

Dealing Number



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<b>1. Lessor</b> JB NO 2 PTY LTD A.C.N. 107 169 844 TRUSTEE UNDER INSTRUMENT 711963727	<b>Lodger</b> (Name, address, E-mail & phone number) Crimmins Lawyers PO Box 13327 GEORGE STREET QLD 4003 Email: <a href="mailto:jim@crimmins.com.au">jim@crimmins.com.au</a> Phone: 07 3003 1222	<b>Lodger Code</b> BE099A
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<b>2. Lot on Plan Description</b>	<b>County</b>	<b>Parish</b>	<b>Title Reference</b>
LOT 6 ON BUP 101694	STANLEY	NORTH BRISBANE	50082053

<b>3. Lessee</b> Given names	Surname/Company name and number	(include tenancy if more than one)
	ASSET TRAINING AUSTRALIA PTY LTD A.C.N. 118 083 971	

**4. Interest being leased**  
FEE SIMPLE

**5. Description of premises being leased**  
THE WHOLE OF THE LOT

<b>6. 6. Term of lease</b> Commencement date: 01/10/2012 Expiry date: 30/09/2019 #Options: 1 x 6 years + 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 REFERENCE SCHEDULE
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**8. Grant/Execution**

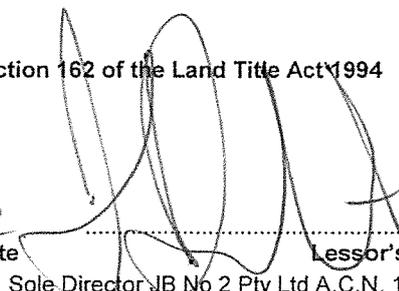
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in: \*the attached schedule; \*the attached schedule and document no. \_\_\_\_\_;

\* document no. \_\_\_\_\_; \*Option in registered Lease no. \_\_\_\_\_ has not been exercised.

\* delete if not applicable

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

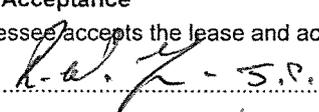
..... signature  
 ..... full name  
 ..... qualification

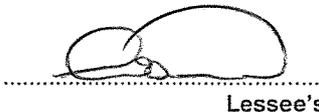
19/9/12  
 Execution Date  Lessor's Signature  
 Sole Director JB No 2 Pty Ltd A.C.N. 107 169 844

**Witnessing Officer**  
(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.

 signature  
 ROBERT McLEAN full name  
 JUSTICE OF THE PEACE qualification

3/9/12  
 Execution Date  Lessee's Signature  
 Director Asset Training Australia Pty Ltd A.C.N. 118 083 971

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



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This is the Schedule referred to in the LEASE dated the 19<sup>th</sup> day of September 2012.

1. REFERENCE DATA

ITEM 1: PARTIES:

Lessor: JB No 2 Pty Ltd A.C.N. 107 169 844  
Address for Notices: Suite 326, 421 Brunswick Street, Fortitude Valley, Qld, 4006  
Solicitors for Lessor: Crimmins Lawyers  
PO Box 13327, George Street, Qld, 4003  
Lessee: Asset Training Australia Pty Ltd A.C.N. 118 083 971  
Solicitors for Lessee: Rostron Carlyle Solicitors  
GPO Box 3203, Brisbane, Qld, 4001  
Att: Gavin McInnes  
Address for Notices: Lot 6, 2<sup>nd</sup> floor, Sureplan House, 133 Leichhardt Street,  
Spring Hill, Qld, 4000

ITEM 2: TERM

Date of Commencement: 1 October 2012  
Date of Termination: 30 September 2019

ITEM 3: PREMISES

Lot 6 on Level 2, Sureplan House, 133 Leichhardt Street,  
Spring Hill, Qld, 4000 as described in Item 5 of the Form 7

ITEM 4: SIZE OF PREMISES

327m<sup>2</sup> approximately

ITEM 5: ANNUAL RENT

\$134,480.00 per annum plus GST

ITEM 6: RENT DATES

At each anniversary of the Commencement Date the greater  
of CPI and 4%

ITEM 7: MARKET REVIEW DATE/S

At the commencement of the Option Term subject to Lessor  
approval

ITEM 8: OUTGOINGS

100% of any increases in the Outgoings over the base  
Outgoings Period

ITEM 9: USE OF PREMISES:

Office and training rooms

ITEM 10: OPTIONS (if any)

One (1) option of six (6) years and one (1) option of five (5)  
years

ITEM 11:

Deleted

ITEM 12: SECURITY AMOUNT:

An amount equal to three (3) months rent plus GST

ITEM 13: GUARANTORS: (name and  
address)

Mark Costello  
1 Ian Court, Kallangur, Qld, 4503

ITEM 14: BODY CORPORATE NAME

"The Body Corporate for the Oxford Centre Community Title  
Scheme 17548"

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Each reference in this Lease to any of the titles contained in this Part is to be construed to incorporate the data stated and the terms provided under that title.

2. INTERPRETATION

Unless otherwise provided or unless there is something inconsistent in the subject matter the expressions following (whether appearing with or without capital letters) have the meanings assigned to them in this clause:

**'Accounting Period'** means in the case of the first Accounting Period the period commencing on the Date of Commencement and expiring on the 30th day of June next. The last Accounting Period commences on the 1st day of July immediately preceding the date of determination of this Lease and expires on the date of determination. Between the first Accounting Period and the last Accounting Period this term is divided into Accounting Periods of 12 months each commencing on the 1st day of July and expiring on the 30th day of June next.

**'Air Conditioning Equipment'** means the plant electrical installations ductwork and diffusers used for the manufacture and reticulation of conditioned air throughout the Premises and includes all mechanical ventilation.

**'Annual Rent'** has the meaning given to that expression in cl.3.2.

**'Appurtenances'** means all mechanical ventilation, stop-cocks, hydrants, fire hoses, alarm systems or other fire detection, prevention and extinguishing equipment, water closets, toilets, grease traps, water apparatus, water basins, washrooms, gas fittings, electrical fittings and apparatus and other services contained in or about the Premises.

**'Bank Guarantee'** means a written guarantee by a bank carrying on banking business in Australia pursuant to the *Banking Act 1959 (Cth)* (as amended).

- (a) in favour of the lessor;
- (b) for a sum equal to the number of calendar monthly instalments of Annual rent set out at item 11 of the Reference Data;
- (c) promising to pay to the Lessor upon receipt of a written demand or demands signed by the Lessor (and regardless of any):
  - (i) query;
  - (ii) objection;
  - (iii) countermanding instructions;

from the Lessee) from time to time during the life of the guarantee sums specified in those demands up to the maximum amount guaranteed;

- (d) unlimited in duration;
- (e) expressed to be assignable by the Lessor as favouree in favour of any party who acquires the land from the Lessor following the grant of the guarantee;
- (f) apart from the qualifications in paragraphs (a) to (e) of this definition, unconditional;

**'Base Outgoings Period'** means the period ending 30 June immediately preceding commencement of this lease or as otherwise determined by the Lessor's accountants.

**'Base Outgoings Figure'** means the Total Outgoings in the Base Outgoings Period.

**'BCCM Act'** means the *Body Corporate and Community Management Act (Qld)*.

**'By-laws'** means all by-laws of the Body Corporate applicable to the Plan from time to time.

**'Body Corporate'** means the Body Corporate in respect of the Community Titles Scheme.

**'Car Park'** means those parts of the Complex (or such other areas that may be designated) from time to time allocated by the Body Corporate to the parking of cars and includes the driveways to and from those parts.

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**'Common Areas'** means those parts of the Complex which are expressly or impliedly designated from time to time by the Body Corporate for use by the Lessee and the Lessee's invitees either in common with other persons designated or entitled to use the same exclusively (but not being part of the Premises) and includes:

- (a) the common property in the Plan; and
- (b) all other parts of the Complex not leased or licensed to any person and designed or provided by the Body Corporate for use by the Lessees and Licensees of the Complex in common with each other.

**'Complex'** means the building and all associated structures comprising 133 Leichhardt Street, Spring Hill.

**'Complex Trading Hours'** means the hours (if any) specified from time to time by the Body Corporate as the trading hours for the Complex, being hours not in excess of the maximum trading hours allowed in Queensland for the Complex or as otherwise determined by the Lessor acting reasonably.

**'Date of Commencement'** means the date referred to in Item 2 of the Reference Data.

**'Fire Equipment'** includes all stop-cocks hydrants fire hoses fire alarms fire sprinklers and other fire prevention extinguishing and detection equipment in the Complex.

**'Guarantor'** means the guarantor or collectively the guarantors referred to in Item 14 of the Reference Data and also any person who enters into covenants with the Lessor as a guarantor pursuant to cl.25 and if the Guarantor is one person that person his executors and administrators and if the Guarantor is more persons than one includes those persons and each of them their and each of their respective executors and administrators and if the guarantor is a corporation includes that corporation and its successors or if more than one corporation includes those corporations and their respective successors.

**'Land'** means the land described in Item 2 of the Form 7 to which this Schedule is attached.

**'this Lease'** means:

- (a) the Form 7 to which this document is a Schedule;
- (b) this Schedule;
- (c) all appendices, plans, attachments or annexures to this document; and
- (d) the Rules and Regulations,

and, where this Lease is required to be registered to pass a legal estate or interest to the Lessee but is not registered for any reason (including the neglect or default of the Lessor or of any person acting on behalf of the Lessor), any tenancy or obligation arising:

- (a) in contract, by operation of law, in equity or by any other means; and/or
- (b) as a result of the Lessee entering into occupation of the Premises, the Lessee paying the Rent and/or the Lessee executing this Lease.

**'Lessee'** means the lessee referred to in Item 3 of the Form 7 to which this Schedule is attached and if this Lease is taken by one person includes that person his executors administrators and permitted assigns and if this Lease is taken by more persons than one includes those persons and each of them their and each of their respective executors administrators and permitted assigns and if a corporation is a Lessee hereunder includes that corporation its successors and permitted assigns.

**'Lease Year'** means each separate year of the term of the Lease, the first of such Lease Years commencing on the Date of Commencement and each subsequent Lease Year commencing on the corresponding day of each succeeding year.

**'Lessor'** means the lessor referred to in Item 1 of the Form 7 to which this Schedule is attached its successors and assigns and unless inconsistent with the subject matter or context includes all persons for the time being authorised by the Lessor.

**'Manager'** means any person appointed from time to time by the Body Corporate to manage the Complex and includes (unless the context otherwise requires) an agent of such person and their respective contractors, employees and sub-contractors. If no such person is appointed, the term means the Body Corporate.

**'Market Review Date'** means the date in Item 7 of the Reference Data.

**'Month'** means a calendar month.

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'Outgoings' means all reasonable expenses and outgoings paid or incurred by the Lessor and directly attributable to the operation, maintenance or repair of the Premises and the areas used in association with the Premises and all charges, levies, premiums, rates or taxes paid or incurred by the Lessor as owner of the Premises and including, but not limited to, the following heads of expenditure:

- (a) rates, charges and other levies payable to the local authority in whose area the Premises is located (other than such of those charges as are payable by the Lessee in terms of this Lease or by any other tenant of the Complex as a condition of its tenancy);
- (b) rates and charges payable to any local or other authority responsible for the provision or reticulation of water and/or sewerage and/or drainage services;
- (c) levies, contributions and/or other amounts payable to any local or other authority for or on account of fire protection services;
- (d) insurance premiums and other charges (including stamp duties) for insurance of the Premises against fire with extended cover endorsement for vandalism malicious mischief earthquake flood water damage boiler and pressure vessel explosion fusion and mechanical breakdown in broad cover form with repair and replacement terms and such other risks as the Lessor may in its absolute discretion deem desirable in such amount or amounts and for such period or periods as the Lessor from time to time requires;
- (e) public risk liability insurance against third party liability hazards including exposure to personal injury bodily injury and property damage on an occurrence basis including insurance for all contractual obligations and covering also actions of all employees, other persons, subcontractors and agents while working on behalf of the Lessor. The policy will be written on a comprehensive basis with limits of not less than \$20,000,000 per occurrence or such higher amounts as the Lessor from time to time reasonably requires;
- (f) insurance premiums and other charges (including stamp duties) for workers' compensation insurance in respect of the employees of the Lessor engaged in the maintenance operation and/or management of the Premises;
- (g) the cost of all repairs painting plumbing maintenance renewals and replacements incurred by the Lessor in keeping the Premises and all its parts in good and substantial repair and condition, not normally charged to capital account as determined by the Lessor's accountants in accordance with accounting principles generally accepted in Queensland;
- (h) management fees (excluding commission on letting) and/or the cost of and incidental to the employment of a Centre Manager (if any).
- (i) the cost of taking all steps deemed desirable or expedient by the Lessor for complying with making representations against or otherwise contesting the incidence of the provisions of any legislation or orders or statutory requirements thereunder concerning town-planning public health highways streets drainage or other matters relating or alleged to relate to the Premises;
- (j) the cost of auditing the Outgoings and providing annual estimates and statements of expenditure incurred in respect of the Outgoings;
- (k) any GST levied or which may become payable in connection with the supply of any matter or thing constituted by Outgoings under this Lease or any other goods and services supplied to the Lessee or to the Premises by the Lessor or in satisfaction by the Lessor of any other obligation under this Lease (other than that which is payable by the Lessee pursuant to the terms of this Lease or by any other tenant of the Complex as a condition of its tenancy).
- (l) all amounts levied upon the Lessor by the Body Corporate in respect of the Premises pursuant to the By-laws, the Plan or the BCCM and without limiting the generality of the foregoing, all contributions sought by the Body Corporate from the Lessor in respect of any administrative or sinking funds or by way of special levies and any contributions pursuant to the BCCM;
- (m) any additional levy struck by the Body Corporate or determined by the Lessor if the Lessor deems it prudent to effectively remove and dispose of rubbish and waste from the Premises;
- (n) Body Corporate levies for the Premises.

