

# Lease of Wyndham Childcare Centre: Lot 826 (No. 44) Koolama Street, Wyndham

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Shire of Wyndham East Kimberley

Lynette Hill T/A Wyndham Child Care Centre



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# Table of Contents

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<b>Copyright notice</b>	<b>i</b>
<b>Details</b>	<b>1</b>
<b>Agreed terms</b>	<b>1</b>
<b>1. Definitions &amp; Interpretation</b>	<b>1</b>
1.1 Definitions	1
1.2 Interpretation	3
<b>2. Grant of Lease</b>	<b>4</b>
<b>3. Quiet Enjoyment</b>	<b>4</b>
<b>4. Rent and Other Payments</b>	<b>4</b>
4.1 Rent	4
4.2 Sales Revenue Proportion	5
4.3 Outgoings	5
4.4 Interest	6
4.5 Costs	6
4.6 Accrual of Amounts Payable	7
<b>5. Rent Review</b>	<b>7</b>
5.1 Rent to be Reviewed	7
5.2 Methods of Review	7
5.3 CPI Review	7
5.4 Market Rent Review	7
5.5 Rent will not Decrease	8
5.6 Lessor's Right to Review	8
<b>6. Insurance</b>	<b>8</b>
6.1 Insurance Required	8
6.2 Building Insurance to be Effected by Lessor	8
6.3 Details and Receipts	9
6.4 Lessee may be Required to Pay Excess on Insurances	9
6.5 Not to Invalidate	9
6.6 Report	9
6.7 Settlement of Claim	9
6.8 Lessor as Attorney	9
<b>7. Indemnity</b>	<b>10</b>
7.1 Lessee Responsibilities	10
7.2 Indemnity	10
7.3 Obligations Continuing	10
7.4 No Indemnity for Lessor's Negligence	11
7.5 Release	11
<b>8. Limit of Lessor's Liability</b>	<b>11</b>
8.1 No Liability for Loss on Premises	11
8.2 Limit on Liability for Breach of Lessor's Covenants	11
<b>9. Maintenance, Repair and Cleaning</b>	<b>11</b>
9.1 Generally	11
9.2 Lessor's Responsibilities	12
9.3 Property Condition Report	13

9.4	Cleaning	13
9.5	Repair	13
9.6	Responsibility for Securing the Premises	13
9.7	Maintain Surroundings	13
9.8	Lessor's Fixtures and Fittings	14
9.9	Pest Control	14
9.10	Painting	14
9.11	Drains	14
<b>10.</b>	<b>Use</b>	<b>14</b>
10.1	Restrictions on Use	14
10.2	No Warranty	16
10.3	Lessee to Observe Copyright	16
10.4	Premises Subject to Restriction	16
10.5	Indemnity for Costs	16
<b>11.</b>	<b>Alterations</b>	<b>16</b>
11.1	Restriction	16
11.2	Consent	17
11.3	Cost of Works	17
11.4	Conditions	17
<b>12.</b>	<b>Lessor's Right of Entry</b>	<b>17</b>
12.1	Entry on Reasonable Notice	17
12.2	Costs of Rectifying Breach	18
<b>13.</b>	<b>Statutory Obligations and Notices</b>	<b>18</b>
13.1	Comply with Statutes	18
13.2	Indemnity if Lessee Fails to Comply	18
<b>14.</b>	<b>Report to Lessor</b>	<b>19</b>
<b>15.</b>	<b>Default</b>	<b>19</b>
15.1	Events of Default	19
15.2	Forfeiture	19
15.3	Lessor May Remedy Breach	20
15.4	Acceptance of Amount Payable By Lessor	20
15.5	Essential Terms	20
15.6	Breach of Essential Terms	20
<b>16.</b>	<b>Damage or Destruction of Premises</b>	<b>21</b>
16.1	Abatement of Rent	21
16.2	Total Damage or Destruction	21
<b>17.</b>	<b>Option to Renew</b>	<b>21</b>
<b>18.</b>	<b>Holding Over</b>	<b>22</b>
<b>19.</b>	<b>Obligations on Termination</b>	<b>22</b>
19.1	Peacefully Surrender	22
19.2	Restore Premises & Remove Lessee's Property Prior to Termination	22
19.3	Lessor Can Remove Lessee's Property on Re-entry	22
19.4	Obligations to Continue	23
<b>20.</b>	<b>Assignment, Subletting and Charging</b>	<b>23</b>
20.1	No Assignment or Sub-letting without Consent	23
20.2	Change in Ownership of Shares	23
20.3	Lessor's Consent to Assignment and Sub-letting	23
20.4	Where Sublessee is a Community Group	23
20.5	Consents of Assignee Supplementary	24

