




MANSFIELD SHIRE

Enquiries: Robert Williams
Telephone: 03 5775 8548
Our Ref: E408

RECEIVED
30 NOV 2004
BY: 

Mansfield Shire Council
Private Bag 1000 Mansfield 3724

Telephone
03 5775 8555

Facsimile
03 5775 2677

Email
council@mansfield.vic.gov.au
ABN 74 566 834 923

26 November 2004

Mr Paul Sladdin
Executive Officer
MACE Inc
145 High Street
Mansfield Vic 3722

Dear Mr Sladdin

LEASE OF REAL ESTATE

I refer to the Lease of Real Estate between Mansfield Shire Council and MACE Inc for the land of Lot 2 Plan of Subdivision 339273.

I have enclosed an executed copy of the Lease for your records.

Please do not hesitate to contact Mr Robert Williams, Corporate Services Officer on the above number should you have any enquiries.

Yours sincerely

Nicole Smith
Corporate Services Coordinator

Dated: 12 March, 2003

BETWEEN
MANSFIELD SHIRE COUNCIL

AND

MACE INC.

LEASE OF REAL ESTATE



MANSFIELD SHIRE

January 2003

A

INDEX

1. DEFINITIONS AND INTERPRETATIONS
 2. TENANT'S OBLIGATIONS
 3. MAINTENANCE
 4. LEASE TRANSFERS AND SUBLETTING
 5. GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT
 6. LANDLORD'S OBLIGATIONS
 7. EVENTS OF DEFAULT AND LANDLORD'S RIGHTS
 8. CONSENTS AND WARRANTIES BY THE PARTIES
 9. OVERHOLDING AND ABANDONMENT OF THE LAND
 10. FURTHER TERM(S)
 11. SECURITY DEPOSIT
 12. NOTICES
 13. OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY
 14. ADDITIONAL PROVISIONS
- SCHEDULE
- APPENDIX A – MAP/PLAN
15. EXECUTION AND ATTESTATION

4

1. DEFINITIONS AND INTERPRETATION

This lease is to be interpreted according to the following rules.

1.1 The listed expressions have the meanings set out opposite them:

EXPRESSION	MEANING
item	an item in the schedule to this lease
landlord	the person named in item 1, or any other person who will be entitled to possession of the land when this lease ends
landlord's improvements	the improvements listed in item 5 and those installed by the landlord after the lease starts
land	the land described in item 4 and the landlord's improvements
rent	the amount in item 6, or as varied in accordance with this lease
tenant	the person named in item 2, or any person to whom the lease has been transferred
tenant's improvements	the improvements listed in item 7 and those installed by the tenant after the lease starts
term	the period stated in item 8

- 1.2 References to law include regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the land. Illegal means contrary to a law as defined in this sub-clause.
- 1.3 This lease must be interpreted so that it complies with all laws applicable in Victoria. If any provision of this lease does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the lease.
- 1.4 The law of Victoria applies to this lease.
- 1.5 Any change to this lease must be in writing and signed by the parties.
- 1.6 An obligation imposed by this lease on or in favour of more than one person binds or benefits all of them jointly and each of them individually.
- 1.7 The use of one gender includes the others and the singular includes the plural and vice versa.
- 1.8 If the landlord, tenant or guarantor is an individual, this lease binds that person's legal personal representative. If any of them is a corporation, this lease binds its transferees.
- 1.9 This lease, including all guarantees and indemnities is delivered and operates as a deed.

