursuant to Clause 15;

“Clause” means a clause of this Agreement;

“Development Area” means the land and water areas within the border coloured orange on the Structure Plan;

“Facilities” means all facilities constructed established or installed by the Company within the Development Area, including earthworks, landscaping and waterways;

“Foreshore Reserve” means those areas within portions of Reserves 20716 and the land coloured yellow on the Property Plan and any other areas added thereto as are designated as ‘public beach’, ‘dune management’, ‘public recreation’, ‘public parking’, ‘public facilities’ or ‘parks and recreation’ in Approved Proposals;

“Inner Harbour” means the harbour to be constructed by the Company as part of the first Stage of the Project generally as coloured light blue on the Property Plan and includes —

- (i) the walls thereof and a strip of land one metre wide adjoining those walls measured from the point where the surface of the land meets the landward side of those walls;
- (ii) where there is an opening or gap in the wall, a strip of land one metre wide adjoining the landward side of a notional line across the opening or gap;

and

- (iii) where there is no wall between the water and the land a strip of land one metre wide landward of high water mark

and also includes any extensions to the Inner Harbour pursuant to Approved Proposals;

“Land Act” means the Land Act 1933;

“local authority” means the council of a municipality that is a city, town or shire constituted under the Local Government Act 1960;

“Management Trust” means The Secret Harbour Management Trust referred to in paragraph (c) of Clause 13;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“Outer Harbour” means the area of water generally shown bordered by a dotted blue line on the Property Plan;

“Project” means the Secret Harbour Project referred to in the recitals to this Agreement, as from time to time developed in accordance with Approved Proposals;

“Property Plan” means the plan marked ‘A’ initialled by or on behalf of the parties hereto for the purpose of identification;

“Residents” means owners or occupiers of land within the Development Area;

“said State” means the State of Western Australia;

“Sand By-Pass System” means the sand by-pass system to be constructed in accordance with Approved Proposals;

“Stage” means any Stage of the Project provided for by Approved Proposals;

“Structure Plan” means the plan marked ‘B’ (initialled by or on behalf of the parties hereto for the purpose of identification) which shows the broad concepts of (*inter alia*) the proposed Breakwaters, Sand By-Pass System, Outer Harbour, Inner Harbour, proposed residential, commercial and recreational areas and areas for future development;

“this Agreement” “hereof “ and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended;

“Town Planning Board” means the Town Planning Board established under the Town Planning and Development Act 1928.

## Interpretation

### 2. In this Agreement —



- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
- (b) power given under any clause other than Clause 20 to extend any period or date shall be without prejudice to the power of the Minister under Clause 20;
- (c) marginal notes do not affect the interpretation or construction; and
- (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu thereof and the regulations for the time being in force thereunder.

#### Initial obligation of the State

3. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31st December, 1983.

#### Ratification and operation

4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2, and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.

(2) If before 31st December, 1983 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and neither of the parties shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the Company

5. (1) The Company shall develop the Project in Stages.

(2) The first Stage of the Project shall include the construction of the Breakwaters, the Sand By-Pass System, the Outer Harbour and the Inner Harbour and in its proposals for the first Stage the Company shall address the contingency provisions detailed in the Supplementary Management Report dated August 1983 submitted by the Company to the State.

(3) With respect to each proposed Stage of the Project the Company shall, subject to the provisions of this Agreement, submit to the Minister (having due regard where applicable to the environmental review and management programme and the supplementary reports referred to in recital (b) hereof and the State's responses thereto) its proposals for the stage (including any proposed amendments to the Structure Plan) in such reasonable detail as will enable the Minister to administer this Agreement which proposals shall include the location, lay out and time programme for the construction and completion of the stage and, as appropriate, the following matters —

- (a) the construction, development, maintenance and management of the Breakwaters, the Sand By-Pass system, the Outer Harbour and the Inner Harbour;
- (b) the development of residential, commercial, industrial and recreational areas;
- (c) the development and management of Foreshore Reserves and other public areas within the Development Area;
- (d) the provision of services within the Development Area including roads, water, drainage, sewerage and power;

- (e) the monitoring and management of the environment (including groundwater) within the Development Area and adjoining areas to the extent that it or they may be materially affected by the implementation of Approved Proposals;
- (f) the establishment and administration of the Capital Fund in accordance with Clause 15; and
- (g) any jetty licences, mooring licences and easements required from the State.

(4) At the time when the Company submits its proposals for the first Stage of the Project pursuant to subclause (3) of this Clause it shall furnish to the State evidence of —

- (a) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
- (b) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals.

(5) Before submitting proposals to the Minister pursuant to subclause (3) of this Clause the Company will use reasonable endeavours to liaise with all relevant government departments and agencies in relation to the subject matter of such proposals.

#### Consideration of proposals

6. (1) The Minister shall within three months after the receipt of proposals submitted pursuant to subclause (3) of Clause 5 give to the Company notice of either:

- (a) his approval thereof; or

- (b) any objections or alterations desired thereto and in such case shall afford the Company an opportunity to consult with and submit new or revised proposals to the Minister.

(2) If within two months of receipt of a notice pursuant to paragraph (b) of subclause (1) of this Clause agreement is not reached as to such proposals, then the Company may within a further period of two (2) months elect by notice to the State to refer to arbitration as herein provided (subject to subclause (4) of Clause 27) any dispute as to the reasonableness of the Minister's decision. If the Company does not so elect within such period, such proposals shall lapse on the expiration of that period.

