

2021

CITY OF BUSSELTON

and

(Lessee)

LEASE

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THIS LEASE is made _____ day of _____ 2021.

BETWEEN :

CITY OF BUSSELTON of Locked Bag)
1, Busselton in the State of Western)
Australia ("the Lessor"))

AND

Add Lessee)
)
)

RECITALS :

- A. The Lessor is the management body of the land described in Item 1 (a) of Schedule 1 under the Management Order ("**the Land**").
- B. Under the Management Order the Lessor has the power to lease the Land for any term not exceeding twenty one (21) years, subject to the approval of the Minister for Lands first being obtained.
- C. The Lessee has requested that the Lessor grant it a lease of a portion of the Land described in Item 1 (b) of Schedule 1 ("**the Premises**") and the Lessor has agreed subject to the Parties entering into this agreement.
- D. Pursuant to Section 30(2)(b)(i) of the *Local Government (Functions and General) Regulations 1996*, the Lessor is exempt from having to comply with the requirements of Section 3.58 of the *Local Government Act 1995* in granting this lease to the Lessee because the Lessee's objects are of charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and the members of the Lessee are not entitled or permitted to receive any pecuniary profit from the Lessee's transactions.
- E. The main objective of the Lease is to enable and allow the Lessee to provide temporary accommodation for the purposes specified in Item 6 of Schedule 1.

OPERATIVE PART:

The Parties agree:

1. DEFINITIONS

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

"ABS" means the Australian Bureau of Statistics or such other body or person as shall carry out the functions of the Australian Bureau of Statistics from time to time;

"Acts" includes all acts and statutes (State or Federal) for the time being enacted or modifying any Acts and all regulations by-laws requisitions or orders made under any Act by any Authority and Act means any one of them;

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

"Authorised Person" means:

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

"Building Works" means the [ADD DETAILS OF APPROVED WORKS] generally consistent with the development concept plan at Annexure B;

"Camping Ground" has the meaning given to that term in the Caravan Parks Act;

"Caravan Parks Act" means the *Caravan Parks and Camping Grounds Act 1995 (WA)*;

"Caravan Park" has the meaning given to that term in the Caravan Parks Act;

"Caravan" has the meaning given to that term in the Caravan Parks Act;

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

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

"Consideration" means the Amounts Payable or any other money payable to the Lessor under this Lease;

"Contamination" means the state of being contaminated as that term is defined in the CSA;

“CSA” means the *Contaminated Sites Act 2003*;

“CPI” means the Consumer Price Index, Table 1, All Groups for the City of Perth prepared by the ABS, provided that if the ABS updates the reference base of such Consumer Price Index, due conversion shall be made to preserve the intended continuity of calculation by using the appropriate factor determined by the ABS; or if that Consumer Price Index is no longer published, then the index that an actuary of the Institute of Actuaries of Australia considers most closely reflects the changes in the cost of living in Perth. The actuary shall be appointed by the Lessor;

“Development Application” means a conforming development application pursuant to the *Planning and Development Act 2005* and/or the *City of Busselton Local Planning Scheme No 21*, to be prepared and submitted by the Lessee in respect of the Building Works;

“Development Approval” means:

- (c) planning consent obtained by the Lessee pursuant to the Development Application; and
- (d) any other consent, registration, certificate, licence, approval, permit, authority, requirement or exemption obtained by the Lessee under clause 11.1 in relation to the Building Works.
- (e) “Electronic Communication” has the same meaning as in the *Electronic Transactions Act 2011*.

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

“Environmental Harm” has the meaning given to that term in the EPA;

“EPA” means the *Environmental Protection Act 1986*;

“GST” means a tax under the Commonwealth’s *A New Tax System (Goods and Services Tax) Act 1999* (“GST Act”) levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease;

“Improvements” means any/all buildings, structures, fixtures and fittings on the Premises as at the Commencement Date as well as any/all additions, alterations or improvements made on/to the Premises made during the Term and for the avoidance of doubt includes the Building Works;

“Interest Rate” means the rate at the time the payment falls due being 2% greater than the Lessor’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 Schedule 1;

“Lease” means this deed as supplemented, amended or varied from time to time and including any/all Schedules and/or Annexures hereto;

“Lessee’s Covenants” means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by any person other than the Lessor;

“Lessor’s Covenants” means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be observed and performed by the Lessor;

“Locke Estate Bushfire Management Plan” means the bushfire management plan in respect of the Land prepared by or on behalf of the Lessor and includes any variation or replacement of that plan from time to time;

“Management Order” means the management order for the Land;

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

“Party” means the Lessor or the Lessee according to the context;

“Pollution” means anything that is pollution within the meaning given to that term in the EPA which is not authorised under any Law;

“Premises” means the premises described at Item 1 (b) of Schedule 1;

“Plan of Premises” means the plan attached to the Lease as Annexure A;

“Rent” means the rent specified in Item 5 of Schedule 1;

“Review Date” means any anniversary of the Commencement Date during the Term;

“Schedule” means any one and/or more of the Schedules to this Lease, as will appear from the context;

“Supply” means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

“Term” means the term specified in Item 2 of Schedule 1; and

“Termination” means expiry by effluxion of time or sooner determination of the Term or any period of holding over.

2. INTERPRETATION

In this Lease, unless expressed to the contrary:

2.1 Words importing:

- (a) the singular include the plural;
- (b) the plural include the singular; and
- (c) any gender includes each gender;

2.2 A reference to:

- (a) a natural person includes a body corporate or local government; and
- (b) a body corporate or local government includes a natural person;

2.3 A reference to a professional body includes a successor to or substitute for that body;

2.4 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;

2.5 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;

2.6 A reference to a right includes a benefit, remedy, discretion, authority or power;

2.7 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;

2.8 A reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to:

- (a) both express and implied provisions and terms;
- (b) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended; and
- (c) any / all Schedules and/or Annexures hereto.

