

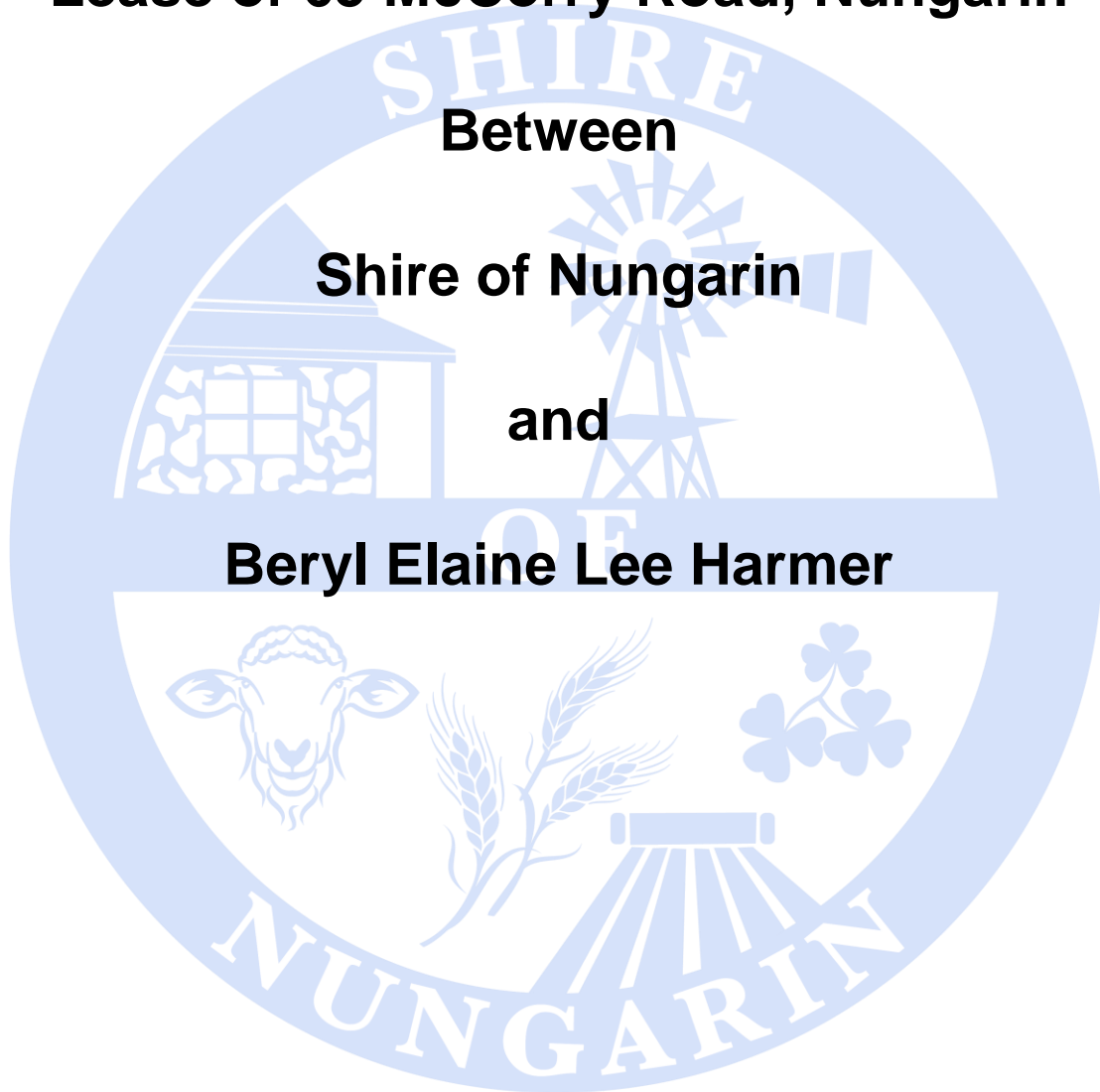
# **Lease of 65 McCorry Road, Nungarin**

**Between**

**Shire of Nungarin**

**and**

**Beryl Elaine Lee Harmer**



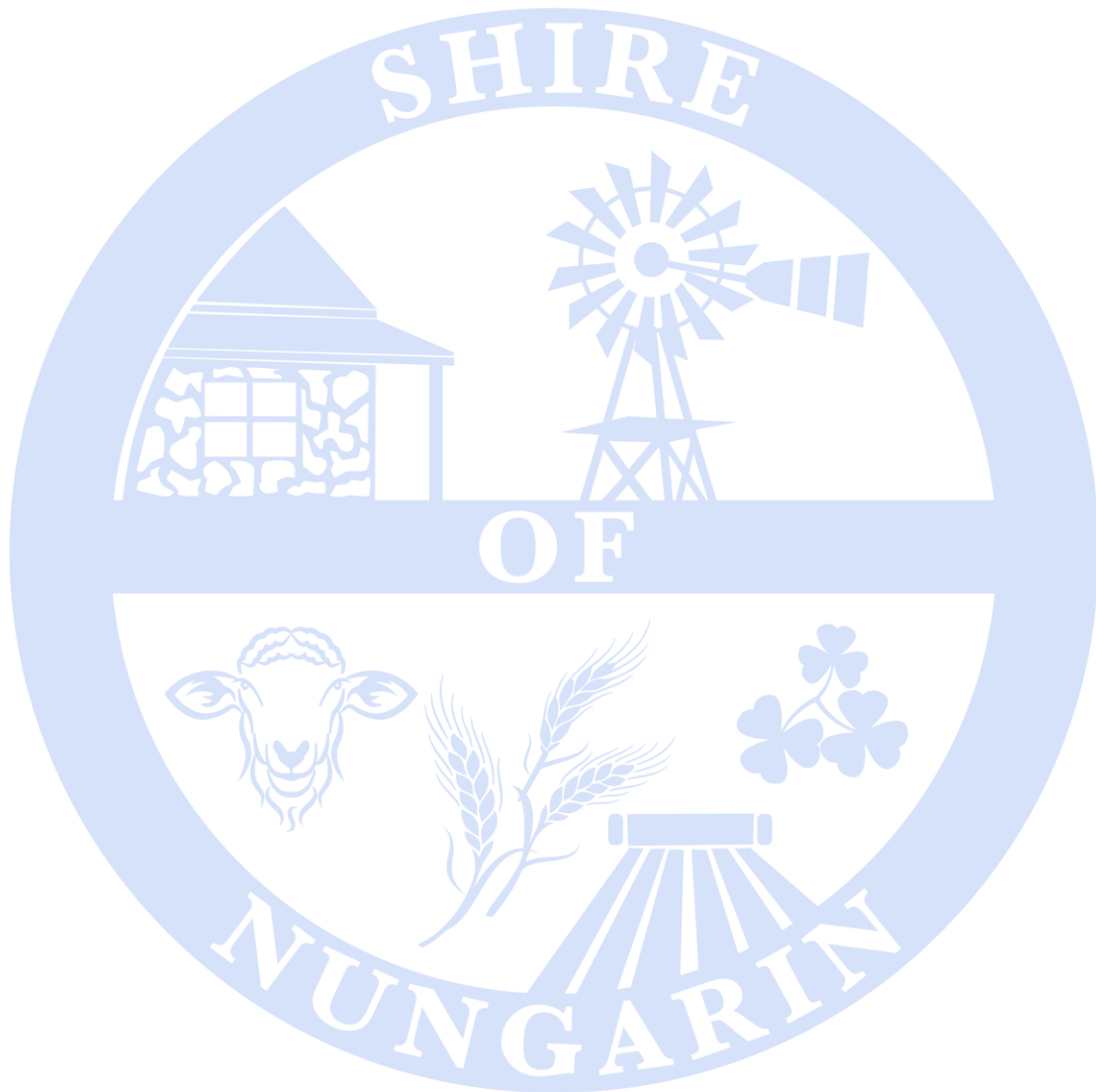
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## Details

Parties

**Shire of Nungarin**

of PO Box 8, Nungarin, Western Australia

**(Lessor)**

**Beryl Elaine Harmer**

of Lot 188 Danberrin Road, Nungarin, Western Australia

(ABN 38 967 629 841)

**(Lessee)**

## Background

- A The lessor is the registered proprietor of the Land  
B The lessor has agreed to lease and the Lessee has agreed to take a lease of the premises upon the terms and conditions contained in this Lease.

