

Lease

Portion of Jerramungup Community
Centre, 8 Tobruk Road, Jerramungup

Shire of Jerramungup (**Lessor**)

Western Australian Agriculture Authority (**Lessee**)

MinterEllison

L A W Y E R S

LEVEL 49, CENTRAL PARK, 152-158 ST GEORGE'S TERRACE, PERTH WA 6000, DX 124 PERTH
TEL: +61 8 9429 7444 FAX: +61 8 9429 7666
www.minterellison.com

Lease

Portion of 8 Tobruk Road, Jerramungup - Jerramungup Community Centre

Information table	5
Agreed terms	8
1. Defined terms & interpretation	8
1.1 Defined terms	8
1.2 Interpretation	11
2. Lease	12
2.1 Grant of lease	12
2.2 Termination on a Break Date	12
3. Lessee's payments	13
3.1 Rent	13
3.2 Rent review	13
3.3 Precondition to rent review	14
3.4 Variable Outgoings	14
3.5 Additional Variable Outgoings	15
3.6 Rate and tax outgoings	15
3.7 Power telephone and other services	15
3.8 Payment of costs and interest	15
3.9 Centre costs	16
3.10 Review and Application of Centre Costs	16
3.11 Security costs	17
4. GST	17
4.1 Interpretation	17
4.2 Lessee's obligations	17
4.3 Net down	17
4.4 Tax invoice	17
5. Insurance and indemnity	17
5.1 Indemnities	17
5.2 Insurance	18
5.3 Evidence of insurance and renewal	18
5.4 Lessee's insurance policies	18
5.5 Voiding insurance policies	19
5.6 Hazards	19
6. Maintenance and repair	19
6.1 Special covenants	19
6.2 General maintenance and repair	19
6.3 Painting	20
6.4 Cleaning	20
6.5 Protection of floor coverings	20
7. Use of Premises	20

7.1	Use of Premises	20
7.2	Nuisance	20
7.3	No sign antenna or amplifier	21
7.4	Keeping authorised signs in good order	21
7.5	Equipment restrictions	21
7.6	No floor overloading	21
7.7	No electrical overloading	22
7.8	Airconditioning Plant	22
7.9	Sanitary appliances	22
7.10	Deliveries	22
7.11	No obstruction	22
7.12	Charges	22
7.13	Town planning	22
7.14	Keeping premises and property secure	22
8.	Alterations and installations	23
8.1	No alterations or additions	23
8.2	Legislation orders and regulations	23
8.3	Standard of works and Lessor's costs	23
9.	Entry by Lessor	23
9.1	Permitting Lessor to enter and inspect	23
9.2	Permit intending tenants or purchasers to inspect	24
10.	Assignment and subletting	24
10.1	Prohibition on assignment, subletting and mortgaging	24
10.2	Conditions applying to assignment and sub-letting	25
10.3	Deemed assignments	25
10.4	Lessee's liabilities to continue	26
10.5	Costs payable in any event	26
11.	Expiration of the Term	26
11.1	Remove fixtures and fittings	26
11.2	Abandoned items	26
11.3	Yield up	26
12.	Miscellaneous	27
12.1	Give notices	27
12.2	Caveats	27
12.3	Rules	27
12.4	Damages	27
13.	Lessor's covenants	28
13.1	Quiet enjoyment	28
14.	Mutual covenants	28
14.1	Daily rent	28
14.2	Default	28
14.3	Effect of termination and re-entry	29
14.4	Lessor's right to remedy defaults	29
14.5	Essential terms	29
14.6	Effect of breach of an essential term	29
14.7	Damage to the Premises	30
14.8	Abatement of Rent	31

14.9	Right to grant other leases or licences	32
14.10	Holding over	32
14.11	Exclusion of liability	32
14.12	Moratorium	32
14.13	Severance	33
14.14	Waiver	33
14.15	Consents and approvals	33
14.16	Centre Facilities	33
14.17	Services	33
15.	Notices and other communications	33
15.1	Service of notices	33
15.2	Effective on receipt	34
15.3	Time of the essence	34
15.4	Whole agreement	34
15.5	Proper law	34
16.	Special Conditions	34
Schedule 1 – Variable outgoings		35
Signing page		36

Information table

Date

Parties

Name	Shire of Jerramungup
Short form name	Lessor
Notice details	2/6 Vasey Street, Jerramungup, WA 6337 Facsimile 9385 1161 Attention: Chief Executive Officer

Name	Western Australian Agriculture Authority (WAAA)
Short form name	Lessee
Notice details	3 Baron-Hay Court, South Perth, WA 6151 Phone: 9368 3333 Attention: Chief Executive Officer

Items

- | | |
|---------------|---|
| Item 1 | Land
Lot 250 on Deposited Plan 55227, being the whole of the land comprised in Certificate of Title Volume 2660 Folio 971. |
| Item 2 | Buildings
All of the buildings that are located on the Land from time to time and which at the date of this Lease comprise the buildings shown on Plan 1. |
| Item 3 | Premises
That portion of the Centre shown hachured on Plan 1. |
| Item 4 | Term
Subject to clause 2.2, 60 years.
(a) Commencement Date – 2 April 2007
(b) Expiration Date – 1 April 2067 |
| Item 5 | Rent
\$1 per annum payable on demand |
| Item 6 | Rent Review Dates
Subject to clause 3.3, not applicable. |
| Item 7 | Lessee's Proportion of Variable Outgoings
33.15% |

Item 8 Area of the Premises

290.93 m²

Item 9 Area of the Centre

877.72m²

Item 10 Permitted business

Commercial office use for the delivery of the Lessee's district agricultural services

Item 11 Prescribed Rate

4% per annum more than the maximum overdraft rate (expressed as a rate per annum) from time to time applied by the Commonwealth Bank of Australia on overdrafts of less than \$100,000.

Item 12 Intervals for painting

At the expiration of every 10 years during the Term or such shorter period as deemed necessary by the Lessor.

Item 13 Centre Costs

Subject to review in accordance with clause 3.10, \$24,200 (inclusive of GST) per annum payable in advance on the Commencement Date and each anniversary of the Commencement Date during the Term.

Background

- A The Lessor is the registered proprietor of the Land on which is constructed the Centre.
- B The Centre includes the Premises.
- C At the request of the Lessee the Lessor has agreed to lease the Premises to the Lessee on the terms and conditions contained in this Lease.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Lease:

Act means a statute (State or Federal) including amendments and re-enactments and any by-laws or regulations made pursuant to it.

After Hours Policy means a policy approved by Council, as amended from time to time with Council's approval, which governs:

- (a) the use of the Centre; and
- (b) the hiring of Centre Facilities,

after Business Hours.

Airconditioning Plant means any plant, machinery or equipment for heating, cooling or circulating air in the Buildings.

Annexure means an annexure to this Lease and annexed has a similar meaning.

approval means prior written approval and approved has a similar meaning.

Area of the Centre means the area of the Centre referred to in Item 9 or any other area written notice of which is given by the Lessor to the Lessee from time to time (which notice is conclusive evidence of that Area in the absence of manifest error). A failure or delay by the Lessor to give notice of any change of the Lettable Area of the Centre does not limit the Lessor's ability to adopt that change.

Area of the Premises means the Area of the Premises referred to in Item 8 or any other area notice of which is given by the Lessor to the Lessee from time to time (which notice is conclusive evidence of that Area in the absence of manifest error). A failure or delay by the Lessor to give notice of any change of the Lettable Area of the Premises does not limit the Lessor's ability to adopt that change.

Break Date means the tenth anniversary of the Commencement Date.

Buildings means the buildings described in Item 2 of the Information table and includes any modifications extensions or alterations to them from time to time and the Lessor's Installations.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Perth.

Business Hours means from 8.00am to 5pm on a Business Day.

Car Parking Areas means those areas on the Land set aside by the Lessor for the purpose of parking motor vehicles.

Centre means the Jerramungup Community Centre, a term which comprises all of the Buildings, the Common Areas, and the balance of the Land.

Centre Costs means the amount specified in Item 13, as reviewed under clause 3.10.

Centre Costs Sum means \$290,547.79, being a sum comprised of the amount specified in Item 13 increased annually by 4% on each anniversary of the Commencement Date for the first 10 years of this Lease.

Centre's Facilities means the Conference Room, the Meeting Room and the Equipment.

Commencement Date means the Commencement Date specified in Item 4 in respect of the Term.

Common Areas means all those parts of either or both of the Centre not leased to any lessee but:

- (a) made available from time to time by the Lessor for use by occupiers and visitors to the Land in common with each other including Elevators, accessways, roads, walks, corridors, passageways, stairways, toilets and washrooms; and
- (b) intended for the maintenance and administration or provision of services to the Centre including any administration offices, storerooms, workshops and plant rooms in the Buildings.

Conditions of Hiring means the conditions of hiring the Centre's Facilities, being conditions supplied by the Lessor from time to time.

Conference Room means the room marked 'Conference Room' on Plan 1.

consent means prior written consent.

Consumer Price Index means the Consumer Price Index All Groups Index Numbers for Perth the subject of Catalogue No. 6401.0 provided by the Australian Bureau of Statistics or if the basis upon which it is determined is substantially altered then such basis as the Lessor may reasonably determine to be as near to the Consumer Price Index previously referred to as is reasonably possible;

CPI Review Date means each anniversary of the Commencement Date during the Term.

Corporation means any body corporate.

Council means the council of the Lessor.

