

Dated _____ **2000**

TOWN OF PORT HEDLAND
and
PORT HEDLAND RETIREMENT VILLAGE INCORPORATED

LEASE

RESERVE 31384
PORT HEDLAND RETIREMENT VILLAGE

Watts & Woodhouse
Solicitors and Legal Consultants
236 Rokeby Road
SUBIACO WA 6008
Telephone 08 9382 3000
Fax 08 9382 3011
Ref: JMW:980346

CONTENTS

Operative Provisions	1
1. DEFINITIONS	1
1.1 Definitions	1
2. LEASE	1
2.1 Lease	1
2.2 Term	1
2.3 GST	2
3. LESSEE'S OBLIGATIONS	2
3.1 Payment of rent	2
3.2 Rates and taxes	2
3.3 Services	2
3.4 Maintenance	2
3.5 Cleaning	2
3.6 Entry by Lessor to view and to repair	3
3.7 Abatement of nuisances	3
3.8 Pests	3
3.9 Rubbish	3
3.10 Disorderly behaviour	3
3.11 Compliance with laws	4
3.12 Permitted purpose and operation of Lessee's undertaking	4
3.13 Insurances	4
3.14 Evidence of insurance cover	5
3.15 Not to void insurances	5
3.16 Compliance with insurance regulations	5
3.17 Indemnity	5
3.18 Alterations and improvements	6
3.19 Notice of defects	6
3.20 Sale of alcohol	6
3.21 Assignment or subletting	6
3.22 Signs	6
3.23 Legal costs	6
3.24 Lessee to make good	6
3.25 No registration or caveat	7
3.26 Special conditions	7
4. QUIET POSSESSION	8
5. MUTUAL AGREEMENTS	8
5.1 Default	8
5.2 Lessor's powers	9
5.3 Destruction of the Premises	9
5.4 Entry by Lessor	9
5.5 Lessor may repair	10
5.6 Holding over	10
5.7 No waiver	10
5.8 No warranty	11
5.9 Notices	11
5.10 Interpretations	11
6. ESSENTIAL TERMS	12
SCHEDULE	13

LEASE

Date

2000

Parties: **TOWN OF PORT HEDLAND** of McGregor Street, Port Hedland, Western Australia ("the Lessor")

and

The person or persons described in Item 1 of the Schedule ("the Lessee")

Recitals

- A. The Lessor has the Lessor's Interest in the Land.
- B. Subject to the consent in writing of the Minister for Lands, the Lessor has agreed to lease the Premises to the Lessee on and subject to the terms and conditions of this Lease.

Operative Provisions

1. DEFINITIONS

1.1 Definitions

In this Lease, unless the context requires otherwise:

"**Land**" means the land described in Item 2 of the Schedule;

"**Lessor's Interest**" means the Lessor's interest in the Land which interest is described in Item 2 of the Schedule;

"**Premises**" means the premises described in Item 2 of the Schedule.

2. LEASE

2.1 Lease

The Lessor grants a lease to the Lessee and the Lessee takes a lease of the Premises on and subject to the terms of this Lease.

2.2 Term

The Premises will be held by the Lessee as tenant for the term commencing on the commencement date specified in Item 3 of the Schedule and expiring on the expiry date specified in Item 3 of the Schedule and at the rent specified in Item 4 of the Schedule payable in the manner provided in Item 5 of the Schedule.

2.3 GST

- (1) Each payment made by the Lessee under this Lease shall be made with an additional payment in respect of any GST or similar tax applying to that payment.
- (2) In this clause "GST" means a tax, impost or other duty raised on the supply of goods and services and imposed by the Commonwealth or the State.

3. LESSEE'S OBLIGATIONS

3.1 Payment of rent

The Lessee shall pay the Lessor the rent reserved by this Lease at the times and in the manner provided in this Lease.

