

Dealing Number



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1. Lessor Lodger (Name, address, E-mail & phone number) Lodger Code
BERMDALE PTY LTD AS TRUSTEE

2. Lot on Plan Description County Parish Title Reference
LOT 5 ON CP MCH4578 MARCH MARYBOROUGH 15465139
LOT 6 ON CP MCH4578 MARCH MARYBOROUGH 10936124

3. Lessee Given names Surname/Company name and number (include tenancy if more than one)
THE MARYBOROUGH SUGAR FACTORY LIMITED
ABN 11 009 658 708

4. Interest being leased
FEE SIMPLE

5. Description of premises being leased
THE WHOLE OF THE LAND AND ALL BUILDINGS THEREON

6. Term of lease 7. Rental/Consideration
Commencement date/event: 17/05/2011 Refer attached Schedule
Expiry date: 16/05/2021 and/or Event:
*Options: 1 x 5 years
#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)

8. Grant/Execution
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- *the attached schedule
* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature
.....full name
.....qualification

Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

19/4/11
Execution Date

M. A. Lenthwaite Director
J. F. Lenthwaite Jr Director
Lessor's Signature
Bermdale Pty Ltd
ACN 069 331 853

9. Acceptance
The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease

.....signature
.....full name
.....qualification

Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

31/3/2011
Execution Date

THE MARYBOROUGH SUGAR FACTORY LIMITED
ACN 009 658 708
COMMON SEAL
DIRECTOR
DIRECTOR
Lessee's Signature

Title Reference 10936124, 11938013

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REFERENCE SCHEDULE

Item 1 : Parties

Lessor **Bermdale Pty Ltd as Trustee**
Address PO Box 31, Koumala Qld 4738
Telephone No. 4950 3823
Facsimile No.

Lessee **The Maryborough Sugar Factory Limited**
Address PO Box 119, Maryborough Qld 4650
Telephone No. 4121 1107
Facsimile No. 4121 1139

Item 2 : Term

Ten (10) years

(a) **Commencement Date** 2011

(b) **Expiry Date** 2021

Item 3 : Premises Address

114-116 Kent Street, Maryborough Qld 4650

Item 4 : Rent

\$76,960.00 per annum (exclusive of GST)

Item 5 : Review Date(s) (CPI/Market/Fixed):

(a) **CPI Review Dates** N/A

(b) **Market Review Dates** Year 5

(c) (i) **Fixed Increase Dates** Years 2,3,4,6,7,8,9 and 10

(ii) **Fixed Increase Percent** 3.5%

Item 6 : Agreed Proportion of (Estimated) Outgoings

100%

Item 7 : Percentage Rental

N/A

Item 8 : Permitted Use

Office Building

Item 9 : Insurance - Public Risk

\$20,000,000.00

Item 10 : Option Periods

1 x 5 years

Item 11 : Security Deposit

Nil

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Item 12 : **Lessor's Fixtures and Fittings**

N/A

Item 13 : **Guarantors**

Item 14 : **Special Conditions**

Option to Purchase – Lessee's First Right of Refusal

Item 15 : **Car Parking Fee**

N/A

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1 INTERPRETATION

1.1 Terms and Reference Schedule

- (1) Terms in **bold** in the Reference Schedule have the meaning shown opposite.
- (2) Item numbers refer to those in the Reference Schedule unless stated otherwise.

1.2 Definitions

- (1) **"Agreed Proportion of (Estimated) Outgoings"** means the percentage in Item 6 of the Reference Schedule
- (2) **"API"** means the Australian Property Institute (Inc.) Queensland Division
- (3) **"Building"** means all buildings and improvements on the Land of which the Premises form part including the land
- (4) **"Car Park"** means those parts of the Building nominated by the Lessor for the parking of cars including all ramps and driveways servicing the car parking area
- (5) **"Car Parking Fee"** means the amount in Item 15 of the Reference Schedule as varied under this Lease
- (6) **"Common Areas"** means the areas of the Building designated for common use by the Lessor
- (7) **"Commencement Date"** means the date inserted in Item 6 of the Form 7
- (8) **"CPI"** means the Consumer Price Index (All Groups) for Brisbane published by the Australian Bureau of Statistics. If that index no longer exists, "CPI" means an index that the president of the API decides best reflects changes in the cost of living in the relevant city in which the Premises are located
- (9) **"Expiry Date"** means the date inserted in Item 6 of the Form 7
- (10) **"Financial Year"** means 1 July to 30 June
- (11) **"Land"** means the property described in Item 2 of the Form 7
- (12) **"Lessee"** means the party described in Item 3 of the Form 7 and its successors and assigns
- (13) **"Lessee's Property"** means all fixtures, fittings, equipment, stock and other articles in the Premises owned by the Lessee
- (14) **"Lessor"** means the party described in Item 1 of the Form 7 and its successors and assigns
- (15) **"Lessor's Property"** means any property, fixture or fitting owned by the Lessor in or on the Building
- (16) **"Lettable Area"** means the parts of the Building the Lessor has leased or can lease at a commercial rental
- (17) **"New Premises"** means the proposed new location of the Lessee's business in the event of relocation
- (18) **"Outgoings"** means the Lessor's reasonable expenses directly attributable to the operation, maintenance or repair of the Building and charges, levies, premiums, rates or taxes payable by the Lessor because it is the owner or occupier of the Building or the Land and such expenses include, but will not be limited to, all costs associated with:
 - (a) rates, taxes and charges (including water access charges and water consumption charges) payable to any government or other authority
 - (b) cleaning costs and materials
 - (c) rubbish removal
 - (d) light and power charges
 - (e) air-conditioning and ventilation

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- (f) fire protection and prevention
- (g) security
- (h) insurance premiums
- (i) repairs and maintenance
- (j) costs for the control of pests, vermin or insects or other similar infestation
- (k) costs of maintaining gardens
- (l) management costs
- (m) if the Premises are under the *Body Corporate and Community Management Act 1997*, then Body Corporate levies

but does not include:

