

CITY OF PERTH
and
TOWN OF CAMBRIDGE
and
TOWN OF VICTORIA PARK
and
TOWN OF VINCENT
and
CITY OF STIRLING
and
CITY OF JOONDALUP
and
CITY OF WANNEROO

(Participants)

AND

MINDARIE REGIONAL COUNCIL

(Mindarie)

DEED OF EXTENSION, VARIATION AND PARTIAL SURRENDER OF LEASE
RELATING TO
TAMALA PARK, MARMION AVENUE, MINDARIE

HAYDN ROBINSON
BARRISTER & SOLICITOR
1/23 RHEOLA STREET
WEST PERTH WA 6005
TELEPHONE: 9322 5232
REFERENCE: BSD03_51
2/12/04

THIS DEED OF VARIATION OF LEASE is made 2005

B E T W E E N:

CITY OF PERTH of ~~Westralia Square, 141 St. George's Terrace, Perth Council House,~~
27 St George's Terrace, Perth

and

TOWN OF CAMBRIDGE of 1 Bold Park Drive, Floreat

and

TOWN OF VICTORIA PARK of 99 Shepperton Road, Victoria Park

and

TOWN OF VINCENT of 244 Vincent Street, Leederville

and

CITY OF STIRLING of ~~Civic Place,~~25 Cedric Street, Stirling

and

CITY OF JOONDALUP of 90 Boas Avenue, Joondalup

and

CITY OF WANNEROO of 23 Dundobar Road, Wanneroo

(Participants)

AND

MINDARIE REGIONAL COUNCIL of Tamala Park, Marmion Avenue, Mindarie
(Mindarie)

BACKGROUND:

- A. By the Lease the Participants leased to Mindarie the Leased Premises for the term 1 July 1990 to 30 June 2011 and granted an option to extend the term of the Lease from 1 July 2011 to 30 June 2032.
- B. The Participants are now the registered proprietors of the Leased Premises.
- C. Mindarie has agreed to give and the Participants have agreed to accept a partial surrender of the Lease in respect of the Surrendered Area.
- D. The Participants and Mindarie have agreed to extend the term of the Lease for the Further Term and to vary the Lease by this deed to better record the current and ongoing relationship between them.

AGREEMENT:

The parties agree as follows:

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~~V:\DD\05reports\December 13\Lot 118 Mindarie - Proposed Lease Amendment with Mindarie Regional Council - Attachment 1 Deed of Extension.doc~~
~~C:\Documents and Settings\rodc\Local Settings\Temporary Internet Files\OLK6\Draft Deed of Variation clean-27 April 05.doc~~

1. INTERPRETATION

1.1 Definitions

In this deed:

Further Term means a further term commencing on 1 July 2011 and expiring on 30 June 2032.

Lease means the lease of the Leased Premises by the Participants to Mindarie pursuant to the Original Lease Documents (as varied by this Deed).

Leased Premises means part of Lot 118 on Deposited Plan 28300 described as the Subject Area in Plan A annexed to the Lease referred to in paragraph (a) of the definition of 'Original Lease Documents' in this clause but excluding those areas surrendered from the Lease pursuant to the deeds referred to in paragraphs (c) and (e) of the definition of 'Original Lease Documents' in this clause.

New Lease Document means the form of lease the subject of Annexure B.

Original Lease Documents means:

- (a) a Lease dated 11 October 1990 made between City of Stirling, City of Wanneroo and City of Perth and Mindarie;
- (b) a Deed of Variation of Lease dated 25 November 1996 between City of Stirling, City of Wanneroo and City of Perth and Mindarie;
- (c) a Deed of Partial Surrender of Lease undated but stamped 8 October 1998 between City of Stirling, City of Joondalup and City of Perth and Mindarie;
- (d) a Deed of Variation of Lease undated but stamped 4 August 2000 made between City of Stirling, City of Joondalup, City of Wanneroo and City of Perth and Mindarie; and
- (e) a Deed of Partial Surrender of Lease undated but stamped 7 November 2002 made between the Participants and Mindarie.

Surrendered Area means the area shown hachured on the Plan in Annexure A.

Term means the term granted pursuant to the provisions of the Lease (including, where relevant, any extension or renewal of that term).

Variation Date means 1 ~~July~~ January 2005~~6~~.

1.2 Interpretation rules

In this deed, unless the contrary intention appears:

- a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of this deed;
- the singular includes the plural and vice versa;
- the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- an obligation, agreement, covenant, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- an obligation, agreement, covenant, representation or warranty on the part of two or more persons binds them jointly and severally;
- a reference to a clause or a Schedule is a reference to a clause or a Schedule in this deed;
- a reference to a month is a reference to a calendar month;
- use of the upper case will be deemed to be use of the lower case and vice versa; and
- the construction rule known as contra proferentum will not apply to this deed.

2. SURRENDER

2.1 From and including the Variation Date, Mindarie will surrender to the Participants the Surrendered Area (and the benefit of the option for renewal (if any) contained in the Lease) for all the residue of the unexpired Term to the intent that the same shall merge and be extinguished in the freehold reversion of the Participants.

2.2 Mindarie covenants and agrees that nothing contained in this deed shall prejudice or affect the liability of Mindarie to observe and perform all of the provisions of the Lease which relate to the Surrendered Area and are due to be performed before the Variation Date.

- 2.3 To avoid any doubt it is hereby agreed and declared that the Lease shall remain in full force and effect in relation to all those leased areas which are not surrendered pursuant to this Deed.

3. RELEASE

Each of the Participants and Mindarie hereby releases the other of them from all actions, suits, claims and demands whatsoever which but for the execution of this Deed such releasing party might have had against the other of them for or in respect of any future breach or non-observance of any covenant, agreement or condition on the part of such other party contained or implied in the Lease as it applies to the Surrendered Area but that release shall be without prejudice to all actions, suits, claims and demands whatsoever which the Participants may have had against Mindarie for or in respect of the outstanding breach or non-observance prior to the Surrendered Date of any covenant, agreement or condition on the part of Mindarie contained or implied in the Lease as it applies to the Surrendered Area.

4. EXTENSION AND VARIATION

4.1 Extension of lease

The Participants agree to grant and Mindarie agrees to accept a Lease of the Leased Premises for the Further Term subject to the Partial Surrender referred to in clause 2 and otherwise on the terms and conditions contained in the New Lease document in accordance with clauses 4.2 to 4.5 (inclusive).

4.2 Variation of lease provisions

The Participants and Mindarie agree to vary the Lease with effect from the Variation Date by substituting all of the provisions in the Original Lease Documents with the provisions in the New Lease Document to the intent that:

- (a) the provisions of the Original Lease Documents will apply to that part of the term up to and including 31 December 200~~4~~5;
- (b) the provisions of the New Lease Document will apply to that part of the Term from and including 1 January 200~~5~~6;
- (c) the demise effected by the Lease continues with only the terms and conditions of that demise varied from the Original Lease Documents to the New Lease Document.

4.3 Participants' covenants

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The Participants covenant and agree with Mindarie to perform and observe all the terms, conditions, covenants and agreements in the New Lease Document which are expressly or by implication to be performed or observed by the Participants during the period in which the Lease continues.

4.4 Mindarie's covenants

Mindarie covenants and agrees with the Participants to perform and observe all the terms, conditions, covenants and agreements in the New Lease Document which are expressly or by implication to be performed or observed by Mindarie during the period in which the Lease continues.

4.5 Execution of New Lease Document

The Participants and Mindarie will duly execute the New Lease Documents so that as from the Variation Date they need only refer to:

- (a) the Original Lease Documents to determine their respective rights and obligations in respect of that part of the Term up to and including 31 December 2004⁵; and
- (b) the New Lease Document to determine their respective rights and obligations in respect of that part of the Term from and including 1 January 2005⁶.

5. FURTHER ASSURANCE

The Participants and Mindarie will at their own expense execute all documents and provide all assurances and do everything reasonably necessary to give effect to this deed.

6. SEVERANCE

If any provision or part provision of this deed is void or voidable or unenforceable then it shall be deemed to be expunged from this deed and the remaining provisions and part provisions shall continue to apply with full force and effect.

7. LEGAL COSTS

The Participants and Mindarie will each pay their own legal and other costs relating to this deed.

