

THIS AGREEMENT is made the day of 2004.

BETWEEN: **TWEED SHIRE COUNCIL** having its registered office at Tumbulgum Road, Murwillumbah in the State of New South Wales (hereinafter called “the Licensor”) of the one part

AND: **CHEREYNE HAMLIN** of 47 Kingscliff Street, Kingscliff in the State of New South Wales (hereinafter called “the Licensee”) of the other part

WHEREAS:

- A.** The Licensor is the registered proprietor of the Licensed Premises (as defined below).
- B.** The Licensor is desirous of granting licences to the Licensee to occupy and use the Licensed Premises (as defined below) for the purposes of the Licensee carrying out a catering and restaurant business.
- C.** The Licensor has agreed to grant the respective licences within and over the Licensed Premises, as stated in Recital B above, to the Licensee subject to the terms and conditions hereinafter appearing.

NOW THIS AGREEMENT WITNESSES as follows:

Definitions

- 1.** In this Agreement and the recitals and the schedules to this Agreement unless otherwise there is something in the subject matter or context inconsistent, the expressions following shall have the meanings in this clause 1 respectively assigned to them:
 - (a) “Agreement” means this Licence Agreement.
 - (b) “Authority” means the General Manager for the time being of the Licensor.
 - (c) “Business” means the business owned and operated by the Licensee and known as “Butler’s on the Run” and any associated catering operations.
 - (d) “Council Premises” means the land described in Certificate of Title Folio Identifier 15/1037891 and commonly known as the Tweed River Art Gallery, Mistral Road, Greenhills, and South Murwillumbah and includes the Licensed Premises.
 - (e) “Inventory” means those items which are the property of the Licensor and listed in the schedule to this Agreement.
 - (f) “Licence” means the licence granted by the Licensor to the Licensee pursuant to clause 3.
 - (g) “Licensed Premises” means that part of the Council Premises being the restaurant, kitchen and seating area adjacent thereto as hatched in red on the plan annexed to this Agreement and the Licensor’s fixtures, fittings, utensils, plant and equipment contained therein including those items in the Inventory.

- (h) "Term" means the period specified in clause 4.

Interpretation

2.

- (a) Writing includes printing, typing and other modes of reproducing words in a visible form and written as they correspond in meaning.
- (b) Words denoting the singular number only will include the plural number and vice versa and words denoting a gender shall include all other genders and the neuter and words denoting individual persons only will include corporation and other legal persons or entities and vice versa.
- (c) The headings in this Agreement are included for convenience only and will not effect the construction of this Agreement.
- (d) References in this Agreement to another instrument or to this Agreement or to an Act, by-law or regulation shall (say where there is something in the subject matter or context inconsistent) be references to such instrument or this Agreement or Act, by-law or regulation and all amendments, variations and supplements to this and substitutions or other modifications of this.
- (e) The schedules and annexures to this Agreement shall for the purposes of this Agreement be deemed to form part of this Agreement.

Grant of Licence

3. During the Term the Licensee **HEREBY GRANTS** to the Licensee:

- (a) Subject to clause 19, the exclusive right and privilege to carry on the Business within the Licensed Premises together with the right of ingress and egress to and from the Licensed Premises at all such times as may be reasonably necessary for the carrying out of this Agreement and the operation of the Business, and for their employees, invitees and members of the public desirous of doing business with them;
- (b) a non-exclusive right to occupy the Licensed Premises for the purposes of conducting the Business;
- (c) subject to clause 19, an exclusive right to the use of the Licensor's fixtures, fittings, utensils, plant and equipment in the Licensed Premises including those items in the Inventory; and,
- (d) a non-exclusive right to use the toilet facilities situated in the Council Premises,

together with the further rights and privileges hereinafter contained and subject to the due observation, performance and keeping by the Licensee of the terms of this Agreement.

Term of Licence

4. Subject to the earlier determination of this Licence, the term of this Licence shall be for THREE (3) years, commencing on 1 July 2004 and expiring on 30 June 2007.

Licence Fee

5. (a) Subject to clause 5(b), during the Term the Licensee shall pay to the Licensor an annual licence fee of \$20,000 per annum ("the Licence Fee"), to be paid by equal calendar monthly instalments in advance, the first payment to be on the date of commencement of the Term and each later month's instalment of rent is to be paid by the first day of each calendar month.
- (b) On each anniversary of the commencement of the Term the Licence Fee shall be reviewed and the new Licence Fee for that year of the Term will be determined in accordance with the following formula:

$$\text{The new Licence Fee} = \$\text{LF} \times \frac{\text{CPI 2}}{\text{CPI 1}}$$

Where:

\$LF is the Licence Fee payable during the last year of the Licence;

CPI 1 is the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the last date on which the Licence was reviewed or if none, the commencement of the Term; and

CPI 2 is the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the review date.

