

LEASE
New South Wales
Real Property Act 1900

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

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(A) TORENS TITLE

Property leased
Certificate of Title Folio Identifier 100/1176602

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
426	Sparks Helmore DX 282 Sydney Tel (02) 9373 3555 Reference:	L

(C) LESSOR

Bermark Pty Limited ACN 000 798 658

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

(D)

Encumbrances (if applicable):

(E) LESSEE

Caltex Australia Petroleum Pty Limited ACN 000 032 128

(F)

TENANCY:

(G) 1 TERM 10 years

2. COMMENCING DATE 15 May 2013

3. TERMINATING DATE 14 May 2013

4. With an **OPTION TO RENEW** for a period of 2 x 5 years
set out in clause 3.2 of Annexure A

5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE(S) A** hereto.

8. Incorporates the provisions set out in N.A. with the Land and
Property Management Authority as No. N.A.

9. The **RENT** is set out in clause No. 4 of Annexure A

DATE 14 May 2013

(H) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

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

Signature of witness:

Signature of lessor:

Name of witness: SEE ANNEXURE
Address of witness: SEE ANNEXURE

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

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

Signature of witness:

Signature of lessee:

Name of witness: SEE ANNEXURE
Address of witness: SEE ANNEXURE

(I) STATUTORY DECLARATION *

I

solemnly and sincerely declare that—

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

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

Made and subscribed at
on

in the State of New South Wales
in the presence of—

Signature of witness:

Signature of lessor:

Full name of witness:
Address of witness:

Qualification of witness: [tick one]
 Justice of the Peace
 Practising Solicitor
 Other qualified witness [specify]

* As the Land and Property Management Authority may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment.

**THIS AND THE FOLLOWING' PAGES COMPRISE ANNEXURE 'A'
REFERRED TO IN THE LEASE MADE BETWEEN BERMARK PTY
LIMITED (AS 'LESSOR') AND CALTEX AUSTRALIA PETROLEUM PTY
LIMITED (AS 'LESSEE')**

TABLE OF CONTENTS

1	INTERPRETATION	6
	1.1 Definitions.....	6
	1.2 General.....	10
2	Exclusion of statutory provisions	12
3	TERM	12
	3.1 Term of Lease.....	12
	3.2 Option of renewal.....	12
	3.3 Holding over.....	13
4	Rent	14
	4.1 Payment of Rent.....	14
	4.2 Payment of instalments.....	14
	4.3 Index review of Rent.....	14
	4.4 Market review of Rent.....	14
	4.5 Lessee's dispute of Rent.....	15
	4.6 Cap and Collar.....	17
5	Outgoings	17
	5.1 Payment by Lessee.....	17
	5.2 Cost of Services.....	17
6	Use of Premises	17
	6.1 Permitted use.....	17
	6.2 No warranty as to use.....	18
	6.3 Compliance with Laws and Requirements.....	18
	6.4 Overloading.....	18
	6.5 Other activities by Lessee.....	19
	6.6 Signs.....	19
	6.7 For sale/to let.....	19
	6.8 Dangerous Substances.....	20
	Maintenance, repairs, alterations and additions	20
	7.1 Repairing obligations.....	20
	7.2 Lessor's repairing obligations.....	21
	7.3 Lessor's right of inspection.....	21
	7.4 Enforcement of repairing obligations.....	21
	7.5 Lessor/Lessee may repair.....	21
	7.6 Alterations to Premises.....	22
	7.7 Notice to Lessor of damage, accident etc.....	22
	7.8 Fire Fighting Equipment.....	22
8	Tanks, Linework and fuel equipment	23
	8.1 Ownership and removal of Tanks and Linework.....	23
	8.2 Installation with Lessor's Consent.....	23
	8.3 Lessee to obtain consents.....	23
	8.4 Installation at cost of Lessee.....	23
	8.5 Maintenance of Fuel Equipment:.....	23
	8.6 Lessee may not replace and remove Tanks and Linework.....	24
9	Assignment and sub-letting	24
	9.1 Application of this clause 9.1.....	24
	9.2 No disposal of Lessee's interest.....	24

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	9.3	Corporate ownership	25
10		Insurance and indemnities.....	25
	10.1	Insurance to be taken out by Lessee.....	25
	10.2	Lessee's global insurance policy	25
	10.3	Insurances to be taken out by the Lessor	26
	10.4	Lessee's indemnities.....	27
	10.5	Exclusion of Lessee's liability.....	28
	10.6	Lessor's indemnities	28
	10.7	Exclusion of Lessor's liability.....	28
	10.8	Lessee to Pay Additional Insurance Premiums.....	29
11		Damage, destruction and resumption.....	29
	11.1	Damage to or destruction of Premises	29
	11.2	Resumption of Premises.....	30
	11.3	Liability.....	30
	11.4	Dispute	30
12		Lessor's covenants	31
	12.1	Quiet Enjoyment	31
	12.2	Lessor's Mortgaging Obligation.....	31
13		Default and determination.....	31
	13.1	Default.....	31
	13.2	Essential terms	31
	13.3	Forfeiture of Lease.....	31
	13.4	Waiver.....	32
	13.5	Offer of money after determination	32
	13.6	Lessor's Entitlement to Damages:	32
14		Termination.....	33
	14.1	Lessee to yield up and remove its fittings.....	33
	14.2	Lessee not to cause damage	33
	14.3	Failure by Lessee to remove Lessee's Fittings.....	33
15		Environmental	34
	15.1	Definitions.....	34
	15.2	Lessee Requirements.....	34
	15.3	Vacation	35
16		Miscellaneous	36
	16.1	Notices	36
	16.2	Costs.....	36
	16.3	Services.....	37
	16.4	Severance	37
	16.5	Entire agreement.....	37
	16.6	Governing Law	37
17		Goods and Services Tax.....	37
18		Environmental Warranty	38

REFERENCE SCHEDULE

Item 1	Lessor	Bemark Pty Limited (ACN 000 798 658)
Item 2	Lessee	Caltex Australia Petroleum Pty Limited (ACN 000 032 128)
Item 3	Land (clause 1.1)	100/176600
Item 4	Promises (clause 1.1)	in Lancaster Street, Ingleburn
Item 5	Term (clause 3.1)	10 years
Item 6	Commencing Date	15 May 2013
Item 7	Terminating Date	14 May 2023
Item 8	Further Term (clauses 1.1 and 3.2)	2 x 5 years
Item 9	Rent (clauses 1.1 and 4)	\$245,000.00 per annum (excluding GST)
Item 10	Review Dates (clauses 4.3 and 4.4)	CPI Review Dates – each anniversary of the Commencement Date of this Lease Market Review Dates – upon the commencement of each option
Item 11	Lessee's Business	Unmanned diesel petroleum service station with ancillary services.
Item 12	Public Risk Insurance (clauses 10.1 and Error! Reference source not found.)	\$20 million
Item 13	Market Review – Maximum & Minimum (clause 4.6)	(a) Maximum: 10% of the Rent payable immediately before the relevant Review Date (b) Minimum: 10% of the Rent payable immediately before the relevant Review Date

1 INTERPRETATION

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Appurtenance includes any drain, basin, sink, toilet or urinal.

Australian Institute means the State division of The Australian Institute of Valuers and Land Economists (Inc.).

Authorised Officer means:

- (a) (for Lessee) in respect of the Lessee, any director or secretary, or any person from time to time nominated as an Authorised Officer by the Lessee; and
- (b) (for Lessor) in respect of the Lessor, any director or secretary of the Lessor.

Authority includes:

- (a) (government) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) (public utility) any provider of public utility services, whether statutory or not; and
- (c) (other body) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of Australia Limited).

