

Lease – 26956 South Coast Highway, Jacup

Shire of Jerramungup

Lawson Grains Limited



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Details

Parties

Lawson Grains Limited (ACN 142 723 617)

of *[insert address]*

(Lessor)

Shire of Jerramungup

of 8 Vasey Street, Jerramungup, Western Australia

(Lessee)

Background

- A The Lessor is the registered proprietor of the land described in **Item 1** of the Schedule (**the Land**).
- B The Lessee has requested that the Lessor grant it a lease of that part of the Land described in **Item 1** of the Schedule (**Premises**), and the Lessor has agreed subject to the Parties entering into this agreement.

Agreed terms

1. Grant of lease

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

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

LESSEE'S RIGHTS & OBLIGATIONS

2. Quiet enjoyment

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

3. Rent and other payments

The Lessee AGREES with the Lessor:

(a) **Rent**

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

(b) **Outgoings**

- (i) To pay to the Lessor or to such person as the Lessor may from time to time direct upon demand and punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises (if applicable):

- (A) Rubbish collection charges;
- (B) Fire Emergency Services Authority Levy;
- (C) Meter rent and excess water charges;
- (D) Telephone charges
- (E) Wiring, internet and telephone connections;
- (F) Electricity and power consumption charges including but not limited to meter rents;

- (G) Gas consumption charges including but not limited to meter rents;
 - (H) Meter installation;
 - (I) Maintenance costs;
 - (J) Land taxes; and
 - (K) Any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (ii) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 3(b)(i)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

(c) **Interest**

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

(d) **Costs**

- (i) To pay to the Lessor on demand:
- (A) all statutory duties, taxes, fines and penalties payable on or in connection with this Lease;
 - (B) all registration and application fees in connection with this Lease; and
 - (C) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
 - (D) all costs associated with preparing a surveyed plan of the Land and Premises for the purposes of this Lease.
- (ii) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
- (A) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (B) any breach of an obligation or agreement by the Lessee or an Authorised Person;
 - (C) the preparation and service of a notice under Section 81 of the Property Law Act 1969 requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;

- (D) any work done at the Lessee's request; and
- (E) any action or proceedings arising out of or incidental to any matters referred to in this **clause 3(d)** or any matter arising out of this Lease.

4. Rent review

- (1) The Rent will be reviewed on and from each Rent Review Date on the basis stipulated in **Item 8** of the Schedule to determine the Rent to be paid by the Lessee until the next Rent Review Date.
- (2) The reviewed Rent payable from a Rent Review Date upon which the reviewed Rent is based on the increase in the Consumer Price Index (All Groups for Perth) compiled by the Australian Bureau of Statistics (**Index**) will be the amount of Rent payable during the immediately preceding period increased by a percentage equal to the percentage increase in the Index having regard to the quarterly Index published immediately prior to the Commencement Date (in the case of the first Rent Review Date) or the immediately preceding Rent Review Date (in the case of a subsequent Rent Review Date) as the case may be and the quarterly Index published immediately prior to the relevant Rent Review Date. If the Index is discontinued or suspended at any time or its method of computation is substantially altered the Lessor shall nominate the substitution of another appropriate Index.
- (3) Notwithstanding the provisions of this clause, the Rent payable from any Rent Review will not be less than the Rent payable in the period immediately preceding such Rent Review Date.
- (4) The Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

5. Accrual of amounts payable

Amounts Payable accrue on a daily basis.

6. Payment of money

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

7. Insurance

7.1 Insurance required

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

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 7** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require; and

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

7.2 Details and Receipts

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

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

7.3 Not to Invalidate

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

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

7.4 Reports

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

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

7.5 Lessee May be Required to Pay Excess on Insurances

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

7.6 Lessee's equipment and possessions

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

8. Indemnity

8.1 Indemnity

The Lessee indemnifies the Lessor against any liability, loss or damage arising from the Lessee's occupation or use of the Premises, except to the extent such liability, loss or damage is caused or contributed to by any negligent act of the Lessor or its servants, agents, contractors or invitees.

8.2 Indemnity Unaffected by Insurance

- (1) The Lessee's obligation to indemnify the Lessor under this Lease or at law is not affected by any insurance maintained by the Lessor in respect of the Premises and the indemnity under **clause 8.1** is paramount; and
- (2) If insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 8.1** will be reduced by the extent of such payment.