3.2 Rates and taxes

The Lessee shall punctually pay all rates, assessments, levies or taxes levied or assessed or to be levied or assessed by the Commonwealth, the local government, any water supply authority, any sewerage authority or by any other authority whether statutory, governmental, or otherwise which:

- (a) are at any time during the term or any holding over to any extent charged on the Premises or on the Lessor in respect of the Premises or both; or
- (b) arise out of or by reason of the method or kind of business carried on by the Lessee.

3.3 Services

The Lessee shall punctually pay for all water, gas, electricity, telephone and other utility services which are either provided to or used on the Premises.

3.4 Maintenance

The Lessee shall keep and maintain every part of the Premises and all lighting and electrical installations and all drainage and septic systems and all other fixtures and fittings in good and substantial repair, order and condition to a standard acceptable to the Lessor and the Lessee shall paint all 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 Lessor provided that the Lessee shall not be responsible for repairs of a structural nature.

3.5 Cleaning

The Lessee shall keep and maintain the Premises well cleansed and drained in good sanitary condition and properly disinfected, free from rubbish, refuse and disused material of any kind and the Lessee shall observe, perform, discharge, execute and take such sanitary measures and precautions and subject to clause 3.18, construct such works and make such amendments, alterations and additions to the Premises at any

time as shall during the term be required by or under any written law.

3.6 Entry by Lessor to view and to repair

- (1) The Lessee shall permit the Lessor, the Lessor's architects, agents and contractors at all reasonable times to enter into and upon the Premises in order to view and examine the state of repair, order and condition and to leave upon the Premises notice of any lack of repair, order, condition, neglect or defect for which the Lessee is liable and requiring the Lessee to make good the same within the time specified in the notice and the Lessee shall make good the same in accordance with the notice to the satisfaction of the Lessor.
- (2) The Lessee shall permit the Lessor, the Lessor's agents and contractors at all reasonable times and, in the case of emergency, at any time to enter into and remain upon the Premises with all necessary plant, equipment and materials to carry out any works or make any repairs or alterations or additions to the Premises.

3.7 Abatement of nuisances

- (1) The Lessee shall not do or omit to do any act matter or thing which may be or be deemed to be a nuisance within the meaning of the Health Act or any other Act or under any planning scheme, local law or regulation applicable to the Premises or the use or occupation of the Premises by the Lessee and the Lessee will immediately abate any such nuisance or alleged nuisance.
- (2) The Lessee shall 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 premises in the vicinity of the Premises and on being required to do so by the Lessor or any employee or agent of the Lessor the Lessee shall immediately abate the nuisance, disturbance or annoyance.

3.8 Pests

The Lessee shall keep the Premises free of ants, termites, rodents and any pests and vermin.

3.9 Rubbish

- (1) The Lessee shall not permit any rubbish or garbage to accumulate on the Premises unless confined in suitable containers which are located so as not to be visible to members of the public.
- (2) The Lessee shall forthwith comply with the directions of the Lessor from time to time given with a view to ensuring public safety during any cyclone including the removal of rubbish and loose material.

3.10 Disorderly behaviour

The Lessee shall prevent disorderly behaviour and indecent language at the Premises.

3.11 Compliance with laws

The Lessee shall comply with, carry out and perform the requirements of the Local Government Act, the Health Act and any other Act, ordinance, town planning scheme, local law, regulation or written law or of any notice, requisition or order under a written law applicable to the Premises or the use or occupation of the Premises.

3.12 Permitted purpose and operation of Lessee's undertaking

- (1) The Lessee shall use the Premises only for the purpose specified in Item 6 of the Schedule or for any other purpose first approved in writing by the Lessor.
- (2) The Lessee shall at all times conduct its undertaking on the Premises for the purpose specified in Item 6 of the Schedule in a first class businesslike and reputable manner and with due diligence and efficiency.

