

**KINASH PTY LTD – A.C.N. 005 800 617**  
**As Trustee for K.C. & T.L. MURRAY SUPERANNUATION FUND**  
of 55 Williams Parade, Bairnsdale 3875

Lessor

**K.C. & T.L. MURRAY PTY LTD – A.C.N. 065 031 389**  
of 55 Williams Parade, Bairnsdale 3875

Lessee

**13 ROVAN PLACE, BAIRNSDALE**

Premises

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**COMMERCIAL LEASE**

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Wards Barristers & Solicitors Pty Ltd  
Legal Practitioners  
10 Service Street  
BAIRNSDALE VIC 3875

Tel: 5152 1677  
Fax: 5152 4883  
Ref: AJR/HMLEASEKINASH

COMMERCIAL LEASE

THIS LEASE is made between the Lessor of the first part, the Lessee of the second part and the Guarantor, if any, of the third part.

AND WITNESSES as follows

- A. The Lessor leases the premises to the Lessee for the term and at the rent and subject to the provisions set out in this lease.
- B. The Guarantor, if any, agrees to be bound by the Guarantor's obligations set out in this lease.

IN WITNESS the parties have executed this Deed this 25<sup>th</sup> day of AUGUST 2011.

EXECUTED by KINASH PTY LTD in accordance with the Company's Constitution )  
by being signed by those persons authorized to bind the Company )

*K.C. Murray* Director  
Name: *K.C. MURRAY*  
Address: *55 Williams Parade*  
*Bairnsdale*

*Tanya Murray* Director  
Name: *Tanya Murray*  
Address: *55 Williams Parade*  
*Bairnsdale*

EXECUTED by K.C. & T.L. MURRAY PTY LTD in accordance with the )  
Company's Constitution by being signed by those persons authorized to )  
bind the Company )

*K.C. Murray* Director  
Name: *K.C. MURRAY*  
Address: *55 Williams Parade*  
*Bairnsdale*

*Tanya Murray* Director  
Name: *Tanya Murray*  
Address: *55 Williams Parade*  
*Bairnsdale*

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this lease, unless the contrary intention appears, the following expressions have the meanings set out opposite them:

<b>Expression</b>	<b>Meaning</b>
"Act"	the Retail Leases Act 2003.
"Guarantor"	the person named in Schedule Item 3, including that person's executors and administrators.
"Lessee"	the person named in Schedule Item 2, including that person's executors, administrators and assigns, or in the case of a corporation its successors and assigns.
"Lessee's Fixtures and Fittings"	the fixtures and fittings set out in Schedule Item 7, and any other fixtures and fittings brought onto the premises by the Lessee.
"Lessor"	the person named in Schedule Item 1, including that person's Executors, Administrators and Assigns or in the case of Corporation its successors and assigns and including the person entitled to possession of the premises when this lease comes to an end.
"Lessor's Fixtures and Fittings"	the fixtures and fittings existing in the premises at the commencement of the lease and those installed by the Lessor after the commencement of the lease and including those fixtures and fittings set out in Schedule Item 5.
"Premises"	the property and facilities described in Schedule Item 4, including the Lessor's fixtures and fittings and plant and equipment set out in Schedule Item 5.
"Rent"	the amount specified in Schedule Item 6, or that amount as varied by the application of the rent review provisions.
"Term"	the term stated in Schedule Item 8.
"Valuer"	a person holding the qualifications or experience specified under Section 13DA(1A) of the Valuation of Land Act 1960.

1.2 This lease is to be interpreted so that it does not infringe against the Acts of any Parliament or any regulations made under those Acts. Any provision that does so infringe shall be read down to the extent necessary to give it, if possible, an operation

of a partial character, but if it cannot be so read down it shall be deemed to be severable. If any provision is held invalid by a Court that provision shall be disregarded and the remainder of this lease shall continue in force.

- 1.3 Amendment of this lease must be in writing and signed by the parties.
- 1.4 An obligation imposed by this lease upon more than one person binds them jointly and severally.
- 1.5 The use of one gender includes the other and the singular includes the plural and vice versa.
- 1.6 The Law of Victoria applies to this lease.
- 1.7 The terms of this lease shall be binding upon the heirs, executors, assigns, administrators and transferees of the parties hereto, as the case may be.