8. CONDITIONS

This deed is, if required, conditional upon the approval of the Western Australian Planning Commission and the Minister for Local Government and Regional Development.

EXECUTED as a deed.

The common seal of)
CITY OF PERTH is affixed)
to this document by authority of a)
resolution of the Council in the presence of)

Chief Executive Officer

Lord Mayor

The common seal of)
TOWN OF CAMBRIDGE)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
TOWN OF VICTORIA PARK)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
TOWN OF VINCENT)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
CITY OF STIRLING)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
CITY OF JOONDALUP)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Chairman of Commissioners

The common seal of)
CITY OF WANNEROO)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

MINDARIE

The common seal of)
MINDARIE REGIONAL COUNCIL)
was affixed to this document in)

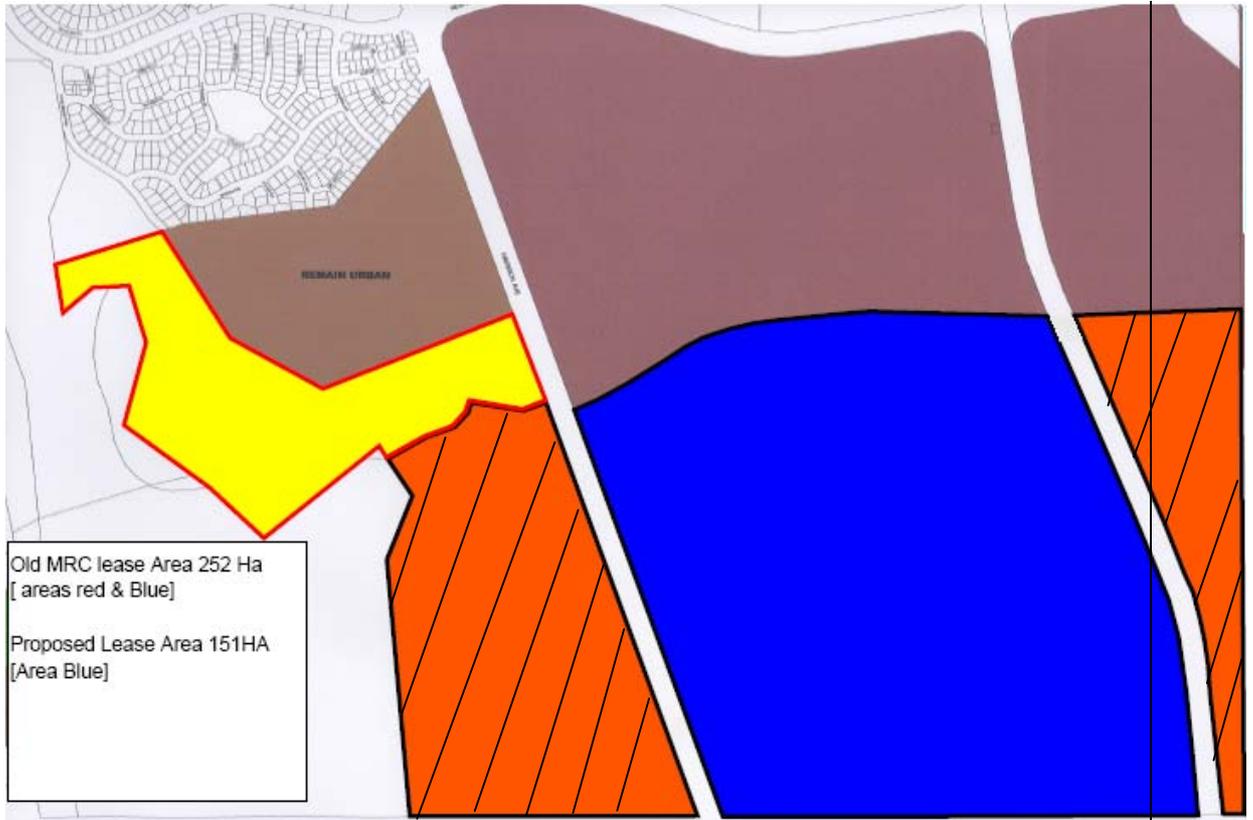
accordance with its constitution in the)
presence of:)

Chief Executive Officer

Chairman

ANNEXURE A

Surrendered Area (hachured)



ANNEXURE B

New Lease Document

CITY OF PERTH
and
TOWN OF CAMBRIDGE
and
TOWN OF VICTORIA PARK
and
TOWN OF VINCENT
and
CITY OF STIRLING
and
CITY OF JOONDALUP
and
CITY OF WANNEROO

(Participants)

and

MINDARIE REGIONAL COUNCIL

(Mindarie)

LEASE OF TAMALA PARK, MARMION AVENUE, MINDARIE

HAYDN ROBINSON
BARRISTER & SOLICITOR
1/23 RHEOLA STREET
WEST PERTH WA 6005
TELEPHONE: 9322 5232
REFERENCE: BSD03_50.rtf
19/4/05

REFERENCE TABLE

PARTICIPANTS	CITY OF PERTH of Council House, 27 St George's Terrace, Perth and TOWN OF CAMBRIDGE of 1 Bold Park Drive, Floreat and TOWN OF VICTORIA PARK of 99 Shepperton Road, Victoria Park and TOWN OF VINCENT of 244 Vincent Street, Leederville and CITY OF STIRLING of Civic Place, Stirling and CITY OF JOONDALUP of Boas Avenue, Joondalup and CITY OF WANNEROO of 23 Dundobar Road, Wanneroo
MINDARIE	MINDARIE REGIONAL COUNCIL of Tamala Park, Marmion Avenue, Mindarie
PREMISES	That part of the Land which is shown hachured on the plan in Annexure A but excluding the areas shown hachured in the plans in Annexure B.
LAND	Lot 118 on Deposited Plan 28300 being the whole of the land in Certificates of Title: 2213/691 (the 1/12 th share of City of Perth); 2213/692 (the 1/12 th share of Town of Cambridge); 2213/693 (the 1/12 th share of Town of Victoria Park); 2213/694 (the 1/12 th share of Town of Vincent); 2213/695 (the 4/12 th shares of City of Stirling); 2213/696 (the 2/12 th shares of City of Joondalup); 2213/697 (the 2/12 th shares of City of Wanneroo).
COMMENCEMENT DATE	1 January <u>July</u> 200 <u>56</u> .
RENT COMMENCEMENT DATE	1 July <u>January</u> 200 <u>56</u> .
RENT	\$510,294 per annum (subject to review in accordance with this Lease)
TERM	From the Commencement Date to 30 June 2032, subject to early termination as specified in this Lease.
PERMITTED USE	Subject to clause 5.2(d), the carrying on of Mindarie's Core Business.
MARKET RENT REVIEW DATES	Each 5 th anniversary of 1 July <u>1 January</u> , the first review being on 1 July <u>January</u> 201 <u>01</u> .

CPI REVIEW DATES	Each anniversary of 1 July <u>January</u> (other than a Market Rent Review Date), the first CPI Review Date being 1 July <u>January</u> 200 <u>6</u> 7 .
PUBLIC RISK AMOUNT	\$20,000,000
PRESCRIBED RATE	4% per annum more than the maximum overdraft rate (expressed as a rate per annum) from time to time applied by the Commonwealth Bank of Australia on overdrafts of less than \$100,000.
SPECIAL CONDITIONS	Nil

BETWEEN

THE PARTICIPANTS

and

MINDARIE

INTRODUCTION

- A. The Participants are the registered proprietors of the Land and are entitled to lease the Premises to Mindarie.
- B. The Participants have agreed to lease and Mindarie has agreed to accept the lease of the Premises for the Term from the Commencement Date on the terms and conditions in this Lease.
- C. In administering this Lease, the Participants and Mindarie have each agreed to act in good faith and to co-operate with each other with the aim of seeking to simultaneously achieve both:
 - (i) Mindarie's objective to conduct its Core Business from the Premises; and
 - (ii) the Participant's objective to develop the Urban Development Area in the manner contemplated by this Lease.

The Participants and Mindarie agree:

1. GRANT OF LEASE AND ACCESS TO PREMISES

1.2 Grant of Lease

The Participants lease and Mindarie takes the Premises for the Term at the Rent on the terms and conditions of this Lease.

