

Deed of Assignment and Variation of Sublease - Portion of Reserve 26384, 7 Mary Street, Bremer Bay

Shire of Jerramungup

Bremer Bay Community Resource and Visitor's
Centre Inc

Thuc Huynh

Thuchan Pty Ltd (ACN 604 723 908)



McLeods

Barristers & Solicitors

Stirling Law Chambers | 220 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

Ref:DFN:FREM-28939

Copyright notice

McLeods owns the copyright in this document and commercial use of the document without the permission of McLeods is prohibited.

Table of Contents

Copyright notice	i
Details	1
Background:	1
Agreed terms	2
1. Definitions	2
2. Interpretation	2
3. Minister for Lands' Consent	3
4. Assignment	3
5. Assignor's covenants with Assignee	3
6. Assignee's covenants with Assignor and Sublessor	4
7. Reservation of rights by Sublessor against Assignor	4
8. Assignee's acknowledgment and Sublessor's covenant with assignee	4
9. Variation to Sublease	5
10. Guarantee	5
(1) Guarantee and Indemnity	5
(2) Guarantor's Covenants	5
(3) Obligations Effective in All Circumstances	6
11. Severance	7
12. Release	7
Schedule	8
Signing page	9
Annexure 1 – Minister for Lands Consent	11

Details

Parties

Shire of Jerramungup

of PO Box 92, Jerramungup, Western Australia, 6337

(**Head Lessor**)

Bremer Bay Community Resource and Visitor's Centre Inc

of 7 Mary Street, Bremer Bay, Western Australia, 6337

(**Sublessor**)

Thuc Huynh

of 7 Mary Street, Bremer Bay, Western Australia, 6337

(as **Assignor**)

Thuchan Pty Ltd (ACN 604 723 908)

of 34 Yougenup Road, Gnowangerup, Western Australia, 6335

(**Assignee**)

Thuc Huynh

of 7 Mary Street, Bremer Bay, Western Australia, 6337

(as **Guarantor**)

Background:

- A The Head Lessor has the care, control and management of the land described in **Item 1(a)** of the Schedule (**Land**) pursuant to the Management Order.
- B By deed of lease the Head Lessor granted to the Sublessor a lease of a portion of the Land for a period of five years commencing on 1 April 2016 (**Head Lease**).
- C By the sublease described in **Item 2** of the Schedule (**Sublease**) the Assignor has a leasehold estate in the Premises for the Term.
- D The Sublease prohibits any assignment of the Lease by the Assignor without the prior written consent of the Sublessor, the Head Lessor and the Minister for Lands.
- E The Assignor and the Assignee have agreed, subject to the consent of the Sublessor, the Head Lessor and the Minister for Lands, to the assignment of the leasehold estate in the Premises to the Assignee and the variation of the Sublease on the Assignment Date on the terms and conditions of this Deed, including the grant of a guarantee of the Assignee's obligations under the Sublease by the Guarantor.

Agreed terms

1. Definitions

(1) In this deed:

Assignment Date means the date specified in **Item 3** of the Schedule;

Land means the land described in **Item 1(a)** of the Schedule;

Premises means the premises described in **Item 1(b)** of the Schedule;

Schedule means the schedule to this Deed;

Sublease means the document described in **Item 2** of the Schedule;

Term means the term of the Sublease; and

Unexpired Residue of the Sublease means the period commencing on the Assignment Date and ending on the date of expiration by effluxion of time of the Term and any extension of that Term granted in accordance with the Sublease.

(2) Except to the extent inconsistent with this deed, terms in this deed have the same meaning as they have under the Sublease.

