

LEASE
New South Wales
Real Property Act 1900



AN372401A

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Revenue NSW use only

(A) TORRENS TITLE

Property leased

~~3/SP78588 being Ground Floor of the Premises known as 1218 Anzac Parade Malabar and designated car space "P" at the rear of the Premises.~~

(B) LODGED BY

Document Collection Box 390G	Name, Address or DX, Telephone, and Customer Account Number if any SPECTRUM CLIENT SOLUTIONS 131493N	CODE L
	Reference: <u>Thomas - 180034</u>	

(C) LESSOR

THOMAS JAMES DILLON DAGWORTHY and COLLEEN MARY DAGWORTHY

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

(D)

Encumbrances (if applicable):

(E) LESSEE

TONG PHARMACY PTY LIMITED (ACN 621 359 733)

(F)

TENANCY:

- (G)**
- TERM SIX (6) YEARS**
 - COMMENCING DATE** 1 June 2018
 - TERMINATING DATE** 31 May 2024
 - With an **OPTION TO RENEW** for a period of Six (6) years set out in clause 12 of Annexure "A"
 - With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
 - Together with and reserving the **RIGHTS** set out in clause 1 & 2 of Schedule 1
 - Incorporates the provisions or additional material set out in **ANNEXURE(S) "A"** hereto.
 - Incorporates the provisions set out in N.A.
No. N.A.
 - The **RENT** is set out in item No. 1 of Reference Schedule

LEASE

Leave this space clear. Affix additional pages to the top left-hand corner.

New South Wales Real Property Act 1900

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Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE L
	Reference: <input type="text"/>	

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- 6. Together with and reserving the **RIGHTS** set out in clause 1 & 2 of Schedule 1
- 7. Incorporates the provisions or additional material set out in **ANNEXURE(S) "A"** hereto.
- 8. Incorporates the provisions set out in N.A. No. N.A.
- 9. The **RENT** is set out in item No. 1 of Reference Schedule

DATE

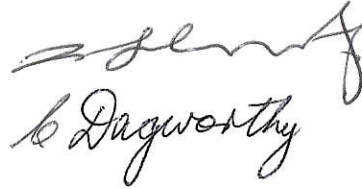
(H) I certify I am an eligible witness and that the lessor signed this dealing in my presence.
[See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness:



Signature of lessor:



Name of witness:
Address of witness:

JAMES GRELLMAN
Solicitor
Thorntons Lawyers
Level 4, 205 Pacific Highway
ST LEONARDS

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: TONG PHARMACY PTY LIMITED (ACN 621 359 733)
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:
Office held:

Name of authorised person:
Office held:


Kevin Tong
Sole Director/Secretary

(I) **STATUTORY DECLARATION***

I solemnly and sincerely declare that—

- 1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
- 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 _____ of _____,

Justice of the Peace (J.P. Number: _____) Practising Solicitor
 Other qualified witness [specify] _____,

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness:

Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

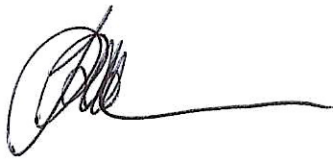
THIS IS SCHEDULE ONE HEREINBEFORE REFERRED TO

The Lessee shall have the benefit of the following rights and liberties:

1. The right to the Lessee and its invitees to use the Common Parts in common with other persons entitled to use the same.

The Lessor reserves unto himself the following rights and liberties.

2. The right to the Lessor and persons claiming through or authorised by it to use the exterior walls and roof and the right to install maintain use repair alter and replace pipes ducts conduits and wires leading through the Premises and to pass and run water air electricity sewerage drainage gas and other services through such pipes ducts and conduits and wires and to enter upon the Premises for such purpose provided that in exercising such rights as aforesaid the Lessor shall not interfere with the Lessee in its use and occupation of the Premises more than is reasonably necessary.



B Dagworthy

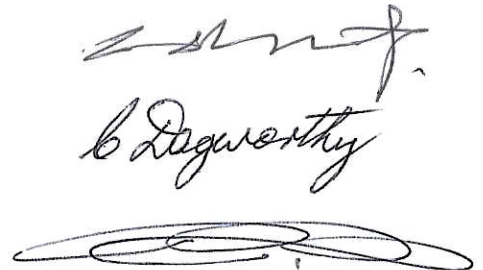
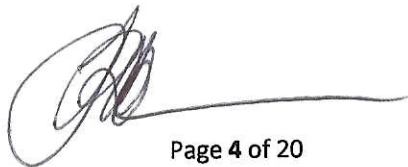


THIS AND THE FOLLOWING PAGES ARE THE ANNEXURE "A" REFERRED TO IN THE
LEASE BETWEEN THOMAS JAMES DILLON DAGWORTHY & COLLEEN MARY DAGWORTHY
("LESSOR")
AND TONG PHARMACY PTY LIMITED (ACN 621 359 733 ("LESSEE"))

DATED DAY OF 2018

REFERENCE SCHEDULE

- ITEM 1 RENT- Clause 3**
\$100,166.48 per annum plus GST (being \$8,347.21 plus GST per calendar month)
- ITEM 2 RENT COMMENCEMENT DATE - Clause 3**
The Commencing Date of this Lease
- ITEM 3 OUTGOINGS & OPERATING EXPENSES PAYABLE BY LESSEE - Clause 4**
100% of Council and Water Rates for the Premises and 20% of the Total Water Usage charges for the Building.
- ITEM 4 USE - Clause 7**
Retail Pharmacy
- ITEM 5 OPENING HOURS- Clause 7**
Normal business trading hours having regard to the use of the premises
- ITEM 6 TERM - Clause 1**
Six (6) years
- ITEM 7 RENT REVIEW DATES - Clause 3**
The date that is each anniversary of the Commencement Date during the Term of the Lease
- ITEM 8 BANK GUARANTEE- Clause 10**
The equivalent to 3 months of the Annual Rent from time to time plus GST.
- ITEM 9 OPTION TERM - Clause 12**
Six (6) years
- ITEM 10 GUARANTOR – Clause 24**
Kevin Tong



