



GYMPIE REGIONAL COUNCIL

STANDARD TERMS FOR A TRUSTEE LEASE

Registration No: 723451471

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GYMPIE REGIONAL COUNCIL STANDARD TERMS FOR A TRUSTEE LEASE

This document needs to be read in conjunction with the prescribed terms contained in Schedule 3 of the Land Regulation 2020

For the *Land Act 1994*, this document contains provisions that are treated as terms of a further document, and applies to a document, that is a Trustee Lease under that Act. Those provisions are:

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PART 1: INTERPRETATION

1.1 General Requirement

Unless:

- (a) the context otherwise requires; or
- (b) a contrary intention appears

the words defined in **Clause 1.2** shall have throughout this lease the meaning assigned thereto by **Clause 1.2**.

1.2 Definitions

Each of the following expressions bears the meaning shown opposite:

Act	<ul style="list-style-type: none">• An Act passed by Commonwealth Parliament or the Queensland Parliament.• Subordinate legislation under any such Act.• A direction or requirement made under any such Act or subordinate legislation by a competent authority or person.• A licence, authorization, consent, approval, or exemption granted under any such Act or subordinate legislation.• A planning instrument.• A local law.
Act	Includes: <ul style="list-style-type: none">(1) an omission; and(2) a refusal to act.
Act of Insolvency	<ul style="list-style-type: none">• Suffering the appointment of a receiver, which appointment is not terminated, postponed or enjoined within 14 days after it is made.• Entering voluntary administration.• Suffering the appointment of a provisional liquidator.• Failing to satisfy a statutory demand under Corporations Act 2001 section 459E.• Voluntarily applying to be wound-up, or suffering presentation of an application for winding-up.• Being wound up or being de-registered as a corporation.• Entering a composition or scheme of arrangement for the benefit of creditors.• Failing to secure the return of one's assets within 21 days after a creditor or an encumbrance lawfully seizes them.• Committing an act of bankruptcy mentioned in Bankruptcy Act 1966 section 40.

	<ul style="list-style-type: none">• Presenting a debtors petition for bankruptcy, or suffering the presentation of a creditors petition.• Signing an authority under Bankruptcy Act 1966 section 188 (to appoint a controlling lessor).• Becoming bankrupt upon a debtors petition or a creditors petition.
Address for Notices	<p>For the Trustee as referred to in Item 1 of the Reference Schedule or as otherwise advised by it in writing.</p> <p>For the Trustee Lessee as referred to in Item 2 of the Reference Schedule or as otherwise advised by it in writing.</p>
Building	A building that comprises, includes, or forms part of, the Land.
Business	Any business conducted by the Trustee Lessee in connection with a Liquor Licence obtained under Part 13 of this Lease.
Business Day	A day which is not a Saturday, Sunday or public holiday in the locality of the Premises
Chief Executive Officer	<p>(1) The Trustee's Chief Executive Officer, at any relevant time;</p> <p>(2) Any person the Trustee's Chief Executive Officer authorises in writing to exercise at any relevant time his responsibilities for any purpose relating to this Lease (the Trustee Lessee acknowledging that the Chief Executive Officer is empowered to delegate his responsibilities generally or particularly).</p>
Corporation	Includes an incorporated association constituted by the <i>Associations Incorporation Act 1981</i> .
Cost	Includes loss, liability, damage and expense.
Council	Gympie Regional Council (being an entity under <i>the Local Government Act 2009</i>) representing the interests of the community of the Gympie Region.
Damage Policy	<p>An insurance policy that indemnifies against Cost resulting from damage or destruction through:</p> <ol style="list-style-type: none">(1) fire;(2) burst pipes and overflow;(3) storm and tempest;(4) flood;(5) earthquake;(6) explosion and concussion from explosion;(7) impact of vehicles, aircraft and articles escaping from them;

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- (8) malicious acts;
 - (9) civil commotion;
 - (10) theft;
 - (11) act of God; and
 - (12) other risks nominated reasonably by the Trustee from time to time.
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Development Permit A development approval or development permit issued under, or continued in existence by, the *Planning Act 2016*.

- Fixed Improvement (1) A structure, of a permanent or semi-permanent character, that is firmly affixed to:
- (a) the Land; or
 - (b) a structure upon the Land,

to enable the Land to be used or better used for a particular purpose.

Examples:

- (a) a building, whether demountable or not;
 - (b) an observation or viewing tower;
 - (c) floodlighting apparatus (including pole);
 - (d) a swimming pool or other bathing facility;
 - (e) a brick or concrete block barbeque;
 - (f) a coldroom
 - (g) an integrated air-conditioning system and an air-conditioner that is mounted through a hole made in an external wall for the purpose of enabling the machine to be so mounted;
 - (h) an in-ground irrigation system;
 - (i) a fence or wall other than a purpose-designed temporary fence or wall;
 - (j) a building slab;
 - (k) an immovable sight screen structure (irrespective of whether the screen itself can be re-positioned from side to side upon the structure);
 - (l) a concrete, paved, or otherwise-constructed, path patio or similar structure;
 - (m) an entrance arch.
- (2) The expression does not include an item that is affixed to the Land or a structure that is placed upon the Land to enable the item or structure to be used or better used.
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Examples:

- (a) *a wall-mounted dispensing machine;*
- (b) *a wall-mounted air-conditioner;*
- (c) *football goalposts;*
- (d) *a flagpole;*
- (e) *a cargo container.*

GST	GST is defined in the GST Act (being, without limiting the ambit of the definition of that Act, a tax upon the value of supply of goods and l or services).
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 Commonwealth.</i>
Improvements	means all plant, equipment, fixtures, fittings, furnishings and other property on the Land which the Trustee provides and, if relevant, includes the Services in or connected to the Land.
Insurance Relevant Information	A matter relating to the Trustee Lessee, or to any of its Officers or members, likely to affect an insurer's decision to grant or continue insurance for any of the risks the Trustee Lessee is required by this Lease to be insured for.
Index Review Dates	As described in Item 7 of the Reference Schedule.
Indicative Rate	The interest rate charged for the time being by the Trustee's banker to its customers on overdraft accommodation exceeding \$100,000.00.
Item	A numbered item of particulars in the Form 7 of this Lease, or the Reference Schedule.
Land	<p>(1) The Land detailed at Item 5 in the Form 7 and, if not the entirety of the land referred to at Item 2 in the Form 7 as shown upon the plan attached to the Lease.</p> <p>(2) All improvements and chattels the property of the Trustee:</p> <ul style="list-style-type: none">(a) situated upon the Land; and(b) used by the Trustee Lessee for the purposes of enjoyment or management of the Land and Improvements.
Licensing Authority	The Authority responsible under the <i>Liquor Act 1992</i> for regulating the sale and consumption of intoxicating substances
Liquor Licence	A License issued or to be issued under the <i>Liquor Act 1992</i> with respect to the Land and Improvements.