-
- 2.9 A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- 2.10 Anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- 2.11 If a Party comprises two or more persons the covenants 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;
- 2.12 The covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include:
- (a) covenants not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (b) a covenant to do everything necessary to ensure that that act or thing is not done or omitted to be done;
- 2.13 Except in the Schedule headings do not affect the interpretation of this Lease.

3. GRANT OF LEASE

The Lessor leases to the Lessee the Premises for the Term subject to:

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable;
- (c) the performance and observance of the Lessee's Covenants; and
- (d) any/all the terms and conditions contained in this Lease.

4. QUIET ENJOYMENT

Except as provided in the Lease, for so long as the Lessor has the power to lease the land under the Management Order, and subject to the performance and observance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

5. LESSEE COVENANTS

The Lessee covenants and agrees with the Lessor to:

-
- (a) submit a Development Application within twelve (12) months from the Commencement Date; and
 - (b) undertake and complete the works specified in the Development Approval to the Lessor's reasonable satisfaction within three (3) years from the Commencement Date or such longer period as the Lessor, acting reasonably, agrees to.

6. RENT AND OTHER PAYMENTS

The Lessee covenants with the Lessor:

(a) **Rent**

To pay to the Lessor the Rent, as adjusted from time to time in terms of clause 6(e), in the manner set out at Item 5 of Schedule 1 from the Commencement Date clear of any set – off or deductions whatsoever.

(b) **Outgoings**

- (i) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises including but not limited to;
 - (A) local government rates, services and other charges;
 - (B) water, drainage and sewerage rates, charges for disposal of storm water, 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;
 - (D) land tax and metropolitan regional improvement tax on a single ownership basis; and
 - (E) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (ii) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in clause 5(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, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for fourteen (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**

(i) To pay to the Lessor on demand:

- (A) any/all amounts payable under any Act in connection with the Lease which shall include but not be limited to all levies, taxes, duty, fines and penalties, whether payable under the *Duties Act 2008* or otherwise;
- (B) all registration fees in connection with this Lease including any costs in relation to survey plans required for registration purposes; and
- (C) all legal costs of and incidental to the preparation, execution and stamping of this Lease and all copies.

(ii) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:

- (A) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
- (B) any breach of covenant by the Lessee or an Authorised Person;
- (C) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
- (D) any work done at the Lessee's request; and
- (E) any action or proceedings arising out of or incidental to any matters referred to in this clause 5(d) or any matter arising out of this Lease.

(e) **Rent Review**

On each Review Date, the Rent shall be reviewed to the amount determined in the following manner:

The Rent payable immediately before the Review Date shall be increased by the greater of:

-
- (i) three percent (3%); and
 - (ii) the percentage by which the CPI in respect of the quarter immediately preceding that Review Date is increased over the CPI in respect of the quarter immediately preceding the previous Review Date (or where the relevant Review Date is the first Review Date, the Commencement Date).

(f) **Accrual of Amounts Payable**

Amounts Payable accrues on a daily basis.

7. INSURANCE

7.1 Insurances Required

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

- (a) adequate public liability insurance covering the respective rights, interests, obligations and risks of the parties in terms of and subsequent to this Lease for a sum not less than the sum set out at Item 8 of Schedule 1 in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
- (b) insurance to cover the Lessee's equipment, moveable assets or other belongings against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage, loss from theft or burglary and other usual risks against which a Lessee can and does ordinarily insure in their full replacement value; and
- (c) insurance to the full insurable value on a replacement or reinstatement value basis of the Premises and the Improvements 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 which an owner can and does ordinarily insure, including in respect of all insurances, architects and other consultants' fees and the cost of demolition and removal of building waste or debris.

7.2 Details and Receipts

In respect of the insurances required by clauses 7.1 the Lessee must:

- (a) supply to the Lessor on demand details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;

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

7.3 Not to Invalidate

The Lessee must not do or omit to do any act or thing or allow anything to be done or bring or keep anything on the Premises which might render any insurance effected under clause 7.1 on the Premises, or any adjoining premises, void or voidable;

7.4 Reports

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

- (a) any 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 in or at the Premises.

7.5 Settlement of Claim

The Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any insurance required by clause 7.1(a) or (c).

7.6 Lessee Required to Pay Excess on Insurances

For the avoidance of doubt, the Lessee covenants and agrees with the Lessor that it shall pay any excess payable in connection with the insurances referred to in clauses 7.1.

8. INDEMNITY

8.1 Indemnity

The Lessee indemnifies the Lessor against any liability or loss arising from and any costs, charges and expenses incurred in connection with:

- (a) any damage to the Premises or the Improvements or any loss of or damage to anything on it; and

-
- (b) any injury to any person on the Premises, and for which the Lessor becomes liable unless caused by the wilful or negligent conduct of the Lessor, its employees, agents or contractors.

8.2 Indemnity Unaffected by Insurance

- (a) The Lessee's obligation to indemnify the Lessor under this Lease or at law is not affected by any insurance maintained by the Lessor in respect of the Premises and the indemnity under clause 8.1 is paramount; and
- (b) if insurance money is received by the Lessor for any of the obligations set out in this clause 8.1 then the Lessee's obligations under clause 8.1 will be reduced by the extent of such payment.

8.3 Indemnity Minister for Lands

Any reference to "Lessor" in this clause 8 shall include the Minister for Lands and its employees, agents or contractors.

9. LIMIT OF LESSOR'S LIABILITY

9.1 No Liability for Loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property (including the Improvements) in or about the Premises however occurring, unless caused by the wilful or negligent conduct of the Lessor, its employees, agents or contractors.

