

Dealing Number



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1. **Lessor**
PHAM COMMERCIAL PROPERTY PTY LTD ACN 600 780 792

Lodger (Name, address, E-mail & phone number)
SLF Lawyers
Level 2, 217 George St, Brisbane QLD 4000
Ph: (07) 3839 8011
Email: jlo@slflawyers.com.au

Lodger Code
276A

2. **Lot on Plan Description**
LOT 1 ON RP 44399

Title Reference
14943193

3. **Lessee** Given names Surname/Company name and number (include tenancy if more than one)
VIET DE-LITES PTY LTD ACN 128 428 955

4. **Interest being leased**
FEE SIMPLE

5. **Description of premises being leased**
THE WHOLE OF THE LAND DESCRIBED IN ITEM 2 HEREOF.

6. **Term of lease**
Commencement date/event: 01 / 01 / 2020
Expiry date: 31 / 12 / 2022 and/or Event:
#Options: 1 x 3 YEARS
#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)

7. **Rental/Consideration**
SEE SCHEDULE ATTACHED

8. **Grant/Execution**
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in- *the attached schedule; *~~the attached schedule and document no. _____~~;
*document no. _____; *Option in registered Lease no. _____ has not been exercised.
* delete if not applicable

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

..... Signature Pham Commercial Property Pty Ltd ACN 600 780 792
.....full name
.....qualification
Witnessing Officer 10 / 08 / 2020
Execution Date
..... Director
..... Director
Lessor's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

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

.....signature Viet De-Lites Pty Ltd ACN 128 428 955
.....full name
.....qualification
Witnessing Officer 10 / 08 / 2020
Execution Date
..... Director
..... Director
Lessee's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

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REFERENCE SCHEDULE

The parties:

Item 1: Address for Service:

Lessor: 2615 Old Cleveland Road, Chandler QLD 4155

Lessee: 2615 Old Cleveland Road, Chandler QLD 4155

Item 2: Term:

3 years

Date of commencement: 1st January 2020

Expiry date: 31st December 2022

Item 3: Rent:

For the 1st year: \$72,000.00 plus GST per annum (\$6,000.00 plus GST per month)

Item 4: Review Date(s):

(a) Market Review Date: Not applicable

(b) (i) Fixed Increase Dates: Not applicable

(ii) Fixed Increase Percentage: Not applicable

(c) CPI Review Dates: Annually on the anniversary of the commencement date: 01/01/2021; 01/01/2022

If Option exercised: 01/01/2023; 01/01/2024; 01/01/2025

Item 5: Agreed Proportion of Outgoings:

100%

Item 6: Percentage Rental:

(a) Percentage Rental: Not applicable

(b) Turnover Threshold: Not applicable

Item 7: Permitted Use:

Café Restaurant and Takeaway

Item 8: Option Periods:

1 x 3 years

Option period commencing on 1st January 2023 and expiring on 31st December 2025

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Item 9: Security Cash Bond/ Bank Guarantee:

Amount equivalent to three (3) months' Rent and Outgoings plus GST

Item 10: Guarantors:

Not applicable

Item 11: Public Liability Insurance:

\$10,000,000.00

1 INTERPRETATION

1.1 Terms and Reference Schedule

- (1) Terms in **bold** in the Reference Schedule have the meaning shown opposite.
- (2) Item numbers refer to those in the Reference Schedule unless stated otherwise.

1.2 Definitions

- (1) "**Act**" means the Retail Shop Leases Act 1994 (as amended).
- (2) "**Agreed Proportion of Outgoings**" means the percentage/fraction in Item 5 of the Reference Schedule.
- (3) "**Air Conditioning Equipment**" means the plant, machinery and equipment (including ductwork, diffusers, pipework, electrical installations, switchboards, wiring, thermostats, controls, cooling towers, air handling equipment, compressors, condensers, chiller sets and pumps) installed in the **Premises** for heating, cooling or circulating air in the **Premises** but does not include any such plant, machinery and equipment owned, hired or leased by the **Lessee** other than from the **Lessor**.
- (4) "**API**" means the Australian Property Institute (Inc) Queensland Division.
- (5) "**Authority**" means any Federal, State or local government authority or department and in the context of **Services** includes the provider of such **Services** whether government owned or not.
- (6) "**Building**" means all buildings and improvements on the **Land**.
- (7) "**Commencement Date**" means the day inserted in Item 6 of the Form 7.
- (8) "**CPI**" means the Consumer Price Index (All Groups) for Brisbane published by the Australian Bureau of Statistics. If that index no longer exists, "CPI" means an index that the President of the **API** decides best reflects changes in the cost of living in the relevant city in which the **Premises** are located.
- (9) "**Expiry Date**" means the day inserted in Item 6 of the Form 7 as amended from time to time.
- (10) "**Financial Year**" means 1 July to 30 June.
- (11) "**GST**" means GST within the meaning of the GST Act.

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- (12) **"GST Act"** means A New Tax System (Goods and Services Tax) Act 1999 (as amended).
- (13) **"Guarantors"** means the person or persons as referred to in Item 10 of the Reference Schedule both jointly and severally and in the case of a corporation shall include its successors in title and assigns and in the case of a natural person or persons its or their respective heirs, executors, administrators and assigns.
- (14) **"Land"** means the property described in Item 2 of the Form 7.
- (15) **"Lessee"** means the party described in Item 3 of the Form 7 namely Viet De-Lites Pty Ltd ACN 128 428 955 and in the case of a corporation shall include its successors in title and assigns and in the case of a natural person or persons shall include its or their respective heirs, executors, administrators and assigns.
- (16) **"Lessee's Property"** means all fixtures, fittings, equipment, stock and other articles in the **Premises** owned by the **Lessee**.
- (17) **"Lessor"** means the party described in Item 1 of the Form 7 namely Pham Commercial Property Pty Ltd ACN 600 780 792 and in the case of a corporation shall include its successors in title and assigns and in the case of a natural person or persons shall include its or their respective heirs, executors, administrators and assigns.
- (18) **"Lessor's Property"** means any property owned by the **Lessor** in or on the **Building** including but not limited to any of the **Lessor's** fixtures and fittings and plant and equipment.
- (19) **"Lease"** means this document which comprises the Form 7 and all Schedules and annexures to the Form 7.
- (20) **"Market Review Date"** means the date (and if more than one, each of the dates) specified in Item 4(a) of the Reference Schedule and at the discretion of the **Lessor** the first day of any holding over period.
- (21) **"Official Requirement"** means any requirement, notice, order or direction of any statutory, public or other competent authority, present or future, and includes the provisions of any statute, ordinance or by-law.
- (22) **"Option Term"** means any optional renewed term of this **Lease** as set out in Item 8 of the Reference Schedule.
- (23) **"Outgoings"** means the total of all amounts paid or payable by the **Lessor** in respect of the **Land** and **Building** on account of all costs and expenses in operating, maintaining and managing the **Land** and **Building** including but not limited to:
- (a) all municipal rates, charges and levies payable to the local **Authority** in whose area the **Land** is located including but not limited to general rates, fire levy, waste and garbage removal;
 - (b) all rates, charges and levies payable to any local or other **Authority** responsible for the provision **Services** including but not limited to reticulation of water and/or sewerage and/or drainage services;
 - (c) all other rates taxes (including land tax) charges, assessments and impositions whatsoever (whether parliamentary, municipal or otherwise and whether assessed,

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charged or imposed by any **Authority** and whether on a capital or revenue value or any other basis and even though of a novel character) which may at any time after the **Commencement Date** be assessed, charged or imposed in respect of the **Land** or **Building**;

- (d) all reasonable insurance premiums and any other charges including but not limited to stamp duties on insurances against material damage to the **Building**, public liability, industrial special risks and any other insurances effected by the **Lessor** in relation to any risk relating to the **Lessor's** ownership of or interest in the **Land** and **Building**;
- (e) the cost of operating, servicing, repairing and maintaining the **Building**, the **Lessor's Property** and the **Services**;
- (f) the cost to the **Lessor** of producing audited statements of expenditure (if required);
- (g) the cost of the **Lessor** complying with the requirements of **Authorities** in relation to the certification of essential **Services** to the **Building**, such as emergency fire evacuation training;
- (h) any management fees paid by the **Lessor** to a third party for management of the **Land** and/or **Building** including Body Corporate levies and charges (if applicable);
- (i) cleaning of the **Premises** to the extent arranged by the **Lessor** at the request of the **Lessee** or as otherwise deemed necessary by the **Lessor** as a result of any failure to clean on the part of the **Lessee** and not already included in any Body Corporate levies and charges;

excluding the amount of any refund or credit of GST to which the **Lessor** is entitled in respect of the above costs and excluding any income tax and capital gains tax of the **Lessor**.

