



## Licence Agreement

Surf Coast Shire Council

(ABN 180 784 614 09)

("Licensor")

and

David Bell

("Licensee")

Licensed Area: Part of car park 1 Merrijig Drive, Torquay

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# Licence Agreement

Date: 23 April 2014

## Parties

**SURF COAST SHIRE COUNCIL (ABN 180 784 614 09)** of 1 Merrijig Drive, Torquay in the State of Victoria ("Licensor")

and

The party named in Item 1 of the Schedule ("Licensee")

## Background

- A. The Licensor owns the Premises. The Licensor has agreed to grant the Licensee a Licence to use the Licensed Area for the Permitted Use.
- B. This Agreement sets out the terms and conditions under which the Licensee may use the Licensed Area.
- C. The parties wish to record their agreement in writing.

## Operative Provisions

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Agreement:

**"Agreement"** means this agreement including the background items, any schedules and any annexures;

**"Business Day"** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the State of Victoria;

**"Commencement Date"** means the date stated in Item 5 of the Schedule;

**"Further Licence Term"** means the further term stated in Item 11 of the Schedule;

**"Hours of Use"** means those hours stated in Item 10 of the Schedule;

**"Licensed Area"** means the area stated in Item 3 of the Schedule and marked red on the plan of the Premises being Annexure "A";

**"Licence Fee"** means the fee payable under this Licence stated in Item 6 of the Schedule;

**"Outgoings"** means those outgoings noted in Annexure "B";

**"Permitted Use"** means the use stated in Item 9 of the Schedule;

**"Premises"** means the land stated in Item 2 of the Schedule;

**"Term"** means the term stated in Item 4 of the Schedule.

## **1.2 Interpretation**

In this Agreement, unless the context requires otherwise:

- (a) The singular includes the plural and vice versa;
- (b) A gender includes the other genders;
- (c) The headings are used for convenience only and do not affect the interpretation of this;
- (d) A reference to a document includes the document as modified from time to time and any document replacing it;
- (e) If something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;
- (f) The word "person" includes a natural person and any body or entity whether incorporated or not;
- (g) The word "month" means calendar month and the word "year" means twelve (12) months;
- (h) The words "in writing" include any communication sent by letter, facsimile transmission or email;
- (i) A reference to any statute, proclamation, rule, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, regulation or ordinance replacing it. A reference to a specified section, clause, paragraph, schedule or item of any statute, proclamation, rule, regulation or ordinance means a reference to the equivalent section of the statute, proclamation, rule, regulation or ordinance which is for the time being in force;
- (j) Wherever "include" or any form of that word is used it must be construed as if it were followed by "(without being limited to)";
- (k) Money amounts are stated in Australian currency unless otherwise specified; and
- (l) A reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has its powers or functions removed ("defunct body"), means the agency or body which performs most closely the functions of the defunct body.

## **2. Term of Licence**

The Licence is granted for the Term and commences on the Commencement Date.

## **3. Licence**

- (a) The Licensor grants to the Licensee a non-exclusive Licence to use the Licensed Area for the Permitted Use.
- (b) The Licensee may use the Licensed Area for the Permitted Use during the Hours of Use, or such additional or alternate hours as may be approved by the Licensor in writing.
- (c) The Licensee must use the Licensed Area actively and continuously for the Permitted Use during the Term of the Licence.

#### **4. Licence Fee**

- (a) The Licensee must pay to the Licensor the Licence Fee, without deduction, in the manner stated in Item 7 of the Schedule.
- (b) The Licence Fee will be increased annually on the anniversary of the Commencement Date (“review date”) in accordance with Item 8 of the Schedule.
- (c) In the event Item 8 provides for the method of review to be by agreement and an agreement cannot be reached within thirty (30) days of the review date, the Licence Fee shall be determined by a valuer and the following process shall apply:
  - (i) The parties shall jointly appoint an agreed valuer to determine a the Licence Fee;
  - (ii) If the parties do not agree on a valuer within a further fourteen (14) days, the valuer must be nominated by the senior office-bearer of the Australian Property Institute - Victorian Division, at the request of either party
  - (iii) In determining the current Licence Fee for the Licensed Area, the valuer must:
    - (A) Consider any written submissions made by the parties within twenty-one (21) days of their being informed of the valuer’s appointment;
    - (B) Determine the current fair licence fee as an expert;
    - (C) Consider the Licensee’s objects and purposes and the application of the Licensee’s income;
    - (D) Take into account the conditions of this Licence including the Permitted Use;
  - (iv) The valuer’s determination binds both parties.
  - (v) The Licensor and Licensee must bear equally the valuer’s fee for making the determination.
  - (vi) Until the determination is made by the valuer, the Licensee may continue to pay the same Licence Fee as before the review date. Within seven (7) days of being informed of the valuer’s determination, the parties must make any necessary adjustments.

#### **5. Outgoings**

The Licensee must pay, or reimburse the Landlord for, the Outgoings in such manner as is determined by the Licensor from time to time.

#### **6. Licences and Permits**

- (a) The Licensee agrees to obtain at its own costs such licences and permits as shall be required from time to time to conduct the Permitted Use from the Premises and to comply with the terms and conditions of such licences and permits and the law applicable to such Permitted Use.
- (b) The Licensee agrees to comply with and to ensure that its agents, invitees, employees and contractors fully comply with the terms and conditions imposed by any town planning permits or any regulations concerning the Licensee's use of the Premises.

