

**LEASE**  
New South Wales  
Real Property Act 1900

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**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) TORRENS TITLE**

Property leased  
PART OF (DEFINE WHOLE OF LAND OWNED BY LANDLORD)

**(B) LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE <b>L</b>
	Reference:	

**(C) LESSOR**

(NAME OF LANDLORD)

The lessor leases to the lessee the property referred to above.

**(D)**

Encumbrances (if applicable):

**(E) LESSEE**

(NAME OF TENANT)  
  
**TENANCY:**

**(F)**

- (G)**
- TERM** (INSERT PERIOD OF LEASE - PREFERABLY LESS THAN FIVE YEARS)
  - COMMENCING DATE** (PREFERABLY 1 JULY)
  - TERMINATING DATE**
  - With an **OPTION TO RENEW** for a period of N.A.  
set out in clause N.A. of N.A.
  - With an **OPTION TO PURCHASE** set out in clause \_\_\_\_\_ of \_\_\_\_\_
  - Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.
  - Incorporates the provisions or additional material set out in **ANNEXURE(S)** "A" hereto.
  - Incorporates the provisions set out in N.A.  
No. N.A.
  - The **RENT** is set out in clause No. 8 of ANNEXURE "A"

**DATE** \_\_\_\_\_

(H) I certify 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 witness: \_\_\_\_\_

Signature of lessor: \_\_\_\_\_

Name of witness: \_\_\_\_\_  
Address of witness: \_\_\_\_\_

I certify 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 witness: \_\_\_\_\_

Signature of lessee: \_\_\_\_\_

Name of witness: \_\_\_\_\_  
Address of witness: \_\_\_\_\_

**(I) STATUTORY DECLARATION \***

I \_\_\_\_\_  
solemnly and sincerely declare that—

- 1. The time for the exercise of option to \_\_\_\_\_ 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 (J.P. Number: \_\_\_\_\_)     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 *OR* I did not see the face of the person because the person was wearing a face covering, but 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 *OR* I have confirmed the person's identity using an identification document and the document I relied on was a \_\_\_\_\_ [*Omit ID No.*]

Signature of witness: \_\_\_\_\_ Signature of applicant: \_\_\_\_\_

\* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

**DATE** \_\_\_\_\_

I certify I am an eligible witness and that the Guarantor signed this dealing in my presence.

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

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness

**ANNEXURE "A" TO LEASE**

**BETWEEN:  
AND:**

**LANDLORD  
TENANT**

***Definitions***

1. These definitions apply unless they are inconsistent with the context.

'Land'	means (INSERT DETAILS OF LANDLORD'S ENTIRE LAND OF WHICH THE LEASED AREA FORMS PART) and includes buildings and improvements.
'Leased Area'	means the part of the Land leased as defined in Item (A) on the front page of this lease.
'Buildings and improvements'	means the trees, buildings, structures, yards, drains, bores, bore drains, wells, ground tanks, reservoirs, dams, levee banks, fences, gates, grids, ramps, roads, private telephone lines, private power lines, wiring, water pipes, gas pipes, sheds, dips, mailboxes, huts, cottages, homesteads, outbuildings, swimming pools, tennis courts and plant and equipment on the Land.
'Notify'	means serve a written notice and 'notifies', 'notified' and 'notification' have a corresponding meaning.
'Shared Area'	means the area/s outside the Leased Area but within the Land designated by the landlord as the part/s of the Land able to be used by the tenant to enter and exit the Leased Area.

***Interpretation***

2. These rules apply unless they are inconsistent with the context.

- (1) References to corporations include natural persons and vice versa.
- (2) If the landlord, the tenant or the guarantor comprises more than one person, their liabilities under the lease are joint and several.
- (3) References to statutes in general or to any particular statute above, include:
  - (a) amendments, consolidations or replacements of them or it; and
  - (b) proclamations, rules, regulations, orders and notices issued under them or it.
- (4) Covenants implied by statute are not incorporated in the lease, unless the relevant statute provides that certain covenants are to be implied and/or cannot be excluded by agreement.