If the **Act** applies, then **Outgoings** exclude any expenses that are prohibited to be recovered by the **Lessor** from the **Lessee**.

- (24) "**Permitted Use**" means the use described in Item 7 of the Reference Schedule.
- (25) "**PPSA**" means the *Personal Property Securities Act 2009* (Cth).
- (26) "**PPSR**" means the Personal Property Securities Register.
- (27) "**Premises**" means the part of the **Land** described in Form 7 also known as 16 Nudgee Road, Hamilton, in the State of Queensland and includes the **Lessor's Property** in the **Premises**.
- (28) "**Renewed Lease**" means a **Lease** of the **Premises** for the relevant period set out in Item 8 of the Reference Schedule on the terms set out in clause 15.
- (29) "**Rent**" means the rental payable by the **Lessee** under this **Lease** being the amount in Item 3 of the Reference Schedule as varied under this **Lease**.
- (30) "**Services**" means all water, sewerage and all other utilities, services or systems provided in the **Building** and/or to the **Premises**.
- (31) "**Term**" means the term of this Lease as shown on the Form 7 and includes, if any option to renew is exercised, any such **Option Term**.

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- (32) “**Valuer**” means a specialist retail valuer kept on the list of specialist retail valuers pursuant to the **Act** and who is independent of the interest of the **Lessor** and **Lessee**.

1.3 Interpretation

- (1) In this Lease unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) “parties” is a reference to the parties of this **Lease** being the **Lessor** and the **Lessee** and (if applicable and where the context permits) any **Guarantors**;
 - (c) “person” includes a firm, a corporation or body corporate, an unincorporated association or an **Authority**;
 - (d) an agreement, representation or warranty:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
 - (e) a reference to:
 - (i) a month, week or year is a reference to a calendar month, calendar week or calendar year unless stated or defined otherwise;
 - (ii) a person includes the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
 - (iii) a document including this **Lease** includes any variation or replacement of it;
 - (iv) a law includes regulations and other instruments under it and amendments or replacements of any of them;
 - (v) a thing includes the whole and each part of it;
 - (vi) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually;
 - (vii) the president of a body or **Authority** includes any person acting in that capacity; and
 - (viii) a clause is to a clause in this **Lease**.
- (2) Headings are for convenience only and do not form part of this **Lease** or affect its interpretation.

2 RENT AND OTHER PAYMENTS

2.1 Payments

The **Lessee** must pay the **Lessor**:

- (a) the **Rent**;

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- (b) the **Agreed Proportion of Outgoings** (if applicable);
- (c) stamp duty assessed on the **Lease** (if applicable) and costs of registering the **Lease**;
- (d) other reasonable expenses incurred by the **Lessor** in obtaining the consent of the **Lessor's** mortgagee to the **Lease** (subject to the *Retail Shop Leases Act 1994*) and costs of survey fees associated with registration of the **Lease**, including the **Lessor's** legal costs on an indemnity basis associated with the same;
- (e) all reasonable costs and expenses incurred by the **Lessor** in relation to any notice given to the **Lessee** in accordance with this **Lease**, lawful determination or attempted determination of this **Lease**, the surrender of this **Lease**, the granting of any consents, variation of lease, proceedings lawfully brought by the **Lessor** to enforce the **Lessee's** performance and obligations under this **Lease**;
- (f) any tax or levy in the nature of a goods and services tax or consumption tax or other tax levied directly on or relating to the receipt of payments including **Rent** incurred by the **Lessor** during the **Term**; and
- (g) any other payments arising from the **Lessee's** use of the **Premises**.

2.2 Manner of Payment

The **Lessee** must pay the **Rent** throughout the **Term** and any renewal thereof without any formal or other demand:

- (a) by equal monthly instalments in advance on the first day of each month;
- (b) the first payment must be made on or before the **Commencement Date**;
- (c) if necessary the first and last instalments must be apportioned on a daily basis; and
- (d) in the manner as directed by the **Lessor** or its managing agent from time to time in writing.

2.3 Goods and Services Tax

- (1) In the event that a Goods and Services Tax ("GST") applies to any amount payable under this **Lease**, then:
 - (a) no amount specified as payable by the **Lessee** under this **Lease** is inclusive of any GST applying to such payments;
 - (b) the **Lessee** shall pay to the **Lessor**, or as the **Lessor** shall direct, the GST payable in respect of the **Rent** and other payments payable by the **Lessee** under this **Lease**;
 - (c) the GST in respect of the **Rent** shall be payable on each occasion when any **Rent** payment falls due for payment and in respect of any other payment shall be payable upon demand;
 - (d) if the **Lessee** shall default in payment of the **Rent** or other monies payable under this **Lease** and the **Lessor** becomes liable to pay any additional GST, fine or penalty, then the **Lessee** shall, on demand, pay to the **Lessor** the additional GST, fine or penalty and the **Lessee** shall indemnify the **Lessor** in respect of such sum;

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(e) as between the **Lessor** and the **Lessee**, the **Lessor** shall not be obliged to pay GST or additional tax, fine or penalty or to take other steps to minimise the liability in respect of such tax or additional tax, fine or penalty until the corresponding payment is received from the **Lessee**.

(2) An Amount payable by a party under this **Lease** in respect of a taxable supply by the other party, unless expressed to represent the price of supply, represents the value of the supply and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.

(3) Expressions used in this clause 2.3 have the meanings given to them in the GST Act.

2.4 Reimbursement of Expenses

If this **Lease** requires the **Lessee** to pay, reimburse or contribute to an amount paid or payable by the **Lessor** in respect of a creditable acquisition from a third party, the amount for payment, reimbursement or contribution will be the value of the acquisition by the **Lessor** plus, if the **Lessor's** recovery from the **Lessee** is a taxable supply, the GST payable in respect of that supply.

2.5 Supplier to Provide Tax Invoice

A party is not obliged to pay the GST on a taxable supply to it under this **Lease**, until that party is given a valid tax invoice for the supply.

2.6 Agreed Proportion of Outgoings

The **Lessee** must pay the **Agreed Proportion of Outgoings** for each Financial Year as set out in the estimates and statements:

(1) Estimates

(a) The **Lessor** must give the **Lessee** a written estimate of the **Outgoings** to which the **Lessee** must contribute under the **Lease**, in the form prescribed under the **Act**.

(b) The estimate of **Outgoings** must be given to the **Lessee** in respect of each **Financial Year** during the **Term** of the **Lease** and must be given before the **Lease** is entered into and thereafter during the **Term** of the **Lease** at least one (1) month before the commencement of the **Financial Year** concerned.

(c) If the **Premises** is in a retail shopping centre, the estimate of **Outgoings** is to include:

(i) a statement of management fees, broken down into the fees to be paid by the **Lessee** towards the administration costs of running the centre and other fees paid to the management company;

(ii) a statement of cleaning costs to be paid by the **Lessee**, broken down into the costs of consumables and other costs; and

(iii) any other particulars prescribed by law.

