



HopgoodGanim

# Agreement for Sublease (J-Arm)

Marina Berth J1, Port of Airlie

Meridien Airlie Beach Pty Ltd ACN 101 370 763 (Receivers and Managers Appointed) (In Liquidation) and Meridien AB Pty Ltd ACN 101 370 772 (Receivers and Managers Appointed) (In Liquidation) (**Sublessor**)

Glen Arthur Finning and Brenda Jo Finning as trustee for Finning Family Superfund (**Sublessee**)

Glen Arthur Finning and Brenda Jo Finning (**Guarantor**)

Contact – Meryl Snow, Partner, [m.snow@hopgoodganim.com.au](mailto:m.snow@hopgoodganim.com.au)

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# Agreement for Sublease (J-Arm)



Date \_\_\_\_\_

## Parties

Meridien Airlie Beach Pty Ltd ACN 101 370 763 (Receivers and Managers Appointed) (In Liquidation) and Meridien AB Pty Ltd ACN 101 370 772 (Receivers and Managers Appointed) (In Liquidation) (Sublessor)

Glen Arthur Finning and Brenda Jo Finning as trustee for Finning Family Superfund (Sublessee)

Glen Arthur Finning and Brenda Jo Finning (Guarantor)

## Background

- A. Under the Term Lease, the Sublessor is the registered lessee of the Marina from the State.
- B. The Sublessor has agreed to sublease the Berth to the Sublessee and the Sublessee has agreed to sublease the Berth from the Sublessor on the terms and conditions set out in this agreement.

It is agreed

## 1. Reference Schedule, definitions and interpretation

### 1.1 Reference Schedule

Where a term used in this agreement appears in bold type in the Reference Schedule, that term has the meaning shown opposite it in the Reference Schedule.

<b>Sublessor's Address</b>	c/- PPB Advisory Level 7, 8-12 Chifley Square Sydney, New South Wales 2000
<b>Sublessor's Solicitor</b>	HopgoodGanim Level 8, 1 Eagle Street Brisbane Qld 4000 Tel: 07 3024 0300 Fax: 07 3024 0000
<b>Sublessee's Address</b>	74 Bottle Brush Drive Yeppoon Qld 4703
<b>Sublessee's Solicitor</b>	Kerry Connolly & Howard Level 1, 99 Bolsover Street Rockhampton Qld 4700
<b>Guarantor's Address</b>	74 Bottle Brush Drive Yeppoon Qld 4703
<b>Berth</b>	Berth J1, Port of Airlie Marina as identified and delineated approximately as "Lease JA" on the Draft Sublease Plan.

# Agreement for Sublease (J-Arm)



<b>Rent</b>	\$150,000 (inclusive of GST)
<b>Deposit</b>	\$15,000
<b>Deposit Holder</b>	HopgoodGanim
<b>Sublease Term</b>	The period commencing on the Commencement Date and expiring on 30 November 2108
<b>Sunset Date</b>	The date that is 12 months from the date of this agreement

## 1.2 Definitions

In this agreement:

**Authority** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Balance Rent** means the Rent less the Deposit.

**Business Day** means a week day other than a Saturday, Sunday or public holiday in the place where the Berth is located.

**Certificate of Practical Completion** means a certificate issued by a registered professional engineer engaged by the Sublessor and acting properly and reasonably stating the date on which Practical Completion occurred.

**Claim** includes any legal proceeding, claim, demand, loss, damage, cost, expense, compensation or other liability, whether present, future, contingent or unascertained of any description.

**Commencement Date** means the commencement date of the Sublease determined in accordance with clause 3.4.

**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever, including, where appropriate, all reasonable and proper legal fees.

**Default Interest Rate** means the higher of:

- (a) the Standard Contract Default Interest Rate published by the Queensland Law Society Inc from time to time; and
- (b) the Default Rate prescribed by the Sublease.

**Draft Sublease Plan** means the plan in Schedule 1.

**GST** means the goods and services tax under the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation, regulations and publicly available rulings.

# Agreement for Sublease (J-Arm)



**Land** means lots 120 and 123 on SP218220 in the County of Herbert, Parish of Conway (tenure reference 40057710) or any part of it.

**Land Act** means the *Land Act 1994* (Qld).

**Law** includes the common law, statutes, statutory instruments (within the meaning of that term in the *Statutory Instruments Act 1992* (Cth)) and the requirements of any Authority.

**Local Government** means Whitsunday Regional Council.

**Mandatory Standard Terms Document** means the standard terms document lodged pursuant to section 318 of the Land Act under dealing number 713040803.

**Marina** means the marina known as Port of Airlie Marina, Shute Harbour Road, Airlie Beach, Queensland (which includes the Land together with other land owned or leased by the Sublessor).

**Minister** means the Minister responsible for administering the Land Act.

**Obligation** means any commitment, covenant, duty, obligation or undertaking whether arising by operation of law, in equity or by statute and whether expressed or implied.

**Practical Completion** means that stage when the Marina Structure associated with the Berth is reasonably complete despite any minor omissions or minor defects that are not then complete which:

- (a) do not significantly inconvenience the Sublessee;
- (b) do not cause any legal impediment to the use of the Berth; and
- (c) do not prevent the Berth from being reasonably capable of being used for its intended use.

**Reference Schedule** means the schedule in clause 1.1.

**Standard Terms Documents** means the Mandatory Standard Terms Document and the Sublessor's Standard Terms Document.

**Sublease** means the sublease over the Berth generally on the terms and conditions in Schedule 2 and in the Standard Terms Documents.

**Sublessor's Standard Terms Document** means the standard terms document lodged pursuant to section 318 of the Land Act under dealing number 716119253.

**Term Lease** means term lease 0/233003 granted to the Sublessor by the State of Queensland.



## 1.3 Interpretation according to Sublease

Where a term used in this agreement is defined in the Sublease, unless the context requires otherwise, when the term is used in this agreement it has the meaning given to it in the Sublease.

## 1.4 Parties

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An Obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- (c) Clause 32.9 of the Sublessor's Standard Terms Document applies to this agreement in relation to a party who is a trustee (as though that clause was set out in full in this agreement).

