

Our Ref: GBC.LSP.041401
Your Ref:

11 January 2019

C & S Haslam Superannuation Pty Ltd
308 Camp Road
COWRA NSW 2794

Dear Stephen & Christine

re: Your Lease to Smith
property: 51 Kendal Street, Cowra

We refer to the above matter and advise that we have sent the lease to the NSW Land Registry to be registered. We *enclose* a copy of same for your records. We confirm we will forward a copy of the lease to Balanced Accountants for their records.

Once registered we will retain the original Lease in our safe custody pending your further instructions.

This now completes the matter and we *enclose* our Tax Invoice for your attention in due course. We thank you for instructing us to act on your behalf and should you have any queries, please do not hesitate to contact the writer or his assistant.

Yours faithfully
GARDEN & MONTGOMERIE

Per:



Grant Chamberlain
(direct email: grant@gandm.com.au)
Enc.

Enquiries: Lachlan Patterson
(direct email: lachlan@gandm.com.au)
Tel: 02 6342 1622

LEASE
New South Wales
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Revenue NSW use only	COPY
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(A) **TORRENS TITLE**

Property leased Folio Identifier 2/17754

(B) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any Reference: _____	CODE L
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(C) **LESSOR**

C & S Haslam Superannuation Pty Ltd ACN 622 202 671

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable): _____

(E) **LESSEE**

Anthony Vincent Gerard Smith and Julie Maureen Smith ABN 92 358 019 482
TENANCY: Joint Tenants

- (G) 1. **TERM** Five (5) Years _____
2. **COMMENCING DATE** 1 November 2018 _____
3. **TERMINATING DATE** 31 October 2023 _____
4. With an **OPTION TO RENEW** for a period of Five (5) Years _____
set out in clause 5.2 of Annexure A _____
5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A. _____
6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A. _____
7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A hereto.
8. Incorporates the provisions set out in N.A. _____
No. N.A. _____
9. The **RENT** is set out in item No. 6 of Annexure A _____

DATE 18 December 2018

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: C & S Haslam Superannuation Pty Limited ACN 622 202 671

Authority: section 127 of the Corporations Act 2001

Signature of authorised person: 

Signature of authorised person: 

Name of authorised person: Stephen John Haslam

Name of authorised person: Christine Rhonda Haslam


Office held: Director

Office held: Director

I certify I am an eligible witness and that the lessee signed this dealing in my presence.
[See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness:



Signature of lessee:



Name of witness:

Address of witness: Michael John Whiteley
Solicitor
65 Sale Street, Orange

(I) STATUTORY DECLARATION*

I _____ solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales on _____

in the presence of _____ of _____

Justice of the Peace (J.P. Number: _____) Practising Solicitor

Other qualified witness [specify] _____

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness: _____ Signature of applicant: _____

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ANNEXURE A TO THE LEASE

LANDLORD: C & S HASLAM SUPERANNUATION PTY LIMITED ACN 622 202 671
TENANT: ANTHONY VINCENT GERARD SMITH & JULIE MAUREEN SMITH
ABN 92 358 019 482

Annexure A consists of this and the following pages

SUMMARY

- Item 1 Landlord
C & S HASLAM SUPERANNUATION PTY LIMITED ACN 622 202 671
- Item 2 Tenant
ANTHONY VINCENT GERARD SMITH & JULIE MAUREEN SMITH
ABN 92 358 019 482
- Item 3 Guarantor
Not Applicable*
- Item 4 Premises
Folio Identifier 2/17754 being 51 Kendal Street, Cowra NSW 2794*
- Item 5 Term
1 November 2018 and ending on 31 October 2023*
- Item 6 Initial Rent
\$32,500.00 per annum*
- Item 7 Option Lease
1 November 2023 and ending on 31 October 2028*
- Item 8 Second Option Lease
Not Applicable*
- Item 9 Market Rent Review Dates (including during any Option Leases)
Not Applicable*
- Item 10 CPI Rent Review Dates (including during any Option Leases)
Not Applicable*
- Item 11 Percentage Rent Review Dates (including during any Option Leases)
Each anniversary of the commencement of this lease and on the commencement of any option lease and each anniversary thereof*
- Item 12 Percentage for Percentage Rent Review
3%*
- Item 13 Interest rate
10%*
- Item 14 Permitted Use
Retail*
- Item 15 Initial public liability insurance amount
\$20,000,000.00*
- Item 16 Bank Guarantee amount
Two (2) Months Rent *
- Item 17 Rent free period
Four (4) Months* or until vacant possession of flat 51A Kendal Street Cowra is given to the tenant pursuant to clause 20, whichever date is the later.

Handwritten initials/signature

Handwritten signatures and notes:
Anthony Vincent Gerard Smith
Julie Maureen Smith
C & S Haslam

Handwritten signature:
C Haslam

- Item 18** **Turnover Rent base figure**
Not Applicable*
- Item 19** **Turnover Rent percentage figure**
Not Applicable*
- Item 20** **Security Bond amount**
Not Applicable*
- Item 21** **Incentive amount**
Not Applicable*
- Item 22** **Demolition**
Not Applicable*

Jul 5th
Anthony Smith
J. Smith
5th
CHASIA

RETAIL LEASES ACT ACKNOWLEDGMENT

A. Lessor's Disclosure Statement

The Tenant acknowledges that it received the Lessor's Disclosure Statement not less than 7 days before this Lease was entered into.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Unless otherwise provided in this Lease, the following words have the following meanings:

- (a) *Accounting Year* means each 12 Month period during the Term ending on 30 June or on such other date as the Landlord chooses and gives written notice of to the Tenant;
- (b) *Assignor's Disclosure Statement* has the meaning given in the Retail Leases Act;
- (c) *Authority* means any government, semi-government, city, municipal, administrative, statutory or judicial body, instrumentality, department, agency or similar entity;
- (d) *Bank Guarantee* means an irrevocable bank guarantee having no expiry date in a form approved by the Landlord from a bank trading in New South Wales under which the bank agrees to pay to the Landlord on demand not less than the amount of Rent and Outgoings stated in Item 16 increased by the rate of GST (applicable from time to time) expressed as a percentage;
- (e) *Business Day* means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney;
- (f) *Business Hour* means an hour in the period between 8am to 6pm on a Business Day;
- (g) *Commencing Date* means the lease starting date stated in Item 5;
- (h) *Corporations Act* means the *Corporations Act 2001 (Cth)*;
- (i) *CPI Rent Review Date* means each of the dates stated in Item 10;
- (j) *Demolition Date* means the date specified in the Demolition Notice as the date on which this Lease is terminated;
- (k) *Demolition Notice* means a written notice given by the Landlord to the Tenant:
 - (i) if the Term is more than 12 Months, giving the Tenant not less than 6 Months prior notice of a Demolition Proposal and requiring the Tenant to vacate the Premises on the Demolition Date; and
 - (ii) if the Term is 12 Months or less, giving the Tenant not less than 3 Months prior notice of a Demolition Proposal and requiring the Tenant to vacate the Premises on the Demolition Date;
- (l) *Demolition Proposal* means a genuine proposal by the Landlord to carry out within a reasonably practical time a substantial repair, renovation or reconstruction of the Premises which cannot be carried out without vacant possession of the Premises;
- (m) *Demolition Termination Date* means the date specified in the Demolition Termination Notice as the date on which the Lease is terminated;
- (n) *Demolition Termination Notice* means a written notice given by the Tenant to the Landlord terminating this Lease by giving not less than 7 Business Days prior notice;

Anthony Smith
SAH
et al

- (o) *GST* has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- (p) *Guarantor* means the person described in Item 3 and includes:
 - (i) if the Guarantor is a natural person, the Guarantor's executors and administrators; and
 - (ii) if the Guarantor is a corporation, the Guarantor's successors in title;
- (q) *Incentive* means the amount (if any) of any incentive paid or allowed by the Landlord in relation to this Lease;
- (r) *Item* means an Item in the Summary;
- (s) *Landlord* and *Lessor* means the Person described in Item 1 and includes:
 - (i) if the Landlord is a natural person, the Landlord's executors, administrators and assigns; and
 - (ii) if the Landlord is a corporation, the Landlord's successors in title and assigns;
- (t) *Landlord PPS Items* means any item of Personal Property which:
 - (i) is owned or leased by the Landlord; and
 - (ii) is situated on the Premises at any time during the term of this Lease;
- (u) *Landlord's Air Conditioning Equipment* means all plant and equipment for ventilating or air conditioning the Premises owned or controlled by the Landlord;
- (v) *Landlord's Equipment* means:
 - (i) all wires and cables, pipes drains and sewers, ducts, plant, machinery, fixtures fittings and equipment, kitchens, toilets, grease traps, wash basins, water gas and electrical fittings and equipment and other services in the Premises owned or controlled by the Landlord, except the Tenant's Goods;
 - (ii) the Landlord's Air Conditioning Equipment; and
 - (iii) all fire fighting, detection, prevention, warning and evacuation equipment in the Premises;
- (w) *Lease* means this Lease and includes any other tenancy which exists between the Landlord and the Tenant;
- (x) *Lessor's Disclosure Statement* has the meaning given in the Retail Leases Act;
- (y) *Loose Tenant's Items* means those items of the Tenant's Goods which are not fixtures;*
- (z) *Market Rent Review Date* means each of the dates stated in Item 9;
- (aa) *Month* means calendar month;
- (bb) *Nominator* means the president or other principal officer (acting or otherwise) for the time being of the New South Wales Division of the Australian Property Institute (Inc) or the president or other principal officer (acting or otherwise) for the time being of the Real Estate Institute (NSW);
- (cc) *Option Lease* means the Option Lease (if any) referred to in Item 7;
- (dd) *Option Leases* means the Option Lease and the Second Option Lease;