9.2 Limit on Liability for Breach of Lessor's Covenants

- (a) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor remains the management body of the Land; and
- (b) the Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

9.3 Indemnity Minister for Lands

Any reference to "Lessor" in this clause 9 shall include the Minister for Lands and its employees, agents or contractors.

10. RESPONSIBILITY FOR PREMISES AND IMPROVEMENTS

10.1 Lessee Solely Responsible for Improvements

Disregarding anything else to the contrary contained in this Lease, the Lessee shall be wholly and solely responsible for any/all costs and/or expenses and

assumes all risk in relation to the Improvements, disregarding the nature or origin thereof without derogating from the generality of the foregoing:

- (a) The Lessee will, save for the conditions of clause 17.1, promptly repair at its own cost and expense to the reasonable satisfaction of Lessor any damage to the Improvements including damage of structural nature, regardless how it is caused;
- (b) The Lessee will maintain at its own expense the Premises and the Improvements, including but not limited to walls, floors, roofs, doors, windows, plate glass, electrical installations, gas and water pipes and fittings, toilets, sanitary appliances, air-conditioning units, exhaust fans, drains, septic tanks, leach drains, paths, paving, park or garden furniture, retaining walls, fences and reticulation in good, safe order repair and condition;
- (c) The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises and the Improvements;
- (d) The Lessee must at all times keep the Premises and Improvements clean, tidy, unobstructed and free from dirt and rubbish; and
- (e) If the Lessee's use of the Premises (including any action of or omission by any of the Lessee's officers, employees, agents, contractors or invitees) may cause or has already caused erosion, drift or movement of sand, soil, dust or water to occur at, on or from the Premises, the Lessee must take such reasonable action as is necessary:
 - (i) to prevent such erosion, drift or movement, or
 - (ii) if it has already occurred, to rectify or otherwise ameliorate the effects thereof.

10.2 No Obligation on Lessor to Repair or Maintain

- (a) The Lessor has no obligation whatsoever to repair or maintain the Premises or the Improvements.
- (b) Any further development proposed on the Premises during the Term shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained the prior written consent of the Lessor, and all necessary statutory approvals.

10.3 Maintain Surroundings

- (a) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings, including but not limited to any flora, gardens lawns, shrubs, hedges and trees;
- (b) The Lessee agrees that lopping of trees must not be undertaken without the prior written consent of the Lessor, such consent not to be unreasonably withheld but will be conditioned to require that works are carried out by a qualified contractor;
- (c) If any flora, trees or lawn are damaged or die the Lessee must replace the flora, trees or lawn at its own expense, except where such loss or damage has been caused by any circumstances outside the reasonable control of the Lessee, like drought or storm damage;
- (d) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require;
- (e) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the written approval of the Lessor, except where necessary for urgent safety reasons.

10.4 Pest Control

- (a) The Lessee must at its cost and expense keep the Premises free of any vermin and harmful insects and pests (like termites);
- (b)
 - (i) The Lessee must undertake, annually, an inspection by a licensed pest controller for termite infestation;
 - (ii) This inspection must be carried out and any pest control treatment required as a result of the inspection must be undertaken by a licensed pest controller within a reasonable time and in any event no longer than four (4) weeks following the date of the inspection;
 - (iii) The Lessee must provide to the Lessor a copy of the certificate issued by the licensed pest controller if requested by the Lessor; and
 - (iv) All costs and expenses arising from the inspection and any work undertaken as a result will be the responsibility of the Lessee.

10.5 Lessor May Undertake Works, Inspections etc at Cost of Lessee

Notwithstanding the existence of clauses within this Lease imposing an obligation on the Lessee to carry out any inspections of the Premises or to repair, clean or otherwise maintain the Premises, the Lessor may, subject to the provision of reasonable notice to the Lessee, enter onto the Premises to carry out:

- (a) inspections of the Premises to ensure that the Premises are free of vermin and/or termite infestation;
- (b) inspections of any fire extinguishers or emergency lighting on the Premises;
- (c) any treatment work or works which are required to be carried out on the Premises as a result of the inspections carried out pursuant to paragraphs (a) or (b) of this clause 10.5;
- (d) cleaning of the Premises or Improvements; and
- (e) repairs or maintenance to the Premises and/or the Improvements;

11. ALTERATIONS

11.1 Restriction

The Lessee must not without prior written consent from the Lessor and from any other person or public authority from whom consent is required under this Lease and required under any statute in force from time to time, including but not limited to the planning approval of the Lessor under a town planning scheme of the Lessor;

- (a) carry out any works or cause any works to be carried out on the Premises or make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises or the Improvements; or
- (b) subject to the performance of the Lessee's obligations in clause 10, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

11.2 Consent

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

-
- (i) consent subject to conditions, which consent shall not be unreasonably withheld; and
 - (ii) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (iii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (b) if the Lessor consents to any matter referred to in clause 11.1:
- (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (ii) the Lessee 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.

11.3 Cost of Works

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

11.4 Conditions

If any of the consents given by the Lessor or other persons/authorities whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either:

- (a) carry out those other works at the Lessee's expense; or
- (b) permit the Lessor to carry out those other works at the Lessee's expense in accordance with the Lessor's requirements.

11.5 No Fetter

The Lessee acknowledges that no provision of this Lease constitutes a fetter on the discretion of the Lessor in the exercise by the Lessor of any of its powers under the laws relating to planning, building or health.

