

DATED THIS 25<sup>th</sup> DAY OF MARCH 2017

**FR & B Atkins Pty Ltd (ACN 073 828 207), Frank Reuben Atkins and Brenda Atkins**  
("the Lessor")

AND

**WA Panel Works Pty Ltd (ACN 615 963 534)**  
("the Lessee")

AND

**Alfredo Lombardi**  
("the Guarantor")

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**LEASE OF**

**21 Wandeara Crescent, Mundaring;  
23 Wandeara Crescent, Mundaring; and  
1 Burra Street, Mundaring**

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THIS LEASE is made the                      day of                      Two thousand and seventeen  
 BETWEEN

The Lessor described in Item 1 in the Reference Schedule (called "Lessor") of the first part

The Lessee described in Item 2 in the Reference Schedule (called "Lessee") of the second part

The Guarantor described in Item 3 in the Reference Schedule (called "Guarantor") of the third part.

## **PART 1 — DEFINITIONS AND INTERPRETATION**

### **1 Definitions**

In this Lease the following expressions have the following meanings:

- (a) **"Building"** means the building on the Leased Premises, including:
  - (i) the Land on which the building is erected;
  - (ii) land, buildings and structures owned or controlled by the Lessor in conjunction with the Building, which is or may in the future be erected or altered; and
  - (iii) Lessor's Fixtures, and the Lessor's chattels, plant, equipment, property and amenities.
- (b) **"Business day"** means any day which is not Saturday, Sunday or a public holiday.
- (c) **"Insolvency Event"** means any of the following:
  - (i) judgment is obtained by any person in any court against the Lessee and remains unsatisfied for a period exceeding fourteen (14) days;
  - (ii) the Lessee, if a corporation:
    - (A) enters into liquidation or provisional liquidation;
    - (B) has a receiver, or receiver and manager, or other controller of the corporation's property, appointed; or
  - (iii) the Lessee, without the Lessor's consent, leaves the Leased Premises, unoccupied, or discontinues carrying on business at the Leased Premises, for a period exceeding fourteen (14) days, except during refurbishment of the Leased Premises or annual holidays.
- (d) **"Land"** means the land described in Item 4 of the reference Schedule to this Lease.
- (e) **"Latent Defects"**, with reference to the Leased Premises or the Building, means any defects which:
  - (i) are attributable to defective:
    - (A) preparation or remediation of the site on which the Building is erected;
    - (B) supervision of the construction or any installation;

- (C) design;
  - (D) workmanship; or
  - (E) materials;
- (ii) occurred when the Building was erected or is substantially extended or altered;
  - (iii) are not reasonably apparent to a competent professional consultant on a visual inspection of the property; and
  - (iv) are not expressly disclosed by the Lessor to the Lessee before entry into this Lease.
- (f) **"Lease"** means this document and includes the schedules and annexures to this Lease.
- (g) **"Leased Premises"** means:
- (i) the Land described in Item 4 in the Reference Schedule together with all the buildings and improvements on the Land and includes, with reference to those buildings;
    - (A) the internal surfaces of external walls and of internal structural walls of the buildings;
    - (B) the internal surfaces of the ceiling and of concrete or other floors;
    - (C) the internal surfaces of glass contained in external windows;
    - (D) all internal partitions, divisions, windows and window frames, doors and door frames;
    - (E) the external surfaces and finishes on walls, floors, ceilings, partitions, doors and windows, including paint, wallpaper and other materials or substances;
  - (ii) the Lessor's Fixtures and any chattels provided by the Lessor for the Lessee within the Leased Premises at any time during the lease term, including those listed in Item 5 in the Reference Schedule; and
  - (iii) pipes and connections to water, sewerage, electricity, gas, telecommunications, air conditioning and other services and supplies, situated within above or under the Leased Premises which connect those services to the Leased Premises.
- (h) **"Lessee"** means the person or persons described in Item 2 of the Reference Schedule and includes:
- (i) when an individual, the Lessee's legal personal representatives;
  - (ii) when several individuals, the Lessees jointly and their respective legal personal representatives;
  - (iii) the Lessee's assigns; and
  - (iv) when a company or corporation, its successors and assigns.



- (i) **"Lessor"** means the person or persons described in Item 1 of the Reference Schedule and includes:
  - (i) when an individual, the Lessor's legal personal representatives;
  - (ii) when several individuals, the Lessors jointly and their respective legal personal representatives;
  - (iii) the Lessor's assigns; and
  - (iv) when a company or corporation, its successors and assigns.
- (j) **"Lessor's Fixtures"** means all the plant, equipment and chattels which have been or become permanently or securely affixed to the Leased Premises and are the Lessor's property, including the items listed as fixtures in Item 5 in the Reference Schedule.
- (k) **"Operating Expenses"** means the expenses of the Lessor in operating, repairing or maintaining the Leased Premises and as set out more particularly in clause 11 of this Lease.
- (l) **"Reference Schedule"** means the Reference Schedule in this Lease.
- (m) **"Security Interest"** has the same meaning as defined in Section 12 of the *Personal Property Securities Act 2009 (Cth)*.
- (n) **"Services"** means electricity, gas, water, sewerage, telephone, telecommunication, and any other services provided or available to the Building by public or local or statutory authorities and the pipes, wires, ducting and other means of providing those services to the Building.
- (o) **"Structural repairs"** means structural repairs to the Building, including but not limited to, the foundations, floors, walls and load bearing columns.

## 2 Interpretation

### (1) Terms

- (a) Words expressed in the singular include the plural and vice versa.
- (b) Words expressed in one gender include the other genders, as is appropriate in the context.
- (c) The reference to "person" includes a corporation.

### (2) Statutes

References to statutes, regulations, ordinances and by-laws when contained in this Lease include amendments, re-enactments or consolidations of any of them.

### (3) Covenants implied by statute

Covenants and powers implied by statute are excluded from this Lease, unless any such covenant or power cannot be excluded by force of statute or is expressly incorporated in this Lease.

**(4) Joint and several liability**

- (a) In the event of there being two or more Lessors or two or more Lessees under this Lease (including whilst the Lease or the reversion is held by legal personal representatives, successors or assigns) each of them is jointly and severally liable to perform covenants and obligations under this Lease.
- (b) When there are two or more Lessors or Lessees, any conduct under or in respect of this Lease, including the exercise of any entitlement or taking any action under this Lease or a provision of this Lease, shall be undertaken by all of the Lessors or all of the Lessees jointly, unless this Lease expressly provides otherwise.

**(5) Severance**

If any provision contained in this Lease is or becomes legally ineffective, under the general law or by force of legislation, the ineffective provision shall be severed from this Lease which otherwise continues to be valid and operative.

**(6) Governing law**

This Lease is governed and construed in accordance with the law of the State in Item 6 in the Reference Schedule.

**(7) Lease comprises entire agreement**

It is agreed that this Lease contains the whole of the agreement between the Lessor and the Lessee relating to the Leased Premises.

**PART 2 — THE SUBJECT MATTER AND TERM OF THIS LEASE****3 Rights and entitlements granted to Lessee****(1) The Lessor grants to the Lessee for the duration of this Lease**

- (a) exclusive possession of the Leased Premises; and
- (b) use and enjoyment of the Lessor's Fixtures and the chattels listed in Item 5 of the Reference Schedule;

**4 The term of this Lease**

The Lessor leases the Leased Premises to the Lessee for the term specified in Item 8 in the Reference Schedule.

**5 Holding over after expiry of Lease**

After the expiry of the term of this Lease, when the Lessee remains in occupation of the Leased Premises with the consent of the Lessor this Lease continues as a monthly tenancy:

- (a) commencing on the day immediately following the last day of the term of this Lease;
- (b) the rent being payable monthly in advance, comprising the rent payable immediately before the end of this Lease and the Lessee's contributions to Operating Expenses, calculated and payable from time to time in accordance with this Lease or as agreed between the parties;
- (c) on the terms contained in this Lease, except those terms which are inapplicable to a monthly tenancy; and

- (d) the tenancy being terminable by either party on one month's written notice expiring at any time.

## **6 Option for renewal**

### **(1) Offer of renewal**

If a term of renewal is specified in Item 9 of the Reference Schedule, the Lessor offers a renewal of this Lease to the Lessee on the terms specified in this clause which the Lessee should accept strictly in accordance with the provisions contained in this clause, otherwise this offer shall lapse.

### **(2) Binding Lessor's successors and assigns**

This offer and the option bind the Lessor and the Lessor's successors and assigns being the owners for the time being of the Leased Premises.

### **(3) Parties who may renew**

This offer may be accepted by:

- (a) the Lessee or by the Lessee's successors and assigns being the lessee for the time being of the Leased Premises; and
- (b) in the event of there being two or more persons holding as lessees as joint tenants, upon the death of any of them by their survivors.

### **(4) Conditions for exercise of option**

The Lessee may only accept this offer and exercise the option if:

- (a) there is no subsisting breach of any lease covenants by the Lessee at the date of serving notice of exercise of this option and also at the date of expiry of this Lease; and
- (b) the Lessee shall have served on the Lessor notice of exercise of this option during a period before the date of expiry of the term of this Lease, as is specified in Item 9 in the Reference Schedule.

### **(5) Guarantee for Lease for option term**

- (a) If this Lease is guaranteed by the Guarantor, then the renewal of this Lease is conditional on the Guarantor under this Lease entering into a guarantee in the form contained in Part 4 of this Lease in respect of the option term.
- (b) If the Guarantor or any of the Guarantors, under this Lease is unable or unwilling to enter into a guarantee in respect of the option term, the Lessee may provide a guarantee by another person who is acceptable to the Lessor as a new guarantor.
- (c) An acceptable new guarantor is a person who is respectable and is not less sufficiently financial than the Guarantor.
- (d) The Lessor will consider the Lessee's request to provide an acceptable new guarantor for the renewal of this Lease promptly and will not unreasonably refuse, withhold or delay its consent to the substitution of that person as guarantor.

- (e) If the Lessee is unable to provide a guarantee in respect of the Lease for the option term either by the Guarantor or by an acceptable new guarantor, the Lessee will be deemed to have failed to effectively exercise the option for renewal of this Lease and the Lessee is not entitled to a renewal of this Lease for the option term.

**(6) Conditions of renewal**

- (a) The renewal which the Lessee may accept under this clause is for the renewal of this Lease for the further term of years specified in Item 9 in the Reference Schedule from the day after the date of expiry of the term of this Lease, containing identical covenants to the covenants of this Lease (except this clause):
  - (i) at a rent which shall be determined in accordance with clause 6(6)(b) but which is not less than the rent payable under this Lease immediately before the expiration of the term of this Lease; and
  - (ii) containing such further options for renewal as are specified in Item 9 in the Reference Schedule.
- (b) Within the number of days indicated in Item 9 in the Reference Schedule after the Lessee shall have served notice of exercise of this option, the Lessor shall give written notice to the Lessee of the rent determined on the basis specified in Item 11 of the Reference Schedule for the option term.
- (c) Where the basis for the determination of the rent for the option term is the current market rent:
  - (i) The Lessee is entitled to accept the Lessor's assessment of the current market rent for the option term by written notice served on the Lessor within the number of days indicated in Item 9 in the Reference Schedule after the service of the Lessor's notice under clause 6(6)(b) and that amount shall be the rent for the option term.
  - (ii) If the Lessee does not accept the Lessor's assessment of the current market rent, then the rent for the option term shall be determined in accordance with clause 6(6)(c)(iv).
  - (iii) If the parties agree on the current market rent after it shall have been referred for determination in accordance with clause 6(6)(c)(iv), that shall be the rent for the option term and the rent determination shall be concluded.
  - (iv) If the parties fail to agree on the current market rent, the rent for the option term shall be determined in accordance with the procedure and on the terms specified in clause 10(6)-(10).
- (d) Where the basis for the determination of the rent for the option term is CPI Review, then the rent for the option term shall be determined in accordance with the procedure and on the terms specified in clause 10(13).

**(7) Payment of rent and Operating Expenses whilst rent is determined**

- (a) After exercise of this option, until the rent for the option term is determined, the Lessee will continue to pay the rent and Operating Expenses as and when payable under this Lease at the rate at which they are payable during the last year of the lease term.

- (b) Within the number of days indicated in Item 9 in the Reference Schedule after the rent for the option term is determined, the parties will adjust and pay any shortfall or excess in the rent paid from the commencement of the option term up to the last day for rent payment before the rent determination.

**(8) Execution of lease for option term**

- (a) After the Lessee has effectively exercised this option and the rent for the option term has been determined, the Lessor's solicitor shall submit for execution a lease or a variation or extension of this Lease incorporating the lease conditions for the option term, which shall be executed promptly by the Lessor and by the Lessee.
- (b) The Lessee shall pay the legal costs and disbursements in accordance with clause 13(2).

**(9) Lessee's liability under renewed Lease**

If this option is exercised by an assignee of this Lease, the Lessee is not liable under this Lease for the period after the expiry of the term of this Lease, during the renewal, extension or variation of this Lease, following the exercise of an option for renewal.

**PART 3 — LESSEE'S FINANCIAL OBLIGATIONS**

**7 Rent payments**

The Lessee covenants to pay rent as specified in Item 10 in the Reference Schedule:

- (a) by an initial payment in advance on the date for commencement of rent to the end of that calendar month and then by calendar monthly payments in advance on the first day of each month, each payment being one-twelfth of the annual rent then due as fixed or varied under this Lease;
- (b) without demand by the Lessor;
- (c) by cash or cheque, or if required by the Lessor by banker's order on the Lessee's bank, or by depositing or transferring the payments into an account as directed by the Lessor; and
- (d) to or as directed by, the Lessor, which may be altered by the Lessor by written notice served on the Lessee.

**8 Abatement of rent and financial obligations**

**(1) Abatement of Lessee's financial obligations**

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

**(2) Abating events**

This clause applies in case of fire, lightning, storm, flood, earthquake, explosion, malicious damage, war damage, and any other event beyond the Lessee's control.

**(3) Lessee's financial obligations**

Abatement extends to all the Lessee's financial obligations to the Lessor under this Lease, including rent, rates, outgoings and Operating Expenses.

**(4) Period of abatement**

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

**(5) Effect of abatement**

During and for the period of abatement the Lessee's liability to pay the whole or proportion of the financial obligations under this Lease, as agreed or determined under clause 8(7), calculated on a daily basis, ceases and abates.

**(6) Exception to abatement**

The Lessee is not entitled to an abatement of the Lessee's financial obligations under this clause if

- (a) the event resulting in the damage, destruction or inaccessibility is caused or contributed to by the act or negligent omission of the Lessee or the Lessee's employees, contractors, agents or invitees; or
- (b) the Lessor fails to recover the benefit of any insurance for loss or damage to the Building because of any act or omission of the Lessee or the Lessee's employees.

**(7) Determination of abatement**

- (a) The parties shall endeavour to agree on the commencement and period of abatement of the Lessee's financial obligations, and if the Lessee is able to have partial use and enjoyment of the Leased Premises, the proportion of the abatement having regard to the nature and extent of the damage to and use of the premises.
- (b) If the parties have any dispute regarding the Lessee's entitlement to an abatement, its period or amount, the dispute shall be determined by a loss assessor:
  - (i) who is then a member of the Insurance Council of Australia Ltd and is experienced in assessing premises of the nature of the Leased Premises and is nominated by the President for the time being or senior officer of that Council on the application of either party;
  - (ii) acting as an expert;
  - (iii) who is entitled to accept written submissions and expert reports from either party;
  - (iv) whose costs shall be borne equally by the parties; and
  - (v) whose decision is final and binding on the parties.
- (c) If the loss assessor nominated under clause 8(7)(b) fails to proceed or to determine the dispute, either party may seek the nomination of another loss assessor in accordance with clause 8(7)(b).

