

Sublease of Portion of Reserve 26384, 7 Mary Street, Bremer Bay

Shire of Jerramungup

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Tenant Guide

FORM 4

Commercial Tenancy (Retail Shops) Agreements Act 1985

Section 6A

[r. 9]

TENANT GUIDE

FOR NEW RETAIL SHOP LEASES FROM 1 JANUARY 2013

This guide is intended to assist you, as a tenant, to understand some of your legal rights and obligations in relation to a retail shop lease under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (the **Act**). This guide does not replace financial, legal or business advice.

The Act and the regulations are available from the State Law Publisher at www.slp.wa.gov.au.

WHAT IS A RETAIL SHOP LEASE?

Entering into a lease for a retail shop means that you (the **tenant** or **lessee**) are entering into a legally binding contract with the landlord (or **lessor**). The lease agreement sets out your rights and obligations in relation to the use of the retail shop.

A lease cannot override the requirements of the Act.

The Act regulates some of the provisions which may be contained in your lease agreement, including the following:

- rent reviews
- options to renew a lease
- terminating a lease
- operating expenses (or outgoings)
- trading hours.

Which leases are covered by the Act?

The Act generally applies to leases for premises with a lettable area of 1 000 m² or less:

- that are used for carrying on a business and that are in a retail shopping centre
- that are not in a retail shopping centre, but that are used (or predominantly used) for the sale of goods by retail
- that are used for conducting a 'specified business' — specified businesses include, drycleaning, hairdressing, beauty therapy, shoe repair and video or DVD stores (a list of all specified businesses is available from the Department of Commerce at www.commerce.wa.gov.au).

There are some retail shops with a lettable area greater than 1 000 m² that are also covered by the Act — a list of these premises can be obtained from the Department of Commerce at www.commerce.wa.gov.au.

The Act generally does not apply to leases to publicly listed companies.

(See section 3(1) of the Act, definition of retail shop lease.)

When is the lease “entered into”?

A lease is usually entered into when both parties have signed it. However, a lease is still valid even if the lease document hasn't been signed by the parties if:

- the tenant takes possession of the shop premises; or

- the tenant starts paying rent.

(See section 3(4) of the Act.)

What you should do:

- ***if necessary, seek advice as to whether your lease is covered by the Act***
- ***establish the area of the retail shop under the lease and have this verified if necessary.***

INFORMATION YOU SHOULD HAVE BEFORE ENTERING INTO A LEASE

Before entering into a lease you should do the following:

- carefully read this ***tenant guide***
- carefully read the ***disclosure statement*** provided by the landlord or the landlord's agent
- carefully read any written ***lease document (including any assignments, extensions or deeds of variation)***
- obtain ***independent financial, legal and business advice.***

Rent, the term of the lease, options, outgoings and related costs are open to negotiation with the landlord. Make sure that you understand these, and all other aspects of the lease, before signing it. To avoid disputes at a later stage, you should make sure that all agreements that you have made are in writing and that the lease documents are consistent with any representations made by the landlord or the landlord's agents.

What you should do before signing or entering into a lease:

- ***seek independent legal and business advice before entering into a lease***
- ***make sure you understand the lease and your rights, liabilities and obligations before signing it***
- ***seek advice from financial experts to ensure you understand the costs of running the business.***

Tenant Guide to be located in lease

A new retail shop lease must include this tenant guide at the front of the lease.

If the landlord does not give you a tenant guide, you may have the right to do either or both of the following:

- terminate (end) the lease at any time up to 60 days after the lease was entered into (after this time you may apply to the State Administrative Tribunal for an order to terminate the lease)
- apply to the State Administrative Tribunal for an order for compensation for any monetary loss suffered by you.

(See section 6A of the Act.)

Disclosure statement to be given to you by landlord

At least 7 days before a lease is entered into the landlord must give you a disclosure statement. The disclosure statement sets out important facts about the retail shop and the lease. A copy of this tenant guide, the form of lease and annual estimates of expenditure in relation to operating expenses should be attached to the disclosure statement.

If the landlord does not give you a disclosure statement or gives you a disclosure statement that is incomplete or contains incorrect information you may have the right to do either or both of the following:

- terminate (end) the lease at any time up to 6 months after the lease was entered into
- apply to the State Administrative Tribunal for an order for compensation for any monetary loss you have suffered.

The disclosure statement should be in a prescribed form (this form is Form 1 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au). It is important to read the statement carefully and make sure it includes all verbal and written agreements, promises or commitments made during negotiations with the landlord or the landlord's agent (for example, any representations about customer traffic).

The disclosure statement should also contain details about the following:

- the landlord's property, such as the total lettable area, tenancy mix and services provided
- the shop premises, such as location, area and services provided
- key terms and conditions of the lease such as rent, term of the lease, options to extend the term and rent review
- permitted use of the premises
- your contribution to the landlord's expenses (operating expenses)
- any additional charges payable by you, such as shop fitout or contributions to marketing and sinking funds.

By signing the disclosure statement you are acknowledging that you understand the basis for the retail shop lease with the landlord. If you do not understand or agree with anything in the disclosure statement you should advise the landlord immediately.

It is vital that you are satisfied that the disclosure statement sets out all relevant information regarding the retail shop and (where applicable) the shopping centre building and property. If necessary, you should check details by making relevant enquiries and by seeking appropriate independent legal or expert advice.

(See section 6 of the Act.)

What you should do:

- ***make sure that you understand the disclosure statement before signing it and ensure it includes any agreements you reached during negotiations and any promises made to you by the landlord or their agent.***

Disclosure by the tenant

The landlord may ask for details of your retailing experience and financial capacity to establish and trade profitably and professionally. Any information provided to the landlord by you must also be correct and contain no misleading information.

PERMITTED USE OF THE RETAIL SHOP

The permitted use clause in a lease is very important as it sets out the type of business that you can run from the premises. You should ensure that the description of permitted use is broad enough to cover the type of business that you want to operate and, if anticipated, to allow you to expand the business.

The kind of things to consider about permitted use include:

- for a hairdresser, does the permitted use include providing beauty treatments?
- for a takeaway shop, can the type of food be changed?
- your future plans for the business.

You should also check that any local government approvals are in place for the type of business that you plan to operate. Avoid potential disputes by getting the approvals you need in writing.

A permitted use clause in a lease does not mean that you have the exclusive right to carry on a particular type of business in a shopping centre. Exclusivity is a separate issue that needs to be agreed separately with the landlord and included in the lease agreement.

What you should do:

- ***make sure the lease and the landlord's disclosure statement describe the shop's permitted use and that this description is broad enough so you can expand or sell the business***
- ***check that local government approvals are in place for the business you plan to conduct — get the approvals in writing***
- ***confirm whether or not you have an exclusive right to carry on your particular type of business.***

TERM OF THE RETAIL SHOP LEASE

The term of a lease is the length of time for which you can rent the shop. The lease must set out the lease term and may also include one or more options to renew or extend the term.

The length of the term of the lease is critical because it should be long enough to enable you to recover your investment, make a profit and sell the business, if you wish.

Minimum of 5 years

In most cases, the Act gives a tenant who is entering into a new lease a right to a minimum 5 year lease term. The 5 year term can be a combination of the initial term and options to extend the lease (for example, an initial term of 2 years and an option to renew of 3 years). The initial term does not need to be 5 years.

If the lease does not provide for options to extend the lease to a 5 year term, you have a legal right to do so (often called a “statutory option”). You can exercise this option by giving the landlord written notice in the standard form at least 30 days prior to the expiry of the term of the lease (the standard form is Form 3 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au). Although the Act allows you to extend the lease to a 5 year term, you do not need to extend the lease for the whole of this period if you choose not to.

