

Council

RENEWAL OF LEASE – SALEYARDS HOLDING  
PENS – M & J MITCHELL PTY LTD

Draft Lease

Meeting Date: 08 September 2020

Number of Pages : 16

**Dated 1 July 2020**

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**SHIRE OF PLANTAGENET**

**and**

**M & J MITCHELL PTY LTD**

**LEASE**

**Lot 3 Plantagenet Location 4900  
Albany Highway, Mount Barker**

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## LEASE

DEED dated

BETWEEN **SHIRE OF PLANTAGENET** of Lowood Road, Mount Barker, Western Australia 6324 (“Lessor”)

AND **M & J MITCHELL PTY LTD** of P O Box 21, Waroona, Western Australia 6215 (“Lessee”)

## RECITALS

- A. The Lessor is the registered proprietor of the Land.
- B. The Lessor has agreed to Lease the Premises to the Lessee at the Rent and upon the terms and conditions contained in this Leas

## OPERATIVE PART

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed, unless the contrary intention appears the following words shall have the following meanings:

“**Commencement Date**” means the Commencement Date specified in the Schedule;

“**Expiration Date**” means the Expiration Date specified in the Schedule;

“**Land**” means the Land referred to in the Schedule;

“**Lessee**” means the Lessee referred to in the Schedule;

“**Lessee’s Covenants**” means terms, covenants and conditions contained in this Lease and on the part of the Lessee to be observed and performed;

“**Permitted Use**” means the permitted use specified in the Schedule;

“**Premises**” means that part of the Land described in the Schedule and all improvements fixtures and fittings in the Premises;

“**Rent**” means the rent specified in the Schedule and the rent payable under this Lease from time to time;

“**Rent Review Clause**” means the Rent Review clause, if any, specified in the Schedule pursuant to which the Rent shall be reviewed;

“**Rent Review Date**” means each of the rent review dates specified in the Schedule;

“**Term**” means the term of this Lease specified in the Schedule commencing on the Commencement Date and terminating on the Expiration Date;

“**this Lease**” means this lease and any variations to it agreed between the parties.

**1.2 Interpretation**

Words importing the masculine gender shall include the feminine gender and shall also have application to corporations.

Words importing the plural number shall include the singular number and words importing the singular number shall include the plural number.

References to statutes shall include all statutes amending the statutes referred to or passed in lieu thereof.

When two or more Lessees are parties to this Lease the covenants and agreements on their part shall bind them and any two or greater number of them jointly and severally.

**2. LEASE**

The Lessor leases the Premises to the Lessee for the Term at the Rent and otherwise upon the terms and conditions contained in this Lease.

**3. RENT**

The Lessee shall pay the Rent to the Lessor annually in advance commencing on the Commencement Date and on each anniversary of the Commencement Date.

**4. LESSEE'S COVENANTS**

The Lessee COVENANTS with the Lessor as follows:

**4.1 Payment of Rent**

To pay the Lessor the Rent reserved by this Lease at the times and in the manner provided in this Lease.

**4.2 Rates, Taxes & Outgoings**

To pay and discharge all rates and taxes including land tax assessed or charged in respect of the Premises and all other outgoings, including without limitation all telephone, electricity, gas water, rubbish collection and sewerage charges levied, charged or imposed upon the Premises or any part of the Premises or arising out of the use of the Premises and whether expressed to be payable by the owner or occupier of the Premises.

**4.3 Maintenance, Repairs & Painting**

To keep and maintain every part of the Premises and all additions to the Premises and all lighting and electrical installations and all drainage and all other fixtures and fittings in good repair to a standard acceptable to the Lessor and to paint all such parts of the interior and exterior of the Premises as are now painted or are usually painted at such times and in accordance with the directions of the Building Surveyor of the Lessor.

#### **4.4 Cleaning**

At the Lessee's own expense during the Term at all times to keep and maintain the Premises clean, drained, properly disinfected, free from rubbish, refuse and disused material of any kind and in good and sanitary condition to a standard acceptable to the Lessor.

#### **4.5 Entry by Lessor to View**

To permit the Lessor, its officers, members or agents at all reasonable times with or without workmen or others to enter the Premises to view the state of repair and condition of the Premises and to forthwith carry out any repairs, cleaning, painting or other works for which the Lessee is responsible under this Lease in accordance with any notice in writing given to the Lessee or left on the Premises by the Lessor.