***Notification and service***

3. (1) Where this lease provides that one party is to notify the other then any notice may be served by any of the following methods:

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TENANT**

- (a) by personal delivery to the person to be served;
  - (b) by prepaid post to the person to be served;
    - (i) addressed to the person's last-known place of residence; or
    - (ii) addressed to the registered office or any director, in the case of a corporation; or
    - (iii) addressed to the person's last-known place of residence, in the case of a natural person;
  - (c) by any other method authorised by law.
- (2) Anything sent by post will be deemed to have been received 3 days after posting.
- (3) Where persons having the same interest in respect of the subject matter of the lease are to notify any other party or are to be notified, notification to or by any one of them is sufficient notification to or by all of them.

### ***Exclusion of statutory provisions***

4. No statutory provisions (including the Agricultural Tenancies Act (NSW) 1990) apply to this lease, unless the relevant statute provides that certain provisions apply and cannot be excluded by agreement.

### ***Grant of lease and term***

5. (1) The landlord grants to the tenant the right to possess and use the Leased Area for the term of this lease and according to the provisions of the lease.
- (2) In addition to the right to possess and use the Leased Area the landlord also grants the tenant the non-exclusive right to use the Shared Areas subject to the following:
- (a) The tenant will only use the Shared Areas to enter and exit the Leased Area in the ordinary course of the Permitted Use, and
  - (b) The tenant will not damage or destroy the Shared Areas or things on the Shared Areas (fair wear and tear excepted);
  - (c) The tenant will use the Shared Areas at the tenant's own risk.
- (3) In addition to the lease of the Leased Area, the landlord grants to the tenant the right to use the plant and equipment and other property listed in Schedule 1 to this lease, for the period of this lease, subject to the following:

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- (i) The tenant will repair and maintain and insure the items listed in Schedule 1 and provide proof of repairs, maintenance and insurance upon request;
  - (ii) The tenant shall use due care and skill in relation to the use, maintenance and repair of the items listed in Schedule 1;
  - (iii) If any item listed in Schedule 1 comes to the end of its economically useful life then, provided the tenant is not in breach of Clause 5 (3) (i) or (ii), then the tenant does not have to replace the item/s. The landlord does not have to replace any item in Schedule 1 at any time;
  - (iv) The tenant will use the items listed in Schedule 1 at the tenant's own risk and the landlord does not warrant that the items are safe or fit for any proposed use.
- (4) The rights conferred on the tenant under this clause 5, extend to the employees and contractors of the tenant. The tenant is responsible for the acts of omissions of those employees and contractors which are to be treated as acts or omissions of the tenant.

***Holding over***

6. If the tenant continues to occupy the Leased Area after the end of the lease with the consent of the landlord, it will do so as a tenant from month to month. The terms of the lease will apply to the tenancy as far as they may be applicable. Either the landlord or the tenant may end the tenancy by one month's notification to the other.

***Quiet enjoyment***

7. If the tenant pays the rent and does not breach the lease, it may use and occupy the land during the lease without any interference from the landlord or any person lawfully claiming under the landlord, subject to the provisions of the lease and the landlord's rights under it.

***Rent***

8. For the purposes of this clause:

"Average Annual Production"	means the total amount of saleable kernel produced in a season in a particular year divided by the number of hectares of land used to produce that kernel.
"Saleable Kernel"	means all premium and commercial kernel (excluded rejected kernel) as determined by the processor of those nuts.
"Hectare/s"	means the part of the Leased Area used for actual macadamia production. The parties agree that the part of the Leased Area under actual macadamia production is <b>(INSERT NUMBER)</b> hectares.

