

Signed LEASE

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SOUTH AUSTRALIA  
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# LEASE

**PRIVACY COLLECTION STATEMENT:** The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

## LAND DESCRIPTION

THE WHOLE OF THE LAND COMPRISED IN CERTIFICATE OF TITLE VOLUME 5335 FOLIO 231 (**Premises**).

## ESTATE & INTEREST

IN FEE SIMPLE.

## LESSOR (Full name and address)

BRUNO PAUL JOSEPH GIORGIO AND XIAO HUA PAN BOTH FORMERLY OF 57 WARANGA DRIVE KIALLA VIC 3631 BUT NOW BOTH OF 85 WATERFALL GULLY ROAD BEAUMONT SA 5066 (**Lessor**).

## LESSEE (Full name, address and mode of holding)

FIONA JOY STEVENS OF 32 MALCOLM CRESCENT SALISBURY SA 5108 (**Lessee**).

## TERM

FOR A TERM OF: TWO (2) YEARS;

COMMENCING ON: 26 JULY 2019;

AND

EXPIRING ON: 25 JULY 2021;

(**Term**).

## RENT AND MANNER OF PAYMENT (or other consideration)

1. The annual rent shall be the amount of Twenty Thousand Nine Hundred Dollars (\$20,900.00) plus GST subject to review as hereinafter provided.
2. The Annual Rent shall be payable by equal consecutive calendar monthly instalments equivalent to 1/12<sup>th</sup> of the Annual Rent always in advance the first such instalment to be paid (unless otherwise advised by the Lessor) on the date of commencement hereof (being a proportion of instalment if appropriate) and thereafter by the first day of each and every month.

**IT IS CONVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as listed herein:**

(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

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**OPERATIVE CLAUSE** *\*Delete the inapplicable*

The Lessor LEASES TO THE LESSEE the land ~~\*above / \*hereinafter~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed ~~\*herein /~~ ~~\*in Memorandum No. \_\_\_\_\_~~ and to the powers and covenants implied by the *Real Property Act 1886* (except to the extent that the same are modified or negated below).

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**DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.**

NOT APPLICABLE.

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**CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION**

THIS LEASE DOES NOT CONTRAVENE SECTION 32 OF THE DEVELOPMENT ACT 1993.

DATED

30.8.19

**CERTIFICATION** *\*Delete the inapplicable*

**Lessor(s)**

\*The Prescribed Person has taken reasonable steps to verify the identity of the Lessor.

\*The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

\*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

\*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

.....  
<Insert Name of certifying party>  
Solicitor / Registered Conveyancer  
for: Grope Hamilton Lawyers  
On behalf of the **Lessor**

**Lessee(s)**

\*The Prescribed Person has taken reasonable steps to verify the identity of the Lessee.

\*The Prescribed Person holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.

\*The Prescribed Person has retained the evidence to support this Registry Instrument or Document.

\*The Prescribed Person has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

.....  
<Insert Name of certifying party>  
Solicitor / Registered Conveyancer  
for: <company name>  
On behalf of the **Lessee**

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## **SCHEDULE**

## COVENANTS OF LEASE

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 DEFINITIONS

In this Lease unless the contrary intention appears:

**"Premises"** shall mean and include the land or part thereof hereinbefore described and all buildings and improvements from time to time erected thereon and known as **UNIT 2 / 51 PARK TERRACE SALISBURY SA 5108** and where the context so requires or admits shall mean and include all the Lessor's fixtures fittings plant equipment (including all air conditioning plant if any) and chattels installed therein or thereon and all the services thereto or therein and any alterations additions improvements or modifications made thereto from time to time;

**"Demolition"** of a building of which the Premises forms part includes a substantial repair, renovation or reconstruction of the building that cannot be carried out practicably without vacant possession of the Premises;

**"Land"** shall mean the whole of the land hereinbefore described and where the context so requires or admits the building and other improvements erected thereon;

**"Lessee"** shall mean and include the person or persons hereinbefore named and described (and if more than one then jointly and severally) and where the context so requires or admits the heirs executors administrators and assigns of such person or of each of such persons (as the case may be) and/or the company or companies hereinbefore named and described (and if more than one then jointly and severally) and where the context so requires or admits the successors and permitted assigns of such company or each of such companies (as the case may be);

**"Lessor"** shall mean and include the person or persons hereinbefore named and described (and if more than one then jointly and severally) and where the context so requires or admits the heirs executors administrators and assigns of such person or each of such persons (as the case may be) and/or the company or companies hereinbefore named and described (and if more than one then jointly and severally) and where the context so requires or admits the successors and permitted assigns of such company or each of such companies (as the case may be);

**"Notice"** means notice in writing given in the manner provided herein for service of notices;

**"Permitted Use"** means the use to which the Lessee shall put the Premises being the use described in Item 1 of the Schedule hereto;

**"Retail and Commercial Leases Act 1995"** means the said Act and includes any applicable amendments from time to time and any regulations passed from time to time; and

**"Services"** means and includes all electrical plumbing air conditioning gas telephone and other like installations including all pipes wire and conduits incorporated therein or appurtenant thereto.

#### 1.2 INTERPRETATION

1.2.1 Reference to a statute shall include all amendments for the time being in force and any other statute enacted in substitution thereof and the regulations or by-laws for the time being under that statute and any notice demand order direction requirement or obligation under or pursuant to that statute or those regulations or by-laws and the expressions "statute" "act" and "act of Parliament" shall mean any State or Federal statute and the regulations or by-laws for the time being in force thereunder and any notice demand order direction requirement or obligation issued made given or imposed under or pursuant to any statute regulation or by-law.



- 1.2.2 Words importing the singular shall embrace the plural and words importing one gender shall embrace the other genders and vice versa respectively.
- 1.2.3 Any reference to a person shall be deemed to include a corporate body and vice versa.
- 1.2.4 All moneys payable by the Lessee to the Lessor under this Lease and due and unpaid shall be recoverable as a debt or as rental in arrear and if no date or time for payment is specified shall be payable on demand.
- 1.2.5 Any consent where it is required by this Lease from the Lessor shall mean prior consent in writing.
- 1.2.6 Anything which the Lessee is required to do under this Lease shall be done at the cost in all things of the Lessee and to the reasonable satisfaction of the Lessor.
- 1.2.7 Headings are for convenience or reference only and shall not affect the construction or interpretation of the covenants of this Lease.
- 1.2.8 Any reference to an "Item of the Schedule hereto" shall mean the relevant Item in the Schedule to this Lease.
- 1.2.9 Where the words "Not Applicable" appear opposite any part of any Item in the Schedule hereto then each and every clause in this Lease in which specific reference is made to such part of the relevant Item in the Schedule hereto shall be null and void and of no effect.

## **2 LESSEE'S COVENANTS**

Lessee hereby covenants and agrees with the Lessor throughout the continuance of the said term and any extended or renewed term or any period during which the Lessee shall hold over or be or remain a tenant or be in occupation of the Demised Premises:

### **2.1 Rent**

to pay the rent hereby reserved at the times and in the manner hereby stipulated free from exchange, set off, equitable set off or deduction for any reason whatsoever subject always to the provisions relating to rent review hereinafter contained;

### **2.2 Rates Taxes and Utilities**

- 2.2.1 to pay and discharge (prior to the due date for payment) all rates taxes assessments charges impositions and all other outgoings (including State Land Tax except during such time as this Lease is a Retail Shop Lease pursuant to the provisions of the Retail & Commercial Leases Act 1995 and Emergency Services Levy) imposed charged or assessed solely upon the Premises or upon the owner or occupier in respect thereof or payable by either in respect thereof;
- 2.2.2 to pay all charges for electricity (including air conditioning running costs) gas telephone and all other like Services supplied (either by the Lessor or any other person or authority) to or consumed in or on or in respect of the Premises; and
- 2.2.3 to pay any assessment or charge relating to water usage in respect of the Premises.
- 2.2.4 the parties acknowledge that (except if otherwise stated) all amounts payable by the Lessee pursuant to this Lease are exclusive of GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* ("the Act"). If GST is payable by the Lessor in respect of any Taxable Supply, within the meaning of the Act, which is made by the Lessor pursuant to this Lease then the amount payable for that Taxable Supply shall be increased by a percentage not exceeding the rate of GST fixed from time to time (10% at the date of commencement of this Lease) as reasonably determined by the Lessor, having regard to the amount of GST liability

and to Part VB of the *Trade Practices Act 1974*. If the Lessee fails to make any payment required under this clause and the Lessor thereby incurs any liability to pay any fine, interest or other additional amount then the Lessee shall be liable to pay on demand by the Lessor any such fine, interest or additional amount.

- 2.2.5 that all such rates taxes assessments charges impositions fees other outgoings and charges aforesaid shall be adjusted between the Lessor and the Lessee as at the dates of commencement expiry or determination (as the case may be) of this Lease and the Lessor's proportion thereof shall be deemed to be so much of such rate tax assessment charge imposition fee other outgoing or charge that is referable to any period of time not included in the term of this Lease or any extension thereof or any period during which the Lessee shall be holding over;
- 2.2.6 to pay all such rates taxes assessments charges impositions fees other outgoings and charges as and when the same shall fall due for payment and then immediately upon receipt of a demand therefore from or on behalf of the Lessor or on the basis of an estimate of the same given by or on behalf of the Lessor payable by equal calendar monthly payments at like time and in like manner as rent is payable hereunder and a reconciliation against the actual at the end of each year of the Term.
- 2.2.7 the Lessor may install in or about the Premises any meters necessary for measuring electricity gas water telephone and other services supplied to the Premises and the cost of such installation shall be paid by the Lessee. If no such meters are installed a statement in writing given by the Lessor as to any amount payable by the Lessee pursuant to this clause shall be prima facie evidence of the matters so stated;
- 2.2.8 the Lessor may elect at any time to assume responsibility for any positive obligation on the Lessee set out in this Lease (including without limitation any obligation to clean, maintain or repair any part of the Premises) and recover from the Lessee the cost of same (including the cost of any contractor) as an outgoing pursuant to this clause 2.2.