Outgoings

6. (a) The Licensee shall be responsible for and pay all Outgoings separately assessed or measured in respect of the Licensed Premises.
- (b) For those Outgoings that are not separately assessed or measured in respect of the Licensed Premises, the Licensee shall pay to the Landlord a proportion of those Outgoings. The relevant proportion of those Outgoings shall be determined by the Licensee acting reasonably.
- (c) The Licensee will pay Outgoings on one of the following basis:
- (i) On the next day an instalment of the Licence Fee is to be paid after receiving a request for payment of an Outgoing from the Licensor. A request for payment of an Outgoing by the Licensor can be made to the Licensee after the Licensor has paid an Outgoing or after the Licensor has received an assessment or account for payment of an Outgoing; or
- (ii) In accordance with the following procedure:
- A. At least 1 month before the start of each year the Licensor will give to the Licensee a written estimate of the Licensee's proportion of the Outgoings for the next year;

- B. The Licensee must pay to the Licensor the Licensor's estimate by equal monthly instalments in advance on the same days and in the same manner as the Licence Fee;
- C. Within 1 month after the end of each year an adjustment will be made of any underpayment or overpayment of the Outgoings. The adjustment is to be the difference between the Licensor's estimate and the amount actually paid or payable by the Licensor for the Outgoings during the relevant year; and
- D. For the purposes of this clause "year" means each 12 month period ending on 30 June during the Term.

(d) Outgoings means all rates, taxes, assessments, charges, duties, fees, levies, outgoings, costs and expenses of the Licensor paid or payable in respect of the Licensed Premises and the Council Premises (irrespective of their ownership) or in relation to the administration, control, insurance, management, ownership, repair and maintenance of and provision of services for the Licensed Premises and the Council Premises, whether provided by the Licensor or another party, and without limit, includes:

Rates and taxes: all rates, taxes (excluding income tax and capital gains tax but including, without limit, land tax calculated on a single holding basis) assessments, charges, duties (including any State or Federal duties and taxes on deposits or financial institutions) fees, impositions and levies of any government statutory or other competent authority in respect of the Licensed Premises and the Council Premises and services to the Licensed Premises and the Council Premises;

Water charges: all costs in respect of water, sewerage and drainage (including, without limit, water usage, excess water, meter rents and environmental levies) to the Licensed Premised and the Council Premises;

Services: all costs in respect of providing, operating, supplying, maintaining, repairing and renovating all services or amenities from time to time provided by the Licensor for the Licensee and (including, without limit, any plant and equipment required for any such services) all costs of satisfying all relevant local authorities in relation to compliance with fire safety and other essential services in the building;

Power: all costs for lighting, power, electricity, air conditioning, gas and heating incurred in connection with the Licensed Premises and the Council Premises;

Cleaning: all costs of cleaning the Licensed Premises and the Council Premises provided by the Licensor;

Grease Trap: all costs of servicing and cleaning the grease trap on the Licensed Premises and the Council Premises;

Pest Control and Extermination: all costs associated with obtaining regular pest control and extermination services to the Licensed Premises and the Council Premises;

Telephone: all costs for telephone, facsimile, internet and other telecommunications services incurred in connection with the Licensed Premises and the Council Premises;

Insurance: all costs associated with effecting and maintaining insurance of the Licensed Premises and the Council Premises; and

Garbage and Waste Removal: all costs in respect of waste and garbage removal from the Licensed Premises and the Council Premises.

Security Bond

7. (a) The Licensee covenants and agrees that upon the signing of this Agreement it will lodge with the Licensor a bond of \$2,200.00 or a bank guarantee (in a form acceptable to the Licensor) in the sum of \$2,200.00 ("the Bond") as a security bond in earnest performance of the Licensee's obligations under this Agreement.

If the Bond is provided by way of money, the following provisions apply:

- (i) The Licensor shall deposit the Bond for the duration of the Term in a term deposit account with a Bank of the Licensor's choosing in the Licensor's name to be held by the Licensor as trustee for the Licensee in accordance with the provisions of this clause 7;
- (ii) The Licensor shall incur no liability to the Licensee for the loss of the Bond through the failure of the financial institution in which it has been deposited; and
- (iii) The interest earned on the Bond shall be added to the amount held as the Bond and credited to the Lessee.

Upon the expiration or sooner determination of the Term, the Licensor shall be at liberty to make demand on and claim out of the Bond the costs as a result of the Licensee's breach of the terms of this Agreement and any balance thereafter held to the credit of the account shall be refunded to the Licensee.

Goods and Services Tax

8. (a) The Licence Fee, Outgoings and all other moneys payable by and on behalf of the Licensee under this Licence are exclusive of Goods and Services Tax or like impost ("GST").
- (b) Liability for GST (payable in respect of any taxable supply) is additional and payable by the Licensee to the Licensor at the same time as the Licence Fee and other moneys are payable to the Licensor by the Licensee.

Use of Premises

9. The Licensee and its employees, agents, subcontractors and invitees are authorised to use the Licensed Premises only for the purpose of conducting the Business.

