

2021

DEVELOPMENT AGREEMENT

JERRAMUNGUP DISTRICT HIGH SCHOOL

SWIMMING POOL

MINISTER FOR EDUCATION

AND

SHIRE OF JERRAMUNGUP

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DEVELOPMENT AGREEMENT

DATE: 2021

PARTIES:

1. **MINISTER FOR EDUCATION** a body corporate under the *School Education Act 1999* of 151 Royal Street East Perth Western Australia (**Minister**)
2. **SHIRE OF JERRAMUNGUP** a local government and body corporate under the *Local Government Act 1995* of 8 Vasey Street Jerramungup Western Australia (**Shire**)

BACKGROUND:

- A. The Land is Crown land reserved for education purposes.
- B. The Minister has care, control and management of the Land.
- C. The Shire will, in accordance with this Development Agreement, undertake the Development on the Land at a total cost of \$4,200,000.00 using the following funding:
 - (a) \$2,100,000 provided by the Department of Industry, Science, Energy and Resources through the Building Better Regions Fund;
 - (b) \$1,400,000 provided by the Department of Education; and
 - (c) \$700,000 provided by the Department of Industry, Science, Energy and Resources through the Drought Communities Programme.
- D. The Minister has agreed to permit the Shire to undertake the Development on the Land in accordance with the provisions of this Agreement, including the:
 - (d) grant of the Development Licence to permit construction of the Development; and
 - (e) the Minister granting the Shire the Licence.
- E. The Shire has appointed a project team to deliver the Development and the Shire is responsible for the performance of the contractors who have been appointed.

AGREEMENT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context indicates otherwise:

- (a) **Affected Party** means a party who is unable to perform its obligations under this Agreement because of an event of Force Majeure.
- (b) **Australian Standards** means all standards prepared, approved and published by Standards Australia Limited ABN 85 087 326 690 as at the Commencement Date.
- (c) **Authorisation** means any approval, consent, permit, licence, registration, exemption, waiver or other authorisation of any kind required from any Authority or otherwise under Law including the Development Approvals.
- (d) **Authority** means any government or any governmental, semi governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, agency, entity or Parliament and includes any part of, entity comprising, or agent of the State.
- (e) **Best Industry Practices** means in relation to the design, construction and installation of the Works and practices, methods, specifications, standards of

safety, design and performance (including but not limited to standards relating to the operation and maintenance of the Works) that are commonly used by skilled and experienced contractors who perform such work in Australia.

- (f) **Building Permit** means a building permit issued by the Shire of Jerramungup to undertake the construction of the Development in accordance with this Agreement.
- (g) **Business Day** means a day other than a Saturday, Sunday or gazetted public holiday in Perth, Western Australia.
- (h) **Claim** means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made under or in connection with this Agreement or under any Law, and the terms "Claiming" and "Claimed" are to be construed accordingly.
- (i) **Commencement of Construction** means commencement of all works preliminary to the construction of the Development including the fencing of the relevant part of the Land, construction of all earthworks and the construction of swimming pool and associated facilities.
- (j) **Commencement Date** means the date of execution of this Agreement by the last party to sign it.
- (k) **Confidential Information** means any information relating to the Minister, this Agreement or the Works which is confidential or which is specified by a party to this Agreement as confidential in nature, but does not include information:
 - (i) which is already in the public domain (otherwise than as a result of a breach of this clause);
 - (ii) which a party is required by law or by an Authority or a court to disclose; or
 - (iii) information which is disclosed to a party's employees, consultants, advisers, agents or financiers for a purpose connected with the proper implementation of this Agreement.
- (l) **Consequential Loss** means any
 - (i) direct expenditure of time by managers and employees consequential upon any Loss;
 - (ii) loss of opportunity;
 - (iii) loss of anticipated savings;
 - (iv) loss of profit, revenue or business;
 - (v) damage to reputation; and
 - (vi) the cost of capital or other financing costs,but excludes any Loss arising from, or in connection with:
 - (vii) any statutory fine arising from any breach of Law by the other Party;
 - (viii) personal injury, sickness or death;
 - (ix) damage to property caused or contributed to by a Party;
 - (x) criminal acts of, fraudulent acts or omissions of, and fraudulent misrepresentations by a Party;
 - (xi) wrongful acts committed by a Party with a reckless indifference to the consequences;
 - (xii) willful default by a Party (being an intentional act or omission which is a breach of this Agreement);

- (xiii) the abandonment of this Agreement by the Shire;
 - (xiv) matters that cannot be excluded at Law;
 - (xv) a breach of confidentiality by the Shire;
 - (xvi) an infringement of any intellectual property rights by the Shire; or
 - (xvii) any matter which is the subject of a Third Party Claim against the Minister or State Associates and for which the Shire has given an indemnity under this Agreement that the Minister or State Associates (as the case may be) has taken reasonable steps to limit or avoid such loss.
- (m) **Contamination** has the meaning given in section 4 of the *Contaminated Sites Act 2003* (WA).
 - (n) **Contractor** means any person, firm, company or corporation to whom the performance of any part of this Agreement is delegated or contracted out by the Shire or by a contractor of the Shire.
 - (o) **Contractor's Employees** includes all directors, employees, agents and consultants of a Contractor.
 - (p) **Date for Practical Completion** means the 1 July 2021 subject to any agreed extension of time pursuant to **clause 12** or extension of time for any approved variation pursuant to **clause 8.3**.
 - (q) **Date of Practical Completion** means the date being the next Business Day after Practical Completion.
 - (r) **Defects Liability Period** means the period of 12 months commencing on the Date of Practical Completion, and being the period within which the Shire must ensure all minor defects identified at Practical Completion are rectified by the Contractor.
 - (s) **Delay Event** means:
 - (i) a State-caused Delay;
 - (ii) an industry-wide industrial dispute which results in a State-wide stoppage in Western Australia or an Australian wide stoppage, neither of which has arisen by reason of, or in connection with the Shire's activities or the Shire, any of the Shire's Employees or is not directed solely at the Shire or any Shire's Employees; or
 - (iii) a Force Majeure Event;
 - (iv) a delay by any governmental Authority in granting any necessary approval beyond the usual period taken for the granting of such approval (but excluding any delay incurred by reason of a valid request for further information, or valid refusal of approval);

but excludes any delay arising from:

- (v) a breach by the Contractor of its obligations to the Shire, to construct and complete the Development, or any act or omission of the Contractor that prevents the Shire from complying with its obligations under this Agreement.
- (vi) a breach of this Agreement by, or the negligence or wrongful act or omission of, the Shire or the Shire's Employees;
- (vii) any delay or disruption caused by the State or the State's Representative acting in accordance with, or in exercising any of its rights or remedies under, this Agreement or any Law, other than a State-caused Delay; or

- (viii) any matter expressly referred to under this Agreement as not constituting a Delay Event.
- (t) **Development** means the proposed construction of a swimming pool and associated facilities and includes installation of sub meters for electricity and water and initial filling of the pool with water.
- (u) **Development Application** means a development application in accordance with the Development Plans and WAPC requirements to undertake the Development in accordance with this Agreement.
- (v) **Development Approvals** means all approvals which must be obtained from each Authority to enable the Shire to construct the Development lawfully.
- (w) **Development Key Dates** means the development dates set out in clause 2.3.
- (x) **Development Licence** means a development licence to permit access to, and construction on, the Development Licence Area and to carry out the Development in accordance with the terms in this Agreement (refer **clause 3**).
- (y) **Development Licence Area** means the area delineated and bordered red on the Plan (attached as Annexure A) being the area of the Land that the Shire may gain access to and use for construction of the Development.
- (z) **Development Licence Fee** means \$1.
- (aa) **Development Licence Term** means the period commencing on the Commencement Date and expiring on the date of expiry of the Defects Liability Period or the Sunset Date, whichever occurs first.
- (bb) **Development Plans** mean the plans, specifications and schedules for the Development which are approved by the Minister, as varied from time to time in accordance with this Agreement and all other plans, specifications and schedules (including finishes) relating to the Development which must be approved by the Minister prior to the Works being carried out.
- (cc) **Dispute** means a dispute arising out of or in connection with this Agreement.
- (dd) **Environment** has the meaning given to it in section 3 of the EPA.
- (ee) **Environmental Claim** means a claim made under any Law relating to environmental matters, including, but not limited to the EPA and the *Contaminated Sites Act 2003 (WA)* after the Commencement Date.
- (ff) **Environmental Condition** means the physical state and condition of the Environment in, on, about or under the Land.
- (gg) **Environmental Law** means a law relating to any aspect of the Environment or health.
- (hh) **EPA** means the *Environmental Protection Act 1986 (WA)*.
- (ii) **Force Majeure** means an event which is beyond the reasonable control of a party that prevents that party from performing its obligations in whole or part under this Agreement, including:
 - (i) fire (other than fire caused by the Affected Party), flood, a category 3 or above tropical cyclone (as defined by the Australian Bureau of Meteorology) affecting the area, earthquake, tsunami or explosion;
 - (ii) war, insurrection, civil disturbance or acts of terrorism;
 - (iii) act of God; or
 - (iv) impact of vehicles or aircraft,
 but does not include:

- (v) lack of or inability to use funds for any reason;
 - (vi) any occurrence which results from the wrongful or negligent act or omission of the Affected Party or the failure by the Affected Party to act in a prudent and proper manner and in accordance with Best Industry Practice;
 - (vii) an event or circumstance where the event or circumstance or its effects on the affected Party or the resulting inability of the Affected Party to perform its obligations could have been prevented, overcome or remedied by the exercise by the Affected Party of the standard of care and diligence consistent with that of a reasonable and prudent contractor;
 - (viii) breakdown of equipment belonging to the Affected Party or any contractor or sub- contractor engaged either directly or indirectly by the Affected Party;
 - (ix) if the Affected Party is the Shire, strikes or industrial action:
 - (A) by any of the Shire's contractors or sub-contractors;
 - (B) in any way directed at the Shire's contractor or sub-contractor; or
 - (C) directed at the site of the Works;
 - (x) weather conditions or any effects of weather conditions, other than as described in sub-paragraph (i) above;
 - (xi) if the Affected Party is the Shire, act or omission of the Shire's contractor or sub-contractor (including if any contractor or sub - contractor becomes insolvent);
 - (xii) a failure by a third party to fulfil a contract commitment to an Affected Party other than as a result of an event in paragraph (i) to (iv) above;
 - (xiii) lack of resources; or
 - (xiv) any epidemic or pandemic (including COVID 19), and shortages caused thereby, and any government response/s to such epidemic, pandemic or shortages.
- (jj) **Independent Certifier** means an independent certifier appointed by the Shire at the Shire's cost, with the prior written consent of the Minister, to provide independent certification services, to verify the quality of Works complies with the Development Plans and approvals, as more particularly described in clause 13 and Annexure B.
- (kk) **Independent Certifier Deed** means the deed which stipulates the terms and conditions under which the Independent Certifier will perform its services and is executed by the Minister, the Shire and the Independent Certifier.
- (ll) **Insolvency Event** means any of the following:
- (i) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
 - (i) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
 - (ii) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within SEVEN (7) days;

- (iii) a receiver or receiver and manager is appointed in respect of any property of a corporation;
 - (iv) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
 - (v) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
 - (vi) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members of a moratorium involving any of them;
 - (vii) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within SEVEN (7) days or a person presents a petition against himself or herself;
 - (viii) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
 - (ix) anything analogous to or of a similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of a person.
- (mm) **Intellectual Property Rights** means all intellectual property rights of any kind, including:
- (i) patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have Confidential Information kept confidential; and
 - (ii) any application or right to apply for registration of any of those rights.
- (nn) **Interest Rate** means the aggregate of:
- (i) the 60 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or replacement publication) (or if unavailable the nearest equivalent rate determined by the party to whom the interest is payable (acting reasonably)); and
 - (ii) 2% per annum.
- (oo) **Land** means Lot 500 on Deposited Plan 64935 and being the whole of the land in Qualified Certificate of Crown Land Title Volume LR3157 Folio 187, and comprising Reserve 24772 located at 2 Lancaster Road Jerramungup Western Australia.
- (pp) **Laws** includes any Federal, State or local government legislation including regulations, by-laws or other subordinate legislation, judicial, administrative or regulatory decrees, official directives, judgments or orders.
- (qq) **Licence** means a shared use licence between the Minister as licensor and the Shire as licensee which amongst other things, will grant the Shire a licence to use the Development during certain times once Practical Completion of the Development is achieved.
- (rr) **Loss** means:
- (i) any liability of any kind whatsoever, cost, expense, loss, personal injury (including illness), death or damage and includes direct and indirect, consequential or special damage, loss of use of revenue; and
 - (ii) in respect of a Claim or a Third Party Claim, includes amounts payable on the Claim and (whether or not the claim is successful) legal costs and disbursements on a full indemnity basis,

whether or not such liability, cost, expense, loss, personal injury, death or damage, Claim or Third Party Claim is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.

- (ss) **Material Changes** means any change which:
- (i) reduces the total gross floor area of the Development by more than FIVE per cent (5%) from that shown on the Development Plans;
 - (ii) substitutes materials and finishes which are not comparable in appearance, texture, quality or performance to those indicated in the Development Plans;
 - (iii) materially deviates from the Development Plans for the Development; or
 - (iv) materially affects the use of the Development.
- (tt) **Material Environmental Harm** has the same meaning as that term is defined in the EPA.
- (uu) **OSH Legislation** means the *Occupational Safety and Health Act 1984 (WA)*, the *Occupational Safety and Health Regulations 1996 (WA)*, *Dangerous Goods Safety Act 2004 (WA)* and associated regulations, other legislation (Commonwealth and State), local authority regulations or by-laws, codes of practice, other compliance codes, directions on safety or notices issued by any relevant authority and standard relating to occupational safety and health where any part of the Works relating to the Development is being performed.
- (vv) **Occupancy Permit**, where applicable means an unconditional occupancy permit issued by the Shire of Jerramungup for the Development.
- (ww) **Permitted Purpose** means:
- (i) gaining access to and from the Development Licence Area in accordance with requirements of the Development Approval and requirements notified by the State's Representative to the Shire from time to time to construct the Development;
 - (ii) construction of the Development;
 - (iii) rectifying defects identified by the Independent Certifier or the State's Representative; and
 - (iv) maintaining and making good the Development Licence Area in accordance with the obligations in clause 3.
- (xx) **Plan** means the plan annexed as Annexure A showing the Development Licence Area on the Land.
- (yy) **Pollution** has the same meaning as that expression is given in the EPA.
- (zz) **Practical Completion** means the later of each of the following:
- (i) the construction of the Development in conformity with the Development Plans and the Development Approvals;
 - (ii) a certificate being provided from the Independent Certifier certifying that the Development has been constructed or completed on the Land according to the Development Plans and Development Approvals; and
 - (iii) the date the Minister receives a copy of the Occupancy Permit for the completed Development from the Shire.
- (aaa) **Prudent Industry Practices** means in relation to the design, construction and installation of the Development, practices, methods, specifications, standards of safety, design and performance (including but not limited to standards relating to

the operation and maintenance of the Development) that are commonly used by skilled and experienced contractors who perform such work in Australia as at the Commencement Date.

- (bbb) **Regulatory Requirements** means compliance with all:
 - (i) relevant Laws; and
 - (ii) lawful and properly issued orders and directions of every Authority and their respective officers; and
 - (iii) payment of all fees and charges properly payable to every Authority.
- (ccc) **Representatives** means the State's Representative or the Shire's Representative (as the context permits)
- (ddd) **Safe Work Procedures** means any safe work procedures or safe work method statement prepared by or on behalf of the Shire to satisfy the requirements of OSH Legislation and relevant to the Works relating to the Development and the Land.
- (eee) **Safety Management Plan** any safety management plan prepared by or on behalf of the Shire to satisfy the requirements of OSH Legislation and relevant to the Works relating to the Development and the Land.
- (fff) **Shire's Employees** includes all directors, employees, agents and consultants of the Shire.
- (ggg) **Shire's Representative** means the person appointed by the Shire as the Shire's Representative under **clause 6** at any time.
- (hhh) **State** means the State of Western Australia.
- (iii) **Specifications** means the plans, elevations and items which the Shire has specified and which have been agreed by the Department of Education on behalf of the Minister.
- (jjj) **State Associates** means the State of Western Australia and any of the State of Western Australia's government department, agencies or instrumentalities and any body whether incorporated or unincorporated that is established or continued for a public purpose by or under a Law including any employee, officer, contractor, adviser, consultant or agent of any of those bodies.
- (kkk) **State caused-Delay** means any delay to the performance of the Works caused by:
 - (i) a delay or failure by the Minister to provide the Shire with access to the Land for the performance of the works in accordance with this Agreement;
 - (ii) the discovery of an Aboriginal site on the Land; or
 - (iii) any negligent act or breach of this Agreement by the Minister.
- (lll) **State's Representative** means the person appointed by the Minister as the State's Representative under **clause 6** at any time.
- (mmm) **Sunset Date** means the date THIRTY SIX (36) months after the Commencement Date.
- (nnn) **Third Party** means any person or entity other than the Shire.
- (ooo) **Third Party Claim** means any Claim, demand, legal proceedings or cause of action made or brought by a Third Party.
- (ppp) **WAPC** means the Western Australian Planning Commission.

- (qqq) **Works** means the works to complete the Development, and includes the works described in the Development Plans.
- (rrr) **Works Report** means the works report to be prepared by the Shire in accordance with **clause 9.3**.

1.2 Interpretation

In this Agreement unless the context indicates otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) other grammatical forms of defined words and expressions have corresponding meanings;
- (d) references to persons include corporations and bodies politic;
- (e) references to a person include the legal personal representatives successors and assigns of that person;
- (f) a reference to a Statute Ordinance Code or other Law includes regulations and other statutory instruments under it and consolidations amendments re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (g) references to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the parties;
- (h) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (i) an obligation of two or more parties binds them jointly and severally;
- (j) if a word or expression is defined cognate words and expressions have corresponding definitions;
- (k) references to an association body or authority which is reconstituted amalgamated reconstructed or merged or the functions of which have become exercisable by any other person association body or authority in its place shall be taken to refer to the person association body or authority established or constituted in its place or by which its functions have become exercisable;
- (l) reference to anything (including without limitation any amount or the Land) is a reference to the whole or any part of it (as the context requires) and a reference to a group of things or persons is a reference to any one or more of them but this is not to be taken as implying that performance of part of an obligation is the performance of the whole;
- (m) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the first day of the next succeeding calendar month;
- (n) references to this Agreement or the Licence include any schedules and annexures to those documents;
- (o) headings are inserted for ease of reference only and shall be ignored in construing this Agreement;
- (p) references to time are to local time in Perth Western Australia;
- (q) a reference to a contractor is to a consultant, contractor or subcontractor at any tier;

- (r) where time is to be reckoned from a day or event that day or the day of that event shall be excluded;
- (s) the word “include” used when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (t) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement;
- (u) where a covenant, undertaking or warranty is given to the Minister or a benefit is given to the Minister by the Shire the undertaking, warranty, covenant and benefit is enforceable by the Minister against the Shire in accordance with section 11 of the *Property Law Act 1969* (WA) notwithstanding the Minister is not a party to the agreement; and
- (v) unless defined in this Agreement, words defined in the Licence have the same meaning in this Agreement.

