

# **LEASE**

# LEASE

New South Wales  
Real Property Act 1999

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**PRIVACY NOTE:** Section 31B of the Real Property Act 1999 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

**STAMP DUTY**

Revenue NSW use only

**(A) TORRENS TITLE**

Property leased  
33/SP80145 & 78/SP81913

**(B) LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE  L
	Reference:	

**(C) LESSOR**

Cameron Dennis Wood &  
Elizabeth Louise Wood

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

**(D)**

Encumbrances (if applicable):

**(E) LESSEE**

Zadtec Pty Limited ABN 58879921144

**(F)**

**TENANCY:**

- (G) 1. TERM** Three (3) years
- 2. COMMENCING DATE** 1st March 2020
- 3. TERMINATING DATE** 28th February 2023
- 4. With an OPTION TO RENEW** for a period of Five years (5)  
set out in clause of
- 5. With an OPTION TO PURCHASE** set out in clause of N.A.
- 6. Together with and reserving the RIGHTS** set out in clause of
- 7. Incorporates the provisions or additional material** set out in ANNEXURE(S) A & B hereto.
- 8. Incorporates the provisions** set out in No.
- 9. The RENT** is set out in item No. 13 of Annexure 'A'

DATE

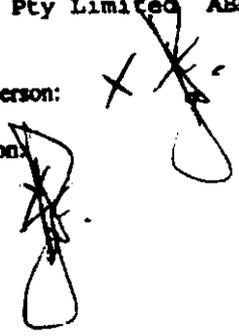
(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: Zadtec Pty Limited ABN 58879921144  
Authority:

Signature of authorised person:

Name of authorised person:  
Office held:

Sole Trader.



Signature of authorised person:

Name of authorised person:  
Office held:

Certified correct for the purposes of the Real Property Act 1900 on behalf of the lessee by the person whose signature appears below.

Signature:

Signatory's name: James Alexander Shevlin  
Signatory's capacity: solicitor



(I) STATUTORY DECLARATION \*

I solemnly and sincerely declare that—

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

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

Made and subscribed at in 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 had 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 a [Omit ID No.]

Signature of witness:

Signature of applicant:

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

**ANNEXURE A – RETAIL LEASE**

**Lessor:** Cameron Dennis Wood & Elizabeth Louise Wood  
34 Crystal Springs Court, Maudsland NSW 4210

**Lessee:** Zadtec Pty Limited ABN 58879921144

This annexure consists of \_\_\_\_\_ pages.

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**NOTE:** Any alterations and additions to Lease Covenants in Annexure B must be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

**SCHEDULE OF ITEMS (continued – cl 1.3)**

- Item 10 (cl 13.1) (cl 13.7) A. **The guarantor:** Jay Keanly  
13/805-811 Pittwater Road, Dee Why NSW 2099
- B. **Limit of guarantor's liability:** Three (3) months rent
- Item 11 (cls 3, 6.2.7) **Additional leased property:** Car space (Lot 78)
- Item 12 (cl 4) **Option to renew**
- A. Further period of Five (5) years from 1/3/2023 to 28/2/2028
- B. Further period of Five (5) years from 1/3/2028 to 28/2/2033
- C. **Maximum period of tenancy under this lease and permitted renewals:**  
Thirteen (13) years
- D. **First day option for renewal can be exercised:** 1/11/2022
- E. **Last day option for renewal can be exercised:** 1/2/2023
- Item 13 (cl 5) A. **Rent**
- For the lease period:  
From the commencement date  
to the first rent review date: \$ 27,500.00 a year by monthly  
instalments of \$ 2,291.66
- Afterwards: At the new yearly rent beginning on  
each review date by monthly instalments  
of one twelfth of the new yearly rent.

- Item 13 (continued) (cl 5) For the further period in item 12A:  
From the commencement date to the first rent review date:  
(for example: Current market rent) \$31,460.00 p/a from 1/3/22
- Afterwards: At the new yearly rent beginning on each review date by monthly instalments of one twelfth of the new yearly rent.
- For the further period in item 12B:  
From the commencement date to the first rent review date:  
(for example: Current market rent) Market Valuation from 1/3/23
- Afterwards: At the new yearly rent beginning on each review date by monthly instalments of one twelfth of the new yearly rent.
- Item 13 (continued) (cl 15) B. **GST**  
Clause 15 provides for payment by the lessee of GST unless otherwise here indicated:  
GST is to be paid by the Lessee
- Item 14 (cl 5) **Outgoings**  
A. Share of outgoings: 0% 1st Yr, 50% 2nd, 100% 3rd  
B. Outgoings –  
[Select applicable items]  
 (a) local council rates and charges;  
 (b) water sewerage and drainage charges;  
 (c) land tax;  
 (d) public liability insurance and building insurance;  
 (e) any outgoings listed in the lessor's disclosure statement;  
 (f) all levies and contributions of whatsoever nature determined and/or levied by the owners corporation with the exception of any contribution to a capital works fund or special levy in respect of the strata scheme of which the property forms part (if applicable);
- for the land or the building of which the property is part, fairly apportioned to the period of this lease.
- Item 15 (cl 5.1.5) Interest rate: <sup>8</sup> \_\_\_\_\_ %

Item 16  
(cl 5.5)

**Rent review**

Rent review date	Method of rent review	If Method 1 applies, increase by
1/3/2023	Market Valuation	
Thereafter	Consumer Price Index	(the increase should show percentage or amount)
1/3/2028	Market Valuation	
Thereafter	Consumer Price Index	

Method 1 is a fixed amount or percentage.  
 Method 2 is Consumer Price Index.  
 Method 3 is current market rent.  
 Method 2 applies unless another method is stated.

Item 17  
(cl 6.1)

**Permitted use:** Workshop

Item 18  
(cl 8.1.1)

**Amount of required public liability insurance:** \$ 20 million

Item 19  
(cl 16)

**Bank Guarantee**

Three (3) month(s) rent and the lessee's proportion of outgoings increased by the rate of GST (expressed as a percentage) applicable from time to time, or an amount of \$ \_\_\_\_\_

Item 20  
(cl 17)

**Security Deposit**

\_\_\_\_\_ month(s) rent and the lessee's proportion of outgoings increased by the rate of GST (expressed as a percentage) applicable from time to time, or an amount of \$ \_\_\_\_\_

Item 21 Address for service of notices  
(cl 14.2)

**Lessor:**

Street address: c/- Riviera Real Estate  
73/2 Shore Road, Chiswick NSW 2048

Fax: 0418.499.342 (mobile)

Email: john.mclavish@riviera-realestate.com.au

**Lessee:**

Street address: \_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Guarantor:**

Street address: \_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Item 22 Execution by guarantor  
(cl 13)

I certify that I am an eligible witness and that the guarantor signed this dealing in my presence.  
[See note \* at end]

) Certified correct for the purposes of the *Real Property Act 1900* and signed by the guarantor.  
)

\_\_\_\_\_  
Signature of guarantor

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Address of witness

\* Section 117 of the *Real Property Act 1900* requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

**Details of strata manager/secretary of the owners corporation (if applicable)**

Life Property Group Pty Limited,

PO Box 1097,

Dee Why NSW 2099

**The following alterations and additions are to be made to the Lease Covenants in Annexure B:**

[Empty rectangular box for alterations and additions to Lease Covenants]

**ANNEXURE B – RETAIL LEASE**

**Lessor:** Cameron Dennis Wood & Elizabeth Louise Wood  
34 Crystal Springs Court, Maudsland NSW 4210

**Lessee:** Zadtec Pty Limited ABN 58879921144

This annexure consists of 14 pages.

**Property:** Unit 33, 49-51 Mitchell Road, Brookvale NSW 2100

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**NOTE:** Any alterations and additions to Lease Covenants in Annexure B must be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

**CONTENTS**

CLAUSE	SUBJECT	PAGE	CLAUSE	SUBJECT	PAGE
1	Interpretation.....	2	11	Lessor's other Obligations.....	8
2	Grant of Lease.....	2	12	Forfeiture and End of Lease.....	9
3	The Property.....	2	13	Guarantee.....	10
4	Lease Period.....	2	14	Exclusions and Notices.....	11
5	Money.....	3	15	Goods and Services Tax.....	11
6	Use.....	5	16	Bank Guarantee.....	11
7	Condition and Repairs.....	6	17	Security Deposit.....	12
8	Insurance and Damage.....	6	18	Strata.....	12
9	Access.....	7			
10	Transfer, Sublease and Change in Control.....	7			

Details of strata management/secretary of the owners corporation:  
Life Property Group Pty Limited, PO Box 1097, Dee Why NSW 2099

The following alterations and additions are to be made to the Lease Covenants in Annexure B:

**The lessor and the lessee hereby agree that the provisions of Annexure B as hereinafore provided are hereby amended as follows:**

19. Add Clause 5.1.10:

'All charges which are paid or incurred by the lessor relating to electricity, telephone, gas, garbage removal, water usage, sewerage usage, trade waste, greasy waste and maintenance and repair of air-conditioning if the same relate directly to the property or if the property is not separately serviced in such regard, then a fair proportion thereof as apportioned by the lessor acting reasonably.'

