

LEASE

BETWEEN

**R.L. & J.A. BOVELL ATF
BOVELL SUPERANNUATION FUND**

and

**QUEST ON SOUTHBANK PTY LTD
(ACN 081 554 289)**

**PREMISES:
LOT M22**

**IN RESPECT OF THE LAND SITUATED AT:
12-16 KAVANAGH STREET, SOUTHBANK, VICTORIA, 3006**



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THIS LEASE is made the date specified in Item 1 of the First Schedule.

BETWEEN: The person or persons named and described in Item 2 of the First Schedule (“**the Landlord**” and more particularly defined in Clause 1.1) of the first part

AND: The person or persons named and described in Item 3 of the First Schedule (“**the Tenant**” and more particularly defined in Clause 1.1) of the second part

THIS LEASE WITNESSETH that in consideration of the Rent hereinafter reserved (“**the Rent**”) and of the covenants agreements conditions and stipulations hereinafter contained by and on the part of the Tenant to be paid performed and observed the LANDLORD HEREBY DEMISES AND LEASES UNTO THE TENANT the premises described in Item 4 of the First Schedule (“**the Premises**”) (as more particularly defined in Clause 1.1) being part of Estate (“**the Estate**”) (and more particularly defined in Clause 1.1) TO BE HELD by the Tenant for the term specified in Item 5 of the First Schedule (“**the Term**”) commencing on the date as specified in Item 6 of the First Schedule (“**the Commencement Date**”) and for any further term as specified in Item 9 of the First Schedule and at such Rentals as are hereinafter set out TOGETHER WITH the right at all times during the Term hereby granted by the Owners Corporation for the Tenant and the Tenant’s invitees to use the Common Area in common with other persons entitled to use the same subject however to the Owners Corporation Rules for the time being in force and to the covenants conditions and restrictions herein contained.

1 DEFINITIONS AND INTERPRETATIONS

1.1 In and for the purposes of this Lease unless inconsistent with the context or subject matter:

- 1.1.1 “**the Act**” means the *Subdivision Act 1988* (Vic) (as amended) and all applicable regulations;
- 1.1.2 “**Associate**” has the same meaning as associate as defined in Section 26AAB(14) of the *Income Tax Assessment Act 1936* (Cth) (as amended);
- 1.1.3 “**the Commencement Date**” means the commencement date of this Lease as specified in Item 6 of the First Schedule;
- 1.1.4 “**Common Area**” means the areas delineated as common property or common area, excluding the Premises, and that are not comprised in any lot or lots on the Plan of Subdivision;
- 1.1.5 “**Common Furnishings and Fittings**” means any furniture, fittings, floor coverings, items, fences, audio security system, external lighting, security doors and mechanical exhaust system, landscaping and plant and equipment from time to time, being, or situated on, the Common Area including without limitation, all plate glass, doors, windows, locks, wires, gutters, sewerage and other pipes, conduits, ducts, lighting, suspended ceiling, partitions and other facilities and installations of the Estate now or hereafter installed therein and further includes all and any heating, air-conditioning, mechanical exhaust and/or ventilation plant, fire detection and protection equipment, lifts, automatic opening doors and other plant and equipment appurtenances or services, of a mechanical nature, all water, gas, electricity, telephone, sewerage, garbage and trade waste disposal and other utilities now or hereafter installed in the Premises or other parts of the Estate as the context requires PROVIDED THAT any item that is howsoever acquired from time to time by the Tenant will not form part of the Common Furnishings and Fittings;
- 1.1.6 “**Contents**” means the furniture, fittings, items and equipment and all cutlery and crockery from time to time situated in the Premises PROVIDED THAT any item of Fixed Equipment is deemed not to be an item of Contents;
- 1.1.7 “**the Estate**” means the estate described in Item 4 of the First Schedule and includes the Premises all other lots on the Plan of Subdivision the Common Area and such other land either adjacent to or in the vicinity of the Estate which may from time to time be incorporated into or used for the purposes of the Estate and includes all buildings and structures erected or to be erected thereon and such of the Common Furnishings and

Fittings related thereto PROVIDED THAT premises and/or other areas that are not being leased by the Tenant or in respect of which, the Tenant has no rights of use or access, will be excluded from the Estate;

1.1.8 “**the Estate Leases**” means the leases in respect of each of the premises that comprise the Estate;

1.1.9 “**the Fixed Equipment**” means any fixture and/or fixed equipment at the Premises howsoever described and without limiting the generality of the foregoing includes all air-conditioning and heating systems, hot water service, stove/oven (and built-in microwave ovens) and dishwashers;

1.1.10 “**the Further Terms**” means the Further Terms referred to in Item 9 of the First Schedule;

1.1.11 “**the Landlord**” means the Landlord referred to in Item 2 of the First Schedule and the executors administrators successors transferees and assigns of the Landlord and (where not repugnant to the context) the employees, agents, contractors, invitees or any person claiming through or under the Landlord;

1.1.12 “**the Landlord Upgrade Works**” has the meaning ascribed to that term in Clause 16.1;

1.1.13 “**the Landlord Upgrade Works Period**” has the meaning ascribed to that term in Clause 16.1;

1.1.14 “**the Landlord Upgrade Works Proposal**” has the same meaning as is ascribed to that term in Clause 16.3.1;

1.1.15 “**the Lease**” means this Lease and includes references to the Schedules and Annexes;

1.1.16 “**Market Rent**” means the rent that is obtainable at the time of review in a free and open market, between a willing landlord and a willing tenant in an arm’s length transaction, having regard to these matters:

1.1.16.1 the provisions of the lease;

1.1.16.2 the rent that would reasonably be expected to be paid for the premises if they were unoccupied and offered for lease for the same, or a substantially similar, use to which the premises may be put under the lease;

1.1.16.3 the landlord’s outgoings to the extent to which the tenant is liable to contribute to these outgoings; and

1.1.16.4 rent concessions and other benefits offered to prospective tenants of unoccupied retail premises,

but the current market rent is not to take into account the value of goodwill created by the tenant’s occupation or the value of the tenant’s fixture and fittings;

1.1.17 “**OC Act**” means the *Owners Corporations Act 2006* (Vic) as amended from time to time;

1.1.18 “**OC Manager**” means any manager appointed by the Owners Corporation in respect of the Estate and where the context permits, includes the OC Manager’s employees or any person the OC Manager authorises;

1.1.19 “**Owners Corporation**” means the owners corporation formed on registration of the Plan of Subdivision;

1.1.20 “**Plan of Subdivision**” means Plan of Subdivision No PS412885H;

- 1.1.21 “**the Premises**” means the premises specified in Item 4 of the First Schedule;
- 1.1.22 “**Quest**” means Quest Serviced Apartments Pty Ltd ACN 119 523 483 and any person or entity in the Quest Group who acts as a franchisor in respect of any intellectual property associated with the Quest Group and each of their respective nominees, successors transferees and assigns;
- 1.1.23 “**the Quest Group**” means Quest and its Associates;
- 1.1.24 “**the Rent**” means the rent payable in accordance with this Lease;
- 1.1.25 “**the Rent Notice**” has the same meaning as is ascribed to that term in Clause 15.1;
- 1.1.26 “**the Retail Leases Act**” means the *Retail Leases Act 2003* (Vic);
- 1.1.27 “**the Scheme**” has the same meaning as is ascribed to that term in Clause 21.1.1;
- 1.1.28 “**the Services**” has the same meaning as is ascribed to that term in Clause 12.7;
- 1.1.29 “**Sinking Fund**” means any fund established by the Owners Corporation for the purpose of providing for prospective capital works in respect of the Common Area;
- 1.1.30 “**Small Business Commissioner**” means the Small Business Commissioner appointed under the *Small Business Commissioner Act 2003* (Vic);
- 1.1.31 “**the State**” means the State detailed in Item 10 of the First Schedule;
- 1.1.32 “**the Tenant**” means the Tenant referred to in Item 3 of the First Schedule and the executors administrators successors and permitted transferees and permitted assigns of the Tenant and (where not repugnant to the context) the employees, agents, contractors and invitees or any person claiming through or under the Tenant;
- 1.1.33 “**the Tenant’s Business**” means the serviced apartment business conducted by the Tenant or an Associate of the Tenant from the Estate;
- 1.1.34 “**Tenant’s Fixtures and Fittings**” means any property now or hereafter brought upon the Premises or the Estate by or on behalf of the Tenant and may include where the context permits any item of the Common Furnishings and Fittings and the Contents:
- 1.1.34.1 not owned by the Landlord and/or the Owners Corporation; and
- 1.1.34.2 acquired and/or replaced by the Tenant from time to time.
- 1.1.35 “**the Term**” means the term of the Lease as specified in Item 5 of the Schedule and includes (where the context permits) any renewal hereof and any permitted over holding;
- 1.1.36 “**Un-Usable**” means that, at the absolute discretion of the Tenant, the Premises is not, as a result of one or more occurrences useable for occupation. For this purpose, but without limiting the generality of the forgoing unusable for occupation could include either of the following:
- 1.1.35.1 either the shower, toilet, bathroom basin or kitchen basin are unable to be used in the manner intended;
- 1.1.35.2 there is a lack of normal power and/or lighting and/or telephone connections;
- 1.1.35.3 either the hot or cold water to the relevant the Premises is faulty or inoperable;