9. Use

9.1 Restrictions on Use

(a) Generally

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

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

(b) No offensive or illegal acts

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

(c) No nuisance

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

(d) **No harm or stress**

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

(e) **No signs**

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

(f) **Removal of rubbish**

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

(g) **No pollution**

The Lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil, petrol, chemical or any other pollutant or contaminant. In the event that pollution or contamination of the Premises or any portion thereof does occur the Lessee shall be liable for the cost of removing such pollution or contamination and restoring the Premises to the state it was in prior to the pollution or contamination occurring to the satisfaction of the Lessor.

9.2 **No Warranty**

The Lessor gives no warranty as to the suitability of the Premises for the use set out in Item 6.

10. **Keys and access**

Not applicable

11. **Maintenance, repair and cleaning**

11.1 **Generally**

(a) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to:

(i) maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's fixtures and fittings) clean and in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Lessee any obligation:

(A) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any action or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees); and

- (B) in respect of any structural maintenance, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because of any action or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or by the Lessee's particular use or occupancy of the Premises;
- (b) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing or repairing:
 - (i) any electrical fittings and fixtures;
 - (ii) any plumbing;
 - (iii) any air-conditioning fittings and fixtures; and
 - (iv) any gas fittings and fixtures, in or on the Premises

use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.

11.2 Maintain Surroundings

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

11.3 Pest Control

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

11.4 Responsibility for Securing the Premises

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

11.5 Acknowledgement of state of repair of Premises

The Lessee acknowledges that it has inspected the Premises prior to the execution of this Lease and enters into the Lease with full knowledge of the existing state and condition of the Premises.

12. Alterations

12.1 Restriction

The Lessee must not without prior written consent from the Lessor, which shall not unreasonably be withheld, or any other person from whom consent is required under this Lease or required under statute in force from time to time:

- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or

- (b) subject to the performance of the Lessee's obligations in **clause 11**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

12.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 12.1** the Lessor acting reasonably may:
 - (a) give such consent subject to conditions; and
 - (b) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent.
- (2) If the Lessor consents to any matter referred to in **clause 12.1** the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

12.3 Cost of Works

All works undertaken under this **clause 12** will be carried out at the Lessee's expense.

12.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must carry out those other works at the Lessee's expense.

12.5 Standard of Alteration

Where the Lessor grants its consent to any proposed alteration, addition or improvement to or demolition of any part of the Premises (**Approved Works**), the Approved Works shall be undertaken in a workmanlike manner and in accordance with the Building Code of Australia and any other applicable regulatory requirements.

13. Report to Lessor

The Lessee must immediately report to the Lessor:

- (a) **Vandalism**

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

- (b) **Pollution**

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

(c) **Notices, etc**

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

(d) **Defects**

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

14. Assignment and subletting

14.1 No assignment or subletting without consent

The rights in this Lease are personal to the Lessee, and Lessee may not transfer, assign, sublet, assign or otherwise part with possession or any way dispose of any of its rights or obligations under this Lease without the written consent of the Lessor, which consent shall not be unreasonably withheld, subject to the Lessee's compliance with **clause 14.2**.

14.2 Requirements for assignment or subletting of Lease

If the Lessee wishes to assign this Lease or sublet the Premises the Lessee shall request the Lessor in writing to consent to an assignment or sublease of the Premises, and such consent shall not be unreasonably withheld, subject to:

- (a) the proposed assignee or sublessee being a respectable and financially sound person, experienced and having a good reputation in conducting a business permitted under the provisions of the Lease, which the Lessee must demonstrate to the Lessor's reasonable satisfaction, and the onus of proof shall be on the Lessee to the reasonable satisfaction of the Lessor;
- (b) the Lessee paying legal costs and expenses incurred in relation to the assignment or sublease, and all costs for stamping and registration of documents relating to the proposed assignment or sublease;
- (c) the Lessee paying all Rent and other moneys properly due and payable to the Lessor as at the date of assignment and remedying any existing unremedied breach of the Lease;
- (d) the Lessee complying with any condition of the assignment or sublease imposed by the Lessor that the proposed assignee or sublessee:
 - (i) enters into a deed to covenant to observe the terms and conditions of the Lease in such form as may be required by the Lessor; and/or
 - (ii) provides reasonable security by way of bank guarantee or other form acceptable to the Lessor.