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"Rent Calculation Formula" is as follows:

Average Annual Production per hectare under macadamia production	Landowner's Share	Tenant's Share
Up to 300kg per hectare under macadamia production	0%	100%
More than 300kg but not more than 600kg per hectare under macadamia production	10%	90%
More than 600kg but not more than 750kg per hectare under macadamia production	20%	80%
More than 750kg but not more than 900kg per hectare under macadamia production	25%	75%
More than 900kg but not more than 1200kg per hectare under macadamia production	25%	75%
More than 1200kg but not more than 1500kg per hectare under macadamia production	25%	75%
More than 1500kg but not more than 1800kg per hectare under macadamia production	30%	70%
More than 1800kg per hectare under macadamia production	35%	65%

"Total Annual Income" means the total amount payable by the processor/s for nuts produced from the Leased Area in a particular season. Unless otherwise agreed, the only deduction to be made by the processor/s is the Macadamia Industry Levy. Unless otherwise agreed, any other deduction made by the processor is to be paid out of the tenant's share of any payment.

(a) The rent payable to the landlord for the first year of this lease shall be calculated as follows:

Rent = (Total Average Annual Production for the 5 seasons immediately preceding the commencement date of this lease ÷ 5) x the Landlord's share percentage determined in accordance with the Rent Calculation Formula.

(b) The rent payable to the landlord in the second and subsequent years of this lease shall be calculated as follows:

Rent = Total Annual Income for that particular year of this lease x the Landlord's share percentage determined in accordance with the Rent Calculation Formula.

(c) Payment of Rent

i. Rent under this lease shall be paid to the landlord on the date/s of payment by the processor in relation to nuts produced on or from the Leased Area.

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- ii. All parties to this lease will do all things necessary to direct the processor to make payments to both the landlord and tenant in accordance with the percentages calculated in accordance with this lease and the "Rent Calculation Formula".
- iii. The parties acknowledge that in the second and subsequent years of this lease the processor will make payments during the season and before the Total Annual Income for that season is known. In relation to all payments from the processor during the season (other than the final payment) the parties will direct the processor to split those payments to the landlord and tenant in accordance with the Rent Calculation Formula percentages applicable to the preceding season. The actual Total Annual Income amount is to be determined prior to the final payment by the processor and the parties will direct the processor to adjust and split the final payment between the landlord and tenant so that the payments to the parties over the whole season are in accordance with the rent calculation in clause 8(b).
- (d) All parties agree to provide any reasonably requested assistance (including providing information and signing documents) to facilitate processor payments in accordance with this lease and undertake not to hinder, delay or prevent prompt payment to the parties by the processor in accordance with this lease.
- (e) The transport charges imposed by any processor shall be paid (**INSERT PARTY WHO PAYS THIS EXPENSE OR PROPORTIONAL CONTRIBUTIONS IF EXPENSE TO BE SHARED**)
- (f) The tenant will, prior to 1 February each year, advise the landlord of the processor or processors that the tenant will be using for the particular season to process the nuts from the Leased Area.
- (g) The landlord may, at any time, request information and documents to verify the information required for the calculations required under this clause and the accuracy and completeness of any information or documents provided by the tenant shall be verified by a Statutory Declaration.

### ***Rates, taxes and outgoings***

- 9. The landlord will pay all rates, taxes and outgoings relating to the Land and the Leased Area other than any rates, taxes or outgoings payable because of the tenant's use of the Leased Area (which will be paid by the tenant on request).

### ***Tenant to pay for services***

- 10. The tenant is to punctually pay all water, gas, electricity, telephone, heat and other utilities that are provided to the Land and/or the Leased Area to the extent that those services are used by, or for the benefit of, the tenant.



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### ***Capital Improvements Contributions***

11. The landlord and tenant will pay any capital improvement costs in the following proportion:

**(INSERT PROPORTIONAL PERCENTAGE CONTRIBUTIONS)**. In the event of a dispute as to whether or not an expense is a "capital improvement cost" the determination of the Chief Executive Officer of the Australian Macadamia Society shall be binding on the parties.

