

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

**LEASE**

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# LEASE

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

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**LAND DESCRIPTION**

The whole of the land comprised in Certificate of Title Volume 5675 Folio 796 being known as 39 Muller Road, Hampstead Gardens SA 5086 and shown on the plan at Annexure A

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**ESTATE & INTEREST**

In fee simple

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**LESSOR** (Full name and address)

**SPENCER PROPERTY SA PTY LTD** ACN 601 161 700 of 11 Bronzewing Place, Tea Tree Gully SA 5091

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

**RICHARD PETER HOOK** of 7 Adelaide Street, Maylands SA 5069

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**TERM**

- (a) Original Term: Two (2) years commencing on 1 October 2020 and expiring at midnight on 30 September 2022.
  - (b) Renewal Terms:
    - (i) First Renewed Term: Two (2) years commencing on 1 October 2022 pursuant to clause 4.9.1 of this Lease; and
    - (ii) Second Renewed Term: Two (2) years commencing on 1 October 2024 pursuant to clause 4.9.2 of this Lease.
- 

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

**Rent: TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS** (\$22,500.00) per annum (GST exclusive) (GST exclusive) subject to review pursuant to clause 4.10 of this Lease. The annual rent shall be payable by equal consecutive calendar monthly instalments equivalent to one twelfth of the annual rent always in advance the first such instalment to be paid on the Commencement Date (being a proportionate instalment if appropriate) and thereafter on the first day of each subsequent calendar month.

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

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

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**SCHEDULE**

**ITEM 1**  
*Certificates of Title Being Leased*

The whole of the land comprised in Certificate of Title Volume 5675 Folio 796 being known as 39 Muller Road, Hampstead Gardens SA 5086 and shown on the plan at Annexure A

**ITEM 2**  
*Lessor Full name and address*

**SPENCER PROPERTY SA PTY LTD** ACN 601 161 700 of 11 Bronzewing Place, Tea Tree Gully SA 5091

**ITEM 3**  
*Lessee Full name and address*

**RICHARD PETER HOOK** of 7 Adelaide Street, Maylands SA 5069

**ITEM 4**  
*Term of Lease and Renewal(s)*

- (a) Original Term: Two (2) years commencing on 1 October 2020 and expiring at midnight on 30 September 2022.
- (b) Renewal Terms: (i) One (1) further terms of two (2) years commencing on 1 October 2022 pursuant to clause 4.9.1 of this Lease; and  
(ii) One (1) further term of two (2) years commencing on 1 October 2024 pursuant to clause 4.9.2 of this Lease.

**ITEM 5**  
*Rent and Manner of Payment (or Other Consideration)*

**TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS** (\$22,500.00) per annum (GST exclusive) subject to review pursuant to clause 4.10 of this Lease. The annual rent shall be payable by equal consecutive calendar monthly instalments equivalent to one twelfth of the annual rent always in advance the first such instalment to be paid on the Commencement Date (being a proportionate instalment if appropriate) and thereafter on the first day of each subsequent calendar month.

**ITEM 6**  
*The Land*

The whole of the land comprised in Certificate of Title Volume 5675 Folio 796.

**ITEM 7**  
*Permitted Use*

Warehouse/Yard for Motor Vehicle Storage/Repairs/Motor Trimming.

**ITEM 8**  
*Review Date(s)*  
*\*delete inapplicable*

**CPI + 1%**: Each anniversary of the Commencement Date throughout the Term (including any Renewed Term).

## 1. DEFINITIONS AND INTERPRETATION

In this Lease unless the context requires a contrary interpretation:

### 1.1 Definitions

- 1.1.1 **'Business Day'** means a day other than a Saturday Sunday or public holiday in Adelaide South Australia;
- 1.1.2 **'Commencement Date'** means the date of commencement of the Original Term;
- 1.1.3 **'CPI'** means the Consumer Price Index (All Groups) for Adelaide published by the Australian Bureau of Statistics or the Commonwealth of Australia or if that Index ceases to be published then the index which is substituted for it by the Australian Bureau of Statistics or the Commonwealth of Australia;
- 1.1.4 **'default rate'** means:
- (a) the rate of interest two percentage points above the Loan Index Rate for commercial loans charged by the Commonwealth Bank of Australia Limited ACN 123 123 124 on the date default occurs (or if there is more than one rate then the highest of them); or
  - (b) if there is no such rate then the rate of interest two percentage points above the National Australia Bank Limited ACN 004 044 937 Indicator Base Rate on the date on which default occurs;
- 1.1.5 **'Land'** means the land described in Item 6 of the Schedule and includes any part of the Land;
- 1.1.6 **'Leases Act'** means the *Retail and Commercial Leases Act 1995* (SA) and if the Leases Act applies to this Lease each term of this Lease is subject to the Leases Act;
- 1.1.7 **'Lessee'** means the person named in Item 3 of the Schedule and includes the heirs executors administrators successors and permitted assigns of such person;
- 1.1.8 **'Lessee's Agents'** means each of the Lessee's officers employees agents contractors subtenants invitees and other persons claiming through or under the Lessee;
- 1.1.9 **'Lessor'** means the person named in Item 2 of the Schedule and includes the heirs executors administrators successors and assigns of such person;
- 1.1.10 **'notice'** means written notice;
- 1.1.11 **'Original Term'** means the original term of this Lease set out in Item 4(a) of the Schedule;
- 1.1.12 **'Permitted Use'** means the use set out in Item 7 of the Schedule;
- 1.1.13 **'Persistent Breach'** means that the Lessee has breached this Lease on three (3) or more occasions during the Term and the Lessor has given written notice of the breaches;
- 1.1.14 **'Premises'** means the Land and includes all the Lessor's fixtures fittings air conditioning hot water service grease trap fire protection and other plant machinery and equipment in or on the Premises and includes any part of the Premises;
- 1.1.15 **'relevant authority'** means any public governmental semi-governmental statutory or regulatory authority department or other body having competent jurisdiction in respect of the relevant act matter or thing;
- 1.1.16 **'Renewed Term'** means the First Renewed Term or Second Renewed Term (as the case may be);
- 1.1.17 **'rent'** means the rent payable under this Lease;
- 1.1.18 **'Review Date'** means the respective date set out in Item 8 of the Schedule;
- 1.1.19 **'services'** means all plumbing air conditioning gas telephone facsimile and other like installations and services including without limitation all pipes drains cables wires and conduits in respect of the Land;
- 1.1.20 **'Schedule'** means the schedule of this Lease;

- 1.1.21 **'Term'** means the Original Term and includes the term of any extension or renewal of this Lease;
- 1.1.22 **'terms of this Lease'** means the terms covenants obligations rights acknowledgments and conditions set out in this Lease and includes the Rules;
- 1.1.23 **'Valuer'** means a qualified valuer (being an individual with the professional designation corresponding to valuer as designated by the Australian Property Institute as at the Commencement Date) who shall be appointed to make a valuation or determination pursuant to this Lease and:
- (a) who shall be appointed by the Lessor and Lessee or (if they fail to agree on the appointee within seven (7) days of either the Lessor or Lessee notifying the other of the requirement of such appointment) at the request of the Lessor or Lessee by the then chief executive officer of the Australian Property Institute (South Australian Division) or if that Institute has ceased to exist by the then chief executive officer of a professional body formed by or for valuers in South Australia and fulfilling substantially the same functions as that Institute;
  - (b) who has practised as a land valuer as defined in the *Land Valuers Act 1994 (SA)* in the valuation for rental purposes of property similar to the Premises for at least five (5) years immediately prior to such appointment;
  - (c) who shall act as an expert and not as an arbitrator;
  - (d) whose determination shall be final and binding as between the Lessor and Lessee; and
  - (e) all costs of such valuation or determination shall be borne by the Lessee and Lessor equally unless otherwise provided in this Lease;

## 1.2 Interpretation

- 1.2.1 a reference to 'Act' or a particular Act includes any regulations codes and by-laws and any notice demand order direction requirement or obligation under the Act and a reference to 'law' includes a reference to Acts and the common law;
- 1.2.2 words importing the singular embrace the plural and vice versa;
- 1.2.3 words importing one gender embrace the other genders and vice versa;
- 1.2.4 any reference to a person includes a corporate body and vice versa;
- 1.2.5 where the Lessee or Lessor comprise more than one person this Lease binds those persons jointly and severally;
- 1.2.6 all money payable by the Lessee to the Lessor and costs recoverable from the Lessee by the Lessor shall be recoverable as a debt or as rent in arrear (as the Lessor elects) and if no date for payment is specified shall be payable on demand;
- 1.2.7 anything which the Lessee is required to do shall be done at the cost of the Lessee and to the reasonable satisfaction of the Lessor;
- 1.2.8 any reference to a clause means the relevant clause of this Lease;
- 1.2.9 headings are for reference only and do not affect the interpretation of the terms of this Lease; and
- 1.2.10 where the words 'Not Applicable' appear opposite any Item in the Schedule then each and every clause in this Lease in which specific reference is made to that Item is of no effect.

