

Dealing Number



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<b>1. Lessor</b>	<b>Lodger (Name, address E-mail &amp; phone number)</b>	<b>Lodger Code</b>
TEMPUS FUGIT DK CUSTODIAN PTY LTD ACN 164 202 331		

<b>2. Lot on Plan Description</b>	<b>County</b>	<b>Parish</b>	<b>Title Reference</b>
LOT 10 ON BUP 11481	WARD	GILSTON	18246160

<b>3. Lessee</b>	Given names	Surname/Company name and number	(include tenancy if more than one)
		ECHELON INVESTMENTS PTY LTD	as Trustee
		ACN 010 306 126	

<b>4. Interest being leased</b>
FEE SIMPLE

<b>5. Description of premises being leased</b>
WHOLE OF THE LOT

<b>6. Term of lease</b>	<b>7. Rental/Consideration</b>
Commencement date/event: 9 DECEMBER 2020	\$65,000.00 per annum (plus GST)
Expiry date: 30 NOVEMBER 2025 & DECEMBER 2025 and/or Event:	
#Options: 2 x 5 years	
#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	

**8. Grant/Execution**

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- \*the attached schedule; \*the attached schedule and document no. \_\_\_\_\_; \*document no. \_\_\_\_\_; \*Option in registered Lease no. 713611273 has not been exercised.

\* delete if not applicable

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

TEMPUS FUGIT DK CUSTODIAN PTY LTD  
ACN 164 202 331

04 12 2020  
Execution Date

Sole Director  
Lessor's Signature

**9. Acceptance**

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

ECHELON INVESTMENTS PTY LTD  
ACN 010 306 126

1 12 2020  
Execution Date

Lessee's Signature

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This is the Schedule referred to in the Form 7 Lease.

1. REFERENCE DATA

ITEM 1: PARTIES:

Landlord:	TEMPUS FUGIT DK CUSTODIAN PTY LTD ACN 164 202 331
Address for Notices:	
Tenant:	ECHELON INVESTMENTS PTY LTD ACN 010 306 126
Address for Notices:	'Corporate Centre One', Level 2, 2 Corporate Court, Bundall 4217

ITEM 2: TERM:

	5 years
Date of Commencement:	9 <sup>th</sup> December 2020
Expiration Date:	<del>30 November 2025</del> 8 December 2020

ITEM 3: BUILDING AND  
LEASED PREMISES:

Address of Building:	10/2431 Gold Coast Highway, Mermaid Beach Q 4218
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ITEM 4: RENT:

(a) Commencement of date of rental payment:	
(b) Rent:	
(i) Rent:	\$65,000.00 per annum (plus GST)
(ii) Monthly Rent:	\$5,416.67 (plus GST)
(c) Rent due date:	the first day of each Month
(d) Interest on arrears:	at the Stipulated rate as defined in clause 2

ITEM 5: MARKET REVIEW DATE/S: 9<sup>th</sup> December 2025, 9<sup>th</sup> December 2030

ITEM 6: USE OF PREMISES: The practice of medicine including a cardiology clinic and an administrative office.

ITEM 7: INSURANCE REQUIREMENTS: As set out in clauses 8.4 and clauses 8.5 to 8.6

ITEM 8: FIRST RIGHT OF RENEWAL:

Term	Five (5) years
Date must be exercised in writing:	Six (6) months before expiry of current term
Commencement Date of Renewed Term:	9 <sup>th</sup> December 2025

SECOND RIGHT OF RENEWAL:

Term	Five (5) years
Date must be exercised in writing:	Six (6) months before expiry of first option term
Commencement Date	

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of Renewed Term:

<sup>9</sup>  
1 December 2030

**ITEM 9: AMOUNT OF BOND:** \$17,874.99 (three months rent plus GST)

**ITEM 10: GUARANTORS:**

(name and address)

GEOFFREY MAXWELL ADSETT and SUSAN MARY  
ADSETT, both of Unit 70 "The Pinnacle" 2898 – 2908  
Gold Coast Highway, Surfers Paradise, 4217

Each item in this Lease to any of the titles contained in this Part is to be construed to incorporate the data stated and the terms provided under that title.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

Unless otherwise provided or unless there is something inconsistent in the subject matter, the expressions following (whether appearing with or without capital letters) have the meanings assigned to them in this clause:

"Act" means Body Corporate and Community Management Act 1997.

"Air Conditioning Equipment" means the plant, electrical, installations, ductwork, and diffusers used for the manufacture and reticulation of conditioned air throughout the Premises and includes all mechanical ventilation.

"Annual Rent" means the amount of Rent per annum specified in Item 4 as varied from time to time pursuant to the terms of this Lease.

"Body Corporate" means the body corporate constituted under the Act for the Scheme.

"Body Corporate Contributions" means any contribution payable to the Body Corporate in respect of the Land and the Scheme.

"Building" means the building in which the Premises are situated.

"Business Day" means a day other than

- (i) a Saturday or Sunday; or
- (ii) a public holiday in Southport.

"Car Parking Plan" means the plan of that name attached to this Lease.

Car Parking Spaces means the five (5) car parking spaces hatched on the Car Parking Plan.

"Common Property" means the common property for the Scheme.

"Date of Commencement" means the date referred to in Item 2 of the Reference Data as the Date of Commencement.

"Fire Equipment" includes all stopcocks, hydrants, fire hoses, fire alarms, fire sprinklers, and other fire prevention extinguishing and detection equipment in the Premises.

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"Form 7" means the lease in Form 7 to the *Land Title Act 1994* to which this Schedule is attached.

"Guarantor" means the guarantor or collectively the guarantors referred to in Item 10 of the Reference Data and also any person who enters into covenants with the Landlord as a guarantor under clause 9.1. If the Guarantor is one person, the expression includes that person his executors and administrators. If the Guarantor is more than one person, the guarantor includes those persons and their respective executors and administrators jointly and severally. If the guarantor is a corporation, the guarantor includes that corporation and its successors or if more than one corporation includes those corporations and their respective successors.

"Index Number" means the Consumer Price Index (All Groups) for the city of Brisbane as published by the Australian Bureau of Statistics. If that index is suspended, discontinued, or modified so that it does not reflect on a consistent basis changes which have occurred in the cost of living in the city of Brisbane during any Lease Year, the expression will mean an index which in the opinion of the Australian Statistician (whether published or advised at the request of either party) does reflect on a consistent basis changes which have occurred in the cost of living in the City of Brisbane during any Lease Year. If the Australian Statistician has not published and will not advise an appropriate index, the expression will mean an index or method of measuring increases in the cost of living agreed in writing by the parties and in default of agreement within a period of fourteen (14) days, an index or method determined at the request of either party by the President or Acting President of the Australian Institute of Valuers & Land Economists (Qld Division) or their nominee.

"Insured Risks" means the risks against which the Landlord is required by this Lease to effect insurance and any additional risks against which the Landlord effects insurance relating to the Premises. The term includes risks against which the Body Corporate has insured the Premises.

"Item" means an item in the Reference Schedule.

"Land" means the lot described in Item 2 of the Form 7.

"Landlord" means the lessor referred to in Item 1 of the Form 7 its successors and assigns and unless inconsistent with the subject matter or context includes all person for the time being authorised by the Landlord.

"Lease" means this lease including the Form 7 together with any annexures and schedules and any covenant or agreement expressed to be supplemental to this Lease and all amendments to those documents.

"Lease Year" means each separate year of the term of this Lease the first Lease Year commencing on the Date of Commencement and each subsequent Lease Year commencing on the corresponding day of each succeeding year; the expression includes any broken period between the end of the last complete Lease Year and the date of termination.

"Market Rent" means the Rent payable from each Market Review Date.

"Market Review Dates" are the dates specified in Item 5.

"Month" means a calendar month.

"Outgoings" means the following expenses and outgoings paid or incurred by the Landlord in respect of the Premises under the following heads of expenditure:

- (a) rates, charges and other levies payable to the local authority in whose area

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the Premises are located;

- (b) rates and charges payable to any local or other authority responsible for the provision or reticulation of water and/or sewerage and/or drainage services;
- (c) levies, contributions and/or other amounts payable to any local or other authority for or on account of fire protection services;
- (d) all rates, taxes, charges, assessments, outgoings, and impositions (whether parliamentary, municipal, or otherwise and whether assessed, charged, or imposed by or under Federal or State law or by Federal State or Local authorities and whether on a capital, revenue value, or any other basis and even though of a novel character) which are assessed, charged, or imposed in respect of the Premises or any part of them other than:
  - (i) land tax;
  - (ii) income tax and capital gains tax or any similar tax payable by the Landlord.
- (e) all charges for electricity, gas, oil, or other fuel incurred in the operation of the Air Conditioning Equipment and other plant and equipment in the Premises;
- (f) insurance premiums and other charges (including stamp duties) for insurance of the Premises against fire with extended cover endorsement for vandalism, malicious mischief, earthquake, flood, water damage, boiler and pressure vessel explosion, fusion, and mechanical breakdown in broad cover form with repair and replacement terms and other risks determined by the Landlord including all other charges payable in addition to the Rent in an amount or amounts and for periods determined by the Landlord;
- (g) public risk liability insurance against third party liability hazards including exposure to personal injury, bodily injury, and property damage on an occurrence basis including insurance for all contractual obligations and covering also actions of all employees, other persons, subcontractors and agents while working on behalf of the Landlord. The policy will be written on a comprehensive basis with limits of not less than \$5 million per occurrence or higher amounts reasonably required by the Landlord from time to time; and
- (h) the Body Corporate Contributions are not Outgoings.

"Pipes" means all pipes, sewers, drains, mains, conduits, ducts, gutters, water courses, wires, cables, channels, flues, and all other conducting media and including any fixings, louvres, cowls, and any ancillary apparatus.

"Premises" means the Land and all improvements on the Land together with the right to use the Common Property and all facilities situated on or about the Common Property. The expression includes any part of a pipe, pole, wire, cable, or duct which is intended to be used solely for the servicing or enjoyment of the Premises and is within the Premises but not within a wall, floor, or ceiling forming a boundary of the Premises.

"Redecorate" means the repainting and redecorating of such part of the interior of the Premises as are currently painted or otherwise decorated. :

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"Reference Data" means the data set out in Part 1 of this Schedule.

"Rent" has the meaning given to that expression in clause 3.2.

"Scheme" means the community titles scheme that includes the Land.

"the Stipulated Rate" means a percentage interest rate per annum equal to the prime lending rate charged by the Landlord's bank plus five (5) per centum.

"Tenant" means the lessee referred to in Item 3 of the Form 7 and if this Lease is taken by one person, the tenant includes that person, his executors, administrators, and permitted assigns. If this Lease is taken by more than one person, the tenant includes those persons and each of their respective executors, administrators, and permitted assigns jointly and severally. If a corporation is a Tenant, the tenant includes that corporation, its successors, and permitted assigns.

"Valuers' Institute" means the Australian Institute of Valuers and Land Economists Inc (Queensland Division).

"writing" includes printing, typing, lithography, and other modes of reproducing words in a visible form and "written" has a corresponding meaning.

**2.2 Interpretation**

- 2.2.1 Every covenant, agreement, or obligation expressed or implied in this Lease by which two or more persons covenant, agree, or are bound binds those persons jointly and each of them severally. Every provision expressed or implied in this Lease which applies to two or more persons applies to those persons jointly and each of them severally.
- 2.2.2 References to the Valuers' Institute and any other authorities, associations, and bodies whether statutory or otherwise will, if any of those authorities, associations, or bodies ceases to exist or is reconstituted, renamed, or replaced or if its powers or functions are transferred to any other authority, association, or body be deemed to refer to the authority, association, or body established or constituted in its place and/or as nearly as may be succeeding to its powers or functions.
- 2.2.3 References to any right of the Landlord to have access to the Premises extend to all persons authorised by the Landlord including agents, professional advisers, contractors, workmen and others.
- 2.2.4 References to the Premises, in the absence of any provision to the contrary, include any part of the Premises.
- 2.2.5 Any covenant by the Tenant not to do any act or thing is deemed to include an obligation not to permit that act or thing to be done, and to use its best endeavours to prevent that act or thing being done by a third party.
- 2.2.6 INTENTIONALLY DELETED
- 2.2.7 References to the "Consent of the Landlord" or words to similar effect mean a consent in writing signed by or on behalf of the Landlord and references to "Approved" and "Authorised" or words to similar effect mean approved or authorised in writing by or on behalf of the Landlord.