#### **4.6 Abatement of Nuisances**

- a) Not to do or leave undone any act matter or thing which may be or be deemed to be a nuisance within the meaning of the *Local Government Act*, the *Health Act*, the *Factories and Shops Act* or any other Act or under any local laws or regulations applicable to the Premises or the use or occupation of the Premises by the Lessee and immediately to abate any such nuisance or alleged nuisance.
- b) To ensure that the Premises are not used in any manner which may be or become a nuisance disturbance or annoyance to the quiet and comfort of any occupier of any land in the vicinity of the Premises and on being required to do so by the Lessor or any officer of the Lessor to immediately abate any such nuisance, disturbance or annoyance.

#### **4.7 Pests**

To keep the Premises free of ants, pests and vermin.

#### **4.8 Disorderly Behaviour**

To prevent disorderly behaviour and indecent language in the Premises at all times during the day and night.

#### **4.9 Compliance with Statutes and Licences**

- a) At its own expense to comply with, carry out and perform the requirements of the Local Government Act, the Health Act and all other Acts, town planning schemes, local laws or regulations or of any requisitions or orders under them applicable to the Premises or the use or occupation of the Premises.
- b) To take out and keep current any licenses required in connection with any activities carried on from the Premises including without limitation any licence required by the Australian Performing Rights Association.

#### **4.10 Permitted Use**

To use the Premises solely for the Permitted Use.

#### **4.11 Prohibited Use**

Not to use the Premises for any illegal or immoral purpose nor for any business or commercial use without the prior written consent of the Lessor.

#### **4.12 Insurance**

- a) To take out and keep in force during the Term a policy of insurance in the joint names of the Lessor and the Lessee for all buildings, erections or other improvements comprised in the Premises including any plate glass in the Premises (if any) with an insurance company approved by the Lessor against fire, storm, tempest, earthquake, malicious damage and such other risks as the Lessor shall determine and to allow the Lessor to hold every insurance policy.
- b) To effect and keep in force throughout the term a public risk policy of insurance in an amount of not less than \$10,000,000 for any one event or such greater amount as the Lessor may require and to produce to the Lessor on request a certificate of the currency of that policy.
- c) Not to do or permit to be done anything whereby any policy of insurance in respect of the Premises may become void or voidable or by which the rate or premium on it may be increased and if any increased premium shall be payable by reason of any acts or defaults of the Lessee under this sub-clause then to immediately pay the amounts by which the premium shall be increased.
- d) At the Lessee's own expense to make such amendments alterations and additions to the Premises as shall be required by any requisitions or requirements of the Insurance Council of Australia or other body or authority having power or control over electrical installations or fixtures or dealing with insurance matters if the amendments alterations and additions are required as a results of the Lessee's use of the Premises.

#### **4.13 Indemnity**

To indemnify the Lessor and keep the Lessor indemnified from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatever which the Lessor may suffer or incur in connection with the loss of life, personal injury or damage to property arising from or out of any occurrence in upon or at the Premises or the use by the Lessee of the Premises or any part or to any person or the property of any person using or entering or near any entrance to the Premises or occasioned (wheresoever it may occur) wholly or in part by any act, neglect, default or omission by the Lessee its agents, contractors, servants, workmen, customers, members or any other person or persons using or upon the Premises with its consent or approval expressed or implied.

#### **4.14 Alterations & Improvements**

Not without prior written consent of the Lessor to erect or suffer to be erected any building or structure on the Premises nor to make or suffer to be made any alteration in or additions to any building or any other improvements to the Premises nor to remove any such improvements or to cut maim or injure or suffer to be cut maimed or injured any of the walls or timbers of the Premises.

#### **4.15 Fixtures, Fittings and Furniture**

Not without the prior written consent of the Lessor to erect, install or place any fixtures, fittings or furniture in or upon the Premises.

#### **4.16 Sale of Liquor**

Not to sell or permit the sale of any spirituous or fermented liquors or alcohol on the Premises or any part of the Premises other than under a valid licence issued in pursuance of the *Liquor Licensing Act*, and then only with the prior written consent of the Lessor.