Building means those improvements erected on part of the Land where the Premises are located.

Business Day means any day except Saturday or Sunday or a day that is a public holiday in the State.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

Consent means prior written consent.

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid but excluding loss of profits and economic loss), including where appropriate all Rates and all legal fees.

CPI Review means review in accordance with clause 4.3.

Date of Termination means:

- (a) the date specified in Item 7;
- (b) any earlier date on which this Lease is determined;
- (c) the date of expiration or earlier termination of the Further Term or, if more than one, the last Further Term; or
- (d) the end of any period of holding over under clause 3.3, as appropriate.

Event of Default means any event referred to in clause 13.1.

Further Term means the further term(s) specified in Item 8.

Goods and Services Tax (GST) means a goods and services tax, consumption tax, value added tax or like tax.

Index Number means:

- (a) (Consumer Price Index) the Consumer Price Index for the capital city of the State All Groups number published from time to time by the Australian Bureau of Statistics; or
- (b) (Average Weekly Earnings) if the Consumer Price Index is suspended or discontinued, the State's Average Weekly Earnings of All Employees published from time to time by the Australian Bureau of Statistics; or
- (c) (other cost of living index) if the system or practice of the determination of the State's Average Weekly Earnings of All Employees ceases, the index published by the Australian Bureau of Statistics which reflects changes in the cost of living in the State's capital city at the date of this Lease and at the time of variation of the Rent as determined by:
 - (1) agreement between the parties; or
 - (2) if the parties are unable to agree, the President of the Australian Institute, or by some person nominated by him, whose decision is conclusive and binding.

Land means the land specified in Item 3 and includes the subsoil.

Land Tax means land taxes or taxes in the nature of a tax on land, calculated on the taxable value of the Land at the rate which would be payable by the Lessor if the Land were the only land owned by the Lessor in the State and not subject to a trust.

Lease Year means every 12 month period commencing on and from the Commencing Date.

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

- (1) relating to the Land;
 - (2) for any Services of the type from time to time provided by the local government Authority for the locality in which the Premises and Land are situated; and/or
 - (3) for waste and general garbage removal from the Premises and Land (including any excess); and
- (b) (water rates) all charges payable to an Authority:
- (1) relating to the Premises and Land; and
 - (2) for the provision, reticulation or discharge of water and/or sewerage and/or drainage (including water and sewerage usage charges and meter rents).

Rent means the rent specified in Item 9 as varied from time to time in accordance with this Lease.

Review Date means each of the dates specified in Item 10.

Report means the further environmental report on the condition of the Land and/or the Premises if obtained by the Lessee under clause 15.1.

Requirement includes any requirement, notice, order, direction, recommendation, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise, and regardless of to whom it is addressed or directed.

Services means all services from time to time provided to the Premises or available for use, and means those of the following which are part of the Premises on the Commencing Date, namely:

- (a) lighting, gas, fuel, power, water, sewerage, and drainage;
- (b) fittings, fixtures, appliances, plant and equipment utilized for any of these Services.

State means the state or territory in which the Land is located.

Tanks means any tanks from time to time in the Premises for the storage of petroleum and associated products.

Term means the term of the Lease specified in Item 5.

Valuer means a person who:

- (a) (full member) is a full member of the Australian institute and has been for the last five years;
- (b) (licence) holds a licence to practise as a valuer of service station premises;

- (c) (active) is active in the relevant market at the time of his appointment and has made at least seven valuations of service station premises in the 24 months prior to his appointment;
- (d) (experience) has at least five years experience in valuing premises of the kind leased under this Lease; and
- (e) (prompt) undertakes to act promptly.

Umpire means a person who:

- (a) (Valuer) is at the relevant time a Valuer;
- (b) (appointed) is appointed under clause 4.5(f)(2);
- (c) (appointment in writing) accepts his appointment in writing; and
- (d) (determination) undertakes to hand down his determination within 28 days after being instructed to proceed.

1.2 General

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) (Plurals) The singular includes the plural and conversely.
- (b) (Gender) A gender includes all genders.
- (c) (Other grammatical forms) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) (Person) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) (clause) 'clause', 'Sub-clause', 'Paragraph', 'Sub-paragraph' or 'Schedule' refers to this Lease and 'Item' refers to the relevant item listed under the Reference Schedule to this Lease.
- (f) (Successors and assigns) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.
- (g) (Joint and several obligations) A reference to a right or obligation of any two or more Lessees confers that right, or imposes that obligation, as the case may be jointly and severally.
- (h) (Amendments and variations) A reference to an agreement or document is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.
- (i) (legislation) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it.

- (j) (Australian currency) A reference to 'dollars' or '\$' is to Australian currency.
- (k) (Schedules and annexures) Each schedule of, annexure to and/or, exhibit relating to this Lease forms part of it.
- (l) (Conduct) A reference to conduct includes any act, omission, statement or undertaking, whether or not in writing.
- (m) (Writing) A reference to 'writing' includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (n) (Substantial) 'Substantial' means not merely nominal.
- (o) (No limitation) Unless stated otherwise, one word or provision does not limit the effect of another.
- (p) (Whole) Reference to the whole includes part.
- (q) (Due and punctual) All obligations are taken to be required to be performed duly and punctually.
- (r) (Permit or omit) Words importing 'do' include do, permit or omit, or cause to be done or omitted.
- (s) (Bodies and Authorities)
 - (1) (Successors) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as that person, body or Authority.
 - (2) (President) Any reference to the President of a body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the body or Authority or any other person fulfilling the duties of President.
- (t) (Consent of Lessor) Unless the context otherwise requires, where the Lessor has a discretion or its consent or approval is required for anything the Lessor shall not unreasonably withhold or delay its decision, consent or approval.
- (u) (Emergency) Where anything is permitted in an 'emergency' the reasonable opinion of the Lessor as to the existence or non-existence of that state of affairs is conclusive.
- (v) (Relevant date) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.
- (w) ('Month') Month means calendar month.

(x) (Covenants)

- (1) (Generally) Subject to Sub-paragraph (ii), every obligation under this Lease:
 - (A) (deemed covenant) regardless of the form or context of the wording, is a covenant by the party undertaking that obligation; and
 - (B) (entire) continues throughout the Term and any holding over period and after that so far as the obligation remains to be observed or performed.
- (2) (Lessor's covenants) The covenants on the part of the Lessor include the person from time to time immediately entitled to the Premises at the end of this Lease.

2 Exclusion of statutory provisions

To the extent permitted by Law the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated.

3 TERM

3.1 Term of Lease

Subject to this Lease the Lessor leases to the Lessee and the Lessee takes the Premises for the Term.

3.2 Option of renewal

- (a) If:
- (1) a Further Term is specified in Item 8;
 - (2) the Lessee notifies in writing the Lessor not more than six (6) months and not less than three (3) months before the Terminating Date that it requires a further lease for the Further Term; and
 - (3) at the Terminating Date there is no subsisting Event of Default by the Lessee,

the Lessor shall grant to the Lessee a lease of the Premises for the Further Term commencing on the day after the Terminating Date.