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- 2.2.8 The terms "the Parties" or "Party" mean the Landlord and/or the Tenant but except where there is an express indication to the contrary, exclude the Guarantor.
- 2.2.9 Words in the singular include the plural and vice versa. A reference to any gender includes every other gender. Words denoting individuals include corporations.
- 2.2.10 A reference in this Lease to an Act of Parliament or any section of an Act are to be read as though the words "or any statutory modification or re-enactment of it or any statutory provision substituted for it" were added to the reference. Any general reference to "Statute" or "Statutes" includes any regulations or orders made under the Statute or Statutes.
- 2.2.11 Every obligation or covenant (whether positive or negative) undertaken by any Party (including the Guarantor) will, despite the wording, be deemed to be and will be construed as if each obligation or covenant is a separate and independent covenant made by the Party undertaking the obligation and continuing (unless the context otherwise requires) throughout the term of this Lease and subsequently so long as it remains to be performed.
- 2.2.12 References in this Lease to any clause, subclause, paragraph, or Schedule without further designation will be construed as a reference to the clause, subclause, paragraph, or Schedule of this Lease so numbered.
- 2.2.13 The headings or marginal notes in this Lease are included for convenience only and do not affect the construction of this Lease.

**3. RENT**

**3.1 Payment of Rent**

The Tenant will pay the Rent to the Landlord without any formal or other demand by equal monthly instalments in advance on the first day of each month. In the case of any broken period of less than one month the Tenant will pay an instalment on the first day of the broken period of an amount ascertained by multiplying the number of days in that broken period by the Rent for the Lease Year of which it forms part and dividing the result by 365.

**3.2 Rental Reviews**

**3.2.1 Rent and Annual Reviews**

The expression "Rent" means an annual sum calculated as follows:

- (a) for the first Lease Year:  
the sum specified in Item 4(b)(i) of the Reference Data;
- (b) for the second and each subsequent Lease Year:  
subject to clause 3.2.2 the higher of:
- (i) that amount derived annually by multiplying the Rent for the Lease Year last concluded by a fraction obtained by dividing the Index Number for the last quarter immediately preceding the first day of the Lease Year under review by the Index Number for the last quarter immediately preceding the first day of the Lease Year last

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concluded;

- (ii) 104% of the Rent reserved and payable during the Lease Year last concluded.

3.2.2 Reviews to Market

The Rent will be further reviewed so that the Rent for the Lease Years commencing on the Market Review Dates will be the greatest of:

- (a) 104% of the Rent reserved and payable during the Lease Year last concluded;
- (b) the Market Rent for that Lease Year calculated in accordance with clause 3.3;
- (c) that amount derived annually by multiplying the Rent for the Lease Year last concluded by a fraction obtained by dividing the Index Number for the last quarter immediately preceding the first day of the Lease Year under review by the Index Number for the last quarter immediately preceding the first day of the Lease Year last concluded and the Rent so determined will be reviewed annually in accordance with clause 3.2.1.

3.3 Market Rent Reviews

- 3.3.1 The Tenant may, by written notice given to the Landlord, in either relevant Early Determination Period, ask for the relevant Market Rent to be determined.

- 3.3.2 In this clause "**Early Determination Period**" means the period starting six (6) months before the relevant Option Expiry Date and ending three (3) months before the relevant Option Expiry Date; and

"**Option Expiry Date**" means the last day on which each option to renew the Lease, under clauses 17.1 and 17.2 may be exercised by the Tenant.

- 3.3.3 If the Landlord and the Tenant have not agreed the Market Rent to apply from the relevant Market Review Date before the expiration of either relevant Early Determination Period the Landlord may by written notice given to the Tenant in the relevant Early Determination Period ask for the Market Rent to be determined.

- 3.3.4 If the Tenant gives a notice under clause 3.3.1 or if the Landlord gives a notice under clause 3.3.3 the Market Rent will be determined as follows: (a) the Market Rent will be determined by a person ("the Arbitrator") who has been a member of the Valuers' Institute for at least five (5) years nominated by the President for the time being of the Valuers' Institute on the application of the Landlord or Tenant;

- (b) the Arbitrator will act as an arbitrator in accordance with the *Commercial Arbitration Act 1990*;

- (c) the Arbitrator will determine the Market Rent of the Premises assuming:

- (i) a term equivalent to the original term of this Lease;
- (ii) that the Tenant has complied with all obligations of repair and



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decoration imposed by this Lease;

- (iii) that the covenants of the lease are the same as the covenants of this Lease other than for quantum of rent and any other differences required by these assumptions;
- (iv) that any improvements made to the Premises by the Tenant have not been made.

3.3.5 The Landlord and the Tenant will do all things necessary and use their best endeavours to allow the Market Rent to be determined before the relevant Option Expiry Date.

3.3.6 The Market Rent must be determined as at the date the request is made under clause 3.3.1 or 3.3.3.

3.3.7 Notwithstanding anything to the contrary in this Lease, the last day on which either option contained in clauses 17.1 and 17.2 may be exercised is the day that is twenty one (21) days after the Tenant receives written notice of the current Market Rent determined under clause 3.3.1 or the Landlord receives such a notice pursuant to clause 3.3.3.

3.3.8 If the Annual Rent commencing on either relevant Market Review Date is not agreed and if no notice is given by the Tenant under clause 3.3.1 or by the Landlord under clause 3.3.3 and if the Tenant exercises either relevant option contained in clauses 17.1 or 17.2, the Annual Rent commencing on such relevant Market Review Date will be reviewed under clause 3.2.1(b).

**3.4 Obligation to Pay Pending Determination**

Pending determination of the Rent for any Lease Year, rent will be paid at the rate payable during the Lease Year last concluded and will be adjusted retrospectively to the beginning of the Lease Year under review.

**3.5 Precluding Deduction for set-off or counterclaim**

The Tenant expressly agrees to make all payments due under this Lease, including for Rent and Outgoings, punctually on the date when each payment is due and shall not withhold or be entitled to withhold the whole or part of any such payment by way of deduction, set-off or counterclaim, in respect of any claim for damages or for compensation which the Tenant shall make or has made against the Landlord, until after the Tenant's liability for damages or compensation is determined and the amount due to the Tenant is determined or agreed.

**3A. GOODS AND SERVICES TAX (GST)**

Interpretation

3A.1 In this clause:

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

Rent and other amounts exclusive of GST

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- 3A.2 It is agreed that Rent and all other amounts agreed to be paid by the Tenant to the Landlord being the consideration for the supply expressed in this Lease, are exclusive of GST.

Tenant's obligation to reimburse Landlord

- 3A.3 In respect of any liability of the Landlord for GST under this Lease, and the renewal or extension of this Lease including for Rent, Outgoings, or any consideration for any other taxable supply:

The Tenant covenants to pay to the Landlord, at the same time as any payment is made involving the Landlord in GST liability, the additional amount of GST, together with the payment to which it relates.

3A.4 Landlord's input tax credits

- 3A.4.1 The Tenant's liability under (3) is to reimburse the full amount of GST, disregarding and excluding the Landlord's entitlement to input tax credits or other credits or reimbursements for GST.

- 3A.4.2 Notwithstanding 3A.4.1 if the Landlord is entitled to an input tax credit in relation to any amount recoverable from the Tenant under 3A.3 the amount payable by the Tenant shall be reduced by the amount of the input tax credit which the Landlord has received or claims and is entitled to receive.

Tax invoice

- 3A.5 In respect of each payment by the Tenant under 3A.3, the Landlord agrees to deliver to the Tenant, as required under the GST Act, tax invoices in a form which complies with the GST Act and the regulations, to enable the Tenant to claim input tax credits in respect of the taxable supply.

3B ABATEMENT OF RENT

3B.1 Abatement of Tenant's financial obligations

If during the continuance of this Lease either or both the Building or the Premises are wholly or partly damaged or destroyed or are rendered wholly or substantially inaccessible through an event described in clause 8B.2 rendering the Premises or any part of it wholly or substantially unfit for the Tenant's use and occupation or inaccessible for a period exceeding seven (7) days, then the Tenant's financial obligations abate in accordance with this clause.

3B.2 Abating events

This clause applies in case of fire, lightning, storm, flood, earthquake, explosion, malicious damage, war damage, epidemic, pandemic (including Covid-19 pandemic or any variation of it), strike, act of terrorism, lockdown, and any other event beyond the Tenant's control.

3B.3 Tenant's financial obligations

Abatement extends to all the Tenant's financial obligations to the Landlord under this Lease, including Rent and Outgoings.

3B.4 Period of abatement

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The period of abatement is from the date of the destruction, damage or inaccessibility until the date when the Premises are restored and rendered suitable for the Tenant's use and occupation or accessible.

**3B.5 Effect of abatement**

During and for the period of abatement the Tenant's liability to pay the whole or proportion of the financial obligations under this Lease, as agreed or determined under clause 3B.8 calculated on a daily basis, ceases and abates.

**3B.6 Exception to abatement**

The Tenant is not entitled to an abatement of the Tenant's financial obligations under this clause if the event resulting in the damage, destruction or inaccessibility is caused or contributed to by the act or negligent omission of the Tenant or the Tenant's employees.

**3B.7 Tenant's use of premises**

If the extent of the damage to the Premises enables use and enjoyment of the whole or part of the Premises for the Tenant's business, the Tenant may continue to use the Premises and conduct its business whilst the Premises are being repaired

3B.7.1 unless the Landlord reasonably requires such use to cease during whole or part of the repairs, or

3B.7.2 unless the local or other authorities prohibit occupation of the Premises in its damaged condition,

and such use by the Tenant shall be taken into account when determining the partial abatement of the Tenant's financial obligations.

**3B.8 Determination of abatement**

3B.8.1 The parties shall endeavour to agree on the commencement and period of abatement of the Tenant's financial obligations, and if the Tenant is able to have partial use and enjoyment of the Premises, the proportion of the abatement having regard to the nature and extent of the damage to and use of the Premises.

3B.8.2 If the parties have any dispute regarding the Tenant's entitlement to an abatement, its period or amount, the dispute shall be determined by a loss assessor

- (i) who is then a member of the Insurance Council of Australia Ltd and is experienced in assessing premises of the nature of the Premises and is nominated by the President for the time being or senior officer of that Council on the application of either party;
- (ii) acting as an expert;
- (iii) who is entitled to accept written submissions and expert reports from either party;
- (iv) whose costs shall be borne equally by the parties;
- (v) whose decision is final and binding on the parties.

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- 3B.8.3 If the loss assessor nominated under paragraph 3B.8.2 fails to proceed or to determine the dispute, either party may seek the nomination of another loss assessor in accordance with paragraph 3B.8.2.

**4. OUTGOINGS**

**4.1 Outgoings**

The Tenant will pay all Outgoings immediately upon request of the Landlord. Any Outgoings assessed at intervals or for periods that do not fall wholly within the term of this Lease will be apportioned as necessary.

**4.2 Light and Power**

The Tenant will not use any form of light, power, or heat other than electric current or gas supplied through meters. This covenant does not prevent the use of auxiliary power or lighting (other than an exposed flame) during any period of power failure or power restrictions.

**4.3 Electricity, Gas, and Water**

The Tenant will pay all assessments for electricity, gas and water relating to the Premises by their due dates for payment.

**4.4 Cleansing Dues**

If the relevant Local or other Authority provides any cleansing or refuse service for the Premises (whether at the request of the Tenant or by direction of any officer of that Authority), the Tenant will pay the cost of the service to the relevant assessing Authority on or before the due date if assessed directly against the Tenant but otherwise to the Landlord within seven (7) days of being billed by the Landlord.

**4.5 Body Corporate Contributions**

The Landlord must pay the Body Corporate Contributions as and when they fall due for payment.

**5. USE**

**5.1 Use of the Premises**

Subject to clause 5.1A the Tenant will not use or permit the Premises to be used for any purpose other than the purpose specified in Item 6 of the Reference Data. The Tenant acknowledges that:

5.1.1 It is the responsibility of the Tenant to obtain the consent of any planning or other authority which may be required for the Tenant to carry on its business on the Premises and the failure of the Tenant to obtain that consent does not relieve the Tenant of its obligation to pay Rent and otherwise to perform its obligations under this Lease.

5.1.2 No promise, representation, warranty, or undertaking has been given by or on behalf of the Landlord in respect to the suitability or adequacy of the Premises for any use or business or to the fixtures, fittings, furnishings, finish, plant, machinery, and equipment of or in the Premises.

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5.1.3 Any warranties as to the suitability, fitness, and adequacy of the Premises implied by law are negated.

