

Brenda Wishey

Paula Burke  
Hayellen Pty Ltd  
PO Box 572  
ST GEORGE QLD 4487

10 May 2022

The Landlord  
L Russell Super Fund  
PO Box 116  
HIGHFIELDS QLD 4352

Dear Sir/Madam

**RE: LEASE OF PREMISES AT 89 VICTORIA STREET, ST GEORGE**

Please be advised that we wish to renew the lease of 89 Victoria Street, St George which we understand expires on 25/06/2022.

We believe there is an option to renew for a further 5 years per item 10 of the lease.

We understand that the rent will be adjusted to the market value per item 4 of the lease.

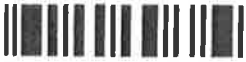
Please let us know your decision as soon as possible.

Kind regards



.....  
Paula Burke  
Director

Dealing Number



**Privacy Statement**

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

<b>1. Lessor</b> <b>L RUSSELL ENTERPRISES PTY LTD A.C.N. 105 042</b> <b>206 AS TRUSTEE UNDER INSTRUMENT 710355381</b>	<b>Lodger</b> (Name, address, E-mail & phone number) <b>Lodger Code</b> 514
---	---

<b>2. Lot on Plan Description</b> LOT 2 ON RP 82093	<b>County</b>	<b>Parish</b>	<b>Title Reference</b> 50338997
--	---------------	---------------	------------------------------------

<b>3. Lessee</b> Given names	Surname/Company name and number	(include tenancy if more than one)
	HAYELLEN PTY LTD A.C.N. 618 659	
	260 AS TRUSTEE	

**4. Interest being leased**  
Fee Simple

**5. Description of premises being leased**  
Whole of the Land

<b>6. Term of lease</b>  Commencement date/event: 26/06/2017 Expiry date: 25/06/2022 #Options: 1 x 5 years #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	<b>7. Rental/Consideration</b>  See attached schedule
--	---

**8. Grant/Execution**

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

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

**Execution Date**

**Lessor's Signature**

Noted  
.....signature  
.....full name  
.....qualification  
as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

19/6/2017

L. Russell  
L. Russell

**9. Acceptance**

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

**Execution Date**

**Lessee's Signature**

Noted  
.....signature  
.....full name  
.....qualification  
as per Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

19/6/2017

Paula  
P.C. Burke  
Wayne  
W.C. Burke

**Title Reference 50338997**

**REFERENCE SCHEDULE**

<b>Item 1</b>	<b>Rent:</b> (Clause 3)	\$40,260.00 per annum (\$3,355.00 per month) including GST	
<b>Item 2</b>	<b>Percentage Review Dates:</b> (Clause 5.1)	Not Applicable	
<b>Item 2a</b>	<b>Percentage Review:</b> (Clause 5.1)	Not Applicable	
<b>Item 3</b>	<b>CPI Review Dates:</b> (Clause 5.2)	On each anniversary of the Commencement Date	
<b>Item 4</b>	<b>Market Review Dates:</b> (Clause 5.3)	On the commencement of the Further Lease Term	
<b>Item 5</b>	<b>Permitted Use:</b> (Clause 6)	Retail sales	
<b>Item 6</b>	<b>Term:</b>	5 years	
<b>Item 7</b>	<b>Notices:</b> (Clause 27)	<b>Landlord</b>	
		Address:	PO Box 428, St George, Qld, 4487
		Email:	TBA
		<b>Tenant</b>	
		Address:	PO Box 572, St George, Qld, 4487
		Email:	<a href="mailto:paulabackhause@yahoo.com.au">paulabackhause@yahoo.com.au</a>
<b>Item 8</b>	<b>Bank Guarantee:</b> (Clause 24)	Not Applicable	
<b>Item 9</b>	<b>Guarantors:</b> (Clause 29)	Paula Louise Burke and Wayne Leslie Burke	
<b>Item 10</b>	<b>Option to Renew:</b> (Clause 19)	5 years Commencing on 26/06/2022 Terminating on 25/06/2027	

Title Reference 50338997

1. DEFINITIONS

1.1 Words in the Reference Schedule have the meanings shown opposite them.

1.2 In this lease:

**Accounting Period** means the period or periods not exceeding 12 months from time to time selected by the Landlord for the purpose of calculating the Outgoings and other charges mentioned in this lease.

**Act** means the *Retail Shop Leases Act 1994*.

**Air Conditioner** means the air conditioning unit(s) provided to the Premises by the Landlord;

**Bank Guarantee** means an unconditional and irrevocable undertaking (or any replacement or addition to it under clause 4) by a bank and on terms acceptable to the Landlord (acting reasonably) to pay on demand the amount in Item 8.

**Car Park** means those parts of the Land which the Landlord intends for parking motor vehicles including structures, driveways and vehicular ramps.

**Commencement Date** means the date this lease is stated to commence in Item 6 of the Form 7.

**Core Trading Hours** has the meaning given to that term in the Act.

**CPI Index Number** means the Consumer Price Index (All Groups) Index Numbers for Brisbane published by the Australian Bureau of Statistics.

**Expert** means an expert appointed under clause 22.

**Expiry Date** means the date this lease is stated to expire in Item 6 of the Form 7.

**Further Lease** has the meaning given to the term in clause 19.1.

**GST** means the same as in the GST Law and any applicable additional tax, penalty tax, fine, interest or other charge.

**GST Law** means the same as "GST Law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guarantor** means the person or persons named in Item 9.

**Land** means the land described in item 2 of the form 7.

**Lease** means this lease and any documents signed in conjunction with this Lease.

**Lettable Area** means gross lettable area calculated by the Landlord's surveyor using the Property Council of Australia method of measurement "Gross Lettable Area - Retail Complexes" applicable at the time of measurement.