The Outgoings will be calculated on an accrual and prepayment basis and all the sums referred to in this provision will be deemed to have been paid at the time when the obligation to pay them arose notwithstanding the actual date of payment and any sum which is assessed at intervals or for periods other than periods falling wholly within the relevant Accounting Period will be apportioned so far as may be necessary to calculate the Outgoings. Any

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statement by the Lessor or its agent certifying as to the Outgoings will be *prima facie* evidence of the matters stated in it.

**'Option Conditions'** means the terms comprised in this lease with the exception that:

- (a) if the numeral appearing in item 10 of the Reference Data is greater than 1 then that numeral will be reduced by 1;
- (b) if the numeral appearing in item 10 of the Reference Data is equal to 1 then the clause in this lease conferring an option to renew it will be deleted, together with item 11 of the Reference Data;
- (c) the commencement date of the option term will be the date immediately following expiry of this lease;
- (d) if the numeral appearing in item 10 of the Reference Data is greater than or equal to '1' the commencement Annual Rent for the first lease year of the option term will be determined in the same manner as if:
  - (i) the date of commencement of the option term was a market review date under this lease;
  - (ii) the last lease year of this lease was the lease year immediately preceding the year under review; and
  - (iii) the first lease year of the option term was the lease year for which the rent is being determined;
- (e) any clause of this lease that grants a period of rent free or car park licence fee free will be deleted;

**'Option term'** means a lease created by exercise of the option to renew (if any) conferred by this lease having a duration of the number of years specified in item 10 of the Reference Data.

**'Pipes'** means all pipes sewers drains mains conduits ducts gutters water courses wires cables channels flues and all other conducting media and including any fixings louvres cowls and any ancillary apparatus.

**'Plan'** means the Plan noted in item 2 of the Form 7 being part of a Community Titles Scheme under the BCCM Act.

**'Premises'** means the premises described in Item 3 of the Reference Data and in Item 5 of the Form 7 in this Lease (including any of the Lessor's fixtures and fittings from time to time in the Premises).

**'Prescribed Percentage'** means 100%.

**'Property Manager'** means any person appointed from time to time by the Lessor to manage the Premises and includes (unless the context otherwise requires) an agent of such person and the respective contractors, employees and sub-contractors.

**'Qualified Valuer'** means a registered valuer who is a current member of the Australian Property Institute and has practised for a minimum of four (4) years in the valuation of commercial property in the city in which the Premises are situated.

**'Quarterly Period'** means each consecutive period of 3 months during the term hereof ending respectively on the last days of March June September and December; the expression also includes any broken period prior to the first complete Quarterly Period and after the last complete Quarterly Period.

**'Redecorate'** includes the professional cleaning of the interior of the Premises including all partitions and additions made to the Premises and the treatment as previously treated of all internal surfaces of the Premises by painting staining polishing or otherwise to a specification approved by the Lessor and also the replacing of all windows, carpet and/or floor tiles and ceiling tiles which in the reasonable opinion of the Lessor are worn or damaged and in need of replacement.

**'Reference Data'** means the data set out in Part 1 of this Schedule.

**'Review Date'** has the meaning given to that expression in Item 6 of the Reference Data.

**'Rules and Regulations'** means the rules and regulations contained in Annexure 'A' to this Lease.

**'Stipulated Rate'** means the rate which is 3% per annum above the prime, reference, benchmark or other like rate charged on a relevant date by the Lessor's bank (and if more than one, then that bank specified by the Lessor) in respect of overdrafts in excess of \$100,000, conclusive evidence of which rate shall (in the absence of manifest error) be a written notice by any manager of the Lessor's bank stating that rate.

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3. RENT

3.1 Payment of Annual Rent

The Lessee will pay to the Lessor (including by way of periodic bank transfer if the Lessor so requires) in each Lease Year the Annual Rent without any formal or other demand by equal monthly instalments in advance on the first day of each month and in the case of any broken period of less than 1 month by an instalment on the first day of the broken period of an amount ascertained by multiplying the number of days in that broken period by the Annual Rent for the Lease Year of which it forms part and dividing the result by 365.

3.2 Rental Reviews

(a) **Annual Rent and Reviews** - The expression 'Annual Rent' means an annual sum calculated as follows:

- (i) for the first Lease Year;  
the amount specified in Item 5 of the Reference Data;
- (ii) for the second and each subsequent Lease Year the greater of the amount below and the amount determined in accordance with Clause 3.3;  
the amount calculated as follows:

$$R \times \frac{104}{100}$$

WHERE R means the Annual Rent payable in the Lease Year immediately preceding the Lease Year for which the said amount is to be calculated and determined.

3.3 CPI Review

(a) **CPI Review Date** – the level of Rent will be reviewed as from each CPI review date so that following each such date it is equal to "A" in the formula:

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

Where:

- B = Rent applicable immediately prior to the applicable CPI review date;
- C = the index published for the quarter year ended immediately prior to the applicable CPI review date;
- D = the index published for the quarter year ended immediately prior to the last date on which the Rent was reviewed (by any mechanism prescribed under this lease) preceding the applicable CPI review date (or if the applicable review date falls on the first anniversary of the commencement date, the commencement date itself).

(b) **Conversion of Index** – if, since, "D" in the formula above has been published, the Australian Bureau of Statistics has declared a new reference base period for calculation of the index but in the Lessor's opinion:

- (i) The Bureau has published a notional index number;
- (ii) The Bureau has published a conversion formula showing or permitting calculation of the value of "C" had it been calculated using the same reference base period as "D"; or
- (iii) Whilst no conversion formula has published the value of "C" can be calculated, then for the purposes of application of the formula for the CPI review date in question "C" will be the number calculated by reference to this clause. If the number represented by "C" is relevant for any subsequent reviews of rent for those reviews the value calculated is deemed to be the relevant index.

3.4 Market Review

- (a) The level of Base Rent payable by the Lessee to the Lessor will be reviewed as from each Market Review Date so that following that date it is equal to the Market Rent.
- (b) The Lessor may, not earlier than 6 months prior to and at any time following each Market Review Date,

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give written notice ('Lessor's rent notice') to the Lessee of the level of Base Rent that it considers should apply as from that date ('Lessor's rent').

- (c) The Lessee may, within 14 days after service of the Lessor's rent notice, object to the Lessor's rent if it gives written notice ('Lessee's rent notice') specifying:-
  - (i) the reason for its objection: and
  - (ii) a counter-offer as to the Base Rent to apply as from the Market Review Date.
- (d) If the Lessee:-
  - (i) fails to serve a Lessee's rent notice within the time specified for that purpose (for which time is of the essence) then the Base Rent is the Lessor's rent (that rent then being deemed to be the Market Rent);
  - (ii) serves a Lessee's rent notice within the time specified then, unless the parties can reach agreement as to the level of Base Rent to apply (the agreed sum then deemed to be the Market Rent), within 28 days from service of the Lessee's rent notice upon the Lessor, either the Lessor or Lessee may request the President for the time being of the Queensland Division of the Australian Property Institute to nominate a Qualified Valuer to value the Market Rent for the Premises as at the Market Review Date and the Qualified Valuer's fees will be borne equally by the parties.
- (e) The Qualified Valuer will:
  - (i) be deemed duly appointed upon the date the valuer issues a simultaneous written confirmation to the Lessor and Lessee that the valuation will be carried out in accordance with the terms of this lease;
  - (ii) assess the Market Rent for the Premises:
    - (A) after permitting the parties or their nominated representative a period of 14 days following the date of the valuer's appointment to present written submissions for consideration and supplying copies to each party of the other party's written submissions (if any) as soon as is practicable following receipt of them by him;
    - (B) after inviting and considering verbal submissions volunteered by either party or their nominated representative arising out of material contained in the written submissions (if any) on the basis (if practicable) of simultaneous attendance of both parties or their nominated representatives before the valuer if that is the desire of either;
    - (C) acting as an expert and not as an arbitrator;
    - (D) expressly taking account of the Assumptions and taking no account of the Excluded Factors; and
    - (E) within 28 days from the date of issue of the valuer's appointment under clause 3.4(e)(i);
  - (iii) Issue comprehensive written reasons substantiating the Market Rent assessed:
    - (A) containing full calculations;
    - (B) identifying all properties and values used for comparison purposes; and
    - (C) addressing all criteria in the concept of 'Market Rent' as defined in this lease and quantifying the influence of each criteria (and any other factors) on the final figure so far as it is reasonably possible to do;
  - (iv) provide copies of the reasons for valuation to both parties immediately following completion of the valuation; and
  - (v) not be entitled to access any information concerning rental values applicable to other premises owned by the Lessor unless:
    - (A) with the Lessor's consent; or
- (f) those premises are specifically relied upon by the Lessor in its submission (if any);
- (g) notwithstanding anything to the contrary contained in this clause 3.4 it is expressly acknowledged and agreed that the level of Base Rent reviewed on each Market Review Date shall not be less than the Annual Rent payable immediately prior to the Mark Review Date in question;
- (h) for the purposes of this clause 3.4:- "**Assumptions**" means:
  - (i) the fact of any category of tax or levy or expense attaching to ownership of the Land or Building

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being borne solely by the Lessor and not recouped from the Lessee under the terms of the lease whether by reason only of a Federal or State statute or regulation or local government by-law rendering collection or reimbursement or those items by the Lessor from the Lessee illegal or unenforceable, or otherwise;

- (ii) that the whole of the Premises are able to be let with immediate vacant possession by the Lessor to the Lessee (both of whom are willing but not anxious);
  - (iii) no fine or premium is payable;
  - (iv) the supposition that all obligations of the Lessee under this lease have been performed;
  - (v) that any letting will be on those terms of this lease in force at the relevant date (aside from amounts then payable under rental covenants);
  - (vi) a lease term equal to the Term of this lease regardless of the timing of the Market Review Date;
  - (vii) the Permitted Use of the Premises;
  - (viii) the Premises are intact (if destroyed or damages at the Market Review Date;
  - (ix) a free and open market; and
  - (x) the intrinsic value of any exclusive use areas or other areas licensed to the Lessee for use (even though not part of the Premises);
- (i) for the purposes of this clause 3.4:- **“Excluded Factors”** means:
- (i) any depressive effect on rent of any sub-letting;
  - (ii) any goodwill attached to the business conducted on the Premises;
  - (iii) the value of any improvements made during the Term by the Lessee (or any predecessor or sub-tenant) and any depressive effect on asking rental for the Premises because of those works;
  - (iv) any local goodwill attaching to the Land (or adjacent lands owned by the Lessor); and
  - (v) the value of the Lessee’s property;

#### 4. OUTGOINGS

##### 4.1 Outgoings

The Lessee will pay to the Lessor (in addition to the Annual Rent) the Prescribed Percentage of the amount by which the Outgoings incurred during any Accounting Period exceed the total Outgoings in the Base Outgoings Period ('Base Outgoings Figure'). Where any Accounting Period is less than 1 full year in duration, the Lessee will pay an amount calculated as follows:-

$$(A - B) \times \frac{C}{365} \times D$$

WHERE:-

A is the total amount of the Outgoings for the calendar year ending thirtieth day of June in which the relevant Accounting Period falls;

B is the Outgoings determined for the Base Outgoings Period;

C is the number of days in the relevant Accounting Period;

D is the Prescribed Percentage.

##### 4.2 Payment of the Lessee's Contribution

The Lessee must pay the Prescribed Percentage of the Outgoings to the Lessor or as directed by the Lessor within 14 days of being notified of the amount of Outgoings payable pursuant to clause 4.1.

##### 4.3 Prepayment of the Outgoings

Deleted.

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#### 4.4 Light and Power

The Lessee will not use any form of light power or heat other than electric current or gas supplied through meters. This covenant does not prevent the use of auxiliary power or lighting (other than an exposed flame) during any period of power failure or power restrictions. The Lessee further covenants that:

- (a) **Charges for Electricity** - All charges for electricity imposed or charged in respect of electric current consumed on the Premises including the electricity consumed in the running of the Air Conditioning Equipment during the term of this Lease will be paid by the Lessee to the relevant assessing authority (or supplier, including the body corporate) on or before the due date if assessed directly against the Lessee but otherwise to the Lessor within 14 days of the Lessee being billed by the Lessor at the tariff rates which would have been chargeable by the relevant assessing Authority to the Lessee had the electricity been supplied direct to the Lessee in the first place.
- (b) **Charges for Gas** - All charges for gas imposed or charged in respect of gas consumed on the Premises during the term of this Lease will be paid by the Lessee to the relevant assessing authority (or supplier) on or before the due date if assessed directly against the Lessee but otherwise to the Lessor within 14 days of being billed by the Lessor at the standard rates which would have been chargeable by the relevant assessing Authority had the gas been supplied direct to the Lessee in the first place.
- (c) **Charges for Water** - If a separate water meter is at any time at the option of the Lessor installed in respect of water consumed on the Premises the Lessee will pay the meter rental (if any) and all charges and assessments for water consumed on the Premises to the relevant assessing Authority on or before the due date if assessed directly against the Lessee but otherwise to the Lessor within 14 days of being billed by the Lessor.

#### 4.5 Rates and Charges Relating to Premises

The Lessee shall during the term, pay to the relevant local authority or any other state body or other authority having power or jurisdiction to charge, levy or collect, when required so to do, any additional or extra rates, charges, assessments, levies or imposts, including, but without limiting the generality of the foregoing, additional cleansing and trade waste charges, water rates and water meter rent, pedestal charges any signage charges, or any other charges whatsoever resulting from, or applicable to, the Premises or to any service thereto, or arising out of, or incidental to, the use by the Lessee or any other occupant of the Premises, as well as land tax assessed over the Lot. Should such rates, charges, assessments or levies be made against the Lessor, then in such case, the Lessee shall pay to the Lessor, within 14 days of demand by the Lessor, any such rates, charges, assessments or levies.

#### 4.6 Other Charges

The Lessee shall pay all charges and outgoings of whatever nature relative to the use by the Lessee of the Premises and, without limiting the generality of the foregoing, all telephone charges and installation fees, replacement and installation costs of faulty, damaged or broken equipment, and all charges and expenses related to, or resulting from, the improper use by the Lessee of the Premises or the Appurtenances therein contained. The Lessee shall also pay the costs of replacing Fire Equipment (including fire detection devices) and any fee charged by the State Fire Services for the answering of a false alarm caused by the improper use of fire equipment in the Premises. The Lessee shall also pay any costs of and incidental to refuse, removal and cleansing of grease traps which may be situate on the Premises or utilised by the Lessee for the Premises.