5.1A Change of user

5.1A.1 The Tenant may apply to the Landlord for consent to a change of user during the continuance of this Lease which the Landlord shall not unreasonably refuse or withhold, if the following conditions precedent are satisfied

- (a) any other use shall be permitted by the town planning scheme for the City of Gold Coast and by the by-laws of the Scheme;
- (b) the Tenant first obtains, if necessary, all planning and other approvals to the use of the Premises for that purpose and subsequently complies with the conditions of approval at the Tenant's expense;
- (c) there are no unremedied breaches of the Tenant's obligations under this Lease at the date of the Tenant's application for consent to change of user or whilst that application is considered by the Landlord;
- (d) the execution of a deed in a form reasonably required by and prepared on behalf of the Landlord, by the Landlord, Tenant, and Guarantor;
- (e) the execution by the Landlord and the Tenant of an appropriate instrument varying the lease covenant relating to user, which shall be duly stamped and registered; and
- (f) the payment by the Tenant to the Landlord of the Landlord's reasonable costs in relation to the preparation and execution of relevant documentation.

5.2 Compliance with Statutes, Regulations, etc.

5.2.1 The Tenant shall at its expense observe and comply with all laws and requirements relating to

- (a) the Tenant's use and occupation of the Premises for the use permitted in this Lease;
- (b) the Premises and facilities by reason of the number and the sex of the Tenant's employees and other persons working in or entering the Premises;
- (c) the fixtures, fittings, machinery, plant and equipment in the Premises;
- (d) occupational health, safety and environmental matters.

5.2.2 The Tenant will not do or omit to do any act or thing whereby the Landlord may become liable to pay any penalty imposed or to bear the whole or any part of any expenses incurred under any statute, ordinance, regulation, by-law, order, requirement, or notice.

5.2.3 The Tenant is not required by this clause to make any structural improvements or structural alterations unless they are required or made necessary by reason of any neglect or default by the Tenant or any person claiming under the Tenant or by reason of the business carried on in the Premises or the number or sex of the employees or persons at the Premises.

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**5.3 Annoying or Injurious Conduct**

The Tenant will not:

- 5.3.1 Carry on in any part of the Premises any annoying, noxious, offensive, or illegal business, occupation, or practice.
- 5.3.2 Do any act or thing or use any plant or machinery which through noise, odours, vibrations, or otherwise may be or grow to the annoyance, nuisance, grievance, damage, hazard, or disturbance of the Landlord or of the occupiers of neighbouring premises.
- 5.3.3 Use the Common Property in a way that unreasonably interferes with its use by others.

**5.4 Use of Appurtenances**

The Tenant will not use the water closets, drains, and other water apparatus, and other appurtenances in the Premises for any purposes other than those for which they were constructed and will not place in them any sweepings, rubbish, rags, ashes, or other deleterious substances.

**5.5 Drains and Waste**

All blockages which may occur in any Pipes originating within the Premises will be cleared by licensed tradesmen employed by the Tenant.

**5.6 Interference with Services**

Except as otherwise provided in this Lease, the Tenant will not interfere with any appurtenances, Pipes, water supply, gas, electrical, plumbing, or other services contained in or about the Premises or the Air Conditioning Equipment or the Fire Equipment without first obtaining the consent in writing of the Landlord.

**5.7 Erection of Signs**

The Tenant will not cause any advertising or other sign or advertisement or hoarding to be painted or erected or otherwise placed on the Premises without the consent of the Landlord. The Landlord's consent will not be withheld unreasonably to the using or exhibiting of any advertisement or sign customary to the Tenant's class of business if the advertisement or sign strictly complies with the by-laws of the Body Corporate and local or other authorities.

**5.8 Prohibition on Erection of Blinds and Shop Fittings**

The Tenant will not erect or affix any blinds or awnings to the outside of any improvements on the Premises or any blinds (venetian or otherwise) to the interior of the windows, display windows, or doors or affix any fittings to the exterior walls or ceilings of the Premises without the written consent of the Landlord with the Landlord acting reasonably. Where required by by-law the Tenant will obtain the consent of the Body Corporate with the consent of the Landlord if necessary.

**5.9 Prohibition on Marking or Damaging Walls**

The Tenant will not deface or damage any parts of the Premises except so far as may reasonably be necessary for the purpose of the Tenant's fitout and for the erection of approved signs, blinds, or awnings. On the removal of signs, blinds, or awnings, the Tenant will make

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good any damage or unsightliness caused in or about the erection or removal of them even if the Landlord has consented to them.

5.10 Rodents and Vermin

The Tenant will at its own cost and expense keep the Premises free and clear of rodents, termites, cockroaches, and other vermin.

5.11 Overloading of Floors

The Tenant will observe the maximum floor loading weights nominated by the Landlord and will not permit the floors of the Premises to be broken, strained, or damaged by overloading them. In particular the Tenant will not install any safes or other heavy equipment except in positions and subject to conditions approved in writing by the Landlord.

5.12 Infectious Diseases

If any infectious disease happens upon the Premises which may require notification by virtue of any statute, regulation, or ordinance, the Tenant will:

5.12.1 Give all the necessary notices and any other information which may be required to the proper authorities;

5.12.2 Give a copy of the notification to the Landlord;

5.12.3 At its own expense thoroughly fumigate and disinfect the Premises.

5.13 Inflammable Substances

The Tenant will not use any chemical, burning fluids, oil, acetylene, or alcohol in lighting the Premises or, except in the ordinary course of the Tenant's business, for any business or other purpose.

5.14 Not to Make Voidable Insurance Policies

The Tenant will not do or permit anything to be done on the Premises or bring or keep anything in the Premises that may in any way:

5.14.1 Make void or voidable any policy of insurance applicable to the Premises;

5.14.2 Conflict with any laws or regulations or with any insurance policy applicable to the Premises;

5.14.3 Cause the amount of premium payable in respect of any insurance policy to be increased.

Without prejudice to the rights of the Landlord to determine this Lease, the Tenant will pay to the Landlord on demand any increase of premium which may be occasioned by a breach of this clause.

5.15 To Observe Fire Laws

The Tenant will at all times in its use of the Premises comply with the requirements of the Insurance Council of Australia and the laws and regulations for the time being in force relating to fires and the provisions of every relevant Statute, regulation, and ordinance.

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5.16 Fire Drills and Evacuation Procedures

The Landlord and the Body Corporate may require the Tenant to perform fire drills and to observe all necessary emergency evacuation procedures and the Tenant and all persons under its control will cooperate with the Landlord and the Body Corporate in performing those drills and procedures.

5.17 Auction Sales

The Tenant will not hold or permit to be held any auction sale in or about the Premises.

5.18 Security

The Tenant will cause all exterior doors and windows in the Premises to be locked securely at all times when the Premises are not being used. The Landlord's representatives may enter the Premises for the purpose of locking any doors or windows left unlocked or unfastened or checking the general security of the Premises.

5.19 Overloading of Electricity

The Tenant will not without the written consent of the Landlord install any electrical equipment on the Premises that overloads the cables, switchboards, or sub-boards through which electricity is conveyed to the Premises. If the Landlord grants that consent any alterations which may be necessary to comply with the requirements of the insurance underwriters of the Premises or any Statutes, regulations, ordinances, or by-laws will be effected by the Landlord at the expense of the Tenant and the entire cost of the alterations will be paid by the Tenant to the Landlord upon demand. The Landlord may require the Tenant to deposit with the Landlord the estimated cost of the alterations before they are commenced.

5.20 Use of External Areas

5.20.1 The Landlord gives the Tenant a licence to exercise the rights available to the Landlord in respect of the Common Property of the Scheme during the term of the Lease including the right to assume the exclusive use rights available to the Landlord in respect of the Car Parking Spaces which spaces may be used by the Tenant, its invitees, employees, agents, consultants and representatives.

If the Landlord transfers or otherwise assigns any interest in the Premises and in this Lease, the Landlord will in that event obtain a covenant executed by way of a deed between any such transferee or assignee and the Tenant whereby that transferee or assignee agrees to comply with the terms of this clause.

5.20.2 The Tenant must not use the Premises or the Common Property for parking or storage of motor vehicles, caravans, boats, demountable buildings, or containers of any kind other than in the day to day use of the Premises authorised by this Lease.

5.21 The Tenant and the Body Corporate

The Tenant will comply with:

5.21.1 the by-laws of the Body Corporate;

5.21.2 all lawful directions of the Body Corporate;

5.21.3 all obligations imposed on occupiers by or in accordance with the *Body Corporate and*



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*Community Management Act 1997;*

5.21.4 all obligations imposed on occupiers by the community management statement for the Scheme;

insofar as those by-laws, directions and obligations relate to the occupation of the Premises by the Tenant.

5.22 Common Property

The Tenant must obtain the approval of the Body Corporate before doing anything that physically or aesthetically affects the Common Property and if necessary the Landlord will support the same.

5.23 The Landlord acknowledges that the rights and privileges granted by the Landlord to the Tenant pursuant to this Lease includes the right of the Tenant, its invitees, employees, agents, consultants and representatives to have unrestricted access to and egress from the Common Property together with the use of all facilities situated on the Common Property and where the context permits a reference to the right of the Tenant to the Premises will include the said right to use and access the Common Property.

5.24 The Landlord and the Body Corporate

The Landlord will comply with:

5.24.1 the by-laws of the Body Corporate;

5.24.2 all lawful directions of the Body Corporate;

5.24.3 all obligations imposed on proprietors by or in accordance with the *Body Corporate and Community Management Act 1997*;

5.24.4 all obligations imposed on proprietors by the community management statement for the Scheme;

insofar as those by-laws, directions and obligations relate to the ownership of the Premises by the Landlord.

5.25 The Landlord agrees to send to the Tenant any correspondence, notice, demand or order from the Body Corporate committee, lot owner in the Scheme or any other authority or person relating to or affecting the use or occupation of the Premises, the Common Property or the conduct.

5.26 Contributions to the Body Corporate

The payment of the Body Corporate Contributions does not form part of the Outgoings.

5.27 The Body Corporate contributions must be paid by the Landlord as and when they become due and payable.

6. MAINTENANCE AND REPAIR

6.1 Landlord's general obligations

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The Landlord shall use its best endeavours to ensure that the Body Corporate keeps the Building and the Premises together with the services in the Building in good repair throughout the term of this Lease.

**6.2 Landlord and Body Corporate specific obligations**

6.2.1 the Landlord's obligation to repair is subject to the qualifications and limitations contained in this Lease (including this clause) and is subject to the repair obligations imposed on the Tenant;

6.2.2 The Landlord shall at its cost use its best endeavours to ensure that the Body Corporate:

- (a) takes reasonable action to prevent the entry of water into the Building or the Premises and to keep the Building and the Premises watertight and weatherproof;
- (b) keeps and maintains services to the Building and to the Premises in good working condition and repair;
- (c) properly maintains the Common Property in a high class condition;
- (d) complies with the requirements of statutory and local government authorities relating to the Building which are imposed on the Landlord as an owner of the Building.

6.2.3 Each of the Landlord and the Body Corporate is responsible, in respect of the Building and the Premises, for

- (a) structural repair;
- (b) latent defects; and
- (c) fair wear and tear

but neither the Landlord or the Body Corporate is required to carry out structural repairs or to remedy latent defects or to remedy fair wear and tear, except

- (A) when required for the stability or safety of the Building; or
- (B) to maintain the reasonable use and enjoyment of the Building and the Premises by the Tenant and other tenants of the Building; or
- (C) to maintain the Building in the condition in clause 6.1.

6.2.4 The Tenant will advise the Landlord promptly in writing of any damage sustained to the Premises or the defective operation of any of the appurtenances in the Premises.

6.2.5 The Tenant will maintain the Air Conditioning equipment, the alarm system and the fire equipment in the Premises in good working order and condition throughout the term hereof and will enter into and keep in force during the term of this lease a comprehensive maintenance repair contract in respect of the Air Conditioning

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equipment, the alarm system and Fire Equipment with such responsible specialists in such maintenance and repair and replacement works as may be approved by the Landlord acting reasonably.

- 6.2.6 The Tenant will repair, maintain or replace all broken or damaged glass in the Premises, the doors, locks, windows and window fittings, all broken, faulty or blown light tubes and associated electrical apparatus in the Premises.

6.3 Maintenance of Premises

The Tenant will repair the Premises and keep them in good repair except damage caused by:

- 6.3.1 Fair wear and tear;

- 6.3.2 An Insured Risk other than where the insurance money is irrecoverable because of any act or default of the Tenant or anyone who is at the Premises expressly or by implication with the Tenant's consent.

6.4 Landlord's right to inspect Premises

6.4.1 Inspection by Landlord

The Landlord, or persons authorised by the Landlord, may enter the Premises

- (a) to inspect the condition and state of repair of the Premises;
- (b) to ascertain that the Tenant complies with the Tenant's obligations under this Lease.

6.4.2 Prior Notice

The Landlord shall exercise its entitlement under clause 6.4.1;

- (a) not more frequently than twice annually during the Lease term;
- (b) at reasonable times during business hours on a Business Day;
- (c) after giving not less than seven (7) days prior written notice to the Tenant of the intended time of the inspection, except in an emergency when the Landlord has an additional right to enter the Premises and prior notice is not required before entry.

