

Ref: 1364 RV / Src: M
Form: U7L
Licence: 01-05-028
Licensee: George Newhouse & Associates

LEASE



New South Wales
Real Property Act 190

9384501D

PRIVACY NOTE: this information is legally required and v

STAMP DUTY

Office of State Revenue	OFFICE OF STATE REVENUE	(N.S.W. TREASURY)
CLIENT No. 3323749	STAMP No. 1368	
STAMP DUTY \$6163.50	SIGNATURE <i>CS</i>	
TRANSACTION No. 1287982	DATE 18-2-03	
ASSESSMENT DETAILS:		

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises
101/1038691
 Part being the whole of Building E and associated carpark and drive through in the complex known as Menai Central, Cnr Central, Qld Illawarra and Carter Roads, Menai

(B) LODGED BY

Delivery Box 124E	Name, Address or DX and Telephone LEGALINK PARALEGAL SUPPORT SERVICES LTO BOX 124E	Reference (optional): J-NEWG-540114	CODE L
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(C) LESSOR

MENAI CENTRAL PTY LIMITED ACN 092 075 440

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable): 1. 2. 3.

(E) LESSEE

QSR LIMITED A.C.N. 089 163 682

TENANCY:

(G) 1. TERM:

Ten (10) years

2. COMMENCING DATE:

10 DECEMBER 2002

3. TERMINATING DATE:

9 DECEMBER 2012

4. With an OPTION TO RENEW for a period of ten (10) years set out in Clause 20 of the Schedule hereto.

5. With an OPTION TO PURCHASE set out in Not applicable

6. Together with and reserving the RIGHTS set out in the Schedule Annexed hereto

7. Incorporates the provisions set out in ANNEXURE(S) the Schedule annexed hereto.

8. Incorporates the provisions set out in MEMORANDUM filed at Land and Property Information New South Wales as No. Not applicable

9. The RENT is set out in item/clause Item 1 of the Schedule hereto marked "A"

*CS
18/2/03
395V
13/11*



DATE

(H)

Certified correct for the purposes of the Real Property Act 1900 by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Corporation: MENAI CENTRAL PTY LTD ACN 092 075 440

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person: ~~Arnold Newhouse~~
Office held: ~~MURRY OFFORD~~
Director

Signature of authorised person:

Name of authorised person: Carolyn Angela Smith
Office held: Secretary

SEE EXECUTION CLAUSE PAGE 10 OF ANNEXURE "A"

Certified correct for the purposes of the Real Property Act 1900 by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Corporation: QSR LIMITED ACN 089 153 682

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person: MICHAEL KILIAS
Office held: COMPANY SECRETARY

Signature of authorised person:

Name of authorised person: GARY WILSON
Office held: MANAGING DIRECTOR

(I) STATUTORY DECLARATION

I, _____
solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended;
2. The lessee under that lease has not exercised the option

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____

in the State of New South Wales

on _____

in the presence of—

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness:

SCHEDULE TO LEASE

DATED _____ DAY OF _____ 2002

BETWEEN: MENAI CENTRAL PTY LIMITED ACN092 075 440 (LESSOR)

AND: QSR Limited ACN089 163 682 (LESSEE)

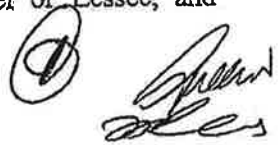
A. PRELIMINARY

1. INTERPRETATION

In this lease unless the context indicates a contrary intention:-

- 1.1 words importing the singular number include the plural and vice versa;
- 1.2 words importing persons include companies;
- 1.3 words importing one gender include the other genders;
- 1.4 the headings appearing in this lease are inserted for convenience only and in no way define limit or describe the scope or extent of the clauses of this lease and shall not affect the construction thereof;
- 1.5 where two or more persons are Lessees all covenants agreements and obligations herein shall bind the Lessees jointly and severally;
- 1.6 where under or pursuant to this Lease or anything done hereunder the day on or by which any act matter or thing is to be done is a Saturday or a Sunday or a public holiday in the State or place in which the Demised Premises are situated such act matter or thing may be done on the next succeeding day which is not a Saturday Sunday or such a public holiday;
- 1.7 if the Lessor or Lessee be a corporation then reference to the Lessor or Lessee herein shall mean and include the successors assigns and transferees of the corporation;

if the Lessor or Lessee be a natural person then reference to the Lessor or Lessee herein shall include his her or their permitted assigns and their executors or administrators;
- 1.8 "Building" means the improvements or if more than one, the buildings comprising all of the lettable areas within the Centre;
- 1.9 "Centre" shall mean the complex to be known as "Menai Central" which includes that part of:
 - 1.9.1 the land contained in Certificate of Title Folio Identifier 101/1038691; and
 - 1.9.2 any other land which the Lessor develops in conjunction with or as additional to such land in which the Lessor has or is entitled to any estate or interest as owner or Lessee; and



which the Lessor conducts manages and operates as a Retail and/or Commercial Centre from time to time pursuant to these presents and shall include all structures buildings and other improvements now or hereafter erected on such land and all plant, machinery, fittings and equipment therein or thereon under the ownership or control of the Lessor and all conveniences, amenities, appurtenances and common areas thereof.

1.10 "Common Area" means those parts of the Centre provided by the Lessor from time to time for common uses parking areas, driveways, access and egress roads, walkways, pavements, entrances, passages, courts, corridors, vestibules, halls, toilets, docks, stairways, elevators and escalators and such other areas, grounds, appurtenances and conveniences of and in relation to the Centre.

1.11 "Demised Premises" or "Premises" means that part of the Centre shown on the plan exhibited prior to the execution hereof and initialled by the parties hereto which extends vertically from and including the upper surfaces of the floor level up to but excluding the ceiling or roof, as the case may be and horizontally (where the boundaries thereof comprise walls, shopfronts or doors) to:-

1.11.1 the mid-point of all perimeter masonry walls (before application of any surfacing materials);

1.11.2 where the whole or part of any wall shall consist of shop fronts and/or doors a straight line extending between the outer faces of the masonry walls at each end respectively of such shop fronts, windows and/or doors; and

1.11.3 where part of such walls consists of roller shutter doors, a straight line extending between the return faces of the masonry walls at each end respectively of such roller shutter doors along the midline of the bottom edges of the said roller shutter doors where the same meet the floor or pavement

but where the Demises Premises include driveways or pavements then only that part of the surface of such driveways or pavements.

1.12 "Lease Year" means each period of twelve (12) months ending at midnight on the day immediately prior to the anniversary of the commencement date of the lease.

1.13 "policies of insurance with respect to Public Risk" means an insurance policy covering public risk which will:-

(a) be in the name of the Lessee, the Lessor, the Lessor's agents, managers, employees, representatives and contractors and provide for a minimum cover for an amount not less than the sum specified in Item 4 of Annexure A hereto for each accident, claim or event or such higher amount as the Lessor specifies;

- (b) extend to cover any liability for the death of, or injury to, any person or damage to any person's property sustained when such person is using or entering or near any entrance, passage, stairway, display or display window to into or of the Premises, or sustains the injury or damage as a result of an act or omission of the Lessee, its agent, licensee, employee or representative operating a business on or from the Premises, or sustains the injury or damage as a result of consuming food or drink supplied on or from the Premises or as a result of goods sold on or from the Premises;
- (c) require the insurance company and the Lessee to give the Lessor at least thirty (30) days written notice before either cancellation of the policy or a reduction in its level or extent of cover;
- (d) contain a Clause which provides that any claims made by any of the insured parties against any other will be treated as though the claimant were not an insured party and in such instances provide that the insurance company waive its right of subrogation;
- (e) provide cover which is primary and not contributory with any policies effected by the Lessor or the Lessor's managers, agents, employees, representatives or contractors.

1.14 "Term" means the period commencing on and from the date of the commencement of the Lease and terminating on the date of termination of the Lease.

1.15 "Total lettable area of the Centre" means the total floor area of the inside parts of all tenancies from time to time within the Centre, calculated from the mid section of all external walls of any Building and including any driveway or roadway that forms a part of a lot but excluding the Common Area and plant rooms.

2. EXCLUSION OF STATUTORY PROVISIONS

The covenants and powers implied in every Lease by virtue of Section 84 and 85 of the Conveyancing Act, 1919 shall not apply to or be implied in this Lease and the same are expressly negated.

3. SHORT FORMS OF COVENANT

The short form of covenants set out below shall apply to the effect that the same are set forth in words at length in the second column of Part 2 of the Fourth Schedule to the Conveyancing Act, 1919.

- 3.1 1. That the Lessee covenants with the Lessor to pay rent.
- 3.2 4. And to maintain and leave the Premises in good repair (having regard to their condition at the commencement of the lease) reasonable wear and tear, war damage, and damage by fire, lightning, flood and tempest excepted.

- 3.3 7. And that the Lessor may enter and carry out requirements of public authorities and repair under the Lease.
- 3.4 17. That the Lessee will not carry on any offensive trade, PROVIDED ALWAYS that the permissible use of the Demised Premises by the Lessee shall not be deemed to be an offensive trade within the meaning of this covenant.
- 3.5 21. The said Lessor covenants with the said Lessee for quiet enjoyment.

B. LESSEE'S COVENANTS

The Lessee covenants with the Lessor that:-

4. RENT

The rent payable by the Lessee to the Lessor pursuant to this lease shall be calculated and paid in the manner set forth in Item 1 of Annexure A hereto. The parties hereto acknowledge that the payment of rent constitutes an essential term of this Lease and that failure by the Lessee to make such payment on or by the due dates constitutes a repudiation by the Lessee of an essential and fundamental term of this Lease.

5. OPERATING EXPENSES

- 5.1 The proportion of the Lessor's Operating Expenses payable by the Lessee shall be calculated and paid in the manner set forth in Item 2 of Annexure A hereto. The parties hereto acknowledge that the payment of the Lessee's proportion of the Operating Expenses constitutes an essential term of this Lease and that failure by the Lessee to make such payment on and by the due dates constitutes a repudiation by the Lessee of an essential and fundamental term of this Lease.
- 5.2 The amounts payable by the Lessee in accordance with this clause will be payable monthly on the same day as rent is payable in accordance with Item 1 of Annexure A to this Lease.
- 5.3 The Lessee's proportion of the Operating Expenses shall be estimated by the Lessor for each year of the term of this Lease and the amount estimated by the Lessor in accordance with this clause will be payable by the Lessee by equal monthly instalments in advance.
- 5.4 The Lessor shall provide to the Lessee each year a statement reconciling the actual Lessee's proportion of the Operating Expenses as calculated in accordance with this Lease against the amounts paid on a monthly basis by the Lessee in accordance with clause 5.2. Any overpayment by the Lessee will be allowed as a credit against future Operating Expenses payable by the Lessee in accordance with this Lease, or if this Lease is at an end, will be refunded by the Lessor to the Lessee within 14 days of the issue of such statement by the Lessor to the Lessee, and if there is any money payable in accordance with such reconciliation statement by the

Lessee to the Lessor, then the same will be paid within 14 days of delivery of such reconciliation statement to the Lessee.

6. OTHER CHARGES

- 6.1 SERVICES: The Lessee shall duly and punctually pay all charges for the water usage, telephone, gas, electricity and waste disposal services to the Demised Premises including meter rents.
- 6.2 COSTS OF LEASE: The Lessee shall pay the usual and proper costs of the Lessor incidental to the preparation, execution, stamping and registration of this lease, any exercise of option and any assignment thereof including all legal costs, mortgagee consent costs, registration fees and stamp duties payable hereon.
- 6.3 COSTS OF NOTICES - RE-ENTRY AND CONSENTS: The Lessee shall upon demand by the Lessor pay all costs (as between solicitor and client) and expenses incurred by the Lessor in relation to the following:-
- 6.3.1 any notice lawfully given to the Lessee pursuant to this lease,
 - 6.3.2 the lawful determination or attempted determination of this lease,
 - 6.3.3 the lawful re-entry or attempted re-entry by the Lessor into the Demised Premises,
 - 6.3.4 the surrender of this lease (including any stamp duties and registration fees thereof),
 - 6.3.5 the granting of any consents by the Lessor as provided herein.
- 6.4 LEGAL FEES: The Lessee shall pay to the Lessor all legal fees and disbursements (as between solicitor and client) incurred by the Lessor in connection with any litigation commenced by or against the Lessee arising directly or indirectly out of the Lessee's occupancy of the Demised Premises. The Lessee shall also pay all costs, expenses and reasonable legal fees that may be paid by the Lessor in enforcing the covenants and agreements of this lease.
- 6.5 ARCHITECT AND OTHER CONSULTANT FEES: The Lessee shall pay to the Lessor the costs of any architect, engineer and/or consultant engaged on behalf of the Lessor for and in respect of the checking or approval of alterations plans and specifications of any work to be carried out by the Lessee on or in respect of the Demised Premises and for any consultations by such architect, engineer and/or consultant with any person or authority together with the appropriate reasonable charges for printing any plans, specifications or other details required by the Lessor.

7. USE OF PREMISES

- 7.1 PERMISSIBLE USE: The Lessee shall not use the Demised Premises or any part thereof for any purpose other than as set out in Item 3 of

Annexure A hereto without the prior consent in writing of the Lessor. Where the Demised Premises include driveways the Lessee shall only use those driveways for the ingress and egress of motor vehicles.

- 7.2 PLANNING RESTRICTIONS: Notwithstanding Clause 7.1 hereof the Lessor gives no warranty as to the use to which the Premises may be put and the Lessee shall satisfy itself thereon and shall be deemed to have accepted this lease with full knowledge of and subject to any prohibitions or restrictions on the use thereof under or in pursuance of any act ordinance regulation by-law planning scheme (whether prescribed or not) or other statutory enactment or order of Court. Should the use referred to in Clause 7.1 hereof be permissible only with the consent of any authority under or in pursuance of any such act ordinance regulation by-law planning scheme or other statutory enactment or order of Court the Lessee shall obtain such consent at its own expense and produce to the Lessor evidence of such consent if requested by the Lessor.

The Lessee must not object to any development application relating to the Land including its use by the Lessor or any other lessee or proposed lessee within the Centre.

- 7.3 COMPLIANCE WITH PLANNING RESTRICTIONS: The Lessee shall not use the Demised Premises for any purposes other than a purpose permitted under the Local Government Act, 1993, The Environmental Planning and Assessment Act, 1979, or any other Act and will comply with any condition that may be attached to any consent given by any such authority under or in pursuance of any such Act or Acts.

- 7.4 STATUTORY REQUIREMENTS: The Lessee shall forthwith comply with all statutes, ordinances, proclamations, orders and regulations present or future affecting or relating to the Demised Premises or the use thereof and with all requirements which may be made or notices or orders which may be given by any Governmental, semi-Governmental, city, municipal, health, licensing or any other authority having jurisdiction or authority in respect of the Demised Premises or the use thereof including any work of a structural nature.

- 7.5 OPERATION OF BUSINESS: The Lessee will take all necessary steps to ensure that any business carried on upon the Demised Premises is carried on at all times in a reputable manner and that the Lessee will not commit or knowingly suffer or permit any illegal or unlawful act to be committed or performed or done on the Demised Premises. The Lessee will at all times during the term of the Lease but subject to any restrictions imposed by law keep the Demised Premises open for trade during the regular and customary hours of business for substantially all businesses conducted by the lessees in the Centre, and shall use to the best advantage all space available in the Demised Premises for the display and adequate merchandising of the Lessee's goods, wares and stock-in-trade and will keep display windows, signs and other appropriate parts of the Demised Premises adequately lighted with electric illumination during such periods of time as may from time to time be reasonably required by the Lessor in respect of all retail businesses in the Centre.

7.6 HEAVY MACHINERY: The Lessee shall not bring upon the Demised Premises any heavy machinery or other plant or equipment not reasonably necessary or proper for the conduct of the Lessee's use of the Demised Premises as herein provided and in no event shall any machinery plant or equipment be of such nature or size as to cause or in the reasonable opinion of the Lessor be likely to cause any structural or other damage to the floors or walls or any other parts of the Demised Premises. Before bringing any such equipment upon the Demised Premises the Lessee shall inform the Lessor of the Lessee's intention so to do and the Lessor may direct the routing installation and location of all such machinery plant and equipment and the Lessee shall observe and comply with all such directions.

7.7 ALTERATIONS TO PREMISES:

7.7.1 The Lessee shall not erect or construct or cause or suffer to be erected or constructed upon the Demised Premises or any part thereof any further building structure or improvement nor carry out nor permit to be carried out any alteration to any building structure or improvement on the Demised Premises or any part thereof without the consent in writing of the Lessor or the Lessor's agents first had and obtained which consent shall not be unreasonably withheld AND any such building structure or improvement erected by the Lessee on the Demised Premises or any alteration made to any structure or improvement upon the Demised Premises with the consent of the Lessor shall be erected or carried out at the expense and cost of the Lessee in accordance with plans and specifications previously approved in writing by the Lessor or the Lessor's agents (which approval shall not be unreasonably withheld) and to the satisfaction in all respects of the Lessor and in accordance with the requirement of the local municipal council and other proper authorities. The Lessee must pay the reasonable costs of the Lessor's architect and consultants in reviewing the plans and specifications for the Lessee's proposed alterations.

7.7.2 Without affecting the generality of the preceding paragraph hereof the Lessee particularly shall not without such consent install any water, gas or electrical fixtures equipment or appliances or any apparatus for illuminating, air-conditioning, heating, cooling or ventilating of the Demised Premises or in any way deface any walls, ceilings, floor, wood or other part of such Demised Premises.