1.3 Fetter

Nothing contained in this Agreement or the Licence or contemplated by either of this Agreement or the Licensee has the effect of constraining the Minister or the Shire or any other part of the State or placing any fetter on the Minister’s or the Shire or any other part of the State’s statutory rights, duties, powers or functions.

1.4 Priority

The parties acknowledge and agree that the order of priority of documents is as follows:

- (a) this Agreement; and
- (b) the Licence.

2. TERM AND OBLIGATIONS TO UNDERTAKE DEVELOPMENT

2.1 Term

Subject to **clause 22.1**, this Agreement shall commence on the Commencement Date and shall expire on the earlier of:

- (a) Practical Completion of the Development; and
- (b) termination under clause 20; and
- (c) the Sunset Date.

2.2 General

The Shire must promptly and diligently, and at its own cost:

- (a) do everything reasonably necessary for the procurement of the Works;
- (b) use its best endeavours to obtain a Development Approval, where required, and a Building Permit(s) for the Works;
- (c) obtain all Authorisations from any relevant Authorities for the Works (as required);
- (d) provide and maintain all necessary personnel, equipment and facilities for the effective conduct and management of its obligations under this Agreement;
- (e) ensure the Development complies with the 'Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities January 2020' or any replacement thereof; and
- (f) comply with all other obligations of the Shire under this Agreement, including the obligation to appoint the Independent Certifier in accordance with **clause 13**.

2.3 Development Key Dates

The Shire must (notwithstanding delays that fall outside of the Shire's control, for example inclement weather):

- (a) effect Commencement of Construction of the Development by 28 February 2021;
- (b) achieve Practical Completion of the Development by 1 July 2021; and
- (c) rectify all defects identified at Practical Completion or during the Defects Liability Period, within TWELVE (12) months from the Date of Practical Completion of the Development;

3. DEVELOPMENT LICENCE

3.1 Grant of Licence

In consideration of the Development Licence Fee (receipt of which is acknowledged) the Minister grants to the Shire the right for the Shire, the Shire's Employees, the Contractor and the Contractor's Employees to enter and occupy the Development Licence Area for the Permitted Purpose for the Development Licence Term.

3.2 Impact of Development Licence Area

When undertaking any activity pursuant to the Development Licence the Shire must:

- (a) take all reasonable and proper care to minimise:
 - (i) injury to persons and damage to vehicles and other property on the Land;
 - (ii) damage to the Development Licence Area or the Land;
 - (iii) disruption or inconvenience to the activities being conducted on the Land by the Minister or on adjoining land by other parties; and
- (b) ensure the Minister enjoys continuity of services (including electricity, gas, water and telecommunications); and
- (c) promptly repair any damage caused by the Shire, the Contractor, the Shire's Employees or the Contractor's Employees and promptly remove all equipment and other material from the Development Licence Area not belonging to the Minister.

3.3 Condition of Land

- (a) The Shire accepts the Development Licence Area and the structures on the Land in their present condition and subject to all defects, including all sub-surface and site conditions.
- (b) The Minister makes no representation and gives no warranty as to those matters referred to in clause 3.3(a).

3.4 Maintenance of Development Licence Area

During the Development Licence Term the Shire must maintain the Development Licence Area in a tidy and safe manner and in accordance with all applicable Laws.

3.5 Entry by Minister

During the Development Licence Term, the Shire must ensure that the Minister and the State's Representative have safe and convenient access to the Development Licence Area at any time, except that where construction works are being carried out, the State's Representative must comply with usual site safety rules and procedures.

3.6 Emergency Work

If at any time the State's Representative as advised by a qualified consultant reasonably considers any remedial, repair or other work is urgently required to prevent loss of, or

damage to any property (other than the Shire's property) or to prevent personal injury to or death of any person, the State's Representative may direct the Shire to carry out or arrange for the carrying out of such work. If the Shire is unwilling or unable to do so then any reasonable costs incurred by the Minister in carrying out that work will be a debt due to the State from the Shire which is payable within SEVEN (7) days after the State gives the Shire an invoice for payment setting out the full details of all charges making up such invoice.

3.7 Partially Completed Work

The Shire must ensure that it:

- (a) does not leave any Works or partly completed Works in an unsafe condition or in a condition which might cause damage to other work, plant, machinery or equipment; and
- (b) continues any partly completed Works as quickly as practical until that part of the Works is at a safe stage.

4. SHIRE'S ACKNOWLEDGEMENTS

The Shire acknowledges and declares that in entering into this Agreement the Shire has:

- (a) examined carefully and acquired actual knowledge of any information made available in writing by the Minister to the Shire for the purpose of this Agreement; and
- (b) examined all other information relevant to the risks, contingencies and other circumstances having an effect on the Shire's obligations under this Agreement and which is obtainable by the making of reasonable enquiries; and
- (c) satisfied itself as to the costs of complying with all its obligations under this Agreement and of everything necessary for the proper carrying out of the Works.

5. SHIRE'S WARRANTIES AND UNDERTAKINGS

5.1 Shire's Warranties

The Shire warrants to the Minister that:

- (a) it has legal capacity to enter into and perform its obligations under this Agreement; and
- (b) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable it lawfully to enter into, and exercise its rights and perform its obligations under this Agreement have been fulfilled or are capable of being fulfilled; and
- (c) it has or is able to obtain all Authorisations necessary to enter into this Agreement, perform its obligations under it and allow it to be enforced; and
- (d) it is not entering this Agreement as the trustee of any trust or for and on behalf of any other person otherwise than as stated in this Agreement; and
- (e) it owns or has licensed to it (or will own or have licensed to it) all the Intellectual Property Rights to the extent required by the Shire and it will not, in carrying out obligations under this Agreement, infringe any Intellectual Property Rights of any third party in any material respect; and
- (f) it will ensure that all Intellectual Property Rights necessary to be held by third parties in order to undertake the construction of the Development are held by those third parties; and
- (g) at the Commencement Date no conflict of interest exists or is likely to arise in relation to the performance of the Shire's obligations under this Agreement; and
- (h) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or to the knowledge of any of its officers after due inquiry,

threatened which, if adversely decided, could have a material adverse effect on its ability to perform its obligations under this Agreement; and

- (i) it has procedures in place to comply with all of its obligations under OSH Legislation; and
- (j) it has examined and carefully checked any documents included in any submission to the Minister and that such documents are suitable, appropriate and adequate for the purpose stated in such documents.

5.2 Shire's Undertakings

The Shire covenants and undertakes to the Minister that in connection with this Agreement:

- (a) at all times it will exercise due skill, care and diligence in ensuring that the Works are undertaken; and
- (b) at all times it will be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the Works as would be expected from qualified, skilled, and experienced Contractors operating in Western Australia and carrying out works similar to the Works; and
- (c) it has fully considered the scope of the Works and that it has the knowledge, skill, experience, capacity and personnel to undertake the Works and that its personnel holds all professional qualifications or licences necessary to carry out the Works; and
- (d) it will engage and retain only Contractors who are suitably qualified and experienced; and
- (e) it will ensure that the Works are undertaken in accordance with Prudent Industry Practices; and
- (f) it will procure the carrying out and completion of the Works in a manner not inconsistent with the Development Plans so that the Works, when completed will:
 - (i) be proper, adequate and fit to use for the purpose stated expressly in the Development Plans and this Agreement; and
 - (ii) comply with all of the requirements of this Agreement and all applicable Laws, Australian Standards and Development Approvals; and
- (g) all materials used in performing the Works will:
 - (i) be of good merchantable quality; and
 - (ii) be able to be used for their purpose stated expressly in the Development Plans.