## Agreed terms

### 1. Grant of Lease

The lessor leases to the Lessee the Premises for the term subject to:

- (a) All Encumbrances;
- (b) the payment of Amount Payable; and
- (c) the performance of the Lessee's obligations.

### 2. Quiet Enjoyment

Except as provided in the lease, subject to the performance of the Lessee's obligations the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

### 3. Rent and other Payments

#### 3.1 Rent

The lessee agrees with the Lessor to pay the Lessor rent in the manner set out in **Item 5** of the schedule and from the Commencement date clear of any deductions whatsoever.

#### 3.2 Outgoings

- (1) The lessee agrees with the lessor to pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges (If applicable), assessed or incurred in respect of the Premises.

- (a) charges for rubbish or garbage removal;
- (b) telephone, electricity, water, gas and other power and light charges including the installation of any internet connections or telephone connections AND the Lessee shall ensure any accounts for all charges and outgoings in respect of telephone, electricity, water, gas and other power and light charges taken out and issued in the name of the Lessee;
- (c) Department of Fire and Emergency Services (**DFES**) levies (if applicable);
- (d) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.

### 3.3 Interest

Without affecting the rights, powers and remedies of the Lessor under this Lease, the Lessee agrees with the Lessor to pay to the Lessor interest on demand on any Amounts Payable which are paid for fourteen (14) days computed from the due date or the payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

### 3.4 Costs

- (1) The Lessee agrees with the Lessor to pay to the Lessor on demand:
  - (a) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in the connection with this Lease; and
  - (b) all registration fees in connection with this Lease.
- (2) The Lessee agreed with the Lessor to pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
  - (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
  - (b) any breach of an obligation or agreement by the Lessee or an Authorised person;
  - (c) the preparation and service of a notice under section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a court;
  - (d) any work done at the Lessee's request; and
  - (e) any action or proceedings arising out of an incidental to any matters referred to in this clause **3.4** or any matter arising out of this Lease.



## 4. Rent Review

### 4.1 Rent to be review

The rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next Rent Review Date.

### 4.2 Methods of review

The review will be based on CPI for each Rent Review Date in **Item 8** of the schedule.

### 4.3 CPI review

A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review date. If there is a decrease in CPI having regard to the relevant publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period. Should the CPU be discontinued or suspended at any time or its method of computation substantially altered, the parties shall endeavor to agree upon the substitution of the CPU with an equivalent index.

### 4.4 Rent will not decrease

Notwithstanding the provisions in this clause, the Rent payable from any Rent Review based on CPI Review will not be less than the Rent payable in the period immediately preceding such Rent Review Date.

### 4.5 Lessor's right to review

The lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back and be payable from the Rent Review Date for which such review is made.

## 5. Accrual of Amounts Payable & Payment of Money

### 5.1 Accrual of Amounts Payable

Amounts Payable accrue on a daily basis.

### 5.2 Payment of money

Any amount Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

## 6. Insurance

### 6.1 Insurance required

The lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interest in the Premises) for the time being:

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 6** of the schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
- (b) a policy of employers' indemnity insurance including workers compensation insurance in respect of all employees of the Lessee employed in, about or from the Premises.
- (c) insurance against all risks as the Lessor may require, of all plate glass windows, doors and display show cases forming part of or within the Premises for a sum which is not less than its full insurable value; and
- (d) insurance to cover the Lessee's fixture's, fittings equipment and stock against loss or damage by fire, fusion, smoke, lighting, flood, storm, earthquake, sprinkler leakage, water damage and other usual risks against which a lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary.

### 6.2 Details and receipts

In respect of the insurances required by **clause 6.1** the Lessee must:

- (a) on demand supply to the Lessor details of the insurance and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issues by the insurers; and
- (c) notify the Lessor immediately:
  - i. when an event occurs, which gives rise or might give rise to a claim under or which could prejudice policy or insurance; or
  - ii. when a policy of insurance is cancelled.

### 6.3 Not to invalidate

The lessee must not do or omit to do any act or thing or bring or keep anything on the premises which might:

- (a) render any insurance effected under **clause 6.1** or **clause 20** on the Premises, or any adjoining premises, void or voidable; and
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

## 6.4 Reports

The lessee must report to the Lessor promptly in writing and in an emergency verbally:

- (a) any damage to the Premises of which it is or might be aware; and
- (b) any circumstances of which it is aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person who is lawfully using or may lawfully use the Premises.

## 6.5 Settlement of Claim

The lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any insurance required by **Clause 6.1**.

## 6.6 Lessor as attorney

The lessee appoints the Lessor as the lessee's attorney during the term:

- (a) in respect to all matters and questions which may arise in relation to any insurance required in **Clause 6.1**.
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required in **Clause 6.1**
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

## 6.7 Lessee to pay excess on insurances

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 6.1**.

## 6.8 Lessee's equipment and possessions

The Lessee ACKNOWLEDGES it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

# 7. Indemnity

## 7.1 Lessee responsibilities

The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the lessee were the owner and occupier of the freehold of the Premises.

## 7.2 Indemnity

The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor, in respect of:

- (a) any loss whatsoever (including loss of use)
- (b) Injury or damage of, or to, any kind of property or thing; and
- (c) the death of, or injury suffered by, any person,

Caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

- i. the use or occupation of the Premises by the Lessee or Authorised Persons;
- ii. any work carried out by or on behalf of the Lessee on the Premises.
- iii. the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
- iv. the presence of any contamination, pollution or environmental harm in on or under the premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or an Authorised person;
- v. any default by the lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- vi. an act or omission of the Lessee

## 7.3 Obligations continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligations of the lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 7.2** will be reduced by the extent of such payment; and
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

## 7.4 No indemnity for Lessor's negligence

The Parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor against any loss, damage, expense, action or claim to the extent caused by a negligence or wrongful act or omission of the Lessor or an Authorised Officer.

## 7.5 Release

- (1) The lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee;  
and
- (b) releases to the full extent permitted by law, the Lessor from:
  - i. any liability which may arise in respect of any accident or damage to property, the death or any person, injury to any person or illness suffered to any person occurring on the Premises or arising from the Lessee's use or occupation of the Premises; and
  - ii. loss or damage to the Premises or personal property of the Lessee;

Except to the extent that such loss or damage is caused by a negligent or wrongful act of omission of the Lessor or an Authorised Officer.

- (2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

## 8. Operation of Business

### 8.1 Handling of food and beverage on the Premises

Where food and/or beverage is sold or handled in any way on the Premises, the Lessee shall:

- (a) provide adequate facilities for the hygiene handling of such food and/or beverage including facilities for the washing of hands and utensils;
- (b) notwithstanding any other provision of this Lease, not permit or allow a food and/or beverage vendor or handler to breach the provisions of the *Food Act 2008* or any order, regulation or other by-law or local law or directions made relating to food and/or beverage or its preparation or handling.
- (c) without limiting the generality of the obligations in the foregoing paragraphs the Lessee will take adequate measures at all times to the satisfaction of the Lessor to safeguard any food and/or beverage being sold or distributed on the premises from flies and dust; and
- (d) obtain all necessary permits and approvals under the provisions of the *Food Act 2008* and any associated legislation or any equivalent or re-enactment thereof.

