



WALLMANS
LAWYERS

Expert advice,
human approach.

L5, 400 King William St
Adelaide SA 5000

GPO Box 1018
Adelaide SA 5001

Tel (08) 8235 3000
Fax (08) 8232 0926

general@wallmans.com.au
www.wallmans.com.au

ABN 98 802 494 422

FOUR PILLARS SUPERANNUATION PTY LTD

(Landlord)

and

MCINTOSH INVESTMENTS AUSTRALIA PTY LTD

(Tenant)

AGREEMENT FOR LEASE

TABLE OF CONTENTS

1	INTERPRETATION	1
2	ACQUISITION	6
3	DEVELOPMENT WORKS	6
4	INSURANCE	11
5	TERMINATION	12
6	LANDLORD TO PURCHASE IMPROVEMENTS	13
7	LEASE OF PREMISES	14
8	GST	15
9	REPRESENTATIONS AND WARRANTIES	15
10	MISCELLANEOUS	16
11	NOTICES	17
12	GOVERNING LAW AND JURISDICTION	18
13	DISPUTE RESOLUTION	19
14	TRANSFER	20
15	CONFIDENTIALITY	21
	SCHEDULE 1 – SERVICE DETAILS	23
	ANNEXURE A – LEASE	

DEED dated 16th December 2019

BETWEEN

FOUR PILLARS SUPERANNUATION PTY LTD A.C.N. 632 184 617 as trustee for Four Pillars Superannuation Fund of c/- Crase Consulting Group Pty Ltd, Level 4, 20 Grenfell Street, Adelaide SA 5000

(Landlord)

MCINTOSH INVESTMENTS AUSTRALIA PTY LTD A.C.N. 613 394 817 as trustee for Mcintosh Family Trust No.1 of c/- Crase Consulting Group Pty Ltd, Level 4, 20 Grenfell Street, Adelaide SA 5000

(Tenant)

INTRODUCTION

- A. The Landlord intends to purchase the Land.
- B. The Tenant proposes to undertake and complete the Development on the Land.
- C. On the Commencement Date the Landlord will lease the Land to the Tenant on the terms contained in this agreement.

TERMS

1 INTERPRETATION

1.1 Definitions

Approvals means all authorisations, consents, approvals, licences, permits, permissions, filings, registrations, resolutions, directions, declarations or exemptions by, from or with any Authority and all requirements imposed under Law or by any Authority.

Authority includes:

- (a) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) any provider of public utility services, whether statutory or not; and
- (c) any other person, authority, instrumentally or body having jurisdiction, rights, powers, duties or responsibilities over the Land or anything in relation to the Land.

Business Day means any day except Saturday or Sunday or a day that is a public holiday throughout Queensland.

Certificate of Practical Completion means the certificate issued under the Construction Contract certifying that the Development Works have reached Practical Completion.

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

Commencement Date means the Commencement Date of the Lease being the later of the date of issue of the Certificate of Practical Completion or the Completion Date.

Completion Date means the anticipated date of Practical Completion of the Development Works being the date 12 months from Settlement subject to any extension of time made pursuant to **clause 3.6**.

Concept Plans means the plans to accompanying the Tenant's Development Application identified by the parties as the Concept Plans for the purposes of this document as varied by agreement.

Construction Contract means the contract or contracts entered into by the Tenant with the Contractor for the construction of the Development Works.

Contractor means the contractor or contractors engaged by the Tenant to undertake the Development Works.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid).

Defects Liability Period means the period of 24 months from Practical Completion.

Development means the construction of a gym, conference centre and cafe, landscaping and associated works.

Development Application means an application by or on behalf of the Tenant with the relevant Authority for Development Approval and includes any request for a permissible change to an existing development approval.

Development Approval means a valid development approval for the material change of use, operational works (if any), building works and all other necessary Approvals to enable the Tenant to undertake the Development Works including an order or judgment of the Planning and Environment Court of competent jurisdiction for the Land.

Development Works means the construction and other works to be undertaken by and at the cost of the Tenant to complete the Development in accordance with the requirements of this agreement.

Expert means a person appointed under **clause 13.6**.

Force Majeure Event means any of the following events or circumstances to the extent that they are not caused or contributed to by the Tenant:

- (a) loss or damage by fire, explosion, flood, earthquake, lightning, storm, tempest;
- (b) national or industry wide industrial disputes which have not been caused by or directed at the Tenant, the Contractor or the Development Works;
- (c) weather sufficiently inclement to prevent the Contractor proceeding with undertaking the Development Works; or
- (d) any prohibition or embargo imposed under or by virtue of any legislation.

GST means the goods and services tax as imposed by the GST Act including, where relevant, any related interest, penalties, fines or other charge.

GST Act has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act, 1999 (Cth)*.

GST Amount means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the appropriate rate of GST rate prescribed under the GST Act from time to time (being 10% when the GST Law commenced) or any lower rate notified from time to time by the person making the relevant Supply.

Improvements means all improvements to be constructed on the Land as required to complete the Development.

Land means Lot 1 on SP316620 Title Reference 51205861.

Landlord includes the Landlord's successors and permitted assigns.

Landlord's Representatives means each of the Landlord's employees, agents, contractors and consultants.

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

- (a) building regulations;
- (b) the Building Code of Australia; and
- (c) Australian Standards.

Lease means a lease in the form annexed to this agreement as **Annexure A**.

Licence Fee means an amount equal to the Rent payable during the first year of the Lease plus the Landlord's reasonable estimate of all Outgoings payable by the Tenant under the Lease.

Material Change means a change to the Plans and Specifications or the Development Works which materially change the concept or layout of the Development from that shown in the Concept Plans.

Payment means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under **clause 8**); and
- (b) the GST Exclusive Market Value of any non-monetary consideration,

paid or provided by the Tenant for this agreement or by the Landlord or the Tenant for any other Supply made under or in connection with this agreement and includes any amount payable by way of indemnity, reimbursement, compensation or damages.

Plans and Specifications means the plans and specifications for the Development Works identified by the parties as the Plans and Specifications for the purposes of this agreement in accordance with **clause 3.3**.

Practical Completion means that the Development Works have been completed in accordance with **clause 3**, and are fit for occupation and use by the Tenant and if requested by the Landlord the Tenant has provided a Certificate of Practical Completion.

Premises means the premises subject to the Lease.

Property Institute means the Australian Property Institute Limited ACN 608 309 128 Queensland Division or its successor or other organisation replacing it;

Purchase Contract means the contract for sale of the Land from Stillhaus Land Pty Ltd A.C.N. 631 846 770 to the Landlord.

Reinstatement Rate means the rate as agreed by the parties or if not agreed the rate determined by the Expert acting reasonably.

Rent means the commencing rent under the Lease being \$189,500.00 per annum, GST exclusive.

Settlement means the settlement of the Purchase Contract.

Schedule means the schedule of this agreement.

Sunset Date means the date being 24 months from the date of this agreement.

Tenant includes the Tenant's successors and assigns and includes the Tenant's employees, agents, invitees, contractors and persons the Tenant allowed on the Land by invitation of the Tenant.

Tenant's Representative means the person nominated by the Tenant as the Tenant's Representative for the purpose of this agreement.

Valuer means a person who:

- (a) is a full member of the Property Institute and has been for the last 7 years;
- (b) is active in the relevant market at the time of appointment under this agreement; and
- (c) has at least 5 years' experience in valuing premises similar to the Premises.

1.2 Construction

In this agreement, unless the context otherwise requires:

1.2.1 words importing:

- (a) the singular include the plural and vice versa; and
- (b) any gender includes the other genders;

1.2.2 an agreement, representation, warranty, undertaking or covenant on the part of or in favour of two or more persons binds or is for the benefit of them jointly

and each of them severally;

- 1.2.3 if a word or phrase is defined cognate words and phrases have corresponding definitions;
- 1.2.4 the words 'including', 'includes' or 'included' are not to be construed as words of limitation;
- 1.2.5 in the event of any part of this agreement being or becoming void or unenforceable then that part must be severed from this agreement to the intent that all parts not void or unenforceable must remain in full force and effect and be unaffected by any such severance;
- 1.2.6 a reference to:
- (a) a person includes a firm, unincorporated association, corporation and government body;
 - (b) a person includes the legal personal representatives, successors, assigns and substitutes (including, without limitation, persons substituted by novation) of that person;
 - (c) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (d) this or any other agreement includes the agreement as varied or replaced, and notwithstanding any change in the identity of the parties;
 - (e) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmission;
 - (f) time is to local time in Brisbane;
 - (g) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (h) a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next calendar month but if a corresponding day does not occur in the next calendar month the period ends on the last day of that next calendar month;
 - (i) a right includes a benefit, remedy, authority, discretion and power; and
- 1.2.7 an obligation includes any warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

1.3 Headings

Headings do not affect the interpretation of this agreement.

2 ACQUISITION

2.1 Purchase Contract

2.1.1 This agreement is subject to and conditional upon the formation of the Purchase Contract within 30 Business Days from the date of this agreement (**Contract Date**).

2.1.2 If the condition contained in **clause 2.1.1** is not satisfied by the Contract Date then either party may terminate this agreement by written notice to the other party.

2.2 Settlement of Land

2.2.1 This agreement is subject to and conditional upon settlement of the Purchase Contract within 12 months from the Contract Date (**Purchase Date**).

2.2.2 If the Purchase Contract is terminated for any reason prior to Settlement then this agreement will automatically terminate upon the Landlord providing the Tenant with notice of the termination.

2.2.3 If this agreement is terminated under **clause 2.2.2**:

(a) each party is released from its obligations to further perform this agreement; and

(b) each party retains the rights it has against the other party for any antecedent breach.

2.2.4 If the condition contained in **clause 2.2.1** is not satisfied by the Purchase Date then either party may terminate this agreement by written notice to the other party.

3 DEVELOPMENT WORKS

3.1 Handover

3.1.1 Subject to the terms of this **clause 3**, the Landlord must on the day following Settlement (**Handover Date**) handover the Premises to the Tenant on licence until the Commencement Date and the Landlord will permit the Tenant to enter upon the Premises to obtain the Development Approval and carry out the Development Works.

3.1.2 The use and occupation of the Premises by the Tenant during this period will be at the Tenant's risks in all respects.

3.1.3 For each day from the Handover Date to the Commencement Date the Tenant must pay the Landlord the Licence Fee monthly in advance.

3.1.4 For the period from the Handover Date to the Commencement Date the Tenant must pay all usage charges for electricity, gas, water, telecommunications and other services consumed in the Premises.

3.2 Development Approval

- 3.2.1 This agreement is subject to and conditional upon the Tenant obtaining the Development Approval within 90 Business Days from Settlement or such later date as the parties agree in writing (**Development Approval Date**).
- 3.2.2 If for any reason the Development Approval is not obtained on or before the Development Approval Date, or is approved on terms and conditions not to the Tenant's satisfaction, the Tenant may terminate this agreement by notice to the Landlord.
- 3.2.3 The Tenant:
- (a) may make any number of Development Applications or other applications to obtain the Development Approval;
 - (b) is not required to make any Development Applications in its own name; and
 - (c) is responsible for all costs of and related to any Development Application.
- 3.2.4 The Landlord must not in any way object to, hinder or delay any Development Application and must, at the Tenant's cost, do everything reasonably requested by the Tenant in support of any Development Application, including signing any required consent forms.
- 3.2.5 If at any time the Tenant is of the opinion, in its absolute discretion, that this **clause 3.2** will not be satisfied (even if the Tenant has not yet made the Development Application) the Tenant may by written notice to the Landlord terminate this agreement.
- 3.2.6 If by the Development Approval Date the Tenant is still awaiting a decision from the relevant Authority or the expiry of an appeal period then the Tenant may, by notice to the Landlord, extend the Development Approval Date for a further 30 Business Days.
- 3.2.7 If the Tenant does not give notice by the Development Approval Date that:
- (a) this agreement is terminated; or
 - (b) it has obtained a satisfactory Development Approval; or
 - (c) it waives the benefit of this development approval provision; or
 - (d) this condition has been extended under **clause 3.2.6**,
- then the Landlord may terminate this agreement by notice to the Tenant. The Landlord's right to terminate is subject to the Tenant's continuing right to give notice of satisfaction, waiver or termination pursuant to this clause.

