

Community Lease

Kununurra Youth Hub

Shire of Wyndham East Kimberley ABN 35 647 145 756 (**Lessor**)

Western Australia Police and Community Youth Centres Inc Registration Number
A04100075 (**Lessee**)

DRAFT

Contact – Catherine Wheeler, Partner, c.wheelerk.browne@hopgoodganim.com.au

PERTH

Level 27, Allendale Square, 77 St Georges Terrace
Perth WA 6000 Australia

T +61 8 9211 8111
F +61 8 9221 9100

PO Box Z 5312, St Georges Terrace, Perth WA 6831 Australia

E contactus@hopgoodganim.com.au

BRISBANE

Level 8, Waterfront Place, 1 Eagle Street
Brisbane Qld 4000 Australia

T +61 7 3024 0000
F +61 7 3024 0300

PO Box 7822, Waterfront Place Qld 4001 Australia

www.hopgoodganim.com.au



Table of Contents

Reference Schedule	1
General Terms	2
1. Definitions and Interpretation	2
1.1 Definitions	2
1.2 Interpretation	6
1.3 Consents and approvals	7
2. Grant of Lease	8
2.1 Term	8
2.2 Holding over	8
2.3 Further Term	8
3. Rent	9
3.1 Payment of the Rent	9
3.2 CPI Rent review	9
4. Operating Expenses	10
4.1 Direct charges on Premises	10
4.2 Outgoings	10
5. Use covenants	12
5.1 Lessee's conduct of business and Permitted Use	12
5.2 Lessee's Signage	14
5.3 Lessee's name and Lessor's directory board	14
5.4 Use of Common Areas	14
5.5 Access Devices	14
6. Repair, maintenance and other work	15
6.1 Repair and maintenance	15
6.2 Works by Lessee	16
6.3 Lessee's obligations at end of Term	17
7. Lessee's insurance, risk and indemnity	17
7.1 Lessee must insure	17
7.2 Requirements for Lessee's insurance	18
7.3 Lessee's risk and indemnity	18
7.4 Application of Lessee's insurance, risk and indemnity covenants	19
8. Dealing	19
8.1 Lease Dealing by Lessee	19
8.2 Multiple Lessees	19
8.3 Security Dealing by Lessee	19
9. Default	19
9.1 Events of default	19
9.2 Consequences of default	20
10. Lessor's covenants and reservations	21
10.1 Lessor's covenants	21
10.2 Lessor's Signage rights	21
10.3 Lessor's entry rights	21
10.4 Other occupiers	22
10.5 Changes by the Lessor	22
10.6 Management and Tenant User Guide	22
10.7 Damage or destruction	22
11. Miscellaneous	23
11.1 Notices	23
11.2 Costs	24
11.3 Goods and services tax	24
11.4 Governing law	24
11.5 Severance	24
11.6 Waiver	24



Table of Contents

11.7 Performance of covenants	25
11.8 Payment of money	25
11.9 Signing, attorneys, counterparts, electronic mail and faxing	25
11.10 Further assurances	26
11.11 Documentation	26
11.12 Entire agreement	26
11.13 Privacy	26
11.14 Work health and safety	26
11.15 Sustainability Rating and initiatives	27
11.16 Exclusion of statutory provisions	27
Signing page	28
Attachment 1 – Plan of the Premises	29
Attachment 2 – Deed of Licence	30

DRAFT



Community Lease

Date

Reference Schedule

Parties	The Lessor and the Lessee
Lessor	
Name	Shire of Wyndham East Kimberley ABN 35 647 145 756
Address	20 Coolibah Drive, Kununurra, Western Australia, 6743
Email	mail@swek.wa.gov.au
Lessee	
Name	Western Australia Police and Community Youth Centres Inc Registration No A04100075
Address	115 Coolibah Drive, Kununurra, Western Australia, 6743
Email	
Guarantor	Not Applicable
Name	
Address	
Land	Lot 510 Ron Hodnett Drive, Kununurra, Western Australia, 6743
Premises	Kununurra Youth Hub, Part Lot 510 Ron Hodnett Drive, Kununurra, WA, 6743 and being that part of the Land shown shaded in yellow on the plan in Attachment 1
Term	10 years commencing on the Commencement Date and expiring on the Expiry Date.
Commencement Date	31 October 2021
Expiry Date	30 October 2031
Further Term	
Period of Further Term	A further term of 10 years commencing on expiry of the Term.
Total Period of Original Term and all Further Term(s)	20 years
Rent	\$500.00 per annum plus GST
CPI Rent Review	
CPI Review Date(s)	N/A
Licence	Deed of Licence to use the Licenced Area.
Licensee Outgoings Contribution	The Agreed Proportion of the Outgoings
Permitted Use	As space for the delivery of community youth services.
Bank Guarantee (amount)	Not Applicable

Community Lease

Background

- A. The Lessor has the care, management and control of the Land.
- B. The Premises is available for lease subject to certain conditions contained in clause 2.1.
- C. The Lessor has agreed the nominal rent for the Term based on the assurances of the Lessee that it will comply with its commitments under the Redevelopment Agreement.
- D. It is the intention of the parties that the Redevelopment Agreement and the Deed of Licence are read in conjunction with and form part of the covenants of this Lease
- E. The Lessor has agreed to grant and the Lessee has agreed to take the Lease of the Premises on the covenants contained in this document.

General Terms

1. Definitions and Interpretation

1.1 Definitions

In this Lease:

Access Device means any key, access card or other similar device enabling the Lessee to access the Premises when authorised to do so under this Lease.

Air Conditioning Equipment means all plant, machinery and equipment for heating, cooling, extracting and otherwise circulating air and associated controls and ducting that may be in or servicing the Premises.

Authorisation means an approval, authorisation, consent, exemption, licence, notarisation, permit or waiver however described (including any condition attaching to it) and any renewal or amendment of it from any Authority or the Lessor or both.

Authority means the local council and any other body providing any public Utilities or Services to or having any jurisdiction over the Premises or the Land (as the context may require).

Building means all buildings and other improvements (if any) above or below ground level erected on the Land and includes the Lessor's Property and the Licence Area.

Building Hours mean the hours the Lessor may (acting reasonably) designate as the hours during which the Premises and Building is open to the public.

Business Day means any day except a Saturday, Sunday or public holiday in the capital city of the Home State.

Claim includes any legal proceeding, claim, demand, loss, damage, cost, expense, compensation or other liability, whether present, future, contingent or unascertained of any description.

Commencement Date means the date specified in the Reference Schedule on which the Term commences.

Common Areas means (if any and where the context permits) all non-lettable parts of the Land designated by the Lessor or intended for common use, and includes any car parking areas, ovals, tennis courts and associated amenities constructed or on the Land.



Community Lease

Condition Precedent means the condition required to be met as construction for the granting of this Lease set out in clause 2.1.

Damage Event means damage or destruction by fire, lightning, storm, flood, tempest, earthquake, strike, civil unrest, explosion, enemy or hostile action, impact by aircraft or aerial object, act of God or other disabling cause.

Dealing means any Lease Dealing, Control Dealing or Security Dealing.

Deed of Licence means the Licence Agreement.

Default Rate means the rate per cent per annum equal to the highest lending rate charged by the Lessor's principal lender to its customers as at the due date for payment for an unsecured business loan of one hundred thousand dollars, plus 2%. A certificate by an officer of the relevant bank or other financial institution is conclusive evidence of the rate.

Exit Date means the later of the date on which the Term, any Further Term and any holding over period ends and the date the Lessee permanently vacates the Premises.

Expiry Date means the date specified in the Reference Schedule on which the Term expires.

Fitout Guide means:

- (a) the document (if any) given by the Lessor to the Lessee setting out the Lessor's detailed requirements for the design, approval and construction of any works by the Lessee; or
- (b) if there is no written guide, the reasonable directions of the Lessor.

Fixed Percentage increase means 3% per annum.

Further Term means the period (if any) of extension of the Term specified in the Reference Schedule.

GST has the meaning defined in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or other consumption tax Law.