Loan Agreement	(1) An agreement between the Trustee and the Trustee Lessee pursuant to which the Trustee has lent money, or granted other financial accommodation, to the Trustee Lessee, whether or not at interest. (2) The expression includes a mortgage or other security instrument executed by the Trustee Lessee to secure the loan or financial accommodation.
Maintain	Includes repair and replace.
Major Incidents	Any damage to the value of \$6,000 or more including, but not limited to, damage caused by storm, flood and fire.
Minor Incidents	Any damage to the value of less than \$6,000 including, but not limited to, damage to plate glass and damage caused by acts of vandalism.
Negligence	An act, including an intentional act, that: (1) breaches a duty of care owed to a person; and (2) causes that person to incur or sustain a Cost that is compensable at law.
Officer	A director or management committee member, a secretary, an executive officer, an attorney or a solicitor of or for a party to the Lease.
Planning Scheme	The planning scheme governing the region pursuant to the <i>Planning Act 2016</i> .
Premises	Means the Land, and includes any Building located on the Land.
Prescribed Terms	the prescribed terms for a trustee lease contained in Schedule 3 of the <i>Land Regulation 2020</i>
Public Liability Insurance Policy	An insurance policy that indemnifies against Cost resulting from: (1) Property loss; (2) Property damage; (3) Death; and (4) Personal injury, sustained by a person during, or resulting from, an occurrence: upon the Land and Improvements; or upon any other land that the Trustee Lessee uses in relation to, or in conjunction with, the Premises.
Rates	(1) Local government general rates, water rates and sewerage rates. (2) Environmental levy, or any levy otherwise named but which is imposed to assist

or to facilitate preservation, restoration or improvement of the natural environment/s within the Gympie Region.

- (3) The levy an owner of land must pay to the local government under the *Fire and Rescue Service Act 1990*.
- (4) Any other fee, rate, special rate, charge, levy or impost an owner of land must at any time pay to the local government authority in which the property is located, whether such charge is levied by the local government authority or some other level of government or statutory authority and collected by the local government authority on behalf of another level of government or statutory authority.

Recipient	The person to whom a Taxable Supply is made under this Lease.
Reference Schedule	The reference schedule included in the schedule attached to the Form 7 with respect to the lease of which this document forms part.
Registration	Recording of the relevant dealing upon the title to the Trust Land, by the Registration Authority, pursuant to the <i>Land Act 1994</i> .
Registration Authority	Department of Resources.
Rent Period	A period of twelve (12) months occurring during the Lease Term, commencing from the Commencement Date of the Lease and on each anniversary thereof as the context requires.
Services	<p>The services or systems of any nature from time to time appurtenant to the Land and Improvements, including:</p> <ol style="list-style-type: none">(1) fire, sprinkler and air-conditioning facilities;(2) lighting, gas, fuel and other power sources;(3) water, sewerage or drainage facilities;(4) plant rooms and storage facilities, <p>and other fittings, fixtures, appliances, plant and equipment used for provision of those services or systems.</p>
State	The State of Queensland.
Taxable Supply	<p>A taxable supply as defined in the GST Act, being, without limiting the ambit of that definition, a supply made:</p> <ol style="list-style-type: none">(1) by a person who is, or is required to be, registered for GST;(2) for consideration, <p>in the course of or in furthering an enterprise connected with Australia.</p>

Tax Invoice	A tax invoice as defined in the <i>GST Act</i> , being, without limiting the ambit of that definition, an invoice: (1) in the approved form under the <i>GST Act</i> ; and (2) detailing the price for a Taxable Supply under this Lease.
Term	The term of this Lease, as detailed at Item 6 on the Form 7 .
Trustee's Office	(1) The Trustee's office located at 242 Mary Street, Gympie. (2) Such substitute address as the Trustee notifies to the Trustee Lessee in writing.
Utility Charges	(1) Charges by the local government for the supply of: (a) water, gas and sewerage services; and (b) cleansing services. (2) Any other service charge assessed with respect to the Land and Improvements under the <i>Local Government Act 1993</i> and any Local Government Act which may be enacted at any time hereafter.

1.3 Parties

Reference to a party to the lease includes in the case of a corporation, the corporation, its successors and assigns (transferees).

1.4 Covenants

Reference to a covenant or obligation in the Lease includes a covenant or obligation:

- (1) express or implied;
- (2) positive or negative;
- (3) running with the land or merely personal to the party upon which it is imposed. Statutory and Other Bodies

1.5 Statutory and Other Bodies

Reference to a relevant body (statutory, professional, or other) includes any body:

- (1) established or constituted in lieu of that body; and
- (2) as nearly as may be, succeeding to its power or functions.

1.6 Miscellaneous References

Reference to:

- (1) the singular includes the plural, and vice versa;
- (2) a gender includes each other gender;

- (3) a person includes a corporation, a firm and a voluntary association and vice versa;
- (4) an Act includes an Act that amends or replaces an Act;
- (5) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
- (6) money is a reference to Australian dollars and cents;
- (7) a time or day is a reference to Australian eastern standard time; and
- (8) writing is a reference to reproduction of words, figures, symbols, shapes in visible form, including print, type, lithograph, facsimile and photocopy.

1.7 Headings and Notes

Subject headings, footnotes, endnotes, and the table of contents:

- (1) exist for convenience only; and
- (2) are to be disregarded when interpreting the Lease.

1.8 Contra Proferentem Interpretation

The Lease is not to be interpreted against the interest of any party merely because the document was prepared by that party or on its behalf.

1.9 Nature of the Lease Document

Irrespective of whether it records the passage of consideration between Trustee and the Trustee Lessee, this document is a deed.

1.10 Modification of Implied Covenants

- (1) The covenants implied by Sections 105 and 107 of the Property Law Act 1974 are modified by or excluded from the Lease to the extent that they are inconsistent with it;
- (2) No covenant is implied into the Lease by operation of Section 109 of the Property Law Act 1974.

1.11 Merger

A provision of the Lease capable of continued application thereafter:

- (1) the Lease has terminated; or
- (2) a Court has issued judgment or made an order against a party with respect to that provision will remain enforceable despite the termination, judgment or order.

1.12 Severance

If:

- (1) any provision of the Lease is void, voidable, illegal or unenforceable; or
- (2) the Lease would be void, voidable, illegal or unenforceable unless a particular provision were deleted from it,

the provision will be deemed deleted from the Lease.

1.13 Entirety of Agreement

The Trustee Lessee acknowledges that it has not been induced to accept the Lease by any representation, verbal or other, made by or on behalf of the Trustee and not detailed in the Lease.

1.14 The Trustee Lessee acknowledgements

- (1) This Trustee Lease is subject to the provisions of the Prescribed Terms.
- (2) The Trustee Lessee acknowledges that the Land is administered under the Land Act 1994 and the Trustee holds the Land as trustee under that Act.
- (3) The Trustee Lessee acknowledges that the Trustee grants this Trustee Lease to benefit the community.
- (4) If any clause or condition of the Trustee Lease is inconsistent with either the Land Act 1994 or the Prescribed Terms, the provisions of the Land Act 1994 and the Prescribed Terms prevail.
- (5) The Trustee Lessee further acknowledges that, in accepting this Trustee Lease, it intends to contribute benefit to the community through use of the Land and Improvements in good faith, in accordance with this Trustee Lease.

PART 2: RENT AND OTHER CHARGES

2.1 Rent Payable

The annual rent payable is specified in **Item 6** of the Reference Schedule.

2.2 Payment of Rent

The Trustee Lessee must pay the annual rent to the Trustee:

- (1) in advance, on the first day of each Rent Period of the Term; and
- (2) without demand and without deduction.

2.3 Rent Review

- (a) Rent Review

Rent will be reviewed annually on the anniversary of the Commencement Date and increased in accordance with "Gympie Regional Council's Fees and Charges" for a Community Lease Agreement.