(3) The Company shall implement proposals approved pursuant to this Clause or an award made on arbitration as the case may be in accordance with the terms thereof.

#### Additional proposals

7. If the Company at any time during the continuance of this Agreement desires to modify expand or otherwise vary its activities carried on pursuant to this Agreement beyond those specified in any Approved Proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (g) of subclause (3) of Clause 5 and such other matters as the Minister may require. The provisions of Clauses 5 and 6 shall *mutatis mutandis* apply to proposals submitted pursuant to this Clause. The Company shall implement the Approved Proposals in accordance with the terms thereof.

#### Exchange of land

8. Forthwith following approval of proposals for the first Stage of the Project and subject to the provisions of Section 8 of the Land Act, the Company shall transfer to the Crown the land (being part of Peel Estate Lot 1092) coloured red on the Property Plan in exchange for a Grant in fee simple of the land (being part

of Reserve No. 20716 and part of former Anstey Road) coloured purple on the Property Plan. For the purposes of this Clause the value of the lands to be exchanged shall be determined by a valuation as at a date within one month prior to the date of this Agreement.

#### Transfer and lease of lands

9. Upon completion of construction of the Breakwaters, the Sand By-Pass System, the Outer Harbour and the Inner Harbour in accordance with Approved Proposals and to the satisfaction of the Minister —

- (a) the Company shall transfer to the Crown —
  - (i) the land shown coloured yellow on the Property Plan;
  - (ii) all other land of the Company comprised within the Inner Harbour; and
- (b) subject thereto, the State shall grant to the Company a lease of the Inner Harbour (as transferred pursuant to paragraph (a) (ii) of this Clause) for a period of 99 years at peppercorn rental such lease to be granted under and except as otherwise provided in this Agreement subject to the Land Act but in the form set out in the Second Schedule hereto.

#### Extensions to Inner Harbour

10. Where in accordance with Approved Proposals the Inner Harbour is extended, the Company shall on completion of construction of each such extension transfer to the Crown the land comprised within the extension and the State shall thereupon grant to the Company a lease of the land so transferred at peppercorn rental for a term equal to the unexpired term of the lease referred to in paragraph (b) of Clause 9 and otherwise on the same terms and conditions as that lease.

Modification of Land Act

11. For the purpose of this Agreement in respect of any land leased to the Company by the State the Land Act shall be deemed modified by —

- (a) the substitution for subsection (2) of section 45A of the following subsection —
  - “ (2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be leased. ”;
- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) the deletion of section 143;
- (e) the inclusion of a power to grant leases for terms or periods and on such terms and conditions and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act and upon application by the Company in forms consistent as aforesaid in lieu of in the forms referred to in the Land Act.

The provisions of this Clause shall not operate so as to the prejudice the rights of the State to determine any lease or other right or title in accordance with the other provisions of this Agreement.

Further obligations of the Company

12. The Company shall —

- (a) carry out all construction works for the Project in a competent manner, and employ or engage competent staff and consultants in relation to the carrying out of the Project;
- (b) maintain or cause to be maintained the Facilities within the Inner Harbour and the Outer Harbour in good condition for a period of three years after the completion of the first Stage of the Project and thereafter maintain or cause to be maintained in good condition such Facilities other than (except as otherwise provided in Approved Proposals) those Facilities which are from time to time vested in or are the responsibility of the Management Trust or the relevant local authority;
- (c) until the Management Trust is established, maintain and control the use of the Breakwaters and the Sand By-Pass System;
- (d) install, maintain and operate such navigational aids relative to the Project as may be reasonably required from time to time by the State.

Further obligations of the State

13. The State shall —

- (a) in accordance with Approved Proposals grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant, for such periods and on such terms and conditions (including rental and renewal rights) as shall be reasonable having regard to the requirements of the Company —
  - (i) easements and if applicable leases in connection with the Sand By-Pass System;

- (ii) mooring licences over the water areas of the Outer Harbour and the Inner Harbour; and
  - (iii) licences under the Jetties Act 1926 for the construction, maintenance and use of jetties within the Inner Harbour and the Outer Harbour;
- (b) co-ordinate the activities of all authorities and instrumentalities of the State concerned with the Project and endeavour to ensure the grant by all such relevant authorities and instrumentalities of all necessary licences and permits to enable the Company to develop the Project in accordance with Approved Proposals;
- (c) prior to 31st May, 1984 introduce and sponsor a Bill in the Parliament of Western Australia to establish a management trust to be known as The Secret Harbour Management Trust to manage and regulate the maintenance, safety and environment of the Breakwaters, the Sand By-Pass System, the Outer Harbour, the Inner Harbour and the Foreshore Reserve and provide for vesting in the management trust of the Breakwaters and the Sand By-Pass System;
- (d) as soon as reasonably practicable having regard to its overall responsibilities, extend the southern boundary of the jurisdiction of the Metropolitan Water Authority to the southern boundary of the land referred to in paragraph (a) of the First Schedule hereto.

Use of local professional services labour and materials

14. (1) The Company shall, for the purposes of this Agreement, as far as it is reasonable and economically practicable so to do —
- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
  - (b) use labour available within the said State;



- (c) when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.

