

Lease – Portion of Lot 1023 (No. 11) Edmonds Place, Bindoon

Shire of Chittering

Swanville Investments Pty Ltd



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

Ref: LMC:CHIT-32438

Copyright notice

McLeods owns the copyright in this document and commercial use of the document without the permission of McLeods is prohibited.

Table of Contents

Copyright notice	i
Details	1
Agreed terms	2
1. Defined terms and interpretation	2
1.1 Defined terms	2
1.2 Interpretation	4
1.3 Headings	5
1.4 Schedules etc	5
2. Grant of Lease	5
3. Quiet enjoyment	5
4. Rent and other payments	5
4.1 Rent	5
4.2 Outgoings	6
4.3 Interest	6
4.4 Costs	6
5. Rent Review	7
5.1 Rent to be Reviewed	7
5.2 Methods of Review	7
5.3 CPI Review	7
5.4 Market Rent Review	7
5.5 Rent will not decrease	8
5.6 Lessor's right to review	8
6. Accrual of Amounts Payable & Payment of Money	8
6.1 Accrual of Amounts Payable	8
6.2 Payment of Money	8
7. Insurance	8
7.1 Insurance required	8
7.2 Details and Receipts	9
7.3 Not to invalidate	9
7.4 Reports	9
7.5 Settlement of claim	9
7.6 Lessor as attorney	10
7.7 Lessee may be required to pay excess on insurances	10
7.8 Lessee's equipment and possessions	10
8. Indemnity	10
8.1 Lessee responsibilities	10
8.2 Indemnity	10
8.3 Obligations Continuing	11
8.4 No indemnity for Lessor's negligence	11
8.5 Release	11
9. Environmental Contamination	12
10. Use	12
10.1 Restrictions on use	12
10.2 No warranty	14

10.3	Premises subject to restriction	14
10.4	Indemnity for costs	14
11.	Casual hire of Premises	14
12.	Keys and access	14
13.	Maintenance, repair and cleaning	14
13.1	Maintenance	14
13.2	Cleaning	15
13.3	No obligation to Lessor to repair or maintain	15
13.4	Maintain surroundings	15
13.5	Pest control	15
13.6	Responsibility for securing the Premises	15
13.7	Comply with all reasonable conditions	15
13.8	Acknowledgement of state of repair of Premises	15
14.	Alterations	15
14.1	Restriction	15
14.2	Consent	16
14.3	Cost of Works	16
14.4	Conditions	16
15.	Statutory obligations and notices	16
15.1	Comply with Statutes	16
15.2	Indemnity if Lessee Fails to Comply	16
16.	Report to Lessor	17
(1)	Vandalism	17
(2)	Pollution	17
(3)	Notices, etc	17
(4)	Defects	17
17.	No assignment, subletting and charging	17
17.1	No assignment or sub-letting without consent	17
17.2	Lessor's Consent to Assignment and Sub-letting	17
17.3	Consents of Assignee Supplementary	18
17.4	<i>Property Law Act 1969</i>	18
17.5	Costs for assignment and sub-letting	18
17.6	No mortgage or charge	18
18.	No caveat or other interest	18
18.1	No caveat or other interest	18
18.2	Removal of interest	18
18.3	Costs of removal, Indemnity and Ratification	19
19.	Lessee's Equipment	19
20.	Obligations on expiry or termination of lease	19
20.1	Restore Leased Area	19
20.2	Peacefully Surrender	19
20.3	Removal of Lessee's Equipment	19
20.4	Failure to Remove or Restore	19
20.5	Clause to survive termination	20
21.	Guarantee	20
21.1	Guarantee and Indemnity	20
21.2	Guarantor's Covenants	20
21.3	Obligations Effective in All Circumstances	21
22.	Provide keys	21

23. Shire's right to terminate	21
24. Lessor's right of entry	22
24.1 Entry on reasonable notice	22
24.2 Costs of Rectifying Breach	22
25. Limit of Lessor's liability	22
25.1 No liability for loss on Premises	22
25.2 Limit on Liability for Breach of Lessor's obligations	22
26. Damage or destruction of Premises	23
26.1 Abatement of Rent	23
26.2 Dispute as to Abatement of Rent	23
26.3 Termination	23
27. Option to renew	23
27.1 Exercise of option	23
28. Holding over	23
29. No Fetter	24
30. Default	24
30.1 Events of Default	24
30.2 Forfeiture	24
30.3 Lessor may remedy Lessee's default	25
30.4 Acceptance of Amount Payable By Lessor	25
30.5 Essential Terms	25
30.6 Breach of Essential Terms	25
31. Disputes	26
31.1 Appointment of arbitrator	26
31.2 Payment of amounts payable to date of award	26
32. Consents	26
33. Goods and services tax	26
33.1 Lessee must Pay	26
33.2 Increase in GST	26
33.3 GST invoice	27
34. Additional terms and conditions	27
35. Notice	27
35.1 Form of delivery	27
35.2 Service of Notice	27
35.3 Signing of Notice	27
36. Amendments to lease	27
37. Consents	28
37.1 Minister for Lands	28
37.2 Western Australian Planning Commission Consent	28
38. Waiver	28
38.1 No general waiver	28
38.2 Partial exercise of right power or privilege	28
39. Acts by agents	28
40. Statutory powers	28
41. Further assurance	28