Equipment means equipment obtained or to be obtained by JTI to enable it to provide the Services.

Estimated Variable Outgoings means the Lessor's estimate of the Variable Outgoings likely to be expended or allowed for during each Lease Year.

Expiration Date means the Expiration Date specified in Item 4 in respect of the Term.

Fire Equipment means all fire prevention, smoke detection and fire fighting equipment in or serving any part of the Land or the Buildings.

Fund means an interest bearing account established by the Lessor which is to operate as a sinking fund. Moneys deposited into the account may only be used for the cleaning, maintenance, and repair of the Premises in accordance with the provisions contained in this Lease.

Information table means the part of this document described as Information table.

Item means an item in the Information table.

JTI means Jerramungup Telecentre Inc, being an association incorporated under the *Associations Incorporation Act 1987* (WA), or any other entity which takes on JTI's role in providing the Services.

Land means the land described in Item 1 as may be added to or reduced in area from time to time;

Lease means the lease evidenced by this document the Information table and each Annexure whether or not the lease or any of the Lessee's Covenants are enforceable at law or in equity or otherwise and includes 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 document.

Lease Year means each consecutive year commencing on 1 July and expiring on the following 30 June. If this Lease commences between those dates the period from the Commencement Date until the following 30 June is deemed to be a Lease Year. If the Lease expires or is otherwise determined between those dates the period from the immediately preceding 1 July until that date of expiration or determination will be deemed to be a Lease Year.

Lessee where not inconsistent with the context includes the Lessee's Employees and Visitors.

Lessee's Covenants means the terms covenants and conditions expressed or implied in this Lease and on the part of the Lessee to be observed and performed.

Lessee's Employees and Visitors means:

- (a) any person at any time upon the Premises other than the Lessor and its employees, agents and contractors; and
- (b) the Lessee's employees, agents, customers, clients, visitors and contractors at any time upon the Land (whether within either or both of the Buildings and the Premises or not).

Lessee's Proportion means the proportion that the Area of the Premises bears to the Area of the Centre being the proportion expressed as a percentage in Item 7 or any other percentage which expresses that proportion from time to time, written notice of which is given by the Lessor to the Lessee from time to time (which notice is conclusive evidence of the appropriate percentage in the absence of manifest error). A failure or delay by the Lessor to give notice of any change of the Lessee's Proportion does not limit the Lessor's ability to adopt that change.

Lessor where not inconsistent with the context includes the Lessor's employees agents and contractors.

Lessor's Installations means any fixtures, fittings plant and equipment installed by or belonging to the Lessor and providing services and utilities to the whole or any part of the Buildings.

Lessor's Purposes means the passage or flow of water gas fuel electricity sewerage garbage sullage air conditioning heating cooling and ventilation telephone public address fire and smoke detectors security alarms and other services.

Local or Public Authority means every Governmental or Semi-Governmental body, Municipal Council, the Insurance Council of Australia and any other board person or authority now or in the future exercising under any Act any control or jurisdiction over or power in connection with the Premises or with any business at any time conducted on or from the Premises.

Meeting Room means the room marked 'Meeting Room' on Plan 1.

Person means a natural person or Corporation or incorporated association or any other entity established pursuant to any Act.

Plan 1 means the plan contained in Annexure 'A'.

Premises means the Premises described in Item 3 and includes the Lessor's Installations.

Prescribed Rate means the Prescribed Rate specified in Item 11.

Rate and Tax Outgoings means the outgoings payable from time to time by the Lessee pursuant to clause 3.6.

Reduced Rate means the Prescribed Rate less 2% per annum.

Rent means initially the Rent specified in Item 5 and then that Rent as subsequently reviewed and varied pursuant this Lease.

Rent Review Date means each Rent Review Date (if any) specified in Item 6.

Rules means the Rules in respect of the Buildings and the Land which are prescribed by the Lessor in accordance with the provisions of this Lease.

Schedule means a Schedule to this Lease.

Services means the provision of a public library and electronic communications service to the Centre's users in accordance with the State Library Service Board Agreement and to a professional standard, and includes:

- (a) the acquisition of books and other information resources and the lending of those items to the Centre's users;
- (b) the hiring of the Centre's Facilities to users in accordance with an equitable booking system and at appropriate commercial rates set in accordance with Special Condition 1;
- (c) the purchasing of Equipment;
- (d) the payment of all costs for connecting any Equipment to electronic communications networks, including the internet and any other online or satellite-linked resource;
- (e) the provision of free access to users of all computer facilities provided by the Lessor under Special Condition 2, so that the users can:
 - (i) search the Centre's catalogue; and
 - (ii) undertake private research,provided that such facilities are not to be used for email or other forms of online communications.
- (f) the provision of email services to users at appropriate commercial rates set in accordance with Special Condition 1;
- (g) the implementation of an after-hours access regime for users in accordance with the After Hours Policy; and
- (h) the promotion and marketing of the Centre.

Special Conditions means the special conditions contained in Schedule 2.

Term means the term of this Lease commencing on the Commencement Date and expiring on the Expiration Date and includes where appropriate the period of any extension or renewal of the Term.

Variable Outgoings means the outgoings specified in Schedule 1.

Valuer means a valuer who is a member of the Australian Property Institute (Inc.) Western Australian Division practising within the Perth Metropolitan Area and having at least 5 years previous experience of assessing the rental value of premises similar to the Premises.

1.2 Interpretation

- (a) A reference to this Lease or any related document includes:
 - (i) both express and implied terms, covenants and conditions of; and
 - (ii) all variations and additions to,those documents at any time.

- (b) A reference to a person includes a reference to the person's personal representatives, executors, administrators, successors and assigns and a reference to a Corporation includes a reference to the Corporation's successors and assigns.
- (c) A reference to any person if that person ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions.
- (d) An obligation, covenant, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them severally.
- (e) An obligation, covenant, representation or warranty on the part of two or more persons binds them jointly and each of them severally.
- (f) A reference to any thing includes the whole or any part of that thing and a reference to a group of things or persons includes each thing or person in that group.
- (g) A reference to a clause, paragraph, information table, schedule or annexure is a reference to a clause or paragraph or the information table in, or a schedule or an annexure to, this lease and a reference to this lease includes the information table and any schedule or annexure.
- (h) The index and all headings have been included for ease of reference only and they are not to be used to construe or interpret any part of this Lease.
- (i) The covenants on the part of the Lessor:
 - (i) bind only the person entitled to the reversionary estate of the Land immediately expectant upon the determination of the Term at the time of any act or default; and
 - (ii) do not render that person liable in damages except where the act or default of that person or its employees or agents occurs while that person is the registered proprietor of the Land.

2. Lease

2.1 Grant of lease

The Lessor leases to and the Lessee takes the Premises for the Term:

- (a) together with the non-exclusive right for the Lessee and the Lessee's Employees and Visitors to use the Common Areas for the purpose for which they are intended; and
- (b) subject to:
 - (i) the covenants implied in leases by the *Transfer of Land Act 1893* (WA) as amended by the terms and conditions contained in this Lease;
 - (ii) the Lessor's right to make use of the external walls and roof of the Centre for any purpose; and
 - (iii) the other rights reserved to the Lessor by this Lease.

2.2 Termination on a Break Date

If the Lessee gives to the Lessor at any time not later than 6 months prior to the Break Date a notice to the effect that from the Break Date it wishes to terminate this Lease upon the Break Date, then this Lease will come to an end on the Break Date so specified.

3. Lessee's payments

3.1 Rent

The Lessee must pay the Rent to the Lessor (free of deductions) at the times, in the manner and at the address referred to in Item 5 or to such other place or person as the Lessor from time to time specifies by notice to the Lessee.

3.2 Rent review

Subject to clause 3.3, on each Rent Review Date the Rent is to be reviewed in the following manner:

- (a) Not less than 1 month prior to each Rent Review Date the Lessor must give to the Lessee written notice of the annual Rent proposed by the Lessor to become payable from that Rent Review Date (the Lessor's Proposed Rent).
- (b) Within 14 days of service of that notice on the Lessee (time being of the essence) the Lessee is entitled to give to the Lessor written notice that it agrees or does not agree to pay the Lessor's Proposed Rent. If the Lessee neglects to give the Lessor that notice, the Lessee is deemed to have agreed to pay the Lessor's Proposed Rent.
- (c) If the Lessee gives the Lessor written notice that it does not agree to pay the Lessor's Proposed Rent within the period specified in clause 3.2(b) then the annual Rent payable from the Rent Review Date is to be the amount determined by a Valuer nominated by the President for the time being of the Australian Property Institute (Inc.) Western Australian Division at the request of the Lessor as the then Current Market Rental Value for the Premises which the parties agree in any event will not be less than the Rent payable immediately prior to the relevant Rent Review Date.
- (d) The Valuer is deemed to be acting as an expert whose decision is final and binding on both the Lessor and the Lessee.
- (e) Each party is entitled to make written submissions to the Valuer but any failure to make or unreasonable delay in making submissions is not to delay, annul or otherwise affect the Valuer's determination.
- (f) The Valuer must give full written reasons for his or her decision specifying the matters taken into account the weight given to each matter and the matters disregarded.
- (g) The costs of the Valuer's determination are to be borne equally by the Lessor and the Lessee unless the Current Market Rental Value determined by the Valuer is equal to or greater than the Lessor's Proposed Rent in which case those costs are to be borne by the Lessee.
- (h) Until the annual Rent from a Rent Review Date is agreed or determined the Lessee must pay to the Lessor a rent equivalent to the Lessor's Proposed Rent.
- (i) If the annual Rent agreed or determined from a Rent Review Date is less than the Lessor's Proposed Rent the Lessor must apply the difference between the rent paid in respect of the period from the Rent Review Date to the date of agreement or determination and the rent which should have been paid for that period against the money which next becomes due and payable by the Lessee to the Lessor pursuant to this Lease.
- (j) If the annual Rent agreed or determined from a Rent Review Date is more than the Lessor's Proposed Rent, the Lessee must pay to the Lessor on demand the difference between the rent paid in respect of the period from the Rent Review Date to the date of agreement or determination and the rent which should have been paid for that period,

together with interest at the Reduced Rate calculated on a daily basis from the date on which each portion of that difference would have been payable if the annual Rent had been agreed or determined on the Rent Review Date until the date on which it is paid.