## 2. LESSEE'S COVENANTS

- 2.1 The Lessee shall:
  - 2.1.1 pay the rent free of all deductions to the Lessor or as the Lessor directs on the days and in the manner specified in Schedule Item 9. No demand for rent is necessary and the Lessor may direct in writing that the rent be paid to another person.
  - 2.1.2 pay when due or within 7 days of request to do so reimburse the Lessor for all outgoings specified in Schedule Item 10 and produce receipts for any payments. The Lessee is not obliged to pay special fees or charges for capital items levied by an Owners Corporation.
  - 2.1.3 pay when due all charges for the supply of any service to the premises including gas, electricity, water, sewerage and telephone.
  - 2.1.4 pay promptly the expenses of operating maintaining and repairing any heating, cooling or air conditioning equipment exclusively serving the premises.
  - 2.1.5 comply with the Lessor's operational requirements for any services provided by the Lessor.
  - 2.1.6 pay when due all costs for removal of sewerage and waste.
  - 2.1.7 if necessary at the beginning and the end of the term, the Lessee's liability to pay the above items shall be apportioned.

2.1.8 pay on demand interest on any rent or other moneys payable by the Lessee which remain unpaid for seven days after the due date for payment at the rate specified in Schedule Item 13 such interest to be computed from the due date for payment and to accrue on a daily basis until paid.

2.1.9 pay the Lessor's reasonable expenses of:

- (a) the negotiation, preparation, settling, execution and stamping of this lease;
- (b) obtaining the consent of the Lessor's Mortgagee (including a Chargee or Debenture Holder) to this Lease;
- (c) the variation, assignment, surrender or termination of this Lease other than by expiry of the term or where the variation occurs at the Lessor's request;
- (d) the sub-letting of the premises;
- (e) any breach of this lease by the Lessee;
- (f) the exercise or attempted exercise of any right or remedy of the Lessor against the Lessee;

but if the Act applies only to the extent to which the Act permits recovery.

2.1.10 comply with all laws relating to the use or occupation of the premises.

2.2 The Lessee shall not and the Lessee shall ensure that the Lessee's agents, servants, workmen or other invitees do not:

- 2.2.1 use or allow the use of the premises except for the permitted use stated in the Schedule Item 14.
- 2.2.2 use or allow the use of the premises for any illegal or immoral purpose.
- 2.2.3 carry on or allow to be carried on in the premises any noxious or offensive act or occupation.
- 2.2.4 do or allow anything which may cause nuisance, damage or disturbance to lessees, occupiers or owners of adjacent premises.
- 2.2.5 hold or allow any auction or public meeting on the premises.
- 2.2.6 use or allow the use of any radio, television or other sound producing equipment at a volume that can be heard outside the premises.
- 2.2.7 use or allow the use of the premises in breach of any legislation.

- 2.2.8 do or allow anything which may result in any insurance of the premises or any building of which the premises form part becoming void or voidable, or any claim being declined or any premium being increased.
- 2.2.9 keep or use chemicals, flammable liquids or other hazardous materials on the premises except as may be necessary for the Permitted Use of the premises or create any fire hazard.
- 2.2.10 display any sign or advertisement on the exterior of the premises without the Lessor's consent which may be given or withheld at the Lessor's discretion.
- 2.2.11 make any alteration or addition to the premises except and in accordance with the Lessor's consent which may be given or withheld at the Lessor's discretion.
- 2.2.12 install without the Lessor's consent any fixtures or fittings except those reasonably required for the permitted use.
- 2.2.13 without the Lessor's consent bring onto the premises any item which by its nature or weight may cause damage to the premises.
- 2.2.14 except in an emergency, interfere with any of the services or equipment in the premises or in any property of which the premises form part.

### 2.3 **INSURANCE**

- 2.3.1 The Lessee must during the term pay or reimburse within 7 days of a request by the Lessor all premiums and charges for comprehensive replacement and re-instatement insurance taken out by the Lessor for the risks listed in Item 11.
- 2.3.2 The Lessee must take out and keep current an insurance cover in the name of the Lessee and noting the interest of the Lessor for Public Risk for any single event or accident for the amount stated in Schedule Item 12, or if none is stated, for \$10,000,000.00. Such Policy must contain an extension which includes the indemnities given by the Lessee to the Lessor under this lease. Such Policy must require that the Insurer give 21 days written notice of cancellation to the Lessor before cancelling or refusing to renew the Policy.
- 2.3.3 Any insurances taken out by the Lessee hereunder must be taken out with an Insurer approved by the Lessor, however, the Lessor will not unreasonably withhold such approval.
- 2.3.4 The Lessee must produce satisfactory evidence of insurance within 7 days of request for same by the Lessor.
- 2.3.5 The Lessee shall pay for all extra insurance premiums which arise as a result of the Lessee's use of the premises.

- 2.4 The Lessor may require the Lessee to take out and pay for such insurance policies with the Lessor's interest noted thereon, or to reimburse the Lessor for such policies taken out by the Lessor, or a combination thereof.
- 2.5 In the event of the Lessee taking out such policies the Lessee shall produce satisfactory evidence of insurance cover on written request by the Lessor.