1. INTERPRETATION

In this Lease made hereunder unless the contrary intention appears:

- (1) "**Building**" means the Land and the building or buildings erected on the Land and includes all plant machinery fixtures fittings and equipment on the Land under the ownership or control of the Lessor.
- (2) "**Common Parts**" means those parts of the building provided by the Lessor from time to time for common use as parking areas, driveway, access and egress roads, walkways, pavements, entrances, passages, courts, corridors, vestibules, halls, toilets, docks, stairways, lifts and escalators and other such areas, grounds, appurtenances and conveniences of and in relation to the building other than those reserved for the Lessor or any entity other than the Lessee claiming through or authorised by the Lessor.
- (3) "**Item**" means an item in the Reference Schedule to this Lease.
- (4) "**Land**" means and refers to that land referred to or described by the Torrens Title Reference on the front page of the Lease.
- (5) "**Lease**" means this document and any of its schedules and annexures.
- (6) "**Lessee**" means and includes the Lessee and the executors and administrators and successors of the Lessee and where not repugnant to the context the servants and agents of the Lessee any permitted assignee pursuant to the provisions of this Lease and where more than one Lessee than such Lessees jointly and severally.
- (7) "**Lessor**" means and includes the Lessor and its successors and assigns and where not repugnant to the context its servants and agents.
- (8) "**Outgoings and Operating Expenses of the Premises**" means 100% of council rates and water rates for the Premises and 20% of total water usage charges for the Building.
- (9) "**Premises**" means the premises described on the front page of this Lease, being situated in the Building.
- (10) "**Term**" means the term granted by this Lease as specified in **Item 6** or any renewal of it.
- (11) Words importing the singular number or plural number shall include plural number and singular number respectively and words importing any gender shall include each other gender and words importing corporations shall include persons or vice versa.
- (12) Any covenant or agreement on the part of 2 or more persons shall be deemed to bind them jointly and severally.
- (13) Where pursuant to the Lease the day on or by which any act matter or thing is to be done is a Saturday, Sunday or public holiday that act matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.
- (14) Headings of clauses have been inserted for guidance only and shall not be deemed to form any part of the provisions of this Lease or be used for the purposes of construction of this Lease.
- (15) A reference to a statute or ordinance includes all regulations under and amendments to that statute or ordinance whether by subsequent statute or otherwise and a statute or ordinance



passed in substitution for the statute or ordinance referred to or incorporating any of its provisions.

- (16) In case any one or more of the provisions contained in this Lease shall be invalid illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions of this Lease shall not in any way be affected or impaired.
- (17) Every obligation undertaken by any of the parties to this Lease shall, notwithstanding the wording, be deemed to be and shall be construed as a covenant by the party undertaking such obligation, and unless the context otherwise requires, shall be construed as continuing throughout the Term or any holding over period so far as the same remain to be observed or performed.
- (18) A reference to a month or year is a reference to a calendar month or year.

2. COVENANTS

To the full effect of the covenants next hereinafter shortly noted as the same are set forth in the words at length in the second column of Part 2 of the Fourth Schedule to the *Conveyancing Act, 1919-1954*.

1. That the Lessee covenants with the Lessor to pay rent.
16. And will not assign or sublet without leave.
17. That the Lessee will not carry on any offensive trade.
21. The Lessor covenants with the Lessee for quiet enjoyment.

3. RENT

- (1) The Lessee shall during the Term pay to the Lessor without demand from the Lessor and without any deduction whatsoever an annual rent in the amount set out in **Item 1** as varied in accordance with the terms of this Lease ("**Annual Rent**").
- (2) The Annual Rent must be paid by the Lessee in advance by regular and consecutive monthly payments each equal to 1/12 of the appropriate Annual Rent on the first day of each month in each year during the Term (except the first and last payments which if necessary will be proportionate) the first being payable on the date specified in **Item 2**.
- (3) The Annual Rent shall be reviewed yearly on the date specified in **Item 7 ("the Review Date")**. Every year on the Review Date and for the year then to follow (or such part thereof during which the Lessee continues in possession or ought so to continue pursuant to this Lease or any holding over or extension thereof the Annual Rent shall be varied ~~either-~~

~~(a) in the proportion that the Index Number as at each respective review date bears to the Index Number as at the date of commencement of this Lease. In this sub-clause the words "Index number" shall mean the Consumer Price Index published from time to time in the Commonwealth (Australian) Statisticians Summary of Australia Statistics All Groups Section. In the event that there is any suspension or discontinuance of the Consumer Price Index by the Commonwealth (Australian) Authorities then Index Number shall mean the New South Wales Male Basic Wage applicable to the City of Sydney. If the system or practice of the determination of the New South Wales Male Basic Wage applicable in the City of Sydney shall cease, then Index Number shall mean such Index published as the date hereof and at the time of variation of the rental~~

KA
~~in the said Commonwealth (Australian) Statisticians Summary of Australia Statistics which reflects fluctuations of the cost of living in Sydney and which the parties may mutually agree upon and if they are unable to agree then such variation of rental shall be by reference to such Index or in such amount as may be determined by the President at the relevant time of the Real Estate Institute of New South Wales or some person nominated by him whose decisions shall be conclusive and binding; or~~

~~(b)~~ by 4% per annum;

whichever is the greater.