- (k) Despite the failure by the Lessor for any reason to give the notice referred to in clause 3.2(a) within the specified time the right to give the notice and the effect of the notice remains in full force and effect as if it had been given within the specified time.

3.3 Precondition to rent review

- (a) The Rent shall not be subject to review under clause 3.2 unless the Lessee assigns the Lease, in which case the assignment date shall be a Rent Review Date for the purposes of Item 6 as will every anniversary of that assignment date.
- (b) The fact the rent at the Commencement Date is \$1 per annum shall not be a factor that may be taken into account for the purposes of determining the Current Market Rental Value of the Premises.

3.4 Variable Outgoings

- (a) The Lessee must pay to the Lessor during each Lease Year the Lessee's Proportion of the Variable Outgoings for each Lease Year by 12 equal consecutive instalments monthly in advance on the same days and in the same manner as payment of Rent.
- (b) Prior to the Commencement Date and prior to 30 June in each Lease Year (or as soon as practicable after that date) the Lessor must notify the Lessee in writing of the Estimated Variable Outgoings for the immediately succeeding Lease Year and the amount of the Lessee's Proportion of those Estimated Variable Outgoings.
- (c) The Lessor may at any time by notice to the Lessee increase or decrease the Estimated Variable Outgoings and from the date specified in that notice each monthly instalment becoming due after that notice is to be increased or decreased as the case may require by the amount which will ensure that the Lessee's Proportion of the amended Estimated Variable Outgoings is paid in full by the expiration of the then current Lease Year.
- (d) Where any Variable Outgoing is incurred and is attributable to a period which includes the whole or part of a relevant Lease Year together with a period outside that Lease Year the Lessor may apportion the Variable Outgoing between the two periods in such manner as the Lessor reasonably determines.
 - (i) As soon as reasonably practicable after 30 June in each Lease Year (and where the Lease expires or is determined other than on 30 June as soon as reasonably practicable after 30 June next succeeding that expiration or determination) the Lessor must certify in writing to the Lessee the amount of the Lessee's Proportion of the actual Variable Outgoings for the preceding Lease Year.
 - (ii) If the amount of that Proportion is greater than the amount paid by the Lessee on account of that Proportion the Lessee must pay the difference to the Lessor on the date of receipt of the notice (even if by that date the Lease may have expired or been determined).
 - (iii) If the amount of that Proportion is less than the sum actually paid by the Lessee on account of that Proportion the Lessor must credit the Lessee with the difference towards the next ensuing payment or payments on account of the Lessee's Proportion of the Estimated Variable Outgoings but if the Term has then expired or been determined and no amount remains owing by the Lessee to the Lessor then the Lessor must pay any credit to the Lessee.

3.5 Additional Variable Outgoings

On demand by the Lessor the Lessee must pay the amount by which in the reasonable opinion of the Lessor the cost of the provision performance or undertaking of any service facility or thing included in any item of Variable Outgoings has been increased beyond its normal or anticipated cost by reason of any extended hours or days of opening of the Premises or any other increase change or peculiarity in the usage of the Premises or any other cause.

3.6 Rate and tax outgoings

- (a) Subject to clause 3.6(c), the Lessee must duly and punctually pay all Local or Public Authority rates water rates land tax (calculated as if the Land is the only land owned by the Lessor in Western Australia) metropolitan region improvement tax and all other outgoings:
 - (i) directly assessed or payable in respect of the Premises during or applicable to the Term and (without the necessity of demand) must produce to the Lessor receipts for each of those payments prior to the date specified for payment in the relevant assessment; or
 - (ii) which the Lessor elects not to recover as part of the Variable Outgoings in any Lease Year.
- (b) Subject to clause 3.6(c), if any of the outgoings referred to in 3.6(a) are not separately assessed or payable in respect of the Premises the Lessee must pay to the Lessor on demand an amount which bears the same proportion to the amount of the outgoing as the Lettable Area of the Premises bears to the lettable area of that part of the Centre to which the relevant assessment applies.
- (c) Clause 3.6(a) and (b) do not apply while the Western Australian Agricultural Authority is the lessee under this Lease.

3.7 Power telephone and other services

The Lessee must pay all charges for gas, electricity, fuel, telephone or other services, utilities or facilities (including meter rental, use or consumption, calls, re-connection, re-location or otherwise) relating to the Premises or the use or occupation of the Premises.

3.8 Payment of costs and interest

The Lessee must pay to the Lessor on demand:

- (a) all solicitors' costs of and incidental to the negotiation of and instructions for and for the preparation and execution of this Lease and all stamp duty (including all fines and penalties) payable on this Lease; and
- (b) all costs (calculated as between solicitor and client in the case of legal fees) charges and expenses incurred by the Lessor:
 - (i) attributable to any default by the Lessee in observing or performing any of the Lessee's Covenants;
 - (ii) relating to the preparation and service of a notice under Section 81 of the *Property Law Act 1969* (WA);
 - (iii) in obtaining professional advice as to the Lessor's rights remedies and obligations as a result of any default by the Lessee;
- (c) interest at the Prescribed Rate on all Rent and other money payable by the Lessee to the Lessor under this Lease but unpaid for more than 7 days from the respective due date

computed on daily rests on the amount from time to time remaining owing from and including the due date until the date of payment.

3.9 Centre costs

- (a) Subject to clauses 3.9(b) to (d) and 3.10, the Lessee must pay the Centre Costs to the Lessor (free of deductions) at the times and in the manner referred to in Item 13.
- (b) As the Lessee is only paying a peppercorn rent under this Lease and as the Lessor has agreed to the Break Date, the Lessee acknowledges that, from the Commencement Date, the Lessee is liable for the payment of the whole of the Centre Costs Sum.
- (c) If the Lease is terminated due to a breach by the Lessee during the first 10 years of the Term, then the Lessee is required to pay to the Lessor as a genuine pre-estimate of the damage suffered by the Lessor in respect of that early termination (but without prejudice to any other claim for damages that the Lessor may have against the Lessee), the Centre Costs Sum less the Centre Costs paid by the Lessee to the Lessor up to the date of the termination of the Lease.
- (d) This clause 3.9 shall survive any termination of this Lease.

3.10 Review and Application of Centre Costs

- (a) The Lessee acknowledges that the Centre Costs for the first year of the Term related to the following items of expenditure:
 - (i) repair and maintenance of the Premises;
 - (ii) cleaning costs for the Premises;
 - (iii) the Lessor's electricity costs for that part of the Centre that does not comprise the Premises; and
 - (iv) use by the Lessee of the Conference Room in accordance with clause 14.16,
- (b) At the end of each year of the Term, the Lessor must place any unused Centre Costs for the year into the Fund, which Fund the Lessor may use from time to time at its discretion to pay for structural repairs of or capital improvements to the Premises (and to the Buildings to the extent that the amenity of the Lessee's occupancy of the Premises is improved by those repairs or improvements). The Fund may also be used to pay for repair of damage to the Premises caused by fair wear and tear (pursuant to clause 6.2(c)).
- (c) The Lessee acknowledges that despite any other provision of this Lease (including Schedule 2) the Lessor shall not be obliged to add any money to the Fund in addition to the amounts (if any) deposited into the Fund pursuant to clause 3.10(b); nor will the Lessor be required to spend its own moneys on the items of expenditure that are intended to be paid for by using the Centre Costs or the Fund.
- (d) Subject to clause 3.10(d), on each CPI Review Date, the Centre Costs shall be increased by the factor equal to the percentage increase in the Consumer Price Index between the Consumer Price Index published for the quarter ending immediately preceding the relevant CPI Review Date and the Consumer Price Index published for the quarter ending immediately preceding the CPI Review Date which occurred immediately prior to the CPI Review Date in question or (in the case of the first CPI Review Date, between the Consumer Price Index published for the quarter ending immediately preceding the CPI Review Date in question and the Consumer Price Index published for the quarter ending immediately preceding the Commencement Date). The Centre Costs payable following a CPI Review Date shall never be less than the Centre Costs immediately preceding the CPI Review Date.

- (e) Despite clause 3.10(b), Council may review the Centre Costs under Special Condition 1.4.

3.11 Security costs

- (a) If the Lessee seeks the provision of additional security services, over and above the services provided as part of the Variable Outgoings, from the Lessor (including any subcontractor of the Lessor) for the Premises or in respect of the Lessee's use of the Centre's Facilities at any time, then the Lessee must pay the Lessor for the net cost of providing those services.
- (b) Unless the Lessor and the Lessor agrees otherwise, the Lessee may not seek the provision of security services at the Centre from other persons.

