

DATE / /

(H)

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

Company:

Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:

Office held:

Signature of authorised person: SEE PAGE 43 OF ANNEXURE "A"

Name of authorised person:

Office held:

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

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

Signature of witness:

Name of witness:

Address of witness:

Signature of lessee: SEE PAGE 43 OF ANNEXURE "A"

(I) **STATUTORY DECLARATION #**

I,

solemnly and sincerely declare that -

1. The time for the exercise of option to **renew/purchase** 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 atin the State of New South Wales on.....

in the presence of of

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

☐ Other qualified witness [specify]

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

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

Signature of witness: Signature of applicant:

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

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

ANNEXURE "A"

This is the Annexure "A" referred to in Lease between

LANDLORD: The Lessor shown on the Front Page c/- Commercial Property Group,
Level 3, 56 Kitchener Parade, Bankstown NSW 2200

TENANT: The Lessee shown on the Front Page of 24a Louie Street, Padstow
NSW 2211

PREMISES: The premises described on the Front Page as "Property Leased"
as further defined in clause 3



JOHN MUBAYYID

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REFERENCE SCHEDULE

LANDLORD:	The Lessor shown on the Front Page	
TENANT:	The Lessee shown on the Front Page	
PREMISES: (Clause 3)	The premises described on the Front Page as "Property Leased" as further defined in clause 3	
CONTRACTUAL TERM:	The term stated on the Front Page commencing from and including the Commencement Date and ending on and including the Termination Date.	
RENT: (Clauses 5 & 6)	Initial Rent:	\$48,000.00 per annum (plus GST where this Lease is a taxable supply)
	Rent Commencement Date:	Provided the Lessee is not in breach of a term in the Lease, rent commences 2 months and 14 days from the Commencement Date of the Lease. The Lessee is deemed to have waived its right to this rent concession if the Lessee breaches a term of this Lease.
	Rent Payment Frequency:	Equal instalments in advance from the Rent Commencement Date payable on the Rent Payment Dates, and where the Rent Commencement Date is not the first day of a calendar month then the first and last such payments to be proportionate amounts having regard to the Commencement Date and Termination Date respectively
	Rent Payment Dates:	The first day of each calendar month

REFERENCE SCHEDULE (Cont'd)

RENT REVIEW:

(Clause 7)

Rent Review Method:

Method 1 (3% per annum)

Rent Review Dates:On each anniversary of the
Commencement Date**TENANT'S SHARE OF
OUTGOINGS:**

(Clause 8)

100% of Outgoings

**OPTIONS FOR
RENEWAL:**

(Clause 4)

Number of Options for 1
Renewal:**Option Term (term of 5**
each Option Lease):**PERMITTED USE:**

(Clause 13)

Food Manufacturing and Bakery

SECURITY BOND:

(Clause 10)

An amount equivalent to 3 months' GST-inclusive Rent and
Outgoings namely the sum of \$14,850.00.**GUARANTOR:**

(Clause 31)

JOHN MUBAYYID of 24a Louie Street, Padstow NSW 2211

**PUBLIC LIABILITY
INSURANCE:**

(Clause 18)

\$20 million

1 Interpretation

1.1 Reference Schedule

A reference to “Reference Schedule” means the schedule of particulars attached to this Lease bearing that name.

In this Lease the words and expressions contained in the Reference Schedule have the meanings specified in the Reference Schedule but as further defined (if applicable) in clause 1 and elsewhere in this Lease.

In the event of any inconsistency between the Reference Schedule and any general provision of this Lease, the Reference Schedule prevails.

1.2 Definitions

In this Lease (unless the context otherwise requires) the following words and expressions have these meanings:

Accounting Year means a period of 12 consecutive months selected by the Landlord for the purposes of calculating or levying charges and which may be a Lease Year or a Financial Year or some other period;

Authority includes a council, statutory or public authority, government department, regulatory body and a public service or utility-supplier;

Accessway means any area (not being part of the Premises) in which the Landlord has an interest and over or through which access is properly obtained to the Premises (for example corridors, lifts, stairs, and driveways);

Business Day means any day other than a Saturday or Sunday or day within New South Wales that is a public holiday;

calendar month refers to one of the 12 months of the year;

Commencement Date means the commencing date shown on the Front Page;

Common Facilities means areas and facilities of which the Premises has the benefit in common with other users or other premises (for example kitchen and toilet used in common by the Tenant and by occupants of other premises);

Common Services means services (for example water supply) which are shared by the Tenant with other users or other premises but excluding Conduits within the Premises;

Conduits means sewers, drains, gutters, ducts, pipes, wires, cables, watercourses and other conducting media and also manholes, inspection chambers, tanks and apparatus used in conjunction with them;

CPI means the Consumer Price Index for Sydney (All Groups) published by the Australian Bureau of Statistics;

Financial Year refers to a period of 12 months (or part thereof) starting on 1 July and ending on the following 30 June;

Front Page means the Real Property Act prescribed form to which these Lease terms are annexed;

Guarantor means the person(s) named in the Reference Schedule (and any other person who guarantees any or all of the Tenant's Obligations in this Lease) and including any personal representative of them;

Insolvency Event occurs where any of the following happens in relation to a person:

- (a) an order is made (or an application for such order is presented) for winding-up (whether compulsorily or voluntarily);
- (b) an Official Manager, Receiver, Liquidator or Controller (whether or not provisional) is appointed;
- (c) entry into a scheme of arrangement or composition for the benefit of creditors;
- (d) execution is levied against any assets;
- (e) an application is made for a declaration of bankruptcy;
- (f) an order is made (or an application for such an order is presented) for the appointment of a Trustee in Bankruptcy;
- (g) a meeting is called of creditors to consider a resolution for winding-up; or
- (h) it ceases to exist (other than by death) or is dissolved or deregistered as a company,

but does not include a voluntary winding up for the purposes of an amalgamation or re-construction;

Landlord means any person from time to time entitled to the immediate reversion to this Lease (which as at the Commencement Date is the person identified in the Reference Schedule as the Landlord) and a reference to an act or right of the Landlord includes the Landlord doing that act or exercising that right by its agents and employees;

Landlord's Costs means all costs, charges and expenses reasonably incurred by the Landlord, including legal costs on an indemnity basis;

Landlord's Fixtures means all the plant, equipment and chattels which have been or become permanently or securely affixed to the Premises and are the Landlord's property;

Law includes an Act of Parliament, statutory instrument, regulation, by-law, requirement of a competent Authority, statutory body, utility company or Authority, common law or regulation;

Lease means this lease as varied from time to time;

Lease Year means a period of 12 months commencing on either the Commencement Date or an anniversary of it;

Liability means all actions, proceedings, costs, claims, demands, losses, expenses and liabilities;

Maintain includes repairing, renewing and replacing;

month means either a period of time between a day in a Calendar Month and either the preceding day in the following Calendar Month or the following day in the preceding Calendar Month, or from the first to the last day (both inclusive) within a Calendar Month, as the case may be;

normally means subject to any other provision of this Lease;

obtain includes “maintain and comply with”;

Option Lease means a lease arising pursuant to the exercise of an Option for Renewal;

Option for Renewal means the Tenant’s option (if any) stated in the Reference Schedule to renew this Lease in accordance with clause 4;

Option Term means the term of the Option Lease (if any) stated in the Reference Schedule;

Plan means the plan(s) annexed to this Lease (if any);

Redecorate means to restore and update the surfaces of the Premises in a style and to a standard of finish originally used (eg, repainting the surfaces previously painted and repapering those previously papered) so that the finishes look clean, fresh, new and not out-dated having regard to relevant and appropriate current styles;

Rent means the Initial Rent and the Reviewed Rent;

Rent Review refers to the review of the Rent under **clause 7**;

Rent Review Dates means the rent review dates in the Reference Schedule;

Rent Review Method refers to one of the rent review methods numbered in **clause 7**;

Retail Shopping Centre has the same meaning as defined in the *Retail Leases Act 1994 (NSW)*;

Reviewed Rent means the Rent calculated pursuant to a Rent Review;

Sign includes notice, display, flagpole, hoarding, aerial, satellite dish and advertisement (whether illuminated or not);

Specialist Retail Valuer is one as defined in s.3 of the *Retail Leases Act 1994*

(NSW) and who is a member of the Australian Institute of Valuers and Land Economists (NSW Division) Inc;

Tenant means the Tenant identified in the Reference Schedule and includes the Tenant's successors in title and assigns and (if an individual his personal representative) and a reference to an act or omission of the Tenant includes an act or omission of any subtenant and any other person deriving title under the Tenant and includes an act or omission of their respective employees, agents and visitors and anyone at the Premises with the express or implied authority of any one or more of them (but the reference to assigns in this definition does not itself authorise an assignment);

Tenant's Default means an act or omission of the Tenant including a breach by the Tenant of a term, condition, covenant, warranty or obligation in this Lease;

Tenant's Obligation means a covenant or obligation of the Tenant;

Tenant's Share of Outgoings is that proportion or calculation stated in the Reference Schedule;

Term means the **Contractual Term** and any period of continuation, holding-over or extension of it;

Termination Date means the terminating date shown on the Front Page;

Tribunal means the Administrative Decisions Tribunal of New South Wales established by the Administrative Decisions Tribunal Act 1997.