- (c) The Licensee agrees to comply with all laws in relation to the Premises or the use of the Premises including essential safety measures, occupational health and safety and disability discrimination relevant to the Premises.

## 7. Licensor's Regulations

The Licensee must at all times:-

- (a) Follow all reasonable instructions given by the Licensor for the use of the Licensed Area and the safe custody and use of entry keys;
- (b) Keep the Licensed Area in a clean and tidy state;
- (c) Comply with the Licensee's obligations regarding repairs and maintenance to the Licensed Area set out in Annexure "B";
- (d) Take out and keep current an insurance cover:
  - (i) in the name of the Licensee and noting the interest of the Licensor, for Public Liability to a minimum of \$20 million for any one (1) event;
  - (ii) maintain the insurance cover with an insurer approved by the Licensor; and
  - (iii) produce satisfactory evidence of insurance cover on written request by the Licensor.
- (e) Be solely liable for the Licensee's property left in the Licensed Area and/or Premises. The Licensee acknowledges that the Licensor recommends the Licensee obtain contents insurance for any property stored at the Licensed Area and/or Premises.
- (f) Allow the Licensor or the Licensor's employees, agents or servants to enter the Licensed Area at any time to clean or repair the Licensed Area;
- (g) Permit the Licensor to inspect the Licensed Area by appointment;
- (h) To permit the Licensor to allow any person or group to use the Licensed Area at the times and for the charges nominated by the Licensor as long as such use does not conflict with the Licensee's use of the Premises;
- (i) Comply with any Special Conditions regarding use set out in Item 12 of the Schedule and Annexure "C";
- (j) Immediately report to the Licensor any damage to the Premises, with the Licensee to make good and damage caused to the Premises by the Licensee or their members or any person invited by the Licensee onto the Premises;
- (k) Keep the Licensed Area locked and secured against unauthorised entry;
- (l) Comply with any lawful notice, order or requirement with respect to the Premises or the use of the Premises; and
- (m) Ensure that all activities conducted by the Licensee or their representatives on the Licensed Area are properly and competently supervised for the safety of participants and the preservation of good order.
- (n) Provide to the Licensor copies of financial reports of the Licensee twice during the Licence term. A copy shall be provided to the Licensor three months after the commencement date and another copy at the conclusion of the Licence term. These

reports should include details of all income received by the Licensee in relation to the use of the Licensed Area.

## **8. Use of Licensed Area**

The Licensee must not and must not let anyone else at all times:-

- (a) Cause or permit any rubbish to be left in or about the Licensed Area;
- (b) Use the Licensed Area in any noxious or offensive manner or do or permit any nuisance, annoyance or obstruction to the Licensor, or any other Licensee or any other person using the Premises or any of the adjoining or nearby properties;
- (c) Use the Licensed Area for any illegal purpose;
- (d) Conduct an auction or public meeting on the Licensed Area, without the written consent of the Licensor;
- (e) Use the Licensed Area for any activity prohibited by the Licensor by notice in writing to the Licensee;
- (f) Use the Licensed Area for the sale of liquor or any gaming or gambling activities, without the written consent of the Licensor;
- (g) Use the Licensed Area as a residence or for residential purposes;
- (h) Use the Licensed Area for retail sale or hire of goods or the retail provisions of services, other than to the Licensee's members and their guests and only if those retail activities are ancillary to the Permitted Use;
- (i) Keep or use chemicals, inflammable fluids, acids, or other hazardous things on the Premises except to the extent necessary for the Permitted Use, or create fire hazards;
- (j) Do anything which might prejudicially affect the essential safety measures or the occupational health and safety or disability discrimination status of the Premises;
- (k) Place any sign on the exterior of the Premises without the Licensor's written consent;
- (l) Make any alteration or addition to the Licensed Area. Any alterations or additions consented to by the Licensor shall be undertaken by the Licensor's contractors at the Licensee's sole expense;
- (m) Install any fixtures or fittings to the Licensed Area. Any installations consented to by the Licensor shall be undertaken by the Licensor's contractors, at the Licensee's expense;
- (n) Engage any contractor to undertake work in relation to the Licensed Area or the Premises;
- (o) Undertake any repairs or works to the Licensed Area which are the responsibility of the Licensor unless:
  - (i) The repairs are necessary to fix or remedy a fault or damage that will affect the business at the Licensee of the Premises;

- (ii) The Licensee has requested the Licensor to effect the repairs and the Licensor has not done so within a reasonable time (being no less than twenty-four (24) hours); and
  - (iii) The Licensor is unable to conduct the repairs.
  - (iv) Where the Licensee conducts the repairs the Licensor is liable to reimburse the Licensee for the cost of such repairs upon receipt of a tax invoice from the Licensee.
- (p) Bring onto the Premises any object which by its nature or weight might cause damage to the Premises, without the Licensor's written consent;
  - (q) Except in an emergency, interfere with any of the services or change the locks on any door or window of the Licensed Area without the Licensor's written consent; and
  - (r) Do anything which might affect any insurance policy relating to the Premises by causing:
    - (i) it to become void or voidable;
    - (ii) any claim on it being rejected; or
    - (iii) a premium to be increased.

## **9. Licensor's Obligations**

- (a) The Licensor shall provide the Licensee with use of the Licensed Area in accordance with this Licence, provided the Licensee is not in default of the Licence Terms.
- (b) The Licensor will comply with the Licensor's maintenance obligations as detailed in Annexure "B".

