



HERBERT
SMITH
FREEHILLS

Lease – Health Suite x, Geographe Leisure Centre

City of Busselton

Tenant



Contents

Table of contents

1	Definitions and interpretation	2
1.1	Definitions	2
1.2	Interpretation	5
2	Grant of lease	5
3	Length of lease	6
3.1	Term	6
3.2	Holding over	6
4	Payments by the Tenant	6
4.1	Payments by the Tenant	6
4.2	How the payments are to be made	6
4.3	Interest on overdue money	6
5	Rent	6
5.1	Rent	6
5.2	Variation of Rent	7
6	Services, Costs and GST	7
6.1	Services to the Premises	7
6.2	Payment of costs	7
6.3	Goods and services tax	7
7	Tenant's obligations in relation to maintenance of the Premises	8
7.1	Tenant to maintain the Premises	8
7.2	Tenant to maintain the Tenant's Property and Landlord's Property	8
7.3	Tenant to keep Premises clean	8
7.4	Tenant to repair or replace items if necessary	8
7.5	Alterations by the Tenant	8
8	Tenant's obligations in relation to the use of the Premises	8
8.1	Permitted use of Premises	8
8.2	Tenant to comply with all laws and requirements	8
8.3	Tenant must not conduct offensive activities	9
8.4	Tenant's use of Landlord's Property	9
8.5	Tenant liable for permitted persons	9
8.6	Security	9
8.7	Tenant's use of Common Areas	9
8.8	Services to the Premises	9
8.9	Tenant to report to Landlord	10
8.10	Signs	10
8.11	Rules	10
9	Landlord's rights and obligations	10
9.1	Landlord must allow quiet enjoyment	10
9.2	Landlord to maintain Building and clean Common Areas	11
9.3	Landlord only liable while registered proprietor	11
9.4	Landlord may undertake building works	11



9.5	Landlord may enter Premises	11
9.6	Landlord may grant easements and other interests over Land	11
10	Insurance, release and indemnities	12
10.1	Tenant to effect public liability insurance	12
10.2	Tenant to effect insurance for the Tenant's Property	12
10.3	Supply details of Insurance	12
10.4	Not to invalidate insurance	12
10.5	Tenant indemnifies the Landlord and the Minister	12
10.6	Tenant releases the Landlord and the Minister	13
10.7	Landlord to insure Building	13
11	Default by the Tenant	13
11.1	Breach and termination	13
11.2	Landlord may remedy Tenant's breach	14
11.3	Acceptance of money payable not to prejudice Landlord's Rights	14
11.4	Essential terms	14
11.5	Compensation to the Landlord	14
12	Destruction or damage to Building or Premises	14
12.1	Definition	14
12.2	Major rebuilding required	15
12.3	Abatement of Rent	15
12.4	Tenant may Terminate	15
13	Termination	16
13.1	Restoration of the Premises on Termination	16
13.2	Yield up and surrender keys	16
13.3	Removal of Tenant's Fixtures	16
13.4	Tenant's property left in Common Areas	16
13.5	Tenant's property not removed at Termination	16
14	Assignment, subletting and other dealings	17
14.1	No dealing without consent	17
14.2	Exclusion of the Property Law Act	17
15	General matters	17
15.1	Notices	17
15.2	Proper law	17
15.3	Laws which alter agreement	17
15.4	Severance	18
15.5	Variation	18
15.6	Further assurances	18
15.7	Continuing obligations	18
15.8	Caveats	18
15.9	Waivers	18
	Commercial Terms	19
	Signing page	1



Lease – Health Suite number x, Geographe Leisure Centre

Date ►

Between the parties

Landlord

City of Busselton

Locked Bag 1, Busselton, Western Australia 6280

(Landlord)

Tenant

(Tenant)

Background

- A. The Landlord is the primary interest holder of the Land being a Crown reserve under management order, and is authorised to grant leases of the Land for community purposes pursuant to the Management Order.
 - B. The Landlord has agreed to grant to the Tenant and the Tenant has agreed to take, a lease of the Premises as set out in this lease.
-