(2) Statements

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- (a) The **Lessor** must give the **Lessee** a written statement that details all expenditure by the **Lessor** in each **Financial Year** during the **Term** of the **Lease** on account of **Outgoings** to which the **Lessee** is required to contribute ("Outgoings Statement").
- (b) If the **Premises** is in a retail shopping centre, the Outgoings Statement must include a statement of the current gross lettable area of the shopping centre and details of any materials change in that gross lettable area during the period to which the Outgoings Statement relates.
- (c) If the **Premises** is in a retail shopping centre, the Outgoings Statement is to include:
 - (i) a statement of total management fees paid in respect of the centre, broken down into the fees paid towards the administration costs of running the centre and other fees paid to the management company;
 - (ii) a statement of total cleaning costs paid by the **Lessor**, broken down into the costs of consumables and other costs; and
 - (iii) any other particulars prescribed by law.
- (d) The Outgoings Statement is to be given to the **Lessee** within three (3) months after the end of the **Financial Year** to which it relates.

(3) Adjustments

There is to be an adjustment between the **Lessor** and the **Lessee** for each **Financial Year** to take account of any under-payment or over-payment by the **Lessee** in respect of **Outgoings** during the **Financial Year**. The adjustment is to take place within one (1) month after the **Lessor** gives the **Lessee** the Outgoings Statement for the **Financial Year** concerned and must in any event take place within four (4) months after the end of that **Financial Year**.

2.7 Payments to Authorities

The **Lessee** must pay by the due date for payment all other payments promptly to the relevant assessing authority if assessed directly against the **Lessee** but otherwise to the **Lessor** upon receipt of an invoice.

2.8 Charges for Services Supplied to the Premises

- (1) The **Lessee** must pay all charges imposed during the **Term** in respect of:
 - (a) electricity (electric current) charges consumed in the **Premises**;
 - (b) gas consumed on the **Premises**;
 - (c) water access, water usage, water metre rental, sewerage charges and all other general garbage charges in respect of the **Premises**;
 - (d) cleaning, refuse and trade waste services and grease trap provided by any **Authority** in respect of the **Premises**;
 - (e) any **Services** to the **Premises** or arising out of or incidental to the use by the **Lessee** or the **Lessee's** employees, agents, contractors of the **Premises**;

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to the relevant authority if charged directly, to the relevant authority on or before the due date for payment but otherwise to the **Lessor** within seven (7) days of being billed for such charges by the **Lessor**.

- (2) To avoid doubt, the **Lessee** must pay for the council rates, water and sewerage invoices (which shall include water access charges, sewerage charges and water usage charges) issued by the relevant authority in respect of the entire **Land**.

2.9 Maintenance of Air Conditioning Equipment

- (1) If **Air Conditioning Equipment** is provided by the **Lessor** the **Lessee** must pay all the costs associated with maintaining, servicing and operating any **Air Conditioning Equipment** for the **Premises** including the cost of any maintenance and/or service agreements and electricity. The **Lessee** must at the **Lessee's** own expense ensure the routine quarterly service of such **Air Conditioning Equipment** with qualified and licensed contractors and provide the **Lessor** with a copy of the service report for each service upon demand. The **Lessee** is responsible for all expenses for repair, replacements and/or renewals of or to any **Air Conditioning Equipment** including the costs of any capital items.
- (2) At the expiration of the **Lease**, the **Air Conditioning Equipment** including any replacements paid for by the **Lessee** remains the property of the **Lessor**.

2.10 Special Services

The **Lessee** must pay all additional or unusual costs, charges and expenses incurred by the **Lessor** for any special services, alterations, repairs or maintenance to the **Premises** provided by the **Lessor** at the **Lessee's** request or at a competent **Authority's** request. Payment must be made on demand, which may be before the special services are provided.

2.11 Overloading

- (1) The **Lessee** shall not without prior consent in writing of the **Lessor** install any electrical equipment on the **Premises** that overloads the cables, switchboards or sub-boards through which electricity is conveyed to the **Premises**. If the **Lessor** consents to the installation of such electrical equipment any alterations which may be necessary to comply with the requirements of the insurance underwriters of the **Building** or any statutes, regulations, ordinances or by-laws relating thereto shall be effected by the **Lessor** at the expense of the **Lessee** and the entire cost to the **Lessor** of such alteration shall be paid by the **Lessee** upon demand by the **Lessor**. The **Lessor** may require the **Lessee** to deposit with the **Lessor** the estimated cost of alterations before any alterations are commenced.
- (2) The **Lessee** shall not place or store any heavy articles or materials on any of the floors of the **Building** without the prior written consent of the **Lessor**, which consent shall only be given where the articles or materials are reasonably necessary and proper for the conduct of the **Permitted Use** and are of a nature and size as will not in the **Lessor's** opinion cause or be likely to cause any structural or other damage to the floors or walls or any other part of the **Premises** or the **Building**.
- (3) If the **Lessor** at the request of the **Lessee** upgrades the **Services** to accommodate any equipment or system which the **Lessee** wishes to install, the **Lessee** shall pay to the **Lessor** upon demand the reasonable cost to the **Lessor** of those alterations (including without limitation consultants' fees) and the **Lessor** may require the **Lessee** to deposit with the **Lessor** the estimated costs before any alterations are commenced. The **Lessor** gives no warranty as to the suitability of any alterations performed by the **Lessor** under this clause.

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2.12 Grease Trap

- (1) This clause 2.12 applies if there is a grease trap connected to and/or servicing the **Premises**.
- (2) The **Lessee** acknowledges it is responsible and must professionally clean the grease trap every three (3) months and pay all costs relating to the cleaning and maintenance thereof. The **Lessee** specifically acknowledges that if the **Lessor** is required to expend any maintenance, repairing, upgrade and/or cleaning costs (including expenditures of a capital nature) then the same are to be reimbursed to the **Lessor** thereof upon such expenditure by the **Lessor**.
- (3) If the existing grease trap requires any structural or capital repairs due to a requisition or direction issued by the local **Authority** then the costs shall be payable by the **Lessee** and the **Lessee** must attend to the requisitions within the timeframe stipulated by the local **Authority**.
- (4) Notwithstanding clauses 2.12(2) and 2.13(3) above, if the **Lessee** elects to enlarge, improve, extend and/or replace the grease trap at its own will or to enlarge its trading capacity then in that case, the **Lessee** shall bear all the costs of any works relating to the grease trap.
- (5) Notwithstanding any other provisions in this **Lease**, the parties acknowledge that if the grease trap is shared by other tenants, then the cleaning, maintenance and repair cost associated with the grease trap shall be borne equally between the **Lessee** and other tenants that share the use of the grease trap.

2.13 Late Payment of Rent and other charges

In the event that any **Rent** or other monies due by the **Lessee** under this **Lease** remain unpaid for a period of fourteen (14) days after their due date then the **Lessee** shall pay to the **Lessor** interest on the overdue amount at a rate of 12% per annum calculated from the due date until the date of payment and the **Lessor** will be entitled to recover that money as if the same were rent in arrears.

2.14 Future Taxes and Charges

- (1) The **Lessee** must pay all future taxes of any kind which are not payable at the **Commencement Date** but which may at any time during the term of this **Lease** be assessed charged or imposed upon or in respect of the **Premises** and whether assessed against the **Lessor** or directly against the **Lessee**.
- (2) Any sums payable by the **Lessee** if assessed:
 - (a) directly against the **Lessee** must be paid to the assessing authority not later than the due date of the payment; and
 - (b) against the **Lessor** must be paid to the **Lessor** upon demand by the **Lessor** but no later than seven (7) days from demand.

3 RENT REVIEWS

3.1 Market Review

The **Rent** shall be reviewed on each **Market Review Date** to an amount being the current market rent determined in accordance with clauses 3.4, 3.5 and 3.6.