Guarantor means the party (if any) named as Guarantor in the Reference Schedule.

Home State means Western Australia.

Incoming Lessor means any transferee of the Lessor's interest under this Lease.

Insolvency Event means:

- (c) the bankruptcy, insolvency, assignment for the benefit of creditors or other demise of the party;
- (d) the appointment of any administrator, receiver, receiver and manager, liquidator, official manager or other person to control the party's assets, or the party is de-registered or otherwise dissolved; or
- (e) the failure of the party to comply with a statutory demand, the enforcement of any judgement, order or Security against the party's interest under this Lease or the party's



Community Lease

property or any other property used in connection with the party's business, or the party is otherwise insolvent or unable to pay its debts as and when they fall due.

Land means the land described in the Reference Schedule.

Law means any statute, rule, regulation, code, proclamation, order in council, ordinance, local law or by-law, whether present or future and whether State, federal or otherwise.

Lease means this document.

Lease Dealing means any transfer (including assignment), Subdealing, declaration of trust or other dealing by the Lessee in connection with the Premises, this Lease or the Lessee's interest in this Lease.

Lease Documents mean:

- (f) this Lease; and
- (g) any amendment, guarantee or covenant prepared and signed by the Lessor, the Lessee and any other person in connection with any of them.

Lease Year means each consecutive period of 12 months starting on the Commencement Date and includes any broken period between the last complete Lease Year and the Expiry Date.

Lessee means the party named as Lessee in the Reference Schedule and includes the Lessee's Agents.

Lessee's Agents include each subtenant, licensee and invitee of the Lessee.

Lessee's Business means the business operated from the Premises.

Lessee's Business Hours means the hours that the Lessee may require and the Lessor may approve for the carrying out of the Permitted Use.

Lessee's Property means any fixtures, fittings, plant, equipment, Signage or other property in or about the Premises that are not Lessor's Property or Services.

Lessor means the party named as Lessor in the Reference Schedule.

Lessor's Property includes the Building any fixtures, fittings, plant, equipment, doors, locks, windows, drains, Signage or other property owned or supplied by the Lessor in or about or providing Services to the Premises or the Building.

Lettable Area means the Premises area.

Lettable Area of the Building means the Lettable Area of all premises in the Building occupied or available for occupation by any tenant or occupier but, to the extent allowed at Law, excludes any Common Areas, parking areas, plant rooms, dedicated storage areas, and any other area excluded from the Building by the Lessor or under Law.

Licence Agreement means the Deed of Licence for the Community Ablution licence area in Attachment 2.

Licensed Area means the Community Ablutions area under the Deed of Licence.

Notice means a written notice, demand, legal proceeding or other communication.



Community Lease

Original Term means the Term, or if this Lease is one in a series of tenancies of the Premises, means the first term of the first tenancy in that series.

Permitted Use means the use of the Premises specified in the Reference Schedule.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Premises mean the premises as described in the Reference Schedule.

Reference Schedule means the schedule at the front of this Lease.

Redecorate means to repaint the interior surfaces of the Premises that are usually painted and replace window and floor coverings in the Premises.

Redevelopment means the refurbishment and redevelopment in under the Redevelopment Agreement.

Redevelopment Agreement means the agreement executed between the parties in respect of the refurbishment, redevelopment and funding of the refurbishment and redevelopment of the Premises.

Refurbish means to redecorate and otherwise upgrade the Premises and the Lessee's Property in the way reasonably required by the Lessor under clause 6 and, if reasonably approved by the Lessor, in the Lessee's corporate style and colour scheme.

Related Body Corporate has the meaning as defined in the *Corporations Act 2001* (Cth).

Related Document means the Lease Documents (excluding this Lease) and any other lease, sublease, licence, incentive deed, deed or other document between the Lessor, the Lessee and any other person in connection with the Premises, the Building or the Land.

Rent means the amount referred to in the Reference Schedule and subject to review under this Lease.

Requirement means a condition (including a condition of any Authorisation), demand, direction, Notice, order, request, requirement or requisition received from or given by any Authority or the Lessor or both.

Retail Legislation means the relevant Law in the Home State governing retail shop leases (in Western Australia, the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA)).

Security means any mortgage, charge, lien, pledge or other Security Interest.

Security Dealing means the creation of any Security by the Lessee affecting the Lessor's Property, the Lessee's Property or the Lessee's interest under this Lease.

Security Interest means any interest constituting a security interest as that term is defined in the PPS Act.

Services mean any maintenance, security, rubbish removal, air conditioning, cleaning (including cleaning materials and sanitary services), sewerage, plumbing, drainage, pest control, lighting, electrical, metering, meter reading, communication, fire protection and control, equipment testing and monitoring, technical and other consultants' fees, lift, escalator, heating, caretaking, gardening, landscaping, Signage, car parking, traffic control, child minding and play areas and all Utilities, plant and equipment (including service costs) in connection with them to or for the Premises, the Building or the Land supplied by or on behalf of the Lessor or any Authority.



Community Lease

Signage means any sign, advertisement, nameplate or other similar notification.

Signage Guide means:

- (a) the document (if any) given by the Lessor to the Lessee setting out the Lessor's detailed requirements for the design, approval, erection and display of any Signage of the Lessee; or
- (b) if there is no written guide, the reasonable directions of the Lessor.

Structural means any part of the Premises and/or Building that is in the Lessor's opinion load bearing or supportive or both or otherwise fundamental to the fabric of the Premises and/or Building.

Subdealing means any subletting, licensing, sharing or parting of possession of the Premises by the Lessee.

Supply has the meaning defined in the GST Law.

Sustainability Rating means:

- (c) rating level as the Lessor may from time to time (acting reasonably) require by Notice to the Lessee; and
- (d) any other industry standard or rating scheme (whether mandatory or voluntary) for energy, water, indoor environment and waste management applicable to the Premises to the level reasonably required by Notice from the Lessor to the Lessee.

Tenant User Guide means the Lessor's rules and conditions for managing the Building or any part or precinct of it.

Term means the term of this Lease described in the Reference Schedule.

Termination Date means midnight on the date on which this Lease may end before the Expiry Date because of any earlier termination.

Utilities mean any sources of energy, electricity, gas, water, communication or other similar services to or for the Premises and/or, the Building supplied by or on behalf of the Lessor or any Authority.

Words and expressions not defined in this clause may be described elsewhere in this Lease or in the Reference Schedule.

1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this Lease to:
 - (1) this Lease or another document includes any variation or replacement of it despite any change in the identity of the parties.
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Authority or other entity includes any other of them;

Community Lease

- (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this Lease and a reference to this Lease includes any schedule or attachment;
 - (6) a party includes each person comprising the party, each personal representative, executor, administrator, successor and substitute (including a person who becomes a party by novation), and each officer, employee, agent, contractor and permitted transferee of the party;
 - (7) any Law includes any regulation, instrument or other Requirement under it and any consolidation, amendment, re-enactment or replacement of it;
 - (8) money is to Australian dollars, unless otherwise stated;
 - (9) a time is a reference to time in the capital city of the Home State unless otherwise specified;
 - (10) a month or year means a calendar month or year;
 - (11) a thing includes the whole and any one or more parts of it;
 - (12) writing includes printing, typing, electronic mail and facsimile;
 - (13) any Authority, tribunal, association, institute or other body includes any entity that may, in the reasonable opinion of the Lessor, be constituted instead of or in succession to it; and
 - (14) the President of a body includes any acting President or other principal officer of the body, or that person's delegate.
- (b) The words include, including, such as, for example and similar expressions in this Lease are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning in this Lease, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) The headings to clauses and any table of contents or index in this Lease must be ignored, except headings in the Reference Schedule.
- (e) A provision of this Lease must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of it or the inclusion of the provision in it.
- (f) Each covenant in this Lease by two or more persons as a party is made jointly by all and separately by each.
- (g) The date of this Lease is the date that the last party executes it.
- (h) This Lease is signed, sealed and delivered by each party as a deed.
- (i) To the extent that there may be an inconsistency between a provision in this Lease and a provision in any other Lease Documents, the provision in this Lease will prevail to the extent of the inconsistency.