4. OUTGOINGS AND OPERATING EXPENSES PAYMENTS

- (1) In addition to the Annual Rent the Lessee shall pay to the Lessor the Outgoings and Operating Expenses of the Premises specified in **Item 3**.
- (2) The Outgoings and Operating Expenses of the Premises shall be computed for every period of one year or less as the case may be expiring on the 31st day of December in each year during the term in respect of all periods of less than one year all items of an annual or other periodic nature comprising such operating expenses shall be apportioned in respect of time as necessary.
- (3) As soon as practicable after the 31st day of December in each year the Lessor will furnish to the Lessee a statement giving reasonable details of the operating expenses of the Premises and indicating the amount of the Lessee's proportion as abovementioned. Except in the case of manifest error notified by either party to the other within fourteen (14) days of the service of such statement on the Lessee such statement shall be prima facie evidence as to the matters stated therein. Within thirty (30) days after service of such statement on the Lessee 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.

5. ASSIGNMENT OF LEASE

- (1) During the continuance of this Lease, in respect of the whole or part of this Lease or the leased premises, the Lessee shall not, otherwise than in accordance with this clause:
 - (a) assign, transfer, sublet, deal with, hold on trust, or grant any interest in, this Lease
 - (b) mortgage, charge or encumber this Lease
 - (c) part with possession of the whole or any part of the leased premises
 - (d) grant any licence, or share the right of occupation or possession, in respect of the whole or part of the leased premises
 - (e) grant any franchise or concession over the Lessee's business conducted at the leased premises which would entitle any other person to use, occupy or trade from the whole or part of the leased premises.
- (2) If the Lessee desires to assign this Lease:
 - (a) the Lessee shall, before requesting the Lessor's consent, furnish the proposed assignee with a copy of any disclosure statement given to the Lessee in respect of this Lease, together with details of any changes that have occurred in respect of the information contained in that disclosure statement since it was given to the Lessee (being changes of which the Lessee is aware or could reasonably be expected to be aware). If the Lessee cannot provide the proposed assignee with a copy of the disclosure statement, the Lessee may request the Lessor to provide a copy of that

- disclosure statement, and if the Lessor is unable or unwilling to provide that copy within 14 days after the request, the Lessee need not comply with this paragraph;
- (b) the Lessee shall request the Lessor's consent to the assignment of this Lease in writing and shall furnish with that request:
 - (i) information regarding the financial resources and financial standing and the business experience and retailing skills of the proposed assignee;
 - (ii) particulars of the use of the leased premises intended by the proposed assignee;
 - (iii) confirmation that the Lessee has complied with para (a) of this clause.
- (3) The Lessor:
- (a) agrees to deal expeditiously with the Lessee's request for consent to assign this Lease;
 - (b) is entitled to require the Lessee to furnish to the Lessor:
 - (i) details of the Lessee's financial resources and retailing skills at the time of the request for consent;
 - (ii) such further information as the Lessor may reasonably require concerning the financial standing and business experience of the proposed assignee;
 - (c) is entitled to withhold consent to the assignment of this Lease in any of the following circumstances:
 - (i) if the proposed assignee proposes to change the use to which the premises are put (unless the Lessor consents to the change of use in accordance with the provisions of this Lease);
 - (ii) if the proposed assignee has financial resources and retailing skills that are inferior to those of the Lessee;
 - (iii) if the Lessee has failed to comply with the provisions contained in this clause for requesting and obtaining consent to the assignment.
- (4) For the purposes of the Lessee making a request and the Lessor considering that request under this clause:
- (a) if the assignee is a corporation, the retailing skills of the assignee include the retailing skills of those of its directors who have actively participated in the assignee's business and intend to actively participate in the business in the leased premises;
 - (b) if the Lessor consents to a change of use by the assignee, the assignee's retailing skills for that use should be compared with the Lessee's retailing skills for the Lessee's use of the leased premises.
- (5) (a) The Lessor may require the assignee to execute an instrument in which the assignee assumes liability under this Lease for the residue of the lease term.
- (b) If the assignee is a corporation whose shares are not listed on an Australian stock exchange, the Lessor may require, as a condition of the Lessor's consent to the assignment, that [at least] two of the assignee's directors or shareholders (chosen by the Lessor) execute personal guarantees in respect of the payment of rent and the observance and performance of the lease covenants by the assignee during the lease term.
- (c) The Lessee will pay the Lessor's reasonable legal and other expenses of investigating the Lessee's application for consent and of preparing, executing, stamping and registering all the required instruments or dealings and the costs of obtaining the mortgagee's consent.

- (6) (a) If the Lessee has complied with the requirements of this clause, the Lessor shall state, within 28 days after the Lessee has made its request under para (2)(b) and furnished any further details required under para 3(b), whether the Lessor consents or withholds consent.
- (b) If the Lessor does not provide that statement within 28 days, it shall be taken to have consented to the assignment, subject to the conditions in para (5).
- (7) When the preconditions for consent to the assignment of this Lease in respect of a proposed Assignee are satisfied, the Lessor is entitled to refuse to consent to the assignment of this Lease, but only if:
- (i) the Lessor and the Assignee have negotiated and reached agreement on the grant of a new lease from the Lessor to the Assignee;
- (ii) such lease to be for a lease term (including options for renewal) which shall have a longer total duration than the outstanding term of this Lease (including any subsisting options for renewal);
- (iii) such new lease to contain substantially similar lease covenants as those contained in this Lease, unless otherwise agreed with the proposed assignee.

6. NO WARRANTY BY LESSOR

The Lessee acknowledges and declares that no promise representation warranty or undertaking has been given by or on behalf of the Lessor otherwise than by writing herein in respect of the suitability of the Premises for any business to be carried on therein or to the fittings finish facilities and amenities of the Premises or as to other businesses to be carried on otherwise than in the Lease contained. The Lessee shall apply for and maintain all consents as may be necessary as a consequence of the Lessee's use of the Premises provided that notwithstanding anything herein contained to the contrary the Lessee shall be entitled to terminate this Lease if the Lessee's use of the Premises is at any time prohibited or substantially restricted by the Local Council or other relevant authorities. Such termination will be without any liability by either party to the other for completion for damages or otherwise.