Storage of Stock, etc.

10. At their own risk, the Licensee may leave stored in proper receptacles upon the Licensed Premises reasonable quantities of food, stock and goods required in connection with the due carrying on of the Business under this Agreement.

Licensee' Covenants

11. The Licensee hereby covenants with the Licensor that during the Term:

- (a) The Business shall not be carried on in a manner prejudicial to the control of the Authority or to the interests of the Licensor.
- (b) To open, keep open and operate the Business from the Licensed Premises:
 - (i) Between the hours 10.00am to 5.00pm on the days Wednesday to Sunday (inclusive) including any public or bank holidays which may fall on such days; and
 - (ii) During such functions as the Licensor notifies to the Licensee in writing.

For the purposes of clarity, the Licensee shall be free to open and operate the Business from the Licensed Premises outside those hours provided that they first obtain the consent of the Licensor.

- (c) To employ all staff reasonably necessary for the proper conduct of the Business and that such staff shall be the employees of the Licensee who shall punctually pay their wages and remuneration as they become due and to keep the Licensor indemnified against all claims for accident or injury by such employees during the course of their employment whether such claims be at common law or under the *Workers' Compensation Act 1987 (NSW)* or the *Work Place Injury Management & Workers Compensation Act 1998 (NSW)* or otherwise. The Licensee agrees to keep all proper records in relation to the employees and make same available for inspection by the Authority on reasonable notice.
- (d) To use their best endeavours to ensure that the employees engaged by the Licensee shall be suitably attired, competent and sufficient to facilitate a proper service .
- (e) That if any employee of the Licensee shall be guilty of any misconduct or disobedience or shall be guilty of any dishonesty or convicted by any Court of any criminal offence (whether such offence be committed upon the Council Premises, the Licensed Premises or not) or, if in the opinion of the Authority or the Licensor, any employee shall not be of the type of standard required or shall reasonably be supposed by such Authority or the Licensor to be guilty of any dishonesty so as to justify dismissal by the Licensee, then the Licensee upon the written request of the Authority, or the Licensor shall dismiss such employee.
- (f) To use their best endeavours to see that the employees of the Licensee shall not misconduct themselves upon the Licensed Premises and the Council Premises and shall keep observe and perform all rules orders and instructions made or given by the Licensor pursuant to this Agreement relating to the use of amenities or other facilities entrances or passage ways upon the Licensed Premises and the Council Premises or to the arrival or departure of employees, the conduct, deportment, attire and decorum of employees whilst upon the Licensed Premises and the Council Premises or relating to securing the convenience or comfort of persons resorting to the Licensed Premises and the Council Premises and the maintenance or order thereon and any special instructions given in respect of any of the matters aforesaid to a particular employee of the Licensee by the Licensor or the Authority.

- (g) To observe perform and keep all of their legal obligations under the provisions of all licenses, industrial law, factories and shop laws, and all other Acts, Regulations, Ordinances or other laws, and the requirements of all competent Boards, Councils and Authorities relating to or affecting the conduct and carrying on of the Business or their employees therein.
- (h) Not to do or permit or suffer to be done or omitted upon the Licensed Premises and the Council Premises any act matter or thing which would or might prejudicially affect the Licensor's rights under any policy of insurance upon or relating to the Licensed Premises, the Council Premises or any part thereof.
- (i) To duly and punctually pay or otherwise discharge all of their outgoings, claims, debts, liabilities and other obligations arising out of or connected with the carrying on of the Business by the Licensee including but not limited to the cost of gas, electricity, water and the disposal of garbage effected during the continuance of this Agreement or in connection with the Licensed Premises or in carrying on of the Business so soon as the same shall become due.
- (j) To keep the kitchen, kitchen cold room, store room and dining room area (including carpeting and glass) in a clean condition, free of vermin and any offensive or noisome matter or thing and to comply with the Licensor's directions, the Food Act 1989 and any regulations thereunder in this regard.
- (k) Not to make any alteration to the structure or the layout of the Licensed Premises and the Council Premises without the written consent of the Licensor first had and obtained and in any event upon the expiration or sooner determination of the Term, the Licensee shall if so required by the Licensor restore the Licensed Premises to the same structural condition and layout as at the commencement of the Term.
- (l) Having due regard to the Licensee's application for tender submitted to the Licensor, use only the best available first quality wholesome food and products in the conduct of the Business from the Licensed Premises wherever possible reflecting the diversity of local produce.
- (m) To ensure that the fire extinguishers provided by the Licensor are maintained in their present position and that all the Licensee's employees shall be made familiar with the use of same.
- (n) To carry out regular laundering of all table cloths, tea towels, coverings and cooking cloths **PROVIDED ALWAYS** that the Licensee may use place mats and paper napkins at their discretion.
- (o) To be solely responsible for all purchases of food and provisions made by them.
- (p) That all accounts conducted by them, whether with suppliers or otherwise, shall be in the Licensee's own names and they shall not pledge the credit of the Licensor.
- (q) That at the expiration or sooner determination of the Term for any cause the Licensee shall deliver up to the Licensor the Licensed Premises in good order condition and repair subject to fair wear and tear.