## **10. Indemnity**

The Licensee indemnifies and agrees to keep the Licensor indemnified to the extent permitted by law against all liabilities, losses, damages, expenses, actions, claims, demands or proceedings, whether arising under any statute or at common law, in connection with or arising from:

- (a) The negligent use, misuse, waste or abuse by the Licensee or any servant, agent, contractor, sub-contractor, customer or invitee of or any other person claiming through or under the Licensee of the water, gas, electricity, oil lighting and other services and facilities of the Premises;
- (b) Overflow or leakage of water (including rain water) in or from the Premises but having origin within the Premises or caused or contributed to by any act or omission on the part of the Licensee or other persons as aforesaid;
- (c) Loss, damage or injury from any cause whatsoever to property or person caused or contributed to by the use or occupation of the Premises by the Licensee or other persons as aforesaid; and
- (d) Loss or injury from any cause whatsoever to property or person within or outside the Premises or Licensed Area or contributed to by any act, omission, neglect, breach or default of the Licensee or other persons as aforesaid.



## 11. Limitation of Liabilities

- (a) To the extent permitted by law and except as expressly provided to the contrary in this License, the Licensee uses and occupies the Premises, the Licenced Area and any common areas at its own risk and the Licensor shall not be under any liability (contractual, tortious or otherwise) to the Licensee in connection with or arising out of any damage to the plant, equipment, fixtures, fittings, merchandise, stock-in-trade or any other property of any description of or in the possession of the Licensee and contained in or about the Premises occasioned by water, heat, fire, electricity, vermin, explosion, tempest, riot, civil commotion, bursting pipes or by the entry of water from any source whatsoever or by the operation of any fire equipment nor from any loss of profits resulting therefrom and notwithstanding that the same may occur by reason of any defect in the construction of the building or any part or of any of the appurtenances in or by any other Licensee of the building and their respective employees or any member of the public provided that nothing in this Clause shall operate in any way so as to make the Licensee liable to the Licensor for any losses, costs, damages, expenses, claims or actions whatsoever where such losses, costs, damages, expenses, claims or actions have been caused or contributed to by any wilful wrongdoing, fraudulent conduct or negligence by the Licensor.
- (b) To the extent permitted by law and except as expressly provided to the contrary in this Licence, the Licensor shall not be under any liability (contractual, tortious or otherwise) to the Licensee in respect of any loss or damage (including, without limitation, consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in connection with this License, failure or omission of the Licensor including but not limited to any malfunction, failure to function or interruption of or to the water, gas or electricity services, the fire equipment or any of the appurtenances contained at the Premises or in the building or for the blockage of any sewers, wastes, drains, gutters, down pipes or storm water drains from any cause whatsoever.

## 12. No Proprietary Interest

This Licence does not confer upon the Licensee any estate or interest in any part of the Premises or Licenced Area.

## 13. Events of Default and Licensor's Rights

- (a) The Licensor may terminate this License, by re-entry or notice of termination, if -
  - (i) The Licence Fee is unpaid after the day on which it falls due for payment;
  - (ii) The Licensee does not meet its obligations under this License;
  - (iii) The Licensee is a corporation and -
    - (A) an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation;
    - (B) goes into liquidation;
    - (C) is placed under official management;
    - (D) has a receiver, including a provisional receiver, or receiver and manager of any of its assets or an administrator appointed; or

- (E) without the Licensor's written consent, there is a different person in effective control of the Licensee as a result of changes in -
  - (1) membership of the company or its holding company;
  - (2) beneficial ownership of the shares in the company or its holding company; or
  - (3) beneficial ownership of the business or assets of the company, but this paragraph does not apply if the Licensee is a public company listed on the Australian Stock Exchange, or a subsidiary of one.

"Effective control" means the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings,

- (iv) A warrant issued by a court to satisfy a judgement against the Licensee is not satisfied within 30 days of being issued;
  - (v) The Licensee:
    - (A) no longer actively and continuously uses the Licensed Area for the Permitted Use under this License; or
    - (B) Fails to pursue the objective and purpose set out in the constitution of the Licensee, or the Licensee pursues other objectives or purposes; or
  - (vi) The Premises is damaged or destroyed so as to be wholly or partially unfit for the Permitted Use.
- (b) The Licensee must pay to the Licensor;
- (i) Interest at the rate fixed pursuant to the pursuant the *Penalty Interest Rate Act* on any overdue monies;
  - (ii) Any costs incurred as a result of the Licensee's default;
  - (iii) Any costs or losses incurred by the Licensee in exercising their rights and powers pursuant to the Licence;
  - (iv) Any amounts paid by the Licensor for which the Licensee is responsible for pursuant to this Agreement.

## 14. Termination or Expiry

- (a) This Licence may be terminated:
  - (i) By agreement between the parties in writing; or
  - (ii) By the Licensor pursuant to Clause 13.
- (b) At the end of the Licence period or if the Licence is terminated earlier, on termination of the Licence:
  - (i) The Licensee must vacate the Premise and deliver it to the Licensor in good order and condition as required by this Licence;
  - (ii) If the Licensor allow the Licensee to continue using the Licensed Area and the Licensee remains, then the Licence will continue on a month to month basis and the provisions of this Licence will continue to apply;

- (iii) Alterations and additions that the Licensee has made to the Licensed Area or fixtures attached to the Premises become part of the Premises and ownership passes to the Licensor at the end or earlier termination of the Licence, unless notice in writing requiring that the alterations, additions or fixtures be removed has been given; and
- (iv) If the Licensor requires or consent to the removal of any alterations, additions or fixtures then the Licensee must undertake their removal immediately and make good any damage to the Premises caused by their removal within fourteen (14) days after the end or earlier termination of this Licence.