7.7.3 The Lessee shall not do nor permit to be done in or about the Demised Premises any act matter or thing whereby any electrical services supplied thereto shall be overloaded or caused to malfunction, and the Lessee shall be liable for any damage or loss whatsoever caused as a result of any breach of the terms hereof.

- 7.8 DAMAGE TO PLUMBING: The Lessee shall not use permit nor suffer to be used the lavatories toilets sinks and drainage and other plumbing facilities in the Demised Premises for any purpose other than those for which they were constructed or provided and shall not deposit nor permit to be deposited therein anything which may cause or causes any obstruction or damage thereto and any obstruction or damage thereto caused by such misuse shall be made good by the Lessee forthwith.
- 7.9 INTERFERENCE WITH SERVICES: The Lessee shall not interfere with any drains, water supply, gas, electrical, plumbing or other services contained in or about the Demised Premises or any of the appurtenances therein without the prior consent in writing of the Lessor.
- 7.10 Deleted.
- 7.11 EXPENSES OF ALTERATIONS AND ADDITIONS: The Lessee shall carry out any alteration or addition to the Premises permitted or required by the terms of this lease and shall erect any sign notice or advertisement permitted by the terms of this lease at its own expense in a proper and workmanlike manner and in accordance with any directions in that behalf given to the Lessee by the Lessor or its architects or agents.
- 7.12 NO RESIDENTIAL USE: The Lessee shall not permit or suffer the Demised Premises or any part thereof to be used for any residential purpose on either a temporary or permanent basis.
- 7.13 SOURCE OF LIGHT AND POWER: The Lessee shall not use any form of light, power or heat other than electric current or gas supplied through meters. This covenant shall not prevent the use of auxiliary power or lighting (other than an exposed flame) during any period of power failure or power restrictions.
- 7.14 AUCTION, FIRE AND BANKRUPT SALES: The Lessee shall not in any circumstances hold any auction, fire or bankrupt sale in or about the Demised Premises.
- 7.15 ERECTION OF SHOPFITTINGS: The Lessee shall not erect or affix any blinds or awnings to the outside of the Demised Premises or any blinds (venetian or otherwise) to the interior of the windows, display windows or doors thereof or affix any shopfittings to the walls or ceilings thereof without the prior consent in writing of the Lessor which consent shall not be unreasonably withheld.
- 7.16 HOLING OF WALLS: The Lessee shall not cut, make holes in, mark, deface, drill, nor damage the floors, walls, ceilings or other parts of the Demised Premises except so far as may be reasonably necessary for the erection of approved signs, blinds, awnings or shopfittings as aforesaid and on the removal of any such signs, blinds, awnings or shopfittings, the Lessee shall reinstate, repair and make good any damage caused by the erection or removal thereof notwithstanding that the Lessor may have consented thereto.

- 7.17 Deleted
- 7.18 REFUSE: The Lessee shall at its own cost and expense cause all wet refuse (if any) to be removed daily and shall also at its own cost and expense cause to be removed from time to time all packing materials, cartons, containers and other waste material of every description which do not form part of the normal refuse removed by the local authority. Refuse which is to be removed by the local authority shall be properly wrapped and placed in bins at the proper place for collection by such authority.
- 7.19 ANIMALS, RODENTS AND VERMIN: The Lessee will take all reasonable precautions to keep the Demised Premises free of rodents, vermin, insects, pests, birds and animals and in the event of failing so to do will if so required by the Lessor but at the cost of the Lessee employ from time to time or periodically, reputable pest exterminators.
- 7.20 INFECTIOUS DISEASES: The Lessee will in the event of any notifiable infectious illness occurring in the Demised Premises forthwith give notice thereof to the proper public authorities and at the expense of the Lessee will thoroughly fumigate and disinfect the Demised Premises to the satisfaction of such public authorities and otherwise comply with their reasonable and lawful requirements in regard to the same.
- 7.21 INFLAMMABLE GOODS: The Lessee shall not without the consent in writing of the Lessor use or store any inflammable, explosive or corrosive chemicals, liquids, gas, alcohol, oil compound or substances upon the Demised Premises for any purpose PROVIDED THAT this clause shall not prohibit any usage or storage which is reasonably in accordance with the specified use of the Demised Premises approved by the Lessor.
- 7.22 BULBS AND TUBES: The Lessee shall at its own expense from time to time replace all broken or faulty light bulbs and tubes in the Demised Premises.
- 7.23 RADIO AND TELEVISION AERIALS: The Lessee shall not without the prior consent in writing of the Lessor (which consent shall not be unreasonably withheld) erect or place upon, within or without or on the exterior of the Demised Premises any radio or television aerial or antenna or any loudspeaker, screen or similar device or equipment and shall not without the like consent use or permit to be used any radio tapeplayer, gramophone, television or other like media or equipment likely to be heard or seen from outside the Demised Premises.
- 7.24 REPLACEMENT OF GLASS: The Lessee shall from time to time immediately repair and replace all broken, damaged or cracked plate or other glass including interior shop windows with glass of the same or similar quality.
- 7.25 SECURITY: The Lessee shall cause all exterior doors and windows in the Demised Premises to be securely locked and fastened at all times when the Demised Premises are not being used.

- 7.26 INSTALLATION OF PARTITIONS: The Lessee on obtaining the consent of the Lessor (which consent shall not be unreasonably withheld) and any necessary approvals from all proper authorities, Governmental or otherwise, may install internal partitions. Any malfunction or derangement to or of the air- conditioning, ceilings, fire alarm, sprinklers, smoke detectors, cables or relocation thereof in the Demised Premises caused by the installation, alterations, relocation or extension of partitioning and its accessories such as to interfere with their efficiency shall be made good by the Lessee at its own expense and to the satisfaction of the Lessor.
- 7.27 RELOCATION OF PARTITIONS: In the event of removal or relocation of partitions the Lessee will ensure that no damage is occasioned to the carpet or other floor coverings or floor finishes and in the event of such damage shall make it good at the Lessee's own cost.
- 7.28 FLOOR COVERINGS: The Lessee will not cut or mutilate or cause or permit any damage to occur to the standard floor coverings (if any) at any time. All cutting required for installation of telephone or electrical fittings or any other purpose shall if approved by the Lessor be carried out by the Lessor at the cost of the Lessee.
- 7.29 SIGNAGE: The Lessee will not erect any signage on the Demised Premises without the prior approval of the Lessor and the proper authorities. The Lessee will ensure that all signage erected on the Demised Premises complies with all statutory ordinances or regulations relating thereto.
- 7.30 REPAIR AND MAINTAIN:
- 7.30.1 The Lessee will during the term of this lease well and sufficiently repair maintain pave empty cleanse amend and keep the inside of the Premises with the appurtenances inside in good and substantial repair together with all windows door fastenings water closets cisterns partitions fixed presses shelves pipes pumps grates rails locks and keys and all other fixtures and things which at any time during the said term shall be erected and made when where and so often as need shall be and;
- 7.30.2 The Lessee will also make all amendments alterations reparations and additions whether structural or otherwise which by virtue of any statute or by law now or hereafter in force may be required to be done or executed by either the Lessor or Lessee in or upon the Premises and;
- 7.30.3 The Lessee will on one occasion every four (4) years or on the expiry or determination of this lease (including any renewal of lease) or more often if reasonably so required by the Lessor or whenever so required by any relevant authority or authorities paint the inside wood iron and other works now or usually painted with two coats of proper oil colours in a

workmanlike manner and also will repaper with paper of a quality as at present such parts of the Premises as are now papered and also wash stop whiten or colour such parts of the Premises as are now plastered and;

7.30.4 It is hereby agreed that it shall be lawful for the Lessor and his agents at all reasonable times during the said term to enter the Premises as often and whenever the Lessor shall consider necessary and to take a schedule of the fixtures and things made and erected thereupon and to examine the Premises and further all wants of painting or repairs which upon such views shall be found and;

7.30.5 For the amendment of any want of painting or repairs referred to in clause 7.30.3 notice in writing shall be left at the Demised Premises and the Lessee will within a reasonable time after every such notice well and sufficiently paint repair and make good accordingly and in default of the Lessee so doing it shall be lawful for the Lessor from time to time to enter and execute the required painting and repairs and;

7.30.6 The Lessor and his agents may at all reasonable times during the said term with workmen and others and all necessary materials and appliances enter upon the Premises or any part thereof for the purpose of complying with the terms of any present or future legislation affecting the Premises or of any notices served upon the said Lessor or the Lessee by any health licensing municipal or other competent authority involving the destruction of noxious animals or the carrying out of any repairs alterations or works of a structural character which the Lessee may not be bound or if bound may neglect to do and also for the purpose of exercising the powers and authorities of the Lessor under the Lease provided that such destruction repairs alterations and works shall be carried out by the Lessor without undue interference with the occupation and use of the Premises by the Lessee and;

7.30.7 The Lessee will at the expiration or other sooner determination of the term peaceably surrender and yield up unto the Lessor the Premises with the appurtenances together with all buildings erections and fixtures of the Lessor now or hereafter to be built or erected thereon in good and substantial repair and condition in all respects;

7.30.8 The Lessee will cause the Demised Premises (including external surfaces of windows and doors and the surface of any Common Area immediately adjacent to the Demised Premises) to be cleaned in a proper and workmanlike manner and during the whole of the term of this Lease to be kept clean and free from dirt and rubbish and particularly shall store and keep all trade-waste, trash and garbage in proper receptacles and arrange for the regular removal thereof from

the Demised Premises to such proper receptacles as are provided therefor AND FURTHER will make good from time to time any breakage, defect or damage to the Common Area or to any adjoining premises or any facility or appurtenance thereof occasioned by want of care, misuse or abuse on the part of the Lessee or the Lessee's servants, agents, contractors or sub-contractors, sub-tenants or other persons claiming through or under the Lessee, or otherwise occasioned by any breach or default of the Lessee hereunder.

7.31 NOXIOUS USE AND NUISANCE:

The Lessee will not at any time during the term of this Lease:-

7.31.1 use, exercise, carry on or permit or suffer to be used, exercised or carried on, in or upon the Demised Premises, or any part thereof, any noxious, noisome or offensive act, trade, business, occupation or calling, or

7.31.2 do or omit, or permit or suffer to be done or omitted, any act, matter or thing whatsoever in upon or about the Demised Premises or the Building or the Centre or any part thereof which is or may become an annoyance, nuisance, grievance or disturbance to any other occupier or owner of any adjacent premises.

7.32 RULES & REGULATIONS:

7.32.1 Notwithstanding anything hereinbefore contained the Lessee shall not alter, enter or use or permit to be entered or used the Demised Premises, the Building, the Centre or any Common Areas otherwise than in accordance with the Rules and Regulations including design guidelines.

7.32.2 The Lessor reserves the right at any time and from time to time to amend, cancel, add to or suspend all or any of the Rules and Regulations for the time being subsisting and to make such other and further rules and regulations either in lieu of or in addition as, in the judgment of the Lessor, may be required for the management, safety, care or cleanliness of the Demised Premises or of the Building or Centre, or for the preservation of good order therein, and for the convenience of the occupiers and invitees thereof PROVIDED THAT no amendment or variation to the Rules and Regulations shall be inconsistent with the rights of the Lessee as expressed in this Lease. All such amendments and additions shall bind the Lessee when written notice thereof shall have been given to the Lessee. If there shall be any inconsistency between the provisions of this Lease and the Rules and Regulations the provisions of this Lease shall prevail.

7.32.3 The Lessor shall not be liable for any loss or damage howsoever caused arising out of any non- enforcement of the Rules and Regulations.

8. **ASSIGNMENT AND SUB-LEASES**

8.1 **ASSIGNMENT:** To the extent permitted by the Retail Leases Act, the Lessee shall not assign, transfer, demise, sub-let, charge, encumber, part with or otherwise deal with its interest in or possession of the Demised Premises or any part or parts thereof or its interest under or pursuant to this lease except with the prior written consent of the Lessor. Such consent may be exercised in the Lessor's absolute discretion except in the case of an assignment of the whole of the Demised Premises, in which case the Lessor's consent will not be unreasonably withheld WHERE:

8.1.1 The proposed assignee proves to the satisfaction of the Lessor that he is a respectable, responsible and solvent person capable of carrying on the business being carried on by the Lessee in the Demised Premises and who enters into a covenant with the Lessor in the form required by the Lessor that he will duly perform and keep the covenants and agreements on the Lessee's part herein contained and who pays to the Lessor its costs and disbursements of and incidental to the giving of its consent.

8.1.2 The proposed assignee if a company shall, in addition to the requirements of the preceding sub-paragraph 8.1.1, furnish to the Lessor on execution of the assignment, sub-lease or license a joint and several guarantee by such of its directors and shareholders as the Lessor may nominate in the form required by the Lessor that it will observe and perform the covenants and agreements on the Lessee's part herein contained or implied.

8.1.3 All rent and other moneys due or payable hereunder shall have been paid by the Lessee and there shall not then be any existing unremedied breach of the terms, covenants, conditions and restrictions herein contained.

8.1.4 The proposed assignee satisfies the Lessor that the proposed assignee has financial resources and retailing skills that are not inferior to those of the Lessee and where the proposed assignee is a corporation, that its directors are financially responsible persons that have sufficient financial resources and retailing skills;

8.1.5 The proposed assignee has complied with the provisions of section 41 of the Retail Leases Act

8.1.6 The legal and other expenses of the Lessor in relation to its costs of the assignment are paid; and

8.1.7 The proposed assignee is not changing the use.

8.2 CHANGE IN BENEFICIAL OWNERSHIP: Where the Lessee is a company other than a company listed on any recognised Stock Exchange, any change in the shareholding thereof or any change in the shareholding of any holding company of the Lessee altering the effective control of the Lessee, shall (for the purpose of this clause) be deemed to be an assignment of this lease and shall require the consent of the Lessor as aforesaid.

8.3 Deleted

9. DAMAGE TO OR DESTRUCTION OF THE DEMISED PREMISES

9.1 LEASE DETERMINATION: In the case of:

9.1.1 The Demised Premises being resumed or being taken by any competent authority, or

9.1.2 If the whole or any part of the Demised Premises shall be destroyed or damaged by fire, flood, lightning, storm, tempest or other disabling cause,

so as in any case to render the Demised Premises substantially unfit for the use and occupation of the Lessee or so as (in the case of the circumstances described in paragraph 9.1.2 only) to render the rebuilding or reconstruction of the Demised Premises in its previous form reasonably impracticable or undesirable in the opinion of the Lessor then:-

9.1.3 This Lease may be terminated without compensation by either the Lessor or the Lessee by notice in writing to the other PROVIDED ALWAYS that the Lessee shall only terminate this lease in such case where the Lessor shall have failed to rebuild or reinstate the Demised Premises within a reasonable time after notice in writing from the Lessee.

9.1.4 Any such termination as aforesaid shall be without prejudice to the rights of either party in respect of any antecedent breach, matter or thing arising under this lease.

9.1.5 Nothing herein contained or implied shall be deemed to impose any obligation upon the Lessor to rebuild or reinstate or make fit for occupation the Demised Premises.

9.2 ABATEMENT OF RENT: Upon the happening of any such damage or destruction as provided by Clause 9.1 all monies hereby reserved or a proportionate part thereof according to the nature and extent of the damage sustained shall abate and all or any remedies for the recovery of such monies or such proportionate part thereof shall be suspended until

the Demised Premises shall have been rebuilt or reinstated or made fit for the occupation and use of the Lessee or until the Lease shall be terminated pursuant to the provisions of Clause 9.1 hereof as the case may be PROVIDED THAT the Lessee shall give the Lessor reasonable time in which to rebuild or reinstate the Lessor's premises.

9.3 DAMAGE BY LESSEE: Notwithstanding anything in Clause 9.1 or 9.2 hereof expressed or implied the Lessee shall have no right of termination and rent shall not abate if the destruction or damage to the Demised Premises was caused or directly contributed to by the Lessee or any person claiming under the Lessee.

9.4 LESSEE TO GIVE NOTICE OF DAMAGE: The Lessee shall give to the Lessor prompt notice of any damage, defect or deterioration affecting the Demised Premises or any accident or damage to or defect in the water, gas, drainage or electrical installations, appliances or fittings or to any lifts or hoists and the Lessor his servants and agents may enter the Demised Premises at reasonable hours so often as may be necessary to attend thereto.

9.5 LESSEE TO PAY FOR DAMAGE: The Lessee shall pay for and make good all damage and loss to the Demised Premises or to the Building caused or resulting from the negligent use or misuse by the Lessee or by any clerk, servant, employee, agent, invitee or contractor of the Lessee, of the Demised Premises or of the Centre or of any of the services, installations, appliances or fittings to or on the Premises.

10. INSURANCE

10.1 PUBLIC RISK: The Lessee shall upon the execution hereof effect and at all times maintain with an insurance office policies of insurance with respect to Public Risk for an amount not less than the sum specified in Item 4 of Annexure A hereto or such amount as may be reasonably required from time to time by the Lessor in writing.

10.2 PLATE GLASS: The Lessee shall insure and keep insured in the joint names of the Lessee and Lessor and in such amount (not being less than the full insurable value) and against such risks as the Lessor may require all plate glass windows doors and display show cases upon the Demised Premises.

10.3 TO USE REPUTABLE COMPANY: The Lessee shall effect all policies of insurance liable or required to be effected by the Lessee hereunder with a reputable insurance company and the Lessee will pay all premiums and other monies payable in respect of any policy of insurance to be effected hereunder as the same shall become due and payable and if required by the Lessor will forthwith produce to the Lessor Certificates of Currency in respect of any policy of insurance which the Lessee is required to effect hereunder.