2.4 Payment of Rates and Utility Charges

- (1) The Trustee Lessee must pay upon demand the Trustee's accounts for Rates and Utility Charges, or their equivalents, levied or imposed with respect to the Land and Improvements. The Trustee Lessee may apply for a rates concession in accordance with Council's Community Organisation's Concessions Policy.
- (2) This **Clause 2.4** applies irrespective of whether the Land and Improvements are rateable land for the purposes of the *Local Government Act 2009* or any Local Government Act which

may be enacted at any time hereafter.

- (3) The Trustee's entitlements under this **Clause 2.4** are additional to, not in derogation of, its entitlement as local government, to levy and recover Rates and Utility Charges under the *Local Government Act 2009* or any Local Government Act which may be enacted at any time hereafter with respect to the Land and Improvements.

2.5 Charges for Gas and Electricity

The Trustee Lessee must pay all charges imposed or levied for gas and/or electricity consumed upon, or serving, the Land and Improvements.

2.6 Costs

The Trustee Lessee must pay to the Trustee upon demand:

- (1) The Trustee's reasonable legal and other expenses of:
- (a) preparation, settlement and execution of the Lease to a maximum of \$1,500 plus GST;
 - (b) All Titles Queensland registration fees for registering the Lease and any associated Titles Queensland documents;
 - (c) All Titles Queensland registration fees for registering the survey plan and 50% of the surveyor's costs of preparing the Lease Survey Plan; and
 - (d) obtaining any consent required with respect to the Lease or any dealing with the Lease, particularly any consent requested by the Trustee Lessee.
- (2) The Trustee's reasonable legal and other expenses of preparation, settlement, execution, and Registration of any necessary documents with respect to:
- (a) Any other dealing concerning the Lease; and
 - (b) Exercising or attempting to exercise any entitlement accruing to the Trustee upon a default by the Trustee Lessee under the Lease.

2.7 Character of Payments (GST)

Unless otherwise specified in this Lease, all payments for which the Lease provides are GST exclusive.

2.8 Responsibility for Payment of GST

The Recipient must:

- (1) bear the GST upon a Taxable Supply made under this Lease;
- (2) pay the tax to the Supplier with the Consideration for the Taxable Supply.

2.9 Tax Invoices and Adjustment Notes

The Supplier must give the Recipient a Tax Invoice for any GST borne by the Recipient under this Lease, not later than 14 days after the Supplier receives the relevant Consideration and GST.

PART 3: USE OF LAND AND IMPROVEMENTS

3.1 Permitted Use

- (1) The Trustee Lessee must use the Land and Improvements for the use only as specified in **Item 4** of the Reference Schedule.
- (2) The Trustee does not expressly or impliedly warrant that the Land or Improvements are (at the commencement date of this lease), or will remain, fit, suitable or adequate for all or any of the uses granted under this Lease.

3.2 Nuisance

The Trustee Lessee will not do or suffer to be done anything in upon or about the Land and Improvements which, in the reasonable opinion of the Trustee, constitutes a nuisance.

3.3 Overnight Sleeping

The Trustee Lessee must not permit any person, save on a temporary basis in the case of emergency circumstances, to sleep overnight upon the Land and Improvements without the Trustee's written permission.

3.4 Administration of Land and Improvements

- (1) The Trustee Lessee must make the rules and arrangements that the Trustee reasonably directs it to make for:
 - (a) protection, control and management of the Land and Improvements; and
 - (b) exclusion of dissolute, disreputable or otherwise undesirable persons from the Land and Improvements.
- (2) The Trustee Lessee also must do everything reasonable to assist the Trustee to enforce the requirements of any Act applicable to the Land and Improvements.
- (3) **Clauses 3.4(1) and 3.4(2)** do not limit the general effect of **Clause 3.1**.

3.5 Use of Land and Improvements by Third Persons

The Trustee Lessee must in respect of the Land and Improvements only permit other persons to use the Land and Improvements who:

- (1) conduct activities for which the Land and Improvements are suitable as a venue; and
- (2) apply to the Trustee Lessee for permission (in sufficient time to enable their applications to be adequately considered).

3.6 Conditions of Grant (Permissions to Third Persons)

- (1) A grant of permission under Clause 3.5(1) will be subject to the requirements specified in this **Clause 3.6**.

- (2) The Trustee Lessee (acting reasonably and in good faith) must determine whether:
 - (a) the land and Improvements are required for the conduct of its own activities at the relevant time; and
 - (b) whether the activities for which the Trustee Lessee requires the Land and Improvements will preclude their concurrent use by the applicant for permission.
- (3) If it does not require the Land and Improvements for its own activities, or it can reasonably accommodate, the applicant to use the Land and Improvements or a portion of the Land and Improvements concurrently with it, the Trustee Lessee may impose reasonable conditions upon the grant of its permission.
- (4) The Trustee Lessee's conditions may include a requirement governing reimbursement of charges incurred by the Trustee Lessee through the applicant's use of electricity or other services.
- (5) Any dispute that the Trustee Lessee and the applicant for permission cannot resolve between themselves will be resolved by the Trustee's Chief Executive Officer or his delegate in their absolute discretion, and whose decision will be final.
- (6) Permission must not be granted where:
 - (a) permanent or semi-permanent occupation or an area of the land and Improvements to the exclusion of the Trustee Lessee is intended; or
 - (b) the Trustee considers, in its absolute discretion, that a Sub-Lease should be granted.
- (7) Permission to use the Land and Improvements may include a reasonable rental fee to be charged by the Trustee Lessee which rental fee shall be such as to maximise the usage of the Land and Improvements within the constraints of what the public will pay or can afford.
- (8) No licence may be granted for the conduct of any activity inconsistent with:
 - (a) a planning policy applicable to the Land under the Planning Scheme; or
 - (b) a condition of a Development Permit applicable to the Land.

3.7 Fees for Use of Land and Improvements

- (1) Subject to **Clause 3.6**, the Trustee Lessee must not charge any person a fee to use the Land and Improvements, without the Trustee's written approval, to be granted or withheld at the Trustee's absolute discretion.
- (2) However, the Trustee Lessee may charge (in accordance with its constitution) reasonable membership admission and subscription fees.

3.8 Improper / Noxious Behaviour

The Trustee Lessee must not conduct, or permit to occur, upon the Land and Improvements:

- (1) Anything which the Trustee (in its absolute discretion) considers to be illegal, noxious, offensive or otherwise not consistent with acceptable social or community standards; and
- (2) anything that may cause, as determined by the Trustee (in its absolute discretion) a nuisance, annoyance, or cost to:
 - (a) The Trustee;
 - (b) other persons lawfully occupying or using the Trust land;
 - (c) The owners or occupiers of neighbouring Land and Improvements; or
 - (d) persons lawfully upon or about the Land and Improvements.
- (3) The Trustee acknowledges that carrying out of the Permitted Use on the Premises in accordance with the terms of this Lease, is not a breach of this clause.

3.9 Compliance with Statutory Requirements

The Trustee Lessee must discharge promptly, at its own expense (where applicable), the requirements of:

- (1) all Acts relating to the Land and Improvements; and
- (2) all notices, orders, requisitions and requirements (whether directed to the Trustee, the Trustee Lessee or both of them) issued with respect to the Land and Improvements by any lawful authority.