## 2. Port of Airlie Marina

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### 2.1 Development of Marina

- (a) The Sublessee acknowledges that the Sublessor is not required to complete the development of the Marina within any specific timeframes or at all.
- (b) The Sublessee must not:
  - (1) object to any works that the Sublessor or its contractors and agents lawfully undertake for the further development of the Marina (**Works**);
  - (2) refuse to complete this agreement or accept the Sublease because Works are continuing on other lots within the Marina;
  - (3) take any action to prevent the Works being lawfully conducted; or
  - (4) make any Claim for compensation for (and the Sublessee releases the Sublessor and its contractors and agents from all liability with respect to) noise, dust, disturbance or nuisance resulting from the Works whether such Claim is founded in contract, tort or otherwise.

### 2.2 Changes to Marina

- (a) Any plans and documents which the Sublessor has given to the Sublessee about the Marina are indicative only of the Sublessor's intentions for the Marina.
- (b) The Sublessor may make changes to the plan and documents or to the Marina as the Sublessor sees fit. The Sublessee may not object to these changes.

### 2.3 Marina operations

The Marina will be used for normal commercial and private marina operations and for ancillary uses. The Sublessee agrees that it will not take any action to prevent, or make any Claim for compensation with respect to, lawful activities within or associated with the Marina.

## 3. Grant of Sublease

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### 3.1 Agreement

The Sublessee agrees to sublease the Berth from the Sublessor and the Sublessor agrees to sublease the Berth to the Sublessee for the Sublease Term commencing on the Commencement Date and on the terms of this agreement and the Sublease.

### 3.2 Title

The Berth is leased subject to:

- (a) the Land Act;
- (b) any transfer, dedication, lease, easement or other right over the Land given to any Authority or utility service provider; and
- (c) any notifications, easements and restrictions or other thing affecting the Berth or the Land as described in this agreement or any plans and documents annexed this agreement.

### 3.3 Land Act

- (a) The Sublessee acknowledges that the Sublessor holds the Term Lease subject to the provisions of the Land Act and that the Sublessor must not grant interests under the Term Lease except in a manner authorised by the Land Act.
- (b) This agreement is subject to the Sublessor obtaining:
  - (1) the consent of the Minister to the Sublease (unless the Sublessor holds a general authority to sublease under section 333 of the Land Act which is applicable to the Berth and the Sublease); and
  - (2) the consent of each mortgagee of the Term Lease to the Sublease.
- (c) ~~The Sublessor must apply for the consents referred to in subclause 3.3(b).~~ The Sublessee must assist the Sublessor in obtaining the consents referred to in subclause 3.3(b) and act promptly and reasonably in providing any information required to support applications for the consents.
- (d) If, by the Sunset Date, the Sublessor has not obtained the consent of the Minister to the Sublease and the consent of each mortgagee of the Term Lease to the Sublease, either party may terminate this agreement by written notice to the other party in which case neither party will have any Claim against the other party.

### 3.4 Commencement Date

The Commencement Date is the last to occur of:

- (a) 20 July 2015;
- (b) the date that is seven days after the date on which the Sublessor delivers the Certificate of Practical Completion to the Sublessee;
- (c) the date that is seven days after the date on which the Sublessor obtains the consent of the Minister to the granting of the Sublease or obtains a general authority to



sublease under section 333 of the Land Act which is applicable to the Berth and the Sublease; and

- (d) the date that is seven days after the date on which the Sublessor gives notice to the Sublessee that the Sublessor has obtained the consent of all registered mortgagees of the Term Lease to the granting of the Sublease.

## **4. The Berth**

### **4.1 Subject to Practical Completion**

- (a) The grant of the Sublease is subject to Practical Completion by the Sunset Date.
- (b) If Practical Completion does not occur by the Sunset Date, either party may terminate this agreement by written notice to the other party in which case neither party will have any Claim against the other party.

### **4.2 Sublessor's Obligations**

The Sublessor must:

- (a) cause the Marina Structure associated with the Berth to be constructed by a licensed builder in a good and tradesman-like manner substantially as shown in the plans annexed to this agreement;
- (b) use reasonable endeavours to complete construction of the Marina Structure associated with the Berth as soon as reasonably possible; and
- (c) give a Certificate of Practical Completion to the Sublessee when the Marina Structure associated with the Berth is Practically Completed.

### **4.3 Delays**

If construction of the Marina Structure associated with the Berth is delayed due to one or more of the following:

- (a) fire, explosion, earthquake, lightning, storm, tempest, other act of God, war, civil commotion, strikes or industrial disputes;
- (b) delays by the Local Government or any other Authority in giving any necessary approval, permit, consent or certification;
- (c) objections or proceedings being taken or threatened by or disputes with adjoining or neighbouring owners;
- (d) industrial disputes;
- (e) bad weather; or
- (f) any other cause beyond the Sublessor's control,

the Sublessor may at any time and more than once, by written notice to the Sublessee extend the Sunset Date by the period of the delay.



## 4.4 Changes to Marina

- (a) The Sublessor may change the design of the Marina if the Sublessee is not materially prejudiced by the change, including the configuration, dimensions, area and position of the berths comprising the Marina.
- (b) If the Local Government or any other authority requires a change in the Marina then the Sublessor may make that change even if the Sublessee is materially prejudiced.

## 4.5 Changes to the Berth

The Sublessor may make the following changes to the Berth:

- (a) the area of the Berth may be larger or may be up to 5% smaller than the area shown in the Draft Sublease Plan; and
- (b) changes required by the Local Government or any other Authority.

## 4.6 Risk

- (a) The Berth is at the Sublessor's risk until the Commencement Date.
- (b) If the Marina Structure Associated with the Berth is destroyed or substantially damaged before the Commencement Date, the Sublessor may cancel this agreement.

## 4.7 Services

- (a) The Sublessee acknowledges that, under certain approvals granted to the Sublessor for the development of the Berth or under agreements or arrangements with neighbouring land owners, the provision of water, electricity, and any other services may be provided by the Local Government or other utility service providers.
- (b) If, for any reason beyond the Sublessor's control, any services are not available to the Berth at the Commencement Date:
  - (1) ~~the Sublessee may not delay the Commencement Date or claim compensation under this agreement; and~~
  - (2) the Sublessor must use its best endeavours to ensure that services are provided to the Berth as soon as possible following the Commencement Date.

## 5. Deposit

### 5.1 Payment

The Sublessee must pay the Deposit to the Deposit Holder when the Sublessee executes this agreement.

### 5.2 Default

- (a) The Sublessee will be in default if it:
  - (1) does not pay the Deposit when required;
  - (2) pays the Deposit by post-dated cheque; or





- (3) pays the Deposit by cheque that is dishonoured on presentation.
- (b) Despite any other remedy, the Sublessor may recover from the Sublessee any part of the Deposit that is not paid when required as a liquidated debt.

