

Council

RENEWAL OF SUBLEASE – MOUNT BARKER
TOURIST BUREAU INC.

Sublease

Meeting Date: 1 December 2020

Number of Pages : 11

Dated 1 December 2020

SHIRE OF PLANTAGENET

and

MOUNT BARKER TOURIST BUREAU INCORPORATED

and

**PUBLIC TRANSPORT AUTHORITY OF WESTERN
AUSTRALIA (PTAWA)**

SUBLEASE



Post Office Box 48
MOUNT BARKER WA 6324
Phone: 08 9892 1111
Email: info@sop.wa.gov.au

SUBLEASE

DEED dated 1 December 2020

BETWEEN **SHIRE OF PLANTAGENET** of Post Office Box 48, Mount Barker,
Western Australia ("Sublessor")

AND **MOUNT BARKER TOURIST BUREAU INCORPORATED** of Post
Office Box 632, Mount Barker, Western Australia ("Sublessee")

AND **PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA
(PTAWA)** of West Parade, Perth, Western Australia ("Head Lessor")

RECITALS

- A. By the Head Lease the Head Lessor has leased to the Sublessor the Head Lease Premises for the Head Lease Term at the rent and on the terms and conditions contained in the Head Lease.
- B. At the request of the Sublessee, the Sublessor has agreed to sublease the Premises to the Sublessee for the Term, at the Rent and on the terms and conditions contained in the Sublease.
- C. The Head Lessor consents to this Sublease upon the terms and conditions contained in the Sublease.

OPERATIVE PART

1. Definitions

Unless the context otherwise requires the following terms shall have the following meanings:

Commencement Date means the date specifies as such in Item 3 of the Schedule.

Expiration Date means the date specified as such in Item 3 of the Schedule.

Extended Term means the term (if any) referred to in Item 4 of the Schedule commencing and expiring on the dates referred to in that Item.

Head Lease means the lease particulars of which are referred to in Item 1 of the Schedule and a copy of which is annexed to this Sublease.

Head Lease Premises means the premises referred to in Item 1 of the Schedule.

Head Lease Term means the term of the Head Lease which is referred to in Item 1 of the Schedule.

Head Lessor's Rights means all of the rights and reservations expressed in or implied by the Head Lease in favour of the Head Lessor.

Outgoings has the same meaning attributed to the term "the outgoing" in the Head Lease.

Permitted Use means the permitted use of the Premises referred to in Item 6 of the Schedule.

Premises means the premises referred to in Item 2 of the Schedule.

Rent means the rent specified in Item 5 of the Schedule as subsequently reviewed and varied pursuant to the provisions of this Sublease.

Schedule means each of the schedules to this Sublease.

Sublessee's Covenants means the covenants terms and conditions expressed or implied by this sublease to be observed and performed by the sublessee.

Sublessor's Rights means all of the rights expressed in or implied by the Head Lease in favour of the Sublessor.

Term means the term of this Sublease which term shall commence on the Commencement Date and expire on the Expiration Date and includes where applicable any extension or renewal of the Term.

1.2 Interpretation

In this Sublease, unless the contrary intention appears:

- (a) a reference to this Sublease, the Head Lease or any other instrument includes:
 - (i) both express and implied terms, covenants and conditions of those documents; and
 - (ii) all variations, additions and deletions to the terms, covenants and conditions contained in those documents whenever effected;
- (b) a reference to a person includes a reference to the person's personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporation's successors and assigns;
- (c) a reference to any person if that person ceases to exist is reconstituted, renamed or replaced or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions;
- (d) an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (e) an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- (f) a reference to any thing includes the whole or any part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- (g) a reference to a clause or a schedule is a reference to a clause in or a schedule to this Sublease; and
- (h) the index and all headings have been included for ease of reference only and they are not to be used to construe or interpret any part of this Sublease.

2. **SUBLEASE AND RENT**

2.1 **Sublease**

The Sublessor subleases the Premises to the Sublessee for the Term together with the Sublessor's Rights (to the extent that the Sublessor's Rights are relevant to the Premises), but subject to the Head Lessor's Rights.