Community Lease

- (j) Any covenant or power implied under any Law is excluded from this Lease, unless it cannot lawfully be excluded because of the Law, or is expressly incorporated into this Lease.

1.3 Consents and approvals

- (a) If this Lease requires the consent or approval of a party, it must not be unreasonably withheld or delayed unless otherwise specified.
- (b) If anything requires the consent or approval of the Lessor, it must be obtained before the act or thing is done.
- (c) The Lessee must within 14 days after Notice from the Lessor give the Lessor any consent that the Lessor may reasonably require or in the standard form necessary to obtain any consent to or required under this Lease.

2. Grant of Lease

2.1 Term

- (a) The Lessor lets the Premises to the Lessee and the Lessee takes the Premises for the Term:
- (b) The covenant in clause 2.1(a) is conditional on:
 - (1) the Lessee strictly complying with the terms of the Redevelopment Agreement; and
 - (2) Ministerial approval of this Lease.

2.2 Holding over

- (a) If the Lessee remains in occupation of the Premises after the Expiry Date with the Lessor's consent (which may be refused at the Lessor's sole discretion), the Lessee holds over as a month to month occupier on the terms of this Lease so far as they are applicable to a monthly tenancy.
- (b) The Lessor or the Lessee may terminate that monthly tenancy on any day by giving at least one month's Notice to the other party.
- (c) The Rent payable by the Lessee at commencement of that monthly tenancy is the amount of Rent payable monthly under this Lease immediately before the Expiry Date increased by the Fixed Percentage Increase (if any) specified in the Reference Schedule unless otherwise notified to the Lessee at least one month before the Expiry Date. That Rent may be reviewed during the monthly tenancy whenever the Lessor may require on not less than one month's Notice to the Lessee.

2.3 Further Term

- (a) This clause 2.3 only applies if an option to renew for a Further Term is specified in the Reference Schedule.
- (b) If the Lessee:
 - (1) not less than 6 months before the Expiry Date (time being essential) gives a Notice to the Lessor to extend the Term for a Further Term; and

Community Lease

- (2) is not in default under this Lease as at the date of giving that Notice,
- the Lessor must grant and the Lessee must take an extension of the Term for the Further Term on the terms and conditions contained in this clause 2.3 (**Further Term Lease**).
- (c) The terms and conditions of the Further Term Lease are as follows:
- (1) the Rent for the first and each subsequent Lease Year of the Further Term must be determined in accordance with this Lease;
 - (2) this clause 2.3 must only be included in a Further Term Lease that results in the last Further Term Lease in the series of tenancies expiring at the end of the total period of the Original Term and all Further Terms specified in the Reference Schedule, without any further renewal (and if a Further Term or a total period is not specified, it is deemed that there is no further renewal); and
 - (3) the Further Term Lease must otherwise contain the same covenants as this Lease with any modifications that the Lessor may reasonably require because of the changed circumstances or changes to the Law.
- (d) All lease documents for the Further Term Lease must be prepared by the Lessor and signed by the Lessee within one month after the Lessor gives them to the Lessee. The Lessor may (but is not obliged to) give those documents to the Lessee for signing until the Rent from commencement of the Further Term has been ascertained.

3. Rent

3.1 Payment of the Rent

The Lessee must pay to the Lessor the Rent during the Term by one instalment in advance on or before the first day of each year during the Term. The first instalment is payable on or before the Commencement Date.

3.2 CPI Rent review

If a further Term Lease comes into effect this clause 3.2 applies.

- (a) The Rent must be reviewed on each CPI Review Date (if any) specified in the Reference Schedule by multiplying the Rent payable immediately before the CPI Review Date by the Current CPI and dividing by the Previous CPI.
- (b) In this Lease, in addition to other defined terms:

Current CPI means the Index Number for the Financial Quarter last ended immediately before the CPI Review Date.

Financial Quarter means each consecutive period of three months ending on 30 September, 31 December, 31 March and 30 June.

Index Number means the Consumer Price Index (All Groups) for the capital city of the Home State published by the Australian Bureau of Statistics.

Previous CPI means the Index Number for the Financial Quarter last ended one year immediately before the CPI Review Date.

Community Lease

- (c) If any Index Number is suspended or discontinued, it means an Index Number determined by an economist employed or engaged by the Lessor's principal bank on the Lessor's application as reflecting on a consistent basis changes in the cost of living in the capital city of the Home State during the relevant period.
- (d) Despite anything to the contrary, if this subclause 3.2(d) does not cause any review of Rent to be illegal, invalid, unenforceable or void under the Retail Legislation (if applicable) or any other Law, the Rent payable from any CPI Review Date until next reviewed must be the greater of the Rent:
 - (1) as reviewed under this clause 3.2; and
 - (2) payable under this Lease immediately before the CPI Review Date increased by the Fixed Percentage Increase (if any) referred to in the Reference Schedule.

4. Operating Expenses

4.1 Direct charges on Premises

- (a) The Lessee must pay to the relevant supplier by the due date or reimburse the Lessor within 14 days after Notice from the Lessor the cost of:
 - (1) any Services and Utilities consumed on or supplied to the Premises;
 - (2) installing, connecting, changing and reading any meter and any meter rental for measuring any Utilities; and
 - (3) any rates, taxes, levies, charges, fees or other assessments (present or future) imposed by any Authority or under any Law directly against the Premises, the Lessee's Property or the conduct of the Lessee's Business.
- (b) The Lessee must pay to the relevant supplier by the due date or reimburse the Lessor within 13 Business Days after Notice from the Lessor the cost of any electricity consumed on or supplied to the Premises.

4.2 Outgoings

(a) Definitions

In this Lease, in addition to other defined terms:

Accounting Period means each consecutive period not exceeding 12 months selected by the Lessor for the purpose of calculating the Outgoings.

Agreed Proportion means the proportion that the Lettable Area of the Premises bears to the Lettable Area of the Premises and Building, being on the Commencement Date the proportion specified in the Reference Schedule.

Outgoings means all costs, expenses and outgoings paid, payable or incurred by the Lessor or for which the Lessor may become liable in connection with, the Building or the Premises, in any Accounting Period and including:

- (1) rates, assessments or other fees, levies, contributions, impositions or charges (present or future) payable to any local or other Authority or under any Law in respect of the Premises and the Building or the Lessor's ownership or use of it in any Accounting Period (for example: council rates, water rates, sewerage

Community Lease

rates, rubbish and waste removal, body corporate charges, fire service levies and parking charges and levies);

- (2) insurance premiums (including any duty) against all risks in connection with the Premises and the Building, the Lessor and the Lessor's manager, including:
 - (A) insurance of the Premises and the Building against all usual risks to the full reinstatement value (including the cost of removal and disposal of debris, consultants' fees and fire extinguishment costs);
 - (B) plate glass;
 - (C) public liability;
 - (D) workers compensation;
 - (E) replacement, reinstatement, machinery breakdown, industrial, special and such other risks as the Lessor may require, including any claim costs, broker, consultant, valuation or risk assessment fees payable in connection with any insurance policy or its renewal, and the amount of any excess, deductible or settlement sum payable by the Lessor in relation to any claim; and
 - (F) any other insurance the Lessor considers appropriate in its absolute discretion including consequential losses and loss of rent,

whether or not the Lessee has, or is required under this Lease to, insure against similar risks;

- (3) costs in connection with controlling and extermination of pests, insects, vermin, rodents, birds and animals;
- (4) costs in connection with:
 - (A) providing and caring for indoor and outdoor plants; and
 - (B) indoor and outdoor gardening and landscaping;
- (5) costs in connection with the Services and Utilities including:
 - (A) providing, maintaining, repairing (including by replacement of parts), testing and (where applicable) replacing the Services and Utilities;
 - (B) upgrading the Services and Utilities; and
 - (C) the cost of operation of the Services and Utilities, such as the provision of electricity or other power;
- (6) costs in connection with repairing, redecorating, enhancing and maintaining the Premises and the Building;
- (7) the cost of the effective operation of the car parking areas of the Premises and the Building (including the cost of painting of parking bays and other directional signage);

Community Lease

- (8) costs in connection with supplying, maintaining, repairing and replacing all signs.
- (9) costs in connection with complying with the Lessor's reporting and disclosure requirements for the environmental performance of all or any part of the Premises and the Building and the Services and Utilities;
- (10) steps taken in connection with the requirements of any Authority;
- (11) Signage licence fees, environmental levies (including costs arising from environmental emissions), special levies, meter rents, Crown and other rents, and any levies payable under any special facilities licence, or building management statement;

but excluding any:

- (12) leasing commission, capital expenditure (as determined by the Lessor's accountants in accordance with generally accepted accounting principles), income tax or capital gains tax of the Lessor; and
- (13) payment for which the Lessee or another occupier of the Building is directly responsible.