10.4 DISCLOSURE: The Lessee shall give full true and particular information to the office or company with which its insurances are effected of all

matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any monies thereunder.

- 10.5 INCREASED RISKS: The Lessee shall not bring on to, do or suffer to be done or allow any act matter or thing to be done upon the Demised Premises or keep anything in the Demised Premises which shall or may increase the rate of fire or other insurance on the building or any property of the Lessor therein or which may vitiate or render void or voidable any such insurances in respect thereof (without limiting the generality of the foregoing) which may conflict with the laws or any other insurance policy over any part of the Building or any property therein or the regulations relating to fires or any other insurance policy over any part of the Building or any property therein or the regulations or ordinances of any public authority or the provisions of any statute for the time being in force.
- 10.6 EXTRA PREMIUMS: The Lessee shall from time to time as and when required by notice in writing from the Lessor pay all extra premiums and stamp duties payable by the Lessor on account of all extra risks to the Demised Premises and the Building caused by the use to which the Demised Premises are put by the Lessee.
- 10.7 SPRINKLER AND FIRE ALARM REGULATIONS: The Lessee shall comply with insurance sprinkler and fire alarm regulations in respect of the Demised Premises and the Lessee will pay to the Lessor the costs of any alterations to the sprinkler and fire alarm installation which may become necessary by reason of the non-compliance by the Lessee with the said regulations or the requirements of the Insurance Council of Australia or the requirements of the insurer as a result of the Lessee's use and occupation of the Demised Premises.

11. INDEMNITY BY LESSEE

- 11.1 The Lessee shall indemnify and keep indemnified the Lessor from and against:-
- 11.1.1 All claims demands writs summonses actions suits proceedings judgments orders decrees damages costs losses and expenses of any nature whatsoever which the Lessor may suffer or incur in connection with loss of life personal injury and/or damage to property arising from or out of any occurrence for which the Lessee is responsible in upon or about the Demised Premises or the land and building of which the Demised Premises forms part;
- 11.1.2 All loss and damage to the Demised Premises to the Building or the Centre and to all the Lessor's property therein caused by the Lessee or any contractor, sub-contractor, licensee or invitee of the Lessee or by the Lessee's use and occupation of the Demised Premises and in particular but without limiting the generality of the foregoing, caused by the misuse, waste

or abuse of water, sewerage, gas, electricity, fuel, lighting, heating, cooling, drainage, ventilating, fire control, lifts or by the negligent use of any facilities or services of the Demised Premises by the Lessee, its contractors, servants or employees or of any faulty fittings of fixtures of the Lessee.

11.2 Without limiting the generality of clause 11.1 hereof the Lessee will and does hereby indemnify the Lessor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor may become liable in respect of or arising from all or any of the following:

11.2.1 Negligent or careless use, misuse, waste or abuse by the Lessee or any contractor, sub-contractor or licensee of the Lessee or any other person claiming through or under the Lessee of the water, gas, electricity, lighting or other services and facilities of the Demised Premises or arising from any faulty fittings or fixtures of the Lessee;

11.2.2 Overflow or leakage of water (including rain water) in or from the Demised Premises but having origin within the Demised Premises or caused or contributed to by any act or omission on the part of the Lessee or other person as aforesaid;

11.2.3 Loss, damage or injury from any cause whatsoever to property or persons to the extent it is caused or contributed to by the use of the Demised Premises by the Lessee or other persons as aforesaid and not caused by any act, neglect or default of the Lessor its servants, agents or contractors; and

11.2.4 Loss, damage or injury from any cause whatsoever to the Demised Premises occasioned or directly contributed to by any act, omission, neglect, breach or default of the Lessee or other persons as aforesaid.

12. LIABILITY OF LESSOR

12.1 INTERRUPTION OF SERVICES: Notwithstanding any implication or Rule of Law to the contrary the Lessor shall not in any circumstances be liable to the Lessee for any loss or damage suffered by the Lessee for any malfunction failure to function or interruption of or to the heating, ventilating or air conditioning equipment or the water, gas or electricity services or the appurtenances or equipment contained in the Demised Premises or in the Centre or for the blockage of any sewers, wastes, drains, gutters, downpipes or stormwater drains from any cause whatsoever unless caused by the negligence of the Lessor, its agents or servants.

12.2 CONDITION OF LESSOR'S LIABILITY: Notwithstanding anything herein contained or implied to the contrary, the Lessor shall not in the case of a remediable breach be or be deemed to be in default in the observance and performance of its obligations hereunder unless the

Lessee shall have given notice in writing to the Lessor of such default and the Lessor has failed within a reasonable time thereafter to take proper steps to rectify such default.

13. **RESERVATIONS**

- 13.1 **ENTRY BY LESSOR:** The Lessor and any architect officer servant agent or workman of the Lessor may at all reasonable times during normal business hours upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) enter into the Demised Premises to examine and view the condition and state of repair thereof and may by notice in writing require the Lessee within a time fixed in the notice to repair, maintain or clean the Demised Premises in accordance with the covenants or agreements contained in the lease AND that the Lessee will repair, maintain and clean the Demised Premises in accordance with and within the time mentioned in such notice as far as the Lessee may be liable to do so under this lease.
- 13.2 **LESSOR'S ADVERTISEMENTS AND VIEWING:** The Lessee shall at all reasonable times permit intending purchasers or tenants to inspect the Demised Premises and will permit the Lessor to affix where the Lessor shall think fit a notice specifying that the Demised Premises are to be sold and the name and address of the Lessor and his agent and in the last three months of the term hereof to permit the Lessor to affix where the Lessor shall think fit a notice specifying that the Demised Premises are to be let and the name and address of the Lessor and his agent and generally will not do or perform or permit to be done or performed any matter or thing which might have the effect of prejudicing a bona fide sale or lease of the Demised Premises.
- 13.3 **THE LESSOR'S RIGHT TO IMPROVE:** The Lessor shall have the right from time to time to improve, extend, vary, amend or reduce the Centre or in any manner whatsoever alter or deal with the Centre (other than the Demised Premises) or any part thereof PROVIDED ALWAYS that the Lessor shall maintain or cause to be maintained reasonable capacity in the Common Area for the parking of motor vehicles AND PROVIDED FURTHER that in exercising its said right the Lessor will endeavour to cause as little inconvenience to the Lessee as is practicable in the circumstances.
- 13.4 **LESSOR MAY ENTER TO REPAIR:** The Lessor shall have the right for itself and all those authorised by it upon reasonable notice (except in case of emergency when no notice shall be required) and at all reasonable times to carry out any works, or make any repairs, alterations or additions to, and to enter upon all or any part of the Demised Premises, and to use the same for the purpose of effecting or carrying out any repairs, alterations or additions or other work which the Lessor may consider necessary or desirable to any part of the Building or Centre or any buildings adjacent thereto from time to time.
- 13.5 **DEFAULT IN EFFECTING REPAIRS:** In default of the Lessee repairing any defect according to reasonable notice the Lessor by itself and/or those

authorised by it may enter the Demised Premises and execute at all reasonable times all or any of the required repairs as the Lessor may think fit, and in addition to the Lessor's other remedies recover from the Lessee the cost of such repairs as the Lessee ought to have effected, including all sums paid on account of any insurance, indemnities or compensation under the Worker's Compensation Acts or otherwise with respect thereto.

- 13.6 ENTRY TO COMPLY WITH REQUIREMENTS OF AUTHORITIES:
Without prejudice to the obligations of the Lessee under this Lease, the Lessor by itself and all those authorised by it may enter the Demised Premises at all reasonable times with workmen and others and all necessary materials and appliances, for the purpose of complying with the terms of any present or future legislation affecting the Demised Premises or the Building or of any notice by any authority having jurisdiction or authority over or in respect of the Demised Premises or the Building in respect of the destruction of insects, rodents or other pests or for the carrying out of any repairs, alterations or works (including the provision of air-conditioning, sprinklers, lighting, power, telephone and other services to the Lessee and other tenants of the Building or Centre for which purpose the Lessor may from time to time require access to the service ducts, walls, floors and ceilings and the Demised Premises) and also for the purpose of exercising the powers and authorities of the Lessor hereunder.

14. COMMON AREA

The Lessor reserves a right from time to time to add to, vary, modify, alter, redesign, reconstruct or rebuild the Centre and any part thereof and to construct buildings or improvements upon the Common Area of the Centre and to move or change the directions, areas, levels or location or any part of the Common Area (including carparks and accesses thereto) of the Centre in any way or manner which the Lessor in its absolute discretion thinks fit provided that in so doing, the Lessor shall cause as little inconvenience to the Lessee, its customers and invitees as is practicable.

15. DEFAULT BY THE LESSEE

15.1 DEFAULT: It is agreed that the following obligations of the Lessee are essential terms of the lease and the Lessee shall be in default of the lease in any of the following circumstances namely:

15.1.1 Rent in arrears - If the rent hereby reserved including any payment of GST or any part thereof shall be unpaid and in arrears for the space of fourteen (14) days after the same shall have become due whether any formal or other demand therefor shall have been made or not.

15.1.2 Failure to pay monies - If any monies payable by the Lessee to the Lessor hereunder on demand shall not have been paid within fourteen (14) days of the making of demand therefor or if any other monies payable by the Lessee to the Lessor shall not have been paid within fourteen (14) days after the due date thereof.

- 15.1.3 Failure to effect repairs - If the Lessee shall not commence effecting the repairs or carry out maintenance required by any notice given under this lease within a reasonable time after the giving of such notice.
- 15.1.4 Breach of covenants - If the Lessee commits permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants obligations or provisions of this lease contained or implied and on the part of the Lessee to be observed or performed which breach or default continues for a period of fourteen (14) days after notice in writing has been given by the Lessor to the Lessee requiring such breach or default to be rectified.
- 15.1.5 Liquidation of Company - If (the Lessee being a company) any order is made or resolution passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld) or an order is made for the appointment of a provisional liquidator or the Lessee makes an assignment for the benefit of or enters into any arrangement or composition with its creditors or is unable to pay its debts within the meaning of the Corporations Act 2001 or an official manager is appointed pursuant to the provisions of such Act.
- 15.1.6 Execution against Lessee - If execution is levied against the Lessee and not discharged within thirty (30) days.
- 15.1.7 Assignment to Creditors - If the Lessee's property shall be assigned for the benefit of creditors.
- 15.1.8 Use of Premises - If the Lessee uses the Demised Premises for any use other than the Permissible Use.
- 15.1.9 Consent of the Lessor - If the Lessee fails to obtain the prior consent of the Lessor in respect of anything in which the prior consent of the Lessor is required.
- 15.1.10 Assignment of Lease - If the Lessee assigns this lease or otherwise parts with possession or occupation of the whole or any part of the Demised Premises without the prior written consent of the Lessor.
- 15.1.11 Insurance - If the Lessee fails to insure the Demised Premises for its full insurable value or otherwise in accordance with the provisions of clause 10 of this lease.
- 15.2 FORFEITURE: If the Lessee shall have made default as aforesaid, such default shall be a breach by the Lessee of a fundamental or essential term of this Lease and the Lessor shall have all rights of action, remedies and claims as for such a breach and thereupon the Lessor shall be freed and

discharged from any action, suit, claim or demand by or obligation to the Lessee under or by breach of this lease and the Lessor may at its option:-

- 15.2.1 Determination by re-entry - Without any prior demand or notice (unless required by law) re-enter into and take possession of the Demised Premises or any part thereof (by force if necessary) and eject the Lessee and all other persons therefrom and repossess and enjoy the same as of its first and former estate therein and thereupon this lease shall be determined.
- 15.2.2 Determination by notice - By notice in writing to the Lessee determine this lease and from the date of giving such notice this lease shall be determined.
- 15.3 ACCEPTANCE OF RENT: Acceptance of rent by the Lessor after default by the Lessee under this lease shall not prevent or prejudice the exercise by the Lessor of the powers conferred upon it by this Clause 15 hereof or operate as an election by the Lessor either to exercise or not exercise any of such powers.
- 15.4 WAIVER: No waiver by the Lessor of one breach of any covenant, obligation or provision in this lease shall operate as a waiver of another breach of the same or of any other covenant, obligation or provision of this lease.
- 15.5 LESSOR MAY RECTIFY: On each and every occasion on which the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has herein covenanted to pay, do or effect then it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any rights or powers arising from such default) to pay such money or to do or effect such thing by itself, its architects, agents, contractors and workmen as if it were the Lessee and for that purpose the Lessor, its architects agents, contractors and workmen may enter upon the whole or any part of the Demised Premises and there remain for the purpose of doing or effecting any such thing and the Lessor may recover forthwith the amount of any expenses and costs so incurred as a liquidated debt due and owing by the Lessee to the Lessor.
- 15.6 INTEREST ON OVERDUE PAYMENTS: Without prejudice to the rights, powers and remedies of the Lessor otherwise under this lease the Lessee will pay to the Lessor interest on any monies due by the Lessee to the Lessor on any account whatsoever pursuant to this Lease but unpaid for fourteen (14) days such interest to be calculated at the rate being two per centum (2%) above the maximum rate chargeable at the time by Westpac Banking Corporation on overdraft accounts of less than One hundred thousand dollars (\$100,000.00) and to be computed from the date due for payment of the monies in respect of which the interest is chargeable until payment of such monies in full.
- 15.7 CONVERSION TO MONTHLY TENANCY: Notwithstanding anything herein contained if the Lessee shall have made default as provided by

Clause 15.1 hereof the Lessor may by notice in writing to the Lessee elect to convert the residue of the term for the time being unexpired of this Lease to one (1) month and thereafter the tenancy hereby created shall be and remain a tenancy from month to month at a rental equivalent to one (1) month's proportion of the annual rental herein reserved and shall be determinable by one (1) month's notice in writing given by either party to the other expiring at any time.

15.8 ANTECEDENT BREACHES: The determination of this lease or the conversion of the residue of the term hereof to a monthly tenancy shall not prejudice or affect any rights or remedies of the Lessor against the Lessee on account of any antecedent breach by the Lessee of any of the terms, covenants and restrictions on the part of the Lessee under the terms of this Lease.

15.9 RIGHT TO REMOVE: Upon the Lessor becoming entitled to re-enter the Demised Premises pursuant to any provision of this Lease, the Lessee shall remove from the Demised Premises all goods and personal property of every description which may be thereon or therein and in default of the Lessee effecting such removal, the Lessor upon entering into possession of the Demised Premises may remove all such goods and personal property, together with any of the Lessee's fixtures which remain therein, from the Demised Premises to such place or places as the Lessor may deem fit, and the Lessor shall be deemed to have the authority of the Lessee to deposit the same in the name and at the expense of the Lessee with a warehouseman selected by the Lessor and in doing so, the Lessor shall not be liable or responsible for loss or damage to or warehousing expenses in respect of the whole or any part of such goods which shall be at the Lessee's risk and expense at all times; and all costs and expenses incurred by the Lessor in such removal and deposit (including the costs of making good the Demised Premises) shall notwithstanding that this Lease shall then have been terminated be and be deemed to be payable by the Lessee to the Lessor upon demand.

15.10 LESSOR'S ENTITLEMENT TO DAMAGES: In the event the Lessee breaches an essential term of this lease the Lessee covenants to compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the breach. The Lessor is entitled to recover damages against the Lessee in respect of the breach of an essential term for the loss suffered by the Lessor during the term of this lease, including the periods before and after termination of this lease. The Lessor's entitlement to recover damages is not affected or limited by:

- (a) the Lessee abandoning or vacating the Demised Premises; or
- (b) the Lessor electing to re-enter or terminate the lease; or
- (c) the Lessor accepting the Lessee's repudiation of the lease; or
- (d) the parties' conduct constituting a surrender by operation of law.

The Lessor is entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire lease term, including the periods before and after the Lessee vacates the Demised Premises and before and after the events referred to in items (a) to (d) above whether such proceedings are instituted before or after such events.

The Lessor's entitlement to damages is additional to the Lessor's entitlement to recover:

- (i) rent, rates, taxes (including GST), outgoings and operating expenses until the date of expiry or termination of this lease; and
- (ii) interest on late payment in accordance with this lease; and
- (iii) costs of any breach or default including the costs of termination.

16. **HOLDING OVER**

Subject to Section 44 of the Retail Leases Act, if the Lessee shall with the consent of the Lessor remain in occupation of the Demised Premises after the expiration of the term hereof the Lessee shall (in the absence of any express agreement to the contrary) hold the Demised Premises as a tenant from month to month at a rental equivalent to one (1) month's proportion of the annual rental herein reserved for the final year of the term hereof but otherwise on the terms and conditions of this lease so far as they can be applied to a monthly tenancy. Such tenancy may be determined by one (1) month's notice in writing given by either party to the other expiring at any time. During any time that the Lessee is holding over, the Rent will increase by 6% on each anniversary of the expiration of the term.

17. **NOTICES**

Any notice given by either party to the other shall be deemed to be duly given if signed by such party or any duly authorised officer or secretary of the party giving such notice and shall be deemed to be duly served if delivered to or left at or forwarded by prepaid certified mail addressed to the address of the other party as shown herein or to the address last advised to the party giving such notice.

18. **NO RELATIONSHIP OF PARTNERSHIP**

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating a relationship of partnership or of principal and agent or of joint venture between the parties hereto it being understood and agreed that neither the method of computation of rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this lease. The covenants provisions, terms and agreements contained herein expressly or by statutory implication, comprise the whole of the agreement between the parties, and the parties expressly agree and declare that no further or other covenants, agreements, provisions or terms whether in respect of the Demised Premises or otherwise shall be deemed to be implied herein or

to arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by either party to the other upon or prior to the execution hereof, and the existence of any such implication or collateral or other agreement is hereby negated.