5.3 No Liability of the Minister

- (a) The Shire shall have no right to make any objection or requisition or claim against the Minister for compensation or to rescind this Agreement and the Minister shall not be liable to indemnify the Shire whatsoever or howsoever arising by reason of:
 - (i) the prior use of the Land;
 - (ii) the Land being unsuitable for any particular purpose including, but not limited to, the Development;
 - (iii) the area of the Land being different from the area indicated on any plan, brochure, document, letter, material or other publication issued or published by or on behalf of the Minister which does not form part of this Agreement or as indicated on the Certificate of Title to the Land;
 - (iv) the provision of, or a lack of, or a lack of an available connection to, water, drainage, sewerage, gas, electricity, telecommunication or other

services or connections to the Land, or in respect of the fact that any services or connections may be joint services to any other land, or because any facilities for services for any other land pass through the Land;

- (v) any encroachment onto the Land by any improvement which does not form part of the Land, or the encroachment onto adjoining land of any improvement which forms part of the Land;
 - (vi) the location of any sewerage, water or drainage or other pipes or cables to services affecting the Land, or that any pipes or cables pass through, or penetrates the Land; or
 - (vii) the fact that the current use of the Land may not be an authorised use under any applicable zoning or use law, scheme or regulation.
- (b) The Shire shall be solely liable to comply with and otherwise to deal with all laws and the requirements or orders of any relevant Authority in relation to any Contamination or Pollution or otherwise on or from the Land.
 - (c) The Shire agrees to indemnify and keep indemnified the Minister or the Minister from and against any claims, liability, expenses, loss, costs or damages (whether direct or indirect and whether present or future) which the Minister or the Minister may suffer in relation to any Contamination or pollution on the Land whether prior to or subsequent to the date of this Agreement.
 - (d) The State makes no representation or warranty concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Land.
 - (e) The Shire relies on its own investigations concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Land.
 - (f) The warranties and all provisions contained within this Agreement do not merge on the grant of the Licence to the Shire and survive the commencement of the Licence.
 - (g) The representations and warranties by the Shire in this Agreement are taken to be repeated continuously on the basis of the facts and circumstances as at any time.
 - (h) The Shire acknowledges that the Minister has executed this Agreement in reliance on the representations and warranties that are made or repeated by the Shire in this Agreement.

5.4 Shire's Acknowledgements

The Shire acknowledges and agrees that:

- (a) no warranty or representation has been given or made to the Shire or anyone on the Shire's behalf by the Minister or any agent, employee or contractor or consultant of the Minister or any other person on the Minister's behalf as to:
 - (i) the title to the Land;
 - (ii) any encumbrance, restriction or right in favour of any third party affecting the Land;
 - (iii) the condition or state of repair, order or condition of the Land;
 - (iv) the suitability of the Land for any use or purpose of any kind including, but not limited to, the Development;
 - (v) the walls (if any) purporting to be on the boundaries of the Land being on the proper boundaries of the Land; or

- (vi) the provisions of, or lack of, or the lack of an available connection to, water, drainage, sewerage, gas, electricity, telecommunication or other services or connections to the Land;
- (b) any representation or warranty implied by virtue of any statute or otherwise will not apply to, or by implied in, this Agreement and any such representation or warranty is excluded to the extent permitted by law;
- (c) the Minister will not be liable under any circumstances to make any allowance or compensation to the Shire by the exclusion of warranties or representations in this clause or for any fault, defect, omission or characteristic in the Land; and
- (d) this clause will apply despite the contents of any brochure, document, letter or publication made, prepared or published by the Minister by any other person or consultant with or without the express or implied authority of the Minister.

5.5 Release

- (a) The Shire,
 - (i) agrees to occupy, use and keep the Development Licence Area at the risk of the Shire; and
 - (ii) releases to the full extent permitted by law the Minister from any liability, claims, demands, costs, expenses and losses of any kind including caused by, arising from, or relating to:
 - (A) any accident or damage to property or death or injury to, or illness of any person, of any nature in or near the Land, including from carrying out the Development;
 - (B) any inability howsoever arising of the Shire to be able to complete the Development;
 - (C) any loss of profits or business of the Shire or any of the Shire's agents;
 - (D) any act or default by any person accessing the Land, except for any officer, employee, agent or contractor of the State;
 - (E) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Land at any time throughout the term of this Agreement whether or not identified in an audit undertaken by the Shire; and
 - (F) loss of or damage to fixtures or personal property of the Shire or the Shire's agents or any Contractors,

except to the extent it may be caused by the wilful misconduct, wrong or negligence of the Minister, or its officers, employees or agents.
- (b) The obligations of the Shire under this clause continue after the expiration or earlier determination of this Agreement in respect of any act, matter or thing occurring before the expiration or earlier determination of this Agreement.

5.6 Police Clearances

- (a) The Shire is required to ensure that any person entering the Development Licence Area, has an Australia wide Police Clearance. These clearances are to be kept current for the Development Licence Term.
- (b) The Shire must comply with any requests by the Minister for copies of the police clearances within 5 Business Days after that request.
- (c) If any Police Clearance evidences that any person on the Development Licence Area has committed a criminal offence punishable by imprisonment or detention, then the Minister may, without prejudice to the Minister's other rights under this

Agreement, require the Shire to promptly remove any such person from the Development Licence Area and not allow that person to go on the Development Licence Area again.

- (d) If the Shire is required to remove a person in accordance with clause 5.6(c), the Shire must do so at its own cost and must arrange for a replacement for that person.

6. STATE'S REPRESENTATIVE AND SHIRE'S REPRESENTATIVE

6.1 Appointment of the State's Representative and Shire's Representative

The Minister and the Shire shall each appoint a representative (to be known as the State's Representative and the Shire's Representative respectively) who will be authorised to:

- (a) in the case of the State's Representative, act for and on behalf of the Minister in administering the performance of this Agreement. The State's Representative will be a person nominated by the Minister and may be one of the Minister's employees. A communication given to the Shire by the State's Representative is taken to be given by the Minister; and
- (b) in the case of the Shire's Representative, act for and on behalf of the Shire in communicating with the Minister on any matter in relation to this Agreement and promptly responding to questions and other matters put forward by the State's Representative.

6.2 Delegation

The State's Representative may, in the State's Representative's absolute discretion, by notice to the Minister and the Shire at any time delegate to any person any of the State's Representative's powers, discretions and authorities and Minister and the Shire will accept that person as lawfully exercising, for the purpose of this Agreement, the powers, duties, discretions and authorities of the State's Representative to the extent they have been so delegated. The State's Representative may by notice to the Minister and the Shire revoke or amend any delegation so made.

7. RISKS AND OWNERSHIP

7.1 Land and Construction Risks

Except as otherwise stated in this Agreement, all risks of and associated with the right of access to and use of the Development Licence Area and the carrying out of the Works including, without limitation, risks relating to:

- (a) ease of access to the Development Licence Area including any requirements of any Authority in relation to activities of the Shire on the Land; and
- (b) all utility services to the Land; and
- (c) Land conditions; and
- (d) construction means, methods and techniques used to undertake the Works; and
- (e) availability of labour and materials; and
- (f) time or cost overruns suffered as a result of any unanticipated conditions with regard to access to the Development Licence Area; and
- (g) industrial action and work stoppages by any Contractor or any Contractors' Employees,

rest with the Shire and the Shire will not make any claim against the Minister in relation to any of those risks.

7.2 Authorisations Risk

Except as otherwise stated in this Agreement, the Shire will bear all risks associated with obtaining any Authorisations, including delays and cost increases, and will not make any claim against the Minister in relation to any of those risks.

7.3 Heritage Risks and Environmental Claims

The Shire will bear the risk of any European Heritage Claim or Environmental Claim, in respect of or relating to the Development Licence Area and the Works, and will not make any claim against the Minister in relation to any of those risks. As at the Commencement Date, the Minister warrants and represents that it is not aware of any such claims.

7.4 Risk Generally

Subject to this Agreement, risk in relation to the Works generally rests with and remains entirely with the Shire.

7.5 Ownership

The Development during construction and at Practical Completion becomes part of the Land and ownership rests in the State. The Shire will have no claim, right or interest in the Development in priority to the State or the Minister other than the right to the Licence.

8. DEVELOPMENT PLANS

8.1 Approval of Development Plans

- (a) The Shire will provide the Development Plans and Specifications to the Minister for approval as soon as practicable after execution of this Agreement. Within 28 days after receipt, the Minister will examine the Development Plans and Specifications and notify the Shire that those Development Plans and Specifications are either approved or that certain alterations are required before they can be approved by the Minister.
- (b) If the Development Plans and Specifications require alteration, the Shire must submit the altered Development Plans and Specifications to the Minister within 28 days after the notice from the Minister referred to in clause 8.1(b).
- (c) The Minister will approve the altered Development Plans and Specifications within 28 days after receipt from the Shire provided that the Shire has implemented the alterations required by the Minister. If the Shire has not implemented all alterations required by the Minister, the Minister may require the Shire to repeat the process in this clause 8.1.

8.2 Unavoidable Change to Development Plans or Specifications

If:

- (a) through unavailability, or significant delays in availability, of materials or if through any other cause beyond the reasonable control of the Shire it is impractical to incorporate in the Development any item referred to in the Development Plans or the Specifications; or
- (b) it becomes necessary for the Shire to undertake or incorporate an amendment in respect of anything shown or described in the Development Plans or the Specifications (in order to comply with Regulatory Requirements),

then with the consent of the Minister (acting reasonably) the Shire may substitute an alternative item or undertake or incorporate such an amendment. The Shire may make any alteration to the Works without the consent of the Minister, provided that such alteration does not result in a delay to the Date of Practical Completion or cause a Material Change to the Development.

8.3 Shire's notice of Variation of the Development

- (a) At any time before the Date of Practical Completion the Shire may (by notice in writing to the State's Representative) ("**Shire's Variation Notice**") request the

Minister to consent to variations to the Development Plans or the Specifications which may constitute a Material Change.

