

Form: 07SL
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Edition: 4.0

SUBLEASE
New South Wales
Real Property Act, 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) HEAD LEASE

(B) TORRENS TITLE

Property leased:
Part folio: 7356/ 1167221 being Kiosk/kitchen of the North Curl Curl Surf Life Saving Club, Hudson Parade, North Curl Curl as shown on the attached diagram

(C) LODGED BY

Document Collection Box 168H	Name, Address or DX, Telephone and Customer Account Number if any CARROLL & O'DEA LAWYERS LLPN: 123098 Q Level 18, 111 Elizabeth Street SYDNEY NSW 2000 Fax: 02 9221 1117 Tel: 02 9291 7100 Reference (optional): DCR:243782	CODE SL
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(D) SUBLESSOR

NORTH CURL CURL SURF LIFE SAVING CLUB INC. ABN 74 095 397 853

(E)

The sublessor leases to the sublessee the property referred to above.
Encumbrances (if applicable):

(F) SUBLESSEE

TENANCY:

- (H)**
- 1. TERM** Three (3) years
 - 2. COMMENCING DATE** TBC
 - 3. TERMINATING DATE** TBC
 - With **OPTION TO RENEW** for a further three periods of **one (1) year each**
 - Together with and reserving the **RIGHTS** set out in **ANNEXURE "A"**
 - Incorporates the provisions or additional material set out in **ANNEXURE "A"**
 - ~~Incorporates the provisions set out in **MEMORANDUM** filed / LEASE registered in the Department of Lands, Land and Property Information Division South Wales as No-~~
 - The **RENT** is set out in **item 6** of the Reference Schedule.

DATE

SEE PAGES

HERETO FOR EXECUTION BY LESSOR AND LESSEE

~~(H) I certify that I am an eligible witness and that the lessor signed this dealing in my presence. (See note** below)~~ ~~Certified correct for the purposes of the Real Property Act 1900 by the lessor.~~

~~Signature of lessor:~~

~~Signature of witness:~~

~~Name of witness:~~

~~Address of witness:~~

~~I certify that I am an eligible witness and that the lessee signed this dealing in my presence. (See note* below)~~

~~Certified correct for the purposes of the Real Property Act 1900 by the lessee.~~

~~Signature of lessee:~~

~~Signature of witness:~~

~~Name of witness:~~

~~Address of witness:~~

(I) STATUTORY DECLARATION*

I solemnly and sincerely declare that -

1. The time for the exercise of option to renew/purchase in expired lease No has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on
in the presence of of

Justice of the Peace Practising Solicitor Other qualified witness (*specify*)

Who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person / I did not see the face of the person because the person was wearing a face covering, I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was

Signature of witness:

Signature of applicant:

This and the following < > pages comprise Annexure “A” referred to in the Lease between NORTH CURL CURL SURF LIFE SAVING CLUB INC. ABN 74 095 397 853 as Lessor and ##### as Lessee

THIS SUBLEASE is made on _____ and commences on the Commencement Date.

BETWEEN: THE LESSOR whose name, address and ABN appear in **Item 1 (Lessor)**

AND: THE LESSEE whose name, address and ABN appear in **Item 2 (Lessee)**

RECITALS

- A. The Land is reserved or dedicated under the Act by virtue of the Gazette notification specified in Item 11 for the purpose or purposes set out in Item 11 of Schedule 1.
- B. The State of New South Wales is the registered proprietor of the Land.
- C. The State of New South Wales as owner of the Land has permitted Council to grant a Lease of the Land and Council has granted a Head Lease to the Lessee.
- D. The Lessor has agreed to sublease the Premises to the Lessee on the terms and conditions set out in this Sublease (hereinafter called “Lease”).

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease:

Annual Financial Statement means an annual financial statement prepared for the business of the Lessee conducted at the Premises for the Financial Year provided or to be provided to its accountant, and includes income and expenditure statement, profit and loss statement, balance sheet.

Approval means authorisation, approval, consent, licence, permission and the like.

Authority includes any government, local government, statutory, public or other Person, authority, instrumentality or body having jurisdiction over the Land, the Premises or any part of it or anything in relation to it.

Business Day means any day (except a Saturday, Sunday or public holiday) on which banks are open for business in Sydney, New South Wales.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding and right of action.

Clause means a clause of this Lease, and Sub-Clause has a similar meaning.

Club means the Surf Life Saving Club as set out in Item 1.

Commencement Date means the date set out in Item 4.

Common Areas means those parts of the Premises (if any) which the Lessor intends for common use, subject to the Head Lessor's directions in the matter.

Consumer Price Index (CPI) means:

- (a) the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics; or
- (b) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered vary so as to change the basis of the price index then such price index as the Landlord may select that, as nearly as practicable serves the same purpose.

Core Hours means the minimum hours the Lessee is to keep the Premises open for trade as set out in Item 7 of the Schedule to the Lease

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever.

Council means Northern Beaches Council ABN 57 284 295 198, being also known as the Head Lessor for the purposes of this Lease.

Due Date means the date for payment of Rent under this Lease as specified in Item 6C.

Default Rate means the interest rate set by the Lessor's bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more.

Environment has the same meaning given to that term in the *Protection of the Environment Operations Act 1997*.

Environmental Law means any law relating to the protection of the Environment.

Financial Year means the period 1 May to 30 April of the following year

Further Obligations means any obligations of the Lessee set out in Item 18.

Further Term means the further term or terms set out in Item 8.

GST means any consumption, goods and services or value added tax, by whatever name called, imposed, levied or collected by any Federal or State Government which operates at any time or times during the Term or any renewal or overholding of the Lease including, without limitation, GST as defined in the GST Act and any replacement tax.

GST Act means *A New System (Goods and Services Tax) Act 1999*.

Guarantor means the guarantor(s) if any specified in Item 19.

Hazardous Materials includes any substance, material, thing, component or element which is hazardous, a contaminant or a pollutant to persons or property.

Head Lease means the lease between Northern Beaches Council as lessor and North Curl Surf Life Saving Club INC ABN 74 095 397 853 as lessee.

Head Lessor means the lessor under the Head Lease, its successors and assigns.

Improvement means any building, structure, fixture, fitting, plant, equipment, partition, sign or other material, or article or chattel, which is erected, installed or put in or on the Land.

Insured Sum means the amount set out in Item 10.

Item means the relevant item in Schedule 1.

Land means the land described in Item 3A to a depth of 15 metres below the surface and all rights, easements and appurtenances usually and normally enjoyed with that land and all Lessor's Improvements.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or local law, present or future, and whether State, Federal or otherwise.

Lease means this Sublease between the Lessor and Lessee in relation to the Premises described on the first page of this Sublease.

Lessee means the sublessee as specified on the front page of this Sublease, its successors and assigns.

Lessee's Employees means each of the Lessee's employees, agents, contractors, invitees or others (whether with or without invitation), sub-lessees, licensees and concessionaires or others (whether expressly or impliedly) who may at any time be in or upon the Land.

Lessee's Improvements means any Improvements undertaken by the Lessee in accordance with this Lease but does not include those Improvements listed in Item 14.

Lessor means the sublessor as specified on the front page of this Sublease, its successors and assigns, and in respect of the Head Lease then the lessee therein.

Lessor's Agents means the employees, contractors, agents and any other Person appointed from time to time by the Lessor as agent of the Lessor.

Lessor's Improvements means all the Improvements affixed to the Premises, the Plant and Equipment set out in Schedule A and the Lessor's property, as listed in Item 14.

Minister means the Minister for the time being administering the *Local Government Act* 1993 or any consolidating or replacing Act.

Minister's Agents and Officers includes any person, committee or delegate (including any statutory authority or statutory body corporate or committee for the time being responsible for the administration, care and management of the Land) from time to time responsible for carrying out functions, including the functions of the Minister, under this Lease.

Name and Notice Address means the name and address in Item 9 as it may be changed from time to time.

Notice means any notice or other written communication.

Party means a party to this Lease.

Permitted Use means the permitted use of the Land set out in Item 7 of Schedule 1 and any ancillary uses/associated activities as listed in Item 7 of Schedule 1 which are solely operated by the Lessee and complies with the relevant development consent.

Person includes any corporation and vice versa.

Plan of Management means the Plan of Management for the respective land, as amended from time to time or any subsequent Plan of Management adopted from time to time as determined and updated by Northern Beaches Council.

Plant and Equipment means those items set out in the Schedule attached to this Lease that forms part to the Lessors Improvements

Premises means the Premises described in Item 3B.

Proposed Work means any renovation, demolition, construction of or to any Improvement on the Land and any activity which physically alters the structure of the Premises.

Rates and Taxes means all existing and future rates (including any special rates or levies) taxes (including land tax on a single holding basis), duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the Land or the Lessor directly in relation to the Land or the Lessee or payable by the owner or occupier of the Land directly in relation to the Land.

Rent means the amount specified in Item 6A to be paid annually by the Lessee, as reviewed, adjusted or increased under this Lease,

Regulations mean the *Local Government (General) Regulation 2005, Crown Land Management Regulation 2018* and any other relevant and applicable regulations as amended or replaced from time to time.

