

PRINCIPAL:  
Chandra Trikam LLB.



ABN 69 688 157 386

FROM: OXLEY OFFICE

OUR REF: CT: HR: 17034

YOUR REF:

DATE: 24 December 2015

The Directors  
Fivewise Superannuation Pty Ltd  
atf *The Fivewise Superannuation Fund*  
115 McLean Road South  
CAMP MOUNTAIN QLD 4520

Dear Directors

**RE: FIVEWISE SUPERANNUATION PTY LTD atf *The Fivewise Superannuation Fund* LEASE TO  
HARD'N'UP ENTERPRISES PTY LTD atf *Hard N Up Enterprises Trust*  
PREMISES: 17/254 SOUTH PINE ROAD, EVERTON HILLS, QLD 4053**

We refer to the above matter and **enclose** Lease in duplicate for your perusal and if satisfactory, execution of the same and return to us.

Would you kindly attend to the following:

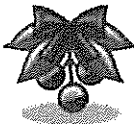
1. sign in duplicate where indicated and return to our office. (Please note your signatures as directors of the company do not require a witness); and
2. date pages 1 and 2 where indicated.

If you have any questions, please do not hesitate to contact Helen Reeve of our office.

Yours faithfully,  
**ZAPPULLA TRIKAM & PARTNERS**

Per: *H. Reeve*

Encl.



*Please be advised this office will be closed from Friday 25<sup>th</sup> December 2015 and will reopen on Monday 4<sup>th</sup> January 2015.*

*Have a safe and very Merry Christmas from the Principal and Staff at  
Zappulla Trikam and Partners.*

88 Cook Street, Oxley Qld 4075  
Phone: (07) 3379 8777 Fax: (07) 3379 5464

(EVERTON PARK PHONE (07) 3354 2500)

"Individual liability limited by a scheme approved under professional standards legislation"

Dealing Number



OFFICE USE ONLY

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<b>1. Lessor</b> FIVEWISE SUPERANNUATION PTY LTD A.C.N. 607 449 436 AS TRUSTEE (TRUST DOCUMENT/S DEPOSITED WITH INSTRUMENT NO. 716916246)	<b>Lodger</b> (Name, address, E-mail & phone number) Zappulla Trikam & Partners PO Box 283, Everton Park Qld 4053 Email: ctrikam@bigpond.com Phone: 3354 2500	<b>Lodger Code</b> BE 167A
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<b>2. Lot on Plan Description</b>	<b>County</b>	<b>Parish</b>	<b>Title Reference</b>
LOT 17 ON SP 277928			51010550

<b>3. Lessee</b>	Given names	Surname/Company name and number	(include tenancy if more than one)
		HARD'N'UP ENTERPRISES PTY LTD A.C.N. 146 738 365 AS TRUSTEE	

**4. Interest being leased**  
FEE SIMPLE

**5. Description of premises being leased**

The whole of the said land together with fixed improvements thereon and the Landlord's fittings if any therein (which said land and improvements are called "the Premises")

**6. Term of lease**

Commencement date/event: 01 / 01 / 2016  
Expiry date: 31 / 12 / 2018  
#Options: 3 x 3 years (see pages 29 to 31)  
#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)

**7. Rental/Consideration**

SEE ATTACHED SCHEDULE

**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  
 .....full name  
 .....qualification

**Witnessing Officer**

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

Date  
↓  
4/11/16  
Execution Date

Fivewise Superannuation Pty Ltd  
A.C.N. 607 449 436 as trustee

Director.....Director.....  
Lessor's Signature

**9. Acceptance**

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

.....signature  
 .....full name  
 .....qualification

**Witnessing Officer**

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

Hard'N'Up Enterprises Pty Ltd  
A.C.N. 146 738 365 as trustee

Sole Director and Sole Secretary.....  
Lessee's Signature

23/12/15  
Execution Date

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This is the Schedule referred to in the FORM 7 LEASE dated the \_\_\_\_\_ day of \_\_\_\_\_ 2015.

1. REFERENCE DATA

- ITEM 1: PARTIES:  
Landlord: FIVEWISE SUPERANNUATION PTY LTD  
A.C.N. 607 449 436 as trustee for *The Fivewise Superannuation Fund*  
Address for Notices: 115 McLean Road South, Camp Mountain, Qld, 4520  
Tenant: HARD'N'UP ENTERPRISES PTY LTD A.C.N. 146 738 365  
as trustee for *Hard N Up Enterprises Trust* (trading as *Max Force Tactical*)  
Address for Notices: 17 / 254 South Pine Road, Everton Hills, Qld, 4053
- ITEM 2: TERM: 3 years  
Date of Commencement: 1 January 2016  
Expiration Date: 31 December 2018
- ITEM 3: BUILDING AND LEASED PREMISES:  
Address of Building: 17 / 254 South Pine Road, Everton Hills, Qld, 4053
- ITEM 4: RENT:  
(a) Commencement date of rental payment: 1 January 2016  
(b) Rent:  
(i) Rent: \$16,000.00 per annum (plus GST) plus outgoings (plus GST)  
(ii) Monthly Rent: \$1,333.33 (plus GST) plus outgoings (plus GST)  
(c) Rent due date: the first day of each Month  
(d) Interest on arrears: at the Stipulated Rate as defined in Part 2
- ITEM 5: REVIEW DATES:  
Fixed review: 2.5% increases on 1 January 2017 and 2018  
CPI review: Not applicable  
Market Review: Not applicable
- ITEM 6: USE OF PREMISES: Warehouse and showroom
- ITEM 7: SIZE OF PREMISES 80 square metres (approximately) (ground floor) plus 50 square metre (approximately) (mezzanine floor)
- ITEM 8: INSURANCE REQUIREMENTS: As set out in cl. 8.2
- ITEM 9: RIGHT OF RENEWAL:  
First Renewal Term: 3 years  
Date must be exercised in writing: Not less than six (6) months before expiry of current term  
Commencement Date of First Renewal Term: 1 January 2019  
Second Renewal Term: 3 years  
Date must be exercised in writing: Not less than six (6) months before expiry of current term  
Commencement Date of Second Renewal Term: 1 January 2022

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Third Renewal Term: 3 years  
Date must be exercised  
in writing: Not less than six (6) months before expiry of current term  
Commencement Date of  
Third Renewal Term: 1 January 2025

ITEM 10: REVIEW DATES  
DATES

First Renewal Term –  
Fixed review: 2.5% increases on 1 January 2020 and 2021  
CPI review: Not applicable  
Market review: 1 January 2019

Second Renewal Term –  
Fixed review: 2.5% increases on 1 January 2023 and 2024  
CPI review: Not applicable  
Market review: 1 January 2022

Third Renewal Term –  
Fixed review: 2.5% increases on 1 January 2026 and 2027  
CPI review: Not applicable  
Market review: 1 January 2025

ITEM 11: OUTGOINGS:

Percentage payable by Tenant: The Prescribed Percentage as defined in  
Part 2 (being at the date of Commencement 100%)

ITEM 12: GUARANTORS David John Hawkins, 14 Edmund Court, Warner, Qld 4500

ITEM 13: SECURITY BOND Two (2) months' rent (plus GST) plus two (2) months'  
outgoings (plus GST)

Each reference in this Lease to any of the titles contained in this Part is to be construed to incorporate  
the data stated and the terms provided under that title.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

Unless otherwise provided or unless there is something inconsistent in the subject matter the  
expressions following (whether appearing with or without capital letters) have the meanings assigned  
to them in this clause:

2.1.1 "the Air Conditioning Equipment" means the plant, electrical installations, ductwork, and  
diffusers used for the manufacture and reticulation of conditioned air throughout the Building  
and includes all mechanical ventilation.

2.1.2 "the Building" means the building or buildings of the Landlord erected or to be erected on the  
Land.

2.1.3 "the Date of Commencement" means the date referred to in Item 2 of the Reference Data as  
the Date of Commencement.

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- 2.1.4 "the Fire Equipment" includes all stopcocks, hydrants, fire hoses, fire alarms, fire sprinklers, and other fire prevention extinguishing in the Building.
- 2.1.5 "Form 7" means the Lease in Form 7 to the *Land Title Act 1994* to which this Schedule is attached.
- 2.1.6 "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charges.
- 2.1.7 "GST Amount" means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment which is consideration for a Taxable Supply) by the appropriate rate of GST (being 10% when the GST Law commenced or any other rate notified from time to time by the persons making the relevant Taxable Supply).
- 2.1.8 "GST Law" has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under the Act.
- 2.1.9 "the Guarantor" means the guarantor or collectively the guarantors referred to in Item 12 of the Reference Data and also any person who enters into covenants with the Landlord as a guarantor under cl. 27.1. If the Guarantor is one person the expression includes that person, his executors, and administrators. If the Guarantor is more than one person, the guarantor includes those persons and their respective executors and administrators jointly and severally. If the guarantor is a corporation, the guarantor includes that corporation and its successors or, if more than one corporation, the guarantor includes those corporations and their respective successors.
- 2.1.10 "Index Number" means the Consumer Price Index (All Groups) for the city of Brisbane as published by the Australian Bureau of Statistics. If that index is suspended, discontinued, or modified so that it does not reflect on a consistent basis changes which have occurred in the cost of living in the city of Brisbane during any Lease Year, the expression will mean an index which in the opinion of the Australian Statistician (whether published or advised at the request of either party) does reflect on a consistent basis changes which have occurred in the cost of living in the City of Brisbane during any Lease Year. If the Australian Statistician has not published and will not advise an appropriate index, the expression will mean an index or method of measuring increases in the cost of living agreed in writing by the parties and in default of agreement within a period of fourteen (14) days, an index or method determined at the request of either party by the President or Acting President of the Australian Property Institute (Inc.) Queensland Division or their nominee.
- 2.1.11 "Insured Risks" means the risks against which the Landlord is required by this Lease to effect insurance and any additional risks against which the Landlord effects insurance relating to the Building.
- 2.1.12 "the Land" means the land described in Item 2 of the Form 7.
- 2.1.13 "the Landlord" means the LANDLORD referred to in Item 1 of the Form 7 its successors and assigns and unless inconsistent with the subject matter or context includes all persons for the time being authorised by the Landlord.
- 2.1.14 "this Lease" means this Lease including the Form 7 together with any annexures and schedules and any covenant or agreement expressed to be supplemental to this Lease and all amendments to those documents.
- 2.1.15 "Lease Year" means each separate year of the term of this Lease the first Lease Year commencing on the Date of Commencement and each subsequent Lease Year commencing

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on the corresponding day of each succeeding year; the expression includes any broken period between the end of the last complete Lease Year and the date of termination.

