

SHIRE OF DENMARK

(“the Lessor”)

and

XXX

(“the Lessee”)

LEASE

LEASE BETWEEN

Shire of Denmark

&

XXX

Portion of Lot 300 on Deposited Plan 46811

THIS LEASE is made the first day of September 2013, BETWEEN the Lessor named in Item 1 of the Schedule hereto and the Lessee named in Item 2 of the Schedule hereto.

WHEREAS:

- A. The Lessor has agreed to lease and the Lessee has agreed to take on lease, the land described in Item 3 of the Schedule hereto (which together with the buildings erections improvements fixtures and fittings thereon are collectively hereinafter “the Leased Premises”) for the Term and on commencement date stated in Item 4 of the Schedule hereto.
- B. The Lessee wishes to use a portion of Lot 300 on Deposited Plan 46811 comprising an area of approximately 7,640sqm for the purposes of **XXX**.

IT IS RECORDED BY THIS DEED THAT THE PARTIES AGREE as follows:

1. LEASE TERM

The Lessor leases the Leased Premises TO BE HELD by the Lessee subject to the covenants and powers contained or implied in the Transfer of Land Act 1893 (as amended) except in so far as they are hereby modified and subject to the covenants, conditions and stipulation’s contained or implied herein for a term expiring on 31 December 2015.

2. OPTION TO EXTEND LEASE TERM

The Lessee may request the Lessor in writing no later than 120 days before the expiration of the lease to extend the lease. The Lessor may at its absolute discretion extend the term of this lease for a further period of up to 2 YEARS after having regard to the performance and observance of the Lessee in regard to this lease and the availability of suitable alternative sites. Should the Lessor be willing to extend the Lease Term in accordance with this clause then before doing so the rental payable will be reviewed in accordance with clause 4.

3. RENT

The Lessee shall pay rental as outlined in Schedule 1 attached to this lease such sums shall be by two equal instalments payment on 1st July and 1st January in each year of the lease term or extension thereof with the first payment due and payable in full upon signing of the lease with effect from the commencement date of the lease being 1 September 2013.

4. REVIEW OF RENT

- 4.1 There is no rent review given the short term nature of the lease.
- 4.2 The lessor will obtain a valuation at the lessee’s expense from a licensed valuer to determine a fair market rental for the premises.

4.3 Any determination of the fair market rental of the leased premises by a valuer is conclusive and binds the Lessor and the Lessee.

5. OUTGOINGS

The Lessee shall be responsible for;

5.1 All rates and charges payable to any local or government authority including but without being limited to municipal rates charged by the Shire of Denmark and the Water Authority of Western Australia.

5.2 All charges and fees relating to the installation, use and consumption of water, electricity and telephone services.

6. PERMITTED USE

The Lessee agrees to use the Leased Premises for the purpose of XXX and in accordance with the approved development application and for no other purpose without the prior written consent of the Lessor.

7. PERMITTED STRUCTURES

7.1 The parties agree that the Lessee may use the Toilets and Shed erected on the Leased Premises, subject to such terms and conditions as the Lessor may require.

7.2 The parties agree that a fence may be erected along the boundaries of the Leased Premises with an appropriate gate at the Lessee's cost. The fence shall be in accordance with specifications, building materials and other requirements of the Lessor.

7.3 The Lessee agrees not to install or undertake work on any further structures on the Leased Premises without the prior written consent of the Lessor and, if such consent is obtained, only then in accordance with the conditions as set down by the Lessor.

8. REMOVAL OF STRUCTURES

The Lessee agrees that at the expiration of the leased term or upon the termination of this Lease, whichever is the earlier, the Lessee shall if requested to do so by the Lessor cause to be removed, at the lessee's expense, from the Leased premises all structures erected thereon by the lessee.

9. NO CLEARING OF VEGETATION

The Lessee agrees that no vegetation on or adjacent to the Leased Premises shall be cleared by the lessee or on the Lessee's behalf, unless the prior written consent of the Lessor is first obtained.