20. In clause 6.1.3, after the word 'properly' add the words 'and keep the property free of insects pests, vermin and odours'.

21. The following words are added at the end of clause 7.3.3: 'and includes the replacement of all carpet or floor tiles which in the lessor's opinion are worn or damaged and in need of replacement (otherwise than by reasonable wear and tear)'

22. In the second sentence of clause 7.6, before the word 'require' insert '(including but not limited to painting the property)'.

23. The following provisions are added at the end of clause 7:

7.7 Notwithstanding any provision to the contrary, the lessee must during the term of this lease at the lessee's expense maintain and keep the air-conditioning system in good and substantial repair, working order and condition. The lessee must forthwith upon the expiration (or the sooner determination) of this lease ensure that the air-conditioning system is in good repair, working order and condition as required pursuant to this clause and available for the lessor's use. The lessee's obligations under this clause include an obligation to replace at the lessee's expense the whole or any component of the air-conditioning system if such system or any component cannot be repaired.

24. The following clause 8.1.3 is added to clause 8.1: 'contents insurance (including tenant's fixtures) for the property against all usual risks for full replacement value'.

25. The following clause 8.3 is added after clause 8.2:

8.3.1 The lessee agrees to occupy and maintain the property at its own risk.

8.3.2 The lessee releases and indemnifies the lessor completely from all loss or liability (except if it is caused by the lessor's act, neglect or default) which may arise as a result of:

8.3.2.1 Accident or damage to the property or the building; or

8.3.2.2 Use of the property or building; or

8.3.2.3 Death of or injury to any person including the lessee.

- 8.3.3 The lessee agrees that the lessor is not liable for loss or damage to the tenant's fixtures or personal property (except if it is caused by the lessor's act, neglect or default).
- 8.3.4 The lessee indemnifies the lessor from loss or liability to the extent that the lessor's insurances are ineffective or inadequate because of any act, neglect or default of the lessee.

26. Add Clause 10.9:

'The lessor may require the lessee and the proposed transferee to execute such legal instruments and deeds as may be reasonably required by the lessor and if the proposed transferee is a corporation whose shares are not listed on the Australian Stock Exchange, the lessor may require that the directors or the shareholders (as chosen by the lessor) execute personal guarantees creating obligations of the nature set out in Clause 13.'

27. Add Clause 10.10:

'If the lessee is a company (other than one listed on an Australian Stock Exchange) any change in shareholding which results in more than 50% of the voting rights of the company being transferred as compared with the voting rights as at the date hereof shall be deemed to be a transfer of this lease by the lessee whereupon the whole of clause 10 hereof shall apply thereto.'

28. In clause 11.1 after the word 'without' add the word 'undue'.

29. Add a Clause 12.2.5:

'The lessee has breached an essential term of this lease.'

30. Add clause 12.8:

'The essential terms referred to in clause 12.5 will be essential terms of this lease notwithstanding acceptance by the lessor of arrears of rent or other moneys payable by the lessee under this lease or any waiver by the lessor in respect of the lessee's continuing obligation to pay rent or other moneys payable by the lessee under this lease during the term of this lease.'

31. Add clause 12.9:

'Should the lessor become entitled to re-enter and take possession of the property and end this lease then the lessee hereby irrevocably appoints the lessor to be the attorney of the lessee for it in its name and as its act and deed from time to time if and when such attorney shall think fit for the purpose of giving full effect to the power of re-entry to execute and to procure the registration where necessary of a surrender of this lease and to register this power of attorney and do any act, matter or thing which may be required to give full effect thereto.'

**MISCELLANEOUS PROVISIONS**

32. All the covenants and agreements by the lessor herein contained shall be taken and construed to be made by and for the lessor, its executors, administrators and assigns (or successors if a company) with the lessee, its executors, administrators and assigns (or successors if a company) and vice versa as regards the covenants and agreements by the lessee herein contained and except to the extent that such interpretation shall be excluded by or inconsistent with the context words importing the singular or plural number shall include the plural number and singular number respectively and reference to statutes shall include all statutes amending or consolidating the statutes referred to and words importing the masculine, feminine or neuter gender shall be deemed to include any gender as the case may require. Where a party is comprised of more than one person those persons shall be bound jointly and severally.
33. The lessee acknowledges and agrees that the lessor and its servants and agents do not in any way warrant or represent that the property is or will remain suitable or adequate for any of the purposes of the lessee and the lessee is and will be deemed to have satisfied itself in that regard prior to entering into this lease. The lessee shall be responsible for obtaining any consent required for the proposed use of the premises at its own expense and warrants that it has satisfied itself regarding any statutes, ordinances, regulations or by-laws prior to entering into this lease.
34. The lessee acknowledges and agrees that in entering into this lease it has not relied on any promise, representation, or warranty by the lessor or any person on behalf of the lessor and that this lease comprises the whole agreement between the parties. This lease may be qualified, varied or amended only by instruments in writing executed by the lessor and the lessee. In addition the lessee acknowledges that it is leasing the property in its present condition and state of repair and will make no objection in respect of anything in that regard.
35. If any clause or sub-clause (or part thereof) of this lease shall to any extent be invalid, void or unenforceable for any reason whatsoever, then the remainder of the clause or sub-clause and the remainder of this lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
36. Any consent or waiver by the lessor under this lease shall be binding only if it is express and in writing and no consent or waiver to or of a breach of any covenant, provision, condition or duty of the lessee shall be construed as a consent to or waiver of any other breach of the same or any other covenant, provision, condition or duty in or under this lease.
37. The lessee expressly agrees to make all payments due under this lease (including those for rent and for outgoings where applicable) punctually on the date when each payment is due and the lessee shall not withhold or be entitled to withhold the whole or any part of any such payment by way of a deduction, set-off or counter-claim in respect of any claim for damages or for compensation which the lessee shall make or has made against the lessor.
38. In the event that the lessor has failed to request payment for an outgoing to which the lessee is obligated to contribute pursuant to clause 5.1.2 or the lessor has failed to pursue or claim a rent review to which the lessor is entitled pursuant to clause 5.4 as and when the lessor was entitled to do so, the lessor may at any time thereafter call for such outgoings contribution or rent review and clauses 5.3 and 5.5 will continue to apply thereto notwithstanding the late request or claim.

39. In the interpretation of this lease, should there be any conflict or contradiction between the provisions of Annexures A and B, the provisions of Annexure A shall prevail.
40. Notwithstanding anything to the contrary herein no rent shall be payable for the period from the commencement date to and including 31 October 2020 PROVIDED THAT the lessee shall continue to remain in occupation of the premises for the whole of the initial term of the lease. If the lessee shall cease his occupation of the premises for whatever reason, the lessee shall forthwith be liable for and shall pay to the lessor the sum of Twenty eight thousand six hundred dollars (\$28,600) (including GST).
41. (Intentionally omitted)
42. The lessee will during the term of this lease and for such further time as the lessee holds the premises or any part thereof pay for all electricity, gas, water usage, telecommunications, and trade and waste disposal used in connection with the premises.
43. This lease has been granted to the lessee at the request of ..... and ..... (hereafter called 'the guarantor') as testified by his execution hereof, who guarantees the due performance by the lessee of all the terms and conditions hereof and covenants for himself, his executors and administrators that he will upon demand pay to the lessor all moneys which may become due to the lessor hereunder and remain unpaid for a period of fourteen (14) days and will be responsible for the due compliance by the lessee with all the terms and conditions hereof and will indemnify and keep indemnified the lessor from and against any loss so sustained by it without the necessity of the lessor giving any prior notice to the guarantor requiring the payment of any such moneys or to remedy any default by the lessee and any concession, indulgence or waiver of any covenant, condition or provision given or allowed by the lessor to the lessee shall not relieve or release the guarantor from his liability under this covenant and the liability of the guarantor under this covenant and indemnity shall not be abrogated or prejudiced or affected by:
- (a) The giving to the lessee of any notice to quit;
  - (b) The liability of the lessee to the lessor ceasing from any cause whatsoever;
  - (c) Any other person or corporation joining in this guarantee and indemnity;
  - (d) Any omission or neglect or by any matter or thing which but for this clause could or might abrogate, prejudice or affect this guarantee and indemnity;
  - (e) Any alteration, modification, variation or addition to this lease;
- AND the above-mentioned guarantee is a continuing guarantee and shall be irrevocable and shall remain in full force and effect until all moneys payable under this lease have been paid or satisfied.
44. The Parties acknowledge that the subject premises are not retail premises in accordance with the meaning under the *Retail Leases Act 1994*.