19. **DETERMINATION OF TERM**

19.1 **LESSEE'S FIXTURES:** The Lessee may at or prior to the expiration of the Lease take remove and carry away from the Demised Premises all fixtures fittings plant equipment or other articles upon the Demised Premises in the nature of trade or tenant's fixtures at any time brought upon the Demised Premises by the Lessee but the Lessee shall in such removal do no damage to such Demised Premises or forthwith shall make good any such damage which the Lessee may occasion thereto and shall remove all rubbish and shall leave the Demised Premises in a clean state and condition and should the Lessee fail to remove such trade or tenant's fixtures the Lessor at its option may upon the expiration of the lease remove such trade or tenant's fixtures and recover from the Lessee the cost of such removal and disposal.

19.2 **REMOVAL OF SIGNS:** At the expiration or sooner determination of this Lease the Lessee will at the expense of the Lessee remove all advertisements, signs, notices, lettering and any other distinctive marks that have been painted on or in any way displayed on or affixed to any portion of the Demised Premises and will make good any damage or disfigurement caused to the Demised Premises thereby.

20. **OPTION FOR RENEWAL**

The Lessor and the Lessee further covenant that provided the Lessee shall have duly and punctually observed and performed all the covenants agreements and restrictions on the part of the Lessee herein contained, except insofar as the due and punctual observance and performance of the same has been expressly waived in writing by the Lessor, and provided the Lessee shall have given to the Lessor notice in writing, not less than six (6) months and no more than nine (9) months prior to the expiration of the term of this lease, of the Lessee's desire to take a further Lease of the Demised Premises for the further term indicated in Item 5 of Annexure "A" hereof from the date of the expiration of the term of this Lease, the Lessor will grant to the Lessee a lease of the Demised Premises for the said further term on the following conditions:

20.1 The covenants conditions and restrictions of the lease for the said further term shall be the same as in this lease with the exception that this option to renew shall be excluded from the renewed Lease referred to in Item 8 of Schedule A to the intent and effect that the total term under this Lease and the Options for Renewal shall not exceed the term specified in Item 9 of Schedule A.

20.2 The rent payable for the further term shall be calculated and paid in the manner set forth in Item 6 of the Annexure A hereof.

21. **FURTHER COVENANTS OF THE LESSOR**

- 21.1 The Lessor covenants to ensure that the Car Park is properly maintained.
- 21.2 The Lessor will from time to time comply as soon as is reasonably practicable with all requirements which may be made or notices or orders which may be given in respect of the Demised Premises by any governmental semi-governmental city municipal health licensing civic or any other authority having jurisdiction or authority over or in respect of the Demised Premises or the user thereof in so far as the same are not the obligation of the Lessee under the terms of this Lease.
- 21.3 The Lessor hereby covenants with the Lessee that during the Lease term and any extension or renewal thereof it will at its own expense insure and keep insured all buildings and structural parts (including the Demised Premises) of the Centre:-
- 21.3.1 for their replacement value (which value shall be reviewed from year to year) against fire earthquake lightning storm and tempest rainwater and other water damage including flood concussion (explosion) malicious damage riots and strikes impact by vehicles and impact by aircraft and articles dropped therefrom and including sprinkler leakage and other risks as the Lessor may require;
- 21.3.2 for a reasonable sum for removal of debris; in the names of the Lessor and the Lessee and such other persons having an insurable interest therein as the Lessor shall include as a reinstatement and replacement policy with a recognised reputable insurance company.

22. SECURITY BOND

- 22.1 The Lessee shall pay to the Lessor upon the signing hereof the amount set out in Item 11 of Annexure A hereto as a bond for the due performance and observance by the Lessee of all the terms and conditions of this lease or any extension or renewal hereof and the Lessor shall have the right to apply all or any part thereof or any interest earned thereon in or towards payment of any monies due by the Lessee to the Lessor or in respect of rectifying any breach non-performance or non-observance of any of the terms and conditions hereof by the Lessee. The Lessor shall lodge such bond in an account in the joint names of the Lessor and the Lessee and at the end of the Term the Lessor shall repay the bond to the Lessee together with the interest earned thereon during the Term, subject to the right of the Lessor to apply such bond and any interest earned thereon or any part thereof in the manner as aforesaid. The Lessor shall accept an unconditional bank guarantee in satisfaction of the requirements of the Lessee under this clause except where the Lessor is of the opinion that it would be unreasonable to do so having regard to all of the circumstances.
- 22.2 If the Bond is forfeited or appropriated the Lessor shall notify the Lessee that the Bond and interest have been applied in full or in partial satisfaction of the Lessor's claim and shall itemise the Lessor's claim, giving credit for the Bond and for interest.

- 22.3 The Lessor is entitled to recover rent and damages from the Lessee without being limited to the Bond, and if any further claim is made against the Lessee, the Lessor shall credit the Lessee with the Bond and interest.
- 22.4 The Lessor's conduct in forfeiting the Bond or in appropriating the whole or part of the Bond, or in failing to do so, does not constitute a waiver of the Lessee's breach or default or preclude the Lessor from exercising any of its rights or remedies.
- 22.5 The Lessee shall reinstate or increase the amount of the Bond within 14 days after service of notice by the Lessor on the Lessee requiring the Lessee to do so and indicating the amount required to be paid and its calculation:
- (a) when the whole or part of the Bond has been appropriated;
 - (b) when the rent is increased on rent review or the exercise of an option to renew, to ensure that the Bond shall be increased to reflect the increased rent and the accrued interest and outgoings in accordance with item 11 of Annexure "A".
- 22.6 In the event of an assignment of the Lease the Bond shall be held on behalf of the assignee and the Bond and interest shall be deemed to have been assigned to the assignee, to be held for the assignee in accordance with this clause.
- 22.7 In the event of a sale of the Lease Property subject to this Lease,
- (a) control over the Bond and accrued interest shall be vested in the purchaser as trustee for the Lessee.
 - (b) The rights and obligations of the Lessor under this clause shall enure in favour of and against the purchaser as assignee of the reversion
 - (c) After the Bond has vested in the purchaser, the Lessor's liability to the Lessee for repayment of the Bond is extinguished.
- 22.8 The owner of the reversion at the expiry or termination of the Lease, whether being the purchaser of the reversion or a mortgagee from the Lessor who has entered into possession, assumes personal liability to the Lessee and to any assignee of the Lease for repayment of the Bond, whether or not that owner has acquired control over the Bond.
- 22.9 The Lessor shall repay to the Lessee the Bond and accrued interest on expiry or termination of this Lease, unless the Bond and accrued interest have been forfeited or appropriated in accordance with this clause.

23. **DAMAGE CAUSED BY BURGLARY**

Notwithstanding anything to the contrary herein contained, the Lessee shall make good any damage to the Demised Premises or the Common Area caused as a result of any burglary or forced entry or any attempted burglary or forced entry AND the Lessee covenants that it will effect adequate insurance of the Demised Premises in respect of such damages as aforesaid in the names of the Lessor and the Lessee and further that it will maintain such insurances during the Term or any extension or renewal hereof and will produce evidence of payment of the appropriate premium in

respect of such policy to the Lessor during each year of the Term or any extension or renewal hereof.

24. **MERCHANT'S ASSOCIATION**

The Lessee shall, at the request and direction of the Lessor at any time and from time to time through the term of this Lease, become and shall remain a member of any Merchant's Association established in respect of traders or operators in the Centre and which is in existence from time to time, and shall pay all levies and contributions in respect of such membership as and when the same are due.

25. **GOODS AND SERVICES TAX**

25.1 In this clause:

"the Act" means all acts, statutes or other laws implementing the GST including all amendments thereto;

"GST" means a goods and services tax, value added tax or any similar tax, impost or duty introduced by the Commonwealth of Australia or any state or territory of Australia whether before, on or after the Commencement Date, which is or may be levied or becomes payable in connection with the supply of the Demised Premises or any goods, services or other things by the Lessor to the Lessee under this Lease;

"Basic Consideration" means the Annual Rent, Cleaning, Contribution, Lessee's Contribution and any and all other consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of goods and services provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

"Goods and Services" and "Taxable Supply" shall have the same meaning assigned to them by the Act.

25.2 If a GST is introduced and applies or may apply to impose tax on the Basic Consideration or part thereof, then with effect from such date as may be nominated in writing by the Lessor in its absolute discretion:

25.2.1 this Lease shall be treated as taxable;

25.2.2 the Lessee must forthwith do everything reasonably requested by the Lessor including the making of any election required under the Act to ensure this Lease is treated as taxable for GST purposes from the nominated date;

25.2.3 the Basic Consideration is not inclusive of GST;

25.2.4 notwithstanding any other provision in this Lease, the Lessor is entitled to require the Lessee to pay and may recover from the Lessee in addition to the Basic Consideration the amount of any GST which is chargeable on any Basic Consideration or Taxable Supply under or in connection with this Lease;

- 25.2.5 notwithstanding any other provision in this Lease, unless the Lessor, in its absolute discretion, shall otherwise direct (which direction the Lessee shall promptly observe), the Lessee must pay any amount payable by the Lessee pursuant to this clause on the date on which the Basic Consideration or the relevant portion thereof is payable;
- 25.2.6 if the Lessee shall make default in payment on the due date of any amount payable pursuant to the preceding paragraph, then without prejudice to the Lessor's other rights and remedies, the Lessee shall pay to the Lessor upon demand an amount equal to the amount of any additional tax, fine or penalty that shall have become chargeable or payable pursuant to the Act together with an amount sufficient to provide for any further GST chargeable on such payment;
- 25.2.7 as between the Lessor and the Lessee, the Lessor shall not be obliged to pay any GST or additional tax, fine or penalty or to take any other steps to minimise the liability in respect of such tax or additional tax, fine or penalty until the corresponding payment is received from the Lessee.
- 25.3 To the extent, if any, to which the previous provisions of this clause or other provisions of this Lease do not already require the Lessee to pay the Lessor an amount equal to any GST which is charged or levied or paid by any person on goods, services or other things acquired or utilised by the Lessor ("Input GST") in connection with procuring the goods, services and other things which the Lessor in turn provides to the Lessee under or in connection with this Lease, then so much of the Input GST for which the Lessor cannot or does not obtain a credit against any liability of the Lessor to pay GST, as may be attributed to the goods, services and other things provided under or in connection with this Lease shall be paid by the Lessee to the Lessor upon demand.
- 25.4 If under the Act this Lease is or may be zero rated for a particular period or for the term of this Lease, then at the direction of the Lessor in its absolute discretion, the parties shall do all things necessary, including the making of any elections required under the Act, to ensure that this Lease is zero rated for the maximum permissible period.

26. GUARANTEE

In consideration of the Lessor at the request of the Guarantors named in Item 7 of the Reference Schedule granting the within lease to the Lessee the Guarantors covenant with the Lessor as follows:-

- 26.1 The Guarantors hereby jointly and severally guarantee to the Lessor the due and punctual payment of all rent and interest and all other monies due and the punctual observance and performance by the Lessee of the conditions, clauses, covenants and other provisions contained in or implied under this lease on the part of the Lessee to be respectively paid, observed and performed.

- 26.2 The Guarantors jointly and severally agree with the Lessor to be liable for and to indemnify and keep indemnified the Lessor against all actions, claims, suits, demands and losses which the Lessor may incur or be liable for as a result of any default, act or omission of the Lessee under the terms of this lease.
- 26.3 The Guarantors agree with the Lessor (any rule of law or equity to the contrary notwithstanding) that the guarantee and indemnity given by the guarantors hereunder shall be a continuing guarantee and engagement and that the granting of time, credit, concession or indulgence to the Lessee or the Guarantors or the making of any composition with or the waiver of any breach or default by the Lessee or the neglect or forbearance of the Lessor to enforce the covenants and provisions of this Lease or those of this guarantee and indemnity or the avoidance for any reason whatsoever by statute or otherwise of any payment by or on behalf of the Lessee or the Guarantors to the Lessor or any moratorium or other period staying or suspending by statute or the order of any Court or other authority all or any of the Lessor's rights, remedies or recourse against the Lessee will not stay, suspend, release or discharge this guarantee and indemnity it being the intention that the guarantee and indemnity herein contained shall be unconditional and absolute in any and all circumstances.
- 26.4 The Guarantors hereby waive in favour of the Lessor all rights, remedies and recourse of the Guarantors against the Lessor the Lessee and any other person, estate or assets so far as necessary to give effect to anything contained in this guarantee and indemnity. The liability of a Guarantor hereunder shall not be affected if the guarantee and indemnity herein contained on the part of another person is void defective or informal.
- 26.5 The Guarantee hereby given shall extend and apply to any liability which the Lessee has or would have had under and pursuant to the provisions of this Lease if the Lease has not been brought to an end by any determination or decision of any liquidator, administrator or receiver of the Lessee.
- 26.6 The Guarantor acknowledges that it is not the intention of the parties hereto that any such determination of the Lease shall release the Guarantor from its obligations arising pursuant to the provisions of this Clause to meet all payments due and to perform all obligations which would have accrued to the Lessee as and from the date of such determination until the expiry of the Lease.
- 26.7 The Guarantor shall, for the purposes of this Lease, be deemed to be the Lessee as and from the date of any such determination until the date of expiry of such Lease as if it entered a lease of the Demised Premises on the same terms and conditions as are contained in this Lease as and from the date of such termination as Lessee.

27. CONSENT OF LESSOR

In any case where pursuant to this Lease or to any Rule or Regulation made hereunder the doing or executing of any act matter or thing by the Lessee is

dependent upon the consent or approval of the Lessor such consent or approval may be given or withheld by the Lessor in its absolute uncontrolled discretion unless otherwise herein provided.

28. **EXCLUSION OF IMPLIED TERMS**

Without prejudice to anything hereinbefore expressed or implied, the Lessee acknowledges that no warranty or representation has been given by or on behalf of the Lessor in respect of the suitability of the Demised Premises or the Building for any business to be carried on therein, or as to the fixtures fittings furnishings finish plant and machinery and equipment of or in the Demised Premises or the Building or as to other businesses to be carried on in the Building otherwise than in this Lease expressly contained.

29. **POWER OF ATTORNEY**

The Lessee hereby irrevocably appoints the Lessor and the Lessor's nominee or nominees and their substitute or substitutes jointly and severally to be the true and lawful attorney or attorneys of the Lessee to act at any time after the power to re-enter herein contained shall have become exercisable or shall have been exercised (a sufficient proof whereof shall be the statutory declaration of the Lessor or any officer of the Lessor duly authorised by the Lessor in that behalf) to execute and sign an assignment or a surrender of this Lease and to procure the same to be registered and for this purpose to use the name of the Lessee and generally to do, execute and perform any act, deed, matter or thing relative to the Demised Premises as fully and effectually as the Lessee could do in and about the Premises and the Lessee hereby covenants to ratify and confirm all and whatsoever the said attorney or attorneys shall lawfully do or cause to be done in and about the Premises.

30. **MORATORIUM**

No statute ordinance proclamation order regulation or moratorium present or future shall apply to this Lease so as to abrogate extinguish impair diminish fetter delay or otherwise prejudicially affect any rights powers remedies or discretions given or accruing to the Lessor.

31. **GRANT OF EASEMENTS**

The Lessor hereby expressly reserves the right to create such easements, rights of way, Restrictions as to User, covenants or other encumbrances in respect of the Land, the Building, the Centre or any land adjacent thereto, at any time during the currency of this Lease or any extension or renewal hereof and the Lessee shall not be entitled to claim any compensation or damages from the Lessor in relation to the creation of the same or the conversion of the title to the land into separate torrens, strata, community or neighbourhood titles.

32. **WHOLE OF PREMISES**

The Lessee acknowledges that the Demised Premises as described in clause 1.11 of this Lease comprise the whole of the Premises the subject of this Lease and that the Lessee has no further or other right to use any other part of Building or the Centre or

the Common Areas under or pursuant to this Lease or any other agreement further incorporated in this Lease or otherwise.

33. USE OF COMMON AREAS

The Lessee its servants agents and invitees shall have the right to use common with other persons entitled to use the same the Common Areas subject to any restrictions hereinbefore contained AND the Lessor and persons claiming through or authorised by it RESERVES the use of the exterior walls the roof and the right to install maintain use repair alter and replace pipes ducts conduits and wires leading through the Demised Premises and to pass and run water air electricity sewerage drainage gas and other services through such pipes conduits ducts and wires and to enter upon the Demised Premises for such purposes PROVIDED THAT in exercising such rights as aforesaid the Lessor shall not interfere with the Lessee in its use and occupation of the Demised Premises more than is reasonably necessary PROVIDED THAT the Lessee shall be responsible for the maintenance and cleaning of the common area adjacent to the Demised Premises including any signs on the common area approved by the Lessor and any driveway facilities or garden areas and any carparking facilities provided for the exclusive use of the Demised Premises (whether in accordance with the requirements of Sutherland Shire Council or otherwise).

34. WEIGHT LIMITATION

Notwithstanding anything to the contrary herein contained the Lessee warrants and covenants with the Lessor that no vehicle or equipment brought in or upon or left in the Demised Premises or any part thereof will have a net weight exceeding 20 tonnes and the Lessee hereby covenants and agrees with the Lessor to indemnify and keep indemnified the Lessor from and against all costs, loss, damages, expenses and claims whatsoever arising from any breach of the terms of this clause with reference to any person or property, and the Lessee further covenants and agrees with the Lessor at the cost and expense of the Lessee to rectify and repair all or any damage of whatsoever nature caused to the Demised Premises or any part thereof or the surrounds thereof as a result of the breach of the provisions of this clause by the Lessee, its servants, agents, employees, workmen, invitees, licensees or permitted assigns.