- (b) That further lease will be on the same conditions as this Lease except that:
- (1) Clause 4.2(b) is to read "Intentionally deleted";
 - (2) the term to be specified in Item 5 of the further lease will be that specified in Item 8;

- (3) the date to be specified in Item 6 of the further lease will be the day after the Terminating Date;
- (4) the date to be specified in Item 7 of the further lease will be the last day of the term specified in Item 8 after the date of commencement of the further lease;
- (5) the amount of Rent to be specified in Item 9 of the further lease will be determined as specified in Item 10;
- (6) the amount of public risk insurance will be as stated in Item 12 and which may be increased from time to time by the Lessor, acting reasonably;
- (7) the number of Further Terms specified in Item 8 shall be reduced by one from the number specified in Item 8 of this Lease; and
- (8) if in any further lease the number of Further Terms specified in Item 8 would by the operation of clause 3.2(b)(6) be zero, then this clause 3.2 will not be included in that further lease so that the last further lease will end on the date specified in Item 8 of this Lease.

3.3 Holding over

If the Lessor does not inform the Lessee in writing prior to the expiration of the Term of the Lessor's refusal to the Lessee continuing to occupy the Premises beyond the Terminating Date (otherwise than under a further lease) then:

- (a) the Lessee does so as a monthly tenant and shall pay Rent:
 - (1) monthly on the 1st day following the Terminating Date; and
 - (2) equal to one-twelfth of the annual rate of Rent payable immediately prior to the Terminating Date with said annual rent having been increased in accordance with the formula set out in Clause 4.3 hereof;
- (b) the monthly tenancy is determinable at any time by either the Lessor or the Lessee by one month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease; and
- (c) if the Lessee is in breach of any of those conditions, then the monthly tenancy may be determined at any time by the Lessor giving 21 days notice to the Lessee, ending at any time.

4 Rent

4.1 Payment of Rent

The Lessee shall pay Rent to the Lessor at the relevant rate (as set out in Item 9 and reviewed under clauses 4.3 to 4.7) from time to time:

- (a) without demand;
- (b) annually in advance on the commencement date and anniversary date thereafter of the Term.

4.2 Payment of instalments

- (a) The rent for the first year shall be paid on the Commencing Date. Rental shall be paid to the place in Australia and in the manner directed by the Lessor from time to time.
- (b) Notwithstanding anything contained herein to the contrary, the Lessee is not required to pay any Rent, Outgoings or other monies payable under this Lease for the period commencing on the Commencing Date and terminating on the earlier of:
 - (1) 3 weeks from the Commencing Date; and
 - (2) the date the Lessee commences trade from the Premises.

Index review of Rent

- (a) On each Review Date for which a CPI Review is specified in Item 10, the Rent shall be varied in accordance with the following formula:

$$\frac{R = AXB}{C}$$

Where:

R = the Rent payable for the following Lease Year;

A = the Rent payable during the Lease Year just ended;

B = the Index Number Last published before the end of the Lease Year just ended; and

C = the Index Number last published before the commencement of the Lease Year just ended.

- (b) The rent payable shall not as a consequence of the beforegoing provisions be less than the amount of the rent payable immediately prior to the Review Date.

4.4 Market review of Rent

Should either party wish to review the Rent as at a Review Date for which a Market Review is specified in Item 10, then the following procedure applies.

- (a) Not earlier than six (6) months before and not later than three months after the relevant Review Date a party may notify the other of that party's assessment of the current market rent for the Premises. This assessment shall take into account the criteria contained in clause 4.5(g) which apply at that particular Review Date.
- (b) If neither party notifies the other of that party's assessment of the current market rent for the Premises then the rent shall be varied in accordance with the formula as set out in Clause 4.3 hereof with the proviso that the rent payable shall not as a consequence of the foregoing provisions be less than the amount of the rent payable immediately prior to the Review Date.

4.5 Lessee's dispute of Rent

If the parties do not agree with one party's assessment of the current market rent and the parties are unable to agree on the current market rent to apply from a particular Review Date then the following procedure applies.

- (a) A party shall within 30 days of being notified of the other party's assessment of the current market rent notify that party that it disputes that assessment and requires the Rent to be reviewed in accordance with this clause 4.5.
- (b) Each of the parties shall, within 21 days of a party's notice of dispute, nominate a Valuer to the other.
- (c) Subject to clauses 4.5(d) and (e), the parties shall endeavour to ensure that the nominated Valuers shall, within 28 days after being nominated, determine the current market rent of the Premises as at that particular Review Date. Each party shall provide to the other a copy of the assessment by the Valuer nominated by it as soon as practicable.
- (d) If a party fails to notify the other party that it disputes that party's assessment of the current market rent within the time required the Rent will be varied in accordance with the formula set out in Clause 4.3 hereof with the proviso that the rent payable shall not as a consequence of the before going provisions be less than the amount of the rent payable immediately prior to the Review Date.
- (e) If either party nominates a Valuer under clause 4.5(b) within the time required, but the other party fails to do so:
 - (1) the Rent shall be determined by the nominated Valuer within 28 days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by consent; and
 - (2) the Costs of the nominated Valuer's determination shall be apportioned equally between the Lessor and Lessee.
- (f) If the respective assessments of the Valuers are not the same or the Valuers do not provide a valuation of the current market rent of the Premises within the time specified in clause 4.5(c) then:

- (1) if the difference between the respective assessments of the Valuers is not greater than three percent of the aggregate of their assessments, then the Rent of the Premises will be one half of that aggregate;
 - (2) in all circumstances other than those covered by clause 4.5(f)(1), the Valuers shall agree on and appoint an Umpire;
 - (3) if either or both of the Valuers for any reason fail to agree on and appoint the Umpire within seven days from the end of the time required for them to make a determination, then the Lessor or the Lessee may request the President of the Australian Institute to appoint the Umpire; and
 - (4) if it becomes necessary for the Umpire to determine the current market rent, his determination will be final and binding on the parties and in considering his determination the Umpire shall:
 - (A) have regard to any evidence submitted by the Valuers and the parties as to their assessments of the current market rent; and
 - (B) give his determination and the reasons for it in writing to the Lessor and the Lessee.
- (g) In determining the current market rent each Valuer (including the Umpire) shall be taken to be acting as an expert and not as an arbitrator, and shall assess and determine respectively the current market rent for the Premises as at the particular Review Date having regard to this Lease and shall:
- (1) disregard:
 - (A) the value, if any, of the tank farm;
 - (B) the value of any goodwill of the Lessee's Business, the Lessee's Fittings and any other interest in the Premises created by this Lease;
 - (C) any impaired condition of the Premises if that condition results from any work effected or not carried out on the Premises by the Lessee or from any breach under this Lease by the Lessee; and
 - (D) any sublease or other sub-tenancy agreement or occupational arrangement in respect of any part of the Land and any rental, fees or money payable under any of them; and
 - (2) consider the Premises as available for use for any purpose for which the Premises may be used in accordance with this Lease.

- (h) The Costs incurred in the determination of the current market rent under this clause 4.5 shall be equally borne by the Lessor and by the Lessee.
- (i) Any variation in the Rent resulting from a determination under clause 4.4 or 4.5 (as appropriate) will be effective on and from that particular Review Date.

4.6 Cap and Collar

Despite anything to the contrary, the parties agree that the Rent payable under any Market Review must not exceed the amount of Rent payable immediately prior to the Review Date increased by the amount referred to in Item 13(a) and must not be less than the amount of Rent payable immediately prior to the Review Date less the amount referred to in Item 13(b).

4.6 Variation in Rent

The rent payable shall not as a consequence of the foregoing provisions be less than the amount of the rent payable immediately prior to the Review Date.

5 Outgoings

5.1 Payment by Lessee

The Lessee shall pay or reimburse to the Lessor (as the case may be), within 14 days of receipt by the Lessee from the Lessor of the issuing body's account, all Outgoings paid or payable by the Lessor in respect of the Term or any part of it.

5.2 Cost of Services

The Lessee shall promptly pay all Costs for all Services, including for all sources of energy, electricity, gas, oil, water and telephone separately supplied, metered, consumed or connected (as appropriate) to in or on the Premises during the currency of this Lease.