(b) **Payment of Outgoings Contribution and verification of Outgoings**

- (1) The Lessee must pay the Outgoings Contribution to the Lessor (in addition to the Rent) for each Accounting Period.
- (2) If this Lease requires the Lessee to pay the Outgoings Contribution, the Lessor may give the Lessee a statement of the estimated Outgoings for the relevant Accounting Period (**Annual Estimate**).
- (3) If the Lessor gives the Lessee an Annual Estimate:
 - (A) the Lessee must pay the Outgoings Contribution by equal monthly instalments in advance on the same dates and in the same way as instalments of the Rent in accordance with the Annual Estimate;
 - (B) pending the Lessor giving the Lessee an Annual Estimate for any subsequent Accounting Period, the Lessee must pay the Outgoings Contribution in accordance with the Annual Estimate given for the immediately preceding Accounting Period, and any necessary adjustment must be made between the Lessor and the Lessee upon the Lessor giving the Lessee Notice of the adjustment;
 - (C) within three months after the end of the Accounting Period, the Lessor must give the Lessee an itemised statement of the Outgoings actually incurred by the Lessor during the Accounting Period (**Outgoings Statement**); and
 - (D) within one month after delivery of the Outgoings Statement, any necessary adjustment must be made between the Lessor and the Lessee.
- (4) As an alternative to or in addition to the procedures in subclauses 4.2(b)(2) and 4.2(b)(3), the Lessor may at any time require the Lessee to reimburse the



Community Lease

Lessor on demand the Agreed Proportion of any Outgoings incurred by the Lessor.

(c) **Apportionment and recalculation of Outgoings**

- (1) If any Outgoings relate to a period outside the relevant Accounting Period, or to any land or premises outside the Premises and the Building, the Lessor must apportion them in the way reasonably required by the Lessor.
- (2) The Lessor may recalculate the Agreed Proportion or the Annual Estimate or both at any time. Any change applies from the date on which it may occur, and the Lessee must adjust payments of its Outgoings Contribution on the Lessor giving the Lessee Notice of it.

5. Use covenants

5.1 Lessee's conduct of business and Permitted Use

(a) The Lessee must at its cost:

- (1) use, occupy and conduct the Lessee's Business in the whole of the Premises during the Lessee's Business Hours in a responsible and reputable way;
- (2) keep the Premises neat and tidy, clean and free from pests and rubbish;
- (3) keep the Premises locked and secure when not occupied;
- (4) comply with any other reasonable requirements of the Lessor in connection with the use of the Common Areas and the conduct of fire drills, evacuation procedures and the Lessee's Business; and
- (5) be respectful of and not interfere with other occupier's use of the Land, the Building and in particular the Common Areas and Community Ablutions.

(b) The Lessee must not:

- (1) use the Premises for any purpose other than the Permitted Use;
- (2) use the Premises wholly or predominantly for carrying on any retail business as referred to in the Retail Legislation;
- (3) conduct any annoying, dangerous or illegal business in or about the Premises;
- (4) misuse or do anything to overload the facilities, Services or Utilities of the Premises, the Building or the Land;
- (5) obstruct or interfere with any windows, air vents, air conditioning ducts, skylights, sprinklers, fire equipment or emergency exits in the Premises and the Building;
- (6) obstruct or interfere with any Signage or directory boards provided by or on behalf of the Lessor;
- (7) conduct business or place anything outside the Premises or any Licensed Area without the Lessor's consent (which may be refused at the Lessor's absolute discretion);

Community Lease

- (8) permit any overflow, leakage or escape of water, fire, gas, electricity, odour or any other harmful agent in or from the Premises;
 - (9) pollute or contaminate the Premises or the Building or its environment; or
 - (10) alter or interfere with the Lessor's Property or remove it from the Premises or the Building without the Lessor's consent.
- (c) The Lessor gives no warranty (either present or future) as to the suitability or adequacy of the Premises or the lawfulness of the Permitted Use.
- (d) The Lessee must at its cost:
 - (1) obtain, maintain and comply with any Authorisation that may be necessary or appropriate for the conduct of the Lessee's Business or the Permitted Use in the Premises; and
 - (2) comply with all Law and Requirements affecting this Lease, the Premises and the Lessee's Property and the use of each of them, including fire protection and environmental matters.
- (e) This clause 5.1 does not require the Lessee to effect any Structural alteration or addition to the Premises, unless required by the Redevelopment Agreement, the Lessee's use or occupation of the Premises, the nature of the Lessee's Business, the number or gender of any persons in the Premises, any neglect or default of the Lessee or any combination of those things.
- (f) If the Lessor is required or elects to comply (in whole or in part) with any Law or the Requirement of any Authority in connection with the Premises, the Lessee must pay to the Lessor all reasonable costs incurred by the Lessor in connection with that.

5.2 Lessee's Signage

- (a) The Lessee must not place any Signage on or near the Premises, or in the Premises and visible from outside the Premises, unless the Lessee obtains the prior written consent of the Lessor.
- (b) Any Signage erected by the Lessee must:
 - (1) be of a size, style, type, position and electrically lit as the Lessor may reasonably require and comply with the Signage Guide;
 - (2) be displayed at all times and kept clean and in good repair and condition by the Lessee;
 - (3) be professionally made, not handwritten, and must be incidental to the Lessee's Business;
 - (4) not emit any flashing lights; and
 - (5) be immediately removed if not approved by the Lessor.

5.3 Lessee's name and Lessor's directory board

- (a) The Lessee must not operate the Lessee's Business under any name other than the Lessee's name or such other name approved by the Lessor.

Community Lease

- (b) The Lessee consents to the Lessor using the Lessee's name but only for the purpose of any marketing, advertising or other promotion activities in connection with the Building.

5.4 Use of Common Areas

The Lessee must:

- (a) not obstruct or otherwise interfere with any Common Areas by leaving or placing any article or thing, parking any delivery or other vehicle in it, or in any other way; and
- (b) comply with any reasonable directions of the Lessor for the receipt, delivery or other movement of any goods, articles or vehicles or any other use of the Land and/or any Common Areas.

5.5 Access Devices

- (a) The Lessor must provide the Lessee with not more than one Access Device for every 12 square metres of Lettable Area of the Premises free of charge, provided that each of the Access Device holders are registered with the Lessor.
- (b) The Lessee must pay for the replacement of any lost or damaged Access Device at the rate then charged by the Lessor.
- (c) The Lessor may carry out quarterly audits of Access Devices and the Lessee must promptly comply with any request by the Lessor to provide information regarding any lost, damaged or unregistered Access Device. All Access Devices are and must remain the property of the Lessor.