2. Interpretation

In this deed unless the contrary intention appears:

- (a) reference to a person includes a reference to that person's personal representatives, successors and assigns;
- (b) reference to a person includes a natural person, partnership, trust, association and company;
- (c) a word importing the singular includes the plural and a word importing the plural includes the singular;
- (d) a word importing a gender includes the other gender;
- (e) reference to a company includes any incorporated body of any description;
- (f) reference to any statute, regulation, proclamation, ordinance, by-law or local law includes all statutes, regulations, proclamations, ordinances, by-laws or local laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and local laws issued under that statute;
- (g) reference to the provisions of a document or part of a document includes a reference to all the terms, covenants, conditions, stipulations, acknowledgments and reservations contained or implied in that document or in that part of a document;

- (h) during any time when the Sublease is a lease to which the *Commercial Tenancies (Retail Shops) Agreements Act 1985* (“the Retail Shops Act”) applies:
 - (i) the provisions of the Sublease are subject to the provisions of the Retail Shops Act; and
 - (ii) any provision of the Sublease giving a right, power or remedy to the Sublessor or imposing an obligation on the Assignor or the Assignee which is prohibited or made void or otherwise unenforceable by the Retail Shops Act, does not apply to the extent only that the provision is so prohibited, made void or is otherwise unenforceable, but without prejudice to the other provisions of the Sublease, which continue in full force and effect.

3. Minister for Lands’ Consent

- (1) This Assignment of Sublease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*.
- (2) The parties acknowledge that the Minister for Lands’ consent letter is annexed hereto as **Annexure 1**.

4. Assignment

Subject to the terms and conditions of this Deed and in consideration of:

- (a) the matters set out in the Recitals to this Deed; and
- (b) the Assignee assuming liability under the Sublease for the Unexpired Residue of the Sublease,

the Assignor with the consent of the Sublessor and the Head Lessor HEREBY ASSIGNS as beneficial owner to the Assignee all the Assignor's estate and interest in the Premises and the Sublease for the Unexpired Residue of the Sublease as from the Assignment Date SUBJECT TO payment of the rental and the performance and observance by the Assignee of all and every one of the covenants conditions stipulations and acknowledgments to be performed and observed by the Sublessee under the Sublease.

5. Assignor's covenants with Assignee

The Assignor COVENANTS with the Assignee that:

- (a) notwithstanding any act, deed or thing done by the Assignor or knowingly suffered by the Assignor to have been done the Sublease is now a valid and subsisting instrument and has not become void or voidable and that the Assignor has performed and observed any covenant on its part contained in the Sublease and will continue to perform and observe such covenants up to the Assignment Date and if necessary, thereafter;
- (b) subject to the consents required under the Sublease, the Assignor has power to assign the Premises to the Assignee for the Unexpired Residue of the Sublease free from all encumbrances;
- (c) during the Unexpired Residue of the Sublease the Premises may be entered into and held and any profits from the Premises may be received by the Assignee without any

lawful interruption by the Assignor, the Sublessor or any person rightfully claiming through or in trust for the Assignor or the Sublessor, subject always to the provisions of the Sublease and subject to the performance and observance by the Assignee of any covenant that is expressed or implied under this Deed to be the responsibility of the Assignee; and

- (d) the Assignor and every person rightfully claiming through it any estate right title or interest in the Premises or the Sublease will at all times during the Unexpired Residue of the Sublease at the request and expense of the Assignee execute and do every lawful act assurance and thing for further securing the Premises for the Assignee for the Unexpired Residue of the Sublease.

6. Assignee's covenants with Assignor and Sublessor

THE ASSIGNEE COVENANTS with the Assignor and as separate covenants with the Sublessor and Head Lessor:

- (a) at all times from the Assignment Date during the continuance of the Sublease to duly and punctually pay the rent reserved by the Sublease and to perform and observe all of the Sublessee's obligations under the Sublease;
- (b) to indemnify and keep indemnified the Assignor against all actions claims demands and suits costs charges and damages whatsoever in respect of the rent reserved by the Sublease and the Sublessee's obligations under the Sublease;
- (c) that the Assignee will be bound in all respects and will comply in all respects with the terms and conditions of the Sublease as fully and to the same effect as if the Assignee had been a party to the Sublease as the Sublessee;
- (d) that the powers granted to or implied in favour of the Sublessor by the Sublease will be as good and valid and may be as effectually exercised by the Sublessor against the Assignee as if the Assignee was a party to the Sublease and expressly named in the Sublease as the Sublessee; and
- (e) to pay all costs and expenses including the costs of the Sublessor's solicitors of and incidental to the instruction for and the preparation execution and approval by the Sublessor of this Deed and any duty payable in respect of this Deed.