- (ee) *Outgoings* means Cowra Shire Council rates and charges and building insurance for Folio Identifier 2/17754.
- (ff) *Outgoings Estimate* means a written estimate given by the Landlord to the Tenant in accordance with the Retail Leases Act of the Outgoings for any period up to 1 year in advance;
- (gg) *Outgoings Report* means a report given by the Landlord to the Tenant detailing all expenditure by the Landlord on the Outgoings for the preceding Accounting Year;
- (hh) *Percentage Rent Review Dates* means each of the dates stated in Item 11;
- (ii) *Permitted Use* means the use specified in Item 14;
- (jj) *Person* includes natural persons and incorporated and unincorporated associations;
- (kk) *Personal Property* has the meaning given in the PPS Act;
- (ll) *PPS Act* means the *Personal Property Securities Act 2009 (Cth)*;
- (mm) *Premises* means the land and buildings described in Item 4 together with all improvements on the Premises owned or controlled by the Landlord and the Landlord's Equipment and any extensions or alterations to the Premises and includes any part of the Premises;
- (nn) *Premises Services* means any services and facilities provided or installed by or for the Landlord in the Premises or for the benefit of the Premises in any false floor of the Premises or in any ceiling cavity or structural walls adjoining the Premises including but, not limited to, air-conditioning thermostats, ducts and outlets, fire sprinkler heads and piping, security and fire alarm equipment, lighting, central electrical switching arrangements, emergency lighting and exit signs;
- (oo) *Principal Contractor* has the same meaning as in the WH&S Regulation;
- (pp) *Property Council* means the Property Council of Australia Limited (ABN 13 008 474 422) trading as Property Council of Australia;
- (qq) *Registrar* has the meaning given in the Retail Leases Act;
- (rr) *Rent* means the amounts payable under clause 6.1;
- (ss) *Rent Agreement Period* means the period of 14 days during which the Landlord and the Tenant will try to agree on the annual current market rent to apply from a Market Rent Review Date;
- (tt) *Rent Review Notice* means a written notice given by the Landlord to the Tenant of the Landlord's assessment of the annual current market rent to apply as the Rent from a Market Rent Review Date;
- (uu) *Retail Leases Act* means the *Retail Leases Act 1994 (NSW)*;
- (vv) *Second Option Lease* means the lease for a further term referred to in Item 8;
- (ww) *Secretary* has the meaning given in the Retail Leases Act;
- (xx) *Security Bond* means a sum of cash of an amount not less than the amount of Rent and Outgoings stated in Item 20 increased by the rate of GST (applicable from time to time) expressed as a percentage as provided in clause 17.3;
- (yy) *Security Interest* has the meaning given in the PPS Act;
- (zz) *Specialist Retail Valuer* has the same meaning as that term has in the Retail Leases Act;

- (aaa) *Summary* means the Summary in Annexure A to this Lease;
- (bbb) *Tenant and Lessee* means the Person described in Item 2 and includes:
 - (i) if the Tenant is a natural person, the Tenant's executors, administrators and permitted assigns;
 - (ii) if the Tenant is a corporation, the Tenant's successors in title and permitted assigns;
 - (iii) unless contrary to the context, the Tenant's employees; and
 - (iv) unless contrary to the context, the Tenant's licensees, subtenants, contractors, agents, customers and visitors at any time in the Premises;
- (ccc) *Tenant's Goods* means all the Tenant's fixtures, fittings and goods in the Premises and includes any fixtures, fittings and goods of a previous occupier of the Premises but does not include any fixtures, fittings or goods in the Premises to replace the Landlord's Equipment;
- (ddd) *Tenant's Sales* means the gross amount received or receivable whether as cash or otherwise by the Tenant from the sale of goods, hirings or the provision of services at or associated with the Tenant's business at the Premises;
- (ccc) *Term* means the term of this Lease as stated in Item 5;
- (fff) *Terminating Date* means the lease ending date stated in Item 5;
- (ggg) *Turnover Rent* means an amount equal to that percentage of the Tenant's Sales stated in Item 19 that exceed the Turnover Rent base figure stated in Item 18;
- (hhh) *WH&S Laws* means the laws relating to work health and safety that apply to the Premises and the use of it and includes the WH&S Regulation; and
- (iii) *WH&S Regulation* means the *Work Health and Safety Regulation 2011 (NSW)*.

1.2. Interpretation

Unless otherwise provided in this Lease:

- (a) all covenants or obligations in this Lease are to be regarded as separate and independent covenants made by 1 party to this Lease in favour of the other parties;
- (b) the law of New South Wales and the jurisdiction of the New South Wales Courts and of the High Court and Federal Court of Australia apply to this Lease;
- (c) the Landlord and the Tenant agree that nothing will be implied by this Lease or will arise between the Landlord and the Tenant (whether by other agreement or because of any promise, representation, warranty or undertaking given by or for the Landlord or the Tenant);
- (d) reference to any body (including, but not limited to, any institute, association, Authority or government agency) which ceases to exist or whose powers or functions are transferred to any other body also includes the body which replaces it or which substantially takes over its powers and functions;
- (e) headings in this Lease do not form part of the content of this Lease and do not affect the meaning of this Lease;
- (f) Sections 84, 85 and 133B of the *Conveyancing Act 1919 (NSW)* do not apply to this Lease;
- (g) words importing the singular include the plural and vice versa and words importing a particular gender include every gender;

- (h) any agreement in this Lease by 2 or more Persons binds them jointly and each of them separately;
- (i) if any part of this Lease is invalid, illegal or unenforceable, the remaining parts of this Lease will not be affected and will continue to be enforceable;
- (j) references to statutes, regulations, ordinances and by-laws include all statutes, regulations, ordinances and by-laws amending, consolidating or replacing them;
- (k) words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act;
- (l) a provision of this Lease must not be construed against a party only because that party was responsible for preparation of this Lease or the drafting of that provision; and
- (m) *including* and similar expressions are not words of limitation.

2. **FORM OF THIS LEASE**

- (a) This Lease is a Deed.
- (b) This Lease consists of the front page of this Lease and Annexure A.

3. **PARTIES**

The parties to this Lease are the Landlord and the Tenant and the Guarantor.

4. **PROPERTY LEASED**

The Landlord leases the Premises to the Tenant for the Term on the conditions in this Lease.

5. **LEASE PERIOD**

5.1. **Term of this Lease**

This Lease is for the Term starting and ending on the dates stated in Item 5.

5.2. **Option Lease**

If Item 7 refers to a lease for a further term and the Tenant wishes to take up the Option Lease and strictly follows the procedures set out in clause 5.3, the Landlord will lease the Premises to the Tenant on the conditions set out in clause 5.4.

5.3. **Option procedure for Option Lease**

- (a) If the Tenant wishes to take up the Option Lease, the Tenant must:
 - (i) give written notice to the Landlord not more than 9 Months and not less than 6 Months before the Terminating Date of this Lease;
 - (ii) not be in default under this Lease unless either the Landlord has waived the default or the default has been remedied by the Tenant;
 - (iii) ensure that the Guarantor enters into the Option Leases as guarantor; and
 - (iv) provide to the Landlord a new bank guarantee prior to the commencing date of the Option Lease to be calculated by the Landlord in accordance with Item 16.
- (b) After the Landlord receives a notice under clause 5.3(a)(i), the Landlord will give to the Tenant a written statement updating the Lessor's Disclosure Statement.



5.4. Option Lease conditions

The Option Lease will be on the same conditions as this Lease except that:

- (a) clauses 5.2 to 5.5 will not be included;
- (b) Item 7 will be deleted;
- (c) any clause of this Lease which contains a provision excluding that clause from the Option Lease will not be included;
- (d) the commencing date will be the Option Lease commencing date;
- (e) the terminating date will be the Option Lease terminating date; and
- (f) the initial Rent payable during the Option Lease will be determined in accordance with this Lease.

5.5. Option Lease market rent determination

- (a) If the commencing date of the Option Lease is a Market Rent Review Date and the Landlord and the Tenant have not agreed on the Rent to apply as at that date, the Tenant can request a determination of the annual current market rent at any time within the period beginning 6 Months before and ending 3 Months before the last date on which the option to enter into the Option Lease can be exercised by the Tenant.
- (b) If the Tenant requests a determination of the annual current market rent, the period referred to in clause 5.3(a)(i) will be extended so that the last day of the period is 21 days after written notice is given to the Tenant of the determination.
- (c) If the Term is 12 Months or less, the periods of 6 Months and 3 Months in clause 5.5(a) will instead be 3 Months and 30 days.

5.6. New lease offer

- (a) Unless there is an Option Lease, no earlier than 12 Months before the Terminating Date and no later than 6 Months before the Terminating Date, the Landlord will by written notice to the Tenant either:
 - (i) offer the Tenant a new lease on the terms (including Rent) specified in the notice; or
 - (ii) inform the Tenant that the Landlord does not propose to offer the Tenant a new lease.
- (b) If the Term is 12 Months or less, the periods of 12 Months and 6 Months in clause 5.6(a) will instead be 6 Months and 3 Months.
- (c) The Landlord cannot withdraw an offer made under clause 5.6(a)(i) until 1 Month after the offer is made.
- (d) If the Landlord does not give a notice to the Tenant under clause 5.6(a) and the Tenant requests an extension by written notice given to the Landlord before the Terminating Date, the Term will be extended until 6 Months after the Landlord gives the notice required under clause 5.6(a).
- (e) During an extension of this Lease under this clause 5.6(d), the Tenant can terminate this Lease by giving not less than 1 Month written notice to the Landlord.

5.7. Second Option Lease

If Item 8 refers to a lease for a further term and the Tenant wishes to take up the Second Option Lease and strictly follows the procedures set out in clause 5.8, the Landlord will lease the Premises to the Tenant on the conditions set out in clause 5.9.

5.8. Option procedure for Second Option Lease

- (a) If the Tenant wishes to take up the Second Option Lease, the Tenant must:
 - (i) give written notice to the Landlord not more than 6 Months and not less than 3 Months before the Terminating Date of the Option Lease;
 - (ii) not be in default under the Option Lease unless either the Landlord has waived the default or the default has been remedied by the Tenant; and
 - (iii) provide to the Landlord a new bank guarantee prior to the commencing date of the Second Option Lease to be calculated by the Landlord in accordance with Item 16.
- (b) After the Landlord receives a notice under clause 5.8(a)(i) the Landlord will give to the Tenant a written statement updating the Lessor's Disclosure Statement.

5.9. Second Option Lease conditions

The Second Option Lease will be on the same conditions as the Option Lease except that:

- (a) clauses 5.7 to 5.10 will not be included;
- (b) Item 8 will be deleted;
- (c) any clause of the Option Lease which contains a provision excluding that clause from the Second Option Lease will not be included;
- (d) the commencing date will be the Second Option Lease commencing date;
- (e) the terminating date will be the Second Option Lease terminating date; and
- (f) the initial Rent payable during the Second Option Lease will be determined in accordance with the Option Lease.

5.10. Second Option Lease market rent determination

- (a) If the commencing date of the Second Option Lease is a Market Rent Review Date and the Landlord and the Tenant have not agreed on the Rent to apply as at that date, the Tenant can request a determination of the annual current market rent at any time within the period beginning 6 Months before and ending 3 Months before the last date on which the option to enter into the Second Option Lease can be exercised by the Tenant.
- (b) If the Tenant requests a determination of the annual current market rent, the period referred to in clause 5.8(a)(i) will be extended so that the last day of the period is 21 days after written notice is given to the Tenant of the determination.
- (c) If the term of the Option Lease is 12 Months or less, the periods of 6 Months and 3 Months in clause 5.10(a) will instead be 3 Months and 30 days.