## CLAUSE 1 INTERPRETATION

### About this lease.

- 1.1 There are three parts to this lease – a lease form, Annexure A and this Annexure B.
- 1.2 This lease is a deed even if it is not registered.
- 1.3 A reference in this deed to the schedule is to the schedule of items commencing at item 1 on the lease form.
- 1.4 The lessor is named on page 1 of this lease.
- 1.5 The lessee is named on page 1 of this lease.
- 1.6 The guarantor is named in item 10 in the schedule, if there is a guarantor.
- 1.7 If a party consists of two or more persons, obligations of that party can be enforced against any one or more of them.
- 1.8 In this lease, "property" means the Property leased described on page 1 of this lease.
- 1.9 In this lease, "Act" means the *Retail Leases Act 1994*.
- 1.10 This lease is subject to any provision of the Act that cannot be excluded.
- 1.11 In this lease "Secretary" has the same meaning as in the Act.
- 1.12 In this lease "Registrar" has the same meaning as in the Act.
- 1.13 A reference to any legislation is also a reference to any corresponding later legislation.

## CLAUSE 2 GRANT OF LEASE

The lessor grants to the lessee, and the lessee accepts, a lease of the property.

## CLAUSE 3 THE PROPERTY

### What property is leased?

- 3.1 The property leased is described on page 1 of this lease.
- 3.2 The lessor's fixtures are included in the property.
- 3.3 If anything else is leased (such as furniture belonging to the lessor) and is described in item 11 in the schedule it is included in the property.
- 3.4 If the property has facilities and services shared in common with other persons in the same building as the property, clause 11.3.2 applies to those common facilities. The lessee shares the common facilities with the lessor, and with others. The lessor can set reasonable rules for sharing these common facilities.

## CLAUSE 4 LEASE PERIOD

### How long is this lease for?

- 4.1 This lease is for the period stated in item (G)1 in the schedule, commences on the date stated in item (G)2 in the schedule and ends on the date stated in item (G)3 in the schedule, subject to any extension under the Act.
- 4.2 If a further period, commencing when this lease ends, is stated in item 12A in the schedule then the lessee has the option to renew this lease for that period.
- 4.3 The lessee can renew this lease more than once if that is stated in item 12B in the schedule. However the period of tenancy under this lease and under any renewal(s) is, in total, not longer than the maximum period stated in item 12C in the schedule.
- 4.4 The lessee can exercise the option only if –
  - 4.4.1 the lessee serves on the lessor a notice of exercise of option not earlier than the first day stated in item 12D in the schedule and not later than the last day stated in item 12E in the schedule;
  - 4.4.2 there is at the time of service no rent or outgoing that is overdue for payment; and
  - 4.4.3 at the time of service all the other obligations of the lessee have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the lessor.

- 4.5 After exercising the option the lessee must continue to pay all rents and outgoings on time and continue to comply with all of the lessee's obligations under this lease. If the lessee does not do so, the lessor may treat any breach as being a breach of the new lease as well as of this lease.
- 4.6 A new lease will be the same as this lease except for –
- 4.6.1 the new rent;
  - 4.6.2 the commencement date and the termination date;
  - 4.6.3 the omission of clauses 4.2, 4.3, 4.4, 4.5 and 4.6 and items 12A and 12B in the schedule in the last lease allowed in item 12 in the schedule;
  - 4.6.4 item 12B becoming item 12A;
  - 4.6.5 adjustment of item 12C in the schedule; and
  - 4.6.6 adjustment of items 12D and 12E in the schedule. The number of days between the dates stated in items 12D and 12E in the schedule of the new lease and the termination date of the new lease and the number of days between each date stated in items 12D and 12E in the schedule of this lease and the termination date of this lease are to correspond.

If the new rent is to be current market rent it will be decided in the same way that current market rent is to be decided under Method 3 stated in clause 5 assuming that this lease and the new lease were one continuous lease and the commencement date of the new lease was a rent review date.

## CLAUSE 5 MONEY

### What money must the lessee pay?

- 5.1 The lessee must pay to the lessor or as the lessor directs –
- 5.1.1 the rent stated in item 13A in the schedule;
  - 5.1.2 the share stated in item 14A in the schedule of those outgoings stated in item 14B in the schedule and the utility charges referred to in clauses 5.23 and 5.24;
  - 5.1.3 the reasonable cost to the lessor of remedying a default by the lessee;
  - 5.1.4 the reasonable cost to the lessor (including legal costs) of dealing with any application by the lessee for the lessor's consent or where applicable an owners corporation's consent under this lease (whether or not it is given);
  - 5.1.5 interest on these moneys at the rate stated in item 15 in the schedule when payment is more than 14 days overdue, calculated from the due date to the date of payment;
  - 5.1.6 registration fee for registration of this lease at NSW Land Registry Services (payable on delivery to the lessor's solicitor or conveyancer of the executed lease);
  - 5.1.7 if the lessee defaults, the lessor's reasonable legal costs relating to the default;
  - 5.1.8 the lessor's reasonable costs and expenses in connection with the preparation of this lease but only that part of those costs and expenses which are permitted to be recovered by a lessor under section 14 and section 45 of the Act; and
  - 5.1.9 GST as provided for in clause 15.
- 5.2 The first month's instalment of rent is to be paid by the commencement date. Each later month's instalment of rent is to be paid in advance.
- 5.3 A payment under clause 5.1.2 must be paid on the next rent day after a request for payment is made by the lessor.
- A request for payment can be made –
- 5.3.1 after the lessor has paid an outgoing; or
  - 5.3.2 after the lessor has received an assessment or account for payment of an outgoing.
- 5.4 If item 14B in the schedule refers to land tax, the liability of the lessee is not to exceed the amount of that liability had the amount of land tax payable by the lessor been assessed on the basis that the land was the only land owned by the lessor and that there was no special trust or non-concessional company involved and –
- 5.4.1 if the property is a strata lot, the relevant land tax is land tax on that lot; or
  - 5.4.2 if the property is not a strata lot but is part of a building, the relevant land tax is land tax on the land on which the building is situated, plus any land of the lessor used or available for use by or for the benefit of lessees conducting business in the building or in connection with trading in the building.

**When and how is the rent to be reviewed?**

- 5.5 The rent is to be reviewed on the rent review dates stated in item 16 in the schedule.

If this lease is extended by legislation, the rent review dates include each anniversary of the latest rent review date stated in item 16 in the schedule (or if none is stated each anniversary of the commencement date) which falls during the extension.

- 5.6 The lessee must continue to pay rent at the old rate until the new rate is known. After that, the lessee is to pay the new rent from the next rent day. By that rent day the lessee is also to pay any shortfall between the old and new rate for the period since the rent review date. Alternatively, the lessor is to refund to the lessee any overpayment of rent.
- 5.7 There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 16 in the schedule. The lessee is entitled to a reduction if the method produces a rent lower than the rent current just before the review date.

**Method 1. By a fixed amount or percentage.**

- 5.8 In this case the rent beginning on each review date will be increased by the percentage or amount stated in item 16 in the schedule.

**Method 2. By reference to Consumer Price Index.**

- 5.9 In this case –

- take the yearly rent as of the last review date or if none, the rent at the commencement date (\$X),
- divide that rent by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before that date (CPI 1),
- multiply the result by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the review date (CPI 2).

The product is the new rent for the year beginning on the review date (\$Y), written as a formula –

$$\frac{\$X}{\text{CPI 1}} \times \text{CPI 2} = \$Y$$

- 5.10 The lessor must calculate the new rent after each review date and give the lessee written notice of the new rent.
- 5.11 If the Australian Bureau of Statistics makes a change in the reference base of the index and there is a published co-relation between the old and new base then the published co-relation is to be applied to convert the CPI 1 figure to the new reference base. If there is none then the lessor and the lessee agree to accept the calculations of the lessor's solicitor or conveyancer who must be retained to determine a fair co-relation between the old and the new series of numbers.
- 5.12 If the index used to calculate the new rent is discontinued the lessor may substitute another index that, as nearly as practicable, serves the same purpose and, if there is no such index, then the rent will be fixed by Method 3.

**Method 3. By reference to current market rent.**

- 5.13 In this case the rent is to be the current market rent. This can be higher or lower than the rent payable at the rent review date and is the rent that would reasonably be expected to be paid for the property, determined on an effective rent basis, having regard to the following matters –
- 5.13.1 the provisions of this lease;
  - 5.13.2 the rent that would reasonably be expected to be paid for the property if it were unoccupied and offered for renting for the same or a substantially similar use to which the property may be put under this lease;
  - 5.13.3 the gross rent, less the lessor's outgoings payable by the lessee;
  - 5.13.4 rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops; and
  - 5.13.5 the value of goodwill created by the lessee's occupation and the value of lessee's fixtures and fittings are to be ignored.