The right to a 5 year term will only apply to retail shop leases with a term of more than 6 months (this includes any lease where the tenant has been continuously in possession of the premises for more than 6 months).

(See section 13 of the Act.)

The term can be longer or shorter than 5 years

Even though the Act gives tenants a right to a minimum 5 year term, you can negotiate a term that is longer than 5 years (for example, a 10 year term, or a 5 year initial term with 2 options to renew for a further 5 years each).

In some circumstances, you may agree to a term shorter than 5 years, but this must be your decision and needs to be approved by the State Administrative Tribunal.

(See section 13(7b) of the Act.)

Exercising an option to renew

It is important that you exercise an option to renew a lease in the way set out in the lease (you may need to let the landlord know in writing and within certain timeframes). If you do not exercise an option to renew properly the landlord may not be obliged to renew the lease.

The Act requires the landlord to give you written notice of the expiry date for any options to renew (the date on which the option to renew is no longer valid). You must receive this notice between 6 and 12 months before the expiry date. If the landlord fails to give you notice the option expiry date may be extended.

(See section 13C of the Act.)

At the end of the lease term

At the end of the term of the lease and the use of any options to renew the lease, the landlord does not have to renew the lease and you will have no further rights to occupy the premises. In some instances the landlord may allow you to continue to occupy the premises on a month to month basis.

Within 12 months before the end of the lease term you can make a written request to the landlord asking whether the landlord intends to renew the lease. The landlord must reply to such a request in writing within 30 days.

(See section 13B of the Act.)

What you should do:

- ***seek advice as to the appropriate lease term for your business***
- ***don't assume that you will get a new lease at the end of the lease term — you need to make sure that the term of your lease is appropriate for your business structure***
- ***seek advice as to the landlord's intentions at the end of the lease term as early as possible so that you can plan accordingly.***

Does the lease include redevelopment or relocation clauses?

Many leases include a clause allowing a landlord to terminate a lease before the end of the agreed lease term if the premises are to be redeveloped. In some instances the landlord may offer to relocate a tenant to alternative premises.

For the initial 5 years of a lease term, a redevelopment or relocation clause may only be included in a lease if:

- it is in the prescribed form (see item 2 of Schedule 1 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au); or
- it has been approved by the State Administrative Tribunal (if the parties have agreed to a provision that is different to the prescribed form).

If 5 years of the term have already expired, then the clause must be in accordance with the provisions of the Act — which sets out requirements in relation to notice, offer of alternative premises, payment of the tenant's reasonable costs and payment of compensation.

(See section 14A of the Act.)

What you should do:

- ***carefully look at any redevelopment or relocation clause in the lease and consider:***
 - ***what commitment is the landlord giving about relocation of the shop – will the new location and rental be comparable to the current premises?***
 - ***what compensation is the landlord offering you if your trade is affected?***
 - ***what effect will it have on your business?***
- ***seek independent financial, legal and business advice on the clause.***

RENT

Rent is usually the largest ongoing payment required under a lease. The Act does not regulate what the rent should be. However, the Act includes some rules relating to rent based on turnover and review of rental.

Types of rent

The initial rent for a shop is a matter for negotiation between the landlord and the tenant. Rental for retail shops can vary considerably depending on the location, the size of the shop, the term of the lease and the type of business.

Some common methods of determining rent are:

- net rent — an agreed base rent plus a contribution to the landlord's operating expenses or outgoings
- gross rent — an all inclusive payment for all the shop's occupancy costs
- semi-gross rent — an amount charged for rental inclusive of some outgoings (for example, the tenant may pay the semi-gross rent plus its proportion of rates and taxes)
- turnover rent or percentage rent — a component of rent that is determined as a percentage of the tenant's turnover during a specified period.

What you should do:

- ***seek expert advice as to the basis for determining rent that best suits your business operations***
- ***pay your rent on time — if you don't pay your rent, the landlord may be able to end your lease.***

Rent based on turnover

Some leases base rent (or a part of the rent) on a percentage of the turnover of the tenant's business.

If you have agreed to a rent based on turnover, then:

- the lease must set out an agreed formula
- your agreement must be formalised in writing on the prescribed form before the lease is entered into (the prescribed form is Form 2 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au).

The Act also recognises the confidentiality of turnover figures to a retail business and limits the use of this information.

(See section 7 of the Act.)

The landlord cannot require you to provide turnover figures unless your rent is to be based on turnover.

(See section 8 of the Act.)

RENT REVIEW

Most leases will state that the rent will be reviewed at regular intervals.

At each review time the lease must set out a single basis on which the rent is to be reviewed, this can include:

- the market rent
- an increase by reference to the Consumer Price Index (CPI)
- a set percentage increase
- an agreed formula or combination, for example, CPI + 2%.

The types of review may vary over the life of the lease (the lease may state that reviews are to alternate between CPI and market review). However, the lease cannot give the landlord the right to choose the greatest return from a range of rent types at any one review (for example, the lease cannot state that the increase is to be CPI or 5% whichever is higher).

The lease may specify only one method of review at a time.

Market rent

The Act provides that market rent is the rent obtainable for the retail shop in a free and open market if it were vacant and to be let on similar terms.

The market rent is not to take into account:

- the goodwill of the business
- any stock, fixtures or fittings that are not the property of the landlord
- any structural improvements paid for or carried out by the current tenant.

Market rent review

If your lease specifies a market rent review, the Act provides that both parties can initiate the market rent review process and if the parties cannot agree on the rental:

- appoint a licensed valuer (agreed to by both parties) to determine the new rental; or
- request that the Small Business Commissioner appoint a valuer to determine the rental; or
- each appoint a valuer to determine the rental.

A landlord is required under the Act to provide a valuer with certain information in relation to retail shops in a shopping centre or in the same building in order to assist the valuer to decide the market rent. A valuer must keep this information confidential.

A disagreement regarding the new rent may be referred to the Small Business Commissioner for mediation or to the State Administrative Tribunal for determination. Until the new rent is agreed, the current rent continues to apply. Once the higher or lower rent is agreed, adjustments will be backdated to the review date.

No “ratchet” clauses

Any provision in a lease about a market review that seeks to prevent the rent from rising or falling above or below a certain level is void. The lease must allow the rent to rise or fall to a level supported by market evidence, for example, a clause cannot stop the rent from decreasing on a market review.

(See section 11 of the Act.)

What you should do:

- **make sure that you understand how your rent is to be calculated and what other payments may be required**
- **consider whether your business can sustain the current rent, rent increases and operating expenses over the term of the lease.**

CONTRIBUTION TO THE LANDLORD’S OPERATING EXPENSES OR OUTGOINGS

You may be required to contribute to a proportion of the landlord’s expenses. The landlord’s expenses are described in the Act as operating expenses. Leases can also refer to them as “outgoings or variable outgoings”.

Operating expenses are the costs of operating, repairing or maintaining the landlord’s premises including any building common areas. Typically these costs include the rates and taxes, cleaning, air conditioning, security, insurances and other valid expenses of running the property.

Details about the operating expenses and their payment are to be set out in the lease and the disclosure statement.

No capital expenses or management fees

The landlord cannot recover the following from you as an operating expense:

- management fees
- capital expenditures in relation to a retail shopping centre (for example, asset replacement)

Operating expenses are not to exceed the “relevant proportion”

Your contributions to operating expenses are negotiable. The Act provides that a tenant cannot be required to contribute more than the “relevant proportion” in relation to an operating expense. Nothing prevents you from negotiating with the landlord to pay less than the relevant proportion.

The relevant proportion is calculated by comparing the lettable area of your shop to the total lettable area of the shopping centre or the group of premises to which the expense relates.

$$\text{relevant proportion} = \frac{\text{lettable area of shop}}{\text{total lettable area}}$$

Referable expenses

In certain circumstances an operating expense may be incurred in relation to only some of the businesses in a centre or group of premises, for example, specialised cleaning used by only a few tenants. This is called a “referable expense” and can be allocated using the total lettable area of only the shops to which the referable expense relates.

