

LEASE / SUBLEASE

Dealing Number

Duty Imprint



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1. Lessor Ipswich City Council	Lodger (Name, address & phone number)	Lodger Code
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2. Lot on Plan Description Lot 12 on SP103223	County Stanley	Parish Ipswich	Title Reference 50209132
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3. Lessee	Given names Rajesh	Surname/Company name and number Sharma	(include tenancy if more than one)
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4. Interest being leased
Fee simple

5. Description of premises being leased
Part of the ground floor of the building on the lot identified in item 2, as shown hachured in black as "Lease C" on the attached plan

6. Term of lease Commencement date: 01/09/2015 Expiry date: 30/06/2021 and/or Event: #Options: Nil #insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	7. Rental/Consideration As provided in the attached 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.
Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

<p>.....signature 26 15 115 Alicia Kerrin Rieckfull name C-Dec 98619qualification</p>	<p>Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)</p>	<p>Execution Date</p>	<p>..... Lessor's Signature *Mayor/*Authorised Councillor *Chief Executive Officer/*Delegated Officer for IPSWICH CITY COUNCIL</p>
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9. Acceptance
The lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.
Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

<p>.....signature 14 15 14 GERARD PHILIP PENDERfull name SOLICITORqualification</p>	<p>Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)</p>	<p>Execution Date</p>	<p>..... Lessee's Signature Rajesh Sharma</p>
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Title Reference 50209132

This is the schedule referred to in items 7 and 8 of the attached form 7 lease between IPSWICH CITY COUNCIL (lessor) and RAJESH SHARMA (lessee).

1 INTERPRETATION

1.1 Definitions

- 1.1.1 Except where the context indicates the contrary intention, the definitions set out in schedule 2 apply to terms used in this Lease.
- 1.1.2 If a word or phrase is defined in this Lease, a word or phrase derived from the defined word or phrase (or from which it is derived) has a corresponding meaning.

1.2 Rules for interpretation

- 1.2.1 A reference in this Lease to:
- (a) a person includes the person's successors and anyone that any of the person's rights or obligations have been transferred to;
 - (b) a thing includes all or part of the thing;
 - (c) a document includes the document as changed or replaced;
 - (d) individuals includes corporations and the other way around;
 - (e) a gender includes the other genders;
 - (f) the singular includes the plural and the other way around;
 - (g) money is in Australian currency;
 - (h) a person or party consisting of 2 or more people includes each (or any one) of those people, and every combination of them together;
 - (i) organisations includes any organisations replacing them or taking over their functions or powers; and
 - (j) a month is to a calendar month.
- 1.2.2 If a provision of this Lease requires the Tenant not to do something, the provision also requires the Tenant:
- (a) not to attempt to do that thing; and
 - (b) to do everything in its power to prevent it happening or being done by someone else.
- 1.2.3 A rule in this clause does not apply where:
- (a) the context indicates an intention that it will not apply; or
 - (b) applying the rule would produce a result that is absurd, impossible or obviously unintended.

1.3 How provisions of this Lease are referred to

- 1.3.1 The following diagram explains how different provisions of this Lease are referred to in the Lease and how the numbering system used in this Lease works.

40	Section
40.1	Clause
40.1.1	Subclause
(a)	Paragraph
(i)	Subparagraph

- 1.3.2 Headings in this Lease are included for ease of reference only. They do not affect the meaning of the Lease.

2 GRANT OF LEASE

2.1 Grant

- 2.1.1 The Landlord grants the Tenant a lease of the Premises for the Initial Term and the Tenant accepts the grant.

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2.1.2 If there are is an Option Term, the Landlord also grants the Tenant options to take a further lease of the Premises for the Option Term. Section 11 contains provisions about the option.

2.2 Holding over

2.2.1 This clause applies if the Tenant remains in occupation of the Premises with the consent of the Landlord after the Expiration Date.

2.2.2 The Tenant will be the monthly tenant of the Premises.

2.2.3 The rent payable under the monthly tenancy will be the same as the monthly rent payable under the Lease immediately before the Expiration Date.

2.2.4 The Landlord or the Tenant may terminate the monthly tenancy at any time by giving at least 1 month's notice to the other expiring on any day.

2.2.5 Otherwise, the terms of the monthly tenancy will be the same as those in this Lease, as far as they can be sensibly applied to the monthly tenancy.

2.3 Departure from Premises

2.3.1 On the Departure Date, the Tenant must:

- (a) vacate the Premises;
- (b) take the Tenant's Goods away from the Premises (apart from any of the Tenant's Goods that are fixtures, unless the Landlord requires their removal);
- (c) give all keys, security devices and records of security codes for the Premises and any Facilities to the Landlord (whether or not the Landlord originally gave them to the Tenant);
- (d) if required by the Landlord, do any or all Works necessary in order to convert the Premises back to the Original Layout; and
- (e) leave the Premises in an order and condition consistent with the Tenant having complied with its obligations under this Lease.

2.3.2 The Tenant must make good any damage caused to the Complex in doing the things required under this clause.

2.3.3 If the Tenant does not take any of the Tenant's Goods away from the Premises within 14 days after the Departure Date:

- (a) the Tenant will be regarded as having abandoned them;
- (b) they will become the property of the Landlord and the Tenant will have no further claim to them; and
- (c) the Landlord may therefore dispose of or deal with them as the Landlord sees fit.

3 RENT AND OTHER PAYMENTS

3.1 Tenant to pay Annual Rent

3.1.1 During each Lease Year, the Tenant must pay to the Landlord the Annual Rent.

3.1.2 The Annual Rent is to be paid by equal monthly instalments in advance.

3.1.3 However, for a broken period of less than a month, the monthly instalment payable in advance is the Annual Rent then applying divided by 365 and multiplied by the number of days in the broken period.

3.1.4 The Tenant must pay the Annual Rent:

- (a) without demand; and
- (b) in the way reasonably required by the Landlord.

3.2 Annual Rent

3.2.1 For the first Lease Year, the Annual Rent is specified in item 5 of the Reference Details.

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3.2.2 For each Lease Year commencing on a CPI Review Date, the Annual Rent is to be calculated by applying the formula $OAR \times CPI1 \div CPI2$, where:

- (a) OAR is the Annual Rent for the preceding Lease Year (expressed as an annualised figure);
- (b) CPI1 is the Index Number for the last complete Quarter ending before the commencement of the Lease Year for which the Annual Rent is being calculated; and
- (c) CPI2 is the Index Number for the last complete Quarter ending before the commencement of the preceding Lease Year.

3.2.3 For each Lease Year commencing on a Fixed Review Date, the Annual Rent is to be calculated by applying the formula $OAR \times (100 + FP)\%$, where:

- (a) OAR is the Annual Rent for the preceding Lease Year (expressed as an annualised figure); and
- (b) FP is the percentage specified in item 6 of the Reference Details for that Fixed Review Date.

3.2.4 For each Lease Year commencing on a Market Review Date, the Annual Rent is to be the amount:

- (a) agreed between the Landlord and the Tenant; or
- (b) determined as the current market rent for the Premises under the *Retail Shop Leases Act 1994*.

3.3 Service Charges

3.3.1 The Tenant must pay all Service Charges when they fall due for payment.

3.3.2 If a service is not supplied directly to the Tenant, the Tenant must pay for the Service Charge for the service within 7 days of receiving an account from the Landlord. The account will be at the tariff rates that would have been payable by the Tenant if the service had been supplied directly to the Tenant.

3.4 Costs

3.4.1 The Tenant must pay for:

- (a) survey fees associated with the preparation of a plan for this Lease and the registration of this Lease;
- (b) lease duty on this Lease;
- (c) registration of this Lease;
- (d) all Costs paid or incurred by the Landlord because of, or in connection with, an Event of Default;
- (e) all Costs paid or incurred by the Landlord in connection with any request by the Tenant for a consent or approval of the Landlord under this Lease (whether or not the consent or approval is given and whether or not the matter for which the consent or approval is requested proceeds);
- (f) all Costs paid or incurred by the Landlord to the extent that they are reasonable legal or other expenses incurred in responding to a request by the Tenant for:
 - (i) a variation of this Lease, including, for example, a rent concession; or
 - (ii) the Landlord's consent to the Tenant entering into a sublease or licence with another person in relation to the Premises; and
- (g) all Costs incurred by the Tenant in complying with its obligations under this Lease.

3.5 Payments

3.5.1 The Tenant:

- (a) must not deduct from any payment any amount the Tenant claims the Landlord owes, or could in the future owe, the Tenant; and
- (b) cannot set off any such amount against any payment the Tenant must make under this Lease.

3.5.2 Payments must be made in Australian currency.

3.5.3 The Landlord may appropriate payments in any way it chooses to. It does not have to:

- (a) pay the earliest debt first; or
- (b) comply with any requirement made by the Tenant about the appropriation of a payment.

3.6 GST

3.6.1 All consideration and other amounts payable under or in connection with this Lease are taken to be exclusive of GST.

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- 3.6.2 If the Landlord or another person is liable to pay GST on or in respect of any supply arising under or in connection with this Lease or in respect of which the Tenant must make a payment under this Lease, then:
- (a) the amount of any payment or other consideration payable under or in connection with this Lease for that supply is to be increased by the additional amount calculated by applying the GST Rate to the amount of the payment or consideration; and
 - (b) the Tenant must pay that additional amount to the Landlord or other person at the same time, and in the same way, as the Tenant must pay the payment or consideration.
- 3.6.3 If this Lease requires the Tenant to pay for, reimburse or contribute to:
- (a) any expense or liability incurred, payable or due by the Landlord to a third party;
 - (b) any expense or liability anticipated to be incurred, payable or due by the Landlord to a third party,
- then the amount the Tenant must pay, reimburse or contribute is not to include the amount of any input tax credit to which the Landlord is entitled in respect of the expense or liability concerned.
- 3.6.4 A term defined in the GST Law has that defined meaning when used in this clause.

4 USE OF PREMISES

4.1 Permitted Use

- 4.1.1 The Tenant must not use the Premises for a purpose other than a Permitted Use.
- 4.1.2 The Tenant is responsible for obtaining, at its cost, any necessary consents or approvals and for doing anything (subject to this Lease) that the Tenant has to do in order to obtain or comply with the consents or approvals. The Lease remains fully effective even if the Tenant does not obtain a necessary consent or approval or does not or cannot comply with any of them.
- 4.1.3 The Tenant must conduct the Permitted Use from the Premises:
- (a) in an up-to-date, first-class and reputable way befitting the Complex;
 - (b) during the Required Trading Hours; and
 - (c) consistent with good business practice.
- 4.1.4 The Tenant must not do anything that:
- (a) confuses, misleads or deceives the public; or
 - (b) harms the business or reputation of the Landlord, the Complex or anyone else who trades from the Complex.

4.2 Compliance with Laws

- 4.2.1 The Tenant must comply with all Laws relating to:
- (a) the Premises; or
 - (b) the Tenant's use of the Premises.
- 4.2.2 However, the Tenant cannot be required to make any structural improvements or structural alterations unless they are needed:
- (a) because of, or in order to allow or make lawful, the conduct of a Permitted Use from the Premises or the Tenant's use or occupation of the Premises (including improvements or alterations required for the Tenant to comply with the *Workplace Health and Safety Act 1995*);
 - (b) because of the number of people at the Premises or any characteristic of any of those people;
 - (c) because of something done or not done by the Tenant or a Tenant's Invitee;
 - (d) in connection with or because of the occurrence of an Event of Default; or
 - (e) in order for the Tenant to comply with another provision of this Lease.
- 4.2.3 The Tenant must not do anything which results, or might result, in the Landlord incurring a liability under a Law.

4.3 Facilities

- 4.3.1 The Tenant must not use a Facility for a purpose it was not designed for.

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- 4.3.2 The Tenant must pay for any repairs to a Facility in the Premises required because of its use or misuse (whether by the Tenant or by someone else), but not to the extent that they are required because of fair wear and tear.
- 4.3.3 The Tenant must pay for any repairs to a Facility in the Complex but not in the Premises required because of its use or misuse by the Tenant or by any of the Tenant's Invitees.
- 4.3.4 For the purposes of this clause:
- (a) if the Landlord decides that a Facility to which this clause applies cannot be economically repaired, the Tenant must pay for it to be replaced by what the Landlord decides is the closest comparable item available on the market at the time; and
 - (b) the Landlord is the sole judge of these matters and the Tenant cannot dispute what the Landlord decides unless the Tenant can prove the Landlord's decision on either matter was manifestly unreasonable.
- 4.3.5 The Tenant must not interfere with a Facility without the Landlord's consent (which the Landlord may give or refuse in its absolute discretion).
- 4.4 Annoying conduct, etc**
- 4.4.1 The Tenant must not carry on an annoying, noxious or offensive activity in the Premises other than in the ordinary course of the Permitted Use.
- 4.4.2 In any event, the Tenant must not do anything that might annoy, disturb, cause damage to or be a nuisance to:
- (a) the Landlord; or
 - (b) an occupier of premises in or neighbouring the Complex.
- 4.5 Signs, advertising and related matters**
- 4.5.1 The Tenant must not install, paint, write or put a Sign in or on the Building or in the Complex unless the Tenant has the Landlord's consent or the Sign:
- (a) is entirely inside the Premises;
 - (b) is in connection with a Permitted Use;
 - (c) complies with any applicable Law; and
 - (d) is not affixed or attached to the Premises or any Facility.
- 4.5.2 The Tenant must not use or allow the use of the name of the Building or Complex, or any likeness of the Building or Complex, in any advertisement unless the Tenant has the Landlord's approval of the way and medium in which it is used.
- 4.6 Cleaning**
- 4.6.1 The Tenant must keep the Premises in a thorough state of cleanliness.
- 4.6.2 The Tenant must also properly clean the floors, windows, shopfront and any other area accessible or visible to the public on a daily basis.
- 4.6.3 The Tenant must keep any display windows in the Premises clean and properly dressed.
- 4.7 Rubbish**
- 4.7.1 The Tenant must not allow rubbish to build up in the Premises.
- 4.7.2 The Tenant must ensure that all rubbish is regularly removed from the Premises.
- 4.8 Pests, diseases**
- 4.8.1 The Tenant must keep the Premises clear of rodents, termites, cockroaches, vermin and pests.
- 4.8.2 The Tenant must have the Premises preventatively sprayed or treated for rodents, termites, cockroaches, vermin and pests:
- (a) as often as it is reasonable to expect it to be done; and
 - (b) in any event, whenever the Landlord requires (but no more than once a year).

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4.8.3 The Tenant must notify the Landlord about any infectious disease at the Premises, and must disinfect and fumigate the Premises to rid them of the disease.

4.9 Fire

4.9.1 The Tenant must not use any flammable substance at the Premises other than in the ordinary course of the Permitted Use.

4.9.2 The Tenant must co-operate, and ensure everyone under the Tenant's control co-operates, with the Landlord in relation to fire drills and emergency evacuation procedures.

4.10 Security

4.10.1 The Tenant must keep all exterior doors and windows in the Premises locked when nobody is at the Premises.

4.10.2 The Landlord may enter the Premises to:

- (a) lock any doors and windows; or
- (b) check the general security of the Building.

