

Lease

Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 446 Collins Street, Melbourne (DX 217)

Ref: A60082 (Westmore Initial Lease)

Customer Code: 1608A

The Lessor leases to the Lessee the land for the term and yearly rental specified subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this lease and subject to the covenants and conditions contained in this lease.

Land: *(volume and folio reference)*

Volume 9520 Folio 747.

Lessor: *(full name)*

Kenneth John Westmore

Lessee: *(full name and address including postcode)*

ALMOND LAND PTY LTD ACN 091 460 392 Level 8, 461 Bourke Street, Melbourne, Victoria, 3000

Term: *(number of years, or commencement to completion date)*

From the Commencement Date to 1 July 2029.

Commencement date:

March 2006

Rental:

\$1.00 per annum

Covenants: *(set out any further covenants and conditions and the extent (if any) to which the covenants and powers implied under the Transfer of Land Act 1958 are to be negated or modified)*

As appears from the annexure of 11 pages, making 12 in total

Dated: March 2006

The signing clauses for the Lessor and the Lessee are on the annexure pages

ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 2 of *Approved Form 26 (Lease)* dated March 2006 between KENNETH JOHN WESTMORE and ALMOND LAND PTY LTD ACN 091 460 392

Signatures of the parties:

Kenneth J Westmore

For and on behalf of Almond Land Pty Ltd

Panel Heading

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Lease, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

GST:	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Land:	as described on the first page of this lease;
Rent	As set out on the first page of this Lease, and that amount is a GST exclusive amount; and
Term:	as set out on the front page of this Lease.

1.2. Interpretation

In this Lease, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;

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330056A

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For and on behalf of Almond Land Pty Ltd

- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Lease;
- (i) if a party comprises two or more persons, this Lease binds them jointly and each of them severally; and
- (j) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be read as if the expression "(but not limited to)" immediately followed such word.
- (k) headings are for convenience only and do not affect the interpretation of this Lease

2. CAPACITY OF THE LESSEE

2.1. The parties acknowledge that the Lessee has entered into this Lease in its personal capacity.

3. RENT PAYMENTS

3.1. The Lessor acknowledges that the whole of the Rent for the lease term has been prepaid.

4. RATES, TAXES AND CHARGES

4.1. The Lessee must pay all charges and assessments levied upon the Land and or the Lessor in respect of the Land, including, but not limited to:

- (a) local authority rates;
- (b) water and sewerage rates; and
- (c) State and other land tax.

BUT should the Lessee fail to pay any such amounts, the Lessor is not thereby entitled to re-enter or to determine this lease.

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For and on behalf of Almond Land Pty Ltd

5. USE OF LAND

- 5.1. The Lessee, and persons claiming through or under the Lessee, may use the land for any purpose. While the Lessee warrants that the Land is not intended to be used for any illegal purpose, such use does not invalidate this lease or create a right of re-entry in the Lessor...

6. GOVERNMENT REQUIREMENTS

- 6.1. The Lessee must comply with all statutes, ordinances, orders or regulations of any Commonwealth, State or local authority affecting or relating to the Land.

7. INSPECTION OF AND ENTRY TO THE LAND

- 7.1. The Lessor has no right of inspection or entry.

8. QUIET ENJOYMENT

- 8.1. The Lessee may, during the term of this Lease, possess the Land without interruption from the Lessor or any person claiming through it.

9. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

9.1. Assignment by Lessee

The Lessee may sell, transfer assign or sublet the whole or any part of its interest in this lease and the Land (whether legal or equitable) as and when and upon such terms as it sees fit without requiring the consent of the Lessor, or being required to notify the Lessor.

9.2. Lessee may mortgage its interest

The Lessee may mortgage, charge or otherwise encumber its estate or interest in this Lease at any time and from time to time and on such terms as it sees fit, without requiring the consent of the Lessor.

10. DEFAULT AND RE-ENTRY

10.1. Default by Lessee

There are no matters acts facts or circumstances which give a right of re-entry to the Lessor, other than expiry of the lease term.

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For and on behalf of Almond Land Pty Ltd

10.2. Re-entry by Lessor

The Lessor will have the right to re-enter the Land upon expiry of the Lease term and not otherwise.

10.3. Lessor discharged from obligations

Where the Lessor exercises its rights under clause 10.2, and upon re-entry by the Lessor, the Lessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Lessee under or by virtue of this Lease.