What you should do:

- ***make sure that you understand the operating expenses before signing the lease***
- ***budget to meet the operating expenses payments.***

Landlord to provide estimates and statements for operating expenses

In order to recover operating expenses from you, the landlord must provide you with:

- an annual estimate of expenditure for each operating expense
- an audited operating expenses statement for each accounting period detailing all expenditure by the landlord (this statement must be given within 3 months after the end of the accounting period).

(See section 12 of the Act.)

SINKING FUNDS

If your shop is in a shopping centre and you have agreed to contribute to a fund for major repair and maintenance works, your contributions are protected under the Act. These funds are subject to accounting and audit provisions and should not be spent by the landlord on anything other than the purpose for which they are collected. These costs may be in addition to operating expenses charged under the lease.

Capital works must be paid for by the landlord and would include such works as the construction of extensions to the shopping centre and the replacement of major plant and equipment.

(See section 12A of the Act.)

OTHER FUNDS AND RESERVES

The landlord is also required to properly account for the administration, expenditure and auditing of any other funds or reserves that you have agreed to contribute to for specific purposes such as for marketing or promotion. These costs may be in addition to operating expenses charged under the lease.

(See section 12B of the Act.)

FITOUT AND REFURBISHMENT

Tenants are usually responsible for the costs of installing fixtures and fittings in the shop (the ***fitout***). There may be a standard of construction required for fitouts. You may also be responsible for some or all of the landlord's costs of preparing the shop for the fitout.

Fitout requirements must be detailed in the disclosure statement.

A provision in a lease requiring a tenant to contribute to the cost of any of the landlord's finishes, fixtures, fittings, equipment or services will be void unless the disclosure statement notifies the tenant about the effect of the provision.

(See section 12(3A) of the Act.)

The Act provides that a clause about refurbishment or refitting will be void unless it provides the tenant with enough detail about the required refurbishment or refitting as is necessary to indicate the nature, timing and extent of work required.

(See section 14C of the Act.)

What you should do:

- ***ensure that you understand your obligations with regards to the fitout of the premises***
- ***if possible, obtain or prepare a condition report prior to entering into the lease so that you have evidence of its condition***
- ***ensure you have a sufficient fitout budget as some fitout costs (for example cost of moving plumbing) are often overlooked***
- ***discuss variations of standard fitout with the landlord — as this could cost you extra.***

LEGAL FEES

The Act prohibits the landlord from claiming legal or other expenses from you relating to:

- the negotiation, preparation or execution of the lease (or any renewal or extension of the lease)
- obtaining the consent of a mortgagee to the lease
- the landlord's compliance with the Act.

However, if you assign your lease or sub-let the premises, the landlord may claim from you any reasonable legal or other expenses incurred in connection with the assignment or sub-letting.

(See section 14B of the Act.)

TRADING HOURS

The trading hours for your shop may be affected by a number of matters.

Retail trading hours legislation in Western Australia sets out those hours that retailers may open (this can vary depending on the type of business you operate).

If your retail shop is located inside a shopping centre then for practical reasons the opening and closing times for the centre (***core hours***) may be different to the trading hours permitted by law. This should be set out in the disclosure statement by the landlord.

When do you have to open your shop?

A clause in a lease which requires you to open your premises at specified hours or for specified times is void under the Act. For example, you cannot be required to open your shop for the core hours for a centre. You can choose which hours to open your shop.

If you believe that your lease has not been renewed because you did not open at certain times you can apply to the State Administrative Tribunal for compensation.

(See section 12C of the Act.)

What you should do:

- ***if your premises are in a shopping centre you should check that the core hours are suitable for your business***
- ***find out whether you can open your shop at any times outside of the core hours and find out about what costs are involved***
- ***remember that the lease can't require you to open your shop for specified hours or during specified times.***

Standard trading hours and operating expenses

The Act also sets out “standard trading hours” which are used only for the purposes of allocating operating expenses.

For the purposes of allocation of operating expenses “standard trading hours” are:

- 8.00 a.m. to 6.00 p.m. Monday, Tuesday, Wednesday and Friday
- 8.00 a.m. to 9.00 p.m. Thursday
- 8.00 a.m. to 5.00 p.m. Saturday.

The Act provides that if you do not open outside standard trading hours, then you cannot be charged operating expenses related to the extended hours (for example, additional security costs).

If, however, you do open outside the standard trading hours, you may be required to pay operating expenses related to the extended hours. These expenses should be calculated based on the lettable area of those shops which were open during the extended hours.

If you are closed for a period during the standard trading hours (for example, if you do not open your shop until 10 a.m.), you may still be charged operating expenses for the time that you are closed, that is, between 8.00 a.m. and 10.00 a.m..

(See section 12(1)(c) of the Act.)

Retail trading hours law may allow you to open at times outside of the standard trading hours (for example, Sunday trading) - however:

- ***you can't be forced to open your business***
- ***you are not required to make a contribution to operating expenses relating to non-standard hours if you choose not to open during those times.***

VOID CLAUSES

The lease agreement and any other verbal or written agreements cannot include clauses that are contrary to any provision in the Act.

In addition, the Act specifically precludes the lease or any other agreement from containing clauses that:

- require a tenant to pay key money, which is any money or other benefit in addition to rent paid to the landlord or others for the right to lease retail shop premises (**See section 9 of the Act.**)
- prevent the tenant disclosing the rent it has agreed to third parties, such as other retail tenants or their valuers (**See section 11(2a) of the Act.**)
- require the tenant to contribute to any fund that applies moneys to capital expenditure in a shopping centre, such as new building works (**See section 12(2) of the Act.**)
- require a tenant to open for specified hours or during specified times (**See section 12C of the Act.**)
- prevent a tenant from joining a tenant's association or similar body (**See section 12D of the Act.**)
- require a tenant to provide turnover figures to the landlord, unless the tenant has agreed to pay rent based on turnover (**See section 8 of the Act.**)

A clause in a lease that is contrary to the provisions of the Act is void and has no effect.

DISRUPTIONS — COMPENSATION BY THE LANDLORD

The Act states that, if your shop is in a shopping centre, you are entitled to seek reasonable compensation from the landlord if the landlord:

- inhibits or prevents your, or customer, access to the shop premises
- disrupts trading conditions, causing loss of profits to your business
- does not properly repair, maintain or clean the shopping centre premises or common areas.

You will only be entitled to compensation from the landlord if you have given the landlord notice in writing to rectify the problem and the landlord has not done so.

If you cannot agree the amount of compensation with the landlord, you can make an application to the State Administrative Tribunal for a decision as to the amount payable.

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See section 14 of the Act.)

UNCONSCIONABLE CONDUCT AND MISLEADING AND DECEPTIVE CONDUCT

The Act provides that neither the landlord nor the tenant can engage in conduct that is:

- unconscionable (conduct that is so harsh, oppressive or unreasonable that it goes against good conscience)
- misleading or deceptive.

The State Administrative Tribunal can hear a claim for unconscionable conduct or misleading and deceptive conduct and may make an order for payment of compensation or another appropriate order (such as an order to vary a lease or an order that a party stop doing something).

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See Part IIA of the Act.)

ASSIGNMENT AND SUB-LEASING

During the term of the lease, your circumstances may change and you may want to sell your business and assign your lease or sub-let all or part of the premises.

Your responsibilities if you assign your lease

If you assign your lease the new tenant "takes over" and assumes all your rights and responsibilities including rent and any other obligations under the lease from the date of assignment.