42.	Severance	28
43.	Moratorium	28
44.	Governing law	29
	Schedule	30
	Signing page	31
	Annexure 1 – Sketch of Premises	32

Details

Parties

Shire of Chittering

of PO Box 70, Bindoon, Western Australia
(Lessor)

Swanville Investments Pty Ltd (ACN 078 967 343)

of Lot 7, Binda Place, Bindoon, Western Australia
(Lessee)

James Francis Griffiths

of 1 Smales Road, Quinns Rock, Western Australia
(Guarantor)

Background

- A The Lessor is the registered proprietor of the land described in **Item 1** of the Schedule (**Land**).
 - B The Lessee is one of the registered proprietors of the land described as Lot 7 on Diagram 70142 being the whole of the land comprised in Certificate of Title Volume 1732 Folio 383 (**Lot 7**).
 - C A building more commonly known as the Bindoon IGA is located on Lot 7 (**Supermarket**).
 - D The Lessee applied to the Lessor for planning approval to extend the Supermarket (**Development**).
 - E The Lessor approved the Development on 1 March 2011 (**Approval**), subject to a number of conditions including:
 - “3. The property owner is required to enter into a formal lease agreement for the lease of an agreed area for the purposes of effluent disposal.”
- (Condition 3).
- F In satisfaction of Condition 3 of the Approval, the Lessee has requested that the Lessor grant it a lease of that portion of the Land described in **Item 1** of the Schedule (**Premises**), and the Lessor has agreed subject to the Parties entering into this agreement.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Lease, unless otherwise required by the context or subject matter -

Amounts Payable means the Rent and any other money payable by the Lessee under this Lease;

Authorised Agent means -

- (a) an agent, employee, licensee or invitee of the Lessor; and
- (b) any person visiting the Premises with the consent or implied consent of any person mentioned in paragraph (a);

Authorised Person means -

- (a) an agent, employee, licensee or invitee of the Lessee; and
- (b) any person visiting the Premises with the consent or implied consent of any person mentioned in paragraph (a);

Basic Consideration means all consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics or its equivalent determined in accordance with **clause 5**;

Commencement Date means the date of commencement of the Term specified in **Item 4** of the Schedule;

Contaminated Sites Act means the *Contaminated Sites Act 2003* (WA);

DEC means the Department of Environment and Conservation of Western Australia;

Environmental Contamination has the same meaning as the word "contaminated" in the Contaminated Sites Act;

EPA means the Environmental Protection Authority of Western Australia;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat;

Further Term means each further term specified in **Item 3** of the Schedule;

Good Repair means good and substantial tenantable repair and in clean, good working order and condition;

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Input Tax Credit has the meaning that it bears in section 195-1 of the GST Act;

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00, which rate cannot exceed the rate prescribed by, and imposed in accordance with, section 6.13 of the *Local Government Act 1995*;

Land means the land described at **Item 1** of the Schedule;

Lease means this deed as supplemented, amended or varied from time to time;

Lessee's Equipment includes but is not limited to any buildings, plant, equipment, fittings, pipes or pipelines, tanks, pumps or any other structures or improvements which may be constructed, erected, installed or placed on, in or under the Premises by the Lessee in connection with the Permitted Purpose;

Lessee's Obligations means the agreements and obligations set out or implied in this Lease or imposed by law to be performed by any person other than the Lessor;

Lessor's Obligations means the agreements and obligations set out or implied in this Lease, or imposed by law to be performed by the Lessor;

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Party means the Lessor or the Lessee according to the context;

Permitted Purpose is described in **Item 6** of the Schedule;

Premises means the premises described at **Item 1** of the Schedule;

Remediation has the meaning it has in the Contaminated Sites Act and Remediate has a corresponding meaning;

Rent means the rent specified in **Item 5** of the Schedule;

Rent Review Date means a date identified in **Item 8** of the Schedule;

Schedule means the Schedule to this Lease;

Tax Invoice has the meaning which it bears in section 195-1 of the GST Act;

Taxable Supply has the meaning which it bears in section 195-1 of the GST Act;

Term means the term of years specified in **Item 2** of the Schedule and any Further Term; and

Termination means expiry by lapse of time or sooner determination of the Term or any period of holding over.