2.2 **Rent**

The Sublessee must pay the Rent to the Sublessor upon written demand by the Sublessor. Each payment of rent must be made with an additional amount equal to any goods and services, consumption, value added tax applying to that payment.

3. **SUBLESSEE'S COVENANTS**

The Sublessee COVENANTS with the Sublessor to perform and observe with respect to the Premises all terms, covenants and conditions contained in the Head Lease on the Sublessor's part as lessee under the Head Lease to be performed and observed as if they were repeated in full in this Sublease as terms covenants and conditions binding the Sublessee in respect of the Premises SAVE THAT:

- (a) notwithstanding the provisions of the Head Lease, the Sublessee shall not be obliged to pay any Outgoings other than those referred to in clause 4 and those, if any, referred to in the Schedule;
- (b) notwithstanding the provisions of the Head Lease, the Sublessee shall use the Premises only for the Permitted Use and shall not use the premises for any purpose which would constitute the Premises a retail shop for the purposes of the *Commercial Tenancy (Retail Shops) Agreements Act*.
- (c) notwithstanding the provisions of the Head Lease, the Sublessee must maintain at its own cost insurance on usual terms with an insurer authorised under the Insurance Act 1973 for:
 - (i) public risk for at least \$20,000,000.00;
 - (ii) a policy insuring fittings, fixtures and chattels owned by the Sublessee on the Premises to their full replacement value against fire and extraneous risks including but not limited to water, storm and rainwater damage; and
 - (iii) the Sublessee must give the Sublessor evidence of its insurance if the Sublessor asks for it.

4. **POWER TELEPHONE AND OTHER SERVICES**

Throughout the Term, the Sublessee must punctually pay for all electricity, telephone and rubbish services which are either provided to or used on the Premises.

5. **OPTION OF RENEWAL**

If not more than 4 months prior to the Expiration Date and not less than 2 months prior to the Expiration Date of the Term the Sublessee gives written notice to the Sublessor that the Sublessee wishes the Sublessor to grant to the Sublessee an extension of the Term for the Extended Term (if applicable) then provided that there shall not at any time during the Term have been any breach or non-observance or

non-performance of any of the Sublessee's Covenants and provided further that the Sublessor shall not have exercised the Sublessor's right under the Head Lease to terminate the Head Lease, at the expiration of the Term, the Sublessor shall grant to the Sublessee an extension of the Term for the Extended Term containing like covenants and provisions as are expressed and implied in the Sublease (save for the right of extension the subject of this Clause) and reserving to the Sublessor a rent from the Commencement Date of the Extended Term to be calculated in accordance with the rent review provisions contained in this Sublease.

6. APPLICATION OF HEAD LEASE

The parties AGREE that to the extent that the terms, covenants and conditions of the Head Lease are applicable to the Premises, those terms covenants and conditions:

- (a) which apply to and bind the Sublessor as lessee shall apply to and bind the Sublessee reserving to the Sublessor and the Head Lessor severally all rights and powers conferred on the Head Lessor by the Head Lease;
- (b) which apply to and bind the Head Lessor under the Head Lease shall apply to and bind the Sublessor,

as if those terms, covenants and conditions were repeated in full in this Sublease.

7. HEAD LEASE CONSENTS

Where by the terms of the Head Lease an act or omission of the Sublessor constitutes a breach of a term of the Head Lease if done or committed without the consent or permission of the Head Lessor that act or omission shall be deemed to be a breach of this Sublease if done or committed by the Sublessee without the consent or permission of both the Head Lessor and the Sublessor.

8. SUBLESSOR'S COVENANTS

The Sublessor COVENANTS with the Sublessee that:

- (a) the Sublessee paying the Rent and performing and observing the Sublessee's Covenants shall peaceably and quietly hold and enjoy the Premises during the Term without any interruption or disturbance from or by the Sublessor or any person or persons claiming under or in trust for the Sublessor save those so authorised by either or both of this Sublease and the Head Lease;
- (b) forthwith upon receipt of the same, the Sublessor shall deliver to the Sublessee a true copy of every notice, statement, account or other document or thing which comes into the possession of the Sublessor and which relates to or in any way affects the Premises or which relates to or affects the liability of the Sublessee under this Sublease.