- 2.1.16 "Market Review Dates" are the dates specified in Item 5 of the Reference Data.
- 2.1.17 "Month" means a calendar month.
- 2.1.18 "the Outgoings" means all expenses and outgoings paid or incurred by the Landlord in respect of the Premises under the following heads of expenditure:
- (a) Rates, charges, and other levies (including any benefited mall area levy) payable to the local authority in whose area the Premises are located.
  - (b) Rates and charges payable to any local or other authority responsible for the provision or reticulation of water and/or sewerage and/or drainage services.
  - (c) Levies, contributions and/or other amounts payable to any local or other authority for or on account of fire protection services.
  - (d) All rates, taxes, charges, assessments, outgoings, and impositions (whether parliamentary, municipal, or otherwise and whether assessed, charged, or imposed by or under Federal or State law or by Federal State or Local authorities and whether on a capital, revenue value, or any other basis and even though of a novel character) which are assessed, charged, or imposed in respect of the Premises or any part of them other than income tax and capital gains tax.
  - (e) All charges for electricity, gas, oil, or other fuel incurred in the operation of the Air Conditioning Equipment and other plant and equipment in the Premises.
  - (f) Insurance premiums and other charges (including stamp duties) for insurance of the Premises against fire with extended cover endorsement for vandalism, terrorism, malicious mischief, earthquake, flood, water damage, boiler and pressure vessel explosion, fusion, and mechanical breakdown in broad cover form with repair and replacement terms and other risks determined by the Landlord in its absolute discretion including, but not limited to, consequential losses and loss of all rents receivable from the Premises including all other charges payable in addition to the Rent in an amount or amounts and for periods determined by the Landlord.
  - (g) Public risk liability insurance against third party liability hazards including exposure to personal injury, bodily injury, and property damage on an occurrence basis; including insurance for all contractual obligations and covering also actions of all employees, other persons, subcontractors, and agents while working on behalf of the Landlord. The policy will be written on a comprehensive basis with limits of not less than \$10 million per occurrence or higher amounts reasonably required by the Landlord from time to time.
  - (h) The cost of all repairs painting plumbing maintenance renewals and replacements incurred by the Landlord in keeping the Premises in good and substantial repair and condition, not normally charged to capital account as determined by the Landlord's accountants in accordance with accounting principles generally accepted in Queensland.
  - (i) The cost of cleaning treating and polishing the Premises and the external windows glass and other external surfaces of the Building including but not limited to cleaning materials.
  - (j) Disposing of rubbish and waste.

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- (k) Maintaining gardens and landscaped areas in or near to the Complex.
  - (l) Property Management.
  - (m) Body corporate levies.
- 2.1.19 "Pipes" means all pipes, sewers, drains, mains, conduits, ducts, gutters, water courses, wires, cables, channels, flues, and all other conducting media and including any fixings, louvres, cowls, and any ancillary apparatus.
- 2.1.20 "Prescribed Percentage" means the percentage of the Total Lettable Floor Area which is from time to time represented by the floor area of the Premises where:
- Total Lettable Floor Area means the Floor Area of all those parts in the Complex that are leased or may be available for lease or licence, but does not include:
- (i) the Floor Area of the Common Areas and the Car Park; or
  - (ii) any part of the Complex used exclusively for storage.
- 2.1.21 "the Premises" means that part of the Land which is described in Item 5 of the Form 7 and all improvements on that part of the Land.
- 2.1.22 "Redecorate" includes:
- (a) washing down the whole of the interior of the Premises including all partitions and additions made to the Premises;
  - (b) treating as previously treated all internal surfaces of the Premises by painting, staining, polishing, or otherwise to a specification approved by the Landlord; and
  - (c) replacing all carpet and/or floor tiles which in the opinion of the Landlord are worn or damaged and in need of replacement.
- 2.1.23 "the Reference Data" means the data set out in Part 1 of this Schedule.
- 2.1.24 "Rent" has the meaning given to that expression in cl. 3.2.
- 2.1.25 "the Stipulated Rate" means a percentage interest rate per annum equal to the prime lending rate charged by the Landlord's bank plus five (5) per centum.
- 2.1.26 "Supply" has the meaning given in the GST Law.
- 2.1.27 "the Tenant" means the TENANT referred to in Item 3 of the Form 7 and if this Lease is taken by one person, the Tenant includes that person his executors, administrators, and permitted assigns. If this Lease is taken by more persons than one, the Tenant includes those persons and each of their respective executors, administrators, and permitted assigns jointly and severally. If a corporation is a Tenant, the Tenant includes that corporation, its successors, and permitted assigns.
- 2.1.28 "Valuers' Institute" means the Australian Property Institute (Inc.) Queensland Division or their nominee.
- 2.1.29 "writing" includes printing, typing, lithography, and other modes of reproducing words in a visible form and "written" has a corresponding meaning.

2.2 Interpretation

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- 2.2.1 Every covenant agreement or obligation expressed or implied in this Lease by which two or more persons covenant, agree, or are bound, binds those persons jointly and each of them severally. Every provision expressed or implied in this Lease which applies to two or more persons applies to those persons jointly and each of them severally.
- 2.2.2 References to the Valuers' Institute and any other authorities, associations, and bodies whether statutory or otherwise will, if any of those authorities, associations, or bodies ceases to exist, or is reconstituted, renamed, or replaced or if its powers or functions are transferred to any other authority, association, or body be deemed to refer to the authority, association, or body established or constituted in its place and/or as nearly as may be succeeding to its powers or functions.
- 2.2.3 References to any right of the Landlord to have access to the Premises extend to all persons authorised by the Landlord including agents, professional advisers, contractors, workmen and others.
- 2.2.4 References to the Premises, in the absence of any provision to the contrary, include any part of the Premises.
- 2.2.5 Any covenant by the Tenant not to do any act or thing is deemed to include an obligation not to permit that act or thing to be done, and to use its best endeavours to prevent that act or thing being done by a third party.
- 2.2.6 Any provision in this Lease requiring the consent or approval of the Landlord also requires the consent or approval of any mortgagee of the Premises and any superior Landlord where that consent is required. This Lease does not restrict the right of any mortgagee or superior Landlord to refuse any consent or approval.
- 2.2.7 References to the "Consent of the Landlord" or words to similar effect mean a consent in writing signed by or on behalf of the Landlord and references to "Approved" and "Authorised" or words to similar effect mean approved or authorised in writing by or on behalf of the Landlord.
- 2.2.8 The terms "the Parties" or "Party" mean the Landlord and/or the Tenant but except where there is an express indication to the contrary, exclude the Guarantor.
- 2.2.9 Words in the singular include the plural and vice versa. A reference to any gender includes every other gender. Words denoting individuals include corporations.
- 2.2.10 A reference in this Lease to an Act of Parliament or any section of an Act are to be read as though the words "or any statutory modification or re-enactment of it or any statutory provision substituted for it" were added to the reference. Any general reference to "Statute" or "Statutes" includes any regulations or orders made under the Statute or Statutes.
- 2.2.11 Every obligation or covenant (whether positive or negative) undertaken by any Party (including the Guarantor) will, despite the wording, be deemed to be and will be construed as if each obligation or covenant is a separate and independent covenant made by the Party undertaking the obligation and continuing (unless the context otherwise requires) throughout the term of this Lease and subsequently so long as it remains to be performed.
- 2.2.12 References in this Lease to any clause, subclause, paragraph, or Schedule without further designation will be construed as a reference to the clause, subclause, paragraph, or Schedule of this Lease so numbered.
- 2.2.13 The headings or marginal notes in this Lease are included for convenience only and do not affect the construction of this Lease.



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3. RENT

3.1 Payment of Rent

The Tenant will pay to the Landlord (including by way of periodic bank transfer if the Landlord so requires) in each Lease Year the Rent without any formal or other demand by equal monthly instalments in advance on the first day of each month. In the case of any broken period of less than one month by an instalment on the first day of the broken period of an amount ascertained by multiplying the number of days in that broken period by the Rent for the Lease Year of which it forms part and dividing the result by 365.

3.2 Rental Reviews

3.2.1 Rent and Annual Reviews

The expression "Rent" means an annual sum calculated as follows:

(a) for the first (1st) Lease Year:

the sum specified in Item 4(b) (i) and subsequent years in Item 5 and or Item 10 of the Reference Data respectively;

(b) If Item 5 and or Item 10 of the Reference Schedule provides for CPI review then from that Review Date the Rent must be reviewed to the following formula:

for the second (2nd) and each subsequent Lease Year that amount derived annually by multiplying the Rent for the Lease Year last concluded by a fraction obtained by dividing the Index Number for the last quarter immediately preceding the first day of the Lease Year under review by the Index Number for the last quarter immediately preceding the first day of the Lease Year last concluded;

(c) If Item 5 and or Item 10 of the Reference Data provides for a Fixed Review for a Review Date, then from that Review Date the Rent must be reviewed to the following amount:

$$A + (A \times D)$$

Where:

A is the Rent payable immediately before the Review Date;

D is the Minimum Rent increase specified in Item 5 or Item 10 of the Reference Data for the Review Date

3.2.2 Reviews to Market

The Rent will be further reviewed so that the Rent for the Lease Years commencing on the Market Review Dates will be the market rent for that Lease Year calculated in accordance with cl. 3.3, and the Rent so determined will be reviewed annually in accordance with Item 5 and or Item 10 of the Reference Data;

3.3 Market Rent Reviews

3.3.0 If Item 5 and or Item 10 of the Reference Schedule provides for a Market Review, then this clause will apply

3.3.1 The Landlord may at any time prior to the date which is twelve (12) months after each date stated in Item 5 and or Item 10 of the Reference Data ("the Market Review Date") give

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written notice to the Tenant of the amount of rent the Landlord believes is the market rent for the Premises as at that Market Review Date.

- 3.3.2 If the Landlord does not give written notice in accordance with cl. 3.3.1 in respect of a Market Review Date the rent payable for the Lease Year commencing from that Market Review Date will be the same rent as was payable in the preceding Lease.
- 3.3.3 If the Landlord gives written notice in accordance with cl. 3.3.1, the Tenant may give written notice to the Landlord within twenty-one (21) days of receipt of the Landlord's notice disputing the Landlord's assessment of the market rent.
- 3.3.4 If the Tenant does not give notice in accordance with cl. 3.3.3 the amount set out in the Landlord's notice will be the Rent payable from the Market Review Date.
- 3.3.5 If the Tenant gives notice in accordance with cl. 3.3.3 the market rent will be determined as follows:
- (a) the market rent will be determined by a person ("the Arbitrator") who has been a member of the Valuers' Institute for at least five (5) years nominated by the President for the time being of the Valuers' Institute on the application of the Landlord or Tenant;
  - (b) the Arbitrator will act as an arbitrator in accordance with the *Commercial Arbitration Act 1990*; and
  - (c) the Arbitrator will determine the market rent of the Premises assuming:
    - (i) a term equivalent to the original term of this Lease;
    - (ii) that the Tenant has complied with all obligations of repair and decoration imposed by this Lease;
    - (iii) that the covenants of the Lease are the same as the covenants of this Lease other than for quantum of rent and any other differences required by these assumptions; and
    - (iv) that any improvements made to the Premises by the Tenant have not been made.
  - (d) The costs associated with a valuation obtained under this clause must be paid by the parties in equal shares unless otherwise decided by the Valuer.

3.4 Obligation to Pay Pending Determination

Pending determination of the Rent for any Lease Year, rent will be paid at the rate payable during the Lease Year last concluded and will be adjusted retrospectively to the beginning of the Lease Year under review.

3.5 Net Lease

This Lease is a net Lease and the Tenant's obligation to pay all Rent and the rights of the Landlord to the Rent are absolute and unconditional and are not subject to any abatement, reduction, set-off, defence, counterclaim, or recoupment. Except as may otherwise be expressly provided in this Lease and despite any law to the contrary, this Lease will not terminate and the respective obligations of the Landlord or the Tenant will not otherwise be affected, by reason of:

- 3.5.1 the invalidity or unenforceability or lack of due authorisation or other defect of this Lease;

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- 3.5.2 the lack of any right, power, or authority of the Tenant to enter into this Lease or any prohibition or interruption of or other restriction against the Tenant's use, operation, or possession of the Premises for any reason;
- 3.5.3 the interference with the use, operation, or possession by any person or entity;
- 3.5.4 any other indebtedness or liability whenever arising of the Landlord or the Tenant to any other person, firm, or corporation or to any governmental authority;
- 3.5.5 any insolvency, bankruptcy, or similar proceedings by or against the Landlord or the Tenant;  
or
- 3.5.6 any other cause.