6 Use of Premises

6.1 Permitted use

The Lessee shall:

- (a) not without the Lessor's Consent use the Premises for any purpose which is not specified in Item 11;
- (b) not use the Premises as a residence;
- (c) not keep any animals or birds in the Premises;
- (d) at its own Cost keep the Premises free and clear of pests, insects and vermin;

- (e) not do or carry on in the Premises any offensive trade, business or occupation or anything which causes or may cause nuisance or damage to the occupiers or owners of any nearby premises or to the Lessor; and
- (f) not hold any auction, bankrupt or fire sale on the Premises.

6.2 No warranty as to use

The Lessor gives no warranty as to the suitability of the Premises or the use to which the Premises may be put. The Lessee shall obtain, maintain and comply with at its Cost any consent or approval from any Authority which may from time to time be necessary or appropriate for the Lessee's Business under any Requirement or Law.

6.3 Compliance with Laws and Requirements

- (a) The Lessee shall:
 - (1) comply with and observe at its Cost all Laws (including Environmental Laws as defined in Clause 15) and Requirements of any Authority that apply in relation to the Premises, or to any of the Lessee's Fittings installed in them or relating to the business conducted in the Premises by the Lessee; and
 - (2) where any Law or Requirement is notified to or served on the Lessee, promptly give a complete copy of it to the Lessor.
- (b) If the Lessee has not in good faith commenced to comply with any Law or Requirement, within a reasonable time of becoming aware of the need to comply, the Lessor may give at least 30 days' notice in writing to the Lessee (without prejudice to any of the Lessor's other rights) that the Lessor elects to comply with any Law or Requirement either in part or whole, including where the Lessee fails to comply within a reasonable time with any of its obligations. Despite the previous sentence, in an emergency no notice shall be required.
- (c) The Lessee shall not be required under this clause 6.3 to effect structural or capital alterations or additions except those caused by any deliberate or negligent act or omission on the part of the Lessee or of the Lessee's Employees or except if such works are required because of the Lessee's particular use of the Premises.
- (d) The Lessee shall on demand pay to the Lessor all reasonable Costs incurred in good faith by or on behalf of the Lessor in complying with any Law or Requirement pursuant to clause 6.3(b).

6.4 Overloading

The Lessee shall:

- (a) not place or store any heavy articles or materials on any of the floors of the Building without the Lessor's Consent unless the articles or

materials are reasonably necessary and proper for the conduct of the Lessee's Business.

- (b) make good any damage done to the Building or any part of it during the time those heavy articles or materials are in the Building or when they are taken or removed from it.

6.5 Other activities by Lessee

The Lessee shall:

- (a) in respect of Appurtenances in the Premises:
 - (1) not use any of them for any purpose other than those for which they were designed;
 - (2) not place in any of them any substance which they were not designed to receive; and
 - (3) pay to the Lessor all reasonable Costs of making good any damage to any of them arising from any misuse by the Lessee or the Lessee's Employees;
- (b) keep the Premises clean and not permit any accumulation of useless property or rubbish in them;
- (c) not throw anything out of the windows or doors of the Building, passages or skylights or into the light areas of the Building, or deposit waste paper or rubbish anywhere except in proper receptacles.
- (d) if any infectious illness occurs in the Premises due to the Lessee's use of the Premises:
 - (1) immediately notify the Lessor and all proper Authorities; and
 - (2) where that illness is confined to the Premises, at its Cost thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities.

6.6 Signs

The Lessee shall only be permitted to display erect and/or affix any sign, or advertisement on any part of the Premises in conjunction with the Lessee's Business. Such signs or advertisement must be approved in writing by the Lessor (such consent not to be unreasonably withheld) and the consents of any relevant Authority. Any such sign or advertisement must be of high quality and erected in a proper and professional workmanlike manner and the Lessee must make good all damage caused by such erection or affixation and upon the termination of this Lease, remove such sign or advertisement and make good any damage caused by such removal.

6.7 For sale/to let

The Lessor is entitled at reasonable times to:

- (a) upon giving 48 hours prior notice in writing to the Lessee, place advertisements and signs on the parts) of the Premises as it reasonably considers appropriate where the Premises are either for sale or (6 months prior to the end of the Term where the Lessee has not exercised the option to renew the Lease) available for lease; and
- (b) during the hours of 9.00 am to 5.00 pm on days when the Lessee's Business is open and after reasonable notice show interested persons through the Premises.

The Lessor shall not in exercising its rights under this clause 6.7 do anything likely to cause any confusion to members of the public or any inconvenience to the Lessee or the Lessee's Business.

6.8 Dangerous Substances

The Lessee will not bring on to the Premises any dangerous, inflammable explosive, noxious or offensive substances except in the ordinary course of the Lessee's business (permitted by this Lease to be carried on at the Premises) and provided that the Lessee shall ensure that all proper and prudent measures are taken in the handling, storage, removal and use of petrol substances or any other dangerous substances.

7 Maintenance, repairs, alterations and additions

7.1 Repairing obligations

- (a) The Lessee shall, during the Term and any holding over, keep the Premises and the Lessee's Fittings in good repair and condition having regard to their state of repair and condition at the commencement of this Lease. That obligation excludes:
 - (1) fair wear and tear; and
 - (2) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out, or which would be covered by any insurance which is required to be taken out, by the Lessor in respect of the Premises.
- (b) This clause 7.1 does not oblige the Lessee to carry out any structural or capital maintenance, replacement or repair except where rendered necessary by any deliberate or negligent act or omission of the Lessee or the Lessee's Employees or by the Lessee's use or occupancy of the Premises.
- (c) The Lessee shall:
 - (1) immediately make good any damage to the Premises caused by any act, omission, neglect or default of the Lessee or of the Lessee's Employees by the installation, use or removal of the Lessee's Fittings;
 - (2) immediately replace all glass broken by the Lessee or by any of the Lessee's Employees or anyone else;

- (3) repair or where appropriate replace any of the Tanks and Linework and Lessor's Fixtures which are broken or damaged by the Lessee or by any of the Lessee's Employees or anyone else; and
- (4) keep the Tanks and Linework and those Lessor's Fixtures or Services located within and exclusively serving the Premises maintained, serviced and in good repair (fair wear and tear excepted) and having regard to their state of repair and condition at the commencement of this Lease.

7.2 Lessor's repairing obligations

The Lessor shall, during the Term and any extension or holding over, keep the structure of the Premises in good repair and condition. (Subject to the Lessee's obligations in this respect contained in this Lease).

7.3 Lessor's right of inspection

The Lessor may in the presence of a responsible officer of the Lessee at all reasonable times on giving to the Lessee reasonable notice (except in the case of an emergency when no notice is required) enter the Premises and view the state of repair and condition but the Lessor shall make good any damage caused in doing so and shall do everything reasonably necessary to minimise disruption to the Lessee's Business during the viewing.

7.4 Enforcement of repairing obligations

Either party may:

- (a) notify the other party of any failure by a party to carry out any repair or replacement of any part of the Premises which that party is obliged to do under this Lease; and
- (b) except in respect to the Tanks and Linework, require that party to carry out that repair or replacement within a reasonable time and if that party fails to do so or in the case of an emergency when no notice shall be required, the other party may elect to carry out that repair or replacement at the defaulting party's Cost and risk. The defaulting party shall reimburse the other party for those Costs.