3.3 Plans and Specifications

- 3.3.1 The Tenant must promptly after the date of this agreement, but by no later than 30 Business Days after Settlement (**Plan Submission Date**) cause to be prepared in a professional manner by properly qualified consultants specific site drawings and specifications detailing the Development Works in

appropriate detail for construction and submit the Plans and Specifications to the Landlord for review and approval.

- 3.3.2 The Landlord and Tenant will promptly consult regarding any reasonable changes required to the Plans and Specifications and the Tenant will resubmit the plans and specifications for review if necessary.
- 3.3.3 If the Plans and Specifications are not approved by the Landlord within 60 Business Days from Settlement (**Plan Approval Date**) the Landlord may, by giving 10 Business Days' prior written notice of its intention to do so, terminate this Agreement by giving further written notice to the Tenant (**Termination Notice**), unless the Plans and Specifications are approved by the Landlord before the giving of a Termination Notice.
- 3.3.4 Both parties must act promptly and reasonably in complying with this clause. If the Landlord does not approve the Plans and Specifications or request changes to them within 10 Business Days of submission, the Plan Approval Date and Sunset Date, will be extended by one Business Day for every Business Day more than 10 Business Days taken by the Landlord to either approve the Plans and Specifications or request changes.

3.4 **Standard of construction**

The Tenant must ensure that the Development Works are completed in accordance with:

- 3.4.1 the Plans and Specifications (subject to **clause 3.5**);
- 3.4.2 the Approvals;
- 3.4.3 all Laws; and
- 3.4.4 the Tenant's obligations under this agreement.

3.5 **Changes of Plans and Specifications**

- 3.5.1 The Tenant may make changes to the Plans and Specifications if:
 - (a) the change is required by any relevant Authority; and
 - (b) the change is not a Material Change.
- 3.5.2 If the change is a Material Change the Tenant must not make the change without the written consent of the Landlord (which consent must not be unreasonably withheld or delayed). The Landlord must act reasonably and in good faith in relation to finding a solution and consenting to a Material Change which is acceptable to both parties.
- 3.5.3 The Tenant must notify the Landlord and provide details of any proposed or required change before the change is made to the Plans and Specifications whether the change is a Material Change or not.
- 3.5.4 The Landlord must grant its consent or give reasons for refusing its consent

to a Material Change within 10 Business Days of a request by the Tenant.

3.5.5 If the Tenant considers (acting reasonably) that a Material Change required by an Authority will adversely affect the Tenant's proposed use of the Premises the Tenant may give notice to the Landlord.

3.5.6 If the parties cannot agree within 5 Business Days of the giving of notice about whether the Material Change will adversely affect the Tenant's proposed use of the Premises either party may refer the matter to the Expert for determination under **clause 13.6** whether:

- (a) the change will or will be reasonably likely to materially and adversely affect the Tenant's proposed use of the Premises; and
- (b) the change is able to be compensated by a reduction in Rent or other financial adjustments.

3.5.7 If the Expert determines that:

- (a) the change will or will be reasonably likely to adversely and materially affect the Tenant's proposed use of the Premises, or
- (b) the adverse effect is not able to be compensated,

then the Tenant may, within 10 Business Days after the determination, terminate this agreement by giving written notice to the Landlord.

3.5.8 If:

- (a) the Expert determines both matters in **clause 3.5.6** in the affirmative; and
- (b) the Tenant elects not to exercise its rights of termination under **clause 3.5.7**,

then the Lease must be amended to reflect the change in Rent or other financial adjustments as determined by the Expert.

3.6 Delays

3.6.1 The Tenant is entitled to an extension of time to the Completion Date if, and to the extent that, the Contractor is entitled to an extension of time under the Construction Contract which delays Practical Completion.

3.6.2 The Tenant must give written notice to the Landlord of the delay which affects its ability to achieve Practical Completion, not later than 10 Business Days after the Tenant becomes aware of the cause of the delay.

3.7 Certificate of Practical Completion

3.7.1 Prior to Practical Completion the Tenant must:

- (a) provide the Landlord's Representative with at least 10 Business Days

written notice of the date when the Tenant estimates that the Development Works will reach Practical Completion; and

- (b) nominate and notify the Landlord of the date for the Landlord's Representative to inspect the Development Works for the purposes of this clause (**Inspection Date**).

- 3.7.2 On the Inspection Date the parties together with their nominated consultants, will jointly inspect the Development Works.
- 3.7.3 After the inspection the parties may agree and prepare a list of items (**Defects List**) which require attention by the Tenant in order for the Development Works to reach Practical Completion.
- 3.7.4 If the parties cannot agree within 5 Business Days of the joint inspection whether one or more items (not being minor faults or omissions) require alteration, attention or rectification in order for the Development Works to reach Practical Completion, the matter must be referred to the Expert for determination under **clause 13.6**.
- 3.7.5 If a Defects List is issued under this clause the Tenant must make good the defects as soon as possible and will give written notice to the Landlord when the Tenant considers that the defects have been rectified. The parties must within 2 Business Days of the giving of the notice inspect the works and this clause will reapply as relevant.
- 3.7.6 If the Landlord does not require the completion of any items of work under this clause the Development Works will be taken to have reached Practical Completion. The occurrence of Practical Completion does not indicate that the Tenant has complied with this agreement, or diminish any rights of the Landlord or liability of the Tenant for any breach of this agreement.

3.8 **Maintenance Period**

- 3.8.1 The Tenant must at its own cost make good any defects or faults in the Development Works which may be evident and notified in writing to the Tenant by the Landlord during the Defects Liability Period.
- 3.8.2 At the end of the Defects Liability Period, if the Tenant holds a current warranty that covers the repair of an item of the Development Works in need of repair, the Tenant must use reasonable endeavours to enforce that warranty for the benefit of the Landlord.

3.9 **Reporting**

The Tenant must provide to the Landlord at periodic intervals requested by the Landlord written reports which detail all material information relating to the status and progress of all matters referred to in this agreement, including any actual or anticipated variation or delay and any information reasonably requested by the Landlord.

3.10 **Electricity Augmentation**

The Tenant will be responsible for the costs of any new connection or the modification to the existing connection to the electricity network necessary to supply electricity to

the Premises for the Tenant's consumption and use in connection with its business including the cost of installation and construction of any connection equipment or the cost of augmentation or extension to the electricity distribution network.

3.11 "As Constructed" Drawings

The Tenant must within 20 Business Days of Practical Completion provide to the Landlord all "as constructed" drawings, plans, specifications, operating and maintenance manuals, warranties, guarantees and certificates applicable to the Development Works.

3.12 Constructed Improvements

The parties acknowledge that:

- 3.12.1 the Tenant has caused or will cause the construction and installation of the Improvements on the Land to make the Premises suitable for the "Permitted Use" as defined in the Lease; and
- 3.12.2 notwithstanding any other provision of this agreement, the Tenant is the owner of the Improvements and the Improvements are agreed and deemed to be Tenant's property notwithstanding:
 - (a) the degree, purpose or object of affixation of the Improvements or any part of the Improvements;
 - (b) any law to the contrary; or
 - (c) any right granted to the Landlord or any obligation imposed upon the Tenant whether under this agreement, the Lease or any other document including any right or obligation relating to the use, occupation, maintenance, repair, subsistence, assignment, subleasing, charging or control of the Improvements.

4 INSURANCE

4.1 Contracts Works Insurance

Prior to commencing the Development Works the Tenant must maintain or will ensure that the Contractor maintains a contracts work insurance policy (insurance policy) with an insurer and upon terms approved by the Landlord (acting reasonably). The insurance policy must cover:

- 4.1.1 the whole of the construction of the Development Works together with all associated temporary works (including all materials incorporated or to be incorporated in the Improvements) in respect of loss, damage or destruction of or to the property insured arising from any cause whatsoever for an amount not less than the full insurable value (based on the full reinstatement and replacement costs); and
- 4.1.2 the cost of demolition and removal of debris, consultants' fees and costs of replacing the Improvements including cost escalation over the period of rebuilding in each case to an amount agreed by the parties (acting reasonably).

4.2 Damage or destruction of Improvements

- 4.2.1 If any of the Improvements are totally or substantially destroyed prior to Practical Completion for any reason other than as a result of the negligence or default of the Tenant or the Tenant's Representatives, then the parties will negotiate in good faith to determine whether the Tenant should recommence construction of the Improvements and if so, determine a new Completion Date.
- 4.2.2 If the Tenant is to recommence construction of the Improvements the Tenant must apply the amount paid on the insurance policy to that purpose.
- 4.2.3 If within 20 Business Days of the total or substantial destruction of the Improvements the parties have not reached agreement on the matters set out in this clause this agreement will automatically terminate.
- 4.2.4 If this agreement is terminated under **clause 4.2.3**:
- (a) each party is released from its obligations to further perform this agreement; and
 - (b) each party retains the rights it has against the other party for any antecedent breach.

4.3 Consultation

Prior to commencing construction of the Development Works the Tenant will cause its insurance brokers to consult with the Landlord's insurance brokers in relation to insurance arrangements during the construction of the Improvements and will cooperate with the Landlord in endeavouring to ensure that insurance arrangements made by the Landlord and Tenant respectively are appropriate and avoid unnecessary cost and duplication.

4.4 Additional Insurance Obligations

The Tenant must:

- 4.4.1 not do anything nor allow anything to be done that contravenes or may render void or voidable the insurance policy;
- 4.4.2 deliver a certificate of currency from the insurer to the Landlord before commencing the Development Works and when otherwise reasonably required by the Landlord;
- 4.4.3 pay each premium on or before the due date for payment;
- 4.4.4 not alter or cancel the insurance policy without the consent of the Landlord; and
- 4.4.5 ensure that the insurance policy covers the period from commencement of the Development Works until the Commencement Date.

5 TERMINATION

5.1 Failure to achieve Practical Completion

If Practical Completion is not achieved by the Sunset Date the Landlord may terminate this agreement by giving written notice to the Tenant at any time after the Sunset Date, but before Practical Completion is achieved.

5.2 Default

Either party may terminate this agreement by written notice to the other party (**Defaulting Party**) if the Defaulting Party is in breach of this agreement and fails to rectify that breach to the reasonable satisfaction of the other party within 20 Business Days after giving written notice to the Defaulting Party, but:

- 5.2.1 no termination will be effective if the grounds for termination have validly been referred for Expert determination in accordance with this agreement and the Expert makes a determination in favour of the Defaulting Party; and
- 5.2.2 termination will be without prejudice to any existing rights or remedies that either party has under this agreement.

5.3 Other Grounds for Termination

Either party may by written notice to the other immediately terminate this agreement if:

- 5.3.1 a liquidator, provisional liquidator, administrator or controller is appointed to the other party or over the whole or any part of the other party's property;
- 5.3.2 the other party being, or stating that the other party is, unable to pay all its debts as and when they become due and payable;
- 5.3.3 the other party is deemed insolvent under the Corporations Act;
- 5.3.4 any event described in Section 461 of the Corporations Act occurs in relation to the other party; or
- 5.3.5 any action is taken to make an appointment referred to in **clause 5.3.1**.