7. Reservation of rights by Sublessor against Assignor

Subject to clause 2(h), the Sublessor expressly reserves its rights against the Assignor in all respects whether under the Sublease or otherwise for any wrong, default, act or omission occurring prior to the Assignment Date whether or not the Sublessor was aware or could reasonably have been aware of such wrong, default, act or omission as at the Assignment Date and nothing in this Deed shall be construed as releasing the Assignor from its liability to the Sublessor or prejudicing the liability of the Assignor to the Sublessor.

8. Assignee's acknowledgment and Sublessor's covenant with assignee

The Assignee acknowledges that:

- (a) the current annual rental payable under the Sublease is ten thousand six hundred and eighty two dollars and nineteen cents (\$10,682.19) inclusive of GST per annum, payable in advance in weekly instalments of two hundred and five dollars and forty two cents (\$205.42) inclusive of GST and that the rental will be reviewed subject to the terms of the Sublease; and
- (b) outgoings are payable under the Sublease.

9. Variation to Sublease

The Head Lessor, Sublessor, Assignee and Guarantor agree that clause 10 has effect as a variation to the Sublease effective on and from the Assignment Date.

10. Guarantee

(1) Guarantee and Indemnity

Notwithstanding any other provision of this Deed, in consideration of the Sublessor and Head Lessor consenting to this assignment of the Sublease, the Guarantor:

- (a) GUARANTEES payment by the Assignee of the Amounts Payable by the Sublessee to the Sublessor under the Sublease and the observance and performance by the Sublessee of the Sublessee's Covenants;
- (b) AGREES that if any money payable by the Sublessee to the Sublessor or the Head Lessor under the Sublease is not recoverable from the Guarantor under this Guarantee by reason of any legal limitation disability or incapacity on or of the Assignee or by reason of any avoidance of the liability of the Assignee or of any other fact or circumstance then the Guarantor will hold the Sublessor and the Head Lessor fully indemnified at all times against all loss or damage which the Sublessor or Head Lessor may suffer or incur by reason of any such limitation disability incapacity failure fact or circumstance.

(2) Guarantor's Covenants

Notwithstanding any other provision of this Deed, the Guarantor COVENANTS AND AGREES with the Sublessor as follows:

- (a) To pay on demand all moneys due and payable to the Sublessor or the Head Lessor by the Sublessee under the Sublease from the Assignment Date;
- (b) The liability of the Guarantor will not be affected by:
 - (i) the granting of any time or other indulgence by the Sublessor to any person;
 - (ii) any compounding compromise release abandonment waiver variation or renewal of any term of the Sublease or of the rights of the Sublessor or any omission;
 - (iii) the avoidance of any payment by the Sublessee or the Guarantor to the Sublessor;
 - (iv) any other dealing matter or thing which but for this provision operates to affect the liability of the Guarantor.