**3. REPAIRS, MAINTENANCE etc.**

- 3.1. Except for fair wear and tear, the Lessee shall keep the premises in the same condition as at the start of the Lease and properly cleaned, repaired and maintained and shall comply with the requirements of any Act, regulation, by-law or notice affecting the premises. However the Lessee shall not be obliged:
- 3.1.1 to repair damage caused by risks against which the Lessor has insured unless the insurance has been invalidated by the acts or omissions of the Lessee or the Lessee's employees or agents.
- 3.1.2 to repair and maintain the structure or spend money on items of a capital nature unless the repair maintenance or expenditure becomes necessary because of the Lessee's use of the premises or the Lessee's failure to perform his obligations under this lease.
- 3.2 In addition to its obligation under Clause 3.1.1 and 3.1.2 the Lessee must:
- 3.2.1 (a) repaint, repaper, revarnish or otherwise refinish all interior and exterior surfaces of the premises in a workmanlike manner with as good quality materials as previously at least once every five (5) years during the term of occupation by the Lessee under this Lease or renewal thereof;
- (b) keep the premises free from rubbish, keep waste in proper containers and have it removed regularly;
- (c) immediately replace glass which becomes cracked or broken with glass of at least the same thickness and quality PROVIDED THAT any replacement glass shall comply with current safety standards;
- (d) immediately repair defective windows, lights, doors, locks and fastenings and replace missing light globes and fluorescent tubes, keys and keycard;
- (e) maintain in working order all plumbing, drainage, gas, electric, solar and sewerage installations and fire protection apparatus;
- (f) promptly give written notice to the Lessor or the Lessor's Agent of:
- (i) damage to the premises or of any defect in the structure or any of the services to the premises;

- (ii) service by any Authority of a Notice or Order affecting the premises;
  - (iii) any hazards threatening or affecting the premises;
  - (iv) any hazards arising from the premises for which the Landlord might be liable.
- 3.2.2 immediately make good any damage caused to adjoining premises by acts or omissions of the Lessee or the Lessee's employees, agents, licensees or invitees, or others claiming through or under the Lessee.
- 3.2.3 permit the Lessor and the Lessor's agents and workmen if necessary with equipment to enter the premises during normal business hours upon reasonable notice and in cases of emergency at any time:
- (a) to inspect the premises;
  - (b) to carry out any repair or alterations;
- or
- (c) to comply with any notice or order of any competent authority.
- 3.2.4 repair the premises within 14 days after being served with a written notice of any defect or lack of repair for which the Lessee is responsible. If the Lessee fails to comply with the notice the Lessor may carry out the repairs at the Lessee's cost.
- 3.2.5 take all precautions required by law against fire but the Lessee shall not be liable to make structural alterations or install equipment unless required because of the Lessee's use of the premises, including the permitted use, or the Lessee's failure to perform his obligations under this lease.
- 3.2.6 comply with the reasonable requirements of the Lessor or its insurer and with the recommendations of the Insurance Council of Australia concerning prevention of fire.
- 3.2.7 upon vacating the premises remove the Lessee's signs or advertisements and damage caused by removal.
- 3.2.8 take reasonable precautions to secure the premises and any contents from theft, keep all openings fastened when the premises are not in use and comply with the Lessor's directions for the use and return of keys or keycards.
- 3.2.9 permit the Lessor or the Lessor's agent at reasonable times upon appointment to show the premises:



- (a) to prospective purchasers at any time during the term.
- (b) to prospective lessees within 3 months prior to the expiry of this lease and to affix to the premises "for sale" or "to let" notices in positions that do not interfere unduly with the permitted use of the premises.

3.2.10 carry on the Lessee's business in a proper and efficient manner and keep the premises open during normal business hours.

3.2.11 keep and maintain the gardens and grounds of the premises in good order and condition.

3.2.12 comply with all requirements of any Government Department statutory corporation or public authority under any Act of Parliament, Regulation, Planning Ordinance or By-law requiring works to be carried out to the premises, but the Lessee shall not be liable to make structural alterations unless required because of the Lessee's use of the premises, including the permitted use, or the Lessee's failure to perform his obligations under this lease.

#### 4. ASSIGNMENT AND SUB-LETTING

4.1 The Lessee shall not assign, transfer or sub-let the premises without the Lessor's written consent and Section 144 of the Property Law Act 1958 does not apply.

4.2. The Lessor shall not unreasonably withhold consent to an assignment or transfer of this lease or a sub-letting of the premises if the Lessee has complied with the requirements of Clause 4.3.