6.5 Tenant to Redecorate

The Tenant will, at the expiration of the term of this Lease (either original or extended) and in such case during the last 3 months of the term of this Lease Redecorate the Premises to the reasonable satisfaction of the Landlord. If the Tenant fails to Redecorate the Premises, the Landlord may Redecorate them at the Tenant's expense.

6.6 Glass

The Tenant will replace all glass in the Premises that is broken during the term of this Lease.

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**6.7 Cleaning**

The Tenant will:

- 6.7.1 Keep the Premises in a thorough state of cleanliness;
- 6.7.2 Not allow any accumulation of useless property or rubbish;
- 6.7.3 At its own expense employ staff for the regular cleaning of the Premises and the interior and exterior surfaces of windows and glass.

**6.8 Car Parking Spaces**

- 6.8.1 The Tenant is not responsible for the maintenance of the Car Parking Spaces;
- 6.8.2 The Tenant will keep the Car Parking Spaces neat and free from rubbish.

**7. ALTERATIONS**

**7.1 No Alterations Without Consent**

The Tenant will not make any structural or other alterations or additions to the Premises or appurtenances in the Premises or the Air Conditioning Equipment or the Fire Equipment without first submitting full detailed drawings and other specifications of the proposed works and particulars of the materials proposed to be used and obtaining the Landlord's consent with the Landlord acting reasonably, in writing. If the Landlord grants its consent it may be a condition of that consent that the works are carried out under the supervision of the Landlord's architect. If the Landlord grants a consent it may be a condition of that consent that the works are carried out under the supervision of the Landlord's architect and the Tenant will pay the Landlord immediately on demand all reasonable costs and expenses incurred by the Landlord including its architect's costs and other consultant's fees payable by the Landlord whether consent is granted or not.

**7.2 Alterations Required for Tenant's Business**

Any alterations which may be required to the Premises, or to the Air Conditioning Equipment, the Fire Equipment or the water, gas, electrical, plumbing, or other services to make or keep the Premises suitable for use by the Tenant in its business or required by reason of the number or sex of the persons employed in the Premises will be effected by and at the expense of the Tenant. The Tenant must first submit full detailed drawings and other specifications of the proposed work and class of materials proposed to be used and obtain the Landlord's consent in writing (which consent will not be unreasonably refused). The Tenant indemnifies the Landlord against all injury or damage to the Premises caused in or about the erection or construction of the alterations or additions or in the removal of the alterations and additions even though the Landlord may have consented to them.

**7.3 Internal Partitions**

The Tenant will not install any internal partitions in the Premises or make any alterations or modifications to any internal partitions without the written consent of the Landlord. The Landlord's consent will not be unreasonably withheld if the following conditions are complied with:

- 7.3.1 The Tenant is to submit to the Landlord full detailed drawings and specifications of the proposed works;

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- 7.3.2 The drawings and specifications are to meet with the approval of the Landlord's architect;
- 7.3.3 The materials to be used in carrying out the works are to be of a standard as to type, quality, colour, and size as the Landlord determines;
- 7.3.4 The works are to be carried out by a builder Approved by the Landlord;
- 7.3.5 The works are to be carried out under the supervision of the Landlord's architect;
- 7.3.6 The Tenant is to pay to the Landlord immediately upon demand all reasonable costs and expenses incurred by the Landlord including architect's and other consultants' fees payable by the Landlord whether any Approval is granted or not;
- 7.3.7 If required, the Tenant in conjunction with the Landlord will obtain the consent of the Body Corporate.

Any partitions erected by the Tenant remain the property of the Tenant who is responsible for their maintenance and insurance.

**7.4 Costs of Internal Works**

Any works Approved under clause 7.3 will be effected by and at the expense of the Tenant including the costs of all additional lights and power outlets, switches, telephone outlets, and alterations or any other services which may be required by reason of the position of partitions. The Tenant indemnifies the Landlord against all injury or damage to the Premises caused in or about the execution of those works.

**7.5 Tenant's Fixtures**

If the Tenant has paid all Rent and observed and performed all the covenants, agreements, and provisions contained in this Lease which are the Tenant's responsibility and on the part of the Tenant, any fixtures and things which with the consent of the Landlord have been installed by the Tenant on the Premises may at the expiration of the term of this Lease be taken down and removed from the Premises for the Tenant's own benefit but always only upon the condition that the removal can be carried out without danger to the stability of the structure of the Premises. The Tenant will make good to the satisfaction of the Landlord or the architect of the Landlord, such architect acting reasonably, any damage done or unsightliness occasioned to the Premises by or as a result of the installation or removal of any of these fixtures and things. Any fixtures and things not removed by the Tenant and all other goods of the Tenant left on the Premises will be deemed abandoned by the Tenant and become the property of the Landlord. The Landlord may in its discretion sell or otherwise dispose of abandoned fixtures, things, and goods in any manner the Landlord thinks fit.

**7.6 Cost of replacement of the Air Conditioning equipment, the alarm system and the fire equipment**

The Landlord will at its cost meet the cost of the replacement of any part of the Air Conditioning equipment, the alarm system and the fire equipment in the Premises so as to ensure that that equipment is at all times in good working order and condition throughout the term of this Lease.

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**7.7 Tenant's fitout**

Notwithstanding any provision in this Lease to the contrary, the Landlord acknowledges that the fitout by the Tenant prior to the commencement of this Lease meets its requirements in all respects.

**8. INDEMNITY, RISK, INSURANCE, LIABILITY**

**8.1 Tenant's Indemnities**

The Tenant indemnifies the Landlord against all actions, claims, demands, losses, damages, costs, and expenses which the Landlord may sustain or incur or for which the Landlord may become liable whether during or after the term of this Lease in respect of or arising from:

- 8.1.1 loss, damage, or injury from any cause to property or person inside or outside the Premises occasioned or contributed to by the neglect or default of the Tenant or any servant, agent, licensee, invitee, subtenant, or other person claiming through or under the Tenant to observe or perform any of the covenants, conditions, regulations, and restrictions on the part of the Tenant in this Lease whether positive or negative, expressed or implied;
- 8.1.2 the negligent use, misuse, waste, or abuse by the Tenant or any servant, agent, licensee, invitee, subtenant, or other person claiming through or under the Tenant of any water, gas, or electricity, or other services to the Premises;
- 8.1.3 the overflow, leakage, or escape of water, fire, gas, electricity, or any other harmful agent in or from the Premises caused or contributed to by any act or omission on the part of the Tenant, its servants, agents, licensees, invitees, subtenants, or other persons claiming through or under the Tenant;
- 8.1.4 the failure of the Tenant to notify the Landlord of any defect in any of the Air Conditioning equipment, the fire equipment, or other appurtenances in the Premises of which the Tenant is aware or ought to be aware;
- 8.1.5 loss, damage, or injury from any cause to property or person caused or contributed to by the use of the Premises by the Tenant or any servant, agent, licensee, invitee, or subtenant and arising out of the neglect or default of the Tenant or any servant, agent, licensee, invitee, or subtenant;
- 8.1.6 the improper or faulty erection or construction of facilities, trade fixtures, or equipment installed on or in the Premises by the Tenant;
- 8.1.7 any personal injury sustained by any person in or about the Premises however caused other than by the wilful or negligent act of the Landlord, its servants, or agents.

**8.2 Limitations**

Any obligation of the Tenant pursuant to clause 8.1 is subject to the right of the Tenant to seek contribution from the Landlord where any act or omission of the Landlord, its invitees, employees, agents, consultants or representatives has caused or contributed to any action, claim, demand, loss, damages, costs or expenses for which the Tenant may otherwise be liable pursuant to clause 8.1.

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8.3 Intentionally deleted.

8.4 Insurances

8.4.1 The Tenant will during the term of this Lease at its sole cost and expense obtain and keep in full effect in the names of the Tenant, the Landlord, and all mortgagees of the Premises (as their interests may appear) the following insurances:

(a) Property

Insurance upon all property situated in the Premises owned by the Tenant or for which the Tenant is legally liable and on all fixtures and improvements installed in the Premises by the Tenant. The policies must be for an amount not less than ninety per centum (90%) of the full replacement cost with coverage against at least fire with standard extended coverage.

(b) Business Interruption Insurance

Business Interruption insurance in an amount sufficient to reimburse the Tenant for direct or indirect loss of earnings attributable to perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises.

(c) Public Risk

Public Risk Liability insurance applying to all operations of the Tenant and which will include bodily injury liability and property damage liability, personal injury liability, products liability, contractual liability, contingent liability, and tenant's legal liability with respect to the occupancy by the Tenant of the Premises. The policy will be written on a comprehensive basis with limits of not less than Twenty million Dollars (\$20,000,000.00) per occurrence or any higher limits the Landlord or its mortgagee reasonably requires from time to time.

(d) Plate Glass

Insurance of all plate glass in the Premises or forming part of the boundary walls of the Premises for reinstatement following breakage or damage from any cause.

(e) General

Any other form or forms of insurance as the Tenant or the Landlord's mortgagee reasonably requires from time to time in amounts and for perils against which a prudent tenant would protect itself in similar circumstances.

8.4.2 All insurance policies required by this clause will contain a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord and against those for whom the Landlord is in law responsible whether damage is caused by the act, omission, or negligence of the landlord or by those for whom the Landlord is in law responsible. The Tenant releases and agrees to hold harmless the Landlord from and against all liability for any loss or damage to the Tenant, its property, or improvements, by oversight, fault, or any other cause.

8.4.3 All insurance policies required by this clause will be taken out with insurers acceptable

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to the Landlord with the Landlord acting reasonably and on policies and in forms satisfactory from time to time to the Landlord. Certificates of insurance, or if required by the Landlord or its mortgagee certified copies of each insurance policy, will be delivered to the Landlord as soon as practicable after they are taken out. All policies will contain an undertaking by the insurer to notify the Landlord and its mortgagee in writing not less than thirty (30) days prior to any material change in terms, cancellation or other termination of the policies.

- 8.4.4 If the Tenant fails to take out or to keep in force any insurance required by this clause, or if the insurance is not reasonably approved by either the Landlord or its mortgagee, the Landlord may effect the insurance at the sole cost of the Tenant and all outlays by the Landlord will be payable by the Tenant to the Landlord as additional rent on demand without prejudice to any other rights and remedies of the Landlord under this Lease.

**8.5 Assumption of Risk by Tenant**

Subject to the obligations of the Landlord pursuant to this Lease, and generally, and otherwise imposed by law the Tenant agrees to occupy and use the Premises at the risk of the Tenant. The Landlord will not be liable to the Tenant for any damage to the plant, equipment, fixtures, fittings, merchandise, stock-in-trade, or any other property of any description of or in the possession of the Tenant and contained in or about the Premises occasioned by:

- 8.5.1 water, heat, fire, electricity, vermin, explosion, tempest, riot, civil commotion, bursting pipes, or by the entry of water from any source;
- 8.5.2 by the operation, non-operation, or malfunction of the Air Conditioning equipment or the fire equipment;
- 8.5.3 by any other cause except to the extent that such damage is caused or contributed by any act or omission of the Landlord, its invitees, employees, agents, consultants or representatives.

The Landlord will not be liable for any loss of profits resulting from the damage even if the damage occurs by reason of:

- 8.5.4 any defect in the construction of the Premises or of any of the appurtenances in the Premises;
- 8.5.5 by reason of any act or omission by any contractor of the Landlord or any other tenant of the Premises and their respective employees or any member of the public.

**8.6 Interruption of Services**

Despite any implication or rule of law to the contrary, the Landlord will not in any circumstances be liable to the Tenant for any loss or damage suffered by the Tenant for any malfunction, failure to function, or interruption of or to the water, gas, or electricity services, the Air Conditioning Equipment, or the Fire Equipment, or any of the appurtenances contained in the Premises, or for the blockage of any sewers, wastes, drains, gutters, downpipes, or storm water drains from any cause.

**8.7 Landlord's Insurance**

Except where the Body Corporate insures the structure of the Premises, the Landlord will insure the Premises against damage by:



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- 8.7.1 fire;
- 8.7.2 lightning;
- 8.7.3 impact by aircraft;
- 8.7.4 earthquake;
- 8.7.5 explosion;
- 8.7.6 impact by vehicles and animals;
- 8.7.7 malicious damage other than by persons in or about the Premises with the actual or implied consent of the Tenant, any subtenant, or licensee;
- 8.7.8 rainwater;
- 8.7.9 storm and/or tempest,

in broad cover form with repair and replacement terms on terms and conditions reasonable in the market at the time the insurance is effected. The obligation to insure against any risk is conditional upon insurance for that risk being available from reputable insurers at reasonable rates.