The Rent will continue to be payable in all events and in the manner and at the times provided in this Lease unless the obligation to pay it is terminated under the express provisions of this Lease.

3.6 GST

3.6.1 The parties agree that:

- (a) all payments have been set or determined without regard to the impact of GST;
- (b) if the whole or any part of a Payment is the consideration for a Taxable Supply for which the payee is liable to GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
- (c) the payee will provided to the payer a Tax Invoice.

3.6.2 The Landlord may include in the amount of the Outgoings to which the TENANT contributes, all goods and services tax or other consumption tax payable by the Landlord in respect of the Outgoings except for any part of the tax that the Landlord may claim as an input tax credit.

4. OUTGOINGS

4.1 Outgoings

In addition to the Rent, the Tenant must pay the Landlord sums of money equal to the Prescribed Percentage of the Outgoings.

4.2 Light and Power

The Tenant will not use any form of light, power, or heat other than electric current or gas supplied through meters. This covenant does not prevent the use of auxiliary power or lighting (other than an exposed flame) during any period of power failure or power restrictions.

4.3 Electricity, Gas, and Water

The Tenant will pay all assessments for electricity, gas, trade waste and water relating to the Premises by their due dates for payment.

4.4 Future Taxes on Premises

The Tenant will pay and discharge without exception on and from the commencement date all rates, taxes, charges, assessments, outgoings, and impositions (whether parliamentary municipal or otherwise and whether assessed, charged, or imposed by or under Federal or State law or by Federal State or Local Authorities and whether on a capital or revenue basis or any other basis and even

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though of a novel character) which may at any time during the term of this Lease be assessed, charged, or imposed upon or in respect of the Premises or the use and occupation of the Premises and whether assessed against the Landlord or directly against the Tenant will be paid to the relevant assessing Authority not later than the due date for the payment and if assessed against the Landlord will be paid by the Tenant to the Landlord upon demand.

4.5 Special Services

The Tenant will pay to the Landlord upon demand the amount of any additional or unusual costs, charges, and expenses incurred by the Landlord at the request of the Tenant in having any alterations, repairs, or maintenance to the Premises or to the appurtenances in the Premises effected outside the normal working hours of the tradesmen concerned or in providing any special, additional, or unusual services for the Tenant.

4.6 Cleansing Dues

If the relevant Local or other Authority provides any cleansing or refuse service for the Premises (whether at the request of the Tenant or by direction of any officer of that Authority), the Tenant will pay the cost of the service to the relevant assessing Authority on or before the due date if assessed directly against the Tenant but otherwise to the Landlord within seven (7) days of being billed by the Landlord.

5. USE

5.1 Use of the Premises

The Tenant will not use or permit the Premises to be used for any purpose other than the purpose specified in Item 6 of the Reference Data. The Tenant acknowledges that:

- 5.1.1 it is the responsibility of the Tenant to obtain the consent of any planning or other authority which may be required for the Tenant to carry on its business on the Premises and the failure of the Tenant to obtain that consent does not relieve the Tenant of its obligation to pay Rent and otherwise to perform its obligations under this Lease;
- 5.1.2 no promise, representation, warranty, or undertaking has been given by or on behalf of the Landlord in respect of the suitability or adequacy of the Premises for any use or business or to the fixtures, fittings, furnishings, finish, plant machinery, and equipment of or in the Premises; and
- 5.1.3 any warranties as to the suitability, fitness, and adequacy of the Premises implied by law are negatived.

5.2 Compliance with Statutes, Regulations, etc.

- 5.2.1 The Tenant will duly and punctually comply with and observe all Statutes and all orders, ordinances, regulations, and by-laws relating to the Premises or to the Tenant's use or occupation of the Premises and all requirements and orders lawfully given or made by any public body or authority relating to the Premises within the time required by the notice or order.
- 5.2.2 The Tenant will not do or omit to do any act or thing whereby the Landlord may become liable to pay any penalty imposed or to bear the whole or any part of any expenses incurred under any statute, ordinance, regulation, by-law, order, requirement, or notice.
- 5.2.3 The Tenant is not required by this clause to make any structural improvements or structural alterations unless they are required or made necessary by reason of any neglect or default

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by the Tenant or any person claiming under the Tenant or by reason of the business carried on in the Premises or the number or sex of the employees or persons at the Premises.

5.3 Annoying or Injurious Conduct

The Tenant will not:

- 5.3.1 carry on in any part of the Premises any annoying, noxious, offensive, or illegal business, occupation, or practice; and
- 5.3.2 do any act or thing or use any plant or machinery which through noise, odours, vibrations, or otherwise may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the Landlord or of the occupiers of neighbouring premises.

5.4 Use of Appurtenances

The Tenant will not use the water closets, drains, and other water apparatus and other appurtenances in the Premises and the Building for any purposes other than those for which they were constructed and will not place in them any sweepings, rubbish, rags, ashes, or other deleterious substances.

5.5 Drains and Waste

All blockages which may occur in any Pipes originating within the Premises will be cleared by licensed tradesmen employed by the Tenant.

5.6 Interference with Services

Except as otherwise provided in this Lease the Tenant will not interfere with any appurtenances, Pipes, water supply, gas, electrical, plumbing, or other services contained in or about the Premises or the Air Conditioning Equipment or the Fire Equipment without first obtaining the consent in writing of the Landlord.

5.7 Erection of Signs

The Tenant will not cause any advertising or other sign or advertisement or hoarding to be painted or erected or otherwise placed on the Premises without the consent of the Landlord. The Landlord's consent will not be withheld unreasonably to the using or exhibiting of any advertisement or sign customary to the Tenant's class of business if the advertisement or sign strictly complies with the by-laws of the local or other authorities.

5.8 Prohibition on Erection of Blinds and Fittings

The Tenant will not erect or affix any blinds or awnings to the outside of the Premises or any blinds (venetian or otherwise) to the interior of the windows, display windows, or doors or affix any fittings to the exterior walls or ceilings of the Building without the written consent of the Landlord which may be granted or refused or granted subject to conditions in the absolute discretion of the Landlord.

5.9 Prohibition on Marking or Damaging Walls

The Tenant will not cut, make holes in, mark, deface, drill, or damage any of the walls, ceilings, or other parts of the Premises except so far as may reasonably be necessary for the erection of approved signs, blinds, or awnings. On the removal of signs, blinds, or awnings, the Tenant will reinstate, repair, and make good any damage or unsightliness caused in or about the erection or removal of them even if the Landlord has consented to them.

5.10 Rodents and Vermin

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The Tenant will at its own cost and expense keep the Premises free and clear of rodents, termites, cockroaches, and other vermin.

5.11 Overloading of Floors

The Tenant will observe the maximum floor loading weights nominated by the Landlord and will not permit the floors of the Building to be broken, strained, or damaged by overloading them. In particular, the Tenant will not install any safes or other heavy equipment except in positions and subject to conditions approved in writing by the Landlord.

5.12 Infectious Diseases

If any infectious disease happens upon the Premises which may require notification by virtue of any statute, regulation, or ordinance, the Tenant will:

- 5.12.1 give all the necessary notices and any other information which may be required to the proper authorities;
- 5.12.2 give a copy of the notification to the Landlord; and
- 5.12.3 at its own expense thoroughly fumigate and disinfect the Premises.

5.13 Inflammable Substances

The Tenant will not use any chemical, burning fluids, oil, acetylene, or alcohol in lighting the Premises or, except in the ordinary course of the Tenant's business, for any business or other purpose.

5.14 Not to Make Voidable Insurance Policies

The Tenant will not do or permit anything to be done on the Premises or bring or keep anything in the Premises that may in any way make void or voidable any policy or policies of insurance applicable to the Premises or conflict with any laws or regulations or with any insurance policy applicable to the Premises or whereby the amount of premium payable in respect of any insurance policy may be liable to be increased. Without prejudice to the rights of the Landlord to determine this Lease, the Tenant will pay to the Landlord on demand any increase of premium which may be occasioned by a breach of this clause.

5.15 To Observe Fire Laws

The Tenant will at all times in its use of the Premises comply with the requirements of the Insurance Council of Australia and The Metropolitan Fire Brigades Board and the laws and regulations for the time being in force relating to fires and the provisions of every relevant Statute, regulation, and ordinance.

5.16 Fire Drills and Evacuation Procedures

The Landlord may require the Tenant to perform from time to time fire drills and to observe all necessary and proper emergency evacuation procedures and the Tenant and all persons under its control will co-operate with the Landlord in performing those drills and procedures.

5.17 Auction Sales

The Tenant will not in any circumstances hold or permit to be held any auction sale in or about the Premises.

5.18 Security

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The Tenant will cause all exterior doors and windows in the Building to be locked securely at all times when the Premises are not being used. The Landlord's representatives are authorised from time to time to enter the Premises for the purpose of locking any doors or windows left unlocked or unfastened or checking the general security of the Building and the Premises.

5.19 Overloading of Electricity

The Tenant will not without the written consent of the Landlord 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 Landlord grants that consent 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 will be effected by the Landlord at the expense of the Tenant and the entire cost of the alterations will be paid by the Tenant to the Landlord upon demand. The Landlord may require the Tenant to deposit with the Landlord the estimated cost of the alterations before they are commenced.

5.20 Use of External Areas

The Tenant must not use areas external to the Building for parking or storage of motor vehicles, caravans, boats, demountable buildings, or containers of any kind other than in the day to day use of the Premises authorised by this Lease.

6. MAINTENANCE AND REPAIR

6.1 Notice of Damage

The Tenant will advise the Landlord promptly in writing of any damage sustained to the Premises or the defective operation of any of the appurtenances in the Premises.

6.2 Maintenance of Premises

The Tenant will repair the Premises and keep them in good repair (including but not limited to repair and maintenance of all the appurtenances including any stop-cocks, hydrants, fire hoses, alarm systems or other fire prevention equipment, water closets, toilets, grease traps, water apparatus, wash basins, sinks, taps and washers, wash rooms, gas fillings, electrical fittings, light bulbs, door handles, door locks and hinges, key replacement, window locks/catches and hinges and other services contained in or about the premises) except damage caused by:

6.2.1 fair wear and tear; or

6.2.2 an Insured Risk other than where the insurance money is irrecoverable because of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's consent.

Where the policy of insurance for the Insured Risks requires payment of excess or deductible by the Landlord, the Tenant will pay the excess or deductible (or where the damage is to the Premises and other parts of the Building a fair proportion of the excess or deductible) to the Landlord on demand.

6.3 Inspection by Landlord

The Tenant will permit the Landlord at all reasonable times on reasonable notice to enter upon and view the condition of the Premises and immediately upon notice being given to the Tenant by the Landlord will execute all repairs and work agreed to be done by the Tenant. The Tenant will also permit the Landlord at all reasonable times to enter upon the Premises for the purpose of effecting any alterations, remodelling, or repairs which the Landlord may wish to carry out.

6.4 Landlord's Right to Repair

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If the Tenant at any time makes default in the performance or observance of any express or implied covenants in this Lease relating to the repair of the Premises, the Landlord may (but without prejudice to the Landlord's right of re-entry) enter upon the Premises and repair them at the expense of the Tenant.

6.5 Tenant to Redecorate

The Tenant will, at least once during the last three (3) months of the term of this Lease and the renewal granted under Clause 17.1, Redecorate the Premises to the satisfaction of the Landlord. If the Tenant fails to Redecorate the Premises, the Landlord may Redecorate them at the Tenant's expense.

6.6 Glass

The Tenant will replace all glass in the Premises that is broken during the term of this Lease.