- (n) expenditure of a capital nature, including the amortisation of capital costs
 - (o) insurance premiums for loss of profits
 - (p) the Lessor's contributions to merchants' associations and centre promotion funds
 - (q) payment of interest and charges on amounts borrowed by the Lessor
 - (r) any other item prescribed by regulation in the Act
- (19) "**Percentage Rent**" means for each Rental Year an amount equal to the percentage in Item 7 of the Reference Schedule of Turnover in excess of the Turnover Threshold
- (20) "**Premises**" means the premises described Item 5 of the Form 7 on the attached Plan.
- (21) "**Renewed Lease**" means a Lease of the Premises for the relevant period set out in Item 10 of the Reference Schedule on the terms set out in Clause 16
- (22) "**Rent**" means the amount in Item 4 of the Reference Schedule as varied under this Lease
- (23) "**Rental Year**" means each year of the Term
- (24) "**Security Deposit**" means the security bond, deposit bond or bank guarantee as required by the Lessor by the Lessee to the Lessor as set out at Item 11 or as varied under this Lease
- (25) "**Services**" means all gas, electricity, telephone, water, sewerage, fire prevention, ventilation, air-conditioning, security services and all other utilities, services or systems provided in the Building
- (26) "**Turnover**" means the gross sales of the Lessee's business operated from the Premises but does not include any item excluded by the Act

1.3 Reference

- (1) Reference to:
 - (a) the singular includes the plural and the plural includes the singular
 - (b) a person includes a body corporate
 - (c) a party includes the party's executors, administrators, successors and permitted assigns.
- (2) If a party consists of more than one person, this Lease binds them jointly and each of them severally.
- (3) Headings are for convenience only and do not form part of this Lease or affect its interpretation.

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- (4) Unless stated to the contrary a reference to an Act shall include all regulations under and amendments to that Act whether by subsequent Acts or otherwise passed in substitution for the Act referred to or incorporating any of its provisions.

2 RENT AND OTHER PAYMENTS

2.1 Payments

The Lessee must pay the Lessor:

- (a) the Rent
- (b) the Agreed Proportion of (Estimated) Outgoings
- (c) charges for Services to the Premises during the Term
- (d) stamp duty assessed on the Lease and costs of registering the Lease
- (e) the Lessor's reasonable expenses incurred in obtaining the consent of the Lessor's mortgagee to the Lease and costs of survey fees associated with registration of the Lease
- (f) the Lessee pays to the Lessor all the Lessor reasonable legal costs, stamp duty, registration fees, survey fees, mortgagee consent fees, incurred by the Lessor relating to the preparation, registration and execution of this Lease and to any assignment, sublease, amendment or variation of this Lease.
- (g) all reasonable costs and expenses incurred by the Lessor in relation to any notice given to the Lessee in accordance with this Lease, lawful determination or attempted determination of this Lease, the surrender of this Lease, the granting of any consents, proceedings lawfully brought by the Lessor to enforces the Lessee's performance and obligations under this Lease
- (h) any reasonable additional or unusual charges and expenses incurred by the Lessor at the request of the Lessee
- (i) any tax or levy in the nature of a goods and services tax or consumption tax or other tax levied directly on or relating to the receipt of payments including Rent incurred by the Lessor during the Term
- (j) any other payments arising from the Lessee's use of the Premises.

2.2 Manner of Payment

- (1) The Lessee must pay the Rent:
- (a) by equal monthly instalments in advance on the first day of each month
 - (b) the first payment must be made on the Commencement Date
 - (c) if necessary the first and last instalments must be apportioned on a daily basis.
- (2) **Agreed Proportion of Outgoings**
- (a) In addition to the Annual Rent, the Lessee covenants to pay to the Lessor the Lessee's Proportion of Outgoings. The Lessee must reimburse to the Lessor the Lessee's Proportion of Outgoings within twenty-one (21) days of the Lessor giving to the Lessee a copy of the relevant assessment received by the Lessor provided that no payment need be made more than twenty-one (21) days before the due date for payment to the assessing authority. If an assessment makes provision for payment of Outgoings by instalments, the Lessee may the Lessee's Proportion of Outgoings by instalments
 - (b) At the beginning and end of the Lease, the Lessee must pay the daily pro rata proportion of the Lessee's Proportion of Outgoings for any period that is less than the full rate period
 - (c) Payments to be made as the Lessor directs.

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2.3 Charges for Electricity

The Lessee acknowledges that if the Lessor supplies electricity to the Lessee as provided in the *Electricity Act 1994* and Section 244 of the *Electricity Regulations 1994* that the Lessor has elected to recover the cost of it from the Lessee as provided in that Act.

2.4 Additional Rent

If the Lessee is late in paying the Lessor any money, the Lessor may charge the Lessee additional rent calculated on any late payments at the rate of two percent (2%) per month or any part of a month. All additional rent charged must be paid on demand.

2.5 Goods and Service Tax

- (1) The parties agree that:
 - (a) terms used in this Lease that are defined in the Goods and Services Act 1999 (the GST Act) have the same meaning given in the GST Act
 - (b) unless an amount is expressed otherwise, all amounts payable by the Lessee to the Lessor under this Lease are stated exclusive of GST
 - (c) failure by the Lessee to pay the Lessor GST pursuant to this Clause treated in the same manner as this Lease treats the failure to pay the consideration for the relevant Taxable Supply.
- (2) The Lessee must pay to the Lessor for each Taxable Supply made in connection with this Lease the amount of GST that will be payable by the Lessor for that Taxable Supply as and when the consideration for that Taxable Supply is payable by the Lessee to the Lessor.
- (3) The Lessor must give the Lessee a GST Tax Invoice for each Taxable Supply made in connection with this Lease.
- (4) The amount of each Outgoing excludes the amount of any Input Tax Credit that the Lessor receives from the Australian Taxation Office on that Outgoing.

