

Dated 201

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SHIRE OF NANNUP

and

(LESSEE'S NAME)

LEASE

(DESCRIPTION OF PREMISES)

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## LEASE

This Lease dated

200

**PARTIES** SHIRE OF NANNUP of Adam Street, Nannup, Western Australia (“the Lessor”)  
and  
The person or persons described in Item 1.1 of Schedule 1 (“the Lessee”)

### RECITALS

- A. The Lessor has the Lessor’s Interest in the Land.
- B. The Lessor has agreed to lease the Premises to the Lessee on and subject to the terms and conditions of this Lease.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

In this Lease, unless the context requires otherwise:

“**Building**” means the building or buildings and all other fixed improvements forming part of the Premises and includes any additions or alterations;

“**Commencement Date**” means the commencement date of the Term specified in Item 1.3 of Schedule 1;

“**CPI**” means the Consumer Price Index All Groups Index Numbers for Perth provided by the Australian Bureau of Statistics or if the basis upon which it is determined is substantially altered then such basis as the Lessor may reasonably determine to be as near to the Consumer Price Index previously referred to as is reasonably possible;

“**CPI Rent Review Date**” means each of the dates specified as such in Item 1.6 of Schedule 1;

“**GST**” means a tax, impost or other duty raised on the supply of goods and services and imposed by the Commonwealth of Australia or a state or territory of the Commonwealth of Australia;

“**Guarantor**” means the person or persons described in Item 1.8 of Schedule 1;

“**Land**” means the land described in Item 1.2 of Schedule 1;

“**Lessee**” if only one Lessee is a party means the Lessee and the executors, administrators and permitted assignees of the Lessee and if there are two or more Lessees parties means the Lessees and each of them and their and each of their executors, administrators and permitted assigns and if the Lessee or any of the Lessees shall be a corporation includes the successors and permitted assigns of the Lessee;

**“Lessor”** if only one Lessor is a party means the Lessor and the executors, administrators and assigns of the Lessor and if there are two or more Lessors parties hereto means the Lessors and each of them and their and each of their executors, administrators and assigns and if the Lessor or any of the Lessors shall be a corporation includes the corporation and its successors and assigns;

**“Lessor’s Interest”** means the Lessor’s interest in the Land which interest is described in Item 1.2 of Schedule 1;

**“Market Rent Review Date”** means each of the dates referred to as such in Item 1.6 of Schedule 1;

**“Premises”** means the premises described in Item 1.2 of Schedule 1 including all the Lessor’s fixtures and appurtenances;

**“Rate of Interest”** means the general maximum rate of interest charged from time to time by the Lessor on overdue or unpaid rates;

**“Rent”** means the Rent payable by the Lessee pursuant to this Lease;

**“Term”** means the term of this Lease as specified in Item 1.3 of Schedule 1 commencing on the Commencement Date and any shorter period in the event of the early determination of the Term.

## 1.2 Interpretation

In this Lease, unless the context indicates a contrary intention:

- (a) words suggesting the singular include the plural and vice versa;
- (b) words suggesting any gender include any other gender;
- (c) a reference to a day means any day, which is not a Saturday, Sunday or a public holiday;
- (d) reference to a person include a company, corporation, and unincorporated or incorporated association or statutory authority;
- (e) references to clauses, paragraphs, subparagraphs and Schedules are to clauses, paragraphs, and subparagraphs of, and schedules to, this Lease as amended from time to time in accordance with the terms of this Lease;
- (f) a document will be incorporated into and form part of this Lease if the parties sign the document and it is referred to in this Lease and a reference to such a document is to that document as amended from time to time in accordance with the terms of this Lease;
- (g) headings used for clauses, paragraphs, subparagraphs, Schedules and the table of contents are for ease of reference only and will not affect the interpretation of this Lease;
- (h) references to any Lease or instrument are to that Lease or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (i) references to laws include any modification or re-enactment of those laws, or any legislative provisions substituted for such laws, and all orders, local laws,

planning schemes, by-laws, regulations and other statutory instruments issued under those laws;

- (j) use of the words “includes” or “including” means without limitation, unless the contrary intention appears;
- (k) a reference to any body is:
  - (i) if that body is replaced by another organisation, deemed to refer to that organisation; and
  - (ii) if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes or objects as that body; and
- (l) all dollar amounts specified in this Lease are in Australian dollars.

## **2. LEASE**

### **2.1 Lease**

- (1) The Lessor grants a lease to the Lessee and the Lessee takes a lease of the Premises on and subject to the terms of this Lease.
- (2) Where the Land is Crown land and the approval of the Minister of Lands is required under the provisions of any relevant vesting or management order then the grant of a lease under subclause (1) is subject to that approval.

### **2.2 Term**

The Premises will be held by the Lessee as tenant for the Term commencing on the Commencement Date and expiring on the expiry date specified in Item 1.3 of Schedule 1 the Lessee paying therefore the Rent payable in the manner provided in this Lease.

### **2.3 Rent**

- (1) The Lessee shall pay to the Lessor:
  - (a) for the first year of the Term, the annual rent specified in Item 1.4 of Schedule 1;
  - (b) for the second and each subsequent year of the Term the annual rent varied pursuant to clauses 2.4 and 2.5.
- (2) The Rent shall be payable in the manner set out in Item 1.5 of Schedule 1.