-
- (r) That it acknowledges that the Licensed Premises and the items in the Inventory were in good repair at the commencement of the Term.
 - (s) That notwithstanding any other clause of this Agreement any item fixed to the Licensed Premises by the Licensee shall become the property of the Licensor.
 - (t) It will properly service and maintain at the Licensee's expense all of those items in the Inventory.
 - (u) It shall at the Licensee's expense repair and maintain the Licensee's chattels in the Licensed premises in a first class state of condition and repair.
 - (v) To maintain the Licensed Premises in its condition at the commencement of the Term and promptly do repairs needed to keep it that condition. For the purpose of clarity the Licensee does not have to:
 - (i) alter or improve the Licensed Premises;
 - (ii) fix structural defects; or
 - (iii) repair fair wear and tear.
 - (w) To:
 - (i) reimburse the Licensor for the cost of fixing structural damage caused by the Licensee, apart from fair wear and tear; and
 - (ii) decorate the inside of the Licensed Premises in the last 3 months of the Term ('decorate' means restoring the surfaces of the property in a style and to a standard of finish originally used eg by painting).

Use of Toilet Facilities

12. The parties agree that the Licensee and their employees, servants, invitees and agents shall be entitled to use the toilet facilities provided by the Licensor in the Council Premises.

Insurance and Indemnity

13. (a) The Licensee will carry public liability insurance in respect of any injury which may be caused or result from activity or action by or on the part of any of the Licensee, their staff, agents, invitees or subcontractors with an insurer or insurers licence under the *Insurance Act 1973* (Cth) and in such form as it is approved by the Licensor for a sum of no less than \$10,000,000.00 per event or such other amount as the Licensor may from time to time reasonably require.
- (b) The Licensee shall also effect and maintain throughout the Term such other insurance policies as are required by law (such as Workers Compensation Insurance) or as are deemed necessary by the Licensor from time to time.
- (c) The Licensee shall provide a copy of the policies and a certificate of currency of insurance for each insurance policy required by this clause 13 upon the reasonable request of the Licensor and nominate the Licensor on any such policy as an additional insured. Nothing in this clause will

require the Licensor to apply for such insurance on the Licensee's behalf nor will it require any insurer to accept any such application, nor will it release the Licensee from its absolute responsibility under this Agreement to arrange on his own behalf the required public liability insurance.

- (d) The Licensee indemnifies the Licensor and agrees to keep the Licensor always indemnified in respect of all loss, damage, consequential loss and damage, claims, demands, proceedings, actions whatsoever, including but not limited to loss of profit, directly or indirectly associated with the operation of the Business or the use and/or occupation of the Licensed Premises, claims by any persons against the Licensor and legal fees or consultants fees which the Licensor may suffer or incur and all monies which the Licensor may become liable to pay to any person in respect of or arising directly or indirectly out of the Licensee carrying out the Business or the use and/or occupation of the Licensed Premises.
- (e) The Licensee will use and occupy the Licensed Premises and any part of it under this agreement at the risk of the Licensee and the Licensee by this Agreement releases to the full extent permitted by the law, the Licensor and the servants, agents, invitees and Licensee of the Licensor and each of them from all liability, howsoever arising resulting from:
 - (i) any accident, loss, damage or injury to persons or property in the Licensed Premises or any part of it whilst occupied or used by the Licensee under the provisions of this Agreement caused by the Licensee or its staff, agents, subcontractors, or invitees; and,
 - (ii) any loss or damage suffered by any person or persons arising out of the exercise by the Licensor of any right or discretion under this Agreement.
- (f) The Licensor gives no warranty that the Licensed Premises will, at any time before or after the date of this Agreement, be adequate for and or fit for the operation of the Business and the Licensee agrees that it will satisfy itself as to such matters. The Licensor will not be liable to the Licensee for any loss or damage howsoever caused arising wholly or partially from the Licensed Area and not being adequate and/or fit for use

Supply of Cooking Utensils, etc.

14. The Licensee will provide, without cost to the Licensor, all cooking utensils and linen as may be reasonably necessary for the carrying out of the Business and the terms of this Licence and shall maintain the same in good order and repair and in reasonable quantities.

Mutual Covenants

15. It is hereby mutually covenanted that:
- (a) all income from carrying on the Business shall be the property of the Licensee; and,
 - (b) if at any time during the Term the Licensed Premises or the Council Premises be damaged with any neglect or default of the Licensee by fire flood lightning storm or tempest so as to render the licensed premises wholly or partially unfit for use hereunder by the Licensee then, and so often as the same shall happen, this Licence shall not

thereby alone be determined or revoked but any Licence Fee payable hereunder shall abate during such time or times that the Licensed Premises cannot be used.

