

CROWN LAND LEASE
Reserve 28563
63 Bates Street Merredin WA

SHIRE OF MERREDIN

Lessor

-and-

MERRITTVILLE RETIREMENT VILLAGE
(WA A0800229A)

Lessee

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BETWEEN:

1. **SHIRE OF MERREDIN** of Cnr Barrack & King Streets, Merredin, Western Australia (**Lessor**); and
2. **MERRITTVILLE RETIREMENT VILLAGE (WA A0800229A)** of 63 Bates Street, Merredin, Western Australia (**Lessee**)

RECITALS:

- A. Pursuant to the Management Order, the Minister has by order placed with the Lessor the care, control and management of the Land with power to lease for any term not exceeding 21 years, subject to the approval in writing of the Minister being first obtained and to the provisions of section 18 of the *Land Administration Act 1997*.
- B. The Land comprises the whole of Reserve 28563, for which the designated purpose is "Homes for the Aged".
- C. Between September 1981 and February 2001 the Lessor, Lessee, and Housing Authority variously entered into the JVAs to construct the JVA Dwellings, in which the Housing Authority held the Housing Authority Interest.
- D. The Lessee also constructed the New Dwellings, to which the Housing Authority claimed an equitable interest.
- E. On 7 October 2019 the Lessor, Lessee, and Housing Authority entered into the Deed of Termination and Release under which, amongst other things, the Housing Authority and Lessee assigned all their respective interests in the JVA Dwellings and New Dwellings to the Lessor.
- F. From April 1994 to April 2015 the Lessee was in possession of the Land and Premises under a lease agreement, and since then pursuant to an informal lease.
- G. The Lessee wishes to lease the Land and Premises.
- H. The Lessor has agreed to lease the Land and Premises to the Lessee on the terms and conditions of this Lease.
- I. The Housing Authority indicates its consent to this Lease by endorsing its consent.
- J. The Minister indicates its consent to this Lease by endorsing its consent.

OPERATIVE PART:**1. DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In this Lease unless the context otherwise requires:

Act means a statute (State or Federal) including amendments and re-enactments and any ordinance, by-laws or regulations made pursuant to it;

Allocated Dwelling has the same meaning given to that term in the Deed of Termination and Release;

Air-conditioning Plant means any plant, machinery or equipment for heating, cooling or circulation of air in any Building;

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

Building means:

- (a) any building, improvement or other permanent structure;
- (b) all Plant and Equipment, machinery, fixtures, fittings, furnishings and equipment; and
- (c) all Facilities;

now or hereafter constructed made, erected, installed or situated on the Land and Premises;

Business Day means a day which is not a Saturday, Sunday or public holiday in Western Australia;

Commencement Date means the Commencement Date specified in Item 4 of Schedule 1 in respect of the Term;

Council means the council of the Lessor;

Deed of Termination and Release means the 'Deed of Termination and Release of JVA's and Allocation Agreement' (a copy of which is annexed at Annexure B) between the Housing Authority, Merrittville Retirement Village (WA A0800229A), and the Shire of Merredin made on 7 October 2019 under which:

- (a) the Housing Authority and the Merrittville Retirement Village assigned all their respective interests in the JVA Dwellings to the Shire of Merredin;
- (b) the Housing Authority and the Merrittville Retirement Village assigned all their respective interests in the New Dwellings to the Shire of Merredin; and
- (c) the Housing Authority and the Merrittville Retirement Village and the Shire of Merredin were released from each of their obligations under the JVA's;

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

Facilities means the water supply, drainage, sewerage, gas and electrical fixtures, fittings or appliances, in or on the Land and Premises and the Lessee's Fixtures;

Housing Authority means the Housing Authority, a body corporate constituted under the *Housing Act 1980* (WA);

Housing Authority Interest means the percentage interest the Housing Authority would hold in the JVA Dwellings if not for the Deed of Termination and Release, being:

- (a) 100% of the ten (10) one bedroom units constructed under JVA 1;
- (b) 87.10% of the five (5) one bedroom units constructed under JVA 2;
- (c) 87.2% of the five (5) two bedroom units constructed under JVA 3; and
- (d) 82.7% of the six (6) two bedroom units constructed under JVA 4;

JVA 1 means the joint venture agreement between the Housing Authority and Merrittville Retirement Village made on or around 29 September 1981 (for an unspecified term) and pursuant to which ten (10) one-bedroom residential living units were developed on the Land and in which the Housing Authority fully funded the construction of the dwellings;

JVA 2 means the joint venture agreement between the Housing Authority and Merrittville Retirement Village made on or around 11 January 1993 for a term of 50 years and pursuant to which five (5) one-bedroom residential living units were developed on the Land;

JVA 3 means the joint venture agreement between the Housing Authority and Merrittville Retirement Village made on or around 16 June 1995 for a term of 50 years and pursuant to which five (5) two-bedroom residential living units were developed on the Land;

JVA 4 means the joint venture agreement between the Housing Authority, Merrittville Retirement Village and the Shire of Merredin made on or around 9 February 2001 for a term of 25 years and pursuant to which six (6) two-bedroom residential living units were developed on the Land;

JVA Dwellings means the twenty-six (26) residential living units constructed on the Land collectively under the terms of the JVAs;

JVAs means the four joint venture agreements (comprising JVA 1, JVA 2, JVA 3, and JVA 4) variously entered into by the Housing Authority, Merrittville Retirement Village and the Shire of Merredin pursuant to which the JVA Dwellings were constructed on the Land;

Insurance Costs means the whole of the costs of the Lessee complying with clause 5;

Land means the land described in Item 1 of Schedule 1;

Lease means the lease evidenced by this deed and the Schedules and, where applicable, any annexures, plans, or other attachments to this deed as amended from time to time;

Lessee where not inconsistent with the context includes the Lessee's Employees and Visitors;

Lessee's Covenants means the terms covenants and conditions expressed or implied in this Lease and on the part of the Lessee to be observed and performed;

Lessee's Employees and Visitors means:

- (a) any person at any time upon the Land or Premises who is not there on behalf of the Lessor in the capacity of employee, agent, or contractor of the Lessor; and
- (b) the Lessee's employees, agents, customers, clients, visitors and contractors at any time upon the Land (whether within the Premises or not);

Lessee's Fixtures means each Building, fixture, and fitting constructed or installed by the Lessee in or on the Land and Premises with the Lessor's consent which is not re-classified as a Lessor's Fixture in accordance with the Lease;

Lessor's Fixtures means the Lessor's fixtures and fittings in or on the Land and Premises and any Lessee's Fixtures which are re-classified by the Lessor as Lessor's Fixtures in accordance with this Lease;

Management Order means Management Order O418454 registered at Landgate in relation to Reserve 28563 on 3 June 2020;

Maintain includes maintain, repair, renovate, replace, and refurbish, and **Maintenance** and **Maintaining** have equivalent meanings;

Minister means the Minister for Lands, a body corporate under s.7 of the *Land Administration Act 1997*;

New Dwellings means the three (3) three bedroom dwellings constructed on the Land by Merrittville Retirement Village that were not part of the JVAs and to which the Housing Authority claimed an equitable interest;

Occupants has the same meaning given to that term in the Deed of Termination and Release;

Outgoings means the outgoings fees, charges and levies of any kind assessed or incurred in respect of the Land and Premises, or the Lessee's use of occupation of the Land and Premises, including:

- (a) all Rates & Taxes;
- (b) all Insurance Costs;
- (c) all rates, charges, costs and expenses (including any GST on any of them) incurred in relation to the Land and Premises including in relation to:
 - (i) water rates and other water, drainage and sewerage charges;
 - (ii) all meter, rental, or consumption charges;
 - (iii) Maintenance of the Land, Premises, and Lessor's Fixtures;
 - (iv) provision of the Services (including the Air Conditioning Equipment), including the cost of installation including of any meter, wiring, cable, pipe or other device necessitated by the use of the Services;
 - (v) cleaning and decoration of the Premises;

- (vi) landscaping of and maintaining any landscaping at the Land and Premises; and
- (d) anything ancillary to providing or doing all of the above, including any taxes and statutory charges so far as not included in the Rates & Taxes;