### **2.4 Market Rent Review**

- (1) In calculating the Rent payable from a Market Rent Review Date the following shall apply:
  - (a) not less than 3 months prior to each Market Rent Review Date the Lessor shall give to the Lessee notice in writing of the annual rental proposed by the Lessor to become payable from that Market Rent Review Date (“the Lessor’s Proposed Rent”);

- (b) within 14 days after service of that notice on the Lessee (time being of the essence) the Lessee shall be entitled to give to the Lessor notice in writing disputing the amount of the Lessor's Proposed Rent and stating the amount which the Lessee considers to be the correct current market rent that should be payable from that review date ("the Lessee's Proposed Rent");
  - (c) if the Lessee does not give the notice referred to in paragraph (b) within the time specified in that paragraph (time being of the essence) then the Lessee shall be deemed to have accepted that the Lessor's Proposed Rent shall be the Rent payable by the Lessee to the Lessor on and from that Market Rent Review Date;
  - (d) if the Lessee gives the notice referred to in paragraph (b) within the time specified in that paragraph then the Lessor may accept the Lessee's Proposed Rent as the Rent payable by the Lessee to the Lessor on and from that Market Rent Review Date but unless notice in writing of such acceptance is given by the Lessor to the Lessee within 14 days after receipt by the Lessor of written notice of the Lessee's Proposed Rent then the Rent payable from that Market Rent Review Date shall be as determined by a Valuer nominated by the President for the time being of the Australian Institute of Valuers and Land Economists (Inc.) Western Australian Division at the request of the Lessor as the then Current Market Rent of the Premises;
  - (e) the Valuer appointed pursuant to paragraph (d) shall be deemed to be acting as an expert whose decision shall be final and binding on both the Lessor and the Lessee. Prior to determining the Current Market Rent of the Premises the Valuer shall afford each of the Lessor and the Lessee a reasonable opportunity to make a written submission. Any failure by either party to make such a submission shall not delay the Valuer's determination or otherwise affect any determination made. Upon completion of his determination the Valuer shall provide to the Lessor and the Lessee written reasons for his determination in which (without limitation) the Valuer shall specify the matters taken into account by the Valuer in reaching his determination and the weight given by the Valuer to each such matter. The cost of the Valuer's determination shall be borne by the Lessee unless the Current Market Rent so determined is less than the Lessor's Proposed Rent in which case those costs are to be borne equally by the Lessor and the Lessee.
- (2) Until the Rent from a Market Rent Review Date is agreed or determined the Lessee shall pay to the Lessor a rent equivalent to the Lessor's Proposed Rent. If the Rent agreed or determined from a Market Rent Review Date is less than the Lessor's Proposed Rent, then the difference between the Rent paid in respect of the period from the Market Rent Review Date to the date of such agreement or determination and the Rent which should have been paid for such period shall be applied by the Lessor against the moneys which next become due and payable by the Lessee to the Lessor pursuant to this Lease. If the annual rent agreed or determined from a Market Rent Review Date is more than the Lessor's Proposed Rent, then the difference between the rent paid in respect of the period from the Market Rent Review Date to the date of such agreement or determination and the Rent which should have been paid for such period, shall be paid by the Lessee to the Lessor on demand together with interest at the Rate of Interest calculated on a daily basis from the date on which each portion of such difference would have been payable if the Rent had been agreed or determined on the Market Rent Review Date until the date on which the same is paid.

- (3) Notwithstanding the failure by the Lessor for any reason to give the notice referred to in paragraph (c) of subclause (1) within the time specified in that paragraph, the right to give the notice and the effect of the notice shall remain in full force and effect as if it had been given within the specified time.
- (4) The Rent following the Market Rent Review Date shall never be less than the Rent immediately preceding the Market Rent Review Date.

## **2.5 CPI Rent Review**

On each CPI Rent Review Date the Rent 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 immediately preceding the relevant CPI Rent Review Date and the Consumer Price Index published for the quarter ending immediately prior to the preceding CPI Rent Review Date and in the case of the first CPI Rent Review Date the quarter ending immediately prior to the Commencement Date and in no case will the Rent be less than that payable prior to the relevant CPI Rent Review Date.

## **3. LESSEE'S OBLIGATIONS**

### **3.1 Rates and Taxes**

- (1) The Lessee shall punctually pay all rates, assessments, levies or taxes levied or assessed or to be levied or assessed by the Commonwealth, the State, the local government, any water supply authority, any sewerage authority or by any other authority whether statutory, governmental, or otherwise which:
  - (a) are at any time during the Term or any holding over to any extent charged on the Premises or on the Lessor in respect of the Premises or both; or
  - (b) arise out of or by reason of the method or kind of business carried on by the Lessee.
- (2) If any rates, assessments, levies or taxes referred to in subclause (1) are not levied or assessed in respect of the Premises, then the Lessee shall pay to the Lessor on demand a proportion of them, being the proportion that the area of the Premises bears to the area of the property the subject of the assessment or levy, as specified by the Lessor.

### **3.2 Services**

The Lessee shall punctually pay for all water, gas, electricity, telephone and other utility services which are either provided to or used on the Premises.

