

Resolution of Directors of Flexile Holdings Pty Ltd ATF The Robyn Ottey Superannuation Fund (the "Fund") held at 7 Fawcett Way, Warwick on 30th April , 2020

Present

Neil Warren Ottey
Robyn Elizabeth Elsie Ottey

Chairperson

Neil Warren Ottey was elected chairperson.

Previous Meeting

The Minutes of the previous meeting were read and confirmed as correct.

Rent Relief for Tenant as a Result of the Financial Effects of COVID-19 Unit 7-152 Balcatta Road, Balcatta (the Property)

The Chairperson advised the meeting that:

- The Fund has a 50% interest in the Property;
- The other owners are Wayne and Sandra Ottey as trustees for The SANE Super Fund;
- Taxation and Accounting Services Pty Ltd (the Tenant), a related party, leases the Property;
- The National Cabinet Mandatory Code of Conduct for commercial leasing (the Code) was released by the Prime Minister on April 7, 2020;
- The objective of the Code is to share, in a proportionate, measured manner, the financial risk and cashflow impact during the COVID-19 period, whilst seeking to appropriately balance the interests of the tenants and landlords;
- The Tenant has advised that it is suffering financial stress as a result of the COVID-19 pandemic and has requested (copy attached) rent relief as provided for in the Code;
- The rent invoices for March and April are outstanding;
- The Code provides, *inter alia*:

It applies to all tenancies that are suffering financial stress or hardship as a result of the COVID-19 pandemic, where the tenant is eligible for the JobKeeper programme and has an annual turnover of up to \$50 million (SME Tenant).

It applies from a date after 3 April 2020 for the period during which the JobKeeper programme is operational (i.e. until the end of the pandemic period). The JobKeeper programme is currently in place for 6 months.

The overarching principles set out in the Code include:

- landlords and tenants share a common interest to preserve the lease and facilitate the resumption of normal trading activities;
- landlords and tenants are required to negotiate and work towards achieving mutually satisfactory outcomes and negotiate in good faith;
- landlords and tenants will act in an open, honest and transparent manner and provide sufficient and accurate information to enable the parties to reach agreement consistent with the Code; and
- the arrangements must be proportionate to the impact of the COVID-19 pandemic on the tenant.

The Code provides that the following leasing principles should be applied as soon as practicable on a case-by-case basis:

- landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the rent ordinarily payable, on a case-by-case basis, based on the reduction in the tenant's trade for the pandemic period and a subsequent recovery period;
- rental waivers must constitute no less than 50% of the total reduction in rent and may be greater where necessary to allow the tenant to fulfil its ongoing obligations, but regard must also be had to the landlord's financial ability to provide such waivers. Tenants may waive the 50% minimum waiver requirement;

- any remaining relief may be in the form of a waiver or a deferral; and
- deferred rent must be paid over the balance of the lease term, but if the balance of the lease term is less than 24 months, then the tenant may pay the deferred rent over a 24 month period, commencing after the end of the pandemic period (i.e. deferred rent could continue to be paid after the lease expiry).

These principles offer a starting point for landlords and tenants when seeking to negotiate rent relief due to COVID-19. While they are binding on leases with SME Tenants, they also provide good guidance for landlords seeking to provide relief and for other commercial tenants experiencing hardship.”

It is intended that there will be State- or Territory-based Industry Code Administration Committees, comprising representatives from relevant industry bodies representing landlord, tenant and SME interests, with an independent chair appointed by the relevant State or Territory Government. The role of the committee will be primarily to encourage application of the Code.”;

- The ATO has advised (SMSF FAQs) “Some landlords are giving their tenants rent relief as a rent reduction, waiver or deferral because of the financial effects of COVID-19 and we understand that you may wish to as well. Our compliance approach for 2019-20 and 2020-21 financial years is that we will take no action if an SMSF gives a tenant - even one who is a related party - a temporary rent reduction, waiver or deferral because of the financial effects of COVID-19 during this period. If there are temporary changes to the terms of the lease agreement in response to CIVID-19, it is important that the parties to the agreement document the changes and the reasons for the change. You can do this with a minute or renewed lease agreement or other contemporaneous document.”; and
- Preliminary discussions have taken place between N.W. Ottey, R.E.E. Ottey, W.A. Ottey and S.K. Ottey.

The meeting carefully considered the Tenant’s request for rent relief and the requirements outlined above. They are aware that the tenant is receiving the JobKeeper payment and, therefore, that its turnover has reduced by at least 30%. They considered the request reasonable and within the terms of the Code. The cost to the Fund of providing the relief would be \$1,118.10 (\$1,366.51 – 1,161.53 = 204.98 less GST = 186.34 per month x 6 months). The proposed rent relief would be no more than that which would apply to an unrelated party. The rent payments would be up to date by June 30th.

Resolved

That, subject to the other joint owners also agreeing to the relief being granted:

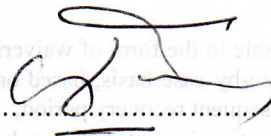

- the Tenant be notified that the request has been approved; and
- the appropriate documentation be prepared and executed.

Closure

There being no further business the meeting was closed.

Confirmed

Signed as a true and correct record of the meeting.

.......... Neil Warren Ottey..... Robyn Elizabeth Elsie Ottey

30 April 2020

The Directors
Flexile Holdings Pty Ltd ATF The Robyn Ottey Superannuation Fund

W.A. & S.K. Ottey ATF The SANE Super Fund

Dear Sirs

Re: Unit 7-152 Balcatta Road, Balcatta
Rent Relief for Tenant as a Result of the Financial Effects of COVID-19

As previously discussed, our business is suffering financial stress as a result of the COVID-19 pandemic and is having difficulty meeting its financial obligations under the lease.

We, therefore, request rent relief in terms of The National Cabinet Mandatory Code of Conduct for commercial leasing which was released by the Prime Minister on 7 April 2020.

The Code applies to all tenancies that are suffering financial stress or hardship as a result of the COVID-19 pandemic, where the tenant is eligible for the JobKeeper programme and has an annual turnover of up to \$50 million (SME Tenant).

It applies from a date after 3 April 2020 for the period during which the JobKeeper programme is operational (i.e. until the end of the pandemic period). The JobKeeper programme is currently in place for 6 months.

Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the rent ordinarily payable, on a case-by-case basis, based on the reduction in the tenant's trade for the pandemic period and a subsequent recovery period.

Rental waivers must constitute no less than 50% of the total reduction in rent and may be greater where necessary to allow the tenant to fulfil its ongoing obligations, but regard must also be had to the landlord's financial ability to provide such waivers. Tenants may waive the 50% minimum waiver requirement.

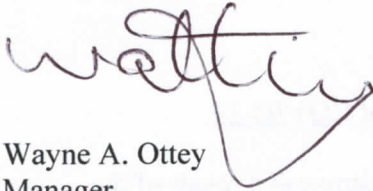
Any remaining relief may be in the form of a waiver or a deferral.

Deferred rent must be paid over the balance of the lease term, but if the balance of the lease term is less than 24 months, then the tenant may pay the deferred rent over a 24 month period, commencing after the end of the pandemic period (i.e. deferred rent could continue to be paid after the lease expiry).

Our turnover has reduced by more than 30% and we are receiving the JobKeeper payment.

We respectfully request that 15% rent relief be provided for 6 months in terms of the Code. i.e. Monthly rent reduced by 15% from \$2,733.03 to \$2,323.08 for the months April to September inclusive.

It is planned that the rent payments will be up to date by 30 June 2020.



Wayne A. Ottey
Manager,
Taxation and Accounting Services Pty Ltd