3.13 Insurances

The Lessee shall, at the Lessee's expense, effect and keep current, with an insurance company approved by the Lessor the following insurances in relation to the Premises:

Public risk

- (a) A policy covering public risk which will:
 - (i) be in the name of the Lessee, the Lessor, the Lessor's agent, managers, employees, representatives and contractors and provide for a minimum cover of ten million dollars (\$10,000,000.00) for each accident, claim or event or such higher amount as the Lessor specifies; and
 - (ii) extend to cover any liability for the death of, or injury to, any person or damage to any person's property sustained when such person is using or entering or near any entrance, passage, stairway, display or display window to into or of the Premises, or sustains the injury or damage as a result of an act or omission of the Lessee, its agent, licensee, employee or representative operating a business on or from the Premises, or sustains the injury or damage as a result of consuming food or drink supplied on or from the Premises or as a result of goods sold on or from the Premises; and
 - (iii) require the insurance company and the Lessee to give the Lessor at least thirty (30) days written notice before either cancellation of the policy or a reduction in its level or extent of cover; and
 - (iv) contain a clause which provides that any claims made by any of the insured parties against any other will be treated as though the claimant were not an insured party and in such instances provide that the insurance company waives its right of subrogation; and

- (v) provide cover which is primary and not contributory with any policies effected by the Lessor or the Lessor's managers, agents, employees, representatives or contractors;

*Deleted
per letter 26/7/01
Council Resolution*

Glass

~~a policy in the name of the Lessee and the Lessor covering the breakage of any glass on the Premises. The Lessee agrees that all money received under the insurance policy will be expended in reinstating the damaged glass. If such money is insufficient to meet the cost of the reinstatement the Lessee shall reinstate the damaged glass at its own expense to the Lessor's satisfaction;~~

Contents

- (c) a policy covering the Lessee's fittings, fixtures and chattels contained in or about the Premises for its full insurable value against loss or damage resulting from fire and extraneous risks including but not limited to water, storm and rainwater damage.

3.14 Evidence of insurance cover

Before taking possession of the Premises, the Lessee shall deliver the insurance policies required under this Lease to the Lessor. The Lessee shall give satisfactory evidence to the Lessor that the policies have been renewed within 7 days after the expiration of each policy term.

3.15 Not to void insurances

The Lessee shall not at any time do or allow anything which may either render the insurances on the Premises or any part of it void or voidable.

3.16 Compliance with insurance regulations

The Lessee shall comply with insurance, sprinkler and fire alarm regulations as they relate to the use of the Premises. The Lessee shall pay to the Lessor the cost of any alterations to any sprinkler or fire alarm installation which may become necessary by reason of the non-compliance by the Lessee with the regulations of the Insurance Council of Australia or the requirements of the Lessor's insurer or both of them.

3.17 Indemnity

The Lessee shall 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 whatsoever which the Lessor may suffer or incur in connection with 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 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.

3.18 Alterations and improvements

The Lessee shall not, without the prior written consent of the Lessor, make or permit to be made any alteration in or additions to the Premises or remove from the Premises any improvement and the Lessee shall not cut maim or injure or suffer to be cut maimed or injured any of the walls, floors, ceilings, plumbing, gas or electrical fixture or fittings or timbers.

3.19 Notice of defects

The Lessee shall give to the Lessor immediate notice in writing of any damage to or defect in the Premises or the water or sewerage pipes, gas pipes, electrical light fixtures or any plant fittings or equipment in the Premises.

3.20 Sale of alcohol

The Lessee shall not sell or permit the sale of any alcohol or alcoholic beverage on the Premises.

3.21 Assignment or subletting

- (1) The Lessee shall not assign, sublet or part with the possession of the Premises and the Lease without the prior written consent of the Lessor and the Minister for Lands and it is **HEREBY DECLARED** that sections 80 and 82 of the Property Law Act 1969 are expressly excluded.
- (2) The Lessor shall not unreasonably withhold consent to a subletting of a residential unit forming part of the Premises to an aged or disabled person in accordance with the objects of the Lessee's constitution and in the form of a sublease previously approved in writing by the Lessor.