#### 4.7 Future Taxes on Premises

The Lessee will pay and discharge without exception all rates taxes charges assessments outgoings and impositions (whether parliamentary municipal or otherwise and whether assessed charged or imposed by or under Federal or State law or by Federal State or Local Authorities and whether on a capital or revenue basis or any other basis and even though of a novel character) which may at any time during the term of this Lease be assessed charged or imposed upon or in respect of the Premises or the use and occupation of the Premises or upon any moneys which may from time to time be payable by the Lessee to the Lessor and whether assessed against the Lessor or directly against the Lessee. Any sums so payable by the Lessee if assessed directly against the Lessee shall be paid to the relevant assessing Authority not later than the due date for the payment thereof and if assessed against the Lessor will be paid by the Lessee to the Lessor upon demand by the Lessor.

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**4.8 Special Services**

The Lessee will pay to the Lessor upon demand the amount of any additional or unusual costs charges and expenses incurred by the Lessor at the request of the Lessee in having any alterations repairs or maintenance to the Premises or to the Appurtenances in the Premises effected outside the normal working hours of the tradesmen concerned or in providing any special additional or unusual services for the Lessee.

**4.9 Cleansing Dues**

If the relevant Local or other Authority provides any cleansing or refuse service for the Premises (whether at the request of the Lessee or by direction of any officer of that Authority) the Lessee will pay the cost of the service to the relevant assessing Authority on or before the due date if assessed directly against the Lessee but otherwise to the Lessor within 14 days of being billed by the Lessor.

**4.10 The Air Conditioning Equipment**

The Lessee will pay all costs of and associated with the Air Conditioning Equipment including but not limited to all costs of and incidental to the maintenance and repair, the costs of and incidental to the running of the Air Conditioning Equipment including electricity consumption costs and all replacement costs incurred for the effective running of the Air Conditioning Equipment together with any costs incurred by the Lessor in the maintenance and/or replacement of any refrigerant piping but excluding any costs of a capital nature.

**4.11 Bulk Supply Electricity**

If the Lessor at any time purchases a bulk supply of electricity then, if required by the Lessor:

- (a) the Lessee must purchase all electricity consumed within the Premises from the Lessor and, so far as it is reasonably able to do so, the Lessor will supply all of the Lessee's reasonable electricity requirements for its permitted use of the Premises;
- (b) the Lessor will not be responsible or liable for any failure of or interruption to the electricity supply because of any failure of the electrical system in the Centre or in the Premises due to breakdown, repairs, maintenance, industrial action, accidents or otherwise;
- (c) subject to paragraph (f), if the Lessee does not pay a bill within 14 days after it is rendered, the Lessor may disconnect the Lessee's electricity supply. The Lessee must pay, upon demand, the cost to the Lessor of any disconnection and reconnection of such supply;
- (d) the Lessee must ensure that any electrical installation, while it remains connected to the electricity supply to the Premises, is maintained free from any defect and must make the installation available for inspection by the Lessor upon demand;
- (e) where, due to limitations in the electricity supply, the Lessor considers that, in order to ensure a regular, efficient and constant supply it is necessary to restrict the use of electrical items by the Lessee, the Lessor may impose such restrictions it considers necessary including the prohibition of use of any electrical item; and
- (f) if this Lease is terminated, the Lessor may render a bill up to the date of termination which will be payable immediately;

for the purpose of this Clause, 'electricity installation' and 'electrical article' have the same meaning as given in the Electricity Act 1976.

**4.12 Goods and services tax**

In this clause:

- (a) **GST** means a goods and services tax, consumption tax, value added tax, retail turnover tax or a tax of a similar nature.
- (b) **Input Tax** means an amount equal to the amount of GST paid or payable for the supply of any thing acquired.
- (c) **Primary Payment** means any payment by the Lessee to the Lessor of any rent, outgoings or other

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amount payable by the Lessee to the Lessor in connection with any supply of any goods or services.

If the Lessor is liable by law for any GST on any Primary Payment, the Lessee must pay to the Lessor the amount of the GST:

- (a) at the same time; and
- (b) in the same manner,

as the Lessee is required to pay the Primary Payment in respect of which the GST relates.

Outgoings excludes any amount of Input Tax in respect of the Outgoings to the extent that the Lessor is entitled to a credit for the Input Tax under the law.

## 5. USE

### 5.1 Use of the Premises

The Lessee will not use or permit the Premises or any part of the Premises to be used for any purpose other than the purpose specified in Item 9 of the Reference Data.

The Lessee acknowledges that:

- (a) it is the responsibility of the Lessee to obtain the consent of any planning or other authority which may be required for the Lessee to carry on its business in the Premises and the failure of the Lessee to obtain that consent does not relieve the Lessee of its obligation to pay Annual Rent and otherwise to observe perform and fulfil its obligations hereunder; and
- (b) no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor:
  - (i) in respect of the suitability or adequacy of the Premises or the Complex for any use or business to be carried on therein or to the fixtures fittings furnishings finish plant machinery and equipment of or in the Premises or the Complex; or
  - (ii) that the Lessee has any exclusive right to carry on the type of business permitted under this Lease or as to other businesses to be carried on in the Complex; and
  - (iii) all warranties (if any) as to the suitability fitness and adequacy of the Premises implied by law are hereby negated.

### 5.2 Lessee to Carry on Business

The Lessee shall operate from the Premises during the entire Lease term with sound business practice, due diligence and efficiency. The Lessee shall provide, install and at all times maintain in the Premises, all suitable furniture, fixtures, equipment and other property necessary for the conduct of the Lessee's business therein in a businesslike manner, and shall at all times in the Premises carry a stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum return to the Lessor and the Lessee, and employ all necessary staff, contractors or subcontractors to adequately comply with the Lessee's obligations herein.

A business practice by the Lessee whether through advertising, selling procedures or otherwise which may harm the business or reputation of the Lessor or reflect unfavourably on the Complex, the Lessor or other tenants of premises in the Complex, or which may confuse, mislead or deceive the public, will immediately be discontinued by the Lessee at the request of the Lessor.

### 5.3 Trading Hours

Deleted.

### 5.4 Other Tenancies

The Lessor will not be prejudiced by or responsible to the Lessee for the non-observance or violation of any lease by any other tenant of premises in the Complex.

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**5.5 Compliance with Statutes Regulations etc.**

The Lessee will duly and punctually comply with and observe all Statutes now or hereafter in force and all ordinances regulations and by-laws thereunder and all orders and regulations of all other relevant authorities relating to the Premises or to the Lessee's use or occupation thereof and all requirements and orders lawfully given or made by any public body or authority relating to the Premises within the time required by the notice or order AND will not do or omit to do any act or thing whereby the Lessor may become liable to pay any penalty imposed or to bear the whole or any part of any expenses incurred under any statute ordinance regulation by-law order requirement or notice as aforesaid PROVIDED HOWEVER that the Lessee is not required to make any structural improvements or structural alterations pursuant to this clause unless they are required or made necessary by reason of any neglect or default by the Lessee or any person claiming under the Lessee or by reason of the business carried on in the Premises or the number or sex of the employees or persons at the Premises.

**5.6 Annoying or Injurious Conduct**

The Lessee will not carry on or permit to be carried on in any part of the Premises any annoying noxious offensive or illegal business occupation or practice and the Lessee will not do or permit to be done any act or thing or use or permit to be used any plant or machinery which through noise odours vibrations or otherwise may be or grow to the annoyance nuisance grievance damage or disturbance of any other tenant of the Complex or of the Lessor or of the occupiers of neighbouring premises.

**5.7 Lessee's Public Address Music/Sound Systems**

The Lessee will not erect or place or permit to be erected or placed on any part of the external walls roof or awnings of the Premises or any part of the Common Areas any radio or television receiver loud speaker amplifier or other similar device without the consent in writing of the Lessor first had and obtained which consent may be granted or refused subject to conditions in the absolute discretion of the Lessor and which consent may be withdrawn by the Lessor at any time.

**5.8 Use of Appurtenances**

The Lessee will not use or permit to be used the water closets drains other water apparatus and the other Appurtenances in or about the Premises and the Complex for any purposes other than those for which they were constructed and will not place or permit to be placed therein any sweepings rubbish rags ashes or other deleterious substances.

**5.9 Drains and Waste**

All blockages which may occur in any Pipes originating within the Premises between their points of origin and their entry into any trunk drain will be cleared by licensed tradesmen employed by the Lessor and all costs of cleaning blockages incurred by the Lessor will be paid by the Lessee to the Lessor upon demand.

**5.10 Interference with Services**

Except as otherwise provided in this Lease the Lessee will not interfere with any Appurtenances Pipes water supply gas electrical plumbing or other services contained in or about the Premises or the Fire Equipment without first obtaining the consent in writing of the Lessor.

**5.11 Erection of Signs**

The Lessee will not cause or permit any advertising or other sign or advertisement or hoarding to be painted or erected or otherwise placed on or in the Premises without the prior consent of the Lessor, which consent shall be granted or refused or granted subject to conditions in the absolute discretion of the Lessor.

**5.12 Prohibition on Erection of Blinds and Shop Fittings**

The Lessee will not erect or affix any blinds or awnings to the outside of the Premises or any blinds (venetian or otherwise) to the interior of the windows display windows or doors or affix any shop fittings to the exterior walls or ceilings of the Premises without the consent in writing of the Lessor first had and obtained which consent may be granted or refused or granted subject to conditions in the absolute discretion of the Lessor.

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**5.13 Prohibition on Marking or Holing of Walls**

The Lessee will not cut make holes in mark deface drill damage or suffer to be cut holed marked defaced drilled or damaged any of the walls ceilings or other parts of the Premises except so far as may reasonably be necessary for the erection of Approved signs blinds or awnings and on the removal of signs blinds or awnings the Lessee will reinstate repair and make good any damage or unsightliness caused in or about the erection or removal of them notwithstanding that the Lessor may have consented to them.

**5.14 Daily Cleaning of Premises**

The Lessee will keep the Premises in a thorough state of cleanliness and will not allow any accumulation of useless property or rubbish and will at its own expense employ staff for the regular daily cleaning of the interior of the Premises and the regular cleaning of exterior surfaces of windows.

**5.15 Refuse**

The Lessee will at its own cost and expense cause all wet refuse to be removed daily outside of normal business hours and will also at its own cost and expense cause to be removed from time to time (and to the extent necessary to ensure that they do not become readily visible from the Common Areas) all packing materials cartons containers and other waste materials of every description which do not form part of the normal refuse removed by the relevant Local Authority. Refuse removed by the relevant Local Authority must be properly wrapped and placed in bins to be located in the service areas provided for the Premises.

**5.16 Rodents and Vermin**

The Lessee will at its own cost and expense keep the Premises free and clear of rodents termites cockroaches and other vermin.

**5.17 Overloading of Floors**

The Lessee will observe the maximum floor loading weights nominated by the Lessor and will not permit the floors of the Premises to be broken strained or damaged by overloading them. In particular the Lessee will not install any safes or other heavy equipment except in such positions and subject to such conditions as the Lessor may in writing approve.

**5.18 Infectious Diseases**

If any infectious disease happens upon the Premises which may require notification by virtue of any Statute regulation or ordinance the Lessee will give all the necessary notices and any other information which may be required to the proper authorities and will give a copy of the notification to the Lessor and will at its own expense thoroughly fumigate and disinfect the Premises.

**5.19 Inflammable Substances**

The Lessee will not use or permit to be used any chemical burning fluids oil acetylene or alcohol in lighting the Premises or, save in the ordinary course of the Lessee's business, for any business or other purpose.

**5.20 Not to Make Voidable Insurance Policies**

The Lessee will not do or permit anything to be done in the Premises or bring or keep anything in the Premises that may in any way make void or voidable any policy or policies of insurance applicable to the Premises or conflict with any laws or regulations or with any insurance policy applicable to the Premises or whereby the amount of premium payable in respect of any insurance policy may be liable to be increased. Without prejudice to the rights of the Lessor to determine this Lease the Lessee will pay to the Lessor on demand any increase of premium which may be occasioned by a breach of this clause.

**5.21 To Observe Fire Laws**

The Lessee will at all times in its use of the Premises comply with the requirements of the Insurance Council of Australia and The Metropolitan Fire Brigades Board and the laws and regulations for the time being in force relating to fires and the provisions of every relevant Statute regulation and ordinance.

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**5.22 Fire Drills and Evacuation Procedures**

The Lessor may require the Lessee to perform from time to time fire drills and to observe all necessary and proper emergency evacuation procedures and the Lessee and all persons under its control will co-operate with the Lessor in performing those drills and procedures.

**5.23 Auction Sales**

The Lessee will not in any circumstances hold or permit to be held any auction sale in or about the Premises.

**5.24 Security**

The Lessee will cause all exterior doors and windows in the Premises to be locked securely at all times when the Premises are not being used and hereby authorises the Lessor's representatives from time to time to enter the Premises for the purpose of locking any doors or windows left unlocked or unfastened or checking the general security of the Building and the Premises.

The Lessee will at its own cost and expense ensure security of a high standard is maintained to control patrons that may frequent the Premises, including but not limited to the employment of a specialised security company should the Lessor deem that such a measure is desirable.

**5.25 Overloading of Electricity**

The Lessee will not without the consent in writing of the Lessor first had and obtained install any electrical equipment on the Premises that overloads the cables switchboards or sub-boards through which electricity is conveyed to the Premises. If the Lessor grants that consent any alterations which may be necessary to comply with the requirements of the insurance underwriters of the Building or any Statutes regulations ordinances or by-laws will be effected by the Lessor at the expense of the Lessee and the entire cost of the alterations will be paid by the Lessee to the Lessor upon demand. The Lessor may require the Lessee to deposit with the Lessor the estimated cost of the alterations before they are commenced.

**5.26 Internal Lighting**

The Lessee will not, install any additional internal lighting in the Premises subsequent to the Date of Commencement of this Lease without first having obtained the consent in writing of the Lessor.