- (b) In the Shire's Variation Notice the Shire must provide details of:
 - (i) any material variations proposed to be made and all known consequential effects on the design, quality, character, aesthetics and general finishes of the Development; and
 - (ii) any adjustment to the Date for Practical Completion required as a result of the variations,

("Shire's Variation Particulars").
- (c) As soon as practicable, but in any event within TWENTY 20 Business Days after receipt by the State's Representative of the Shire's Variation Notice, the State's Representative must notify the Shire in writing as to whether the Minister approves or disapproves of the Shire's Variation Particulars, acting reasonably ("**the Minister's Variation Response**"). In considering any such variation the parties agree and acknowledge that the Minister is not required to consent to any variation which results in a material reduction in the quality of the Development or Material Changes to the Development.
- (d) The Minister is not taken to have approved the variations in the Shire's Variation Notice unless and until the State's Representative provides to the Shire the Minister's Variation Response stating this to be the case.
- (e) If the State's Representative approves of the Shire's Variation Particulars then:
 - (i) the Shire may make those variations to the Works specified or described in the Shire's Variation Notice;
 - (ii) the Date for Practical Completion will be adjusted in accordance with the Shire's Variation Particulars; and
 - (iii) the Shire must pay all costs incurred in connection with amending the Development Plans and the carrying out of the approved variations to the Works.

8.4 Permitted Variations by the Shire

For the avoidance of doubt, the Shire may not make any material variations to the Development Plans or the Specifications for the Development which are Material Changes unless approved under this **clause 8**.

9. CONSTRUCTION OF THE DEVELOPMENT

9.1 Works

The Shire must procure the carrying out of the Development on the Development Licence Area:

- (a) in a proper workmanlike manner;
- (b) at the Shire's cost and expense;
- (c) in a manner not inconsistent with:
 - (i) the Development Plans and Specifications;
 - (ii) the Regulatory Requirements;
 - (iii) all Laws; and
- (d) in a prudent and efficient manner;
- (e) in accordance with reasonable and suitable methods and practices;
- (f) in accordance with Prudent Industry Practices; and

- (g) in compliance with this Agreement.

9.2 Standards of Materials and Workmanship

The Shire must procure the use of the standards of materials and workmanship required by the Development Plans, Development Approvals and Specifications. In the absence of any stated requirement, the Shire must procure the use of suitable new materials.

9.3 Provision of Information and meetings

- (a) The Shire must prepare and give to the Minister a general periodic Works Report relating to the Works or any other matter connected with this Agreement as reasonably requested by the Minister (through the State's Representative) for any reasonable purpose connected with this Agreement, including verifying compliance by the Shire with the requirements of this Agreement.
- (b) The Works Report must be provided by the Shire to the Minister (by delivery to the State's Representative) at least every month from the Commencement Date.
- (c) At the request of the Minister (through the State's Representative), the Shire must:
 - (i) provide to the Minister within a reasonable time any further information reasonably requested by the Minister in relation to the progress of the Works or any matter the subject of this Agreement; or
 - (ii) agree to meet with the State's Representative or their delegate from time to time or at periodic intervals requested by the State's Representative, to monitor the Shire's progress with the Works (i.e. Development and compliance with this Agreement).

10. SHIRE'S INSURANCE OBLIGATIONS

10.1 Shire to insure

The Shire shall at its cost effect and keep in force at all times during the term of this Agreement in the respective names of the Shire and the State for their respective rights and interests the following policies of insurance with its self-insurance fund or an insurer reasonably acceptable to the State:

- (a) a public liability policy including cover against liability of the Shire and the State to any person for any reason arising in or about the Land for an amount of indemnity of not less than FIFTY MILLION DOLLARS (\$50,000,000) for each and every occurrence for public liability claims (or any higher sum as is reasonably determined by the State from time to time) not including but limited to:
 - (i) any injury of, or illness to, or death of, any person;
 - (ii) any loss, damage or destruction to any property including to the property of the State; and
 - (iii) the loss of use of any property, including the property of the State.
- (b) a policy of insurance for the Development (that is, contract works insurance) insured to its full insurable value on a replacement or reinstatement basis against loss or damage by fire, flood, storm, tempest, rainwater, cyclones, explosion, smoke, lightning and such other risks against which, in the Minister's opinion a Shire may and does ordinarily insure, to their full replacement value;
- (c) workers' compensation insurance in accordance with the workers compensation legislation of Western Australia, including principal's indemnity extension; and
- (d) such other insurances as may be reasonably required by the Minister.

10.2 The Shire shall cause any Contractors to be covered by insurance on the same terms as set out in clause 10.1.

10.3 The Shire shall if required by the Minister within SEVEN (7) days from the date of the State's Representative's request produce to the State's Representative a copy of any policy of insurance so effected and a certificate of currency in respect of any policy of insurance required pursuant to clauses 10.1.

10.4 The Shire is:

- (a) to notify the State's Representative immediately if an event occurs which gives rise or might give rise to a claim under the insurance policies or which could prejudice the insurance policies;
- (b) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the insurance policies mentioned in this clause;
- (c) to comply with the requirements of any Authority, the Insurance Council of Australia and any insurer in relation to fire protection of any improvements, when they are being, or are constructed;
- (d) to expend or cause the expenditure of any moneys received in respect of a claim made under the insurance policy referred to in clause 10.1(b) in reinstating or replacing the damaged or destroyed property (if part of the Development);
- (e) to ensure that under the insurance policies mentioned in this clause, the insurer has no rights of subrogation against the State, and the Shire indemnifies the State against any loss arising from a breach of this subclause;
- (f) to ensure that all premiums in respect of the insurance policies and renewals of insurance policies are paid punctually;
- (g) to ensure that it does not at any time during the term of this Agreement do or bring upon the Land anything where the insurance policies may be rendered void or voidable; and
- (h) to ensure that if the Shire does anything or brings anything onto the Land where the rate of premium on the insurance policies will be liable to be increased, the Shire will obtain insurance cover for such increased risk and pay all additional premiums in respect of the Land (if any) required on account of the additional risk caused by the use to which the Land is put by the Shire.

10.5 For the avoidance of doubt, any deductible or excess on the relevant insurance policies shall be payable by the Shire.

10.6 If the Shire does or permits to be done any act, matter or thing which has the effect of invalidating or avoiding any policy of insurance taken out by or effected hereunder for the benefit of the State then the Shire shall pay to the State on demand the full amount of any damage or loss which the State may suffer or incur as a result.

11. ENVIRONMENTAL OBLIGATIONS

11.1 Obligation

Without limitation, the Shire must:

- (a) ensure the Works are carried out in a manner that prevents pollution, Contamination or damage to the Environment; and
- (b) ensure that no pollutant, Contamination or waste material of any kind is discharged or otherwise allowed to contaminate the Environment during the carrying out of the Works; and
- (c) immediately remediate, clean up or arrange to clean up any pollutant, Contamination or waste material which is discharged or does contaminate the Environment or have the potential to do so; and

- (d) remove or arrange to remove all Contamination, waste and debris resulting from or arising out of or in connection with the carrying out of the Works; and
- (e) maintain proper procedures or ensure proper procedures are maintained to monitor compliance and comply with all Environmental Laws affecting the carrying out of the Works (including, without limitation, reporting any known or suspected Contamination at, on, under or near the Land),

to the degree and standard required by any Environmental Law.

11.2 Removal

The remediation, cleaning up or removal of anything referred to in the preceding clause includes removing or eliminating the cause of Contamination and any contaminated material or substance as required by any Environmental Law. The responsibility does not cease on termination of this Agreement but continues in relation to any Contamination caused by the Shire or in connection with the Works discovered after the termination of this Agreement.

12. DEVELOPMENT DELAYS

12.1 Agreement on Development Key Dates

The Shire agrees to undertake the Works in accordance with the Development Key Dates.

12.2 Delay Event

Despite any other provision, if the completion of the construction of the Works is delayed by a Delay Event then, subject to **clause 12.3**, the Shire may (by giving notice in writing to the State's Representative within TEN (10) Business Days after the occurrence of the relevant event) request, and shall be entitled to an extension to the Date for Practical Completion by a number of days which is the same as the number of days for which the relevant Delay Event delay continues. Any dispute that arises in relation to an extension of the Date for Practical Completion must be resolved in accordance with the procedure set out in **clause 17**.

12.3 Delay caused by Shire

To the extent the delay has been caused or contributed to by the Shire or any of the Shire's Employees or Contractors, then the Shire is not entitled to an extension to the Date for Practical Completion.

13. INDEPENDENT CERTIFIER

13.1 The Independent Certifier will be engaged at the Shire's cost on the terms of the Independent Certifier Deed attached as Annexure B.

13.2 The Independent Certifier's role is to:

- (a) independently certify in accordance with the Independent Certifier Deed that:
 - (i) the design documentation for the final design for the Development is appropriate for construction purposes and complies with the Development Plans and Specifications;
 - (ii) the Works comply with the requirements of the final design and the Specifications;
 - (iii) Practical Completion has been achieved; and
 - (iv) all defects have been rectified within the Defects Liability Period;
- (b) provide the State's Representative with a written report on any matter required by the State's Representative in relation to any compliance certificate; and
- (c) perform all other functions in accordance with the Independent Certifier Deed.

13.3 The Independent Certifier is obliged to act independently of the Minister, the Shire, the Contractor and any of the Contractor's subcontractors.

13.4 The Shire must provide the Independent Certifier with all necessary information and allow the Independent Certifier:

- (a) to attend design meetings and all other relevant meetings;
- (b) access to the Development Licence Area and such other premises,

as may be necessary to allow the Independent Certifier to perform their functions in accordance with the Independent Certifier Deed.

13.5 Wherever a clause of this deed requires the Shire to provide to the Minister or the State's Representative any notice, opportunity to inspect or documentation, including any drawing or design (but excluding any payment claim or dispute notice), the Shire must at the same time also provide that notice, opportunity to inspect or documentation to the Independent Certifier.