3.22 Signs

The Lessee shall not, without the prior written consent of the Lessor, 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 outside the Premises any placard, sign, notice, poster, hoarding or advertisement.

3.23 Legal costs

The Lessee shall pay to the Lessor on demand the costs (of a full indemnity basis) 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 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 a provision of this Lease.

3.24 Lessee to make good

- (1) At the expiration or sooner determination of this Lease:

- (a) the Lessee shall yield up the Premises to the Lessor in the condition required by this Lease; and
 - (b) the Lessee shall remove from the Premises all fixtures, fittings and chattels brought onto the Premises by or for the use of the Lessee except for any structural improvements and any fixtures, fittings and chattels provided for the use of the Lessee and which the Lessor determines should remain in the Premises. The Lessee shall not do or allow any damage to the Premises in such removal. If however any damage occurs the Lessee will immediately make it good; and
 - (c) the Lessee shall remove any lettering, signs, names, advertisements and notices erected, painted, displayed or affixed by the Lessee onto or within the Premises and make good any damage caused by reason of such erection, painting, displaying, affixing or removal. If the Lessee defaults under this clause the Lessor may remove and make good at the Lessee's expense.
- (2) If the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option do either or both of the following:-
- (a) remove and store any of them in such a manner as the Lessor determines at the cost of the Lessee; and
 - (b) treat them as if the Lessee had abandoned its interest in them and they had become the property of the Lessor may then deal with them in such manner as the Lessor determines. If the Lessor sells them it need not account to the Lessee for the proceeds of sale but may apply the proceeds of sale as it see fit.

3.25 No registration or caveat

Neither the Lessee nor any agent or other person on behalf of the Lessee shall without the prior consent in writing of the Lessor register this Lease nor lodge any absolute caveat in respect of the Premises or any part thereof to protect the interests of the Lessee under this Lease but in the event of this Lease or any such caveat being registered or lodged the Lessee in consideration of the Lessor having granted this Lease to the Lessee hereby irrevocably appoints the Lessor and each and every one of the officers or agents of the Lessor jointly and severally for the term of the Lease any extension thereof and holding over hereunder and for a period of six (6) months thereafter the agent and attorney of the Lessee to surrender or withdraw any such lease or caveat the cost of which shall be borne and paid by the Lessee.

3.26 Special conditions

The Lessee shall observe and perform the special conditions, if any, set out in Item 7 of the Schedule.

4. QUIET POSSESSION

If the Lessee pays the rent and performs its covenants contained in this Lease it will peaceably possess and enjoy the Premises for the term granted without any interruption from the Lessor or any person lawfully claiming through, from or under its subject always to the rights, powers, remedies and reservations of the Lessor contained in this Lease.

5. MUTUAL AGREEMENTS

5.1 Default

If:

- (a) the rent or any part of it is in arrears for 14 days even if it has not been formally demanded;
- (b) the Lessee breaches or does not comply with any provision whether expressed or implied in this Lease;
- (c) repairs required by any notice given by the Lessor under this Lease are not completed within the time specified in the notice;
- (d) the Lessee defaults in the payment of any moneys owing to the Lessor other than rent under this Lease or any other account after 14 days written demand for payment has been made by the Lessor on the Lessee;
- (e) an order is made or a resolution is passed for the winding up or dissolution of the Lessee;
- (f) the Lessee is a corporation and ceases or threatens to cease to carry on business or goes into liquidation whether voluntary or otherwise or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (g) the Lessee is a corporation and is placed under official management or an administrator is appointed under or pursuant to the provisions of the relevant Corporations Law or enters into a composition or scheme of arrangement; or
- (h) the interest of the Lessee under this Lease is taken in execution,

then the Lessor may in addition to its other powers either:

- (i) re enter on the Premises or any part of them with force if necessary and eject the Lessee and all other persons from and repossess the Premises; or
- (ii) by notice in writing to the Lessee determine this Lease,

or both.

