

2007

SHIRE OF WYNDHAM EAST KIMBERLEY

AND

**EWIN CENTRE CHILDREN'S SERVICE
INCORPORATED**

**FACILITY USE AGREEMENT AND LEASE
FOR KUNUNURRA CHILD CARE CENTRE**

Facility Use Agreement and Lease

DEED dated 17 July 2007

BETWEEN the SHIRE OF WYNDHAM EAST KIMBERLEY of PO Box 614
Kununurra, Western Australia, 6743 ("the Lessor")

AND

The EWIN CENTRE CHILDREN'S SERVICES INCORPORATED of 98
Konkerberry Drive, Kununurra, Western Australia, 6743 ("the Lessee")

RECITALS

- A. The Lessor is registered or is entitled to be registered as proprietor of the land known as Kununurra Child Care Centre being Lot 77 Portion on Deposited Plan P28729 the whole of the land in Certificate of Title Volume LR3124 Folio 509 Reserve Number R29799 Portion.
- B. The Lessor has agreed to lease the Land and the Premises to the Lessee on the terms and conditions contained in this lease.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

"Acts" includes all Acts and statutes (State and Federal) and all regulations, by-laws, requisitions or orders made under any Act from time to time by any statutory public or other competent authority;

"Airconditioning Plant" means any plant, machinery or equipment for heating, cooling or circulating air in the Premises;

"Corporations Law" means the Corporations Law as referred to in the Corporations (Western Australia) Act 1990;

"Consumer Price Index" means the consumer price index compiled by the Australian Bureau of Statistics for the Perth (Capital City) Area (All Groups);

“CPI Rent Review Date” means each CPI Rent Review Date specified in Item 7 of the Schedule;

“Current CPI” means the Consumer Price Index number last published before the relevant CPI Rent Review date, or if an actuary is appointed under clause 3.2(b)(iii) to determine an index, the number certified by that actuary;

“Date of Commencement” means the date of commencement of the Term mentioned in the Schedule;

“Date of Expiration” means the date of expiration of the Term mentioned in the Schedule;

“Entry Qualifications” means:

- (a) 24 hours prior written notice being given to the Lessee;
- (b) a representative of the Lessee accompanying the parties entering; and
- (c) the parties entering causing as little inconvenience and interruption as possible to the Lessee and its operation;

“GST” has the same meaning as in the A New Tax System (Goods and Services) Act 1999 (Cth);

“Insured Risk” means an event that the Lessor have insured against, including fire, explosion, earthquake, riot, civil commotion, lightening, storm, tempest, fusion, smoke, rainwater, water damage, impact by aircraft or vehicles, machinery breakdown and malicious acts or omissions;

“Land” means the land mentioned in the Schedule

“Lease” means this deed and the Schedules and appendices and plans as amended or supplemented from time to time and any attachments;

“Lessee” includes the servants and agents of the Lessee;

“Lessee’s Covenants” means the covenants contained or implied in this Lease on the part of the Lessee to be obeyed;

“Lessor’s Powers” means the rights, powers and remedies contained in or implied in this Lease or at law exerciseable by the Lessor;

“Outgoings” means all the outgoings mentioned in Item 9 of the Schedule;

“Premises” means the Land and all improvements located at the address mentioned in the Schedule and includes all carpets and floor coverings,

curtains, blinds and other fixtures and fittings belonging to the Lessor located there and all additions or modifications and replacements for the time being;

"Previous CPI" means the Consumer Price Index number last published before the date which is twelve (12) months before the relevant CPI Rent Review Date, or if an actuary is appointed to determine an index, the number certified by that actuary;

"Rates and Taxes" means

- (a) council rates and charges, where applicable;
- (b) water, drainage and sewerage rates and charges including meter rents, charges for the disposal of sewerage and storm water, and water usage charges;
- (c) all other rates, taxes, charges, assessments and impositions, payable with respect to the Land or the use of the same;

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

"Rent Review Date" means each date specified in Item 7 of the Schedule and the relevant rent method expressed for each date;

"Services" means electricity, gas, oil, fuel, water, communication or other similar commodities, facilities or services in or on the Land or Premises or otherwise servicing the Land or Premises;

"Schedule" means the Schedule to this Lease;

"Term" means the Term mentioned in the Schedule commencing on the Date of Commencement and expiring on the Date of Expiration and where appropriate any renewal or extension;

~~**"Viability Payment"** means the amount calculated at the end of each year of the Term based on the Lessee's net profit and being 20% (ex GST) of the Lessee's profit;~~

~~**"Viability Payment Review Date"** means each Viability Payment Review Date specified in Item 7 of the Schedule.~~

22/12/14
Council Resolution 10634
of 21 October 2014
09/02/2015

1.2 Interpretation

Unless the context otherwise requires:

- (a) any covenant or agreement expressed or implied entered into by more than one person will bind those persons jointly and each of them severally;
- (b) reference to any thing that includes any part of that thing;

- (c) reference to any party includes a reference to that party and its successors or personal representatives (as the case may be) and transferees;
- (d) the word "person" includes a corporation;
- (e) words importing to the feminine gender, masculine gender, singular or plural numbers include the masculine gender, feminine gender, plural and singular numbers respectively; and
- (f) the covenants on the part of the Lessor being only the registered proprietor from time to time of the Land.

1.3 Business Days

Where the day or last day for doing something under this Lease is not a business day, the day or the last day from doing that thing is deemed to be the next following business day.

1.4 Acts

Reference to any Act includes all amendments for the time being in force and any other Act enacted in substitution for that Act.

2 OPERATIVE PART

The Lessor leases to and the Lessee takes the Premises for the Term subject to the Lessee obeying the Lessee's Covenants.