3.10 Advertising Devices

- (1) No advertising sign, bill, placard, notice or poster is to be affixed, painted, exhibited or operated upon the Land and Improvements without the Trustee's written permission.
- (2) When the Lease expires or otherwise terminates, the Trustee Lessee must remove all signs, bills, placards, notices and posters placed by the Trustee Lessee upon the Land and Improvements.

3.11 Connection of Electricity

The Trustee Lessee must:

- (1) Arrange with the relevant electricity supply authority for connection of suitable mains electricity to the Land and Improvements; and
- (2) Ensure, to the satisfaction of the electricity supply authority, that the connection and any equipment installed upon the Land and Improvements by that authority are properly maintained.

3.12 Native Title and Aboriginal Cultural Heritage

- (1) Where the whole of the lease area is not an area where:

(a) native title has previously been completely extinguished; or

(b) there is a registered Indigenous land use agreement that covers the lease dealing;

this lease may be covered by Section 24IA of the *Native Title Act 1993 (Cth)* (for lease renewals, re-grants and extensions) or by Section 24JA of the *Native Title Act 1993 (Cth)* (for leases granted under certain reservations). The non-extinguishment principle may apply to the lease dealing and Section 238 of the *Native Title Act 1993 (Cth)* describes the non-extinguishment principle.

- (2) Where native title exists over all or part of the lease area, for example because native title has not previously been extinguished and the non-extinguishment principle applies to this lease dealing, Section 44H of the *Native Title Act 1993 (Cth)* provides that an activity done in accordance with a valid lease prevails over any native title and any native title does not prevent the doing of the activity. The Trustee Lessee will notify the Trustee in writing of any proposal or possibility of it doing an activity in the lease area not in accordance with the lease.
- (3) The Trustee and the Trustee Lessee acknowledge the application of the cultural heritage protection provisions in Part 3 Division 1 of the *Aboriginal Cultural Heritage Act 2003 (Qld)*, including the statutory duty of care under Section 23(1) to take all reasonable and practicable measures to ensure an activity does not harm Aboriginal cultural heritage. Each party is responsible for ensuring compliance with the cultural heritage protection provisions for the activities that they respectively carry out.
- (4) Having regard to **clauses 3.12(1) to (3)**, the Trustee Lessee is responsible for carrying out native title and Aboriginal cultural heritage assessments prior to it undertaking any of its own activities in the lease area, including any additional improvements or other changes to the lease area.
- (5) In respect of proposed activities by the Trustee Lessee for which it is responsible, the Trustee Lessee will notify the Trustee in writing of any activities it proposes to carry out that may not be in accordance with the lease or compliant with the cultural heritage protection provisions. The Trustee Lessee will allow a minimum of twenty-one (21) days to enable the Trustee to undertake any compliance assessment it chooses to make in respect of the proposed activity. If the outcome of an assessment requires measures to be taken under the *Native Title Act 1993 (Cth)* or the *Aboriginal Cultural Heritage Act 2003 (Qld)*, the Trustee Lessee will not commence the proposed activity until it receives a clearance in writing from the Trustee to do so.

3.13 Improvements to Vest in Council

- (1) All Fixed Improvements constructed or installed upon the Land will vest in the Trustee from the time they are constructed or installed.

PART 4: CLEANING, HEALTH, MAINTENANCE AND REPAIR

4.1 Conditions of Land and Improvements

- (1) The Trustee Lessee must keep the Land and Improvements in sound, clean and sanitary condition, free from the accumulation of refuse, waste and rubbish.
- (2) In particular, the Trustee Lessee must:

- (a) supply and maintain sufficient and suitable refuse bins upon the Land and Improvements; and
 - (b) provide for regular collection, storage and removal of all the refuse, waste and rubbish from the Land and Improvements, for disposal at a recognised refuse disposal site.
- (3) The Trustee Lessee must keep cleansed all drains and water pipes within the Land and Improvements.

4.2 Maintenance and Repair (General)

The Trustee Lessee must maintain the Land and Improvements, including all fixtures and fittings, in good repair, working order and condition, save where maintenance is necessitated by the Trustee's negligence.

4.3 Maintenance of Land and Improvements (Particular)

- (1) Without limiting the effect of **Clause 4.2**, the Trustee Lessee's obligation to maintain the Land and Improvements includes:
- (a) rectifying damage to the Land and Improvements;
 - (b) replacing all glass broken;
 - (c) replacing inoperative or damaged light bulbs or other illumination sources within the Land and Improvements; and
 - (d) repairing or replacing (as necessary) Trustee property damaged by the Trustee Lessee (which repair or replacement may be, at the Trustee's option, effected by the Trustee at the Trustee Lessee's expense).
- (2) Notwithstanding the Clauses forming **Part 4** of this Lease, the parties agree that maintenance responsibilities of the Trustee Lessee shall be as defined from time to time by any specific maintenance agreement entered into by the parties, and under circumstances where any clauses in **Part 4** contradict the terms of the specific maintenance agreement, then the terms of the maintenance agreement prevail.
- (3) The Trustee Lessee and Trustee acknowledge that the documents attached entitled "Lessee - Maintenance Schedule - Annexure D" and "Lessee - Statutory Maintenance Schedule - Annexure E" form part of this Lease and under circumstances where a specific maintenance agreement does not exist and any clauses in **Part 4** contradict the terms of the maintenance schedules annexed to this Lease, then the terms of the maintenance schedules prevail.

4.4 Notice of Damage, Defect or Danger

The Trustee Lessee must inform the Trustee promptly in writing if it becomes aware, or is informed of:

- (1) damage to the Land and Improvements (other than minor damage the repair of which is the Trustee Lessee's responsibility);

- (2) the defective operation of any Service;
- (3) any unsafe condition of:
 - (a) the Land and Improvements or the Trust Land; and
 - (b) any area adjacent to the Trust Land, via which persons access the Trust Land or the Land and Improvements;
- (4) any dangerous or potentially dangerous activity in which persons are engaging regularly or from time to time upon:
 - (a) the Land and Improvements or the Trust Land; or
 - (b) an area adjacent to the Trust Land, via which persons access the Trust Land or the Land and Improvements.

PART 5: ALTERATIONS AND ADDITIONS

5.1 Alterations /Additions by Trustee Lessee

- (1) Unless otherwise permitted or required by this Lease, the Trustee Lessee must not make any improvements, alterations, or additions to the Land and Improvements, or allow them to be made, without the Trustee's written permission.
- (2) In any event, the Trustee Lessee must ensure that all improvements, alterations and additions it makes or allows to be made to the Land and Improvements are made:
 - (a) competently;
 - (b) in conformity with plans approved by the Trustee in its capacity as Trustee of the Trust Land;
 - (c) in conformity with the conditions of the relevant Development Permit;
 - (d) using quality materials; and
 - (e) to the satisfaction, and subject to the reasonable directions, of the Trustee.

5.2 Alterations / Additions by Trustee

- (1) The Trustee may construct improvements, alterations or additions to the Land and Improvements to provide amenities or additional amenities (such as toilet facilities) for use in conjunction with or separately from the Land provided that the Trustee will not unreasonably interfere with the Trustee Lessee's right to use the Premises for the Permitted Use.
- (2) Where the constructed amenities are lockable:
 - (a) the Trustee must give the Trustee Lessee keys to the locks; and

- (b) the Trustee Lessee must comply with the written requirements of the Trustee about locking the amenities when they are not being used by the Trustee Lessee.