## 2. LESSEE'S COVENANTS

The Lessee covenants and agrees with the Lessor for and throughout the Term:

### 2.1 Rent

to pay the rent to the Lessor free from exchange deduction set off and abatement:

- 2.1.1 at the Lessor's address set out in the Schedule; or

2.1.2 by electronic funds transfer to a bank account specified by the Lessor and the Lessee acknowledges that it will need to attend to such transfer approximately four Business Days prior to the first day of each month to allow sufficient time for banking procedures to ensure the rent is received by the Lessor on the first day of each month; or

2.1.3 to such other person or at such other place as the Lessor may notify the Lessee,

as directed by the Lessor and by the dates and in the manner set out in Item 5 of the Schedule;

## 2.2 Rates and Taxes

2.2.1 to pay all present and future rates charges taxes levies assessments duties impositions and fees of any relevant authority including without limitation:

- (a) council rates;
- (b) emergency services levies;
- (c) water and sewerage rates and charges; and
- (d) (subject to the Leases Act) land tax calculated on a single holding basis,

which are referable only to the Premises ('**statutory charges**') as and when the statutory charges are due and payable to the relevant authority or if required by the Lessor to pay the statutory charges to the Lessor within seven (7) days of demand to do so; and

2.2.2 that the statutory charges shall (if necessary) be adjusted as between the Lessor and Lessee and the Lessor's share shall be that proportion which relates to the period which is outside the Term;

## 2.3 Utilities and Management Fees

2.3.1 to pay punctually (or if required by the Lessor then to pay within seven (7) days of demand being made therefor) all costs and charges in respect of the provision of:

- (a) electricity (including without limitation electricity in respect of the air conditioning) water gas oil and other energy or fuels supplied to or consumed in respect of the Premises;
- (b) telephone and other communication services in respect of the Premises; and
- (c) any other utility service supplied to or consumed in respect of the Premises,

irrespective of the identity of the supplier;

2.3.2 that such costs and charges shall (if necessary) be adjusted as between the Lessor and Lessee and the Lessor's share shall be that proportion which relates to the period which is outside the Term; and

2.3.3 to pay all of the costs and expenses of management administration control and operation of the Premises incurred paid or payable by the Lessor including without limitation:

- (a) the Lessor's managing agent's fees and audit fees; and
- (b) all costs of cleaning the gutters in respect of the Premises; and

## 2.4 Property Insurance

to pay to the Lessor within seven (7) days of demand to do so all money paid or payable by the Lessor in insuring and keeping insured all the buildings improvements fixtures fittings plant and equipment comprised in or situated on the Premises from time to time against loss or damage by fire lightning storm tempest earthquake flood burglary theft breakdowns fusion and such other risks as the Lessor considers desirable for their replacement value as determined by the Lessor under a policy or policies providing for their complete reinstatement and including consequential loss provisions covering removal of debris consequential costs and loss of rent and outgoings for six (6) months;

## 2.5 **Costs**

subject to the Leases Act:

- 2.5.1 to pay half of the Lessor's reasonable costs in respect of the preparation negotiation and engrossment of this Lease;
- 2.5.2 to pay all of the Lessor's reasonable costs in respect of the preparation negotiation and engrossment of any renewal extension surrender guarantee assignment or transfer of this Lease and any other incidental documents;
- 2.5.3 to pay all stamp duty and registration fees in respect of this Lease and any renewal extension surrender guarantee assignment or transfer of this Lease and any other incidental documents; and
- 2.5.4 to pay all fees imposed by any mortgagee of the Land for consenting to this Lease or any renewal extension surrender transfer or assignment of this Lease;

## 2.6 **Permitted Use**

- 2.6.1 not to use or permit the use of the Premises other than for the Permitted Use;
- 2.6.2 not to do or permit to be done anything which might be or become unlawful immoral or an annoyance nuisance or damage to the Lessor or any other person in the vicinity of the Premises;
- 2.6.3 not to sleep or allow anyone to sleep on the Premises;
- 2.6.4 not to hold or allow anyone to hold any auction or liquidation closing down or like sale on the Premises;
- 2.6.5 to obtain and comply with all consents approvals and licences from all relevant authorities necessary or incidental to the use of the Premises for the Permitted Use; and
- 2.6.6 promptly upon demand to provide the Lessor with copies of all such approvals consents and licences;

## 2.7 **Assignment and Other Dealings**

- 2.7.1 not to transfer or assign this Lease without the Lessor's consent which consent may be withheld if:
  - (a) the proposed transferee or assignee proposes to change the use to which the Premises is put; or
  - (b) the proposed assignee is unlikely to be able to meet the financial obligations of the Lessee under this Lease; or
  - (c) the Lessor reasonably considers that the proposed assignee's business skills are inferior to those of the assignor; or
  - (d) the Lessee has not complied with the procedural requirements for obtaining the Lessor's consent as set out in Section 45 of the Leases Act;
- 2.7.2 where the Lessee is a company (other than a company or a subsidiary of a company the voting shares of which are listed on an Australian stock exchange) there shall be deemed an assignment of this Lease requiring the Lessor's consent if:
  - (a) the issue of any share or the transfer (except by inheritance) of the legal or beneficial ownership of any issued share of the Lessee or the ultimate holding company of the Lessee alters the effective control of the Lessee; or
  - (b) any change to the constitution of the Lessee varies the rights attaching to any of the issued shares of the Lessee;
- 2.7.3 not to sublease licence part with possession of or mortgage charge or encumber this Lease or the Premises without the Lessor's consent;
- 2.7.4 in respect of all such dealings in this Lease or the Premises the Lessee shall not be released from its liabilities and obligations under this Lease for the balance of the Term;

2.7.5 if the Lessee requests that the Lessor consent to any such proposed dealing in this Lease or the Premises the Lessee shall immediately on demand from the Lessor to do so (and irrespective of whether the Lessor consents to such dealing):

- (a) pay all arrears of rent and other money owing under this Lease and remedy all outstanding breaches and defaults;
- (b) pay such money as the Lessor reasonably estimates is required for the Lessee to comply with the terms of this Lease including without limitation those relating to the state of repair and cleaning and painting of the Premises;
- (c) submit a true copy of all agreements entered or to be entered into in respect of such dealing and evidence satisfactory to the Lessor that the proposed transferee assignee or sublessee is respectable responsible solvent and suitable and information reasonably required by the Lessor about the financial standing and business experience of the proposed transferee assignee or sublessee; and
- (d) pay to the Lessor the reasonable costs in respect of enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal preparation and stamping of the documents required by the Lessor

and if such consent is given the Lessee shall ensure that prior to the date of any transfer or assignment the proposed transferee or assignee:

- (e) enters into a covenant direct with the Lessor to observe the terms of this Lease; and
- (f) furnishes such guarantees of the performance of such person's obligations under this Lease as the Lessor may require; and

2.7.6 if the Lessee grants a mortgage of this Lease the rights of the Lessor under this Lease shall be in priority to the rights of the mortgagee and the provisions of Section 139 of the *Real Property Act 1886 (SA)* shall not apply to such mortgage;

## 2.8 Repair and Maintenance

2.8.1 subject to the Leases Act to maintain repair clean and keep the Premises including without limitation the interior and exterior of all its buildings and improvements and all the Lessor's and Lessee's fixtures fittings partitions plant and equipment in good and substantial repair and condition and where appropriate in good working order (including without limitation to enter into any servicing or maintenance contracts reasonably required by the Lessor) provided that the Lessee shall be under no obligation to make good damage:

- (a) by fair wear and tear; or
- (b) by fire flood lightning act of God or war (except where insurance money is irrecoverable in consequence of any act or omission of the Lessee or any of the Lessee's Agents or default of the Lessee); or
- (c) of a capital or structural nature (except in consequence of any act omission or default of the Lessee or any of the Lessee's Agents);

2.8.2 to promptly repair or replace (or if required by the Lessor to pay to the Lessor the cost of doing so) all damaged or broken glass in or about the Premises including external windows with glass of the same or similar quality;

2.8.3 to promptly replace all damaged or broken light globes and fluorescent tubes;

2.8.4 not without the Lessor's consent to nor permit the Lessee's Agents to:

- (a) damage any plant or equipment in the Premises; or
- (b) mark drill deface or damage the walls ceilings columns floor or other parts of the Premises; or
- (c) use the toilets sinks drains and other plumbing facilities in the Premises for any purpose other than that for which they were constructed; or

(d) deposit or permit to be deposited any rubbish or other material in such toilets sinks drains and other plumbing facilities;

2.8.5 to make good any damage to the Premises caused or contributed to by the Lessee or any of the Lessee's Agents;

2.8.6 if the Lessee wants the Lessor to carry out any works which are the responsibility of the Lessee under this clause regarding repair and maintenance then:

(a) the Lessor may (without any obligation to do so) execute such works as if it were the Lessee; and

(b) the Lessee shall pay to the Lessor all the Lessor's costs and expenses in respect of such works; and