1.3 Construction

In this Lease (unless the context otherwise requires):

- 1.3.1 **"Include", "includes" and "including"** are deemed to be followed by the words "without limitation", and general words introduced by **"other"** do not have a restrictive meaning, and **"for example"** is not to be interpreted as if there are no other examples nor to limit or restrict the ordinary meaning of the words preceding it;
- 1.3.2 **Statutes:** A reference to an Act of Parliament includes all derivative instruments, orders, regulations and other matters and in each case any re-enactment, amendment, consolidation or modification from time to time of that Act and any derivative instruments, orders, regulations or other matters;
- 1.3.3 **Joint and several:** An obligation owed by more than one person is owed by them jointly and severally and a reference to the Tenant or a Guarantor includes a reference to each person comprising them;
- 1.3.4 **"Not" includes "not permit":** An obligation by the Tenant not to do something includes an obligation not to permit or allow it to be done;
- 1.3.5 **Clauses:** A reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Lease;

- 1.3.6 **End of Term:** A reference to the end of the Term is to the end of the Term however it ends or terminates;
- 1.3.7 **Consent:** A consent or approval of the Landlord to be valid must be in writing;
- 1.3.8 **Notice:** Any notice given to the Landlord to be valid must be in writing and must (unless the Landlord or this Lease specifies otherwise) be given before the event or action to which it relates;
- 1.3.9 **Consent not to be unreasonably withheld:** Where the Landlord's consent is required then, unless it is stated that the Landlord's consent is in the Landlord's discretion, that consent must not be unreasonably withheld or delayed but the Landlord is entitled to withhold its consent where it requires the corresponding consent of any mortgagee or superior landlord until it obtains that consent but nothing in this Lease implies any obligation on those other persons not unreasonably to refuse their consent or approval except where such obligation is imposed on the mortgagee or the superior landlord under the mortgage or the superior lease;
- 1.3.10 **Extension of access rights:** A right of the Landlord or anyone else to have access to or entry upon the Premises extends to any superior landlord and any mortgagee of the Premises and to anyone authorised by the Landlord or the superior landlord or mortgagee and includes a right of entry with workmen, equipment and materials;
- 1.3.11 **Headings only for convenience:** The table of contents and headings to clauses, paragraphs and schedules do not affect the construction of this Lease;
- 1.3.12 **Limit on power to grant a right:** A right granted by the Landlord is granted only so far as the Landlord can lawfully grant it and is granted in common with all other persons entitled to it and/or authorised by the Landlord to exercise it;
- 1.3.13 **Third party obligations:** Nothing entitles the Tenant to enforce any obligation owed by anyone to the Landlord;
- 1.3.14 **Void provisions:** A provision of this Lease which is void or unenforceable (and cannot be read-down) shall (to that extent) be severed from all other provisions of this Lease and the remaining provisions shall continue to have effect;
- 1.3.15 **Reading-down:** If a provision of this Lease extends beyond the limitations set by any Law or rule of law but if it were not so extended would remain unaffected by the Law or rule of law, the provision is deemed to be varied to the necessary extent so as not to extend beyond the limitations;
- 1.3.16 **Plurals and genders:** Words importing the singular or plural number include the plural and singular number respectively and words importing the masculine gender include the feminine or neutral gender and

references to a person or corporation include a corporation or person respectively;

- 1.3.17 **Definitions:** Where a word is defined then other grammatical forms of that word are to be interpreted in the same manner with the necessary grammatical change;
- 1.3.18 **Conveyancing Act:** Section 84 of the *Conveyancing Act 1919 (NSW)* and all short-form covenants under Part 2 of Schedule 4 of that Act are excluded;
- 1.3.19 **Exclusion of Inconsistent Laws:** to the extent that any law is inconsistent with this Lease, expressly or impliedly, such law does not apply (to the extent that such exclusion is permissible);
- 1.3.20 **Common demands:** The rules applying to common demands do not apply to any demand made under this Lease;
- 1.3.21 **Deed:** This Lease is a Deed (even if it is not registered);
- 1.3.22 **Service:** Anything relating to this Lease that is to be served:
 - 1.3.22.1 may be served in accordance with s.170 of the *Conveyancing Act 1919 (NSW)*;
 - 1.3.22.2 may be served on the Tenant by leaving it at the Premises; and
 - 1.3.22.3 may be served by facsimile transmission and will be considered to have been received (if the sender's facsimile machine produces a transmission report indicating that transmission was error-free) at the time of transmission except that a transmission on a day that is not a Business Day at the place of receipt will be considered to be received on the next Business Day and a transmission sent after 17:00 hours at the place of receipt will be considered to have been received at 09:00 hours the following Business Day;
- 1.3.23 **Signing Notices:** a notice given by a party to this Lease may be signed on behalf of that party by its solicitor, officer or agent and if a party to this Lease consists of more than one person then it will be sufficient for one of those persons to sign the notice;
- 1.3.24 **Authority to Complete:** By returning this signed Lease to the Landlord (or the Landlord's solicitor or Agent) the Tenant authorises the Landlord to date and complete this Lease including completing any blanks;
- 1.3.25 **Entire Agreement:** This Lease contains the complete agreement of the parties and supersedes and excludes all previous discussions and correspondence and the Tenant warrants that it does not rely on any representations made by or on behalf of the Landlord other than those contained in this Lease;

- 1.3.26 **Waiver:** Failure by the Landlord to compel performance of any term or condition of this Lease does not constitute a waiver of that term or condition and does not impair the right of the Landlord to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition. The Landlord may enforce its rights against the Tenant whether or not the Landlord enforces any similar rights against other tenants or occupiers of any other property of which the Premises form part and failure to enforce against such other tenants or occupiers does not waive the Landlord's rights against the Tenant nor estop the Landlord;
- 1.3.27 **Contra Proferentem:** In the interpretation of covenants and obligations under this Lease no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward the Lease or any part of it.

2 Grant and Term

- 2.1 The Landlord leases the Premises to the Tenant for the Contractual Term.
- 2.2 The Tenant acknowledges that a copy of the proposed lease and prescribed retail tenancy guide was made available to the Tenant in accordance with the *Retail Leases Act 1994 (NSW)*
- 2.3 *The Tenant acknowledges that* a Lessor disclosure statement or lessor disclosure update (as the case may be) was provided to the Tenant in accordance with s 11 of the *Retail Lease Act*.
- 2.4 If the Landlord is a Trustee of a Trust, then all obligations undertaken and liabilities incurred by the Landlord are done so solely in its capacity as Trustee, and only the assets of the trust under the Landlord's control and in its possession shall be available to pay or satisfy such obligations and the Landlord's liability under this Lease is limited to the extent it is indemnified out of the assets of the trust and the Landlord is liable personally only to the extent that it acts fraudulently or in breach of the trust.

3 Premises

- 3.1 The Premises are described in the Reference Schedule and:
- 3.1.1 include any Landlord's Fixtures;
 - 3.1.2 include any Conduits within the Premises and;
 - 3.1.3 exclude any air-space above the Premises.
- 3.2 A reference to the Premises includes any and each part of them.
- 3.3 If the Premises has Common Facilities or Common Services which it shares in common with other premises or other persons then the Tenant is licensed to the

reasonable non-exclusive use of them during this Lease in accordance with any reasonable directions or Rules issued by the Landlord from time to time.

- 3.4 If access to the Premises is obtained via any Accessway then the Landlord licenses the Tenant to reasonably and non-exclusively use that Accessway for the purposes of reasonable access during this Lease provided the Tenant complies with any reasonable directions or Rules issued by the Landlord from time to time.

4 Option for Renewal

- 4.1 If the Reference Schedule states there is an Option for Renewal then the Tenant has an Option for Renewal of this Lease for the Option Term commencing immediately after the Termination Date of this Lease.

- 4.2 The Tenant can only exercise the Option for Renewal and the exercise of it will only be valid if:

4.2.1 the Tenant serves a notice of exercise of option on the Landlord at least 3 months before the Termination Date of this Lease (but not more than 6 months before the Termination Date); and

4.2.2 at the time of service of that notice and at the Termination Date of this Lease no monies payable by the to the Landlord are overdue and all of the Tenant's Obligations under this Lease have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the Landlord.

and for avoidance of doubt the parties acknowledge that these requirements are essential conditions for the valid exercise of the Option for Renewal and that any purported exercise of the Option for Renewal other than in writing will be void ab initio under all circumstances.