6.7 Cleaning

The Tenant will:

- 6.7.1 keep the Premises (including the whole of the interior of the Building and the internal and external surfaces of the windows and glass) in a thorough state of cleanliness;
- 6.7.2 not allow any accumulation of useless property or rubbish; and
- 6.7.3 clean the interior of the Building and the interior and exterior surfaces of windows and glass on a regular basis.

7. ALTERATIONS

7.1 No Alterations Without Consent

The Tenant will not make any structural or other alterations or additions to the Premises or appurtenances in the Premises or the Air Conditioning Equipment or the Fire Equipment without first submitting full detailed drawings and other specifications of the proposed works and particulars of the materials proposed to be used and obtaining the Landlord's consent in writing. The Landlord's consent may be granted upon whatever terms and conditions the Landlord in its absolute discretion thinks fit. If the Landlord grants its consent it will be a condition of that consent that the works are carried out under the supervision of the Landlord's architect. The Tenant will pay to the Landlord immediately on demand all costs and expenses incurred by the Landlord including architect's and other consultants fees payable by the Landlord whether consent is granted or not.

7.2 Alterations Required for Tenant's Business

Any alterations which may be required to the Premises or to the Air Conditioning Equipment, the Fire Equipment, or the water, gas, electrical, plumbing, or other services to make or keep the Premises suitable for use by the Tenant in its business or required by reason of the number or sex of the persons employed in the Premises will be effected by and at the expense of the Tenant. The Tenant must first submit full detailed drawings and other specifications of the proposed work and class of materials proposed to be used and obtain the Landlord's consent in writing (which consent will not be unreasonably refused having regard only to the interests of the Landlord if the alterations are required by law). The Tenant indemnifies the Landlord against all injury or damage to the Premises caused in or about the erection or construction of the alterations or additions or in the removal of the alterations and additions even though the Landlord may have consented to them.

7.3 Internal Partitions



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The Tenant will not install any internal partitions in the Building or make any alterations or modifications to any internal partitions without the written consent of the Landlord. The Landlord's consent will not be unreasonably withheld if the following conditions are complied with:

- 7.3.1 the Tenant is to submit to the Landlord full detailed drawings and specifications of the proposed works;
- 7.3.2 the drawings and specifications are to meet with the approval of the Landlord's architect;
- 7.3.3 the materials to be used in carrying out the works are to be of a standard as to type, quality, colour, and size as the Landlord determines;
- 7.3.4 the works are to be carried out by a builder Approved by the Landlord;
- 7.3.5 the works are to be carried out under the supervision of the Landlord's architect; and
- 7.3.6 the Tenant is to pay to the Landlord immediately upon demand all reasonable costs and expenses incurred by the Landlord including architect's and other consultants' fees payable by the Landlord whether any Approval is granted or not.

Any partitions erected by the Tenant remain the property of the Tenant who is responsible for their maintenance and insurance.

7.4 Costs of Internal Works

Any works Approved under cl. 7.3 will be effected by and at the expense of the Tenant including the costs of all additional lights and power outlets, switches, telephone outlets, and alterations or any other services which may be required by reason of the position of partitions. The Tenant indemnifies the Landlord against all injury or damage to the Premises caused in or about the execution of those works.

7.5 Tenant's Fixtures

If the Tenant has paid all Rent and observed and performed all the covenants, agreements, and provisions contained in this Lease for which the Tenant is responsible, any fixtures and things which with the consent of the Landlord have been installed by the Tenant on the Premises may at the expiration of the term of this Lease be taken down and removed from the Premises for the Tenant's own benefit but always only upon the condition that the removal can be carried out without danger to the stability of the structure of the Premises. The Tenant will make good to the satisfaction of the Landlord or the architect of the Landlord any damage done or unsightliness occasioned to the Premises by or as a result of the installation or removal of any of these fixtures and things. Any fixtures and things not removed by the Tenant and all other goods of the Tenant left on the Premises will be deemed abandoned by the Tenant and become the property of the Landlord. The Landlord may in its discretion sell or otherwise dispose of abandoned fixtures, things, and goods in any manner the Landlord thinks fit.

7.6 Alterations or Additions to Premises by Landlord

Intentionally deleted.

8. INDEMNITY, RISK, INSURANCE, LIABILITY

8.1 Indemnities

The Tenant indemnifies the Landlord against all actions, claims, demands, losses, damages, costs, and expenses which the Landlord may sustain or incur or for which the Landlord may become liable whether during or after the term of this Lease in respect of or arising from:

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- 8.1.1 loss, damage, or injury from any cause to property or person inside or outside the Building occasioned or contributed to by the neglect or default of the Tenant or any servant, agent, licensee, invitee, subtenant, or other person claiming through or under the Tenant to observe or perform any of the covenants, conditions, regulations, and restrictions on the part of the Tenant in this Lease whether positive or negative, expressed or implied;
- 8.1.2 the negligent use, misuse, waste, or abuse by the Tenant or any servant, agent, licensee, invitee, subtenant, or other person claiming through or under the Tenant of any water, gas, or electricity, or other services to the Premises or to the Building;
- 8.1.3 the overflow, leakage, or escape of water, fire, gas, electricity, or any other harmful agent in or from the Premises caused or contributed to by any act or omission on the part of the Tenant, its servants, agents, licensees, invitees, subtenants, or other persons claiming through or under the Tenant;
- 8.1.4 the failure of the Tenant to notify the Landlord of any defect in any of the Air Conditioning Equipment, the Fire Equipment, or other appurtenances in the Premises of which the Tenant is aware or ought to be aware;
- 8.1.5 loss, damage, or injury from any cause to property or person caused or contributed to by the use of the Premises by the Tenant, or any servant, agent, licensee, invitee, or subtenant, and arising out of the neglect or default of the Tenant or any servant, agent, licensee, invitee, or subtenant;
- 8.1.6 the improper or faulty erection or construction of facilities, trade fixtures, or equipment installed on or in the Premises by the Tenant; and
- 8.1.7 any personal injury sustained by any person in or about the Premises however caused other than by the wilful or negligent act of the Landlord, its servants, or agents.

8.2 Insurances

- 8.2.1 The Tenant will during the term of this Lease at its sole cost and expense obtain and keep in full effect in the names of the Tenant, the Landlord, and all mortgagees of the Premises (as their interests may appear) the following insurances:

- (a) Intentionally deleted.
- (b) Intentionally deleted.
- (c) Public Risk

Public Risk Liability insurance applying to all operations of the Tenant and which will include bodily injury liability and property damage liability, personal injury liability, products liability, contractual liability, contingent liability, and Tenant's legal liability with respect to the occupancy by the Tenant of the Premises. The policy will be written on a comprehensive basis with limits of not less than ten million dollars (\$10 000 000.00) per occurrence or any higher limits the Landlord or its mortgagee reasonably requires from time to time.

- (d) Intentionally deleted.
- (e) General

Any other form or forms of insurance as the Tenant or the Landlord's mortgagee reasonably requires from time to time in amounts and for perils against which a prudent TENANT would protect itself in similar circumstances.

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8.2.2 The Tenant releases and agrees to hold harmless the Landlord from and against all liability for any loss or damage to the Tenant, its property, or improvements, by oversight, fault, or any other cause unless caused by the Landlord.

8.2.3 If the Tenant fails to take out or to keep in force any insurance required by this clause, or if the insurance is not reasonably approved by either the Landlord or its mortgagee, the Landlord may effect the insurance at the sole cost of the Tenant and all outlays by the Landlord will be payable by the Tenant to the Landlord as additional rent on demand without prejudice to any other rights and remedies of the Landlord under this Lease.

8.3 Assumption of Risk by Tenant

The Tenant agrees to occupy and use the Premises at the risk of the Tenant. The Landlord will not in any circumstances be liable to the Tenant for any damage to the plant, equipment, fixtures, fittings, merchandise, stock-in-trade, or any other property of any description in the possession of the Tenant and contained in or about the Premises occasioned by:

8.3.1 water, heat, fire, electricity, vermin, explosion, tempest, riot, civil commotion, bursting pipes, or by the entry of water from any source;

8.3.2 the operation, non-operation, or malfunction of the Air Conditioning Equipment or the Fire Equipment; or

8.3.3 any other cause.

The Landlord will not be liable for any loss of profits resulting from the damage even if the damage occurs by reason of:

8.3.4 any defect in the construction of the Premises or of any of the appurtenances in the Premises; or

8.3.5 any act or omission by any contractor of the Landlord or any other Tenant of the Premises and their respective employees or any member of the public.

8.4 Interruption of Services

Despite any implication or rule of law to the contrary, the Landlord will not in any circumstances be liable to the Tenant for any loss or damage suffered by the Tenant for any malfunction, failure to function, or interruption of or to the water, gas, or electricity services, the Air Conditioning Equipment, or the Fire Equipment, or any of the appurtenances contained in the Premises, or for the blockage of any sewers, wastes, drains, gutters, downpipes, or storm water drains from any cause unless caused by the Landlord.

8.5 Condition Precedent

Despite anything contained in this Lease or any implication or rule of law to the contrary, the Landlord will not be liable for any damage or loss the Tenant may suffer by reason of the neglect or omission of the Landlord to do any act or thing to or in respect of the Premises of which the Tenant is or ought to be aware and which (as between the Landlord and the Tenant) the Landlord might be legally liable to do unless the Tenant gives to the Landlord notice in writing of that act or omission and the Landlord without reasonable cause fails within a reasonable time to take proper steps to rectify the act or omission.

8.6 Intentionally deleted.

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9. ASSIGNMENT, SUBLETTING AND OTHER DEALINGS

9.1 COVENANT AGAINST ASSIGNMENT, SUBLETTING AND OTHER DEALINGS

- (a) The Tenant must not mortgage or otherwise charge nor assign (including transfer), sublet, licence, or part with possession or share possession of the Premises or of this Lease or of any estate or interest of the Tenant in this Lease to any person;
- (b) However, if the Tenant is a corporation, the Tenant may grant a floating charge over the whole of its undertaking or assets;
- (c) If the *Retail Shop Leases Act* applies to this Lease, then Section 45 of that Act does not apply to this Lease.