## **2.3 Outgoings**

- 2.3.1 to pay to the Lessor during the term of this Lease the Lessee's proportion of all the outgoings of the Lessor in respect of the Land;
- 2.3.2 that the Lessee's proportion is the proportion that the gross lettable area of the Premises bears to the gross lettable area of all buildings erected on the said Land as reasonably determined by the Lessor from time to time. It is agreed that the Lessee's proportion (expressed as a percentage) may be expressed in Item 3 of the Schedule hereto. If not so expressed and/or if the Lessor during the term of this Lease erects further buildings on the Land, or extends the existing buildings, the Lessee's proportion shall be calculated (on the above basis) as from the date of commencement of this Lease or (as is applicable) practical completion of the new building or extensions taking into account the increased lettable area;
- 2.3.3 that for the purposes of this sub-clause the outgoings of the Lessor shall mean to the extent to which the same are not specifically payable from time to time by the Lessee under the terms of this Lease and to the extent to which they are legally recoverable the total cost of all outgoings, costs and expenses of the Lessor now or hereafter properly and reasonably assessed charged or chargeable paid or payable or otherwise incurred upon or in respect of the said land or any part thereof or upon the Lessor in relation thereto or any part thereof or in the management and maintenance of the building or any part thereof or upon or in respect of the use or occupation of the same and in particular but without limiting the generality of the foregoing shall include the following:
  - 2.3.3.1 council rates, water and sewerage rates taxes (including State Land Tax except during such time as this Lease is a Retail Shop Lease pursuant to the provisions of the Retail & Commercial Leases Act 1995 and Emergency Services Levy) and strata

and community title corporation levies and contributions including maintenance fund contributions (if any) property management (inclusive of wages) and administration fees security and costs of cleaning all common areas including any parking areas, and

- 2.3.3.2 all insurance premiums payable by the Lessor in insuring and keeping insured all the building improvements fixtures and fittings comprised in the Land from time to time against loss and damage by fire storm tempest earthquake flood and such other risks as the Lessor deems necessary for their replacement value as determined by the Lessor from time to time in its absolute discretion under a policy or policies in the joint names of the Lessor and the Lessee and noting their respective rights and interest providing for the complete reinstatement thereof and including consequential loss provisions covering loss of rent for twelve months;
- 2.3.4 to pay the Lessee's proportion of the outgoings as and when such outgoings have been incurred and are due and payable PROVIDED ALWAYS that there should be no obligation on the Lessee to pay any sum or sums so demanded which relate to any structural alteration, repair or improvement to the building or buildings in respect of which the Demised Premises relates or any improvements to such buildings or any common area, and
- 2.3.5 to punctually pay the insurance premiums in respect of the insurance to be effected by the Lessee under sub-clauses 2.26 and 2.27 of this Lease;

## **2.4 Costs**

to pay on demand:

- 2.4.1 one half of the following costs;
  - 2.4.1.1 the Lessor's legal costs incurred in connection with the negotiation preparation stamping and (if applicable) registration of this Lease,
  - 2.4.1.2 the fees charged by a mortgagee for producing a certificate of title for the land over which the Lease is to be registered or for consenting to the Lease, and
  - 2.4.1.3 the costs of attendances on the Lessee by the Lessor or a lawyer acting for the Lessor;
- 2.4.2 the Lessor's reasonable legal costs and other expenses incidental to the negotiation of the preparation of documents for any guarantee of or renewal or extension or surrender of this Lease and any application by the Lessee for the consent of the Lessor to any transfer or assignment by the Lessee of this Lease or the Lessee's interest in it, or to any sub-letting by the Lessee, or to any mortgage or charge or encumbrances of the interest of the Lessee under this Lease (whether consent is granted or lawfully refused);
- 2.4.3 such amount (to be paid by the Lessor or its solicitors or agents) as is reasonably estimated by the Lessor's architect or engineer when an application for consent to a proposed dealing is made by the Lessee to be required to comply with the covenants and conditions herein contained and on the part of the Lessee to be performed and observed, including in particular, but without limiting the generality, those relating to the state of repair, cleanliness and painting of the Premises, and including the costs of the architect or engineer for inspecting the Premises and such further amount by which the actual amount so paid exceeds the said estimated amount;
- 2.4.4 the stamp duty and (if applicable) the registration fees payable in respect of any dealing with this Lease by the Lessee including any renewal or extension.
- 2.4.5 the costs of preparation of a suitable plan of the Premises (where such a plan is necessary or reasonably required);

- 2.4.6 monies expended and expenses incurred by the Lessor in consequence of any default on the part of the Lessee in performing or observing any covenant condition or agreement on the part of the Lessee herein contained, or in exercising or enforcing (or attempting so to do) any rights or remedies of the Lessor hereunder, and
- 2.4.7 the cost of any alterations to the sprinkler or fire alarm installations which may become necessary by reason of any non-compliance by the Lessee with the regulations of the Fire and Accident Underwriters Association or the requirements of the Lessor's insurer;

## **2.5 Assignment Subletting and Charging**

### **2.5.1 Assignment**

that the Lessee shall not assign its interest in this Lease without the prior written consent of the Lessor and the Lessee shall make any request for the Lessor's consent to an assignment of the Lease in writing and the Lessee must provide the Lessor with information the Lessor reasonably requires about the use to which the proposed assignee proposes to put the Premises and the financial standing and business experience of the proposed assignee. Before requesting the consent of the Lessor to a proposed assignment of the Lease the Lessee must furnish the proposed assignee with a copy of any disclosure statement given to the Lessee in respect to the Lease together with details of any changes that have occurred in respect of the information contained in that disclosure statement since it was given to the Lessee being changes of which the Lessee is aware or could reasonably be expected to be aware. For the purpose of enabling the Lessee to comply with the requirement to furnish the proposed assignee with a disclosure statement the Lessee is entitled to request the Lessor to provide the Lessee with a copy of the disclosure statement concerned and if the Lessor is unable or unwilling to comply with such a request within 14 days after it is made then the Lessee shall not be required to furnish the proposed assignee with a copy of the disclosure statement. The Lessor must deal expeditiously with a request for consent and is taken to have consented to the assignment if the Lessee has complied with the above matters and the Lessor has not within 42 days after the request was made given notice in writing to the Lessee either consenting or withholding consent. The Lessor is entitled to withhold consent to the assignment of this Lease in any of the following circumstances and shall not be entitled to withhold such consent in any other circumstances:

- 2.5.1.1 if in the reasonable opinion of the Lessor the proposed assignee proposes to change the Permitted Use;
- 2.5.1.2 if in the reasonable opinion of the Lessor the proposed assignee is unlikely to be able to meet the financial obligations of the Lessee under the Lease;
- 2.5.1.3 if in the reasonable opinion of the Lessor the proposed assignee's retailing skills are inferior to those of the assignor, and
- 2.5.1.4 if the Lessee has not complied with the procedural requirements for obtaining the Lessor's consent as set out above.

The terms of any consent hereby granted by the Lessor shall include the following:

- 2.5.1.5 that the Lessee shall have duly and punctually paid all rent and fulfilled and observed all of the covenants and conditions hereof and the Lessor may require the Lessee as a condition of the consent to pay to the Lessor or to its solicitors or agents such sum of money as is reasonably estimated by the Lessor's architect or engineer to be required to comply with the covenants and conditions herein contained on the part of the Lessee to be performed and observed and without limiting the generality thereof with those relating to the state of repair and cleanliness and painting of the Premises including the costs of such architect or engineer in inspecting the Premises;

- 2.5.1.6 the Lessee shall submit a true copy of all agreements entered into in respect of any proposed dealing with the Lease or the Premises and evidence satisfactory to the Lessor that the proposed assignee is respectable responsible solvent and suitable;
- 2.5.1.7 pay the Lessor a reasonable sum for legal or other expenses incurred in connection with considering such an application for consent irrespective of whether such a consent is ultimately granted;
- 2.5.1.8 the Lessor may require the person to whom it is proposed to assign to enter into a direct covenant with the Lessor to observe the terms and conditions of this Lease and/or to furnish such guarantees of the performance of such person's obligations under this Lease as the Lessor may require and if it is proposed to assign the Premises to a proprietary company then the directors of that company shall each be required to furnish such guarantee of the performance of that company as the Lessor may require,
- 2.5.1.9 that it shall be deemed that the assignor shall remain liable for the performance of the Lessee's covenants in respect of the period expiring at:
  - (a) the second anniversary of the date on which the Lease was assigned; or
  - (b) the date on which the Lease expires; or
  - (c) if the Lease is renewed or extended after the assignment, the date on which the renewal or extension commences,

whichever first occurs, or

  - (d) if section 45A(1) of the Retail and Commercial Leases Act 1995 does not apply to the assignment of this Lease then the end of the term or extended term of the Lease during which the assignment takes place, and
- 2.5.1.10 that the Lessee shall provide to the proposed assignee and to the Lessor an assignor's Disclosure Statement in the form and at the time required by section 45A(4) and (5) of *the Retail and Commercial Leases Act 1995*.

## 2.5.2 Subletting and Charging

that the Lessor may in its absolute discretion refuse the Lessee consent to the grant of a sub-lease, licence or concession for the whole or any part of the Premises, and similarly refuse the Lessee consent to parting with possession with the whole or any part of the Premises or the consent to the Lessee mortgaging or otherwise charging or encumbering the Lessee's interest in the Lease. In the event that the Lessor allows such consent it shall be in terms specified by the Lessor including that the Lessee shall:

- 2.5.2.1 duly and punctually have paid all rent and fulfilled and observed all the covenants and conditions hereof PROVIDED ALWAYS that the Lessor may require the Lessee applying for any such consent and as a condition of the consideration of any such application to pay to the Lessor or to its solicitors or agents such sum of money as is reasonably estimated by the Lessor's architect or engineer to be required to comply with the covenants and conditions herein contained on the part of the Lessee to be performed and observed and without limiting the generality thereof with those relating to the state of repair and cleanliness and painting of the Premises including the costs of such architect or engineer in inspecting the Premises;
- 2.5.2.2 submit a true copy of all agreements to be entered into in respect of any proposed dealing with the Lease or the Premises and evidence satisfactory to the Lessor that the proposed sub-tenant is respectable responsible solvent and suitable;

- 2.5.2.3 pay to the Lessor or its solicitors the reasonable costs and expenses of and incidental to any inspection of the Premises and enquiries concerning the proposed dealing or the persons concerned therein and of the perusal and preparation and stamping of the documents deemed necessary by the Lessor hereunder;
- 2.5.2.4 as a condition of its consent the Lessor may require the person to whom it is proposed to sublet to enter into a direct covenant with the Lessor to observe the terms and conditions of this Lease and/or to furnish such guarantee or guarantees of the performance of such persons' obligations under this Lease as the Lessor may require and if it is proposed to sublet the Premises to a proprietary company then the directors of that company shall each be required to furnish such guarantee of the performance of that company as the Lessor may require, and
- 2.5.2.5 in respect of any such mortgage charge or encumbrance procure a written undertaking in terms as determined by the Lessor's solicitors from any proposed mortgagee chargee or encumbrancee of this Lease that such mortgage charge or encumbrance shall not in any way whatsoever derogate from the Lessor's rights pursuant to the terms of this Lease and in particular the Lessor's right of re-entry and termination and without limiting the generality of the foregoing in the event of any mortgagee chargee or encumbrancee taking possession of the Premises such mortgagee chargee or encumbrancee shall be deemed to have adopted the terms of this Lease as if they were the Lessee;

## **2.6 Permitted Use**

the Lessee shall not use the Premises or permit the same to be used otherwise than in accordance with the Permitted Use. If the Permitted Use lawfully requires the consent of any authority under or in pursuance of any Statute, then the Lessee must obtain such consent. The Lessee shall not permit on the Premises any offensive, illegal or dangerous activity or (unless within the Permitted Use) the sale or distribution of alcohol, nor permit on the Premises any auction or cause or allow any nuisance by way of noise, smell or vibration, nor permit any animals on the Premises, nor allow anyone to smoke cigarettes within any building of which the Premises forms part, nor permit any person to sleep at the Premises. The Lessee shall not use in any way or obstruct any area beyond the Premises. The Lessee must not allow the Premises to be vacant unattended or otherwise not open for business for any period exceeding 10 consecutive business days. Should the Premises ever have attached to it a liquor licence, the Lessee shall be obliged to maintain and comply with the conditions of such licence and to meet the Lessor's reasonable requirements in respect of such licence.

