



JACKSON McDONALD
MULTI-SECTOR LAW

Deed of Extension

“Mangowine Homestead” Nungarin, Western Australia

The National Trust of Australia (WA)
(ABN 83 697 381 616)

Lessor

and

Shire of Nungarin

Lessee

Jackson McDonald
Lawyers
225 St Georges Terrace
Perth WA 6000

t: +61 8 9426 6611
f: +61 8 9321 2002
w: www.jacmac.com.au

Reference: 7172305

Table of contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	2
2.	Condition Precedent	3
3.	No waiver of Lessor’s powers	3
4.	Extension of Term	3
5.	Agreements by Lessee for Extended Term	3
6.	Mutual Agreements for Extended Term	3
7.	Variation of Lease	4
8.	Costs	4
9.	Jurisdiction	4
10.	Severance	4
11.	Entire Agreement	5
12.	Construction	5
13.	Inconsistent law	5
14.	Supervening laws	5
15.	Counterparts	5
16.	Notices	6
17.	Special Conditions	7
	Schedule	8

Deed of Extension

Date 2021

Between

The person described in Item 1 (**Lessor**)

The person described in Item 2 (**Lessee**)

Recitals

- A. This Deed is supplemental to the Lease.
- B. The Lessee leases the Premises from the Lessor subject to the terms of the Lease.
- C. The Lessor agrees to grant to the Lessee an extension of the Term for the Extended Term subject to the terms and conditions of this Deed.
- D. The Lessee and the Lessor agree to vary certain terms of the Lease as set out in this Deed.

The Parties agree as follows:

1. Definitions and interpretation

1.1 Definitions

In this Deed, unless inconsistent with the context, the following definitions apply:

Business Day means a day which is not a Saturday, Sunday or gazetted public holiday in the State.

Claims mean any claim, demand, action, suit and proceeding of whatever nature and however arising, but not limited to, claims arising in equity, tort (including negligence), under contract, statute, common law or otherwise, whether present or contingent

Deed means this Deed and any schedules and annexures to it.

Effective Date means the date specified in Item 9.

Expiry Date means the date of expiry of the Term.

Extended Term means the extension of the Term specified in Item 6.

Item means an item of the Schedule.

Lease means the lease and any assignments, variations, extensions or other document described in Item 3.

Lessee means the person described in Item 2.

Lessee's Covenants means all or any of the terms of the Lease, express or implied, to be observed and performed by the Lessee as lessee of the Premises.

Lessor means the person described in Item 1.

Party and **Parties** means a party or parties to this Deed.

person includes reference to:

- (a) an individual, a body corporate, a trust, a partnership, a joint venture, an unincorporated body or other entity, whether or not it is a separate legal entity;
- (b) if a person is an individual, that person's personal representatives and permitted assigns; and
- (c) if a person is not an individual, that person's successors and permitted assigns and a person, who novates the Deed.

Premises means the premises specified in Item 4.

Rent means the rent from time to time payable under the Lease.

Schedule means the schedule to this Deed.

Special Conditions means the terms and conditions (if any) specified in Item 10 of the Schedule.

State means the State of Western Australia.

Term means the term of the Lease specified in Item 5.

1.2 Interpretation

In this Deed unless inconsistent with the context:

- (a) a reference to an Act of Parliament includes a reference to any regulation made under that Act and any amendment to or re-enactment of that Act or that regulation for the time being in force;
- (b) if a Party comprises two or more persons, the agreements on their part bind and must be complied with by them jointly and each of them severally and may be enforced against anyone or any two or more of them;
- (c) when the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day;
- (d) except in the Schedule, headings in this Deed do not affect its interpretation;
- (e) reference to a clause is a reference to a clause of this Deed and a reference to a paragraph is a reference to a paragraph of the clause in which the reference occurs;

