

CITY OF NEDLANDS

AND

ANN LOUISE O'HARA

Deed of Variation of Lease: Lot 254 (No. 25)
Strickland Street, Mt Claremont



McLeods
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REF: NEDL 18095

This Deed of Variation of Lease is made the day of 2011.

BETWEEN :

CITY OF NEDLANDS of 71 Stirling Highway,)
Nedlands, Western Australia (**Lessor**))

AND

ANN LOUISE O'HARA of 8 Camilia Avenue,)
Mt Claremont, Western Australia (**Lessee**))

Recitals

- A. Pursuant to the Original Lease the Lessor leased to the Lessee the Premises for the Term.
- B. The Lessor and Lessee have agreed to vary the Original Lease to take into account a new development approval that has been issued for the Premises.

OPERATIVE PART :

The Parties agree:

1. Definitions and Interpretation

1.1 Definitions

Unless otherwise required by the context or subject matter the following words have these meanings in this Deed:

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

Original Lease means the lease specified in **Item 1** of the Schedule;

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

Premises means the premises described in **Item 2** of the Schedule;

Schedule means the Schedule to this Deed; and

Term means the term as defined in the Original Lease.

1.2 Same meaning as Original Lease

Unless the contrary intention appears words defined in the Original Lease have the same meaning when used in this Deed.

1.3 Interpretation

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (ii) any gender include each gender;
- (b) A reference to:
 - (i) a natural person includes a body corporate or local government; and
 - (ii) a body corporate or local government includes a natural person.
- (c) A reference to a professional body includes a successor to or substitute for that body.
- (d) A reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) A reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) A reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) A reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a misrepresentation or a breach of warranty;
- (h) Subject to any contrary provisions in this Deed a reference to this Deed or provisions or terms of this Deed or any other deed, agreement, instrument or contract include a reference to:
 - (a) both express and implied provisions and terms; and
 - (b) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended.
- (i) A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;

- (j) A reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
 - (k) If a Party comprises two or more persons the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them.
 - (l) The covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include:
 - (a) covenants not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (b) a covenant to do everything necessary to ensure that that act or thing is not done or omitted to be done.
 - (j) Except in the Schedule headings do not affect the interpretation of this Deed.
-

2. Variation of Lease

The parties mutually COVENANT AND AGREE that the Original Lease shall be varied by:

- (a) deleting subclause 13.4(b) and replacing it with the following subclause:

"the hours and days of operation of the child care centre are limited to Tuesday 9 am to midday; Wednesday 9 am to midday; Thursday 9 am to midday and Friday 9 am to midday."

- (b) deleting subclause 13.4(c) and replacing it with the following subclause:

"the day care centre must only operate with a maximum of thirteen children at any given time and such children must be aged between 3 and 4 years old"

3. Terms of Variation

All the provisions of the Original Lease apply to the Premises, except to the extent that the terms of the Original Lease are varied by this Deed.

4. Severance

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

Schedule

Item 1: Original Lease

A Lease dated 4 January 2011 made between the City of Nedlands as the Lessor and Ann Louise O'Hara as the Lessee, copy annexed hereto as **Annexure 1**.

Item 2: The Premises

The Premises as described in the Original Lease.

EXECUTED by the parties as a Deed:

THE COMMON SEAL of the CITY OF)
NEDLANDS was hereto affixed by)
authority of Council in the presence of:)

MAYOR

(Print Full Name)

CHIEF EXECUTIVE OFFICER

(Print Full Name)

SIGNED by the said ANN LOUISE)
O'HARA in the presence of:)

Witness sign:

Print name:

Address:

Occupation:

Annexure 1
Original Lease

CITY OF NEDLANDS

AND

ANN LOUISE O'HARA

Lease of Lot 254 (No. 25)
Strickland Street, Mt Claremont



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THIS LEASE is made

4

day of

JANUARY

2010.

BETWEEN:

CITY OF NEDLANDS of 71 Stirling)
Highway, Nedlands, Western Australia)
("Lessor"))

AND

ANN LOUISE O'HARA of 8 Camilia Avenue,)
Mt Claremont, Western Australia ("Lessee"))

RECITALS:

- A. The Lessor is the registered proprietor of the Land on which the Premises are located.
- B. The Lessor has agreed to grant a lease of the Premises to the Lessor and the Lessee has agreed to accept that lease on the terms and conditions in this deed of lease.