### 8.2 Operation of Business

The Lessee must:

- (a) conduct its business on the Premises at all times in a proper efficient and reputable manner and must not use the premises nor permit the premises to be used for any illegal, immoral or improper use or purpose.
- (b) not conduct nor permit to be conducted in the premises any auction, fire, bankruptcy or liquidation sale without the prior written consent of the Lessor.

- (c) take all proper precautions to keep the Premises free of rodents, vermin, insects and pests and must, if so required by the Lessor but at the cost of the Lessor, employ from time to time or periodically pest exterminators for that purpose.
- (d) not without the prior written consent of the lessor use or permit to be used any other method in lighting the Premises other than by electricity and will not use or permit or suffer to be used any method of heating other than by electricity or gas.
- (e) not without prior written consent of the Lessor use or permit to be used any mobile or temporary unit for cooking.
- (f) keep in force all licenses and permits require for the carrying on of any business conducted by it in or upon the Premises; and
- (g) deliver to the lessor any notices or orders served on or received by the Lessee in respect of the Premises or the conduct of the Lessee's business on the premises.

### 8.3 No alcohol or liquor license without consent

- 1. The lessor must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol, without first obtaining the written consent of the Lessor.
- 2. The Lessee will not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premise without prior written consent from the Lessor and then only in accordance with the provisions of the *Liquor Control Act 198*, *Liquor Control regulations 1989*, *Liquor Licensing Regulations 1989*, *Food Act 2008*, *Food Regulations 2009* and any other relevant written law that may be in force from time to time.

## 9. Use

### 9.1 Restrictions on use

#### (1) Generally

The Lessee must not and must not suffer or permit a person to:

- (a) use the Premises or any part of it for any purpose other than for the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any local or town planning scheme, local laws, Acts, Statutes or any law relating to health.

#### (2) No offensive or illegal acts

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, manner or thing.

#### (3) No Nuisance

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises anything which causes a nuisance, damage or disturbance to the lessor or to owners or occupiers of adjoining properties.

(4) No dangerous substances

The Lessor must not and must not suffer or permit a person to store any dangerous compound or substance on or in the premises, otherwise than in accordance with the following provisions:

- (a) any such storage must comply with all relevant statutory provisions;
- (b) all applications for the approval or renewal of any license necessary for such storage must be first referred to the lessor;
- (c) The Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (d) upon the request of the Lessor, the Lessee will provide a list of all dangerous compounds or substances stored on the Premises.

(5) No harm or distress

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(6) Nothing to be affixed to the walls

The lessee must not and must not suffer or permit a person to attach nor affix, anything whatsoever to the walls (both interior and exterior) of the Premises without the prior written consent of the Lessor.

(7) No Signs

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(8) No Smoking

The Lessee must not suffer or permit a person to smoke inside any building or other enclosed area on the premises.

(9) Removal of rubbish

The Lessee must keep the Premises free from dirt and rubbish and store and keep all garbage, trade and medical waste in proper receptacles.

(10) No pollution

The lessee must do all things necessary to prevent pollution or contamination of the Premises by garbage, refuse, waste matter, oil and other pollutants.

## 9.2 No warranty

The lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licenses required by the Lessee under any statute for its use of the Premises.

## 9.3 Premises subject to restriction

The Lessee accepts the Premises for the term subject to any existing prohibition or restriction on the use of the Premises.

## 9.4 Indemnity for costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 9**.

# 10. Maintenance, repair and cleaning

## 10.1 Generally

(1) The Lessor AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the lessor's Fixtures and Fittings) and appurtenances in Good Repair having regard to the age and condition of the Premises at the Commonwealth Date PROVIDED THAT this subclause shall not impose on the Lessee any obligation.

- (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or any Authorised Person); and
- (b) in respect of any structural maintenance, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because:
  - i. of any act or omission of or on the part of the Lessee (or any Authorised Person);
  - ii. of the Lessee's particular use or occupancy of the Premises; or
  - iii. the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or any Authorised Person).



(2) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing, repairing or cleaning:

- (a) any electrical fittings and fixtures;
- (b) any plumbing;
- (c) any air-conditioning fittings and fixtures; or
- (d) any gas fittings and fixtures,

In or on the Premises use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, approval shall not be unreasonably withheld.

#### 10.2 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

#### 10.3 Repair

Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must promptly repair at its own expense to the satisfaction of the Lessor, any damage to the Premises, regardless of how the damage is caused and replace any of the Lessor's Fixtures and Fittings which are or which become damaged.

#### 10.4 Lessor's fixtures and fittings

The Lessee covenants and agrees that the Lessor's Fixtures and Fittings will remain the property of the Lessor and must not be removed from the Premises at any time.

#### 10.5 Pest control

The Lessee must keep the Premises free of any pests and vermin and the cost of extermination will be borne by the Lessor.

#### 10.6 Drains

(1) The Lessee must keep and maintain the waste pipes, drains and conduits originating in the Premises or connected thereto in a clean, clear and free flowing condition and must pay to the Lessor upon demand the cost to the Lessor of clearing any blockage which may occur in such waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry thereof into any trunk drain unless such blockage has been caused without neglect or default on the part of the Lessee.

(2) The Lessee must not permit the drains, toilets, grease traps (if any) and other sanitary appliances on the Premises to be used for any purpose

other than that for which they were constructed and must not allow any foreign matter or substance to be thrown therein.

#### 10.7 Maintain Surroundings

- (1) The Lessor must regularly inspect and maintain a good condition any part of the Premises which surrounds any buildings including but not limited to any flora, gardens, lawns, shrubs, hedges and trees.
- (2) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

#### 10.8 Responsibility for securing the Premises

- (1) The Lessee must ensure the Premises, including the Lessor's and Lessee's fixtures and fittings are appropriately secured at all times.
- (2) Subject to prior written approval from the Lessor, the Lessee may install a security system to the Premises, PROVIDED the Lessee:
  - (a) pays for all costs associated with the installation and ongoing monitoring of the security system; and
  - (b) provides the lessor with access keys or alarm codes.

#### 10.9 Comply with all reasonable conditions

The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.

#### 10.10 Acknowledgement of state of repair of Premises

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the lease with full knowledge of the structural state and state of repair of the Premises.

### 11. Alterations

#### 11.1 Restrictions

- (1) The Lessee must without prior written consent:
  - (a) from the Lessor;
  - (b) from any other person from whom consent is required under this Lease;
  - (c) required under statute in force from time to time, including but not limited to the planning approval of the lessor under a local or town planning scheme of the Lessor;

- i. install any new signage
- ii. make or allow to be made any alteration, addition or improvement to or demolish any part of the Premises; or
- iii. subject to the performance of the Lessee's obligations to **clause 10.9**, remove any flora or fauna, alter or cut down any flora, or sell remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

## 11.2 Consent

(1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 11.1** the Lessor may:

(a) consent subject to conditions:

- i. require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
- ii. require that any works be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant.

(2) If the Lessor consents to any matter referred to in **clause 11.1**

- (a) The Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any written law for such matters; and
- (b) the Lessee must apply for and obtain all such consents, approvals, authorities, permits or policies as are required by law before undertaking any alterations, additions, improvements or demolitions.

## 11.3 Cost of works

All works undertaken under this **clause 11** will be carried out at the Lessor's expense.

## 11.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must carry out those other works at the lessee's expense.

## 12. Minimise Nuisance to Neighbours

- (1) The Lessee must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding premises.

- (2) The Lessee must comply with all reasonable conditions and directions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding premises.