10. LESSEE'S COVENANTS

The Lessee covenants with the Lessor as follows;

- 10.1 To pay punctually the rent hereby reserved clear of all deductions at the times and in the manner hereinbefore mentioned to the Lessor or the Lessor's nominee without any abatement or deduction.
- 10.2 To keep and maintain at all times in good order and condition all building, all improvements and structures now or in the future to be on the Leased Premises and in that state of repair and condition hand over these to the Lessor at the end or sooner determination of the Lease term, damage by fire storm and tempest excepted.
- 10.3 To permit the Lessor and its employees or agents at all times to go into and upon the Leased Premises and inspect them and repair according to notice and if the Lessee shall omit or neglect to keep the buildings in good repair and condition, it shall be lawful for the Lessor to effect repairs and for that purpose enter upon the leased premises with workmen and others and the cost of repairs shall be added to the rent payable for the term during which the repairs were effected.
- 10.4 At all times take those measures as may be necessary to keep the Leased Premises clean and free from litter and hazards.
- 10.5 At all times take all necessary measures that may be necessary to exterminate and keep the Lease Premises free from white ants and comply with all demands of any Act or Acts of Parliament relating thereto and duly and punctually to comply with and observe all statutes now or hereafter in force and all ordinances regulations, by-laws or local laws relating to these matters or otherwise in any case in which the non-compliance therewith or the non-observance thereof would or might impose some damage or liability upon the Leased Premises or any part thereof or the Lessor in respect thereof.
- 10.6 Unless the prior written consent of the Lessor has been obtained, the Lessee will not during the term transfer, assign, sub-let or encumber the Leased Premises or any part thereof or otherwise by any act or deed procure the Leased Premises or any part thereof to be transferred, assigned, sub-let or encumbered and Sections 80 and 82 of the Property Law Act 1969 (as amended) shall not apply to this Lease.
- 10.7 To ensure and keep insured in some public insurance office approved by the Lessor the Leased Premises against standard risk public liability claims to an amount of not less than ten million dollars (\$10,000,000) and to produce appropriate evidence of payment of premiums whenever these shall be demanded by the Lessor.
- 10.8 To manage and control the parking of vehicles upon the Leased Premises in an orderly manner.
- 10.9 To not allow or permit any vehicle, material or any other object to be parked, stored or located in any area adjacent to the Leased Premises without the prior written permission of the Lessor.
- 10.10 To insure and keep insured during the term hereby created in the full insurable value all buildings erected upon the Leased Premises.
- 10.11 To provide labour as and when reasonably required if necessary to assist the Lessor to comply with all statutory requirements regarding bushfires.

- 10.12 To comply with an obey all lawful and valid regulations and order which may be made or given in respect of the Leased Premises or any part thereof under the provisions of the Local Government Act 1995, the Health Act 1911 or any Act or Acts amending the same or any other statute, order, regulation, by-laws, local laws now or hereafter in force or by any Minister department board or other competent authority or person.
- 10.13 Subject to clause 8. hereof, to yield up the leased premises at the termination of the term in good and substantial repair in accordance with the Lessee's covenants and agreements hereinbefore contained.

11.LESSOR'S COVENANTS

The Lessor COVENANTS with the Lessee:

- 11.1 That the Lessee paying the rent hereby reserved and observing and performing the several agreements conditions and stipulations herein contained shall peaceably hold and enjoy the leased premises during the term hereof without any interruption by the Lessor.

12.LESSOR'S AND LESSEE'S COVENANTS

The Lessor and Lessee COVENANT AND AGREE as follows:

- 12.1 That if the rent hereby reserved or any part thereof shall at any time be in arrears or unpaid for fourteen (14) days after the same shall become due whether any legal or formal demand therefor shall have been made or not or if the Lessee shall neglect at any time to perform or observe any covenant and condition herein contained and implied and on its part to be observed and performed and such neglect shall continue for a period of fourteen (14) days after the posting of a notice in writing to the Lessee by the Lessor at the address hereinbefore given calling upon the Lessee to perform and observe the same respectively or if the Lessee shall become bankrupt or make any arrangement with its creditors or in any way avail or attempt to avail itself of the Bankruptcy Act or suffer a Judgement or Execution to be levied against it in any form then in that case (but subject to the provisions of the Bankruptcy Act 1966) the Lessor may at the Lessor's option re-enter upon, occupy and resume possession of the Leased Premises or any part thereof in the name of the whole and thereupon this Lease and the term hereby created shall cease and determine but without releasing the Lessee from rental accrued up to the time of re-entry and without prejudice to the right of action of the Lessor in respect of any breach of the covenants conditions and stipulations on the Lessee's part contained or implied in this Lease.
- 12.2 Subject to the next sub-clause if the Leased Premises or any part thereof shall at any time during the term or any extension or renewal thereof be destroyed or damaged by fire so as to be unfit for occupation and use any insurance cover taken out by the Lessee or Lessor in respect of the buildings erected on part of the Leased Premises and in respect of all items of plant and equipment the subject of this Lease shall not have been vitiated or payment of the policy moneys refused in consequence of some act or default of the Lessee or the Lessee's employees, agents, customers, visitors, invitees or licensees and the Leased Premises shall not be reinstated or rebuilt as the case may be by the Lessor within one month after the

event a fair proportion of the annual rental according to the nature and extent of the damage sustained shall after the expiration of one month be allowed by the lessor until the Leased Premises shall be again rendered fit for occupation and use and in case of difference touching this proviso the same shall be referred to the award of a single arbitrator in accordance with the provisions of the Commercial Arbitration Act 1985 or any statutory modification thereof for the time being in force PROVIDED THAT the full annual rental shall be paid without any deduction or abatement until allowed by the Lessor or until the Leased Premises shall again be ready and fit for occupation and use or the date of agreement or award whereupon the Lessor shall refund any rental which according to the agreement or award has been overpaid.