5.3 Use of Trustee Alterations / Additions

The Trustee Lessee must permit the amenities constructed by the Trustee pursuant to **Clause 5.2** to be:

- (1) used by the Trustee's servants and agents; and
- (2) used by the public or any class or section of the public nominated by the Trustee.

5.4 Maintenance and Repair of Trustee Lessee Improvements

The Trustee Lessee must maintain the improvements, alterations, or additions it makes to the Land and Improvements, save where maintenance is necessitated by the Trustee negligence.

5.5 External Lighting

- (1) The Trustee Lessee must not install external lighting upon the Land and Improvements without the Trustee's written approval;
- (2) The Trustee Lessee must also not allow any approved external lighting (other than lighting approved for the purpose of improving the security of the Land and Improvements) to be operated later than:
 - (a) the time (if any) nominated in writing by the Trustee; or
 - (b) if the Trustee has not nominated a time, midnight; or
 - (c) at any time when it may create a nuisance to occupiers of surrounding residences.

5.6 Severance of Fixed Improvements

- (1) The Trustee Lessee may not sever those Fixed Improvements from the Land and Improvements unless the Trustee approves the severance, in writing.
- (2) The Trustee may grant or refuse its consent to the application:
 - (a) in its absolute discretion;
 - (b) conditionally or unconditionally;
 - (c) without giving reasons.

5.7 Restoration of Land

Forthwith upon being required by the Trustee so to do, to remove from the Land any building, fixture, improvement, alteration or addition erected, constructed or made in contravention of **Clause 5.1** herein and thereupon to clear and level the land to its former level and to restore to the

satisfaction of the Trustee the Premises to the same or substantially the same condition as they were in immediately prior to that unauthorised building, fixture, improvement, alteration or addition being so erected, constructed or made or commenced to be so erected, constructed or made.

PART 6: TRUSTEE BENEFIT CONVENANTS

6.1 Provision of Trustee Lessee Information

The Trustee Lessee must provide to the Trustee:

- (1) a written return detailing the office bearers and other members of the Trustee Lessee's management committee appointed at the annual meeting of the Trustee Lessee during the Lease Term;
- (2) written details of any change in the office bearers or other members of the Trustee Lessee's management committee, occurring during the Term otherwise than at an annual general meeting of the Trustee Lessee;
- (3) such information as the Trustee requests with respect to the activities for which:
 - (a) the Land and Improvements are used by the Trustee Lessee; and
 - (b) the Trustee Lessee permits the Land and Improvements to be used.
- (4) The information the subject of **Clauses 6.1(1)** and **6.1(2)** shall be provided no later than 1 month after the annual general meeting or the meeting at which the change occurs.
- (5) Information the subject of **Clause 6.1(3)** shall be provided no later than 14 days after the information is requested by the Trustee.

6.2 Entry by Trustee

- (1) The Trustee Lessee must permit the Trustee's servants and agents to enter the Land and Improvements at all reasonable times to:
 - (a) examine their condition;
 - (b) effect repairs and alterations that the Trustee deems reasonably necessary for their safety, preservation or improvement;
 - (c) monitor or verify the use made of the Land and Improvements by the Trustee Lessee;
 - (d) exercise any of the Trustee's entitlements under this Lease; and
 - (e) discharge any of the Trustee's statutory duties relating to the Land and Improvements.

- (2) The Trustee is not obliged to compensate the Trustee Lessee, or any person claiming under or through the Trustee Lessee, for any inconvenience or cost attributable to the exercise of a Trustee entitlement under **Clause 6.2(1)**.

6.3 Intrusion of Harmful Commodities

- (1) Without derogating from the Prescribed Terms, the Trustee Lessee releases the Trustee from any liability for Costs sustained or incurred by the Trustee Lessee through sewage, gas, electric current or any other fluid, substance or force entering or otherwise affecting the Land and Improvements.
- (2) Without derogating from the Prescribed Terms, the Trustee Lessee also indemnifies the Trustee against any Costs the Trustee sustains or incurs through being held liable to a person claiming under or through the Trustee Lessee for the effects of sewage, gas, electric current or any other fluid, substance or force entering or otherwise affecting the Land and Improvements.

6.4 Disclosure of Insurance Relevant Information

The Trustee Lessee assures the Trustee that it disclosed all Insurance relevant information to the Trustee in writing before entering into the Lease.

6.5 Condition Precedent to Trustee Liability

Irrespective of any rule of law, and anything in the Lease, to the contrary, the Trustee will not be liable to the Trustee Lessee for any Cost resulting from the Trustee's negligence, or from Trustee default under the Lease, unless:

- (1) the Trustee Lessee gives the Trustee written notice of that negligence or default; and
- (2) without reasonable cause, the Trustee subsequently fails to take appropriate remedial action within a reasonable time.

6.6 Interests of Local Government

- (1) The Trustee Lessee acknowledges that:
 - (a) this Lease is granted at a concessional rent to contribute benefit to the community within the vicinity of the Land and Improvements (in particular) and within the Gympie Region as a whole; and
 - (b) its intent, in accepting the Lease, is to contribute community benefit through bona fide use of the Land and Improvements in accordance with the requirements of the Lease.
- (2) The Trustee may terminate the Lease by notice to the Trustee Lessee if the Trustee:
 - (a) requires the Land and Improvements for its own use;
 - (b) wishes to let the Land and Improvements for a purpose that the Trustee considers will create, or contribute to creating, community benefit greater than that created

by the use the Trustee Lessee makes of the Land and Improvements;

- (c) considers that the use of the Trustee Lessee makes of the Land and Improvements no longer benefits the community, or no longer benefits a sufficient portion of the community to justify permitting the Lease to continue;
- (d) considers that the use the Trustee Lessee makes of the Land and Improvements is disadvantaging the community more than it is benefiting the community;
- (e) considers, for any other reason, that the cancellation of the Lease is in the community interest or the public interest.

An example of any other reason is: *should disputes between members of the Incorporated Association constituting the Trustee Lessee exist to such an extent that the proper running and operation of the Lease is compromised and is not in the best interests of the Trustee Lessee, community or public interest.*

- (3) A termination notice under **Clause 6.6(2)** must state:
 - (a) the reason the Trustee is terminating the Lease; and
 - (b) the date upon which the Trustee Lessee must vacate the Land and Improvements (which date must not be earlier than 60 days after the date upon which the Trustee gives the notice).

PART 7: INSURANCE

7.1 Types and Duration of Insurances

- (1) The Trustee Lessee must:
 - (a) insure under the *Workers' Compensation and Rehabilitation Act 2003*, all persons employed by it upon the Land and Improvements;
 - (b) insure under a Public Liability Insurance Policy the Land and Improvements the Trustee Lessee uses in relation to, or in conjunction with, its use of the Land and Improvements in accordance with the Prescribed Terms;
 - (c) insure the Fixed Improvements for Minor Incidents;
 - (d) insure against any loss or damage which is commonly covered by contents insurance;
 - (e) provide the Trustee with descriptions and values of Fixed Improvements ("Fixed Improvement List") for insurance purposes. If the Lessee does not provide the Fixed Improvement List to the Trustee to enable the Trustee to include the Fixed Improvement on its insurance, then the Trustee Lessee may be liable to fix and cover the cost of damage to that Fixed Improvement; and
 - (f) maintain whatever other insurance the Trustee reasonably requires.