4.3 If the Lessee shall -

4.3.1 ask the Lessor in writing to consent to the assignment or transfer or sub-lease;

4.3.2 give to the Lessor:

- (a) in relation to each proposed new Lessee or sub-tenant –
  - its name and address
  - two written references as to its financial circumstances
  - two written references as to its business experience
- (b) a copy of the proposed document of assignment, transfer or sub-lease.
- (c) at least seven days before the proposed date for assignment a plan relating to the business that the prospective Assignee proposes to carry on at the premises, prepared and/or endorsed by a financial adviser of the prospective Assignee.

4.3.3 if the Act applies and the Lessee has complied with this Clause and the Lessor fails to respond by giving or withholding consent within 28 days then the Lessor is to be taken as having consented.

4.3.4 the Lessor may withhold its consent at its discretion:

- (a) if the Act does not apply and an assignment or transfer of this lease would result in the Act applying;
- (b) if the Act does not apply the Lessor may request any additional information reasonably required to enable it to make a decision.

4.4 The Lessor, the Lessee and any proposed assignee of this lease or sub-lessee of the premises shall execute such documents as are necessary for the purpose of effecting an assignment or sub-letting. Those documents shall contain a covenant by the proposed assignee or sub-lessee and, where the proposed assignee or sub-lessee is a corporation, by each director of that corporation to perform and observe the Lessee's obligations under this lease.

4.5 The Lessee shall pay the fees, costs and charges (including stamp duty) reasonably incurred by the Lessor in connection with any proposed or actual assignment or sub-letting, including the preparation, execution and completion of any documents as may be required as a result of such assignment or sub-letting.

4.6 The Lessee shall not, except by an assignment of this lease or a sub-letting of the premises, part with or share possession of, or grant any licence to use, any part of the premises without the Lessor's consent which the Lessor may grant or withhold at its discretion.

## **5. GENERAL AGREEMENTS BETWEEN THE LESSOR AND THE LESSEE**

5.1 When the term comes to an end, the Lessee shall return possession of the premises to the Lessor in a state of cleanliness and repair that complies with the Lessee's covenants and shall remove all the Lessee's property from the premises and make good all damage caused by removal. Unless agreed otherwise, any of the Lessee's property left on the premises after the end of the Lease shall be deemed to have been abandoned by the Lessee and shall become the Lessor's property.

5.2 The Lessee shall indemnify the Lessor from and against:

5.2.1 liability loss and damage of every description flowing from a breach by the Lessee of any of the provisions of the lease;

5.2.2 liability of every description in respect of injury loss or damage of every description sustained by any person on or in the vicinity of the premises arising out of the act or omission of the Lessee or any employee, agent, contractor, lessee, licensee or visitor of the Lessee, the Lessee's use (including

the permitted use) or occupation of the premises or the existence on the premises of a dangerous state of affairs whether or not the existence of the state of affairs was or ought to have been known to the Lessor.

5.2.3 loss or damage of every description to the premises caused contributed to or aggravated by the negligent act or omission of the Lessee or any employee, agent, contractor, lessee, licensee or visitor of the Lessee.

5.2.4 liability of every description arising out of proceedings wherein the Lessor is sued or joined as a third party being proceedings to which the Lessee is a party save and expect proceedings brought successfully by the Lessee against the Lessor to compel observance of the Lessor's obligations under this lease. It is the intention of the parties that the Lessee shall occupy use and keep the premises at his own risk in every respect and that the Lessor be released to the full extent permitted by law from all liability arising out of the Lessor's ownership or deemed occupancy of the premises except in respect of matters arising out of the negligent act or omission of the Lessor or his servants or agents but negligence shall not be attributed to the Lessor by reason only of his ownership of the premises or the existence of a state of affairs which is or ought to have been known to the Lessor.

5.3 The Lessee shall:

5.3.1 occupy and use the premises at its own risk;  
and

5.3.2 indemnify the Lessor against any action or demand resulting from any accident, damage or injury occurring in the premises, except where such accident, damage or injury is caused by the fault or neglect of the Lessor.

## 6. LESSOR'S COVENANTS

6.1 Lessor covenants that if the Lessee performs and observes the Lessee's obligations under this lease the Lessee may occupy and use the premises during the term without any interruption by the Lessor or any person lawfully claiming through the Lessor.

6.2 The Lessor must subject to Clause 2.1.9(c) obtain the written consent to this Lease of all Mortgagees or Debenture Holders whose interests would otherwise have priority over this Lease.

6.3 The Lessor must keep the premises in a structurally sound and watertight condition during the term of the Lease and any renewal thereof, in accordance with the Act, but the Lessor shall not be liable for any repairs which are the Lessee's responsibility under this Lease.