7.5 Lessor/Lessee may repair

- (a) If:
 - (1) except in respect of the Tanks and Linework, the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease; and/or
 - (2) any Authority requires any repair or work to be undertaken on the Premises which the Lessor must do and for which the Lessee is not liable under this Lease, then the Lessor, its architects, workmen and others authorised by the Lessor may at

all reasonable times on giving to the Lessee reasonable notice (except in the case of an emergency when no notice is required) enter and carry out any of those works and repairs. In so doing the Lessor shall not cause undue inconvenience to the Lessee and the conduct of the Lessee's Business and shall make good any damage caused in doing so.

- (b) If the Lessor fails to repair or maintain anything which the Lessor is obliged to do under this Lease or under clause 7.5(a)(2), the Lessee, its architects, workmen and others authorised by it may (but is not obliged to) carry out those works or repairs after giving to the Lessor reasonable written notice (except in the case of an emergency when no notice shall be required) at the Lessor's Cost and risk.
- (c) The Lessor shall upon reasonable written demand reimburse the Lessee for the reasonable costs of the Lessee carrying out the works and repairs under clause 7.5(b).

7.6 Alterations to Premises

The parties shall not make or permit any Proposed Work without the Lessor's Consent or the Lessee's Consent as the case may be (which consents must not be unreasonably withheld) and:

- (a) in seeking the consent a party shall submit to the other plans and specifications of the Proposed Work;
- (b) any works to be carried out by the Lessee must be carried out in accordance with the Lessor's written approval and requirements.

7.7 Notice to Lessor of damage, accident etc.

The Lessee shall promptly notify the Lessor of any:

- (a) damage, accident or defects to or in the Premises; and/or
- (b) circumstances likely to cause any damage or injury to occur within the Premises of which the Lessee is aware.

7.8 Fire Fighting Equipment

- (a) The Lessee will at all times during the Term and during any period of holding over maintain and keep the Premises in good and substantial repair, order and condition to the reasonable satisfaction of the Lessor having regard to their condition at the Commencement Date. The Lessee is not responsible for damage by fire, flood, lightning, storm, tempest, act of god, war damage and other insurable risks and reasonable wear and tear.
- (b) The Lessee will maintain all fire-fighting and fire-prevention equipment now in the Premises in good working order and condition to the standard specified by the Lessor or if not specified to the standard from time to time adopted by the Insurance Council of Australia (or

any other Authority) and have same inspected at least once in every year of the Term by the relevant authority.

8 Tanks, Linework and fuel equipment

8.1 Ownership and removal of Tanks and Linework

The parties acknowledge that all Tanks and Linework which are located underground (including the fuel tanks and gas tanks but excluding the fuel dispensers) are the property of the Lessor (**Lessor's Fuel Equipment**) and all other fuel equipment is the property of the Lessee (**Lessee's Fuel Equipment**) and that the Lessee may remove, but is not required to remove, the Lessee's Fuel Equipment during the Term or at the expiry of sooner determination of the Term and therefore:

- (a) if the Lessee removes the Lessee's Fuel Equipment at any time it must restore and reinstate the Premises to the order and condition reasonably required by the Lessor; and
- (b) if the Lessee does not remove the Lessee's Fuel Equipment at the expiry or within thirty (30) days after the sooner determination of the Term, the Lessee's Fuel Equipment will become the property of the Lessor and the Lessee will have no further interest in the Lessee's Fuel Equipment.

8.2 Installation with Lessor's Consent

Subject to the written consent of the Lessor, the Lessee shall be entitled at any time during the Term to install at its cost any additional fuel equipment.

8.3 Lessee to obtain consents

The Lessee shall be responsible for obtaining all permits and consents required in relation to installation of any fuel equipment and all works incidental thereto.

8.4 Installation at cost of Lessee

Installation of any additional fuel equipment and all works associated therewith shall be undertaken in all respects at the cost of the Lessee which covenants to perform the works in a proper and tradesman like manner and to make good the Premises any damage or want of repair occasioned thereby.

8.5 Maintenance of Fuel Equipment:

- (a) The Lessee shall maintain the Lessee's Fuel Equipment and the Lessor's Fuel Equipment in good and proper repair and condition and if during the Term any of the fuel equipment becomes unserviceable the Lessee will:
 - (1) replace, renew, repair any of the fuel equipment (unless the Lessor objects) at its own cost and expense;
 - (2) carry out such work in a good and proper manner;

- (3) make application for any permits or licences and pay all fees and expenses relating thereto;
 - (4) reinstate the groundwork and surrounding areas and repair any damage occasioned as a consequence of such work; and
 - (5) ensure that the number of underground petroleum storage tanks is not reduced and the capacity and quality thereof is not compromised.
- (b) In no circumstances shall the Lessee be responsible for any replacement required to be carried out to the Lessor's Fuel Equipment unless the requirement for such works is caused or contributed to by the negligence or any wilful act or omission, or misuse of the Lessee or the Lessee's agents or customers.
- (c) If any Contaminant leaks occur as a result of the Lessee's breach of this clause or any leaks occur for any other reason arising from the petrol dispensing equipment or from any other aboveground equipment (or if any leaks occur arising from or caused or contributed to by the negligence or any wilful act or omissions or misuse by the Lessee or the Lessee's agents or customers) then the Lessee is responsible to clean up and make good any damage caused by the leak and any contamination flowing from such leak.

8.6 Lessee may not replace and remove Tanks and Linework

The Lessee shall not replace or remove the Tanks or Linework or the Lessor's Fuel Equipment unless it has obtained the Lessor's written consent (which consent must not be unreasonably withheld) and complied with any reasonable conditions of the Lessor in this respect.

9 Assignment and sub-letting

9.1 Application of this clause 9.1

- (a) Whilstever the Lessee or a related body corporate is the lessee under this Lease, the Lessee in its complete discretion may sublease or grant a licence to a person to occupy the whole or part of the Premises and carry on the whole or part of the Lessee's Business on terms (except for clauses 9.2 to 9.3) not inconsistent with this Lease.
- (b) The provisions of clause 9.2 does not apply to the grant of a sublease or a licence under clause 9.1(a).
- (c) The Lessee must give notice to the Lessor of any exercise by the Lessee of its right under clause 9.1(a).

9.2 No disposal of Lessee's interest

Except as permitted under clause 9.1(a) the Lessee shall not assign, transfer, sublet or otherwise deal with or part with possession of the Premises or this Lease or any part of them or any interest in them or attempt to do so without the consent of the Lessor.

9.3 Corporate ownership

If the Lessee is a company, other than a company whose shares are listed on any Australian Stock Exchange, any change in the shareholding of the Lessee effectively altering the control of the Lessee will be regarded as a proposed assignment of this Lease. In that case the Lessee shall not:

- (a) register, record or enter in its books any transfer of any share or shares in the capital of the Lessee;
 - (b) deal with any beneficial interest in any such share or shares;
 - (c) issue any new share or shares; or
- take or attempt to take any action having the effect:
- (1) of effectively altering the control of the Lessee; or
 - (2) that the shareholders of the Lessee at the date of this Lease together beneficially hold or control less than 51% of the voting rights of capital in the Lessee unless the Lessee complies with the conditions of clause 9.

10 Insurance and indemnities

10.1 Insurance to be taken out by Lessee

The Lessee must:

- (a) insure the Premises against public risk for an amount in respect of any single accident of not less than the amount specified in Item 12;
- (b) be responsible for damage to all plate glass windows (other than external windows), doors and display show-cases forming part of or within the Premises;
- (c) in respect of any policy of insurance to be effected by the Lessee under this clause 10.1, whenever reasonably required by the Lessor, give to the Lessor a certificate of currency; and
- (d) pay all premiums, policy deductibles on any claims and other money payable in respect of any policy whenever they are due and payable.