- 5.14 The lessor or the lessee may inform the other in writing at least 60 days before the rent review date of the rent that the lessor or lessee thinks will be the current market rent at the review date.
- 5.15 If the lessor and the lessee agree on a new rent then that rent will be the new rent beginning on the rent review date and the lessor and the lessee must sign a statement saying so.
- 5.16 If the lessor and the lessee do not agree on the amount of the new rent 30 days before the rent review date, the current market rent will be decided by a valuer appointed under clause 5.17.
- 5.17 The valuer appointed must be a specialist retail valuer appointed by agreement of the parties or, failing agreement, by the Registrar, upon application by the lessor or the lessee.
- 5.18 The valuer will act as an expert not an arbitrator. The lessor and the lessee can each make submissions in writing to the valuer.
- 5.19 The valuer's decision is final and binding. The valuer must state how the decision was reached in accordance with the provisions of the Act.
- 5.20 If the valuer –
- 5.20.1 does not accept the nomination to act;
  - 5.20.2 does not decide the current market rent within 1 month after accepting the nomination;
  - 5.20.3 becomes incapacitated or dies; or
  - 5.20.4 resigns.
- then another valuer is to be appointed in the same way.
- 5.21 The lessor and lessee must each pay half the valuer's costs.
- 5.22 If the lessor and lessee do not agree upon a valuer and neither applies for a valuer to be appointed within 6 months after a review date then the rent will not change on that rent review date.

#### **Utility Charges**

- 5.23 The lessee must pay separately metered utility charges for utilities such as water usage, gas, electricity, telecommunications, trade waste or grease trap charges with respect to the property directly as they fall due.
- 5.24 If the utilities are not separately metered the lessor, acting reasonably, must apportion an amount attributable to the property. The amount apportioned by the lessor to the lessee must be paid by the lessee to the lessor on the next date that rent is due to be paid by the lessee to the lessor.
- 5.25 If the lessee does not pay the utility charges under either clause 5.23 or 5.24 the lessor may pay the same and immediately recover from the lessee the amount paid by the lessor as if the charges were rent in arrears payable by the lessee.

### **CLAUSE 6 USE**

#### **How must the property be used?**

- 6.1 The lessee must –
- 6.1.1 use the property for the purpose stated in item 17 in the schedule and not for any other purpose;
  - 6.1.2 open for business at times usual for a business of the kind conducted by the lessee;
  - 6.1.3 keep the property clean and dispose of waste properly;
  - 6.1.4 comply with all laws regulating how the property is used, obtain any consents or licences needed, comply with any conditions of consent, and keep current any licences or registrations needed for the use of the property or for the conduct of the lessee's business there; and
  - 6.1.5 do all things required by the lessor from time to time (including, without limitation, signing any documents required by the lessor) to enable the lessor to register its security interests under the *Personal Property Securities Act 2009* (Cth) and to release any security interests under that Act.
- 6.2 The lessee must not –
- 6.2.1 do anything that might invalidate any insurance policy covering the property or that might increase the premium unless the lessor consents in which case the lessee must pay the increased premium;
  - 6.2.2 use the property as a residence or for any activity that is dangerous, offensive, noxious, illegal or immoral or that is or may become a nuisance or annoyance to the lessor or to the owner or occupier of any neighbouring property;

- 6.2.3 hold any auction, bankrupt or fire sale in the property;
- 6.2.4 display signs or advertisements on the outside of the property, or that can be seen from the outside, unless the lessor consents (but the lessor cannot withhold consent unreasonably);
- 6.2.5 overload the floors or walls of the property;
- 6.2.6 without the prior written consent of the lessor use any common area for any purpose other than for access to and egress from the property; or
- 6.2.7 create a security interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth)) in favour of a third party in respect of the additional leased property without the lessor's consent which must not be unreasonably withheld.

## **CLAUSE 7 CONDITION AND REPAIRS**

### **Who is to repair the property?**

- 7.1 The lessor must –
  - 7.1.1 maintain in a state of good condition and serviceable repair the roof, the ceiling, the external walls and external doors and associated door jambs, and the floors of the property and must fix structural defects;
  - 7.1.2 maintain the property in a structurally sound condition; and
  - 7.1.3 maintain essential services.
- 7.2 The lessee must otherwise maintain the property in its condition at the commencement date and promptly do repairs needed to keep it in that condition but the lessee does not have to –
  - 7.2.1 alter or improve the property;
  - 7.2.2 fix structural defects; or
  - 7.2.3 repair fair wear and tear.
- 7.3 The lessee must also –
  - 7.3.1 reimburse the lessor for the cost of fixing structural damage caused by the lessee, apart from fair wear and tear;
  - 7.3.2 maintain and decorate the shop front if the property has one;
  - 7.3.3 decorate the inside of the property in the last 3 months of the lease period (however it ends) – 'decorate' here means restoring the surfaces of the property in a style and to a standard of finish originally used e.g. by repainting.
- 7.4 If an authority requires work to be done on the property and it is structural work or work needed to make the property safe to use then the lessor must do the work unless it is required only because of the way the lessee uses the property. If it is any other work, or is required only because of the way the lessee uses the property, then the lessee must do the work.
- 7.5 If the lessee fails to do any work that the lessee must do the lessor can give the lessee a notice in writing stating what the lessee has failed to do. After the notice is given the lessee must –
  - 7.5.1 do the work immediately if there is an emergency; and
  - 7.5.2 do the work promptly and diligently in any other case.If the lessee does not do the work, the lessor can do it and the lessee must reimburse the lessor for the cost of the work.
- 7.6 The lessee must not make any structural alterations to the property. Any other alterations require the lessor's consent in writing (but the lessor cannot withhold consent unreasonably).

## **CLAUSE 8 INSURANCE AND DAMAGE**

### **What insurances must the lessee take out?**

- 8.1 The lessee must keep current an insurance policy noting the interests of the lessor and covering –
  - 8.1.1 liability to the public in an amount not less than the amount stated in item 18 in the schedule (for each accident or event); and

8.1.2 damage or destruction from any cause to all plate glass in the windows and other portions of the property.

and must produce to the lessor, upon request, the policy and the receipt for the last premium.

**What happens if the property is damaged?**

- 8.2 If the property or the building of which it is part is damaged (a term which includes destroyed) :
- 8.2.1 the lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoings and other charges, that is attributable to any period during which the property cannot be used under this lease or is inaccessible due to that damage;
  - 8.2.2 if the property is still useable under this lease but its useability is diminished due to the damage, the lessee'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;
  - 8.2.3 if the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee can terminate this lease by giving not less than 7 days' notice in writing of termination to the other and no compensation is payable in respect of that termination;
  - 8.2.4 if the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor to do so the lessee can terminate this lease by giving not less than 7 days' notice in writing of termination to the lessor; and
  - 8.2.5 nothing in clause 8.2 affects any right of the lessor to recover damages from the lessee in respect of any damage or destruction to which the clause applies.

**CLAUSE 9 ACCESS**

**What are the lessor's rights of access to the property?**

- 9.1 The lessee must give the lessor (or anyone authorised in writing by the lessor) access to the property at any reasonable time for the purpose of –
- 9.1.1 inspecting the condition of the property, or how it is being used;
  - 9.1.2 doing anything that the lessor can or must do under this lease or must do by law;
  - 9.1.3 viewing the property as a valuer, prospective buyer or mortgagee;
  - 9.1.4 fixing a notice in a reasonable position on the outside of the property saying that it is for sale; or
  - 9.1.5 viewing the property as a prospective lessee not earlier than 6 months before the lease period ends;
  - 9.1.6 fixing a notice not earlier than 6 months before the lease period ends in a reasonable position on the outside of the property saying that it is to let; or
  - 9.1.7 inspecting, cleaning or repairing another property or any services to another property.
- 9.2 The lessor must give the lessee at least 2 days' written notice for access (except in an emergency). The day of the giving of the notice and any Saturday, Sunday or public holiday on which the property is not open for business are not counted.
- 9.3 The lessor must promptly make good any damage caused to the property and to any of the lessee's belongings which results from exercising these rights.
- 9.4 The lessee must give to the lessor a copy of any notice relating to the property or relating to any neighbouring property immediately after receiving the notice.