## 15. Further Licence Term

The Licensor may renew this Licence for the further Licence Term provided:

- (a) The Licensee makes a request to the Licensor in writing not more than six months and at least three months before the end of the Term;
- (b) The new Licence will be at a Licence Fee and upon such conditions as required by the Licensor; and
- (c) This agreement for renewal will be excluded from the Licence for the last of the Further Licence Term provided for in Item 11.

## 16. Dispute Resolution

The parties hereby acknowledge and agree that should a dispute arise the following steps will be undertaken:

- (a) The Complainant must tell the Respondent in writing:
  - (i) The nature of the dispute;
  - (ii) What outcome the Complainant wants; and
  - (iii) What action the Complainant thinks will settle the dispute.
- (b) The parties shall then agree to and use their best endeavours to resolve the dispute as quickly, efficiently and as reasonably as possible with consideration to the nature of the dispute at issue.
- (c) In the event that subsequent to the implementation of the procedure stipulated in Clauses 16(a) and 16(b) above, the dispute between the parties remains unresolved at the expiration of a period no less than three weeks from when the dispute procedure was implemented, either party to this Licence may refer the matter to a mediator.
- (d) If the parties cannot agree upon an appropriate mediator, any party may request the President of the Law Institute of Victoria to appoint a mediator.
- (e) The parties acknowledge and agree that upon the appointment of a mediator the following provisions apply:
  - (i) The mediator may decide the time and place of the mediation.
  - (ii) The parties must attend the mediation and use their best endeavours to resolve the dispute.

- (iii) Each party is responsible for the payment of its own cost incurred during the course of the mediation process and the parties must share equally the costs of the mediation and the mediator.
- (f) The parties acknowledge and agree that should –
  - (i) At least thirty (30) days have elapsed from the commencement of the mediation; and
  - (ii) The dispute has not been resolved.

either party may request the Mediator to terminate the mediation. Then but not otherwise the Mediator must immediately terminate the mediation if requested by either party to do so.,

- (g) Subject to the provisions of Clause 16(f) above, the Mediator may terminate the mediation at any time unless satisfied a resolution of the dispute is imminent.
- (h) If the Mediator does terminate the mediation of the dispute under the provisions of Clause 16(f), the Mediator must issue a Certificate stating:-
  - (i) The names of the parties;
  - (ii) The nature of the dispute;
  - (iii) That the mediation has finalised; and
  - (iv) That the dispute has not been resolved.

A copy of the Certificate must be provided by the Mediator to each of the parties in the dispute.

- (i) The parties to this Licence acknowledge and agree that the dispute resolution procedures stipulated in Clause 16 do not affect the right of either party to the Lese to commence legal proceedings under this Licence.

## 17. GST

For the purposes of this Licence:

- (a) “GST” means GST within the meaning of the GST Act;
- (b) “GST Act” means the A New Tax System (Goods & Services Tax) Act 1999 (as amended);
- (c) The expressions “consideration”, “value”, “taxable supply”, “acquisition”, “input tax credit” and “tax invoice” bear the same meaning as those expressions in the GST Act.
- (d) Except where express provision is made to the contrary and subject to this Licence, the consideration payable by any party under this Licence represents the value of any taxable supply for which payment is to be made.
- (e) Subject to 17(g) if a party makes a taxable supply in connection with this Licence for a consideration which under 17(d) or 17(f) represents its value then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- (f) If this Licence requires the Licensee to pay, reimburse or contribute to an amount payable by the Licensor in respect of an acquisition from a third party for which the Licensor is entitled to claim an input tax credit the amount required to be paid

reimbursed or contributed by the Licensee will be the value of the acquisition by the Licensor plus, if the Licensor's recovery from the Licensee is a taxable supply, any GST payable under 17(e).

- (g) A party's right to payment under 17(e) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

## **18. General**

### **18.1 Nature of Obligations**

- (a) Any provision in this Agreement which binds more than one person binds all of those persons jointly and each of them individually.
- (b) Each obligation imposed on a party by this Agreement in favour of another is a separate obligation.

### **18.2 Entire Understanding**

- (a) This Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes all prior communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Agreement.

### **18.3 No Waiver**

A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise or any other power or right under the Agreement. A waiver of a breach does not operate as a waiver of any other breach.

### **18.4 Severability**

If any provision of this Agreement offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

- (a) Where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
- (b) In any other case the offending provision must be severed from this Agreement in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.

### **18.5 Successors and Assigns**

This Agreement binds and benefits the parties and their respective successors and permitted assigns.

### **18.6 No Assignment**

A party cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other party.

## **18.7 No Variation**

This Agreement cannot be amended or varied except in writing signed by the parties.

## **18.8 Costs**

Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

## **18.9 Counterparts**

If this Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.

## **18.10 Conflicting Provisions**

If there is any conflict between the main body of this Agreement and any schedules or annexures comprising it, then the provisions of the main body of this Agreement prevail.

## **18.11 Notices**

Any notice or other communication to or by a party to this Agreement:

- (a) May be given by personal service, post, facsimile or email;
- (b) Must be in writing, legible and in English addressed to the address of the party as stated in this Agreement or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) In the case of a corporation, must be signed by an officer or under the common seal of the sender;
- (d) Is deemed to be given by the sender and received by the addressee;
  - (i) If delivered in person, when delivered to the addressee;
  - (ii) If posted, two (2) Business Days (or six (6), if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or
  - (iii) If sent by facsimile transmission, on the date shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purpose of this clause.
  - (iv) If sent by email upon dispatch from the sender's computer.