- 1.1.35.4 the air conditioning/heating system is not working to an acceptable standard;
 - 1.1.35.5 the Premises is not suitable to be reasonably used as a serviced apartments i.e. flooding etc;
 - 1.1.35.6 the Tenant is unable to use the Premises for the Intended Use as a result of any action or inaction of the Landlord; or
 - 1.1.35.7 the Premises do not meet the requirements imposed by any relevant legislation, regulations or directions of any relevant authority for the Intended Use.
- 1.1.36 “Valuer” means:
- 1.1.36.1 in the event that the Retail Leases Act applies to this Lease a valuer appointed by the Small Business Commissioner; or
 - 1.1.36.2 in the event that the Retail Leases Act does not apply to this Lease a person holding the qualification or experience specified under section 13DA(1A) of the *Valuation of Land Act 1960* (Vic).
- 1.2 “person” and words importing persons includes bodies corporate;
 - 1.3 where a party comprises two or more persons an agreement or obligation to be performed or observed by that party and any reference to that party binds those persons jointly and each of them severally, and a reference to that party will be deemed to include a reference to any one or more of those persons;
 - 1.4 words importing the singular include the plural and vice versa and words importing the masculine include the feminine and neuter: where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
 - 1.5 a reference to any Act of Parliament or section thereof or schedule thereto will be read as if the words “or any statutory modification or re-enactment thereof or substitution therefore” were added to the reference;
 - 1.6 “writing” includes typewriting, printing, lithography, photography and other modes of representing or reproducing words in a visible form and “written” has a corresponding meaning;
 - 1.7 references to clauses, sub-clauses and schedules are references to clauses, sub-clauses and schedules of this Lease;
 - 1.8 any marginal notes or headings are included for convenience and do not affect the interpretation of this Lease;
 - 1.9 this Lease is delivered and operates as a deed; and
 - 1.10 this Lease will be subject to the laws and the jurisdiction of the State.

2 PAYMENTS OF THE RENT AND OUTGOINGS

2.1 The Rent

- 2.1.1 The Tenant hereby covenants with the Landlord to duly and punctually pay the Rent during the Term unto the Landlord at the Landlord’s address herein or as it may direct in writing from time to time on the days and in the manner hereinafter set out.
- 2.1.2 The Tenant will pay Rent to the Landlord by equal calendar monthly payments in advance on the first day of each month with a proportionate payment for any broken period calculated from the Commencement Date to the first day of the month next

ensuing the said date and for any broken period to the date of expiration or sooner determination of the Term hereby created.

2.1.3 The Rent payable

- (a) for the first year of the Term by the Tenant will be the Rent specified in Item 7 of the First Schedule.
- (b) during each and every subsequent year of the term, will be the Rent specified in Item 7 of the First Schedule.

2.2 The Tenant's Outgoings

The Tenant hereby covenants with the Landlord to pay and/or reimburse to the Landlord immediately upon demand by the Landlord at any time:

- 2.2.1 all gas, electricity, oil, telephone, water rates and water usage charges assessed in respect of the Premises and all charges imposed by any public utility or authority for the supply of any service to the Premises;
- 2.2.2 the insurance premiums referred to in Clause 3.1;
- 2.2.3 all reasonable Owners Corporation levies, charges and fees other than those payable by the landlord in accordance with clause 2.3.3;
- 2.2.4 all costs of operating and expenses of maintaining the Common Furnishing and Fittings, and any other services which are connected to and directly attributable to the Premises and/or are not attributable to the Owners Corporation;
- 2.2.5 all costs and expenses associated with and incurred in respect of maintenance and repairs effected to the Premises and the repairs to or replacement of (where applicable) the Contents in accordance with Clause 11.1; and only if the Tenant owns the Contents;
- 2.2.6 all charges connected with the Tenant's operation or business carried on upon the Premises including all licence and inspection fees in respect thereof.

2.3 The Landlord's Outgoings

The Landlord will pay during the Term:

- 2.3.1 all council and municipal rates, (other than water rates and water usage charges that are payable by the Tenant in accordance with Clause 2.2.1), taxes and assessments, charges, impositions, assessments, duties and fees including any Land Tax separately charged or assessed on or in respect of the Premises and any other outgoings that the Tenant has not agreed to pay in accordance with the provisions of this Lease;
- 2.3.2 the insurance premiums referred to in Clause 3.4;
- 2.3.3 all Owners Corporation levies, charges and/or fees that relate to capital works unless such capital works are as a result of the negligent acts or omissions of the Tenant, the Tenant's servants, agents, invitees or guests;
- 2.3.4 all contributions that may be required to any Sinking Fund established by the Owners Corporation; and
- 2.3.5 all costs and charges associated with the connection of services to the Premises and/or the Estate.

PROVIDED THAT the Tenant may elect to pay any of the Landlord's outgoings as referred to in this Clause 2.3 and deduct the same from any amounts due and payable to the Landlord in the event that the Landlord fails to make any such payments by the time such payments become due and payable.

3 INSURANCE

3.1 The Tenant's Insurance Obligations

During the Term, the Tenant will insure and keep insured in the name of the Landlord, the Tenant and the Owners Corporation (only so far as the same may be practicable and/or necessary) the following insurances:

- 3.1.1 Property insurance covering fire, theft, and other property loss and/or damage as is normally insured against by prudent tenants for the following:
 - 3.1.1.1 the Premises; and
 - 3.1.1.2 such of the Contents that are installed in the Premises and/or are connected to and directly attributable to the Premises and/or are not attributable to the Owners Corporation (that are commonly and reasonably insured).
- 3.1.2 Public risk insurance covering liability for loss, injury or damage to any person or property whatsoever in or about or to or from or in relation to the Premises or the common areas of the Estate or state of repair thereof or the business carried out therein or there from for an amount of not less than ten million dollars (\$10,000,000.00).
- 3.1.3 Plate glass insurance covering loss of damage to all plate glass and all plate glass windows now or hereafter installed on the Premises.

3.2 Joint Insurance

If so required by the Owners Corporation, all insurances referred to in Clause 3.1 will be effected and maintained in common with the Landlord and/or the Owners Corporation.

3.3 Owners Corporation Insurance Obligations

- 3.3.1 Notwithstanding Clauses 3.1 and 3.4, all insurances referred to in those clauses that are the responsibility of the Owners Corporation will be effected by the Owners Corporation and will not be the responsibility of either the Tenant or the Landlord. The Tenant and the Landlord will use their best endeavours to ensure that the Owners Corporation effects such insurances.
- 3.3.2 The Owners Corporation is responsible for insuring and keeping insured in the name of the Owners Corporation and the Landlord (only so far as the same may be practicable and/or necessary) the following insurances:
 - 3.3.2.1 Property insurance covering fire, theft, and other property loss and/or damage as is normally insured against by prudent tenants for the following:
 - 3.3.2.1.1 the Common Area; and
 - 3.3.2.1.2 such of the Common Furnishings and Fittings that are commonly and reasonably insured.
 - 3.3.2.2 Such other insurances (including Public risk insurance) as the Owners Corporation may be required to effect from time to time to ensure compliance with all applicable laws and common practice.

3.4 The Landlord's Insurance Obligation

In the event that a prudent Landlord would reasonably effect any insurances in addition to those insurances detailed in the preceding Subclauses, then the Landlord will, at the Landlord's own expense, effect and maintain all such insurances.