6 LANDLORD TO PURCHASE IMPROVEMENTS

- 6.1 In the event that this agreement is terminated by either party under **clause 5**, the Tenant (as owner of the Improvements) agrees to sell and the Landlord agrees to purchase the Tenant's interest in all of the Improvements in accordance with and on the terms and conditions contained in this **clause 6**.
- 6.2 Not later than thirty (30) days after the termination of this agreement (whether under the terms of this agreement or otherwise under law) the parties must agree in writing a purchase price for all of the Improvements (**Agreed Purchase Price**) and the Landlord must pay the Agreed Purchase Price to or as directed by the Tenant within 60 days of being provided with a tax invoice for the Agreed Purchase Price.
- 6.3 If the parties do not agree a purchase price for the Improvements within the period specified in **clause 6.2**, then the purchase price for all of the Improvements will be determined by a Valuer agreed by the parties (or failing agreement, nominated by the president of the Property Institute) based on the in situ market value of such Improvements as part of the continuation of a going concern business operated from

the Premises (**Valued Purchase Price**) on the following basis:

- 6.3.1 The Valuer shall act as an expert and not as an arbitrator and his decision shall be final and binding on the parties.
 - 6.3.2 The costs of the valuation are to be paid equally by the Landlord and Tenant.
 - 6.3.3 The Landlord and the Tenant may make written submissions to the Valuer within fourteen (14) days after the Valuer has been appointed or nominated.
 - 6.3.4 The Landlord and the Tenant must forward to the other a copy of all written material forwarded or provided at the same time it is provided to the Valuer.
 - 6.3.5 The Landlord and the Tenant may within fourteen (14) days of receiving a copy of the other's written materials forward written comments to the Valuer on the other party's written submissions.
 - 6.3.6 The Valuer's decision must be made within sixty (60) days of appointment and must be provided in writing (with reasons for the determination including specifying the matters required to be taken into account under this agreement in making that determination) and that decision will be final and binding.
- 6.4 The Landlord must pay the Valued Purchase Price to or as directed by the Tenant, not later than thirty (30) days after the Valuer decision has been provided in writing to the parties.
 - 6.5 On the date of payment of the Agreed Purchase Price or the Valued Purchase Price (whichever is applicable), the Tenant transfers to the Landlord all legal and beneficial title (to the extent not already vested in the Landlord) in all of the Improvements, and must ensure the Improvements are transferred free from any charge, lien, mortgage or any other form of encumbrance as at the date of transfer.
 - 6.6 For the avoidance of doubt, the Tenant is not required and is not permitted to remove or reinstate any Improvements to be purchased by the Landlord under this clause.
 - 6.7 The Landlord may set-off against such purchase price any moneys owing and unpaid by the Tenant to the Landlord under this agreement together with any moneys required to be paid in order to obtain from the Tenant a clear and unencumbered title to the Improvements.

7 LEASE OF PREMISES

7.1 Completion of Lease

Within 10 Business Days after the Commencement Date, the Tenant must deliver to the Landlord the Lease duly completed by the insertion of the Commencement Date, the title particulars of the Land and any other relevant details necessary to complete the Lease. The Landlord must execute the Lease and return the Lease to the Tenant within 10 Business Days of receipt. The Landlord must promptly execute and arrange for registration of the Lease.

7.2 Authority to Complete Lease

The Landlord authorises the Tenant to complete the Lease in the manner specified in **clause 7.1** and in accordance with this agreement.

7.3 Lease Binding on the Parties

On and from the Commencement Date, even if the Lease is not executed by the parties, the Lease will be deemed to have commenced and the terms of the Lease will be binding as if the Lease had been executed by the parties.

8 GST

8.1 Definitions

Capitalised expressions which are not defined in **clause 1.1**, but which have a defined meaning in the GST Law have the meaning given to them under GST Law.

8.2 Payment of GST

The parties agree that:

8.2.1 all Payments have been set or determined without regard to the impact of GST;

8.2.2 if the whole or any part of a Payment is the consideration for a Taxable Supply for which the payee is liable to GST, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and

8.2.3 the payee will provide to the payer a Tax Invoice.

8.3 Input tax credit

Despite any other provision of this agreement, if a Payment due under this agreement is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment will exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.

9 REPRESENTATIONS AND WARRANTIES

9.1 Nature

Each party represents and warrants to the other party that:

9.1.1 it is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is now being conducted;

9.1.2 this agreement is enforceable against it in accordance with its terms and is not void or voidable;

9.1.3 it has capacity unconditionally to execute and deliver and comply with its obligations under this agreement;

9.1.4 it has taken all necessary action to authorise the unconditional execution and delivery of and the compliance with its obligations under this agreement;

9.1.5 each authorisation from and filing and registration with a government body necessary to enable it to unconditionally execute and deliver and comply with

its obligations under this agreement has been obtained, effected and complied with; and

9.1.6 the unconditional execution and delivery of and compliance with its obligations under this agreement does not contravene:

- (a) a Law or directive from a government Authority;
- (b) its constitution;
- (c) an agreement or instrument to which it is a party; or
- (d) any of its obligations to any other person.

9.2 **General**

The interpretation of any statement contained in any representation or warranty in this agreement is not restricted by reference to or inference from any other statement contained in any other representation or warranty in this agreement.

10 **MISCELLANEOUS**

10.1 **Rights Cumulative**

The rights of the parties under this agreement are cumulative and are in addition to any other rights of the parties.

10.2 **Approvals and Consent**

The Landlord may, acting reasonably, but subject to any express provision in this agreement to the contrary, conditionally or unconditionally give or withhold any consent contemplated by this agreement.

10.3 **Waiver**

10.3.1 A right in favour of a party under this agreement, subject to any express provision of this agreement to the contrary, may be waived prospectively or retrospectively by writing signed by that party.

10.3.2 Subject to **clause 10.3.1**, no other act, omission or delay by a party will constitute a waiver of a right.

10.4 **Exercise of Rights**

10.4.1 A single or partial exercise or waiver by a party of any right relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

10.4.2 A party will not be liable for any loss, Cost or expense of any other party caused or contributed to by the waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right.

10.5 **Business Days**

If:

10.5.1 the day on which any thing is to be done under this agreement is not a

Business Day, that thing must be done on the following Business Day; and

10.5.2 an act is required to be done on a particular day and the act is done after 5.00 pm on that day, it will be deemed to have been done on the following Business Day.

10.6 **Supervening Legislation**

Any present or future legislation which operates to vary an obligation or right of a person in connection with this agreement is excluded to the extent that its exclusion is not prohibited or rendered ineffective by law.

10.7 **Counterparts**

This agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

10.8 **Entire Agreement**

10.8.1 This agreement contains the entire agreement as concluded between the parties despite any prior negotiations and anything contained in any brochure, report or other document prepared by or on behalf of the Landlord for submission to the Tenant.

10.8.2 The Tenant warrants that it has not been induced to enter into this agreement by any representation made by or on behalf of the Landlord which is not set out in this agreement.

10.9 **Costs**

The Tenant must pay the Landlord on demand the Landlord's reasonable legal fees and disbursements in connection with the preparation, negotiation and execution of this agreement.

11 **NOTICES**

11.1 **General**

Any notice, demand, certification or other communication under this agreement:

11.1.1 must be given in writing and in the English language; and

11.1.2 may be given by an authorised representative of the sender.

11.2 **Method of Service**

In addition to any means authorised by law, any communication may be given by:

11.2.1 being personally served on a party;

11.2.2 being left at the party's current address for service;

11.2.3 being sent to the party's current address for service by pre-paid ordinary mail

or if the address is outside Australia, by pre-paid airmail; or

11.2.4 by facsimile to the party's current number for service; or

11.2.5 by email to the party's current email address for service.

11.3 **Address for Service**

11.3.1 The initial addresses and numbers for service are as specified in Schedule 1.

11.3.2 A party may from time to time change its address or numbers for service by notice to the other party.

11.4 **Service by Post**

A communication given by post is deemed received:

11.4.1 if posted within Australia to an Australian address, on the third Business Day after posting; and

11.4.2 in any other case, on the tenth Business Day after posting.

11.5 **Service by Facsimile**

A communication sent by facsimile is deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent in full to the addressee's facsimile number.

11.6 **Form Received**

A communication sent by facsimile is deemed given in the form transmitted unless the message is not fully received in a legible form and the addressee immediately notifies the sender of that fact by close of the next Business Day.

11.7 **Service by email**

A communication sent by email will be deemed received:

11.7.1 when the sender receives an automated message confirming delivery; or

11.7.2 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first, but if delivery or receipt is after 5:00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9:00am on the next Business Day and take effect from that time unless a later time is specified.

12 **GOVERNING LAW AND JURISDICTION**

12.1 **Governing Law**

This agreement is governed by and shall be construed in accordance with the laws of Queensland.

12.2 **Jurisdiction**

The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and the parties waive any right to object to any proceedings being brought in those courts because the venue is inconvenient, the courts lack jurisdiction or any other reason.

13 DISPUTE RESOLUTION

13.1 How Disputes are to be Determined

This **clause 13** applies:

13.1.1 to any dispute relating to the construction of the Development Works; or

13.1.2 where a clause of this agreement specifically refers the dispute for determination under this clause,

but:

13.1.3 disputes about termination of this agreement or anything which is a consequence of termination must not be dealt with under this clause; and

13.1.4 a party may apply to a court for urgent interlocutory relief where it is not reasonable to determine a dispute under this clause.

13.2 Dispute

Either party may give the other a notice (**Dispute Notice**) giving reasonable detail of a dispute to which **clause 13** applies and requiring it to be dealt with under this clause.

13.3 Consult to Resolve

Following receipt of a Dispute Notice the parties will consult in good faith with a view to resolving the matter in dispute.

13.4 Continue to Perform

Despite the giving of a Dispute Notice, the parties must continue to perform their respective obligations under this agreement and any other rights which the parties may have under this agreement or at law are not prejudiced. But, a party may not begin court proceedings (except proceedings for urgent interlocutory or interim injunction) unless the procedure set out in this clause has been completed.

13.5 Solution Binding

If a solution or compromise is agreed in writing and signed by the parties, it will be final and binding.

13.6 Expert

If a solution or compromise is not agreed within 5 Business Days after the Dispute Notice is given or within such longer period as the parties may agree in writing, the parties must submit the dispute to expert determination by:

13.6.1 agreeing on a person to appoint jointly as an Expert to determine the dispute and appointing that person on condition that the person undertakes to comply with **clause 13**; or

- 13.6.2 if the parties cannot agree on a person to appoint as an Expert within 5 Business Days after the Dispute Notice is given, either party asking the Executive Director for the time of the Property Council of Australia (Queensland Division) to appoint a person as an expert to determine the dispute on condition that the person undertakes to comply with **clause 13**.

13.7 **Appointment**

When the Expert is appointed, the parties must instruct the Expert that in determining the dispute, the Expert:

- 13.7.1 acts as an expert and not as an arbitrator;
- 13.7.2 is not liable for, and the parties release and indemnify the Expert from any claims in the course of acting as an expert under this clause including negligence but excluding actual fraud;
- 13.7.3 may decide on the rules of conduct under which the Expert is determine the dispute;
- 13.7.4 may make enquiries into and require evidence relating to the dispute as the Expert determines;
- 13.7.5 must give a written determination of the dispute including reasons; and
- 13.7.6 must make a determination within 5 Business Days of appointment or such other period as the parties agree in writing.

13.8 **Expert's Decision**

The parties:

- 13.8.1 may make submissions to the Expert and must give the Expert all assistance the Expert reasonably required;
- 13.8.2 must comply with the rules of conduct under which the Expert is to determine the dispute; and
- 13.8.3 must accept the Expert's decision as being final and binding on the parties unless there is an obvious error.