2.8.7 to keep and maintain all lawns plants gardens and other flora comprised in or situated at the Premises neat trimmed and pruned and to water and fertilise them as is necessary to ensure that they flourish;

## 2.9 **Cleaning**

2.9.1 to cause the Premises to be cleaned routinely in a proper and professional manner;

2.9.2 to store and keep all rubbish waste and garbage in proper receptacles and to arrange for the regular removal of it from the Premises;

2.9.3 to exterminate and eradicate all rodents vermin and other pests from the Premises including without limitation if required by the Lessor to engage pest exterminators for that purpose; and

2.9.4 to cause all gutters in respect of the Premises to be routinely and properly cleaned provided that if at any time the Lessor (acting reasonably) believes the Lessee is in breach of its obligations under this clause the Lessor may give the Lessee three (3) days' notice requiring the Lessee take such action as the Lessor requires to rectify or mitigate the breach failing which the Lessor may (but is not obliged to) elect to undertake or cause to be undertaken such cleaning provided the Lessor may recover the full costs of doing so from the Lessee on demand;

## 2.10 **Comply with Laws**

subject to the Leases Act to comply with and satisfy all present and future laws in respect of the Premises including without limitation all notices orders directions and requirements of any relevant authority relating to or affecting the use or condition of the Premises or the Lessee's occupancy of the Premises (whether such compliance is or obligations are imposed on the owner or occupier of the Premises);

## 2.11 **Fire Safety**

subject to the Leases Act:

2.11.1 to take such precautions against fire in respect of the Premises as are required pursuant to any present or future laws or by any relevant authority including without limitation to comply with sprinkler and fire alarm laws in respect of the sprinkler and fire alarm systems installed in or about the Premises;

2.11.2 to pay to the Lessor the cost of any alterations or additions to the sprinkler or fire alarm systems which the Lessor may be required to make by reason of the Lessee's use or occupation of the Premises or the non-compliance by the Lessee with such laws or requirements of a relevant authority; and

2.11.3 without limiting any other provision of this clause 2.11 to supply to the Premises with fire extinguishers in accordance with Australian Standards and to tag and test all electrical equipment within the Premises;

## 2.12 **Air conditioning**

2.12.1 where any plant machinery or equipment for heating cooling or circulating air or any related services controls or appliances are provided or installed by the Lessor in the Premises ('**air conditioning plant**') subject to the Leases Act:

(a) to pay all costs and expenses of and incidental to the operation servicing maintenance replacement and repair of and consumption of electricity by the air conditioning plant; and

- (b) if required by the Lessor to enter into a service and maintenance contract in respect of the air conditioning plant which contract shall be first approved by the Lessor (such approval not to be unreasonably withheld);

2.12.2 to comply with and observe the reasonable requirements of the Lessor in respect of the air conditioning plant;

2.12.3 that to the maximum extent permitted by law the Lessor shall be under no liability to the Lessee in respect of the Lessor's inability or failure to operate service maintain replace or repair the air conditioning plant at any time for any reason and the Lessee acknowledges that the Lessor does not warrant that the air conditioning plant (if any) is suitable or adequate for the business to be conducted in the Premises by the Lessee; and

2.12.4 to permit the Lessor and all persons authorised by the Lessor at all reasonable times on giving to the Lessee reasonable prior notice (except in the case of emergency where no notice is required) to enter the Premises to view the state of repair of the air conditioning plant and there remain for the purpose of carrying out any necessary or desirable maintenance servicing or repair to or replacement of the air conditioning plant;

## 2.13 **Painting**

2.13.1 by each fifth anniversary of the Commencement Date and in any event immediately prior to the expiration of the Term or surrender of this Lease or within seven (7) days of any other determination of this Lease in colours and with at least two coats and in accordance with the Lessor's then specifications to paint or cause to be painted in a professional manner all such parts of the interior (and if required by the Lessor the exterior) of the Premises as are usually painted. For the purposes of this clause 2.13, the Lessor's painting specifications shall include:

- (a) For new unpainted surfaces – fill nail holes, cracks, etc., with an appropriate patching material;
- (b) Lightly sand joints and patching. Completely remove dust. Ensure that previously painted surfaces are clean and free from dirt, grease, dust, etc. Remove loose and flaking paint, fill, sand and remove dust. Kill any mould or fungus. Use Sterilizing Wall-Wash. Seal stains. Use Quick Drying Multi Block Stain Sealer. Spot prime bare areas with the recommended first coat. Powdery friable surfaces must be washed and rubbed down to a sound surface. On areas where it is not possible to completely remove powdery materials apply Surface Conditioner according to directions;
- (c) Gyprock: 2 coats of Low Sheen Full Acrylic;
- (d) Wet Areas: 2 coats of Full Gloss Acrylic Paint, with anti mould additive; and
- (e) Doors and Skirting Boards: 2 coats Satin Enamel. 3 coats to be applied to any new surface,

and such other specifications as the Lessor reasonably requires at the time; and

2.13.2 if the Lessee fails to comply with such obligation then on giving three (3) days' notice to the Lessee the Lessor may elect to undertake or cause to be undertaken such painting and any money incurred by the Lessor in respect of such painting shall be paid by the Lessee to the Lessor;

## 2.14 **Signs**

2.14.1 not without the Lessor's consent (which shall not be unreasonably withheld) and the consent of any relevant authority to paint display or affix any sign advertisement name or notice outside the Premises or on glass windows or doors of the Premises or inside the Premises but visible from outside the Premises;

2.14.2 to ensure that any signage installed by the Lessee in accordance with this clause 2.14 is and is kept in keeping with the character of the Premises and is manufactured and installed by contractors who hold appropriate qualifications and insurances; and

2.14.3 to maintain such signage in good and substantial repair and on vacating the Premises or otherwise at the request of the Lessor to immediately remove such signage and make good any damage caused by reason of the painting display affixation or removal of it;

**2.15 Noisy Heavy and Electrical Equipment**

- 2.15.1 not without the Lessor's consent to erect install place or operate inside or outside the Premises any radio television loudspeakers or similar equipment which may be heard or seen from outside the Premises;
- 2.15.2 not without the Lessor's consent to bring on to the Premises any machinery plant or equipment of such weight size or nature as (in the Lessor's opinion) to cause or potentially cause any structural or other damage to the Premises or unreasonable noise or vibrations and to inform the Lessor of the Lessee's intention to bring any such machinery plant and equipment on to the Premises and to comply with all directions of the Lessor as regards the installation and location of such machinery plant and equipment; and
- 2.15.3 not without the Lessor's consent to erect or install any electrical equipment on the Premises which may overload or potentially overload the cables switchboards or sub-boards through which electricity is conveyed to or within the Premises;

**2.16 Dangerous Substances**

not without the Lessor's consent to bring or allow to be brought on to the Premises any dangerous noxious odorous toxic volatile explosive or inflammable substance or compound (whether in solid liquid gaseous or any other form) other than substances normally used for carrying on the Permitted Use or cleaning the Premises;

**2.17 Security**

- 2.17.1 to use the Lessee's best endeavours to protect and keep safe from theft and vandalism the Premises and any property contained in it and to ensure that all doors and windows are closed and locked when the Premises are not being used; and
- 2.17.2 not without the Lessor's consent (which shall not be unreasonably withheld) to install any security equipment or system in or about the Premises nor to change or modify any existing security equipment or system;

**2.18 Inspection of Premises**

to permit the Lessor and any person authorised by the Lessor at all reasonable times to enter the Premises and view its state of repair or undertake any works the Lessor is required to do under this Lease and if the Lessor considers that there is any defect or damage which the Lessee is obliged to repair:

- 2.18.1 the Lessor may notify the Lessee of the defect or damage and require the Lessee to repair it within a reasonable time;
- 2.18.2 in default of the Lessee repairing the defect or damage the Lessor may execute the repairs as if it were the Lessee and for that purpose the Lessor and any person authorised by the Lessor may enter and remain on the Premises for the purpose of effecting such repairs; and
- 2.18.3 all costs and expenses in respect of such repairs shall be payable by the Lessee to the Lessor;

**2.19 Lessor's Alterations**

- 2.19.1 subject to clause 2.19.2 to permit the Lessor and any person authorised by the Lessor:
  - (a) to carry out inspections of or modifications or additions to or other works on the Land (including the Premises where the Lessor has given reasonable prior notice to the Lessee); and
  - (b) where the Lessor has given reasonable prior notice to the Lessee to enter the Premises for the purpose of carrying out such works,  
  
causing as little disturbance as is practical to the Lessee in undertaking such works provided that the Lessor may not commence to carry out any alteration or refurbishment to the Land (other than routine maintenance or repairs) that is likely to adversely affect the business of the Lessee unless:
  - (c) the Lessor has given the Lessee at least one (1) months' notice of the proposed alteration or refurbishment; or

- (d) the alteration or refurbishment is necessitated by an emergency and the Lessor has given the Lessee the maximum period of notice that is reasonably practicable in the circumstances;

2.19.2 in an emergency the Lessor may without notice enter the Premises and carry out any works deemed necessary by the Lessor; and