Licensor's Access to Licensed Premises

16. The Authority of the Licensor shall have the right to enter all areas covered by this Agreement during normal business hours on reasonable notice to inspect same to determine whether the provisions of this Agreement have been adequately maintained.

Public Address System

17. The use of the public address system in the Council Premises shall be by mutual agreement of the parties.

Functions Catering - Generally

18. Subject to clause 19, the Licensee shall cater for all functions on the Licensed Premises provided always that the Licensee shall not be restricted from catering outside the Licensed Premises. For the purposes of clarity, the Licensor shall be free to use any caterer it chooses for any function on the Council Premises.

Functions Catering - Special Functions of Licensor

19. (a) Notwithstanding any other clause of this Agreement, the Licensee hereby grants to the Licensor access to the Licensed Premises and the Licensee's chattels therein so as the Licensed Premises and those chattels may be used by the Licensor for a maximum of four functions in each year of the Term.
- (b) The Licensee shall give the Licensor the access referred to in clause 19(a) without charge or expense to the Licensor. The Licensor will return the Licensed Premises and the Licensee's chattels to the Licensee in the condition and state of repair as at the commencement of the time of each period of access utilised by the Licensor

Assignment of Licence

20. (a) The Licensee must not assign this Agreement without the consent of the Licensor.
- (b) The Licensor cannot unreasonably withhold their consent pursuant to clause 20(c) of this Agreement.
- (c) The Licensor may withhold their consent where –
- (i) The proposed assignee proposes to change the use to which the Licensed Premises are put;
 - (ii) The proposed assignee has financial resources inferior to those of the Licensee;
 - (iii) The proposed assignee has business experience inferior to that of the Licensee;
or
 - (iv) The Licensee has not complied with the terms and conditions of this Agreement.

- (d) A request for the Licensors consent to an assignment of this Agreement must be made in writing and the Licensee must provide the Licensor with such information as the Licensor may reasonably require concerning the financial standing and business experience of the proposed assignee.
- (e) The assignee shall pay all costs arising from and incidental to the assignment of this Agreement including but not limited to the Licensor's reasonable legal costs and stamp duty.

Costs

21. (a) In connection with this Agreement and any document or matter in connection with it, the Licensee must pay promptly to the Licensor:
- (i) for everything the Licensee must do;
 - (ii) on demand, the Licensor's reasonable costs, charges and expenses including those for negotiating, preparing, executing, stamping, registering, obtaining any consents the Licensor must obtain before giving approvals, considering requests for approvals and exercising rights (including but not limited to any mortgagee's consent fees);
 - (iii) the reasonable costs of the Licensor remedying a default by the Licensee;
 - (iv) stamp duty on this Agreement;
 - (v) if the Licensee defaults, the Licensor's reasonable legal costs relating to the default;
 - (vi) the Licensor's reasonable legal costs in the preparation of this Agreement; and
 - (vii) interest on the above moneys at a rate of 10% per annum calculated from the due date until the date of payment.
- (b) Notwithstanding clause 21(a) the Licensee will only be obliged to contribute \$400.00 toward the Licensor's costs of preparing this Agreement.
- (c) Clause 21(b) shall not apply to any subsequent Agreement or any licence entered pursuant to an option contained in this Agreement.

Inventory

22. The parties hereto acknowledge that the Inventory contained in the schedule hereto details the fixtures and fittings supplied by the Licensor. The said fixtures and fittings shall be delivered up to the Licensor by the Licensee upon the expiration or sooner determination of the Term in good order and condition, fair wear and tear only expected.

Expiry or Sooner Determination of Term:

23. (a) This Agreement shall expire at midnight 12.00 am at the end of the Term.

- (b) Notwithstanding anything herein contained to the contrary the Licensor may determine this Agreement at any time and without prior notice if any of the following events occur:
- i. if any payments due under this Agreement remain unpaid for 14 days after they become due;
 - ii. if the Licensee defaults in the observation or performance of any covenant or term contained in this Agreement;
 - iii. If the Licensee uses any part of the Licensed Premises other than for the purposes as agreed between the Licensor and the Licensee.

The Effect of Expiry or Sooner Determination

24. The Licensee will at the expiration of the Term or sooner determination of this Agreement vacate the Licensed Premises and will leave the Licensed Premises clean and in good and substantial repair, order and condition in all respects and shall if so required by the Licensor remove its fixtures and fittings and restore the licensed premises to its condition as at the commencement date of the Term, fair wear and tear excepted.

Holding Over

25. (a) If the Licensee obtains the Licensor's consent (given or withheld as the Licensor sees fit), it may continue to occupy and use the Licensed Premises beyond the expiration of the Term. Such occupation and use is for a fixed term of one month and then from month to month on the provisions of this Agreement (so far as applicable) and at the same rate as the annual Licence Fee payable under this Agreement immediately prior to the end of the Term.
- (b) The Licensee must pay the Licence Fee monthly in advance on the first day of each month, the first instalment to be paid on the day after the end of the Term.
- (c) Without limiting clause 25 (a), the licence in sub-clause (a) is determinable at any time by either the Licensor or the Licensee by one month's written notice to the other. The notice can expire on any day.