14.3 Property Law Act 1969

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

14.4 No mortgage or charge

The Lessee must not mortgage nor charge the leasehold interest in the Premises.

15. No caveat or other interest

15.1 No Caveat or other interest

The Lessee, or any person acting on behalf of the Lessee, must not lodge any absolute caveat, mortgage or charge over the Land or Premises or part thereof, without the prior written consent of the Lessor.

15.2 Removal of interest

If any caveat or other interest is lodged without the consent of the Lessor, the Lessee shall do all such things as are necessary to enable the caveat or other interest to be withdrawn, including but not limited to signing and lodging at Landgate:

- (a) a withdrawal of any absolute caveat lodged by or behalf of the Lessee;
- (b) a withdrawal of any caveat lodged by on or behalf of the Lessee and not withdrawn on Termination; and
- (c) a surrender of the estate granted by this Lease where the Lease has been lawfully terminated.

16. Statutory obligations & notices

16.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to its use of the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 9**; and
- (c) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Lessee's use of the Premises.

17. Obligations on expiry or termination of lease

17.1 Restore Premises

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

17.2 Remove Lessee's Property prior to Termination

Prior to Termination, the Lessee must, unless otherwise directed by the Lessor, remove from the Premises all property of the Lessee including the Lessee's signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought or constructed upon the Premises by the Lessee (other than any fixtures and fittings which in the opinion and sole discretion of the Lessor form an integral part of the Premises) and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

17.3 Lessor can Remove Lessee's Property on Re-Entry

If the Lessee fails to remove any such fixtures or fittings and any other chattels, stock or goods belonging to the Lessee in accordance with **clause 17.2** within fourteen (14) days from the determination of the Term, the Lessor may at its option:

- (a) cause any such fixtures or fittings to be removed and stored at the cost of the Lessee and any such damage to be made good and any such alterations to be so re-altered and may recover the costs thereof from the Lessee as a liquidated debt payable on demand; or
- (b) elect to treat any such fixtures or fittings and any other chattels, stock or goods of the Lessee to be deemed abandoned by the Lessee and such property shall then be and become the property of the Lessor absolutely.

17.4 Peacefully Surrender

On Termination the Lessee must:

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

17.5 Obligations to continue

The Lessee's obligations under this clause will continue, notwithstanding the end or Termination of this Lease.

LESSOR'S RIGHTS & OBLIGATIONS

18. Lessor's right of entry

18.1 Entry on Reasonable Notice

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

- (a) at all reasonable times;
- (b) with or without workmen and others;

- (c) with or without plant, equipment, machinery and materials; and
- (d) for each of the following purposes:
 - (i) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor reasonably considers necessary, provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Obligations or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable;
 - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

18.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 18.1(d)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

19. Limit of Lessor's liability

19.1 Limit on Liability for Breach of Lessor's Obligations

The Lessor is only liable for breaches of the Lessor's Obligations set out in this Lease which occur while the Lessor is registered as the proprietor in fee simple of the Premises.

MUTUAL AGREEMENTS

20. Damage or destruction of premises

20.1 Abatement of Rent

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

20.2 Dispute as to Abatement of Rent

Any dispute arising in relation to the abatement of rent pursuant to **clause 20.1** shall be referred to arbitration under the provisions of the *Commercial Arbitration Act 1985* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the award appears to have been overpaid.

20.3 Termination

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

21. Option to renew

21.1 Exercise of Option

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

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

the Lessor shall grant to the Lessee a lease for the Further Term as specified in **Item 3** of the Schedule at the Rent and on terms and conditions similar to this Lease other than this **clause 21.1** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

22. Holding over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

23. Default

23.1 Events of Default

A default occurs if:

- (a) any Amounts Payable remain unpaid for 21 days after a Notice has been given to the Lessee that an amount is outstanding;
- (b) the Lessee is in breach of any of the Lessee's Obligations for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;

- (c) any execution or similar process is made against the Premises on the Lessee's property;
- (d) the Premises are vacated; or
- (e) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.
- (f) the Lessee is a body corporate and an administrator is appointed, of the Lessee;
- (g) the Lessee is a body corporate and an application is made, an order is made, or, a resolution is passed, or a meeting is convened for the purpose of considering a resolution, for the Lessee to be wound up unless the winding up is for the purpose of reconstruction; or
- (h) the Lessee:
 - (i) becomes insolvent;
 - (ii) admits in writing the inability of the Lessee to pay its debts; or
 - (iii) is deemed to be insolvent;

