

Dealing Number



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1. Lessor QUANDA ROAD PROPERTY PTY LTD ACN 612 708 013 AS TRUSTEE UNDER INSTRUMENT 717434538	Lodger (Name, address, E-mail & phone number) Greenhalgh Pickard Solicitors PO Box 52, Buddina Qld 4575 07 5444 1022 info@gpla.com.au	Lodger Code NR 809
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2. Lot on Plan Description LOT 1 ON SP 188291	Title Reference 50672438
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3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
		JD RENTALS PTY LTD ACN 138 853 773	

4. Interest being leased
FEE SIMPLE

5. Description of premises being leased
THE WHOLE OF THE LOT

6. Term of lease Commencement date/event: 01/05/2021 Expiry date: 30/04/2024 #Options: 1 x 3 years #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	7. Rental/Consideration SEE SCHEDULE
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8. Grant/Execution
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in: the attached schedule;

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

.....signature QUANDA ROAD PROPERTY PTY LTD ACN 612 708 013
full name
qualification / /

Witnessing Officer	Execution Date	Director Lessor's Signature
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)		

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

.....Signature JD RENTALS PTY LTD ACN 138 853 773
full name
qualification
 Execution Date 11/06/2021

Witnessing Officer	Execution Date	Director Lessee's Signature
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)		

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REFERENCE SCHEDULE

Item 1.	Landlord	QUANDA ROAD PROPERTY PTY LTD ACN 612 708 013 AS TRUSTEE UNDER INSTRUMENT 717434538
	Address:	12 Ironbark Road, Little Mountain QLD 4551
Item 2.	Tenant:	JD RENTALS PTY LTD ACN 138 853 773
	Address:	338 Crosshill-Aubigny Road, Biddeston QLD 4401
Item 3.	Commencement Date:	1 May 2021
Item 4.	Termination Date:	30 April 2024
Item 5.	Term	Three (3) years
Item 6.	First Option to Renew:	Three (3) years
Item 7.	Second Option to Renew:	NIL
Item 8.	Rent:	\$45,900 per annum plus GST (\$150 per m ² per annum plus GST)
Item 9.	Index Review Dates:	Each anniversary of the Commencement Date during any Renewed Term but not the first Term.
Item 10.	Market Review Dates:	N/A
Item 11.	(a) Exclusive Use:	Not applicable
	(b) Permitted Use:	Wholesale Bakery – wholesale preparation and manufacturer of bakery products and ancillary use for retail sale of bakery products of no more than 10% of the net lettable area of the Premises.
Item 12.	Amount of Public Risk Insurance:	\$20 million
Item 13.	Security Deposit Amount:	An amount equivalent to 6 months' rent plus GST.
Item 14.	Guarantor(s):	Dean Cameron Orford
	Address:	338 Crosshill-Aubigny Road, Biddeston QLD 4401
Item 15.	(a) Pylon Sign Lightbox cost:	N/A
	(b) Awning Lightbox cost:	N/A
Item 16.	Trading hours:	N/A

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Special Conditions

The Special Conditions will prevail where there is any discrepancy or inconsistency between the Special Conditions and the General Conditions.

SC1. Existing Fitout

- (1) The Tenant acknowledges that items of plant, equipment and fitout have been left in the Premises by a previous occupier ("the Existing Fitout"), which the Landlord regards as having been abandoned.
- (2) The Landlord does not warrant or represent that it nor the Tenant has ownership of the Existing Fitout.
- (3) To the extent that the Landlord is lawfully entitled to do so, the Landlord permits the Tenant to use the existing fitout.
- (4) The Tenant acknowledges that the owner of or a party with a security interest in the Existing Fitout may, at any time, make a valid claim for repossession of the Existing Fitout and the Tenant must allow access to the Premises, on the provision of reasonable notice, for that party to retake possession of the Existing Fitout.
- (5) The Tenant agrees that the Landlord is not liable to the Tenant if for any reason the Existing Fitout or any part thereof fails to operate or cannot continue to be used by the Tenant for any reason.
- (6) The Tenant agrees to use the Existing Fitout entirely at its own risk.
- (7) If the Tenant elects to use the Existing Fitout or any part of it, the Tenant must keep the Existing Fitout in good repair and agrees that for the purposes of determining any liability, it is to be treated as Tenant's own property.
- (8) In the event that any or all of the Existing Fitout is not used by the Tenant, then it must be disposed of by the Tenant at the Tenant's expense provided that the Tenant has first obtained the Landlord's consent in writing which shall not be unreasonably withheld.
- (9) No undertaking or warranty is given that the Existing Fitout is useful, safe, or in working condition.
- (10) The Landlord is not obligated to replace or repair any of the Existing Fitout.

SC2. Equipment Licence

- (1) The Landlord is the owner of and retains title to the following plant & equipment:
 - a. Coolroom (purpose-built and inclusive of enclosed work area);
 - b. Freezer (purpose-built);
 - c. Air-conditioner; and
 - d. Dishwasher,which are located within the Premises (collectively, the "Landlord's Equipment").
- (2) The Landlord grants to the Tenant a licence throughout the Term entitling the Tenant and the Tenant's authorised employees and agents to use the Landlord's Equipment in the ordinary course of the Tenant's business conducted at the Premises.
- (3) The Tenant must at all times:
 - a. keep the Landlord's Equipment in a clean and tidy condition;
 - b. not do anything to or with the Landlord's Equipment which is likely to be or become a danger to any person or property including the Premises;

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SC3. Ancillary (Retail) Use

- (1) The Tenant must not, at any time, use more than 25% of the total lettable area of the Premises for a Retail Shop Lease, as that term is defined in the *Retail Shop Leases Act 1994* (QLD).
- (2) The Tenant must not do anything which converts this lease to become a Retail Shop Lease, as that term is defined in the *Retail Shop Leases Act 1994* (QLD).

General Conditions

1. Definitions and Interpretation

1.1 Terms in Reference Schedule

Where a term used in this Lease appears in bold type in the Reference Schedule, that term has the meaning shown opposite it in the Reference Schedule.

