

Dealing Number

Duty Imprint



Privacy Statement

The information from this form is collected under the authority of the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used for the purpose of maintaining the publicly searchable registers in the land registry and the water register.

1. Lessor

L Russell Enterprises Pty Ltd A.C.N. 105 042 206
As trustee for the L Russell Superfund

Lodger (Name, address & phone number)

Fox & Thomas
Solicitors
78 The Terrace
St George Qld 4487
Telephone: (07) 4625 3300

Lodger Code

2. Lot on Plan Description

Lot 2 on RP82093

County

Belmore

Parish

St. George

Title Reference

50338997

3. Lessee Given names

Surname/Company name and number

LINELLE RUSSELL

(include tenancy if more than one)

AS TRUSTEE

4. Interest being leased

Fee Simple

5. Description of premises being leased

PART OF THE LAND HATCHED IN BLACK ON THE ATTACHED PLAN

6. Term of lease

Commencement date: 12 February 2007

*Expiry date: 11 February 2010

**Options on page 18

*not required for leases in a retirement village **insert nil if no option

7. Rental/Consideration

\$30,000.00

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- The attached Schedule

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

Witnessing Officer

Execution Date

Lessor's Signature

.....Signature / /

.....full name

.....qualification

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

9. Acceptance

The lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

Witnessing Officer

Execution Date

Lessee's Signature

.....Signature / /

.....full name

.....qualification

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

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RENTAL (7)

1. The term hereof shall be divided into rent periods of twelve (12) calendar months each, the first rent period commencing on the date of commencement and the second and subsequent rent periods commencing respectively on each twelve monthly anniversary of the date of commencement.
2. The expression "the base rental" shall mean the GST exclusive sum of \$30,000.00.
3. The respective yearly rentals payable for the second and subsequent rent periods for the term hereof shall in respect of each such rent period be the amount of "X" to be determined in accordance with the following formula:-

$$X = A \times \frac{B}{C}$$

WHERE

"A" means the base rental set forth in Clause 2 hereof.

"B" means the C.P.I. for the Quarter ending immediately preceding the beginning of the second and subsequent rent periods respectively.

"C" means the C.P.I. number for the Quarter ending immediately preceding the date of commencement.

AND "C.P.I." (Consumer Price Index) means the "All Groups" C.P.I. published from time to time by the Commonwealth Statistician in relation to the City of Brisbane.

"Quarter" means the respective three (3) monthly periods adopted by the Statistician for the compilation and issue of such Index.

"Index Number" means the Index Number or Points compiled and issued by the Statistician for and in respect of a particular Quarter.

PROVIDED HOWEVER that in no event shall the annual rental payable for the second subsequent rent periods be less than the yearly rental payable in the immediately preceding rent period.

AND in the event that the Commonwealth Statistician shall update the reference base of such Consumer Price Index due conversion shall be made to preserve the intended continuity of calculation by using the appropriate factor determined by the said Statistician.

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AND if the said Consumer Price Index is discontinued or suspended, then the annual rental payable for the rent period which would otherwise have been calculated in accordance with such Consumer Price Index as aforesaid shall be the annual amount mutually agreed upon by the Lessor and the Lessee within a period of one (1) calendar month of the commencement of the rent period **PROVIDED THAT** pending mutual agreement the Lessee shall continue to pay on account of the rent ultimately determined to be payable rental at the rate current when the date of the increase ought to have come into force and the balance thereof upon mutual agreement.

FAILING such agreement, then the annual rental payable shall be determined by a registered Valuer nominated for that purpose (at the request of either the Lessor or the Lessee) by the President or Acting President for the time being of the Real Estate Institute of Queensland and the person so nominated shall act as an expert and not as an Arbitrator and in determining the annual rental payable such Valuer shall have regard to rentals payable for comparable premises (if any) in the locality of the demised premises during the last three (3) months of the previous rent period but in no case shall the annual rental payable be so determined at a figure less than the yearly rental payable in the immediately preceding rent period. The Valuer's decision shall be final and binding on the Lessor and the Lessee and the cost of obtaining such determination by such Valuer shall be borne by the Lessor and Lessee in equal shares.

AND until the amount of yearly rental payable for the second and subsequent rent periods respectively can be determined in accordance with the provisions of this sub-clause, the Lessee shall pay to the Lessor on account thereof on the due dates the same rental as was payable during the immediately preceding rental period and after ascertainment of the proper yearly rental, any arrears shall be payable within 14 days of such ascertainment and request therefore being made by the Lessor.

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1. SECTION 1 - INTERPRETATION AND DEFINITION

In the interpretation of this Lease unless there is something in the subject matter or context inconsistent therewith:-

- 1.1. "the Lessor" shall mean and include in the case of a natural person the Lessor his or her executors administrators and assigns and in the case of two (2) or more natural persons the Lessor and their and each of their administrators and assigns and in the case of a corporation the Lessor and its successors and assigns;
- 1.2. "the Lessee" shall mean and include in the case of a natural person the Lessee his or her executors administrators and assigns in the case of two (2) or more natural persons the Lessee and their and each of their executors administrators and assigns and in the case of a corporation the Lessee and its successors and assigns;
- 1.3. "the said land" shall mean and include the land described in item 2 of the front sheet of this lease.
- 1.4. "the demised premises" shall mean and include the lands described in item 5 of the front sheet to this lease and includes any buildings (which buildings are referred to herein as "the building") and other improvements on that land.
- 1.5. Where more than one (1) Lessee is a party hereto the covenants herein contained or implied shall be deemed to be entered into by the Lessee jointly and severally;
- 1.6. Headings of clauses have been inserted for guidance only and shall not be deemed to form any part of the context;
- 1.7. References to Statutes (whether in particular or generally) shall include all Statutes amending or consolidating or replacing the Statutes referred to and all ordinances rules and regulations and by-laws made thereunder.