The parties agree as follows:



1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Building	the building described in Item 1 and all other improvements and structures on the Land for the time being used in connection with the building.
Business Day	a day other than a Saturday, Sunday or public holiday in Perth, Western Australia.
Common Areas	a part of the Land and the Building from time to time set aside by the Landlord as an area open for common use by occupiers of the Building.
Consumer Price Index (CPI)	the index published by the Australian Bureau of Statistics as the Consumer Price Index for Perth for all groups or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.
Current CPI	for a Review Date, the Consumer Price Index number last published prior to that Review Date.
Further Term	each further term specified in Item 5.
GST	goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply.
GST law	has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
Insolvency Event	1 if the Tenant informs the Landlord or the Tenant's creditors generally that the Tenant is insolvent or unable to pay its debts as they fall due;

Term	Meaning
	<p>2 if the Tenant, being a corporation:</p> <ul style="list-style-type: none"> (a) becomes insolvent; (b) resolves to be wound up voluntarily (unless the winding up is for the purpose of reconstruction or amalgamation); (c) has a winding up application presented against it (unless the winding up is for the purpose of reconstruction or amalgamation); (d) is ordered to be wound up; (e) is dissolved or has its registration cancelled; (f) is placed in administration or provisional liquidation; or (g) has a receiver or receiver and manager or controller (as defined under the Corporations Act 2001) appointed over part or all of the Tenant's property; <p>3 a mortgagee of the Tenant's property takes possession of any of that property; or</p> <p>4 an execution or similar process is made against the Premises or the property of the Tenant on the Premises.</p>
Interest	interest at the rate 4% above the Corporate Overdraft Reference Rate published by Commonwealth Bank of Australia at the date when payment of the interest becomes due and payable or if that rate is no longer published, a rate reasonably determined by the Landlord.
Item	refers to an item in Schedule 1, Commercial Terms forming part of this lease.
Land	the land described in Item 2 on which the Building is situated.
Landlord's Property	each fixture, fitting and item of Plant and Equipment installed in the Premises and belonging to the Landlord.
Management Order	management order G511721 dated 3 June 1997
Minister	the Minister for Lands being a body corporate continued under section 7(1) of the Land Administration Act 1997 (WA) (LAA) and being the Minister to whom the administration of the LAA is from time to time committed by the Governor of Western Australia.
Permitted Person	<p>1 an agent, employee, licensee, or invitee of the Tenant; and</p> <p>2 any person visiting the Building with the express or implied</p>



Term	Meaning
	consent of any person mentioned in the paragraph above.
Permitted Use	the use specified in Item 9.
Plant and Equipment	plant and equipment owned or leased by the Landlord serving the Land or the Building.
Premises	that part of the Land and Building described in Item 3.
Previous CPI	for a Review Date, the Consumer Price Index number last published before: <ol style="list-style-type: none">1 the immediately preceding Review Date; or2 if there is no preceding Review Date, the date of commencement of the Term.
Rent	the rent paid by the Tenant to the Landlord under clause 5.
Review Date	each date specified in Item 7.
Rules	such rules and regulations from time to time made by the Landlord in respect of the use of the Building and Premises.
Service	electricity, water, gas, telephone, sewerage disposal or communication link, security system or other like service.
Tenant's Obligations	each agreement or obligation in this lease or imposed by law with which the Tenant must comply.
Tenant's Property	each fixture, fitting or other property installed in or brought on the Premises by the Tenant.
Term	the term specified in Item 4.
Termination	the expiry or earlier determination of the Term under this lease.