## **2.7 Fire Precautions**

to take such precautions against fire on and in respect of the Premises as are or may from time to time be required under or in pursuance of any statute now or hereafter in force or which may be required by any authority (whether governmental municipal civic or other authority) having jurisdiction in relation thereto AND ALSO at the Lessee's own expense in all things to do all such other acts matters and things in relation to fire safety as are or may from time to time be directed or required to be done or executed (whether by the owner or occupier of the Premises) by any authority (whether governmental municipal civic and other authority) having jurisdiction in relation thereto pursuant to any statute now or hereafter in force PROVIDED THAT this covenant shall not impose on the Lessee any obligation in respect of any structural maintenance replacement or repair except where the same is rendered necessary by any act or omission on the part of the Lessee or any servant agent contractor sub-tenant employee or invitee of the Lessee or by the use of the Premises by the Lessee notwithstanding that such use of the Premises may be within the scope of the Permitted Use;

## **2.8 Maintenance and Repair**

to maintain replace repair cleanse and keep the whole of the Premises including but without limiting the generality of the foregoing the interior and exterior of all buildings and improvements comprised therein and all the Lessor's partitions fixtures fittings plant and equipment in good and substantial

repair order and condition and where appropriate in good working order damage by fire flood lightning storm tempest inevitable accident Act of God war damage and fair wear and tear only excepted (save where insurance moneys are irrecoverable in consequence of any act or default of the Lessee or any servant agent contractor sub-tenant or any person on the Premises by lawful licence of the Lessee) and at the expiration or sooner determination of this Lease peaceably to surrender and yield up unto the Lessor the Premises and every part thereof together with all the buildings and improvements and all the Lessor's partitions fixtures fittings plant and equipment comprised therein in good and substantial repair order and condition in all respects and where appropriate in good working order as the same are now PROVIDED THAT nothing herein shall render or be deemed to render the Lessee liable in respect of any structural maintenance replacement or repair except where the same is rendered necessary by any act or omission on the part of the Lessee or any servant agent contractor sub-tenant or employee or any person on the Premises by lawful licence of the Lessee or as a result of or relating to any works carried out by or on behalf of the Lessee from time to time;

## **2.9 Maintenance of Driveways and other Areas**

without limiting the generality of the foregoing at all times at the cost and expense of the Lessee to maintain in good and substantial repair (fair wear and tear excepted) all paved and/or bituminised walkways driveways and/or car park areas comprised in the Premises and all lawns shrubs plants and gardens appurtenant to or comprised in the Premises neat and tidy and well trimmed and pruned and to water and nurture same on such occasions as such lawns shrubs plants and gardens require to subsist and to yield up the same in a like condition at the expiration or sooner determination of this Lease;

## **2.10 Painting**

without limiting the generality of the foregoing the Lessee will during each of the years specified in Item 4 of the Schedule hereto during the Term and any extension or renewal thereof and in any event immediately prior to the expiration or sooner determination of this Lease in a proper and workmanlike manner and in colours and in accordance with specifications approved by the Lessor paint or cause to be painted (with at least 2 coats of paint) all such parts of the interior of the Premises as are usually painted PROVIDED THAT if at the expiry of any of the said years the Lessee has not so painted and the Lessor by Notice in writing requires the Lessee to paint or cause the interior of the Premises to be painted at the cost and expense of the Lessee and the Lessee fails to comply with such Notice within one month of the service of such Notice THEN if the Lessor so elects the Lessor may upon giving 14 days' notice in writing to the Lessee of the Lessor's intention so to do undertake through the services of its contractors or nominees the painting of the interior of the Premises as aforesaid and any moneys reasonably expended by the Lessor in the exercise of its election hereunder shall be repaid to the Lessor by the Lessee forthwith upon demand being made therefore and shall be an addition to the rent and other moneys reserved unto the Lessor by virtue of this Lease;

## **2.11 Air Conditioning**

2.11.1 where any air conditioning plant servicing the Premises services only the Premises and is not owned by the Lessee, the Lessee shall pay all the costs of running such air conditioning plant and shall regularly and as necessary clean the filters of such air conditioning plant and shall engage at its cost an independent qualified contractor to maintain such air conditioning plant in good and substantial repair and condition and in good working order. The Lessee shall not be liable for the cost of any repairs or replacement of a capital or structural nature unless they are necessary as a result of the Lessee's failure to clean and maintain as required by this clause.

2.11.2 If the Lessee owns any air conditioning plant servicing the Premises or wishes to install its own or supplementary air conditioning plant then:

2.11.2.1 such air conditioning plant is an alteration to the Premises and is subject to clause 2.21 and 2.22 of this Lease; and

2.11.2.2 the Lessee must pay all costs of running, powering, maintaining, repairing and replacing such air conditioning plant.

## **2.12 Cleaning**

without affecting the generality of the foregoing at the Lessee's expense:

2.12.1 to cause the Premises to be cleaned regularly in a proper and workmanlike manner and kept clean and free from dirt and rubbish by persons approved by the Lessor which approval shall not be unreasonably withheld, and

2.12.2 to keep and maintain clean and in good order repair and condition the fittings plant furnishing and equipment of the Lessee to the extent necessary to prevent any hazard to or deterioration in the condition of the Premises.

## **2.13 To Repair Damage**

to make good any breakage defect or damage to the Premises or any facility or appurtenance thereof occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's servants agents contractors sub-tenants or any person on the Premises by lawful licence of the Lessee or otherwise occasioned by any breach or default of the Lessee hereunder or by the use of the Premises by the Lessee notwithstanding that such use of the Premises may be within the scope of the Permitted Use;

## **2.14 Statutory Requirements**

to comply with all statutes ordinances proclamations orders and regulations present or future affecting or relating to the Lessee's use of the Premises and with all requirements which may be made or notices or orders which may be given by any governmental municipal civic or other authority over or in respect of the use of the Premises and to keep the Lessor indemnified in respect of all such matters as are in this clause set forth PROVIDED THAT nothing herein shall render or be deemed to render the Lessee liable in respect of any structural maintenance replacement or repair except where the same is rendered necessary or desirable as a consequence direct or indirect of any act or omission on the part of the Lessee or any servant agent contractor or sub-tenant of the Lessee or any person on the Premises by lawful licence of the Lessee or by the use of the Premises by the Lessee notwithstanding that such use of the Premises may be within the scope of the Permitted Use and it is mutually agreed and acknowledged for the purpose of this clause 2.14 that it shall be the Lessee's responsibility to satisfy at its cost and expense the requirements imposed under Part 2 of the Occupational Health, Safety & Welfare Regulations, 1995;

## **2.15 Health and Safety Requirements**

without limiting the generality of the foregoing not to permit or suffer the Premises or any part thereof to be or become in an unsanitary condition within the meaning of any legislation relating to health or to be or become in such a condition as shall not comply with the provisions as regards public health and safety contained in the Local Government Act and the Industrial Code or Acts for the time being in force in the State of South Australia and at the Lessee's costs and expense in all things to perform and fulfil or cause to be performed and fulfilled all the duties and obligations with regard to the Premises or the use thereof imposed by any Health Act Local Government Act the Industrial Code or Acts and any other statute affecting the Premises or the occupation or condition or use thereof for the time being in force in the said State of South Australia and to carry out promptly and efficiently the proper requirements from time to time lawfully made by any local government authority or board or person pursuant to any such acts and/or code and to indemnify the Lessor from and against all actions proceedings claims demands charges penalties and expenses arising from the non-performance or non-observance of any such duties and obligations or the non-compliance with any such requirements as aforesaid PROVIDED THAT nothing herein shall render or be deemed to render the Lessee liable in respect of any structural maintenance replacement or repair except where the same is rendered necessary or desirable as a consequence direct or indirect of any act or omission on the part of the Lessee or any servant agent contractor or sub-tenant of the Lessee or any person on the Premises by



lawful licence of the Lessee or by the use of the Premises notwithstanding that such use may be within the scope of the Permitted Use;

#### **2.16 Use of Facilities**

not to use nor permit any servant agent contractor or sub-tenant of the Lessee or any person on the Premises by lawful licence of the Lessee to use the lavatories toilets sinks and drainage and other plumbing facilities in the Premises for any purpose other than that for which they were constructed or provided and not to deposit or permit to be deposited therein any sweeping rubbish or other material and any damage thereto caused by such misuse shall be made good by the Lessee forthwith;

#### **2.17 Garbage and Waste**

to store and keep all waste materials and garbage in proper receptacles therefor and to arrange for the regular removal thereof from the Premises.

#### **2.18 Notice of Defects**

to give to the Lessor prompt Notice in writing of any circumstances including any accident to or defect or want of repair in any service to or fittings in the Premises which the Lessee should reasonably be aware might cause any danger risk or hazard to the Premises or any person therein;

#### **2.19 Security**

to use the Lessee's best endeavours to protect and keep safe the Premises any buildings and improvements thereon and any property contained therein from theft or robbery and to keep all doors windows and other openings closed and securely fastened when the Premises are not in use;

#### **2.20 Signs and Other Devices**

not without the prior approval in writing of the Lessor to erect display affix or exhibit on in or to the Premises any sign advertisement name or notice and not to erect or place upon or within or without the Premises any radio or television aerial or antennae or any loudspeakers film screens or similar devices or requirement and not without the like consent of the Lessor to use or permit to be used any radio gramophone television or other like media or equipment which may be heard or seen from without the Premises and upon vacating the Premises or otherwise at the request of the Lessor forthwith to remove any signs advertisements names or notices erected displayed painted affixed or exhibited upon to or within the Premises by or on behalf of the Lessee and to make good any damage or disfigurement caused by reason of such erection painting displaying affixing placing exhibiting or removal;

#### **2.21 Alterations and Additions**

not without the prior consent in writing of the Lessor to make any alteration or addition in or to the Premises or any part thereof nor without the prior consent in writing of the Lessor which consent shall not be unreasonably withheld to install or alter any partitioning work fixed equipment or other fixed installation in or on the Premises PROVIDED HOWEVER that where such consent is given the materials and design shall first be approved by the Lessor or its architects and such work equipment or installation shall be installed or altered in accordance with the approval so given (if any) and all fees payable to the Lessor's architects in connection with such approval and inspection shall be paid by the Lessee to the Lessor forthwith upon demand AND PROVIDED FURTHER that all such partitioning work and installations save where the same are Lessor's fixtures and/or fittings shall remain the property of the Lessee who shall be responsible for all maintenance thereof and (in the case of any plant and equipment) for the repair and running costs thereof and such partitioning work and/or installations may and if so required by the Lessor shall be removed by the Lessee at or immediately prior to the expiration of this Lease but the Lessee shall upon removal cause no damage to the Premises and shall reinstate the same to the condition they were in prior to such work or installation;

## **2.22 Electrical and Plumbing Installations**

without affecting the generality of the preceding clauses hereof not without the prior consent in writing of the Lessor to install any water gas or electrical fixtures equipment or appliances or any apparatus for illuminating air conditioning heating cooling or ventilating the Premises other than kitchen appliances for the preparation of food or beverages and appliances and equipment reasonably necessary for the execution of the normal business of the Lessee nor to mark paint drill or in any way deface the walls ceilings partitions floors wood or other parts of the Premises;

## **2.23 Heavy Objects**

not to bring upon the Premises without the prior consent in writing of the Lessor any heavy machinery or other plant and equipment of such nature and/or size as to cause or be likely to cause any structural or other damage to the Premises or any part thereof;

## **2.24 Dangerous Substances**

not to bring upon or cause to be brought upon the Premises without the prior consent in writing of the Lessor any dangerous noxious toxic radio-active volatile explosive or inflammable chemical substance or compound whatsoever whether organic inorganic or microbial in solid liquid or gaseous form and the Lessee HEREBY INDEMNIFIES and agrees to keep indemnified the Lessor from and against all and any actions claims demands losses damages costs and expenses for which the Lessor shall or may become liable in respect of or arising from a breach of this Clause;