### **3.3 Maintenance**

- (1) The Lessee shall keep and maintain every part of the Premises and all lighting and electrical installations and all drainage, sewerage and septic systems and all other fixtures and fittings in good and substantial repair, order and condition.
- (2) The Lessee need not carry out repairs of a structural nature.
- (3) (a) Without derogating from the Lessee's obligation under subclause (1), the Lessee agrees, within 7 days after receipt of a property condition report from the Lessor, to sign and return the report noting any variations.



- (b) The property condition report when signed by the parties shall be taken to be a true and correct description of the Premises as at the date of the report.
- (c) If the Lessee fails to sign the property inspection report, noting any variations, and to return it to the Lessor within 7 days after receipt, then the property inspection report provided by the Lessor shall be taken to be a true and correct description of the Premises as at the date of the report.

### **3.4 Cleaning**

The Lessee shall keep and maintain the Premises well cleansed and drained in good sanitary condition and properly disinfected, free from rubbish, refuse and disused material of any kind and the Lessee shall observe, perform, discharge, execute and take such sanitary measures and precautions and subject to clause 3.21, construct such works and make such amendments, alterations and additions to the Premises at any time as shall during the term be required by or under any written law.

### **3.5 Make good damage**

At the Lessee's own expense from time to time the Lessee shall make good any breakage, defect or damage to the Premises or any adjoining premises or facilities or any other property caused by want of care misuse or abuse on the part of the Lessee or the Lessee's employees agents contractors invitees licensees sub-tenants or other persons claiming through or under the Lessee or otherwise occasioned by any breach or default of the Lessee under this Lease.

### **3.6 Repainting**

Without limiting the generality of clause 3.3, as often as is necessary in the reasonable opinion of the Lessor at the Lessee's own expense the Lessee shall paint, colour, varnish and paper to the reasonable satisfaction of the Lessor all such parts of the Premises as have been previously painted coloured varnished or papered.

### **3.7 Entry by Lessor to view and to repair**

- (1) The Lessee shall permit the Lessor, the Lessor's architects, agents and contractors at all reasonable times to enter into and upon the Premises in order to view and examine the state of repair, order and condition and to leave upon the Premises notice of any lack of repair, order, condition, neglect or defect for which the Lessee is liable and requiring the Lessee to make good the same within the time specified in the notice and the Lessee shall make good the same in accordance with the notice to the satisfaction of the Lessor.
- (2) The Lessee shall permit the Lessor, the Lessor's agents and contractors at all reasonable times and, in the case of emergency, at any time to enter into and remain upon the Premises with all necessary plant, equipment and materials to carry out any works or make any repairs or alterations or additions to the Premises.

### **3.8 Abatement of nuisances**

- (1) The Lessee shall not do or omit to do any act matter or thing which may be or be deemed to be a nuisance within the meaning of the Health Act or any other Act or under any planning scheme, local law or regulation applicable to the Premises or the use or occupation of the Premises by the Lessee and the Lessee will immediately abate any such nuisance or alleged nuisance.
- (2) The Lessee shall ensure that the Premises are not used in any manner which may be or become a nuisance, disturbance or annoyance to the quiet and comfort of any occupier of any premises in the vicinity of the Premises and on being required to do so by the Lessor or any employee or agent of the Lessor the Lessee shall immediately abate the nuisance, disturbance or annoyance.

### **3.9 Pests**

The Lessee shall keep the Premises free of ants, termites, rodents, pests and vermin.

### **3.10 No living in premises**

The Lessee shall not use or permit the use of any part of the Premises for living or sleeping or for any unlawful purpose.

### **3.11 Defacing**

The Lessee shall not mark, paint, drill, write on or in any way deface any wall, ceiling, floor, wood, stone or ironwork of the Premises unless permitted by this Lease.

### **3.12 Rubbish**

The Lessee shall not permit any rubbish or garbage to accumulate on the Premises unless confined in suitable containers which are located so as not to be visible to members of the public.

### **3.13 Disorderly behaviour**

The Lessee shall prevent disorderly behaviour and indecent language at the Premises.

### **3.14 Compliance with written laws**

The Lessee shall comply with, carry out and perform the requirements of the Local Government Act, the Health Act and any other Act, ordinance, town planning scheme, local law, regulation or written law or of any notice, requisition or order under a written law applicable to the Premises or the use or occupation of the Premises.

### **3.15 Permitted purpose and operation of lessee's affairs**

- (1) The Lessee shall use the Premises only for the purpose specified in Item 1.7 of Schedule 1 or for any other purpose first approved in writing by the Lessor.
- (2) The Lessee shall at all times conduct its affairs for the purpose specified in Item 1.7 of Schedule 1 in a first class businesslike and reputable manner and with due diligence and efficiency.