Requirement includes any lawful Notice, order or direction received from or given by any Authority or under any Law, in writing or otherwise, and notwithstanding to whom such Requirement is addressed or directed but if not addressed to the Lessee then the Lessee must be given a copy.

Reserve means the dedicated or reserved Crown Land described in Item 11.

Rent Review Date means the date specified in Item 6B.

RLA means the Retail Leases Act 1994 (NSW) as amended (including any regulation thereunder) or any Act or regulation enacted in substitution thereof in the event of its repeal.

Security Deposit means the security deposit equivalent to three months (3) months rent plus GST to be provided by the Lessee to the Lessor, which amount is specified in Item 21 and to be updated as necessary on or before the Commencement of each Option Term .

Services means all services installed or to be installed and connected to the Premises including, without limitation, gas, electricity, telephone and telecommunication, water, sewerage and drainage.

Structural repairs means repairs or replacement of essential structures relating to all loads, internal actions, material properties and foundation conditions that affect structural sufficiency or serviceability including:

- (a) Concrete Slab;
- (a) Structural load-bearing Masonry;
- (b) Roof Covering and Roof Structure;
- (c) Footings and Foundations;
- (d) Painting of External Surfaces at a frequency determined by the Lessor to be for the protection of the life of the building;
- (e) Outer Walls of any construction including windows, doors, doorframes and door furniture (does not include internal windows and doors) or replacement of glass within windows, doors and outer walls;
- (f) Sewerage, draining and water supply including taps and other visible water fittings but not any internal fittings;
- (g) Power supply but does not include switch board, power points and other visible power fittings; and
- (h) Structural repairs as detailed under the Head Lease.

Supply means the supply of any goods, service or thing by either Party under this Lease.

Term means the term of this Lease in Item 5 commencing from and including the Commencement Date.

Termination means a termination of this Lease as a consequence of the expiration of the Term (or any extension thereof) or a termination under clause 16.

this Lease or the Lease means this lease and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

1.2 Interpretation

- (a) The singular includes the plural and vice versa.
- (b) A gender includes all genders.
- (c) An obligation imposed by this Lease on more than one Person binds them jointly and severally.
- (d) Every covenant by the Lessee includes a covenant by the Lessee to procure compliance with the covenant by each of the Lessee's Employees.
- (e) A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it and a regulation, rule or statutory instrument issued under it.
- (f) This Lease must be interpreted so that it complies with all Laws applicable in New South Wales. Any provision must be read down so as to give it as much effect as possible. If it is not possible to give a provision any effect at all, then it must be severed from the rest of the Lease. If any provision or part of it cannot be so read down, such provision or part shall be deemed to be void and severable and the remaining provisions of this Lease shall not in any way be affected or impaired.

- (g) Unless otherwise stated, no provision of this Lease limits the effect of any other provision of this Lease. "Including" and similar expressions are not and must not be treated as words of limitation.
- (h) A reference to the Land, Premises or anything includes the whole and each part of it.
- (i) The Lessor and the Lessee agree that:
 - (1) the terms contained in this Lease constitute the whole of the agreement in respect of the Land and Premises between the Lessor and the Lessee and all previous negotiations and agreements are negated;
 - (2) no further terms are to be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negated;
 - (3) no information, representation or warranty by the Lessor or the Lessor's agents was supplied or made with the intention or knowledge that it would be relied on by the Lessee in entering into this Lease; and
 - (4) no information, representation or warranty has been relied on by the Lessee in entering into this Lease.
- (j) Headings and the index to this Lease are for guidance only and do not affect the interpretation of this Lease.
- (k) If a reference is made to any Person, body or Authority and that Person, body or Authority has ceased to exist, then the reference is deemed to be a reference to the Person, body or Authority that then serves substantially the same or equivalent objects as the Person, body or Authority that has ceased to exist.
- (l) Reference to the President of a Person, body or Authority must, in the absence of a President, be read as a reference to the senior officer or equivalent employee for the time being of the Person, body or Authority or such other Person fulfilling the duties of President.
- (m) A reference to "writing" or "written" and any words of similar import include printing, typing, lithography and any other means of reproducing characters in tangible and visible form, including any communication effected through any electronic medium if such communication is subsequently capable of reproduction in tangible or visible form.
- (n) A reference to "corporation" and any other words or expressions used or defined in the *Corporations Act 2001 (Cth)*, unless the context otherwise requires, has the same meaning that is given to them in the *Corporations Act 2001 (Cth)*.
- (o) This Lease is governed by New South Wales law. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them. Except as expressly agreed in writing by both Parties or for an action required at a federal level, each Party waives any right it has to object to an action being brought in any court outside New South Wales including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

- (p) If the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, the day or last day for doing the thing or date on which the entitlement arises for the purposes of this Lease shall be the next Business Day.
- (q) Each provision of this Lease continues to have full force and effect until it is satisfied or completed.
- (r) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (s) A reference to an agreement or a document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Lease.
- (t) A reference to a Clause or Sub-Clause followed by a number refers to the relevant numbered Clause or Sub-Clause in this Lease.
- (u) Wherever in this lease the Lessor is required to make a decision affecting or which may effect the Lessee, serve a notice or reach an agreement with the Lessee, then it shall do so acting honestly, fairly and reasonably.

1.3 Minister's delegations

- (a) If this Lease refers to an action, Approval or other thing to be done by, or matter to be considered by the Minister, the reference to the Minister shall be deemed to include a reference to the Minister's Agents and Officers.
- (b) The Minister may appoint any person as the Minister's delegate to exercise all powers conferred by this Lease on the Minister expressly, including without limitation, the power to give any Approval under this Lease.
- (c) The Minister may change the appointment at any time.

2. EXCLUSION OF STATUTORY PROVISIONS

2.1 Moratorium

To the extent permitted by law, the application to this Lease or to any Party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any Party is excluded and negated.

2.2 Exclusion of statutory provisions

- (a) The covenants, powers and provisions implied in leases by virtue of sections 84, 84A, 132, 133, 133A and 133B of the *Conveyancing Act 1919* do not apply or are not implied in this Lease and are expressly negated except in so far as the same or some part or parts of it are included in the covenants contained in this Lease. The use in this Lease of any words in any of the forms of words contained in the first column of Part II of the Fourth Schedule to the *Conveyancing Act 1919* shall not imply any covenant under section 86 of that Act.
- (b) Part 4 of the *Civil Liability Act 2002 (NSW)* does not apply to this Lease.

3. LEASE OF LAND

3.1 Lease of Premises for Term

- (a) The Lessor leases the Premises to the Lessee for the Term.
- (b) In addition to the Premises the Lessee will:-
 - (i) have the use of the Cool room on a non-exclusive basis
 - (ii) have full and exclusive access to the Kiosk.
 - (iii) have full but non- exclusive access to the Kitchen to facilitate "Bottles" meals and any catering opportunities passed on to the Lessee at the discretion of the Lessor.
 - (iv) the ability to book the entire main hall through venuehire@nccslsc.com.au for its own use for the above requirements when available at its own cost.

3.2 Lessor's reservations

The Lessor reserves the right for the Lessor and the Lessor's Agents to:

- (a) enter the Premises as expressly provided for in this Lease; and
- (b) create any registered or unregistered easement or other right over the Land;

as long as such entry and/or easement does not materially adversely affect the Lessee's rights under this Lease including the right to use the Premises for the Permitted Use.

3.3 Lessor's exercise of rights

In exercising its rights reserved under clause 3.2, the Lessor must use reasonable endeavours (including where possible providing reasonable notice to the Lessee of a proposed exercise of those rights) to minimise interference to the Lessee and to the Permitted Use, subject to the provisions of clause 3.1 .

3.4 Holdover

If the Lessee **remains** in the Premises with the Lessor's consent after the expiry date, the Lessee may occupy the Premises as a monthly tenant on the same terms as this Lease at a monthly rent and other periodical payments payable by the lessee immediately before the expiry date, subject to clause 4.3. The Lessor or the Lessee may end the monthly tenancy on any day by giving one month's notice to the other party.

4. RENT

4.1 Lessee to pay Rent

The Lessee covenants to pay the Rent:

- (a) on the Due Date without demand by the Lessor;
- (b) without any abatement, deduction or right of set-off; and

- (c) to the Lessor in the manner set out in Item 12 or in any other way the Lessor directs the Lessee by Notice.

4.2 Apportionment of Rent

If the Commencement Date is not the first day of a rent period, the first and last instalments of Rent will be apportioned on a pro-rata daily basis for the periods from:

- (a) the Commencement Date to the first day of the next rent period;
- (b) the first day of the last rent period of the Term until the date on which the Term expires.

4.3 Rent Review/Calculation of Rent Adjustment

The Rent will be increased as follows:-

- (a) by a fixed percentage of 3% on each anniversary of the Commencing Date
- (b) by CPI on each exercise of the Option to renew the Term or the further term; and
- (c) if the Lessee remains in occupation of the Premises on a holding over basis upon the expiry of the initial term or any further term, by a fixed percentage of 3% on each anniversary of the Commencing Date, or

4.4 Financial Information of the Lessee

The Lessee must provide to the Lessor an Annual Financial Statement within 3 months after the end of the Financial Year.