3.5 Reinstatement

Where a policy of insurance required by this Clause 3 relates to loss, damage and/or destruction of any property, then the proceeds of any such insurance policy will be used where reasonably possible to reinstate such loss, damage and/or destruction.

3.6 Further Covenants

The Tenant and/or the Landlord will not do or commit or permit or suffer to be done or committed any act or thing other than such acts that are contemplated as normal usage, which may prejudice the continuing cover or which may render any increase or extra premiums payable for the insurance of the Estate and/or the Premises or any part thereof or which may make void or voidable any policy of such insurance.

4 **THE TENANT'S GENERAL NEGATIVE COVENANTS**

4.1 Use of the Premises

The Tenant will not at any time use or permit to be used the Premises or any part thereof for any purpose other than for the purpose specified in Item 8 of the First Schedule PROVIDED THAT the Tenant may with the consent of the Landlord (whose reasonable consent will not be withheld) alter the usage of the Premises.

4.2 Nuisance

The Tenant will not at any time use exercise or carry on or permit or suffer to be used exercised or carried on in or upon the Premises or the Estate or any part thereof any illegal purpose or activity or any noxious noisome or offensive trade business occupation or calling.

5 **THE TENANT'S GENERAL POSITIVE COVENANTS**

The Tenant HEREBY FURTHER COVENANTS with the Landlord that the Tenant will at the cost and expense of the Tenant in all respects from time to time and at all times:

5.1 Management

5.1.1 care for and maintain the Premises and in accordance therewith the Tenant will:

5.1.1.1 allowing for fair wear and tear, cause the Premises to be kept clean and free from dirt and rubbish (including external surfaces or windows walls and doors);

5.1.1.2 subject to the Landlords obligations under this Lease, paint the interior of the Premises and maintain and keep in good repair carpets as reasonably required during the Term; and

5.1.1.3 in the event that the Tenant is leasing or otherwise occupying all of the Apartments that comprise the Estate repair, cleanse, disinfect and put and keep in good repair order and condition to the reasonable satisfaction of the Owners Corporation all the rooms passages stairs floors windows walls ceilings closets and sewerage connections (except for water main and fire service mains) of the Estate and the Premises and take all other sanitary precautions.

5.1.2 supervise so far as is reasonably practicable the standard and behaviour of occupants of the Premises;

5.1.3 not without the prior written consent of the Landlord, whose reasonable consent will not be withheld, make any structural alterations to the Premises;

5.1.4 comply at the Tenant's own expense with all statutory requirements affecting the Premises PROVIDED THAT the Tenant will not be required to perform or carry out structural work unless such structural work is required by reason of the neglect or default of the Tenant, the Tenant's servants, agents or invitees;

- 5.1.5 comply with all laws relating to the Estate and the conduct of the Tenant's Business in the Estate; and
- 5.1.6 to properly and efficiently conduct the Tenant's business in accordance with the intended use of the Premises.

6 THE LANDLORD'S COVENANTS

The Landlord will:

- 6.1 give the Tenant quiet enjoyment and possession and use of the Premises, the Contents and the Common Area without interruption by the Landlord or anyone connected with the Landlord including the right to assign in accordance with Clause 8;
- 6.2 ensure that the Premises can be used for the Intended Use;
- 6.3 not interfere with the Tenant's business conducted at the Estate unless the Tenant is in breach of the provisions hereunder;
- 6.4 deliver forthwith any accounts for outgoings payable by the Tenant in accordance with Clause 2.2 to the Tenant;
- 6.5 where the Landlord fails to comply with Clause 6.4, the Landlord will promptly pay any accounts and notify the Tenant of any payment and the Tenant will reimburse the Landlord for the amount so paid;
- 6.6 obtain at the Landlord's cost upon execution of this Lease and prior to commencement of any further Leases (or upon the grant of any subsequent mortgage) the consent of any mortgagee of the Premises to this Lease;
- 6.7 assist the Tenant in the event that the Tenant wishes to mortgage any or all of the Tenant's rights and/or interests in the Lease to any other party. Such assistance will include but is not limited to giving the Landlord's consent (which will not be unreasonably withheld), using the Landlord's best endeavours to execute all reasonable documentation and at the Landlord's own cost and using the Landlord's best endeavours obtaining the consent of any Mortgagee of the Premises (if any);
- 6.8 vote to approve and pay any special and/or capital owners corporation levies from time to time to maintain the structure and the standard of the Premises and/or the Estate, including (if required) repairing and repainting (having regard to the nature of the relevant surfaces) the exterior of the Premises and/or any building in the Estate (and if applicable the external faces and roof) as and when required, but in any event at the expiration of each Term; and
- 6.9 allow the Tenant possession and use of the Premises for the purposes of conducting a serviced apartment business, without noise or any other form of pollution from outside of the Premises (whether from a source within the Estate or outside the Estate, but not caused by the Tenant) reasonably disturbing the Tenant's use of the Premises. In the event that such noise or other pollution does reasonably disturb the Tenant then the Landlord will take all reasonable action to minimise such disturbance, such action may include the installation of appropriate soundproofing (including double glazing where appropriate) to any affected walls, windows, doors, ceilings and/or floors within the Premises (including where appropriate common walls and floors)
PROVIDED THAT:
 - 6.9.1 during the period of such noise or other pollution, a fair proportion of the Rent and outgoings is to be suspended until the Premises are reasonably free from all disturbances and are again wholly fit for the purpose specified in Item 8 of the First Schedule; and
 - 6.9.2 if the disturbance continues for a period of two (2) months or greater, then notwithstanding anything herein contained to the contrary, the Tenant may upon seven (7) days' notice in writing to the Landlord terminate this Lease.

7 MUTUAL COVENANTS

The Landlord and the Tenant (and where applicable, the Owners Corporation) HEREBY FURTHER COVENANT AND AGREE as follows that:

7.1 Signage

The Tenant may without further consent being required from the Landlord or Owners Corporation, but subject always to the requirements of any relevant regulatory authority, reasonably affix, paint or in any way exhibit such advertisement or signage of any kind upon the inside or outside of the Estate and/or the Premises or any part or parts thereof that the Tenant or any associate of the Tenant reasonably requires for the use of the Premises and the Estate in accordance with the Use of the Premises.

7.2 Holding Over

In the event of the Tenant holding over after the expiration of the Term granted by this Lease, the Tenant will become a monthly tenant only of the Landlord at a monthly Rent equivalent to the monthly proportion of the then total annual Rent payable and any other monies payable by the Tenant herein at the expiration of the Term and otherwise on the same terms and conditions mutatis mutandis as those herein contained so far as applicable.

7.3 Interest

If the either party fails to pay to the other party any monies which are payable or repayable by the first party to the other party then the first party will pay to the other party upon fourteen (14) days' notice in writing, interest on unpaid monies at the rate of interest per annum fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic) from time to time until such monies are paid.

7.4 Legal Costs and Expenses

7.4.1 Each party will bear its own legal costs and expenses associated with entering into this Lease and any lease as a result of a renewal thereof.

7.4.2 The Landlord will be responsible for all stamp duty assessable under this Lease and any renewal thereof irrespective of whether the Landlord or the Tenant is otherwise liable to pay that stamp duty.

7.5 Reletting by the Landlord

The Tenant will during the last three (3) months of the Term unless the Tenant will have exercised any option to renew contained herein permit the Landlord or the Landlord's agents to display on the exterior of the Premises or the Estate a "To Let" sign of reasonable size and to conduct prospective future tenants through the Premises (subject to reasonable availability) or the Estate to enable them to view the same PROVIDED THAT in exercising such powers the Landlord will endeavour not to cause any undue inconvenience to the Tenant and the Landlord will prior to displaying on the exterior, or interior of the Premises obtain the approval of the Tenant whose approval will not be unreasonably withheld.