9.2 CONDITIONS OF ASSIGNMENT AND SUBLETTING

- (a) Despite the immediately preceding clause, if the Tenant proposes to assign this Lease or sublet or licence the Premises (a "Dealing") in favour of any proposed assignee, subtenant or licensee ("the Incoming Tenant") the Landlord must not unreasonably withhold its consent to the Dealing if:
  - (i) the Tenant:
    - (A) gives to the Landlord not less than fourteen (14) days prior written notice of the same together with a true copy of any contract, deed of assignment, transfer, trust deed, sublease, licence or other documents and information as may be relevant to the same or required by the Landlord (and the Landlord must keep the documents confidential unless required to be disclosed in any court, tribunal or similar proceedings or otherwise by force of law); and
    - (B) proves to the reasonable satisfaction of the Landlord that the Incoming Tenant:
      - (1) is a respectable, responsible, solvent, fit and suitable person experienced in and capable of adequately carrying on the Permitted Use under this Lease; and
      - (2) has at least equal or greater Gross Sales turnover potential as the Tenant (if Turnover Rent is payable by the Tenant under this Lease);
  - (ii) all rent and other money then payable by the Tenant under this Lease have been paid to the Landlord and there is not then any existing, unremedied breach of any covenant by the Tenant under this Lease that has not been expressly waived in writing by the Landlord;
  - (iii) the Tenant pays to the Landlord all reasonable costs (including legal costs on a full indemnity basis) and expenses incurred by the Landlord (whether or not any proposed Dealing proceeds to completion) including all reasonable administrative and other costs of the Landlord of and incidental to the proposed Dealing;
  - (iv) in the case of a proposed assignment, the Incoming Tenant:
    - (A) signs a deed with the Tenant and the Landlord to be bound by all the covenants of the Tenant under this Lease and appoints the Landlord its attorney for any purpose that the Tenant has appointed the Landlord its attorney under this Lease; and

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- (B) supplies any security that the Landlord may reasonably require in respect of the performance of the Incoming Tenant under this Lease, which may include a bank guarantee or security bond for an amount not exceeding two (2) months gross rent;
- (v) in the case of a proposed sublease or licence (a "Subdealing"):
- (A) the Subdealing contains the same covenants as this Lease except for any variations that are required by the changed circumstances and are approved by the Landlord;
- (B) the Tenant and the Incoming Tenant sign a deed with the Landlord that if the Tenant defaults in payment of any rent or other money under this Lease, then the Incoming Tenant must pay all the rent and other money payable under the Subdealing to the Landlord; and
- (C) the Tenant proves to the reasonable satisfaction of the Landlord (by valuations if so required) that the annual rent (or licence fees as the case may be) payable by the Incoming Tenant under the Subdealing is at a rate not less than the market rent for the Premises, or the Tenant provides a written acknowledgment in a form satisfactory to the Landlord that the rent rate (or licence fee) is below the market rent for the Premises,
- (vi) in any case where the Incoming Tenant is a corporation (other than a Listed Corporation) or a trustee of any trust or both, the Tenant procures any person that the Landlord may reasonably require to execute a joint and several guarantee and indemnity in favour of the Landlord in respect of the performance by the Incoming Tenant of all the covenants of the Tenant under this Lease or of the Incoming Tenant under any proposed Subdealing (as the case may be);
- (vii) the Tenant, the Guarantor and the Incoming Tenant otherwise comply with all other reasonable requirements of the Landlord in relation to the proposed Dealing and the Landlord's consent;
- (viii) the Dealing does not cause and is not likely to cause the Landlord to be in breach of any lease or other right of occupation of any other premises in the Complex; and
- (ix) any mortgagee of the reversion or this Lease consents to the Dealing.
- (b) Any deed or guarantee referred to in this clause must be prepared by the Landlord at the cost of the Tenant.
- (c) The covenants by the Incoming Tenant are supplementary to this Lease and must not in any way relieve or otherwise affect the continuing liability of the transferring Tenant and the Guarantor or any of them under this Lease despite any subsequent assignment, subletting or variation of this Lease.
- (d) In this clause, "the Tenant" includes any assignee, subtenant or licensee of the Tenant subsequently approved by the Landlord.
- (e) Despite anything to the contrary in this clause, if in the case of assignment the Incoming Tenant is a related body corporate (as defined in the *Corporations Act 2001*) of the Tenant then:

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- (i) the Incoming Tenant is not obliged to comply with subparagraphs (a)(iv)(B) and (a)(vi) of this clause if the liability of the Tenant and any guarantee or other security provided by or on behalf of the Tenant continues unaffected; and
- (ii) the Tenant and the Incoming Tenant must otherwise comply with this clause; and
- (iii) The Landlord in that circumstance must not withhold consent to the assignment.

9.3 CHANGE IN CORPORATE CONTROL

(a) In this Lease, in addition to other defined terms:

- (i) **Control Date** means the later of the Date of Commencement, the date (if any) on which the Landlord may have last consented to an assignment of this Lease, and the date (if any) on which the Landlord may have last consented to a change in a Prescribed Right under this Lease;
- (ii) **Prescribed Right** means a voting right, or an income participation right, or a capital participation right or any combination of those rights;
- (iii) **the Transferee** means:
  - (A) each person and corporation who may hold a Prescribed Right immediately after a change in a Prescribed Right; and
  - (B) each director and principal shareholder of each corporation who may hold a Prescribed Right immediately after a change in a Prescribed Right; and
  - (C) each unit holder, beneficiary and trustee of each trust (and each director and principal shareholder of each corporate unit holder, beneficiary and trustee) who may hold a Prescribed Right immediately after a change in a Prescribed Right as above.

- (b) If the Tenant is a corporation, and while the Tenant is not a Listed Corporation, a change in 50% or more of the beneficial holding or control of a Prescribed Right in the Tenant or in any holding company of the Tenant (when compared to the circumstances prevailing at the Control Date) is deemed to be a proposed assignment of this Lease. The Tenant must not permit any change in a Prescribed Right as above to occur unless the Tenant first complies with the conditions for the consent of the Landlord to assignment of this Lease set out in this Part.
- (c) It is a further condition for any consent of the Landlord to a change in a Prescribed Right that the Tenant must prior to the date of the proposed change, procure the Guarantor and the Transferee to execute and deliver to the Landlord a joint and several guarantee and indemnity in favour of the Landlord in respect of the performance by the Tenant of all its covenants under this Lease. That guarantee and indemnity must be prepared by the Landlord at the cost of the Tenant and contain the covenants that the Landlord may reasonably require.

9.4 Assignment by Landlord

If the Landlord sells an interest in the Complex or in this Lease, then the Landlord is automatically free of legal responsibility under any clause in this Lease to the extent that the buyer is responsible for compliance with those clauses.

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10. COSTS

10.1 Costs of Litigation

If without fault on its part, either Party is made a party to any litigation commenced by or against the other (other than litigation between the Landlord and the Tenant) and arising directly or indirectly out of the acts or omissions of the other in relation to the Premises, the Party not at fault will be paid by the other Party on demand all legal fees and disbursements (as between solicitor and own client) incurred in connection with the litigation.

10.2 THE LANDLORDS LEGAL COSTS AND OTHER COSTS

10.2.1 The Tenant must pay:

- (a) the Landlord's reasonable legal and other costs arising out of this Lease including:
  - (i) preparing, negotiating, executing and, if applicable, obtaining the consent of any mortgagee of the Land to, and registering this Lease; and
  - (ii) any dealing arising out of this Lease (for example: assignment, subletting);
- (b) lease duty and, if applicable, mortgagee consent, registration and survey fees on this Lease or any other document arising out of this Lease;
- (c) the Landlord's reasonable costs of considering the Tenant's request for the Landlord's approval or consent including considering plans, designs or references; and
- (d) the Landlord's costs and expenses (including legal costs), on a full indemnity basis, incurred as a result of any default under or breach of this Lease by the Tenant.

If the *Retail Shop Leases Act 1994* applies to this Lease and precludes the Landlord from recovering one or more of the expenses detailed in clause 10.2.1(a), the Landlord must pay these costs.

10.2.2 Costs Specific to the Premises

The Tenant must pay any cost that the Landlord incurs for or in respect of the Premises that results from the Tenant's use or occupation of the Premises.

10.3 Upstamping Lease

- 10.3.1 If the legislation requiring the payment of stamp duty on Leases requires this Lease to be produced to the collector of duty for further stamping by a date determined by or in accordance with the legislation, the Tenant must ensure that this Lease is produced by that date with all information required by the collector to reassess duty.
- 10.3.2 The Tenant will inform the Landlord in writing of all details relevant to the further stamping of the Lease by the date determined for its production.
- 10.3.3 If the Tenant does not comply with cl. 10.3.1 of this clause the Landlord may cause the Lease to be produced for further stamping and all duty, penalties, and costs (including for example, legal costs calculated on a solicitor and own client basis) incurred by the Landlord will be paid to the Landlord by the Tenant immediately on demand.

11. MORTGAGEE OF FREEHOLD

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11.1 Mortgagee's Consent

In consideration of the Landlord granting this Lease to the Tenant, the Tenant covenants and agrees with the Landlord, for the benefit of all present or future mortgagees of the whole or any part of the Land ("the Mortgagee"), that the consent of the Mortgagee to this Lease is subject to the following conditions and provisions:

- 11.1.1 if the Rent is paid strictly in accordance with the terms contained in this Lease and the covenants, conditions, and provisions in this Lease are fully observed and performed, the Mortgagee will, in the event of the exercise of the power of sale or other power or remedy of the Mortgagee or its assigns on default under the relevant instrument of mortgage, exercise the power subject to the then subsisting rights of the Tenant its successors and permitted assigns under this Lease;
- 11.1.2 that so long as the Mortgagee is registered as Mortgagee of the Land, the Tenant will obtain the consent or approval of the Mortgagee or its assigns in addition to the consent or approval of the Landlord in all cases where the consent or approval of the Landlord is required;
- 11.1.3 that upon the Mortgagee or its assigns giving notice to the Tenant demanding to enter into receipt of the rents and profits of the Land or any part of them, the covenants on the part of the Tenant expressed or implied in this Lease will be deemed to have been entered into by the Tenant with the Mortgagee and its assigns and all the rights, powers, and remedies of the Landlord under this Lease will vest in and be exercisable by the Mortgagee and its assigns until the notice is withdrawn or the relevant mortgage is discharged;
- 11.1.4 the Mortgagee is in no way bound to perform and will not incur any liability in respect of the covenants and agreements expressed or implied in this Lease and on the part of the Landlord to be performed and observed; and
- 11.1.5 the consent will, at the option of the Mortgagee, be void and of no effect if the Landlord or the Tenant fails to observe and perform all or any of the conditions contained in this clause.

12. LANDLORD'S ASSURANCES

12.1 Quiet Enjoyment

If the Tenant promptly pays the Rent and observes and performs the covenants and agreements in this Lease, the Tenant may peaceably hold and enjoy the Premises during the term of this Lease without any interruption by the Landlord or any persons lawfully claiming under or in trust for the Landlord.

13. DEFAULT

13.0 Essential Terms

The obligations of the TENANT under clauses, 3, 4, 5, 6.2, 6.5, 6.6, 8.2, 8.2.1, 9.2, 9.3, 13.1.1 and 20 are essential terms. Other obligations under this Lease may also be essential terms.

13.1 Default by Tenant

13.1.1 Events of Default – Right to Re-Enter

If:

- (a) the Rent or any part of it is unpaid for fourteen (14) days after it has become due whether any formal or legal demand is made for it or not;



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- (b) the Tenant breaches any of the covenants or agreements (whether expressed or implied) in this Lease and on the part of the Tenant to be performed or observed (including covenants and agreements of a negative character);
- (c) the repairs required by any notice given under cl. 6.3 are not completed within the time specified in the notice;
- (d) judgment for an amount exceeding thirty thousand dollars (\$30,000.00) is obtained or entered up against the Tenant in any court of competent jurisdiction and is not satisfied within twenty-one (21) days;
- (e) the Tenant does or suffers to be done any act whereby the estate or effects of the Tenant may become liable to be taken in execution; or
- (f) the Tenant, being a corporation, enters into provisional liquidation or liquidation whether voluntary or otherwise (except for the purpose of reconstruction or amalgamation) or has a receiver and/or manager appointed,

THEN subject to the Landlord giving notice under s. 124 of the *Property Law Act* 1974, the Landlord or any person duly authorised by the Landlord may, at any time on one (1) days written notice or without notice, re-enter the whole or part of the Premises in the name of the whole and determine this Lease but without prejudice to the right of action or other remedy of the Landlord in respect of any antecedent breach of the Tenant's covenants, stipulations, or agreements contained or implied in this Lease.

13.1.2 Damages

If the Landlord determines this Lease under cl. 13.1.1 the Landlord may recover from the Tenant in addition to damages and amounts recoverable apart from this clause:

- (a) any Rent and Outgoings due but unpaid at the date of the determination;
- (b) the amount by which the Rent and Outgoings between the date of determination and the date of expiry of this Lease by effluxion of time exceeds the rent and outgoings received or likely to be received from any other Tenant to whom the Premises are relet or may be relet during that period; and
- (c) any other amount necessary to compensate the Landlord as a result directly or indirectly of the Tenant's default and the Landlord's determination of the Lease including, for example:
  - (i) costs and expenses incurred in maintaining the Premises;
  - (ii) costs of recovering possession of the Premises;
  - (iii) expenses of reletting including necessary renovation or alteration of the Premises;
  - (iv) legal costs; and
  - (v) real estate commissions charges and fees.

