

Lessor

Life's Really Good Pty
Ltd
ACN 609 575 582

Lessee

Legeneering (Aust) Pty Ltd
ACN 112 645 468

Guarantor

David Troy Milroy
Glen Peter Crawford

Lease
9 Redemptora Road, Henderson

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THE SCHEDULE

Dated	<i>Wednesday 27th May 2020</i>
Item 1 Lessor:	
Name	Life's Really Good Pty Ltd [ACN 609 575 582] as trustee for Good Life Superannuation Fund
Address	1/235 Rockingham Road, Spearwood in Western Australia
Item 2 Lessee:	
Name	Legeneering Aust) Pty Ltd ACN 112 645 468
Address	1/235 Rockingham Road, Spearwood in Western Australia
Item 3 Guarantor:	
Name	David Troy Milroy
Address	29 Greeson Parkway, Secret Harbour in Western Australia
Name	Glen Peter Crawford
Address	93 Holmes Road, Muster in Western Australia
Item 4 Description of Land:	
	Lot 109 on Plan 15819 the whole of the land comprised in certificate of title Volume 1764 Folio 105.
Item 5 Description of Premises:	
	The Building known as 9 Redemptora Road, Henderson in Western Australia.
Item 6 Commencement/Termination Dates	
(a) Term:	Five (5) years
(b) Commencement Date:	1st July 2020
(c) Termination Date:	1st July 2025
Item 7 Further Term or Terms of Lease:	
(a) Term:	1 + 1 years
(b) Commencement Date:	1st July 2025
(c) Termination Date:	1 st December 2027

Item 8 Place for Payment of Rent:

Payments shall be made by electronic fund transfer into the Lessor's nominated account or as the Lessor may otherwise direct in writing.

Item 9 Rent:

\$125,000 per annum plus GST.

Rent is payable in advance by equal successive calendar monthly payments of \$10,416.66 per month plus GST by no later than the 1st day of each month.

Date for First Rent Payment:

1st July 2020

Item 10 Rent Review Dates**(1) CPI Review Date:**

On each anniversary of the Commencement Date throughout the Term and the Further Term except on a Market Review Date

(2) Market Review Date

Not Applicable

(3) Fixed Percentage Increase Review Date:

On each anniversary of the Commencement Date throughout the Term and the Further Term.

(4) Fixed Percentage Increase:

3.5% Increase on 12month Anniversary of Signing

Item 11 Rates and Taxes payable by the Lessor:

Nil

Item 12 Description of Business:

Oil & Gas Servicing Company specialising in: Project Management, Project Scoping, Engineering Design & Drafting, Engineering Construction, Mechanical, Specialist Access Solutions, Protective Coatings & Hazardous Zone Red Hot Work specialist.

Item 13 (1) Insurance to be taken out by Lessor (at the cost of the Lessee):

- (a) A Policy insuring the Building, for the replacement value thereof against such usual risks as may seem to the Lessor to be reasonably necessary or expedient, which may include loss or damage by fire, lightning, thunderbolt, storm, tempest, rainwater, water, earthquake, flood, impact, explosion, aircraft, riots, strikes, malicious acts loss of rent insurance, architect and consultant fees, demolition and removal of debris.
- (b) A Public Liability Policy in respect of the Building for an amount of indemnity as the Lessor may determine.
- (c) Such other policies of insurance as the Lessor considers reasonable and necessary.

(2) Insurance to be taken out by Lessee at the cost of the Lessee:

- (a) A Policy insuring all plate glass, fixtures, stock and leased fittings in the Building.
- (b) A Public Liability Policy in respect of the Building for an amount of indemnity of not less than \$20,000,000 (or any higher sum as is reasonably determined by the Lessor from time to time).
- (c) Worker's Compensation Insurance.
- (d) Burglary insurance, including damage arising from actual or attempted unauthorised or violent entry to the Building.

Item 14 Special Clauses:**14.1 Rent Free**

The Lessor grants to the Lessee a one (1) month Rent free period, with the first payment to be made on the date referred to in Item 9 of the Schedule.

All Outgoings are payable from the Commencement Date.

14.2 Sub-Lease

The Lessor consents to the Lessee sub-leasing a portion of the Premises if required.

Item 15 Security Required by the Lessor

Nil, provided the lessee is Legeneering (Aust) Pty Ltd ACN 112 645 468

GENERAL TERMS

This Lease is made between the Lessor, the Lessee and the Guarantors (if any) as described in the Reference Schedule.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 *Definitions*

In this Lease unless the contrary intention appears:

"API" means the Australian Property Institute (Incorporated) Western Australia Division;

"Building" means the land and building which comprises the Premises;

"Business" means the Business to be conducted by the Lessee from the Premises, the nature of which is specified in Item 12.

"Commencement Date" means the date the Lease commences and being the date specified in Item 6(b) of the Schedule.

"Commercial Arbitration Act" means the Commercial Arbitration Act 1985 (WA).

"Default" in relation to the Lessee, means any breach of or non-compliance with any of the Lessee's Covenants by the Lessee.

"Fire Equipment" means all stop-cocks, hydrants, alarms, drench curtains, fire sprinkler systems, hoses, extinguishers and other fire prevention equipment in or serving any part of the Building and where used in relation to the Premises refers to such of the Fire Equipment as contained in the Premises.

"Further Term" means the further term or terms of the Lease specified in Item 7 of the Schedule.

"Gross Rent" means the total of the Rent and Outgoings payable by the Lessee to the Lessor during a Lease Year;

"Gross Lettable Area of the Premises" means the floor area of any space in the Premises which is leased or intended to be leased from time to time, calculated using the appropriate item or items of Property Council of Australia Limited method of measurement for measuring the area of premises of a similar kind to the Premises;

"GST" refers to the goods and services tax under the GST Act (and includes all tax in the nature of a consumption tax, value added tax or other like tax);

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999*, as amended;

"Guarantor" means the person, or persons, named and described in Item 3 of the Schedule and includes the successors and legal representatives of those persons.

"Insolvency Event" means the happening of any of the following events in relation to the Lessee or any Guarantor:

- (1) It is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand, as provided in section 459F(l) of the Corporations Act 2001, or it is deemed to be unable to pay its debts under Section 585 of the Corporations Act 2001;
- (2) A meeting is convened to place it in liquidation (voluntary or involuntary) or to appoint an administrator;
- (3) An application is made to a court for it to be wound up;
- (4) An appointment of a controller (as defined in section 9 of the Corporations Act 2001) or over any of its assets;
- (5) It proposes to enter into or enters into any form of arrangement (form or informal) with its creditors or any of them including a deed of company arrangement;
- (6) It becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001;
- (7) Being an individual dies or becomes bankrupt.

"Insurance Cost" all costs incurred by the Lessor with respect to taking out and maintaining any insurance policies under this Lease;

"Interest" means interest charged on outstanding Lease Money at a rate equal to 1% per calendar month payable on monies due but not paid;

"Land" means the land described in Item 4 of the Schedule.

"Lease" means the lease granted by the Lessor to the Lessee under this Lease.

"Lease Money" means all money that may at any time and in any manner become payable under this Lease by the Lessee to the Lessor or to any other person, including without limitation Rent, Rates & Taxes and Outgoings payable by the Lessee under this Lease.

"Lease Year" means respectively:

- (1) The period from the Commencement Date to the next 30th day of June;
- (2) Each successive full period of 12 months commencing on the 1st day of July and expiring on the 30th day of June during the Term; and
- (3) The period from the 1st day of July in the last year of the Term to the Termination Date or sooner determination of the Term.

"Lessee" means the person, or persons, named and described in Item 2 of the Schedule and includes the successors in law, legal representatives and permitted assigns of the Lessee.

"Lessee's Agent" means any employee, contractor, invitee, licensee or agent of the Lessee;

"Lessee's Covenants" means any of the covenants, obligations and agreements to be observed and performed by the Lessee or the Guarantor under this Lease.

"Lessee's Fixtures" means all fixtures and fittings installed in the Premises by the Lessee or by a previous holder of the Lease and which, in the Lessor's opinion, are affixed to the Premises so as to form a part of the Premises.

"Lessor" means the person, or persons, named and described in Item 1 of the Schedule and includes the successors, legal representatives, assigns and transferees of the Lessor, the registered proprietor of the Land from time to time.

"Lessor's Fixtures" means all partitions, fixtures, fittings, equipment, furnishings and other materials or articles installed_ (either by the Lessor or the Lessee) in the Premises at the Lessor's cost;

"Managing Agent" means such person or firm as may from time to time be appointed by the Lessor to manage the Land and includes the employees and agents of the Managing Agent

"Outgoings" means, in respect of any Lease Year, the total amount incurred or to be incurred (as estimated by the Lessor) during that period by the Lessor including provisions and adjustments, in respect of the Premises including without limitation on the following i t e m s :

- (1) Maintenance of gardens, fences, replacement cost of plants, lawn, reticulation and watering systems;
- (2) Expenses associated with the running, maintenance and repair of the parking area;
- (3) The cost of servicing, cleaning, maintaining, running, repairing, replacing or inspecting the Building, Premises, the Lessor's Fixtures, the Land and the plant and equipment, including, without limitation:
 - (a) The air conditioning ventilation heating or cooling plant and equipment installed by the Lessor in the Premises, the Common Areas or elsewhere in the Building;
 - (b) The cost of ensuring the Fire Equipment adheres to all safety requirements and guidelines, and the supply and servicing of all fire appliances;
 - (c) The fees and/or premiums payable to specialist contractors and/or the wages paid to permanent staff employed and the cost of materials used by the Lessor in or about the maintenance and servicing of plant and equipment servicing the Building;
 - (d) The operation of security systems and security patrols and the cost of maintaining security including monitoring any security system;
 - (e) The replacement of toilet requisites;
 - (±) The maintenance and repair of hot water systems; and
 - (g) Maintenance and repair of downpipes and gutters.
- (4) Garbage and trade waste disposal;
- (5) The Insurance Cost;

- (6) The Lessor's costs associated with the auditing of the Outgoings;
- (7) The cost of managing the Premises including all managing agent fees; and
- (8) Rates & Taxes.
- (9) All bank fees and statutory charges and taxes associated with the matters referred to in this definition which are now or in the future may be charged.

"Premises" means the building and Land described in Item 5 of the Schedule together with the fixtures fittings plant machinery and equipment of the Lessor and other improvements situated on the Land or forming part of or affixed to the Premises.

"Rates & Taxes" means:

- (1) Council and shire rates, rubbish removal and underground power levies and any future charges or levies; and
- (2) Water, sewerage and drainage rates and charges;
- (3) Land tax and metropolitan region improvement tax assessed against the Land,

and includes any other charges, levies and assessments, including penalties (other than penalties for late payment by the Lessor), payable to any government, public, statutory or other competent authority in respect of the Premises or the Land, but excluding any income tax, capital gains tax or similar taxes payable by the Lessor in relation to the Land and the Premises;

"Relevant Body" means any government department, local council, government or statutory authority, public or private utility or other public or private body, which has a right to impose a requirement (including a requirement that its consent be obtained) or charge a fee in connection with the Building or the Services

"Rent" means the Rent referred to in Item 9 of the Schedule as varied from time to time.

"Review Dates" means the dates specified in Item 10 of the Schedule.

"Services" means services (such as water, sewerage, drainage, gas, electricity, communications, Fire Equipment, air conditioning, lifts and escalators to or of the Building or any premises in it or the Land provided by a Relevant Body, the Lessor or any person authorised by the Lessor and includes all plant and equipment in connection with them;

"Schedule" means the schedule to this Lease.