13.9 **Costs**

Each of the parties must pay:

- 13.9.1 its own costs incurred of and incidental to the resolution of a dispute in accordance with this clause; and
- 13.9.2 one half of any expenses or fees incurred in the conduct of the resolution including the fees of the Expert.

14 **TRANSFER**

14.1 **Assignment by Tenant**

Prior to the Commencement Date, the Tenant must not assign or purport to assign any of its rights or obligations under this agreement without the written consent of the Landlord.

14.2 **Sale by Landlord**

14.2.1 If the Landlord sells or otherwise transfers its interest in the Land prior to the Commencement Date, the parties must, at the Landlord's cost, enter into a deed with the purchaser or transferee (**New Owner**) under which:

- (a) the Tenant acknowledges that the New Owner is entitled to enforce the obligations of the Landlord under this agreement on and from the date of transfer; and
- (b) the New Owner agrees to be bound by the terms of this agreement on and from the date of transfer as if named as the Landlord.

14.2.2 The Landlord must not mortgage or charge the Land unless:

- (a) the mortgage is granted subject to the Tenant's rights under this agreement and the Lease;
- (b) the Landlord procures the written consent of the mortgagee to this agreement and the Lease on reasonable conditions acceptable to the Tenant; and
- (c) the mortgagee enters into a deed with the Tenant containing covenants reasonably required by the Tenant.

15 **CONFIDENTIALITY**

15.1 **Public Announcements**

Except as required by law or the requirements of any Authority (including the listing rules of the stock exchange), all press releases and other public announcements relating to the subject matter of this agreement must be in terms agreed by the parties. If a party gives to the other party a written request for approval of a press release or public announcement and the other party fails to respond within 3 Business Days the other party will be deemed to have given its approval.

15.2 **Confidentiality**

The terms of this agreement and all information exchanged between the parties are confidential and must not be disclosed by either party, their agents, contractors or employees without the written consent of the other party except if required by law or the listing rules of the stock exchange.

EXECUTED as a deed.

Signed by the Landlord

EXECUTED by **FOUR PILLARS SUPERANNUATION PTY LTD A.C.N. 632 184 617** in accordance with section 127(1) of the *Corporations Act 2001 (Cth)* by:

_____	Signature	_____
_____	Print Name	_____
_____	Print Position	_____

If only one person has signed, that person states that he/she is the sole director and sole secretary of the company

Signed by the Tenant

EXECUTED by **MCINTOSH INVESTMENTS AUSTRALIA PTY LTD A.C.N. 613 394 817** in accordance with section 127(1) of the *Corporations Act 2001 (Cth)* by:

_____	Signature	_____
_____	Print Name	_____
_____	Print Position	_____

If only one person has signed, that person states that he/she is the sole director and sole secretary of the company

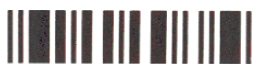
SCHEDULE 1 – SERVICE DETAILS

Landlord: Address: 22 Celestine Place Rosemount QLD 4560
Email: davidmcintosh444@hotmail.com
Attention: Dr D L McIntosh

Tenant: Address: 22 Celestine Place Rosemount QLD 4560
Email: davidmcintosh444@hotmail.com
Attention: Dr D L McIntosh

ANNEXURE A – LEASE

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in DERM see the department's website.

1. Lessor	Lodger (Name, address E-mail & phone number)	Lodger Code
FOUR PILLARS SUPERANNUATION PTY LTD A.C.N. 632 184 617 TRUSTEE UNDER INSTRUMENT [INSERT]		079

2. Lot on Plan Description	Title Reference
LOT 1 ON SP 316620	51205861

3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
		MCINTOSH INVESTMENTS AUSTRALIA PTY LTD A.C.N. 613 394 817	AS TRUSTEE

4. Interest being leased
Fee simple

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

6. Term of lease	7. Rental/Consideration
Commencement date/event: [INSERT] Expiry date: [INSERT] #Options: 1 x 20 YEARS #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	REFER ATTACHED SCHEDULE

8. Grant/Execution
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6, subject to the covenants and conditions contained in the attached schedule.

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

..... signature	Four Pillars Superannuation Pty Ltd A.C.N. 632 184 617
..... full nameDirector
..... qualificationDirector/Secretary
Witnessing Officer	Execution Date / / Lessor's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

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

..... signature	Mcintosh Investments Australia Pty Ltd A.C.N. 613 394 817
..... full nameDirector
..... qualificationDirector/Secretary
Witnessing Officer	Execution Date / / Lessee's Signature

(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Title Reference 51205861

This is the schedule referred to in item 8 of the lease dated day of 2019.

REFERENCE SCHEDULE

Item 1	Landlord
	FOUR PILLARS SUPERANNUATION PTY LTD A.C.N. 632 184 617 as trustee under instrument [INSERT]
Item 2	Tenant
	MCINTOSH INVESTMENTS AUSTRALIA PTY LTD A.C.N. 613 394 817 as trustee for McIntosh Family Trust No. 1
Item 3	Land
	The whole of the land in title reference 51205861 more particularly described as Lot 1 on SP 316620
Item 4	Commencement Date
	[INSERT]
Item 5	Termination Date
	[INSERT]
Item 6	Term
	Twenty (20) years
Item 7	Option to Renew
	One further term of twenty (20) years
Item 8	Rent
	\$189,500.00 per annum (exclusive of GST)
Item 9	CPI Review Dates
	On each anniversary of the Commencement Date, except on the Market Review Dates
Item 10	Market Review Dates
	On each 5 th anniversary of the Commencement Date
Item 11	Permitted Use
	Gym, conference centre education, café, retail, physical health services such as physiotherapy, nutrition and massage
Item 12	Amount of Public Risk Insurance
	\$20,000,000.00

Title Reference 51205861

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATIONS	4
2.	GROUND LEASE	7
3.	TERM	8
4.	RENT AND RENT REVIEW	9
5.	OUTGOINGS AND OTHER COSTS	12
6.	GST	13
7.	USE OF THE PREMISES	14
8.	MAINTENANCE AND REPAIR	15
9.	ALTERATIONS	18
10.	DAMAGE AND DESTRUCTION	18
11.	INSURANCES	19
12.	RISK AND INDEMNITIES	20
13.	ASSIGNMENT AND SUBLETTING	21
14.	LANDLORD'S COVENANTS	21
15.	DEFAULT AND TERMINATION	22
16.	TERMINATION OF TERM	25
17.	NOTICES	26
18.	DISPUTE RESOLUTION	26
19.	LANDLORD TO PURCHASE IMPROVEMENTS	28

Title Reference 51205861

1. **DEFINITIONS AND INTERPRETATIONS**

1.1 **Definitions**

In this Lease unless the context otherwise requires:

Access Conditions means the conditions of access to the Premises set out in **clause 8.6**;

Air Conditioning Equipment means any plant, machinery, chilled water piping, electrical installations, ductwork and diffusers used to heat, cool, circulate or extract air in the Premises or servicing the Premises;

Amenities include all toilets, urinals, basins, sinks, showers and drains in the Premises;

Authority includes:

- (a) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) any provider of public utility services, whether statutory or not; and
- (c) any other person, authority, instrumentally or body having jurisdiction, rights, powers, duties or responsibilities over the Land or anything in relation to the Land.

Building means any building constituting the Improvements;

Claim includes any claim or legal action;

Commencement Date means the commencement date set out in the **Item 4**;

Cost means any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) and, where appropriate, includes reasonable fees and disbursements payable to contractors, consultants and lawyers;

CPI Review Date means each of the dates stated in **Item 9**;

Default Rate means 2% per annum above the highest overdraft rate charged by the Landlord's bank for commercial loans in excess of \$100,000.00 at the date for payment of any money and, in the absence of manifest error, a written statement by the Landlord's bank manager will be conclusive evidence of the rate;

Expert means a person appointed under **clause 18**;

GST has the same meaning given to that term in the GST Act;

GST Act means the *New Tax System (Goods and Services Tax) Act 1999*;

Improvements mean all improvements constructed on the Land by the Tenant including the Building and any modifications, extensions or alterations to those improvements;

Land means the Land stated in **Item 3**;

Landlord means the party described in **Item 1** and includes:

- (a) in the case of a company, the Tenant's successors and permitted assigns; and
- (b) in the case of a person, the Tenant's executors, administrators and permitted assigns;

Title Reference 51205861

Landlord's Representative means each of the Landlord's employees, agents, contractors and consultants.

Law includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

Lease means this Lease including any variations;

Lease Year means every 12 month period commencing on and from the Commencement Date;

Market Review Date means each of the dates stated in **Item 10**;

Outgoings mean all amounts paid or payable by the Landlord (or for which the Landlord may be or become liable) during the Term in connection with the ownership, management, operation and maintenance of the Land whether or not by direct assessment including Rates and Taxes;

Permitted Use means the use of the Premises described in **Item 11**;

Premises means the Land and where the where the context allows includes:

- (a) all the Landlord's fixtures, fittings, plant and machinery equipment (including air-conditioning plant if any), fire protection equipment and chattels installed in or on the Premises;
- (b) all the services to or in the Premises and any alterations, additions, improvements or modifications made to them from time to time; and
- (c) all car parking areas (if any) on or within the Premises;

Property Institute means the Australian Property Institute Limited ACN 608 309 128 Queensland Division or its successor or other organisation replacing it;

Rates and Taxes means all rates, taxes (including GST which the Landlord is not entitled to an input tax credit), land tax, levies, charges, assessments and/or impositions payable to any Authority in connection with the Premises or on the Landlord or Tenant concerning the Premises but does not include any income tax or capital gains tax;

Rent means the amount stated in **Item 8** and includes any variation of it under **clause 4**;

Requirement means any requirement, notice, order or direction received from or given by any statutory, public or other competent authority, present or future;

Review Date means a CPI Review Date or a Market Review Date as the context requires;

Services means all gas, electricity, telephone, water, sewerage, fire equipment, ventilation, Air Conditioning Equipment, hydraulic, elevator and security services and all other services or systems provided in or servicing the Premises or available for the Tenant's use;

Tenant means the party described in **Item 2** and includes:

- (c) in the case of a company, the Tenant's successors and permitted assigns; and
- (d) in the case of a person, the Tenant's executors, administrators and permitted assigns;

Tenant's Agents means each of the Tenant's employees, contractors, agents, customers, clients, visitors, subtenants or licensees who may be in or on the Premises;

Title Reference 51205861

Tenant's Fittings means all fittings, furniture, plant, equipment, partitions or other articles of personal property and chattels, capable of being removed without causing any damage to the Premises, which are in or on the Premises, and are not owned by the Landlord, but not including the Improvements;

Term means the term described in **Item 6** and any extension or renewal of this Lease or any period during which the Tenant holds over or remains in occupation of the Premises; and

Termination Date means the Termination Date set out in **Item 5**;

Valuer means a person who:

- (a) is a full member of the Property Institute and has been for the last 7 years;
- (b) is active in the relevant market at the time of appointment under this Lease; and
- (c) has at least 5 years' experience in valuing the kind of premises leased by this Lease.

1.2 Construction

1.2.1 Reference to:

- (a) a person includes:
 - (b) a corporation and government body; and
 - (c) the legal representatives, successors and assigns of that person;
 - (d) month or monthly means calendar month or calendar monthly;
 - (e) a right includes a remedy, authority or power; and
 - (f) an **Item** is an item of the Reference Schedule of this Lease.

1.2.2 A word importing:

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

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

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

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

1.2.6 If any provision of this Lease:

- (a) is illegal, invalid or unenforceable, that provision will, as far as possible, be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable and so as to give it a valid operation of a partial character.