## 9 Goods and services tax (GST)

### (1) Interpretation

In this clause:

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

### (2) Rent and other amounts exclusive of GST

It is agreed that rent and all other amounts agreed to be paid by the Lessee to the Lessor, being the consideration for the supply expressed in this Lease, are exclusive of GST.

### (3) Lessee's obligation to reimburse Lessor

In respect of any liability of the Lessor for GST under this Lease, and the renewal or extension of this Lease including for rent, rates, Operating Expenses, or any consideration for any other taxable supply the Lessee covenants to pay to the Lessor, at the same time as any payment is made involving the Lessor in GST liability, the additional amount of GST, together with the payment to which it relates.

### (4) Lessor's input tax credits

- (a) The Lessee's liability under clause 9(3) is to reimburse the full amount of GST, disregarding and excluding the Lessor's entitlement to input tax credits or other credits or reimbursements for GST.
- (b) Notwithstanding clause 9(4)(a) if the Lessor is entitled to an input tax credit in relation to any amount recoverable from the Lessee under clause 9(3), the amount payable by the Lessee shall be reduced by the amount of the input tax credit which the Lessor has received or claims and is entitled to receive.

### (5) Tax invoice

In respect of each payment by the Lessee under clause 9(3), the Lessor agrees to deliver to the Lessee, as required under the GST Act, tax invoices in a form which complies with the GST Act and the regulations, to enable the Lessee to claim input tax credits in respect of the taxable supply.

## 10 Rent review

### (1) Review date

The annual rent shall be reviewed at the dates specified in Item 11 in the Reference Schedule. Notwithstanding anything to the contrary expressed or implied in this Lease, the rent payable after review, whether specified or agreed, will not be less than the rent payable before review.

### (2) Market Review Date

The provisions of clauses 10(3) to 10(11) inclusive apply on and with respect to each rent review specified as a Market Review Date (each called "Market Review Date").

### (3) Lessor's assessment

The Lessor shall, at a date not more than the number of days in Item 11 in the Reference Schedule prior to a Market Review Date, serve on the Lessee written notice of intention to increase the yearly rent from the Market Review Date and of the Lessor's reasonable

assessment of the Current Market Rent of the Leased Premises at the Market Review Date.

**(4) Lessee's entitlement to have rent reviewed**

If the Lessor has not served a written notice on the Lessee in accordance with clause 10(3) before a Market Review Date, the Lessee may serve on the Lessor written notice of the Lessee's intention to have the rent reviewed and requiring the Lessor to serve on the Lessee within twenty-eight (28) days after service of the Lessee's notice the Lessor's reasonable assessment of the Current Market Rent of the Leased Premises at the Market Review Date.

**(5) Acceptance of Lessor's assessment**

The Lessee may accept the Lessor's assessment of the Current Market Rent and in that event the assessed amount shall be the rent from the Market Review Date.

**(6) Determination of current market rent**

If the Lessee fails or refuses to accept the Lessor's assessment of the Current Market Rent within twenty-eight (28) days after service of the assessment or if the Lessor fails to provide an assessment or if they are unable to agree within that period on some other amount as the Current Market Rent at the Market Review Date, the Current Market Rent shall be determined in accordance with this clause.

**(7) Meaning of current market rent**

"Current Market Rent" means the best annual rent that can be reasonably obtained for the Leased Premises, which is calculated:

- (a) on the basis that the Leased Premises is available for leasing with vacant possession by a willing lessor to a willing lessee for a term equal to the whole term of this Lease and any option for renewal;
- (b) having regard to the permitted use of the Leased Premises;
- (c) on the basis of the terms and conditions contained in this Lease (other than the amount of rent reserved in this Lease, but including the provisions for rent review);
- (d) on the basis that:
  - (i) the Leased Premises are fit for immediate occupation and use by the Lessee; and
  - (ii) the Lessee's lease covenants and obligations shall have been fully performed at the Market Review Date;
- (e) without taking into account:
  - (i) any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted or required to remove at the termination of this Lease, except for permanent structural improvements to the Leased Premises installed at the Lessee's expense which the Lessee is not permitted to remove at the termination of this Lease, which shall be taken into account;
  - (ii) any goodwill attributable to the Leased Premises through the Lessee's business activity;
  - (iii) that the Lessee has been in occupation of the Leased Premises;



- (iv) any relocation costs which would be incurred by the Lessee when moving to other premises;
  - (v) any lease incentive, concession or inducement paid, given or provided by the Lessor to or on behalf of the Lessee in relation to the grant of this Lease; and
- (f) having regard to the rental values of comparable premises.

**(8) Appointment of nominee**

- (a) Both parties shall jointly nominate a person licensed under the *Land Valuers Licensing Act 1978* or any substituted legislation who has practised as a valuer for not less than five (5) years and is licensed to practise as a valuer of the kind of premises similar to the Leased Premises (called "Nominee") to determine the Current Market Rent at the Market Review Date;
- (b) If both parties are unable to agree on the Nominee, either party may apply to the President or principal officer for the time being of the West Australian Division of the Australian Property Institute (or if it does not exist an association with substantially similar objects) ("the Nominator") to nominate a person who is a licensed valuer and:
  - (i) has practised as a valuer for not less than five years;
  - (ii) is a member of the West Australian Division of the Australian Property Institute; and
  - (iii) is licensed to practise as a valuer of the kind of premises whose rent review is required under this Lease to determine the Current Market Rent at the Review Date.

**(9) Conduct of rent review**

- (a) The Nominee shall act as an expert and not as an arbitrator.
- (b) Each party may submit to the Nominee written valuations and submissions within twenty-one (21) days after the Nominee has accepted the nomination to act, but may not make oral submissions or adduce any evidence.
- (c) At the time of making any written submissions or forwarding to the Nominee any written valuation, that party shall forward to the other party a copy of all written material submitted to the Nominee.
- (d) Within thirty-five (35) days after the Nominee has accepted the nomination to act, each party may forward to the Nominee written comments on the other party's written valuations and submissions.
- (e) The Nominee shall take into consideration any written submissions received within those periods, but is not fettered by them and shall determine the Current Market Rent in accordance with his own judgment and clause 10(7).
- (f) The Nominee's determination is final and is binding on the parties.
- (g) The Nominee shall conclude the determination and shall inform the parties of the determination within the number of days in Item 11 in the Reference Schedule after having accepted the nomination to act and shall provide detailed written reasons for the determination.

**(10) Costs of rent determination**

The parties shall bear equally the total costs of the rent determination at each Market Review Date. Each party shall bear its own costs of legal representation, the fees of any experts and for making valuations for the purpose of written submissions.

**(11) Late rent reviews**

- (a) Except as provided in clause 10(11)(b), the Current Market Rent may be determined from a Market Review Date even if the review is instituted after that Market Review Date.
- (b) In the event of the parties having failed to institute a rent review to determine the rent from a Market Review Date in any of the situations specified in this paragraph, then the existing rent shall continue to be the rent for that review period, and thereafter neither party may have the Current Market Rent determined for that period:
  - (i) after a later rent review date has arrived; and
  - (ii) after the expiry of the lease term, in respect of any Market Review Date within that term.

**(12) Rent payments**

If the Current Market Rent from a Market Review Date shall not be determined until after that Market Review Date:

- (a) The Lessee shall continue to pay the current instalments of rent due until the new rent is determined.
- (b) When the rent is determined, the Lessee shall pay the additional amount (if any) due for rent from the Market Review Date to the date when the next monthly instalment of rent is payable on the rent day next succeeding the expiration of thirty (30) days after the date when the Lessee is informed of the rent determination.

**(13) CPI Adjustments**

- (a) On each date specified in Item 11 of the Reference Schedule as a CPI Review date ("CPI Review Date"), the annual rent shall be reviewed and shall be calculated by multiplying the annual rent payable immediately prior to the relevant CPI Review Date ("base period") by the fraction of C/P. C refers to the Consumer Price Index for Perth (All Groups) ("Index") published by the Australian Bureau of Statistics ("Bureau") in respect of the quarter immediately preceding the CPI Review Date and P is the Consumer Price Index for Perth (All Groups) published by the Bureau in respect of the quarter immediately preceding the previous rent review date.
- (b) The Lessor shall notify the Lessee in writing of the Lessor's calculation of increase in rent claimed since the CPI Review Date and the calculation of the new instalment of rent.
- (c) The annual rent calculated from any CPI Review Date shall be payable by calendar monthly instalments calculated to the nearest cent by dividing the annual rent by twelve and references in this Lease to monthly instalments of rent shall be varied accordingly.
- (d) The Lessee shall pay the increased rent from the last review date within fourteen (14) days after service of the Lessor's notice.

- (e) When the rent is not determined until after that CPI Review Date the Lessee shall continue to pay the current instalments of rent due until the new rent is determined.
- (f) When the rent is determined, the Lessee shall pay the additional amount (if any) due for rent from the CPI Review Date to the date when the next monthly instalment of rent is payable on the rent day next succeeding the expiration of thirty (30) days after the date when the Lessee is informed of the rent determination.

#### **(14) Fixed Increase**

- (a) On each date specified in Item 11 of the Reference Schedule as a Fixed Increase review date, the rent payable immediately before the Fixed Increase review date shall be increased by the percentage specified in Item 11 of the Reference Schedule.
- (b) The Lessee shall pay the increased rent within fourteen (14) days of the Fixed Increase review date and no notification of the increase will be required from the Lessor.

### **11 Operating Expenses**

#### **(1) Lessee's Obligation**

- (a) The Lessee shall pay to the Lessor the Lessee's percentage of Operating Expenses specified in Item 12 in the Reference Schedule for the term of this Lease.
- (b) The amount of Operating Expenses shall be assessed by the Lessor, for each Annual Period ending 30<sup>th</sup> June (called "Annual Period"), on the basis of the previous Annual Period's Operating Expenses and any reasonably anticipated changes.
- (c) The proportion attributable to part of an Annual Period shall be calculated on the basis of the Lessor's assessment and is payable by monthly instalments.

#### **(2) Operating Expenses**

In this Lease "Operating Expenses" means the expenses of the Lessor in operating, repairing or maintaining the Leased Premises and more particularly the following:

##### **(a) Rates and Taxes**

All rates, taxes, charges and impositions, currently and in the future, payable to any Federal, State, local government, statutory or public authority or corporation, in respect of the Building or the Leased Premises, including:

- (i) municipal, local and other rates and charges payable to a local authority;
- (ii) rates and charges for the supply, reticulation or discharge of water (including excess water), sewerage, drainage and removal of waste;
- (iii) land tax or any similar tax, at the rate payable if the land on which the Leased Premises is situated was the only land owned by the Lessor; and

but not including any income tax, capital gains tax or similar tax payable by the Lessor ("Rates and Taxes").

**(b) Insurance**

Insurance costs and charges paid by the Lessor in respect of risks to or in connection with the Building and its use, control and management, which the Lessor reasonably considers necessary to cover by insurance.

**(c) Management and administration**

The Lessor's reasonable costs of management and administration of the Leased Premises including:

- (i) the costs and expenses of operating and cleaning parking areas of the Leased Premises;
- (ii) providing for the security of the Building, cleaning and caretaking for the Building;
- (iii) the supply of services, facilities and amenities for the Leased Premises, including electricity, gas, power, fuel, oil, garbage compacting and removal, waste disposal, telephone, intercommunication system, public address system, background music, supply of washroom and toilet requisites;
- (iv) safety and environmental audits of the Leased Premises; and
- (v) the costs of independent contractors and the costs of employing staff to perform any of the functions in this clause and the costs of leasing or hiring equipment for any of those functions.

**(d) Maintenance and repair**

Without limiting the maintenance and repair obligations of the Lessee as set out in Part 6 of this Lease, costs and expenses relating to:

- (i) painting, repair, renewal and maintenance of the Leased Premises;
- (ii) cleaning, maintenance, repair and replacement of carpets and floor coverings;
- (iii) maintaining, repairing and replacing notice boards and signs;
- (iv) detection, control and eradication of insects and pests;
- (v) operating, maintaining, servicing and repairing plant and equipment, services and facilities provided by the Lessor, including door hinges, latches, locks, window fixtures and fittings, sliding door rollers and mechanisms, roller door motors and mechanisms, plumbing, electrical and other services, air conditioning, Generator, ventilating, heating or cooling the Building (or any part of the Building), elevators, fire detection prevention and protection equipment and the costs of electricity and power to operate those services and facilities, and fees paid for service contracts and to specialist contractors;
- (vi) licence, registration, inspection and other fees paid by the Lessor in respect of plant, equipment, Services and facilities in the Building;
- (vii) Landscaping including the replacement of plants and the maintenance of the reticulation, if any; and
- (viii) Where a gantry crane(s) and hoist(s) are included in the Leased Premises, maintaining, replacing parts and repairs in compliance with Occupational

Health and Safety Regulations applicable in Western Australia and manufacturers specifications including periodic major inspections to keep the crane in full working order and compliant with all Worksafe and other relevant rules, regulations and recommendations.

**(e) Sinking fund**

The Lessor is not entitled to require the Lessee to contribute to any sinking fund created by the Lessor for repairs, replacements or other expenditure, as part of the Lessee's contributions to Operating Expenses under this Lease.

**(f) Exclusions from Operating Expenses**

The following are excluded from constituting Operating Expenses and the Lessee is not required to contribute to:

- (i) capital expenditure by the Lessor on plant, machinery, equipment or structural repairs to the Building;
- (ii) any liability or expenditure payable by the Lessee under some other provisions of this Lease;
- (iii) any liability or expenditure payable by or recoverable from any other person;
- (iv) any liability or expenditure recoverable by the Lessor through insurance, with the exception of any insurance excesses payable by the Lessee;
- (v) costs, expenses and interest in connection with money borrowed by the Lessor; and
- (vi) any other capital expenditure or deduction which should not be considered an Operating Expense of the Building under normal accounting policies or practice.

**(3) Payment of Lessee's contribution**

- (a) The Lessee's contributions to the Operating Expenses may be invoiced on a per item basis or included as part of a regular monthly payment at the Lessor's discretion.
- (b) Where the Lessee's contributions to Operating Expenses are payable by regular monthly payments, then:
  - (i) At least thirty (30) days before the commencement of an Annual Period the Lessor shall provide to the Lessee an itemised estimate of the Operating Expenses payable during or attributable to the next Annual Period, and calculations of the Lessee's percentage and the monthly instalments payable by the Lessee.
  - (ii) When during an Annual Period some additional item of operating expense is incurred, the Lessor may reassess the Lessee's contribution and require the Lessee to pay it by monthly instalments during that Annual Period.
  - (iii) The Lessee's contributions to Operating Expenses is payable monthly together with the rent.
  - (iv) Within ninety (90) days after the end of an Annual Period the Lessor shall provide to the Lessee an itemised statement of the total Operating Expenses for that Annual Period.