2.19.3 subject to the Leases Act the Lessee shall not make any claim or commence any action against the Lessor for breach of clause 3 or section 38 of the Leases Act or otherwise in respect of such entry on to the Premises or the execution of any of the works contemplated by this clause;

## 2.20 Alterations or Additions by Lessee

not without the Lessor's consent to make any alteration or addition in or to the Premises (including the installation of an electricity meter) nor without the Lessor's consent (which shall not be unreasonably withheld) to install or alter any floor coverings fixed partitioning fixed equipment or other fixed installation in or about the Premises provided that where such consent is given:

2.20.1 the materials and design shall first be approved by the Lessor or its consultants;

2.20.2 such work equipment or installation shall be installed or altered in accordance with such approval (if any); and

2.20.3 all such partitioning equipment and installations (except where they are the Lessor's fixtures or fittings) shall remain the property of and be maintained repaired and kept in good condition by the Lessee;

## 2.21 Yielding up Premises

2.21.1 at or immediately before the expiration of the Term or surrender of this Lease or forthwith upon any other determination of this Lease to:

- (a) peaceably surrender and yield up possession of the Premises in clean and good and substantial repair order and condition and where appropriate in good working order (fair wear and tear excepted having regard to the condition of the Premises as at the Commencement Date); and

- (b) surrender all keys for the Premises to the Lessor; and

2.21.2 at or immediately before the expiration of the Term or surrender of this Lease or within seven (7) days of any other determination of this Lease to:

- (a) if required to do so by the Lessor remove all of the Lessee's fixtures fittings plant and equipment furniture furnishings decorations and other property brought on to the Premises and in carrying out such removal the Lessee shall minimise the damage to the Premises and immediately make good any resulting damage;

- (b) if required to do so by the Lessor remove the alterations and additions in and to the Premises or the Land effected by or on behalf of or at the request of the Lessee and reinstate the Premises and the Land to substantially the same standard and open floor plan that it was in at the Commencement Date or such earlier date as the Lessee received handover of the Premises and ensuring that the Premises does not pose a significant risk of harm to human health and in carrying out such removal and reinstatement the Lessee shall minimise the damage to the Premises and the Land and immediately make good any resulting damage; and

- (a) comply with the Lessor's reasonable requirements in respect of such removal and reinstatement works provided that the Lessor may elect to carry out such removal and reinstatement works at the Lessee's cost and any alterations additions fixtures fittings plant and equipment not removed by the Lessee either as of right or by requirement of the Lessor shall at the Lessor's election be deemed abandoned and be and become owned by the Lessor absolutely;

2.21.3 despite any other provision in this clause 2.21:

- (a) the Lessor may (but is not obliged to) notify the Lessee that it does not require the Lessee to carry out all or some of the works and removal described in clause 2.21.2 (including but not limited to any air conditioning plant or alterations and additions in and to the Premises effected by or on behalf of or at the request of the Lessee) ('**Limited Make Good Notice**');

- (b) if the Lessor serves a Limited Make Good Notice then:
  - (i) clause 2.21.2 does not apply to the extent set out in the Limited Make Good Notice; and
  - (ii) on the expiry or sooner determination of this Lease or any holding over:
    - (A) the Lessee must comply with the Limited Make Good Notice;
    - (B) if applicable the Lessee must otherwise comply with clause 2.21.2 including but not limited to removing from the Premises all of the Lessee's property not required by the Limited Make Good Notice to be left in the Premises; and
    - (C) any of the Lessee's property required by the Limited Make Good Notice to be left in the Premises is deemed abandoned by the Lessee and will become the property of the Lessor absolutely;
- (c) the Lessee's obligations under this clause do not merge when this Lease ends; and
- (d) to avoid any doubt nothing in this clause relieves the Lessee of or mitigates any of the obligations in clause 2.8.

## 2.22 Notice of Hazards

to give prompt notice to the Lessor of any circumstance (including without limitation any accident or lack of repair to or defect in any service of or fixtures and fittings in the Premises) which the Lessee should reasonably be aware might cause any danger risk or hazard to the Premises or any person in the Premises;

## 2.23 Public Liability Insurance

to immediately effect and keep current in respect of the Premises a public liability insurance policy for an amount of not less than \$20,000,000 per claim (or such other amount as the Lessor may reasonably require and notify the Lessee) in the joint names of the Lessor and the Lessee and for their respective rights and interests with an insurer approved by the Lessor (which approval shall not be unreasonably withheld);

## 2.24 Glass Insurance

2.24.1 to immediately insure and keep insured against breakage and damage in the joint names of the Lessor and the Lessee and for their respective rights and interests with an insurer approved by the Lessor (which approval shall not be unreasonably withheld) all the plate and other glass in the Premises for its replacement value; and

2.24.2 to expend all money received under such insurance in reinstating the broken or damaged glass and where such money received is insufficient to make good the deficiency out of the Lessee's own money;

## 2.25 Insurance of Fixtures and Fittings

to immediately effect and keep current a policy insuring the Lessee's fixtures fittings plant and equipment to their full insurable value against loss or damage by fire burglary theft lightning explosion earthquake riot impact of vehicles water damage flood consequential loss and such other insurable risks as the Lessor may reasonably require and notify the Lessee;

## 2.26 Policies and Certificates

immediately on execution of this Lease by the Lessee and on demand at any other time to deliver to the Lessor the policies and certificates of currency of such insurances effected by the Lessee;

## 2.27 Conduct Affecting Insurance

not at any time to do or permit anything in on or about the Land whereby any insurance in respect of the Land may be or become void or voidable or whereby the rate of premium for any insurance may be or be liable to be increased;

**2.28 Indemnities**

subject to the Leases Act to indemnify the Lessor and its officers employees agents and contractors against and in respect of any and all actions claims demands losses damages costs and expenses which may be incurred by or made against or claimed from the Lessor or any of its officers employees agents and contractors in respect of:

- 2.28.1 overflow or leakage of water (including rain water) in or from the Premises either originating within the Premises or caused or contributed to by any act or omission by the Lessee or any of the Lessee's Agents; and
- 2.28.2 the death of or injury to any person or loss of or damage to the property of any person caused or contributed to by any occurrence or incident in on or about the Premises or the use of the Premises or the Land by the Lessee or any of the Lessee's Agents (notwithstanding that such use may be permitted under this Lease),

except to the extent caused by the negligence of the person seeking such indemnity;

**2.29 Release of Lessor**

subject to the Leases Act to occupy use and keep the Premises at the risk of the Lessee and the Lessee agrees that the Lessor and its officers employees agents and contractors will have no responsibility or liability and are fully released from all responsibility or liability and the Lessee shall not make any claim or commence any action against the Lessor or any of its officers employees agents or contractors for breach of the covenant set out in clause 3 in respect of:

- 2.29.1 loss of or damage to the Lessee's stock fixtures or fittings or other property;
- 2.29.2 claims demands and damages resulting from or contributed to by any accident incident damage death or injury occurring in on or about the Land unless deriving from any structural defect in the Land (not caused or contributed to by the Lessee or any of the Lessee's Agents); and
- 2.29.3 loss or damage including without limitation direct indirect consequential and economic loss caused or contributed to by:
  - (a) flooding of the Premises or blockage of any sewers waste drains gutters or pipes; or
  - (b) any malfunction failure to function or interruption of or to the water gas electricity telephone facsimile air conditioning fire prevention fire safety lifts escalators computers building management systems and other systems and services situated in or serving the Premises,

except to the extent caused by the negligence of the Lessor or any of its officers employees agents or contractors;

**2.30 Additional Premium and Excess**

- 2.30.1 without limiting clause 2.4 pay any additional premium levied on account of the Lessee's use or occupation of the Premises in respect of any insurance policy effected in respect of the Premises or any public liability insurance policy effected by the Lessor; and
- 2.30.2 to pay all excess amounts paid or payable by the Lessor under any such insurance policies relating to any accident incident or claim caused or contributed by the Lessee or any of the Lessee's Agents;

**2.31 Reletting**

to permit the Lessor:

- 2.31.1 not more than four (4) months prior to the expiration of the Term to place 'To Let' notices; and
- 2.31.2 at any time to place 'For Sale' notices,

in conspicuous places outside or inside the Premises and to enter the Premises at all reasonable times for the purpose of placing such notices or showing prospective tenants or purchasers over the Premises;

### 2.32 Lessee's Consent

that where pursuant to any Act or requirement of any relevant authority the Lessee's consent is required to any process step or dealing by the Lessor with its interest in the Land then the Lessee shall give its written consent to such proposed process step or dealing within seven (7) days of receipt of a written request from the Lessor to do so provided that such proposed process step or dealing does not materially detrimentally affect the Lessee's use of or access to the Premises;

### 2.33 Agreement to Lease

that if this Lease is entered into pursuant to an agreement to lease the Lessee shall observe and perform all of the terms and conditions of such agreement which remain outstanding as at the Commencement Date;