4. GST

4.1 Interpretation

In this Lease:

- (a) GST, supply, taxable supply and tax invoice have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (b) a reference to payment being made or received includes a reference to consideration other than money being given or received.

4.2 Lessee's obligations

The Lessee must:

- (a) pay to the Lessor, on each date the Lessee must make payment for a taxable supply under this Lease, an additional amount equal to the GST payable on the taxable supply or component of the supply for which that payment is made; and
- (b) ensure that any policy of insurance the Lessee must take out under this Lease provides for the insurer to pay, in addition to any amount paid on a claim, an amount on account of any GST payable by the insured on receipt of that payment.

4.3 Net down

When calculating the amount of:

- (a) the Variable Outgoings;
- (b) any reimbursement from the Lessee to the Lessor; and
- (c) the indemnification by the Lessee of the Lessor of an expense, loss or liability incurred by the Lessor,

the Lessor must exclude the GST paid or payable on the supply giving rise to the amount.

4.4 Tax invoice

The Lessor must give the Lessee a tax invoice for supplies under this Lease within the period required by law.

5. Insurance and indemnity

5.1 Indemnities

- (a) The Lessee occupies the Premises at the risk of the Lessee in all respects.

- (b) Except to the extent caused or contributed to by the Lessor, the Lessee releases and agrees to indemnify the Lessor and keep the Lessor indemnified from all costs claims actions proceedings demands expenses judgments damages or losses of any kind including any relating to loss of life of or personal injury to any person or damage to any property (wherever occurring) resulting from or attributable to anything occurring on or in the vicinity of the Premises by any act neglect default or omission by the Lessee or any of the Lessee's Employees and Visitors.

5.2 Insurance

- (a) Throughout the Term the Lessee must effect and keep current with a public insurance office approved by the Lessor, on behalf of the Lessee and the Lessor for their respective rights and interests:
 - (i) a policy to cover the Lessee's fixtures, fittings plant and equipment and stock in the Premises to their full insurable value against all usual risks against which in the opinion of the Lessor from time to time a tenant should ordinarily insure;
 - (ii) workers' compensation and employer's indemnity insurance in respect of the Lessee's employees;
 - (iii) a policy to cover all plate glass in the Premises against damage or destruction for its full replacement value;
 - (iv) a policy with a cover not less than the amount specified from time to time by the Lessor in respect of the risks referred to in clause 5.1;
 - (v) a public liability policy with a cover of not less than \$20,000,000 (or such greater sum as the Lessor may from time to time specify) in respect of any one occurrence; and
 - (vi) any other policy of insurance which the Lessor acting reasonably may from time to time require the Lessee to effect and maintain with an amount of cover and on terms as the Lessor may reasonably specify.
- (b) The Lessee must:
 - (i) immediately expend all money recovered in respect of any insurance under clause 4.2(a) in the satisfaction of the payment of damages or the reinstatement or replacement of the items for which that money is received to the extent that that money is sufficient for that purpose; and
 - (ii) on demand make up from the Lessee's own money any insufficiency of money for that purpose.

5.3 Evidence of insurance and renewal

The Lessee must:

- (a) pay all insurance premiums on any policies referred to in this clause 5 not later than the due date for payment specified in the first premium notice or demand for payment; and
- (b) on demand produce to the Lessor proper evidence of the policies and their renewal.

5.4 Lessee's insurance policies

The Lessee may not vary, surrender or cancel any of the policies referred to in clause 5.2(a) without the Lessor's consent.

5.5 Voiding insurance policies

- (a) Except with the Lessor's consent the Lessee must not do or allow to be done any thing in or near the Premises as a result of which any insurances in respect of the Premises taken out by the Lessor or the Lessee may be invalidated or avoided or the rate of premium on any insurance may be liable to be increased or any claim under that insurance may be lawfully refused in whole or in part.
- (b) If the Lessee or the Lessee's Employees and Visitors do or permit to be done anything which has the effect of invalidating or avoiding any policy of insurance taken out by the Lessor or the Lessee or by virtue of which the insurer may lawfully refuse a claim in whole or in part, then the Lessee is responsible for and must pay on demand any resulting damage or loss which the Lessor suffers or incurs and (without limiting any other rights of the Lessor) must pay to the Lessor on demand any increased amount of premium over the existing premium which may be charged on any such insurance.

5.6 Hazards

The Lessee must (without the Lessor's consent which may be granted or refused at the Lessor's absolute discretion) not bring onto or keep in the Premises or permit to be brought onto or kept in the Premises anything of a dangerous hazardous or flammable nature.

6. Maintenance and repair

6.1 Special covenants

- (a) Subject to clause 6.1(b), and subject to its receipt of the Centre Costs under clause 3.9, the Lessor covenants with the Lessee to perform the obligations in clause 6.2(a) and (c), 6.3, 6.4(a) and 6.5 that are imposed on the Lessor.
- (b) In performing its obligations under this clause 6, the Lessor is not required to perform work in any one year that costs more than the Centre Costs for that year (as reviewed under clause 3.10(c)) and the Lessor's obligations under this clause are contingent in any given year upon its receipt of payment of that sum in advance in accordance with clause 3.9.

6.2 General maintenance and repair

- (a) Subject to clause 6.1 and 6.2(b) and (c), the Lessor must maintain the Premises in good substantial and functional repair order and condition;
- (b) The Lessee must:
 - (i) repair and make good any damage to the Premises where that damage results from or is attributable to the want of care negligence misuse or abuse by the Lessee or the Lessee's Employees and Visitors or from any breach of any of the Lessee's Covenants; and
 - (ii) immediately replace all electric light fittings, light bulbs, globes and fluorescent tubes in the Premises which become damaged broken or which fail to function and the Lessee agrees that upon installation any replacements will become the property of the Lessor.
- (c) The Lessor is responsible for repairing any damage to the Premises that is caused by fair wear and tear. However, the timing and extent of any repair of such damage is a matter that shall be determined by Council, and the costs of any repairs may only be paid for with moneys drawn from the Fund, unless Council decides otherwise in its discretion.

6.3 Painting

Subject to clause 6.1:

- (a) at the painting intervals referred to in Item 12; and
- (b) in the final two months of the Term (whether or not the Term is to be extended) or upon the earlier determination of the Term if required by the Lessor,

the Lessor must paint in a good and tradesmanlike manner all parts of the Premises which have been previously painted.

6.4 Cleaning

- (a) Subject to clause 6.1, the Lessor is responsible for providing cleaning services for the Premises.
- (b) The Lessee must:
 - (i) leave rubbish containers outside the Premises only in the areas and at the times and for the periods from time to time prescribed for that purpose by the Lessor;
 - (ii) when reasonably required by the Lessor, permit any of the Lessor's cleaning contractors nominated by the Lessor to have access to the Premises at all necessary times and to remain on the Premises with necessary employees sub-contractors plant and equipment for cleaning purposes; and
 - (iii) keep the Premises free and clear of all rodents, vermin, insects, birds, animals and other pests and wherever necessary must employ pest exterminators approved by the Lessor to carry out the necessary work.
- (c) If the Lessee makes any use of the Centre's Facilities or the Centre's kitchen at any time, it must ensure that it leaves the same in a clean condition after it has done so.

6.5 Protection of floor coverings

In relation to floor coverings installed in the Premises by the Lessor, the Lessee must:

- (a) replace an appropriate part of them with floor coverings of a similar nature design colour and quality as the original floor covering if in the reasonable opinion of the Lessor any part is so damaged as a consequence of the Lessee's negligence as to be incapable of being reinstated to its former condition;
- (b) protect them from excessive wear by the provision of protective devices reasonably specified by the Lessor; and
- (c) not cut alter or replace any of them or install any other floor coverings in the Premises without the consent of the Lessor.

7. Use of Premises

7.1 Use of Premises

The Lessee must use the Premises only for the purpose described in Item 10.

7.2 Nuisance

The Lessee must not do or permit to be done in or near the Premises anything which is a nuisance grievance disturbance or annoyance to the Lessor or to any tenant or occupier of other premises in the vicinity of the Premises.

7.3 No sign antenna or amplifier

- (a) Except with the consent of the Lessor and the approval of each relevant Local or Public Authority, the Lessee must not place or permit to be placed or maintained in the Premises or on the roof or any exterior part of the Buildings:
 - (i) any sign awning canopy decoration lettering advertising device notice matter or thing visible from outside the Premises;
 - (ii) any television or radio antenna or mast or other apparatus; or
 - (iii) any radio or television receiver loudspeaker amplifier or other similar device (other than any emergency communication apparatus installed by the Lessor) audible from outside the Premises.
- (b) Any consent given by the Lessor pursuant to clause 6.3(a) may be withdrawn at any time where the Lessor reasonably so determines having regard to the interests of the Lessor the Buildings or the rights or interests of owners occupiers or users of any other premises.
- (c) On the first to occur of:
 - (i) the Lessor withdrawing the consent referred to in clause 6.3(a);
 - (ii) the expiration of the Term;
 - (iii) the determination of the Term prior to expiration,the Lessee must immediately remove any of the things referred to in clause 6.2(a) and make good any damage or disfigurement caused by that thing or by its removal.

7.4 Keeping authorised signs in good order

The Lessee must maintain in good condition and repair any thing approved by the Lessor under clause 7.3.

7.5 Equipment restrictions

The Lessee may not without the consent of the Lessor use or permit to be used in or in connection with the Premises any form of lighting heating cooling or ventilation other than as installed in the Premises at the Commencement Date.