### **3.16 Insurances**

The Lessee shall, at the Lessee's expense, effect and keep current, with an insurance company approved by the Lessor the following insurances in relation to the Premises:

#### **(a) Public risk**

A policy covering public risk which will:

- (i) be in the name of the Lessee, the Lessor, the Lessor's agent, managers, employees, representatives and contractors and provide for a minimum cover of ten million dollars (\$10,000,000.00) for each accident, claim or event or such higher amount as the Lessor specifies; and
- (ii) extend to cover any liability for the death of, or injury to, any person or damage to any person's property sustained when such person is using or entering or near any entrance, passage, stairway, display or display window to into or of the Premises, or sustains the injury or damage as a result of an act or omission of the Lessee, its agent, licensee, employee or representative operating a business on or from the Premises, or sustains the injury or damage as a result of consuming food or drink supplied on or from the Premises or as a result of goods sold on or from the Premises; and
- (iii) require the insurance company and the Lessee to give the Lessor at least 30 days written notice before either cancellation of the policy or a reduction in its level or extent of cover; and
- (iv) contain a clause which provides that any claims made by any of the insured parties against any other will be treated as though the claimant were not an insured party and in such instances provide that the insurance company waives its right of subrogation; and
- (v) provide cover which is primary and not contributory with any policies effected by the Lessor or the Lessor's managers, agents, employees, representatives or contractors;

#### **(b) Glass**

a policy in the name of the Lessee and the Lessor covering the breakage of any glass on the Premises including any plate glass. The Lessee agrees that all money received under the insurance policy will be expended in reinstating the damaged glass. If such money is insufficient to meet the cost of the reinstatement the Lessee shall reinstate the damaged glass at its own expense to the Lessor's satisfaction;

#### **(c) Fittings and chattels**

a policy covering the Lessee's fittings, fixtures and chattels contained in or about the Premises for its full insurable value against loss or damage resulting from fire and extraneous risks including but not limited to water, storm and rainwater damage.

### **3.17 Evidence of insurance cover**

- (1) Before taking possession of the Premises, the Lessee shall deliver the insurance policies required under this Lease to the Lessor.

- (2) The Lessee shall give satisfactory evidence to the Lessor that the policies have been renewed within 7 days after the expiration of each policy term.

### **3.18 Not to void insurances**

The Lessee shall not at any time do or allow anything which may either render the insurances on the Premises or any part of it void or voidable.

### **3.19 Compliance with insurance regulations**

- (1) The Lessee shall comply with insurance, sprinkler and fire alarm regulations as they relate to the use of the Premises.
- (2) The Lessee shall pay to the Lessor the cost of any alterations to any sprinkler or fire alarm installation which may become necessary by reason of the non-compliance by the Lessee with the regulations of the Insurance Council of Australia or the requirements of the Lessor's insurer or both of them.
- (3) The Lessee shall pay to the Lessor on demand the Lessor's costs of carrying out:
  - (a) any testing and servicing of fire equipment and systems and of electrical equipment which may be required by law or recommended by any relevant authority; and
  - (b) any alteration to any fire equipment and systems which may become necessary by reason of non-compliance by the Lessee with the requirements of any insurer, relevant authority or local government.

### **3.20 Indemnity**

The Lessee shall indemnify the Lessor and keep the Lessor indemnified 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 or damage to property arising from or out of any occurrence in upon or at the Premises or the use by the Lessee of the Premises or to any person or the property of any person using or entering or near any entrance to the Premises or occasioned (wheresoever it may occur) wholly or in part by any act, neglect, default or omission by the Lessee its agents, contractors, servants, workmen, customers, members or any other person or persons using or upon the Premises with its consent or approval expressed or implied.

### **3.21 Alterations and improvements**

The Lessee shall not, without the prior written consent of the Lessor, make or permit to be made any alteration in or additions to the Premises or remove from the Premises any improvement and the Lessee shall not cut maim or injure or suffer to be cut maimed or injured any of the walls, floors, ceilings, plumbing, gas or electrical fixture or fittings or timbers.

### **3.22 Notice of defects**

The Lessee shall give to the Lessor immediate notice in writing of any damage to or defect in the Premises or the water or sewerage pipes, gas pipes, electrical light fixtures or any plant fittings or equipment in the Premises.

### **3.23 Sale of alcohol**

The Lessee shall not sell or permit the sale of any alcohol or alcoholic beverage on the Premises except with the prior consent of the Lessor and in accordance with a licence under the Liquor Licensing Act 1988.

### **3.24 Assignment or subletting**

- (1) The Lessee shall not assign, sublet or part with the possession of the Premises and the Lease without the prior written consent of the Lessor.
- (2) Sections 80 and 82 of the Property Law Act 1969 (*Attachments 1 & 2*) are hereby expressly excluded.
- (3) Where the Land is Crown land, the prior written consent of the Minister for Lands is required under subclause (1) in addition to the consent of the Lessor.
- (4) The Lessee shall not mortgage, encumber or charge the Premises or the Lease.

### **3.25 Signs**

The Lessee shall not, without the prior written consent of the Lessor, affix or exhibit or permit to be affixed to or exhibited upon any part of the exterior of the Premises or in any place visible from outside the Premises any placard, sign, notice, poster, hoarding or advertisement.

### **3.26 Legal costs**

- (1) The Lessee shall pay to the Lessor on demand the costs (on a full indemnity basis) of and incidental to the negotiations and instructions for and the preparation, completion and stamping of this Lease (including stamp duty) and all copies of this Lease.
- (2) The Lessee shall pay to the Lessor on demand all costs, charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of any notice under section 81 (*Attachment 3*) or any other section of the Property Law Act 1969 requiring the Lessee to remedy a breach of a provision of this Lease.