### 2.34 No Caveat

not to lodge or cause or permit to be lodged any absolute caveat on the Certificate(s) of Title for the Land and to indemnify the Lessor against and in respect of any and all actions claims demands losses damages costs and expenses which the Lessor may incur in respect of the lodgement removal or withdrawal of any such caveat; and

### 2.35 Security Bond

- 2.35.1 on or before the Commencement Date, the Lessee must give the Lessor cash or a bank cheque for the amount of \$5,000 (exclusive of GST) which will be held by the Lessor as a security bond (**Security Bond**);
- 2.35.2 if the Lessee does not comply with any of its obligations under this Lease or any other agreement in connection with this Lease then the Lessor may make demand on the Security Bond (or any part of it);
- 2.35.3 the Lessor's rights under this clause 2.35 are in addition to the other rights and remedies of the Lessor in relation to any default of the Lessee in connection with this Lease;
- 2.35.4 the Lessor may call on the Security Bond notwithstanding that this Lease has been terminated;
- 2.35.5 if the rent increases, and at least two (2) years have elapsed since the Security Bond was given or last increased, the Lessor may by written notice to the Lessee require the Lessee to increase the Security Bond by a specified additional amount but not so that the total amount of the Security Bond exceeds three (3) months' rent (exclusive of GST) under the Lease; and
- 2.35.6 if the Leases Act applies, the Security Bond will be dealt with in the manner provided by Part 4 of the Leases Act.

## 3. QUIET POSSESSION

The Lessor covenants and agrees with the Lessee that the Lessee paying the rent and duly and punctually observing and performing the terms of this Lease may peaceably possess the Premises for the Term without any interruption or disturbance from the Lessor.

## 4. MUTUAL COVENANTS

The Lessor and the Lessee covenant and agree for and throughout the Term that:

### 4.1 Default

#### 4.1.1 Essential Terms

- (a) clauses 2.1 2.2 2.3 2.4 2.6 2.7 2.8 2.10 2.11 2.12 2.20 2.21 2.23 2.35 and 7 are essential terms of this Lease and the Lessor may at its option treat any breach or default by the Lessee in the observance or performance of its obligations under any of such clauses as a repudiation by the Lessee of this Lease; and
- (b) the Lessor's acceptance of rent arrears will not constitute a waiver of the essential and fundamental nature of the Lessee's obligation to pay rent as and when due;

#### 4.1.2 Termination and Re-entry

if:

- (a) the rent or any part of it is unpaid for seven (7) days after any of the days on which it should have been paid (although no formal or legal demand shall have been made for payment); or
- (b) the Lessee commits or permits to occur any breach or default in the due and punctual observance and performance of any of the terms of this Lease; or
- (c) where the Lessee is a company:
  - (i) an order is made or resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the Lessor's consent); or
  - (ii) a Receiver or Receiver and Manager or Administrator or Controller or any of them is appointed to the Lessee or any property of the Lessee is affected by or action is taken towards such appointment; or
  - (iii) the Lessee goes into liquidation or provisional liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth); or
- (d) where the Lessee is a natural person the Lessee is convicted of an indictable offence (other than a traffic offence); or
- (e) execution is levied against the Lessee and not discharged within fourteen (14) days; or
- (f) the Premises is left unoccupied for one (1) month or more without the Lessor's consent; or
- (g) any property in or on the Premises is seized or taken in execution under any judgment or other proceedings; or
- (h) any event described in paragraphs (c) to (e) of this clause (inclusive) occurs in respect of any guarantor of the Lessee's obligations under this Lease,

then subject to any laws to the contrary the Lessor shall have the right to terminate this Lease and re-enter and repossess the Premises without prejudice to any other right or remedy of the Lessor for arrears of rent or breach of any term of this Lease and if such right is exercised:

- (i) the Lessor shall be released and discharged from any action claim or demand by or obligation to the Lessee under or in respect of this Lease; and
- (j) the Lessee shall not be entitled to claim or receive from the Lessor any compensation or damages in respect of such termination re-entry and repossession; and

#### 4.1.3 Damage

if the Lessee's conduct (whether by act or omission) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any of the terms of this Lease the Lessee shall compensate the Lessor for the loss or damage suffered as a result of such repudiation or breach and the Lessor's entitlement to recover damages will not be prejudiced or limited by:

- (a) the Lessee abandoning or vacating the Premises; or
- (b) the Lessor electing to re-enter the Premises or to terminate this Lease; or
- (c) the Lessor accepting the Lessee's repudiation; or
- (d) the conduct of the Lessor and Lessee constituting a surrender by operation of law;

**4.2 Landlord and Tenant Act**

any notice given pursuant to Section 10 of the *Landlord and Tenant Act 1936* (SA) shall provide that fourteen (14) days is the period within which the Lessee is to remedy any breach of a term of this Lease if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the Lessor and no period of notice shall be required in respect of non-payment of rent;

**4.3 Abandoned Goods**

subject to the Leases Act any goods or other property left on the Premises by the Lessee at the expiration of the Term or any sooner termination of this Lease may be dealt with by the Lessor at the Lessee's cost in such manner as the Lessor chooses in its absolute discretion and the Lessor shall not be liable to the Lessee for any loss or damage in respect of such dealing;

**4.4 Default Interest**

without prejudice to any other right or remedy of the Lessor the Lessee shall pay to the Lessor interest at the default rate on any money payable but unpaid seven (7) days after the money becomes payable by the Lessee to the Lessor under this Lease such interest to be computed daily from the date on which the money becomes payable until payment is made in full;

**4.5 Power of Attorney**

if the Lessor becomes entitled to terminate this Lease and re-enter and repossess the Premises (of which a statutory declaration of an officer of the Lessor shall be conclusive evidence for the purposes of the Registrar-General) then the Lessee by this Lease irrevocably appoints the Lessor as the attorney of the Lessee:

- 4.5.1 to give full effect to such termination re-entry and repossession;
- 4.5.2 to execute a surrender of this Lease;
- 4.5.3 to register this Power of Attorney and such surrender (and the Lessee shall immediately on demand produce to the attorney the Lessee's registered copy of this Lease to enable the registration of such surrender); and
- 4.5.4 to procure anything to be done which may be requisite or proper for giving full effect to the Power of Attorney and such surrender according to the *Real Property Act 1886* (SA) or any other law (including without limitation if necessary to execute and lodge an application to the Registrar-General to dispense with the production of the Lessee's registered copy of this Lease);

**4.6 Costs and Remedies on Default**

4.6.1 if the Lessee breaches or fails to perform any term of this Lease and such breach or failure to perform continues for seven (7) days after the Lessor has given the Lessee notice requiring the Lessee to remedy the breach or perform the term (except in an emergency when no notice is required) then:

- (a) the Lessor may remedy the breach or perform the term without prejudice to any other right or remedy; and
- (b) the Lessee shall pay to the Lessor all resulting costs incurred by the Lessor; and

4.6.2 all costs incurred by the Lessor in respect of:

- (a) the recovery of rent and other money payable by the Lessee to the Lessor under this Lease; and
- (b) the Lessor remedying or attempting to remedy any Lessee's breach of or failure to perform any term of this Lease

shall be deemed to be additional rent falling due and payable on the date on which the Lessor incurs such costs;

#### 4.7 Destruction or Damage

4.7.1 if:

- (a) the Premises is wholly or substantially damaged or destroyed then the Lessor may at its option terminate this Lease by giving the Lessee seven (7) days' prior notice to that effect; or
- (b) the Premises is damaged or destroyed so as to render the Premises wholly or substantially unfit for use or inaccessible by the Lessee and the Lessor gives the Lessee notice that the Lessor considers that it is impracticable or undesirable to effect repairs then either the Lessor or the Lessee may terminate this Lease by giving the other not less than seven (7) days' prior notice to that effect; or
- (c) this Lease is not terminated pursuant to clauses 4.7.1(a) or (b) but the Lessor fails to commence to effect repairs to the damage within a reasonable time after the Lessee has given the Lessor notice to do so (provided that the Lessor shall not be obliged to effect the repairs) then the Lessee may terminate this Lease by giving the Lessor seven (7) days' prior notice to that effect

and this Lease shall terminate seven (7) days after the giving of any such notice of termination and neither party shall have any claim for or right to recover any compensation or damages by reason of such termination but without prejudice to the rights of either party for any antecedent breach or default or any claim by the Lessor against the Lessee for compensation or damages in respect of the damage or destruction;

4.7.2 if the Premises is rendered wholly or partially unfit for use or inaccessible as a result of damage or destruction then a just proportion (if any) of the rent statutory charges and other amounts payable by the Lessee under this Lease having regard to the nature and extent that the Premises has been rendered unfit for use or inaccessible shall cease and be suspended until the Premises are useable and accessible provided that such proportion shall (if not agreed between the Lessor and Lessee) be determined by a Valuer; and

4.7.3 notwithstanding clauses 4.7.1 and 4.7.2 if the damage or destruction results from the wrongful act or negligence of the Lessee or any of the Lessee's Agents no proportion of the rent shall cease and be suspended unless the Lessor is entitled to fully recover all such loss of rent under an insurance policy to which the Lessee contributes to the premium;