7. LESSEE COVENANTS

The Lessee HEREBY COVENANTS with the Lessor as follows:-

- (1) To promptly pay to the proper authorities according to meter readings all charges for electricity gas used or consumed on the Premises and also all meter rents in respect of the Premises and if the Lessee shall make default in the payment thereof it shall be optional for the Lessor to pay the same and in addition to the Lessor's other remedies it shall be lawful for the Lessor to recover the amount so paid as if the same were overdue rent hereunder.
- (2) That the Lessee shall not without the written consent of the Lessor first had and obtained do or suffer or permit to be done any of the following:-
- (a) make any alteration or addition to or in the Premises or any Lessor's fixtures and fittings contained therein;
- (b) bring deposit or keep or permit to be brought deposited or kept in the Premises any goods materials or substances which shall or may in any way increase or contribute to increase the yearly premium payable on any policy and policies of insurance against fire now or at any time hereafter to be effected by the Lessor on

its said Building or which may conflict with the regulations or ordinances of any public authority or the provisions of any statute for the time being in force;

- (c) paint affix or erect on the exterior of the Premises any notices advertisements signs or other devices in any position other than on boards erected for the purpose or as approved by the Lessor.
- (3) At all times during the said Term well and sufficiently to repair and maintain and amend the Premises when where and so often as need shall be and to keep and at the expiration or sooner determination hereof the yield up the Premises and all Lessor's fixtures and fittings therein clean and in good tenable repair having regard to the condition thereof at the commencement of the Lease war damage by reason able wear and tear and damage by fire lightning flood and tempest excepted but such damage shall not be excepted where any insurance moneys on the Premises are irrecoverable by the Lessor in consequence of some act or default of the Lessee or the servants or agents of the Lessee. In this clause the word "repair" shall include the cleaning and keeping free of all drains and waste pipes PROVIDED ALWAYS and it is HEREBY AGREED AND DECLARED that the Lessee's obligations under this covenant shall not extend to repairs of a structural nature except as in 7(5) hereinafter appearing.
- (4) The Lessee shall not use nor permit nor suffer to be used the lavatories toilets sinks and drainage and other plumbing facilities in the Premises or the common areas of the said Building for any purpose other than those for which they were constructed or provided and no sweepings rubbish or other matter shall be deposited therein and any damage thereto caused by misuse shall be made good by the Lessee forthwith.
- (5) To comply with and observe all notices received from any statutory or public authority relating to the Premises or otherwise in regard thereto but only where such notice was issued as a result of the Lessee's use of the Premises and to carry out the requirements thereof at their own expense but this clause shall not include structural works unless the same shall be required by reason of the use to which the Premises shall be put by the Lessee, and then subject to the consent of the Lessor.
- (6) Should any infections illness transpire in or about the Premises the Lessee shall forthwith give notice thereof in writing to the Lessor and thoroughly fumigate and disinfect the Premises at their own expense and to the satisfaction of the Local Health Officer.
- (7) To insure and keep insured with a company approved by the Lessor all plate glass shop windows window frames and fittings and also to insure for public risk in the sum of \$20,000,000.00. The Lessee shall pay all premiums in respect of such insurances and shall produce policies and certificates of renewals to the Lessor.
- (8) Not to do or permit or suffer to be done upon the Premises in the nature of overloading the floor thereof whereby the Premises or any part thereof may be strained or the walls or floors caused to sag or deflect from the right line or so as to damage the Premises or the said Building or any part thereof respectively and shall not bring any iron safe or heavy goods into the Premises without the consent of the Lessor first had and obtained.
- (9) That the Lessee will permit the Lessor and its agents at all reasonable times on reasonable notice (except in the case of emergency when no notice shall be required) to enter the Premises to carry out repairs renovations or maintenance to the Premises or to any part thereof or to any adjoining areas or any part thereof in compliance with the Lessor's obligations under any lease or under the provisions of this Lease or otherwise deemed necessary or desirable by the Lessor.
- (10) Not use the Premises for any other purpose other than specified in **Item 4.**

- (11) To keep the Premises open for business during the business trading hours specified in **Item 5** or such longer hours that the Lessee may desire. The Lessee further covenants that he will not board up or paint over the windows of the Premises. The Lessee will ensure at all times that during the continuance of this Lease the Premises are occupied and that any business permitted by this Lease to be carried on in the Premises shall be carried on and managed in a proper and businesslike manner.
- (12) Not to hold any auction sale on the Premises.

8. OCCUPATION OF THE PREMISES

The Lessee covenants with the Lessor that -

- (1) The Lessee agrees to occupy use and keep the Premises at the risk of the Lessee and HEREBY RELEASES to the full extent permitted by law the Lessor and its agent servants contractors and employees from all claims and demands of every kind resulting from any accident damage or injury occurring therein where such accident damage or injury was not caused by the willful or negligent act or omission of the Lessor his agents workmen and assigns and the Lessee EXPRESSLY AGREES that in the absence of any willful act or negligence on the part of the Lessor, his agents workmen and assigns the Lessor shall have no responsibility or liability for any loss of or damage to fixtures or other personal property of the Lessee.
- (2) 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 shall or may be liable in respect of or arising from:-
- (a) the negligent use misuse waste or abuse by the Lessee or any servants agents invitees licensees or guests of the Lessee of the water gas electricity oil lighting and other services and facilities of the Premises or the said Building;
 - (b) overflow or leakage of water from any source to or from the Premises where caused by the negligence of the Lessee;
 - (c) loss damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Premises;
 - (d) loss damage or injury from any cause whatsoever to property or person within or without the Premises or the said Building occasioned or contributed to by any act omission neglect breach or default of the Lessee or any servants agents invitees licensees or guests of the Lessee.
- (3) If the whole or any part of the Premises shall be destroyed or damaged by fire flood lightning storm tempest or other disabling cause so as to render the same substantially unfit for the use and occupation of the Lessee during the Term then:-
- (a) this Lease may be terminated without compensation by either the Lessor or the Lessee by notice in writing to the other PROVIDED ALWAYS that in the latter case the Lessor shall have failed to rebuild or reinstate the Premises within a reasonable time after notice in writing from the Lessee;
 - (b) any such termination as aforesaid shall be without prejudice to the rights of either party in respect of any antecedent breach matter or thing;

- (c) nothing herein contained or implied shall be deemed to impose any obligations upon the Lessor to rebuild or reinstate or make fit for occupation of the Premises;
- (d) pending such termination by either party as aforesaid then upon the happening of any such damage or destruction as aforesaid the total yearly rent 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 rent or such proportionate part thereof shall be suspended unless and until the Premises shall have been rebuilt or reinstated or made fit for the occupation of any use by the Lessee.