### **3.27 Lessee to make good**

- (1) At the expiration or sooner determination of this Lease:
  - (a) the Lessee shall yield up the Premises to the Lessor in the condition required by this Lease; and
  - (b) the Lessee shall remove from the Premises all fixtures, fittings and chattels brought onto the Premises by or for the use of the Lessee except for any structural improvements and any fixtures, fittings and chattels provided for the use of the Lessee and which the Lessor determines should remain in the Premises. The Lessee shall not do or allow any damage to the Premises in such removal. If however any damage occurs the Lessee will immediately make it good; and
  - (c) the Lessee shall remove any lettering, signs, names, advertisements and notices erected, painted, displayed or affixed onto or within the Premises

and make good any damage caused by reason of such erection, painting, displaying, affixing or removal. If the Lessee defaults under this clause the Lessor may remove and make good at the Lessee's expense.

- (2) If the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option do either or both of the following:
  - (a) remove and store any of them in such a manner as the Lessor determines at the cost of the Lessee; and
  - (b) treat them as if the Lessee had abandoned its interest in them and they had become the property of the Lessor may then deal with them in such manner as the Lessor determines. If the Lessor sells them it need not account to the Lessee for the proceeds of sale but may apply the proceeds of sale as it see fit.

### **3.28 No registration or caveat**

- (1) Neither the Lessee nor any agent or other person on behalf of the Lessee shall without the prior consent in writing of the Lessor register this Lease nor lodge any absolute caveat in respect of the Premises to protect the interests of the Lessee under this Lease.
- (2) In the event of this Lease or any such caveat being registered or lodged the Lessee, in consideration of the Lessor having granted this Lease to the Lessee, hereby irrevocably appoints the Lessor and each and every one of the officers or agents of the Lessor jointly and severally for the Term and for a period of 6 months after the Term the agent and attorney of the Lessee to surrender or withdraw any such lease or caveat the cost of which shall be borne and paid by the Lessee.

### **3.29 Interest on arrears**

The Lessee shall pay to the Lessor on demand interest at the Rate of Interest plus 2% on all moneys owing by the Lessee but unpaid in breach of the provisions of this Lease for more than 14 days from and including the due date for payment such interest to be calculated on a daily basis on the total of the moneys owing from time to time and computed from and including the due date for payment until the date of actual payment.

### **3.30 GST**

Each payment made by the Lessee under this Lease must be made with an additional payment in respect of any GST or similar tax applying to that payment where the Lessee is registered for GST.

### **3.31 Lessee's office holders**

Where the Lessee is an incorporated association or a body corporate, the Lessee shall deliver to the Lessor, as often as is required, a current list of the names and addresses of the office holders of the Lessee.

### **3.32 Vandalism**

The Lessee shall immediately report to the Lessor any acts of vandalism or any incident which occurs on or adjacent to the Premises which is, or is likely to involve, a breach of the peace or become the subject of a report to the police.

### **3.33 Storage of dangerous materials**

The Lessee shall not store or keep on the Premises any inflammable liquids, acetylene gas, dangerous chemicals or volatile or explosive oils, compounds or substances.

### **3.34 Ownership of improvements**

The Lessee acknowledges and agrees that any building or improvement constructed or erected on the Premises by the Lessee is or shall become the property of the Lessor upon completion of the building or improvement and shall form part of the Premises for the purposes of this Lease and the Lessee shall have no claim for compensation in respect thereof.

### **3.35 Special conditions**

The Lessee shall observe and perform the special conditions set out in Schedule 2.

## **4. QUIET POSSESSION**

If the Lessee pays the rent and performs its covenants contained in this Lease it will peaceably possess and enjoy the Premises for the Term without any interruption from the Lessor or any person lawfully claiming through, from or under it, subject always to the rights, powers, remedies and reservations of the Lessor contained in this Lease.

## **5. MUTUAL AGREEMENTS**

### **5.1 Default**

If:

- (a) the Rent or any part of it is in arrears for 14 days even if it has not been formally demanded;
- (b) the Lessee breaches or does not comply with any provision whether expressed or implied in this Lease;
- (c) repairs required by any notice given by the Lessor under this Lease are not completed within the time specified in the notice;
- (d) the Lessee defaults in the payment of any moneys owing to the Lessor other than rent whether under this Lease or any other account after 14 days written demand for payment has been made by the Lessor on the Lessee;
- (e) the Lessee is a corporation and an order is made or a resolution is passed for the winding up of the Lessee except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent will not unreasonably be withheld;
- (f) the Lessee is a corporation and ceases or threatens to cease to carry on business or goes into liquidation whether voluntary or otherwise or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (g) the Lessee is a corporation and is placed under official management or an administrator is appointed under or pursuant to the provisions of the

relevant Corporations Law or enters into a composition or scheme of arrangement;

- (h) the interest of the Lessee under this Lease is taken in execution;
- (i) the Lessee or any person claiming through the Lessee conducts any business from the Premises after the Lessee has committed an act of bankruptcy;
- (j) the Lessee abandons or vacates the Premises; or
- (k) the Lessee being an incorporated association:
  - (i) is wound up or resolves to be dissolved or wound up voluntarily;
  - (ii) without the prior written consent of the Lessor, changes its name, objects or constitution;
  - (iii) is convicted of an offence under the Associations Incorporations Act 1987,

then the Lessor may in addition to its other powers either:

- (i) re enter on the Premises or any part of them with force if necessary and eject the Lessee and all other persons from and repossess the Premises; or
- (ii) by notice in writing to the Lessee determine this Lease,

or both.