1.2 Definitions

In this Lease unless the context otherwise requires:

- (1) **"Air Conditioning Equipment"** means the plant, chilled water piping, electrical installations, ductwork and diffusers used to heat, cool, circulate and extract air throughout the Building;
- (2) **"Australian Institute"** means the Australian Property Institute Queensland Division or its successor or other organisation replacing it;
- (3) **"Body Corporate"** means the body corporate of the proprietors of the Scheme (if applicable);
- (4) **"Building"** means the building in which the Premises are situated including any modifications, extensions or alterations to the Building and, where appropriate, includes the Landlord's Fixtures;
- (5) **"Centre"** means –
 - (a) the Lot and any other land (from time to time) which the Landlord notifies the Tenant is being used with the Lot for the purposes of the retail centre; and
 - (b) all buildings, structures and other improvements (including the Landlord's fixtures) which are used or designated by the Landlord for use for the purposes of the retail centre.
- (6) **"Claim"** includes any claim or legal action;
- (7) **"Common Property"** means –

the common property in the Scheme (if applicable); or
all areas in the Centre which are available for the common use of tenants of the Centre.
- (8) **"Cost"** means any cost, charge, expense, outgoing, payment or other expenditure of any nature and, where appropriate, includes reasonable fees and disbursements payable to contractors, consultants and lawyers;
- (9) **"Default Rate"** means 2% per annum above the highest overdraft rate charged by the Landlord's bank for commercial loans in excess of \$100,000.00 at the date for payment of any money and, in the absence of manifest error, a written statement by the Landlord's bank manager will be conclusive evidence of the rate;
- (10) **"Lot"** means the lot stated in Item 2 of the Form 7 to which this Schedule is annexed;

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- (11) "Landlord" includes:
- (a) the "Lessor" referred to in Item 1 of the Form 7 to which this Schedule is annexed;
 - (b) in the case of a company, its successors and assigns; and
 - (c) in the case of a person, his executors, administrators and assigns.
- (12) "Landlord's Fixtures" includes:
- (a) the Air Conditioning Equipment and the Landlord's plant, equipment, fittings, fixtures, partitions, furniture, furnishings, window coverings, blinds, floor coverings and light fittings in any part of the Premises; and
 - (b) stopcocks, fire hoses, hydrants, fire prevention aids and other fire fighting equipment located in the Premises or servicing the Premises.
- (13) "Law" includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;
- (14) "Lease" means this Schedule and the Form 7 to which this Schedule is annexed;
- (15) "Managing Agent" means any agent appointed by the Landlord to manage the Premises;
- (16) "Premises" means that part of the Lot referred to in Item 5 of the Form 7 and includes the Landlord's Fixtures;
- (17) "Promotion Levy" – not applicable.
- (18) "Rent" means the amount stated in Item 8 of the Reference Schedule and includes any variation of it under clause 4;
- (19) "Requirement" means any requirement, notice, order or direction received from or given by any statutory, public or other competent authority, present or future;
- (20) "Rules" means the rules made by –
- (i) the Body Corporate in respect of the Building, the Centre or the Lot and the by-laws in respect of the Scheme (if applicable); or
 - (ii) the Landlord in respect of the Centre.
- (21) "Security Interest" has the meaning given to that term in the *Personal Property Securities Act 2009* (Cth) ("PPSA").
- (22) "Scheme" means the Community Title Scheme including the lot stated in Item 2 of the Form 7 to which this Schedule is annexed (if applicable);
- (23) "Services" means all gas, electricity, telephone, water, sewerage, fire prevention, ventilation, air conditioning, hydraulic, elevator and security services and all other services or systems provided in the Premises or available for the Tenant's use;
- (24) "Tenant" includes:
- (a) the "Lessee" referred to in Item 3 of the Form 7 to which this Schedule is annexed;
 - (b) in the case of a company, its successors and permitted assigns; and

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- (c) in the case of a person, his executors, administrators and permitted assigns;
- (25) **"Tenant's Employees"** means each of the Tenant's employees, contractors, agents, customers, clients, visitors, subtenants, licensees or others (with or without invitation) who may be in the Premises or in the Building;
- (26) **"Tenant's Fittings"** includes all fixtures, fittings, furniture, plant, equipment, partitions or other articles and chattels which are in the Premises and are not owned by the Landlord; and
- (27) **"Valuer"** means a person who is:
- (a) a fellow or an associate, of not less than 5 years' standing, of the Australian Institute and active in the relevant market at the time of his appointment; and
 - (b) has at least 3 years' experience in valuing the kind of premises leased by this Lease.

1.3 Construction

Reference to:

- (1) a person includes:
- (a) a corporation and government body; and
 - (b) the legal representatives, successors and assigns of that person;
- (2) month or monthly means calendar month or calendar monthly; and
- (3) a right includes a remedy, authority or power.

1.4 Plurals and Genders

A word importing:

- (1) the singular includes the plural and vice versa; and
- (2) any gender includes all other genders.

1.5 Parties Bound Jointly and Individually

If two or more persons are named as Tenant or Guarantor, any covenant or agreement made by or on behalf of the Tenant or the Guarantor binds them jointly and each of them individually.

1.6 Statutes and Regulations

References to statutes, regulations, ordinances or by-laws include all statutes, regulations, ordinances or bylaws amending, consolidating or replacing them.

1.7 Covenants

Every obligation undertaken by a party to this Lease will be deemed to be and be construed as a covenant by that person.

1.8 Severability

- (1) As far as possible all provisions of this Lease will be construed so as not to be invalid, illegal or unenforceable in any respect.

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- (2) If any provision on its true interpretation is illegal, invalid or unenforceable, that provision will, as far as possible, be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable and so as to give it a valid operation of a partial character.
- (3) If any provision or part of it cannot be read down, that provision or part will be deemed to be void and severable and the remaining provisions of this Lease will not be affected or impaired.

1.9 **Whole Agreement**

- (1) The terms contained in this Lease and any agreement to lease under which this Lease was granted comprise the whole agreement between the Landlord and the Tenant.
- (2) No further terms will be implied or arise between the Landlord and the Tenant under any collateral or other agreement made on or prior to execution of this Lease.
- (3) This Lease can only be amended by further written agreement signed by both parties.
- (4) The tenant acknowledges that it has not been induced to enter into this Lease by any representation verbal or otherwise made by or on behalf of the Landlord which is not set out in this Lease or any agreement to lease under which this Lease was granted.
- (5) The Landlord has no obligation to develop or build any more than the Building and the tenant has no rights against the Landlord if the only part of the Centre which it builds is the Building.

1.10 **Headings**

- (1) Headings and the table of contents to this Lease have been inserted for guidance only and will not affect the construction of this Lease.
- (2) References to clauses, schedules and annexures will be construed as references to clauses of and schedules and annexures to this Lease.

1.11 **Organisations**

- (1) If any organisation has ceased to exist, reference to that organisation will be deemed to be reference to an organisation as then serves substantially the same objects as the original organisation.
- (2) Reference to the president of an organisation will, in the absence of a president, be read as reference to the senior officer for the time being of the organisation or any other person fulfilling the duties of president.

1.12 **Areas and Measurement**

- (1) Unless the context otherwise requires, where any area of the Premises or the Building is to be calculated or measured for the purposes of this Lease, those calculations and measurements will be in accordance with the method of measurement.
- (2) In this clause 1.12 "method of measurement" means the relevant method for the measurement of the lot properly utilised by the surveyor in the preparation of the survey plan referred to in clause 23.