35. GOODS LEFT IN PREMISES

- 35.1 Upon the expiry or determination of the Lease (whether by virtue of default of the Lessee or otherwise) the Lessee acknowledges that all goods, fittings, equipment, machinery, plant and items of the Lessee in, upon or attached to the Premises or any area adjoining the Premises ("the said goods") shall, at the election of the Lessor, be and become the absolute property of the Lessor and the Lessee shall not be entitled to claim any payment or compensation in respect thereof from the Lessor.
- 35.2 The Lessor shall be entitled to sell, dispose of or utilise the said goods in any manner which it deems appropriate.
- 35.3 Should the Lessor not elect, pursuant to this clause, to have the property in the said goods forfeited to it, then the Lessee shall be required to remove the same from the Premises immediately upon being given notice by the Lessor

to do so and shall make good any damage to the Premises by virtue of such removal.

- 35.4 Should the Lessor remove the said goods from the Premises, for any purpose whatsoever, then the cost of making good any damage to the Premises by such removal shall be paid by the Lessee.

36. **RETAIL LEASES ACT**

If any provision of this lease is contrary to the Retail Leases Act in existence as at the date of this lease or which comes into effect after the date of this lease, then such provisions shall be excluded or modified to the extent necessary to comply with the provisions of the Retail Leases Act or any amendment or replacement thereof. For clarity the parties acknowledge that this clause shall not operate if the Retail Leases Act does not apply to this lease or if any amendment to the said act after the date of this lease does not operate retrospectively.

37. **NON-SMOKING**

The Lessee shall not permit its employees agents or invitees to smoke cigarettes or other tobacco products in any part of the Premises or the Building and shall erect such signs as are reasonably required by the Lessor in this regard and maintain such signs during the terms of this Lease.

38. **SUBDIVISION**

38.1 The Lessor may effect a strata, community, neighbourhood or Torrens title subdivision of the Centre at any time during the term of this Lease and the Lessee will not take any objection nor make any claim for compensation in respect of any subdivision of the Centre effected by the Lessor.

38.2 The Lessor will advise the Lessee of its intention to carry out the subdivision of the Centre in accordance with this clause by notice in writing.

38.3 The Lessee will sign all documents necessary to enable the Lessor to obtain all consents and register any plan with regard to the subdivision of the Centre and all such documents and plans will be signed by the Lessee within one week of being requested so to do by the Lessor.

38.4 The Lessee will have any mortgagee or chargee of the Lessee execute all documents required to be executed by such mortgagee or chargee with regard to the subdivision of the Centre by the Lessor.

38.5 The Lessee, in consideration of the Lessor entering into this Lease, hereby irrevocably appoints the Lessor as its attorney for the purposes of doing all such acts matters and things required by the Lessee pursuant to this clause and shall do all things necessary to confirm the acts of the Lessor done as the Lessee's attorney pursuant to this clause and will not seek to revoke the power of attorney granted to the Lessor in accordance with this clause in any circumstances whatsoever.

- 38.6 The Lessee will undertake all matters required to be done or arranged by the Lessee pursuant to this clause at its cost and expense.
- 38.7 The Lessee will not lodge any objection with Sutherland Shire Council or any other relevant or responsible authority in respect of any application made by or on behalf of the Lessor with respect to the subdivision of the Centre or in respect of any other acts matters or things necessary to have a plan of subdivision registered in respect of the Centre.
- 38.8 The Lessee acknowledges that the subdivision of the Centre may result in changes to the operation of the Centre which may or may not impact adversely on the Lessee's business. The Lessee agrees that it will not seek any compensation from the Lessor for any loss or damages suffered by the Lessee directly or indirectly attributable to the subdivision.

39 **CAVEATS**

Nothing herein contained or implied shall grant to the Lessee the right to lodge or cause to be lodged a caveat over the Land or any part thereof to protect any interest of the Lessee hereunder.

40 **NON-REMOVAL OF LESSOR'S FITTINGS**

The Lessee hereby covenants and agrees with the Lessor that the Lessee will not remove or cause to have removed from the Demised Premises or the Building any of the standard carpets or floor coverings or other fixtures, fittings and appurtenances of the Lessor and the Lessee covenants and agrees with the Lessor that the Lessee will at its cost and expense replace or restore any such carpets, floor coverings, fittings, fixtures or other appurtenances removed, damaged, defaced, destroyed or rendered inoperative other than due to fair wear and tear

41 **LESSEE'S TRADE NAME**

If the Lessee's business or trade name includes words associating the business with the Centre the Lessee will on the termination of this Lease transfer that name to the Lessor and will not then use any business or trade name which associates the business with the Centre.

42 **NO NOISE OR DAMAGE**

The Lessee will not perform or allow any act or thing or carry on any practice which may damage the Premises or the Centre or any part of them and will not cause any offensive odours or loud noise and will not in any other manner commit a nuisance or disturbance or annoyance to the Lessor, any other lessee or any other person using the Centre

43 **ILLUMINATE WINDOWS**

The Lessee will keep the display windows in and the illuminated signs on the Premises electrically lit during such of time as may be required by the Lessor for substantially all other retail businesses in the Centre.

44 **STOCK**

The Lessee will keep the Premises fully stocked and staffed but will keep only such goods, wares and merchandise in the Premises as the Lessee intends to offer for retail sale at or from the Premises.

45 **NON-SELLING AREA**

The Lessee will use for office, clerical or other non-selling purposes only such space in the Premises as is reasonably required for the Lessee's business.

46 **EXTERNAL FITTINGS**

The Lessee will not place any plumbing, shades, canopies, awnings, window boxes, amplifiers or other devices or things on the exterior of the Premises.

47 **EXTERNAL NOISE**

The Lessee will not use any medium, such as loud speakers, video equipment, sound reproduction equipment, television or radio equipment, which may be seen, heard or experienced outside the Premises.

48 **DEFACING**

The Lessee will not mark, paint, drill, write on or in any way deface any wall, ceiling, floor, wood, stone or ironwork of the Premises or the Centre unless permitted by this Lease.

49 **INTERFERENCE WITH EQUIPMENT**

The Lessee will not interfere with or attempt to control any part of the fire alarm, sprinkler systems, any escalator, travelator, any air-conditioning equipment or any other machinery or equipment of the Lessor installed in the Premises or the Centre or both.

50 **LESSOR'S RIGHTS TO ALTER AND MANAGE CAR PARKS AND COMMON AREAS**

50.1 All common areas and car parks are subject at all times to the exclusive control and management of the Lessor. The Lessor may establish, vary, and enforce reasonable rules and regulations about them and the Lessee agrees to comply with them.

50.2 With respect to the common areas and the car parks of the Centre or any part of the common areas and car parks the Lessor may at any time:-

- (a) (a) construct, maintain and operate lighting facilities and landscaping facilities,
- (b) (b) police car parks, prevent employee parking and discourage non-customer parking,
- (c) (c) construct surface, subterranean or elevated car parks,

- (d) increase or decrease the size of car parks and common areas, change the location and composition of them, change the arrangement of parking spaces, and change the direction and means of access to them in any way or manner which the Lessor may choose,
- (e) close temporarily or permanently all or any part of the common areas and car parks if the Lessor thinks it is necessary or desirable to do so:-
 - (i) to reconstruct, maintain or repair the Centre or any part of it;
 - (ii) to prevent either a dedication of it or them to the public or the accrual of any rights in any person; or
 - (iii) to manage the Centre better,
- (f) construct buildings or improvements on the common areas and car park,
- (g) do anything else which the Lessor thinks will be either for the convenient use of them by the customers of the lessees of premises in the Centre or for the advertising and promotion of the Centre

50.3 The Lessee acknowledges that the locations of the car parks of the Centre may be separated from the Centre by public streets.

51. USE OF CAR PARKS

- 51.1 (a) The Lessee's customers while in the Centre may use the car parks within the Centre for parking motor vehicles. The Lessor may charge any person parking in the car park a parking fee, the amount of which will be determined by the Lessor.
- (b) The Lessor does not grant or warrant the right of the Lessee or the Lessee's officers, employees, agents, licensees or invitees to use the car parks in the Centre other than as customers of the Centre. The Lessee will at all times use its best endeavours to prevent the car parks being used by any unauthorised persons.

52. LESSEE TO SUPPLY CAR NUMBERS

The Lessee will, within seven (7) days after being requested by the Lessor, supply the Lessor with the names and addresses of the officers and employees of the Lessee as well as the make and registration number of any motor vehicles of the Lessee its officers and employees employed at either the Demised Premises or elsewhere in the Centre or both.

53. OBSTRUCTION

The Lessee will not use either the common areas or car parks of the Centre for the sale of goods, wares and merchandise or for any other business, occupation or

undertaking and will not in any manner obstruct or cause interference with free passage over them.

54. LESSOR MAY CHANGE CENTRE

The Lessor may increase or decrease the size of, alter or reconstruct the Centre or any part of it other than the Premises.

55. PROMOTION

The Lessee will join with the Lessor in promoting the use of such trade names and slogans as may be adopted by the Lessor for the Centre but the Lessee will be at liberty to use its own trade names or slogans and its normal mode of advertising.

56. TURNOVER RENT

56.1 In addition to the rent as hereinbefore provided, the Lessee shall during the whole of the term pay to the Lessor free of all deductions, the Average Sum, being the amount representing the percentage specified in Item 10.1 of Annexure A of the amount by which the Gross Sales (hereinafter defined) in each Lease Year are in excess of the figure specified in item 10.2 of Annexure A.

56.2 Unless otherwise agreed by the parties hereto the Lessee shall keep for at least six (6) months after the expiration of each Lease Year records conforming to usual accounting practices of the Lessee showing all the Gross Sales at in from or upon the Demised Premises for such Lease Year including all weekly cash reports sales records hire purchase agreements and bank deposit records.

56.3 Within twenty-one (21) days after:

- (i) the end of each of the Lessee's usual four (4) or five (5) weekly accounting periods occurring during the Term or;
- (ii) the date of any permitted assignment by the Lessee of the Lease the Lessee shall furnish to the Lessor a Statement (certified by the Lessee or by the Lessee's duly authorised responsible officer or representative) of the Lessee's Gross Sales during such accounting period and;

56.4 Within twenty-eight (28) days of:

- (i) the expiration of each Lease Year and of the end of the Term or;
- (ii) of the date of sooner termination or;
- (iii) of the date of assignment by the Lessee of the Lease

the Lessee shall furnish to the Lessor a Report (hereinafter called "the Annual Report") confirmed by a practising Chartered Accountant of the Lessee's Gross Sales during the preceding Lease Year or portion thereof

- included in the said Term PROVIDED THAT if the Annual Report is made following an assignment of the Lease such Annual Report shall be made for the portion of the current Lease Year up to the date of assignment and shall be furnished by the Assignor and the next Annual Report shall be made for the period from the date of assignment to the end of the then current Lease Year and shall be furnished by the Assignee.
- 56.5 The Lessor's duly appointed Auditor or his representative shall have the right from time to time but only for so long as the Lessee shall be obliged to keep records hereunder to audit all statements of Gross Sales disclosed in any report given by the Lessee to the Lessor and the Lessee shall make all such records readily available for such examination. If any such audit discloses that the actual Gross Sales by the Lessee exceeded those reported by more than Five per centum (5%) the Lessee shall pay the cost of such audit.
- 56.6 The term "Gross Sales" as used herein shall mean the entire amount of the actual sales price including any Sales Tax (whether wholly or partly for cash or on credit or wholly or partly payable in money or in kind) of all sales (including exchanges) of merchandise or services and all other receipts of all business conducted in or from the Demised Premises (including all resales of articles accepted as trade-ins on sales made at in from or upon the Demised Premises whether such resales are made at in from or upon the Demised Premises or elsewhere and all charges made to customers for altering or repairing goods sold or to be sold commissions on all sales from vending machines all deposits not refunded to purchasers all orders taken at in from or upon the Demised Premises although the said orders may be filled elsewhere and all sales by any sublessee concessionaire or licensee at in from or upon the Demised Premises). No deduction shall be allowed to the Lessee for uncollected or uncollectable credit accounts.
- 56.7 Each sale upon instalment or credit shall be treated as a sale for the full price in the month during which such sale shall be made irrespective of the time when the Lessee shall receive full or partial payment from its customers.
- 56.8 Where goods are hired by the Lessee to customers with an option of purchase there shall be included within the term "Gross Sales" the whole of the cash price (whether the same shall actually be received or not) but there shall be excluded from the term "Gross Sales" any hiring charges where such are specifically charged separately to customers. The whole of the cash price shall be included in the month when the hiring shall be entered into.
- 56.9 There shall be excluded from "Gross Sales" the exchange or transfer of merchandise between the stores of the Lessee (where such exchange or transfer of merchandise is made solely for the convenient operation of the business of the Lessee and not for the purpose of consummating a sale which has theretofore been made at in from or upon the Demised Premises or for the purpose of depriving the Lessor of the benefit of a sale

which otherwise would be made at in from or upon the Demised Premises), the amount of returns to suppliers shippers or manufacturers by the Lessee any sublessee concessionaire or licensee, the amount allowed for any trade-in by the Lessee any sublessee concessionaire or licensee, the amount of any cash or credit refund made upon any sale where the merchandise sold or some part thereof is thereafter returned by the purchaser and accepted by the Lessee any sub-lessee concessionaire or licensee and sales of Lessee's fixtures which are not a part of the Lessee's stock in trade.

- 56.10 Should the Gross Sales exceed the figure specified in item 10.3 of Annexure A in any lease year of the term, then the percentage of such excess payable by the Lessee to the Lessor shall be the percentage specified in Item 10.4 of Annexure A and shall be paid by the Lessee to the Lessor on or before the expiration of one (1) calendar month following the end of each lease year based upon the Annual Report referred to in subclause 56.4. Should the Term terminate for any reason during a lease year, then the payment of rental shall be calculated pro rata on the assumption that the level of Gross Sales made during such lease year up to the date of termination continues at such level for the remainder of the lease year. Nothing in this subclause shall prejudice or effect the right of the Lessor to require an audit as referred to in subclause 56.4.

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REDEVELOPMENT

Notwithstanding anything herein contained or implied the Lessor reserves the right to determine the term hereby granted without payment of any compensation and without any liability attaching to the Lessor, subject only to the provisions of the Retail Leases Act (but only if such provisions apply), if the Premises or any part thereof or the Land or the Building or any of them are required by the Lessor for demolition or any development upon giving six (6) calendar months previous notice in writing to that effect to the Lessee specifying (a) the details of the demolition or development and (b) that the Lessee must vacate the Premises on a date not less than six (6) calendar months from the date of such notice and on the expiry of such period, the Lessee shall vacate the Premises forthwith, provided however that the Lessor shall not be entitled to serve such notice on the Lessee prior to the 1st January, 2013.

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AMENDMENTS AND SPECIAL CONDITIONS

Notwithstanding any other provision of this lease this lease shall be amended by and be read in accordance with the matters set out in Item 12 of Annexure A.



**ANNEXURE TO LEASE BETWEEN MENAI CENTRAL PTY LIMITED ACN 092 075 440 AS
LESSOR AND QSR LIMITED ACN 089 163 682 AS LESSEE DATED 2002**

THE FIRST SCHEDULE

RULES AND REGULATIONS

1. The pavements entries passages elevators escalators and stairways of the said Building shall not be obstructed by any of the tenants or the clerks servants employees clients or customers agents or invitees of any tenant or used by them for any other purpose than for ingress to and egress from their respective Premises and shall be under the absolute control of the Lessor.
2. The floors skylights and windows that reflect or admit light into passageways or into any place in the Building shall not be covered or obstructed by any of the tenants. The water closets conveniences and other water apparatus of which any tenant has the use shall be under the control of the Lessor and shall not be used for any purpose other than those for which they were constructed and no sweepings rubbish rags ashes or other unsuitable substance shall be thrown or placed therein. Any damage resulting to such water closets conveniences or apparatus from misuse shall be borne by the tenant who or whose clerk servant employee client or customer shall cause it.
3. No tenant shall do or permit anything to be done in the said Building or in the portion leased to him or bring or keep anything therein which will in any way obstruct or interfere with the rights of other tenants or in any way injure or annoy them or conflict with the laws relating to fires or with the regulations of the Metropolitan Fire Brigades Board or with any insurance policy upon the Building or any part thereof or conflict with any of the laws or ordinances now or hereafter in force affecting the City of Sydney or of the Municipal Council thereof or of the Sydney Water Board of Health or the Factories Act or any other Act.
4. The Lessor shall in all cases retain the power to prescribe the weight and proper position of iron safes and all damage done to the Building by taking in or putting out a safe or heavy furniture or occasioned thereby during the time it is in or on the Premises shall be made good and paid by the tenant who or whose clerk servant employee or agent shall cause it and no tenant shall (nor shall his clerk servant employee or agent) mark paint drill into or drive nails screws or holes into or in any way deface the walls ceilings partitions floors wood stone or ironwork.
5. Before any safe or furniture is moved into or out of the Building due notice must be given to the Lessor or its agents or the caretaker by the tenant and the moving of the same must be done under the supervision of the Lessor's agent or the caretaker and at a time approved by such agent or caretaker. If there are any elevators and/or escalators in the Building then they shall (except with the permission of the Lessor's agent or the caretaker) be used only for passengers and not for the carriage of goods but this provisions shall not apply to any goods lift.
6. Each tenant shall keep the Premises tenanted by him (including the windows) in a thorough state of cleanliness and free from rats mice or other vermin and shall not allow any accumulation of rubbish therein and shall upon the termination of this Lease restore to the Lessor the keys delivered to the said tenant of all rooms strongrooms and water closets.
7. No tenant shall use any method of heating other than gas or electricity.
8. Each tenant shall give to the Lessor prompt notice in writing of any accident to or defect in the water pipes electric wiring lights or fittings.