2. TENANT'S OBLIGATIONS

2.1 The tenant must:

mace

A

- 2.1.1 pay the rent without any deductions to the landlord on the days and in the way stated in item 9. No demand for rent is necessary and the landlord may direct in writing that the rent be paid to another person.
- 2.1.2 pay when due the outgoings listed in item 10 for which the tenant receives notices directly, and reimburse within 7 days those which the landlord requests.
- 2.1.3 produce receipts for paid outgoings within 7 days of a request.
- 2.1.4 pay when due all charges for the provision of services to the land including gas, electricity, water and telephone.
- 2.1.5 comply with the landlord's requirements in relation to any of the landlord's improvements or any services provided by the landlord.
- 2.1.6 produce evidence of insurance policies listed in item 11.
- 2.1.7 pay when due the costs of removal of waste and sewage.
- 2.1.8 pay the appropriate apportionment of the outgoings listed in item 10 at the start and end of the term, and in each of these cases the landlord must produce the relevant assessments and invoices to support the calculation.
- 2.1.9 pay on demand interest at the rate stated in item 14 on any rent or other money which the tenant has not paid within 7 days of the due date. Interest is to be calculated daily from the due date and continues until the overdue money is paid.
- 2.1.10 pay on demand the landlord's reasonable expenses of:
 - [a] change, transfer, surrender or ending of this lease, except at the end of the term, or where the change occurs at the landlord's request.
 - [b] the subletting of the land.
 - [c] any breach of this lease by the tenant.
 - [d] the exercise or attempted exercise by the landlord of any right or remedy against the tenant,
- 2.1.11 Contain all storage within the building. Any unused areas must be maintained in a tidy condition.
- 2.1.12 Comply with all laws relating to the use or occupation of the land.
- 2.1.13 Must provide a loading area contained within the site.

2.2 The tenant must not, and must not let anyone else:

- 2.2.1 use the land except for the permitted use stated in item 15.
- 2.2.2 use the land for any illegal purpose.
- 2.2.3 carry on a noxious or offensive activity on the land.
- 2.2.4 do anything which might cause nuisance, damage or disturbance to a tenant, occupier or owner of any adjacent property.
- 2.2.6 use radio, television or other sound-producing equipment at a volume that can be heard outside the land.

✓

- 2.2.7 do anything which might affect any insurance policy relating to the land by causing:
- it to become void or voidable or
 - any claim on it being rejected or
 - a premium to be increased.
- 2.2.8 keep or use chemicals, inflammable fluids, acids, or other hazardous things on the land except for the permitted use, or create fire hazards.
- 2.2.9 place any major signage on the land without the landlord's consent.
- 2.2.10 undertake any major works without the landlord's written consent which shall not be unreasonably withheld. Consent is entirely in the landlord's discretion.
- 2.2.11 install any fixtures or fittings, except those necessary for the permitted use, without the landlord's written consent, which shall not be unreasonably withheld.
- 2.2.12 bring onto the land any object which by its nature or weight might cause damage to the land, without the landlord's written consent.
- 2.2.13 except in an emergency, interfere with any of the services or equipment in the land or in any property of which the land form part.

3. MAINTENANCE

- 3.1 keep the land free from rubbish, keep waste in proper containers and have it removed regularly.
- 3.2 maintain in working order all plumbing, drainage, gas, electric and sewerage improvements and fire protection apparatus on those items that have been added or upgraded since the beginning of this lease. Any maintenance required on existing items will remain under the obligation of the Landlord.
- 3.3 promptly give written notice to the landlord or the landlord's agent of -
- [a] service by any authority of a notice or order affecting the land
 - [b] any hazards threatening or affecting the land
 - [c] any hazards arising from the land for which the landlord might be liable.
- 3.4 immediately make good damage caused to adjacent property by the tenant or its employees, agents, contractors, customers or visitors.
- 3.5 permit the landlord, its agents or workmen to enter the land during normal business hours, after giving reasonable notice except in cases of emergency:
- [a] to inspect the land,

[b] to do anything necessary to comply with notices or orders of any authority, bringing any necessary equipment.

- 3.6 take all precautions required by law against fire, but not if this requires structural alterations or installation of equipment unless they are required by the nature of the tenant's use of the land.
- 3.7 comply with all reasonable directions of the landlord or the insurer of the land as to the prevention, detection and limitation of fire.
- 3.8 permit the landlord or its agent access to the land at reasonable times by appointment to show the land:
 - [a] to prospective purchasers at any time during the term, and
 - [b] to prospective tenants within 3 months before the end of the termand to affix "for sale" or "to let" signs in a way that does not unduly interfere with the permitted use.