- 4.3 The Option Lease will be on substantially the same terms as this Lease except that:

4.3.1 the Initial Rent for the Option Lease will be the Current Market Rent decided as if this Lease and the Option Lease were one continuous lease and the Commencement Date of the Option Lease was a Rent Review Date with a market rent review,

4.3.2 the appropriate adjustments will be made to update such information as is appropriate including:

4.3.2.1 the Commencement Date;

4.3.2.2 the Termination Date;

4.3.2.3 the Rent Review Dates;

4.3.2.4 the Security Bond;

- 4.3.2.5 omitting any clause making the Option Lease subject to a Development Consent for the Permitted Use;
 - 4.3.2.6 omitting any rent-free period;
 - 4.3.3 the Option for Renewal will be omitted where the Tenant was granted one Option for Renewal under this Lease or where the Option for Renewal was the Tenant's final one; and
 - 4.3.4 where the Tenant was granted more than one Option for Renewal then the number of remaining Options for Renewal will be reduced by one.
- 4.4 Where the Tenant has more than one Option for Renewal:
 - 4.4.1 the failure to validly exercise an Option for Renewal means that all Options for Renewal immediately lapse; and
 - 4.4.2 each Option for Renewal can only be exercised consecutively, one during each Lease term.

5 Rent

- 5.1 The Tenant must pay the Rent to the Landlord without deduction or set-off.
- 5.2 The Rent is payable in accordance with the Rent Payment Frequency stated in the Reference Schedule.

6 Goods and Services Tax

- 6.1 All monetary amounts stated in this Lease are quoted as GST-exclusive (that is, if GST is payable then it must be paid on top of the amount).
- 6.2 If a party makes a *taxable supply* in connection with this Lease to the other party, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as for the *taxable supply*, the amount of any *GST* payable in respect of the *taxable supply*.
- 6.3 Each party warrants that at the time it makes any *taxable supply* under this Lease, it will be *registered* under the *GST Law* and it will provide evidence of *registration* and advise its *ABN* to the requesting party immediately upon receipt of a request.
- 6.4 The right of a party ("the Supplier") to receive payment of the *GST* from the other party ("the Payer") is subject to the Supplier providing a valid *tax invoice* to the Payer.
- 6.5 The Supplier must issue a *tax invoice* to the Payer no later than the date on which payment is made for the *taxable supply* to which the *tax invoice* relates. Each party agrees that if it requests the other to issue a *tax invoice* in respect of any *taxable supply* then that request will not be made earlier than 28 days before the date that

the party makes payment for the *taxable supply* to which the requested *tax invoice* relates.

- 6.6 Italicised words in this clause have the same meaning given in s.195.1 of the *A New Tax System (Goods and Services Tax) Act 1999* ("the *GST Law*") and their various grammatical forms have a corresponding meaning.

7 Rent Review

7.1 General

- 7.1.1 The Rent is to be reviewed on each of the Rent Review Dates stated in the Reference Schedule by the Rent Review Method specified in the Reference Schedule.
- 7.1.2 The Tenant must continue to pay the Rent at the rate then current until the Reviewed Rent has been calculated after which the Tenant must pay the Reviewed Rent on the next Rent Payment Date together with any shortfall between the new and old rates for the period since the Rent Review Date.
- 7.1.3 Failure to initiate a rent review does not prevent the Landlord from initiating a rent review at any time prior to the next rent review or termination of this Lease (as the case may be) backdated to the appropriate Rent Review Date.

7.2 Method 1: Fixed Rent Review

- 7.2.1 This clause applies when the Reference Schedule indicates the Rent is to be reviewed by a fixed amount or percentage.
- 7.2.2 On each Rent Review Date the Reviewed Rent will be calculated by increasing the Rent by the fixed amount or percentage stated in the Reference Schedule.

7.3 Method 2: CPI Rent Review

- 7.3.1 This clause applies when the Reference Schedule indicates a CPI rent review applies.
- 7.3.2 On the Rent Review Date, or as soon thereafter as is practicable, the Landlord may notify the Tenant in writing of the new Reviewed Rent.
- 7.3.3 The Reviewed Rent is calculated as follows:

$$\frac{\text{old rent}}{\text{old CPI}} \times \text{new CPI} = \text{Reviewed Rent}$$

where:

“old rent” means the annual rent payable immediately before the Rent Review Date;

“old CPI” means the CPI number for the quarter ended immediately before the previous Rent Review Date (or the Commencement Date as the case may be);

“new CPI” means the CPI number for the quarter ended just before the current Rent Review Date; and

“quarter” means a calendar quarter used by the Australian Bureau of Statistics in CPI calculations.

- 7.3.4 If the Australian Bureau of Statistics changes the reference base of the CPI then the required conversion shall be made to preserve the intended continuity of the calculations by making the appropriate arithmetical adjustment, but if it is not possible to make an arithmetical adjustment, or if there is a fundamental change in the basis of assessment of the CPI or its calculation has been suspended or discontinued, then the Rent will be reviewed to market rent instead.

7.4 Method 3: Market Rent Reviews

- 7.4.1 This clause applies whenever this Lease indicates that a market rent review applies.
- 7.4.2 If the parties agree on a Reviewed Rent then that will be the Rent applying from the Rent Review Date and the parties must sign a statement to record their agreement.
- 7.4.3 If the parties have not agreed on a Reviewed Rent at least 30 days before the Rent Review Date then the market rent will be decided by a Specialist Retail Valuer whose costs the Landlord and Tenant shall pay equally.
- 7.4.4 If the parties cannot agree on a Specialist Retail Valuer then either of them may apply to the Tribunal for the appointment of a Specialist Retail Valuer in accordance with the *Retail Leases Act 1994 (NSW)*.
- 7.4.5 The Specialist Retail Valuer’s decision is final and he/she:
- (a) will act in good faith;
 - (b) will act as an expert and not as an arbitrator;
 - (c) must state reasons for the how the decision was reached (but set out in a way so to comply with the confidentiality provisions of s.31 of the Retail Leases Act 1994 (NSW);
 - (d) must consider submissions made within 14 days of appointment (and any extension agreed by both Landlord and Tenant) and may ignore submissions not made within that time; and
 - (e) must make a decision within 1 month of obtaining or being provided with the following information concerning the Lease (unless that period is extended by the consent of both Landlord and Tenant):

- (i) current rental,
- (ii) rent free periods or any other form of incentive,
- (iii) recent or proposed variations,
- (iv) outgoings.

7.4.6 If the Specialist Retail Valuer:

- 7.4.6.1 fails to accept the nomination to act;
- 7.4.6.2 fails to determine the market rent within one (1) month after accepting the nomination to act;
- 7.4.6.3 becomes incapacitated or dies; or
- 7.4.6.4 resigns;

then another Specialist Retail Valuer must be appointed in the same way.

7.4.7 **"Market Rent"** means the rent that would reasonably be expected to be paid for the Premises as between a willing landlord and a willing tenant in an arm's length transaction (where the parties are each acting knowledgeably, prudently and without compulsion), determined on an effective rent basis,

7.4.7.1 having regard to the following matters

- (i) the provisions of this Lease (but subject to the other provisions of this clause);
- (ii) the rent that would reasonably be expected to be paid for the Premises if it were unoccupied and offered for renting for the same or a substantially similar use to which the Premises may be put under this Lease (and that the tenant has all necessary approvals to carry on that use);
- (iii) the gross rent, less the Landlord's Outgoings payable by the Tenant;
- (iv) rent concessions and other benefits that are frequently or generally offered to prospective tenants similar premises;
- (v) assuming the Premises are available for immediate occupation and use;
- (vi) no work has been carried out to the Premises by the Tenant which has diminished their rental value;
- (vii) the Premises are in a good state of repair and decorative condition;
- (viii) if the Premises have been damaged or destroyed they have been fully restored;
- (ix) the services serving the Premises are fully operational and access to the Premises is fully available; and
- (x) all covenants in this Lease have been performed and observed,

7.4.7.2 but disregarding the following matters:

- (i) the value of goodwill created by the Tenant's occupation;
- (ii) the value of the Tenant's fixtures and fittings in the Premises (but to the extent that any payment or allowance has been made to the cost of the Tenant's fixtures by the Landlord they are not to be considered the Tenant's for this purpose);
- (iii) any increase in rental value attributable to an improvement to the Premises carried out by the Tenant during the Term (unless carried out under an obligation to the Landlord or its predecessors in title or where the Landlord or its predecessors in title contributed to the cost or where the improvement was carried out contrary to the terms of this Lease or any consent);
- (iv) any obligation of the Tenant to reinstate the Premises to their condition or design as it existed before the carrying out of any works;
- (v) any adverse effect on the rental value of the Premises of any temporary works; and
- (vi) that part of the Term has expired or an Option for Renewal has expired.

8 Outgoings

8.1 When Payable

The Tenant must pay the Tenant's Share of Outgoings within 14 days of the Landlord's written demand.

8.2 Payment by Instalments

The Landlord may from time to time nominate an estimate of the Tenant's Share of Outgoings and require the Tenant to pay to the Landlord instalments of that estimate at the same time and in the same manner as Rent.

8.3 Outgoings Statement

Within 3 months of the end of each of the Landlord's accounting periods the Landlord must give the Tenant a reconciled written statement detailing all Outgoings in that period ("**Outgoings Statement**").