(2) The Company shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) of this Clause and shall report to the Company concerning such third party's implementation of that condition.

(3) The Company shall submit a report to the Minister at quarterly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning its implementation of the provisions of this Clause together with a copy of any report received by the Company pursuant to subclause (2) of this Clause during that quarter (or such longer period as aforesaid).

#### Capital Fund

15. (1) In this Clause —

“Approval” means an approval by the Town Planning Board pursuant to section 20 of the Town Planning and Development Act 1928;

“Capital Fund Trustee” means the company appointed as trustee of the Capital Fund in accordance with subclause (4) of this Clause;

“Final Subdivision” in relation to any area of land within the Development Area means the date of Approval of the subdivision of that land into one or more lots not exceeding 2 000 square metres in area and applies only to the lot or lots created on such subdivisions which do not exceed 2 000 square metres in area.

(2) The Company agrees with the State and, when appointed, the Capital Fund Trustee, that it will —

(a) establish a fund (“the Capital Fund”) for the purposes set out in subclause (5) of this Clause in the manner set out in this Clause; and

(b) pay to the Capital Fund Trustee or otherwise to or for the credit of the Capital Fund —

(i) during the period of five years from the first sale of land within the Development Area an amount equal to 2½% of the value of all land within the Development Area sold by the Company; and

(ii) during each successive period of 5 years thereafter an amount equal to 2½% of the value of all land within the Development Area sold by the Company or such lesser or greater percentage as may be agreed between the Company and the Minister, or failing agreement, if either party so requires, as may be determined by arbitration in accordance with Clause 27 having regard to the purpose of the Capital Fund set out in subclause (5) (b) of this Clause, but in any event not exceeding 4% of such value.

For the purpose of this subclause land shall be deemed to be sold by the Company when it receives the sale price.

(3) Any purchaser or other successor in title from the Company of land within the Development Area who subdivides such land or any part thereof (other than a subdivision subsequent to a Final Subdivision of the relevant lot or a subdivision into strata titles) shall on the Approval of such subdivision pay to the

Capital Fund Trustee or otherwise to or for the credit of the Capital Fund an amount calculated in accordance with the percentage then applicable under subclause (2) (b) of this Clause on the basis of the value of the land as so subdivided and the Town Planning Board may make a requirement for such payment a condition of any such Approval.

(4) The Company shall by deed executed by it and in a form approved by the Minister appoint a public company approved by the Minister to be the trustee of the Capital Fund not later than one (1) month prior to the first sale by the Company of any land within the Development Area. The Company may at any time, with the prior approval of the Minister, terminate any such appointment and appoint a new such trustee by deed executed by the Company.

(5) The Capital Fund may be applied for any one or more of the following purposes —

- (a) in making loans to the Management Trust to meet operating expenditure requirements;
- (b) in making grants to the Management Trust to finance any necessary major maintenance of or the reconstruction of the walls of the Inner Harbour, the Breakwaters and the Sand By-pass System and navigational aids within the Inner Harbour or the Outer Harbour;
- (c) for such other purposes connected with the Secret Harbour locality or any activity carried out therein as the Management Trust may propose and the Minister and the Company may approve.

(6) The Capital Fund Trustee shall be authorised to make payments under subclause (5) (b) of this Clause on receiving —

- (a) a certificate from a qualified consulting engineer that the funds are properly required by the Management Trust for the purposes specified in that paragraph; and
- (b) the approval of the Minister to the payment being made.

(7) The Capital Fund shall be held by the Capital Fund Trustee on the terms of the trust deed referred to in subclause (4) of this Clause which shall —

- (a) give effect to the provisions of this Clause;
- (b) provide that the term of the Fund shall be eighty years and that at the expiration of such term the monies constituting the Fund (including income) shall be dealt with as directed by the Minister;
- (c) authorise investment of the Capital Fund in —
  - (i) investments authorised by the Trustees Act 1962;
  - (ii) income producing real estate;
  - (iii) such other forms of investment as the Minister may from time to time approve;
- (d) provide that in making any loans or grants as provided in subclause (5) of this Clause, the income of the Capital Fund shall be used first and, only if such income is insufficient, shall resort be made to the capital of the Capital Fund;
- (e) contain reasonable indemnities in favour of the Trustee;
- (f) contain such other terms and provisions as shall be agreed between the Company and the Minister.

(8) All amounts which from time to time become payable by the Company to the Capital Fund under this Clause in respect of each of the three monthly periods ending on 31st March, 30th June, 30th September and 31st December in each year shall be paid to the Capital Fund Trustee not later than the end of the month following the expiration of the relevant three monthly period. The Company shall with each payment provide the Capital Fund Trustee and the Minister with an audited statement of the sales in respect of which the payment is being made.

(9) For the purposes of subclauses (2) and (3) of this Clause the value of any land within the Development Area sold by the Company or subdivided by any purchaser or other successor in title from the Company shall be that portion of the value of the land sold or subdivided as is attributable to the value of the land sold, excluding the value of any buildings or other structures on the land, as determined by agreement between the Company and the Capital Fund Trustee or, failing agreement, as determined by arbitration in accordance with the Arbitration Act 1895.

(10) Subclause (2) of Clause 27 shall not apply to this Clause.