5.11. Demolition

- (a) If Item 22 entitles the Landlord to give a Demolition Notice, and if the Landlord has a Demolition Proposal then, despite anything to the contrary in this Lease, the Landlord can give a Demolition Notice to the Tenant.



- (b) At any time after the Landlord gives a Demolition Notice to the Tenant but no later than 10 Business Days before the Demolition Date, the Tenant can give a Demolition Termination Notice to the Landlord.
- (c) If the Landlord gives a Demolition Notice or the Tenant gives a Demolition Termination Notice:
 - (i) no later than the earlier of the Demolition Date and the Demolition Termination Date, the Tenant will deliver to the Landlord a surrender of this Lease in registrable form, except for signing by the Landlord;
 - (ii) the Tenant will give vacant possession of the Premises to the Landlord on the earlier of the Demolition Date and the Demolition Termination Date in the condition that would be required under this Lease if such date were the Terminating Date; *
 - (iii) the Tenant will give vacant possession of the Premises to the Landlord on the earlier of the Demolition Date and the Demolition Termination Date and in that event, the Tenant will not be required to comply with clause 16.3(a) provided that the Tenant:
 - (A) removes the Loose Tenant's Items from the Premises;
 - (B) vacates the Premises leaving them in a clean and tidy state; and
 - (C) repairs any damage caused by the Tenant to the Premises;*
 - ~~(iv) this Lease will terminate on the earlier of the Demolition Date and the Demolition Termination Date and neither the Landlord nor the Tenant will have any claim against the other as a consequence of the giving of either the Demolition Notice or the Demolition Termination Notice;~~
- (d) If the Landlord gives a Demolition Notice or the Tenant gives a Demolition Termination Notice and demolition of the Premises is not carried out within a reasonably practicable time after the Demolition Date, the Landlord is liable to pay the Tenant reasonable compensation for damage suffered by the Tenant as a consequence of the early termination of this Lease, unless the Landlord establishes that at the time the Demolition Notice was given by the Landlord there was a genuine proposal to demolish the Premises within a reasonably practical time.
- (e) If the Landlord gives a Demolition Notice or the Tenant gives a Demolition Termination Notice and the Tenant has installed fixtures in the Premises the Landlord is liable to pay the Tenant compensation for the Tenant's fixtures, whether or not the Demolition Proposal is carried out.

6. PAYMENTS

6.1. Rates of Rent and method of payment

Rent is payable at the annual rate stated in Item 6 until varied under this Lease and is then payable at the varied rates. All payments must be made in full at the Landlord's address stated in Item 1 or at any other place notified in writing by the Landlord to the Tenant. If required by the Landlord, Rent must be paid by irrevocable automatic order on the Tenant's bank.

6.2. Instalments of Rent

The Tenant will pay Rent at the following rates:

- (a) if the Commencing Date is not the first day of a Month the first Rent payment will be calculated on a daily basis based on the number of days in the relevant Month;
- (b) by instalments monthly in advance on the first day of each full Month within the Term equal to one-twelfth of the annual Rent then payable; and

- (c) if the Terminating Date is not the last day of a Month, the last Rent payment will be calculated on a daily basis based on the number of days in the relevant Month.

6.3. Market Rent Reviews

- (a) On each Market Rent Review Date the annual Rent payable under this Lease will be varied to the annual current market rent agreed or determined under this clause 6.3.
- (b) In this Lease current market rent means the annual rent that would reasonably be expected to be paid for the Premises, determined on an effective rent basis:
 - (i) having regard to:
 - (A) the terms and conditions of this Lease;
 - (B) the rent concessions or other benefits that are frequently or generally offered to prospective tenants of unoccupied retail premises;
 - (C) the rent that would reasonably be expected to be paid for the Premises if the Premises were unoccupied and offered for renting for the same or a substantially similar use to the Permitted Use; and
 - (D) the Rent and Outgoings;
 - (ii) without having regard to:
 - (A) the value of the Tenant's Goods; or
 - (B) the Tenant's goodwill.
- (c) No earlier than 3 Months before a Market Rent Review Date, the Landlord will give the Rent Review Notice to the Tenant.
- (d) Unless the Tenant objects to the Rent Review Notice by giving written notice to the Landlord within 14 Business Days of the Tenant receiving the Rent Review Notice (time being of the essence), the annual current market rent payable from the Market Rent Review Date will be the amount in the Rent Review Notice.
- (e) If the Tenant objects to the Rent Review Notice by giving written notice to the Landlord within 14 Business Days of the Tenant receiving the Rent Review Notice (time being of the essence), the Rent Agreement Period will start. If the Landlord and the Tenant do not agree within the Rent Agreement Period (time being of the essence) on the annual current market rent to apply from the Market Rent Review Date clauses 6.3(f) to 6.3(o) will apply.
- (f) The Landlord and the Tenant will try to agree on a Specialist Retail Valuer to determine the annual current market rent to apply from the Market Rent Review Date. Failing agreement within 7 Business Days of the end of the Rent Agreement Period either the Landlord or the Tenant can apply to the Registrar to nominate a Specialist Retail Valuer.
- (g) The Landlord and the Tenant can make written submissions to the Specialist Retail Valuer before the date on which the Specialist Retail Valuer is required to make the determination. The Specialist Retail Valuer is entitled to take into account any such written submissions when making the determination but is not obliged to do so.
- (h) The Specialist Retail Valuer in determining the amount of the rent must take into account the matters set out in clause 6.3(b)(i).
- (i) Within 14 days after a request by the Specialist Retail Valuer, the Landlord must supply the Specialist Retail Valuer with information reasonably available to the Landlord requested by the

Specialist Retail Valuer to assist the Specialist Retail Valuer to determine the current market rent.

- (j) A Specialist Retail Valuer may apply to the Registrar for an order that the Landlord comply with a request referred to in clause 6.3(i) to supply relevant information about leases for retail shops situated in the Premises.
- (k) The Specialist Retail Valuer will make a determination and will notify the Landlord and the Tenant of the Specialist Retail Valuer's determination within 1 Month after the Specialist Retail Valuer receives the information required in clause 6.3(i). The Specialist Retail Valuer must give his or her valuation in writing and must give detailed reasons for the Specialist Retail Valuer's determination. The Specialist Retail Valuer must specify the matters to which the Specialist Retail Valuer has had regard in making the determination.
- (l) The Specialist Retail Valuer will act as an expert and not as an arbitrator.
- (m) Subject to Section 32A of the Retail Leases Act, the Specialist Retail Valuer's determination will be final and binding as between the Landlord and the Tenant.
- (n) Either the Landlord or the Tenant can request the Registrar to appoint another Specialist Retail Valuer if the appointed Specialist Retail Valuer:
 - (i) fails to accept the appointment;
 - (ii) resigns the appointment;
 - (iii) becomes incapacitated or dies; or
 - (iv) fails to notify the Landlord and the Tenant of the determination within 1 Month after accepting the appointment.
- (o) The Landlord and the Tenant will each pay one half of the Specialist Retail Valuer's costs of making the determination.
- (p) If the Rent has not been agreed or determined by a Market Rent Review Date, the Tenant will pay the Landlord instalments of Rent on account equal to the Rent payable before that Market Rent Review Date. Within 14 days of the Rent being agreed or determined the Tenant will pay to the Landlord or the Landlord will credit to the Tenant any difference between the amount paid on account and the Rent as agreed or determined.

6.4. CPI Rent Reviews

- (a) On each CPI Rent Review Date the annual Rent payable under this Lease will be the amount determined under this clause 6.4.

- (b) The annual Rent payable from the CPI Rent Review Date will be the amount calculated by applying the following formula:

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

where:

- R* is the annual Rent to be payable from the CPI Rent Review Date;
- A* is the Australian Statistician's Consumer Price Index (All Groups) figure for Sydney last published before the CPI Rent Review Date;
- B* is the Australian Statistician's Consumer Price Index (All Groups) figure for Sydney last published before whichever is the later of the Commencing Date and the most recent date on which Rent was reviewed under this Lease; and
- C* is the annual Rent payable immediately before the CPI Rent Review Date.
- (c) If the Australian Statistician updates the reference base of the Consumer Price Index, the intended continuity of calculation will be preserved by applying the appropriate factor, as chosen by the Landlord, to such updated reference base.
- (d) If the Consumer Price Index is discontinued or suspended:
- (i) the Landlord and the Tenant will try to agree within 14 Business Days after the CPI Rent Review Date on an alternative index which reflects fluctuations in the cost of living in Sydney;
- (ii) if the Landlord and the Tenant do not agree on an alternative index, the Landlord will request the Nominator to nominate an alternative index which reflects fluctuations in the cost of living in Sydney. The decision of the Nominator will be final and binding as between the Landlord and the Tenant. The Landlord and the Tenant will each pay one half of the Nominator's costs of making the determination.

6.5. Percentage Rent Reviews

On each Percentage Rent Review Date the annual Rent payable under this Lease will be the annual Rent payable immediately before the Percentage Rent Review Date increased by the percentage stated in Item 12.

6.6. Outgoings

In each Accounting Year the Landlord will pay the Outgoings.

6.7. Interest on arrears

The Tenant will pay to the Landlord interest on any Rent and on any other moneys due but unpaid for 14 days. Interest will be calculated at the rate stated in Item 13 as at the dates on which such moneys fall due to the date on which such moneys are received by the Landlord.

6.8. Duty and Landlord's costs

- (a) The Tenant will pay the Landlord's costs, including legal costs as between solicitor and client, in relation to any amendment to the terms of this Lease that was requested by the Tenant and any transfer, surrender or termination of this Lease (including the cost of obtaining the consent of any Person whose consent is required, other than a mortgagee) and in relation to any breach of this Lease by the Tenant.

- (b) The Tenant must pay the Landlord's costs and disbursements of lodging a financing statement in respect of any Security Interest arising under this Lease.
- (c) The Tenant will pay all duty when due and any registration fees when payable in relation to this Lease and in relation to anything done under this Lease.

6.9. Cost of Landlord remedying Tenant defaults

After giving reasonable notice to the Tenant, the Landlord can remedy any default by the Tenant under this Lease. The Tenant will pay on demand any costs that the Landlord incurs in doing so.