23.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 23.1** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 22**,

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

23.3 Lessor May Remedy Lessee's default

If the Lessee:

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

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the

breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

23.4 Acceptance of Amount Payable By Lessor

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

23.5 Essential Terms

Each of the Lessee's Obligations in **clauses 3** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **9** (Use), **11** (Maintenance, Repair and Cleaning), **14** (Assignment and subletting) and **27** (Goods and Services Tax) is an essential term of this Lease but this **clause 23** does not mean or imply that there are no other essential terms in this Lease.

23.6 Breach of Essential Terms

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

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

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

- (d) the Lessee agrees that the obligation set out in **clause 23.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease; and
- (e) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

24. Disputes

24.1 Appointment of Arbitrator

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

24.2 Payment of Amounts Payable to Date of Award

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

25. Consents

25.1 Western Australian Planning Commission's Consent

If for any reason whatsoever this Lease requires the consent of the Western Australian Planning Commission or other consent under the *Planning and Development Act 2005*, then this Lease is made expressly subject to and conditional on the granting of that consent in accordance with the provisions of the *Planning and Development Act 2005*.

26. Goods and services tax

(1) Lessee must Pay

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

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

(2) Increase in GST

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with **clause 26(a)**.

(3) GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to **clause 26(b)**, the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

27. Additional terms and conditions

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

GENERAL PROVISIONS

28. Notice

28.1 Form of Delivery

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

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

28.2 Service of Notice

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

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 28.1**, at the time of leaving the Notice provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 28.1**, on the second business day following the date of posting of the Notice.

28.3 Signing of Notice

A Notice to a person may be signed:

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

29. Amendments to lease

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

30. Waiver

30.1 No General Waiver

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

30.2 Partial Exercise of Right Power or Privilege

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

31. Acts by agents

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

32. Statutory powers

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

33. Further assurance

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

34. Severance

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

35. Moratorium

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

36. Governing law

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

DEFINITIONS & INTERPRETATION

37. Definitions

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

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

Authorised Person means:

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

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

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

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

CPI means the Consumer Price Index (All Groups for Perth) compiled by the Australian Bureau of Statistics;

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

Further Term means the further term (if any) specified in **Item 3** of the Schedule;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Schedule means the Schedule to this Lease;

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

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

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

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

38. Interpretation

In this Lease, unless expressed to the contrary:

- (a) Words using:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender includes each gender;
- (b) A reference to:
 - (i) a natural person includes a body corporate or local government; and

- (ii) a body corporate or local government includes a natural person;
- (c) A reference to a professional body includes a successor to or substitute for that body;
- (d) A reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) A reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) A reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) A reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) A reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to:
 - (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) Any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (k) If a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them;
- (l) The agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include:
 - (i) an agreement not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done;
- (m) Except in the Schedule headings do not affect the interpretation of this Lease.

Schedule

Item 1: Land and Premises

Land

Lot 301 on Deposited Plan 33122 and being the whole of the land comprised in Certificate of Title Volume 2221 Folio 984

Premises

That portion of the Land comprising an area of 2500m² and depicted on the survey plan annexed hereto as “**Annexure A**”, together with any buildings or improvements situated thereon.

Item 2: Term

Twenty (20) years commencing on 1 January 2013 and expiring on 31 December 2032

Item 3: Further Term

Nil

Item 4: Commencement Date

1 January 2013

Item 5: Rent

One dollar (\$1) payable on demand

Item 6: Use

Bushfire brigade shed and truck storage

Item 7: Public Liability Insurance

Fifteen Million Dollars (\$15,000,000)

Item 8: Rent Review

Not applicable

Item 9: Additional Terms and Conditions

Not applicable

Signing page

EXECUTED on the _____ day of _____ 2013

THE **COMMON SEAL** of the **SHIRE**)
OF JERRAMUNGUP was hereunto)
affixed by authority of a resolution of)
the Council in the presence of:)

President

(Print Full Name)

Chief Executive Officer

(Print Full Name)

EXECUTED BY LAWSON GRAINS)
LIMITED (ACN 142 723 617) pursuant to)
section 127 of the Corporations Act:)