10.2 Lessee's global insurance policy

- (a) While Caltex Australia Petroleum Pty Ltd ACN 000 032 128 or a related body corporate as defined under the *Corporations Act 2001* (**Caltex**) is the Lessee, the Lessee may provide for the insurance cover under clause 10.1 by inclusion under the Lessee's worldwide policy.
- (b) Caltex must provide to the Lessor evidence that it has complied with clause 10.2(a) when requested in writing by the Lessor.
- (c) The Lessee warrants that the interest of the Lessor is covered by the Lessee's global insurance policy.

10.3 Insurances to be taken out by the Lessor

(a) The Lessor must:

- (1) take out and keep current during the Term (and any extension or holding over) an insurance policy for all insurable risks against damage or destruction to the Building other than for risks for which the Lessee is required to arrange insurance under clause 10.1;
- (2) public risk (including sudden and accidental pollution occurrences) for not less than the amount specified in Item 12 in respect of each and every occurrence covering the liabilities of the Lessor;
- (3) Use reasonable endeavours to ensure that the insurance policies taken out under this clause 10.3:
 - (A) are taken out with an independent and reputable insurer approved by the Lessee acting reasonably;
 - (B) are for amounts necessary to enable complete replacement and reinstatement of the Building;
 - (C) contain conditions reasonably acceptable to or reasonably required by the Lessee;
 - (D) have no exclusions, endorsements or alterations unless first approved in writing by the Lessee acting reasonably; and
 - (E) are taken out in the names of the Lessor and the Lessee for their respective rights and interests;
 - (F) that the respective rights and interests of the Lessor and the Lessee under the policies are independent of each other and a breach of a condition of the policies by one party will not impact or affect the rights and interests of the other party;
 - (G) to the extent permissible at Law, waive all express and implied rights of subrogation against officers, employees and agents of the Lessee.
- (4) in respect of any policy of insurance to be effected by the Lessor under this clause 1.3, whenever reasonably required by the Lessee, give to the Lessee copies of the insurance policy or similar evidence of insurance, the receipt for the last premium and a certificate of currency;
- (5) pay all premiums, policy deductibles on any claims and other money payable in respect of any policy under clause 10.3(a) whenever they are due and payable; and

- (6) pay all premiums, proceeds of claims and other money payable in respect of any policy in clause 10.3(a) towards the repairs, reconstruction or reinstatement of the Building.
- (b) The Lessor must use reasonable endeavours, in respect of any policy of insurance to be effected by the Lessor under this clause 10.3, to ensure that the policy obliges the insurer to immediately notify the Lessee if at any time the policy expires, terminates or is cancelled.
- (c) In respect of any policy of insurance to be effected by the Lessor under clause 10.3, if:
 - (1) the Lessor terminates or cancels a policy;
 - (2) the insurer terminates or cancels the policy; or
 - (3) a policy expires by the effluxion of time during the term of the Lease or any holding over period,

without any replacement insurance cover being in place in accordance with clause 10.3 from and including the date of termination, cancellation or expiry of the policy then the Lessee may elect to take out and keep current the insurance required under clause 10.3 on behalf of the Lessor.

- (d) The Lessor must within a reasonable time, but no later than 14 days after notification by the Lessee, reimburse the Lessee for costs and premiums paid to establish any policy referred to in clause 10.3(c).
- (e) If the Lessor fails to reimburse the Lessee for the costs and premiums referred to in clause 10.3(d) the Lessee will be entitled to set off the costs and premiums against the Rent payable by the Lessee under this Lease.

10.4 Lessee's indemnities

- (a) The Lessee indemnifies the Lessor in respect of all claims for which the Lessor will or may be or become liable, during the Term, in respect of or arising directly or indirectly from any loss, damage or injury to property or person caused or contributed to by:
 - (1) any wilful or negligent act or omission;
 - (2) any default under this Lease; or
 - (3) the use of the Premises,
 - (4) by or on the part of the Lessee or the Lessee's Employees except to the extent caused by the Lessor or any of the Lessor's Employees and except to the extent that such Claim is the subject of the Lessor's release or indemnity in clause 10.6.

10.5 Exclusion of Lessee's liability

- (a) The Lessee and the Lessee's Employees will not be liable for any Claim that the Lessor or the Lessor's Employees or any person claiming by, through or under the Lessor may incur or make or any which arises from any fault in the construction or state of repair of the Tanks, the Linework, (excluding the state of repair of the Tanks and Linework owned by the Lessee as at the Commencement Date) the Building or any part of it or the Lessor's Fixtures or from any other cause except to the extent caused by the negligence of the Lessee or any servant or agent of the Lessee or caused by a breach of the Lessee's obligations under this Lease.
- (b) The Lessor releases the Lessee and the Lessee's Employees from liability in respect of any Claim relating to any property of the Lessor in the Premises or any part of them except to the extent the Claim, damage or injury is caused by the negligence of the Lessee or the Lessee's Employees or caused by a breach of the Lessee's obligations under this Lease.

10.6 Lessor's indemnities

- (a) The Lessor indemnifies the Lessee in respect of all Claims for which the Lessee will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from any loss, damage or injury to property or person caused or contributed to by:
- (1) any wilful or negligent act or omission (whether before the commencement of or during or after the Term);
 - (2) any default under this Lease; or
 - (3) any Contamination existing in the Premises and introduced to the Premises

by or on the part of the Lessor, the Lessor's Employees or any prior lessee or licensee of the Lessor or other occupier of the Premises except to the extent caused by the Lessee or the Lessee's Employees.

10.7 Exclusion of Lessor's liability

- (a) The Lessor, its servants and agents will not be liable for any Claim that the Lessee or the Lessee's Employees or any person claiming by, through or under the Lessee may incur or make or any which arises from:
- (1) any defect in any Service or any Appurtenance; or
 - (2) the flow, overflow, leakage, condensation or breakdown of any water, air-conditioning, power or sewage, whether from the roof, walls, gutter, downpipes or other parts of the Building,
- except to the extent caused by an act or omission, negligent or otherwise of the Lessor or any servant or agent of the Lessor.

(b) The Lessee releases the Lessor and its servants and agents from liability in respect of any:

- (1) Claim excluding claims made pursuant to clause 11.1 relating to any property of the Lessee in the Premises or any part of them; and
- (2) damage or injury to any person or property in the Premises or on any land near the Premises,

except to the extent the Claim, damage or injury is caused by an act or omission negligent or otherwise of the Lessor or any of the Lessor's Employees.

10.8 Lessee to Pay Additional Insurance Premiums

In the event that the Lessor shall approve in writing of the proposal of the Lessee to increase the risk of damage by fire or other cause the Lessee shall pay any extra premiums of insurance on the Building or any property therein required on account of the extra risk caused by the use to which the Premises are put by the Lessee with approval as aforesaid.

11 Damage, destruction and resumption

11.1 Damage to or destruction of Premises

If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Premises or (having regard to the nature and location of the Premises and the normal means of access) are substantially inaccessible then:

- (a) the Rent and any other money payable periodically under this Lease, or a proportionate part of that Rent or money according to the nature and extent of the damage or destruction sustained or the inaccessibility suffered, will abate except to the extent caused by the negligence of the Lessee, its employees, or its agents; and
- (b) Nothing expressed in or implied by this Lease shall be deemed to impose any obligation upon the Lessor to rebuild or reinstate or make fit for occupation the Premises in the event of damage thereto or destruction thereof. However, if the Lessor does not reinstate the Premises, the Lessee in its sole discretion may elect to reinstate the Premises using the proceeds of any insurance it receives. In doing so, the Lessee is not obliged to spend any moneys above the amount it has received under its insurance policy.
- (c) if the reconstruction of the damage or destroyed Premises has not been substantially recommenced within three (3) months of the date of the damage or destruction occurring or reconstruction of Premises has not been completed within six (6) months of the damage or destruction occurring, either party may terminate this lease by giving the other party not less than one (1) months written notice to the other.