**CLAUSE 10 TRANSFER, SUB-LEASE AND CHANGE IN CONTROL**

**Can this lease be transferred or the property shared or sub-let?**

- 10.1 The lessee must not transfer this lease without the lessor's written consent.
- 10.2 The lessor can withhold consent only if –
- 10.2.1 the proposed transferee proposes to change the use to which the property is put;
  - 10.2.2 the proposed transferee has financial resources or retailing skills inferior to those of the proposed transferor as at the date of request for the lessor's consent;

- 10.2.3 in the case of a lease awarded by public tender, the proposed transferee fails to meet any criteria of the public tender;
- 10.2.4 the lessee has not complied with clause 10.3 and clause 10.4; or
- 10.2.5 section 80E of the Act applies.
- 10.3 A request for the lessor's consent to a transfer of lease must be made in writing and the lessee must provide the lessor with such information as the lessor may reasonably require concerning the financial resources and retailing skills of the proposed transferee.
- 10.4 Before requesting the consent of the lessor to a proposed transfer of this lease, the lessee must furnish the proposed transferee with a copy of any disclosure statement given to the lessee in respect of this lease, together with details of any changes that have occurred in respect of the information contained in the disclosure statement (being changes of which the lessee was aware or could reasonably be expected to be aware). For the purpose of enabling the lessee to comply with this obligation, the lessee can request the lessor to provide the lessee with an updated lessor's disclosure statement within 14 days and, if the lessor fails to comply with such a request within 14 days after it is made, it is sufficient compliance by the lessee if the proposed assignee is provided with an updated lessor's disclosure statement completed by the lessee to the best of the lessee's knowledge (but with information as to current outgoings in place of information as to estimated outgoings).
- 10.5 The lessor must deal expeditiously with a request for consent to assignment of lease. Where the lessee has complied with clause 10.3 and clause 10.4, and the lessor has not within 28 days after the request was made or the lessee has complied with the requirements of section 41 of the Act, whichever is the later, given notice in writing to the lessee either consenting or withholding consent, the lessor is taken to have consented.
- 10.6 The lessee has to pay in connection with any consent the lessor's reasonable legal costs, the stamp duty and the registration fee for the transfer.
- 10.7 The lessee can sub-let, grant a licence or concession, share or part with the possession of the whole or any part of the property or mortgage or otherwise charge or encumber the lessee's estate or interest in this lease only with the written consent of the lessor which can be refused in the lessor's absolute discretion.
- 10.8 **Change in control of lessee: company**
- 10.8.1 If the lessee is a company and there is a proposal for the lessee or any company controlling the lessee to change its shareholding or change its constitution so that the effective control of the lessee is altered then that proposed change in control is treated as a proposed transfer of this lease and clause 10.1 applies.
- 10.8.2 Clause 10.8.1 does not apply if the lessee is listed on the Australian Securities Exchange or, if the change occurs to a company controlling the lessee, that company is listed on the Australian Securities Exchange.

## **CLAUSE 11 LESSOR'S OTHER OBLIGATIONS**

### **What are the lessor's other obligations?**

- 11.1 So long as the lessee does all the things that must be done by the lessee under this lease the lessor must allow the lessee to possess and use the property in any way permitted under this lease without interference from the lessor, or any person claiming under the lessor or having superior title to the title of the lessor.
- 11.2 The lessor must pay all outgoings for the land or the building of which the property is part when they fall due.
- 11.3 If the property is part of a building owned or controlled by the lessor –
- 11.3.1 the lessor must maintain in reasonable structural condition all parts of the building that the lessee can use under this lease; and
- 11.3.2 if the property has facilities and service connections shared in common with other persons the lessor must –
- 11.3.2.1 allow reasonable use of the facilities and service connections including –
- the right for the lessee and other persons to come and go to and from the property over the areas provided for access,
  - access by the lessee to service connections; and

- the right for the lessee's customers to park vehicles in any area set aside for customer parking, subject to any reasonable rules made by the lessor.
- 11.3.2.2 maintain the facilities and service connections in reasonable condition.
- 11.4 The lessor must provide the lessee with an executed copy of the lease within 3 months after the lease is returned to the lessor or the lessor's solicitor, conveyancer or agent following its execution by the lessee. That 3 month period is to be extended for any delay attributable to the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent).
- 11.5 If this lease is for a term of more than 3 years or is to be registered –
- 11.5.1 the lessor must lodge the lease for registration in accordance with the *Real Property Act 1900* within 3 months after the lease is returned to the lessor or the lessor's solicitor, conveyancer or agent following its execution by the lessee; and
  - 11.5.2 the 3 month period within which a lease must be lodged for registration is to be extended for any delay attributable to –
    - 11.5.2.1 the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent), or
    - 11.5.2.2 requirements arising under the *Real Property Act 1900* that are beyond the control of the lessor.
- 11.6 For the purposes of clause 11.5 the term of this lease includes any term for which the lease may be extended or renewed at the option of the lessee. Clauses 11.5 and 11.6 do not affect the operation of the *Real Property Act 1900*.
- 11.7 Where this lease is lodged for registration, the lessor must –
- 11.7.1 ensure that this lease is registered; and
  - 11.7.2 provide the original registered lease to the lessee, where available.
- 11.8 If a consent is needed for this lease, from someone such as a mortgagee or head lessor of the property, then the lessor must get the consent.

## CLAUSE 12 FORFEITURE AND END OF LEASE

### When does this lease end?

- 12.1 This lease ends –
- 12.1.1 on the date stated in item 3 in the schedule;
  - 12.1.2 if the lessor lawfully enters and takes possession of any part of the property; or
  - 12.1.3 if the lessor lawfully demands possession of the property.
- 12.2 The lessor can enter and take possession of the property or demand possession of the property if –
- 12.2.1 the lessee has repudiated this lease;
  - 12.2.2 rent or any other money due under this lease is 14 days overdue for payment;
  - 12.2.3 the lessee has failed to comply with a lessor's notice under section 129 of the *Conveyancing Act 1919*; or
  - 12.2.4 the lessee has not complied with any term of this lease where a lessor's notice is not required under section 129 of the *Conveyancing Act 1919* and the lessor has given at least 14 days' written notice of the lessor's intention to end this lease.
- 12.3 When this lease ends, unless the lessee becomes a lessee of the property under a new lease the lessee must –
- 12.3.1 return the property to the lessor in the state and condition that this lease requires the lessee to keep it in (including any obligation to decorate under clause 7.3.3); and
  - 12.3.2 have removed any goods (unless otherwise directed by the lessor to the extent the lessor has any security interest) and anything that the lessee fixed to the property and have made good any damage caused by the removal.

Anything not removed becomes the property of the lessor who can keep it or remove and dispose of it and charge to the lessee the cost of removal, making good and disposal.

- 12.4 If the lessor allows the lessee to continue to occupy the property after the end of the lease period (other than under a new lease) then –
- 12.4.1 the lessee becomes a monthly lessee and must go on paying the same rent and other money in the same way that the lessee had to do under this lease just before the lease period ended (apportioned and payable monthly);
  - 12.4.2 the monthly tenancy will be on the same terms as this lease, except for –
    - clause 4; and
    - clauses 5.5 to 5.22 inclusive;
  - 12.4.3 either the lessor or the lessee can end the monthly tenancy by giving, at any time, 1 month written notice to the other expiring on any date; and
  - 12.4.4 anything that the lessee must do by the end of this lease must be done by the end of the monthly tenancy.
- 12.5 Essential terms of this lease include
- 12.5.1 the obligation to pay rent not later than 14 days after the due date for payment of each periodic instalment (and this obligation stays essential even if the lessor, from time to time, accepted late payment);
  - 12.5.2 the obligations of the lessee in clause 5.1.2 (outgoings);
  - 12.5.3 the obligations of the lessee in clauses 5.23 to 5.25 (utility charges);
  - 12.5.4 the obligations of the lessee in clause 6.1, 6.2.1, 6.2.2 and 6.2.5 (use);
  - 12.5.5 the obligations of the lessee in clause 7 (repairs);
  - 12.5.6 the obligations of the lessee in clause 8.1 (insurance);
  - 12.5.7 the obligations of the lessee in clause 10 (transfer, sub-lease and change in control);
  - 12.5.8 the obligations of the lessee in clause 15 (GST); and
  - 12.5.9 the obligations of the lessee in clause 16 (bank guarantee) or clause 17 (security deposit).
- 12.6 If there is a breach of an essential term the lessor can recover damages for losses over the entire period of this lease but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 12.7 The lessor can recover damages even if –
- 12.7.1 the lessor accepts the lessee's repudiation of this lease;
  - 12.7.2 the lessor ends this lease by entering and taking possession of any part of the property or by demanding possession of the property;
  - 12.7.3 the lessee abandons possession of the property; or
  - 12.7.4 a surrender of this lease occurs.

## **CLAUSE 13 GUARANTEE**

### **What are the obligations of a guarantor?**

- 13.1 This clause applies if a guarantor of the lessee is named in item 10A in the schedule and has signed or executed this lease in item 22 or, if this lease is a renewal of an earlier lease, the earlier lease.
- 13.2 The guarantor guarantees to the lessor the performance by the lessee of all the lessee's obligations (including any obligation to pay rent, outgoings or damages) under this lease, under every extension of it or under any renewal of it or under any tenancy and including obligations that are later changed or created.
- 13.3 If the lessee does not pay any money due under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must pay that money to the lessor on demand even if the lessor has not tried to recover payment from the lessee.
- 13.4 If the lessee does not perform any of the lessee's obligations under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must compensate the lessor even if the lessor has not tried to recover compensation from the lessee.
- 13.5 If the lessee is insolvent and this lease or any extension or renewal of it is disclaimed the guarantor is liable to the lessor for any damage suffered by the lessor because of the disclaimer. The lessor can recover damages for losses over the entire period of this lease or any extension or renewal but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.