- 12.3 If the extent or nature of the damage done by fire to the Leased Premises or to the buildings erected on part of the Leased Premises (whether the fire arises on the Leased Premises or not) is such that the Lessor desires to reinstate or rebuild as the case may be the Leased Premises and or the buildings in a different manner or for a different use or in the case of buildings to a different style, scale or size the Lessor may serve on the Lessee fourteen (14) days written notice to determine this Lease SUBJECT HOWEVER to the Lessee remaining liable not only for all breaches of covenant up to the expiration of the notice but also for the full annual rental for the period of two (2) weeks following the destruction or damage and thereafter and pending the expiration of the notice a fair proportion of the rental as determined in accordance with the preceding sub-paragraph but pending the determination the Lessee shall pay the full annual rental to the Lessor who shall upon the determination refund to the Lessee the amount of the excess paid by the Lessee.

13. INDEMNITY

- 13.1 The Lessee at all times during the Lease term shall indemnify the Lessor and keep the Lessor indemnified from and against all actions, claims, suits, demands and losses of any nature whatsoever which the Lessee may suffer or incur in connection with the loss of life and or personal injury to any person and or damage to any property (wheresoever occurring) arising from or out of any occurrence at the Leased Premises or the use by the Lessee of the Leased Premises or any part thereof or occasioned wholly or in part by any neglect default or omission by the Lessee or by the employees against contractors, customers, lawful visitors, invitees, licensees or sub-tenants of the Lessee or by any other person or persons using or upon the Leased Premises with the consent or approval expressed or implied of the Lessee.
- 13.2 The Lessee will indemnify the Lessor from all loss and damage to the Leased Premises caused by the negligent use or misuse waste or abuse of air-conditioning fire protection or fire fighting installations or equipment water gas or electricity supplied to the Lease Premises or the Lessee in connection with the Leased Premises or the use and occupation thereof or by faulty sanitary water, gas or electric pipes or wires or fittings, fixtures or installed in the Leased Premises by the Lessee or by the employees agents or independent contractors of the Lessee.

14. ESSENTIAL TERMS

- 14.1 Each of the covenants by the Lessee which are specified in this clause are essential to this Lease

- 14.1(a) The covenants to pay rent throughout the term at a date not later than fourteen (14) days after the due date for payment of each instalment of rent;
 - 14.1(b) The covenant restricting the right to transfer, assign, sub-let, mortgage, charge or otherwise part with possession of the Leased Premises;
 - 14.1(c) The covenants restricting the use of the Leased Premises.
- 14.2 In respect of the lessee's obligations to pay rent the acceptance by the lessor of arrears or of any late payment of rent shall not constitute a waiver of the essentiality of the Lessee's obligations to pay rent in respect of those arrears or of the late payments or in respect of the Lessee's continuing obligation to pay rent during the term.
- 14.3 The Lessee covenants to compensate the Lessor in respect of any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of those breaches. The Lessor's entitlement under this clause in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this Lease).

15. DAMAGES FOR BREACH OF ESSENTIAL TERMS

- 15.1 In the event that the Lessee's conduct (whether acts or omissions) constitutes a repudiation of the Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any Lease covenants the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.
- 15.2 The Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire term of this lease.
- 15.3 The Lessor's entitlement to recover damages shall not be affected or limited by any of the following:
- 15.3(a) If the Lessee abandons or vacates the Leased Premises;
 - 15.3(b) If the Lessor elects to re-enter or to terminate the Lease;
 - 15.3(c) If the Lessor accepts the Lessee's repudiation;
 - 15.3(d) If the parties' conduct shall constitute surrender by operation of law.
- 15.4 The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire term including the period before and after the Lessee has vacated the Leased Premises and before and after abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in sub-clause 12.3 whether the proceedings are instituted either before or after that conduct.
- 15.5 In the event of the Lessee vacating the Leased Premises whether with or without the Lessor's consent the Lessor shall be obliged to take reasonable steps to mitigate their damages and to endeavour to lease the premises at a reasonable rent and on reasonable terms. The Lessor's entitlement to damages shall be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this sub-clause. The Lessor's conduct taken in pursuance of the duty to

mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

16. DEFINITIONS

16.1 In this Lease unless the context otherwise requires the expression

"Acts" shall mean and include all present and future Acts and Statutes both State and Federal and all amendments thereto and re-enactments thereof and all regulations and by-laws and orders made thereunder.