- (v) Within ninety (90) days after the end of an Annual Period, the parties shall adjust and pay any balance due from the Lessee or overpayment for contributions paid to the Lessor for the previous Annual Period.
  - (vi) The Lessee shall be entitled, by itself or its agent, to inspect the accounts, assessments and other evidence of the Operating Expenses for an Annual Period, at the premises of the Lessor or of the Lessor's accountant, at a convenient time arranged for the inspection.
- (c) Where the Lessee's contributions to Operating Expenses are invoiced on a per item basis, then the contribution is to be paid by the earlier of the due date specified on the invoice or within fourteen (14) days of service of the invoice on the Lessee by the Lessor.
- (d) The Lessor may require the Lessee to pay the full amount of the Lessee's portion of the annual Rates and Taxes levied on the Building after the Lessor has been notified by the relevant body that it is payable. In such an event:
- (i) the Lessee must pay the stipulated amount by the Lessor on the next day on which the Rent is due, whether or not the Rates or Taxes are payable by the Lessor by that date;
  - (ii) if the year for which any annual Rates or Taxes are payable does not coincide with a year of the Lease, the amount the Lessee is to pay in the first year of the Lease will be adjusted proportionally. In the last year of the Lease, the Lessee must pay the full amount for the whole year, but the amount paid will be adjusted at the end of the Lease and the Lessor will refund the overpayment to the Lessee
- (e) The Lessee's liability to pay for Operating Expenses during the Lease term shall not be extinguished merely because the Lease term has expired or has been terminated, subject to any other express agreement between the parties.

## 12 Services

### (1) Lessee's liability for services and utilities

The Lessee will pay throughout this Lease for any electricity, power, fuel, gas, oil, water, telephone, garbage removal, waste disposal, and other services or utilities provided by public local or other authorities or suppliers to the Leased Premises and charged separately in respect of the Leased Premises, to the supplier of the service or utility.

### (2) Installation of meters

The Lessee will, if required by the Lessor or by an authority supplying any such service or utility, permit the installation of meters required to measure the quantity of the service supplied to the Leased Premises.

### (3) Cost of establishment of Services

The Lessee shall pay for all levies charges and fees imposed by a public, local or other authority or supplier associated with the delivery, establishment, connection or installation of any services or utilities to the Leased Premises including but not limited to any underground electricity connection.

## 13 Costs

### (1) Costs of preparation of Lease

Each party shall bear its own costs of the preparation and negotiation of this Lease.

**(2) Renewal or extension of Lease**

The costs and disbursements of any renewal or extension of this Lease shall be paid by the parties as is indicated in clause 13(1).

**(3) Consents, transactions and default**

The Lessee agrees to pay the Lessor's costs, charges, and expenses which are incurred reasonably, properly and in good faith, in connection with:

- (a) any breach or default by the Lessee under this Lease; and
- (b) the exercise or attempted exercise by the Lessor of any right, power, privilege, authority or remedy, against the Lessee or against any Guarantor, to enforce the Lessee's obligations under this Lease, or to terminate this Lease for the Lessee's breach or default.

**(4) Costs on an indemnity basis**

The Lessor's legal and professional costs and disbursements under clause 13(3) shall be charged and allowed on an indemnity basis to provide full indemnity to the Lessor for such costs charges and expenses.

**(5) Lessor's internal costs**

The Lessor's costs under clause 13(3) include:

- (a) the Lessor's reasonable administrative costs and expenses of considering any application for consent, of considering and managing any breach or default under this Lease and attendances by the Lessor's officers, employees or agents, including attendances on the Lessor's legal advisers and in court; and
- (b) the fees of professional consultants reasonably and properly incurred by the Lessor.

**(6) Lessee's obligation to pay costs**

- (a) The Lessor is entitled to render to the Lessee an itemised statement of any costs charges and expenses for which the Lessee is liable in accordance with clause 13(3) at any time after they have been incurred. In respect of any such statement, the Lessee shall pay the amount claimed:
  - (i) when the Lessor's consent is provided to the Lessee; and
  - (ii) in any other case, within thirty (30) days after service of the statement on the Lessee.
- (b) The Lessee's liability shall incur interest on the basis specified in clause 15 from the thirty first day after the date of service of the statement until the day of payment, calculated on a daily rate.

**14 Precluding deduction for set-off or counterclaim**

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

## 15 Lessee's liability for interest on overdue payments

### (1) Interest on overdue payments

In the event of the Lessee being in default for a period of more than fourteen (14) days with the payment of rent, rates, Operating Expenses, costs or any other liability to or on behalf of the Lessor under this Lease, the Lessee is liable to pay additional interest to the Lessor in accordance with this clause.

### (2) Computation of interest

Interest is computed:

- (a) from the day immediately following the day on which each liability is due for payment, at a daily rate, until the liability is discharged by payment;
- (b) at the rate of interest indicated in Item 13 in the Reference Schedule calculated as at the date of commencement of the default and applicable until the liability is discharged by payment; and
- (c) in respect of amounts remaining unpaid, the Lessor at its option may capitalise interest calculated up to the end of each calendar month whilst there are outstanding liabilities in accordance with clause 15(1) from the Lessee.

### (3) Recovery of interest

The Lessor may demand the payment of interest and take legal action to recover the amount due at any time after not less than fourteen (14) days notice is given to the Lessee indicating the amount due and its calculation.

## PART 4 — SECURING THE LESSEE'S OBLIGATIONS

### 16 Bank Guarantee

- (a) On signing the Lease, the Lessee must give security against breach of the Lease by giving an unconditional banker's order or bank guarantee drawn to the Lessor in the amount shown in Item 23 of the Reference Schedule which will be called the '**Bank Guarantee**'.
- (b) If the Lessee fails to pay rent or other money payable under the Lease or if the Lessor suffers loss or damage because of any other breach of the Lease by the Lessee, the Lessor may apply the amount payable under the Bank Guarantee towards the arrears of rent or other money, or towards the loss or damage. In doing so, the Lessor does not waive the Lessee's breach and does not waive any other right or remedy arising from the breach.
- (c) If the Lessor does use the amount payable under the Bank Guarantee as described in clause 16(b), the Lessor may notify the Lessee that it has done so. Within fourteen (14) days of the notification date, the Lessee must reinstate, extend or renew the Bank Guarantee for the amount applied.
- (d) At the end of the Lease, if the Lessee is not indebted to, or otherwise liable to the Lessor for breach of the Lease, or if any breach of the Lease has been remedied by the Lessee to the Lessor's satisfaction, the Lessor will consent to the discharge of the Bank Guarantee within fourteen (14) days of the later of the end of the Lease or finalisation of any breach.



## 17 Guarantee

### (1) Entering into Guarantee

In consideration of the Lessor agreeing to grant this Lease to the Lessee at the request of the Guarantor the Guarantor enters into this guarantee (called "Guarantee") in favour of the Lessor on the terms specified in this clause.

### (2) Scope of Guarantee

- (a) The Guarantor agrees to guarantee the payment of rent and the observance and performance of all the Lessee's obligations as specified in this Lease throughout the lease term, including during holding over as periodical tenant after the expiry of the lease term, by the Lessee, its successors and assignees of this Lease.
- (b) This Guarantee covers the whole period whilst the Lessee occupies or is entitled to occupy the Leased Premises under this Lease as the lessee, or whilst holding an equitable interest over the Leased Premises under an agreement for lease or as a periodical tenant.
- (c) This Guarantee extends to claims by the Lessor:
  - (i) for damages for breaches of lease covenants;
  - (ii) for breaches of any essential terms of this Lease;
  - (iii) for repudiation of this Lease;
  - (iv) for the Lessor's loss or damage in the event of the Lessee abandoning or vacating the Leased Premises;
  - (v) in the event of the Lessor electing to re-enter or to terminate this Lease;
  - (vi) for the Lessor's reasonable legal and other expenses of seeking to enforce those obligations against the Lessee and the Guarantor, recovering possession and terminating this Lease, on the basis specified in clause 13; and
  - (vii) for loss or damage consequent on disclaimer of this Lease on the Lessee's insolvency, as if this Lease had not been disclaimed.
- (d) This Guarantee is in favour of the Lessor and its successors and assigns being the owner of the Leased Premises from time to time during the continuance of this Guarantee.

### (3) Liability of several Guarantors

When there is more than one Guarantor under this Lease:

- (a) the term Guarantor in this clause refers to each of the Guarantors and to all of them;
- (b) their obligations as Guarantor are joint and several;
- (c) the Lessor may enforce this Guarantee against all or any of them;
- (d) any notice or demand may be served on all of them by serving any one of them; and
- (e) this Guarantee remains binding on the other Guarantors, even if:

- (i) any Guarantor fails to execute this Lease or to enter into this Guarantee;
- (ii) this Guarantee is not binding on any Guarantor; and
- (iii) the Lessor shall release any Guarantor from liability under this Guarantee.

**(4) Guarantee not discharged**

This Guarantee is not discharged and the Lessor's rights against the Guarantor are not affected by any of the following:

- (a) the granting of any indulgence or extension of time by the Lessor to the Lessee or to the Guarantor;
- (b) the Lessor's neglect or failure to enforce lease covenants against the Lessee or waiver of any breaches or defaults under this Lease;
- (c) the total or partial release of liability of the Lessee or of a Guarantor by the Lessor;
- (d) the entry into any arrangement, composition or compromise relating to this Lease between the Lessor and the Lessee or any other person;
- (e) the variation of any provision of this Lease between the Lessor and the Lessee without the Guarantor's consent but only if they are minor and are not prejudicial to the Guarantor;
- (f) the death or bankruptcy or winding up of the Lessee or the Guarantor;
- (g) the Lessee's liability under this Lease, or this Lease, being or becoming invalid, illegal, or unenforceable, including through any act, omission or legislation; and
- (h) the disclaimer of this Lease following the Lessee's insolvency.

**(5) Lessor's Certificate**

For the purpose of this Guarantee, a certificate or statement signed by or on behalf of the Lessor or the Lessor's solicitor relating to any sum of money claimed by the Lessor to be due from the Lessee under this Lease is prima facie evidence of the amount claimed and the facts therein.

**(6) Payments**

- (a) In respect of any payment made by or on behalf of the Lessee under this Lease which is void or is avoided for any reason, the Guarantor shall remain liable under this Guarantee as if that payment had not been made.
- (b) Until the Lessor's claims against the Lessee and against the Guarantor have been fully satisfied, the Guarantor will hold on trust for the Lessor any money received by the Guarantor under any arrangement, composition, assignment, liquidation or bankruptcy of the Lessee.

**(7) Disclaimer of lease**

In the event of the Lease being terminated by disclaimer by a trustee or liquidator of the Lessee, the Guarantor agrees that upon being required by the Lessor within ninety (90) days after the date of the disclaimer to do so, the Guarantor will enter into a lease of the Leased Premises for a term commencing from the date of the disclaimer to the end of the lease term at the cost of the Guarantor and on the terms and conditions of the Lease but without containing any provision for a guarantee of that lease.

or deemed to be given to the Lessor will prejudice, affect or in any way limit the personal liability of the Lessee on its own account as Lessee under this Lease.

(e) Trust Not to Affect Lease

This Lease is not affected by the fact that the Lessee is the trustee of the Trust or is otherwise a trustee or nominee whether or not disclosed to the Lessor or by any change whatsoever which is made or takes place in the position of the Lessee as such trustee or nominee.

(f) Lessor Not Affected

Nothing contained or implied in this Lease or in any notification given or deemed to be given to the Lessor by any person will:

- (i) oblige or require the Lessor to take notice of any actual, contingent or future interest of any person in or under the Trust or in respect of any beneficiary or otherwise in regard to any trustee or nominee relationship of the Lessee; and
- (ii) prejudice, affect or limit any rights or remedies conferred by law or in equity upon the Lessor against the Lessee or any present or future beneficiary of the Trust or in respect of any beneficiary or any other person referred to in the Trust Deed or any other relevant agreement or claiming any interest under the Trust Deed or other relevant agreement or otherwise in regard to any trustee or nominee relationship including all rights to trace, follow and levy execution upon or against all or any assets;

(g) Lessor's Right of Indemnity

The Lessor may exercise all the rights, powers, authorities and discretions conferred by this Lease or implied by law or in equity upon the Lessor and the Lessor will be entitled to full recourse and resort to an indemnity from time to time held by the Lessee as trustee or nominee in the same manner and to the same extent as if the Lessee were the sole unencumbered legal and beneficial owner of its assets.

(h) Trust Benefit

The Lessee considers that this Lease is being executed and entered into as, and all transactions contemplated by this Lease are or will be entered into as, part of the due and proper administration of the Trust Fund and for the benefit of the beneficiaries of the Trust.

(i) Lessee's Right of Indemnity

The Lessee has a right to be fully indemnified out of the Trust Fund for obligations and liabilities undertaken by the Lessee in its capacity as trustee of the Trust Fund under this Lease and no action has been taken to limit or restrict that right.

(j) No Default

No default has occurred or, having occurred, is subsisting under the Trust Deed.

(k) Vesting Date

No vesting date for the Trust Fund has been determined; and

**(l) No Changes Regarding Trust**

The Lessee warrants that it will not permit (insofar as it is able to do so), without the prior written consent of the Lessor:

- (i) any re-settlement, appointment, appropriation or distribution of capital of the Trust Fund;
- (ii) where the Trust Deed constitutes a unit trust, any issue, transfer or repurchase of units;
- (iii) any retirement or replacement of the Lessee as trustee of the Trust Fund (whether in addition to, or in substitution for, the lessee);
- (iv) any amendment of the Trust Deed;
- (v) any breach of the Trust Deed; or
- (vi) any encumbrance, mortgage or charge whatsoever on any of the assets of the Trust Fund which are encumbered, mortgaged or charged for the benefit of the Lessor.

**21 Lessee's obligation to trade****(1) Requiring lessee to continue trading**

The Lessee covenants to keep the Leased Premises open for business and to conduct the Lessee's business throughout the term of this Lease during the hours in Item 16 in the Reference Schedule, except:

- (a) when the Lessee is prevented from trading in the Leased Premises in circumstances beyond the Lessee's control; and
- (b) when the business is closed for annual holidays.

**(2) Extended hours**

The Lessee may trade in the Leased Premises outside the hours specified in clause 21(1), but only in accordance with any restrictions on trading hours applying generally or specifically to the Leased Premises or to the particular use of the premises.

**(3) Closure of building**

The Building shall remain closed during the hours specified in Item 16 in the Reference Schedule and the Lessee shall not trade at the Leased Premises during any of those hours.

**22 Signs****(1) Sign on exterior of Leased Premises**

The Lessee shall not display or affix any sign, advertisement or notice to the exterior of the Leased Premises or situated within or affixed to the interior of the Leased Premises which is visible from outside the Leased Premises, without the Lessor's prior written consent. Such consent may be withheld at the Lessor's absolute discretion or provided on such conditions as the Lessor requires.

## **PART 5 — USE OF LEASED PREMISES AND BUILDING**

### **18 Use of Leased Premises**

The Lessee will not use or permit the Leased Premises to be used for any other purpose than that stated in Item 14 in the Reference Schedule. The Lessee shall not use the Leased Premises for the sale of goods or services by retail or any other retail business or as a retail shop as defined in the *Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA)*.

#### **(1) Change of use**

The Lessee may apply to the Lessor for consent to a change of use during the continuance of this Lease which the Lessor shall not unreasonably refuse or withhold, if the following conditions precedents are satisfied:

- (a) the Lessee first obtains all planning and other approvals to the use of the Leased Premises for that purpose and subsequently complies with the conditions of approval at the Lessee's expense;
- (b) there are no unremedied breaches of the Lessee's obligations under this Lease at the date of the Lessee's application for consent to change of use or whilst that application is considered by the Lessor;
- (c) any other consents which are required to the change of use, by head Lessors, mortgagees, guarantors under this Lease, or others, are obtained before the change of use;
- (d) the execution of a deed in a form reasonably required by and prepared on behalf of the Lessor, by the Lessor, Lessee, and Guarantor;
- (e) the execution by the Lessor and the Lessee of an appropriate instrument varying the lease covenant relating to use; and
- (f) the payment by the Lessee to the Lessor of the Lessor's reasonable costs and disbursements, in accordance with clause 13.