1.13 **Landlord's Consent**

Unless otherwise stated, if the Landlord's consent or approval is required it:

- (1) may be granted or withheld at the Landlord's discretion (the Landlord is to act reasonably); and
- (2) will not be effective unless in writing.

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1.14 Written Notices

If a provision of this Lease requires a notice to be given by a party, it must be in writing unless the provision states that it may be given orally.

1.15 Lease to Operate as Deed

This Lease will operate as a deed on execution by the Landlord and the Tenant.

2. Exclusion of Statutory Provisions

2.1 To the extent permitted by Law:

- (1) the covenants, powers and provisions (if any) implied in leases by virtue of any Law are negated; and
- (2) the application to this Lease of any Law having the effect of extending the Term, reducing or postponing the payment of Rent or otherwise affecting the operation of any of the covenants, terms and conditions of this Lease is excluded and negated.

3. Term and Holding Over

3.1 Term

The Landlord leases to the Tenant and the Tenant takes a lease of the Premises for the Term commencing on the Commencement Date and terminating on the Termination Date subject to the provisions of this Lease.

3.2 Holding Over

If the Tenant continues to occupy the Premises beyond the Termination Date with the Landlord's consent except under a lease arising from the valid exercise of an option to renew the following provisions will apply.

(1) Monthly Tenancy

The Tenant will occupy the Premises as a monthly tenant at a total rental payable monthly in advance being an amount equal to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to the Landlord under this Lease as at the Termination Date, the first of the monthly payments to be made on the day following the Termination Date.

(2) Provisions of Lease to Apply

As far as applicable, the monthly tenancy will otherwise continue on the terms and conditions of this Lease.

(3) Rent Review

The Rent or any part of it for the monthly tenancy may be reviewed whenever the Landlord determines it appropriate and any provisions in this Lease relating to calculation of, limitation on or right of review of the Rent or any part of it will not apply.

(4) Termination

- (a) The monthly tenancy will be terminable at any time by either the Landlord or the Tenant giving to the other 1 month's notice expiring on any date.
- (b) If the Tenant defaults in the performance of its obligations under the monthly tenancy, the Landlord may terminate the monthly tenancy by giving the Tenant 24 hours' notice.

4. Rent and Rent Reviews

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4.1 Rent

- (1) The Tenant must pay the Rent to the Landlord without demand, deduction or right of set-off at the rate stated in Item 8 of the Reference Schedule by equal monthly installments in advance on the first business day of each month.
- (2) If necessary, the first and last installments will be apportioned on a daily basis.
- (3) The first installment will be paid on the Commencement Date.
- (4) All installments must be paid as the Landlord directs.
- (5) Provided the Tenant is not in substantial default under this Lease (having had a reasonable opportunity to remedy that default), the Landlord will forego the rent which otherwise would be payable for the period set out within Item 8(a) of the Reference Schedule. Notwithstanding that the Landlord has agreed to the forgoing the Tenant must pay outgoings payable under clause 5 and all other costs and charges required in performance of this Lease. This sub-clause will be omitted from any lease granted or accepted pursuant to an option for renewal and will be disregarded in calculating the yearly rent payable for the second and subsequent years of the term.

4.2 Definitions

In this clause 4:

- (1) "index number" means the Consumer Price Index (All Groups) for Brisbane published from time to time by the Australian Bureau of Statistics; if the Australian Bureau of Statistics updates the reference base of the index number, the index number will be appropriately adjusted so as to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Bureau of Statistics;;
- (2) "index review date" means each of the dates (if any) stated in Item 9 of the Reference Schedule;
- (3) "market review date" means each of the dates (if any) stated in Item 10 of the Reference Schedule;
- (4) "quarter" means a 3 month period; and
- (5) "review date" means an index review date or a market review date as the context requires.

4.3 Rent Review: Consumer Price Index

If Item 9 of the Reference Schedule has been completed by inserting index review dates, the following provisions will apply to the review of the Rent.

(1) Review

The Rent will be reviewed on each index review date to an amount represented by A in the following formula:

$$A = \frac{B}{C} \times D$$

Where B = the index number released for the quarter ending immediately prior to the relevant index review date;

C = the index number released for the quarter ending immediately prior to the later of the Commencement Date or the date when the Rent was last reviewed; and

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$D =$ the Rent payable immediately prior to the index review date disregarding any incentive set out in item 8 of the Reference Schedule.

(2) **Suspension of Consumer Price Index Etc.**

- (a) If the Consumer Price Index (All Groups) for Brisbane is suspended or discontinued, the words "index number" will mean the price index substituted by the Australian Statistician.
- (b) If no price index is substituted, the words "index number" will mean an index which the parties agree most closely reflects changes in the cost of living.
- (c) If the parties cannot agree on a substitute index, the president of the Australian Institute, at the request of either party, may appoint an expert to determine a substitute index which most closely reflects changes in the cost of living and the words "index number" will mean that index.

4.4 **Rent Review: Fixed Review**

If Item 9 of the Reference Schedule has been completed by inserting fixed review dates, the Rent will be reviewed on each fixed review date to an amount represented by A in the following formula:

$A = B$ increased by the percentage referred to in item 9 of the Reference Schedule.

Where $B =$ the Rent payable in the year immediately preceding the fixed review date disregarding any incentive set out in item 8 of the Reference Schedule.

4.5 **Market Rent Review**

- (1) If Item 10 of the Reference Schedule has been completed by inserting market review dates then the Rent must be reviewed on such market review date to the current market rent for the Premises.
- (2) The Landlord and the Tenant must use their best endeavours to agree on the current market rent for the Premises within 1 month after such market review date.
- (3) If the Landlord and the Tenant do not reach agreement on the current market rent for the Premises within 1 month after such market review date then the current market rent for the Premises is to be determined under the provisions of the *Retail Shop Leases Act 1994* if this Lease is regulated by that legislation.
- (4) If this Lease is not regulated by the *Retail Shop Leases Act 1994* the market rent will be determined as follows –
 - (a) **Landlord's Notice**

The Landlord may vary the Rent to an amount which it considers to be the market rent for the Premises by notice to the Tenant ("Landlord's notice") at any time after 1 month after the market review date.
 - (b) **Tenant's Notice**
 - (i) Within 21 days after service of the Landlord's notice, the Tenant may serve on the Landlord a notice ("Tenant's notice") disputing the amount stated in the Landlord's notice, stating the amount which the Tenant considers to be the market rent for the Premises and requiring the market rent to be determined under sub-clauses (c) to (h) inclusive.
 - (ii) If the Tenant fails to give the Tenant's notice within 21 days, the Rent payable until the next review date will be the amount set out in the Landlord's notice.
 - (c) **Negotiations**

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Within 14 days of service of the Tenant's notice, the Landlord and the Tenant or their representatives will meet and attempt to resolve their dispute as to the market rent payable for the Premises at the market review date.