## **5.2 Lessor's powers**

If the Lessor exercises its powers under clause 5.1, this Lease will terminate but the Lessee will not be released from liability for any breach of or non-compliance with any provision of this Lease and the remedies available to the Lessor for recovery of arrears of rent or for prior breach or non-compliance will not be affected. On such determination if the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option take action in accordance with section 3.27 (2) of this lease agreement.

## **5.3 Destruction of the Premises**

- (1) Where the Premises or any part of the Premises are at any time damaged or destroyed by fire, flood, lightning, storm or tempest so as to make them unfit for the occupation and use of the Lessee, then the Rent or a proportionate part of the Rent, according to the nature and extent of the damage sustained will abate and all remedies for recovery of the Rent or such proportionate part of the Rent will be suspended until the Premises are rebuilt or made fit for the occupation and use of the Lessee.
- (2) If the Lessor does not rebuild the Premises or make them fit for the use and occupation of the Lessee within a reasonable time then either party may terminate this Lease by one month's notice in writing to the other without right or claim for damage by reason of such termination of the Lease but without prejudice to the rights of either party for any prior breach of or failure to comply with a provision of this Lease.



- (3) Nothing in this Lease will impose on the Lessor any obligation to rebuild the Premises or to make the Premises fit for the use and occupation of the Lessee.

#### **5.4 Entry by Lessor**

If the Lessee fails to duly and punctually observe or perform any provision of this Lease the Lessor shall be entitled to carry out the observance or performance of the provision and for that purpose the Lessor or the Lessor's architects, servants agent or workmen may if necessary enter the Premises and the cost and expense incurred in the observance or performance together with interest thereon at a rate of 2% per annum greater than the Rate of Interest shall be a debt due by the Lessee to the Lessor and shall be payable on demand and may be recovered by the Lessor in the same manner as if such debt were for rent due under this Lease in arrears by action in law and such cost expense and interest shall be a charge on the term.

#### **5.5 Works by Lessor**

- (1) The Lessor may by itself or its agents at all reasonable times enter the Premises or any part of the Premises for any one or more of the following purposes:
  - (a) complying with the terms of any legislation affecting the Premises and any notices served on the Lessor or Lessee by any statutory, licensing, municipal or other competent authority;
  - (b) carrying out any repairs, alterations or works of a structural nature;
  - (c) installing any services such as air-conditioning apparatus, automatic fire sprinklers, gas pipes, water pipes, drainage pipes, cables or electrical wiring;
  - (d) making any repairs which the Lessor may think necessary to the Premises;
  - (e) making any improvements or alterations to the adjoining Premises which the Lessor may consider necessary;
  - (f) taking inventories of fixtures;
  - (g) exercising the powers and authorities of the Lessor under this Lease.
- (2) In carrying out the works referred to in this clause the Lessor will not cause unnecessary interference with the use of the Premises by the Lessee.

#### **5.6 Holding over**

If the Lessee shall hold over the Premises upon the expiry of the Term then a tenancy from year to year shall not be presumed but the tenancy shall in that event be and continue to be a tenancy from week to week at the rental then payable but otherwise upon the terms and conditions contained in this Lease insofar as they are applicable and shall be determinable at the expiration of one week's notice by either party to the other at any time.

#### **5.7 No waiver**

- (1) No waiver (whether express or implied) by the Lessor of any breach of any

covenant, obligation or provision contained or implied in this Lease will operate as a waiver of any other breach of the same or any other covenant, obligation or provision contained or implied in this Lease nor shall it operate as a waiver of the essentiality of any obligation which by virtue of this Lease is an essential term of this Lease.

- (2) In particular, any demand by the Lessor for, or any acceptance by the Lessor of, rent or other moneys payable under this Lease will not constitute a waiver by the Lessor of any breach of any provision in this Lease and will not create any new tenancy between the parties.
- (3) No custom or practice which has grown up between the parties in the course of administering this Lease will be construed so as to waive or lessen the right of the Lessor to insist on the performance by the Lessee of all or any of the Lessee's obligations under this Lease.

#### **5.8 No warranty**

- (1) This document embodies the whole transaction of leasing made by this Lease and all warranties, conditions and representations collateral or otherwise concerning the leasing whether written, oral, express or implied and whether consistent with this document or not are cancelled.
- (2) This Lease may be amended only by instruments in writing executed by the Lessor and the Lessee.
- (3) The Lessee acknowledges that it has entered into this Lease without relying on any representation or warranty by the Lessor except as stated in this clause and after satisfying itself as to the suitability of the Premises for the purpose of which the Premises are leased.

#### **5.9 Lessor's right to install services**

The Lessor reserves to itself and to its employees agents and contractors the right to enter upon the Premises at all reasonable times with all necessary materials and appliances to erect make excavate lay or install in on over or under the Premises any posts drains pipes conduits cables wires or other things requisite for any existing or future service to the Premises together with the like right to enter upon the Premises for the purpose of inspecting removing maintaining altering or adding to any such things relation to an existing service to the Premises and, in each such case the Lessor shall cause as little inconvenience and damage to the Lessee as is practicable in the circumstances.