"Term" means the term of the Lease specified in Item 6(a) of the Schedule and any renewals exercised by the Lessee under this Lease, subject to earlier termination as provided in this Lease, but does not include any holding over by the Lessee.

"Termination Date" means the date the Term expires and being the date specified in Item 6(c) of the Schedule.

1.2 Interpretation

In this Lease, unless the context otherwise requires:

- (1) Words importing the singular number includes the plural and vice versa and words importing persons includes corporations;
- (2) Any covenant or agreement on the part of two or more persons binds them jointly and severally;
- (3) Headings have been inserted for convenience only and will not affect the interpretation of this Lease;
- (4) This Lease is governed by and construed in accordance with the law of Western Australia and the parties submit to the non-exclusive jurisdiction of that State;
- (5) References to statutes, regulations and by-laws includes reference to all statutes, regulations and by-laws which amend, consolidate or replace the statutes regulations or by-laws referred to and also include any notices or orders issued under any statutes regulations or by-laws for the time being in force;
- (6) Where the day or the last day for doing an act or on which an entitlement is due to arise is a Saturday, Sunday or public holiday or bank holiday within the meaning of the Public and Bank Holidays Act 1972 (WA) the day or last day for doing the act or on which the entitlement arises will for the purposes of this Lease be the next following day that is not a Saturday, Sunday or public holiday or bank holiday;
- (7) References to institutes, bodies, associations and authorities whether statutory or otherwise will if any institute, body, association or authority ceases to exist or is reconstituted renamed or replaced or its powers or functions are transferred to any other institute, body, association or authority be deemed to refer respectively to the institute, body, association, or authority established or constituted in place thereof or as nearly as may be succeeds to the powers or functions of the institute, body, association or authority referred to;
- (8) Unless application is mandatory by law any statute, proclamation, order, regulation or moratorium present or future shall not apply to this Lease so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, privileges, remedies or discretions given or accruing to the Lessor;
- (9) Any act or exercise of power by the Lessor under this Lease may be done by the Lessor or the Lessor's appointed agent or representative; and
- (10) No delay or omission to exercise any right power or remedy accruing to the Lessor upon any continuing breach or default under this Lease impairs that right power or remedy of the Lessor nor shall it be construed to be a waiver of the continuing breach or default or any acquiescence of it. A waiver of any single breach or default is not to be regarded as a waiver of any other breach or default.

2. LEASE

2.1 Lease

Subject to the terms of this Lease, the Lessor as registered proprietor of an estate in fee simple of the Land leases the Premises to the Lessee for the Term and upon the other terms and conditions contained in this Lease.

3. TERM

3.1 Initial term

Subject to the terms of this Lease, the Lease commences on the Commencement Date and ends on the Termination Date.

3.2 Further Terms

- (1) If the Lessee wishes to continue the Lease for the Further Term the Lessee must at least 3 calendar months but no more than 6 calendar months prior to the end of the then current Term give to the Lessor written notice of the Lessee's desire to extend the Term. Once the Lessor receives the Lessee's written notice and, subject to paragraph (2), the Lessor will let the Premises to the Lessee for the Further Term from the Termination Date.
- (2) The Lessor has the right to refuse to grant any Further Term if the Lessee, at the time the Lessee exercises the option to extend the Termination for the Further Term, is in Default and has not remedied the Default.
- (3) Where the Lease contains more than one Further Term, Clauses 3.2(2) applies to each option granted to the Lessee.
- (4) Each Further Term will be at the Rent specified in the Lease as reviewed in accordance with this Lease and subject to the same terms, covenants, conditions and provisions as contained in this Lease except this clause for renewal (where there is only one option remaining to extend for the Further Term.)

3.3 Holding Over

Should the Lessee continue to occupy the Premises beyond the expiration of the Term with the consent of the Lessor, then:

- (1) The Lessee will be a monthly Lessee and pay a monthly rent equal to the last monthly rent payable by the Lessee under the Lease.
- (2) One month's written notice given by either party to the other will be sufficient to end the monthly tenancy.
- (3) The monthly tenancy will be subject to all of the Lessee's Covenants and the other terms set out in this Lease.

4. RENT

4.1 *Payment of Rent*

The Lessee agrees to pay the Rent to the Lessor.

4.2 *Manner of payment*

- (1) All payments of Rent to be made by the Lessee under this Lease must be made at the place or in the manner specified in Item 8 of the Schedule without the need for any prior demand for payment and without any abatement, deduction or setoff.
- (2) The Rent is to be paid by the Lessee to the Lessor by equal successive monthly payments in advance on the first day of each month unless otherwise advised by the Lessor.
- (3) The first instalment must be paid on the date referred to in Item 9 of the Reference Schedule and if no date is specified then on the Commencement Date.
- (4) Subsequent instalments must be paid on the first day of each month.
- (5) If necessary, the first and last instalments will be apportioned on a daily basis.

4.3 *Review*

The Rent will be reviewed at each Review Date.

4.4 *Manner of review*

On review, the Rent must be agreed between the Lessor and the Lessee within 21 days prior to the Review Date. Failing agreement, the Rent will be determined using the following methods, to be applied on the date(s) referred to in Item 10 of the Schedule:

(1) Definitions

For the purposes of this clause:

"ABS" means the Australian Bureau of Statistics;

"Consumer Price Index" or "CPI" means the Table described as the Consumer Price Index (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905*;

"CPI Review Date" means each and every date referred to in Item 10(1) of the Reference Schedule.

"index number" means the Consumer Price Index (All Groups) for Perth published from time to time by the ABS; if the ABS updates the reference base of the index number, the index number must be appropriately adjusted so as to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the ABS;

"Fixed Percentage Increase" means the percentage amount referred to in Item 10(4) of the Schedule;

"Fixed Percentage Increase Review Date" means the date specified in Item 10(3) of the Schedule;

"Market Rent" means the best, current, open market annual rent value that can be obtained for the Premises:

- (i) on the basis that the Premises is available for leasing for the Term and any Further Term and disregarding the fact that part of the Term will have elapsed at the Review Date;
- (ii) on the terms and conditions and for the permitted use contained in this Lease but having regard to any other use to which the Premises may be lawfully put;
- (iii) On the basis that the Lessee's Covenants have been fully performed at the Review Date;
- (iv) without taking into account the Lessee's trade fixtures and fittings and any other improvements and installations erected or installed at the Lessee's expense which the Lessee may remove at the expiration of this Lease, but taking into account permanent structural or other improvements to the Premises installed at the Lessee's expense and which the Lessee is not permitted to remove at the expiration of this Lease;
- (v) having regard to current open market annual rental values of comparable premises, whether vacant or occupied and whether any of those rental values have been arrived at through new lettings, reviews or renewals of existing tenancies or otherwise;
- (vi) If the Premises or the Building has been damaged or destroyed, assuming that the Premises or Building has been reinstated;

but ignoring:

- (vii) Any rent free period or other benefit, incentive, bonus, financial contribution or other concession customarily or at any time offered or likely to be offered to new lessees of vacant premises or to any lessee of the Premises;
- (viii) Any value attaching to goodwill created by the Lessee's occupation of the Premises;
- (ix) Any value attaching to any licence or permit the property of the Lessee in respect of the business carried on by the Lessee at the Premises;
- (x) Any deleterious condition of the Premises if such condition results from any work carried out on the Premises by the Lessee or by any breach of any term of this Lease by the Lessee;
- (xi) Any decrease in the value of the Premises by reason of the occupancy or use of the Premises by the Lessee or any person deriving an interest in the Premises through the Lessee;
- (xii) The Lessee's trading performance at the Premises.

"**Market Review Date**" means each date specified in Item 10(2) of the Reference Schedule;

"**quarter**" means a 3month period;

"**Value**" means a value who is a full member of the API and who has been actively engaged in Western Australia for not less than 5 years in valuing industrial and commercial premises in the Perth Metropolitan area.

(2) Consumer Price Index Adjustment

- (a) At each CPI Review Date, the Rent will be adjusted and the Rent payable under this Lease for the ensuing year will be calculated as follows:

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

Where

A= the reviewed Rent and which is payable from the relevant CPI Review Date;

B = the index number released for the quarter ending immediately prior to the CPI Review Date;

C = the index number released for the quarter ending immediately prior to the later of the Commencement Date or the date from when the Rent was last reviewed; and

D = the rent payable immediately prior to the relevant review date.

- (b) If the Consumer Price Index (All Groups) for Perth is suspended or discontinued, the words "**index number**" mean the price index substituted by the ABS.
- (c) If no price index is substituted, the words "**index number**" mean an index which the parties agree most closely reflects changes in the cost of living.
- (d) If the parties cannot agree on a substitute index, the president of the API, at the request of either party, may appoint an expert to determine a substitute index which most closely reflects changes in the cost of living and the words "**index number**" mean that index.

(3) Market Review of Rent

- (a) The Rent will be reviewed on each Market Review Date specified in Item 10(2) of the Schedule.
- (b) On each Market Review Date, the Lessor may give to the Lessee, at any time before the next Review Date, a notice (the "**Lessor's Notice**") proposing the new rent to apply from and including the Market Review Date.
- (c) If the Lessee does not agree to the proposed rent, the Lessee must give to the Lessor a notice disputing the proposed rent (the "**Dispute Notice**") within 14 days

after the date the Lessor gives the Lessor's Notice. If the Lessee does not give the Lessor the Dispute Notice within the 14 days, the Lessee is taken to agree to the proposed rent.

- (d) If the Lessee gives the Lessor a Dispute Notice, the Market Rent will be determined by valuation as follows:
- (i) The Lessor and the Lessee may each appoint a Valuer at their cost and notify the other of the Valuer appointed within 21 days after notification of the Dispute Notice. It is essential to comply with this time limit.
 - (ii) If neither the Lessor nor the Lessee complies with the time limit of 21 days, both will remain entitled to appoint Valuers. When a Party who has not appointed a Valuer receives notice of the other Party's appointment, it must appoint its Valuer and notify the other of the Valuer appointed within 14 days of receiving notice. It is essential to comply with this time limit.
 - (iii) If only one Party has appointed and notified its Valuer to the other Party within time, that Valuer alone will determine the Market Rent at the joint cost of the Lessor and the Lessee.
 - (iv) If both Parties have appointed Valuers and the Valuers have agreed upon the reviewed rent within four weeks of the date on which the last appointed Valuer is notified to the other Party, the amount agreed upon will be the Market Rent.
 - (v) Where both Parties have appointed Valuers and the Valuers have not agreed upon the Market Rent within four weeks of the date on which the last appointed Valuer is notified to the other Party, either or both of the Valuers and either or both of the Lessor and the Lessee may request the President of the API to nominate a Valuer to determine the Market Rent. The nominated Valuer must give both the Lessor and the Lessee a reasonable opportunity to make submissions and to put before the Valuer whatever material they think is relevant, but is to determine the Market Rent acting as an expert and not as an arbitrator. The reviewed rent, as determined by the nominated Valuer will be the Market Rent.
 - (vi) As well as any other way in which they might fail to do so, the Valuers appointed by the Lessor and the Lessee will be treated as having failed to agree upon the Market Rent:
 - (A) Either of them has not or both of them have not completed his, her or their valuation within the time limit of four weeks. It is essential to comply with this time limit: or
 - (B) Before completing his or her valuation within the time limit of four weeks, either of them dies, becomes incapable of acting or refuses to act.

(4) Fixed Percentage Increase in Rent

On each Fixed Percentage Increase Review Date, the Rent will increase by applying the Fixed Percentage Increase to the Rent payable immediately prior to the Review Date without prior notice or reminder

4.5 *Time from which review takes effect*

Following any variation in the Rent pursuant to the provision of Clause 4.4 an appropriate adjustment and payment or repayment must be made immediately between the Lessor and the Lessee to ensure that as from the relevant Rent Review Date the Lessee has paid and the Lessor has received the Rent as varied.