4.11 Electricity overloads

4.11.1 The Tenant must not do anything that overloads any cables, switchboards, subboards or other equipment relating to the conveyance of electricity to the Premises.

4.12 Insurance policies

4.12.1 The Tenant must not do anything other than in the ordinary course of the Permitted Use that could:

- (a) make an insurance policy relating to the Building or the Complex wholly or partly void, voidable or unenforceable;
- (b) conflict with the policy;
- (c) entitle the insurer to wholly or partly resist a claim under the policy; or
- (d) make the premium payable for the policy liable to be increased.

4.12.2 The Tenant must pay the Landlord any increase of premium, or the proportion of any insurance premium, on any insurance policy relating to the Building or the Complex arising:

- (a) because the Tenant did not comply with this clause;
- (b) due to the nature of the Permitted Use; or
- (c) due to any risks or additional or increased risks which in turn are due to the nature of the Permitted Use (or anything which might be done or occur in the course of the Permitted Use).

5 MAINTENANCE AND REPAIR OF PREMISES

5.1 Tenant's obligations

5.1.1 The Tenant must keep the Premises in good repair.

5.1.2 Without in any way limiting it, the Tenant's obligation to keep the Premises in good repair includes the obligations to:

- (a) promptly replace all broken or faulty light bulbs, tubes and starters;
- (b) maintain all water pipes and taps in good working order and condition;
- (c) replace tap washers, parts and fittings if they become broken or do not work properly;
- (d) keep the waste pipes, drains and conduits originating in or on the Premises in a clean, clear and free flowing condition between their points of entry and the entry into any trunk drain;
- (e) employ licensed tradespersons to immediately clear any blockages in the waste pipes, drains and conduits;
- (f) regularly clean and service any grease trap in or on the Premises;
- (g) keep any external areas, forming part of the Premises, in the same state and condition as at the Commencement Date; and

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- (h) ensure that the Tenant's Goods or the use or operation of the Tenant's Goods do not cause any damage to the Building and make good any damage caused by the Tenant's Goods or the use or operation of the Tenant's Goods.

5.1.3 However, the Tenant is not required to repair damage caused by:

- (a) fair wear and tear; or
- (b) an Insured Risk, as long as:
 - (i) the Tenant or a Tenant's Invitee has not otherwise breached this Lease; and
 - (ii) the Tenant pays to the Landlord the amount of any premium or deductible payable or applicable under the policy for the Insured Risk.

5.1.4 The Tenant must put and keep the Tenant's Goods that are in or on the Premises or the Complex from time to time in good and substantial repair.

5.2 Tenant must notify damage

5.2.1 The Tenant must immediately notify the Landlord:

- (a) about any damage or the risk of any damage occurring to the Premises;
- (b) if the Tenant knows about any damage or the risk of any damage occurring to another part of the Complex; or
- (c) if a Facility is not operating properly.

5.3 Landlord may inspect

5.3.1 The Landlord may enter the Premises at reasonable times and on giving the Tenant at least 2 days' notice (except in an emergency when no notice is required) to inspect the Premises.

5.4 Glass

5.4.1 If any glass in the Premises, or forming part of the boundary walls of the Premises, is broken, the Tenant must replace it with glass of the same kind and quality.

5.5 Redecoration

5.5.1 The Tenant must redecorate the Premises during the last 3 months of the Initial Term; and

5.5.2 Redecoration means carrying out all works necessary to put the Premises in good repair having regard to the condition of the Premises at the Commencement Date, subject to the exceptions in subclause 5.1.3.

5.6 Tenant's Works

5.6.1 The Tenant must not do or allow any Works without the Landlord's consent.

5.6.2 The Landlord is not required under any circumstances to consent to the Tenant doing or allowing any Works unless:

- (a) the Tenant gives the Landlord any drawings, specifications and other information the Landlord requires;
- (b) the drawings, specifications and other information are approved by the Landlord's architect and any other consultant required by the Landlord;
- (c) the Tenant makes any changes to the drawings, specifications and other information required by the architect or consultants; and
- (d) the Tenant pays the fees of the architect and consultants.

5.6.3 Also, the Landlord may give or refuse its consent in its absolute discretion unless the Works are required to be done in the Premises under a Law relating to:

- (a) the conduct of a Permitted Use from the Premises; or
- (b) the number of people at the Premises or any characteristic of any of those people; and

5.6.4 If the Tenant does or allows any Works (whether or not the Landlord has consented to them):

- (a) the Tenant must pay for the Works, installation, alteration or modification, and all other works or services necessitated as a result;

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- (b) the Tenant must ensure the Works, installation, alteration or modification conform to the drawings, specifications and other information given to the Landlord (with any changes required by the Landlord's architect or other consultants) and to the Landlord's consent;
- (c) the Tenant must get all approvals required under any Laws and give copies of them to the Landlord before the Works are started and must comply with those approvals;
- (d) the Tenant must show the Landlord that the Tenant or its contractors hold insurances satisfactory to the Landlord, before the Works are started; and
- (e) the Tenant indemnifies the Landlord against any damage arising from or relating to the Works.

6 INSURANCE, RISK AND RESPONSIBILITY

6.1 Tenant's insurance

- 6.1.1 The Tenant must take out and maintain insurance policies:
 - (a) on all of the Tenant's Goods, for at least 90% of full replacement value against at least fire with standard extended coverage;
 - (b) sufficient to reimburse the Tenant for direct or indirect loss of earnings due to perils commonly insured against by careful tenants or due to prevention of access to the Premises;
 - (c) against public risks applying to all operations of the Tenant including personal injury, products, contractual, contingent, property damage, occupier's, tenant's legal and all other liabilities connected with the Tenant's occupancy and use of the Premises, with limits per occurrence in at least the amount specified in item 10 of the Reference Details; and
 - (d) of all plate glass in or forming part of the boundary walls of the Premises for reinstatement following damage or breakage from any cause.
- 6.1.2 An insurance policy under this clause must be:
 - (a) with an insurer approved by the Landlord;
 - (b) on terms approved by the Landlord; and
 - (c) for the respective interests of the Tenant and the Landlord (as those interests apply).
- 6.1.3 The Tenant must give the Landlord a copy of any insurance policy under this clause, together with a certificate of currency and any other information the Landlord reasonably requires:
 - (a) at the start of the Term;
 - (b) whenever anything happens which gives a right to claim on the policy;
 - (c) whenever the policy is renewed; and
 - (d) whenever the Landlord asks for it.

6.2 Risk

- 6.2.1 The Tenant will occupy and use the Premises at the Tenant's own risk.
- 6.2.2 The Landlord is not liable to the Tenant or anyone else for any loss or damage arising otherwise than as a direct result of:
 - (a) the Landlord not complying with a provision of this Lease; or
 - (b) the negligence of the Landlord.
- 6.2.3 The Tenant indemnifies the Landlord, and must keep the Landlord indemnified, against any loss or damage arising from:
 - (a) the Tenant's use or occupation of the Premises; or
 - (b) any act, omission or conduct of the Tenant or of a Tenant's Invitee.

6.3 Responsibility

- 6.3.1 The Tenant is responsible for the conduct of the Tenant's Invitees.
- 6.3.2 Any act or omission of any of the Tenant's Invitees will be treated for the purposes of this Lease as if it was done or omitted by the Tenant personally.

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7 DEALINGS AND RELATED MATTERS

7.1 Tenant's Dealings

- 7.1.1 The Tenant must not effect a Dealing in relation to the Premises, its interest in this Lease or the use of or right to use the Premises.
- 7.1.2 However, the Tenant may effect a Dealing if:
- (a) the Dealing relates to the whole of the Tenant's interest under this Lease;
 - (b) the Dealing is in favour of a respectable and financially responsible person ("**Assignee**");
 - (c) the Assignee, the Tenant and the Landlord enter into any deed the Landlord reasonably requires whereby:
 - (i) the Assignee agrees to comply with this Lease; and
 - (ii) the Tenant remains liable under the Lease despite the Dealing;
 - (d) if the Assignee is a corporation other than a public company whose shares are listed on the Australian Stock Exchange - a deed of guarantee in the form reasonably required by the Landlord is executed by any of the directors and shareholders required by the Landlord whereby:
 - (i) they guarantee that the Assignee will comply with this Lease;
 - (ii) they indemnify the Landlord against any loss or damage arising because the Assignee does not comply with this Lease (even if it is because the company is not bound to it); and
 - (iii) if the Assignee is dissolved or this Lease is disclaimed, they will accept a lease of the Premises for the remainder of the Term with provisions the same as this Lease but with necessary adaptations; and
 - (e) the Landlord consents to the Dealing.

7.2 Corporate Tenant

- 7.2.1 This clause applies if:
- (a) the Tenant (or any person comprising the Tenant) is a corporation whose shares are not listed on the Australian Stock Exchange;
 - (b) any shares in the corporation are transferred or issued;
 - (c) after the transfer or issue, there is any person or combination of people holding or between them holding more than 50% of the issued share capital or voting rights in the corporation;
 - (d) before the transfer or issue, that person or combination of people did not hold more than 50% of the issued share capital or voting rights in the corporation; and
 - (e) the Tenant did not obtain the consent of the Landlord before the transfer or issue of the shares and comply with any conditions attaching to that consent in relation to the transfer or issue.

- 7.2.2 An Event of Default occurs on the date of the transfer or issue of the shares.

7.3 Landlord's Dealings

- 7.3.1 This clause applies if the Landlord effects a Dealing in relation to the Premises, the Building, the Complex or its interest in this Lease.
- 7.3.2 The Landlord is relieved of the obligation to comply with any provision of this Lease after the date of the Dealing if the other party to the Dealing has that obligation.

8 QUIET ENJOYMENT

8.1 Quiet enjoyment

- 8.1.1 If the Tenant complies with this Lease, the Tenant may quietly enjoy the Premises without any interruption by the Landlord.
- 8.1.2 However, this clause is subject to the Landlord's rights under this Lease and under any Law.

8.2 Inspection by prospective tenants and buyers

- 8.2.1 During the last 6 months of the Term:

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- (a) the Landlord may exhibit on the Premises notices advertising the Premises for rent;
- (b) the Tenant must not remove or do anything else with those notices, except in an emergency; and
- (c) the Landlord may enter the Premises and show them to prospective tenants after giving the Tenant at least 2 days' notice first.

8.2.2 At any time:

- (a) the Landlord may exhibit on the Premises notices advertising the Premises for sale;
- (b) the Tenant must not remove or do anything else with those notices, except in an emergency;
- (c) the Landlord may enter the Premises and show them to prospective buyers after giving the Tenant at least 2 days' notice first.

9 DAMAGE, DESTRUCTION AND RESUMPTION

9.1 Unfitness or inaccessibility

9.1.1 This clause applies if the Premises or Complex is damaged, destroyed or resumed.

9.1.2 If the damage, destruction or resumption makes the Premises wholly unfit for the Permitted Use or wholly inaccessible (having regard to the nature and location of the Premises and the normal means of access to them) then, from the date of the unfitness or inaccessibility beginning until the earlier of the Expiration Date and the date the Landlord reinstates the fitness or accessibility of the Premises:

- (a) the Tenant may reduce its payments under this Lease in accordance with clause 9.2;
- (b) the Tenant's obligations to repair and maintain the Premises are suspended so far as they would otherwise relate to any damage or destruction; and
- (c) the Tenant may terminate this Lease only if:
 - (i) the Landlord notifies the Tenant that the Landlord does not intend to reinstate the fitness or accessibility of the Premises; or
 - (ii) the Landlord does not commence any necessary Works to reinstate the fitness or accessibility of the Premises within a reasonable time after the Tenant gives the Landlord notice to do so.

9.1.3 If the damage, destruction or resumption makes the Premises substantially (but not wholly) unfit for the Permitted Use or substantially (but not wholly) inaccessible (having regard to the nature and location of the Premises and the normal means of access to them) then, from the date of the unfitness or inaccessibility beginning until the earlier of the Expiration Date and the date the Landlord reinstates the fitness or accessibility of the Premises:

- (a) the Tenant may reduce its payments under this Lease in accordance with clause 9.2;
- (b) the Tenant's obligations to repair and maintain the Premises are suspended so far as they would otherwise relate to any damage or destruction;
- (c) the Tenant must continue to use the Premises in accordance with this Lease to the extent that the Premises are useable, safe and accessible; and
- (d) the Tenant may not terminate this Lease.

9.1.4 However, the Tenant may not exercise a right under this section to the extent that any damage or destruction was caused by the negligence or a breach of this Lease on the part of the Tenant or any of the Tenant's Invitees.

9.1.5 Despite any other provision of this section, the Landlord:

- (a) is not obliged to reinstate the fitness or accessibility of the Premises or Complex;
- (b) may, in its discretion, terminate this Lease by notice to the Tenant; and
- (c) is not obliged to compensate the Tenant.

9.2 Reduction of payments

9.2.1 The amount by which the Tenant may reduce its payments under this Lease is an amount:

- (a) proportionate to the nature and extent of the unfitness of the Premises for the Permitted Use or of the inaccessibility of the Premises; and
- (b) either:
 - (i) agreed between the Landlord and the Tenant; or
 - (ii) in the absence of agreement, determined by a loss assessor appointed under this clause.

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- 9.2.2 Unless damage or destruction has been caused by an act of the Landlord, the Tenant must continue to make its payments under this Lease until the agreement or determination is made. If damage or destruction has been caused by an act of the Landlord, the Tenant's obligation to make payments of the Annual Rent is suspended from the date of the damage or destruction until the agreement or determination is made. In either case, when the agreement or determination is made, an adjustment is to be made by the Landlord allowing the Tenant a credit or by the payment by the Tenant to the Landlord of the amount of the adjustment within 14 days.
- 9.2.3 The loss assessor who makes the determination:
- (a) must be a member of the Insurance Council of Australia Ltd;
 - (b) is to be appointed by the president of the Insurance Council of Australia Ltd on the request of either party;
 - (c) acts as an expert and not an arbitrator; and
 - (d) is to determine the proportionate amount by which the Tenant may reduce its payments.
- 9.2.4 The determination of the loss assessor is final and binding on both the Landlord and the Tenant.
- 9.2.5 The Landlord and the Tenant must each pay half of the fees and expenses payable to the loss assessor for making the determination.

10 THE BUILDING AND THE COMPLEX

10.1 Works

- 10.1.1 The Landlord may effect Works in relation to the Premises or the Complex at any time.
- 10.1.2 The Landlord may enter or restrict access to the Premises for that purpose after giving the Tenant at least 2 weeks' notice of the Landlord's intention to effect the Works (except in an emergency when no notice is required).
- 10.1.3 If the Landlord effects any Works in relation to the Premises under a Law or a notice, requirement, order or requisition under a Law (other than one given because the Landlord has not maintained the structural integrity of the Building):
- (a) the Landlord may obtain from its architects a certificate stating:
 - (i) the amount of the costs (including architects' fees) incurred by the Landlord in effecting the Works; and
 - (ii) the date of practical completion of the Works;
 - (b) the Landlord may give the Tenant a copy of the certificate; and
 - (c) if the Landlord does so, the amount of the Annual Rent is then increased to an amount equal to the Annual Rent applying immediately beforehand plus an additional amount equalling 15% of the amount of the costs certified by the Landlord's architects.

