

New Lease com

LANDS TITLES REGISTRATION OFFICE

1/7/19

SOUTH AUSTRALIA

LEASE

FORM APPROVED BY THE REGISTRAR-GENERAL

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## LEASE

**PRIVACY COLLECTION STATEMENT:** The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

### LAND DESCRIPTION

The whole of the land in Certificate of Title Volume 5563 Folio 935

### ESTATE & INTEREST

Fee simple

**LESSOR** (Full name and address) 30°10

AMBRA INVESTMENTS PTY LTD ACN 007 606 279 and 216 GRANGE ROAD PTY LTD ACN 633 691 004 of  
216 Grange Road Flinders Park SA 5025

wpg (216 Grange Pty Ltd) 30°10  
**LESSEE** (Full name, address and mode of holding)

BRAZZALE CONSTRUCTIONS PTY LTD ACN 008 281 114 of 216 Grange Road Flinders Park SA 5025

### TERM

5 years together with the rights to extend (if any) set out in this Lease.

COMMENCING ON 1 July 2019

AND

EXPIRING ON 30 June 2024

### RENT AND MANNER OF PAYMENT (or other consideration)

The rent is that in Item 4, reviewed in accordance with clause 3.2.2, and payable in accordance with clause 3.1.  
The first payment of rent is made on commencement of this lease.

**IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as listed herein:**  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

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**OPERATIVE CLAUSE** *\*Delete the inapplicable*

The Lessor LEASES TO THE LESSEE the land \*above / \*hereinafter described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed \*herein / ~~\*in Memorandum No.~~ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

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**DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.**

Not Applicable

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**CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION**

This Lease does not contravene Section 32 of the Development Act 1993.

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DATED .....

**CERTIFICATION** *\*Delete the in applicable*

**Lessor(s)**

\*The Prescribed Person has taken reasonable steps to verify the identity of the lessor.

\*The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

\*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

\*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By Certifying Party: .....

.....  
Name of certifying party

Solicitor for the Lessor(s)  
Capacity of certifying party

for: .....  
Company name  
on behalf of the Lessee

**Lessee(s)**

\*The Prescribed Person has taken reasonable steps to verify the identity of the lessee.

\*The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

\*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

\*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By Certifying Party: .....

.....  
Name of certifying party

.....  
Capacity of certifying party

for: .....  
Company name  
on behalf of the Lessee

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REFERENCE SCHEDULE

1	LESSOR	<u>Name:</u> Ambra Investments Pty Ltd ACN 007 606 279 and 216 Grange Road Pty Ltd ACN 633 691 004 <u>Address:</u> 216 Grange Road Flinders Park SA 5025 + WPS (216 Grange Rd) 50°10
2	LESSEE	<u>Name:</u> Brazzale Constructions Pty Ltd ACN 008 281 114 <u>Address:</u> 216 Grange Road Flinders Park SA 5025
3	LEASED PREMISES	<u>CT Reference:</u> CT 5563/935 <u>Street Address:</u> 216 Grange Road Flinders Park SA 5025
4	THE RENT	\$20,000 per year plus GST
5	LEASE PERIOD	5 years plus the right to the renew (if any) in Item 6
6	RENEWAL PERIOD	2 rights of renewal each for 5 years
7	MARKET RENT REVIEW DATES	On renewal of the lease
8	CPI RENT REVIEW DATES	The yearly anniversary of the commencement date except for those dates that are market review dates in item 7
9	PERMITTED USE	Office Accommodation
10	SECURITY	None
11	GUARANTOR	None
12	LAND	The whole of the land in Certificate of Title Volume 5563 Folio 935
13	SPECIAL CONDITIONS	Not applicable

## **1. INTRODUCTION**

### **1.1 Dictionary and Interpretation**

In this agreement the following expressions shall have the following meanings unless the context requires otherwise:

- 1.1.1 Act means the Retail and Commercial Leases Act 1995 and regulations thereunder as amended from time to time;
- 1.1.2 Accounting Period means respectively:
  - (a) The period from the commencement of the lease to the next 30<sup>th</sup> June;
  - (b) Each successive period of 12 months commencing on 1 July and expiring on the next 30<sup>th</sup> June during the Term and any extension of the Term;
  - (c) The period from the 1<sup>st</sup> July in the last year of the Term (or extended term) to the date of the expiration of this lease;
- 1.1.3 Common Areas means areas in the building or on the Land that are under the control of the Lessor and are used or intended for use for the public or in common with other lessees are not leased or intended to be leased to other lessees;
- 1.1.4 Land means the land described in Item 12 and subject to the encumbrances noted on the certificate of title;
- 1.1.5 Leased Premises means the land and buildings described in Item 3;
- 1.1.6 Lessor means the person described in Item 1;
- 1.1.7 Lessee means the person described in Item 2;
- 1.1.8 Lessee's Proportion means the proportion that the lettable area of the Leased Premises bears to whole of the lettable area of the Land and buildings (including the Common Areas) on the Land and any adjacent land owned by the Lessor determined in accordance with the current guidelines of the Property Council of Australia and if no guidelines then in accordance with their March 1997 guidelines;
- 1.1.9 Outgoings means the charges set out in clauses 4.1.1 to 4.1.4 inclusive;
- 1.1.10 Rent means the rent payable under this lease as set out in Item 4 and reviewed at the times in Items 7 and 8;
- 1.1.11 Term means the period of this lease set out in Item 5;

- 1.1.12 A reference to a person includes a corporation;
- 1.1.13 The singular includes the plural and vice versa;
- 1.1.14 A reference to money or \$ is to Australian dollars;
- 1.1.15 A reference to time is a reference to Adelaide time;
- 1.1.16 A reference to an Item is a reference to an Item of the reference schedule on page 6.