14. PRACTICAL COMPLETION AND DEFECTS LIABILITY PERIOD

14.1 Shire's Notice of Practical Completion

The Shire must notify the Independent Certifier (with a copy to the State's Representative) when the Shire considers all Works for the Development have been properly completed and all omissions and defects in those Works have been corrected (except for minor defects and omissions) and those Works have in all other respects reached the stage of Practical Completion.

14.2 Completion

- (a) Within FOURTEEN (14) days of receipt of the notice from the Shire under clause 14.1, the Shire must procure the Independent Certifier to inspect the Works and conduct any tests or examinations which the Independent Certifier requires to determine whether the Development has achieved Practical Completion and then notify the Shire of any parts of those Works which still require completion or which the Independent Certifier considers are still defective and which require remedial work in order to comply with this Agreement.
- (b) Upon receipt of a notice from the Independent Certifier under **clause 14.2(a)**, the Shire must re-perform or rectify any part of the Works which is incomplete or defective.
- (c) When the Shire considers the incomplete or defective Works have been completed or rectified (as the case may be) the Shire must give the Independent Certifier (with a copy to the State's Representative) a further notice certifying that the incompleteness or defects have been corrected and submit to the Independent Certifier a replacement Notice in accordance with **clause 14.1**.
- (d) The procedure specified in **clauses 14.1** and **14.2** is to be followed until the Independent Certifier reasonably determines the Development has achieved Practical Completion and issues to the Shire and the Minister a certificate of Practical Completion.

14.3 Effect of the Practical Completion Certificate

The issue of a certificate of Practical Completion by the Independent Certifier is binding on the Parties as to Practical Completion having been achieved. Without limiting the effect of the Independent Certifier issuing a certificate of Practical Completion, the issue of a certificate of Practical Completion will not operate:

- (a) to discharge the obligation of the Shire to rectify Defects;
- (b) to discharge any obligations the Shire has under this Agreement;
- (c) to discharge any obligations the Minister has under this Agreement; or
- (d) to limit the liability of the Shire or the Minister arising from any breach of this Agreement.

14.4 Occupation of Development

The Development cannot commence being utilized or occupied for its intended purpose until Practical Completion has occurred and:

- (a) the Independent Certifier issues the Certificate of Practical Completion in accordance with this Agreement and Annexure D;
- (b) the Minister receives a copy of the Occupancy Permit for the completed Development; and
- (c) the Shire has executed and returned to the Minister the Licence.

14.5 Defects Liability

- (a) The Shire must rectify, or must procure the rectification of, any Defects in the Works, including those listed in the certificate of Practical Completion Certificate, within a reasonable amount of time, having regard to the nature of the Defect.
- (b) At any time during the Defects Liability Period the Minister may, upon reasonable prior notice and at reasonable times, inspect the Works for the purpose of ascertaining what Defects (if any) in the Works are required to be made good by the Shire. In accessing the Works the Minister will not unreasonably interrupt the operation of the student accommodation.
- (c) During the Defects Liability Period the Minister may give a notice (**Defects Notice**) to the Shire of any Defects (if any) which in the reasonable opinion of the Minister are required to be made good.
- (d) Any Defects Notice must identify the Defect and state a date by which the Shire must complete the rectification work. The dates specified in the Defects Notice must be reasonable having regard to the relevant Defect.
- (e) The Shire must:
 - (i) promptly make good the Defect specified in the Defects Notice within the relevant time specified in the Defects Notice;
 - (ii) promptly make good any Defect of which it becomes aware during the Defects Liability Period; and
 - (iii) give notice to the Minister when, in the Shire's opinion, all Defects specified in the Defects Notice have been made good.
- (f) If the Shire does not complete the rectification work by the date specified in the Defects Notice and that Defect poses a risk to health and safety if not rectified, the Minister may have the rectification work carried out without prejudice to any other rights that the Minister may have against the Shire in connection with the Defect.
- (g) The Minister may, either itself or through any consultant or contractor carry out any rectification works the Minister is entitled to carry out under clause 14.5(f).
- (h) The reasonable cost of the rectification work incurred by the Minister under clause 14.5(f):
 - (i) are a debt due and owing (without set off (including equitable set off) or counterclaim and without deduction) to the Minister from the Shire; and
 - (ii) accrue interest at the Interest Rate in accordance with clause 33 from the last day of the calendar month following the month in which the Minister gives the Shire an invoice specifying those Costs, together with reasonable detail as to how those costs have been calculated.
- (e) The Minister does not assume any liability to the Shire by undertaking any rectification work in accordance with clause 15.5(f).
- (f) Any dispute in relation to whether there is a Defect which arises during the Defect Liability Period will be determined in accordance with clause 17.

15. LICENCE

15.1 Preparation of Licence

Once the terms and conditions of the Licence have been agreed by the parties, the Minister will following Practical Completion:

- (a) prepare in duplicate, the Licence; and
- (b) complete the Licence by filling in blanks in accordance with this Agreement and otherwise to give effect to the intention of the parties, including inserting the 'Commencement Date'; and
- (c) deliver the completed Licence to the Shire for execution.

16. DOCUMENTS AND INTELLECTUAL PROPERTY

16.1 Availability of Documents

During the construction of the Works under this Agreement and if required by the Minister, the Shire must arrange for a legible set of the drawings and written information relevant to any part of the design and construction of the Works to be kept by it at the place of construction of the Works and be available for inspection and reference at all reasonable times by the Minister or the State's Representative or any other person nominated in writing by the Minister.

16.2 Shire must make provide

As soon as reasonably possible after completion of the Works the Shire must provide to the Minister copies of all construction and as-built drawings, plans, specifications and any other similar documentation relevant to the design, construction and operation of the Works in respect of the Development as reasonably required by including in relation to materials procured by the Shire from any Contractor or other third party for the purpose of designing or constructing the Works.

16.3 Intellectual Property Rights Licence

To the extent that the Shire is lawfully permitted to do so, if there is a default by the Shire under this Agreement, then if required by the Minister the Shire grants to the Minister a perpetual, irrevocable and non-exclusive licence to use (including the right to sub-licence and transfer) the documents which the Shire must provide under **clause 16.1** or **16.2** in relation to the Development including all Intellectual Property Rights comprised in or relating to the design documents for all purposes in connection with the Development.

16.4 Intellectual Property Rights

The Shire must ensure that it has an irrevocable licence to use the design of the Development and all other reports in relation to the Development where the intellectual property rights are held by a third party and those rights are assignable.

16.5 Application of Licence

The licence granted under **clause 16.3** includes the use of all design documents for any repairs to the Development and any maintenance and servicing of the Development and all additions or alterations to the Development and any refurbishment of the Development and, if necessary, in order to cause Practical Completion of the Development.

16.6 No Fee

The Minister is not required to pay any fee or cost for the licence granted under **clause 16.3**.

16.7 When Licence takes effect

The licence granted under **clause 16.3** takes effect from the Commencement Date and may be used by the Minister in connection with anything referred to in **clause 16.5**.

17. DETERMINATION OF DISPUTES

- 17.1** If a Dispute arises between the parties:
- (a) one of them may notify the other party, in writing, of the existence of the Dispute under this clause and the nature of the Dispute (“**Dispute Notice**”); and
 - (b) within SEVEN (7) Business Days after the Dispute Notice is given, a senior representative of the Department of Education on behalf of the Minister and a senior representative of the Shire must meet and consult to try to resolve the Dispute.
- 17.2** If the Dispute is resolved under **clause 17.1**:
- (a) the parties must, as soon as possible, execute a statement setting out the terms of the agreement reached; and
 - (b) each party must do anything (including execute any document) reasonably required by the other parties to give effect to the agreement.
- 17.3** If the Dispute is not resolved under **clause 17.1** within TWENTY (20) Business Days of the date of the Dispute Notice:
- (a) the Chief Executive Officer of the Department of Education and the President of the Shire (or a delegate of the President with authority to resolve the Dispute) must meet and consult to try to resolve the Dispute within a further TEN (10) Business Days; and
 - (i) if the Dispute is resolved, the provisions of **clause 17.2** shall apply; or
 - (ii) if the Dispute cannot be resolved, then either party may at any time after the meeting of Chief Executive Officer and the President pursuant to paragraph (a) commence legal or other proceedings.
- 17.4** The parties to a Dispute must continue performing their obligations under this Agreement while the dispute is being resolved.
- 17.5** The parties acknowledge and agree that the purpose of a party providing any information, including the making of any offer of settlement, under this **clause 17** is to attempt to resolve the Dispute between the parties.
- 17.6** If, in relation to a Dispute, a party breaches any provision of this **clause 17**, the other party is not bound by the clause in relation to that Dispute.
- 17.7** This clause shall not apply in relation to an urgent application to the Courts for equitable relief.