9. No tenant or his clerks servants employees clients or customers shall make or permit any improper noises in or defile the Building or any part thereof or loiter in or about the same or interfere in any way with or annoy other tenants or those having business with them and in particular no tenant shall erect or cause to be erected any machinery which may cause or permit any fumes of cooking or objectionable odour which may be an annoyance to any other tenants of the Building.
10. Nothing shall be thrown by the tenants or their clerks servants employees clients or customers agents or invitees out of the windows or doors or down the passages or skylights or upon any pavement of the Building and no tenant shall hang any clothes cloths signs paper or other matter from any window thereof.
11. No animals or birds or reptiles shall be kept in or about the Premises or the Building.
12. Each tenant shall take all reasonable action to ensure that none of its agents, servants or invitees smoke in or about the Premises or Common Parts of the Building.
13. No flower boxes or other objects shall be placed on the outside window sills or on the balconies of any part of the Building.
14. No objectionable noise shall be made or be permitted to be made in the Building or Premises which would in any way interfere with other occupiers thereof.
15. No musical instruments wireless or television sets shall be played on the Premises or in the Building where same can be heard from outside of the Premises.
16. No tenant shall use or cause to be used or allowed to be used any vehicle in the Premises or in the Building that does not have pneumatic tyres.
17. The Lessor shall have the right to amend these rules and regulations from time to time and to make such other rules and regulations as in its judgment may from time to time be needful for the cleanliness safety and care of the Premises and for the preservation of good order therein.
18. No tenant shall permit its vehicles to remain on any parking space that is marked for the exclusive use of any other tenant in the Centre or for loading areas or disabled parking and shall take all reasonable action to ensure that none of its agents, servants or invitees shall allow their vehicles to remain on any parking space that is marked for the exclusive use of any other tenant in the Centre or for loading areas or disabled parking.
19. Any Tenant using any outdoor area for any purpose must ensure that such area is kept clean and tidy. This rule is not to be taken as permitting the use of any area not contained within a tenants leased property.

SCHEDULE HEREINBEFORE REFERRED TO AS ANNEXURE A
To the lease between Menai Central Pty Limited ACN 092 075 440 (Lessor) and
OSR Limited ACN 089 163 682 (Lessee)

Item 1. RENT: Clause 4 - 156,573.

Item 1.1 Base Rent: The rental for the first year of the term hereof shall be \$120,000.00, payable upon the commencement of this Lease as to one (1) month's rent in advance together with that amount of rent from the commencement date to the first day of the next month and thereafter on the first day of each and every month. Such rent shall be paid free of all deductions at such place in the Commonwealth of Australia as the Lessor shall from time to time in writing nominate. The Lessee shall pay all rent, if so directed by the Lessor, to the Lessor or its authorised agent by order on the Lessee's bankers directing payment thereof to the credit of the Lessor's account or to the account of such agent at such bank and branch thereof as is from time to time nominated by the Lessor. ✓

Item 1.2 The base rent for the second and subsequent years of the term hereof shall be reviewed or increased in accordance with the following table:

Rent Reviews During The Lease Term

	Rent review date	Nature of rent increase/review	Method
03	1 st Anniversary of the Lease	Fixed Increase	Rent x 103% ✓
04	2 nd Anniversary of the Lease	Fixed Increase	Rent x 103% ✓
05	3 rd Anniversary of the Lease	Fixed Increase	Rent x 103% ✓
06	4 th Anniversary of the Lease	Fixed Increase	Rent x 103% ✓
07	5 th Anniversary of the Lease	Market Review	See Item 6
08	6 th Anniversary of the Lease	Fixed Increase	Rent x 103% ✓
09	7 th Anniversary of the Lease	Fixed Increase	Rent x 103% ✓
10	8 th Anniversary of the Lease	Fixed Increase	Rent x 103% ✓
11	9 th Anniversary of the Lease	Fixed Increase	Rent x 103% ✓

Where Rent means the base rent for the preceding year

Item 2. OUTGOINGS/OPERATING EXPENSES: Clause 5

In addition to the Rent hereinbefore provided the Lessee shall in respect of each year or part of a year of the Lease reimburse and pay to the Lessor the Lessee's proportion of the Operating Expenses of the Centre relative to each such year or part. Such proportion shall be calculated and payable as follows:- ✓

Item 2.1 (proportionate expenses) The Lessee's proportion of the Operating Expenses shall be such percentage as is determined by the Lessor from time to time (acting reasonably) having regard to the percentage that the floor area of the Demised Premises (including any common areas used exclusively by the Lessee) bears to the total lettable area of all tenancies from time to time within the Centre, the use of the Demised Premises by the Lessee and the maintenance requirements of the Centre caused or created or likely to be caused or created by such use, and such other factors as the Lessor deems appropriate from time to time in apportioning the Operating Expenses of the Centre between all tenancies from time to time.

Item 2.2 For the purposes of this Clause:

- Item 2.2.1 (all expenses) "The Operating Expenses of the Centre" means (to the extent to which the same are not specifically payable from time to time by the Lessee) the total costs of all outgoings costs and expenses of the Lessor now or hereafter properly and reasonably assessed charged or chargeable paid or payable or otherwise incurred upon or in respect of the Centre or upon the Lessor in relation thereto or in the conduct management and maintenance of the Centre and to the use and occupation of the same as a high-class retail/bulky good centre and in particular but without limiting the generality of the foregoing shall include:-
- Item 2.2.3 (all taxes) All taxes including any land tax on a single holding basis payable by the Lessor (but excluding income tax payable by the Lessor on its income).
- Item 2.2.4 (all rates & Charges) All rates charges assessments duties impositions and fees of any public municipal or government body authority or department.
- Item 2.2.5 (all duties) All receipt and other duties and taxes (other than income tax) paid or payable by the Lessor in consequence of the receipt by the Lessor of rent and all other monies payable pursuant to this Lease or in consequence of the Lessor having any estate or interest in the Centre.
- Item 2.2.6 (all insurance) All insurance premiums payable by the Lessor in respect of all improvements, buildings outdoor areas and facilities under the control of the Lessee, fittings and fixtures of the Centre in their full insurable reinstatement value against fire flood lightning storm and tempest and in respect of insurance of the Centre and the Lessor against such other risks (referable to the Centre or the Lessor in relation to the Lessor's ownership or interest in the Centre) as the Lessor may deem necessary or desirable including consequential loss public risk and loss of rent insurance and against such other risks as the Lessor may request in respect of the Centre.
- Item 2.2.7 (Separate or other charges) All charges for water gas oil electricity light power fuel telephone sewerage garbage and other services or requirements furnished or supplied to the Centre or the Common Area for the general benefit or purposes of the Centre.
- Item 2.2.8 (repairs and maintenance) All costs of repairs and maintenance renovations repainting and replacements of and to the Centre and all parts thereof, and all adjacent areas and all signs in respect of the Centre (whether on or part of the Centre or located separately from the Centre), other than work of a structural nature or work the responsibility of any tenant or occupant of the Centre.
- Item 2.2.9 (painting repair of Common Area) The cost of painting repair and other maintenance work and of all cleaning of the Common Area.

Item 2.2.10 (management control security) All reasonable costs (inclusive of wages) of management control security and administration of the Centre.

Item 2.2.11 (parking areas) All costs and expenses associated with the effective maintenance repair or operation of the parking areas and any extensions thereof from time to time available in the Common Area inclusive of any cost or remuneration paid to any contractor engaged by the Lessor to operate such area.

Item 2.2.12 (air-conditioning, escalators etc) The cost of provision operating and maintenance of ventilating, air-conditioning, heating, cooling, escalators, travelators, elevators and any other services provided for the Common Area of the Centre or any part thereof.

Item 2.2.13 (lighting and cleaning) The cost of lighting and cleaning any carparking area or any part of the Common Area.

Item 2.2.14 (security) The reasonable cost in providing security in such manner as the Lessor thinks fit for and in respect of the Centre and its adjacent areas.

Item 2.2.15 (fire fighting and fire protection) The cost of the maintenance repair and testing of all fire, fighting and protection equipment including sprinkler installations, hydrants, fire extinguishers, smoke detectors and fire fighting equipment installed by the Lessor throughout the Centre together with charges rendered by any authority in the supply maintenance servicing or monitoring of fire alarms.

Item 2.2.16 (pests) All costs incurred in the control and eradication of all pests in the Common Area.

Item 2.2.17 (gardens, landscaping and maintenance) The reasonable cost of maintenance and upkeep of the Centre and its adjacent areas including all gardens and landscaping.

Item 2.2.18 (renovation replacements and maintenance fund) Such sum in each year as the Lessor may reasonably decide to set aside as a fund to cover repairs renovation replacements and maintenance of the Centre or its appurtenances and equipment of a substantial but infrequent or irregular nature PROVIDED ALWAYS that any expenditure of the nature aforesaid shall only be deemed to be an Operating Expense as otherwise herein provided to the extent to which the fund shall not be sufficient at the time when such expenditure is actually made.

Item 2.2.19 (levies and contributions) All levies and contributions of whatsoever nature determined and/or levied by the Owners Corporation, Body Corporate or any Managing Agent in respect of any Strata Scheme of which the Demised Premises or the building or the Centre forms part.

Item 2.3 (Statement of Expenses) As soon as practicable after the 30th day of June in each year, the Lessor will furnish to the Lessee a statement giving reasonable details of the Operating Expenses of the Centre.

Except in the case of manifest error notified by one party to the other within fourteen (14) days of the service of such statement on the Lessee, such statement shall be prima facie evidence of the matters stated therein.

Item 2.4 Within twenty one (21) days of receipt by the Lessee from the Lessor of the statement in writing of the amount of the Lessee's proportion of the Operating Expenses of the Centre or any particular part thereof the Lessee shall pay such amount to the Lessor AND IT IS HEREBY AGREED AND DECLARED:

Item 2.4.1 that subject to Paragraph 2.4.2 of this sub-clause the liability of the Lessee to pay the Lessee's proportion of the Operating Expenses of the Centre shall not be determined or otherwise prejudiced by the prior expiry of the Term of or other determination of this Lease;

Item 2.4.2 that if the term of this Lease expires or if this Lease is otherwise determined before the 30th day of June in any year or if at such 30th day of June less than one year of the Term of this Lease has expired, then the Operating Expenses of the Centre shall be deemed to accrue from day to day and the Lessee's proportion thereof shall be calculated accordingly.

Item 2.5 Notwithstanding the provisions of the foregoing paragraph the Lessor may from time to time notify the Lessee of the Lessor's reasonable estimate of the Lessee's proportion of the Operating Expenses of the Centre for any period not exceeding one (1) year in advance of the estimate whereupon the Lessee will pay to the Lessor during such period such estimated proportion by equal monthly instalments in advance on the days hereinbefore fixed for payment of the Rent PROVIDED ALWAYS that upon computation of the Operating Expenses of the Centre at the end of the then current year as aforesaid any necessary adjustment between the estimated and actual Lessee's proportion shall be made and any refund to or further payment by the Lessee shall be allowed or made by or to the Lessor accordingly.

Item 3 PERMITTED USE: Clause 7.1

Take away restaurant with a drive through facility

Item 4 PUBLIC RISK INSURANCE: Clause 10.1

\$20,000,000.00

Item 5 OPTION PERIOD: Clause 20

One further term of Ten (10) years.

Item 6 RENT FOR RENEWED PERIOD: Clause 20

The base rent payable by the Lessee to the Lessor pursuant to this Lease shall be calculated and paid in the following manner:-

6.1 All rent shall be paid calendar monthly in advance on the first day of each and every month,

6.2 On or before the first day of the renewed term ("the review date") and at any time thereafter the Lessor shall have the option by notice given in writing to the Lessee to increase the annual rent to an amount which would

at the relevant review date be the current market rent of the Demised Premises (having regard to all matters then relevant to the determination of such rent) and the amount so determined shall subject as hereinafter appearing be the annual rent payable by the Lessee as from the review date.

- 6.3 The Lessee within a period of twenty-one (21) days after service of any such notice may by notice in writing to the Lessor dispute that the amount set out in the notice referred to in paragraph 6.2 of this subclause is the current market rent of the Demised Premises.
- 6.4 If the lessor and the lessee do not agree as to what the actual amount of that rent is to be, the amount of the rent is to be determined by valuation carried out by a specialist retail valuer appointed by agreement between the parties to the lease, or failing agreement, appointed by the person for the time being holding or acting in the office of President of the Australian Property Institute (NSW) or President of the Real Estate Institute (NSW). Note the parties may agree to appoint a specialist retail valuer nominated by the President of the Australian Property Institute (NSW) or the President of the Real Estate Institute (NSW), or nominated by some other person of the parties' choice.
- 6.5 The provisions of section 19 (1) (a) of the Retail Leases Act are to be taken into account by a specialist retail valuer appointed under paragraph 6.4 in determining the amount of the rent.
- 6.6 A valuation for the purposes of paragraph (b) is to be in writing, to contain detailed reasons for the specialist retail valuer's determination and to specify the matters to which the valuer had regard for the purposes of making his or her determination.
- 6.7 The parties to the lease are to pay the costs of a valuation by a specialist retail valuer appointed under paragraph (b) in equal shares.
- 6.8 A specialist retail valuer must make a valuation of a current market rent for the purposes referred to in this section not later than 1 month after accepting the appointment to make the valuation.
- 6.9 Deleted.
- 6.10 Should the amount of the reviewed annual rent as aforesaid not be ascertained before the review date the Lessee shall pending ascertainment thereof continue to pay the annual rent at the rate then applicable but subject to the review thereof and upon the reviewed annual rent being ascertained any necessary adjustment of rent calculated from the review date shall be paid forthwith by the Lessee to the Lessor. The Lessee shall in addition pay interest on the amount (if any) by which the reviewed annual rent exceeds the annual rent applicable at the review date ("the excess amount"), for the period from the review date to the date of payment of the excess amount ("the relevant period"), such interest to be calculated in respect of the relevant period at the rate being two (2%) per centum above the rate chargeable at the time by the Westpac Banking Corporation on overdraft accounts of less of \$100,000.00.
- 6.11 To the extent that the provisions of section 19 of the Retail Leases Act does not apply, any valuer determining the current market rent in accordance with the provisions of this Clause shall disregard, when effecting the calculation of the current market rent, any incentive, concession, inducement, abatement or reduction (whether in respect of rent

or otherwise) paid, payable, granted or allowed to the Lessee or any other person in respect of comparable premises.

- 6.12 Deleted
- 6.13 Deleted
- 6.14 Any valuers appointed in accordance with the foregoing provisions shall act in all respects in the capacity of experts and not as arbitrators and their decision shall be final and binding in all respects.
- 6.15 Time in paragraphs 6.3 and 6.8 shall be of the essence in all respects.
- 6.16 The rental for the second and subsequent years of the Renewed Term shall be the rental set out in the table in item 6A below.

Item 6A RENT INCREASES DURING TERM OF OPTION: Clause 20

Rent Reviews During The Option Term

Rent review date	Nature of rent increase/review	Method
1 st Anniversary of the Lease	Fixed Increase	Rent x 103%
2 nd Anniversary of the Lease	Fixed Increase	Rent x 103%
3 rd Anniversary of the Lease	Fixed Increase	Rent x 103%
4 th Anniversary of the Lease	Fixed Increase	Rent x 103%
5 th Anniversary of the Lease	Market Review	See Item 6
6 th Anniversary of the Lease	Fixed Increase	Rent x 103%
7 th Anniversary of the Lease	Fixed Increase	Rent x 103%
8 th Anniversary of the Lease	Fixed Increase	Rent x 103%
9 th Anniversary of the Lease	Fixed Increase	Rent x 103%

Where Rent means the base rent for the preceding year

Item 7 GUARANTORS: Clause 26

Not Applicable whilst the Tenant is a public company, and the directors of the Tenant in all other circumstances.

Item 8 LAST OPTION: Clause 20.1

The First Option

Item 9 MAXIMUM TERM: Clause 20.1

Twenty (20) years

Item 10 TURNOVER RENT Clause 56

Item 10.1 7% (Clause 56.1)

Item 10.2 The amount which equals the Base Rental as determined in accordance with Items 1 and 6A of this Schedule multiplied by a factor of 14.29. (Clause 56.1)

Item 10.3 Not Applicable (Clause 56.10)

~~139,000~~

$139,000 \times 14.29 = 1,986,310$

~~139,000~~ $\times 14.29 = 2,000,000$

$7\% \times 13,690 = 958.30$

958.30

✓ Item 10.4 Not Applicable (Clause 56.10)

Item 11 SECURITY BOND Clause 22

✓ An amount equivalent to three (3) months rental as set out in item 1 of this Annexure and three (3) months' contribution to Outgoings and all Goods and Services Tax applicable thereto

Item 12 AMENDMENTS AND SPECIAL CONDITIONS Clause 58

Pre-lease

12.1 The Lessor must assist the Lessee, at the Lessee's cost in any application for signage that the Lessee may lodge with Sutherland Council provided that the signage must be consistent with KFC's standard signage.

12.2 The Lessor must assist the Lessee, at the Lessee's cost in any application for signage that the Lessee may lodge with Sutherland Council and will allow the Lessee a space on its directional signage and a signboards.