1.2 Interpretation

In this Agreement -

- (a) words denoting -
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender includes each gender;
- (b) a reference to -
 - (i) a natural person includes a body corporate or local government; and
 - (ii) a body corporate or local government includes a natural person;
- (c) a reference to a professional body includes a successor to or substitute for that body;
- (d) a reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) a reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) a reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) a reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) a reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to -
 - (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (k) if a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them; and

- (l) the agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include -
 - (i) an agreement not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

1.4 Schedules etc

Each Schedule (and an Annexure or document incorporated by reference, if any) forms part of this Agreement. In the event of any conflict or inconsistency between any part of –

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) a Schedule;
- (c) an Annexure, if any; and
- (d) a document incorporated by reference, if any,

the material mentioned in any one of paragraph (a)-(d) of this **clause 1.4** has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. Grant of Lease

The Lessor leases to the Lessee the Premises for the Term subject to -

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Covenants.

3. Quiet enjoyment

Except as provided in the Lease, subject to the performance of the Lessee's Obligations the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

4. Rent and other payments

The Lessee AGREES with the Lessor -

4.1 Rent

To pay to the Lessor the Rent in the amount and manner set out at **Item 5** of the Schedule from the Commencement Date clear of any deductions whatsoever.

4.2 Outgoings

- (1) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises-
 - (a) local government rates, taxes and charges and including charges for rubbish or garbage removal;
 - (b) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
 - (c) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection AND the Lessee shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee;
 - (d) Fire and Emergency Services Authority (F.E.S.A) levies;
 - (e) land tax and metropolitan regional improvement tax on a single ownership basis; and
 - (f) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 4.2(1)** being the proportion that the Premises bears to the total area or the land or premises included in the charge or assessment.

4.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 35 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

4.4 Costs

- (1) To pay to the Lessor on demand –
 - (a) 4.2(1) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;
 - (b) all registration fees in connection with this Lease; and
 - (c) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (2) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to -
 - (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (b) any breach of an obligation or agreement by the Lessee or an Authorised Person;
 - (c) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;

- (d) any work done at the Lessee's request; and
- (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 4.4** or any matter arising out of this Lease.

5. Rent Review

5.1 Rent to be Reviewed

The Rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next Rent Review Date.

5.2 Methods of Review

The review will be either based on CPI or a Market Review. The basis for each rent review is as identified for each Rent Review Date in **Item 8** of the Schedule.

5.3 CPI Review

A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date. If there is a decrease in CPI having regard to the relevant CPI publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period. Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the parties, the substitution shall be made by a Valuer appointed in accordance with **clause 5.4**.

5.4 Market Rent Review

- (1) A rent review based on market rent will establish the current market rent for the Premises (which will not be less than the Rent payable in the period immediately preceding the Rent Review Date) by agreement between the parties and failing agreement, will be determined in accordance with the following provisions.
- (2) If agreement as to the substitution of the CPI with an equivalent index for the Premises is not reached at least one (1) month prior to the relevant Rent Review Date then the current market rent for the Premises will be determined at the expense of the Lessee by a valuer (**Valuer**) licensed under the Land Valuers Licensing Act 1978, to be appointed, at the request of either party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).
- (3) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the parties. The parties will be entitled to make submissions to the Valuer.
- (4) In this **clause 5**, "current market rent" means the rent obtainable for the Premises in a free and open market if the Premises was unoccupied and offered for rental for the use for which the Premises is permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:
 - (a) any improvements made or effected to the Premises by the Lessee; and
 - (b) any rent free periods, discounts or other rental concessions.

5.5 Rent will not decrease

Notwithstanding the provisions in this clause, the Rent payable from any Rent Review based on CPI Review will not be less than the Rent payable in the period immediately preceding such Rent Review Date.

5.6 Lessor's right to review

The Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

6. Accrual of Amounts Payable & Payment of Money**6.1 Accrual of Amounts Payable**

Amounts Payable accrue on a daily basis.

6.2 Payment of Money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

7. Insurance**7.1 Insurance required**

The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interest in the Premises) for the time being:

(a) Public Liability Insurance

The Lessee must effect and maintain with reputable insurers, noting the Lessor's and Lessee's respective rights and interests in the Premises for the time being, adequate public liability insurance for a sum not less than the sum set out at **Item 7** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

(b) Building Insurance

The Lessee will effect and keep effected policies of insurance in relation to any risk relating to the Lessee's ownership or interest in any buildings or improvements on the Premises including, without limitation, insurance for fire, Lessee's fixtures and fittings.

(c) Contents Insurance

Where the Lessor so requires, reasonable insurance to cover the Lessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary.