1.2 Interpretation

Unless the contrary intention appears:

- (a) Headings and boldings are for convenience only and do not affect the interpretation of this lease.
- (b) Words denoting the singular include the plural and vice versa.
- (c) Words denoting a gender include each gender.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this lease have a corresponding meaning.
- (e) A reference to a person includes a natural person, partnership, joint venture, association, or corporation and a government or any governmental, local authorities and agencies.
- (f) A reference to a thing, including a right or power, includes the whole or a part of that thing.
- (g) A reference to a statute includes a regulation, by-law, requisition and order made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, requisition or order for the time being in force.
- (h) A reference to a document, including this lease, includes each document or agreement varying or replacing that document.
- (i) A reference to a party to a document includes that party's successors personal representatives and permitted assigns.
- (j) An agreement on the part of 2 or more persons binds them jointly and severally.
- (k) A reference to a body, other than a party to this lease (including, without limitation, an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (l) Where the day on or by which a thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.
- (m) Month means a calendar month.
- (n) Where a general description of a thing, including a right or obligation, is followed by a specific instance or example of that thing, that specific instance or example does not limit the scope of the general description.
- (o) This lease includes the provisions contained in a schedule or annexure to this document.

2 Grant of lease

The Landlord:

- (a) leases the Premises to the Tenant; and
 - (b) grants the Tenant the right to use the Common Areas,
- on the terms and conditions set out in this lease.

3 Length of lease

3.1 Term

The lease granted to the Tenant is for the Term.

3.2 Holding over

If the Tenant remains in possession of the Premises after expiry of the Term with the written consent of the Landlord, the Tenant will be a monthly tenant of the Landlord on the same terms and conditions as this lease so far as they are applicable to a monthly tenancy.

4 Payments by the Tenant

4.1 Payments by the Tenant

The Tenant must pay to the Landlord the Rent and any other money payable by the Tenant to the Landlord under this lease:

- (a) without demand and without deduction or set off, including equitable set off; and
- (b) at the times specified in this lease with any proportional adjustments necessary for the first and last payments and any payments following any variation of the Rent.

4.2 How the payments are to be made

- (a) The Rent and other money payable by the Tenant must be paid to the Landlord as specified by the Landlord to the Tenant from time to time.
- (b) If required by the Landlord, the Tenant must make arrangements with the Tenant's bank directing payment of the Rent and other money payable by the Tenant under this lease to the Landlord by debiting the Tenant's bank account and crediting the Landlord's bank account with those payments.

4.3 Interest on overdue money

Without affecting the Landlord's rights, the Tenant must pay to the Landlord on demand Interest on money payable by the Tenant to the Landlord which is unpaid for 7 days calculated from the due date for payment until payment.

5 Rent

5.1 Rent

Subject to clause 4.1, the Tenant must pay to the Landlord the Rent by the instalments specified in Item 6.

5.2 Variation of Rent

The Rent from each Review Date will increase by the amount specified in Item 7.

6 Services, Costs and GST

6.1 Services to the Premises

- (a) The Tenant must pay:
- (1) to the Landlord; or
 - (2) to another person, if the demand is made to the Tenant by that other person,
- on demand all charges for Services to the Premises including costs for the connection, usage and supply of a Service.
- (b) The Lessee acknowledges and agrees that the Lessee must pay the water and electricity consumptions charges in respect of the Premises as specified in Item 8.

6.2 Payment of costs

- (a) The Lessee will pay the Lessor's reasonable legal and other costs in respect of the preparation and registration of this lease.
- (b) The Tenant must pay the Landlord's reasonable legal and other costs associated with any breach of a Tenant's Obligation.

6.3 Goods and services tax

- (a) Words used in this clause which have a defined meaning in the GST law have the same meaning as in the GST law unless the context indicates otherwise.
- (b) Unless expressly included, the consideration for any supply under or in connection with this lease does not include GST.
- (c) To the extent that any supply made under or in connection with this lease is a taxable supply for which the supplier is liable for GST, the recipient must pay, in addition to the consideration provided under this lease for that supply (unless it expressly includes GST) an amount (**additional amount**) equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.
- (d) The supplier must issue a tax invoice to the recipient of a supply to which subclause (c) applies no later than 7 days following payment of the GST inclusive consideration for that supply under that clause.
- (e) If a party is entitled under this lease to be reimbursed or indemnified by any other party for a cost or expense incurred in connection with this lease, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that an input tax credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.

7 Tenant's obligations in relation to maintenance of the Premises

7.1 Tenant to maintain the Premises

The Tenant must maintain the Premises in good order and condition except for:

- (a) fair, wear and tear; and
- (b) structural damage not caused by an act or omission of the Tenant or a Permitted Person.