1.3 Early Termination by Mindarie

- (a) At any time during the Term, Mindarie may give to the Participants 12 months notice in writing terminating this Lease.
- (b) At the expiration of that notice the Term will cease and determine without prejudice to the rights of the Participants contained or implied in this Lease in respect of any antecedent breach of Mindarie's Covenants.
- (c) On the expiration of that notice Mindarie must yield up the Premises to the Participants in accordance with Mindarie's Covenants.

2. RENT

2.1 Rent

Mindarie will pay the Rent (free of deductions) to the Participants from the Rent Commencement Date until the end of the Term.

2.2 **Manner of Rent Payment**

Mindarie will pay the Rent by equal monthly payments in advance on the Rent Commencement Date and then on the first day of each month during the Term. If necessary, the first and last payments will be proportionate.

2.3 **Market Rent Review Dates**

On each Market Rent Review Date the Rent is to be reviewed in the following manner:

- (a) The annual Rent payable from the Market Rent Review Date is to be the amount determined by the Valuer General at the request of either party (which request may not be made more than 3 months prior to the Market Rent Review Date), as the then current market rental value for the Premises which the parties agree in any event will not be less than the Rent payable immediately prior to the relevant Market Rent Review Date.
- (b) If for any reason the Valuer General declines an appointment to determine the current market rental value for the Premises, either party may request the President of the Australian Property Institute (Western Australian Division) to nominate a Valuer to determine the current market rental value and that Valuer shall determine the Rent in lieu of the Valuer General and the succeeding provisions shall apply to that Valuer as if a reference to Valuer General were a reference to the Valuer.
- (c) The Valuer General is deemed to be acting as an expert whose decision is final and binding on both parties.
- (d) Each party is entitled to make written submissions to the Valuer General but any failure to make or unreasonable delay in making submissions is not to delay, annul or otherwise affect the Valuer General's determination.
- (e) The Valuer General must give full written reasons for his or her decision specifying the matters taken into account the weight given to each matter and the matters disregarded.
- (f) The costs of the Valuer General's determination (if any) are to be borne equally by parties.
- (g) Until the annual Rent from a Market Rent Review Date is agreed or determined Mindarie must pay to the Participants a rent equivalent to the Rent payable immediately prior to the Market Rent Review Date.
- (h) If the annual Rent agreed or determined from a Market Rent Review Date is more than the Rent immediately prior to the Market Rent Review Date, Mindarie must pay to the Participants within 14 days of demand the difference between the rent paid in respect of the period from the Market Rent Review Date to the date of agreement or determination and the rent which should have been paid for that period.

2.4 **CPI Review Date**

On each CPI Review Date, the Rent payable immediately prior to the CPI Review Date shall be increased by a factor equal to the percentage increase in the Consumer Price

Index between the Consumer Price Index published for the quarter ending immediately preceding the Rent Review Date which occurred immediately prior to the CPI Review Date in question and the Consumer Price Index published for the quarter ending immediately preceding the relevant CPI Review Date (or in the case of the first rent review, between the Consumer Price Index published for the quarter ending immediately preceding the CPI Review Date in question and the Consumer Price Index published for the quarter ending immediately preceding the Commencement Date). The parties agree that in any event the Rent following a CPI Review Date shall never be less than the Rent payable immediately prior to the CPI Review Date.

3. **OTHER PAYMENTS**

3.1 **Statutory Outgoings**

Mindarie must pay or reimburse to the Participants, within 30 days of demand, all rates taxes and other statutory charges which are directly assessed or payable in respect of the Premises. The parties agree Mindarie is only liable for Land Tax and Metropolitan Region Improvement Tax on the basis the Premises is the only land of which the Participants is owner within the meaning of the *Land Tax Assessment Act 1976 (WA)* as amended. Subject to Mindarie meeting the Participant's reasonable costs of doing so, the Participants will cooperate with Mindarie to minimise or dispute statutory outgoings as may be reasonably required by Mindarie.

3.2 **Telephone, Electricity, Water Consumption Charges and other services**

Mindarie will duly and punctually pay all charges for the telephones, gas, electricity, water consumption and other services, utilities and facilities connected to the Premises.

3.3 **Apportionment of Statutory Outgoings and other Charges**

- (a) Subject to clause 3.3(b), if any of the outgoings referred to in clauses 3.1 and 3.2 are not separately assessed or payable in respect of the Premises, Mindarie must pay to the Participants within the time specified in this Lease an amount which bears the same proportion to the amount of the outgoing as the lettable area of the Premises bears to the lettable area of that part of the Land to which the relevant assessment applies.
- (b) Where Mindarie is the sole consumer of any of the items referred to in clause 3.2, Mindarie must pay all of the assessed costs without any apportionment referred to in clause 3.3(a).

3.4 **Costs**

- (a) The Participants and Mindarie will each pay their own legal and other costs relating to preparation and negotiation of this Lease.
- (b) A defaulting party must pay to the other all costs (calculated as between solicitor and client in the case of legal fees) charges and expenses incurred by the non-defaulting party:
 - (i) attributable to any default in observing or performing any of the covenants in or implied in this Lease;

- (ii) relating to the preparation and service of a notice under Section 81 of the *Property Law Act 1969* (WA);
 - (iii) in obtaining professional advice as to the non-defaulting party's rights remedies and obligations as a result of any default by the defaulting party.
- (c) Mindarie must pay to the Participants on demand interest at the Prescribed Rate on all Rent and other money payable by Mindarie under this Lease but unpaid for more than 7 days from the respective due date computed on daily rests on the amount from time to time remaining owing from and including the due date until the date of payment.

3.5 **Goods and Services Tax**

- (a) In this clause 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the meanings of words and phrases in the GST Act apply to this Lease.
- (b) If pursuant to the GST Act, the Participants are liable to pay GST on any supply made by the Participants under this Lease then Mindarie will pay that GST at the same time and in the same manner as the payment of consideration for the supply.
- (c) The Participants must give Mindarie a Tax Invoice on account of any GST payable by Mindarie under this Lease in accordance with the GST Act.

4. **MAINTENANCE AND INSPECTION OF PREMISES**

4.1 **Act as Required by Law**

- (a) Mindarie must at its own expense duly and punctually observe and comply and indemnify the Participants in all respects of all Acts, orders, rules, requirements and notices of any Government Agency which relate or apply in any way to the Premises or their use or occupation. For the avoidance of doubt, Mindarie acknowledges this clause imposes on it an obligation to carry out or effect any structural or capital works.
- (b) Mindarie is responsible for satisfying all Environmental Liabilities whether existing before the Commencement Date (or after termination of this Lease) in respect of Mindarie's use and maintenance of the Premises and conducting all Remediation or other rehabilitation in accordance with:
 - (i) Best Practice Environmental Management;
 - (ii) the provisions of this Lease;
 - (iii) the Statutory Licences and subject to any variations required under the Statutory Licences;
 - (iv) Environmental Law;
 - (v) Planning Law; and
 - (vi) the Authorisations.

4.2 Participants' Right to Inspect

The Participants may at reasonable times and on reasonable notice inspect the Premises but will do all things reasonably necessary to minimise any disruption to the use of the Premises by Mindarie caused by inspection.

5. USE OF PREMISES

5.1 Permitted Use of Premises

Mindarie must use the Premises for the Permitted Use only and design, operate, use, maintain and rehabilitate the Premises in accordance with:

- (a) Best Practice Environmental Management;
- (b) the provisions of this Lease;
- (c) the Statutory Licences and subject to any variations required under the Statutory Licences;
- (d) Environmental Law;
- (e) Planning Law; and
- (f) the Authorisations.

5.2 Current and Future Use

- (a) That part of the Premises identified as area ~~1-2~~ on the plan in Annexure A has been used as a Landfill.
- (b) ~~That~~These parts of the Premises identified as areas ~~2A and 2B~~ on the plan in Annexure A ~~is~~are currently progressively being used as Landfills.
- (c) Subject to clause 5.1, Mindarie must fill the Landfills identified as areas ~~2A and 2B~~ on the plan in Annexure A working from the northern to the southern parts of ~~that~~these Landfills.
- (d) Without limiting the above, Mindarie acknowledges that its future use of the Premises for the Permitted Use will be subject to Planning Law and may be constrained by existing and proposed special land use controls relating to, but not necessarily limited to, the conservation of urban bush as proposed in Bush Forever and the Proposed Metropolitan Region Scheme Amendment 1082/33.
- (e) Mindarie may for its own benefit dispose of minerals, sand, rock, gravel and other materials excavated from the Premises to create Landfills subject to compliance with the requirements of all relevant Government Agencies including without limitation the requirements of the Mines Department pursuant to the *Mining Act 1975* (WA).
- (f) Mindarie must obtain at its own expense all Authorisations required to conduct Mindarie's business and use of the Premises.