## 5.3 Entitlement to Deposit

The party entitled to receive the Deposit is:

- (a) if the Sublease commences, the Sublessor (in part payment of the Rent);
- (b) if this agreement is terminated without default by the Sublessee, the Sublessee; and
- (c) if this agreement is terminated owing to the Sublessee's default, the Sublessor.

## 6. Sublease

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### 6.1 Sublease

- (a) The Sublease must be executed by the Sublessee and the Guarantor contemporaneously with this agreement and delivered to the solicitors for the Sublessor.
- (b) The Sublessee and the Guarantor authorise the Sublessor (and the Sublessor's Solicitors) to:
  - (1) insert in item 6 of the Form 7 of the Sublease the Commencement Date of the Sublease determined in accordance with this agreement;
  - (2) insert any other words, dates, names, figures, plans or forms of consent and making any corrections to the extent necessary to maintain consistency with this agreement;
  - (3) make any changes to the Sublease that have been agreed between the parties;
  - (4) make any changes to the Sublease permitted by this agreement or required to allow for registration of the Sublease; and
  - (5) correct any typographical errors or spelling mistakes.

### 6.2 Obligations of Sublessee

- (a) On or before the Commencement Date, the Sublessee must:
  - (1) pay the Balance Rent and any other money payable under the Sublease by bank cheque to the Sublessor or as the Sublessor or its solicitor directs;
  - (2) if not already done, deliver to the Sublessor three copies of the Sublease properly executed by the Sublessee and the Guarantor;
  - (3) pay the Sublessor's Solicitors' legal fees for preparing this agreement and the Sublease and registering the Sublease (fixed at \$1,800 (exclusive of GST));
  - (4) pay any fees or costs imposed by the Minister or any mortgagee of the Term Lease necessary to obtain the consent to the Sublease;



- (5) pay the registration fees necessary to register the Sublease at the Land Titles Office; and
- (6) pay any stamp duty associated with this agreement and the Sublease.
- (b) The Sublessee will not be entitled to possession of the Berth until it complies with this clause.

## 6.3 Sublessor's Obligations

- (a) After the Sublessee has complied with clause 6.2, the Sublessor must promptly:
  - (1) sign the Sublease;
  - (2) lodge the Sublease for stamp duty assessment and pay all stamp duty assessed (if any);
  - (3) obtain any consents required for the registration of the Sublease;
  - (4) lodge the Sublease for registration; and
  - (5) give the Sublessee its signed and stamped (if applicable) copy of the Sublease when the Sublease has registered
- (b) The Sublessor must, at its cost:
  - (1) procure a surveyor to prepare a survey plan for registration in the Land Titles Office (**Sublease Plan**) to delineate the Berth (in accordance with the Draft Sublease Plan); and
  - (2) have the Sublease Plan registered to permit registration of the Sublease.

## 6.4 Power of attorney

The Sublessee, for valuable consideration, irrevocably appoints the Sublessor as its attorney to do anything the Sublessee is required to do under this clause 4 (including executing the Sublease).

## 6.5 Commencement of Sublease

The Obligations of each party under the Sublease apply as and from the Commencement Date even if the Sublease has not been completed, executed by all parties or registered.

## 7. Time and Delay

### 7.1 Time is of the essence

Time is of the essence of the Sublessee's Obligations under this agreement.

### 7.2 Interest on late payments

Without affecting the Sublessor's other rights, if any money payable by the Sublessee under this agreement is not paid when due, the Sublessee must pay the Sublessor interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.



## **8. Sublessee's Default**

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### **8.1 Sublessor may affirm or terminate**

If the Sublessee fails to comply with any provision of this agreement, the Sublessor may affirm or terminate this agreement.

### **8.2 If Sublessor affirms**

If the Sublessor affirms this agreement under clause 8.1, it may sue the Sublessee for:

- (a) damages;
- (b) specific performance; or
- (c) damages and specific performance.

### **8.3 If Sublessor terminates**

If the Sublessor terminates this agreement under clause 8.1, it may do all or any of the following:

- (a) resume possession of the Berth;
- (b) sue the Sublessee for damages; and
- (c) re-lease or sell the Berth.

### **8.4 Sublessor's damages**

The Sublessor may claim damages for any loss it suffers as a result of the Sublessee's default, including interest and holding charges incurred by the Sublessor and its legal costs on a solicitor and own client basis.

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## **9. GST**

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### **9.1 Rent inclusive of GST**

The Rent includes any GST payable on the supply of the Berth to the Sublessee by way of grant of the Sublease.

### **9.2 GST exclusive amounts**

Unless otherwise specified, amounts payable or consideration to be provided under or in accordance with this agreement are exclusive of GST.

### **9.3 Tax invoices**

If any party is liable to pay GST on any supply made by it under this agreement and such party provides a valid tax invoice under the GST Law to the recipient, then the recipient agrees to pay to the supplier an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

## 10. Receivers

### 10.1 Relevant definition

In this clause, Receiver means, as the context permits or requires, any or all of the joint and several receivers and managers of each Sublessor, namely:

- (a) David Webb; and
- (b) Ken Whittingham.

### 10.2 Sublessee's acknowledgements

- (a) The Sublessee acknowledges that:
  - (1) the Receiver has been appointed as receiver and manager of the Sublessor;
  - (2) the Receiver has executed this agreement and is subleasing the Berth in the capacity of receiver and manager of the Sublessor;
  - (3) the Receiver is the agent of the Sublessor; and
  - (4) under this agreement, the Sublessee is not contracting with the Receiver personally but is contracting with the Sublessor.
- (b) The Sublessee agrees that:
  - (1) the Sublessee accepts and takes no objection to this agreement, the Sublease or any other related documentation being executed or given effect to by the Receiver;
  - (2) the Receiver is not liable personally or in any other capacity for any of the Obligations of the Sublessor under or in respect of this agreement or otherwise;
  - (3) nothing in this agreement (whether express or implied) will render the Receiver liable in any way (whether in the capacity of receiver and manager, personally or otherwise);
  - (4) none of the partners, directors, employees or agents of the Receiver or their firm will be personally liable for any of the Obligations of the Sublessor under or in respect of this agreement or otherwise; and
  - (5) nothing in this agreement (whether express or implied) will render the partners, directors, employees or agents of the Receiver or their firm liable in any way (whether in the capacity as receiver and manager, personally or otherwise).