7.6 No floor overloading

- (a) The Lessee must not without the consent of the Lessor bring into the Buildings or onto the Land or permit to remain in the Premises any heavy machinery, plant or equipment of a nature, size, weight or design as to cause or in the reasonable opinion of the Lessor is likely to cause damage of any kind to any part of the Land the Buildings or the Premises.
- (b) The Lessee must take all steps reasonably necessary to ensure that no part of the Premises is broken over-stressed or damaged by any overloading from any cause and must observe the maximum floor loading weights for the respective portions of the Premises specified from time to time by the Lessor.
- (c) Before bringing or permitting to be brought onto the Land or into the Buildings or the Premises any items referred to in clause 6.6(a) the Lessee must give notice to the Lessor of the Lessee's intention to do so and must comply with every reasonable direction given by the Lessor in respect of the delivery times routing installation and location of each of those items and when appropriate their removal.
- (d) On demand the Lessee must make good to the Lessor's satisfaction any damage done to the Premises the Buildings or the Land by any of those items or their delivery or removal.

7.7 No electrical overloading

The Lessee must not without the consent of the Lessor install or use any electrical equipment on the Premises that overloads or has the capacity to overload the cables switchboards or sub-boards through which electricity is conveyed to or through the Premises.

7.8 Airconditioning Plant

The Lessee must comply with and observe the reasonable requirements of the Lessor in respect of the Airconditioning Plant and not do nor permit to be done anything which interferes with or impairs their safe and efficient operation.

7.9 Sanitary appliances

The Lessee must not use or permit to be used any toilets sinks drains and other plumbing facilities in the Premises for any purpose other than that for which they were respectively designed constructed or provided and must not deposit or permit to be deposited in any of those facilities any sweepings rubbish or other matter.

7.10 Deliveries

The Lessee may only make deliveries to and from the Centre at the times and in the manner which will ensure as little interference as is reasonably practicable with persons using the Common Areas.

7.11 No obstruction

- (a) The Lessee must not obstruct or permit to be obstructed by the Lessee's Employees and Visitors any part of the Common Areas by leaving or placing any article or thing or by any meeting of persons or in any other manner.
- (b) Where such an obstruction occurs and the Lessee does not remove or is not capable of immediately removing that article or thing the Lessor may remove it at the Lessee's expense and risk.

7.12 Charges

- (a) The Lessee must not without the Lessor's consent give any charge or any other security interest of any kind (the Security) over or affecting any plant or equipment affixed or to be affixed to the Premises and the Lessee must:
 - (i) duly and punctually comply in all respects with the terms and conditions of the Security; and
 - (ii) give immediate notice to the Lessor of any notice of default or demand received by the Lessee in respect of the Security.
- (b) The Lessee authorises the Lessor and the Lessor's employees and agents to obtain from any grantee of the Security any particulars (including the amount from time to time owing) under the Security.

7.13 Town planning

The Lessee must not do or permit to be done anything in breach of any applicable town planning scheme or zoning or as a result of which the zoning or permitted use of the Premises for their present purposes under any Act by-law order or scheme relating to town planning may be cancelled or otherwise prejudiced or altered.

7.14 Keeping premises and property secure

The Lessee must:

- (a) use the Lessee's best endeavours to protect and keep safe the Premises and any property contained in the Premises from theft or robbery; and
- (b) keep all doors windows and other openings closed and securely fastened when the Premises are not open for business.

8. Alterations and installations

8.1 No alterations or additions

Subject to clause 8.3 the Lessee must not without the consent of the Lessor:

- (a) make any alterations or additions to the construction or arrangement of the Premises or any of the Lessor's Installations;
- (b) cut main or injure any of the walls roofs partitions timbers doors or floors of the Premises; or
- (c) erect or install any internal partitions fixtures or fittings in the Premises.

8.2 Legislation orders and regulations

Subject to clause 8.3:

- (a) the Lessee must duly and punctually comply with and observe and indemnify the Lessor in respect of all Acts and all orders requirements and notices from or by any Local or Public Authority which relate or apply in any way to the Premises or their use or occupation or the number or sex of the Lessee's Employees and Visitors. The Lessee's obligations under this clause 7.2(a) include the carrying out of any repairs alterations or works to or the provision of fire or smoke alarms or other emergency services in or for the Premises.
- (b) if any compliance or observance under clause 7.2(a) includes a requirement for structural alterations or additions to the Premises the Lessee's obligations under clause 7.2(a) only apply insofar as they relate to the Lessee's business or the use to which the Premises are put by the Lessee or the number or sex of the Lessee's Employees and Visitors.

8.3 Standard of works and Lessor's costs

The Lessee must:

- (a) ensure that all works which the Lessee carries out or is required to carry out under clauses 8.1 and 8.2 are carried out only by contractors and tradesmen approved of by the Lessor and in accordance with plans specifications and schedules of works materials and finishes approved by the Lessor before any of those works are commenced; and
- (b) pay to the Lessor on demand the reasonable cost to the Lessor and its employees agents and independent contractors in respect of the grant of those approvals and in ensuring that those works are carried out in accordance with this Lease.

9. Entry by Lessor

9.1 Permitting Lessor to enter and inspect

The Lessee must permit the Lessor and any person authorised by the Lessor at any time to enter the Premises on the Lessor giving the Lessee reasonable notice:

- (a) to view the state of repair and condition of the Premises and to make reasonable investigations to ascertain if there has been any breach of any of the Lessee's Covenants;

- (b) to serve upon the Lessee written notice of any default found on such inspection requiring the Lessee to remedy that default in accordance with the Lessee's Covenants; and
- (c) to the extent necessary to remain on the Premises with all necessary tradesmen, contractors, plant, equipment and materials:
 - (i) to carry out any repairs, renovations, maintenance, modifications, extensions, alterations or replacements to any part of the Buildings and to any plant, machinery or equipment within the Buildings (whether within the Premises or not);
 - (ii) without limiting clause 9.1(c)(i), to erect make excavate lay or install in on over or under the Premises and to make use of any pipe wire amplifier light alarm channel drain sump vent duct inlet outlet plant or machinery or other thing requisite for or in addition to any of the Lessor's Purposes;
 - (iii) to inspect, remove, maintain, replace, repair, service, alter or add to any of the items referred to in clause 9.1(c)(ii) in or about the Premises or the walls floors and ceilings of the Premises or any other part of the Buildings;
 - (iv) to comply with any Act or any request, requirement, notification or order of any Local or Public Authority for which the Lessee is not responsible under this Lease.
- (d) In exercising the right of entry referred to in clause 9.1(a), (b) or (c) the Lessor must cause as little inconvenience disruption or damage to the Lessee as is practicable in the circumstances. The Lessee has no claim for any abatement of Rent or compensation or damages in respect of that exercise.

9.2 Permit intending tenants or purchasers to inspect

- (a) At all times during the Term in respect of any prospective sale and within the period of 3 months immediately prior to the expiration of the Term in respect of any reletting the Lessee must permit the Lessor or any person authorised by the Lessor on the Lessor giving the Lessee reasonable notice:
 - (i) at all reasonable times to enter the Premises with and exhibit them to prospective tenants of the Premises or purchasers of the whole or any part of or any interest in the Land;
 - (ii) to affix and exhibit where the Lessor thinks fit in or about the Premises any notice or sign for reletting the Premises or selling the Land or that part or interest.
- (b) The Lessee must not remove deface or obscure or permit to be removed defaced or obscured any notice or sign referred to in clause 8.2(a).

10. Assignment and subletting

10.1 Prohibition on assignment, subletting and mortgaging

- (a) Subject to clause 10.2 and 10.1(d) the Lessee must not without the consent of the Lessor assign, sublet, transfer or part with possession of the whole or any part of the Premises or the benefit of this Lease or any estate or interest in the Premises or this Lease.
- (b) The Lessee must not without the consent of the Lessor mortgage charge or otherwise encumber the interest of the Lessee under this Lease.
- (c) The provisions of Sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to this Lease.

- (d) Despite any other provision of this Lease, the Tenant must not assign part only of the Premises.

10.2 Conditions applying to assignment and sub-letting

The Lessor will not unreasonably withhold consent under clause 10.1(a) if:

- (a) the Lessee proves to the satisfaction of the Lessor that the proposed assignee is a respectable responsible and solvent person capable of adequately carrying on the business permitted to be carried on in the Premises and capable of complying with all the Lessee's Covenants;
- (b) all Rent and other money (including interest) then due and payable by the Lessee under this Lease have been paid;
- (c) there is not at either or both of the time such consent is sought and at the date any assignment is to take effect any subsisting breach of any of the Lessee's Covenants;
- (d) the Lessee has procured the execution by the Lessee and the proposed assignee and any guarantors referred to in clause 9.2(f) of a deed of assignment of this Lease to which the Lessor is a party and which is in a form prepared by the Lessor's solicitors and has delivered that deed or sublease to the Lessor;
- (e) the Lessee pays to the Lessor all reasonable costs and expenses including legal costs administrative costs stamp duty and other disbursements incurred or to be incurred by the Lessor in respect of:
 - (i) the deed of assignment; and
 - (ii) any enquiries and investigations which are made by or on behalf of the Lessor as to the respectability solvency and suitability of any proposed assignee; and
- (f) where any proposed sublessee or assignee is a Corporation its directors and principal shareholders at their expense execute and complete a deed of guarantee and indemnity in a form approved by the Lessor's solicitors in favour of the Lessor in respect of:
 - (i) in the case of an assignment the payment by the proposed assignee of all Rent and other money and interest which becomes due from and including the assignment date and the observance and performance by the proposed assignee of all of the Lessee's Covenants which are due to be observed and performed from and including the assignment date; and
 - (ii) in the case of a sublease the payment by the proposed sublessee of all rent and other money and interest which becomes due under the sublease and the observance and performance by the proposed sublessee of all of the terms covenants and conditions which are due to be observed and performed by the proposed sublessee

10.3 Deemed assignments

An assignment of this Lease requiring the consent of the Lessor in the terms of clause 10.2 will be deemed to occur when:

- (a) any change in the principal shareholders of any corporate Lessee (which is not a public listed company) occurs which has the effect of altering the effective control of the Lessee; or
- (b) the Lessee has executed this Lease as the trustee of a trust and any change in the persons beneficially entitled (or who may become beneficially entitled) to the trust assets occurs or

in the case of a unit trust any units are transferred or any units (in addition to those issued at the Commencement Date) are issued.