12. USE

12.1 Restrictions on Use

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

- (a) use the Premises or the Improvements or any part of it for any purpose other than for the purposes for which the Premises and Improvements are held by the Lessor, as set out at Item 6 of the Schedule 1;
- (b) use the Premises for any purpose which is not permitted under any town planning scheme, local laws, acts, statutes or any law relating to health;
- (c) use Caravans on the premises without the prior written approval of the Lessor;
- (d) do or carry out on the Premises any harmful, offensive or illegal act, matter or thing;
- (e) do or carry out on the Premises anything which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties;
- (f) store any dangerous compound or substance on the Premises, otherwise than in accordance with the following provisions:
 - (i) any such storage must comply with all relevant statutory provisions;
 - (ii) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
 - (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
 - (iv) upon the request of the Lessor, the Lessee will provide a manifest of all dangerous compounds or substances stored on the Premises;
- (g) do any act or thing which might result in excessive stress or harm to any part of the Premises.

12.2 No Warranty

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or

-
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

12.3 Premises Subject to Restriction

- (a) The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises;
- (b) The Lessor may in its sole discretion and without furnishing any reasons for its decision require from the Lessee to remove and/or relocate any signs, notices or advertisements from/on the Premises, which shall be done at the Lessee's cost.
- (c) The Lessor may require from the Lessee to display/incorporate on any sign, notice or advertisement on the Premises the wording "Supported by the City of Busselton" or anything similar and to incorporate the Lessor's logo or such wording as approved by the Lessor; provided that such a requirement by the Lessor shall be reasonably and practically executable.

12.4 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all reasonable costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this clause 12.

13. LESSOR'S RIGHT OF ENTRY

13.1 Entry on Reasonable Notice

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

- (a)
 - (i) at all reasonable times;
 - (ii) with or without workmen and others; and
 - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes:
 - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are

carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;

- (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable;
- (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause 13.1(b)(iv) is without prejudice to the Lessor's other rights, remedies or powers under this Lease;
- (v) For any purpose as may be required in terms of the Special Conditions contained in Schedule 2; and
- (vi) The Lessor may, for the purpose of:
 - (A) providing public or private access to or egress from the Land or the Premises;
 - (B) for the support of structures erected/constructed (whether existing or erected/constructed hereafter) on adjoining land; or
 - (C) for services to be installed on or conducted over the Land or the Premises (including but not limited to water, drainage, gas, electricity, and telephonic or electronic communications) grant any such rights to and/or enter into any arrangement or agreement with any person, government agency or public authority (including any owner, lessee, tenant or occupier of or a person with an interest in any land adjacent to or near the Land or the Premises) and may dedicate, transfer, grant or create any easement or privilege in favour of any such person, and this Lease will be deemed subject to each such right, arrangement, agreement, easement or privilege however and whenever granted/created : PROVIDED THAT
 - (D) the Lessor shall use reasonable endeavours not to cause any undue inconvenience to the enjoyment of the Premises by the Lessee; and
 - (E) the Lessor will not be liable to the Lessee for any compensation for granting such rights and/or entering into such arrangement or agreement, provided that any works on the Premises undertaken in terms of this clause 13.1(vi) do not cause any damage to the Lessee's property and are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee.

13.2 Costs of Rectifying Breach

All reasonable costs and expenses incurred by the Lessor as a result of any breach referred to at clause 13.1(b)(iv) together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

13.3 Lessor's right to carry out duties

Nothing in this lease shall prevent the Lessor from entering the Premises and/or the Improvements to carry out any of its obligations, duties or functions under any Act.

14. STATUTORY OBLIGATIONS & NOTICES

14.1 Comply with Statutes

The Lessee must:

- (a) promptly comply with all legislation from time to time in force relating to the Premises and/or the Improvements (including but not limited to all statutes and local laws);
- (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 specified in Item 6 of Schedule 1;
- (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 by or at the instance of the Lessee; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

14.2 Indemnity if Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in clause 14.1; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in clause 14.1.

15. REPORT TO LESSOR

The Lessee must immediately report to the Lessor:

- (a) any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should reasonably be aware of;
- (b) 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; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

16. DEFAULT

16.1 Events of Default

A default occurs if:

- (a) the Lessee is in breach of any of the Lessee's Covenants for twenty eight (28) days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) the Lessee is wound up whether voluntarily or otherwise;
- (c) where the Lessee is an association, the Lessee passes a special resolution under the Associations Incorporation Act 1997 altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of rent and profits.

16.2 Lessor's rights in event of default

On the occurrence of any of the events of default specified in clause 16.1 the Lessor may:

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

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

16.3 Lessor May Remedy Breach

If the Lessee:

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

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

16.4 Acceptance of Amount Payable By Lessor

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

16.5 Essential Terms

Each of the Lessee's Covenants in clauses 5 (Lessee's Covenants) 6 (Rent and Other Payments), 7 (Insurance), 8 (Indemnity), 10 (Responsibility for Premises and Improvements), 12 (Use), 21 (Removal of Property and Improvements From Premises) 22 (Assignment, Subletting and Charging), 34 (Goods and Services Tax) and Special Conditions 7 and 15 under Schedule 2 is an essential term of this Lease but this clause 16.5 does not mean or imply that there are no other essential terms in this Lease.

16.6 Breach of Essential Terms

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

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

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

- (d) the Lessee agrees that the covenant set out in clause 16.6(c) will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessor 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 Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

17. DAMAGE OR DESTRUCTION

17.1 Damage or Destruction

If the Premises or the Improvements or any part of the Premises or the Improvements are totally or partially destroyed so as to require major rebuilding the Lessee, at its cost and risk:

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- (a) may within two (2) months of the destruction or the damage terminate the Lease with immediate effect by giving Notice to the Lessor, in which event the conditions of clause 21 shall apply; or
 - (b) must
 - (i) within two (2) years from the date of destruction or damage rebuild such building or structure to its original state and condition to the reasonable satisfaction of the Lessor and in accordance with the requirements of all relevant authorities; or
 - (ii) within six (6) months from the date of destruction or damage demolish and remove from the Premises such building or structure and restore the Premises to its original state.