4.6 *Previous Rent*

In no circumstances will the Rent following a Rent Review fall below the Rent payable by the Lessee immediately preceding the Review Date.

4.7 *More than one method of review*

Where there is more than one method of a rent review on a Review Date, the Rent payable from the Review Date will be determined by the method giving the greatest increase in the Rent.

4.8 *No Waiver*

Notwithstanding anything to the contrary contained in this Lease, time is not of the essence in conducting a Rent Review on a Rent Review Date and the failure on the part of the Lessor to review the Rent on a Rent Review Date does not mean the Lessor will forfeit its right to review the Rent on a Rent Review Date, provided the review is conducted prior to the next Rent Review Date.

4.9 *Special Rent following alterations*

- (1) If the Lessor shall at any time effect any structural alterations or additions to the Premises or to the water, gas, electrical, plumbing, air conditioning equipment, Fire Equipment, the Services or appurtenances servicing the Premises which are required by reason of any existing or future Act (State or Federal), regulation or by-law of Relevant Body, the Lessee, in addition to the Rent, shall pay for each Lease Year of the Term following the completion of any such works (the date of such completion to be as certified by the Lessor) an additional annual rent to be known as special rent ("Special Rent").
- (2) The Special Rent shall be a sum equal to 14% per annum of the total cost to the Lessor of the construction of such works including but not limited to building and material costs and fees paid to architects, quantity surveyors, engineers or other consultants and builders (the total cost to be as certified by the Lessor's auditors)
- (3) The Special Rent for the remainder of the Lease Year in which such works are completed shall be the ratable promotion (based on the ratio that the number of days remaining in that Lease Year bears to the number 365) of 14% of the total cost of such works.
- (4) The Special Rent shall be paid at the times and in the manner provided for the payment of Rent.
- (5) Any alterations or additions required by virtue of the Lessee's business or the use to which the Premises are put by the Lessee or the number or sex of the persons working in or from or at any time occupying or visiting the Premises or the provision of separate lavatories in the Premises will be borne solely by the Lessee.

5. RATES AND TAXES AND UTILITY CHARGES

5.1 *Payment on Demand*

- (1) The Lessor shall be entitled to elect (and shall duly advise the Lessee in writing):
 - (a) To recover Outgoings by monthly instalments of the Outgoings for the Lease Year in accordance with Clause 6; or
 - (b) Whether such payments shall be made either direct to the Relevant Body; or
 - (c) By direct payment to the Lessor if the Lessor wishes to make direct payment to the Relevant Body; or
 - (d) A combination of subparagraphs (a) -(c) inclusive, as directed by the Lessor.
- (2) The Lessor may invoice the Lessee in accordance with an election it makes pursuant to clause 5.1(1) and the Lessee will be obliged to accept such election by the Lessor.
- (3) If the Lessor elects not to provide to the Lessee an estimate of Outgoings, the Lessee shall pay the Outgoings within 7 days from the date the Lessor advises the Lessee in writing of the nature of the Outgoing and the amount payable.
- (4) If on any occasion the Lessee shall pay any item of the Rates & Taxes or the Insurance Cost direct to the relevant authority, then the Lessee will at the request of the Lessor produce to the Lessor the receipts in respect of any such payment.

5.2 *Utilities and services*

The Lessee agrees with the Lessor to punctually pay and discharge all charges for water, sewerage, garbage and waste disposal, gas, electricity, telephone and other utilities and services used in or charged against or in respect of the Premises including all meter installation costs, telephone connection charges and rents.

5.3 *Late payments*

The Lessee acknowledges and agrees to pay any interest or charges which result from any of the amounts payable by the Lessee under this clause not being paid on time or pursuant to clause 5.1(3) within 7 days from the date the Lessor advises the Lessee in writing of the nature of the Outgoing and the amount payable.

6. OUTGOINGS

6.1 *Lessee to Pay Outgoings*

Except as specified in Item 11, the Lessee agrees to pay to the Lessor the Outgoings.

6.2 *Lease Year*

Outgoings will be calculated in respect of each Lease Year.

6.3 *Estimates of Outgoings*

If the Lessor elects, and prior to or at the commencement of each Lease Year, the Lessor will advise the Lessee of the amount of Outgoings which the Lessor estimates to be payable by the Lessee during that year. The Lessor may at any time during the year revise its estimate by notice to the Lessee.

6.4 *Lessee to pay instalments of Outgoings based on estimates*

The Lessee shall pay to the Lessor monthly instalments of Outgoings, based on the Lessor's prevailing estimate of the amount of Outgoings payable by the Lessee during the prevailing period. Instalments of Outgoings are payable at all times and in the manner that the Lessee is required to pay Rent under this Lease.

6.5 *Operating Statement*

- (1) After the expiration of each Lease Year to which the Outgoings relate, the Lessor must provide to the Lessee, at the Lessee's cost, an operating statement (the "Statement") specifying the details of the actual expenditure incurred during the relevant Lease Year.
- (2) The Statement shall be prima facie evidence as to the accuracy of its contents.

6.6 *Adjustment*

If at the end of each Lease Year it is found that the amount paid by the Lessee on account of Outgoings is greater or less than the amount properly payable by the Lessee, then the amount payable by the Lessee on account of Outgoings for the next following period shall be adjusted accordingly provided that if there is no following period, the Lessee must pay any shortfall to the Lessor within 14 days from being notified of the difference and any surplus shall be paid to the Lessee within 14 days from the date of notification..

7. **COMMON AREAS**

Intentionally Deleted

8. **REPAIRS AND MAINTENANCE OF PREMISES**

8.1 *Lessee to repair and maintain*

- (1) The Lessee agrees with the Lessor at all times during the Term and at the Lessee's own expense to maintain repair and keep in good clean substantial and tenantable repair and condition to the reasonable satisfaction of the Lessor the Premises and every part of it and all additions to its including without limitation:
 - (a) Floor coverings (if any);
 - (b) Glass and plate glass;
 - (c) Partitions, doors fixtures fittings installations and facilities and appurtenances including but not limited to all plumbing, electrical wiring and the replacement of light globes;

- (2) Unless otherwise undertaken by the Lessor and the cost of which is recoverable as an Outgoing, the Lessee agrees to also maintain, service and repair:
- (a) Plant, equipment and machinery that service the Building;
 - (b) All drains, downpipes and gutters; and
 - (c) The Lessor's Fixtures.
- (3) The Lessee will not be required to repair:
- (a) Fair wear and tear which is consistent with the Premises having been occupied by a careful and diligent lessee and in compliance with all of the Lessee's Covenants;
 - (b) Damage to the Premises where the event causing the damage is covered by a policy of insurance taken out pursuant to the terms of this Lease except where:
 - (i) The damage arises by reason of some act omission or default on the part of the Lessee or the Lessee's Agent; or
 - (ii) The insurance policy or any money recoverable under that policy has been rendered irrecoverable by some act omission or default on the part of the Lessee or the Lessee's Agent.
 - (c) Work of a structural nature except as may be required or necessary by reason of the Lessee's business or the Lessee's use of the Premises or arising by any act or omission on the part of the Lessee or any employee, contractor, agent or invitee of the Lessee.

8.2 *Lessee to repaint*

The Lessee with materials and to standards reasonably approved by the Lessor agrees to repaint all parts of the Premises, both internal and external, that have been damaged or which otherwise require repainting, as determined by the Lessor acting reasonably, at the termination of this Lease. All repainting must be carried out by a competent and professional painter and using paint approved by the Lessor. The Lessee agrees to immediately paint over any graffiti on the fence or Building.

8.3 *Lessor may inspect state of repair and maintenance*

The Lessor has power by the Lessor's agents and workmen with all necessary appliances to enter upon the Premises at all reasonable times and after giving to the Lessee 24 hours' prior notice to view the state of repair and maintenance of the Premises.

8.4 *Lessor may require or carry out remedial work*

If the Lessor at any time during the Term or following termination considers that the Lessee has not complied with any of its covenants under this Clause 8, then:

- (1) The Lessor may serve upon the Lessee a notice in writing of any defect requiring the Lessee to repair the defect in accordance with any of the Lessee's Covenants.

- (2) In default of the Lessee repairing any defect within 14 days of the date of the Lessor's notice the Lessor may enter the Premises and execute any of the required repairs or maintenance as the Lessor considers necessary and the Lessee agrees to on demand pay to the Lessor the costs of remedying the Default.

8.5 *Emergency repairs and maintenance*

If the Lessor considers that any repairs or maintenance are required to the Premises which in the opinion of the Lessor are of an emergency nature, then:

- (1) The Lessor has power to enter the Premises and carry out the repairs or maintenance without prior notice to the Lessee.
- (2) If these repairs or maintenance would have been the responsibility of the Lessee in accordance with the Lessee's Covenants (whether or not the Lessee was in Default by failing to have carried them out), then the cost of those repairs or maintenance are payable by the Lessee to the Lessor upon demand.

8.6 *Rights of Lessor in carrying out remedial work*

If under this Lease the Lessor is entitled to enter the Premises or to carry out repairs or maintenance or other remedial work, the Lessor is entitled to do so by the Lessor's agents and workmen and with all recess materials and equipment.

8.7 *Lessee to give notice of certain matters*

The Lessee agrees to give to the Lessor prompt notice in writing of any accident to or defect or want of repair to the structure of or in any service to or fittings in the Premises and of any circumstances likely to be or cause any danger risk or hazard to the Premises or any person in the Premises.

9. **OPERATION AND USE OF PREMISES**

9.1 *Permitted uses*

The Lessee must:

- (1) Use the Premises solely for the purpose of conducting the Business and not permit the Premises to be used for any other purpose, without the prior written consent of the Lessor;
- (2) Obtain all necessary approvals from any Relevant Body regarding the use of Premises by the Lessee, the safety and occupation of the Premises;
- (3) Comply with all conditions imposed by the Relevant Body as a result of the Lessee's use or occupation of the Premises and to ensure the Business complies with all zoning requirements;
- (4) Obtain all necessary approval from any Relevant Body regarding the installation of signage.
- (5) Not allow the Premises to be used for the retail sale of goods unless such sales are ancillary or incidental to the Business.

- (6) The Lessee must comply with the requirements of any Relevant Body, the Insurance Council of Australia Limited and of any insurer in relation to fire protection of the Premises and the position of the Fire Equipment.

9.2 *No offensive activities a11d no 11uisa11ce*

The Lessee agrees not to carry on or permit in or upon the Premises any noxious noisome obstructive or offensive act trade business occupation or calling nor to permit or suffer any act matter or thing to be done in or upon the Premises which may cause annoyance nuisance grievance damage or disturbance to the occupiers or owners of the adjoining or neighboring premises.

9.3 *Exterior signs, etc.*

The Lessee agrees not to paint or place or permit the painting or placing on the Premises of any exterior signs, placards or other advertising media and to observe the reasonable directions of the Lessor in relation to the size and character of any signs permitted by the Lessor unless the Lessee first obtains the prior written consent of the Lessor on each occasion and conforms with the requirements of any Relevant Body.

9.4 *Sleeping purposes*

The Lessee agrees not to use or permit the use of any portion of the Premises for sleeping purposes or as sleeping apartments.

9.5 *Fire sales, etc.*

The Lessee agrees not to conduct any auction fire or bankruptcy sales on or from the Premises without first obtaining the prior written consent of the Lessor.

