

Your Reference:

Our Reference: MB:20180428



abn. 27 897 735 270
acn. 133 817 482

23 August 2018

Mrs M Platt & Mr AL Platt
27 Purnell Street
KALLANGUR QLD 4503

suite 15, the merthyr centre,
900 brunswick st, new farm

post office box 186 new farm
brisbane, queensland 4005

telephone (07) 3358 5800
facsimile (07) 3358 5448

nrbarki@nrbarbisolicitor.com.au

EXPRESS POST

 **noel barbi**
director
a/hours. 0412 743 394

 **natalie sirijland**
director
a/hours. 0413 123 455

Dear Mary & Arthur,

**RE: LEASE - WHITE & MAXFIELD
PREMISES: 35 STATION STREET, NERANG**

We refer to the above matter and confirm it is now complete, we now **enclose** for your records a copy of the Lease.

Thank you for your instructions. If there are any further matters you would like to discuss with us, please give us a call on 3358 5800.

Yours faithfully,
NR BARBI SOLICITOR PTY LTD

per: Maria Buci | Solicitor
enc

Individual liability limited by a scheme approved under professional standards legislation.

N. R. BARBI
SOLICITOR PTY LTD
A.B.N. 27 897 735 270

15/900 BRUNSWICK STREET
PO BOX 186
NEW FARM QLD 4005

TELEPHONE: (07) 3358 5800
FACSIMILE: (07) 3358 5448

TO: Mr and Mrs Platt
C/- 43 Station Street
NERANG QLD 4211

FOR ATTENTION OF:

Mr White and Ms Maxfield
C/- SEQ Business Sales
VIA EMAIL: rod@seqbusinesssales.com.au

MB:20180428

TAX INVOICE 3 August 2018

RE: MARY AND ARTHUR PLATT
LEASE TO DAVID WHITE AND TONI MAXFIELD
PROPERTY: 35 STATION STREET, NERANG QLD 4211

TO OUR PROFESSIONAL COSTS of and incidental to acting on your behalf in relation to this matter including: taking your instructions; review of prior Lease; drafting of new lease; various correspondences with you, the Tenant and agent; provision of advice throughout; and to all due care and attention generally:

	EXPENSE	GST	TOTAL
PROFESSIONAL FEES	\$2,500.00	\$250.00	\$2,750.00
BALANCE DUE AND OWING (GST INCLUSIVE)			\$2,750.00

With Compliments
N. R. BARBI SOLICITOR PTY LTD

E & OE
Per: Maria Buci | Solicitor

Enclosed: *Tax Invoice Notification of Client's Rights*
Legal Profession Act 2007 (Qld) - Your Right to Challenge Legal Costs (v8)

Kindly provide your remittance by direct deposit to the Account below or alternatively provide us with a cheque in favour of "NR Barbi Solicitor Pty Ltd".

NR Barbi Solicitor Pty Ltd General Account
Westpac Bank, New Farm
BSB: 034 065
Account: 299 918
Ref No: 20180428

Please confirm payment to this office by quoting the abovementioned Reference.

We reserve the right to withdraw this account and to substitute an amended itemised bill for an increased amount being the full amount of the itemised bill notwithstanding that it may exceed the amount referred to herein. If the firm becomes liable to pay GST on this Tax Invoice in addition to the GST set out herein, the firm reserves the right to claim such GST from the client.

THIS INVOICE IS PAYABLE BY 16 August 2018

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LEASE/SUB-LEASE

Dealing Number

Duty Imprint



Privacy Statement

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

1. Lessor	Lodger (Name, address & phone number)	Lodger Code
Arthur Laurence Platt Mary Platt		

2. Lot on Plan Description	County	Parish	Title Reference
Lot 1 on BUP 3894			16238116
Lot 2 on BUP 3894			16238117
Lot 3 on BUP 3894			16238118
Lot 4 on BUP 3894			16238119

3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
David Ian		White	
Toni Louise		Maxfield	

4. Interest being leased
Fee Simple

5. Description of premises being leased
The whole of the property described in item 2 above

6. Term of lease	7. Rental/Consideration
Commencement date: 13 August 2018 Expiry date: 12 August 2023 Option: 2 x 5 years	\$62,400.00 per annum (plus GST)

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 inapplicable words

Witnessing officer must be aware of his/her obligations under section 161 of the Land Title Act 1994

Witnessing Officer	Execution Date	Lessor's Signature
.....signature	/ /	SEE ENLARGED PANEL
.....full name		
.....qualification		

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

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

Witnessing Officer	Execution Date	Lessee's Signature
.....signature	/ /	SEE ENLARGED PANEL
.....full name		
.....qualification		

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

Title Reference 16238116; 16238117; 16238118; 16238119

8. Grant/Execution

The lessor leases the premises described in Item 5 to the lessee for the term stated in Item 6 subject to the covenants and conditions contained in:- the attached schedule

Witnessing Officer

Execution Date

Lessor's Signature

.....signature

/ /

.....full name

.....
Arthur Laurence Platt

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

.....signature

.....full name

.....
Mary Platt

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

9. Acceptance

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

Witnessing Officer

Execution Date

Lessee's Signature

.....signature

/ /

.....full name

.....
David Ian White

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

.....signature

.....full name

.....
Toni Louise Maxfield

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

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- Item 1: **Term:**
2 x 5 years
- Item 2: **Rent**
\$62,400.00 per annum (plus GST).
- Item 3: **Review Date(s)** (CPI/Market/Fixed):
- (a) **CPI Review Dates** N/A
 - (b) **Market Review Dates** If the options are exercised, the anniversary of the commencement of the lease 2023 and 2028
 - (c) (i) **Fixed Increase Dates** The anniversary of the commencement of the lease and if the option is exercised, then on the anniversary of the years commencing 2024 applicable only if the amount of the review is greater than in item 3(b) above.
 - (ii) **Fixed Increase Percent** 1%
- Item 4: **Minimum Increase Percentage**
Not less than 1% increase
- Item 5: **Agreed Proportion of Outgoings**
100%
- Item 6: **Permitted Use**
Squash court and gym with licensed bar
- Item 7: **Insurance - Public Risk**
\$20,000,000.00
- Item 8: **Car Parking Fee**
N/A
- Item 9: **Option Periods**
2 x 5 years
- Item 10: **Bank Guarantee**
Nil
- Item 11: **Guarantors**
Nil

