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Notary Public FANZCN

Ynoo Pty Ltd
A.C.N. 008 288 819
An Incorporated Practice

A.B.N. 59 008 288 819

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Standards Legislation*



LEASE AGREEMENT

YORKE PENINSULA COUNCIL

and

DATED THE DAY OF 2017

LEASE

We, our, us (i.e. the council or lessor): <i>Insert name and address</i>	YORKE PENINSULA COUNCIL of PO Box 57 MAITLAND SA 5573
You, your (i.e. the lessee): <i>Insert name and address</i>	
The Property (i.e. your leased area): <i>Insert description</i>	Portion of the land comprised in Section 100 Hundred of Ramsay PLN 131400 Certificate of Title: Volume 5451 Folio 338 as set out in the plan annexed to this Lease Agreement excluding the area marked as Transfer Station
The lease period:	Commencing on the day of 2017 and expiring on the day of 2022 subject to right renewal as set out in item 2 of the schedule
Any optional extension period:	See item 2 of schedule and clause 42
The rent and manner of payment:	

We lease your premises to you for the lease period on the terms following.

THE COMMON SEAL of)
YORKE PENINSULA COUNCIL)
 was hereunto affixed in the presence of:)

.....
Mayor

.....
Chief Executive Officer

SIGNED by the said)
)
 in the presence of:) (Usual Signature)

..... *Signature of Witness*

..... *Full Name of Witness*

..... *Address of Witness*

.....

..... *Business Hours Phone No.*

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PART ONE – YOUR OBLIGATIONS

Special Meanings

- | | | |
|-----|--|--|
| 1.1 | We, our, us: | The Lessor on page 1. |
| 1.2 | You, your: | The Lessee on page 1. |
| 1.3 | The property: | The property that you are renting as described on pages 1 and 2. This includes any buildings or anything of ours, now or in the future, on the property (this includes for example but is not limited to yards, bores, ground tanks, reservoirs, dams, fences, gates, grids, ramps, dips and plant and equipment on the land including farming plant and equipment provided by us to you). |
| 1.4 | Objects and wishes of the parties with respect to this Lease Agreement: | The parties acknowledge that Council are making the property available that is adjacent to their transfer station site for purposes of allowing farming and grazing on the same but with Council's primary consideration being the stabilisation and restoration of this land, and undertaking that you have agreed to, subject to the terms and conditions of this Lease Agreement. |
| 1.5 | The lease period: | The lease period on page 1. |
| 1.6 | The rent: | The rent on page 1 (as increased under clause 43). |
| 1.7 | Item: | Reference to an item and a number means that item in the Table at the end of this lease. |
| 1.8 | Your visitors: | Your employees, agents, contractors, sub-tenants and anybody else you allow on to the property. |
| 1.9 | Our workers: | Our employees, agents, contractors and professional advisers. |

- | | | | |
|-------------------------------|------|------------------|--|
| | 1.10 | GST: | For the purposes of the lease, GST and any other terms defined in GST law have the meanings given to those terms in A New Tax System (Goods & Services Tax) Act 1999 (the “GST law”). |
| | 1.11 | Landlord: | The Lessor on page 1. |
| | 1.12 | Tenant: | The Lessee on page 1. |
| You must pay rent | 2.1 | | You must pay the rent in full (that is, with no set off or reduction) in the way set out on page 1. |
| | 2.2 | | You must pay the rent to us at our address on page 1 or to such other person, or at such other place, that we advise you by written notice. |
| You must pay charges | 3. | | Not Applicable |
| You must pay outgoings | 4.1 | | You must pay all rates and taxes relating to the property which includes Council Rates, Water Rates and water usage charges and Emergency Services Levy. |
| | 4.2 | | You must pay the things mentioned in this clause no matter who they are billed to noting that there will be a GST component added to these amounts which we are required to do at law. |
| You must pay costs | 5.1 | | You must pay one half of all solicitors’ costs of negotiating, preparing, stamping and registering this lease or any extension of this lease. |
| | 5.2 | | In addition, you must pay all stamp duty and out-of-pocket expenses to do with that. |
| | 5.3 | | Solicitors’ costs will be worked out based on the current scale of costs as charged by Messrs. Andrew B. Thiele & Co. Solicitors 10 Elizabeth Street Maitland SA 5573 and 52 William Street Norwood SA 5067. |
| | 5.4 | | You must pay one half of any fees charged by a Mortgagee for producing the Certificate of Title of the property or for consenting to this lease. |