9.6 *Rubbish; Lessee to keep clean*

The Lessee agrees to:

- (1) Keep the immediate surroundings of the Premises clean;
- (2) Store all garbage rubbish and refuse in a proper hygienic manner within the Premises;
- (3) Attend to the expeditious disposal of the rubbish and refuse;
- (4) Observe any directions given from time to time by the Lessor relating to the disposal of rubbish and refuse; and
- (5) Keep all drains inside the Premises clean and free from obstructions.

9.7 *No burning*

The Lessee agrees not to burn any garbage, refuse or rubbish except in an incinerator and in the place or places approved by the Lessor and any Relevant Body for that purpose.

9.8 *Water closets and sanitary appliances*

The Lessee agrees not to use or panned the water closets, lavatories, grease traps and other sanitary appliances to be used for any purpose other than that for which they were constructed and not do or suffer to be done any act or thing that might choke or otherwise affect or damage them.

9.9 *Inflammable substances*

The Lessee agrees not to use or permit to be used chemicals, burning fluids, acetylene gas or alcohol in lighting the Premises or any method other than by electricity nor use or permit to be used any method of heating other than by electricity gas, oil, or solid fuel unless the Lessee first obtains the prior written consent of the Lessor.

9.10 *Vermin*

The Lessee agrees to take all proper precautions to keep the Premises free from rodents, vermin, insects, pests, birds and animals and if the Lessee fails to do so and if so required by the Lessor, the Lessee at its own cost must employ from time to time or periodically pest exterminators appointed by the Lessor for that purpose. It is expressly acknowledged that all costs incurred by the Lessor in appointing a pest exterminator for the purpose of removing birds, termites or other insects or pests from the Premises will be borne by the Lessee.

9.11 *Alteratio11s or additio11s*

The Lessee agrees not to:

- (1) Make any alteration or addition in or to the Premises;
- (2) Install any fitting or equipment particularly any water, gas or electrical fixture, equipment, appliances or apparatus for illuminating, air conditioning, heating, cooling or ventilating the Premises;
- (3) Injure, mark, paint, drill or deface in any way the walls, ceilings, partitions, floors or other parts of the Premises; or
- (4) Overload or otherwise harm the Premises; without

the written consent of the Lessor on each o c c a s i o n .

9.12 *Heavy Plant*

The Lessee agrees not to without the written consent of the Lessor bring on to the Premises any heavy plant, machine1y or equipment which will or is likely to cause damage to the structure of the Services the Building or other pe1manent improvement on the L a n d .

9.13 *Lessor may show P1-emises to prospective Lessees*

The Lessee will permit the Lessor to:

- (1) At any time exhibit the Premises to prospective purchasers and to affix and exhibit where the Lessor thinks fit the usual "For Sale" signs or notices, with the name and address of the Lessor and/or the Lessor's agents on it; and

- (2) Within the 3 months immediately preceding the termination of the Lease permit the Lessor to exhibit the Premises to prospective tenants and to affix and exhibit where the Lessor thinks fit the usual "To Let" signs or notice, with the name and address of the Lessor and/or the Lessor's agents on it,

and the Lessee will not remove such signs or notices without the prior written consent of the Lessor.

10. COMPLIANCE WITH LAWS

10.1 Lessee to comply with all laws

The Lessee must comply with and observe at the Lessee's own expense all present and future legislation regulations by-laws or orders of Relevant Body affecting the use or cleanliness of the Building by the Lessee and with all notices received either by the Lessor or the Lessee from any statutory or public authority including notices requiring the carrying out of any repairs alterations or works and will keep the Lessor indemnified in respect of all such matters.

10.2 Licenses and permits

- (1) The Lessee agrees to keep in force all licenses, consents, approval and permits required for the carrying on of the Business and to comply with any notices, orders or requisitions issued in relation to the use or occupation of the Premises.
- (2) The Lessor makes no warranty that the Lessee is entitled to carry on the Business from the Premises.

11. LESSEE'S FIXTURES

11.1 Installation

The Lessee may install Lessee's Fixtures only with the prior approval of the Lessor which the Lessor may give subject to such conditions as the Lessor considers appropriate.

11.2 Lessee to make good damage

- (1) Upon termination of the Lease the Lessee agrees to:
- (a) Surrender and deliver up possession of the Premises to the Lessor clean and free from rubbish in good clean substantial and tenantable repair and condition in accordance with all of the Lessee's Covenants including without limitation the Lessee's Covenant to maintain and repair and make good all damage to the Premises resulting from the installation or removal of Lessee's Fixtures to the reasonable satisfaction of the Lessor.
- (b) Reinstatement of the Premises to the condition it was in as at the Commencement Date, fair wear and tear excepted, using materials and finishes to the same or similar quality as in the condition of the Premises as at the Commencement Date and to the Lessor's reasonable satisfaction.
- (2) If required by the Lessor, and without limitation, the Lessee will, on or before the Termination Date or earlier termination of this Lease:

- (a) Professionally clean all floor coverings; unless they are damaged in which case they must be replaced;
 - (b) Patch any holes and paint the walls in a colour selected by the Lessor;
 - (c) Replace all damaged lamps and tubes in the Building;
 - (d) If requested by the Lessor, remove all computer, telephone and data cabling and make good damaged Services to the Premises;
 - (e) Repair any damaged bitumen or concrete in the Premises or the car parking bays caused or contributed to by the Lessee or the Lessee's Agent;
 - (f) Replace any damaged ceiling tiles;
 - (g) Remove the Lessee's signage and make good any damage occasioned by the removal;
 - (h) Subject to clause 11.3(2), remove the Lessee's Fixtures and all its property, including furniture, plant, equipment and stock in trade from the Premises.
- (3) All work referred to in Clause 11.2(1) and (2) must have been completed prior to the Lessee delivering up possession of the Premises to the Lessor prior to the Termination Date. To the extent the works are not completed prior to the Termination Date, then clause 11.6 will apply.

11.3 *Lessor's Fixtures and Lessee's Fixtures*

- (4) All of the Lessor's Fixtures remains the property of the Lessor and is not to be removed by the Lessee upon termination and are to be properly maintained and serviced throughout the Term and any Further Term.
- (5) Any part of the Lessee's Fixtures which forms an integral part of the Premises and which the Lessor requires the Lessee to leave in the Buildings and all partitions, fixtures, fittings, equipment, furnishings and other materials or articles installed by the Lessor in the Building at the Lessor's costs are the property of the Lessor and may not be removed, altered or otherwise disposed of by the Lessee without the prior written consent of the Lessor.

11.4 *Failure to remove*

If the Lessee fails to remove the Lessee's Fixtures or any of its property from the Premises in accordance with clause 11.2, the Lessor may:

- (1) Have that property removed from the Premises and stored, using reasonable care in removing and storing the property, but being exempt from liability to the Lessee for loss or damage to any of the property however arising;
- (2) Sell or otherwise dispose of all or any part of the Lessee's property with or without removing them from the Premises, in the name of and as agent for the Lessee.

- (3) (a) In respect of all or any of the Lessee's Fixtures or other property which the Lessee has failed to remove from the Premises, the Lessee is deemed to have abandoned the property and title to it and the Lessor at its option acquires title to that property through abandonment; and
- (b) The Lessor is not obliged to account to the Lessee for the value of any property whose title vests in the Lessor by a b a n d o n m e n t .

11.5 *Lessor may do work which Lessee should have carried out*

Without limiting the remedies available to the Lessor, if the Lessee fails to remove all the Lessee's Fixtures and other property or otherwise fails to comply with clause 11.2, then the Lessor may do all things necessary to carry out such work. The costs incurred by the Lessor in doing the works is payable by the Lessee to the Lessor on demand. This clause shall survive the termination of this Lease.

11.6 *Occupation Fee*

Without prejudice to any other rights of the Lessor under this lease, during the period from the Termination Date or expiry or sooner determination of this Lease (including any extension or renewal hereof or period of holding over) until such date as the Lessee has complied with its obligations under clause 11, the Lessee shall pay to the Lessor from time to time immediately upon demand an occupation fee (calculated on a daily basis) at a rate equal to the rate of the aggregate of the Rent, Outgoings and other monies payable immediately prior to the date of expiry or sooner determination of this Lease divided by 365. All other obligations on the part of the Lessee under the Lease (other than the obligation to pay Rent and Outgoings for such period) shall apply, with the necessary changes.

12. GENERAL PROVISIONS AS TO LESSEE'S COVENANTS

12.1 *Lessee to bear costs of complying with Lessee's Covenants*

All costs and expenses incurred by the Lessee in connection with observing or complying with the Lessee's Covenants are to be borne by the Lessee.

12.2 *Lessee not to permit others to breach Lessee's Covenants*

The Lessee agrees not to permit to be done upon the Premises any act or thing by any person in breach of the Lessee's Covenants.

12.3 *Duration of Lessee's Covenants*

The Lessee's Covenants apply and have full force at all times during the Term and any holding over by the Lessee and after the Term for as long as may be necessary, in order to give full effect to the Lessee's Covenants.

13. COVENANTS BY LESSOR

13.1 *Quiet enjoyment*

Subject to the Lessee paying the Rent and performing all the Lessee's Covenants the Lessee may peaceably possess and enjoy the Premises without any interruption or disturbance from the Lessor or any person or persons lawfully claiming under or in trust from the Lessor.

13.2 *Liability of the Lessor*

- (1) If the Lessor ceases to be the registered proprietor of the Land:
 - (a) The Lessor is released from its obligations under this Lease including in relation to any option to extend the Lease, from the date it ceases to be registered proprietor; and
 - (b) The new registered proprietor of the Land becomes "the Lessor" for the purposes of this Lease and the Lessee and the Guarantor jointly agree to sign a deed of assignment or a deed of covenant with the new registered proprietor pursuant to which the Lessee and Guarantor agree that the terms of the Lease are fully enforceable by the new registered proprietor against the Lessee and the Guarantor.
- (2) Despite any other provision of this lease, the Lessee:
 - (a) Agrees that if the Lessor enters into this Lease only in its capacity as trustee ("Trustee") of a trust ("Trust") and not otherwise, the obligations of the Lessor under this Lease are undertaken by it only in its capacity as Trustee of the Trust and not personally;
 - (b) Agrees that the Trustee's liability as Lessor under this lease is limited to the assets of the Trust from time to time and that in no circumstances will the Trustee be liable to pay or satisfy any of the obligations imposed on the Lessor under this Lease out of any assets held by the Trustee personally, as trustee of any other trust or on behalf of any other person; and
 - (c) Waives any right to recourse from the Trustee and releases the Trustee from all personal liability whatsoever for any loss or damage which the Lessee may suffer as a result of any default under or breach of any obligation (whether express or implied) under or in connection with this Lease or implied by statute or other law or arising otherwise except to the extent that such liability is or can be paid or satisfied out of the assets of the Trust from time to time.

13.3 *Negation of Warranty*

The Lessor does not, expressly or impliedly, warrant that the Premises are:

- (1) Suitable for any purpose;
- (2) May be used for the Business, or
- (3) Now or will remain suitable or adequate for all or any of the purposes of the Lessee.

13.4 *Lessor not Liable for Damage to Stock*

If the Lessee's Fixtures, merchandise, goods plant or equipment or property of any kind which may be in the Premises during the Term is destroyed, or damaged by water, heat, fire, vermin, or otherwise, the Lessee agrees that the Lessor will not be liable for any loss or damage suffered

or incurred by the Lessee as a result of that damage or destruction except where it is caused by any negligent act or omission by the Lessor and/or its servants, agents or contractors.