10.2 Subdivision

- 10.2.1 The Landlord may at any time:
- (a) subdivide or reconfigure the Complex; and
 - (b) create a community titles scheme in respect of the Complex.
- 10.2.2 If the Landlord requires the Tenant to do so, the Tenant must, within 7 days, sign a surrender of this Lease and a new lease (on the same substantive terms as this Lease for the part of the Term then remaining) in the form required by the Landlord. The Landlord must pay all costs of and incidental to the preparation, stamping and registration of the surrender and of the new lease (including the reasonable amount of the Tenant's legal fees and costs reasonably incurred).
- 10.2.3 The Tenant must comply with any by-laws, community management statement or building management statement brought into existence in connection with the subdivision or reconfiguration of the Complex or with the creation of a community titles scheme in respect of the Complex.

10.3 Easements, agreements and arrangements

- 10.3.1 The Landlord may at any time enter into any easement, agreement or arrangement with any person for the purpose of:

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- (a) access to the Land from any land near the Land;
- (b) access to any land near the Land from the Land;
- (c) the support of the Building;
- (d) the support of any structure on any land near the Land;
- (e) the provision of services (for example, water supply, drainage, gas supply, electricity supply and communications) to the Building; or
- (f) the provision of services to any land near the Land.

10.3.2 However, the Landlord must not exercise its rights under this clause in a way that substantially and permanently derogates from the Tenant's rights under this Lease.

10.4 Complex Regulations

- 10.4.1 The Landlord may from time to time make, amend and revoke regulations ("**Complex Regulations**") about the use, occupation, good order and condition of and other matters relating to the Complex.
- 10.4.2 If the Landlord does so and notifies the Tenant of the addition, amendment or revocation, the Tenant must comply with the Complex Regulations and ensure that the Tenant's Invitees comply with the Complex Regulations as added to, amended or revoked except to the extent that they are in substantial and permanent conflict with the Tenant's rights under this Lease.

10.5 Name of Building or Complex

- 10.5.1 The Landlord reserves the right to name and to change the name of the Building or the Complex at any time.

10.6 Other occupiers

- 10.6.1 The Landlord is not responsible to the Tenant for the acts or omissions of an occupier or user of any other premises in the Complex.
- 10.6.2 The Tenant:
- (a) agrees not to make a claim against the Landlord in relation to the acts or omissions of an occupier or user of any other premises in the Complex; and
 - (b) indemnifies the Landlord against any loss or damage incurred by the Tenant and by the Tenant's Invitees because of any such acts and omissions.

10.7 Use of pipes and service lines

- 10.7.1 The Landlord is entitled to the free and uninterrupted passage and running of water, sewerage, gas electricity, telephone and other services and supplies from and to other parts of the Complex or any adjoining land in and through any pipes, conduits, service lines or similar infrastructure in, under or over the Premises.
- 10.7.2 The Landlord may enter the Premises to construct, repair, remove, alter and replace or under or over the Premises any pipes, conduits, service lines or similar infrastructure for the purpose referred to in subclause 10.7.1.
- 10.7.3 However, except in an emergency (in which case the Landlord may enter or break and enter without notice and at any time), the Landlord may exercise the right given by subclause 10.7.2 only:
- (a) after giving the Tenant reasonable notice; and
 - (b) at a reasonable time in all the circumstances.

10.8 Common Areas – Control by Landlord

- 10.8.1 The Landlord may:
- (a) close, remove, relocate and restrict or change access to any of the Common Areas;
 - (b) erect, remove, re-erect and alter kiosks, freestanding Signs, seats, displays and other structures in any part of the Common Areas;
 - (c) give any person the right to use or occupy any of those structures for any periods, at any times and on any terms the Landlord chooses(exclusively or otherwise); and

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- (d) give any person the right to use the Common Areas for the purpose of functions, displays or other events or business for any periods, at any times and on any terms the Landlord chooses (exclusively or otherwise).

10.8.2 The Landlord is not liable to compensate the Tenant if the Landlord exercises its rights under this clause.

10.9 Common Areas – Use by Tenant

10.9.1 Subject to the Landlord's rights under this Lease, the Landlord gives the Tenant the non-exclusive right for the Tenant's Invitees to bona fide use the Common Areas for the purpose of:

- (a) passing and repassing on foot to or from the Premises; and
- (b) using any toilet facilities made available

10.9.2 However, the Landlord may at any time revoke the right of a person to use, enter or remain on the Common Areas if the Landlord reasonably considers that the person has done any of the following or is likely to do so:

- (a) do anything that would constitute a breach of this Lease if done by the Landlord;
- (b) misuse or damage the Common Areas or anything on or in the Common Areas;
- (c) otherwise do an act injurious to the Common Areas or the maintenance of good order and peace in or on the Common Areas or any neighbouring or nearby premises.

10.9.3 The Tenant will and the Tenant must ensure that the Tenant's Invitees:

- (a) use the Common Areas and any Facilities in or on the Common Areas in a responsible manner;
- (b) do not obstruct or cause a nuisance on the Common Areas;
- (c) do not damage the Common Areas or any Facilities in or on the Common Areas;
- (d) obey any Signs erected by or for the Landlord giving directions about the use or control of the Common Areas or any Facilities in or on the Common Areas;
- (e) use any Facilities in or on the Common Areas only for the purposes for which they are intended;
- (f) do not breach any Law while on the Common Areas;
- (g) do not engage in any spruiking, advertising, trade or business on or from the Common Areas;
- (h) do not bring any animal or bird onto the Common Areas; and
- (i) do not litter on the Common Areas.

10.9.4 If the Landlord from time to time imposes and notifies the Tenant of any restrictions on the use of the Common Areas or of any Facilities in or on the Common Areas, the Tenant must:

- (a) ensure that it and the Tenant's Invitees comply with any restrictions the Landlord imposes; and
- (b) help the Landlord in any way reasonably requested by the Landlord to:
 - (i) notify the Tenant's Invitees of the restrictions; or
 - (ii) police and enforce the restrictions.

10.10 Competing businesses

10.10.1 The description of the Permitted Use does not imply any form of exclusivity for the Tenant.

10.10.2 The Landlord may:

- (a) grant leases in favour of people who;
 - (b) in any other way enter into arrangements with people who; or
 - (c) itself,
- carry on the Permitted Use at or from premises within the Building, the Complex or elsewhere or carry on any other activity that competes with any business carried on by the Tenant at or from the Premises in accordance with this Lease.

11 RENEWAL OPTION

11.1 Exercise

11.1.1 The Tenant can only exercise the Renewal Option if:

- (a) the Tenant gives written notice to the Landlord to that effect at least 6 months before the end of the Initial Term;
- (b) this Lease is still current and has not been terminated:
 - (i) when the Tenant gives the notice; and

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- (ii) on the last day of the Initial Term; and
- (c) the Tenant has substantially complied with this Lease at the end of the Initial Term, has remedied any non-compliance capable of remedy and has compensated the Landlord to the Landlord's reasonable satisfaction in respect of any non-compliance incapable of remedy.

11.1.2 If the Tenant exercises the Renewal Option under subclause 11.1.1:

- (a) the parties are taken to have entered into, and must enter into, a new lease on the same terms as this Lease (except as provided by paragraph (b)); and
- (b) the new lease will differ from this Lease in the following respects:
 - (i) the term of the new lease is to be the period specified in item 3 of the Reference Details in this lease and is to begin on the day after the Expiration Date;
 - (ii) the particulars to be specified in item 3 of the Reference Details in the new lease will be the same as those specified in item 4 of the Reference Details in this Lease (if item 4 of the Reference Details is completed in this Lease);
 - (iii) item 4 of the Reference Details in the new lease is to state "Not applicable";
 - (iv) the amount to be inserted in item 5 of the Reference Details in the new lease is to be the current market rent for the Premises, agreed or determined under the *Retail Shop Leases Act 1994*, as if the term of the new lease was a continuation of the term of this Lease and as if the first day of the term of the new lease was a Market Review Date;
 - (v) item 5 of the Reference Details in the new lease may be completed by the Landlord once the Annual Rent for the first Lease Year of the Option Term is ascertained (if it has not been ascertained when the documents referred to in this subclause are to be prepared and signed);
 - (vi) any dates specified in the Reference Details that precede the Commencement Date of the new lease are to be deleted;
 - (vii) any other amendments reasonably required by the Landlord will be made in order to give effect to or clarify the intended provisions of this Lease as a result of any changes in any Laws since this Lease was entered into; and
 - (viii) any other necessary changes will be made;
- (c) the Tenant must sign any documents required by the Landlord to give effect to the exercise of the Renewal Option within 7 days after the Landlord requires the Tenant to do so;
- (d) those documents may be in the form of:
 - (i) a new lease for the Option Term; or
 - (ii) an amendment of this Lease to change the term of this Lease from the Initial Term to the Option Term; and
- (e) any Guarantor must sign a new guarantee and indemnity in respect of the Tenant's obligations, in the same or substantially the same form as any guarantee and indemnity previously signed by that or any other Guarantor and prepared by the Landlord's solicitors, within 7 days after the Landlord requires the Tenant to do so.

11.2 If no Renewal Option

11.2.1 If there is no Renewal Option, the Landlord makes no commitment to the Tenant that:

- (a) the Landlord will allow the Tenant to continue to occupy the Premises after the Expiration Date; or
- (b) the Landlord will grant the Tenant a further lease or other right to occupy the Premises after the Expiration Date.

11.2.2 No such commitment or purported commitment will bind the Landlord unless it is in writing and signed by the Landlord or on behalf of the Landlord by someone authorised to do so.

12 DEFAULT

12.1 Termination

12.1.1 If an Event of Default happens, the Landlord may re-enter the Premises and terminate this Lease.

12.1.2 The re-entry need only be of part of the Premises in the name of the whole of the Premises.

12.1.3 The Landlord does not have to give any notice other than a notice under section 124 of the *Property Law Act 1974* before exercising its rights under this clause.

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12.2 Damages

- 12.2.1 If the Landlord terminates this Lease, the Tenant must pay to the Landlord the difference between:
- (a) the Rent payable for the unexpired period of the Term as at the date of termination; and
 - (b) the rent received or likely to be received by the Landlord during that period.
- 12.2.2 To the extent that the Rent payable for the unexpired period of the Term cannot be ascertained as at the date of termination, it is to be assumed that the Annual Rent for each Lease Year would have increased by 5% above the Annual Rent for the preceding Lease Year (annualised if necessary).
- 12.2.3 If the Landlord terminates this Lease, the Tenant must pay to the Landlord any cost or expense paid or incurred by the Landlord because of the termination including, for example, costs and expenses paid or incurred:
- (a) in maintaining the Premises;
 - (b) in recovering possession of the Premises;
 - (c) in reletting or attempting to relet the Premises (including necessary renovation or alteration of the Premises);
 - (d) for legal fees; and
 - (e) for real estate agents' commissions, charges and fees.

12.3 Abandonment

- 12.3.1 This clause applies if the Tenant vacates or abandons the Premises or otherwise repudiates this Lease without lawful excuse before the end of the Term. The Tenant is taken to have abandoned the Premises if the Tenant does not carry on a Permitted Use in the Premises for 7 days in a row without having paid in advance the Rent for that period of 7 days (but this does not limit the circumstances in which the Tenant can be taken to have abandoned the Premises).
- 12.3.2 The Landlord may (but is not required to) try to find another tenant or occupier for the Premises.
- 12.3.3 The Landlord may, from time to time, enter the Premises and allow real estate agents, prospective tenants and others to view them.
- 12.3.4 The Landlord may do anything necessary in the opinion of the Landlord to renovate, restore, clean and secure the Premises.
- 12.3.5 If the Landlord acts under this clause, that does not mean that the Landlord accepts or has accepted a surrender of this Lease.
- 12.3.6 This Lease and the obligations of the Tenant under it continue until the Landlord terminates this Lease or expressly accepts a surrender of it.

12.4 Making good

- 12.4.1 This clause applies if the Tenant does not comply with a provision of this Lease.
- 12.4.2 The Landlord may do anything it considers necessary to make good the non-compliance. This includes, for example, spending money. The Landlord may enter the Premises for this purpose.
- 12.4.3 The Tenant must pay to the Landlord any cost or expense paid or incurred by the Landlord in acting under this clause.

12.5 Interest

- 12.5.1 This clause applies if the Tenant does not pay on time any money the Tenant must pay to the Landlord under this Lease.
- 12.5.2 The Tenant must pay to the Landlord interest on the money at the Stipulated Rate from the date it was due for payment to the date it is paid.

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12.6 Waiver

- 12.6.1 The Landlord may exercise a right, power or remedy under this Lease even if:
- (a) it could have done so before but did not or delayed in doing so;
 - (b) it has exercised another right, power or remedy under this Lease before; or
 - (c) it has exercised the right, power or remedy in part, or in a different way, before.
- 12.6.2 A waiver of a failure by the Tenant to comply with this Lease:
- (a) is effective against the Landlord only if, and to the extent that, it is in writing; and
 - (b) does not mean that any earlier, later or other failure to comply is also waived.

12.7 Rights, powers and remedies

- 12.7.1 The Landlord's rights, powers and remedies under this Lease are cumulative and not alternative.
- 12.7.2 The Landlord may exercise them in any order it chooses.

12.8 Power of attorney

- 12.8.1 The Tenant appoints as its attorneys the following people ("**Attorneys**"):
- (a) the Landlord;
 - (b) if and while the Landlord is a body corporate other than a local government - the directors and secretary of the Landlord from time to time;
 - (c) if and while the Landlord is a local government - each of the persons from time to time occupying the following positions in that local government (including a person acting in any of the positions):
 - (i) Chief Executive Officer;
 - (ii) City Solicitor; and
 - (iii) any other position designated in writing by the Landlord to the Tenant from time to time; and
 - (d) the solicitors for the Landlord from time to time.
- 12.8.2 The Attorneys may act individually or together in any combination.
- 12.8.3 After an Event of Default has happened, the Attorneys may do anything relating to the Premises or this Lease that the Tenant can lawfully do by attorney. For example, they may:
- (a) surrender this Lease; and
 - (b) delegate their powers under this clause (including this power of delegation).
- 12.8.4 The power of attorney in this clause is given by way of security and is irrevocable.
- 12.8.5 A statutory declaration by an Attorney that an Event of Default has happened is sufficient proof of that fact.
- 12.8.6 The Tenant must ratify everything done by an Attorney under this clause.

13 OTHER PROVISIONS

13.1 Tenant as trustee

- 13.1.1 This clause applies if the Tenant is at any time a trustee of any trust, and whether or not the Landlord knows about the trust.
- 13.1.2 This Lease extends to all rights of indemnity the Tenant has, or will have, against the trust and the trust fund.
- 13.1.3 The Tenant warrants that the Tenant:
- (a) has the power to enter into this Lease as trustee and that the Tenant enters into this Lease in the due administration of the trust; and
 - (b) has full rights to claim against the assets of the Trust for all liabilities under this Lease and that those rights have not been, and will not be, changed or lost.
- 13.1.4 Despite any other document or law, the Tenant is, and will remain, personally liable to comply with this Lease.