6.10. GST

- (a) The Rent and other moneys payable under this Lease by the Tenant have been calculated without regard to GST.
- (b) The Tenant must pay to the Landlord any amount which is payable by the Landlord for GST as a consequence of any supply made by the Landlord to the Tenant under this Lease, such payment on account of GST to be made by the Tenant at the same time as payment is made for the relevant supply.
- (c) If at any time an adjustment is made as between the Landlord and the relevant taxing Authority of an amount paid on account of GST on any supply made by the Landlord to the Tenant under this Lease, a corresponding adjustment must be made as between the Landlord and the Tenant and any payments required to give effect to the adjustment must be made.
- (d) No later than 14 days after the date of payment of any GST the Landlord must provide to the Tenant a tax invoice complying with any legislation under which GST is imposed.
- (e) The Tenant will pay on demand to the Landlord any interest or penalties incurred by the Landlord as a result of the Tenant's failure to make a payment under clause 6.10(b).
- (f) The amount of Outgoings will be calculated by applying the following formula:

$$(A - B) \times (1 + C)$$

where:

- A* is the GST inclusive price of the component of Outgoings, being the amount paid by the Landlord;
- B* is the GST input tax credit for which the Landlord is eligible on the component of Outgoings; and
- C* is the rate of GST expressed as a decimal.

6.11. Rent free period

If an amount appears in Item 17 then, despite clauses 6.1 and 6.2, the Tenant is entitled to the Rent free period stated in Item 17 commencing on the Commencing Date. This clause and Item 17 will not be included in the Option Lease.

6.12. Turnover

- (a) The Tenant will issue to all the Tenant's customers receipts or serially numbered sales slips for every transaction.
- (b) The Tenant will keep at the Premises for not less than 1 year after the relevant transactions:
 - (i) copies of the receipts and slips referred to in clause 6.12(a); and

- (ii) accurate and complete records of Tenant's Sales.
- (c) The Tenant agrees that the Landlord and the Landlord's auditors and accountants can have access to the Tenant's records of Tenant's Sales at any reasonable time on giving not more than 24 hours prior written notice.
- (d) The Tenant agrees that the Landlord is entitled to have a representative of the Landlord at the Premises from time to time to ensure that the Tenant's Sales are being correctly recorded.
- (e) If an amount is stated in Item 19 the Tenant will pay Turnover Rent.
- (f) Turnover Rent is due on the first day of each Month of the Term (except the first Month) and will be an amount equal to that percentage of the Tenant's Sales specified in Item 19 that exceed the Turnover Rent Base Figure specified in Item 18.
- (g) The Tenant can request the Landlord once during the first year of the Term and at yearly intervals after that to adjust any underpayment or overpayment of Turnover Rent. Any such request must be in writing and must be accompanied by such information as the Landlord reasonably requires to make the adjustment. The Landlord will make any such adjustment within 1 Month of the Tenant's request.
- (h) Whether or not Turnover Rent is payable, within 10 Business Days of the end of each Month the Tenant will give to the Landlord a statement in reasonable detail of the Tenant's Sales for the preceding Month.
- (i) Whether or not Turnover Rent is payable, within 1 Month of each anniversary of the Commencing Date the Tenant will give to the Landlord a statement in reasonable detail certified by registered company auditor in accordance with accounting standards within the meaning of the Corporations Act of the Tenant's Sales for the preceding year.
- (j) If Turnover Rent is payable and the Tenant does not give the Landlord the statement of the Tenant's Sales in accordance with clause 6.12(i) then the Landlord may carry out or cause to be carried out an inspection or audit of the Tenant's Sales.
- (k) Within 7 days of receiving written notice from the Landlord, the Tenant will pay the Landlord's cost of:
 - (i) any audit or inspection made because the Tenant did not comply with clause 6.12(i); and
 - (ii) any audit or inspection which shows that the Tenant's Sales have been understated by more than 3 per cent.
- (l) The Landlord agrees not to disclose details of the Tenant's Sales to other Persons except:
 - (i) with the Tenant's consent;
 - (ii) as part of a document containing information about turnover generally from which the Tenant's Sales cannot be ascertained;
 - (iii) to a Court or arbitrator or for any mediation or valuation under the Retail Leases Act or under this Lease;
 - (iv) in compliance with the requirements of any legislation;
 - (v) to the Landlord's professional advisors or to the proper officer of a financial institution to enable the Landlord in good faith to obtain financial accommodation; or
 - (vi) in good faith to a prospective purchaser of the Premises.

- (m) The Landlord and the Tenant agree that Tenant's Sales do not include any of the following:
- (i) losses from the resale or disposal of goods properly purchased as trade-ins from the Tenant's customers in the usual course of business;
 - (ii) deposits and instalments for lay-bys, hire purchase or credit sales refunded to the Tenant's customers;
 - (iii) refunds on transactions which have been included as part of Tenant's Sales;
 - (iv) any service, finance or interest charges (other than commissions on credit or store cards) payable to financiers in connection with providing credit to the Tenant's customers;
 - (v) the price of goods exchanged between the Premises and other premises of the Tenant where made solely for the convenient operation of the Tenant's business and not to conclude a sale at the Premises;
 - (vi) the price of goods returned to shippers, wholesalers or manufacturers;
 - (vii) the proceeds of sale of the Tenant's Goods after their use at the Premises;
 - (viii) discounts given to the Tenant's customers in the usual course of business;
 - (ix) uncollected credit accounts that are written off;
 - (x) any amount paid or payable by the Tenant as GST;
 - (xi) delivery charges;
 - (xii) the amount received (other than commissions) from the sale of lottery and similar tickets; or
 - (xiii) online transactions except where the goods or services concerned are delivered or provided from or at the Premises or where the transaction takes place while the customer is at the Premises (whether or not the goods or services concerned are delivered from or at the Premises).

7. USE

7.1. Tenant's use of the Premises

- (a) The Tenant will only use the Premises for the Permitted Use.
- (b) The Tenant will keep the Premises clean and tidy and arrange for the regular removal of any waste or rubbish from the Premises.
- (c) The Tenant will endeavour to keep the Premises and any property in the Premises safe from theft and will keep the Premises secure when the Premises are not in use.
- (d) The Tenant will not allow any animal onto the Premises or keep any animal in the Premises and will keep the Premises free of all pests and vermin.
- (e) The Tenant will immediately notify the Landlord and the proper public authorities of any infectious illness in the Premises and thoroughly fumigate the Premises to the Landlord's satisfaction.
- (f) The Tenant will not use the Premises in an unsafe, noisy, offensive or unlawful manner.



- (g) The Tenant will not allow any article whatsoever to fall from the Premises and will not place any article on any ledge or other similar part of the Premises.
- (h) The Tenant will not mark or damage the Premises.
- (i) The Tenant will not obstruct any windows or lights in the Premises without the Landlord's prior consent.
- (j) The Tenant will not without the Landlord's prior consent put either on the outside of the Premises or on anywhere visible from the outside of the Premises any sign, advertisement or notice. Before the expiry or earlier termination of this Lease, the Tenant will remove any such sign, advertisement or notice and make good to the Landlord's satisfaction any damage.
- (k) The Tenant agrees that any blinds, awnings, window ventilators and other similar fittings installed by the Tenant and visible from outside the Premises must conform to the Landlord's requirements about design, quality and appearance.
- (l) The Tenant will not allow the floor of the Premises to be broken, strained or damaged by overloading.
- (m) The Tenant will not use the Landlord's Equipment for any purpose other than those for which they were supplied.
- (n) The Tenant will not do anything to affect the working or efficiency of the Landlord's Air Conditioning Equipment.
- (o) The Tenant will promptly notify the Landlord in writing of any defect in or need to repair the Premises or the Landlord's Equipment of which the Tenant is aware.
- (p) The Tenant will promptly notify the Landlord in writing of any circumstance of which the Tenant is aware which is likely to cause a danger or hazard to the Premises or to any Person in the Premises.
- (q) The Tenant will not store inflammable or dangerous substances in the Premises other than where reasonably required by the Tenant in connection with the Permitted Use but then only in such quantities and containers as are permitted by law and approved by the Landlord.
- (r) The Tenant will not do anything that would make any insurance policy taken out by the Landlord or the Tenant void or voidable or which would breach any laws or regulations.
- (s) The Tenant will only use light, power or heat generated by electric current or gas supplied through meters.
- (t) The Tenant will promptly pay all utility and service charges in relation to the Premises and, where appropriate, install any necessary meters.
- (u) The Tenant will keep any waste pipes and drains in or servicing the Premises free from blockages.
- (v) The Tenant will not do anything that might result in a statutory Authority issuing a notice in relation to the Premises.
- (w) The Tenant will not sell any alcohol in the Premises without the Landlord's written consent.
- (x) The Tenant will not hold any auction, fire or bankruptcy sale in the Premises without the Landlord's written consent.
- (y) The Tenant will not do anything to obstruct the Landlord's Equipment.



- (z) The Tenant will keep clean and free from rubbish those parts of any public footpath that immediately adjoin the Premises.
- (aa) The Tenant will not burn any waste or rubbish in the Premises.
- (bb) The Tenant will not cover any light, sky-light, window or other means of illuminating the Premises.
- (cc) The Tenant will not without the Landlord's consent use any loudspeaker or similar equipment likely to be seen or heard outside the Premises.
- (dd) The Tenant will not smoke in the Premises.
- (ee) The Tenant will comply with the Landlord's requirements in relation to Premises security.
- (ff) The Tenant will not use any part of the Premises except the approved customer parking areas for parking vehicles except for pick-up or delivery of goods or Persons in the ordinary course of the Tenant's business.
- (gg) The Tenant will ensure that the Tenant's customers, visitors and invitees park only in those parts of the Premises approved by the Landlord from time to time as customer parking.
- (hh) The Tenant will not grease, oil, repair, clean or wash vehicles within the Premises.
- (ii) The Tenant will not bring onto the Premises any vehicle without rubber tyres.
- (jj) The Tenant will replace all non-operating light globes and light tubes.

7.2. Cleaning

- (a) The Tenant will clean the Premises at the Tenant's cost.
- (b) The Tenant must first obtain the Landlord's approval, which can be given or withheld in the Landlord's absolute discretion, before the Tenant engages any Person to clean the Premises on behalf of the Tenant.
- (c) The Tenant acknowledges that the security concerns of the Landlord and of other tenants or occupiers of the building will be relevant matters to be considered by the Landlord when the Landlord is asked to approve any Person proposed by the Tenant to clean the Premises.
- (d) If the Landlord requests that a Person is not engaged to clean the Premises or that a Person who is a cleaner is not to be allowed access to the building or Premises, the Tenant must immediately comply with that request.
- (e) The Tenant will require the Tenant's cleaners to provide such personal information and identification and to comply with such security checks as the Landlord acting reasonably requires.

7.3. Trading and stock

- (a) The Tenant will keep the Premises open for trading during usual business hours.
- (b) The Tenant will keep current all licences and permits required for the use of the Premises by the Tenant.
- (c) The Tenant will keep the Premises adequately lit.
- (d) The Tenant will provide all necessary staff and stock to ensure that the Tenant's business is conducted in a proper and reputable manner in accordance with best practice.