The consent of the Lessor shall be granted or refused or granted subject to conditions in the absolute discretion of the Lessor.

**6. MAINTENANCE AND REPAIR**

**6.1 Notice of Damage**

The Lessee will advise the Lessor promptly in writing of any damage sustained to the Premises or the defective operation of any of the Appurtenances in the Premises.

**6.2 Maintenance of Premises**

The Lessee will keep repair and maintain the Premises and all gas and electric light and power and other fixtures and fittings and all locks keys and window fastenings in and about the Premises and all additions and improvements thereto in good and tenantable repair working order and condition fair wear and tear and damage by fire storm flood tempest riot civil commotion or the Queen's enemies and without any neglect or default on the part of the Lessee excepted and at the expiration or sooner determination of the term of this Lease will peaceably and quietly surrender and yield up the Premises to the Lessor in the condition required by this clause. The Lessee will from time to time replace any light bulbs and fluorescent light tubes in the Premises which may become broken or worn out. The obligations in this clause take effect from the Date of Commencement. The exception in respect of fair wear and tear only applies if the Lessee takes all reasonable measures and precautions to ensure that any damage defect or dilapidation which at any time is attributable to fair wear and tear does not give rise or contribute to any further consequential damage to the Premises.

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**6.3 Inspection by Lessor**

The Lessee will permit the Lessor or the agents or agent of the Lessor with or without workmen and others at all reasonable times to enter upon and view the condition of the Premises and forthwith upon notice being given to the Lessee by the Lessor will execute all repairs and work agreed to be done by the Lessee. The Lessee will also permit the Lessor or the agents or agent of the Lessor with or without workmen and others at all reasonable times to enter upon the Premises for the purpose of effecting any alterations remodelling or repairs (if any) which the Lessor may wish to carry out.

**6.4 Lessor's Right to Repair**

If the Lessee at any time makes default in the performance or observance of any express or implied covenants in this Lease relating to the repair of the Premises, the Lessor may (but without prejudice to the Lessor's right of re-entry) enter upon the Premises and repair them at the expense of the Lessee.

**6.5 Lessee to Redecorate**

The Lessee will at least once during every 4 years of the term and in any case during the last 3 months of the term of this Lease Redecorate the Premises to the reasonable satisfaction of the Lessor. If the Lessee fails to Redecorate the Premises the Lessor may Redecorate them at the Lessee's expense.

**6.6 Glass**

The Lessee will replace all glass in the Premises or forming part of the boundary walls of the Premises that is broken during the term of this Lease.

**7. ALTERATIONS**

**7.1 No Alterations Without Consent**

The Lessee will not make or cause to be made any structural or other alterations or additions to the Premises or Appurtenances in the Premises or the Fire Equipment without first submitting full detailed drawings and other specifications of the proposed works and particulars of the materials proposed to be used and obtaining the Lessor's consent in writing which consent may be granted upon such terms and conditions as the Lessor may in its absolute discretion think fit. If the Lessor grants its consent it will be a condition of that consent that the works are carried out under the supervision of the Lessor's architect. The Lessee will pay to the Lessor forthwith on demand all costs and expenses incurred by the Lessor including architect's and other consultants fees payable by the Lessor whether consent is granted or not.

**7.2 Alterations Required for Lessee's Business**

Any alterations which may be required to the Premises or the Fire Equipment or the water gas electrical plumbing or other services to make or keep the Premises suitable for use by the Lessee in its business or required by reason of the number or sex of the persons employed in the Premises will be effected by and at the expense of the Lessee. The Lessee must first submit full detailed drawings and other specifications of the proposed work and class of materials proposed to be used and obtain the Lessor's consent in writing (which consent will not be unreasonably refused having regard only to the interests of the Lessor if the alterations are required by law). The Lessee indemnifies the Lessor from and against all injury or damage to the Premises or the Building caused in or about the erection or construction of the alterations or additions or in the removal of the alterations and additions and notwithstanding that the Lessor may have consented to them.

**7.3 Internal Partitions**

The Lessee will not install any internal partitions in the Premises or make any alterations or modifications to any internal partitions without the written consent of the Lessor which consent will not be unreasonably withheld if the following conditions are complied with:

- (a) The Lessee submits to the Lessor full detailed drawings and specifications of the proposed works and the drawings and specifications meet with the approval of the Lessor's architect;

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- (b) The materials to be used in the carrying out of the works are of such a standard as to type quality colour and size as the Lessor may determine;
- (c) The works are to be carried out by a builder Approved by the Lessor;
- (d) The works are to be carried out under the supervision of the Lessor's architect; and
- (e) The Lessee pays to the Lessor forthwith upon demand all reasonable costs and expenses incurred by the Lessor including architects and other consultants fees payable by the Lessor whether any Approval is granted or not.

Any partitions erected by the Lessee remain the property of the Lessee who is responsible for their maintenance and insurance.

**7.4 Costs of Internal Works**

Any works Approved pursuant to cl.7.3 will be effected by and at the expense of the Lessee including the costs of all additional lights and power outlets switches telephone outlets and alterations or any other services which may be required by reason of the position of partitions and the Lessee indemnifies the Lessor against all injury or damage to the Premises caused in or about the execution of those works.

**7.5 Lessee's Fixtures**

If the Lessee has paid all Annual Rent and observed and performed all the covenants agreements and provisions contained in this Lease and on the part of the Lessee to be observed and performed, any fixtures and things which with the consent of the Lessor have been installed by the Lessee on the Premises may at the expiration of the term hereof be taken down and removed from the Premises for the Lessee's own benefit but always only upon the condition that the removal can be carried out without danger to the stability of the structure of the Premises. The Lessee will make good to the satisfaction of the Lessor or the architect of the Lessor any damage done or unsightliness occasioned to the Premises by or as a result of the installation or removal of any of these fixtures and things. Any fixtures and things not removed by the Lessee and all other goods of the Lessee left on the Premises shall be deemed abandoned by the Lessee and become the property of the Lessor. The Lessor may in its discretion sell or otherwise dispose of abandoned fixtures things and goods in such manner as the Lessor thinks fit.

**7.6 Alterations or Additions to Premises by Lessor**

If after the commencement of this Lease the Lessor carries out or effects any alterations or additions to the Premises at the request of the Lessee or by reason or as a result of any requisition direction or order of any licensing inspector health inspector municipal or other authority having jurisdiction over the Premises or the owner or occupier of the Premises (and whether the requisition order or direction was received before or after the Date of Commencement of this Lease) then the Lessee will as from the date of completion of those alterations or additions pay to the Lessor as and by way of further rental hereunder an amount per annum equal to 15% of the cost (including architects' fees) as certified by the Lessor's architects of carrying out those alterations or additions to the Premises the further rental to be paid monthly in advance as aforesaid.

**8. INDEMNITY, RISK, INSURANCE, LIABILITY**

**8.1 Indemnities**

The Lessee indemnifies the Lessor against all actions claims demands losses damages costs and expenses which the Lessor may sustain or incur or for which the Lessor may become liable whether during or after the term of this Lease in respect of or arising from:

- (a) loss damage or injury from any cause whatsoever to property or person within or without the Premises occasioned or contributed to by the neglect or default of the Lessee or any servant agent licensee invitee subtenant or other person claiming through or under the Lessee to observe or perform any of the covenants conditions regulations and restrictions on the part of the Lessee in this Lease whether positive or negative expressed or implied;
- (b) the negligent use misuse waste or abuse by the Lessee or any servant agent licensee invitee subtenant or

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- other person claiming through or under the Lessee of any water gas or electricity or other services to the Premises or to the Complex;
- (c) the overflow leakage or escape of water fire gas electricity or any other harmful agent whatsoever in or from the Premises caused or contributed to by any act or omission on the part of the Lessee its servants agents licensees invitees subtenants or other persons claiming through or under the Lessee;
  - (d) the failure of the Lessee to notify the Lessor of any defect in any of the Fire Equipment or other Appurtenances in the Premises of which the Lessee is aware or ought to be aware;
  - (e) loss damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Premises by the Lessee or any servant agent licensee invitee subtenant or other person aforesaid and arising out of the neglect or default of the Lessee or any servant agent licensee invitee subtenant or other person aforesaid;
  - (f) the improper or faulty erection or construction of facilities trade fixtures or equipment installed on or in the Premises by the Lessee;
  - (g) any personal injury sustained by any person in or about the Premises howsoever caused other than by the wilful or negligent act of the Lessor its servants or agents.

## 8.2 Insurances

The Lessee will during the term at its sole cost and expense obtain and keep in full force and effect in the names of the Lessee the Lessor and all mortgagees of the Premises (save where the Lessor and any Mortgagee have no insurable interest) the following insurances:

- (a) **Property** - Insurance upon all property situated in the Premises owned by the Lessee or for which the Lessee is legally liable and on all fixtures and improvements installed in the Premises by the Lessee, the policies to be for an amount not less than 90% of the full replacement cost with coverage against at least fire with standard extended coverage.
- (b) **Public Risk** - Public Risk Liability insurance applying to all operations of the Lessee and which will include bodily injury liability and property damage liability products liability contractual liability contingent liability and tenant's legal liability with respect to the occupancy by the Lessee of the Premises. The policy will be written on a comprehensive basis with limits of not less than \$20,000,000 per occurrence or such higher limits as the Lessor or its mortgagee requires from time to time.
- (c) **Plate Glass** - Insurance of all plate glass in the Premises or forming part of the boundary walls of the Premises for reinstatement following breakage or damage from any cause.
- (d) **General** - Any other form or forms of insurance as the Lessee or the Lessor's mortgagee reasonably requires from time to time in amounts and for perils against which a prudent lessee would protect itself in similar circumstances.

If the Lessee fails to take out or to keep in force any insurance required by this clause, or if the insurance is not reasonably Approved by either the Lessor or its mortgagee, the Lessor may effect the insurance at the sole cost of the Lessee and all outlays by the Lessor will be payable by the Lessee to the Lessor as additional rent on demand without prejudice to any other rights and remedies of the Lessor under this Lease.

## 8.3 Assumption of Risk by Lessee

The Lessee agrees to occupy and use the Premises at the risk of the Lessee and the Lessor will not in any circumstances be liable to the Lessee for any damage to the plant equipment fixtures fittings merchandise stock-in-trade or any other property of any description of or in the possession of the Lessee and contained in or about the Premises occasioned by water heat fire electricity vermin explosion tempest whatsoever or by the operation non-operation or malfunction of the Fire Equipment or by any other cause whatsoever nor for any loss of profits resulting therefrom and notwithstanding that the same may occur by reason of any defect in the construction of the Building or any part thereof or of any of the Appurtenances therein or by reason of any act or omission by any contractor of the Lessor or any other tenant of the Building and their respective employees or any member of the public.

## 8.4 Interruption of Services

Notwithstanding any implication or rule of law to the contrary, the Lessor will not in any circumstances be liable to

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the Lessee for any loss or damage suffered by the Lessee for any malfunction failure to function or interruption of or to the water gas or electricity services the Air Conditioning Equipment the Fire Equipment in the Complex or any of the Appurtenances contained in the Premises or the Complex or for the blockage of any sewers wastes drains gutters downpipes or storm water drains from any cause whatsoever.

**8.5 Condition Precedent**

Notwithstanding anything contained in this Lease or any implication or rule of law to the contrary, the Lessor will not be liable for any damage or loss the Lessee may suffer by reason of the neglect or omission of the Lessor to do any act or thing to or in respect of the Premises or the Body Corporate in respect of the Complex of which the Lessor and/or the Body Corporate is or ought to be aware and which (as between the Lessor and the Lessee) the Lessor might be legally liable to do unless the Lessee gives to the Lessor notice in writing of that act or omission and the Lessor without reasonable cause fails within a reasonable time thereafter to take proper steps to rectify the act or omission.

**9. ASSIGNMENT**

**9.1 Covenant Against Assignment, Subletting and Franchising**

The Lessee shall not assign or transfer, underlet or in any way deal with or dispose of the Premises or any part thereof or any estate or interest therein without first obtaining the written consent of the Lessor but such consent will not be arbitrarily or capriciously withheld in the case of the proposed assignment or subletting of the whole of the Premises to a respectable and financially responsible assignee or subtenant AND IT IS HEREBY AGREED AND DECLARED that as a condition precedent to the Lessor's consent to any assignment or subletting and prior to the execution of any consent the Lessor may require the assignee or subtenant:

- (a) to enter into a covenant with the Lessor that the assignee or subtenant will observe perform fulfil and keep all covenants conditions and restrictions contained in this Lease and on the part of the Lessee to be observed and performed fulfilled and kept, and
- (b) to execute and deliver to the Lessor a power of attorney duly stamped in favour of the Lessor in the same terms mutatis mutandis as those contained in Part 20 of this Lease,

the covenant and Power of Attorney to be prepared by the Lessor's solicitors at the cost and expense of the Lessee and the Lessee will pay all other costs and expenses of the Lessor arising out of or in relation to the assignment or subletting including the Lessor's reasonable costs, charges and expenses incurred by the Lessor of and incidental to any investigation of the proposed assignee or sub-tenant. If the intended assignee is a limited liability company then upon the Lessor's demand at least 2 (or more if the Lessor so requires) of its directors or shareholders of satisfactory standing will join in the deed as sureties for the company in order jointly and severally to covenant with the Lessor as sureties that the company will pay the Annual Rent hereby reserved and perform and observe the covenants (including this present covenant) by the Lessee and conditions contained in this Lease and to indemnify the Lessee against all loss damages costs and expenses arising by reason of any default by the company and the covenant will further provide in the usual form that any neglect or forbearance of the Lessor will not release or exonerate the sureties and will further provide for the sureties to accept a new lease of the Premises upon disclaimer of these presents by the company or on its behalf or on dissolution of the company the new lease to be for the residue then unexpired of the term of this Lease and at the Annual Rent payable under this Lease and subject to the like Lessee's and Lessor's covenants respectively and the like provisos and conditions in all respects (including a proviso for re-entry) as are contained in this Lease. The onus of proving the respectability and financial responsibility of any proposed assignee subtenant or surety is upon the Lessee at its expense.