7.2 Tenant to maintain the Tenant's Property and Landlord's Property

The Tenant must maintain the Tenant's Property and the Landlord's Property in the Premises and keep them in good order and condition.

7.3 Tenant to keep Premises clean

The Tenant must keep the Premises clean, tidy and free of rubbish.

7.4 Tenant to repair or replace items if necessary

Without affecting clauses 7.1 and 7.2, the Tenant must promptly:

- (a) repair any damage to the Building or Landlord's Property caused by the Tenant;
- (b) replace all electric globes and fluorescent tubes in the Premises which fail for any reason; and
- (c) replace all broken or damaged glass in the doors, walls or windows of or to the Premises unless broken or damaged by the Landlord, its employees, agents or contractors.

7.5 Alterations by the Tenant

The Tenant must not alter, add to, remove or demolish any part of the Premises, including install or alter any fixture or partitioning in the Premises which forms part of the Tenant's Property, unless the Tenant:

- (a) obtains the prior written consent of the Landlord; and
- (b) satisfies any reasonable condition imposed by the Landlord.

8 Tenant's obligations in relation to the use of the Premises

8.1 Permitted use of Premises

The Tenant must use the Premises for the Permitted Use and not for any other purpose.

8.2 Tenant to comply with all laws and requirements

- (a) The Tenant must comply with each law relating to the Premises or the use of the Premises except for any imposing an obligation to carry out structural work unless that work is required as a result of the Tenant's use of the Premises.

- (b) The Tenant must obtain all consents, licenses and authorities required by the Tenant to conduct the Tenant's business.

8.3 Tenant must not conduct offensive activities

The Tenant must not do anything on the Premises or the Building which is:

- (a) offensive, illegal or which causes nuisance, damage, or disturbance to any person; or
- (b) likely to be dangerous to anyone or cause damage to any property.

8.4 Tenant's use of Landlord's Property

The Tenant must:

- (a) not use any Service or Landlord's Property for a purpose other than that for which it was designed or designated;
- (b) not remove any of the Landlord's Property without the Landlord's consent; and
- (c) comply with the reasonable requirements of the Landlord relating to the Services and the Landlord's Property.

8.5 Tenant liable for permitted persons

The Tenant is liable for the acts or omissions of Permitted Persons arising out of and in connection with the rights and obligations created by this lease.

8.6 Security

It is the Tenant's responsibility to ensure that:

- (a) the Premises are kept safe, secure and protected against theft; and
- (b) all doors, windows and other openings are locked or securely shut whenever the Premises are unoccupied.
- (c) All keys issued by the Lessor shall remain in the possession of the Lessee, its employees or agents and any security call out charge incurred as a result of the Lessee's use of the Premises or the Building shall be reimbursed to the Lessor

8.7 Tenant's use of Common Areas

The Tenant must not do or omit to do anything which might cause or allow the Common Areas to:

- (a) deteriorate or become impaired except for fair wear and tear;
- (b) be in a condition other than a good and clean condition; or
- (c) be obstructed, including leaving anything in the Common Areas.

8.8 Services to the Premises

- (a) If the Landlord supplies a Service, the Tenant must use only that supply.
- (b) If a Service is not supplied by the Landlord, the Tenant must make the Tenant's own arrangements direct with a supplier of that Service.

- (c) The Tenant must comply with any reasonable condition of supply of a Service imposed by the Landlord and with each additional condition of supply imposed by the supplier.

8.9 Tenant to report to Landlord

The Tenant must promptly:

- (a) report to the Landlord:
 - (1) damage to or accident in the Building; or
 - (2) a problem or malfunction of a Service or Landlord's Property, of which the Tenant is aware; and
- (b) provide to the Landlord a copy of any notice or report affecting the Premises.

8.10 Signs

- (a) The Landlord retains all naming and signage rights to the Building.
- (b) The Tenant must not put anything on the outside of the Premises (including a sign or advertisement) without the prior written consent of the Landlord and only after obtaining each necessary approval of all relevant authorities.
- (c) Signage inside the Building will be governed by the Rules from time to time.