20.6	<i>Property Law Act 1969</i>	24
20.7	Costs for Assignment and Sub-letting	24
20.8	No Mortgage or Charge	24
<b>21.</b>	<b>Disputes</b>	<b>24</b>
21.1	Referral of Dispute: Phase 1	24
21.2	Referral of Dispute: Phase 2	24
21.3	Appointment of Arbitrator: Phase 3	24
21.4	Payment of Amounts Payable to Date of Award	24
<b>22.</b>	<b>Prior Notice of Proposal to Change Rules</b>	<b>25</b>
<b>23.</b>	<b>Provision of Information</b>	<b>25</b>
<b>24.</b>	<b>Right to Terminate Upon Notice if Service Provided by Lessee is Not Viable</b>	<b>25</b>
<b>25.</b>	<b>Caveat</b>	<b>25</b>
25.1	No Absolute Caveat	25
25.2	CEO & Lessor as Attorney	25
25.3	Ratification	26
25.4	Indemnity	26
<b>26.</b>	<b>Goods and Services Tax</b>	<b>26</b>
26.1	Definitions	26
26.2	Lessee to Pay GST	26
26.3	Consideration in Kind	26
26.4	No Contribution from Lessor	27
26.5	Statement of GST paid is Conclusive	27
26.6	Tax Invoices	27
26.7	Reciprocity	27
<b>27.</b>	<b>No Fetter</b>	<b>27</b>
<b>28.</b>	<b>Additional Terms Covenants and Conditions</b>	<b>27</b>
<b>29.</b>	<b><i>Commercial Tenancy Act</i></b>	<b>27</b>
<b>30.</b>	<b>Acts by Agents</b>	<b>27</b>
<b>31.</b>	<b>Governing Law</b>	<b>28</b>
<b>32.</b>	<b>Statutory Powers</b>	<b>28</b>
<b>33.</b>	<b>Notice</b>	<b>28</b>
33.1	Form of Delivery	28
33.2	Service of Notice	28
33.3	Signing of Notice	28
<b>34.</b>	<b>Severance</b>	<b>29</b>
<b>35.</b>	<b>Variation</b>	<b>29</b>
<b>36.</b>	<b>Moratorium</b>	<b>29</b>
<b>37.</b>	<b>Further Assurance</b>	<b>29</b>
<b>38.</b>	<b>Payment of Money</b>	<b>29</b>
<b>39.</b>	<b>Waiver</b>	<b>29</b>
39.1	No General Waiver	29
39.2	Partial Exercise of Right Power or Privilege	29
<b>Schedule</b>		<b>30</b>

<b>Signing page</b>	<b>32</b>
<b>Annexure 1 - Lessor's Fixtures &amp; Fittings</b>	<b>33</b>
<b>Annexure 2 – Property Condition Report</b>	<b>34</b>

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# Details

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## Parties

### Shire of Wyndham East Kimberley

of PO Box 614, Kununurra, Western Australia  
(Lessor)

### Lynette Hill T/A Wyndham Child Care Centre

of 1 Myrmidon Street, Wyndham, Western Australia  
(Lessee)

## Background

- A The Lessor is registered as the proprietor of the Land.
- B The Lessor has agreed to lease and the Lessee has agreed to take a lease of the Premises upon the terms and conditions contained in this agreement.

## Agreed terms

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### 1. Definitions & Interpretation

#### 1.1 Definitions

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

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

**Appurtenances** means all drains, toilets, grease traps, wash basins, bathrooms, water, gas and electrical fittings, air-conditioning plant and equipment and any other service contained in or about the Premises;

**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);

**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;

**Contaminated Sites Act** means the *Contaminated Sites Act 2003 (WA)*;

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

**DER** means the Department of Environment Regulation of Western Australia;

**Environmental Contamination** has the same meaning as the word “contaminated” in the Contaminated Sites Act;

**EPA** means the Environment Protection Agency of Western Australia;

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

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

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

**Interest Rate** means the rate as adopted from time to time by the Shire of Wyndham East Kimberley in accordance with its adopted budget, to a maximum of 11% per annum;

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

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

**Leased Premises** means the Land and Lot 827 together;

**Lessee's Agents** includes:

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

**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;

**Lessee's Business** means the business to be conducted by the Lessee at the Leased Premises in accordance with the Permitted Purpose;

**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;

**Lessor's Fixtures and Fittings** means all fixtures, fittings and equipment installed in or provided to the Premises by the Lessor at the Commencement Date or at any time during the Term. An initial list of the Lessor's Fixtures and Fittings installed at the Commencement Date is annexed hereto as **Annexure 1**;

**Lot 827** means the land described as Lot 827 on Deposited Plan 208835 being the whole of the land comprised in Crown Land Title Volume LR3012 Folio 42;

**Month or month** means a calendar month;

**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;

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

**Property Condition Report** means the report (which may include without limitation photographs) prepared by the Lessor and initialled by the Lessee, outlining the condition of the Premises at the commencement of this Lease, annexed to this Lease as **Annexure 2**;

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

**Sales Revenue Proportion** means 1% of the Lessee's total sales revenue for the Trading Year;

**Schedule** means the Schedule to this Lease;

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

**Termination** means expiry by effluxion of time or sooner determination of the Term or any period of holding over; and

**Trading Year** means the period of 12 consecutive months commencing on the Commencement Date and on each anniversary of the Commencement Date during the Term.