**Outgoings** means the aggregate of all amounts paid by the Landlord or the payment of which the Landlord may be or become liable in any Accounting Period whether by direct assessment or other liability in relation to the Premises including but not limited to:

- (a) rates charges assessments and other levies payable to the local authority in whose area the Premises are located;
- (b) rates and charges payable to any local or other authority responsible for the provision of water, sewerage, drainage and or cleansing services;

**Title Reference 50338997**

- (c) all rates taxes (other than land tax) charges assessment outgoings and impositions (excluding wealth taxes, capital gains taxes or income taxes) which may be assessed or imposed in respect of the Premises;
- (d) payroll taxes in respect of employees of the Landlord employed solely for the purposes of operating, cleaning, maintaining or administering the Premises calculated as if those employees are the only employees of the Landlord;
- (e) insurance premiums and other charges (including stamp duty) for insurance on structures, public liability insurance, Workers' Compensation insurance and any other insurance effected by the Landlord in relation to any risk relating to the Landlord's ownership of the Premises;
- (f) fees and premiums payable to specialist contractors for the maintenance service and repair of any plant and equipment in or about the Premises;
- (g) the cost of operating servicing maintaining and supplying all Services from time to time provided by the Landlord for the Tenant;
- (h) the cost of repairs to and maintenance of the Premises excluding:
  - (i) repairs of a structural nature;
  - (ii) expenditure incurred by way of rebuilding or additions to the Premises.
- (i) any costs of cleaning of the Premises and the exterior of the building and all plant rooms, service ducts and pipes in the building;
- (j) disposal of garbage and waste from the Premises (including garbage compacting) and the cleaning of grease traps in the Premises including the cost to the Landlord of hiring or leasing any equipment for those purposes;
- (k) the cost of maintaining gardens and landscaped areas;
- (l) the provision of security and caretaking services;
- (m) the cost of managing controlling and administering the Premises and the collection of rents and other monies including (without limiting the generality of the foregoing) wages and other payments paid to any centre manager or clerical staff employed by the landlord for those purposes (together with all statutory overheads related to such wages) and charges paid to any managing agents but not including leasing commissions or fees incurred by directors of the landlord not directly engaged in the management and operation of the Premises;
- (n) the control and eradication of pests, termites, cockroaches, spiders, rodents and other vermin;
- (o) the sanitation of the Premises so as to keep free the Premises from all infectious, contagious and contractible diseases;
- (p) the cost to the Landlord of producing statements of expenditure audited by a public accountant;
- (q) the costs and expenses of challenging any valuation or rate assessment on the Premises or on the Landlord in respect of the Centre; and
- (r) any other expenses properly and reasonably incurred in the conduct of the Premises.

The Outgoings for each Accounting Period shall be calculated on an accrual and prepayment basis and all expenses shall be deemed to have been paid at the time when the obligation to pay, debit or charge that amount arose notwithstanding the actual date of payment and any expenses which are assessed at intervals or for periods other than an Accounting Period or which may vary during an Accounting Period shall be apportioned so far as necessary to calculate Outgoings for each Accounting Period.

PROVIDED ALWAYS that in assessing a tenant's contribution to the Outgoings the Landlord may

**Title Reference 50338997**

allocate solely to a particular tenant or particular tenants (including the Tenant) any item or items (or a proportion thereof) constituting part of the Outgoings which in the Landlord's reasonable opinion was incurred in respect of such tenant or tenants or the premises occupied by them or any of them and not all the tenants or premises or Common Areas of the Centre.

**Premises** means the area in item 5 of the Form 7 and includes all improvements and property of the Landlord provided for the benefit of the Premises.

**Tenant's Proportion** means 100%.

**Rent** means the yearly amount in item 1 as varied under this lease.

**Review Date** means a percentage review date or a market review date.

**Services** means services to or of the Premises provided by authorities or the Landlord including water, electricity, air conditioning, toilets, trade waste, telephone lines, communication infrastructure and systems and fire services

**Tenant's Business** means the business carried on by the Tenant from the Premises.

**Term** means the period in Item 6 from and including the Commencement Date to and including the Expiry Date.

**Valuer** means a specialist retail valuer pursuant to the Act.

**2. GRANT OF LEASE**

- 2.1 The Landlord grants a lease to the Tenant and the Tenant takes a lease of the Premises for the Term on and subject to the terms of this Lease.

**3. RENT**

- 3.1 The Tenant must pay the Rent by equal monthly instalments in advance on the first day of each month.
- 3.2 If Rent is payable for a period of less than one month, the amount payable is the proportion of one twelfth of the Rent which the number of days in the period bears to the number of days in the month in which that period begins.

**4. OUTGOINGS AND OTHER CHARGES**

- 4.1 **Outgoings**  
Not Applicable

4.2 **Services**

The Tenant must pay for all Services it consumes within the time required by each Service provider if assessed directly against the Tenant, or if assessed against the Landlord within 7 days of written request. The Tenant must pay any access or connection charges charged by authorities in relation to the provision of Services to the Premises. The Tenant is responsible for the connection and provision of hot water to the Premises and the installation of meters for the consumption of that water.

4.3 **Special Services**

The Tenant must pay to the Landlord within 7 days of written request the Landlord's additional or unusual costs, charges and expenses arising from any alterations, repairs or maintenance to the Premises requested by the Tenant or in providing any special, additional or unusual services for the Tenant.

**Title Reference 50338997**

**5. RENT REVIEW**

**5.1 Percentage Review**

On each date inserted in item 2, the Rent will be reviewed to an amount represented by A where:

$$A = B \times C$$

Where B = the Rent immediately prior to the relevant percentage review date;

Where C = the amount in item 2a;

**5.2 Consumer Price Index Review**

On each date inserted in item 3, the Rent will be reviewed to an amount represented by A where:

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

Where B = the CPI Index Number (Brisbane) for the quarter ending immediately prior to the relevant CPI review date;

Where C = the CPI Index Number (Brisbane) for the quarter one year prior to the quarter in B; and

Where D = the Rent payable immediately prior to the CPI review date.