#### Resumption

16. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency hereof —

- (a) resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the State any land within the Development Area for the time being belonging to the Company; nor
- (b) create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any right-of-way or easement of any nature or kind whatsoever over or in respect of any such lands

without first consulting with the Company as to any such proposal and giving to the Company full opportunity to make representations to the State with regard thereto and using reasonable endeavours to avoid undue prejudice to or interference with the carrying out of the Project by the Company. Clause 27 shall not apply to this Clause.

#### Assignment

17. (1) Subject to the provisions of this Clause, the Company may at any time with the consent of the Minister assign mortgage charge sublet or dispose of to any company or person the whole or any part of the rights of the Company hereunder and of the obligations of the Company hereunder subject in the case of an assignment subletting or disposition to the assignee sublessee or disponee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition under subclause (1) of this Clause PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

(3) Notwithstanding that the Company has entered into this Agreement in its capacity as trustee for the Secret Harbour Unit Trust —

- (a) the State shall not be affected by notice of that trust; and
- (b) any alteration of the status of the Company as such trustee shall notwithstanding the Trustees Act 1962 not be binding on the State nor shall it affect the rights and obligations of either party under this Agreement unless effected in, accordance with the provisions of this Clause.

(4) Notwithstanding the provisions of the Transfer of Land Act 1893 and the Land Act, insofar as the same or either of them may apply —

- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over any lease licence easement

grant or other title granted hereunder or pursuant hereto by the Company or any assignee sublessee or disponee who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under this Clause.

#### Variation

18. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease licence easement grant or other title granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) The Minister shall cause any agreement made pursuant to subclause (1) of this Clause in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

(3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

#### *Force majeure*

19. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of

continuing obligations hereunder that may be caused by or arise from circumstance beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God *force majeure* earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots industrial disputes shortages of labour or essential materials reasonable failure to secure contractors delays of contractors or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

#### Power to extend periods

20. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period of vary or further vary any date referred to in this Agreement or in any Approved Proposal hereunder for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

#### Determination of Agreement

21. (1) In any of the following events namely if:
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company herein or in any lease licence easement grant or other title or document granted or assigned under this Agreement on its part to be performed or observed; or



- (ii) the Company abandons or repudiates this Agreement or its operations under this Agreement,

and such default is not remedied or such operations resumed within a period of 180 days after notice is given by the State as provided in subclause (2) of this Clause or, if the default or abandonment is referred to arbitration, then within the period mentioned in, subclause (3) of this Clause, or

- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within three (3) months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 17

the State may by notice to the Company determine this Agreement.

(2) The notice to be given by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other grounds so entitling the State to exercise its right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 17 whose name and address for service of notice has previously been notified to the State by the Company or by any such assignee, mortgagee, chargee or disponent.

- (3) (a) If the Company contests the alleged default, abandonment or repudiation referred to in paragraphs (a) and (b) of subclause (1) of this Clause the Company shall within sixty (60) days after notice is given by the State provided in subclause (2) of this Clause refer the matter in dispute to arbitration.
- (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the

arbitrator finds that there was a *bona fide* dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.

(4) If the default referred to in subclause (1) of this Clause shall not have been remedied after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid, the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to either upon lands occupied by the Company and to make use of all plant machinery and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be payable by the Company to the State on demand.

#### Effect of cessation or determination of Agreement

22. On the cessation or determination of this Agreement —

(a) except as otherwise agreed by the Minister —

(i) the rights of the Company in or under this Agreement; and

(ii) where the Agreement has been determined because of a matter mentioned in subclause (1) of Clause 21, the rights of the Company or any assignee mortgagee chargee or disponee to any lease, licence, easement, grant or other title or right granted hereunder or pursuant hereto

shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;

(b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due;

- (c) save as aforesaid and as otherwise provided in this Agreement, neither of the parties hereto shall have any claim against the other in respect to any matter or thing in or arising out of this Agreement.

#### Environmental protection

23. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities hereunder that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.

#### Indemnity

24. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its operations hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

#### Surveys

25. Any surveys of land and bathymetric surveys required for the purposes of this Agreement within the Development Area shall be carried out at the expense of the Company.

#### Company as owner of land

26. Nothing in this Agreement shall exempt the Company as an owner of land from any provision of the Local Government Act 1960, the Metropolitan Region Town Planning Scheme Act 1959 and the Town Planning and Development Act 1928.

#### Arbitration

27. (1) Subject to subclause (4) of this Clause any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties or under this Agreement shall, in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary, be referred to the arbitration of two arbitrators, one to be appointed by each party, the arbitrators to appoint their umpire before proceeding in the reference and any such arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1895.

(2) Except as otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given a discretionary power.

(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

(4) Where in respect of any matter that might otherwise be referred to arbitration under this Clause the Company has a right of appeal under the Town Planning and Development Act 1928, the matter shall be determined in accordance with that Act and the provisions of subclause (1) of this Clause shall not apply.

Mining tenements

28. During the period of ten years from the date of this Agreement the State shall not, without the consent of the Company, grant any lease or other mining tenement under the Mining Act 1978 in respect of any land within the Development Area for the time being belonging to the Company.