### **19 Warranties and representations**

#### **(1) No warranty of suitability or adequacy**

Regarding the present or future suitability or adequacy, for the Lessee's intended use or the business intended to be conducted by the Lessee, of the Leased Premises, the Building or the fixtures, fittings, furnishings, plant, machinery, equipment, services and facilities provided by the Lessor:

- (a) the Lessee acknowledges that no promise, representation or warranty was given by or on behalf of the Lessor to or on behalf of the Lessee;
- (b) the Lessor makes no warranty; and
- (c) any warranties implied under the general law or by statute are excluded under this Lease and negated to the extent permitted by law.

#### **(2) Lessee's responsibility for approvals**

- (a) The Lessee has satisfied itself, before entering into this Lease, regarding the need for the availability and existence of all approvals, consents and licences required for use of the Leased Premises by the Lessee for its business and for the intended and permitted use of the Leased Premises.

by the Lessee in its business. Such work must be carried by an appropriately qualified tradesman to ensure a professional standard of work and the use of appropriate nails, screws or other attachments.

## **24 Compliance with regulations**

### **(1) Lessee's obligation**

The Lessee shall at its expense observe and comply with all laws and requirements relating to:

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

### **(2) Compliance with notices**

The Lessee shall comply with the notices or requirements of the relevant authorities regarding the matters in clause 24(1), whether given to the Lessor or the Lessee, except to carry out structural alterations to the Leased Premises.

## **25 Lessee's obligations regarding use of Leased Premises**

### **(1) Prohibitions with reference to use of Leased Premises**

The Lessee shall not, during the term of this Lease:

- (a) allow the Leased Premises to be used for any illegal, immoral, noxious, dangerous or offensive purpose, activity or occupation;
- (b) use or permit any part of the Leased Premises to be used as sleeping quarters or for residence;
- (c) keep any animals in the Leased Premises;
- (d) hold or permit any auction or public meeting in the Leased Premises;
- (e) use or permit the use of any sound producing equipment in the Leased Premises at a volume which may be heard outside the premises;
- (f) use the Leased Premises in a noisy or in any other manner which would cause damage, nuisance or disturbance to the Lessor or to the owners or occupiers of adjoining properties;
- (g) trade or display merchandise outside the Leased Premises;
- (h) use the Leased Premises in an excessively noisy or noxious or offensive manner; and
- (i) use plant or machinery in the Leased Premises so as to constitute a nuisance or disturbance to the Lessor, due to noise, vibration, odours or otherwise.

**(2) Mode of conducting Lessee's business**

The Lessee agrees, regarding the conduct of the business in the Leased Premises, throughout the term of this Lease, to conduct the business in an orderly, efficient and reputable manner, consistent with the standard and quality of the Building.

**(3) Inflammable substances and contaminants**

- (a) The Lessee covenants that, during the continuance of this Lease, the Lessee will:
- (i) not use or permit to be used or stored at the Leased Premises any radioactive, toxic, hazardous, inflammable, dangerous or explosive chemicals, wastes or substances, except in concentrations and quantities permitted by the relevant statutory authorities and in accordance with any licences, permits or authorisations required by law and in accordance with the conditions imposed by such authorities or under their permission unless the sale or use of such substances constitutes proper conduct of the Lessee's business for the permitted use of the Leased Premises and the particular substances are stored and used only whilst taking all necessary safety precautions and in compliance with all fire and safety regulations relating to such substances;
  - (ii) not permit any petroleum product, oil, grease, or any noxious, dangerous or poisonous chemical or substance to be discharged through the pipes of the water or sewerage service at the Building, or into any nearby stream or river or into or under the soil, and to discharge them only as permitted by the relevant statutory authorities, as required by law and in accordance with any conditions imposed by those authorities;
  - (iii) control and restrict the emission of smoke or odours at and from the Building in accordance with the applicable legislation, regulations and the requirements of statutory authorities;
  - (iv) not use the Leased Premises in an excessively noisy or noxious or offensive manner; and
  - (v) not use plant or machinery in the Leased Premises so as to constitute a nuisance or disturbance to the Lessor or lessees and owners of adjoining buildings due to noise, vibration, odours or otherwise.
- (b) The Lessee must comply with the demands, notices and requirements of the regulatory authorities in respect of contamination of the Leased Premises caused by the Lessee or by occupiers of the Leased Premises, including notices to remediate the Leased Premises;
- (c) Notify the Lessor within fourteen (14) days after receiving any demand or notice from a regulatory authority in respect of contamination of the Leased Premises;
- (d) The Lessee agrees to indemnify the Lessor against any liability, loss, damage, expense or claim which the Lessor may incur as a consequence of the breach by the Lessee of any obligation under this clause, including fines, legal costs, consultants' fees and remediation costs; and
- (e) The Lessee at the reasonable request of the Lessor will obtain a contamination certificate at the termination of the Lease.

**(4) Cleaning and hygiene**

The Lessee must keep the Leased Premises in a clean and sanitary condition at least to the standard of the relevant health authorities, and otherwise as considered satisfactory

by the Lessor, and must prevent any contamination or environmental damage resulting from vermin or accumulation of rubbish or substances of any kind. The Lessee must regularly remove rubbish and refuse from the Leased Premises using, where appropriate, proper receptacles for the purpose. If the Lessor nominates a cleaning contractor for cleaning the Building or removing rubbish or contaminants from the Building, the Lessee must accept the services of that cleaning contractor.

**(5) Disposal of rubbish**

- (a) The Lessee shall cause all rubbish accumulated in the Leased Premises to be placed daily in suitable containers provided by the Lessor for the Leased Premises and situated in an area in the Building designated by the Lessor ("Bin Area") and shall use that Bin Area in accordance with the requirements of the Health Department.
- (b) The Lessee will ensure that trade waste or wet refuse including cooking oil is removed from the Leased Premises and the Bin Area daily.

**(6) Use of toilets and drainage**

The Lessee shall:

- (a) not use the toilets, sinks, drainage and plumbing in the Leased Premises or in the Building for purposes other than those for which they were designed;
- (b) not place in any of those facilities rubbish, chemicals, oil, contaminated and other substances, which they are not designed to receive or which would infringe health or environmental regulations; and
- (c) repair any damage caused to any of those facilities by breach of clause 25(6)(a) or 25(6)(b).

**26 Overloading and heavy equipment**

**(1) Weight and location of heavy equipment**

- (a) The Lessor is entitled to specify the maximum weight and the proper location of any heavy articles which may be brought into and located in the Leased Premises.
- (b) The Lessee shall not bring into the Leased Premises any heavy equipment, including machinery, plant, safe, furniture or other equipment, unless:
  - (i) it is reasonably necessary for the conduct of the Lessee's business for the permitted use in the Leased Premises;
  - (ii) the Lessee gives at least seven (7) days prior written notice to the Lessor of the intention to bring them into the Leased Premises, a description of the nature, size and weight of each item, and indicating the intended position of each item; and
  - (iii) the Lessee has obtained the Lessor's prior consent.
- (c) The Lessee is liable to the Lessor for any damage caused to the Leased Premises or the Building consequent on the Lessee moving heavy equipment into the Leased Premises without having complied with the provisions of this clause.



**(2) Overloading electrical supply**

- (a) The Lessee will not install any electrical equipment which will overload the cables, switchboards and other equipment that supplies electricity to the Building or to the Leased Premises.
- (b) If any installations by the Lessee result in overloading that equipment, the Lessee is liable:
  - (i) for the costs of repairing any damage; and
  - (ii) for ensuring that the Lessor's equipment is repaired and restored to working order; and
  - (iii) if necessary, to disconnect the Lessee's installations or alter or upgrade the electrical supply system at the Lessee's cost, in order that it will suffice for the additional load imposed by the Lessee's installations.

**27 Security and keys****(1) Securing premises**

The Lessee shall:

- (a) take reasonable action to secure the Leased Premises against unauthorised entry whilst the Leased Premises are unoccupied; and
- (b) securely lock and fasten external doors and windows in the Leased Premises whilst the Leased Premises are unoccupied.

**(2) Lessee's obligations regarding alarm**

The Lessee shall:

- (a) service, maintain and repair, when required, any intruder alarm installed in the Leased Premises by the Lessee;
- (b) ensure that any intruder alarm installed by the Lessee is not incompatible with, or does not adversely affect the performance of, any intruder alarm installed by the Lessor; and
- (c) allow reasonable access to the Leased Premises to persons nominated by the Lessor, for the purpose of testing, servicing, maintaining and repairing any intruder alarm to the Building or the Leased Premises installed by the Lessor.

**(3) Lessor to provide keys and access cards**

At the commencement of this Lease the Lessor shall provide to the Lessee at the Lessor's cost a sufficient number of keys and access cards reasonably required by the Lessee for entry into the Building, the Leased Premises and use of the elevators, including outside normal business hours.

**(4) Lessee's obligations regarding keys and access cards**

The Lessee shall:

- (a) not make or allow to be made any duplicate keys or access cards;
- (b) provide keys and access cards only to the Lessee's employees;

- (b) The Lessor shall maintain the Building in a standard of repair having regard to its standard, quality, nature, character, situation and age, in keeping with comparable commercial buildings of similar nature and quality.
- (c) The Lessor is responsible, in respect of the Building and the Leased Premises, for
  - (i) structural repair;
  - (ii) Latent Defects; and
  - (iii) fair wear and tear subject to the Lessee's maintenance obligations,
    - but the Lessor is not required to carry out structural repairs or to remedy Latent Defects or to remedy fair wear and tear, except:
      - (A) when required for the stability or safety of the Building; or
      - (B) to maintain the reasonable use and enjoyment of the Building and the Leased Premises by the Lessee; or
      - (C) to maintain the Building in the condition in clause 29(2)(b).
- (d) The Lessor is not responsible for any damage to the Lessee's plant and equipment, stock, fixtures and fittings caused by termite or timber pest activity or infestation.

### **30 Lessee's repair obligations**

#### **(1) Lessee's general obligation**

The Lessee shall keep the Leased Premises and the Lessor's fixtures and chattels situated in the Leased Premises in good repair and working condition throughout this Lease and shall on expiry or termination of this Lease yield up the Leased Premises to the Lessor in the state of repair and condition as is specified in this clause.

#### **(2) Limiting Lessee's repair obligation**

The Lessee is not responsible for:

- (a) Latent Defects;
- (b) structural repairs, unless the need for repair occurred:
  - (i) through the conduct or negligence of the Lessee or of persons for whose conduct the Lessee is legally liable; and
  - (ii) through the Lessee's use and occupation of the Leased Premises or the use of fixtures, plant and machinery in the Leased Premises;
- (c) the condition of the Leased Premises at the commencement of this Lease;
- (d) fair wear and tear since the commencement of this Lease, throughout the term of this Lease;
- (e) repairs required as a result of natural disasters, deliberate damage or accident, such as fire, flood, storm, earthquake, explosion, which are beyond the Lessee's responsibility or control, unless:

- (i) the damage occurred as a result of or was substantially contributed to by the Lessee's negligence; and
- (ii) the Lessor is legally unable to recover from its insurer insurance money for the damage because of some act, neglect, default or misconduct by the Lessee or by other persons for whose conduct the Lessee is responsible.

**(3) Lessee's additional specific repair obligations**

In addition to the Lessee's obligations under clause 30(1) and without limiting the Lessee's obligations in respect of the costs and expenses for repairs and maintenance set out in clause 11 of this Lease, the Lessee shall throughout the term of this Lease, notwithstanding clause 30(2) (which does not apply to the matters listed in this paragraph), carry out the following repair and maintenance:

- (a) promptly repair or replace all broken, cracked or damaged glass in the Leased Premises, with glass of the same or similar gauge and quality or in compliance with current regulations as the case maybe, unless the damage was caused by the Lessor and or the Lessor's tradespersons, agents and employees;
- (b) promptly repair or replace all damaged, broken or faulty light globes, fluorescent lights, power points, light switches, heating, lighting and electrical appliances, services and wiring in the Leased Premises;
- (c) promptly repair and keep in proper working order and free from blockage plumbing fittings, drains, water pipes, sewerage pipes, toilets and sinks, to the extent to which they are situated in or under the Leased Premises and provide Services or facilities to the Leased Premises;
- (d) maintain and repair all door and window locks and fittings in the Leased Premises;
- (e) keep and properly maintain the gardens, lawns, landscaped areas in and outside the Building in good condition;
- (f) repair any actual or reasonably foreseeable damage or breakage to the Leased Premises, to the Lessor's Fixtures and property in the Leased Premises, and to Services and facilities in the Leased Premises, caused by lack of care or misuse, act or omission by the Lessee or by its employees or agents; and
- (g) where the Leased Premises contain plant and items of a mechanical or electrical nature the tenant must keep them in regular repair and working order and service them in accordance with accustomed service procedures and requirements.

**(4) Carrying out repairs**

When carrying out any repair in accordance with this clause, the Lessee shall ensure that:

- (a) the work is carried out by appropriately licensed and qualified tradespersons;
- (b) the work is carried out promptly;
- (c) the work is completed to a high standard of workmanship and with good quality materials;
- (d) fittings and materials of similar style and quality are used to the items being repaired or replaced;
- (e) the required consent or approval of any statutory authority is obtained to carry out the work and the conditions of approval are observed; and

- (f) the work is carried out without creating undue noise, nuisance or interference with the use and enjoyment of adjoining or nearby leased premises.

### **31 Lessee's obligation to paint**

#### **(1) Obligation to paint**

The Lessee shall paint the Leased Premises during each period specified in Item 17 in the Reference Schedule.

#### **(2) Quality of painting**

- (a) Painting shall be carried out by qualified tradespersons engaged by the Lessee, in high class workmanship and with good quality materials to the Lessor's specifications.
- (b) If the Lessee desires to change the colours, patterns, nature, style or quality of the painting or wallpapering, the Lessee shall submit to the Lessor full details of and patterns for the intended changes, for the Lessor's prior written approval, such approval not to be refused unreasonably by the Lessor.

#### **(3) Extent of painting**

Painting includes:

- (a) painting all painted surfaces, including internal walls and ceilings, with at least two coats of first quality paint;
- (b) the external previously painted surfaces of the Building excluding colourbond and panel tilt surfaces; and
- (c) wallpapering where the internal walls of the Leased Premises are wallpapered.

#### **(4) Lessee's failure to paint**

If the Lessee fails to paint the Leased Premises in accordance with this clause, the Lessor may give notice to the Lessee requiring it to commence to paint within thirty (30) days, and if the Lessee fails to commence to paint in accordance with that notice, the Lessor may paint the Leased Premises and recover from the Lessee the reasonable cost of the painting.

### **32 Lessor's right to inspect Leased Premises**

#### **(1) Right of inspection**

The Lessor, or persons authorised by the Lessor, may enter the Leased Premises:

- (a) to inspect the condition and state of repair of the Leased Premises, Services and Facilities (as defined in clause 28(2)); and
- (b) to ascertain that the Lessee complies with the Lessee's obligations under this Lease.

#### **(2) Prior notice**

The Lessor shall exercise its entitlement under clause 32(1) after giving not less than seven (7) days prior written notice to the Lessee of the intended time of the inspection, except in an emergency when the Lessor has an additional right to enter the Leased Premises and prior notice is not required before entry.

### **33 Lessor's right to repair Leased Premises**

#### **(1) Lessor's right of entry**

The Lessor and persons authorised by the Lessor, including consultants and contractors, may enter the Leased Premises, together with tools, equipment and materials, and remain on the Leased Premises, at and for such reasonable times as is necessary for the purpose of carrying out repairs and other work, in accordance with this clause.