**5.3 Market Review**

If a market review date has been inserted in item 4 the following provisions apply:

- (a) The Landlord may give a notice to the Tenant setting out the market rent at any time from 3 months before and including a market review date up until the next review date.
- (b) If the Landlord and Tenant have not agreed on the market rent within 30 days of a market review date or within 30 days of the Landlord's notice under (a) if it is served after the market review date, the dispute must be referred for determination by a Valuer agreed by the Landlord and Tenant, or failing agreement, to be nominated by the chief executive (as defined in the Act) at the request of the Landlord or the Tenant.
- (c) The Valuer must determine the current market rent as at the particular market review date acting as an expert and not as an arbitrator and give written reasons within 1 month of his appointment.
- (d) The Valuer's determination is final and binding on the Landlord and Tenant.
- (e) The Valuer's costs must be shared equally by the Landlord and Tenant.
- (f) The valuation by the Valuer must take into account the use of the Premises and any areas licensed to the Tenant or available for use by the Tenant but it must not take into account the value of the goodwill of the Tenant's Business.

**5.4 Payment of Reviewed Rent**

- (a) Until the Valuer has determined the Rent in clause 5.3, the Tenant must pay the old Rent.
- (b) Any variation in Rent under clauses 5.1, 5.1 or 5.3 takes effect on the review date and within 14 days of the determination, the Tenant or the Landlord must pay or credit any adjustment (as applicable).

**Title Reference 50338997**

**6. USE OF PREMISES**

- 6.1 The Tenant must use the Premises for the Permitted Use and must not use the Premises for any other use.
- 6.2 The Tenant must operate the Tenant's Business according to proper business practices.
- 6.3 The Tenant must trade from the Premises during the Core Trading Hours.

**7. PAYMENT OF MONEY**

- 7.1 The Tenant must pay Rent and any other money under this lease by:
  - (a) the method;
  - (b) to the person; and
  - (c) to the account,nominated by the Landlord without set-off, counterclaim, withholding or deduction.
- 7.2 The Landlord is not required to make demand for any amount payable by the Tenant unless this lease requires.
- 7.3 If the Tenant does not pay any amount payable by it under this lease on time, it must pay, on demand by the Landlord, interest on the outstanding amount from when it becomes due for payment until it is paid. Interest will be calculated on daily balances at a rate 3% above the rate quoted on the day of demand by the Landlord's bank on an unsecured overdraft in excess of \$100,000.

**8. TENANT TO INSURE**

- 8.1 The Tenant must maintain policies of insurance in the name of the Tenant and noting the Landlord for:
  - (a) public risk insurance for at least \$10,000,000 (or as varied by notice from the Landlord); and
  - (b) plate glass insurance against all risks specified by the Landlord; and
  - (c) insurance of the Tenant's property in the Premises to its full replacement value; and
  - (d) other insurances which are required by law or which, in the Landlord's reasonable opinion, are required in connection with the Tenant's Business.
- 8.2 The Tenant must give the Landlord a copy of the policy and a certificate of currency of any insurance required by this clause when asked to do so.
- 8.3 If an insurance policy required by this lease is cancelled or an event occurs which may allow a claim or affect rights under such a policy the Tenant must notify the Landlord.
- 8.4 The Tenant must not do anything on the Premises which may increase an insurance premium payable in connection with the Premises or the Centre.
- 8.5 The Tenant must not enforce, conduct, settle or compromise claims under any insurance policy required by this lease without the Landlord's consent.

**9. TENANT'S INDEMNITY**

- 9.1 The Tenant is liable for and indemnifies the Landlord against liability or loss arising from, and cost incurred in connection with damage, loss, injury or death caused to any property or persons in or about the Premises which is caused or contributed to by the act, negligence or default of the Tenant or of its employees and agents. Any indemnity by the Tenant may be enforced by the Landlord before the Landlord outlays any expense.



**Title Reference 50338997**

- 9.2 The Tenant releases the Landlord from any liability or loss arising from, or cost incurred in connection with:
- (a) damage, loss, injury or death unless it is caused by the act, negligence or default of the Landlord or its employees or agents; and
  - (b) anything the Landlord is permitted to do under this lease; and
  - (c) a Service being interrupted or not working properly.
- 9.3 Each indemnity is independent from the Tenant's other obligations and continues during this lease and after it expires.

**10. TENANT'S OBLIGATIONS**

- 10.1 The Tenant must:
- (a) keep the Premises secure when they are unoccupied. Unless the landlord advises, it is the Tenant's responsibility to maintain security for the Premises; and
  - (b) obtain any permits, comply with all laws and comply with the requirements of authorities in connection with the Premises, the Tenant's Business, and the occupation of the Premises; and
  - (c) observe maximum load weights and obtain the Landlord's approval before moving large objects to the Premises; and
  - (d) inform the Landlord of damage to the Premises or of faulty Services immediately the Tenant becomes aware of it; and
  - (e) keep the Premises free of vermin; and
  - (f) maintain and clean any grease trap servicing the Premises; and
  - (g) fix any damage caused by the Tenant to the Land or the Premises; and
  - (h) keep the Premises, the shopfront and the Common Area outside the Premises clean and tidy; and
  - (i) maintain the waste pipes, drains and conduits originating within the Premises in a clean, clear and free flowing condition between their points of origin and their entry into any trunk drain and immediately clear any blockage; and
  - (j) comply with the Landlord's reasonable requirements regarding the operation of the Air Conditioner.
- 10.2 The Tenant must not:
- (a) keep any animals on the Premises; or
  - (b) make any alterations to the Premises; or
  - (c) store or use inflammable substances on the Premises except as is reasonably necessary for the Tenant's Business; or
  - (d) do anything which is annoying, dangerous or offensive; or
  - (e) do anything which may damage the Premises or cause any offensive odours, loud noise, nuisance, disturbance or annoyance or to neighbours; or
  - (f) use the Services for anything other than their intended purpose; or
  - (g) install amusement machines without the Landlord's approval; or

**Title Reference 50338997**

- (h) erect signs, notices without the Landlord's approval; or
  - (i) hold auctions, or fire sales on the Premises.
- 10.3 The Tenant must arrange for the removal of its own garbage, trade waste and recycling material from the Premises. The Tenant acknowledges the Landlord is not obliged to provide garbage removal services to tenants. The Tenant must keep its waste containers clean, hygienic and orderly and place them only in areas nominated by the Landlord. If required by the Landlord, the Tenant must arrange for the regular removal of the containers and for the return of those containers to the nominated area promptly after removal.
- 10.4 The Tenant acknowledges that the Premises were in good repair at the Commencement Date.
- 10.5 The Tenant may not terminate this lease or alter any payments because a Service is interrupted or fails or because the Landlord's plant or equipment breaks down.