4.5 Non disclosure of financial information

The Lessor must not divulge or communicate to any person any information about the Lessee's Annual Financial Statement provided by the Lessee, but this does not prevent the Lessor communicating or divulging any such information—

- (a) with the consent of the Lessee, or
- (b) to the Head Lessor; or
- (c) to a court or arbitrator or for the purposes of any mediation or valuation for the purposes of this Act or the Lease, or
- (d) in compliance with a requirement made by or under an Act, or
- (e) to the Lessor's professional advisers (such as legal or financial advisers), or to the proper officer of any financial institution for the purpose in good faith of enabling the Lessor to obtain financial accommodation.

5. NOT USED

6. SERVICES & OUTGOINGS

6.1 Lessee's Liability for Services

(A) Utilities (not including gas)

- The Lessee will not be liable for the payment of Electricity and Water, which will be the responsibility of the Lessor.

(B) Gas

- The Lessor will arrange for the supply of gas to the Premises, however the Lessee is liable for the cost of supply and use of the gas during the Term.
- The Lessor will provide to the Lessee the invoice for the supply and use of gas, and the Lessee must reimburse the Lessor within 7 days of receipt of the invoice from the Lessor. Failure to make payment within that 7 day period will constitute a default by the Lessee of an essential term of the Lease.

7. COSTS

The Lessee must also pay to the Lessor:

- (a) not used;
- (b) interest on any money payable by the Lessee to the Lessor if more than fourteen (14) days overdue at the rate prescribed from time to time under section 101 of the Civil Procedure Act 2005 (NSW) (as amended) or any succeeding legislation, at the date of demand, from the due date to the date of payment;
- (c) the Lessor's reasonable costs and disbursements of considering any application by the Lessee for Lessor's consent (whether or not given) and on any surrender of the Lease;
- (d) the Lessor's reasonable costs and disbursements in connection with a default by the Lessee under this Lease including, but not limited to, enforcement costs;
- (e) not used;
- (f) any stamp duty charges arising from the Lessee's dealings in connection with this Lease;
- (g) at the same time as rent and other payments hereunder are payable under this Lease, any GST payable or collectable by the Lessor as a result of the imposition on the Lessee of the obligation to pay rent and such other payments under this Lease; and
- (h) not used.

8. INTEREST

8.1 Payment of interest on overdue payments

Unless otherwise agreed, the Lessee must pay to the Lessor on demand as a debt due, interest at the Default Rate, applicable at the time and applied by the Lessor to any Rent or other moneys which the Lessee has not paid on and from the due date for payment.

8.2 Calculation of interest

Interest is to be calculated daily from the due date and is to continue until the overdue money is paid. The interest will be capitalised on the last day of each month and may be recovered in the same way as Rent in arrears.

8.3 No prejudice

If the Lessor requires the Lessee to pay interest, it is without prejudice to any other rights, powers and remedies which the Lessor may have under this Lease or at law.

9. USE OF PREMISES

9.1 Permitted Use and negative covenants

The Lessee must not:

- (a) use the Premises for any purpose other than the Permitted Use;
- (b) damage the Plant and Equipment
- (c) or do anything in or on the Premises which in the reasonable opinion of the Lessor causes or may cause nuisance, damage, disturbance or danger to the Lessor or members of the public using the Reservation referred to in Item 11;
- (d) other than as necessary for the Permitted Use, use or allow the use of any radio, television or other sound producing equipment at a volume that can be heard outside the Premises except with the prior written Approval of the Lessor which is not to be unreasonably withheld but may be given conditionally;
- (e) other than as necessary for the Permitted Use, affix any television or radio mast or antennae, satellite dish or any other communication device to any part of the Premises except with the prior written Approval of the Lessor which is not to be unreasonably withheld but may be given conditionally;
- (f) other than for the Permitted Use, write, paint, display, hang or affix any sign, advertisement, placard, name, flagpole, flag or notice on any part of the Premises except with the prior written Approval of the Lessor which is not to be unreasonably withheld but may be given conditionally. The Lessee acknowledges that it will be reasonable for the Lessor to withhold Approval for any sign, advertisement, placard, name, flagpole, flag or notice that does not directly relate to the Permitted Use;
- (g) overload the floor, walls, roof or any other part of the Premises, or, bring onto or remove from the Premises any plant or heavy equipment which by reason of its weight or vibration in its operation or in any way is likely in the reasonable opinion of the Lessor to cause damage to any part of the Premises or the Services;

- (h) except to the extent that they are necessary for the Permitted Use and then only in compliance with any Law or Requirement and in such quantities as are reasonably appropriate, store Hazardous Materials on or in the Premises;
- (i) install any equipment or system in the Premises that overloads or may overload the electrical or other Services to the Premises;
- (j) use the Premises for an illegal purpose;
- (k) burn any rubbish or waste on the Premises other than the burning of vegetation in accordance with all necessary permits;
- (l) use the Premises in conjunction with a hotel liquor licence, general bar licence or small bar licence within the meaning of the *Liquor Act 2007*. Nothing in this Lease otherwise prevents the Lessee from selling or providing liquor (within the meaning of the *Liquor Act 2007*) in connections with the Permitted Use;
- (m) use the Premises for any type of gambling; or
- (n) change or override the Lessor's master locks on any part of the Premises.

9.2 Lessee's positive covenants

The Lessee at its Cost must:

- (a) maintain the Premises in good order in accordance with this Lease;
- (b) at all times carry out the Permitted Use in a business-like and reputable manner;
- (c) keep the Premises clean and not permit any accumulation of useless/discarded property or rubbish on them;
- (d) keep the Premises free of pests, insects and vermin;
- (e) provide the Lessor (and keep updated when it changes) with the name, postal address, e-mail address, landline telephone and mobile phone numbers of a person or persons to contact during and after business hours if an emergency arises which affects the Premises;
- (f) obtain, maintain and comply with all Approvals from all Authorities which from time to time are necessary or appropriate for the Lessee's occupation and use of the Premises;
- (g) maintain documented risk management identification and treatment programs for the Premises and the Services, which must be produced to the Lessor upon demand;
- (h) arrange for the regular and efficient removal from the Premises of its refuse and rubbish;
- (i) if a notifiable infectious illness occurs in the Premises, promptly give Notice to the Lessor and all relevant Authorities and comply with applicable regulations and directions from Authorities at the time of the notifiable infectious illness;
- (j) undertake all fire protection works on the Land required by Law to the satisfaction of the Lessor and all relevant Authorities;

- (k) permit the Lessor or the Lessor's servants or agents with or without vehicles and equipment, workmen or others at all times to enter the Land for fire protection and suppression purposes;
- (l) comply with the Further Obligations as set out in item 18; and
- (m) wherever the Club promotes its major sponsors and supporters it will use its best endeavours to recognise Council's support.

9.3 **No warranty as to use**

- (a) The Lessor gives no warranty (either present or future) that the Land or the Premises are fit for the Permitted Use.
- (b) The Lessee has entered into this Lease with full knowledge of and subject to any prohibitions or restrictions contained in any Law or any Requirement on how the Land or the Premises may be used.

9.4 **Cost incurred by Lessor**

Without limiting clause 10.2, unless otherwise agreed with the Lessor, the Lessee must pay to the Lessor on demand as a debt due the Cost incurred by the Lessor of doing any work or other thing to the Premises which may become necessary because of the non-compliance of the Lessee or of the Lessee's Employees with any Law or Requirement or any provision of this Lease.

9.5 **Non-Fetter**

Nothing in this Agreement shall be deemed to fetter in any way the obligations of the Council to exercise any duty, power or function required to be exercised by it in relation to this Agreement otherwise than in accordance with the Council's legal and administrative duties at common law and/or under the provisions of the *Environmental Planning and Assessment Act 1979 (NSW)*.

10. **COMPLIANCE WITH LAWS AND REQUIREMENTS**

10.1 **Compliance with Laws**

- (a) The Lessee at its Cost must comply with all Laws and Requirements relating to the Land, the Premises, the Services, the Permitted Use, and the Lessee's occupation and use of the Premises. If the Lessee receives any Notice from an Authority, the Lessee must immediately provide a complete copy of it to the Lessor.
- (b) Before complying with any Law or Requirement, the Lessee must (if required by that Law or Requirement):
 - (1) obtain the written Approval of the Lessor and the Head Lessor which is not to be unreasonably withheld; and
 - (2) observe the provisions of this Lease.

10.2 Lessor may comply with Laws if Lessee defaults

If the Lessee fails to do so, the Lessor may comply with any Law or Requirement referred to in this clause 10 either in part or whole. If the Lessor does this:

- (a) any Costs incurred by the Lessor must be paid or reimbursed to the Lessor by the Lessee as a debt due;
- (b) it is without prejudice to any of the Lessor's other rights in respect of non-compliance by the Lessee with its obligations under this Lease.

11. MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

11.1 Lessee's general repairing obligation

Unless otherwise agreed in writing between the parties, the Lessee must at its Cost during the Term, any extension of the Term, and any holding over period, keep the Premises in good repair and condition (fair wear and tear only excepted) and clean and tidy and comply with any reasonable notice served on the Lessee by the Lessor requiring the Lessee to carry out any repairs of the Premises, and must bear all costs of:

- (a) maintaining, servicing, certifying (where applicable), repairing, replacing and redecorating the interior of the Premises and the Services from time to time as necessary having regard to their condition as at the Commencement Date and comply with any notice served on the Lessee by the Lessor requiring the Lessee to carry out any repairs being the responsibility of the Lessee within, fourteen (14) days of the date of service (including maintenance of any shop front forming part of the Premises); and
- (b) repairing any damage caused by the Lessee within a reasonable time
- (c) maintaining all the Plant and Equipment at its own cost, including changing the filters on the ceiling/exhaust fans and generally keeping the Plant and Equipment in good working order and condition, structural repairs excluded unless any damage is caused by the Lessee, its staff or agents.

11.2 Structural repairs

- (a) The Lessee is not responsible for structural repairs during the Term, unless they are required because of:
 - (1) the Lessee's or any sub-lessee's misuse of the Premises; or
 - (2) the act, negligence or default of the Lessee.
- (b) The Lessee is not permitted to make structural alteration to the Premises.

11.3 Further maintenance responsibilities

Should the Lessee fail to fulfil its obligations under clause 11 within 14 days of receiving written notice from the Lessor, the Lessor may carry out such obligations and charge the cost to the Lessee.

11.4 **Lessor's right of entry**

The Lessor, Head Lessor or the Lessor's Agents may enter the Premises in the following circumstances and at reasonable times on giving to the Lessee reasonable prior notice in writing, and in the presence of the Authorised Officer of the Lessee if required by the Lessee:

- (a) to view the state of repair and condition of the Premises and Services;
- (b) to determine compliance with this Lease by the Lessee;
- (c) in accordance with clause 11.6, to carry out works and repairs; and
- (d) at any time and for any purpose if the Lessor reasonably considers entry is required in the case of an emergency.

11.5 **Enforcement of repairing obligations**

The Lessor may serve on the Lessee a Notice:

- (a) specifying any failure by the Lessee to carry out any repair, replacement or cleaning of the Premises or the Services which the Lessee is required to do under this Lease; and
- (b) requiring the Lessee to carry out the repair, replacement or cleaning within a reasonable time specified in the Notice.

If the Lessee does not comply with the Notice, the Lessor may elect to carry out such repair, replacement or cleaning and any Costs incurred must be paid by the Lessee when demanded by the Lessor.

11.6 **Lessor may enter to repair**

- (a) The Lessor, the Lessor's Agents and others authorised by the Lessor may at all reasonable times after giving the Lessee reasonable written notice enter the Land and the Premises to carry out any works and repairs in the circumstances set out below. In doing so, the Lessor must endeavour not to cause undue inconvenience to the Lessee.
- (b) The circumstances for entry are any one or more of the following:
 - (1) to carry out any repairs on or to the Premises or the Services, which the Lessor acting reasonably considers necessary or desirable or which relate to anything which the Lessor is obliged or entitled to do under this Lease;
 - (2) if an Authority requires any repair or work to be undertaken on or to the Premises or the Services which the Lessor is either required or in the Lessor's discretion elects to do and for which the Lessee is not liable under this Lease; or
 - (3) if the Lessor elects to carry out any repair work which the Lessee is required or liable to do under this Lease by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done.

11.7 Alterations to Premises

- (a) Subject to this Lease, the Lessee must not and must not permit any other person to carry out any Proposed Work without the Lessor's prior written Approval which must not be unreasonably withheld or delayed.
- (b) In seeking the Lessor's Approval, the Lessee must submit plans and specifications of the Proposed Work for the Approval of the Lessor and such other information relating to the Proposed Work as is reasonably required by the Lessor.
- (c) Any Approval given by the Lessor to the Lessee for the Proposed Work is subject to the Lessee satisfying conditions of the Approval and the following requirements:
 - (i) unless otherwise agreed any Proposed Work must be supervised by a Person approved by the Lessor;
 - (ii) any Proposed Work must be executed promptly and continuously in a proper and workmanlike manner, using the materials and by contractors or tradesmen approved by the Lessor, in accordance with all Laws and Requirements;
 - (iii) the Lessee must pay on demand all reasonable Costs incurred by the Lessor in considering or inspecting the Proposed Work and its supervision, including the reasonable fees of architects, engineers or other building consultants reasonably engaged by or on behalf of the Lessor;
 - (iv) the Lessee must obtain and keep current and comply with all necessary Approvals from all Authorities necessary to enable any Proposed Work to be lawfully effected, and must on request by the Lessor produce for inspection by the Lessor copies of all such Approvals; and
 - (v) on completion of the Proposed Work the Lessee must immediately obtain and produce to the Lessor, any unconditional certificates of compliance or of satisfactory completion issued by relevant Authorities and, a certificate by a consultant approved by the Lessor that the Proposed Work has been carried out in accordance with the plans and specifications approved by the Lessor.

11.8 Notice to Lessor of damage, accident etc.

The Lessee must immediately give Notice to the Lessor of any:

- (a) of the following of which the Lessee has actual or constructive notice:
 - (1) significant damage however caused;
 - (2) accident to or defects in the Premises or the Services; or
 - (3) circumstances likely to cause any damage or injury occurring within the Premises;
- (b) fault in the Services; or
- (c) Notice from any Authority.

12. ASSIGNMENT AND SUBLETTING

12.1 This is subject to clause 33.1(c)(2).

13. INSURANCE AND INDEMNITIES

13.1 Insurances to be taken out by Lessee

The Lessee must effect and maintain at the Lessee's Cost:

- (a) a standard public liability insurance policy endorsed to extend the indemnity under the policy to include the Lessee's liability under clause 13.5. The policy must be for an amount of not less than the Insured Sum or such higher amount as the Lessor may reasonably require in respect of any single occurrence;
- (b) insurance for all Lessee's property and Lessee's Improvements; and
- (c) any other insurance reasonably required by the Lessor (common in the insurance industry) or as set out in Schedule 1.

13.2 Lessee's insurance obligations

The Lessee must:

- (a) ensure that all policies of insurance effected by the Lessee under this clause 13 are taken out with an insurance office or company authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia including policies underwritten by Lloyd's of London or otherwise approved by the Lessor;
- (b) on the Commencement Date and on request from the Lessor, produce to the Lessor a certificate of currency; and
- (c) pay all premiums and other money payable in respect of the insurance policies when they become due and payable.

13.3 Non-vitiating of policies

The Lessee must not do anything, in, to or on the Premises and must use its best endeavours not to allow anything to be done, which may lessen or render void or voidable any Lessee's insurances or any condition of any insurance taken out by the Lessor of which the Lessee has been made aware in respect of the Premises or any property in or on it.

13.4 Exclusion of Lessor's liability

- (a) The Lessee acknowledges that all property which may be in or on the Premises will be at the sole risk of the Lessee and the Lessor will not be liable for any Claim (but for the avoidance of doubt not where such Claim is a result of or arising from any act or omission of the Lessor or the Lessor's Agents and pertaining to any risk known or which ought reasonably have been known to the Lessor) that the Lessee or the Lessee's Employees or any Person claiming by, through or under the Lessee may incur or make or any which arises from:

- (1) any fault in the construction or state of repair of the Premises or any part of it; or
 - (2) the collapse of the Premises irrespective of the cause; or
 - (3) any defect in any Services; or
 - (4) the flow, overflow, leakage, condensation or breakdown of any water, air-conditioning, gas, oil or other sources of energy or fuel, whether from the roof, walls, gutter, downpipes or other parts of the Premises.
- (b) The Lessee agrees that the Lessor will not be responsible for and releases the Lessor, the Crown and the Lessor's Agents from liability in respect of any:
- (1) Claim relating to any property of the Lessee or any other Person in or on the Premises or any part of it however occurring; or
 - (2) death, damage or injury to any Person or property which occurs in on or under the Premises suffered as a direct consequence of the Lessee's construction, operation, presence or maintenance of the Premises by the Lessee or where that construction, operation, presence or maintenance is the responsibility of the Lessee under the Lease, and including, without limitation, damage or injury to any person or property resulting from any collision with or the collapse of the Premises.