### ***Agricultural Activities***

12. (1) The tenant will actively and continuously operate a macadamia nut farm/orchard on the Leased Area during the period of this lease for the purpose of maximizing production and income from the sale of macadamia nuts.
- (2) The tenant will carry out any all agricultural activities on the land in accordance with good farm management practices in a proper and professional way and comply with all relevant environmental and industry standards and practices.
- (3) As soon as reasonably practicable after the commencement of this lease, and in August of each subsequent year, the tenant will, at the tenant's cost, obtain a Leaf and Soil Test Report and an Agronomic Report from properly qualified and experienced professionals and provide copies of those reports to the landlord when received.
- (4) The tenant will do all things reasonably necessary and use best industry practices to maintain the Leased Area and the trees within the Leased Area in a fit and healthy condition for the production of macadamia nuts.
- (5) The tenant will, at the tenant's costs, and in consultation with the landlord, prepare a Farm Management Report as soon as practicable after the commencement of this lease and in the month of August in each following year and provide a copy of that report to the landlord. The Farm Management Plan will be in the format set out in Schedule 2 attached to this lease.

### ***General Obligations of Tenant***

13.

- (a) The tenant may use the land only for the purpose of macadamia production activities.
- (b) The tenant is to comply with the terms of any statute affecting the Leased Area or the way the tenant uses the Leased Area. The tenant, at its own cost, is to carry out any alterations, additions and repairs (whether structural or not) to the Leased Area that are required by any statute or any notices given under statute if their necessity has been caused by either the tenant or the way the tenant has or will use the Leased Area.
- (c) The tenant is to take out and keep current all licences, authorities and permits required to

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carry on the activities conducted on the Leased Area.

- (d) The tenant may not cause or allow any nuisance, disturbance or annoyance to be made in or to emanate from the Leased Area.
- (e) The tenant will not cause or allow any noxious, offensive or dangerous chemicals or pollution to escape from the Leased Area.
- (f) The tenant may not conduct or allow any auction sale, fire sale, warehouse sale or liquidation sale or clearance sale on the Leased Area.
- (g) The tenant may not mark, paint, drill, write or in any way deface any wall, ceiling, floor, wood, stone or ironwork of the buildings unless permitted by the lease.
- (h) The tenant is not to allow any rubbish to accumulate on the Leased Area.
- (i) The tenant will provide to the landlord, on request, information in relation to the farming operations, production, compliance with the Farm Management Plan & health condition of the orchard and land.
- (j) The tenant will advise the landlord in relation to any material non-compliance with the Farm Management Plan prepared under Clause 12 (5) above.
- (k) The tenant will consult with and obtain the approval of the landlord in relation to any substantial changes to the Farm Management Plan prepared under Clause 12 (5) above.
- (l) The tenant will take all reasonable steps to keep the land free of rabbits, foxes and other vermin, and noxious weeds, and comply with all statutes relating to them.
- (m) The tenant must give notice of all diseases to humans, plants and livestock to the landlord and all public authorities as required by statute.
- (n) The tenant must, at its own expense, comply with all requirements of all public authorities under statute regarding fumigation, disinfection, eradication and prevention of diseases relating to the Leased Area or the orchard on the Leased Area,
- (o) The tenant acknowledges and agrees that for the purpose of the *Occupational Health & Safety Act, 1983 (NSW)* the tenant has the control of the Leased Area and all equipment and substances within the Leased Area. The tenant releases and indemnifies the landlord from and against any obligation or liability of the landlord under any occupational health and safety legislation as defined in the *Occupational Health & Safety Act, 1983 (NSW)*.
- (p) The tenant must do all things reasonably necessary to ensure that any quota, licence or permit used at the date of this lease, or subsequently in respect of the Leased Area, is protected and preserved.

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- (q) The tenant will maintain on the Leased Area at all times sufficient firefighting equipment for the fighting of bushfires. The firefighting equipment must always be ready for instant use.
- (r) The tenant will maintain the fire breaks on the Leased Area at the date of this lease, and create and maintain such additional fire breaks as may be necessary, to prevent the spread of fire.

