QUEENSLAND LAND REGISTRY **AMENDMENT** **FORM 13** Version 6

Land Title Act 1994, Land Act 1994 and Water Act 2000*Duty Imprint* Page 1 of 9

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | *Dealing Number* | | |  | | | | |  | | |
|  | untitledOFFICE USE ONLY  **Privacy Statement**  Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in DERM see the department’s website. | | | |  | | | | |  | | |
| **1. Type/Dealing No of Instrument/Document being amended**  Type of Instrument/Document Lease  Dealing Number 709101332 | | | | **Lodger** (Name, address, E-mail & phone number) | | | | **Lodger Code** | |
| **2. Lot on Plan Description**  LOT 2 ON RP 205231 | |  | | |  | | **Title Reference**  16939042 | | |
| **3. Grantor/Mortgagor/Lessor**  JOHN HARGREAVES AND JUNE ANNE HARGREAVES AS TRUSTEE UNDER INSTRUMENT 710816717 | | | | | | | | | |
| **4. Grantee/Mortgagee/Lessee**  Mountain Retreat (Qld) Pty Ltd ACN 116 058 541 as Trustee UNDER INSTRUMENT 709101332 | | | | | | | | | |
| **5. Amendment of Lease Details** (Only to be completed for an amendment of the term and/or option of lease)  Expiry date: 02/10/2020 AND/OR Event:  Option/s#: 1 x 4 YEARS  # Insert *nil* if no option or insert option period (eg 3 years or 2 x 3 years etc) | | | | | | | | | |
| **6. Request/Execution**  The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with:- ~~\*item 5;~~ \*item 5 and attached schedule; ~~\*attached schedule.~~*[\*delete whichever is inapplicable]*  \* delete if not applicable  **Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994** | | | | | | | | | |
| signature  full name  …………………………………………. qualification  **Witnessing Officer** | | | / /  **Execution Date** | | | See Enlarged Panel    **Lessor’s** **Signature** | | | | |
| (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec) | | | | | | | | | | |
| signature  full name  …………………………………………. qualification  **Witnessing Officer** | | | / /  **Execution Date** | | | See Enlarged Panel    **Lessee’s** **Signature** | | | | |
| (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec) | | | | | | | | | | |

**ENLARGED PANEL**

|  |  |  |
| --- | --- | --- |
| **6. Request/Execution**  The parties identified in items 3 and 4 agree that the instrument/document in item 1 is amended in accordance with:-  **Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994** | | |
| signature  full name  …………………………………………. qualification  **Witnessing Officer** | / /  **Execution Date** | **Lessor**  John Hargreaves  .............................................................................. | |
| (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec) | | | |
| signature  full name  …………………………………………. qualification  **Witnessing Officer** | / /  **Execution Date** | **Lessor**  June Anne Hargreaves  ............................................................................. | |
| (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec) | | | |
|  | | | |
| signature  full name  …………………………………………. qualification  **Witnessing Officer** | / /  **Execution Date** | **Lessee’s Signature**  ..................................................................................  Director  ..................................................................................  Director/Secretary | |
| (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec) | | | |

|  |  |
| --- | --- |
| **AGREEMENT** dated | 2019. |

|  |  |
| --- | --- |
| **PARTIES** | John Hargreaves and June Anne Hargreaves as trustee under instrument 710816717 of PO Box 143, Montville Qld 4560 |
|  | (the **Landlord**) |
| **AND** | Mountain Retreat (Qld) Pty Ltd ACN 116 058 541 as Trustee of the McCabe Family Trust c/- Montville Mountain Inn, Main Street, Montville, Qld 4560 |
|  | (the **Tenant**) |
| **AND** | Lyle Anthony McCabe c/- Montville Mountain Inn, Main Street, Montville Qld 4560 |
|  | (the **Guarantor**) |

|  |  |  |
| --- | --- | --- |
| **BACKGROUND** | |  |
|  | The Landlord leases and the Tenant holds the Premises pursuant to the Lease. | |
|  | The Guarantor guaranteed the obligations of the Tenant under the Lease. | |
|  | The Landlord and Tenant agree to amend the Lease in accordance with the terms and conditions set out in this Deed. | |
|  | The Guarantor agrees to extend the operation of the Guarantee to amend the obligations of the Tenant as set out in this Deed. | |