- 8.8 Insurer  
The Landlord shall effect the insurance under clause 8.7 with an insurer which is respectable, reputable and financially sound.

**9. ASSIGNMENT**

**9.1 Covenant Against Assignment, Subletting and Franchising**

The Tenant will not:

- 9.1.1 mortgage or otherwise charge the Tenant's interest in this Lease;
- 9.1.2 assign, underlet, grant any license over or part with the possession of the Premises;
- 9.1.3 share with any person the occupancy of the Premises,

without first obtaining the written consent of the Landlord. The consent will not be unreasonably withheld, in the case of the proposed assignment or subletting of the whole of the Premises, to a respectable and financially responsible assignee or subtenant. As a condition precedent to the Landlord's consent to any assignment or subletting and prior to the execution of any consent, the Landlord may require the assignee or subtenant:

- 9.1.4 to enter into a covenant with the Landlord that the assignee or subtenant will observe, perform, fulfil, and keep all covenants, conditions, and restrictions contained in this Lease and on the part of the Tenant to be observed, performed, fulfilled, and kept;
- 9.1.5 to execute and deliver to the Landlord a power of attorney in favour of the Landlord in the same terms with necessary alterations as those contained in Part 18 of this Lease,

The covenant and Power of Attorney to be prepared by the Landlord's solicitors at the cost and expense of the Tenant. The Tenant will pay all other reasonable costs and expenses of the Landlord arising out of or in relation to the assignment or subletting. If the intended assignee

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is a limited liability company then upon the Landlord's demand at least two (2) (or more if the Landlord so requires) of its directors or shareholders of satisfactory standing will join in the deed as sureties for the company in order jointly and severally to covenant with the Landlord as sureties that:

- 9.1.6 the company will pay the Rent and perform and observe the covenants by the Tenant and conditions contained in this Lease;
- 9.1.7 they indemnify the Landlord against all loss, damages, costs, and expenses arising by reason of any default by the company;
- 9.1.8 any neglect or forbearance of the Landlord will not release or exonerate the sureties;
- 9.1.9 the sureties will accept a new lease of the Premises upon disclaimer of this lease by the company or on its behalf or on dissolution of the company the new lease to be for the residue then unexpired of the term of this Lease and at the Rent payable under this Lease and subject to the same Tenant's and Landlord's covenants respectively and the same provisos and conditions in all respects as are contained in this Lease. The onus of proving the respectability and financial responsibility of any proposed assignee, subtenant, or surety is upon the Tenant at its expense;
- 9.1.10 upon due assignment of this Lease by the Tenant, the Tenant and the Guarantors will be released from any liability under this Lease as from the date of assignment.

**9.2 Subleases**

Clause 9.1 shall also apply to the subletting of part only of the Premises where the proposed subtenant is a respectable and financially responsible subtenant.

**9.3 Concessions, Licences, etc.**

Without in any way limiting the generality of clause 9.1 and clause 9.2, the Tenant will not permit any business to be operated in or from the Premises by any concessionaire, franchisee, licensee, or others without the written consent of the Landlord in each instance. The Landlord's consent may, despite any statutory provision or provisions to the contrary, be arbitrarily withheld. The consent by the Landlord to any concession, franchise, or licence will not constitute a waiver of the necessity for the consent to any subsequent concession, franchise, or licence. If the Landlord agrees to grant its consent to any concession, franchise, or licence each concession, franchise, or licence will only be granted upon and subject to the following conditions that:

- 9.3.1 The concession, franchise, or licence will be subject to the terms covenants and conditions contained in this Lease;
- 9.3.2 The aggregate area of all concessions, franchises, or licences will not at any one time exceed a percentage of the area of the Premises as the Landlord, in its sole discretion, considers advisable;
- 9.3.3 Each concessionaire, franchisee, or licensee will carry on business under the trade name and style of the Tenant and in a manner so that to all intents and purposes, the business will appear as an integral part of the Tenant's business operations;
- 9.3.4 The Tenant will provide the Landlord with an executed copy of each concession, franchise, and licence agreement and the Landlord will have the right to Approve the terms of the agreement or to request changes to the agreement which the Tenant

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covenants to make or have made prior to its grant;

- 9.3.5 At the option of the Tenant, the Tenant and any concessionaire, franchisee, or licensee will execute any document or instrument which the Landlord requires including, without limitation, a sublease of the Premises substantially in the form of this Lease.

9.4 Corporate Tenant

Where any person who holds a substantial interest in the Tenant (the Tenant being a corporation) at the time of the execution of this Lease ceases to hold a substantial interest, the Tenant will immediately give notice in writing of that fact to the Landlord. The Landlord may at its discretion within ninety (90) days of receipt of that notice terminate this Lease by giving the Tenant thirty (30) days prior notice in writing. This lease expires on the expiration of the notice. For the purposes of this Clause, a substantial interest in the Tenant is a holding of not less than thirty per centum (30%) of the issued share capital of the Tenant or a holding of shares in the Tenant which entitle the holder to not less than thirty per centum (30%) of the voting power of all shares represented at any meeting of members of the Tenant.

9.5 Change of Corporate Ownership Deemed Assignment

Where the Tenant is a corporation not being a company whose shares are listed on any Stock Exchange in Australia, the following circumstances will constitute or be deemed to constitute an assignment of this Lease (requiring the prior consent of the Landlord under clause 9.1):

- 9.5.1 If at any time during the term of this Lease any corporation or any related corporation (as defined by the legislation regulating corporations as at the Date of Commencement) not holding or holding between them more than fifty percent (50%) of the issued capital or voting rights of the Tenant, acquires or acquire between them so much of the issued capital or voting rights of the Tenant as when added to the issued capital or voting rights (if any) previously held by that corporation or related corporations represent in the aggregate more than fifty per cent (50%) of the issued capital or voting rights of the Landlord;
- 9.5.2 If at any time during the term of this Lease any person or any persons and their relatives (as defined in the *Income Tax Assessment Act* 1936 as at the Date of Commencement) not holding or holding between them more than fifty percent (50%) of the issued capital or the voting rights of the Tenant acquires or acquire between them so much of the issued capital or voting rights of the Tenant as when added to the issued capital or voting rights (if any) previously held by that person or those persons represent in the aggregate more than fifty per cent (50%) of the issued capital or voting rights of the Tenant;
- 9.5.3 If at any time during the term of this Lease, the changes referred to in clause 9.5.1 or clause 9.5.2 occur to any holding company (as defined in the legislation regulating corporations as at the Date of Commencement) of the Tenant or in any holding company of any holding company of the Tenant.

9.6 Restructure

- 9.6.1 Clauses 9.4 and 9.5 do not apply in the event of a Restructure.
- 9.6.2 A "Restructure" occurs when the Tenant notifies the Landlord that the Tenant is restructuring its business enterprise as a result of which clauses 9.4 and 9.5 might otherwise be relevant.

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- 9.6.3 In the event of a Restructure, clause 9.1 is relevant to the Restructure transaction as if it was an assignment of Lease and the Tenant must provide the Landlord with such information and data as the Landlord may reasonably require to allow the Landlord to constructively consider such an application with the result that the Tenant shall be required to prove to the reasonable satisfaction of the Landlord that the persons gaining control of the Tenant will be respectable, responsible and solvent assignees in accordance with clause 9.1.3.

10. COSTS

10.1 Costs of Litigation

If without fault on its part, either Party is made a party to any litigation commenced by or against the other (other than litigation between the Landlord and the Tenant) and arising directly or indirectly out of the acts or omissions of the other in relation to the Premises, the Party not at fault will be paid by the other Party on demand all legal fees and disbursements (as between solicitor and own client) incurred in connection with the litigation.

10.2 Costs to be Borne by Tenant

The Tenant will pay:

- 10.2.1 The costs of and incidental to the negotiation, preparation, execution, stamping, and registration of this Lease;
- 10.2.2 All stamp duty and registration fees payable in respect of this Lease;
- 10.2.3 All costs, charges, and expenses (including for example, legal costs and fees payable to a surveyor or architect) incurred by the Landlord for the purpose of or incidental to the preparation and service of any notice under s. 124 or s. 127 of the *Property Law Act 1974* even if forfeiture is avoided otherwise than by relief granted by the Court;
- 10.2.3 All costs of and incidental to the grant or refusal of any consent or authority of the Landlord which may be requested by the Tenant under the terms of this Lease;
- 10.2.4 All monies the Landlord may expend or be put to in consequence of any default by the Tenant in the performance and observance of any covenant or agreement contained or implied in this Lease or which is authorised or entered into or made by the Tenant.

10.3 Upstamping Lease

- 10.3.1 If the legislation requiring the payment of stamp duty on leases requires this Lease to be produced to the collector of duty for further stamping by a date determined by or in accordance with the legislation, the Tenant must ensure that this Lease is produced by that date with all information required by the collector to reassess duty.
- 10.3.2 The Tenant will inform the Landlord in writing of all details relevant to the further stamping of the Lease by the date determined for its production.
- 10.3.3 If the Tenant does not comply with clause 10.3.1 the Landlord may cause the Lease to be produced for further stamping and all duty, penalties, and costs (including for example, legal costs calculated on a solicitor and own client basis) incurred by the Landlord will be paid to the Landlord by the Tenant immediately on demand.

11. INTENTIONALLY DELETED

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**12. LANDLORD'S ASSURANCES AND INDEMNITY**

**12.1 Quiet Enjoyment**

If the Tenant promptly pays the Rent and observes and performs the covenants and agreements in this Lease, the Tenant may peaceably hold and enjoy the Premises during the term of this Lease without any interruption by the Landlord or any persons lawfully claiming under or in trust for the Landlord.

**12.2 Landlord to Pay Rates**

The Landlord will pay all municipal rates and land tax payable in respect of the Land except those rates and taxes (if any) which the Tenant has covenanted to pay in whole or in part.

**12.3 The Landlord warrants that it is not aware of any decision of the Body Corporate to consent to recording a new community management statement for the Scheme.**

**13. DEFAULT**

**13.1 Essential terms of Lease**

**13.1.1 It is agreed that the following obligations by the Lessee are essential terms of this Lease:**

- (a) the covenant to pay rent throughout the lease term at a date not later than fourteen (14) days after the due date for the payment of each monthly instalment of rent (clause 3.1);
- (b) the covenant to pay Outgoings throughout the Lease term at a date not later than fourteen (14) days after the due date for the payment of Outgoings (clause 4.1);
- (c) the covenant dealing with the use of the Premises (clause 5.1);
- (d) the covenant to effect insurance (clause 8.1); and
- (e) the covenant dealing with assignment and subletting (clause 9).

**13.1.2 Termination of Lease for default**

Each of the following constitutes a default by the Tenant under this Lease

- (a) the failure to pay Rent or comply with any other financial obligation under this Lease, including the payment of Outgoings, for a period in excess of fourteen (14) days after the due date for payment, whether a formal demand for payment has or has not been made;
- (b) the failure to comply with an essential term of this Lease;
- (c) any serious, persistent and continuing breach by the Tenant of its covenants and obligations under this Lease.

**13.1.3 Termination after default**

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The Landlord may terminate this Lease, after a default by the Tenant in accordance with clause 13.2, and continuance of the default, after the Landlord shall have served a legally effective notice of breach of covenant (if required) by

- (a) re-entering and taking possession of the Premises, using reasonable force to secure possession;
- (b) serving on the Tenant written notice terminating this Lease;
- (c) instituting proceedings for possession against the Tenant;
- (d) taking the actions in both 13.1.3(a) and 13.1.3(b) or in 13.1.3(b) and 13.1.3(c).

**13.1.4 Damages**

If the Landlord determines this Lease under clause 13.1.2, the Landlord may recover from the Tenant:

- (a) any Rent and Outgoings due but unpaid at the date of the determination;
- (b) the amount by which the Rent and Outgoings between the date of determination and the date of expiry of this Lease by effluxion of time exceeds the rent and outgoings received or likely to be received from any other tenant to whom the Premises are relet or may be relet during that period;
- (c) any other amount necessary to compensate the Landlord as a result directly or indirectly of the Tenant's default and the Landlord's determination of the Lease including, for example:
  - (i) costs and expenses incurred in maintaining the Premises;
  - (ii) costs of recovering possession of the Premises;
  - (iii) expenses of reletting including necessary renovation or alteration of the Premises;
  - (iv) legal costs;
  - (v) real estate commissions charges and fees.

For the purposes of clause 13.1.2(b), the onus of proving that the Premises are likely to be relet and the amount of the rent likely to be received is upon the Tenant. For the purpose of calculating the rent and Outgoings that would have been payable after the determination of this Lease and to the extent that the Rent and Outgoings that would have been payable cannot be established certainly, it will be assumed that the Rent and Outgoings would have increased annually by four per centum (4%) cumulative on each anniversary of the Date of Commencement.