3 RENT REVIEWS

3.1 CPI Review

Where CPI Review Dates are inserted in Item 5(a) of the Reference Schedule the Rent must be reviewed on each CPI Review Date to an amount represented by A where:

$$A = \frac{B}{C} \times D$$

- Where
- B = the CPI for the quarter ending immediately before the relevant CPI review date
 - C = the CPI for the quarter one (1) year before the quarter in B, and
 - D = the Rent payable immediately before the CPI Review Date.

3.2 Market Review

- (1) Where Market Review Dates are inserted in Item 5(b) of the Reference Schedule the Rent must be reviewed in each Market Review Date to an amount equal to the current market rent for the Premises at the commencement of the year under review.
- (2) The current market rent must be agreed upon between the Lessor and the Lessee and if agreement on the current market rent is not reached by one (1) month after the relevant Market Review Date must be determined by a Registered Valuer, to be agreed upon by the Lessor and the Lessee or failing agreement, as nominated by the President of the API, Queensland Division.
- (3) The costs of the Valuer must be borne equally by the Lessor and the Lessee.

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3.3 Fixed Review

Where Fixed Increase Dates are inserted in Item 5(c)(i) of the Reference Schedule from and including each Fixed Increase Date the Rent increases by the corresponding percentage set out in Item 5(c)(ii).

3.4 Payment of Rent Prior to Review

- (1) Until a determination of Rent is made, the Lessee must pay the Rent payable before the date of the relevant review.
- (2) Any variation in Rent resulting from a review takes effect on the relevant review date.
- (3) Within fourteen (14) days of a determination, the Lessor must refund any overpaid Rent or the Lessee must pay any shortfall.

3.5 Rent Not to Decrease

Notwithstanding Clauses 3.1 to 3.3 (inclusive) during the initial term of the Lease the rent in any one year will not in any circumstances be less than the rent payable in the immediately preceding year.

4 USE OF PREMISES

4.1 Use of Premises

- (1) The Lessee must bring the Premises into active and bona fide use for the Permitted Use and for no other purpose. The Lessee will comply with any statutory requirement relating to the use of the premises and the Lessee's non-compliance will not negate the terms of this Lease.
- (2) The Lessor does not warrant the Premises are suitable for any purpose or may be used for the Permitted Use.

4.2 Occupation of Premises

The Lessee acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor that others have leased or occupy or will continue to lease or occupy or will lease or occupy or will not be permitted to lease or occupy premises within the Building or that the Lessee has any exclusive right to carry on the type of use or business permitted under or carried on pursuant to this Lease.

4.3 Conduct

The Lessee must not:

- (a) allow the Premises to be used for annoying, offensive or illegal acts which cause annoyance, nuisance, grievance, damage or disturbance to the occupants of adjacent premises or to the Lessor
- (b) hold or permit to be held any auction or similar sale in the Premises
- (c) use any form of power other than gas or electric current or gas supplied through metres
- (d) overload the Services
- (e) damage the Lessor's Property
- (f) alter the Premises, install any partitions or do any building work
- (g) do anything that may invalidate the Lessor's insurance or increase the Lessor's premiums
- (h) display, paint or erect any signs, save standard business signage
- (i) knowingly use or allow the Lessor's Property to be used for any purpose other than those for which they were designed
- (j) interfere with any drains, water supply, gas, electrical, plumbing, air-conditioning equipment or other services or any of the Lessor's Property

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- (k) prepare or cook for sale or other commercial purpose any food on the Premises
- (l) use any apparatus which radiates heat other than required to be used in the ordinary course with the Permitted Use
- (m) bring any heavy machinery, plant or equipment onto the Premises unless it is reasonably necessary for the Permitted Use and in any case must not overload the floors, walls or ceilings
- (n) make holes, deface or damage floors, walls or ceilings or other parts of the Premises
- (o) install any vending or amusement machines
- (p) use or install any product or property in the Premises likely to cause damage

4.4 Consent

The Lessee may seek the Lessor's written consent to any of the matters in Clause 4.3 which can be granted at the Lessor's discretion.

4.5 Lessee's Obligation

The Lessee must:

- (a) obtain and maintain all permits or consents required from any government authority to carry on the Permitted Use in the Premises
- (b) obey all reasonable directions and rules given by the Lessor relating to use of the Common Areas
- (c) obey any rules made by the Lessor relating to the operation, safety, use, occupation and management of the Building
- (d) immediately notify the Lessor of any damage to, defect or disrepair in the Services or the Lessor's Property
- (e) immediately notify the Lessor of any infectious diseases notifiable to the relevant Health Authority occurring on the Premises of which it is or ought reasonably come to its attention at any time throughout the term
- (f) immediately provide the Lessor with copies of all notices, which it is required to serve on or receive pursuant to any legislation relating to the Premises
- (g) at the expiration or sooner determination of the Term return all keys of the Premises to the Lessor
- (h) lock all exterior doors and windows in the Premises and the Building when the Premises or the Building are not being used
- (i) keep the Premises open for business during the core trading hours of the Building as defined in the Act
- (j) pay all charges, assessments or impositions which may be levied in respect of the Premises during the Term and arising as a result of the use and occupation of the Premises by the Lessee
- (k) and keep the Premises free from vermin.

4.6 Air Conditioning

- (1) In the event that the Lessor does supply conditioned air to the premises during the term then the following provisions shall apply:-
 - (a) the Lessee must keep the air conditioning plant in the premises in good and workable condition with the exception of:-
 - (i) damage by fire, lightning, flood, storm, tempest, act of God, or civil commotion
 - (ii) capital repairs, and

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- (iii) damage caused by the intentional or negligent misconduct of the Lessor or its employees or agents.
- (b) The Lessee must fix any damage to the air conditioning equipment caused by the intentional or negligent misconduct of the Lessee or its employees.
- (c) Without limiting the Lessee's obligations to repair, the Lessee must keep in effect a maintenance contract in relation to the filters and ducting of the air conditioning plant and equipment servicing the Premises. The Lessee must also regularly service and test the air conditioning plant for the presence of diseases including legionnaires disease and must otherwise comply with all laws and requirements in respect of such infectious diseases.
- (d) The Lessor must promptly repair, maintain and replace the air conditioning equipment to the extent that the Lessee is not required by this Lease to do so, including without limitation replacement of the air conditioning if the plant becomes irreparable or not economically viable to repair. Should the large air conditioning unit need to be replaced within the first three (3) years of the Term of Lease THEN the parties agree to pay the cost of a similar air conditioning unit in equal shares.