4. LEASE TRANSFERS AND SUBLETTING

- 4.1 The tenant must not transfer this lease or sublet the land without the landlord's written consent.
- 4.2. If the landlord consents to the transfer or sublease, the landlord, tenant and new tenant or sub-tenant and the guarantor must execute a copy of the proposed document of transfer or sublease. The new tenant or sub-tenant and the directors of them if they are corporations must execute a deed binding each of them to carry out the obligations of the tenant under this lease and a guarantee and indemnity in the form of clause 15.
- 4.4 The tenant must pay the landlord's reasonable expenses incurred in connection with an application for consent or the granting of consent and the completion of the documents, as well as the stamp duty (if applicable) on the documents.
- 4.5 The tenant must not give up possession or share occupancy of the land or grant a licence to anyone else without the landlord's written consent
- 4.6 The obligations to the landlord of every tenant who has transferred this lease continue until this lease ends. They do not continue into any period of overholding after this lease ends, nor into any renewed term: at those times they are the responsibility only of the tenant in possession. This clause does not prevent the landlord from enforcing rights which arise before this lease ends.

5. GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT

- 5.1 When the term ends, the tenant must -
 - 5.1.1 return possession of the land to the landlord in clean and tidy condition as required by this lease, and
 - 5.1.2 remove the tenant's improvements and other property from the land and make good any damage caused in removing it.
- 5.2 If the tenant leaves any of its improvements or other property on the land after the end of the lease, unless the landlord and tenant agree otherwise,

[Handwritten mark]

that property will be will be considered abandoned and will become the property of the landlord.

- 5.3 The tenant indemnifies the landlord against any claim resulting from any act or failure to act by the tenant or its employees, agents, contractors, customers or visitors while using the land.
- 5.4 The tenant -
 - 5.4.1 uses and occupies the land at its own risk and
 - 5.4.2 releases the landlord from all claims resulting from accidents occurring on the land except in those cases where the accident is caused by the landlord or a person for whom the landlord is responsible.

6. LANDLORD'S OBLIGATIONS

- 6.1 The landlord must give the tenant quiet possession of the land without any interruption by the landlord or anyone connected with the landlord as long as the tenant does what it must under this lease.

7. EVENTS OF DEFAULT AND LANDLORD'S RIGHTS

- 7.1 The landlord may re-enter the land and end this lease if -
 - 7.1.1 the tenant does not pay the rent for 14 days - no demand is necessary; or
 - 7.1.2 the tenant does not meet its obligations under this lease; or
 - 7.1.3 the tenant -
 - [a] becomes bankrupt, or
 - [b] takes or tries to take advantage of Part X of the Bankruptcy Act, or
 - [c] makes an assignment for the benefit of its creditors, or
 - [d] enters into a composition or arrangement with its creditors, or
 - [e] is unable to pay its debts when they fall due; or
 - 7.1.4 the tenant is a corporation and -
 - [a] an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation, or
 - [b] goes into liquidation, or
 - [c] is placed under official management, or
 - [d] has a receiver, including a provisional receiver, or receiver and manager of any of its assets, or an administrator appointed, or
 - [e] has an inspector appointed under the Australian Securities Commission Act, or
 - [f] without the landlord's written consent, there is a different person in effective control of the tenant as a result of changes in -
 - [i] membership of the company or its holding company;
 - [ii] beneficial ownership of the shares in the company or its holding company;

f

[iii] beneficial ownership of the business or assets of the company,

but this paragraph does not apply if the tenant is a public company listed on an Australian stock exchange, or a subsidiary of one; or is a not for profit incorporated organisation; or

7.1.5 a warrant issued by a court to satisfy a judgement is not satisfied within 30 days of being issued; or

7.1.6 the tenant, without the landlord's written consent -
[a]discontinues its business on the land, or
[b]leaves the land unoccupied for 28 days.