## 2. **LEASE**

- 2.1 The Lessor leases the Leased Premises to the Lessee, and the Lessee accepts a lease of the Leased Premises, for the Rent and the Term and otherwise in accordance with the terms of this lease.
- 2.2 As a result of the lease the following rights and obligations will apply:
  - 2.2.1 Subject to the other provisions of this agreement the Lessee will be able to occupy and use the Leased Premises without disturbance by the Lessor in accordance with the conditions of this lease;
  - 2.2.2 The Leased Premises will be occupied and used by the Lessee at the risk of the Lessee and the Lessor will not be responsible to the Lessee or anyone else in any way for any condition of the Leased Premises or consequences of its use during the period of the lease;
- 2.3 The Lessee provides the following protections to the Lessor:
  - 2.3.1 The Lessee releases the Lessor from all liabilities the Lessor may have in respect of the condition of the Leased Premises.
  - 2.3.2 The Lessee must indemnify the Lessor for all claims made upon the Lessor or liabilities to the Lessor as a result of the use or condition of the Leased Premises during the period of this lease.

## 3. **RENT**

### 3.1 Payment

The Lessee must pay to the Lessor the Rent without any deduction or set off (legal or equitable) as follows:

- 3.1.1 The Rent must be paid by monthly calendar payments in advance at the commencement of each calendar month, whether formally demanded or not;
- 3.1.2 Where this lease commences on a day other than the first day of a month then the first payment of Rent must be calculated on a pro rata daily basis



for the period from the date of commencement to the last day of the calendar month in which the date of commencement occurs;

3.1.3 The Rent must be paid as directed by the Lessor.

3.2 Amount of rent

3.2.1 At the commencement of this lease the rent payable by the Lessee is set out in Item 4.

3.2.2 The rent must also be reviewed as provided for by clauses 3.3 and 3.4.

3.3 CPI rent review

The rent will be increased on the dates in Item 8 by:

3.3.1 such proportion as equals the proportionate increase (if any) in the Consumer Price Index (CPI) (All Groups) for the capital city of Adelaide for the period from the date when the rent was last fixed or reviewed to the date for increase;

3.3.2 If there is no CPI or such index has been substantially changed or replaced then the provisions of clause 3.3.1 will be varied to express appropriate provisions to be agreed by the parties or otherwise determined according to clause 23.

3.4 Market rent review

The Rent will be reviewed to market on the dates in Item 7 as follows:

3.4.1 The Lessor must give a notice to the Lessee and set out in its notice the Rent it requires to be paid;

3.4.2 If within 14 days of the giving of that notice the Lessee has not notified the Lessor that it objects to the Rent then that Rent shall be the reviewed rent;

3.4.3 If within 14 days of the giving of that notice the Lessee does notify the Lessor in writing that it objects to the Rent then the Lessor must refer the matter to a licensed valuer of not less than 8 years experience appointed by the President of the Australian Property Institute (SA Division) or its successor for determination of the rent.

3.4.4 In so determining the Rent the valuer must act according to the following

(a) the market rental of the Leased Premises by reference to the rent payable for similar premises;

(b) the valuer will be acting as an expert and not an arbitrator;

- (c) the valuer will not act where he or she has a conflict of interest with the Lessor;
  - (d) the valuer must provide his or her determination in writing;
  - (e) the valuer must make allowance for the contribution made by the Lessor for the Lessor's works;
  - (f) the valuer will ignore the improvements made by the Lessee which the Lessee was not obligated to make.
- 3.4.5 Unless the Act applies, the rent as so determined must not be less than the rent payable immediately before the date for review.
- 3.4.6 The parties must each pay one half of the valuer's fees.
- 3.4.7 Until the Rent is reviewed the Lessee must continue to pay the Rent payable before the date for review.
- 3.4.8 When the Rent has been reviewed the Lessee must then:
- (a) Pay the reviewed Rent as from the commencement of the next calendar month;
  - (b) Within 7 days pay the difference between the previous Rent and the reviewed Rent for the period from the date for review to the date referred to in clause 3.4.8(a).

#### 4. **OTHER PAYMENTS**

- 4.1 The Lessee must also pay the following charges or reimburse the Lessor where they are paid for by the Lessor:
- 4.1.1 All rates, assessments, levies (including land tax unless the Act applies), and other charges levied during the period of the lease upon the Leased Premises or any part of the Leased Premises or the Lessor or the Lessee or the occupant of the Leased Premises or any part of the Leased Premises or the use of the Leased Premises or any part of the Leased Premises. For the purposes of this clause the obligations of the Lessee include an obligation to pay all rates, levies and charges which may be charged to the Lessee or the Lessor after the termination of this agreement for a period or periods before then and because of the Leased Premises ceasing to be occupied or used by the Lessee;
- 4.1.2 All charges made for the installation, maintenance and supply of all services to the Leased Premises including but not limited to following:
- (a) Electricity

- (b) Gas
- (c) Telephone
- (d) Facsimiles
- (e) Water
- (f) Sewerage
- (g) Waste removal
- (h) Modems
- (i) Internet, data and cabling
- (j) Landscaping
- (k) Heating and cooling including air-conditioning costs
- (l) Lessor's insurance and excess on insurance
- (m) Lighting
- (n) Fire services
- (o) Body corporate fees
- (p) Security
- (q) Pest control
- (r) Cleaning services;

4.1.3 The cost of maintaining and repairing the Leased Premises and maintaining, repairing and replacing the installations on the Leased Premises;

4.1.4 Interest on all moneys due to be paid to the Lessor under this lease and which have not been paid within 7 days of a written notice being delivered to the Lessee at a rate 2% higher than the rate charged by Commonwealth Bank on overdraft accounts on an amount not greater than the Rent (as reviewed).