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is deemed to have been received at 9.00 am on the next Business Day.

## **18.12 Non Merger**

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged. Each term of this Agreement that has not been carried into effect at the termination of this Agreement survives the termination.

## **18.13 Further Assurances**

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents which are reasonably necessary to give full effect to this Agreement.

#### **18.14 Consents and Approvals**

Where anything depends on the consent or approval of a party, then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

#### **18.15 No Right of Set-Off**

Unless this Agreement expressly provides otherwise, a party has no right of set-off against a payment due to another party.

#### **18.16 Governing Law and Jurisdiction**

This Agreement is governed by and must be construed in accordance with the laws of the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of this Agreement.

Executed as an Agreement

Signed on behalf of the SURF COAST SHIRE )  
COUNCIL by the Chief Executive Officer )  
pursuant to the instrument of delegation dated )  
23 July 2013 in the presence of: ).....  
Chief Executive Officer

.....  
Witness

**SIGNED SEALED AND DELIVERED** by the )  
said David Bell in the presence of: ).....  
David Bell

.....  
Witness



## SCHEDULE

### Item 1

The Licensee: David Bell



### Item 2

Premises Portion of Car park space known as 1 Merrijig Drive, Torquay Victoria 3228

### Item 3

Licensed Area The area marked red on plan of the Premises being Annexure "A"

### Item 4

Term: Six months from the date of commencement

### Item 5

Commencement Date 23 April 2014

### Item 6

Licence Fee \$ 360.00 per week plus GST

### Item 7

Method of Payment: Monthly in advance

### Item 8

Method of increase to fee: Not applicable

**Item 9**

Permitted Use Farmers Market, with restrictions stipulated in planning permit.

**Item 10**

Hours of Use The market may operate every Saturday between the hours of 8:30am and 1:00pm. Stall holders must not commence set up before 6:30am and must remove all stalls and refuse by 3:00pm Saturday.

**Item 11**

Further Licence Term At the conclusion of the Licence term, Council will undertake a review of the Licence and the Event and determine if a further term will be considered.

**Item 12**

Special Conditions All special conditions listed in Annexure "C".

# Annexure A

## Location Map of Premises



Contains Warning Information  
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This map is produced on the Geocentric Datum of Australia (GDA94). GDA94 supersedes the Australian Geodetic Datum 1991 (AGD91). Surf Coast Shire uses the Map Grid of Australia (MGA94) Zone 55 projection.

1 MERRIJIG DRIVE  
 PO BOX 350  
 TORQUAY, VICTORIA  
 AUSTRALIA 3228  
 PHONE : +61 3 5261 0600  
 FAX : +61 3 5261 0525  
 INTERNET : [www.surfcoast.vic.gov.au](http://www.surfcoast.vic.gov.au)  
 EMAIL : [info@surfcoast.vic.gov.au](mailto:info@surfcoast.vic.gov.au)



## Annexure B

### Outgoings and Maintenance Obligations

ITEM	LICENSEE'S RESPONSIBILITY	LICENSOR'S RESPONSIBILITY
Air conditioning and/or heating & cooling appliances  (If applicable).	<ul style="list-style-type: none"> <li>Any additional units.</li> </ul>	<ul style="list-style-type: none"> <li>Replacement of existing units at the end of its economical life.</li> <li>Service and repair when required of all units.</li> </ul>
Building, General.	<ul style="list-style-type: none"> <li>Determine and document any specific requests to Council for building alterations and other capital improvements.</li> <li>Not to undertake any work unless prior written approval by Council.</li> <li>Notify Council of any damage requiring rectification.</li> <li>All repairs resulting from inappropriate activity by the Licensee as reasonably determined by Council.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure satisfactory completion of approved works.</li> <li>Undertake works required to ensure the Premises meet appropriate standards or regulations.</li> <li>Assess all requests submitted.</li> </ul>
Cleaning.	<ul style="list-style-type: none"> <li>All costs of cleaning for the Premises to ensure it is maintained in a clean &amp; hygienic state.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure that reasonable standards are maintained.</li> </ul>
Ceiling, internal walls.	<ul style="list-style-type: none"> <li>Costs of repair and replacement due to negligent damage by the Licensee.</li> <li>Report faults to Council via CRM.</li> </ul>	<ul style="list-style-type: none"> <li>Major repair and/or replacement due to structural faults/age.</li> <li>Cost of routine repairs &amp; painting.</li> </ul>
Furnishings and equipment (if applicable).	<ul style="list-style-type: none"> <li>Repairs or replacement as required.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
Curtains/Drapes/Blinds  (If applicable).	<ul style="list-style-type: none"> <li>Report faults to Council via CRM.</li> </ul>	<ul style="list-style-type: none"> <li>Periodic cleaning.</li> <li>Cost of routine repairs.</li> </ul>
Electrical wiring, fittings and lights. Test & Tag compliance	<ul style="list-style-type: none"> <li>Reimburse Council for the cost of any additions to existing lighting.</li> <li>Supply and replacement of all</li> </ul>	<ul style="list-style-type: none"> <li>Repair or replacement of all electrical components other than light globes.</li> <li>Provision of electrical safety</li> </ul>