(d) **Workers Compensation**

The Lessee must effect and maintain a policy of employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Lessee employed in, about or from the Premises.

(e) **Personal Accident Insurance**

The Lessee must effect and maintain a policy of personal accident insurance in respect of any Authorised Person in, about or on the Premises,

and another other policy of insurance which the Shire may reasonably require or specify from time to time.

7.2 Details and Receipts

In respect of the insurances required by **clause 7.1** the Lessee must -

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately -
 - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

7.3 Not to invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might -

- (a) render any insurance effected under **clause 7.1** on the Premises, or any adjoining premises, void or voidable; or
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

7.4 Reports

Each party must report to the other promptly in writing and in an emergency verbally -

- (a) any damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person who is lawfully using or may lawfully use the Premises.

7.5 Settlement of claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any insurance required by **clause 7.1**.

7.6 Lessor as attorney

The Lessee appoints the Lessor as the Lessee's attorney during the Term -

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clause 7.1**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clause 7.1**;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

7.7 Lessee may be required to pay excess on insurances

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 7.1**.

7.8 Lessee's equipment and possessions

The Lessee ACKNOWLEDGES it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

8. Indemnity**8.1 Lessee responsibilities**

The Lessee is responsible and liable for all acts or omissions of any Authorised Person on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

8.2 Indemnity

The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor, in respect of:

- (a) any loss whatsoever (including loss of use);
 - (b) injury or damage of, or to, any kind of property or thing; and
 - (c) the death of, or injury suffered by, any person,
- caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:
- (d) the use or occupation of the Premises by the Lessee or an Authorised Person;
 - (e) any work carried out by or on behalf of the Lessee on the Premises;
 - (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;

- (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or an Authorised Person;
- (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (i) an act or omission of the Lessee.

8.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 7** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

8.4 No indemnity for Lessor's negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

8.5 Release

(1) The Lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by;
 - (ii) loss of or damage to the Premises or personal property of the Lessee; and
 - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area,

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

- (2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

9. Environmental Contamination

- (1) The Lessee shall undertake any Remediation of the Premises that is required to be undertaken (whether by a condition of development approval or otherwise) by reason of its use of the Premises for the Permitted Purpose.
- (2) Subject always to paragraph (1) above, the Lessee acknowledges and agrees:
 - (a) from the Commencement Date it is responsible for all and any Environmental Contamination caused as a result of the Lessee's use and occupation of the Premises;
 - (b) if at any time during the Term the Lessee knows or suspects of any Environmental Contamination on, in or under the surrounding land or the Premises, then the Lessee must immediately inform the DEC, the EPA and the Lessor of the Environmental Contamination;
 - (c) it must take all reasonable steps to prevent Environmental Contamination:
 - (i) occurring on, in or under the Premises; and
 - (ii) entering neighbouring premises from the Premises; and
 - (d) if any Environmental Contamination occurs which is attributable to the Lessee's use of the Premises, it must immediately and to the Lessor's satisfaction remediate such Environmental Contamination. If the Lessee fails to remediate the Environmental Contamination in accordance with this clause, then the Lessor is permitted to, at the Lessee's cost remediate the Premises or adjoining land. Any reasonable expense that the Lessor incurs in remediating the Environmental Contamination will be owed by the Lessee to the Lessor as a debt payable on demand.

10. Use

10.1 Restrictions on use

(1) Generally

The Lessee must not and must not suffer or permit a person to -

- (a) use the Premises or any part of it for any purpose other than for the purposes for which the Premises are held by the Lessee, as set out at **Item 6** of the Schedule; or
- (b) use the Premises for any purpose which is not permitted under any local or town planning scheme, local laws, acts, statutes or any law relating to health.

(2) No offensive or illegal acts

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

(3) No nuisance

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties.

(4) **No dangerous substances**

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions -

- (a) any such storage must comply with all relevant statutory provisions;
- (b) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
- (c) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (d) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

(5) **No harm or stress**

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(6) **No signs**

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(7) **No smoking**

The Lessee must not suffer or permit a person to smoke inside any building or other enclosed area on the Premises.

(8) **Consumption of alcohol**

The Lessee must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol without first obtaining the written consent of the Lessor.

(9) **Sale of Alcohol**

The Lessee will not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988*, *Health (Food Hygiene) Regulations 1993*, *Liquor Licensing Regulations 1989* and any other relevant written laws that may be in force from time to time.

(10) **Removal of rubbish**

The Lessee must keep the Premises free from dirt and rubbish and to store and keep all trade waste and garbage in proper receptacles.

(11) **No pollution**

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

(12) **No Permanent Residence**

The Lessee must not permit, or suffer to permit any person to live or otherwise reside on the Premises without the prior written approval of the Lessor.