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13.1.5 The Tenant must not, without the consent of the Landlord:

- (a) be removed or replaced, or retire, as sole trustee of the trust;
- (b) alter or vary the terms of the trust;
- (c) advance or distribute any capital of the trust;
- (d) resettle the property of the trust; or
- (e) exercise any power as trustee of the trust after an Event of Default has happened.

13.1.6 The Tenant must not commit a breach of trust.

13.2 Time

13.2.1 Time is essential for all the Tenant's obligations under this Lease.

13.3 Entire agreement

13.3.1 This Lease sets out the entire agreement between the Landlord and the Tenant about its subject matter.

13.3.2 In particular, this Lease is not affected by and it cancels:

- (a) any negotiations or discussions before the execution of this Lease;
- (b) anything contained in any brochure, report or other document prepared by the Landlord; and
- (c) any representation made by or on behalf of the Landlord which is not set out in this Lease.

13.3.3 The only exception is that the Tenant continues to be bound by, and must comply with, any obligation of the Tenant under any lease, agreement or terms and conditions under which the Tenant occupied the Premises before the Commencement Date and that remains unfulfilled except to the extent that the continuation of that obligation is absurd, impossible or expressly negated by a provision of this Lease.

13.3.4 The Landlord does not give any warranty or representation, and it is and always was the Tenant's responsibility to satisfy itself, about:

- (a) the suitability of the Premises for the conduct of the Permitted Use;
- (b) the structural adequacy of the Premises;
- (c) all Laws and other legal and regulatory requirements affecting the use of the Premises;
- (d) all Laws and other legal and regulatory requirements affecting anything the Tenant wants or may want to do in the Premises;
- (e) the potential of the Premises for the conduct of the Permitted Use; and
- (f) pedestrian or vehicular traffic flow past the Premises.

13.4 Implied covenants

13.4.1 The provisions implied in leases by sections 105 and 107 of the *Property Law Act 1974* do not apply to this Lease.

13.4.2 All other obligations of the Tenant implied by the *Property Law Act 1974* are not negated but are modified to the extent of any inconsistency with this Lease.

13.5 Landlord's rights and powers

13.5.1 Except to the extent to which it is incompatible with the right or power, the Landlord may authorise or delegate to someone else the ability to exercise any of its rights or powers.

13.6 New Guarantor

13.6.1 If a Guarantor dies or loses full legal capacity or an Insolvency Event happens in relation to the Guarantor:

- (a) the Tenant must give the Landlord prompt notice of the occurrence of that event;
- (b) the Landlord may give the Tenant a notice requiring the Tenant to get someone else acceptable to the Landlord to give a guarantee in similar terms to the one given by the Guarantor; and
- (c) the Tenant must:
 - (i) comply with the Landlord's notice; and
 - (ii) pay all costs and expenses paid or incurred by the Landlord in relation to anything done under this clause.

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13.7 Notices

13.7.1 This clause applies to all notices under or about this Lease.

13.7.2 The notice must be in writing and signed by:

- (a) the party giving it;
- (b) the solicitor for the party giving it;
- (c) if that party is a corporation - a director or other officer of the corporation; or
- (d) if that party is the Landlord - an employee authorised by the Landlord.

13.7.3 A notice to the Tenant may be served:

- (a) by delivering it to the Tenant;
- (b) by posting it to the Premises;
- (c) by leaving it at, or attaching it to, the Premises (even if nobody is there);
- (d) by posting it to the residential, business or postal address of the Tenant last known to the Landlord;
- (e) in a way set out in section 347 of the *Property Law Act 1974*; or
- (f) if the Tenant is a company - in a way set out in section 109X of the *Corporations Act 2001*.

13.7.4 If the Tenant comprises 2 or more people, a notice need only be served on 1 of them.

13.7.5 A notice to the Landlord may be served:

- (a) in a way set out in section 347 of the *Property Law Act 1974*; or
- (b) if the Landlord is a company - in a way set out in section 109X of the *Corporations Act 2001*.

13.7.6 Unless the contrary is proven, a notice served by post is taken to have been served on the next business day after posting, even if it is received some other day, or not at all.

13.8 Consents and approvals

13.8.1 This clause applies if:

- (a) a provision or a combination of provisions of this Lease literally or in effect:
 - (i) requires the Tenant to have the consent or approval of the Landlord before doing something, omitting to do something or letting anything happen or any circumstances arise; or
 - (ii) provides that it is an Event of Default if the Tenant does not have the consent or approval of the Landlord in a particular situation; and
- (b) the Tenant wants the consent or approval.

13.8.2 The Tenant must:

- (a) ask the Landlord in writing for the consent or approval;
- (b) supply any additional information or documents the Landlord asks for; and
- (c) pay all costs and expenses paid or incurred by the Landlord in relation to the application for the consent or approval.

13.8.3 If the Tenant complies with subclause 13.8.2 and the consent or approval applied for does not relate to a part of the Complex other than the Premises, the Landlord must act reasonably in deciding whether to:

- (a) grant the consent or approval;
- (b) refuse the consent or approval; or
- (c) grant the consent or approval subject to conditions.

13.8.4 The Landlord does not have to comply with subclause 13.8.3 and is not under a similar obligation:

- (a) if a provision of this Lease says that the Landlord does not have to act reasonably; or
- (b) in circumstances to which it would be inconsistent with a provision of this Lease to apply subclause 13.8.3.

13.8.5 If the Premises are subject to a mortgage, the Landlord is taken to have acted reasonably for the purposes of subclause 13.8.3 if the Landlord:

- (a) grants the consent or approval subject to a condition that the Tenant obtain and comply with the consent or approval of the mortgagee; or
- (b) does not grant the consent or approval until the Tenant obtains and complies with the consent or approval of the mortgagee.

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13.8.6 A consent or approval is ineffective unless it is in writing.

13.9 Liquor licences

13.9.1 The Tenant is responsible for obtaining any Liquor Licence required for the Tenant to conduct the Permitted Use, or to conduct the Permitted Use in any particular way, from the Premises.

13.9.2 The Tenant is responsible for doing anything necessary to comply with the terms of any Liquor Licence relating to the Premises. (This is subject to any other relevant provisions of this Lease, such as the provision requiring the Tenant to obtain approval and the Landlord's right to give or decline the approval before the Tenant does any Works.)

13.9.3 The Landlord does not make any representation or give any warranty:
(a) that the Tenant will be able to obtain a Liquor Licence; or
(b) about the terms on which the Tenant may be able to obtain a Liquor Licence,
but the Landlord will do all things reasonably required by the Tenant in connection with any application for a Liquor Licence relating to the Premises if the Tenant pays to the Landlord its reasonable legal fees and costs, expenses and administrative fees incurred or charged in that regard.

13.9.4 The Tenant must ensure that any Liquor Licence in existence at the Commencement Date or at any later time and relating to the Premises remains current.

13.9.5 The Tenant must not seek or allow, and must do everything reasonably necessary to prevent:
(a) the lapsing, surrender or other termination;
(b) the extension or application to any other premises;
(c) the endorsement of any condition; or
(d) any transfer, removal or variation,
of any Liquor Licence relating to the Premises from time to time except with the Landlord's approval.

13.9.6 If the Landlord asks, the Tenant must within 14 days:
(a) give to the Landlord copies of any returns or declarations relating to any Liquor Licence relating to the Premises and that the Tenant is required to lodge, give or make under any Law; and
(b) give to the Landlord any other documents, and do any other things, reasonably required by the Landlord to help or enable the Landlord to comply with its obligations under any Law in connection with any Liquor Licence relating to the Premises.

13.9.7 If the Tenant asks, the Landlord must within 14 days give to the Tenant any other documents, and do any other things, reasonably required by the Tenant to help or enable the Tenant to comply with its obligations under any Law in connection with any Liquor Licence relating to the Premises if the Tenant pays to the Landlord its reasonable legal fees and costs, expenses and administrative fees incurred or charged in that regard.

13.9.8 If required by the Landlord, the Tenant must on and from the Departure Date (or any later date required by the Landlord):
(a) appoint the Landlord (or a person nominated by the Landlord) to be the Tenant's agent to manage, superintend and conduct the business at the Premises under any Liquor Licence relating to the Premises for the period commencing on the Departure Date (or the later date required by the Landlord) and expiring on the earliest of:
(i) the date on which any Liquor Licence relating to the Premises is transferred from the Tenant to the Landlord;
(ii) the date on which the Landlord or another person obtains a Liquor Licence relating to the Premises and replacing a Liquor Licence relating to the Premises held or previously held by the Tenant; or
(iii) the date specified by the Landlord; and
(b) must apply for permission under section 149 of the *Liquor Act 1992* covering the absence from the Premises of the Tenant or its nominee on any Liquor Licence relating to the Premises during the period to which paragraph (a) applies.

13.9.9 If required by the Landlord, the Tenant must on the Departure Date (or any later date required by the Landlord) and subsequently immediately do everything necessary, or reasonably required by the Landlord, to enable the transfer from the Tenant to the Landlord (or to any other person nominated by the Landlord) of any Liquor Licence then relating to the Premises.

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13.10 Authority to act for Landlord

- 13.10.1 If and while the Landlord is a body corporate (including a local government), only the Attorneys are taken to have the authority to give any consent or approval, make any agreement, give any waiver or do anything else on behalf of and binding the Landlord under or in connection with this Lease unless:
- (a) a Law provides or deems otherwise; or
 - (b) the Tenant can prove that a person who purportedly did any of those things actually had the authority of the Landlord to do that thing on behalf of and binding the Landlord.

13.11 Bank Guarantee

- 13.11.1 In order to secure the performance of the obligations of the Tenant under this Lease the Tenant must procure in favour of the Landlord a Bank Guarantee which:
- (a) is for the Guaranteed Sum;
 - (b) takes effect on and from the Commencement Date; and
 - (c) is given to the Landlord on or before the Commencement Date.
- 13.11.2 If the Tenant is in breach of or fails to perform its obligations under this Lease the Landlord may, without prejudice to all other rights and remedies available to it, draw down the whole or any part of the Bank Guarantee and apply the proceeds drawn down to remedy or assist in remedying and to compensate the Landlord for that default and to assist the Landlord in exercising any or all of the Landlord's rights and remedies under this Lease.
- 13.11.3 If the Landlord is entitled to exercise any rights and remedies under this Lease the whole of the Bank Guarantee or such of it remaining may be drawn down and the amount deposited in an interest bearing bank account in the name and under the control of the Landlord and the amount together with interest applied to remedy or assist in remedying the default and to compensate the Landlord for the reasonable loss, cost, expense and damage resultant upon the Tenant's default and the Landlord having to exercise its rights and remedies and to assist in the exercise of any rights and remedies under this Lease.
- 13.11.4 The Tenant must either:
- (a) give the Landlord another Bank Guarantee for the Shortfall Guaranteed Sum; or
 - (b) give the Landlord a fresh Bank Guarantee for the new Guaranteed Sum, within 14 days if:
 - (d) the Guaranteed Sum changes; or
 - (e) the Landlord acts under subclause 13.11.2 or 13.11.3 and notifies the Tenant of the Shortfall Guaranteed Sum.
- 13.11.5 The Landlord must return the Bank Guarantee to the Tenant:
- (a) when this Lease comes to an end and the Tenant has no outstanding obligations under this Lease or liability or potential liability in damages for any breach or non-performance of any obligations under this Lease; or
 - (b) in exchange for a fresh Bank Guarantee which the Tenant gives the Landlord under paragraph 13.11.4(b).
- 13.11.6 The Landlord will not be deemed to have waived or relinquished any right under the Bank Guarantee if the Tenant assigns this Lease. If that occurs, the Bank Guarantee will remain in full force and effect as if it had been provided by the assignee and it will be read accordingly. The Landlord may, as a condition of assignment, require the assignee to provide an equivalent replacement Bank Guarantee and if that occurs, the Landlord must return the Bank Guarantee provided by the Tenant assigning this Lease.

13.12 Bond instead of Bank Guarantee

- 13.12.1 Instead of complying with subclause 13.11.1, the Tenant may on or before the Commencement Date pay to the Landlord an amount of money equalling the Guaranteed Sum as security for the performance of the Tenant's obligations under this Lease. That amount of money is called the **Bond**.
- 13.12.2 The Landlord can (even after the end of the term of the Lease) use the Bond or a part of it to set off against, and satisfy or partially satisfy, the amount of:
- (a) any debt or liquidated amount of money that falls due for payment by the Tenant under this Lease but is at the time unpaid; and

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- (b) the Landlord's reasonable estimate of the Landlord's loss, cost, expense and damage resultant upon a breach of this Lease by the Tenant to the extent that the Tenant has not paid the Landlord compensation for that loss, cost, expense and damage.

13.12.3 If the Landlord uses all or part of the Bond under subclause 13.12.2, the Landlord may give the Tenant a notice telling the Tenant that and requiring the Tenant to restore the amount of the Bond to the Guaranteed Sum. The Tenant must then, within 14 days, pay enough to the Landlord to restore the amount of the Bond to the Guaranteed Sum.

13.12.4 If the Guaranteed Sum changes, the Tenant must pay enough to the Landlord to ensure that the amount of the Bond held by the Landlord is the new Guaranteed Sum.

13.12.5 The Landlord's use of, or right to use, all or part of the Bond under subclause 13.12.2 does not excuse the Tenant from any of its obligations under this Lease or from any liability, but the Tenant is entitled to a credit against those obligations and liabilities for the amounts for which the Landlord has used the Bond under subclause 13.12.2.

13.12.6 Within 90 days after the end of the term of the Lease, the Landlord must refund to the Tenant the Bond Balance.

13.12.7 If the Tenant gives the Landlord a Bank Guarantee for the Guaranteed Sum under clause 13.11, the Landlord must refund to the Tenant the Bond Balance.

13.12.8 The Tenant is not entitled to any interest in the Bond or the Bond Balance. If the Landlord earns any interest or income from holding the Bond, that interest or income belongs to the Landlord.

13.12.9 The **Bond Balance** is:

- (a) the total of all amounts paid by the Tenant to the Landlord under subclauses 13.12.1, 13.12.3 and 13.12.4; less
- (b) the total of all amounts of the Bond used by the Landlord under subclause 13.12.2.

13.13 Retail Shop Leases Act

13.13.1 The Tenant acknowledges that, at least 7 days before entering into this Lease, the Tenant was given a draft of the lease and a disclosure statement under section 22 of the *Retail Shop Leases Act 1994*.

13.13.2 The Tenant warrants that:

- (a) if section 22A of the *Retail Shop Leases Act 1994* required the Tenant to give the Landlord a disclosure statement under that Act before entering into this Lease, the Tenant complied with that section; and
- (b) all the information contained in any disclosure statement given to the Landlord by the Tenant under section 22A of the *Retail Shop Leases Act 1994* applies was when the statement was given, and still is at the time the Tenant enters into this Lease, true, complete and not misleading.