ITEM	LICENSEE'S RESPONSIBILITY	LICENSOR'S RESPONSIBILITY
	light globes.	switches to switchboards. <ul style="list-style-type: none"> <li>• Test &amp; Tag compliance.</li> </ul>
Emergency Lighting.	<ul style="list-style-type: none"> <li>• Report to Council if not operational via CRM.</li> </ul>	<ul style="list-style-type: none"> <li>• Annual replacement of light globes.</li> <li>• Compliance inspections and annual BCA essential safety measures testing.</li> <li>• All maintenance and repair as required.</li> </ul>
Fire alarm system (If installed).	<ul style="list-style-type: none"> <li>• Any costs associated with abuse by Licensee.</li> <li>• Any costs of false alarms as a result of action of the Licensee.</li> </ul>	<ul style="list-style-type: none"> <li>• Replacement of batteries to stand alone smoke detectors on a 12 monthly basis.</li> </ul>
Exit Doors	<ul style="list-style-type: none"> <li>• Maintain a clear path of travel.</li> </ul>	<ul style="list-style-type: none"> <li>• Undertake 3 monthly inspections. (ESM Regulations).</li> </ul>
Emergency Exit Plans & Procedures.	<ul style="list-style-type: none"> <li>• Ensure Plans &amp; procedures are known to all user groups.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide and maintain.</li> </ul>
Fire extinguishers and other fire suppression equipment.	<ul style="list-style-type: none"> <li>• Cost of fill if discharged due to misuse.</li> <li>• Report defects or loss.</li> <li>• Replace if stolen or lost except in the case of burglary of the Premises.</li> <li>• Maintain clear access.</li> </ul>	<ul style="list-style-type: none"> <li>• Additional units if assessed by Council as required.</li> <li>• Replacement on expiry date.</li> <li>• Service inspection and maintenance charge.</li> <li>• Undertake 6 monthly inspections. (ESM Regulations).</li> </ul>
Floor surfaces and coverings.	<ul style="list-style-type: none"> <li>• Cleaning of all floor surfaces and coverings.</li> <li>• Report faults to council via CRM</li> </ul>	<ul style="list-style-type: none"> <li>• Repair and/or replacement at the end of their economical life.</li> </ul>
Flyscreens (If applicable).	<ul style="list-style-type: none"> <li>• Costs of repair and replacement due to negligent damage by the Licensee.</li> </ul>	<ul style="list-style-type: none"> <li>• Install fly screens if required under regulation.</li> <li>• All maintenance and repair as required</li> </ul>
General joinery, doors, cupboards etc.	<ul style="list-style-type: none"> <li>• Costs of repair and replacement due to negligent damage by the Licensee.</li> <li>• Report faults to council via CRM</li> </ul>	<ul style="list-style-type: none"> <li>• Replacement due to age, structural defect or vandalism, subject to Council assessment.</li> <li>• All maintenance and repair as required.</li> </ul>
Glass & Glazing.	<ul style="list-style-type: none"> <li>• Cleaning as per "Cleaning Schedule".</li> <li>• Costs of repair and replacement</li> </ul>	<ul style="list-style-type: none"> <li>• Replacement due to breakage as result of all other actions or events.</li> </ul>

ITEM	LICENSEE'S RESPONSIBILITY	LICENSOR'S RESPONSIBILITY
	<p>due to negligent damage by the Licensee.</p> <ul style="list-style-type: none"> <li>Report faults to council via CRM.</li> </ul>	
<p>Grounds and surrounds. Fencing and gates.</p>	<ul style="list-style-type: none"> <li>Determine and document any specific requests to Council for building alterations and other capital improvements.</li> <li>Maintenance of garden hoses, sprinklers, etc.</li> </ul>	<ul style="list-style-type: none"> <li>Fencing to comply with regulatory requirements.</li> <li>Remove graffiti from external areas.</li> <li>Define and oversee standards.</li> <li>Major pruning (branches greater than 100mm diameter) or any tree removal.</li> <li>Repair and replacement of existing pavements to pathways, driveway etc.</li> </ul>
<p>Intercom/communication system (if installed).</p>	<ul style="list-style-type: none"> <li>Service/maintenance charges.</li> <li>Up-grade or replacement.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<p>Keys and locks.</p>	<ul style="list-style-type: none"> <li><b>Site specific input.</b></li> <li>Cost of replacement of lost or damaged keys.</li> <li>Cost or repair and replacement of lock if due to Licensee abuse.</li> <li>At the discretion of the Council, costs of re-keying of Premises in the event of loss of keys by Licensee.</li> <li>Replacement of lock/additional locks if required for security.</li> <li>Additional keys supplied by council at users cost.</li> <li>Report to council if not operational via CRM.</li> </ul>	<ul style="list-style-type: none"> <li>All maintenance and repair as required.</li> <li>Ensure locks are on Councils key system.</li> <li>Provide 2 keys.</li> </ul>
<p>Daily Security of Building</p>	<ul style="list-style-type: none"> <li>Securing of premises including locking doors and windows before leaving.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<p>Notice Boards etc.</p>	<ul style="list-style-type: none"> <li>Provide and maintain units.</li> <li>Locate units in locations as approved by Council.</li> </ul>	<ul style="list-style-type: none"> <li>None.</li> </ul>
<p>Painting.</p>	<ul style="list-style-type: none"> <li>Costs to re-paint internally if damage result of misuse by Licensee.</li> </ul>	<ul style="list-style-type: none"> <li>Internal and external as per council cyclic program</li> </ul>