Option for further term

26. (a) If the Licensee desires to have a Licence of the Licensed Premises for the further term of 3 years commencing at the expiration of the Term then clause 26(b) applies if:
- (i) the Licensee gives notice to the Licensor at a time not less than 6 months before the end of the Term exercising the option of renewal for that further term; and
 - (ii) the Licensee is not in breach of this Licence when it gives notice under clause 26(a)(i) or at any subsequent time during the Term (unless the breach is waived in writing by the Licensor or is remedied to the Licensor's reasonable satisfaction within a reasonable time after service on the Licensee of notice specifying the breach).
- (b) If the Licensee exercises its option for a further term in accordance with clause 26(a) and clause 26(a)(ii) is satisfied, then the Licensor must grant and the Licensee must take a Licence of the whole of the Licensed Premises on similar terms as in this

Agreement, the necessary changes being made, and at a Licence Fee determined under clauses 26(e) to 26(k).

- (c) The Licensor is not bound to grant the Licensee a further Licence unless the Licensee procures the prompt execution of covenants, guarantees and indemnities of its obligations in the further licence in similar terms to the covenants, guarantees and indemnities contained in or required for this Agreement.
- (d) The licence for the further term must not contain this clause 26.
- (e) The Licensor may at any time in the period commencing at any time before the expiry of the term and expiring at the expiry of the Term , give notice (the "Licensor's Notice") to the Licensee of the amount which the Licensor considers to be the current market Licence Fee.
- (f) If the Licensee does not, within one month (time being of the essence) after the date of service of the Licensor's Notice, give notice to the Licensor:
 - (i) disputing that the amount of the current market Licence Fee in the Licensor's Notice;
 - (ii) stating an alternative figure which the Licensee considers to be the current market Licence Fee, and
 - (iii) requiring the current market Licence Fee to be determined under clause 26(g),then the amount stated in the Licensor's Notice is the Licence Fee on and from the commencement of the further term.
- (g) If the Licensee gives to the Licensor a notice in accordance with clause 26(f), the following procedure applies:
 - (i) **Appointment of valuer:** The Licensor and the Licensee will agree upon and appoint a Valuer to determine the current market Licence Fee in accordance with this clause.
 - (ii) **Further appointment:** If for any reason the Licensor and the Licensee cannot agree upon the Valuer, then the Licensor must from time to time request the President of the API to appoint a Valuer (qualified as provided in sub-clause (i)) to determine the current market Licence Fee in accordance with this clause and to notify the Licensor and the Licensee of the appointment.
 - (iii) **Criteria:** In determining that current market Licence Fee any Valuer must:
 - (iv) act as an expert and not as an arbitrator;
 - (v) take no account of the value of any goodwill attributable to the Business or the value of the licensee's equipment;
 - (vi) take no account of any deleterious condition of the Licensed Premises resulting from a breach of this Licence by the Licensee, the Licensee's agents or any predecessor in title as Licensee under this Licence;

- (vi) have regard to the provisions of this Licence (including any liability on the part of the Licensee to pay a contribution to Outgoings) and also have regard to the period of time until the next date on which the Licence Fee is to be renewed;
 - (vii) have regard to then current licence fees and rents reserved by licences, leases, agreements for Licence or agreement for lease (including in particular any recently reviewed licence fees and rents) between willing but not anxious Licensors or Landlords and willing but not anxious Licensees or Tenants of any comparable premises;
 - (viii) regard this Licence as being between a willing but not anxious Licensor and a willing but not anxious Licensee enjoying actual possession of the whole Licensed Premises as at the Licence Fee Review Date;
 - (ix) regard the Land as having been fully repaired and restored in any case where it has been damaged, destroyed, rendered inaccessible or is being refurbished;
 - (x) take no account of any difference in Licence Fee that is accountable to fluctuations caused by any sub-licensing of the Licensed Premises or of any comparable premises;
 - (xi) take no account of any incentive given to the Licensee in connection with the granting of this Agreement;
 - (xii) take into account any other criteria the Valuer regards as relevant to his determination, provided that the Valuer must disregard anything which is inconsistent with the criteria set out in paragraphs (v) to (xi) inclusive; and
 - (xiii) endeavour to make his determination within one month after the date of his appointment.
- (h) The Licensor and the Licensee must each pay half of the Valuer's costs incurred in determining the Current Market Licence Fee.
- (i) Each Valuer appointed under this clause must be a Valuer of not less than 5 years' standing, hold a certificate of registration to practice as a Valuer and be experienced in carrying out valuations of those kind of Licensed Premises and in the area in which the Licensed Premises are situated.
- (j) Pending the determination of the Current Market Licence Fee, the Licensee must pay (on an interim basis) Licence Fee at the rate payable by the Licensee immediately prior to the expiry of the Term. If the Current Market Licence Fee is determined as an amount greater than the Licence Fee payable immediately prior to the expiry of the Term then the Licensee must pay to the Licensor the balance of the Licence Fee due. If the Current Market Licence Fee is determined as an amount less than the Licence Fee payable immediately prior to the expiry of the Term then the Licensor must pay to the Licensee immediately the amount over paid by the Licensee since the commencement of the further term.
- (k) The Current Market Licence Fee as determined in accordance with this clause 26(g) and is immediately binding on the parties to this Agreement (except for manifest error).