9. DEFAULT OF LESSEE

It is HEREBY EXPRESSLY AGREED AND DECLARED that:-

- (1) Notwithstanding anything contained or implied in or by the *Real Property Act* 1900 or the *Conveyancing Act* 1919 the Lessee covenants with the Lessor that in case the Annual Rent or any part thereof including monies payable under Clause 3 or 4 herein is in arrears for the space of fourteen (14) days (although no formal demand therefor has been made) or in case default is made in the fulfilment of any covenant condition or stipulation whether expressed or implied in this Lease and on the part of the Lessee to be performed and observed and such default is continued for a space of twenty-one (21) days or in case the repairs required by any notice to repair are not completed within the time herein specified or if the Lessee shall go into liquidation whether voluntarily or compulsorily the Lessor may re-enter upon the leased Premises or any part thereof in the name of the whole and thereby determine the estate of the Lessee therein but without releasing him from liability in respect of the breach or non-observance of any covenant or condition or stipulation under this Lease.
- (1) If the Annual Rent or any part thereof shall be unpaid for the space of fourteen (14) days after any of the days on which the same ought to have been paid the Lessee shall pay to the Lessor interest at the rate of twelve per centum (12%) per annum on such unpaid rent such interest to be calculated from the date the said rent was due to be paid until the date of actual payment. Interest so incurred shall be paid by the Lessee to the Lessor within five (5) days of written notice from the Lessor that such interest is payable. Payment and acceptance of such interest will not be construed as a waiver or acceptance or release of the breach involvement in non-payment of the Annual Rent on the due date.
- (3) The covenants contained in **clauses 3, 5, 7 & 8** are essential terms of this Lease.
- (4) If the Lessee shall be and be deemed to be in default of this Lease or vacates or abandons the Premises or otherwise repudiates this Lease without the Lessor's consent or acceptance prior to the expiration of the Term hereof, the Lessor, without prejudice to any other rights of the Lessor under this Lease or at law:-
 - (a) may without being under any obligation so to do, seek to find another Lessee for the Premises and for that purpose the Lessor may from time to time enter upon the Premises and permit prospective Lessees to view the Premises and may otherwise do all such acts and things as necessary to renovate restore clean and secure the Premises (including changing the locks) without accepting or being deemed to have accepted a surrender of this Lease, it being the intention of the parties that this Lease and the obligations of the Lessee hereunder shall subsist until such time as another person enters into occupation of the Premises as Lessee or the Lessor expressly accepts a surrender of this Lease, and it is acknowledged that any entry by the Lessor into the Premises in the meantime

shall be deemed an entry by the leave and licence of the Lessee; and

- (b) shall be entitled to recover from the Lessee all losses, damages, costs and expenses whatsoever suffered or incurred by the Lessor in consequence of the Lessee not continuing the Lease for the full Term including, but without limiting the generality of the foregoing, all losses; damages, costs and expenses suffered by the Lessor in reletting the Premises or arising out of the reletting of the Premises at a rental less than the rental reserved hereby for that part of the Term of this Lease remaining unexpired at the date of such default, vacation, abandonment determination or repudiation. The Lessor agrees to use its best endeavours to mitigate its losses damages costs and expenses and shall furthermore use its best endeavours to obtain a replacement Lessee.

The Lessor's entitlement to recover damages shall not be affected or limited by any of the following:

- (i) If the Lessee shall abandon or vacate the Premises;
 - (ii) If the Lessor shall determine the Lease;
 - (iii) If the Lessor shall accept the Lessee's repudiation;
 - (iv) If the parties' conduct shall constitute a surrender by operation of law;
- and
- (c) shall also be entitled to recover from the Lessee all such losses, damages, costs and expenses as are mentioned in paragraph (b) above in the event of the Lessor determining the Term hereof by reason of the default or breach of or by the Lessee, without prejudice to any other rights of the Lessor under this Lease or at law; and
- (d) may without any prior demand or notice (unless required by law) re-enter into and take possession of the Premises or any part of the Premises (by force if necessary) and eject the Lessee and all other persons from the Premises and repossess and enjoy the Premises and by this action this Lease shall be determined; or
- (e) by notice in writing to the Lessee determine this Lease and from the date of giving such notice this Lease shall be determined; or
- (f) by notice in writing to the Lessee elect to convert the Term into a tenancy from month to month. In this event this Lease shall be determined and the tenancy from month to month shall commence as from the date of giving such notice. Such monthly tenancy, including the manner of determination of the tenancy, shall be as provided in **clause 21**.
- (5) (a) In respect of the Lessee's obligation to pay Annual Rent and the Lessee's Proportion, the acceptance by the Lessor of arrears or of any late payment of such moneys shall not constitute a waiver of the essentiality of the Lessee's obligation to pay those moneys in respect of the arrears or of the Lessee's continuing obligation to pay such moneys during the Term.
- (b) The Lessee covenants to compensate the Lessor in respect of any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of such breaches. The Lessor's entitlement under this paragraph is in addition to any other remedy or entitlement to which the Lessor is entitled (including the right to determine and/or the right of re-entry contained in this Lease).
- (c) In the event that the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any Lease covenants, the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.