**11. LANDLORD'S RIGHTS AND OBLIGATIONS**

**Landlord's Obligations**

- 11.1 While the Tenant complies with its obligations under this lease, it may occupy the Premises during the Term without interference by the Landlord.
- 11.2 The Landlord must:
- (a) do everything reasonably necessary to obtain the consent of anyone it must obtain in relation to this lease;
  - (b) take all reasonable steps to keep the Services available to the Premises during the Core Trading Hours;
  - (c) take all reasonable steps to keep the plant and equipment in good working order; and
  - (d) if it transfers its interest in the Land and this lease is not registered, ensure the new landlord signs a deed with the Tenant binding the new landlord to the terms of this Lease.

**Landlord's Rights**

- 11.3 The Landlord may:
- (a) exclude or remove any person from the Land;
  - (b) carry out any works on the Premises but must do everything reasonably necessary to minimise interference with the Tenant's Business;
  - (c) enter the Premises at reasonable times on reasonable notice to see if the Tenant is complying with its obligations under this lease or to do anything it must or may do under this lease. If the Landlord decides there is an emergency, the Landlord may enter at any time without notice;
  - (d) after giving reasonable notice, enter the Premises to show prospective purchasers or tenants through the Premises;
  - (e) display for a reasonable time from the Premises a sign indicating that the Premises are for sale or lease;
  - (f) stop the Tenant entering the Premises if the Landlord decides there is an emergency.
  - (g) subdivide the buildings or grant easements or other rights over the Land;
  - (h) at the Tenant's cost, do anything which the Tenant should have done under this lease but which it has not done or has not done properly (in the Landlord's reasonable opinion); and
  - (i) appoint an agent to carry out any of its rights or perform any of its obligations under this lease.

**Title Reference 50338997**

**12. SIGNAGE**

12.1 The Tenant shall not install or erect any signage on the external surface of the Premises without the prior written consent of the Landlord.

12.2 Any signage approved by the Landlord must not be erected until:

- (a) plans and specifications;
- (b) the style of lettering and method of lighting;
- (c) the manner and method of construction; and
- (d) the size and location of the signage,

has been approved in writing by the Landlord. In seeking the Landlord's approval the Tenant shall submit plans and specifications for the proposed signage and the Landlord may require as a condition of its consent that:

- (e) any work is supervised by consultants appointed by the Landlord;
- (f) the Tenant pays on demand all costs incurred by the Landlord in the supervision of construction including the fees of any consultants engaged by the Landlord;
- (g) upon completion of the erection or installation of the signage, the Tenant shall produce to the Landlord any certificates of compliance required by any authority.

12.3 The Tenant must:

- (a) at its own cost and expense obtain any and comply with all permits and licenses required from time to time from the local authority and all other authorities for the construction and maintenance of that signage;
- (b) pay for the cost of erection and operation of the signage including the cost of installation of separate metering of any electricity supply to the signage;
- (c) keep, clean and maintain the signage in good order, repair and condition;
- (d) construct and maintain the signage at its sole risk and pay any and all damages to persons as well as to property that may in any way or in any manner be caused by construction or maintenance or operation of the signage;
- (e) indemnify and keep indemnified the Landlord and hold the Landlord free and harmless from any and all loss, cost, expense and damages to which the Landlord may be put by reason of the construction, maintenance or operation of the signage;
- (f) on the expiry or earlier determination of the Term without delay remove the signage and at its cost make good any damage to the Premises caused by that removal. If the Tenant has not removed the signage by the expiry or earlier determination of the Term, the Landlord may remove it and reinstate the Premises and the cost of such removal and reinstatement will be a debt due and payable by the Tenant to the Landlord and the property in the signage shall vest in the Landlord who may deal with it as it sees fit.

**13. ALTERATIONS TO PREMISES**

**Approval for Works**

13.1 The Tenant must not carry out any works to the Premises without the Landlord's approval. The Landlord's approval may be given subject to terms and conditions the Landlord decides are appropriate.

**Title Reference 50338997**

- 13.2 Any application for the Landlord's consent must include all plans, specifications and finishes for the proposed works.
- 13.3 The Tenant must ensure that any works it does are done in a proper and workmanlike manner and in accordance with all laws and the requirements of authorities.
- 13.4 The Landlord may not require the Tenant to carry out structural work to the Premises unless it is required because of the use or occupation of the Premises by the Tenant or the negligence or default or deliberate act of the Tenant or of its employees and agents.
- 13.5 The Tenant must pay all costs of any works it does pursuant to this clause including the Landlord's reasonable costs incurred in considering, in approving and supervising those works.

**Tenant's obligation to maintain**

- 13.6 The Tenant must:
- (a) keep the Premises and any fixtures, fittings, furnishings and other property owned by the Tenant in good repair excluding fair wear and tear;
  - (b) replace damaged items in the Premises (including plate glass, any property owned by the Tenant (other than stock) and those floor coverings and furnishings owned by the Landlord); and
  - (c) repaint and refurbish the Premises (including the replacement of any floor coverings) and the fixtures of the Tenant's Business at least every 3 years during the Term.