- (g) Subject to clause 5.7, Mindarie must use reasonable endeavours to ensure its use of the Premises will not prejudice the use of the balance of the Land by the Participants.
- (h) The Participants and Mindarie will in good faith regularly consult with each other about the use of the Premises. If any changes to the use or the extent or intensity of the use of the Premises is likely to affect the public interest, the parties will engage in community consultation.
- (i) Whenever reasonably required during the Term, the Participants and Mindarie will in good faith negotiate variations to this Lease to take into account any legislative changes, any changes to the use or the extent or intensity of use of the Premises pursuant to clause 5.2(h) and the Authorisations and Statutory Licences applicable to the Premises from time to time.

5.3 **Alterations**

- (a) The Participants acknowledge that Mindarie has installed Mindarie's Improvements.
- (b) Mindarie may make any alterations or additions to the construction or arrangement of the Premises or any of Mindarie's Improvements without the consent of the Participants if:
 - (i) the proposed alterations or additions are reasonably necessary in order for Mindarie to carry on its Core Business;
 - (ii) the alterations or additions do not involve the whole or any part of the Relevant Bush Forever Area; and
 - (iii) (except in respect of alterations or additions which may reasonably be regarded as minor or trivial), prior to carrying out the alterations or additions Mindarie gives notice to the Participants of the nature and location of the proposed alterations or additions and provides reasonable proof that the criteria referred to in clauses 5.3(b)(i) and 5.3(b)(ii) are satisfied.
- (c) In respect of any alterations or additions to the construction or arrangement of the Premises or any of Mindarie's Improvements other than those permitted pursuant to clause 5.3(b), Mindarie must not make those alterations or additions without the Consent of the Participants.

5.4 **Keep Premises Secure**

Mindarie must keep all gates and other openings closed and securely fastened when the Premises are not being used.

5.5 **Nuisance**

If in the opinion of the Participants (which opinion must be reasonably held) in the course of its use and occupation of the Premises, Mindarie:

- (a) causes a nuisance (including, without limitation, a visual nuisance), grievance, disturbance or annoyance to the Participants, or any other person; or

- (b) injuriously affects any other premises in the vicinity of the Premises,

then on receipt of a written notice from the Participants containing reasonable detail of the nuisance or injurious affection Mindarie must do all things reasonably necessary to cease that nuisance or injurious affection.

5.6 Termination obligations

- (a) Immediately before the expiration of the Term or within 5 Business Days after the earlier termination of the Term) Mindarie must:
 - (i) remove Mindarie's Improvements (except for those of them which the Participants by written notice to Mindarie (given 18 months before the expiration of the Term or within 2 Business Days after the earlier termination of the Term) have requested remain on the Premises); and
 - (ii) make good to the satisfaction of the Participants any damage caused to the Land by any removal referred to in clause 5.6(a)(i) and shall fill in and consolidate and level off all excavations in the Land to contours existing prior to the construction and installation of Mindarie's Improvements or to contours otherwise approved by the Participants and shall deliver up possession of the Premises to the Participants clean, tidy and free of rubbish, in good substantial and tenantable repair and condition in accordance with Mindarie's Covenants.
- (b) The Participants may treat Mindarie's Improvements not removed by Mindarie when required to be as abandoned and deal with them in any manner they see fit. Mindarie must pay to the Participants on demand the costs and expenses incurred by the Participants in removing or dealing with Mindarie's Improvements which were not removed by Mindarie when required to do so.
- (c) To the extent Mindarie is requested to leave Mindarie's Improvements on the Premises the Participants will pay to Mindarie the value of those Mindarie Improvements as agreed between the Participants and Mindarie and failing agreement within 3 months of the date of service of the notice referred to in clause 5.6(a), the value will be that determined by the Valuer General at the request of either party. If for any reason the Valuer General declines an appointment to make that determination, the determination will be made by a quantity surveyor appointed by the President of the Australian Institute of Quantity Surveyors Western Australian Division at the request of either party. The value determined must not exceed the written down value of any item. The determination made will be final and binding on the parties. The parties will pay the Valuer General's costs (or the quantity surveyor's costs) in equal shares.
- (d) The Participants will pay the price agreed or determined under clause 5.6(c) within 60 days of the price being agreed or determined.
- (e) As soon as practicable after the expiration or earlier termination of the Term, Mindarie must undertake rehabilitation and Remediation of the Premises as required by the Department of Environment and reasonably required by the Participants and in accordance with:
 - (i) Best Practice Environmental Management;

- (ii) the provisions of this Lease;
 - (iii) the Statutory Licences and subject to any variations required under the Statutory Licences;
 - (iv) Environmental Law;
 - (v) Planning Law; and
 - (vi) the Authorisations.
- (f) The rehabilitation and Remediation of the Premises must make the Premises useable for recreation (both passive and active) and conservation.
- (g) The Participants will permit Mindarie to continue to have access to the Premises as a licensee after termination of this Lease as may be reasonably required to enable Mindarie to comply with its obligations to rehabilitate and Remediate including monitoring the Premises as may be required by Government Agencies and the Participants. The indemnity given by Mindarie in clause 8 of this Lease shall continue to apply during any licence period and Mindarie must continue to maintain the public liability policy of insurance referred to in clause 7.1(a)(iii) during that licence period (and the provisions of clause 7 will continue to apply in respect of that policy).
- (h) Not later than twelve (12) months before the expiration of the Term by effluxion of time (or the termination of the term pursuant to clause 1.3) Mindarie must:
- (i) prepare a programme and a timetable for vacating the Premises and providing vacant possession to the Participants and for the removal of all Mindarie's Improvements in or about the Premises in order to ensure that vacant possession of the Premises in good order and repair shall be available to the Participants not later than the date of termination of the Term; and
 - (ii) prepare a detailed plan of Remediation of the Premises in accordance with Mindarie's obligations pursuant to clause 5.6(e).
- (i) If the Term is terminated by the Participants prior to its expiry, Mindarie must observe and perform its obligations under clauses 5.6(h) as soon as reasonably practicable after the date of termination.
- (j) Mindarie must provide to the Participants a detailed report not less than once every month between the period being twelve (12) months prior to the expiration of the Term and the date of expiration of the Term (and more frequently if requested by the Participants) indicating all steps taken by Mindarie to meet the proposed programme and timetable and generally to enable the Participants to monitor whether or not Mindarie will comply with its obligations to rehabilitate, Remediate and vacate the Premises.

5.7 Buffer Distance Requirements

- (a) Mindarie acknowledges that the Urban Development Area is not part of the Premises.

- (b) The Participants acknowledge that Mindarie must maintain an Internal Buffer Distance in accordance with the requirements of the Statutory Licence and that the Government Agency responsible for environmental protection recommends a 500m buffer distance from the active Landfill face to sensitive land uses (**Recommended Buffer Distance**).
- (c) The Participants agree to use reasonable endeavours to set aside the Temporary Buffer to assist Mindarie to satisfy the Recommended Buffer Distance.
- (d) Mindarie must use its reasonable endeavours to ensure that Mindarie's reliance on the Temporary Buffer is reduced and eliminated as soon as reasonably practicable.
- (e) Mindarie acknowledges and agrees that consistent with Mindarie's observance of its obligations pursuant to clauses 5.2(c) and 5.7(d), the size of the Temporary Buffer will be permanently reduced as the Landfills are filled in a southerly direction and Mindarie becomes capable of providing more of the Recommended Buffer Distance from areas within the Premises which may be taken into account in assessing the provision of the Recommended Buffer Distance.
- (f) Subject to clause 5.7(g) (and without limiting the meaning and effect of clause 5.7(d)), Mindarie must completely cease to rely on the Temporary Buffer to satisfy the whole or any part of the Recommended Buffer Distance on 31 December 2010.
- (g) At any time not later than 1 January 2009 Mindarie may apply to the Participants approval for the date referred to in clause 5.7(f) to be extended from 31 December 2010 to a later specified date. The Participants may grant their approval (with or without conditions) or may refuse to grant the approval under this clause in each case in the Participant's absolute discretion.
- (h) From 1 January 2011 (or such later date (if any) approved by the Participants pursuant to clause 5.7(g)), the Participants may use the Temporary Buffer or any part of it as it sees fit without:
 - (i) the Participants being liable to Mindarie in any way for compensation or damages;
 - (ii) the Participants being liable to provide alternative land as a buffer; and
 - (iii) Mindarie being entitled to terminate this Lease or claim any abatement of Rent.
- (i) If the Participants develop the Urban Development Area prior to 1 January 2011 (or such later date (if any) approved by the Participants pursuant to clause 5.7(g)), the Participants will use their reasonable endeavours to ensure that, to the extent reasonably practicable, the Urban Development Area is developed in a manner which defers the development of the area the subject of the Temporary Buffer until after the development of the balance of the Urban Development Area.