Name of Director

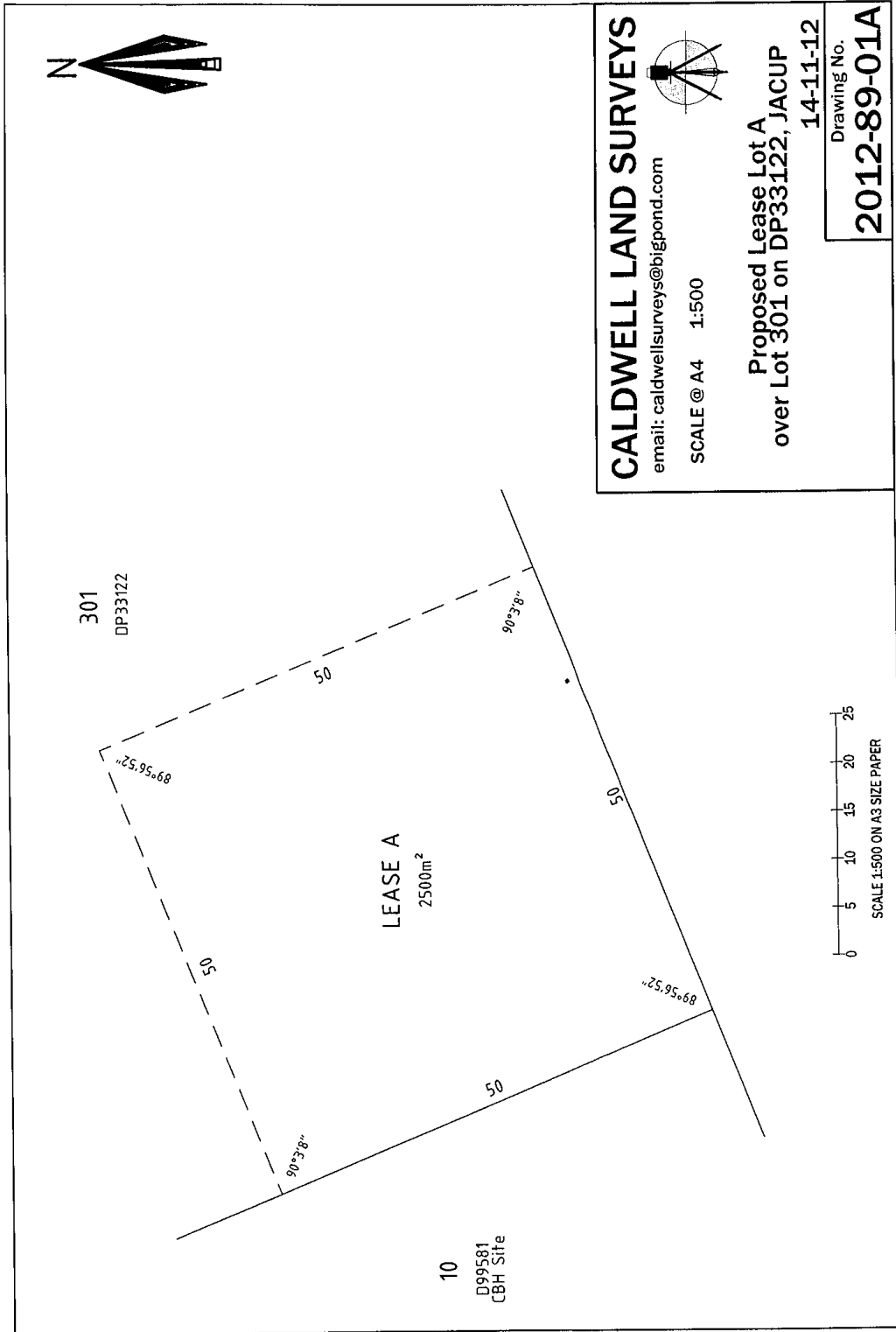
Signature of Director

Name of Director/Secretary

Signature of Director/Secretary

(Delete whichever designation is incorrect)

Annexure A – Plan of Premises



Annexure B – Mortgage's Consent

MORTGAGEE'S CONSENT

[Insert mortgagee] being the Mortgagee under Mortgage ***** CONSENTS to this Lease.

DATED the day of 2012.