### 10.3 Release

The Sublessee:

- (a) releases the Receiver and the partners, directors, employees or agents of the Receiver or their firm from any Claim (whether arising prior to or after execution of this agreement) arising out of or in any way related to:
  - (1) this agreement; or



- (2) any act or omission (including negligence) of the Sublessor or the Receiver;  
and
- (b) must make no Claim or raise any objection as to the Receiver's power or capacity to:
  - (1) enter into or cause the Sublessor to enter into this agreement;
  - (2) execute or cause the Sublessor to execute any document under or contemplated under this agreement; or
  - (3) complete or perfect or cause the Sublessor to complete or perfect any Obligation under this agreement.

## **11. Guarantee and indemnity**

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### **11.1 Guarantee**

In consideration of the Sublessor at the request of the Guarantor having entered into or having agreed to enter into this agreement with the Sublessee, which request is testified by the execution of this agreement and the guarantee and indemnity contained in this clause by the Guarantor, the Guarantor unconditionally and irrevocably guarantees to the Sublessor:

- (a) the payment by the Sublessee of all money payable by the Sublessee under this agreement; and
- (b) the prompt performance and observance of all the covenants of the Sublessee under this agreement.

### **11.2 Indemnity**

The Guarantor indemnifies the Sublessor and agrees to keep the Sublessor indemnified to the fullest extent permitted by law from and against all Claims of every description for which the Sublessor may be legally responsible (whether in contract, tort, by statute or otherwise) arising from any:

- (a) default under or repudiation of this agreement by the Sublessee; or
- (b) non-enforceability of this agreement by the Sublessor against the Sublessee for any reason, including because of any disclaimer of this agreement by any trustee in bankruptcy, liquidator or administrator of the Sublessee as if there had been no disclaimer.

Any disclaimer does not relieve the Guarantor of the Guarantor's Obligations under this indemnity, and each indemnity survives any termination of this agreement.

### **11.3 Effect of guarantee and indemnity**

The Obligations of the Guarantor under this guarantee and indemnity apply and extend to the performance by the Sublessee under the Sublease and in respect of any right of occupation or other interest granted by the Sublessor to the Sublessee in relation to the Berth whether pursuant to this agreement or otherwise.

## 12. General

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### 12.1 Notices

Any notice, demand, legal proceeding or other communication to be given by one party to another under this agreement must be given in accordance with clause 32.1 of the Sublessor's Standard Terms Document.

### 12.2 Mortgages and dealings

- (a) The Sublessor may mortgage or charge the Term Lease or the Berth or obtain further advances on the security of the Term Lease or the Berth and, further, the Sublessor may enter into joint ventures or other agreements in connection with the development of the Land or the Berth.
- (b) The Sublessee must, on the written request of the Sublessor, do all things the Sublessor may reasonably require (including executing any documents) in order to procure the consent of any mortgagee of the Sublessor to the Sublease.

### 12.3 Sublessor's right of assignment

The Sublessor may transfer or assign its interest in the Term Lease or the Berth or this agreement and the benefit of any guarantee relating to this agreement and, on doing so, the Sublessor is released from all Obligations and liability under this agreement.

### 12.4 Duty and registration fees

The Sublessee must pay all transfer or other duty on this agreement (or any transaction contemplated under it) and must pay any registration fees relating to the Sublease of the Berth to the Sublessee. The Sublessee must indemnify the Sublessor in respect of all such transfer or other duty and registration fees.

### 12.5 Entire agreement

- (a) The terms of this agreement constitute the entire contract or agreement between the Sublessor and the Sublessee despite any negotiations or discussions before the signing of this agreement.
- (b) The Sublessee warrants that it has not been induced to enter into this agreement by any oral or written representations made by or on behalf of the Sublessor or its agents or any other party, which is not set out in this agreement.
- (c) The Sublessee acknowledges that any brochure or model relating to the development of the Land, the Berth or the Marina is indicative or illustrative only and must not be relied on by the Sublessee.

### 12.6 Sublessee's eligibility to hold Sublease

The Sublessee warrants and represents to the Sublessor that:

- (a) the Sublessee is eligible under the Land Act to hold the Sublease; and
- (b) the Sublessee is not a foreign person within the meaning of section 21A of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or a person to whom section 26A of that Act applies.

## 12.7 Privacy consent

The Sublessee consents to the Sublessor providing personal information about the Sublessee and this agreement to:

- (a) its professional advisers and insurers;
- (b) its consultants;
- (c) its bankers or any other financial institution from whom the Sublessor may seek to obtain any finance; and
- (d) the Commonwealth Treasury.

## 12.8 Severance

If any provision or part of this agreement is or becomes invalid or unenforceable, such provision or part will be severed from this agreement, such that the remaining provisions or part will be unaffected by such severance and will remain valid and enforceable to the fullest extent permitted by law.

## 12.9 Rights after commencement of Sublease

Despite the commencement of the Sublease and registration of the Sublease, any provision of this agreement that can take effect after commencement of the Sublease or registration of the Sublease remains in force.

## 12.10 Further acts

If requested by the other party, each party must, at its own Cost, do everything reasonably necessary to give effect to this agreement.

## 12.11 Execution as a deed

- (a) It is intended that this agreement will be executed as a deed.
- (b) Each party to this agreement:
  - (1) acknowledges that this is a sealed document and has the effect of a deed; and
  - (2) unconditionally signs, seals and delivers this document so that that party has an intention to be immediately legally bound by this document.
- (c) If for any reason whatever, this agreement is not properly executed as a deed then this agreement will bind the parties as an agreement.