**AGREEMENT**

# DEFINITIONS AND INTERPRETATIONS

## Definitions

In this document:

**Guarantee** means the deed or document described in Item 4(b).

**Guarantor** means the party specified in Item 4(a).

**Landlord** means the party specified in Item 2.

**Lease** means the lease described in Item 5.

**Lease Amendments** means the amendments to the Lease of the clauses or parts of the Lease as specified in Item 7.

**Premises** means the premises described in Item 6.

**Tenant** means the party specified in Item 3.

## Interpretation

Unless expressed to the contrary:

### headings and boldings are for convenience only and do not affect the interpretation of this document;

### where an expression is defined anywhere in this document another part of speech or grammatical form of that expression has a corresponding meaning;

### a reference to:

#### an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority:

#### any gender includes all genders;

#### the singular includes the plural and vice versa;

#### recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this document;

#### a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;

#### money is to Australian currency;

#### this document or another document includes the document as varied or replaced; and

#### any party to this document, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

#### An item is a reference to an Item specified in the attached Schedule.

# Amendment of the Lease

The Lease is amended as from the date shown in Item 1 of the attached Schedule (the **Date of Amendment**) in accordance with the Lease Amendments. Unless otherwise expressly referred to, the rights and obligations of each party under the Lease up to the Date of Amendment shall not be affected or otherwise discharged by this Deed.

# Lease

The Landlord and the Tenant agree to be bound by the same terms and conditions contained in the Lease but subject to:

(a) the terms of this Deed; and

(b) the Lease Amendments.

# cOSTS

### The Tenant must pay:

#### the Landlord's, or its solicitors', costs in relation to the negotiation, preparation, execution, consent and stamping of; and

#### any stamp duty (if applicable) on;

this Deed.

### All parties to this Deed authorise the Landlord’s solicitors to apply any money held in trust towards payment of all costs and expenses referred to in this Deed.

# Goods and services Tax

### Any amount referred to in this Deed as the amount payable for any supply is exclusive of GST unless expressly included.

### If GST is payable on any taxable supply made to the Tenant pursuant to this Deed, the amount payable by the Tenant will be increased by the amount of GST payable. The Landlord must give the Tenant a valid GST tax invoice.

### Words and phrases in this clause 5 have the meaning attributed to them by “A New Tax System (Goods and Services Tax) Act 1999”.

# fURTHER ASSURANCE

Each party to this Deed shall do all that is necessary to perfect or complete the provisions of this Deed and the Lease.

# sEVERABILITY

If any part of this Deed is, or becomes, legally invalid or unenforceable, the remainder of this Deed subsists and remains enforceable.

# eNTIRE UNDERSTANDING

### This Deed contains the entire agreement between the parties.

### All representations or Deeds, whether oral or in writing:

#### made prior to the date of this Deed; and

#### relating to any matter dealt with in this Deed

are merged in this Deed and do not have any effect from the date of this Deed.

# tIME OF ESSENCE

Time is of the essence of this Deed.

# gOVERNING LAW

This Deed is governed by and to be construed in accordance with the laws of Queensland.

# GUARANTOR’S CONSENT

(a) The Guarantor consents to the terms and conditions of this Deed and agrees that the terms of the guarantee and indemnity in the Lease will continue to apply to any amendments to the Lease as provided in this Agreement.

(b) The Landlord hereby agrees to release Lyle Anthony McCabe from the guarantee and indemnity obligations in the Lease from the date of this Deed.