## **2.25 Lessor's Access**

to permit the Lessor and its agents at all reasonable times upon giving to the Lessee 3 days' prior Notice in writing (except in the case of emergency when no Notice shall be required) to enter upon the Premises and view the state of repair thereof and the Lessor may thereupon serve upon the Lessee a Notice in writing of any defects the repair of which is within the Lessee's obligations hereunder requiring the Lessee within a reasonable time to repair the same and in default of the Lessee so doing it shall be lawful for the Lessor (without any obligation on the part of the Lessor so to do) for the time being to enter and execute the required repairs as if it were the Lessee and for that purpose the Lessor its architects contractors workmen and agents may enter upon the whole or any part of the Premises and there remain for the purpose of doing erecting or effecting any such thing and any reasonable expenses and costs of carrying out such work shall forthwith be payable by the Lessee to the Lessor AND FURTHER to permit the Lessor at all times to carry out repairs renovations maintenance modifications extensions or alterations to the Premises or to any part thereof deemed necessary or desirable by the Lessor and for any of these purposes to enter upon and remain in the Premises with or without its architects contractors workmen and agents as aforesaid PROVIDED THAT any alteration or refurbishment by the Lessor of the building (other than routine maintenance or repairs) which is likely to adversely affect the business of the Lessee shall be preceded with notice in writing to the Lessee of such alteration or refurbishment at least one month before the commencement of the alteration or refurbishment except in the case of an emergency where the maximum period of notice that is reasonably practicable in the circumstances shall be so given to the Lessee;

## **2.26 Plate Glass, Fixtures, Fittings and Stock**

2.26.1 forthwith to insure and keep insured against breakage in the joint names of the Lessor and the Lessee and for their respective rights and interests at the Lessee's expense in such office as the Lessor shall approve (which approval shall not be unreasonably withheld) all the plate glass in the Premises for its replacement value and on demand to deliver the policy of such insurance to the Lessor and to produce the receipt or certificate of currency for every premium in respect of such insurance in reinstating such of the plate glass as may be broken and where such moneys shall be insufficient to make good the deficiency out of the Lessee's own money;

2.26.2 from time to time to immediately repair and replace (or pay to the Lessor the cost of its so doing) all broken glass in the Premises including external windows with glass of the same or

similar quality and all damaged or broken heating lighting electrical equipment (including light globes and fluorescent tubes) and all other services installed upon the Premises; and

- 2.26.3 to immediately effect and keep current a policy insuring the Lessee's fixtures stock fittings plant and equipment to their full insurable value against loss or damage by fire burglary theft lightning explosion tempest earthquake riot impact of vehicles earthquake damage by aircraft or articles dropped therefrom water damage flood and such other insurable risks as the Lessor may reasonably require from time to time;

## **2.27 Public Liability Insurance**

forthwith to effect and keep current at all times in respect of the Premises a Public Risk Policy for an amount of not less than the amount set forth in Item 5 of the Schedule hereto per claim (or such greater amount the Lessor reasonably requires from time to time) in the joint names of the Lessor and the Lessee and for their respective rights and interests with a company approved by the Lessor which approval shall not be unreasonably or capriciously withheld and on demand to deliver the policy of such insurance to the Lessor and to produce the receipt or certificate of currency for every premium in respect of such insurance;

## **2.28 Not to vitiate Lessor's Insurance**

not at any time to do or permit or suffer to be done any act matter or thing in or on the Premises whereby any insurance in respect of the Premises may be vitiated or rendered void or voidable or whereby the rate of premium on any insurance shall be liable to be increased;

## **2.29 Indemnities**

to indemnify the Lessor from and against all and any actions claims demands losses damages costs and expenses for which the Lessor shall or may be or become liable in respect of or arising from:

- 2.29.1 the negligent use misuse waste or abuse by the Lessee or any servant agent contractor or sub-tenant of the Lessee or any person in or on the Premises by lawful licence of the Lessee or any other person claiming through or under the Lessee of the water electricity lighting and other services and facilities to or in the Premises;
- 2.29.2 overflow or leakage of water (including rain water) in or from the Premises but having origin within the Premises caused by or contributed to any act or omission on the part of the Lessee or any invitee servant agent contractor or sub-tenant of the Lessee or any person in or on the Premises by lawful licence of the Lessee or any other person claiming through or under the Lessee;
- 2.29.3 loss damage or injury from any cause whatsoever to property or persons caused or contributed to by the use of the Premises by the Lessee notwithstanding that such use of the Premises may be within the scope of the Permitted Use or by any invitee servant agent contractor or sub-tenant of the Lessee or any person in or on the Premises by lawful licence of the Lessee or any other person claiming through or under the Lessee, and/or
- 2.29.4 loss damage or injury from any cause whatsoever to property or persons within or without the Premises occasioned or contributed to by any act omission neglect breach or default of the Lessee or any invitee servant agent contractor or sub-tenant of the Lessee or any person in or on the Premises by lawful licence of the Lessee or any other person claiming through or under the Lessee;

## **2.30 Release**

to occupy use and keep the Premises at the risk of the Lessee and the Lessee HEREBY RELEASES to the full extent permitted by law the Lessor and its servants agents contractors from all and any claims demands and damages of every kind resulting from any accident damage or injury occurring therein except where deriving from any wilful or negligent act of the Lessor or any agent of the Lessor

and the Lessee EXPRESSLY AGREES that the Lessor shall have no responsibility or liability for any loss or damage to the fixtures fittings and/or personal property of the Lessee;

### **2.31 Reletting and Sale**

to permit the Lessor or the agent of the Lessor at any time or times (except in the event of reletting not more than 3 months prior to the expiration or sooner determination of this Lease) to place "To Let" or "For Sale" notices in conspicuous places outside or inside the Premises and (at the Lessor's discretion) to enter into and upon the Premises at all reasonable times for the purpose of erecting and exhibiting the same and also for the purpose of showing prospective tenants or purchasers over the Premises;

### **2.32 Strata Corporation**

whereas if the Premises is a unit or lot or part of a unit or lot upon a Strata Plan under the Real Property Act 1886 (as amended) the Lessee its servants agents employees and licensees will observe the Articles of Association of the Corporation or the bylaws of the Corporation (as the case may be) from time to time enforced and will duly and punctually pay all monies which may be lawfully demanded from time to time by the Corporation from the Lessor PROVIDED ALWAYS that there shall be no obligation by the Lessee to pay any sum or sums so lawfully demanded which relate to any structural alteration repair or improvement to the building or buildings in respect of which the Strata Plan relates or any improvements to such buildings or the common areas, or in respect of the purchase of personal property for the use by the Strata Title or Community Corporation or use in connection with the common property;

### **2.33 Environmental Obligations**

2.33.1 ensure that the occupation and use of the Premises complies with all Environmental Laws from time to time and ensure that all authorisations and approvals required under any Environmental Laws are obtained prior to commencing any activity for which such authorisations and approvals are required and are kept in full force and effect and that any breach is promptly rectified and ensure that at all times an adequate program is established, maintained and regularly reviewed setting out all practical and reasonable steps that can be taken and measures and precautions adopted to ensure that all persons and things of any kind on or using the Premises comply with Environmental Laws, and

2.33.2 ensure that if any contaminant is discovered on the Premises (unless that contaminant is safely and lawfully stored) or, without lawful authority, escapes or is released from the Premises into the environment or is released into or upon the Premises;

2.33.2.1 the impact on the Premises and the environment is immediately minimised; and

2.33.2.2 steps are taken as quickly as possible to safely contain the contaminant and to remove the contaminant from the environment or the Premises or reduce the levels of the contaminant to a level required or recommended by the relevant authority as safe and in either case to eliminate or reduce any danger arising from the contaminant and do all things necessary to fully and properly restore the Premises and the environment;

### **2.34 Expiration**

that at the expiration or sooner determination of this Lease the Lessee shall:

2.34.1 remove all partitions alterations or additions installed or made by the Lessee and make good damage to the Premises caused by such removal and where the term of this Lease shall be determined prior to the expiration of the term the Lessee shall effect such removal and making good of damage within a reasonable time after such determination. If the Lessee shall not have completed such removal and making good on the expiration of the term of this Lease (or in the case of the determination of the term of this Lease within a reasonable time after such determination) then the Lessor may remove and store such partitions alterations or additions

as the Lessee shall have failed to remove and the Lessee undertakes to repay on demand all costs and expenses incurred by the Lessor in so doing and the Lessor may alternatively elect not to effect such removal in which case the Lessor shall by notice in writing given to the Lessee notify the Lessee that unless the Lessee shall have effected such removal within fourteen (14) days of the date on which such notice is given such partitions alterations or additions as have not been removed by the Lessee shall be forfeited to the Lessor and where the Lessee fails to comply with such notice such partitions alterations and additions shall at the expiration of such fourteen (14) day period become the absolute property of the Lessor;

- 2.34.2 yield up in good and substantial repair and condition (fair wear and tear damage by fire storm tempest earthquake Act of God only excepted) and in a state of thorough cleanliness the Premises and all additions thereto and the appurtenances thereto;
- 2.34.3 furnish to the Lessor the certificate of a competent authority acceptable to the Lessor that all mechanical and air-conditioning equipment in or upon the Premises is in sound working condition having regard to its age and taking into account reasonable wear and tear;
- 2.34.4 deliver up to the Lessor all keys for the locks in and upon the Premises and all security passes or cards (if any) in the possession of the Lessee, and
- 2.34.5 remove any signs names advertisements or other notices erected painted displayed or affixed or exhibited upon or to or within the Premises and make good any damage or disfigurement thereby caused.

### **3 THE LESSOR'S COVENANTS**

The Lessor hereby covenants with the Lessee:

#### **3.1 Quiet Possession**

that the Lessee paying the rent hereby reserved and fully and punctually observing and performing the covenants obligations and provisions in this Lease and on the part of the Lessee to be observed and performed shall and may peaceably possess and enjoy the Premises for the term hereby granted without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by from or under the Lessor;

#### **3.2 Lessee's Property**

that the Lessee may at or prior to the expiration of the Lease take remove and carry away from the Premises all fixtures fittings plant equipment or other articles upon the Premises in the nature of trade or tenant's fixtures brought upon the Premises by the Lessee (other than the Lessors fixtures and fittings) but the Lessee shall in such removal do no damage to the Premises and shall forthwith make good any damage which the Lessee may occasion thereto;

#### **3.3 Air Conditioning**

the Lessor shall maintain replace and repair any air conditioning unit installed by the Lessor upon the Premises provided that the Lessor shall not be so obliged to the extent that the Lessee so covenants under sub-clause 2.11 hereof;

#### **3.4 Common Areas**

the Lessor shall permit the Lessee the non-exclusive use of the Common Areas in common with other persons permitted by the Lessor. The Common Areas remain subject to the absolute control of the Lessor. Without limiting the Lessor's rights, the Lessor may:

- 3.4.1 establish, modify and enforce reasonable rules and regulations with regard to the use of the Common Areas;

- 3.4.2 impose restrictions on the passage of vehicles or persons over the Common Areas;
- 3.4.3 designate specific areas for the parking of vehicles or for particular types of vehicles or for vehicles in which particular persons (including the Lessee or Permitted Persons) may park or stand vehicles or impose charges for parking;
- 3.4.4 restrict the times during which the Common Areas may be used;
- 3.4.5 close and/or secure any part of the Common Areas at any reasonable time; and
- 3.4.6 vary, extend, reduce or develop any part of the Common Areas, including leasing parts of the Common Areas to third parties (with such leased areas to then no longer be Common Areas);

and the Lessee must:

- 3.4.7 comply with any rules or regulations prescribed by the Lessor in respect of the Common Areas;
- 3.4.8 use the Common Areas properly and carefully and only for the purposes for which they are designated by the Lessor; and
- 3.4.9 use the Common Areas without any unnecessary disturbance, noise or hindrance to any other person.

### **3.5 Land Tax**

subject to clause 2 of this Lease the Lessor shall pay any and all land tax imposed charged or assessed on the Premises in respect of the term or extended terms of this lease.