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1 INTERPRETATION

1.1 Terms and Reference Schedule

- (1) Terms in **bold** in the Reference Schedule have the meaning shown opposite
- (2) Item numbers refer to those in the Reference Schedule unless stated otherwise

1.2 Definitions

- (1) "**Agreed Proportion of Outgoings**" means the percentage in Item 5 of the Reference Schedule being the proportion that the area of the **Premises** bears to the **Lettable Area**
- (2) "**API**" means the Australian Property Institute (Inc) Queensland Division
- (3) "**Bank Guarantee**" means an unconditional and irrevocable undertaking by a bank for the amount in Item 10 of the Reference Schedule on terms acceptable to the **Landlord**
- (4) "**Building**" means all buildings and improvements on the **Land** of which the **Premises** form part including the land
- (5) "**Car Park**" means those parts of the **Building** nominated by the **Landlord** for the parking of cars including all ramps and driveways and all rooms servicing the car parking area
- (6) "**Car Parking Fee**" means the amount in Item 8 of the Reference Schedule as varied under this Lease
- (7) "**Common Areas**" means the areas of the **Building** designated for common use by the **Landlord**
- (8) "**Commencement Date**" means the day inserted in Item 6 of the Form 7
- (9) "**CPI**" means the Consumer Price Index (All Groups) for Brisbane published by the Australian Bureau of Statistics. If that index no longer exists, "CPI" means an index that the president of the **API** decides best reflects changes in the cost of living in the relevant city in which the **Premises** are located
- (10) "**Designated Car Park**" means the **Car Parks** hatched in black on the attached plan
- (11) "**Expiry Date**" means the day inserted in Item 6 of the Form 7
- (12) "**Financial Year**" means 1 July to 30 June
- (13) "**Land**" means the property described in Item 2 of the Form 7
- (14) "**Landlord**" means the party described in Item 1 of the Form 7
- (15) "**Landlord's Property**" means any property owned by the **Landlord** in or on the **Building**
- (16) "**Lettable Area**" means the parts of the **Building** the **Landlord** has leased or intends to lease at a commercial rental
- (17) "**Outgoings**" means the Landlord's Body Corporate Administration levies, rates and water levies, and any tax or levy in the nature of goods and services tax or consumption tax or other tax levied directly on or relating to the above amounts on the issuing of Tax Invoices.
- (18) "**Premises**" means the premises described Item 5 of the Form 7 and hatched in black on the attached Plan the boundaries of which are the internal finished surface of walls and includes the **Landlord's Property** in the **Premises**
- (19) "**Renewed Lease**" means a Lease of the **Premises** for the relevant period set out in Item 9 of the Reference Schedule on the terms set out in Clause 15

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- (20) "**Rent**" means the amount in Item 2 of the Reference Schedule as varied under this Lease
- (21) "**Services**" means all gas, electricity, telephone, water, sewerage, fire prevention, ventilation, airconditioning, hydraulic, elevator and security services and all other utilities, services or systems provided in the **Building**
- (22) "**Tenant**" means the party described in Item 3 of the Form 7
- (23) "**Tenant's Property**" means all fixtures, fittings, equipment, stock and other articles in the **Premises** owned by the **Tenant**
- (24) "**Valuer**" means a person who has at least three (3) years experience in valuing the kind of premises leased by this Lease

1.3 Reference

- (1) Reference to:
 - (a) the singular includes the plural and the plural includes the singular
 - (b) a person includes a body corporate
 - (c) a party includes the party's executors, administrators, successors and permitted assigns.
- (2) If a party consists of more than one person, this Lease binds them jointly and each of them severally.
- (3) Headings are for convenience only and do not form part of this Lease or affect its interpretation.

2 RENT AND OTHER PAYMENTS

2.1 Payments

The **Tenant** must pay the **Landlord**:

- (a) the **Rent**
- (b) the **Agreed Proportion of Outgoings**
- (c) Intentionally Deleted
- (d) the **Car Parking Fee**
- (e) stamp duty assessed on the Lease and costs of registering the Lease
- (f) costs of the survey plan attached to the Lease
- (g) the **Landlord's** legal costs and expenses (calculated on a solicitor and own client basis) of and incidental to the negotiation, preparation and execution of this Lease
- (h) all costs and expenses (including all legal costs calculated on a solicitor and own client basis) incurred by the **Landlord** in relation to any notice given to the **Tenant** in accordance with this Lease, lawful determination or attempted determination of this Lease, the surrender of this Lease, the granting of any consents, proceedings lawfully brought by the **Landlord** to enforce the **Tenant's** performance and obligations under this Lease
- (i) any reasonable additional or unusual charges and expenses incurred by the **Landlord** at the request of the **Tenant**
- (j) any tax or levy in the nature of a goods and services tax or consumption tax or other tax levied directly on or relating to the receipt of payments including **Rent** incurred by the **Landlord** during the **Term**

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- (k) any other payments arising from the **Tenant's** use of the **Premises**.