8.4 Adjustments

If the Tenant pays instalments of Outgoings based on the Landlord's estimate then in respect of each Accounting Year there is to be an adjustment between the Landlord and the Tenant to take into account any under-payment or over-payment and such adjustment is to occur within 1 month of the Landlord giving the Tenant

the Outgoings Statement but in any case not later than 4 months after the end of the Accounting Year.

8.5 General Definition of Outgoings

"Outgoings" means all costs reasonably incurred by the Landlord as a result of the Landlord owning, maintaining, repairing, renewing, letting and managing the Premises except those excluded below.

8.6 Examples of Outgoings

8.6.1 Outgoings include the following:

- (a) council rates,
- (b) water and sewer rates and charges,
- (c) land tax,
- (d) taxes and charges imposed by any authority in respect of the Landlord's ownership of the Premises,
- (e) levies and charges imposed under strata or community title schemes,
- (f) cleaning costs (including consumables),
- (g) cost of repair, maintenance and renewal of the Premises and its plant and equipment,
- (h) insurance (including building insurance, public risk insurance and loss of rent insurance),
- (i) costs of operating and supplying services to the Tenant or the Premises or to Common Facilities or Accessways including maintaining them and upgrading them to any relevant standards of any Authority,
- (j) cost of electricity, gas, oil, fuel, telephone and other services supplied to the Premises or for the Tenant's use,
- (k) waste disposal and recycling costs and licence fees and trade waste charges;
- (l) gardening costs, security and caretaking costs,
- (m) managing agent's fees,
- (n) promotions and advertising.

8.6.2 Where an example is given in this clause of an outgoing that is in the nature of the Landlord seeking a reimbursement for the provision of a service or doing of an act, that reference does not by itself oblige the Landlord to provide such services or do such act unless this Lease elsewhere obliges the Landlord so to do.

8.7 Exclusions

The following are excluded from Outgoings:

- 8.7.1 commissions paid on the securing of a tenant;
- 8.7.2 expenditure on capital improvements;
- 8.7.3 depreciation;

8.7.4 amounts payable by the Landlord on the Landlord's borrowings on the Premises; and

8.7.5 income tax payable in respect of assessable income from the Premises.

8.8 Tenant's Share

Where an Outgoing relates to land or premises which include more than just the Premises or the Outgoing relates to usage by more than just the Tenant, then the amount of the Outgoing payable by the Tenant is calculated by applying the Tenant's Share of Outgoings to the Outgoings.

8.9 Land Tax

Land Tax is calculated on the basis that the land on which the Premises is situated or forms a part of, together with all other land of the Landlord used or available for use by or for the benefit of the Tenant, is the only land owned by the Landlord and there is no special trust or non-concessional company involved.

9 Utilities

9.1 The Tenant must promptly pay for services supplied to the Premises or used by Tenant irrespective of whether or not the Tenant is liable to pay Outgoings (but not to the extent that the Tenant would pay twice).

9.2 If any services supplied to the Tenant are not separately metered or if the Tenant shares the services with others (for example electricity supplied to Common Facilities) then the Tenant must pay a proportion of the shared services within 14 days of demand by the Landlord or the other service user.

9.3 The Tenant's proportion of shared services is calculated by the Landlord acting reasonably and may be calculated proportionately according to the number of users or beneficiaries of the shared service or another method and the Landlord's decision is final.

10 Security Bond

10.1 No later than the Commencement Date the Tenant must provide the Landlord with a Security Bond by way of Bank Guarantee or cash.

10.2 The Landlord may call on the Security Bond or Bank Guarantee and apply monies paid under it to set off any monies owing by the Tenant to the Landlord or to any other person but that application will not waive any breach of the Tenant's obligations.

10.3 Whenever any payment is made to the Landlord under the Security Bond or Bank Guarantee the Landlord may by written notice to the Tenant require that within 10 Business Days the Tenant top up the Security Bond and Bank Guarantee (either by providing a substitute Security Bond or Bank Guarantee or an additional Bank

Guarantee) so that the Landlord is in possession of one or more payments or Bank Guarantees which in aggregate are for the amount stated in the Reference Schedule.

10.4 The Bank Guarantee must be:

- (i) unconditional
- (ii) in favour of the Landlord;
- (iii) not have an expiry date;
- (iv) be for the amount required by the Reference Schedule;
- (v) state that payments made under it will be made on demand and without reference to the Tenant; and
- (vi) be from an authorised deposit-taking institution as defined in the *Retail Leases Act 1994 (NSW)*

and the Tenant acknowledges these to be reasonable requirements.

10.5 When the Tenant vacates the Premises the Landlord must return the Security Bond or Bank Guarantee document to the Tenant within 2 calendar months.

10.6 Where the Premises are sold (or contracted to be sold) the Tenant must within 10 Business Days of a written request from the Landlord provide a new Security Bond or Bank Guarantee in favour of the new Landlord in exchange for the return of the previous Bank Guarantee document, or obtain from the bank issuing the Bank Guarantee an assignment in favour of the new Landlord.

11 Other Monies and Legal Costs Payable by the Tenant

11.1 The Tenant must pay to the Landlord the Landlord's Costs of:

- 11.1.1 remedying a Tenant's Default;
- 11.1.2 dealing with any application by the Tenant for the Landlord's consent (whether or not that consent is given);
- 11.1.3 stamping, and registering this Lease;
- 11.1.4 negotiating, drafting, amending and completing this Lease and any renewal of it;

but subject, where applicable, to the following sections of the *Retail Leases Act 1994 (NSW)*: 14, 40(3) and 45.
- 11.1.5 dealing with any Security Bond (including depositing it as required by the *Retail Leases Act 1994 (NSW)*); and
- 11.1.6 pursuant to Part 9 of the *Environmental Planning and Assessment Regulation 2000*;

- 11.1.6.1 complying with a Fire Safety Schedule;
 - 11.1.6.2 obtaining a Fire Safety Certificate and Final Safety Certificate;
 - 11.1.6.3 implementing a Fire Safety Measure;
 - 11.1.6.4 obtaining a Fire Safety Statement and Supplementary Fire Safety Statement;
 - 11.1.6.5 maintaining a Fire Safety Measure;
 - 11.1.6.6 complying with a Fire Safety Order.
- 11.2 Where the Landlord is or will be entitled to receive any payment from the Tenant for the doing of any act or giving of any consent the Landlord may reasonably estimate the payment of Landlord's Costs likely to be required of the Tenant and may require the Tenant to make that payment in advance with an adjustment to be made as soon as is reasonable practicable upon the amount due being ascertained precisely.

12 Interest

- 12.1 If any monies due under this Lease are unpaid by the Tenant for a period of more than 7 days then interest accrues on them from and including the due date until payment whether or not any claim is made for interest or any notice is given that the monies are overdue.
- 12.2 If the Landlord refuses to accept any monies so as not to prejudice its rights of re-entry in this Lease, the Tenant must pay interest on those monies for the period from and including the due date until acceptance by the Landlord.
- 12.3 The Landlord is entitled to refuse to accept payment of any overdue monies unless accrued interest under this clause is paid at the same time.
- 12.4 Interest payable under this clause is payable on written demand by the Landlord.
- 12.5 Interest is calculated at the Prescribed Rate (both before and after judgment) accruing on a daily basis and compounded with monthly rests.
- 12.6 The Prescribed Rate is the rate from time to time charged by Westpac Banking Corporation Ltd on standard commercial overdrafts of \$100,000.00 plus a margin of 2% but if no such rate exists, then such rate as is set from time to time pursuant to s.101 of the *Civil Procedure Act 2005 (NSW)* for payment of interest on a judgment debt.
- 12.7 The Landlord and the Tenant acknowledge that the interest stated in this clause is a genuine pre-estimate of loss and not a penalty.

13 Use

13.1 The Tenant must:

- 13.1.1 use the Premises for the Permitted Use, and no other;
- 13.1.2 keep the Premises open for business at times usual for the Tenant's kind of business;
- 13.1.3 obtain all necessary consents and licences and registrations to conduct the Tenant's business from the Premises;
- 13.1.4 comply with all laws regulating how the Premises may be used and how the Tenant's business may be conducted;
- 13.1.5 comply with the directions of the Insurer of the Premises (or any larger property of which the Premises form a part);
- 13.1.6 supply the Landlord with a copy of all development approvals relating to the Tenant's use of the Premises;
- 13.1.7 if the Landlord requires, before the end of the Term, complete any works authorised under the Tenant's development approval which the Tenant has not completed;
- 13.1.8 at the Tenant's own expense, comply with any Fire Safety Schedule issued in respect of the Premises pursuant to Part 9 of the *Environmental Planning and Assessment Regulation 2000*;
- 13.1.9 at the Tenant's own expense, comply with a Notice served by the Landlord on the Tenant requiring the Tenant to comply with any Fire Safety Order given to the Landlord in respect of the Premises, including any Order pursuant to Part 9 of the *Environmental Planning and Assessment Regulation 2000*;
- 13.1.10 at the Tenant's own expense, comply with a Notice served by the Landlord on the Tenant requiring the Tenant, to install or implement any Fire Safety Measure required in respect of the Premises pursuant to Part 9 of the *Environmental Planning and Assessment Regulation 2000*;
- 13.1.11 at the Tenant's own expense, comply with a Notice served by the Landlord on the Tenant to obtain on behalf of the Landlord a Fire Safety Statement and supplementary Fire Safety Statement required pursuant to Part 9 of the *Environmental Planning and Assessment Regulation 2000*;
- 13.1.12 at the Tenant's own expense, comply with a Notice served by the Landlord on the Tenant requiring the Tenant, to obtain a Fire Safety Certificate and final Fire Safety Certificate, required in respect of the Premises, pursuant to Part 9 of the *Environmental Planning and Assessment Regulation 2000*;
- 13.1.13 at the Tenant's own expense, comply with a Notice served by the Landlord on the Tenant, requiring the Tenant, to maintain a Fire Safety

Measure at the Premises to a standard no less than that specified in any Fire Safety Schedule issued in respect of the Premises, pursuant to Part 9 of the *Environmental Planning and Assessment Regulation 2000*.