The liability of the Lessee under the covenants, provisions and conditions contained in the Lease will not be impaired or discharged by reason of any time or other indulgence now or at any time hereafter granted by the Lessor to any assignee or subtenant and the liability of the Lessee to assure the performance of the Lease will not be affected by any further assignments or sub-letting of the Lease.

**9.2 Subleases**

The Lessor's consent to a sub-letting of part only of the Premises may be granted or refused in the absolute discretion of the Lessor and every permitted sublease of the whole or part of the Premises must be granted at a

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rent equal to the then current market rent of the underlet premises and will contain covenants:

- (a) for the upwards only review of the rent reserved on the basis on which the Annual Rent is to be reviewed in this Lease;
- (b) prohibiting the sublessee from doing or allowing any act or thing in relation to the underlet premises inconsistent with or in breach of the provisions of this Lease; and
- (c) by the sublessee with the Lessor not to assign or sublet the underlet premises without the consent in writing of the Lessor.

### 9.3 Name of Business

If the Lessor grants or is ordered by any court or authority of competent jurisdiction to grant consent to an assignment of this Lease, the Lessor will have the right to require that the name of the business conducted in the Premises remain the same as the name under which the Lessee first conducted business during the term of this Lease.

The Lessee acknowledges that the name 'Oxford Centre' or 'Sureplan House' and any derivatives thereof, is the property of the Lessor and the Lessee shall not be entitled to use the words 'Oxford Centre' or 'Sureplan House' or any derivative thereof, in naming the business to be conducted on the Premises without first obtaining the consent of the Lessor which consent may be granted by the Lessor or refused or granted subject to conditions in the absolute discretion of the Lessor.

### 9.4 Corporate Lessee

Where the Lessee is a corporation, (other than a corporation whose voting shares are officially quoted by the Australian Stock Exchange Limited or a corporation at least 80% of whose voting shares are owned by another corporation the voting shares of which are so listed) which proposes to allow the transfer of any of its shareholdings, the issue of new shares in the Lessee or the taking of any action, which would effectively change the beneficial ownership and control of the Lessee, then the Lessee shall obtain the consent of the Lessor in writing to such acts or events which shall not be unreasonably withheld where -

- (a) the Lessee gives to the Lessor not less than 1 month's notice in writing of the intention of the Lessee's directors to deal with any such transfer or interest or to issue such shares or to take such other action as aforesaid;
- (b) the Lessee is not in default under any of the covenants and agreements of the Lessee's part contained in the Lease;
- (c) the Lessee proves to the satisfaction of the Lessor that the person or persons to whom it is proposed to transfer or issue shares or to whom it is proposed any of such rights shall become vested (hereinafter called 'the proposed transferees') are each respectable, responsible and solvent persons and that the Lessee will remain capable of adequately carrying on the business carried on by it in the Premises;
- (d) the proposed transferees furnish to the Lessor a joint and several guarantee in the form required by the Lessor that the Lessee will duly perform and keep the covenants and agreements on the Lessee's part contained in the Lease, such documents to be prepared and stamped by the Lessor's solicitors at the expense of the Lessee;
- (e) the Lessee shall pay to the Lessor all reasonable costs, charges and expenses incurred by the Lessor of and incidental to any investigation of the proposed transferees and as to the capacity of the Lessee to remain capable of adequately carrying on the business carried on by it in the Premises.

### 9.5 Release of Lessor

In the event of any assignment of the Lease, the Lessee shall be deemed thereafter to have released the Lessor from any and all claims which the Lessee then has or may have or may thereafter have against the Lessor in respect of any and all matters in or arising out of the provisions of the Lease.

### 9.6 No Release of Lessee

No assignment, sub-letting or parting with possession by the Lessee whether consented to by the Lessor or not

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shall in any way release the Lessee from its liability to pay the Annual Rent hereby reserved and perform and observe the other covenants and conditions herein contained or implied, or in any way release the obligations of any Guarantor in respect of the obligations of the Lessee herein.

**9.7 Mortgage by Lessee**

The Lessee shall not (in law or in equity) mortgage, charge or otherwise encumber the Lessee's estate or interest in the Lease. The Lessee shall not mortgage, charge, lease or otherwise deal with any equipment, fixtures or fittings or anything else which requires the Lessor to sign a landlord's waiver or any like document with any provider of financial accommodation to the Lessee without first obtaining the consent of the Lessor, which consent will not be unreasonably withheld where the Lessee is entering into a proper and bona fide mortgage, charge or lease as a means of financing such equipment, fixtures or fittings, and provided the Lessee uses the standard form of waiver prepared by the Lessor and pays the Lessor's costs (including legal costs and outlays where applicable) in relation thereto. Without prejudice to the Lessor's rights previously stated in this clause, should the Lessor agree in its absolute discretion to sign a Landlord's Waiver or like document with any provider of financial accommodation to the Lessee, in a form not in the standard form of waiver prepared by the Lessor, then the Lessee shall also pay the Lessor's costs (including legal costs and outlays where applicable) in relation thereto.

**10. COSTS**

**10.1 Costs of litigation**

If without fault on its part the Lessor is 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 Premises the Lessee will pay to the Lessor on demand all legal fees and disbursements (as between solicitor and own client) incurred by the Lessor in connection with such litigation.

**10.2 Costs to be borne by Lessee**

The Lessee shall pay its own costs and those of the Lessor to an amount not exceeding \$1,850 plus GST of and incidental to the negotiation, preparation, execution, stamping and registration of this Lease.

The Lessee will also pay:

- (a) all stamp duty (if any) and registration fees payable in respect of this Lease; and
- (b) the cost of preparation of any necessary lease plan but only if required; and
- (c) all costs charges and expenses (including for example, legal costs and fees payable to a surveyor or architect) incurred by the Lessor for the purpose of or incidental to the preparation and service of any notice under s.127 or s.124 of the *Property Law Act 1974* notwithstanding forfeiture is avoided otherwise than by relief granted by the Court; and
- (d) all costs of and incidental to the grant or refusal of any consent or authority of the Lessor which may be requested by the Lessee under the terms of this Lease; and
- (e) all monies the Lessor may expend or be put to in consequence of any default by the Lessee in the performance and observance of any covenant or agreement expressed or implied in this Lease or which is authorised or entered into or made by the Lessee.

**11. MORTGAGEE OF FREEHOLD**

**11.1 Mortgagee's Consent**

In consideration of the Lessor granting this Lease to the Lessee the Lessee covenants and agrees with the Lessor that if, as a condition precedent to the granting of consent to the Lease by any mortgagee or chargee of the Premises, such mortgagee or chargee requires the Lessee to enter into any covenant or agreement with it, then the Lessee shall execute and deliver such covenant or agreement and return it to the mortgagee or chargee within 14 days of its receipt by the Lessee.

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**12. LESSOR'S COVENANTS**

The Lessor hereby covenants and agrees with the Lessee as follows -

**12.1 Quiet Enjoyment**

That if the Lessee promptly pays the Annual Rent hereby reserved and observes and performs the covenants and agreements in this Lease the Lessee may peaceably hold and enjoy the Premises during the term of this Lease without any interruption by the Lessor or any persons lawfully claiming under or in trust for the Lessor.

**12.2 Lessor to Pay Rates**

To pay all municipal rates and tax payable in respect of the Premises save those rates and taxes (if any) which the Lessee has covenanted to pay in whole or in part.

**12.3 Lessee to Have Access**

To permit the Lessee its servants agents licensees and invitees at all times during the term of this Lease to have full and free access (in common with the Lessor and all other persons to whom the Lessor grants the like right) to and from the Premises.

**12.4 Lessee to Have Access to Toilets**

The Lessee its servants agents licensees and invitees will be entitled in common with all other persons to whom the Lessor and/or the Body Corporate (as the case may be) grants the like right to use the toilet facilities (if any) in the Complex PROVIDED the Lessee will use its best endeavours to keep those facilities in a clean and proper condition throughout the term hereof.

**13. DEFAULT**

**13.1 Default by Lessee**

Events of Default - Right to Re-Enter - Without limiting the circumstances in which a default may be made under the Lease, a default shall be deemed to have been made in any of the following circumstances:

- (a) if the Annual Rent or any part of it is unpaid after it has become due whether any formal or legal demand is made for it or not; or
- (b) if the Lessee makes default in the strict and prompt fulfilment or observance of any of the covenants or agreements (whether expressed or implied) in this Lease and on the part of the Lessee to be performed or observed (including covenants and agreements of a negative character); or
- (c) if the repairs required by any notice given pursuant to cl.6.3 are not completed within the time therein specified; or
- (d) If judgment is obtained or entered against the Lessee in any court of competent jurisdiction; or
- (e) if the Lessee does or suffers to be done any act whereby the estate or effects of the Lessee may become liable to be taken in execution; or
- (f) if the Lessee, being a corporation enters into liquidation whether voluntary or otherwise (except for the purpose of reconstruction or amalgamation); or
- (g) if the Lessee fails to comply with its obligations pursuant to the *Foreign Ownership of Land Register Act 1988*; or
- (h) if the Lessee, being a corporation appoints a voluntary administrator within the meaning of the Corporations Law; or
- (i) if the Lessee brings the estate of the Lessee within the operation of any law relating to bankrupts by any of becoming a bankrupt, committing an act of bankruptcy, or executing a deed of arrangement or deed of assignment under the provisions of the *Bankruptcy Act*; or
- (j) if the Lessee shall make an assignment of the property of the Lessee for the benefit of creditors; or

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- (k) if the Lessee shall be a trustee and is removed from the office of trustee or resigns without the consent in writing of the Lessor being first had and obtained or without such consent as aforesaid either makes a distribution of capital or disposes of the trust assets except in the ordinary course of business; or
- (l) if the Lessee abandons, vacates or otherwise surrenders the Premises.

### 13.2 Forfeiture of Lease

If the Lessee shall have made default as aforesaid, the Lessor may (after first giving prior notice where required by law or by the Lease) at its option:

- (a) **Determination by Re-Entry** Without any prior demand or notice, re-enter into and take possession of the Premises or any part thereof in the name of the whole (by force if necessary) and eject the Lessee and all other persons therefrom and repossess and enjoy the same as of its first and former estate therein and thereupon the Lease shall be absolutely determined; or
- (b) **Determination by Notice** By notice in writing to the Lessee determine the Lease and from the date of giving such notice the Lease shall be absolutely determined; or
- (c) **Conversion to Monthly Tenancy** By notice in writing to the Lessee elect to convert the unexpired portion of the term of the Lease into a tenancy from month to month, in which event the Lease shall be determined as from the giving of such notice, and thereafter the Lessee shall hold the Premises from the Lessor as Lessee from month to month as aforesaid at a monthly rent equal to the monthly instalments on account of the Annual Rent paid by the Lessee in the Lease Year immediately preceding the date of expiration or conversion to monthly tenancy (such rent being payable monthly in advance) but otherwise on the terms and conditions of the Lease so far as they can be applied to a monthly tenancy including, without limiting the generality of the foregoing, an obligation to pay the Additional Rent and the Lessee's contribution.

### 13.3 Moneys Received After Determination

Any moneys tendered by the Lessee after the determination of the Lease may be and (in the absence of any express election of the Lessor) shall be accepted and applied firstly on account of any rent and other moneys accrued due hereunder but unpaid at the date of determination and, secondly, on account of the Lessor's costs of re-entry or determination as aforesaid.

### 13.4 Essential Terms

The Parties hereto agree and declare that each of the following covenants by the Lessee are essential terms of the Lease:-

- (a) the covenants to pay Annual Rent and the Lessee's contribution as contained in cl.3.1 and 4.1 ;
- (b) the covenant contained in cl.5.1 that the Lessee will carry on the type of business covenanted therein;
- (c) the covenants against carrying on offensive or illegal conduct as contained in cl.5.6;
- (d) the covenants to repair and maintain the Premises as contained in cl.6.2;
- (e) the covenants relating to assignment and sub-letting of the Premises as contained in cl.9.1 and cl.9.2;
- (f) the covenants not to make any structural or other alterations to the Premises as contained in cl.7.1 and 7.2;
- (g) the covenants to comply with all statutes, orders, regulations, ordinances and by-laws contained in cl.5.5;
- (h) the covenants to effect policies of insurance contained in cl.8.2.1, and not act so as to render void insurances contained in cl.5.20;
- (i) the covenant as to yielding up upon expiration or sooner determination contained in cl.21.1;

The listing of the abovementioned covenants as essential terms does not ipso facto mean that certain other covenants in the Lease are not essential terms.

### 13.5 Lessor to be Compensated

The Lessee covenants to compensate the Lessor in respect of any breach of an essential term of the Lease and

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the Lessor is entitled to recover damages from the Lessee in respect of such breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate or surrender the Lease). The Lessor shall be entitled to recover damages and/or compensation from the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire term of the Lease.

**13.6 Repudiation**

In the event that the Lessee's conduct (whether acts or omissions) constitutes a repudiation of the Lease (or of the acts or of the Lessee's obligations under the Lease), or constitutes a breach of any Lease covenants, the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.

**13.7 Entitlement to Damages**

The Lessor's entitlement to damages shall not be reduced, affected or limited by any one or more of the following:-

- (a) if the Lessee shall abandon or vacate the Premises;
- (b) if the Lessor shall elect to re-enter or to terminate the Lease;
- (c) the acceptance by the Lessor of the Lessee's repudiation or surrender of the Lease; or
- (d) if the Parties' conduct shall constitute a surrender by operation of law.

**13.8 Damages Over Entire Term**

The Lessor shall be entitled at any time and in the Lessor's absolute discretion to institute legal proceedings claiming damages against the Lessee in respect of the entire term of the Lease, including the periods before and after the Lessee has vacated the Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in the preceding clause, whether the proceedings are instituted either before or after such conduct.