13.13.3 The Tenant warrants that, if section 22D of the *Retail Shop Leases Act 1994* required the Tenant to give the Landlord a financial advice report and a legal advice report under that Act before entering into this Lease, the Tenant complied with that section.

13.13.4 If any warranty in paragraph 13.13.2(a) or subclause 13.13.3 is not correct:

- (a) the Tenant is in breach of this Lease until the disclosure statement or reports (as the case may require) have been given to the Landlord; and
- (b) the Landlord's rights because the Tenant is in breach of this Lease are in addition to the Landlord's rights under section 22E of the *Retail Shop Leases Act 1994*.

14 LICENCE

14.1 Definitions

14.1.1 For the purposes of this section:

Applied Provisions means the following provisions of this Lease:

- (a) clause 2.3;

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- (b) clause 3.3;
- (c) section 4 (but as if subclause 4.5.1 ended at the word "consent");
- (d) clauses 5.1, 5.2, 5.4, 5.5 and 5.6;
- (e) section 6;
- (f) clauses 10.1 and 10.7;
- (g) subclause 12.8.3;
- (h) subclauses 13.3.3 and 13.3.4;
- (i) clause 13.9.

Outdoor Eating Area means the part of the land shown as "Licence D" on the plan attached to this Lease.

Storage Area means the parts of the land shown as "Licence E" and "Licence F" on the plan attached to this Lease.

14.2 Licence of Outdoor Eating Area

- 14.2.1 The Landlord grants to the Tenant a licence to use the Outdoor Eating Area on the terms set out in this clause and the Tenant accepts the grant.
- 14.2.2 The Tenant may use the Outdoor Eating Area for the purposes of:
- (a) placing on it tables, chairs and umbrellas (but not as fixtures and in no greater number than the Landlord approves from time to time and not in any configuration that the Landlord does not approve from time to time) for use by the Tenant's invitees who are customers of the business carried on by the Tenant at the Premises in accordance with this Lease;
 - (b) serving or selling to those customers products supplied by the Tenant to those customers in the course of carrying on that business; and
 - (c) placing on the tables items (such as serviettes and menus) for the use or convenience of those customers which are reasonably connected with the business carried on by the Tenant at the Premises in accordance with this Lease and which the Landlord has not, by notice to the Tenant, prohibited the Tenant from placing on the Outdoor Eating Area.
- 14.2.3 The Tenant may not use the Outdoor Eating Area for any other purpose.
- 14.2.4 The Tenant must, whenever the Premises are closed for business, remove and store away from the Outdoor Eating Area anything placed on the Outdoor Eating Area under subclause 14.2.2.
- 14.2.5 The Tenant must ensure that the Outdoor Eating Area is maintained:
- (a) as a clean and safe environment to consume food; and
 - (b) clear of food remnants, plates, eating utensils, cups, wrapping paper and other rubbish or unwanted items.
- 14.2.6 The Tenant must also ensure that all food remnants, plates, eating utensils, cups, wrapping paper and other rubbish or unwanted items, on any other premises or area but originating from the Outdoor Eating Area, are removed.
- 14.2.7 The Tenant is not given exclusive possession of the Outdoor Eating Area and cannot exclude the Landlord, or people authorised by the Landlord, from the Outdoor Eating Area.
- 14.2.8 The Tenant may (and will if requested by the Landlord):
- (a) refuse entry to the Outdoor Eating Area to;
 - (b) revoke any implied licence or invitation to be on the Outdoor Eating Area of; and
 - (c) use lawful and proper means to remove or keep away, any person who causes or has caused damage to the Outdoor Eating Area, engages or has engaged in unlawful conduct there or has done anything which would be in breach of this Lease if done by the Tenant.
- 14.2.9 The Tenant cannot assign the licence under this clause or make it the subject of a Dealing. If this Lease is assigned in accordance with the provisions of this Lease at any time before the licence under this clause has expired, the licence is assigned at the same time as, and to the same person as, the Lease.
- 14.2.10 The licence under this clause expires on the earliest to occur of:
- (a) the Departure Date;

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- (b) the Landlord by notice to the Tenant terminating the licence if the Tenant breaches an obligation under this clause (or under this Lease and concerning the Outdoor Eating Area) which is capable of being remedied but has not remedied the breach within 14 days after the Landlord gave the Tenant notice to do so;
- (c) the Landlord by notice to the Tenant terminating the licence if the Tenant breaches an obligation under this clause (or under this Lease and concerning the Outdoor Eating Area) which is not capable of being remedied; or
- (d) the Landlord by notice to the Tenant terminating the licence after the occurrence of any damage to, destruction of or resumption of the Outdoor Eating Area as a result of which the Outdoor Eating Area is no longer reasonably capable of continuing to be used for the purposes which this clause would allow.

14.2.11 The Tenant must comply with the Applied Provisions, and the Applied Provisions apply, as if references in them to:

- (a) the Premises – were to the Outdoor Eating Area;
- (b) the Departure Date – were to the date on which the licence under this clause expires according to subclause 14.2.10;
- (c) the Original Layout – were to the layout, order and condition of the Outdoor Eating Area as at the Commencement Date, as modified or altered by the Tenant in accordance with this Lease or by the Landlord;
- (d) a Service Charge – were to an amount payable by the Tenant or the Landlord for a service or facility (for example, electricity, water or gas) supplied to the Tenant, supplied to the Outdoor Eating Area or used at the Outdoor Eating Area; and
- (e) the Permitted Use – were to the purposes listed in subclause 14.2.2.

14.3 Licence of Storage Area

14.3.1 The Landlord grants to the Tenant a licence to use the Storage Area on the terms set out in this clause and the Tenant accepts the grant.

14.3.2 The Tenant may use the Storage Area for the purpose of storing Tenant's Goods:

- (a) which are used in the ordinary course of the business carried on by the Tenant at the Premises in accordance with this Lease;
- (b) which are intended by the Tenant for use, and on an objective basis could reasonably be expected to be used, in that ordinary course; or
- (c) which are placed on the Outdoor Eating Area under clause 14.2.

14.3.3 The Tenant may not use the Storage Area for any other purpose.

14.3.4 The Tenant must not make any of the Tenant's Goods fixtures to the Storage Area or allow them to become fixtures.

14.3.5 The Tenant is not given exclusive possession of the Storage Area and cannot exclude the Landlord, or people authorised by the Landlord, from the Storage Area.

14.3.6 The Tenant cannot assign the licence under this clause or make it the subject of a Dealing. If this Lease is assigned in accordance with the provisions of this Lease at any time before the licence under this clause has expired, the licence is assigned at the same time as, and to the same person as, the Lease.

14.3.7 The licence under this clause expires on the earliest to occur of:

- (a) the Departure Date;
- (b) the Landlord by notice to the Tenant terminating the licence if the Tenant breaches an obligation under this clause (or under this Lease and concerning the Storage Area) which is capable of being remedied but has not remedied the breach within 14 days after the Landlord gave the Tenant notice to do so;
- (c) the Landlord by notice to the Tenant terminating the licence if the Tenant breaches an obligation under this clause (or under this Lease and concerning the Storage Area) which is not capable of being remedied; or
- (d) the Landlord by notice to the Tenant terminating the licence after the occurrence of any damage to, destruction of or resumption of the Storage Area as a result of which the Storage Area is no longer reasonably capable of continuing to be used for the purposes which this clause would allow.

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- 14.3.8 The Tenant must comply with the Applied Provisions, and the Applied Provisions apply, as if references in them to:
- (a) the Premises – were to the Storage Area;
 - (b) the Departure Date – were to the date on which the licence under this clause expires according to subclause 14.3.7;
 - (c) the Original Layout – were to the layout, order and condition of the Storage Area as at the Commencement Date, as modified or altered by the Tenant in accordance with this Lease or by the Landlord;
 - (d) a Service Charge – were to an amount payable by the Tenant or the Landlord for a service or facility (for example, electricity, water or gas) supplied to the Tenant, supplied to the Storage Area or used at the Storage Area; and
 - (e) the Permitted Use – were to the purposes listed in subclause 14.3.2.

15 PRIOR LEASE, BANK GUARANTEE AND SECURITY DEPOSIT

15.1 Definitions

- 15.1.1 For the purposes of this section:

Original Tenant means Adana Corporation Pty Ltd ACN 130 151 478.

Prior Lease means registered lease no. 711979160, as assigned from the Original Tenant to the Tenant and as amended by an instrument of amendment executed by the Tenant on 11 August 2010 and by the Landlord on 26 November 2010.

Prior Lease Expiry Date means 31 August 2015.

Security Deposit means the sum of \$16,830 held by the Stakeholder in trust for the Landlord and the Tenant and as security for the Tenant's obligations under the Prior Lease and also includes any additional amount paid by the Tenant to the Stakeholder for that purpose or as or towards a Bond under clause 13.12.

Stakeholder means the law practice known as Horrell Legal.

15.2 Relationship of this Lease to Prior Lease

- 15.2.1 The Landlord's obligation to grant this Lease is conditional on the Prior Lease expiring on, and not being terminated or rescinded before, the Prior Lease Expiry Date.
- 15.2.2 If the Prior Lease is terminated or rescinded before the Prior Lease Expiry Date, the Landlord may (not later than the day before the Commencement Date) rescind this Lease by written notice to the Tenant.
- 15.2.3 The Landlord's right to rescind this Lease under subclause 15.2.2 exists even if this Lease has been registered under the *Land Title Act 1994*.
- 15.2.4 If the Landlord rescinds this Lease under subclause 15.2.2 after this Lease has been registered under the *Land Title Act 1994*:
- (a) the Tenant must, if the Landlord asks, execute and give to the Landlord a registrable form of surrender of this Lease and do all other things the Landlord reasonably requires the Tenant to do in order to surrender, and perfect the surrender of, this Lease; and
 - (b) the Attorneys may act under clause 12.8 to do any of those things as the Tenant's attorney as if an Event of Default had happened.

15.3 Tenant to provide Bank Guarantee or Bond

- 15.3.1 The Tenant must comply with subclause 13.11.1 or subclause 13.12.1 as if the references in those subclauses to "the Commencement Date" were instead references to "the date that is 30 days after the Landlord has executed this Lease".

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15.3.2 The Landlord and the Tenant agree that the Prior Lease is hereby amended so that the Tenant's obligation under subclause 13.11.1 or subclause 13.12.1 (as modified by subclause 15.3.1) of this Lease is an obligation of the Tenant under the Prior Lease as well as under this Lease.

15.4 Bank Guarantee can be used for Prior Lease as well as this Lease

15.4.1 This clause applies if:

- (a) the Tenant gives the Landlord a Bank Guarantee, complying with subclause 13.11.1, before the Commencement Date; and
- (b) the Bank Guarantee takes effect from a date earlier than the Commencement Date.

15.4.2 Until 90 days after the Prior Lease Expiry Date:

- (a) subclause 13.11.1 applies as if it said "this Lease and the Prior Lease" where the words "this Lease" appear; and
- (b) subclauses 13.11.2, 13.11.3 and 13.11.6 apply as if it said "this Lease or the Prior Lease" wherever the words "this Lease" appear.

15.5 Bond can be used for Prior Lease as well as this Lease

15.5.1 This clause applies if the Tenant pays to the Landlord a Bond under subclause 13.12.1 before the Commencement Date.

15.5.2 Until 90 days after the Prior Lease Expiry Date:

- (a) subclause 13.12.1 applies as if it said "this Lease and the Prior Lease" where the words "this Lease" appear; and
- (b) subclauses 13.12.2, 13.12.3 and 13.12.6 apply as if it said "this Lease or the Prior Lease" wherever the words "this Lease" appear.

15.6 Security Deposit

15.6.1 The Landlord and the Tenant agree that the Stakeholder is to pay the amount of the Security Deposit to the Landlord on request or demand by the Landlord or Tenant or on the Stakeholder's own initiative.

15.6.2 When the Stakeholder pays the amount of the Security Deposit to the Landlord, it is to be taken to be a payment by the Tenant to the Landlord of an amount for the Bond under subclause 13.12.1.

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SCHEDULE 1 – REFERENCE DETAILS

Item	Matter	Particulars
1	Commencement Date	1 September 2015
2	Initial Term	5 years and 10 months
3	Option Term	Nil
4	Further Option Term	Nil
5	Annual Rent	\$65,000.00
6	CPI Review Dates	Each anniversary of the Commencement Date that is not a Market Review Date
	Fixed Review Dates and percentages	Nil
7	Market Review Dates	Nil
8	Permitted Use	Dine in retailing and/or the retail sale of takeaway food and ancillary related uses
9	Required Trading Hours	The trading hours customary for a business carrying on the Permitted Use specified in item 8 of the Reference Details
10	Minimum insurance	\$20,000,000.00
11	Guarantor	Nil
12	Stipulated Rate	12% per annum

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SCHEDULE 2 – DEFINITIONS

Annual Rent	means the rent payable by the Tenant as defined in clause 3.2
Assignee	is defined in subclause 7.1.2
Attorney	is defined in subclause 12.8.1
Bank Guarantee	<p>means an unconditional and irrevocable undertaking which:</p> <ul style="list-style-type: none">(a) is issued by an authorised deposit-taking institution under the <i>Banking Act 1959</i>;(b) is in a form acceptable to the Landlord;(c) will remain in force until the Issuing Bank is notified in writing by the Landlord that it is no longer required;(d) requires the Issuing Bank to pay to the Landlord the Guaranteed Sum or such part of the Guaranteed Sum which has not already been paid to the Landlord without any form of deduction, counterclaim or set off whatsoever on receipt by the bank of a copy of a notice of default certified by or on behalf of the Landlord or its solicitors and without reference or regard to the Tenant or any communication or direction given by the Tenant to the Issuing Bank to the contrary; and(e) imposes on the Issuing Bank no responsibility to investigate the entitlement of the Landlord to terminate or seek specific performance of this Lease or demand the payment of any money under this Lease
Building	means the building or buildings erected from time to time on the Land and in which the Premises are contained
Commencement Date	means the commencement date shown in item 1 of the Reference Details
Common Areas	means all those parts of the Complex, not leased or intended or available to be leased to any tenant, from time to time be set aside by the Landlord or available for use by the tenants of the Complex their employees, contractors, agents, licensees and invitees (and which may include, for example, walkways, passageways, circulation areas, staircases, escalators, ramps and lifts, service roads, loading bays, forecourts and toilets)
Complex	<p>means:</p> <ul style="list-style-type: none">(a) the Land;(b) all other parcels of land adjacent or near the Land acquired or leased by the Landlord and which the Landlord determines will form part of the Complex;(c) the fixtures, fittings and plant and the other structures, facilities and improvements erected or to be erected on the Land or those other parcels, including the Common Areas and the Building, <p>but does not include any buildings or structures that the Landlord in its absolute discretion determines will not form part of the Complex</p>
Complex Regulations	is defined in subclause 10.4.1
Costs	<p>means all costs and expenses including:</p> <ul style="list-style-type: none">(a) legal fees and costs on a full indemnity basis;(b) fees and expenses payable to experts and other consultants including architects and engineers; and(c) all other costs and expenses
CPI Review Date	means each date specified as such in item 6 of the Reference Details
Dealing	<p>means each of the following:</p> <ul style="list-style-type: none">(a) sale, transfer or assignment;(b) lease or sublease;