13.5 Indemnities

Despite:

- (a) any Claims having resulted from anything which the Lessee may be authorised or obliged to do under this Lease; and/or
- (b) at any time any waiver or other indulgence having been given to the Lessee in respect of any obligation of the Lessee under this clause 13,
- (c) the Lessee will in any case indemnify and keep indemnified the Lessor, the Lessor's Agents, the Minister and the Crown from and against all Claims for which any of them will or may be or become liable, during or after the Term, in respect of or arising from:
 - (1) any breach of this Lease by the Lessee;
 - (2) any cause whatever in respect of damage or injury to the Premises, to any property or to any Person or the death of any Person inside or outside the Premises caused or contributed to by any neglect or default of the Lessee or the Lessee's Employees under this Lease or by the use of the Premises by the Lessee or by the Lessee's Employees including, without limitation, injury or death to any Person or property resulting from any collision with or collapse of the Premises;
 - (3) the negligent or careless use or neglect of the Services and facilities of the Premises by the Lessee or the Lessee's Employees or any other Person claiming through or under the Lessee or of any trespasser while such trespasser is in or on the Premises caused or contributed to by any default or negligent act or omission of the Lessee;

- (4) overflow or leakage of water (including rain water) or from any Services whether originating inside or outside the Premises caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees or other Person claiming through or under the Lessee;
- (5) failure of the Lessee to give Notice to the Lessor of any defect in any of the mechanical or any other Services in the Premises within a reasonable time of the Lessee becoming aware of it; and
- (6) damage to plate, float and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees.

The Lessee's indemnity obligation in this clause and in any other clause in the Lease is and shall be reduced to the extent the Claim is caused or contributed to by the Lessor or the Lessors Agents.

14. DAMAGE AND DESTRUCTION

14.1 Lessor to reinstate Premises

If the Premises or any part of them are at any time damaged or destroyed by any disabling cause, subject to the requirements of the Lessor's obligations under the Head Lease, then the Lessor may re-instate the Premises and make them fit for the occupation and use by the Lessee otherwise pursuant to this Lease and in accordance with the Head Lease. In the event the Lessor is not required under the Head Lease to reinstate the Premises fit for occupation by the Lessee, then the Lessor will notify the Lessee in writing and either party may terminate this Lease upon 7 days written notice to the other party. In such event, this Lease will terminate and the provisions of clause 17 will apply.

14.2 Not used

14.3 Rent and Outgoings

Unless otherwise agreed between the parties in writing the Lessee must continue to pay the Rent unless the damage was caused by the Lessor or the Lessor's Agents or the Lessee has been exempted from payment.

The Lessee is not required to pay any of the outgoings in respect of the Premises except for gas supply and gas usage.

15. LESSOR'S COVENANT

If the Lessee pays the Rent and observes and performs in a timely fashion the covenants and conditions on its part contained in this Lease, the Lessee may occupy and enjoy the Premises during the Term without any interruption by the Lessor or by any Person claiming through the Lessor except as provided in this Lease. Provided that the Lessor may upon seven (7) days notice to the Lessee require the exclusive use of the Premises (to the exclusion of the Lessee) for a special function or event hosted or to be hosted at the Premises by the Lessor. Provided further that in such circumstances the Lessor is not required to compensaten the Lessee or offer the Lessee a reduction in Rent payable by the Lessee to the Lessor.

16. TERMINATION AND DEFAULT

16.1 Not used

16.2 Events of default

The following are events of default:

- (a) if the Rent or any other money payable under this Lease is not paid within 30 days of the due date for payment whether legally demanded or not;
- (b) if the Lessee at any time fails to perform or observe any of its obligations under this Lease;
- (c) If the Lessee fails to provide the Annual Financial Statement to the Lessor each year
- (d) if the Lessee is a company then if the Lessee:
 - (1) enters into any compromise or arrangement with any of its creditors or if an application is made to any court for an order summoning a meeting of creditors;
 - (2) has a receiver or receiver and manager or administrator or controller appointed of any of its assets;
 - (3) is wound up or dissolved or notice is given of intention to propose a resolution for winding up or an order is made or resolution passed or an application is made for winding up or dissolution;
 - (4) has a resolution passed by the directors that in their opinion the company can no longer continue its business;
 - (5) calls a meeting of its creditors under the *Corporations Act 2001*;
 - (6) is placed under official management or if the members determine to convene a meeting of creditors for the purpose of placing the company under official management;
 - (7) has an inspector appointed under the *Australian Securities and Investments Commission Act 1989*;
 - (8) is unable to pay its debts as and when they fall due;
 - (9) makes an assignment for the benefit of or enters into an arrangement or composition or a moratorium whether formal or informal with its creditors or financiers; or
 - (10) has a provisional liquidator or a liquidator by any means appointed;
- (e) if any execution exceeding ten thousand dollars is issued, levied or enforced against the Lessee or on any of the assets of the Lessee unless such execution is fully paid or satisfied within seven days from the date of the issue, levy or enforcement, or appropriate legal proceedings to invalidate the execution are taken within seven days of the issue, levy or enforcement; and

- (f) if the Lessee is a natural person and becomes or is made bankrupt or makes any assignment of his estate or any part of it for the benefit of creditors or otherwise seeks relief under or takes advantage of any Law for the time being in force relating to bankruptcy or insolvent debtors or causes or permits his goods to be levied on or under any execution or other legal process.

16.3 **Forfeiture of Lease**

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have against the Lessee or any other Person at any time re-enter into and upon the Land or any part of it in the name of the whole and thereupon this Lease will be absolutely determined.

16.4 **Lessor may rectify**

If the Lessee is in default under this Lease and fails to commence to rectify that default within 7 days of the Lessor notifying the Lessee in writing of that default and requiring its rectification or, having commenced, fails to expeditiously complete that rectification within a reasonable time, the Lessor may, but will not be obliged to, remedy at any time without further notice any default by the Lessee under this Lease. If the Lessor so elects all reasonable Costs incurred by the Lessor (including legal costs and expenses) in remedying the default will constitute a liquidated debt and must be paid by the Lessee to the Lessor on demand.

16.5 **Waiver**

- (a) The Lessor's failure to take advantage of any default or breach of covenant by the Lessee will not be or be construed as a waiver of it, nor will any custom or practice which may grow up between any of the Parties in the course of administering this Lease be construed to waive or to lessen the right of the Lessor to insist upon the timely performance or observance by the Lessee of any covenant or condition of this Lease or to exercise any rights given to the Lessor in respect of any such default.
- (b) A waiver by the Lessor of a particular breach is not deemed to be a waiver of the same or any other subsequent breach or default.
- (c) The demand by the Lessor for, or subsequent acceptance by or on behalf of the Lessor of, Rent or any other money payable under this Lease will not constitute a waiver of any earlier breach by the Lessee of any covenant or condition of this Lease, other than the failure of the Lessee to make the particular payment or payments of Rent or other moneys so accepted, regardless of the Lessor's knowledge of any earlier breach at the time of acceptance of such Rent or other moneys.

16.6 **Tender after termination**

If the Lessor accepts money from the Lessee after the Lessor ends this Lease the Lessor may (in the absence of any express election of the Lessor) apply it:

- (a) firstly, on account of any Rent and other moneys accrued and due under this Lease but unpaid at the date the Lease is ended; and
- (b) secondly, on account of the Lessor's Costs of re-entry.

16.7 Essential terms

The Lessor and the Lessee agree that each of the following covenants by the Lessee are essential terms of this Lease:

- (a) pay the Rent;
- (b) pay the gas supply and usage costs or reimburse the Lessor for the costs incurred by the Lessor for the gas supply and gas usage at the Premises within 7 days of being requested to do so by the Lessor
- (c) keep the Premises open for use during the Core Hours described in Item 7 of the Schedule as required to conduct the Permitted Use;
- (d) carry on the Permitted Use;
- (e) comply with Laws and Requirements;
- (f) comply with the Lessee's repair and maintain obligations under this Lease;
- (g) not assign, or transfer this Lease or sub-let or part with possession of the Premises or any part of it without the Head Lessor's and Lessor's consent and compliance with any conditions provided in this Lease;
- (h) take out and keep current those insurances required to be taken out by the Lessee;
- (i) pay or reimburse to the Lessor Gas Supply and Gas Usage costs ;
- (j) not cause damage to the Plant and Equipment . In the event that the Lessee damages any part of the Plant and Equipment , the Lessor may by notice in writing to the Lessee, require the Lessee to carry out repairs to the Plant and Equipment , at the cost of the Lessee. Failure to do so by the Lessee will constitute a breach of the Lease by the Lessee; and
- (k) remove the Lessee's Improvements at the end of this Lease unless the Lessor specifically requires otherwise by notice in writing to the Lessee;

16.8 Damages for breach

The Lessee covenants to compensate the Lessor for any breach of this Lease and the Lessor may recover damages from the Lessee for any breach. The Lessor's entitlement under this Clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including the right to terminate this Lease).

16.9 Repudiation by Lessee

Without limiting clause 16.8 or any other provision of this Lease, the Lessee covenants to compensate the Lessor for any loss or damage suffered by the Lessor by reason of the Lessee's conduct (whether acts or omissions) constituting a repudiation of this Lease or of the Lessee's obligations under this Lease.

16.10 Acts by the Lessor not to constitute forfeiture

The Lessor's entitlement to recover damages shall not be affected or limited if any of the following events occur:

- (a) the Lessee abandons or vacates the Land;
- (b) the Lessor elects to re-enter the Land or to terminate the Lease;
- (c) the Lessor accepts the Lessee's repudiation; or
- (d) the Parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of law.

16.11 Mitigation

Nothing in this Clause will operate to relieve the Lessor of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Lessor.