### ***Tenant to repair buildings and improvements on the Leased Area***

14. (1) Throughout the lease, the tenant is to keep the buildings, improvements, fences, gates and trees on the Leased Area in good condition and repair having regard to their condition at the beginning of the lease, but need not carry out:
- (a) any structural works (unless within Clause 11), unless they have been caused by negligence or misconduct of the tenant or those for whom the tenant is responsible;
  - (b) repairs due to fair wear and tear; or
  - (c) repairs due to some natural disaster or other serious event that is beyond the reasonable control of the landlord or the tenant.
- (2) Without affecting the generality of Clause 14 (1) the tenant must:
- (a) immediately make good any damage to the buildings and improvements on the Leased Area or Shared Area caused by negligence or misconduct of the tenant anyone on the Land because of the tenant's use of the land;
  - (b) maintain all boundary and sub-divisional fencing within or adjoining the Leased Area in the condition they were in at the commencement of this lease (fair wear and tear excepted).
- (3) The tenant is to maintain in a condition of the same standard at the date of this lease all roads on the Leased Area, and all access roads on other land leading to the land. For the purposes of this sub-clause, 'roads' include culverts, ramps, grids, bridges, table drains and causeways but does not include roads which the Commonwealth, state or local governments or statutory authorities have the duty to maintain.
- (5) If the tenant requires new fencing the tenant will notify the landlord of the proposed fence line which must be shown on a properly drawn scale plan together with details of the construction of the fence. The landlord is to notify the tenant within one month whether the landlord consents to the erection of the new fence.
- (6) If the landlord requires new fencing it is to notify the tenant of the proposed fence line which must be shown on a properly drawn scale plan together with details of the construction of the fence.

### ***Tenant to insure***

15. (1) The tenant shall, at its own expense, take out and keep current the following insurance policies in relation to the Leased Area and Shared Areas. The policies must be in the names

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of the landlord and the tenant and must be with an insurance company approved by the landlord.

- (a) A public risk policy that provides for a minimum cover for each accident, claim or event of \$20,000,000.00.
  - (b) All other insurances usually obtained by persons understanding the activities of the tenant
- (2) The tenant at its own expense is to take out and keep current a workers' compensation insurance policy in respect of all persons employed by the tenant, whether they are to work on or off the land.

### ***Tenant to provide evidence of insurance***

16. (1) Before taking possession of the Leased Area, the tenant is to deliver a copy of the insurance policies required under the lease to the landlord.
- (2) Within seven days of receiving any certificate of renewal or further policy, the tenant is to deliver a copy of it to the landlord.
- (3) After the expiration of any policy, the tenant, on request, is to provide satisfactory evidence to the landlord that it has been renewed.

### ***Subletting, assignment and parting with possession***

17. (1) Unless the landlord consents, the tenant may not sublet, assign, transfer the lease or part with possession of the land or any part of it. The landlord may withhold its consent without reason.
- (2) The tenant may not mortgage or charge this lease or any estate or interest in the land.

### ***Landlord may view the land***

- 18.(1) At all reasonable times, the landlord and/or its agents may enter the Leased Area and view the state of the land and carry out any tests relating to the health and condition of the land and/or orchard. The landlord may notify the tenant of any defects and/or breaches of this lease and require the tenant to remedy them as required by the lease within a reasonable time.
- (2) At all reasonable times the landlord and or its agents may enter the Leased Area to show any prospective purchasers or subsequent tenants

### ***Landlord may repair the land***

19. (1) At all reasonable times (and at any time during the last 3 months of this Lease), the landlord and/or its agents may enter the Leased Area for any one or more of the following purposes:

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- (a) to comply with the terms of any statute affecting the land;
- (b) to carry out any works that the landlord reasonably thinks should be carried out;
- (c) to carry out any repairs to the buildings and improvements that the landlord reasonably thinks should be carried out;
- (d) to make a record of the condition of the land;
- (e) to remedy any defects of which the landlord has notified the tenant under Clause 18 above and the tenant has not remedied within the required time.

In carrying out the works referred to in this Clause the landlord is not to cause unnecessary interference with the use of the land by the tenant.

- (2) If the landlord carries out any works on the land that should have been carried out by the tenant, the tenant must pay the landlord on demand the costs that the landlord incurs in doing so.

***Termination in the event of death, bankruptcy etc of tenant***

- 20. In the event of the death, bankruptcy or loss of legal capacity of the tenant or guarantor and/or the inability of the tenant or guarantor to effectively manage and operate the farming operations on the Leased Area the landlord may terminate this lease by notice in writing.