#### **(2) Notice before entry**

Before entering the Leased Premises the Lessor shall give to the Lessee not less than seven (7) days prior written notice of the intended date and time of entry, its purpose and the likely duration of the intended work, except in an emergency, when prior notice before entry is not required.

#### **(3) Nature of repairs**

The Lessor may carry out repairs, including maintenance, installations, alterations, replacement or renewal, in respect of the Building, the Leased Premises, Services and Facilities (as defined in clause 28(2)), to or situated in the Leased Premises, in order:

- (a) to undertake work which the Lessor is required or desires to carry out in accordance with this Lease;
- (b) to comply with the requirements of any authority;
- (c) to carry out work in conjunction with or to adjoining buildings which cannot be reasonably undertaken without access from or through the Leased Premises;
- (d) to undertake work which the Lessee:
  - (i) failed to carry out, in breach of its obligations under this Lease, or following notice from the Lessor; and/or
  - (ii) failed to complete in a workmanlike manner;
- (e) to remove unauthorised work, alterations or signs, undertaken or installed by the Lessee in breach of its obligations under this Lease; and
- (f) to restore or rebuild the Leased Premises following damage or destruction.

#### **(4) Minimise Interruption**

In exercising its rights under this clause 33, the Lessor must use its best endeavours to minimise interruption and inconvenience to the Lessee and its business operations.

### **34 Removal of alterations and fixtures**

#### **(1) Make good**

The Lessee shall:

- (a) Remove:
  - (i) any alterations, additions, fixtures, partitions and fittings made or installed by the Lessee in the Leased Premises during this Lease;

- (ii) all signs and notices erected or affixed by the Lessee to the Leased Premises and to the Building;
  - (iii) all nails and screws inserted by the Lessee into any part of the Leased Premises; and
  - (iv) all stock, rubbish and or debris from the Building and the Leased Premises.
- (b) Reinststate:
- (i) the Leased Premises to their condition before any alterations, additions, installations and partitions were made or installed by the Lessee; and
  - (ii) make good, in a proper and workmanlike manner, any damage caused to the Leased Premises by the installations and their removal.
- (c) Clean:
- (i) steam clean any carpets and floor tiles and repair or replace any damage to any carpets or floor tiles caused by the Lessee, but excluding fair wear and tear in the Building; and
  - (ii) High pressure clean the workshop and any associated areas.

**(2) Period of removal**

The Lessee shall comply with the obligations under clause 34(1):

- (a) before the expiry or termination of this Lease; and
- (b) if this Lease is terminated suddenly or unexpectedly, by forfeiture, destruction or other event, within fourteen (14) days after the termination of this Lease.

**(3) Removal of Lessee's fixtures**

- (a) The Lessee is entitled to remove from the Leased Premises all fixtures installed by the Lessee during the lease term (except fixtures which the parties agreed in writing to become the Lessor's property and not removable by the Lessee).
- (b) The Lessee may remove fixtures during the term of this Lease, during any extension of the term of this Lease, during holding over after the expiration of this Lease, and during the term of a new lease granted to the Lessee, notwithstanding the surrender of this Lease, subject to this clause.
- (c) The Lessee (or the Lessee's successors or assigns) must remove fixtures within the number of days in Item 18 in the Reference Schedule after having ceased to occupy the Leased Premises.
- (d) The Lessee covenants to repair any damage caused to the Leased Premises by the removal of fixtures, or becoming apparent on their removal, in a workmanlike manner, so as to restore the Leased Premises to its condition before the installation of those fixtures which are removed.
- (e) Those fixtures which the Lessee does not remove within the period specified in paragraph (c) may at the Lessor's option remain permanently affixed to the Leased Premises and be and remain the property of the Lessor.

**(4) Consequences of failure to remove and reinstate**

If the Lessee fails to comply with the obligations under clause 34(1) or 34(3) within the periods in clause 34(2) or 34(3)(c):

- (a) the Lessor may cause the removal, reinstatement and repairs to be carried out, and the Lessee is responsible for and shall reimburse the Lessor for the Lessor's reasonable costs and expenses; and
- (b) if the Lessor incurs further loss in reletting the Leased Premises by reason of the Lessee's failure, the Lessor may recover from the Lessee the loss of rent and Operating Expenses which would have been received from a prospective Lessee.

**PART 7 — INSURANCE, INDEMNITIES, DAMAGE AND DESTRUCTION****35 Lessor's insurances****(1) Lessor's obligation to insure**

The Lessor shall effect and maintain throughout the term of this Lease a comprehensive insurance policy:

- (a) for the full insurable and replacement value of the Building and the Lessor's plant, equipment, facilities and property in the Building;
- (b) including for the costs of demolition, site clearance, removal of debris, professional and other costs of planning and other approvals and for reinstating or replacing the Building, and Services and Facilities (as defined in clause 28(2)), to the Building; and
- (c) against loss or damage by fire, storm, tempest, earthquake, lightning, explosion, and other risks usually covered under a comprehensive insurance policy for fire and related risks;

**(2) Insurer**

The Lessor shall effect the insurance under clause 35(1) with an insurer which is respectable, reputable and financially sound.

**(3) Premium**

The Lessor shall pay punctually the insurance premium to effect and maintain insurance throughout the term of this Lease.

**(4) Replacement of property**

- (a) In the event of loss or damage to the Lessor's property covered by the insurance under clause 35(1) the Lessor will promptly replace, repair or reinstate the damaged or destroyed property and utilise the insurance proceeds.
- (b) The Lessor is not required to repair, replace or reinstate the Lessor's property, when the following conditions are satisfied:
  - (i) the Building has been seriously damaged and is required to be substantially rebuilt or replaced; and
  - (ii) the Lessor is unable:
    - (A) to obtain planning or building consent to a reinstatement of a Building of substantially similar size and lettable space;

- (B) to obtain consents without the imposition of conditions which would render compliance by the Lessor unreasonable or not financially viable as a property investment; and
- (C) to reinstate the Building due to circumstances beyond the Lessor's control.

### 36 Lessee's insurances

#### (1) Lessee's obligations to insure

The Lessee shall effect and maintain throughout the term of this Lease the following insurances:

##### (a) Public Risk

A public risk insurance policy:

- (i) in the form of a standard public risk policy or in the form commonly used by the Lessee's insurer and by some other reputable insurers;
  - (A) in the sum in Item 19 in the Reference Schedule in respect of any single event or accident;
  - (B) or for such higher amount as the Lessor, acting reasonably and prudently, may require, during any year of the term of this Lease after the first year of the term of this Lease;
- (ii) relating to the Lessee's liability for death, personal injuries and property damage arising from the Lessee's occupancy of the Leased Premises and use of the Building, whilst entering, leaving, using and being in the Leased Premises or any portion of the Building, in circumstances in which the Lessee may incur liability for the injury, loss or damage; and
- (iii) and extended to include claims, risks and events covered under indemnities provided by the Lessee to the Lessor under this Lease.

##### (b) Lessee's property

A comprehensive insurance policy:

- (i) for the full insurable and replacement value of the Lessee's fixtures, fittings, plant, equipment and stock in trade in the Leased Premises; and
- (ii) against loss or damage by fire, storm, tempest, earthquake, lightning, explosion, burglary and other risks usually covered under a comprehensive insurance policy for fire and related risks.

##### (c) Lessor's Plant and Equipment

A comprehensive policy for the full insurable and replacement value of the Lessor's plant, equipment, facilities and property the Building and Leased Premises.

##### (d) Plate Glass

A comprehensive insurance policy for the full replacement value, through breakage or damage from any cause:



- (i) of all plate and other glass in windows, doors, shop front, display cases and other fixed glass in the Leased Premises; and
- (ii) of any doors, windows or other frames containing the glass;  
within or forming part of the Leased Premises.

(e) Workers' compensation

A workers' compensation insurance policy, providing cover in respect of the Lessee's employees for workers' compensation, as required by law.

**(2) Insurer and conditions**

(a) Lessor's approval

The Lessee's insurances shall be effected with one or more insurance companies which are respectable, reputable and financially sound.

(b) Joint insurances

The Lessee's insurances relating to public risk and the Lessee's property (in order to cover fixtures):

- (i) shall cover the Lessor's and Lessee's interests;
- (ii) and, if requested by the Lessor, shall include the interest of any mortgagee over the Building; and
- (iii) the Lessee shall provide to the Lessor on their request a Certificate of Currency for insurance policies taken out by the Lessee pursuant to this Lease.

**(3) Payment of premium**

- (a) The Lessee shall pay punctually when due the insurance premiums and other moneys payable to effect and maintain the insurances required under this clause.
- (b) If the Lessee fails to pay an insurance premium when due, the Lessor may make such payment, which shall become due and payable by the Lessee to the Lessor, together with interest, within seven (7) days after service of written notice by the Lessor on the Lessee requiring payment.

**(4) Replacement of property**

- (a) In the event of loss or damage to the Lessor's or Lessee's property which is covered by insurance effected by the Lessee, the Lessee will promptly replace, repair or reinstate the damaged or destroyed property, utilising the proceeds from the insurance.
- (b)
  - (i) The Lessee shall pay any additional costs of replacement, repair or reinstatement not covered by the proceeds from the insurance,
  - (ii) unless the Building is seriously damaged or destroyed and is not repaired or reinstated by the Lessor or this Lease is terminated as a consequence of the damage or destruction.

- (c) In the events under clause 36(4)(b)(ii), the proceeds from any insurance effected by the Lessee in respect of damage or loss to the Lessor's property shall be remitted to the Lessor as compensation for its loss.

### 37 Lessee's conduct relevant to insurance

#### (1) Compliance with fire safety regulations

- (a) The Lessee agrees to comply with the requirements imposed by the Lessor's insurer for the Building and under fire safety regulations, in respect of the authorised use by the Lessee of the Leased Premises:
- (i) with regard to the installation, repair and maintenance of fire alarms, sprinklers, and fire prevention equipment in the Leased Premises, except those provided by the Lessor at or before the commencement of this Lease; and
  - (ii) including in respect of partitions and alterations in the Leased Premises.
- (b) The Lessee is liable to the Lessor for the reasonable cost of installations and equipment, which the Lessor may install in the Leased Premises during this Lease, in order to comply with the requirements under clause 37(1)(a), if the Lessee shall have failed to comply with those obligations in any respect.

### 38 Lessee's indemnities to Lessor

#### (1) Indemnities

The Lessee agrees to indemnify the Lessor from and against any liability, loss, damage, expense or claim, which the Lessor may incur, including to a third party, during or after the term of this Lease, in respect of or arising from:

(a) Breach of lease obligations

Loss, damage or injury to property or person occurring within the Building or the Leased Premises, caused or contributed to by the Lessee's failure (including through the Lessee's agents or employees) to comply with the obligations imposed under this Lease.

(b) Misuse of Services or Facilities

The negligent use or misuse by the Lessee (and by its agents or employees) of any Services or Facilities (as defined in clause 28(2)), in the Building or in the Leased Premises.

(c) Escape of substances

The overflow, leakage or escape of water, gas, electricity, fire, or other materials or substances in or from the Leased Premises, caused or contributed to by the Lessee's (and its agents' or employees') negligence.

(d) Use of Leased Premises

Loss, damage or injury to property or person, caused or contributed to by the Lessee's negligence, arising out of use of the Leased Premises.

**(e) Faulty installations**

Loss, damage or injury to property or persons, caused or contributed to by the defective installation of plant, fixtures and equipment in the Leased Premises by or on behalf of the Lessee.

**(f) Failure to notify**

The Lessee's failure to notify the Lessor regarding any defect in the Facilities (as defined in clause 28(2)), or Services in the Leased Premises.

**(2) Conditions and limitations**

The indemnities under this clause:

- (a) include penalties, fines, legal and other costs incurred by the Lessor;
- (b) do not apply when the loss, damage or injury was caused or contributed to by the wilful or negligent act or omission of the Lessor, its employees or agents;
- (c) do not apply when the Lessor is fully indemnified for the loss or damage from moneys paid or recovered from insurances effected by the Lessor.

**PART 8 — ASSIGNMENT AND SUBLETTING****39 Prohibition against assignment, subletting and mortgage over Lease****(1) Prohibition of dealings**

During the continuance of this Lease, in respect of whole or part of this Lease or the Leased Premises, the Lessee shall not:

- (a) assign, transfer, sublet, deal with, hold on trust, or grant any interest in, this Lease;
- (b) mortgage, charge or encumber this Lease;
- (c) part with possession of whole or any part of the Leased Premises;
- (d) grant any licence, or share the right of occupation or possession, in respect of whole or part of the Leased Premises; and
- (e) grant any franchise or concession over the Lessee's business conducted at the Leased Premises which would entitle any other person to use, occupy or trade from the whole or part of the Leased Premises.

**(2) Consent to assignment**

- (a) The Lessee may apply to the Lessor for consent to the assignment of this Lease, which shall not be unreasonably withheld if the following conditions precedent are satisfied:
  - (i) the Lessee shall make a written application to the Lessor for consent and furnish complete copies of all written documents entered into between the Lessee and the proposed assignee relating to the Lessee's business and the Leased Premises, written personal and business references and financial statements relating to the assignee and any proposed new guarantors;
  - (ii) the Lessee shall establish to the reasonable satisfaction of the Lessor that:

- (A) the proposed assignee is respectable, responsible and solvent;
  - (B) the proposed assignee has adequately performed its obligations as the lessee or former lessee of other business or commercial premises; and
  - (C) in respect of the business or profession intended to be conducted by the assignee at the Leased Premises the assignee has sufficient financial resources and business experience to be capable of adequately complying with the Lessee's obligations under this Lease and of efficiently conducting the assignee's business at the Leased Premises;
- (iii) the Lessee shall have paid to the Lessor all moneys due under this Lease up to the date of the assignment (and, in respect of any liability which cannot be accurately determined, will secure it to the Lessor's reasonable satisfaction at the date of the assignment);
  - (iv) there are no unremedied breaches of the Lessee's obligations under this Lease at the date of the assignment;
  - (v) any other consents which are required to the assignment, by headlessors, mortgagees or others, are obtained before the assignment;
  - (vi) when the assignee is a company, other than a company whose shares are listed on an Australian Stock Exchange, personal guarantees for performance of lease covenants for the duration of the lease term by the assignee be provided, in a form reasonably acceptable to the Lessor and prepared on behalf of the Lessor at the Lessee's expense, by two of the assignee's directors or principal shareholders chosen by the Lessor;
  - (vii) the execution of a deed in a form reasonably required by and prepared on behalf of the Lessor, by the Lessor, Lessee, assignee, continuing guarantors and new guarantors, in which:
    - (A) the Lessor is released from liability to the Lessee under this Lease;
    - (B) the assignee covenants to observe the Lessee's obligations under this Lease during the duration of this Lease; and
    - (C) new guarantors execute guarantees under this Lease for the assignee;
  - (viii) the payment by the Lessee to the Lessor of the Lessor's reasonable costs and disbursements of considering the application for consent and consenting to the assignment, including:
    - (A) the Lessor's solicitors' reasonable costs of acting for the Lessor and preparing instruments in accordance with this clause; and
    - (B) the Lessors' reasonable administrative costs and expenses of considering the application and consenting to the assignment, including making inquiries regarding the assignee and new guarantors;
- (b) If the Lessee has made a proper and sufficiently detailed application for consent and the Lessor has failed, within twenty-eight (28) days after receiving the application, to give written notice to the Lessee, that the Lessor consents, or withholds consent, to the assignment, the Lessor shall be taken to have consented to the assignment of this Lease to the assignee; and

- (c) When the preconditions for consent to the assignment of this Lease in respect of a proposed assignee are satisfied, the Lessor is entitled to refuse consent to the assignment of this Lease, but only if,:
- (i) the Lessor and the assignee have negotiated and reached agreement on the grant of a new lease from the Lessor to the assignee;
  - (ii) such lease to be for a lease term (including options for renewal) which shall have a longer total duration than the outstanding term of this Lease (including any subsisting options for renewal); and
  - (iii) such new lease to contain substantially similar lease covenants as those contained in this Lease, unless otherwise agreed with the proposed assigned.