- 13.2 The Tenant must not:
- 13.2.1 allow any encroachments or claims for new easements to be made against the Premises;
 - 13.2.2 do anything which causes a nuisance, annoyance or disturbance to the Landlord or any owner or occupier of a neighbouring property;
 - 13.2.3 do anything that is illegal or dangerous; or
 - 13.2.4 allow to be brought into the Premises any inflammable, dangerous or explosive substances unless the sale or use of such constitutes proper conduct of the Tenant's business for the Permitted Use and the substance is stored and used in accordance with all appropriate safety measures.
- 13.3 The Tenant does not rely on any representation by the Landlord or the Landlord's agent that the Premises may legally be used for, or are fit for, any particular purpose or are in any particular condition.
- 13.4 This Lease will not, as between the Landlord and the Tenant, be void or unenforceable by virtue only of the Tenant having failed to obtain or comply with development approval from the relevant consent authority but will be voidable at the option of the Landlord.

14 Risk and Indemnity

- 14.1 The Tenant uses and occupies the Premises at its own risk.
- 14.2 The Tenant indemnifies the Landlord against Liability in connection with:
- 14.2.1 the Tenant's use or occupation of the Premises;
 - 14.2.2 the Tenant's use of any Common Services or Common Facilities or Accessways under licence;
 - 14.2.3 the Tenant's acts and omissions;
 - 14.2.4 a Tenant's Default.
- 14.3 Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded.

15 Maintenance, Repair and Redecoration

15.1 Normally the Landlord must:

- 15.1.1 Maintain the roof and external walls and floors of the Premises in a structurally-sound and watertight condition; and
- 15.1.2 (where the Landlord is the owner of same) Maintain the Accessways and Common Facilities and Common Services in a structurally-sound condition,

but the Landlord may recover from the Tenant the cost of any works necessitated because of any negligent or wilful act or omission by the Tenant.

15.2 Otherwise, the Tenant must:

- 15.2.1 keep the Premises clean and tidy at all times;
- 15.2.2 clean any Accessway and Common Facility it uses; and
- 15.2.3 Maintain the Premises in good condition, including:
 - 15.2.3.1 Promptly replace all faulty power point switches, light bulbs, starters and tubes;
 - 15.2.3.2 Repair and replace all broken and cracked or damaged glass;
 - 15.2.3.3 Replace faulty tap and toilet washers, toilet seats, toilet seals, cisterns;
 - 15.2.3.4 Repair any blocked drain or sewerage pipes in the premises;
 - 15.2.3.5 Maintain in good working order all doors, door jambs, door fittings, locks, windows, automatic doors and systems;
 - 15.2.3.6 Keep clean and in good condition all carpets and floor coverings;
 - 15.2.3.7 Install and keep in good working order and service as required by any fire authority, any fire safety equipment, required to be installed in the premises by any authority.
- 15.2.4 Maintain, repair, keep clean and in good condition any shop front.

15.3 Normally, when Maintaining the Premises the Tenant is not required to:

- 15.3.1 fix inherent structural defects;
- 15.3.2 undertake structural repairs; nor
- 15.3.3 maintain any Accessway or Common Service or Common Facility,

but the Tenant's obligation of Maintenance will extend to structural repairs, capital improvements and reconstruction and will extend to Accessways, Common Services

and Common Facilities to the extent that the damage or need for Maintenance is caused or contributed to by the Tenant.

- 15.4 When Maintaining the Premises regard is to be had to their condition at the Commencement Date of this Lease, or where the Tenant (or its predecessor-in-title) has been in occupation earlier under an earlier lease or otherwise, then the first date of occupation).
- 15.5 The Tenant must Redecorate the Premises whenever reasonably required by the Landlord (by the Landlord giving the Tenant at least 3 month's written notice) and in any case within the last 6 months before the end of the Term (in which case no prior written notice is required).
- 15.6 The Landlord may make a Rule or serve a notice on the Tenant stating what the Tenant is required to do to fulfil an obligation to Maintain, Redecorate or clean the Premises (including requiring the Tenant to enter into maintenance contracts for the regular inspection, servicing, maintenance and repair of any plant and equipment in the Premises) and the Tenant must comply with that Rule or notice as if it were a term of this Lease provided it is not otherwise inconsistent with any other term of this Lease.
- 15.7 The Tenant must immediately notify the Landlord of the necessity for or advisability of any maintenance or repair which is properly the Landlord's responsibility.
- 15.8 Where required by any Act or Regulation, (including Part 9 of the *Environmental Planning and Assessment Regulation 2000*), every 12 months the Tenant must provide the Landlord with a statement by a qualified accredited fire examiner setting out the examiner's assessment of the fire equipment, fire extinguishers and fire blanket. If the Premises are damaged by fire, and any insurance claim is rejected by the building insurer due to the absence of, or the expiry of the aforesaid statement, the Tenant shall pay to the Landlord the cost of any fire damage to the Premises to the extent that the same is not covered by the Landlord's building insurer.

16 Alterations & Improvements by the Tenant

- 16.1 The Tenant must:
 - 16.1.1 not commit any act of waste;
 - 16.1.2 not make any alteration or addition to the Premises or install, or make any additions or alterations to, any electrical, gas, water, plumbing and other services, fixtures, or appliances, or any other equipment or appliances for heating, cooling, ventilating or air conditioning the Premises, without the Landlord's written consent (but no consent is required for the Tenant to install, alter or remove non-structural demountable partitioning which complies with the remaining provisions of this clause);

- 16.1.3 not without the Landlord's consent carry out any alteration or addition which hinders access to a Conduit;
- 16.1.4 do the work to the Premises required by any Authority (even if it involves structural work or additions or improvements) because of the way that the Tenant uses the Premises or the number or sex or physical impairment of the Tenant's employees or invitees;
- 16.1.5 supply to the Landlord all plans and specifications and reports and expert advices that the Landlord may require to identify any of the Tenant's proposed alterations or additions;
- 16.1.6 carry out all alterations and additions:
 - 16.1.6.1 only in accordance with the plans and specifications consented to by the Landlord;
 - 16.1.6.2 to the reasonable satisfaction of the Landlord;
 - 16.1.6.3 in a good and workmanlike manner using new materials;
 - 16.1.6.4 in accordance with all laws and approvals and any conditions that the Landlord has reasonably set;
 - 16.1.6.5 using tradesmen that are qualified, licensed, experienced and who the Landlord has approved;
 - 16.1.6.6 in accordance with relevant Law and the requirements of any relevant Authority; and
 - 16.1.6.7 in accordance with any conditions upon which the Landlord's consent was given.
- 16.2 After commencing any permitted alteration or addition the Tenant must complete them by the earliest of:
 - 16.2.1 any date the Landlord reasonably requires;
 - 16.2.2 a date which is a reasonable period after they have been commenced;
 - 16.2.3 the end of the Term
- 16.3 The Landlord may impose conditions for the granting of its consent relating to the Tenant's proposed alterations including:
 - 16.3.1 the standards, quality and appearance of the alterations;
 - 16.3.2 how and when the alterations may be carried out;
 - 16.3.3 which parts of the Premises must not be reinstated and which parts must be upon the Tenant vacating the Premises; and
 - 16.3.4 which fittings of the Tenant installed as part of the alterations must not be removed when the Tenant vacates the Premises.

17 Signs

- 17.1 The Tenant must not exhibit any sign on the exterior of the Premises without first obtaining the Landlord's consent.
- 17.2 During the last 3 months of this Lease the Tenant must permit the Landlord to fix and retain on any part of the exterior of the Premises appropriate signs advertising the availability of the Premises for letting provided they do not unreasonably interfere with the Tenant's business or the Tenant's signs.
- 17.3 Whenever the Landlord wishes to sell the Premises the Tenant must permit the Landlord to fix and retain on any part of the exterior of the Premises appropriate signs advertising their sale provided they do not unreasonably interfere with the Tenant's business or the Tenant's signs.