4.2 The payments must be adjusted where they relate to a period before the commencement or after the conclusion of the Term.

4.3 Where the lease is of a portion of the Land, the Lessee must pay the Lessee's Proportion of the Outgoings except for those charges that service the Leased Premises exclusively in which case the Lessee must pay 100% of the charges.

4.4 For an Accounting Period, the Lessor may provide the Lessee with an annual estimate of the Outgoings, which is payable at the same time and in the same manner as Rent. Within 3 months of the end of an Accounting Period, the Lessor will reconcile the actual Outgoings incurred against the estimate provided to the Lessee and the Landlord will credit any overcharge and the Lessee will pay on demand any undercharge.

## 5. **USE OF THE LEASED PREMISES**

### 5.1 Permitted use

The Lessee must use the Leased Premises during the period of the lease for the purposes described in Item 9.

### 5.2 Permitted use not exclusive

Nothing contained in this Lease shall confer on the Lessee the exclusive right to conduct on the Land a business of a particular type, to the intent that the Lessor shall be free to lease to any person other premises on the Land for a use similar to that permitted by this Lease.

### 5.3 Use obligations

The Lessee must not without the consent of the Lessor do or allow to be done upon, within or within the vicinity of the Leased Premises or the Common Areas, any of the following:

5.3.1 Anything which will represent a nuisance or annoyance to any member of the public;

5.3.2 Anything which involves the carrying out of any noxious, offensive or dangerous trade or activity;

5.3.3 Anything which may invalidate any insurance policy maintained by the Lessor or the Lessee or a body corporate;

5.3.4 Any alteration, improvement or work of a structural nature;

5.3.5 Affix any sign, placard, advertisement, hoarding or promotional material;

5.3.6 Any gambling within the Leased Premises;

5.3.7 Any sale of liquor or liquor products;

5.3.8 Solicitation of business in the Common Area.

5.4 Heavy equipment

The Lessee must not bring heavy equipment into the Leased Premises unless it is reasonably required for the Permitted Use. Any damage made to the Leased Premises from the bringing on and use of heavy equipment must be immediately made good by the Lessee at its cost and expense.

5.5 Compliance with laws

The Lessee must at its cost and expense comply and ensure that all users comply with all laws in respect of the use of the Leased Premises and obtain all necessary permits and authorities which may be required to use the Leased Premises for the purposes permitted by this lease.

5.6 Lessee occupies at own risk

The Lessee agrees to occupy and use the Leased Premises at the Lessee's risk and releases to the fullest extent permitted by law the Lessor its servants agents and contractors from all claims and demands of any kind and from all liability which may arise in respect of any accident damage or injury occurring to any person or property in or about the Leased Premises save to the extent that such claims demands or liability is caused or contributed to by the negligent or wilful act or omission of the Lessor.

5.7 Lessee to indemnify Lessor

The Lessee shall keep the Lessor indemnified against all claims, actions, damages, losses, costs and expenses of any nature which the Lessor may suffer or incur or for which the Lessor may become liable in respect of or arising out of:

- 5.7.1 the negligent or careless use or misuse by the Lessee and persons under its control of the Leased Premises or any of the utility or other services to the Leased Premises or arising out of any faulty fixture or fitting of the Lessee;
- 5.7.2 any accident or damage to property or injury or death suffered by any person arising from any occurrence in or near the Leased Premises to any person or property using or near the Leased Premises arising wholly or in part by reason of any wrongful act or omission by the Lessee and persons under its control,

save to the extent that any such claim, action, damages, losses, costs and expenses are caused or contributed to by the negligent or wilful act or omission of the Lessor.

5.8 Deliveries

The Lessee must use its best endeavours to cause all delivery vehicles servicing the Leased Premises to load and unload outside normal trading hours. Deliveries at other times shall be made only through specified loading areas or entrances

designated by the Lessor and in a manner so as to cause no inconvenience to other lessees and customers on the Land.

## 5.9 Car Parking

5.9.1 The Lessor may from time to time designate the particular parking areas on any Common Area carparking (if any) which may be used by the Lessee its agents or employees and may from time to time specify the days and hours during which the same may or may not be used by such persons. The right of such persons to use the common parking areas shall be at all times secondary or subordinate to the use thereof by the customers and patrons of the Land. The Lessee must prohibit its employees and others over whom the Lessee has control from parking their motor vehicles during their working hours in the common parking areas of the Land except in such place or places and during such times as the Lessor may from time to time specifically allocate for such purposes and shall do all acts and things as may be reasonably necessary to enforce such prohibition.

5.9.2 The Lessee must furnish from time to time and within five (5) days of being requested so to do by the Lessor the descriptions and registration numbers of all motor vehicles owned and used by the Lessee in the conduct of its business in the Leased Premises and also the descriptions and registration numbers of all motor vehicles owned by any of the Lessee's employees who work in the premises and shall notify the Lessor of any changes when the same shall occur.

## 6. **INSURANCE AND INDEMNITY**

### 6.1 Lessee's Insurance

The Lessee must during the entire Term and any extensions keep in full force and effect a policy of public risk insurance with respect to the Leased Premises and any Common Areas appurtenant and the business or businesses carried on in the Leased Premises in which the limits of public risk shall be at least \$20,000,000 as the amount which may be paid arising out of any single accident or event. The policy must:

6.1.1 include an extension to cover the Lessee's legal liability in respect of death or injury to any person and damage to property of any such person or to the Leased Premises and must include an extension to cover the Lessee's liability in respect of the Lessor's property (and if the premises are or become part of land to which either the Strata Titles Act or the Community Titles Act applies, the body corporate) in or upon or part of the Leased Premises or any Common areas appurtenant.