17. TERMINATION OF TERM

17.1 Lessee to yield up

- (a) When this Lease ends, the Lessee, at its Cost, must:
 - (1) unless otherwise required by the Lessor, remove the Lessee's Improvements in a proper and workmanlike manner in compliance with the requirements of all Authorities and to the satisfaction of the Lessor; and
 - (2) remove all loose items from the Premises.
 - (3) Ensure that the Plant and Equipment remain at the Premises
- (b) If the Lessor does not require the Lessee to remove the Lessee's Improvements or particular Improvements specified by the Lessor, those improvements that have not vested in the Lessor by operation of Law will revert to and become the absolute property of the Lessor (except for the Lessee's trade fixtures, fittings and chattels) without any payment or compensation.

17.2 Lessee not to cause damage

- (a) The Lessee must not cause or contribute to any damage to the Land in the demolition and removal of the Lessee's Improvements.
- (b) If the Lessee causes any such damage in the demolition and removal of the Lessee's Improvements, the Lessee must make good any such damage and must leave the Land in a condition that is acceptable to the Lessor and all Authorities.
- (c) If the Lessee fails to do so within a reasonable time, the Lessor may make good any such damage at the Cost of and as agent for the Lessee and recover from the Lessee the reasonable cost to the Lessor of doing so as a debt due payable on demand.

17.3 Failure by Lessee to remove the Lessee's Improvements

If the Lessee fails to remove the Lessee's Improvements and loose items in accordance with this clause 17 or if the Lessor re-enters the Land, the Lessor at the Lessor's option

(without prejudice to any action or other remedy which the Lessor has) may do any one or more of the following:

- (a) demolish and remove the Lessee's Improvements and remove the Lessee's loose items;
- (b) without being guilty of any manner of trespass, cause any of the Lessee's property to be removed and stored in such manner as is reasonable at the risk and at the Cost of Lessee and/or at the option of the Lessor sell it as the attorney of the Lessee and appropriate the proceeds of sale in payment of any Rent or other money owing by the Lessee to the Lessor and pay any residue without interest to the Lessee;
- (c) treat the Lessee's property as if the Lessee had abandoned its interest in it and it had become the property of the Lessor, and deal with it in such manner as the Lessor thinks fit without being liable in any way to account to the Lessee for them;
- (d) recover its costs from the Lessee on demand as a debt due.

17.4 Lessee to indemnify and pay Lessor's Costs

Without limiting clause 13.5, the Lessee must indemnify and keep indemnified the Lessor in respect of any reasonable Costs incurred by the Lessor under clause 17.3 and also in respect of all Claims which the Lessor may suffer or incur at the suit of any Person (other than the Lessee) claiming an interest in the Premises or the Lessee's property by reason of the Lessor acting in any manner permitted in this clause 17.

17.5 Earlier breaches

The ending of this Lease does not prejudice or affect any rights or remedies of the Lessor against the Lessee in respect of any earlier breach by the Lessee of any Lease covenants and conditions.

18. MISCELLANEOUS

18.1 Notices

- (a) Any Notice served or given by either Party under this Lease will be valid and effectual if signed by either Party or by any director, alternate director, secretary, executive officer, attorney, managing agent, Authorised Officer or solicitors for the time being of that Party or any other Person nominated from time to time by that Party.
- (b) Each Party must immediately provide the other Party with a Notice containing full particulars of the address and email information of the Party giving the Notice and must update such notice in the event of any change.
- (c) Any Notice required to be served or which the Lessor may elect to serve on the Lessee shall be sufficiently served if:
 - (1) served personally;
 - (2) sent by email to the email address in Item 9; or

- (3) forwarded by prepaid security post to the Lessee at its address in this Lease.
- (d) Any Notice required to be served on the Lessor shall be sufficiently served if:
 - (1) served personally;
 - (2) sent by email to the email address in Item 9; or
 - (3) forwarded by prepaid security post addressed to the Lessor to the Name and Notice Address.

All such Notices must be addressed to the Lessor at that address or at such other address as the Lessor from time to time nominates.

- (e) Any Notice is deemed to have been duly served if given:
 - (1) by post, two Business Days after the day it was posted;
 - (2) by email if to the email address in the Information Table or as otherwise notified for the purposes of this clause 18;
 - (3) personally, on the date of service.

18.2 **Set-Off**

If the Lessee defaults in the payment of the Rent, the Rates and Taxes or any other money payable under this Lease to the Lessor or any Authority, the Lessor may set-off that amount against any moneys which may from time to time be payable by the Lessor to the Lessee on any account whatsoever but any set-off will not relieve the Lessee from its default for any non-payment of the Rent, the Rates and Taxes or other moneys under this Lease.

18.3 **Easements**

The Head Lessor may grant rights of support and enter into any arrangement or agreement with any party with an interest in any adjacent land or with any Authority as the Head Lessor thinks fit for the purpose of:

- (a) public or private access to the Land;
- (b) support structures erected on adjoining land; or
- (c) the provision of Services.

The Head Lessor shall not exercise any rights under this Clause if it substantially and permanently derogates from the enjoyment of the rights of the Lessee under this Lease.

18.4 **Waiver**

No waiver by one Party of a breach by or on behalf of the other Party of any obligation, provision or condition of this Lease expressed or implied shall operate as a waiver to or of any other breach of the same or any other obligation, provision or condition of this Lease expressed or implied.

19. GUARANTEE AND INDEMNITY

- 19.1 In consideration of the Lessor leasing the Premises to the Lessee at the request of the Guarantor, the Guarantor unconditionally and irrevocably guarantees to the Lessor:
- (a) the payment of all money payable by the Lessee to the Lessor under this Lease; and
 - (b) the performance and observance by the Lessee of the terms and conditions of this Lease.
- 19.2 The Guarantor indemnifies the Lessor against any loss and/or liability arising out of the default by the Lessee of the terms and conditions of this Lease.
- 19.3 Neither this Lease, nor the obligations of the Guarantor under this Lease, will be affected by anything which might otherwise operate to release the Guarantor from the provisions of this clause, including the death of the Guarantor.
- 19.4 This guarantee and indemnity:
- (a) is a continuing guarantee and indemnity;
 - (b) will not be discharged by any partial payment; and
 - (c) remains in force until all money payable by the Lessee to the Lessor has, in fact, been paid and the obligations of the Lessee under this Lease have been completely performed.

20. SECURITY DEPOSIT

- 20.1 The Lessee must, on or before the Commencing Date, pay to the Lessor the Security Deposit.
- 20.2 The Security Deposit will be refunded to the Lessee on termination of this Lease and the vacation of the Premises by the Lessee, provided that the Lessor at any time may deduct from the Security Deposit and apply the amount deducted, to pay any amount that may be payable to the Lessor as a result of any breach by the Lessee of any of the terms and conditions of this Lease (and such deduction is not to be deemed to waive the Lessee's breach).
- 20.3 If any amount is deducted from the Security Deposit pursuant to sub-clause 21.2, the Lessee must immediately pay to the Lessor within seven (7) days a similar amount or the same amount so as to restore the Security Deposit.

21. BANK GUARANTEE

21.1 Lessee to Provide a Bank Guarantee

In lieu of the Security Deposit referred to in clause 21, the Lessee may provide the Lessor prior to the Commencing Date with a Bank Guarantee for the amount of the Security Deposit.

- 21.2 The Lessor is entitled to call on part or all of the Bank Guarantee to cover any amount that may be payable by the Lessee to the Lessor, as a result of any breach by the Lessee of any of the terms and conditions of this Lease.

21.3 If payment is made under the Bank Guarantee, the Lessee must give to the Lessor an additional or replacement bank guarantee no later than seven (7) days after being requested to do so, such that the amount guaranteed is the amount specified in Item 21.

21.4 Replacement of Bank Guarantee

The Lessee must, at the expiration of the Term provide to the Lessor a replacement Bank Guarantee for an amount which is equivalent to the amount specified in Item 21.

21.5 Release of Earlier Guarantee and at end of Lease

The Lessor will, as soon as practicable after the receipt of the replacement Bank Guarantee or otherwise having complied with the provisions of this Lease in full, return the Bank Guarantee previously held to the Lessee.

22. PLAN OF MANAGEMENT

22.1 The Lessee must comply with the Plan of Management that applies to the Premises and/or the Permitted Use Premises

22.2 The Lessee acknowledges that it has read and understood the Plan of Management and that the Plan of Management as amended and updated from time to time is included and forms part of the Lease.

22.3 The Plan of Management can be found on the link <https://www.northernbeaches.nsw.gov.au/council/publications/plans-management> enter "coastal lands" in search field

23. COUNCIL POLICIES

23.1 The Lessee must use its best endeavours to comply with the Head Lessor's Single Use Plastic Policy, aimed at eliminating the use of single use plastics. As such, the Lessee must minimise the use of plastic bags, balloons plates and cutlery. The Lessee should provide products and services that do not rely on single use plastics and promote alternatives to single use plastics. The Lessee must not distribute or sell plastic straws. The Lessee must also use its best endeavours to comply with the Lessor's Waste Minimisation for Functions and Events policy, aimed at promoting best practice waste management.