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- (c) licence;
- (d) grant of any right or interest; and
- (e) parting with or sharing possession

Departure Date

means:

- (a) if clause 2.2 applies - the date the monthly tenancy is terminated;
- (b) otherwise - the earlier of the Expiration Date and the date this Lease is validly terminated

Event of Default

means each of the following:

- (a) the Tenant not paying an amount this Lease requires the Tenant to pay, when it is required to be paid;
- (b) the Tenant not doing something this Lease requires the Tenant to do, when it is required to be done;
- (c) the Tenant doing something this Lease requires the Tenant not to do;
- (d) the Tenant otherwise breaching a provision of this Lease; and
- (e) the occurrence of an Insolvency Event in relation to the Tenant or any Guarantor

Expiration Date

means the last day of the Initial Term

Facility

means an appurtenance, fixture or other facility in the Premises or Complex

Fixed Review Date

means each date specified as such in item 6 of the Reference Details

Floor Area

means the Gross Lettable Area – Retail determined in accordance with the Property Council of Australia Method of Measurement for Lettable Area – March 1997

Form 7

means the lease in form 7 under the *Land Title Act 1994* forming part of this Lease

GST

means GST under *A New Tax System (Goods and Services) Tax Act 1999* and any other tax, levy or impost (including a goods and services tax, consumption tax or value added tax) applying in respect of:

- (a) the payment of money under this Lease; or
- (b) the supply of any goods or services under this Lease

GST Law

means:

- (a) *A New Tax System (Goods and Services) Tax Act 1999* and any other Law imposing or dealing with the assessment, collection, imposition, calculation, payment or recovery of or liability for GST; and
- (b) any public rulings or determinations (whatever they might be called) under that Act or Law

Guaranteed Sum

means the amount from time to time equal to one-quarter of the prevailing Annual Rent, increased by a proportion equal to the prevailing rate of GST

Guarantor

means each of:

- (a) each person named in item 11 of the Reference Details;
- (b) anyone giving a guarantee because of subclause 7.1.2; and
- (c) anyone giving a guarantee because of a notice under clause 13.6

Index Number

means:

- (a) the Consumer Price Index (All Groups) for the city of Brisbane as published by the Australian Statistician;
- (b) if that index is reset or recalibrated, the Consumer Price Index (All Groups) for the city of Brisbane as published by the Australian Statistician and adjusted by a factor published or advised on the request of either party by the Australian Statistician; or
- (c) if that index is suspended, discontinued or modified so that it does not reflect on a consistent basis changes which have occurred in the cost of living in the city of Brisbane during any Lease Year:
 - (i) an independently published index of prices, costs or wages which in the

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opinion of the Australian Statistician (whether published or advised at the request of either party) does reflect on a consistent basis changes which have occurred in the cost of living in the city of Brisbane during that Lease Year; or

- (ii) if the Australian Statistician has not published and will not advise an index under subparagraph (i), an independently published index of prices, costs or wages agreed in writing by the parties and in the absence of agreement within a period of 14 days after the start of the Lease Year for which the Annual Rent is being calculated, an independently published index of prices, costs or wages determined at the request of either party by the President or Acting President of the Australian Property Institute (Queensland Division) or their nominee (who acts as an expert and not an arbitrator, whose determination is final and binding and whose fees in making the determination are to be borne equally by the parties).

Initial Term

means the term shown in item 2 of the Reference Details

Insolvency Event

means:

- (a) in relation to an individual, each of the following events:
- (i) the individual becoming insolvent (as defined in section 95A of the *Corporations Act 2001*);
 - (ii) the individual committing an act of bankruptcy; and
 - (iii) the entry of a judgment or order against the individual for at least \$2,000 and the individual not satisfying the judgment or order within 14 days; and
- (b) in relation to a corporation, each of the following events:
- (i) the corporation becoming insolvent (as defined in section 95A of the *Corporations Act 2001*);
 - (ii) an event specified in section 461(1) of the *Corporations Act 2001* occurring in relation to the corporation;
 - (iii) the corporation becoming an externally-administered body corporate (as defined in section 9 of the *Corporations Act 2001*);
 - (iv) a resolution being passed for the voluntary winding up of the corporation by its members or creditors;
 - (v) the appointment of a provisional liquidator in relation to the corporation; and
 - (vi) the entry of a judgment or order against the corporation for at least \$2,000 and the corporation not satisfying the judgment or order within 14 days

Insured Risk

means a risk for which the Landlord holds insurance in relation to the Building

Issuing Bank

means, in relation to a Bank Guarantee, the authorised deposit-taking institution under the *Banking Act 1959* that issued the Bank Guarantee

Land

means the land described in item 2 of the Form 7

Landlord

means the lessor named in item 1 of the Form 7

Law

means each of the following:

- (a) any Act of any Parliament;
- (b) any statutory instrument under any Act of Parliament;
- (c) any order, requirement or notice given under any Act or statutory instrument; and
- (d) any change to or repeal, consolidation or reenactment of, any of those

Lease

means this lease comprising the Form 7, this schedule and any variations

Lease Year

means:

- (a) each separate year of the Term (with the first one starting on the Commencement Date); and
- (b) any broken period between the end of the last complete Lease Year and the end of the Term

Liquor Licence

means any licence, permit, consent, permission or authorisation under the *Liquor Act*

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1992

Market Review Date	means each date specified in item 7 of the Reference Details
Option Term	means the term (if any) specified in item 3 of the Reference Details
Original Layout	means the layout, order and condition of the Premises as at the Commencement Date, as modified or altered: (a) by the Landlord; or (b) by the Tenant in accordance with this Lease
Permitted Use	means: (a) the use specified in item 8 of the Reference Details; (b) reasonable storage and administrative uses directly related to the conduct of that use; and (c) any other use that the Landlord consents to in its absolute discretion
Premises	means the premises identified in item 5 of the Form 7 including: (a) the floor and ceiling finishes (but not any other part) of the floor slabs and ceiling slabs that bound the Premises; (b) the inner half severed medially of the internal non-load bearing walls that divide the Premises from the adjoining shops offices or facilities in the Complex or from the Common Areas; (c) the doors and windows and door and window frames at the Premises; (d) all additions and improvements to the Premises; (e) all the Landlord's fixtures and fittings and fixtures of every kind which from time to time are in or upon the Premises (whether originally fixed or fastened to or upon the Premises or otherwise) except any fixtures installed by the Tenant that can be removed from the Premises without defacing the Premises; (f) all pipes that are in or on and that exclusively serve the Premises; and (g) any equipment or apparatus (for air extraction or otherwise) that is in or on and that exclusively serves the Premises, but excluding the shop-front of the Premises (being the wall or walls dividing the Premises from the adjoining malls or walkways of the Complex)
Quarter	means each period of 3 months ending on 31 March, 30 June, 30 September and 31 December in each year
Reference Details	means the details set out in schedule 1
Renewal Option	means an option to take a lease of the Premises for an Option Term (if there is one)
Rent	means the rent payable under this Lease
Required Trading Hours	means the hours set out in item 9 of the Reference Details
Retail Shop Lease	means the same thing as in the <i>Retail Shop Leases Act 1994</i>
Service Charge	means an amount payable by the Tenant or the Landlord for a service or facility (for example, electricity, water or gas) supplied to the Tenant, supplied to the Premises or used at the Premises
Shortfall Guaranteed Sum	means the difference between the Guaranteed Sum less the face value of any Bank Guarantee already held by the Landlord less the aggregate of the amounts (if any) drawn down by the Landlord under subclause 13.11.2 or 13.11.3
Sign	means each of the following: (a) advertisement; (b) placard; (c) poster; (d) sign;

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- (e) banner; and
- (f) any similar thing and anything having a similar purpose to any of the above

Stipulated Rate means the rate set out in item 12 of the Reference Details

Tenant means:

- (a) the lessee named in item 3 of the Form 7; and
- (b) any assignee of the lessee or of an earlier assignee

Tenant's Goods means:

- (a) all fittings, fixtures and goods that are the property of the Tenant, or would be if they were not fixtures; and
- (b) all fixtures, fittings and goods that are the property of neither the Tenant nor the Landlord but are the subject of a rental, hiring or other arrangement between the Tenant and someone other than the Landlord

Tenant's Invitee means each of the following:

- (a) a customer of the Tenant;
- (b) an invitee of the Tenant;
- (c) a tradesperson or worker used by the Tenant;
- (d) an employee or agent of the Tenant; and
- (e) anyone at the Premises or Building with the Tenant's expressed or implied consent

Term means the period starting on the Commencement Date and ending on the Departure Date

Total Lettable Floor Area means the Floor Area of all those parts of the Building or the Complex (as applicable) leased to or occupied by any tenant or which are available from time to time for lease or licence, but not including:

- (a) the Floor Area of the Common Areas; or
- (b) any part of the Complex to be used exclusively for the purpose of storage

Works means structural and non-structural alterations or additions to the Premises or any Facility or to the Complex, including:

- (a) painting;
- (b) the installation, removal, replacement or alteration of floor coverings; and
- (c) the installation, removal, replacement or alteration of partitions

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GUARANTEE AND INDEMNITY

1. Interpretation

- 1.1 The following definitions apply for the purposes of the provisions contained in this guarantee and indemnity (**Guarantee**):

comply includes perform, adhere to, observe and carry out an obligation, law or agreement.

costs includes legal costs and outlays on a full indemnity basis.

event of default means any of the following events, even if its occurrence is outside the control of the Tenant or Guarantor:

- (a) a failure by the Tenant to comply with an obligation under the Lease on the due date; and
- (b) the occurrence of an insolvency event in relation to the Tenant; and
- (c) anything that constitutes a breach of the Lease by the Tenant; and
- (d) anything that gives rise to a right or power on the part of the Landlord to terminate the Lease or re-enter the Premises, exercise another right or remedy against the tenant under the Lease or exercise a right or remedy against the Tenant connected with the use, occupation, act, omission or presence on the Premises by the Tenant or someone claiming through the Tenant (for example, to sue for damages for trespass or for waste).

guaranteed obligation means an obligation of the Tenant:

- (a) under the Lease; or
 - (b) to pay or repay any part of the secured amount; or
 - (c) to pay or repay any money which would be payable under, or as damages for breach of, a provision of the Lease if the provision was not void, avoided, illegal or unenforceable; or
 - (d) to pay money as interest, costs or otherwise, other than as specified in paragraphs (a), (b) or (c), in connection with or because of an amount falling within one or more of those paragraphs,
- and includes, for example, obligations to indemnify.

Guarantor includes:

- (a) each person comprising the Guarantor individually;
- (b) every combination of those persons together; and
- (c) each of those persons' respective legal personal representatives, successors and permitted assigns, both individually and together in every combination.

insolvency event, in relation to the Tenant, means:

- (a) if any person comprising the Tenant is a natural person – that person being or becoming bankrupt, committing an act of bankruptcy, entering into an arrangement under part IX or part X of the *Bankruptcy Act 1966* or another similar arrangement or being or becoming insolvent as defined in section 95A of the *Corporations Act 2001*; or
- (b) if any person comprising the Tenant is a corporation – the corporation being or becoming an externally-administered body corporate as defined in section 9 of the *Corporations Act 2001*, a provisional liquidator or liquidator being appointed in relation to the corporation, an event specified in section 461(1) of the *Corporations Act 2001* occurring in relation to the corporation, the corporation being taken to have failed to comply with a statutory demand under section 459F of the *Corporations Act 2001*, a resolution being passed by or in relation to the corporation under part 5.5 of the *Corporations Act 2001* or a notice of a meeting being issued at which such a resolution is intended to be moved or the corporation being or becoming insolvent as defined in section 95A of the *Corporations Act 2001*.

Landlord includes the Landlord and its successors and assigns.

Landlord's rights means the rights of the Landlord:

- (a) expressed or implied in the Lease or this Guarantee; or
- (b) arising under or because of the Lease or this Guarantee; or
- (c) arising under any law, at law or in equity.

law includes:

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- (a) legislation, regulation, order in council, by-law, ordinance and any other primary or subordinate legislation or law made by any level of government; and
- (b) any order, direction, notice or requirement validly given or made under any such law.

Lease means the lease to which this Guarantee is attached, and includes any relationship of lessor and lessee arising out of that lease or the occupancy of the Premises between the parties named in it, including any renewed or extended lease resulting from the exercise of an option for renewal or extension.

month means a calendar month.

obligation includes requirement, restriction, stipulation, covenant and provision (whether positive or negative in character).

Premises has the meaning given in the lease to which this Guarantee is attached.

right includes a power or remedy however arising.

secured amount, at a particular time, means all amounts of money outstanding or contingently payable by the Tenant to the Landlord under the Lease, including:

- (a) money payable under an obligation to indemnify; and
- (b) amounts that have not been quantified.

security interest means an interest in property:

- (a) arising under a mortgage, charge, lien, hire purchase agreement or other encumbrance; or
- (b) arising under a finance lease; or
- (c) which in substance secures the provision of financial accommodation or the performance or discharge of an obligation.

Tenant means Rajesh Sharma and includes any assignee from him (and any subsequent assignee) in all their capacities from time to time.

1.2 In the Guarantee:

- (a) words suggesting the singular include the plural and the other way around; and
- (b) words suggesting a gender include the other genders; and
- (c) words or expressions that are related to defined terms have corresponding meanings; and
- (d) a reference to any kind of legal person includes every other kind of legal person.

1.3 In the Guarantee, a reference to a law (or laws generally) is to be read:

- (a) as if the definition of "law" was included in the reference; and
- (b) as including a reference to any law amending the law referred to, repealing it, re-enacting it, relocating it or dealing with substantially similar subject matter after its repeal (but this paragraph does not apply in relation to a law referred to in a definition).

1.4 Headings are to assist with ease of reference only, and are not to be used in interpreting the Guarantee.

1.5 A provision of the Guarantee must not be read to the detriment of a party only because the provision was:

- (a) drafted by or on behalf of that party; or
- (b) included in the guarantee at the request or insistence of that party.

2. Background

2.1 The Guarantor has requested the Landlord to grant the Lease to the Tenant.

2.2 By executing this deed the Guarantor:

- (a) confirms that request; and
- (b) acknowledges that the Landlord has granted, or will grant, the Lease to the Tenant because of that request.

2.3 It does not matter whether the Landlord executes this deed before or after the execution of this deed by any person comprising the Guarantor.

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3. Guarantee

- 3.1 The Guarantor guarantees to the Landlord the due and punctual compliance by the Tenant with the guaranteed obligations.
- 3.2 If the Tenant does not duly and punctually comply with a guaranteed obligation, the Guarantor must immediately pay to the Landlord the amount required to make good, or compensate the Landlord for, the non-compliance.