12.3 The Lessor must provide access roadways to the boundary of the demised premises as indicated on the plan attached

✓ 12.4 The Lessor shall be absolutely entitled to all improvements, fixtures and fittings constructed and affixed to the demised premises including but not limited to mechanical ventilation and hoods, air-conditioning ducting, conduit fixtures and vents (but not mechanical systems), grease trap/s, toilets, ceilings, floor and wall finishes, ceiling and external light fittings and cold stores upon completion of as they are constructed or affixed to the demised premises (the 'Landlords Fixtures and Fittings') PROVIDED THAT such landlords fixtures and fittings shall not include tables, chairs, cooking equipment and other fixtures and fittings specifically related to the operation of a KFC franchise.

✓ 12.5 The Lessee shall be solely responsible for cleaning and maintaining of its external areas, including landscaping, roadway and carpark areas within the bounds of the property leased and shall be responsible for resurfacing roadways with tarmac and resurfacing footpath pavements within the leased property if reasonably required by the Lessor. Provided that the Lessor may come onto the demised premises and maintain the roadway, carpark, landscaping and footpaths if the Lessee fails to do so at any time and the Lessee must indemnify the Lessor for the costs of such maintenance work

X 12.6 The Lessor is not responsible for policing the use of the roadway and carspaces within the demised premises or for placing signage on them.

Pre-lease

12.7 The Lessor must approve the construction of any improvements proposed by the Lessee on the demised premises. The Lessee must construct such improvements in accordance with council approvals, using new and good quality materials and in a proper and workmanlike manner. The Lessee must ensure that its builder integrates its work programme with the Lessor's builder. The Lessor retains the right at all times to come onto the leased property and do all things necessary to obtain a Construction Certificate for the Centre if the Lessee's uncompleted building work is unreasonably delaying the issue of such certificate. The Lessee must indemnify the Lessor for the costs of such work provided that such right may not be exercised prior to the date which is 16 weeks from the 12th August 02.

Pre-lease

12.8 The Lessee must provide the Lessor with a copy of the following documents prior to commencing its work: a Building contract, trade breakdown, cash flow, work programme, builders payment terms

~~12.9 The Lessor agrees to progressively pay \$443,000 to the Lessee's builder towards the construction of the improvements on the Demised Premises subject to the following conditions:~~

- ~~(a) receiving the above documents which must be satisfactory to the Lessor~~
- ~~(b) the Lessor and the Lessee and the Builder entering into a tripartite deed~~
- ~~(c) retention of 10% of any progress payment with 50% released on practical completion and the balance released on the expiration of the defects rectification period,~~
- ~~(d) the submission of a progress claim (on a cost to complete basis) together with a QS and Architects report in the form below~~
- ~~(e) the Lessee serving a Quantity Surveyor's report addressed to the Lessor particularising the work completed to the date of any progress claim on a cost to complete basis~~
- ~~(f) the Lessee serving an Architect's report addressed to the Lessor certifying that the work completed to the date of any progress claim has been completed in a proper and workmanlike manner and in accordance with council or certifiers requirements for all progress claims and at practical completion.~~



*12.9-12.10
lease*

12.10 The Lessee must use its best endeavours to complete its proposed construction works and obtain a Construction Certificate for the completed works on or before 1st November 2002.

12.11 The Construction Certificate referred to in item 12.10 above must be served on the Lessor within seven (7) days of its issue date.

12.12 The Lessee may heat and air condition the Premises to the Tenant's occupational requirements.

✓ 12.13 the Lessee must, at its sole expense, be responsible for the regular servicing of the Air conditioning Equipment.

✓ 12.14 On the Tenant vacating the Premises, air-conditioning ducting, conduit fixtures and vents (but not mechanical systems), owned by the Tenant must remain in or on the Premises and ownership of that Air conditioning Equipment will vest absolutely in the Landlord.

✓ 12.15 In clause 7.30.3 replace the words "four years ... Lessor" with "five (5) years or on expiry or determination of this lease (or any renewal of this Lease)"

✗ 12.16 In clause 9.1 replace the word "undesirable" with not financially viable"

✗ 12.17 In clause 9.3 after the word "directly" in the fourth line insert the words "and materially". Insert the following words at the conclusion of this paragraph "provided that the Lessor shall do all things reasonably necessary to minimise interference with the Lessee's business including interference with the roadways, car parking and drive-thru facility of the Lessee".

✗ 12.18 In clause 15.1.4 replace "fourteen (14) days" with "twenty-eight (28) days".

✓ 12.19 In clause 16 replace "6%" with "4%".

12.20 Replace clause 19.1 with the following clause:

"LESSEE'S FIXTURES:

(a) The Lessee will, within seven (7) days of the expiration of the term of the Lease or the sooner determination of this Lease, remove:

- (i) Externally – Illuminated awning, cupola, all signage, dumpster bins and all garbage bins, and all outside furniture;
- (ii) Internally – All portable cooking equipment (tables, cookers, fryers and warmers), all portable refrigerators and refrigerated cabinets, all tables and chairs, menu boards and decorations.

Together known as "trade or tenant's fixtures"

(b) but the Lessee shall in such removal do no damage to such Demised Premises or forthwith shall make good any such damage which the Lessee may occasion thereto and shall remove all rubbish and shall leave the Demised Premises in a clean state and condition and should the Lessee fail to remove such trade or tenant's fixtures the Lessor at its option may upon the expiration of the lease remove such trade or tenant's fixtures and recover from the Lessee the cost of such removal and disposal.

12.21 Add new clause 21.4 as follows:

"Wherein the Lessor grants the Lessee a right to quiet use and enjoyment of the property".

12.22 Delete clause 22.5 (b):

12.23 Add new clause 26.7 as follows:

"The provisions of this clause shall not apply for so long as the Lessee is a publicly listed company and the Lessee must procure that any assignee or sub tenant procure a guarantee from its directors before any change to the Lessee is effected".

12.24 In clause 31 insert the following words at the conclusion of this paragraph "provided that such easements, rights of way, restrictions, covenants or other encumbrances or conversions of the title to the land, do not materially and adversely affect the business of the Tenant including access by the customer's of the Tenant to its drive-thru facility"

12.25 In clause 51 Insert the following words at the conclusion of this paragraph "provided that such increase, decrease, alteration or reconstruction does not materially and adversely affect the pedestrian and vehicular access to the business of the Tenant in the event of any aforementioned action by the Lessor. The Lessor covenants to minimise as far as is practicable any interference with the pedestrian and vehicular access to the Lessee's business."

12.26 In clause 56.6 add the words "but excluding GST" after the words "Sales Tax"

12.27 Delete clause 57

12.28 In item 6.3 replace "twenty-one (21)" with "thirty (30)"

THE COMMON SEAL of
MENAI CENTRAL PTY LIMITED
was hereunto affixed by authority of the
Board of Directors and in the presence of:



[Signature]
Secretary

[Signature]
Director

THE COMMON SEAL of
QSR LIMITED
was hereunto affixed by authority of the
Board of Directors and in the presence of:



[Signature]
Secretary
MICHAEL THARENOS KILIAS

[Signature]
Director
GARY WILSON
MAYANUS AREOAR

CONSENT TO AGREEMENT TO LEASE

Annexure to Agreement to Lease

From: Menai Central Pty Limited ACN 092 075 440

To: QSR Limited ACN 089 163 682

Dated:

Perpetual Nominees Limited as Mortgagee under Mortgage(s) No. **HEREBY**
CONSENTS to the within Lease subject to and without in any way limiting abridging
affecting or prejudicing the rights powers and remedies of the Mortgagee under the said
Mortgage(s) (or any of them) which rights powers and remedies shall remain in full force and
effect as if this consent had not been given save and except that so long as the covenants and
conditions and provisions of the within Lease are duly observed and performed the
Mortgagee will in the event of the exercise of the power of sale or other power or remedy of
the Mortgagee on default under the said Mortgage(s) (or any of them) exercise the same
subject to the then subsisting rights of the Lessee(s) under the within Lease.

Signed at Sydney this *6TH* day of *NOVEMBER* 2002.

SIGNED for and on behalf of:

Signed in my presence for and on behalf of Perpetual Nominees Limited (A.C.N. 000 733 700) by its Attorneys **JOHN BOWEN**
ASSISTANT MANAGER..... **KYLIE ARIGHO**..... **ASSISTANT MANAGER**
who are personally known to me and each of whom declares that he/she
has been appointed by the Board of Directors of that company as an
attorney of the company for the purposes of the Power of Attorney
dated *12/2/02* (Registration No. *43421843*) and that
he/she has no notice of the revocation of his/her powers
.....
Signature of Witness
.....
Full name of Witness *Dean Gray*.....
Signature of Attorney
Signature of Attorney

Applicant:

SAI Global Property Division Pty Ltd
L 3 355 Spencer St
WESTMELBOURNE VIC 3003

**Planning Certificate – Section 149(2) and (5) Certificate
Environmental Planning and Assessment Act, 1979**

Certificate no:	CN14/02645	Delivery option:	Email
Certificate date:	06/11/2014	Your reference:	24855299 43341145

Property:

Lot 101 DP 1038691
5-21 Carter Road MENAI NSW 2234

Zone:

Sutherland Shire Local Environmental Plan 2006
Zone 8 - Urban Centre
Draft Sutherland Shire Local Environmental Plan 2013
Zone B3 Commercial Core

Notes:

- (a) *The information in this certificate only relates to the real property identifier associated with the property and not to any licence or permissive occupancy that may be attached to and included in the property details contained in the description of the land.*
- (b) *The Environmental Planning and Assessment Act 1979 will be referred to in this Certificate as 'the Act'.*

Disclaimer:

- (a) *This certificate contains information provided to Council by third parties and is as current as the latest information available to Council at the time of production of this document. Council does not warrant the accuracy of the information contained within the information provided by third parties and has not independently verified the information. It is strongly recommended that you contact the relevant third parties to confirm the accuracy of the information.*

**INFORMATION PURSUANT TO SECTION 149(2),
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**

1. Names of relevant instruments and DCPs

1. The name of each environmental planning instrument that applies to the carrying out of development on the land:

Sutherland Shire Local Environmental Plan 2006

Greater Metropolitan Regional Environmental Plan No. 2 - Georges River Catchment (5/2/1999) (deemed SEPP).

* Regional Environmental Plan No.09 (Extractive Industry (No.2) 1995) (deemed SEPP).

- * SEPP (Building Sustainability Index: Basix) 2004.
- * SEPP (Exempt and Complying Development Codes) 2008
- * SEPP (Affordable Rental Housing) 2009

- * SEPP No. 1 - Development Standards
- * SEPP No. 19 – Bushland in Urban Areas.
- * SEPP No. 21 – Caravan Parks.
- * SEPP No. 32 – Urban Consolidation (Redevelopment of Urban Land).
- * SEPP No. 33 – Hazardous and Offensive Development.
- * SEPP No. 39 – Spit Island Bird Habitat.
- * SEPP No. 50 – Canal Estates.
- * SEPP No. 55 – Remediation of Land.
- * SEPP No. 62 – Sustainable Aquaculture.
- * SEPP No. 64 – Advertising and Signage.
- * SEPP No. 65 – Design Quality of Residential Flat Development.
- * SEPP (Housing for Seniors or People with a Disability) 2004: (Does not apply to land to which State Environmental Planning Policy (Kurnell Peninsula) 1989 applies).
- * SEPP (Major Development) 2005.
- * SEPP (Mining, Petroleum Production and Extractive Industries) 2007.
- * SEPP (Temporary Structures) 2007.
- * SEPP (Infrastructure) 2007.

2. The name of each proposed environmental planning instrument that will apply to the carrying out of development on the land and that is or has been the subject of community consultation or on public exhibition under the Act (unless the Director-General has notified the council that the making of the proposed instrument has been deferred indefinitely or has not been approved):

Draft State Environmental Planning Policy (Competition) 2010
applies and aims to promote economic growth and competition and
remove anti competitive barriers in planning and assessment.

Council has prepared a draft Standard Instrument Local Environmental Plan (draft SSLEP2013) for the Sutherland Shire. The draft plan affects all land and water within the Sutherland Shire. Following Gateway Determination, the draft SSLEP2013 was exhibited between 2nd September 2014 and 1st October 2014. The draft plan proposes changes to zoning and land use and development standards that may change development potential of individual properties. For further information please see Council's website www.sutherlandshire.nsw.gov.au.

3. The name of each development control plan that applies to the carrying out of development on the land:

* Sutherland Shire Development Control Plan 2006

Note: In this clause, proposed environmental planning instrument includes a planning proposal for a LEP or a draft environmental planning instrument.

2. Zoning and land use under relevant LEPs

For each environmental planning instrument or proposed instrument referred to in clause 1 (other than a SEPP or proposed SEPP) in any zone (however described).

- (a) The name and number of the zone:

Sutherland Shire Local Environmental Plan 2006
Zone 8 - Urban Centre
Draft Sutherland Shire Local Environmental Plan 2013
Zone B3 Commercial Core

Sutherland Shire Local Environmental Plan 2006
Zone 8 - Urban Centre

- (b) Development allowed without development consent:

Development for the purpose of drainage.

Exempt development.

- (c) Development that requires development consent:

Development (other than development included in item (b)) for the purpose of:

advertisements, arts and craft centres, awnings, backpackers' accommodation, boarding houses, bulky goods premises, business identification signs, business premises, car parks, childcare centres, community facilities, convenience stores, educational establishments, entertainment facilities, food shops, hotels, medical facilities, mixed use

premises, motels, motor showrooms, nightclubs, passenger transport facilities, places of assembly, places of public worship, railways, recreation areas, recreation facilities, registered clubs, residential flat buildings (but only on land identified on the map for such a purpose) restaurants, roads, seniors housing, service stations, service support industries, sex shops, shop-top housing, shops, tourist facilities, tourist information centres, utility installations (except for gas holders or generating works), vehicle rental centres, veterinary hospitals.

Demolition not included in item (b).

- (d) Development that is prohibited within the zone:

Any development other than development included in (b) or (c).

**Sutherland Shire Local Environmental Plan 2006
Clauses 28, 29, and 31**

Clause 28 Subdivision - consent requirements,
Clause 29 Crown development and public utilities, and/or
Clause 31 Development for group homes,
of Sutherland Shire Local Environmental Plan 2006 apply to this property.

**Sutherland Shire Local Environmental Plan 2006
Exceptions Clause 32**

Clause 32 - Seniors Housing in Zone 8 or 9 of Sutherland Shire Local Environmental Plan 2006 applies to this property.

**Draft Sutherland Shire Local Environmental Plan 2013
Zone B3 Commercial Core**

- (b) Development allowed without development consent:

Home occupations

- (c) Development that requires development consent:

Amusement centres; Boarding houses; Building identification signs; Business identification signs; Car parks; Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Environmental protection works, Flood mitigation works; Function centres; Helipads; Home businesses; Hostels; Hotel or motel accommodation; Information and education facilities; Light industries; Medical centres; Mortuaries; Passenger transport facilities; Places of public worship; Public administration building; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises, Roads; Seniors housing; Service stations; Shop top housing;

Small bar; Tourist and visitor accommodation; Vehicle repair stations;
Veterinary hospitals

Any other development not specified in item 2 or 4

(d) Development that is prohibited within the zone:

Advertising signage; Agriculture; Air transport facilities; Airstrip; Animal boarding or training establishments; Attached dwellings; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Depots; Dual occupancies; Dwelling houses; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; General industries; Group homes; Heavy industrial storage establishments; Heavy industries; Helipads; Highway service centres; Home-based child care; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Jetties; Marinas; Multi dwelling housing; Open cut mining; Recreation facilities (major); Rural industries; Rural worker's dwellings; Secondary dwellings; Semi-detached dwellings; Sewerage systems; Sex services premises; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste or resource management facilities; Water supply systems; Wholesale supplies.

(e) Minimum land dimensions fixed for the erection of a dwelling-house on the land:

Under SSLEP2006 there are no relevant development standards for the erection of a dwelling house due to site dimensions.

Under Draft Sutherland Shire Local Environmental Plan 2013 there are no relevant development standards for the erection of a dwelling house due to site dimensions.

(f) Does the land include or comprise critical habitat?

No

(g) Is the land in a conservation area?

No

(h) Is an item of environmental heritage situated on the land?

The Sutherland Shire Local Environmental Plan 2006 lists this property as the location of a heritage item and clause 54 applies.

The Draft Sutherland Shire Local Environmental Plan 2013 proposes to list this property as a heritage item, Clause 5.10 will also apply.

2A. Zoning and land use under State Environmental Planning Policy (Sydney Region Growth Centres) 2006

To the extent that the land is within any zone (however described) under:

- (a) Part 3 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (the 2006 SEPP)*, or
- (b) a Precinct Plan (within the meaning of the 2006 SEPP), or
- (c) a proposed Precinct Plan that is or has been the subject of community consultation or on public exhibition under the Act,

the particulars referred to in clause 2 (a)-(h) in relation to that land (with a reference to "the instrument" in any of those paragraphs being read as a reference to Part 3 of the 2006 SEPP, or the Precinct Plan or proposed Precinct Plan, as the case requires).

Note: Sutherland Shire Council does not currently have any land in the Growth Centres that has been zoned by a Precinct Plan in the Appendices to this SEPP, proposed to be zoned in a draft Precinct Plan (that has been publicly exhibited or formally consulted on) or has been zoned under Part 3 of the Growth Centres SEPP.

3. Complying Development

- (1) The extent to which the land is land on which complying development may be carried out under each of the codes for complying development because of the provisions of clauses 1.17A (1) (c) to (e), (2), (3) and (4) and 1.19 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
- (2) The extent to which complying development may not be carried out on that land because of the provisions of clauses 1.17A (1) (c) to (e), (2), (3) and (4) and 1.19 of that Policy and the reasons why it may not be carried out under those clauses.
- (3) If the council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land, a statement that a restriction applies to the land, but it may not apply to all of the land, and that council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land.