Notices

29. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer in the Civil Service of the State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company at its registered office for the time being in the State and by the Company if signed on its behalf by any director or the secretary of the Company or by its solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister, and except in the case of personal service, any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Applicable law

30. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

THE FIRST SCHEDULE

- (a) Portion of Cockburn Sound Location 16 being the whole of the land comprised in Certificate of Title Volume 1249 Folio 850 (including any accretions thereto), all the said land being Lot 50 on Diagram 61971 and

held by the Company under the terms of an Agreement dated 14 May, 1978.

- (b) Portion of Peel Estate Lot 1092 being the whole of the land comprised in Certificate of Title Volume 1303 Folio 762.
- (c) Portion of Peel Estate Lot 1093 and being Lot 93 on Diagram 63314 and being the whole of the land comprised in Certificate of Title Volume 1627 Folio 130.
- (d) Portion of Peel Estate Lot 1094 and being Lot 94 on Diagram 63314 and being the whole of the land comprised in Certificate of Title Volume 1627 Folio 131.

THE SECOND SCHEDULE.

WESTERN AUSTRALIA.

SPECIAL LEASE.

(Under Section 116 of the Land Act, 1933 and the Tourist  
Development (Secret Harbour) Agreement Act, 1893.)

SOUTH WEST DIVISION

LOCATION

REGISTRATION FEE PAID

LEASE NO.

ELIZABETH THE SECOND by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth. To all to whom these presents shall come, GREETING: Know ye that:

WHEREAS:

- A. By the Land Act, 1933 power is given to the Minister for Lands of our State of Western Australia to grant leases of any portion of land to any person for any special purpose upon the terms and conditions set forth in Section 116 of the said Act.
- B. By Clause 11 of the Agreement it is provided that for the purpose of the Agreement in respect of any land leased to the Lessee by the State the Land Act 1933 shall be deemed to be modified (*inter alia*) by the deletion of the proviso to Section 116 and by the inclusion of a power to grant leases for terms or periods and on such terms and conditions and in forms consistent with the provisions of the Agreement in lieu of the terms or periods the terms and conditions and the forms referred to in the Land Act.
- C. By Clause 9 (b) of the Agreement it was provided that subject to the terms and conditions therein contained the State shall grant to the Lessee a lease under the Land Act 1933 of the Inner Harbour (as therein defined) for a period of ninety-nine (99) years at a peppercorn rental.
- D. The Lessee has made application for a lease of the land hereinafter described and delineated in the Schedule hereto under Section 116 (14) of the Land Act, 1933 as modified by the Agreement for the special purpose of a Boat Harbour and associated purposes.
- E. The Governor in Council has by notice in the *Government Gazette* approved the special purpose and has approved the granting of the said lease.
- F. Our Minister for Lands has in pursuance of Section 136 of the Land Act 1933 (to the extent to which that section applies to this lease) allowed directed and approved the granting of this lease.

We of Our especial Grace, and in consideration of the premises, and also in consideration of the rents hereinafter reserved and on the part of the Lessee to be paid and in the exercise of the powers in that behalf to Us given by the said Act,

do by these presents demise and lease to the Lessee ALL THAT piece or parcel of land described and delineated in the Schedule hereto with the appurtenances (hereinafter referred to as “the demised premises”) TO HAVE AND TO HOLD the demised premises SUBJECT TO the powers reservations covenants and conditions herein in the Agreement and in the said Act contained and with all the rights powers and privileges conferred by the said Act and the Agreement as are applicable hereto unto the Lessee for the term of ninety-nine (99) years to be computed from the                    day of                    19                    (but determinable as hereinafter provided) for the special purpose aforesaid YIELDING AND PAYING therefor during the said term unto Us, Our heirs and successors the yearly rent of ONE PEPPERCORN of yearly rental payable if and when demanded by the Minister for Lands of our said State PROVIDED NEVERTHELESS that We do hereby save and reserve to Us, Our heirs and successors, all mines of gold, silver, copper tin or other metals, ore and mineral, or other substances containing metals, and all gems and precious stones, and coal or mineral oil, and all phosphatic substances in and under the demised premises, with full liberty at all times to search and dig for and carry away the same; and for that purpose enter upon the demised premises or any part thereof; PROVIDED FURTHER that all petroleum on or below the surface of the demised premises is reserved to Her Majesty with the right to Her Majesty or any person claiming under her or lawfully authorised in that behalf to have access to the demised premises for the purpose of searching for and for the operations of obtaining petroleum in any part of the land under the provisions of the Petroleum Act, 1967.

1. THE Lessee HEREBY COVENANTS AND AGREES with Us, Our Heirs and successors and with the Minister for Lands as follows: —

- (1) The Lessee will pay the reserved rent in manner aforesaid.
- (2) The Lessee shall —
  - (a) duly and punctually pay and discharge all present and future rates taxes charges assessments impositions and out-goings whatsoever which now are or during the term hereby created shall be payable in respect of or charged upon the demised premises or imposed upon the owner occupier or tenant in respect thereof;