"Building" means the Toilets and Shed or any other building erected or to be erected on the Leased Premises and includes any additions or modifications thereto.

"Leased Premises" means that area marked in red on the Plan annexed to this Lease and forming part of Lot 300 of Deposited Plan 46811.

"Lessor" means and includes the Lessor and the reversioner for the time being immediately expectant upon the term hereby created and where two or more persons are the Lessor means and includes those persons and each of them.

"Lessee" means and includes where the Lessee is a person and his executors, administrators and permitted assigns and permitted sub-lessees and where two or more persons are the Lessee means and includes those persons and each of them and their permitted assigns and permitted sub-lessees and where the Lessee is a corporation means and includes that corporation and its successors and permitted assigns and permitted sub-lessees and where two or more corporations are the Lessee means and includes those corporations and their respective successors and permitted assigns and permitted sub-lessees and this definition shall apply mutatis mutandis when the Lessee is a combination of both person or persons and corporation and corporations.

"Month" means calendar month.

"Person" means and includes a person, firm or corporation.

"Structures" means the buildings, toilet facilities, pipes, wiring, electrical poles, fences, gates, sheds, tanks and any other structures erected or permitted to be erected on the Leased Premises and includes any additions thereto.

16.2 In this Lease unless the context otherwise requires:

16.2(a) The singular number includes the plural number and the Masculine gender includes the feminine gender and the neuter gender and vice versa;

16.2(b) A covenant entered into by more than one person shall be deemed to be entered into by those persons jointly and each of them severally;

16.2(c) The covenants and obligations on the part of the Lessee shall be binding upon and enforceable against not only the Lessee as hereinbefore defined but also against any and every occupier whatever of the Leased

Premises as hereinafter defined or any part thereof for the time being and from time to time;

- 16.2(d) The covenants on the part of the Lessor shall bind the person for the time being seized of the land on which or on part of which the Leased Premises stand but shall not render the Lessor personally liable in damages for any breach except in the case of the Lessor's own acts or defaults or those of its employees or agents while the Lessor remains lawfully seized of the said land.

17. NOTICES

Any notice of demand required to be served, given or made under this Lease shall be sufficiently served upon the Lessee or the Lessor if addressed to the Lessee or Lessor (as the case may require) and posted by pre-paid registered letter addressed to the addressee at his, her or its address hereinbefore appearing and shall be deemed served three (3) dates after having been posted.

18. COSTS

The costs of and incidental to the preparation, completion and stamping of this Lease shall be borne and paid by the Lessee.

The Schedule

1. Lessor Shire of Denmark of 953 South Coast Highway
Denmark WA 6333
2. Lessee XXX
3. Leased Premises Portion of Lot 300 on Deposited Plan 46811 (Marked Red on Appendix A) and comprising approximately 7,640sqm, of useable area.
4. Term of Lease Commencing on 1st September 2013 and expiring on 31 December 2015.
5. Annual Rent XXX per annum plus GST for each year of the Term of Lease.
6. Special Conditions
 - 6.1 The shed known as the old pig shed formerly used for railway purposes at the Denmark Old Railway Station No. 3 (site) may be required by the Denmark Machinery Restoration Group Inc. and during the term of the lease, the Council may at their discretion, permit that organisation, at their cost, to remove the structure from the leased premises by giving Council and the lessee 3 months written notice. The said removal will be undertaken such that the inconvenience to the lessee will be minimised as much as practical.
 - 6.2 The saleyards fenced area is not considered part of the lease and the lessee will at all times ensure that the facility may be used by persons to access the yards for the temporary storage or unloading or loading of cattle. The lessee will ensure that the area 30m in length immediately adjacent the western cattle ramps is able to be utilised by trucks seeking to reverse up to these ramps to load and unload cattle. This area has not been calculated in the lessees leased area to recognise the need for users vehicles to access the cattle yards western ramps.

ATTESTATION SHEET

Executed by the parties as a Deed on the _____ day of _____ in the year _____

LESSOR SIGNS HERE

The Common Seal of)
SHIRE OF DENMARK)
was hereunto affixed)
in the presence of)

Cr Ross Thornton
Shire President

Dale Stewart
Chief Executive Officer

LESSEE SIGNS HERE

XXX

Appendix A