***Termination on Notice***

21.

- (a) Unless otherwise agreed between the parties the landlord may not terminate this lease in accordance with this clause during the first (**INSERT NUMBER**) of years/months (*delete one*) of this lease.
- (b) Subject to sub-clause (a) above, the landlord may terminate this lease without reason by giving at least 12 months' notice provided that notice is given in the month of June.
- (c) The tenant may terminate this lease without reason on 6 months' notice provided that notice is given during the period 1 December to 1 March (inclusive).
- (d) During any period of termination the tenant will continue to comply with the obligations of this lease (including Clauses 12 and 13) and the tenant will ensure that as at the end of this Lease the condition of the Leased Area and/or orchard is in the same or better condition as set out in the Leaf and Soil Report and Agronomic Report obtain under Clause 12 (3) on or about the Commencement Date of this Lease.
- (e) During the period of any termination notice given under this clause the landlord may enter the Leased Area to carry out any reasonably necessary works or farming activities to prepare the land and orchard for use after the termination of the lease subject to the following:

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- (a) The landlord will use the landlord's best endeavors to cause as little interference with the use of the Leased Area by the tenant; and
- (b) The landlord will keep the tenant informed as to the works and/or farming activities to be carried out on the Leased Area.

### ***Termination on default***

22. (1) The landlord may end the lease in the manner set out below in the following circumstances:
- (a) if the rent or any part of it or any other moneys owing to the landlord under the lease is or are in arrears for 14 days, whether formally demanded or not;
  - (b) if the tenant is in breach of any other clause of this lease (other than a requirement to pay rent or other moneys) and that breach continues for more than seven days after notice from the landlord specifying the breach;
  - (c) if the tenant is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation;
  - (d) if the tenant is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
  - (e) if the tenant is a company and is placed under official management under the Corporations Law or enters a composition or scheme of arrangement;
  - (f) if the interest of the tenant under the lease is taken in execution;
  - (g) if the tenant is a trustee and there are any changes to the terms of the trust or change in beneficiaries.
- (2) In the circumstances set out above in this Clause, the landlord may end the lease by:
- (a) notifying the tenant that it is ending the lease; or
  - (b) re-entering the land, with force if necessary, and ejecting the tenant and all other persons from the land and repossessing the land; or
  - (c) doing both.
- (3) If the landlord ends the lease under this Clause, the tenant will not be released from liability for any prior breach of the lease and other remedies available to the landlord for recovery of arrears of rent or for breach of the lease will not be prejudiced.

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### ***End of Lease***

23.

1. The landlord will be entitled to place on the land within the six months preceding the end of this lease 'To let' and 'For sale' notices.
2. At the expiration or earlier termination of this Lease the tenant must, in addition to any other obligations under this Lease:
  - (a) give vacant possession to the landlord;
  - (b) remove all the tenant's property, fixtures and fittings;
  - (c) repair any damage to the buildings and improvements;
  - (d) ensure that the condition of the Leased Area is the same as or better than the condition of the Leased Area as set out in the Leaf and Soil Report obtained and the Agronomic Report at or about the dated of commencement of this lease. This clause is to be satisfied by a Leaf and Soil Report and Agronomic Report obtained by the tenant, at the tenant's expense, within one month of the termination date. That report is to be provided to the landlord when received.

### ***Landlord may remove and dispose of property***

24. However the lease ends, the landlord may remove the tenant's property, and store it at the tenant's expense without being liable to the tenant for trespass, detinue, conversion or negligence. After storing it for at least one month, the landlord may sell or dispose of the property by auction, private sale, gift, distribution or otherwise. It may apply any proceeds towards any arrears of rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

### ***Damages***

25. If the landlord ends the lease under Clause 22, it may, besides any other rights and remedies that it might have, recover from the tenant damages for the loss of the benefit of the rest of the lease.