#### 4.8 Holding Over

4.8.1 if the Lessee holds over after the expiration or sooner determination of the Original Term or any extension or renewal of this Lease (**'Holding Over Date'**) with the consent (express or implied) of the Lessor the Lessee then becomes a monthly tenant of the Lessor which tenancy may be terminated by either party giving to the other one (1) months' prior notice expiring at any time at a monthly rent equivalent to one twelfth of the annual rent payable in respect of the Premises immediately prior to the Holding Over Date and otherwise on the same terms as the terms of this Lease (so far as applicable); and

4.8.2 if the Lessee vacates the Premises on the expiration of the Term or any other sooner termination of this Lease notwithstanding that the Lessee is not in physical occupation of the Premises the Lessee shall be deemed to be holding over on a daily basis at a rent to be determined in the manner specified in clause 4.8.1 (with the necessary changes) and otherwise on the same terms as the terms of this Lease (so far as applicable) until the Lessee has complied with its obligations relating to rectification and painting of the Premises and removal of the Lessee's signs notices fixtures fittings plant and equipment to the reasonable satisfaction of the Lessor;

#### 4.9 Renewal

4.9.1 on the written request of the Lessee made not less than three (3) months nor more than nine (9) months before the expiration of the Original Term and provided that at the time of such request and at the expiration of the Original Term the Lessee is not in breach of any of the terms of this Lease the Lessor will grant to the Lessee a renewal of this Lease for the further term set out in Item 4(b)(i) of the Schedule (**'First Renewed Term'**) subject to and on the same terms as this Lease except for the exclusion of this clause 4.9.1 giving the Lessee a right of renewal;

4.9.2 on the written request of the Lessee made not less than three (3) months nor more than nine (9) months before the expiration of the First Renewed Term and provided that at the time of such request and at the

expiration of the First Renewed Term the Lessee is not in breach of any of the terms of this Lease the Lessor will grant to the Lessee a renewal of this Lease for the further term set out in Item 4(b)(ii) of the Schedule ('**Second Renewed Term**') subject to and on the same terms as this Lease except for the exclusion of this clause 4.9.2 giving the Lessee a right of renewal;

- 4.9.3 if the performance of the Lessee's obligations under this Lease shall have been guaranteed by any person then the execution by such guarantor of such documents (if any) as the Lessor may require for the purpose of affirming or renewing such guarantee for the Renewed Term shall be a condition precedent to the exercise of the Lessee's right to request such a renewal;
- 4.9.4 if this Lease is renewed pursuant to clause 4.9.1 and 4.9.2 and on the date of commencement of the Renewed Term the rent has not been reviewed pursuant to clause 4.10 then the renewal shall be effective notwithstanding that the rent shall be reviewed at a subsequent date;
- 4.9.5 time shall be of the essence in respect of this clause 4.9; and
- 4.9.6 notwithstanding any other provision of this Lease if at any time there is or has been a Persistent Breach by the Lessee the Lessor may (without limiting any other right of the Lessor) give notice to the Lessee that any right of the Lessee to renew or extend this Lease is terminated with immediate effect. If the Lessor gives such notice under this clause:
  - (a) the Lessee has no right to renew or extend this Lease;
  - (b) this Lease will be deemed to be amended by:
    - (i) replacing all details in Item 4(b) of the Schedule with the words 'Not Applicable';
    - (ii) deleting clauses 4.9.1 to 4.9.5 (inclusive); and
    - (iii) removing all other references to the Renewed Term; and
  - (c) the Lessee must sign such documentation required by the Lessor to effect the removal and/or termination of any right of the Lessee to renew or extend this Lease;

#### 4.10 Rent Review

- 4.10.1 the rent shall be reviewed as at and from each Review Date specified in Item 8(a) of the Schedule to an amount equal to 'A' calculated in accordance with the following formula:

$$A = B \times \frac{C}{D} \times 1.01$$

where:

'B' is the amount of the rent payable immediately before the relevant Review Date (but disregarding any rent incentives or rebates);

'C' is the CPI for the quarter ending before the relevant Review Date; and

'D' is the CPI for the corresponding quarter ending 12 months before the relevant Review Date;

- 4.10.2 the failure of the Lessor to require a review of the rent as at and from any Review Date shall not prevent the Lessor at any subsequent time from requiring the rent to be reviewed pursuant to this clause 4.10 as at and from the Review Date; and
- 4.10.3 if the new rent applicable as at and from any Review Date is not reviewed by that date then:
  - (a) pending such review the Lessee shall pay the instalments of the rent at the rate applicable immediately prior to the Review Date; and
  - (b) the new rent shall be varied retrospectively as at and from the Review Date and any necessary adjustment in respect of:

- (i) any underpayment of rent paid after the Review Date shall be paid by the Lessee to the Lessor within seven (7) days after the new rent is determined; and
- (ii) any overpayment shall be credited to the next rent instalments due by the Lessee after the new rent is determined;

#### 4.11 Notice

4.11.1 a notice demand consent approval or communication under this Lease ('Notice') must be:

- (a) in writing in English and signed by a person duly authorised by the sender; and
- (b) hand delivered sent by prepaid post or sent by email to the recipient's address specified in the Schedule as varied by any Notice given by the recipient to the sender;

4.11.2 a Notice given in accordance with clause 4.10.2 takes effect when taken to be received (or at a later time specified in it) and is taken to be received:

- (a) if hand delivered on delivery;
- (b) if sent by prepaid post on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
- (c) if sent by email on the Business Day the notice or communication is sent provided that the communication is sent by 5.00pm on that day,

but if the delivery receipt or transmission is not on a Business Day or is after 5.00pm (addressee's time) on a Business Day the Notice is taken to be received at 9.00am (addressee's time) on the next Business Day; and

4.11.3 where there is more than one person comprising the Lessee a Notice served on or by any one or more of the persons comprising the Lessee is deemed served on or by all of the persons comprising the Lessee;

#### 4.12 Notice

4.12.1 a notice demand consent approval or communication under this Lease ('Notice') must be:

- (a) in writing in English and signed by a person duly authorised by the sender; and
- (b) hand delivered sent by prepaid post or sent by email to the recipient's address specified in the Schedule as varied by any Notice given by the recipient to the sender;

4.12.2 a Notice given in accordance with clause 4.10.2 takes effect when taken to be received (or at a later time specified in it) and is taken to be received:

- (a) if hand delivered on delivery;
- (b) if sent by prepaid post on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
- (c) if sent by email on the Business Day the notice or communication is sent provided that the communication is sent by 5.00pm on that day,

but if the delivery receipt or transmission is not on a Business Day or is after 5.00pm (addressee's time) on a Business Day the Notice is taken to be received at 9.00am (addressee's time) on the next Business Day; and

4.12.3 where there is more than one person comprising the Lessee a Notice served on or by any one or more of the persons comprising the Lessee is deemed served on or by all of the persons comprising the Lessee;

**4.13 Other Matters**

- 4.13.1 no waiver by the Lessor of one breach of any term of this Lease shall operate as a waiver of another breach of that or any other term of this Lease;
- 4.13.2 any term of this Lease which is not applicable to the Premises or which is repugnant to the general interpretation of this Lease or which is invalid unlawful void or unenforceable shall be capable of severance without affecting any of the other terms of this Lease;
- 4.13.3 the terms of this Lease comprise the whole of the agreement between the parties;
- 4.13.4 no other agreements or terms shall be implied in this Lease or arise between the parties by way of collateral agreement;
- 4.13.5 no promise representation or warranty (including without limitation as to the suitability of the Premises to conduct the Lessee's business) has been given or made by or on behalf of the Lessor to the Lessee; and
- 4.13.6 this Lease shall not create any relationship between the Lessor and the Lessee other than the relationship of lessor and lessee; and

**4.14 Managing Agent**

the Lessor may appoint a managing agent to manage the Premises and any managing agent shall represent the Lessor in all matters relating to this Lease except where the Lessor otherwise notifies the Lessee provided that any communication from the Lessor to the Lessee shall to the extent of any inconsistency supersede any communication from the managing agent.

**5. CONDITIONS**

This Lease is subject in all respects to the consent or approval of any person having any mortgage over the Land and any development or planning approval or consent (if required in respect of the grant of this Lease) being first obtained.

**6. CONSENT**

Unless otherwise provided in this Lease where the Lessor's consent or approval is required such consent or approval:

- 6.1.1 means prior written consent and prior written approval;
- 6.1.2 may be given or withheld in the absolute discretion of the Lessor; and
- 6.1.3 if given may be made conditional or unconditional

and the Lessee shall pay and reimburse the Lessor any costs or fees paid or payable by the Lessor to any agents consultants contractors solicitors or any other person to examine or advise on any application for such consent or approval and all incidental documents and any other money expended in respect of such application for consent or approval.