5.2 Lessor's powers

If the Lessor exercises its powers under clause 5.1, this Lease will terminate but the Lessee will not be released from liability for any breach of or non-compliance with any provision of this Lease and the remedies available to the Lessor for recovery of arrears of rent or for prior breach or non-compliance will not be affected. On such determination if the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option do either or both of the following:

- (a) remove and store any of them in such a manner as the Lessor determines at the cost of the Lessee; and
- (b) if the Lessee does not remove or recover them within a month after termination of the Lease, treat them as if the Lessee had abandoned its interest in them and they had become the property of the Lessor and the Lessor may then deal with them in such a manner as the Lessor determines. If the Lessor sells them, it need not account to the Lessee for the proceeds of sale, but may apply the proceeds of sale as it sees fit.

5.3 Destruction of the Premises

- (1) Where the Premises or any part of the Premises are at any time damaged or destroyed by fire, flood, lightning, storm or tempest so as to make them unfit for the occupation and use of the Lessee, then the rent or a proportionate part of the rent, according to the nature and extent of the damage sustained will abate and all remedies for recovery of the rent, or such proportionate part of the rent will be suspended until the Premises are rebuilt or made fit for the occupation and use of the Lessee.
- (2) If the Lessor does not rebuild the Premises or make them fit for the use and occupation of the Lessee within a reasonable time then either party may terminate this Lease by one month's notice in writing to the other without right or claim for damage by reason of such termination of the Lease but without prejudice to the rights of either party for any prior breach of or failure to comply with a provision of this Lease.
- (3) Nothing in this Lease will impose on the Lessor any obligation to rebuild the Premises or to make the Premises fit for the use and occupation of the Lessee.

5.4 Entry by Lessor

If the Lessee fails to duly and punctually observe or perform any provision of this Lease the Lessor shall be entitled to carry out the observance or performance of the provision and for that purpose the Lessor or the Lessor's architects, servants agent or workmen may if necessary enter the Premises and the cost and expense incurred in the observance or performance together with interest thereon at a rate of 1% per annum greater than the rate that would be charged by the Lessor's bankers on an overdraft of an amount equal to the cost 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 arrears by action in law and such cost expense and interest shall be a charge on the term.

5.5 Lessor may repair

The Lessor may by itself or its agents at all reasonable times enter the Premises or any part of the Premises for any one or more of the following purposes:

- (a) complying with the terms of any legislation affecting the Premises and any notices served on the Lessor or Lessee by any statutory, licensing, municipal or other competent authority;
- (b) carrying out any repairs, alterations or works of a structural nature;
- (c) installing any services such as air-conditioning apparatus, automatic fire sprinklers, gas pipes, water pipes, drainage pipes, cables or electrical wiring;
- (d) making any repairs which the Lessor may think necessary to the Premises;
- (e) making any improvements or alterations to the adjoining Premises which the Lessor may consider necessary;
- (f) taking inventories of fixtures;
- (g) exercising the powers and authorities of the Lessor under this Lease.

In carrying out the works referred to in this clause the Lessor will not cause unnecessary interference with the use of the Premises by the Lessee.

5.6 Holding over

If the Lessee shall upon the expiration of the term hold over the Premises a tenancy from year to year shall not be presumed but the tenancy shall in that event be and continue to be a tenancy from week to week at the rental then payable but otherwise upon the terms and conditions contained in this Lease insofar as they are applicable and shall be determinable at the expiration of one week's notice by either party to the other at any time.