- (2) *Examples* of areas that a tenant might use in relation to, or in conjunction with, its use of tenanted Land and Improvements (and therefore that must be covered by the Public Liability Insurance Policy pursuant to **Clause 7.1(1)(b)**) include:
- (a) a storage area used under licence;
 - (b) a playing field used under licence in conjunction with the tenanted Land and Improvements.
- (3) The Trustee must insure the Fixed Improvements for Major Incidents.
- (4) The Trustee Lessee must ensure that all policies of insurance effected or required to be effected by the Trustee Lessee under **Clause 7.1**:
- (a) have no exclusions, endorsements or alterations unless first approved by the Trustee; and
 - (b) are taken out in the joint names of the Trustee and the Trustee Lessee for their respective rights and interests.
- (5) Each Party must give written notice to the other of any circumstances (including death, personal injury or property damage or loss) likely to give rise to a claim under any policy of insurance affected in accordance with this Agreement within 24 hours of the incident occurring.
- (6) The Trustee Lessee shall be responsible for ensuring that the appropriate regulating authority is notified within 24 hours of any unauthorised break-in and/or wilful damages including graffiti, to the property. Written notice, including photographs must be forwarded to Council within 48 hours of the incident occurring.
- (7) Indemnities
- The Trustee Lessee indemnifies the Trustee against all claims arising during or after the term from:
- (a) Any cause relating to the Premises, any property or any person inside or outside the Premises occasioned or contributed to by any act, neglect or default of the Trustee Lessee or the Trustee Lessee's employees and volunteers;
 - (b) The negligent use or neglect of the services and facilities in the Premises or the Trustee Lessee's property by the Trustee Lessee, the Trustee Lessee's employees and volunteers, or any other person claiming by, through or under the Trustee Lessee or any trespasser while in the Premises;
 - (c) The Trustee Lessee's failure to give notice to the Trustee of any defect in the services;
 - (d) Any person's accidental death or damage to property caused or contributed to by the use of the Premises by the Trustee Lessee or the Trustee Lessee's employees and volunteers; and

- (e) Damage to plate and other glass caused or contributed to by any act or omission by the Trustee Lessee or the Trustee Lessee's employees and volunteers.

7.2 Indemnity Levels

- (1) Without derogating from the Prescribed Terms, the Trustee Lessee's Public Liability Insurance must provide indemnity on a comprehensive basis, at least to the amount as specified in **Item 7 of the Reference Schedule** in relation to a single occurrence.
- (2) Without derogating from the Prescribed Terms, the Trustee may require from time to time, but not more frequently than once every 3 years, that the Trustee Lessee increase the level of its public liability insurance cover to the sum nominated in a written notice to the Trustee Lessee.
- (3) Upon service of the Trustee's notice under **Clause 7.2(2)**, the sum detailed in **Clause 7.2(1)** will be deemed varied to the sum specified in the notice.

7.3 Payment of Premiums

The Trustee Lessee must pay promptly all premiums, duty, GST and other money entailed in maintaining any insurance required under **Clause 7.1**.

7.4 Proof of Insurance

- (1) Irrespective of when the Term begins, the Trustee Lessee is not entitled to possession of the Land and Improvements until it produces to the Trustee:
 - (a) a copy of each policy of insurance the Trustee Lessee is required to effect under **Clause 7.1**; and
 - (b) a certificate of currency issued under that policy by the insurer.
- (2) During each year of the Term, the Trustee Lessee must produce to the Trustee, no later than the date of expiry of the then current insurance term, a certificate of currency for the renewed insurance term, issued under the policy by the insurer.

7.5 Failure to Insure

If the Trustee Lessee fails to discharge an obligation under **Clauses 7.1 to 7.4**:

- (1) The Trustee may obtain or maintain the required insurance, at its option and at the Trustee Lessee's cost; and
- (2) The Trustee Lessee must reimburse the Trustee upon demand any expenditure the Trustee incurs pursuant to **Clause 7.5(1)**.

PART 8: TRUSTEE COVENANTS

8.1 Quiet Enjoyment

- (1) While it discharges promptly its obligations under the Lease, the Trustee Lessee may occupy

and use the Land and Improvements without interruption from the Trustee.

- (2) **Clause 8.1(1)** does not apply to interruption specifically permitted under the Lease.

PART 9: DAMAGE TO/ DESTRUCTION OF LAND AND IMPROVEMENTS/BUILDING

9.1 Application of Part 9

This **Part 9** applies only where the Improvements comprise, include, or form part of a Building.

9.2 Abatement of Rent and Obligation to Repair

- (1) Without limiting the effect of **Clause 9.4**, if the Improvements or the Building are:

- (a) destroyed; or
- (b) so damaged that the Improvements are substantially inaccessible, or otherwise wholly or partially unusable,

the Trustee Lessee will be entitled to relief detailed in **Clause 9.4(2)** if the destruction or damage is not the result of the Trustee Lessee's negligence.

- (2) If the Improvements are destroyed, inaccessible or wholly useable, the Trustee Lessee's obligations to:

- (a) pay the annual rent (**Clauses 2.1**);
- (b) pay Utility Charges (**Clause 2.4**); and
- (c) clean and Maintain the Land and Improvements (**Clauses 4.1, 4.2 and 4.3**),

will be suspended until the Land and Improvements are rendered accessible and fit for the Permitted Use.

- (3) If the Land and Improvements are partially inaccessible or partially unusable, the obligations the subject of **Clause 9.2(2)** will abate proportionately with the nature and extent of the damage and diminution of utility.

9.3 Reinstatement of Improvements

The Trustee is not obliged to reinstate or reconstruct the Building or the Improvements if it is, or they are damaged or destroyed, and if the Trustee considers it appropriate, in its sole discretion, it may require payment by the Trustee Lessee of such part of the excess that the Trustee is required to pay pursuant to the Trustee's policy of insurance in order to reinstate improvements with respect to the Building and Improvements

9.4 Right to Terminate after Destruction

- (1) If the Improvements or the Building are destroyed, or so damaged that the Improvements are inaccessible or unusable:

- (a) the Trustee may terminate the Lease; or
 - (b) either party may terminate the Lease if the damage is not attributable to the Trustee Lessee's negligence.
- (2) Termination under **Clause 9.4(1)** must be effected:
- (a) by written notice;
 - (b) within 30 days after the damage / destruction occurs,
- and will not affect any entitlements that have accrued to either party prior to the date of that termination.

PART 10: DEFAULT BY TRUSTEE LESSEE

10.1 Default and Cancellation

- (1) Subject to the provisions of Section 65 of the *Land Act 1994*, the Trustee may cancel this Lease if default is made by the Trustee Lessee in the performance or observance of any covenant or conditions of this Lease, including, where such default is capable of remedy, such default is not remedied within twenty-one (21) days (or such other time as the Trustee may allow after taking into account what needs to be done and the reasonable time required to remedy the default) after notice in writing specifying such default and requiring the Trustee Lessee to remedy the same has been given by the Trustee to the Trustee Lessee whereupon the Trustee shall be entitled to re-enter the land and improvements.