(13) No animals

With the exception of livestock that may temporarily be on the Premises for the purpose of being transported to or from the Premises by air pursuant to a contract of carriage, the Lessee must not permit, or suffer to permit, any animals, temporarily or otherwise, on the Premises without the prior written approval of the Lessor.

10.2 No warranty

The Lessor gives no warranty -

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

10.3 Premises subject to restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

10.4 Indemnity for costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this clause.

11. Casual hire of Premises

Not applicable.

12. Keys and access

Not applicable.

13. Maintenance, repair and cleaning**13.1 Maintenance**

- (1) The Lessee will maintain at its own expense the Premises including but not limited to any structural parts, plate glass, electrical installations, gas and water pipes and fittings, toilets, sanitary appliances, drains, septic tanks, leach drains, paths, paving, retaining walls, fences and reticulation in good, safe order repair and condition.
- (2) The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.
- (3) The Lessee must take such reasonable action as is necessary to -
 - (a) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
 - (b) rectify or otherwise ameliorate,the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

13.2 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

13.3 No obligation to Lessor to repair or maintain

- (1) The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements comprising the Premises, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Premises.
- (2) Any further development proposed on the Premises during the Term shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained the prior consent of the Lessor, and all necessary statutory approvals.

13.4 Maintain surroundings

The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings including but not limited to any flora, gardens, lawns, shrubs, hedges and trees.

13.5 Pest control

The Lessee must keep the Premises free of any vermin or any other recognised pests and the cost of extermination will be borne by the Lessee.

13.6 Responsibility for securing the Premises

The Lessee must ensure the Premises, including Lessor's and Lessee's fixtures and fittings, are appropriately secured at all times.

13.7 Comply with all reasonable conditions

The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.

13.8 Acknowledgement of state of repair of Premises

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the Lease with full knowledge of the structural state and state of repair of the Premises.

14. Alterations**14.1 Restriction**

The Lessee must not without prior written consent from the Lessor or any other person from whom consent is required under this Lease or required under statute in force from time to time, including but not limited to the planning approval of the Lessor under a local or town planning scheme of the Lessor -

- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
- (b) subject to the performance of the Lessee's obligations in **clause 13**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

14.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in this **clause 14** the Lessor may -
 - (a) give such consent subject to conditions;
 - (b) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (c) require that any works be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant.
- (2) If the Lessor consents to any matter referred to in **clause 14** -
 - (a) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (b) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

14.3 Cost of Works

All works undertaken under this **clause 14** will be carried out at the Lessee's expense.

14.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either -

- (a) carry out those other works at the Lessee's expense; or
- (b) permit the Lessor to carry out those other works at the Lessee's expense, in accordance with the Lessor's requirements.

15. Statutory obligations and notices**15.1 Comply with Statutes**

The Lessee must:

- (a) comply promptly with all written law from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 10**; and
- (c) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

15.2 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 15.1**; and

- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 15.1**,

except to the extent that any claim, demand, costs or other payments is caused or contributed to by the negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

16. Report to Lessor

The Lessee must immediately report to the Lessor -

(1) **Vandalism**

Any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware.

(2) **Pollution**

Any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment.

(3) **Notices, etc**

All notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

(4) **Defects**

Any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

17. No assignment, subletting and charging

17.1 No assignment or sub-letting without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law.

17.2 Lessor's Consent to Assignment and Sub-letting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or Sub-letting of the leasehold estate created by this Lease if -

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the permitted use for non-profit making community purposes;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by -

- (i) the proposed assignee of a deed of assignment; or
 - (ii) the proposed sublessee of a deed of sublease,
- to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.

17.3 Consents of Assignee Supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning lessee from the Lessee's Covenants.

17.4 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

17.5 Costs for assignment and sub-letting

If the Lessee wishes to assign or sub-let the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to -

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
 - (b) any consents required under this Lease or at law; and
 - (c) all other matters relating to the proposed assignment or sub-letting,
- whether or not the assignment or sub-letting proceeds.

17.6 No mortgage or charge

The Lessee must not mortgage nor charge the Premises.

18. No caveat or other interest

18.1 No caveat or other interest

The Lessee nor any person on behalf of the Lessee must not lodge any absolute caveat, subject to claim or any other interest including any lease, sublease, mortgage, charge over the Land or Premises or part thereof, without the prior written consent of the Lessor.

18.2 Removal of interest

If any caveat or other interest is lodged without the consent of the Lessor, the Lessee irrevocably appoints the Lessor (or any person authorised by the Lessor for that purpose) jointly and severally -

- (a) for the Term;
- (b) for any holding over under this Lease; and
- (c) for a period of six (6) months after Termination of this Lease,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate -

- (d) a withdrawal of any absolute caveat lodged by or behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by on or behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease.