OPERATIVE PART:

The Parties AGREE:

1. DEFINITIONS:

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

Alterations means any of the acts referred to in 12.1(b), 12.1(c) and 12.1(d).

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

Authorised Person means:

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

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

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

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title for the Land;

Further Term means the further term specified in **Item 3** of the Schedule;

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

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

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

Lessee's Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessee;

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

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

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

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

Rent means the rent specified in **Item 5** of the Schedule as varied from time to time under this Lease;

Schedule means the Schedule to this Lease;

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

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

2. INTERPRETATION

In this Lease, unless expressed to the contrary:

2.1 Words importing:

- (a) the singular include the plural;
- (b) the plural include the singular; and
- (c) any gender includes each gender;

2.2 A reference to:

- (a) a natural person includes a body corporate or local government;
- (b) a body corporate or local government includes a natural person;
- (c) a professional body includes a successor to or substitute for that body;
- (d) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
- (f) a right includes a benefit, remedy, discretion, authority or power;
- (g) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to:
 - (i) both express and implied provisions; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;

- (j) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (k) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- 2.3 The covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include:
- (a) covenants not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (b) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- 2.4 Except in the Schedule, headings do not affect the interpretation of this Lease; and
- 2.5 If a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

3. GRANT OF LEASE

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

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

4. QUIET ENJOYMENT

Except as provided in the Lease, for so long as the Lessor is the management body of the Premises under the Order, and subject to the performance and observance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

5. RENT AND OTHER PAYMENTS

The Lessee covenants with the Lessor:

(a) **Rent**

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

(b) **Outgoings**

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

- (A) local government rates, services and other charges, including but not limited to rubbish collection charges and the emergency services levy;
- (B) water, drainage and sewerage rates; charges for disposal of stormwater, meter rent and excess water charges;
- (C) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring or telephone connection;
- (D) land tax and metropolitan regional improvement tax on a single ownership basis; and
- (E) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.

(ii) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 5(b)(i)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

(c) **Interest**

Without affecting the rights, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 7 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

(d) **Costs**

- * (i) To pay to the Lessor on demand:
- (A) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;
 - (B) all registration fees in connection with this Lease; and
 - (C) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (ii) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
- (A) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (B) any breach of covenant by the Lessee or an Authorised Person;
 - (C) the preparation and service of a notice under Section 81 of the Property Law Act 1969 requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
 - (D) any work done at the Lessee's request; and
 - (E) any action or proceedings arising out of or incidental to any matters referred to in this clause 5(d) or any matter arising out of this Lease.

(e) **Payment of Money**

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

6. **ACCRUAL OF AMOUNTS PAYABLE**

Amounts Payable accrue on a daily basis.

7. INSURANCE

7.1 Insurance to be Effected

The Lessee must effect and maintain with insurers approved by the Lessor in the joint names of the Lessor and the Lessee for their respective rights and interests in the Premises for the time being adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

7.2 Building Insurance to be Effected and Paid by Lessee

The Lessee will effect and maintain insurance of the building on the Premises, with an insurance company acceptable to the Lessor, and to a value agreed by the parties.

7.3 Details and Receipts

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

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

7.4 Not to Invalidate

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

- (a) render any insurance effected under **clause 7.1** or **7.2** on the Premises, or any adjoining premises, void or voidable;
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

7.5 Report

Each Party must report to the other promptly in writing, and in addition verbally in an emergency:

- (a) any damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person in or on the Premises.

7.6 Settlement of Claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clause 7.1**.

7.7 Lessor as Attorney

The Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term:

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clause 7.1**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clause 7.1**;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

8. INDEMNITY

8.1 Indemnity

The Lessee indemnifies the Lessor against any liability or loss arising from and any costs, charges and expenses incurred in connection with:

- (a) any damage to the Premises, or any loss of or damage to anything on it; and
- (b) any injury to any person on the Premises,

and for which the Lessor becomes liable.