### 13. Report to Lessor

The Lessee must immediately report to the Lessor:

- (a) **Vandalism** - Any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware.
- (b) **Pollution** - Any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment.
- (c) **Notices, etc** - All notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.
- (d) **Defects** - Any accident to or defect or wants of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

### 14. No assignment, subletting and charging

#### 14.1 No assignment or sub-letting without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law.

#### 14.2 Lessor's consent to assignment and sub-letting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or sub-letting of the leasehold estate created by this Lease if:

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the permitted use;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Obligations;
- (c) the Lessee procures the execution by:
  - i. the proposed assignee of a deed of assignment; or
  - ii. the proposed sublessee,

to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors and the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Obligations.

#### 14.3 Consents of assignee supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Obligations and will not release the assigning lessee from the Lessee's Obligations.

#### 14.4 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

#### 14.5 Costs for assignment and sub-letting

If the Lessee wishes to assign or sub-let the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sub-letting whether or not the assignment or sub-letting proceeds.

#### 14.6 No mortgage or charge

The Lessee must not mortgage nor charge:

- (a) the Premises; or
- (b) the leasehold interest in the Premises.

### 15. No caveat or other interest

#### 15.1 No caveat or other interest

The Lessee nor any person on behalf of the Lessee must not lodge any absolute caveat or any other interest including any lease, sublease, mortgage or charge over the Land or the Premises or part thereof, without the prior written consent of the Lessor.

#### 15.2 Removal of interest

If any caveat or other interest is lodged without the consent of the Lessor, the Lessee irrevocably appoints the Lessor (or any person authorised by the Lessor for that purpose) jointly and severally:

- (a) for the Term;
- (b) for any holding over under this Lease; and
- (c) for a period of six (6) months after Termination of this Lease,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate:

- (d) a withdrawal of any absolute caveat lodged by or behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by on or behalf of the Lease and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease.

### 15.3 Costs of removal, indemnity and ratification

- (1) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause.
- (2) The Lessee indemnifies the Lessor against any loss arising from any act done under this clause 15.

## 16. Statutory obligations and notices

### 16.1 Comply with statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the Permitted Purpose;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

### 16.2 Safety and testing obligations

- (1) The Lessee acknowledges and agrees that it is fully responsible at its cost for ensuring that the Premises, and any fixtures or fittings within the Premises, are regularly tested, maintained and inspected to ensure that the Premises and such fixtures and fittings comply with all statutory requirements and are safe for use.
- (2) To comply with its obligation pursuant to clause 16.2(1) above, the Lessee acknowledges that it will be required to, amongst other things:
  - (a) comply with the requirements of the Occupational Safety and Health Act 1984, including without limitation the requirement for all portable plug-in electrical equipment and residual current devices to be safe and appropriately inspected, tested and maintained by a competent person;

- (b) comply with all relevant requirements of the DFES, including without limitation the requirement to ensure that all fire protection and firefighting equipment located, or installed at the Premises, is tested regularly for compliance with Australian Standards and DFES's requirements; and
- (c) ensure that the emergency/exit lighting systems in the Premises are adequately maintained in accordance with the requirements of the Building Code of Australia and Australian Standards.

### 16.3 Indemnity if Lessee fails to comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in clause 16.1 or clause 16.2; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in clause 16.1 or clause 16.2.

## 17. Obligations on Expiry or Termination

### 17.1 Restore Premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease.

### 17.2 Remove Lessee's property prior to termination

Prior to Termination, unless otherwise mutually agreed between the Parties, the Lessee must remove from the Premises all property of the Lessee which is not a fixture (other than air-conditioning, plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and promptly make good to the satisfaction of the Lessor any damage caused by the removal.

### 17.3 Lessor can remove Lessee's property on re-entry

On re-entry the Lessor will have the right to:

- (a) remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing such property; or
- (b) take ownership of any property of the Lessee which has not been removed from the Premises within thirty (30) days of the expiry or Termination of this Lease.

### 17.4 No removal of Lessor's fixture and fittings

The Lessee must not remove from the Premise, destroy, alter or otherwise dispose of (without the prior written consent of the Lessor), at any time during the Term or on determination of the Term, any appurtenance or the Lessor's Fixtures and Fittings, which will remain the property of the Lessor at all times.

## 17.5 Peacefully surrender

On Termination the Lessee must:

- (a) peacefully surrender and yield up to the Lessor the Premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease; and
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

## 17.6 Obligations to continue

The Lessee's obligations under this clause will survive Termination.

## 18. Lessor's Right of Entry

### 18.1 Entry on reasonable notice

The Lessee must permit entry by the Lessor or any Authorised Officer onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice:

- (a) at all reasonable times;
- (b) with or without workmen and others; and
- (c) with or without plant, equipment, machinery and materials, for each of the following purposes:
  - (d) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
  - (e) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
  - (f) to comply with the Lessor's Obligations or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
  - (g) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

### 18.2 Costs of rectifying breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at clause 18.1(g) together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

## 19. Limit of Lessor's liability

### 19.1 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.



## 19.2 Limit on liability for breach of Lessor's obligations

- (1) The Lessor is only liable for breaches of the Lessor's Obligations set out in this Lease which occur while the Lessor is the registered proprietor of the Land.
- (2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Obligations due to any cause beyond the Lessor's control.

## 20. Building Insurance

The Lessor shall effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of the Premises against damage arising from any standard insurable risks as determined by the Lessor's insurers from time to time which may include (without limitation) fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions HOWEVER in the event that any excess is payable in respect of a claim the Lessee shall be responsible to pay the excess on any claim made on the policy of insurance.

## 21. Damage or destruction of Premises

### 21.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee.

### 21.2 Termination

In the event that fifty per cent (50%) or more of the gross lettable area of the Premises are damaged or destroyed by fire or any like casualty the Lessor will have the option to be exercised by Notice in writing delivered to the Lessee within sixty (60) days of such occurrence, to elect to cancel and terminate this Lease. The Term will terminate upon the third date after such Notice is given and the Lessee must vacate the Premises and surrender the same to the Lessor but such termination will be without prejudice to the Lessor's rights in respect of any antecedent breach of this Lease.

## 22. Option to Renew

If the Lessee at least one month, but not earlier than 6 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to request a grant of the Further Term as specified in Item 3 of the Schedule and:

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained;

(b) there is no subsisting default by the Lessee at the date of service of the Notice in:

- i. the payment of Amounts Payable; or
- ii. the performance or observance of the Lessee's obligation; and

(c) the Lessor agrees to the grant,

the Lessor may, in its sole discretion, grant to the Lessee a lease for the Further Term at the Rent and on the same terms and conditions other than this clause 22 in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

### 23. Holding Over

- (1) If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and subject to paragraph (2) below otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.
- (2) In the event that the Lessee is permitted to hold over the Premises pursuant to paragraph (1) above, the parties acknowledge and agree that the Rent will be continued to be reviewed in accordance with **clause 4**.
- (3) Either the Lessee or Lessor may give notice to the other, at any time, to terminate the monthly tenancy and termination will take effect one month after the date of service of that notice.
- (4) If the Lessee is granted a new lease of the Premises following the expiration of the Term of this Lease, the parties acknowledge and agree that the Lessee will as a condition of the grant of the new lease be required to pay the new rental amount payable under the new lease from the date of expiration of this Lease, and in that regard the Lessee must pay to the Lessor any difference or shortfall between the rental amounts paid under the holding over provision of this Lease and the new rental amount payable under the new lease, at the time of executing the new lease.

### 24. Bank Guarantee

#### 24.1 Bank guarantee

The Lessee must give the Lessor an unconditional and irrevocable undertaking (Bank Guarantee) from a bank or financial institution authorised to carry on banking in Australia under the Banking Act 1959 in the terms provided in clauses 24.2 to 24.6.

#### 24.2 Purpose of the guarantee

The Bank Guarantee will authorise the Lessor to draw on the money guaranteed:

- (a) if any Amounts Payable remain unpaid for fourteen (14) days after becoming due whether or not a demand or Notice has been given to the Lessee; or
- (b) to recover the cost to the Lessor of rectifying any breach of any of the Lessee's Covenants (other than the covenant to pay the Amounts Payable) which has not been rectified by the Lessee within fourteen (14) days of being notified of the breach.