Party means a party to this Lease;

Permitted Use means the use of the Land and Premises permitted under this Lease as detailed in Item 9 of Schedule 1;

Plant and Equipment means the plant and equipment used in connection with the provision of any Services or the heating, cooling, lighting, power or plumbing for the Land or Premises;

Premises means the premises specified in Item 2 of Schedule 1 and includes all improvements and the Lessee's Fixtures;

Prescribed Rate means the prescribed rate of interest specified in Item 10 of Schedule 1;

Qualified Contractors and Tradespersons means contractors and tradespersons who hold appropriate and valid qualifications for the work to be undertaken, and hold relevant, valid licences and insurances;

Rates and Taxes means:

- (a) council rates and charges including rubbish removal rates and charges;
- (b) land tax on a single holding basis;
- (c) water, drainage and sewerage rates, including meter rents, charges for the disposal of storm water and excess water charges;
- (d) rates, taxes, charges, duties and fees levied, charged, assessed or imposed by a Relevant Authority in respect of the Land and Premises or the ownership or occupation of any part of the Land and Premises;

together with any related interest, penalties, fines and expenses in common with them but excluding any tax imposed by the *Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth);

Relevant Authority means any governmental, statutory, public or other authority or body having jurisdiction over the Land or Premises or any matter or thing relating to the Land or Premises;

Rent means the rent specified in Item 5 of Schedule 1 paid in accordance with Item 6 and Item 7 of Schedule 1;

Rent Review Date means each rent review date as specified by Item 8 of Schedule 1;

Requirements means any requirements, conditions, notices, orders or directions of any Relevant Authority;

Services means any telecommunication, electricity, gas, oil, fuel, water, sewerage, waste disposal, or other similar commodity, facility or service in to

or on the Land or Premises or the Lessee's Fixtures or otherwise serving the Land, Premises or Lessee's Fixtures;

Schedule means a schedule to this Lease;

Term means the Term of this Lease specified in Item 3 in Schedule 1;

Termination means the expiry of the Term by effluxion of time or by termination in accordance with this Lease;

Works Conditions means in respect of any Maintenance or works carried out by the Lessee, the Lessee must:

- (a) do so:
 - (i) at the Lessee's cost;
 - (ii) in a safe and proper workmanlike manner and to the satisfaction of the Lessor, acting reasonably;
 - (iii) using only good quality materials;
 - (iv) in full compliance with:
 - A. and only after obtaining the approvals of, all Relevant Authorities;
 - B. and subject to the conditions of the Lessor's consent in relation to those works;
 - C. plans and specifications approved by the Lessor;
 - D. all Requirements and Acts;
 - (v) using Qualified Contractors and Tradespersons;
- (b) ensure that the Lessee and all its employees, agents, contractors and workmen employed in executing the work:
 - (i) duly and punctually comply with the reasonable directions of the Lessor in relation to their conduct in and access and egress to and from the Land and Premises; and
 - (ii) do not do or permit any act or thing to be done which may be a nuisance or cause damage, disturbance, or offence to the Lessor or any other person;
- (c) if required by the Lessor, erect and maintain a fence around the relevant part of the Land and Premises during the erection and completion of the works and ensure such a fence is sufficiently sound, high, and secure to prevent entry upon the Land and Premises by unauthorised persons and members of the public; and
- (d) clean up the Land and Premises progressively during the construction, installation, or demolition of the works, as the case may be, and promptly remove from the Land and Premises all rubbish and waste arising from such works;

1.2 Interpretation

- (a) Headings etc
 - (i) The cover, index and headings in this Lease are to be disregarded in interpreting this Lease.
 - (ii) Reference to a **Recital, clause, Schedule** or **Annexure** is a reference to a recital, clause, schedule or annexure of this Lease.
- (b) Number & Gender
 - (i) Words importing the singular include the plural and vice versa.
 - (ii) Reference to any gender includes all genders.
- (c) Persons & Parties
 - (i) Reference to a person includes a corporation, firm, unincorporated association or Relevant Authority.
 - (ii) Reference to a party means and includes a reference to that party, its successors, personal representatives and permitted transferees.
- (d) Joint & Several
 - (i) Any obligation or undertaking entered into or a warranty given by more than one person or party is entered into or given by them jointly and severally.
 - (ii) The benefit of any obligation, undertaking or a warranty given to more than one person or party is given to them jointly and severally.
- (e) Covenants
 - (i) Any obligation or undertaking entered into or warranty given by any party is a covenant by that party to the person with whom such obligation or undertaking is entered into or to whom the warranty was given.
 - (ii) A provision of this Lease prohibiting the Lessee from doing a thing shall require the Lessee to ensure compliance with it by the Lessee's Employees and Visitors.
 - (iii) Where anything may be done by the Lessor in terms of this Lease, it may competently be done by the Lessor's employees.
- (f) Implied Provisions

Where an Act implies or incorporates a provision into this Lease which:

 - (i) affects any Lessee's Covenants;
 - (ii) imposes any obligation onto the Lessor not envisaged by this Lease; or

(iii) is inconsistent with this Lease as written,

such provision shall not apply to this Lease unless it is mandatory.

(g) Acts

A reference to any Act includes all Acts amending or consolidating it.

(h) Time

(i) If the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day.

(ii) Reference to time is to the local time in Perth.

(iii) Reference to a month is to a calendar month.

(iv) In calculating any period expressed in months or years, if the corresponding day of the month does not exist in the month at the end of the period, the period shall end on the last day of that month.

(i) Whole includes Part

Reference to any place, matter or thing includes a reference to any part of that place, matter or thing.

(j) Including

The word **including** shall be construed as meaning including without prejudice to the foregoing generality.

(k) Governing Law

(i) This Lease shall be governed by and be interpreted in accordance with the laws of Western Australia.

(ii) The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

(l) Severance

If any provision of this Lease is void or unenforceable, other provisions which are self-sustaining and capable of separate enforcement with regard to the void or unenforceable provision, are and continue to be valid and enforceable.

2. LEASE

2.1 Grant of Lease

The Lessor leases to and the Lessee takes the Land and Premises for the Term subject to:

(a) the Minister's consent;

(b) all Encumbrances;

- (c) the payment of the Amounts Payable by the Lessee; and
- (d) the performance and observance of the Lessee's Covenants.

2.2 Lessor's Reserved Rights

Without limiting any other provision of this Lease, the Lessor reserves the following rights:

- (a) create or remove easements and restrictive covenants in any way affecting the Land or Premises;
- (b) grant or discharge any mortgage or other charge affecting the Land or Premises;
- (c) run, maintain, alter or remove services on, in, over or under the Land or Premises;
- (d) permit others to run, maintain, alter or remove services on, in, over or under the Land or Premises;
- (e) grant or deny consent or approval to any Lessee for any proposed assignment, sub-lease, change of use, alteration, development, addition or other matter affecting any part of the Land or Premises;
- (f) make, vary, revoke, enforce, waive, apply or not apply any policies or rules & regulations relating to the use of the Land or Premises.

2.3 Discretion of the Lessor in its capacity as a Relevant Authority

The parties agree and acknowledge that nothing in this Lease shall fetter or be construed to fetter the discretion or the powers of the Lessor in its capacity as a Relevant Authority under any Acts, and in particular does not fetter the Lessor in its capacity as a Relevant Authority with regard to the approval or imposition of conditions on any approval required for the development or use of the Land or Premises.

3. THE DEED OF TERMINATION AND RELEASE

3.1 Inconsistency of terms

The parties acknowledge and agree that:

- (a) on 7 October 2019 the Lessor, Lessee, and Housing Authority entered into, and are bound, by the Deed of Termination and Release;
- (b) the Lessee provides its services to the Occupants under the terms and conditions of the this Lease and the Deed of Termination and Release; and
- (c) in the event of any inconsistency between this Lease and the Deed of Termination and Release, the Deed of Termination and Release will prevail to the extent of the inconsistency.

3.2 Comply with the Deed of Termination and Release

The Lessee must at all times comply with the terms and conditions and obligations imposed on the Lessee in the Deed of Termination and Release.