6. Repair, maintenance and other work

6.1 Repair and maintenance

- (a) The Lessee must keep and maintain the Premises in good and substantial repair and condition, except for fair wear and tear and any Damage Event. However, the exceptions in this subclause 6.1(a) do not apply if any damage is caused or contributed to by the Lessee, or payment of any money to the Lessor under any insurance policy is refused or reduced, because of that. The Lessee acknowledges that the Premises are in good repair and condition as at the Commencement Date of the Original Term.
- (b) Subclause 6.1(a) does not require the Lessee to effect any Structural repair, alteration or addition to the Premises, unless required by the Redevelopment Agreement, the Lessee's use or occupation of the Premises, the nature of the Lessee's Business, the number or gender of any persons in the Premises, any neglect or default of the Lessee or any combination of those things.
- (c) The Lessee must at its cost effect and maintain service, maintenance and repair contracts on all plant and equipment in or otherwise exclusively servicing the Premises (**Maintenance Contract**) with an experienced and reputable contractor approved by the Lessor (except to the extent that the Lessor may otherwise require by Notice to the Lessee), in which case:
 - (1) the Maintenance Contract must require the relevant equipment to be inspected and serviced by the contractor at least once during each consecutive period of six months from the Commencement Date and otherwise on terms and conditions reasonably required by the Lessor;

Community Lease

- (2) the Lessee must replace any major components of a capital nature for any such plant and equipment; and
- (3) the Lessee must not later than 14 days after the end of each period referred to in subclause 6.1(c)(1) produce to the Lessor a report in reasonable detail from the contractor confirming that the plant and equipment has been inspected and serviced during the relevant period and details of any work carried out to it.
- (d) Despite anything to the contrary, the Lessee must at its cost promptly and in the way reasonably required by the Lessor:
 - (1) replace any glass in or about the Premises that may be damaged or broken with similar glass;
 - (2) replace any damaged or non-operative means of illumination in connection with the Premises;
 - (3) repair or (if appropriate) replace any item of the Lessor's Property or the Lessee's Property or both that may be damaged by the Lessee or for which the Lessee is liable with similar items; and
 - (4) Refurbish within three months after written notice from the Lessor (but not more than once during each consecutive period of five years), and in any case Refurbish during the last three months of the Term if the Lessee is then entitled to a Further Term.
- (e) The Lessee's covenants in this clause 6.1 also apply at any time while the Lessee may be in possession of the Premises outside the Term (for example, during any period of fitout or holding over).

6.2 Works by Lessee

- (a) The Lessee must not carry out any works required under the Redevelopment Agreement, other works to the Premises or the Lessee's Property (**Lessee's Works**) without the Lessor's approval. The Lessor may at its discretion withhold approval to any Lessee's Works of a Structural nature.
- (b) Within 14 days after Notice from the Lessor and before carrying out the Lessee's Works, the Lessee must at its cost:
 - (1) provide such details as the Lessor may reasonably require evidencing that the contractor appointed by the Lessee to carry out the Lessee's Works (**Lessee's Builder**) is (together with any subcontractor) reputable, competent, licensed and holds insurance against the risks and for amounts that the Lessor may reasonably require and all necessary and current Authorisations to carry out the Lessee's Works;
 - (2) submit detailed plans and specifications for the Lessee's Works to the Lessor and (after the Lessor's approval) to any relevant Authority for approval; and
 - (3) obtain and produce to the Lessor for its approval any Authorisation required from any Authority necessary to lawfully carry out the Lessee's Works.
- (c) The Lessee's Works must comply with any Fitout Guide and Signage Guide.

Community Lease

- (d) The Lessee must cause any Lessee's Works to be carried out:
- (1) at its cost by the Lessee's Builder approved by the Lessor during the hours and in the way reasonably required by the Lessor and in a prompt, good and workmanlike way and in accordance with all Law and Requirements;
 - (2) in accordance with the Fitout Guide and Signage Guide and the Lessor's approval and reasonable supervision and direction;
 - (3) if reasonably approved by the Lessor, in the Lessee's corporate style and colour scheme; and
 - (4) in a way that does not cause any disruption or disturbance to the Lessor or any other contractor, tenant or occupier of the Building or the Land.
- (e) The Lessee must:
- (1) within 14 days after Notice from the Lessor pay the Lessor's reasonable costs in connection with the Lessee's Works (whether approved or not), including any approval process, supervision of works, consequential works and security for costs (if reasonably required by the Lessor);
 - (2) at its cost promptly and in any case within 14 days after Notice from the Lessor rectify any deficiency or other defect in the Lessee's Works and any damage caused to the Building because of the Lessee's Works; and
 - (3) on completion of the Lessee's Works, deliver to the Lessor a certificate from the certifier/superintendent stating that the works have been completed in accordance with the Requirements of the Authority and may be lawfully used for the Permitted Use.
- (f) Despite anything to the contrary, the Lessor may by Notice to the Lessee elect to carry out at the cost of the Lessee any Lessee's Works that may in the reasonable opinion of the Lessor be of a Structural nature or that may affect any Services or Utilities.
- (g) The Lessee's covenants in this clause 6.2 also apply at any time while the Lessee may be in possession of the Premises outside the Term (for example, during any period of fitout or holding over), except to the extent required under the Agreement for Lease (if any).

6.3 Lessee's obligations at end of Term

- (a) During the period of 14 days either before the Exit Date or after the Termination Date, the Lessee must at its cost and in the way reasonably required by the Lessor:
- (1) remove the Lessee's loose items and personal belongings from the Premises and make good any damage caused to the Premises as a result of the removal;
 - (2) remove all rubbish and leave the Premises in a clean and tidy condition;
 - (3) deliver up vacant possession of the Premises in the condition required by this Lease (except to the extent required by this clause 6.3) and return all Access Devices to the Lessor; and
 - (4) remove any Subdealing or Security affecting the Premises or the Lessee's interest under this Lease.

Community Lease

- (b) Before carrying out any works under this clause 6.3, the Lessee must obtain the Lessor's consent and comply with clause 6.2. The Lessee must pay any reasonable costs incurred by the Lessor in connection with the Lessee's obligations under this clause 6.3, including the cost of engaging any qualified consultant in connection with ascertaining the condition of the Premises and any works required to be carried out.
- (c) If the Lessee defaults under this clause 6.3, the Lessor may, on not less than seven days' Notice to the Lessee, either:
 - (1) carry out the Lessee's obligations under this clause 6.3 to the exclusion of the Lessee;
 - (2) treat the Lessee's Property as abandoned and take property in it, and remove, leave or otherwise deal with it in the way required by the Lessor without any compensation to the Lessee; or
 - (3) do any combination of those things.
- (d) The Lessee indemnifies the Lessor against any Claim by any person claiming an interest in the Lessee's Property because of the Lessor exercising its rights under subclause 6.3(c)(1).
- (e) The Lessee must continue to pay all Rent and other money under this Lease as if the Lessee was holding over on a daily basis until the later of the date that the works required under this clause 6.3 have been completed, or the Lessor may complete the Lessee's obligations under subclause 6.3.

7. Lessee's insurance, risk and indemnity

7.1 Lessee must insure

The Lessee must at its cost effect and maintain the following insurances:

- (a) insurance on the Lessee's Property for an amount not less than its full insurable and replacement value with coverage against at least any Damage Event;
- (b) public risk liability insurance applying to the Premises, any Licensed Area and the Lessee's Business for at least \$20 million per occurrence or any higher amount that the Lessor may reasonably require;
- (c) insurance on all plate and other glass in connection with the Premises; and
- (d) workers' compensation insurance and any other insurance required under Law or that the Lessor may reasonably require including insurance in connection with the Lessee's works on the Premises.

7.2 Requirements for Lessee's insurance

- (a) All insurance policies taken out by the Lessee under this Lease:
 - (1) must be taken out in the name of the Lessee and note the Lessor in connection with the Land as an interested party; and
 - (2) may be taken out as part of a global policy but must be taken out as primary cover.

Community Lease

(b) The Lessee must:

- (1) within 14 days after Notice from the Lessor deliver certificates of any insurance required to be taken out by the Lessee under this Lease whenever reasonably required by the Lessor;
 - (2) within 14 days after Notice from the Lessor produce the full policies and any relevant insurance valuation evidencing compliance with the Lessee's insurance obligations under this Lease whenever reasonably required by the Lessor; and
 - (3) apply the proceeds of the Lessee's insurance to reinstate, replace or restore the loss or damage to the insured item and make up any deficiency from its own funds.
- (c) The Lessee must within 14 days after Notice from the Lessor pay to the Lessor any insurance excess, deductible or shortfall payable by the Lessor for any insurance Claim made in connection with the Premises (if the Claim arises because of any act, omission, neglect or default of the Lessee), and all extra insurance costs for any extra risk caused by any use or occupation of the Premises.