SECTION 2 - EXCLUSION OF IMPLIED COVENANTS AND POWERS

- 2.1. The covenants implied by virtue of "*Land Title Act 1994*" or the "*Property Law Act 1974*" are not negatived but shall be deemed to have been modified to the extent of any inconsistency with the provisions hereof.

3. SECTION 3 - RENT

- 3.1. The Lessee hereby covenants with the Lessor as follows:-

- (a) To pay in the first rent period and each subsequent rent period (free of all deductions) to the Lessor, or as the Lessor shall otherwise direct, the base and the yearly rental payable by the Lessee to the Lessor for each subsequent rent period which yearly rental shall be the base rental (increased under the provisions of this Lease, where appropriate) such rental to be paid always monthly in advance by equal payments on the First day of each month throughout the said term (save that if the commencement date is not the first day of a calendar month, the first rental payment which shall be made on or before the commencement date, and the final rental payment shall be payments proportionate to the parts of the calendar month to which they relate);

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4. SECTION 4 - OUTGOINGS

The Lessee hereby covenants with the Lessor as follows:-

- 4.1. To pay any charges outgoings or assessments in relation to the use of water which may at any time during the term be separately levied or imposed on the demised premises.
- 4.2. To pay any rates or charges outgoings or assessment which may at any time during the term be separately levied or imposed on the demised premises calculated by reference to the volume of water consumed on the premises.

5. SECTION 5 - ABATEMENT OF RENT OR TERMINATION OF LEASE ON DAMAGE TO BUILDING

- 5.1. If, during any term of the Lease, the demised premises or any part thereof are destroyed or damaged (without any neglect or default on the part of the Lessee) by fire, storm, flood, tempest, riot, civil commotion or the Queen's enemies or destroyed or damaged in resisting the Queen's enemies or by any other Act of God so as to render the demised premises wholly or partially unfit for occupation and use by the Lessee for the purpose of its business then until such time as the demised premises shall again be rendered fit for occupation and use by the Lessee for the purpose of its business the rental payable by the Lessee hereunder (or a fair and just proportion thereof having regard to the nature and extent of the damage sustained) shall be suspended and cease to be payable. In the event of any difference between the Lessor and the Lessee as to the amount of rent payable such difference shall be referred to the arbitration of a single arbitrator willing to act nominated for the purpose by the President for the time being of the Queensland Law Society Incorporated and such reference shall be deemed to be a submission to arbitration within the provisions of the *Commercial Arbitration Act* 1990 or any statutory modification or re-enactment thereof for the time being in force in the State of Queensland so that this submission and the award shall at the instance of either party and without notice to the other of them be made a rule or order of the Supreme Court of Queensland. If the demised premises shall (without any neglect or default on the part of the Lessee) be destroyed or so damaged by fire storm flood tempest riot civil commotion or the Queen's enemies or destroyed or so damaged in resisting the Queen's enemies or by any other act of God that the demised premises shall be wholly unfit for occupation or use by the Lessee then if the demised premises shall not within a period of six (6) months have been reinstated for the purpose of carrying on its business then if the demised premises shall not within a period of six (6) months from the occurrence of such destruction or damage have been reinstated to such a degree that the demised premises are again rendered fit for occupation and use by the Lessee for the purpose of carrying on its business this Lease and the term hereby created shall by written notice by either party to the other at any time after the expiration of such period of six (6) months absolutely cease and determine but without prejudice however to any rights which might have accrued to either party prior to such determination. The Lessee shall not on the occurrence of any of the events provided for in this clause request the insurer of the building to apply the money for which the building is insured to be laid out and expended so far as such moneys will go towards rebuilding reinstating or repairing the building.

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6. SECTION 6 - THE USE OF THE DEMISED PREMISES BY THE LESSEE

The Lessee hereby covenants with the Lessor as follows:-

- 6.1. To use the demised premises only for the purpose of retail sales and for such other purposes as the Lessor may from time to time approve in writing with such approval by the Lessor not to be unreasonably withheld. The Lessee will at all times on the request of the Lessor give to the Lessor a faithful and true account of the nature of the business carried on by the Lessee.
- 6.2. Not to use exercise or carry on or permit or suffer to be used exercised or carried on in or upon the demised premises or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling.
- 6.3. Not to paint affix or exhibit or permit to be painted affixed or exhibited on or upon any part of the demised premises or on or upon external walls awnings doors blinds or windows thereof any placard poster sign nameplate or signboard or mark or other advertisement without the prior consent of the Lessor **PROVIDED THAT** such consent shall not be unreasonably withheld to the using or exhibiting of any advertisement or sign customary and/or incidental to the Lessee's class of business if such advertisement or sign strictly complies with the by-laws of the local or other authorities.
- 6.4. Not without the consent in writing of the Lessor to effect or place upon or within or without the demises premises of the building any radio or television aerial or antenna or any loud-speakers screens or similar devices or equipment and not without the like consent to use or permit to be used any musical instrument loud-speaker radio gramophone television or other like media or equipment capable of being heard or seen from outside the demised premises.
- 6.5. Not without the prior written approval of the Lessor to bring upon the demised premises any heavy machinery or other plant or equipment not reasonably necessary or proper for the conduct of the Lessee's use of the demised premises as herein provided and in no event shall the Lessee bring upon the demised premises any heavy machinery or other plant or equipment of such nature or size as to cause or (in the reasonable opinion of the Lessor) be likely to cause any structural or other damage to the floors, walls, roof or any other parts of the demised premises.
- 6.6. Not to permit or to use or suffer the use of the demised premises so as to commit or cause any breach of any Act of Parliament or any regulation or by-law made thereunder or by the Local Authority, the Department of Public Health, the Department of Factories and Shops, the Local Fire Brigades Board or any other municipal semi-government local or statutory authority, instrumentality department or body.
- 6.7. Not to use or permit the demised premises to be used for residential purposes, whether temporary or permanent nor to permit any person to sleep on the demised premises **PROVIDED THAT** this clause shall not apply to a caretaker of the Lessee.
- 6.8. Not to use or permit the demised premises to be used for any illegal purposes or activity.