5.8 **Urban Development Area**

- (a) Mindarie must use and maintain the Premises in such a manner so as to not interfere, prevent or otherwise hinder the Participants' use and enjoyment of the Urban Development Area, including subdivision and development of the Urban Development Area for Urban Development.
- (b) If the Urban Development of the Urban Development Area cannot proceed due to Mindarie's use of the Premises, the Participants may serve notice on Mindarie specifying the nature of the Improvement Works it requires Mindarie to carry out at its own expense.
- (c) Mindarie must complete or must cause the Improvement Works referred to in the Participants notice to be completed as soon as practicable but in any event not later than 12 months after the date of receipt of the Participants notice referred to in clause 5.8(b).
- (d) Mindarie acknowledges that the Participants intend to subdivide and develop the Urban Development Area in the future as an Urban Development.

6. **ASSIGNMENT, SUBLETTING AND LICENSING**

6.1 **Assignment and grant of security**

Mindarie must not without the consent of the Participants:

- (a) assign, transfer or part with possession of the whole or part of the Premises or the benefit of this Lease or any estate or interest in the Premises or this Lease; or
- (b) mortgage charge or otherwise encumber the interest of Mindarie under this Lease.

6.2 **Exclusion of statutory provisions**

The provisions of Sections 80 and 82 of the *Property Law Act 1969* do not apply to this Lease.

6.3 **Subleasing and Licensing without the Participants' consent**

Mindarie may sublease or grant a licence in respect of the whole or any part of the Premises without the consent of the Participants if:

- (a) the permitted use referred to in the sublease or licence is the same as the Permitted Use specified in the Reference Table of this Lease;
- (b) the area the subject of the proposed sublease or licence is not part of the Relevant Bush Forever Area;
- (c) the terms and conditions contained in the sublease or licence and on the part of the sublessee or licensee to be observed and performed are no less onerous than the terms and conditions contained in this Lease and on the part of Mindarie to be observed and performed;
- (d) prior to granting the sublease or licence Mindarie gives written notice to the Participants of the identity of the proposed sublessee or licensee and the area

proposed to be the subject of the proposed sublease or licence and provides reasonable proof that the criteria referred to in clauses 6.3(a), 6.3(b) and 6.3(c) are satisfied; and

- (e) contemporaneously with the grant of the sublease or licence, Mindarie provides the Participants with a fully executed copy of the sublease or licence.

6.4 Subleasing and Licensing with the Participants' consent

Wherever Mindarie proposes to sublease or grant a licence in respect of the whole or any part of the Premises and Mindarie has not complied with the provisions of clause 6.3 or is not capable of complying with the provisions of that clause, Mindarie must obtain the consent of the Participants to the proposed sublease or licence prior to that sublease or licence being granted.

6.5 Mindarie's liabilities to continue

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

6.6 Costs payable in any event

Mindarie must pay to the Participants on demand all costs and expenses incurred by the Participants in considering any submissions or applications made pursuant to clause 6.3(d) or clause 6.4 even if:

- (a) the Participants refuse to consent to the proposed sublease (where that consent is required pursuant to clause 6.4); and
- (b) the proposed sublease is not completed for any reason (other than the default of the Participants).

7. INSURANCE

7.1 Types of Insurance

- (a) Throughout the Term Mindarie must effect and keep current with a public insurance office approved by the Participants, in the name of the Participants and Mindarie for their respective rights and interests:
 - (i) a policy to cover Mindarie's Improvements to their full insurable value against all usual risks against which in the opinion of the Participants from time to time a tenant should ordinarily insure;
 - (ii) workers' compensation and employer's indemnity insurance in respect of Mindarie's employees;
 - (iii) a public liability policy with a cover of not less than the amount specified in the Reference Table (or such greater sum as the Participants

may from time to time reasonably specify) in respect of any one occurrence; and

- (iv) any other policy of insurance which the Participants acting reasonably may from time to time require Mindarie to effect and maintain with an amount of cover and on terms as the Participants may reasonably specify.
- (b) Mindarie must:
 - (i) subject to clause 7.1(c), immediately expend all money recovered in respect of any insurance under clause 7.1(a) in the satisfaction of the payment of damages or the reinstatement or replacement of the items for which that money is received to the extent that that money is sufficient for that purpose; and
 - (ii) on demand make up from Mindarie's own money any insufficiency of money for that purpose.
- (c) If Mindarie wishes to expend any insurance proceeds other than in accordance with clause 7.1(b), it may do so if that proposed expenditure is first approved by the Participants (which approval must not be unreasonably withheld where the proposed expenditure is consistent with the prudent operation of Mindarie's Core Business).

7.2 **Evidence of insurance and renewal**

Mindarie must:

- (a) pay all insurance premiums on any policies referred to in this clause 7 not later than the due date for payment specified in the first premium notice or demand for payment; and
- (b) on demand produce to the Participants proper evidence of the policies and their renewal.

7.3 **Mindarie's insurance policies**

Mindarie may not vary, surrender or cancel any of the policies referred to in clause 7.1(a) without the Participants' Consent.

7.4 **Voiding insurance policies**

- (a) Except with the Participants' Consent Mindarie must not do or allow to be done any thing in or near the Premises as a result of which any insurances in respect of the Premises taken out by the Participants or Mindarie may be invalidated or avoided or the rate of premium on any insurance may be liable to be increased or any claim under that insurance may be lawfully refused in whole or in part.
- (b) If Mindarie or Mindarie's Employees and Visitors do or permit to be done anything which has the effect of invalidating or avoiding any policy of insurance taken out by the Participants or Mindarie or by virtue of which the insurer may lawfully refuse a claim in whole or in part, then Mindarie is responsible for and must pay on demand any resulting damage or loss which the Participants suffer

or incur and (without limiting any other rights of the Participants) must pay to the Participants on demand any increased amount of premium over the existing premium which may be charged on any such insurance.

8. INDEMNITIES

8.1 Mindarie's Indemnity

- (a) Mindarie occupies the Premises at its own risk in all respects.
- (b) Except to the extent caused or contributed by the Participants, Mindarie indemnifies the Participants and agrees to keep the Participants indemnified against all Claims and Liabilities including any relating to loss of life of or personal injury to any person or damage to any property (wherever occurring) resulting from or attributable to anything occurring on or in the vicinity of the Premises by any act, neglect, default or omission by Mindarie or any of Mindarie's Employees and Visitors.
- (c) Without limitation, Mindarie indemnifies and releases the Participants from all Claims and Liabilities relating to any Environmental Liability (directly or indirectly) in respect of Mindarie's use of the Premises and any activity carried out on the Premises.

8.2 Participants' Indemnity

The Participants indemnify Mindarie and agrees to keep Mindarie indemnified against all loss or damage which Mindarie suffers to the extent to which it is caused directly by:

- (a) any default by the Participants under this Lease; or
- (b) the wilful misconduct or the negligence of the Participants or any of the Participants' officers, employees, agents or contractors.

9. PARTICIPANT'S COVENANTS

9.1 Quiet Enjoyment

Subject to Mindarie duly paying the Rent and other money payable under this Lease and observing and performing Mindarie's Covenants, Mindarie may possess and use the Premises during the period of this Lease without interruption by the Participants, except as provided for in this Lease.