Title Reference 51205861

- (b) cannot be read down, that provision or part will be deemed to be void and severable and the remaining provisions of this Lease will not be affected or impaired.
- 1.2.7 The terms contained in this Lease comprise the whole agreement between the parties and no further terms will be implied or arise between them under any collateral or other agreement made on or prior to execution of this Lease.
- 1.2.8 Headings and the table of contents to this Lease have been inserted for guidance only and will not affect the construction of this Lease.
- 1.2.9 References to clauses, schedules and annexures will be construed as references to clauses of and schedules and annexures to this Lease.
- 1.2.10 If any organisation has ceased to exist, reference to that organisation will be deemed to be reference to an organisation as then serves substantially the same objects as the original organisation and a reference to the president of an organisation will, in the absence of a president, be read as reference to the senior officer for the time being of the organisation or any other person fulfilling the duties of president.
- 1.2.11 Unless the context otherwise requires, where any area of the Premises or the Building is to be calculated or measured for the purposes of this Lease, those calculations and measurements will be in accordance with the method of measurement being:
- (a) the relevant method for the measurement of buildings which are similar to the Premises using the lettable area Method of Measurement (current edition) published by the Property Council of Australia; or
 - (b) if there is no relevant method, the method or criteria which the Tenant selects as the most appropriate (acting reasonably).
- 1.2.12 Unless otherwise stated where the Landlord has a discretion or its consent or approval is required the Landlord:
- (a) must not unreasonably withhold or delay its discretion, consent or approval; and
 - (b) must exercise its discretion acting reasonably.
- 1.2.13 If a provision of this Lease requires a notice to be given by a party, it must be in writing unless the provision states that it may be given orally.
- 1.2.14 This Lease is governed by and will be construed according to the laws of Queensland.
- 1.2.15 If there is any inconsistency between the covenants, powers and other provisions of the Lease and those implied by the *Property Law Act 1974* (Qld) then the covenants, powers and provisions of the Lease prevail unless they are unlawful in which event the covenants, powers or other provisions of the *Property Law Act 1974* (Qld) apply.

2. GROUND LEASE

2.1 Grant

The Landlord grants and the Tenant accepts a lease of the Premises for the Term on the terms and conditions set out in this Lease (excluding the Improvements which the parties acknowledge are owned by the Tenant to the fullest extent permissible at law).

2.2 Constructed Improvements

Title Reference 51205861

The parties acknowledge that:

- 2.2.1 the Tenant has caused the construction and installation of the Improvements on the Land to make the Premises suitable for the Permitted Use; and
- 2.2.2 notwithstanding any other provision of this Lease, the Tenant is the owner of the Improvements and for the duration of the Term the Improvements are agreed and deemed to be tenant's property notwithstanding:
- (a) the degree, purpose or object of affixation of the Improvements or any part of the Improvements;
 - (b) any law to the contrary; or
 - (c) any right granted to the Landlord or any obligation imposed upon the Tenant whether under this Lease or any other document including any right or obligation relating to the use, occupation, maintenance, repair, subsistence, assignment, subleasing, charging or control of the Improvements.

3. TERM

3.1 Term

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

3.2 Option

3.2.1 The Landlord will grant an extension of this Lease of the Premises to the Tenant for the further term specified in **Item 7** and upon the same terms and conditions as this Lease (except this **clause 3.2** will be omitted from the extended lease) if the Tenant:

- (a) is not in default under this Lease other than a default which has been waived by the Landlord; and
- (b) has not given notice to the Landlord that the Tenant does not wish to extend this Lease for the further term.

3.2.2 Notice under **clause 3.2.1** must be given not less than 3 months prior to expiry of the Term.

3.3 Holding Over

If the Landlord does not indicate refusal to the Tenant continuing to occupy the Premises beyond the Termination Date (otherwise than under a lease for a further term) then:

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

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

Title Reference 51205861

3.3.3 The quarterly tenancy will be terminable at any time by either the Landlord or the Tenant giving to the other 90 days' notice expiring on any date.

4. RENT AND RENT REVIEW

4.1 Rent

4.1.1 The Tenant must pay the Rent to the Landlord without demand, deduction or right of set-off by equal monthly instalments in advance on the first day of each month.

4.1.2 If necessary, the first and last instalments will be apportioned on a daily basis.

4.1.3 The first instalment will be paid on the Commencement Date.

4.1.4 All instalments must be paid by electronic funds transfer to the account nominated by the Landlord to the Tenant from time to time.

4.2 CPI Rent Review

4.2.1 The Rent will be reviewed on each CPI Review Date to the higher of:

- (a) the Rent payable immediately preceding the relevant Review Date increased by 4%;
or
- (b) the amount represented by NR in the formula contained in **clause 4.2.2**.

4.2.2 **(Formula)** $NR = (A \times B) \div C$

Where:

NR = the Rent payable for the following Lease Year;

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

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

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

4.2.3 **Index Number** means:

- (a) the Consumer Price Index All Groups (Brisbane) number as published and made available by the Australian Bureau of Statistics on the basis that:
 - (i) the reference base for the index is the fiscal year 1989/90; and
 - (ii) if the Australian Statistician updates the reference base of the index, appropriate arithmetical adjustments will be made to preserve the intended continuity of the calculation;
- (b) if the index referred to in **clause 4.2.3(a)** is suspended or discontinued, the index published by the Australian Bureau of Statistics which reflects changes in the cost of living in Brisbane at the date of this Lease and at the time of variation of the Rent as determined by:
 - (i) agreement between the parties; or

Title Reference 51205861

- (ii) if the parties are unable to agree within 14 days of notice that a dispute exists is given, the President of the Property Institute, or by some person nominated by the President, whose decision is conclusive and binding.

4.3 Market Rent Review

The Rent may be reviewed on each Market Review Date to an amount determined in accordance with the following procedure:

- 4.3.1 The Landlord may vary the Rent to an amount which it considers to be the market rent for the Premises by notice to the Tenant (**Landlord's notice**) at any time during the period commencing 9 months before and ending 6 months before a Market Review Date.
- 4.3.2 If the Landlord fails to give the Landlord's notice within the period specified in **clause 4.3.1** the Rent will not be reviewed unless the Tenant refers the matter for determination by a Valuer under **clause 4.3.6 to 4.3.10**.
- 4.3.3 Within 21 days after service of the Landlord's notice, the Tenant may serve on the Landlord a notice (**Tenant's notice**) disputing the amount stated in the Landlord's notice, stating the amount which the Tenant considers to be the market rent for the Premises and requiring the market rent to be determined under **clauses 4.3.5 to 4.3.10**.
- 4.3.4 If the Tenant fails to give the Tenant's notice within 21 days, the market rent for the Premises must be referred for determination by a Valuer under **clauses 4.3.6 to 4.3.10**.
- 4.3.5 Within 14 days of service of the Tenant's notice, the Landlord and the Tenant or their representatives will meet and attempt to resolve their dispute as to the market rent payable for the Premises at the Market Review Date.
- 4.3.6 If the Landlord and Tenant have not agreed on the market rent for the Premises within 30 days after service of the Tenant's notice:
 - (a) The dispute must be referred for determination by a Valuer to be nominated by the president of the Property Institute at the request of either the Landlord or the Tenant.
 - (b) The appointed Valuer will make a determination of the market rent as at the particular Market Review Date acting as an expert and not as an arbitrator.
 - (c) The Valuer must make a written determination containing reasons within 45 days of the appointment.
 - (d) The Valuer's determination will be final and binding on the Landlord and the Tenant.
 - (e) The Valuer's Costs will be paid by the Landlord and the Tenant equally. Either party may pay the Valuer's Costs and recover one half of the amount paid from the other party.
- 4.3.7 A Valuer is not to act as an expert under **clause 4.3** until the Valuer has given written notice of acceptance of the appointment to the Landlord and the Tenant.
- 4.3.8 A Valuer who accepts appointment under **clause 4.3** may confer with the Landlord and the Tenant and may require either party to supply information which the Valuer considers relevant to the determination and:
 - (a) Any request for information must be complied with promptly in writing by the party to whom it is directed, who will make a copy of that information available to the other

Title Reference 51205861

party.

- (b) Either party may supply the Valuer with other information which it considers relevant and, if it does so, must make a copy of that information available to the other party.
- (c) Information may be provided on a confidential basis and, if so, the party receiving it and the Valuer will treat the information as confidential and will not use that information other than for the purposes of **clause 4.3**.

4.3.9 The Landlord and the Tenant may make written submissions to the Valuer in relation to the market rent within 21 days of receipt of written notice of the Valuer's acceptance of his appointment. A party making a written submission must at the same time make a copy of it available to the other party.

4.3.10 The Valuer must not determine the market rent until the expiration of that period of 21 days.

4.3.11 In determining the market rent as at a Market Review Date, the Valuer must do so on the basis that the Premises is unimproved vacant land available for lease by a willing landlord and a willing tenant and may take into account any matters considered relevant including taking into account or disregarding any written submissions received from the Landlord or the Tenant but, in making the determination, the Valuer must disregard:

- (a) the value of Improvements or any other fixtures made or installed at the cost of the Tenant except Services and Services infrastructure connected or available to the Premises;
- (b) the value of the Tenant's Fittings;
- (c) any goodwill attributable to the Premises by reason of the trade, business or activity carried on by the Tenant;
- (d) any state of disrepair of the Premises if that condition results from any work carried out or not carried out on the Premises by the Tenant or from the Tenant's breach of any provision of this Lease;
- (e) any inducement provided or to be provided to the Tenant in connection with the granting of this Lease; and
- (f) anything (including part of a submission received from the Landlord or the Tenant) which is not consistent with the matters to be disregarded or taken into account under this **clause 4.3.11**;

and take into account the following matters or, where the context requires, make the following assumptions:

- (g) the provisions of this Lease;
- (h) the Term and any option for renewal (disregarding the elapsed part of the Term); and
- (i) the Tenant has observed and performed all of the provisions of this Lease.

The term **inducement** means any inducement or incentive provided by a landlord in respect of the tenant's entering into a lease of comparable premises and includes any payment, transfer of property, fit-out of premises or provision of services, assumption of obligation, rent moratorium or reduction, loan or gift.

Title Reference 51205861

4.4 Payment of Rent Pending Review

- 4.4.1 Until the determination of Rent has been made, the Tenant will continue to pay the Rent payable immediately prior to the Review Date.
- 4.4.2 Any variation in Rent as the result of review under **clauses 4.2 or 4.3** will take effect on the Review Date.
- 4.4.3 Within 14 days of the determination, the Landlord will refund any overpaid Rent or the Tenant will pay any shortfall.

5. OUTGOINGS AND OTHER COSTS

5.1 Pay Outgoings

The Tenant must pay all Outgoings:

- 5.1.1 to the relevant Authority on or before the due date if assessed directly against the Tenant; or otherwise,
- 5.1.2 to the Landlord within seven (7) days of written demand.

5.2 Apportionment of Outgoings

Where any Outgoings are not co-extensive with a complete Lease Year, they will be taken to accrue and be apportioned from day to day. Any dispute about their apportionment may be referred by either party for Expert determination under **clause 18.7**.

5.3 Utilities

- 5.3.1 The Tenant must pay all usage charges for electricity, gas, water, telecommunications and other services consumed in the Premises:
 - (a) to the relevant Authority on or before the due date if assessed directly against the Tennant; or
 - (b) to the Landlord within seven (7) days of written demand (which charges will not exceed the actual rate at which the Tennant would be able to purchase the service direct from the relevant Authority).
- 5.3.2 The Landlord must ensure that all utilities and other services supplied to the Premises are separately metered.