10.2 Events of Default

- (1) The Trustee Lessee will be in default under this Lease if:
- (a) it fails to discharge an obligation the Lease imposes upon it;
 - (b) it fails to discharge an obligation to the Trustee in an agreement for the consent to a sub-lease or licence, or the transfer of an interest in the Lease;
 - (c) it fails to discharge an obligation to the Trustee in an agreement for consent to the grant of a mortgage over the Lease;
 - (d) it commits an Act of Insolvency, is unable to pay its debts or other grounds exist for its winding up by the Supreme Court of Queensland;
 - (e) it fails to discharge an obligation to the Trustee under a current Loan Agreement.
- (2) The Trustee Lessee will be in default under a current Loan Agreement if it is in default under this lease pursuant to any of **Clauses 10.2(1)(a)** or **10.2(1)(d)**.

10.3 Remedies Upon Default

- (1) If the Trustee Lessee defaults under the Lease by failing to pay money, or to discharge an obligation, to a person other than the Trustee, the Trustee may:

- (a) pay the money or discharge the obligation as the agent of the Trustee Lessee; and
 - (b) recover from the Trustee Lessee as a liquidated debt all of the money it expends in doing so.
- (2) Subject to Section 124 of the *Property Law Act 1974*, if the Trustee Lessee is in default under the Lease, the Trustee also may:
- (a) terminate the Lease by re-possessing the Land and Improvements at any time, with or without notice;
 - (b) otherwise terminate the Lease,
- without prejudicing the entitlements that have accrued to it for any earlier default by the Trustee Lessee.

PART 11: ESSENTIAL TERMS

11.1 Each of the following covenants by the Trustee Lessee is an essential term of this Lease:

- (1) to pay at the times and in the manner specified:
 - (a) the annual rent or, where applicable, the instalments of annual rent **(Clause 2.1)**;
 - (b) money owing with respect to Rate and Utility Charges **(Clause 2.4)**; and
 - (c) the GST payable in conjunction with a payment under the Lease **(Clause 2.8)**;
- (2) to use and administer the Land and Improvements in the required manner and in compliance with any applicable Act **(Part 3)**;
- (3) not to supply, sell or consume alcohol or other intoxicating or stupefying substances upon the Land and Improvements other than pursuant to a licence or permit **(Part 13)**;
- (4) not to apply for a Liquor Licence without Trustee consent which will not be unreasonably withheld **(Part 13)**;
- (5) not to operate the Business, or allow it to operate, without a Liquor Licence **(Part 13)**;
- (6) not to transfer the Liquor Licence, or allow it to be transferred, without Trustee consent **(Part 13)**;
- (7) to give the Trustee, or to ensure the holder of the Liquor Licence gives the Trustee, annual returns particularising liquor purchases with respect to the Land and Improvements **(Part 13)**;
- (8) to notify the Trustee promptly if the Liquor Licence is suspended, cancelled, or surrendered, or is not renewed **(Part 13)**;
- (9) to Maintain the Land and Improvements, and keep them clean **(Clauses 4.2 and 4.3)**;

- (10) to provide all Trustee Lessee Information (**Clause 6.1**);
- (11) not to:
 - (a) transfer this Lease;
 - (b) sub-let the Land and Improvements;
 - (c) otherwise part with possession of any area of the Land and Improvements; or
 - (d) grant security over or affecting the Lease or the Land and Improvements, without Trustee consent (**Part 16**).

PART 12: DAMAGES UPON TERMINATION FOR BREACH

- 12.1** If it lawfully terminates the Lease for breach of an essential term (whether the term possesses the character of essentiality pursuant to or independently of **Part 11**) the Trustee may recover damages with respect to the breach.

PART 13: LIQUOR LICENSING

13.1 Application for a Liquor Licence

No application for issue of a liquor licence with respect to the Premises is to be made by the Trustee Lessee or any other person without the Trustee's written consent.

13.2 Request for Trustee's Consent

- (1) A request for the Trustee's consent under **Clause 13.1** must be:
 - (a) submitted in writing to the Trustee;
 - (b) accompanied by copies of the completed application and supporting documents that the applicant proposes to submit to the Licensing Authority for the purpose of obtaining the Liquor Licence.
- (2) The Trustee Lessee must ensure that the Trustee receives whatever further information it requests for the purpose of enabling it to consider and determine the request.
- (3) The Trustee and the Trustee Lessee agree that whilst the Trustee Lessee is permitted to hold a Standard Club Licence, the actual hours of operation are to be approved by the Trustee.

13.3 Conditions of Trustee Consent

- (1) Grant or refusal of a request for Trustee consent, made under **Clause 13.1** will be at the absolute discretion of the Trustee.
- (2) Consent may be granted subject to whatever conditions the Trustee considers appropriate, including conditions relating to:
 - (a) variation of rent provisions in the Lease;

- (b) development work;
- (c) abatement/ minimisation of noise or other nuisance;
- (d) parking motor vehicles; and
- (e) security of Land and Improvements, including installation and positioning of lighting.

13.4 Obtaining and Holding Liquor Licence

Where the Trustee has consented to a Liquor Licence being obtained with respect to the Land and Improvements, the Trustee Lessee must not operate the Business, or allow it be operated, upon the Land and Improvements or the Trust Land, unless the Trustee Lessee or the operator holds a licence.

13.5 Dealing with Licence Upon Expiry/ Termination of Lease

When the Term expires (and the Lease is not to be renewed), or if the Lease is determined before the Expiry Date, the Trustee Lessee must:

- (1) if requested by the Trustee, deliver promptly to the Trustee the applicant/s for transfer, the returns, and any other forms that the Trustee requires to facilitate:
 - (a) transfer of the Liquor Licence to the Trustee or a person nominated in writing by the Trustee; or
 - (b) the issue of any necessary permit or authority to enable the Trustee to operate the Business; and
- (2) generally, do everything reasonably necessary to enable the Trustee, by itself or its nominee, to obtain the transfer, permit or authority, and should the Trustee Lessee not do so then the Trustee may do so as attorney for the Trustee Lessee and the Trustee is hereby appointed the Trustee Lessee's attorney for this purpose.

13.6 Transfer of Liquor Licence (Trustee Consent)

- (1) The Trustee Lessee must not transfer the Liquor Licence without the Trustee's written consent.
- (2) If a person other than the Trustee Lessee holds the Liquor Licence (for example, a sub-tenant of the Premises), the Trustee Lessee must ensure that the holder does not transfer the licence without the Trustee's written consent.
- (3) The Trustee must not withhold unreasonably its consent to a proposed transfer of the Liquor Licence.

13.7 Return of Liquor Purchases

- (1) The Trustee Lessee must give the Trustee, not later than 30 September of each year during the Term, a written statement:

(a) in the form required by the Trustee; or

(b) in a form acceptable to the Trustee,

detailing to the extent required by the Trustee:

(c) the quantities of the liquor purchased during the year ending upon the immediately preceding 30 June, under the Liquor Licence; and

(d) the purchase prices paid or payable for those quantities.

(2) If a person other than the Trustee Lessee holds the Liquor Licence (for example, a sub-tenant of the Land and Improvements), the Trustee Lessee must ensure that the holder complies with **Clause 13.6** as if the holder were the Trustee Lessee.

13.8 Standards for Conduct of Licensed Business

The Trustee Lessee must:

(1) conduct the Business in a professional and businesslike manner, to develop, maintain and preserve the goodwill attaching to the Land and Improvements, the Business and Liquor Licence;

(2) ensure that the Business is kept open and trading during such hours, and for such purposes, as are:

(a) customary for businesses of that nature; and

(b) permitted by the Liquor Licence;

(3) ensure, to the reasonable satisfaction of the Trustee, that all persons entering the Land and Improvements for any purpose associated with or incidental to the Business cause no excessive noise and create no nuisance, whether to the annoyance of other persons upon the Land and Improvements or persons living in proximity to the Land and Improvements.