- (b) maintain or cause to be maintained the harbour walls and all structures constructed by or on behalf of the Lessee within and all surface land areas of the demised premises in good condition for a period of three (3) years from the day of 198 and thereafter maintain or cause to be maintained the said harbour walls and all structures constructed by or on behalf of the Lessee within and all surface land areas of the demised premises in good condition until the maintenance thereof becomes the responsibility of the Secret Harbour Management Trust;
- (c) duly and punctually perform observe comply with carry out and conform with the provisions of all statutes for the time being in force and of all rules regulations and by-laws made thereunder and for the time being in force;
- (d) not do or leave undone or cause or permit or suffer to be done or left undone in or upon the demised premises or any part thereof any act or thing which may be or become a nuisance damage annoyance or inconvenience to the Minister for Lands or to the occupiers of any of the adjoining or neighbouring premises and not to use or permit the use of the demised premises except for the purposes of the Boat Harbour and associated purposes;
- (e) perform discharge and execute all requisitions and works and do and perform all such acts and things upon unto in respect of or affecting the demised premises or any part thereof or the operations carried out therein as are or may be required or directed to be executed or done (whether by the Minister for Lands or tenant owner or occupier) by the Council of any municipality and by any other 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;
- (f) not 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 of 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 demised premises or any business or activity carried on upon the same or the use or occupancy thereof AND to forthwith abate any such nuisance or alleged nuisance and carry out and comply with all the provisions of every such statute or by-law and of every requisition and order of any local or other public authority in reference thereto;

- (g) pay to the Minister for Lands or as directed by it on demand all sums of money which the said Minister may at any time and from time to time hereafter pay or expend or be called upon to repay in or about or in connection with performing discharging or executing any requisition or works or abating any nuisance or alleged nuisance referred to in the immediately proceeding paragraphs (e) and (f) and which contrary to the agreements therein contained the Lessee neglects or fails to perform discharge or execute;
  
- (h) EXCEPT as provided in Approved Proposals not without the previous consent in writing of the Minister for Lands the Minister for Works and the Minister for Transport first had and obtained dredge or reclaim any part of the water area over the demised premises or build on affix to or install on or permit or suffer to be built on affixed to or installed on the demised premises any building structure erection fixture plant equipment or improvement whatsoever (either above or below the surface of the demised premises other than jetties or moorings erected in accordance with Approved Proposals pursuant to licences issued for that purpose) or otherwise make or effect any alteration or addition to the demised premises and with each application for the consent therefor submit to the said Ministers plans and specifications of the proposed dredging or reclamation works buildings structure erection fixture plant equipment improvement alteration or addition and to make complete and carry out the same strictly in accordance with plans and specifications approved by the said Ministers and the local authority having jurisdiction over

the demised premises AND the provisions of Clause 1 (4) shall apply *mutatis mutandis* to all works undertaken by the Lessee pursuant to this paragraph (h);

- (i) permit any Minister of the Crown by agents servants and workmen with or without appliances and equipment at all times to enter into and upon the demised premises to inspect the demised premises for the purpose of ensuring that the Lessee is observing performing and complying with the covenants conditions and obligations of this lease and the Lessee shall forthwith execute all the works (including maintenance and the removal of any obstructions) required to be done in accordance with the provisions of this lease PROVIDED THAT if the Lessee shall not within one month after service of such notice commence and diligently proceed with the execution of those works mentioned in such notice (including where necessary and with the prior consent of any such Minister the undertaking by and at the expense in all things of the Lessee of any preliminary research investigations and studies relating to such work) it shall be lawful for the said Minister by its contractors servants workmen and agents to enter upon the demised premises and execute such works and the cost thereof shall be debt from the Lessee and be forthwith recoverable by action;
  
- (j) permit the Metropolitan Water Authority by its officers workmen servants agents contractors and others acting under the authority of the said Authority with or without vehicles or motor or other mechanised vehicle laden or unladen from time to time and at all times during the said term to enter on the demised premises for the purposes of inspecting cleansing repairing maintaining and renewing such drains and all or any apparatus connected therewith as may be constructed beneath the surface of the demised premises (hereinafter referred to as “the Board’s drains”);
  
- (k) not to construct or cause permit or suffer the construction of any building foundation or structure or any part thereof within 2.7 metres of the centreline of the Board’s drains and not to do

cause suffer or permit any act matter or thing which will obstruct or is likely to obstruct the flow of water through the Board's drains;

- (l) not to obstruct or permit to be obstructed the waters of and the air space above the Boat Harbour and the approach channel with any obstructions which are or may be prejudicial to or endanger or impede the navigation of such waters except pursuant to jetty or mooring licences granted under or otherwise in accordance with Approved Proposals and in particular without limiting the generality of the foregoing the Lessee will dredge or cause to be dredged the demised premises to the minimum depth published from time to time by the Department of Marine and Harbours or otherwise as provided in the Lessee's Approved Proposals;
- (m) at its own cost and expense arrange for the installation connection and maintenance of all electric power and lighting telephone water drainage and sewerage and other services to on and from the demised premises;
- (n) accept sole responsibility for the disposal of all dross garbage refuse waste substances or material of whatsoever kind from the works or operations on the demised premises;
- (o) EXCEPT as shall be provided in Approved Proposals comply forthwith with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Lessee hereunder that may be made by the Crown or by any Crown agency or instrumentality or any local or other authority or statutory body pursuant to any Act from time to time in force and in particular and without derogating from the foregoing provisions of this subclause permit inspectors appointed under Section 66 of the Environmental Protection Act 1971 and other officers of the Environmental Protection Authority at all reasonable times to have access to the demised premises or either as the case requires for the purpose of monitoring the quality of the

waters and the biota of the Boat Harbour and the approach channel;