5.4 Costs

The Tenant must pay the Landlord on demand:

- 5.4.1 any stamp duty payable on this Lease including any fines and penalties except those due to the Landlord's default and fees payable to register this Lease; and
- 5.4.2 the Landlord's reasonable legal fees and disbursements in connection with:
 - (a) the preparation, negotiation and execution of this Lease;
 - (b) any consent required under this Lease;

Title Reference 51205861

- (c) any assignment or subletting; and
- (d) any surrender or termination of this Lease except through its expiry.

6. GST

6.1 Definitions

In this **clause 6**:

Adjustment note, adjustment, recipient, supply, tax invoice and taxable supply have the same meaning given to those terms in the GST Act;

Consideration means any consideration payable under the Lease in return for a taxable supply, but does not include any amount on account of GST;

Input tax credit has the same meaning given to that term in the GST Act, but also includes a rendered input tax credit and an adjusted input tax credit under the GST Act.

Supplier means the entity making a supply.

6.2 GST Exclusive

Except as otherwise provided all consideration payable under this Lease in relation to any supply is exclusive of GST.

6.3 Increase in Consideration

To the extent that any supply under this Lease constitutes a taxable supply, the consideration payable by the recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

6.4 Payment of GST

Any GST Amount must be paid by the recipient to the supplier at the same time and in the same manner as the relevant consideration is paid or given under this Lease, without any right of set-off or deduction (unless otherwise provided in this Lease).

6.5 Reimbursements

If this Lease requires the recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier (**relevant expense**) the amount which the recipient must pay, reimburse or contribute will be the amount net of any input tax credits to which the Supplier is entitled in respect of the relevant expense, together with any GST amount if the payment, reimbursement or contribution constitutes a taxable supply by the Supplier to the recipient.

6.6 Tax Invoice

The Supplier must provide to the recipient a valid tax invoice at or prior to the time of payment of any GST amount.

6.7 Adjustments & Adjustment Notes

Title Reference 51205861

To the extent that any adjustment occurs in relation to a taxable supply, the supplier must issue an adjustment note to the recipient within 7 days of becoming aware of the adjustment, and any payment necessary to give effect to such adjustment must be made within 7 days after the date of receipt of the adjustment note.

7. USE OF THE PREMISES

7.1 Permitted Use

The Tenant must use the Premises only for the Permitted Use.

7.2 Restrictions on Use

The Tenant must not:

- 7.2.1 use or permit the Premises to be used for any illegal purpose; or
- 7.2.2 do or permit anything on the Premises which constitutes a legal nuisance to occupiers of adjoining premises.

7.3 Compliance with Laws and Requirements

- 7.3.1 At its expense, the Tenant must comply with and observe any Law or Requirement concerning the operation of the Tenant's business from the Premises or the Tenant's use of the Premises.
- 7.3.2 If any Law or Requirement is notified to or served upon the Tenant, it must promptly provide a complete copy to the Landlord.
- 7.3.3 If it is lawful to do so, before complying with any Law or Requirement under **clause 7.3.1**, the Tenant must obtain the Landlord's consent.

7.4 Signs and Naming Rights

- 7.4.1 The Landlord gives the Tenant exclusive rights to:
 - (a) construct, install and attach to the façade of the Building, the roof of the Building, and the Land any signs, logos, notices or advertisements of any kind connected with the Tenant's business or the Tenants use of the Premises; and
 - (b) name the Premises and construct, install and attach on the façade of the Building, the roof of the Building and the Land any signs, logos or notices indicating the name or names of the Tenant or parties associated with the Tenant.
- 7.4.2 The Tenant must:
 - (a) notify the Landlord before installing signs under **clause 7.4.1**;
 - (b) comply with all Laws relating to the installation of the signs;
 - (c) maintain the signs in good repair and condition in accordance with **clause 8.1**; and
 - (d) remove the signs on termination of this Lease.

Title Reference 51205861

7.5 Services

- 7.5.1 The Tenant must not interfere with any of the Services unless permitted under this Lease without the prior written consent of the Landlord.
- 7.5.2 The Tenant must not install any equipment in the Premises that may overload any of the Services without the prior written consent of the Landlord.
- 7.5.3 If the Landlord gives consent under this clause the Tenant will be responsible at its cost for upgrading or altering the Services to accommodate any equipment which the Tenant proposes to install.

7.6 Amenities

- 7.6.1 The Tenant must not use the Amenities other than for their intended purposes nor place in them any substance which they were not designed to receive.
- 7.6.2 The Tenant will pay to the Landlord the Costs of repairing any damage to the Amenities arising from the misuse by the Tenant or the Tenant's Agents of the Amenities.

7.7 Hazardous Materials

The Tenant must ensure that any explosive, inflammable or hazardous material are stored safely in the Premises and in compliance with all applicable Laws and Requirements.

7.8 Contamination

- 7.8.1 The Tenant must take the necessary steps to control or remove any pollutant or contaminant brought onto the Premises by the Tenant or the Tenant's Agents.
- 7.8.2 The Tenant must collect and dispose of all garbage, waste matters and other pollutants from the Premises at a place and in a manner required by any relevant Authority.

7.9 Viewing

- 7.9.1 The Landlord or the Landlord's Representatives may enter into the Premises at all reasonable times and on reasonable notice to view the Premises with:
- (a) prospective tenants of the Premises but only during the last three (3) months of the Term; or
 - (b) prospective purchasers of the Premises.
- 7.9.2 The Landlord in exercising its rights under this **clause 7.9** must comply with the Access Conditions and must not interfere with or disturb the Tenant's operations.

8. MAINTENANCE AND REPAIR

8.1 Repair of Premises

The Tenant must keep the Premises in good repair and condition.

8.2 Structural Repairs

As owner of the Improvements the Tenant must carry out or cause to be carried out:

Title Reference 51205861

8.2.1 any maintenance, repair or replacement of any part or the whole of the Improvements or the interior or exterior of the Improvements; and

8.2.2 any structural or major component part repair or replacement or any capital expenditure to the Improvements,

which is necessary for the Tenant to keep the Improvements or the Premises in good repair, order and condition or in order to comply with any Laws or Requirements.

8.3 Cleaning, Maintenance and Breakages

The Tenant will:

8.3.1 keep the Premises clean and tidy;

8.3.2 keep the Premises free from dirt and rubbish, store all waste and garbage in proper receptacles and arrange for its regular removal from the Premises;

8.3.3 keep the Tenant's Fittings clean and maintained in good repair and condition; and

8.3.4 immediately repair or replace:

(a) broken glass with glass of the same quality;

(b) damaged or inoperative electric light bulbs, globes, tubes and other means of illumination and light switches and power points which may become damaged or fail to operate.

8.4 Landlord's Right to Inspect and Repair

8.4.1 Except in the case of emergency (when no notice will be required) after giving the Tenant 2 days' notice, the Landlord and the Landlord's Representatives may enter the Premises accompanied by the Tenant or the Tenant's nominated representative and view their condition.

8.4.2 The Landlord may serve a notice on the Tenant requiring it to repair any defect, the repair of which is the Tenant's obligation, within a reasonable time.

8.4.3 If the Tenant does not make the repairs to the Landlord's reasonable satisfaction, the Landlord and the Landlord's Representatives may enter any part of the Premises and make the repairs at the Tenant's Cost.

8.4.4 In exercising its powers under this **clause 8.4**, the Landlord must use reasonable endeavours to minimise any interference to the Tenant and the operation of the Tenant's business.

8.5 Landlord May Enter

8.5.1 The Landlord may enter the Premises with the Landlord's Representatives and necessary materials and appliances to:

(a) comply with any Law or Requirement involving the destruction of noxious animals, rodents or other pests;

(b) carry out any repairs, alterations, renovations, extensions or works;

Title Reference 51205861

- (c) exercise the Landlord's rights; or
- (d) provide any Services to the Tenant.

8.5.2 In carrying out work under this **clause 8.5** the Landlord must use reasonable endeavours to minimise any interference to the Tenant and the operation of the Tenant's business.

8.6 Access Conditions

8.6.1 If the Landlord wishes to exercise its right to enter the Premises, the Landlord must (except in the case of an emergency, when **clause 8.7** applies) comply with the following conditions:

- (a) give the Tenant not less than 2 days prior written notice;
- (b) enter the Premises at reasonable times and wherever possible, outside normal business hours;
- (c) enter the Premises only when accompanied by a person appointed by the Tenant, but the Tenant must make that person available;
- (d) (except in the case of an emergency) comply with the Tenant's reasonable requests with respect to safety and security of the Premises including, if the Tenant reasonably requests, security checks to the Tenant's reasonable satisfaction on any of the Landlord's Representatives requiring access to the Premises; and
- (e) minimise any inconvenience or disruption to the Tenant or the Tenant's business.

8.6.2 The Landlord must:

- (a) use its best endeavours to avoid damage to the Premises or the Tenant's business; and
- (b) immediately make good all damage caused to the Premises or the Tenant arising from the exercise of those rights; and
- (c) pay to the Tenant within 14 days after a request, the Cost of any security services incurred by the Tenant as a result of giving the Landlord access to the Premises.

8.6.3 The Landlord indemnifies the Tenant on demand against any Claim the Tenant may suffer or incur arising from the Landlord's failure to comply with the Access Conditions.

8.7 Landlord's rights in an emergency

8.7.1 If there is an emergency the Landlord may enter the Premises:

- (a) at any time if it has first telephoned the person whose name the Tenant notifies to the Landlord for that purpose from time to time to inform that person of the proposed entry;
- (b) if required by the Tenant, accompanied by a person appointed by the Tenant from time to time; and
- (c) subject to the requirements of **clause 8.7.3**,

Title Reference 51205861

to ascertain and if necessary remedy the cause or limit the effect of the emergency.

8.7.2 The Landlord must promptly inform the Tenant in writing of any entry effected under **clause 8.7**.

8.7.3 In exercising its rights of entry under this **clause 8.7** the Landlord must comply with the Access Conditions, except that if the persons named or appointed by the Tenant under **clause 8.7.1** are uncontactable or unavailable after the Landlord has used reasonable endeavours to comply with **clauses 8.7.1(a)** and **8.7.1(b)**, having regard to the nature of the emergency, then the Landlord is taken to have complied with the provisions of those clauses.

9. ALTERATIONS

9.1 Non Structural Alterations

9.1.1 The Tenant may install in the Premises the Tenant's Fittings without the consent of the Landlord.

9.1.2 Despite **clause 9.1.1**, the Landlord's consent is required to any works that affect the structure of the Building, in which case, the Tenant must comply with **clause 9.2**.

9.2 Structural Alterations

9.2.1 The Tenant will not undertake any works that affect the structure of the Building without the Landlord's prior consent.

9.2.2 The Tenant must submit plans and specifications of the proposed alteration, addition or installation for the Landlord's consent.

9.2.3 As a condition of its approval the Landlord may require:

- (a) the Tenant to engage consultants approved by the Landlord to ensure that the works are in sympathy with the Building;
- (b) the Tenant to use only the drawings, plans and specifications prepared by those consultants after first having them approved by the Landlord's consultants;
- (c) the Tenant to pay the Costs of the Landlord's consultants approving the plans and specifications referred to in **clause 9.2.2** and, if the Landlord pays those Costs, it may recover them from the Tenant as a debt;
- (d) any proposed work to be supervised by a person nominated by the Landlord and the Costs of supervision will be paid by the Tenant;
- (e) any proposed work to be carried out by contractors approved by the Landlord;
- (f) the Tenant to obtain, at its expense, from any competent authority all approvals or permits necessary to enable the proposed work to be lawfully undertaken and, if requested by the Landlord, the Tenant must produce a copy of any approval and permit; and
- (g) the Tenant to reimburse the Landlord for Costs incurred by it as a result of the installation, operation or removal of any equipment, fixture, fitting or machinery.