7.6 Sale by the Landlord

If the Landlord at any time during the Term proposes to sell the Premises or the Estate the Tenant will permit the Landlord or the Landlord's agent to display on the exterior or interior of the Premises or the Estate a "For Sale" sign of reasonable size and to conduct prospective purchasers through the Premises (subject to availability) or the Estate to enable them to view the same PROVIDED THAT:

7.6.1 in exercising such powers the Landlord will endeavour not to cause any undue inconvenience to the Tenant and the Landlord will prior to displaying on the exterior, or interior of the Premises obtain the approval of the Tenant whose approval will not be unreasonably withheld; and

7.6.2 in the event that the relevant Apartment is being used then the Landlord would be required to reimburse the Tenant for loss of use and enjoyment for that period of time that the Apartment could not be used.

7.7 Consent by the Landlord

The Landlord must not unreasonably withhold the Landlord's consent to any act by the Tenant which needs consent unless any other clause provides otherwise, but:

7.7.1 the Landlord may impose reasonable conditions before consenting; and

7.7.2 the Tenant must reimburse the Landlord's reasonable expenses resulting from an application for the Landlord's consent.

7.8 Non-Waiver

No waiver by the Landlord of one breach of any covenant obligation or provision in this Lease contained or implied will operate as a waiver of another breach of the same unless such breach has been rectified.

7.9 Registration

In the event that either party to this Lease desires (for whatever reason) to procure the registration of either this Lease or a caveat in respect of this Lease, then the other party will use their reasonable endeavours to assist in such registration. In any event, if this Lease is not in the form required for registration, then the party desiring to procure the registration will be responsible for amending the form of this Lease so as to ensure compliance with any registration requirement PROVIDED THAT the Landlord will always be responsible for obtaining the consent of all mortgagees to such registration and the lodging and registration costs and expenses of such registration.

8 **ASSIGNMENT**

8.1 Assignment of Lease

8.1.1 Subject to the provisions of Clause 8.2, the Tenant may assign the Tenant's interest in this Lease with the prior written consent of the Landlord.

8.1.2 The Landlord will prior to giving consent to a proposed assignment be entitled to require:

8.1.2.1 satisfactory evidence that the proposed assignee is a responsible and respectable person capable in all respects of satisfactorily performing the duties and obligations of the Tenant pursuant to this Lease;

8.1.2.2 that the proposed assignee execute in favour of the Landlord a Deed of Covenant in the form of Annexure "B" to this Lease; and

8.1.2.3 in the event that the proposed assignee is a company then the Landlord may require the Directors of the company to provide a guarantee for the Tenant's obligations under this Lease.

8.1.3 The Landlord will:

8.1.3.1 in the event that the Retail Leases Act applies to this Lease;

8.1.3.1.1 be required to consider a request for an assignment in accordance with the terms contained in the Retail Leases Act; and

8.1.3.1.2 only be entitled to withhold consent to the proposed assignment in accordance with the terms contained in the Retail Leases Act; or

8.1.3.2 in the event that the Retail Leases Act does not apply to this Lease, not arbitrarily or capriciously or unreasonably withhold the Landlord's consent to a proposed assignment.

8.1.4 If the Landlord refuses to reasonably consent to a proposed assignment the Tenant may refer the matter for dispute resolution.

8.2 Assignment to a Quest Franchise

8.2.1 The Landlord acknowledges that the Tenant or a company (whose directors include directors of the Tenant or directors of Quest):

8.2.1.1 intends to conduct a serviced apartment or other similar business from the Premises and the Estate pursuant to a franchise agreement or arrangement with an entity associated with the Quest Group; and

8.2.1.2 may sell the said business and assign this Lease and/or transfer the shares in the Tenant to a person who will conduct the said business pursuant to a franchise agreement or arrangement with the Quest Group.

8.2.2 Notwithstanding anything hereinbefore contained, the Landlord covenants and agrees that the Tenant will have the right to assign, transfer, sell or otherwise dispose of the Tenant's estate or interest in the Premises created by this Lease and/or transfer the shares in the Tenant to any person (or Associate of such person where such Associate is a company and such company has the same directors as the proposed assignee) who has entered or intends to enter into a franchise agreement or arrangement to conduct a serviced apartment or other similar business pursuant to a franchise agreement or arrangement with an entity associated with the Quest Group without the Landlord's consent being first obtained.

8.2.3 In order to better protect the rights of the Quest Group, the Landlord will also enter into the Deed annexed hereto and marked with the letter "A".

8.3 Guarantees

8.3.1 On any assignment of this Lease and/or the change of Directors of the Tenant, the Tenant can request a release of any guarantor from any guarantee given in support of this Lease and the Landlord will not unreasonably withhold the Landlord's consent to such release if the Landlord is provided with a replacement guarantee in the form of the existing guarantee and such evidence that the person providing the replacement guarantee is of good repute and has the financial capacity to meet his obligations as guarantor.

8.3.2 In the event that the Landlord has been provided with a replacement guarantee in the form of the existing guarantee and financial statements of the replacement guarantor which demonstrate that the replacement guarantor has the financial capacity to meet his obligations as guarantor AND the Landlord does not within fourteen (14) days of receipt of the above, either reasonably consent or reasonably object, then the Landlord will be deemed to have consented to the replacement guarantor and the release of the existing guarantor PROVIDED THAT if the Landlord objects to the replacement guarantor and the release of the existing guarantor, then such objection will be resolved in accordance with the dispute resolution provisions contained herein.

9 OWNERSHIP OF THE CONTENTS

The Tenant is the owner of all items of the Contents.

10 THE TENANTS REPAIR AND MAINTENANCE OBLIGATIONS

10.1 Repair, Maintenance and Replacement at the expense of the Tenant

The Tenant will at the Tenant's own expense repair, maintain and (except for Fixed Equipment) replace:

10.1.1 all damaged Contents ; and

10.1.2 the Fixed Equipment,

to the condition or standard commensurate with a serviced apartment facility and suitable for immediate use by succeeding tenants or occupiers.

10.2 Repair, Maintenance and Replacement at the expense of the Owners Corporation

The Landlord will use its best endeavours to procure the Owners Corporation to:

10.2.1 repair, maintain and replace the Common Furnishing and Fittings;

10.2.2 carry out repairs or make payments of a capital nature in respect of the Common Furnishing and Fittings; and

10.2.3 enter into and keep in force a contract with a reputable contractor engaged in the business of maintenance and repair for the maintenance and repair of the Common Furnishing and Fittings.

11 THE LANDLORDS REPAIR, MAINTENANCE AND REPLACEMENT OBLIGATIONS

11.1 Subject at all times to Clauses 11.2, 11.3 and 11.4, in accordance with section 52 of the Retail Leases Act (if applicable), the Landlord is responsible for maintaining in good repair and/or replacing:

11.1.1 the structure of the Premises (and if applicable the external faces and roof) in a sound and watertight condition and maintain in a timely manner the structural soundness of the Premises;

11.1.2 the Fixed Equipment PROVIDED THAT any such obligation relates only to repairs and/or replacements which may be required which are of a capital nature;

11.1.3 the fixtures and the plant and equipment at the Premises; and

11.1.4 the appliances, fittings or fixtures provided under the lease by the Landlord relating to the gas, electricity, water, drainage or other services.

11.2 The Landlord is not responsible for incurring any costs, which may be contemplated in Clause 11.1, in the event that the Landlord can demonstrate that the need for the repair arises out of misuse by the Tenant of the item in need of repair.

11.3 The Landlord agrees that:

11.3.1 the Tenant may arrange for urgent repairs and/or replacement (the costs for which the Landlord is responsible) to be carried out to any of the items contemplated in Clause 11.1 if the Premises become Un-Usable and/or the repairs and/or replacements are necessary to fix or remedy a fault or damage that has or causes a substantial effect on or to the Tenant's business at the Premises; and

11.3.2 if the Tenant carries out those repairs the Tenant must give the Landlord written notice of the repairs and the cost within Fourteen (14) days after the repairs are carried out and the Landlord is liable to reimburse the Tenant for the reasonable cost of the repairs and such cost may be set off by the Tenant against Rent payable by the Tenant to the Landlord.

11.4 If the repairs and/or replacements are not deemed urgent and the Landlord fails to comply with the provisions of this Clause 11 within fourteen (14) days after notice in writing has been given to

effect such repairs and/or replacements, the Tenant may at the Tenant's option elect to carry out such repairs and/or replacements at the Landlord's cost. Such expenses may be set off by the Tenant against Rent payable by the Tenant to the Landlord.