3 LESSEE'S COVENANTS

The Lessee covenants with the Lessor as follows:

3.1 Rent

To pay the Rent (free from all deductions) at the times mentioned in the Schedule to the Lessor at its address or as the Lessor may direct in writing from time to time. The Lessor shall only use the Rent for costs associated with the structural repair and maintenance and capital improvements to the Premises, loan repayments and interest associated with the Premises and if determined by the Lessor, related community services.

3.2 Rent Reviews

On each Rent Review Date the Rent shall be reviewed and in calculating the Rent Payable from each Rent Review Date the following will apply;

- (a) On each rent Review Date the Rent Payable from the Rent Review Date is determined in accordance with the following formula:

$$\frac{\$A}{B} \times C = \text{Rent}$$

Where:

- A = the Rent payable by the Lessee for the 12 month period immediately prior to that Rent Review Date:
- B = the Consumer Price Index published for the quarter immediately preceding the Date of Commencement or the quarter immediately preceding the previous Rent Review Date (whichever is most recent): and
- C = the Consumer Price Index for the quarter immediately preceding the relevant Rent Review Date:
- (b) Until the Annual Rent from the Rent Review Date is agreed or determined the Lessee must pay to the Lessor a rental equivalent to the rent payable prior to the Rent Review Date.
- (c) The Lessee must pay the indexed Rent from the Rent Review Date on which it is to take effect. When the Lessor notifies the Lessee of the amount of the indexation, any necessary adjustment will be made on the day the Rent is next due.
- (d) For the purposes of this Clause, if the Consumer Price Index figure at any relevant date is no longer provided by the Australian Bureau of Statistics, the Lessor and the Lessee shall utilise such figures in place thereof as the Lessor shall reasonably determine being an index which is as near to the Consumer Price Index figure as reasonably possible. If any dispute arises between the parties with respect to that determination, that dispute shall be referred for determination to a person appointed by the President for the time being of the Law Society of Western Australia and that determination shall be final and binding on all the parties. That person shall be deemed to be acting as an expert and not as an arbitrator. The costs of that determination shall be borne by the parties in equal shares.

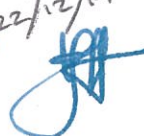
~~(e) Annual Viability Payment Review~~

~~To determine the Viability Payment component of the Proposed Rent, the Lessor shall require the Lessee to provide an income statement including profit and loss and a balance sheet and an audited annual financial statement no later than 31 March. The~~

22/12/14


~~Lessor will provide an invoice for the Annual Viability Payment component no later than 30 June.~~

Council Resolution 10634
of 21 October 2014

22/12/14


3.3 Interest on Overdue Moneys

Without prejudice to the Lessor's Powers the Lessee must pay to the Lessor on demand interest on any moneys due but unpaid by the Lessee, that interest to be computed from the due date for the payment of the moneys in respect of which the interest is chargeable until payment of those moneys in full and to be recoverable in the same manner as Rent in arrears. For the purpose of this clause "interest" means the then current rates per annum charged by the Lessor's principal trading bank on overdraft loans of less than \$100,000 plus 3%.


09/02/2015

3.4 Payment of Rates and Taxes and Outgoings

To duly and punctually pay:

- (a) all Rates and Taxes to the Lessor or if the demand is made to the Lessee by any statutory authority, then to that authority, on demand, in full all Rates and Taxes separately assessed or imposed by any statutory authority solely in respect of the Premises;
- (b) to the Lessor or if the demand is made to the Lessee by any authority, then to that authority, on demand, in full all Outgoings separately assessed or imposed by any authority solely in respect of the Premises;
- (c) all charges and assessments associated with Services solely in respect of the Premises which charges, assessments and costs now are or during the Term shall be charged upon or in respect of the Premises or be payable by the owner or occupier in respect of the Premises at the respective days or times upon which those outgoings become due or payable;

provided that the Lessee's liability for those outgoings commence on the Date of Commencement subject to any proportionate payment, as is reasonably determined by the Lessor, of any charge, assessment or cost which is incurred, or has becomes payable, and is attributable to:

- (i) a period which includes the whole or any part of the Term together with a period outside the Term
- (ii) the whole or any part of either or both of the Land and the Premises, any other land or premises.

- (d) Where Rates and Taxes, Outgoings or Services are not separately assessed then to duly and punctually pay to the Lessor the Lessee's proportion.

3.5 Costs

To pay the Lessor on demand:

- (a) reasonable and proper costs (including solicitor's costs on a solicitor and own client basis) of or incidental to any breach or default by the Lessee under this Lease and in connection with the exercise or attempted exercise of any of the Lessor's Powers; and
- (b) all stamp duty (including all fines and penalties) assessed in respect of this Lease.

3.6 Maintain and Repair Premises

- (a) Generally

To maintain, repair and keep the Premises including all gardens and parking areas and all additions to the Premises installed by the Lessee including (without limitation) the external and internal surfaces, entrances floors, glass plate, glass windows, flooring, floor coverings, partitions, fire sprinkler system fixtures, air-conditioning plant and equipment, toilet accommodation, all water sewerage and electrical installations and exterior signs and also all other permanent fixtures and fittings in good and substantial repair order and condition. Damage by earthquake, aircraft, riot, civil commotion, fire, lightening, storm, tempest and reasonable wear and tear excepted (unless the damage is caused by the neglect, default or misconduct of the Lessee or the Lessor's insurances are invalidated by an act, neglect or default or the Lessee or its customers) PROVIDED THAT this clause does not impose on the Lessee any obligation in respect of any structural maintenance, replacement or repair except when made necessary by any act, neglect, default or omission on the part of the Lessee or by the Lessee's particular use of the Premises. The Lessee shall provide written advice to the Lessor of any repairs or maintenance identified by the Lessee and the Lessor shall provide advice within 7 days where practical and when required by the Lessee for repairs and maintenance to the Premises.