(d) Valuer to Settle if Dispute

- (i) If the Landlord and the Tenant have not agreed on the market rent for the Premises within 60 days after service of the Tenant's notice, the dispute must be referred for determination by a Valuer to be nominated by the president of the Australian Institute at the request of either the Landlord or the Tenant.
- (ii) The appointed Valuer will make a determination of the market rent as at the particular market review date acting as an expert and not as an arbitrator.
- (iii) The Valuer must make a written determination containing reasons within 60 days of his appointment.
- (iv) The Valuer's determination will be final and binding on the Landlord and the Tenant.
- (v) The Valuer's Costs will be paid by the Landlord and the Tenant equally. Either party may pay the Valuer's Costs and recover one half of the amount paid from the other party.

(e) Valuer to Give Notice of Acceptance of Appointment

A Valuer is not to act as an expert under this clause until he has given written notice of acceptance of his appointment to the Landlord and the Tenant.

(f) Landlord's and Tenant's Submissions

- (i) A Valuer who accepts appointment under this clause may confer with the Landlord or the Tenant and may require either party to supply information which the Valuer considers relevant to the determination.
- (ii) Any request for information must be complied with promptly in writing by the party to whom it is directed, who will make a copy of that information available to the other party.
- (iii) Either party may supply the Valuer with other information which it considers relevant and, if it does so, must make a copy of that information available to the other party.
- (iv) Information may be provided on a confidential basis and, if so, the party receiving it and the Valuer will treat the information as confidential and will not use that information other than for the purposes of this clause.

(g) Written Submissions

- (i) The Landlord and the Tenant may make written submissions to the Valuer in relation to the market rent within 30 days of receipt of written notice of the Valuer's acceptance of his appointment. A party making a written submission must at the same time make a copy of it available to the other party.
- (ii) The Valuer must not determine the market rent until the expiration of that period of 30 days.

(h) Valuer's Criteria

- (i) In determining the market rent as at a market review date, the Valuer may take into account any matters he considers relevant including taking into account or disregarding

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any written submissions received from the Landlord or the Tenant but, in making his determination, the Valuer must:

- (A) disregard:
- (1) any goodwill attributable to the Premises by reason of the trade, business or activity carried on by the Tenant and the value of the Tenant's Fittings;
 - (2) any state of disrepair of the Premises if that condition results from any work carried out or not carried out on the Premises by the Tenant or from the Tenant's breach of any provision of this Lease;
 - (3) any money received under any sublease, sub-tenancy agreement or occupational arrangement in respect of the Premises which has not been approved by the Landlord;
 - (4) any inducement provided or to be provided to the Tenant in connection with the granting of this Lease;
 - (5) any inducement then being provided or to be provided to any other tenant in relation to the taking of a lease of any other premises; and
 - (6) anything (including part of a submission received from the Landlord or the Tenant) which is not consistent with the matters to be disregarded or taken into account under sub-clause (8); and
- (B) take into account the following matters or, where the context requires, make the following assumptions:
- (1) the provisions of this Lease;
 - (2) the Term and any option for renewal (disregarding the elapsed part of the Term);
 - (3) the rent and outgoings paid or payable in respect of other premises of a quality, nature, size and location similar to the Premises;
 - (4) the use permitted by the relevant Laws and the provisions of this Lease;
 - (5) assume that the Tenant has observed and performed all of the provisions of this Lease; and
 - (6) assume that it is the Landlord's and the Tenant's express requirement that no reduction or adjustment will be made to the market rent on account of any inducement provided or to be provided to the Tenant to secure it as a tenant of the Premises or to any other tenant in relation to the taking of a lease of any other premises whether or not those premises are comparable with the Premises.
- (ii) The term "inducement" means any inducement or incentive provided by the Landlord in respect of the Tenant's entry into this Lease and includes any payment, transfer of property, fit-out of premises or provision of services, assumption of obligation, rent moratorium or reduction, loan or gift.
- (iii) If the Rent is reviewed in accordance with sub-clauses (a) – (h) the Rent following the market review must not be less than the Rent payable for the year immediately preceding the relevant market review date reviewed in accordance with clause 4.3.

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- (1) Until the determination of Rent has been made, the Tenant will pay Rent at the same rate as the Rent payable immediately prior to the review date.
- (2) Any variation in Rent as the result of review under any of the sub-clauses in this clause will take effect on the review date.
- (3) Within 14 days of the determination, the Landlord will refund any overpaid Rent or the Tenant will pay any shortfall.

5. **Operating Expenses**

5.1 **Operating Expenses Year**

The term "operating expenses year" means each period of 12 months ending on 30 June in each year regardless of any part of that 12 month period falling outside the Term.

5.2 **Definition of Operating Expenses**

The term 'Operating Expenses' has the same meaning as 'outgoings' in the *Retail Shop Leases Act 1994 (Qld)* if this Lease is regulated by that legislation. If this Lease is not regulated by *Retail Shop Leases Act 1994 (Qld)*, the term "operating expenses" means the total of all amounts payable by the Landlord (or for which the Landlord may be or become liable) relating to any operating expenses year in connection with the Premises whether or not by direct assessment including:

(1) **rates and charges**

rates, taxes, charges, assessments, duties, impositions and fees (excluding income and capital gains taxes payable by the Landlord) payable to any government, local government, semi-government or other competent authority in connection with the Lot; state land tax will be included only if it is lawful to do so and then on the basis that the Lot is the only land owned by the Landlord;

(2) **water, waste etc.**

Costs for sewerage, supply of water and removal of waste and other garbage from the Premises;

(3) **insurances**

amounts payable for insurances effected by the Landlord relating to the Premises, their use and occupancy including, without limitation, insurance against fire and other usual risks on a replacement basis, public risk and plate glass insurance and loss of rents insurance;

(4) **repairs and maintenance**

Costs of repairs or maintenance of the Premises (excluding maintenance of a structural nature and major repairs and renovations) including Costs of operating, supplying, maintaining and repairing the Services and the plant and equipment required for those Services;

(5) **light, fuel and power**

Costs incurred in providing lighting, fuel and power to the Premises and the Services;

(6) **pest control**

Costs for the control of pest, vermin, insect or other similar infestation;

(7) **management**

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the Landlord's Costs of having the Premises managed by the Managing Agent, as agreed between the Landlord and the Managing Agent, and any other Costs relating to the management of the Premises;

(8) **materials**

Costs of materials used by the Landlord in maintaining and servicing the Landlord's Fixtures and the Services;

(9) **air conditioning**

Costs of maintaining, servicing and running the Air Conditioning Equipment;

(10) **Body Corporate contribution**

all contributions, payments or levies payable to the Body Corporate by the Landlord as owner of the Lot; and

(11) **general expenditure**

Costs properly incurred by the Landlord in the management, operation, control and maintenance of the Premises excluding expenditure related to items of a capital nature and commission or fees payable to any letting agent.