**You must not sign
over this lease**

- 6.1 Unless you first get our written consent
 - 6.1.1 You must not transfer this lease, or use it as security for a loan or deal with it in any other way.
 - 6.1.2 You must not transfer any of your rights or obligations under this lease, or use them as security for a loan or deal with them in any other way.
 - 6.1.3 You must not allow anybody else to share any part of the property.
 - 6.1.4 If you are a company, you must not allow any change in the ownership or voting rights of any share in the company.
- 6.2 We can give or refuse consent as we wish and on whatever terms we wish. We have total discretion in the matter.
- 6.3 If you want our consent you must apply in writing to us giving us full details of your proposal and everybody involved and any further detail we ask for.
- 6.4 You must also pay us our reasonable costs and out-of-pocket expenses to do with your application. This is the case whether or not we give consent.

**Your use of
the property**

- 7.1 You must not use the property, or allow it to be used, except for the purpose of grazing and agriculture.
- 7.2. You must manage the property according to the most approved methods of good farm management applicable to the district and to our satisfaction in doing so keeping the property in good heart and condition and not allowing any portion to become impoverished nor at any time to permit or allow any pasture land to be overstocked.
- 7.3 You must not allow any unlawful thing to be done on the property.
- 7.4 You must not do anything on the property which could cause damage to or annoy us, or anybody near the property.
- 7.5 In each season there shall be no restriction on the cropping percentage.

**You must comply
with laws**

- 7.6 You must keep the property clean, tidy and free of rubbish.
- 8.1 You must comply with all government rules which (now or in the future) affect the property or your use of the property.
- “Government rules” are laws, by-laws, regulations, codes of practice and so on.
- 8.2 You must comply with any requirement to do with the property, or your use of the property, of the local council or any other government agency.
- 8.3 You must especially comply with all requirements under law to do with public health and safety.
- Laws such as, for example, the Country Fires Act, the Health Act, the Local Government Act, the Food and Drugs Act, the Work Health and Safety Act 2012 and the regulations and codes of practice under them (or any Act or regulation that replaces them).
- 8.4 You must also ensure that no part of the property becomes insanitary.
- 8.5 You must take all reasonable steps to keep the property free of rabbits, foxes and other vermin and noxious weeds.
- 8.6 You must not conduct or allow any auction sale, liquidation sale, clearance sale or sale of any type on the property.
- 8.7 You must give us notice of any infectious illness to humans and livestock and to any public authority as required by law.
- 8.7 You must at your cost comply with all laws and requirements regarding fumigation, disinfection, eradication and prevention of any such diseases and any requirements regarding the quarantining of stock.
- 8.9 If we get sued or fined or have to pay any costs because you fail to comply with this clause, you must pay us back everything we pay or owe as a result.

**You must maintain
the property’s
improvements**

- 9.1 You must keep the improvements on the property in good repair and condition.
- 9.2.1 If any fencing on the property requires renewal the council will consider (but need not at their discretion) consider

paying for the cost of the materials (see clause 30.2) unless it is required because of any act (or failure to act) of yours or your visitors, or because of your use of the property in which case you would pay the cost of the materials.

9.2.2 The labour component with respect to renewing fencing (unless it is required because of any act (or failure to act) of yours or your visitors, or because of your use of the property) which shall be your cost entirely, shall be shared in the following proportions:

- the lessee One Hundred percent (100 %)
- the lessor Zero percent (0 %)

9.3 Also, you do not have to do any structural work, unless:

- it is required because of any act (or failure to act) of yours or your visitors, or because of your use of the property; or
- it is specifically provided for in this agreement.

9.4 However, you are not liable under this clause to do anything if the cost of doing it is covered by insurance which either you, or we, have taken out under this lease.

You must look after your things

10. You must keep all your things on the property in good repair and condition.

Especially so as to prevent any harm to the property.

You must look after plumbing facilities

11.1 “Plumbing facilities” means toilets, sinks, drains, pipes, bores, tanks, reservoirs, dams and troughs.