8.2 Indemnity Unaffected by Insurance

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

9. LIMIT OF LESSOR'S LIABILITY

9.1 No Liability for Loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.

9.2 Limit on Liability for Breach of Lessor's Covenants

- (a) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the management body of the Premises under the Order.
- (b) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

10. OPERATION OF BUSINESS

The Lessee must:

- (a) conduct its business on the Premises at all times in a proper efficient and reputable manner and must not use the Premises nor permit the Premises to be used for any illegal, immoral or improper use or purpose;
- (b) not conduct nor permit to be conducted in the Premises any auction fire bankruptcy or liquidation sale without the prior written consent of the Lessor;
- (c) take all proper precautions to keep the Premises free of rodents vermin insects and pests and must, if so required by the Lessor but at the cost of the Lessee, employ from time to time or periodically pest exterminators for that purpose;
- (d) not without the prior written consent of the Lessor use or permit to be used any other method in lighting the Premises other than by electricity and will not use or permit or suffer to be used any method of heating other than by electricity or gas;

- (e) keep in force all licences and permits required for the carrying on of any business conducted by it in or upon the Premises; and
- (f) deliver to the Lessor any notices or orders served on or received by the Lessee in respect of the Premises or the conduct of the Lessee's business on the Premises.

11. MAINTENANCE, REPAIR AND CLEANING

11.1 Maintenance

- (a) The Lessee will maintain at its own expense the Premises including but not limited to any structural parts, plate glass, electrical installations, gas and water pipes and fittings, toilets, sanitary appliances, drains, septic tanks, leach drains, paths, paving/park or garden furniture, retaining walls, fences and reticulation in good, safe order repair and condition.
- (b) The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises; and
- (c) The Lessee must take such reasonable action as is necessary to:
 - (i) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
 - (ii) rectify or otherwise amelioratethe effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

11.2 Repair

The Lessee must promptly repair at its own expense to the satisfaction of the Lessor any damage to the Premises including damage of a structural nature, regardless of how it is caused.

11.3 No Obligation on Lessor to Repair or Maintain

- (a) The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements comprising the Premises, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Premises.
- (b) Any further development proposed on the Premises during the Term shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained the prior consent of the Lessor, and all necessary statutory approvals.

11.4 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

11.5 Access to Surrounds

- (a) The Lessee acknowledges that the Premises are limited to the building on the Land as defined on the plan annexed to this Lease and that, although the Lessee will have access to the surrounding grounds and play equipment, the surrounding grounds and play equipment will remain under the control of the Lessor and will be available for general public use.
- (b) The Lessor will maintain the surrounding grounds and play equipment.

11.6 Pest Control

- (a) The Lessee must keep the Premises free of any vermin and the cost of extermination will be borne by the Lessee.
- (b)
 - (i) The Lessee must undertake, annually, an inspection by a licensed pest controller for termite infestation;
 - (ii) This inspection must be carried out and any pest control treatment required as a result of the inspection must be undertaken by a licensed pest controller within two weeks of the inspection;
 - (iii) The Lessee must provide to the Lessor a copy of the certificate issued by the licensed pest controller by May 1 annually; and
 - (iv) All costs and expenses arising from the inspection and any work undertaken as a result will be the responsibility of the Lessee.

11.7 Structural State of Premises

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the Lease with full knowledge of the structural state and state of repair of the Premises.

12. ALTERATIONS

12.1 Restriction

The Lessee must not without prior written consent:

- (a) (i) from the Lessor;

- (ii) from any other person from whom consent is required under this Lease;
 - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;
- (b) install any new signage;
 - (c) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises;
 - (d) remove alter or add to any fixtures, fittings or facilities in or on the Premises; or
 - (e) subject to the performance of the Lessee's obligations in **clause 11**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

12.2 Consent

- (a) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 12.1** the Lessor may:
 - (i) consent subject to conditions; and
 - (ii) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (iii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (b) if the Lessor consents to any matter referred to in **clause 12.1**:
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

12.3 Cost of Works

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

12.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either:

- (a) carry out those other works at the Lessee's expense; or
 - (b) permit the Lessor to carry out those other works at the Lessee's expense,
- in accordance with the Lessor's requirements.
-

13. USE

13.1 Restrictions on Use

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

- (a)
 - (i) use the Premises or any part of it for any purpose other than for the purposes for which the Premises are held by the Lessor, as set out at **Item 6** of the Schedule; or
 - (ii) use the Premises for any purpose which is not permitted under any town planning scheme or any law relating to health;
- (b) do or carry out on the Premises any harmful, offensive or illegal act, matter or thing;
- (c) do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties;
- (d) store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:
 - (i) any such storage must comply with all relevant statutory provisions;
 - (ii) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
 - (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
 - (iv) upon the request of the Lessor, the Lessee will provide a manifest of all dangerous compounds or substances stored on the Premises;

