

McInvest Property Holdings Pty Ltd as trustee for McInvest Superannuation Fund  
(Landlord)

and

MCINTOSH INVESTMENTS AUSTRALIA PTY LTD  
(Tenant)

AGREEMENT FOR LEASE

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DEED dated 10/12/2020

BETWEEN

MCINVEST PROPERTY HOLDINGS PTY LTD A.C.N. 643 233 809as trustee for the

McInvest Superannuation Fund of c/- Crase Consulting Group Pty Ltd, Level 4, 20 Grenfell Street, Adelaide SA 5000

(Landlord)

MCINTOSH INVESTMENTS AUSTRALIA PTY LTD of /- 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 6/6/2020 subject to any extension of time made pursuant to clause 3.5.

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 buildings, 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 25 on Plan SP313106, 'Chevallum Industrial Estate', 521 Chevallum Road, Chevallum, Queensland 4555

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.

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 3.1.

Practical Completion means that the Development Works have been completed in accordance with clause 3.1, 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 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, reenactments 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 Development Approval

3.1.1 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).

3.1.2 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.

3.1.3 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.

3.1.4 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.

3.1.5 If at any time the Tenant is of the opinion, in its absolute discretion, that this clause 3.1 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.

3.1.6 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.

3.1.7 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 3.1.6,

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.

### 3.2 Plans and Specifications

3.2.1 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.

3.2.2 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.

3.2.3 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.

3.2.4 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.

### 3.3 Standard of construction

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

3.3.1 the Plans and Specifications (subject to clause 3.4);

3.3.2 the Approvals;

3.3.3 all Laws; and

3.3.4 the Tenant's obligations under this agreement.

### 3.4 Changes of Plans and Specifications

3.4.1 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.

3.4.2 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.

3.4.3 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.

3.4.4 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.

3.4.5 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.

3.4.6 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.

3.4.7 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.

3.4.8 If:

- (a) the Expert determines both matters in clause 3.4.6 in the affirmative; and

- (b) the Tenant elects not to exercise its rights of termination under clause 3.4.7,

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

### 3.5 Delays

3.5.1 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.

3.5.2 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.

### 3.6 Certificate of Practical Completion

3.6.1 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).

3.6.2 On the Inspection Date the parties together with their nominated consultants, will jointly inspect the Development Works.

3.6.3 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.

3.6.4 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.

3.6.5 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.

3.6.6 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.

### 3.7 Maintenance Period

3.7.1 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.

3.7.2 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.

### 3.8 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.

### 3.9 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.

### 3.10 "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.

### 3.11 Constructed Improvements

The parties acknowledge that:

3.11.1 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

3.11.2 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

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

(a) 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;

(b) 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;

(c) the other party is deemed insolvent under the Corporations Act;

(d) any event described in Section 461 of the Corporations Act occurs in relation to the other party; or

(e) any action is taken to make an appointment referred to in clause 5.3.1(a).

## 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.

### 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 McInvest Property Holdings Pty Ltd as trustee for McInvest Superannuation Fund  
accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

A handwritten signature in black ink, appearing to read 'David McIntosh', with a stylized flourish at the end.

Signature

Print Name David McIntosh

Print Position Sole Director

and 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 in accordance with section 127(1) of the  
Corporations Act 2001 (Cth) by:

A handwritten signature in black ink, appearing to read 'David McIntosh', with a stylized flourish at the end.

Signature

Print Name David Mcintosh

Print Position Sole Director

and 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: PO BOC 3066 MAROOCHYDORE QLD

Email: davidmcintosh444@hotmail.com

Attention: David McIntosh

Tenant: Address PO BOC 3066 MAROOCHYDORE QLD

Email: davidmcintosh444@hotmail.com

Attention: David McIntosh

ANNEXURE A – LEASE

ANNEXURE B – LAND