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3.2 Fixed Review

If Fixed Increase Dates are specified in Item 4(b)(i) of the Reference Schedule the **Rent** from and including each Fixed Increase Date shall be increased by the corresponding percentage set out in Item 4(b)(ii). To avoid any doubt, on each Fixed Increase Date, the new **Rent** is calculated by multiplying the **Rent** payable for the immediately preceding year by a percentage equal to the percentage set out in Item 4(b)(ii).

3.3 CPI Review

(1) If CPI Review Dates are specified in Item 4(c) of the Reference Schedule the **Rent** from and including each CPI Review Dates shall be the **Rent** calculated in accordance with the following formula:

$$R = \frac{A \times B}{C} + A \times 0.01$$

Where R = the new **Rent**;
A = the **Rent** immediately prior to the relevant CPI Review Date;
B = the current **CPI** published before the relevant CPI Review Date; and
C = the previous **CPI** last published before the date which is one (1) year prior to the CPI Review Date.

(2) On the first day of the month after the information is available to make the calculation in clause 3.3(1), the **Lessee** must pay (or the **Lessor** must refund to the **Lessee**) the difference between what the **Lessee** has paid on account of rent and the new rent for the period from and including the relevant CPI Review Date.

3.4 Determination of Current Market Rent

The Current Market Rent shall be agreed upon between the **Lessor** and the **Lessee** and failing agreement within one (1) month of the Market Review Date, the current market rent shall be determined by a **Valuer** taking into account the criteria set out in the **Act**. The cost of the **Valuer** shall be borne by the **Lessor** and the **Lessee** equally.

3.5 Interim Current Market Rent

Until the Current Market Rent can be determined or agreed in accordance with clause 3.4 the **Lessee** shall pay to the **Lessor** the **Rent** at the rate payable immediately preceding the Market Review Date.

3.6 Non-Waiver of Rent

Notwithstanding any other provisions in this **Lease** the failure of the **Lessor** to negotiate or determine the new **Rent** at the **Market Review Date** or to demand or collect any such **Rent** after the **Market Review Date** shall not prevent the **Lessor** at any time after the **Market Review Date** (whether or not the **Lease** shall have expired) from negotiating with the **Lessee** or having determined or demanding or collecting from the **Lessee** (as the case may be) any such **Rent**.

3.7 Payment of Reviewed Rent

- (1) Any variation in the **Rent** resulting from a review date takes effect on the relevant review date.
- (2) If the **Rent** payable from any review date has not been ascertained by that date then the **Lessee** shall continue to pay the then current amount of **Rent** until the new **Rent** is ascertained

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and within fourteen (14) days after the new **Rent** is ascertained the **Lessee** shall pay to the **Lessor** or the **Lessor** shall credit the **Lessee** (as the case may be) the difference for the period commencing on the relevant review date and ending on the last day of the period for which **Rent** has been paid by the **Lessee**.

4 USE OF THE PREMISES

4.1 Use of the Premises

- (1) The **Lessee** must use the **Premises** for the **Permitted Use** only and for no other purpose.
- (2) The **Lessee** must comply with all laws and requirements of **Authorities** in relation to the **Permitted Use**.
- (3) The **Lessor** does not in any way warrant that the **Premises** are suitable for any purpose or may be used for the **Permitted Use**.
- (4) The **Lessee** must satisfy itself that it is lawful for the **Lessee** to use the **Premises** for the **Permitted Use**.
- (5) The **Lessee** accepts this **Lease** subject to any prohibitions or restrictions on the use of the **Premises** under any law.
- (6) The **Lessee** must not vary the **Permitted Use** or use the **Premises** for any purposes other than the **Permitted Use** without the **Lessor's** prior approval and consent.

4.2 Occupation of the Premises

- (1) The **Lessee** acknowledges that it is the responsibility of the **Lessee** to obtain the consent of any planning or other **Authority** which may be required for the **Lessee** to carry on its business on the **Premises** at the **Lessee's** own cost and the failure of the **Lessee** to obtain that consent does not relieve the **Lessee** of its obligation to pay **Rent** and otherwise to perform its obligations under this **Lease**.
- (2) The **Lessee** acknowledges that any warranties as to the suitability fitness and adequacy of the **Premises** implied by law are negated.
- (3) The **Lessee** acknowledges that it is the responsibility of the **Lessee** to maintain and renew from time to time all licences, permits and registrations required for the carrying on of the business of the **Lessee** on the **Premises** at the **Lessee's** own cost and the failure of the **Lessee** to maintain and renew licences, permits and registrations does not relieve the **Lessee** of its obligation to pay **Rent** and otherwise to perform its obligations under this **Lease**.
- (4) The **Lessee** must comply at its cost with **Official Requirements**:
 - (a) relating to the **Lessee's Property**;
 - (b) under disability legislation involving non-structural work to the **Premises**; and
 - (c) involving non-structural work to the **Premises** where the **Official Requirements** arise out of, or are attributable to, the **Lessee's** use of or business in the **Premises**.
- (5) The **Lessee** must bear the cost of compliance by the **Lessor** with **Official Requirements**:

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- (a) under disability legislation involving non-structural work to the **Premises**; and
- (b) involving non-structural work to the **Premises** where the **Official Requirements** arise out of, or are attributable to, the **Lessee's** use of or business in the **Premises**.

4.3 Conduct

The **Lessee** must not:

- (a) allow the **Premises** to be used for annoying, offensive or illegal acts which cause annoyance, nuisance, grievance, damage or disturbance to the **Lessor**, occupiers of adjacent premises, or passers-by;
- (b) use any form of power other than gas or electric current supplied through meters;
- (c) overload the **Services**;
- (d) damage the **Lessor's Property**;
- (e) alter the **Premises**, install or remove any partitions, fixtures and fittings or plant and equipment or do any building work without the **Lessor's** prior written consent;
- (f) do anything that may invalidate the **Lessor's** insurance or increase the **Lessor's** premiums;
- (g) display, paint or erect any signs on any part of the **Building** or the **Land** without the **Lessor's** prior written consent and if necessary, without the prior consent of any relevant **Authority**;
- (h) carry out any building work without the **Lessor's** prior written consent;
- (i) store or use inflammable, volatile or explosive substances on the **Premises** except where the substances are required for the **Permitted Use** and in the ordinary course of the **Lessee's** business and in that case the **Lessee** will comply with all relevant laws and the requirements of the **Lessor's** insurer in respect of such storage or use;
- (j) knowingly use or allow the **Lessor's Property** to be used for any purpose other than those for which they were designed;
- (k) interfere with any drains, water supply, gas, electrical, plumbing, air conditioning equipment or other services or any of the **Lessor's Property**;
- (l) obstruct or interfere with any of the entrances or common areas;
- (m) occupy or permit the **Premises** to be occupied or used outside the hours as from time to time stipulated by law;
- (n) bring any heavy machinery, plant or equipment onto the **Premises** unless it is reasonably necessary for the **Permitted Use** and in any case must not overload the floors, walls or ceilings;
- (o) make holes, deface or damage floors, walls or ceilings or other parts of the **Premises**;
- (p) install any vending or amusement machines;
- (q) use or install any product or property in the **Premises** likely to cause damage;

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- (r) permit the accumulation of any packing materials, cartons, containers or other waste material of any description in or about the **Premises**.

4.4 Consent

Whenever the consent of the **Lessor** is required under this **Lease** and unless otherwise provided in this **Lease**, the consent of the **Lessor** may be granted or refused on conditions as the **Lessor** in the **Lessor's** absolute discretion sees fit.