**13.9 Damages on Termination**

Should the Lessor terminate the Lease following any breach of an essential term or otherwise then without prejudice to any other right or remedy of the Lessor herein contained or implied the Lessor shall be entitled to recover from the Lessee the difference between the aggregate of the Annual Rent and other moneys payable by the Lessee hereunder for the unexpired residue of the term plus all costs and expenses which the Lessor may incur of and incidental to the leasing of the Premises to a new tenant, including, but without limiting the generality of the foregoing, any leasing commission payable by the Lessor in respect of a new lease and the costs of any repairs or alterations to the Premises which the Lessor may in its discretion consider necessary to enable the Premises to be leased to a new tenant less any amount the Lessor is able to obtain or could in the Lessor's opinion reasonably be expected to obtain by observing the provisions of cl.13.10.

**13.10 Mitigate Damages**

In the event of the Lessee vacating or abandoning the Premises, whether with or without the Lessor's consent, the Lessor shall be obliged to take reasonable steps to mitigate its damages and to endeavour to lease the Premises at a reasonable rent and on reasonable terms, but only to a Lessee who is of a sound financial standing and who, in the opinion of the Lessor is capable of carrying on the permitted use specified under the Lease, or such other use as may be compatible with the tenancy mix the Lessor desires to achieve within the Complex. The Lessor's entitlement to damages shall be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this clause. The Lessor's conduct taken in pursuance of the duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

**13.11 Non-Waiver**

The waiver by the Lessor of any default or breach by the Lessee of any of the terms, agreements, covenants, conditions, stipulations and restrictions hereof shall not, in any circumstances, be construed or operate as a licence to the Lessee to repeat or continue any such default or breach, nor shall any waiver be construed nor operate as a waiver of any subsequent default or breach, whether of a like nature or not. Any waiver permit consent or approval of any kind or character of any breach or default under this Lease or any waiver of any

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provision or condition of this Lease must be in writing and will be effective only to the extent set out in the written waiver. All remedies either under this Lease or by law or otherwise afforded to the Lessor are cumulative and not alternative.

### 13.12 Accord and Satisfaction

No payment by the Lessee or receipt by the Lessor of a lesser amount than the Annual Rent stipulated in this Lease will be considered to be other than on account of the stipulated Annual Rent, nor will an endorsement or statement on a cheque or in a letter accompanying a cheque or payment as Annual Rent be considered to be an accord or satisfaction, and the Lessor may accept a cheque or payment without prejudice to the Lessor's right to recover the balance of the Annual Rent or pursue any other remedy.

### 13.13 Performance of Lessee's Covenants by Lessor

If the Lessee makes default in payment of any moneys covenanted by the Lessee to be paid or in the observance or performance of any of the covenants contained or implied in this Lease and on the part of the Lessee to be observed and performed the Lessor may pay that money and observe and perform those covenants and the Lessee will pay to the Lessor immediately upon demand all moneys which the Lessor expends in that behalf together with interest on those moneys calculated at the Stipulated Rate from the time of those moneys having been so expended to the date of payment.

### 13.14 Interest on Arrears

The Lessee will pay to the Lessor interest on any Annual Rent or other moneys which are in arrears calculated at the Stipulated Rate from the time of the Annual Rent or other moneys respectively falling due to the date of payment.

## 14. DAMAGE OR DESTRUCTION

### 14.1 Damage or Destruction

- (a) **Substantially Unfit or Substantially Inaccessible** If the Premises or the Complex is damaged by fire, lightning, storm, tempest, earthquake, water damage, flood, riots, strikes, civil commotions, malicious damage, concussion (explosion), fusion, impact by vehicles or aircraft, articles dropped from aircraft or other act of God, or the Queen's enemies so as to render the Premises substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) substantially inaccessible, then provided the damage has not been caused by the negligent act or omission of the Lessee or of any servant agent licensee invitee customer or visitor of the Lessee or of any sub-lessee licensee or other occupier claiming by through or under the Lessee:
- (i) a proportionate part of the Annual Rent and other moneys payable under this Lease according to the nature and extent of the damage sustained, shall abate and all or any remedies for recovery of that proportionate part of the Annual Rent and other moneys falling due after the damage shall be suspended until the Premises have been restored or made fit for the occupation and use of the Lessee or accessible to the Lessee as the case may be;
  - (ii) within 14 days of the Premises or any part thereof being rendered unfit or inaccessible, the Lessee may serve on the Lessor written notice that the Premises have been rendered unfit or inaccessible (a 'Damage Notice') and unless within the period of 31 days after being served with a Damage Notice, the Lessor serves written notice on the Lessee that the Lessor or the Body Corporate will restore the Premises or make them fit for the occupation and use of or render them accessible to the Lessee (a 'Restoration Notice'), the Lessee may (not before the expiration of the period of 31 days and not after the expiration of the period of 75 days from the date of service of the Damage Notice on the Lessor) terminate this Lease by notice in writing to the Lessor;
  - (iii) if the Lessor gives a Restoration Notice to the Lessee and the Lessor or the Body Corporate does not within a reasonable time substantially commence and diligently proceed to restore the Premises or make them fit for the occupation and use of or render them accessible to the Lessee, the Lessee may serve on the Lessor notice of intention to terminate this Lease and unless the Lessor upon receipt of that notice proceeds with reasonable expedition and diligence to restore the Premises or make them fit for the occupation and use of or render them accessible to the Lessee

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- Lessee as the case may require, the Lessee may terminate this Lease by giving not less than 1 month's notice in writing to the Lessor and at the expiration of the last mentioned notice this Lease terminates;
- (iv) if in the Lessor's sole opinion the damage to the Premises or the Complex is such that it is impractical or undesirable to restore the Premises or make them fit for the occupation and use of the Lessee or render them accessible to the Lessee or if the damage to the Premises or the Complex occurs less than 2.5 years prior to the expiration of the term of this Lease, the Lessor may terminate this Lease by giving not less than 1 month's notice in writing to the Lessee and at the expiration of that notice this Lease terminates;
  - (v) no liability attaches to the Lessor by reason of termination of this Lease pursuant to cl.14.1.1(c) or 14.1.1(d), and otherwise any termination is without prejudice to the rights of either Party in respect of any antecedent breach or non-observance of any covenant or provisions of this Lease.
- (b) **Wholly Unfit or Totally Inaccessible** If the Complex or the Premises are taken for any public purpose or are destroyed or so damaged that the Premises are rendered wholly unfit for the occupation and use of the Lessee or totally inaccessible, then -
- (i) the Lessor may notwithstanding anything contained or implied in this Lease terminate this Lease by giving not less than 1 month's notice in writing to the Lessee and at the expiration of that notice this Lease terminates and no liability attaches to the Lessor by reason of the termination;
  - (ii) except where the destruction or damage has been caused or contributed to by the negligent act or omission of the Lessee or of any servant agent licensee invitee customer or visitor of the Lessee or of any sub-lessee licensee or other occupier claiming by through or under the Lessee, the Lessee may terminate this Lease by giving not less than 1 month's notice in writing to the Lessor and at the expiration of that notice this Lease terminates;
  - (iii) any termination pursuant to cl.14.1.2(a) or 14.1.2(b) shall be without prejudice to the rights of either Party in respect of any antecedent breach or non-observance of any covenant or provision of this Lease.
- (c) **Resolution of Disputes** - Any dispute arising under cl.14.1(a) or cl.14.1(b) of this clause will be determined by a member of the Australian Institute of Valuers & Land Economists (Qld Division) or its successor appointed by the President for the time being of that Institute on the application of the Lessor or the Lessee. The person so appointed will in making his determination act as an expert and not as an arbitrator and his determination will be final and binding on both Parties. The cost of the determination will be borne by either or both of the Parties (and if by both of the Parties in the proportion between them) as the person making the termination decides.

## 15. COMPLEX

### 15.1 Relocation of Common Areas

Notwithstanding anything to the contrary in this Lease the Body Corporate may at all times without liability to the Lessee for compensation or otherwise remove or relocate any of the Common Areas and the Car Park or erect additional buildings and structures on or over the Common Areas and the Car Park and the Lessee will have no interest whatever in the areas so taken.

### 15.2 Closing of the Complex

Subject to the provisions of the *BCCM Act* the Body Corporate shall have the right at any time and from time to time for such periods as it sees fit to close all or any of the entrances to the Complex and during such time as all the entrances to the Complex are closed the Lessee and its servants agents customers licensees and invitees will not seek to enter or leave the Complex save with the specific permission of the Lessor obtained for the purpose.

### 15.3 Licences for Use of Common Areas

The Lessee acknowledges that the Body Corporate shall have the right to grant to any tenant of the Complex a licence to use any part of the Common Areas either exclusively or in common with others for such purposes for such periods and upon such terms and conditions as the Body Corporate in its absolute discretion may think fit.

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**15.4 Obstruction of Driveways**

The Lessee will prohibit its servants agents licensees and invitees and others over whom it may have control from parking delivery vehicles during loading or unloading in or otherwise obstructing in any manner the entrances exits and driveways in and to the Car Park.

**15.5 Obstruction of Passageways**

The Lessee will not obstruct or permit to be obstructed by its servants agents licensees invitees or others over whom it may have control any part of the Common Areas (and in particular the vestibules entrances passageways and stairways) by leaving or placing any article or thing or by any meeting of persons.

**15.6 Rules and Regulations**

The Lessee and its concessionaires officers employees agents customers licensees and invitees will in the exercise of the rights conferred by this Lease comply with and abide by the Rules and Regulations and the Lessee agrees to endeavour to ensure that its concessionaires licensees officers employees and agents conform to the Rules and Regulations and all amendments and additions thereto. The Lessor reserves the right at any time and from time to time to amend cancel add to or suspend all or any of the Rules and Regulations for the time being subsisting and to make such other and further Rules and Regulations either in lieu of or in addition to the Rules and Regulations existing at any time as in the judgment of the Lessor may from time to time be required for the management safety care or cleanliness of the Premises or any part of them or for the preservation of good order therein and for the convenience of the occupiers and invitees. No amendment or variation to the Rules and Regulations will substantially derogate from the rights of the Lessee as expressed in this Lease. All amendments and additions will bind the Lessee when notice of them is given to the Lessee in writing by the Lessor. A certificate signed by or on behalf of the Lessor of the Rules and Regulations in force at a particular date will be *prima facie* evidence of the Rules and Regulations in force at that date. If there is any inconsistency between the provisions of this Lease the By Laws and any Rules and Regulations the provisions of this Lease shall prevail. The Lessor will not be liable for any loss or damage howsoever caused arising out of any non-enforcement of the Rules and Regulations.

**16. CENTRE MANAGEMENT**

**16.1 Property Manager**

The Lessor may from time to time appoint a Property Manager to manage the Premises and any Property Manager so appointed will represent the Lessor in all matters relating to this Lease except in so far as the Lessor otherwise in writing directs but any communication from the Lessor to the Lessee will to the extent of any inconsistency supersede any communication from the Property Manager.

**17. GENERAL**

**17.1 Time to be of the Essence**

Time is essential for all obligations of the Lessee in this Lease and the Lessee indemnifies the Lessor against all losses costs and expenses which the Lessor may sustain or incur as a consequence of any failure by the Lessee to perform and observe on the due date any obligations on its part contained or implied in this Lease.

**17.2 Entire Agreement**

It is expressly acknowledged by and between the Parties to this Lease that the terms and conditions set out in this Lease and the Schedule and annexures contain the entire agreement as concluded between the Parties notwithstanding any negotiations or discussions prior to the execution of this Lease and notwithstanding anything contained in any brochure report or other document prepared by the Lessor or the Lessor's agent for submission to potential tenants of the Complex and the Lessee further acknowledges that it has not been induced to enter into this Lease by any representation verbal or otherwise made by or on behalf of the Lessor which is not set out in this Lease.

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### 17.3 Negating of Moratorium

To the fullest extent to which it may from time to time be lawful so to do the provisions of all statutes whether now existing or subsequently to come into force and operating directly or indirectly to lessen or otherwise modify or vary or affect in favour of the Lessee the obligations of the Lessee or to stay postpone or otherwise prevent or prejudicially affect the exercise by the Lessor of all or any of the rights powers and remedies conferred on the Lessor by this Lease are hereby expressly negated and excluded from this Lease.

### 17.4 New Guarantor

Within 14 days of the death of any Guarantor during the term of this Lease or of any Guarantor becoming bankrupt or becoming insane or being a company passing a resolution to wind up or entering into liquidation or having a receiver appointed, the Lessee will give notice of this to the Lessor and if so required by the Lessor at the expense of the Lessee within 28 days procure some other person acceptable to the Lessor to execute a guarantee in respect of the Lessee's obligations contained in this Lease in the form of the Guarantor's covenants which are contained in this Lease or in any guarantee separate from this Lease.

### 17.5 Inspection by Purchaser or Tenant

The Lessee will:

- (a) at all reasonable times upon prior reasonable notice permit the Lessor to show the Premises to prospective purchasers; and
- (b) within the 6 month period immediately preceding the expiration of the term granted by this Lease, permit the Lessor to show the Premises to prospective tenants at all reasonable times. In addition to this on proper reasonable notice the Lessee shall allow the Lessor to affix and exhibit on the Premises where the Lessor thinks fit 'For Sale' and/or 'To Let' notices. In each case the notices may display the name and address of the Lessor and its agents and the Lessee will not remove any notice without the prior written consent of the Lessor.

### 17.6 Modification of Implied Covenants

The obligations and powers implied in leases by ss.105 and 107 of the *Property Law Act 1974* are negated. All other covenants on the part of the Lessee implied by the *Land Title Act 1994* and the *Property Law Act 1974* are not negated but are modified to the extent of any inconsistency with the provisions of this Lease.

### 17.7 Notices

Unless otherwise herein provided any notice given by the Lessor is deemed to be duly given and served on the Lessee if signed by the Lessor or the solicitors for the Lessor or if the Lessor is a corporation then by any officer of or the solicitors for the Lessor and either delivered to the Premises or the last known residence of the Lessee - if more persons than one are lessees under this Lease then to any one or more of them (or if the Lessee is a corporation then to any person at its registered office or principal place of business in this State) or sent to the Lessee through the post in an envelope addressed to the Premises and in the latter case service is deemed to have been effected on the day following posting. Any notice by the Lessee to the Lessor must be signed by the Lessee and must be given or served in the manner prescribed by s.257 of the *Property Law Act 1974*. As an alternative to using the addressed discussed above the parties may (unless a substitute address is notified in writing by either party to the other at any time) use the addresses specified in item 1 of the Reference Data.