5 MAINTENANCE AND REPAIR

5.1 Repair

The Lessee must:

- (a) keep the Premises, including all signage, in good repair and condition structural defects and fair wear and tear excepted
- (b) fix any damage caused by the Lessee or its employees
- (c) maintain, repair or replace all glass in the Premises, the doors locks windows and window fittings, all broken, faulty or blown light tubes and associated electrical apparatus in the Premises
- (d) during the last year of the Term, and more often if reasonably required by the Lessor having regard to the condition of the Premises, paint the walls, ceilings and other painted surfaces of the interior of the Premises with two (2) coats of first quality paint in a proper and workmanlike manner, in the original colours or in such other colours approved by the Lessor.

5.2 Cleaning

The Lessee must:

- (a) keep the Premises clean and tidy, consistent with the nature of the business conducted on the Premises
- (b) keep the Lessee's Property clean and tidy
- (c) if the Lessor and Lessee agree to use a cleaning service supplied by the Lessor to the Premises the Lessee must pay to the Lessor on demand the reasonable cost of cleaning the Premises
- (d) any cleaning of the Premises by a service supplied by the Lessor must be of a satisfactory commercial standard and the cleaners will be allowed access to the Premises at all reasonable times.

5.3 Lessor's Right to Inspect and Repair

- (1) Upon giving the Lessee two (2) days notice in writing, the Lessor may inspect or carry out repairs, maintenance, or building work in or around the Premises at any reasonable time. In an emergency, the Lessor may enter at any time without giving the Lessee notice.
- (2) The Lessor may carry out any of the Lessee's obligations under this Lease if the Lessee does not carry them out on time or as reasonably directed by the Lessor. If the Lessor does so, then the Lessee must pay the Lessor's expenses.

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5.4 Lessee's Works

- (1) The Lessee must not carry out any building work without the Lessor's consent. The Lessor cannot unreasonably refuse to give its consent if:
 - (a) the Lessor approves the Lessee's drawings and specifications for the works
 - (b) the Lessee and the Lessor agree on the type, quality, colour and size of the materials to be used
 - (c) the Lessor reasonably approves of the Lessee's builder
- (2) The Lessee must:
 - (a) pay for any work approved under Clause 5.4(1)
 - (b) indemnify the Lessor against all injury or damage to the Premises or the Building caused by those works, and
 - (c) maintain the works.

5.5 Lessor's Fit-out

If the Lessor has provided any fit-out to the Premises then:

- (a) that fit-out is Lessor's Property
- (b) the Lessee must not damage any fit-out provided by the Lessor or install any additional fit-out without the consent of the Lessor which must not be unreasonably withheld
- (c) if during the Term of this Lease or any renewed term, any fit-out provided by the Lessor needs to be replaced because of fair wear and tear, then the Lessor will replace that fit-out with fit-out of a like quality
- (d) If during the Term of this Lease or any renewed term, the Lessee requires any fit-out by the Lessor to be replaced for reason other than fair wear and tear, the Lessor or the Lessee with the Lessor's consent will replace that fit-out at the cost of the Lessee.

6 ASSIGNMENT AND SUBLETTING

- 6.1 The Lessee may only assign, sublet, mortgage, charge or deal with the Lease or the Premises with the Lessor's consent which must not be unreasonably withheld.
- 6.2 The Lessor must give its consent if:
 - (a) the Lessor is satisfied that the new Lessee is suitable, respectable, responsible and financially secure and is capable of carrying out the Lessee's obligations under this Lease
 - (b) the Lessee and the new Lessee signs any agreement and gives any security which the Lessor reasonably requires
 - (c) the Lessee complies with any other reasonable requirements of the Lessor
 - (d) the Lessee is not in breach of the Lease
 - (e) the Lessee releases the Lessor from all claims the Lessee has or may have in respect of this Lease
 - (f) the Lessee pays the Lessor's reasonable costs and expenses of giving its consent including legal costs, stamp duty and registration fees.
- 6.3 If the Lessee is a corporation, any change in the principal shareholding or composition of the board of directors altering the effective control or control of one half or greater of the shares of the board is an assignment of this Lease and must be dealt with in accordance with this Lease.

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7 LESSOR'S RIGHTS AND OBLIGATIONS

7.1 Variations In Lessee's Agreed Proportion

If the Lessor modifies the Building or alters the Lettable Area, the Lessor can recalculate the Agreed Proportion of (Estimated) Outgoings on the same basis as the Agreed Proportion of (Estimated) Outgoings was calculated before the Commencement Date but taking into account the increased or reduced (as the case may be) Lettable Area. Every such recalculation shall be binding on the parties to this Lease from the date the Lessor notifies the Lessee in writing.

7.2 Head Lease or Other Interests

The Lessee must allow any person having any estate or interest in the Premises superior to or concurrent with the Lessor to exercise the powers to enter and view the Premises and to carry out repairs renovations maintenance and other work and otherwise to exercise or perform their lawful rights or obligations.

7.3 Rules

The Lessor may make rules relating to the Building and Common Areas dealing with:

- (a) their use, care and cleanliness
- (b) the preservation of good order
- (c) the comfort of persons
- (d) the location of garbage and refuse pending its removal
- (e) the closure of any part outside normal business hours
- (f) the external appearance
- (g) the control and operation of the Car Park.

7.4 Management

The Lessor must manage and operate the Building and may appoint a person or corporation to carry out this task.

7.5 Complex Exterior

The Lessor has the exclusive right to use the exterior of the Building, provided that any use of the exterior of the Building must not interfere with or adversely impact upon the Lessee's use of the Premises.