- (e) The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee (and recover such damages) in respect of what would be the entire Term, including the periods before and after the Lessee has vacated the Premises, and before and after the abandonment, determination, repudiation, acceptance of repudiation or surrender by operation of law referred to in **sub-clause (5)(b)** of this clause whether the proceedings are instituted either before or after such conduct.
- (6) (a) The Lessor may upon re-entry or determination as aforesaid remove from the Premises any contents of every description including but without limiting the foregoing all plant, equipment, stock-in-trade, fittings and fixtures of the Lessee. Such contents may be stored in a public warehouse or elsewhere at the cost of the Lessee without the Lessor being deemed guilty of conversion or becoming liable for any loss or damage occasioned by such removal or storage. Any costs incurred by the Lessor in or about such removal and/or storage shall be paid by the Lessee to the Lessor upon demand. After storing such contents for not less than 2 weeks the Lessor may sell or dispose of such contents by way of private sale, gift, distribution, destruction or at auction and may apply the proceeds (if any) towards the cost of removing, storing and disposing of such contents and towards any other costs (including any legal costs) incurred by the Lessor in consequence of the Lessee's failure to so remove such contents.
- (b) The Lessor shall not be liable for any damage to the contents mentioned in the paragraph above occasioned in their removal, storage or disposal. The Lessee by this Lease releases the Lessor from any liability in respect of such damage.
- (7) All moneys tendered by the Lessee after the determination of this Lease in the manner described in **sub-clauses (5)(a) and (5)(b)** of this clause and accepted by the Lessor may be and (in the absence of any express election of the Lessor) shall be applied firstly on account of any interest payable by the Lessee to the Lessor pursuant to this Lease; secondly on account of the Lessor's costs of re-entry and/or upon determination; thirdly on account of any rental and other moneys accrued due under this Lease but unpaid at the date of determination.
- (8) If the Lessor is entitled to re-enter the Premises and terminate this Lease, then after necessary compliance with any relevant statutory provision as to the exercise of rights or forfeiture (of which the statutory declaration of any officer of the Lessor shall be conclusive evidence for the purposes of the Registrar General), the Lessee by this Lease irrevocably appoints the Lessor and, where applicable, each director of the Lessor to be the attorney of the Lessee for the purpose of giving full effect to the power of re-entry and to execute and procure the registration of a surrender of this Lease and to procure to be done any act of thing which may be required to give full effect to this power of attorney according to the *Real Property Act* 1900 or to any other Laws or usage for the time being in force in the State of New South Wales. Whatever the attorney of the Lessee shall lawfully do or purport to do or cause to be done by virtue of the above appointment is by this Lease ratified and confirmed by the Lessee.

10. BANK GUARANTEE

- (a) As security for the due performance and satisfaction by the Lessee of its obligations and liabilities to the Lessor under this Lease the Lessee shall on or before the Commencement Date provide to the Lessor an unconditional written Guarantee by a Bank licensed under the Banking Act (1959) carrying on business in New South Wales to pay the Lessor on demand the amount specified in **Item 8**, which Guarantee may be retained by the Lessor until such time as the Lessee shall have duly performed and satisfied all of its obligations under this Lease and such Guarantee shall be held by the Lessor as security for the performance by the Lessee of the Lessee's obligations under this Lease.

(b) The Lessor shall be entitled from time to time to call upon the said Guarantee in or towards satisfaction of any amounts of rent or other monies payable under the Lease or in or towards satisfaction of any amount which may become payable as a result of any breach by the Lessee of any of the covenants and conditions on the part of the Lessee contained in the Lease PROVIDED ALWAYS that any such action or application shall not be deemed to constitute a waiver or release in respect of any such breach.

(c) In the event that either:-

- (i) the Lessor requires the Lessee's Bank to make payment pursuant to the Guarantee; or
- (ii) the Annual Rent payable by the Lessee increases such that the guaranteed amount becomes less than three (3) months' rent at the then applicable rate under this Lease;

then the Lessee shall, within fourteen (14) days of notification by the Lessor to the Lessee that such a requirement for payment has been made or that the Rent has increased, deliver to the Lessor a further Banker's Guarantee (which Banker's Guarantee shall be in the same form as that previously delivered) for or in respect of a sum equal to the difference between the amount then required to be provided by the Lessee under the preceding provisions of this clause and the balance then remaining available pursuant to the original Guarantee.

(d) Upon delivery to the Lessor of such further Guarantee the provisions of this clause shall apply to such Guarantee.

(e) Upon the termination of this Lease and payment of all moneys payable by the Lessee to the Lessor pursuant to this Lease, the Lessor will return to the Lessee any Guarantee then held.

11. LESSEE'S FIXTURES AND FITTINGS

The Lessee may remove his fixtures fittings and plant from the Premises on the determination of this Lease but subject to making good any breach of covenant or default in payment of Annual Rent prior to their being entitled so to be removed the same until such breach and/or default is made good the Lessor shall be entitled without cost expense liability or obligation to the Lessee to use the said fixtures fittings and plant in the Premises.

12. OPTION

The Lessor covenants with the Lessee:-

(1) That if the Lessee desires to have a further lease of the Premises granted to the Lessee for the Term specified in **Item 9** after the expiration of the Term of this Lease then provided that the Lessee gives the Lessor not less than three (3) months nor more than six (6) months written notice of its intention to exercise the option and at the date of the exercise of this option and at the date of the expiration of this Lease there is no subsisting breach by the Lessee of the covenants terms conditions and provisions herein contained the Lessor will grant to the Lessee at the cost of the Lessee a lease of the Premises for the said Term specified in **Item 9** commencing the day following the expiration of the Term of this Lease upon and subject to the same covenants terms and provisions contained in this Lease except this **clause 12** and that:-

(a) the Term of the renewed lease shall be for the period specified in **Item 9** and the

commencement date shall be the first date of the renewed Term;

- (b) the base yearly rental shall be such amount as may be agreed, between the Lessor and the Lessee or failing such agreement at such yearly rental as shall be determined by a valuer nominated by the New South Wales President of the Australian Institute of Valuers at the request of the Lessor or Lessee as being the current market yearly rental for the said Premises as at the expiration of this Lease,
- (c) such rental shall be payable in the same manner and otherwise subject to the same covenants, agreements and provisions as are contained in this Lease.