23.2 The Lessee must further comply with all Lessor Policies relevant to the Lessee. The Lessor must make such policies known to and reasonably available to the Lessee.

24. LIQUOR LICENCE- NOT USED

25. DISPUTE RESOLUTION

All disputes or differences arising out of this Lease will be resolved in accordance with this clause 25.

25.1 Notice of disputes

Either party may at any time, notify the other party in writing that there is a dispute or difference concerning any matter in this Lease. That Notice must:

- (a) Identify the subject matter of the dispute;
- (b) Identify the relevant provisions of this Lease;
- (c) Annex copies of any correspondence or background material and information relevant to that dispute; and
- (d) Contain any particulars of qualifications of the dispute.

25.2 **Parties to Confer**

The parties must, within twenty-one (21) days of the service of the Notice, meet in an attempt to discuss, and to reach a mutually acceptable decision, on the matter of the dispute.

25.3 **Referral to Mediation**

If:

- (a) the matter in dispute is not settled within ten (10) Business Days of the meeting referred to clause 29.2(b), or such later date as the parties may agree; or
- (b) either party refuses to attend a meeting in accordance with clause 29.2 then;

the difference or dispute must be the subject of a mediation administered by the Australian Disputes Centre (**ADC**) conducted and held in accordance with the mediation rules of the ADC in force at the time of the appointment of a mediator.

25.4 **Mediator**

- (a) The mediator will be appointed by the parties, from a panel suggested by the ADC within twenty-eight (28) days of the referral of the difference or dispute for mediation.
- (b) If a mediator is not appointed by agreement within that period, by the Secretary-General of the ADC at the request of either party.
- (c) The costs of, and associated with, formal mediation before a mediator under this clause are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, in equal shares.

25.5 As an alternative to clause 25.4 any or all of the parties to this lease may, at any time, refer a dispute to the Registrar for mediation of the dispute in accordance with the dispute resolution provisions contained in Part 8 of the RLA.

25.6 The costs of and associated with formal mediation before a mediator under this clause are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, in equal shares.

26. COMMON AREAS

26.1 Common areas to be clean

The Lessee must keep any Common Areas, such as the Kitchen, Cool room located on or near the Premises clean, tidy and free from rubbish. In particular, the Lessee must not obstruct a fire door, escape door, service duct, fire prevention device or anything that allows light or air into the Building. If the Lessee does not keep the Common Areas clear, the Lessor may remove the obstruction at the Lessee's cost.

26.2 Obstructing Common Areas

The Lessee must use all reasonable endeavours to ensure that its employees, contractors, agents and invitees do not:

- (a) stack or load goods, containers or pallets within any roadways or land surrounding the Premises or Common Areas (unless such areas are specifically designated for that purpose);
- (b) obstruct the interior aisles and passage ways;
- (c) obstruct access to fire extinguishers or other fire protection equipment, such as valve rooms, hoses, hose reels and mains; or
- (d) permit vehicles of any kind to block roadways, loading areas and/or entrances to the Premises.

27. RULES AND REGULATIONS

27.1 The Lessee acknowledges and agrees that the Head Lessor may from time to time promulgate rules and regulations (including a building operational management plan) not inconsistent with or in derogation of the rights of the Lessor hereunder relating to:

- (a) the use safety care and cleanliness of the Premises or the Land;
- (b) the preservation of good order therein;
- (c) the comfort of persons lawfully using the same;
- (d) the location and storage of garbage and refuse pending its removal;
- (e) the policing and regulating of traffic and the parking of motor vehicles on the Premises or the Land;
- (f) the external appearance of the Premises and the Land.

Any such rules and regulations not inconsistent with or in derogation of the rights of the Lessor may from time to time be repealed amended or added to at the discretion of the Head Lessor and upon notice in writing thereof under the hand of the Head Lessor or its authorised agent being given to the Lessor shall be and become as binding upon the Lessor and the Lessee herein as if the same were expressly set forth herein as covenants on the part of the Lessee.

Signage

- 27.2 The Lessee must first obtain the Lessor's consent to any signage erected or proposed to be erected at or near the Premises. If any signage is or has been erected by the Lessee without first obtaining the consent of the Lessor will be a breach of this Lease by the Lessee

28. LESSOR'S FURTHER OBLIGATIONS TO COMPLY WITH

28.1 The Lessee must at its own cost and risk:

- (a) arrange for its own waste contractor to handle and remove any and all waste and the proper service and maintenance of the grease traps to the Premises;
- (b) adhere to Council's directions at all times regarding the treatment and removal of waste, including the need to increase the number of bins and waste removal services, as determined by the Lessor (bins are to be kept within the designated bin room at all times).

28.2 The Lessee must hold the insurances as required under this Lease. The insurance policies must note the Head Lessor and Lessor as interested parties for their respective rights in relation to the public liability insurance(s).

28.3 Any Lessee fitout works shall be subject to the prior approval of both the Lessor and Head Lessor and the conditions and requirements under the Head Lease.

28.4 The Lessee will be responsible for the Head Lessor's legal costs arising out of or in connection with this Lease, to the extent permitted under the RLA.

28.5 Sale and storage of Food

The Lessee will be responsible and ensure that it at all times complies with the sale, storage and serve of food handling, hygiene not forming part of the kiosk

The Lessee must comply with the requirement of the following website in relation to the proper preparation, sale and storage of food, [HTTP://WWW.WARRINGAH.NSW.GOV.AU/WORK/DOING-BUSINESS-WARRINGAH/HEALTH-AND-SAFETY/FOOD-SAFETY](http://www.warringah.nsw.gov.au/work/doing-business-warringah/health-and-safety/food-safety)SEE TO COMPLY WITH ONLY

In the event that the Lessee fails to comply with the above the Lessor may charge the Lessee with any costs including legal costs incurred in relation to an inspection, fines or penalties imposed by any order or authority by failing to comply with the provisions of this clause.

28.6 Cool room

The cool room must only be used for minimal storage of bulk excess drinks and non hazardous food only.

No hazardous food is to be stored in the cool room.

All drinks must be kept off the floor and must not interfere with any equipment or access to the cool room.

All perishable items to be removed at the end of each day

29. HEAD LEASE

29.1 Notwithstanding anything else stated under this Lease:

- (a) the Lessor must ensure that it will comply with all its obligations under the Head Lease and the Lessor will not breach its obligations under the Head Lease at any time;
- (b) the parties acknowledge that if the Lessee requires the Lessor and/or the Head Lessor to undertake an action in connection with this Lease, the Lessor may communicate with the Head Lessor and seek for the Head Lessor's consent and/or directions. In that regard, the Lessor is entitled to attendance of the matter within reasonable timeframes. The Lessee must promptly seek for and comply with the Lessor's directions with respect to a matter that materially affects the Head Lessor and/or the Head Lease;
- (c) the Lessor's capacity under this Lease is limited to the Lessor's capacity as the lessee under the Head Lease only. Accordingly, and for the avoidance of doubt:
 - (1) the Lessor's obligations under this Lease towards the Lessee must be read in a manner that does not exceed and conflict with the Lessor's obligations or entitlements under the Head Lease;
 - (2) the Lessee must not assign, transfer, mortgage, charge, sublet, part with possession, grant any licence and/or change in ownership or control that affect or may affect the Lessee's corporate structure, control and composition, the Premises, this Lease and/or the Head Lease without the prior written consent of the Lessor and Head Lessor, written consent of which:
 - (A) may be withheld by the Head Lessor on the same terms and conditions under the Head Lease as applied to the Lessee;
 - (B) may not be unreasonably withheld by the Lessor, with consideration to this subclause and also subclause (e) below.
- (d) Dealings with the interest of parties under this lease
 - (1) The Lessor must provide its consent to a request for a transfer or assignment by the Lessee of this Lease unless:
 - (A) the proposed transferee or assignee proposes to alter the Permitted Use;
 - (B) the proposed transferee or assignee has financial resources or skills that are inferior to those of the Lessee;
 - (C) the proposed transferee or assignee refuses to provide security including but not limited to a security deposit, bank guarantee or, in the case of a company, personal guarantees, if reasonably required by the Lessor; or
 - (D) but not if the Lessee has failed to comply with sub-clauses (2) and (3) below (if applicable).

- (2) A request for consent to a transfer or assignment must be made by the Lessee in writing and must be accompanied by sufficient information to enable the Lessor to establish the financial resources and skills of the proposed transferee or assignee to the Lessor's reasonable satisfaction.
- (3) Prior to making a request under subclause (2), the Lessee must provide the proposed transferee or assignee with an updated version of the disclosure statement provided to the Lessee by the Lessor.
- (4) The Lessee may require the Lessor to provide the Lessee with such a statement as required under subclause (3) and if the Lessor fails to comply with this requirement within fourteen (14) days of receiving a written request from the Lessee to do so the provisions of sub-clause (3) will not apply; and
- (5) Provided that the Lessee has complied with sub-clauses (2) and (3) then, unless the Lessor has previously notified the Lessee of its decision, the Lessor is deemed to have consented to the transfer or assignment following the expiration of twenty-eight (28) days after the request has been made under sub-clause (2) but subject always to the Head Lease.