- 11.5 In accordance with Clauses 2.3.3 and 2.3.4, the Landlord will be responsible for the payment of any Owners Corporation levies relating to expenses of a capital nature.
- 11.6 In addition to the obligations of the Landlord pursuant to this clause, if during the Term the Premises is or becomes Un-Useable (as defined) as a result of any action or inaction of the Landlord which is the responsibility of the Landlord, then the Tenant will advise the Landlord in writing of the same and at that time the rent and the outgoings (payable by the Tenant) on such of the Premises will be suspended until such time as the defect or non compliance has been properly rectified.

12 DAMAGE, DESTRUCTION AND SUSPENSION OF SERVICES

12.1 Damage and Destruction

If:

- 12.1.1 the Premises (including the interior of the Premises) or any part of the Common Area is destroyed or damaged;
- 12.1.2 the Premises are either;
- 12.1.2.1 wholly or partially unfit for occupation or use; or
- 12.1.2.2 are Un-Usable,
- 12.1.3 the same will not have been caused by some default act or neglect on the part of the Tenant; and
- 12.1.4 the insurance policy or policies effected by the Tenant, Landlord or the Owners Corporation will not have been vitiated or payment refused in consequence of some act default or neglect of the Tenant,

THEN

- 12.1.5 the Landlord will:
- 12.1.5.1 where the interior of the Premises is damaged, use the Landlord's best endeavours to repair the Premises as soon as is practicably possible; or
- 12.1.5.2 make or cause the Owners Corporation to take any appropriate action including if applicable to make an application for the Plan of Subdivision to be wound up or altered as the case may be,
- within a reasonable time after the damage or destruction,
- 12.1.6 a fair proportion of the Rent and outgoings as agreed between the Landlord and Tenant is to be suspended until the Premises are again wholly fit for the purpose specified in Item 8 of the First Schedule PROVIDED THAT the suspended portion of the Rent and outgoings must be proportioned to the nature and extent of the damage.

12.2 Failure of the Landlord to Comply

If as a result of such damage or destruction the Landlord has not complied with Clause 12.1.5, the Landlord and the Tenant will meet with a view to reaching agreement on reinstatement or will consider any order of the Court made pursuant to the Act. If such agreement is not reached within sixty (60) days after the date of the damage or destruction then either party may at the end of the sixty (60) day period by written notice to the other terminate this Lease from the date of the

damage or destruction but will retain any prior accrued rights.

12.3 Failure of the Landlord and Tenant to Reach Agreement

If as a result of such damage or destruction the Landlord and Tenant have failed to reach an agreement as to the fair proportion of Rent and outgoings that is to be suspended pursuant to Clause 12.1.6 within sixty (60) days after the date of damage or destruction then such determination of a fair proportion of Rent and outgoings will be referred at the insistence of either the Landlord or Tenant to a valuer nominated by the Australian Property Institute and such valuer in so determining will be deemed to act as an expert and not as an arbitrator and such determination will be final and binding upon the parties and the cost of such determination will be borne equally by the Landlord and Tenant.

12.4 Use of Insurance Monies

Any insurance money received by the Tenant or Landlord in respect of any damage will be applied to:

- 12.4.1 reinstatement of the damaged Premises or Common Area; or
- 12.4.2 where the Premises or Common Area are not reinstated then, to the rightful Landlord or Landlords.

12.5 Termination on Damage or Destruction

- 12.5.1 The Landlord acknowledges that the Tenant has taken a Lease over many or all of the lots that comprise the Estate.
- 12.5.2 In the event that Damage or Destruction is sustained by more than one half of the number of lots in the Estate over which the Tenant has taken a lease then notwithstanding anything hereinbefore contained to the contrary the Tenant may upon seven (7) days' notice in writing to the Landlord terminate this Lease.
- 12.5.3 This Clause 12.5 is included for the benefit of the Tenant and will operate notwithstanding that no damage or destruction has been suffered by the Premises.
- 12.5.4 In the event that this Lease is terminated in accordance with this Clause 12.5, all parties will retain their accrued rights hereunder.

12.6 Application of the Retail Leases Act

In the event that the Retail Leases Act applies to this Lease, the parties agree that Clauses 12.1 to 12.5 (inclusive) are to be read subject to the provisions of the Retail Leases Act.

12.7 Suspension of Services

In the event that provision of any of the electricity, water, telephonic or other essential services ("the Services") are disrupted for any reason beyond the control of the Tenant, and such disruption continues for a period of forty eight (48) hours or greater, during which period the operation of the Tenant's Business is materially disrupted, then the Rent for such period of disruption is to be suspended.

13 **OWNERS CORPORATION**

13.1 Subject to applicable legislation (including without limitation the OC Act), the Landlord agrees to act in good faith, in the Tenant's best interests and in accordance with the Tenant's reasonable directions in relation to all matters concerning any act, omission, consent, vote, motion or resolution by the Owners Corporation which may impact upon the Tenant's Business, including:

- 13.1.1 voting at Owners Corporation meetings in accordance with directions provided by the Tenant;

- 13.1.2 authorising and consenting to the attendance of the Tenant or a person nominated by the Tenant at Owners Corporation meetings (including committee meetings, annual general meetings and extraordinary general meetings);
 - 13.1.3 voting for or against on any motion to raise an Owners Corporation levy for capital charges, commissioning or obtaining reports in relation to the possible need for capital improvements or contributions to the sinking fund as may be reasonably required;
 - 13.1.4 appointing or dismissing a suitably qualified and experienced OC Manager, provided that in the event of a dismissal a suitably qualified and experienced replacement OC Manager must be proposed and ready, willing and able to accept the appointment;
 - 13.1.5 voting in favour of granting the Tenant a lease over Common Area, which is reasonably required to be reserved for the exclusive use of the Tenant for the operation of the Tenant's Business;
 - 13.1.6 voting in favour of the appointment of the Tenant, or an employee of the Tenant, to the Owners Corporation committee, if permissible under the applicable laws;
 - 13.1.7 appointing as proxy or power of attorney or both the Tenant or any person nominated by the Tenant to vote on behalf of the Landlord in accordance with this clause 14.10(b) at any Owners Corporation meeting which the Landlord will not be personally attending; and
 - 13.1.8 promptly upon request do anything necessary to perfect the rights of the Tenant and execute all documents required to give effect to this clause 13 from time to time.
- 13.2 The Landlord must provide the Tenant with copies of all notices and minutes relating to the meetings of the Owners Corporation or procure the Owners Corporation to do so.
- 13.3 The Landlord agrees that for the purposes of allowing the Tenant to better conduct the Tenant's Business and to ensure compliance with the Landlord's covenants as contained in this Lease, the Landlord will:
- 13.3.1 attend all meetings of the Owners Corporation, and any committee of the Owners Corporation held during the Term, and vote in accordance with the reasonable directions given by the Tenant; or
 - 13.3.2 to the extent permitted by law (including without limitation the OC Act), provide a proxy or power of attorney to the Tenant authorising the Tenant or any person nominated by the Tenant to vote on behalf of the Landlord in accordance with reasonable directions given by the Tenant.
- 13.4 The Landlord hereby ratifies and confirms all acts, deeds and things done by the Tenant as proxy for the Landlord.
- 13.5 Whenever acting as proxy for the Landlord, the Tenant must act in good faith and, to the extent that matters are known to the Tenant in advance of any meeting, provide the Landlord with prior notice of all proposals to be dealt with by the Owners Corporation.
- 14 SALE OF THE PREMISES BY THE LANDLORD**
- 14.1 If the Landlord wishes to dispose of the Premises or any interest therein the Landlord will obtain from the proposed purchaser, prior to the disposal, a duly executed Deed of Covenant in the form of Annexure "C" to this Lease in favour of the Tenant.
- 14.2 The Landlord will pay any stamp duty that is assessable on the Deed of Covenant referred to in Clause 14.1.
- 15 OPTION FOR RENEWAL FOR EACH OF THE FURTHER TERMS**

Subject at all times to the provisions of the Retail Leases Act (if it is to apply to this Lease) (which includes the obligation of the Landlord to serve a notice on the Tenant in respect of the option for the further terms) the option for any Further Term may be exercised upon the written request of the Tenant at any time after the Commencement Date but not less than three (3) months prior to the expiration of the Term, the Landlord will grant and the Tenant will accept a new Lease for the Further Term in the form of the then current Quest Standard Lease on the covenants terms and conditions similar to those set out in this Lease and commencing on the day after the Term of this Lease ends PROVIDED THAT:

15.1 Rent

The Rent payable by the Tenant during the Further Term will be:

15.1.1 during the first year of the Further Term a Rent determined by the Tenant giving notice in writing (“**the Rent Notice**”) to the Landlord that it considers the Rent of the Premises should be the amount stated in the Rent Notice for the period under review specified in the Rent Notice. The Tenant must give the Rent Notice to the Landlord not less than two (2) months prior to the expiration of the Term failing which the Landlord may give the Rent Notice. If within fourteen (14) days from the service of the Rent Notice, the party receiving the Rent Notice:

15.1.1.1 does not object in writing, then the Rent will be adjusted accordingly for that period; or

15.1.1.2 does object in writing then the Rent for the said period will be agreed to between the Landlord and the Tenant and in default of agreement between the Landlord and Tenant, the Rent will be the Market Rent (as defined in Clause 1.1) determined by:

15.1.1.2.1 in the event that the Retail Leases Act does not apply to this Lease, a valuer appointed by:

15.1.1.2.1.1 agreement between the Landlord and Tenant; or

15.1.1.2.1.2 if there is no such agreement, nominated by the Australian Property Institute; or

15.1.1.2.2 in the event that the Retail Leases Act does apply to this Lease, a valuer appointed by:

15.1.1.2.2.1 agreement between the Landlord and Tenant; or

15.1.1.2.2.2 if there is no such agreement, the Small Business Commissioner,

PROVIDED THAT:

15.1.1.3 pending the determination of the Rent payable the Tenant will continue to pay on account of the Rent ultimately determined to be payable Rent at the rate current on the last day of the immediately preceding Term and the balance thereof on the next date due for payment of Rent occurring immediately after such determination;

15.1.1.4 any failure of the parties to determine the updated Rent payable when the update ought to have come into force will not be deemed a waiver by the Landlord of any of the Landlord’s rights herein contained and such failure will in no way prejudice the Landlord’s rights in relation to the determination of any such updated Rent payable; and

15.1.1.5 in the event that a Valuer is used to determine a rent then:

15.1.1.5.1 in order to assist with the Valuer with its valuation either party

will be entitled to make written submissions to the Valuer in respect of the rent within fourteen (14) days of the appointment of the Valuer;

15.1.1.5.2 the Valuer must make its determination. If:

15.1.1.5.2.1 no determination has been made within 45 days of the parties:

15.1.1.5.2.1.1 appointing the Valuer; or

15.1.1.5.2.1.2 being informed of the Valuer's appointment, or

15.1.1.5.2.2 the Valuer resigns, dies, or becomes unable to complete the valuation,

then the parties may immediately appoint a replacement Valuer in accordance with sub-clause 15.1.2.

15.1.1.5.3 the Valuer's determination binds both parties; and

15.1.1.5.4 the Landlord and Tenant must bear equally the Valuer's fee for making the determination. If either pays more than half the fee, the difference may be recovered from the other.

15.1.2 during each and every subsequent year of the Further Term will be the Rent specified in Item 7 of the First Schedule.

15.2 Lease Terms

The new lease to be entered will be in the form of the then current Quest Standard Lease and contain covenants terms and conditions similar to those set out in this Lease other than:

15.2.1 the incorporation of suitable amendments so as to take into account the acquisition of the Contents by the Tenant in the manner contemplated in Clause 9.1 and the fact that as a result of such acquisition, the Tenant is the owner of such Contents; and

15.2.2 an amendment to the Further Terms (as defined herein) so as to ensure that the intent of the parties as at the Commencement Date of the initial term of the lease in relation to the Term and any Further Terms is maintained.

15.3 Landlord Upgrade Works

In the event that commencement date of any Further Term coincides with one or more of the Landlord Upgrade Works Period, the Landlord will be required to complete the Landlord Upgrade Works in the manner contemplated in Clause 16 PROVIDED THAT for such period of time as the Landlord Upgrade Works have not been completed and paid for:

15.3.1 the Tenant reserves its rights to, at its absolute discretion notwithstanding the fact that it has exercised the option in the manner contemplated in Clause 15.1 for the Further Term, revoke such option; and

15.3.2 the Rent payable, until such time as the Landlord Upgrade Works are completed, will be the lesser of:

15.3.2.1 the rent payable in the immediately preceding Twelve (12) months; or

15.3.2.2 the Rent payable as determined in accordance with Clause 15.1,

will until such time as the Landlord Upgrade Work are effected.

16 **LANDLORD'S REPAIR, MAINTENANCE AND REPLACEMENT OBLIGATIONS AT THE END OF EACH TERM**

16.1 To ensure the maintenance of all of the Premises and the Estate to the high standard of other properties constructed for or used by the Quest Group from time to time and to overcome any deterioration during the Term due to wear and tear, the Landlord acknowledges that repairs, replacement and/or other works of a capital nature may reasonably be required at the end of each five (5) year period ("**the Landlord Upgrade Works**"). In accordance therewith the Landlord will, subject to and in accordance with the provisions of this clause, at the end of each five (5) year period ("**the Landlord Upgrade Works Period**") if any of the options are exercised:

16.1.1 replace in the Premises the carpet (if it needs replacing and if it is not replaced replace it during the next term when it needs replacing) with a carpet selected by the Tenant in the Tenant's reasonable discretion PROVIDED THAT if at the Commencement Date of the initial term the carpet is not new then the carpet may need to be replaced.

16.1.2 if reasonably required repaint, clean, renovate and otherwise update and renew the Premises to the satisfaction of the Tenant.

16.2 The Landlord acknowledges that:

16.2.1 the Landlord Upgrade Works must be effected in a manner that is consistent throughout all of the apartments that are leased by the Tenant (including the Premises) and the Estate; and

16.2.2 the planning and implementation in relation to the effecting of the Landlord Upgrade Works are to be effected in a manner, which reduces the impact on the Tenant's Business.

In order to achieve these objectives, it is agreed that:

16.2.3 the Landlord Upgrade Works are to be effected by persons recommended and approved by the Tenant; and

16.2.4 any Landlord Upgrade Works are to be approved of by the Tenant in the manner contemplated in Clause 16.3.

16.3 In order to define the Landlord Upgrade Works, the Tenant will:

16.3.1 within a reasonable time prior to the Landlord Upgrade Works Period present to the Landlord a proposal in respect of the Landlord Upgrade Works ("**Landlord Upgrade Works Proposal**"); and

16.3.2 review any comments of the Landlord within thirty (30) days of the Landlord Upgrade Works Proposal being delivered and will then within a reasonable period of time re submit the Landlord Upgrade Works Proposal or an amended Landlord Upgrade Works Proposal.

16.4 Payment of the Landlord Upgrade Works will be required fourteen (14) days prior to the commencement of the Landlord Upgrade Works:

16.4.1 in order to assist with the payment of the Landlord Upgrade Works the Owners Corporation may recommend that the Landlords set aside from a nominated date an agreed amount from each month's rent which is to be used and applied in the future for the Landlord Upgrade Works; and

16.4.2 in the event that the Landlord fails to make payment for the Landlord Upgrade Works within fourteen (14) days after notice has been given by the Tenant to effect such works, the Tenant may at the Tenant's option elect to carry out such works at the Landlord's costs. Such expenses may be set off by the Tenant against Rent payable by the Tenant to the Landlord and charge interest on such amounts as are outstanding from time to

time.