10.4 Lessee's liabilities to continue

The covenants and agreements on the part of any assignee expressed or implied in any deed of assignment and in favour of the Lessor are supplementary to those contained in this Lease and do not in any way relieve the Lessee from the Lessee's Covenants. Despite any assignment by the Lessee of the benefit of this Lease the Lessee will remain liable to observe and perform all of the Lessee's Covenants throughout the balance of the Term current at the date of assignment.

10.5 Costs payable in any event

The Lessee must pay to the Lessor on demand all reasonable costs and expenses incurred by the Lessor in relation to clauses 10.2 and 10.3 even if:

- (a) the Lessor refuses to consent to the proposed assignment or proposed sublease; and
- (b) the proposed assignment or proposed sublease is not completed for any reason (other than the default of the Lessor).

11. Expiration of the Term

11.1 Remove fixtures and fittings

Immediately before the expiration of the Term (or within 5 Business Days after the earlier determination of the Term) the Lessee must:

- (a) remove from the Premises all items which have been erected or installed by the Lessee or any previous tenant or occupier of the Premises (other than any which in the opinion of the Lessor form an integral part of the Premises including all light fittings located in or affixed to the Premises);
- (b) make good to the satisfaction of the Lessor any damage caused to the Premises the Buildings or the Land by any erection installation or removal referred to in clause 10.1(a); and
- (c) if required by the Lessor re-alter any alterations (whether structural or otherwise) made to the Premises during the Term so that the Premises are restored to their condition as at the Commencement Date.

11.2 Abandoned items

Any items referred to in clause 11.1(a) not removed by the Lessee within the time specified in clause 11.1 are deemed to have been abandoned by the Lessee and become the property of the Lessor without any right by the Lessee to make any claim against the Lessor in respect of those items. The Lessee must pay to the Lessor on demand the reasonable cost of removing abandoned items from the Premises and making good any damage caused by that removal.

11.3 Yield up

At the expiration of the Term the Lessee must:

- (a) deliver up possession of the Premises to the Lessor in good and substantial repair order and condition and state of cleanliness and decoration consistent with the due and punctual observance and performance by the Lessee of the Lessee's Covenants; and
- (b) deliver to the Lessor all keys cards switching equipment combinations identification cards or other devices for or enabling the Lessee or the Lessee's Employees and Visitors to gain access to the Premises or the Buildings or the Land.

12. Miscellaneous

12.1 Give notices

The Lessee must immediately:

- (a) on receipt of any notice by the Lessee from any Local or Public Authority relating to the Premises or their use or occupation give the Lessor a copy of that notice; and
- (b) on any person dying or receiving any injury in the Premises or on any accident occurring to or defect being found in any of the Lessor's Installations or in the Buildings give to the Lessor notice of the occurrence and all relevant particulars known to the Lessee.

12.2 Caveats

- (a) The Lessee must not at any time lodge an absolute caveat against the Lessor's title to the Land.
- (b) During the Term the Lessee may lodge a subject to claim caveat against the Lessor's title to the Land in order to protect the interests of the Lessee pursuant to this Lease.
- (c) At the expiration of the Term the Lessee must sign and lodge at the Lessee's expense a proper registerable withdrawal of any caveat lodged against the Land by the Lessee.
- (d) If the Lessee lodges an absolute caveat or fails to withdraw any caveat pursuant to clause 11.2(c) then the Lessee must sign and lodge any withdrawal of caveat and on demand the Lessee must pay to the Lessor all costs and disbursements relating to that withdrawal.

12.3 Rules

- (a) The Lessor may make, alter, and from time to time add to Rules (not inconsistent with any of the express provisions of this Lease) for the use safety security control care appearance and cleanliness of the Centre and for the comfort of persons and preservation of good order and conduct in and around the Buildings and the Land.
- (b) Any Rules and any alterations or additions to the Rules bind the Lessee from the date notice of them is served on the Lessee and will take effect as Lessee's Covenants.
 - (i) The Lessee is responsible for ensuring that the Lessee's Employees and Visitors observe the Rules.
 - (ii) Any breach of the Rules by the Lessee's Employees and Visitors will be deemed to be a breach of the Rules by the Lessee.
- (c) A certificate signed by or on behalf of the Lessor shall be sufficient evidence that the Rules at any particular time have been duly made and are binding on the Lessee and that the Lessee was given a copy of the Rules and any alterations or additions on the dates of service specified in the certificate.

12.4 Damages

- (a) The Lessee's obligations to observe or perform the Lessee's Covenants survive the expiration or earlier determination of the Term.
- (b) If the Lessee fails to observe and perform any of the Lessee's Covenants the Lessor may in addition to any of the Lessor's other rights and at the Lessor's option cause or do all things necessary for that observance and performance.
- (c) The Lessee must pay to the Lessor on demand as a liquidated debt the Lessor's costs and expenses incurred by the Lessor in exercising any rights under clause 11.4(b).

13. Lessor's covenants

13.1 Quiet enjoyment

The Lessor covenants with the Lessee that the Lessee duly paying the Rent and other money payable under this Lease and observing and performing all other of the Lessee's Covenants may peaceably and quietly hold and enjoy the Premises during the Term and any extension or renewal of the Term without any interruption by the Lessor or any person rightfully claiming through under or in trust for the Lessor except as authorised by this Lease.

14. Mutual covenants

14.1 Daily rent

- (a) Subject to clause 14.1(c), in respect of each day following the date of the expiration or earlier determination of the Term until the date on which the Lessee has completed the observance and performance of the Lessee's Covenants or such earlier date on which the Lessor in exercise of any powers conferred on the Lessor by this Lease remedies or causes to be remedied any default by the Lessee in that observance or performance the Lessee must pay to the Lessor as liquidated damages a daily sum.
- (b) The daily sum will be equal to 1/365th of the aggregate of the Rent, the Lessee's Proportion of the Variable Outgoings and the Rate and Tax Outgoings payable by the Lessee in respect of the Premises for the 12 months immediately preceding the date of expiration or earlier determination (or where less than 12 months have elapsed between the Commencement Date and the date of expiration or earlier determination a daily sum equal to that aggregate for that period divided by the number of days in that period).
- (c) If during the period referred to in clause 14.1(a) the Lessee is entitled to an abatement of Rent or has for any reason been relieved from the obligation to pay Rent for the whole or any part of that period then for the purpose of calculating the daily sum the Lessee will be deemed not to have been entitled to that abatement or relief.
- (d) The rights vested in the Lessor under clause 14.1(a) do not limit or prejudice any other remedy available to the Lessor in respect of any breach of the Lessee's Covenants.

14.2 Default

If:

- (a) the Rent or any part the Rent is at any time unpaid for 7 days after becoming due (whether formally demanded or not);
- (b) the Lessee breaches or fails to observe or perform any other of the Lessee's Covenants and that breach or failure continues after the expiration of 14 days (or any further time as the Lessor may specify) of notice to the Lessee to remedy it or where that breach or failure is incapable of being remedied, the Lessee has failed to pay adequate monetary compensation to the Lessor by the expiration of that period;
- (c) the Lessee goes into liquidation or becomes bankrupt or enters into any composition arrangement with or assignment for the benefit of the Lessee's creditors;
- (d) a manager, an administrator, a trustee, a receiver, a receiver and manager or liquidator is appointed under any Act or instrument or by order of any court in relation to any part of the Lessee's undertakings assets or property; or
- (e) any execution is issued against any assets or property of the Lessee; or

- (f) the Premises are abandoned or otherwise left vacant by the Lessee,

then in any such case (but subject to the *Bankruptcy Act 1966* (Cth)) the Lessor may at its option re-enter occupy and resume possession of the Premises or any part of the Premises in the name of the whole.

14.3 Effect of termination and re-entry

- (a) In exercising its right of re-entry the Lessor or any person authorised by the Lessor may by any means open any door or lock and may remove all persons, and all fixtures, fittings and other property of the Lessee from the Premises without being liable for any action in trespass, assault, detainee or otherwise.
- (b) On exercising the right of re-entry (other than the provisions of this Lease which apply for the benefit of the Lessor after the expiration or earlier determination of the Term) this Lease and the Term ceases and determines.
- (c) Despite this Lease and the Term having ceased and determined the Lessee remains liable to pay the Rent, the Lessee's Proportion of the Variable Outgoings, the Rate and Tax Outgoings and other money accrued, due and payable up to the time of the re-entry.
- (d) Any re-entry of the Premises does not prejudice any other rights of the Lessor in respect of any breach of or failure to comply with the Lessee's Covenants.