SCHEDULE 1

|  |  |  |
| --- | --- | --- |
| **ITEM 1:** | **DATE:** |  |
| **ITEM 2:** | **LANDLORD:** | John Hargreaves and June Anne Hargreaves |
| **ITEM 3:** | **TENANT:** | Mountain Retreat (Qld) Pty Ltd ACN 116 058 541 as trustee of The McCabe Family Trust |
| **ITEM 4:** | **(a) GUARANTOR:** | Lyle Anthony McCabe |
|  | **(b) GUARANTEE:** | The covenants given by the Guarantor in the Lease |
| **ITEM 5:** | **LEASE:** | Lease no.70910332 dated 4 October 2005 which commenced on 3 October 2005 and as amended on title by amendments 715417917 and 717305969. |
| **ITEM 6:** | **PREMISES:** | The whole of the Land described in Item 2 of the Lease. |
| **ITEM 7:** | **LEASE AMENDMENTS:** | |
| The parties agree to amend the Lease as follows:   1. Inserting a new Item 5d below Item 5c in the Reference Schedule on page 2 to read:   Item 5d Option to Renew : Fifth option – 4 years commencing on 03/10/2037 and terminating on 02/10/2041   1. In addition to the above and to confirm previous amendments to the Lease, Item 5c includes the following options as at the date of this Deed:   Second option – 5 years commencing on 03/10/2020 and terminating on 02/10/2025  Third option – 5 years on 03/10/2025 and terminating on 02/10/2030  Fourth option – 7 years on 03/10/2030 and terminating on 02/10/2037   1. Item 7 of the Lease is amended to read:   “Item 7   Index Review Dates:   3/10/2019”.   1. Inserting a new clause 17.17 to 17.19 to read:   17.17 Fifth Option  If Item 5d of the Reference Schedule contains a proposed further term and the Tenant:  (1) wishes to lease the Premises for a further term;  (2) gives notice to that effect to the Landlord not more than 6 months and not less than 3 months before the Term expires; and  (3) has not breached an essential term of this Lease [as set out in clause 14.7];  the Landlord must grant a lease of the Premises (“Further Lease”) to the Tenant upon the same terms and conditions as this Lease.  17.18 Fifth Further Lease  (1) In the Further Lease, the reference schedule is varied as follows:  Item 4 Term : 4 years commencing on 03/10/2037 and terminating on 02/10/2041  Item 5d Option to Renew : Nil  Item 6 Rent : *An amount agreed between the Landlord and the Tenant, or failing agreement 2 months before the Term expires, an amount to be determined by following the procedure set out in clause 4.4 as if the last day of the Term was a Market Review Date but in any event not less than the Rent payable in the last year of the Term.*  Item 7 Index Review Dates : 03/10/2038, 03/10/2039, 03/10/2040  Item 8 Market Review Dates : Not applicable  17.19 Omission of Clauses 17.17 to 17.19 inclusive will be omitted from the Further Lease.  17.20 Parties to Sign Further Lease  The Landlord, the Tenant and the Guarantor (if any) must sign an instrument of amendment under section 67 of the Land Title Act 1994 or a Further Lease within a reasonable time after service on the Landlord of a notice under clause 17.17.   1. The parties agree to amend Item 5b of the Lease reference schedule to replace the words “clause 18” with the words “clause 17”. 2. The parties agree to the addition of a new clause 17.21 to the Lease as follows:   “**17.21 Water Distribution and Allocation** – The Tenant agrees that the bore water on the property is shared equally with the Mayfield Building owned by the Landlord located on main street diagonally opposite the premises and that any further water allocations from the bore are subject to change at the landlord’s sole discretion. Further, the Tenant acknowledges and agrees that the costs to maintain and replace the water bore and equipment servicing it are shared in equal thirds with the landlord and the neighbouring tenant at Lot 1 on RP 2055231 which currently operates as Montville Bar and Grill. Those costs are invoiced to the Tenant as an outgoing under this Lease.”   1. The parties agree that the Lease Amendments contained in the Amendment of Lease dated 5 March 2013 (dealing number 715417917) are contained in Item 9 of that document and that the definition of “Lease Amendments” in that document is amended by replacing the words “Item 6” with the words “Item 9”. | | |

SIGNED as a Deed

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signed Sealed & Delivered – John Hargreaves as Landlord |  | Witness – Signature |
|  |  |  |
|  |  | Witness Name |
|  |  |  |
|  |  |  |
| Signed Sealed & Delivered – June Anne Hargreaves as Landlord |  | Witness – Signature |
|  |  |  |
|  |  | Witness Name |
|  |  |  |
|  |  |  |
| Executed by – Sole Director for Mountain Retreat (Qld) Pty Ltd ACN 116 058 541 as Trustee of The McCabe Family Trust – in accordance with s127 of the Corporations Act 2001 as Tenant |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Signed Sealed & Delivered – Lyle Anthony McCabe as Guarantor |  | Witness Signature |
|  |  |  |
|  |  | Witness Name |