**(3) Consent to subletting**

- (a) The Lessee may apply to the Lessor for consent to the grant of a sublease over the whole or part of the Leased Premises, which shall not be unreasonably withheld if the following conditions precedent are satisfied:
- (i) the Lessee shall make a written application to the Lessor for consent and furnish a copy of the proposed sublease and written personal and business references and financial statements relating to the proposed sublessee and any guarantors for the sublease;
  - (ii) the terms and conditions of the sublease shall be reasonably acceptable to the Lessor and shall:
    - (A) require the sublessee to comply with the Lessee's obligations under this Lease as far as they govern the conduct of the sublessee as occupant of the subleased premises; and
    - (B) prohibit the sublessee from doing or permitting some act in relation to the subleased premises which is inconsistent with or would constitute a breach of this Lease;
  - (iii) the Lessee shall establish to the reasonable satisfaction of the Lessor that:
    - (A) the proposed sublessee is respectable, responsible and solvent;
    - (B) the proposed sublessee has adequately performed its obligations as the lessee or former lessee of other business or commercial premises;
    - (C) in respect of the business or profession intended to be conducted by the sublessee at the Leased Premises, the sublessee has sufficient financial resources and business experience to be capable of adequately complying with the Lessee's obligations under the sublease and of efficiently conducting the sublessee's business at the subleased premises;
  - (iv) the Lessee has paid to the Lessor all monies due under this Lease up to the date of the sublease;
  - (v) there are no unremedied breaches of the Lessee's obligations under this Lease at the date of the sublease;

- (vi) any other consents to the sublease which are required, by mortgagees or others, are obtained before the sublease is granted;
- (vii) the execution of a deed of consent in a form reasonable required by and prepared on behalf of the Lessor, by the Lessor, Lessee and sublessee;
- (viii) the payment by the Lessee to the Lessor of the Lessor's reasonable costs and disbursements of considering the application for consent and consenting to the sublease, including:
  - (A) the Lessor's solicitor's reasonable costs of acting for the Lessor and preparing instruments in accordance with this clause;
  - (B) the costs of obtaining any other consents to the sublease; and
  - (C) the Lessor's reasonable administrative costs and expenses of considering the application and consenting to the sublease, including making inquiries regarding the sublessee and any guarantors; and
- (b) If the Lessor, within twenty-eight (28) days after the Lessee has made a proper and sufficiently detailed application for consent, fails to give to the Lessee written notice of the Lessor's consent, or withholding of consent, to the subletting, the Lessor shall be taken to have consented to the subletting.

**(4) Change in control of Lessee**

- (a) When the Lessee is not a company whose shares are listed on an Australian Stock Exchange, any proposed:
  - (i) transfer in the legal or beneficial interest in shares of the Lessee if a company;
  - (ii) allotment of shares in the Lessee company; or
  - (iii) changes in the company's articles of association,
 which would have the consequence of altering the effective control of the Lessee company, is considered to be an assignment of this Lease and requires the Lessor's consent in accordance with clause 39(2) as if the parties which would acquire control over the company were assignees of the Lease.

**(5) Consent to mortgage over Lease**

The Lessee may apply to the Lessor for consent to the grant of a mortgage over this Lease, which shall not be unreasonably withheld if each of the following conditions precedent is satisfied:

- (a) the Lessee shall make a written application to the Lessor for consent, and furnish a copy of the proposed mortgage and any other documents between the Lessee and the mortgagee;
- (b) the mortgagee is a bank or financial institution;
- (c) the purpose of the loan is to enable the Lessee to acquire the business conducted at the Leased Premises or to continue or expand the Lessee's business;
- (d) the Lessee is not in default under this Lease;

- (e) the execution of a deed of consent, in a form reasonably required by the Lessor, and to be prepared on behalf of the Lessor, by the Lessor, Lessee and mortgagee; and
- (f) the payment by the Lessee to the Lessor of the Lessor's reasonable costs and disbursements in accordance with clause 13(3)-(6).

**(6) Exclusion of statutory provisions**

The provisions of sections 80 and 82 of the *Property Law Act 1969 (WA)* do not apply to this Lease.

**PART 9 — LESSOR'S COVENANTS, OBLIGATIONS AND RESERVATION OF ENTITLEMENTS**

**40 Lessor's covenant for quiet enjoyment**

The Lessor covenants with the Lessee that whilst the Lessee complies with the financial and other obligations under this Lease, the Lessee may occupy and have the use and enjoyment of the Leased Premises for the term of this Lease without interruption or disturbance from the Lessor and other persons lawfully claiming through or under the Lessor.

**41 Miscellaneous reservations**

**(1) Right to inspect Leased Premises**

- (a) The Lessor, its employees, agents and persons authorised by the Lessor, may enter and remain on the Leased Premises, for reasonably short periods of time, for the purpose of inspecting the Leased Premises, with a prospective purchaser or mortgagee of the building or with a prospective lessee of the Leased Premises.
- (b) The right to enter and inspect the Leased Premises shall be exercised:
  - (i) during the last two months of the lease term, with prospective lessees; and
  - (ii) during two hours in any week, to be nominated by the Lessor, with prospective purchasers or mortgagees of the Building.

**(2) Passage of Services**

The Lessor reserves the right to maintain Services to the Leased Premises, by having those Services pass through or under the Leased Premises, and to have access to those Services for the purpose of maintenance, repair or replacement, or to provide additional Services through or under the Leased Premises.

**42 Lessor's entitlement to alter Building**

**(1) Work in Building**

The Lessor may carry out any building work in the Building or on the Land in accordance with this clause. The Lessor shall endeavour to minimise any disruption or interference to the Leased Premises in the course of conducting any building work.

**(2) Extent of building work**

The Lessor is entitled to:

- (a) repair, renovate or refurbish the Building;
- (b) extend or alter the Building;

- (c) add to and alter the car parking facilities, alter their location and the direction and access to those facilities; and
- (d) alter the access to the Building or to the Leased Premises, including for pedestrians or for vehicles.

## **PART 10 — DEFAULT AND TERMINATION**

### **43 Lessee's obligation to yield up Leased Premises**

The Lessee agrees, immediately on the expiry or legally effective termination of this Lease, to yield up possession and control over the Leased Premises to the Lessor, in the condition and state of repair as required under this Lease.

### **44 Essential terms of Lease**

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

- (a) the covenant to pay rent throughout the lease term at a date not later than fourteen (14) days after the due date for the payment of each monthly instalment of rent (clause 7);
- (b) the covenant to pay Operating Expenses throughout the lease term at a date not later than fourteen (14) days after the due date for the payment of instalments (clause 11);
- (c) the covenant dealing with the use of the Leased Premises (clause 18);
- (d) the covenant's dealing with the Lessee's insurance, the Lessee's conduct relevant to insurance and indemnities (clauses 36, 37 and 38); and
- (e) the covenant dealing with assignment and subletting (clause 39);

### **45 Lessor's entitlements after Lessee vacates during lease term**

#### **(1) Lessor's entitlements**

If the Lessee vacates or abandons the Leased Premises during the lease term in breach of the Lessee's obligations under this Lease, the Lessor may:

- (a) accept the keys to the Leased Premises from the Lessee;
- (b) renovate, restore and clean the Leased Premises;
- (c) change the locks and secure the Leased Premises;
- (d) permit prospective tenants to inspect the Leased Premises; and
- (e) take any action in clause 45(1)(a) without the Lessor's conduct constituting:
  - (i) a re-entry or termination of this Lease; and/or
  - (ii) the acceptance of a surrender of this Lease.



**46 Power of attorney by Lessee to Lessor****(1) Appointment**

The Lessee appoints the Lessor (and its successors and assigns, being the owner of the property for the time being) the Lessee's attorney with the powers contained in this clause.

**(2) Irrevocable power**

This power of attorney is:

- (a) irrevocable by the Lessee; and
- (b) granted by the Lessee for valuable consideration (the grant of this Lease by the Lessor), to secure the performance of the Lessee's obligations and the Lessor's proprietary interest over the Leased Premises.

**(3) Extent of power**

The Lessor as the Lessee's attorney and in the name and on behalf of the Lessee may:

- (a) remove from the Leased Premises, store and sell, any plant, equipment, chattels and other property left on the Leased Premises by the Lessee, after the Lessee has vacated the premises and this Lease is terminated or has expired;
- (b) surrender this Lease, after:
  - (i) the Lessor has become entitled to terminate this Lease; and
  - (ii) the Lessee vacates or abandons the Leased Premises; or
  - (iii) the Lessor terminates this Lease by serving notice of termination; and
- (c) withdraw any caveat lodged by the Lessee in respect of this Lease, after the Lessor effectively terminates this Lease.

**(4) Exercise of power**

The Lessor may:

- (a) act as attorney under this clause during the continuance of this Lease and during the period of the number of months in Item 20 in the Reference Schedule after the termination of this Lease;
- (b) register this Lease (or lease provision) as a power of attorney, at any time including after the termination of this Lease, if that is required for the exercise of any power; and
- (c) ratify and confirm any power when exercised under this clause, as attorney and agent for the Lessee.

**47 Waiver****(1) Demand and acceptance of rent and other financial obligations**

After the Lessee is in default or breach under this Lease, including in breach of an essential term of this Lease, the demand or acceptance from the Lessee by the Lessor of arrears or of any late payment of rent, rates, taxes, outgoings, Operating Expenses, or other financial obligations does not:

- (a) preclude the Lessor from exercising any rights or remedies under this Lease, including enforcing or terminating this Lease;
- (b) constitute a waiver of the essentiality of the Lessee's obligation to make those payments; and
- (c) waive the Lessee's continuing obligation to make those payments during the lease term.

**48 Termination after damage to or destruction of Building**

**(1) Lessor's entitlement to terminate Lease**

- (a) The Lessor may terminate this Lease when the Building is seriously damaged by fire, storm, tempest, earthquake, lightning, explosion, or other similar event, in any of the following circumstances:
  - (i) when the Building is required to be demolished and wholly replaced;
  - (ii) when the serious damage or destruction extends to more than fifty per cent (50%) of the Building, including the Leased Premises;
  - (iii) when the Lessor is not required to repair, replace or reinstate the Building under this Lease;
  - (iv) when the Building cannot be repaired or reinstated by the Lessor, acting reasonably and promptly, within the number of months in Item 21 in the Reference Schedule after the damage; and
  - (v) when the Leased Premises are incapable of being used and occupied due to the damage and this Lease expires, with no option for renewal, within two (2) years after the date when the damage occurs.
- (b) In any of the circumstances specified in clause 48(1)(a) the Lessor may give written notice at any time terminating this Lease on one month's notice.

**(2) Lessee's entitlement to terminate Lease**

- (a) The Lessee may terminate this Lease when the Leased Premises are seriously damaged by fire, storm, tempest, earthquake, lightning, explosion, or other similar event, or the Leased Premises are rendered incapable of being used and occupied as a consequence of serious damage to the Building from such an event, in any of the following circumstances:
  - (i) when the Lessor takes no action to repair or reinstate the Leased Premises for a consecutive period of the number of weeks in Item 21 in the Reference Schedule, at any time after the date of the damage; and
  - (ii) when the Leased Premises will not be capable of being used and occupied for a period in excess of the number of months in Item 21 in the Reference Schedule from the date of the damage.
- (b) In any of the circumstances specified in clause 48(2)(a), the Lessee may give one month's written notice terminating this Lease.

## 49 Termination of Lease for default

### (1) Default

Each of the following constitutes a default by the Lessee under this Lease:

- (a) the failure to pay to the Lessor rent or comply with any other financial obligation under this Lease, including the payment of Operating Expenses, for a period in excess of fourteen (14) days after the due date for payment, whether a formal demand for payment has or has not been made;
- (b) the failure to comply with an essential term of this Lease;
- (c) the use of the Leased Premises as a retail shop as defined in section 3(1) of the *Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA)*;
- (d) any serious, persistent and continuing breach by the Lessee of its covenants and obligations under this Lease;
- (e) a judgment, order or Security Interest is enforced, or becomes enforceable against the Lessee's interest in this Lease or the Lessee's Property at the Leased Premises;
- (f) an Insolvency Event occurs with respect to the Lessee or a Guarantor;
- (g) the Premises are deserted or vacated;
- (h) the Lessee ceases to be the sole trustee of the Trust;
- (i) any part of the capital of the Trust Fund is distributed without the Lessor's prior consent, which consent shall not be unreasonably withheld;
- (j) any warranty under clause 20 proves to be untrue or incorrect in any material respect;
- (k) any application or order being sought or made in any court for the removal of the Lessee as trustee of the Trust or for accounts to be taken in respect of the Trust or for any property of the Trust to be brought into court or administered by the court or under the court's control;
- (l) any notice is given or meeting summoned or proposal put forward for the removal of the Lessee as trustee of the whole or any part of the Trust fund or the appointment of any other person as trustee with the Lessee; or
- (m) if, without the prior written consent of the Lessor, any alteration is made to the terms of the Trust Deed or through the exercise of any power under any such instrument, to the constitution of the Trust fund or any other trust fund which might in the opinion of the Lessor, detrimentally affect the Lessor's position under this Lease.

### (2) Termination after default

The Lessor may terminate this Lease, after a default by the Lessee in accordance with clause 49(1), and continuance of the default, after the Lessor shall have served a legally effective notice of breach of covenant (if required) by:

- (a) re-entering and taking possession of the Leased Premises, using reasonable force to secure possession;
- (b) serving on the Lessee written notice terminating this Lease;

- (c) instituting proceedings for possession against the Lessee; and
- (d) taking the actions in both 49(2)(a) and 49(2)(b) or in 49(2)(b) and 49(2)(c).

except that when section 81(1) of the *Property Law Act 1969* applies, the Lessor may only terminate this Lease if the Lessor has first given to the Lessee a notice which complies with that section and the Lessee has failed to comply with that notice.

## **50 Lessor's entitlement to damages**

### **(1) Damages for breach or for repudiation**

- (a) In the event that the Lessee's conduct (whether acts or omissions) constitutes:
  - (i) a repudiation of this Lease (or of the Lessee's obligations under this Lease);
  - (ii) a breach of any Lease covenants;
  - (iii) a breach of an essential term of this Lease;

the Lessee covenants to compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation or breach, whether this Lease is or is not terminated for the repudiation, breach or on any other ground.

- (b) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.
- (c) The Lessor is entitled to recover damages against the Lessee in respect of the repudiation or breach of covenant or essential term for the loss suffered by the Lessor during the term of this Lease, including the periods before and after termination of this Lease.
- (d) The Lessor's entitlement to recover damages is not affected or limited by any of the following:
  - (i) if the Lessee abandons or vacates the Leased Premises;
  - (ii) if the Lessor elects to re-enter or to terminate the Lease;
  - (iii) if the Lessor accepts the Lessee's repudiation; and
  - (iv) if the parties' conduct constitutes a surrender by operation of law.

### **(2) Additional entitlements of Lessor**

The Lessor's entitlement to damages is in addition to:

- (a) the entitlement to recover rent, rates, taxes, outgoings and Operating Expenses until the date of expiry or termination of this Lease;
- (b) interest on late payments in accordance with this Lease; and
- (c) costs of any breach or default, including the costs of termination.