14.4 Lessor's right to remedy defaults

- (a) The Lessor may but is not obliged to remedy at any time without notice any default by the Lessee under this Lease and whenever the Lessor so elects any or all of the Lessor and any person authorised by the Lessor may enter and remain upon the Premises together with all necessary plant equipment and materials for the purpose of remedying that default.
- (b) The Lessee shall pay on demand to the Lessor all costs and expenses incurred by the Lessor (including legal costs and expenses calculated as between solicitor and client) in remedying that default.

14.5 Essential terms

- (a) Each of the covenants by the Lessee:
 - (i) to pay the Rent, the Lessee's Proportion of the Variable Outgoings, the Rate and Tax Outgoings, and the Centre Costs;
 - (ii) to use the Premises only for those purposes specified in Item 10;
 - (iii) not to assign, sublet transfer or part with possession of the whole or any part of the Premises or of the benefit of this Lease; and
 - (iv) to comply with the Special Conditions,is an essential term of this Lease but nothing expressed or implied in this clause is to be construed to mean that other Lessee's Covenants may not also be essential terms of this Lease.
- (b) Any breach of an essential term will be regarded by the Lessor and the Lessee as a fundamental breach by the Lessee of this Lease.

14.6 Effect of breach of an essential term

- (a) Subject to clause 3.9(d), if the Lessor determines this Lease following a breach of an essential term then (without prejudicing or limiting any other right or remedy of the

Lessor under this Lease) the Lessor is entitled to recover from the Lessee as liquidated damages for the breach the difference between:

- (i) the aggregate of the Rent, Variable Outgoings, Rate and Tax Outgoings and any other money which would have been payable by the Lessee for the unexpired residue of the Term remaining after the determination; and
 - (ii) the rent, outgoings and other money which the Lessor by taking reasonable steps to relet the Premises obtains or could reasonably be expected to obtain by reletting the Premises for the unexpired residue of the Term on reasonable terms as to rent and otherwise.
- (b) The Lessor is not obliged to effect any reletting referred to in clause 13.6(a) on the same or similar terms as are expressed and implied in this Lease.
- (c) The Lessor's acceptance of arrears or any late payment of any of the Rent, Variable Outgoings, Rate and Tax Outgoings or other money due under this Lease does not constitute a waiver of the essentiality of the Lessee's obligations to make those payments.
- (d) The Lessor's entitlement to recover damages under this clause is not prejudiced or limited if:
- (i) the Lessee abandons or vacates the Premises;
 - (ii) the Lessor elects to re-enter the Premises or to determine this Lease;
 - (iii) the Lessor accepts the Lessee's repudiation of this Lease; or
 - (iv) any conduct constitutes a surrender by operation of law.
- (e) The Lessor is entitled to institute proceedings to recover damages under this clause either before or after any of the events or matters referred to in clause 13.6(d).
- (f) Any conduct by the Lessor to mitigate damages does not of itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

14.7 Damage to the Premises

If during the Term:

- (a) any Local or Public Authority resumes or takes the Premises for any public purpose or declares the Premises unfit for occupation or orders their demolition; or
- (b) the Premises are destroyed or damaged so as to render them substantially unfit for the use and occupation of the Lessee or so as (in either case) to deprive the Lessee of substantial use of them or so as (in the case of damage or destruction) to render the rebuilding or reconstruction of the Buildings in its previous form impracticable or undesirable in the opinion of the Lessor,

then:

- (c) this Lease may be terminated (without compensation) by either the Lessor or (subject to clause 13.7(d)) the Lessee by notice to the other;
- (d) the Lessee is only entitled to terminate this Lease under this clause if:
 - (i) in the case of the events referred to in clause 13.7(a):
 - (A) the events are not caused or contributed to by the Lessee or the Lessee's Employees and Visitors;

- (B) the resumption, taking, declaration or order has not been withdrawn, reversed, declared void or otherwise become ineffective within a reasonable time after first being made;
- (ii) in the case of the events referred to in clause 13.7(b):
 - (A) any policy of insurance effected in respect of any damage or destruction has not been made void or payment of any of the policy money refused as a consequence of an act or default of the Lessee or any of the Lessee's Employees and Visitors; and
 - (B) the Lessor has failed to rebuild or reinstate the Premises within a reasonable time (having regard to the extent of the damage and the work required) after notice by the Lessee to the Lessor requesting that the Premises be rebuilt or reinstated;
- (e) any termination under this clause will be without prejudice to the rights of either party in respect of any antecedent breach matter or thing; and
- (f) nothing expressed or implied in this clause will be deemed to impose any obligation on the Lessor to challenge any resumption, taking, declaration or order of the type referred to in clause 13.7(a), rebuild or reinstate the Premises or to make them fit for use and occupation of the Lessee.

14.8 Abatement of Rent

If any resumption, taking, declaration or order is made under clause 14.7(a) or if any damage or destruction referred to in clause 14.7(b) occurs and if in the latter case the policy of insurance effected in respect of any relevant damage or destruction has not been made void or payment of the policy money refused in consequence of an act or default of the Lessee or any of the Lessee's Employees and Visitors then:

- (a) the Rent, Variable Outgoings and Centre Costs or a proportionate part of them depending on the nature, extent and effect of the resumption, declaration, order, destruction or damage will abate until the Premises have been rebuilt or reinstated or made fit for the occupation and use of the Lessee or until the Lease is terminated pursuant to the provisions of clause 14.7 as the case may be;
- (b) until the Lessor and the Lessee mutually agree or in the absence of an agreement a determination of the extent of the abatement is made the Lessee must continue to pay the Rent and all other monies payable under this Lease in full;
- (c) upon mutual agreement or determination of the extent of the abatement the Lessor must refund to the Lessee any Rent, Variable Outgoings and Centre Costs which according to that agreement or determination has been overpaid;
- (d) if any dispute arises as to the extent of the abatement it may be referred at the request of either party to a person nominated by the President for the time being of The Law Society of Western Australia and that nominee is to act as an expert and not as an arbitrator;
- (e) each party is entitled to make written submissions to the expert but any failure to make or unreasonable delay in making submissions is not to delay annul or otherwise affect the expert's determination;
- (f) on completion of his determination the expert must provide to the Lessor and the Lessee written reasons for his determination in which the expert must specify the matters taken into account by the expert in reaching his determination and the weight given by the expert to each such matter;

- (g) the expert's determination is final and binding upon the Lessor and the Lessee;
- (h) the expert's costs are to be borne by the Lessee unless the extent of the abatement is determined to be greater than that offered by the Lessor in which case the Lessor and the Lessee must share that cost equally.

14.9 Right to grant other leases or licences

The Lessee agrees that:

- (a) the Lessor may grant any lease or licence of other parts of the Centre for the same purposes for which the Lessee is entitled to use the Premises under this Lease;
- (b) the Lessee will not seek compensation from the Lessor in respect of the grant of any other lease or licence; and
- (c) the grant of any other lease or licence will not affect the liability of the Lessee to observe and perform the Lessee's Covenants.

14.10 Holding over

If the Lessee continues to occupy the Premises after the expiration or earlier determination of the Term with the consent of the Lessor then the Lessee will become a monthly tenant of the Lessor but (unless otherwise agreed) at a rent equal to one twelfth of the aggregate of the Rent (increased by 10% above that payable immediately prior to that expiration or determination except if the Rent is at that time a peppercorn) and Variable Outgoings and Rate and Tax Outgoings payable by the Lessee immediately preceding that expiration or determination and otherwise on and subject to the Lessee's Covenants and the same conditions as are expressed or implied in this Lease except for any option to renew which the parties agree is deemed to be expressly excluded.

14.11 Exclusion of liability

Despite any implication or rule of law or equity to the contrary the Lessor shall not in any circumstances be liable to the Lessee:

- (a) for any loss or damage suffered by the Lessee or the Lessee's Employees and Visitors attributable in any way to:
 - (i) any act, default or negligence of any other tenant of the Buildings or the Land or that tenant's employees, agents, contractors or invitees; or
 - (ii) any malfunction, breakdown, interference or interruption of or to the Lessor's Installations; or
 - (iii) the breakage blockage or overflow of any sewer gutter or drain from any cause; or
- (b) for any damage or loss that the Lessee may suffer by reason of the neglect or omission of the Lessor to do any act or thing to or in respect of the Premises, the Buildings or the Land which the Lessor is liable to do unless the Lessee has given to the Lessor notice of that act or omission and the Lessor has without reasonable cause failed within a reasonable time to take proper steps to do that act or rectify that omission.

14.12 Moratorium

The application to this Lease of any moratorium or Act having the effect of extending the Term reducing or postponing the payment of the Rent or otherwise affecting the operation of the Lessee's Covenants or providing for compensation rights or privileges at the expense of the Lessor in favour of the Lessee or any other person is expressly excluded to the extent that this exclusion is lawful.

14.13 Severance

If any condition covenant or stipulation of this Lease or its application to any person or circumstances is or becomes invalid or unenforceable the remaining covenants conditions and stipulations are not to be affected and each covenant condition and stipulation of this Lease will be valid and enforceable to the fullest extent permitted by law.