4.5 Lessee's Obligations

The **Lessee** must:

- (a) obtain and maintain all permits or consents required from any **Authority** to carry on the **Permitted use** in the **Premises**;
- (b) observe and comply with all laws, by-laws, rules, regulations and requirements of any **Authority**, body corporate, community titles scheme, and/or body corporate management scheme including any by-laws, regulations, rules that may appear in the body corporate management statement and/or community management statement from time to time relating to or affecting the **Premises**, **Permitted Use** or the **Lessee's** occupation of the **Premises**;
- (c) obey all reasonable directions and rules given by the **Lessor** relating to the use of the **Lessor's Property**;
- (d) obey any rules made by the **Lessor** relating to the operation, safety, use, occupation and management of the **Building**;
- (e) immediately notify the **Lessor** of any damage to, defect or disrepair in the **Services** or the **Lessor's Property**;
- (f) immediately notify the **Lessor** of any infectious diseases to the relevant Health Authority occurring on the **Premises** of which it is aware;
- (g) immediately provide the **Lessor** with copies of all notices, which it is required to serve on or receive pursuant to any legislation relating to the **Premises**;
- (h) at the expiration or sooner determination of the **Term** return all keys of the **Premises** to the **Lessor**;
- (i) lock all exterior doors and windows in the **Premises** and the **Building** when the **Premises** or the **Building** are not being used;
- (j) keep the **Premises** free from rodents, vermin, pests, insects, birds and animals;
- (k) keep the lawn and gardens in a neat and tidy condition (if applicable);
- (l) keep the **Premises** in a neat, clean and tidy condition during the term of this **Lease** and any extended term of this **Lease**;
- (m) pay all charges, assessments or impositions which may be levied in respect of the **Premises** during the **Term** and arising as a result of the use and occupation of the **Premises** by the **Lessee**;

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- (n) maintain all areas outside the **Premises** in good order and condition including keeping the area neat, clean and free from rubbish.

4.6 Personal Property Securities

- (1) The **Lessee** must notify the **Lessor** on or before the **Commencement Date** if the **Lessee's Property** or any other Personal Property of the **Lessee** relevant to the **Lease** is subject to a security interest.
- (2) The **Lessee** must not create a security interest in favour of any third party in respect of the **Lessee's Property** or any other Personal Property of the **Lessee** relevant to the **Lease** except with the prior written consent of the **Lessor**, such consent not to be unreasonably withheld.

5 MAINTENANCE AND REPAIR

5.1 Repair

The **Lessee** must:

- (a) keep the whole of the **Land** and the **Premises**, including any licenced area, all signage, fixtures and fittings in good repair and condition except for fair wear and tear and damage caused by fire, storm and tempest, unless any policy of insurance covering such occurrences shall have been vitiated or the policy money refused as a result of the act or omission of the **Lessee**, its servants, agents, licensees or invitees;
- (b) maintain, service and keep in good repair and condition at the **Lessee's** expense any plant and equipment servicing the **Premises** and keep current any such maintenance, service and repair contracts that are reasonably required by the **Lessor**;
- (c) fix any damage to the **Building** and **Premises** caused by the **Lessee** or its employees, agents, contractors, consultants, workmen, sublessees, licensees, franchisees and concessionaires' use;
- (d) repair, maintain or replace all glass in the **Premises**, the doors, locks, windows and window fittings, all broken, faulty or blown light tubes and associated electrical apparatus in the **Premises** including the hot water system (if applicable);
- (e) repair, maintain and replace all heating, electrical and plumbing fittings installed in the **Premises**, broken or damaged as a result of the use of the **Premises** by the **Lessee**;
- (f) regularly clean the **Premises** and dispose of all waste products;
- (g) take all necessary steps to control any pest infestation;
- (h) repair and maintain the **Lessee's** shop fit out from time to time when reasonably required at its own cost;
- (i) repair, service, clean and maintain from time to time in good working order and condition the awning (if applicable) at the front of the **Premises**;
- (j) maintain and keep in good repair and condition all waste pipes, drains and water closets servicing the **Premises** in a clean, clear and operative condition and shall employ licensed tradesman to clear any blockages which may occur therein;

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- (k) regularly clean and service any grease traps provided for the use of the **Premises**;
- (l) repair or replace any of the **Lessor's Property** which are broken or damaged by the **Lessee**, its employees, agents, contractors, consultants, workmen, sublessees, licensees, franchisees and concessionaires which repairs or replacements (if required) are to be carried out by the **Lessor** at the **Lessee's** cost;
- (m) repaint and redecorate such part of the interior of the **Premises** as are painted or otherwise decorated every three (3) years;
- (n) comply with all statutory requirements affecting the **Premises** and any notices or orders which may be given by any **Authority** in respect of the use of the **Premises** by the **Lessee** provided that the **Lessee** shall be under no liability in respect of any structural alterations unless that liability arises out of the **Lessee's** particular use or occupation of the **Premises**.

5.2 Lessor's Right to Inspect and Repair

- (1) Upon giving the **Lessee** two (2) days' notice in writing, the **Lessor** or its agents may at any reasonable time enter upon the **Premises** to inspect the state of repair thereof. In an emergency, the **Lessor** may enter at any time without giving the **Lessee** notice.
- (2) In the event of the **Lessee** failing to perform any of its obligations under the foregoing provisions then the **Lessor** may do such things as are necessary to comply with such provisions and may recover from the **Lessee** the costs of so doing as if the costs was unpaid rental hereunder.
- (3) Notwithstanding anything in this Lease or any law to the contrary, the **Lessor** is not legally responsible for any loss or damage suffered by the **Lessee** because the **Lessor** does or fails to do something relating to the **Premises** or **Building** unless the **Lessee** gives the **Lessor** written notice to fix that act or omission and the **Lessor** unreasonably fails to do so.

6 ASSIGNMENT AND SUBLETTING

- (1) The **Lessee** must not assign, sublet, mortgage, charge or otherwise deal with the **Lease** or the **Premises** with the **Lessor's** consent which shall not be unreasonably withheld.
- (2) The **Lessor** must give its consent if:
 - (a) the **Lessor** is satisfied that the new tenant is:
 - (i) of good repute;
 - (ii) of sound financial standing;
 - (iii) responsible;
 - (iv) experienced in the business to be conducted in the **Premises**;
 - (v) capable of performing the **Lessee's** obligations under this **Lease**;
 - (b) the **Lessee** and the new tenant signs any agreement and gives any security which the **Lessor** reasonably requires;
 - (c) the **Lessee** complies with any other reasonable requirements of the **Lessor**;

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- (d) the **Lessee** is not in breach of the **Lease**;
 - (e) the **Lessee** releases the **Lessor** from all claims the **Lessee** has or may have in respect of this **Lease**;
 - (f) the **Lessee** pays the **Lessor's** reasonable costs and expenses of giving its consent including legal costs, stamp duty and registration fees.
- (3) If the **Lessee** is a corporation, any change in the principal shareholding or composition of the board of directors altering the effective control or control of one half or greater of the shares of the board is deemed an assignment of this **Lease** and must be dealt with in accordance with this **Lease**.
- (4) The **Lessee** acknowledges that the **Lessor** may at its discretion impose certain conditions upon the new tenant in order to consent to an assignment of lease such as requiring a greater security bond having considered the new tenant's financials and suitability.
- (5) If the new tenant is a corporation the **Lessor** may require the directors and/or shareholders of the company to give personal guarantees.

7 LESSOR'S RIGHTS AND OBLIGATIONS

7.1 Lease or other Interests

The **Lessee** must allow any person having any interest in the **Premises** superior to or concurrent with the **Lessor** to exercise the powers to enter and view the **Premises** and to carry out repairs, renovations, maintenance and other work and otherwise to exercise or perform their lawful rights or obligations.

7.2 Quiet Enjoyment

Provided the **Lessee** complies with the terms of this **Lease** the **Lessee** may peaceably hold and enjoy the **Premises** during the continuance of this **Lease** without any interruption or disturbance from the **Lessor** or any other person lawfully claiming by, from or under the **Lessor**.

7.3 Lessor's Insurance

The **Lessor** must insure the **Building** (but excluding all additions to the **Premises** carried out by the **Lessee** and the **Lessee's Property**) for its full replacement value and unless the insurance becomes void or voidable throughout or by reason of some default by the **Lessee** keep it insured. The **Lessee** must undertake any works (excluding works which are structural or capital in nature), repairs or cleaning as required by the **Lessor's** insurer during the **Term** and the **Lessee** must not do anything or omit to do any act that will render the **Lessor's** insurance void.