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- 6.9. Not to do or permit to be done in or upon the demised premises or any part thereof, any act, matter or other thing whatsoever at any time which shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of occupiers or owners of any adjacent premises and in particular will not hold or permit to be held in or in the vicinity of the demised premises any auction sale or public meeting.
- 6.10. To store and keep all waste materials and garbage in proper receptacles therefore and to arrange for the regular removal thereof from the demised premises.
- 6.11. To use its best endeavours to protect and keep safe the demised premises and any property contained therein from theft or robbery and to keep all doors windows and other openings closed and securely fastened when the demised premises are not in use.
- 6.12. Not to keep or suffer to be kept any animal or bird on the demised premises.
- 6.13. To take such precautions against fire on and in respect of the demised premises as shall be required under or in pursuance of any Act or Acts of Parliament now or hereafter in force or by local or public authority **AND** at the Lessee's own expense in all things to do all such other acts, matters and things as are or may be required under, or in pursuance of any Act or Acts of Parliament now or hereafter to be in force or as directed or required by any local or public authority to be done or executed during the said term in respect of the demised premises which are required to be undertaken as a result of the purpose for which the demised premises are used by the Lessee, Owner or Occupier thereof **PROVIDED** that nothing contained in this Clause shall render the Lessee liable to make any structural alterations to the demised premises nor to provide any permanent fittings or by reason of the purpose for which the demised premises are leased to the Lessee whether by the owner or occupier thereof **PROVIDED THAT** nothing contained in this clause shall render the Lessee liable to make any structural alterations to the demised premises nor provide any permanent fittings.
- 6.14. That no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor in respect of the suitability of the demised premises for any business to be carried on therein or to the state of the fittings, finish, facilities and amenities of the demised premises.
- 6.15. Not without the Lessor's written consent first had and obtained to use any method of heating lighting of air conditioning in the demised premises other than by gas or electricity current supplied through meters properly installed and not at any time to install a greater number of electric light and power points than any appropriate and duly constituted authority shall permit and allow **PROVIDED THAT** the Lessee may install in the demised premises an alternative method of lighting for emergency use as required by it but shall only use the same during such emergency and shall indemnify the Lessor against any loss or damage suffered by them and relating therefrom.
- 6.16. Save in the ordinary course of the Lessee's business and not without the consent in writing of the Lessor first obtained, to store chemicals, flammable liquids, acetylene gas or alcohol or explosive oils, compounds or substances upon the demised premises or to use such substances or fluids in the demised premises for any purpose other than ordinary course of the business of the Lessee.

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7. SECTION 7 - MAINTENANCE REPAIR AND CLEANING

The Lessee hereby covenants with the Lessor as follows:-

- 7.1. From time to time and at all times during the said term or any extension thereof at the Lessee's own expense and without any notice or demand from the Lessor to repair and maintain in good and substantial repair and condition the whole (including without prejudice in any way to the generality of the foregoing all appurtenances electrical wiring plumbing and other services plant plate glass doors locks and other equipment of the Lessor of whatsoever nature) of the demised premises and all the Lessor's fixtures and fittings and particularly all machinery plant equipment and other things of the Lessor belonging thereto or which at any time during the said term or any extension thereof shall be erected therein or thereon or be part thereof fair wear and tear and damage by fire, storm, flood, tempest, riot, civil commotion the Queen's enemies or damage caused in resisting the Queen's enemies or other similar causes excepted. The Lessee shall also keep the demised premises tidy and free from rubbish at all times **PROVIDED HOWEVER** that nothing herein contained shall impose any obligation upon the Lessee to do any work of a structural nature except such as may be occasioned by the act, neglect or default of the Lessee or his customers, visitors, servants or invitees or of the Lessee's use or occupancy of the demised premises or by the nature of the business or activities conducted by the Lessee therein.
- 7.2. Not to cut, injure, damage or deface the building or any conveniences, appliances, facilities or equipment of the Lessor installed therein and not to use or suffer the use of same for any purpose or in any manner other than those for which they are provided or properly available and not to abuse or misuse same.
- 7.3. To permit the Lessor and its agents with or without workmen or others with all necessary appliance and equipment to enter the demised premises at any time or times during normal commercial hours (or, in case of emergency, at any time whatsoever) for the purpose of either viewing the state of repair and condition of the demised premises or for effecting any repairs alterations or improvements to the building **PROVIDED THAT** in so doing the Lessor will cause as little disruption as possible to the Lessee in the conduct of its business.
- 7.4. To make good any defects and wants of repair in breach of the Lessee's covenant to repair the demised premises as soon as reasonably possible after the Lessor shall have left on such premises notice in writing of such defects and wants of repair and in the event of the Lessee failing to commence the work of remedying the same within thirty (30) days after the leaving of such notice or failing to proceed diligently with the execution of such repairs it shall be lawful for the Lessor or its agents to execute or complete the execution of such repairs at the cost and expense of the Lessee.
- 7.5. To make good any breakage defect or damage to the building or to any adjoining premises or any facility or appurtenance thereof occasioned by any act neglect want of care or misuse or abuse on the part of the Lessee or the Lessee's agents contractors or sub-contractors sub-tenants customers or invitees or other persons claiming through or under the Lessee or otherwise occasioned by any breach or default of the Lessee hereunder.
- 7.6. To immediately repair or replace (or pay to the Lessor the cost of its so doing) any broken glass in or about the demised premises (including exterior windows) with glass of the same or similar quality and to immediately repair or replace all damaged or broken heating, electrical equipment including light globes and fluorescent tubes and plumbing installed upon the demised premises.