#### 24.3 Form of the guarantee

The Bank Guarantee must be in favour of the Lessor and in a form that is reasonably satisfactory to the Lessor.

#### 24.4 Term of guarantee

The Bank Guarantee must be enforceable at all times for:

- (a) the Term of the Lease;
- (b) any further term, extension or holding over; and
- (c) a period of three (3) months after termination of the Lease.

#### 24.5 Amount of bank guarantee

The amount of the Bank Guarantee shall be at any point in time during the Term or any Further Term be equal to the sum specified in Item 10 of the Schedule.

#### 24.6 Cost of bank guarantee

Any costs associated with meeting this obligation will be paid by the Lessee.

### 25. Personal Property Securities

#### 25.1 Title to Lessor Assets

- (1) Despite anything to the contrary expressed or implied in this Lease, the parties agree that the Lessor retains full title to the Lessor's Assets and title will not at any time pass to the Lessee despite:
  - (a) The delivery or collection of the Lessor's Asset by the Lessee (as the care may be);
  - (b) The possession and use of the Lessor's Assets by the Lessee.
- (2) The Lessee acknowledges that the Lessee has the right to possess the Lessor Assets as a mere bailee only and will deal with the Lessor Assets in such a manner which enables it to be clearly identified as Lessor Assets belonging to the Lessor and does not have any right to pledge the Lessor's credit in connection with the Lessor Assets and agrees not to do so.
- (3) The Lessee acknowledges and agrees that:
  - (a) it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal

- possession of or otherwise deal with the Lessor Assets without the express written consent of the Lessor;
- (b) it will, if requested by the Lessor, return the Lessor Assets to the Lessor following nonfulfillment of any obligation of the Lessee (including payment of moneys) without limiting any other right the Lessor may have;
  - (c) it will deliver up the Lessor Assets at the end of the term and give the Lessor or its agents or authorised representatives the right to enter any premises occupied by the Lessee and any premises where the Lessor believes any Lessor Assets may be stored (without liability for trespass or any resulting damage) and to use the name of the Lessee and to act on its behalf, if necessary, to recover possession of the Lessor Assets and agrees to indemnify the Lessor and its agents and authorised representatives from any damage, injury, loss, claim or expense arising from such recovery or attempted recovery of the Lessor Assets from the Lessee's possession or control;
  - (d) it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the Lessor Assets on trust for and as agent for the Lessor immediately when they are receivable or are received; and
  - (e) the Lessor may recover as a debt due and immediately payable by the Lessee all amounts owing by the Lessee to the Lessor in any respect even though title to the Lessor Assets has not passed to the Lessee.
- (4) The Lessee acknowledges and agrees that despite any other provision of this Lease:
- (a) the PPSA applies to any provision of the Lessor Assets by the Lessor to the Lessee;
  - (b) the Lessor Assets are commercial property;
  - (c) by agreeing to, and accepting or adopting this Lease the Lessee grants a purchase money security interest to the Lessor in the Lessor Assets to secure the Lessor's interest in the Lessor Assets and all moneys owing or payable by the Lessee under this Lease and any other moneys payable by the Lessee to the Lessor from time to time on any account whatsoever;
  - (d) if a purchase money security interest is not able to be claimed on the Lessor Assets by the Lessor for any reason, the Lessor will have a security interest in the Lessor Assets;
  - (e) the Lessee agrees that the Lessor's security interest in the Lessor Assets covered by this Lease may be registered on the Register and the Lessee agrees to do all things necessary and required by the Lessor to effect registration of the Lessor's security interest on the Register in order to give the Lessor's security interest the best priority possible and anything else the Lessor requests the Lessee to do in connection with the PPSA without delay;
  - (f) the Lessee warrants that all information provided by the Lessee to the Lessor, including but not limited to the Lessee's details, including the entity name, ACN or ABN and address set out in this Lease is correct in all respects and must not change its name, address or other details set out in this Lease without providing the Lessor with at least 20 Business Days' prior written notice;
  - (g) the Lessee unconditionally and irrevocably appoints the Lessor as its attorney to do any of the acts and matters set out in this clause 25 in the event that the Lessee fails, delays or declines to execute such documents or do such acts;

- (h) the Lessee agrees that it will not grant a security interest or other encumbrance in the Lessor Assets whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of the Lessor, which the Lessor may refuse to provide or grant in its absolute and unfettered discretion. The Lessor may request and the Lessee must provide any information that the Lessor requires, acting reasonably, in order to fully consider whether to grant its consent;
  - (i) the Lessor's security interest in the Lessor Assets extends to any proceeds in all present and after acquired property including without limitation book debts and accounts receivable arising from the lessee dealing with the Lessor Assets;
  - (j) it has received value as at the date of first delivery of the Lessor Assets and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to Lessor under this Lease;
  - (k) the Lessor Assets are located in Australia at the date of the provision of the Lessor Assets and the Lessee warrants that the Lessor Assets will remain located in Australia for the term of the Lease;
  - (l) neither the Lessor or the Lessee will disclose any information to any interested person unless required to do so under the PPSA;
  - (m) the Lessee waives its right under the PPSA:
    - i. to receive a copy of any verification statement, financing change statement, or any notice that the Lessor intends to sell the Lessor Assets or to retain the Lessor Assets on enforcement of the security interest granted to the Lessor under this Lease or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of;
    - ii. to object to a proposal by the Lessor to dispose of or purchase or retain the Lessor Assets in satisfaction of any obligation owed by the Lessee to Lessor;
    - iii. to receive a statement of account following the sale of the Lessor Assets; and
    - iv. to redeem the Lessor Assets.
  - (n) The Lessee will not give (or allow any person to give) to the Lessor a written demand requiring the Lessor to register a financing change statement under the PPSA or enter into (or allow any person to enter into) the Register a financing change statement under the PPSA; and
  - (o) a default by the Lessee under any other security agreement of and under which a security interest has granted to any other party in respect to the Lessor Assets and any default under such security agreement which results in an exercise of rights under the PPSA is deemed to be a breach of this Lease.
- (5) The parties agree that the Lessor is not required to respond to a request made under section 275 of the PPSA and that neither party will disclose information of any kind set out in section 275(1) of the PPSA.

## 25.2 Additional Lessor Assets

The parties acknowledge and agree that any provision of any additional Lessor Assets made by the Lessor to the Lessee during the Term (and any further Term

or period of holding over if applicable) which is not specifically set out in his Lease is deemed to form part of this Lease and is subject to the terms of this Lease.

### 25.3 Enforcement

- (1) the enforcement provisions contained in this Lease are in addition to any rights available to the Lessor under the PPSA and apply to the maximum extent permitted by law.
- (2) Without limitations to **clause 25.3 (1)** and any other provision of this Lease section 125, 129(2), 142 and 143 of the PPSA are contracted out of.

### 25.4 Power of attorney

The Lessee irrevocably nominates constitutes and appoints the Lessor, its officers or its nominees severally to be the true and lawful attorneys of the Lessee on behalf of and in the name of the Lessee to do all things necessary and sign all such documents as may be necessary to deal with the Lessor Assets in accordance with the enforcement provisions of this Lease, the PPSA or otherwise, if the Lessee is in default of this Lease.