13. LESSEE'S PERMITS TO OPERATE BUSINESS

The Lessee confirms that all the permits, approvals and licences necessary to conduct the type of business it rents the subject Premises for have to be obtained by him at his own expense.

14. LESSEE ACCEPTS PREMISES IN PRESENT STATE

The Lessee has inspected the Premises and takes the Premises in their present state and condition and shall not require the Lessor to make any repairs of a structural nature or otherwise. Any repairs required as a result of the Lessee's refurbishment shall be at the Lessee's expense.

15. YIELDING UP

The Lessee shall at his own expense paint the Premises and shall upon termination of this Lease yield up the Premises in a clean state and in good tenable repair having regard to the condition of the Premises at the date of this Lease, and subject to fair wear and tear after any chattels and fittings installed by the Lessee have been removed PROVIDED THAT where any such fittings have been installed by the Lessee with the consent of the Lessor or where any alterations to the Premises have been carried out with the consent of the Lessor, then the Lessee at his discretion shall be entitled to remove or leave such fittings and alterations subject to the terms and conditions of such consent.

16. GST

- (1) In this clause:

"GST" refers to goods and services tax *under A New Tax System (Goods and Services) Act 1999 ("GST Act")* and the terms used have the meanings as defined in the GST Act.

- (2) It is agreed that the Annual Rent and all other amounts agreed to be paid by the Lessee to the Lessor, being the consideration for the supply expressed in this Lease, are exclusive of GST.
- (3) In respect of any liability of the Lessor for GST under this Lease, and the renewal or extension of this Lease, including for Annual Rent, outgoings and operating expenses of the Building, or any consideration for any other taxable supply; the Lessee covenants to pay to the Lessor at the same time as any payment is made involving the Lessor in GST liability, the additional amount of GST, together with the payment to which it relates.
- (4) (a) The Lessee's liability under (3) is to reimburse the full amount of GST, disregarding and excluding the Lessor's entitlement to input tax credits or other credits or reimbursements for GST.

- (b) Notwithstanding (4)(a), if the Lessor is entitled to an input tax credit in relation to any amount recoverable from the Lessee under (3), the amount payable by the Lessee shall be reduced by the amount of the input tax credit which the Lessor has received claims and is entitled to receive.
- (5) In respect of each payment by the Lessee under (3), the Lessor agrees to deliver to the Lessee, as required under the GST Act, tax invoices in a form which complies with the GST Act, and the regulations, to enable the Lessee to claim input tax credits in respect of the taxable supply.

17. LESSOR'S POWER TO ENTER, VIEW AND REPAIR

- (1) The Lessor and its agents may at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Premises and view the state of repair and condition of the Premises. The Lessor may make such reasonable investigations as it or they may deem necessary for the purposes of ascertaining whether or not there has been any breach of any of the covenants and conditions contained in this Lease and may serve upon the Lessee a notice in writing of any defect, repair or maintenance for which the Lessee may be responsible pursuant to this Lease requiring the Lessee within a reasonable time to repair the same. Should the Lessee default in carrying out such repairs, it shall be lawful for the Lessor from time to time to enter and execute the required repairs, as if it were the Lessee and for that purpose the Lessor its architects, contractors, workmen and agents may enter upon the whole or any part of the Premises and there remain for the purpose of doing erecting or effecting any such thing. All expenses and costs of carrying out such work including all sums paid on account of any insurance, indemnities or compensation under the *Workers Compensation Act* or otherwise with regard to effecting such repairs shall be immediately payable by the Lessee to the Lessor.
- (2) The Lessee will permit the Lessor at all times on reasonable notice to enter and carry out any works, repairs, renovations, additions or alterations to the Premises or to any part of the Premises or to the Building or any part of the Building in compliance with the Lessor's obligations under the provisions of this Lease if any or otherwise deemed necessary or desirable by the Lessor provided that such works, repairs, renovations, additions or alterations will be carried out with the minimum of disruption to the Lessee.

18. LESSOR'S RIGHTS TO ALTER BUILDING

Despite anything expressed or implied in this Lease, and in particular despite the covenant on the part of the Lessor for quiet enjoyment, the Lessor shall be entitled:

- (1) to repair, alter, refurbish, extend or add to the Building (which without limiting the generality of the foregoing shall include the right to construct other Buildings or improvements on or over the Common Area) and for this purpose to erect hoardings scaffolding and to use equipment and plant for such purpose.
- (2) by itself and/or those authorised by it at all reasonable times to enter the Premises 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 Premises or the Building or of any notice served upon the Lessor or Lessee by the Environmental Protection Authority or any licensing, municipal or other competent authority involving the destruction of noxious animals, rodents or other pests or the carrying out of any repairs, alterations or works (including but not limiting the generality of the former rights, the provision of lighting, power and telephone services) to the Premises in the Building for which the Lessor may from time to time require access to (among other things the false ceilings if any in the Premises) 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 this Lease PROVIDED THAT such destruction, repairs, alterations and works shall be carried out by the Lessor as far as possible without undue interference with the occupation and use of the Premises by the Lessee; and

- (3) the Lessor reserves to itself and all others authorised by it the right to use the exterior walls and the roof of the Building and the right at all times to carry out, install, maintain, use, repair, alter and replace through, along, in or into the Premises fire prevention equipment, sprinkler systems, electrical wiring, water and sewerage connections, drains, sewers, pipes, conduits, wires, cables, vents and flues and the right to pass and run gases, liquids, solids or energy through the Premises as may be necessary or desirable for the purpose of providing and maintaining all such services as are now or at any time or times afterwards available generally for use within the Building or any part of the Building and to enter Premises for such purposes providing that in exercising such rights the Lessor shall not unreasonably interfere with the Lessee in its use or occupation of the Premises.