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- 7.7. If so required by the Lessor, the Lessee shall at the end of the term hereby created or at the expiration or earlier termination of the initial term or of any renewed or extended term, to paint, colour and paper all parts of the inside of the demised premises which have previously been painted, coloured or papered to standards reasonably determined by the Lessor to be appropriate in the circumstances and in the original colours or such other colours as may be approved in writing by the Lessor (if so required by the Lessor).
- 7.8. That at the expiration or sooner determination of the term to peaceably surrender and yield up to the Lessor the whole of the demised premises and every part thereof in good and substantial repair, order and condition and to clean and leave free from rubbish (having regard to the condition of the demised premises at the commencement of the term and fair wear and tear and damage by, fire, storm, flood, tempest, riot, civil commotion, the Queen's enemies or damage caused in resisting the Queen's enemies, and other similar causes excepted) and otherwise surrender the demised premises up to the Lessor in accordance and compliance in all respects with all of the Lessee's covenants and obligations hereunder.
- 7.9. To keep the demised premises in a thorough state of cleanliness and of good appearance and not to allow any accumulation of useless property or rubbish thereon and to take all necessary sanitary precautions.
- 7.10. To keep and maintain in clean and good order repair and condition all fittings plant furnishings and equipment of the Lessor, if any.
- 7.11. To keep the drains spouting and water pipes, if any, of the demised premises clean and free from any obstruction.
- 7.12. To give to the Lessor prompt notice in writing (after the same has come to the knowledge of the Lessee) of any accident to or defect or want of repair in any service to or fittings in the demised premises and of any other circumstances likely to be or cause any danger risk or hazard to the demised premises or to the said land or any person therein.

SECTION 8 - ALTERATIONS

The Lessee hereby covenants with the Lessor:-

- 8.1. That subject to the provisions of Clause 8.2, and not without the previous consent in writing of the Lessor to make any alteration or addition in or to the demised premises or any part thereof and in the course of any alterations or additions made with the consent of the Lessor to observe and comply with all requirements of the Lessor and public authorities.
- 8.2. That the Lessee will not without the consent in writing of the Lessor install any equipment, partitioning or other installation unless the same be nominated or approved by the Lessor and installed at the Lessee's cost **PROVIDED THAT** the Lessor will not unreasonably withhold such consent with respect to the proposed installation of any alteration or addition to the demised premises reasonably required for the better enjoyment of the demised premises or the more efficient conduct of the Lessee's business thereon.

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8.3. That unless otherwise agreed in writing by the parties hereto all equipment, partitioning, or other installation erected or installed in the demised premises by or at the cost of the Lessee shall remain the property of the Lessee who shall be responsible for all maintenance thereof. Any such equipment, partitioning or other installation will, if so required by the Lessor be removed by the Lessee at or immediately prior to the expiration of the last term of the Lease. The Lessee shall upon such removal do no damage to the demised premises and shall reinstate the demised premises to the condition it was in prior to such installation.

8.4. That any structural alterations, additions or substitutions made by the Lessee to the demised premises (with or without the consent in writing of the Lessor) shall unless otherwise mutually agreed become the absolute property of the Lessor.

9. SECTION 9 - ASSIGNMENT AND SUBLETTING

9.1. The Lessee covenants with the Lessor not to assign sub-let or part with the possession of the demised premises or any part thereof or of the lease thereof or of any estate or interest therein to any person without the previous written consent of the Lessor **BUT** the Lessor **HEREBY AGREES** that in the event of the Lessee wishing to assign transfer or sub-let the demised premises or any part thereof to any person the Lessor shall not unreasonably withhold its consent to such assignment transfer or Sub-lease if:-