#### **4.17 Assignment or Subletting**

Not to assign, sublet or part with the possession of the Premises or any part of the Premises without the prior consent in writing of the Lessor and it is DECLARED that Sections 80 and 82 of the *Property Law Act 1969* are expressly excluded.

#### **4.18 Signs**

Not without prior written consent of the Lessor to affix or exhibit or permit to be affixed to or exhibited upon any part of the exterior of the Premises or in any place visible from beyond the Premises any placard, sign, poster, boarding or advertisement.

#### **4.19 Legal Costs**

To pay the costs (on the scale applicable to the Lessor) of and incidental to the negotiations and instructions for and the preparation, completion and stamping of this Lease (including stamp duty) and all copies of the Lease and also all costs, charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor for the purpose of or incidental to any default of the Lessee under this Lease and the preparation and service of any notice under Section 81 or any other section of the *Property Law Act 1969* requiring the Lessee to remedy a breach of any of the covenants contained in this Lease.

#### **4.20 Delivery Up of Possession**

At the expiry or sooner determination of the Term peaceably and quietly to deliver up possession of the Premises and all furniture, fixtures and fittings belonging to the Premises in such good and tenantable repair, order and condition as shall be consistent with the covenants contained in this Lease PROVIDED THAT immediately upon the expiry or sooner determination of the term the Lessee shall remove any tenant's fixtures and fittings and shall make good any damage caused to the Premises in doing so.



**5. LESSOR'S COVENANT – QUIET POSSESSION**

The Lessor COVENANTS with the Lessee that the Lessee paying the rental reserved by this Lease and observing and performing the covenants expressed and implied by this Lease and on the Lessee's part to be observed and performed shall during the Term and any extension of the Term quietly enjoy the use and occupation of the Premises without interruption by the Lessor or any person lawfully claiming through or under the Lessor.

**6. MUTUAL AGREEMENTS**

IT IS MUTUALLY AGREED as follows:

**6.1 Default by Lessee**

If:

- a) the Rent or other monies payable by the Lessee under this Lease are not paid within 7 days after becoming due (whether formally demanded or not); or
- b) the Lessee breaches any of the Lessee's Covenants and the breach continues for 14 days after notice has been served on the Lessee by the Lessor; or
- c) the Lessee being a company goes into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or a receiver or manager is appointed; or
- d) any mortgagee of the Lessee's property enters into possession of the Premises; or
- e) any execution or process is made against the property of the Lessee; or
- f) the Lessee being a natural person shall commit an act of bankruptcy; or
- g) the Lessee abandons or vacates the Premises; or
- h) the Lessee being an incorporated association:
  - i) is wound up or resolves to be wound up voluntarily;
  - ii) without the prior consent of the Lessor, changes its name, objects, rules or constitution;
  - iii) is convicted of an offence under the Associations Incorporations Act 1987,

then and in any of such cases (but subject to the *Bankruptcy Act 1966*) the Lessor may at its option at any time after that event and without any notice or demand enter and repossess the Premises and as a result of the Term and the estate and interest of the Lessee in the Premises will immediately determine but without prejudice to any other of the rights and remedies of the Lessor under this Lease and without releasing the Lessee from liability in respect of the Lessee's Covenants.

## 6.2 Destruction of Premises

- a) Subject to clause 7.2(b), if the Premises or any part of the Premises shall be burned down, destroyed or damaged by fire so as to render the same unfit for the purpose permitted by this Lease then in such case (unless the insurance of the Premises shall have been forfeited or become null or void or the payment of any moneys payable under such insurance be refused or withheld through any act or default of the Lessee or its members, agents, servants, invitees or licensees) the Rent or a fair and just proportion of the Rent according to the nature and extent of the damage sustained shall cease to be payable until the Premises shall have been rebuilt and rendered fit for the purpose permitted by this Lease. In case of difference touching this paragraph such difference shall be referred to the award of a single arbitrator if the parties can agree upon one and otherwise to two arbitrators one to be appointed by the Lessor and the other by the Lessee and their umpire (to be appointed before proceeding with the arbitration) and in either case in accordance with the provisions of the *Commercial Arbitration Act 1985* or any modification or re-enactment thereof for the time being in force PROVIDED THAT in the event of such difference no part of the Rent shall be allowed by the Lessor to the Lessee as aforesaid but the Lessee shall continue to pay the Rent in full until the date of the award of such arbitrator at which time the Lessor shall refund to the Lessee free of interest any Rent which according to such award shall have been overpaid. In any such arbitration each party shall be entitled to be represented by a duly qualified legal practitioner and this clause shall be deemed to be the agreement in writing referred to in Section 20 of the *Commercial Arbitration Act 1985* in respect of such representation.
- b) If the Premises or any substantial part thereof be burnt down, destroyed or damaged so as to be wholly unfit for occupation or use this Lease may at the option of the Lessor (such option to be declared in writing within 28 days after such destruction) be determined the Lessee in that event paying the rental hereby reserved up to such determination and all moneys paid or payable under any policy of insurance effected in respect of the Premises shall belong to the Lessor absolutely.