13.5 *Lessor not Liable for Interruption of Services*

Despite any implication or rule of law to the contrary, the Lessor will not, except for any willful or negligent acts by it or its officers servants or agents, 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 Services, the plant and equipment (including air-conditioning equipment), Fire Equipment or any of the appurtenances contained in the Premises or for the blockage of any sewers, water drains, gutters, downpipes, or storm water drains from any cause and the Lessee will not be entitled to terminate this Lease for those reasons nor will the Lessee have any right of action of claims for compensation or damages against the Lessor.

14 RISK AND INDEMNITY

14.1 *Indemnity*

Except to the extent the same is caused by the Lessor's negligence, the Lessee agrees to indemnify and keep indemnified the Lessor from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgements, orders, decrees, damages costs, losses and expenses of any nature which the Lessor may suffer or incur in connection with:

- 14.2 Loss of life;
- (2) Personal injury; and/or
- (3) Damage to property;

arising from the use by the Lessee, or the Lessee's Agent of the Premises or any part of it or by reason of the Lessee failing to comply with the terms of this Lease.

14.3 *Risk*

The Lessee agrees to use and occupy the Premises at the Lessee's own risk and the Lessee releases to the full extent provided by law the Lessor and the Lessor's agents, servants contractors and employees from all claims and demands of every kind resulting from any accident damage or injury occurring in the Premises.

14.4 *Indemnity Survives Completion*

Each indemnity in this Lease is a continuing obligation, separate and independent from the other obligations of the premises and survives termination of this Lease for whatever reason.

15 INSURANCE

15.1 *Insurances to be maintained by Lessor*

- 15.1.1 The Lessor will unless otherwise agreed, effect and keep in force at all times during the Term the policies of insurance as are specified in Item 13(1) of the Schedule.
- (2) The Insurance Cost forms part of the Outgoings.

- (3) The Lessee agrees to pay for any excess the Lessor is liable to pay in relation to any claim made by the Lessor as a result of any act or omission by the Lessee or the Lessee's Agent.

15.2 *Insurances to be maintained by Lessee*

- (1) The Lessee agrees at the Lessee's cost to take out and keep in force at all times during the Term in the respective names of the Lessee and the Lessor and any mortgagee of the Land for their respective rights and interests the policies of insurance as are specified in Item 13(2) of the Schedule.
- (2) All insurances required to be taken out by the Lessee is at the expense of the Lessee.

15.3 *Party taking out insurance to show policy to other party*

The party effecting any policy of insurance under this Lease must if required by another party immediately produce to the other party a copy of the policy of insurance and a current certificate of renewal in respect of it.

15.4 *Lessee must not do anything that may increase premiums*

- 15.4.1 The Lessee agrees not to bring on to or keep any article or thing or do any act matter or thing upon the Premises which may increase the rate of premium under the policy of insurance taken out by the Lessor in respect of the Premises or any part of it.
- (2) If the Lessee brings or keeps any such article or thing upon the Premises then the Lessee must pay the amount of the increased premium to the Lessor upon demand.

15.5 *Lessee to comply with requirements of relevant authorities*

The Lessee agrees, at all times when carrying on the Business, to comply with the requirements of the relevant authorities and all laws and regulations for the time being relating to fires and the provisions of any relevant statute regulation and ordinance.

15.6 *Lessee must not do anything that may invalidate insurance*

If the Lessee permits to be done any act matter or thing which has the effect of invalidating or avoiding any policy of insurance taken out by or affected under this Lease for the benefit of the Lessor, then the Lessee will be responsible for any damage or loss which the Lessor may suffer or incur as a result.

16 **DEFAULT**

16.1 *Lessor may remedy Default at cost of Lessee*

If the Lessee commits any Default (other than in the payment of the Lease Money) and fails to remedy the Default within 14 days after notice from the Lessor requiring the Default to be remedied, the Lessor is entitled to do all such acts, matters and things as may be reasonably necessary or expedient to remedy the Default. Without limitation, the Lessor will be entitled to:

- (1) Enter the Premises with necessary plant, equipment and labour and execute repairs or works to the Premises;

- (2) Expend money on behalf of the Lessee;
- (3) Execute documents for and on behalf of and in the name of the Lessee, and the Lessee for that purpose constitutes the Lessor its lawful attorney.

16.2 *Lessee to pay the costs*

The Lessee agrees to pay to the Lessor on demand all reasonable costs and expenses incurred by the Lessor pursuant to the exercise of its powers under Clause 16.1.

16.3 *Notice to Lessee*

Subject to clause 16.1, the Lessor may exercise its powers under this Clause 16 without further notice to the Lessee.

16.4 *Indemnity for Default*

The Lessee agrees to indemnify the Lessor against all costs, expenses claims, demands, losses and liabilities arising from any Default of the Lessee including all legal costs charges and expenses for which the Lessor becomes liable in consequence of or in connection with the Lessee's Default, including all costs charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor.

16.5 *No waiver of Default*

Acceptance of Rent or other Lease Money by the Lessor after Default by the Lessee is without prejudice to the exercise by the Lessor of the powers conferred upon the Lessor under this Lease and does not operate as an election by the Lessor either to exercise or not to exercise any of the Lessor's rights powers or privileges.

16.6 *No consent or waiver to affect any other Default*

No consent or waiver expressed or implied by the Lessor to any Default of the Lessee is to be construed as a consent or waiver to or of any other Default.

16.7 *Interest on late payment*

- (1) If any payment of any Lease Money payable by the Lessee to the Lessor under this Lease is not paid on the due date that amount will bear Interest.
- (2) Interest is to be computed from the date that the Lease Money becomes due and payable to the date of payment with monthly rests.
- (3) Interest accrues from day to day and is payable on demand being made by the Lessor.

17 TERMINATION FOR DEFAULT

17.1 *Termination for default*

The Lessor is entitled to terminate the Lease by notice to the Lessee in any of the following circumstances:

- (1) If Lease Money or any part of it at any time falls in arrears and remains unpaid for 7 days after the Lease Money has become due (whether or not any formal or legal demand has been made for it);
- (2) If the Lessee at any time commits any Default other than in respect of the payment of Lease Money and fails to remedy the Default within a period of 14 days after service of a notice calling upon the Lessee to remedy the Default;
- (3) If the Lessee commits a Default of any nature, on more than two occasions during the Term, regardless of whether the Defaults committed are of the same or of a different nature;
- (4) An Insolvency Event occurs;
- (5) If the Lessee fails to obtain any approvals or consents necessary for the carrying on of the Business or the signage or such approvals or consents lapse for any reason, or if the provisions of this Lease are or become unenforceable against the Lessee for any reason;
- (6) If the Lessee abandons, vacates or otherwise surrenders the Premises; or
- (7) The Lessee carries on any business involving the retail sale of goods.
- (8) The Lessee shall part with possession of the Premises or purp01i to assign or transfer the benefit of its rights under this Lease without the prior written approval or consent of the Lessor;
- (9) The Lessee fails to comply with any order, notice or requisition issued by any Relevant Body in relation to the Lessee's use or occupation of the Business; or
- (10) The Lessee fails to comply with clause 29.

17.2 *Time within which Lessor may exercise rights*

If an event referred to in Clause 17.1 occurs, (other than in the case of the non-payment of Rent or other Lease Money), then before exercising the rights of re-entry the Lessor must, if required by section 81 of the Property Law Act 1969:

- (1) Serve on the Lessee a notice which complies with that section;
- (2) If the breach is capable of being remedied, give the Lessee fourteen (14) days to remedy to remedy the breach;
- (3) Give the Lessee fourteen (14) days to make reasonable compensation for the breach in money to the satisfaction of the Lessor.

17.3 *Termination does not affect other rights*

Termination of the Lease under this Clause 17 is without prejudice to any right of action or remedy of the Lessor in respect of any Default by the Lessee.

Breach of essential terms

The Lessee agrees that the following covenants of the Lessee are essential terms of this Lease and any Default by the Lessee in punctually performing any one or more of these terms will be deemed to be a fundamental breach of the provisions of this Lease:

- (1) To pay Rent on the due date;
- (2) To pay the Outgoings on the due date;
- (3) To obtain the Lessor's consent before assigning, transferring or sub-letting the Premises;
- (4) To pay the Lessor's legal costs;
- (5) To use the Premises only for the permitted use;
- (6) To keep the Premises in good repair;
- (7) Any other covenant in respect of which the Lessee's breach is serious, persistent and of a continuing nature; and
- (8) To comply with clause 29

17.4 *Damages*

The Lessor is entitled in any case where the Lessor has terminated the Lease as a result of:

- (1) Non-payment of any Lease Money;
- (2) Any other fundamental breach of this Lease; or
- (3) Any breach of the Lessee's Covenants;

to recover as damages from the Lessee and the Lessee covenants to pay to the Lessor as and by way of liquidated damages for the breach and repudiation the aggregate of the Lease Money which would have been payable by the Lessee for the unexpired residue of the Term remaining after the determination after making allowance for Lease Money which the Lessor by taking reasonable steps to re-let the Premises obtains or could reasonably be expected to obtain by re-letting the Premises for the unexpired residue of the Term on reasonable terms as to the Rent and otherwise together with all costs and expenses incurred by the Lessor or which the Lessor reasonably expects to incur as a result of the early determination including (without limitation) all costs incurred by the Lessor in re-letting or attempting to re-let the Premises provided that:

- (4) Any re-letting shall not be required to be on like terms as contained in this Lease;
- (5) The acceptance by the Lessor of arrears or any late payment of any Lease Money does not constitute a waiver of the essentiality of the Lessee's obligations to make these payments;

- (6) The Lessor's entitlement to recover damages as specified above shall not be prejudiced or limited if:
- The Lessee abandons or vacates the Premises;
 - The Lessor elects to re-enter the Premises or to determine this Lease;
 - The Lessor accepts the Lessee's repudiation of this Lease; or
 - The parties' conduct constitutes surrender by operation of law.
- (7) The Lessor may institute proceedings to recover damages as specified above or after any of the events or matters referred to in sub clause (6) above;
- (8) Any conduct by the Lessor to mitigate damages shall not of itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law; and
- (9) Nothing in this clause, whether expressed or implied, shall be construed to mean that no other Lessee's Covenants can be an essential term.

18. CONSEQUENCES OF TERMINATION

18.1 *This clause applies to termination for any reason*

The provisions of this clause apply in respect of any termination of the Lease by expiry or by reason of Default or otherwise.

18.2 *Re-entry*

- (1) Immediately upon the Termination Date or sooner determination of the Lease, the Lessor is entitled to re-enter the Premises.
- (2) For the purposes of re-entry the Lessor or the Lessor's appointed agent or servant has power to open by any means any door or fastening for the purpose of resuming possession of the Premises and to expel and remove all persons and other property from the Premises (without being liable for any action for trespass assault or any other proceedings for doing so).

18.3 *Lessee to deliver up Premises*

Immediately upon the Termination Date or sooner determination of the Lease, the Lessee agrees to:

- (1) Surrender all keys for the Premises to the Lessor such place as directed by the Lessor; and
- (2) Inform the Lessor of all combinations on locks, safes and vaults (if any) in the Premises.

18.4 *Lessee's responsibility for damage and costs*

The Lessee is responsible for and indemnifies the Lessor in respect of:

- (1) Any loss or damage caused by the Lessee or the Lessee's Agent during the removal of the Lessee's Fixtures and other property from the Premises;
- (2) The costs of removal, storage and sale of any of the Lessee's fixtures and other property.

18.5 *Lessor may carry out remedial work following termination*

- (1) Following the Termination Date, the Lessor has power to enter upon the Premises and carry out any repairs or maintenance which the Lessee has failed to undertake in accordance with the Lessee's Covenants and otherwise remedy any outstanding Default.
- (2) If the repairs or maintenance would have been the responsibility of the Lessee in accordance with the Lessee's Covenants (whether or not the Lessee was in Default by failing to have carried them out), then the cost of those repairs or maintenance are payable by the Lessee to the Lessor upon demand and is recoverable from the Lessee notwithstanding the Lease has ended.