18. INDEMNITIES

- 18.1** Notwithstanding the existence of any policy or policies of insurance in the name of the Minister or of the Minister and any other person including the Shire or that the Shire or any other person may hold a licence, permit or authority from any Local or Public Authority, the Shire hereby indemnifies and agrees to keep indemnified the State and the Minister from and against all Loss, damage, sums of money, costs, charges, expenses, actions, claims and demands (including Consequential Losses) which may be claimed, sustained or suffered by or recovered or made by the Shire (or any other person) against the State or the Minister, solely in its capacity as the person with care, control and management of the Land, or where it is exercising a right under this Agreement, arising out of or in connection with:
- (a) loss or damage to the Land or any other loss (including loss of use) or the adjoining or nearby property caused by the Shire or any employee, agent, contractor, licensee, customer or invitee of the Shire PROVIDED THAT the Shire shall not be responsible for any damage caused by the any negligent or wrongful act or default of the State or the Minister or their respective employees, agents or contractors or of those the State or the Minister permits to enter upon or use the Land;

- (b) any injury the Shire or any other person may sustain when on, using or entering or near the Land or any appliance connected with the Land whether or not such injury arises or has arisen as a result of the negligence of or as a result of the creation of some dangerous thing or state of affairs by the State or the Minister or their respective employees, agents, licensees, customers or invitees and whether the existence of such dangerous thing or dangerous state of affairs was or ought to have been known to the State or the Minister or not PROVIDED THAT the Shire shall not be responsible for any damage caused by the negligent or wrongful act or default of the State or the Minister or their employees, agents or contractors;
- (c) the use or occupation of the Land by the Shire or its employees, licensees, customers, invitees, agents or contractors;
- (d) the Shire's activities, operations, business or other use of any land under this Agreement;
- (e) any work carried out by or on behalf of the Shire or the Shire's Employees or any Contractor or Contractor's Employees under this Agreement;
- (f) Contamination or Pollution of the Land or any land or groundwater adjoining or near the Land and of the air generally above the Land by any act or omission of the Shire or its employees, licensees, customers, invitees, agents or Contractors whatsoever, including but not limited to the escape from the Land of petroleum or any other inherently dangerous or inflammable liquid or matter;
- (g) any breach of the Shire's obligations under this Agreement; and
- (h) the proper exercise or attempted exercise of the Minister's remedies under this Agreement.

18.2 The Shire indemnifies and must keep indemnified the State and the Minister from and against all claims, costs, proceedings, suits, writs, demands and expenses relating to, or in respect of, the remediation of Contamination, Pollution or Environmental Harm required under any Environmental Notice, by any Law or by any Authority as a result of any Contamination, Pollution or Environmental Harm emanating on, or from the Land as a result of, or relating to, the use or occupation of the Land by the Shire.

18.3 The obligations of the Shire under this clause:

- (a) are unaffected by the obligation of the Shire to take out insurance and the obligations of the Shire to indemnify are paramount; and
- (b) continue after the expiration or earlier determination of this Agreement in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of this Agreement.

18.4 To the full extent permitted by law, the State and the Minister exclude and are not liable for any liability in tort (including negligence), contract, statute or otherwise for any loss or damage incurred by the Shire in connection with any act or omission by the State under or in relation to this Agreement and excludes all warranties, rights and remedies the Shire would otherwise be entitled to at law or in equity or under any legislation. This **clause 18.4** does not operate to limit the State's or Minister's liability for a material breach of this Agreement.

18.5 The State and the Minister shall not be liable under any circumstances for Consequential Loss to the Shire arising out of any breach of this Agreement by the State or the Minister or arising out of any tortious act or omission by the State or the Minister under or in relation to this Agreement.

18.6 The indemnities referred to in this **clause 18** shall:

- (a) be a continuing obligation;
- (b) constitute a separate and independent obligation of the Shire from the Shire's other obligations under this Agreement; and

- (c) survive termination of this Agreement for a period of SIX (6) years from the date of termination of this Agreement

19. SUBCONTRACTING

19.1 Suitable Contractors

The Shire may subcontract the performance of any part of its obligations under this Agreement provided that the Shire engages suitably qualified and experienced sub-contractors whom the Shire considers (acting reasonably) to be reputable in relation to performing the Works.

19.2 Subcontracting does not Relieve Shire

Any subcontracting of any part of the Works will not relieve the Shire from any of its liabilities or obligations under this Agreement. The Shire will be liable to the State and the Minister for the acts and omissions of all Contractors and all Contractor's Employees as if they were the acts or omissions of the Shire. Part 1F of the *Civil Liability Act 2002* (WA) does not apply to this Agreement.

20. TERMINATION

20.1 This Agreement continues in force until termination as a result of:

- (a) termination under any provision of this Agreement or by operation of Law; or
- (b) agreement of the parties; or
- (c) any right to terminate this Agreement, however it arises, is exercised by a party to this Agreement.

20.2 In the event that this Agreement is terminated due to the default of the Shire, then if required by the Minister, the Shire agrees to novate to the Minister the benefit of any building contract entered into by the Shire in respect of the Development and to pay all government funding that the Shire has received (but not expended) for the Works.

21. TERMINATION ON DEFAULT OR REPUDIATION

21.1 When Termination May Occur

This Agreement may be terminated by the Minister by notice to the Shire if:

- (a) the Shire fails to comply with each of the Milestone Matters by each Milestone Date (of which time shall be of the essence);
- (b) the Shire otherwise has committed a breach under this Agreement and the breach is incapable of being remedied, unless the Shire pays reasonable compensation to the Minister (or undertakes to pay such compensation upon it being assessed) and such payment is acceptable to the Minister;
- (c) the Shire has committed a breach under this Agreement and that breach continues un-remedied for such time period as is reasonable having regard to the nature and circumstance of the breach, after written notice of the breach has been given to the Shire by the Minister;
- (d) an Insolvency Event occurs in relation to the Shire; *or*
- (e) the Shire repudiates this Agreement.

21.2 Termination on Default does not Limit other Rights

Termination of this Agreement under this **clause 21** does not limit or affect the rights or remedies of the State or the Minister whether arising as a result of default or otherwise prior to termination.

22. EFFECT OF TERMINATION OF THIS AGREEMENT

22.1 Survival

Termination of this Agreement does not release either party from any obligations relating to this Agreement that by their nature survive termination of this Agreement, including all warranties and obligations of indemnity or confidentiality. All such obligations which are capable of having future operation continue in force despite this Agreement being otherwise fully performed.

23. OCCUPATIONAL SAFETY AND HEALTH

23.1 Occupational safety and health to be paramount consideration

- (a) The Shire acknowledge that the safety and health of:
 - (i) its employees;
 - (ii) its Contractor's employees;
 - (iii) any other persons engaged or employed to complete the Works;
 - (iv) the public; and
 - (v) any other person affected by the conduct of the parties business or undertaking,

affected by the Works is the paramount consideration in the undertaking and completion of those Works.

- (b) The Shire warrants that it is familiar with and has the capability and resources to comply with the OHS Legislation applicable or relevant to the Works.
- (c) The Shire must comply with, and ensure that any and all Contractors or other persons engaged in the provision of the Works comply with, all such OHS Legislation.
- (d) The Shire will supply, design, manufacture, erect and install all plant necessary to ensure the provision of the Works in a manner that is safe and without risks to health. The Shire must ensure that all plant supplied by it is and is maintained in a condition that is safe and without risks to any person.

23.2 Breach of OHS Legislation

Any breach by the Contractor of OHS Legislation which:

- (a) gives rise to circumstances which presents actual or potential risk to life or serious injury, circumstances resulting in a person suffering a work related illness, or gives rise to an incident resulting in a dangerous event;
- (b) is otherwise required to be notified under OHS Legislation,

entitles the Minister to suspend the whole or part of the Works until the breach is remedied (or reasonable steps taken to prevent a re-occurrence) and the Shire must bear any cost it incurs as a result of the suspension.

23.3 Shire and Contractor obligations

The Shire must:

- (a) comply with, and ensure that any and all Contractors comply with:
 - (i) OHS Legislation;
 - (ii) any Safety Management Plan; and
 - (iii) any Safe Work Procedures,
- (b) exercise every authority as is necessary to enable it to discharge its responsibilities under OHS Legislation;
- (c) ensure the Works are planned and managed in a way that prevents or minimises risks to the health and safety of:

- (i) workers; and
 - (ii) other persons at or near any site on which the Works will be undertaken.
- (d) work in accordance with the Safety Management Plan for the Works.

23.4 Shire's acknowledgements

The Shire acknowledges that:

- (a) it is the licensee under the Development Licence and has management and control of the Development Licence Area from the Commencement Date; and
- (b) it is the employer and person having control of a workplace under the OHS Legislation in respect of the Development Licence Area, the Development and the Works;
- (c) the Minister does not have control of any workplace associated in the Development Licence Area, the Development, the Works; and
- (d) nothing under this Agreement imposes any obligation under any OHS Legislation in respect of the Development Licence Area, the Development or the Works on the Minister.

23.5 Shire to give notice of accident, injury, damage to the Minister

The Shire must:

- (a) promptly notify the Minister of any incident which is notifiable under OHS Legislation or environment damage which;
 - (i) occurs during the performance of the Works; or
 - (ii) is associated with the Works; and
- (b) within FIVE (5) Business Days of any such incident, provided a written report to the Minister giving complete details of the incident, including the results of investigations (albeit preliminary) into its cause and any recommendations or strategies for prevention of a recurrence. Provision of any statutorily required report shall be sufficient compliance with this clause.

23.6 Shire to indemnify

The Shire must, to the extent permitted by law, indemnify and hold harmless the State and the Minister against any costs, losses, liabilities or expenses which the State or the Minister may incur arising out of, or in connection with, non-compliance or breach by the Shire or any Contractor engaged by it of any requirement of this **clause 23** including any costs incurred by the State or the Minister in taking steps to ensure compliance by the Minister or the State with the OHS Legislation, where those steps or equivalent steps should have been taken by the Shire in compliance with this **clause 23**.