11.2 You must not use the plumbing facilities on the property except for their normal purpose.

11.3 You must not put any rubbish or other material in them.

11.4 You must not allow your visitors to likewise misuse the plumbing facilities.

11.5 If there is any damage to plumbing facilities because of misuse by you or your visitors, you must fix it immediately.

You must tell us about defects

12. You must promptly give us written notice of any damage to or defect in the property.

Or anything which could harm the property or any person.

Or anything that needs repairing.

**Alterations to
the property**

- 13.1 Unless you first get our written consent, you must not:-
- do any alterations or additions to any part of the property; or
 - install or alter any fixtures, fittings or equipment.
- 13.2 We can give or refuse consent as we wish. We can give it on whatever terms we wish. We have total discretion in the matter.
- 13.3 If you want our consent, you must apply in writing to us. You must give us full details of the proposed work and materials. Also any further detail we ask for.
- 13.4 You must also pay us our reasonable costs and out-of-pocket expenses to do with your application. This is the case whether or not we give consent.

**Dangerous
materials**

14. Unless you first get our written consent, you must not bring anything onto the property which is dangerous, harmful, poisonous, explosive or inflammable unless it is to be used in the normal course of farming and agriculture.

We can inspect

- 15.1 You must allow us and our workers to come onto the property at any time to check its condition.
- 15.2 However, we must give you reasonable notice beforehand (except in an emergency).

**We can do work
if you don't**

- 16.1 By written notice given at any time, we can require you to do any work or repairs which are your responsibility under this lease.
- The notice may state a period for you to do the work or repairs, but it must be a reasonable period.
- 16.2 If you don't comply with the notice, then we may do the work or repairs on your behalf.
- However, we don't have to do them.
- 16.3 If we do them, then we and our workers can come onto the property for that purpose.

**Our right of entry
to do work**

- 16.4 All costs of doing them must be paid by you to us immediately.
- 17.1 This clause applies to work or repairs which are not your responsibility under this lease.
- 17.2 You must allow us and our workers to come onto the property to carry out any work or repairs which we think are needed.
- 17.3 However, we must give you reasonable notice beforehand (except in an emergency).
- 17.4 So far as practical, we must not disturb you or your visitors when we do the work or repairs.

**Insurances you
must get**

- 18.1 You must insure all of your stock, equipment, materials and machinery on the property for their full insurable value.
- The events you must cover are fire (including fusion), flood, lightning, explosion, impact of vehicles, storm and tempest, earthquake, water damage, civil commotion, burglary and malicious damage or any other event that we may reasonably require.
- 18.2 You must have a public risk insurance policy relating to the property.
- This must cover both you and us for each party's right and interest.
- The cover must be for a minimum amount of TEN MILLION DOLLARS (\$10,000,000.00) for any one occurrence.
- 18.3 You must pay any Workcover levies which are your responsibility.
- 18.4 You will obtain the insurances mentioned in this clause only from reputable insurers.
- 18.5 You must have these insurances in place throughout the lease period.
- You must pay all necessary premiums and levies for that purpose.

- 18.6 Whenever we require it, you must show us policies, certificates of currency, or other written evidence of these insurances.
- 18.7 Before any of these insurances run out, you must, if we request it, give us written proof that you have renewed it.
- 18.8 If you do not do so, we can take out the insurance in question.
- 18.9 If we do, you must pay us what it costs us immediately.

That is the case even if we have to pay a higher premium than you would.

**Payment for
insurances
we take out**

19. Not Applicable

Insurance claims

- 20.1 You must tell us by written notice, giving full detail, whenever there is a possible claim under any insurance mentioned in this lease.
- 20.2 In the case of any claim under insurances mentioned in clause 28, we alone may deal with the insurer regarding the claim. You must not interfere.

We may also settle the claim as we think fit, and you will be bound by the settlement.

**You must not
prejudice
any insurance**

- 21.1 You must not do anything which could prejudice any insurance mentioned in this lease.

For example, you must not do anything which could make an insurance void, or cause an increase in premium, or give the insurer a right to cancel.

- 21.2 You have to make good any part of any claim which is refused because of any act (or failure to act) of yours or your visitors.