## 26. Default

### 26.1 Event of default

A default occurs if:

- (a) any Amounts Payable remains unpaid for fourteen (14) days after a Notice has been given to the Lessee to rectify the breach;
- (b) the Lessee is in breach of any of the Lessee's covenants other than the covenant to pay the Amounts Payable for fourteen (14) days after written notice has been given to the Lessee to rectify the breach;
- (c) where the Lessee is an association which is incorporated under the *Associations Incorporations Act 2015*, the associations is wound up whether voluntarily or otherwise;
- (d) an order is made or a resolution effectively passed for the winding up of the lessee unless the winding up is for the purpose of amalgamation or reconstruction;
- (e) a controller, as defined by the *Corporations Act 2001* is appointed in respect of the Lessee's interest in the Premises under this Lease;
- (f) a mortgage takes possession of the Lessee's interest in the Premises under this Lease;
- (g) the Premises are vacated;
- (h) the Premises are not used, in the Lessor's reasonable opinion, for the Permitted Purpose for a six-month period;
- (i) the registration of the Lessee is cancelled or dissolved under the *Corporation Act 2001*; or
- (j) a person other than the Lessee or a permitted sublessee is in occupation possession of the Premises or in receipt of a rent and profits.

## 26.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 26.1** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 23**,

But without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Obligations or releasing the Lessee from liability in respect of the Lessee's obligations.

## 26.3 Lessor may remedy Lessee's default

If the lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under the Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's obligations,

Then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or so or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor or demand the Lessor's cost and expenses of remedying each breach or default.

## 26.4 Acceptance of amount payable by Lessor

Demand for or acceptance of the Amount Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers of the Lessor by the term of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

## 26.5 Essential terms

Each of the Lessee's Obligations in **clause 3** (Rent and other Payments), **6 and 20** (Insurance), **7** (Indemnity), **8** (Use), **10** (Maintenance, Repair and Cleaning), **14** (no Assignment, subletting and Charging) and **28** (Goods and Services Tax) is an essential term of this Lease but this **clause 26.5** does not mean or imply that there are no other essential terms in this Lease.

## 26.6 Breach of essential terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor:

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term;
- (c) the Lessee AGREES with the Lessor that if the Term is determined:
  - i. for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
  - ii. following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

The Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by lapse of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises.

- (d) the Lessee agrees that the obligation set out in this **clause 26.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 26.6 (c)** the rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of termination and the date on which the Term would have expired by lapse of time; and
- (f) the lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rate and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

## 27. No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licenses and permits having regard to any written law governing such applications, including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under the Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

## 28. Dispute Resolution

- (1) Until the parties have complied with this clause, a Party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory or equitable relief from a court.



- (2) Where any Dispute arises, a party may give notice in writing of the Dispute to the other party's representative setting out the material particulars of the Dispute. The representatives must act in good faith to try to resolve the Dispute quickly.
- (3) If the dispute has not been resolved within 14 days of the Dispute Notice (or any longer period the Representatives agree), each party must refer to the Dispute to its Dispute Resolution Representative who must act in good faith to try to resolve the Dispute quickly.
- (4) If the parties have not:
  - (a) resolved the dispute; or
  - (b) agreed to an alternative method of resolving the Dispute,Within 14 days after the Dispute is referred to the Dispute Resolution Representatives (or any longer period the Dispute Resolution Representatives agree), either party may submit the Dispute to mediation.
- (5) If the Dispute is submitted to mediation and the parties do not, within 14 days (or any longer period the parties agree) after the Dispute is submitted to mediation, agree on:
  - i. a mediator and the mediator's compensation;
  - ii. the procedure for the mediation; or
  - iii. the timetable of each step of the procedure,The mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines' in force at the time that the Dispute is referred.
- (6) If a dispute is not resolved within 30 days after the Dispute Notice or, where a Party has submitted the dispute to mediation, 60 days after the Dispute Notice (or any longer period the parties agree), either party who has complied with this clause may end this dispute resolution process and commence court proceedings in relation to the Dispute.

## 29. Goods and Services Tax

### 29.1 Definitions

The following definitions apply for the purpose of this clause:

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;
- (c) **GST** means a tax under the Act levied on a supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods and services or property or any other thing under this Lease; and

- (d) **Supply** means a good or service or any other thing supplied by the Lessor under the Lease and includes but is not limited to a grant of a right to possession of the Premises.

#### 29.2 Lessee to pay GST

- (1) The consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to in **clause 29.2(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

#### 29.3 Consideration to be kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 29.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

#### 29.4 No contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

#### 29.5 Statement of GST paid is conclusive

A written statement given to the Lessee by the Lessor of an amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

#### 29.6 Tax Invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

#### 29.7 Reciprocity

If the Lessee finishes any Supplies to the Lessor under this lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

## 30. Additional terms and conditions

Each of the terms and conditions (if any) specified in **Item 11** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

## 31. Notice

### 31.1 Form of delivery

A notice to a person must be in writing and may be given or made:

- (a) by a delivery to the person personally; or
- (b) by addressing it to the person and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by notice to the other.

### 31.2 Service of notice

A Notice to a person is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 31.1**, at the time of leaving the Notice provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 31.1**, on the second business day following the date of posting the Notice

### 31.3 Signing of notice

A Notice to a person may be signed:

- (a) if given by an individual by the person giving the Notice;
- (b) if given by a corporation by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government;
- (d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

## 32. Commercial Tenancy Act

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreement Act 1985* applies to this Lease and a provision of the Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with the Act.

### **33. Amendments to lease**

Subject to such consents as are required by this Lease or at law, this Lease may be varied by the agreement of the Parties in writing.

### **34. Waiver**

#### **34.1 No general waiver**

Failure to exercise or delay in exercising any rights, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

#### **34.2 Partial exercise of right, power or privilege**

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any right, power or privilege.

### **35. Acts by agents**

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lease.

### **36. Statutory powers**

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

### **37. Further assurance**

- (1) The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the Severance.
- (2) If any part of the Lease is or between void or unenforceable, that part is or will be severed from this Lease into the intent that all parts that are not o do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

### **38. Moratorium**

The provisions of a statute which would nit for this clause extend or postpone the dare od payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

## 39. Governing law

This Lease is governed by and is to be interpreted in accordance with the law of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

## 40. Defined terms and interpretation

### 40.1 Defined terms

In this Lease, unless otherwise required by the context or subject matter:

**Amounts Payable** means the Rent and any other money payable by the Lessee under this Lease;

**Appurtenances** means all drains, toilets, wash basins, bathrooms, water, gas and electrical fittings and other services contained in or about the Premises.

**Authorised Person** means:

- (a) an agent, employee, licensee or invitee of the Lessee; and
- (b) any person visiting the Premises with the consent or implied consent of any person mentioned in paragraph (a);

**Authorised Officer** means

- (a) an agent, employee, licensee or invitee of the Lessor; and
- (b) any person visiting the Premises with the consent or implied consent of any person mentioned in paragraph (a);

**CEO** means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or its functions under this Lease;

**CPI** means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics;

**Commencement Date** means date of commencement of the Term specified in **Item 4** of the Schedule;

**Encumbrance** means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat;

**Further term** means each further term specified in **Item 3** of the schedule;

**Good Repair** means good and substantial tenantable repair and in clean, good working order and condition;

**Interest Rate** means the rate at the time of payment falls due being the interest rate adopted by the Lessor on money owing to the local government each year for its annual budget. The Lessee acknowledges that for the 2021 -2022 financial year is 11%

**Land** means land described at **Item 1** of the Schedule;

**Lease** means this lease and any equitable lease or common law tenancy evidenced by this deed as supplemented amended or varied from time to time;

**Lessee's Obligations** means the agreements and obligations set out or implied in this Lease or imposed by law to be performed by any person other than the Lessor;

**Lessor Assets** mean the Lessor's Fixtures and Fittings and any of its improvements or alterations and any other personal property (as that term is defined in the PPSA) provided by the Lessor to the Lessee under this Lease at any time;

**Lessor's Fixtures and Fittings** means all fixtures and fittings and equipment installed in or provided to the Premises by the Lessor at the Commencement Date or at any time during the Term. An initial list of the Lessor's Fixtures and Fittings installed at the Commencement Date as annexed here to as **Annexure 2**;