- (b) Cleaning, Rodent Control, Nuisance

At the Lessee's own expense to:

- (i) keep and maintain the premises and the sumps and drains well cleaned and drained and in good sanitary condition and properly disinfected;

- (ii) remove from the Premises all rubbish, trade waste, carton boxes, produce containers or accumulation of useless property remaining on the Premises or in the immediate surroundings, being within a 3 metre radius of external fence line and car park areas;
- (iii) not leave any rubbish bins or other containers outside the Premises;
- (iv) take any action necessary to keep the Premises free from rodents and vermin and from time to time employ pest exterminators for that purpose;
- (v) not cause or permit a nuisance or anything in the nature of or which may be deemed to be a nuisance by the Lessor or any properly constituted authority or within the meaning of any Act relating to the Premises to arise or continue upon or in connection with the Premises; and
- (vi) forthwith abate any nuisance.

(c) Carpets

Not without the prior written consent of the Lessor to use or permit the use of casters or rollers on any chairs or other furniture upon carpeted areas of the Premises except where the carpet is protected by rubber or other protective mats and to make good or be responsible for any expenses relating to the making good or replacement and relaying of carpet damaged by the use of casters or rollers on unprotected carpet surfaces.

(d) Window Treatments

Not without the prior written consent of the Lessor (which consent may not be unreasonably withheld) to install any form of window treatment to the windows of the Premises either in addition to or in replacement of the existing curtains/blinds until those window treatments have become worn or damaged.

(e) Air-conditioning Plant

The Lessee shall engage properly qualified contractors under maintenance agreements to regularly check, repair and replace parts and maintain the Airconditioning Plant in good and efficient working order. Replacement of compressors and motors to air conditioning plant shall be the responsibility of the Lessor.

(f) Maintenance of Lessor's Plant and Equipment

The Lessee must:

- (i) maintain the Lessor's plant and equipment on the Premises in good condition and replace any damaged items excepting fair wear and tear and damage caused by an event which is

the subject of an insured risk which the Lessor has insured against, but if payment of the insurance money in respect of that damage is refused or reduced by reason of a default of the Lessee, the Lessee must in respect of that damage maintain the Lessor's plant and equipment in the Premises in good condition to the extent that payment of that insurance money is refused or reduced, except that the Lessee's obligation is reduced to the extent that payment of insurance money under the Lessor's insurance policy is refused or reduced by reason of an act or default of the Lessor;

- (ii) if the Lessee is liable to replace any of the Lessor's plant and equipment in the Premises, replace that Lessor's plant and equipment with an item of similar quality, colour and design and carry out the replacement to the satisfaction of the Lessor.

3.7 Use of Premises

- (a) Generally

Not to use or permit the Premises to be used as the residence or sleeping place (except where permitted under the specified Use of Premises) of any person or for auction sales but to use the Premises only for the purpose mentioned in the Schedule and for no other purpose whatsoever.

- (b) Offensive Activities

Not to carry on or permit any person to carry on in the premises any noxious noisome or offensive act, trade, business, occupation or calling or any act, matter or thing whatever which may cause nuisance, damage or disturbance to the Lessor or occupier of any building in the neighbourhood.

- (c) Lavatories etc

Not to use or permit the lavatories, toilets, sinks and drainage and other plumbing facilities in the Premises to be used for any purpose other than for which they were constructed or provided and any damage caused by misuse of those facilities must be immediately made good by and at the cost of the Lessee.

- (d) Chemicals etc

Not to use or store or permit to be used or stored more than ten (10) litres of any toxic chemicals or inflammable gases, fluids or substances in the Premises.

(e) Signs

Not without the prior written consent of the Lessor (which consent may not be unreasonably withheld) to construct, display, affix or exhibit on or to the exterior of the Premises any signs, lights, embellishments, advertisements, names or notices visible from outside the Premises.

(f) Floor Overloading

Not to do or permit to be done upon the Premises anything which would result in excessive strain or floor loading to any part of the Premises except to those parts of the Premises designated in writing by the Lessor.

(g) Airconditioning Plant

To comply with and observe the reasonable requirements of the Lessor in regard to the Airconditioning Plant and not to do or permit to be done anything which might interfere with or impair the efficient operation of the Airconditioning Plant including (without limitation) equipment which may place a demand on the Airconditioning Plant beyond its designated limits.

(h) Security of the Building

Security of the building is provided by the hard wired alarm system and it is the Lessee's responsibility to ensure the system is armed at all times that the building is unoccupied. The Lessee may engage a security firm to provide additional security services, such as drive by surveillance or back to base alarm services available from the building alarm system at the cost of the Lessee. If the building is used by community groups in accordance with the lease conditions, the Lessee must ensure that building security and alarm systems are properly activated and that keys are promptly returned by hirers.

3.8 Entry by Lessor and Others

To permit the Lessor or any person authorised by the Lessor to enter the Premises at reasonable times after giving the Lessee reasonable written notice of entry, or on demand in the case of emergency, with or without work crews and others, and with or without plant, equipment and materials to:

- (a) inspect the state of repair of the Premises and to ensure that there is no breach of the Lessee's covenants;
- (b) maintain or repair the Premises;

- (c) maintain, repair or alter any services or any cables, pipes or wires within the Premises;
- (d) carry out structural alterations to the Premises or other works required by a statutory authority;
- (e) rebuild the Premises or any part damaged;
- (f) maintain, service, install or remove any plant and equipment;
- (g) remove harmful substances;
- (h) comply with any requirement, notification or order of an authority having jurisdiction or authority over or in respect of the Premises for which the Lessee is liable under this Lease;
- (i) view the Premises with persons having or seeking an interest in the Premises or any part of the Premises, financiers, insurers and other similarly interested persons; and
- (j) affix re-letting signs or notices to the Premises during the last three (3) months of the Term and the Lessee covenants that it will not remove, damage or obscure such signs or notices or allow or cause such signs or notices to be removed, damaged or obscured.