#### **5.10 Execution of works by Lessor**

If the Lessor desires or is required to:

- (a) execute any works which by law the Lessor is bound and has been required to execute on the Premises or the Building; or
- (b) build any further storeys upon the Building; or
- (c) alter repair add to or re-build any part of the Premises or the Building; or
- (d) construct erect lay down alter repair cleanse or maintain any drain ventilator shaft water pipe electric wires or gas pipes in connection with or for the accommodation of the Building or any adjoining property; or

- (e) underpin; or
- (f) reinstate or re-build in case of fire,

then and in any such case the Lessor may with or without employees agents workmen and contractors and appliances enter upon the Premises and carry out such works doing as little damage to the Premises as is reasonably possible and restoring them without unreasonable delay but without making compensation for any damage or inconvenience to the Lessee provided that in each case the Lessor shall cause as little inconvenience and damage to the Lessee as is practicable in the circumstances.

#### **5.11 Notices**

- (1) Any notice or demand from the Lessor to the Lessee is to be taken to be duly served if left for the Lessee on the Premises, if mailed by prepaid letter addressed to the Lessee at the address set in this Lease or if sent by facsimile machine to the Lessee's facsimile machine.
- (2) Any notice or demand from the Lessee to the Lessor is to be taken to be duly served if mailed by prepaid letter addressed to the Lessor at its office.
- (3) A notice or demand posted mailed is to be taken to be duly served at the expiration of 48 hours after the time of posting mailing and any notice given by one party to the other may be signed on behalf of the party giving it by a director, secretary, chief executive officer or solicitor.

#### **5.12 Approvals and consents**

Except as expressly stated to the contrary in this Lease, the Lessor may, whenever its approval or consent is required under this Lease, give it conditionally or unconditionally or withhold it.

### **6. ESSENTIAL TERMS**

The Lessee and the Lessor agree that each of clauses 2.3, 3.1, 3.2, 3.3, 3.15, 3.16 and 3.24 are essential terms of this Lease, and any breach or failure by the Lessee to comply with any of those clauses will entitle the Lessor to all rights and remedies available to it in respect of breach of or failure to comply with an essential term.

### **7. GUARANTEE**

- (1) This Lease is granted to the Lessee at the request of the Guarantor and for such consideration the Guarantor hereby covenants and agrees with the Lessor as follows:
  - (a) the Guarantor hereby guarantees to the Lessor the due observance and performance by the Lessee of each and all of the covenants contained in this Lease;
  - (b) the Guarantor hereby indemnifies the Lessor and covenants and agrees at all times hereafter to keep the Lessor indemnified from and against all damages and all costs, losses and expenses which the Lessor may suffer or incur as a result either directly or indirectly of any breach or non-observance by the Lessee of any covenant or provision in this Lease expressed or implied and on the part of the Lessee to be observed and performed and the Guarantor agrees that this indemnity shall continue and the Guarantor shall remain liable to the Lessor under this indemnity notwithstanding that as a

consequence of such breach or non-observance the Lessor has exercised any of its rights hereunder and notwithstanding that the Lessee (being a corporation) may be wound up or (being a natural person) may be declared bankrupt and notwithstanding that the guarantee hereby given may for any reason whatsoever be unenforceable either in whole or in part.

- (2) The Guarantor shall be responsible for the payment to the Lessor on demand of all costs, charges and expenses which the Lessor may be entitled to recover by reason of any default of the Lessee.
- (3) The liability of the Guarantor shall not be released, prejudiced or abrogated by the granting of time or other indulgence or concession to the Lessee or by any variation of the provisions of this Lease or by any release, abandonment, waiver or modification of any rights or obligations as between the Lessor and the Lessee or by any act or omission of the Lessor whereby but for this provision the Guarantor would or may have been so released it being intended that the obligation and liability of the Guarantor shall be a continuing liability absolute and unconditional in all circumstances.
- (4) If for any reason and whether by statute or otherwise any payment made by the Guarantor to the Lessor under the provisions of this Lease is avoided then irrespective of whether such avoidance operates from the date of such payment or from any later date the liability of the Guarantor shall remain as if no such payment had been made.
- (5) The guarantee and indemnity hereby given are to continue and are to remain in full force and effect until the due performance, observance and fulfillment by the Lessee of all the covenants and provisions in the Lease expressed or implied and on the part of the Lessee to be observed and performed.
- (6) Where 2 or more parties are named as Guarantor those parties are bound jointly and severally.

## 8. GST

- (1) If GST is imposed or levied in respect of any supply by a party under or in accordance with this Lease (including the supply of the Premises or the supply of any goods, services, rights, benefits or other things) then the party making the supply may recover the GST Amount from the party receiving the supply in addition to the Consideration. The party making the supply shall provide such invoices to the party receiving the supply as are required pursuant to the GST Legislation.

- (2) In sub-clause (1):

“Consideration” means any amount or consideration payable or to be provided pursuant to any provision of this Lease other than this clause;

“GST” means any form of goods and services tax or similar value added tax;

“GST Amount” means the Consideration (after deducting the GST Exempt Component) multiplied by the Rate;

“GST Exempt Component” means any part of the Consideration which solely relates to a supply that is free or exempt from the imposition of GST;

“GST Legislation” means A New Tax System (Goods and Services Tax) Act 1999 and any other legislation or regulation which imposes, levies, implements or varies a GST or any applicable rulings issued by the Commissioner of Taxation;

“Rate” means the rate at which GST Legislation from time to time imposes or levies GST on the relevant supply under this Lease;

“supply” includes supply as defined under GST Legislation.