7.6 Licenses For Use of Common Areas

The Lessor, may grant to any person a licence to use any part of the Common Areas (other than toilets) provided such licence must not substantially or adversely effect the Lessee's rights under this Lease.

7.7 Quiet Enjoyment

Provided the Lessee performs its obligations and complies with the terms of this Lease the Lessee may peaceably hold and enjoy the Premises during the continuance of this Lease without interruption by the Lessor or any other person lawfully claiming under the Lessor.

7.8 Insurance

The Lessor must insure the Building (but excluding all additions to the Premises carried out by the Lessee and the Lessee's Property) for its full replacement value and unless the insurance becomes void or voidable through or by reason of some default by the Lessee keep it insured.

7.9 Rates and Taxes

The Lessor must pay all Outgoings not payable by the Lessee or other occupant of the Building.

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7.10 **Maintenance**

The Lessor must keep the Common Areas tidy and in good repair and must maintain the structural integrity of the Premises and Building.

7.11 **Services**

The Lessor must do everything reasonable to ensure the Services and Lessor supplied fixtures, fittings and equipment operate efficiently during normal working hours but the Lessor is not liable if they do not.

7.12 **Directory Boards**

Any directory boards provided by the Lessor are under its control.

7.13 **Consent of Mortgagee**

The Lessor must obtain from any mortgagee an unconditional consent in writing to this Lease.

7.14 **Relocation**

Intentionally Deleted

7.15 **Common Area Toilets**

The Lessee, its employees, agents, licensees and invitees may in common with all other persons to whom the Lessor grants a similar right use the toilets in the Building. The Lessee will use its best endeavours to keep the toilets in a clean and proper condition throughout the term of this Lease.

8 **RISK**

8.1 **Own Risk**

The Lessee occupies and uses the Premises at its own risk. The Lessee also carries out building work in the Premises at its own risk.

8.2 **Release**

- (1) The Lessee releases to the fullest extent permitted by Law, the Lessor and its agents, employees and contractors from all claims and demands resulting from any accident, damage, loss, injury or death occurring in the Premises or in any part of the Building or outside the Building except to the extent that it is caused by a deliberate act, negligence or default by the Lessor or its agents, employees or contractors or from structural defects.
- (2) Despite any term in this Lease or any law to the contrary, the Lessor is not legally responsible for any loss or damage suffered by the Lessee because the Lessor does or fails to do something relating to the Premises or Complex unless the Lessee gives the Lessor written notice to fix that act or omission and the Lessor unreasonably fails to do so.

8.3 **Indemnity**

Without limiting the generality of Clause 8.2 the Lessee indemnifies and holds indemnified the Lessor and its agents, employees and contractors from and against all actions, claims, losses, damages and costs for or in respect of which the Lessor may sustain or incur or for which the Lessor or its agents, employees and contractors shall or may be or become liable whether during or after the Term in respect of or arising from:

- (1) **Breach of Covenant** - Loss, damage or injury to property or person from or contributed to by the neglect or default of the Lessee to observe or perform any of the covenants, conditions and restrictions on the part of the Lessee whether positive or negative expressed or implied
- (2) **Misuse** - Negligent use or misuse, waste or abuse by the Lessee or any servant, agent or sub-Lessee of any Services to the Premises or to the Building
- (3) **Escape of Harmful Agent** - Overflow or escape of water, fire, gas, electricity or any other harmful agent whatsoever in or from the Premises caused or contributed to by any act or omission on the part of the Lessee its servants, agents or sub-Lessees

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- (4) **Failure to Notify** - Failure of the Lessee to notify the Lessor of any defect of which it is aware in the Premises whatsoever
- (5) **Use of Premises** - Loss damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Premises by the Lessee or any servant, agent or sub-Lessee
- (6) **Personal Injury** - Any personal injury sustained by any person in or about the Premises or the Building howsoever caused other than the wilful or negligent act or omission of the Lessor or its servants or agents.

8.4 **Insurance**

- (1) At all times during the continuance of this Lease the Lessee must effect and keep current:
 - (a) a public liability insurance policy in respect of the Premises having endorsement to include the risks and indemnities contained in Clause 8.3 in the names of the Lessor and all persons having superior title to the Lessor and the Lessee for their respective interests in an amount set out in Item 9 of the Reference Schedule or any higher amount that the Lessor may from time to time reasonably require the Lessee by notice in writing to effect for any single claim, accident or event, with an insurance office or company approved by the Lessor (such approval not to be unreasonably withheld)
 - (b) a policy of insurance in the names of the Lessor and the Lessee for their respective interests to cover:
 - (i) the full reinstatement replacement costs of plate glass in the Premises
 - (ii) special industrial risks (if any) due to the specific Permitted Use of the Premises by the Lessee (if any)with an insurance office or company approved by the Lessor (such consent not to be unreasonably withheld)
 - (c) worker's compensation including employer's liability insurance (unlimited cover).
- (2) The Lessee must give the Lessor:
 - (a) a duplicate copy of each such policy immediately it is effected
 - (b) a copy of the receipt issued for payment of each premium within five (5) business days of it being paid
 - (c) a copy of the certificate of currency when requested.

8.5 **Notice of Accident**

The Lessee must give the Lessor prompt notice in writing of any accident in or want of repair to the Premises or defect in any Services which it is aware.

8.6 **Conduct Voiding Insurance**

The Lessee must not knowingly do or permit to be done or omit to do any act in the Premises or on the Common Areas which may render void or voidable any insurances on the Building or that may cause the rate of premium on any such insurance policies to be increased or be liable to be increased and the Lessee must do or permit to be done immediately upon request by the Lessor, everything necessary to ensure the continuance of any insurances effected by the Lessor.

9 **DEFAULT AND TERMINATION**

9.1 **Essential Terms**

The essential terms are:

- (a) Payments [Clause 2.1]
- (b) Use of Premises [Clause 4.1]
- (c) Conduct [Clause 4.3]

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- (d) Lessee's Obligations [Clause 4.5]
- (e) Repair [Clause 5.1]
- (f) Cleaning [Clause 5.2]
- (g) Obtain consent before assignment, subletting, mortgaging or charging [Clause 6.1].