2.2 Manner of Payment

- (1) The **Tenant** must pay the **Rent**:
- (a) by equal monthly instalments in advance on the first day of each month
 - (b) the first payment must be made on the Commencement Date
 - (c) if necessary the first and last instalments must be apportioned on a daily basis.
- (2) The **Tenant** must pay the **Agreed Proportion of Operating Expenses** for each **Financial Year** in the manner notified in writing by the **Landlord** and in the absence of notification in the same manner as **Rent**. A certificate by the **Landlord** or authorised representative of the **Landlord** is prima facie evidence of the **Operating Expenses** for each **Financial Year**.
- (3) The **Tenant** must make all other payments promptly to the relevant assessing authority if assessed directly against the **Tenant** but otherwise to the **Landlord** upon receipt of an invoice.
- (4) Payments must be made as the **Landlord** directs.
- (5) Within ninety (90) days after the expiry of each **Financial Year** the **Landlord** must provide the **Tenant** with a statement containing the actual **Outgoings** for the **Building** or the **Land** for the immediately preceding **Financial Year**. Within fourteen (14) days of being provided with a statement, the **Landlord** must refund any overpaid **Outgoings** and the **Tenant** must pay any shortfall.

2.3 Charges for Electricity

The **Tenant** acknowledges that if the **Landlord** supplies electricity to the **Tenant** as provided in the *Electricity Act 1994* and Section 244 of the *Electricity Regulations 1994* that the **Landlord** has elected to recover the cost of it from the **Tenant** as provided in that Act.

2.4 Interest

If the **Tenant** is late in paying the **Landlord** any money, the **Landlord** may charge the **Tenant** daily interest on any late payments at the rate of two percent (2%) per month or any part of a month. All interest charged must be paid on demand.

3 RENT REVIEWS

3.1 CPI Review

Where **CPI Review Dates** are inserted in Item 3(a) of the Reference Schedule the **Rent** must be reviewed on each **CPI Review Date** to an amount represented by A where:

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

Where B = the **CPI** for the quarter ending immediately before the relevant **CPI review date**.

C = the **CPI** for the quarter one (1) year before the quarter in B; and

D = the **Rent** payable immediately before the **CPI Review Date**.

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3.2 Market Review

- (1) Where **Market Review Dates** are inserted in Item 3(b) of the Reference Schedule the **Rent** must be reviewed in each **Market Review Date** to an amount equal to the current market rent for the **Premises** at the commencement of the year under review.
- (2) The current market rent must be agreed upon between the **Landlord** and the **Tenant** and if agreement on the current market rent is not reached by one month after commencement of the year under review, must be determined by a **Valuer**, acting as an expert and not an arbitrator, to be agreed upon by the **Landlord** and the **Tenant** or failing agreement, as nominated by the President of the **API**.
- (3) In arriving at a decision, the **Valuer** must take no account of any increase in rental value of the **Premises** attributable at the review date of any improvements to the **Premises** carried out by the **Tenant** or **Landlord** by way of fit out.
- (4) The costs of the **Valuer** must be borne equally by the **Landlord** and the **Tenant**.

3.3 Fixed Review

Where **Fixed Increase Dates** are inserted in Item 3(c)(i) of the Reference Schedule the from and including each **Fixed Increase Dates** the **Rent** increases by the corresponding percentage set out in Item 3(c)(ii) of the Reference Schedule.

3.4 Rent Not to Decrease

The **Rent** in any year will not in any circumstances be less than an amount equivalent to the percentage in Item 4 of the Reference Schedule multiplied by the **Rent** payable in the immediately preceding year.

3.5 Payment of Rent Prior to Review

- (1) Until a determination of **Rent** is made, the **Tenant** must pay the **Rent** payable before the date of the relevant review.
- (2) Any variation in **Rent** resulting from a review takes effect on the relevant review date.
- (3) Within fourteen (14) days of a determination, the **Landlord** must refund any overpaid **Rent** or the **Tenant** must pay any shortfall.

4 USE OF THE PREMISES

4.1 Use of Premises

- (1) The **Tenant** must bring the **Premises** into active and bonafide use for the **Permitted Use** inserted in item 6 of the schedule and for no other purpose.
- (2) The **Landlord** does not warrant the **Premises** are suitable for any purpose or may be used for the **Permitted Use**.

4.2 Conduct

The **Tenant** must not:

- (a) allow the **Premises** to be used for annoying, offensive or illegal acts which cause annoyance, nuisance, grievance, damage or disturbance to the occupants of adjacent premises or to the **Landlord**
- (b) hold or permit to be held any auction or similar sale in the Premises
- (c) use any form of power other than gas or electric current or gas supplied through metres
- (d) overload the Services

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- (e) damage the Landlord's Property
- (f) alter the Premises, install any partitions or do any building work
- (g) do anything that may invalidate the Landlord's insurance or increase the Landlord's premiums
- (h) display, paint or erect any signs, save standard business signage
- (i) knowingly use or allow the Landlord's Property to be used for any purpose other than those for which they were designed
- (j) interfere with any drains, water supply, gas, electrical, plumbing, airconditioning equipment or other services or any of the Landlord's Property
- (k) prepare or cook for sale or other commercial purpose any food on the Premises and keep the Premises free from vermin
- (l) Intentionally deleted
- (m) bring any heavy machinery, plant or equipment onto the Premises unless it is reasonably necessary for the Permitted Use and in any case must not overload the floors, walls or ceilings
- (n) make holes, deface or damage floors, walls or ceilings or other parts of the Premises
- (o) Intentionally deleted
- (p) use or install any product or property in the Premises likely to cause damage
- (q) use or permit to be used any of the elevators, escalators or travelators in the Building to carry any bulky goods or equipment unless they are designated by the Landlord for that purpose.

4.3 Consent

The **Tenant** may seek the **Landlord's** written consent to any of the matters in Clause 4.2 which can be granted at the **Landlord's** discretion.