19 **SUBLEASE, ASSIGNMENT, UNDERLETTING, ETC**

19.1 *Lessee not to assign or sub-lease Lease*

The Lessee agrees that it will not assign, sub-lease or transfer the Lease or any part of it or any estate or interest in it without the prior written consent of the Lessor. The written consent of the Lessor must not be unreasonably withheld in the case of a proposed assignment or sub lease of the Lease or any part of it to a respectable responsible person or company capable of complying with the terms of the Lease and being of high financial standing proof of which lays with the Lessee to the entire satisfaction of the Lessor.

19.2 *Conditions of Lessor's consent to assignment or sub-lease*

If the Lessor grants consent for assignment or sub-lease of the Lease that consent is subject to:

- (1) All Lease Money and other Lessee's Covenants up to the date of assignment or sub- lease having been paid and discharged and the Lessee is not in Default;
- (2) The Lessee at the Lessee's expense withdrawing any subject to claim caveat lodged by the Lessee against the Land or any part of it;
- (3) Where the proposed assignee or sub-lessee is a corporation, the covenants by the assignee or sub-lessee contained in the Deed of Covenant must be guaranteed by the directors and principal shareholders of the corporation.
- (4) In the case of a sub-lease, the rate of Rent payable by the sub-lessee is not in excess of the then current rate of Rent payable by the Lessee to the Lessor. If the rate of Rent payable by the sub-lessee is in excess of the current Rent payable by the Lessee to the Lessor, the Lessor reserves the right to require the Lessee to pay to the Lessor

an additional rent at such rate as the Lessor may determine in respect of that part of the Premises sub-leased.

19.3 Change in the principal shareholding of Lessee

- (1) Any change in the effective control of the Lessee (being a corporation other than a public company listed on the main board of the Australian Stock Exchange) or its holding company (within the meaning of the Corporations Act) or of any trust (of which the Lessee is trustee) is deemed to be an assignment by the Lessee of its interest in the Premises.
- (2) For this purpose "effective control" means control of the composition of the board of directors (defined as "control" in the Corporations Act) or control of more than one half of the voting power provided that the issue, transfer or transmission of shares to (or to a trustee for) any relative by blood or marriage of the shareholders at the Commencement Date (or the beneficiaries under any trust in the case of shares held by a trustee) or to (or to a trustee for) any employees of the Lessee employed at the date of this Lease is not to be regarded as effecting any change in effective control.

19.4 Restriction on Charges

- (1) The Lessee shall not be entitled to mortgage lien pledge encumber or in any way charge its interest in the Lease or the Premises without the prior written approval of the Lessor which approval the Lessor may in its absolute discretion refuse save and except if the following conditions are met namely:
 - (a) The party holding the benefit of the mortgage pledge encumbrance or charge ("Charge") enters into an agreement with the Lessor in terms satisfactory to the Lessor and at the expense of the Lessee or Chargee whereby such Chargee agrees that it will not:
 - (i) lodge any caveat over the title to the Land to protect an interest as Chargee of the Lease;
 - (ii) exercise any powers under the mortgage pledge encumbrance or charge in relation to its charge over the Lease without having given prior notice in writing to the Lessor of at least five (5) business days;
 - (iii) exercise its powers under such charge in relation to the Lease save and except to enter the Premises in order to take stock and fixtures and fittings to which it shall pursuant to the charge be entitled, but save in each event to making good the Premises to the reasonable satisfaction of the Lessor; and
 - (iv) seek to introduce any new Lessee for the Premises unless such introduction is on such terms and conditions as are suitable to the Lessor and the proposed Lessee in every respect complies with the requirements set out in this clause on the basis of such new Lessee becoming an assignee and all and any defaults under the Lease (especially in the payment of any moneys due therein) are made good prior to such proposed Lessee being accepted by the Lessor.
 - (b) There shall be no Default under the Lease on the part of the Lessee then current or un-remedied; and

- (c) All of the Lessor's legal and other costs in relation to such consent are paid by the Lessee or Chargee.

19.5 Costs

If the Lessor grants consent for the Lessee to sublet or part with possession of any part of the Premises, that consent is conditional on the Lessee paying to the Lessor all reasonable costs and expenses including legal costs administrative costs stamp duty and other disbursements incurred by the Lessor in respect of the Deed of Covenant and a fee to cover administrative expenses and the Lessor's reasonable legal costs including the payment of the Lessor's managing agent's fee.

19.6 Sections 80 and 82 of the Property Law Act excluded

It is expressly agreed that the provisions of Sections 80 and 82 of the Property Law Act 1969 (WA) are excluded from this Lease.

19.7 Lessor's consent does not release Lessee

The covenants and agreements on the part of any assignee or sub-lessee with the Lessor expressed or implied in any Lease evidencing any assignment or sub-lease is supplementary to those contained in this Lease and do not in any way relieve the Lessee from the Lessee's Covenants during the Term and the Further Term of this Lease.

19.8 Possession

If the Lessor consents or is deemed under the Retail Shops Act to have consented to a sub-lease, assignment or transfer of the Premises (or any part of the same) then the Lessee is not to allow the assignee, transferee or sub-Lessee to enter upon or take possession of the Premises and the Lessee is not to vacate the Premises or any part of the Premises until the time when either an Assignment or a Sublease as the case may be has been executed by all parties and stamp duty paid thereon and all other costs referred to in this clause have been paid in full to the Lessor or the Managing Agent

20 CAVEATS

20.1 Only subject to claim caveats permitted

Neither the Lessee nor any agent or other person on behalf of the Lessee shall register this Lease or lodge a caveat against the Land or any part of it other than a subject to claim caveat to protect the Lessee's interests under this Lease.

20.2 Lessee to withdraw caveat on termination

Any caveat lodged by the Lessee must be withdrawn by the Lessee at the Lessee's expense at the expiration of the Term.

21 DAMAGE OR DESTRUCTION OF THE PREMISES

21.1 Arbitration of Rent and Suspension of Covenants to Repair

In the case of the total or partial destruction of or damage to the Premises from any cause (other than neglect or default on the part of the Lessee) by which the Premises is rendered wholly or partially unfit for occupation or use by the Lessee in the conduct of the Business,

payment of the Lease Money or a proportionate part of the Lease Money according to the extent of the destruction or damage will suspend until the Premises is restored and put in a proper condition fit for use by the Lessee for the purpose of the Business.

21.2 *Lessor may Reinstate*

- (1) In the case of the total or partial destruction of or damage to a substantial part of the Premises the Lessor has the option within 90 days after such destruction or damage by notice in writing to the Lessee either to:
 - (a) Determine this Lease (but without prejudice to any rights which may have accrued prior to such determination);
 - (b) Elect to restore and put the Premises in a proper condition fit for use by the Lessee for the purpose of carrying on the Business;
 - (c) Restore or rebuild the Premises in a different form so long as the Gross Lettable Area of the Premises is not less than the Gross Lettable Area of the Premises immediately prior to the damage or destruction and the materials employed in the construction of the Premises are of at least equal quality or appearance to the materials formerly used.
- (2) For the purposes of this clause the expression "a substantial part of the Premises" means 50% or more of the Gross Lettable Area of the Premises or a significant part of the Premises as, in the opinion of the Lessor, renders the restoration of the Premises uneconomic or undesirable or the continued occupation of the Premises impractical.

21.3 *Continuation of Business*

The Lessee, during any period of reconstruction or repair of the Premises shall continue the operation of the Business in the Premises so far as it may be reasonably practicable for the Lessee so to do having regard to the nature of the Business and the nature and extent of the damage sustained.

21.4 *Lessee may Determine if no Re-Instatement*

If the Premises are destroyed or damaged, without neglect or default on the part of the Lessee, so as to be wholly unfit for occupation or use for the purpose for which the Premises were leased and the Lessor has not substantially commenced to restore the Premises within a reasonable time from the date of the destruction or damage the Lessee may elect to terminate this Lease by giving to the Lessor notice in writing of its intention to do so and this Lease will upon receipt of that notice be determined but without prejudice to any claim by either party against the other in respect of any antecedent breach of any of the provisions or agreements contained or implied in this Lease.

21.5 *Arbitration of Disputes*

- (1) If any dispute, question or difference arises between the parties as to the meaning, operation or effect of this Clause 21 or as to their rights or liabilities under this Clause 21, the dispute, question or difference must be referred to the arbitration of an independent arbitrator to be appointed by the President or by the person for the time being fulfilling the office of President of the Law Society of Western Australia (Inc.) whose decision or award is conclusive and binding on the parties and any such submission to arbitration shall be deemed to be a submission to arbitration within the

meaning of the Commercial Arbitration Act 1985. Subject to the provisions of that Act, a reference to arbitration in accordance with the provisions of this clause is a condition precedent to any action or to other legal proceedings between the parties. The arbitrator has power to award costs and may award judgment of the Court. In any arbitration proceedings either party may be represented by his solicitor or other legal representative.

- (2) Nothing in this Lease prohibits the parties from agreeing that any dispute, question or difference arising between them pursuant to the terms of this Lease shall be submitted to arbitration.

21.6 *No Obligations to Re-instate*

Nothing contained in this Clause 21 imposes upon the Lessor any obligation to restore or reinstate the Premises.

22 **SERVICES**

22.1 *Air Conditioning Plant*

Where any plant machine¹y or equipment for heating cooling or circulating air (herein called "air conditioning plant") is installed by the Lessor in the Premises the following provisions apply:

- 22.1.1 The Lessor will not be under any liability to the Lessee or any other person arising from any inability or failure on the part of the Lessor to operate or maintain any air conditioning plant at any time or times for any reason and to the extent to which the Lessor has control over the air conditioning plant the use and operation of the plant will at all times be at the discretion of the L e s s o r .
- (2) All costs associated with the servicing maintenance and repair of the air conditioning plant is at the cost of the Lessee.
- (3) If the air conditioning unit is not serviced by the Lessor and the Lessee fails to maintain and service the air-conditioning unit on an annual basis in accordance with the manufacture's specifications by a qualified person, the cost of replacing any air conditioning unit servicing the Premises will be borne by the Lessee. The onus of proving the air conditioning unit has been serviced in accordance with this clause rests with the Lessee to the satisfaction of the Lessor.
- (4) Any damage caused to the Premises, including any corrosion to the roof of the Premises, arising from the installation of any air conditioning unit by the Lessee, must be made good by the Lessee at the Lessee's cost, immediately upon demand being made by the Lessor.

23 **RESERVATIONS OF THE LESSOR**

23.1 *Pipes ducts conduits and wires*

The Lessor reserves the right to install maintain use repair alter and replace pipes ducts conduits and wires leading through the Premises and to pass and run gas water sewerage heat oil electricity and other power through such pipes ducts conduits and wires and to enter upon the Premises for such purposes.

23.2 *Additions to Premises*

The Lessor reserves the right to add on to or alter the Premises and the Lessee agrees that the Lessor is at liberty to do so provided that any alterations or additions are carried out with reasonable dispatch and minimum disruption to the Lessee.

23.3 *Dealings with Land*

(1) The Lessor reserves the right to:

- (a) Subdivide the Land;
- (b) Grant easements and restrictive covenants over the Land;
- (c) Accept the surrender of easements and restrictive covenants which are encumbrances over the Land;
- (d) Subdivide the Land and any Premises on the Land under the Strata Titles Act;
- (e) Grant and discharge mortgages over the Land; or
- (f) Install or temporarily interrupt any Services provided to the Land or Premises;

but in doing so, will use all reasonable endeavors to minimize interference and disruption to the Lessee, or the Business.