You indemnify us

- 22.1 If we have a liability to anybody which arises wholly or partly from any of the following, you must pay us back everything we reasonably pay or owe as a result of that liability:-
- the misuse or negligent use by you or your visitors of any services at the property;
 - the overflow or leakage of water caused (wholly or partly) by any act (or failure to act) of yours or your visitors;

- your use or occupation of the property; or
- any other act (or failure to act) of yours or your visitors.

22.2 However, you don't have to pay us back anything which we can recover under any insurance taken out under this lease.

Limits on our liability

23.1 You occupy and use the property at your risk.

23.2 We have no responsibility for any loss of or damage to any of your stock, equipment, materials and machinery on the property nor any crop loss.

23.3 You release us from any costs or loss rising from any act (or failure to act) of ours or our workers.

[That is, you cannot sue us.]

23.4 However, this clause does not apply to costs or loss rising from any wilful or negligent act (or failure to act) of ours or our workers.

Limits on our liability for breakdowns

24.1 We have no responsibility for any costs or loss rising from the operation of, or any problem with:

- any machinery or equipment on the property; or
- any services at the property.

24.2 "Services" are things such as, for example, water, gas, electricity and (in the case of buildings and improvements on the property) lighting, air-conditioning, communication services and so on.

24.3 However, this clause does not apply to costs or loss arising from any wilful or negligent act (or failure to act) of ours or our workers.

We may seek new tenants

25.1 For one month before the end of this lease, we may put up on any part of the property a leasing sign.

You must not interfere with the sign.

25.2 We may also come onto the property at all reasonable times during that period with potential tenants.

You must yield up the property

26.1 At the end of this lease, you must give over the property to us.

26.2 It must be repaired, and in a state, so as to comply with this lease.

26.3 You must also remove from the property everything you brought onto it, or made on it.

This includes things of yours which you have fixed to the property.

26.4 You must fix any damage caused in removing things under this clause.

You must also put the property back into the condition it was before those things were on the property.

PART TWO – OUR OBLIGATIONS

Quiet enjoyment

27. If you fully and promptly comply with all your obligations under this lease, you may quietly enjoy the property for the lease period.

And without interference from us, or anybody to whom we transfer any of our rights under this lease.

Works to be carried

28. Intentionally omitted

Rates, Taxes and Charges

29. We will pay all rates, taxes and other outgoings in respect of the property except those that you have agreed to pay in clause 4.1.

Structural Repairs

30.1 We are responsible for the structural state and maintenance of the improvements (excluding fencing) on the property except as otherwise stated in this agreement.

30.2 We will provide the materials required to renew or repair fencing upon the property except as otherwise stated in this agreement.

PART THREE – MUTUAL OBLIGATIONS

New Fencing

31.1 If you require new fencing on the property (that is not replacement of an existing fence) you must notify us of the proposed fence line and set this out on a property drawn

scale plan together with details of the construction of the fence. We will consider paying or contributing towards fencing material costs only (at our discretion) but not any labour component.

- 31.2 We will advise you within one month of receiving your request whether we approve or not. This is at our total discretion. The cost of erecting any new fence (including in this case materials) will be at your cost.

Re-entry

- 32.1 At any time after any event mentioned in this clause happens, we can re-enter the property.

Or we can re-enter part of it whilst claiming it all.

[This means we can take back the property, and exclude you from it.]

This lease then ends.

- 32.2 The events are:
- if any rent is unpaid for 14 days after it should have been paid (and whether or not we have demanded it be paid);
 - if you disobey this lease in any other way;
 - if you do an act of bankruptcy;
 - if you are a company, you come under external administration (or you resolve to);
- [These words have special legal meanings. See the Bankruptcy Act and the Corporations Law.]
- if someone else lawfully takes possession of any of your property pursuant to any order of any court with civil jurisdiction or as part of a debt recovery process;
 - if you stop payment on any cheque to us;
 - if someone gets a court judgment against you; or
 - if someone levies execution against you.
- [For example, if someone attempts to seize any of your assets, real estate or bank funds.]

Removal and Disposal of Chattels

- 33.1 When this lease ends we may remove any of your goods and chattels or plant and equipment left behind by you and store them at your expense.
- 33.2 We will not be liable to you for trespass, detinue, conversion or negligence.

- 33.3 We will advise you where they are stored. If you do not collect them after one month we may sell or dispose of them at our complete discretion. Any proceeds received by us can be deducted from any rent or other monies owing by you to us after the payment of any storage or other expenses. If there are balance funds left after this we will forward the balance to you.