4.4 Tenant's Obligation

The **Tenant** must:

- (a) obtain and maintain all permits or consents required from any government authority to carry on the **Permitted Use** in the **Premises**
- (b) obey all reasonable directions and rules given by the Landlord relating to use of the Common Areas
- (c) obey any rules made by the Landlord relating to the operation, safety, use, occupation and management of the Building
- (e) immediately notify the Landlord of any damage to, defect or disrepair in the Services or the Landlord's Property
- (f) immediately notify the Landlord of any infectious diseases notifiable to the relevant Health Authority occurring on the Premises of which it is aware
- (g) immediately provide the Landlord with copies of all notices, which it is required to serve on or receive pursuant to any legislation relating to the Premises
- (h) at the expiration or sooner determination of the Term return all keys of the Premises to the Landlord

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- (i) lock all exterior doors and windows in the Premises and the Building when the Premises or the Building are not being used
- (j) pay all charges, assessments or impositions which may be levied in respect of the Premises during the Term and arising as a result of the use and occupation of the Premises by the Tenant.

5 MAINTENANCE AND REPAIR

5.1 Repair

The **Tenant** must:

- (a) keep the **Premises**, including all signage, in good repair and condition except for fair wear and tear, and structural defects and/or repairs
- (b) fix any damage caused by the **Tenant** or its employees use
- (c) repair, maintain or replace all glass in the **Premises**, the door locks, windows and window fittings, all broken, faulty or blown light tubes and associated electrical apparatus in the **Premises**
- (d) during the last year of the **Term**, and more often if reasonably required by the **Landlord** having regard to the condition of the **Premises**, paint the walls, ceilings and other painted surfaces of the interior of the **Premises** with two (2) coats of first quality paint in a proper and workmanlike manner, in the original colours or in such other colours approved by the **Landlord**.

5.2 Cleaning

The **Tenant** must:

- (a) keep the **Premises** clean and tidy, consistent with the nature of the business conducted on the **Premises**
- (b) keep the Tenant's Property clean and tidy
- (c) if the Landlord and Tenant agree to use a cleaning service supplied by the Landlord to the Premises the Tenant must pay to the Landlord on demand the reasonable cost of cleaning the Premises
- (d) any cleaning of the Premises by a service supplied by the Landlord must be of a satisfactory commercial standard and the cleaners will be allowed access to the Premises at all reasonable times.

5.3 Landlord's Right to Inspect and Repair

- (1) Upon giving the **Tenant** two (2) days' notice in writing, the **Landlord** may inspect or carry out repairs, maintenance, or building work in or around the **Premises** at any reasonable time. In an emergency, the **Landlord** may enter at any time without giving the **Tenant** notice.
- (2) The **Landlord** may carry out any of the **Tenant's** obligations under this Lease if the **Tenant** does not carry them out on time or as reasonably directed by the **Landlord**. If the **Landlord** does so, then the **Tenant** must pay the **Landlord's** expenses.

5.4 Tenant's Works

- (1) The **Tenant** must not carry out any building work without the **Landlord's** consent. The **Landlord** cannot unreasonably refuse to give its consent if:
 - (a) the **Landlord** approves the **Tenant's** drawings and specifications for the works
 - (b) the **Tenant** and the **Landlord** agree on the type, quality, colour and size of the materials to be used
 - (c) the **Landlord** reasonably approves of the **Tenant's** builder.

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(2) The **Tenant** must:

- (a) pay for any work approved under Clause 5.4(1)
- (b) indemnify the **Landlord** against all injury or damage to the **Premises** or the **Building** caused by those works, and
- (c) maintain the works.

5.5 Landlord's Fitout

If the **Landlord** has provided any fitout to the **Premises** then:

- (a) that fitout is **Landlord's Property**
- (b) the **Tenant** must not damage any fitout provided by the **Landlord** or install any additional fitout without the consent of the **Landlord** which must not be unreasonably withheld
- (c) if during the **Term** of this Lease or any renewed term, any fitout provided by the **Landlord** needs to be replaced because of fair wear and tear, then the **Landlord** will replace that fitout with fitout of a like quality
- (d) If during the **Term** of this Lease or any renewed term, the **Tenant** requires any fitout by the **Landlord** to be replaced for reason other than fair wear and tear, the **Landlord** or the **Tenant** with the **Landlord's** consent will replace that fitout at the cost of the **Tenant**.

6 ASSIGNMENT AND SUBLETTING

6.1 The **Tenant** may only assign, sublet, mortgage, charge or deal with the Lease or the **Premises** with the **Landlord's** consent which must not be unreasonably withheld.

6.2 The **Landlord** must give its consent if:

- (a) the **Landlord** is satisfied that the new tenant is suitable, respectable, responsible and financially secure and is capable of carrying out the **Tenant's** obligations under this Lease
- (b) Then Tenant and the new tenant signs any agreement and gives any security which the Landlord reasonably requires
- (c) The Tenant complies with any other reasonable requirements of the Landlord
- (d) The Tenant is not in breach of the Lease
- (e) The Tenant releases the Landlord from all claims the Tenant has or may have in respect of this Lease
- (f) The Tenant pays the Landlord's reasonable costs and expenses of giving its consent including legal costs, stamp duty and registration fees.

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

7 LANDLORD'S RIGHTS AND OBLIGATIONS

7.1 Variations In Tenant's Agreed Proportion

If the **Landlord** modifies the **Building** or alters the **Lettable Area**, the **Landlord** can recalculate the **Agreed Proportion of Outgoings** on the same basis as the **Agreed Proportion of Outgoings** was calculated before the **Commencement**

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Date but taking into account the increased or reduced (as the case may be) **Lettable Area**. Every such recalculation shall be binding on the parties to this Lease from the date the **Landlord** notifies the **Tenant** in writing.