ITEM	LICENSEE'S RESPONSIBILITY	LICENSOR'S RESPONSIBILITY
Pest Control.	<ul style="list-style-type: none"> <li>• Notify Licensor if pest control required.</li> <li>• Reimburse Licensor for all costs of pest control.</li> </ul>	<ul style="list-style-type: none"> <li>• The Licensor shall arrange all pest control.</li> </ul>
Permanent appliances if applicable (direct wired to main switchboard) e.g.  Dishwashers.  Ovens, stoves.  Exhaust fans.  Ceiling fans.	<ul style="list-style-type: none"> <li>• Cleaning as per "Cleaning Schedule".</li> <li>• Repair and/or replace if damaged through Licensee abuse.</li> <li>• Report to Council if not operational via CRM.</li> <li>• Ensure appliances are switched off prior to vacating premises.</li> </ul>	<ul style="list-style-type: none"> <li>• Repair and replace when required, subject to Council assessment.</li> <li>• Additional appliances. Testing and Tagging in accordance with AS 3760.</li> </ul>
Plumbing.	<ul style="list-style-type: none"> <li>• Report to Council if not operational via CRM.</li> <li>• Trade Waste Trap cleaning costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Repair and replace when required, subject to Council assessment.</li> <li>• Replacement of tap washers.</li> <li>• Cleaning of blocked toilets and blocked property sewerage pipes</li> <li>• Drainage repairs/works, including broken sewerage pipes, drains and pits.</li> </ul>
Roof, external walls, spouting and downpipes.	<ul style="list-style-type: none"> <li>• Report faults to Council via CRM.</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• Repair and replace when required, subject to Council assessment.</li> <li>• Gutter cleaning program.</li> </ul>
Security Alarm System (If installed).	<ul style="list-style-type: none"> <li>• Seek approval in writing from Council prior to installation.</li> <li>• Install or replace systems.</li> <li>• Meet system and operating costs.</li> <li>• Manage usage of the system.</li> <li>• Any calls out and service costs i.e. false alarms, misuse.</li> <li>• Provide security system details to Council.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
Security patrol services (at discretion of Council).	<ul style="list-style-type: none"> <li>• Call out and emergency service costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Security patrol services.</li> </ul>
Signage (Internal).	<ul style="list-style-type: none"> <li>• Cleaning of all signs.</li> <li>• Additional signage as required and as approved by Council.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure that reasonable standards are maintained.</li> </ul>

ITEM	LICENSEE'S RESPONSIBILITY	LICENSOR'S RESPONSIBILITY
Signage (External).	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Maintenance as per "Grounds Maintenance".</li> <li>• Additional signage as required and as approved by Council.</li> <li>• Initial identification signage to be provided by Council.</li> <li>• Replacement or maintenance of initial signage.</li> </ul>
Skylights. (If installed).	<ul style="list-style-type: none"> <li>• Report faults to Council via CRM.</li> </ul>	<ul style="list-style-type: none"> <li>• Repairs when required.</li> </ul>
Smoke detectors.	<ul style="list-style-type: none"> <li>• Change batteries 12 monthly for portable units.</li> </ul>	<ul style="list-style-type: none"> <li>• Service inspection and maintenance.</li> <li>• Undertake 6 monthly inspections. (ESM Regulations).</li> </ul>
Telecommunications systems (fax, photocopier, telephones, printers, computers, and modems).	<ul style="list-style-type: none"> <li>• Service and maintenance outgoings.</li> <li>• Replacement costs.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
Waste Disposal.	<ul style="list-style-type: none"> <li>• Additional removal of hard rubbish above standard domestic waste service.</li> <li>• Additional domestic waste handling.</li> <li>• Removal of all waste from events and functions.</li> <li>• Provision of sanitary services.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide domestic garbage and recycling service, as per standard Council residential waste program.</li> </ul>
White goods or equipment i.e. refrigerator, washing machine, clothes dryer, freezer, toasters, urns, microwaves  (not supplied by Council).	<ul style="list-style-type: none"> <li>• Service and maintenance costs.</li> <li>• Replacement costs.</li> <li>• Ensure appliances are switched off prior to vacating premises.</li> </ul>	<ul style="list-style-type: none"> <li>• Testing and Tagging in accordance with AS 3760.r</li> </ul>
Utilities Charges.	<ul style="list-style-type: none"> <li>• All utility charges metered including but not restricted to water, gas, telephone, sewerage, electricity.</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>
Car Parks.	<ul style="list-style-type: none"> <li>• None.</li> </ul>	<ul style="list-style-type: none"> <li>• Repaint existing line markings</li> <li>• Maintain existing surfaces in safety operational condition.</li> </ul>
Bookings/Fees.	<ul style="list-style-type: none"> <li>• Bookings for premises</li> <li>• Collection of all fees &amp; charges.</li> </ul>	
On-Site Contractors.	<ul style="list-style-type: none"> <li>• None.</li> </ul>	<ul style="list-style-type: none"> <li>• Supervised by Council Nominated Officer.</li> </ul>
Food Preparation Areas /Kitchens.	<ul style="list-style-type: none"> <li>• Maintain food handling equipment/ area in Hygienic condition so as to comply with</li> </ul>	<ul style="list-style-type: none"> <li>• None.</li> </ul>



ITEM	LICENSEE'S RESPONSIBILITY	LICENSOR'S RESPONSIBILITY
	regulations.	
Advertising Signs.	<ul style="list-style-type: none"> <li>• Maintenance of advertising signs where written council approval has been given for erection.</li> </ul>	<ul style="list-style-type: none"> <li>• Written approval.</li> </ul>

**Note:-**

Report all requests for service by calling **5261 0600** this will ensure the recording of the details in the Surf Coast Shire system.