## **1.2 Interpretation**

In this Lease, unless expressed to the contrary:

- (a) words importing:
  - (i) the singular includes the plural and vice versa; and
  - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to:
  - (i) a natural person includes a body corporate or local government;
  - (ii) a body corporate or local government includes a natural person;
  - (iii) a professional body includes a successor to or substitute for that body;
  - (iv) 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;
  - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
  - (vi) a right includes a benefit, remedy, discretion, authority or power;
  - (vii) 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;
  - (viii) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to:

- (A) both express and implied provisions; and
- (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- (d) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include:
  - (i) covenants not to permit that act or thing to be done or omitted to be done by a Lessee's Agent; and
  - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them 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. 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; and
- (c) the performance and observance of the Lessee's Covenants.

## 3. Quiet Enjoyment

Except as provided in the Lease, for so long as the Lessor is the registered proprietor of the Land, 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.

## 4. Rent and Other Payments

### 4.1 Rent

The Lessee covenants with the Lessor to pay to the Lessor the Rent in the manner set out at **Item 5** of the Schedule on and from the Commencement Date clear of any deductions.

## 4.2 Sales Revenue Proportion

- (1) In addition to the Rent, the Lessee must pay to the Lessor an amount equal to the Sales Revenue Proportion.
- (2) The Sales Revenue Proportion will be payable on a quarterly basis throughout the Term.
- (3) The Lessee must pay the quarterly Sales Revenue Proportion within twenty one (21) days of the end of each quarter. At the time the Lessee pays the quarterly Sales Revenue Proportion, the Lessee must provide the following information to the Lessor:
  - (a) a statement of income and expenditure for the Lessee's Business for the relevant period; and
  - (b) a profit/loss statement for the Lessee's Business for the relevant period; and
  - (c) any other information on the Premises or the operation of the Lessee's Business that may be reasonably required and requested in writing by the Lessor.
- (4) Notwithstanding any other provision of this Lease, the Parties agree that the maximum total Sales Revenue Proportion payable by the Lessee in a Trading Year shall not exceed \$1,200 (plus GST).
- (5) The Lessor may at any time during the Term vary the Sales Revenue Proportion by agreement between the parties and failing agreement; in accordance with the following provisions:
  - (a) the Lessor shall notify the Lessee of the variation to the Sales Revenue Proportion;
  - (b) if the Lessee does not dispute the variation notified, that amount becomes the Sales Revenue Proportion;
  - (c) if the Lessee disputes the variation to the Sales Revenue Proportion as notified by the Lessor, she must notify the Lessor of that dispute within thirty (30) days after receiving the Lessor's notification. The Lessee must comply with this time limit to dispute the notified amount; and
  - (d) if the Lessee gives a notice in accordance with paragraph (c), the dispute shall be determined in accordance with **clause 21** of the Lease.

## 4.3 Outgoings

- (1) The Lessee covenants with the Lessor to pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges, assessed or incurred in respect of the Premises:
  - (a) local government rates, specified area rates, taxes, service and other charges and including charges for rubbish and garbage removal;
  - (b) 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;
  - (c) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
  - (d) land tax and metropolitan regional improvement tax on a single ownership basis;

- (e) premiums, excess and other costs arising from the insurance obtained by the Lessor pursuant to **clause 6.2**. For the avoidance of doubt, the parties agree:
    - (i) that if such premium or cost does not include a separate assessment or identification of the Premises or the Land, the Lessee must pay a proportionate part of such premium or cost determined by the Lessor acting reasonably; and
    - (ii) such insurance will include insurance for the full replacement value of buildings; and
  - (f) 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.
- (2) 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 4.3(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

#### **4.4 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 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.

#### **4.5 Costs**

The Lessee covenants with the Lessor to:

- (a) pay to the Lessor on demand:
  - (i) all duty, fines and penalties payable under the *Duties Act* 2008 and other statutory duties or taxes payable on or in connection with this Lease;
  - (ii) all registration fees in connection with this Lease; and
  - (iii) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies;
- (b) 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:
  - (i) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
  - (ii) any breach of covenant by the Lessee or the Lessee's Agents;
  - (iii) 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;
  - (iv) any work done at the Lessee's request; and
  - (v) any action or proceedings arising out of or incidental to any matters referred to in this **clause 4.5** or any matter arising out of this Lease.

#### 4.6 Accrual of Amounts Payable

Amounts Payable accrue on a daily basis.

### 5. Rent Review

#### 5.1 Rent to be Reviewed

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

#### 5.2 Methods of Review

The review will be either based on CPI or a Market Review. The basis for each rent review is as identified for each Rent Review Date in **Item 6** of the Schedule.

#### 5.3 CPI Review

A rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date. If there is a decrease in CPI having regard to the relevant CPI publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period. Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the parties, the substitution shall be made by a Valuer appointed in accordance with **clause 5.4**.