Power of Attorney

- 34.1 If this lease ends under clause 32, you appoint us your attorney to do anything necessary to put that into effect.
- 34.2 In particular, we may execute a surrender of lease in your name and get it registered at the Lands Titles Office.
- 34.3 You cannot revoke this power of attorney (please note this is not a general power of attorney, only a power of attorney that relates to the things mentioned in this clause).

Arbitration

- 35.1 If we have a dispute under this agreement which we cannot mutually resolve that dispute will be referred to the arbitration of a single arbitrator to be appointed as set out in this clause.
- 35.2 The party giving the notice ("the claimant") will deliver to the other party ("the respondent") a written list of 3 proposed Arbitrators setting out their names and addresses.
- 35.3 The respondent must within 14 days notify the claimant in writing which one (if any) of the proposed Arbitrators he selects and that person shall be the single Arbitrator.
- 35.4 If the respondent fails to respond in that time or notifies the claimant in writing that he does not agree with any of those persons then the single Arbitrator shall be selected by the President of the Law Society of South Australia or his nominee and the issue shall be determined by the arbitration of that person.
- 35.5 The decision of the Arbitrator will be binding on you and us and we will pay one half of the costs of the arbitration and you will pay the other half of the costs of the arbitration.

Option for Purchase

36. Not Applicable

Essential Terms

37. You must comply with all your obligations in this lease fully, correctly and on time, without fail.

Your strict compliance is essential.

**Preservation
of Rights**

- 38.1 If this lease ends, especially under clause 32, that does not affect any right of either party.
- 38.2 Using a right (and especially the right of re-entry) given in this lease does not affect any other right.

**You must pay
interest**

39. You must pay us interest at the rate of ten percent (10%) on whatever is unpaid after the time it should have been paid by you to us under this lease.

**Refunding
Costs to us**

- 40.1 You must immediately refund to us any damages or penalties rising from your disobedience of this lease which we pay.
- 40.2 You must immediately pay us any out-of-pocket expenses (including solicitors' costs) to do with:-
- us getting, or attempting to get, anything you owe us under this lease;
 - us using, or attempting to use, any of our rights in this lease;
 - us enforcing, or attempting to enforce, any obligation in this lease; or
 - us curing, or attempting to cure, your disobedience of this lease.

**Recovery of
Funds Owed**

41. Anything owed by you to us under this lease is recoverable by us in the same way as unpaid rent.

Term of Lease

- 42.1 If you request it, from the end of the lease period, we will lease the property to you for a further period of five (5) years.

That further lease is on the exact same terms as this lease, except for this clause.

- 42.2 However, the right in this clause only applies if:-
- you make the request by written notice given to us between the days 3 and 6 months before the end of the lease period; and
 - at the time you give that notice, you are not in breach of this lease.

Rent Increases

- 43.1 During the lease period, and any extension of it, the rent will be adjusted.

- 43.2 It will be adjusted as from every date, or after every period, mentioned in Item 1.
- 43.3 It will be adjusted by the way set out in Item 1.
- 43.4 However, the rent can never decrease from any level it reaches.
- 43.5 You must pay the adjusted rent at the same times, and in the same way, as the previous rent was to be paid.

Notices

- 44.1 All notices must be in writing.
- 44.2 All notices must be given to the other party.
- 44.3 Notices can be given in person.
- 44.4 Notices can also be left at the other party's address on page 1, or at the other party's last known address.
- 44.5 Notices can also be sent there by post, but they must be correctly addressed and posted.
- 44.6 Notices can also be given to you by being left at, or sent by post to, the property.
- 44.7 If posted, a notice is treated as given the next business day after posting.
- 44.8 Any notice may be signed by a party, or any person that party authorises to sign it.

Losing Rights

45. A party's action, or lack of it, on any disobedience of this lease by the other does not affect the party's rights if the other:-
- repeats or continues the disobedience; or
 - disobeys this lease in another way.

Void or unenforceable terms

- 46.1 Clauses in this lease must be read down so that they are not void or unenforceable.
- 46.2 If they cannot be read down, they must be severed (that is, treated as if cut out).
- 46.3 Anything in this lease which plainly can't apply to the property must also be severed.