17 **DEFAULT AND TERMINATION**

17.1 Default of the Tenant

In the event that any of the following occurs:

- 17.1.1 if the Rent or any part thereof will be unpaid for the period of thirty (30) days after any of the days on which the same ought to have been paid in accordance with the covenants for payment herein contained;
- 17.1.2 if the Tenant commits permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants obligations and provisions of this Lease;
- 17.1.3 if the Tenant being a Company:
 - 17.1.3.1 an order is made or a resolution is effectively passed for the winding up of the Tenant (except for the purpose of reconstructions or amalgamation); and
 - 17.1.3.2 the Tenant goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with the Tenant's creditors or is unable to pay the Tenant's debts within the meaning of the Corporations Law for the time being in force.
- 17.1.4 if the Tenant being an individual becomes bankrupt or commits an act of bankruptcy;
- 17.1.5 if execution is levied against the Tenant and not discharged within thirty (30) days; or
- 17.1.6 if the business conducted in the Premises will be discontinued or the Premises deserted or vacated or left unoccupied for the space of one week (other than for seasonal holidays, maintenance and/or repairs, defaults of the Landlord and/or reasons beyond the control of the Tenant),

then and in any one or more of such events and notwithstanding that the Landlord may not have exercised any of the Landlord's rights under this Clause 17.1 in respect of some previous breach or default by the Tenant whether of a like nature or not the Landlord will subject to the provisions of all applicable legislation, be entitled at any time or times thereafter to re-enter (forcibly if necessary) into and upon the Premises or any part thereof in the name of the whole and to have again repossess and enjoy the same as of the Landlord's former estate anything herein contained to the contrary notwithstanding but without prejudice to any action or other remedy which the Landlord has or might or otherwise could have for arrears of Rent or breach of covenant or for damage as a result of any such event.

17.2 Conditions On Termination

- 17.2.1 The Tenant will at the expiration or sooner determination of this Lease peaceably surrender and yield up unto the Landlord the whole of the Premises clean and free from rubbish and in a state of repair order and condition which is in all respects consistent with the covenants on the part of the Tenant herein contained.
- 17.2.2 The Landlord may at the expiration or sooner determination of this lease cause any of the Tenant's Fixtures and Fittings to be removed and will be entitled to make any such alterations to the Premises so that the Premises are reasonably reinstated and the Landlord may recover the costs thereof from the Tenant as a liquidated debt payable on demand.

17.3 Termination in the absence of a Default

If at any time during the term of this Lease, the Premises cannot be used for the purposes

described in Item 8 of the First Schedule under the provisions of any applicable planning or like scheme in which the Premises are located the Tenant has the right by notice to the Landlord to terminate this Lease and to surrender this Lease to the Landlord. In the event that this Lease is terminated in accordance with the terms of this clause it is agreed that neither party will have any recourse whatsoever against the other.

18 ESSENTIAL TERMS

The Parties agree and acknowledge that the essential terms of this Lease are:

18.1 in relation to the Tenant Clauses 2.1, 2.2, 5, 9.4, 11.1, 15 and 17.3; and

18.2 in relation to the Landlord Clauses 2.3, 6, 11.3, 13, 15 and 16.

19 RENT REVIEW TIMES

19.1 The rent review dates applicable to this Lease are:

19.1.1 in the event that the Lease continues for a Further Term, the last day of the Term.

19.2 The method of rent review applicable is:

19.2.1 in respect of the date listed in Clause 19.1.1, in accordance with Clause 15.1.

20 DISPUTE RESOLUTION

20.1 Unless the Retail Leases Act applies, the parties must attempt to resolve any dispute by the mediation procedure, except disputes about:

20.1.1 unpaid Rent and interest charged on it;

20.1.2 review of Rent; and

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

20.2 The mediation procedure is:

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

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

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

20.2.4 once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and

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

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

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

20.5 The mediation is confidential and:

20.5.1 statements made by the mediator or the parties; and

- 20.5.2 discussions between the participants to the mediation, before after or during the mediation, cannot be used in any legal proceedings.
- 20.6 It must be a term of the engagement of the mediator that the parties release the mediator from any court proceedings relating to the lease or the mediation.
- 20.7 The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.
- 20.8 If the Act applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the parties agree that each may be represented by a legal practitioner or legal practitioners of its choice.
- 21 **GST**
- 21.1 The parties acknowledge and agree that any amount payable or other consideration to be provided under this Lease for a supply to be made by either party under or in connection with this Lease, has been determined without regard to any GST payable on that supply ("**GST Exclusive Amount**").
- 21.2 To the extent that any supply made by either party under or in connection with this Lease is a taxable supply, the GST exclusive amount for that supply must be increased by an additional amount equal to the GST which the party making the supply ("**the Supplier**") is or becomes liable to pay in respect of that taxable supply, so that the Supplier retains, after deducting the GST, the GST exclusive amount.
- 21.3 If a payment to the Landlord under this Lease is a reimbursement or indemnification (including, but not limited to, the Tenant's outgoings referred to in Clause 2.2), calculated by reference to a loss, cost, liability or expense incurred by the Landlord, then the payment will be reduced by the amount of any input tax credit which the Landlord is entitled to claim for that loss, cost, liability or expense. The Landlord is assumed to be entitled to a full input tax credit unless it demonstrates prior to the date on which payment must be made by the Tenant, that its entitlement is otherwise.
- 21.4 The Landlord must provide to the Tenant a valid tax invoice in respect of any taxable supply made by the Landlord, on or before the date of any obligation by the Tenant to make any payment or provide any consideration under or in connection with this Lease.
- 21.5 The Landlord must promptly issue an adjustment note for and refund to the Tenant any overpayment by the Tenant of GST.
- 22 **ENTIRE UNDERSTANDING**
- 22.1 Subject to Clause 22.2, this Lease embodies the entire understanding and the whole agreement between the parties relative to the subject matter hereof and all previous negotiations representations warranties arrangements and statements (if any) whether expressed or implied with reference to the subject matter hereof or the intentions of either of the parties are merged herein and otherwise are hereby excluded and cancelled.
- 22.2 The parties agree that if the provisions of the Retail Leases Act apply to this Lease and that in the event of an inconsistency the provisions of this Lease and the provisions of the Retail Leases Act then the provisions of the Retail Leases Act will prevail.
- 23 **SEVERABILITY**
- All stipulations contained in this Lease will be so construed as not to infringe the provisions of any Act whether State or Commonwealth but if any such stipulation or its true interpretation does infringe any such provisions the same will be deemed to be void and severable.

24 **NOTICES**

24.1 Notice

Any notice required to be given by the Landlord to the Tenant in the case of a breach of any covenant or condition herein contained to which the said Section 146(1) applies will provide the period of fourteen (14) days as the time within which the Tenant is to remedy such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Landlord in respect thereof.

24.2 Serving of Notice

That any notice required to be served under this Lease may be signed by the respective party's solicitors or other duly authorised representative and will be sufficiently served on the Tenant if forwarded by prepaid post or served personally or if delivered or left addressed to the Tenant at the Tenant's address herein or the Premises or to the last known place of abode or business of the Tenant or affixed to any part of the Premises and will be sufficiently served on the Landlord if addressed to the Landlord and left at or sent to the Landlord's address herein or the Landlord's registered office for the time being and a notice sent by post will be deemed to have been received forty eight (48) hours after the time of posting unless the same is received prior thereto.

25 **ADDITIONAL PROVISIONS**

Notwithstanding anything herein contained, the provisions of this Agreement will be subject to any additional provisions (if any) specified in item 11 of the Schedule.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year specified in the First Schedule.

SIGNED SEALED AND DELIVERED by
R.L. & J.A. BOVELL ATF BOVELL
SUPERANNUATION FUND in the presence

NICHOLAS J. P. BOVELL

)
)
Witness

Bovell
DBell
W. Gower

THE COMMON SEAL of QUEST ON)
SOUTHBANK PTY LTD (ACN 081 554 289))
was affixed in accordance with its Articles of)
Association in the presence of:)

[Signature]
.....
.....

