

COPY

SHIRE OF JERRAMUNGUP



LEASE AGREEMENT

FOR

3 SPITFIRE AVENUE, JERRAMUNGUP

**BETWEEN THE SHIRE OF JERRAMUNGUP AND THE
JERRAMUNGUP OCCASIONAL CHILD CARE
ASSOCIATION INCORPORATED
October 2008 to October 2013**

This Lease made the 31th day of October 2008.

BETWEEN the lessor named in item 1 of the Schedule hereto (hereinafter called "the Lessor") of the one part and Jerramungup Occasional Child Care Association incorporated as a body corporate in the State of Western Australia (hereinafter with its success and permitted assigns called "the Lessee") of to the other part.

WHEREAS:

The Lessor has agreed to lease and the Lessee has agreed to take on lease the land described in item 2 of the said Schedule (hereinafter called "the demised land" which demised land together with the buildings erections improvements fixtures and fittings thereon are collectively hereinafter called the "demised premises") and together also with all rights of access and egress with or without vehicles for the Lessee its employees servants visitors and other persons authorised by the Lessee upon and subject to the terms and conditions hereafter contained.

WITNESSETH as follows:

1. The Lessor HEREBY LEASES unto the Lessee the demised premises TO HOLD the same unto the Lessee for the term stated in item 3 of the said Schedule ("the term") the Lessee YIELDING AND PAYING therefore the rental stated in item 4 of said schedule.
2. The Lessor acknowledges that responsibility for insuring the building and contents, other than contents owned specifically by the Lessee, rests with the Lessor.

2. The Lessee covenants with the Lessor:

- a) To pay the rent hereby reserved at the times and in the manner stated in item 5 of the said Schedule;
- b) To pay all rates and taxes and other government or local authority impositions other than those accepted by the lessor in item 8 of this schedule and assessments whatsoever (if any) now or hereafter to be charged or imposed or assessed upon and payable in respect of the demised premises;
- c) To keep and maintain the demised premises, and every part thereof and any addition thereto in a clean and sanitary condition (removing all refuse and rubbish there from) and well cleansed and drained and to keep the same and any additions thereto in good and substantial repair order and condition (reasonable wear and tear excepted); and yield and deliver up the demised premises in good and substantial repair order and condition at the expiration of the term or sooner determination of this lease PROVIDED that nothing contained in this lease shall impose on the Lessee any duty to maintain the demised premises in any better condition than the existing at the commencement of the term;
- d) Not to do or leave undone any act matter or thing whereby a nuisance or anything in the nature of or which may be deemed to be a nuisance by any properly constituted authority or within the meaning of any statute (State or Federal) now or hereafter in force may exist or arise or continue upon or in connection with the demised premises, or the use to which it is being applied and forthwith to abate any such nuisance or alleged nuisance;

- e) At all times during the term duly and punctually to obey and comply with observe carry out, and conform to the provisions of all statutes now or hereafter in force in Western Australia and all rules regulations and bylaws there under applicable to either the owner or the occupier of the demised premises respectively affecting the demised land and/or the use to which the demised premises and the buildings thereon are from time AND if the Lessee makes any default in observing and complying with the covenants contained in this clause or any of them it: shall be lawful but not obligatory for the Lessor at the absolute discretion of the Lessor and without prejudice to any of the Lessor's rights or remedies hereunder to carry out comply with such matters aforesaid and to pay such moneys and to do such things as may be necessary to remedy such default non-observance or non-compliance and the cost thereof and all moneys so expended by the Lessor shall be paid by the to the Lessor on demand;
- f) To permit the agents and servants of the Lessor at all reasonable times to enter and view the state of cleanliness and repair of the demised premises and forthwith to clean and repair and amend in a proper workman like manner and defects for which the Lessee is liable and of which written notice is given to the Lessee PROVIDED THAT if the Lessee fails to comply with such notice it shall be lawful for the Lessor with servants and workman to enter upon the demised premises and to clean the same or to effect such repairs and amendments and the cost thereof shall be paid by the Lessee on demand;
- g) Not to permit or allow to be used exercised carried on in or about the demised premises or any part thereof any noisome offensive trade business occupation or calling or allow to do any act or things whatsoever which shall at any time during the term by or grow to be a nuisance or disturbance of the occupiers of adjoining lands and properties or of any persons in the vicinity;
- h) Not without the previous consent in writing of the Lessor (which consent will in no case be unreasonably withheld);
 - i) to assign sublet underlet or part with possession of the demised premises or any part thereof AND the provisions of Section 80 of the Property Law Act 1969 are expressly excluded from the provisions of this lease;
 - ii) to use the demised premises except for the purpose of Occasional Care Centre;
 - iii) to erect or cause to be erected any new buildings on the demised premises or any alterations or additions thereto; or
 - iv) to pull down demolish or remove or caused to be pulled down demolished or removed during the term hereby granted any building or improvement erected upon the demised premises.
- i) Not to do or suffer anything to be done in about or upon the demised premises whereby any policy of insurance against loss or damage to the demised premises may become void or voidable or whereby the premiums payable in respect thereof may be increased;
- j) Not to permit any unseemly or riotous conduct about the demised premises nor carry on or permit to be carried on upon any part of the same any trade business or occupation and not to permit the demised premises to be used as a factory or place

of manufacture or for any illegal or immoral purpose or so to as to cause nuisance or annoyance or inconvenience to the Lessor the Lessor's tenants or the neighbourhood;