- (p) provide instal maintain and operate navigational aids relative to the operation of the Boat Harbour as may be reasonably required from time to time by the Crown except where any of such matters are the responsibility of the Secret Harbour Management Trust;
- (q) at all times during the term hereof ensure that free public access to the surface waters forming part of the Boat Harbour from the Indian Ocean is permitted subject to the terms of any jetty licence or mooring licence held by the Lessee or any by-laws of the Secret Harbour Management Trust PROVIDED THAT with the prior approval of the Minister for Lands such access may be prohibited or restricted for any reasonable purpose and period;
- (r) as and when necessary apply for and obtain a jetty and mooring licence or licences and pay all fees payable in connection therewith;
- (s) indemnify and keep indemnified all Ministers of the Crown and the Crown and all instrumentalities thereof and all officers servants workmen agents and contractors of such Ministers the Crown and its instrumentalities and the employees of such agents and contractors from and against all actions claims costs proceedings suits and demands whatsoever (whether arising founded on or based in contract tort or statute or otherwise howsoever or any combination thereof) which may at any time be brought maintained or made against all or anyone or more of them:
  - (i) in respect of any loss (including loss of use) injury or damage of or to any nature or kind of property; and
  - (ii) in respect of any death or injury sustained by any person including without limiting the generality of the

foregoing an officer servant workman agent or contractor of the said Ministers or an employee of such agent or contractor

directly or indirectly during the term hereof or any extension hereof caused by arising out of or in connection with:

- (1) the use or occupation of the demised premises by the Lessee, or
- (2) any work carried out by or on behalf of the Lessee pursuant to this lease, or
- (3) the Lessee's activities and operations business or otherwise whatsoever under this lease, or
- (4) the construction maintenance or use by the Lessee or its members officers servants workmen agents contractors subcontractors licensees invitees customers visitors or any other person or persons whatsoever of the works facilities or services the subject of this lease or the plant apparatus or equipment installed in connection therewith, or
- (5) any incorrect information or data or plans given or made available by the Lessee or on its behalf to the said Ministers or the Crown or any instrumentality thereof, or
- (6) any default by the Lessee in the due and punctual performance observance and compliance with any of its other covenants agreements conditions or obligations herein contained;

PROVIDED that this subclause shall not apply where any such loss death or injury is caused or contributed to (to the extent of such contribution) by the negligence of any Minister,

the Crown or any instrumentality thereof or any officer servant agent or contractor of any Minister the Crown or any instrumentality thereof;

- (t) insure in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000) or such other amount as may be reasonably agreed between the Minister for Lands and the Lessee from time to time in an insurance office reasonably acceptable to the said Minister in respect of all indemnities referred to in the immediately preceding paragraph (s) and produce or cause to be produced to the said Minister the relevant policy or policies of insurance and premium receipts therefor AND if the Lessee fails to pay any premiums in respect of any such policy the said Minister may pay the same and any amount so paid by the said Minister shall be payable by the Lessee to the said Minister on demand;
  - (u) yield up the demised premises including the harbour walls and all the existing permanent structures belonging to the Lessee at the expiration or sooner determination of this lease in accordance with the covenants and agreements herein contained.
- (3) Except as hereinafter in this subclause provided the Lessee will not without the prior written consent of the Minister for Lands assign mortgage charge sublet dispose of part with the possession of or grant any licence in respect of the demised premises or any part thereof or procure allow or suffer either voluntarily or involuntarily the same to be assigned mortgaged charged sublet disposed of the possession thereof parted with or licensed for all or any part of the term hereby created PROVIDED THAT the said Minister may condition its consent upon the execution of an agreement to be prepared by or on behalf of the said Minister and executed by the proposed assignee mortgagee chargee sublessee or licensee binding such assignee mortgagee chargee sublessee or licensee to observe and comply with the covenants conditions and stipulations herein contained and such further covenants and conditions as the said Minister shall deem fit PROVIDED FURTHER THAT notwithstanding anything contained in or anything done under or

pursuant to the preceding provisions of this subclause the Lessee shall at all times during the currency of this lease be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part herein contained or implied AND the provisions of Sections 80 and 82 of the Property Law Act 1969 are hereby expressly excluded from this lease PROVIDED FURTHER that the said Minister may agree to release the Lessee from all future liability under this Lease where he considers such release will not be contrary to the interests of the Crown and PROVIDED FURTHER that this subclause shall not apply to any permits or sublicences granted by the Lessee pursuant to any jetty licence or mooring licence held by the Lessee with respect to any part of the demised premises.

- (4) Notwithstanding the prior written consent of the Minister for Lands pursuant to the immediately preceding subclause (3) the Lessee will whenever requested by the said Minister —
- (a) give to the said Minister such particulars in writing as the said Minister may reasonably require of all assignments sublettings and licences to which the provisions of the preceding paragraph (3) hereof apply granted in respect of the demised premises or any part thereof;
  - (b) make available to the said Minister or a person appointed in writing by the said Minister all documents and records which relate to or are connected with any such assignment subletting or licence and permit the said Minister or person so appointed to examine and take copies or extracts from them.

2. PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED AND DECLARED by and between Us, Our heirs and successors the Minister for Lands and the Lessee as follows:

- (1) All rights other than those expressly or impliedly granted under this lease are reserved to Us, Our heirs and successors and the Minister for Lands (as the case requires).