17.2 Insurance Proceeds

- (a) All insurance proceeds received in respect of partial or total destruction as mentioned in clause 17.1 shall be applied towards either the reconstruction of such buildings or structures or the costs of demolition and removal thereof.
- (b) Should the proceeds of any insurance policies not be sufficient to pay for any shortfall between any/all costs/expenses incurred under clause 17.1, the Lessee shall pay such shortfall or, in the event of a surplus, the Lessee shall be entitled to retain such surplus: provided that any demolition and/or reconstruction works required in terms of this agreement, have been undertaken and completed to the Lessor's reasonable satisfaction.

18. OPTION TO RENEW

The Lessor does not grant to the Lessee any right or option to renew or extend the Term.

19. RESTORE PREMISES

Save for the conditions of clause 21, the Lessee must at its expense prior to Termination restore the Premises and the Improvements to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease, fair wear and tear excepted.

20. YIELD UP THE PREMISES

20.1 Peacefully Surrender

On Termination and subject to clause 21 the Lessee must:

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- (a) peacefully surrender and yield up to the Lessor the Premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease;
 - (b) surrender to the Lessor all keys and security access devices and combination for locks providing access to or within the Premises held by the Lessee whether or not provided by the Lessor; and
 - (c) promptly make good and rehabilitate the Premises and remediate any Contamination, Pollution and Environmental Harm of or to the Premises arising from or connected with the use and occupation of the Premises by the Lessee, its officers, employees, agents, contractors or invitees.

20.2 Clause 20.1 to Survive Termination

The Lessee's obligation under clause 20.1 will survive termination.

21. REMOVAL OF PROPERTY AND IMPROVEMENTS FROM PREMISES

21.1 Ownership of Improvements

The Lessor and the Lessee agree that the ownership of the Improvements lies in the Lessee and the manner in which those Improvements shall be dealt with at Termination is governed by clauses 21.2 – 21.4 of this Lease.

21.2 Lessee's Right to remove Improvements

At any time prior to Termination the Lessee may remove at its own cost and risk from the Premises any/all the Improvements provided that the Lessee shall make good to the reasonable satisfaction of the Lessor any damage caused to the Premises by such removal.

21.3 Failing Lessor's Right to Require Removal of Improvements

If the Lessee does not do so as of right under clause 21.2 then, if required to do so by the Lessor, the Lessee shall remove from the Premises within three (3) months after Termination the Improvements or any part thereof (as determined by the Lessor), and the Lessee shall make good to the reasonable satisfaction of the Lessor any damage caused to the Premises by such removal.

21.4 Abandoned Improvements May Become Property of Lessor

The Improvements or any part thereof not removed by the Lessee either as of right under clause 21.2 or by requirement by the Lessor under clause 21.3 will at the Lessor's election become the property of the Lessor and the Lessor will not be liable to the Lessee or any person claiming through the Lessee to compensate for the acquisition by the Lessor of such Improvements.

21.5 **Clause 21 Survive Termination**

The Lessee's obligations under clause 21 will survive Termination.

22. **ASSIGNMENT, SUB-LETTING AND CHARGING**

22.1 **No Assignment or Sub-letting without Consent**

The Lessee shall not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor (which consent the Lessor may withhold in its absolute discretion, but not unreasonably or grant subject to such conditions as the Lessor may seek to impose) and the prior written consent of the Minister for Lands as required by section 18 of the *Land Administration Act 1997*.

22.2 **Consents of Assignee Supplementary**

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

22.3 **Property Law Act 1969**

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

22.4 **Costs for Assignment and Sub-letting**

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

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
- (b) any consents required under this Lease or at law;
- (c) all other matters relating to the proposed assignment or sub-letting, whether or not the assignment or sub-letting proceeds.
- (d) all legal costs of and incidental to preparation, execution and stamping of a Deed of Assignment of Lease or Sublease as the case may be;
- (e) all registration fees in connection with the Deed of Lease or Sublease; and
- (f) all duty, fines and penalties under the Duties Act 2008 and other statutory duties.

22.5 No Mortgage or Charge

The Lessee shall not mortgage nor charge the Premises.

23. ACTS BY AGENTS

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

24. GOVERNING LAW

This Lease 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.

25. STATUTORY POWERS

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

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

26.2 Service of Notice

- (a) A notice to a person must be in English, in writing and signed by, or on behalf of, the sender or by Electronic Communication.
- (b) The Landlord may only serve a notice on the Lessee by:
 - (i) giving it to the Lessee personally;
 - (ii) leaving it at, posting it to, or by Electronic Communication to the Lessee's address specified in clause 26.1.

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- (c) The Lessee may serve a notice on the Landlord by posting it, by registered mail, or by Electronic Communication to the address specified in clause 26.1.
 - (d) The Landlord or the Lessee may change the address details specified in clause 26.1 by giving notice of the new address details to the other party.
 - (e) A notice given in accordance with subclauses (a) to (c) is taken to be received:
 - (i) if hand delivered, on the first Business Day following delivery;
 - (ii) if sent by pre-paid post, five (5) Business Days after the date of posting; or
 - (iii) if sent by Electronic Communication on the first Business Day following the time that would be the time of receipt under the *Electronic Transactions Act 2011* (which is currently when the Electronic Communication enters the addressee's information system).

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. SEVERANCE

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease 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.

28. DISPUTES

28.1 Referral of Dispute: Phase 1

Except as otherwise provided any dispute arising out of this Lease is to be referred in the first instance in writing to the Lessor's Representative as nominated in writing from time to time ("the Lessor's Representative") of the Lessor who shall convene a meeting within thirty (30) days of receipt of such notice from the Lessee or such other period of time as is agreed to by the parties between the Lessor's Representative and an officer of the Lessee for the purpose of resolving the dispute ("the Original Meeting").