The Lessor must use its best endeavours not to cause any undue inconvenience to the Lessee.

3.9 Alterations and Installations

(a) Generally

Not to make or permit to be made to the Land or the Premises any additions or attachments or additional fixtures or installations or carry out any improvements or repairs (only those repairs for which the Lessee is responsible), or any alterations or external projection or any structural alteration or to cut, maim or injure any of the principal structure or walls without the prior written consent of the Lessor (which consent may not be unreasonably withheld).

(b) Plant and Equipment

Not to make any alterations or additions to any plant, equipment, fixtures or fittings forming part of the Premises (including any Airconditioning Plant, electrical fittings, plumbing, fire warning or prevention systems or security systems) without the prior written consent of the Lessor (which consent may not be unreasonably withheld) and where in setting up any fixtures or fittings in the

Premises it is necessary or desirable to make alterations or additions to or otherwise affect the performance of any plant, equipment, fixtures or fittings forming part of the Premises the work will only be done under the supervision of the Lessor's architect or other authorised persons or consultants approved by the Lessor (which approval may not be unreasonably withheld) and to pay all reasonable fees incurred by the Lessor in inspecting or supervising the work (including issuing approvals and arranging contracts) and on expiry or earlier termination on the Term should the Lessor so request to reinstate and restore the Premises as are consistent with the Lessee's Covenants to its original state so much of the Premises as may have been altered, added to or removed by the Lessee pursuant to the terms of this clause.

(c) Fixtures and Fittings

To repair and make good any damage which may be caused to the Premises by the installation or removal by the Lessee of any fixtures or fittings supplied and fitted by the Lessee on behalf of the Lessee only being such fixtures and fittings that the Lessor has provided prior written consent for the installation or removal (which consent may not be unreasonably withheld).

3.10 To Report Certain Matters to the Lessor

(a) Broken Glass and Equipment

To immediately report to the Lessor any breakage of glass and exterior windows and all damaged or broken heating, cooling, lighting, gas or electrical equipment and plumbing installed upon the Premises.

(b) Defects

To give to the Lessor prompt notice in writing of any accident to or defect or want of repair in any plant or equipment in the Premises and of any circumstances likely to be or to cause any danger, risk or hazard to the Premises or any person in the Premises.

3.11 No Assignment

Not to assign, sublet, mortgage, charge or otherwise part with the possession of or dispose of the Premises or the benefit of this Lease without the prior written consent of the Lessor first had and obtained provided that:

(a) Consent Not Unreasonable Withheld to Sub-Lease

The Lessor may not unreasonably withhold its consent in respect of a sub-lease of the Premises (not inconsistent in its terms with any of the covenants, terms and conditions of this Lease) to a respectable, responsible and solvent person (the onus of proof of which shall be upon the Lessee).

- (b) If the Lessee wishes to assign the whole of the Premises and the benefit of this Lease the Lessor may not unreasonably withhold its consent to that assignment if:
- (i) the proposed assignee is a respectable, responsible and solvent person (the onus of proof of which shall be upon the Lessee);
 - (iii) the Lessee procures the execution by the proposed assignee of a deed of assignment of this Lease to which the Lessor is a party, prepared and completed by the Lessor's solicitors at the cost of the Lessee in all respects and the covenants and agreements on the part of any proposed assignee will be deemed to be supplementary to this Lease and will not in any way relieve the Lessee from its liability under this Lease;
 - (iv) all Rent and Outgoings then due or payable have been paid and there is not any existing unremedied breach of any of the Lessee's Covenants;
 - (v) the deed of assignment contains a covenant by the assignee with the Lessor that the assignee will at all times during the continuance of the Term duly observe and perform all the Lessee's Covenants; and
 - (vi) the Lessee pays to the Lessor all proper and reasonable costs, charges and expenses incurred by the Lessor of and incidental to the deed of assignment and any other enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility and solvency of any proposed assignee.

(c) Corporate Assignee or Sub Lessee

If the assignee or sub-lessee is a company (the shares in which are not listed on any Stock Exchange in Australia) then it is a condition of the Lessor's consent to any deed of assignment or sub-lease that the directors and the shareholders of that company guarantee to the Lessor:

- (i) in the case of an assignment the observance and performance by the assignee of the Lessee's Covenants; or

- (ii) in the case of a sub-lease the observance and performance by the sub-Lessee of the Lessee's Covenants excluding the covenant by the Lessee to pay the Rent and Outgoings.

(d) Deemed Assignment

For the purposes of this clause 3.11:

- (i) any change in the shareholders of any corporate Lessee; or
- (ii) where the Lessee has executed this Lease as the trustee of a trust and any change in the persons eligible to be beneficially entitled to the trust assets occurs, or the trust deed is amended to change or add to the persons or classes of persons defined as beneficiaries,

that change is deemed as assignment of the Lease and requires the prior consent of the Lessor in the manner referred to in this clause 3.11.

(e) Exclusion of Sections

Sections 80 and 82 of the Property Law Act 1969 are excluded from any assignment or sub-lease.

3.12 Trust

(a) Consent

Without the prior written consent of the Lessor the Lessee must not:

- (i) hold the Lessee's interest in this Lease on trust for any party other than pursuant to the trust (if any) described in the Schedule
- (ii) declare a trust of the Lessee's interest pursuant to this Lease;
- (iii) if the Lessor approves of a trust by the Lessee pursuant to the terms of this clause, vary, amend, alter or revoke the terms contained in any trust deed or add to or vary the beneficiaries thereunder; or
- (iv) distribute or join in the distribution of any or all of the capital of the trust or in any other way vest the trust.

(b) Deemed Assignment

Any declaration, amendment, alteration, revocation or distribution in terms of clause 3.12(a) is deemed to be an assignment to which the provisions of clause 3.11 apply.