7.3 Lessee's risk and indemnity

Except to the extent of any neglect or default of the Lessor:

- (a) the Premises, the Lessee's Property and the exercise of any right or remedy by the Lessee under this Lease is at the sole risk of the Lessee; and
- (b) the Lessee releases and indemnifies the Lessor against any Claim to the extent arising from any:
 - (1) loss, damage, death or injury to any property or person in or about the Premises caused or contributed to by the Lessee or any use or occupation of the Premises by the Lessee or by the Lessor exercising or not exercising any right or remedy under this Lease;
 - (2) act, omission, neglect or default of the Lessee;
 - (3) Services not being available, interrupted or not working properly; or
 - (4) combination of those things.

7.4 Application of Lessee's insurance, risk and indemnity covenants

The Lessee's covenants in this clause 7 also apply at any time while the Lessee may be in possession of the Premises outside the Term (for example, during any period of fitout or holding over).

8. Dealing

8.1 Lease Dealing by Lessee

The Lessor has agreed to this Lease on the basis of the Lessee's satisfaction of the Lessor's criteria with respect to the Premises. Accordingly, this Lease is personal to the Lessee and notwithstanding any other rule or law to the contrary, the Lessee must not complete any Lease Dealing in respect of this Lease or the Premises.

Community Lease

8.2 Multiple Lessees

If at any time the Lessee comprises more than one party, this clause 8 applies to any proposed Dealing by any one of those parties of their separate interest.

8.3 Security Dealing by Lessee

- (a) The Lessee must not create or allow to come into existence any Security Dealing without the Lessor's consent.
- (b) If the Lease Documents (or any Dealing in connection with any of them) give rise to any Security Dealing under the PPS Act in favour of the Lessor, the Lessee:
 - (1) acknowledges that the Security Interest attaches to any proceeds or any accession;
 - (2) consents to the Lessor registering the Security Interest in the appropriate registry; and
 - (3) must at its cost within 14 days after Notice from the Lessor do all things reasonably required by the Lessor to enable the Lessor to register, maintain, amend, discharge or otherwise deal with the Security Interest, or to exercise, comply with and perfect its rights under this clause 8.3.
- (c) The Lessor is not required to give the Lessee any verification, statement or other notice under the PPS Act unless it is mandatory and cannot be excluded.
- (d) The Lessor and the Lessee contract out of the Lessor's obligation to dispose of or retain collateral under section 125 of the PPS Act.
- (e) In this clause, words defined in the PPS Act have the meanings given to them in the PPS Act.

9. Default

9.1 Events of default

The Lessee is in default under this Lease if:

- (a) any Rent or other money payable by the Lessee is unpaid after becoming payable;
- (b) the Lessee fails to promptly comply with any of its covenants under this Lease, the Redevelopment Agreement, the Deed of Licence or any Related Document;
- (c) the Lessee fails to comply with any of the requirements set out in the Tenant User Guide;
- (d) an Insolvency Event occurs to the Lessee; or
- (e) any combination of those things occurs.

9.2 Consequences of default

- (a) If the Lessee defaults under or repudiates this Lease and the Lessee, the Redevelopment Agreement or Deed of Licence fails to remedy it to the Lessor's reasonable satisfaction within a reasonable time after the Lessor has given the Lessee a Notice to remedy it, the Lessor may, without limiting any other rights, either:



Community Lease

- (1) terminate this Lease and
 - (A) enter into and take exclusive possession of the Premises (by force if necessary), eject the Lessee and remove or otherwise deal with the Lessee's Property; or
 - (B) convert this Lease into a tenancy from month to month (in which case clause 2.2 applies); or
- (2) remedy the default or repudiation in the way reasonably required by the Lessor (but without being obliged to do so).
- (b) The Lessee acknowledges that not more than 14 days is a reasonable time to remedy the non-payment of any money.
- (c) The Lessee must in addition to any other obligations, pay the Lessor any amount reasonably necessary to fully compensate the Lessor for any Claim in connection with any default or repudiation by the Lessee.
- (d) The Lessor is not obliged to terminate this Lease if the Lessee defaults or repudiates, but if the Lessor terminates this Lease because of that, the Lessor must use reasonable endeavours to mitigate its loss.
- (e) The Lessee's covenants in each the following clauses are an essential term of this Lease:
 - (1) clause 3 (Rent), clause 4 (Operating Expenses), clause 5 (Use covenants), clause 6 (Repair, maintenance and other work), clause 7 (Lessee's insurance, risk and indemnity) and clause 8 (Dealing); and
 - (2) any covenant to pay any money, any covenant expressed to be essential, and any covenant under Law or held by a Court to be essential.
- (f) If the Lessor terminates this Lease under this clause 9.2, the Lessor may also recover from the Lessee:
 - (1) any Rent or other money owing at the Termination Date;
 - (2) the amount by which the Rent and other money that would have been payable by the Lessee for the unexpired residue of the Term exceeds what is or is likely to be paid by another occupier from a re-letting of the Premises for the unexpired residue of the Term; and
 - (3) any other amount necessary to compensate the Lessor for early termination and loss of its bargain.
- (g) Despite anything to the contrary, the Lessee cannot take action against the Lessor for any default or repudiation of this Lease by the Lessor unless the Lessee gives the Lessor a detailed Notice of it and the Lessor fails to remedy it to the Lessee's reasonable satisfaction within a reasonable time.

Community Lease

10. Lessor's covenants and reservations

10.1 Lessor's covenants

- (a) While the Lessee is not in default under this Lease, the Lessee may use and occupy the Premises during the Term without interruption by the Lessor, except if otherwise allowed under this Lease.
- (b) The Lessor must pay all rates and taxes payable for the Land, except any amount that the Lessee is required to pay under clause 4.2(b).
- (c) The Lessor must use its reasonable endeavours to keep any Services supplied by the Lessor to the Premises during the Building Hours, subject to any break downs or temporary shutdowns due to equipment or supply failure or periodic maintenance or any circumstances beyond the Lessor's control.
- (d) Despite anything to the contrary, the Lessor is not obliged to put the Premises into any better condition than they are in as at the Commencement Date of the Original Term.
- (e) The Lessor must allow the Lessee access to and from the Premises and Community Ablution facilities during the building hours except if otherwise referred to in this Lease. If the Lessee requires access outside the Building Hours, the Lessee must comply with all reasonable security and other access requirements of the Lessor.

10.2 Lessor's Signage rights

- (a) The Lessor may place Signage on the exterior of the Premises including Signage to advertise the Premises for letting. That Lessor's Signage must not obstruct the view of any Lessee's Signage approved by the Lessor, and the Lessee must not remove, obstruct or interfere with the Lessor's Signage.
- (b) The Lessor has sole control of any directory boards or other Signage provided by the Lessor.

10.3 Lessor's entry rights

- (a) The Lessor may at any time after giving the Lessee a Notice for a reasonable time (except in emergency when a Notice is not required) enter the Premises for any purpose, including to carry out work, inspect or view the Premises with any agent or other consultant. The Lessor must take reasonable steps to minimise any disturbance to the Lessee's Business when exercising its rights under this clause 10.3.
- (b) When entering the Premises under this clause 10.3 the Lessor must be accompanied by an authorised representative of the Lessee appointed by the Lessee and notified to the Lessor for that purpose. If the representative is not appointed, notified and available at the relevant time or if there is an emergency, the Lessor may enter without any representative.

10.4 Other occupiers

The Lessor is not responsible to the Lessee for any act, omission, neglect or default, non-observance or non-enforcement of any lease or other right of occupation by any occupier of other premises on the Land.