**13.1.5 Landlord's Right when Tenant Abandons Premises**

If the Tenant vacates or abandons the Premises or otherwise repudiates this Lease without lawful excuse prior to the expiration of the term, the Landlord may without being under any obligation so to do seek to find another tenant for the Premises. For that purpose the Landlord may from time to time enter upon the Premises and permit

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prospective tenants to view them and may otherwise do all acts and things necessary in the opinion of the Landlord to renovate, restore, clean, and secure the Premises without accepting or being deemed to have accepted a surrender of this Lease. It is the intention of the parties that this Lease and the obligations of the Tenant under this Lease subsist until another person enters into occupation of the Premises as tenant or the Landlord expressly accepts a surrender of this Lease.

**13.1.6 Reservation of Rights**

The rights and powers conferred on the Landlord by this clause 13.1 are in addition to any other right or power which may be conferred upon the Landlord at law or in equity.

**13.2 Non-Waiver**

No delay or omission to exercise any right power or remedy accruing to the Landlord upon any continuing breach or default under this Lease impairs any right, power, or remedy of the Landlord and it will not be construed to be a waiver of or acquiescence in any continuing breach or default or of or in any similar breach or default occurring subsequently; and no waiver of any single breach or default will be deemed a waiver of any earlier or later breach or default. Any waiver, permit, consent, or approval of any kind or character of any breach or default under this Lease or any waiver of any provision or condition of this Lease must be in writing and will be effective only to the extent set out in the written waiver. All remedies either under this Lease or by law or otherwise afforded to the Landlord are cumulative and not alternative.

**13.3 Accord and Satisfaction**

No payment by the Tenant or receipt by the Landlord of a lesser amount than the Rent stipulated in this Lease will be considered to be other than on account of the stipulated Rent. An endorsement or statement on a cheque or in a letter accompanying a cheque or payment as Rent will not be considered to be an accord or satisfaction. The Landlord may accept a cheque or payment without prejudice to the Landlord's right to recover the balance of the Rent or pursue any other remedy.

**13.4 Performance of Tenant's Covenants by Landlord**

If the Tenant makes default in payment of any monies covenanted by the Tenant to be paid or in the observance or performance of any of the covenants contained or implied in this Lease and on the part of the Tenant to be observed and performed, the Landlord may pay that money and observe and perform those covenants and the Tenant will pay to the Landlord immediately upon demand all monies which the Landlord expends in that behalf with interest calculated at the Stipulated Rate from the time of those monies having been so expended to the date of payment.

**13.5 Interest on Arrears**

The Tenant will pay to the Landlord interest on any Rent or other monies which are in arrears calculated at the Stipulated Rate from the time of the Rent, or other monies respectively falling due, to the date of payment.

**14. DAMAGE OR DESTRUCTION**

**14.1 Substantially Unfit or Substantially Inaccessible**

If the Premises are damaged by an event beyond the control of the Tenant or by an Insured Risk so as to render the Premises substantially unfit for the occupation and use of the Tenant

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or (having regard to the nature and location of the Premises and the normal means of access) substantially inaccessible, then:

- 14.1.1 EXCEPT where the damage has been caused by the negligent act or omission of the Tenant or of any servant, agent, licensee, invitee, customer, or visitor of the Tenant or of any subtenant, licensee, or other occupier claiming by, through, or under the Tenant:
- (a) A proportionate part of the Rent and other monies payable under this Lease according to the nature and extent of the damage sustained, abates and all or any remedies, for recovery of that proportionate part of the Rent and other monies falling due after the damage, are suspended until the Premises have been restored or made fit for the Occupation and use of the Tenant or accessible to the Tenant as the case may be.
  - (b) Within fourteen (14) days of the Premises being rendered unfit or inaccessible, the Tenant may serve on the Landlord written notice that the Premises have been rendered unfit or inaccessible (a Damage Notice). Unless within the period of thirty-one (31) days after being served with a Damage Notice, the Landlord serves written notice on the Tenant that the Landlord will restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant (a Restoration Notice), the Tenant may (not before the expiration of the period of thirty-one (31) days and not after the expiration of the period of seventy-five (75) days from the date of service of the Damage Notice on the Landlord) terminate this Lease by notice in writing to the Landlord.
  - (c) If the Landlord gives a Restoration Notice to the Tenant and does not within a reasonable time substantially commence and diligently proceed to restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant, the Tenant may serve on the Landlord notice of intention to terminate this Lease. Unless the Landlord upon receipt of that notice proceeds with reasonable expedition and diligence to restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant as the case may require, the Tenant may terminate this Lease by giving not less than one (1) month's notice in writing to the Landlord and at the expiration of the last mentioned notice this Lease terminates.
- 14.1.2 If in the Landlord's sole opinion the damage to the Premises is such that it is impractical or undesirable to restore the Premises or make them fit for the occupation and use of the Tenant or render them accessible to the Tenant or if the damage to the Premises occurs less than two and one half (2½) years prior to the expiration of the term of this Lease, the Landlord may terminate this Lease by giving not less than one (1) month's notice in writing to the Tenant and at the expiration of that notice this Lease terminates.
- 14.1.3 No liability attaches to the Landlord by reason of termination of this Lease under clause 14.1.1 or 14.1.2, and otherwise any termination is without prejudice to the rights of either party in respect of any antecedent breach or nonobservance of any covenant or provisions of this Lease.

14.2 Wholly Unfit or Totally Inaccessible



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If the Premises are taken for any public purpose or are destroyed or so damaged that the Premises are rendered wholly unfit for the occupation and use of the Tenant or totally inaccessible:

- 14.2.1 The Landlord may, despite anything contained or implied in this Lease, terminate this Lease by giving not less than one (1) month's notice in writing to the Tenant and at the expiration of that notice this Lease terminates and no liability attaches to the Landlord by reason of the termination;
- 14.2.2 Except where the destruction or damage has been caused or contributed to by the negligent act or omission of the Tenant or of any servant, agent, licensee, invitee, customer, or visitor of the Tenant or of any subTenant, licensee, or other occupier claiming by, through, or under the Tenant, the Tenant may terminate this Lease by giving not less than one (1) month's notice in writing to the Landlord and at the expiration of that notice this Lease terminates;
- 14.2.3 Any termination under clause 14.2.1 or 14.2.2 is without prejudice to the rights of either party in respect of any antecedent breach or nonobservance of any covenant or provision of this Lease.

**14.3 Resolution of Disputes**

Any dispute arising under clause 14.1 or 14.2 will be determined by a member of the Valuers' Institute appointed by the President for the time being of that Institute on the application of the Landlord or the Tenant. The person so appointed will in making their determination act as an expert and not as an arbitrator and their determination will be final and binding on both parties. The cost of the determination will be borne by either or both of the Parties (and if by both of the Parties in the proportion between them) as the person making the determination decides.

**15. GENERAL**

**15.1 Time Essential**

Time is essential for all obligations of the Tenant in this Lease.

**15.2 Entire Agreement**

The terms and conditions set out in this Lease contain the entire agreement as concluded between the Parties despite any negotiations or discussions prior to the execution of this Lease and despite anything contained in any brochure, report, or other document prepared by the Landlord for submission to potential tenants of the Premises. The Tenant also acknowledges that it has not been induced to enter into this Lease by any representation verbal or otherwise made by or on behalf of the Landlord which is not set out in this Lease.

**15.3 New Guarantor**

Within fourteen (14) days of the death of any Guarantor during the term of this Lease, or of any Guarantor becoming bankrupt, or having a receiving order made against them, or becoming insane, or being a company passing a resolution to wind up, or entering into liquidation, or having a receiver appointed, the Tenant will give notice of this to the Landlord. If required by the Landlord, the Tenant, at their own expense, must, within twenty eight (28) days, procure some other person acceptable to the Landlord to execute a guarantee in respect of the Tenant's obligations contained in this Lease in the form of the Guarantor's covenants which are contained in this Lease or in any guarantee separate from this Lease.

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15.4 Inspection by Purchaser or Tenant

The Tenant will upon receiving reasonable written notice from the Landlord allow prospective purchasers to inspect the Premises at a time mutually convenient to both the Landlord and the Tenant.

15.5 Modification of Implied Covenants

The obligations and powers implied in leases by ss. 105 and 107 of the *Property Law Act 1974* are negated. All other covenants on the part of the Tenant implied by the *Property Law Act 1974* are not negated but are modified to the extent of any inconsistency with the provisions of this Lease.

15.6 Notices

15.6.1 Unless otherwise stated, any notice given by the Landlord is deemed to be duly given and served on the Tenant if signed by the Landlord or the solicitors for the Landlord or if the Landlord is a corporation then by any officer of or the solicitors for the Landlord and delivered to the Tenant (or if more persons than one are tenants under this Lease then to any one or more of them) personally or if the Tenant is a corporation then to any person at its registered office or principal place of business in this State or if left at the Premises or sent to the Tenant through the post in an envelope addressed to the Premises and in the latter case service is deemed to have been effected on the day following posting.

15.6.2 Any notice given by the Tenant to the Landlord is deemed to be duly given and served on the Landlord if signed by the Tenant or the solicitors for the Tenant or if the Tenant is a corporation then by any officer of or the solicitors for the Tenant and delivered to the Landlord (or if more persons than one are landlords under this Lease then to any one or more of them) personally or if the Landlord is a corporation then to any person at its registered office or principal place of business in this State or if left at the Premises or sent to the Landlord through the post in an envelope addressed to the Premises and in the latter case service is deemed to have been effected on the day following posting.

15.7 Holding Over

If the Tenant with the consent of the Landlord remains in occupation of the Premises after the expiration of the term of this Lease then:

15.7.1 The Tenant will be a tenant from month to month of the Landlord of the Premises on the terms of this Lease so far as they are applicable to a monthly tenancy;

15.7.2 The monthly tenancy may be determined by either party in the manner prescribed by Div. 4 of Part VIII of the *Property Law Act 1974*;

15.7.3 The rent payable in respect of the monthly tenancy will be the amount of Rent payable monthly under this Lease immediately prior to the expiration of the term and will be payable in advance.

15.8 Severability

If it is held by a Court of competent jurisdiction that:

15.8.1 Any part of this Lease is void, voidable, illegal, or unenforceable;

15.8.2 This Lease would be void, voidable, illegal, or unenforceable unless any part of this

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Lease were severed,

that part will be severable from and will not affect the continued operation of the rest of this Lease.

15.9 Community Title Disputes

The Tenant will give to the Landlord written notice of any matter under the dispute resolution provisions of the *Body Corporate and Community Management Act 1997* in the nature of:

- (a) an application by the Tenant relating to the Scheme;
- (b) an application by any other person that relates to the Tenant or the Premises;
- (c) any order including interim orders affecting the Premises or the occupier of the Premises.

15.10 Community Title Dispute Resolutions

The Tenant will comply with the terms of all orders, interim orders, determinations and resolutions (including resolutions by agreement where the Tenant is a party to the agreement) arising from a community title dispute that relate to the Premises.

16. TRUSTS

16.1 Trusts

If the Tenant at any time upon or subsequent to entering into this Lease or entering into or incurring the obligations contained in this Lease is acting in the capacity of trustee of any trust (the Trust) then whether or not the Landlord may have notice of the Trust, the Tenant covenants with the Landlord as follows:

- 16.1.1 This Lease extends to all rights of indemnity which the Tenant now or subsequently may have against the Trust and the trust fund.
- 16.1.2 The Tenant has full and complete power and authority under the Trust to enter into this Lease and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Tenant against the Trust or the trust Fund. The Tenant will not release that right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- 16.1.3 Despite the terms of any deed of trust or settlement or other document, the Tenant will be and at all times remain personally liable to the Landlord for the use performance fulfilment and observance of the obligations in this Lease.
- 16.1.4 During the currency of this Lease the Tenant will not without the consent in writing of the Landlord cause, permit, or suffer to happen any of the following events:
  - (a) the removal replacement or retirement of the Tenant as sole trustee of the Trust;
  - (b) any alteration to or variation of the terms of the Trust;
  - (c) any advancement or distribution of capital of the Trust;
  - (d) any resettlement of the trust property.

The Tenant further covenants with the Landlord that it will be an event of default under this Lease if the Tenant is guilty of any breach of trust in respect of the Trust or ceases to be the

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sole trustee of the Trust or otherwise suffers removal, replacement, or retirement as trustee of the Trust.