18 Insurance

- 18.1 The Tenant must keep current the following insurance policies at all times during the Term:
 - 18.1.1 public liability for at least the amount stated in the Reference Schedule in respect of each single event;
 - 18.1.2 damage to plate glass and windows, and
insurance required by the *Workers Compensation Act 1987 (NSW)*.
- 18.2 Insurances other than compulsory workers compensation insurance must:
 - 18.2.1 be effected in the Tenant's name for its interest as tenant and in the Landlord's name for its interest as landlord.
 - 18.2.2 contain a cross liability clause such that the policy operates as if there was a separate policy of insurance covering each of the insured persons;
 - 18.2.3 contain a waiver of subrogation clause against every insured where they are indemnified by the policy;
 - 18.2.4 not exclude cover in respect of any legal liability assumed by an insured under the Lease (including the indemnity clause and the contractual assumption of joint and several liability by the Tenant through the contracting-out of any proportionate liability legislation); and
 - 18.2.5 be governed by the law of New South Wales and subject to Australian jurisdiction.
- 18.3 All insurances must be effected with either

- 18.3.1 an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - 18.3.2 a Treasury Managed Fund insurance scheme with the NSW State Government; or
 - 18.3.3 the Comcover insurance scheme for the Australian Federal Government; or
 - 18.3.4 Lloyds Underwriters.
- 18.4 The minimum amount of public liability insurance stated in the Reference Schedule may be increased annually by the Landlord (by a reasonable amount) by notice served on the Tenant.
- 18.5 The Tenant must provide proof that the policies of insurance required under this Lease have been effected and are current at all times during the Term. The Tenant must notify the Landlord within 1 Business Day of:
- 18.5.1 the cancellation of any of the policies of insurance required under this Lease; or
 - 18.5.2 the variation or reduction in the limits or coverage of such insurance policies.
- 18.6 The Tenant must not do or omit to do anything that would cause the Landlord's insurance premiums in respect of building or fire insurance for the Premises or any adjoining premises owned by the Landlord or any part thereof to increase and if the Tenant breaches this clause then the Tenant must pay the amount of the increase to the Landlord on demand as a liquidated debt (an increase in a premium includes any loading or additional amounts charged due to the use to which the Tenant puts the Premises or due to the items stored in the Premises).

19 Landlord's Right of Access and Power to Remedy Tenant's Default

- 19.1 The Landlord may at any time on reasonable notice to the Tenant (except in case of an emergency when no notice is required) enter the Premises to:
- 19.1.1 show them to any interested party including a mortgagee or prospective purchaser or prospective tenant;
 - 19.1.2 exercise any right that is reserved to the Landlord in this Lease or obligation of the Landlord under this Lease or at law;
 - 19.1.3 inspect the Premises or ascertain whether the Tenant is complying with this Lease; and
 - 19.1.4 remedy a Tenant's Default including carrying out maintenance and repair (but without thereby waiving the Tenant's Default).

- 19.2 When exercising its rights under this clause the Landlord must use reasonable efforts to minimise disruption to the Tenant and the Landlord must make good any damage caused to the Premises and the Tenant's fixtures and fittings.

20 Damage and Destruction

- 20.1 In this clause "damaged" (which term includes "destroyed") means damage to the Premises (or to larger property of which the Premises forms a part) such that the Tenant cannot use or gain access to the Premises or such that the useability is substantially reduced.
- 20.2 The Tenant is not liable to pay Rent, or any amount payable to the Landlord in respect of Outgoings or other charges, that is attributable to any period during which the Premises are damaged.
- 20.3 If the Premises are still useable under the Lease but their useability is diminished due to the damage, the Tenant's liability for Rent and any amount in respect of Outgoings attributable to any period during which useability is diminished is reduced in proportion to the reduction in useability caused by the damage.
- 20.4 If the Landlord notifies the Tenant in writing that the Landlord considers that the damage is such as to make its repair impracticable or undesirable, the Landlord or the Tenant may terminate the Lease by giving not less than 7 days notice in writing to the other and no compensation is payable in respect of that termination (but without prejudice to any other rights or liability in respect of any breach of this Lease).
- 20.5 If the Landlord fails to repair the damage within a reasonable time after the Tenant requests the Landlord in writing to do so, the Tenant may terminate the Lease by giving not less than 7 days notice in writing of termination to the Landlord.
- 20.6 This clause does not affect any other right of the Landlord to recover damages from the Tenant in respect of any damage or destruction.
- 20.7 Nothing obliges the Landlord to rebuild the Premises after destruction or repair them if repair is uneconomic in the Landlord's reasonable opinion.
- 20.8 In the event of any dispute arising as to the amount by which Rent or Outgoings are to abate such dispute shall be determined by a loss assessor who is a member of the Insurance Council of Australia. The parties may agree on a loss assessor otherwise either of them may ask the President for the time being of the Insurance Council of Australia to nominate one. Each party must pay half of the loss assessor's costs. The loss assessor will act as an expert and not as an arbitrator and his decision is final but he must state how he reached his decision and the matters he relied upon. The parties may make written submissions to the loss assessor within 14 days of their being notified of his appointment (but the loss assessor may extend that time) and the loss assessor must promptly pass details of one party's submissions to the other party inviting comments in reply to matters raised in the initial submissions of each party within 14 days (and the loss assessor may ignore submissions and comments not submitted within time). If the loss assessor refuses

to accept or resigns his appointment to act or fails to make a determination within 1 month then either party may seek the appointment of a new loss assessor under this clause.

21 Transfer, Subletting & Alienation

- 21.1 In this clause a reference to "assignment" and "assignee" (which terms also include a transfer and transferee respectively) and "lease" will, with the necessary changes, include a reference to "subletting" and "subtenant" and "sublease" respectively and where the Tenant is a private corporation, any change in the majority shareholding in the Tenant or change that causes a change in the effective control of the corporation, will be deemed to be an assignment.
- 21.2 A request for the Landlord's consent to an assignment of the Lease must be made in writing and the Tenant must provide the Landlord with such information as the Landlord may reasonably require concerning the financial standing and business experience of the proposed assignee.
- 21.3 The Landlord must deal expeditiously with a request for consent and is taken to have consented to the assignment if the Tenant has complied with its obligations in this clause and the Landlord has not within 28 days after the request was made given notice in writing to the Tenant either consenting or withholding consent or granting conditional consent.
- 21.4 The Landlord is entitled to withhold consent to the assignment of the Lease in any of the following circumstances (and is not entitled to withhold that consent in any other circumstances):
- 21.4.1 if the proposed assignee proposes to change the use to which the Premises is put;
 - 21.4.2 if the proposed assignee has financial resources or retailing skills that are inferior to those of the proposed assignor;
 - 21.4.3 if the Tenant has not complied with this clause, or
 - 21.4.4 in the case of proposed subletting:
 - 21.4.4.1 the subletting is of less than the whole of the Premises,
 - 21.4.4.2 the rent to be paid by the proposed subtenant is less than what the Landlord reasonably considers is the current market rent;
or
 - 21.4.4.3 on any other ground which is reasonable.
- 21.5 Consent by the Landlord to the assignment (but not a subletting) will be deemed to include the following (unless the Landlord waives them in writing) and it is agreed the following conditions are reasonable:

- 21.5.1 the proposed assignee enters into a Deed with the Landlord covenanting to comply with the terms of the Lease and any other covenants reasonable to secure performance of the Lease;
 - 21.5.2 where the proposed assignee is a private corporation, that its directors provide a personal guarantee of the corporation's performance of the Lease;
 - 21.5.3 the proposed assignee provides the Landlord with a new Security Bond under clause 10;
 - 21.5.4 the Tenant (and its directors where the Tenant is a corporation) provides the Landlord with a guarantee of the proposed assignee's performance of the Lease as permitted under s.40(4) of the *Retail Leases Act 1994 (NSW)*; and
 - 21.5.5 the payment of a reasonable sum in respect of any legal or other expenses incurred in connection with such a consent as permitted under ss.39(2) and 40(3) of the *Retail Leases Act 1994 (NSW)*.
- 21.6 The Tenant must not mortgage or charge or encumber the Tenant's interest in the Lease or the Tenant's fixtures or fittings without the prior written consent of the Landlord which may be granted or refused or conditionally granted in the absolute discretion of the Landlord.
- 21.7 The Tenant must not part with possession (other than by way of assignment to which the Landlord has consented) nor grant a licence or concession in respect of the whole or any part of the Premises without the prior written consent of the Landlord which shall be in the Landlord's absolute discretion.