For the purposes of cl. 13.1.2(b), the onus of proving that the Premises are likely to be relet and the amount of the rent likely to be received is upon the Tenant. For the purpose of calculating the rent and Outgoings that would have been payable after the determination of this Lease and to the extent that the Rent and Outgoings that would have been payable cannot be established certainly, it will be assumed that the Rent and Outgoings would have

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increased annually by five per centum (5%) cumulative on each anniversary of the Date of Commencement.

13.1.3 Landlord's Right when Tenant Abandons Premises

If the Tenant vacates or abandons the Premises or otherwise repudiates this Lease without lawful excuse prior to the expiration of the term, the Landlord may without being under any obligation so to do seek to find another Tenant for the Premises. For that purpose the Landlord 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 Landlord to renovate, restore, clean, and secure the Premises without accepting or being deemed to have accepted a surrender of this Lease. It is the intention of the parties that this Lease and the obligations of the Tenant under this Lease subsist until another person enters into occupation of the Premises as Tenant or the Landlord expressly accepts a surrender of this Lease. For the purpose of this clause the Tenant 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 of that period of seven (7) days.

13.1.4 Reservation of Rights

The rights and powers conferred on the Landlord by this cl. 13.1 are in addition to any other right or power which may be conferred upon the Landlord at law or in equity.

13.2 Non-Waiver

No delay or omission to exercise any right power or remedy accruing to the Landlord upon any continuing breach or default under this Lease impairs any right, power, or remedy of the Landlord and it will not be construed to be a waiver of or acquiescence in any continuing breach or default or of or in any similar breach or default occurring subsequently; and no waiver of any single breach or default will be deemed a waiver of any earlier or later breach or default. Any waiver, permit, consent, or approval of any kind or character of any breach or default under this Lease or any waiver of any provision or condition of this Lease must be in writing and will be effective only to the extent set out in the written waiver. All remedies either under this Lease or by law or otherwise afforded to the Landlord are cumulative and not alternative.

13.3 Accord and Satisfaction

No payment by the Tenant or receipt by the Landlord of a lesser amount than the Rent stipulated in this Lease will be considered to be other than on account of the stipulated Rent. An endorsement or statement on a cheque or in a letter accompanying a cheque or payment as Rent will not be considered to be an accord or satisfaction. The Landlord may accept a cheque or payment without prejudice to the Landlord's right to recover the balance of the Rent or pursue any other remedy.

13.4 Performance of Tenant's Covenants by Landlord

If the Tenant makes default in payment of any moneys covenanted by the Tenant to be paid or in the observance or performance of any of the covenants contained or implied in this Lease and on the part of the Tenant to be observed and performed, the Landlord may pay that money and observe and perform those covenants and the Tenant will pay to the Landlord immediately upon demand all moneys which the Landlord expends in that behalf with interest calculated at the Stipulated Rate from the time of those moneys having been so expended to the date of payment.

13.5 Interest on Arrears

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The Tenant will pay to the Landlord interest on any Rent or other moneys which are in arrears calculated at the Stipulated Rate from the time of the Rent, or other moneys respectively falling due, to the date of payment.

14. DAMAGE OR DESTRUCTION

14.1 Substantially Unfit or Substantially Inaccessible

If the Premises are damaged by an event beyond the control of the Tenant or by an Insured Risk so as to render the Premises substantially unfit for the occupation and use of the Tenant or (having regard to the nature and location of the Premises and the normal means of access) substantially inaccessible, then:

14.1.1 EXCEPT where the damage has been caused by the negligent act or omission of the Tenant or of any servant, agent, licensee, invitee, customer, or visitor of the Tenant, or of any subtenant, licensee, or other occupier claiming by, through, or under the Tenant:

- (a) A proportionate part of the Rent and other moneys payable under this Lease according to the nature and extent of the damage sustained, abates and all or any remedies, for recovery of that proportionate part of the Rent and other moneys falling due after the damage, are suspended until the Premises have been restored or made fit for the occupation and use of the Tenant or accessible to the Tenant as the case may be.
- (b) Within fourteen (14) days of the Premises being rendered unfit or inaccessible, the Tenant may serve on the Landlord written notice that the Premises have been rendered unfit or inaccessible (a "Damage Notice"). Unless within the period of thirty-one (31) days after being served with a Damage Notice, the Landlord serves written notice on the Tenant that the Landlord will restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant (a "Restoration Notice"), the Tenant may (not before the expiration of the period of thirty-one (31) days and not after the expiration of the period of seventy-five (75) days from the date of service of the Damage Notice on the Landlord) terminate this Lease by notice in writing to the Landlord.
- (c) If the Landlord gives a Restoration Notice to the Tenant and does not within a reasonable time substantially commence and diligently proceed to restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant, the Tenant may serve on the Landlord notice of intention to terminate this Lease. Unless the Landlord upon receipt of that notice proceeds with reasonable expedition and diligence to restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant as the case may require, the Tenant may terminate this Lease by giving not less than one (1) month's notice in writing to the Landlord and at the expiration of the last mentioned notice this Lease terminates.

14.1.2 If in the Landlord's honest and reasonable opinion the damage to the Premises or the Building is such that it is impractical or undesirable to restore the Premises or make them fit for the occupation and use of the Tenant or render them accessible to the Tenant or if the damage to the Premises occurs less than two and one half (2½) years prior to the expiration of the term of this Lease, the Landlord may terminate this Lease by giving not less than one (1) month's notice in writing to the Tenant and at the expiration of that notice this Lease terminates.

14.1.3 No liability attaches to the Landlord by reason of termination of this Lease under cl. 14.1.1 or cl. 14.1.2, and otherwise any termination is without prejudice to the rights of either party in

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respect of any antecedent breach or nonobservance of any covenant or provisions of this Lease.

14.2 Wholly Unfit or Totally Inaccessible

If the Premises are taken for any public purpose or are destroyed or so damaged that the Premises are rendered wholly unfit for the occupation and use of the Tenant or totally inaccessible:

14.2.1 The Landlord may, despite anything contained or implied in this Lease, terminate this Lease by giving not less than one (1) month's notice in writing to the Tenant and at the expiration of that notice this Lease terminates and no liability attaches to the Landlord by reason of the termination.

14.2.2 Except where the destruction or damage has been caused or contributed to by the negligent act or omission of the Tenant or of any servant, agent, licensee, invitee, customer, or visitor of the Tenant or of any subtenant, licensee, or other occupier claiming by through or under the Tenant, the Tenant may terminate this Lease by giving not less than one (1) month's notice in writing to the Landlord and at the expiration of that notice this Lease terminates.

14.2.3 Any termination under cl. 14.2.1 or cl. 14.2.2 is without prejudice to the rights of either party in respect of any antecedent breach or nonobservance of any covenant or provision of this Lease.

14.3 Resolution of Disputes

Any dispute arising under cl. 14.1 or cl. 14.2 will be determined by a member of the Valuers' Institute appointed by the President for the time being of that Institute on the application of the Landlord or the Tenant. The person so appointed will in making their determination act as an expert and not as an arbitrator and their determination will be final and binding on both parties. The cost of the determination will be borne by either or both of the Parties (and if by both of the Parties in the proportion between them) as the person making the determination decides.

15. GENERAL

15.1 Time to be of the Essence

Time is essential for all obligations of the Tenant in this Lease. The Tenant indemnifies the Landlord against all losses, costs, and expenses which the Landlord may sustain or incur as a consequence of any failure by the Tenant to perform and observe on the due date any obligations on its part contained or implied in this Lease.

15.2 Entire Agreement

The terms and conditions set out in this Lease contain the entire agreement as concluded between the Parties despite any negotiations or discussions prior to the execution of this Lease and despite anything contained in any brochure, report, or other document prepared by the Landlord for submission to potential Tenants of the Premises. The Tenant also acknowledges that it has not been induced to enter into this Lease by any representation verbal or otherwise made by or on behalf of the Landlord which is not set out in this Lease.

15.3 Negating of Moratorium

To the fullest possible extent, the provisions of all statutes now existing and subsequently to come into force and operating directly or indirectly to lessen or otherwise modify or vary or affect in favour of the Tenant the obligations of the Tenant or to stay, postpone, or otherwise prevent or prejudicially affect the exercise by the Landlord of all or any of the rights, powers, and remedies conferred on the Landlord by this Lease are expressly negated and excluded from this Lease.

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15.4 New Guarantor

Within fourteen (14) days of the death of any Guarantor during the term of this Lease, or of any Guarantor becoming bankrupt, or having a receiving order made against them, or becoming insane, or being a company passing a resolution to wind up, or entering into liquidation, or having a receiver appointed, the Tenant will give notice of this to the Landlord. If required by the Landlord, the Tenant at their own expense must, within twenty-eight (28) days, procure some other person acceptable to the Landlord to execute a guarantee in respect of the Tenant's obligations contained in this Lease in the form of the Guarantor's covenants which are contained in this Lease or in any guarantee separate from this Lease.

15.5 Inspection by Purchaser or Tenant

The Tenant will:

- 15.5.1 allow the Landlord to exhibit on the Premises notices advertising the Premises for sale;
- 15.5.2 at all reasonable times upon prior reasonable notice permit the Landlord to show the Premises to prospective purchasers; and
- 15.5.3 within the six (6) month period immediately preceding the expiration of the term granted by this Lease, permit the Landlord to show the Premises to prospective Tenants at all reasonable times, on prior reasonable notice, and allow the Landlord to affix and exhibit on the Premises where the Landlord thinks fit the usual "For Sale" and/or "To Let" notices. In each case the notices may display the name and address of the Landlord and its agents.

The Tenant will not remove any notice without the prior written consent of the Landlord.

15.6 Modification of Implied Covenants

The obligations and powers implied in Leases by ss. 105 and 107 of the *Property Law Act 1974* are negated. All other covenants on the part of the Tenant implied by the *Property Law Act 1974* are not negated but are modified to the extent of any inconsistency with the provisions of this Lease.

15.7 Notices

Unless otherwise stated, any notice given by the Landlord is deemed to be duly given and served on the Tenant if signed by the Landlord or the solicitors for the Landlord or if the Landlord is a corporation then by any officer of or the solicitors for the Landlord and delivered to the Tenant (or if more persons than one are Tenants under this Lease then to any one or more of them) personally or if the Tenant is a corporation then to any person at its registered office or principal place of business in this State or if left at the Premises or sent to the Tenant through the post in an envelope addressed to the Premises and in the latter case service is deemed to have been effected on the day following posting. Any notice by the Tenant to the Landlord must be signed by the Tenant and must be given or served in the manner prescribed by s. 347 of the *Property Law Act 1974*.

15.8 Holding Over

If the Tenant with the consent of the Landlord remains in occupation of the Premises after the expiration of the term of this Lease then:

- 15.8.1 the Tenant will be a Tenant from month to month of the Landlord of the Premises on the terms of this Lease so far as they are applicable to a monthly tenancy;
- 15.8.2 the monthly tenancy may be determined by either party in the manner prescribed by Div. 4 of Part VIII of the *Property Law Act 1974*; and

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15.8.3 the rent payable in respect of the monthly tenancy will be the amount of Rent payable monthly under this Lease immediately prior to the expiration of the term and will be payable in advance.