**14. DEALINGS WITH THE PREMISES**

**Assignment Conditions**

- 14.1 During the Term and Further Lease, the Tenant may only assign this lease if:
- (a) it satisfies the Landlord that the proposed tenant is financially secure and has experience to run the Tenant's Business and a good reputation; and
  - (b) there is no current breach of the lease; and
  - (c) the Tenant pays the Landlord's reasonable costs in relation to giving its consent including the costs of investigating the proposed assignee; and
  - (d) the Tenant and the proposed tenant sign a deed of consent (in a form required by the Landlord) and comply with any other reasonable requirements; and
  - (e) any personal and/or bank guarantee reasonably required by the Landlord from the proposed tenant and any or all of its directors or shareholders so that the security for performance granted by the incoming tenant is no less than the security for performance provided by the Tenant ; and
  - (f) the Tenant and the assignee have provided all requisite disclosure statements required by the Act; and
  - (g) the Landlord has obtained from its mortgage any consents it may be required to obtain; and

**Change in Shareholding**

- 14.2 Unless the Tenant is a company listed on the Australian Stock Exchange or is wholly owned by such a company, any proposed change in the shareholding of the Tenant or its holding company so that there

**Title Reference 50338997**

is a change in more than 50% of the shares giving a right to vote at general meetings then that proposed change is a proposed assignment of this lease and clause 14.1 applies.

**No Sublease**

- 14.3 The Tenant may not sublet the Premises or grant any licence, franchise or concession in relation to the Premises or the Tenant's Business without the Landlord's prior consent.

**Mortgage of Tenant's property**

- 14.4 The Tenant must not mortgage or charge any of its property in the Premises or this Lease including the Tenant's Business without the Landlord's approval. The Landlord must not unreasonably withhold its approval.

**15. EXPIRY OR TERMINATION**

- 15.1 On the earlier of the Expiry Date and the date this lease is terminated the Tenant must vacate the Premises.
- 15.2 The Tenant must leave the Premises in a satisfactory condition and if required by the Landlord return the Premises to their original condition including:
- (a) removing any partitions;
  - (b) painting all walls and columns previously painted, to a colour nominated by the Landlord; and
  - (c) removing floor coverings and replacing them with floor coverings approved by the Landlord;
  - (d) resealing any floor penetrations (and fire stop);
  - (e) repairing the ceiling grid;
  - (f) removing ancillary airconditioning and associated works other than the Air Conditioner;
  - (g) replace all defective fluorescent tubes and other light bulbs.
- 15.3 When vacating the Premises the Tenant may not remove anything it does not own nor anything constructed by the Tenant which the Landlord required to remain on the Premises as a condition of its consent.
- 15.4 The Tenant must remove all of its stock fittings and furnishings and anything constructed by the Tenant (even if paid for by the Landlord) which the Landlord requires to be removed from the Premises before vacating and must make good any damage caused by the removal.
- 15.5 If the Tenant has not removed its property from the Premises by the Expiry Date or on earlier termination of this Lease and (before clause 15.6 applies) seeks access to the Premises for that purpose the Landlord may require the Tenant to provide a bond on conditions reasonably required by the Landlord as security that the Tenant complies with this clause when removing that property.
- 15.6 If the Tenant does not remove any property from the Premises within the time required by the Landlord, then that property will be deemed to be abandoned by the Tenant and the Landlord may deal with it in any way it sees fit at the Tenant's expense.
- 15.7 Expiry or termination of this lease does not affect the Tenant's obligation to make payments under this lease for earlier periods or to give information to the Landlord to enable it to calculate amounts payable.

**16. HOLDING OVER**

- 16.1 The Tenant may only occupy the Premises after the Expiry Date with the Landlord's approval. If the Landlord allows, the Tenant may remain on the Premises:

**Title Reference 50338997**

- (a) under a monthly tenancy;
- (b) an annual rent which is the same as the Rent of the Expiry Date, increased by 10%; and
- (c) on the same terms as this lease except for those changes necessary to make this lease appropriate for a monthly tenancy.

**17. DAMAGE TO PREMISES**

- 17.1 If the Premises are damaged or destroyed and as a result the Tenant cannot use the Premises, the Landlord is not liable to pay the Tenant compensation but the Tenant may reduce its payments under this lease to the date this lease is terminated or to the date the Premises are made fit for the Tenant's use by an amount proportionate to the loss of amenity caused by the damage.
- 17.2 The Tenant must continue to use any part of the Premises that is useable, safe and accessible and to obey the lease as far as possible.
- 17.3 If the Premises are damaged so that the Tenant's use of the Premises is substantially adversely affected and the Landlord receives a request from the Tenant to rebuild the Premises, the Landlord must give the Tenant a notice within 6 weeks after that notice either:
- (a) terminating this lease on a date not less than 2 weeks after the date the Landlord gives the notice; or
  - (b) stating that the Landlord intends to make the Premises fit for the Tenant's use.
- This clause does not impose an obligation on the Landlord to rebuild or reinstate the Premises.
- 17.4 If the Landlord does not make the Premises fit for the Tenant's use within a reasonable time after giving the notice, the Tenant may give the Landlord a notice stating that the Tenant will terminate this lease if the Landlord does not make the Premises fit within one month after the Tenant gives the notice.
- 17.5 The Tenant may not terminate this lease or reduce payments under this clause if the damage is caused by the Tenant or the Landlord's rights to claim under an insurance policy are prejudiced by any act, negligence or default of the Tenant or of its employees and agents.

**18. DEFAULT**

**Breach**

- 18.1 The Tenant will be in breach or default:
- (a) if the Rent is not paid when it is due; or
  - (b) if any other moneys payable by the Tenant to the Landlord have not been paid when due or (if payable on demand) after the making of the demand; or
  - (c) if the Tenant has not effected the repairs required by any notice given by the Landlord within the time prescribed; or
  - (d) if the Tenant fails to observe perform or fulfil any of the other terms covenants conditions and restrictions in this Lease on the part of the Tenant (whether positive or negative) and such failure continues for 14 days; or
  - (e) if the Tenant (or the ultimate holding company of the Tenant) being a company enters into liquidation (otherwise than for the purpose of reconstruction) or if a receiver or official manager or an administrator is appointed; or
  - (f) if the interest of the Tenant under this Lease is attached or taken in execution under any legal process; or

**Title Reference 50338997**

- (g) if the Tenant proposes to or enters into any arrangement or composition with its creditors; or
- (h) if the Tenant being an individual commits any act of bankruptcy pursuant to the Bankruptcy Act 1966 (as amended) or becomes a bankrupt.