10.5 Changes by the Lessor

- (a) The Lessor may:

Community Lease

- (1) use any air space for any purpose, subdivide the Land or amalgamate it with other land, grant any easement or other rights over it or grant a concurrent lease;
 - (2) alter, renovate, redevelop or extend the Building (but not the Premises except if otherwise allowed under this Lease or the Redevelopment Agreement), name the Building (and change the name), make charges for parking, change its tenancy mix and the Building Hours, control the Common Areas and all Signage and lighting, and permit any function, display or other activity to occur in the Common Areas; or
 - (3) do any combination of those things.
- (b) The Lessor must not permanently, substantially and adversely derogate from the rights of the Lessee when exercising its rights under subclause 10.5(a)(1) without the consent of the Lessee, except to the extent permitted under another provision of this Lease.
- (c) The Lessee must within 14 days after Notice from the Lessor do all things reasonably required by the Lessor (including executing a surrender of this Lease and a new lease for the balance of the Term then unexpired) to enable the Lessor to exercise, comply with and perfect its rights under this clause 10.5.
- (d) If the Lessee complies with its obligations under this clause 10.5, the Lessor must pay the Lessee's reasonable legal costs and any duty and registration fees for the relevant documents in full satisfaction of any Claim by the Lessee for any loss, damage, costs or compensation in connection with the transaction.
- (e) Except to the extent of any neglect or default of the Lessor, the Lessee may not object or make any Claim against the Lessor in connection with the exercise of the Lessor's rights under this clause 10.5.

10.6 Management and Tenant User Guide

- (a) The Lessor may appoint an agent to manage the Building (**Managing Agent**).
- (b) The Managing Agent represents the Lessor except to the extent that the Lessor may otherwise notify the Lessee.
- (c) The Lessor may make, revoke, suspend and vary the Tenant User Guide. The Lessee must comply with the Tenant User Guide as if they are covenants under this Lease. This Lease prevails to the extent a Rule may be inconsistent with this Lease.
- (d) The Lessor must give the Lessee a Notice of any Managing Agent and Tenant User Guide and any changes to them.

10.7 Damage or destruction

- (a) If the Premises or the Building are damaged by any Damage Event so that the Lessee's use of and access to the Premises is wholly or substantially and (in any case) adversely affected, the Rent and any Outgoings Contribution must be reduced in proportion to the nature and extent of the damage sustained until the Premises have been restored and made usable and accessible or this Lease is terminated.
- (b) If the Lessor does not within three months after the Damage Event give the Lessee a Notice (**Restoration Notice**) of the Lessor's intention to restore the damage and make the Premises useable and accessible (**Restoration Works**), or does not within a

Community Lease

reasonable time after giving the Restoration Notice proceed with the Restoration Works, the Lessor or the Lessee may terminate this Lease by giving one month's Notice to the other party (**Termination Notice**).

- (c) If the whole or a substantial part of the Premises or the Building or the whole or a substantial part of the Premises or the Building is damaged or destroyed, or any damage or resumption renders the Premises totally unable to be used or made inaccessible, or in the Lessor's opinion the damage makes it impractical or undesirable to carry out the Restoration Works, the Lessor may (despite anything to the contrary) terminate this Lease by giving a Termination Notice.
- (d) Despite anything to the contrary:
 - (1) the Lessee's rights under subclauses 10.7(a) and 10.7(b) do not apply if the Damage Event has been caused or contributed to by any neglect or default of the Lessee, or payment of any money to the Lessor under any insurance policy is refused or reduced, because of that;
 - (2) if the Lessor gives a Restoration Notice, its obligation to carry out any Restoration Works is subject to the Lessor obtaining any necessary Authorisation on terms satisfactory to the Lessor within a reasonable time;
 - (3) the Lessor is not obliged to restore the Premises or the Building or the means of access (or to any former specifications) if there is any damage as referred to in this clause 10.7; and
 - (4) the Lessee is not entitled to any compensation from the Lessor because of any resumption or termination of this Lease by either the Lessor or the Lessee under this clause 10.7.

11. Miscellaneous

11.1 Notices

- (a) Any Notice from a party to another is served if it is delivered or sent to the address of the party specified in this Lease, or the address of the lawyers last acting for the party, or another address in Australia that a party may have last notified to another party for that purpose, or to the party in any other way that is lawful.
- (b) A Notice sent by post is served on the Business Day following the date of posting. A Notice sent by electronic mail or facsimile transmission is served on receipt by the sender of a report from the sender's transmitting machine that the Notice has transmitted. If a Notice is served on a day that is not a Business Day, or after 5.00pm on any Business Day, the Notice is served at 9.00am on the following Business Day.
- (c) A Notice must be in legible English and signed by the party giving the Notice, or on its behalf by its lawyer, attorney, manager or other agent which includes (for a corporation, association or other body) any director, manager, secretary or other authorised officer of it.

11.2 Costs

- (a) The Lessee must pay all reasonable costs (including legal costs on a full indemnity basis) and expenses of the Lessor in connection with the negotiation, preparation, signing and (if applicable) stamping and registration of this Lease.

Community Lease

- (b) The Lessee must otherwise pay all reasonable costs (including legal costs on a full indemnity basis) and expenses of the Lessor in connection with this Lease, including:
- (1) any duty, registration fees or other taxes payable on it and any other instrument relating to it;
 - (2) any amendment, surrender or Dealing in connection with it;
 - (3) any default under or repudiation of it by the Lessee;
 - (4) the Lessor or the Lessee exercising any right or remedy under it;
 - (5) the consent or approval of the Lessor and any other person to or under it or to any Dealing whether granted or not;
 - (6) any litigation or other proceeding involving the Lessee and any third party where the Lessor is made a party; and
 - (7) the preparation of any plan attached to it.

11.3 Goods and services tax

- (a) If GST is imposed on any Supply made by a party (**Supplier**) under or in connection with this Lease, the recipient of that Supply (**Recipient**) must pay the GST to the Supplier in addition to the consideration for the Supply, and at the same time as the Recipient must pay for the relevant Supply.
- (b) The Supplier must give the Recipient a tax invoice complying with the GST Law by the due date for payment of the Supply referred to in this clause 11.3.
- (c) All amounts payable under this Lease are exclusive of GST, unless otherwise specified.

11.4 Governing law

This Lease is governed by the Law of Western Australia.

11.5 Severance

If any provision of this Lease is illegal, invalid, unenforceable or void in a jurisdiction it must be severed for that jurisdiction, the remainder of this Lease has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. The Lessor may modify or amend any provision of this Lease so that it is no longer illegal, invalid, unenforceable or void.

11.6 Waiver

Any failure or delay by the Lessor to exercise any right or remedy is not a waiver of it, and a waiver by the Lessor of a particular breach is not a waiver of another breach. Any waiver by the Lessor must be in writing.

11.7 Performance of covenants

- (a) Each covenant by a party not to do anything includes an obligation not to allow it to be done.

Community Lease

- (b) The exercise of a particular right or remedy by a party does not limit or affect the exercise of any other right or remedy unless otherwise specified.
- (c) The failure or inability of the Lessee to comply with a covenant does not relieve the Lessee from any of its other covenants, including payment of Rent and other money.
- (d) The performance of a covenant by the Lessor under this Lease is subject to the Lessee complying with its covenants, and any circumstances beyond the control of the Lessor.
- (e) This Lease binds the parties from the Commencement Date even if it is signed on a later date, and all covenants to be performed after the Expiry Date or Termination Date continue until performed.
- (f) If anything must be done or a time limit expires on a day that is not a Business Day, it is extended to the next Business Day. However, this does not apply when ascertaining the Commencement Date or to any obligation of the Lessee to open the Premises for business.
- (g) Time is essential for all rights and obligations of the Lessee.

11.8 Payment of money

- (a) All payments of money to the Lessor must be made unconditionally:
 - (1) in Australian dollars in the way reasonably required by the Lessor (which may include electronic funds transfer) without any deduction or set off whatever; and
 - (2) without any Notice or demand at the time specified, or if not specified, within 30 days after Notice from the Lessor.
- (b) The Lessor may ignore any condition made by the Lessee when the Lessee pays any money.
- (c) A requirement for any party to pay any costs or other expenses of the Lessor includes all reasonable legal costs on a full indemnity basis and other reasonable expenses.
- (d) Expiry or termination of this Lease does not affect the Lessee's obligations to make payments under this Lease for periods before or after that.