5.3 Apportionment of Operating Expenses

Where any operating expenses are not co-extensive with an operating expenses year, they will be deemed to accrue and be apportioned from day to day.

5.4 Statement of Operating Expenses

- (1) The Landlord may determine the operating expenses payable by the Tenant in respect of each operating expenses year or any broken period. The Tenant's proportion of the operating expenses is either –
 - (a) the proportion that the total of the area of the Premises bears to the total area of all premises in the centre if the Premises is not the whole of the Lot; or
 - (b) one hundred percent if the Premises are the whole of the Lot.
- (2) Within three (3) months after the expiration of each operating expenses year, the Landlord will furnish an audited statement to the Tenant containing particulars of the operating expenses payable by the Tenant.
- (3) Unless either party notifies the other of a manifest error in the notice within 30 days of service, the statement will be prima facie evidence of its contents.

5.5 Payment by the Tenant of Operating Expenses

The Tenant must pay the operating expenses to the Landlord within 30 days after service of the statement referred to in clause 5.4.

5.6 Payment by Tenant on Account of Operating Expenses

- (1) Regardless of the provisions of clause 5.4, the Landlord may notify the Tenant no later than one (1) month before the start of any operating expenses year of the Landlord's estimate of the operating expenses payable by the Tenant for any period not exceeding 1 year in advance of the estimate.
- (2) During that period the Tenant will pay to the Landlord the amount of the estimate by equal monthly installments in advance on the same days and in the same manner as the Tenant is required to pay Rent.

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- (3) Following a review of operating expenses, any necessary adjustment between the estimated and actual operating expenses payable by the Tenant will be made.
- (4) Any refund or further payment will be made by the relevant party.

6. Damage and Destruction

6.1 Definitions

In this clause 6:

- (1) "reinstatement notice" means a notice given by the Landlord to the Tenant of the Landlord's intention to carry out the reinstatement works; and
- (2) "reinstatement works" means the work necessary to:
 - (a) reinstate the Premises; or
 - (b) make the Premises fit for occupation and use or accessible by the Tenant.

6.2 Abatement

- (1) If the Premises are damaged or destroyed so as to render any part of the Premises wholly or substantially:
 - (a) unfit for occupation and use by the Tenant; or
 - (b) inaccessible having regard to the nature and location of the Premises and the normal means of access to them;then from the date that the Tenant notifies the Landlord of the damage or destruction ("damage notice"):
 - (c) the Rent;
 - (d) any other money payable by the Tenant; and
 - (e) the covenant to repair and maintain;will abate according to the nature and extent of the damage or destruction sustained.
- (2) If clause 6.2(1) applies, the remedies for:
 - (a) recovery of the Rent and any other money or a proportionate part falling due after the damage or destruction; or
 - (b) enforcement of the covenant to repair and maintain;will be suspended (or partially suspended as the circumstances require) from the date of the damage notice until the Premises are:
 - (c) restored;
 - (d) made fit for the Tenant's occupation and use; and
 - (e) made accessible.

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6.3 Either Party May Terminate

Either party may terminate this Lease by notice to the other unless the Landlord:

- (1) within 3 months of receiving the damage notice, gives the Tenant a reinstatement notice; and
- (2) diligently proceeds within a reasonable time to carry out the reinstatement works.

6.4 Tenant May Terminate

- (1) If the Landlord gives a reinstatement notice to the Tenant and fails to commence the reinstatement works within a reasonable time, the Tenant may give the Landlord notice of the Tenant's intention to terminate this Lease ("termination notice").
- (2) If the Landlord does not complete the reinstatement works within a reasonable time after receipt of the termination notice, the Tenant may terminate this Lease by giving not less than 2 months notice to the Landlord and, at the expiration of that period, this Lease will terminate.

6.5 Exceptions

Clauses 6.2, 6.3 and 6.4 will not apply where:

- (1) the damage or destruction was caused or contributed to, or arises from any willful act of the Tenant or the Tenant's Employees as a result of the tenant's business; or
- (2) an insurer under any policy effected by the Landlord refuses indemnity or reduces the sum payable under the policy because of any act or default of the Tenant or the Tenant's Employees.

6.6 Landlord May Terminate

If the Landlord considers the damage to the Premises renders it impractical or undesirable to carry out the reinstatement works, the Landlord may terminate this Lease by giving not less than one (1) month's notice to the Tenant and, at the expiration of that notice, this Lease will terminate.

6.7 Antecedent Rights

No liability will attach to either party because of termination of this Lease under this clause 6 but that termination will be without prejudice to the rights of either party for any antecedent breach or non-observance of any provision of this Lease.

6.8 Dispute Resolution

- (1) Any dispute arising under this clause 6 will be determined by a member of the Australian Institute appointed by the president at the request of either the Landlord or the Tenant.
- (2) In making his determination, the appointed member will act as an expert and not as an arbitrator and his determination will be final and binding on both parties.
- (3) The Cost of the determination will be paid by both parties equally unless otherwise decided by the member.

6.9 Landlord Not Obligated to Reinstate

Nothing in this Lease obliges the Landlord to reinstate the Premises or the means of access to them.

6.10 Proceeds of Insurance

If the Premises are damaged or destroyed and the Lease is terminated under this clause 6, the Tenant will have

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no interest in the insurance proceeds.

7. Use of the Premises

7.1 Permitted Use

The Tenant must not use, occupy or permit the Premises to be used or occupied for any purpose other than as stated in Item 11 of the Reference Schedule.

7.2 Restrictions on Use

The Tenant will:

- (1) conduct the Tenant's business in the Premises as permitted under this Lease;
- (2) not use the Premises as a residence;
- (3) not keep any animals or birds in the Premises, except for the express purpose of the Tenant's business;
- (4) at its expense, keep the Premises free and clear of pests, insects and vermin and in default the Landlord will be entitled to employ pest exterminators to carry out any pest extermination at the Tenant's expense;
- (5) not carry on or permit any noxious or offensive act, trade, business, occupation or calling to be carried on in the Premises;
- (6) not cause annoyance, nuisance, grievance, damage or disturbance to occupiers of adjacent premises;
- (7) not hold or permit any auction, bankrupt or fire sale to be held on the Premises;
- (8) not make any disturbing or irritating noises or install or use any appliance, engine or machine which causes or may be likely to cause noise or vibration;
- (9) not prepare or cook food except in areas provided and approved by the Landlord for that purpose;
- (10) operate its business to a high standard, in keeping with the theme discussed with the Landlord prior to execution of this Lease;
- (11) adopt or use a simple, strong brand consistent with the other national franchises and businesses in the Centre; and
- (12) ensure that none of the Tenant's Employees smoke on the Premises or the Common Property.