8.11 Rules

- (a) The Tenant
 - (1) must comply with the Rules in respect of the use of the Premises and the Building (**Rules**); and
 - (2) agrees that the failure of the Tenant or of any Permitted Person to comply with any of the Rules will constitute a breach of this lease in the same manner as if the Rules were Tenant's Obligations.
- (b) If an inconsistency arises between the provisions of this lease and the Rules, the provisions of this lease prevail.
- (c) The Landlord is not liable for any loss or damage arising out of non-enforcement of the Rules.

9 Landlord's rights and obligations

9.1 Landlord must allow quiet enjoyment

The Landlord must allow the Tenant to occupy and use the Premises and enjoy the Tenant's rights under this lease during the Term:

- (a) subject to the Tenant complying with each Tenant's Obligation;
- (b) without being disturbed by the Landlord; and
- (c) except as provided in this lease.

9.2 Landlord to maintain Building and clean Common Areas

The Landlord must:

- (a) maintain the structure of the Building and the Common Areas in a safe condition; and
- (b) keep the Common Areas clean, tidy and in good condition.

9.3 Landlord only liable while registered proprietor

Each Landlord is only liable for breaches of a Landlord's obligation occurring while that person is the registered proprietor of the Land.

9.4 Landlord may undertake building works

The Landlord may:

- (a) undertake any repairs or maintenance to the Building;
 - (b) do any building work to extend, refurbish or change the Building,
- subject to the Landlord causing as little disruption to the Tenant's use of the Premises as is reasonable in the circumstances.

9.5 Landlord may enter Premises

- (a) The Landlord is permitted to enter the Premises to:
 - (1) inspect or clean the Premises;
 - (2) view the Premises with prospective purchasers or tenants; or
 - (3) undertake work or maintenance to the Premises or the Landlord's Property,at all reasonable times on the Landlord giving to the Tenant 2 Business Days notice, except in the case of an emergency when the Landlord may enter at any time without notice.
- (b) Where:
 - (1) the Tenant has failed to comply with a Tenant's Obligation; and
 - (2) the Landlord has given the Tenant at least 2 Business Day's notice to comply with the Tenant's Obligation,the Landlord may enter the Premises and undertake necessary work or actions at the Tenant's cost in order to comply with the Tenant's Obligation on the Tenant's behalf.

9.6 Landlord may grant easements and other interests over Land

The Landlord may:

- (a) subdivide the Land or the Building; or
 - (b) grant easements or restrictive covenants over the Land,
- provided that the Landlord does not substantially and permanently reduce the Tenant's rights under this lease.

10 Insurance, release and indemnities

10.1 Tenant to effect public liability insurance

The Tenant must take out and maintain insurance for public liability:

- (a) noting the interests of the Landlord;
- (b) for the amount specified in Item 10 for any one claim or any higher amount reasonably required by the Landlord; and
- (c) with a reputable insurance company carrying on insurance business in Australia:

10.2 Tenant to effect insurance for the Tenant's Property

The Tenant must take out and maintain insurance for the Tenant's Property:

- (a) for the full insurable value on a replacement or reinstatement basis; and
- (b) with a reputable insurance company carrying on insurance business in Australia:

10.3 Supply details of Insurance

The Tenant must:

- (a) supply to the Landlord details of each insurance policy referred to in clauses 10.1 and 10.2; and
- (b) produce each policy, certificate of insurance, receipt for premiums or certificate of currency when required to do so by the Landlord.

10.4 Not to invalidate insurance

The Tenant must:

- (a) not do or omit to do anything:
 - (1) which might render the insurance on the Building or public liability insurance in respect of the Land void or voidable; or
 - (2) which might cause the rate of premium to be increased; and
- (b) if the Landlord approves in writing a proposal of the Tenant to add to or increase a risk which is covered by insurance, pay all additional premiums resulting from the additional or increased risk.