10. DEFAULT

10.1 Mindarie's Default

If:

- (a) the Rent or any part the Rent is at any time unpaid for 7 days after becoming due (whether formally demanded or not);
- (b) Mindarie breaches or fails to observe or perform any other of Mindarie's Covenants and that breach or failure continues after the expiration of 90 days (or any further time as the Participants may specify) of notice to Mindarie to remedy it or where that breach or failure is incapable of being remedied, Mindarie has

failed to pay adequate monetary compensation to the Participants by the expiration of that period;

- (c) Mindarie goes into liquidation or becomes bankrupt or enters into any composition arrangement with or assignment for the benefit of Mindarie's creditors;
- (d) a manager, an administrator, a trustee, a receiver, a receiver and manager or liquidator is appointed under any Act or instrument or by order of any court in relation to any part of Mindarie's undertakings assets or property;
- (e) any execution is issued against any assets or property of Mindarie; or
- (f) the Premises are abandoned or otherwise left vacant by Mindarie,

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

10.2 **Effect of termination and re-entry**

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

10.3 **Participants right to remedy defaults**

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

10.4 **Essential terms**

- (a) Each of the covenants by Mindarie:

- (i) to pay the Rent and other money;
- (ii) under clauses 4.1, 5, 7 and 8; and
- (iii) not to assign, sublet transfer or part with possession of the whole or any part of the Premises or of the benefit of this Lease other than on the terms and conditions contained in this Lease,

is an essential term of this Lease but nothing expressed or implied in this clause is to be construed to mean that other of Mindarie's Covenants may not also be essential terms of this Lease.

- (b) Any breach of an essential term will be regarded by the Participants and Mindarie as a fundamental breach by Mindarie of this Lease.

10.5 **Effect of breach of an essential term**

- (a) If the Participants determine this Lease following a breach of an essential term then (without prejudicing or limiting any other right or remedy of the Participants under this Lease) the Participants are entitled to recover from Mindarie as liquidated damages for the breach the difference between:
 - (i) the aggregate of the Rent and any other money which would have been payable by Mindarie for the unexpired residue of the Term remaining after the determination; and
 - (ii) the rent and other money which the Participants by taking reasonable steps to relet the Premises obtain or could reasonably be expected to obtain by reletting the Premises for the unexpired residue of the Term on reasonable terms as to rent and otherwise.
- (b) The Participants are not obliged to effect any reletting referred to in clause 10.5(a) on the same or similar terms as are expressed and implied in this Lease.
- (c) The Participant's acceptance of arrears or any late payment of any of the Rent or other money due under this Lease does not constitute a waiver of the essentiality of Mindarie's obligations to make those payments.
- (d) The Participant's entitlement to recover damages under this clause is not prejudiced or limited if:
 - (i) Mindarie abandons or vacates the Premises;
 - (ii) the Participants elect to re-enter the Premises or to determine this Lease;
 - (iii) the Participants accept Mindarie's repudiation of this Lease; or
 - (iv) any conduct constitutes a surrender by operation of law.
- (e) The Participants are entitled to institute proceedings to recover damages under this clause either before or after any of the events or matters referred to in clause 10.5(d).

- (f) Any conduct by the Participants to mitigate damages does not of itself constitute acceptance of Mindarie's breach or repudiation or a surrender by operation of law.

11. **HOLDING OVER**

11.1 **Holding Over**

If Mindarie continues to occupy the Premises after the end of this Lease with the consent of the Participants, Mindarie is a monthly tenant upon the same terms and conditions of this Lease as far as they can be applied to a monthly tenancy.

12. **GENERAL**

12.1 **Notices**

(a) **Method of Giving Notices**

A notice required or permitted to be given by one party to another under this Lease will be in writing addressed to the other party and:

- (i) delivered to that party's address;
- (ii) sent by Express Post to that party's address; or
- (iii) transmitted by facsimile to that party's address.

(b) **Time of Receipt**

A notice given to a party in accordance with this clause is treated as having been given and received:

- (i) if delivered to a party's address, on the day of delivery;
- (ii) if sent by Express Post, on the day after posting; and
- (iii) if transmitted by facsimile on the day of transmission to a party's address and a correct and complete transmittal report is received,

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

(c) **Address of Parties**

- (i) The address of the Participants is unless otherwise specified is City of Stirling, Civic Place, Stirling, 6021.

Postal address: City Administrative Centre, Civic Place, Stirling, WA, 6021.

Facsimile: (08) 9345 8822

Attention: Chief Executive Officer

- (ii) The address of Mindarie is unless otherwise specified is Lot 17 Marmion Avenue, Mindarie, 6030.

Postal address: PO Box 538, Joondalup, 6919.
Facsimile: (08) 9305 6795

12.2 **Reading Down**

Any provision in this Lease which is invalid or unenforceable is to be read down, if possible.

12.3 **Application for Consent**

Wherever in this Lease the doing or executing of any act matter or thing by Mindarie is dependent upon the consent or approval of the Participants, the Participants will promptly consider Mindarie's request and provide reasons for their decision.

12.4 **Joint and Several Liability**

An agreement or covenant on the part of two or more persons under this Lease binds them jointly and each of them severally.

12.5 **No Warranty by Participants**

Mindarie acknowledges and declares that in entering into this Lease Mindarie has inspected the Premises and that it has not relied on any promise representation warranty or undertaking given by or on behalf of the Participants in respect to the suitability of the Premises for any business to be carried on from it and all warranties (if any) implied by law are hereby so far as legally possible expressly negated.

12.6 **Whole Agreement**

This Lease contains the entire agreement between the parties and supersedes any earlier agreement or understanding on the subject matter of this Lease.

12.7 **Special Conditions**

The Special Conditions in the Reference Table (if any) form part of this Lease and prevail to the extent of any inconsistency with any other provision of this Lease.

13. **INTERPRETATION AND DEFINITIONS**

13.1 **Interpretation**

In this Lease unless the context otherwise requires:

- words indicating the singular include the plural and vice versa;
- words indicating a gender include any gender;
- reference to a person includes reference to a natural person, firm, any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency and reference to the successors and permitted assigns of any of the entities mentioned in this sub-paragraph;
- reference to a body (other than a party to this Lease) which ceases to exist or whose powers or functions are transferred to any other body, refers to the body which replaces it or which substantially succeeds to its powers or functions;

- headings and marginal notes are incorporated for convenience only and do not affect interpretation of this Lease;
- reference to a statute includes any statute varying, consolidating or replacing it;
- where the context so requires reference to the upper case includes the lower case and vice versa;
- other terms not defined but commencing in upper case have their apparent meanings;
- names, words and phrases in bold in the Reference Table and in this Lease have the meanings there specified;
- the Reference Table is part of this Lease; and
- the rule of construction known as *contra proferentem* will not apply to this Lease.

13.2 Definitions

- **Act** means a statute (State or Federal) including amendments, re-enactments and any by-laws or regulations made pursuant to it.
- **Authorisations** includes:
 - (a) any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
 - (b) in relation to anything which a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.
- **Best Practice Environmental Management** means the siting, design, operation and rehabilitation of the Landfill in accordance with Environmental Law and Planning Law, as amended from time to time.
- **Bush Forever** means the State Government Policy from time to time which identifies regionally significant bushland in the metropolitan region.
- **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Western Australia.
- **Claim** means any claim or cause of action including (but not limited to):
 - (a) in contract (including breach of warranty);
 - (b) in tort (including, but not limited to misrepresentation or negligence); or
 - (c) under statute (including Part V or VI of the *Trade Practices Act 1974*) (Cth),

in respect of this Lease, the Premises and Mindarie's business conducted on and from the Premises.