6.1.2 note the name of the Lessor (and if required the Lessor's mortgagee) as an interested party.

6.2 The Lessee must during the entire Term and any extensions keep in full force and effect a policy of insurance covering the plate glass of the Leased Premises and the

Lessee's plant fittings and stock in trade contained in or about the Leased Premises to the full insurable value thereof against loss or damage by fire fire fighting activities fusion explosion lighting civil commotion storm tempest earthquake and malicious damage or accidental damage.

6.3 The Lessee must use the Lessee's best endeavours to ensure that each such policy contains a clause that the insurer will not cancel or change the insurance without first giving the Lessor thirty days prior written notice. The policy or a certificate of insurance must be produced by the Lessee to the Lessor upon request.

6.4 Insurance not to be affected

6.4.1 The Lessee must not do or store nor cause permit or suffer to be done or to be stored in or upon or in connection with the Leased Premises anything whereby any policy or policies of insurance on the Leased Premises or any part thereof or on any adjoining premises belonging to the Lessor may be invalidated or become void or voidable or whereby any increased rate of premium may become payable under any such policy or policies of insurance.

6.4.2 Without prejudice to the preceding sub-clause, the Lessee must from time to time on demand by the Lessor pay to the Lessor all extra or excess premiums (if any) for all and any insurance effected by the Lessor (and if the premises are or become part of land to which either the Strata Titles Act or the Community Titles Act applies, the body corporate) in relation to the Land and the buildings thereon and or the Leased Premises required on account of extra risk caused directly or indirectly by the use to which the Leased Premises are put by the Lessee and or required by reason of any breach by the Lessee of any covenants in this lease.

## **7. MAINTENANCE AND REPAIRS**

7.1 The Lessee must at its cost and expense keep the Leased Premises fully maintained in a continual state of good repair and condition and without limiting the extent of the Lessee's obligations in this regard they shall (subject to the Act) include an obligation to keep in good repair and condition the following parts of the Leased Premises:

7.1.1 the structure of the Leased Premises including its roof, floor and walls;

7.1.2 the water, gas and electricity apparatus;

7.1.3 the Lessor's fixtures and fittings;

7.1.4 the windows and glass;

7.1.5 the plumbing, pipes, wires and cabling;

7.1.6 the lighting, including changing all broken light bulbs;

- 7.1.7 the plant and machinery;
- 7.1.8 the air conditioning system;
- 7.1.9 the lawns, gardens and landscaping (including irrigation and lighting);
- 7.1.10 the fire services (including, monitored alarms, smoke detectors, fire extinguishers and sprinkler systems).

## 7.2 Pests

The Lessee must take all practicable measures to prevent any infestation of the Leased Premises or any part thereof by termites white ants rats mice or other vermin or by flies, cockroaches ants or other insects and must not expose any food garbage rubbish debris rags or utensils to rats, mice or other vermin or flies cockroaches or other insects.

## 7.3 Suitable personnel

The Lessee must at all times engage competent personnel to ensure that these obligations are met and ensure that regular service contracts are in place to meet the obligations under this clause.

## 7.4 Notice of damage

The Lessee must promptly give to the Lessor (or where appropriate to the building supervisor or managing agent of the Lessor) notice of the occurrence of any accident or damage to or defect or blockage in (as the case may be) the Leased Premises any water gas or electrical apparatus installation or fixed appliance or any water or gas pipes or electrical wiring or any sewer pipes roof gutters down pipes or storm water drains in or adjacent to the Leased Premises, any Common Areas near the Leased Premises or any part of the Land adjacent to or near the Leased Premises, and will give such notice promptly after the occurrence thereof. This clause shall not lessen or modify the effect of any other covenant or agreement on the part of the Lessee to be performed and observed.

- 7.5 The Lessee must allow a representative of the Lessor to inspect the Leased Premises at any time upon the giving of reasonable notice except in the case of an emergency when no notice shall be required.

## 8. **GUARANTEE AND INDEMNITY**

(The clause applies if there is a person named as the Guarantor in Item 10.)

- 8.1 The Guarantor in consideration of the Lessor having entered into this lease at the Guarantor's request:

- 8.1.1 guarantees that the Lessee will perform all its obligations under this lease for the Term and any renewed term or terms and during any period of holding over after the end of the Term; and



- 8.1.2 will pay on demand any amount which the Lessor is entitled to recover from the Lessee under this lease; and
  - 8.1.3 indemnifies the Lessor against all loss resulting from the Lessor's having entered into this lease whether from the Lessee's failure to perform its obligations under it or from this lease being or becoming unenforceable against the Lessee.
- 8.2 The liability of the Guarantor will not be affected by:
- 8.2.1 the Lessor granting the Lessee or a Guarantor time or any other indulgence, or agreeing not to sue the Lessee or another Guarantor;
  - 8.2.2 failure by any Guarantor to sign this document;
  - 8.2.3 transfer (except in accordance with the Act, if the Act applies) or variation of this lease;
  - 8.2.4 the fact that this lease cannot be registered at the Land Registry.
- 8.3 The Guarantor agrees that:
- 8.3.1 the Lessor may retain all money received including dividends from the Lessee's bankrupt estate, and need allow the Guarantor a reduction in its liability under this guarantee only to the extent of the amount received, and
  - 8.3.2 the Guarantor will not seek to recover money from the Lessee to reimburse the Guarantor for payments made to the Lessor until the Lessor has been paid in full, and
  - 8.3.3 the Guarantor will not prove in the bankruptcy or winding up of the Lessee for any amount which the Lessor has demanded from the Guarantor, and
  - 8.3.4 the Guarantor will pay the Lessor all money which the Lessor refunds to the Lessee's liquidator or trustee in bankruptcy as preferential payments received from the Lessee.
- 8.4 If any of the Lessee's obligations are unenforceable against the Lessee, then this clause is to operate as a separate indemnity and the Guarantor indemnifies the Lessor against all loss resulting from the Lessor's inability to enforce performance of those obligations. The Guarantor will pay the Lessor the amount of the loss resulting from the unenforceability.
- 8.5 If there is more than one Guarantor, this guarantee binds them jointly and each of them individually.
9. **TRANSFER OF THE LEASE**
- 9.1 The Lessee must not assign or mortgage this lease or sublet or licence the Leased Premises or any part of the Leased Premises or in any way (either in law or in