- (a) In the case of a proposed assignment transfer or Sub-lease the proposed assignee transferee or Sub-lessee is a respectable responsible solvent fit and suitable person the onus of proving which shall be upon the Lessee;
- (b) The Lessee procures the execution by any such assignee transferee or Sub-lessee of an assignment or transfer of these presents or of a Sub-lease to which the Lessor is a party in such form as the Lessor or their Solicitors shall approve of (such approval not to be unreasonably withheld) and any such assignment or transfer shall contain (inter alia) a covenant with the Lessor by such assignee or transferee that the said assignee or transferee will at all times during the continuance of the said term or any extension thereof duly pay the rent (or a proportionate part thereof if such assignment or transfer be part only of the demised premises) at the times and in the manner herein mentioned and any such Sub-lease shall contain (inter alia) a covenant with the Lessor by such Sub-lessee to pay to the Lessor in manner aforesaid the rent thereby reserved in the event of default in payment thereof by the Lessee upon the Lessor giving notice in writing to such effect to the Sub-lessee and until such notice be given to pay such rent to the Lessee **AND** that any such assignment transfer or Sub-lease (as the case may be) shall contain (mutatis mutandis) covenants by the assignee transferee or Sub-lessee (as the case may be) to observe and perform the covenants conditions and agreements herein contained or implied and on the part of the Lessee to be observed and performed;
- (c) All rent then due or payable shall have been paid and there shall not be any existing unremedied breach of covenants conditions or agreements herein contained;
- (d) Such assignment transfer or sublease is approved by the Solicitors to the Lessor (such approval not to be unreasonably withheld) at the cost and expense in all respects of the Lessee or of such assignee transferee or Sub-lessee;

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- (e) The Lessee pays to the Lessor all proper costs charges and expenses incurred by the Lessor of and incidental to any queries which may be made by or on behalf of the Lessor as to the respectability responsibility solvency fitness and suitability of any proposed assignee transferee or Sub-lessee;
- (f) The assignee transferee or Sub-lessee is a corporation, the directors of the assignee transferee or Sub-lessee provide a guarantee of the obligations of the assignee transferee or Sub-lessee in a form reasonably satisfactory to the Lessor;
- (g) The covenants and agreements on the part of any such assignee transferee or Sub-lessee shall be deemed to be supplementary to these presents and shall not in any way relieve or be deemed to relieve the Lessee from its liability hereunder;

9.2. If the Lessee is a corporation, any change in the principal shareholding or composition of the board of directors altering the effective control or control of one half or greater of the shares of the board is an assignment of this Lease and must be dealt with in accordance with this Lease.

10. SECTION 10 - INSURANCES

The Lessee will observe and comply with the following covenants and obligations relating to insurance:-

- 10.1. The Lessee will effect and keep current during the term in respect of the demised premises a public risk policy for an amount in respect of any single accident or event of not less than **TEN MILLION DOLLARS (\$10,000,000.00) OR** such larger amount as the Lessor may reasonably request from time to time. Such policy shall indemnify the Lessor against actions, suits, claims and demands of any kind arising from the use by the Lessee its invitees or licensees of the building or portions thereof.
- 10.2. The Lessee will insure in the joint names of the Lessor and the Lessee and for the full insurable value all plate glass and other glass windows doors and showcases on and about the demised premises.
- 10.3. The Lessee will not at any time during the said term do permit or suffer to be done any act matter or thing whereby any insurances in respect of the demised premises or the building may be vitiated or rendered void or voidable or (except with the approval of the Lessor in writing) whereby the rate of premium on any such insurance shall be liable to be increased.
- 10.4. Without prejudice to the generality of the preceding sub-clause the Lessee will not (other than in the ordinary course of the Lessee's business or in accordance with a specified use of the demised premises approved by the Lessor) store chemicals inflammable liquids or solids acetylene gas or alcohol volatile or explosive oils compounds or substances upon or about the demised premises and will not use any of such substances or fluids in or about the demised premises for any purpose and will not in any way create any actual or potential fire hazard in the demised premises. The Lessee will permit the Lessor at all times to enter upon the demised premises and to abate any actual or potential fire hazard in or about the demised premises and if such hazard in the reasonable opinion of the Lessor is caused by or results from the use or occupancy of the demised premises by the Lessee the Lessee shall pay to the Lessor the costs and expenses incurred by the Lessor in carrying out such work.

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- 10.5. The Lessor will insure the structures of the premises against loss or damage by fire, storm, tempest, or any other risk against which the Lessor reasonably considers is proper to insure. The insurance shall be of a kind which cannot be rendered void or voidable or attract extra or excess premiums because of the normal use of the premises for the use permitted under this Lease. The Lessor will pay all costs of effecting the said insurance and the keeping of the same current during the term of this Lease.

11. SECTION 11 - INDEMNITIES

It is hereby expressly agreed and declared as follows:-

- 11.1. The Lessee will and does hereby indemnify the Lessor from and against all actions claims demands losses damages costs and expenses for which the Lessor shall or may be or become liable in respect of or arising from:-

- (a) The negligent use misuse waste or abuse by the Lessee or any servant agent sub-tenant customer or invitee of or any other person claiming through or under the Lessee of the water gas electricity oil lighting and other services and facilities of the demised premises or the building;
- (b) Overflow or leakage of water (including rain water) in or from the demised premises but having origin within the demised premises caused or contributed to by any act or omission on the part of the Lessee its servants agents sub-tenants or other person as aforesaid;
- (c) Loss damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the demised premises by the Lessee or any servant agent sub-tenant customer invitee or other person as aforesaid;
- (d) Loss damage or injury from any cause whatsoever to property or person within the demised premises or the building occasioned or contributed to by any act, omission neglect, breach or default of the Lessee or any servant, agent, contractor or sub-contractor, sub-tenant or other person as aforesaid.
- (e) The Lessee agrees to occupy use and keep the demised premises at the risk of the Lessee and hereby releases to the full extent permitted by law the Lessor and its agents servants contractors and employees, in the absence of any negligence on their part, from all claims and demands of every kind in respect of or resulting from any accident damage or injury occurring in the building or the demised premises and the Lessee **EXPRESSLY AGREES** that in the absence of any such negligence as aforesaid the Lessor shall have no responsibility or liability for any loss damage or injury suffered by the Lessee (whether to or in respect of the Lessee's person or property or the business conducted by the Lessee) as a result of any breakage, leakage, accident or event in the building.