Although the Act gives you a right to assign your lease, the landlord may withhold consent on reasonable grounds. Examples of reasonable grounds include:

- if the landlord believes that the new tenant would not be able to meet their financial obligations; or
- if the proposed use of the premises is contrary to the use permitted in the lease.

You will need to write to the landlord seeking consent for assignment of the lease. If the landlord doesn't reply within 28 days, you are entitled to assume the landlord has consented to the assignment.

You may have to pay the landlord's reasonable expenses for assessing a prospective tenant to take over your lease.

Your responsibilities if you sub-lease your shop

If you sub-let all or part of your premises you effectively become the landlord and the person you sub-let to is your tenant. Sub-leasing means that you will still be responsible under the lease to your landlord (for example, you may be liable for the rent if the sub-lessee does not pay).

You will also have obligations to the person you sub-let to, for example, you will need to provide a tenant guide and disclosure statement to your sub-tenant.

Your lease may include restrictions on sub-leasing. You should check your lease and seek advice as to its requirements on sub-leasing.

You may need to write to the landlord seeking consent to sub-lease. If the landlord doesn't reply within 28 days, you are entitled to assume the landlord has consented to the sub-lease.

(See section 10 of the Act.)

What you should do:

- ***seek independent legal advice as to the requirements of the Act and your obligations on assignment or sub-leasing.***

DEFAULT OR BREACH OF LEASE

Most leases allow the landlord to terminate (or end) the lease on a breach or default by the tenant (for example, failure to pay rent). You should ensure that you understand the procedures set out in the lease in relation to default. For example, in many instances, your obligation to pay future rent will continue even after a lease has been terminated.

DISPUTES BETWEEN THE TENANT AND LANDLORD

State Administrative Tribunal

If you are unable to resolve a dispute with your landlord over any aspect of your retail shop lease the Act allows the State Administrative Tribunal to deal with these disputes.

Either you or the landlord may initiate this action with the Tribunal by making an application and paying the appropriate fee. The Tribunal generally deals with matters through an initial directions hearing, a mediation process or in a hearing.

(See section 16 of the Act.)

Small Business Commissioner

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See Part III of the Act and regulation 10.)

Advice about a dispute can be obtained from lawyers with property experience, the Small Business Development Corporation, industry sources, tenant advocates and retail representative groups.

KEEP RECORDS

You should make sure that you keep records of all agreements, undertakings, correspondence (including emails) and other communications with the landlord. Where possible you should confirm things in writing.

Make sure that you diarise important dates in relation to your lease.

- If you need to make a claim in the Tribunal you will need to provide appropriate evidence to support your claim.

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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)

Thuchan Pty Ltd (ACN 604 723 908)

of 34 Yougenup Road, Gnowangerup, Western Australia, 6335

(Sublessee)

Thuc Huynh

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

(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 2021 and expiring on 31 March 2026 (**Head Lease**).
- C Subject to the consent of the Head Lessor and the Minister for Lands, the Sublessor has agreed to grant the Sublessee a sublease of the Premises, as described in **Item 1(c)**, on the terms and conditions contained within this agreement.

Agreed terms

1. Grant of Sublease & Effect of Head Lease

1.1 Grant of Sublease

- (1) The Sublessor subleases to the Sublessee the Premises for the Term subject to:
 - (a) all Encumbrances;
 - (b) the payment of the Amounts Payable; and
 - (c) the performance and observance of the Sublessee's Covenants; and
 - (d) the consent of the Minister for Lands.
- (2) The parties acknowledge that a copy of the Minister for Lands' consent pursuant to section 18 of the *Land Administration Act 1997* is annexed to this Deed at **Annexure 2**.

1.2 Effect of Head Lease

- (1) The parties agree to the extent that the terms and conditions of the Head Lease are applicable to the Premises, those terms covenants and conditions which apply to and bind the Sublessor under the Head Lease shall apply to and bind the Sublessee reserving to the Sublessor and the Head Lessor severally all rights and powers conferred on the Head Lessor by the Head Lease.
- (2) Where by the terms of the Head Lease an act or omission of the Sublessor constitutes a breach of a term of the Head Lease if done or permitted without the consent or permission of the Head Lessor that act or omission shall be deemed to be a breach of this Sublease if done or permitted by the Sublessee without the consent or permission of both the Head Lessor and the Sublessor.
- (3) The Sublessee will not be liable for any breach of the Head Lease due to any cause beyond the reasonable control of the Sublessee.

Sublessee's General Covenants

2. Rent and Other Payments

The Sublessee AGREES with the Sublessor:

(a) **Rent**

To pay to the Sublessor the Rent in the manner set out at **Item 5** of the Schedule clear of any deductions whatsoever.

(b) **Outgoings**

(i) To pay to the Sublessor or to such person as the Sublessor may from time to time direct punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises:

(A) local government rates, taxes and charges and including charges for rubbish or garbage removal;

- (B) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
 - (C) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection AND the Sublessee shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Sublessee;
 - (D) fire and emergency services levies;
 - (E) land tax and metropolitan regional improvement tax on a single ownership basis;
 - (F) the costs of any cleaning and lighting of, supply of internal security and toilet requisites to, and maintenance and repair of the Premises;
 - (G) premiums, excesses and other costs arising from the insurance obtained by the Head Lessor pursuant to **clause 18**. For the avoidance of doubt, the parties agree:
 - (I) that if such premium or cost does not include a separate assessment or identification of the Premises or the Land, the Sublessee must pay a proportionate part of such premium or cost determined by the Sublessor acting reasonably; and
 - (II) such insurance will include insurance for the full replacement value of buildings; and
 - (H) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Sublessee's use and occupation of the Premises.
- (ii) If the Premises are not separately charged or assessed the Sublessee will pay to the Sublessor a proportionate part of any charges or assessments referred to in **clause 2(b)(i)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

(c) **Interest**

Without affecting the rights, powers and remedies of the Sublessor under this Sublease, to pay to the Sublessor interest on demand on any Amounts Payable which are unpaid for 14 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

(d) **Costs**

To pay to the Sublessor or the Head Lessor all costs, legal fees, disbursements and payments incurred by or for which the Sub lessor or the Head Lessor is liable in connection with or incidental to:

- (i) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Sublease;
- (ii) any breach of an obligation or agreement by the Sublessee or a Sublessee's Agent;

- (iii) the preparation and service of a notice under Section 81 of the *Property Law Act* 1969 requiring the Sublessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
- (iv) any work done at the Sublessee's request; and
- (v) any action or proceedings arising out of or incidental to any matters referred to in this **clause 2(d)** or any matter arising out of this Sublease.

3. Rent Review

(a) **Rent to be Reviewed**

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

(b) **Methods of Review**

The review will be either based on CPI or a Market Review. The basis for each rent review is as identified for each Rent Review Date in **Item 8** of the Schedule.

(c) **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 CPI 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 CPI be discontinued or suspended at any time or its method of computation substantially altered, the parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the parties, the substitution shall be made by a Valuer appointed in accordance with **clause 3(d)(ii)**.

(d) **Market Review**

- (i) A rent review based on market rent will establish the current market rent for the Premises (which will not be less than the Rent payable in the period immediately preceding the Rent Review Date) by agreement between the parties and failing agreement, will be determined in accordance with the following provisions.
- (ii) If agreement as to the current market rent for the Premises is not reached at least one (1) month prior to the relevant Rent Review Date then the current market rent for the Premises will be determined at the equal expense of the Sublessee and Sublessor by a valuer ("the Valuer") licensed under the *Land Valuers Licensing Act* 1978, to be appointed, at the request of either party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).
- (iii) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the parties. The parties will be entitled to make submissions to the Valuer.
- (iv) In this **clause 3**, "current market rent" means the rent obtainable for the Premises in a free and open market if the Premises were unoccupied and offered for rental

for the use for which the Premises are permitted pursuant to this Sublease and on the same terms and conditions contained in this Sublease, BUT will not include:

- (A) any improvements made or effected to the Premises by the Sublessee; and
- (B) any rent free periods, discounts or other rental concessions.

