
**DAMSHELL INVESTMENTS PTY LTD ACN 624 372 863
AS TRUSTEE FOR SHELLDAM SUPER FUND**

AND

DAMIEN TARDA AND MICHELLE HELENE STEPHENSON

DEED OF SURRENDER OF LEASE

Finemore Walters & Story
31 Woongarra St
Bundaberg Qld 4670
PO Box 704, Bundaberg Qld 4670
Phone: 07 4153 0000
Fax: 07 4153 0017
Email: enquiries@fws.com.au
Ref: ACW:MTS:20201575

THIS DEED dated *12* day of *JUNE* 2020

BETWEEN Damshell Investments Pty Ltd ACN 624 372 863 as trustee for
Sheldam Super Fund of 179 McCarthys Road, Bundaberg,
Queensland (**Lessor**)

AND Damien Tarda and Michelle Helene Stephenson of 179 McCarthys
Road, Bundaberg, Queensland (**Lessee**)

RECITALS

- A. The Lessor is the owner of the Premises.
- B. The Lessee is the Lessee under the Lease.
- C. The Lessor and Lessee have agreed to a surrender of the Lease on the terms and conditions set out in this Deed.

OPERATIVE PART:

The Lessor and the Lessee agree as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed, the words and phrases in this clause 1.1 will, unless the context otherwise requires, have the following meanings:

“**this Deed**” means this deed and all annexures hereto and any other documents expressed to be supplemental to this Deed and all amendments and annexures, if any, thereto;

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Brisbane;

“**GST**” means the Goods and Services Tax as provided by the GST law and any applicable additional tax, penalty, fine, interest or other charge;

“**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* as it stands from time to time;

“**GST Law**” means the GST Act and associated legislation including without limitation delegated legislation;

“**the Lease**” means the Lease entered into between the Lessor and the Lessee dated 22/09/2019;

“**Notice**” means any notice, demand, consent in writing or other communication to be given or made under this Deed;

“the Payment Date” means the date the Lessee signs this Deed;

“the Premises” means 261 McDonalds Road, Farnsfield;

“the Prescribed Rate” means a percentage interest rate per annum equal to the prime lending rate charged by the Lessor’s bank plus two (2) per centum; and

“the Surrender Date” means 29/02/2020.

1.2 General

In this Deed, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) a reference to writing includes printing, typing, lithography and other modes of reproducing words in a visible form including email;
- (c) the singular includes the plural and vice versa;
- (d) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (e) a reference to any gender includes all genders;
- (f) a reference to a recital, clause, Schedule, annexure or exhibit is to a recital, clause, Schedule, annexure or exhibit of or to this Deed;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this Deed, or any other document or arrangement, includes that party’s executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined anywhere in this Deed, it has the same meaning throughout;
- (j) a reference to “dollars” or “\$” is to an amount in Australian currency;
- (k) a provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed;
- (l) if an act must be done on a specific day which is not a Business Day, it must be done instead on the next Business Day;
- (m) any reference to time in this Deed will be of the essence; and
- (n) every covenant agreement or obligation expressed or implied in this Deed by which two or more persons covenant agree or are bound binds those

persons jointly and each of them severally and every provision expressed or implied in this Deed which applies to two or more persons applies to those persons jointly and each of them severally.

1.3 Headings and Parts of Speech

In this Deed:

- (a) headings are for convenience of reference only and do not affect interpretation; and
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

1.4 Inconsistencies

If there is any inconsistency or conflict between the provisions of clauses 1.1 to 1.3 hereof of this Deed and any corresponding provisions in the Lease the provisions of this Deed will prevail.

2. THE SURRENDER

- 2.1 In consideration of the Lessor accepting a surrender of the Lease to take effect on the Surrender Date, the Lessee covenants to pay to the Lessor on the Payment Date the costs and duty payable under clause 7 of this Deed with a bank cheque made payable to the Lessor or as the Lessor directs or any other method which places cleared funds in the Lessor's bank account.

3. OBLIGATIONS OF LESSEE

- 3.1 Not later than the Surrender Date, the Lessee must:

- (a) pay all moneys due to any persons in respect of any matters relating to the Premises;
- (b) do all things necessary to remove all charges or other encumbrances imposed by reason of the Lessee's use and occupation of the Premises;
- (c) deliver up possession of the Premises in the condition and state of repair required by the Lease; and
- (d) pay to the Lessor all rent and other monies due and payable under the Lease in respect of all periods up to and including the Surrender Date.

- 3.2 The Lessee must observe and perform all the covenants conditions and provisions contained in the Lease up to and including the Surrender Date.

4. RELEASE

The Lessee hereby releases the Lessor from all claims that the Lessee may have against the Lessor in respect of the Lease.

5. DEFAULT OF LESSEE

- 5.1 If the Lessee fails to pay any of the amounts identified in clause 2 of this Deed on or before the due date for payment, the Lessee must pay to the Lessor interest at the Prescribed Rate calculated on a daily basis commencing on the due date for payment and ending on the actual date of payment by way of cleared funds (both before and after judgment), compounded daily.
- 5.2 The Lessee hereby covenants with the Lessor to indemnify and keep indemnified the Lessor from and against all and any loss, claim, damage, action, suit, demand, cost, interest, charges and expenses of any kind whatsoever (including legal costs on an indemnity basis) which the Lessor may suffer or incur or be called upon to suffer or incur by virtue of the Lessee's default hereunder.