## **4 MUTUAL COVENANTS**

The Lessor and the Lessee hereby mutually covenant and agree:

### **4.1 Default**

#### **4.1.1 Essential Terms**

sub-clauses 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.12, 2.13, 2.14, 2.15, 2.18, 2.24, 2.26, 2.27 and 2.28 are essential terms of this Lease and that the Lessor may at its option treat any breach or default by the Lessee in the due observance or performance by the Lessee of its duties and obligations thereunder as a repudiation by the Lessee of the terms of this Lease;

#### **4.1.2 Re-entry**

if the rent hereby reserved or any part thereof or any other moneys payable pursuant to the terms of this Lease shall be unpaid for a space of 14 days after any of the days on which the same ought to have been paid in accordance with the covenant for payment of rent herein contained (although no formal or legal demand shall have been made therefore) or if the Lessee commits permits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants obligations and provision of this Lease or (if the Lessee being a company) an order is made or resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor) or a receiver and/or administrator is appointed to the Lessee or if the Lessee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts within the meaning of any relevant law code act or ordinance relating to companies or if the Lessee is placed under administration or a meeting is summoned or other step taken for the purpose of placing the Lessee under administration and appointing an administrator thereof or if the Lessee or any one or more of the Lessees commits an act of bankruptcy pursuant to the laws of the State of South Australia or if the Lessee or any one or more of the Lessees or

a guarantor of the Lessee is convicted of an offence punishable with imprisonment other than a road traffic offence or if execution is levied against the Lessee and not discharged within 14 days THEN and in any one or more of such events the Lessor at any time or times thereafter shall have the right to re-enter into and upon the Premises or any part thereof in the name of the whole and have again repossess and enjoy the same as or in its former estate anything therein contained to the contrary notwithstanding but without prejudice to any right of action or other remedy which the Lessor has or might otherwise have for arrears of rent or breach of covenant or for damages as a result of any such event and thereupon the Lessor shall be freed and discharged from any action suit claim or demand by or obligation to the Lessee under or by virtue of this Lease or otherwise howsoever in relation thereto;

#### 4.1.3 Waiver

in respect of the Lessee's obligation to pay rent the acceptance by the Lessor of arrears or of any late payment of rent shall not constitute a waiver of the essentiality of the Lessee's obligation to pay rent in respect of those arrears or of the late payments or in respect of the Lessee's continuing obligation to pay rent during the said term;

#### 4.1.4 Damages

the Lessee hereby covenants to compensate the Lessor in respect of any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of such breach. The Lessor's entitlement under this clause is in addition to any other right remedy or entitlement to which the Lessor is entitled (including the right to re-enter and determine the estate of the Lessee) and shall not be prejudiced by the exercise of the right of re-entry; and

#### 4.1.5 Costs and Expenses of Default

that costs of and incidental to the recovery of rent due and unpaid interest thereon and the Lessor's costs and expenses incurred by remedying or attempting to remedy any breach of the Lessee's covenants therein contained including but without limiting the generality thereof the Lessor's reasonable legal fees on the basis of solicitor and own client reasonable professional charges workmen's wages and the amount paid by the Lessor by way of damages and penalties resulting from such breach whether by law or otherwise shall be deemed to be and it is hereby agreed that they shall be treated as additional rent falling due and payable on the date on which such rent interest costs expenses wages charges damages or penalties become due and owing attaching thereto the Lessor's rights and remedies under this Lease expressed or implied by law or statute for the recovery of rent;

#### 4.1.6 Personal Property Securities Act

expressions used in this clause and this Lease that are defined in the Personal Property Securities Act (2009) (Cth) ("PPSA") have the same meaning as in the PPSA. The Lessee consents to the Lessor at the cost of the Lessee doing whatever the Lessor considers necessary at any time to register (including registering a financing statement and/or a financing change statement), perfect (with the priority required by the Lessor) or enforce any security interest (including as a purchase money security interest or a PPS Lease) that arises under this Lease or any other agreement with the Lessee and/or in respect of any personal property of the Lessor. The Lessee must execute any documents, provide any information and otherwise assist the Lessor as required by the Lessor at any time to enable the Lessor to do anything contemplated by this clause. In accordance with s157(3) of the PPSA, the Lessee waives its right to receive notice of a verification statement in respect of a registration event. The Lessee must not register or permit to be registered any financing statement on the register in relation to any security deposit or bank guarantee provided by the Lessee. In accordance with s115 of the PPSA, the Lessor and the Lessee contract out of the provisions, to the extent such provisions grant rights in favour of the Lessee or create obligations upon the Lessor, of

sections 95, 96, 117, 118, 120, 125, 130, 135, 142 and 143, sub-sections 121(4), 132(3)(d) and 132(4) and Division 6 of Part 4.3 of the PPSA;

#### 4.1.7 Charging

without limiting any other clause in this Lease, the Lessee, as security for the performance of its obligations to the Lessor under this Lease, charges in favour of the Lessor all and any real and personal property owned by the Lessee at any time and wherever situated for an amount equal to the full amount of the rent and other monies payable under this Lease or otherwise owing by the Lessee to the Lessor. The Lessee consents to the Lessor lodging a caveat over any interest in land owned by the Lessee in relation to the charge granted by the Lessee pursuant to this clause. Further, the Lessee acknowledges that this Lease creates a security interest in respect of the aforesaid personal property for the purposes of the Personal Property Securities Act (2009) (Cth) ("PPSA") and consents to the Lessor registering such security interest on the register established by the PPSA and the Lessee shall provide all information and assistance reasonably requested by the Lessor to enable and maintain such registration.

## 4.2 Repudiation

in the event that the Lessee's conduct (whether by way of action or omission) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any covenant contained in this Lease:

- 4.2.1 the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach;
- 4.2.2 the Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire term of this Lease;
- 4.2.3 the Lessor's entitlement to recover damages shall not be affected or limited by any of the following:
  - 4.2.3.1 if the Lessee shall abandon or vacate the Premises;
  - 4.2.3.2 if the Lessor shall elect to re-enter or to determine the estate of the Lessee;
  - 4.2.3.3 if the Lessor shall accept the Lessee's repudiation; or
  - 4.2.3.4 if the parties' conduct shall constitute a surrender by operation of law;
- 4.2.4 the Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Lease term including the periods before and after the Lessee has vacated the Premises and before and after the abandonment termination repudiation acceptance or repudiation or surrender by operation of law referred to in sub-clause 4.2.3 of this clause whether the proceedings are instituted either before or after such conduct;
- 4.2.5 in the event of the Lessee vacating the Premises whether with or without the Lessor's consent the Lessor shall be obliged to take reasonable steps to mitigate his or its damages and to endeavour to lease the Premises at a reasonable rent and on reasonable terms. The Lessor's entitlement to damages shall be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this sub-clause. The Lessor's conduct in pursuance of the duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law, and
- 4.2.6 the Lessor may enter into and take possession of the Premises or any part thereof in the name of the whole and may eject the Lessee, any sub-tenant, licensee or occupier of or under the Lessee and all other persons thereon without terminating this Lease and the Lessor may then hold and retain possession of the same until each breach of the Lessee's covenants has been



remedied but in all other respects the covenants and conditions of this Lease, including the payment of rent, shall continue in full force and effect unless and until this Lease expires or is otherwise terminated;

#### **4.3 Abandoned Chattels**

if this Lease is terminated or expires and goods are left on the Premises then the Lessor may when at least two days have passed since the Lessor took possession of the Premises remove and destroy or dispose of those goods if they are perishable food stuffs or if their value is less than a fair estimate of the cost of their removal storage and sale but if the goods are not liable to destruction or disposal as aforementioned the Lessor must store the goods in a safe place and manner for at least 60 days. The Lessor must within 7 days after storing goods or having good stored under this sub-clause give notice of the storage of the goods to (if the Lessee has left a forwarding address) the Lessee, and if another person has to the knowledge of the Lessor an interest in the goods and the persons name and address are known to or reasonably ascertainable by the Lessor then to that person and further the Lessor shall publish a notice of the storage of the goods in a newspaper circulating generally throughout the State. A notice must be in the form prescribed by regulation under the Retail and Commercial Leases Act 1995 from time to time. A person who is entitled to possession of goods stored pursuant to this sub-clause may reclaim the goods by paying to the Lessor the reasonable cost of their removal and storage. If the goods are not reclaimed within the 60 day storage period the Lessor must as soon as practicable after the end of that period have the goods sold by public auction. On the sale of the goods by public auction the Lessor may retain out of the proceeds of sale the reasonable costs of removing storing and selling the goods and any amounts owed to the Lessor under the Lease and further pay the balance if any to the owner or if the identity and address of the owner are not known or reasonably ascertainable by the Lessor to the Commissioner for Consumer Affairs for the credit of the Retail and Commercial Leases Fund established under the Retail and Commercial Leases Act 1995. If the goods are sold by public auction under this sub-clause the purchaser acquires good title to the goods in defeasance of the Lessee's interest in the goods and the interest of others (apart from the Lessee) unless the purchaser has actual notice of the interest before purchasing the goods. If a dispute arises between the Lessor and Lessee about the exercise of powers set out in this sub-clause the Magistrates Court may on application by either party to the dispute make orders resolving the matters in dispute. Where the Act does not apply to this Lease, any goods abandoned by the Lessee (and goods of the Lessee remaining on the Premises after this Lease expires or is terminated or surrendered shall be deemed to be abandoned) shall immediately become the property of the Lessor, and should the Lessor remove from the Premises some or all of such goods, the Lessee shall pay on demand to the Lessor the costs of such removal and, if relevant, disposal;

#### **4.4 Landlord and Tenant Act**

that in the case of a breach of any covenant or condition contained in this Lease then the Notice to the Lessee to be given pursuant to Section 10 of the Landlord and Tenant Act 1936 shall provide that the period of 14 days is the time within which the Lessee is to remedy any such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Lessor in respect thereof;

#### **4.5 Default Interest**

that without prejudice to the rights powers and remedies of the Lessor otherwise under this Lease the Lessee will pay to the Lessor interest at the rate charged from time to time by the Lessor's Bank on overdrafts in excess of \$100,000.00 increased by 2% on any moneys due but unpaid after the same fell due and payable by the Lessee to the Lessor on any account whatsoever pursuant to this Lease such interest to be computed from the due date for the payment of the moneys in respect of which the interest is chargeable until payment of such moneys is made in full and shall be recoverable in like manner as rent in arrears;

#### **4.6 Destruction or Damage**

that if the Premises are damaged the Lessee shall not be liable to pay rent or any amount payable to the Lessor in respect of outgoings or other charges in respect of the period during which the Premises cannot be used under the Lease or is inaccessible due to the said damage. If the Premises are still usable under the Lease but the usability is diminished due to the damage the Lessee's liability for rent and any amount for outgoings in respect to the period during which usability is reduced in proportion to the reduction in usability caused by the damage. In the event of the Lessee and Lessor not agreeing the proportion of reduced rent and an amount for outgoings then a valuer may be appointed at the request of either the Lessee or the Lessor by the person for the time being holding or acting in the office of the President of the Australian Property Institute (SA Division) Inc the cost of which valuation shall be borne in equal shares and which valuer shall be deemed to act as an expert and not as an arbitrator and who shall be instructed to determine the appropriate proportion of reduced rental outgoings and other moneys payable. 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 may terminate the Lease by giving not less than 7 days notice in writing to the other and no compensation is payable in respect of that termination provided however that neither the Lessor nor Lessee shall be released from any of their obligations in respect of the period prior to such termination. If the Lessor fails to repair the damage within a reasonable time after the Lessee requests the Lessor in writing to do so the Lessee may terminate the Lease by giving not less than 7 days notice in writing of termination to the Lessor provided again that such termination shall not in any way release the Lessor or Lessee from their obligations herein in respect to the period prior to such termination PROVIDED ALWAYS that the Lessee shall not be relieved of the obligation to pay rent outgoings or other monies payable under the Lease if the damage results from the wrongful act or negligence of the Lessee or an employee, invitee or agent of the Lessee unless the Lessor is insured against loss of rent under an insurance policy and the Lessee contributes to the insurance premium and then only to the extent of recovery of the loss under that policy;