**7. GOODS AND SERVICES TAX**

- 7.1.1 The amount payable by the Lessee to the Lessor for or in connection with a taxable supply under this Lease does not include any GST.
- 7.1.2 The Lessee must pay the Lessor an additional amount on account of GST equal to the amount payable by the Lessee for the relevant taxable supply multiplied by the prevailing GST rate.
- 7.1.3 The additional amount is payable at the same time as when the amount for the relevant taxable supply is payable by the Lessee to the Lessor.
- 7.1.4 Within 14 days of receipt of the amount and additional amount the Lessor must provide the Lessee with a tax invoice.

7.1.5 For the purposes of this clause each of 'GST' 'taxable supply' and 'tax invoice' have the same meaning as those terms have in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 8. REDEVELOPMENT

If at any time in their respective absolute and unfettered discretion the Lessor or any proposed purchaser of the Land or any other party desires to redevelop the Land and the Lessor or such proposed purchaser or other party requires the Premises for demolition or to make structural alterations or additions or for any reason connected with the proposed redevelopment then the Lessor shall provide the Lessee with reasonable details of the proposed redevelopment and (if applicable) the proposed demolition sufficient to indicate a genuine proposal to redevelop or demolish the Building and the Lessor may terminate this Lease with effect from any time on giving not less than six (6) months' notice to the Lessee specifying the date on which the Premises is so required (**'Termination Date'**) and if the Lessor gives such notice then:

8.1.1 this Lease shall automatically and without the necessity for any further notice terminate on the Termination Date;

8.1.2 not less than fourteen (14) days prior to the Termination Date the Lessee shall execute and deliver to the Lessor a surrender of this Lease by mutual consent and without the payment of any monetary or other consideration which surrender shall be in registrable form and shall take effect from the Termination Date;

8.1.3 the costs of preparation and registration of the surrender shall be paid by the Lessor;

8.1.4 on the Termination Date the Lessee shall vacate the Premises in all respects in compliance with the terms of this Lease; and

8.1.5 if this Lease is terminated pursuant to this clause the Lessee shall not be entitled to any compensation or damages from the Lessor on any account by reason of such termination,

provided always that the Lessee may terminate this Lease by giving to the Lessor not less than seven (7) days' notice of termination at any time within six (6) months before the Termination Date (**'Lessee's Termination Date'**) and if the Lessee gives such notice then the provisions of clauses 8.1.1 to 8.1.5 (inclusive) shall apply mutatis mutandis as if the words 'Lessee's Termination Date' were substituted for the words 'Termination Date'.

## 9. SPECIAL CONDITIONS

### 9.1 Interpretation

If there is any inconsistency between the special conditions set out in this clause 9 and the other terms in this Lease the special conditions will prevail to the extent of any inconsistency.

### 9.2 Exclusion of Warranty

The Lessee agrees and acknowledges that:

9.2.1 the Lessor does not warrant that the Premises will for the Term of this Lease be fit for purpose or structurally suitable for the Permitted Use;

9.2.2 the Lessor does not warrant that the Permitted Use may be carried out at the Premises; and

9.2.3 the Lessee has relied only on its own enquiries in connection with this Lease including without limitation as to the suitability of the Premises for the Permitted Use.

### 9.3 Confidentiality

Each party agrees not to disclose any dealings concerning this Lease or any terms or conditions of this Lease to any third person without the consent of the other party consent except:

9.3.1 if this Lease is to be registered for upon registration this Lease becomes a public document;

9.3.2 for the purposes of the party's own legal financial accountancy or tax records; or

9.3.3 unless compelled to do so by law.

#### 9.4 Redecoration requirements

9.4.1 Immediately prior to the expiration of the Term or surrender of this Lease or within seven (7) days of any other determination of this Lease the Lessee must at its cost complete a redecoration of the entire Premises which redecoration shall include the following:

- (a) washing down the whole of the interior and exterior of the Premises including all partitions and additions made to the Premises;
- (b) painting staining polishing or otherwise treating all surfaces inside the Premises to such standard as the Lessor may require; and
- (c) replacing floor coverings (including all carpet and floor tiles) which are in the Lessor's reasonable opinion worn or damaged beyond fair wear and tear,

together the '**Redecoration Works**'.

9.4.2 If the Lessee fails to perform the Redecoration Works in accordance with this clause 9.4 the Lessor may perform the Redecoration Works at the Lessee's cost and such costs shall be deemed to be additional rent falling due and payable on the date on which the Lessor incurs such costs.

9.4.3 Nothing in this clause 9.4 shall be construed as limiting any other obligation of the Lessee under this Lease (including but not limited to clauses 2.13 and 2.21).

#### 9.5 Notice Charges

Without limiting any other clause in this Lease if the Lessor gives the Lessee:

9.5.1 a notice requiring the payment of outstanding rent; or

9.5.2 a notice requesting that the Lessee provides any information required to be given to the Lessor in connection with this Lease after the Lessee has failed to comply with an initial notice requiring the same,

the Lessee will be liable to pay on demand the Lessor's reasonable costs in respect of notice.

#### 9.6 Rent Free Period

The parties acknowledge and agree that:

9.6.1 the Lessor has granted to the Lessee a rent free period to the intent that provided the Lessee is not in breach or default of this Lease the Lessee shall not be liable to pay the rent during the two (2) month period commencing on 1 October 2020 and expiring at midnight on 30 November 2020 ('**Rent Free Period**');

9.6.2 the Lessee must commence paying the rent due under this Lease in accordance with Item 5 of the Schedule as at and from the day after the expiration of the Rent Free Period;

9.6.3 the Rent Free Period applies to the rent only and to no other payments due under this Lease. For the avoidance of any doubt the Lessee shall remain liable to pay all other payments payable by the Lessee under this Lease on and from the Commencement Date; and

9.6.4 the Rent Free Period granted under this clause 9.6 shall not in any way affect or vary the manner in which the rent is reviewed under the Lease (and the rent shall be reviewed without regard to the Rent Free Period).

#### 9.7 Condition of Premises

9.7.1 The Lessee acknowledges and agrees that:

- (a) the Lessee will receive possession of the Premises in the state and condition that the previous occupant of the Premises left the Premises and accepts the Premises in that condition, including the Existing Fitout;
- (b) the Lessee uses the Existing Fitout at the Lessee's sole risk;

- (c) the Lessor makes no warranties as to the ownership of the Existing Fitout;
- (d) the Lessor makes no representations about:
  - (i) the state and condition of the Existing Fitout;
  - (ii) the suitability of the Existing Fitout; or
  - (iii) whether the Existing Fitout is subject to any Security;
- (e) the Lessee will deal directly with any third party who may have any interest in the Existing Fitout to ensure that the Lessee becomes the unencumbered owner of the Existing Fitout promptly after becoming aware of the third party interest in the Existing Fitout; and
- (f) from the Commencement Date the Existing Fitout of the Premises is part of the Lessee's property.

9.7.2 In this clause 9.7:

- (a) **'Existing Fitout'** means the fitout in the Premises at the Commencement Date and includes any of the following:
  - (i) items installed on the Premises by or for a previous occupant of the Premises (if any);
  - (ii) the shopfront and signage;
  - (iii) internal partitioning, ceilings and walls;
  - (iv) flooring above the concrete slab (including any flooring laid on the concrete slab); and
  - (v) electrical wiring, light fittings, plumbing and other services back to the access/connection point.
- (b) **'Security'** means any or all of:
  - (i) a charge, mortgage, lien or pledge; or
  - (ii) a security interest within the meaning of the PPSA.
- (c) **'PPSA'** means the *Personal Property Securities Act 2009* (Cth).

9.8 **Lessee's Fitout**

- 9.8.1 The Lessee must carry out and complete all of the works to be undertaken by the Lessee to fitout the Premises to the Lessee's requirements (**'Fitout Works'**).
- 9.8.2 Before commencing the Fitout Works the Lessee must:
  - (a) submit to the Lessor its draft drawings and specifications prepared by professional draftsmen for the Lessor's approval (acting reasonably);
  - (b) obtain all necessary statutory and governmental approvals and provide copies to the Lessor;
  - (c) give the Lessor evidence that the Lessee has effected the insurances required under this Lease; and
  - (d) pay the reasonable costs incurred by the Lessor in connection with considering the Lessee's request for the Lessor's approval under clause 9.8.2(a).
- 9.8.3 If the Lessor does not approve any aspect of the draft drawings and specifications submitted by the Lessee:

- (a) the Lessor must give notice to the Lessee giving the basic reasons why the draft drawings and specifications are not approved and specifying a reasonable timetable for the resubmission of amended draft drawings and specifications; and
- (b) the Lessee must ensure appropriate amendments are made to the draft drawings and specifications or submit new draft drawings and specifications within the timetable specified by the Lessor and resubmit them under clause 9.8.2(a).