"API" means the Division of the Australian Property Institute (Inc.) in which the Licensed Premises are situated.

Second Option for further term

27. (a) If the Licensee has exercised the option in clause 26 and desires to have a Licence of the Licensed Premises for the further term of 3 years commencing at the expiration of the Term then clause 27(b) applies if:
- (i) the Licensee gives notice to the Licensor at a time not less than 6 months before the end of the Term exercising the option of renewal for that further term; and
 - (ii) the Licensee is not in breach of this Licence when it gives notice under clause 27(a)(i) or at any subsequent time during the Term (unless the breach is waived in writing by the Licensor or is remedied to the Licensor's reasonable satisfaction within a reasonable time after service on the Licensee of notice specifying the breach).
- (b) If the Licensee exercises its option for a further term in accordance with clause 26(a) and clause 27(a)(ii) is satisfied, then the Licensor must grant and the Licensee must take a Licence of the whole of the Licensed Premises on similar terms as in this Agreement, the necessary changes being made, and at a Licence Fee determined under clauses 27(e) to 27(k).
- (c) The Licensor is not bound to grant the Licensee a further Licence unless the Licensee procures the prompt execution of covenants, guarantees and indemnities of its obligations in the further licence in similar terms to the covenants, guarantees and indemnities contained in or required for this Agreement.
- (d) The licence for the further term must not contain this clause 27.
- (e) The Licensor may at any time in the period commencing at any time before the expiry of the term and expiring at the expiry of the Term, give notice (the "Licensor's Notice") to the Licensee of the amount which the Licensor considers to be the Current Market Licence Fee.
- (f) If the Licensee does not, within one month (time being of the essence) after the date of service of the Licensor's Notice, give notice to the Licensor:
- (i) disputing that the amount of the Current Market Licence Fee in the Licensor's Notice;
 - (ii) stating an alternative figure which the Licensee considers to be the Current Market Licence Fee, and
 - (iii) requiring the Current Market Licence Fee to be determined under clause 27(g),
- then the amount stated in the Licensor's Notice is the Licence Fee on and from the commencement of the further term.

- (g) If the Licensee gives to the Licensor a notice in accordance with clause 27(f), the following procedure applies:
- (i) **Appointment of valuer:** The Licensor and the Licensee will agree upon and appoint a Valuer to determine the current market Licence Fee in accordance with this clause.
 - (ii) **Further appointment:** If for any reason the Licensor and the Licensee cannot agree upon the Valuer, then the Licensor must from time to time request the President of the API to appoint a Valuer (qualified as provided in sub-clause (i) to determine the current market Licence Fee in accordance with this clause and to notify the Licensor and the Licensee of the appointment.
 - (iii) **Criteria:** In determining that current market Licence Fee any Valuer must:
 - (iv) act as an expert and not as an arbitrator;
 - (v) take no account of the value of any goodwill attributable to the Business or the value of the licensee's equipment;
 - (vi) take no account of any deleterious condition of the Licensed Premises resulting from a breach of this Licence by the Licensee, the Licensee's agents or any predecessor in title as Licensee under this Licence;
 - (vi) have regard to the provisions of this Licence (including any liability on the part of the Licensee to pay a contribution to Outgoings) and also have regard to the period of time until the next date on which the Licence Fee is to be renewed;
 - (viii) have regard to then current licence fees and rents reserved by licences, leases, agreements for Licence or agreement for lease (including in particular any recently reviewed licence fees and rents) between willing but not anxious Licensors or Landlords and willing but not anxious Licensees or Tenants of any comparable premises;
 - (viii) regard this Licence as being between a willing but not anxious Licensor and a willing but not anxious Licensee enjoying actual possession of the whole Licensed Premises as at the Licence Fee Review Date;
 - (ix) regard the Land as having been fully repaired and restored in any case where it has been damaged, destroyed, rendered inaccessible or is being refurbished;
 - (x) take no account of any difference in Licence Fee that is accountable to fluctuations caused by any sub-licensing of the Licensed Premises or of any comparable premises;
 - (xiv) take no account of any incentive given to the Licensee in connection with the granting of this Agreement;
 - (xv) take into account any other criteria the Valuer regards as relevant to his determination, provided that the Valuer must disregard anything which is inconsistent with the criteria set out in paragraphs (v) to (xi) inclusive; and