18.3 Costs of removal, Indemnity and Ratification

- (1) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause.
- (2) The Lessee indemnifies the Lessor against any loss arising from any act done under **clause 18**.

19. Lessee's Equipment

For the Term of the Lease and any further term, extension or holding over thereof, the Lessee's Equipment is the property of the Lessee and the Lessee shall bear responsibility for all costs relating to or arising from the Lessee's Equipment, including but not limited to insurance, security, maintenance, cleaning and repair and the Lessor agrees that the Lessee may, subject to **clause 20.4**, remove and retain ownership of the Lessee's Equipment upon Termination of the Lease.

20. Obligations on expiry or termination of lease

20.1 Restore Leased Area

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the performance by the Lessee of the Lessee's Obligations under this Lease fair wear and tear excepted.

20.2 Peacefully Surrender

On Termination the Lessee must -

- (a) peacefully surrender and return to the Lessor the Premises in a condition consistent with the performance of the Lessee's Obligations under this Lease; and
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

20.3 Removal of Lessee's Equipment

Unless otherwise agreed by the Lessor in writing in the event this Lease is terminated or otherwise determined the Lessee must at its cost and to the Lessor's satisfaction remove the Lessee's Equipment and restore the Premises and the surrounding area to substantially the same condition as it was immediately prior to the construction, installation or erection of the Lessee's Equipment on the Premises.

20.4 Failure to Remove or Restore

If the Lessee fails to comply with **clause 20.3** within thirty (30) days following termination or determination of the Lease the Lessor may at its option:

- (a) remove the Lessee's Equipment, rehabilitate and restore the Premises and recover the cost of doing so from the Lessee as a liquidated debt payable on demand; or
- (b) permit the Lessee's Equipment to remain on the land, in which case the Lessor and the Lessee covenant and agree that the Lessee's Equipment becomes the absolute property of the Lessor.

20.5 Clause to survive termination

The Lessee's obligations under this clause will survive termination.

21. Guarantee

21.1 Guarantee and Indemnity

In consideration of the Lessor entering into this Lease with the Lessee at the request of the Guarantor, the Guarantor hereby jointly and severally:-

- (a) GUARANTEES payment by the Lessee of the Amounts Payable by the Lessee to the Lessor pursuant to this Lease and the observance and performance by the Lessee of the Lessee's Covenants; and
- (b) AGREES that if any money payable by the Lessee to the Lessor pursuant to the terms of this Lease shall not be recoverable from the Guarantor under this Guarantee by reason of any legal limitation disability or incapacity on or of the Lessee or by reason of any avoidance of the liability of the Lessee or of any other fact or circumstances then the Guarantor will hold the Lessor fully indemnified at all times against all loss or damage which the Lessor may suffer or incur by reason of any limitation disability incapacity failure fact or circumstances.

21.2 Guarantor's Covenants

- (1) The Guarantor COVENANTS AND AGREES with the Lessor as follows:

- (a) To pay all moneys due and payable to the Lessor by the Lessee under this Lease upon demand.
- (b) The liability of the Guarantor will not be affected by:
 - (i) the granting of any time or other indulgence by the Lessor to any person;
 - (ii) any compounding compromise release abandonment waiver variation or renewal of any term of this Lease or of the rights of the Lessor or any omission;
 - (iii) the avoidance of any payment by the Lessee or the Guarantor to the Lessor;
 - (iv) any other dealing matter or thing which but for this provision operates to affect the liability of the Guarantor.

- (2) This Guarantee is an irrevocable and continuing Guarantee and will remain in effect for the benefit of the Lessor in respect of all liabilities of the Lessee arising from this Lease both before and after the determination of the Term.

- (3) All benefits or moneys received by the Lessor from or on account of the Lessee capable of being applied by the Lessor in reduction of any money owing to the Lessor will be taken and applied by the Lessor as payment in gross without any right of the Guarantor to claim any benefit from any moneys so received by the Lessor.

- (4) Upon liquidation or bankruptcy of the Guarantor the Lessor will be entitled to prove for the total indebtedness of the Lessee under this Lease for the Term notwithstanding that the Rent or other moneys payable by the Lessee to the Lessor under this Lease are not due and payable at the date of the liquidation or bankruptcy of the Guarantor.
- (5) The indemnity given in this **clause 22** by the Guarantor will be a principal obligation and may be enforced against the Guarantor without any responsibility on the part of the Lessor to proceed against the Lessee or any other person.
- (6) Upon liquidation or bankruptcy of the Lessee the Guarantor will not prove in competition with the Lessor and the Guarantor authorises the Lessor to prove for all moneys which the Guarantor has paid under this Lease and retain or to appropriate at the discretion of the Lessor any amount received by the Lessor.
- (7) To give effect to this Lease the Guarantor waives in favour of the Lessor all rights of the Guarantor against the Lessee.
- (8) The liabilities of the Guarantor created by this clause shall not be affected by reason of any security taken by the Lessor being or becoming void or defective.
- (9) In the event of any such part of this Lease being severed the Guarantor will not be entitled to rely on or claim the benefit of any such severance.
- (10) This Guarantee will remain in force and continue notwithstanding any extension, renewal or assignment of this Lease, and will continue during any period of holding over by the Lessee (whether or not with the Lessor's consent).