equity) part with the rights to occupy or use the Leased Premises given by this lease without the written consent of Lessor which consent the Lessor may withhold, refuse or condition in its discretion.

9.2 If the Lessee undergoes such a change in its administration, structure or membership or there is such a change in its ownership, governing body or committee which makes it dissimilar in nature, type and quality from when it entered into this agreement, then such change is deemed to be an assignment of this lease.

9.3 If the Lessee seeks the Lessor's consent, the Lessor may request information from the Lessee which the Lessee must provide, and the Lessor may engage external consultants, the cost of which will be borne by the Lessee.

## 10. **TERMINATION OF THE LEASE**

### 10.1 Termination events

This agreement may be terminated at any time by the Lessor for any of the following reasons and the Lessor may then retake possession of the Leased Premises:

10.1.1 The Lessee fails to pay the Rent due under this lease for a period exceeding 14 days or for such other period as may be required by law whether formally demanded or not;

10.1.2 The Lessee is in breach of any other obligation under this agreement and the breach continues for 14 days after the Lessor gives the Lessee written notice requiring the breach to be remedied;

10.1.3 The Lessee has its property seized under any court process;

10.1.4 a Guarantor becomes bankrupt;

10.1.5 If at any time during the period of this lease any mortgagee of the Lessee exercises its rights to take possession of the property the subject of the mortgage;

10.1.6 The Lessee:

- (a) takes any steps towards liquidation (other than for reasons of reconstruction or amalgamation);
- (b) has a receiver or manager appointed in respect of its activities;
- (c) has a liquidator or administrator appointed;
- (d) makes an arrangement or composition with its creditors;
- (e) dissolves, disbands or ceases to be active or exist;

- (f) undergoes such a change in its administration, structure or membership or there is such a change in its governing body or committee which makes it dissimilar in nature, type and quality from when it entered into this agreement without obtaining the consent of the Lessor;
- (g) ceases to have the right to use the Leased Premises;
- (h) ceases to use or occupy the Leased Premises for a continuous period of 30 days;
- (i) becomes bankrupt or enters into a personal insolvency agreement (if an individual).

#### 10.2 Recovery of losses

Should the Lessor terminate the lease under clause 9.1 the Lessor shall use its best endeavours to relet the Leased Premises and the Lessee shall pay to the Lessor all moneys due under this lease until the Leased Premises is relet together with any losses suffered by the Lessor as a result of the reletting.

#### 10.3 Power of attorney

To better secure the Lessor's rights in respect of a termination of this lease the Lessee appoints the Lessor to be its true and lawful attorney to act at any time after the termination (sufficient proof of which shall be a statutory declaration by an authorised officer of the Lessor) to execute a transfer or surrender of this lease and to do all things in respect of the Leased Premises and the fittings and chattels within the Leased Premises in the same way as would have the Lessee and the Lessee covenants to ratify all that is done by the Lessor pursuant to this clause.

#### 10.4 Essential terms

The following terms of this lease are agreed by the parties to be essential terms which means that a breach of any of them will represent a repudiation of this lease and provide grounds for the Lessor to elect to treat this lease at an end and recover damages at law for all losses suffered as a result: Clauses 3, 4.1, 5.1, 5.3, 5.4, 5.5, 5.8, 7, 9, 19.1, 24, 25.2.

#### 10.5 Power of Re-entry

If the Lessee shall fail neglect or omit to perform or observe any essential term on the Lessee's part to be performed or observed and such failure neglect or omission shall remain unremedied for a period of 14 days (after notice to remedy has been served on the Lessee for the purposes of section 10 of the Landlord and Tenant Act 1936) then the Lessor or the Lessor's attorney or duly authorised agent, solicitor or representative may without notice to the Lessee re-enter into and upon the Leased Premises or any part thereof in the name of the whole and use and enforce all such ways and means and adopt all such measures as may be necessary or expedient for the purpose of effecting such re-entry by force or otherwise as the occasion may

require without being liable for any loss expense damage action suit or proceeding or cost and to hold and enjoy the Leased Premises as if these presents had not been made and thereupon the Lessee's leasehold interest in the Leased Premises shall cease and determine.

## 11. **DESTRUCTION OF THE LEASED PREMISES**

### 11.1 Partial Destruction

If at any time during this lease the Leased Premises are destroyed or damaged to such extent as to be unable to be used by the Lessee and this is not a result of conduct or neglect of the Lessee then (subject to the Act), until restoration the Lessee will not be required to pay such fair proportion of the Rent and Outgoings to the extent of the damage to the Leased Premises.