- (c) This Guarantee is an irrevocable and continuing Guarantee and will remain in effect for the benefit of the Sublessor and the Head Lessor in respect of all liabilities of the Assignee arising from the Sublease both before and after the determination of the Term.
- (d) All benefits or moneys received by the Sublessor from or on account of the Assignee capable of being applied by the Sublessor in reduction of any money owing to the Sublessor will be taken and applied by the Sublessor as payment in gross without any right of the Guarantor to claim any benefit from any moneys so received by the Sublessor.
- (e) Upon liquidation or bankruptcy of the Guarantor the Sublessor will be entitled to prove for the total indebtedness of the Assignee under the Sublease for the Unexpired Residue of the Sublease notwithstanding that the Rent or other moneys payable by the Assignee to the Sublessor under the Sublease are not due and payable at the date of the liquidation or bankruptcy of the Guarantor.
- (f) The indemnity given by the Guarantor will be a principal obligation and may be enforced against the Guarantor without any responsibility on the part of the Sublessor to proceed against the Assignee or any other person.
- (g) Upon liquidation or bankruptcy of the Assignee the Guarantor will not prove in competition with the Sublessor and the Guarantor authorises the Sublessor to prove for all moneys which the Guarantor has paid under this Sublease and retain or to appropriate at the discretion of the Sublessor any amount received by the Sublessor.
- (h) To give effect to this Sublease the Guarantor waives in favour of the Sublessor all rights of the Guarantor against the Assignee.
- (i) The liabilities of the Guarantor created by this clause shall not be affected by reason of any security taken by the Sublessor being or becoming void or defective.
- (j) In the event of any part of this Deed being severed the Guarantor will not be entitled to rely on or claim the benefit of any such severance.
- (k) This Guarantee will remain in force and continue notwithstanding any extension, renewal or assignment of the Sublease, and will continue during any period of holding over by the Sublessee (whether or not with the Sublessor's consent).

(3) Obligations Effective in All Circumstances

The obligations (expressed or implied) of the Guarantor in this Deed shall apply to and be fully effective in respect of the Sublessee's Covenants whether or not:

- (a) the whole or any part of the Sublessee's Covenants are enforceable at law or in equity or otherwise pursuant to any express or implied lease, tenancy or other right of occupancy of or interest in the Premises granted by or derived from the Sublessor under the Sublease or under or pursuant to any antecedent agreement or otherwise enjoyed by the Assignee at law or in equity;
- (b) the Sublease is in a form such as to be capable of being registered in the manner referred to in the *Transfer of Land Act 1893*; or

- (c) it is the intention (expressed or implied) of either or both of the Sublessor and the Assignee that the Sublease be registered in the manner referred to in the *Transfer of Land Act* 1893.

11. Severance

If any part of this Deed is or becomes void or unenforceable that part is or will be severed from this Deed so that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by the severance.

12. Release

Without detracting from clause 9, the Sublessor and the Assignor each absolutely release and discharge the other from all liability whatsoever in relation to the observance and performance of their respective covenants, agreements and obligations under the Sublease to be observed and performed on and from the Assignment Date.

Schedule

Item 1 Land and Premises

(a) Land

Reserve 26384 being Lot 649 on Deposited Plan 189638 and being the whole of the land comprised in Crown Land Title LR3010 Folio 86.

(b) Premises

That portion of the Land as shown on the plan at Annexure 1 to the Sublease together with all buildings, structures, alterations, additions and improvements on those portions of the Land at the Commencement Date or erected on those portions of the Land during the Term.

Item 2 Sublease

A sublease of the Premises for a term of 5 years commencing on 1 April 2016 and expiring on 31 March 2021 between the Shire of Jerramungup as Head Lessor, Bremer Bay Community Resource and Visitor's Centre Inc as Sublessor and Thuc Huynh as Sublessee

Item 3 Assignment Date

[insert date]

Signing page

Executed on the

day of

2019

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

Signature of President

Full name of President

Signature of Chief Executive Officer

Full name of Chief Executive Officer

THE COMMON SEAL of **BREMER BAY COMMUNITY RESOURCE AND VISITOR'S CENTRE INC** ("Association") was hereunto affixed pursuant to the constitution of the Association in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office in the Association indicated under his or her name-

Office Holder Sign

Office Holder Sign

Name:

Name:

Address:

Address:

Office Held:

Office Held:

SIGNED by **THUC HUYNH** as **ASSIGNOR** in
the presence of

Signature of Thuc Huynh

Witness Sign

Name of Witness

Address

Occupation

EXECUTED by **THUCHAN PTY LTD (ACN 604
723 908)** pursuant to Section 127 of the
Corporations Act:

Name of Director

Signature of Director

Name of Director/Secretary

Signature of Director/Secretary

SIGNED by **THUC HUYNH** as **GUARANTOR**
in the presence of

Signature of Thuc Huynh

Witness Sign

Name of Witness

Address

Occupation

Annexure 1 – Minister for Lands Consent