(e) **Sublessor's right to review**

The Sublessor may institute a rent review notwithstanding the Rent Review Date has passed and the Sublessor 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 to and be payable from the Rent Review Date, for which such review is made provided that such payment must not exceed a six month rental period.

4. Accrual of Amounts Payable & Payment of Money

4.1 Accrual of Amounts Payable

Amounts Payable accrue on a daily basis.

4.2 Payment of Money

Any Amounts Payable to the Sublessor under this Sublease must be paid to the Sublessor at the address of the Sublessor referred to in the Sublease or as otherwise directed by the Sublessor by Notice from time to time.

5. Goods and Services Tax

5.1 Sublessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Sublessor is liable to pay GST in connection with the sublease of the Premises or any goods, services or other Taxable Supply supplied under this Sublease then, as from the date of any such introduction or application:

- (a) the Sublessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (b) the Sublessee shall pay the increased Basic Consideration on the due date for payment by the Sublessee of the Basic Consideration.

5.2 Increase in GST

If, at any time, the GST Rate is increased, the Sublessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with this clause.

5.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to this clause the Sublessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Sublessee to submit a claim for a credit or refund of GST.

6. Insurance

6.1 Insurance required

The Sublessee must effect and maintain with insurers approved by the Sublessor and the Head Lessor (noting the Sublessor's, Head Lessor's and the Sublessee'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 Sublessor may from time to time reasonably require; and
- (b) insurance to cover the Sublessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a Sublessee 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 Sublessee must:

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

6.3 Not to Invalidate

The Sublessee 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** and/or **clause 18** on the Premises, or any adjoining premises, void or voidable;
- (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

Each party must report to the other promptly in writing and in an emergency verbally:

- (a) any material damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person on the Premises.

6.5 Settlement of Claim

The Head Lessor and the Sublessor may, but the Sublessee may not without prior written consent of the Sublessor, settle or compromise any claims under any insurance required by **clause 6.1**.

6.6 Sublessee May be Required to Pay Excess on Insurances

The Sublessee AGREES with the Sublessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 6.1** and/or **clause 18** in the event that it is determined by the insurer or otherwise that a claim arises out of or in connection with the negligence or any act or omission of the Sublessee.

6.7 Sublessee's equipment and possessions

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

6.8 Failure to Comply with Insurance Requirements

If the Sublessee fails to comply with any of its obligations under this **clause 6**, the Sublessor may, by serving written notice upon the Sublessee, require that such default be remedied within 28 days and in the event that the Sublessee fails to comply with such notice, then the Sublessor may, in its absolute discretion, immediately terminate this Sublease.

7. Indemnity

7.1 Sublessee responsibilities

The Sublessee is responsible and liable for all acts or omissions of the Sublessee's Agents on the Premises and for any breach by them of any covenants or terms in this Sublease required to be performed or complied with by the Sublessee.

7.2 Indemnity

The Sublessee indemnifies, and shall keep indemnified, the Sublessor, the Head Lessor and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Sublessor, the Head Lessor and the Minister for Lands, or brought, maintained or made against the Sublessor, the Head Lessor and the Minister for Lands, 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:

- (d) the use or occupation of the Premises by the Sublessee or the Sublessee's Agents;
- (e) any work carried out by or on behalf of the Sublessee on the Premises;
- (f) the Sublessee's activities, operations or business on, or other use of any kind of, the Premises;
- (g) any default by the Sublessee in the due and punctual performance, observance and compliance with any of the Sublessee's covenants or obligations under this Sublease; or

- (h) an act or omission of the Sublessee.

7.3 Obligations Continuing

The obligations of the Sublessee under this clause:

- (a) are unaffected by the obligation of the Sublessee to take out insurance, and the obligations of the Sublessee to indemnify are paramount, however if insurance money is received by the Sublessor for any of the obligations set out in this clause then the Sublessee's obligations under **clause 7.2** will be reduced by the extent of such payment.
- (b) continue after the expiration or earlier determination of this Sublease 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 Sublease.

7.4 No indemnity for Sublessor's negligence

The parties agree that nothing in this clause shall require the Sublessee to indemnify the Sublessor, Head Lessor or Minister for Lands, their officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Sublessor, Head Lessor or Minister for Lands or their servants, agents, contractors or invitees.

7.5 Release

- (1) The Sublessee:

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

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Sublessor, Head Lessor, Minister for Lands or its servants, agents, contractors or invitees.

- (2) The release by the Sublessee continues after the expiration or earlier determination of this Sublease 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 Sublease.

8. Maintenance, Repair and Cleaning

8.1 Generally

- (1) The Sublessee AGREES during the Term and for so long as the Sublessee remains in possession or occupation of the Premises to maintain, repair, clean and keep the Premises clean and in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Sublessee any obligation in respect of any structural maintenance, replacement or repair except when rendered necessary by, because of or is caused by any actions or omissions, whether deliberate or negligent or occasioned through neglect,

default or misconduct, of or on the part of the Sublessee (or its servants, agents, contractors or invitees) or by the Sublessee's particular use or occupancy of the Premises.

- (2) In discharging the obligations imposed on the Sublessee under this subclause, the Sublessee shall where maintaining, repairing or cleaning:
- (a) any electrical fittings and fixtures;
 - (b) any plumbing;
 - (c) any air-conditioning fittings and fixtures;
 - (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 Sublessor and notified to the Sublessee, which approval shall not be unreasonably withheld.

8.2 Cleaning of Premises

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

8.3 Repair Damage

Unless such damage is the Sublessor's responsibility pursuant to the terms of the Sublease, the Sublessee must promptly repair at its own expense to the satisfaction of the Sublessor, any damage to the Premises, regardless of how the damage is caused.

8.4 Pest Control

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

8.5 Comply with all reasonable conditions

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

9. Use

9.1 Restrictions on Use

(1) Generally

The Sublessee 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 the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any Written Law.

(2) No offensive or illegal acts

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

(3) **No nuisance**

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

(4) **No dangerous substances**

The Sublessee 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 licence necessary for such storage must be first approved by the Sublessor;
- (c) the Sublessor 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 Sublessor, the Sublessee will provide a manifest of all dangerous compounds or substances stored on the Premises.

(5) **No harm or stress**

The Sublessee 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) **No signs**

The Sublessee 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 Sublessor.

(7) **Toilets**

The Sublessee must not use or permit toilets or 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 act or thing to be done that might choke or otherwise affect or damage the same.

9.2 **Operation of Business**

The Sublessee 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) keep in force all licences and permits required for the carrying on of any business conducted by it in or upon the Premises; and
- (c) deliver to the Sublessor any notices or orders served on or received by the Sublessee in respect of the Premises or the conduct of the Sublessee's business on the Premises.

9.3 **Sublessee to Observe Copyright**

In the event that the Sublessee or any person sub-leasing, hiring, or in temporary occupation of the Premises provides, contracts for, or arranges for the performance, exhibition or display of any music or work of art the copyright of which is not vested in the Sublessee or that person, the Sublessee shall ensure that all obligations in regard to payment of copyright or licensing fees with

the owner or licensor of the copyright are met before any such performance, exhibition or display is held.

9.4 No Warranty

The Sub lessor and Head Lessor give no warranty that the Sublessor or Head Lessor will issue any consents, approvals, authorities, permits or licences required by the Sublessee under any Written Law for its use of the Premises.

9.5 Premises Subject to Restriction

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

9.6 Damage to Common Areas

The Sublessee must make good any breakage defect or damage to the Common Areas or to any other part of the Building or any appurtenance or equipment therein caused by want of care misuse or abuse on the part of the Sublessee or the Sublessee's servants agents contractors or sub-contractors sub-tenants or other persons claiming through or under the Lessee or by any breach of this Lease by the Lessee.