- (xvi) endeavour to make his determination within one month after the date of his appointment.
- (h) The Licensor and the Licensee must each pay half of the Valuer's costs incurred in determining the Current Market Licence Fee.
- (i) Each Valuer appointed under this clause must be a valuer of not less than 5 years' standing, hold a certificate of registration to practice as a Valuer and be experienced in carrying out valuations of those kind of Licensed Premises and in the area in which the Licensed Premises are situated.
- (j) Pending the determination of the Current Market Licence Fee, the Licensee must pay (on an interim basis) Licence Fee at the rate payable by the Licensee immediately prior to the expiry of the Term. If the Current Market Licence Fee is determined as an amount greater than the Licence Fee payable immediately prior to the expiry of the Term then the Licensee must pay to the Licensor the balance of the Licence Fee due. If the Current Market Licence Fee is determined as an amount less than the Licence Fee payable immediately prior to the expiry of the Term then the Licensor must pay to the Licensee immediately the amount over paid by the Licensee since the commencement of the further term.
- (k) The Current Market Licence Fee as determined in accordance with this clause 27(g) and is immediately binding on the parties to this Agreement (except for manifest error).

"API" means the Division of the Australian Property Institute (Inc.) in which the Licensed Premises are situated.

Service of Notices

28. (a) Any notice required to be given under the terms of this Agreement shall be in writing.
- (b) Any notice delivered or given under this Agreement will be sufficiently served if addressed to the party and served in accordance with Section 170 of The Conveyancing Act 1919 NSW.
- (c) Any notice sent by post is deemed to have been served within 48 hours after posting.

Severance

29. Any provision of this agreement which is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective only to the extent of that prohibition or unenforceability and does not invalidate the remaining provisions of this agreement or effect the validity or enforceability of the provision in any other jurisdiction.

Whole Agreement

30. The Licensor and the Licensee agree that no party shall have any claim against another party arising out of this Agreement other than may arise under this Agreement.

Applicable Law

31. (a) Despite the domicile or residence of any of the parties this Agreement shall be construed in accordance and governed by the Laws of New South Wales.
- (b) The parties submit to the non exclusive jurisdiction of the Courts of New South Wales with respect to any legal proceedings in connection with or relating to this Agreement.

Non Merger

32. None of the terms and conditions or any act matter or thing done under or by virtue or in connection with this Agreement shall operate as a merger of any rights and remedies of the parties in or under this Agreement but such rights and remedies shall at all times continue in full force and effect.

Relationship Between the Parties

33. (a) The Licensor and the Licensee hereby agree and acknowledge that nothing contained in this Agreement shall create the relationship of partnership or of principal and agent or of joint venture or of landlord and tenant between the parties.
- (b) No provision in this Agreement contained nor any acts of the parties shall create any relationship between the parties other than the relationship of Licensor and Licensee upon the terms and conditions provided in this Agreement.

No Interest in the Licensed Premises

34. This Agreement does not confer on the Licensee any estate or interest in the Licensed Premises and it is agreed and declared that the control and management thereof shall at all times remain vested in the Licensor and in particular this agreement shall not operate as a demise of the Licensed Premises and in the construction and interpretation of this agreement this clause shall be paramount and the other clauses thereof shall be construed so as not to be inconsistent with this clause in the event of and to the extent that any other clause or clauses thereof cannot be construed so as to avoid any such inconsistency such other clause or clauses shall to such extent be void and of no effect but otherwise this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands this day and year first hereinbefore written.

THE COMMON SEAL of **TWEED SHIRE**)
COUNCIL was hereunto affixed pursuant to)
a resolution passed the day of))
in the presence of:)

.....

Mayor

General Manager

SIGNED by the said **CHEREYNE**)
HAMLIN in the presence of)

.....
Chereyne Hamlin

.....
Signature of Witness

.....
Name of Witness

SCHEDULE

INVENTORY OF FIXTURES & FITTINGS

Stainless steel benches

Exhaust fans

Sinks

Basins

Cold food display

Fan forced oven and stove with
griddle

Stainless steel 1800 wide microwave

Coffee machine

Chest freezer

Under bench refrigeration (under
cold display and under bar)

2 door glass display fridge

Pressure Toaster

Crockery

Cutlery

Glassware (100 pcs)

Tables & chairs for 60 pax

Architecturally designed front
servery & bar with shelving
for storage

DATED _____, 2004

BETWEEN:

TWEED SHIRE COUNCIL

Licensor

AND:

CHEREYNE HAMLIN

Licensee

LICENCE AGREEMENT

STACKS/NORTHERN RIVERS
Solicitors
12 Queen Street
MURWILLUMBAH NSW 2484
DX 20451 MURWILLUMBAH

PH: (02) 6672 1855
FAX: (02) 6672 4677
REF: DOC.SMD.040312