- **Commencement Date** means the commencement date specified in the Reference Table.
- **Consent** means prior written consent.
- **Consumer Price Index** means the Consumer Price Index All Groups Index Numbers for Perth the subject of Catalogue No. 6401.0 provided by the Australian Bureau of Statistics or if the basis upon which it is substantially altered then such basis as the Participants may reasonably determine to be as near to the Consumer Price Index previously referred to as is reasonably possible.
- **Contamination** means the presence of Pollutants:
 - (a) in, on, or under the Premises; or
 - (b) in the ambient air and emanating from the Premises.
- **Core Business** means the primary function of Mindarie being:
 - (a) administrative operations associated with conduct of a refuse disposal function;
 - (b) operation of a Landfill for disposal of refuse;
 - (c) operation of a transfer station for movement of refuse to other locations;
 - (d) operation of a refuse recycling activity dealing predominantly with second-hand household items and building materials, scrap metals and glass;
 - (e) extraction and elimination of gas from Landfills within the Premises including the elimination of gas through conversion to electricity;
 - (f) crushing of limestone for sale; and
 - (g) green waste reduction through chipping and grinding processes.
- **CPI Review Date** means each CPI Review Date specified in the Reference Table.
- **Disposal** means the final stage in the management of the waste stream.
- **Environmental Law** means any legislation, policy, guideline or standard, applying in Western Australia regulating Pollutants and Waste or in connection with the protection of the environment or health and safety.
- **Environmental Liability** means any actual or potential loss, cost, liability, penalty, expense or damage incurred in connection with:
 - (a) the investigation from Remediation;
 - (b) a claim by any third party;

- (c) any action, order, declaration or notice by a Government Agency under any Environmental Law; or
- (d) any agreement between Mindarie and:
 - (i) any occupier of the Premises; and
 - (ii) any Government Agency;

of or in respect of Contamination of the Premises or properties adjoining the Premises, where the Pollutants emanated from the Premises.

- **Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, Department, Commission, Authority, Tribunal, Agency or entity in any part of the world.
- **Improvement Works** means all works necessary to facilitate the Urban Development of the Urban Development Area including but not limited to undertaking all necessary assessments, monitoring and modelling of any Pollutants emanating from the Premises, Remediation, rehabilitation, relocation of Mindarie's Improvements and obtaining all necessary Authorisations for undertaking the Improvement Works.
- **Internal Buffer Distance** means a distance of 50m from the boundary of the Premises to any area within the Premises used for Landfill.
- **Land** means the land described in the Reference Table.
- **Landfill** means a site used for Disposal of Waste by burial in the ground that is licensed as a landfill under the *Environmental Protection Act 1986 (WA)*.
- **Lease** means the lease evidenced by this document, the Reference Table and each annexure whether or not the lease or any of Mindarie's Covenants are enforceable at law or in equity or otherwise and includes any express or implied lease tenancy or other right of occupancy of or interest in the Premises granted by or derived from the Participants under this document.
- **Liabilities** means all liabilities, losses, damages, outgoings, costs and expenses of whichever description whether actual, prospective, contingent or otherwise present or future quantified or unquantified and liability shall have a corresponding meaning.
- **Market Rent Review Date** means the market rent review dates specified in the Reference Table.
- **Metropolitan Region Scheme** is a town planning scheme for land use in the Perth metropolitan area adopted under the *Metropolitan Region Town Planning Scheme Act 1959*.
- **Mindarie** where not inconsistent with the context includes Mindarie's Employees and Visitors.
- **Mindarie's Covenants** means the terms, covenants and conditions expressed or implied in this Lease and on the part of Mindarie to be observed and performed.

- **Mindarie's Employees and Visitors** means:
 - (a) any person at any time upon the Premises other than the Participants and their respective employees, agents and contractors; and
 - (b) Mindarie's employees, agents, customers, clients, visitors and contractors at any time upon the Land (whether within the Premises or not).
- **Mindarie's Improvements** means any fixtures, fittings, plant and equipment installed by or belonging to Mindarie on or in the Premises and includes without limitation offices, workshops, sheds, transfer station and the Landfills.
- **Perth Metropolitan Area** means the area referred to in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959* (WA).
- **Planning Law** means any legislation policy, guideline or standard applying in Western Australia regulating or in connection with the use and development of land and buildings.
- **Pollutant** means a pollutant, contaminant, dangerous, toxic or hazardous substance, petroleum or petroleum product, chemical, solid, special liquid, industrial, other waste or emission regulated under Environmental Law.
- **Premises** means the premises specified in the Reference Table.
- **Prescribed Rate** means the Prescribed Rate specified in the Reference Table.
- **Proposed Metropolitan Region Scheme Amendment 1082/33** provides for proposed special land use controls relating to Bush Forever.
- **Reference Table** means the part of this document described as Reference Table.
- **Relevant Bush Forever Area** means that part of the Premises which from time to time is the subject of Bush Forever. At the Commencement Date the Relevant Bush Forever Area is shown hachured on the plan in Annexure **CB**.
- **Remediation** has the meaning given to the term in the *Contaminated Sites Act 2003* (WA).
- **Rent** means initially the rent specified in the Reference Table and then that rent as subsequently reviewed and varied pursuant to this Lease.
- **Rent Commencement Date** means the rent commencement date specified in the Reference Table.
- **Rent Review Date** means each Rent Review Date specified in the Reference Table whether a Market Rent Review Date or CPI Review Date.
- **Statutory Licences** means all licences, consents, rights, permits and certificates relating to any aspect of Mindarie's operations issued by any Government Agency in relation to Mindarie's operations on and from the Premises.

- **Temporary Buffer** means initially that portion of the Urban Development Area which is shown hachured on the plan in Annexure DC which area is to reduce in size in accordance with the provisions of clauses 5.7(d) and 5.7(e).
- **Term** means the term of this Lease specified in the Reference Table commencing on the Commencement Date and expiring on the expiration date.
- **Urban Development** means the subdivision and development of the Urban Development Area for residential purposes.
- **Urban Development Area** means the land north of the Premises shown for identification purposes as cross hachured black on the plan in Annexure A and marked 'Urban Development Area'.
- **Valuer** means a valuer who is a member of the Australian Property Institute (Inc) Western Australian Division practising within the Perth Metropolitan Area and having at least 5 years experience of assessing the rental value of commercial and industrial premises in the Perth Metropolitan Area.
- **Waste** means one or more of the following:
 - (a) any substance that is discarded, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment;
 - (b) any discarded, rejected, unwanted, surplus or abandoned substance;
 - (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the substance; and
 - (d) any substance described in regulations under *the Environmental Protection Act 1986* (WA) as waste.

14. **CONDITIONS PRECEDENT**

This deed is, if required, conditional upon the approval of the Western Australian Planning Commission and the Minister for Local Government and Regional Development.

Executed as a deed

PARTICIPANTS

The common seal of)
CITY OF PERTH is affixed)
to this document by authority of a)
resolution of the Council in the presence of)

Chief Executive Officer

Lord Mayor

The common seal of)
TOWN OF CAMBRIDGE)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
TOWN OF VICTORIA PARK)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
TOWN OF VINCENT)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
CITY OF STIRLING)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

The common seal of)
CITY OF JOONDALUP)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Chairman of Commissioners

The common seal of)
CITY OF WANNEROO)
was affixed to)
this document by authority of a resolution)
of the Council in the presence of:)

Chief Executive Officer

Mayor

MINDARIE

The common seal of)
MINDARIE REGIONAL COUNCIL)
was affixed to this document in)
accordance with its constitution in the)
presence of:)

