

**COPY**

DATED \_\_\_\_\_ 2005

**AGREEMENT TO  
LEASE**

SHIRE OF CUBALLING

Ref: GNCLPROP/POPOSCHOOL/AU05LEASEAGREEMENT

THIS AGREEMENT FOR LEASE is made on the day of 18 day of <sup>August</sup> 2005

BETWEEN:-

1. SHIRE OF CUBALLING of Post Office Box 13, Cuballing, Western Australia ("the Lessor") of the first part, and
2. THE POPANYINNING PROGRESS ASSOCIATION (INC.) of C/- Post Office, Popanyinning, Western Australia ("the Lessee") of the second part.

**NOW THIS AGREEMENT FOR LEASE WITNESSES:**

1. All those premises situated in Popanyinning Lot 313 being reserve number 47419 and the subject of Management Order I 771510 are vested in the Lessor by the Government of Western Australia in the Shire of Cuballing for the objects and purposes of "Community Purposes". The Lessor is able to vest these premises with the approval by THE MINISTER FOR HOUSING & WORKS, RACING & GAMING, GOVERNMENT ENTERPRISES, LAND INFORMATION, such approval which will be sought following the signing of this agreement. Should such approval not be granted, this agreement will immediately be at an end.
2. The Lessor hereby agrees to lease to the Lessee all those premises which are for the purpose of identification only shown edged red on the plan attached to this Agreement ("the Demised Premises") to be held by the Lessee for a term ("the Term") of Twenty (20) years commencing on the 1st day of July 2004 at a total rental of 1 peppercorn subject to the covenants and conditions hereafter contained and subject to the covenants and powers implied under the Transfer of Land Act 1983 as amended unless negated or modified by this Agreement.
3. The Lessee hereby covenants with the Lessor as follows:
  - (a) To pay to the Lessor the rent reserved in the manner appointed for payment of same without any deduction or abatement whatsoever.
  - (b) To keep the buildings and other improvements (if any) upon the Demised Premises in the same condition as they now are fair wear and tear excepted.
  - (c) To observe all statutes and regulations made by any duly constituted authority affecting the Demised Premises or the occupation thereof.
  - (d) Not to part with possession of the Demised Premises without

obtaining the prior written consent of the Lessor such consent not to be unreasonably withheld.

- (e) To keep the Demised Premises and all fixtures and chattels (if any) in good condition, fair wear and tear excepted.
  - (f) To permit the Lessor or his agent to inspect the Demised Premises at all reasonable times and reasonable intervals.
  - (g) Upon the determination of the Lease to yield up to the Lessor the Demised Premises in such good repair and condition as is consistent with this Agreement in that behalf.
  - (h) The Demised Premises be used for any purpose that complies with the Shire of Cuballing' s Regulations.
  - (i) To indemnify and keep indemnified the Lessor from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the Lessor may suffer or incur in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Demised Premises or the use by the Lessee of the Demised Premises or any part thereof or to any person or the property of any person using or entering on or near the Demised Premises or occasioned (wheresoever it may occur) wholly or in part by any act, neglect, default or omission by the Lessee, his agents, contractors, servants, workman, customers or any other person or persons using or upon the Demised Premises with his consent or approval express or implied.
  - (j) To use and occupy the Demised Premises at the Lessee's own risk and the Lessee hereby releases to the full extent permitted by law the Lessor and its agents, servants, contractors and employees from all claims and demands of every kind resulting from any accident, damage or injury occurring therein.
  - (k) Not to mortgage lien or in any way charge or encumber the Lessee's interest in this Agreement for Lease.
  - (l) To keep in force all licenses and permits required for the carrying on of any business conducted by the Lessee in or upon the Demised Premises.
  - (m) To pay the Lessor's legal costs and disbursements in connection with the preparation, execution, completion and stamping of this Lease.
4. (a) In default of any of the covenants contained in this Agreement for Lease and provided that such default shall continue for not less than fourteen (14) days after the day on which the notice of that

default is given to the Lessee by the Lessor then the Lessor may at any time thereafter enter upon the Demised Premises and retake possession of them without prejudice to any other remedy that the Lessor may have.