7.2 **Elevators, Escalators, Travelators and AirConditioning**

The **Landlord** must use its best endeavours to ensure any elevator, escalator or travelator and airconditioning services are functioning properly during normal business hours and will ensure any cessation of such services during normal business hours is restricted to the minimum period possible. If the **Landlord** provides out of hours airconditioning, at the request of the **Tenant**, any additional costs will be borne by the **Tenant**.

7.3 **Head Lease or Other Interests**

The **Tenant** must allow any person having any estate or interest in the **Premises** superior to or concurrent with the **Landlord** to exercise the powers to enter and view the **Premises** and to carry out repairs renovations maintenance and other work and otherwise to exercise or perform their lawful rights or obligations.

7.4 **Rules**

The **Landlord** may make rules relating to the **Building** and **Common Areas** dealing with:

- (a) their use, care and cleanliness
- (b) the preservation of good order
- (c) the comfort of persons
- (d) the location of garbage and refuse pending its removal
- (e) the closure of any part outside normal business hours
- (f) the external appearance.

7.5 **Complex Exterior**

The **Landlord** has the exclusive right to use of the exterior of the **Building**, provided that any use of the exterior of the **Building** must not interfere with or adversely impact upon the **Tenant's** use of the **Premises**.

7.6 **Licenses For Use of Common Areas**

The **Landlord**, can to grant to any person a licence to use any part of the **Common Areas** (other than toilets) provided such licence must not substantially adversely effect the **Tenant's** rights under this Lease.

7.7 **Quiet Enjoyment**

Provided the **Tenant** complies with the terms of this Lease the **Tenant** can peaceably hold and enjoy the **Premises** during the continuance of this Lease without any interruption by the **Landlord** or any other person lawfully claiming under the **Landlord**.

7.8 **Insurance**

The **Landlord** must insure the **Building** (but excluding all additions to the **Premises** carried out by the **Tenant** and the **Tenant's Property**) for its full replacement value and unless the insurance becomes void or voidable through or by reason of some default by the **Tenant** keep it insured.

7.9 **Rates and Taxes**

The **Landlord** must pay all **Outgoings** not payable by the **Tenant** or other occupant of the **Building**.

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7.10 Maintenance

The **Landlord** must keep the **Common Areas** tidy and in good repair and must maintain the structural integrity of the **Premises** and **Building**.

7.11 Services

The **Landlord** must do everything reasonable to ensure the **Services** and **Landlord** supplied fixtures, fittings and equipment operate efficiently during normal working hours.

7.12 Directory Boards

Any directory boards provided by the **Landlord** are under its control.

7.13 Consent of Mortgagee

The **Landlord** must obtain from any mortgagee an unconditional consent in writing to this Lease.

8 RISK

8.1 Own Risk

The **Tenant** occupies and uses the **Premises** at its own risk. The **Tenant** also carries out building work in the **Premises** at its own risk.

8.2 Release

The **Tenant** releases to the fullest extent permitted by Law, the **Landlord** and its agents, employees and contractors from all claims and demands resulting from any accident, damage, loss, injury or death occurring in the **Premises** or in any part of the **Building** or outside the **Building** except to the extent that it is caused by a deliberate act, negligence or default by the **Landlord** or its agents, employees or contractors or from structural defects.

8.3 Indemnity

Without limiting the generality of Clause 8.2 the **Tenant** indemnifies and holds indemnified the **Landlord** and its agents, employees and contractors from and against all actions, claims, losses, damages and costs for or in respect of which the **Landlord** may sustain or incur or for which the **Landlord** or its agents, employees and contractors shall or may be or become liable whether during or after the **Term** in respect of or arising from:

- (1) **Breach of Covenant** - Loss, damage or injury to property or person from or contributed to by the neglect or default of the **Tenant** to observe or perform any of the covenants, conditions and restrictions on the part of the **Tenant** whether positive or negative expressed or implied
- (2) **Misuse** - Negligent use or misuse, waste or abuse by the **Tenant** or any servant, agent or sub-tenant of any **Services** to the **Premises** or to the **Building**
- (3) **Escape of Harmful Agent** - Overflow 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 **Tenant** its servants, agents or sub-tenants
- (4) **Failure to Notify** - Failure of the **Tenant** to notify the **Landlord** of any defect of which it is aware in the **Premises** whatsoever
- (5) **Use of Premises** - Loss damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the Premises by the Tenant or any servant, agent or sub-tenant
- (6) **Personal Injury** - Any personal injury sustained by any person in or about the Premises or the Building howsoever caused other than the wilful or negligent act or omission of the Landlord or its servants or agents.

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8.4 Insurance

- (1) At all times during the continuance of this Lease the **Tenant** must effect and keep current:
- (a) a public liability insurance policy in respect of the **Premises** having endorsement to include the risks and indemnities contained in Clause 8.3 in the names of the **Landlord** and all persons having superior title to the **Landlord** and the **Tenant** for their respective interests in an amount set out in Item 7 of the Reference Schedule or any higher amount that the **Landlord** may from time to time reasonably require the **Tenant** by notice in writing to effect for of any single claim, accident or event, with an insurance office or company approved by the **Landlord** (such approval not to be unreasonably withheld)
 - (b) a policy of insurance in the names of the **Landlord** and the **Tenant** for their respective interests to cover:
 - (i) the full reinstatement replacement costs of plate glass in the **Premises**
 - (ii) special industrial risks (if any) due to the specific **Permitted Use** of the **Premises** by the **Tenant** (if any)with an insurance office or company approved by the **Landlord** (such consent not to be unreasonably withheld)
 - (c) worker's compensation including employer's liability insurance (unlimited cover).
- (2) The **Tenant** must give the **Landlord**:
- (a) a duplicate copy of each such policy immediately it is effected
 - (b) a copy of the receipt issued for payment of each premium within five (5) business days of it being paid
 - (c) a copy of the certificate of currency when requested.