### 11.2 Wholly destroyed

Where the Leased Premises are wholly or substantially damaged, then,

11.2.1 the Lessor shall not be required to reinstate the Leased Premises and if the Lessor does not reinstate the Leased Premises, the Lessor may terminate the Lease by notice to the Lessor and the Lessee, and

11.2.2 otherwise, if the Leased Premises are not reinstated within 6 months the Lessee may terminate this lease by giving written notice of such termination to the Head Lessor and the Lessor.

11.3 If the destruction or damage is caused by the Lessee, then the Rent and Outgoings are not abated and the Lessee cannot terminate the Lease.

## 12. **CONTINUATION OF LEASE**

### 12.1 Renewal of lease

If the Lessee would like to renew this agreement for the renewal period in Item 6 then it must notify the Lessor of its intention to do so no earlier than 6 months and no later than 3 months before the expiry of this lease and if it does so and is not in breach of the provisions of this lease and has not been in consistent breach beforehand then the Lessor will grant a new lease to the Lessee for the renewal period on the same terms contained in this lease except for the following:

12.1.1 The right of renewal so exercised;

12.1.2 The rent for the first year of the new lease will be fixed as provided by 3.4.

### 12.2 Holding over

If the Lessee stays on in occupation after the lease expires then the Lessee will have a new lease from month to month which contains the following terms.

- 12.2.1 All of the provisions of this lease without a right of renewal;
- 12.2.2 The rent payable will be the rent payable at the date of expiration of this lease;
- 12.2.3 Either the Lessor or the Lessee can also terminate the lease on giving to the other at least 1 month's written notice at any time.

13. **HANDING BACK THE LEASED PREMISES**

At the end of the Lessee's right to occupation of the Leased Premises as provided by this lease the Lessee must:

- 13.1.1 Ensure that the Leased Premises and the buildings and fittings belonging to the Lessor are in good repair and condition;
- 13.1.2 Leave the Leased Premises in that state and take away from the Leased Premises all equipment and belongings of the Lessee;
- 13.1.3 Remove from the Leased Premises all signs, placards and fittings of the Lessee and repair any damage caused by the removal;
- 13.1.4 Hand over to the Lessor's authorised officer all keys, security devices and other items belonging to the Lessor which are held by the Lessee;
- 13.1.5 Paint all previously painted surfaces of the Leased Premises with 2 coats of good quality paint in a colour approved by the Lessor.

14. **ELECTRICITY SUPPLY**

- 14.1 If the Lessor and the Lessee have entered into an agreement as to the supply by the Lessor to the Lessee of electricity for the Leased Premises then the terms and conditions of such agreement shall apply to the parties and any breach by the Lessee of that agreement shall be deemed to be a breach by the Lessee of this Lease. In the absence of any such agreement between the Lessor and the Lessee, the following provisions shall apply:
  - 14.1.1 If at the Commencement Date of this Lease the Lessor supplies electricity to the Leased Premises and requires the Lessee to purchase such electricity from the Lessor, the Lessee must pay to the Lessor for all such electricity at such rate as the parties may agree from time to time and in the absence of such agreement at the maximum rate applicable under the Electricity (General) Regulations 1997.
  - 14.1.2 Notwithstanding the preceding subclause, there is no obligation on the Lessor to supply or continue to supply electricity to the Leased Premises and upon giving at least 60 days prior written notice to the other either:
    - (a) the Lessor may elect to cease selling electricity to the Lessee, or

- (b) the Lessee may elect to cease purchasing electricity from the Lessor.

14.1.3 If either the Lessor elects to cease selling electricity to the Lessee or the Lessee elects to cease purchasing electricity from the Lessor in accordance with the preceding subclause, the Lessee must on or before the time at which such sale and purchase is to cease pursuant to the notice given in accordance with the preceding subclause:

- (a) enter into a contract to purchase electricity for the premises from a licensed electricity retailer of the Lessee's choice;
- (b) ensure that any such contract contains a provision that such electricity retailer must provide details to the Lessor concerning the Lessee's consumption of electricity in or in relation to the Leased Premises;
- (c) install at no cost to the Lessor such new or additional equipment and meters as may reasonably be necessary to supply and record the supply of electricity to the Leased Premises.

14.1.4 If the Lessee is supplied electricity via an Inset Network (as defined in the Electricity (General) Regulations 1997) on the Land, the Lessee must pay to the Lessor the Lessee's share of Inset Network charges such share to be as is reasonably determined by the Lessor from time to time taking into account the quantum of electricity provided to the Leased Premises and the quantum of electricity provided to other premises situated on the Land.

14.1.5 Save to the extent caused or contributed to by the Lessor's negligence, the Lessor shall not be liable to the Lessee for any failure of electricity supply to the Leased Premises.

## 15. AIR-CONDITIONING

15.1 Where any plant machinery or equipment for heating cooling or circulating air is provided or installed by the Lessor in the Leased Premises or within any structure on the Land for the benefit of tenants of the Land ("air-conditioning plant")

- 15.1.1 the Lessee must pay all costs and expenses (charged at an hourly rate reasonably determined by the Lessor) associated with the operation of the air-conditioning plant (when such operation is requested or required by the Lessee) between 6.00 pm and 8.00 am Monday to Friday and at any time on public holidays and weekends;
- 15.1.2 the Lessee must comply with and observe the reasonable requirements of the Lessor in respect of the air-conditioning plant;
- 15.1.3 to the maximum extent permitted by law, the Lessor shall be under no liability to the Lessee in respect of the Lessor's inability or failure to operate service maintain replace or repair the air-conditioning plant at any time for

any reason and the Lessee acknowledges that the Lessor does not warrant that the air-conditioning plant (if any) is suitable or adequate for the business to be conducted in the Leased Premises by the Lessee;

- 15.1.4 to the extent of the Lessor's control, the use and operation of the air-conditioning plant shall at all times be at the discretion of the Lessor but the Lessor shall use reasonable endeavours to keep the air-conditioning plant in operation at all times between 8.00 am and 6.00 pm Monday to Friday (inclusive) other than public holidays;
- 15.1.5 the Lessee must permit the Lessor and all persons authorised by the Lessor at all reasonable times on giving to the Lessee reasonable prior notice (except in the case of emergency where no notice is required) to enter the Leased Premises to view the state of repair of the air-conditioning plant and there remain for the purpose of carrying out any necessary or desirable maintenance servicing or repair to or replacement of the air-conditioning plant.

