

Licence Agreement – 8678 Gnowangerup-Jerramungup Rd, Needilup

Shire of Jerramungup

R.J. Russell Nominees Pty Ltd



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Details

Parties

R.J. Russell Nominees Pty Ltd (ACN 008 787 424)

of Post Office Box 16, Jerramungup, Western Australia
(Licensor)

Shire of Jerramungup

of Post Office Box 92, Jerramungup, Western Australia
(Licensee)

Background

- A The Licensor is the Lessee of the Land under the Crown Lease.
- B The Licensee is a local government constituted pursuant to the provisions of the *Local Government Act 1995*.
- C At the request of the Licensee, the Licensor has agreed to grant to the Licensee the right to use the Access Area and to draw at least 50% of the water from the Dam on the terms and conditions contained in or implied by this Licence.

Operative part

1. Interpretation

1.1 Definitions

Access Area means that part of the Land comprised in the Crown Lease hachured on the plan annexed to this Deed;

Crown Lease means Crown Lease Number I144606;

Dam means the Dam located in the Access Area;

Land means Lot 1402 on Deposited Plan 28297 being the whole of the land comprised in Certificate of Crown Land Title Volume LR3082 Folio 979.

1.2 Interpretation

In this Deed -

- (a) words denoting -
 - (i) the singular include the plural and vice versa; and
 - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
 - (i) a person includes a firm, an unincorporated association, an incorporated association, a corporation and a government or statutory body or authority;
 - (ii) a person includes their legal personal representatives, successors and assigns;
 - (iii) a statute, regulation, local law or any other written law, code or policy includes subsidiary legislation or an instrument made under it, and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) 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;
 - (vi) provisions or terms of this Deed, or another document, agreement, understanding or arrangement, include a reference to both express and implied provisions and terms;
 - (vii) time is to local time in Perth, Western Australia;
 - (viii) \$ or dollars is a reference to the lawful currency of Australia;
 - (ix) this Deed or any other document includes this Deed or other document as amended or replaced and despite any change in the identity of the parties;

- (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions or other electronic mail or transmissions;
- (xi) anything (including 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; and
- (xii) a clause, paragraph, Schedule or Annexure is a reference to a clause or paragraph of, or Schedule or Annexure to, this Deed; and

(d) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

2. Grant of licence

Subject to approval of the Minister for Lands under section 18 of the *Lands Administration Act 1997* first being obtained, the Licensor grants to the Licensee for the Term, specified in **Item 1** of the Schedule, the right to:

- (a) use and occupy the Access Area in common with others for the purpose of access to and egress from the Dam; and
- (b) the right to take and use 50% of the water from the Dam to distribute to farmers requiring water during periods of water deficiency (as determined by the Licensee acting reasonably) together with the right at all times to enter upon the Land under or through which the pipes are laid and to do all necessary acts for the purpose of cleaning, repairing or renewing the pipes doing as little damage to the Land as is reasonable in the circumstances.

3. Licensee's covenants

The Licensee COVENANTS AND AGREES to:

- (a) pay to the Licensor the fee specified in **Item 2** of the Schedule (**Licence Fee**);
- (b) use the Access Area and the Dam only for the purposes specified in **clause 2**; and
- (c) pay any consumption charge or cost incurred or payable by the Licensor by reason of the Licensee's use of the Access Area or Dam.

4. Licensor's covenants

The Licensor COVENANTS AND AGREES:

- (a) prior to the entry into any contract of sale for the Land to notify any purchaser of this Deed and require any purchaser as a condition to the sale of the Land, to enter into a new deed with the Licensee on the same terms and conditions as this Deed;
- (b) not to construct, erect or build any building, structure or obstruction whatsoever on the Access Area or the Dam; and
- (c) not to permit the Land to be used in such a way as to obstruct or interfere with the right of the Licensee to draw water and access the Dam in accordance with the terms of this Licence.

5. Governing law

This Licence 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.

6. Variation

This Licence may be varied only by deed executed by the parties subject to such consents as are required by this Licence or at law.

7. 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 Licence.

8. Charge and Caveat

The Licensor CHARGES its interest in the Land in favour of the Licensee with the performance of its obligations pursuant to this Deed and AUTHORISES the Licensee to lodge an absolute Caveat at the Western Australian Land Information Authority trading as Landgate against the certificate of title to the Land for the purpose of securing such obligations.

9. Disposal Restrictions

The Licensor shall not sell, transfer, mortgage, lease, charge, assign or otherwise dispose of or encumber the Land without the prior written consent of the Licensee, which consent shall not be withheld if the person to whom any such right or interest in the Land is to be granted has first executed a Deed of Covenant (or in the case of a mortgagee an undertaking satisfactory to the Licensee) to be prepared by the Licensee's solicitors whereby that person covenants to observe and perform such of the covenants conditions and stipulations herein contained (including this covenant) as the Licensee shall require, as if that person had been a party to this Deed.

10. Withdrawal of Caveat

Subject to there being no subsisting or unremedied breach of any provision of this Deed and subject to:

- (a) the Licensor as appropriate complying with **clause 9**, the Licensee agrees that on receipt of a written request from the Licensor it shall provide to the Licensor at the cost of the Licensor in registrable form a duly executed withdrawal of any Caveat lodged by the Licensee pursuant to this Deed to enable registration of any transfer, lease, assignment or mortgage document provided that the Licensee is entitled to re-lodge its absolute caveat following such registration; and
- (b) upon expiry of the term of this Licence the Licensee shall provide to the Licensor on receipt of a written request from it a withdrawal of any Caveat lodged by the Licensee pursuant to this Deed and the provisions of this Deed shall then be of no further force and effect except in respect of any pre-existing unremedied breach.

11. Costs

Each party shall bear its own costs in relation to the preparation, drafting and execution of this Deed. The Licensee shall bear the costs of lodging any caveat pursuant to **clause 8** of this Deed, other than where a caveat is required to be withdrawn and relodged at the request of the Licensor in accordance with **clause 10(a)**.

Schedule

Item 1 Term

Twenty years commencing on the date this Licence is executed by the parties.

Item 2 Licence fee

One peppercorn per annum payable on demand.

Signing page

EXECUTED on the _____ day of _____ 2014

EXECUTED by **R.J. RUSSELL NOMINEES**)
PTY LTD (ACN 008 787 424) pursuant to)
section 127 of the Corporations Act:)

Name of Director

Signature of Director

Name of Director/Secretary*

Signature of Director/Secretary*

(*Delete whichever designation is incorrect)

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

President

(Print full name)

Chief Executive Officer

(Print full name)

CONSENT OF THE MINISTER FOR LANDS:

Annexure 1 – Sketch of Access Area and Dam