9.2 Default

The Lessee is in default of this Lease if:

- (a) it breaches an essential term of this Lease
- (b) it repudiates its obligations under this Lease
- (c) it is insolvent or is unable to pay its/their debts when they fall due
- (d) its interest under this Lease is attached or taken in execution under any legal process, or
- (e) it does not comply with any other term of this Lease within a reasonable time after receiving notice from the Lessor to do so.

9.3 Termination of Tenancy

- (1) If the Lessee is in default and does not remedy the default within the time stated in any notice from the Lessor, the Lessor may do any one or more of the following without prejudice to any other right which it may have against the Lessee:
 - (a) by notice to the Lessee, convert this Lease to a month to month tenancy on the terms of this Lease as far as they can be applied to a monthly tenancy
 - (b) by notice to the Lessee, terminate the Lease and take possession of the Premises
 - (c) recover from the Lessee any loss suffered by the Lessor due to default of the Lessee
 - (d) exercise any of its other legal rights.
- (2) The Lessor must take reasonable steps to mitigate its loss.

10 EXPIRY OF TERM

10.1 Lessee's Obligations

On expiry of the Term or earlier termination the Lessee must:

- (a) vacate the Premises in good repair and clean condition fair wear and tear being acceptable
- (b) remove all the Lessee's Property from the Premises
- (c) repair any damage caused by removal of the Lessee's Property
- (d) return all keys, security passes and cards held by the Lessee or its employees, and
- (e) paint the Premises with two coats of first quality paint in a workmanlike manner in colours approved in writing by the Lessor.

10.2 Failure to Remove Lessee's Property

If the Lessee does not remove the Lessee's Property on expiry or earlier termination, the Lessor may:

- (a) remove and store the Lessee's Property at the Lessee's risk and expense, or
- (b) treat the Lessee's Property as being abandoned, in which case title in the Lessee's Property passes to the Lessor who may deal with it as it thinks fit without being liable to account to the Lessee.

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10.3 Power of Attorney

- (1) The Lessee irrevocably appoints the Lessor and each and every one of its directors to be the true and lawful attorney of the Lessee to act at any time after the power to take back possession of the premises has been exercised.
- (2) The attorney is empowered to:
 - (a) execute and register (if necessary) a Transfer or Surrender of the Lease or a Withdrawal of any Caveat lodged by the Lessee affecting the Land together with any other documents needed to effect those dealings
 - (b) do all things which the Lessee is required to do under this Lease.
- (3) The Lessee undertakes to ratify and confirm anything the attorney lawfully does and to pay the Lessor's reasonable expenses incurred in exercising the powers under Clause 10.3 on demand.

11 MONTHLY TENANCY

11.1 Monthly Tenancy

If the Lessee continues to occupy the Premises after the Expiry Date in accordance with this Lease:

- (a) The Lessee does so as a monthly Lessee on the same conditions as at the last day of the Term, and
- (b) either party may terminate the monthly tenancy by giving to the other one (1) month's notice expiring on any day.

12 DAMAGE AND DESTRUCTION

12.1 Rent Reduction

If the Building is damaged or destroyed and the Lessee or its employees have not caused or contributed to such damage or destruction and as a result the Premises are wholly or partially unfit for use or the Lessee cannot gain access to the Premises then from the date that the Lessee notifies the Lessor of the damage or destruction until the date that the Premises are again fit for use and accessible the Lessor:

- (a) must reduce the Rent, Agreed Proportion of Outgoings and any other moneys payable to the Lessor by a reasonable amount depending on the type and extent of damage or destruction, and
- (b) cannot require the Lessee to clean, repair or maintain until the Premises are fit for use and accessible.

12.2 Lessee May Terminate

The Lessee may terminate this Lease by giving thirty (30) days notice to the Lessor unless:

- (a) within three (3) months of the event causing damage or destruction, the Lessor notifies the Lessee that the Premises will be reinstated, and
- (b) carries out reinstatement works within a reasonable time having regard to the extent of the damage.

12.3 Lessor May Terminate

If the Lessor considers the damage to the Premises renders it impractical or undesirable to reinstate the Premises, it may terminate this Lease by giving to the Lessee notice in writing.

12.4 No Obligation to Rebuild

The Lessor is not obliged to restore the Building or Premises according to the former design or specifications.

12.5 Dispute Resolution

- (1) The Lessee is entitled to dispute the reasonableness of any reduction of rent and other moneys.

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- (2) Any dispute as to the extent and reasonableness of any reduction in rent and other moneys must be determined by an independent Registered Valuer appointed by the President of the API at the request of either party.
- (3) In making the determination, the appointed Valuer acts as an expert and the determination is final and binding on both parties.
- (4) The cost of the determination must be paid by the parties equally unless otherwise decided by the appointed Registered Valuer.

12.6 Antecedent Rights

Termination under Clause 12 or any other provision of this Lease does not effect either parties' accrued rights before termination.

13 SALE BY LESSOR

- 13.1 Before transferring any interest in the Land, the Lessor must obtain a signed deed from the transferee containing covenants in favour of the Lessee that the transferee will be bound by the terms of this Lease and will not transfer its interest in the Land unless it obtains a similar deed from its transferee.

14 INSPECTION BY PURCHASER OR LESSEE

The Tenant must:

- 14.1 allow the Lessor to exhibit on the Premises notices advertising the Complex or any part of it for sale; and
- 14.2 at all reasonable times upon prior reasonable notice permit the Lessor to show the Premises to prospective purchasers; and
- 14.3 within the 6 month period immediately before the end of the term granted by this Lease, permit the Lessor to show the Premises to prospective Lessees at all reasonable times and on prior reasonable notice and allow the Lessor to affix and exhibit on the Premises where the Lessor thinks fit the usual "For Sale" and/or "To Let" notices. In each case the notices may display the name and address of the Lessor and its agents.