- (e) do any act or thing which might result in excessive stress or harm to any part of the Premises; or
- (f) display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

13.2 No Warranty

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

13.3 Premises Subject to Restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

13.4 Comply with Development Approval

The Lessee COVENANTS AND AGREES to comply with the terms of the Development Approval, in particular:

- (a) the use of the Premises is limited to an Early Childhood Centre;
- (b) the hours and days of operation of the child care centre are limited to a maximum of three morning sessions from 9 am to 11.30 am, and three afternoon sessions 12.30 pm to 3 pm, Tuesday, Wednesday and Thursday.
- (c) the day care centre must only operate with a maximum of twelve children at any given time and such children must be aged between 3 and 4 years old;
- (d) two staff may be employed; and
- (e) there is limited on-site parking, however street parking is available within the locality.

13.5 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this clause 13.

14. LESSOR'S RIGHT OF ENTRY

14.1 Entry on Reasonable Notice

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

- (a)
 - (i) at all reasonable times;
 - (ii) with or without workmen and others; and
 - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes:
 - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause 14.1(b)(iv) is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

14.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at clause 14.1(b)(iv) together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

15. STATUTORY OBLIGATIONS AND NOTICES

15.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 13**;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

15.2 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 15.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 15.1**.

16. REPORT TO LESSOR

The Lessee must immediately report to the Lessor:

- (a) any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;
- (b) any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

17. DEFAULT

17.1 Events of Default

A default occurs if:

- (a) the Lessee is in breach of any of the Lessee's Covenants for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) the association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the Associations Incorporation Act 1997 altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) (the Premises are vacated) the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the permitted purpose for six month period; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

17.2 Forfeiture

On the occurrence of any of the events of default specified in clause 17.1 the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under clause 20,

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

17.3 Lessor May Remedy Breach

If the Lessee:

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

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

17.4 Acceptance of Amount Payable By Lessor

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

17.5 Essential Terms

Each of the Lessee's Covenants in **clauses 5** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **11** (Maintenance, Repair and Cleaning), **13** (Use), **24** (Assignment, Subletting and Charging), **36** (Goods and Services Tax), **40** (Alcohol) and **41** (Minimise Nuisance to Neighbours) is an essential term of this Lease but this **clause 17.5** does not mean or imply that there are no other essential terms in this Lease.

17.6 Breach of Essential Terms

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

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee covenants with the Lessor that if the Term is determined:
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or

- (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default;

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

- (d) the Lessee agrees that the covenant set out in this clause 17.6(c) will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at clause 17.6(c) the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

18. DAMAGE OR DESTRUCTION

18.1 Damage or Destruction

If the Premises or any part of the Premises are totally or partially destroyed so as to require major rebuilding the Lessee may within two (2) months of the destruction or the damage terminate the Term with immediate effect by giving Notice to the Lessor.

18.2 Insurance Proceeds

If the Lessee terminates the Term in accordance with clause 18.1 all insurance proceeds in respect of the Premises will be paid to and retained by the Lessor.

19. OPTION TO RENEW

If the Lessee at least one month, but not earlier than 12 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and:

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and

- (b) there is no subsisting default by the Lessee at the date of service of the Notice in:
- (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Covenants,

the Lessor may in its sole discretion grant to the Lessee a lease for the Further Term at the Rent specified in **Item 5** of the Schedule for the Further Term and on terms and conditions similar to this Lease other than this **clause 19** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

20. HOLDING OVER

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

21. RESTORE PREMISES

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

22. YIELD UP THE PREMISES

22.1 Peacefully Surrender

On Termination the Lessee must:

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

22.2 Clause 22.1 to Survive Termination

The Lessee's obligation under **clause 22.1** will survive termination.

23. REMOVAL OF PROPERTY FROM PREMISES

23.1 Remove Property prior to Termination

Prior to Termination, unless otherwise mutually agreed between the parties, the Lessee must remove from the Premises all property of the Lessee which is not a fixture other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

23.2 Lessor can Remove Property on Re-Entry

On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property.

24. NO ASSIGNMENT, SUBLETTING OR CHARGING

24.1 No Subletting or Assignment without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises.

24.2 Property Law Act 1969

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

24.3 No Mortgage or Charge

The Lessee must not mortgage or charge the Premises, without the prior written consent of the Lessor.