10.5 Tenant indemnifies the Landlord and the Minister

The Tenant indemnifies the Landlord and the Minister against all loss, damage or expense which the Landlord or the Minister suffers or incurs arising whether directly or indirectly from:

- (a) the Tenant's use or occupation of the Premises;
- (b) an act or omission of the Tenant or a Permitted Person; or
- (c) a breach of a Tenant's Obligation;

except to the extent that the loss or damage is caused or contributed to by the Landlord or the Landlord's employees, agents or contractors or the Minister or the Minister's employees, agents or contractors.

10.6 Tenant releases the Landlord and the Minister

The Tenant:

- (a) occupies and uses the Premises at the Tenant's own risk; and
- (b) releases the Landlord and the Minister from any action or demand due to any action, demand, claim, damage, loss, injury, or death, occurring in the Premises or the Building, except to the extent caused by the Landlord or the Landlord's employees, agents or contractors or the Minister or the Minister's employees, agents or contractors.

10.7 Landlord to insure Building

The Landlord must insure the Building against those risks, in amounts and with insurance companies as the Landlord considers prudent.

11 Default by the Tenant

11.1 Breach and termination

- (a) If:
 - (1) the Tenant fails to pay Rent or any other amount payable under this lease when due and owing and that amount remains outstanding for 10 Business Days after written notice from the Landlord to the Tenant that the amount is due and owing;
 - (2) the Tenant is in breach of a Tenant's Obligation other than a failure to pay Rent or any other amount due under this lease and that breach continues for 10 Business Days after the Landlord has given the Tenant written notice of the default; or
 - (3) an Insolvency Event occurs in respect of the Tenant, the Landlord may, subject to complying with the requirements of the Property Law Act 1969 (WA), re-enter the Premises and on re-entry the Term will immediately determine but without:
 - (4) affecting any of the Landlord's rights; or
 - (5) releasing the Tenant from liability in respect of a Tenant's Obligation.
- (b) The Landlord may exercise the Landlord's rights under subclause (a) and re-enter the Premises by:
 - (1) taking possession of all or any part of the Premises;
 - (2) issuing and serving proceedings against the Tenant for possession; or
 - (3) giving a notice to the Tenant terminating this lease.



11.2 Landlord may remedy Tenant's breach

If the Tenant fails to pay any money payable by the Tenant or to do anything which constitutes a breach of a Tenant's Obligation:

- (a) the Landlord may pay that money payable or do that thing; and
- (b) the Tenant must pay to the Landlord on demand the Landlord's cost of remedying each breach or default.

11.3 Acceptance of money payable not to prejudice Landlord's Rights

Demand for or acceptance by the Landlord of Rent or other money payable under this lease after an event of default has occurred will not:

- (a) affect the exercise by the Landlord of the Landlord's rights under this lease; or
- (b) operate as an election by the Landlord either to exercise or not to exercise the Landlord's rights under this lease.

11.4 Essential terms

Each Tenant's Obligation in the following clauses is an essential term of this lease - clauses 4, 5, 6, 7, 8, 10, 13 and 14. This clause does not mean or imply that there are no other essential terms in this lease.

11.5 Compensation to the Landlord

- (a) The Tenant must compensate the Landlord for loss, damage or expense incurred or reasonably expected to be incurred by the Landlord as a result of an event of default referred to in this 11.
- (b) If this lease is terminated following breach of an essential term, the Landlord, in addition to any other remedy, is entitled to recover loss of bargain damages from the Tenant being the total of all money then payable and which but for its termination would have become payable under this lease for the unexpired balance of the Term.
- (c) The amount payable under this clause is subject to the obligation of the Landlord to take reasonable steps to mitigate the Landlord's loss and damage.