#### **4.7 Holding Over**

that in the event of the Lessee holding over after the expiration or sooner determination of this Lease with the consent of the Lessor the Lessee shall become a monthly tenant only of the Lessor which tenancy may be terminated by one month's prior notice in writing expiring at any time at a monthly rental calculated by increasing the monthly proportion of the total annual rental payable immediately prior to the expiration of this Lease by 10% and otherwise on the same terms and conditions (mutatis mutandis) as those herein contained insofar as the same are applicable to a monthly tenant;

#### **4.8 Renewal**

4.8.1 that on the written request of the Lessee made not less than 6 nor more than 9 (or if the term of the Lease is 2 years or less then not less than 3 nor more than 6) months before the expiration of the said term and provided that there shall not at the time of such request be any existing breach or non-observance of any of the covenants and conditions herein contained and on the Lessee's part to be observed and performed the Lessor will at the expense of the Lessee grant to the Lessee an extension of this Lease of the Premises for the term set forth in Item 6 of the Schedule hereto (the "first renewed term") but on the same terms and conditions as are herein contained save for the exclusion of this clause giving the Lessee a right of renewal;

4.8.2 that on the written request of the Lessee made not less than 6 nor more than 9 (or if the first renewed term of the Lease is 2 years or less then not less than 3 nor more than 6) months before the expiration of the first renewed term and provided that there shall not at the time of such request be any existing breach or non-observance of any of the covenants and conditions herein contained and on the Lessee's part to be observed and performed the Lessor will at the expense of the Lessee grant to the Lessee an extension of this Lease of the Premises for the term set forth in Item 7 of the Schedule hereto (the "second renewed term") but on the same terms and conditions as are herein contained save for the exclusion of this clause giving the Lessee a right of renewal, and

- 4.8.3 that on the written request of the Lessee made not less than 6 nor more than 9 (or if the second renewed term of the Lease is 2 years or less then not less than 3 nor more than 6) months before the expiration of the second renewed term and provided that there shall not at the time of such request be any existing breach or non-observance of any of the covenants and conditions herein contained and on the Lessee's part to be observed and performed the Lessor will at the expense of the Lessee grant to the Lessee an extension of this Lease of the Premises for the term set forth in Item 8 of the Schedule hereto (the "third renewed term") but on the same terms and conditions are herein contained save for the exclusion of this clause giving the Lessee a right of renewal.

Time shall be of the essence in respect of this renewal clause. In the event that the rate of rent to be payable from the commencement of a renewed term as set out herein is a determination of the Current Market Rent then notwithstanding sub-clause 4.9 the Lessee shall be entitled to request a determination of the Current Market Rent within the period that begins 6 months before and ends 2 months before (or where the term of the Lease is 12 months or less begins 3 months before and ends 1 month before) the last day on which the option may be exercised under the Lease but may not make such a request to the Lessor where the Lessor and the Lessee have already agreed as to what the actual amount of that rent shall be. The Lessee must make a request by giving notice in writing of the request to the Lessor. If the Lessee makes such a request the amount of the Current Market Rent is to be determined in accordance with the provisions of sub-clause 4.9 hereof and the period within which the Lessee must exercise the option contained herein to renew is varied so that the last day on which the option may be exercised is 21 days after the determination of rent is made and notified to the Lessee in writing or the last day of the term of the Lease, whichever is the earlier. The parties agree that the amount of rent determined pursuant to this sub-clause 4.8 is the Current Market Rent for the purposes of the exercise of the option even though it may be a determination of the Current Market Rent as at some earlier time. The parties to the Lease are to pay the costs of the determination of the Current Market Rent in equal shares unless however the Lessee decides not to exercise the option to renew the Lease in which case the Lessee shall be liable to pay the whole of the cost of the valuation.

#### **4.9 Rent Review**

The rent shall be reviewed on the date or dates and in the manner specified in Item 2 of the Schedule.

##### **4.9.1 Current Market Rent**

If rent is to be reviewed to current market rent, the following shall apply:

- 4.9.1.1 the rent shall be reviewed as at the dates specified in Item 2 of the Schedule to a rate agreed by the Lessor and the Lessee but failing agreement shall be determined by a Land Valuer appointed, at the request of either the Lessee or the Lessor, by the person for the time being holding or acting in the office of the President of the Australian Property Institute Inc (SA Division) or its successor (the cost of which valuation shall be borne by the Lessor and the Lessee equally) which valuer shall be deemed to act as an expert and not as an arbitrator and who shall be instructed to determine the current market rent for the Premises;
- 4.9.1.2 the stipulations in this Lease relating to the time method and manner of payment of rent shall apply to the reviewed rent and rent instalments varied from such date or dates (as the case may be) and any adjustment necessary in respect of any underpayment or overpayment of any instalment paid after any such date or dates at the rate previously applicable shall be paid by the Lessee to the Lessor (or vice versa) forthwith upon the reviewed rent being determined with the Lessee paying the current instalments of rent due pending determination of the reviewed rent and any failure by the Lessor to effect such review at the relevant time shall not prevent such review being effected retrospectively at a later time;

In determining the current market rent for the Premises the Land Valuer shall:

- 4.9.1.3 exclude the value of any goodwill created by the Lessee's occupation, the value of the Lessee's fixtures and fittings within the Premises, any incentive or rebate offered to the Lessee or any tenant of any relevant premises and any deleterious condition of the Premises if such condition results from any breach of any term of this Lease by the Lessee;
- 4.9.1.4 have regard to all of the terms of this Lease in particular to any liability on the part of the Lessee to pay or contribute to rates, taxes (and in particular land tax) and outgoings pursuant to this Lease and as if the Premises were unoccupied and offered for rent for the Permitted Use for the period until the expiry of the current term;
- 4.9.1.5 have regard to the current market rent of premises which are comparable with the Premises;
- 4.9.1.6 take into account the value of all the Lessor's fixtures, fittings, plant and equipment in the Premises (and if applicable in the building of which the Premises forms part) and the value of any fit-out or other tenancy works provided by the Lessor;
- 4.9.1.7 have regard to the GST exclusive rate of rent;
- 4.9.1.8 have regard to any other matters the Land Valuer reasonably considers relevant; and
- 4.9.1.9 the Land Valuer must give detailed reasons for the determination and must specify the matters taken into account in making the determination;

#### **4.9.2 CPI**

If the rent is to be reviewed to CPI, the following shall apply:

- 4.9.2.1 the rent shall be reviewed as at the dates specified in Item 2 of the Schedule by multiplying the rent payable immediately preceding such review (without reference to and taking no account of any rent or other incentive) by a number determined by dividing the Consumer Price Index (Adelaide – All Groups) ("CPI Index") published for the quarter immediately preceding the relevant review date by the CPI Index published for the quarter immediately preceding the previous review date or, if applicable, the commencement date of this Lease;
- 4.9.2.2 if during the Term such Index ceases to be published or if a substantial change takes place in the method or basis of calculating such Index the relevant rent variation shall correspond with the variation over the relevant one year period in the weighted average for Australia of weekly wage rates to be determined by the Australian Bureau of Statistics and if the said Bureau is unwilling to make a determination then the reviewed rate of rent shall be determined by a Land Valuer appointed, at the request of either the Lessee or the Lessor, by the person for the time being holding or acting in the office of President of the Australian Property Institute Inc (SA Division) or its successor (the cost of which valuation shall be borne by the Lessor and the Lessee equally) which valuer shall be deemed to act as an expert and not as an arbitrator and having regard to what would have been the increase in such Index had it continued or had it continued to be determined on the same basis as at the date of this Lease as the requires;
- 4.9.2.3 the stipulation in this Lease relating to the time method and manner of payment of rent shall apply to the reviewed annual rent and rent instalments varied from such date or dates (as the case may be) and any adjustment necessary in respect of any underpayment or overpayment of any instalment paid after any such date or dates at the rate previously applicable shall be paid by the Lessee to the Lessor (or vice versa) forthwith upon the reviewed annual rent being determined with the Lessee

paying the current instalments of rent due pending determination of the reviewed rate of shall and any failure by the Lessor to effect such review at the relevant time shall not prevent such review being effected retrospectively at a later time;

#### **4.9.3 Fixed Percentage**

If the rent is to be increased by a fixed percentage the following shall apply:

- 4.9.3.1 as at the dates specified in Item 2 of the Schedule the rent payable immediately preceding such date (without reference to and taking no account of any rent or other incentive) shall be increased by the percentage shown in Item 9 of the Schedule provided that the stipulations in this Lease relating to the time method and manner of payment of rent shall apply to the increased rent and any failure by the Lessor to effect such increase at the relevant time shall not prevent such increase being effected retrospectively at a later time;

#### **4.10 Security Deposit**

that notwithstanding anything hereinbefore appearing the Lessee shall pay to the Lessor by way of a security deposit for the due performance and observance of the Lessee's duties and obligations hereunder the sum set forth in Item 10 of the Schedule hereto which sum shall be no more than an amount equivalent to four weeks rental hereunder and shall be paid by the person receiving the deposit to the Commissioner of Consumer Affairs pursuant to the provisions of the Retail and Commercial Leases Act 1995. If the rent payable under the Lease increases and at least two years have elapsed since the security bond was first given by the Lessee to the Lessor or was last increased, the Lessor may by written notice to the Lessee require the Lessee to increase the amount of the security bond by a specified additional amount but not so that the total amount of the security bond exceeds four weeks rent under the Lease at the time. A notice requiring an increase in the amount of the security shall fix the date by which the additional amount must be paid to the Lessor and the date so fixed must be at least sixty days from when the notice is given;

#### **4.11 Share Transfers**

if the Lessee is a duly incorporated company and if at any time hereafter or in the case where a Lessee takes possession of the Premises pursuant to an assignment at any time after the date on which the Lessor consents to such assignment the majority of the shares therein shall no longer be held both beneficially and according to the share register (except as a result of transfer by inheritance) by the person or persons who hold such majority at the date of execution of this Lease then:

- 4.11.1 the Lessee shall notify the Lessor of such changes in shareholdings, and

- 4.11.2 whether or not such notice is given the Lessor may at any time after such change in shareholdings by Notice in writing terminate this Lease as at the expiration of the current calendar month;

this clause shall not apply whenever the Lessee is a company the voting shares of which are listed on a recognised Stock Exchange in Australia or if at least 80% of its voting shares is owned by another company the voting shares of which are so listed or where the Lessor has given prior written consent to such changes in shareholding which consent shall not be unreasonably or capriciously withheld;

#### **4.12 Waiver**

that no waiver by the Lessor of one breach of or covenant obligation or provision in this Lease contained or implied shall operate as a waiver of another breach of the same or any other such covenant obligation or provision as aforesaid and if the Lessor shall become entitled to determine this Lease under the provisions for re-entry herein contained the receipt of rent by the Lessor or the doing or omission of any act or thing whatsoever by the Lessor or any agent or servant of the Lessor (which but for this covenant would or might amount to a waiver of the Lessor's rights in respect of any such breach or default) before or after the happening thereof shall not operate as nor be deemed to be a

waiver in any way of the Lessor's rights and powers in respect of any such breach or default rule of law or equity to the contrary notwithstanding;

#### **4.13 Notices**

that without prejudice to any other means of giving notice any Notice required to be served hereunder shall be sufficiently served on the Lessee if forwarded to the Lessee by registered mail to the last known place of business of the Lessee and shall be sufficiently served on the Lessor if addressed to the Lessor and sent by registered mail to the Lessor at the last known place of business of the Lessor in the State of South Australia and any Notice sent by mail shall be deemed to be given at the time when it ought to be delivered in the due course of post;