Chief Executive Officer

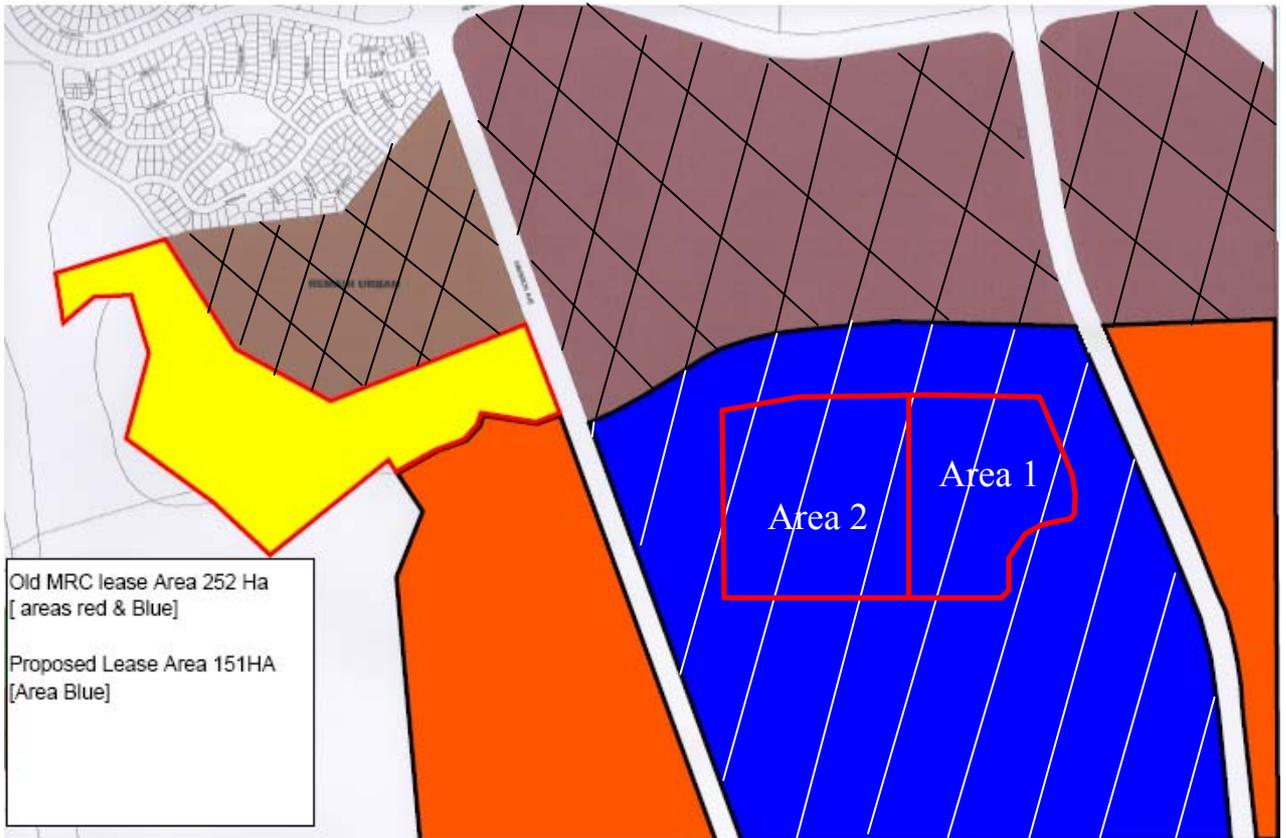
Chairman

ANNEXURE 'A'

Premises shown hachured (~~but areas shown in detail in the plans the subject of Annexure 'B' are excluded~~)

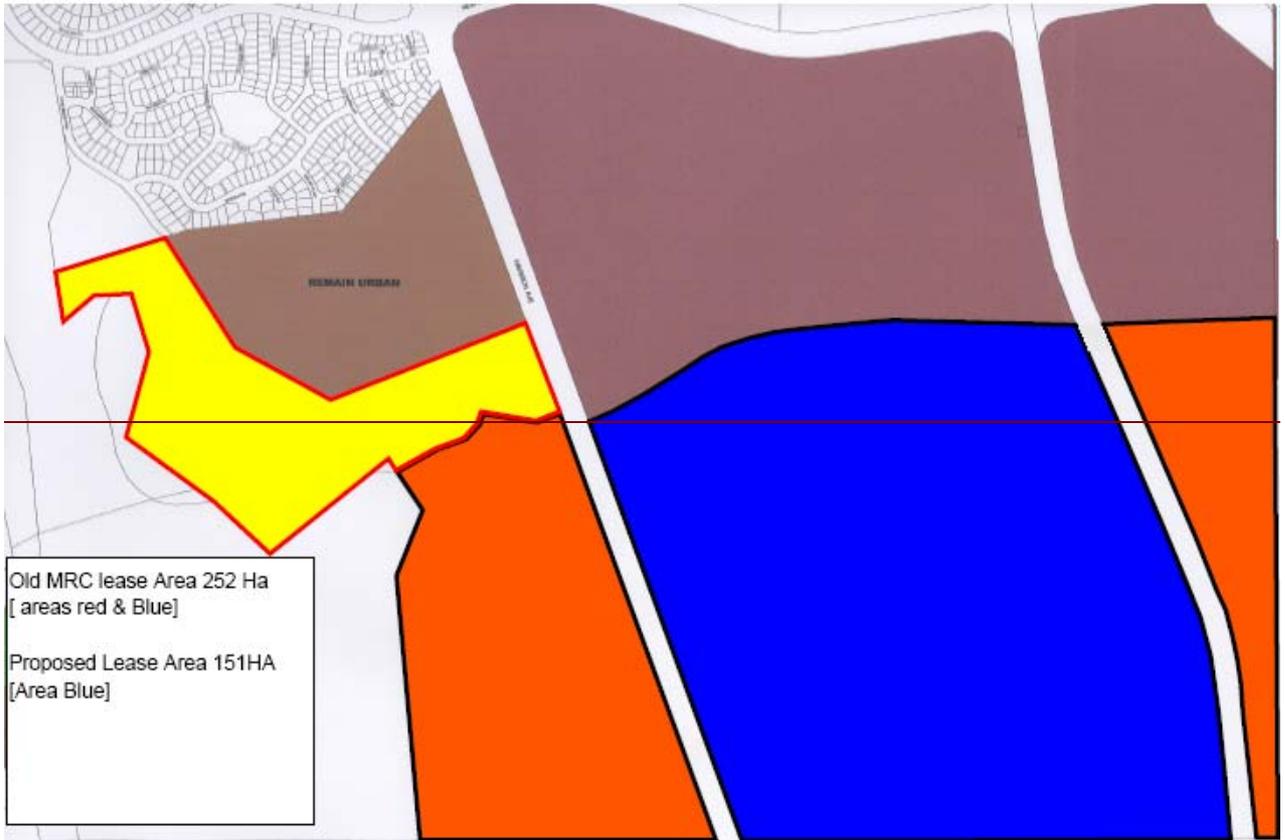
Urban Development Area shown cross hachured (clauses 5.7 and 5.8)

Areas 1 ~~and 2~~, ~~2A~~ and ~~2B~~ as shown (clauses 5.2(a) and 5.2(b))



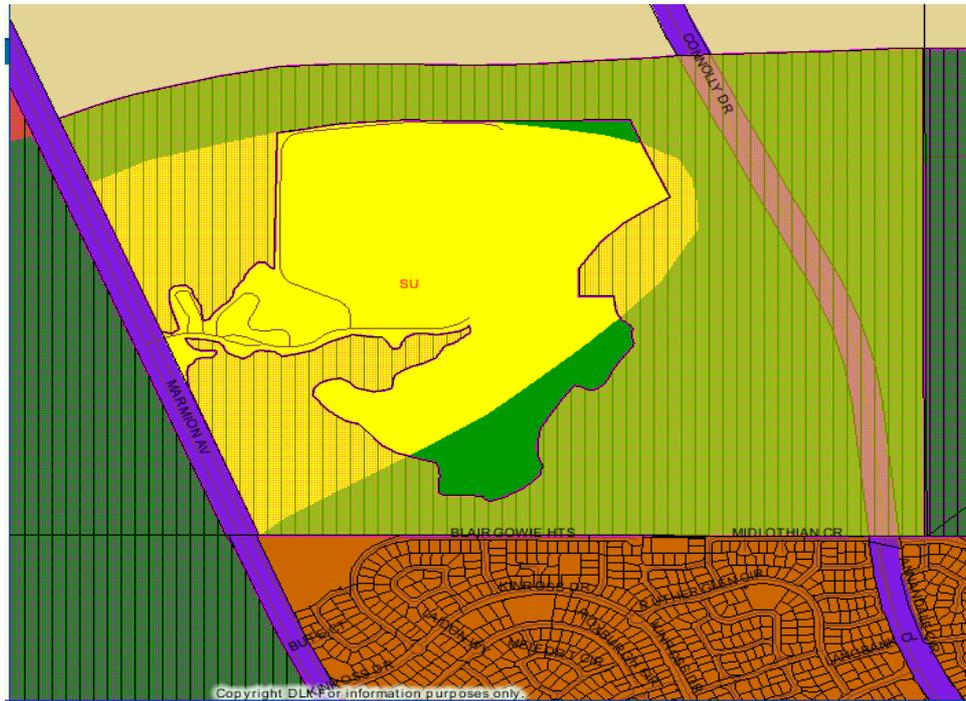
ANNEXURE 'B'

Areas excluded from the plan of the Premises shown in Annexure 'A'



ANNEXURE 'CB'

Relevant Bush Forever Area shown hachured



ANNEXURE 'DC'

Temporary Buffer shown hachured