7.4. Energy consumption information

- (a) The Tenant agrees and acknowledges that the Landlord has or may have mandatory reporting obligations which may include disclosing to the relevant authorities and other Persons information relating to the Tenant's level of energy consumption in the Premises, greenhouse gas emissions, energy efficiency initiatives and associated data, records and other information.
- (b) The Tenant will provide such data, records and other information as the Landlord may reasonably require to enable the Landlord to comply with its reporting obligations relating to the Tenant's level of energy consumption in the Premises, greenhouse gas emissions and energy efficiency initiatives.
- (c) The Tenant will within 7 days of receipt by the Tenant provide to the Landlord copies of all records and accounts received by the Tenant from a utility or service provider in respect of the consumption of electricity or gas in the Premises.
- (d) If the Tenant does not provide information required by the Landlord pursuant to this clause 7.4 the Tenant will pay on demand to the Landlord an amount equal to any expense, fine or penalty incurred by the Landlord arising as a result of the Tenant's default.

7.5. Tenant's signs

- (a) The Tenant will not put on the outside of the Premises or anywhere within the Premises that is visible from outside the Premises any sign, advertisement or notice without the Landlord's prior written consent and the consent of any Authority.
- (b) On or before the expiry or earlier termination of this Lease, the Tenant will remove any such sign, advertisement or notice and make good any damage to the Landlord's satisfaction.
- (c) The Tenant's signs must be:
 - (i) of a colour, size, style, content and location approved by the Landlord;
 - (ii) installed in accordance with plans and specifications approved by the Landlord and any Authority;
 - (iii) installed and maintained in a good and workmanlike manner; and
 - (iv) installed and maintained in good repair and condition and in accordance with the requirements of any Authority and the Landlord.
- (d) Any signs erected by or on behalf of the Tenant must be in accordance with the Landlord's signage guidelines from time to time and, if required by the Landlord, must be installed by the Landlord at the Tenant's cost.

8. CONDITION AND REPAIRS

8.1. Keeping and delivering up in repair

- (a) The Tenant will at all times keep the Premises and any of the Landlord's Equipment in the Premises in good repair and condition having regard to the condition of the Premises and of the Landlord's Equipment at the earlier of the Commencing Date or the date that the Tenant first occupied the Premises.
- (b) The Tenant must regularly maintain and service the Landlord's Air Conditioning Equipment. Unless otherwise required by the Landlord, the Tenant will, at the Tenant's cost, keep comprehensive contracts current with contractors approved by the Landlord for regular inspections, servicing and repair of the Landlord's Air Conditioning Equipment in the Premises. The Tenant will keep all service records for the Landlord's Air Conditioning Equipment in the Premises, and provide copies to the Landlord on demand.*



- (c) Unless required because of the Tenant's particular use of the Premises, the Tenant's obligations under clause 8.1(a) and clause 8.1(b) do not extend to:
 - (i) any repair required because of fair wear and tear or because of the Landlord's negligence;
 - (ii) any capital costs or structural repairs; or
 - (iii) anything beyond the control of the Tenant.

8.2. Repair of damage

- (a) The Tenant will make good any defect in or damage to the Premises or the Landlord's Equipment caused by lack of care or misuse by the Tenant.
- (b) The Tenant will promptly repair or replace any broken glass in the Premises, at the Tenant's cost, except to the extent that such repairs or replacements are necessitated because of the Landlord's negligence.

8.3. Painting etc

At least once every 5 years (calculated from the earlier of the Commencing Date or the date that the Tenant first occupied the Premises) or at such earlier intervals as the Landlord may reasonably require and also before the Tenant ceases to occupy the Premises, the Tenant will to the Landlord's satisfaction:

- (a) ~~paint with at least 2 coats of high quality paint and otherwise treat appropriately all the internal brickwork, masonry, timber, metalwork and other surfaces of the Premises usually painted or treated; and~~
- (b) wash down all washable surfaces of the Premises.

8.4. Alterations and additions

- (a) The Tenant will not make any alterations or additions to the Premises without first obtaining the Landlord's written consent. The Landlord can give or withhold consent in its absolute discretion.
- (b) When requesting consent for any such works the Tenant will give to the Landlord for approval detailed plans and specifications of the works. The Landlord can give or withhold approval of the plans and specifications in its absolute discretion.
- (c) Any such works can only be undertaken by Persons approved by the Landlord at the Tenant's expense.
- (d) The Tenant must comply with the requirements of the Landlord, the law and the relevant public authorities in carrying out any such works.

8.5. Statutory requirements

- (a) The Tenant will at all times comply with all statutes, ordinances, proclamations, orders and regulations affecting the Premises, the use of the Premises by the Tenant and the Tenant's Goods.
- (b) The Tenant will comply with all notices and orders given by any statutory, public or other competent Authority in respect of the Premises, the use of the Premises by the Tenant and the Tenant's Goods.
- (c) The Tenant will comply with all WH&S Laws in relation to the Premises.
- (d) The Tenant indemnifies the Landlord in relation to any failure by the Tenant to comply with the Tenant's obligations under this clause 8.5.



- (e) Despite clauses 8.5(a) and 8.5(b) the Tenant is not responsible for any capital costs nor for any structural alterations unless required because of the Tenant's particular use of the Premises.

8.6. **Principal Contractor and WH&S Regulation**

- (a) If any work is to be carried out on the Premises by the Tenant during the Term of the lease, including any Option Lease or holding over period which requires the appointment of a Principal Contractor under the WH&S Regulation, the Landlord appoints the Tenant as the Principal Contractor in respect of those works and the Tenant accepts that appointment.
- (b) The Landlord authorises the Tenant to exercise such authority of the Landlord as is necessary to ensure that the Tenant can carry out the responsibilities imposed on the Tenant as Principal Contractor under the WH&S Regulation.
- (c) The Tenant may propose that another Person is appointed as Principal Contractor for specific works in place of the Tenant, subject to the Tenant first obtaining the Landlord's consent.
- (d) The Tenant must ensure that when any work is carried out in the Premises all the requirements of the WH&S Regulation and any other laws relating to work health and safety are met.
- (e) The Tenant must consult, co-operate and co-ordinate its activities with the Landlord in connection with the Premises to ensure that the parties at all times comply with WH&S Law including, but not limited to, scheduling and participating in regular meetings, maintaining current information on an accident registers and conducting regular risk assessment reports of the Premises including taking the views of Tenant's workers into consideration and to take any other steps as agreed between the parties.
- (f) The Landlord will make itself available to the Tenant on a regular basis to discuss any matters related to health and safety at work arising from its obligations in relation to the Premises.
- (g) The Tenant must immediately notify the Landlord of any accident, notifiable incident (being an incident which is notifiable under WH&S Law) or injury which occurs on the Premises in connection with the activities at the Premises. The Tenant must take all reasonably practicable steps to safely isolate any dangers from occurring or reoccurring before the Landlord is informed.
- (h) The Tenant undertakes to inform itself of the serious injury or illness and dangerous incident notification obligations. The Tenant undertakes to advise the regulator by the fastest possible means, prior to advising the Landlord in the event that a notifiable incident occurs.

8.7. **Plant and service contracts**

- (a) The Tenant will ensure the Landlord's Equipment is used to its best advantage.
- (b) The Tenant will keep comprehensive contracts current with contractors approved by the Landlord for regular inspections, servicing and repair of the Landlord's Equipment.

9. **INSURANCES**

9.1. **Public liability and plate glass**

The Tenant will keep current in the name of the Tenant, noting the interest of the Landlord and, if required by the Landlord, the Landlord's mortgagee:

- (a) a public liability insurance policy for not less than the amount stated in Item 15 or for such higher amount as the Landlord from time to time requires;
- (b) adequate insurance of all glass, including glass in any doors and any internal and external windows, in the Premises for the amount to replace the glass in accordance with the then current Australian Standards; and

- (c) other insurances which are required by law or which in the Landlord's reasonable opinion a prudent tenant would take out.

9.2. Workers compensation

The Tenant will comply with all statutory requirements in relation to workers compensation.

9.3. Tenant's Goods

The Tenant will keep current adequate insurance against damage to or loss of the Tenant's Goods.

9.4. Landlord may insure

If the Tenant fails to take out the insurances required under this Lease, the Landlord can take out those insurances. Any amount paid by the Landlord for such insurances will be payable by the Tenant to the Landlord on demand.

9.5. Approval of insurance policies

All insurance policies to be taken out under this Lease must contain conditions acceptable to the Landlord and must be on an occurrence and not a claims made basis.

9.6. Reputable insurer

All insurances required to be taken out by the Tenant under this Lease are to be taken out with a APRA approved reputable insurer which has a Standard & Poor's rating of at least 'A' or equivalent.

9.7. Production of policies

The Tenant will promptly provide to the Landlord any insurance policy which the Tenant is required to take out under this Lease together with the receipt for the last premium paid or a certificate of currency in relation to such policy.

9.8. Conduct voiding insurances

The Tenant will not do anything that might make any insurance taken out by the Landlord or the Tenant void or voidable or which would breach any laws, regulations or statutes.

9.9. Increased premiums

If the Tenant's acts or omissions cause any premium for insurances effected by the Landlord to increase, the Tenant will pay the amount of that increased premium to the Landlord within 14 days of demand.

10. INDEMNITIES

10.1. Risk

The Tenant occupies and uses the Premises at the Tenant's risk. The Landlord is only liable to the Tenant for any injury, loss or damage to any property or Person to the extent that such injury, loss or damage is caused by the Landlord's negligence.

10.2. Indemnities by Tenant

- (a) The Tenant indemnifies the Landlord against all claims, costs and expenses for which the Landlord is liable in relation to any death, personal injury or property damage caused by any act or failure to act of the Tenant or because of the Tenant's use of the Premises.
- (b) The Tenant indemnifies the Landlord against all loss or damage caused by the Tenant including, but not limited to, the Tenant's use or misuse of the Premises or of the Landlord's Equipment or

by the Tenant's failure to notify the Landlord of any major or continuing defect in the Premises or in any of the Landlord's Equipment.

11. TERMINATION AND ABATEMENT ON DAMAGE

- (a) If the Premises are damaged so that the Premises are inaccessible or unable to be used and the Landlord notifies the Tenant in writing that the Landlord considers repairing the damage impractical or undesirable, either the Landlord or the Tenant can terminate this Lease without compensation by giving not less than 7 days written notice to the other.
- (b) If the Premises are damaged so that the Premises are inaccessible or unable to be used and the Landlord fails to repair the damage within a reasonable time after written notice from the Tenant requesting the Landlord to do those repairs, the Tenant can terminate this Lease by giving not less than 7 days written notice to the Landlord.
- (c) If the Premises are damaged so that the Premises are inaccessible or unable to be used, no Rent or Outgoings will be payable by the Tenant until the Premises are made accessible or useable.
- (d) If the Premises are damaged and are still useable but the use of the Premises is diminished due to damage, the Rent and the Outgoings will abate according to the extent of the diminished use until the use of the Premises is no longer diminished.
- (e) Nothing in this clause 11 affects the Landlord's right to recover damages from the Tenant in respect of any damage or destruction referred to in this clause nor obliges the Landlord to restore or reinstate the Premises.