## 7. EVENTS OF DEFAULT AND CONSEQUENCE

7.1 The Lessor may re-enter the premises and put an end to this lease if -

- 7.1.1 the Lessee does not pay the rent that is due within 14 days after being given written notification by the Lessor that the rent is overdue.
- 7.1.2 the Lessee fails to perform or observe any of the Lessee's obligations under this lease.
- 7.1.3 the Lessee is a corporation and -
- (a) an order is made or a resolution is passed for its winding up (except for the purpose of reconstruction or amalgamation);
  - (b) it goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or is unable to pay its debts within the meaning of the Corporations Legislation;
  - (c) it is placed under official management or a receiver or manager of any of its assets is appointed or an inspector is appointed under the provisions of the Corporations Legislation; or
  - (d) without the prior written consent of the Lessor a change occurs in its membership or the membership of its holding company, the beneficial ownership of any shares in its issued capital or the issued capital of its holding company or the beneficial ownership of its business or assets resulting in the effective control of the Lessee being with a person who at the commencement of this lease did not have that control. This paragraph shall not apply if the Lessee is a public company listed on any recognised Australian stock exchange or a subsidiary of such a company.
- 7.1.4 execution is levied against the Lessee and is not satisfied within 30 days.
- 7.1.5 without the Lessor's prior written consent the business conducted in the premises is discontinued, or the premises are left unoccupied for a period of 7 days.
- 7.2 Upon re-entry or rescission for breach of an essential term or acceptance by the Lessor of the Lessee's repudiation of the lease this lease shall be at an end without affecting any right which the Lessor may have to recover moneys owing under this lease or to recover damages and such damages shall include compensation for the loss of all benefits which the Lessor would have received if the lease had continued for the term and the Lessee had performed all of his obligations under this lease.
- 7.3 For the purposes of Section 146(1) of the Property Law Act 1958 14 days are fixed as the period in which the Lessee may remedy any breach if it is capable of remedy and make reasonable compensation in money to the Lessor.

7.4 Failure by the Lessee to perform and observe any of the Lessee's obligations under clauses 2.1.1, 2.1.2, 2.1.6, 2.1.9, 2.1.10, 2.2.1, 2.2.2, 2.3, 3.1, 3.2.4, 3.2.10, 4.1 and 4.6 is a breach of an essential term of this lease even though the Lessor may have waived his rights in respect of an earlier breach of the same clause or delayed in enforcing his rights in relation to the breach.

## 8. DESTRUCTION OR DAMAGE

8.1 If any part of the premises is destroyed or damaged by any cause not resulting from the fault or neglect of the Lessee or the Lessee's servants or agents and as a result is unfit for the permitted use and the payment of any insurance moneys is not lawfully refused as a result of any act of the Lessee or the Lessee's employees or agents then -

8.1.1 the rent or a fair proportion of the rent according to the nature and extent of the damage shall be suspended until the premises are again fit for the permitted use.

8.1.2 if the Lessor considers the extent of damage makes repair or reinstatement of the premises impractical or undesirable, the Lessor may notify the Lessee in writing and in such event either party may terminate this Lease by the giving of 7 days written notice of termination to the other party.

8.1.3 if the Lessee requests in writing that the Lessor repair or reinstate the premises and the Lessor fails to do so within 6 months or such other time as may be considered reasonable then the Lessee may terminate this Lease by giving the Lessor written notice of such termination.

8.1.4 the Lessee shall not be entitled to a suspension of rent or outgoings pursuant to this clause, nor to terminate the Lease under this clause if payment of an insurance claim is properly refused in respect of such damage or destruction because of the fault or neglect of the Lessee or the Lessee's agents, servants, workmen or other invitees.

8.2 If a dispute arises under this clause Part 10 of the Act shall apply and if the premises are not retail premises the provisions of that Part shall apply in every respect as if the premises were retail premises.

## 9. CONSENTS AND WARRANTIES

9.1 Where any act of the Lessee requires the Lessor's consent the Lessor shall not (except where this lease otherwise expressly provides) unreasonably withhold consent but the Lessor may require the Lessee to comply with reasonable terms and conditions before giving consent. The Lessee shall, on demand, reimburse the Lessor for any expenses including fees paid to the consultants, reasonably incurred by the Lessor in relation to any application by the Lessee for the Lessor's consent.

9.2 This Lease and the Disclosure Statement (if any) given hereunder set out the whole of agreement between the parties and no obligation or liability shall arise by reason of any promise, representation, warranty or undertaking allegedly given or made by either party to the other unless the same is contained in the Lease or Disclosure Statement.

## 10. OVER-HOLDING AND ABANDONMENT OF PREMISES

10.1 If the Lessee remains in possession of the premises with the Lessor's consent after the end of the term:

10.1.1 the Lessee shall be a monthly Lessee subject to the conditions of this lease so far as applicable.