#### 5.4 Market Rent Review

- (1) A rent review based on market rent will establish the current market rent for the Premises (which will not be less than the Rent payable in the period immediately preceding the Rent Review Date) by agreement between the parties and failing agreement, will be determined in accordance with the following provisions.
- (2) The Lessor shall notify the Lessee of the amount that it reasonably considers is the current market rent for the Premises.
- (3) If the Lessee does not dispute the amount notified, that amount becomes the Rent.
- (4) If the Lessee disputes the current market rent as notified by the Lessor, it must notify the Lessor of that dispute (**Dispute Notice**) within 14 days after receiving the Lessee's notification. The Lessee must comply with this time limit to dispute the notified amount.
- (5) If the Lessee gives a Dispute Notice, then the current market rent for the Premises will be determined at the expense of the Lessee by a valuer (**Valuer**) licensed under the *Land Valuers Licensing Act 1978*, to be appointed, at the request of either party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).
- (6) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the parties. The parties will be entitled to make submissions to the Valuer.
- (7) In this **clause 5**, "current market rent" means the rent obtainable for the Premises in a free and open market if the Premises was unoccupied and offered for rental for the use for which the

Premises is permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:

- (a) any improvements made or effected to the Premises by the Lessee; and
- (b) any rent free periods, discounts or other rental concessions.

## **5.5 Rent will not Decrease**

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

## **5.6 Lessor's Right to Review**

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

# **6. Insurance**

## **6.1 Insurance Required**

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

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;
- (b) insurance against all risks as the Lessor may require, of all plate glass windows, doors and display show cases forming part of or within the Premises for a sum which is not less than its full insurable value;
- (c) insurance to cover the Lessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a Lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary;
- (d) employers' indemnity insurance including workers' compensation insurance in respect of all employees of the Lessee employed in, about or on the Premises; and
- (e) any other policy of insurance which the Lessor may reasonably require or specify from time to time.

## **6.2 Building Insurance to be Effected by Lessor**

The Lessor shall effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of the Premises against damage arising from 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.

### 6.3 Details and Receipts

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

- (a) upon renewal of any insurance policy immediately forward to the Lessor copies of Certificates of Currency and details of the insurances as held by the Lessee;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency 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.

### 6.4 Lessee may be Required to Pay Excess on Insurances

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 6.1** and **clause 6.2**.

### 6.5 Not to Invalidate

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

- (a) render any insurance effected under **clause 6.1** and **clause 6.2** on the Premises, or any adjoining premises, void or voidable; or
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

### 6.6 Report

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

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

### 6.7 Settlement of Claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clause 6.1** and **clause 6.2**.

### 6.8 Lessor as Attorney

The Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term:

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clause 6.1** and **clause 6.2**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clause 6.1** and **clause 6.2**;

- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

## **7. Indemnity**

### **7.1 Lessee Responsibilities**

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

### **7.2 Indemnity**

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

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

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

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

### **7.3 Obligations Continuing**

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 7.2** will be reduced by the extent of such payment.

- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

#### **7.4 No Indemnity for Lessor's Negligence**

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

#### **7.5 Release**

- (1) The Lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor from:
  - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by;
  - (ii) loss of or damage to the Premises or personal property of the Lessee; and
  - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, pollution or environmental harm in, on or under the Premises or surrounding area,

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

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

### **8. Limit of Lessor's Liability**

#### **8.1 No Liability for Loss on Premises**

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

#### **8.2 Limit on Liability for Breach of Lessor's Covenants**

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is registered as the proprietor in fee simple in the Premises.
- (2) 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. Maintenance, Repair and Cleaning**

#### **9.1 Generally**

- (1) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for

the avoidance of doubt includes the Lessor's Fixtures and Fittings and Appurtenances) in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Lessee any obligation:

- (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees); or
  - (b) in respect of any structural maintenance, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or by the Lessee's particular use or occupancy of the Premises, or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees).
- (2) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing, repairing or cleaning:
- (a) any electrical fittings and fixtures;
  - (b) any plumbing;
  - (c) any air-conditioning fittings and fixtures; or
  - (d) any gas fittings and fixtures,

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

- (3) The Lessee must take such reasonable action as is necessary to:
- (a) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
  - (b) rectify or otherwise ameliorate,

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

## **9.2 Lessor's Responsibilities**

- (1) For the avoidance of doubt, the Lessor is responsible for all structural repairs and major repairs and/or replacement of any sewerage, plumbing, electrical or air-conditioning fittings and fixtures to the Premises EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee or an Authorised Person, or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee or an Authorised Person. The parties agree that nothing in this clause means or implies that the Lessor is responsible for the day to day maintenance and repair of any sewerage, plumbing, electrical or air-conditioning fittings and fixtures to the Premises.
- (2) Notwithstanding paragraph (1) above, the Lessee acknowledges and agrees that the Lessor may have limited, or no, funds set aside within its budget for structural maintenance of the Premises, and as a consequence the Lessor will not be able to rectify any major maintenance or structural defect or problem unless it has sufficient monies set aside in its budget for such purpose and/or the Lessor's Council has approved such expenditure.
- (3) Notwithstanding any other provision of this Lease, the Lessee will be responsible for any repair or replacement which is necessary because of any act or omission of or on the part of the Lessee or

an Authorised Person, or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee or an Authorised Person.