12. EARLY TERMINATION

- (a) Despite anything else in this Lease, if during the Term a licensed Telstra shop commences trading within the town limited of Cowra or Telstra revokes the Tenant's Telstra Dealer Agreement ("TDA"), then the Tenant may terminate this Lease at any time thereafter by giving at least three months' notice in writing to the Landlord expiring on any day. The notice must include evidence that a licensed Telstra shop has commenced trading within the town limits of Cowra or that Telstra has revoked the Tenant's TDA.
- (b) If the Tenant terminates this Lease in accordance with 12 (a):
 - (i) the Tenant must comply with clauses 16.2 and 16.3 of this Lease; and
 - (ii) the Landlord will not be entitled to any compensation as a result of the early termination.

13. ACCESS

13.1. Right to enter to inspect or carry out works

- (a) The Landlord can enter the Premises at reasonable times after giving reasonable notice or at any time without notice in an emergency to:
 - (i) inspect the Premises;
 - (ii) do any works that the Landlord considers desirable;
 - (iii) collect data and to check or monitor the performance of the Premises;
 - (iv) exercise any of the Landlord's rights under this Lease; and
 - (v) repair the Premises where the Premises have been damaged.

- (b) The Landlord will give to the Tenant 2 Months prior written notice of any alteration to or refurbishment of the Premises to be carried out by the Landlord which is likely to adversely affect the Tenant's business. In emergencies reasonable notice only of any such alteration or refurbishment is required
- (c) In exercising the Landlord's right to enter the Premises and to do works:
 - (i) the Landlord and the Landlord's employees, agents and contractors will be entitled to enter the Premises with all necessary materials; and
 - (ii) the Landlord will use all reasonable endeavours to ensure that as little disruption as is practical is caused to the Tenant's use of the Premises.

13.2. Landlord's signs and inspections

- (a) The Landlord is entitled to attach *For Sale* and *For Lease* signs to the exterior of the Premises. *For Lease* signs will only be attached during the 6 Months immediately preceding the Terminating Date.
- (b) The Tenant will not obscure the Landlord's signs.
- (c) The Tenant will allow all Persons authorised in writing by the Landlord to inspect the Premises at reasonable times after reasonable notice from the Landlord.

13.3. Easements and other rights

- (a) The Landlord can transfer or create any easement, covenant, restriction, licence or other right or dedicate land in favour of any Person or in favour of any land near the Premises or in favour of any Authority for the purposes of access, support or services or such other purposes that the Landlord reasonably requires or which may be required by an Authority. This Lease is subject to any such easement, covenant, restriction, licence, other right or dedication.
- (b) The Landlord may release, cancel, modify or extinguish any easement, covenant, restriction licence or other right which benefits or burdens the land on which the Premises stand.
- (c) Within 7 days of written request by the Landlord the Tenant will sign and return to the Landlord any consents or other documents necessary to enable the Landlord to carry out any activity referred to in clauses 13.3(a) and 13.3(b) and will make no objection or claim for compensation in relation to such activity.
- (d) The Landlord will not dedicate land or transfer, create, release, cancel, modify or extinguish any easement, covenant, restriction, licence or other right which would substantially and permanently lessen the Tenant's rights under this Lease.

13.4. Landlord's reservations

The Landlord reserves the right:

- (a) to use the roof and the external walls of the Premises;
- (b) to run substances through any pipes, ducts or wires passing through the Premises; and
- (c) to enter the Premises to exercise such rights.



13.5. Repair obligation

The Tenant will maintain the structure, the roof, plumbing, electrical, telephone and data cabling, lighting and air-conditioning of the Premises is kept in good repair having regard to its condition at the earlier of the Commencing Date or the date that the Tenant first occupied the Premises except for:

- (a) fair wear and tear;
- (b) damage from any cause beyond the Tenant's reasonable control.

14. ASSIGNMENT AND SUB-LETTING

14.1. Restrictions on assignment, sub-letting and licensing

The Tenant will not assign this Lease without first obtaining the Landlord's written consent. The Landlord can withhold consent if:

- (a) the proposed assignee proposes to change the Permitted Use;
- (b) the proposed assignee has financial resources or retailing skills inferior to those of the Tenant; or
- (c) the Tenant has not complied with the procedures set out in clause 14.2.

14.2. Procedures for obtaining consent to assignment

If the Tenant wishes to assign this Lease:

- (a) a request for the Landlord's consent to an assignment of the Lease must be made by the Tenant in writing;
- (b) the Tenant must provide the Landlord with such information as the Landlord may reasonably require to be satisfied that the financial resources and retailing skills of the proposed assignee are not inferior to those of the Tenant;
- (c) the Tenant must provide the proposed assignee with an updated Lessor's Disclosure Statement (comprising a copy of the Lessor's Disclosure Statement given to the Tenant in respect of the Lease together with details of any changes that have occurred in respect of the information contained in that Lessor's Disclosure Statement since it was given to the Tenant);
- (d) for the purpose of enabling the Tenant to provide the proposed assignee with the required updated Lessor's Disclosure Statement, the Landlord must provide the Tenant with an updated Lessor's Disclosure Statement within 14 days after being requested to do so by the Tenant;
- (e) if the Landlord fails to provide the updated Lessor's Disclosure Statement, it is sufficient compliance with the requirement to provide the proposed assignee with an updated Lessor's Disclosure Statement if the Tenant instead provides a Lessor's Disclosure Statement completed by the Tenant to the best of the Tenant's knowledge (but with information as to current Outgoings in place of information as to estimated Outgoings);
- (f) the Landlord must deal expeditiously with a request for consent to assignment of the Lease;
- (g) the Landlord has 28 days to decide whether to consent or to refuse consent to assignment, starting from when the request for consent was made by the Tenant or from when the Tenant has complied with the requirements of this clause 14.2 (whichever is the later);
- (h) the Landlord is taken to have consented to assignment if the Tenant has complied with this clause 14.2 and the Landlord has not given notice in writing to the Tenant either consenting or withholding consent to assignment in accordance with clause 14.2(g);



- (i) the proposed assignee will provide to the Landlord such securities or guarantees of the proposed assignee's obligations under this Lease as the Landlord requires including, but not limited to, a Bank Guarantee or Security Deposit;
- (j) the Tenant will and will ensure that the proposed assignee and any guarantors of the proposed assignee required by the Landlord enter into a deed in a form required by the Landlord;
- (k) the Tenant and the proposed assignee will comply with the Landlord's requirements in relation to documenting, stamping and registering the transaction; and
- (l) the Tenant will pay the Landlord's costs in connection with the proposed assignment.

14.3. Protection of the Tenant on assignment of the Lease for ongoing business

- (a) If the Tenant assigns the Lease of the Premises in connection with the continued use of the Premises for the conduct of an ongoing business, the Tenant will have no liability to the Landlord in respect of amounts payable under the Lease by the assignee after the Lease is assigned if the Tenant complies with the requirements of this clause 14.3.
- (b) The Tenant must, at least 7 days before the assignment of the Lease, provide:
 - (i) the assignee with an updated Lessor's Disclosure Statement (comprising a copy of the Lessor's Disclosure Statement given to the Tenant in respect of the Lease together with details of any changes that have occurred in respect of the information contained in that Lessor's Disclosure Statement since it was given to the Tenant);
 - (ii) the assignee with an Assignor's Disclosure Statement; and
 - (iii) the Landlord with a copy of the Assignor's Disclosure Statement with Part B Certification and acknowledgement duly signed by the Tenant and the assignee.
- (c) For the purpose of enabling the Tenant to provide the proposed assignee with the required updated Lessor's Disclosure Statement, the Landlord must provide the Tenant with an updated Lessor's Disclosure Statement within 14 days after being requested to do so by the Tenant, but if the Landlord fails to do so:
 - (i) it is sufficient compliance with the requirement to provide the proposed assignee with an updated Lessor's Disclosure Statement if the Tenant instead provides a Lessor's Disclosure Statement completed by the Tenant to the best of the Tenant's knowledge (but with information as to current Outgoings in place of information as to estimated Outgoings); and
 - (ii) the Tenant and assignee can sign Part B Certification and acknowledgement of the Assignor's Disclosure Statement on the basis that the Lessor's Disclosure Statement completed and provided by the Tenant constitutes the updated Lessor's Disclosure Statement.

14.4. Restrictions on shares dealings

- (a) If the Tenant is a corporation (other than a corporation whose shares are listed on the Australian Stock Exchange) then, unless the Tenant first complies with clause 14.4(b), the Tenant will not:
 - (i) register, record or enter in its books any transfer of any share in the capital of the Tenant;
 - (ii) deal with the beneficial interest in any such share;
 - (iii) issue any new shares; or

- (iv) take any other action,

which would have the effect that the shareholders of the Tenant at the Commencing Date would, after such action, beneficially hold or control less than 51% of the voting rights or of the income or capital participation rights in the Tenant or less than 51% of the voting rights at a meeting of directors of the Tenant.

- (b) The requirements referred to in clause 14.4(a) are that the Tenant:
 - (i) gives to the Landlord not less than 1 Month written notice of its intention;
 - (ii) is not in default under this Lease unless either the Landlord has waived the default or the default has been remedied by the Tenant;
 - (iii) proves to the Landlord's satisfaction that the Persons to whom the Tenant proposes to transfer or issue such shares or in whom the Tenant proposes to vest such other rights are each respectable, responsible and solvent;
 - (iv) ensures that the Persons referred to in clause 14.4(b)(iii) provide to the Landlord such guarantees of the Tenant's obligations under this Lease as the Landlord requires; and
 - (v) pays the Landlord's costs.

14.5. Restrictions on units dealings

- (a) If the Tenant is the trustee of a unit trust (unless the unit trust is listed on the Australian Stock Exchange) then, unless the Tenant first complies with clause 14.5(b), the Tenant will not:
 - (i) register, record or enter in its books any transfer of any unit or units in the Unit Trust or the holding trust;
 - (ii) deal with the beneficial interest in any such unit or units;
 - (iii) issue any new unit or units; or
 - (iv) take any other action, take or attempt to take any action having the effect of:
 - (A) effectively altering the control of the unit trust; or
 - (B) the unitholders in the unit trust at the date of this Lease at any time ceasing to beneficially hold or control at least 51% of the units in the unit trust.
- (b) The requirements referred to in clause 14.5(a) are that the Tenant:
 - (i) gives to the Landlord not less than 1 Month written notice of its intention;
 - (ii) is not in default under this Lease unless either the Landlord has waived the default or the default has been remedied by the Tenant;
 - (iii) proves to the Landlord's satisfaction that the Persons to whom the Tenant proposes to transfer or issue such units or in whom the Tenant proposes to vest such other rights are each respectable, responsible and solvent;
 - (iv) ensures that the Persons referred to in clause 14.5(b)(iii) provide to the Landlord such guarantees of the Tenant's obligations under this Lease as the Landlord requires; and
 - (v) pays the Landlord's costs.