- (b) Notice in terms of clause 3 (a) of this Agreement for Lease shall be deemed to have been properly given if left at the address of the Lessee specified in this Agreement or at such other address within Western Australia as the Lessee shall have notified the Lessor in writing.
5. The Lessor to the intent of binding the Demised Premises and the proprietor thereof for the time being but not so as to render the Lessor personally liable in damages except for the Lessor's own acts and defaults while the Lessor remains such proprietor hereby covenants and agrees with the Lessee:-
- (a) that the Lessee duly paying the rent hereby reserved and performing and observing the terms, covenants and conditions herein expressed or implied and on the part of the Lessee to be performed and observed shall peaceably and quietly hold and enjoy the Demised Premises during the said term or any extension thereof without any interruption by the Lessor or by any person or persons rightfully claiming under or in trust for the Lessor;
  - (b) to pay all outgoings not otherwise payable by the Lessor.
6. The Lessor and the Lessee hereby expressly agree and declare as follows:
- (a) The Lessor does not expressly or impliedly warrant that the Demised Premises are now or will remain suitable or adequate for all or any of the purposes of the Lessee and all warranties (if any) as to suitability and adequateness of the Demised Premises implied by law are to the extent permitted by law hereby expressly negatived.
  - (b) That if the Lessee shall remain in occupation of the Demised Premises after the expiration of this Lease the Lessee shall so remain as a tenant from week to week but subject nevertheless to the terms, covenants and conditions hereof so far as the same are applicable to a weekly tenancy and such tenancy shall be terminable at the expiration of one week's notice by either party to the other at any time.

- (c) (i) The Lessor shall not less than' five months before the expiration of the Term notify the Lessee in writing whether or not he intends to re-lease the Demised Premises.
- (ii) In the event of the Lessor notifying the Lessee that he intends to re-lease the Demised Premises the Lessee shall within fourteen days after receiving the Lessor's notice advise the Lessor in writing whether or not he wishes to renew his lease of the Demised Premises subject to agreeing a new rent.
- (iii) If the Lessee gives notice advising the Lessor that he does not wish to re-lease the Demised Premises the Lessor and the Lessee shall immediately commence negotiating the new rent for the new term. The New Rent for the new term shall be the then Market Rent to be agreed by the parties. PROVIDED ALWAYS that in no event shall the rent as so assessed be less than the rent payable during the last year of the Term.
- (iv) If for any reason whatsoever the Lessor and the Lessee are unable to agree what the new rent shall be on or before a date three months before the expiration of the Term the Lessee shall be deemed to have advised the Lessor that the Lessee does not wish to renew his lease of the Demised Premises and the Lessor shall thereupon be entitled to enter into a lease of the Demised Premises with any third party such lease to commence on a date after the expiration of the Term.

7. In these circumstances the Lessee shall vacate the Demised Premises at the expiration of the Term. It is expressly agreed and declared that the covenants by the Lessee contained in Clauses 2(a), 1(b), 1(t) and 1(k) hereof are (subject to the proviso hereinafter contained) essential terms of this Lease the breach or non-observance or non-performance of anyone

or more of such covenants terms and conditions shall be deemed to be a fundamental breach of the provisions of this Lease on the part of the Lessee to be observed and performed PROVIDED THAT the presence of this Clause in this Lease shall not mean or be construed as meaning that there are no other essential terms in this Lease. Should the Lessor terminate this Lease following any such fundamental breach pursuant to Clause 3(a) hereof without prejudice to any other right or remedy of the Lessor herein contained or implied it is expressly agreed and declared that the Lessor shall be entitled to recover from the Lessee as and by way of liquidated damages for such breach the aggregate of the annual rental rates and taxes and other monies which would have been payable by the Lessee for the unexpired residue of the term but for such determination less the aggregate of the annual rental rates and taxes and other monies which the Lessor by taking proper steps to re-let the Demised Premises shall obtain or could reasonably be expected to obtain by reletting the Demised Premises for the unexpired residue of the term after such determination PROVIDED THAT in so doing the Lessor shall not be required or obliged to offer or accept in respect of such reletting terms covenants conditions or stipulations which are the same or similar to the terms covenants conditions or stipulations herein contained or implied.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

THE COMMON SEAL of )  
SHIRE OF CUBALLING )  
was affixed in accordance with its )  
Constitution in the presence of )



*Ian Leslie Watts*  
.....  
Signature of authorised person

*Peter Thomas Naylor*  
.....  
Signature of authorised person

*IAN LESLIE WATTS*  
.....  
Name of authorised person

*PETER THOMAS NAYLOR*  
.....  
Name of authorised person

*SHIRE PRESIDENT*  
.....  
Office held

*CHIEF EXECUTIVE OFFICER*  
.....  
Office held

THE COMMON SEAL of )  
POPANYINNING PROGRESS ASSOCIATION (INC.) )  
was hereunto affixed by the authority of the State )  
Council previously given and in the presence of )

*Eleanor Stubbs*  
.....  
Signature of authorised person

*Allison MacLennan*  
.....  
Signature of authorised person

*ELEANOR STUBBS*  
.....  
Name of authorised person

*ALLISON MACLENNAN*  
.....  
Name of authorised person

*President*  
.....  
Office held

*SECRETARY*  
.....  
Office held