General Housing Code

Complying development under the General Housing Code may only be carried out on that part of the land not affected by specific land exemptions. The land is affected by the following specific land exemptions: The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps. The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation.

(Note: this code applies only to land within, or proposed to be within, the following zones R1, R2, R3, R4 or RU5. Check the zoning on the front of this certificate.)

Housing Alterations Code

Complying development under the Housing Alterations Code may only be carried out on that part of the land not affected by specific land exemptions. The land is affected by the following specific land exemptions: The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation. The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps.

Commercial and Industrial Alterations Code

Complying development under the Commercial and Industrial Alterations Code may only be carried out on that part of the land not affected by a specific land exemption. The land is affected by the

following specific land exemptions: The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps. The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation.

Commercial and Industrial (New Buildings and Additions) Code

Complying development under the Commercial and Industrial (New Buildings and Additions) Code may only be carried out on that part of the land not affected by specific land exemptions. The land is affected by the following specific land exemptions: The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps. The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation.

(Note: this code applies only to land within, or proposed to be within, the following zones B1, B2, B3, B4, B5, B6, B7, B8, IN1, IN2, IN3, IN4 or SP3. Check the zoning on the front of this certificate.)

Subdivisions Code

Complying development under the Subdivisions Code may only be carried out on that part of the land not affected by specific land exemptions. The land is affected by the following specific land exemptions: The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation. The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps.

Rural Housing Code

Complying development under the Rural Housing Code may only be carried out on that part of the land not affected by specific land exemptions. The land is affected by the following specific land exemptions: The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps. The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation.

(Note: this code applies only to land within, or proposed to be within, the following zones RU1, RU2, RU3, RU4, RU6 or R5. Check the zoning on the front of this certificate.)

General Development Code

Complying development under the General Development Code may only be carried out on that part of the land not affected by specific land exemptions. The land is affected by the following specific land exemptions: The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps. The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation.

Demolition Code

Complying development under the Demolition Code may only be carried out on that part of the land not affected by specific land exemptions. The land is affected by the following specific land exemptions: The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation. The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps.

Fire Safety Code

The land contains a heritage item, which restricts the application of complying development under this Code, but this restriction may not apply to all of the land. Council does not have sufficient information to ascertain the extent of the affectation. The land is partially a draft heritage item. For more information on the extent of the item please refer to the Draft Sutherland Shire Local Environmental Plan 2013 - Heritage maps.

4. Coastal Protection

Is the land affected by section 38 or 39 of the *Coastal Protection Act 1979* (so far as Council has been notified by the Department of Services, Technology and Administration)?

No

4A. Information relating to beaches and coasts

- (1) In relation to a coastal council - whether an order has been made under Part 4D of the *Coastal Protection Act 1979* in relation to temporary coastal protection works (within the meaning of that Act) on the land (or on public land adjacent to that land), except where the Council is satisfied that such an order has been fully complied with.
- (2) In relation to a coastal council:
 - (a) whether the Council has been notified under section 55X of the *Coastal Protection Act 1979* that temporary coastal protection works (within the meaning of that Act) have been placed on the land (or on public land adjacent to that land), and
 - (b) if works have been so placed – whether the council is satisfied that the works have been removed and the land restored in accordance with that Act.

Note: Sutherland Shire Council has not issued any orders or been notified of any temporary coastal protection works to date.

4B. Annual charges under Local Government Act 1993 for coastal protection services that relate to existing coastal protection works

In relation to a coastal council—whether the owner (or any previous owner) of the land has consented in writing to the land being subject to annual charges under section 496B of the Local Government Act 1993 for coastal protection services that relate to existing coastal protection works (within the meaning of section 553B of that Act).

There are no properties subject to annual charges under section 496B of the Local Government Act 1993 for coastal protection services.

Note. "Existing coastal protection works" are works to reduce the impact of coastal hazards on land (such as seawalls, revetments, groynes and beach nourishment) that existed before the commencement of section 553B of the Local Government Act 1993.

5. Mine Subsidence

Is the land proclaimed to be mine subsidence district within the meaning of section 15 of the *Mine Subsidence Compensation Act, 1961*?

No

6. Road Widening and Road Realignment

(a) Is the land affected by a road widening or road realignment under Division 2 of Part 3 of the *Roads Act 1993*?

No

- (b) Is the land affected by any road widening or road realignment under any environmental planning instrument?

No

- (c) Is the land affected by any road widening or road realignment under any resolution of the Council?

No

7. Council and other public authority policies on hazard risk restrictions

- (a) Is the land affected by a policy adopted by the council that restricts the development of the land because of the likelihood of landslip, bushfire, tidal inundation, subsidence, acid sulfate or any other risk?

No

- (b) Is the land affected by a policy adopted by any other public authority that restricts the development of the land because of the likelihood of landslip, bushfire, tidal inundation, subsidence, acid sulphate or any other risk?

No

7A. Flood related development controls information

- (1) Whether or not development on that land or part of the land for the purposes of dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (not including development for the purposes of group homes or seniors housing) is subject to flood related development controls.

No

- (2) Whether or not development on that land or part of the land for any other purpose is subject to flood related development controls.

No

- (3) Words and expressions in this clause have the same meanings as in the Instrument set out in the Schedule to the Standard Instrument (Local Environmental Plans) Order 2006.

8. Land reserved for acquisition

Whether or not any environmental planning instrument or proposed environmental planning instrument referred to in clause 1 makes provision in relation to the acquisition of the land by a public authority, as referred to in section 27 of the Act?

No

9. Contribution Plans

Council has adopted the following Contribution Plans that apply to the land:

- * The 2005 Shire Wide Open Space and Recreation Facilities Contribution Plans applies to this property (Effective 1/1/05).
- * The 2003 Community Facilities Contributions Plan applies to this property (Effective 14/12/04).
- * The Menai Centre S94A Contribution Plan applies to this property (Effective 27/05/08).

9A. Biodiversity certified land

If the land is biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), a statement to that effect.

No

10. Biobanking agreements

If the land is land to which a biobanking agreement under Part 7A of the Threatened Species Conservation Act 1995 relates, a statement to that effect (but only if the council has been notified of the existence of the agreement by the Director-General of the Department of Environment, Climate Change and Water).

No

11. Bush fire prone land

Is the land bush fire prone?

No

12. Property Vegetation Plans

Has Council been notified that a property vegetation plan under the *Native Vegetation Act 2003* applies to the land?

No

13. Orders Under Trees (Disputes Between Neighbours) Act 2006

Whether an order has been made under the Trees (Disputes Between Neighbours) Act 2006 to carry out work in relation to a tree on the land (but only if Council has been notified of the order).

No.

14. Directions under Part 3A

Is there a direction by the Minister in force under section 75P (2) (c1) of the Act that a provision of an environmental planning instrument prohibiting or restricting the carrying out of a project or a stage of a project on the land under Part 4 of the Act that does not have effect?

No

15. Site compatibility certificates and conditions for seniors housing

Is there a current site compatibility certificate (seniors housing) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, of which the council is aware, in respect of proposed development on the land? If there is a certificate, the period for which the certificate is current. Are there any terms of a kind referred to in clause 18 (2) of that Policy that have been imposed as a condition of consent to a development application granted after 11 October 2007 in respect of the land?

No

16. Site compatibility certificates for infrastructure

Is there a valid site compatibility certificate (of which the council is aware), issued under clause 19 of State Environmental Planning Policy (Infrastructure) 2007 in respect of proposed development on the land?

No

17. Site compatibility certificates and conditions for affordable rental housing

Is there a current site compatibility certificate (affordable rental housing), of which the council is aware, in respect of proposed development on the land? If so this statement sets out the period for which the certificate is current and any conditions pursuant to cl17(1) of SEPP (Affordable Rental Housing) 2009.

No

18. Paper subdivision information

Is the land subject to any development plan adopted by a relevant authority or that is proposed to be subject to a consent ballot? If so, this statement sets out the date of any subdivision order that applies to the land.

Note: Words and expressions used in this clause have the same meaning as they have in Part 16C of this Regulation.

No

19. Site verification certificates

Is there a current site verification certificate, of which the council is aware, in respect of the land?

If so, this statement includes:

- (a) the matter certified by the certificate, and
- (b) the date on which the certificate ceases to be current (if any), and
- (c) that a copy may be obtained from the head office of the Department of Planning and Infrastructure.

Note. A site verification certificate sets out the Director-General's opinion as to whether the land concerned is or is not biophysical strategic agricultural land or critical industry cluster land—see Division 3 of Part 4AA of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.

No

Note: The following matters are prescribed by section 59 (2) of the Contaminated Land Management Act 1997 as additional matters to be specified in a planning certificate:

- (a) Is the land significantly contaminated land within the meaning of that Act?
No
- (b) Is the land subject to a management order within the meaning of that Act?
No
- (c) Is the land the subject of an approved voluntary management proposal within the meaning of that Act?
No
- (d) Is the land subject to an ongoing maintenance order within the meaning of that Act?
No
- (e) Is the land subject of a site audit statement within the meaning of that Act?
No

Any Other Prescribed Matter

Note: Section 26 of the Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 provides that a planning certificate must include advice about any exemption under section 23 or authorisation under section 24 of that Act if the Council is provided with a copy of the exemption or authorisation by the Co-ordinator General under the Act.
No

Additional Information

Council's records indicate that there is no other relevant information in accordance with Section 149(5) of the Environmental Planning and Assessment Act, 1979 related to this property. Advice regarding demolition orders should be sought by application for a Section 149D Building Certificate.

**ADDITIONAL INFORMATION PURSUANT TO SECTION 149(5),
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

The following additional information relating to the land is provided in good faith. The information is not exhaustive of matters likely to affect the land. Section 149(6) states that a council shall not incur any liability in respect of any advice provided in good faith pursuant to subsection (5).

Council's records indicate that there is no other relevant information in accordance with Section 149(5) of the Environmental Planning and Assessment Act, 1979 related to this property. Advice regarding demolition orders should be sought by application for a Section 149D Building Certificate.

For further information please telephone [02] 9710 0333.

Yours faithfully



J W Rayner
General Manager

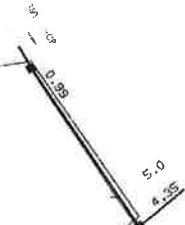
SEWERAGE SERVICE DIAGRAM 3075499

MENAI RD

ILLAWARRA RD

101

CARTER RD



Form 77664 (a.3) (Rev. 01/01/04) (Rev. 07/03/00) (4) Water Board Permitting Services

SYMBOLS AND ABBREVIATIONS		INDICATES PLUMBING FIXTURES & OR FITTINGS	
	Manhole		Clear Out
	Chamber		Vent Pipe
	Lateral Hole		Toilet
	Boundary Trap		Kitchen Sink
	Inspection Shaft		Water Closet
	Manhole		Wash Basin
	Sewer Accessory		Handbasin
	Curb		Sump Pump
	P-Trap		Bidet
	Return Valve		Shower
	Clearing Eye		Dishwasher
	Vertical Pipe Access Post		Floor Waste
	Manhole		Washing Machine
	Junction		Bar Sink
	Rodding Point		Lab Sink
			Waste Stack

SEWER AVAILABILITY
Where the sewer is not available and a special inspection is involved the Board accepts no responsibility for the suitability of the drainage in relation to the proposed position of the Board's sewer. The existence and location of the Board's sewer, stormwater channels, pipes, mains and structures should be ascertained by inspection of records available at Board's Business Offices. Section 22 (2) of Board's Act. Position of structures, boundaries, sewers and sewerage services shown hereon are approximately only and in general the nature of buildings may have been drawn from the building plans submitted to the Board. Occurrences in routine can occur from sewerage to these plans. Discrepancies in location and type of drainage lines and fittings can be due to uncompleted work. Before building work is commenced location of drainage lines is recommended. Licences to install to submit to the Board a Certificate of Compliance in full at which they have been required.
NOTE: This diagram only indicates availability of a sewer and any sewerage service shown as existing in Board's records (By-law 8, Clause 3).

M.U.S. & D.B.
SEWERAGE SERVICE DIAGRAM

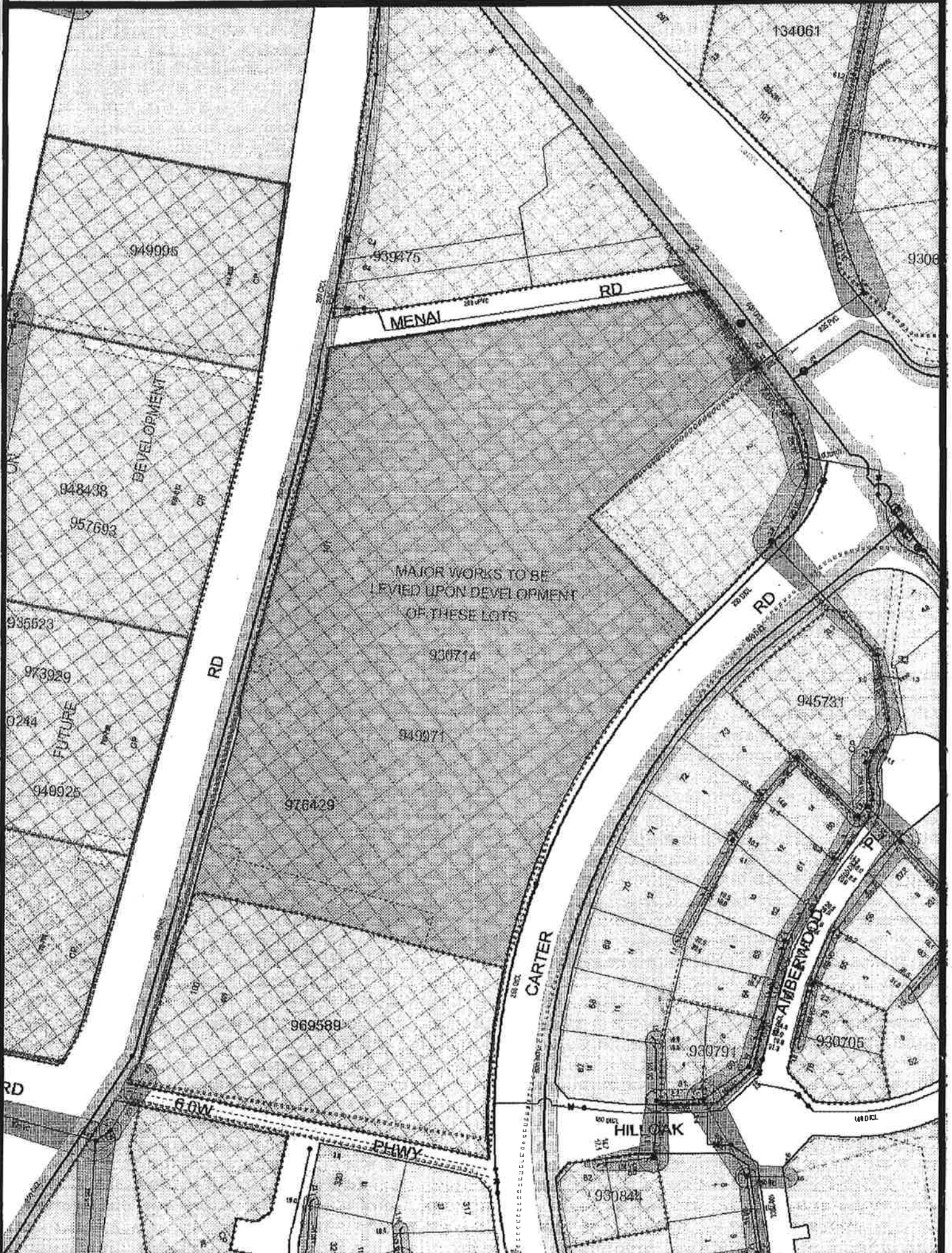
MUNICIPALITY OF SUTHERLAND SUBURB OF MENAI

Scale: Approx. 1:500 Distances/depths in metres pipe diameters in millimetres

W.S. Inspector: _____	Date of Issue: _____	PLUMBING Inspected: <input type="checkbox"/> YES <input type="checkbox"/> NO
U.S. Cert. Of Compliance No. _____	Inspector: _____	Inspector: _____
Sewer Ref. _____	Field Diagram Examined by: _____	Defects: _____
Sheet No. _____	Plumber: _____	Cert. Of Compliance No. _____
Tracing Checked by: _____	Boundary Trap is not required	For Regional Manager

3075499

NOTE This diagram only indicates availability of a sewer and any sewerage service shown as existing in Sydney Water's records. The existence and position of Sydney Water's sewers, stormwater channels, pipes, mains and structures should be ascertained by inspection of maps available at any of Sydney Water's Customer Centres. Position of structures, boundaries, sewers and sewerage services shown hereon are approximately only.



NOTE This diagram only indicates availability of a sewer and any sewerage service shown as existing in Sydney Water's records. The existence and position of Sydney Water's sewers, stormwater channels, pipes, mains and structures should be ascertained by inspection of maps available at any of Sydney Water's Customer Centres. Position of structures, boundaries, sewers and sewerage services shown hereon are approximately only.

NOTE This diagram only indicates availability of a sewer and any sewerage service shown as existing in Sydney Water's records. The existence and position of Sydney Water's sewers, stormwater channels, pipes, mains and structures should be ascertained by inspection of maps available at any of Sydney Water's Customer Centres. Position of structures, boundaries, sewers and sewerage services shown herein are approximately only.