3.3 Consent of the Housing Authority

The Housing Authority confirms its consent to this Lease by endorsing its consent on this Lease.

4. LESSEE'S PAYMENTS

4.1 Rent

The Lessee must pay the Rent to the Lessor (free of deductions or any set-off) at the times, in the manner and at the address specified in Schedule 1 or to such other place or person as the Lessor from time to time specifies by notice to the Lessee.

4.2 Review on Rent Review

On each Rent Review Date, the Rent may be reviewed in the manner set out in the following clauses of clause 4.

4.3 Notification of Reviewed Rent

With effect from each Rent Review Date, the Lessor may review the Rent so that it is an amount determined or calculated for the leasing of the Land and Premises which have been passed by resolution of the Council of the Shire of Merredin.

4.4 Notification of Reviewed Rent

- (a) With effect from each Rent Review Date, the Lessor may review the Rent so that it is an amount determined or calculated in accordance with the then current Shire of Merredin adopted fees and charges for the leasing of the Land and Premises which have been passed by resolution of Council of the Shire of Merredin.
- (b) The Lessor shall give the Lessee a notice setting the Rent in accordance with sub-clause 4.4(a) however the failure of the Lessor to give such a notice before the Rent Review Date does not preclude the Lessor from giving such a notice in respect of that Rent Review Date at any later time.

4.5 Payment of Reviewed Rent

- (a) The Lessee will be liable to pay the reviewed annual Rent from the relevant Rent Review Date whether or not the Lessor has notified the Lessee of the amount to which the annual Rent has been varied.
- (b) The failure of the Lessor to give notice of the reviewed annual Rent before a Rent Review Date does not preclude the Lessor from giving such a notice in respect of that Rent Review Date at any later time.

- (c) If the Lessor has not given notice of the reviewed annual Rent to the Lessee and the Lessee continues to pay Rent at the rate of the current annual Rent until the Lessor notifies the Lessee of the reviewed annual Rent, the Lessee will not for that reason only be in default for non-payment of Rent provided that when the Lessor notifies the Lessee of the amount of the reviewed annual Rent, any necessary adjustment is to be made within ten (10) Business Days of service of the rent review notice.

4.6 Payment of Reviewed Rent

- (a) The Lessee will be liable to pay the reviewed annual Rent from the relevant Rent Review Date whether or not the Lessor has notified the Lessee of the amount to which the annual Rent has been varied.
- (b) The failure of the Lessor to give notice of the reviewed annual Rent before a Rent Review Date does not preclude the Lessor from giving such a notice in respect of that Rent Review Date at any later time.
- (c) If the Lessor has not given notice of the reviewed annual Rent to the Lessee and the Lessee continues to pay Rent at the rate of the current annual Rent until the Lessor notifies the Lessee of the reviewed annual Rent, the Lessee will not for that reason only be in default for non-payment of Rent provided that when the Lessor notifies the Lessee of the amount of the reviewed annual Rent, any necessary adjustment is to be made within ten (10) Business Days of service of the rent review notice.

4.7 Not to cause Rent reduction

The Lessee must not by any act or omission cause, directly or indirectly, the Rent to be reduced or impose on the Lessor any liability of the Lessee under this Lease unless obliged to do so by any Laws or with the consent of the Lessor.

4.8 Lessee to pay Outgoings

- (a) The Lessee must pay all Outgoings assessed or incurred in respect of the Land and Premises, or the Lessee's use of occupation of the Land and Premises.
- (b) If an Outgoing is not separately charged or assessed for the Land and Premises the Lessee will pay to the Lessor a proportionate part of such Outgoing being the proportion that the Land bears to the total area of the land or premises included in the charge or assessment of that Outgoing.

4.9 Rates and Taxes

- (a) The Lessee must pay to the Lessor within one (1) month, or if the demand is made to the Lessee by any Relevant Authority then to that authority on demand in full, all Rates and Taxes assessed or imposed by any Relevant Authority or other service provider in respect of the Land or Premises.

- (b) Except in the case of manifest error, a statement issued by the Lessor under sub-clause 4.9(a) will be prima facie evidence of the matters stated in that statement.
- (c) If the year or other period in respect of which any particular Rate or Tax is payable does not coincide with the Lease year, the amount the Lessee is to pay in the first year and last year of the Lease shall be adjusted proportionally.

4.10 Lessee to pay for Services

- (a) The Lessee must pay to the Lessor or, if the demand is made by a service provider or statutory or other public authority, to that service provider or statutory or public authority, all amounts charged or assessed in respect of the Land or Premises or the Lessee for or in connection with Services to or for the benefit of the Land or Premises, and the cost of installation including of any meter, wiring, cable, pipe or other device necessitated by the use of the Services.
- (b) If the Lessor provides any Services to the Land or Premises the Lessee must on demand pay to the Lessor the amount which would have been charged by the original service provider, or statutory or other public authority if the Services had been supplied to the Lessee directly together with an administrative charge of no more than twenty per cent (20%) of the amount charged by the original service provider, or statutory or other public authority.
- (c) The Lessee must observe and comply with any conditions of supply of Services by the Lessor, or where no conditions of supply are imposed by the Lessor, observe and comply with conditions of supply of Service by the Relevant Authority.
- (d) If any Service or Facility is not provided by the Lessor, the Lessee is responsible to make the Lessee's own arrangements at the Lessee's own cost for the supply of the Services to the Land and Premises. The Lessor is not obliged to provide or to facilitate the procuring of any Services or Facilities to or for the Land or Premises.

4.11 Payment of costs and interest

The Lessee must pay to the Lessor on demand:

- (a) all costs (calculated as between solicitor and client in the case of legal fees), charges and expenses incurred by the Lessor:
 - (i) attributable to any default by the Lessee in observing or performing any of the Lessee's Covenants including the service of a notice under section 81 of the *Property Law Act 1969*;
 - (ii) in obtaining professional advice as to the Lessor's rights remedies and obligations as a result of any default by the Lessee;
 - (iii) of and incidental to the negotiation of this Lease; and
- (b) all costs of and incidental to the preparation and negotiation of any subsequent legal documentation (for example any variation or

assignment) in respect of the Land and Premises and the Lessee's occupancy of the Land and Premises;

- (c) the costs of any work done by the Lessor at the Lessee's request; and
- (d) interest at the Prescribed Rate on all Rent and other money payable by the Lessee to the Lessor under this Lease but unpaid for more than seven (7) days from the respective due date computed on daily rests on the amount from time to time remaining owing from and including the due date until the date of payment.

5. INSURANCE AND INDEMNITY

5.1 Indemnities

- (a) The Lessee occupies the Land and Premises at the risk of the Lessee in all respects.
- (b) The Lessee indemnifies and shall keep indemnified the Lessor against all losses, claims, damages, demands, costs and expenses for which the Lessor becomes liable in respect of loss or damage to property or death or injury of any nature and however or wherever sustained:
 - (i) which are caused or contributed to by the use or occupancy of the Land or Premises by the Lessee or any of the Lessee's Employees and Visitors or any other person , except to the extent caused or contributed to by the Lessor;
 - (ii) resulting from an act or omission of the Lessee; or
 - (iii) resulting from a notice, claim or demand against the Lessee to do or refrain from doing anything except to the extent that the Lessor is obliged under this Lease to pay for or contribute to the cost of compliance with the notice, claim or demand and fails to do so.

5.2 Indemnity unaffected by insurance

The Lessee's obligation to indemnify the Lessor under this Lease or at law is not affected by the obligation of the Lessee to effect insurance.