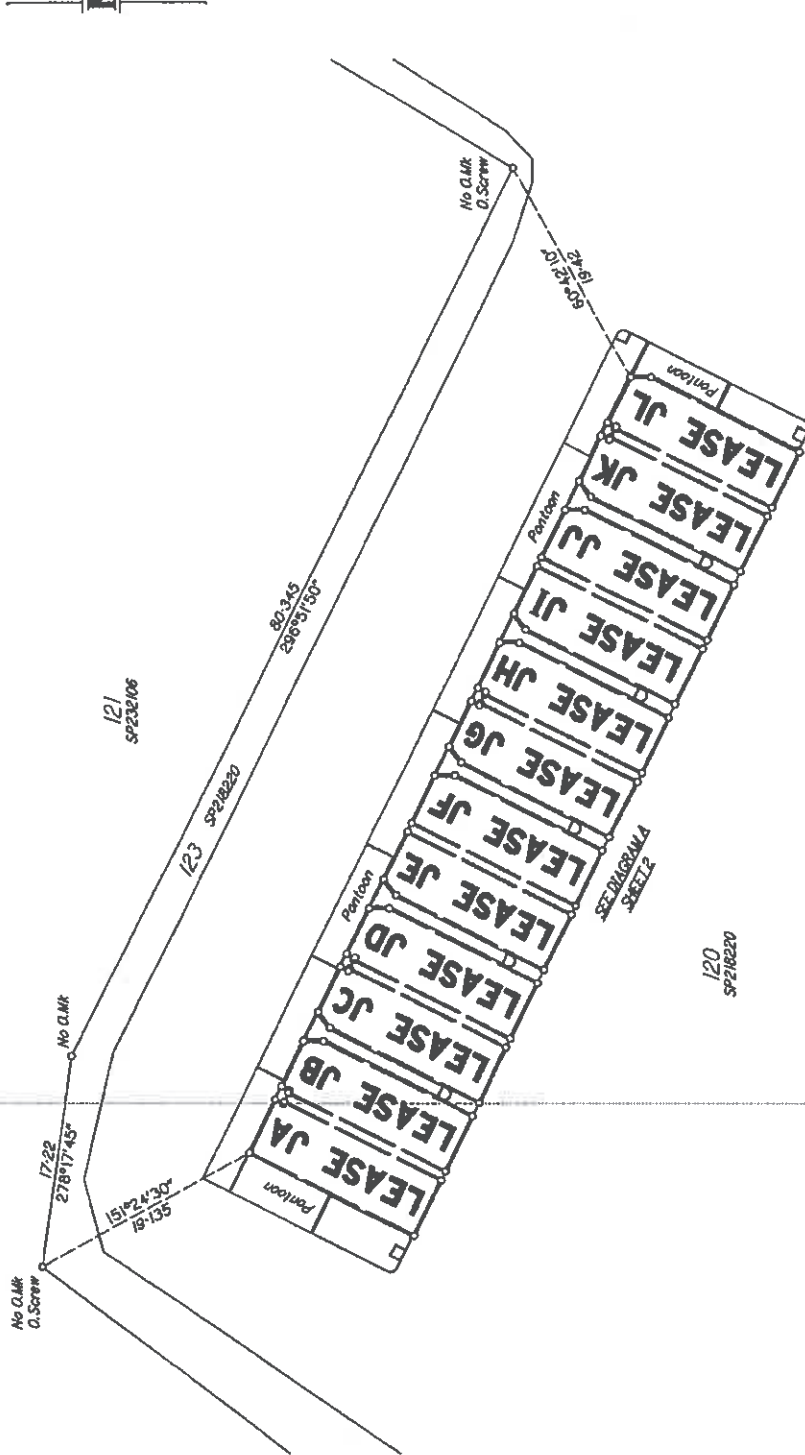




**Schedule 1 – Draft Sublease Plan**

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## SURVEY PLAN

Sheet  
1 of  
2

**PRELIMINARY**  
FOR SALES PURPOSES  
Rev A / 19.03.2014

**RPS**  
RPS Australia East Pty Ltd  
Unit 1, 3 Cels Drive  
Cannonvale QLD 4802  
T +61 7 4948 5300  
F +61 7 4948 5301  
W rpsgroup.com.au

RPS Australia East Pty Ltd (ACN 140 292 762) hereby confirms that this plan is for Pre-sales purposes only and has been compiled from Proposal / Architectural plans only. This plan is subject to final survey.

0 50 100 150 mm State copyright reserved.

**Plan of Leases JA - JL  
in Lot 120 on SP218220**

Scale: **1:400**

Format: **STANDARD**

**SP265786**

LOCAL  
GOVERNMENT: Whitsunday R.C. LOCALITY: Airlie Beach

Meridian: MGA Zone 55 Vide SP232106

Survey  
Records: No

**WARNING : Folded or Mutilated Plans will not be accepted.**  
Plans may be rolled.  
Information may not be placed in the outer margins.

(Deeding No.)

s. Lodged by

(Include address, phone number, reference, and Lodger Code)

1. Certificate of Registered Owners or Lessees.

1/We **MERIDIEN AIRLIE BEACH PTY LTD**  
**A.C.N. 101 370 763**  
**MERIDIEN AB PTY LTD**  
**A.C.N. 101 370 772**  
**AS TENANTS IN COMMON**

(Names in full)

\* as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.

\* as Lessees of this land agree to this plan.

Signature of \*Registered Owners \*Lessees

Existing		Created		
Title Reference	Description	New Lots	Road	Secondary Interests
40057710	Lot 120 on SP218220	—	—	Leases JA-JL

**PRELIMINARY**  
FOR SALES PURPOSES Rev A / 18.05.2014



\* Rule out whichever is inapplicable

2. Planning Body Approval.

\*  
hereby approves this plan in accordance with the:  
%

Dated this ..... day of .....

..... #

..... #

\* Insert the name of the Planning Body.  
# Insert designation of signatory or delegation

% Insert applicable approving legislation.

3. Plans with Community Management Statement :

CMS Number :

Name :

4. References :

Dept File :

Local Govt :

Surveyor : 110420-1

Lots Orig

7. Orig Grant Allocation :

8. Map Reference :  
8657-31113

9. Parish :  
Conway

10. County :  
Herbert

11. Passed & Endorsed :  
RPS Australia East Pty Ltd  
By : ACN 140 292 762

Date :

Signed :

Designation : Cadastral Surveyor

12. Building Format Plans only.

I certify that :

\* As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road.  
\* Part of the building shown on this plan encroaches onto adjoining \* lots and road