28.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with clause 28.1 of this Lease then the dispute shall be referred in writing to the Chief Executive Officer of the Lessor who shall convene a meeting within ten (10) days of the Original Meeting or such other date as is agreed to by the parties between the Chief Executive Officer of the Lessor and the authorised officer of the Lessee for the purpose of resolving the dispute.

28.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with clause 28.2 of this Lease then the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

28.4 Payment of Amounts Payable to Date of Award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the arbitrator referred to in clause 28.3 or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid.

29. VARIATION

This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.

30. 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 Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

31. 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 Lease.

32. PAYMENT OF MONEY

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

33. WAIVER

33.1 No General Waiver

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

33.2 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.

34. GOODS AND SERVICES TAX

34.1 Lessee to Pay GST

- (a) The Consideration will be increased by the amount of GST, if any, which the Lessor is required by legislation to pay on any Supply made under the terms of this Lease;
- (b) The Lessee must pay any increase referred to at paragraph (a) whether it is the Lessee or any other person who takes the benefit of any Supply; and
- (c) The Lessee must pay the amount of GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration.

34.2 Consideration in Kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease the GST amount payable to the Lessor under clause 34.1(b) in respect

of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

34.3 No Contribution from Lessor

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

34.4 Statement of GST paid is Conclusive

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

34.5 Tax Invoices

For each payment by the Lessee under this clause 34 the Lessor agrees to promptly deliver to the Lessee, as required under the GST Act, tax invoices and adjustment notes in a form which complies with the GST Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

34.6 Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this lease then the requirements set out in this clause 34 with respect to the Lessee will apply to the Lessor with the necessary changes.

35. COMMERCIAL TENANCY ACT

Not Applicable

36. CAVEAT

36.1 No Absolute Caveat

The Lessee nor any person on behalf of the Lessee will not, without the prior written consent of the Lessor, lodge any absolute caveat to protect the interests of the Lessee under this Lease.

36.2 CEO & Lessor as Attorney

If any caveat is lodged, the Lessee in consideration of the Lessor having granted this Lease to the Lessee irrevocably appoints the Lessor and the CEO of the Lessor (or any person authorised by the local government for that purpose) jointly and severally:

- (a) for the Term of this Lease;

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- (b) for any holding over under this Lease; and
 - (c) for a period of six (6) months after Termination of this Lease to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at the Western Australian Land Information Authority:
 - (i) to withdraw any absolute caveat lodged by or on behalf of the Lessee;
 - (ii) to withdraw any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; or
 - (iii) a surrender of the estate granted by this Lease;and the costs of withdrawing any caveat or surrendering this Lease will be borne by the Lessee.

37. INDEMNITY AND RATIFICATION

- (a) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under clause 36.2; and
- (b) the Lessee indemnifies the Lessor against:
 - (i) any loss arising from any act done under clause 36.2; and
 - (ii) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee including the withdrawing of any caveat effecting the Land the registration of this Lease to exercise the power of attorney set out in clause 36.2.

38. PRIOR NOTICE OF PROPOSAL TO CHANGE RULES

Where the Lessee is an association and the Lessee changes its rules of association under the *Associations Incorporations Act 2015* the Lessee must notify the Lessor in writing of such changes within thirty (30) days of adopting such a resolution.

39. PROVISION OF INFORMATION

- (a) The Lessee agrees to provide to the Lessor:
 - (i) a detailed annual income and expenditure statement of the business conducted by the Lessee on/at the Premises and all expenses in relation thereto, if and when required to do so by the Lessor ;

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- (ii) from time to time in writing with the name and contact details of the Lessee's representative designated by the Lessee to attend to and/or deal with the day to day management of this Lease on behalf of the Lessee; and
 - (iii) any information on the Lessee's use of or operations at/on the Premises and/or such other information reasonably required by the Lessor from time to time.
- (b) The Lessor covenants and undertakes to keep confidential any/all information provided by the Lessee to the Lessor in terms of sub-clauses 39(a)(i) and (iii) and not to disclose such information to any person, except:
- (i) as required by law; or
 - (ii) where the Lessee's prior written consent has been obtained.

40. PLANNING AND DEVELOPMENT ACT 2005: CONSENT

If for any reason whatsoever this Lease requires the consent of the Western Australian Planning Commission or other consent under the *Planning and Development Act 2005*, then this Lease 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*.

41. ADDITIONAL TERMS COVENANTS AND CONDITIONS

- 41.1 Each of the terms, covenants and conditions contained in Schedule 2 are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.
- 41.2 The provisions of the Lease are varied to the effect and to the extent detailed in Schedule 2 and the parties agree that, except to the extent amended by Schedule 2, the remainder of the main body of the Lease remains in full force and effect.
- 41.3 In the event of any inconsistency between the contents of Schedule 2 and any provision of the remainder of the Lease, the contents of Schedule 2 shall prevail.

42. MINISTER FOR LAND'S CONSENT

See Schedule 2 Special Condition 1.

43. LESSEE RESPONSIBLE FOR PAYMENT OF COSTS AND EXPENSES

43.1 The Lessee is wholly and solely responsible for payment of any/all costs, expenses, fees, charges, premiums and/or any liabilities arising from and/or in connection with meeting and/or complying with its covenants and obligations under this Lease.

43.2 The Lessor may in its sole discretion (but without any obligation to do so) pay any amount of money due by the Lessee in terms of the Lease, on behalf of the Lessee, in which event the Lessee shall punctually reimburse the Lessor on demand.