5.3 Insurance

- (a) Throughout the Term the Lessee must effect and maintain an insurance policy in the names of the Lessor and Lessee with an insurance company approved by the Lessor, in respect of:
 - (i) employer's indemnity insurance (including workers' compensation insurance) in respect of the Lessee's employees under statute and common law;
 - (ii) a policy for personal accident insurance in respect of the Lessee's volunteers and other unpaid workers;

- (iii) a public liability policy with a cover of not less than \$20,000,000 (or such greater sum as the Lessor may from time to time specify) in respect of any one occurrence;
 - (iv) insurance of the Premises to the full insurable value on a replacement or reinstatement value basis against loss or damage by fire, storm, tempest, earthquake, explosion, aircraft or other aerial device including items dropped from any device, riot, strike, commotion, flood, lightning, act of God, fusion, smoke, flood, water damage, leakage, impact by vehicle, machinery breakdown, malicious acts or omissions and other standard insurance risks;
 - (v) insurance of all plate glass windows, doors and display show cases forming part of or within the Premises for a sum which is not less than its full insurable value; and
 - (vi) any other insurances reasonably required by the Lessor from time to time.
- (b) The Lessee must:
- (i) immediately expend all money recovered in respect of any insurance under sub-clause 5.3(a) in the satisfaction of the payment of damages or the reinstatement or replacement of the items for which that money is received to the extent that that money is sufficient for that purpose; and
 - (ii) on demand make up from the Lessee's own money any insufficiency of money for that purpose.

5.4 Evidence of insurance and renewal

The Lessee must:

- (a) pay all insurance premiums on any policies referred to in clause 5 not later than the due date for payment specified in the first premium notice or demand for payment; and
- (b) on demand produce to the Lessor proper evidence of the policies and their renewal, including giving to the Lessor a copy of the insurance policies required to be effected by the Lessee under the Lease including the public liability insurance policy.

5.5 Lessee's insurance policies

The Lessee may not vary, surrender or cancel any of the insurance policies required by clause 5 without the Lessor's consent.

5.6 Not to invalidate insurance

The Lessee must:

- (a) not do or omit to do any act or thing or bring or keep anything on the Land or Premises which might:
 - (i) render the insurance on the Land and Premises or any adjoining premises void or voidable; or

- (ii) cause the rate of a premium to be increased on any policy of insurance required by clause 5;
- (b) pay any increase in the rate of a premium referred to in sub-clause 5.6(a) on the demand of the Lessor;
- (c) pay any excess in regard to any policy of insurance required by clause 5;
- (d) notify the Lessor which gives rise or might give rise to a claim under, or which could prejudice, a policy of insurance.

5.7 Settlement of Claim

The Lessee may not without prior written consent of the Lessor, settle or compromise any claim under any policy of insurance required by clause 5.

6. LIMIT OF LESSOR'S LIABILITY

6.1 No warranties or representations

The Lessee acknowledges and agrees that:

- (a) all the Lessee's Fixtures and other Lessee's property in or on the Land and Premises shall be at the sole risk of the Lessee during the Term and the Lessor shall not be liable for any claim, loss or damage that the Lessee may suffer as a result of:
 - (i) any fault in the construction or state of repair of the Land and Premises, the Lessee's Fixtures or the Lessor's Fixtures;
 - (ii) any defect in any of the Plant and Equipment, Facilities or the Services;
 - (iii) any flow, overflow, leakage or breakdown of any water, Air-Conditioning Plant, gas, power or other source of energy whether from the Land and Premises or otherwise;
- (b) the Lessor gives no warranty as to the use to which the Land and Premises may be put, or that the Lessor will issue any consents, approvals, authorities, permits, or licenses required by the Lessee under any Act or by a Relevant Authority for its use of the Land and Premises; and
- (c) the Lessee has not relied on any representation or warranty of the Lessor in entering into this Lease and, for this purpose, the Lessee acknowledges that the Lessee has relied on the Lessee's own skill and judgment and has made the Lessee's own enquiries in determining the suitability of the Land and Premises for the Permitted Use.

6.2 Lessor Not Liable

The Lessor is not liable to the Lessee and the Lessee will not make a claim against the Lessor in respect of any liability resulting from any accident, death, injury, damage to any property (including water damage), equipment, or

machinery malfunction, interruption of Services or other event of a similar nature in or affecting the Land and Premises.

6.3 Lessee acts at own risk

Unless this Lease provides otherwise, whenever the Lessee is obligated or required by this Lease to do or omit to do any act or thing, the doing or the omission of the act or thing will be at the sole risk and expense of the Lessee.

7. USE OF PREMISES

7.1 Restrictions on Use of Premises

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

- (a) use the Land or Premises for any purpose other than the Permitted Use;
- (b) do or carry put on the Land or Premises any harmful, offensive, or illegal act, matter or thing;
- (c) do or carry out on the Land or Premises anything which causes a nuisance, damage, or disturbance to the Lessor or to owners or occupiers of other premises in the vicinity of the Land and Premises;
- (d) store any dangerous compound or substance on or in the Land or Premises;
- (e) allow any litter, refuse or rubbish to be collected or deposited on the Land or Premises;
- (f) do any act or thing that might result in excessive stress or harm to any part of the Land and Premises;
- (g) display from, or affix any signs, notices or advertisements on the Land or Premises without the prior written consent of the Lessor; and
- (h) sell or dispense alcohol or permit alcohol to be sold or dispensed from the Land and Premises without the prior written consent of the Lessor and then only in accordance with the *Liquor Control Act 1988*.

7.2 Town planning

The Lessee must not do or permit to be done anything in breach of any applicable town planning scheme or zoning or as a result of which the zoning or permitted use of the Land and Premises for their present purposes under any Act or scheme relating to town planning may be cancelled or otherwise prejudiced or altered.

7.3 Comply with Acts

The Lessee must:

- (a) comply promptly with all Acts from time to time affecting the Land and Premises or the Lessee's use of the Land and Premises, including the

Bush Fires Act 1954, the Local Government Act 1995, the Health (Miscellaneous Provisions) Act 1911, and the Public Health Act 2016;

- (b) apply for, obtain, and maintain in force all consents, approvals, authorities, licenses and permits require under any Act or by any Relevant Authority for the use of the Land and Premises for the Permitted Use;
- (c) comply promptly with all orders, notices, requisitions or directions of any Relevant Authority relating to the Land or Premises or to the business the Lessee carries on at the Land and Premises; and
- (d) if an incorporated association under the *Associations Incorporation Act 2015*, at all times comply with the *Associations Incorporation Act 2015*.

8. MAINTENANCE, REPAIR AND CLEANING

8.1 Maintenance

- (a) The Lessee must, at its own expense, undertake the Maintenance of the Land, Premises, and Lessor's Fixtures.
- (b) In addition to its Maintenance obligations, the Lessee must keep the Land, Premises and Lessor's Fixtures in good, safe, clean and tenable repair at all times.
- (c) The Lessee must take such reasonable action as is necessary to:
 - (i) prevent, if it has occurred as a result of the Lessee's use of the Land and Premises; and
 - (ii) rectify or otherwise ameliorate,

the effects of erosion, drift or movement of sand, soil, dust or water on or from the Land and Premises.

8.2 Repair

The Lessee must, at its own expense and to the satisfaction of the Lessor, promptly repair any non-structural damage to the Land or Premises regardless of how it is caused, and repair or replace (including from fair wear and tear) any of the Lessee's Fixtures or Lessor's Fixtures and fittings which are or which become damaged.

8.3 Standard for Maintenance and repairs

The Lessee must comply with the Works Conditions in carrying out all Maintenance and any other work which affects the Land, Premises, and Lessor's Fixtures.

8.4 Cleaning and rubbish

The Lessee must at all times keep the Land and Premises clean, tidy, unobstructed and free from dirt and rubbish, and must not leave rubbish bins or containers outside the Premises other than on official rubbish collection days.

9. ALTERATIONS AND FIXTURES

9.1 No alterations or additions

Subject to clauses 9.2 and 9.3, the Lessee must not, without the prior consent of the Lessor:

- (a) install any Building or Lessee's Fixtures at the Land and Premises and the Lessee must ensure that all such Buildings and Lessee's Fixtures comply with all relevant standards, all Requirements and any Act as may be applicable to the Lessee's Fixtures from time to time;
- (b) make any alterations, improvements, additions or other structural works in or to the construction or arrangement of any Building or Land and Premises or any of the Lessor's Fixtures;
- (c) subject to the performance of any obligations under clause 8, cut down or damage any trees, plants, shrubs or other vegetation, or dispose of any clay, sand, gravel, timber or other materials from the Land or Premises.