- (f) subject to any contrary provision in this Deed, a reference to any other deed, agreement, instrument or contract includes a reference to that other deed, agreement, instrument or contract as validly supplemented or varied from time to time;
- (g) a reference to a Party includes that Party's executors, administrators, personal representatives, successors, substitutes (as expressly contemplated by this Deed) and permitted assigns, and if a Party comprises two or more persons, the executors, administrators, personal representatives, successors and permitted assigns of each of those persons;
- (h) where applicable words denoting the singular include the plural, words denoting the plural include the singular and words denoting a gender include each gender;
- (i) where applicable a reference to a body corporate includes a person as defined in this Deed;
- (j) unless contrary to the sense of context, an obligation by either Party not to do or omit to do any act or thing includes an agreement not to suffer that act or thing to be done or omitted by any agent or employee of that Party and an agreement to do everything necessary to ensure that act or thing is not done or omitted to be done; and
- (k) a word defined in the Lease and used in this Deed, has, unless inconsistent with the context, the same meaning in this Deed as in the Lease.

2. Condition Precedent

This Deed is conditional on the Lessor executing this Deed, and will have no force and effect until the Lessor has executed this Deed.

3. No waiver of Lessor's powers

Nothing in this Deed waives or releases any subsisting breach of lease which arose pursuant to the Lease, the covenants of which may be enforced (subject only to the terms of this Deed) as if the same were still current.

4. Extension of Term

The Lessor leases the Premises to the Lessee for the Extended Term.

5. Agreements by Lessee for Extended Term

The Lessee agrees with the Lessor to observe and perform the Lessee's Covenants during the Extended Term.

6. Mutual Agreements for Extended Term

- (a) The Lessee and the Lessor agree with each other that:

- (i) subject to clause 7, the terms of the Lease will apply during the Extended Term;
 - (ii) the Rent payable at the commencement of the Extended Term is the amount specified in Item 7; and
 - (iii) the Rent is subject to review under the terms of the Lease.
- (b) If at any time it appears that any term or provision of the Lease or this Deed is, or may be illegal, unenforceable or in contravention of any statute, the Lessor may:
- (i) sever that term or provision or part of it;
 - (ii) give notice modifying the effect of such term so that it takes effect according to its tenor, but so as no longer to be illegal, unenforceable or in contravention of any statute; or
 - (iii) do both (a) and (b) above,

but nothing in this clause entitles the Lessor to impose any greater obligation on the Lessee than was assumed by it pursuant to the Lease or this Deed.

7. Variation of Lease

- (a) The Lease is varied by this Deed, from and including the Effective Date, as set out in Item 8.
- (b) Except as varied by this Deed, the Lease remains in full force and effect.

8. Costs

- (a) The costs of and incidental to the preparation, negotiation, completion and execution of this Deed and its usual counterparts, including any duty, are payable by the Lessee.

9. Jurisdiction

- (a) This Deed is governed by, and to be interpreted in accordance with, the Laws of the State and where applicable the laws of the Commonwealth of Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the State and the Courts of Appeal from them. Each Party waives any right it has to object to an action being brought in those Courts including by claiming that the action has been brought in an inconvenient forum if those Courts do not have jurisdiction.

10. Severance

If any term or condition of this Deed or the application of them to any person or circumstances is invalid or unenforceable, the remaining terms and conditions are not

affected and each other term and condition of this Deed is valid and enforceable to the fullest extent permitted by law.

11. Entire Agreement

The Parties acknowledge and agree that:

- (a) the terms and conditions set out in this Deed:
 - (i) contain the entire agreement as concluded between the Parties with respect to the Premises;
 - (ii) supersede any negotiations or discussions prior to the execution of this Deed; and
 - (iii) supersede anything contained in any brochure, market analysis, report or other document prepared by the Lessor or any of the Lessor's agents or consultants for submission to potential tenants of the Premises; and
- (b) the Lessee has not been induced to enter into this Deed by any or any alleged statement, representation, warranty or condition verbal or written made by or on behalf of the Lessor and or the Lessor's agents or consultants which is not contained in this Deed.