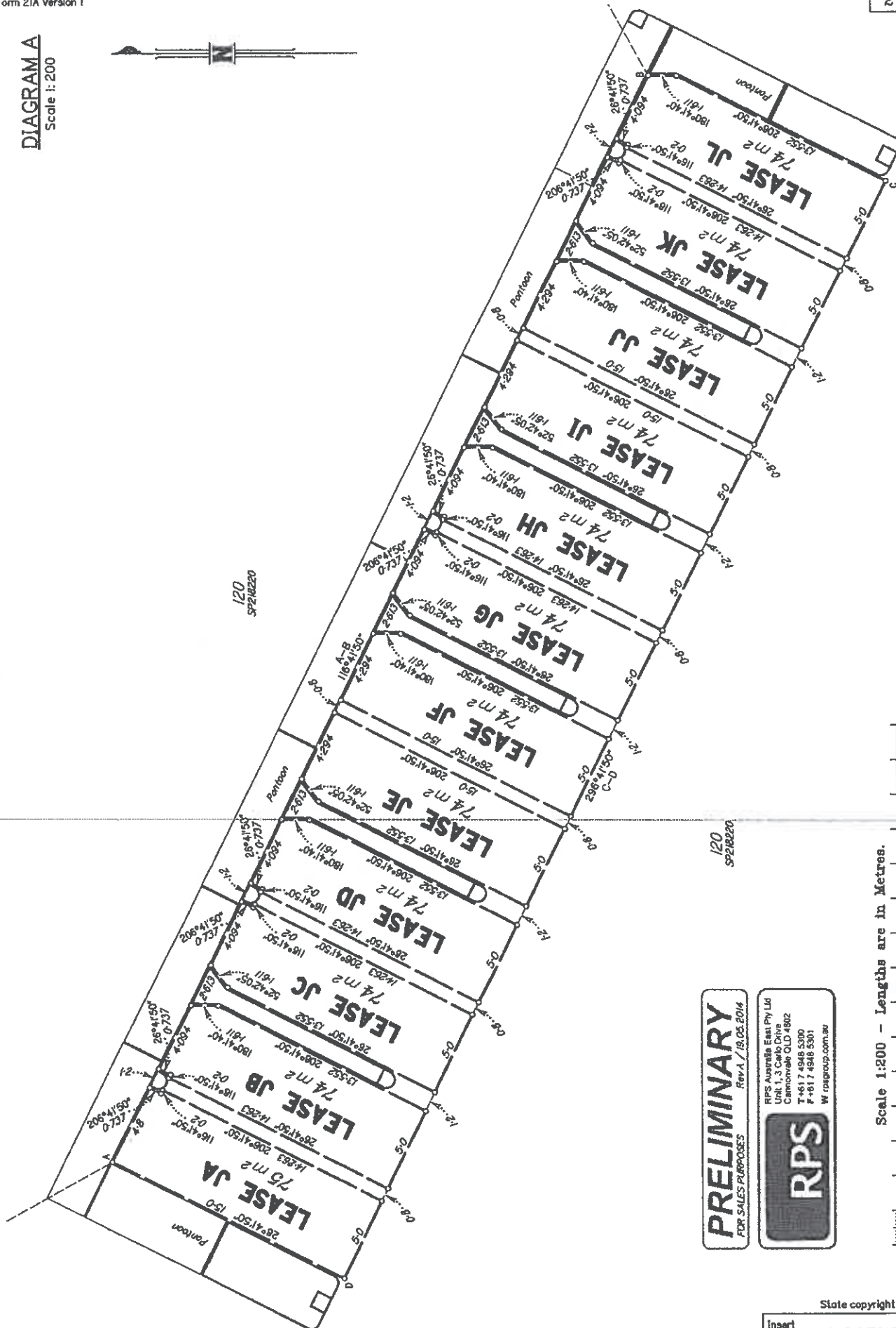
Authorised Delegate \* Date  
\*delete words not required

13. Lodgement Fees :

Survey Deposit \$ .....  
Lodgement \$ .....  
.....New Titles \$ .....  
Photocopy \$ .....  
Postage \$ .....  
TOTAL \$ .....

14. Insert Plan Number  
SP265786

DIAGRAM A  
Scale 1:200



**PRELIMINARY**  
FOR SALES PURPOSES  
Rev 1 / 15.05.2014

RPS  
RPS Australia East Pty Ltd  
Unit 1, 3 Cielo Drive  
Cammerve QLD 4802  
T +61 7 4948 5300  
F +61 7 4948 5301  
W rpsgroup.com.au

Scale 1:200 - Lengths are in Metres.



State copyright reserved.

Insert  
Plan  
Number  
**SP265786**



**Schedule 2 – Sublease**

---

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Lessor

MERIDIEN AIRLIE BEACH PTY LTD ACN 101 370 763  
(RECEIVERS AND MANAGERS APPOINTED) (IN  
LIQUIDATION) AND MERIDIEN AB PTY LTD ACN 101  
370 772 (RECEIVERS AND MANAGERS APPOINTED)  
(IN LIQUIDATION)

Lodger (Name, address, E-mail & phone number)

HopgoodGanim  
Level 8, Waterfront Place  
1 Eagle Street, Brisbane Qld 4000  
E-mail: [contactus@hopgoodganim.com.au](mailto:contactus@hopgoodganim.com.au)

Lodger  
Code  
BE187A

2. Lot on Plan Description

LOT 120 ON SP218220

County

HERBERT

Parish

CONWAY

Title Reference

40057710

3. Lessee Given names

GLEN ARTHUR

BRENDA JO

Surname/Company name and number

FINNING

FINNING

(include tenancy if more than one)

AS TRUSTEE

4. Interest being leased

STATE LEASEHOLD (BEING PART OF TERM LEASE 0/233003)

5. Description of premises being leased

LEASE JA ON SP265786 IN LOT 120 ON SP218220

6. Term of lease

Commencement date/event: / / 2015  
Expiry date: 30 / 11 / 2108 and/or Event: N/A  
#Options: NIL  
#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)

7. Rental/Consideration

SEE SCHEDULE

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in: ~~#the attached schedule; #the attached schedule and document nos. 713040803 and 716119253; #document no. \*Option in registered Lease no. has not been exercised.~~

\* delete if not applicable

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

Lessor's Signature

..... signature

..... full name

..... qualification

/ /  
Execution Date

Witnessing Officer

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

See enlarged panel

for lessor's execution

9. Acceptance

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

Lessee's Signature

..... signature

..... full name

..... qualification

/ /  
Execution Date

Witnessing Officer

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

See enlarged panel

for lessee's execution

Title Reference: 40057710

**8. Grant/Execution**

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in: ~~#the attached schedule; #the attached schedule and document nos. 713040803 and 716119253; #document no. \*~~Option in registered Lease no. has not been exercised.  
# \* delete inapplicable words

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

**Witnessing Officer**

**Execution Date**

**Lessor's Signature**

..... signature

/ /2015

Meridien Airlie Beach Pty Ltd ACN 101 370  
763 (Receivers and Managers Appointed) (In  
Liquidation) by the Receiver David Webb / Ken  
Whittingham