10.1.2 either party may at any time end the tenancy by giving one month's written notice to the other; and

10.1.3 the monthly rental shall be -

(a) one twelfth of the annual rental payable by the Lessee immediately before the end of the term; or

(b) a higher rental of which the Lessor has given to the Lessee one month's written notice.

10.2 If the Lessee leaves the premises during the term whether or not the Lessee ceases to pay rent then acceptance of the keys or entry to the premises by the Lessor to inspect them or show them to prospective lessees or purchasers will not of itself constitute re-entry or waiver of the right to recover rent and other moneys payable under this lease. In such event this lease shall continue until a new Lessee takes possession of the premises, unless the Lessor accepts a surrender of the lease, or accepts the Lessee's repudiation of the lease.

## 11. RENT REVIEWS

11.1 (a) The rent payable in the second and subsequent years of the term and in the second and subsequent years of any further option term hereby created shall be reviewed in accordance with the provisions contained in Schedule Item 15.

(b) The rent payable in the first year of each further option term hereby created shall be fixed by agreement between the parties and in the event of the parties failing to agree by a date 14 days prior to the commencement of each option term then the rent shall be determined by a Valuer registered under the Valuation of Land Act 1960 who is a practising member of the Real Estate Institute of Victoria (REIV) appointed by the parties or if they are unable to agree on the appointment within seven days appointed by the President of the REIV at the request of the Lessor.

- 11.2 In determining the current market rent of the premises the valuer shall:
- (a) consider any written submissions made by the parties within 21 days of them being informed of his appointment.
  - (b) determine the rent as an expert.
  - (c) assume that the premises are available for leasing with a sitting lessee for a term equal to the term of this lease, and with any options for renewal.
  - (d) take into account the terms, conditions and permitted use set out in this lease, including the Lessee's requirement to pay Lessor's outgoings under the lease.
  - (e) assume that the Lessee's covenants have been or will be fully performed and in particular where the Lessee has not performed his obligations under clauses 3.1 and 3.2, determine a rent appropriate to the condition of the premises had those obligations been performed.
  - (f) ignore any fixtures and fittings which the Lessee has the right to remove from the premises and improvements voluntarily made by the Lessee.
  - (g) ignore the goodwill of the Lessee's business.
  - (h) have regard to current market rentals for comparable premises in the locality.
- 11.3 The parties shall provide any such information required by the valuer to enable a valuation to be conducted.
- 11.4 Unless this is a lease to which the whole of the Act applies, the valuer shall determine a rent at least equal to the rent being paid immediately before the review.
- 11.5 The valuer shall make and inform the parties of his determination of the rent as soon as possible after the 21 day period for making submissions. If the valuer fails to determine the rent within 45 days of the parties being informed of his appointment or resigns or becomes incapacitated, then a similarly qualified valuer may be appointed in his place in the manner set out in this clause.
- 11.6 The valuer's determination shall be final and shall bind the parties.
- 11.7 The Lessor and Lessee shall bear equally the valuer's fees for making rent determination. If either party pays more than one half of the fee, that party may recover the excess from the other.
- 11.8 Until the valuer's determination, the Lessee shall continue to pay the rent current immediately before the review. Within 7 days of being informed in writing of the reviewed rent the parties shall make any necessary adjustments.

11.9 The Lessor's delay in reviewing the rent at any of the times specified in Schedule Item 15 shall not prevent the Lessor from reviewing the rent, as at that time or those times, or at any later time during the term.

12. **FURTHER TERM(S)**

12.1 The Lessor will renew this lease for the next of the Further Term(s) (if any) set out in Schedule Item 16 if the Lessee gives the Lessor a written request for renewal not more than 6 months or less than 3 months before this lease expires. The date until which the option is exercisable is set out in Schedule Item 17.

12.2 The Lessor does not have to renew this lease if:

12.2.1 there is any unremedied default of which the Lessor has given the Lessee written notice; or

12.2.2 the Lessee has persistently defaulted under this lease throughout its term and the Lessor has given the Lessee written notices of the defaults.

12.3 The renewed lease shall:

12.3.1 commence on the day after this lease expires;

12.3.2 be at a rent agreed by the parties or, if they do not agree, be determined in the manner set out in clause 11; and

12.3.3 be on the terms and conditions contained in this lease including any provision for the review of rent but not including any provision for renewal in the case of the last Further terms.

12.4 If the Lessee is a corporation a guarantee to the Lessor of the Lessee's obligations under the renewed lease shall be executed by the directors of the Lessee.

13. **SECURITY DEPOSIT**

13.1 The Lessee shall pay to the Lessor a security deposit of the amount specified in Schedule Item 18 and shall maintain the deposit at that amount.

13.2 The Lessor may use the deposit to make good any loss caused by the lessee's default in performing the Lessee's obligations under this lease.