- 13.6 Even if the lessor gives the lessee extra time to comply with an obligation under this lease, under any extension of it or under any renewal of it or under any tenancy, or does not insist on strict compliance with the terms of this lease or any extension of it or renewal of it or of any tenancy, the guarantor's obligations are not affected.
- 13.7 If an amount is stated in item 10B in the schedule the guarantor's liability under this clause is limited to that amount.
- 13.8 The terms of this guarantee apply even if this lease is not registered, even if any obligation of the lessee is only an equitable one, and even if this lease is extended by legislation.

#### CLAUSE 14 EXCLUSIONS AND NOTICES

- 14.1 No covenant or power is implied in this lease by section 84 or 85 of the *Conveyancing Act 1919*.
- 14.2 A document under or relating to this lease is –
- 14.2.1 signed by a party if it is signed by the party or the party's solicitor or conveyancer;
  - 14.2.2 served if it is served by the party or the party's solicitor or conveyancer;
  - 14.2.3 served if it is served in any manner provided in section 170 of the *Conveyancing Act 1919*;
  - 14.2.4 served on the lessee if it is left at the property;
  - 14.2.5 served if it is sent by email or by fax to the email address or fax number for either the lessor or the lessee set out in this lease in item 21 (or any substitute email address or fax number given by either of them), unless it is not received;
  - 14.2.6 served on a person if it or a copy of it comes into possession of that person; and
  - 14.2.7 served at the earliest time it is served, if it is served more than once.

#### CLAUSE 15 GOODS AND SERVICES TAX

Unless item 13B in the schedule has been completed in a way that indicates that this clause is not to apply:

- 15.1 As consideration in whole or in part for a taxable supply the person receiving the supply must pay to the party making the supply an additional amount equal to the amount of GST payable on the supply.
- 15.2 To the extent that the lessee is required to reimburse the lessor in whole or in part for outgoings incurred by the lessor, for the purposes of this lease the amount of the outgoings must be reduced by the amount of any credit or refund of GST to which the lessor is entitled as a result of incurring outgoings.
- 15.3 Outgoings in item 14B in the schedule are to be calculated after deducting any input tax credit to which the lessor is entitled.
- 15.4 For the purposes of this lease GST means a tax in the nature of a supply of goods and services tax levied or imposed by the Commonwealth of Australia.

#### CLAUSE 16 BANK GUARANTEE

- 16.1 If an amount or a number of months appears in item 19 in the schedule, clauses 16.2 to 16.6 apply.
- 16.2 On or before the commencement date of this lease the lessee will deliver to the lessor a guarantee for the performance of the lessee's obligations under this lease by an authorised deposit-taking institution trading in the State of New South Wales in the form of an unconditional and irrevocable undertaking to pay drawn in favour of the lessor (unlimited as to time) in a form acceptable to the lessor, acting reasonably, and for an amount equivalent to the number of months or the amount referred to in item 19 in the schedule.
- 16.3 The lessor is entitled to claim under the guarantee an amount equal to any moneys due but unpaid by the lessee to the lessor under this lease and the lessee must deliver to the lessor within 14 days of a notice from the lessor, an additional guarantee equal to the amount claimed.
- 16.4 The lessee agrees to vary the amount of the guarantee within 28 days of a written request from the lessor after any rent review so that the amount represents the equivalent of the number of months referred to in the schedule.
- 16.5 Subject to the provisions of section 16BA of the Act the lessor will deliver the guarantee (or so much of it as is then held by the lessor) to the lessee within 2 months after the lessee completes performance of the obligations under this lease for which the guarantee is provided as security.

- 16.6 If there is a change in lessor, the lessee must at the cost of the lessor provide a replacement guarantee that complies with clause 16.2 drawn in the name of the new lessor, within 2 months of receipt of a written request for a replacement guarantee.

#### **CLAUSE 17 SECURITY DEPOSIT**

- 17.1 If an amount or a number of months appears in item 20 in the schedule, clauses 17.2 to 17.5 apply.
- 17.2 On or before the commencement date of this lease the lessee will deliver the security deposit to the lessor and any lodgment form to lodge the security deposit with the Secretary.
- 17.3 The lessor is entitled to deduct from the security deposit an amount equal to any monies due but unpaid by the lessee to the lessor under this lease and the lessee must deliver to the lessor within 14 days of a notice from the lessor, an additional amount equal to the amount claimed.
- 17.4 The security deposit will be held in accordance with Section 16C of the Act.
- 17.5 The lessee agrees to vary the amount of the security deposit within 28 days of a written request from the lessor after any rent review so that it represents the equivalent of the number of months referred to in the schedule.

#### **CLAUSE 18 STRATA**

- 18.1 "Strata Acts" means the *Strata Schemes Management Act 2015* and the *Strata Schemes Development Act 2015*, and includes any amending Acts, rules, regulations, ordinances, by-laws, statutory instruments, orders or notices made under those Acts.
- 18.2 "Owners corporation", "owner", "strata scheme", "lot" and "parcel" where used in this lease have the meanings given under the Strata Acts.
- 18.3 "Strata conversion" means a subdivision of the property under the *Strata Schemes Development Act 2015* or the *Community Land Development Act 1989* or the *Community Land Management Act 1989* or other legislation permitting such subdivision.
- 18.4 **Strata Conversion**
- 18.4.1 By its entry into this lease the lessee acknowledges that the lessor can register a strata plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan insofar as any of these may relate to the property, the building or the land. The lessor will provide the lessee with copies of the proposed strata plan and associated documentation for the lessee's approval, which approval must not be unreasonably withheld.
- 18.4.2 Unless the lessee raises an objection to the strata conversion referred to in clause 18.4.1, then within 14 days of written request by the lessor the lessee will sign and return to the lessor any consents or other documents necessary to enable the lessor to carry out the strata conversion and will make no objection or claim for compensation in relation to the strata conversion.
- 18.4.3 If the strata conversion occurs:
- 18.4.3.1 any reference in this lease will be deemed to be a reference to the buildings comprised in the registered plan or plans of which the property forms part;
- 18.4.3.2 any levies or other monies payable to the owners corporation will be payable by the lessee with the exception of any contribution to a capital works fund or special levy; and
- 18.4.3.3 this lease will be deemed to be amended in any respect that is necessary to ensure that this lease reflects that the strata conversion has been carried out.
- 18.5 **Not to prejudice interests of owners corporation.**
- 18.5.1 Without the prior written consent of the owners corporation, the lessee must not do any act, matter or thing under the exercise of its rights and obligations elsewhere contained in this lease or permit or allow any act, matter or thing to be done which will or may:
- 18.5.1.1 increase the rate of premium payable by the owners corporation under any policy of insurance taken out by the owners corporation; or
- 18.5.1.2 invalidate, avoid or suspend the operation of any policy of insurance or otherwise prejudice the owners corporation rights under any such policy.

- 18.5.2 Upon the occurrence of any of the matters referred to in clause 18.5.1, the lessee must:
- 18.5.2.1 pay to the lessor or such other person responsible for payment any amounts payable to the owners corporation as a consequence of any such matters;
  - 18.5.2.2 pay to the lessor for and on behalf of the owners corporation any amounts payable by the owners corporation as a consequence of any such matters and not the subject of clause 18.5.1; and
  - 18.5.2.3 pay to the lessor for and on behalf of the owners corporation the amount of any and all losses and damages arising from the occurrence of any such matters.

**18.6 Indemnity**

The lessee indemnifies the lessor for any loss or damage suffered by the lessor if the lessee or the lessee's employees fail to comply with the obligations as to conduct imposed upon the lessee or the lessee's employees by this lease or by reason of the Strata Acts.

**18.7 Use**

- 18.7.1 Where the property is a lot in a strata scheme the lessee must:
- 18.7.1.1 use the common property only in connection with the use of the property and to obtain access to and egress from the property;
  - 18.7.1.2 co-operate with all other permitted users of the common property;
  - 18.7.1.3 comply with the provisions of the Strata Acts and the by-laws and all lawful orders, motions and directives under the Strata Acts as may be applicable to the exercise of the lessee's rights and obligations under this lease;
  - 18.7.1.4 meet the cost of all damage to the common property caused by the lessee or any invitee or licensee of the lessee;
  - 18.7.1.5 permit the owners corporation, temporarily, to close any part of the common property for the purpose of making and effecting repairs to it; and
  - 18.7.1.6 permit the owners corporation access to the property on giving the lessee reasonable prior notice for the purpose of making and effecting any repairs to the common property.
- 18.7.2 Where the property is a lot in strata scheme the lessor must use its reasonable endeavours to:
- 18.7.2.1 assist the lessee, at the expense of the lessee, to obtain the consent of the owners corporation to the lessee's fit out of the property (as approved by the lessor) and the lodgment of any development application in relation to the lessee's use of the property; and
  - 18.7.2.2 cause the owners corporation to maintain and repair the common property, to the extent of any obligation of the lessor to maintain the building.

### IMPORTANT NOTES

The following notes are for guidance and do not form part of this lease.

If you are a lessor, a solicitor or conveyancer will prepare this lease for you. This lease is specifically for use for retail premises only. It imports requirements of the *Retail Leases Act 1994* which may not be appropriate for non-retail premises. This lease should not be used for a lease of non-retail premises.