7.2 Re-entry by the landlord ends this lease, but the landlord retains the right to sue the tenant for unpaid money or for damages for breaches of its obligations under this lease.

7.3 For the purpose of section 146(1) of the Property Law Act 1958, 30 days is fixed as the period within which the tenant must remedy a breach capable of remedy and make reasonable compensation in money.

7.4 Even though the landlord does not exercise its rights under this lease on one occasion, it may do so on any later occasion.

8. CONSENTS AND WARRANTIES BY THE PARTIES

8.1 The landlord must not unreasonably withhold its consent to any act by the tenant which needs consent unless any other clause provides otherwise, but -

8.1.1 the landlord may impose reasonable conditions before consenting and

8.1.2 the tenant must reimburse the landlord's reasonable expenses resulting from an application for its consent, including fees paid to consultants.

8.2 This lease, together with the attached disclosure statement if there is one, contains the whole agreement of the parties. Neither party is entitled to rely on any warranty or statement in relation to -

- the conditions on which this lease has been agreed,

- the provisions of this lease or

- the land

which is not contained in those documents.

9. OVERHOLDING AND ABANDONMENT OF THE LAND

9.1 If the tenant remains in possession of the land without objection by the landlord after the end of the term:

9.1.1 the tenant, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy;

9.1.2 either party may end the tenancy by giving one month's written notice to the other at any time;

- 9.1.3 the twelve monthly rental starts at the annual rental which the tenant was paying immediately before the term ended unless a different rent has been agreed; and
- 9.1.4 the landlord may increase the 12 monthly rent by giving the tenant three months written notice.
- 9.2 If the tenant vacates the land during the term, whether or not it ceases to pay rent -
 - 9.2.1 the landlord may:
 - [a] enter the land to inspect, or
 - [b] show the land to prospective tenants or purchasers, without this being re-entry or waiver of the landlord's rights to recover rent or other money under this lease.
 - 9.2.2 this lease continues until a new tenant takes possession of the land, unless the landlord:
 - [a] accepts a surrender of the lease, or
 - [b] notifies the tenant in writing that a breach by the tenant is being treated as a repudiation of the lease, or
 - [c] ends the lease by re-entry

10. FURTHER TERM(S)

- 10.1 The landlord must renew this lease for the further term or terms stated in item 18 if -
 - 10.1.1 there is no unremedied breach of this lease by the tenant of which the landlord has given the tenant written notice and
 - 10.1.2 the tenant has not persistently committed breaches of this lease of which the landlord has given notice during the term and
 - 10.1.3 the tenant has requested the renewal in writing not more than 12 months nor less than 1 month before the end of the term. The latest date for exercising the option is stated in item 19.
- 10.2 The renewed lease
 - starts on the day after this lease ends,
 - has a starting rent determined in accordance with clause 11,
 - must contain the same terms as this lease but with no option for renewal after the last option for a further term stated in item 18 has been exercised.
- 10.3 If the tenant is a corporation, it must obtain guarantees of its obligations under the renewed lease from its directors in the form of clause 15.

11. SECURITY DEPOSIT

Not applicable.

12. NOTICES

- 12.1 A notice given under this lease may be given:
 - by post

- to the party's: by facsimile

- by delivery

to the party's

- last known address

- registered office, or

if to the tenant, at the land.

12.2 Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.

12.3 Notices delivered or sent by facsimile after 5.00 pm will be taken to have been received at 9.00 a.m. on the next business day at the place where it is received.

13. OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY

Not applicable.