11.2 Resumption of Premises

If at any time:

- (a) the whole of the Premises are resumed; or
- (b) part of the Premises is resumed so that the residue of them is wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) is wholly or substantially inaccessible

either party may determine this Lease by giving not less than one month's notice in writing to the other party. At the end of that notice this Lease will be at an end.

11.3 Liability

- (a) Neither the Lessor nor the Lessee shall have any liability to each other because of the determination of this Lease under either clause 11.1 or clause 11.2 however, any determination of the Lease under either clause 11.1 or clause 11.2 shall be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.
- (b) Despite clause 11.3(a), if this Lease is determined under either clause 11.1 or clause 11.2 and the Lessee has paid Rent in advance, the Lessee is entitled to recover from the Lessor the appropriate pro-rata proportion of the prepaid Rent.

11.4 Dispute

- (a) Any dispute arising under clause 11.2 shall be determined by an appropriate independent person who is:
 - (1) agreed between the Lessor and the Lessee; or
 - (2) if they cannot agree, a member of a professional body nominated at the request of either the Lessor or the Lessee by the President of the State division of the Building Owners and Managers Association of Australia Limited.
- (b) The appointed person:
 - (1) must have substantial experience in relation to premises of a similar type within the area in which the Premises are located or other comparable area; and
 - (2) in making his determination shall act as an expert and not as an arbitrator, and
 - (3) in making his determination will be final and binding on the parties.

- (c) The Cost of that determination shall be borne equally by both of the parties unless the person making the determination otherwise decides.

12 Lessor's covenants

12.1 Quiet Enjoyment

If the Lessee pays the Rent and other money payable under this Lease and observes and performs when required its obligations under this Lease, the Lessee may occupy and enjoy the Premises during the Term without any interruption by the Lessor or by any person rightfully claiming through, under or in trust for the Lessor.

12.2 Lessor's Mortgaging Obligation

If the Lessor has granted (or subsequently grants) a mortgage over the Premises then the Lessor must obtain the mortgagee's consent to this Lease.

13 Default and determination

13.1 Default

Each of the following is an Event of Default:

- (a) the Rent or any part of it is in arrears and unpaid for 30 days after it is due;
- (b) any money (other than Rent) payable by the Lessee to the Lessor is not paid within 30 days of the Lessor demanding payment;
- (c) the Lessee fails or refuses to carry out any repairs properly required by any notice within a reasonable time; and
- (d) the Lessee fails to perform or observe any of its other obligations under this Lease.

13.2 Essential terms

Each obligation of the Lessee to pay Rent or any other money to the Lessor is an essential term of this Lease.

13.3 Forfeiture of Lease

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of that default, at any time:

- (a) subject to any prior demand or notice as is required by Law and 14 days after written notice to the Lessee of its intention to do so, re-enter into and take possession of the Premises or any part of them, in which event this Lease will be at an end;
- (b) by notice to the Lessee determine this Lease, and 60 days after the date of giving that notice this Lease will be at an end.

13.4 Waiver

(a) No:

- (1) failure to exercise and no delay in exercising any right, power or remedy under this Lease; or
- (2) custom or practice existing between the parties in relation to the Lease,

operates as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

- (b) No waiver by a party of one breach of a covenant under this Lease is a waiver of another breach of that same covenant or of any other.
- (c) The demand by the Lessor for, or acceptance by the Lessor of, Rent or any other money payable under this Lease after default by the Lessee is not a waiver of any earlier breach by the Lessee. The subsequent acceptance by the Lessor of Rent or other money (as appropriate) is a waiver by the Lessor only in relation to the Lessee's failure to make that particular payment when due.

13.5 Offer of money after determination

Any money offered by the Lessee after the determination of this Lease under clause 13.3(a) or (b) and accepted by the Lessor will be applied on account of:

- (a) first: any Rent and other money accrued and due under this Lease but unpaid at the date of determination of this Lease; and
- (b) second: the Lessor's reasonable Costs in relation to the determination.

13.6 Lessor's Entitlement to Damages:

- (a) The Lessor's entitlement to recover damages from the Lessee or any other person is not limited or affected by any of the following:
 - (1) The abandonment or vacation of the Premises by the Lessee;
 - (2) The Lessor's election to re-enter the Premises or determine this Lease;
 - (3) The Lessor's acceptance of the Lessee's repudiation of this Lease;
 - (4) Any conduct constituting a surrender by operation of law.
- (b) If the Lessor determines or otherwise ends this Lease following a breach of an essential term or otherwise then, without prejudice to any of its other rights, powers or remedies, the Lessor will be entitled to recover damages from the Lessee including:

- (1) Amounts unpaid by the Lessee in respect of the period up to the date on which this Lease was determined or otherwise ended;
 - (2) Any costs and expenses incurred by the Lessor in re-letting the Premises;
 - (3) The difference between all money which would have been payable by the Lessee under the Lease from the date of determination or ending up to the expiry date of the Lease and any money which the Lessor has (using reasonable endeavours) actually received or reasonably anticipates it is likely to receive as rent (or otherwise) from other lessee(s) of the Premises for the part of the term that had not expired at the date of determination of this Lease.
- (c) The Lessor must take all reasonable steps to mitigate the Lessor's damages if the Lessee vacates the Premises whether with or without the Lessor's consent

14 Termination

14.1 Lessee to yield up and remove its fittings

The Lessee shall at the Date of Termination subject to clauses 8 and 15:

- (a) yield up the Premises in the state of repair and condition described in clause 7.1; and
 - (b) remove from the Premises all the Lessee's Fittings.
- (c) And shall, if required by the Lessor, restore the Premises to their condition at the Commencement Date. The Lessee shall in such removal or restoration do no damage to the Premises and shall forthwith make good any damage which may have been occasioned thereto by such articles, alterations and additions or by the Lessee in such removal or restoration.

14.2 Lessee not to cause damage

Subject to clause 15 the Lessee shall:

- (a) not cause or contribute (any damage to the Premises in the removal of the Lessee's Fittings. If it does, however, it shall make good that damage; and
- (b) leave the Premises in a clean state and condition. If it fails to do so the Lessor may make good and) or clean the Premises at the reasonable Cost of the Lessee and recover from the Lessee the reasonable Cost to the Lessor of doing so.

14.3 Failure by Lessee to remove Lessee's Fittings

Subject to clause 8 if the Lessee fails to remove the Lessee's Fittings as required by clause 14.1 or in the event of determination under clause 13.3, the

Lessor may after 14 days notice of its intention to do so cause the Lessee's Fittings to be removed and stored in the manner the Lessor in its absolute discretion thinks fit at the risk and at the Cost of the Lessee and at any time thereafter the Lessor may dispose of those goods as it sees fit.

15 Environmental

15.1 Definitions

In this clause the following words have these meanings unless the contrary intention appears.

Commencing Date means the date on the cover sheet.

Contaminant means any substance, matter or thing on, in or under the Premises which cause them to be:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in their capacity to support plant life; or
- (c) otherwise environmentally degraded.

Environmental Laws means all laws and regulations, environmental protection policies and directions standards and guidelines of any authority (and any other like bodies) regulating or otherwise relating to the environment, including without limitation any law relating to land use, planning, heritage, coastal protection, water catchments, pollution or air or water, noise, soil or groundwater contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, or noxious traces.