13.3 When this lease has expired and the Lessee has left the premises the Lessor shall refund within 14 days that part of the deposit not needed to make good any loss.

13.4 The Lessor may invest the security deposit but must account to the Lessee for interest earned on such investment provided that the Lessor is entitled to keep such interest and deal with it as money paid by the Lessee to the Lessor to form part of the security deposit.



13.5 The Lessor such not unreasonably refuse to accept a guarantee from an approved deposit institution (within the meaning of the Banking Act 1959) in satisfaction of any requirement to provide a security deposit hereunder.

**14. NOTICE**

14.1 Any notice required to be given hereunder may be given by pre-paid post, by facsimile or by personal delivery to the parties' last known address or (in the case of a Corporation) to its registered office, or if such notice is being served by the Lessor upon the Lessee, then to the Lessee at the premises.

14.2 Any notice sent by post shall be deemed received 48 hours after posting.

**15. ADDITIONAL PROVISION**

The additional provisions (if any) referred to in Schedule Item 19 shall bind the parties.

**16. GUARANTOR'S OBLIGATIONS**

16.1 The guarantor in consideration of the Lessor having entered into this lease at the guarantor's request –

16.1.1 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 overholding after the end of the term and

16.1.2 must pay on demand any amount which the Lessor is entitled to recover from the Lessee under this lease and

16.1.3 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.

16.2 The liability of the guarantor will not be affected by –

16.2.1 the Lessor granting the Lessee or a guarantor time or any other indulgence, or agreeing not to sue the Lessee or another guarantor, or

16.2.2 failure by any guarantor to sign this document, or

16.2.3 transfer or variation of this lease, but if this lease is transferred the guarantor's obligations, other than those which have already arisen, end when the term ends and do not continue into a term renewed by a new Lessee nor a period of overholding, provided that if the Act applies the guarantor's obligations may end at the time of transfer or assignment of the lease.

16.2.4 the fact that this lease cannot be registered at the Land Titles Office.

16.3 The guarantor agrees that –

16.3.1 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

16.3.2 the guarantor must not seek to recover money from the Lessee to reimburse the guarantor for payments made to the landlord until the Lessor has been paid in full and

16.3.3 the guarantor must not prove in the bankruptcy or winding up of the Lessee for any amount which the Lessor has demanded from the guarantor and

16.3.4 the guarantor must 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.

16.4 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 landlord against all loss resulting from the Lessor's inability to enforce performance of those obligations. The guarantor must pay the Lessor the amount of the loss resulting from the unenforceability.

16.5 If there is more than one guarantor, this guarantee binds them jointly and each of them individually.

**17. DISPUTE RESOLUTION**

17.1 Unless the Act applies, if the words "The mediation procedure applies to this lease" are included in item 21, the mediation procedure applies to this lease. In that event the parties must attempt to resolve any dispute by the mediation procedure, except disputes about:

17.1.1 unpaid rent and interest charged on it

17.1.2 review of rent

17.1.3 a dispute to be resolved in another way prescribed by any other provision of this lease.

17.2 The mediation procedure is:

17.2.1 a party may start mediation by serving a mediation notice on the other party;

17.2.2 the notice must state that a dispute has arisen and identify what the dispute is;

17.2.3 the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 7 days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator;

17.2.4 once the mediator has accepted the appointment the parties must comply with the mediator's instructions;

17.2.5 if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

17.3 The mediator may fix the charges for the mediation which must be paid equally by the parties.

17.4 If the dispute is settled, all parties must sign the terms of agreement and these terms are binding on the parties.

17.5 The mediation is confidential and --

17.5.1 statements made by the mediator or the parties, and

17.5.2 discussions between the participants to the mediation, before after or during the mediation, cannot be used in any legal proceedings.

17.6 It must be a term of the engagement of the mediator that the parties release the mediator from any court proceedings relating to the lease or the mediation.

17.7 The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

17.8 If the Act applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the parties agree that each may be represented by a legal practitioner of its choice.

## 18. **GST**

### (a) **GST Definitions**

For the purpose of this clause:

"GST" means GST within the meaning of the GST Act.

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.

**(b) Amounts otherwise payable do not include GST**

Except where express provision is made to the contrary, and subject to this clause, the *consideration* payable by any party under this Lease represents the *value* of any *taxable supply* for which payment is to be made.

**(c) Liability to pay any GST**

Subject to Sub-clause (e), if a party makes a *taxable supply* in consideration with this Lease for a *consideration*, which, under Sub-clause (b) or Sub-clause (d), represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

**(d) Reimbursements**

If this Lease requires the Lessee to pay, reimburse or contribute to an amount paid or payable by the Lessor in respect of an *acquisition* from a third party for which the Lessor is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the Lessee will be the *value* of the *acquisition* by the Lessor plus, if the Lessor's recovery from the Lessee is a *taxable supply*, any GST payable under Sub-clause (c).