- 15.2 Where any air-conditioning plant is installed in the Leased Premises or the Land for the exclusive use of the Lessee, the Lessee must keep such air-conditioning plant in good repair and condition and must pay all costs of operating and maintaining the same.

16. **CONSENTS BY LESSOR**

- 16.1 Where this lease requires the consent of the Lessor to be provided:
  - 16.1.1 The consent is required to be in writing;
  - 16.1.2 The consent must be sought and provided before the proposed occurrence of the subject matter of the consent;
  - 16.1.3 The Lessor can refuse, withhold or condition discretion in its discretion (subject to the Act);
  - 16.1.4 The Lessee must provide the Lessor with all information required by the Lessor;
  - 16.1.5 The Lessor may designate that any proposed activity the subject of the consent be carried out by persons approved by the Lessor;
  - 16.1.6 The Lessee must pay all of the Lessor's reasonable costs in respect of dealing with the request for its consent including all fees of professionals or consultants from whom it chooses to seek advice in respect of the request irrespective of whether consent is granted or not.

17. **REMEDY BY LESSOR**

17.1 Where the Lessor considers that the Lessee has not complied with any obligation imposed upon it by this lease then the Lessor has the following rights acting reasonably:

17.1.1 The Lessor may give to the Lessee a written notice requiring the action or works to be carried out or performed by the Lessee within a time specified in that notice;

17.1.2 If that action or the works are not carried out within that time the Lessor may enter upon the Leased Premises and carry out the action or the works;

17.1.3 All of the costs to the Lessor in respect of the works must be paid by the Lessee as moneys due under this lease within 7 days of the Lessor giving notice to the Lessee of those costs.

## 18. **STRATA AND COMMUNITY TITLES**

18.1 If the Leased Property is subject to the Strata Titles Act 1998 or Community Titles Act 1996 (as amended), then:

18.1.1 The Lessee must ensure it obtains the consent of the body corporate where appropriate;

18.1.2 The Lessee must abide by the by-laws and other governing rules;

18.1.3 The Lessee must abide by any lawful direction given by the body corporate;

18.1.4 The Lessee must not do anything to invalidate any policy of insurance held by the body corporate or increase the premium payable;

18.1.5 All voting rights with the body corporate remain with the Lessor;

## 19. **LESSOR DEALINGS WITH LAND AND RESERVATIONS**

19.1 The Lessor may deal with the Land in such manner as it thinks fit, including construction or demolition work, granting easements, converting the Land to Community Title (if not already), provided such actions do not conflict with the Lessee's quiet enjoyment of the Leased Premises. If required by the Lessor, the Lessee will promptly provide its consent or sign any document required by the Lessor to do such thing.

19.2 The Lessor reserves the right for itself and for all others authorised by the Lessor the passage of any air conditioning equipment, fire sprinkler systems, pipes, ducts, cables, wiring, communications, water sewerage and drainage connections and any other services through or along or in or into the Leased Premises and also access to and through the Leased Premises at any time for the purpose of installing, maintaining or repairing any such equipment, systems, pipes, ducts, cables,



wirings, connections and services. If the lease is of part of the Land, the Lessor reserves the external surfaces of the Leased Premises for itself.

20. **NO WARRANTY BY LESSOR**

The Lessee warrants that the Lessee has relied on the Lessee's own judgement expertise and the Lessee's experts in deciding that the Leased Premises are suitable for the Lessee's purposes and that the Lessor has given no warranty as to the use to which the Leased Premises may be put and that the Lessee has satisfied itself thereof and the Lessee shall be deemed to have accepted this lease with full knowledge of, and subject to, any prohibitions or restrictions on the use thereof under or in pursuance of any Act, Ordinance, Regulation, By-law or other statutory enactment or order of Court. Should the use be permissible only with the consent of any authority under or in pursuance of any such Act, Ordinance, Regulation, By-law or other enactment or order of Court the Lessee shall obtain such consent at the Lessee's own cost and expense. To the fullest extent permitted by law all warranties as to suitability and as to adequacy implied by law are hereby expressly negated.

21. **AUTHORITY OF OFFICERS**

Anything to be done by the Lessor in respect of this lease or its performance (including the signing of any documents) may be done by any person authorised by the Lessor to do so.

22. **SERVICE OF DOCUMENTS**

22.1 Any notice required to be served under this lease will be sufficiently served if the following provisions are followed.

22.1.1 On the Lessor to the address, email and person provided in Item 1, or such other details which may be advised by the Lessor in writing from time to time (but if the Lessor has a managing agent, then also to the managing agent).

22.1.2 On the Lessee to the address, email and person provided in Item 1, or such other details which may be advised by the Lessee in writing from time to time.

22.2 Any such notice if sent by post shall be taken to have been served 3 postal delivery days after the date of posting. An email is received at the time of sending if sent on a business day before 5pm and no bounce back or error message is received, but if sent after 5pm or not on a business day, then it is received at 9am on the next business day.

23. **MEDIATION OF DISPUTES**

23.1 Covenant

Where any dispute arises between the parties to this lease then, except as otherwise provided for in this lease and before any legal proceedings (including

arbitration) may be commenced, the dispute must be referred to mediation in accordance with the provisions of this clause.