8.5 Notice of Accident

The **Tenant** must give the **Landlord** prompt notice in writing of any accident in or want of repair to the **Premises** or defect in any **Services** which it is aware.

8.6 Conduct Voiding Insurance

The **Tenant** must not knowingly do or permit to be done or omit to do any act in the **Premises** or on the **Common Areas** which may render void or voidable any insurances on the **Building** or that may cause the rate of premium on any such insurance policies to be increased or be liable to be increased and the **Tenant** must do or permit to be done immediately upon request by the **Landlord**, everything necessary to ensure the continuance of any insurances effected by the **Landlord**.

9 DEFAULT AND TERMINATION

9.1 Essential Terms

The essential terms are:

- (a) Payments [Clause 2.1]
- (b) Use of Premises [Clause 4.1]
- (c) Conduct [Clause 4.2]
- (d) Tenant's Obligations [Clause 4.4]
- (e) Repair [Clause 5.1]

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- (f) Cleaning [Clause 5.2]
- (g) Obtain consent before assignment, subletting, mortgaging or charging [Clause 6.1].

9.2 Default

The **Tenant** is in default of this Lease if:

- (a) it breaches an essential term of this Lease
- (b) it repudiates its obligations under this Lease
- (c) it is insolvent
- (d) its interest under this Lease is attached or taken in execution under any legal process, or
- (e) it does not comply with any other term of this Lease within a reasonable time after receiving notice from the **Landlord** to do so.

9.3 Termination of Tenancy

- (1) If the **Tenant** is in default and does not remedy the default within the time stated in any notice from the **Landlord**, the **Landlord** may do any one or more of the following without prejudice to any other right which it may have against the **Tenant**:
 - (a) by notice to the **Tenant**, convert this Lease to a month to month tenancy on the terms of this Lease as far as they can be applied to a monthly tenancy
 - (b) by notice to the **Tenant**, terminate the Lease and take possession of the **Premises**
 - (c) recover from the **Tenant** any loss suffered by the **Landlord** due to default of the **Tenant**
 - (d) exercise any of its other legal rights.
- (2) The **Landlord** must take reasonable steps to mitigate its loss.

10 EXPIRY OF TERM

10.1 Tenant's Obligations

On expiry of the **Term** or earlier termination the **Tenant** must:

- (a) vacate the **Premises** in good repair and clean condition fair wear and tear being acceptable
- (b) remove all the Tenant's Property from the Premises
- (c) repair any damage caused by removal of the Tenant's Property
- (d) return all keys, security passes and cards held by the Tenant or its employees, and
- (e) paint the Premises with two coats of first quality paint in a workmanlike manner in colours approved in writing by the Landlord.

10.2 Failure to Remove Tenant's Property

If the **Tenant** does not remove the **Tenant's Property** on expiry or earlier termination, the **Landlord** may:

- (a) remove and store the **Tenant's Property** at the **Tenant's** risk and expense, or

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- (b) treat the **Tenant's Property** as being abandoned, in which case title in the **Tenant's Property** passes to the **Landlord** who may deal with it as it thinks fit without being liable to account to the **Tenant**.

10.3 Power of Attorney

- (1) The **Tenant** irrevocably appoints the **Landlord** and each and every one of its directors to be the true and lawful attorney of the **Tenant** to act at any time after the power to take back possession of the premises has been exercised.
- (2) The attorney is empowered to:
- (a) execute and register (if necessary) a Transfer or Surrender of the Lease or a Withdrawal of any Caveat lodged by the **Tenant** affecting the **Land** together with any other documents needed to effect those dealings
- (b) do all things which the **Tenant** is required to do under this Lease.
- (3) The **Tenant** undertakes to ratify and confirm anything the attorney lawfully does and to pay the **Landlord's** reasonable expenses incurred in exercising the powers under Clause 10.3 on demand.

11 MONTHLY TENANCY

11.1 Monthly Tenancy

If the **Tenant** continues to occupy the **Premises** after the **Expiry Date** in accordance with this Lease:

- (a) The **Tenant** does so as a monthly tenant on the same conditions as at the last day of the **Term**, and
- (b) either party may terminate the monthly tenancy by giving to the other one (1) month's notice expiring on any day.

12 DAMAGE AND DESTRUCTION

- 12.1 If the **Building** is damaged or destroyed and the **Tenant** or its employees have not caused or contributed to such damage or destruction and as a result the **Premises** are wholly or partially unfit for use or the **Tenant** cannot gain access.

12.1.1 Rent Reduction

If the **Building** is damaged or destroyed and the **Tenant** or its employees have not caused or contributed to such damage or destruction and as a result the **Premises** are wholly or partially unfit for use or the **Tenant** cannot gain access to the **Premises** then from the date that the **Tenant** notifies the **Landlord** of the damage or destruction until the date that the **Premises** are again fit for use and accessible the **Landlord**:

- (a) must reduce the **Rent, Agreed Proportion of Outgoings** and any other money payable to the **Landlord** by a reasonable amount depending on the type and extent of damage or destruction, and
- (b) cannot require the **Tenant** to clean, repair or maintain until the **Premises** are fit for use and accessible.

12.1.2 Tenant May Terminate

The **Tenant** may terminate this Lease by thirty (30) days notice to the **Landlord** unless:

- (a) within three (3) months of the event causing damage or destruction, the **Landlord** notifies the **Tenant** that the **Premises** will be reinstated, and
- (b) carries out reinstatement works within a reasonable time having regard to the extent of the damage.

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12.1.3 **Landlord May Terminate**

If the **Landlord** considers the damage to the **Premises** renders it impractical or undesirable to reinstate the **Premises**, it may terminate this Lease by giving to the **Tenant** notice in writing.

12.1.4 **No Obligation to Rebuild**

The **Landlord** is not obliged to restore the **Building** or **Premises** according to the former specifications so long as the layout and dimensions of the **Premises** and **Services** are not substantially different.