12. Construction

No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

13. Inconsistent law

To the extent permitted by Law, this Deed prevails to the extent it is inconsistent with any Laws.

14. Supervening laws

Any present or future laws which operate to vary the obligations of a Party in connection with this Deed with the result that another Party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) are excluded except to the extent that their exclusion is prohibited or rendered ineffective by law.

15. Counterparts

This Deed may consist of a number of copies, each signed by one or more Parties and so, the signed copies are treated as making up the one document and the date on which the last counterpart is signed will be the date of this Deed.

16. Notices

- (a) Any notice, consent, approval, demand or other communication to be given or made under this Deed (unless otherwise provided):
 - (i) must be in writing;
 - (ii) must be signed by or on behalf of the Party giving or making it;
 - (iii) may be given in any of the following modes:
 - A. by facsimile transmission,
 - B. by pre-paid mail, or
 - C. by hand delivery; and
 - (iv) may be addressed, delivered or transmitted to the Party to receive it at its registered office or principal office for the time being, or at the address or facsimile number:
 - A. shown in this Deed; or
 - B. later notified to the other Party from time to time.
- (b) A notice sent by pre-paid post, facsimile or hand delivery is taken to be received:
 - (i) in the case of post:
 - A. on the third Business Day after posting if posted to and from places within Australia; and
 - B. on the seventh Business Day after posting, if posted to and/or from places outside Australia;
 - (ii) in the case of facsimile:
 - A. if transmitted before 5.00pm (Perth time) on a Business Day: on that Business Day;
 - B. if transmitted after 5.00pm (Perth time) on a Business Day: on the next following Business Day;
 - C. if transmitted on a day not being a Business Day: on the next day being a Business Day,
 - D. if, in any instance, the sender can produce a transmission report by the facsimile machine from which the facsimile was sent which indicates the time and date of transmission and that the facsimile was sent in its entirety to the facsimile number of the recipient.

- (iii) in the case of hand delivery:
 - A. if delivered before 5.00pm (Perth time) on a Business Day: on that Business Day;
 - B. if delivered after 5.00pm (Perth time) on a Business Day: on the next following Business Day; and
 - C. if delivered on a day not being a Business Day: on the next day being a Business Day.
- (c) Any Party's solicitor, or the Lessor's managing agent, may give or serve notice upon the other Party, on behalf of the Party serving the notice.

17. Special Conditions

- (a) The Parties agree to comply with the Special Conditions.
- (b) Any Special Conditions are to be incorporated in and read as a part of this Deed and, to the extent that there is any inconsistency between the terms of this Deed and the Special Conditions, the Special Conditions will prevail.

EXECUTED by the Parties as a deed.

Schedule

Item 1. Lessor:

The National Trust of Australia (WA) (ABN 83 697 381 616) of PO Box 1162, West Perth, Western Australia

Item 2. Lessee:

Shire of Nungarin a local government established under the *Local Government Act 1995* (WA) of Railway Avenue, Nungarin, Western Australia.

Item 3. Lease:

A lease dated 25 May 2016 made between the Lessor and the Lessee for an initial term of five (5) years and a further term of five (5) years.

Item 4. Premises:

The whole of Lot 1 on Diagram 37576 and Lot 10 on Deposited Plan 60273 together with all improvements, including the Heritage Building and being more particularly described in the Lease.

Item 5. Term:

FIVE (5) years commencing on 25 May 2016 and expiring 24 May 2021.

Item 6. Extended Term:

A term commencing on 25 May 2021 and expiring on 24 May 2026.

Item 7. Rent payable from commencement of Extended Term:

To be determined in accordance with the Rent and Rent review provisions under the Lease.

As at the Effective Date the Parties acknowledge and agree that the Rent payable under the Lease is \$2,796.94.

During the Extended Term the Rent will be reviewed annually to CPI in accordance with the Lease on each anniversary of the Commencement Date.