21.3 Obligations Effective in All Circumstances

The obligations (expressed or implied) of the Guarantor in this Lease shall apply to and be fully effective in respect of the Lessee's Covenants whether or not:

- (a) the whole or any part of the Lessee's Covenants are enforceable at law or in equity or otherwise pursuant to any express or implied lease, tenancy or other right of occupancy of or interest in the Premises granted by or derived from the Lessor under this Lease or under or pursuant to any antecedent agreement or otherwise enjoyed by the Lessee at law or in equity;
- (b) the Lease is in a form such as to be capable of being registered in the manner referred to in the *Transfer of Land Act 1893*; or
- (c) it is the intention (expressed or implied) of either or both of the Lessor and the Lessee that the Lease be registered in the manner referred to in the *Transfer of Land Act 1893*.

22. Provide keys

Not applicable.

23. Lessor's right to terminate

- (1) The Parties covenant and agree that:
 - (a) if the Council of the Lessor resolves to subdivide the Land and amalgamate the Premises with Lot 7, this Lease shall be determined on registration of the Application for New Titles to effect the amalgamation of the Premises and Lot 7; and

- (b) if the Lease is determined in accordance with this **clause 23**, then **clause 20** of this Lease shall apply.

24. Lessor's right of entry

24.1 Entry on reasonable notice

The Lessee must permit entry by the Lessor or any Authorised Agent onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice -

- (a)
- (i) at all reasonable times;
 - (ii) with or without workmen and others; and
 - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes -
- (i) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Obligations or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights remedies or powers under this Lease.

24.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to in **clause 24.1(b)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

25. Limit of Lessor's liability

25.1 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.

25.2 Limit on Liability for Breach of Lessor's obligations

The Lessor will not be liable for any failure to perform and observe any of the Lessor's Obligations due to any cause beyond the Lessor's control.

26. Damage or destruction of Premises

26.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee.

26.2 Dispute as to Abatement of Rent

Any dispute arising in relation to the abatement of rent pursuant to **clause 26.1** shall be referred to arbitration under the provisions of the *Commercial Arbitration Act 1985* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the award appears to have been overpaid.

26.3 Termination

In the event that fifty per cent (50%) or more of the gross lettable area of the Premises are damaged or destroyed by fire or any like casualty the Lessor will have the option to be exercised by notice in writing delivered to the Lessee within sixty (60) days of such occurrence, to elect to cancel and terminate this Lease. The Term will terminate upon the third date after such notice is given and the Lessee must vacate the Premises and surrender the same to the Lessor but such termination will be without prejudice to the Lessor's rights in respect of any antecedent breach of this Lease.

27. Option to renew

27.1 Exercise of option

If the Lessee at least one month, but not earlier than 6 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term as specified in **Item 3** of the Schedule and -

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in -
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Obligations; and
- (c) the Lessor agrees to the grant,

the Lessor may, in its sole discretion, grant to the Lessee a lease for the Further Term at the Rent and on the same terms and conditions other than this **clause 27** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate

28. Holding over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term together with the monthly

payment of any other Amounts Payable under this Lease and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

29. No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the Local Government Act 1995, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any written law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

30. Default

30.1 Events of Default

A default occurs if -

- (a) the Lessee is in breach of any of the Lessee's Obligations for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) where the Lessee is an association which is incorporated under the *Associations Incorporations Act 1987*, the association is wound up whether voluntarily or otherwise;
- (c) where the Lessee is an association which is incorporated under the *Associations Incorporations Act 1987*, the Lessee passes a special resolution under the *Associations Incorporation Act 1997* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

30.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 30.2** the Lessor may -

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 28**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Obligations or releasing the Lessee from liability in respect of the Lessee's Obligations.

30.3 Lessor may remedy Lessee's default

If the Lessee -

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Obligations,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

30.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers of the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

30.5 Essential Terms

Each of the Lessee's Obligations in **clauses 4** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **10** (Use), **13** (Maintenance, Repair and Cleaning), **17** (No Assignment, Subletting and Charging) and **33** (Goods and Services Tax) is an essential term of this Lease but this **clause 30.5** does not mean or imply that there are no other essential terms in this Lease.