**Non-Waiver**

**18.2**

- (a) The waiver by the Landlord of any breach by the Tenant will not in any circumstances be construed to permit the Tenant to repeat or continue that breach or any other.
- (b) The Landlord's acceptance of rent or other money under this lease (before or after termination) is not a waiver of a breach or any acceptance of the repudiation of this lease by the Tenant.

**Forfeiture of Lease**

- 18.3** If the Tenant has made default the Landlord may, in addition to any other remedies it may have, at its option:
- (a) without any prior demand or notice re-enter into and take possession of the Premises (by force if necessary) and eject the Tenant and all other persons from them; or
  - (b) by notice in writing to the Tenant terminate this Lease and from the date of giving such notice this Lease will be terminated; or
  - (c) by notice in writing to the Tenant elect to convert the Term into a monthly tenancy and this Lease will be terminated from such notice and the Tenant will hold the Premises as monthly tenant at a monthly rental equal to one twelfth of the Rent and the Outgoings payable under this Lease at the date of giving the notice but otherwise on the terms and conditions of this Lease so far as they can be applied to a monthly tenancy.
- 18.4** The Landlord may upon re-entry remove from the Premises any contents of every description including all plant equipment and fittings and fixtures of the Tenant in or about the Premises and store them at the cost of and for the account of the Tenant without being deemed guilty of conversion or becoming liable for any loss or damage occasioned by such removal or storage.
- 18.5** Any moneys tendered by the Tenant after the termination of this Lease may be and (in the absence of any express election by the Landlord) will be accepted and applied firstly on account of the Landlord's costs of re-entry and secondly on account of any Rent and other moneys due but unpaid at the date of termination.
- 18.6** If the Landlord exercises its right of re-entry or otherwise terminates this Lease then, the Landlord may, recover from the Tenant damages for breach of this lease including compensation for Rent and other amounts that would have been payable after the date of termination until the Expiry Date.
- 18.7** Each obligation of the Tenant to pay money and its obligations to only use the Premises for the permitted use, not to assign or sublet without consent, to keep the Premises in repair and to take out the insurance policies required under this Lease are essential terms of this Lease. Other obligations under this Lease may also be essential terms.
- 18.8** If the Tenant abandons the Premises or repudiates this Lease prior to the expiration of the Term then the Tenant will remain liable for the payment of the Rent and the payment of the other monies payable until the Landlord (without being under any obligation to) finds another person who is prepared to accept a Lease of the Premises on terms and conditions satisfactory to the Landlord in which case the Landlord may terminate this Lease and lease the Premises to that person.
- 18.9** The Landlord may without prejudice to any other remedy sue the Tenant for any moneys which may from time to time become due and owing by the Tenant to the Landlord and in particular the Landlord may sue for any instalments of Rent and Outgoings as and when they become due and later may separately sue for any further sum or sums which are due and owing by the Tenant to the Landlord.

Title Reference 50338997

- 18.10 Expiry or termination of this Lease does not affect any rights in connection with a breach of this Lease before then.

19. OPTION

- 19.1 If a further term has been inserted in item 10 and the Tenant:

- (a) wishes to lease the Premises for the further term;
- (b) notifies the Landlord not more than 6 months and not less than 3 months before the Expiry Date; and
- (c) is not in breach of this lease on the date of that notice or the Expiry Date,

the Landlord will grant a lease of the Premises ("Further Lease") to the Tenant on the same terms and conditions as this lease, except clauses **Error! Reference source not found.** and 19.1 which will be deleted, and that in the further lease, the reference schedule will be varied as follows:

<b>Item 1</b>	<b>Rent</b>	An amount to be agreed between the Landlord and the Tenant and, failing agreement or determination 3 months before the Expiry Date, an amount determined by following the procedure set out in clause 5.3 as if the last day of the Term was a Market Review Date.
<b>Item 10</b>	<b>Option to Renew</b>	Not applicable

- 19.2 The Landlord and Tenant and Guarantor must sign the further lease within a reasonable time.

20. AIR CONDITIONER

- 20.1 The Landlord has provided the Air Conditioner to the Premises. The Landlord makes no statement about the suitability of the Air Conditioner to properly service the Premises for the Permitted Use.
- 20.2 If the Tenant wishes to make any change to the Air Conditioner or to the provision of conditioned air to the Premises, it must first obtain the Landlord's written consent and comply with all reasonable requirements of the Landlord.
- 20.3 The Tenant is responsible for maintaining and repairing the Air Conditioner and must enter into a preventative maintenance contract for the regular inspection and maintenance of the Air Conditioner. That contract must be with a contractor approved by the Landlord. The Tenant will provide a copy of the maintenance contract to the Landlord upon request.
- 20.4 The Tenant is responsible for the costs of maintaining and repairing the Air Conditioner except for the cost of replacement of any major capital item that requires replacement for reasons other than the failure of the Tenant to properly maintain the Air Conditioner as required by this Lease.

21. COSTS, CHARGES AND EXPENSES

- 21.1 The Tenant must pay:

- (a) its own legal costs in relation to this lease and any other document; and
- (b) all stamp duty and registration fees on the lease; and
- (c) on demand, the Landlord's reasonable costs and expenses for:
  - (i) negotiating, preparing, executing, stamping, registering any documents relating to this lease other than this lease; and



**Title Reference 50338997**

- (ii) obtaining any consents (including mortgagee consents if permitted by the Act ) the Landlord must obtain before giving approvals, considering requests for approvals and exercising rights; and
- (iii) any steps taken or matters conducted by the Landlord if the Tenant breaches this lease.

**22. DISPUTES**

- 22.1 The Expert will be an appropriately qualified person appointed by the parties by agreement, or, in default of agreement within 7 days by the President of the Queensland Law Society Incorporated.
- 22.2 If there is a dispute under this lease either party may give the other a notice requiring the dispute to be settled by the Expert.
- 22.3 The Expert acts as an expert and not as an arbitrator and must give a written decision including reasons. Unless there is manifest error, the Expert's decision is final and binding on both parties.
- 22.4 The Expert may enquire into the dispute as that person thinks fit including hearing representations and taking advice from people that person considers appropriate.
- 22.5 The parties may make submissions to and must give the Expert every assistance required.
- 22.6 Each party must pay its own costs in connection with the dispute. Unless otherwise specified or agreed, the Expert's costs must be shared equally by the Landlord and Tenant.