..... full name

..... qualification

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

**Witnessing Officer**

**Execution Date**

**Lessor's Signature**

..... signature

/ /2015

Meridien AB Pty Ltd ACN 101 370 772  
(Receivers and Managers Appointed) (In  
Liquidation) by the Receiver David Webb / Ken  
Whittingham

..... full name

..... qualification

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

**9. Acceptance**

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

**Witnessing Officer**

**Execution Date**

**Lessee's Signature**

..... signature

/ /2015

Glen Arthur Finning as trustee

..... full name

..... qualification

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

**Witnessing Officer**

**Execution Date**

**Lessee's Signature**

..... signature

/ /2015

Brenda Jo Finning as trustee

..... full name

..... qualification

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



**Title Reference: 40057710**

**Reference Schedule**

<b>Item 1</b>	<b>Sublessor</b>	
	Name	Meridien Airlie Beach Pty Ltd ACN 101 370 763 (Receivers and Managers Appointed) (in Liquidation) and Meridien AB Pty Ltd ACN 101 370 772 (Receivers and Managers Appointed) (in Liquidation)
	Address	c/- PPB Advisory, Level 7, 8-12 Chifley Square, Sydney, New South Wales, 2000
	Facsimile Number	(02) 8116 3111
<b>Item 2</b>	<b>Sublessee</b>	
	Name	Glen Arthur Finning and Brenda Jo Finning as trustee for Finning Family Superfund
	Address	74 Bottle Brush Drive, Yeppoon Qld 4703
	Facsimile Number	
<b>Item 3</b>	<b>The Marina</b>	Port of Airlie, Airlie Beach, Queensland.
<b>Item 4</b>	<b>The Premises</b>	Lease JA on SP265786
<b>Item 5</b>	<b>Rent</b>	\$150,000 (inclusive of GST)
<b>Item 6</b>	<b>Default Rate</b>	15% per annum
<b>Item 7</b>	<b>Permitted Use</b>	As mooring berth for a private vessel
<b>Item 8</b>	<b>Outgoings Contribution Commencement Date</b>	The Commencement Date

Title Reference: 40057710

**Deed of Guarantee and Indemnity**

In consideration of Meridien Airlie Beach Pty Ltd ACN 101 370 763 (Receivers and Managers Appointed) (in Liquidation) and Meridien AB Pty Ltd ACN 101 370 772 (Receivers and Managers Appointed) (In Liquidation) (**Sublessor**) having entered into or having agreed to enter into the foregoing sublease (**Sublease**) with Glen Arthur Finning and Brenda Jo Finning as trustee for Finning Family Superfund (**Sublessee**), at the request of Glen Arthur Finning and Brenda Jo Finning (**Guarantor**), which request is testified by the execution of this deed by the Guarantor, the Guarantor covenants and agrees with the Sublessor as follows:

**1. Guarantee**

The Guarantor unconditionally and irrevocably guarantees to the Sublessor:

- (a) the payment by the Sublessee of all money payable by the Sublessee under the Sublease; and
- (b) the prompt performance and observance of all the covenants of the Sublessee under the Sublease.

**2. Indemnity**

- (1) The Guarantor indemnifies the Sublessor and agrees to keep the Sublessor indemnified to the fullest extent permitted by law from and against all legal proceedings, losses (including loss of any rent or other money), damages and Costs of every description for which the Sublessor may be legally responsible (whether in contract, tort, by statute or otherwise) arising from any:

- (a) default under or repudiation of the Sublease by the Sublessee; or
- (b) non-enforceability of the Sublease by the Sublessor against the Sublessee for any reason, including because of any disclaimer of the Sublease by any trustee in bankruptcy, liquidator or administrator of the Sublessee as if there had been no disclaimer.

- (2) Any disclaimer does not relieve the Guarantor of its obligations under this indemnity, and each indemnity survives any termination of the Sublease.

**3. Liability of Guarantor**

The rights and remedies of the Sublessor and the liability of the Guarantor under this deed is a continuing liability and is not affected by any act, matter, thing or circumstance whatever (with or without notice to or the consent of the Sublessee or the Guarantor or both) including, without limitation:

- (a) the grant of any time, credit, consideration, waiver, forbearance, concession or other indulgence to any person;
- (b) any full or partial release, discharge or compromise of any person from any liability under the Sublease;
- (c) any judgement or order against the Sublessee or the Guarantor or both;
- (d) any variation of the Sublease, including any variation of the area of the Premises or the amount of any money payable under the Sublease;
- (e) any further or other lease, sublease, right of occupation or other interest granted by the Sublessor to the Sublessee or to any other person for any reason, including pursuant to the Sublease or any further or other lease, sublease or right of occupation imposed by law or otherwise entered into by the Sublessor and the Sublessee;
- (f) any transaction, arrangement or agreement between the Sublessor and the Guarantor or between the Sublessee and any other person;
- (g) any actual or alleged set-off, defence, counter-claim or other deduction by any party;

Title Reference: 40057710

- (h) any payment made to the Sublessor and later avoided;
  - (i) any failure to give effective notice of any default or repudiation of the Sublease;
  - (j) any assignment or other dealing of any kind by any party of the Sublease;
  - (k) any expiration or termination of the Sublease for any reason;
  - (l) (where a party is or includes a natural person) the death, disability, bankruptcy, infancy, deed of arrangement, assignment or composition with creditors or other demise of any party;
  - (m) (where a party is or includes a corporation), any scheme of arrangement, reduction of capital, capital reconstruction, official management, administration, receivership, liquidation, deregistration or other demise of any party;
  - (n) the Sublessor becoming bound by any compromise, assignment of property, scheme of arrangement, composition of debts or scheme of reconstruction by or relating to any person;
  - (o) the completion of the Sublease by or on behalf of the Sublessor pursuant to the Sublease or any other agreement in that regard;
  - (p) the Sublessor exercising or failing to exercise, waiving or deferring any of its rights or remedies under the Sublease;
  - (q) any non-perfection of the estate of the Sublessee under the Sublease, including any non-execution, non-commencement or non-registration of the Sublease for any reason, or where the consent of any person may be required to the Sublease;
  - (r) any lack of capacity or power by the Sublessee or the Guarantor or both to enter into and perform the Sublease;
  - (s) any sale, transfer, assignment or other dealing of any kind by the Sublessor of the whole or any part of its interest in the Marina, or the Sublease or both; or
- 
- (t) any other act, omission, neglect, default, event, or thing of any description that would, but for this clause, have the effect (either at law or in equity or by statute or otherwise) of releasing, discharging or otherwise affecting the liability of the Guarantor in any way under this deed.