22 Landlord's Reservations

- 22.1 The Landlord reserves the free and uninterrupted passage and running of all utilities and services through and along the Conduits from time to time within the Premises which do not exclusively serve the Premises.
- 22.2 The Landlord reserves the right to grant a lease or licence to a third party:
- 22.2.1 over the airspace above the Premises or on any roof or exterior wall for use by a telecommunications carrier (or a related body corporate) for the affixing of mobile phone network apparatus, and
 - 22.2.2 over any exterior wall of the Premises for the installation of advertising,
- provided that such leases or licences do not substantially interfere with the Tenant's enjoyment of the Premises.
- 22.3 The Landlord is entitled to repair, renovate or refurbish the Accessways and Common Facilities and close them temporarily for the purpose of repair, renovation or service but if this would adversely affect the Tenant's business then in accordance with s.33 of the *Retail Leases Act 1994 (NSW)* the Landlord must give

2 months' notice (except in the case of emergency when the Landlord can give less notice so long as the Landlord gives as much notice as is reasonably practicable). The Landlord must take reasonable precautions to limit any disturbance to the Tenant.

- 22.4 If the Landlord is a trustee of a trust, the Tenant acknowledges that all obligations are undertaken or incurred by the Landlord solely in its capacity as trustee, and accordingly only the assets of the trust under the Landlord's control and in its possession shall be available to pay or satisfy such obligations. The Landlord's liability under this Lease is limited to the extent that it is indemnified out of the assets of the trust and the Landlord is personally liable only if it is fraudulent, acts in breach of trust or is negligent.

23 Capacity of Lessor

- 23.1 The parties acknowledge and agree that:
- 23.1.1 The Lessor has entered into this Lease in its capacity as trustee of Tonini Pension Fund (**Trust**) and in no other capacity;
 - 23.1.2 Subject to clause 23.3, the Lessor is not liable to pay or satisfy any of its obligations under this Lease and has no liability to the other parties, except to the extent of the Lessor's right or indemnity out of the assets of the Trust;
 - 23.1.3 If those assets are insufficient, the other parties (subject to clause 23.3) may not seek to recover any shortfall by bringing proceedings against the Lessor personally and may not seek the appointment of a liquidator, administrator, receiver or similar person to the Lessor in any liquidation, administration or arrangement of or affecting the Lessor.
- 23.2 Subject to clause 23.3, each other party waives its rights and releases the Lessor from any personal liability whatsoever in respect of any loss or damage which cannot be paid or satisfied out of the assets of the Trust.
- 23.3 The Lessor is liable personally and is not released to the extent that a liability under this Lease arising out of the Lessor's own fraud, gross negligence, breach of trust or breach of duty which disentitles it from an indemnity out of the assets of the Trust in relation to the relevant liability.
- 23.4 Notwithstanding any other provision of this Lease, the liability of the Lessor is limited by the provisions of this clause 23. In the event of any inconsistency with any other provision of this Lease, this clause is paramount.
- 23.5 Where the Lessor, in its capacity as trustee of the Trust, appoints an agent to act on its behalf:
- 23.5.1 the agent is not the agent of the Lessor in its personal capacity;
 - 23.5.2 accordingly, the agent cannot act on behalf of the Lessor in a way which exposes the Lessor to any personal liability;

- 23.5.3 therefore no act or omission of such agent will be of itself considered fraud, negligence, breach of trust or breach of duty on the Lessor for the purpose of clause 23.1.
- 23.6 The parties agree that the reference to an agent in clause 23.5 does not include an officer or employee of the Lessor.

24 Rules must be reasonable and must not be inconsistent with the terms of this Rules

- 24.1 The Landlord may make Rules for the use of the Premises, Accessways, Common Services and Common Facilities or to elaborate upon or clarify any clause in this Lease and Rules shall have effect as if they were conditions in this Lease.
- 24.2 Rules must be reasonable and must not be inconsistent with the terms of this Lease and to the extent of any inconsistency then this Lease prevails.
- 24.3 The Tenant must be given notice of the Rules and any change to them before they apply to the Tenant and Rules cannot operate retrospectively.

25 Quiet Enjoyment

- 25.1 Normally, provided the Tenant complies with this Lease the Landlord must allow the Tenant to use and possess the Premises without interference by the Landlord or anyone claiming title through or superior to the Landlord.

26 Termination

- 26.1 Unless terminated earlier, this Lease ends automatically on the Termination Date stated in the Reference Schedule.
- 26.2 The Landlord may terminate this Lease if:
- 26.2.1 the Tenant has repudiated this Lease; or
 - 26.2.2 Rent or any other money due under this Lease is 7 days overdue irrespective of whether or not the Landlord has made any formal demand for it; or
 - 26.2.3 the Tenant has failed to comply with a Landlord's notice under s.129 of the *Conveyancing Act 1919 (NSW)*; or
 - 26.2.4 a Tenant's Default (not requiring a notice under s.129 of the *Conveyancing Act 1919 (NSW)*) occurs (and the Landlord has given a termination notice of at least 14 days); or
 - 26.2.5 an Insolvency Event has occurred in respect of the Tenant.

- 26.3 The Landlord may terminate this Lease by re-entering the Premises and taking possession or attempting to do so or by an unequivocal demand for possession (and a termination notice will be deemed to be an unequivocal demand for possession).
- 26.4 If there is a breach of an essential term of this Lease then the Landlord may recover damages for the Landlord's losses (including loss of rent) for the whole Term but the Landlord must take reasonable steps to mitigate and reduce its loss. The Landlord's right to recover damages is not prevented by the Landlord accepting the Tenant's repudiation of this Lease or the Landlord's re-entry.
- 26.5 Essential terms include the provisions of this Lease covering Tenant's Obligations as to:
- 26.5.1 payment of Rent within 7 days of the date it is due (even if the Landlord accepts late payment);
 - 26.5.2 payment of GST;
 - 26.5.3 payment of Outgoings;
 - 26.5.4 payment of other monies due;
 - 26.5.5 only using the Premises for the Permitted Use;
 - 26.5.6 Maintaining the Premises;
 - 26.5.7 not carrying out any alterations without the Landlord's consent;
 - 26.5.8 effecting the insurances required under this Lease;
 - 26.5.9 not transferring or subletting or dealing with the Lease other than as permitted under this Lease; and
 - 26.5.10 payment of the Security Bond.

27 Conversion to Periodic Tenancy for Breach

- 27.1 If the Landlord would be entitled to terminate this Lease because of a Tenant's Default or repudiation, the Landlord may instead, by notice to the Tenant, convert this Lease to a periodic tenancy from month to month terminable by either party on at least 1 month's notice expiring at any time and otherwise on the same terms of this Lease excepting the Term and any Option for Renewal.
- 27.2 Such conversion is not a waiver by the Landlord of any Tenant's Default nor does it prevent any action by the Landlord to enforce any term of the Lease or to recover damages for loss.

28 Procedure at End of Lease

- 28.1 When this Lease ends, then unless the Tenant enters into a new lease over the Premises the Tenant must:
- 28.1.1 remove all its equipment and stock and Tenant's fixtures (but not the Landlord's fixtures);
 - 28.1.2 make good any damage the Tenant causes to the Premises by that removal;
 - 28.1.3 restore the Premises to the state and condition they were in before the Tenant carried out any alterations (unless the Landlord notifies the Tenant that the Landlord requires any alterations to remain);
 - 28.1.4 return all keys to the Landlord and advise the Landlord of the combination number or code for any safes, alarms or locks; and
 - 28.1.5 yield up vacant possession of the Premises in the condition the Tenant is required to keep them in under this Lease.
- 28.2 If the Tenant fails to remove its goods and stock and Tenant's fixtures (called "*Tenant's belongings*") at the end of the Lease then they will be deemed to have been abandoned by the Tenant and irrespective of any objection from the Tenant the Landlord may keep them, store them, destroy them, hire them out and/or sell them (called "*dealings*") and the Tenant cannot make any claim against the Landlord (including trespass or conversion) nor claim the proceeds of any sale and the Tenant indemnifies the Landlord from any claim by any person claiming any interest (including mortgagee, chargee, bailor or owner) in the Tenant's belongings.
- 28.3 The Landlord is not obliged to seek any price when dealing with the Tenant's belongings and the Tenant must reimburse the Landlord on demand for the Landlord's Costs incurred in dealing with them (but can claim a set-off against any monies the Landlord makes in dealing with them).

29 Holding Over & s.44 Statutory Extension

- 29.1 If at the end of this Lease the Landlord agrees to the Tenant continuing to occupy the Premises (other than under a new lease) then the Tenant becomes a monthly tenant and the terms of this Lease will continue (except for the Term and any Option for Renewal) and the monthly tenancy will end upon either party giving to the other at least one (1) month's written notice expiring at any time.
- 29.2 The Rent for a monthly tenancy is one twelfth of the total of the Rent that the Tenant has paid for the preceding period of 12 months increased by 5%.
- 29.3 Subject to this clause 28, the monthly tenancy is on the same terms as this Lease except for:

- 29.3.1 a change that is necessary to make this Lease appropriate for a monthly tenancy; or
- 29.3.2 a change that the Lessor requires as a condition of giving its approval to the holding over.
- 29.4 The Lessee must maintain any bank guarantee required under this Lease during the monthly tenancy.
- 29.5 The Lessee must pay the Outgoings during the monthly tenancy.
- 29.6 Except where the Tenant has an Option of Renewal or is a periodic tenant, at least 6 months but not more than 12 months before the end of the Contractual Term of this Lease the Landlord must inform the Tenant in accordance with s.44 of the *Retail Leases Act* of what the Landlord's intentions are regarding termination or the offer of a new lease at the end of the contractual term. The Landlord's failure to comply with that section will extend the term as provided for in that section.