9.7 Indemnity for Costs

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

10. Alterations

10.1 Restriction

The Sublessee must not without prior written consent from the Sublessor and the Head Lessor or from any other person from whom consent is required under this Sublease and required under any Written Law in force from time to time, including but not limited to the planning approval of the Head Lessor under a local planning scheme of the Head Lessor:

- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
- (b) subject to the performance of the Sublessee's obligations in **clause 8**, 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.

10.2 Consent

- (1) If the Sublessor or the Head Lessor and any other person whose consent is required under this Sublease or at law consents to any matter referred to in **clause 10.1** the Sublessor or the Head Lessor may:
 - (a) consent subject to conditions; and
 - (b) require that the works be carried out in accordance with plans and specifications approved by the Sublessor, Head Lessor or any other person giving consent; and
 - (c) require that any works be carried out to the satisfaction of the Sublessor or Head Lessor under the supervision of an engineer or other consultant; and

- (2) If the Sublessor or Head Lessor consents to any matter referred to in **clause 10.1**:
- (a) the Sublessor or Head Lessor gives no warranty that the Sublessor or the Head Lessor will issue any consents, approvals, authorities, permits or policies under any Written Law for such matters; and
 - (b) the Sublessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

10.3 Cost of Works

All works undertaken under this **clause 10** will be carried out at the Sublessee's expense.

10.4 Conditions

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

11. Statutory Obligations & Notices

11.1 Comply with Statutes

The Sublessee 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 use of the Premises 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 Sublessee carries on at the Premises.

11.2 Indemnity if Sublessee Fails to Comply

The Sublessee indemnifies the Sublessor and Head Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 11.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 11.1**.

11.3 No Fetter

Notwithstanding any other provision of this Sublease, the Parties acknowledge that the Head Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Head Lessor may be obliged to determine applications for consents, approvals, authorities, licences 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 Head Lessor shall not be taken to be in default under this Sublease by performing its statutory

obligations or exercising its statutory discretions, nor shall any provision of this Sublease fetter the Head Lessor in performing its statutory obligations or exercising any discretion.

12. Report to Sublessor

The Sublessee must immediately report to the Sublessor:

(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 Sublessee 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 Sublessee and which affect the Premises and immediately deliver them to the Sublessor;

(d) **Defects**

Any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Sublessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

13. Obligations on Termination

13.1 Restore Premises

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

13.2 Remove Sublessee's Property prior to Termination

Prior to Termination, unless otherwise mutually agreed between the parties, the Sublessee must remove from the Premises all property of the Sublessee 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 Sub lessor or the Head Lessor form an integral part of the Premises) and promptly make good to the satisfaction of the Sublessor and the Head Lessor any damage caused by the removal.

13.3 Sublessor can Remove Sublessee's Property on Re-Entry

On re-entry the Sublessor will have the right to remove from the Premises any property of the Sublessee and the Sublessee indemnifies the Sublessor against all damage caused by the removal of and the cost of storing such property.

13.4 Peacefully Surrender

On Termination the Sublessee must:

- (a) peacefully surrender and yield up to the Sublessor the Premises in a condition consistent with the observance and performance of the Sublessee's Covenants under this Sublease; and
- (b) surrender to the Sublessor all keys and security access devices held by the Sublessee.

13.5 Obligations to continue

The Sublessee's obligations under this clause will survive termination.

14. No Absolute Caveat or Other Interest

14.1 No Absolute Caveat or other interest

The Sublessee nor any person on behalf of the Sublessee must not lodge at Landgate any absolute caveat or any other interest including any lease, sublease, mortgage, charge over the Land or Premises or part thereof, without the prior written consent of the Sub lessor, Head Lessor and the Minister for Lands.

14.2 Subject to Claim Caveat

Nothing in this **clause 14** prevents the Sublessee from lodging a caveat expressed to be subject to claim to protect the Sublessee's interest under this Sublease. Any caveat lodged by the Sublessee in accordance with this clause must be withdrawn by the Sublessee upon the expiration or earlier determination of this Sublease.

14.3 Removal of interest

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

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

to be the agent and attorney of the Sublessee 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 Sublessee;
- (e) a withdrawal of any caveat lodged by on or behalf of the Sublessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Sublease.

14.4 Costs of Removal, Indemnity and Ratification

- (a) The Sublessee undertakes to ratify all the acts performed by or caused to be performed by the Head Lessor, its agent or attorney under this clause; and
- (b) the Sublessee indemnifies the Head Lessor against:

- (i) any loss arising from any act done under this clause; and
- (ii) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Sublessee including the withdrawing of any caveat effecting the Land the registration of this Sublease to exercise the power of attorney set out in **clause 14.3**.

Sublessor's Rights & Obligations

15. Quiet Enjoyment

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

16. Sublessor's Right of Entry

16.1 Entry on Reasonable Notice

The Sublessee must permit entry by the Sub lessor, the Head Lessor or any person authorised by the Sublessor or Head Lessor 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;
- (d) for each of the following purposes:
 - (i) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Sublease;
 - (ii) to carry out any survey or works which the Sublessor considers necessary, however the Sublessor will not be liable to the Sublessee 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 Sublessee;
 - (iii) to comply with the Sublessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Sublessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Sublessee of any term of this Sublease but the Sublessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Sublessor's other rights, remedies or powers under this Sublease.

16.2 Costs of Rectifying Breach

All costs and expenses incurred by the Sub lessor or Head Lessor as a result of any breach referred to at **clause 16.1(d)(iv)** together with any interest payable on such sums will be a debt due to the Sublessor or Head Lessor and payable to the Sublessor or Head Lessor by the Sublessee on demand.

17. Limit of Sublessor's Liability

17.1 No Liability for Loss on Premises

The Sublessor will not be liable for loss, damage or injury to any person or property in or about the Premises except to the extent that such loss, damage or injury was caused or contributed to by negligent or wilful act or omission of the Sublessor or the Sublessor's Agents or invitees.

17.2 Limit on Liability for Breach of Sublessor's Obligations

The Sublessor is only liable for breaches of the Sublessor's Covenants set out in this Sublease which occur while the Sublessor continues to have a leasehold estate in the Premises pursuant to the Head Lease.

18. Building Insurance

The Head 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 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 and other standard insurable risks.

Mutual Agreements

19. Damage or Destruction of Premises

19.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Sublessee, 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 Sublessee, 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 Sublessee.

19.2 Dispute as to Abatement of Rent

Any dispute arising in relation to the abatement of rent pursuant to **clause 19.1** shall be referred to arbitration under the provisions of the *Commercial Arbitration Act 2012* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Sublessor will refund to the Sublessee any Rent which according to the award appears to have been overpaid.

19.3 Termination

In the event that fifty per cent (50%) or more of the gross lettable area of the building in which the Premises are situated are damaged or destroyed by fire or any like casualty either party will have the option to be exercised by notice in writing delivered to the other party within sixty (60) days of such occurrence, to elect to cancel and terminate this Sublease. The Term will terminate upon such notice being given and the Sublessee must vacate the Premises and surrender the same to the Sublessor but such termination will be without prejudice to the either party's rights in respect of any antecedent breach of this Lease.

20. Option to Renew

20.1 Exercise of Option

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

- (a) all consents and approvals required by the terms of this Sublease or at law have been obtained; and
- (b) subject to **clause 20.2**, there is no subsisting default by the Sublessee at the date of service of the Notice in:
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Sublessee's Covenants,

the Sublessor shall grant to the Sublessee a sublease for the Further Term as specified in **Item 3** of the Schedule at the Rent and on the same terms as this Sublease other than this **clause 20** in respect of the Further Terms previously taken.