15.9 Severability

If it is held by a Court of competent jurisdiction that:

15.9.1 any part of this Lease is void, voidable, illegal, or unenforceable; or

15.9.2 this Lease would be void, voidable, illegal, or unenforceable unless any part of this Lease were severed,

that part will be severable from and will not affect the continued operation of the rest of this Lease.

16. TRUSTS

16.1 Trusts

If the Tenant at any time upon or subsequent to entering into this Lease or entering into or incurring the obligations contained in this Lease is acting in the capacity of trustee of any trust ("the Trust") then whether or not the Landlord may have notice of the Trust, the Tenant covenants with the Landlord as follows:

16.1.1 This Lease extends to all rights of indemnity which the Tenant now or subsequently may have against the Trust and the trust fund.

16.1.2 The Tenant has full and complete power and authority under the Trust to enter into this Lease and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Tenant against the Trust or the trust fund. The Tenant will not release that right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

16.1.3 Despite the terms of any deed of trust or settlement or other document, the Tenant will be and at all times remain personally liable to the Landlord for the due performance fulfilment and observance of the obligations in this Lease.

16.1.4 During the currency of this Lease the Tenant will not without the consent in writing of the Landlord cause, permit, or suffer to happen any of the following events:

- (a) the removal replacement or retirement of the Tenant as sole trustee of the Trust;
- (b) any alteration to or variation of the terms of the Trust;
- (c) any advancement or distribution of capital of the Trust; or
- (d) any resettlement of the trust property.

The Tenant further covenants with the Landlord that it will be an event of default under this Lease if the Tenant is guilty of any breach of trust in respect of the Trust or ceases to be the sole trustee of the Trust or otherwise suffers removal, replacement, or retirement as trustee of the Trust.

17. OPTION

17.1 Option to Renew

If the Tenant:

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- 17.1.1 not less than six (6) months prior to the expiration of this Lease gives written notice to the Landlord that it wishes to renew this Lease; and
- 17.1.2 has not breached its obligations under this Lease,  
then the Landlord will grant to the Tenant a further Lease of the Premises on the following conditions:
- 17.1.3 the term of the further Lease will be the period referred to in Item 9 of the Reference Data;
- 17.1.4 the rent for the first year of the renewal term will be calculated under cl. 3.2.2 as if the date of commencement of the renewal term were a Review Date and the method of review were as nominated for that Review Date in Item 10 of the Reference Data;
- 17.1.5 the terms and conditions will be the same as the terms and conditions of this Lease except for the changes specified in the Modification Schedule at the end of this clause; and
- 17.1.6 the Tenant will pay all costs of the Landlord including the legal costs of the Landlord calculated on a solicitor and own client basis of and incidental to the grant of the new Lease.

Modification Schedule

- (a) this clause 17.1 will be deleted when the first right of renewal in Item 9 of the Reference Data has been exercised.
- (b) The Review Dates in Item 5 of the Reference Data will be deleted and replaced with the Review Dates in Item 10 of the Reference Data.

17.2 Second Option to Renew

If the Tenant:

- 17.2.1 not less than six (6) months prior to the expiration of the first option term gives written notice to the Landlord that it wishes to renew this Lease; and
- 17.2.2 has not breached its obligations under this Lease during the first option term,  
then the Landlord will grant to the Tenant a further Lease of the Premises on the following conditions:
- 17.2.3 the term of the further Lease will be the period referred to in Item 9 of the Reference Data;
- 17.2.4 the rent for the first year of the renewal term will be calculated under cl. 3.2.2 as if the date of commencement of the renewal term were a Review Date and the method of review were as nominated for that Review Date in Item 10 of the Reference Data;
- 17.2.5 the terms and conditions will be the same as the terms and conditions of this Lease except for the changes specified in the Modification Schedule at the end of this clause; and
- 17.2.6 the Tenant will pay all costs of the Landlord including the legal costs of the Landlord calculated on a solicitor and own client basis of and incidental to the grant of the new Lease.

Modification Schedule

- (a) this clause 17.2 will be deleted when the second right of renewal in Item 9 of the Reference Data has been exercised.

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- (b) The Review Dates in Item 5 of the Reference Data will be deleted and replaced with the the Review Dates in Item 10 of the Reference Data.

17.3 Third Option to Renew

If the Tenant:

- 17.3.1 not less than six (6) months prior to the expiration of the second option term gives written notice to the Landlord that it wishes to renew this Lease; and
- 17.3.2 has not breached its obligations under this Lease during the first option term,  
then the Landlord will grant to the Tenant a further Lease of the Premises on the following conditions:
- 17.3.3 the term of the further Lease will be the period referred to in Item 9 of the Reference Data;
- 17.3.4 the rent for the first year of the renewal term will be calculated under cl. 3.2.2 as if the date of commencement of the renewal term were a Review Date and the method of review were as nominated for that Review Date in Item 10 of the Reference Data;
- 17.3.5 the terms and conditions will be the same as the terms and conditions of this Lease except for the changes specified in the Modification Schedule at the end of this clause; and
- 17.3.6 the Tenant will pay all costs of the Landlord including the legal costs of the Landlord calculated on a solicitor and own client basis of and incidental to the grant of the new Lease.

Modification Schedule

- (a) this clause 17.3 will be deleted when the last right of renewal in Item 9 of the Reference Data has been exercised.
- (b) The Review Dates in Item 5 of the Reference Data will be deleted and replaced with the Review Dates in Item 10 of the Reference Data.

17.4 New Guarantee

If at the date of exercise of the options contained in clauses 17.1, 17.2 and 17.3 the obligations of the Tenant under this Lease are the subject of guarantee or indemnity, the Tenant must:

- 17.3.1 procure from the persons who provided the guarantee or indemnity another guarantee or indemnity in respect of the Lease for the renewal term on the same terms apart from necessary changes; and
- 17.3.2 produce the properly executed, valid, and enforceable guarantee or indemnity to the Landlord within thirty (30) days after the Landlord provides to the Tenant the documentation for the new guarantee or indemnity for the renewal term.

The time limit referred to in cl. 17.3.2 is essential. If the Tenant fails to comply with the time limit, the Landlord may terminate the new Lease for the renewal term by notice in writing to the Tenant.

18. POWER OF ATTORNEY

- 18.1 The Tenant irrevocably appoints the Landlord and (if the Landlord is a corporation) the Directors, the General Manager, and the Secretary for the time being of the Landlord jointly and each of them



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severally to be the attorneys of the Tenant at any time after the power contained in this Lease to re-enter has been exercised to:

- 18.1.1 execute and sign a transfer or a surrender of this Lease;
- 18.1.2 procure the transfer or surrender to be registered;
- 18.1.3 appoint, from time to time, a substitute or substitutes and revoke those appointments; and
- 18.1.4 do, execute, and perform any act, deed, matter, or thing in accordance with this clause as fully and effectually as the Tenant could do. The Tenant will ratify and confirm everything the attorneys or any substitute or substitutes lawfully do or cause to be done in accordance with this clause.

A statutory declaration by an attorney that the power of re-entry contained in this Lease has been exercised will be sufficient proof of that fact.

19. TERMINATION OF LEASE

19.1 Yield Up

The Tenant will at the expiration or sooner determination of the term of this Lease yield up the Premises in the order and condition described in Part 6.

19.2 Remove Fittings

If the Tenant does not do so as of right under the provisions of cl. 7.5, the Tenant will, if so required by the Landlord, remove from the Premises within fourteen (14) days from the expiration or sooner determination of the term of this Lease all fixtures, fittings, floor coverings, signs, and notices or contents of every description erected or installed by the Tenant and requested to be removed by the Landlord. The Tenant will make good any damage caused to the Premises by the removal and if required by the Landlord will re-alter any alterations made by the Tenant so that the Premises are converted back to their original layout. The Landlord may at its option cause the fixtures, fittings, floor coverings, signs, and notices or contents to be removed and to be stored in a public warehouse or elsewhere at the risk of the Tenant and any damage to be made good and any alterations to be re-altered. The Landlord may recover the costs of removal, storage, making good, and/or re-alterations from the Tenant as a liquidated debt payable on demand.

19.3 Abandoned Fittings

Any fittings or fixtures not removed by the Tenant under cl. 7.5 and cl. 19.2 will be deemed abandoned by the Tenant and will be and become the property of the Landlord. Nothing contained in this clause relieves the Tenant from, and except where the Landlord agrees in writing to the contrary the Tenant will be liable to the Landlord for, the cost and expense of and associated with any removal by the Landlord of fittings and fixtures not removed by the Tenant from the Premises and the cost and expense of and associated with the making good of any damage to the Premises caused by that removal by the Landlord.

19.4 Stock-in-Trade

The Tenant will remove from the Premises all stock-in-trade and other movable chattels prior to the expiration of the term of this Lease except that if this Lease is determined prior to the due date of expiry by effluxion of time the Landlord will if requested so to do by the Tenant allow the Tenant, its servants, and contractors access to the Premises during seven (7) days next following the date of determination between the hours of 9.00 am and 5.00 pm for the purpose of removing stock-in-trade and movable chattels from the Premises. If the Tenant fails to remove stock-in-trade or chattels as mentioned in this clause, the Landlord may at its option:

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- 19.4.1 cause the stock-in-trade or chattels to be removed and stored in a public warehouse or elsewhere at the risk and at the cost of the Tenant; or
- 19.4.2 treat the stock-in-trade or chattels as if the Tenant had abandoned its interest in them and deal with them in any manner the Landlord thinks fit.

The Tenant indemnifies the Landlord in respect of any damage done to the Premises in or about the removal of stock-in-trade or chattels by the Tenant, its servants, or contractors and also in respect of any costs incurred by the Landlord in the removal and storage of them. The Tenant also indemnifies in respect of all claims, demands, actions, costs, judgments, and expenses which the Landlord may suffer or incur at the suit of any person (other than the Tenant) claiming an interest in the stock-in-trade or chattels by reason of the Landlord acting in accordance with this clause.

19.5 Removal of Signs

At the expiration or earlier determination of this Lease, the Tenant will remove or clean off any advertising or other sign, advertisement, or hoarding painted, erected, or placed on or in the Premises and restore the Premises to the condition they were in immediately before the advertisement, sign, or hoarding was painted, erected, or set up.

20. SECURITY

20.1 Bond

- (1) The Tenant must prior to entering possession of the Premises pay to the Landlord the sum set out in Item 13 of the Reference Data as a cash bond for performance by the Tenant of this Lease.
- (2) As soon as the rent payable from each rent review is calculated, the Tenant must pay to the Landlord as a further cash bond an amount which, when added to the cash bond already held by the Landlord, equals the total of 2 Months rent at the new rate.
- (3) The Tenant may instead of paying the amounts under cl. 20.1(1) and 20.1(2), provide to the Landlord an Australian Trading Bank guarantee, on terms acceptable to the Landlord, for the observance and performance by the Tenant of all the obligations and provisions contained in this Lease. The maximum liability of the bank must at least equal the total of the cash bonds required by cl.20.1 (1) and 20.1(2). The Australian Trading Bank guarantee must not contain an expiry date.
- (4) If at any time the Tenant fails to observe and perform any of the Tenant's obligations in this Lease, the Landlord may take all or any part of the cash bond or call up any guarantee as compensation for any loss or damage suffered or which may be suffered by the Landlord because of that failure. Any such action by the Landlord will not be treated as a waiver of the Tenant's failure and will not limit any other right or remedy of the Landlord in respect of it.
- (5) If any part of the cash bond is taken or any guarantee called up by the Landlord and this Lease remains on foot, the Tenant must immediately upon demand by the Landlord pay to the Landlord the amount taken or called up. This amount is to be held as a cash bond under this clause.
- (6) If the Landlord's interest in the Premises is transferred, the Landlord may pay or transfer the bonds and guarantees to the transferee. Upon payment or transfer the Landlord will be released from all legal responsibility to the Tenant or to any other person for the bonds or guarantees. If the Landlord is unable to assign a bank guarantee, then the Tenant must do whatever is necessary on the Tenant's part to give any party nominated by the transferee the benefit of the bank guarantee, including the provision of a replacement bank guarantee.