12 Destruction or damage to Building or Premises

12.1 Definition

In this clause:

Term	Meaning
Unfit for Occupation	that the Premises or the Building, or any part of the Premises or the Building are so destroyed or damaged as to: <ol style="list-style-type: none"> 1 render a substantial part of the Premises unfit for occupation and

use; or

- 2 interfere substantially with the Tenant's rights under this lease.
-

12.2 Major rebuilding required

If the Building or any part of the Building is so destroyed or damaged:

- (a) as to require major rebuilding of the Building; or
- (b) that the Premises are Unfit for Occupation; or
- (c) as to inhibit access to the Premises by the Tenant or the customers of the Tenant's business in any substantial manner;

the Landlord:

- (d) may within 3 months of the destruction or damage terminate the Term with immediate effect by written notice to the Tenant;
- (e) will not be obliged to rebuild the Building or that part damaged; and
- (f) unless the Landlord has Terminated the Term, must within 3 months of the destruction or damage, give written notice to the Tenant advising the Tenant:
 - (1) whether or not the Landlord intends to rebuild; and
 - (2) if the Landlord intends to rebuild, how long that rebuilding is estimated to take.

12.3 Abatement of Rent

If:

- (a) the Premises are Unfit for Occupation; and
- (b) payment of insurance money in respect of the damage or destruction causing the Premises to be Unfit for Occupation is not at any time refused or withheld in whole or in part as a result of any act or omission of the Tenant,

the Rent and other money payable under this lease or a fair and just proportion according to the nature and extent of the damage sustained will from the date of damage or destruction until the Premises are reinstated and are no longer Unfit for Occupation abate and cease to be payable.

12.4 Tenant may Terminate

If the Premises are Unfit for Occupation and:

- (a) the Landlord has given the Tenant notice under clause 12.2 that it does not intend to rebuild; or
- (b) the Premises remain Unfit for Occupation for a period of at least 3 months,

the Tenant may give the Landlord written notice to terminate the Term with immediate effect but without affecting the rights of the Landlord in respect of any unpaid money payable under this lease or any antecedent breach by the Tenant of any of the Tenant's Obligations.

13 Termination

13.1 Restoration of the Premises on Termination

Prior to Termination, the Tenant at the Tenant's cost must restore:

- (a) the Premises;
- (b) the Building; and
- (c) those parts of the Services,

affected by anything done by the Tenant to its state before being so affected, having regard to the age of the Premises and the Tenants Obligations.

13.2 Yield up and surrender keys

On Termination the Tenant must:

- (a) quietly surrender and give up to the Landlord possession of the Premises in a condition consistent with observance and performance of the Tenant's Obligations; and
- (b) give to the Landlord all keys and security access devices providing access to or within the Building held by the Tenant whether or not provided by the Landlord.

13.3 Removal of Tenant's Fixtures

Prior to Termination, unless otherwise agreed by the Landlord, the Tenant must remove from the Premises and the Building all the Tenant's Property and property of the Tenant and promptly make good to the satisfaction of the Landlord any damage caused by the installation and removal.

13.4 Tenant's property left in Common Areas

- (a) The Landlord may remove any property of the Tenant left in the Common Areas or Meeting Rooms and may sell that property and use the money from the sale to offset any unpaid money payable to the Landlord under this lease.
- (b) All Tenant's Property not removed at Termination will, at the Landlord's option, become the absolute property of the Landlord and may be disposed of by the Landlord as the Landlord thinks fit.

13.5 Tenant's property not removed at Termination

- (a) On re-entry the Landlord will have the right to remove any property of the Tenant left in the Premises.
- (b) The Tenant indemnifies the Landlord against all damage caused by the removal of and the cost of storing that property.
- (c) All Tenant's Property not removed at Termination will, at the Landlord's option, become the absolute property of the Landlord and may be disposed of by the Landlord as the Landlord thinks fit.

14 Assignment, subletting and other dealings

14.1 No dealing without consent

The Tenant must not assign, mortgage or charge this lease nor sublet or part with possession of the Premises or any part of the Premises.

14.2 Exclusion of the Property Law Act

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

15 General matters

15.1 Notices

- (a) A notice to a person must be in English, in writing and signed by, or on behalf of, the sender.
- (b) The Landlord may only serve a notice on the Tenant by:
 - (1) giving it to the Tenant personally;
 - (2) leaving it at, posting it to, or faxing it to the address in Item 11.
- (c) The Tenant may serve a notice on the Landlord by posting it, by registered mail, to the address in Item 11.
- (d) The Landlord or the Tenant may change the address details set out in Item 10 by giving notice of the new address details to the other party.
- (e) A notice sent by facsimile will be treated as having been given on production of a transmission report by the sender's facsimile machine which indicates that the facsimile message was transmitted in its entirety to the recipient's facsimile number, but if the transmission is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is treated as having been given on the next Business Day.