25. ACTS BY AGENTS

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

26. GOVERNING LAW

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

27. STATUTORY POWERS

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

28. NOTICE

28.1 Form of Delivery

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

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

28.2 Service of Notice

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

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

28.3 Signing of Notice

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 1987*, by any person authorised to do so by the board or committee of management of the association; or

- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.
-

29. SEVERANCE

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

30. DISPUTES

30.1 Appointment of Arbitrator

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

30.2 Payment of Amounts Payable to Date of Award

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

31. VARIATION

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

32. MORATORIUM

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

33. FURTHER ASSURANCE

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

34. PAYMENT OF MONEY

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

35. WAIVER

35.1 No General Waiver

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

35.2 Partial Exercise of Right Power or Privilege

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

36. GOODS AND SERVICES TAX

36.1 Definitions

The following definitions apply for the purpose of this clause:

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;
- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease; and
- (d) **Supply** means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

36.2 Lessee to Pay GST

- (a) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease;

- (b) The Lessee must pay any increase referred to at **clause 36.2(a)** whether it is the Lessee or any other person who takes the benefit of any Supply; and
- (c) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

36.3 Consideration in Kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 36.2(b)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

36.4 No Contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

36.5 Statement of GST paid is Conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

36.6 Tax Invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

36.7 Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

37. COMMERCIAL TENANCY ACT

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

38. CAVEAT

38.1 No Absolute Caveat

The Lessee nor any person on behalf of the Lessee will, without the prior written consent of the Lessor, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

38.2 CEO & Lessor as Attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally:

- (a) for the Term of this Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of 6 months after Termination,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate:-

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease,

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

39. INDEMNITY AND RATIFICATION

39.1 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under **clause 38**.

39.2 Indemnity

The Lessee indemnifies the Lessor against:

- (a) any loss arising directly from any act done under **clause 38** and

- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under **clause 38**.

40. ALCOHOL

40.1 Consumption of alcohol

The Lessee COVENANTS AND AGREES:

- (a) not to use or allow the Premises to be used for the consumption or sale of alcohol without first obtaining the written consent of the Lessor, and the Lessor shall determine any such application in its absolute discretion; and
- (b) that it shall not make an application for a licence or permit under the Liquor Control Act 1988 for the Premises, or apply for an amendment to a licence or permit it has been granted, without first obtaining the written consent of the Lessor.

40.2 Liquor Licence

The Lessee COVENANTS AND AGREES that if a licence or permit is granted under the Liquor Control Act 1988 for the Premises it must:

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises **clause 12** shall apply;
- (b) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor, which will require, without limitation the following:
 - (i) the development and implementation of a House Management Policy and Code of Conduct (as defined by the Harm Minimisation Policy) for the Premises, and such policies must be displayed in a prominent position on the Premises at all times; and
 - (ii) the development and implementation of a Management Plan (as defined by the Harm Minimisation Policy) for the Premises.
- (c) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit, including without limitation a copy of the House Management Policy, Code of Conduct and Management Plan (as defined by the Harm Minimisation Policy)) to the Lessor as soon as practicable after the date of grant; and
- (d) indemnify and keep indemnified the Lessor from and against any breach of the Liquor Control Act 1988, Health (Food Hygiene) Regulations 1993, Liquor Control Regulations 1989 or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Premises.

41. MINIMISE NUISANCE TO NEIGHBOURS

- (a) The Lessee acknowledges that the Premises are located in close proximity to residential premises.
- (b) The Lessee must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises, particularly during and following social events held at the Premises.
- (c) The Lessee must comply with all reasonable conditions and directions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises.

42. ADDITIONAL TERMS, COVENANTS AND CONDITIONS

Each of the terms, covenants and conditions (if any) specified in **Item 7** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

SCHEDULE

ITEM 1: LAND AND PREMISES

Land

Lot 254 on Plan 3321 being the whole of the land comprised in Volume 293 Folio 87.

Premises

That part of the Land hachured on the plan annexed hereto as **Annexure 1**, including all buildings, structures, alterations, additions and improvements on that part of the Land, or erected on that part of the Land during the Term.

ITEM 2: TERM

Two years commencing on 1 January 2011 and expiring on 31 December 2012

ITEM 3: FURTHER TERM

Subject to the Lessor's sole discretion, two years commencing on 1 January 2013 and expiring on 31 December 2014

ITEM 4: COMMENCEMENT DATE

1 January 2011

ITEM 5: RENT

During the Term

\$10,000 (Ten thousand dollars) per annum plus GST, payable in advance in monthly instalments with the first payment due on the Commencement Date.