(4) not do, or permit to occur, upon or about the Land and Improvements, anything that breaches the *Liquor Act 1992*, or that results or may result in:

(a) The Liquor Licence being suspended or cancelled; or

(b) The Licensing Authority refusing to renew the licence.

(5) Give to the Trustee, upon request:

(a) a faithful and true account of the nature of the Business; and

(b) balance sheets and profit/ loss accounts for the Business in a form acceptable to the Trustee;

(6) permit the Trustee, or any person authorised in writing by the Trustee, to inspect and copy

any relevant financial records, vouchers, invoices, statements or documents held by or on behalf of the Trustee Lessee, and relating to the Business, to enable the Trustee to verify or audit information or material provided to the Trustee pursuant to **Clauses 13.7 and 13.8.**

- (7) provide the Trustee, upon request, with details of all persons possessing keys or other means of access to the Land and Improvements; and
- (8) where a person other than the Trustee Lessee holds the Liquor Licence (for example, a subtenant of the Premises), ensure that the holder complies with **Clauses 13.8(1) to 13.8(7).**

13.9 Authorisation to Inspect Licensing Authority Records

The Trustee Lessee authorises the Trustee to obtain from the Licensing Authority or any Court of competent jurisdiction, any information the Trustee requires with respect to the Liquor Licence, including:

- (1) particulars and copies of all returns of purchases and assessments of licence fees with respect to the Land and Improvements; and
- (2) details of any charges or complaints against the Trustee Lessee.

13.10 Notification of Suspension or Termination of Licence

The Trustee Lessee must notify the Trustee promptly, in writing, if the Liquor Licence is suspended, cancelled or surrendered, or is not renewed.

13.11 Defence of Proceedings

- (1) If proceedings are instituted against the Trustee Lessee or its nominee for any breach of the *Liquor Act 1992* occurring upon or in respect of the Land and Improvements, the Trustee may (without being obliged to do so):
 - (a) defend the proceedings, either in the name of the Trustee Lessee or the relevant nominee; and
 - (b) appear or be represented upon the hearing of those proceedings.
- (2) All fines, costs, charges and other expenses which the Trustee incurs or sustains as a result of those proceedings:
 - (a) must be paid by the Trustee Lessee upon demand; and
 - (b) will bear interest at the Indicative Rate, if not paid within 14 days after demand.

13.12 Presentation of Land and Improvements

- (1) The Trustee Lessee must ensure that:
 - (a) the Land and Improvements are kept properly furnished and presented to the

standard required by the Licensing Authority; and

- (b) all Licensing Authority requirements necessary to preserve the Liquor Licence are met.
- (2) This obligation is additional to, not in substitution for, any other obligation under this Lease governing standard of finish and preservation of the Land and Improvements (it being the intention of the parties that, in the event of any inconsistency, the higher or the highest of the standards variously required will prevail).

13.13 Payment of Fees

The Trustee Lessee must:

- (1) ensure that all licence fees, imposts and levies assessed under the *Liquor Act 1992* with respect to the Land and Improvements or the Business are paid when due; and
- (2) produce to the Trustee forthwith upon request receipts or other evidence of payment.

PART 14: GENERAL COVENANTS

14.1 Abandoned Improvements

Any fittings or fixtures not removed by the Trustee Lessee either as of right or by requirement of the Trustee as aforesaid shall be deemed abandoned by the Trustee Lessee and shall be and become the property of the Trustee.

14.2 Notices (General)

- (1) This **Clause 14.2**, together with **Clauses 14.3** and **14.4** govern Notices under this Lease unless a provision of the Lease specifically provides otherwise.
- (2) A Notice must be in writing.
- (3) The Chief Executive Officer of the Trustee or his delegate may sign a Notice to be given by the Trustee.
- (4) A Notice given by the Trustee Lessee may be signed by:
 - (a) the Trustee Lessee; or
 - (b) one or more of its Officers.

14.3 Service of Notices

A Notice may be:

- (1) delivered;
- (2) posted; or

- (3) transmitted by facsimile,
to the intended recipient at its address for Notices,

14.4 Receipt of Notices

- (1) A Notice that is delivered or posted will be deemed received:
- (a) if delivered, at the moment of delivery;
 - (b) if posted to an address in Australia, 2 Business Days after posting;
 - (c) if posted to an address outside Australia, 5 Business Days after posting,
- (2) A Notice sent by facsimile transmission will be deemed received at the time of receipt specified in a confirmation report, if the report discloses that the transmission was received at or before 5.00p.m.
- (3) If the Confirmation Report discloses that the transmission was received after 5.00p.m., the notice will be deemed received at 8.30 a.m. on the Business Day following the date of receipt disclosed in the report.

PART 15: ALTERNATIVE DISPUTE

15.1 Dispute Resolution

- (1) Any dispute or difference whatsoever arising out of or in connection with this Lease shall be resolved by negotiation.
- (2) In the event the any dispute or difference dispute cannot be resolved by negotiation, as provided for in **Clause 15.1(1)**, any dispute or difference shall be resolved as follows:
- (a) The parties shall before commencing any arbitration or Court proceedings refer the dispute to mediation by a Queensland Law Society approved mediator, approved by the parties, and failing such appointment to a mediator appointed by the president of the Society under terms of the standard mediation contract approved by the Queensland Law Society.
 - (b) The reference shall commence when any party gives written notice to the others specifying the dispute in requiring its resolution under this clause.
 - (c) Any information or documents obtain through or as part of the reference under this sub clause shall not be used for any purpose other than the settlement of this dispute under this clause.
 - (d) If the dispute is not resolved within 30 days of the commencement of the reference under **Clause 15.1(2)** above either party may then but not earlier commence proceedings in any Court of competent jurisdiction.
 - (e) Any mediation shall be held at such location as the parties may agree and failing agreement at the offices of the Trustee's appointed legal representative.

- (f) Each party shall continue to perform its obligations pursuant to the Lease notwithstanding the existence of a dispute or any proceedings under this clause.
- (g) Each party shall contribute equally to the costs of the mediator.

PART 16: ASSIGNMENT (TRANSFER), SUB-LEASING AND MORTGAGING

16.1 Transfer, Sub-Letting and Other Dealings

The Trustee Lessee must not transfer its interest under this Lease, or any fraction of that interest or mortgage its interest, without the written consent of the Trustee, which consent shall be at the absolute discretion of the Trustee. The Trustee Lessee shall meet the 'Trustee's costs of its consideration of, and granting of, consent.

PART 17: POWER OF ATTORNEY – INSURANCE CLAIM

17.1 Appointment as Attorney

The Trustee Lessee irrevocably appoints the Trustee, the Trustee Lessee's attorney to pursue a claim under a policy of Trustee Lessee insurance, pursuant to **Part 7**.

17.2 Ratification of Appointment/Reimbursement of Expenditure

The Trustee Lessee will:

- (1) ratify whatever the Trustee does pursuant to this **Part 17**; and
- (2) reimburse the Trustee upon demand any expense that Trustee reasonably and properly incurs in the lawful exercise of his power as the Trustee Lessee's attorney.