12.1.5 **Dispute Resolution**

- (1) The **Tenant** is entitled to dispute the reasonableness of any reduction of rent and other moneys
- (2) Any dispute as to the extent and reasonableness of any reduction in rent and other moneys must be determined by an independent **Valuer** appointed by the president of the **API** at the request of either party
- (3) In making the determination, the appointed **Valuer** acts as an expert and the determination is final and binding on both parties
- (4) The cost of the determination must be paid by the parties equally unless otherwise decided by the appointed **Valuer**.

12.1.6 **Antecedent Rights**

Termination under Clause 12 or any other provision of this Lease does not effect either parties' accrued rights before termination.

13 **SALE BY LANDLORD**

Before transferring any interest in the **Land**, the **Landlord** must obtain a signed deed from the transferee containing covenants in favour of the **Tenant** that the transferee will be bound by the terms of this Lease and will not transfer its interest in the **Land** unless it obtains a similar deed from its transferee.

14 **GENERAL**

14.1 **Naming Rights**

The **Landlord** may:

- (a) name or rename the **Building**
- (b) alter or build additions to the **Building** and in so doing interrupt the **Services** provided any interruption is minimised.

14.2 **Landlord May Rectify**

If the **Tenant** does not perform any obligation under this Lease the **Landlord** may perform that obligation as agent of the **Tenant** and the full cost to the **Landlord** of performing that obligation is payable by the **Tenant** to the **Landlord** on demand.

14.3 **Notices**

To be valid or effective a notice or document must be:

- (a) in writing, and

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- (b) left at, posted by registered post or sent by facsimile number to the **Landlord** or **Tenant** at the address last notified by the receiving party.

14.4 Waiver Negatived

Failure by the **Landlord** or **Tenant** to exercise any power or right under this Lease can not be such to be construed or deemed a waiver of the relevant power or right unless it is in writing.

14.5 Entire Agreement

This Lease:

- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Lease, and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

14.6 Severability

If any provision of this Lease or its application to any person or circumstance is or becomes unenforceable, illegal or void the remaining covenants are not effected and each covenant of this Lease is enforceable to the greatest extent permitted by Law.

14.7 Obligations of Parties

The respective covenants and obligations of the parties as set out in this Lease whether positive or negative must be construed as if each such obligation or covenant is a separate and independent covenant made by one party in favour of the other party and continuing (unless the context otherwise requires) throughout the **Term** and for so long as it remains to be performed.

14.8 Statutes and Regulations

Reference to statutes regulations ordinances or by-laws are deemed to extend to all statutes regulations ordinances or by-laws amending consolidating or replacing the same.

14.9 Governing Law

This Lease must be governed by and construed in accordance with the law of the State of Queensland.

14.10 Saturdays, Sundays and Public Holidays

If under this Lease the day on or by which any act, matter or thing must to be done is a Saturday, Sunday or a public holiday that act matter or thing must be done on the next succeeding day which is not a Saturday, Sunday or Public holiday.

15 OPTION FOR FURTHER TENANCY

15.1 Exercise of Option

If further terms have been inserted in Item 9 of the Reference Schedule the **Landlord** must grant a **Renewed Lease** of the **Premises** to the **Tenant** for each further term inserted in Item 9 of the Reference Schedule if the **Tenant**:

- (a) gives notice to that effect to the **Landlord** not less than three (3) months before the **Term** expires, and
- (b) has not breached any of the essential terms of this Lease set out on Clause 9.1.

15.2 Terms of Renewed Lease

The **Renewed Lease** must be on the same terms as this Lease except:

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- (a) the term will be that specified for the relevant **Option** in Item 9 of the Reference Schedule
- (b) the date of commencement will be the day after expiry of the Term
- (c) the rent will be an amount determined under Clause 3.2 as if the last day of the Term was a Market Review Date
- (d) the amount of public liability insurance in Item 7 of the Reference Schedule will be an amount reasonably required by the Landlord
- (e) Clause 15 will be omitted from the **Renewed Lease** when no relevant further terms remain in Item 9 of the Reference Schedule or the **Tenant** does not comply with Clause 15.1.

15.3 Dispute

If rent is not determined at the commencement date of the **Renewed Lease**, the **Tenant** must pay the **Rent** and any adjustment will be made on determination of the relevant rent.

16 BANK GUARANTEE

- 16.1 If a **Bank Guarantee** has been inserted in Item 10 of the Reference Schedule the **Tenant** must deliver the **Landlord** before the **Date of Commencement** the **Bank Guarantee**.
- 16.2 If the **Tenant** does not comply with any of its obligations under this Lease, the **Landlord** may call on the **Bank Guarantee**.
- 16.3 If the **Landlord** makes demand on the **Bank Guarantee** the **Tenant** must provide a replacement **Bank Guarantee** equal to the amount claimed by the Landlord.
- 16.4 The **Landlord** must return the **Bank Guarantee** to the **Tenant** within 2 months of expiration of the **Term** unless:
 - (a) the **Landlord** has started proceedings against the **Tenant**, or
 - (b) the **Tenant** is holding over with the **Landlord's** consent.

17 GUARANTEE

17.1 Guarantee

If **Guarantors** are inserted in Item 11 of the Reference Schedule this Lease is not binding on the **Landlord** until the Guarantee annexed to this Lease has been signed by each person named as a **Guarantor** in Item 11 of the Reference Schedule.

18 CAR PARK LICENCE

18.1 Licence to Park

If a **Car Parking Fee** has been inserted in Item 8 of the Reference Schedule then for so long as this Lease has not been validly terminated or expired, the **Landlord** gives the **Tenant** a licence to enter and leave the **Car Park** and to park one motor vehicle in each **Designated Car Park** during all hours the **Premises** may be lawfully occupied. The rights conferred by this licence are in contract only and do not create a tenancy or an estate or any other interest in the **Car Park** or **Designated Car Park**.