9.2 Consent

- (a) If the Lessor consents to any matter referred to in clause 9.1, the Lessor may:
 - (i) require that the work be carried out in accordance with plans and specifications approved by the Lessor; and
 - (ii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant.
- (b) The Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, or permits under any Act for any matter referred to in clause 9.1.

9.3 Standard for works, alterations, improvements or additions

The Lessee must comply with the Works Conditions in carrying out all works, alterations, improvements, or additions that affects the Land and Premises, Buildings, the Lessee's Fixtures or the Lessor's Fixtures.

9.4 Remove Non-approved Works

If the Lessee carries out any works, or erects any building or structure, on the Land and Premises which have not been previously approved in writing by the Lessor or which are not undertaken in accordance with the provisions of this Lease, the Lessor may require the Lessee (but without limiting any other right or remedy available to the Lessor) at the Lessee's cost, to dismantle and remove any such works, building or structures and the Lessee must carry out the same in accordance with the Lessor's directions.

9.5 Lessee's Fixtures

Notwithstanding anything to the contrary contained in this Lease and for the avoidance of any doubt, the parties acknowledge and agree:

- (a) all Lessee's Fixtures are to remain the property of the Lessee for the duration of this Lease;
- (b) the Lessee assumes full responsibility for all Maintenance, repair and replacement (including from fair wear and tear) of all Lessee's Fixtures;
- (c) the Lessee assumes all risk and liability in respect of the Lessee's Fixtures;
- (d) the Lessee must ensure that all Lessee's Fixtures comply with all relevant standards, all Requirements and any Act as may be applicable to the Lessee's Fixtures from time to time;
- (e) the Lessee releases and agrees to indemnify the Lessor and keep the Lessor indemnified from all costs claims actions proceedings demands expenses judgments damages or losses of any kind including any relating to loss of life of or personal injury to any person or damage to any property (wherever occurring) resulting from or attributable to anything occurring on or in the vicinity of the Land and Premises by any act neglect default or omission by the Lessee or any of the Lessee's Employees and Visitors relating to the Lessee's Fixtures; and
- (f) at the expiration or sooner determination of this Lease, in accordance with clause 12.2(a) the Lessee's Fixtures shall become part of the Lessor's Fixtures at no cost to the Lessor and with no compensation payable to the Lessee by the Lessor.

10. ENTRY BY LESSOR

10.1 Permitting Lessor to enter and inspect

The Lessee must permit the Lessor and any person authorised by the Lessor, on reasonable notice, except in the case of an emergency, to enter the Land and Premises:

- (a) at all reasonable times;
- (b) with or without workmen and others;
- (c) with or without plant, equipment, machinery and materials; and
- (d) for each of the following purposes;
 - (i) to view the state of repair and condition of any Building, Lessor's Fixture, Lessee's Fixture, and the Land and Premises and to make reasonable investigations to ascertain if there has been any breach of any of the Lessee's Covenants;
 - (ii) to carry out any survey or works which the Lessor considers necessary;
 - (iii) to comply with the Lessor's Covenants under this Lease or to comply with any notice or order of any Relevant Authority for which the Lessee is not responsible under this Lease;

- (iv) to do all matters or things to rectify any breach by the Lessee of the Lessee's Covenants, but the Lessor is under no obligation to rectify any breach and any rectification under clause 10.1 is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

10.2 No Abatement

In exercising the right of entry referred to in clause 10.1, the Lessor must cause as little inconvenience disruption or damage to the Lessee as is practicable in the circumstances. The Lessee has no claim for any abatement of Rent or compensation or damages in respect of that exercise.

11. ASSIGNMENT AND SUBLETTING

11.1 Prohibition on Assignment, Subletting and Mortgaging

- (a) The Lessee must not without the prior consent of the Lessor and if necessary, the Minister (which consents may in their absolute discretion refuse without assigning any reason), assign, sublet, mortgage, charge or otherwise encumber, transfer or part with possession of the whole or any part of the Land or Premises or the benefit of this Lease or any estate or interest in the Land or Premises or this Lease.
- (b) The provisions of Sections 80 and 82 of the Property Law Act 1969 do not apply to this Lease.
- (c) The Lessee expressly acknowledges that it has no right to and must not commence negotiations with or permit occupation of any part of the Land or the Premises or both by any telecommunications carrier. The Lessee must immediately direct any telecommunications carrier's enquiries in respect of the Land or the Premises or both to the Lessor.

12. EXPIRATION OF THE TERM

12.1 Lessees Fixtures

Immediately before the expiration of the Term (or within 10 Business Days after the earlier determination of the Term) the Lessee must, at the Lessee's cost:

- (a) upon written notice from the Lessor remove from the Land and Premises any specified Building, Lessee's Fixtures or any other specified items which have been erected or installed by the Lessee or any previous Lessee or occupier of the Land or Premises; and
- (b) make good to the satisfaction of the Lessor any damage caused to the Premises or the Land by any erection installation or removal referred to in sub-clause 12.1(a).

12.2 Yield up

At the expiration of the Term the Lessee must:

- (a) deliver up possession of the Buildings, Lessee's Fixtures, and Land and Premises to the Lessor in good and substantial repair order and condition and state of cleanliness and decoration consistent with the due and punctual observance and performance by the Lessee of the Lessee's Covenants; and
- (b) deliver to the Lessor all keys combinations or other devices for or enabling the Lessee or the Lessee's Employees and Visitors to gain access to Buildings and the Premises or any part of the Premises or the Land.

13. MISCELLANEOUS

13.1 Give notices

The Lessee must immediately:

- (a) on receipt of any notice by the Lessee from any Relevant Authority relating to the Lessee's Fixtures or the Land or Premises or its use or occupation give the Lessor a copy of that notice;
- (b) on any person dying or receiving any injury in the Land or Premises or on any accident occurring to or defect being found in any Lessee's Fixture or the Land or Premises give to the Lessor notice of the occurrence and all relevant particulars known to the Lessee;
- (c) report to the Lessor, any act of vandalism which occurs on or adjacent to the Land and Premises and any incident which occurs on or adjacent to the Land and Premises which is or is likely to be a breach of the peace or something which would ordinarily be the subject of a report to Police.

13.2 Caveats

- (a) The Lessee must not at any time lodge an absolute caveat against the title to the Land.
- (b) During the Term the Lessee may, subject to the consent of the Minister for Lands, lodge a subject to claim caveat against the title to the Land in order to protect the interests of the Lessee pursuant to this Lease.
- (c) At the expiration of the Term the Lessee must sign and lodge at the Lessee's expense a proper registrable withdrawal of any caveat lodged against the Land by the Lessee.
- (d) If the Lessee lodges an absolute caveat or fails to withdraw any caveat pursuant to sub-clause 13.2(c) then the Lessee in consideration of the Lessor (with the consent of the Minister for Lands) granting this Lease to the Lessee irrevocably appoints the Lessor and the Minister for Lands separately the agent and attorney of the Lessee to sign and lodge any withdrawal of caveat and on demand the Lessee must pay to the Lessor and the Minister for Lands all costs and disbursements relating to that withdrawal.

13.3 Damages

- (a) The Lessee's obligations to observe or perform the Lessee's Covenants survive the expiration or earlier determination of the Term.
- (b) If the Lessee fails to observe and perform any of the Lessee's Covenants the Lessor may in addition to any of the Lessor's other rights and at the Lessor's option cause or do all things necessary for that observance and performance.
- (c) The Lessee must pay to the Lessor on demand as a liquidated debt the Lessor's costs and expenses incurred by the Lessor in exercising any rights under sub-clause 13.3(b).

14. LESSOR'S COVENANTS

14.1 Quiet Enjoyment

The Lessor covenants with the Lessee that the Lessee duly paying the Rent and other money payable under this Lease and observing and performing all other of the Lessee's Covenants may peaceably and quietly hold and enjoy the Land and Premises during the Term and any extension or renewal of the Term without any interruption by the Lessor or any person rightfully claiming through under or in trust for the Lessor except as authorised by this Lease.