- k) Not to sell or permit to be sold on the demised premises any part thereof or within the precincts thereof any spirituous or fermented or alcoholic or intoxicating liquor of any kind whatsoever;
- l) To indemnify and keep indemnified the Lessor from and against all actions suits claims proceedings demands and costs of third parties arising out of or in connection with the Lessee's use and enjoyment of the demised premises;
- m) To insure and keep insured the demised premises against loss or damage to the comprised therein and against the risk of injury to the public arising out of or in connection with the Lessee's use or occupation of the demised premises in the names of the Lessor and the Lessee and in some insurance office first approved by forthwith Lessor in the case of contents to the full insurable value thereof and in the case of public risk to an amount specified from time to time by the Lessor (but in any event not exceeding the amount stated in item 6 of the said Schedule) and to punctually make all payments required for that purpose and immediately on any cover note or renewal certificate being issued without demand forthwith deliver, to and leave the same with the Lessor;
- n) To yield up the demised premises with all fixtures fittings and additions thereto including water, electric lights fittings and keys at the determination of the term or any renewal thereof in good and tenantable repair and condition in accordance with covenants in that behalf herein contained PROVIDED HOWEVER that this covenant shall not apply to Lessee's fixtures which said fixtures the Lessee is hereby authorised to remove making good all damage caused by such removal.

3. AND the Lessor CONVANTS with the Lessee that:

- a) The Lessee observing and performing the covenants and stipulations on its part herein contained shall peaceably hold and enjoy the demised premises during the term without any interruption by the Lessor or any person rightfully claiming under or in trust for the Lessor;
- b) The Lessee having duly and punctually performed and observed the terms and conditions on its part herein contained and not being in default hereunder shall have the option (exercisable by at least three (3) calendar months written notice to the Lessor expiring on or before the expiration term) of renewing this lease for the further term (if any) stated in item 7 of the said Schedule at the same rental and on the same terms covenants conditions and stipulations (except this option) as herein contained;

4. AND IS MUTUALLY AGREED AND DECLARED by and between the parties hereto as follows:

- a) If the rent hereby reserved or any part thereof shall be unpaid for fourteen (14) days after becoming payable (whether formally demanded or not) or if the lessee shall fail or cease to use and enjoy the demised premises for the purpose referred to in subparagraph (ii) of paragraph (h) of clause 2 hereof or if any covenant on the Lessee's part herein contained or implied shall not be performed or observed than in any of the said cases it shall be lawful for the Lessor at any time thereafter to re-

enter upon demised premises and or any part thereof in the name of the while and this lease shall absolutely determine but without prejudice to the right of action of the Lessor for arrears of rent or damages for breach of covenant or otherwise however;

- b) If the demised premises or any part thereof shall at any time during the continuance of the term be destroyed or damaged by fire storm tempest malicious damage or earthquake as to be wholly or partially unfit for, occupation and use and the policy or policies of insurance thereon shall not have been vitiated or payment of the policy moneys refused in consequences of some act of default by the Lessee or some employee of the Lessee then and as often as the same shall happen a fair proportion of the rent according to the nature and extent of the damage sustained shall be allowed by the Lessor until the demised premises shall be rendered fit for occupation and use in any case of any difference or dispute touching this clause arising the same shall be and referred to and determined by arbitration under and in accordance with the provisions of to and determined by arbitration under and in accordance with the provisions of at the Commercial Act 1985 PROVIDED THAT the full rent shall be paid without any deduction or abatement until the date of the award of such arbitrator or agreement between the parties whereupon the Lessor shall refund to the Lessee any rent which shall accordingly to such award or agreement have been overpaid by the Lessee PROVIDED FURTHER THAT if at any time the demised premises shall be totally destroyed or damaged in manner aforesaid so as to render the demised premises shall not be rebuilt or reinstated within three (3) calendar months after such destruction or damage then either the Lessor or the Lessee may by notice in writing to the other party absolutely determined this lease as through the term has expired upon the occurrence by such destruction or damage without prejudice to the Lessee's liability for all rent up to the date of occurrence of destruction or damage without prejudice to the Lessee's liability for all rent up to the date of occurrence of destruction or damage and for all breaches of covenant antecedent thereto;
- c) Each party will pay its own solicitors' costs of and incidental to instructions for and preparation of this lease therein;
- d) If after the expiration or sooner determination of the term the Lessee with the consent of the Lessor shall remain in possession of the demised premises or any part thereof without having exercised the option of renewal hereinbefore contained or having exercised such option shall remain in possession with such consent at the expiration of the renewed term then in any such case the Lessee shall be a quarterly tenant of the demised premises but otherwise at the same rent as that paid during the last quarter of the immediately preceding term and on the same terms covenants and conditions as are herein or implied except the said option of renewal;
- e) It shall be for the Lessee on or before the expiration or sooner determination of this lease or any renewal thereof to take down remove and carry away all buildings and improvements which this Lessee shall or may before or during the time of this lease or any renewal have, affixed or erected or constructed to or upon the demised land or any part thereof (not being Lessee's fixtures as to which the provision to clause 2(n) hereof shall apply) and which may be the property of the Lessee (unless the Lessor shall before the expiration or sooner determination of this lease pay to the Lessee the value thereof to be ascertained by agreement or in default of agreement by reference to arbitration within the meaning of the Commercial Arbitration Act 1985) and in the event of the Lessee taking down removing and carrying away any such buildings erections and improvements as aforesaid the Lessee shall