	46.4	The rest of this lease is not affected if any clauses are read down or severed.
Planning Approval	47.1	If this lease must by law be approved by the local council, or any other government agency, then it is subject to getting that approval.
	47.2	You, and we, must use every reasonable effort to get that approval.
Joint and Several Liability	48.	If there are more than one of you then:- <ul style="list-style-type: none"> • we only have to give notices to one of you; and • all your obligations in this lease are joint and several. [This means all of you together, but also each of you separately, must comply in full with obligations in this lease.]
Cost of Compliance	49.	You must comply with all your obligations in this lease at your cost.
Interpreting this lease	50.1	Any example given in this lease is not meant to show all possible cases.
	50.2	No part of any clause in this lease limits any other part of this lease, unless that is the only way it can be read.
	50.3	Reference to a party includes the party's successors and transferees. Also the party's personal representatives, if the party is a natural person.
	50.4	Reference to any statute includes statutes which change or replace it.
	50.5	Any word indicating the singular includes the plural, and vice versa.
	50.6	The contents checklist and the headings for each clause are not to be taken into account in interpreting this lease.
Goods and Services Tax	51.1	Rent is a GST exclusive Rent But for this clause 51, the Rent expressed in this Agreement is a GST exclusive Rent.
	51.2	Rent to be increased for any GST

If any GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time, 'GST') is payable by the Landlord in respect of the supply of the Demised Premises to the Tenant, then the Rent specified in this Agreement ('Original Rent') is to be increased so that the Landlord receives an amount ('Increased Rent') which, after subtracting the GST liability of the Landlord on that Increased Rent, results in the Landlord retaining the Original Rent after payment of that GST liability.

- 51.3 Outgoings are GST inclusive Outgoings
But for this clause 51, all Outgoings referred to in this Agreement are GST inclusive Outgoings.
- 51.4 Outgoings to be reduced for any input tax credits.
If the Tenant is obliged to reimburse the Landlord for all or any part of any Outgoing, the amount that the Tenant must reimburse is limited to the Tenant's proportion of amount paid or payable by the Landlord in respect of that Outgoing less the corresponding proportionate amount of any input tax credit claimable by the Landlord in respect of that Outgoing, plus any adjustment to that amount under clause 51.2.
- 51.5 Landlord to act reasonably to minimise any increase in Rent or Outgoings due to the GST
The Landlord will do all things reasonably available to it to minimise any increase in the Rent under this clause 51, and to minimise any increase in any Outgoings in respect of the Demised Premises.
- 51.6 Landlord to assist the Tenant
The Landlord will do all things reasonably available to it to assist the Tenant to claim on a timely basis any input tax credits the Tenant may be entitled to claim for the acquisition of the Demised Premises, including issuing tax invoices on a timely basis as reasonably requested by the Tenant.

Table

Item 1	Date/s and way of working out rent increases	<p>The rent shall be fixed for the first Five (5) years of this Lease agreement.</p> <p>If the lease is extended for a further five (5) year period the rental payable for that extended period shall be as mutually agreed between the parties and failing mutual agreement then the fair market rent for the property.</p> <p>The “fair market rent” means the amount fixed as the fair market rent for the property by a Licensed Valuer appointed by the President of the Australian Institute of Valuers (South Australian Division).</p> <p>The Valuer is treated as acting as an expert and not as an Arbitrator. His or her costs must be paid half each by you and us. The requirements of this Item 1 are not affected just because dates mentioned in this Item 1 have passed.</p>
Item 2	Option for Renewal or Purchase	<p>(1) At the end of this lease the Lessor undertakes that if he decides to re-lease the said land or sell the said land (or any portion of it) he will first offer that lease or right to purchase to the Lessee.</p> <p>(2) In the event that the parties are unable to mutually agree terms then (after giving the Lessee seven days written notice to that effect) the Lessor may offer the same to some other person on the same terms and conditions.</p> <p>(3) If the Lessor changes the terms and conditions offered to the Lessee in any way at any time he shall firstly offer the same to the Lessee on those modified terms and conditions (again giving the Lessee seven days written notice to that effect).</p> <p>(4) This option for renewal or purchase shall remain valid for a period of two years after the date of the commencement of this lease agreement.</p>

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