7.3 No Warranty as to Use

- (1) The Landlord gives no warranty as to the suitability of the Premises for any purpose or the use to which the Premises may be put.
- (2) The Tenant will:
 - (a) be deemed to have accepted this Lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises under any Law or Requirement;
 - (b) at its expense, comply with all Laws and obtain and comply with the consents or approvals of any authority which may be necessary or appropriate for the Tenant's business; and
 - (c) not by any act or omission cause or permit any consent or approval referred to in clause 7.3(2)(b) to lapse or be revoked.

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- (3) The Landlord will sign a letter of authority addressed to the Local Authority providing the Tenant with the Landlord's consent to lodge any Development Application, Building Application, signage or other required application in relation to the operation of the Tenant's business.

7.4 Compliance with Laws and Requirements

- (1) At its expense, the Tenant must comply with and observe any Law or Requirement concerning:
- (a) the Premises or any of the Tenant's Fittings; and
 - (b) the use or occupation of the Premises including any which arise as a result of the sex or number of persons in the Premises;

whether or not the Law or Requirement is addressed to, or required to be complied with by either the Landlord or the Tenant or both or by any other person.

- (2) If any Law or Requirement is notified to or served upon the Tenant, it must promptly provide a complete copy to the Landlord.
- (3) If it is lawful to do so, before complying with any Law or Requirement under clause 7.4(1), the Tenant must obtain the Landlord's consent.
- (4) At its expense, the Tenant must comply with the Rules.

7.5 Landlord's Rights if Tenant Fails to Comply

The Landlord may:

- (1) without prejudice to any of its other rights in respect of non-compliance, elect to comply (wholly or partially) with any Law or Requirement under clause 7.4 at the Tenant's expense; and
- (2) if it exercises any rights under clause 7.5(1), elect to have the balance of any Law or Requirement complied with by the Tenant.

7.6 Structural Alterations

- (1) The Tenant will not be required under clauses 7.3, 7.4 and 7.5 to effect or pay for structural alterations or additions except those caused by, contributed to or arising from:
- (a) the nature of its business;
 - (b) the number or sex of the persons comprising the Tenant or the Tenant's Employees; or
 - (c) any deliberate or negligent act or omission by the Tenant or the Tenant's Employees.
- (2) Subject to clause 7.6(1), upon demand the Tenant must pay to the Landlord all reasonable Costs incurred by the Landlord in complying with any Law or Requirement under clauses 7.3, 7.4 and 7.5.

7.7 Exterior Signs

- (1) The Tenant can erect signage to the shop above awning signs, at the Tenant's expense.
- (2) The Landlord will install the lightbox or lightboxes for the above awning sign and recover the cost of installation from the Tenant to a maximum amount set out in Item 15 (b) of the Reference Schedule, per lightbox. The Tenant must pay the cost within fourteen (14) days of receipt of a tax invoice from the Landlord.

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- (3) All signage will be as per the Tenant's corporate specifications to be approved by the relevant Council and the Landlord (which approval will not be unreasonably withheld). The Landlord will be acting reasonably if it refuses consent to signage which clashes with the signage of other tenants.
- (4) The Landlord will provide electrical connection to signage points for the above and rear awning sign.
- (5) The Landlord licences the Tenant to use of a full panel on the Landlord's Pylon Sign for the term of this Lease provided the Tenant –
 - (a) pays the Landlord for the cost of installation of the lightbox to a maximum amount set out in Item 15 (a) of the Reference Schedule. The Tenant must pay the cost within fourteen (14) days of receipt of a tax invoice from the Landlord;
 - (b) pays for the design, and connections to the pylon sign; and
 - (c) takes out an insurance policy for their pylon sign noting the Landlord as an interested party.
- (6) In the event of a dispute with respect to signage the Landlord's decision will be final.
- (7) The Tenant must keep all signage in good repair and condition.
- (8) The Landlord will provide electrical connection to the signage point for the pylon sign.

7.8 Overloading

- (1) The Landlord may prescribe the maximum weight and position of any heavy article in the Premises and the safe floor loading of the Premises.
- (2) Damage to any part of the Premises caused by movement or placement of any heavy article will be repaired by the Tenant or, if the Landlord elects, by the Landlord at the Tenant's expense.
- (3) Within 7 days of the Landlord notifying the Tenant of the amount expended by the Landlord, the Tenant will pay that sum to the Landlord.
- (4) The Tenant must not install any equipment in the Premises that may overload any Services.
- (5) If the Landlord upgrades the Services to accommodate any equipment which the Tenant wishes to install, the Tenant will pay to the Landlord the Costs of any alterations.
- (6) The Landlord may require the Tenant to pay the estimated Costs of the alterations to the Landlord before the alterations are commenced.

7.9 Drains and Waste Pipes

- (1) The Tenant must not use any Landlord's Fixture other than for its intended purpose nor place in it any substance which it was not designed to receive.
- (2) The Tenant will pay to the Landlord the Costs of repairing any damage to the Landlord's Fixtures arising from misuse by the Tenant or the Tenant's Employees.

7.10 Antennae, Radios Etc.

The Tenant will not affix any television or radio mast, antennae, satellite dish or similar device to any part of the Premises.

7.11 Rubbish Accumulation

The Tenant must not deposit waste paper, unwanted or useless articles or rubbish anywhere except in proper

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receptacles.

7.12 For Sale Signs Etc.

- (1) The Landlord may:
 - (a) place advertisements and signs on part of the Land it reasonably considers appropriate if the Premises are for sale or lease; and
 - (b) show any interested persons through the Premises after giving the Tenant 2 days' notice.
- (2) If the Premises are for lease, the advertisements and signs may only be placed on the Premises within the last 3 months of the Term.

7.13 Thermal or Fire Detectors

If any thermal or fire detectors are required to be installed in the Premises by any Law or Requirement because of the Tenant's use of the Premises, they will be installed at the Tenant's expense.

7.14 Doors and Windows

The Tenant will lock all doors and fasten all windows in the Premises when the Premises are not occupied.

7.15 Use of Common Property

- (1) In common with other persons authorised by the Landlord, the Tenant and the Tenant's Employees may use the Common Property for the purposes for which it was designed or intended.
- (2) The Tenant will comply with all reasonable directions given to it by the Landlord or the Body Corporate relating to conduct in the Common Property.
- (3) The Tenant will not interfere with or impede other persons using the Common Property nor will it permit any of the Tenant's Employees to do so.

7.16 Exclusive Use Areas

The Tenant may use any part of the Common Property set aside for the exclusive use of the Tenant and the Tenant must perform the Landlord's obligations relating to that part of the Common Property.

7.17 Exclusive Use

The Landlord will not allow other tenants to use any premises contained within the Centre for the exclusive use described in item 11(a) of the Reference Schedule. This clause will only apply to the Premises or the lot in which the Premises are located in the event the Landlord elects to strata-title and a new lease is entered into pursuant to clause 25.