11.9 Signing, attorneys, counterparts, electronic mail and faxing

- (a) Each signatory is bound even if signing by another person does not happen or is void.
- (b) Each person signing as an attorney, officer or agent for any party warrants to all other parties that the person signing is fully authorised to bind the principal and that the authority has not been revoked.
- (c) This Lease may be signed in original, counterpart, electronic mail or facsimile form. If signed in counterparts, all signed counterparts form one document. If signed in counterpart, electronic mail or facsimile form, all parties must each sign one original part of this Lease for each party within one month after a Notice to do so from any party.



Community Lease

11.10 Further assurances

Each party must within 14 days after Notice from the Lessor sign documents and do anything else reasonably necessary or appropriate to give full effect to this Lease and to more perfectly assure the completion and benefit of a transaction or covenant under or in connection with this Lease in favour of the Lessor.

11.11 Documentation

- (a) Any deed or other document to be signed under this Lease must be prepared by or on behalf of the Lessor in the form reasonably required by the Lessor, unless otherwise specified.
- (b) Each party irrevocably authorises and directs the Lessor and its lawyers to complete the Lease Documents by inserting any words, dates, names, figures, plans or forms of consent and making any corrections that the Lessor may reasonably require to the extent necessary to maintain consistency with this Lease.
- (c) The Lessee must sign any Related Document that the Lessor may require to be signed at the same time as this Lease.

11.12 Entire agreement

The Lease Documents contain the entire and finally concluded agreement between the parties in connection with their subject matter, and replace any representations, negotiations, discussions, letter of intent, offer to lease or other similar documents that may have taken place before signing the Lease Documents.

11.13 Privacy

The Lessee consents to the Lessor:

- (a) collecting any Personal Information (as defined in the *Privacy Act 1988* (Cth)) from the Lessee or any credit reporting agency, financial institution or other third party about the Lessee or another person; and
- (b) using and disclosing Personal Information for:
 - (1) deciding whether or not the Lessor will enter into this Lease or any Related Document or Dealing in connection with any of them;
 - (2) enabling the Lessor to perform or otherwise comply with any obligations or to exercise or otherwise enforce any rights under this Lease;
 - (3) compiling and maintaining records (including a marketing database) of any tenant or other occupier in the Building or the Building;
 - (4) disclosure to and use by any third party, including any manager, contractor, service provider, professional adviser, insurer, valuer, financial institution, purchaser, business referee or other third party in connection with any purpose in this clause 11.13, or with whom the Lessor may be negotiating in relation to any transaction in connection with this Lease or the Building; or
 - (5) any combination of those purposes.

Community Lease

11.14 Work health and safety

- (a) The Lessee must comply with the *Occupational Safety and Health Act 1984 (WA)* (**WHS Act**), the *Occupational Safety and Health Regulations 1996 (WA)* (**WHS Regulations**) and any applicable Laws and Codes of Practice when carrying out any work in connection with the Premises, and ensure that the Lessee has adequate systems in place to identify, minimise and control any hazards.
- (b) The Lessee acknowledges that during the Term, the Lessee has the management and control of the Premises.
- (c) The Lessee agrees that if there is any works carried out in connection with the Premises, the Lessee:
 - (1) is the principal contractor for the works unless the Lessee validly appoints another person as the principal contractor with the Lessor's consent; and
 - (2) must comply with all of the Lessor's reasonable requirements in connection with work, health and safety.
- (d) The Lessee must give the Lessor a Notice of any risk to the health and safety of any persons in or about the Premises and of any notifiable incident under the WHS Act as soon as the Lessee may become aware of any such risk or incident.

11.15 Sustainability Rating and initiatives

- (a) The Lessor acknowledges that it must use its reasonable endeavours to manage and operate the Building in such a way as to minimise the environmental impact of its use and occupation.
- (b) The Lessee acknowledges that it must use its reasonable endeavours to use and occupy the Premises in such a way as to minimise the environmental impact of its use and occupation.
- (c) The Lessee must at its cost in the way and at the times reasonably required by the Lessor:
 - (1) achieve and maintain the Sustainability Rating and provide the Lessor with reports in the form reasonably required by the Lessor containing correct and current data and information to enable the Lessor to comply with the Sustainability Rating; and
 - (2) otherwise comply with any reasonable requirements of the Lessor in connection with the Sustainability Rating, including any reasonable requirements for the use, management and storage of energy and water, the implementation and reporting of any environmental initiatives, the minimisation of the environmental impact of any works carried out in connection with the Premises, and the minimisation of waste (including from the installation and removal of any fitout in connection with the Premises).
- (d) Each party must otherwise in good faith cooperate with each other to assist each other to achieve and maintain the Sustainability Rating.

11.16 Exclusion of statutory provisions

- (a) Sections 80 and 82 of the *Property Law Act 1969 (WA)* do not apply to this Lease.



Community Lease

- (b) The covenants, powers and provisions implied in leases by section 92,93 and 99 of the *Transfer of Land Act 1893* (WA) do not apply to this Lease.

Signing page

**Executed by the Shire of Wyndham East
Kimberley** in accordance with section 9.49A of
the *Local Government Act 1995*:

Signature of Authorised Officer

Print Full Name Authorised Officer

Position of Authorised Officer

Executed by Western Australia Police and
Community Youth Centres Inc Registration
Number A04100075

Director

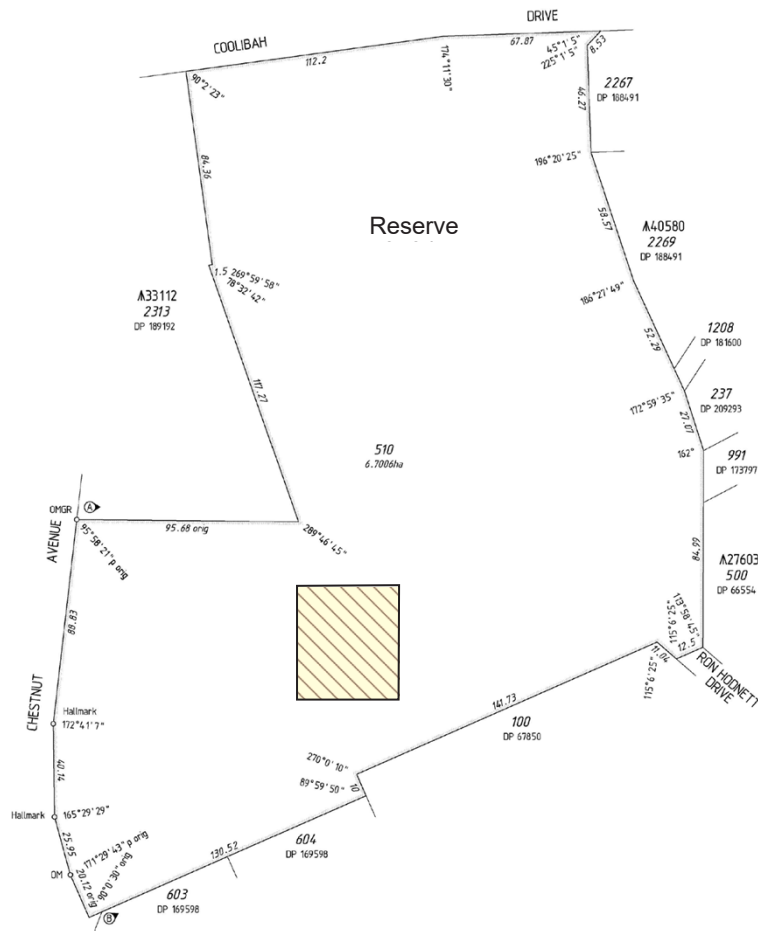
Director/Secretary

Print full name of Director

Print full name of Director/Secretary

Attachment 1

– Plan of the Premises





DRAFT