**23. REDEVELOPMENT AND RELOCATION**

- 23.1 If the Landlord wants to extend, improve or change the Premises and the Landlord decides that work will affect the Premises, the Landlord may require the Tenant to surrender this Lease. The Landlord must give the Tenant at least 3 months notice.
- 23.2 In its notice the Landlord must:
  - (a) specify the date on which the Tenant must move;
  - (b) give details of the plans for the building work;
  - (c) offer a new lease of the alternative premises including:
    - (i) a Lettable Area differing by no more than 10% from the Lettable Area of the Premises in a position which (in the Landlord's reasonable opinion) is not substantially less favourable for the Tenant's Business than the Premises; and
    - (ii) a term beginning on the day after the surrender date and ending on the Expiry Date; and
    - (iii) at the same rate of rent per square metre of Lettable Area as the Rent is at the surrender date; and
    - (iv) otherwise in the same form as this lease with only those changes necessary to make it appropriate to the alternative premises.
  - (d) give the Tenant details of when the lease ends if the Tenant does not accept the offer in clause 23.2(c).
- 23.3 The Tenant must vacate the Premises on the date appointed by the Landlord and give the Landlord:
  - (a) a surrender of this lease executed by the Tenant; and
  - (b) everything reasonably necessary to ensure that any stamp duty refundable on this lease is paid to the Landlord; and

**Title Reference 50338997**

if the offer in clause 23.2(c) is accepted,

- (c) the Tenant's copy of this Lease; and
- (d) the 3 copies of the new lease executed by the Tenant; and
- (e) a guarantee and indemnity in connection with the Tenant's obligations under the new lease by the same person or another person acceptable to the Landlord in connection with the Tenant's obligations under the new lease.

23.4 The Landlord must pay;

- (a) the reasonable costs of relocating the Tenant's Business; and
- (b) the costs of fitting out the new premises to the same standard as the Premises were at the date the notice was given;
- (c) stamp duty, registration fees and reasonable legal costs and disbursements in connection with the Tenant's execution of the surrender of this lease and the new lease.

23.5 If the parties do not agree on any matter under this clause within a reasonable time then the matter is to be decided under clause 22.

**24. BANK GUARANTEE**

- 24.1 On or before the Commencement Date, the Tenant must deliver the Bank Guarantee to the Landlord as security for all obligations of the Tenant under this Lease.
- 24.2 If the Tenant does not comply with any of its obligations under this lease (including any extension or holding over), whether this lease is registered or not, then the Landlord may call on the Bank Guarantee without notice to the Tenant.
- 24.3 If the Landlord calls on the Bank Guarantee or if the Rent increases, the Landlord may give the Tenant a notice asking it for a replacement or additional Bank Guarantee so that the amount guaranteed is the amount set out in item 8.
- 24.4 The Tenant must deliver the replacement or additional Bank Guarantee to the Landlord no later than 14 days after the Landlord asks for it.
- 24.5 Unless the Landlord has commenced proceedings against the Tenant or the Tenant is holding over, the Landlord must return the Bank Guarantee to the Tenant within 3 months after the Expiry Date.

**25. SECURITY DEPOSIT**

- 25.1 In lieu of the Tenant providing the Bank Guarantee pursuant to clause 24 of this Lease, the Tenant may pay to the Landlord the sum in Item 8 of the Reference Schedule as a security bond ("Bond") as security for the obligations of the Tenant under this Lease.
- 25.2 If the Tenant does not comply with any of its obligations under this Lease during the Lease Term (including any extension or holding over), then the Landlord may appropriate the whole or part of the Bond without notice to the Tenant.
- 25.3 If the Landlord appropriates the whole or any part of the Bond pursuant to clause 25.2 or if the Rent increases, the Landlord may give the Tenant a notice requiring it to pay an additional amount so that the Bond is the amount set out in Item 8.
- 25.4 The Tenant must pay any additional amount towards the Bond under this clause to the Landlord no later than 14 days after the Landlord asks for it.

**Title Reference 50338997**

- 25.5 If the Tenant assigns this Lease, the Bond shall be held by the Landlord on behalf of the assignee in accordance with this clause.
- 25.6 If the Landlord sells the Land, control of the Bond shall be vested in the buyer.
- 25.7 Unless the Landlord has commenced proceedings against the Tenant or the Tenant is holding over, the Landlord must repay the Bond to the Tenant within 3 months after the Expiry Date.

**26. GST**

- 26.1 This clause applies in relation to taxable supplies except to the extent that there is a specific provision in this Lease concerning GST on that taxable supply.
- 26.2 A recipient of a taxable supply made under this Lease must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply. The recipient must pay the GST to the supplier:
  - (a) if there is a due date for the consideration for the taxable supply, on the same date as the due date for the consideration in respect of the relevant taxable supply; or
  - (b) if there is no due date, within 7 days of receiving a written request or a tax invoice from the supplier.
- 26.3 A party's obligation to reimburse another party for an amount paid or payable to a third party (eg a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for GST.
- 26.4 Each party making a taxable supply under this Lease must issue a tax invoice to the other party for each taxable supply at or before the time it makes the taxable supply.
- 26.5 The Landlord must issue an adjustment note to the Tenant as soon as it becomes aware of an adjustment event relating to a taxable supply by the Landlord under this Lease.
- 26.6 If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST. If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST which that party can obtain an input tax credit). A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

**27. NOTICES**

- 27.1 A notice or approval in this lease must be in writing.
- 27.2 The Landlord may serve a notice on the Tenant by:
  - (a) giving it to the Tenant personally;
  - (b) leaving it at the Premises;
  - (c) sending it to the Tenant's facsimile number; or
  - (d) posting it to the last known registered office, place of business or residence of the Tenant.
- 27.3 The Tenant may serve a notice on the Landlord by:
  - (a) leaving it at; or
  - (b) posting it to,the office of the Landlord set out in item 7.