3.13 Comply with Acts Etc

(a) Generally

Despite anything in or implied by this Lease to immediately comply with all Acts relating to the Premises or the use of the Premises provided that the Lessee shall not be under any liability in respect of any structural alteration required by any Act other than caused or contributed to be the Lessee's particular use of the Premises.

(b) Fire Regulations

In the positioning of partitions upon or within the Premises to comply with all Acts relating to fire detection and alarm and to pay to the Lessor the cost of effecting any alterations to the thermal detectors or other fire alarm installations which may be required or necessary to comply with any act or the requirements of the Fire and Accident Underwriter's Association, the Insurance Council of Australia and the Fire Brigades Board of Western Australia.

3.14 Insurance

(a) Building Insurance

The Lessor shall pay all premiums for insurance of the Premises for the full replacement value under a reinstatement or like policy against loss or damage by fire, fusion, explosion, smoke, lightning, storm, tempest, rainwater, earthquake, riot, civil commotion, malicious damage, aircraft and articles dropped from them and all the usual and necessary risks which an owner can and does insure including in respect of such insurance all architects and other consultants fees and the cost of demolition and removal of debris.

In addition, the Lessor holds bank guarantees from the construction contractor for any building defects related to the construction defects period (expiring 21 December 2007) under the construction contract.

(b) Other Insurance

At the Lessee's expense to affect and at all times maintain with a public insurance office approved by the Lessor (which approval may not be unreasonably withheld) on behalf of the Lessee and the Lessor for their respective rights and interest:

- (i) a policy to cover the Lessee's fixtures, plant and equipment and stock in the Premises for their full value in respect to loss from burglary, damage by fire, fusion, explosion, smoke, lightning, storm, tempest, rainwater, civil commotion, malicious damage, impact by vehicles, sprinkler leakage, water damage, aircraft and articles dropped from aircraft and other risks against which in the opinion of the Lessor from time to time a tenant should ordinarily insure;
- (ii) workers compensation and employer's indemnity insurance in respect of the Lessee's employees;
- (iii) a policy to cover all (if any) plate glass in the Premises against damage or destruction to the full value thereof;
- (iv) a public liability policy with a cover of not less than \$10,000,000 or any greater sum as the Lessor from time to time specify in respect of any one occurrence; and
- (v) any other policy of insurance which the Lessor acting reasonably may from time to time require the Lessee to effect and maintain with an amount of cover as may reasonably be specified by the Lessor.

All moneys recovered in respect of any insurance under paragraphs (i) and (iii) above shall be immediately expended by the Lessee in the satisfaction, reinstatement or replacement of those items for which those moneys are received to the extent that those moneys are sufficient for that purpose and the Lessee must make up any deficiency from the Lessee's own moneys. The Lessee must obtain the Lessor's prior written approval (which approval may not be unreasonably withheld) regarding the manner in which the satisfaction, reinstatement or replacement of items is to be achieved.

Not later than seven (7) days prior to the date for payment specified in the first premium notice or demand received in respect of the insurances the Lessee must pay all premiums in respect of the insurances to be effected and maintained by the Lessee as provided in this Lease and on demand must produce evidence of the policies and of the renewal of the policies as the Lessor may from time to time require.

3.15 Not to Invalidate Insurance

Not to do or permit any act, matter or thing upon the Premises or bring or keep anything on the Premises which could cause the insurances required to be taken out by the Lessee or taken out by the Lessor to be voided or

which could cause the rate of premium on those insurances to be increased and the Lessee will pay all additional premiums of insurance on the Premises (if any) required on account of the additional or increased risk caused by the use to which the Premises are put by the Lessee.

3.16 Indemnities Etc

(a) General

To the extent that the terms and conditions of any insurances effected by the Lessee or any moneys paid to the Lessor out of insurances effected by the Lessee do not fully indemnify the Lessor from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor becomes liable in respect of all or any of the matters referred to in paragraphs (i) (ii) and (iii) of this sub-clause and except to the extent caused or contributed to by the negligence or act, default or omission of the Lessor or its servants, agents or contractors to indemnify and keep indemnified the Lessor from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor shall or may be or become liable in respect of all or any loss or damage to property or death or injury to any person that:

- (i) is caused or contributed to by the use of occupation of the Premises;
- (ii) results from any act, default or omission by the Lessee hereunder;
- (iii) results from any notice, claim or demand to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease.

(b) Loss of Water Overflow or Leakage

Without limiting the generality of clause 3.16(a) of this clause to indemnify the Lessor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor becomes liable in respect of or arising from the overflow or leakage of water or other fluids in or from the Premises except to the extent that the same is caused or contributed to by the negligence of the Lessor.

3.17 No Absolute Caveat

Not to lodge an absolute caveat over the Land or any part of the Land to protect the interest of the Lessee under this Lease and the Lessee irrevocably appoints the Lessor (and where the Lessor is a corporation then every manager and other officer of the Lessor for the time being

authorised in that behalf by the Lessor jointly and severally) to be true and lawful attorney for the Lessee in his name and on his behalf to execute and to lodge at the Office of Titles, Perth a withdrawal of any absolute caveat and, upon the expiration or sooner determination of the Term, to execute and lodge at the Office of Titles, Perth a withdrawal of any "subject to claim" caveat lodged by the Lessee and the Lessee ratifies and confirms and agrees to ratify and confirm all that the attorney does or causes to be done under this clause and will pay the Lessor's costs and expenses of and incidental to the withdrawing of any caveat lodged by or on behalf of the Lessee affecting the Land as provided by this clause.

3.18 Not to Cause Rent Reduction

Not to do or fail to do anything which could directly or indirectly reduce the Rent or impose on the Lessor any liability of the Lessee under this Lease.

3.19 Yielding Up

(a) Generally

Upon the expiration or sooner determination of the Term to peaceably surrender and yield up to the Lessor the Premises clean and free from rubbish and in good and substantial repair and condition in accordance with the Lessee's Covenants.