15. MUTUAL COVENANTS

15.1 Default

If:

- (a) the Rent or any part the Rent is at any time unpaid for seven (7) days after becoming due (whether formally demanded or not);
- (b) the Lessee breaches or fails to observe or perform any other of the Lessee's Covenants and that breach or failure continues after the expiration of seven (7) days (or any further time as the Lessor may specify) of notice to the Lessee to remedy it or where that breach or failure is incapable of being remedied, the Lessee has failed to pay adequate monetary compensation to the Lessor by the expiration of that period;
- (c) the Lessee goes into liquidation or becomes bankrupt or enters into any composition arrangement with or assignment for the benefit of the Lessee's creditors;
- (d) a manager, an administrator, a trustee, a receiver, a receiver and manager or liquidator is appointed under any Act or instrument or by order of any court in relation to any part of the Lessee's undertakings assets or property;
- (e) any execution is issued against any assets or property of the Lessee;
- (f) the Land and Premises are abandoned or otherwise left vacant by the Lessee; or

- (g) the Lessee being an incorporated association:
 - (i) is wound up or resolves to be wound up voluntarily;
 - (ii) without the prior consent of the Lessor, changes its name, objects, rules or constitution; or
 - (iii) is convicted of an offence under the *Associations Incorporations Act 2015*;

then in any such case (but subject to the *Bankruptcy Act 1966*) the Lessor may at its option re-enter occupy and resume possession of the Land and Premises or any part of the Land and Premises in the name of the whole.

15.2 Effect of Termination and Re-Entry

- (a) In exercising its right of re-entry the Lessor or any person authorised by the Lessor may by any means open any door or lock and may remove all persons, and all fixtures, fittings and other property of the Lessee from the Land and Premises without being liable for any action in trespass, assault, detinue or otherwise.
- (b) On exercising the right of re-entry (other than the provisions of this Lease which apply for the benefit of the Lessor after the expiration or earlier determination of the Term) this Lease and the Term ceases and determines.
- (c) Despite this Lease and the Term having ceased and determined the Lessee remains liable to pay the Rent, the Rates and Taxes, the Outgoings and other money accrued, due and payable up to the time of the re-entry.
- (d) Any re-entry of the Land and Premises does not prejudice any other rights of the Lessor in respect of any breach of or failure to comply with the Lessee's Covenants.

15.3 Lessor's Right to Remedy Defaults

- (a) The Lessor may but is not obliged to remedy at any time without notice any default by the Lessee under this Lease and whenever the Lessor so elects any or all of the Lessor and any person authorised by the Lessor may enter and remain upon the Land and Premises together with all necessary plant equipment and materials for the purpose of remedying that default.
- (b) The Lessee must pay on demand to the Lessor all costs and expenses incurred by the Lessor (including legal costs and expenses calculated as between solicitor and client) in remedying that default.

15.4 Essential terms

- (a) Each of the covenants by the Lessee:
 - (i) in clause 4 (Lessee's Payments);
 - (ii) in clause 5 (Insurance and Indemnity);

- (iii) in clause 7 (Use of Premises);
- (iv) in clause 8 (Maintenance, Repair and Cleaning);
- (v) in clause 11 (Assignment and Subletting);
- (vi) in clause 17 (Environmental Liability); and
- (vii) in clause 18 (Provisions Which Apply to Lease of a Crown Reserve)

is an essential term of this Lease but nothing expressed or implied in clause 15.4 is to be construed to mean that other Lessee's Covenants may not also be essential terms of this Lease.

- (b) Any breach of an essential term will be regarded by the Lessor and the Lessee as a fundamental breach by the Lessee of this Lease.

15.5 Effect of breach of an essential term

- (a) If the Lessor determines this Lease following a breach of an essential term then (without prejudicing or limiting any other right or remedy of the Lessor under this Lease) the Lessor is entitled to recover from the Lessee as liquidated damages for the breach the difference between:
 - (i) the aggregate of the Rent, Rates and Taxes and Outgoings and any other money which would have been payable by the Lessee for the unexpired residue of the Term remaining after the determination; and
 - (ii) the rent, Rates and Taxes, Outgoings and other money which the Lessor by taking reasonable steps to relet the Land and Premises obtains or could reasonably be expected to obtain by reletting the Land and Premises for the unexpired residue of the Term on reasonable terms as to rent and otherwise.
- (b) The Lessor is not obliged to effect any reletting referred to in sub-clause 15.5(a) on the same or similar terms as are expressed and implied in this Lease.
- (c) The Lessor's acceptance of arrears or any late payment of any of the Rent, Rates and Taxes, Outgoings or other money due under this Lease does not constitute a waiver of the essentiality of the Lessee's obligations to make those payments.
- (d) The Lessor's entitlement to recover damages under clause 15 is not prejudiced or limited if:
 - (i) the Lessee abandons or vacates the Land and Premises;
 - (ii) the Lessor elects to re-enter the Land and Premises or to determine this Lease;
 - (iii) the Lessor accepts the Lessee's repudiation of this Lease; or
 - (iv) any conduct constitutes a surrender by operation of law.

- (e) The Lessor is entitled to institute proceedings to recover damages under clause 15.5 either before or after any of the events or matters referred to in sub-clause 15.5(d).
- (f) Any conduct by the Lessor to mitigate damages does not of itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

15.6 Damage to the Land and Premises

If during the Term:

- (a) any Relevant Authority resumes or takes the Land or Premises for any public purpose or declares the Premises unfit for occupation or orders their demolition; or
- (b) the Premises are destroyed or damaged so as to render them substantially unfit for the use and occupation of the Lessee or so as (in either case) to deprive the Lessee of substantial use of them or so as (in the case of damage or destruction) to render the rebuilding or reconstruction of the Premises in its previous form impracticable or undesirable in the opinion of the Lessor,

then:

- (c) this Lease may be terminated (without compensation) by either the Lessor or (subject to sub-clause 15.6(d)) the Lessee by notice to the other;
- (d) the Lessee is only entitled to terminate this Lease under clause 15.6 if:
 - (i) in the case of the events referred to in sub-clause 15.6(a):
 - (A) the events are not caused or contributed to by the Lessee or the Lessee's Employees and Visitors;
 - (B) the resumption, taking, declaration or order has not been withdrawn, reversed, declared void or otherwise become ineffective within a reasonable time after first being made;
 - (ii) in the case of the events referred to in sub-clause 15.6(b):
 - (A) any policy of insurance effected in respect of any damage or destruction has not been made void or payment of any of the policy money refused as a consequence of an act or default of the Lessee or any of the Lessee's Employees and Visitors; and
 - (B) the Lessor has failed to rebuild or reinstate the Premises within a reasonable time (having regard to the extent of the damage and the work required) after notice by the Lessee to the Lessor requesting that the Premises be rebuilt or reinstated;
- (e) any termination under clause 15 will be without prejudice to the rights of either party in respect of any antecedent breach matter or thing; and

- (f) nothing expressed or implied in clause 15 will be deemed to impose any obligation on the Lessor to challenge any resumption, taking, declaration or order of the type referred to in sub-clause 15.6(a), rebuild or reinstate the Premises or to make them fit for use and occupation of the Lessee.

15.7 Exclusion of liability

Despite any implication or rule of law or equity to the contrary the Lessor must not in any circumstances be liable to the Lessee:

- (a) for any loss or damage suffered by the Lessee or the Lessee's Employees and Visitors attributable in any way to:
 - (i) any act, default or negligence of any Occupier or other lessee of any part of the Premises or the Land or that Occupiers or other lessee's employees, agents, contractors or invitees; or
 - (ii) any malfunction, breakdown, interference or interruption of or to the Lessor's Fixtures; or
 - (iii) the breakage, blockage or overflow of any sewer, gutter or drain from any cause; or
- (b) for any damage or loss that the Lessee may suffer by reason of the neglect or omission of the Lessor to do any act or thing to or in respect of the Premises or the Land which the Lessor is liable to do unless the Lessee has given to the Lessor notice of that act or omission and the Lessor has without reasonable cause failed within a reasonable time to take proper steps to do that act or rectify that omission.