7.4 Infrastructure Repair

The **Lessor** reserves the right to use, maintain, modify, relocate and repair any services, fixtures or fittings passing through the **Premises** or the **Land** and in doing so will use reasonable endeavours to cause the minimum of inconvenience and disruption to the **Lessee's** business.

7.5 Strata Titling

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In the event of the **Lessor** wishing to effect a strata title on the **Land**, then the **Lessor** may carry out such works as are required by the responsible **Authorities** provided that in so doing it will cause the minimum of inconvenience and disruption to the **Lessee's** business.

7.6 Reserved Rights

The **Lessor** may:

- (a) use the outside of the external walls and the roof of the centre and of the shop for any purpose;
- (b) provide additional retail opportunities through changes to common property;
- (c) create easements or other rights;
- (d) change **Services**;
- (e) affix signs;
- (f) change decors;
- (g) show the shop to prospective tenants and put 'To Let' notices on the shop during the three (3) months before the end of the lease;
- (h) use the shop for the passage of air conditioning equipment, fire and sprinkler systems, pipes, services, ducts, cables, electrical wiring, water and sewerage and drainage connections and any other services; and
- (i) enter the **Premises** at all reasonable times to install, maintain or repair any of the items listed in clause 7.6(h).

8 RISK

8.1 Own Risk

- (1) The **Lessee** occupies and uses the **Premises** at its own risk. The **Lessee** also carries out building work in the **Premises** at its own risk.
- (2) Except to the extent caused by the **Lessor's** act or negligence, the **Lessor** will not in any circumstances be liable to the **Lessee** for any damage to the plant, equipment, fixtures, fittings merchandise, stock in trade or any other property of any description or in the possession of the **Lessee** and contained in or about the **Premises** occasioned by:
 - (a) water, heat, fire, electricity, vermin, explosion, tempest, riot, civil commotion, bursting pipes or by the entry of water from any source; or
 - (b) the operation or non-operation or malfunction of the **Air Conditioning Equipment**; or
 - (c) any other cause.
- (3) The **Lessor** will not be liable for any loss of profits resulting from the damage even if the damage occurs by reason of:
 - (a) any defect in the construction of the **Building** or of any of the appurtenances in the **Building**; or

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- (b) any act or omission by any contractor of the **Lessor** or any other tenant of the **Building** and their respective employees or any member of the public.

8.2 Release

The **Lessee** releases to the fullest extent permitted by law, the **Lessor** and its agents, employees and contractors from all claims and demands resulting from any accident, damage, loss, injury or death occurring in the **Premises** or in any part of the **Building** or outside the **Building** except to the extent that it is caused by a deliberate act, negligence or default or breach of covenant by the **Lessor** or its agents, employees or contractors.

8.3 Indemnity

Without limiting the generality of clause 8.2 the **Lessee** indemnifies and holds indemnified the **Lessor** and its agents, employees and contractors from and against all actions, claims, losses, damages and costs for or in respect of which the **Lessor** may sustain or incur or for which the **Lessor** or its agents, employees and contractors shall or may be or become liable whether during or after the **Term** in respect of or arising from:

- (1) Breach of Covenant – loss, damage or injury to property or person from or contributed to by the negligence or default of the **Lessee** to observe or perform any of the covenants, conditions and restrictions on the part of the **Lessee** whether positive or negative expressed or implied;
- (2) Misuse – negligent use or misuse, waste or abuse by the **Lessee** or any servant, agent or sub-tenant of any **Services** to the **Premises** or to the **Building**;
- (3) Escape of Harmful Agent – overflow or escape of water, fire, gas, electricity or any other harmful agent whatsoever in or from the **Premises** caused or contributed to by any act or omission on the part of the **Lessee**, its servants, agents or sub-tenants;
- (4) Failure to Notify – failure of the **Lessee** to notify the **Lessor** of any defect of which it is aware in the **Premises** whatsoever;
- (5) Use of Premises – loss, damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the **Premises** by the **Lessee** or any servant, agent or sub-tenant;
- (6) Personal Injury – any personal injury sustained by any person in or about the **Premises** or the **Building** howsoever caused other than the wilful or negligent act or omission of the **Lessor** or its servants or agents;
- (7) Plate Glass – damage relating to plate and other glass in the **Premises** caused or contributed to by any act or omission on the part of the **Lessee** or employees, agents, contractors, consultants, workmen, sub-tenants, licensees, franchisees, concessionaires, invitees or any other person claiming through or under the **Lessee**.

8.4 Lessee's Guarantee

The **Lessee** unconditionally and irrevocably guarantees to the **Lessor** the strict performance and observance by the **Lessee** at all times of:

- (a) the provisions on the **Lessee's** part; and

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- (b) the obligations of the **Lessee** under any lease, licence or occupancy of the **Premises** between the **Lessor** and the **Lessee**:
- (i) established by this document, whether legal or equitable, express or implied, registered or unregistered;
 - (ii) arising out of the **Lessee's** occupation and use of the **Premises** whether legal or equitable, express or implied, registered or unregistered; and
 - (iii) arising by the exercise by the **Lessee** of any option for renewal,
- including any obligation to indemnify the **Lessor**.

8.5 Indemnity

The **Lessee** indemnifies and shall continue to indemnify the **Lessor** against and in respect of all claims sustained or incurred by the **Lessor** or for which the **Lessor** becomes liable, caused or contributed to by the **Lessee's** failure to strictly discharge any obligation referred to in clause 8.4. The **Lessee's** liability under this clause 8.5 is separate from and in addition to the **Lessee's** liability under clause 8.4.

8.6 Insurance

At all times during the continuance of this **Lease** the **Lessee** must effect and keep current:

- (a) a public liability insurance policy in respect of the **Premises** (including for any licence area granted under this **Lease**) in the name of the **Lessee** and noting the **Lessor's** interest in an amount set out in Item 11 of the Reference Schedule or any higher amount that the **Lessor** may from time to time reasonably require the **Lessee** by notice in writing to effect for any single claim, accident or event, with an insurance office or company approved by the **Lessor** (such approval not to be unreasonably withheld);
- (b) a policy of insurance in the name of the **Lessee** and noting the **Lessor's** interest for the full replacement value of all plate glass in or enclosing the **Premises**;
- (c) insurance for the **Lessee's Property** including theft insurance;
- (d) worker's compensation including employer's liability insurance;
- (e) any other insurance reasonably required by the **Lessor**.

8.7 Notice of Accident

The **Lessee** must give the **Lessor** prompt notice in writing of any accident in or want of repair to the **Premises** or defect in any **Services** which it is aware.

8.8 Conduct Voiding Insurance

- (1) The **Lessee** must not knowingly do or permit to be done or omit to do any act in the **Premises** or on the **Land** which may render void or voidable any insurances on the **Building** or that may cause the rate of premium on any such insurance policies to be increased or be liable to be increased and the **Lessee** must do or permit to be done immediately upon request by the **Lessor**, everything necessary to ensure the continuance of any insurances effected by the **Lessor**.

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- (2) If the **Lessee** does or omits to do anything whereby the premiums of any insurance effected by the **Lessor** are increased, then the **Lessee** shall pay such increase in insurance to the **Lessor**.

9 DEFAULT AND TERMINATION

9.1 Essential Terms

- (1) The essential terms are:
- (a) Payments clause 2.1;
 - (b) Use of **Premises** clause 4.1;
 - (c) Conduct clause 4.3;
 - (d) **Lessee's** Obligations clause 4.5;
 - (e) Repair clause 5.1;
 - (f) Consent for Assignment, Sublease, Mortgage, Charge and other Dealings [clause 6];
 - (g) Insurance clause 8.6;
 - (h) Security Cash Bond/ Bank Guarantee clause 16;
- (2) The list of essential terms in this clause is not exhaustive and other terms in this **Lease** may be an essential term.