10. DAMAGE AND DESTRUCTION

Title Reference 51205861

10.1 Definitions

In this **clause 10, reinstatement works** means the work necessary to:

10.1.1 reinstate the Building; or

10.1.2 make the Premises fit for the Tenant's occupation and use or accessible by the Tenant.

10.2 Reinstatement

If the Premises are damaged or destroyed so as to render any part of them wholly or substantially:

10.2.1 unfit for the Permitted Use by the Tenant; or

10.2.2 inaccessible having regard to the normal means of access;

then the Tenant must as soon as practicable commence and undertake the reinstatement works.

10.3 Termination

If the parties agree (acting reasonably) that the reinstatement works cannot be completed within 24 months from the date of the damage or destruction, this Lease may be terminated by either party giving not less than 1 months' notice to the other party and, at the expiration of that period, this Lease will terminate.

10.4 Antecedent Rights

No liability will attach to either party because of termination of this Lease under **clause 10.3** but that termination will be without prejudice to the rights of either party for any antecedent breach or non-observance of any provision of this Lease.

10.5 Dispute Resolution

10.5.1 Any dispute arising under this **clause 10** will be determined by a member of the Property Institute appointed by the president at the request of either the Landlord or the Tenant.

10.5.2 In making the determination, the appointed member will act as an expert and not as an arbitrator and the member's determination will be final and binding on both parties.

10.5.3 The Cost of the determination will be paid by both parties equally unless otherwise decided by the member.

11. INSURANCES

11.1 Tenant's Insurances

The Tenant must at all times during the Term effect and keep current in respect of the Premises:

11.1.1 insurance for the full Cost of replacing and reinstating the Building, and the Services if they are damaged or destroyed by any cause including fire, explosion, flood, storm, tempest, earthquake, civil commotion or malicious damage and other usual or customary risks and on terms that a prudent owner of the Building would require and approved by the Landlord

Title Reference 51205861

(acting reasonably);

11.1.2 a public liability insurance policy which notes the interest of the Landlord and is for the sum stated in **Item 12** or such higher amount as the Landlord may reasonably require from time to time; and

11.1.3 an adequate insurance policy covering any windows, doors and plate glass forming part of or in the Premises for the full reinstatement Cost.

11.2 Evidence of Insurance

The Tenant must:

11.2.1 deliver to the Landlord (or as the Landlord directs) a certificate or other evidence satisfactory to the Landlord of currency on each anniversary of the Commencement Date and otherwise as and when reasonably required by the Landlord; and

11.2.2 notify the Landlord, as soon as the Tenant becomes aware, that the policy is going to lapse or be cancelled.

11.3 Tenant's Insurance

The Tenant's insurance taken out under this **clause 11**:

11.3.1 must be with a reputable insurer approved by the Landlord (acting reasonably);

11.3.2 be in the name of the Tenant and note the Landlord's interest in the Premises; and

11.3.3 have no limit on the number of claims that can be made under it.

11.4 Effect on the Insurances

The Tenant must not do or omit to do anything to or upon the Premises which may:

11.4.1 vitiate or render void or voidable the Tenant's insurance; or

11.4.2 conflict with any Law or Requirement, the requirements of the Landlord's insurer relating to fire, fire safety or fire prevention or Landlord's insurance policy.

12. RISK AND INDEMNITIES

12.1 Tenant's Risk and Release

The Tenant:

12.1.1 occupies and uses the Premises at the Tenant's risk; and

12.1.2 releases the Landlord from liability for any Claim in respect of or arising from any of the circumstances set out in **clause 12.2**.

12.2 Tenant Indemnity

The Tenant indemnifies the Landlord against all Claims incurred because of:

12.2.1 the negligent use or misuse of the Services or the Improvements by the Tenant or the Tenant's Agents;

Title Reference 51205861

- 12.2.2 the overflow or leakage of water from the Premises caused by the negligence of the Tenant of the Tenant's Agents under this Lease;
- 12.2.3 any injury to or death of any person in the Premises caused by the negligence of or default by the Tenant or the Tenant's Agents; and
- 12.2.4 damage to plate and other glass caused by any act or omission of the Tenant or the Tenant's Agents,

except to the extent that the Claim arises from the negligent act or omission of the Landlord.

13. ASSIGNMENT AND SUBLETTING

13.1 Assignment

The Tenant must obtain the Landlord's consent before the Tenant assigns or transfers or sublets this Lease or the Tenant's interest in the Premises.

13.2 Conditions of Consent

The Landlord must not unreasonably withhold or delay consent if the Tenant first makes an application to the Landlord for consent and the following provisions have been observed by the Tenant:

- 13.2.1 the Tenant is not in default under this Lease other than a default which has been waived by the Landlord;
- 13.2.2 the Tenant proves to the Landlord's reasonable satisfaction that the incoming tenant is a respectable, responsible and solvent person capable of complying with the Tenant's obligations under this Lease;
- 13.2.3 the Tenant obtains, at its expense, from the incoming tenant an executed deed, in a form reasonably required by the Landlord, requiring the incoming tenant to perform and observe the Tenant's obligations under this Lease; and
- 13.2.4 the Tenant pays the Landlord's reasonable Costs of giving its consent, whether or not the proposed assignment or transfer proceeds to completion.

13.3 Transfer to Related Corporation

Despite **clause 13.1**, the Tenant may transfer this Lease to a related body corporate without the Landlord's consent, but the Landlord must be notified in writing prior to the transfer. If the Tenant transfers this Lease to a related body corporate the Tenant remains liable to the Landlord for the Tenant's obligations under this Lease.

14. LANDLORD'S COVENANTS

14.1 Quiet Enjoyment

If the Tenant performs and observes all of its obligations under this Lease, it may use the Premises without interruption or disturbance from the Landlord or any person claiming by, through or under the Landlord.

14.2 Person Other Than Landlord Becoming Entitled to Rent

Title Reference 51205861

14.2.1 If any person other than the Landlord becomes entitled to receive the Rent, that person will have the benefit of all covenants by the Tenant under this Lease.

14.2.2 If required by and at the expense of the Landlord, the Tenant will enter into reasonable covenants with that other person.

15. DEFAULT AND TERMINATION

15.1 Default

15.1.1 The Tenant will be in default if after receiving written notice from the Landlord specifying the default:

- (a) the Rent or any money payable by the Tenant remains unpaid for 21 days after the giving of the notice;
- (b) repairs required by the notice are not carried out by the Tenant within a reasonable time specified in the notice having regard to the nature and extent of the work required but not being less than 28 days after the giving of the notice;
- (c) the Tenant fails to perform or observe any of its covenants or obligations under this Lease within a reasonable time specified in the notice but not being less than 28 days after the giving of the notice; or
- (d) the Tenant (except to reconstruct or amalgamate while solvent) enters into any form of liquidation, is wound up or dissolved, enters into a scheme of arrangement for creditors, is placed under official management or a receiver and/or manager is appointed to the Tenant.

15.1.2 In the case of a default of any term of this Lease, where notice is required to be given pursuant to section 124 of the *Property Law Act 1974* (Qld), such notice will provide that the period of 28 days is the reasonable period within which the Tenant is to remedy any such default if it is capable of remedy, or to make compensation to the satisfaction of the Landlord.

15.2 Forfeiture of Lease

Subject to giving any prior demand or notice required by any Law and without prejudice to any other Claim which the Landlord has or may have against the Tenant or any other person in respect of default, if the Tenant defaults as specified in **clause 15.1** the Landlord may:

- 15.2.1 re-enter and take possession of the Premises and this Lease will terminate;
- 15.2.2 by notice to the Tenant, terminate this Lease from the date of giving the notice; and/or
- 15.2.3 by notice to the Tenant, convert the unexpired portion of the Term into a tenancy from month to month and, after the notice and until the tenancy is terminated, the Tenant will occupy the Premises as tenant from month to month.

15.3 Landlord May Rectify

Without notice to the Tenant, any Costs incurred by the Landlord in remedying a default may be treated by the Landlord as a liquidated debt payable by the Tenant.

15.4 Waiver

15.4.1 No waiver by the Landlord will be effective unless it is in writing.

Title Reference 51205861

- 15.4.2 The Landlord's failure to take advantage of any default by the Tenant will not be construed as waiving the default.
- 15.4.3 No custom or practice which evolves between the parties will constitute a waiver or lessen the Landlord's right to insist upon the Tenant's strict performance or observance of any provision of this Lease or to exercise any of the Landlord's other rights.
- 15.4.4 Regardless of the Landlord's knowledge at the time, a demand by it for Rent or other money payable under this Lease or the subsequent acceptance of Rent or other money will not constitute a waiver of any earlier default by the Tenant.
- 15.4.5 The acceptance by the Landlord of any arrears or of any late payment of Rent will not constitute a waiver of the essentiality of the Tenant's obligation to pay Rent in respect of those arrears, the late payments or in respect of the Tenant's continuing obligation to pay Rent during the Term.

15.5 Tender after Termination

In the absence of any election by the Landlord, any money tendered by the Tenant after termination and accepted by the Landlord will be applied:

- 15.5.1 firstly, on account of any unpaid Rent and other money due under this Lease at the date of termination; and
- 15.5.2 secondly, on account of the Landlord's Costs of re-entry.

15.6 Interest on Overdue Money

- 15.6.1 The Tenant will pay interest to the Landlord at the Default Rate on any Rent, Costs or other money due to the Landlord and unpaid for 7 days after written demand.
- 15.6.2 Interest will:
- (a) accrue from day to day;
 - (b) be capitalised on the last day of each month;
 - (c) be payable on the first day of each month where an amount arose in the preceding month or months; and
 - (d) be computed from the date for payment of the Rent, Costs or other money until payment.

15.7 Damages for Breach

- 15.7.1 If the Tenant's conduct constitutes breach of an essential provision of this Lease and the Landlord elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation, the Tenant will compensate the Landlord for all loss or damage suffered by reason of or arising from the repudiation.
- 15.7.2 The following covenants are deemed to be essential:
- (a) to pay Rent [**clause 4.1**];

Title Reference 51205861

- (b) to pay Outgoings [**clause 5**];
- (c) to use the Premises for the Permitted Use [**clause 7.1**];
- (d) to comply with Laws and Requirements [**clause 7.3**];
- (e) not to assign, without consent [**clause 13.1**];
- (f) to repair [**clauses 8.1 and 8.2**];
- (g) not to make structural alterations [**clause 9.2**]; and
- (h) to insure [**clause 11**].

15.7.3 Any loss or damage for the unexpired residue of the Term suffered by the Landlord as a result of the Tenant's repudiation may be recovered as damages at any time.

15.7.4 The Landlord's entitlement to recover damages from the Tenant or any other person will not be limited or affected by any of the following:

- (a) if the Tenant abandons or vacates the Premises;
- (b) if the Landlord elects to re-enter the Premises or terminate this Lease;
- (c) if the Landlord accepts the Tenant's repudiation; or
- (d) if the parties' conduct (or that of any of their employees or agents) constitutes or may constitute a surrender by operation of law.

15.7.5

- (a) If the Tenant vacates the Premises or if the Landlord accepts the Tenant's repudiation and terminates this Lease, the Landlord must take reasonable steps to mitigate its loss and endeavour to re-lease the Premises on reasonable terms.
- (b) The Landlord's entitlement to damages will be assessed on the basis that the Landlord has observed the obligation to mitigate damages.
- (c) The Landlord's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of Law.

15.7.6 Following repudiation by the Tenant if the Landlord terminates this Lease then, without prejudice to any other right or remedy, the Landlord may recover the difference between the aggregate of Rent and other money payable by the Tenant for the unexpired residue of the Term less any amount the Landlord obtains, or could in the Landlord's opinion reasonably be expected to obtain, by observing **clause 15.7.5**.