DRAFT

SCHEDULE 1

ITEM 1: LAND AND PREMISES

(a) **Land**

Lot 5303 on Deposited Plan 220583 and being the whole of the land comprised in Crown Land Title Volume LR3088 Folio 423, Reserve 22674

(b) **Premises**

That portion of the Land as indicated on the Plan of Premises attached as **Annexure A (Site 7)**. Should there be any dispute as to the location and/or the extent of the Premises the Lessor's decision shall be final and binding.

ITEM 2: TERM

TBA approximately 11 years

ITEM 3: FURTHER TERM

None.

ITEM 4: COMMENCEMENT DATE

TBA

ITEM 5: RENT

Two Thousand Five Hundred Dollars per annum. (\$2500.00) Exclusive of GST payable yearly in advance with the Rent for the first year payable within seven (7) days of the Commencement Date and the Rent for the following years payable before or on the same date of each consecutive year and to be reviewed annually as stipulated in clause 6(e) of the Lease.

ITEM 6: USE

- (1) The primary purpose of the Lease is for the Lessee to use the Premises to provide temporary accommodation for **[ADD ORGANISATION'S OBJECTIVES ONCE AGREED]** provided such use fulfils one or more of the criteria listed below:

-
- (a) Groups participating in organised educational, cultural, religious or recreational activities;
 - (b) Financially disadvantaged persons who are otherwise not able to afford a holiday; and
 - (c) Individuals or families requiring respite.
- (2) Incidental to the primary use as stated above, the Lessee may also with the prior written approval of the Lessor and upon such conditions reasonably imposed by the Lessor, use the Premises as temporary accommodation for people involved with or contracted to manage, improve and/or maintain the Premises or the Improvements.

ITEM 7: ADDITIONAL TERMS COVENANTS AND CONDITIONS

The Lessee covenants and agrees with the Lessor to comply with the Special Conditions contained in Schedule 2 of the Lease.

ITEM 8: PUBLIC LIABILITY INSURANCE

\$10,000,000 (Ten Million Dollars)

**SCHEDULE 2
SPECIAL CONDITIONS**

1. Minister for Lands Consent

This Lease is made subject to and conditional upon the parties obtaining the Minister for Lands' consent to this Lease (as is required by the Management Order). The parties agree and acknowledge that the Minister for Lands' prior written consent is also required for any assignment, transfer or mortgage of this Lease and lodgement of any caveat (as referred to in clause 36 of the Lease), and that the Lessee shall obtain such consent in the event of any such assignment, transfer or mortgage of this Lease and/or lodgement of such caveat.

2. Lessor's Interest in the Land

The Parties agree and acknowledge that notwithstanding anything to the contrary in this Lease, the Lessor is not the registered proprietor of the Land. Pursuant to the *Land Administration Act 1997*, the Minister for Lands has by the Management Order, placed the care, control and management of the Land with the Lessor. If at any time the Management Order is revoked for any reason whatsoever, this Lease shall be at an end.

3. Western Australian Planning Commission Consent

See clause 40 of the Lease.

4. Coastal Setback Zone

(a) Nature and location of the Coastal Setback Zone

- (i) It is recorded that;
 - (A) The Land and the Premises border the Indian Ocean coastline; and
 - (B) Certain areas of the Land and the Premises are ecologically sensitive areas which, amongst other things, include vulnerable coastal dune areas.
- (ii) A coastal setback of approximately 50 (fifty) metres from the vegetation line on the Premises has been established (the "Coastal Setback Zone"). The Coastal Setback Zone is shown stippled on the Plan of the Premises (or is to be surveyed by the Lessor) and should there be any dispute as to its location and/or extent, the Lessor's decision shall be final.

(b) Use of Coastal Setback Zone

Notwithstanding any provision in this Lease to the contrary, the Lessee acknowledges and agrees that:

- (i) it shall not be entitled to undertake any development whatsoever within the Coastal Setback Zone and the Lessor will not consent to any such development;
- (ii) during the Term it will revegetate all or part of the Coastal Setback Zone under the guidance of the Lessor so as to help restabilise the vulnerable coastal dune area;
- (iii) except in the case of emergency or the delivery or removal of materials, driving or parking of vehicles of any kind is not permitted in the Coastal Setback Zone; and
- (iv) it will install bollards or other such means to delineate the Coastal Setback Zone and to prevent vehicular access, which installation shall be carried out under guidance of the Lessor and maintained during the Term of the Lease to the Lessor's reasonable requirements and standards.

5. Conservation Zone

(a) Location of the Conservation Zone

- (i) The Premises contain an area shown hatched on the Plan of the Premises as the Conservation Zone;
- (ii) The Conservation Zone is land designated as a conservation zone suitable for revegetation with native species and for the purposes of protection from erosion and enhancement of the habitat of the endangered Western Ringtail Possum;
- (iii) Should there be any dispute as to the location and/or extent of the Conservation Zone; the Lessor's decision shall be final.

(b) Use of Conservation Zone

Notwithstanding any provision in this Lease to the contrary, the Lessee acknowledges and agrees that:

- (i) it shall not be entitled to undertake any development whatsoever within the Conservation Zone and the Lessor will not consent to any such development;

-
- (ii) during the Term it will revegetate the Conservation Zone under the guidance of the Lessor; and
 - (iii) it will install bollards or other such means to delineate the Conservation Zone and to prevent vehicular access, which installation shall be undertaken under the guidance of the Lessor and maintained for the Term of the Lease to the Lessor's reasonable requirements and standards.

6. Fire Management

The Lessee acknowledges and agrees that:

- (a) It is aware of the existence and contents of and the Lessee's obligations under the Locke Estate Bushfire Management Plan; and
- (b) At all times during the Term it will comply with the provisions of the Locke Estate Bushfire Management Plan.