(b) Removal of Lessee's Fixtures

At or prior to the determination or termination of the Term to:

- (i) remove from the Premises all signs, fixtures, fittings, plant, equipment or other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than Airconditioning Plant and fire equipment, walls, basins, lavatories, shop fronts, plumbing and electrical equipment and other fixtures and fittings which in the reasonable opinion of the Lessor form an integral part of the Premises) and the Lessee must immediately following that remove and make good to the reasonable satisfaction of the Lessor any damage which may be occasioned by that removal; and
- (ii) if required by the Lessor re-alter any alterations (whether structural or otherwise) made to the Premises during the Term so that the Premises are restored to their condition as at the Date of Commencement. Any fittings, fixtures, plant, equipment and furnishings not removed by the Lessor after the expiration or other termination of this Lease will be deemed to have been abandoned by the Lessee and will become the property of the Lessor without any right by the

Lessee to make any claim whatever against the Lessor in respect of them.

4 LESSOR'S COVENANTS

Subject to this Lease and the Lessee observing and performing the Lessee's Covenants, the Lessor covenants with the Lessee that the Lessee may peaceably possess and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by, from or under the Lessor.

5 MUTUAL AGREEMENTS

The Lessor and the Lessee mutually agree as follows:

5.1 Default by Lessee

If:

- (a) the rent or other moneys payable by the Lessee under this Lease are not paid within seven (7) days after becoming due (whether formally demanded or not); or
- (b) the Lessee breaches any of the Lessee's Covenants and the breach continues for fourteen (14) days after notice has been served on the Lessee by the Lessor; or
- (c) the Lessee being a company goes into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) and/or a receiver or a manager is appointed; or
- (d) any mortgagee of the Lessee's property enters into possession of the Premises; or
- (e) any execution or process is made against the property of the Lessee; or
- (f) the Lessee being a natural person shall commit an act of bankruptcy; or
- (g) the Lessee abandons or vacates the Premises,

then and in any such cases (but subject to the Bankruptcy Act 1966) the Lessor may at its opinion at any time after the event and without any notice or demand enter and repossess the Premises and as a result of that the Term and the estate and interest of the Lessee in the Premises will immediately determine but without prejudice to any other of the Lessor's Powers and without releasing the Lessee from liability in respect of the Lessee's Covenants.

5.2 Damages for Breach of Essential Term

The covenants by the Lessee contained or implied in:

- (a) clause 3.1, 3.2, 3.3, 3.4 and 3.5 to pay the Rent, Rates and Taxes, Interest Costs and Outgoings; and
- (b) clause 3.7 to use the Premises only for the purpose described in that clause; and
- (c) clause 3.11 and 3.12 not to assign, sub-let or mortgage the Premises except as provided in those clauses,

are essential items of this Lease and the breach, non-observance or non-performance of any one or more of those covenants is deemed to be a fundamental breach of the provisions of this Lease by the Lessee. The presence of this clause in this Lease does not mean that there are no other essential terms in this Lease. Without prejudice to any other of the Lessor's Powers should the Lessor pursuant to clause 5.1 terminate the Term following a fundamental breach, the Lessee covenants with the Lessor (and agrees with the Lessor that this covenant will survive the determination of the Term) that the Lessor will be entitled to recover from the Lessee liquidated damages for that breach being the difference between:

- (i) the aggregate of the Rent, Rates and Taxes and Outgoings which would have become payable by the Lessee to the Lessor if this Lease had expired by effluxion of time calculated at the rate payable at the date of determination (less a rebate in respect of instalments of Rent, Rates and Taxes and Outgoings (calculated as a foresaid) not then accrued or due to be ascertained by applying a rate of 10% per annum to each instalment over the period by which the date for payment is brought forward by this clause) together with any costs and expenses incurred by the Lessor or which the Lessor reasonably estimates are likely to be incurred by the Lessor as a result of such breach including the cost to the Lessor of reletting or attempting to relet the Premises; and
- (ii) the aggregate of the Rent, Rates and Taxes and Outgoings which the Lessor by taking proper steps to relet the Premises obtains or could reasonably be expected to obtain by reletting the Premises after the determination to the date this Lease would have expired by effluxion of time provided that in doing so the Lessor will not be required or obliged to offer or accept in respect of the reletting terms, covenants, conditions or stipulations which are the same or similar to the terms, covenants, conditions or stipulations contained or implied in this Lease.

5.3 Holding Over

If the Lessee remains in possession of the Premises after the expiration of the Term with the consent of the Lessor, then the Lessee will be a monthly tenant of the Lessor at a rent equivalent to the Rent payable by the Lessee at the expiration of the Term and otherwise on the same terms and conditions as this Lease. Any holding over may be terminated by either party first giving one month's written notice to the other party of its intention to so determine.

5.4 Lessee's Obligation's at Risk and Expense of Lessee

Whenever the Lessee is obliged or required by this lease to do or effect or omit to do anything then the doing or the omission to do (as the case may be) of that thing will (unless this Lease otherwise provides) be at the sole risk and expense of the Lessee.

5.5 Abatement of Rent

If the Premises during the Term are destroyed or so damaged as to render the Premises unfit for occupation or use then (unless the damage or destruction was caused by an act or default of the Lessee or any insurance policy in respect of the Premises has been forfeited or payment of any policy moneys refused in consequence of any act or default of the Lessee) the Rent and Outgoings or a fair and just proportion according to the nature and extent of the damage sustained will from the date of the damage or destruction and until the Premises are reinstated and made fit for occupation and use be suspended and cease to be payable and any dispute concerning this provision shall be determined by a single arbitrator in accordance with the provisions of the Commercial Arbitration Act 1985 PROVIDED THAT the Rent and Outgoings must be paid by the Lessee until the date of the award of the arbitrator or agreement between the parties (whichever is the earlier) whereupon the Lessor will refund to the Lessee any Rent and Outgoings overpaid by the Lessee. Either party may be represented by his solicitor or other legal representative in any arbitration proceedings.