9.8.4 The Lessee must carry out and complete the Fitout Works:

- (a) at the Lessee's cost;
- (b) in a proper expeditious and workmanlike manner using new and good quality materials;
- (c) using only contractors who are approved by the Lessor;
- (d) in accordance with:
  - (i) the Lessor's approval; and
  - (ii) all necessary statutory and governmental approvals;
- (e) during the hours and on conditions the Lessor nominates;
- (f) to the Lessor's satisfaction;
- (g) in a manner that will not affect disrupt or cause a nuisance to:
  - (i) the normal operation of the Building; or
  - (ii) any other occupant or user of the Building or the Land; and
- (h) keeping the Premises reasonably clean and tidy including when necessary removing all waste debris and residual materials from the Premises and the Building during hours reasonably prescribed by the Lessor.

9.8.5 The Lessee acknowledges and agrees that:

- (a) the Lessee undertakes the Fitout Works at its own risk;
- (b) despite any review of request for change to or approval by the Lessor of the drawings and specifications supplied by the Lessee the Lessor makes no warranties or representations as to any circumstance relating to the subject matter of the review request for change or approval and the Lessee releases the Lessor from all liability arising out of any error defect or inadequacy in the Fitout Works;
- (c) the Lessee will indemnify and must keep indemnified the Lessor against all liability loss or damages incurred in connection with the Fitout Works including without limitation any consequential works that the Lessor may have to undertake to the Building as a result of the Fitout Works and/or the Lessee's conduct of the Fitout Works;
- (d) the Lessee will repair and make good to the Lessor's satisfaction any damage which may be caused to the Premises or the Building as a result of the access to the Premises by the Lessee or the Fitout Works;
- (e) the Lessee must immediately upon completion of the Fitout Works engage suitably qualified tradespeople to certify the Fitout Works in accordance with the Australian Building Code ('**Certifications**') and provide copies of such Certifications to the Lessor; and
- (f) in the event that the Lessee does not provide the Certifications to the Lessor the Lessor may (but is not obliged to) engage its own tradespeople to inspect the Fitout Works and issue the necessary certifications and the Lessee must reimburse the Lessor for the costs in doing so.

9.8.6 Nothing in this clause 9.8 limits the Lessee's obligations under this Lease including without limitation clauses 2.20, 2.28 and 2.29.

**9.9 Roof and wall penetrations**

Without limiting clause 2.20, the Lessee must seek the prior written approval of the Lessor (which approval may be withheld in the Lessor's absolute discretion) before the Lessee or the Lessee's Agents will be permitted to access the roof or walls of the Building in order to install any equipment (for example, satellite dishes, cable or phone connections). The Lessee must ensure that all penetrations are sealed and are weather and vermin proof. For the purposes of this clause, 'sealed' means that the penetration must be "flushed" to the ridge line as per the Australian Building Code.

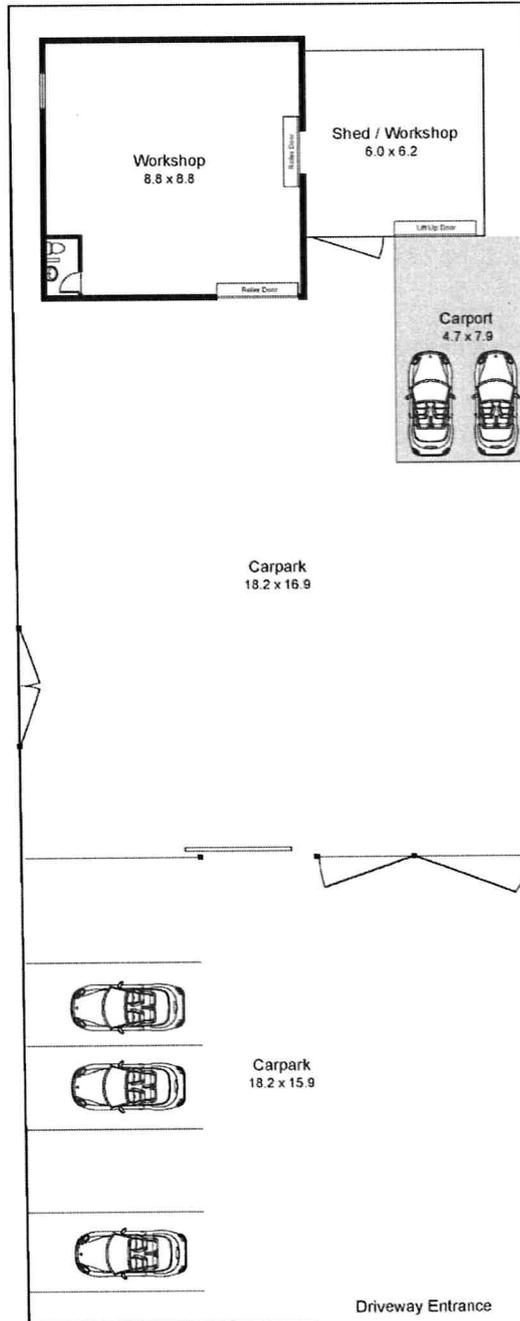
**9.10 Car Parking**

The Lessee covenants and agrees that:

- 9.10.1 the Lessee and its staff will be permitted to park passenger vehicles in the parking areas on the Land PROVIDED THAT the Lessor may from time to time in its absolute discretion designate particular parking areas (if any) which may be used by the Lessee or its staff and may specify the days and hours (if any) during which the same may or may not be used by such persons;
- 9.10.2 the Lessee must and must ensure that the Lessee's staff use fair and reasonable judgment when parking vehicles on the Land;
- 9.10.3 the Lessor may at any time relocate the driveways entrances and exits and change the boundaries and locations of the parking areas on the Land and may remove or rearrange the parking spaces or construct additional parking spaces in the parking areas;
- 9.10.4 the Lessor may prohibit or limit the use of the parking areas on the Land to prevent unauthorised persons not intending to conduct business with or become customers of any of the occupants of the Building from using the parking areas for any private or other purposes;
- 9.10.5 the Lessee shall comply with the Lessor's requirements from time to time in respect of access use and security of the parking areas on the Land;
- 9.10.6 the car parks are not to be used for long term storage of vehicles or as a storage space or as a place to hold containers;
- 9.10.7 upon request to do so the Lessee the Lessee shall furnish the Lessor with the registration numbers of the vehicles of the Lessee and/or the Lessee's staff and the names of the usual drivers of such vehicles and promptly notify the Lessor of any changes of such registration numbers or drivers;
- 9.10.8 any motor vehicle and all their parts and accessories and other goods and chattels in or about the vehicles shall be and remain at the sole risk of the Lessee and the Lessor shall not be liable for any loss or damage in connection with such motor vehicles whilst on entering or leaving the Land;
- 9.10.9 the Lessor shall not be liable for the death of or personal injury to the Lessee or any passengers or drivers of any motor vehicles while on entering or leaving the Land whether the Lessee or such persons are in motor vehicles or on foot; and
- 9.10.10 without limiting clause 2.29 the Lessee shall at all times indemnify the Lessor against all losses actions costs claims and demands resulting from any loss or damage referred to in this clause 9.10 and any damage to the Lessor or the Land or to any other person or the property of any other person caused or contributed to by the Lessee or passengers or drivers of any motor vehicles while on entering or leaving the Land.

Annexure A

Premises Plan



Area (Estimate only)	
Workshop	77.4 m <sup>2</sup>
Shed / Workshop	37.2 m <sup>2</sup>
Carport	37.1 m <sup>2</sup>
<b>Total</b>	<b>151.7 m<sup>2</sup></b>



For illustrative purposes only. All measurements are approximate

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**Execution**

This Lease is executed as a deed.

Dated 23rd October 2020

**LESSOR**

Executed by **SPENCER PROPERTY SA PTY LTD** ACN 601 161 700 in accordance with Section 127 of the *Corporations Act 2001*

  
\_\_\_\_\_  
Signature of director

**LESLIE VERONICA SPENCER**  
\_\_\_\_\_  
Name of director (print)

  
\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

**MICHAEL ROBERT SPENCER**  
\_\_\_\_\_  
Name of director/company secretary (print)

**LESSEE**

Signed by **RICHARD PETER HOOK** in the presence of

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

CATERINA SCHIPANI  
\_\_\_\_\_  
Name of witness (print)

  
\_\_\_\_\_  
**Richard Peter Hook**

18 FULLERTON ROAD NORWOOD SA 5067  
\_\_\_\_\_  
Address of witness

8223 6001  
\_\_\_\_\_  
Phone number of witness

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**OPERATIVE CLAUSE**

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

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

Nil

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

This Lease does not contravene Section 32 of the Development Act 1993.

DATED .....

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

Lessor(s)

- \*The Certifier has taken reasonable steps to verify the identity of the Lessor or his, her or its administrator or attorney.
- \*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- \*The Certifier has retained the evidence to support this Registry Instrument or Document.
- \*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

for: MinterEllison  
On behalf of the **Lessor**

Lessee(s)

- \*The Certifier has taken reasonable steps to verify the identity of the Lessee or his, her or its administrator or attorney.
- \*The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- \*The Certifier has retained the evidence to support this Registry Instrument or Document.
- \*The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

for:  
On behalf of the Lessee