## **Annexure C**

### **Special Conditions**

*(Include only those policies applicable to the particular Licence.  
Additional special conditions should be added here if required)*

#### **1. Licensee's Works**

The Licensee must not undertake any refurbishment works ("Licensee's Works") in the Premises without the Licensor's prior written consent. To obtain the Licensor's consent the Licensee must ask the Licensor in writing. If the Licensee's works are consented to, the Licensor may at its sole discretion undertake such work, using the Licensor's approved contractors, with such work's to be at the Licensee's sole expense. If the Licensor consents to the Licensee undertaking the Licensee's works, the Licensee must attend to following matters to the reasonable satisfaction of the Licensor prior to the commencement of any Licensee's Works:

- (a) The Licensee shall obtain at its own costs all planning and building permits ("Planning and Building Permits") required by the Surf Coast Shire Council;
- (b) The Licensee shall obtain and keep current at its own cost all insurance policies that a prudent Licensee would obtain in the circumstances and/or as reasonably required by the Licensor in relation to the Licensee's Works. The Licensee must maintain the insurance policies with an insurer approved by the Licensor (the Licensor must not withhold approval unreasonably);
- (c) The Licensee shall provide the Licensor with the following:
  - (i) Detailed plans and specifications of the proposed Licensee's Works;
  - (ii) Planning and Building Permits;
  - (iii) Insurance policies;
  - (iv) Details of the contractors, workmen and/or agents the Licensee has retained or will retain to carry out the Licensee's Works including their full names/company names/trading names, business phone number and/or their other information reasonably required by the Licensor. The Licensor may, at its sole discretion, require the Licensee to use the Licensor's approved contractors.
- (d) The Licensee shall at its own costs ensure that its contractors, workmen, agents, employees or the Licensee if the Licensee is a natural person prior to entering into the Premises to carry out the Licensee's Works or inspect the Premises or the Licensee's Works or be involved in any way in the Licensee's Works are properly insured under appropriate WorkCover Policy, public liability insurance and/or any other insurances in relation to workplace death, diseases and/or injury;
- (e) The Licensee indemnifies and agrees to keep the Licensor indemnified against all losses of or damages to the Premises and against any liabilities, losses, damages, expenses, actions, claims demands or proceedings, whether arising under any statute or at common law, in respect of personal injury to, and/or death of any person arising out of or in connection with or caused by the Licensee's Works;
- (f) The Licensee warrants that the Licensee's Works will be carried out and completed in an expeditious, safe, good and workmanlike matter to the reasonable satisfaction of the Licensor in all respects.

## **2. Incorporated Associations**

Where the Licensee is an Incorporated Association, the Licensee must:

- (a) At the end of each of financial year during the Term, provide to the Licensor, a copy of the Licensee's annual report including a statement of income and expenditure and assets and liabilities.
- (b) Not make any changes to the Licensee's constitution. Should alterations lead to changes in the principles, functions and management of the Licensee, the Licensor may terminate the Licence.
- (c) Require that all members, employees, agents, contractors and guests who come on the Licensed Area comply with the Licence.
- (d) Must appoint and notify the Licensor in writing of the name, address and telephone numbers of a liaison officer to communicate with the Licensor on the Licensee's behalf.

## **3. Committee of Management**

If the Premises is part of an area managed by a special committee established by Council under section 86 *Local Government Act* (Vic.), the Licensee must have a representative attend the meetings of the committee when requested to do so by the committee's secretary.

## **4. Condition Report**

The parties agree that the Licensed Area was inspected by representatives of both parties and a report on the condition of the Licensed Area and was prepared and signed on behalf of both parties as conclusive evidence of the state of repair and condition of the Licensed Area at the Commencement Date.

## **5. Use specific conditions**

The Licensee agrees to abide by all conditions below:

1. The use, including car parking areas, as shown on the endorsed plans, must not be altered without the written consent of the responsible authority.
2. The use may only operate on a Saturday between the hours of 8:30 am and 1:00 pm, unless otherwise approved in writing by the Responsible Authority.
3. The market stall vendors must not commence setting up before 6:30 am and removal of all stalls and refuse must be complete by 3:00 pm, Saturday.
4. No more than 36 market stalls are permitted at any time on the subject land, except with the further written consent of the Responsible Authority.
5. All premises selling food must be registered with Council under the Food Act 1984 and comply with the Food Standards Code and any direction made by the relevant authority.
6. Adequate waste disposal facilities must be available for food vendors or market/stalls.

7. Wastewater generated by food vendors or market stalls must be stored and disposed to the sewer.
8. The permit holder must not charge any fee for stallholder or visitor parking on the subject land or surrounds.
9. The amenity of the locality must not be adversely affected by the activity on the site, the appearance of any building, works or materials, emissions from the premises or in any other way to the satisfaction of the Responsible Authority.
10. The operation of this use must at all times be in accordance with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.
11. Provision must be made on the site for suitable rubbish collection by the market operator to the satisfaction of the Responsible Authority.
12. A person responsible for the good conduct of the market is required to be present on the site during all hours the market is in operation to the satisfaction of the Responsible Authority.
13. No amplified music may be played on the site.