#### **4.14 Severance**

that any covenant or provision or any part of any covenant or provision herein which is not applicable to the Premises or which is repugnant to the general interpretation thereof or which is invalid unlawful void or unenforceable shall be capable of severance without affecting any other of the obligations of the parties pursuant hereto and any other part of such covenant or provision;

#### **4.15 Entire Agreement**

the covenants provisions terms and agreements contained herein expressly or by statutory implication occur and comprise the whole of the agreement between the parties and the parties expressly agree and declare that no further or other covenants agreements provisions or terms whether in respect of the Premises or otherwise shall be deemed to be implied herein or to arise between the parties by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by either party to the other on or prior to the execution hereof and the existence of any such implication or collateral or other agreement is hereby negated;

#### **4.16 Lessor as Lessee's Attorney**

that on the Lessor exercising its rights to re-enter and take possession of the Premises or to determine this Lease after necessary compliance with any relevant or statutory provisions as to the exercise of rights of forfeiture (of which the statutory declaration of the Lessor or an officer of the Lessor shall be conclusive evidence for the purpose of the Registrar-General) the Lessee HEREBY IRREVOCABLY APPOINTS the Lessor the attorney of the Lessee in the Lessee's name and as the Lessee's act and deed from time to time if and when such attorney shall think fit for the purpose of giving full effect of the power of re-entry to execute a surrender of this Lease and to procure the registration thereof and to record this power of attorney and to procure to be done any act matter or thing which may be requisite or proper for giving full effect thereto according to the Real Property Act 1886 as amended or any law or usage for the time being in force in the State of South Australia AND all and whatsoever such attorney shall lawfully do or purport to do or cause to be done by virtue of the said appointment is hereby ratified and confirmed;

#### **4.17 Demolition**

that the Lessor may terminate the Lease on the grounds of proposed demolition of the building of which the Premises forms part provided that the Lease cannot be terminated on that ground unless and until the Lessor has provided the Lessee with details of the proposed demolition sufficient to indicate a genuine proposal to demolish the said building within a reasonably practicable time after the Lease is to be terminated. The Lease cannot be terminated by the Lessor on that ground without at least 6 months written notice of termination to the Lessee. If notice of termination on that ground is given to the Lessee the Lessee may terminate the Lease by giving the Lessor not less than 7 days written notice of termination at any time within 6 months before the termination date notified by the Lessor PROVIDED ALWAYS if this lease is for a term of 12 months or less the period of 6 months referred to above is deemed in each case to be 3 months. If this Lease is terminated on such a ground and demolition of the building is not carried out within a reasonably practicable time after the termination date notified by the Lessor the Lessor is liable to pay the Lessee reasonable compensation for damage suffered by the Lessee as a consequence of the early termination of the Lease, unless the

Lessor establishes that at the time notice of termination was given by the Lessor there was a genuine proposal to demolish the Premises within that time;

#### **4.18 Subdivision**

4.18.1 In this clause:

"**allotment**" means an allotment, unit or lot created on subdivision.

"**subdivision**" means the division or re-division of land under:

4.18.1.1 Part XIXAB of the Real Property Act 1886, or

4.18.1.2 the Strata Titles Act 1988, or

4.18.1.3 the Community Titles Act 1996.

4.18.2 If the Lessor notifies the Lessee that the Lessor wants to proceed with the subdivision of the land:

4.18.2.1 the Lessee will give any consent that may be required from the Lessee under any Act or instrument for the purposes of the proposed subdivision, and

4.18.2.2 the following documents are, if the Lessor so requires, to be contemporaneously executed:

(a) an instrument of surrender of this Lease (in registrable form) as from a time immediately before the subdivision takes effect, and

(b) a new Lease (the "substitute lease") for the balance of the term of this Lease (and on the same conditions - or those conditions as appropriately modified to allow for the subdivision) for the allotments to be formed by the subdivision out of land to which this lease applies.

4.18.3 All documents necessary to give effect to this clause will be prepared by the Lessor's solicitors and will be prepared, stamped and registered at the Lessor's expense.

4.18.4 The Lessee agrees to indemnify the Lessor for any contributions to a strata corporation or a community corporation in respect of allotments to which the substitute lease applies.

#### **5 NO WARRANTY**

The Lessee acknowledges and declares that no promise representation warranty assurance or undertaking has been given by the Lessor in respect of the suitability of the Premises for any purpose to be carried on therein or to the fittings finish facilities and amenities of the Premises otherwise than in this Lease contained.

#### **6 LESSOR'S WORK**

Notwithstanding any other provision herein contained in the event that the Lessor is required at any time to carry out work to the Premises (and for which the Lessee is not responsible hereunder) by any competent government or semi-government authority (whether Federal State or Local) having jurisdiction in relation thereto the annual rental otherwise payable by the Lessee hereunder as at the date of completion of such work shall be increased by an amount equivalent to 9% of the amount certified in writing by an architect nominated by the Lessor to be the completed value of such work PROVIDED THAT the stipulations herein contained relating to the time method and manner of payment of rental shall (mutatis mutandis) apply to the annual rental determined in accordance with the provisions of this clause.

## **7 RESUMPTION**

It is hereby mutually agreed and expressly declared between the parties hereto that in the event that the Lessor shall receive Notice of any proposed resumption or acquisition of the Premises or any part thereof by any government (whether Federal State or Local) public statutory or other competent authority the Lessor shall be at liberty at any time thereafter to determine this Lease on giving not less than 90 days' prior notice in writing to the Lessee of its intention so to do.

## **8 RESERVATIONS**

The Lessor HEREBY RESERVES to the Lessor and the Lessor's servants and Licensees and to all other persons granted similar rights whether before or after the date of this Memorandum of Lease the free and uninterrupted passage of gas water and electricity through and along the pipes and wires and drains which now are and may at any time hereafter be on or under or passing through the Premises WITH POWER to the Lessor its servants agents and workmen and other persons authorised by the Lessor at all reasonable times to enter into and upon the Premises for the purpose of inspecting or installing repairing and/or cleansing replacing or altering the said pipes wires and drains AND ALSO for the purpose of painting inspecting repairing and/or cleaning the exterior walls and the roof of the Premises and of the building forming part of the Premises as well as for any other purpose PROVIDED THAT in the exercise of any such rights and powers there shall be occasioned to the Lessee as little disturbance and damage as is practicable and that all such inspections and works shall be carried out without undue delay and that the Lessor shall restore and make good any damage to the fixtures and fittings of the Lessee and to the Premises thereby caused.

## **9 SERVICES**

Notwithstanding any implication or rule of law to the contrary the Lessor shall not in any circumstances be liable to the Lessee for any loss or damage suffered by the Lessee for any malfunction failure to function or interruption of or to the water gas electricity power telephone air conditioning fire prevention fire safety elevators lifts escalators and transportation services and systems contained in or appurtenant to the Premises or the building forming part of the Premises or for the blockage of any sewers wastes drains gutters downpipes or storm water drains from any cause whatsoever.

## **10 ELECTRICITY SUPPLY**

Save to the extent caused or contributed to by the Lessor's negligence, the Lessor shall not be liable to the Lessee for any failure of electricity supply to the Premises. If the Land does not contain an inset network (being electricity wiring owned, operated or controlled by the Lessor) the Lessee must obtain its required electricity from a retailer of electricity licensed under the Electricity Law. If the Land does contain such an inset network the following clauses shall apply.

10.1 If at the commencement date of this Lease (or any time thereafter) the Lessor supplies electricity to the Premises, the Lessee must pay the Lessor for all such electricity at such rate as the parties may agree from time to time and in the absence of such agreement at the maximum rate prescribed for like premises by the Electricity Law.

10.2 Notwithstanding Clause 10.1 (and subject to any contrary agreement between the parties and any contrary provision of the Electricity Law) there is no obligation on the Lessor to supply or continue to supply electricity to the Lessee or the Premises and upon giving at least 60 days prior written notice to the other either:

10.2.1 the Lessor may elect to cease supplying electricity to the Lessee or the Premises; or

10.2.2 the Lessee may elect to cease purchasing electricity from the Lessor;

10.3 If either the Lessor elects to cease supplying electricity to the Lessee or the Premises or the Lessee elects to cease purchasing electricity from the Lessor in accordance with Clause 10.2, the Lessee must on or before the time at which such supply and purchase is to cease (pursuant to the notice given in accordance with Clause 10.2):



- 10.3.1 enter into a contract to purchase electricity for the Premises from a retailer of electricity licensed under the Electricity Law ("electricity retailer") of the Lessee's choice;
- 10.3.2 ensure that any such contract contains a term that the electricity retailer must provide details to the Lessor containing the Lessee's consumption of electricity in or in relation to the Premises and such other information to enable the Lessor to calculate the Lessee's required contribution (if any) to external network charges (as detailed below); and
- 10.3.3 install at no cost to the Lessor such new or additional equipment and meters as may reasonably be necessary to supply and record the supply of electricity to the Premises;

The Lessee's obligations under Clauses 10.3.1 to 10.3.3 inclusive will also apply if prior to or at the commencement date of this Lease the Lessee elects to purchase electricity from an electricity retailer of its choice.

- 10.4 If the Lessor is charged external network charges in respect of the supply of electricity to the Lessee or the Premises, then the Lessee must pay to the Lessor all external network charges applicable to its consumption of electricity in the Premises;
- 10.5 If at the commencement date of this Lease the Lessee purchases electricity from the Lessor and during the term of this Lease the Lessee exercises its right to purchase electricity from an electricity retailer of its choice, then the Lessor may at the next rent review date increase the rent to take into account all additional costs and losses incurred by the Lessor as a result of the Lessee purchasing electricity from an electricity retailer of its choice. Such costs and losses may include, but are not limited to, lost margins on re-selling electricity and additional administration costs;
- 10.6 For the avoidance of doubt, if a carbon or greenhouse emission related charge is passed on to the Lessor by an electricity generator or a third party in relation to the supply of electricity to the Lessee, the Lessor may pass this carbon or greenhouse emission related charge onto the Lessee at cost as part of the electricity charges;
- 10.7 All amounts payable by the Lessee to the Lessor under this Clause 10 are payable within 21 days of demand. If the Lessee fails to comply, the Lessee acknowledges that the Lessor has the right to disconnect the supply of electricity to the Premises (subject to compliance with any relevant provisions of the Electricity Law).

In this Clause 10 reference to the Electricity Law means all Statutes from time to time that regulate the distribution and/or sale of electricity in South Australia, including but not limited to the National Energy Retail Law (South Australia) Act 2011, and reference to external network charges mean the costs payable by the Lessor from time to time to the operator of the electricity distribution network to which the Land is connected on account of the use of that network to deliver electricity to the Land and/or the Premises.

## **11 OCCUPATION**

- 11.1 In the event that the Lessor allows the Lessee to take occupation of or have access to the Premises prior to the commencement date of this Lease, then it is expressly agreed that in respect of such period of occupation and/or access the Lessor and the Lessee shall be bound in contract by all the terms of this Lease other than in respect of the covenants regarding rent and outgoings (as Lessee covenants) and quiet possession and Common Areas (as Lessor covenants).
- 11.2 Notwithstanding any other provision of this Lease, the Lessor is not obliged to provide the Lessee with access to or occupation of the Premises (and will not be liable to the Lessee for not doing so) until such time as:

- 11.2.1 This Lease and any required guarantee has been executed and provided to the Lessor;
- 11.2.2 Any required bank guarantee has been provided to the Lessor;
- 11.2.3 The Lessee has demonstrated to the reasonable satisfaction of the Lessor that all requisite insurances are in place; and
- 11.2.4 All amounts payable to the Lessor (including any deposit and any obligation to reimburse or pay all or a proportion of the Lessor's Lease preparation costs) have been paid.