20.2 Opportunity to Remedy Default

If at the time of service of Notice, there is a subsisting default by the Sublessee at the date of service of the Notice in:

- (a) the payment of Amounts Payable; or
- (b) the performance or observance of the Sublessee's Covenants

the Sublessor covenants and agrees to provide the Sublessee with written notice of such breach and provide the Sublessee with 14 days, after written notice has been given to the Sublessee, to rectify such breach. If the Sublessee rectifies such breach within the required time period, and the required consents have been obtained pursuant to **clause 20.1(a)**, the Sublessor will grant the relevant further term in accordance with **clause 20.1**.

21. Assignment, Subletting and Charging

21.1 No Assignment without Consent

The Sublessee must not assign the leasehold estate in the Premises nor part with possession, sublet or dispose of the Premises or any part of the Premises without the prior written consent of the Sublessor, Head Lessor and Minister for Lands and any other person whose consent is required under this Sublease or at law.

21.2 Change in Ownership of Shares

If the Sublessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the *Corporations Act 2001* (Cth) will be deemed to be an assignment of the leasehold estate created by this Sublease and the Sublessee must give the Sublessor written notification of the change in ownership of shares within 14 days of the change

21.3 Sublessor's Consent to Assignment

Provided all parties whose consent is required under this Sublease or at law to an assignment give their consent, then the Sublessor may not unreasonably withhold its consent to the assignment of the leasehold estate created by this Sublease if:

- (a) the proposed assignee is a respectable and responsible person of good financial standing;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Sublessee or not, of any of the Sublessee's Covenants;
- (c) the Sublessee procures the execution by the proposed assignee of a deed of assignment to which the Sublessor and Head Lessor are a party and which deed is prepared and completed by the Head Lessor's solicitors; and
- (d) the deed of assignment contains a covenant by the assignee with the Sublessor to pay all Amounts Payable and to perform and observe all the Sublessee's Covenants; and
- (e) the Sublessor's consent to assignment of the Sublease, where provided, may be given subject to such reasonable conditions as the Sublessor sees fit.

21.4 Property Law Act 1969

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

21.5 Costs for Assignment or Sublease

If the Sublessee wishes to assign or sublet the leasehold estate created by this Sublease, the Sublessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Sublessor or other person whose consent is required under this Sublease, of and incidental to:

- (a) the enquiries made by or on behalf of the Sublessor as to the respectability, responsibility and financial standing of each proposed assignee;
- (b) any consents required under this Sublease or at law; and
- (c) all other matters relating to the proposed assignment or sublease,

whether or not the assignment or sublease proceeds.

21.6 No Mortgage or Charge

The Sublessee must not, without first obtaining the Sublessor's consent, mortgage, charge or sublet the Premises.

22. Default

22.1 Events of Default

- (1) Subject to **clause 22.1(2)**, a default occurs if:
 - (a) any Amounts Payable remain unpaid for 14 days after becoming due and written notice has been given to the Sublessee to pay such Amounts Payable;
 - (b) the Sublessee is in breach of any of the Sublessee's Covenants, other than the covenant to pay the Amounts Payable, for 28 days after written notice has been given to the Sublessee to rectify the breach;

- (c) an order is made or a resolution effectively passed for the winding up of the Sublessee unless the winding up is for the purpose of amalgamation or reconstruction;
 - (d) a controller, as defined by the *Corporations Act 2001* is appointed in respect of the Sublessee's interest in the Premises under this Sublease;
 - (e) a mortgagee takes possession of the Sublessee's interest in the Premises under this Sublease;
 - (f) the Premises are vacated;
 - (g) the registration of the Sublessee is cancelled or dissolved under the *Corporations Act*; or
 - (h) a person other than the Sublessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.
- (2) For the purposes of **clause 22.1(1)** the Sublessor agrees that the Sublessee will not be in default under the Sublease if, at any time, an administrator, as defined by the *Corporations Act 2001*, is appointed in respect of the Sublessee except where the administration comes to an end by reason of the Sublessee's creditors resolving that the Sublessee should be wound up.

22.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 22.1** the Sublessor 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 Sublessee determine this Sublease and from the date of giving such notice this Sublease will be absolutely determined; and
- (c) by notice to the Sublessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Sublease will be determined as from the giving of the notice and until the tenancy is determined the Sublessee will hold the Premises from the Sublessor as a tenant from month to month under **clause 23**,

but without affecting the right of action or other remedy which the Sublessor has in respect of any other breach by the Sublessee of the Sublessee's Covenants or releasing the Sublessee from liability in respect of the Sublessee's Covenants.

22.3 Sublessor May Remedy Sublessee's default

If the Sublessee:

- (a) fails or neglects to pay the Amounts Payable by the Sublessee under this Sublease; or
- (b) does or fails to do anything which constitutes a breach of the Sublessee's Covenants,

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

22.4 Acceptance of Amount Payable By Sublessor

Demand for or acceptance of the Amounts Payable by the Sublessor after an event of default has occurred will not affect the exercise by the Sublessor of the rights and powers of the Sublessor by

the terms of the Sublease or at law and will not operate as an election by the Sublessor to exercise or not to exercise any right or power.

22.5 Essential Terms

Each of the Sublessee's Covenants in clauses 2 (Rent and Other Payments), 5 (Goods and Services Tax, 6 (Insurance), 7 (Indemnity), 8 (Maintenance, Repair and Cleaning), 9 (Use) and 21 (Assignment, Subletting and Charging) is an essential term of this Sublease but this clause 22 does not mean or imply that there are no other essential terms in this Sublease.

22.6 Breach of Essential Terms

If the Sublessee breaches an essential term of this Sublease then, in addition to any other remedy or entitlement of the Sublessor:

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

the Sublessee must pay to the Sublessor on demand the total of the Amounts Payable under this Sublease which would have been payable by the Sublessee 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 Sublessor 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 Sublessee agrees that the obligation set out in this **clause 22.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Sublease; and
- (e) the Sublessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Sublessor 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 Sublease.

23. Holding Over

If the Sublessee remains in possession of the Premises after the expiry of the Term with the consent of the Sublessor, the Sublessee will be a monthly tenant of the Sublessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Sublease provided that all consents required under this Sublease or at law have been obtained to the Sublessee being in possession of the Premises as a monthly tenant.

24. Disputes

24.1 Referral of Dispute: Phase 1

Except as otherwise provided any dispute arising out of this Sublease is to be referred in the first instance in writing to the Sublessor's Representative as nominated in writing by the Sublessor from time to time (**Sublessor's Representative**) who shall convene a meeting within 10 days of receipt of such notice from the Sublessee or such other period of time as is agreed to by the parties between the Sublessor's Representative and an officer of the Sublessee for the purpose of resolving the dispute (**Original Meeting**).

24.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 24.1** of this Sublease then the dispute shall be referred in writing to the CEO of the Sublessor who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the parties between the CEO and the Sublessee for the purpose of resolving the dispute.

24.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 24.2** of this Lease then unless otherwise required pursuant to the provisions of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 2012* (as amended from time to time) and the Sublessor and the Sublessee may each be represented by a legal practitioner.

24.4 Payment of Amounts Payable to Date of Award

The Sublessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Sublessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Sublessor and the Sublessee then the Sublessor will refund to the Sublessee the monies paid

25. Consents

25.1 Western Australian Planning Commission's consent

If for any reason whatsoever this Sublease requires the consent of the Western Australian Planning Commission or other consent under the *Planning and Development Act 2005*, then this Sublease is made expressly subject to and conditional on the granting of that consent in accordance with the provisions of the *Planning and Development Act 2005*.

General Provisions

26. Notice

26.1 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 Sublease or any other address nominated by a Party by notice to the other.