### 17.8 Holding Over

If the Lessee with the consent of the Lessor remains in occupation of the Premises after the expiration of the term of this Lease then:

- (a) the Lessee will be tenant from month to month from the Lessor of the Premises on the terms of this Lease so far as they are applicable to a monthly tenancy;
- (b) the monthly tenancy may be determined by either Party in the manner prescribed by Div. 4 of Part VIII of the *Property Law Act 1974*; and
- (c) the rent payable in respect of the monthly tenancy will be the amount of Annual Rent payable monthly pursuant to this Lease immediately prior to the expiration of the term and will be payable in advance.

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**17.9 Severability**

If it is held by a Court of competent jurisdiction that:

- (a) any part of this Lease is void voidable illegal or unenforceable; or
  - (b) this Lease would be void voidable illegal or unenforceable unless any part of this Lease were severed;
- that part will be severable from and will not affect the continued operation of the rest of this Lease.

**18. TRUSTEE LESSEE**

**18.1 Restriction on Trust**

In any case where the Lessee enters into the Lease as trustee of a trust ('the trust'), the Lessee expressly agrees that it shall not permit any of the following acts, omissions or events to occur during the term hereof without the prior written consent of the Lessor:-

- (a) the alteration, amendment, variation or revocation of its trust deed;
- (b) the retirement or removal of the Lessee as trustee of the trust;
- (c) the appointment of any new or additional trustee as trustee of the trust;
- (d) the transfer of the assets of the trust or any part thereof to any other trust or person;
- (e) the removal or diminishing of the Lessee's rights of indemnity from the trust assets; or
- (f) the appointment of a date of distribution (being a date upon which the assets of its trust will vest in the beneficiaries of its trust) earlier than 21 days after the termination of the Lessee's interest in the Premises.

**18.2 Indemnity Rights**

The Lessee covenants that it will exercise all its rights of indemnity in relation to the assets of the trust and that the whole of the trust estate will be available to answer claims in the event of default by the Lessee hereunder.

**18.3 Attorney**

The Lessee hereby irrevocably appoints the Lessor and every officer of the Lessor jointly and severally to be the attorneys of the Lessee after such default occurs in the name of the Lessee to execute such documents and do all such acts and things as the attorney may deem necessary to exercise such rights of indemnity.

**18.4 Warranties**

The Lessee warrants that -

- (a) it has disclosed the full terms of the trust to the Lessor prior to the Lessee's execution hereof;
- (b) it has full and unfettered power to enter into the Lease;
- (c) the Lease is being entered into as part of the proper administration of the trust and the Lease is for the benefit of the beneficiaries thereof;
- (d) the Lessee agrees that the Lessee has entered into the Lease with the intent and effect that all the provisions hereof shall be binding on it in its personal capacity and in its capacity as trustee of the trust.

**19. OPTION**

**19.1 Option**

If the Lessee

- (a) is not in breach under its covenants under this lease (including due and punctual payment of moneys) at the time of giving notice in paragraph (b);

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(b) gives not less than 6 months nor more than 9 months prior notice in writing to the lessor prior to expiry of this lease of its desire to exercise the option conferred by this clause prior to expiry of this lease;

(c) does not breach any terms of this lease giving notice under paragraph (b);

then the lessor will grant and the lessee will accept the option term upon the option conditions.

### 19.2 Execution of New Guarantees

Where guarantees have been given in favour of the Lessor of the Lessee's obligations under the Lease ('original guarantees'), the Lessee shall procure the execution of new guarantees (in similar form to the original guarantees) of the Lessee's obligations under the further lease (if so required to do by the Lessor) from the Guarantors, PROVIDED ALWAYS that should any such Guarantor have died, become bankrupt, been wound up or the subject of the appointment of a Manager or Receiver ('outgoing guarantor'), then the Lessee will procure the execution of such new guarantee by a further guarantor as a replacement guarantor for the outgoing guarantor, which further guarantor shall be (to the reasonable satisfaction of the Lessor) a financially sound and respectable person of at least equal net asset worth to that of the outgoing guarantor, as at the time that the outgoing guarantor gave his original guarantee.

### 19.3 Non-Execution of Further Lease

The Parties acknowledge and agree that it is a condition precedent to the grant by the Lessor of any further lease of the Premises to the Lessee that the Lessee and the Guarantors under the Lease shall duly execute and return the further lease (containing the new guarantees) within ten business days of being submitted to the Lessee, failing which, the Lessor shall be entitled to disregard the Notice of Exercise of Option received from the Lessee pursuant to cl. 19.1(a) as if such notice had never actually been received by the Lessor from the Lessee.

## 20. POWER OF ATTORNEY

### 20.1 Attorney

The Lessee hereby irrevocably nominates, constitutes and appoints the Lessor, and each of the directors of the Lessor from time to time, the several attorneys, jointly, and each of them severally to be the true and lawful attorneys and attorney of the Lessee on his behalf and in his name as his act and deed from time to time if and when the Lessor shall think fit:-

- (a) to execute a surrender of the Lease in favour of the Lessor and to procure the registration of such surrender under the provisions of the *Land Title Act 1994* or any amendment thereof or substitution therefore PROVIDED ALWAYS that such powers shall not be exercised unless and until the power of re-entry or of determination of the Lease by the Lessor shall have become exercisable by reason of default on the part of the Lessee in the observance or performance of conditions on its part herein contained or implied;
- (b) to sign all such documents and do all such acts and things as may be necessary to de-register any business, trade or company name which the Lessee is no longer, by the terms of the Lease, permitted to use;
- (c) to substitute as the attorney or attorneys of the Lessee, the purchaser (and the nominated officers of such purchaser) of the reversion of the Lease.

### 20.2 Sufficient Proof

Sufficient proof of the right of the Lessor or each of its directors to perform any such act or deed or execute such documents as referred to in this Part shall be a statutory declaration of any officer of the Lessor duly authorised in that behalf. The Lessee hereby covenants to ratify and confirm all and whatsoever the said attorney or attorneys shall lawfully do or cause to be done pursuant to this Part and in or about the Premises.

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**21. TERMINATION OF LEASE**

**21.1 Lessee to Yield Up**

The Lessee shall at the expiration or sooner determination of the term of the Lease:-

- (a) peacefully yield up the Premises in the order and condition required by cl.6.2, and as is consistent with the full and due performance by the Lessee of the obligations contained in this Lease; and
- (b) do all things necessary to transfer to the Lessor or his nominee, the benefit of any and all services and facilities provided to the Premises or the Lessee in connection with the use of the same as may be directed by the Lessor; and
- (c) deliver to the Lessor all keys in the possession or control of the Lessee which relate to access to or within the Premises and all keys or entry cards in respect of the Complex.

**21.2 Removal of Fixtures and Stock**

The Lessee shall have the right during the last 14 days of the term of the Lease to remove or cause to be removed from the Premises its fixtures, fittings, plant, equipment, stock-in-trade and other property (other than any fixtures, the cost of which has been paid for or subsidised by the Lessor) provided that such removal can be effected without causing any substantial damage to the Premises and provided further that the Lessee shall make good any damage whatsoever caused to the Premises by such removal and the Lessee, if required by the Lessor, shall re- alter any alterations made by the Lessee so that the Premises shall be converted back to their original condition. If the Lessee shall fail to remove the fittings, furniture, plant, equipment, stock-in-trade and other property of the Lessee before the expiration of the term as aforesaid (whether at the expiration of the term or its sooner determination), all fixtures, fittings, plant, equipment, stock-in-trade or other property not removed by the Lessee, voluntarily or by requirement of the Lessor as aforesaid, shall be deemed abandoned by the Lessee and shall, so far as relates to the property of the Lessee, be and become the property of the Lessor and the Lessor shall be at liberty to retain same or to dispose of same in such manner as it thinks fit. If the Lessee elects not to take same then the Lessor may in such event remove same and store the same in a public warehouse or elsewhere at the cost of and for the account of the Lessee without being deemed guilty of conversion or becoming liable for any loss or damage occasioned by such removal or storage, and without prejudice to the rights of the Lessor to such property under the foregoing provisions hereof. If the Lessee removes such fixtures, fittings, plant, equipment stock-in-trade and other property any damage caused by such removal shall be made good and alterations shall be re-altered by the Lessor at the cost of the Lessee. If the Lessee fails to comply with its obligations under this clause and clause 21.1 then notwithstanding anything to the contrary contained in the lease, the obligation of the Lessee to pay rent and other monies due under this lease including Outgoings and the consumable items referred to in clause 5.4 shall not abate and shall continue until such time as the Lessee has complied in full with its obligations under this lease PROVIDED HOWEVER that nothing contained in this clause shall operate to confer upon the Lessee any extended tenure or month to month tenancy.

**21.3 Antecedent Breach**

The determination of the Lease shall not prejudice or affect any rights or remedies of the Lessor against the Lessee on account of any antecedent breach by the Lessee of any of the terms, covenants and restrictions on the part of the Lessee hereunder.

**21.4 Determination of Associated Rights**

Subject to any agreement between the Lessor and the Lessee to the contrary, the determination of the Lease in accordance with the provisions herein, shall also have the effect of determining any and all rights, consents, licences, permits or interests granted to the Lessee by the Lessor or any person or persons associated with the Lessor pursuant to the provisions of the Lease and in addition thereto, any which are associated with the Lessee's use of the Premises in accordance with the provisions of the Lease.

**21.5 Removal of Signs**

At the expiration or earlier determination of this Lease the Lessee will remove or clean off any advertising or other sign advertisement or hoarding painted erected or placed on or in the Premises and restore the Premises to the condition they were in immediately before the advertisement sign or hoarding was painted, erected or set up.

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**22. BANK GUARANTEE**

The Lessee will procure the issue to the Lessor of:

- (a) a Bank Guarantee at or prior to execution of this Lease for an amount equal to the SECURITY AMOUNT;
- (b) supplementary Bank Guarantees replacing any demands made by the lessor and satisfied by the Issuing Bank from time to time during its currency;
- (c) fresh Bank Guarantees whenever the level of base rent payable under the lease increases so that at all times the amount guaranteed equals the number of monthly instalments of Annual Rent in item 12 of the Reference Data; or.
- (d) a cash equivalent of the SECURITY AMOUNT.

The lessor will serve written notice upon the lessee specifying any demands made by the lessor upon the Bank Guarantee which are satisfied by the Issuing Bank.

The lessee will upon the lessor disposing of its interest in the land:

- (a) enter into a deed of covenant in a form acceptable to the lessor assigning the benefit of the Bank Guarantee to the lessor's successor in title; or
  - (b) procure the issue of a new Bank Guarantee expressly in favour of the lessor's successor in title;
- in compliance with written direction by the lessor in that respect, but any change over costs will be borne by the lessor.

Upon expiry of the Bank Guarantee the Lessor will cause it to be delivered back to the Issuing Bank.

The Lessee and the Lessor expressly agree that the Lessor may make demands upon the Bank Guarantee to compensate itself for:

- (a) any failure by the lessee to pay moneys due under this lease;
- (b) any loss or damage suffered as a result of any other breach of this lease,

as liquidated damages and without limiting or extinguishing its rights to sue for damages for breach or loss of bargain.

**23. PROMOTION FUND**

**Deleted.**

**24. LESSOR MAY EXTINGUISH OR RECONFIGURE COMMUNITY TITLE SCHEME**

**24.1 Reconfiguration or extinguishment**

The Lessor may at any time decide to extinguish the community title scheme of which the Land forms part or reconfigure lots and common property in the Plan (other than the Premises) such that the description of the Premises or the Land may change (**Titling Dealing**).

**24.2 Dealing Notice**

If at any time the Lessor decides to proceed with a Titling Dealing the Lessor must serve a Dealing Notice, Surrender Documents and the Replacement Lease on the Lessee and then unless the Dealing Notice is subsequently withdrawn by the Lessor:

- (a) the Lessor and the Lessee must enter into the Surrender Documents and the Replacement Lease;
- (b) the Lessee must execute and return to the Lessor within fourteen (14) days of receipt from them, the Surrender Documents and Replacement Lease in exchange for a written undertaking from the Lessor's solicitors that those documents are to be dealt with strictly for the purpose of registration of the Titling Dealing and that the Replacement Lease will be lodged for registration to immediately follow the Surrender

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Documents and Titling Dealing.

**24.3 Lessor to Register**

The Lessor must as soon as is practicable and in any event within 3 months of receipt of the Surrender Documents and Replacement Lease from the Lessee attend to the registration of the Titling Dealing, Surrender Documents and Replacement Lease but may at any time:

- (a) withdraw the Titling Dealing, Surrender Documents and Replacement Lease from registration; and
- (b) cancel the Dealing Notice by written notice to the Lessee, at the same time returning to the lessee the Surrender Documents and Replacement Lease.

**24.4 Legal effect**

The Lessor and Lessee agree that regardless of the contents of the Surrender Documents the Lessee holds, from the Surrender Date until registration of the Titling Dealing and Replacement Lease, as a tenant at will at law but on the same terms and conditions as those in this lease (including level and payment of rental and option terms) and subject to the covenant of the parties constituting an agreement to lease in clause 24.5.

**24.5 Agreement to lease**

The Lessor must grant and the Lessee must accept the Replacement Lease as from the Titling Dealing registration date and as and from that date the parties are bound to its terms as if the Replacement Lease had been signed and registered in the Department of Natural Resources and Water immediately upon registration of the Titling Dealing.

**24.6 Costs of surrender and replacement lease**

The Lessor is to bear the costs of:

- (a) the Lessor's solicitors in preparation of all required documents;
- (b) stamping the Surrender Documents;
- (c) registration of the Surrender Documents, Replacement Lease and Titling Dealing (including mortgagee's consent); and
- (d) the Lessee's solicitors of and incidental to the Surrender Documents, Replacement Lease and Titling Dealing.