14.6. Restrictions on sub-letting, mortgaging, etc

- (a) The Tenant will not sub-let or part with possession or grant any licence or concession affecting the Premises.
- (b) The Tenant will not mortgage or charge the Tenant's interest in the Premises.

15. LANDLORD'S OBLIGATIONS

15.1. Quiet enjoyment

Unless provided to the contrary in this Lease, so long as the Tenant pays the Rent and the other moneys payable under this Lease when due and performs the Tenant's obligations under this Lease, the Tenant can occupy the Premises without interruption or disturbance from the Landlord.

15.2. Disturbance

- (a) The Landlord will not:
 - (i) inhibit the Tenant's access to the Premises in any substantial way;
 - (ii) take any action that substantially inhibits or alters the flow of customers to the Premises;
 - (iii) unreasonably take any action that causes significant disruption to or has a significant adverse affect on the Tenant trading in the Premises;
 - (iv) fail to take all reasonable steps to prevent or stop anything that causes significant disruption to or has a significant adverse affect on the Tenant trading in the Premises where such thing is within the Landlord's control; or
 - (v) fail to rectify any breakdown of plant or equipment that the Landlord is required to maintain.
- (b) If the Landlord breaches clause 15.2(a) and does not rectify its breach as soon as reasonably practical after written request by the Tenant, the Landlord is liable to pay the Tenant reasonable compensation for any loss or damage (other than nominal damage) suffered by the Tenant as a consequence. The Tenant acknowledges that any claim for compensation is limited to matters not disclosed to the Tenant before this Lease was entered into.
- (c) In deciding whether the Landlord has acted reasonably for the purposes of clause 15.2(a), due consideration will be given to whether the Landlord acted in accordance with recognised shopping centre management practices, to the extent that the Landlord is required to comply with the shopping centre management practices under the Retail Leases Act.
- (d) Clauses 15.2(a) to 15.2(c) do not apply to any action taken by the Landlord as a reasonable response to an emergency or in compliance with any duty imposed under any legislation or resulting from a claim imposed by a public or local Authority under the authority of any legislation.

16. TENANT'S DEFAULT AND END OF LEASE

16.1. Re-entry on default and forfeiture

The Tenant will be in default under this Lease and the Landlord can lawfully re-enter the Premises if:

- (a) Rent is unpaid for 7 days after the due date;
- (b) any other monies are unpaid for 7 days after due;
- (c) the Tenant takes any action in breach of clauses 14.1, 14.4 or 14.5;

- (d) any repairs required by a notice are not completed within the time required by such notice;
- (e) the Tenant fails to perform any other of the Tenant's obligations for 14 days after the Landlord gives the Tenant written notice of the Tenant's default;
- (f) the Tenant becomes insolvent when:
 - (i) they are (or state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act);
 - (ii) they have a controller appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a receiver appointed to any part of their property;
 - (iii) execution or distress or any other process is levied or attempted or imposed against or over any of their undertaking, property or assets;
 - (iv) a compromise, arrangement, assignment, moratorium or composition is proposed with, or becomes effective in relation to, their creditors or any class of their creditors (in each case, other than to carry out a reconstruction or amalgamation while solvent);
 - (v) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above;
 - (vi) they are taken (under Section 459F of the Corporations Act) to have failed to comply with a statutory demand;
 - (vii) they are the subject of an event described in Section 459C(2)(b) or Section 585 of the Corporations Act;
 - (viii) they are a natural person, they commit an act of bankruptcy within the meaning of the *Bankruptcy Act 1966 (Cth)*;
 - (ix) they are otherwise unable to pay their debts as and when they fall due; or
 - (x) something having a substantial similar effect to any of the things referred to above happens in connection with them under any law.

16.2. Removal of Tenant's Goods

- (a) If the Tenant is not in default under this Lease the Tenant can during the last Month of the Tenant's occupation of the Premises remove the Tenant's Goods from the Premises so long as such removal is done under the supervision of and in accordance with the directions of the Landlord. The Tenant will make good any damage caused to the Premises.
- (b) If the Tenant does not remove the Tenant's Goods as provided under clause 16.2(a) and the Landlord requires the Tenant to remove the Tenant's Goods, the Tenant will remove the Tenant's Goods prior to the expiry of the last Month of the Tenant's occupation of the Premises so long as such removal is done under the supervision of and in accordance with the directions of the Landlord. The Tenant will make good any damage caused to the Premises.
- (c) If the Tenant does not remove the Tenant's Goods as provided under clauses 16.2(a) and 16.2(b) the Landlord may:
 - (i) keep, remove, sell or otherwise dispose of the Tenant's Goods at the Tenant's risk and cost; and

- (ii) treat any of the Tenant's Goods as if they were the Landlord's property and deal with them in any way (including by sale) without being liable to account to the Tenant.
- (d) The Tenant indemnifies the Landlord in relation to the removal and storage of the Tenant's Goods and in relation to claims by any Person of an interest in the Tenant's Goods.
- (e) Despite anything to the contrary in this Lease, this Lease will be deemed to continue until such time as the Tenant's Goods are removed from the Premises.

16.3. Delivering up in good repair

- (a) Unless the Landlord notifies the Tenant in writing before the expiry or earlier termination of this Lease that the Tenant is not required to comply with any of its obligations under this clause 16.3(a), at the expiry or earlier termination of this Lease the Tenant will give vacant possession of the Premises to the Landlord with the Premises in the state of repair required under this Lease including, but not limited to, the following:
 - (i) the Premises being painted and treated as required under clause 8.3;
 - (ii) the Premises being in the state of repair required under clause 8.1;
 - (iii) the Tenant's Goods being removed from the Premises as required under clause 16.2;
 - (iv) the Landlord's Air Conditioning Equipment to be serviced immediately prior to the date of expiry or earlier termination of this Lease and left clean and all service records for the Landlord's Air Conditioning Equipment to be delivered to the Landlord;
 - (v) all floor coverings being removed and all floors being restored to a level finish;
 - (vi) any fitting out in the Premises carried out by, for or at the cost of the Landlord on behalf of or at the request of the Tenant being removed from the Premises and any consequential damage made good;
 - (vii) the Premises Services being returned to the configuration they were in before the Tenant first occupied the Premises;
 - (viii) all cables, wires, ducting and pipes installed by or on behalf of the Tenant being removed from the Premises and terminated at the source;
 - (ix) any part of the Premises structure in which holes have been made by or on behalf of the Tenant being made good; and
 - (x) ensuring that the ceilings, lights, any ceiling tiles and ceiling support grid are in good repair.
- (b) Despite anything to the contrary in this Lease, this Lease will be deemed to continue until such time as the Tenant complies with all of its obligations under clause 16.3(a).

16.4. Holding over

- (a) If the Landlord agrees to the Tenant remaining in the Premises after the expiry or earlier termination of this Lease, the Tenant will be a monthly tenant at a rent equal to one-twelfth of the Rent payable at the expiry or earlier termination of this Lease, payable monthly in advance and otherwise on the same terms as this Lease.
- (b) The monthly tenancy under clause 16.4(a) can be terminated at any time by either the Landlord or the Tenant giving the other 1 Month written notice, expiring on any day.

16.5. Essential terms and damages

- (a) The following are essential terms of this Lease:
 - (i) that the Tenant pay the Rent and any other money payable by the Tenant under this Lease no later than 7 days after their due dates;
 - (ii) Tenant's use of the Premises clause 7.1(a);
 - (iii) Insurance - public liability and plate glass clause 9.1;
 - (iv) Restrictions on assignment, sub-letting and licensing clause 14.1;
 - (v) Restrictions on shares dealings clause 14.4;
 - (vi) Restrictions on units dealings clause 14.5;
 - (vii) Bank Guarantee clause 17.1; and
 - (viii) Security Bond clause 17.3.
- (b) The Tenant will compensate the Landlord for any loss or damage suffered by the Landlord because of the Tenant's breach of an essential term of this Lease.
- (c) The Landlord can recover damages from the Tenant for any loss or damage suffered by the Landlord because of the repudiation or breach of this Lease during the entire Term, including both before and after any of the events listed below:
 - (i) the Tenant vacating the Premises;
 - (ii) the Landlord accepting the Tenant's repudiation of this Lease;
 - (iii) the Landlord lawfully re-entering the Premises or terminating this Lease; and
 - (iv) this Lease being surrendered by operation of law because of the Tenant's and the Landlord's conduct.
- (d) If the Tenant (whether with or without the Landlord's consent) vacates the Premises, the Landlord will take reasonable steps to mitigate the Landlord's damages and will try to lease the Premises at a rent and on terms satisfactory to the Landlord. The Landlord's entitlement to damages will be assessed on the basis that the Landlord has mitigated its damages.

16.6. Incentive reimbursement

- (a) The Landlord and the Tenant agree that if this Lease is terminated before the Terminating Date because of the Tenant's default, the Tenant will pay to the Landlord an amount calculated under clause 16.6(b). The Tenant agrees that the amount calculated under clause 16.6(b) is a genuine pre-estimate of the Landlord's loss arising from early termination in relation to payment or allowance of the Incentive.

- (b) The amount payable under clause 16.6(a) will be determined in accordance with the following formula:

$$A = \frac{I \times R}{W}$$

where:

- A* is the amount to be paid under clause 16.6(a);
- I* is the amount of the Incentive paid or allowed to the Tenant as specified in Item 21 together with any GST paid or payable by the Landlord on that amount;
- R* is the number of whole Months of the Term that have yet to expire as at the date that this Lease is terminated; and
- W* is the number of whole Months of the Term.

- (c) This clause 16.6 will not appear in the Option Lease.

17. GUARANTEE

17.1. Bank Guarantee

- (a) If an amount is stated in Item 16, this clause 17.1 applies to this Lease.
- (b) ~~Before the earlier of the Commencing Date and the date that the Tenant first occupies the Premises, the Tenant will deliver the Bank Guarantee to the Landlord.~~
- (c) If for any reason the Bank Guarantee held by the Landlord is for less than the amount stated in Item 16, the Tenant will within 7 Business Days of written notice from the Landlord, provide to the Landlord additional security by way of Bank Guarantee for such amount as is necessary to ensure that the Landlord holds a Bank Guarantee for not less than the amount stated in Item 16.
- (d) The Landlord is entitled to claim under the Bank Guarantee amounts equal to any monies due but unpaid by the Tenant to the Landlord under this Lease.
- (e) The Landlord will deliver the Bank Guarantee (or so much of the Bank Guarantee as is then held by the Landlord) to the Tenant in accordance with the Retail Leases Act.
- (f) If the identity of the Landlord changes the Tenant will do all things necessary to ensure a replacement Bank Guarantee issues in favour of the then Landlord no later than 14 days after written request from the Landlord.