15.8 Earlier Breaches

Termination of this Lease will not prejudice or affect any of the Landlord's rights or remedies against the Tenant for an earlier default by the Tenant.

15.9 Power of Attorney

15.9.1 The Tenant irrevocably appoints the Landlord and any nominee appointed in writing for the purpose of this clause, jointly and severally to be the Tenant's attorney with the powers

Title Reference 51205861

contained in this clause.

15.9.2 At any time after the Tenant has defaulted under this Lease and the Landlord has the right to terminate (sufficient proof being a statutory declaration by the Landlord), the attorney may:

- (a) sign, stamp and register a transfer or surrender of this Lease;
- (b) withdraw any caveat lodged on the Land by the Tenant;
- (c) from time to time appoint a substitute; and
- (d) generally do, sign and perform all things relating to the Premises as fully and effectually as the Tenant could do.

15.9.3 In doing so, the attorney may use the Tenant's name and do anything relating to the Premises which the Tenant could do.

15.9.4 The Tenant will ratify and confirm any lawful act of the attorney.

15.9.5 The Registrar of Titles is authorised to act on the statutory declaration and to accept it as sufficient evidence of the termination of this Lease.

16. TERMINATION OF TERM

16.1 Tenant to Yield Up

At the end of the Term or upon earlier termination of this Lease the Tenant will deliver the Premises to the Landlord in good repair, order and condition (subject to **clause 8.1**) including any requirements that relate to any Improvements purchased by the Landlord under **clause 19**.

16.2 Removal of Tenant's Fittings

16.2.1 Before this Lease comes to an end, the Tenant must at its own cost remove any of the Tenant's Fittings from the Premises and make good any damage to the Premises when removing the Tenant's Fittings and leave the Premises clean.

16.2.2 If the Tenant fails to repair any damage or clean the Premises in accordance with **clause 16.2.1**, the Landlord may repair and clean the Premises and recover the Costs of doing so from the Tenant.

16.2.3 Any Tenant's Fittings not removed by the Tenant within 60 days of termination will be taken to have been abandoned by the Tenant and the Landlord may deal with them as it thinks fit without being liable to account to the Tenant.

16.3 Removal of Improvements

16.3.1 Before this Lease comes to an end, the Tenant must at its own cost, unless the Landlord accepts the offer to purchase some or all of the Improvements under **clause 19**, remove the Improvements and reinstate the Premises.

16.3.2 If, for any reason the Tenant becomes legally incapable or substantially incapable of removing and severing the Improvements under **clause 16.3.1**, then the Landlord must, upon being given notice in writing by the Tenant to that effect, accept the Tenant's offer to sell all of the Improvements under **clause 19** (such notice by the Tenant will be deemed to immediately convert the Tenant's irrevocable offer to sell the Improvements to the Landlord into an

Title Reference 51205861

obligation on the Landlord to purchase all of the Improvements in accordance with the procedure set out in **clause 19**).

17. NOTICES

17.1 Execution of Landlord's Notice

Any notice by the Landlord under this Lease will be valid if signed by an officer or solicitor of the Landlord or any other person nominated by the Landlord.

17.2 Notice of Tenant's Address

The Tenant will promptly notify the Landlord of the address and facsimile number of the Tenant and update the notice if any changes occur.

17.3 Service of Notice on Tenant

Any notice which the Landlord elects to serve on the Tenant will be sufficiently served if:

17.3.1 served personally or addressed to the Tenant and left at the Premises;

17.3.2 sent to the Tenant's facsimile number; or

17.3.3 forwarded by prepaid security post to the Tenant's last known registered office, place of business or residence.

17.4 Service of Notice on Landlord

17.4.1 Any notice to the Landlord will be sufficiently served if:

(a) served personally;

(b) sent to the Landlord's facsimile number; or

(c) forwarded by prepaid security post addressed to the Landlord.

17.4.2 All notices must be addressed to the Landlord at the address stated in this Lease or, if another address is later nominated by the Landlord, then at that address.

17.5 Time of Service

Any notice sent by:

17.5.1 post will be deemed to be served on the second business day after the day it was posted;
or

17.5.2 facsimile will be deemed to have been served at the time that the notice was transmitted unless the sender's facsimile machine indicates a malfunction in the transmission.

18. DISPUTE RESOLUTION

18.1 How Disputes are to be Determined

This **clause 18** applies:

18.1.1 to any dispute arising out of or relating to this Lease (including a dispute about meaning, performance, validity, subject matter, breach or termination of this Lease or to any claim in

Title Reference 51205861

tort, in equity or under any legislation) (**Dispute**); or

18.1.2 where a clause of the Lease specifically refers the dispute for determination under this clause.

18.2 Dispute Notice

Either party may give the other a notice (**Dispute Notice**) giving reasonable detail of the dispute and requiring it to be dealt with under this clause.

18.3 Consult to Resolve

Following receipt of a Dispute Notice the parties will consult in good faith with a view to resolving the matter in dispute using formal dispute resolution techniques such as mediation, expert determination or similar techniques agreed by the parties.

18.4 Continue to Perform

Despite the giving of a Dispute Notice, the parties must continue to perform their respective obligations under this Lease and any other rights which the parties may have under this Lease or at law are not prejudiced. But, a party may not begin court proceedings (except proceedings for urgent interlocutory or interim injunction) unless the procedure set out in this clause has been completed.

18.5 Solution Binding

If a solution or compromise is agreed in writing and signed by the parties, it will be final and binding.

18.6 Mediation

If the parties do not agree, within seven (7) days after the Dispute Notice is given (or such further period they may agree in writing) on:

18.6.1 the dispute resolution technique and procedures to be adopted;

18.6.2 the timetable for all steps in those procedures; and

18.6.3 the selection and compensation of the Expert required for such procedures;

then the parties must:

18.6.4 mediate the dispute in accordance with guidelines issued by the Queensland Law Society and the President of the Queensland Law Society or the President's nominee will select the mediator and determine the mediator's remuneration; and

18.6.5 execute an Agreement to Mediate in a form approved by the Queensland Law Society.

18.7 Expert

If the parties agree that the dispute should be resolved by expert determination then the parties must submit the dispute to expert determination by:

18.7.1 agreeing on a person to appoint jointly as an Expert to determine the dispute and appointing that person on condition that the person undertakes to comply with **clause 18**; or

18.7.2 if the parties cannot agree on a person to appoint as an Expert, either party may ask the President for the time being of the Queensland Law Society to appoint a person as an expert

Title Reference 51205861

to determine the dispute on condition that the person undertakes to comply with **clause 18**.

The Expert appointed under this clause should be of a discipline most closely associated with the type of issue in Dispute.

18.8 Appointment

When the Expert is appointed, the parties must instruct the Expert that in determining the dispute, the Expert:

- 18.8.1 acts as an expert and not as an arbitrator;
- 18.8.2 is not liable for, and the parties release and indemnify the Expert from any claims in the course of acting as an expert under this clause including negligence but excluding actual fraud;
- 18.8.3 may decide on the rules of conduct under which the Expert is determine the dispute;
- 18.8.4 may make enquiries into and require evidence relating to the dispute as the Expert determines;
- 18.8.5 must give a written determination of the dispute including reasons.

18.9 Expert's Decision

The parties:

- 18.9.1 may make submissions to the Expert and must give the Expert all assistance the Expert reasonably required;
- 18.9.2 must comply with the rules of conduct under which the Expert is to determine the dispute; and
- 18.9.3 must accept the Expert's decision as being final and binding on the parties unless there is an obvious error.

18.10 Costs

Each of the parties must pay:

- 18.10.1 its own costs incurred of and incidental to the resolution of a dispute in accordance with this clause; and
- 18.10.2 one half of any expenses or fees incurred in the conduct of the resolution including the fees of the Expert.

19. LANDLORD TO PURCHASE IMPROVEMENTS

19.1 Subject to **clause 16.3.2**, the Tenant (as owner of the Improvements) makes an irrevocable offer to the Landlord to sell to the Landlord all of the Improvements in accordance with and on the terms and conditions contained in this **clause 19**.

19.2 Not later than:

Title Reference 51205861

19.2.1 six (6) months before expiration of the Term; or

19.2.2 thirty (30) days after the surrender, termination or determination of this Lease if occurring before the expiration of the Term,

the Landlord may give written notice to the Tenant that it is considering accepting the Tenant's offer to purchase some or all of the Improvements (**Intention Notice**). If the Landlord proposes to purchase only some of the Improvements, then the Landlord must clearly describe which Improvements are proposed to be purchased. For clarity, giving of the Intention Notice does not require that the Landlord purchase the Improvements.

19.3 Not later than 7 days of the Landlord giving the Tenant the Intention Notice, then the parties must agree in writing a purchase price for all of the Improvements or alternatively those Improvements that the Landlord proposes to purchase (**Agreed Purchase Price**) and the Landlord must pay the Agreed Purchase Price to or as directed by the Tenant within 60 days of being provided with a tax invoice for the Agreed Purchase Price.

19.4 If the parties do not agree a purchase price for the Improvements within the period specified in **clause 19.3**, then the purchase price for all of the Improvements will be determined by a Valuer agreed by the parties (or failing agreement, nominated by the president of the Property Institute) based on the in situ market value of such Improvements as part of the continuation of a going concern business operated from the Premises (**Valued Purchase Price**) on the following basis:

19.4.1 The Valuer shall act as an expert and not as an arbitrator and his decision shall be final and binding on the parties.

19.4.2 The costs of the valuation are to be paid equally by the Landlord and Tenant.

19.4.3 The Landlord and the Tenant may make written submissions to the Valuer within fourteen (14) days after the Valuer has been appointed or nominated.

19.4.4 The Landlord and the Tenant must forward to the other a copy of all written material forwarded or provided at the same time it is provided to the Valuer.

19.4.5 The Landlord and the Tenant may within fourteen (14) days of receiving a copy of the other's written materials forward written comments to the Valuer on the other party's written submissions.

19.4.6 The Valuer's decision must be made within sixty (60) days of appointment and must be provided in writing (with reasons for the determination including specifying the matters required to be taken into account under this Lease in making that determination) and that decision will be final and binding.

19.5 The Landlord must pay the Valued Purchase Price to or as directed by the Tenant, not later than thirty (30) days after the Valuer decision has been provided in writing to the parties.

19.6 On the date of payment of the Agreed Purchase Price or the Valued Purchase Price (whichever is applicable), the Tenant transfers to the Landlord all legal and beneficial title (to the extent not already vested in the Landlord) in all of the Improvements, and must ensure the Improvements are transferred free from any charge, lien, mortgage or any other form of encumbrance as at the date of transfer.

19.7 For the avoidance of doubt, the Tenant is not required and is not permitted to remove or reinstate any Improvements to be purchased by the Landlord under this clause.

Title Reference 51205861

- 19.8 The Landlord may set-off against such purchase price any moneys owing and unpaid by the Tenant to the Landlord under this Lease together with any moneys required to be paid in order to obtain from the Tenant a clear and unencumbered title to the Improvements.

Title Reference 51205861

EXECUTED as a deed

Signed by the Landlord

EXECUTED by **FOUR PILLARS SUPERANNUATION PTY LTD A.C.N. 632 184 617** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature

Print Name

Print Position

If only one person has signed, that person states that he/she is the sole director and sole secretary of the company

Signed by the Tenant

EXECUTED by **MCINTOSH INVESTMENTS AUSTRALIA PTY LTD A.C.N. 613 394 817** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature

Print Name

Print Position

If only one person has signed, that person states that he/she is the sole director and sole secretary of the company