5.6 Destruction of the Building

If during the Term the Premises are destroyed or substantially damaged so as to require rebuilding or reconstruction of the Premises either party may by notice in writing to the other terminate this Lease as from the date of the giving of such notice without prejudice to any rights in respect of any antecedent breach by the other of any of the covenants in this lease PROVIDED THAT the Lessee may only terminate the Lease if the Lessor has failed to rebuild or reinstate the Premises within a reasonable time of being requested to do so by the Lessee.

5.7 Acceptance of Rent Not to Prejudice Lessor's Right

Demand for or acceptance of Rent by the Lessor after default by the Lessee under this Lease (other than on the grounds of non-payment of that Rent) will be without prejudice to the exercise by the Lessor of the Lessor's Powers and will not operate as an election by the Lessor either to exercise or not to exercise any of the Lessor's Powers.

5.8 Lessor May Remedy Lessee's Default

If the Lessee fails to obey the Lessee's Covenants then without prejudice to any of the Lessor's Powers the Lessor may (but is not obliged to) pay the money or to do the thing required to be done as if it were the lessee and for that purpose the Lessor may without regard to the Entry Qualifications enter upon the Premises for the purpose of doing that thing and any moneys expended by the Lessor will be repayable by the lessee to the Lessor upon demand.

5.9 Waiver

No waiver by the Lessor of any of the Lessee's Covenants will operate as a waiver of another breach of the lessee's Covenants.

5.10 Notices

Any notice required to be served under this Lease will be sufficiently served on the Lessee if left on the Premises or forwarded to the Lessee by security post to the registered office of the Lessee and will be sufficiently served on the Lessor if addressed to the Lessor and sent by security post to the Lessor's registered office for the time being and a notice sent by post will be deemed to be given at the time when it ought to be delivered in due course of post unless the contrary is shown.

5.11 Easements

The Lessor may for the purposes of the provision of public or private access to and egress from the Land or support of structures erected on or from adjoining lands or services including water, drainage, gas and electricity supply and telephone and electronic communications or services grant rights of support or enter into any arrangement or agreement with any of the owners, lessees, tenants or occupiers or others interested in any land adjacent or near to the Land and Premises or with any public authority as the Lessor thinks fit and it may likewise for this purposes dedicate, transfer, grant or create any land easement or privilege in favour of any person over or affecting the Premises or the Land or both and this Lease will be subject to any of those agreements, arrangements, rights, easements or privileges that in exercising its rights under this clause the Lessor must not interfere with the Lessee in its use and occupation of the Premises.

5.12 Lessor Not Liable to Third Parties

Except to the extent that any loss or damage or injury is caused by the Lessor the Lessor will not be responsible for the loss of or damage or injury to any person or property of the Lessee or any other person in or about the Land or the Premises however occurring.

5.13 Severance

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

5.14 Act by Agent

Anything which the Lessor is required or empowered to do under this Lease may be done by the Lessor or the solicitor, agent, contractor or employee of the Lessor.

5.15 Exercise of Powers

The Lessor may exercise the Lessor's Powers despite any laches, neglect or previous waiver by the Lessor in respect

5.16 Statutory Powers

The Powers conferred by or under any Acts are (except to the extent inconsistent with the terms and provisions expressed in this Lease) in addition to the Lessor's Powers.

5.17 Proper Law

The Lease is governed by the law of Western Australia.

5.18 Effect of Execution

This Lease is binding upon each person who has executed it notwithstanding:

- (a) the failure of any person named as a party to execute it;
- (b) the avoidance or unenforceability of any part of this Lease; or
- (c) the avoidance of unenforceability of this Lease or any part of the Lease against any signatory or intended signatory.

5.19 Additional Terms Covenants and Conditions

All (if any) the additional terms, covenants and conditions contained in the Schedule are incorporated into and apply to this Lease.

6 RENEWAL OF TERM

If the Lessee desires to renew the term and gives to the Lessor notice in writing not earlier than six (6) calendar months but no later than three (3) calendar months prior to the expiration of the Term and if at the time of giving that notice and at the expiration of the Term there is no outstanding breach or non-observance of any of the Lessee's Covenants and if in the meantime the Lessor's right of re-entry has not otherwise arisen then the Lessor must at the cost of the Lessee grant to the Lessee a renewal of the Term for the further period specified in the Schedule and otherwise on the same terms and conditions contained in this Lease (other than this right of renewal).

7 WHOLE OF AGREEMENT

The Lessee acknowledges and declares that in entering into this Lease the Lessee has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Lessor in respect of the suitability of the Premises.

8 MORATORIUM NEGATIVED

The application to the Lease of any moratorium or other Act whether State or Federal having the effect of extending the Term, reducing or postponing the payment of the Rent, reserved or otherwise effecting the Lessee's Covenants or providing for compensation, rights or privileges at the expense of the Lessor in favour of the Lessee or any other person is expressly excluded and negatived.

The Schedule

Item 1

Land: The land known as Kununurra Child Care Centre being Lot 77 Portion on Deposited Plan P28729 the whole of the land in Certificate of Title Volume LR3124 Folio 509 Reserve Number R29799 Portion.

Item 2

Premises: The section of Lot Number 77 Portion as outlined on the plan annexed to this Lease

Item 3

Term: Five (5) YEARS

Date of Commencement: 17 July 2007

Date of Expiration: 17 July 2012

Item 4

Term of Renewal: Five (5) YEARS

Item 5

Rent:


\$10,500.00 (plus applicable CPI increase) per annum payable in advance monthly or annually from the first day of each year during the Term (except the first and last payment which if necessary will be proportionate) with the first payment being payable on the Date of Commencement of the Term. ~~In addition, the Viability Payment component will be payable annually at the completion of the second year of the Term.~~

Council Resolution 10634
of 21 October 2014

09/12/14


Item 6

Use of Premises: Child Care Services in accordance with West Australian and Australian Commonwealth legislation and including long day care, occasional care, before and after school care and vacation care. Additional community uses in accordance with the lease conditions.