### ***Interest on unpaid moneys***

26. The tenant is to pay interest to the landlord on any moneys due and payable under the lease or on any judgment for the landlord in an action arising from the lease until all outstanding moneys, including interest, are paid in full. The rate of interest applicable is the Reserve Bank Cash rate

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(at the relevant time/s) plus 10% per annum. Interest will accrue and be calculated daily.

### ***Lease binds successors***

27. The lease will apply to the landlord's and the tenant's executors, administrators and permitted assigns or, for a corporation, to its successors and assigns, as if they were parties to it.

### ***Guarantee***

This Clause applies if the tenant is a company and/or trustee.

28. (1) The guarantor is **(INSERT NAME/S OF GUARANTORS)**.

(2) If there is more than one guarantor:

- (a) each is liable even if the others do not execute the guarantee;
- (b) each becomes liable when he or she executes the guarantee; and
- (c) the liability of those that execute the guarantee will be joint and several.

(3) In consideration of the landlord's agreeing to enter the lease at the request of the guarantor, the guarantor:

- (a) guarantees to the landlord that the tenant will duly and punctually pay the rent and other moneys payable under the lease;
- (b) guarantees to the landlord that the tenant will duly and punctually observe and perform its obligations; and
- (c) undertakes to the landlord that, with the tenant, that the guarantor will be jointly and severally liable to the landlord for the payment of rent and other moneys and the due and punctual observance and performance of the tenant's obligations.

(4) The guarantor's liability will not be discharged or reduced by:

- (a) the landlord's granting any time, concession or indulgence to the tenant;
- (b) the landlord's entering into any composition or scheme of arrangement with the tenant;
- (c) the landlord's waiving any breach or default by the tenant;
- (d) the landlord's failure to enforce the terms of the lease against the tenant;
- (e) the disclaimer of the lease on the insolvency of the tenant; or
- (f) any payment by the tenant that is avoided or set aside under any statute relating to insolvency or under any other statute.



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- (5) If the terms of the lease are not enforceable against the tenant for any reason, the guarantor will indemnify the landlord against any loss it may suffer as a result of the Lease being unenforceable against the tenant. That loss will include all moneys that would have been payable by the tenant had the lease been fully enforceable against the tenant.

### ***Tenant as Trustee***

29.(1) If the Tenant is a trustee then:

- (a) The Tenant warrants that it has the power and authority under the trust to enter into this Lease
  - (b) The Tenant warrants that it is the sole trustee under the trust
  - (c) The Tenant warrants that the Tenant is entitled to indemnity out of the trust assets
  - (d) The Tenant warrants that the trust does not affect the validity or enforceability of this Lease against the Tenant
  - (e) The Tenant warrants that the Landlord's interests will not be prejudiced or compromised as a result of the Lease being a trustee.
- (2) The Tenant will indemnify the Landlord in the event that any of the warranties in the preceding sub-clause are false, inaccurate or incomplete in a material way.

### ***Payment of Goods & Services Tax***

30. In the event that the Landlord is required to pay Goods and Services Tax levied on the goods or services which are either:-

- (a) Rent or outgoings;
- (b) provided to or for the benefit of the Tenant pursuant to this Lease; or
- (c) goods or services in respect of which the Tenant is required to reimburse the Landlord, either in whole or in part,

The Tenant shall indemnify the Landlord in respect of such Tax, and shall remit to the Landlord an amount equal to such Tax at such times as the Tenant is required to pay instalments of rent, outgoings or other amounts payable pursuant to the Lease.

- (a) This clause shall not:-
- i) affect the Tenant's right (if any) to claim an input tax credit in respect of any payment in respect of Goods and Services Tax;
  - ii) be construed as a representation by the Landlord to the Tenant of the Tenant's burdens, obligations or benefits in respect of Goods and Services Tax;

and the Tenant warrants that it has made its own enquiries and satisfied itself in respect of same.