The Tenants must not remove any notice without the prior written consent of the Lessor

15 GENERAL

15.1 Naming Rights

The Lessor may:

- (a) name or rename the Building with the approval of the Lessee
- (b) alter or build additions to the Building including the Car Parks and in so doing interrupt the Services provided any interruption is minimised and the Lessee is not entitled any compensation.

15.2 Lessor May Rectify

If the Lessee does not perform any obligation under this Lease the Lessor may perform that obligation as agent of the Lessee and the full cost to the Lessor of performing that obligation is payable by the Lessee to the Lessor on demand.

15.3 Notices

- (1) All notices, requests, consents, approvals, agreements or other communications to or by a party to this agreement given for the purposes of this agreement are to be:
 - (a) in writing and dated and signed by a person duly authorised to sign for and on behalf of the party giving the notice
 - (b) a notice addressed to the Lessee may be given by being left at the premises

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- (c) a notice dispatched to a party through the post must be address of the recipient party provided under this Agreement from time to time and will be deemed to be given on the third day after mailing and must be evidenced by a fully executed photocopy
- (d) a notice dispatched by facsimile is deemed to be given the next day after the transmission was dispatched and must be evidenced by a successful transmission report.

15.4 Default Notices

In addition to the aforementioned requisites for notices, where a Notice to Remedy Default is given to the Lessee the notice must contain a description of the default requiring rectification and must stipulate a period of time in which the rectification is to occur. That period shall take into account what needs to be done and the reasonable time required to remedy the default.

15.5 Waiver Negatived

Failure by the Lessor or Lessee to exercise any power or right under this Lease can not be such to be construed or deemed a waiver of the relevant power or right unless it is in writing.

15.6 Entire Agreement

This Lease:

- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Lease, and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

15.7 Severability

If any provision of this Lease or its application to any person or circumstance is or becomes unenforceable, illegal or void the remaining covenants are not effected and each covenant of this Lease is enforceable to the greatest extent permitted by Law.

15.8 Obligations of Parties

The respective covenants and obligations of the parties as set out in this Lease whether positive or negative must be construed as if each such obligation or covenant is a separate and independent covenant made by one party in favour of the other party and continuing (unless the context otherwise requires) throughout the Term and for so long as it remains to be performed.

15.9 Statutes and Regulations

Reference to statutes regulations ordinances or by-laws are deemed to extend to all statutes regulations ordinances or by-laws amending consolidating or replacing the same.

15.10 Governing Law

This Lease must be governed by and construed in accordance with the law of the State of Queensland.

15.11 Saturdays, Sundays and Public Holidays

If under this Lease the day on or by which any act, matter or thing must to be done is a Saturday, Sunday or a public holiday that act matter or thing must be done on the next succeeding day which is not a Saturday, Sunday or Public holiday.

15.12 Modification of Implied Covenants

The obligations and powers implied in leases by Sections 105 and 107 of the *Property Law Act 1974* are negatived. All other obligations on the part of the Lessee implied by the *Property Law Act 1974* are not negatived but are modified to the extent that they are inconsistent with the provisions of this Lease.

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16 OPTION FOR FURTHER TENANCY

16.1 Exercise of Option

If further terms have been inserted in Item 10 of the Reference Schedule the Lessor must grant a Renewed Lease of the Premises to the Lessee for each further term inserted in Item 10 of the Reference Schedule if the Lessee:

- (a) gives notice to that effect to the Lessor not less than 3 months before the Term expires, and
- (b) has not breached any of the essential terms of this Lease set out on Clause 9.1.

16.2 Terms of Renewed Lease

The Renewed Lease must be on the same terms as this Lease except:

- (a) the term will be that specified for the relevant Option in Item 10 of the Reference Schedule
- (b) the date of commencement will be the day after expiry of the Term
- (c) the rent will be an amount determined under Clause 3.2 as if the last day of the Term was a Market Review Date
- (d) the amount of public liability insurance in Item 9 of the Reference Schedule will be an amount reasonably required by the Lessor
- (e) the Security Deposit in Item 11 of the Reference Schedule will be an amount reasonably required by the Lessor
- (f) Clause 16 will be omitted from the Renewed Lease when no relevant further terms remain in Item 10 of the Reference Schedule or the Lessee does not comply with Clause 16.1.

16.3 Dispute

If rent is not determined at the commencement date of the Renewed Lease, the Lessee must pay the Rent and any adjustment will be made on determination of the relevant rent.

17. SECURITY BOND

17.1 If a Security Bond has been inserted in Item 11 of the Reference Schedule, the Lessee must deliver to the Lessor before the Date of Commencement its payment for the Security Bond

17.2 If the Lessee fails to pay rental or other moneys payable pursuant to the terms of this Lease, or if the Lessor suffers loss or damage because of any other breach of the Lease by the Lessee and if the Lessee does not remedy the breach by payment of rental or otherwise then the Lessor may call upon the Security Bond and utilise the proceeds of same towards the arrears of rental or other moneys or towards the loss or damage. In doing so, the Lessor will not waive the Lessee's breach and will not waive any other right or remedy arising from the breach. The Lessor and the Lessee acknowledge that the Lessor will not call upon the Security Bond as stated whilst a dispute exists between the Lessor and the Lessee as to whether the Lessee has breached this Lease.

17.3 If the Lessor does apply the proceeds of the Security Bond it may notify the Lessee that it has done so. Within fourteen (14) days of the date of notification, the Lessee must reinstate the Security Bond to the amount specified in Item 11 of the Reference Schedule.

17.4 At the end of the Lease, the Lessor must return the Security Bond to the Lessee within two (2) months of expiration of the Term unless:-

- (a) the Lessor has started proceedings against the Lessee; or
- (b) the Lessee is holding over with the Lessor's consent.