9.2 Default

The **Lessee** is in default of this **Lease** if:

- (a) it breaches an essential term of this **Lease**;
- (b) **Rent** or other monies due are unpaid for more than fourteen (14) days, whether any formal demand has been made or not;
- (c) it repudiates its obligations under this **Lease**;
- (d) it is insolvent;
- (e) its interest under this **Lease** is attacked or taken in execution under any legal process; or
- (f) it does not comply with any other term of this **Lease** within a reasonable time after receiving notice from the **Lessor** to do so.

9.3 Termination of Tenancy

- (1) If the **Lessee** is in default and does not remedy the default within the time stated in any notice from the **Lessor**, the **Lessor** may do any one or more of the following without prejudice to any other right which it may have against the **Lessee**:
- (a) by notice to the **Lessee**, convert this **Lease** to a month to month tenancy on the terms of this **Lease** as far as they can be applied to a monthly tenancy;

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- (b) by notice to the **Lessee**, terminate the **Lease** and take possession of the **Premises**;
 - (c) recover from the **Lessee** any loss suffered by the **Lessor** due to default of the **Lessee**;
 - (d) exercise any of its other legal rights.
- (2) Within seven (7) days of termination of the **Lease** by the **Lessor** under clause 9.3(1)(b) the **Lessee** must remove its fixtures, fittings and goods from the **Premises** failing which such fixture, fittings and goods as have not been removed by the **Lessee** shall be forfeited to the **Lessor** and shall become the property of the **Lessor**. The **Lessor** shall re-let the **Premises** as soon as practicable after termination at the best rent obtainable.
- (3) If the **Lessor** determines this **Lease** under clause 9.3(1)(b) the **Lessor** may recover all arrears of **Rent** and **Outgoings**, all loss of rental incurred as a result of the termination of the lease, all costs and expenses associated with the removal of the **Lessee's** fixtures, fittings and goods and the restoration of the **Premises** to a rentable condition, fair wear and tear and damage caused by fire, flood, storm and tempest excepted, damages for breach of any covenant contained in the **Lease**, any other monies owing by the **Lessee** to the **Lessor** and any other expenses of the **Lessor** resulting from the termination of the lease.

10 EXPIRY OF TERM

10.1 Lessee's Obligation

On expiry of the **Term** or earlier termination of this **Lease** the **Lessee** must:

- (a) vacate the **Premises** in good repair and clean condition;
- (b) remove all the **Lessee's Property** from the **Premises**;
- (c) remove all floor coverings (if damaged), signs and notices or contents of every description erected or installed by the **Lessee** and requested to be removed by the **Lessor**;
- (d) repair any damage caused by removal of the **Lessee's Property**;
- (e) paint the **Premises** with two (2) coats of first quality paint in a proper workmanlike manner in colours approved in writing by the **Lessor**;
- (f) return all keys, security passes and cards held by the **Lessee** or its employees;
- (g) replacing all floor coverings which in the reasonable opinion of the **Lessor** are damaged and in need of replacement; and
- (h) make good the **Premises** including but not limited to restoring the shop front (for example, walls, display windows, doors or roller shutters).

10.2 Failure to Remove Lessee's Property

If the **Lessee** does not remove the **Lessee's Property** on expiry or earlier termination, the **Lessor** may:

- (a) remove and store the **Lessee's Property** at the **Lessee's** risk and expense;

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- (b) treat the **Lessee's Property** as being abandoned, in which case title in the **Lessee's Property** passes to the **Lessor** who may deal with it as it thinks fit without being liable to account to the **Lessee** and at the **Lessee's** expense;
- (c) sell and use the proceeds of sale of the **Lessee's Property** to pay for the costs of removal storage repair and/or reinstatement of the **Premises**, the costs of such sale, and to pay any other monies owed by the **Lessee** to the **Lessor** for any outstanding debt howsoever arising including but not limited to arrears of rental and outgoings payable hereunder.

10.3 Lessor's Right when Lessee Abandons Premises

- (1) If the **Lessee** vacates or abandons the **Premises** or otherwise repudiates this **Lease** without lawful excuse prior to the expiration of the term the **Lessor** may, without being under any obligation to do so, seek to find another tenant for the **Premises**. For this purpose the **Lessor** may from time to time enter upon the **Premises** and permit prospective tenants to view them and may otherwise do all acts and things necessary in the opinion of the **Lessor** to renovate, restore, clean and secure the **Premises** without accepting or being deemed to have accepted a surrender of this **Lease** it being the intention of the parties that this **Lease** and the obligations of the **Lessee** under this **Lease** subsists until another person enters into occupation of the **Premises** as tenant or the **Lessor** expressly accepts a surrender of this **Lease**. For the purpose of this clause the **Lessee** is deemed to have vacated the **Premises** if it ceases to carry on its **Permitted Use** for a period of seven (7) consecutive days without having paid in advance the instalments payable on account of **Rent** and contributions to **Outgoings** in respect to that period of seven (7) days.
- (2) The rights and powers conferred on the **Lessor** are in addition to any other right or power which may be conferred upon the **Lessor** at law or in equity.

10.4 Power of Attorney

- (1) If the **Lessee** fails to comply with its obligations under this **Lease**, the **Lessee** irrevocably appoints the **Lessor** and each and every one of its directors to be the true and lawful attorney of the **Lessee** to act at any time.
- (2) The attorney is empowered to:
 - (a) execute and register (if necessary) a Transfer or Surrender of the **Lease** or a withdrawal of any Caveat lodged by the **Lessee** affecting the **Land** together with any other documents needed to effect those dealings;
 - (b) do all things which the **Lessee** is required to do under this **Lease**.
- (3) The **Lessee** undertakes to ratify and confirm anything the attorney lawfully does and to pay the **Lessor's** reasonable expenses incurred in exercising the powers under this clause 10.4 on demand.

10.5 Viewing

- (1) During the period of three (3) months immediately preceding the **Expiry Date**, the **Lessee** shall permit prospective tenants of the **Premises** and during the **Term** permit prospective purchasers of the **Premises** (in both cases either accompanied by the **Lessor** or its agent) to view the **Premises** at all reasonable times of the day after forty eight (48) hours' written notice has been served by the **Lessor** upon the **Lessee**.

Title Reference [14943193]

- (2) The **Lessor** is also entitled to erect and/or place signs for leasing or for sale on parts of the **Premises** at its discretion, acting reasonably. The **Lessee** must not remove or obscure any such sign or notice as erected by the **Lessor**.

11 MONTHLY TENANCY

11.1 Monthly Tenancy

If the **Lessee** continues to occupy the **Premises** after the **Expiry Date** in accordance with this **Lease**:

- (a) the **Lessee** does so as a monthly tenant on the same conditions as at the last day of the **Term**; and
- (b) either party may terminate the monthly tenancy at any time by giving to the other one (1) months' notice to that effect.

12 DAMAGE AND DESTRUCTION

12.1 Rent Reduction

If the **Premises** are damaged or destroyed and as a result the **Premises** are wholly or partially unfit for use or the **Lessee** cannot gain access to the **Premises** and provided that the **Lessee** or its employees have not caused or contributed to such damage or destruction then from the date that the **Lessee** notifies the **Lessor** of the damage or destruction until the date that the **Premises** are again fit for use and accessible the **Lessor**:

- (a) must reduce the **Rent, Agreed Proportion of Outgoings** and any other money payable to the **Lessor** by a reasonable amount depending on the type and extent of damage or destruction; and
- (b) cannot require the **Lessee** to clean, repair or maintain until the **Premises** are fit for use and accessible.