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18.2 Obligations

- (1) The **Tenant** must pay to the **Landlord** upon demand the cost of rectifying any damage to the **Car Park** or the **Building** caused by the **Tenant** or any entity claiming under or through the **Tenant**.
- (2) The **Tenant** must keep the **Designated Car Park** in good repair and clean condition, excluding structural repair.
- (3) The **Landlord's** obligations under this license are discharged on nomination of the **Designated Car Park** and the **Landlord** is under no obligation to ensure availability of the **Designated Car Park**.
- (4) The **Tenant** must use the **Car Park** and **Designated Car Park** at its own risk and the **Tenant** releases the to the fullest extent permitted by Law, the **Landlord** and its agents, employees and contractors from all claims and demands resulting from any accident, damage, loss, injury or death occurring in the **Car Park** or the **Designated Car Park**.
- (5) The **Tenant** indemnifies and holds indemnified the **Landlord** and its agents, employees and contractors from and against all actions, claims, losses, damages and costs for or in respect of which the **Landlord** may sustain or incur or for which the **Landlord** or its agents, employees and contractors shall or may be or become liable whether during or after the **Term** in respect of or arising from the acts, neglect or default of the use of the **Car Park** or **Designated Car Park** by the **Tenant** or by any entity claiming under or through the **Tenant**.
- (6) All terms of the Lease unless specifically altered or excluded by Clause 18 apply to this licence.

19 GOODS AND SERVICES TAX

19.1 Definitions

In this Clause:

"the Act" means all act, statutes or other laws implementing the GST including all amendments thereto;

"GST" means a goods and services tax, value added tax or any similar tax, impost or duty introduced by the Commonwealth of Australia or any state or territory of Australia whether before, on or after the Date of Commencement, which is or may be levied or becomes payable in connection with the supply of the premises or any goods, services or other things by the Landlord to the Tenant under this Lease;

"Basic Consideration" means the Base Rental, Turnover Rental, contributions to the Promotions Fund payable under the lease and any and all other consideration (whether in money or otherwise) to be paid or provided by the Tenant for any supply or use of goods and services provided by the Landlord under this lease (other than tax payable pursuant to this Clause);

"Goods and Services" and "Taxable Supply" shall have the same meaning assigned to them by the Act.

19.2 GST

19.2 GST

If a GST is introduced and applies or may apply to impose tax on the Basic Consideration or part thereof then with effect from such date as may be nominated in writing by the Landlord in its absolute discretion:

- (1) this Lease shall be treated as taxable;
- (2) the Tenant must forthwith do everything reasonably requested by the Landlord including the making of any election required under the Act to ensure this Lease is treated as taxable for GST purposes from the nominated date;
- (3) the Basic Consideration is not inclusive of GST:

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- (4) notwithstanding any other provision in this Lease, the Landlord is entitled to require the Tenant to pay and may recover from the Tenant in addition to the Basic Consideration the amount of any GST which is chargeable on any Basic Consideration or Taxable Supply under or in connection with this Lease;
- (5) notwithstanding any other provision in this Lease, unless the Landlord, in its absolute discretion, shall otherwise direct (which direction the Tenant shall promptly observe), the Tenant must pay any amount payable by the Tenant pursuant to this Clause on the date on which the Basic Consideration or the relevant portion thereof is payable;
- (6) if the Tenant shall make default in payment on the due date of any amount payable pursuant to the preceding paragraph, then without prejudice to the Landlord's other rights and remedies, the Tenant shall pay to the Landlord upon demand an amount equal to the amount of any additional tax, fine or penalty that shall have become chargeable or payable pursuant to the Act together with an amount sufficient to provide for any further GST chargeable on such payments;
- (7) as between the Landlord and the Tenant, the Landlord shall not be obliged to pay any GST or additional tax, fine or penalty or to take any other steps to minimise the liability in respect of such tax or additional tax, fine or penalty until the corresponding payment is received from the Tenant.

19.3 Input GST

To the extent, if any, to which the previous provisions of this Clause or other provisions of this Lease do not already require the Tenant to pay the Landlord an amount equal to any GST which is charged or levied or paid by any person on goods, services or other things acquired or utilised by the Landlord ("Input GST") in connection with procuring the goods, services and other things which the Landlord in turn provides to the Tenant under or in connection with this Lease, then so much of the Input GST for which the Landlord cannot or does not obtain a credit against any liability of the Landlord to pay GST, as may be attributed to the goods, services and other things provided under or in connection with this Lease shall be paid by the Tenant to the Landlord upon demand.

19.4 Zero Rating

If under the Act this Lease is or may be zero rated for a particular period or for the term of this Lease, then at the direction of the Landlord in its absolute discretion, the parties shall do all things necessary, including the making of any elections required under the Act, to ensure that this Lease is zero rated for the maximum permissible period.

Note: The following clause is only to be used for a gross sales lease

19.5 Keeping Parties in the Same Position

- (1) This clause only applies if during the term GST is introduced and wholesale tax is partly or wholly abolished.
- (2) From the date that GST is introduced for the purposes of calculating Turnover Rental the Tenant's Gross Sales must be adjusted in accordance with the following formula:

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

where:

A = the Tenant's Gross Sales for the relevant Lease Year or part Lease Year excluding GST;

B = the amount of the Tenant's Gross Sales for the 6 months immediately preceding the date of introduction of GST that was equal to the estimated wholesale sales tax included in the prices charged to drive those Gross Sales;

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- C = the amount of the Tenant's Gross Sales for the 6 months immediately preceding the date of introduction of GST;
- D = the adjusted amount of Tenant's Gross Sales for the relevant lease Year or part Lease Year on which Turnover Rental must be paid.

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