Director/Secretary



FIRST SCHEDULE

- ITEM 1: **DATE OF THIS LEASE:** The 21st day of December 2022
- ITEM 2: **THE LANDLORD:** R.L.& J.A. BOVELL ATF BOVELL
SUPERANNUATION FUND, 22/880 Canning Highway,
Applecross, Western Australia, 6153
- ITEM 3: **THE TENANT:** QUEST ON SOUTHBANK PTY LTD ACN 081 554 289
whose registered office is situated at Level 2, 351 Burwood
Highway, Forest Hill, Victoria, 3131.
- ITEM 4: **THE PREMISES
AND THE ESTATE** Lot M22 which is situated in the Estate.
The building located at 12-16 Kavanagh Street, Southbank,
Victoria, 3006.
- ITEM 5: **THE TERM:** 5 years, commencing on the Commencement Date and
terminating on 30th September 2027
- ITEM 6: **THE COMMENCEMENT
DATE:** The 1st Day of October 2022.
- ITEM 7: **THE RENT:** The Rent payable during:
- (a) the first two years of the Term will be an amount of \$19,800 exclusive of GST, subject to clause 21 of the lease; and
 - (b) during each and every subsequent year of the term, will be the Rent calculated by increasing the Rent for the preceding twelve (12) month period by an amount equal to three per centum (3%) thereof; and
 - (c) during each and every subsequent year of the Further Term a Rent calculated by increasing the Rent payable for the preceding twelve (12) month period by an amount equal to three per centum (3%) thereof.
- ITEM 8: **THE USE OF THE PREMISES:** Serviced Apartment Accommodation and/or Rent
Accommodation and all associated and ancillary usages.
- ITEM 9: **THE FURTHER TERMS:** Three (3) further terms each of Five (5) years duration.
- ITEM 10: **THE STATE:** Victoria.
- ITEM 11: **FURTHER PROVISIONS**

THIS DEED is made the 21st day of December 2022

BETWEEN: R.L.& J.A. BOVELL ATF BOVELL SUPERANNUATION FUND, 22/880 Canning Highway, Applecross, Western Australia, 6153
("the Landlord") of the first part

AND: QUEST ON SOUTHBANK PTY LTD (ACN 081 554 289) whose registered office is situated at Level 12, 351 Burwood Highway, Forest Hill, Victoria, 3131 ("the Tenant") of the second part.

AND: QUEST SERVICED APARTMENTS PTY LTD (ACN 119 523 483) whose registered office is situated at Level 21, 390 St Kilda Road, MELBOURNE VICTORIA 3004 ("the Franchisor").

WHEREAS:

- A. The Landlord has entered into a lease ("the Lease") with the Tenant in respect of the premises known as Lot M22 located at 12-16 Kavanagh Street, Southbank, Victoria, 3006 ("the Premises").
- B. The Landlord acknowledges that in accordance with the Lease, the Tenant or a company (whose directors are either identical to the Tenant or include one or more of the directors of the Tenant or are directors of the Franchisor or an Associate of the Franchisor) intends to use the Premises for the purposes of a serviced apartment business which is to be operated as a Quest Franchise pursuant to a franchise agreement ("the Franchise Agreement") with the Franchisor.

NOW THIS DEED WITNESSETH:

- 1 Notwithstanding anything to the contrary in the Lease, the Landlord and the Tenant expressly agree and acknowledge that if the Franchise Agreement expires or is terminated for any reason whatsoever then, notwithstanding that the franchisee may dispute such termination, the Tenant's rights under the Lease will, at the option of the Franchisor, be transferred, assigned or otherwise made available to the Franchisor or the Franchisor's nominee (as per Clause 8 of the Lease). The said option may be exercised by the Franchisor giving the Landlord notice in writing within thirty (30) days following termination or cancellation of the Franchise Agreement, such notice will specify, inter alia, the date of such termination or cancellation. The Tenant acknowledges and agrees that the Landlord may rely upon such notice and will not be required to inquire into the due execution thereof or the accuracy of the statements set forth therein. It is further agreed that such notice will, without further act or formality, operate as an effective assignment of the Tenant's rights hereunder to the Franchisor and the assumption by the Franchisor of the covenants of the Lease required to be observed or performed by the Tenant. The Franchisor will thereafter have the right to assign or sub-let the Premises to such person as it may designate (as per Clause 8 of the Lease).
- 2 The Tenant hereby agrees that the Landlord may upon the written request of the Franchisor, provide the Franchisor's agent with access to the Premises and disclose to the Franchisor all reports, information or data in the Landlord's possession relating to sales made in, upon or from the Premises.
- 3 The Landlord will give written notice to the Franchisor (concurrently with the giving of such notice to the Tenant) of any default by the Tenant under the Lease and the Franchisor will have, after the expiration of the period during which the Tenant may cure such default, an additional fifteen (15) days to cure, at the Franchisor sole option, any such default, PROVIDED THAT if such default arises by reason of the bankruptcy or insolvency of the Tenant or the appointment of a receiver over or winding up the Tenant's assets or part thereof or under another default under the Lease by which the Landlord is entitled to terminate the Lease, then the Franchisor will have the right to assume the Lease upon payment of any arrears of Rent to such date. In the event of any such assumption, the Tenant will cease to have any further rights hereunder.
- 4 The Landlord acknowledges that the Franchise Agreement contains a right on the part of the Franchisor, in the event of the expiration or termination of the Franchise Agreement for any reason whatsoever, to enter the Premises and to purchase the business assets of the Tenant. The Landlord further acknowledges that such entry and purchase by the Franchisor will not constitute a breach of the Lease.

- 5 In the event that the Tenant fails to exercise or is deemed ineligible to exercise (for any reason whatsoever) the Tenant's option or options for one or more further terms in accordance with Clause 15 of the Lease, and notwithstanding the fact that the time for the Tenant making a written request (as per Clause 15 of the Lease) has expired, then the Landlord agrees that:
- 5.1 it will serve on the Franchisor written notification advising that the Tenant has failed to exercise the option and providing the Franchisor with a period of not less than fourteen (14) days to exercise the option PROVIDED THAT if the Franchisor exercises the said option the Franchisor or a nominee of the Franchisor will become the Tenant under the Lease to be entered as a result of the exercising of the option as if it were an original tenant who had validly exercised the Option for a Further Term; and
- 5.2 the lease will not lapse unless the Landlord has issued the notice contemplated in Clause 5.1 to the Franchisor.
- 6 The Franchisor includes the administrators, successors, transferees and assigns of the Franchisor.
- 7 The Landlord includes the administrators, successors, transferees and assigns of the Landlord.
- 8 The Tenant includes the administrators, successors, transferees and assigns of the Tenant.

EXECUTED as a Deed

SIGNED SEALED AND DELIVERED by
R.L. & J.A. BOVELL ATF BOVELL
SUPERANNUATION FUND in the presence

NICHOLAS J.P. BOVELL

)
)
Witness → W. B. Bovell

THE COMMON SEAL of QUEST ON)
SOUTHBANK PTY LTD (ACN 081 554 289))
was affixed in accordance with its Articles of)
Association in the presence of:)

[Signature]

Director
Secretary



Executed by QUEST SERVICED)
APARTMENTS PTY LTD (ACN 119 523 483))
pursuant to s127(1) Corporations Act 2001 (Cth))
in the presence of:)

[Signature]
[Signature]

Director
Secretary

ANNEXURE "B"

Deed of Covenant on Assignment of Lease
(Sub-Clause 8.1.1.2)

THIS DEED is made the _____ day of _____ 200

BETWEEN: R.L.& J.A. BOVELL ATF BOVELL SUPERANNUATION FUND, 22/880 Canning Highway,
Applecross, Western Australia, 6153.

("the Landlord") of the first part

AND: _____ ("the Assignee")

WHEREAS:

A. The Landlord has entered into a Lease ("the Lease") with QUEST ON SOUTH BANK PTY LTD (ACN 081 554 289) ("the Tenant") in respect of the premises known as Lot M22 located at 12-16 Kavanagh Street, Southbank, Victoria, 3006 ("the Premises").

B. The Tenant has agreed to assign the Tenant's interest under the Lease to the Assignee.

DEED:

1 The Assignee agrees that as from the date of assignment of the Lease it will perform and observe all of the covenants of the Tenant under the Lease as if the Assignee had been originally named in and executed the Lease as Tenant.

2 In consideration of the Assignee executing this Deed, the Landlord consents to this assignment and agrees with the Assignee to abide by the terms and conditions of the Lease.

3 All stamp duty payable on this Deed will be payable by the Assignee.

EXECUTED as a Deed

SIGNED SEALED AND DELIVERED by
R.L.& J.A. BOVELL ATF BOVELL
SUPERANNUATION FUND in the presence

NICHOLAS J.P. BOVELL

)
)
Witness W. Baven

THE COMMON SEAL of QUEST ON
SOUTH BANK PTY LTD (ACN 081 554 289)
was affixed in accordance with its Articles of
Association in the presence of:)
)
)
)

[Signature]
.....
.....

Director

Secretary



SIGNED SEALED AND DELIVERED by (THE)
PURCHASER) in the presence:)

.....

Witness

THE COMMON SEAL of QUEST ON)
SOUTHBANK PTY LTD (ACN 081 554 289))
was affixed in accordance with its Articles of)
Association in the presence of:)

.....

Director

.....

Secretary