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- (b) If for any reason the Tenant is not bound to make the increased payment referred to in sub-clause (a) the current market rental as determined by a specialist retail valuer shall be the amount that the valuer determines as being the current market rental having regard only to Leases of comparable properties where rental payable is subject to GST and the rent was set or negotiated at a time when it was known by both parties that such set or negotiated rent would be subject to GST.
- (c) It is the intent of the provisions of this clause that the Tenant shall bear the cost of GST without any detrimental reduction in rental receivable by the Landlord.
- (d) Within fourteen (14) days after receiving payment of rent, the Landlord must give the Tenant a tax invoice in respect of any amount paid under this Clause. The Landlord warrants that the amounts referred to in all tax invoices provided by the Landlord to the Tenant are correct.

### ***Indemnities***

31. The tenant shall assume all risk of loss, damage or injury whatsoever to person on property by reason of:
- i) the condition of the Premises or any plant, equipment, fixtures or fittings thereat or;
  - ii) by reason of the use, management, control or operation thereof.
- (b) The Tenant releases the Landlord, its agents, contractors or employees from all claims for such loss, damage or injury, including any loss of profits or other outgoings sustained by the Tenant or any agent or employee of the Tenant, or by any person whatsoever.
- (c) The Tenant will and does hereby indemnify the Landlord, its agents, contractors and employees from and against all actions, claims, demands, losses, damages, costs and expenses, either direct or indirect, for which the Landlord shall or may be or become liable in respect of or arising from:-
- i) The negligent use, misuse, waste or abuse by the Tenant of the water, gas, electricity, oil, lighting and other services and facilities of the Premises;
  - ii) Overflow or leakage of water (including rain water) into or from the Premises from whatever cause;
  - iii) Loss, damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Premises by the Tenant.
- (d) Each indemnity is independent from the Tenant's other obligations and continues during this lease and after it expires or is terminated. The Landlord may enforce an indemnity before incurring expense.

### ***First Right of Refusal***

32. 1. During the period of this lease, the landlord will not sell the Leased Area or any part of the Leased Area without first offering to sell that land to the tenant and giving the tenant 21 days

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to accept that offer. In no circumstances will the landlord sell the Leased Area or any part thereof to any purchaser other than the tenant on terms more favorable to a purchaser than first offered to the tenant under this clause.

2. This clause does not apply to a transfer of the land (or any part thereof) to a person, company, trust or superannuation fund that is an "associate" of the landlord (as defined in the Corporations Act 2001) or, in the case of a superannuation fund, where the landlord is a member of that fund.

***Security Bond/Bank Guarantee***

33. If the tenant is a company and/or trustee then the tenant will provide to the landlord, on or before the Commencement Date, a security bond/bank guarantee (***delete one***) in the amount of **\$(INSERT AMOUNT)** as security for the tenant's obligations under this lease. The landlord is entitled to use that security amount to pay any amount/s due by the tenant under this lease if the tenant is in default.

***No registration of this lease***

34. Unless otherwise agreed in writing, this lease will not be registered on the title to the Land. The landlord consents to the tenant registering a caveat on the title to the Land to record the existence of this lease. In the event that there is an agreement to register this lease the tenant will pay the costs associated with the preparation and registration of a plan defining the Leased Area and the Shared Areas in proper form to comply with the requirements of the Land Titles Office or similar authority.

***Costs of preparation of lease***

35. Each party will pay their own costs and disbursements relating to the preparation of this lease. The tenant will pay all costs and disbursements relating to the stamping and registration of this lease (if applicable).

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TENANT**

Signed by **INDIVIDUAL NAME** in  
the presence of:

.....  
Signature of Witness

.....  
**INDIVIDUAL NAME**

.....  
Name of Witness

Executed on behalf of )  
**COMPANY NAME** ) .....  
**(ACN)** ) Director/Secretary  
pursuant to section 127 of the )  
Corporations Act 2001 ) .....  
 ) Director/Secretary

**SCHEDULE 1 TO LEASE**

**BETWEEN:  
AND:**

**LANDLORD  
TENANT**

**(LIST OF PLANT, EQUIPMENT AND OTHER PROPERTY LEASED)**

**SCHEDULE 2 TO LEASE**

**(CONTENTS OF FARM MANAGEMENT PLAN)**

**(ROBBIE TO COMPLETE)**