Item 8. Variation of Lease:

Not Applicable

Item 9. Effective Date:

24 May 2021.

Item 10. Special Conditions:**10.1 Heritage significance**

- (a) The Lessee acknowledges that the Premises, or certain parts of the Premises are, or may be, listed as places with cultural heritage significance under the *Heritage of Western Australia Act 1990* (WA).
- (b) The Lessee is at all times solely responsible for the day to day safety, maintenance and conservation of the Land and the Premises and this includes, but is not limited to, doing all things necessary in order to comply with the provisions of the *Heritage of Western Australia Act 1990* (WA), but excludes performing any restoration work or incurring any capital expenditure with respect to the Premises other than to ensure that the Land and the Premises are maintained and conserved in the same condition as at the Commencement Date.
- (c) Despite anything contrary in this Lease, the Lessee must not do, cause or permit any works of any kind to be carried out on the Land or the Premises contrary to the provisions of the *Heritage of Western Australia Act 1990* (WA). The Lessee is responsible at all times for ensuring compliance with the *Heritage of Western Australia Act 1990* (WA).
- (d) The Lessee indemnifies and will keep the Lessor indemnified from any costs, expenses, damages, penalties or losses incurred as a result of, arising from or in connection with any non compliance by the Lessee with the *Heritage of Western Australia Act 1990* (WA) resulting from the act or default of the Lessee or any employee, agent, contractor, visitor, licensee, invitee, customer or sublessee of the Lessee.

10.2 Promote objectives of the Lessor

- (a) The Lessee acknowledges and accepts that the Lessor and the Lessee have entered into this Lease on the clear understanding that the Lessee will only use the Premises in accordance with the *Heritage of Western Australia Act 1990* (WA) and the objectives of the Lessor as advised to the Lessee from time to time and agrees that its use of the Premises will promote those objectives.
- (b) If the Lessor considers, acting reasonably, that the Lessee is not complying with its obligations under this Item, or Item 13.1, the Lessor may give the Lessee not less than 14 days notice of its intention to terminate this Lease and this Lease will end on the date advised by the Lessor in the notice. From the termination date, excepting any antecedent breach of this Lease by either Party prior to the termination date, neither Party will have any right, claim or action against the other Party arising from or in connection with this Lease and its termination.

10.3 Pest Control and other costs

Notwithstanding any clause in this Lease to the contrary, the Lessor will be responsible for:

- (a) the costs associated with pest control;
- (b) the costs associated with the building insurance; and
- (c) Water Corporation service fees and charges assessed against the Land.

10.4 No subletting or assignment

- (a) Notwithstanding clause 11 of the Lease and subject to Special Condition 10.4(b), the Lessee must not sub-let, assign or part with possession or occupation of the Premises without the prior written consent of the Lessor (such consent can be withheld in the Lessor's absolute discretion).
- (b) The Lessor acknowledges that the Lessee hosts an annual music festival on the Premises known as the Mangowine Concert which is run during the Nungarin Harvest Festival Weekend (**Concert**). For the avoidance of doubt the Lessee is not required to obtain the prior written consent of the Lessor with respect to the Concert.

Executed by the Parties a deed

Signed for and on behalf of

THE NATIONAL TRUST OF AUSTRALIA (WA)
(ABN 83 697 381 616)
by its duly authorised Attorneys under
Power of Attorney No. N744153
in the presence of: }

.....
Signature of Attorney

.....
Full Name (please print)

.....
Signature of witness

.....
Full name of witness

.....
Address

.....
Occupation

.....
Signature of Attorney

.....
Full Name (please print)

.....
Signature of witness

.....
Full name of witness

.....
Address

.....
Occupation

The COMMON SEAL of the
SHIRE OF NUNGARIN
was hereto affixed in the presence of: }

.....
PRESIDENT

.....
CHIEF EXECUTIVE OFFICER