## 51 Removal of Lessee's property

### (1) Lessee's obligation to remove property

- (a) The Lessee shall remove all its property, including furniture, plant, equipment and stock in trade, from the Leased Premises, before the expiry or termination of this Lease or, if it is terminated by the Lessor, within seven (7) days after this Lease is terminated.
- (b) After the Lessor terminates this Lease, the Lessee and its employees and agents may have access to the Leased Premises, whilst the Lessor has possession and control over those premises, for the next seven (7) days (excluding Sundays and public holidays), between 8am and 5pm, for the purposes of removing the Lessee's property and cleaning, repairing or restoring the Leased Premises.
- (c) The Lessee shall not cause any damage to the Building or to the Leased Premises whilst removing its property, shall leave the Leased Premises clean and tidy after the removal and shall be liable for the cost of repair of the damage caused by or during the removal.

### (2) Lessee's failure to remove property

- (a) If the Lessee fails to remove any of its property from the Leased Premises, the Lessor may:
  - (i) have that property removed from the Leased Premises and stored, using reasonable care in removing and storing the property, but being exempted from any liability to the Lessee for loss or damage to any of its property through the negligence of the Lessor, its employees or agents.
  - (ii) sell or otherwise dispose of all or any of the Lessee's property, with or without removing them from the Leased Premises, in the name of and as agent for the Lessee.
- (b) In respect of all or any of the Lessee's property which the Lessee has failed to remove from the Leased Premises, the Lessee is deemed to have abandoned the property and title to it and the Lessor at its option acquires title to that property through abandonment.
- (c) The Lessor is not obliged to account to the Lessee for the value of any property whose title vests in the Lessor by abandonment.

### (3) Lessee's responsibility for damages and costs

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

- (a) any loss or damage caused by the Lessee, its employees or agents during the removal of the Lessee's property from the Leased Premises; and
- (b) the costs of removal, storage and sale of any of the Lessee's property.

## PART 11 — MISCELLANEOUS

### 52 Service of notices

#### (1) Notice

Any notice, document or demand (called "notice") under this Lease shall be served in accordance with this clause.

**(2) Signature of notice**

The notice shall be in writing, signed by the party giving it, or by the party's duly authorised officer (if a corporation), agent or solicitor.

**(3) Service of notice**

A notice may be served on a party to this Lease, including their successors, assigns, and guarantors:

- (a) by personal delivery to that party or if more persons than one are lessors or lessees to any one of them;
- (b) by delivering the notice to the Leased Premises and leaving it with an employee of the Lessee;
- (c) by delivering the notice to the Lessor's business address and leaving it with an employee of the Lessor;
- (d) by sending it, addressed to the party at that party's address stated in Item 22 in the Reference Schedule, by ordinary post; or
- (e) if the Lessor maintains a centre manager's or administrator's office in the Building, by delivering any notice addressed to the Lessor to that office whilst it is open and leaving it with a person working in that office.

**(4) Time of service**

A notice is considered to have been served:

- (a) at the time of delivery; or
- (b) on the third Business day after the day on which it is posted, the first Business day being the day of posting, whether received by the party or not.

**53 Special Conditions**

- (a) This Lease includes the Special Conditions set out in Item 24 of the Reference Schedule;
- (b) To the extent of any conflict between the Special Conditions set out in Item 24 of the Reference Schedule and the other terms and conditions of this Lease, the Special Conditions prevail

## REFERENCE SCHEDULE

Item 1	<p><b>Lessor:</b></p> <p>FR &amp; B Atkins Pty Ltd (ACN 073 828 207), Frank Reuben Atkins and Brenda Atkins all of PO Box 11 Mundaring WA 6073.</p>
Item 2	<p><b>Lessee:</b></p> <p>WA Panel Works Pty Ltd (ACN 615 963 534) care of Abbotts, 813 Wellington Street, West Perth WA 6005.</p>
Item 3 (introduction)	<p><b>Guarantor:</b></p> <p>Alfredo Lombardi of 6 Sion Close, Waterford WA 6152.</p>
Item 4 (clause 1)	<p><b>Description of Leased Premises:</b></p> <ol style="list-style-type: none"> <li>1. 21 Wandeara Crescent, Mundaring more particularly known as Lot 139 on Diagram 75955 being the whole of the Land comprised in Certificate of Title Volume 1840 Folio 436; and</li> <li>2. 1 Burra Street, Mundaring more particularly known as Lot 36 on Plan 13747 being the whole of the Land comprised in Certificate of Title Volume 1618 Folio 915; and</li> <li>3. 23 Wandeara Crescent, Mundaring more particularly known as Lot 100 on Diagram 91104 being the whole of the Land comprised in Certificate of Title Volume 2077 Folio 694.</li> </ol>
Item 5 (clauses 1 and 3(b))	<p><b>Inclusions in Leased Premises —</b></p> <p><b>Lessor's Fixtures:</b></p> <p>Main desk and filing cabinets/furniture, light fittings, three (3) air conditioners, shelving, security cameras and alarm system, two (2) hot water systems, and a Caterpillar Olympian 80kva Generator (serial number OLY00000J11800411).</p> <p><b>Lessor's chattels:</b></p> <p>Not applicable</p>
Item 6 (clause 2(6))	<p><b>Law of State governing this Lease:</b></p> <p>Western Australia</p>
Item 7	<p><b>Car Parking Bays:</b></p> <p>Not applicable</p>

Item 8 (clause 4)	<p><b>Licence Fee:</b></p> <p>Not applicable</p>
Item 9 (clause 6)	<p><b>Lease term:</b></p> <p>Five (5) years commencing on 1 February 2017 and expiring on 31 January 2022</p> <p><b>Option for renewal —</b></p> <p><b>Period of service of notice of exercise of option (clause 6(4)(b)):</b></p> <p>Between ninety (90) and one hundred and eighty (180) days prior to expiry of the Lease Term</p> <p><b>First Term of renewal (clause 6(6)(a)):</b></p> <p>Five (5) years commencing on 1 February 2022 and expiring on 31 January 2027</p> <p><b>Second Term of renewal (clause 6(6)(a)):</b></p> <p>Not applicable</p> <p><b>Lessor's written notice of rent determination on exercise of option to renew (clause 6(6)(b)):</b></p> <p>To be given thirty (30) days after exercise of option.</p> <p><b>Time for Lessee's acceptance of Lessor's assessment of current market rent (clause 6(6)(c)(i)):</b></p> <p>Fourteen (14) days</p> <p><b>Time for adjustment of rent after rent determination (clause 6(7)(b)):</b></p> <p>Thirty (30) days</p>
Item 10 (clause 7)	<p><b>Rent:</b></p> <p>One hundred and twenty five thousand dollars (\$125,000.00) per annum (exclusive of GST) payable in advance by equal monthly instalments of ten thousand four hundred and sixteen dollars and sixty seven cents (\$10,416.67) per month (exclusive of GST) on the 1<sup>st</sup> day of every calendar month.</p>
Item 11 (clause 10)	<p><b>Review Dates (clause 10(1)):</b></p> <p><b>Review Basis</b></p> <p>Not applicable</p>
<p><b><u>Date</u></b></p> <p>1 February 2018</p>	



1 February 2019	Not applicable
1 February 2020	Not applicable
1 February 2021	Not applicable
1 February 2022	Market Review
1 February 2023	Not applicable
1 February 2024	Not applicable
1 February 2025	Not applicable
1 February 2026	Not applicable
	<b>Service of Lessor's intention for rent review:</b>
	Not before 3 months before the Review Date
	<b>Time for conclusion of determination of rent review:</b>
	Sixty (60) days
Item 12 (clause 11)	<b>Percentage of Operating Expenses:</b>
	100%
Item 13 (clause 15)	<b>Rate of interest (clause 15(2)(b)):</b>
	Two percent (2%) above the Commonwealth Bank overdraft rate of interest charged from time to time on unsecured borrowings or facilities of amounts not exceeding \$100,000
Item 14 (clause 18)	<b>Use of Leased Premises for the following purposes (clause 18(1)):</b>
	Smash repair, towing, windscreen and radiator business. The Lessee shall be responsible for obtaining any and all permits and approvals necessary for any specified use of the Leased Premises.
Item 15 (clause 20)	<b>Details of the Trust:</b>
	Not Applicable.
Item 16 (clause 21)	<b>Leased Premises required to be kept open and trading during the following hours (clause 21(1)):</b>
	Not Applicable.
	<b>Hours when Building is closed (clause 21(3)):</b>
	Not Applicable.

- Item 17 (clause 31) **Painting of Leased Premises during each of the following periods (clause 31(1)):**
- Immediately prior to the expiry of the term or the extension of the same.
- Item 18 (clause 34) **Removal of fixtures (clause 34(3)(c)):**
- Prior to the Lessee ceasing to occupy Leased Premises
- Item 19 (clause 36) **Lessee's insurances:**
- Amount of initial public risk cover (clause 36(1)(a)(ii)(A)):**
- Ten Million Dollars (\$10,000,000)
- Item 20 (clause 46) **Duration of power of attorney after termination of Lease (clause 46(4)(a)):**
- Two (2) months
- Item 21 (clause 48) **Lessor's entitlement to terminate Lease, when Building seriously damaged and cannot be repaired or reinstated within following period (clause 48(1)(a)(iv)):**
- Two (2) months
- Lessee's entitlement to terminate Lease, when Leased Premises seriously damaged and
- (i) Lessor takes no action to repair or reinstate for eight (8) weeks after damage (clause 48(2)(a)(i)),
- (ii) Leased Premises will not be capable of being used and occupied for period in excess of (clause 48(2)(a)(ii)): Six (6) months
- Item 22 (clause 52) **Address for service of notices (clause 52(3)(d)):**
- Lessor:**
- PO Box 11 Mundaring WA 6073
- Lessee:**
- C/- Abbots, 813 Wellington Street, West Perth WA
- Guarantor:**
- 6 Sion Close, Waterford WA 6152
- Item 23 (clause 16) **Bank Guarantee:**
- Not applicable

Item 24 (clause 53)

**Special Conditions:**

**1. First Right of Refusal**

- (a) If at any time during the Lease Term only, excluding any renewed term, the Lessor wishes to sell the fee simple reversion in the Leased Premises, the Lessor will:
  - (i) give written notice to the Lessee personally of the Lessor's intention to sell the Leased Premises on the open market; and
  - (ii) in that notice, offer to sell the Leased Premises at the price which the Lessor would be prepared to accept from any other person.
- (b) The Lessee has, after receipt of the notice in subclause (1)(a), 14 days within which to accept the offer (that acceptance to be given personally to the Lessor in writing) after which time the offer will lapse absolutely.
- (c) The Lessor will not be bound by this right of first refusal if, at any time when notice under this clause would otherwise be required, the Lessee is in breach of any of its lease obligations.
- (d) On lapse of the right of first refusal, the Lessor may sell the fee simple reversion of the Leased Premises by:
  - (i) private treaty at a price not less than the price offered to the Lessee; or
  - (ii) auction, the reserve price at which is not less than the price offered to the Lessee under the right of first refusal
- (e) The Lessee may, following the lapse of the right of first refusal:
  - (i) offer to purchase the fee simple reversion of the Leased Premises by private treaty; or
  - (ii) bid at any action,
 

though the lessor will not be bound to accept;

    - (i) an offer to purchase by the lessee; or
    - (ii) any bid at auction.
- (f) This right of first refusal is not assignable.

**2. Easement**

The Lessee and its director acknowledges that:

- (a) the title to 23 Wandeara Crescent, which comprises a portion of the Leased Premises, is encumbered by Easement C409097 ("Easement"), a copy of which is attached to this Lease marked "Annexure A";
- (b) they have read and understood the nature and extent of the restrictions and obligations imposed by the Easement and the effect, if any, of the Easement on the use and occupation of this portion of the Leased Premises by the Lessee;

- (c) they will comply with the restrictions and obligations imposed by the Easement and ensure compliance by the Lessee's employees, contractors, agents and invitees.

### 3. Make Good

The Lessee is not required to reinstate, make good, remediate, repair or paint the Leased Premises to a standard or condition better than that of the condition of the Leased Premises as at 1 February 2017 upon expiry or earlier termination of this Lease for any reason.

### 4. Contamination

- (a) In this clause:

“**Contaminated**” has the meaning given to that term in the CS Act and “**Contamination**” shall have an equivalent meaning.

“**CS Act**” means the *Contaminated Sites Act 2003 (WA)* and the regulations made there under.

“**Remediation**” has the meaning given to that term in the CS Act and “**Remediate**” shall have an equivalent meaning.

- (b) Notwithstanding anything expressed or implied in this Lease the Lessee shall not be responsible for the Remediation of any Contamination of the Leased Premises deemed to be caused by the Lessor and which occurred before 1 February 2017. The Lessor agrees to indemnify and keep indemnified the Lessee in respect of all liability for any Contamination of the Leased Premises which has been determined to have been caused by the Lessor and which occurred before 1 February 2017.

- (c) The Lessee agrees:

- (i) that it will be liable for the Remediation of any Contamination of the Leased Premises which is caused or contributed by the Lessee or caused during the course of the operation of the Lessee's business during the Lease term and any extension or variation thereof; and
- (ii) the Lessee indemnifies and agrees to indemnify the Lessor against any liability, loss, damage, expense or claim sustained or incurred by the Lessor as a result of any Contamination to the Leased Premises caused or contributed to by the Lessee which occurred during the Lease term and any extension or variation thereof and Remediation of the Leased Premises.

- (d) CS Act not limited

Nothing in this clause shall be taken to limit the Lessee's obligations or the Lessor's rights under the CS Act in any way.


### 5. Warranty as to suitability or adequacy

Subject to Clause 19(2) of the Lease, the Lessor warrants that at the time of entering into this Lease the Leased Premises were suitable and adequate for the Lessee's intended use of the Leased Premises specified in Item 14 of the Reference Schedule.

**Executed as a Deed**

**Executed by the Lessor**

EXECUTED on behalf of )  
FR & B Atkins Pty Ltd (ACN 073 828 207) )  
in accordance with section 127(1) of the )  
Corporations Act 2001 by authority of its )  
directors )


  
\_\_\_\_\_  
Signature of Director


  
\_\_\_\_\_  
Signature of Director/Secretary

FRANK REUBEN ATKINS  
Full Name of Director

BRENDA ATKINS  
Full name of Director/Secretary

SIGNED by the said Frank Reuben Atkins )  
in the presence of: )

  
\_\_\_\_\_  
Signature of Witness


  
\_\_\_\_\_

BRIAN RAVEN  
Name of Witness (please print)

1 THORNBURY CLOSE MONDARING . W.A.  
Address

TELECOMMUNICATION CONSULTANT.  
Occupation

SIGNED by the said Brenda Atkins )  
in the presence of: )

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_

BRIAN RAVEN  
Name of Witness (please print)

1 THORNBURY CLOSE MONDARING W.A.  
Address

TELECOMMUNICATION CONSULTANT.  
Occupation

**Executed by the Lessee**

EXECUTED on behalf of )  
WA Panel Works Pty Ltd (ACN 615 963 534) )  
in accordance with section 127(1) of the )  
Corporations Act 2001 by authority of its sole )  
director and sole secretary )

A Lombardi  
Signature of sole Director and sole Secretary

Alfredo Lombardi  
Full Name of sole Director and sole Secretary

**Executed by the Guarantor**

SIGNED by the said )  
Alfredo Lombardi )  
in the presence of: )

[Signature]  
Signature of Witness

A Lombardi

Cecilia Almasco  
Name of Witness (please print)

5 Jupiter St. Carlisle WA  
Address

ADMINISTRATOR  
Occupation

C409097

~~C409097~~

~~C409097~~  
EASEMENT

REGISTERED FOR REGISTRATION WITHDRAWN FROM REGISTER

HEB (office use)	S	C
	3:21	
	23	
	3:40	

MUNDARING DEVELOPMENTS GROUP

PTY LTD 18 PM 12:11

and

SHIRE OF MUNDARING

17 AM 11:44

RECEIVED FOR REGISTRATION

Address: 1032 Wellington St  
Phone No: 321-766

Use this space for instructions if any other than lodging party.