### **9.3 Property Condition Report**

- (1) The Lessee and Lessor acknowledge and agree that the Property Condition Report outlines the state of cleanliness, repair and maintenance of the Premises at the commencement of this Lease.
- (2) The Lessee acknowledges and agrees that it must keep the Premises as nearly as possible in the same condition (fair wear and tear excepted), or better condition, as the condition of the Premises set out in the Property Condition Report.
- (3) Upon determination or termination of the Term, the Lessee must deliver the Premises to the Lessor as nearly as possible in the same condition (fair wear and tear excepted), or better condition, as the condition of the Premises set out in the Property Condition Report. Following determination or termination of the Term, the Lessor will undertake an exit report comparing the state of the Premises to the state of the Premises outlined in the Property Condition Report (**Exit Report**). If the Exit Report discloses deficiencies in the state of cleanliness, repair and maintenance of the Premises, the Lessor will issue the Lessee a notice requiring the Lessee to remedy such deficiency within 14 days of receipt of such notice. If the Lessee fails to remedy such deficiency within the required time, the Lessor may take any necessary action to remedy such deficiency and recover any cost reasonably incurred by the Lessor doing so from the Lessee as a liquidated debt payable on demand.

### **9.4 Cleaning**

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

### **9.5 Repair**

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

### **9.6 Responsibility for Securing the Premises**

The Lessee must ensure the Premises, including Lessor's and Lessee's fixtures and fittings, are appropriately secured at all times.

### **9.7 Maintain Surroundings**

- (1) 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.
- (2) The Lessee agrees that any pruning of trees must be undertaken by a qualified tree surgeon.
- (3) If any flora, trees or lawn dies the Lessee must replace the flora, trees or lawn at its own expense.
- (4) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require.
- (5) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

## **9.8 Lessor's Fixtures and Fittings**

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

## **9.9 Pest Control**

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

## **9.10 Painting**

- (1) The Lessee must on or before each repainting date as stated in **Item 9** of the Schedule paint with at least 2 coats of paint those parts of the Premises usually painted internally.
- (2) All painting carried out on the Premises must be carried out by a registered painting contractor; and the registered painting contractor or other person engaged by the Lessee to paint the Premises must:
  - (a) do so in a proper manner using good quality materials;
  - (b) have the colour and quality of the materials approved in writing by the Lessor before the work commences;
  - (c) comply with all reasonable directions given or requests made by the Lessor; and
  - (d) be finished in a proper and workmanlike manner.

## **9.11 Drains**

- (1) The Lessee must keep and maintain the waste pipes drains and conduits originating in the Premises or connected thereto in a clean clear and free flowing condition and must pay to the Lessor upon demand the cost to the Lessor of clearing any blockage which may occur in such waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry thereof into any trunk drain unless such blockage has been caused without neglect or default on the part of the Lessee.
- (2) The Lessee must not permit the drains, toilets, grease traps (if any) and other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any foreign matter or substance to be thrown therein.

# **10. Use**

## **10.1 Restrictions on Use**

### **(1) Generally**

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

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

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

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

**(3) No nuisance**

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

**(4) No dangerous substances**

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

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

**(5) No harm or stress**

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

**(6) No signs**

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

**(7) No smoking**

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

**(8) Consumption of alcohol**

The Lessee must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol without first obtaining the written consent of the Lessor.

**(9) Sale of alcohol**

The Lessee will not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises without the prior written consent of the Lessor and then only in accordance with the provisions of the *Liquor Control Act 1988*, *Health (Food Hygiene) Regulations 1993*, *Liquor Licensing Regulations 1989* and any other relevant written laws that may be in force from time to time.

**(10) Removal of rubbish**

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

**(11) No pollution**

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

**(12) No commercial use**

The Lessee must not and must not suffer or permit a person to use the Premises for any business or commercial purpose (other than the Permitted Purpose) without the prior written consent of the Lessor.

**10.2 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.

**10.3 Lessee to Observe Copyright**

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

**10.4 Premises Subject to Restriction**

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

**10.5 Indemnity for Costs**

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, reasonably incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 10**.

## **11. Alterations**

**11.1 Restriction**

The Lessee must not without prior written consent:

- (a) (i) from the Lessor;
- (ii) from any other person from whom consent is required under this Lease;
- (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;

- (b) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
- (c) subject to the performance of the Lessee's obligations in **clause 9**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

## 11.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 11.1** the Lessor may:
  - (a) consent subject to conditions; and
    - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
    - (ii) 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 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.

# 12. Lessor's Right of Entry

## 12.1 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; and
  - (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 12.1(b)(iv)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

## **12.2 Costs of Rectifying Breach**

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 12.1(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. Statutory Obligations and Notices**

## **13.1 Comply with Statutes**

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 10**;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

## **13.2 Indemnity if Lessee Fails to Comply**

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 13.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 13.1**.

## 14. 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 be aware;
- (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.

## 15. Default

### 15.1 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 association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the *Associations Incorporation Act 2015* 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 otherwise not used, in the Lessor's reasonable opinion, for the Permitted Purpose for six month period; 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 a rent and profits.

### 15.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 15.1** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 18**,

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.

### **15.3 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 pay the money due or do or cease the doing of 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.

### **15.4 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.

### **15.5 Essential Terms**

Each of the Lessee's Covenants in **clauses 4** (Rent and Other Payments), **6** (Insurance), **7** (Indemnity), **9** (Maintenance, Repair and Cleaning), **10** (Use), **20** (Assignment, Subletting and Charging) and **26** (Goods and Services Tax), is an essential term of this Lease but this clause **15.5** does not mean or imply that there are no other essential terms in this Lease.