29.2 The Lessee further acknowledges and agrees as follows:

- (a) The Lessor makes no warranty or representation as to the suitability of the Premises, Building and Land for the Permitted Use or any use and the Lessee must satisfy itself as to the suitability of the Premises in all respects (including any and all improvements whatsoever under the Head Lease) and agree to take on the matters on an as-is and where-is basis as at the commencement of this Lease. The obligation is on the Lessee to obtain any approvals required by the Authority;
- (b) this is a sublease and is dependent on the existence and continuance of the Head Lease;
- (c) this Lease may come to a premature end on termination or by reason of the Head Lease;
- (d) unless otherwise stated in this Lease, the rights and obligations of the Lessor and the Lessee under this Lease are, in most respects, governed by and subject to compliance with the provisions of the Head Lease. Accordingly, the Lessee agrees to take-on, observe and do all things necessary to ensure due performance of the Head Lease so far as contemplated under this Lease on part of the Lessor;
- (e) the Lessee must ensure that it does not do anything or refrain from doing anything which causes or might cause the Lessor to breach or default in its obligations or otherwise prejudicially affect its rights under the Head Lease;
- (f) the rights of entry by the Head Lessor under the Lease continue and this Lease is subject to those rights;
- (g) the Lessee must act in good faith and due care in performing this Lease, properly and in a competent manner;
- (h) this Lease is conditional upon the approval by the Head Lessor;

- (i) the Lessee must continually indemnify firstly the Head Lessor and secondly the Lessor against any liability, cost, loss, damage or expense to the extent arising from any of the following:
- (1) the Lessee's occupation or use of the Premises;
 - (2) something the Lessee does or fails to do, or someone the Lessee is responsible for does or fails to do;
 - (3) anything or anyone entering, leaving or affecting the Premises; and/or
 - (4) any default or delay by the Lessor in the performance of its obligations contained or implied under the Lease which directly or indirectly result from the Lessee's acts or omissions including without limitation any conditions imposed by the Head Lessor with respect to this Lease.
- and for the avoidance of doubt, the indemnities in clause 13.5 of this Lease apply against the Lessee in favour of the Head Lessor as well as the Lessor.
- (j) The Lessor's rights under this Lease, are subject to the terms of the Head Lease.
- (k) This Lease will automatically terminate if the Head Lease is terminated for whatever reason.

30. OPTION TO RENEW

30.1 The Lessee must give the lessor notice

If there is a further term specified in item 8 at least 3 months but no more than 6 months before the expiry date, the Lessee must tell the Lessor by notice that the Lessee wishes to lease the Premises for the Further Term(s) specified in item 8. Provided that the Lessee must not be in default of any of its obligations under this Lease, and further provided that the Lessee must have provided the Annual Financial Statement to the Lessor within three (3) months of the end of the current Financial Year.

30.2 Lease for Further Term

If the Lessee gives the Lessor a notice under subclause 1, the Lessee must take and the Lessor must give the Lessee a lease of the Premises for the Further Term which is subject to such provisions as the Lessor may reasonably require having regard to the nature of the provisions usually found in leases of similar Premises owned by the Lessor or managed by the manager at that time, but excluding this or any similar option and in the lease for the Further Term shall provide that:

- (a) Item 4 will be completed by inserting the Commencement Date of the Lease for the Further Term;
- ~~(b)~~ item 5 will be completed by inserting the term in item 8 of this lease ;
- (c) item 6A will be completed by inserting an amount equal to the rent for the final year of the current term increased by 3% item 21 will be an amount that bears the same proportion to the rent payable in the first year of the option period as the security amount in item 21 of this lease bore to the total of the rent payable in clause 7.1 for the first year of the initial term;

30.3 Failure to give notice

If the Lessee does not give the Lessor the notice under subclause 1 the lease ends on the expiry date (see clause 3.1).

30.4 The Lessee's conduct

Despite this clause, the Lessee is not entitled to a lease of the Premises for the Further Term unless the Lessee has:

- (a) paid on time the rent and other monies payable under the lease; and
- (b) obeyed the lease up to the expiry date.

SCHEDULE 1 - REFERENCE SCHEDULE

1. **LESSOR:** NORTH CURL CURL SURF LIFE SAVING CLUB
INC. ABN 74 095 397 853
2. **LESSEE:**
- 3A **LAND** Part Folio: 7356/ 1167221
- 3B **PREMISES** means the "Property leased" specified on the cover page of this Lease being Part folio: 7356/ 1167221 being Kiosk/kitchen of the North Curl Curl Surf Life Saving Club (including the non-exclusive and shared use area as may be allocated and permitted for the Lessee by the Head Lessor and the Lessor under clause 30) and includes the Lessor's fixtures, goods, items, Plant and Equipment in, on or affixed to the Premises.
4. **COMMENCEMENT DATE:**
5. **TERM:** Three (3) Years
- 6A **RENT:** \$####,000.00 (plus GST per year) being the initial rent.
- 6B **RENT REVIEW DATE** Annually upon the anniversary of the Commencement Date.
- Upon exercise of the Option for the new term
- 6C **DUE DATE** Monthly, on or before the 26th day of each month in cleared funds in advance as directed by the Lessor. Provided that for those months of the year that only has 30 days, payment is to be received on or before the 25th day of that month. If the 25th or 26th of the month falls on a weekend or public holiday, then payment must be made on the preceding business day.
7. **PERMITTED USE:** Preparation and sale of cooked food, pre packed or pre-prepared food, hot and cold beverages, ice cream , cold drinks , fruit juice, sport drinks cakes
- To be operated during the following Core Hours:
- Kiosk** Opening Hours during season from the month starting first week of October to the following year being the end of the last week April
- (c) Weekends & Public holidays –

8.30a.m. to 5.30p.m. or earlier being the end of beach patrol day (as determined and advised by Surf Life Savers pursuant to an agreement with Northern Beaches Council) except on days of inclement weather or fewer than 20 persons on the beach.

(b) Weekdays –

9.00a.m. to 5.00 p.m. (including school holidays) at lessee's discretion.

Main Hall Kitchen Hours – (Bottles)

Friday and Sunday 5.30p.m. to 9.00p.m.

Opening Hours during season from the month starting first week of October to the following year being the end of the last week of April

The Permitted Use above is subject always to the approval of Council as the consent authority as may be approved or modified from time to time in accordance with the applicable laws. Any change to Permitted Use is subject to the Lessor's approval at its absolute discretion

8. **FURTHER TERM:** 3 option periods of one (1) year each

9. **NAME AND NOTICE ADDRESS:**

Lessor:

North Curl Curl Surf Life Saving Club inc

ABN: **74 095 397 853**

Huston Parade, North Curl Curl

Attention: Glenn Slater

Email: president@nccslsc.com.au

Lessee:

Xxxxxxxx

xxxxxxx

10. **INSURED SUM & INSURANCES**

Public Liability: \$20 million

Workers Compensation Insurance (if applicable)

Plate Glass Insurance (Except where confirmed in writing by the Lessor that there is no Plate Glass as part of the Premises).

11. RESERVATION/DEDICATION:	Not applicable
12. PAYMENT ADDRESS:	By direct bank transfer to the account nominated by the Lessor
13. MAINTENTANCE RESPONSIBILITIES	See clause 9, 11 and 28
14. LESSOR'S IMPROVMENTS	Plant and Equipment
15. OUTGOING PERCENTAGE	Nil
16. NOT USED	Noted
17. NOT USED	Not used
18. FURTHER OBLIGATIONS	As per Lease
19. GUARANTOR	
20. TURNOVER RENT	Not applicable
21. SECURITY DEPOSIT	Security deposit/bank guarantee: being an amount equivalent to three (3) month's rent from time to time plus GST (Clauses 20/21)

EXECUTION

Lessor

EXECUTED by **NORTH CURL CURL SURF
LIFE SAVING CLUB ABN: 74 095 397 853**

in accordance with its Constitution and in
accordance with Section 22 of the
Associations Incorporation Act 2009 by:

Signature of Director of Member Services

Signature of President

Name of Director of Member Services

Name of President

Lessee

SCHEDULE

PLANT AND EQUIPMENT

Kitchen

- . 4 burner gas stove Zanussi
- 2 pan deep fryer
- Alto shaam warming oven
- Quip well 2 door fridge 1335L
- Single door upright freezer
- Blastwash AT50 dishwasher
- ** Small chest freezer (streets branded, We don't own this.)
- exhaust fans.

Canteen

- 1 small grilling plate Luus
- 3 pan deep frier Waldorf
- ** 1 x 2 door glass fridge (lipton Ice Tea branded)
- ** 1 lager chest freezer (peters branded,
- ** 1 small chest freezer (peters branded)
- ** 1 large chest freezer (streets branded)
- 4 door bench fridge
- exhaust fan.
- 180 L Ice machine

**The refrigerators and freezers are not owned by the Lessor, but given to the Lessor by a third party for its use and enjoyment while it is in occupation of the Premises