**(e) Tax Invoice**

A party's right to payment under Sub-clause (c) is subject to a valid *tax invoice* being delivered to the party liable to pay for the *taxable supply*.

## SCHEDULE

- |        |   |  |
|--------|---|--|
| Item 1 | Lessor:<br>(Clause 1)                         | <b>KINASH PTY LTD – A.C.N. 005 800 617</b><br><b>As Trustee for the K.C. &amp; T.L. Murray</b><br><b>Superannuation Fund</b><br>of 55 Williams Parade, Bairnsdale 3875                                       |
| Item 2 | Lessee:<br>(Clause 1)                         | <b>K.C. &amp; T.L. MURRAY PTY LTD – A.C.N. 065 031 389</b><br>of 55 Williams Parade, Bairnsdale 3875   |
| Item 3 | Guarantor:<br>(Clause 1)                      | Not applicable.  |
| Item 4 | Premises:<br>(Clause 1)                       | <b>13 ROVAN PLACE, BAIRNSDALE 3875</b><br>and being more particularly described as Lot 3 on Plan of<br>Subdivision PS631898A and being the land contained in<br>Certificate of Title Volume 11204 Folio 091. |
| Item 5 | Lessor's Fixtures<br>& Fittings<br>(Clause 1) |  |
| Item 6 | Rent:<br>(Clause 1)                           | \$20,500.00 per annum plus GST   |
| Item 7 | Lessee's Fixtures<br>& Fittings<br>(Clause 1) |  |

Item 8	Term: (Clause 1)	Five (5) years commencing on the 1 <sup>st</sup> day of July 2011 and ending on the 30 <sup>th</sup> day of June 2016
Item 9	Rent Payable: (Clause 2.1)	Calendar monthly in advance by instalments of \$1,708.33 plus \$170.83 GST, total \$1,879.16. The Lessee agrees to pay the rent to the Lessor by any reasonable method nominated in writing by the Lessor to the Lessee including but without limitation, to the Lessor at a nominated address, or to a third party, or by deposit to a bank account nominated by the Lessor, or by direct debit authority or such other method as is normal and reasonable for payment of rent.
Item 10	Outgoings: (Clause 2.1)	All Municipal, water and sewerage rates, taxes, charges and other rates levied against the property, Insurance, Essential Safety Measures Audit Report, all consumption charges for electricity, telephone, water and the like.
Item 11	Lessor's Insurance: (Clause 2.3.1)	<b>Risks insured</b>  (1) Fire, flood, lightning, storm and tempest, explosion, riots and civil commotion, strikes, malicious damage, earthquake, impact by vehicles, impact by aircraft and articles dropped therefrom, internal flood water and such other risks as the Lessor may deem reasonably necessary and prudent from time to time.  (2) Breakage of glass.
Item 12	Public Risk Insurance: (Clause 2.3.2)	\$10,000,000.00

- Item 13 Interest Rate:  
(Clause 2.1.8) 14% per annum
- Item 14 Permitted Use:  
(Clause 2.2.1) Storage
- Item 15 Rent Review:  
(Clause 11)
- (a) Rent for the first year of each option term shall be determined by application of Clause 11.1(b).
  - (b) Rent payable for the second and subsequent years of each term of the lease shall be determined as follows:  
  
A = (B x C) + C where:
    - (i) A is the new rental payable.
    - (ii) B is the percentage change in the Consumer Price Index (C.P.I.) over the 12 month period preceding the date of review.
    - (iii) C is the annual rental payable in the immediately preceding 12 month period
- and it is hereby acknowledged that in relation to the determination of a percentage increase in the C.P.I. over any 12 month period as referred to herein should no C.P.I. figure be published or be available at the time of any review then at the option of the Lessor the latest C.P.I. figure available at such time of review shall be used in substitution therefore with the Lessor reserving the right to adjust any differences in the rental when the precise C.P.I. figure becomes available and provided further that rent shall following any such review be at least equal to the rent payable for the previous 12 month period. The C.P.I. referred to is the C.P.I. figures as published by the Australian Bureau of Statistics as the All Groups Melbourne Consumer Price Index.
- Item 16 Further Term(s):  
(Clause 12) Two (2) further terms of five (5) years.

Item 17	Last Date for Exercise Option: (Clause 12)	The 31 <sup>st</sup> day of March 2016
Item 18	Security Deposit: (Clause 13.1)	Nil
Item 19	Additional Provisions (Clause 15)	Nil
Item 20	Dispute Resolution: (Clause 17)	The mediation procedure applies to this Lease.