### **15.6 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 this **clause 15.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 15.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) 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.

## 16. Damage or Destruction of Premises

### 16.1 Abatement of Rent

If the Premises are at any time during the Term, without neglect or default of the Lessee, destroyed or damaged by fire or other risk covered by insurance so as to render the same unfit for the occupation and use of the Lessee, then the Rent or a proportionate part thereof (according to the nature and extent of the damage) shall abate until the Premises have been rebuilt or made fit for the occupation and use of the Lessee, and in case of any dispute arising under this provision the same will be referred to arbitration under the provisions of the *Commercial Arbitration Act 1985* and the full Rent must be paid without any deduction or abatement until the date of the arbitrator's award whereupon the Lessor will refund to the Lessee any Rent which according to the aware appears to have been overpaid.

### 16.2 Total Damage or Destruction

If the premises are at any time during the Term destroyed or damaged to an extent as to be wholly unfit for the occupation and use of the Lessee either party may be notice in writing to the other of them given within sixty (60) days after the event elect to cancel and terminate this lease. The term will terminate upon such notice being given and the Lessee must vacate the premises and surrender the same to the Lessor, but such termination will be without prejudice however to the liability of the Lessee under this Lease up to the date of termination.

## 17. Option to Renew

If the Lessee at least one month, but not earlier than 12 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and:

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

the Lessor shall grant to the Lessee a lease for the Further Term at the Rent and on terms and conditions similar to this Lease other than this **clause 17** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

## 18. Holding Over

- (1) If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.
- (2) The Lessee shall not be entitled to hold over for a more than twelve (12) months after the expiry of the Term.
- (3) To avoid doubt, the Lessee is obliged during any holding over period to pay any other outgoings payable by the Lessee under this Lease as if the holding over period was included in the Term.

## 19. Obligations on Termination

### 19.1 Peacefully Surrender

- (1) On Termination the Lessee must:
  - (a) peacefully surrender and return to the Lessor the Premises in at least the condition that was approved for the most recent development of the Premises and otherwise in a condition consistent with the performance of the Lessee's Obligations under this Lease; and
  - (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

### 19.2 Restore Premises & Remove Lessee's Property Prior to Termination

Prior to Termination, the Lessee at the Lessee's expense must:

- (a) restore the Premises to a condition consistent with the performance by the Lessee of the Lessee's Covenants under this Lease, fair wear and tear excepted; and
- (b) remove from the Premises all property of the Lessee including the Lessee's signs, fixtures, fittings, plant, equipment and other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

### 19.3 Lessor Can Remove Lessee's Property on Re-entry

- (1) On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property.
- (2) The Lessor may, at any time after the expiration or sooner determination of the Term, give the Lessee a notice (**Abandonment Notice**) requiring the Lessee to remove all fixtures, fittings, plant, equipment or other articles not previously removed by the Lessee in accordance with the requirement of this clause (**Remaining Items**). On the Lessee's receipt of an Abandonment Notice, the Lessee shall have SEVEN (7) days within which to remove all Remaining Items and failing removal within that SEVEN (7) day period, all Remaining Items still on the Premises or in the Lessor's custody shall be deemed absolutely abandoned by the Lessee and shall automatically become the absolute property of the Lessor and may be sold by the Lessor or disposed off at any

time and without further notice or obligation to the Lessee. The Lessor shall be entitled to keep the proceeds of any sales and those proceeds shall not be taken into account to reduce any arrears, damages or other moneys for which the Lessee may be liable.

#### **19.4 Obligations to Continue**

The Lessee's obligations under this **clause 19** will continue, notwithstanding the end or Termination of this Lease.

### **20. Assignment, Subletting and Charging**

#### **20.1 No Assignment or Sub-letting without Consent**

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

#### **20.2 Change in Ownership of Shares**

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

#### **20.3 Lessor's Consent to Assignment and Sub-letting**

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

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the Permitted Purpose;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by:
  - (i) the proposed assignee of a deed of assignment; or
  - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.

#### **20.4 Where Sublessee is a Community Group**

If the proposed sublessee is a community group, whether or not a body corporate or unincorporated, the Lessor may not require a deed of sublease under **clause 20.3(c)**.

## 20.5 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.

## 20.6 Property Law Act 1969

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

## 20.7 Costs for Assignment and Sub-letting

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

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

whether or not the assignment or sub-letting proceeds.

## 20.8 No Mortgage or Charge

The Lessee must not mortgage nor charge the Premises.

# 21. Disputes

## 21.1 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 by the Lessor from time to time (**the Lessor's Representative**) who shall convene a meeting within ten (10) 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**).

## 21.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 21.1** of this Lease then the dispute shall be referred in writing to the CEO 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 CEO and the President of the Lessee for the purpose of resolving the dispute.

## 21.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 21.2** 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.

## 21.4 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 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.

## 22. Prior Notice of Proposal to Change Rules

The Lessee agrees that it will not change its rules of association under the *Associations Incorporations Act 2015* without notifying the Lessor of its intention to make such a change prior to consideration of the required special resolution.