17. OPTIONS

17.1 First Option to Renew

If,:

17.1.1 the Tenant not less than six (6) months prior to the expiration of this Lease gives written notice to the Landlord that it wishes to renew this Lease; and

17.1.2 if there is no subsisting breach of any Lease covenants by the Tenant at the date of serving notice of exercise of this option and also at the Expiry Date,;

then the Landlord will grant to the Tenant a further lease of the Premises on the following conditions:

17.1.3 the term of the further lease will be the first option period referred to in Item 8 of the Reference Data;

17.1.4 the rent for the first year of the further term will be determined in accordance with clause 3.2.2 as if that year were a continuation of the term of this Lease and the date of commencement of the further term were a Market Review Date;

17.1.5 the terms and conditions will be the same as the terms and conditions of this Lease except for the changes specified in the Modification Schedule at the end of this clause;

17.1.6 the Tenant will pay all reasonable costs of the Landlord including the reasonable legal costs of the Landlord calculated on a solicitor and own client basis of and incidental to the grant of the new lease.

Modification Schedule

A. The Market Review Dates to be inserted in Item 5 of the Reference Data will be 1 November 2025

B. Clause 17.1 shall be deleted

17.2 Second Option to Renew

If,:

17.2.1 the Tenant not less than six (6) months prior to the expiration of the first term of the renewed lease gives written notice to the Landlord that it wishes to renew this Lease; and

17.2.2 if there is no subsisting breach of any Lease covenants by the Tenant at the date of serving notice of exercise of this option and also at the Expiry Date of the first renewed term,

then the Landlord will grant to the Tenant a further lease of the Premises on the following conditions:

17.2.3 the term of the further lease will be the second option period referred to in Item 8 of the Reference Data;

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- 17.2.4 the rent for the first year of the further term will be determined in accordance with clause 3.2.2 as if that year were a continuation of the term of this Lease and the date of commencement of the further term were a Market Review Date;
- 17.2.5 the terms and conditions will be the same as the terms and conditions of this Lease except for the changes specified in the Modification Schedule at the end of this clause;
- 17.2.6 the Tenant will pay all reasonable costs of the Landlord including the reasonable legal costs of the Landlord calculated on a solicitor and own client basis of and incidental to the grant of the new lease.

**Modification Schedule**

- A. The Market Review Dates to be inserted in Item 5 will be 1 November 2030
- B. Clause 17.2 shall be deleted

- 17.3
  - 17.3.1 If this Lease is guaranteed by the Guarantor, then the renewal of this Lease is conditional on the Guarantor under this Lease entering into a guarantee in the form contained in Part 22 of this Lease in respect of the relevant option term.
  - 17.3.2 If the Guarantor, or any of the Guarantors, under this Lease is unable or unwilling to enter into a guarantee in respect of the option term, the Tenant may provide a guarantee in accordance with para (a) instead of that Guarantor by another person who is an acceptable new Guarantor.
  - 17.3.3 The Landlord will consider the Tenant's request to provide an acceptable new Guarantor for the renewal of this Lease promptly and will not unreasonably refuse, withhold or delay its consent to the substitution of that person as Guarantor and if the Landlord accepts the proposed new Guarantor, all relevant parties will execute such documentation as the Landlord reasonably requests at the cost of the Tenant.
  - 17.3.4 If the Tenant is unable to provide a guarantee in respect of the Lease for the option term either by the Guarantor or by an acceptable new Guarantor, the Tenant has failed to effectively exercise the option for renewal of this Lease and the Tenant is not entitled to a renewal of this Lease for the relevant option term.

**18. POWER OF ATTORNEY**

- 18.1 The Tenant irrevocably appoints the Landlord and (if the Landlord is a corporation) the Directors, the General Manager, and the Secretary for the time being of the Landlord jointly and each of them severally to be the attorneys of the Tenant at any time after the power contained in this Lease to re-enter has been exercised to:
  - 18.1.1 Execute and sign a transfer or a surrender of this Lease;
  - 18.1.2 Procure the transfer or surrender to be registered;
  - 18.1.3 Appoint, from time to time, a substitute or substitutes and revoke those appointments;
  - 18.1.4 Do, execute, and perform any act, deed, matter, or thing in accordance with this clause as fully and effectually as the Tenant could do. The Tenant will ratify and confirm everything the attorneys or any substitute or substitutes lawfully do or cause to be

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done in accordance with this clause.

A statutory declaration by an attorney that the power of re-entry contained in this Lease has been exercised will be sufficient proof of that fact.

**19. TERMINATION OF LEASE**

**19.1 Yield Up**

The Tenant will at the expiration or sooner determination of the term of this Lease yield up the Premises in the order and condition described in Part 6.

**19.2 Remove Fittings**

If the Tenant does not do so as of right under the provisions of clause 7.5 the Tenant will, if so required by the Landlord, remove from the Premises within fourteen (14) days from the expiration or sooner determination of the term of this Lease all fixtures, fittings, floor coverings, signs, and notices, or contents of every description erected or installed by the Tenant and requested to be removed by the Landlord. The Tenant will make good any damage caused to the Premises by the removal and if required by the Landlord will re-alter any alterations made by the Tenant so that the Premises are converted back to their original layout. The Landlord may at its option cause the fixtures, fittings, floor coverings, signs, and notices, or contents to be removed and to be stored in a public warehouse or elsewhere at the risk of the Tenant and any damage to be made good and any alterations to be re-altered. The Landlord may recover the costs of removal, storage, making good, and/or re-alterations from the Tenant as a liquidated debt payable on demand.

**19.3 Abandoned Fittings**

Any fittings or fixtures not removed by the Tenant under clause 7.5 and clause 19.2 will be deemed abandoned by the Tenant and will be and become the property of the Landlord. Nothing contained in this clause relieves the Tenant from, and except where the Landlord agrees in writing to the contrary the Tenant will be liable to the Landlord for, the cost and expense of and associated with any removal by the Landlord of fittings and fixtures not removed by the Tenant from the Premises and the cost and expense of and associated with the making good of any damage to the Premises caused by that removal by the Landlord.

**19.4 Stock-in-Trade**

The Tenant will remove from the Premises all stock-in-trade and other movable chattels prior to the expiration of the term of this Lease except that if this Lease is determined prior to the due date of expiry by effluxion of time the Landlord will if requested so to do by the Tenant allow the Tenant, its servants, and contractors access to the Premises during any one (1) of three (3) days (excluding Saturdays, Sundays, and public holidays) next following the date of determination between the hours of 9.00 am and 5.00 pm for the purpose of removing stock-in-trade and movable chattels from the Premises. If the Tenant fails to remove stock-in-trade or chattels as mentioned in this clause, the Landlord may at its option:

19.4.1 Cause the stock-in-trade or chattels to be removed and stored in a public warehouse or elsewhere at the risk and at the cost of the Tenant;

19.4.2 Treat the stock-in-trade or chattels as if the Tenant had abandoned its interest in them and deal with them in any manner the Landlord thinks fit.

The Tenant indemnifies the Landlord in respect of any damage done to the Premises in or

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about the removal of stock-in-trade or chattels by the Tenant, its servants, or contractors and also in respect of any costs incurred by the Landlord in the removal and storage of them. The Tenant also indemnifies in respect of all claims, demands, actions, costs, judgments, and expenses which the Landlord may suffer or incur at the suit of any person (other than the Tenant) claiming an interest in the stock-in-trade or chattels by reason of the Landlord acting in accordance with this clause.

**19.5 Removal of Signs**

At the expiration or earlier determination of this Lease, the Tenant will remove or clean off any advertising or other sign, advertisement, or hoarding painted, erected, or placed on or in the Premises and restore the Premises to the condition they were in immediately before the advertisement, sign, or hoarding was painted, erected, or set up.

**20. SECURITY**

**20.1 Bond**

- 20.1.1 Prior to entering possession of the Premises, the Tenant will pay to the Landlord the sum set out in Item 9 as a bank bond from an Australian Trading bank for the due observance and performance by the Tenant of all the covenants and provisions contained in this Lease.
- 20.1.2 As soon as the rent payable from each rent review is determined, the Tenant will pay to the Landlord as a further bond an amount which, when added to the bond or bonds already held by the Landlord, equal to the aggregate of three (3) months rent at the rate payable by the Tenant at the material time.
- 20.1.3 If at any time the Tenant fails to observe and perform any of the Tenant's covenants and provisions in this lease, the Landlord may, in its discretion at any time, appropriate to itself absolutely all or any part of the bond or bonds or call up any guarantee or guarantees as may be necessary in the opinion of the Landlord to compensate the Landlord for any loss or damage suffered or which may be suffered by the Landlord by reason of that failure. Any appropriation or calling up by the Landlord will not constitute a waiver of that failure and will not prejudice any other right or remedy of the Landlord in respect of it.
- 20.1.4 If the whole or any part of the bond or bonds are appropriated or any guarantee or guarantees are called up by the Landlord and this Lease remains on foot, the Tenant will immediately upon demand by the Landlord pay to the Landlord the amount so appropriated or called up to be held as a bond in accordance with this clause.
- 20.1.5 If the Landlord's interest in the Premises is assigned or transferred, the Landlord may pay or transfer the bond or bonds at the Landlord's cost less all sums appropriated by it in accordance with this clause to the assignee or transferee. Upon payment or transfer, the Landlord will be discharged from all liability to the Tenant or to any other person in respect of the bond or bonds.
- 20.1.6 If, after two (2) months from the expiration or earlier determination of this Lease or any renewal, extension or holding over of the same, all obligations of the Tenant under this Lease are discharged and satisfied, the Landlord shall upon the written request of the Tenant return to the Tenant or otherwise discharge the security provided by the Tenant to the Landlord pursuant to part 20 of this Lease.

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21. FIRST RIGHT TO PURCHASE

- 21.1 The Landlord confers on the Tenant a right of pre-emption in respect of the Land on the terms specified in this clause.
- 21.2 Binding Landlord
- The right of pre-emption is binding on the Landlord, and if there are several landlords, each of them and their survivors, and the estate of any deceased Landlord.
- 21.3 No sale or gift by Landlord
- The Landlord covenants not to dispose of the Land by sale or by gift without having first complied with the right of pre-emption in accordance with this clause.
- 21.4 Duration of right of pre-emption
- This right of pre-emption continues during the term of this Lease including any extended or renewed term.
- 21.5 Giving effect to the pre-emption
- If during the duration of this right of pre-emption the Landlord desires to sell the Land;
- 21.5.1 the Landlord shall serve on the Tenant a written notice of its intention to sell the Land and offer to sell it to the Tenant, indicating the price and the terms and conditions of sale and forwarding with the notice a contract for sale which the Landlord is prepared to sign containing those terms and conditions;
- 21.5.2 the Landlord's offer to sell the Land to the Tenant shall constitute an irrevocable offer which the Tenant may accept within 28 days after service of the notice on the Tenant;
- 21.5.3 the Tenant may accept the Landlord's offer to sell the property by delivering to the Landlord the contract for sale submitted by the Landlord duly executed by the Tenant and a cheque for the deposit payable under the contract;
- 21.5.4 upon acceptance of the Landlord's offer by the Tenant within 28 days, the parties are bound by an agreement for sale and purchase of the Land on the terms contained in the contract for sale;
- 21.5.5 the Landlord will deliver to the Tenant within 7 days after receipt of the contract for sale a copy of that contract duly executed by the Landlord;
- 21.5.6 if the Tenant does not accept the Landlord's offer to sell the Land, this right of pre-emption will lapse and the Landlord may dispose of the Land for sale or by gift at any time.
- 21.6 Right of pre-emption by purchaser of Land
- The Landlord covenants with the Tenant that any disposal of the Land by the Landlord by sale or gift to a person other than the Tenant shall be on the basis that:
- 21.6.1 it shall be a term of the disposal that on completion the purchaser or donee will enter into a deed with the Tenant as is specified in 21.6.2;
- 21.6.2 that deed will confer on the Tenant a similar right of pre-emption by the purchaser or donee of the Land as is contained in this clause, including this subparagraph, the Tenant being responsible for the reasonable costs of preparation and execution of that deed.



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23.1 In the event that the Tenant is prevented from conducting the permitted use stated in item 6 of the Reference Data in the premises by reason of a mandatory lockdown or order or direction of a State or Federal Government owing to an epidemic or a pandemic (including the Covid-19 pandemic or any variation of it) ("pandemic event") then the Rent payable under the Lease will be varied during the period in which the Tenant is prevented from conducting the permitted use in the Premises in the following manner:

23.1.1 the Tenant will pay to the Landlord 25% of the current Rent each month;

23.1.2 the remaining 75% of the Rent due will be deferred and paid by the Tenant over the 12 month period commencing on the day that the Tenant recommences to use the Premises for the permitted use.

23.2 In the event of any recurrence of a pandemic event whilst the deferred rent is being paid by the Tenant then clauses 23.1.1 and 23.1.2 will apply to extend the period during which deferred Rent is payable by the Tenant.