6. GST

6.1 Payment of GST

A recipient of a taxable supply made under this Deed must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply except where the consideration for the taxable supply is expressed to be "inclusive of GST". The recipient must pay the GST to the supplier:

- (a) if there is a due date for the consideration for the taxable supply, on the same day as the due date for the consideration in respect of the relevant taxable supply; or
- (b) if there is no due date, within seven (7) days of receiving a written request or a tax invoice from the supplier.

6.2 Reimbursements

A party's obligation to reimburse another party for an amount paid or payable to a third party (e.g. a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

6.3 Tax Invoice

Each party making a taxable supply under this Deed must issue a tax invoice to the other party for each taxable supply at or before the time it makes the taxable supply.

6.4 Adjustment Note

The Lessor must issue an adjustment note to the Lessee as soon as it becomes aware of an adjustment event relating to a taxable supply by the Lessor under this Deed.

6.5 Indemnities

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay and indemnify the payee against the amount of that GST.

-
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
 - (c) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

7. COSTS AND DUTY

7.1 Costs Generally

The Lessee must pay the Lessor's costs (in the case of legal costs as between solicitor and own client) of and incidental to the negotiation, preparation and execution, as the case may be, of this Deed including outlays.

7.2 Duty

The Lessee must bear and is responsible for all duty that may be payable on this Deed and the Surrender pursuant to the *Duties Act 2001* and the Lessee hereby covenants with the Lessor to indemnify and keep indemnified the Lessor from and against all and any loss, claim, damage, action, suit, demand, cost, interest, charges and expenses of any kind whatsoever (including legal costs on an indemnity basis) which the Lessor may suffer or incur or be called upon to suffer or incur by virtue of any breach or default by the Lessee in respect of the payment of duty on this Deed. The provisions of this clause 7.2 will not merge upon completion.

8. NOTICES

8.1 Method of Giving Notices

A Notice under this Deed must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and must be:

- (a) delivered to that person's address; or
- (b) sent by pre-paid mail to that person's address; or
- (c) transmitted by email or facsimile to that person's nominated email address.

8.2 Time of Receipt

A notice given to a person in accordance with this clause 8 will be treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if it is a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; or
- (c) if transmitted by facsimile or email to a person's address and a correct and complete transmission report is received, on the day of transmission, or sending if a Business Day, otherwise on the next Business Day.

8.3 **Address of Parties**

For the purposes of this clause the address of a person is the address set in this Deed or another address or which that person may from time to time given notice to each other person.

9. **GENERAL**

9.1 **Amendment**

This Deed may only be amended or supplemented in writing, signed by the parties.

9.2 **Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

9.3 **Entire Deed**

This Deed is the entire agreement between the parties on the subject matter thereof. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Deed. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Deed.

9.4 **Severability**

Any provision in this Deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

9.5 **No Merger**

No provision of this Deed:

- (a) merges on or by virtue of completion; or
- (b) is in any way modified, discharged or prejudiced by reason of any investigations made or information acquired by or on behalf of the Lessee.

9.6 **Further Assistance**

Each party must do, sign, execute and deliver all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and given full effect to this Deed and the rights and obligations of the parties under it, both before and after completion.

9.7 Counterparts

This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

9.8 Attorneys

Each attorney who executes this Deed on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this Deed and has no notice of the death of the grantor.

9.9 Confidentiality

The Lessee must treat the existence and terms of this Deed confidentially and no announcement or communication relating to the negotiations of the parties or the existence, subject matter or terms of this Deed may be made or authorised by the Lessee without the prior written approval of the Lessor.


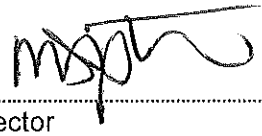
10. LAW AND JURISDICTION

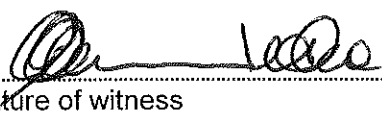
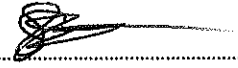
10.1 Governing Law and Jurisdiction

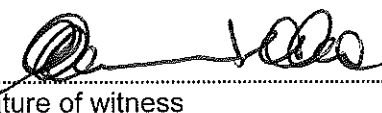
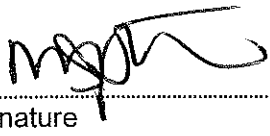
This Deed is governed by, and is to be construed in accordance with, the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland and any court hearing appeals from those courts and agree to submit all disputes arising between them to the Brisbane registry of any such court as is competent to hear the matter.

Execution page

EXECUTED AS A DEED

EXECUTED BY DAMSHELL INVESTMENTS PTY LTD ACN 624 372 863))	
		
..... Director	 Director
Name: Damien Tarda		Name: Michelle Helene Stephenson

SIGNED SEALED & DELIVERED BY DAMIEN TARDA in the presence of:))	
		
..... Signature of witness	 Signature
ANNETTE CHERIE WESCHE		
..... Print name of witness SOLICITOR		

SIGNED SEALED & DELIVERED BY MICHELLE HELENE STEPHENSON in the presence of:))	
		
..... Signature of witness	 Signature
ANNETTE CHERIE WESCHE		
..... Print name of witness SOLICITOR		