- (2) If —
- (a) the Lessee goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within three (3) months from the date of such liquidation the interest of the Lessee is assigned to an assignee approved by the Minister under clause 1 (3) hereof;
  - (b) the demised premises cease to be used for the special purpose of a Boat Harbour or associated purposes; or
  - (c) if the Agreement is terminated by the State pursuant to clause 21 (1) of the Agreement, or
  - (d) the Lessee defaults in the due and punctual performance or observance of any covenant on its part herein or in the Agreement contained or implied and fails to remedy that default within a period of 180 days after the service on the Lessee of a notice specifying such default

THEN and in any of the said cases it shall be lawful for Us, Our heirs and successors into and upon the demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as if this lease had never been executed without making any compensation to the Lessee but without prejudice to any right of action of both or either of Us, Our heirs and successors and the Minister for Lands in respect of any breach of the Lessee's covenants herein contained.

- (3) Any notice consent request or other writing authorised or required by this lease to be given or sent shall be deemed to have been duly given or sent by the Minister for Lands if signed by such Minister or by any senior officer of the Public Service of the said State acting by the direction of such Minister and forwarded by prepaid registered post to the Lessee at its address hereinafter stated and by the Lessee if signed on its behalf by a person authorised to do so and forwarded by prepaid registered post to the Minister for Lands at its office in Perth AND any such notice consent request or writing shall be

deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

- (4) This Lease is made subject to the provisions of the Agreement and in the event of any conflict or inconsistency between the provisions of the Agreement and the provisions hereof then the provisions of the Agreement shall to the extent of the conflict or inconsistency prevail.
- (5) The Crown shall not do anything to prevent or preclude access to the demised premises for navigation from the Indian Ocean.
- (6) As an from a date two (2) months after the Secret Harbour Management Trust is established the Lessee shall be freed and discharged from the obligations contained in clauses 1 (2) (d), 1 (2) (e), 1 (2) (f), 1 (2) (l), 1 (2) (n) and 1 (2) (o) of this Lease but without prejudice to the rights of the Crown in respect of any antecedent default or breach of covenant by the Lessee.
- (7) In this lease unless the contrary intention appears —

“Agreement” means the agreement ratified by the Secret Harbour Development Agreement Act 1983 a copy whereof is set out in the Schedule to the said Act;

“approve” “approval” “consent” or “direct” means approve approval consent or direct in writing as the case may be;

“Approved Proposals” means any proposals approved under the Agreement by the Minister as therein defined or determined by arbitration as therein provided;

“Crown” means the Crown in right of the State of Western Australia;

“Inner Harbour” means the harbour constructed by the Lessee as part of the first stage of the Lessee’s Secret Harbour Project

generally as coloured light blue on the Property Plan referred to in the Agreement and includes —

- (i) the walls thereof and a strip of land one metre wide adjoining those walls measured from the point where the surface of the land meets the landward side of those walls;
- (ii) where there is an opening or gap in the wall, a strip of land one metre wide adjoining the landward side of a notional line across the opening or gap; and
- (iii) where there is no wall between the water and the land a strip of land one metre wide landward of high water mark;

“Jetty licence” means a licence granted under the Jetties Act 1926 and the regulations made thereto;

“Lessee” means SECRET HARBOUR PTY. LTD. a company duly incorporated and having its registered office at 115 Cambridge Street Leederville in the State of Western Australia and includes the Lessee’s successors transferees and permitted assigns;

“Minister for Lands” means the Minister for Lands and Surveys a body corporate by that name pursuant to the provisions of the Land Act 1933;

“Minister for Transport” means The Minister for Transport a body corporate by that name pursuant to the provisions of the Marine and Harbours Act 1981 and includes the Minister of the Crown to whom the administration of the Jetties Act 1926 and the Western Australian Marine Act 1948 is for the time being committed by the Governor and includes any Minister of the Crown for the time being discharging the duties of the office of that Minister;

“Minister for Works” means the Minister for Works a body corporate by that name pursuant to the provisions of the Public Works Act 1902;

“Mooring licence” means a licence granted under the Marine Act 1983 and the Regulations made pursuant thereto;

“notice” means notice in writing;

“person” or “persons” includes corporate bodies;

“Secret Harbour Management Trust” means the management trust to be established by the State pursuant to Clause 13 (c) of the Agreement;

“State” means the State of Western Australia;

Reference to any Act shall include the amendments to such Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof or which forms part of or is incorporated therein and the regulations for the time being in force thereunder.



**Tourist Development (Secret Harbour) Agreement Act 1983**  
**Schedule**

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SIGNED by the said THE  
HONOURABLE BRIAN THOMAS  
BURKE, M.L.A. in the presence of:

}

BRIAN BURKE

DAVID C. PARKER,  
MINISTER FOR PLANNING

THE COMMON SEAL of SECRET  
HARBOUR PTY. LTD. was hereunto  
affixed by authority of the  
Board of Directors in the presence of:

}

(C.S.)

Director. K. D. MERIFIELD,

Director. E. J. R. REILLY,

**NOTES**

- <sup>1.</sup> This is a compilation of the *Tourist Development (Secret Harbour) Agreement Act 1983* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Tourist Development (Secret Harbour) Agreement Act 1983</i>	81 of 1983	22 Dec 1983	22 Dec 1983
<a href="#"><u>This Act was repealed by the Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 16 (No. 10 of 1998) as at 30 Apr 1998</u></a>			