7.18 Trading Hours

- (1) The Tenant must keep the Premises open for business in accordance with the hours set out in Item 16 of the Reference Schedule.
- (2) The Tenant may trade outside the hours referred to in sub-paragraph (1) providing the Tenant has all necessary government approvals to do so.

8. Assignment and Subletting

8.1 No Assignment Etc.

The Tenant will not assign, transfer, mortgage, charge or otherwise deal with its interest in the Premises or

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demise, sublet, part with possession of or grant any licence affecting the Premises except in accordance with clause 8.2.

8.2 Assignment and Subletting Permitted

- (1) The Landlord will not withhold its consent to the assignment or subletting of the Premises if the Tenant first makes an application to the Landlord for consent and the following provisions have been observed by the Tenant:
 - (a) the Tenant is not in default under this Lease other than a default which has been waived by the Landlord;
 - (b) the Tenant proves to the Landlord's reasonable satisfaction that the incoming tenant is a respectable, responsible and solvent person capable of adequately carrying on the business permitted under this Lease;
 - (c) the incoming tenant's obligations are guaranteed in a form acceptable to the Landlord.
 - (d) the Tenant obtains, at its expense, from the incoming tenant and any incoming guarantor an executed deed, in a form reasonably required by the Landlord, requiring the incoming tenant and incoming guarantor to perform and observe the Tenant's obligations under this Lease;
 - (e) in the case of a sublease, the Tenant proves to the Landlord's satisfaction that the incoming subtenant is obliged to pay a rent at least equal to the Tenant's Rent;
 - (f) the Tenant pays the Landlord's reasonable Costs of giving its consent, whether or not the proposed assignment or sublease proceeds to completion; and
 - (g) the incoming tenant pays or gives to the Landlord a security deposit or bank guarantee of an amount determined by the Landlord as security for the observance and performance of the Tenant's obligations. The Landlord may request the incoming Tenant pay a greater bank guarantee if in the Landlord's opinion the incoming Tenant is a greater risk than the Tenant.

8.3 Change in Ownership of Shares in Company

- (1) If the Tenant is a company, any change in the persons who beneficially own or control a majority of the company's voting shares at the date of this Lease will constitute an assignment of this Lease.
- (2) The Tenant will be in breach of clause 8.1 unless the Tenant obtains the Landlord's prior consent to the change in shareholding.
- (3) The consent will not be withheld in the following circumstances:
 - (a) the Tenant is not in default under this Lease other than a default which has been waived by the Landlord;
 - (b) the Tenant proves to the Landlord's reasonable satisfaction that any shareholder or director of the Tenant who was not a shareholder or director prior to the change in shareholding is a respectable, responsible and solvent person capable of adequately carrying on the business permitted under this Lease;
 - (c) the Tenant obtains, at its expense, a guarantee from any new shareholder or director, in a form acceptable to the Landlord, guaranteeing the Tenant's obligations; and
 - (d) the Tenant pays the Landlord's reasonable Costs of giving its consent whether or not the proposed change in shareholding proceeds to completion.
- (4) This clause 8.3 will not apply if the Tenant is a corporation whose voting shares are listed on an

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Australian stock exchange or if at least 80% of its voting shares are owned by another company whose voting shares are so listed.

8.4 Charges Over Tenant's Fittings

The Tenant or the Tenant's Franchisee or Licensee may without obtaining the consent of the Landlord mortgage all its equipment and/or leasehold interests in the fit-out goods chattels and plant and equipment situated in the Premises. The Landlord hereby agrees to sign an authority to enter the Premises in favour of the Tenant or the Licensee's Franchisee's mortgagee in a form which the said mortgagee may reasonably require, limited to the Tenant's fittings only.

9. Utilities

9.1 Source of Light and Power

- (1) The Tenant will only use light, power or heat generated by electrical current or gas supplied through meters except in the case of failure of supply when the Tenant may use other sources of energy except a naked flame.
- (2) The Tenant acknowledges that the Landlord has or may enter into a bulk energy supply agreement ('electricity Agreement') with an energy provider, if the Landlord enters into an electricity Agreement then the Tenant –
 - (a) must purchase all of its electricity consumed in the Premises from the Landlord; and
 - (b) will pay the Landlord by the due date for all electricity charges consumed in the Premises.

9.2 No Alterations to Electrical Installations

- (1) The Tenant will not make any alterations or additions to the electrical installations or wiring on the Premises without the Landlord's prior consent.
- (2) The Tenant will not install any electrical equipment which overloads the cables, switchboards or sub-boards through which electricity is conveyed to the Premises.

9.3 Charges for Utilities

By the due date the Tenant will pay:

- (1) charges for electricity, gas and water consumed in the Premises;
- (2) charges for any telephone service connected to the Premises; and
- (3) other charges and impositions imposed by any public authority for the supply of any other Service to the Premises.

9.4 Heating or Cooling Devices

- (1) The Tenant will not use or install any heating or cooling device or machine which in the Landlord's opinion may interfere with the efficient running of the Air Conditioning Equipment or increase its running costs.
- (2) The Landlord will consent to the indirect heating of the premises by the operation of the Tenants commercial ovens and refrigeration units (where necessary), but only after the Tenant provides the Landlord with a certificate to confirm that the operation of all equipment within the Premises (and associated heat loads) and exhausts, have been appropriately balanced with the air-conditioning system on completion of the fit out. This clause also assumes a reasonable level of heat loading which can be accommodated in a commercially air conditioned space. The Tenant must ensure that any greater heat load is transferred out of the Premises and the Building by ducting approved by the Landlord (acting

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reasonably).

9.5 Access to Equipment

The Tenant will not interfere with or obstruct access to the Air Conditioning Equipment or fire alarm or prevention system installed in the Premises.

10. Maintenance and Repair

10.1 Repair of Premises

- (1) The Tenant must keep the Premises, the Tenant's Fittings and the Landlord's Fixtures in good repair and condition except for:
 - (a) fair wear and tear; and
 - (b) damage covered by insurances taken out by the Landlord in respect of the Premises.
- (2) The exception in clause 10.1(1)(b) will not apply if:
 - (a) insurance money is irrecoverable through the act, default, neglect, omission or misconduct of the Tenant or the Tenant's Employees; or
 - (b) the Landlord is unable to obtain insurance.
- (3) Nothing in clause 10.1(1) imposes any obligation on the Tenant in respect of any structural maintenance, replacement, renovation or repair unless required because of:
 - (a) the act, omission, neglect, default or misconduct of the Tenant or the Tenant's Employees;
 - (b) the Tenant's use of the Premises; or
 - (c) other provisions of this Lease.
- (4) The Tenant must ensure that the air conditioning plant and equipment servicing the Premises is serviced by an appropriately qualified person at least once every six months.