**Lessor's Obligations** means the agreement and obligations set out or implied in this Lease, or imposed by law to be performed by the Lessor;

**Notice** means each notice, demand, consent or authority given or made to any person under this Lease;

**Party** means the Lessor or the Lessee according to the context;

**Permitted Purpose** is described in **Item 7** of the schedule;

**Premises** means the premises described at **Item 1** of the Schedule;

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and its regulations as amended and in force from time to time;

**Register** means the Personal Property Securities Register;

**Rent** means the rent specified in **Item 5** of the Schedule;

**Rent Review Date** means a date identified in **Item 8** of the Schedule;

**Schedule** means the Schedule of this Lease;

**Term** means the term of years specified in **Item 2** of the Schedule and, where the context permits, any Further Term; and

**Termination means** expiry by lapse of time or sooner determination of the Term or any period of holding over.

## 40.2 Interpretation

In this Lease, unless expressed to the contrary:

- (a) words using:
  - i. the singular include the plural;
  - ii. the plural include the singular; and
  - iii. any gender includes each gender.
- (b) a reference to:
  - i. a natural person includes a body corporate or local government; and
  - ii. a body corporate or local government includes a natural person;
- (c) a reference to a professional body includes a successor to or substitute for that body;
- (d) a reference to a Party includes its legal personal representatives, successors and assigns and if a party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) a reference to a statute, ordinance, code, regulations, award, local or town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) a reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) a reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) a reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to –
  - (i) both express and implied provisions and terms; and
  - (j) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (k) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes email and facsimile transmissions;
- (l) anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (m) if a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them; and
- (n) the agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include:
  - i. an agreement not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
  - ii. an agreement to do everything necessary to ensure that the act or thing is not done or omitted to be done.

### 40.3 Headings

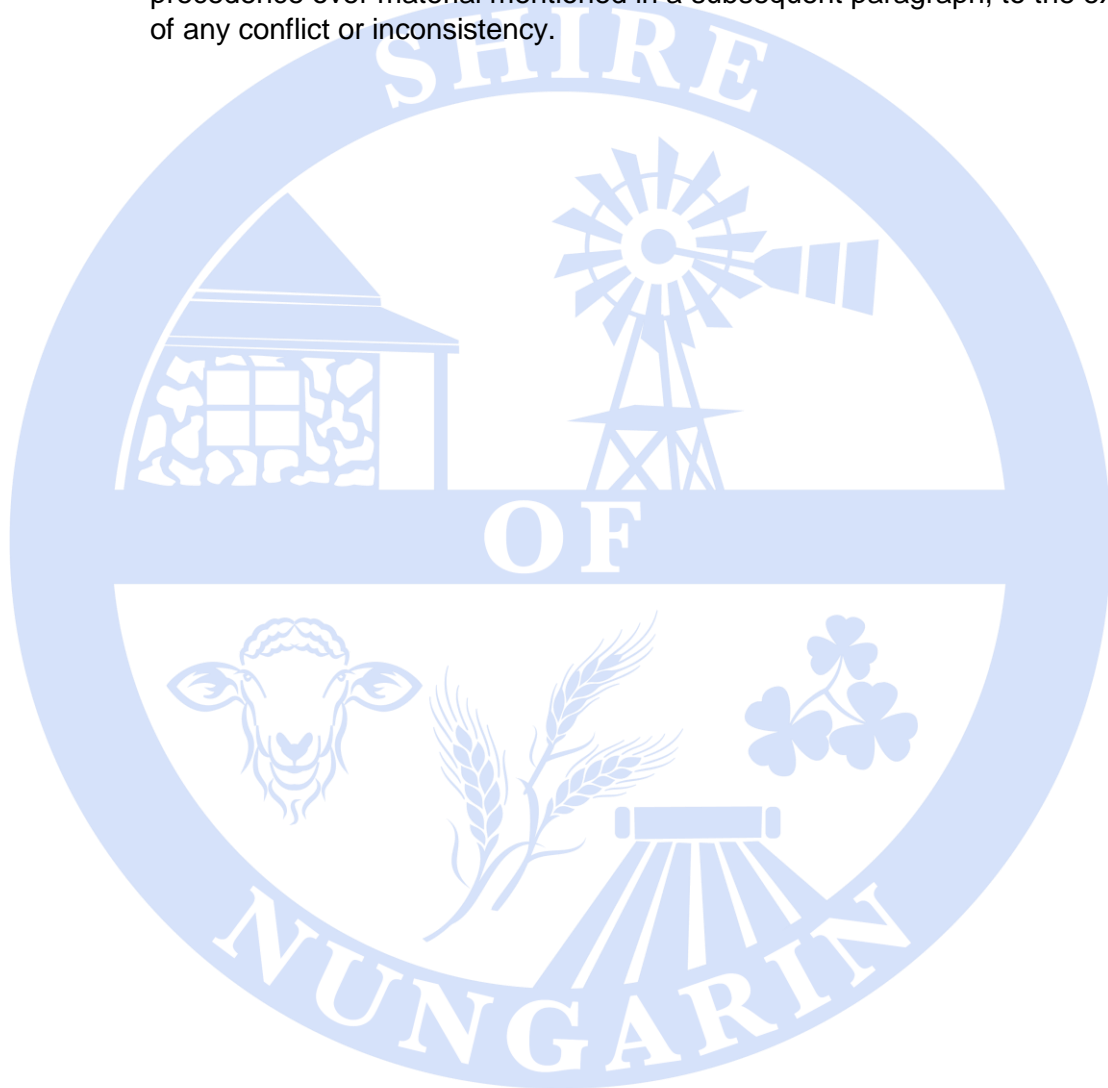
Headings do not affect the interpretation of this Agreement.

### 40.4 Schedules etc

Each Schedule (and an Annexure or document incorporated by reference, if any) forms part of this Agreement. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) a Schedule;
- (c) an Annexure, if any; and
- (d) a document incorporated by reference, if any,

The material mentioned in any one paragraph (a)-(d) of this **clause 40.4** has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.