11. TERMINATION

This lease is not capable of being terminated other than by effluxion of time. That is, it will come to an end on 1 July, 2029.

12. PASSING OF RISK

12.1. The Lessee assume all risk of loss, damage or injury by fire or otherwise to person or the Land by reason of the condition of the Land or any plant, equipment, fixtures or fittings on the Land.

12.2. The Lessor accepts no risk of loss, damage or injury by fire or otherwise to person or the land by reason of the condition of the Land or any plant, equipment, fixtures or fittings on the Land.

13. LEGAL COSTS

13.1. Each party shall pay their own costs of and incidental to the preparation, execution, stamping and registration of this Lease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents (which shall be paid by the person who requires consent for the performance of their obligations).

14. NOTICES

14.1. Form of Notice

Any notice to be given under or in connection with this Lease must be in writing and may be signed by an authorised representative of the party giving the notice. The notice may be served by:

(a) hand delivery;

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For and on behalf of Almond Land Pty Ltd

(b) post or registered or certified mail, or

(c) fax,

to such address or fax number of the party to whom the notice is directed as the addressee may notify prior to such notice being given.

14.2. Receipt of Notice

Any notice will be effective and will be deemed to be received:

- (a) if hand delivered, then upon delivery;
- (b) if posted, then 48 hours after the notice has been properly posted if that falls on a business day; and if not, on the first business day afterwards; and
- (c) if sent by fax, then at the date and time of transmission as shown by the confirmation report from the sender's fax machine indicating that the notice has been received in full by the recipient's fax machine.

15. PROPER LAW

- 15.1. This Lease is governed by and to be interpreted in accordance with the laws of Victoria and the parties to this Lease submit to the non-exclusive jurisdiction of the courts of Victoria and courts of appeal from them for determining any dispute concerning this Lease or the transactions contemplated by this Lease.

16. SEVERANCE

- 16.1. This Lease, so far as possible, must be constructed to give validity to all of its provisions. Any provision found to be prohibited by law will be ineffective so far as it is prohibited without invalidating any other part of this Lease.

17. ENTIRE DEED

- 17.1. Each party acknowledges that this Lease is not entered into in reliance on any representation or warranty, expressed or implied, whether oral, in writing or contained in any brochure, advertisement or otherwise, except as may be specifically set out in this Lease.

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For and on behalf of Almond Land Pty Ltd

18. GST

- 18.1. If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Lease is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- 18.2. In addition to the GST Exclusive Amount for a taxable supply under this Lease, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate.
- 18.3. The GST payable under paragraph 18.2 is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Lease.
- 18.4. The right of a Supplier to payment under this clause 18 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- 18.5. If a payment to satisfy a claim or a right to claim under or in connection with this Lease, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 18.2.
- 18.6. If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Lease, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- 18.7. If a party has a claim under or in connection with this Lease for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- 18.8. If a party has a claim under or in connection with this Lease and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

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19. TRANSFER OF LAND ACT

- 19.1. To the extent permitted by law, all provisions implied by the *Transfer of Land Act 1958* are expressly excluded from this Lease and the lease granted under this Lease.

20. PROPERTY LAW ACT

- 20.1. The provisions of section 144(1) of the *Property Law Act 1958* do not apply to this Lease and the lease granted under this Lease.
- 20.2. The Lessee may at any time and from time to time, surrender this Lease, for the purpose of re-granting to the Lessee a lease for the then unexpired term on the same terms and conditions as this Lease, save and except that the leased area, if less than a whole folio of the Register shall be surveyed at the expense of the Lessee and any such surrender and re-grant shall expressly preserve the rights of sub-lessees and others created by the Lessee as described in Section 150 of the *Property Law Act 1958*.

EXECUTION BY THE PARTIES

SIGNED SEALED AND DELIVERED BY KENNETH JOHN WESTMORE in the presence of



Witness X



X

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Signatures of the parties:

Kenneth J Westmore

For and on behalf of Almond Land Pty Ltd

EXECUTED by ALMOND LAND PTY LTD by being signed by those persons who are authorised to sign for the company.

Director Full Name **Darren Lipton**

Usual Address **20 Bramerton Road, Caulfield 3162**

Director Full Name **Robert Hance**

Usual Address **53 North Road, Brighton 3186**

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