5.7 No waiver

No waiver (whether express or implied) by the Lessor of any breach of any covenant, obligation or provision contained or implied in this Lease will operate as a waiver of any other breach of the same or any other covenant, obligation or provision contained or implied in this Lease nor shall it operate as a waiver of the essentiality of any obligation which by virtue of this Lease is an essential term of this Lease. In particular, any demand by the Lessor for, or any acceptance by the Lessor of, rent or other moneys payable under this Lease will not constitute a waiver by the Lessor of any breach of any provision in this Lease and will not create any new tenancy between the parties. No custom or practice which has grown up between the parties in the course of administering this Lease will be construed so as to waive or lessen the right of the Lessor to insist on the performance by the Lessee of all or any of the Lessee's obligations under this Lease.

5.8 No warranty

This document embodies the whole transaction of leasing made by this Lease and all warranties, conditions and representations collateral or otherwise concerning the leasing whether written, oral, express or implied and whether consistent with this document or not are cancelled. This Lease may be amended only by instruments in writing executed by the Lessor and the Lessee. The Lessee acknowledges that it has entered into this Lease without relying on any representation or warranty by the Lessor except as stated in this clause and after satisfying itself as to the suitability of the Premises for the purpose of which the Premises are leased.

5.9 Notices

- (1) Any notice or demand from the Lessor to the Lessee is to be taken to be duly served if left for the Lessee on the Premises, if mailed by prepaid letter addressed to the Lessee at the address set in this Lease or if sent by facsimile machine to the Lessee's facsimile machine.
- (2) Any notice or demand from the Lessee to the Lessor is to be taken to be duly served if mailed by prepaid letter addressed to the Lessor at its office.
- (3) A notice or demand posted mailed is to be taken to be duly served at the expiration of 48 hours after the time of posting mailing and any notice given by one party to the other may be signed on behalf of the party giving it by a director, board member, secretary, chief executive officer or solicitor.

5.10 Interpretations

In this Lease unless the context requires otherwise:

- (a) "Lessor" if only one Lessor is a party means the Lessor and the executors, administrators and assigns of the Lessor and if there are two or more Lessors parties hereto means the Lessors and each of them and their and each of their executors, administrators and assigns and if the Lessor or any of the Lessors shall be a corporation includes the corporation and its successors and assigns;
- (b) "Lessee" if only one Lessee is a party means the Lessee and the executors, administrators and permitted assignees of the Lessee and if there are two or more Lessees parties means the Lessees and each of them and their and each of their executors, administrators and permitted assigns and if the Lessee or any of the Lessees shall be a corporation includes the successors and permitted assigns of the Lessee;
- (c) words importing the masculine gender include the feminine gender and also have application to corporations;
- (d) words importing the plural number include the singular number and words importing the singular number include the plural number;

- (e) reference to an Act includes all statutes amending consolidating or re-enacting the Act referred to or passed in substitution for an Act;
- (f) when two or more Lessors, Lessees or Guarantors (as the case may be) are parties the covenants and agreements on their part shall bind them and any two or greater number of them jointly and severally;
- (g) 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 provisions of this Lease nor in any way affect this Lease.

6. ESSENTIAL TERMS

The Lessee and the Lessor agree that each of clauses 3.1, 3.2, 3.3, 3.12, 3.13 and 3.21 are essential terms of this Lease, and any breach or failure by the Lessee to comply with any of those clauses will entitle the Lessor to all rights and remedies available to it in respect of breach of or failure to comply with an essential term.

EXECUTED as a Deed

THE COMMON SEAL of TOWN OF PORT)
HEDLAND was hereunto affixed pursuant to a)
resolution of the Council in the presence of:)

Beachon

Mayor

A J Ford

Chief Executive Officer



THE COMMON SEAL of PORT HEDLAND)
RETIREMENT VILLAGE INCORPORATED)
was hereunto affixed by authority of the Board of)
Management in the presence of:)

Pamela Gungall Handberg

Trustee

Katrina Oshkover

Trustee



APPROVED FOR THE PURPOSES OF SECTION 18
OF THE LAND ADMINISTRATION ACT 1997

George P. ...
by Order of the Minister for Lands
This document is still subject to the registration
requirements of the Transfer of Land Act 1893.