If you are a lessee, a solicitor or conveyancer can advise you about it.

1. This document creates legal rights and legal obligations.
2. The lessor must give a lessor's disclosure statement at least 7 days before the lease is entered into in accordance with the *Retail Leases Act 1994*.
3. Failure to register a lease can have serious consequences.
4. If an option for renewal is not exercised at the right time it will be lost.
5. The lessee can exercise an option for renewal even if there has been a breach of this lease in a case where section 133E of the *Conveyancing Act 1919* applies. The lessor must give a prescribed notice within 14 days after the option is exercised if the lessor wants to rely on the breach to prevent the exercise of the option.
6. The Law Society of New South Wales is not responsible for any loss resulting from the use of this lease as printed whether authorised or not.

# **REQUISITIONS ON TITLE**

STRATA TITLE (COMMERCIAL) PROPERTY REQUISITIONS ON TITLE

Vendor:  
Purchaser:  
Property:  
Dated:

CAMERON DENNIS WOOD @ ELIZABETH LOUISE WOOD  
Unit 33 + 78 / 49-51A MITCHELL RD, BROOKVALE 2100

**Possession and tenancies**

1. Vacant possession of the Property must be given on completion unless the Contract provides otherwise.
2. Is anyone in adverse possession of the Property or any part of it?
3.
  - (a) What is the nature of any tenancy or occupancy?
  - (b) If it is in writing, all relevant documentation should be produced, found in order and handed over on completion with notices of attornment.
  - (c) Please specify any existing breaches.
  - (d) What is the current rent payable?
  - (e) Please provide details of outgoing or contributions to outgoing payable and the manner in which they have been calculated (e.g. base year figures).
  - (f) All rent and outgoing or contributions to outgoing should be paid up to or beyond the date of completion.
  - (g) Please provide details of any bond money held, which is to be paid or allowed to the purchaser on completion.
  - (h) If the bond money is held by a government entity pursuant to legislation then the appropriate documentation should be handed over on completion to enable the purchaser to acquire the vendor's rights.
  - (i) Please provide details of any bank guarantees or any personal guarantees which are held by the vendor.
  - (j) Appropriate transfer documentation duly signed should be handed over on completion assigning the vendor's interest in the bank guarantees and any personal guarantees.
  - (k) Are there any sub-leases? If so, copies should be provided.
  - (l) Please provide details of current insurances held by the tenant over the improvements and/or for public liability and plate glass, in particular the type of the cover, the name of the insurer, the period of the cover and the amount of the cover.
4. Is any tenancy subject to the *Retail Leases Act 1994 (NSW)*?  
If so:
  - (a) complete copies of the disclosure statements as required by that Act should be provided;
  - (b) a copy of a certificate given under Section 16(3) of that Act should be provided or other evidence to confirm that Section 16 would not apply to the lease;
  - (c) is the vendor aware of any provision of the lease which is not enforceable because of a non disclosure in the disclosure statement or any lease which has been entered into in contravention of that Act?
  - (d) Are there any retail tenancy disputes on foot? If so, please provide details;
  - (e) Has any retail tenancy claim or unconscionable conduct claim been made under that Act?
  - (f) Have any orders or appointments been made under Part 8 of that Act? If so, please provide details.
5. Is any part of the Property affected by a protected tenancy (a tenancy affected by Parts 2, 3, 4 or 5 of the *Landlord and Tenant (Amendment) Act 1948 (NSW)*)? If so, please provide details.
6. If any tenancy is subject to the *Residential Tenancies Act 2010 (NSW)*:
  - (a) has either the vendor or any predecessor or the tenant applied to the NSW Civil and Administrative Tribunal for an order?
  - (b) have any orders been made by the NSW Civil and Administrative Tribunal? If so, please provide details.

**Title**

7. Subject to the Contract, on completion the vendor should be registered as proprietor in fee simple of the Property free from all encumbrances and notations and recorded as the owner of the Property on the strata roll, free from all other interests.
8. On or before completion, any mortgage, caveat writ or priority notice must be discharged, withdrawn, cancelled or removed as the case may be or, in the case of a mortgage, caveat or priority notice, an executed discharge or withdrawal or removal handed over on completion together with a notice under Section 22 of the *Strata Schemes Management Act 2015 (NSW) (Act)*.
9. Are there any proceedings pending or concluded that could result in the recording of any writ on the title to the Property or in the General Register of Deeds? If so, full details should be provided at least 14 days prior to completion.
10. When and where may the title documents be inspected?

- 11.
- (a) In these requisitions, *personal property, secured party, security agreement, security interest and verification certificate* have the same meanings as in the *Personal Property Securities Act 2009 (Cth)*.
  - (b) Are the inclusions or other items of personal property included in the sale (*inclusions*) subject to a security interest or has the vendor entered into any security agreement in respect of the inclusions and in respect of which the vendor has received, or waived its right to receive, a verification certificate? If so, please provide full details of the property the subject of the security interest, the nature of the security agreement giving rise to the security interest and the full name, address, ACN and/or ABN of the secured party or security agreement counterparty.
  - (c) If a security interest has arisen or been granted over the inclusions, the vendor must procure a full release and discharge of that security interest by the secured party to the extent that it relates to the inclusions. Please provide details of whether the release will be a full or partial release of the security interest and confirm the manner in which the release is to be effected (eg. by provision of a duly executed *Deed Poll of Release and Undertaking to Amend Registration* in the form recommended by the Australian Bankers' Association).
12. A depreciation schedule or all details of the written down values of all fixtures, fittings and chattels included in the Property must be provided.
13. Has any notice been given or received or has an application been made under the *Encroachment of Buildings Act 1922 (NSW)*, *Access to Neighbouring Land Act 2000 (NSW)*, Section 88K of the *Conveyancing Act 1919 (NSW)*, Section 40 of the *Land and Environment Court Act 1979 (NSW)* or are there circumstances which would give rise to a notice or application under those Acts in respect of the Property or the common property? If the answer is yes, please provide full details.
- Rates and taxes**
14. All rates, taxes, levies, other charges and assessments, including land tax, affecting the Property must be paid up to the date of completion and receipts produced.
15. Is the vendor liable to pay land tax or is the Property otherwise charged or liable to be charged with land tax?  
If so:
- (a) to what year has a return been made?
  - (b) what is the taxable value of the Property for land tax purposes for the current year?
16. The vendor must serve on the purchaser a current land tax certificate (issued under Section 47 of the *Land Tax Management Act 1956 (NSW)*) at least 14 days before completion.
- Survey and building**
17. Subject to the Contract, survey should be satisfactory and show that the whole of the Property and the common property is available, that there are no encroachments by or upon the Property or the common property.
18. Is the vendor in possession of a survey report on the Property? If so, please produce a copy for inspection prior to completion. The original should be handed over on completion.
19. In respect of the Property and the common property:
- (a) Have the provisions of the *Local Government Act 1993 (NSW)*, the *Environmental Planning and Assessment Act 1979 (NSW)* and their regulations and instruments or former instruments been complied with?
  - (b) Is there any matter that could justify the making of an upgrading or demolition order in respect of any building or structure?
  - (c) Has the vendor a Building Certificate which relates to all current buildings or structures? If so, it should be handed over on completion. Please provide a copy in advance.
  - (d) Has the vendor a Final Occupation Certificate issued under the *Environmental Planning and Assessment Act 1979 (NSW)* for all current buildings or structures? If so, it should be handed over on completion. Please provide a copy in advance.
  - (e) In respect of any residential building work carried out in the last 6 years:
    - (i) please identify the building work carried out;
    - (ii) when was the building work completed?
    - (iii) please state the builder's name and licence number;
    - (iv) please provide details of insurance under the *Home Building Act 1989 (NSW)*.
  - (f) Are there any proposals by the Owners Corporation or an owner of a lot to make any additions or alterations or to erect any new structures on the common property? If so, please provide details.
  - (g) Has any work been carried out by the vendor on the Property or the common property? If so:
    - (i) has the work been carried out in accordance with the by-laws and all necessary approvals and consents?
    - (ii) does the vendor have any continuing obligations in relation to the common property affected?
20. Is the vendor aware of any proposals to:
- (a) resume the whole or any part of the Property or the common property?
  - (b) carry out building alterations to an adjoining lot which may affect the boundary of that lot or the Property?
  - (c) deal with, acquire, transfer, lease or dedicate any of the common property?
  - (d) dispose of or otherwise deal with any lot vested in the Owners Corporation?