Improvements means the improvements constructed on and in the land and include dispensers, canopy, appurtenances, signage, underground storage tanks, line work and any alterations, additions or replacements to them.

Land means the land described on the cover sheet.

Premises means the Land and the Improvements.

Initial Reports means the environmental site assessment report obtained by the Lessor in respect of the existence of Contaminants on the Premises prepared by [] dated [] 2012.

Further Report means an environmental site assessment report obtained by the Lessee at its cost from a consultant approved of by the Lessor (such approval not to be unreasonably withheld), identifying the nature, extent and concentration of the Contaminant over and above that identified in the Initial Report and works that need to be done to achieve this, and the Remediate Amount.

15.2 Lessee Requirements

The Lessee must, in relation to the Premises;

- (a) comply with Environmental Laws (including to carry out any works required to meet such compliance with Environmental Laws);
- (b) do all things necessary to prevent a breach of any Environmental Laws;
and
- (c) promptly notify the Lessor of any breach of any Environmental Laws and of details of notices received by or proceedings commenced under any Environmental Laws;
 - (1) relating to a breach or alleged breach of any Environmental Laws; or
 - (2) requiring any works to be carried out in relation to the Premises or any land adjoining the Premises or any Contaminant affecting the Premises or adjoining lands; and
- (d) Carry out regular fuel tank dips and record levels and carry out any necessary repairs or works in order to remedy any contamination as a result of the Lessee's use of the Premises.
- (e) Indemnify and hold the Lessor harmless, from and against all claims which arise during the term in connection with the presence or suspected presence of Contaminants in the soil, groundwater or soil vapour on or under the premises, adjoining premises or groundwater from the Lessee's use of the Premises.

15.3 Vacation

In the event the Lessee vacates the Premises at the end of this Lease the following will apply:

- (a) the Lessee will, at that time cause a person with relevant experience and expertise in contaminated site work to carry out a Further Report to determine whether the land has been contaminated with petroleum hydrocarbons in such a manner as may reasonably be regarded as presenting a significant risk of harm to human health or the environment (**Risk of Harm**), based upon the presumption that the Premises are and will continue to be used for service station use ('Use'). The Expert will produce a Further Report containing particulars of the results of the validation sampling and chemical analyses carried out by the Expert and stating the opinion of the Expert in regard to Risk of Harm (**Remediation Work**);
- (b) in the event the Investigation Report concludes that the Premises present a Risk of Harm, having regard to the Use, the Lessee will cause the Expert to produce a report (**Contamination Management Plan**) detailing the nature of the work, if any, the Expert considers are necessary to remediate the Premises such that they no longer present a Risk of Harm;
- (c) to the extent to which it is apparent the Lessee's use of the Premises has caused or contributed to the Risk of Harm (**Lessee's Responsibility**), having regard to the Initial Reports, the Lessee will

contribute to the cost of carrying out the Remediation Work. In the case where there is a Lessee's Responsibility, the Lessee will be entitled to manage the conduct of the Remediation Work;

- (d) where there is a Lessee's Responsibility, then upon completion of the Remediation Work, the Lessee will cause the Expert to issue a report (**Validation Report**) validating the fact the Premises, in the opinion of the expert, no longer presents a Risk of Harm, having regard to the Use;
- (e) The Lessee will be responsible for the costs of the various reports referred to above in this clause (excluding the Commencement Report). All of the reports referred to in this clause will be kept confidential as between the Lessor and the Lessee.

16 Miscellaneous

16.1 Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

- (a) must be in writing;
- (b) must be signed by the sender, or if a company, by its Authorised Officer; and
- (c) will be taken to be duly given or made in the case of:

delivery in person or by post, facsimile transmission or cable, when delivered, received or left at the address of the recipient shown in this Lease or to any other address which it may have notified the sender but if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in that place.

16.2 Costs

The Lessee shall pay to the Lessor on demand:

- (a) all stamp duty (including penalties and fines other than those incurred due to the default of the Lessor); and
- (b) all reasonable Costs of the Lessor in relation to:
 - (1) the enforcement of or exercise of any rights, powers or remedies under this Lease;
 - (2) any consent required to or under this Lease;
 - (3) any assignment or subletting;

- (4) any surrender or determination of this lease otherwise than by effluxion of time; and
- (5) default by the Lessee or the Lessee's Employees in observing or performing the Lessee's obligations in this Lease,

including in each case reasonable legal costs and expenses on a full indemnity basis.

16.3 Services

Subject to anything to the contrary in this Lease, the Lessor and all persons claiming by, through or under the Lessor may at reasonable times, after giving reasonable notice (except in the case of an emergency when no notice is necessary) install, maintain, use, repair, alter, service and replace any Services or any part of them including any pipe, duct, wire and plant at the Lessor's Cost but in doing so the Lessor shall do everything reasonably necessary to minimise any disruption to the Lessee's Business.

16.4 Severance

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

16.5 Entire agreement

This Lease and the Agreement for Lease (if any) contain all the contractual arrangements of the parties with respect to the transactions to which they relate. They supersede all earlier conduct by the parties with respect to those transactions.

16.6 Governing Law

This Lease is governed by the laws of the State. The parties submit to the nonexclusive jurisdiction of courts exercising jurisdiction there.

17 Goods and Services Tax

- (a) Subject as may otherwise be expressly stated in this Lease, and subject to the provisions set out below, if any supply made under or in connection with this Lease by one party ('Supplier') to the other party ('Acquirer'), is subject to GST, the payment for that supply will be increased by an amount equal to the GST payable;
- (b) The Acquirer will not be obligated to make a payment on account of GST under paragraph (a) until the Supplier has issued a tax invoice to the Acquirer for the supply to which the payment relates;
- (c) If a payment made by one party to the other party is a reimbursement or indemnification of a cost, expense loss or liability incurred by that

other party, the payment shall be reduced by an amount for which that party is entitled to an input tax credit;

- (d) Words or expressions used, which are defined in *A New Tax System (Goods and Services Tax) Act 1999*, have the same meaning.

18 Environmental Warranty

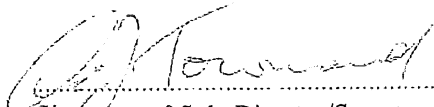
Notwithstanding anything contained in this Lease or at law to the contrary, the parties agree and acknowledge:

- (a) the Lessor is responsible for any Contamination (as defined in the *Contaminated Land Management Act 1997 (NSW)*) existing on the Premises prior to the Commencing Date;
- (b) the Lessee shall not be required to comply with any notice, direction or order of any Authority in relation to any Contamination on the Premises existing prior to the Commencing Date;
- (c) the Lessor must comply with any notice, direction or order of any Authority in relation to any Contamination existing on the Premises prior to the Commencing Date; and
- (d) the Lessor indemnifies the Lessee, and must keep the Lessee indemnified, for any Cost or Claim suffered by the Lessee in connection with any matter of or incidental to Contamination existing on the Premises prior to the Commencing Date.

EXECUTION PAGE

Executed as a Deed

Executed by Bermark Pty Limited)
ACN 000 032 128 in accordance with)
section 127 of the Corporations Act)
2001 (Cth) by)
)


Signature of Sole Director/Secretary

ALBERT JOHN TOWNSEND
Print name of Director/Secretary

The Common Seal of Caltex)
Australia Petroleum Pty Limited)
ACN 000 032 128 was affixed in)
accordance with its Constitution.:)




Signature of Director


Signature of Director/Secretary

SIMON HEPWORTH
Print name of Director

ALBERT JOHN TOWNSEND
Print name of Director/Secretary