30 Disturbance: No Compensation if Pre-Disclosed

- 30.1 The Tenant agrees that the Landlord has no liability to compensate or pay damages to the Tenant in respect of any disturbance in the Premises.

31 Guarantee and Indemnity

- 31.1 The Guarantor gives this guarantee and indemnity in consideration of the Landlord agreeing to enter into this Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Landlord for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.
- 31.2 The Guarantor guarantees to the Landlord the due performance of the Lease by the Tenant, including:
 - 31.2.1 the payment of rent and other monies under the Lease; and
 - 31.2.2 the payment of any damages the Tenant is liable for in respect of the Lease.
- 31.3 The Guarantor indemnifies the Landlord against all losses and expenses which the Landlord incurs in consequence of any breach by the Tenant of the Lease.
- 31.4 The Guarantor also agrees that it will be responsible for the fulfilment of the Lease in the same manner and to the same extent as if the Guarantor was not just a surety but as if the Guarantor was a co-debtor and a co-tenant (but not so as to give the Guarantor any interest in the Lease or the Premises) jointly and severally with the Tenant, without the necessity of the Landlord giving any prior notice to the Guarantor requiring the payment of any moneys or to remedy any default by the Tenant.

- 31.5 This guarantee and indemnity are continuing. They are irrevocable and remain in full force until the obligations of the Tenant under the Lease have been fully satisfied.
- 31.6 This guarantee and indemnity will not be wholly or partially discharged by the payment of any monies or by the granting of any time, credit, indulgence or concession extended by the Landlord to the Tenant or the Guarantor or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any rights of the Landlord against the Tenant or the Guarantor.
- 31.7 This guarantee and indemnity are in addition to any other rights which the Landlord has under the Lease and may be enforced against the Guarantor without the Landlord first having to exercise (or exhaust) any rights it has under the Lease and without the Landlord first having to sue the Tenant.
- 31.8 To the fullest extent permitted by law the Guarantor hereby waives such of the Guarantor's rights which may at any time be inconsistent with any of the provisions of this clause.
- 31.9 The obligations of the Guarantor are not conditional or contingent or dependent upon the validity or enforceability of the covenants and agreements of any other person and remain binding notwithstanding that a co-guarantor has not signed this Lease or that this guarantee or indemnity are not enforceable against a co-guarantor or that the Tenant has not properly signed the Lease or that the Lease is not enforceable against the Tenant.
- 31.10 If the Lease contains an option for a further lease and the Tenant exercises that option then this Guarantee applies to that further lease as well as this Lease.
- 31.11 Where there is more than one person or corporation which together constitute the Guarantor then the obligations and liabilities of each and every such person or corporation shall be joint and several.
- 31.12 The Guarantor acknowledges that the Guarantor has investigated and satisfied itself of all factors relevant to the risk the Guarantor is accepting in giving this guarantee and indemnity, including:
- 31.12.1 the terms of this Lease,
 - 31.12.2 the Tenant's finances,
 - 31.12.3 the accounts of the Tenant's business, and
 - 31.12.4 the Tenant's business experience and skills,
- and the Guarantor represents to the Landlord that the Guarantor has either taken independent legal and financial advice about this guarantee and indemnity and Lease and the Tenant or has voluntarily made an informed decision not to do so.
- 31.13 The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Landlord under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

- 31.13.1 the Landlord granting time or other indulgence to, compounding or compromising with or releasing the Tenant or any other Guarantor;
- 31.13.2 acquiescence, delay, acts, omissions or mistakes on the part of the Landlord;
- 31.13.3 any transfer of a right of the Landlord;
- 31.13.4 the termination, surrender or expiry of, or any variation, assignment, extension or renewal of, this Lease;
- 31.13.5 the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- 31.13.6 any change in the Tenant's occupation of the Premises;
- 31.13.7 this Lease not being registered;
- 31.13.8 this Lease not being effective as a lease;
- 31.13.9 this Lease not being effective as a Lease for the Term; or
- 31.13.10 any person named as Guarantor not executing or not executing effectively this guarantee and indemnity.

31.14 The Guarantor may not:

- 31.14.1 raise a set-off or counterclaim available to it or the Tenant against the Landlord in reduction of its liability under this guarantee and indemnity; or
- 31.14.2 claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Landlord in connection with this Lease; or
- 31.14.3 make a claim or enforce a right against the Tenant or its property; or
- 31.14.4 prove in competition with the Landlord if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Tenant or the Tenant is otherwise unable to pay its debts when they fall due,

until all money payable to the Landlord in connection with the Lease or the Tenant's occupation of the Premises is paid.

31.15 If a claim that a payment to the Landlord in connection with this Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Landlord is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

The Landlord may assign its rights under this guarantee and indemnity.

32 Early Termination for Redevelopment or Demolition

32.1 In this clause:

"Plans" means a genuine proposal to Redevelop within a reasonably practicable time of termination of this Lease.

"Redevelopment" means a proposal to repair, build, rebuild, refurbish or alter the Premises or a larger property of which they form part where the Redevelopment cannot be carried out practicably without vacant possession of the Premises.

32.2 The Landlord may terminate this Lease at any time by giving the Tenant 6 months' notice (or 3 months where the Contractual Term of this Lease is not more than 12 months) and a copy of the Plans if the Landlord proposes Redevelopment.

32.3 After receipt of the Landlord's notice the Tenant may terminate this Lease at any time on 7 day's written notice to the Landlord expiring at any time within 6 months before the Landlord's proposed termination date (or 3 months where the Contractual Term of this Lease is not more than 12 months).

32.4 If the Lease is terminated under this clause and Redevelopment is not carried out within a reasonably practicable time of the termination date notified by the Landlord then the Landlord is liable to pay the Lessee reasonable compensation for the loss suffered by the Lessee as a consequence of the early termination of this Lease, unless the Landlord establishes that at the time the notice of termination was given by the Landlord there was a genuine proposal to Redevelop the Premises within that time, but otherwise, termination under this clause does not give a party any right to compensation or damages but nor does it affect the right of either party against the other in respect of any previous breach of this Lease.

33 Air-Conditioning

33.1 Where any plant, machinery or equipment for heating, cooling or circulating air (all of which are herein included in the expression "air-conditioning plant") are provided or installed in the Building or the Demised Premises by the Lessor:-

33.1.1 **Non-Interference By Lessee.** The Lessee will at all times comply with and observe the reasonable requirements of the Lessor in regard to the air-conditioning plant and will not do or permit to be done anything in relation to the same or otherwise which might interfere with or impair the efficient operation of the air-conditioning plant.

33.1.2 **Failure.** If the air-conditioning plant fails to function for any reason the Lessee shall not by reason of such failure be entitled to determine this Lease nor shall the Lessee have any right of action or claim for compensation or damages against the Lessor in respect thereof.

33.1.3 The Lessee must at its own expense maintain, keep and repair the air-conditioning plant in good working condition.

- 33.1.4 **Maintenance.** The parties agree that the Lessee will arrange and be responsible for payment of a general maintenance agreement for the air-conditioning system and shall at its own costs and expense maintain the air-conditioning system on a day to day basis.
- 33.1.5 Nothing herein shall oblige the Lessor to undertake the repairs or the replacement of the air-conditioning system.

A handwritten signature in black ink, appearing to be 'John Mubayyid', written in a cursive style.

JOHN MUBAYYID

Execution

Executed as a Deed

By the Landlord:

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

Company: KARALA PTY LIMITED

(A.C.N. 002 537 108)

Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person

LILIANA TONINI

Name of authorised person (please print)

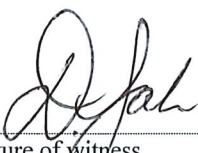
SOLE DIRECTOR & SOLE
SECRETARY

Office held

By the Tenant:

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

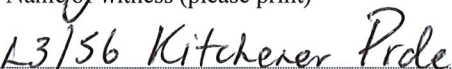
Certified correct for the purposes of the Real Property Act 1900 by the Lessee.



Signature of witness

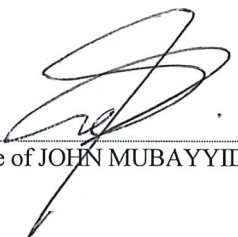


Name of witness (please print)



Address of witness (please print)

Barkston NSW 2200



Signature of JOHN MUBAYYID

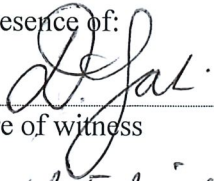
By the Guarantor:

Signed sealed and delivered by
JOHN MUBAYYID
in the presence of:


)
)
)



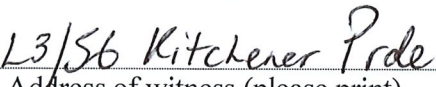
Signature of Guarantor



Signature of witness



Name of witness (please print)



Address of witness (please print)