(2) The Lessee if required by the Lessor will withdraw any caveat lodged by the Lessee to enable the Lessor to exercise any of the Lessor's rights under clause 23.3(1). On completion of registration of the relevant transactions the Lessee may re-lodge a subject to claim caveat against the Land in accordance with this Lease.

24 **GENERAL**

24.1 *No warranty*

The Lessee acknowledges and declares that in entering into this Lease the Lessee has not relied on any promise representation warranty or undertaking given by or on behalf of the Lessor in respect to the suitability of the Premises or the finish facilities amenities or services of the Premises for any business to be carried on and all warranties if any implied by law are so far as legally possible expressly negated.

24.2 *Inconsistent laws excluded*

To the extent that any one or more of the provisions contained in this Lease is prohibited by any applicable law including the Trade Practices Act 1974 (ct) that provision shall to the extent of the inconsistency be ineffective but without invalidating or modifying the remaining provisions of this Lease which continue in full force and effect as if the prohibited provisions had not been included in this Lease.

24.3 *Special clauses*

The special clauses set out in Item 14 of the Schedule are incorporated in this Lease. To the extent the special clauses are inconsistent with the terms of this Lease, the special clauses will prevail.

24.4 *Legal costs and stamp duty*

The Lessee agrees to pay to the Lessor:

- (1) All reasonable legal costs charges and expenses incurred by the Lessor as a result of or attributable to any Default or alleged Default by the Lessee in observing or performing any of the Lessee's Covenants including without limitation all costs charges expenses and fees relating to the preparation and service of a notice under Section 81 of the Property Law Act 1969 requiring the Lessee to remedy any breach of any of the Lessee's Covenants notwithstanding that forfeiture for the breach shall be avoided otherwise than by relief granted by the Court;
- (2) The costs of the Lessor's solicitors of and incidental to the instructions for and drawing and engrossing and stamping and registering this Lease and all counterparts of it and all negotiations and drafts in respect to it;
- (3) The costs of preparing an extension of lease for the Further Term, together with any stamp duty payable on the deed of extension will be borne by the Lessee.

24.5 *Notices*

- (1) Any notice or other document or writing required to be served delivered or given under this Lease may be given to:
 - (a) The Lessor by sending the notice by registered post to the address specified in the Lease or to such other address notified by the Lessor to the Lessee in writing;
 - (b) The Lessee by sending the notice in a properly stamped envelope addressed to the Lessee at the address stated in this Lease, or to the Premises or being served or given personally to the Lessee or any employee of the Lessee or otherwise in accordance with section 135 of the Property Law Act 1969,
- (2) Any notice in writing sent by post shall be deemed to be given at the time when the notice would normally be delivered in the ordinary course of the post.
- (3) Notices may be sent by facsimile transmission and is deemed to be given by the sender and received by the addressee when successful transmission to the addressee's number as specified in the Reference Schedule, has been achieved.
- (4) Notices may be sent by email and is deemed to be given by the sender and received by the addressee when the sender receives a delivered and read receipt email messages from the receiver's email address.

- (5) If the delivery or receipt is on a day which is not a business day or is after 4.00 p.m. (addressee's time) it is deemed to be given at 9.00 a.m. on the succeeding Business Day; and
- (6) Time is of the essence with respect to any notice served by the Lessee on the Lessor in the exercise of any right or remedy purported to be exercised by the Lessee pursuant to the terms of this Lease

24.6 *Consents and Approvals*

Unless otherwise provided, any consent or approval which may be granted by the Lessor pursuant to this Lease may be granted or refused or granted subject to conditions in the absolute discretion of the Lessor.

24.7 *Managing Agent*

- (1) The Managing Agent shall represent the Lessor in all matters relating to this Lease except insofar as the Lessor shall otherwise in writing direct and provided always that any communication from the Lessor to the Lessee shall, to the extent of any inconsistency, supersede any communication from the Managing Agent.
- (2) The Lessor may delegate any of its powers, rights and authorities under this Lease to the Managing Agent for the time being, or to any agent, consultant or officer of the Lessor from time to time appointed for that purpose and from time to time may vary or revoke that delegation or appointment.
- (3) As between the Lessor and the Lessee, the Managing Agent is entitled, on behalf of the Lessor, to exercise all or any of the Lessor's powers, discretions and rights under this Lease and to make any determination which may be made by the Lessor under this Lease provided that, in the event of any inconsistency between a communication by the Lessor to the Lessee and a communication by the Managing Agent to the Lessee, the Lessee must notify the Lessor of the inconsistency provided that the former prevails to the extent of any inconsistency and the Lessee is to observe and comply with the former, unless subsequently directed to the contrary by the Lessor following notice of the inconsistency to the Lessor by the Lessee.

24.8 *Occupational Safety and Health Act*

- (1) The Lessee agrees that, for the purposes of the Occupational Safety and Health Act 1984 of Western Australia, the Lessee has control of the Premises.
- (2) By this clause the Lessee releases and indemnifies and agrees to keep indemnified the Lessor from and against all actions, claims, demands, losses, damages, costs and expenses for or in respect of which the Lessor shall or may be or become liable by reason of the Occupational Safety and Health Act 1984 of the State in respect of the Premises or its use.

24.9 *Commencement of Obligations*

- (1) Despite anything to the contrary expressed or implied in this Lease or howsoever, by this clause the Lessor, the Lessee, the Guarantor and the Covenantors (if any) covenant and agree that their respective rights and obligations under this Lease commence on the Commencement Date irrespective of the actual date of execution of this Lease by all parties.

- (2) The obligations of the Lessor, the Lessee, the Guarantor expressed in, and implied by this Lease are to be construed as covenants.
- (3) If the Lessee takes possession (the "**Possession Date**") prior to the Commencement Date the Lessee shall be deemed to take possession under the terms of the Lease at the Rent and subject to the covenants and conditions in the Lease.
- (4) Each of the Lessor and the Lessee (and the Guarantor if any) shall be deemed to be bound by the terms of the Lease from the Possession Date as though the Possession Date was the Commencement Date.

25. GUARANTEE

25.1 Acknowledgment

The Guarantor acknowledges that the Lessor has leased the Premises to the Lessee:

- (1) At the Guarantor's request; and
- (2) For the benefit of the Guarantor.

25.2 Guarantee

The Guarantor unconditionally guarantees to the Lessor that the Lessee will:

- (1) Pay the Lease Money to the Lessor at the times and in the manner provided in the Lease; and
- (2) Observe and perform the Lessee's Covenants.

25.3 Indemnity

The Guarantor unconditionally agrees to indemnify the Lessor in respect of any demands, claims, actions, proceedings, costs, charges, damages, expenses and losses which result from the Lessee committing a Default or otherwise being in breach of any Lessee's Covenant.

25.4 Continuing Guarantee and Indemnity

The guarantee and indemnity given in this clause 25 is a continuing guarantee and indemnity and will not be affected or avoided in any way by:

- (1) Any agreement or arrangement made between the Lessor and the Lessee, whether with or without the Guarantor's consent; or
- (2) Any alteration or variation to the rights or obligations of any of the parties to the Lease, including:
 - (a) Any further assignment, extension or variation of the Lease; or
 - (b) The Lessor granting to the Lessee or the Guarantor any time or other indulgence or forbearance.

25.5 *Not to prove*

- (1) The Guarantor must not prove or claim in the bankruptcy, liquidation, composition, arrangement or assignment of the Lessee (as the case may be) until the Lessor has received 100 cents in the dollar in respect of any money owed by the Lessee to the Lessor.
- (2) Without affecting the provisions of clause 25.5(1), the Guarantor will hold on trust for the Lessor any proof or claim and any dividend received in any bankruptcy, liquidation, composition or arrangement of the Lessee (as the case may be).

25.6 *Insolvency*

- (1) The provisions of this clause will apply if the Lessee:
 - (a) Being a natural person, becomes bankrupt; or
 - (b) Being a corporation is wound up or becomes subject to administration.
- (2) If the trustee, liquidator or administrator of the Lessee (as the case may be) lawfully disclaims the Lease at any time, then the Guarantor will indemnify and keep indemnified the Lessor from any demands, claims, actions, proceedings, costs, charges, damages, expenses and losses which result from the disclaimer.
- (3) To the extent that it is necessary to give full effect to the indemnity in clause 25.6(2):
 - (a) The Guarantor waives any rights of recourse it otherwise might have, or have had, against the Lessee arising out of the indemnity; and
 - (b) No disclaimer will operate so as to relieve the Guarantor of the obligations of the Guarantor under the indemnity.
- (4) The provisions of the indemnity referred to in clause 25.6(2) will survive any termination of the Lease which may arise out of any disclaimer.

25.7 *Notices*

- (1) Before taking any action against the Guarantor, the Lessor agrees to give written notice to the Guarantor (either by delivery or by posting the notice by prepaid post to the Guarantor at the address of the Guarantor specified in this Deed, or to any other address in Western Australia which the Guarantor specifies to the Lessor in writing) calling upon the Guarantor to remedy the default of the Lessee within 7 days of the giving of the notice.
- (2) Following the expiration of the 7-day period referred to in clause 25.7(1), the Lessor:
 - (a) May regard the Guarantor in all respects as the Lessee and principal debtor; and
 - (b) Is not obliged to take action first against the Lessee or any security granted to the Lessee by the Lessor.
- (3) The Lessor may immediately proceed against the Guarantor if the Guarantor fails to comply with a notice issued under clause 25.7(1).

25.8 Charge

- (1) As a separate and additional obligation under this deed the Lessee and the Guarantor (and if more than one, each of them) (the "**Chargor**") agree to charge, as legal and beneficial owner all freehold and leasehold interests in any land which the Chargor has (either jointly or severally) or during the currency of this Lease may own with the payment of any Lease Money due and owing to the Lessor by the Lessee.
- (2) The Lessor may lodge an absolute caveat against any interest in real estate held by the Chargor as equitable chargee if the Chargor is in Default and has not remedied the Default after the Lessor gives notice to the Chargor requiring the Default to be remedied.
- (3) The Chargor consents to the Lessor lodging an absolute caveat pursuant to clause 25.8(2).
- (4) The costs of and incidental to the preparation, registration and withdrawal of the caveat shall be borne by the Chargor.
- (5) If a caveat is lodged pursuant to this clause and the Default is remedied, the caveat will, at the cost of the Lessee, be removed.

26. TRUST WARRANTIES

26.1 Generally

- (1) Where the Lessee enters into this Lease as trustee of a trust (the "**Trust**"), the Lessee enters into this Lease in its personal capacity and as trustee of the Trust and the Lessee:
 - (a) Acknowledges its personal liability for the performance and observance of the Lessee's obligations under this Lease;
 - (b) Shall take all steps necessary to ensure the assets of the Terms are available to rectify any default by the Lessee; and
 - (c) Warrants that the Lessee has the power and authority under the terms of the Trust to enter into this Lease.
- (2) If the Lessee is removed as trustee of the Trust, the new trustee shall continue to be bound by the terms of this Lease, it being expressly agreed that this lease binds all the successors and assignees of the Trustee.