15.8 Waiver

- (a) If the Lessor fails to take advantage of any default or breach of any of the Lessee's Covenants that failure is not to be or be construed as a waiver by the Lessor of that breach or default.
- (b) Any custom or practice which may grow up between the parties in the course of administering this Lease is not to be construed to waive or lessen the right of the Lessor to insist upon the observance or performance by the Lessee of any of the Lessee's Covenants.
- (c) No consent or waiver expressed or implied by or on behalf of the Lessor to or in respect of any particular breach of any of the Lessee's Covenants is to be construed as a consent to or waiver of any other breach of that or any other of the Lessee's Covenants.
- (d) The acceptance by the Lessor of Rent or any other money under this Lease is not to be nor to be deemed to be a waiver of any default or breach by the Lessee of any of the Lessee's Covenants at the time of that acceptance.

15.9 Consents and approvals

Except as otherwise specifically provided in this Lease any consent or approval which may be granted by the Lessor pursuant to this Lease may be

granted or refused or granted subject to conditions at the discretion of the Lessor.

15.10 Service of notices

- (a) Any notice demand or request by the Lessor to the Lessee or by the Lessee to the Lessor to be made or given pursuant to this Lease must be in writing signed by the party giving the notice or its agent or solicitors and may be served personally or may be served by being delivered or by being sent by prepaid post or by being sent by email:
 - (i) if served personally or delivered or sent by prepaid post:
 - (A) to the party's address specified in this Lease unless that party has given to the other a notice of a substituted address for service of notices in which case that substituted address will be that party's address for service;
 - (B) where the Lessee is a natural person, to the usual place of abode or business of the Lessee;
 - (C) where the Lessee is a corporation, to the Lessee's registered office, principal place of business or principal office;
 - (D) in the case of a notice on the Lessee, to the Premises; or
 - (ii) if sent by email, to the party's email address specified in Item 11 of Schedule 1 of this Lease (if any) unless that party has given to the other a notice of a substituted email address for service of notices in which case that substituted email address will be that party's address for service of any notices by email.
- (b) A notice served in accordance with sub-clause 15.10(a) will be deemed to have been served:
 - (i) in the case of personal service or delivery, on the day of delivery if delivered before 5:00 p.m. on a Business Day, and otherwise on the Business Day next following; or
 - (ii) if posted, on the Business Day next following the day of posting; or
 - (iii) if sent by email, on the day of receipt of the email if received prior to 5.00 p.m. on a Business Day, or on the next following Business Day if received after 5.00 p.m. on a Business Day or on any day that is not a Business Day. A delivery confirmation report received by the sender, which records the time that the email was delivered to the recipient's email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered to the recipient.

15.11 Time of the essence

Time is of the essence in every respect in relation to the observance and performance of the Lessee's Covenants.

15.12 Whole agreement

The covenants and provisions expressed and implied in this Lease cover and comprise the whole of the agreement between the parties to this Lease and no further or other covenants or provisions whether in respect of the Land or Premises or otherwise are to be deemed to be implied in this Lease or to arise between the parties to this Lease by way of collateral or other agreement.

16. GST

16.1 Interpretation

In clause 16:

- (a) 'GST', 'supply', 'taxable supply' and 'tax invoice' have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999*; and
- (b) a reference to payment being made or received includes a reference to consideration other than money being given or received.

16.2 Lessee's obligations

The Lessee must:

- (a) pay to the Lessor, on each date the Lessee must make payment for a taxable supply under this Lease, an additional amount equal to the GST payable on the taxable supply or component of the supply for which that payment is made; and
- (b) ensure that any policy of insurance the Lessee must take out under this Lease provides for the insurer to pay, in addition to any amount paid on a claim, an amount on account of any GST payable by the insured on receipt of that payment.

16.3 Tax invoice

The Lessor must give the Lessee a tax invoice for supplies under this Lease in accordance with the law.

17. ENVIRONMENTAL LIABILITY

17.1 Interpretation

In clause 17, in addition to the terms defined in clause 1.1 of this Lease:

Contaminant means:

- (a) any substance present in the Environment above naturally occurring background levels or concentrations; or
- (b) any substance, including asbestos, which is potentially harmful to human health and safety or any other aspect of the Environment if it:
 - (i) is released into the Environment; and
 - (ii) escapes or migrates from Land (including subsurface areas) water, ground water, buildings or structures at or on the Premises or the Land,

whether the substance is a gas, liquid or solid, or occurs in a compound or in elemental form.

EHS Law means a provision of any law, or a law, which provision or law relates to any aspect of the Environment or dangerous or hazardous substances (including asbestos) or activities which may harm the Environment or be hazardous or otherwise harmful to health.

Environment means any component of the earth, including:

- (a) land (including soil), air and water (including surface and ground water);
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to above; and
- (e) humans.

Environmental Authorisation means any licence, approval, consent, permit or other statutory approval issued under EHS Law.

Environmental Contamination means the presence in the Environment of a Contaminant.

Environmental Consultant means an independent environmental consultant who is accredited in accordance with the *Contaminated Sites Act 2003 (WA)* and/or the *Environmental Protection Act 1986 (WA)* or the equivalent legislation of any other State or Territory of Australia from time to time.

Remediate or **Remediation** includes any action to repair or restore the Environment and also includes removing, destroying, reducing, containing (including encapsulating asbestos in buildings or structures) or dispersing any Contaminant or otherwise mitigating its effect.

17.2 Responsibility

To the extent of any inconsistency, the provisions in clause 17 override the other provisions of this Lease:

- (a) the Lessor shall be responsible for any Environmental Contamination of the Land and Premises and which originated on the Land and

Premises which was present prior to the Lessee taking possession of the Land and Premises in April 1994.

- (b) the Lessee shall be responsible for all Environmental Contamination of the Land and Premises and which originated on the Land and Premises during the Term any Renewal Term, and any further term of extension or holding over of this Lease;
- (c) subject to their respective obligations under any EHS Law, neither the Lessor nor the Lessee shall do anything with the intent, directly or indirectly, of causing or being likely to cause the service by any Authority of any notice requiring Remediation of Environmental Contamination of the Land and Premises; and
- (d) the Lessee shall give prompt notice in writing to the Lessor if the Lessee shall know or reasonably suspect that the continued use of any plant, equipment, structures or improvements are or may be causing Environmental Contamination.

17.3 Notification/Dispute of Environmental Contamination

- (a) The Lessor shall Remediate any Environmental Contamination of the Land and Premises which is its responsibility pursuant to clause 17.2 and which:
 - (i) any Authority requires Remediated; or
 - (ii) prevents or could prevent the Lessee's use of the Land and Premises under this Lease; or
 - (iii) otherwise constitutes a risk to the Environment.
- (b) The Lessee shall Remediate any Environmental Contamination of the Land and Premises which is its responsibility pursuant to clause 17.2 and which:
 - (i) any Authority requires Remediated; or
 - (ii) prevents or could prevent any lawful use (current or future) of the Land and Premises; or
 - (iii) otherwise constitutes a risk to the Environment.
- (c) The Lessor's obligation to Remediate Environmental Contamination arises in relation to sub-clause 17.3(a) when the Lessor receives written notification from an Authority or from the Lessee requiring Remediation, including where the Lessee provides the Lessor with a copy of any written notification it has received from an Authority requiring Remediation of Environmental Contamination and requires the Lessor to carry out the required Remediation in accordance with sub-clause 17.3(a).
- (d) The Lessee's obligation to Remediate Environmental Contamination arises in relation to sub-clause 17.3(b) when the Lessee receives written notification from an Authority or from the Lessor requiring Remediation, including where the Lessor provides the Lessee with a copy of any written notification it has received from an Authority requiring Remediation of Environmental Contamination and requires

the Lessee to carry out the required Remediation in accordance with sub-clause 17.3(b).