10.2 Cleaning, Maintenance and Breakages

The Tenant will:

- (1) keep the Premises thoroughly clean and tidy;
- (2) keep the Premises free from dirt and rubbish, store all trade waste, shop refuse and garbage in proper receptacles and arrange for its regular removal from the Premises;
- (3) keep the Tenant's Fittings clean and maintained in good order and condition; and
- (4) immediately repair or replace:
 - (a) broken glass with glass of the same quality;
 - (b) damaged or inoperative electric light bulbs, globes, tubes and other means of illumination and light switches and power points which may become damaged or fail to operate; and
 - (c) Landlord's Fixtures which are broken or damaged by the Tenant or the Tenant's Employees.

10.3 Landlord's Right to Inspect and Repair

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- (1) Except in the case of emergency (when no notice will be required) after giving the Tenant 2 days' notice, the Landlord and its agents may enter the Premises and view their condition.
- (2) The Landlord may serve a notice on the Tenant requiring it to repair any defect, the repair of which is the Tenant's obligation, within a reasonable time.
- (3) If the Tenant does not make the repairs to the Landlord's satisfaction, the Landlord and its agents may enter any part of the Premises and make the repairs at the Tenant's expense.
- (4) In exercising its powers under this clause, the Landlord will endeavour to cause as little inconvenience to the Tenant as is practicable in the circumstances.

10.4 **Landlord May Enter**

- (1) The Landlord may enter the Premises with workmen and other authorised persons and necessary materials and appliances to:
 - (a) comply with any Law or Requirement involving the destruction of noxious animals, rodents or other pests;
 - (b) carry out any repairs, alterations, renovations, extensions or works;
 - (c) exercise the Landlord's rights; or
 - (d) provide any Services to the Tenant.
- (2) In carrying out work under this clause the Landlord will endeavour to cause as little inconvenience to the Tenant as is practicable in the circumstances.

10.5 **Notice of Damage or Defect in Services**

The Tenant will promptly give the Landlord notice of:

- (1) any damage to, defect or disrepair in the Services or the Landlord's Fixtures; and
- (2) any circumstances likely to cause any danger risk or hazard to the Premises or any person.

11. **Redecoration and Restoration**

11.1 **Definition of Redecorate**

The term "redecorate" includes:

- (1) washing down the interior of the Premises; and
- (2) treatment as previously treated of all external and internal surfaces of the Premises to a specification previously approved by the Landlord;

but does not include replacing carpet or curtains unless they have been damaged by the act, neglect, default or omission of the Tenant or any of the Tenant's Employees.

11.2 **Tenant to Redecorate**

The Tenant will redecorate the Premises to reasonable standards determined by the Landlord prior to the Tenant vacating the Premises.

11.3 **Landlord's Approval Required**

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- (1) The Tenant must obtain the Landlord's approval prior to carrying out any redecoration.
- (2) The Landlord may specify the type and colour of paint, material and treatment to be used in connection with the redecoration.

11.4 Failure to Redecorate

- (1) If the Tenant fails to redecorate the Premises prior to vacating them, the Landlord may redecorate the Premises at the Tenant's expense.
- (2) The Landlord will be entitled to recover from the Tenant:
 - (a) the Cost of redecoration; and
 - (b) if the Landlord redecorates the Premises as soon as practicable after the Tenant vacates, a sum equal to the Rent and any other money being paid by the Tenant at the time it vacated the Premises calculated from the date it vacated the Premises to the date the Landlord completes the redecoration.
- (3) The Tenant will pay interest in accordance with clause 15.6 on any money payable by the Tenant under this clause 11.4.

11.5 Disputes

- (1) Any disagreement between the Landlord and the Tenant concerning the standard to which the Premises are to be redecorated will be referred to an independent architect nominated by the president of the Royal Australian Institute of Architects at the request of either party.
- (2) The nominated architect will determine the disagreement as an expert and not as an arbitrator and his decision will be final and binding on the Landlord and the Tenant.
- (3) The Costs of the nominated architect will be paid equally by the Landlord and the Tenant.

11.6 New Materials

- (1) If the Tenant is required to redecorate the Premises, remove any partitions, fittings or fixtures, replace or repair any carpet or do any other work, the Tenant will, at its expense, restore the Premises to a new condition regardless of their condition at the commencement of the Tenant's occupation.
- (2) For the purposes of clause 11.6 (1), "new condition" means replacing with new parts any parts of the Premises which have been lost, are missing or, in the Landlord's reasonable opinion, have been damaged and need to be replaced.

12. Alterations

12.1 Alterations and Additions

The Tenant will not alter or add to the Premises, install or alter any partitions or install any heavy article likely to disturb the efficient operation of the Services without the prior consent of the Landlord and, if required, the Body Corporate.

12.2 Installation of Equipment Etc.

Without the Landlord's prior consent, the Tenant must not:

- (1) install any water, gas or electrical fixtures, equipment or appliances or any apparatus for air conditioning, heating, cooling, ventilating or illuminating the Premises; or

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- (2) mark, paint, drill, deface or damage any part of the Premises.

12.3 Partitions

- (1) Prior to the Tenant installing or using any partitions in the Premises, the Tenant must submit to the Landlord for its approval:
- (a) a copy of the plans and specifications for the proposed work which must comply with Laws and Requirements and be previously approved by the relevant authorities; and
 - (b) details of the type, quality, colour and size of the partitions.
- (2) The partitions must be installed:
- (a) by a contractor approved by the Landlord under the supervision of the Landlord or its agent; and
 - (b) at the Tenant's expense including the Costs of alterations or additions to the Services or the Premises.
- (3) The partitions remain the Tenant's property and the Tenant will maintain and insure them.

12.4 Reinstatement

- (1) If the Tenant breaches clauses 12.1, 12.2 or 12.3, the Landlord may give the Tenant a notice requiring it to reinstate the Premises to their former condition.
- (2) If the Tenant fails to comply with the notice, the Landlord may undertake the necessary work and the Landlord's Costs of doing the work will be recoverable from the Tenant.

13. Insurances and Indemnities

13.1 Public Risk and Plate Glass Insurance

The Tenant will keep current:

- (1) an adequate public risk insurance policy for the sum stated in Item 12 of the Reference Schedule or a greater sum if nominated by the Landlord; and
- (2) an adequate insurance policy covering any windows, doors, plate glass and display showcases forming part of or in the Premises for the full insurable reinstatement Cost.

13.2 Landlord May Insure

- (1) If the Tenant fails to maintain the insurances required by this clause 13, the Landlord may effect and maintain those insurances.
- (2) The Landlord's Costs in doing so will be paid by the Tenant.

13.3 Tenant's Insurances

The Tenant will ensure that all policies of insurance effected or required to be effected by the Tenant under this clause 13:

- (1) are taken out with the Tenant's usual insurer;
- (2) are for an amount, cover risks and contain conditions which are acceptable to the Landlord and its insurer;

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