14. ADDITIONAL PROVISIONS

Any additional provisions set out in item 22 -

14.1 bind the parties and

14.2 if inconsistent with any other provisions of this lease, override them.

h

SCHEDULE

- Item 1**
[1.1] **Landlord**
Mansfield Shire Council
33 Highett Street
Mansfield Vic 3723
- Item 2**
[1.1] **Tenant**
Mansfield Adult Continuing Education (MACE) Inc
145 High Street
Mansfield, Vic 3722
- Item 3**
[1.1] **Guarantor**
Not applicable.
- Item 4**
[1.1] **Land**
The portion of Lot 2 Plan of Subdivision 339273
Refer to attached Plan.
- Item 5**
[1.1] **Landlord's Improvements**
Not applicable.
- Item 6**
[1.1] **Rent**
One dollar (\$1.00) per annum.
- Item 7**
[1.1] **Tenant's Improvements**
The construction of two 21m X 9m colourbond sheds for the purpose of
community participation in associated woodcraft and metalwork activities.

The construction will comply with all relevant Council planning and building
regulations.

A sketch plan of the construction is attached.
- Item 8**
[1.1] **Term of Lease**
10 Years from date of signing

h

Item 9
[2.1.1]

How rent is to be paid

Annually or for the term of the lease in advance.

Item 10
[2.1.2]

Outgoings, which the tenant must pay or reimburse

Statutory charges, service and utility charges.

In accordance with the Local Government Act 1989 Section 154, the land will be classified as being used exclusively for charitable purposes and will therefore be exempt from municipal rates.

Item 11
[2.1.7]

Risks which the insurance policies must cover

Public Liability (see below).

The tenant must adequately cover all of their own assets on the land for the duration of their tenancy, including all building and fixtures.

Item 12
[2.1.7]

Amount of Public Risk Insurance Cover

Five Million Dollars (\$10,000,000).

Item 13
[2.1.7]

Period of loss of rent and outgoings insurance

Not Applicable.

Item 14
[2.1.10]

Interest rate on overdue money

Not Applicable

Item 15
[2.2.1]

Permitted use

Accommodation area

Item 17
[11.1.1]

Who may initiate reviews

Either party to this agreement.

Item 18
[12]

Further term(s)

Two (2) X Ten (10) year options.

Item 19
[12]

Latest date for exercising option

One (1) month prior to expiration of lease.

Item 20
[13]

Security Deposit

Not applicable.

Item 21

The mediation procedure applies to this lease

[16.2]

The mediation procedure is:

a party may start mediation by serving a mediation notice on the other party.

the notice must state that a dispute has arisen and identify what the dispute is.

the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 7 days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator.

once the mediator has accepted the appointment the parties must comply with the mediator's instructions.

if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

The mediator may fix the charges for the mediation which must be paid equally by the parties.

If the dispute is settled, all parties must sign the terms of agreement and these terms re binding on the parties.

The mediation is confidential and -

- [a] statements made by the mediator or the parties, and
- [b] discussions between the participants to the mediation, before after or during the mediation, cannot be used in any legal proceedings.

It must be a term of the engagement of the mediator that the parties release the mediator from any court proceeding relating to the lease or the mediation.

The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

Item 22
[17]

Additional Provisions

Planning Scheme

Mansfield Shire Council's Planning Scheme requires a permit for the "development and use" of the land. Construction of the building and use of the land for any activity shall not commence until all of the necessary permits are obtained from Council.

Car Parking

Council's Mansfield Community Centre car park is available to be used for vehicles associated with the Community Shed activity providing the required number of car parks does not exceed 15 on a regular basis.

Services

Responsibility for water, power and sewerage will be at tenant's expense.

h

EXECUTION AND ATTESTATION:



The Common Seal of the Mansfield Shire)
Council was affixed in the presence of)
Vernon Robson, Administrator)

Robson

12TH MARCH 2003

.....
Administrator

Paul Martin

PAUL LADDIN

SIGNED on behalf of the Mansfield Adult Continuing Education (MACE) INC
in presence of:

.....

.....

Jim Greenwood

.....

Jan Cowley

.....
Print name

[Handwritten mark]