**SCHEDULE 1**

**Item 1.1 Lessee's Name and Address:**

**Item 1.2 Land:**

**Premises:**

**Lessor's Interest:**

**Item 1.3 Term:**

**Commencement Date:**

**Expiry Date:**

**Item 1.4 Annual rent payable on the  
Commencement Date:**

**Item 1.5 Manner of payment of rent:**

**Item 1.6 CPI Rent Review Dates:**

**Market Rent Review Dates:**

**Item 1.7 Permitted Purpose:**

**Item 1.8 Guarantor's Names and  
Addresses:**

**SCHEDULE 2  
SPECIAL CONDITIONS**

**EXECUTED by the parties**

**THE COMMON SEAL** of **SHIRE OF NANNUP** was )  
hereunto affixed pursuant to a resolution of the Council )  
in the presence of: )

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
Chief Executive Officer

**THE COMMON SEAL** of )  
hereunto affixed by authority of the )  
presence of: )  
was )  
in the )  
)  
)

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Office held

\_\_\_\_\_  
Office held

\_\_\_\_\_  
Name of authorised person  
(block letters)

\_\_\_\_\_  
Name of authorised person  
(block letters)

**SIGNED** by )  
in the presence of: )  
)

Witness:

Address:

Occupation:



**PROPERTY LAW ACT 1969 – SECT 80**

**80 . Consent to assign or sublet not to be unreasonably withheld**

(1) In every lease containing a covenant, condition or agreement against assigning, underletting or parting with the possession, or disposing of the land or property leased without licence or consent, that covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a condition to the effect that the consent shall not be unreasonably withheld and that no fine or sum of money in the nature of a fine shall be payable for or in respect of the licence or consent, but the last mentioned condition does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to the licence or consent.

(2) In any instrument executed before or after the coming into operation of this Act a reference to section 4 of the *Landlord and Tenant Act 1912*<sup>5</sup> shall be read and construed as a reference to this section.

**PROPERTY LAW ACT 1969 – SECT 80**

**82 . Certain assignments not to be deemed a breach**

No assignment or underletting —

- (a) by the official assignee of a bankrupt;
- (b) by the liquidator of a company (except in the case of a member's voluntary winding up);
- (c) by the sheriff or bailiff under an execution; or
- (d) by a personal representative pursuant to a bequest in a will,

shall be deemed a breach of a covenant, condition or agreement against assigning, underletting, parting with possession or disposing of the land leased unless the contrary is expressly declared in the lease.

PROPERTY LAW ACT 1969 – SECT 81

**81 . Restrictions and relief against forfeiture of leases and under-leases**

(1) A right of re-entry or forfeiture under any provision or stipulation in a lease for a breach of any covenant or condition in the lease is not enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice —

- (a) specifying the particular breach complained of;
- (b) where the breach is capable of remedy, requiring the lessee to remedy the breach; and
- (c) in any case, requiring the lessee to make compensation in money for the breach,

and the lessee fails, within a reasonable time after the service of the notice on him, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a lessor is proceeding, by action or otherwise, to enforce or has enforced without the aid of the Court such a right of re-entry or forfeiture, the lessee may, in the lessor's action (if any) or in any action brought by himself apply to the Court for relief, and the Court —

- (a) may grant or refuse relief, as the Court having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances thinks fit; and
- (b) in case of relief may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case, thinks fit.

(3A) A lessor is entitled to recover as a debt due to him from a lessee and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture that, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Part either by the Court or by the operation of subsection (1).

(3B) The lessor is so entitled to recover whether the lessee has or has not rendered forfeiture unenforceable against him under that subsection.

(4) Where a lessor is proceeding by action or otherwise to enforce or has enforced a right of re-entry or forfeiture —

- (a) under any covenant, provision or stipulation in a lease; or
- (b) for non-payment of rent,

the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action brought by that person for that purpose, make an order vesting for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in the property, upon such conditions,

- (c) as to execution of any deed or other document;
- (d) payment of rent, costs, expenses, damages, compensation or giving security or otherwise,

as the Court in the circumstances of each case thinks fit, but in no case is the under-lessee entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

- (5) For the purposes of this section except so far as is otherwise provided —

*lease* includes an original or derivative under-lease; an agreement for a lease where the lessee has become entitled to have his lease granted, and a grant securing a rent by condition;

*lessee* includes an original or derivative under-lessee, and the persons deriving title under a lessee, and a grantee under any grant securing a rent by condition and the persons deriving title under him;

*lessor* includes an original or derivative under-lessor, and the persons deriving title under a lessor, a person making a grant securing a rent by condition and the persons deriving title under him;

*under-lease* includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

*under-lessee* includes any person deriving title under an under-lessee.

- (6) This section applies although the condition or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act.

(7) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant is and takes effect as a lease to continue for any longer term for which it could subsist, but determinable by a condition for re-entry on the breach.

- (8) This section does not extend —

- (a) to a covenant or condition against assigning, underletting, parting with the possession or disposing of the land leased;

- (b) to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest; or

- (c) in the case of a lease of any licensed premises as defined in the *Liquor Control Act 1988*, to a covenant not to do or omit any act or thing by which the licence granted in respect thereof, may be forfeited.

- (9) This section does not except as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

- (10) This section has effect notwithstanding any stipulation to the contrary.