12. SECTION 12 - LESSOR'S COVENANT

The Lessor **HEREBY COVENANTS** with the Lessee that upon the Lessee duly paying the rent payable hereunder and observing the covenants and conditions of this Lease:-

- 12.1. The Lessee may peaceably possess and enjoy the demised premises during the period of this Lease without any interruption or disturbance by the Lessor.

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- 12.2. The Lessor shall pay all rates taxes and other charges assessments and outgoings imposed on or payable in respect of the demised premises (but excluding amounts covenanted to be paid by the Lessee pursuant to any other clause contained in this Lease).

13. **SECTION 13 - DEFAULT BY LESSEE AND TERMINATION OF LEASE**

It is hereby expressly agreed and declared as follows:-

- 13.1. That if the rent hereby reserved or any part thereof shall be unpaid for the space of fourteen (14) days on which the same ought to have been paid in accordance with the covenant for payment of rent herein contained (although no formal or legal demand shall have been made therefore) **OR** if the Lessee commits or suffers to occur any breach or default in the due and punctual observance and performance of any of the covenants obligations and provisions of this Lease and such breach or default shall continue for a further period of fourteen (14) days after the service upon the Lessee of a notice to remedy such default or if the repairs required by the notice as aforesaid are not completed within the time therein specified **OR** if (the Lessee being a company) an order is made or a resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent shall not be unreasonably withheld) **OR** if the Lessee 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 **OR** if execution is levied against the Lessee and not discharged within thirty (30) days **THEN** and in any one (1) or more of such events and notwithstanding that the Lessor may not have exercised any of its rights under this clause in respect of some previous breach or default by the Lessee of a like nature the Lessor shall be entitled (after first giving prior notice where required by law) forthwith or at any time thereafter to do any one (1) or more of the following things that is to say, to determine this Lease by one (1) day's notice to quit or demand of possession expiring at any time on the expiry of which this lease and the estate of the Lessee hereunder shall cease and determine but without prejudice to the Lessor's rights in respect of antecedent breaches and/or without notice to determine this Lease and/or to re-enter into and upon the demised premises or any part thereof in the name of the whole and to have again repossess and enjoy the same as of its former estate, anything herein contained to the contrary notwithstanding, and thereupon this Lease and the term hereby created shall absolutely determine but without prejudice to any action or other remedy which the Lessor has or might or otherwise could have for arrears of rent or breach of covenant or for damages as a result of any such event and thereupon the Lessor shall be freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of this Lease.
- 13.2. On each and every occasion on which the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has herein covenanted to pay do or effect then it shall be lawful for but not obligatory upon the Lessor (and without prejudice to any other rights and powers arising from such default) to pay such money or to do or effect such thing by itself, its agents, contractors and workmen as if it were the Lessee and for that purpose the Lessor its architects, contractors, workmen and agents may enter upon the whole or any part of the demised premises and there remain for the purpose of doing or effecting any such thing and any amount paid expended or incurred by the Lessor therein or in connection therewith shall be paid by the Lessee to the Lessor upon demand.

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- 13.3. Without prejudice to all or any other rights and remedies of the Lessor hereunder, the Lessee will pay to the Lessor on demand interest at the rate of **FIFTEEN (15) PER CENTUM** per annum on any rentals or other moneys payable by the Lessee hereunder and remaining unpaid (whether demanded or not) for fourteen (14) days, such interest in any case to be computed from the date on which the moneys in question become due and payable to the date on which they are fully paid to the Lessor and to be recoverable in like manner as rent in arrears.

14. **SECTION 14 - APPOINTMENT OF ATTORNEY**

- 14.1. The Lessee **DOTH HEREBY** irrevocably nominate constitute and appoint the Lessor jointly and severally and in the case of the Lessor being a Company its secretary and each of its directors for the time being and their and each of their several attorneys jointly and each of them severally to be the true and lawful attorneys and attorney of the Lessee on behalf of and in the name of and as the act and deed of the Lessee to execute a surrender or transfer of this Lease and to do all such things and sign all such documents as may be necessary to obtain registration thereof **PROVIDED ALWAYS** that such powers shall not be exercised unless and until this Lease shall have been determined by the Lessor in accordance with the powers of the Lessor in that behalf herein contained or implied sufficient proof whereof shall be declaration of the attorneys or attorney exercising the power.

15. **SECTION 15 - GENERAL PROVISIONS**

The Lessor and the Lessee further covenant and agree:-

- 15.1. That the Lessee will upon vacating the demised premises or immediately prior thereto at the request of the Lessor remove any signs names advertisements or notices erected painted displayed affixed or exhibited upon to or within the demised premises and make good any damage or disfigurement caused by reason of such erection painting displaying affixing exhibiting or removal thereof.
- 15.2. In the event of the Lessee holding over after the expiration or sooner determination of the term granted by this Lease or any renewal thereof with the consent of the Lessor the Lessee shall become a monthly tenant only of the Lessor at a monthly rental equivalent to a monthly proportion of the total annual rent payable by the Lessee hereunder at the expiration or sooner determination of such term and otherwise on the same terms and conditions mutatis mutandis as those herein contained.
- 15.3. That the Lessee will pay the Lessor's proper costs of and incidental to the negotiation of, instructing of solicitors in relation to same, preparation, execution, stamping and registration hereof and all stamp duty and registration fees hereon, such costs to be assessed and allowed on a solicitor and own client basis. In the last year of the term hereby created the Lessee shall pay to the Lessor the amount of stamp duty and proper costs in relation to the submitting of the Lease documents to the Commissioner of Stamp Duties for assessment and stamping, that the Lessor anticipates will be payable, with the next monthly rent payment, immediately the Lessor has requested same. If on the expiration of the term hereby created it is found that the stamp duty and proper costs paid by the Lessee to the Lessor are more than assessed by the Commissioner of Stamp Duties and the proper costs payable by the Lessor, the Lessor will refund to the Lessee such amount as constitutes overpayment by the Lessee.