24. CONFIDENTIALITY

24.1 Confidentiality Obligation

Each party must keep all Confidential Information confidential, and must not without the prior written consent of the other party or as required by law:

- (a) make available, communicate or disclose the Confidential Information or any part of it to any person, firm or company other than those of its employees requiring the Confidential Information for the purpose of this Agreement or for the purpose of complying with applicable laws; or
- (b) use or allow its employees to use any of the Confidential Information for any purpose other than in relation to the provision of obligations under this Agreement.

24.2 Other Persons Bound

Each party must ensure that any person to whom Confidential Information is made available, communicated or disclosed is at all times subject to and maintains the obligations of confidentiality contained in this **clause 24**.

24.3 Application of Clause

This clause does not apply to the provision of Confidential Information by the Minister to any other minister of the State (including but not limited to the Minister for Lands) or Parliament (including committees of it) or to a court pursuant to a valid court order.

25. CONSENT

Unless otherwise stated, if a party's consent or approval is required:

- (a) it must consider the request promptly and be reasonable in giving or refusing its consent or approval;
- (b) it may require the other party to comply with any reasonable conditions before giving its consent or approval; and
- (c) the consent or approval is not effective unless in writing.

26. ASSIGNMENT

26.1 No Assignment without Consent

The Shire may not assign or novate the benefit of this Agreement or nominate another party as the Shire under this Agreement without the prior written approval of the Minister.

27. NO PARTNERSHIP

This Agreement does not create or evidence a partnership or joint venture.

28. FURTHER ASSURANCE

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

29. ENTIRE UNDERSTANDING

29.1 This Agreement:

- (a) is the entire Agreement and understanding between the parties on everything the subject matter of this Agreement; and
- (b) supersedes any prior Agreement or understanding on anything connected with that subject matter.

29.2 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

30. VARIATION

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

31. WAIVER

31.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

31.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

31.3 A waiver is not effective unless it is in writing.

31.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

32. COSTS AND EXPENSES

- 32.1** Each party must pay its own costs and expenses connected with the negotiation, preparation and execution of this Agreement.
- 32.2** The Shire must pay all duty (if any) payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Minister.

33. OVERDUE PAYMENTS

- 33.1** Interest accrues on each amount which is due and payable by any party under this Agreement (including interest payable under this clause 33):
- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or Loss, if earlier;
 - (b) both before and after judgment (as a separate and independent obligation); and
 - (c) at the Interest Rate.
- 33.2** Parties must pay interest accrued under clause 33.1(a) on demand and on the last Business Day of each month.

34. NOTICES

- 34.1** A notice or other communication connected with this Agreement ("Notice") has no legal effect unless it is in writing.
- 34.2** In addition to any other method of service provided by Law, the Notice may be:
- (a) sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified; or
 - (b) delivered at the address of the addressee set out in this Agreement or subsequently notified.
- 34.3** A Notice must be treated as given and received:
- (a) if sent by post, on the 6th Business Day (at the address to which it is posted) after posting;
 - (b) if otherwise delivered before 5.00 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 34.4** A Notice sent or delivered in a manner provided by **clause 34.2** must be treated as validly given to and received by the party to which it is addressed even if:
- (a) the addressee has been liquidated or deregistered or the party is absent from the place at which the Notice is delivered or to which it is sent; or
 - (b) the Notice is returned unclaimed.
- 34.5** Any Notice by a party may be given and may be signed by its solicitor.
- 34.6** Any Notice to a party may be given to its solicitor by any of the means listed in clause 34.2 to the solicitor's business address or facsimile number.

35. GOVERNING LAW AND JURISDICTION

- 35.1** The Law of Western Australia governs this Agreement.
- 35.2** The parties submit to the exclusive jurisdiction of the courts of Western Australia and courts of appeal from those courts.

36. GST

- (a) GST Definitions

For the purpose of this clause 36 :

acquisition, consideration, GST, GST exclusive value, input tax credit, supply, taxable supply and **tax invoice** bear the same meaning as those expressions in the GST Act.

GST Act means the A new Tax System (Goods and Services Tax) Act 1999 (as amended).

Recipient means any party receiving a taxable supply under this Agreement.

Supplier means any party making a taxable supply under this Agreement.

- (b) Amounts otherwise payable do not include GST

Except where the relevant supply is not a taxable supply or express provision is made to the contrary, and subject to this **clause 36**, the consideration for any supply payable by the Supplier under this Agreement represents the GST exclusive value of the supply.

- (c) Ability to pass on GST

If the Supplier makes a taxable supply in connection with this Agreement for a consideration, which under **clause 36(b)** or **clause 36(d)**, represents its GST exclusive value, then the Recipient must also pay, at the same time and in the same manner as the GST exclusive value is otherwise payable, an amount equal to the GST payable in respect of the taxable supply.

- (d) Reimbursements

Where this Agreement requires the Recipient to pay, reimburse or contribute to an amount paid or payable by the Supplier in respect of an acquisition from a third party for which the Supplier is entitled to claim an input tax credit, the amount required to be paid, reimbursed or contributed by the Recipient will be the GST exclusive value of the acquisition by the Supplier. However, nothing in this **clause 36(d)** limits the operation of **clause 36(c)**.

- (e) Tax Invoice

The Receipt's obligation to make a payment under this **clause 36** is subject to the Supplier delivering to the Recipient a valid tax invoice for the taxable supply.

37. COUNTERPARTS

This Agreement may be executed in counterparts. Each counterpart is deemed an original and all the counterparts together constitute one instrument, which is deemed to be dated on the date of exchange.

EXECUTED as an Agreement.

SIGNED for and on behalf of the)
MINISTER FOR EDUCATION by)
JAY TIMOTHY PECKITT)
A/Deputy Director General of the)
Department of Education,)
the officer delegated this authority)
pursuant to section 230)
of the *School Education Act 1999 (WA)*)
in the presence of)

____/____/____

Witness signature

Witness Full Name (Please print)

Witness address (Please print)

Witness occupation (Please print)

THE COMMON SEAL of the)
SHIRE OF JERRAMUNGUP)
was hereunto affixed in the presence of:)

Shire President

Chief Executive Officer

Print full name

Print full name

____/____/____

Annexure A

PLANS SHOWING LAND AND POOL



Annexure B

INDEPENDENT CERTIFIER DEED AND PROFORMA CERTIFICATES

Independent Certifier's Certificate – Shire's Development Plans

To: The Minister for Education

From: ***[Independent Certifier]***

In accordance with the terms of clause () of the Development Agreement between the Minister for Education and Shire of Jerramungup (**Shire**) dated ***[insert date]*** (**Development Agreement**), we hereby certify that we have reviewed the Shire's ***[insert relevant plan]*** Plan submitted under clause (...) of the Development Agreement and confirm that the ***[insert relevant plan]*** Plan complies in all respects with the requirements of the Development Agreement, including the Specifications.

Any term used in this certificate and defined in the Development Agreement shall be given the same meaning.

Signed for and on behalf of

[Independent Certifier]

Independent Certifier's Certificate – Amendments to the *[insert]* Plan

To: The Minister for Education

From: ***[Independent Certifier]***

In accordance with the terms of clause (...) of the Development Agreement between the Minister for Education and Shire of Jerramungup (**Shire**) dated ***[insert date]*** (**Development Agreement**), we hereby certify that we have reviewed the Shire's proposed amendments to the ***[insert]*** Plan submitted under clause (...) of the Development Agreement and confirm that the proposed amendments comply in all respects with the requirements of the Development Agreement, including the Specifications.

Any term used in this certificate and defined in the Development Agreement shall be given the same meaning.

Signed for and on behalf of

[Independent Certifier]

Independent Certifier's Certificate – Practical Completion

To: The Minister for Education

From: ***[Independent Certifier]***

In accordance with the terms of clause (...) of the Development Agreement between the Minister for Education and Shire of Jerramungup (**Shire**) dated ***[insert date]*** (**Development Agreement**), we certify that:

- (a) the Shire has complied with and satisfied the requirements of the quality management system requirements under the Development Agreement and the Specifications;
- (b) the Shire has completed construction in accordance with the Design Documentation as it was entitled to use for construction purposes under clause (..) of the Development Agreement, subject to minor Defects as referred to in paragraph (a) of the definition of 'Practical Completion';
- (c) all reports, submissions, notices, Authorisations and other documentation (including occupancy permit from the Shire in respect of the Development) have been submitted to the State's Representative in accordance with the Development Agreement; and
- (d) the Works have been completed in accordance with the Development Agreement and the Specifications, subject to minor Defects as referred to in paragraph (a) of the definition of 'Practical Completion'.

Any term used in this certificate and defined in the Development Agreement shall be given the same meaning.

Signed for and on behalf of

[Independent Certifier]

Independent Certifier's Certificate – Final Design

To: The Minister for Education

From: ***[Independent Certifier]***

In accordance with the terms of clause (...) of the Development Agreement between the Minister for Education and Shire of Jerramungup (**Shire**) dated ***[insert date]*** (**Development Agreement**), we certify that the following Design Documentation is appropriate to be used by the Shire for construction purposes and complies with the Development Agreement, including the Specifications:

[insert list of final Design Documentation the subject of this certificate]

Any term used in this certificate and defined in the Development Agreement shall be given the same meaning.

Signed for and on behalf of

[Independent Certifier]

Annexure C

INSURANCES – PUBLIC LIABILITY