26.2 Trust Covenants

The Lessee and the Guarantor jointly and severally covenant that:

- (1) The Trust is lawfully and validly constituted and all deeds and other instruments in respect of the Trust have been properly executed;
- (2) The Trust is and throughout this Lease will remain unrevoked and not varied;

- (3) The assets of the Trust as well as the assets of the Lessee and the Guarantor will at all time be available to satisfy the obligations of the Lessee under this Lease;
- (4) The consents or approvals of all parties necessary to execute this Lease so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
- (5) No one has taken or threatened, nor is the Guarantor or the Lessee aware of any one who is likely, to take action to have the Trust wound-up or otherwise administered by action brought in any Court of competent jurisdiction or to charge the Trustee or any person at any time connected with the Trustee or acting on behalf or purportedly on behalf of the Trustee with any breach of trust or misappropriation of trust money in connection with the Trust;
- (6) No facts are known to the Lessee or to the Guarantor whereby the Trust might be wound-up or the Trustee may be changed or the assets of the Trust vested in any other person or that the Trust may cease to operate or be deprived of funds prior or expiration of the Term.

27. STRATA PLAN

27.1 *Registration of Strata Plan*

The Lessee acknowledges and agrees that should the Lessor elect at any time to register a Strata Plan in respect of the whole or part of the Premises then, immediately upon receiving a request to do so from the Lessor, the Lessee must withdraw any caveat lodged by the Lessee and, in consideration of the Lessor granting this Lease, the Lessee irrevocably appoints the Lessor (and if the Lessor is a company every director of the Lessor jointly and severally) and the Lessor's nominee and the Managing Agent to be the agent and attorney of the Lessee to sign and register a withdrawal of any caveat.

27.2 *Obligations and Rights of the parties*

Should the Premises at any time comprise the whole or part of a Strata Lot, the following applies:

- (1) The Lease is subject to the covenants and powers implied in the Strata Titles Act 1985 (as amended or replaced) (the "Act") as far as they have not been negated or modified;
- (2) The Lease is subject to the by-laws of the Strata Company
- (3) The Lessee agrees to pay to the Strata Company on demand all contributions levied by the Strata Company in respect of the Common Property and the Strata Lots, the subject of this Lease;
- (4) The Lessee shall duly and punctually observe and comply with the provisions of the Act, the by-laws of the Strata Company and all other by-laws for the time being in force in respect of the Common Property and any building comprised in the Strata Plan.

27.3 *Definitions of the Act to apply*

Words used in this clause 27, unless the context otherwise requires, have the same meaning as given to those words in the Act.

28. GOODS AND SERVICES TAX

28.1 *Definitions*

In this clause:

"Primary Payment" means the Lease Money payable under this Lease by the Lessee to the Lessor for the supply of goods, services or property by the Lessor to the Lessee.

28.2 *Payment of GST*

The Lessee must pay to the Lessor the amount of GST the Lessor is liable to pay on a Primary Payment.

28.3 *Method of payment*

The Lessee must pay to the Lessor the amount of the GST the Lessor is liable to pay:

- (1) At the same time; and
- (2) In the same manner as the Primary Payment.

28.4 *Price does not include GST*

The price for all goods and services supplied, by the Lessor, including the Lease Money, does not include GST and the Lessee must pay the amount of GST payable by the Lessor in addition to the Lease Money paid for the goods and services supplied fixed or determined under this Lease.

28.5 *Statement is conclusive*

A written statement given to the Lessee by the Lessor of the amount of GST that the Lessor pays or is liable to pay is conclusive as between the parties except in the case of an obvious error.

28.6 *Tax Invoice*

The Lessor agrees to provide to the Lessee a tax invoice in the form prescribed by the GST Act.

29. SECURITY

29.1 *Security to be provided*

The Parties agree that it is a condition of this Lease that the Lessee provide to the Lessor the security referred to in the First Schedule.

29.2 *Failure to provide security*

Should the Lessee fail to provide the security required by the Lessor prior to the Commencement Date or within 14 days upon demand being made for the Security, the Lessor may terminate this Lease.

29.3 *Default*

If the Lessee is not obliged to provide a bank guarantee pursuant to this Lease, but is in Default of this Lease, notice of which has been served on the Lessee, then the Lessee must upon demand being made by the Lessor, provide to the Lessor a bank guarantee for an amount equal to three (3) months Gross Rent.

30. CAR PARKING LICENCE

30.1 *Grant of Licence*

The Lessor grants to the Lessee the right to use during the Term the car bays situated on the Land for the purpose of parking motor vehicles subject to the terms contained in this clause.

30.2 *Terms and conditions of Licence*

The Lessee is to ensure that:

- (1) the Car Bays are only used for the purpose of parking motor vehicles;
- (2) when a motor vehicle is parked in a bay, it:
 - (a) is parked within the defined area of the Car Bays;
 - (b) is not left with the engine running;
 - (c) does not leave excessive amounts of oil or any other deleterious substance on the floor of the Car Bays; and
- (3) the Lessee is to comply on time with all requirements and orders of any relevant Authority and all laws in connection with the use of the Car Bays for the purpose of parking motor vehicles and the exercise of the rights granted to the Lessee under this Licence;
- (4) the Car Bays are kept free of litter and spillage, including oil, and thoroughly clean;
- (5) no inflammable liquid or gas is kept in any parked motor vehicle unless it is fuel normally used in the motor vehicle and stored in accordance with all laws in connection with the retention of fuel in a motor vehicle;
- (6) the Car Bay is kept clear of obstruction; and
- (7) no motor vehicles are washed or repaired while they are in the Car Bay except in areas designated by the Lessor for those purposes, if any.
- (8) the Lessee will cease to use the Car Bays and return to the Lessor any security keys or key cards used to obtain access to the Car Bays at the expiration or sooner determination of the Term;

- (9) the Lessee may not assign transfer, sub-licence or otherwise part with the benefit of this Licence unless the Lessor has consented to an assignment or sublease of the Lessee's interest as tenant under this Lease.

30.3 *No Liability of Lessor*

The Lessor is not in any way responsible for:

- (1) any damage sustained by any motor vehicle while it is in the Car Bay;
- (2) any loss or damage resulting from the theft of any motor vehicle or of any parts, equipment or contents of any motor vehicle while it is in the Car Bay; or
- (3) any injury to the Lessee or any of its employees, agents, contractors or invitees sustained when any of those persons is in the Car Bay.

30.4 *Application of Lease Provisions*

Unless the context otherwise requires, to the extent that the same is relevant and applicable all clauses in this Lease apply to this Licence as if the Premises and the Rent mentioned in those clauses were or otherwise include the Car Bays and the Licence Fee respectively.

30.5 *Termination of Licence Upon Termination of Lease*

Notwithstanding anything to the contrary contained in this clause 30, this Licence will terminate immediately, automatically and without notice if the Lease is at any time terminated by the Lessor or the Lessee and in any manner and for any reason.

31. **ENVIRONMENTAL CLAIMS**

31.1 *Definitions*

For the purposes of this clause the following words have the following meaning:

"Contamination" means anything which makes or may make the Premises or the Land including the subsoil or the Environment:

- (1) Unsafe or unfit or likely to cause harm to humans or other living things;
- (2) Degraded in any way; or
- (3) Materially diminished in value;

or which may cause degradation or harm to adjoining or nearby land or its occupiers. "Environment" has the meaning given to it in the *Environmental Protection Act 1986*.

"Environmental Legislation" means the *Environmental Protection Act 1986* and all other legislation, regulations and by-laws, State or Commonwealth, which are in force at any time in relation to the protection of the Environment and includes the provisions of the *Contaminated Sites Act 2003*.

"**Hazardous Chemicals**" means any material, substance or solution which may endanger health or the Environment.

"**Law**" means a statute, regulation or ordinance, whether State, Federal, Local or otherwise.

31.2 *Lessee's Obligations*

The Lessee must:

- (1) Ensure that:
 - (a) The Lessee does not cause or permit;
 - (b) The Lessee's Agent does not cause or permit;
any Contamination (and the effect of this clause 31.2 is not limited by any of the subsequent provisions of this clause 31);
- (2) If spillage of Hazardous Chemicals occurs, take all necessary and reasonable steps to clean up the spillage and the Premises as quickly as possible and in accordance with the best practices in the industry concerned, and reinstate the Premises to their condition before the spillage;
- (3) Immediately inform the Lessor and any relevant authority which has to be informed under the Environmental Legislation of any spillage of Hazardous Chemicals;
- (4) Comply with the requirements of and guidelines issued by or under any Law in relation to the storage, handling, disposal and cleaning up of Hazardous Chemicals;
- (5) Handle and store all Hazardous Chemicals in accordance with the requirements of and guidelines issued by or under any Law and the manufacturer's specifications, instructions and recommendations from time to time;
- (6) Maintain an environmental register which conforms with any guidelines published from time to time pursuant to any Law and which records:
 - (a) All storage and handling of Hazardous Chemicals on the Premises at any time;
 - (b) All spillages of Hazardous Chemicals as required by any Environmental Legislation;
 - (c) Any notification to any relevant authority in relation to a spillage of Hazardous Chemicals;
- (7) Permit the Lessor or its agent to inspect the environmental register at any time but not more frequently than once each year;
- (8) Permit an environmental consultant appointed by the Lessor to make, at the Lessor's expense, a comprehensive environmental assessment of the Premises within the period commencing one month prior to and ending three months after the Lessee vacates the Premises;
- (9) If, in the reasonable opinion of the environmental consultant engaged by the Lessor, the assessment made under clause 31.2(8) shows that there has been Contamination

of the Premises, immediately take the action recommended by the consultant (acting reasonably) to remedy and remove the Contamination at the Lessee's expense; and

- (10) Indemnify the Lessor against any claim, liability, damage or loss that the Lessor may suffer or incur, including loss in value of the freehold interest in the Premises, as a result of any Contamination of the Premises or any adjoining or nearby land, caused or permitted by the Lessee or the Lessee's Agent.

31.3 *Lessor may carry out Lessee's remedial work*

If the Lessee fails to promptly comply with the requirements of any Law or guidelines or any notice issued by or pursuant to any Law, then, provided it is the Lessee's responsibility so to comply under the terms of this Lease, the Lessor may, at the Lessee's expense, carry out the required work and any necessary consequential remedial works.

32. RETAIL SHOPSACT

32.1 *No Application*

If the Commercial Tenancy (Retail Shops) Agreement Act 1985 as amended (the "Act") applies to this Lease and if the Lease provides for a review of rent that is prohibited by the Act and is void, the Lessor and Lessee agree to vary the Lease to provide that on each Rent Review Date the Rent will be reviewed to the Market Rent, as that term is defined in the Act, in lieu of any other method of review provided in this Lease.

EXECUTED AS A DEED

Signed by the Lessor:

Executed by:

Life's Really Good Pty Ltd as trustee for
Good Life Superannuation Fund
ACN 609 575 582 by authority of its
Directors in accordance with section
127 of the Corporations Act 2001



Director Signature



Director/Secretary Signature

Glen Peter Crawford

Print Full Name of Director

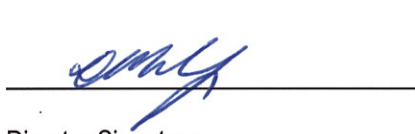
David Troy Kimberley Milroy

Print full Name of Director/Secretary

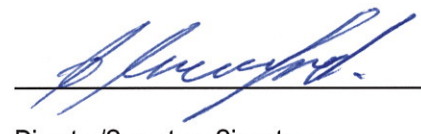
Signed by the Lessee:

Executed by:

Legeneering (Aust) Pty Ltd
ACN 112 645 468 by authority of its
Directors in accordance with section
127 of the Corporations Act 2001



Director Signature



Director/Secretary Signature

David Troy Kimberley Milroy

Print Full Name of Director

Glen Peter Crawford

Print full Name of Director/Secretary



Witness Signature

Diana Chong

Witness Print Full Name

13 Akma Court, Maddington WA 6109

Witness Address

Executive Manager

Witness Occupation