09/02/2015

Item 7

Rent Review Dates:

CPI Rent Review Dates: 30 June annually

~~Viability Payment Review Dates: 31 March annually from 2009, being the second year of the Term.~~

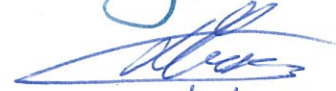
12/12/14

Council Resolution 10634
of 21 October 2014



Item 8

Public Risk/Public Liability Insurance: Ten Million Dollars (\$10,000,00)


09/02/2015

Item 9

Outgoings:

"Outgoings" means all outgoings, costs and expenses of the Lessor, including Rates and Taxes assessed, charged, payable or incurred in respect of the Land or premises and the Lessee's liability for any outgoings is outlined in the appendix annexed to this Lease.

EXECUTED as a DEED

The COMMON SEAL of the)
SHIRE OF WYNDHAM EAST KIMBERLEY)
was hereunto affixed in the presence of:)



Mucci

President

Russell

Chief Executive Officer

The COMMON SEAL of the)
EWIN CENTRE CHILDREN'S SERVICES)
INCORPORATED)
was hereunto affixed in the presence of:)



Chairperson

M. G. G.

Vice Chairperson

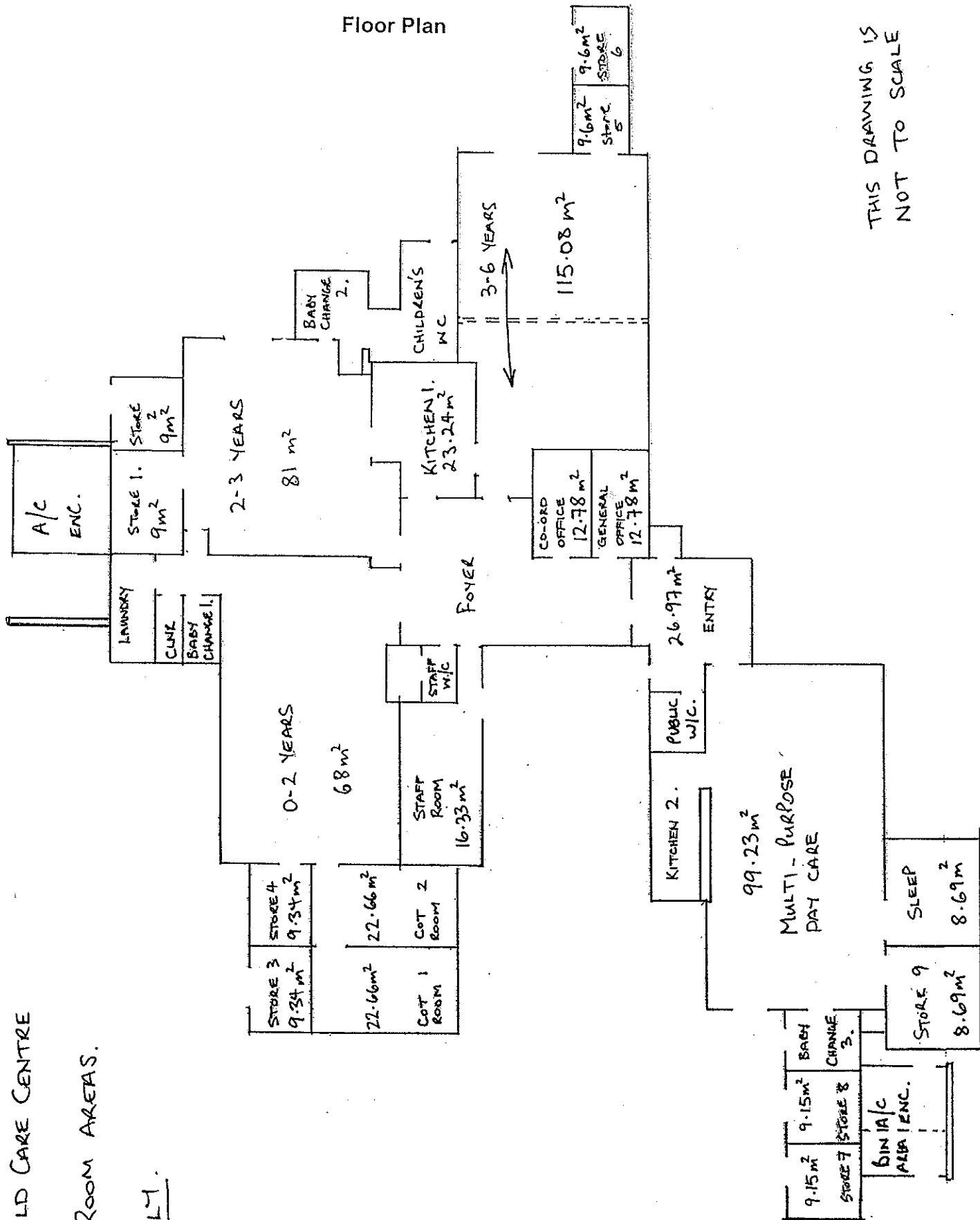
Gullimore

KUNUNURRA CHILD CARE CENTRE

FLOOR PLAN - ROOM AREAS.

INDICATIVE ONLY.

Floor Plan



THIS DRAWING IS NOT TO SCALE



LEGEND

 LEASE AREA

SCALE = 1 : 250



**KUNNURRA CHILD
CARE CENTRE LEASE**



Shire of
Wynndham East Kimberley