9. COMPLIANCE WITH THE HEAD LEASE

In consideration of the Head Lessor, at the request of the Sublessor and the Sublessee, consenting to this Sublease, the Sublessee COVENANTS AND AGREES with the Head Lessor that:

- (1) the Sublessee shall observe and perform the Sublessee's Covenants; and
- (2) if the Head Lease is lawfully terminated at any time by the Head Lessor prior to the expiration of the Head Lease Term then this Sublease shall forthwith

yield up the premises to the Head Lessor in the state of repair, order and condition consistent with the due and punctual compliance with the Sublessee's Covenants and the Sublessee shall have no claim of any kind against the Head Lessor for damages, compensation or otherwise arising for such termination.

10. **PAYMENTS ON SUBLESSOR'S DEFAULT UNDER HEAD LEASE**

The Sublessee COVENANTS with the Head Lessor that in the event of default by the Sublessor in paying to the Head Lessor any monies due by the Sublessor in respect of the Head Lease Premises or in performing the covenants or conditions contained in the Head Lease and upon the Head Lessor giving notice in writing to the Sublessee of that default, the Sublessee will at all times during the continuance of the term until otherwise instructed by notice in writing from the Head Lessor pay the rent and all other monies payable pursuant to this Head Lease to the Head Lessor.

11. **HEAD LESSOR'S CONSENT TO SUBLEASE**

The Head Lessor consents to this Sublease but:

- (1) the Head Lessor's consent is restricted to this particular Sublease and the covenants in the Head Lease against subletting, assignment or parting with possession of the premises remain in full force and effect;
- (2) the Head Lessor's consent is in every respect conditional upon the execution of this Sublease by every party to this Sublease; and
- (3) nothing expressed in or implied by this Sublease will operate to release the Sublessor from liability or otherwise vary the Sublessor's liability for the payment of the rent reserved by the Head Lease and the performance and observance by the Sublessor or the Sublessor's obligations pursuant to the Head Lease.

12. **ADDITIONAL TERMS COVENANTS AND CONDITIONS**

All (if any) those terms covenants and conditions set out in Item 7 of the Schedule.

13. **COSTS**

The Sublessee agrees to pay the Head Lessor and the Sublessor on demand:

- (a) the Head Lessor and the Sublessor's legal costs and expenses (assessed on a full indemnity basis) of and incidental to the preparation, and completion of this Sublease and all copies of the Sublease.

SCHEDULE

Item 1: The Head Lease

A Lease made	25 June 1996 between the Sublessor and the Head Lessor.
The Head Lease Premises:	The premises located at Mount Barker as identified on PTAWA Plan number 4392(1) and shown coloured Blue on the plan attached to the Head Lease.
The Head Lease Term:	Fifty (50) years
Commencement Date:	1 June 1996
Expiration Date:	31 May 2046

Item 2: The Premises

That part of the Head Lease Premises shown hatched in black on the plan annexed to this Deed being approximately 211.54m² in area.

Item 3: The term of this Sublease:

Term:	5 years
Commencement Date:	1 December 2020
Expiration Date:	30 November 2025

Item 4: The Extended Term:

Not applicable

Item 5: Rent:

During the Term:	\$1.00 per annum
Address for payment of Rent:	Shire of Plantagenet, Lowood Road, Mount Barker
Dates for payment of Rent:	Payable if and when demanded

Item 6: Permitted Use:

Tourist Visitors Centre

Item 7: Additional Terms, Covenants and Conditions

Not Applicable

EXECUTED as a Deed

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 MOUNT BARKER)
TOURIST BUREAU INCORPORATED)
was hereunto affixed 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)

PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA

CONSENTS to this Sublease subject to the following conditions.

- Dated _____ 2020

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)
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)
)
) Signature of Duly Authorised Officer

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Name (Please Print)

Position held

Occupation