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- 15.4.** The Lessee shall upon demand by the Lessor pay all costs (as between solicitor and own client) and expenses incurred by the Lessor in relation to the recovery of rent due but unpaid, any lawful determination of this Lease, the lawful re-entry by the Lessor into the demised premises, pursuant to Clause 13 hereof the surrender of this Lease (including any stamp duties thereon) and the granting or obtaining of any consents by the Lessor, such costs to be assessed and allowed on a solicitor and own client basis and to be calculated in accordance with the itemised scale of fees recommended by the Queensland Law Society Incorporated for matters of a conveyancing nature.
- 15.5.** If the Lessor shall without fault on its part be made a party to any litigation commenced by or against the Lessee (other than litigation between the Lessor and the Lessee) and arising directly or indirectly out of the Lessee's occupancy of the demised premises the Lessee shall pay to the Lessor on demand by the Lessor all legal fees and disbursements (as between solicitor and own client) incurred by the Lessor and not otherwise recovered in connection therewith.
- 15.6.** In any case where pursuant to these presents the doing or executing of any act matter or thing by the Lessee is dependant upon the consent or approval of the Lessor, such consent or approval may be given or withheld by the Lessor in its absolute uncontrolled discretion (unless otherwise herein provided) and upon or subject to terms, conditions, requirements or stipulations as the Lessor may think fit. The Lessee shall in any event reimburse the Lessor upon the Lessor to examine or advise upon any application made by the Lessee (including any plans specifications or other material submitted therewith) for the consent or approval of the Lessor where any such consent or approval is required pursuant to these presents and also any other moneys outlaid or expenses incurred by the Lessor in connection therewith.
- 15.7.** That no waiver by the Lessor of one (1) breach by the Lessee of any covenant obligation or provision in this Lease contained or implied shall operate as a waiver of another breach by the Lessee of the same or of any other covenant obligation or provision in this Lease contained or implied.
- 15.8.** That any notice or demand requiring to be served hereunder shall be sufficiently served on the Lessee or the Lessee's permitted assigns or the Lessor if left addressed to it or them on the demised premises or forwarded to it or them by post at its or their registered office or registered offices for the time being in Queensland or, in the case of an individual at his or her address last known to the Lessor or Lessee. A notice sent by post shall be deemed to have been duly given or served at the expiration of forty-eight (48) hours from the time of its posting notwithstanding that it may subsequently be returned through the Post Office unclaimed.
- 15.9.** The Lessee will permit the Lessor to put a "To Let" notice outside the demised premises if so required at any time within three (3) months prior to the expiry of the term hereby created or prior to the expiry of any extension of the said term and during such period permit the Lessor or its agents or prospective tenants and others with written authority from the Lessor or its agents at reasonable times of the day to view the demised premises.

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- 15.10. That nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of partnership or of principal and agent or of joint venture between the parties hereto it being understood and agreed that neither the method of computation of rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.
- 15.11. The covenants provisions terms and agreements contained herein expressly or by statutory implication cover and comprise the whole of the agreement between the parties and the parties **EXPRESSLY AGREE AND DECLARE** that no further or other covenants agreements provisions or terms whether in respect of the demised premises or otherwise shall be deemed to be implied hereon or to arise between the parties by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by either party to the other on or prior to the execution hereof and the existence of any such implication or collateral or other agreement is hereby negatived.
- 15.12. The application to this Lease of any moratorium or other act whether State or Federal having the effect of extending the term reducing or postponing the payment of the rent hereby reserved or any part thereof or otherwise affecting the operation of the covenants conditions and stipulations on the part of the Lessee to be performed or observed or providing for compensation rights or privileges at the expense of the Lessor in favour of the Lessee or any other person is hereby expressly excluded and negatived.
- 15.13. If any term covenant or condition of these presents or the application thereof to any person or circumstances shall be or become invalid or unenforceable the remaining terms covenants and conditions shall not be effected thereby and each term covenant and condition of these presents shall be valid and enforceable to the fullest extent permitted by law.
- 15.14. The Lessee shall pay and discharge punctually all telephone charges payable by the Lessee and all electrical light and power and gas charges which may be in respect of the demised premises or in connection with the Lessee's use and occupation of the demised premises. If the Lessor shall pay the same then the Lessee shall refund the amount thereof to the Lessor immediately upon demand.
- 15.15. The Lessee will be responsible for and pay on demand any outlays that may be payable to the Local Authority in relation to any permit or approval required by the Local Authority for its particular operation carried on in the demised premises.
16. **SECTION 16 - GST**
- 16.1. The consideration payable by the Lessee is exclusive of GST as defined in *A New Tax System (Goods and Services Tax) Act 1999*. If any supply (including the supply of any goods, services, other rights, benefits or other things) made under or in connection with this agreement is or becomes subject to GST, the Lessee will, in addition to any consideration or other amount payable for the relevant supply, pay to the Lessor an additional amount on account of GST, such amount to be calculated by multiplying the consideration or other amount payable for the relevant supply by the prevailing GST rate.