4. Indemnity

- 4.1 The Guarantor indemnifies the Landlord against:
- (a) any costs, losses, damages or expenses paid or incurred by the Landlord as a result of, or in connection with, the Tenant's failure to duly and punctually comply with a guaranteed obligation; and
 - (b) any liability of the Landlord arising directly or indirectly from the Tenant's failure to duly and punctually comply with a guaranteed obligation; and
 - (c) any costs and expenses paid or incurred by the Landlord in relation to the liability referred to in paragraph (b).
- 4.2 The Guarantor indemnifies the Landlord in respect of any guaranteed obligation which the Landlord cannot enforce, or the Tenant cannot comply with:
- (a) because a provision of the Lease purporting to give rise to, or relating to, the guaranteed obligation is void, avoided, illegal or unenforceable; or
 - (b) for any other reason at all.
- 4.3 As a principal debtor, the Guarantor agrees to comply with a guaranteed obligation referred to in subclause 4.2 as if it was set out at length in the Guarantee (with any necessary modifications).

5. Interest

- 5.1 The Guarantor must pay interest to the Landlord on all amounts due by the Guarantor to the Landlord under the Guarantee from the dates they fall due until payment.
- 5.2 Interest is payable at the rate of 12% per annum, accruing daily and calculated and capitalised at the end of each calendar month.
- 5.3 As a separate and additional obligation, subclauses 5.1 and 5.2 will continue to apply:
- (a) after any of the Guarantor's liability under the Guarantee becomes merged in any judgment or order; and
 - (b) to the amount of the judgment or order due and payable but unpaid both before and after the judgment or order.

6. Guarantor's liability

- 6.1 In any proceedings in which the liability of the Guarantor to the Landlord is in issue, and despite any other provision of the Guarantee, the Guarantor:
- (a) will be treated as a principal debtor and contractor jointly and severally liable with Tenant to comply with the guaranteed obligations; and
 - (b) will not raise any defence based on an express or implicit allegation that the Guarantor's position as against the Landlord is that of a guarantor or surety.
- 6.2 The Guarantor's obligations under the Guarantee:
- (a) will remain in full force and effect until the guaranteed obligations have been fully complied with, discharged and satisfied; and
 - (b) are absolute and unconditional; and
 - (c) do not depend on demand being made.
- 6.3 In particular, the Guarantor's obligations under the Guarantee are not affected, reduced, abated, suspended, abrogated or varied by:

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- (a) the variation, termination or enforcement of the Lease, whether by agreement of the Guarantor, Landlord and/or Tenant or not; or
- (b) the granting to the Tenant of any time or other indulgence; or
- (c) the granting of any concession or the waiver of any failure by the Tenant to comply with a guaranteed obligation; or
- (d) the postponing for any time or from time to time of the exercise of any of the Landlord's rights; or
- (e) any variation in the respective obligations and liabilities of the Tenant and Landlord, whether or not made with the knowledge or consent of the Guarantor; or
- (f) any change in the positions as between each other of the Tenant and the Guarantor, whether or not notice of the change is given to the Landlord; or
- (g) an insolvency event happening in relation to the Tenant; or
- (h) any negligence, delay or laches on the part of the Landlord in enforcing the Landlord's rights; or
- (i) the taking or release or loss of any security held by the Landlord in relation to the guaranteed obligations; or
- (j) any provision of the Lease or of the Guarantee being or becoming void, avoided, illegal or unenforceable.

6.4 The Guarantor waives all legal, equitable, statutory or other rights as surety which may at any time be inconsistent with any of the provisions of the Guarantee.

7. Insolvency event relating to Tenant

7.1 Subclauses 7.2, 7.3 and 7.4 apply if:

- (a) an insolvency event happens in relation to the Tenant; and
- (b) the guaranteed obligations have not been fully complied with, discharged and satisfied.

7.2 Except as provided in subclause 7.3, the Guarantor must not lodge any proof of debt or other claim, or exercise any other rights, in connection with the insolvency event.

7.3 The Guarantor must, if required by the Landlord, lodge a proof of debt or other claim, or exercise any other rights, in connection with the insolvency event:

- (a) in the way required by the Landlord; and
- (b) for the benefit of the Landlord.

7.4 If the Guarantor receives any money in connection with the insolvency event or any proceedings relating to or because of the insolvency event, the Guarantor:

- (a) must promptly pay the money to the Landlord; and
- (b) until doing so, holds the money on trust for the Landlord.

8. Security interests

8.1 The Guarantor must not take any security interest from the Tenant whether in respect of:

- (a) any guaranteed obligations; or
- (b) any other obligations or money.

8.2 If the Guarantor does take a security interest referred to in subclause 8.1, the Guarantor must:

- (a) hold the security interest, and any money received by it under or because of that security interest, on trust for the Landlord; and
- (b) promptly pay to the Landlord any money referred to in paragraph (a).

9. Ending of Lease

9.1 Subclause 9.3 applies if the term of the Lease ends for any reason, other than:

- (a) the passage of time; or
- (b) the termination of the Lease following the Landlord's default.

9.2 Reasons why the term of the Lease might end, and which would bring subclause 9.3 into operation, include:

- (a) the disclaimer of the Lease in connection with, and following, an insolvency event; and

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- (b) the termination of the Lease following the Tenant's default; and
- (c) a declaration by a court that the Lease is void or avoided.

9.3 The Landlord may give the Guarantor a notice requiring the Guarantor to take a replacement lease of the Premises as tenant on the same terms as the Lease for the remaining term of the Lease and with any necessary modifications.

9.4 If the Landlord gives the Guarantor a notice under subclause 9.3, the Landlord and the Guarantor:

- (a) are treated as having entered into a lease as stated in subclause 9.3, and must comply with it accordingly; and
- (b) must promptly execute all documents the Landlord reasonably requires to perfect the replacement lease.

9.5 A notice under subclause 9.3:

- (a) may be directed to any one or more of the persons comprising the Guarantor; and
- (b) may require the replacement lease to start on the date the Lease ended (even if it is earlier than when the notice is given) or a later date (which must be earlier than when the Lease would have ended with the passage of time); and
- (c) may require the replacement lease to end on the date the Lease would have ended with the passage of time or an earlier date.

9.6 Whether or not a notice is issued under subclause 9.3, the Guarantor's other obligations under the Guarantee and under any other document or agreement continue to apply, and continue to be enforceable by the Landlord, as separate obligations.

10. Payments

10.1 All payments under the Guarantee are to be made:

- (a) in Australian currency; and
- (b) to the Landlord or in a way reasonably required by the Landlord.

10.2 No payment is to be taken to have been made unless and until the Landlord actually receives it.

10.3 Payments are at the Guarantor's risk until the Landlord actually receives them.

10.4 Payments made by cheque or other negotiable instrument are not to be taken to have been made until the Landlord actually receives the proceeds of the cheque or instrument.

10.5 Payments are to be made clear of any set off, counterclaim or deduction of any kind.

10.6 The Landlord may apply payments in whatever order the Landlord chooses, even if:

- (a) the Guarantor specifies otherwise; or
- (b) there is some contrary endorsement or notification on or accompanying any payment.

11. Landlord's rights

11.1 The Landlord is not liable for any involuntary losses or irregularities arising because of the exercise, attempted exercise, or non-exercise, of the Landlord's rights.

11.2 The Guarantor indemnifies the Landlord against any liability, cost, loss or expense caused or contributed to by an event of default or the exercise, attempted exercise or non-exercise of the Landlord's rights. These indemnities are independent, separate and continuing obligations which will survive the termination of the Guarantee.

11.3 The Landlord may exercise any of the Landlord's rights even if the Landlord:

- (a) has had the ability or opportunity to exercise the right before; and
- (b) did not then exercise the right.

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- 11.4 The Landlord may exercise any of the Landlord's rights despite anything except an express written waiver of the right. No waiver affects the ability of the Landlord to exercise the same right at a later date.
- 11.5 At no time is the Landlord under an obligation to exercise any of the Landlord's rights or to exercise them in a particular way.
- 11.6 The Landlord's rights are cumulative and not alternative.
- 11.7 The Landlord may exercise any of the Landlord's rights in whatever order the Landlord chooses.

12. Costs

- 12.1 The Guarantor must pay or reimburse the Landlord's costs in relation to:
- (a) the exercise or attempted exercise of any of the Landlord's rights; and
 - (b) any event of default; and
 - (c) any breach of the Guarantee by the Guarantor.
- 12.2 The Guarantor is to comply with its obligations under the Guarantee at the Guarantor's own expense.

13. General

- 13.1 The Guarantor must do everything reasonably required by the Landlord to:
- (a) fully give effect to and perfect the Guarantee; or
 - (b) give the Landlord the full benefit of the Landlord's rights.
- 13.2 Execution of this deed by the Guarantor or the Landlord is intended to constitute delivery of the document by that party as between the Guarantor and the Landlord.
- 13.3 The Guarantee is to be governed by the laws of Queensland.
- 13.4 The obligations of the Guarantor and the Landlord's rights:
- (a) will not merge because of the termination of the Guarantee or any other event or thing; and
 - (b) continue in full force and effect despite the termination of the Guarantee and any other event or thing.
- 13.5 A statement in writing signed by the Landlord or any agent or solicitor of the Landlord in relation to:
- (a) the secured amount; or
 - (b) anything else to do with the Guarantee,
- is conclusive evidence of those matters unless the Guarantor can prove otherwise.
- 13.6 If any provision of the Guarantee is void, voidable, invalid, unenforceable or illegal in any jurisdiction:
- (a) the provision is to be read down or, if that is not possible, is taken to be modified or omitted, to the extent necessary to prevent it from being void, voidable, invalid, unenforceable or illegal in that jurisdiction; and
 - (b) the provision is to remain in full force and effect in all other jurisdictions; and
 - (c) the remainder of the Guarantee is to remain in full force and effect.
- 13.7 The Guarantee can only be varied, modified, waived, discharged or changed by a further instrument in writing and signed by the party or parties to be bound by the variation, modification, waiver, discharge or change.
- 13.8 Time is of the essence for all the Guarantor's obligations under the Guarantee.
- 13.9 The Guarantor may not assign or novate any of the Guarantor's rights or obligations under the Guarantee.
- 13.10 The Landlord may at any time:
- (a) assign any of the Landlord's rights under the Guarantee; and
 - (b) disclose to a potential assignee any information about the Guarantor.
- 13.11 Each guarantee and indemnity contained in the Guarantee applies independently and even though another provision of the Guarantee may not apply.

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- 13.12 The Guarantee is fully valid and enforceable regardless of:
- (a) the order in which the Guarantee and any documents concerning the Lease are executed or become binding, whether generally or on each party; and
 - (b) the fact that a party to any of those documents may not execute it.

WARNING TO GUARANTOR

- This is an important document that you should not sign lightly. By signing, you will be giving the Landlord a guarantee and indemnity.
- There are many circumstances that could give the Landlord the right to enforce this guarantee and indemnity.
- These circumstances could include fraud or poor management by the Tenant or its employees, imprudent business practices, failure to effect proper insurances, over optimistic income and profit projections or changes in interest rates, the marketplace, commodity prices, the economy or law.
- Some of these circumstances might be beyond your control or even the Tenant's control and might not be foreseeable to you now. That makes no difference to the Landlord's right to enforce this guarantee and indemnity.
- If the Tenant does not meet its obligations for whatever reason, you are responsible and the Landlord may require you to take a replacement lease of the premises if the Tenant's lease ends. You also risk losing your assets, and your right to recoup your losses is restricted.
- **YOU ARE STRONGLY ADVISED TO READ ALL OF THE DOCUMENTS MAKING UP THE GUARANTEE AND INDEMNITY AND THE AGREEMENT FOR LEASE CAREFULLY AND, BEFORE SIGNING, MAKE ANY INVESTIGATIONS ABOUT THE TENANT AND ANY OTHER GUARANTOR, AND OBTAIN ANY LEGAL OR FINANCIAL ADVICE, THAT YOU CONSIDER NECESSARY TO ENSURE YOU FULLY UNDERSTAND YOUR OBLIGATIONS.**

.....signature / /

.....full name

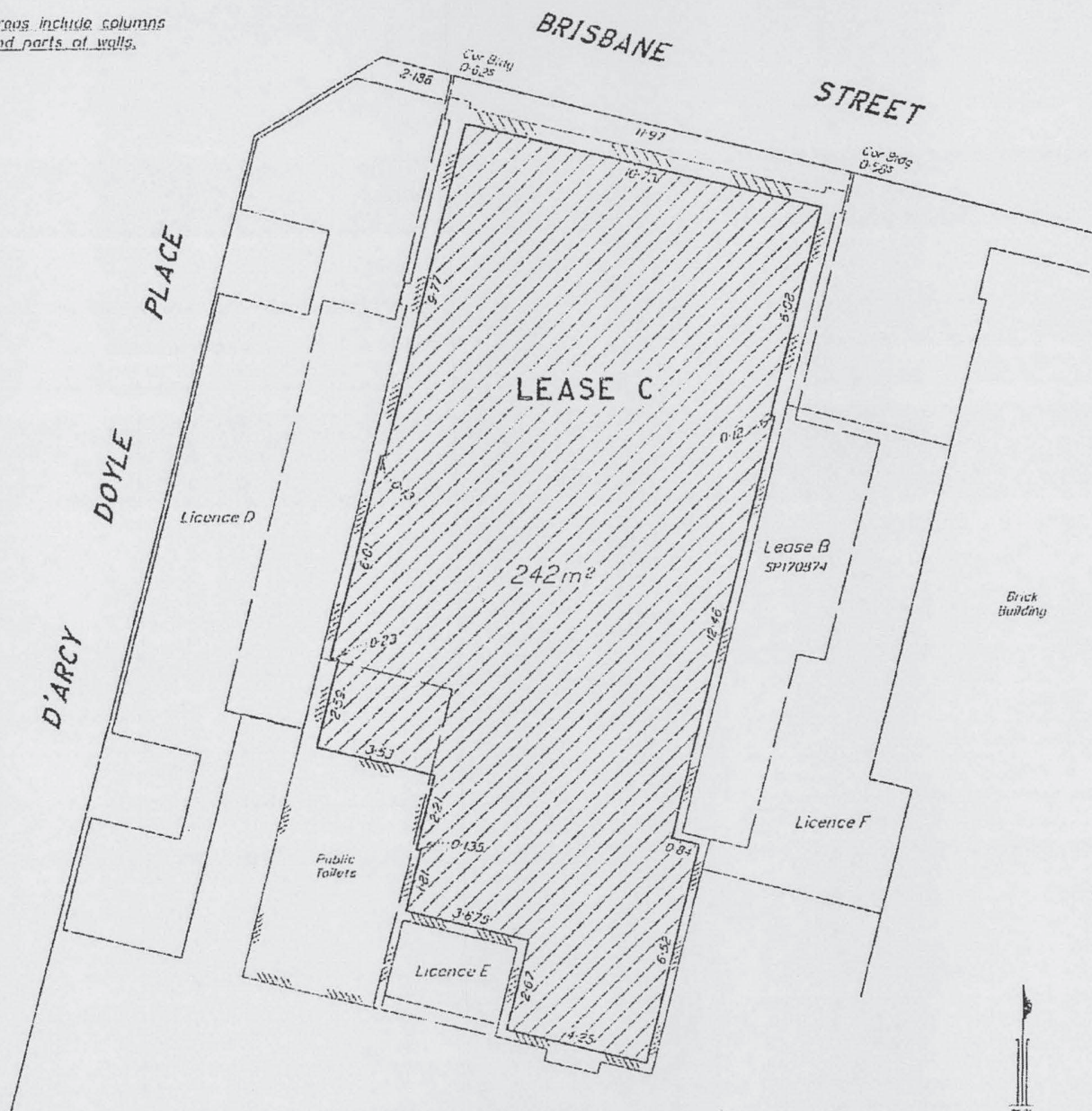
Witness

Execution Date

Guarantor's Signature

AREA OF LEASE
SHOWN HATCHURED.