## 23. Provision of Information

The Lessee agrees to provide to the Lessor:

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders during the Term; and
- (c) any information reasonably required by the Lessor.

## 24. Right to Terminate Upon Notice if Service Provided by Lessee is Not Viable

- (1) Notwithstanding any other provision of this Lease, the Parties AGREE that subject to paragraph (2) of this clause, either party may terminate this Lease upon ninety (90) days written notice to the other party in the event the service provided by the Lessee is no longer considered by the Parties to be viable.
- (2) If this Lease is terminated in accordance with this clause, **clause 19** will apply.

## 25. Caveat

### 25.1 No Absolute Caveat

The Lessee nor any person on behalf of the Lessee will, without the prior written consent of the Lessor, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

### 25.2 CEO & Lessor as Attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally:

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

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

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and

(f) a surrender of the estate granted by this Lease,

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

### 25.3 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause.

### 25.4 Indemnity

The Lessee indemnifies the Lessor against:

- (a) any loss arising directly from any act done under this clause; and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under this clause.

## 26. Goods and Services Tax

### 26.1 Definitions

The following definitions apply for the purpose of this clause:

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

### 26.2 Lessee to Pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to at **clause 26.2(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

### 26.3 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 26.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

#### **26.4 No Contribution from Lessor**

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

#### **26.5 Statement of GST paid is Conclusive**

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

#### **26.6 Tax Invoices**

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

#### **26.7 Reciprocity**

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

### **27. No Fetter**

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

### **28. Additional Terms Covenants and Conditions**

Each of the terms, covenants and conditions (if any) specified in **Item 10** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

### **29. *Commercial Tenancy Act***

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

### **30. 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.

## 31. 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.

## 32. 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.

## 33. Notice

### 33.1 Form of Delivery

A Notice to a Party must be in writing and may be given or made:

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party 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.

### 33.2 Service of Notice

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

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 33.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 33.1(b)**, on the second business day following the date of posting of the Notice.

### 33.3 Signing of Notice

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 2015*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

## 34. 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.

## 35. 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.

## 36. 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.

## 37. 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.

## 38. 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.

## 39. Waiver

### 39.1 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.

### 39.2 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.

# Schedule

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## Item 1 Land and Premises

### **Land**

Lot 826 on Deposited Plan 208835 being the whole of the land comprised in Certificate of Title Volume 1259 Folio 932.

### **Premises**

The whole of the Land together with all buildings, structures, alterations, additions and improvements on the Land or erected on the Land during the term including without limitation all carpets and floor coverings, window treatments (including but not limited to curtains and blinds), the Lessor's Fixtures and Fittings and all additions or modifications and replacements.

## Item 2 Term

3 years commencing on the Commencement Date and expiring on 20 March 2020.

## Item 3 Further Term

Not applicable.

## Item 4 Commencement Date

21 March 2017.

## Item 5 Rent

One dollar (\$1.00) plus GST per annum payable on demand.

## Item 6 Rent Review

Not applicable.

## Item 7 Permitted purpose

Child Care Centre and uses reasonably ancillary thereto.

## Item 8 Public liability insurance

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

Item 9      Repainting Dates

Not applicable.

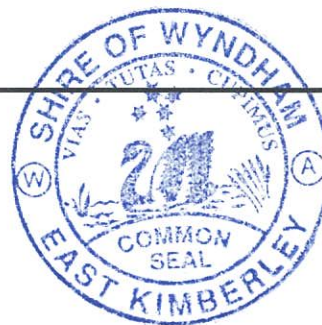
Item 10     Additional terms and covenants

Nil.

# Signing page

EXECUTED

2017



The **COMMON SEAL** of the **SHIRE OF WYNDHAM EAST KIMBERLEY** was affixed in the presence of:

Signature of President

*[Handwritten signature]*

Full name of President

*Ronald Stanley Yulewail*

Signature of Chief Executive Officer

*[Handwritten signature]*

Full name of Chief Executive Officer

**CARL ASKEW**

**SIGNED** by **LYNETTE HILL** in the presence of

Signature of **LYNETTE HILL**

*[Handwritten signature]*

Witness Sign

*[Handwritten signature]*  
**PETER ANDREW BRACEGIRDLE.**

Name of Witness

**3A BELLA LANE, KUNUNURRA.**

Address

**MANAGER COMMUNITY SERVICES.**

Occupation

# Annexure 1 - Lessor's Fixtures & Fittings

<b>Location</b>	<b>Item</b>	<b>Quantity</b>	<b>Brand / Model</b>	<b>Colour</b>	<b>Comment</b>
Main Kitchen	Oven	1	Chef. 540mm upright cooker	White	Electric oven & stove
	Fridge / Freezer	1	LG. 515L Model GN-515GW	White	
	Dishwasher	1	LG. Inverter Direct Drive	Stainless Steel	
	Microwave	1	Breville. Model BN0300	Stainless Steel	
Office	Air Conditioner	1	Toshiba. Inverter Split unit Model RAS-10SKV-A	White	Wall mounted with remote
Entry	Security System	1	Texecom Premier	White	Alarm panel, LCD keypad, screamer and siren strobe combo dipler. Richochet wireless 8 zone receiver kit, Richochet wireless passive infared quad detectors
Open Plan Area	Air Conditioner	2	Toshiba. Inverter high wall split systems Model RAS-24SKV2-A	White	Wall mounted with remote
Back Room	Air Conditioner	1	Toshiba. Model RAV-SM806KRT-A	White	Wall mounted with remote
Sleep Room	Air Conditioner	1	Toshiba. Model RAS-13N3KV2-A	White	Wall mounted with remote
Staff Room	Air Conditioner	1	Toshiba. Model RAS-13N3KV2-A	White	Wall mounted with remote
	Microwave	1	Panasonic	White	
Rear Room	Air Conditioner	1	Braemar	Brown	Wall mounted. Old but working
Laundry	Washing Machine	1	Simpson. 7Kg Front Loader	White	
Backyard	Playground	1		Colourful	Large
	Shade Sail Structures	2			Large

# Annexure 2 – Property Condition Report

SHIRE of WYNDHAM | EAST KIMBERLEY

## PROPERTY CONDITION REPORT



Property:		Date:	
Tenant:		Key No:	

**Please Note:** The Tenant is required to return to the Lessor (noting any variations) a signed copy of the Property Condition Report within seven (7) days after receipt of the Property Condition Report. Failure to do so will deem the Property Condition Report forwarded to the Tenant to be the only evidence of the Premises condition at the time that the Tenant took possession of the Premises. The Tenant is aware and permits the Lessor to take photographs of the interior and exterior of the dwelling and property as required at inspections.

FRONT ENTRANCE & HALLWAY	Clean	Working	Not Damaged	N/A	Tenant Agrees	Comments
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints						
Other						
OFFICE	Clean	Working	Not Damaged	N/A	Tenant Agrees	Comments
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
TV outlet/Aerial						
Other						
KITCHEN	Clean	Working	Not Damaged	N/A	Tenant Agrees	Comments
Walls, Ceilings & Skirting						
Doors - Pantry						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
Oven, Grill & Stove						
Exhaust Fan/Range hood						
Benchtop						

REVIEWED JULY 2015

.....INITIALS

Cupboards Int/Ext						
Sink & Taps						
Splashback						
Other						
<b>INSIDE STOREROOM</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
Other						
<b>OUTSIDE STOREROOM</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
Other						
<b>PLAYROOM 2</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
TV outlet/Aerial						
Other						
<b>PLAYROOM 1</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						

2

.....INITIALS

Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
TV outlet/Aerial						
Other						
<b>CHILDREN'S TOILETS</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Extractor Fan						
Wash basin/Vanity/Mirror						
Shower/Screen/Tiles						
Bath						
Towel Rail						
Toilet						
Other						
<b>SLEEP ROOM</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
Wardrobes						
Other						
<b>CHANGE ROOM AND CHILDREN'S TOILETS</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						

3

.....INITIALS

Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling fan						
Sink & Taps						
Splashback						
Storage						
Other						
<b>LAUNDRY</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors - Sliding						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Extractor Fan						
Trough/Taps						
Storage						
Other						
<b>STORE ROOM</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
TV outlet/Aerial						
Other						
<b>STAFF BATHROOMS</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Extractor Fan						

4

.....INITIALS

Wash basin/Vanity/Mirror						
Shower/Screen/Tiles						
Bath						
Towel Rail						
Toilet						
Other						
<b>STAFF ROOM</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
Benchtop						
Cupboards Int/Ext						
Sink & Taps						
TV outlet/Aerial						
Other						
<b>ENCLOSED VERANDA</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Walls, Ceilings & Skirting						
Doors						
Windows/Screens						
Curtains/blinds						
Light fittings						
Powerpoints/switches						
Floor coverings						
Air conditioner & Ceiling Fan						
TV outlet/Aerial						
Other						
<b>EXTERIOR</b>	<b>Clean</b>	<b>Working</b>	<b>Not Damaged</b>	<b>N/A</b>	<b>Tenant Agrees</b>	<b>Comments</b>
Driveway/Carport						
Gates/Fences						
Security Screens						
Courtyard/Porch						
Storeroom/Shed						
Light fittings						

Front Garden						
Front Lawn						
Front Reticulation						
Back Garden						
Back Lawn						
Back Reticulation						
Rubbish Bin						
Stairs						
Hot Water System						
Other						

Water Meter Reading	
Electricity Meter Reading	

NOTE: FURTHER ITEMS AND COMMENTS MAY BE RECORDED ON A SEPARATE SHEET, SIGNED BY THE LESSOR/PROPERTY MANAGEMENT AND THE TENANT, AND ATTACHED TO THIS REPORT

BOTH PARTIES TO SIGN THE REPORT TO INDICATE AGREEMENT TO THE ABOVE INFORMATION

ONE COPY RETAINED BY THE TENANT AND ONE COPY RETAINED BY THE LESSOR/PROPERTY MANAGEMENT

Signed by Lessor/Property Management

\_\_\_\_\_, Date: \_\_\_\_\_  
(Signature of Lessor/Property management)

Signed by the Tenant

\_\_\_\_\_, Date: \_\_\_\_\_  
(Signature of Tenant)