- i) damaged or deterioration to any of the remaining buildings erections or improvements affected by such removal to be repaired reinstated or otherwise remedied and shall leave them in good repair reinstated or otherwise remedied and shall leave them in good repair reinstated or otherwise remedied and shall leave them in good repair order and condition in conformity with the provisions herein contained; and
 - ii) fill in level off and consolidate all excavations caused by that removal and carrying away of those building erections and improvements and leave the demised premises in a clean and tidy condition free from rubbish litter and debris.
- f) This lease is given by the Lessor and taken by the Lessee upon and subject to the special conditions (if any) contained in item 8 of the said Schedule;
- g) Any notice to be served by the Lessor on the Lessee under this lease shall be deemed have been duly served by or on behalf of the Lessor if sent in a prepaid registered letter addressed to the Lessee at its address aforesaid and any notice to be served by the Lessee on the Lessor under this lease shall be deemed to have been duly served if sent in a prepaid registered letter addressed to the Lessor at the Lessor's address aforesaid. A notice sent by post shall be given at the time when in due course of post it would be delivered at the address to which it is sent;
- h) Reference to this lease to an Act shall include the amendments to that Act for the time being in force and also any Act passed in substitution thereof or in lieu therefore and the regulations by-laws and rules for the time being in force hereunder,
 - i) If at any time any dispute or difference shall arise between the parties hereto in respect of any of the matters hereinbefore to or the meaning or construction of any of the provisions herein contained such dispute or difference shall be referred to and determined by arbitration under and in accordance with the provision of the Commercial Arbitration Act 1985;
 - ii) Notwithstanding the provisions of Section 20 of the Commercial Arbitration Act 1985 on any reference to arbitration pursuant to paragraph (i) of this sub clause or clauses 4(b) or (e) any party may be represented by a duly qualified legal practitioner or other representative.

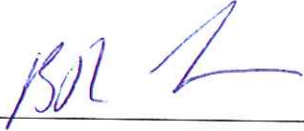
SCHEDULE

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|------------------------------------|--|
| 1. Lessor | JERRAMUNGUP SHIRE COUNCIL of Vasey Street Jerramungup in the State of Western Australia |
| 2. Description of demised premises | All that piece of land, buildings and improvements being 3 Spitfire Avenue, Jerramungup and being the whole of the land comprised on Lot No. 213 Jerramungup. |

- 3. Term of Lease** Five years commencing on 31 October 2008 and expiring on 31 October 2013.
- 4. Annual Rental** TWO HUNDRED DOLLARS (\$200) including 10% GST for the first year of the term and reviewed annually by Council.
- 5. Payment of Rental** Annually in advance commencing on the 31 October 2008 and thereafter on the 31 October in each every year during the term.
- 6. Maximum Amount of Public Risk Insurance** Unlimited
- 7. Period Renewal (option)** Two years from the expiration of term referred to in item 3 above
- 8. Other Conditions** Shire of Jerramungup to provide in-kind assistance with capital works entirely at its option and subject to funding requests from the Jerramungup Occasional Child Care Association, and is responsible for:
- Local Government Rates,
 - Sewerage Rates,
 - Rubbish collection Charges,
 - Water Rates,
 - Telephone Rental
 - Electricity Supply Tariff including GST.
 - Building maintenance in accordance with annual Council budgets.
 - Grounds maintenance in accordance with annual Council budgets.
- Jerramungup Occasional Child Care Association Incorporated are responsible for:
- Electricity consumption charges,
 - Water consumption charges,
 - Gas consumption charges and
 - Telephone consumption charges.
 - Grounds maintenance beyond Council budget allocations.


AS WITNESS the execution of this lease the day and year first aforesaid.

THE COMMON SEAL of the
SHIRE OF JERRAMUNGUP
was duly affixed hereto
in the presence of:




President



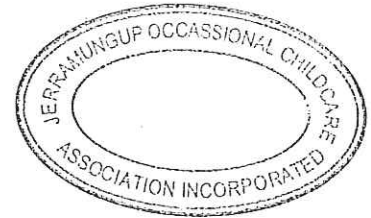


Chief Executive Officer

THE COMMON SEAL of the
JERRAMUNGUP OCCASSIONAL CHILD
CARE ASSOCIATION INCORPORATED was duly affixed
in the time being in the presence of:



President





Secretary

MARIE-CLAIRE BARRETT.