**24.7 By-Laws**

The Lessee will at all times observe and comply with the By-laws as from time to time varied, added to, deleted or amended as hereinafter provided relating to the management and care of the Complex and the Land and the conduct of tenants and the Lessee acknowledges, agrees and declares that failure of the Lessee to keep or observe any such By-laws shall constitute a breach of the terms of this Lease in the same manner as if the By-laws were contained in this Lease as covenants by the Lessee with the Lessor. The Lessee acknowledges that the Lessor shall not be liable for any claim arising out of any non-enforcement of the By-laws by the Body Corporate.

**24.8 Car Parks**

The Lessor reserves from the grant of this lease any exclusive use area (including car parks) allocated from the exclusive use of the premises from time to time. Unless expressly licensed by Lessor to Lessee, the Lessee will not object to the Body Corporate granting exclusive use of the Car Park or any part to any other person.

**25. GUARANTEE AND INDEMNITY**

IN CONSIDERATION of the Lessor at the request of the Guarantor entering into this Lease with the Lessee the Guarantor covenants and agrees with the Lessor that:

- (a) it will be liable jointly and severally with the Lessee for the due and punctual payment of all Annual Rent

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and other moneys to be paid by the Lessee under this Lease and for the due performance and observance by the Lessee of all the covenants terms and conditions of this Lease on the part of the Lessee to be performed and observed;

- (b) the Guarantor indemnifies the Lessor from and against all losses damages costs and expenses which the Lessor may suffer or incur in consequence of any breach or non-observance of any of the covenants terms and conditions of this Lease on the part of the Lessee to be performed or observed and the Guarantor agrees that the Guarantor will remain liable to the Lessor under this indemnity notwithstanding as a consequence of any breach or non-observance the Lessor has exercised any of its rights under this Lease including its rights of re-entry and notwithstanding that the Lessee (being a corporation) may be wound up or dissolved or (being a natural person) may be declared bankrupt and notwithstanding that the guarantee given by the Guarantor may for any reason whatsoever be unenforceable either in whole or in part;
- (c) on any default or failure by the Lessee to observe and perform any of the covenants terms and conditions of this Lease the Guarantor will forthwith on demand by the Lessor pay all Annual Rent and other moneys and make good to the Lessor all losses damages costs and expenses sustained or incurred by the Lessor by reason of or in consequence of any default in performing or observing any of the covenants terms and conditions of this Lease and the Guarantor will also pay to the Lessor interest at the Stipulated Rate from the time of any Annual Rent or other moneys respectively falling due to the date of payment without the necessity of any prior demand having been made on the Lessee;
- (d) the liability of the Guarantor under this guarantee and indemnity will not be affected by the granting of time or any other indulgence to the Lessee or by any assignment or purported assignment of the interest of the Lessee under this Lease or by the compounding compromise release abandonment waiver variation or renewal of any of the rights of the Lessor against the Lessee or by any variation of this Lease or by the completion of this Lease by the Lessor or its solicitors pursuant to the terms of any agreement for lease or by any neglect or omission to enforce those rights or by any other thing which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from its obligations under this guarantee and indemnity;
- (e) notwithstanding that as between the Guarantor and the Lessee the Guarantor may be a surety only, nevertheless as between the Guarantor and the Lessor the Guarantor is deemed to be a primary debtor and contractor jointly and severally with the Lessee;
- (f) to the fullest extent permitted by law the Guarantor hereby waives such of its rights as surety or indemnifier (legal equitable statutory or otherwise) as may at any time be inconsistent with any of the provisions of this guarantee and indemnity;
- (g) the covenants and agreements made by the Guarantor are not conditional or contingent in any way or dependent upon the validity or enforceability of the covenants and agreements of any other person and remain binding notwithstanding that any other person does not execute this Lease or this guarantee and indemnity;
- (h) the obligations of the Guarantor under this guarantee and indemnity continue until all Annual Rent and other moneys payable pursuant to this Lease have been paid and until all other obligations and indemnities have been performed observed and satisfied and those obligations will not be reduced or affected by any notice to quit given by either Party to this Lease or the death insolvency liquidation or dissolution of the Lessee or the Guarantor or either of them;
- (i) the Guarantor does not execute this guarantee and indemnity as a result of or by reason of any promise representation statement information or inducement of any nature or kind whatsoever given or offered to the Guarantor by the Lessor or on the Lessor's behalf whether in answer to any enquiry by or on behalf of the Guarantor or not and (except as provided in this guarantee and indemnity) the Lessee was not prior to the execution of this guarantee and indemnity by the Guarantor and is not subsequently under any duty to disclose to the Guarantor or to do or execute any act matter or thing relating to the affairs of the Lessee or its transactions with the Lessor;
- (j) in the event of the Lessee during the term of this Lease entering into liquidation (or being a person,

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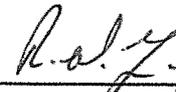
entering into bankruptcy) and the liquidator or trustee in bankruptcy disclaiming this Lease, or if the Lessee should be dissolved, the Guarantor will accept from the Lessor a lease of the Premises for a term equal in duration to the residue remaining unexpired of the term of this Lease, the new lease to contain the same lessee's and lessor's covenants respectively and the same provisos and conditions in all respects (including the proviso for re-entry) as are in this Lease contained together with such other covenants provisos and conditions as the Lessor may reasonably require and on the execution by the Guarantor of the further lease the Guarantor will pay all stamp duty and registration fees and will forthwith execute and deliver to the Lessor the lease in triplicate;

- (k) in the event of a further lease of the Premises being granted by the Lessor to the Lessee (including to any successors of the Lessee or to its permitted assigns) consequent upon the exercise of any option to renew contained in this Lease or in the event of the Lessor granting to the Lessee any extension of the term of this Lease, then this guarantee and indemnity will be deemed to extend to the further lease or the extension of the term as the case may be and will be read and construed as if the further lease were this Lease and the tenant holding under it were the Lessee referred to in this Lease;
- (l) all notices or demands to be given or made to or upon the Guarantor will be deemed to be duly given and served on the Guarantor if signed by the Lessor or the solicitors for the Lessor or if the Lessor is a corporation then by any officer of the corporate Lessor or the solicitors for the corporate Lessor and delivered to the Guarantor (or if there is more than one Guarantor then to any one or more of them) personally or if the Guarantor is a corporation then to any person at its registered office or principal place of business in this State or if left at the last known place of business or abode of the Guarantor or if left at or sent to the Guarantor through the post in a prepaid envelope addressed to the Guarantor at the address (if any) of the Guarantor set out in Item 18 of the Reference Data. A notice or demand which is posted will be deemed to have been served on the Guarantor on the day following the date of posting;
- (m) in the event of the invalidity of any part or provision of this guarantee and indemnity that invalidity will not affect the validity or the enforceability of any other part or provision of this guarantee;
- (n) where there is more than one person or corporation which together constitute the Guarantor to this Lease, the obligations and liabilities of each of those persons or corporations are joint and several;
- (o) this guarantee takes effect forthwith upon its execution and continues to be of full effect whether or not the Lease is subsequently registered in the Department of Natural Resources. References to 'this Lease' include any equitable lease agreement for lease or periodic tenancy arising upon execution or acceptance by the Lessee of the instrument to which this guarantee is annexed;
- (p) in the event of the Lessor transferring the Land or otherwise assigning the Lessor's rights and obligations as Lessor under this Lease the Lessor's rights under this guarantee (whether or not there is any express assignment of the rights) will be deemed to be assigned to the owner from time to time of the Land or other assignee of the Lessor's rights and obligations.

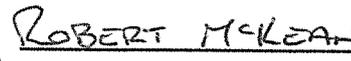
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SIGNED SEALED AND DELIVERED  
this 3<sup>rd</sup> day of SEPTEMBER 2012  
by MARK COSTELLO  
as Guarantor  
in the presence of:



  
A Justice of Peace/Solicitor  
Reg. No. 66361



  
A Name of Witness (Print)

THE GUARANTOR IS GIVEN EXPRESS NOTICE BY THE LESSOR THAT IT IS ADVISABLE FOR THE GUARANTOR TO TAKE SPECIFIC INDEPENDENT LEGAL ADVICE ON THE TERMS OF THE LEASE AND THE EXTENT OF THE GUARANTOR'S OBLIGATIONS UNDER THIS GUARANTEE PRIOR TO SIGNING THE DOCUMENT AND SIGNATURE WITHOUT THAT ADVICE WILL BE DEEMED A POSITIVE ACT OF WAIVER OF THE NECESSITY OF IT BY THE GUARANTOR WITH KNOWLEDGE OF THIS NOTICE.

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**ANNEXURE A  
Rules and Regulations**

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1. The outside of the Premises the entrance halls and passages (if any) of the Complex are under the absolute control of the Body Corporate and must not be obstructed by the Lessee or its employees agents clients invitees customers or used by them for other purposes except ingress and egress to and from the Premises.
2. No sign device fitting furnishing ornament or object which is visible from the street or from any other building which is in the opinion of the Lessor incongruous or unsightly or may detract from the general appearance of the Complex may be erected constructed or maintained by the Lessee in the Premises.
3. No sign fascia placard bill advertisement or notice or other notification may be inscribed painted or affixed on any part of the outside or inside of the Premises or windows thereof except with the consent in writing of the Lessor and then only of such colour size and style and containing such matter and in such places upon or in the Premises as are first Approved by the Lessor.
4. Before any safe furniture office furniture machinery or plant is moved in or out of the Premises written approval of the Lessor or its agent must be obtained by the Lessee and due notice must be given to the Lessor or its agent by the Lessee and the moving of the same upon obtaining such approval must be done under the supervision of the Lessor or its agent at a time Approved by the Lessor or its agent and at no other time.
5. The Lessee must give to the Lessor or its agent prompt notice in writing of any breakages or defects in the waterpipes electric lights or other fittings.
6. No articles of clothing towels or other similar articles may be hung out of the windows or upon the roof of the Premises.
7. The Lessee must not bring or permit any person to bring or leave in the Premises or any part thereof any bicycle or similar machine or any animal or play or permit any person to play any musical instrument in or about the Premises without the consent of the Lessor or its agent.
8. The Lessor is not responsible to the Lessee or its employees agents clients invitees or customers for any loss of property from the Premises however occurring or any damage done to the furniture or other effects of the Lessee.
9. The Lessee will advise the Lessor and its agent for the time being of the private address and telephone number of the Lessee. The Lessee will inform the Lessor promptly of any change in such address or telephone number.
10. No blind or any other kind of awning may be fitted to the outside of the Premises or the windows from the inside without the consent in writing of the Lessor or its agent first had and obtained which consent may be withdrawn by the Lessor at any time in which event all blinds or awnings must be removed within such period as may be specified by the Lessor or its agent. The Lessee will comply with any request made in connection with a blind or awning and will pay for their erection and maintenance.
11. Each Lessee will at his own expense replace all electric light bulbs tubes and globes within the Premises which may become damaged broken or fail to light.
12. All external doors and windows of the Premises must be securely fastened whenever the Premises are left unoccupied. The Lessor reserves the right for its agent employees servants and workmen to enter and fasten doors and windows if they are left unfastened.
13. The Lessee will keep all garbage and refuse in tightly secured containers and the removal of garbage and refuse may be made only by way of the service or loading areas provided and at such time as is designated by the Lessor or his agent. All rubbish containers must be kept within the Premises or as otherwise instructed by the Lessor or its agent.

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14. All receiving and delivery of goods are to be made only by way of the service or loading areas designated by the Body Corporate or its agents from time to time and at such times as are designated by the Manager or its agent.
15. No goods article or item of any kind is to be left in the Common Areas of the Complex.
16. The Lessee may not hand over or allow its servants or employees to hand over the keys of toilets reserved for Lessee and staff to members of the public.
17. Any loading bay pertaining to the Complex may not be used to store goods or other items.
18. Vehicles using any loading bay area must not park within the loading bay area except when loading or unloading.
19. The Lessee must not throw or permit to be thrown or to be dropped or to fall any article or substance whatsoever from or out of the Premises or the Common Areas or any part thereof and must not place any article or substance upon any sill ledge or other like part of the Premises or the Common Areas.
20. The Lessee will keep clean and free from dirt and rubbish such parts of the Common Areas or any public footpath or way as immediately adjoins the Premises.
21. The Lessee will return to the Lessor on the determination of the Lease all keys for locks and doors or other openings of the Premises and will not permit the keys at any time to come into possession or control of any person other than the Lessee or the servants or agents of the Lessee.
22. Rubbish or waste must not be burned upon the Premises or the Common Areas.
23. The Body Corporate may close lock-off or otherwise control the Common Areas or any part of them from time to time and may take all such actions as it deems necessary to prevent and prohibit undesirable persons from entering the Common Areas.
24. Notwithstanding anything hereinbefore contained the Premises must not be open for business at or during any time or times prohibited by law for that class of premises or the business carried therein.
25. Lessees and their employees are to park their cars only in those portions (if any) of the Car Park as may be designated for that purpose from time to time by the Body Corporate and if no such area is designated for that purpose by the Body Corporate then Lessees and their employees shall not be entitled to park their cars in the Car Park provided however that if the Body Corporate designates any such area (which it does not represent that it will do) the Lessee shall furnish the Body Corporate with licence numbers assigned to the Lessee's car or cars and cars of Lessee's employees within 5 days after taking possession of the Premises and thereafter will notify the Body Corporate of any changes within 5 days after changes occur. The Lessor may be entitled at the Lessee's expense after 24 hours notice of its intention to do so tow away any car of the Lessee or its employees which is parked in contravention of this provision.
26. The Lessee may not without the prior consent in writing of the Lessor erect place or maintain upon within or outside the Premises any radio or television aerial or antennae or any loud speaker screen or any amplifier or public address system or similar device or equipment and will not without consent use or permit to be used any of the aforementioned to the extent that they are likely to be heard or seen from outside the Premises or interfere with any public address system of the Lessor PROVIDED however that any consent so given may at any time be withdrawn where the Lessor reasonably so determines having regard to the interests of the Complex as a whole and/or the rights and interests of other tenants occupiers or persons lawfully therein.
27. In these Rules and Regulations except to the extent of any inconsistency with the context any word or expression has the same meaning as given to it in the Lease, and the By Laws.

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