17.2. Guarantee and indemnity

- (a) The expression *this Lease* in this clause includes the Option Leases.
- (b) In consideration of the Landlord granting this Lease to the Tenant at the Guarantor's request, the Guarantor (as shown by the Guarantor signing this Lease) guarantees to the Landlord the punctual payment of all Rent and Outgoings and the punctual observance by the Tenant of all the Tenant's obligations under this Lease.
- (c) The Guarantor unconditionally indemnifies the Landlord in respect of any failure by the Tenant to make any payment or to perform any obligation under this Lease.
- (d) The Landlord and the Guarantor agree that this guarantee and indemnity is a continuing guarantee and indemnity which is absolute and unconditional in all circumstances and will remain in force until all the Tenant's obligations under this Lease are performed.

- (e) The Landlord and the Guarantor agree that this guarantee and indemnity will not be discharged by the payment of any monies on account or by any concession given to the Tenant or to the Guarantor or to any other Person or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the Landlord's rights against the Tenant or the Guarantor or any other Person or by the Landlord's failure to enforce any such rights or by any other thing whatsoever which but for this clause might abrogate, prejudice or affect this guarantee and indemnity or by any variation or addition to this Lease.
- (f) The Landlord and the Guarantor agree that this guarantee and indemnity is in addition to any other rights which the Landlord has under this Lease and can be enforced against the Guarantor without the Landlord first having recourse to any other rights and without the Landlord first taking any action against the Tenant.
- (g) The Landlord and the Tenant agree that this guarantee and indemnity will not prejudicially affect or be prejudicially affected by any security held by the Landlord for any monies owing under this Lease and that such security will be collateral and the Guarantor will not, as against the Landlord, in any way claim the benefit or seek the transfer of any security.
- (h) The Guarantor warrants that the Guarantor has full power and authority to enter into this guarantee and indemnity and that the Guarantor's obligations under this guarantee and indemnity are in no way diminished, fettered or controlled by any deed or instrument including, but not limited to, any debenture trust deed relating to securities issued or given by the Guarantor.
- (i) The Landlord and the Guarantor agree that this guarantee and indemnity will not be affected by any assignment, sub-letting or parting with possession of the Premises by the Tenant.

17.3. Security Bond

- (a) If an amount is stated in Item 20, clause 17.3 applies to this Lease.
- (b) Before the earlier of the Commencing Date and the date that the Tenant first occupies the Premises, the Tenant will deliver the Security Bond to the Landlord.
- (c) The Landlord must deposit the Security Bond with the Secretary in accordance with the Retail Leases Act.
- (d) If for any reason the Security Bond is for less than the amount stated in Item 20, the Tenant will within 7 Business Days of written notice from the Landlord provide to the Landlord additional security by way of Security Bond for such amount as is necessary to ensure that the Security Bond is for not less than the amount stated in Item 20.
- (e) The Landlord is entitled to claim from the Security Bond an amount equal to any monies due but unpaid by the Tenant to the Landlord under this Lease.
- (f) The Landlord will apply to the Secretary to pay the Security Bond (or so much of the Security Bond as is then held by the Secretary) to the Tenant after deduction of any amount due to the Landlord on the later of the following dates:
 - (i) whichever is the later of the Terminating Date of this Lease or, if applicable, the terminating date of the last of the Option Leases; and
 - (ii) whichever is the later of the date that the Tenant complies with all the Tenant's obligations under this Lease or, if applicable, the date that the Tenant complies with all the Tenant's obligations under the last of the Option Leases.

18. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) The Tenant must notify the Landlord on or before the Commencing Date if the Tenant's Goods or any other personal property of the Tenant relevant to this Lease is subject to a Security Interest.

- (b) The Tenant agrees not to create a Security Interest in favour of a third party in respect of the Tenant's Goods or any other personal property of the Tenant relevant to this Lease except with the prior written consent of the Landlord, such consent not to be unreasonably withheld.
- (c) The Tenant:
 - (i) acknowledges that the grant of this Lease also constitutes the grant of a Security Interest in the Landlord PPS Items in favour of the Landlord, which interest the Landlord is entitled to register under the PPS Act;
 - (ii) must do all things required by the Landlord from time to time (including, without limitation, signing any documents required by the Landlord) to enable the Landlord to register its above Security Interests under the PPS Act;
 - (iii) warrants that it has not created a Security Interest in respect of any Landlord PPS Items on or prior to signing of this Lease; and
 - (iv) must indemnify the Landlord against all claims, damages or loss incurred by the Landlord as a consequence of any breach by the Tenant of this clause.

19. GENERAL

19.1. Tenant contact

The Tenant will ensure that the Landlord has the home address, current email address and telephone number of a 24 hour contact for the Tenant.

19.2. Notices

- (a) Any notice or other document to be given by the Landlord will be validly signed if signed by any managing agent, property manager, director, secretary, attorney or solicitor of the Landlord or by any Person nominated by the Landlord.
- (b) Any notice or document to be given under this Lease can be given:
 - (i) in any manner authorised by Section 170 of the *Conveyancing Act 1919 (NSW)*;
 - (ii) by being left at or posted to:
 - (A) an address shown in this Lease;
 - (B) in the case of a corporation, at its registered office;
 - (C) in the case of the Tenant, at the Premises; or
 - (iii) by fax.
- (c) A notice or document will be regarded as having been received:
 - (i) in the case of posting, 2 Business Days after it is placed in the post; or
 - (ii) in the case of a fax, when the machine sending the fax generates a report showing the total number of pages of the fax were successfully sent to the fax number of the addressee.
- (d) If any notice is received by a party after 5pm on any Business Day, the notice will be deemed to have been received on the next Business Day.



- (e) A notice or document is taken to have been given when (unless otherwise proved) it is sent by email to the email address of the addressee or such other email address notified as being the email address to use for the purposes of this clause:
 - (i) where the email is sent during a Business Hour on a Business Day, upon the return of a receipt which confirms successful transmission of the email to the email address of the recipient or, where no return receipt is produced by the recipient's email system, by the end of the last Business Hour on the day the email was sent; or
 - (ii) where the email is sent after the end of the last Business Hour on a Business Day or on a non-Business Day, the email will be deemed to be received at the beginning of the first Business Hour on the next Business Day.

19.3. Consents and costs

Unless provided to the contrary in this Lease where:

- (a) the Landlord is required to exercise a discretion, the Landlord will exercise such discretion reasonably;
- (b) the Tenant is to pay the Landlord's costs, the Landlord will act reasonably in incurring such costs; and
- (c) the Landlord's consent or approval is required, such consent or approval will not be unreasonably withheld.

19.4. Landlord's approvals

- (a) The Tenant acknowledges that the Landlord, when giving approval in connection with this Lease or proposed work, has no objection to the act, matter or thing the subject of the approval.
- (b) Without limiting clause 19.4(a), neither the Landlord nor the Landlord's consultant, in giving approval or imposing a condition in connection with approval, assumes any duty of care to the Tenant or makes any warranty or representation in connection with the proposed work or the act, matter or thing the subject of the approval including any warranty as to suitability or fitness for intended purpose of any plans, drawings, specifications, materials, contractors, suppliers, construction methods or sequence of work or otherwise.

19.5. Relationship between the parties

The only relationship between the parties to this Lease is that of Landlord and Tenant and the Guarantor on the terms of this Lease.

19.6. Miscellaneous

- (a) No waiver by the Landlord or the Tenant of any right under this Lease will be a waiver of any other right.
- (b) No action taken by either the Landlord or the Tenant under this Lease will limit their other rights and remedies.
- (c) Termination of this Lease will not affect the rights of either the Landlord or the Tenant accrued before termination.

19.7. Suitability of Premises

- (a) The Landlord gives no warranty and makes no representation to the Tenant that the Premises are or will remain suitable for the Tenant's purposes.



- (b) The Tenant is responsible for obtaining all Cowra Shire Council, Department of Health and other building, statutory and drainage and compliance permits and approvals with respect to the fit-out and operation of the Premise as a retail shop.

19.8. Measurements

Any measurements of the Premises will be made in accordance with the then current Property Council method of measurement for retail premises not located in shopping centres.

19.9. Deemed rent

The Landlord and the Tenant agree that any money due by the Tenant under this Lease but unpaid are deemed to be rent for the purposes of this Lease.

19.10. Interruption of services

Subject to any law to the contrary, the Landlord is not liable to the Tenant for any loss or damage suffered by the Tenant because the Landlord's Equipment fails to function.

19.11. Keys and access

- (a) The Landlord will provide the Tenant keys to enable the Tenant to gain access to the Premises 24 hours a day 7 days a week.
- (b) The Tenant agrees to comply with the Landlord's security systems when arranging for the Tenant's contractors, agents, customers and visitors to gain access to the Premises.
- (c) The Tenant will not copy any keys and will not give any access keys to the Premises to any other Person and will deliver all keys to the Landlord at the expiry or earlier termination of this Lease.
- (d) The Tenant will pay to the Landlord the cost of replacing any lost or damaged access keys.


20. Residential Tenancy Agreement with Melvin Bonnin


- (a) The Lessee acknowledges the Residential Tenancy Agreement between the Landlord and Melvin Bonnin commencing on the 29 March 2018 and ending on 28 March 2019 for the flat known as 51A Kendal street, Cowra and the car space.
- (b) Until such time that Melvin Bonnin vacates 51A Kendal Street, Cowra, the Tenant agrees that all rent payable under the Residential Tenancy Agreement will be paid to the Landlord.
- (c) The Landlord will take all reasonable steps to end the tenancy and provide vacant possession by 28 March 2019.

Anthony Smith
Anthony Smith
S.H.K.
Chaplain

Certified correct for the purposes of the Real Property Act 1900 by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below:

Corporation: **C & S Haslam Superannuation Pty Limited ACN 622 202 671**
Authority: section 127 of the Corporations Act 2001

Signature of authorised person: 


Signature of authorised person: 


Name of authorised person: Stephen John Haslam
Office held: Director

Name of authorised person: Christine Rhonda Haslam
Office held: Director

I certify I am an eligible witness and that the lessor signed this dealing in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness: 

Signature of lessee:* 
STH

Name of witness: **Michael John Whiteley**
Address of witness:
Solicitor
65 Sale Street, Orange

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John Smith
Anthony Smith
[Signature]

Steele
Cristoforo