- (e) create, vary or extinguish any easements, restrictions or positive covenants over the Property or the common property?
  - (f) subdivide or consolidate any lots and/or any common property or to convert any lots into common property?
  - (g) grant any licence to any person, entity or authority (including the Council) to use the whole or any part of the common property?
21. Are the improvements affected or have they been previously affected by:
- (a) termite infestation, treatment or repair?
  - (b) flooding or dampness?
  - (c) functional problems with equipment such as air conditioning, roofs, lifts or inclinators, pool equipment, building management and security systems?
  - (d) asbestos, fibreglass or other material injurious to health having been used in the construction of the Property?
- If so, please provide full details.
22. Has the vendor (or any predecessor) or the Owners Corporation entered into any agreement with or granted any indemnity to the local council, any water or sewerage authority or any other authority concerning any development on the Property or the common property?
23. Is there a swimming pool on the Property or the common property to which the *Swimming Pools Act 1992 (NSW)* applies? If so:
- (a) did its installation or construction commence before or after 1 August 1990?
  - (b) has the swimming pool been installed or constructed in accordance with approvals under the *Local Government Act 1919 (NSW)* and *Local Government Act 1993 (NSW)*?
  - (c) does it comply with the provisions of the *Swimming Pools Act 1992 (NSW)* and regulations relating to access? If not, please provide details or the exemptions claimed;
  - (d) have any notices or orders issued or been threatened under the *Swimming Pools Act 1992 (NSW)* or regulations?
  - (e) if a certificate of non-compliance has issued, please provide reasons for its issue if not disclosed in the Contract;
  - (f) originals of certificate of compliance or non-compliance and occupation certificate should be handed over on settlement.
- 24.
- (a) If there are any party walls, please specify what rights exist in relation to each party wall and produce any agreement. The benefit of any such agreement should be assigned to the purchaser on completion.
  - (b) Is the vendor aware of any dispute regarding boundary or dividing fences or party walls?
  - (c) Has the vendor received any notice, claim or proceedings under the *Dividing Fences Act 1991 (NSW)*?
25. Are any rainwater downpipes connected to the sewer?
- Affectations, notices and claims**
26. In respect of the Property and the common property:
- (a) Is the vendor aware of any rights, licences, easements, covenants or restrictions on use other than those disclosed in the Contract?
  - (b) Has any claim been made by any person to close, obstruct or limit access to or from them or to prevent the enjoyment of any easement appurtenant to them?
  - (c) Is the vendor aware of:
    - (i) any road, drain, sewer or storm water channel which intersects or runs through them?
    - (ii) any dedication to or use by the public of any right of way or other easement over any part of them?
    - (iii) any latent defects in them such as underground pipes or structures?
  - (d) Has the vendor any notice or knowledge of them being affected by the following:
    - (i) any notice requiring work to be done or money to be spent on them or any footpath or road adjoining? If so, such notice must be complied with prior to completion.
    - (ii) any work done or intended to be done on them or the adjacent street which may create a charge on them or the cost of which might be or become recoverable from the purchaser?
    - (iii) any sum due to any local or public authority recoverable from the purchaser? If so, it must be paid prior to completion.
    - (iv) any realignment or proposed realignment of any road adjoining them?
    - (v) any charge or liability including liability for remediation of the Property, or proceedings under the *Contaminated Land Management Act 1997 (NSW)* or any environment protection legislation (as defined in that Act) or any circumstances which could lead to any such liability, charge or to proceedings being commenced?
  - (e) If the answer to any part of Requisition 26(d) is yes, please:
    - (i) provide full details;
    - (ii) advise whether any applicable notice, order, direction, resolution or liability has been fully complied with; and
    - (iii) provide full details regarding the extent of any non-compliance.
- Applications, Orders etc**
27. Are there any applications made, proposed or threatened, whether by an owner or owners of a lot or the Owners Corporation, to the NSW Civil and Administrative Tribunal, any Court or to the Registrar

General for orders relating to the strata scheme, the Property or the common property (including orders to vary the strata scheme consequent upon damage or destruction or to terminate the strata scheme) which are yet to be determined? If so, please provide particulars.

28. Are there any mediations currently being conducted by the Commissioner of Fair Trading, Department of Finance Services and Innovation in relation to the Property or the common property which involve the vendor or the Owners Corporation? If so, please provide particulars.
29. Are there any:
- (a) orders of the Tribunal;
  - (b) notices of or investigations by the Owners Corporation;
  - (c) notices or orders issued by any Court; or
  - (d) notices or orders issued by the Council or any public authority or water authority, affecting the Property or the common property not yet complied with? In so far as they impose an obligation on the vendor they should be complied with by the vendor before completion.
30. Have any orders been made by any Court or Tribunal that money (including costs) payable by the Owners Corporation be paid from contributions levied in relation to the Property? If so, please provide particulars.
31. Has any proposal been given by any person or entity to the Owners Corporation for:
- (a) a collective sale of the strata scheme; or
  - (b) a redevelopment of the strata scheme?
- If so, please provide particulars of the proposal and the steps taken and decisions made in relation to the proposal to the present time.

#### **Owners Corporation management**

32. Has the initial period expired?
33. Are any actions proposed to be taken or have any been taken by the Owners Corporation in the initial period which would be in breach of its powers without an order authorising them?
34. If the Property includes a utility lot, please specify the restrictions.
35. Do any special expenses (as defined in clause 23.2 of the Contract, including any liabilities of the Owners Corporation) exceed 1% of the price?
36. Has an appointment of a strata managing agent and/or a building manager been made? If so:
- (a) who has been appointed to each role;
  - (b) when does the term of each appointment expire; and
  - (c) what functions have been delegated to the strata managing agent and/or the building manager.
37. Has the Owners Corporation entered into any agreement to provide amenities or services to the Property? If so, please provide particulars.
38. Has a resolution been passed for the distribution of surplus money from the administrative fund or the capital works fund? If so, please provide particulars.
39. Have the by-laws adopted a common property memorandum as prescribed by the regulations for the purposes of Section 107 of the Act? If so, has the memorandum been modified? Please provide particulars.
40. Is there a registered building management statement pursuant to Section 108 of the *Strata Schemes Development Act 2015 (NSW)*? If so, are there any proposals to amend the registered building management statement?
41. If the strata scheme was in existence at 30 November 2016, has the Owners Corporation taken steps to review the by-laws that were current at that date? If so, please provide particulars.
42. Are there any pending proposals to amend or repeal the current by-laws or to add to them?
43. If not attached to the Contract, a strata information certificate under Section 184 of the Act should be served on the purchaser at least 7 days prior to completion.
44. Has the Owners Corporation met all of its obligations under the Act relating to:
- (a) insurances;
  - (b) fire safety;
  - (c) occupational health and safety;
  - (d) building defects and rectification in relation to any applicable warranties under the *Home Building Act 1989 (NSW)*;
  - (e) the preparation and review of the 10 year plan for the capital works fund; and
  - (f) repair and maintenance.
45. Is the secretary of the Owners Corporation in receipt of a building bond for any building work on a building that is part of the Property or the common property?
46. Has an internal dispute resolution process been established? If so, what are its terms?
47. Has the Owners Corporation complied with its obligations to lodge tax returns with the Australian Taxation Office and has all tax liability been paid?

#### **Capacity**

48. If the Contract discloses that the vendor is a trustee, evidence should be produced to establish the trustee's power of sale.

#### **Warranties and service contracts**

49. Please provide copies of any warranty or maintenance or service contract for the Property which is assignable on completion.
50. Please provide details, or copies if available, of any warranty or maintenance or service contract which is not assignable.

**Requisitions and transfer**

51. If not attached to the Contract and the transaction is not an excluded transaction, any *clearance certificate* under Section 14-220 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)* should be served on the purchaser at least 7 days prior to completion.
52. If the transfer or any other document to be handed over on completion is executed pursuant to a power of attorney, then at least 7 days prior to completion a copy of the registered power of attorney should be produced and found in order.
53. If the vendor has or is entitled to have possession of the title deeds the Certificate Authentication Code must be provided 7 days prior to settlement.
54. Searches, surveys, enquiries and inspection of title deeds must prove satisfactory.

**Completion**

55. Please confirm that on completion you will hand to us:
- (a) a discharge of any mortgage, a withdrawal of any caveat, removal of any priority notice and the appropriate Section 22 Notice;
  - (b) the Certificate of Title Folio Identifier;
  - (c) Transfer executed by the vendor and Section 22 Notice;
  - (d) the vendor's copies of all leases and disclosure statements;
  - (e) notices of attornment;
  - (f) all keys in the possession of the vendor;
  - (g) original of any Building Certificate, Survey Report, occupation certificate and swimming pool compliance or non-compliance certificate;
  - (h) instruction manuals and warranties for any plant belonging to the vendor;
  - (i) any third party guarantees together with appropriate assignments;
  - (j) any documents required for the purchaser to have benefit of any bonds;
  - (k) tax invoice;
  - (l) depreciation schedule;
  - (m) any documents required for the purchaser to have good title to any fixtures, fittings or personal property; and
  - (n) keys and other mechanisms (such as remote control equipment) for access to the premises (internal and external).
56. The purchaser reserves the right to make further requisitions prior to completion.
57. Unless we are advised by you to the contrary prior to completion, it will be assumed that your replies to these requisitions remain unchanged as at the completion date.