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21. REPAIR AND MAINTENANCE ON EXPIRATION OF LEASE

Not Applicable

22. REDEVELOPMENT

Intentionally deleted.

23. AIR CONDITIONING MAINTENANCE

The Tenant shall at the Tenant's expense have the air conditioning unit in the Premises serviced and maintained at least one every six (6) months by a qualified tradesman and provide to the Landlord records of such services and maintenance when requested by the Landlord. The Tenant shall enter into an agreement with some other person or company approved by the Landlord for the maintenance, repair and servicing of the air conditioning unit and plant and the Tenant shall without delay do so and all costs, charges and expenses payable under such agreement shall then be payable by the Tenant to such other person and or company when such agreement is entered into. The Tenant shall from time to time at the request of the Landlord supply to the Landlord evidence that such agreement is in full force and effect.

24. INDEMNITY UNDER CONTAMINATED LAND ACT

The Tenant shall indemnify and keep indemnified the Landlord and the managing director manager or other officer of the Landlord against all actions demands losses damages costs and expenses which the Landlord may suffer or incur or to which the Landlord may be put pursuant to the provisions of the Contaminated Land Act 1991 arising directly or indirectly from the use of the Premises by the Tenant. In any proceedings to recover indemnity under this clause the onus of proving the contamination is not attributable to the activities of the Tenant will rest upon the person alleging it.

25. DEMOLITION

25.1 If the Landlord elects at any time during the period of this Lease to extend, renovate, demolish or rebuild the centre or any part or parts of the centre then the Landlord may give the Tenant 90 days' notice in writing of its intention to terminate this Lease.

25.2 At the expiration of the period of 90 days this Lease shall automatically cease and determine but without prejudice to any right of action or other remedy either party may have against the other in respect of any antecedent breach of this Lease.

25.3 The Landlord must prepare and deliver to the Tenant a surrender of this Lease. The Tenant must execute the surrender of the Lease and return it to the Landlord within 7 days of its receipt by the Tenant. The Landlord is irrevocably authorised to insert in the surrender of this Lease the date of surrender and to otherwise complete the surrender in order for it to be registered in the Department of Natural Resources (if necessary).

25.4 The Tenant shall do all such acts, matters and things as may be reasonably required by the Landlord to enable registration of the surrender to occur.

26. SPECIAL CONDITION

26.1 Landlord's Works

The Landlord will at the Landlord's expense cause to be installed in the Premises an area of the mezzanine floor referred to in Item 7 of the Reference Data with dimensions of approximately 6 metres

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by 6.55 metres. The Landlord must obtain the required approvals for the construction of this part of the mezzanine floor. The construction of the mezzanine floor will not increase the Tenant's rental as specified in the Lease, and the rental and outgoings will be inclusive of the cost of the mezzanine floor.

27 GUARANTEE AND INDEMNITY

27.1 IN CONSIDERATION of the Landlord at the request of the Guarantor entering into this Lease with the Tenant, the Guarantor covenants and agrees with the Landlord the following:

27.1.1 The guarantor will be liable jointly and severally with the Tenant for the due and punctual payment of all Rent and other moneys to be paid by the Tenant under this Lease and for the due performance and observance by the Tenant of all the covenants, terms, and conditions of this Lease on the part of the Tenant to be performed and observed.

27.1.2 The Guarantor indemnifies the Landlord from and against all losses, damages, costs, and expenses which the Landlord may suffer or incur in consequence of any breach or nonobservance of any of the covenants, terms, and conditions of this Lease on the part of the Tenant to be performed or observed. The Guarantor agrees that the Guarantor will remain liable to the Landlord under this indemnity despite the fact that, as a consequence of any breach or nonobservance, the Landlord has exercised any of its rights under this Lease including its rights of re-entry and even though the Tenant (being a corporation) may be wound up or dissolved or (being a natural person) may be declared bankrupt and even though the guarantee given by the Guarantor may for any reason be unenforceable either in whole or in part.

27.1.3 On any default or failure by the Tenant to observe and perform any of the covenants terms and conditions of this Lease, the Guarantor will immediately on demand by the Landlord pay all Rent and other moneys and make good to the Landlord all losses, damages, costs, and expenses sustained or incurred by the Landlord by reason or in consequence of any default in performing or observing any of the covenants, terms, and conditions of this Lease. The Guarantor will also pay to the Landlord interest at the Stipulated Rate from the time of any Rent or other moneys respectively falling due to the date of payment added without the necessity of any prior demand having been made on the Tenant.

27.1.4 The liability of the Guarantor under this guarantee and indemnity will not be affected by the granting of time or any other indulgence to the Tenant; or by any assignment or purported assignment of the interest of the Tenant under this Lease; or by the compounding, compromise, reLease, abandonment, waiver, variation, or renewal of any of the rights of the Landlord against the Tenant; or by any variation of this Lease; or by the filling-up of this Lease by the Landlord or its solicitors under the terms of any agreement for Lease; or by any neglect or omission to enforce those rights; or by any other thing which under the law relating to sureties would or might but for this provision reLease the Guarantor in whole or in part from its obligations under this guarantee and indemnity.

27.1.5 Even though as between the Guarantor and the Tenant the Guarantor may be a surety only, as between the Guarantor and the Landlord, the Guarantor is deemed to be a primary debtor and contractor jointly and severally with the Tenant.

27.1.6 To the fullest extent permitted by law the Guarantor waives its rights as surety or indemnifier (legal equitable statutory or otherwise) as may at any time be inconsistent with any of the provisions of this guarantee and indemnity.

27.1.7 The covenants and agreements made by the Guarantor are not conditional or contingent in any way or dependent upon the validity or enforceability of the covenants and agreements of any other person and remain binding even though any other person does not execute this Lease or this guarantee and indemnity.

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- 27.1.8 The obligations of the Guarantor under this guarantee and indemnity continue until all Rent and other moneys payable under this Lease have been paid and until all other obligations and indemnities have been performed observed and satisfied. Those obligations will not be reduced or affected by any notice to quit given by either Party to this Lease or the death, insolvency, liquidation, or dissolution of the Tenant or the Guarantor or either of them.
- 27.1.9 The Guarantor does not execute this guarantee and indemnity as a result of or by reason of any promise, representation, statement, information, or inducement of any nature or kind given or offered to the Guarantor by the Landlord or on the Landlord's behalf whether in answer to any enquiry by or on behalf of the Guarantor or not. Except as provided in this guarantee and indemnity the Tenant was not prior to the execution of this guarantee and indemnity by the Guarantor and is not subsequently under any duty to disclose to the Guarantor or to do or execute any act matter or thing relating to the affairs of the Tenant or its transactions with the Landlord.
- 27.1.10 In the event of the Tenant during the term of this Lease entering into liquidation (or being a person, entering into bankruptcy) and the liquidator or trustee in bankruptcy disclaiming this Lease, or if the Tenant should be dissolved, the Guarantor will accept from the Landlord a Lease of the Premises for a term equal in duration to the residue remaining unexpired of the term of this Lease. The new Lease will contain the same TENANT's and LANDLORD's covenants respectively and the same provisos and conditions in all respects (including the proviso for re-entry) as are in this Lease contained together with any other covenants, provisos, and conditions as the Landlord may reasonably require. On the execution by the Landlord of the further Lease, the Guarantor will pay all costs of the further Lease (including all costs of and incidental to the preparation, execution, and stamping of the Lease and all stamp duty and registration fees) and will immediately execute and deliver to the Landlord the Lease in triplicate.
- 27.1.11 In the event of a further Lease of the Premises being granted by the Landlord to the Tenant (including to any successors of the Tenant or to its permitted assigns) consequent upon the exercise of any option to renew contained in this Lease or in the event of the Landlord granting to the Tenant any extension of the term of this Lease, then this guarantee and indemnity will be deemed to extend to the further Lease or the extension of the term as the case may be. This guarantee and indemnity will be read and construed as if the further Lease were this Lease and the Tenant holding under it were the Tenant referred to in this Lease.
- 27.1.12 All notices or demands to be given or made to or upon the Guarantor will be deemed to be duly given and served on the Guarantor if signed by the Landlord or the solicitors for the Landlord or if the Landlord is a corporation then by any officer of the corporate Landlord or the solicitors for the corporate Landlord and delivered to the Guarantor (or if there is more than one Guarantor then to any one or more of them) personally, or if the Guarantor is a corporation then to any person at its registered office or principal place of business in this State or if left at the last known place of business or abode of the Guarantor or if left at or sent to the Guarantor through the post in a prepaid envelope addressed to the Guarantor at the address (if any) of the Guarantor set out in Item 13 of the Reference Data. A notice or demand which is posted will be deemed to have been served on the Guarantor on the day following the date of posting.
- 27.1.13 In the event of the invalidity of any part or provision of this guarantee and indemnity that invalidity will not affect the validity or the enforceability of any other part or provision of this guarantee.
- 27.1.14 Where there is more than one person or corporation which together constitute the Guarantor to this Lease, the obligations and liabilities of each of those persons or corporation are joint and several.

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27.1.15 This guarantee takes effect immediately upon its execution and continues to be of full effect whether or not the Lease is subsequently registered in the Department of Environment and Resource Management. References to "this Lease" include any equitable Lease agreement for Lease or periodic tenancy arising upon execution or acceptance by the Tenant of the instrument to which this guarantee is annexed.

27.1.16 In the event of the Landlord transferring the Land or otherwise assigning the Landlord's rights and obligations as Landlord under this Lease, the Landlord's rights under this guarantee (whether or not there is any express assignment of the rights) will be deemed to be assigned to the owner from time to time of the Land or other assignee of the Landlord's rights and obligations.

SIGNED, SEALED AND DELIVERED

by the said David John Hawkins  
this 23<sup>rd</sup> day of DECEMBER 2015.



.....  
David John Hawkins



in the presence of

.....  
~~A Justice of the Peace/Solicitor~~

WARREN DEAN WOOD  
SOLICITOR

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**ANNEXURE A**

**REGULATIONS**

1. Do not obstruct the entrance halls, passages and stairways of the Complex. Use them only to enter and leave the Premises.
2. Obtain the written approval of the Landlord before moving safes, furniture, office furniture, machinery or plant in or out of the Complex.
3. Give the Landlord prompt notice in writing of any breakages or defect in the water-pipes, air-conditioning ducts, electric lights or other fittings.
4. Do not hang clothing, towels or other similar articles out of the windows or upon the roof of the Complex.
5. Give the Landlord your private address and telephone number for contact out of hours.
6. Prevent leakages of conditioned air and excess infiltration of air into the premises.
7. Keep all garbage and refuse in tightly secured containers. Remove garbage and refuse through the loading area at permitted times. Keep rubbish containers inside the Premises.
8. Receive and deliver goods through the loading area at permitted times.
9. Do not leave things in the Common Areas.
10. Do not give toilet keys to members of the public.
11. Do not park in the loading bay area except when loading or unloading.
12. Keep clean any parts of the Common Areas or any public footpath adjoining your Premises.
13. You and your employees may park your cars only in those parking spaces designated by the Landlord.
14. Do not use any radio or television aerial, loud speaker, screen, amplifier, public address system or similar device to the extent it may be heard or seen from outside the Premises.