## **12 LIMITATION OF LIABILITY**

This Clause applies if the Lessor owns the Land as trustee of any trust (irrespective of whether the Lessor being a trustee was disclosed to the Lessee) in which case the Lessor enters into this Lease as trustee of the relevant trust and in no other capacity. The limitation of the Lessor's liability under this Clause applies despite any other provision of this Lease or any principle of equity or law to the contrary and without limiting this Clause extends to all liabilities and obligations of the Lessor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease. Any liability or obligation of the Lessor arising under or in connection with this Lease is limited to the extent to which it can be satisfied out of the property of the relevant trust out of which the Lessor is actually indemnified. The Lessor is not obliged to do or refrain from doing anything under this Lease unless the Lessor's liability is limited in the manner set out in this Clause. The Lessee must not take any action of any kind against the Lessor in any capacity other than as trustee of the relevant trust.

## **13 EXCLUSIVE USE**

The Lessee hereby acknowledges that the Permitted Use is not exclusive to the Lessee and that other occupants of the Land may sell similar products or supply similar services to those sold and/or supplied by the Lessee. Further the Lessee acknowledges that the Lessor may have previously granted or may in the future during the Term grant in favour of occupants of other parts of the Land the right to conduct a business similar to that of the Lessee or to sell similar goods to provide similar services to those sold or supplied by the Lessee. The Lessee shall have no claim against the Lessor in respect of any conduct by the Lessor or any other occupant of the Land contemplated by this Clause.

## **14 CONSENT OF MORTGAGEE**

The Lessee may not seek to avoid or set aside this Lease or any of the terms of this Lease nor to prevent the same from coming into effect by reason of any consent of any mortgagee or encumbrancee not being obtained.

## **15 NO PARTNERSHIP**

That nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of partnership or of principal and agent or of joint venture between the parties hereto it being understood and agreed that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.

## **16 TRUSTS**

The Lessor is not bound to acknowledge or give effect to any trust or any beneficial interest in this Lease or otherwise held by the Lessee for any other person notwithstanding that the Lessor may have notice of and/or consented to such trust or such interest. The Lessor may treat the Lessee as the sole and beneficial owner of this Lease and may exercise any right or remedy against the Lessee personally and against any property of the Lessee notwithstanding that such property may be held by the Lessee

on or subject to any trusts or otherwise. In no circumstances will the liability of the Lessee be limited to assets that the Lessee owns in its own right or limited to the extent the Lessee is entitled to be indemnified from the assets of any particular trust.

## **17 LESSOR'S CONSENT**

In any case where pursuant to this Lease the doing or execution of any act matter or thing by the Lessee is dependent upon the consent or approval of the Lessor such consent or approval may be given or withheld by the Lessor in its absolute uncontrolled discretion unless otherwise herein provided and the Lessee shall in any event reimburse the Lessor upon demand any costs or fees paid by the Lessor to consultants engaged by the Lessor to examine or advise upon any application made by the Lessee (including any plans specifications or other material submitted therewith) for the consent or approval of the Lessor where any such consent or approval is required pursuant to this Lease and also any other moneys outlaid or expenses incurred by the Lessor in connection therewith.

## **18 CERTIFIED EXCLUSIONARY CLAUSE**

If the certificate by a lawyer attached to this Lease has been completed, it has been agreed between the parties that the following statutory rights of security of tenure are to be excluded from the operation of this LeaseL

- 18.1 (where the term and renewal periods are together less than 5 years) a right to a 5 year minimum term, and
- 18.2 (where the premises form part of a "retail shopping centre") a right of preference to a new lease at the expiry of the lease term or extended term where no right to renew exists;

In the event of sub-clauses 18.1 or 18.2 being applicable, attached to this lease is a certificate by a lawyer who is not acting for the Lessor which certificate is to the effect that:

- 18.3 the lawyer has, at the request of the Lessee, explained the effect of the above rights and how the statutory rights of security of tenure would apply in relation to the lease if the lease did not include this provision, and
- 18.4 the Lessee gave the lawyer apparently credible assurances that the Lessee was not acting under coercion or undue influence in requesting or consenting to the inclusion of this provision in the lease.

## **19 RETAIL AND COMMERCIAL LEASES ACT 1995**

The intention of the parties is that no covenant provision term or implied term of this Lease shall have the effect of or be interpreted or construed as having or attempting to have the effect of directly or indirectly defeating evading excluding restricting modifying or preventing the operation of any of the provisions of the Retail and Commercial Leases Act 1995 (as amended) or any other legislation which by law cannot be excluded restricted or modified and that the Lessor and the Lessee shall continue to be subject to any such provisions which by law cannot be excluded restricted or modified.

## **20 ACKNOWLEDGEMENTS**

The Lessee hereby acknowledges that:

- 20.1 As soon as negotiations were entered into concerning this Lease the Lessor or a person on behalf of the Lessor made available to the Lessee a copy of the proposed Lease in compliance of Section 11 of the Retail and Commercial Leases Act 1995;
- 20.2 Prior to entering into this Lease a Disclosure Statement was provided to the Lessee in compliance with Section 12 of the Retail and Commercial Leases Act 1995;

- 20.3 Prior to the Lessee entering into this Lease a notice under Section 18(2) and Regulation 7 of the Retail and Commercial Leases Act 1995 was served on and drawn to the attention of the Lessee which notice confirms that the Lessor does not warrant that the Premises will for the duration of this Lease be structurally suitable for the type of business which the Lessee intends to conduct at the Premises; and
- 20.4 Notwithstanding that this Lease has not been executed by any other person who has agreed undertaken or offered to do so as Lessee or one of the Lessees whose name appears herein as Lessee this Lease shall at all times be valid and enforceable against the Lessee by virtue of its or his or her execution hereunder and the liability herein of such Lessee shall continue and may be enforced by the Lessor.

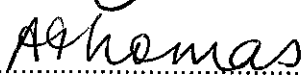
## **21 SPECIAL CONDITIONS**

This Lease shall be subject to the Special Conditions set forth in Item 11 of the Schedule hereto and those Special Conditions terms or covenants insofar as they may be contrary to or in conflict with any other term or condition hereof shall apply in preference to any such contrary or conflicting term or condition.

**EXECUTION BY THE LESSOR:**

  
.....  
**SIGNED** by the LESSOR – BRUNO PAUL JOSEPH GIORGIO

in the presence of:


  
.....  
Signature of WITNESS – Signed in my presence by the LESSOR who is either personally known to me or has satisfied me as to his or her identity.

.....  
ANTONIETTA THOMAS  
Print full name of Witness (BLOCK LETTERS)


.....  
17 BRITTON AVE  
.....  
TRANMERE SA 5073  
Address of Witness

.....  
0497 540 466  
Business Hours Telephone Number

A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

  
.....  
**SIGNED** by the LESSOR – XIAO HUA PAN

in the presence of:

  
.....  
Signature of WITNESS – Signed in my presence by the LESSOR who is either personally known to me or has satisfied me as to his or her identity.

.....  
ANTONIETTA THOMAS  
Print full name of Witness (BLOCK LETTERS)

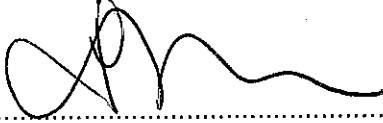
.....  
17 BRITTON AVE  
.....  
TRANMERE SA 5073  
Address of Witness

.....  
Business Hours Telephone Number 0497 540 466

A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

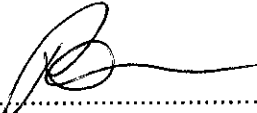
**IMPORTANT NOTICE**  
**THE LESSOR DOES NOT WARRANT THAT THE PREMISES YOU ARE ABOUT TO LEASE**  
**WILL, FOR THE DURATION OF YOUR LEASE, BE STRUCTURALLY SUITABLE FOR THE**  
**TYPE OF BUSINESS THAT YOU INTEND TO CARRY ON**

**EXECUTION BY THE LESSEE:**



.....  
**SIGNED by the LESSEE – FIONA JOY STEVENS**

in the presence of:



.....  
Signature of WITNESS – Signed in my presence by the LESSEE who is either  
personally known to me or has satisfied me as to his or her identity.

.....  
**REBECCA McROSTIE**

.....  
Print full name of Witness (BLOCK LETTERS)

.....  
**32 Malcolm Street**

.....  
**Salisbury**  
.....  
Address of Witness

.....  
**0413 038 758**  
.....  
Business Hours Telephone Number

A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

## THE SCHEDULE

ITEM 1 (Clauses 1.1 and 2.6) PERMITTED USE:	Office.
ITEM 2 (Clauses 1.1 and 4.9) RENT REVIEW	DATE/S OF REVIEW: MANNER OF REVIEW:
	26 July. Current Market Rent (Clause 4.9.1) – On renewal. CPI (Clause 4.9.2) – Each year except renewal. Fixed % (Clause 4.9.3) – Not applicable.
ITEM 3 (Clause 2.3.2) LESSEE'S PROPORTION OF OUTGOINGS:	One Hundred Percent (100%) but if the Premises are not separately assessed the Lessee's proportion will be determined on a pro rata basis pursuant to Clause 2.3.2 of this Lease.
ITEM 4 (Clause 2.10) PAINTING YEARS:	At the expiration of the term of the Lease or any renewal thereof.
ITEM 5 (Clauses 2.27 & 2.28) PUBLIC LIABILITY INSURANCE:	Twenty Million Dollars (\$20,000,000.00).
ITEM 6 (Clause 4.8.1) FIRST RENEWED TERM:	Two (2) years.
ITEM 7 (Clause 4.8.2) SECOND RENEWED TERM:	One (1) year.
ITEM 8 (Clause 4.8.3) THIRD RENEWED TERM:	Not applicable.
ITEM 9 (Clause 4.9) FIXED INCREASE OF RENTAL:	Not applicable.
ITEM 10 (Clause 4.10) SECURITY DEPOSIT:	Not applicable.

ITEM 11

(Clause 21)

SPECIAL CONDITIONS:

- 1 Upon payment of the \$3,483.33 first two month's rental the Vendor will provide the Lessee with immediate access to the Premises, allow the Lessee to remove and dispose of unwanted furniture and allow the Lessee to paint out the Lessor's signage and utilise the space for the Lessee's signage.



**RETAIL AND COMMERCIAL LEASES ACT 1995: SECTION 12**  
**ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURE STATEMENT**  
**(TO BE SIGNED BY LESSEE)**

Name of Lessor: BRUNO PAUL JOSEPH GIORGIO AND XIAO HUA PAN.

Address of Premises: UNIT 2 / 51 PARK TERRACE SALISBURY SA 5108.

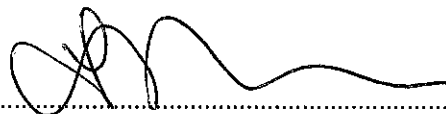
Date of provision of Disclosure Statement to Lessee: 4 / 7 / 20 19

Name of Lessee: FIONA JOY STEVENS.

Address of Lessee: 32 MALCOLM CRESCENT SALISBURY SA 5108.

THE LESSEE HEREBY ACKNOWLEDGES RECEIPT OF THE DISCLOSURE STATEMENT RELEVANT TO THE ABOVEMENTIONED PREMISES PRIOR TO ENTERING INTO THIS LEASE.

(Signed)



.....

08 / 08 / 2019

**Note to lessee:** The Retail and Commercial Leases Act 1995 requires that a Disclosure Statement be given to a Lessee before he or she signs a retail shop lease or any other form of binding document. You should ensure that you read the statement carefully, and understand its contents, before you sign a Lease or other document.