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22. GUARANTEE AND INDEMNITY

- 22.1 IN CONSIDERATION of the Landlord at the request of the Guarantor entering into this Lease with the Tenant the Guarantor covenants and agrees with the Landlord the following:
- 22.1.1 The Guarantor will be liable jointly and severally with the Tenant for the due and punctual payment of all Rent and other monies to be paid by the Tenant under this Lease and for the due performance and observance by the Tenant of all the covenants, terms, and conditions of this Lease on the part of the Tenant to be performed and observed.
- 22.1.2 The Guarantor indemnifies the Landlord from and against all losses, damages, costs, and expenses which the Landlord may suffer or incur in consequence of any breach or non-observance of any of the covenants, terms, and conditions of this Lease on the part of the Tenant to be performed or observed. The Guarantor agrees that the Guarantor will remain liable to the Landlord under this indemnity despite the fact that, as a consequence of any breach or non-observance, the Landlord has exercised any of its rights under this Lease including its rights of re-entry and even though the Tenant (being a corporation) may be wound up or dissolved or (being a natural person) may be declared bankrupt and even though the guarantee given by the Guarantor may for any reason be unenforceable either in whole or in part.
- 22.1.3 On any default or failure by the Tenant to observe and perform any of the covenants terms and conditions of this Lease, the Guarantor will immediately on demand by the Landlord pay all Rent and other monies and make good to the Landlord all losses, damages, costs, and expenses sustained or incurred by the Landlord by reason or in consequence of any default in performing or observing any of the covenants, terms, and conditions of this Lease. The Guarantor will also pay to the Landlord interest at the Stipulated Rate from the time of any Rent or other monies respectively falling due to the date of payment added without the necessity of any prior demand having been made on the Tenant.
- 22.1.4 The liability of the Guarantor under this guarantee and indemnity will not be affected by the granting of time or any other indulgence to the Tenant; or by any assignment or purported assignment of the interest of the Tenant under this Lease; or by the compounding, compromise, release, abandonment, waiver, variation, or renewal of any of the rights of the Landlord against the Tenant; or by any variation of this Lease; or by the filling-up of this Lease by the Landlord or its solicitors under the terms of any agreement for lease; or by any neglect or omission to enforce those rights; or by any other thing which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from its obligations under this guarantee and indemnity.
- 22.1.5 Even though as between the Guarantor and the Tenant the Guarantor may be a surety only, as between the Guarantor and the Landlord the Guarantor is deemed to be a primary debtor and contractor jointly and severally with the Tenant.
- 22.1.6 To the fullest extent permitted by law the Guarantor waives its rights as surety or indemnifier (legal equitable statutory or otherwise) as may at any time be inconsistent with any of the provisions of this guarantee and indemnity.
- 22.1.7 The covenants and agreements made by the Guarantor are not conditional or contingent in any way or dependent upon the validity or enforceability of the covenants and agreements of any other person and remain binding even though that any other

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person does not execute this Lease or this guarantee and indemnity.

- 22.1.8 The obligations of the Guarantor under this guarantee and indemnity continue until all Rent and other monies payable under this Lease have been paid and until all other obligations and indemnities have been performed observed and satisfied. Those obligations will not be reduced or affected by any notice to quit given by either Party to this Lease or the death, insolvency, liquidation, or dissolution of the Tenant or the Guarantor or either of them.
- 22.1.9 The Guarantor does not execute this guarantee and indemnity as a result of or by reason of any promise, representation, statement, information, or inducement of any nature or kind given or offered to the Guarantor by the Landlord or on the Landlord's behalf whether in answer to any enquiry by or on behalf of the Guarantor or not. Except as provided in this guarantee and indemnity, the Tenant was not prior to the execution of this guarantee and indemnity by the Guarantor and is not subsequently under any duty to disclose to the Guarantor or to do or execute any act matter or thing relating to the affairs of the Tenant or its transactions with the Landlord.
- 22.1.10 In the event of the Tenant during the term of this Lease entering into liquidation (or being a person, entering into bankruptcy) and the liquidator or trustee in bankruptcy disclaiming this Lease, or if the Tenant should be dissolved, the Guarantor will accept from the Landlord a lease of the Premises for a term equal in duration to the residue remaining unexpired of the term of this Lease. The new lease will contain the same Tenant's and Landlord's covenants respectively and the same provisos and conditions in all respects (including the proviso for re-entry) as are in this Lease contained together with such other covenants, provisos, and conditions as the Landlord may reasonably require. On the execution by the Landlord of the further lease, the Guarantor will pay all costs of the further lease (including all costs of and incidental to the preparation, execution, and stamping of the lease and all stamp duty and registration fees) and will immediately execute and deliver to the Landlord the lease in triplicate.
- 22.1.11 In the event of a further lease of the Premises being granted by the Landlord to the Tenant (including to any successors of the Tenant or to its permitted assigns) consequent upon the exercise of any option to renew contained in this Lease or in the event of the Landlord granting to the Tenant any extension of the term of this Lease, then this guarantee and indemnity will be deemed to extend to the further lease or the extension of the term as the case may be. This guarantee and indemnity will be read and construed as if the further lease were this Lease and the tenant holding under it were the Tenant referred to in this Lease.
- 22.1.12 All notices or demands to be given or made to or upon the Guarantor will be deemed to be duly given and served on the Guarantor if signed by the Landlord or the solicitors for the Landlord or if the Landlord is a corporation then by any officer of the corporate Landlord or the solicitors for the corporate Landlord and delivered to the Guarantor (or if there is more than one Guarantor then to any one or more of them) personally, or if the Guarantor is a corporation then to any person at its registered office or principal place of business in this State or if left at the last known place of business or abode of the Guarantor or if left at or sent to the Guarantor through the post in a prepaid envelope addressed to the Guarantor at the address (if any) of the Guarantor set out in Item 10 of the Reference Data. A notice or demand which is posted will be deemed

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to have been served on the Guarantor on the day following the date of posting.

22.1.13 In the event of the invalidity of any part or provision of this guarantee and indemnity that invalidity will not affect the validity or the enforceability of any other part or provision of this guarantee.

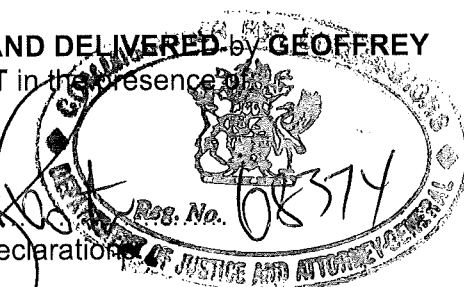
22.1.14 Where there is more than one person or corporation which together constitute the Guarantor to this Lease, the obligations and liabilities of each of those persons or corporation are joint and several.

2.1.15 This guarantee takes effect immediately upon its execution and continues to be of full effect whether or not the Lease is subsequently registered in the Department of Lands. References to "this Lease" include any equitable lease agreement for lease or periodic tenancy arising upon execution or acceptance by the Tenant of the instrument to which this guarantee is annexed.

22.1.16 In the event of the Landlord transferring the Land or otherwise assigning the Landlord's rights and obligations as Landlord under this Lease, the Landlord's rights under this guarantee (whether or not there is any express assignment of the rights) will be deemed to be assigned to the owner from time to time of the Land or other assignee of the Landlord's rights and obligations.

SIGNED SEALED AND DELIVERED by GEOFFREY  
MAXWELL ADSETT in the presence of:

Commissioner for Declarations



11/12/2020 [Signature]

SIGNED SEALED AND DELIVERED by SUSAN  
MARY ADSETT in the presence of:

Commissioner for Declarations



11/12/2020

[Signature]

# CAR PARKING PLAN

(NOT LEASE PLAN)

Ref: 19211481

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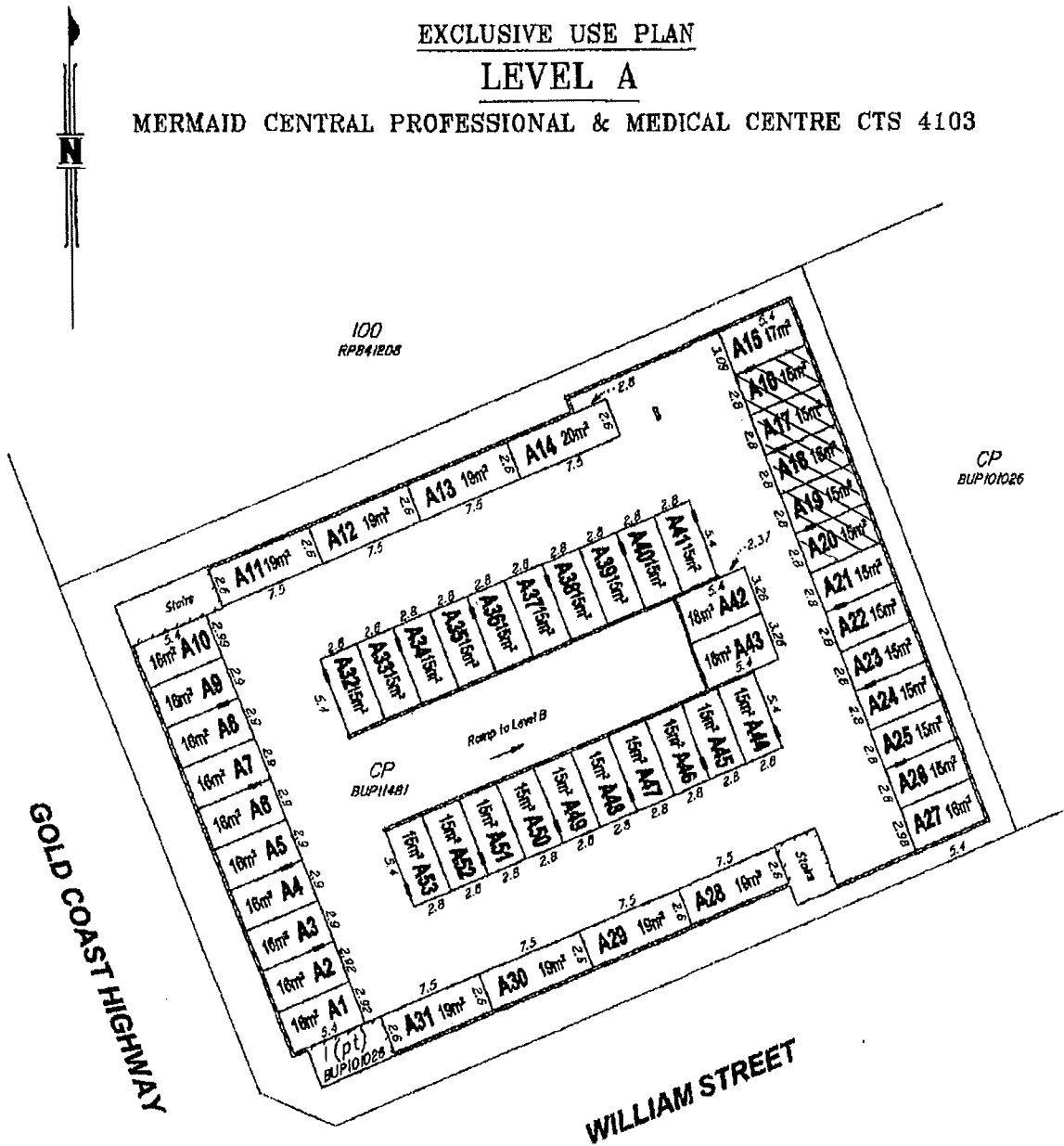
SKETCH PLAN

Sheet of

## EXCLUSIVE USE PLAN

### LEVEL A

MERMAID CENTRAL PROFESSIONAL & MEDICAL CENTRE CTS 4103



EXCLUSIVE USE AREAS ARE RECTANGULAR IN SHAPE AND DEFINED AS SHOWN.



DENOTES BUILDING



DENOTES EDGE OF CONC. PODIUM

ANDREWS & HANSEN PTY LTD ACN 010 742 784  
hereby certify that the details shown on this sketch plan are correct.

Date: 20/6/2018

*[Signature]*  
Director

<p>0m 15m 30m 45m 60m 75m 90m 105m 120m 135m 150m</p> <p>Plan of Exclusive Use Areas in Common Property of "MERMAID CENTRAL PROFESSIONAL &amp; MEDICAL CENTRE"</p> <p>LOCAL CTS 4103 (BUP 11481) GOVERNMENT: GOLD COAST CITY LOCALITY: MERMAID BEACH Meridon: RP835779 F/N's: No</p>		<p>Scale: 1:300</p> <p>Format: SKETCH</p> <p>15487-AE</p>
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