30.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor -

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee AGREES with the Lessor that if the Term is determined -
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by lapse of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;

- (d) the Lessee agrees that the obligation set out in this **clause 30.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 30.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by lapse of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

31. Disputes

31.1 Appointment of arbitrator

Except as otherwise provided any dispute arising out of this Lease is to be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* and the Lessor and the Lessee may each be represented by a legal practitioner.

31.2 Payment of amounts payable to date of award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid.

32. Consents

In the event that the Land is subject to the provisions of the *Land Administration Act 1997* the grant of this Lease is made expressly subject to and is conditional upon the consent of the Minister for Lands to this Lease.

33. Goods and services tax

33.1 Lessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the lease of the Premises or any goods, services or other Taxable Supply supplied under this Lease then, unless the Lessor is liable for the payment of a given Taxable Supply, as from the date of any such introduction or application -

- (a) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (b) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

33.2 Increase in GST

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with **clause 33.1(a)**.

33.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to **clause 33.2**, the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

34. Additional terms and conditions

Each of the terms and conditions (if any) specified in **Item 9** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

35. Notice**35.1 Form of delivery**

A Notice to a person must be in writing and may be given or made -

- (a) by a delivery to the person personally; or
- (b) by addressing it to the person and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by notice to the other.

35.2 Service of Notice

A Notice to a person is deemed to be given or made -

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 35.1**, at the time of leaving the Notice provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 35.1**, on the second business day following the date of posting of the Notice.

35.3 Signing of Notice

A Notice to a person may be signed -

- (a) if given by an individual by the person giving the Notice;
- (b) if given by a corporation by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government; or
- (d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

36. Amendments to lease

Subject to such consents as are required by this Lease or at law, this Lease may be varied by the agreement of the parties in writing.

37. Consents

37.1 Minister for Lands

In the event that the Land is subject to the provisions of the *Land Administration Act 1997* the grant of this Lease is made expressly subject to and is conditional upon the consent of the Minister for Lands to this Lease.

37.2 Western Australian Planning Commission Consent

If for any reason this Lease requires by law the consent of the Western Australian Planning Commission then this Lease is made expressly subject to and is conditional upon the granting of the consent of the Western Australian Planning Commission.

38. Waiver

38.1 No general waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

38.2 Partial exercise of right power or privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

39. Acts by agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

40. Statutory powers

The powers conferred on the Lessor by or under any statutes for the time being in force and in effect except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

41. Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

42. Severance

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

43. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

44. Governing law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

Schedule

Item 1 Land and Premises

Land

Lot 1023 on Deposited Plan 245853 and being the whole of the land comprised in Certificate of Title Volume 2038 Folio 445.

Premises

That portion of the Land as shown hachured on the sketch annexed to this Lease as "Annexure A", comprising approximately 300 square metres.

Item 2 Term

Five (5) years commencing on 1 July 2011 and expiring on 30 June 2016.

Item 3 Further term

To be confirmed.

Item 4 Commencement date

1 July 2011.

Item 5 Rent

Fourth thousand one hundred and twenty five dollars (\$4,125) plus GST, payable annually in advance.

Item 6 Permitted Purpose

Effluent disposal and the installation of a new septic system.

Item 7 Public liability insurance

Twenty million dollars (\$20,000,000).

Item 8 Rent review dates

Not applicable.

Item 9 Additional terms and conditions

Nil.

Signing page

EXECUTED on the _____ day of _____ 2012

EXECUTED by SWANVILLE INVESTMENTS
PTY LTD (ACN 078 967 343) pursuant to
section 127 of the *Corporations Act*.

Signature of sole Director/Secretary (Print full name)

SIGNED by the said JAMES FRANCIS
GRIFFITHS in the presence of:

Witness sign

Print name

Address

Occupation

THE COMMON SEAL of the SHIRE OF
CHITTERING is affixed in the presence of -

Shire President Print Full Name

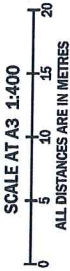
Chief Executive Officer Print Full Name

Annexure 1 – Sketch of Premises



LEASE AREA FOR EFFLUENT DISPOSAL
LOT 7 (NO.7) BINDA PLACE &
PT LOT 1023 (NO.11) EDMONDS PLACE
BINDOON

SHIRE OF CHITTERING



DRAWN	CHECKED	DRAWING No
SDP 12-12-12	AA 12-12-12	A953S-01A.dgn
REV	DESCRIPTION	DATE
A	Original Drawing	12-12-12

COPYRIGHT
This document is and shall remain the property of the SHIRE OF CHITTERING. The document is not to be used for any purpose for which it was drawn. Unauthorised use of this document in any form whatsoever is prohibited.

NOTE:
This plan has been prepared for planning purposes. Areas, Contours and Dimensions shown are subject to survey