14.14 Waiver

- (a) If the Lessor fails to take advantage of any default or breach of any of the Lessee's Covenants that failure is not to be or be construed as a waiver by the Lessor of that breach or default.
- (b) Any custom or practice which may grow up between the parties in the course of administering this Lease is not to be construed to waive or lessen the right of the Lessor to insist upon the observance or performance by the Lessee of any of the Lessee's Covenants.
- (c) No consent or waiver expressed or implied by or on behalf of the Lessor to or in respect of any particular breach of any of the Lessee's Covenants is to be construed as a consent to or waiver of any other breach of that or any other of the Lessee's Covenants.
- (d) The acceptance by the Lessor of Rent or any other money under this Lease is not to be nor to be deemed to be a waiver of any default or breach by the Lessee of any of the Lessee's Covenants at the time of that acceptance.

14.15 Consents and approvals

Except as otherwise specifically provided in this Lease any consent or approval which may be granted by the Lessor pursuant to this Lease may be granted or refused or granted subject to conditions at the reasonable discretion of the Lessor.

14.16 Centre Facilities

- (a) Subject to clause 14.16(b) and (c), it is agreed that the Lessee shall be entitled to hire the Centre's Facilities from the Lessor up to 20 times each calendar year (each booking for the purposes of this calculation comprising part of or no more than a day) without being required to pay a hiring fee for doing so (but subject to it having paid the Centre Costs), provided that all hiring shall be managed by JTI or the Lessor in accordance with the Conditions of Hiring.
- (b) If the Lessee wishes to use the Centre Facilities more often than 20 times in any calendar year, then it must pay the Lessor's usual hiring fee for that additional use.
- (c) If the Lessee wishes to hire any of the Centre Facilities outside the hours specified in the Conditions of Hiring, it may do so subject to the After Hours Policy and any such use may involve additional fees charged in accordance with the After Hours Policy.

14.17 Services

Despite any other provision of this Lease, it is confirmed that the Lessor does not promise that:

- (a) JTI will provide the Services; and
- (b) if JTI does not provide the Services, then the Lessor will provide them.

15. Notices and other communications

15.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (Notice) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Information table, as varied by any Notice given by the recipient to the sender from time to time.

15.2 Effective on receipt

A Notice given in accordance with clause 15.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

15.3 Time of the essence

Time is of the essence in every respect in relation to the observance and performance of the Lessee's Covenants.

15.4 Whole agreement

The covenants and provisions expressed and implied in this Lease cover and comprise the whole of the agreement between the parties to this Lease and no further or other covenants or provisions whether in respect of the Premises or otherwise are to be deemed to be implied in this Lease or to arise between the parties to this Lease by way of collateral or other agreement.

15.5 Proper law

The laws of the State of Western Australia and where applicable the Commonwealth of Australia apply to this Lease and the parties submit to the jurisdiction of the Courts of Western Australia and Courts having jurisdiction to hear appeals from those Courts.

16. Special Conditions

The parties agree that the Special Conditions are to be deemed to be incorporated in this Lease.

Schedule 1 – Variable outgoings

Variable Outgoings means all costs charges and expenses incurred or payable by the Lessor for or in respect of either or both of the Land and the Buildings (and not otherwise the direct responsibility of the Lessee under this Lease) in respect of or incidental to:

- (a) premiums for insurances effected and maintained by the Lessor including (but not limited to):
- (b) electricity gas and other sources of power or energy used or consumed in running and operating the Airconditioning Plant and all meter rentals and reading charges;
- (c) the caretaking and preservation of security of the Centre;
- (d) all audit fees and charges incurred from time to time in the course of verification of statements of the Variable Outgoings;
- (e) if the Premises are or become a lot or part of a lot in a strata plan registered under the *Strata Titles Act* 1985, contributions to any fund established by the strata company or otherwise pursuant to that Act; and
- (f) any other costs charges or expenditure reasonably and properly incurred by the Lessor in and about the preservation of either or both of the Land and the Buildings and the operation, maintenance, inspection, administration and promotion of the Buildings.

Each Variable Outgoing described in the paragraphs above is to be interpreted to include all things of and incidental to the provision of that Variable Outgoing including (without limitation):

- (i) the wages and fees payable to employees and contractors in the course of the provision of any services referred to in the Variable Outgoings;
- (ii) the provision of equipment necessary to provide those services;
- (iii) all consumable items;
- (iv) the cost of all maintenance agreements,

but the Variable Outgoings do not include any cost charges and expenses which are of a capital nature.

Signing page

EXECUTED as a Deed.

The common seal of the Shire of
Jerramungup is affixed in the presence of



A handwritten signature in blue ink, appearing to be "B. Trevaskis", written over a horizontal line.

Signature of Bruce Trevaskis, President

A handwritten signature in blue ink, appearing to be "A. Lamb", written over a horizontal line.

Signature of Mr Alan Lamb, Chief Executive Officer

Signed on behalf of the Western Australian
Agriculture Authority by the Chief Executive
Officer of the Department of Agriculture and
Food authorised by the authority in the presence
of:

A large, stylized handwritten signature in blue ink, written over a horizontal line.

A handwritten signature in blue ink, appearing to be "J. Yovick", written over a horizontal line.

Witness Signature

The name "J. Yovick" written in blue ink.

Name (print)

(Manager) Public Servant.
Position

Annexure A

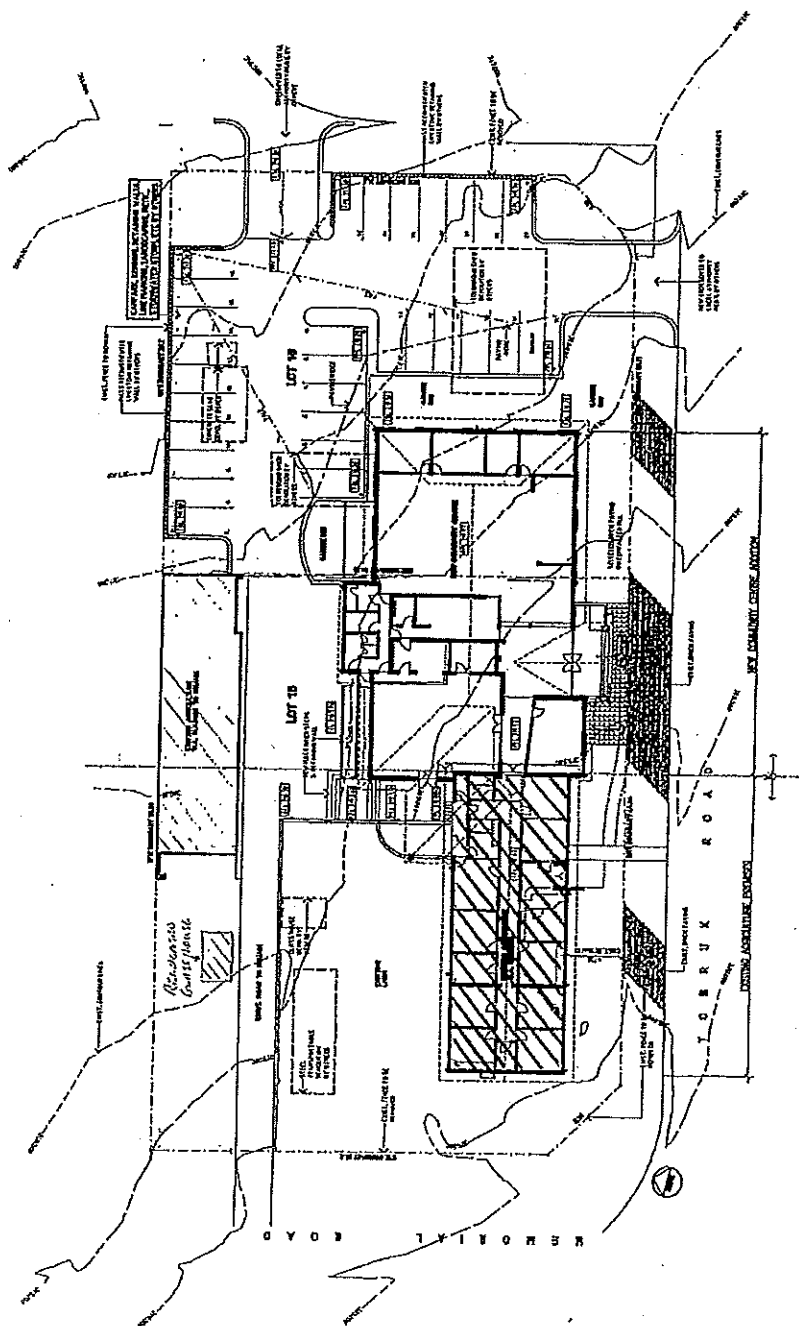
Plan 1

Annexure to Lease

MinterEllison

L A W Y E R S

Development of Adolescent and Young Adults



NAME PLATE.

27. DATE OF THE LAST PAYROLL
FOR WHICH THE EMPLOYEE WAS PAID
BY THE EMPLOYER

1	NAME	NAME	DATE
2	ADDRESS	ADDRESS	DATE
3	CITY	CITY	DATE
4	STATE	STATE	DATE
5	COUNTY	COUNTY	DATE
6	TOWNSHIP	TOWNSHIP	DATE
7	SECTION	SECTION	DATE
8	RANGE	RANGE	DATE
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NEW YORK

RESEARCH AND DEVELOPMENT COLLOCATION

ATTN: PLAN

DATE	TIME	LOCATION	REMARKS
10/10/1961	10:00	1000	1000

[illegible]