19. REFURBISHMENT OR RE DEVELOPMENT OF BUILDING

Deleted Intentionally

20. "FOR SALE" AND "TO LET" NOTICES

The Lessee will at all reasonable times on reasonable notice permit the Lessor to exhibit the Premises to prospective purchasers and will at all times within the three (3) months immediately preceding the expiration of this Lease permit the Lessor to exhibit the Premises to prospective Lessees, allow the Lessor to affix and exhibit where the Lessor shall reasonably think fit "For Sale" or "To Let" notices and in each case displaying the name and address of the Lessor and/or its agents and the Lessee will not remove any such notice without the written consent of the Lessor.

21. HOLDING OVER

If the Lessee continues to occupy the Premises after the expiration or prior determination of the Term with the consent of the Lessor then the Lessee shall become a monthly tenant only of the Lessor determinable on one (1) month's notice (expiring at any time) at a monthly rent being 1/12th of the Annual Rent payable immediately prior to such expiration or sooner determination and otherwise on the same terms and conditions (mutatis mutandis) as those contained in this Lease so far as applicable and in particular any additional sum payable in respect of any period under this Lease shall be apportioned pro rata in respect of the duration of any such holding over period.

22. SUB-DIVISION TO STRATA

The Lessee covenants and agrees with the Lessor that any completion and lodgment of any Sub-division application with the Local Council shall be at the discretion and/or responsibility of the Lessor and the costs and fees associated thereto shall also be borne by the Lessor.

23. AIRCONDITIONING

- (1) Should the Lessee require any alterations to or any supplementary airconditioning at the premises the same will be carried out by the Lessee at its cost.
- (2) The Lessee is responsible for the day to day maintenance, repair and use of the airconditioning system and all expenses of any maintenance agreement entered into by the Lessee with an airconditioning contractor.

24. GUARANTOR

- 24.1 The Guarantors guarantee to the Lessor due performance observance and fulfilment by the Lessee of all the covenants, terms, provisions and conditions contained in this Deed or implied and on the part of the Lessee to be performed observed and fulfilled.
- 24.2 The Guarantors indemnify the Lessor and agree at all times hereafter to keep the Lessor indemnified from and against all damages and all costs, losses and expenses which the Lessor may suffer or incur consequent upon or arising directly or indirectly out of any breach or non-observance or non-performance by the Lessee or the Guarantor of any of the covenants, terms, provisions or conditions herein contained or implied and on the part of the Lessee or the Guarantor to be performed observed or fulfilled and the Guarantor agrees that this indemnity shall continue and the Guarantor shall remain liable to the Lessor under this indemnity notwithstanding that as a consequence of such breach non-observance or non-performance the Lessor has exercised any of its rights hereunder including the right of termination of this Agreement and notwithstanding that the Lessee may be wound up and notwithstanding that the guarantee hereby given or this Memorandum of Lease may for any reason whatsoever be unenforceable either in whole or in part.
- 24.3 The liability of the Guarantors under this Deed shall not be affected by the granting of time or other indulgence or concessions to the Lessee or by the compounding, compromise, release, abandonment, waiver, variation, relinquishment, alteration, deletion or renewal of any of the rights of the Lessor against the Lessee or by any neglect or omission to enforce such rights or by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantor from his obligations hereunder or any thereof.
- 24.4 The guarantee and indemnity hereby given are to continue and to remain in full force and effect until the due performance, observance and fulfilment by the Lessee of all the covenants, terms, provisions and conditions on the part of the Lessee to be performed, observed and fulfilled in accordance with the terms of this Deed and shall not be determined by the death or notice of death of the Guarantors their bankruptcy or insolvency or entry into an agreement assignment or composition for the benefit of creditors and shall not be deemed to have been discharged to the extent that and in the event that any payment by the Lessee is avoided in whole or part by the operation of law so that the Lessor do not retain the benefit hereof;
- 24.5 Until the Lessor has received in full all moneys payable by or recoverable from the Lessee the Guarantors shall not be entitled to claim the benefit of any security held by the Lessor or prove in the estate of the Lessee or any co-guarantor in competition with the Lessor;



EXECUTION


IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals the day and year first hereinbefore written.

SIGNED by the said **THOMAS JAMES DILLON DAGWORTHY** in the presence of

of



Signature of Witness



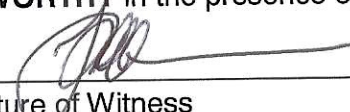
Thomas James Dillon Dagworthy

JAMES GRELLMAN
Solicitor
Thorntons Lawyers
Level 4, 205 Pacific Highway
ST LEONARDS

Name of Witness

Address of Witness

SIGNED by the said **COLLEEN MARY DAGWORTHY** in the presence of



Signature of Witness




Colleen Mary Dagworthy

JAMES GRELLMAN
Solicitor
Thorntons Lawyers
Level 4, 205 Pacific Highway
ST LEONARDS

Name of Witness

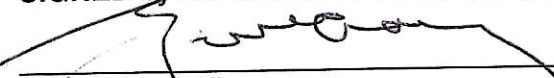
Address of Witness

Executed by **TONG PHARMACY PTY LIMITED** (ACN 621 359 733 in accordance with Section 127 of the Corporations Act 2001

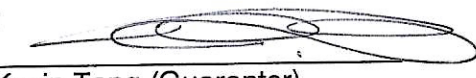


Kevin Tong
Sole Director / Secretary

SIGNED by the said **KEVIN TONG** in the presence of



Signature of Witness



Kevin Tong (Guarantor)

GREGORY MURRAY

Name of Witness

133 CASTLEBAGH ST. STONEY

Address of Witness