7. Compliance with Minimum Standards

The Lessee must ensure that the standard of accommodation, facilities and infrastructure on the Premises complies at all times with all statutory requirements including but not limited to:

- (a) all rules, regulations and standards determined by the Lessor from time to time; and
- (b) the Caravan Parks and Camping Grounds Act (if applicable); and
- (c) the Building Code of Australia.

8. Dieback Prevention

The Lessee must use its best endeavours to prevent the introduction of dieback on the Premises and the Land and, in particular and without limiting the Lessee's obligations in this regard, ensure that all soil that is brought onto the Land or the Premises is certified as being free of dieback.

9. Water

The Lessee must:

- (a) manage the use of bore water at the Premises by the use of water wise techniques so as to mitigate the impact on native vegetation; and

-
- (b) permit the Lessor to enter the Premises at any time for the purpose of taking water samples from the Premises for testing; and
 - (c) if deemed necessary or prudent by the Lessor comply with all directions of the Lessor to reduce water usage.

10. Weed Control

The Lessee shall:

- (a) undertake a regular program of weed removal at the Premises and along the boundaries of the Premises to arrest the spread of weeds; and
- (b) comply with all of the reasonable requirements of the Lessor relating to weed control at the Premises; and
- (c) prohibit the spread of noxious weeds at the Premises.

11. Removal of Vegetation

The Lessee must not remove any vegetation on the Premises at any time during the Term without first:

- (a) submitting a development application to the Local Authority.; and
- (b) obtaining the approval of the Local Authority; and
- (c) complying with every condition of any approval granted by the Local Authority.

12. Site Design Guidelines

- (a) The Lessee acknowledges that the Lessor, in consultation with other Lessees of the Land may seek to formulate site design guidelines (“Guidelines”) to enable the whole of the Land to have a consistent appearance, which will include determining a style for signage, bollards and fencing so as to improve the visual amenity of the Land from Caves Road.
- (b) As part of the Guidelines the Lessor may determine, in consultation with the Lessee:
 - (i) one location for pedestrian beach access on the Premises;
 - (ii) the appropriate positioning of gates for emergency access and egress between the Premises and adjoining premises;

-
- (iii) the location of bollards to restrict vehicle access to the Conservation Zone and the Coastal Setback Zone;
 - (iv) identified flora and fauna corridors across the Premises;
 - (v) appropriate areas of the Premises for educational and heritage signage; and
 - (vi) anything else that the Lessor deems reasonably necessary or prudent for the for the purpose of the Guidelines.
- (c) The Lessee agrees to comply with the Guidelines once they have been developed and approved by the Lessor.

13. Coastal Protection

- (a) It is recorded that:
- (i) The Lessor has sought advice on protection of the coastline bordering the Land and the Premises; and
 - (ii) The Lessor has implemented the abovementioned advice (in full or in part) and may in its sole discretion decide to execute further works during the Term to protect the coastline bordering the Land and/or the Premises (the Works); and
 - (iii) The Lessor has obtained annual contributions towards the cost of the Works from previous lessees of the Premises.
- (b) The Lessee agrees to contribute on the following terms and conditions towards the costs of the Works:
- (i) For a period of xxx years following commencement of the Term (or a lesser period of time as determined by the Lessor) it shall pay to the Lessor the sum of \$4,000.00 per annum (Coastal Protection Contribution) (or such lesser amount as determined by the Lessor), payable to the Lessor annually in advance on the same date as the Rent;
 - (ii) The Coastal Protection Contribution is payable by the Lessee in addition to the Rent and/or any other financial obligations of the Lessee in terms of the Lease;
 - (iii) The funds shall be held by the Lessor in an interest bearing reserve account;

-
- (iv) The Lessor shall be entitled to use/apply the funds (or any portion thereof) in its sole discretion for payment of the Works or for any purpose relating to protection of the coastline as mentioned in clause 13(a) above;
 - (v) The Lessor shall refund to the Lessee at the end of the term any/all unspent funds together with interest accrued (if any);
 - (vi) The Lessor shall use its best endeavours to ensure that execution of the Works does not unreasonably interfere with or limit the Lessee's use and occupation of the Premises; and
 - (vii) The Lessee shall allow the Lessor, its employees, agents and/or contractors at all reasonable time's access to the Premises for execution of the Works.

14. Pets

- (a) Save for the provisions of this clause 14(b) and (c), no domestic animals shall be permitted on the premises.
- (b) The Lessee may allow the caretaker employed by the Lessee on the Premises to keep his pets (excluding any cats) on the Premises; on condition that such animals be restricted to the caretaker's dwelling or private fenced yard unless leashed and under control of the caretaker; and
- (c) This clause does not apply to assistance dogs used for the assistance of visually impaired persons and is subject to the provisions of section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunities Act 1984*.

EXECUTION PAGE

EXECUTED by the parties as a Deed:

Signed by the CEO on behalf of the City of)
Busselton duly authorised pursuant to)
s9.49A (4) of the Local Government Act)
1995 (Council Resolution C1005/169))

CHIEF EXECUTIVE OFFICER

The COMMON SEAL of (ADD LESSEE) was)
hereunto affixed in the presence of its)
authorised board members:)
)
)

BOARD MEMBER

(Print Full Name)

BOARD MEMBER

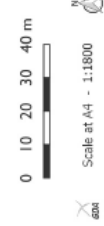
(Print Full Name)

ANNEXURE A

PLAN OF PREMISES



Locke Estate Lease Plan
Lot 5303 Reserve 22674
Camp Site 7 - 194 Caves Rd



- Site 7 Lease Boundary
- Coastal Setback Zone
- Conservation Area
- Development Zone
- Coordinate Points
- Cadastre

Disclaimer
 The City of Busselton does not guarantee that this map is without errors and accepts no responsibility for consequences of actions that rely on this map.



ANNEXURE B

BUILDING WORKS - DEVELOPMENT CONCEPT PLAN

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