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17. SECTION 17 - OPTIONS FOR RENEWAL OF LEASE

- 17.1.** If the Lessee shall be desirous of taking a renewed lease of the demised premises for a further term of 3 years (commencing upon the expiration of the term hereby granted) and shall not more than six months and not less than three months prior to the expiration of the term hereby granted signify such desire by notice in writing to the Lessor and shall not prior to such notice have made and shall not subsequently make any default hereunder (save such as shall be remedied to the Lessor's satisfaction), then the Lessor will at the expense in all things (including legal costs and stamp duty) of the Lessee, grant a new lease to the Lessee of the demised premises for a further term of 3 years at "the base rental" determined in accordance with the provisions of clause 17.3 hereof and otherwise upon the same terms and conditions contained in this Lease with the exception of this clause 17.1.
- 17.2.** If, following the exercise of the option referred to in clause 17.1 the Lessee shall be desirous of taking a renewed lease of the demised premises for a further term of 3 years (commencing upon the expiration of the term granted pursuant to that option) and shall not more than six (6) months and not less than three (3) months prior to the expiration of the term thereby granted signify such desire by notice in writing to the Lessor and shall not prior to such notice have made and shall not subsequently make any default hereunder (save such as shall be remedied to the Lessor's satisfaction), then the Lessor will at the expense in all things (including legal costs and stamp duty) of the Lessee, grant a new lease to the Lessee of the demised premises for a further term of 3 years at "the base rental" determined in accordance with the provisions of clause 17.3 hereof and otherwise upon the same terms and conditions contained in this Lease with the exception of this clause 17.2.
- 17.3.** If, following the exercise of the option referred to in clause 17.2 the Lessee shall be desirous of taking a renewed lease of the demised premises for a further term of 3 years (commencing upon the expiration of the term granted pursuant to that option) and shall not more than six (6) months and not less than three (3) months prior to the expiration of the term thereby granted signify such desire by notice in writing to the Lessor and shall not prior to such notice have made and shall not subsequently make any default hereunder (save such as shall be remedied to the Lessor's satisfaction), then the Lessor will at the expense in all things (including legal costs and stamp duty) of the Lessee, grant a new lease to the Lessee of the demised premises for a further term of 3 years at "the base rental" determined in accordance with the provisions of clause 17.4 hereof and otherwise upon the same terms and conditions contained in this Lease with the exception of this clause 17.3.
- 17.4.** The " base rental" for the further term provided in clauses 17.1 and 17.2 hereof shall be such sum as is agreed upon between the Lessor and the Lessee and in default of agreement within one month of the exercise of the option, such annual sum as is determined by a registered valuer who shall be deemed to be acting as an expert and not as an arbitrator to be appointed by the Chief Executive Officer for the time being of the Real Estate Institute of Queensland provided always that the base rental as so agreed or determined shall in no case be less than the yearly rental payable immediately prior to the expiration of the preceding term but increased in accordance with the provisions of the Enlarged Panel to the Lease as if the first rent period for the further term was a subsequent rent period of the term hereof. Upon determination of the base rental pursuant to the provisions of this clause such sum shall be deemed to be set out in clause 2 of the Enlarged Panel of the Lease in lieu of the sum thereto for set out and in relation to the second

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and subsequent rent periods of the said further term increased in accordance with the provisions hereof and in clause 3 of the Enlarged Panel to the Lease.

17.5. The Lessor covenants with the Lessee that, so long as any of the Options for Renewal referred to in this Section shall remain open for exercise and unexercised by the Lessee, the Lessor will not sell or transfer an estate in fee simple in the said land without first having procured from the Purchaser or transferee thereof a covenant under seal in favour of the Lessee whereby such purchaser or transferee acknowledges himself bound by any such Options for Renewal which shall then remain open for exercise and unexercised by the Lessee and whereby such purchaser or transferee agrees to obtain a similar covenant from any purchaser or transferee of the said land from such purchaser or transferee **PROVIDED ALWAYS** that upon delivery of such Deed of Covenant to the Lessee the outgoing Lessor shall be freed and discharged from any liability to the Lessee under the aforesaid option clause.

7.6. If in pursuance of Clause 17.3 the rental shall be determined by a registered valuer then the rental so determined shall be the current rent value of the demised premises which term shall mean the annual rent value of the demised premises in the open market which might reasonably be demanded by a willing but not anxious Lessor on a Lease for a term of years certain equivalent in length to the term of the option with vacant possession at the commencement of the term but upon the supposition (if not a fact) that the Lessee has complied with all the obligations as to repair and decoration herein imposed on the Lessee but without prejudice to any rights or remedies of the Lessor in regard thereto and there being disregarded (so far as may be permitted by law) any restrictions whatsoever relating to rent or to security of tenure contained in any statute or orders, rules or regulations thereunder and any directions thereby given relating to any method of determination of rent such Lease being on the same terms and conditions in all other respects as this present Lease (save for the covenant for renewal herein contained) without the payment of any fine or premium.

18. Conditional Lease

18.1. This Lease is conditional on the purchase of the said land by L Russell Enterprises Pty Ltd ACN 105 042 206 as trustee for the L Russell Superfund.

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