## 6.3 Entry by Lessor

If the Lessee shall fail to duly and punctually observe or perform any of the Lessee's Covenants the Lessor shall be entitled to carry out the observance or performance of such covenant, condition or agreement and for such purpose the Lessor or the Lessor's agents workmen or architects may if necessary enter the Premises or any part of the Premises and the cost and expense incurred in such observance or performance together with interest thereon at the rate of 16% per annum shall be a debt due by the Lessee to the Lessor and shall be payable on demand and may be recovered by the Lessor in the same manner as if such debt were for rent due under this Lease in arrear by action in law and such cost expense and interest shall be a charge on the Term.

## 6.4 Holding Over

If the Lessee holds over the premises at the expiry of the term:

- a) a tenancy from year to year shall not thereby be presumed but the tenancy shall in such event be and continue to be a tenancy from month to month;

- b) subject to paragraph (c) of this paragraph, the tenancy shall be upon the terms and conditions contained in this Lease insofar as they are applicable and shall be determinable at the expiration of one month's notice by either party to the other at any time;
- c) the Lessee shall pay to the Lessor by equal monthly instalments in advance at times referred to in item 6 of the schedule a Rent being 110% of the Rent payable immediately prior to the expiry of the Term;
- d) the Lessor may give to the Lessee notice in writing at any time specifying a Rent being an amount greater than the Rent referred to in paragraph (c) and the Lessee shall commence paying the Rent specified in the notice at the commencement of the month following the receipt of the notice.

#### **6.5 Structural Alterations**

Notwithstanding anything contained in clauses 5.3 (Maintenance, Repairs and Painting), 5.9 (Compliance with Statutes and Licences) and 5.14 (Alterations and Improvements) of this Lease, the Lessee shall not be liable to effect any structural alterations of the Premises unless the same shall be necessitated or occasioned by reason of any act or default of the Lessee.

#### **6.6 Service of Notices**

That all notices, consents and approvals or any demand to be given to or made upon the Lessee shall be in writing and may be signed by the Lessor or its solicitors or agents and all such notices or demands shall be considered as having been properly served upon the Lessee if delivered to the Lessee or posted to the Lessee by prepaid registered post addressed to the Premises or to the address of the Lessee and if served by post shall be conclusively deemed to be served upon and be received by the Lessee at the expiration of the next day following the day when the same shall be posted.

#### **6.7 Headings**

That the headings appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of the clauses of this Lease nor in any way affect this Lease.

### **7. ESSENTIAL TERMS**

The covenants by the Lessee contained in this Lease to pay Rent and rates, taxes and insurance in respect of the Premises at the time and in the manner therein respectively prescribed and to only use the Premises for the Permitted Use are essential terms of this Lease and any breach of any of those covenants shall be regarded by the Lessor and the Lessee as a fundamental breach by the Lessee of this Lease. Should the Lessor determine this Lease following such a breach then (without prejudicing or limiting any other right or remedy of the Lessor arising from such breach or otherwise under this Lease) the Lessor shall be entitled to recover from the Lessee and the Lessee covenants to pay to the Lessor as and by way of liquidated damages for such breach the Rent, rates, taxes and insurance which would have been payable by the Lessee for the unexpired residue of the Term after making allowance for the Rent, rates, taxes and insurance which the Lessor by taking reasonable steps to relet the Premises obtains or could reasonably be expected to obtain by reletting the Premises for such unexpired residue of the Term on reasonable terms as to rent and otherwise PROVIDED THAT:

- a) any such reletting shall not be required to be on like terms as are expressed and implied in this Lease;
- b) the acceptance by the Lessor of arrears or any late payment of the rent, rates, taxes or insurance shall not constitute a waiver of the essentiality of the Lessee's obligations to make such payments;
- c) the Lessor's entitlement to recover damages as aforesaid shall not be prejudiced or limited if:
  - i) the Lessee abandons or vacates the Premises;
  - ii) the Lessor elects to re-enter the Premises or to determine this Lease;
  - iii) the Lessor accepts the Lessee's repudiation of this Lease; or
  - iv) the parties' conduct constitutes a surrender by operation of law;
- d) the Lessor shall be entitled to institute proceedings to recover damages either before or after any of the events or matters referred to in sub-paragraph (c);
- e) any conduct by the Lessor to mitigate damages shall not of itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law; and
- f) nothing expressed or implied in this Lease shall be construed to mean that no other covenant in this Lease on the part of the Lessee to be observed or performed may be an essential term.

## **8. ADDITIONAL TERMS**

All (if any) the additional terms covenants and conditions contained in the Schedule are incorporated into and apply to this Lease.

## **9. RENEWAL OF TERM**

If the Lessee desires to renew the Term and gives to the Lessor notice in writing not earlier than 6 calendar months but not later than 3 calendar months prior to the expiration of the Term and if at the time of giving that notice and at the expiration of the Term there is no outstanding breach or non-observance of any of the Lessee's Covenants and if in the meantime the Lessor's right of re-entry has not otherwise arisen then the Lessor must at the cost of the Lessee grant to the Lessee a renewal of the Term for the further period specified in the Schedule and otherwise on the same terms and conditions contained in this Lease (other than this right of renewal).

## **10. GST**

### **10.1 Definition of GST**

In this clause, "GST" means a goods and services tax or like tax payable by the Lessor in respect of a supply under this Lease. All payments to be made by the Lessee under this Lease (including but not limited to Rent) are calculated without regard to GST.

## **10.2 Payment of GST**

If a payment by the Lessee to the Lessor under this Lease is for a supply by the Lessor under this Lease on which the Lessor must pay GST, the Lessee must pay the amount of the supply increased by the GST.

## **10.3 Provision of Tax Invoice**

The Lessor shall provide the lessee with a tax invoice as required by the relevant GST legislation within the time specified by the relevant GST legislation.

## SCHEDULE

### **Item 1 The Lessee:**

M & J Mitchell Pty Ltd

P O Box 201

WAROONA WA 6215

### **Item 2 Land**

Lot 3 on Plan 14319 and being the whole of the land comprised in Certificate of Title Volume 1971 Folio 361.

### **Item 3 Premises**

That part of the land hatched on the attached plan marked "A" and "B"

### **Item 4 Term**

Five (5) years

Commencement Date:

1 July 2020

Expiration Date:

30 June 2025

### **Item 5 Rent:**

\$385.00 per annum payable annually in advance on the Commencement Date and on each anniversary of the Commencement Date during the Term (plus GST).

### **Item 6 Permitted Use:**

Cattle Holding Yards

### **Item 7 Additional Terms Covenants and Conditions:**

- 7.1 Lessee at liberty to remove yards at expiry of lease or termination.
- 7.2 The Saleyards Manager may at his discretion hold cattle on the Premises from time to time and when not in use by the Lessee, on any given day other than on sale days and on sale days only with the consent of the Lessee. The Lessor will be responsible for any associated outgoings such as feed, welfare and repairs to any damage caused by such use including the surface condition of the yards.

EXECUTED as a Deed dated

of

2020.

**THE COMMON SEAL OF SHIRE OF  
PLANTAGENET** was hereunto affixed pursuant  
to a resolution of the Council in the presence of:

)  
)  
)  
)

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
Chief Executive Officer

**THE COMMON SEAL OF  
M & J MITCHELL PTY LTD**  
ACN 009 343 659  
is affixed in accordance with its constitution  
in the presence of:

)  
)  
)  
)  
)

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Office Held

\_\_\_\_\_  
Office Held

\_\_\_\_\_  
Name of authorised person  
(Block letters)

\_\_\_\_\_  
Name of authorised person  
(Block letters)

SIGNED by )  
in the presence of )

Witness:

Name:

Address:

Occupation:

# LEASE OF LAND GREAT SOUTHERN REGIONAL SALEYARDS