During the Further Term

\$10,000 (Ten thousand dollars) per annum plus GST, payable in advance in monthly instalments.

ITEM 6: PERMITTED PURPOSE

Occasional child care centre for 3-4 year olds.

ITEM 7: ADDITIONAL TERMS AND COVENANTS

Nil.


ITEM 8: PUBLIC LIABILITY INSURANCE

Ten million dollars (\$10,000,000.00).


SIGNED BY THE PARTIES as a Deed

THE COMMON SEAL of the CITY OF)
NEDLANDS was hereunto affixed by)
authority of a resolution of the Council in)
the presence of:)

No. 547

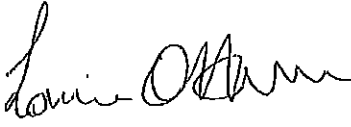


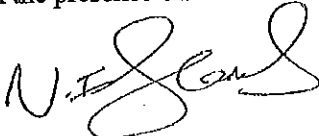
MAYOR



CHIEF EXECUTIVE OFFICER

SIGNED by the said ANN LOUISE)
O'HARA in the presence of:)



Witness sign: 

Print name: NEIL SCANES

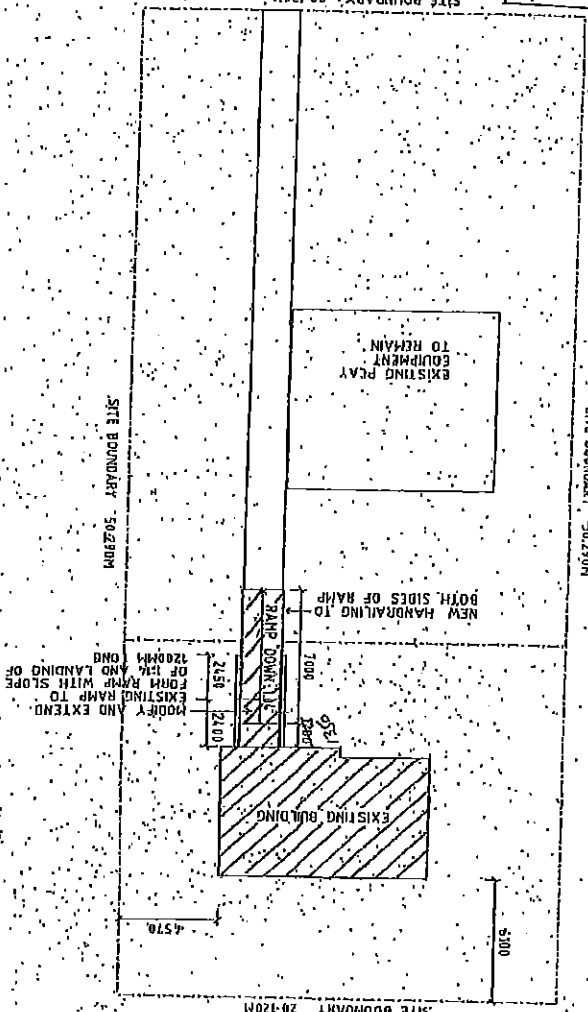
Address: 8 JAVEZ DRIVE, QUINNS ROCKS WA 6030

Occupation: PROPERTY MANAGEMENT OFFICER

18003100121022150601234

ANNEXURE 1
Sketch of Premises

CITY OF MONTREAL
 17 7465
 RECEIVED



RICKLAND STREET
 1200

Approved by _____ for
 the Building Surveyor, City of Montreal
 subject to the issue of Building License No. _____
 0.5 0 5 4
 In accordance with the Local Government
 (Miscellaneous Provisions) Act 1980

AOA *LS*

COORDINATION PREPARED BY: KOURIS PROPERTY DEVELOPMENTS 27 BANGOR STREET-MONTRÉAL TEL: 8050 - Phone: 844 7811 Fax: 844 8811 MOBILE: 514 583 1881	PROPOSED UPGRADING OF EXISTING INFANT HEALTH CENTRE 254 STRICKLAND STREET MT. CLAREMONT	
	SCALE: 1:200 DATE: 07.02.05 DRAWN: relv	JOB NO: 0511 Dwg NO:

I declare the validity of these drawings as well as
 the technical information to be applied, to be correct.