26.2 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 26.1**, 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 26.1**, on the second business day following the date of posting of the Notice.

26.3 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; or
- (c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government; or
- (d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

27. Guarantee

27.1 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.

27.2 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).

27.3 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*.

28. Amendments to Sublease

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

29. Waiver

29.1 No General Waiver

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

29.2 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 other right, power or privilege.

30. Acts by Agents

All acts and things which the Sublessor is required to do under this Sublease may be done by the Sublessor, or the Sublessor's Agents.

31. Statutory Powers

The powers conferred on the Sublessor 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 Sublease, in addition to the powers conferred on the Sublessor in this Sublease.

32. Further Assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Sublease.

33. Severance

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

34. Moratorium

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

35. Governing Law

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

36. Commercial Tenancy Act

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

37. Additional terms and conditions

Each of the terms and conditions (if any) specified in **Item 9** 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.

Definitions & Interpretation

38. Definitions

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

Alterations means any of the acts referred to in **clauses 10.1(a) and 10.1(b)**;

Amounts Payable means the Rent and any other money payable by the Sublessee under this Sublease;

Basic Consideration means all consideration (whether in money or otherwise) to be paid or provided by the Sublessee for any supply or use of the Premises and any goods, services or other things provided by the Sublessor under this Sublease (other than tax payable pursuant to this clause);

Building means the building containing shops or offices and other improvements described in **Item 1(b)** of the Schedule now or at any time in the future erected upon the Land and includes the Common Areas;

CEO means the Chief Executive Officer for the time being of the Sublessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Sublease;

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

Common Areas means all those parts of the Building not leased to any lessee and intended for use by the lessees of the Building and their respective customers in common with each other including all parking areas roads walkways malls corridors passageways stairways elevators toilets and washrooms in on or about the Building and where the Premises comprises a lot on a strata plan, the common property shown on that strata plan;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics or its equivalent determined in accordance with **clause 3(c)**;

Current Market Rent is defined by **clause 3(d)(iv)**;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title for the Land;

Further Term means the further term specified in **Item 3(a)** of the Schedule;

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

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Head Lease means a lease between the Head Lessor as lessor and the Sublessor as Lessee a copy of which is annexed hereto as **Annexure 2**;

Input Tax Credit has the meaning that it bears in section 195-1 of the GST Act.

Interest Rate means the rate at the time the payment falls due being 2% greater than the Sublessor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

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

Market Review is defined by **clause 3(d)**;

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

Party means the Sublessor or the Sublessee according to the context;

Permitted Purpose means the purpose set out in **Item 7** of the Schedule;

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

Rent means the rent specified in **Item 5** of the Schedule as varied from time to time under this Sublease;

Rent Period means each period from the Commencement Date or a Rent Review Date to the next Rent Review Date or Termination;

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

Schedule means the Schedule to this Sublease;

Sublease means this deed as supplemented, amended or varied from time to time;

Sublessee's Agents includes:

- (a) the sublessee, employees, agents, contractors, invitees and licensees of the Sublessee; and
- (b) any person on the Premises by the authority of a person specified in paragraph (a).

Sublessee's Covenants means the covenants, agreements and obligations set out or implied in this Sublease or imposed by law to be performed and observed by the Sublessee;

Sublessor's Agents means the CEO, an officer or the agent, solicitor, contractor or employee of the Sublessor;

Sublessor's Covenants means the covenants, agreements and obligations set out or implied in this Sublease, or imposed by law to be performed and observed by the Sublessor;

Tax Invoice has the meaning which it bears in section 195-1 of the GST Act;

Taxable Supply has the meaning which it bears in section 195-1 of the GST Act.

Term means the term of years specified in **Item 2** of the Schedule; and

Termination means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over.

Written Law includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority.

39. Interpretation

In this Sublease, unless expressed to the contrary:

- (a) Words importing:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender include 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, regulation, award, 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 Sublease or provisions or terms of this Sublease or any other deed, agreement, instrument or contract include a reference to:
 - (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) Any thing (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;
- (k) 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;
- (l) The agreements and obligations on the part of the Sublessee 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 a Sublessee's Agent; and
 - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done;
- (m) Except in the Schedule headings do not affect the interpretation of this Sublease.

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) Building

Bremer Bay Community Resource and Visitor's Centre

(c) Premises

That portion of the Land and Building comprising 45 sqm as shaded in grey on the plan at **Annexure 1**.

Item 2 Term

Five years (5) commencing on 1 April 2021 and expiring on 31 March 2026.

Item 3 Further Term

Nil

Item 4 Commencement Date

1 April 2021.

Item 5 Rent

Eleven thousand dollars (\$11,000) per annum exclusive of GST payable in weekly instalments of two hundred and eleven dollars and fifty three cents (\$211.53) per week exclusive of GST payable weekly in advance commencing on the Commencement Date.

Item 6 Public Liability

Twenty million dollars (\$20,000,000.00).

Item 7 Permitted purpose

Pharmacy.

Item 8 Rent Review Dates

Each anniversary of the Commencement Date based on CPI.

Item 9 Additional terms, covenants and conditions

Nil

Signing page

EXECUTED by the parties as a Deed

2021

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:

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 – Plan of Premises



C	6/2/12	LEASE AREA AMENDED TO INCLUDE PROPOSED SWINGS & STORAGE AREA	MA	MA	HEIGHT DATUM : AHD COORDINATE SYSTEM : MGA'94	COPYRIGHT OF this drawing is the property of 35 Degrees South it must not be reproduced or altered without the prior written consent of the owner
B	8/12/11	BACKGROUND IMAGE ADDED	MA	MA		
A	9/5/11	ORIGINAL ISSUE	MA	MA		
DISCLAIMER 35 DEGREES SOUTH HAS TAKEN DUE CARE IN THE PREPARATION OF THIS DRAWING, BUT ACCEPTS NO RESPONSIBILITY FOR ANY INACCURACY OF THE HIGH WATER MARK POSITION OR THE CADASTRAL INFORMATION NOR INAPPROPRIATE USE OF THIS INFORMATION THE CADASTRAL AND HIGH WATER MARK LOCATION ARE OBTAINED FROM LANDGATE'S DIGITAL CADASTRAL DATABASE NO RESPONSIBILITY CAN BE ACCEPTED FOR ANY DAMAGE CAUSED TO ANY UNDERGROUND SERVICE OR ANY LOSS OR INJURY SO SUFFERED IF INQUIRY AND VERIFICATION HAVE NOT BEEN COMPLETED IN ACCORDANCE WITH THIS NOTE.					NOTES Only above ground features have been located. Areas & dimensions are subject to final survey. Sewer information is as supplied by the Water Corporation of W.A. and has not been surveyed on site except where shown. SOIL - sand VEGETATION - cleared KERB - semi mountable (fair condition) WIND - southerly SEWER - yes POWER - overhead	
The information shown on this drawing is current as at the date of survey. Earthworks/setout dimensions may vary on site at builders discretion Sewer/drainage may vary from schematic presentation. Check minimum clearance. Retaining not included/in addition to contract remains owners responsibility. For easements check Certificate of Title. This is a site survey only, the location of boundary pegs or fences in relation to boundary is not guaranteed.					BREMER BAY COMMUNITY RESOURCE CENTRE LOT 649 MARY ST, BREMER BAY PROPOSED LEASE AREA	
CLIENT : SHIRE OF JERRAMUNGUP		SURVEY DATE : 20/4/11		SCALE 1:300		ORIGINAL SHEET SIZE A3 1 of 1
PLAN : DP 189638		C/T VOL FOL : LR 3010-86		JOB No 4089		
MAP REF : BM 27(2) 17.32		AUTHORITY : SHIRE OF JERRAMUNGUP		DRAWING No DWG4089		

Annexure 2 – Minister’s Consent Letter