15.2 Proper law

This lease is governed by the laws in force in Western Australia.

15.3 Laws which alter agreement

If at any time and for so long as a law applies to this lease:

- (a) a provision of that law conflicts with or would render void a provision of this lease; and
- (b) under that law, that provision of that law prevails,

each conflicting provision of this lease is taken to be amended to the extent necessary to resolve the conflict with that law and each provision which would have been rendered void is taken to be amended accordingly to ensure the validity of that clause.

15.4 Severance

If any part of this lease is, or becomes, void or unenforceable that part is or will be, severed from this lease to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

15.5 Variation

This lease may be varied only in writing by the parties.

15.6 Further assurances

Each party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this lease.

15.7 Continuing obligations

The provisions of this lease will apply throughout the Term and all obligations of the Tenant are continuing obligations.

15.8 Caveats

- (a) The Tenant must not lodge an absolute caveat over the Land to protect the interest of the Tenant under this lease.
- (b) The Tenant must withdraw any subject to claim caveat warning of the interest of the Tenant over the Land on Termination.

15.9 Waivers

- (a) Failure to exercise or delay in exercising a right, power or privilege in this lease by the Landlord does not operate as a waiver of that right, power or privilege.
- (b) A single or partial exercise of a right, power or privilege does not preclude:
 - (1) another or further exercise of that right, power or privilege; or
 - (2) the exercise of another right, power or privilege.



Schedule 1

Commercial Terms

1	Building (clause 1)	The Building constructed on the Land, being the Geographe Leisure Centre.
2	Land (clause 1)	Lot 300 on Deposited Plan 50595 being the whole of the land in Certificate of Crown Land Title Volume LR3137, Folio 982 situated at 1 Recreation Lane, West Busselton, WA6280.
3	Premises (clause 1)	That part of the Building known as Health Suite x within the Geographe Leisure Centre comprising an area of approximately x square metres as shown on the plan annexed to this lease.
4	Term (clause 1)	Term: Commencing on: Expiring on:
5	Further Term (clause 1)	Term: Commencing on: Expiring on: Term: Commencing on: Expiring on:
6	Rent (clause 1)	From the date of commencement of the Term until varied the Rent (inclusive of GST) is \$xxxx per annum payable by monthly instalments of \$xxxx (including GST), with the first instalment payable on the date of commencement of the Term.



7 **Review Dates and amount of increase**
(clause 5)

Review Dates - Each anniversary of the commencement date of this lease.

Amount of increase – On each Review Date, the Rent will increase by CPI.

The annual increase will be calculated as follows:

$$\text{current Rent} \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

8 **Electricity and water charges**
(clause 6)

\$50 per month (including GST) will be charged for the electricity and water consumption in respect of the Premises occupied by the Lessee.

9 **Permitted Use**
(clause 1)

Administration of the nutritional services.

10 **Public liability insurance Amount**
(clause 10.1)

\$10,000,000.00

11 **Addresses for giving Notices**
(clause 15.1)

Unless an address is specified in this Item, the address of a party for giving notices specified in this lease is the address of that party given in this lease.

Landlord's details:

Address: Locked Bag 1, Busselton, WA 6280
 Attention: Chief Executive Officer
 Fax: 08 9752 4958

Tenant's details

Address:
 Attention:
 Fax:



Signing page

Executed as an agreement

Landlord

**The common seal of the
City of Busselton**
is hereto affixed

sign here ► _____
Mayor

print name _____

sign here ► _____
Chief Executive Officer

print name _____



Tenant

Is hereto affixed in accordance with its
Constitution.

sign here ►

Signature of authorised person

*Position of
Authorised
Person*

Premises plan



HERBERT
SMITH
FREEHILLS

Minister for Lands consent

DRAFT