**Title Reference 50338997**

- 27.4 Either party may change its notice details by giving the other party written notice of the new notice details.

**28. MISCELLANEOUS**

**Interpretation**

- 28.1 In this lease unless the contrary intention appears:
- (a) the singular includes the plural and vice versa; and
  - (b) "person" includes a firm, a body corporate, an unincorporated association or an authority; and
  - (c) an agreement, representation or warranty:
    - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
    - (ii) on the part of two or more persons binds them jointly and severally; and
  - (d) a reference to:
    - (i) an item number is a reference to an item in the reference schedule.
    - (ii) a person includes the person's executors, administrators, successors and assigns; and
    - (iii) a document includes any variation to that document; and
    - (iv) any law includes all regulations and other instruments under it and amendments or replacements of any of them; and
    - (v) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually.

- 28.2 Headings are inserted for convenience and do not affect the interpretation of this lease.

**Waiver and Variation**

- 28.3 A provision of or a right under this lease may not be waived or varied except in writing signed by whoever is to be bound.
- 28.4
- (a) The Landlord's acceptance of rent or other money under this lease (before or after termination) is not a waiver of a breach or an acceptance of the repudiation of this lease by the Tenant.
  - (b) An attempt by the Landlord to mitigate its loss is not a surrender by operation of law or a waiver of the Tenant's breach or an acceptance of the Tenant's repudiation of this lease.

**Employees and Agents**

- 28.5 If the Tenant must or must not do something:
- (a) it must do everything necessary to ensure that its employees and agents comply with that obligation; and
  - (b) it may not allow or cause it to be done or do or omit to do anything which results in it happening.

**Tenant is Trustee**

- 28.6 If on or after the Commencement Date, the Tenant holds this Lease as trustee, then, even if the Landlord is not aware of the trust, the following provisions apply.

**Title Reference 50338997**

- (a) The Tenant enters into this Lease both as trustee of the trust and in its personal capacity.
- (b) The Tenant:
  - (i) warrants it has power under the trust to enter into this Lease;
  - (ii) warrants it has a right of indemnity under the trust;
  - (iii) assigns any right of indemnity it has under the trust to the Landlord and must do anything necessary to give effect to the assignment;
  - (iv) must not do anything to prejudice any right of indemnity it has under the trust;
  - (v) must not breach the trust;
  - (vi) warrants it enters into this Lease in the due administration of the trust; and
- (c) must do everything necessary to make available the assets of the trust to rectify a default of this Lease and compensate the Landlord for the default.

**Approvals**

- 28.7 The Landlord may give approval conditionally or unconditionally or withhold approval in its reasonable discretion unless this lease expressly says otherwise.

**Exclusion of statutory provisions**

- 28.8 Sections 105, 107 and 109 of the *Property Law Act 1974* and Section 45 of the *Retail Shop Leases Act 1994* do not apply to this lease.

**Prior Breaches**

- 28.9 Expiry or termination of this lease does not affect any rights in connection with a breach of this lease before then.

**Time of the Essence**

- 28.10 Time is of the essence of this lease in connection with the Tenant's obligations to pay money.

**Caveats**

- 28.11 The Tenant must not lodge a caveat on the Land.

**Tenants Acknowledgment**

- 28.12 The Tenant acknowledges that before it signed this lease it received a draft of this lease and adequate particulars of the matters to be given to the Tenant under section 22 of the Act.

**Severability**

- 28.13 If any part of this lease is void, unenforceable or illegal, it is severed and the remainder of this lease has full force and effect. This clause has no effect if the severance alters the basic nature of this lease or is contrary to public policy.

**Entire Agreement**

- 28.14 This lease constitutes the entire agreement of the parties about its subject matter. Any previous agreements, understandings and negotiations on that subject matter, cease to have any effect.

**Further Assurances**

- 28.15 Each party agrees, at its own expense, on the request of the other to do everything reasonably necessary to give effect to this lease and the transactions contemplated by it, including the execution of documents.

**Title Reference 50338997**

**Future taxes**

28.16 The Tenant must pay all rates, taxes, charges, assessments and impositions currently or in the future payable to any authority in connection with the Premises or the Business. The Tenant must pay the amount on time if assessed directly against the Tenant or if assessed against the Landlord, within 7 days of receiving the Landlord's account.

**Governing law**

28.17 This lease is governed by Queensland law.

**29. GUARANTEE AND INDEMNITY**

29.1 The Guarantor agrees to pay to the Landlord the amount of any loss caused by:

- (a) the breach of this lease by the Tenant or any person the Tenant assigns this lease to; or
- (b) the termination of the Tenant's obligation to pay money under this lease (except by agreement between the Landlord and the Tenant) including a disclaimer of the lease,

and agrees that a loss includes the Rent for the whole of the Term (less any Rent received by the Landlord during the Term under any lease of the Premises).

29.2 The Guarantor must pay the loss even if the lease:

- (a) is varied;
- (b) is unregistered;
- (c) is assigned;
- (d) terminates,

and for the loss that has occurred before the lease ended or arising out of or after the termination.

29.3 The Guarantor may not make a claim or enforce a right against the Tenant without the consent of the Landlord.

29.4 This guarantee and indemnity is not affected by any time or other concession given to the Tenant.

29.5 The benefit of this guarantee can be assigned by the Landlord to any purchaser of the Land.

29.6 The lease has been granted to the Tenant in consideration of this guarantee and indemnity.

**Guarantors' signatures**

SIGNED SEALED AND DELIVERED BY the said  
**PAULA LOUISE BURKE** on the  
day of \_\_\_\_\_ 2017 in the presence of:

} P. L. Burke

Signature of Witness  
  
Name of Witness  
Robyn Paul Fulmer  
Reg. No. 708  


Title Reference 50338997

SIGNED SEALED AND DELIVERED BY the said  
**WAYNE LESLIE BURKE** on the  
day of 2017 in the presence of:

) W L Burke.  
)  
x Wayne



Signature of Witness

Name of Witness

108



SCHEDULE

Title Reference 50338997

Annexure “A”  
Premises Plan