**4. Guarantee applies to Further Interests**

The obligations of the Guarantor under this deed apply and extend to the performance by the Sublessee under or because of any other lease, sublease, right of occupation or any other interest granted by the Sublessor to the Sublessee or to any other person for any reason, including pursuant to the Sublease or as may be imposed by statute or otherwise entered into by the Sublessor and the Sublessee.

**5. Guarantor is a Principal Debtor**

Despite the circumstance that as between the Guarantor and the Sublessee the Guarantor may be a surety only, nevertheless as between the Guarantor and the Sublessor, the Guarantor (as an independent covenant and as a party to the Sublease) is deemed to be a principal contractor and debtor jointly and severally with the Sublessee.

**6. Waiver of Rights**

To the fullest extent permitted by law, the Guarantor waives all its rights either as surety or indemnifier (whether legal, equitable, statutory or otherwise) that may be inconsistent with this deed.

**Title Reference: 40057710**

**7. Guarantor not to Prove in Competition with Sublessor**

- (1) If any bankruptcy, composition, arrangement or assignment for the benefit of creditors, winding up, liquidation, appointment of any controller, administration, receivership or other demise of the Sublessee (a **Demise**) occurs, then the Guarantor must not prove or claim in competition with the Sublessor so as to reduce any amount that the Sublessor would otherwise be entitled to receive from the Demise.
- (2) Despite clause 7(1), the Guarantor must, if required and as directed by the Sublessor, prove or claim in the Demise. Any amount received by the Guarantor from any distribution, dividend or payment concerning the Demise must be held by the Guarantor in trust and charged for the Sublessor, and must be paid to the Sublessor without demand in reduction of the amount owing by the Sublessee or the Guarantor or both to the Sublessor.

**8. Benefit of Guarantee**

- (1) If the Sublessor transfers or assigns its interest in the Sublease to any person, the benefit of the covenants of the Guarantor under this deed is, without any further agreement or notice, deemed to extend to and continue concurrently for the benefit of the transferring Sublessor and any transferee or assignee.
- (2) The Guarantor must at the Cost of the Sublessor promptly enter into covenants with the Sublessor and any transferee or assignee that the Sublessor may require in confirmation of the same.

**9. Miscellaneous**

- (1) The date of this deed is the date of the Sublease.
- (2) This deed takes effect immediately upon its execution and continues in full effect whether or not the Sublease is subsequently registered.
- (3) This deed:
  - (a) covers the whole period during which the Sublessee occupies or is entitled to occupy the Premises as sublessee under the Sublease or as a periodic sublessee;
  - (b) covers the whole period during which the Sublessee holds on equitable interest in relation to the Premises under an agreement for lease;
  - (c) extends to each further lease of the Premises granted to the Sublessee in pursuance of the exercise of any option for renewal; and
  - (d) extends to any period of holding over by the Sublessee under the Sublease.

**10. Interpretation**

In this deed:

- (a) where a word or an expression is not defined in this document but is defined in the Sublease, it has the meaning given to it in the Sublease; and
- (b) any covenant, indemnity or agreement on the part of or for the benefit of two or more persons shall be deemed to bind or benefit (as the case may require) any two or more of them jointly and each of them severally.

SCHEDULE

Title Reference: 40057710

Executed by the Guarantor:

Signed sealed and delivered by Glen  
Arthur Finning as Guarantor this 11th  
day of February 2015 in the  
presence of



SP McKenna  
JP (Qual) 86592

Witness

Sean Patrick McKenna

(Print full name of witness)

Signed sealed and delivered Brenda Jo  
Finning as Guarantor this 11th day of  
February 2015 in the presence of:



SP McKenna  
JP (Qual) 86592

Witness

Sean Patrick McKenna

(Print full name of witness)

# Agreement for Sublease (J-Arm)



## Signing page

Executed for and on behalf of **Meridien Airlie Beach Pty Ltd ACN 101 370 763 (Receivers and Managers Appointed) (In Liquidation)** as the Sublessor by its joint and several receiver and manager David Michael Webb / ~~Kenneth Michael Whittingham~~ on the 2<sup>nd</sup> day of November 2015 in the presence of:

Signature of Witness

THOMAS MATTHEW FARRELL

Print full name of Witness

Signature of Receiver

Executed for and on behalf of **Meridien AB Pty Ltd ACN 101 370 772 (Receivers and Managers Appointed) (In Liquidation)** as the Sublessor by its joint and several receiver and manager David Michael Webb / ~~Kenneth Michael Whittingham~~ on the 2<sup>nd</sup> day of November 2015 in the presence of:

Signature of Witness

THOMAS MATTHEW FARRELL

Print full name of Witness

Signature of Receiver

**Signed sealed and delivered** by Glen Arthur Finning as trustee for Finning Family Superfund as the Sublessee on the 11<sup>th</sup> day of FEBRUARY 2015 in the presence of:

Signature of Witness

Sean Patrick McKenna

Print full name of Witness

Signature of Glen Arthur Finning in his capacity as trustee for Finning Family Superfund

# Agreement for Sublease (J-Arm)



**Signed sealed and delivered** by Brenda Jo Finning as trustee for Finning Family Superfund as the Sublessee on the 11th day of February 2015 in the presence of:

JP  **SP McKenna**  
**JP (Qual) 88592**  
Signature of Witness  
**'Sean Patrick McKenna**

Print full name of Witness

  
Signature of Brenda Jo Finning in her capacity as trustee for Finning Family Superfund

**Signed sealed and delivered** by Glen Arthur Finning as the Guarantor on the 11th day of February 2015 in the presence of:

JP  **SP McKenna**  
**JP (Qual) 88592**  
Signature of Witness  
**'Sean Patrick McKenna**

Print full name of Witness

  
Signature of Glen Arthur Finning

**Signed sealed and delivered** by Brenda Jo Finning as the Guarantor on the 11th day of February 2015 in the presence of:

JP  **SP McKenna**  
**JP (Qual) 88592**  
Signature of Witness  
**'Sean Patrick McKenna**

Print full name of Witness

  
Signature of Brenda Jo Finning