18 TRUSTEE PROVISIONS

18.1 If the Lessee enters into or otherwise at any time holds this Lease as a trustee or any trust ("the Lessee's Trust"), then whether or not the Lessor has any notice (actual or constructive) of the Lessee's Trust, the following apply:-

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- (a) the Lessee warrants that it has full power under the Lessee's Trust to enter into and perform its obligations and liabilities under this Lease;
- (b) the obligations and liabilities of the Lessee under this Lease extend to the fund and any other asset of the Lessee's Trust ("the Trust Deed");
- (c) the Lessee shall on the written demand or direction of the Lessor exercise all rights of indemnity that the Lessee may at any time have against the Trust Fund and any beneficiaries or unit holders of the Lessee's Trust or any of the same for the benefit of the Lessor.
- (d) The Lessee shall be and remain liable under this Lease both in their relevant personal capacities and as a trustee of the Lessee's Trust; and
- (e) the Lessee shall produce the original stamped Trust Deed and all documents evidencing the Lessee's Trust and the Trust Fund to the Lessor within fourteen (14) days of written request for the same by the Lessor.

19 SPECIAL CONDITIONS

19.1 Option to Purchase - First Right of Refusal

- (1) The Lessor covenants and agrees with the Lessee that the Lessor will not sell or offer for sale during the term of this Lease or any renewal or extension thereof of the property being the whole of the land described as Lot 5 on CP MCH 4578 in Certificate of Title 15465139 and Lot 6 on CP MCH 4578 in Certificate of Title 10936124 situate in the County of March Parish of Maryborough to any other person firm or corporation without first offering same for sale to the Lessee at the same price and upon the same terms and conditions which the Lessor would be prepared to accept from such other person firm or corporation PROVIDED THAT the Lessee shall accept or reject such offer within a period of twentyone (21) days from the making of such offer by the Lessor.
- (2) The benefit of this right of first refusal is not assignable.

20 GUARANTEE

20.1 Personal Guarantee

Clauses 20.2 to 20.9 apply if Item 13 of the Reference Schedule has been completed by inserting details of the Guarantors.

20.2 Guarantee and Indemnity

In consideration of the Lessor granting this Lease to the Lessee at the Guarantor's request, the Guarantor guarantees to the Lessor:

- (a) the payment by the Lessee of the Rent and other money agreed to be paid; and
- (b) prompt performance and observance of all of the Lessee's covenants and obligations contained or implied in this Lease.

20.3 Indemnity

The Guarantor indemnifies the Lessor against all Claims which the Lessor may suffer or incur in connection with any breach or default by the Lessee under this Lease or any extension or renewal of the term of this Lease.

20.4 Liability of Guarantor

The Lessor's rights and the Guarantor's liability under Clauses 20.2 and 20.3 will not be prejudiced or affected by:-

- (a) the granting of any time, credit, forbearance, indulgence or concession by the Lessor to the Lessee or any Guarantor;
- (b) any absolute or partial release of the Lessee or Guarantor or any compromise with the Lessee or any Guarantor;
- (c) any variation of this Lease, extension or renewal of the Term, holding over or continued occupation of the Premises by the Lessee;

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- (d) any composition, compromise, release, discharge, arrangement, abandonment, waiver, variation, relinquishment or renewal of any security or right by the Lessor;
- (e) any assignment of this Lease or sublease of any part of the Premises;
- (f) the termination of this Lease;
- (g) the fact that the Rent or any other money may not be recoverable, may cease to be recoverable or may never have been recoverable or that any transaction affecting the Rent or the obligations contained in this Lease is or was wholly or partially void, voidable or unenforceable;
- (h) any failure to sue or agreement not to sue or any dealing, act or omission (whether constituting a waiver, election, estoppel or otherwise) by the Lessor with respect to the Rent, other money payable or the obligations under this Lease;
- (i) any fact, circumstance, legal disability or incapacity which would otherwise release the Lessee or any Guarantor from its obligations;
- (j) non-execution of this Lease by one or more of the persons named as Guarantor or the unenforceability of this guarantee and indemnity against one or more of the Guarantors; or
- (k) the exercise or purported exercise by the Lessor of its rights of re-entry;

AND EACH of the above circumstances shall be construed separately and independently and so as not to limit the meaning or any other listed circumstance and shall not be limited by the provisions of any other clause.

20.5 Irrevocable

This guarantee and indemnity is irrevocable and will remain in force until the Lessee has performed and observed all its obligations under this Lease.

20.6 Guarantor Liable

- (a) The Guarantor's liability will not be discharged by any payment to the Lessor which is later avoided by law.
- (b) If that happens, the Lessor, the Lessee and the Guarantor will be restored to their respective rights as if the payment had not been made.

20.7 Indemnity on Disclaimer

If a liquidator disclaims this Lease, the Guarantor indemnifies the Lessor against any resulting Claim by the Lessor for the residue of the term of this Lease.

20.8 Guarantor Not Prove in Liquidation

- (a) The Guarantor will not prove or claim in any liquidation, composition, arrangement or assignment for the benefit of creditors until the Lessor has received 100c in the dollar of all money payable to it by the Lessee.
- (b) The Guarantor will hold any proof, claim or dividend received by it on trust for the Lessor.

20.9 Guarantee to Continue

- (a) If this Lease is transferred or assigned, the benefit of this guarantee and indemnity will extend to the transferee or assignee and continue concurrently for the benefit of the Lessor regardless of the transfer or assignment unless the Lessor releases the Guarantor in writing.
- (b) This guarantee and indemnity covers the period while the Lessee occupies or is entitled to occupy the Premises as Lessee or holds an equitable interest over the Premises under an agreement for the lease or as a periodic Lessee.
- (c) Without limiting Clause 20.9(b) if registration of this Lease is required to legally create a leasehold estate, then until this Lease is registered, it will operate from the commencement of the term of this Lease as an agreement for lease.

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- (d) This guarantee and indemnity will apply whether this Lease is construed as an agreement for lease, a periodical tenancy or otherwise.

This guarantee and indemnity will extend to the Lease, agreement for lease or periodical tenancy created by the Lessee's exercise of any option for renewal.