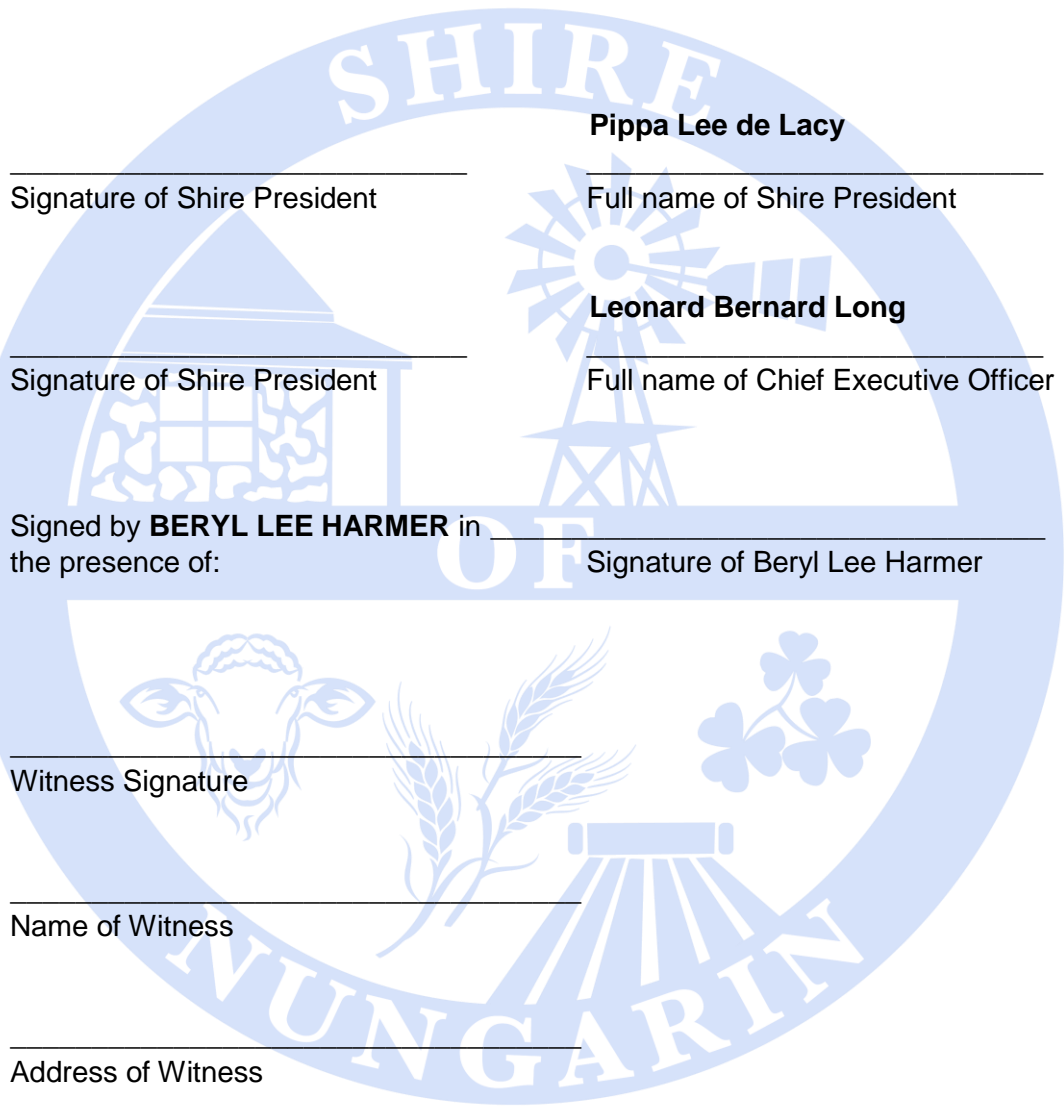


**Signing page**

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EXECUTED      DAY OF      2022

**THE COMMON SEAL** of the **SHIRE OF NUNGARIN** was hereunto affixed in the presence of:



\_\_\_\_\_  
Signature of Shire President

\_\_\_\_\_  
Full name of Shire President

**Pippa Lee de Lacy**

\_\_\_\_\_  
Signature of Shire President

\_\_\_\_\_  
Full name of Chief Executive Officer

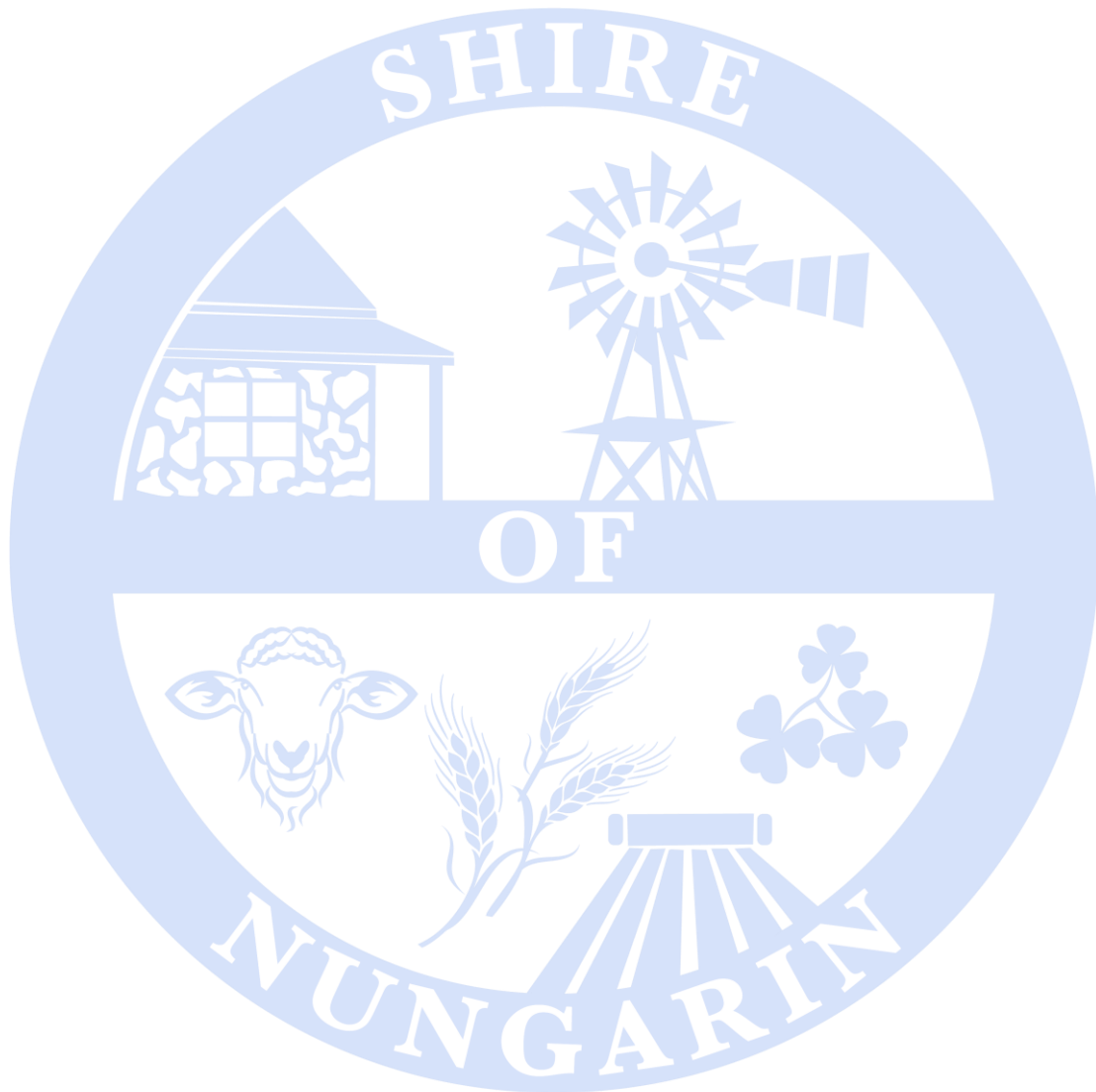
**Leonard Bernard Long**

Signed by **BERYL LEE HARMER** in  
the presence of: \_\_\_\_\_  
Signature of Beryl Lee Harmer

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness



**Item 1**      **Land and Premises**

**Land**

Lot 64 Diagram 53455 and being whole of the land comprised in Certificate of Title Volume 1563 Folio 465.

**Premises**

The whole of the Land including fixtures and fittings belonging to the Lessor therein and all additions or modifications and replacements from time to time.

Item 2

Term

Five (5) years

Item 3

Further Term

On conclusion of this lease the lessor can apply to council for a new five (5) year lease.

Item 4

Commencement Date

\_\_\_\_\_ 2022

Item 5

Rent

\$6,171 per annum plus GST, payable in advance by equal monthly instalments of \$514.25 plus GST (\$565.67)

Item 6

Public Liability

Twenty million dollars (20,000,000.00)

Item 7

Permitted Purposes

Bed and Breakfast

Item 8

Rent Review Dates

Annually of the anniversary of the Commencement Date based on CPI for each year of the Term.

Item 9

Deleted

Item 10

Bond

Equivalent to the three (3) months' Rent plus GST, to be adjusted after each Rent Review

Item 11

Additional Terms & Conditions

1. Fit-out Premises responsibility of Lessee

The Lessee acknowledges and agrees that the Lessor hands over the Premises as is and the fit-out of the Premises will be the sole responsibility of the Lessee at its cost.