- (e) Within 20 Business Days of receipt of notice in accordance with sub-clause 17.3(c) or sub-clause 17.3(d), the party who has received the notice under those sub-clauses (the Relevant Party) may give a notice to the other party disputing that it is responsible for the Environmental Contamination and/or that Remediation is necessary. If the Relevant Party does not give a notice disputing responsibility within such 20 Business Day period, the Relevant Party will be taken to have accepted the notice given to it under those sub-clauses.
- (f) If there is a dispute, following receipt by the Lessee or the Lessor of a notice under sub-clause 17.3(e), the Lessee and the Lessor will use reasonable endeavours to agree the matter in dispute and failing agreement within 20 Business Days of service of the dispute notice the Lessee and the Lessor shall jointly appoint an Environmental Consultant and refer the matter in dispute to the Environmental Consultant for determination. If the parties cannot agree on the Environmental Consultant within a further 14 days, either party may request the President of Engineers Australia (Western Australian Division) to appoint the Environmental Consultant.
- (g) The matters to be determined by the Environmental Consultant are whether the Lessor or the Lessee is responsible for the Environmental Contamination in accordance with clause 7, and, if so disputed by either party, whether and what Remediation is necessary.
- (h) The determination of the Environmental Consultant will be final and binding on the Lessee and the Lessor on receipt by both parties of the written determination.
- (i) The Lessor and the Lessee will respectively pay one half of the fees of the Environmental Consultant.
- (j) Where:
 - (i) the Lessor or the Lessee is responsible for Environmental Contamination, including by acceptance of notice by the Lessee in accordance with sub-clause 17.3(c) or by the Lessor in accordance with sub-clause 17.3(d), and Remediation is required then the responsible party must ensure the Remediation is completed within 1 year of either receipt of written notification from an Authority or from the other party in accordance with sub-clause 17.3(c) or sub-clause 17.3(d) (as the case may be); or
 - (ii) the Lessor or the Lessee is determined by the Environmental Consultant to be responsible for Environmental Contamination in accordance with sub-clause 17.3(g) and Remediation is required, then the responsible party must ensure the Remediation is completed within 1 year of receipt of written notice of the Environmental Consultant's determination under sub-clause 17.3(g),

unless in either case a shorter timeframe is agreed between the parties or is required by an Authority in which case the Remediation shall be completed within such shorter time frame.

17.4 Remediation by the Lessee if Lessor defaults

If:

- (a) the Lessor fails to comply with sub-clause 17.3(a) in accordance with any Requirements, any Acts or any EHS Law or otherwise fails to comply within the time specified in sub-clause 17.3(j); or
- (b) any emergency arises which required the immediate Remediation of Environmental Contamination or compliance with a Requirement, any Act or any EHS Law which the Lessor is required to Remediate or comply with under this Lease,

then the Lessee may Remediate the Environmental Contamination or comply with the Act, the EHS Law, or the Requirement and the cost of so doing shall, be payable by the Lessor to the Lessee on demand on a full indemnity basis.

17.5 Remediation by the Lessor if Lessee defaults

If:

- (a) the Lessee fails to comply with sub-clause 17.3(b) in accordance with any Requirements, and Acts or any EHS Law or otherwise fails to comply within the time specified in sub-clause 17.3(j); or
- (b) any emergency arises which required the immediate Remediation of Environmental Contamination or compliance with a Requirement, any Act or any EHS Law which the Lessee is required to Remediate or comply with under this Lease,

then the Lessor may Remediate the Environmental Contamination or comply with the Act, the EHS Law, or the Requirement and the cost of so doing shall be payable by the Lessee to the Lessor on demand on a full indemnity basis.

18. PROVISIONS WHICH APPLY TO LEASE OF A CROWN RESERVE

The Parties acknowledge and agree that the provisions of clause 18 shall apply to this Lease as the Land is a Crown Reserve.

18.1 Lessor's Interest 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 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.

18.2 Minister for Lands' Consent

This Lease is made subject to and conditional upon the parties obtaining the Minister's consent to this Lease (as is required by the Management Order). The parties agree and acknowledge that the Minister's prior consent is also required for any assignment, sub-lease, licence, transfer or mortgage of this Lease, and that the Lessee must obtain such consent in the event of any such assignment, transfer or mortgage of this Lease.

18.3 Further Indemnity by the Lessee to Minister for Lands

In addition to the indemnities given by the Lessee in favour of the Lessor in clause 5.1 of this Lease, the Lessee also indemnifies the State of Western Australia and the Minister and its agents from and against all claims, damages and costs in respect of or resulting from damage to or destruction of any property, or the death of or injury to any person, no matter how or where this occurs:

- (a) caused or contributed to in any way by:
 - (i) the Lessee;
 - (ii) any Lessee's Employees and Visitors; or
 - (iii) any other person at the Land or Premises with the express or implied consent of the Lessee;
- (b) caused or contributed to by the occupation or use of the Land and Premises; or
- (c) resulting from a breach by the Lessee of any Lessee's Covenants.

SCHEDULE 1

REFERENCE SCHEDULE OF TERMS

Item 1 - Land	Reserve 28563 is comprised of Lot 1460 on Deposited Plan 194884, the whole of the land in Certificate of Crown Land Title Volume LR3118 Folio 697 and is commonly known as 63 Bates Street Merredin, as shown on the plan in Schedule 2.
Item 2 – Premises	All Buildings on the Land including: (b) the JVA Dwellings; and (c) the New Dwellings.
Item 3 - Term	Twenty-One (21) years, commencing on the Commencement Date and expiring on
Item 4 - Commencement Date2020
Item 5 - Rent <i>(Clause 4.1)</i>	ONE DOLLAR (\$1.00) per annum exclusive of GST payable in advance
Item 6 - Address for payment of Rent	Shire of Merredin, Cnr Barrack & King Streets, Merredin WA 6415
Item 7 - Dates for payment of Rent	The Commencement Date and thereafter on each anniversary of the Commencement Date during the Term
Item 8 - Rent Review Dates	Annually on the anniversary of the Commencement Date
Item 9 - Permitted Use	The Land comprises the whole of Reserve 28563. Pursuant to the Management Order the Shire of Merredin has the care control and management of Reserve 28563 for the designated purpose of "Homes for the Aged". The Land and Premises must not be used for any purpose whatsoever other than of managing and maintaining homes for aged persons or such associated facilities for aged persons as approved by the Lessor in writing.
Item 10 - Prescribed Rate	4% per annum more than the maximum overdraft rate (expressed as a rate per annum) from time to time applied by the Commonwealth Bank of Australia on overdrafts of

less than \$100,000.

Item 11 – Email Address

In the case of the Lessor:

Email: _____

Attention:

In the case of the Lessee:

Email: _____

Attention:

SCHEDULE 2

RESERVE 28563 LEASE PLAN

EXECUTED as a Deed

THE COMMON SEAL of the)
SHIRE OF MERREDIN)
hereunto affixed in the)
presence of:)

Signature of President

Signature of Chief Executive Officer

Name of President (print)

Name of Chief Executive Officer (print)

EXECUTED for and on behalf of)
MERRITTVILLE RETIREMENT)
VILLAGE (WA A0800229A))
In accordance with its Constitution)
in the presence of:)

Signature of Executive Committee Member

Signature of Executive Committee Member

Name of Executive Committee Member (print)

Name of Executive Committee Member (print)

Position Title (print)

Position Title (print)

ENDORSEMENT OF HOUSING AUTHORITY’S CONSENT

Dated this day of 2020

THE HOUSING AUTHORITY hereby consents to this Lease pursuant to the Deed of Termination and Release

THE COMMON SEAL of)
HOUSING AUTHORITY)
hereunto affixed in the)
presence of:)

Signature of Authorised Officer

Signature of Authorised Officer

Name of Authorised Officer (print)

Name of Authorised Officer (print)

Position Title (print)

Position Title (print)

ENDORSEMENT OF THE MINISTER’S CONSENT

THE MINISTER FOR LANDS hereby consents to this Lease pursuant to section 18 of the *Lands Administration Act* 1997 by letter annexed in Annexure A

ANNEXURE A

THE MINISTER'S CONSENT

ANNEXURE B

DEED OF TERMINATION AND RELEASE OF JVAs AND ALLOCATION AGREEMENT