23.2 Notice of dispute

A party may initiate mediation by serving a notice upon the other party which describes the matters in dispute and requests the agreement of the other party to proceed with the mediation in accordance with the provisions of this clause.

23.3 Mediator

If the parties are unable to agree upon a mediator to conduct the mediation either party may request the President of the Institute of Arbitrators and Mediators Australia or any successor to it, for the time being, to appoint a mediator.

23.4 Comply with requirements of mediator

Upon the appointment of a mediator the parties will comply with all requirements of the mediator and if the dispute is resolved at the mediation the parties must sign an agreement setting out the terms of the resolution of the dispute.

23.5 Confidentiality

All statements made and matters disclosed at the mediation are confidential and cannot be used in any legal proceedings.

23.6 Costs

The mediator's fees must be paid by the parties equally and the parties must each pay their own costs in respect of the mediation.

23.7 Exceptions

This clause will not apply to any dispute where a party seeks urgent interlocutory relief.

24. **LEGAL FEES AND EXPENSES**

24.1 Legal costs

The Lessee must pay to the Lessor the following legal costs and expenses charged to it by the Lessor's lawyers:

24.1.1 One half of the preparation costs of this lease

24.1.2 All fees charged by a mortgagee or encumbrance to consent to this lease

24.1.3 All costs of negotiating the terms of this lease

24.1.4 All fees for any default by the Lessee of any of the terms and conditions of this lease

24.1.5 All fees for consent sought of the Lessor by the Lessee (including contractor's engaged by the Lessor for this purpose)

24.1.6 All fees for any renewal or assignment of the Lease.

24.2 Plan and Registration fees

The Lessee must pay all costs for a plan and fees required in order to register this lease.

25. **GST**

25.1 Interpretation

In this lease,

25.1.1 "GST" means the goods and services tax as provided for by the GST Law.

25.1.2 "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended or replaced from time to time.

25.1.3 "GST Law" means the GST Act and any associated legislation including without limitation delegated legislation.

25.1.4 Expressions used in this clause have the same meanings as when used in the GST Act.

25.2 Payment of GST

Except where this lease states otherwise, each amount payable by a party under this lease in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to the amount of that supply and at the same time, pay to the supplier GST payable in respect of that supply.

25.3 Tax invoice

A party is not obliged under this clause to pay GST on a taxable supply to it under this lease until given a valid tax invoice for the supply.

26. **INTERPRETATION**

26.1 Whole agreement

The provisions of this agreement represent the whole of the agreement between the Lessor and the Lessee and the Lessee acknowledges that there have been no

representations made by the Lessor or its agents in respect of the Leased Premises or its use.

26.2 Governing law and jurisdiction

This lease is governed by the laws of the state of South Australia and any legal proceedings must only be taken in the courts or tribunals having jurisdiction in that state.

26.3 Joint and several liability

Wherever there are 2 or more lessees their obligations in this agreement are joint and several.

26.4 Legislation

A reference to any legislation includes a reference to all amendments and replacements to the legislation.

26.5 Severance

Whenever any clause or a part of a clause in this lease is void, invalid or unenforceable then the remaining parts are not affected and they will survive and to the extent required to be given adequate meaning they must be read down, reduced or varied so as to allow for the continued enforceability of this lease.

26.6 Headings and contents

The headings, contents and modes of presentation of this agreement do not form a part of this lease and cannot be used for its interpretation.

26.7 Waiver

The acceptance of rent in arrears by the Lessor does not constitute a waiver of the essentiality of the Lessee's obligation to pay the rent as stipulated in this Lease. The Lessor may only waive any right afforded to it by this Lease or by law in writing.

26.8 Operation of the Act

If the Act applies, then any part of this lease that is inconsistent with the Act is to be read down.

**IMPORTANT NOTICE**

**EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE**

**Retail and Commercial Leases Act 1995: Section 18**

**Retail and Commercial Leases Regulations 2010: Regulation 6**

**THE LESSOR DOES NOT WARRANT THAT THE PREMISES YOU ARE ABOUT TO LEASE WILL, FOR THE DURATION OF YOUR LEASE, BE STRUCTURALLY SUITABLE FOR THE TYPE OF BUSINESS THAT YOU INTEND TO CARRY ON.**

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Date of this document: 11 7 /20 19

**LESSOR EXECUTION**

EXECUTED by AMBRA INVESTMENTS PTY LTD in accordance with the Corporations Act 2001:

.....  
Director

.....  
**ANDREW FRANCESCO BRAZZALE**  
Print Full Name

.....  
Director/Secretary

.....  
**MARK BRUNO BRAZZALE**  
Print Full Name

EXECUTED by 216 GRANGE ROAD PTY LTD in accordance with the Corporations Act 2001:

.....  
Director

.....  
**ANDREW FRANCESCO BRAZZALE**  
Print Full Name

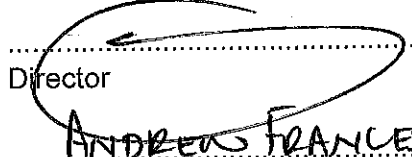
.....  
Director/Secretary

.....  
**MARK BRUNO BRAZZALE**  
Print Full Name


## LESSEE EXECUTION

EXECUTED by BRAZZALE CONSTRUCTIONS PTY LTD in accordance with the Corporations Act 2001:

.....  
Director

.....  
  
ANDREW FRANCESCO BRAZZALE  
.....  
Print Full Name

.....  
Director/Secretary

.....  
  
MARK BRUNO BRAZZALE  
.....  
Print Full Name