THIS IS A REGISTERED DOCUMENT WHICH MAY NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS WITHOUT THE WRITTEN PERMISSION OF THE REGISTRAR OF TITLES

C 409097 E  


Titles, Crown Leases, Declarations, etc. registered with this document. (To be filled in by person registering)

1. Dup. Easement
2. ....
3. ....
4. ....
5. ....
6. ....

Received items  
No's. ....

Rec. Clerk *[Signature]*

BELOW THIS LINE FOR OFFICE USE ONLY

Encumbrances not notified on face.

Registered 18<sup>th</sup> Aug 1982 at 12:11 o'clock and particulars entered in the Register Book.

New Titles to issue or Endorsing instruction. *NE. 38 Easement*

Initials of Signing Officer *[Signature]*

*[Signature]*  
REGISTRAR OF TITLES

EXAMINED *[Signature]* 7/7/82





notices for the warning of persons likely to be endangered by such work.

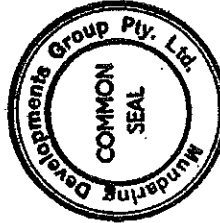
5. The costs of and incidental to the instructions for and preparation execution and stamping of this Indenture together with the stamp duty thereon shall be paid by the Grantor.

Encumbrances Mortgages B971751, C13447 & C238921-3inc.

THE SCHEDULE

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore appearing.

THE COMMON SEAL of  
MUNDARING DEVELOPMENTS  
GROUP PTY LTD was hereunto  
affixed by authority of the  
Board in the presence of :



*[Signature]*

Director

*[Signature]*

Secretary

SIGNED BY OTTO HERMAN GERSCHOW *[Signature]*  
IN THE PRESENCE OF: *[Signature]*  
*24 Collier St. Ardross*  
*Homebush*

SIGNED BY ANN GERSCHOW *[Signature]*  
IN THE PRESENCE OF: *[Signature]*

THE COMMON SEAL of  
SHIRE OF MUNDARING was hereunto  
affixed by authority of a  
resolution of the Council in the  
presence of :



*[Signature]*

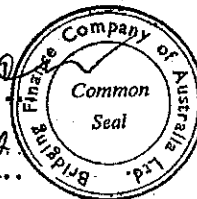
SHIRE PRESIDENT

*[Signature]*

SHIRE CLERK

THE COMMON SEAL OF BRIDGING  
FINANCE COMPANY OF AUSTRALIA  
LTD., WAS HERETO AFFIXED IN  
THE PRESENCE OF:-

*[Signature]*  
DIRECTOR  
*[Signature]*  
SECRETARY



09-  
2 H

09-  
2 H

MR. *[Signature]*  
MRS. *[Signature]*



*Endorse: Endorse on the Second Schedule (cont) on C's 17 1618-911,  
1618-916 and 1618-922 (cont)  
and 1370-518 (c)*

TRANSFER C.409097 The right to enter upon the portion  
of the within land coloured blue on the map in the margin  
for the purpose of exercising certain DRAINAGE rights  
as set out in the said Transfer is granted to  
SHIRE OF MUNDARING.

*REGISTERED: 18-8-82 @ 12.11 o'clock.*



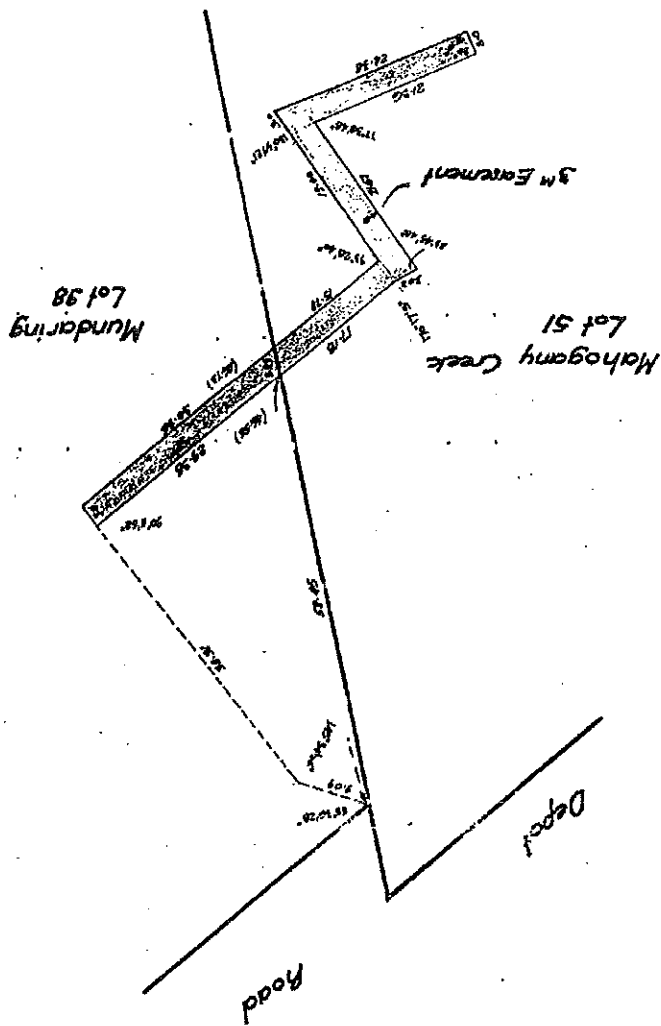




TELEPHONE 314 1188  
 85 GREAT NORTH ROAD, MUNDARING WA 6054  
 LICENSED SURVEYORS - PLANNERS  
**BRIAN HUNT PTY LTD**

PROJECT  
**Assessments Mahogany Ck Lot 51, Mundaring Lot 98**  
 DATE 5-7-81  
 DRAWN B.A.H.  
 CHECKED [Signature]  
 REF ON JOB NO [Blank]  
 SHEET NO 1

*Handwritten notes:*  
 [Signature]  
 [Signature]  
 [Signature]



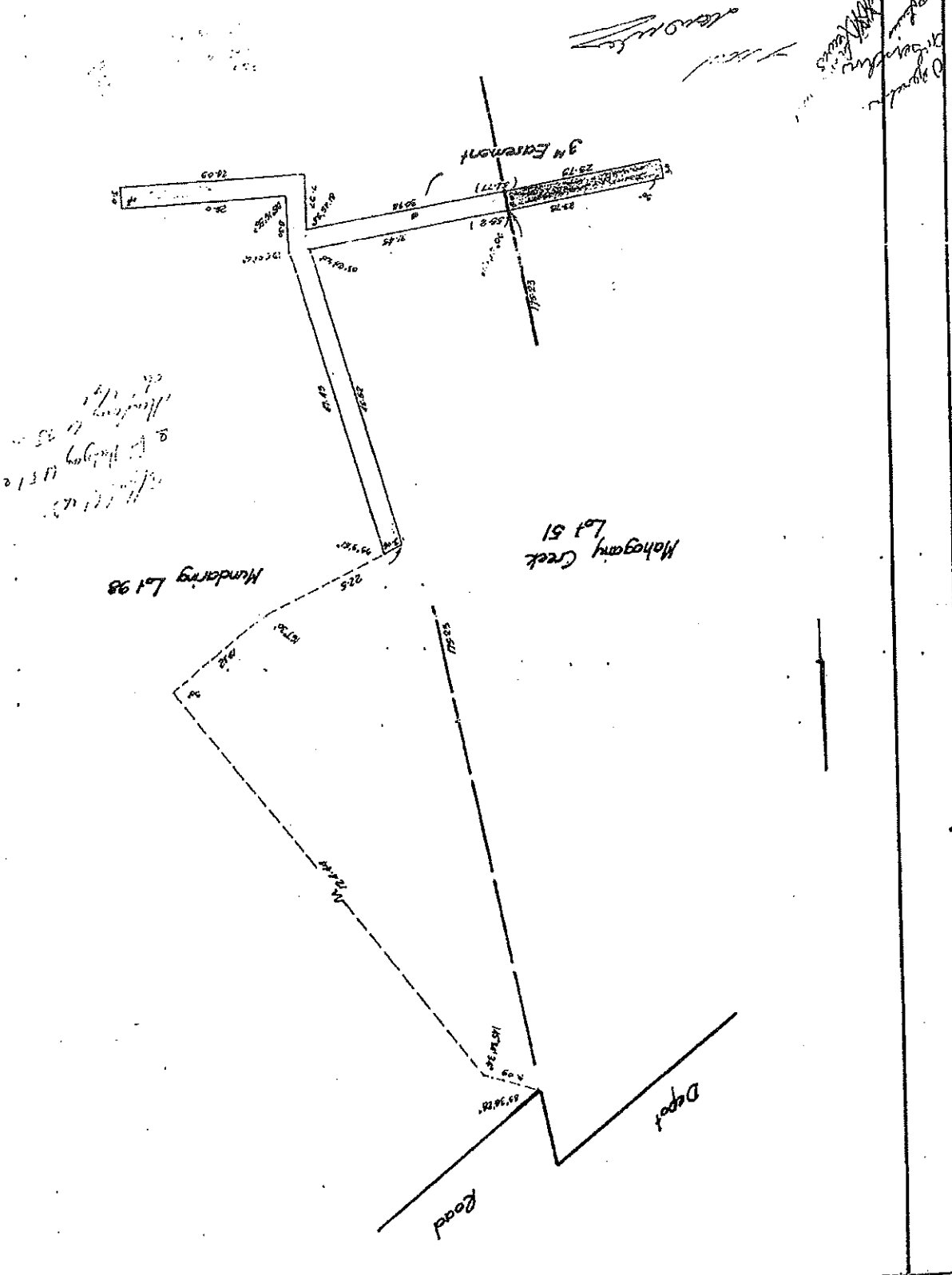
*Handwritten notes:*  
 15/12/27 m/s

















under or upon the affected land and

(ii) Any apparatus connected with and requisite to secure the safe and proper working of the said pipe drain (which apparatus is hereinafter referred to as "the fittings")

and for all or any of such purposes :

- (a) To make surveys and take levels of the affected land and set out such parts thereof as the Grantee and its said workmen officers servants agents contractors and others may think fit and to use any earth stones and other things taken therefrom
  - (b) To construct extend maintain alter and improve the aforesaid pipe drain and fittings or any one or more of them through or under the affected land
  - (c) To open and break up the soil of the affected land and excavate and sink trenches for the purpose of constructing extending maintaining altering or improving any of the aforesaid pipe drain and fittings or any one or more of them
  - (d) To open cleanse and repair any of the aforesaid pipe drain and fittings or any one or more of them and alter the position or construction thereof
- (b) From time to time and at all times hereafter to use any of the aforesaid pipe drain from the passage or conveyance of water
- (c) To use the affected land for the purposes of draining :
- (i) the said land and the water drainage thereto
  - (ii) the land and roadways and adjoining the said land and the water draining thereto

2. The Grantors for themselves and their successors in title the registered proprietor or proprietors for the time being of the said land HEREBY COVENANT with the Grantee :

Not to make or erect or cause permit or suffer to be made or erected any building or improvement or part thereof under or over the affected land nor to plant or suffer or permit to be planted any trees thereon nor to place or permit to be planted or to be placed anything or any part thereof on the affected land or any part thereof which does or may be likely to prevent or hinder the Grantee in the exercise of its rights and privileges hereunder without the consent of the Grantee in writing first had and obtained.

3. The Grantee shall at all times maintain the said drain in good and safe working order and condition and shall ensure that the said drain shall be so used and maintained that no damage or injury shall be caused to the adjoining land of the Grantors or to any improvements and erections thereon.

4. And the Grantee HEREBY COVENANTS with the Grantors and their successors in title the registered proprietor or proprietors for the time being of the said land to complete any work from time to time commenced on the affected land with all convenient speed and fill in consolidate and level off any holes or trenches thereby made on the affected land and to carry away all earth and rubbish occasioned by the work and whilst the soil or surface is opened and during the progress of any construction alteration repair or maintenance work to any fittings on the affected land to ensure that the





Exempt (Section 719) Stamp Act 1924

*[Signature]*  
 for COMMISSIONER OF STATE TAXATION

WESTERN AUSTRALIA,  
 Transfer of Land Act 1893 as amended

WESTERN AUSTRALIA STAMP DUTY  
 85EFG2 2E125430 NDP \$0.00

No.

a. Insert type of  
 document here.

Blank Instrument Form (see footnote)  
 a. GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made the 14<sup>TH</sup> day of April.  
 One thousand nine hundred and eighty

B E T W E E N :

MUNDARING DEVELOPMENTS GROUP PTY. LTD. of 46 Great Eastern Highway Mundaring in the State of Western Australia and OTTO HERMAN GERSCHOW Farmer and ANN GERSCHOW Married Woman both of 193 Uduc Road Harvey in the said State (hereinafter called "the Grantors" which expression shall include the Grantors and their respective assigns successors executors administrators and transferees) of the one part and SHIRE OF MUNDARING of Great Eastern Highway Mundaring in the said State (hereinafter called "the Grantee" which expression shall include its successors) of the other part

W H E R E A S :

- (a) The Grantors are registered as the proprietors of an estate in fee simple in ALL THOSE pieces of land being Portion of each of Mahogany Creek Lot 51 and Mundaring Lot 98 and being Lot 32 on Plan 13747 and being the whole of the land comprised in Certificate of Title Volume 1618 Folio 911: Portion of Mahogany Creek Lot 51 and being Lot 37 on Plan 13747 and being the whole of the land comprised in Certificate of Title Volume 1618 Folio 916: Portion of Mundaring Lot 98 and being Lot 43 on Plan 13747 and being the whole of the land comprised in Certificate of Title Volume 1618 Folio 922: The balance of Mundaring Lot 98 remaining after the removal of the land therein the subject of Plan 13747 and being the balance of the land remaining in Certificate of Title Volume 1370 Folio 518 (hereinafter called "the said land").
- (b) The Grantors desire to subdivide the said land and have made application to the Town Planning Board for its approval to the diagram of the proposed subdivision which approval the said Board is prepared to give subject to the Grantors having first given and granted to the Grantee an Easement in the terms of these presents over that portion of the land delineated and coloured blue on the maps in the Schedule hereto (hereinafter called "the affected land") and entering into and executing these presents which the Grantors have agreed to do.

NOW THIS INDENTURE WITNESSETH as follows :

1. In consideration of the premises the Grantors HEREBY TRANSFER AND GRANT unto the Grantee full and free right and liberty at all times hereafter :

- (a) By its workmen officers servants agents contractors and other acting under the authority of the Grantee with or without motor or other mechanised vehicles or implements laden or unladen from time to time and at all times to enter upon the affected land for the purpose of constructing extending maintaining altering or improving :

(i) A pipe drain for the carriage of water through

NOTE: This Form may be used only when the "Box Type" Form is not suitable. It may be completed in narrative style.

FORM APPROVAL  
 No. 046  
 REGISTRAR OF TITLES



Sands & McDougall  
 STOCK FORM 324