12.2 Lessor May Terminate

If the **Lessor** considers the damage to the **Premises** to be such to make it impractical or undesirable to reinstate the **Premises**, it may terminate this **Lease** by giving to the **Lessee** one (1) months' notice in writing. The **Lessor** is not liable to pay the **Lessee** any compensation.

12.3 Lessee May Terminate

The **Lessee** may terminate this **Lease** if the **Lessor** does not commence reinstatement works within a period of three (3) months from the event causing damage or destruction.

In the event that the **Lessee** terminates the **Lease** pursuant to clause 12.2 of the **Lease**, the **Lessor** is not liable to pay the **Lessee** any compensation. The **Lessee's** right to terminate under clause 12 shall not apply where the damage, or destruction has been caused by or contributed to or arises from any act or omission of the **Lessee** or the **Lessee's** employees, agents, contractors, consultants, workmen, sublessees, licensees, franchisees and concessionaires or by any other person claiming through or under the **Lessee**.

12.4 No Obligation to Rebuild

Title Reference [14943193]

The **Lessor** is not obliged to restore the **Building** or **Premises** according to the former specification so long as the layout and dimensions of the **Premises** and **Services** are not substantially different.

12.5 Dispute Resolution

- (1) The **Lessee** is entitled to dispute the reasonableness of any reduction of **Rent** and other moneys.
- (2) Any dispute as to the extent and reasonableness of any reduction in **Rent** and other moneys must be determined by an independent **Valuer** appointed by the president of the **API** at the request of either party.
- (3) In making the determination, the appointed **Valuer** acts as an expert and the determination is final and binding on both parties.
- (4) The cost of the determination must be paid by the parties equally unless otherwise decided by the appointed **Valuer**.

12.6 Antecedent Rights

Termination under Clause 12 or any other provision of this **Lease** does not affect either party's accrued rights before termination.

13 SALE BY LESSOR

If the **Lessor** sells its interest in the **Land** or this **Lease**, then the **Lessor** is automatically discharged from legal responsibility under any clause in this **Lease**. The **Lessee** is not entitled to damages or any other remedy against the **Lessor**.

14 GENERAL

14.1 Lessor May Rectify

If the **Lessee** does not perform any obligation under this **Lease** the **Lessor** may perform that obligation as agent of the **Lessee** and the full cost to the **Lessor** of performing that obligation is payable by the **Lessee** to the **Lessor** on demand.

14.2 Notices

A communication required by this **Lease**, by a party to another, must be in writing and may be given to them by being:

- (a) delivered personally;
- (b) posted to their address specified in this agreement, or as later notified by them, in which case it will be treated as having been received on the second business day after posting;
- (c) faxed to the facsimile number of the party with acknowledgement of receipt received electronically by the sender, in which case it will be treated as received on the day of sending; or
- (d) sent by email to their email address, in which case it will be treated as received on that day.

Title Reference [14943193]

14.3 Waiver Negatived

Failure by the **Lessor** to exercise any power or right under this **Lease** cannot be construed or deemed a waiver of the relevant power or right unless it is in writing.

14.4 Entire Agreement

This **Lease**:

- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this **Lease**; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

14.5 Severability

If any provision of this **Lease** or its application to any person or circumstance is or becomes unenforceable, illegal or void the remaining covenants are not affected and each covenant of this **Lease** is enforceable to the greatest extent permitted by law.

14.6 Obligation of the Parties

The respective covenants and obligations of the parties as set out in this **Lease** whether positive or negative must be construed as if each such obligation or covenant is a separate and independent covenant made by one party in favour of the other party and continuing (unless the context otherwise requires) throughout the **Term** and for so long as it remains to be performed.

14.7 Statutes and Regulations

References to statutes, regulations, ordinances or by-laws are deemed to extend to all statutes, regulations, ordinances or by-laws amending consolidating or replacing the same.

14.8 Governing Law

This **Lease** must be governed by and construed in accordance with the law of the State of Queensland.

14.9 Saturdays, Sundays and Public Holidays

If under this **Lease** the day on or by which any act, matter or thing must be done is a Saturday, Sunday or Public Holiday that act matter or thing must be done on the next succeeding day which is not a Saturday, Sunday or Public Holiday.

14.10 No Caveats

The **Lessee** must not lodge or authorise any person to lodge a caveat for the **Lessee's** interest in the **Premises** under this **Lease**.

14.11 Dispute Resolution

The parties agree that they will at all times comply with the provisions of the **Act** in particular the provisions relating to the resolution of disputes.

Title Reference [14943193]

15 OPTION FOR FURTHER TENANCY

15.1 Exercise of Option

If further terms have been inserted in Item 8 of the Reference Schedule the **Lessor** must grant a **Renewed Lease** of the **Premises** to the **Lessee** for each further term inserted in Item 8 of the Reference Schedule if the **Lessee**:

- (a) gives written notice to that effect to the **Lessor** not more than six (6) months and not less than six (3) months before the **Expiry Date**; and
- (b) has not breached any of the essential terms of this **Lease** set out and has at all times up to the date of expiration of the **Term** of this **Lease** complied punctually with its obligations under this **Lease**.

15.2 Terms of Renewed Lease

The **Renewed Lease** must be on the same terms as this **Lease** except:

- (a) the term will be that specified for the relevant option in Item 8 of the Reference Schedule;
- (b) the date of commencement will be the day after expiry of the **Term**;
- (c) the **Rent** will be an amount determined under clause 3;
- (d) the amount of public liability insurance in Item 11 of the Reference Schedule will be an amount reasonably required by the **Lessor**;
- (e) This clause 15 will be omitted from the **Renewed Lease** when no relevant further terms remain in Item 8 of the Reference Schedule or the **Lessee** does not comply with clause 15.1.

16 SECURITY CASH BOND/ BANK GUARANTEE

16.1 The **Lessee** will deliver to the **Lessor** a security cash bond or an unconditional bank guarantee in favour of the **Lessor**, its successors and assigns on terms acceptable to the **Lessor** in the sum equivalent to the amount stated in Item 9 of the Reference Schedule ("Guarantee Sum") as security and guarantee for the due observance and performance by the **Lessee** of all the covenants and provisions contained in this **Lease**. The bank guarantee will not have an expiry date.

16.2 If at any time the **Lessee** fails to observe and perform any of the **Lessee's** covenants and obligations in this **Lease**, unless there is a matter of urgency the **Lessor** after providing fourteen (14) days written notice to the **Lessee** may at any time call up any security, guarantee or guarantees as may be necessary in the opinion of the **Lessor** to compensate the **Lessor** for any loss or damage suffered or which may be suffered by the **Lessor** by reason of that failure. Any calling up by the **Lessor** will not constitute a waiver of that failure and will not prejudice any other right or remedy of the **Lessor** in respect of it.

16.3 If the whole or any part of the security, guarantee or guarantees are called up by the **Lessor** and this **Lease** remains on foot, the **Lessee** will immediately upon demand by the **Lessor** pay to the **Lessor** the amount so called upon to be held as a cash bond in accordance with this clause.

16.4 In the case of a bank guarantee, if the **Lessor's** interest in the **Premises** is assigned or transferred, the **Lessee** must at the **Lessor's** request provide a replacement bank guarantee in favour of the assignee or transferee in accordance with this clause.

Title Reference [14943193]

- 16.5 In the case of a security cash bond, if the **Lessor's** interest in the **Premises** is assigned or transferred, the **Lessor** must transfer any security bond held to the new landlord. Upon transfer of the security cash bond to the new landlord, the **Lessor** will be discharged from all liability to the **Lessee** or to any other person in respect of the guarantee.
- 16.6 The **Lessee** is not entitled to claim any interest earned by the Guarantee Sum.
- 16.7 The **Lessee** may, at its option, replace the bank guarantee with the payment to the **Lessor** of a security cash bond.
- 16.8 The **Lessee** must at all times during the **Term** ensure that the bank guarantee is kept current and enforceable.
- 17 GUARANTEE**
- Intentionally deleted.