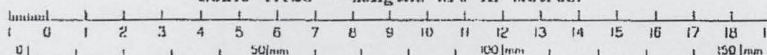
Areas include columns
and parts of walls.



12
SP103223

NOTE:
Lease area is Gross Lettable Area Retain (GLAR) as defined
by the Property Council of Australia (March 1997).

Scale 1:125 - Lengths are in Metres.



I, Wayne John HALLS, Cadastral Surveyor,
hereby certify that the details shown on this
sketch plan are correct.

Wayne John Halls
Cadastral Surveyor

11-01-2008
Date

PLAN OF LEASE C
Being part of the Ground Floor of a
building in Lot 12 on SP103223
Parish of IPSWICH
County of Stanley
Certificate of Title: 50209132

Scale in Metres. 1:125 at A3



IPSWICH CITY COUNCIL
50 SOUTH STREET PH 07 3810 6666
PO BOX 191 FAX 07 3810 6731
IPSWICH Q 4305

Date of Survey: 07/01/2008

Job No: HSP00004-10.2 DWG No: HSP00004-001

Rev: A

DRAFT DESIGN

Compensation and Funding Deed

91 Commercial Road, Newstead Qld 4006
17/302 South Pine Road, Brendale Qld 4500
PO Box 5209, Brendale DC Qld 4500

Phone: 07 3854 2342 | Fax: 07 3041 6569 | Email: admin@horrell.com.au | Web: www.horrell.com.au

Liability limited by a scheme approved under professional standards legislation

Compensation and Funding Deed

Parties

The parties to this deed are:

- Ipswich City Council ('**Council**') of 45 Roderick Street, Ipswich, Queensland; and
- Rajesh Sharma ('**Tenant**') of 9 Darlington Court, Flinders View, Queensland.

Background

- A The Tenant is the lessee from Council of Lease C in Lot 12 on SP103223 ('**Leased Premises**') under registered lease no. 711979160, as assigned from Adana Corporation Pty Ltd ACN 130 151 478 ('**Original Tenant**') to the Tenant and as amended by an instrument of amendment executed by the Tenant on 11 August 2010 and by the Landlord on 26 November 2010 ('**Current Lease**'). The Current Lease is to expire on 31 August 2015.
- B The Tenant is, or intends to become, the lessee from Council of the Leased Premises under a lease ('**Further Lease**') to commence on 1 September 2015 for a term to expire on 30 June 2021 ('**Further Lease Expiry Date**').
- C The Tenant has the right to use Licence Areas D, E and F in Lot 12 on SP103223 ('**Licensed Areas**') for purposes associated with the Tenant's use of the Leased Premises under the Current Lease and the Further Lease.
- D The Current Lease and the Further Lease are governed by the *Retail Shop Leases Act 1994* ('**Act**').
- E Council proposes to undertake certain works ('**Building Improvement Works**') in the Leased Premises and the building containing the Leased Premises, including improvements to the kitchen and the toilets in the building.
- F The Building Improvement Works, if and when carried out, would be likely to give rise to a right on the part of the Tenant to claim compensation under section 43 of the Act and other statutory and common law rights.
- G Council and the Tenant want to make an agreement, set out in this deed, to pre-agree on how the Tenant will be compensated.
- H Council and the Tenant also want to enter into arrangements whereby the Building Improvement Works will actually be arranged and carried out by the Tenant but funded by Council as provided in clauses 17 to 62 ('**Funding Provisions**').

Operative provisions

Acknowledgements about Building Improvement Works

- 1 The Tenant acknowledges and accepts that:
 - (a) the scope and timing of the Building Improvement Works will be as set out in the documents referred to or included in Attachment 1 (**'Project Documents'**); and
 - (b) the purpose of the Building Improvement Works will not be to customise or fit out the Leased Premises for the Tenant but, rather, to make improvements to the building containing the Leased Premises for the lasting betterment of the building; and
 - (c) the Building Improvement Works will involve disruption to the Tenant's business carried on in the Leased Premises and are likely to require the closure of the Tenant's business for a period or periods.

- 2 The Tenant warrants and represents to Council that:
 - (a) the Tenant has concluded that the Building Improvement Works are likely to improve the building containing the Leased Premises and that these improvements are likely to benefit the Tenant in his conduct of his business in the Leased Premises; and
 - (b) the Tenant has been given sufficient opportunity to obtain independent legal advice before entering into this deed and either has done so or has decided to enter into this deed without doing so and accepting all risks of not having done so; and
 - (c) the Tenant is aware that Council might be less inclined to schedule carrying out the Building Improvement Works during the term of the Current Lease or the Further Lease if the Tenant could have the right to claim an indeterminate amount of compensation from Council in respect of any disruption caused to the Tenant's business by the carrying out of the Building Improvement Works; and
 - (d) because the Tenant has reached the conclusion in paragraph (a), the Tenant wants to incentivise Council to schedule carrying out the Building Improvement Works during the term of the Current Lease or the Further Lease by entering into this deed and giving Council certainty about the extent of any compensation to be due to the Tenant in respect of the Building Improvement Works.

Tenant to facilitate Building Improvement Works

- 3 The Tenant agrees that despite anything in the Current Lease or the Further Lease:
 - (a) Council may enter the Leased Premises and the Licensed Areas for any of the following purposes (**'Building Improvement Works Purposes'**):
 - (1) purposes preparatory to carrying out the Building Improvement Works, such as for surveying the Leased Premises or the Licensed Areas, drawing up plans for the Building Improvement Works or other planning activities for the Building Improvement Works; and
 - (2) carrying out the Building Improvement Works; and

- (3) supervising and inspecting the Building Improvement Works; and
 - (4) purposes relating to or incidental to those described in subparagraphs (1), (2) and (3); and
 - (b) Council may for the Building Improvement Works Purposes restrict the Tenant from accessing or using any part or parts of the Leased Premises and the Licensed Areas; and
 - (c) the Tenant must abide by any restriction under paragraph (b); and
 - (d) Council may for the Building Improvement Works Purposes require the Tenant not to carry on business from, and not enter, the Leased Premises and the Licensed Areas; and
 - (e) the Tenant must abide by any requirement under paragraph (c).
- 4 Council may delegate to an employee or agent of Council, or to a contractor engaged by Council, the powers of Council under clause 3.

Rent Free Period

- 5 Council agrees that despite anything in the Current Lease or the Further Lease, the Tenant will not be required to pay any instalments of rent that would otherwise be payable under the Current Lease or the Further Lease during or for the Rent Free Period. For the purposes of this deed:
- (a) **'Rent Free Period'** means the period of 11 months commencing on:
 - (1) the Works Commencement Date if that is the first day of a calendar month; or
 - (2) the first day of the next calendar month after the month in which the Works Commencement Date falls; and
 - (b) **'Works Commencement Date'** means the earliest of the following dates:
 - (1) the day on which commencement of construction of the Building Improvement Works begins under the Funding Provisions;
 - (2) the first day of any period during which Council, for the Building Improvement Works Purposes, restricts the Tenant's access to the Leased Premises under:
 - (A) clause 10.1 of the Current Lease or clause 10.1 of the Further Lease; or
 - (B) paragraph 3(d) of this deed;
 - (3) the date when Council or its contractors first enter the Leased Premises for the purpose of carrying out the Building Improvement Works, disregarding any entry to the Leased Premises preparatory to actually carrying out the Building Improvement Works, such as for surveying the Leased Premises, drawing up plans for the Building Improvement Works or other planning activities for the Building Improvement Works.
- 6 Council and the Tenant agree that for the purpose of any rent review under the Current Lease or the Future Lease, the provisions of this deed concerning the Rent Free Period are to be disregarded.

- 7 Except as set out in clause 5, the Tenant's obligations under the Current Lease and the Further Lease (such as under clause 3.3 of the Current Lease and clause 3.3 of the Further Lease) in respect of the Rent Free Period are unaffected.

Option

- 8 Council grants to the Tenant an option to take a lease of the Premises for a term ('Option Term') of 3 years commencing on 1 July 2021.
- 9 The Tenant can only exercise the option under clause 8 by giving written notice to Council to that effect at least 6 months before the Further Lease Expiry Date. Any such notice has no legal effect unless:
- (a) the Further Lease is still current and has not been terminated:
 - (1) when the Tenant gives the notice; and
 - (2) on the Further Lease Expiry Date; and
 - (b) the Tenant has substantially complied with the Further Lease at the Further Lease Expiry Date, has remedied any non-compliance capable of remedy and has compensated Council to Council's reasonable satisfaction in respect of any non-compliance incapable of remedy.
- 10 If the Tenant exercises the option under clause 8 in accordance with clause 9:
- (a) the parties are taken to have entered into, and must enter into, a new lease on the same terms as the Further Lease (except as provided by paragraph (b)); and
 - (b) the new lease will differ from the Further Lease in the following respects:
 - (1) the term of the new lease is to be the Option Term; and
 - (2) the new lease will not include any further option of renewal or extension; and
 - (3) the annual rent payable for the first year of the Option Term is to be the current market rent for the Leased Premises, agreed or determined under the Act, as if the Option Term was a continuation of the term of the Further Lease and with the first day of the Option Term being the 'review date' for the purposes of the Act; and
 - (4) any other amendments reasonably required by Council will be made in order to give effect to or clarify the intended provisions of the Further Lease as a result of any changes in any laws since the Further Lease was entered into; and
 - (5) any other necessary changes will be made; and
 - (c) the Tenant must sign any documents required by Council to give effect to the exercise of the option within 7 days after Council requires the Tenant to do so; and
 - (d) those documents may be in the form of:
 - (1) a new lease for the Option Term; or
 - (2) an amendment of the Further Lease to change the term of the Further Lease to the Option Term and to make any other amendments to the Further Lease necessary to make it consistent with paragraph (b); and
 - (e) Council is not obliged to grant the new lease for the Option Term unless any person named as 'Guarantor' in the Further Lease signs a new guarantee and indemnity in

respect of the Tenant's obligations, in the same or substantially the same form as any guarantee and indemnity previously signed by him or her in respect of the Further Lease, and prepared by Council's solicitors, within 7 days after Council requires the Tenant to procure that person to do so.

Arrangements under deed satisfy Tenant Remedies

- 11 The Tenant agrees to accept the benefit of the Rent Free Period under this deed, and the grant of the option under clause 8, in full and final satisfaction of all Tenant Remedies. In this deed, **'Tenant Remedies'** means each and every right to make a claim or assert a remedy:
- (a) for compensation or damages under section 43 of the Act, or founded in any statutory or common law or equitable cause of action, for or in respect of:
 - (1) the Building Improvement Works; or
 - (2) any entry by Council or any contractor, employee or agent of Council on the Leased Premises or the Licensed Areas for the Building Improvement Works Purposes; or
 - (3) any loss, damage, interruption or disruption caused by or in respect of any of the above; or
 - (4) any alleged misrepresentation by Council about or in any way in respect of the Building Improvement Works; or
 - (5) anything that Council is authorised by this deed, by clause 10.1 of the Current Lease or by clause 10.1 of the Further Lease to do in respect of the Building Improvement Works; or
 - (b) for an injunction, order or other relief or remedy to prevent or restrain (or in effect prevent or restrain) Council or another person from:
 - (1) carrying out the Building Improvement Works; or
 - (2) carrying out the Building Improvement Works in a particular manner or at a particular time or particular times; or
 - (3) entering on the Leased Premises or the Licensed Areas for the Building Improvement Works Purposes; or
 - (4) anything that Council is authorised by this deed, by clause 10.1 of the Current Lease or by clause 10.1 of the Further Lease to do in respect of the Building Improvement Works.
- 12 The Tenant promises Council that the Tenant will not and nobody deriving title from the Tenant (such as an assignee, other than Council itself) will:
- (a) exercise, enforce, assert or pursue any of the Tenant Remedies; or
 - (b) commence any proceeding in a court or tribunal or under a statute (including by lodging a dispute notice under section 55 of the Act) to exercise, enforce, assert or pursue any of the Tenant Remedies.
- 13 The Tenant unconditionally assigns to Council each of the Tenant Remedies.

- 14 The Tenant appoints Council as the Tenant's attorney to do in the Tenant's name anything in respect of the Tenant Remedies that the Tenant could do. The power of attorney is given by way of security and cannot be revoked. Council may act under the power of attorney despite any conflict of interests or duties or interest and duty, and may act under the power of attorney in Council's own interests.
- 15 If a Consideration Failure Event happens:
- (a) the Tenant and Council agree that the consideration for Council's agreement in clause 5 and for the grant of the option under clause 8 will have wholly failed; and
 - (b) Council may invoice the Tenant for any instalments of annual rent (plus any additional amounts for GST) under the Current Lease and the Future Lease that:
 - (1) would have fallen due for payment during or for the Rent Free Period if this deed had not been entered into; and
 - (2) have not been paid by the Tenant to Council; and
 - (c) the Tenant's obligation to pay to Council the amounts set out in any such invoice will be reckoned and determined under the Current Lease and the Future Lease as if this deed had not been entered into, except that the Tenant will not be considered to be in breach of the Current Lease or the Future Lease for having failed to pay those amounts until 14 days from the date of the invoice have elapsed; and
 - (d) the option under clause 8 is null and void and the option cannot be exercised.
- 16 For the purposes of this deed, a '**Consideration Failure Event**' happens if:
- (a) the Tenant or a person deriving title from the Tenant (such as an assignee, other than Council itself) does any of the things referred to in clause 12; and
 - (b) for any reason whatsoever, Council cannot successfully plead this deed in bar to that action.

Arrangements for carrying out and funding Building Improvement Works

Tenant's obligations

- 17 The Tenant agrees to:
- (a) arrange for the design of the Building Improvement Works consistently with the Project Documents; and
 - (b) ensure that no substantial departures from the Project Documents are made except with Council's prior written consent; and
 - (c) ensure that the design and construction of the Building Improvement Works are in accordance with all applicable Standards and Statutory Requirements; and
 - (d) pay for all costs and expenses (including unforeseen costs) in relation to the Building Improvement Works including costs of obtaining building and plumbing approvals; and

- (e) give Council the detailed plans and specifications for the designed Building Improvement Works proposed by the Tenant at least 10 Business Days before the commencement of construction; and
- (f) ensure that construction of the Building Improvement Works:
 - (1) commences no later than 1 June 2015; and
 - (2) is completed by the end of the Rent Free Period; and
- (g) deliver the completed Building Improvement Works to the satisfaction of Council in accordance with this deed and no later than the Funding Expiry Date; and
- (h) on request by Council, give Council a list of all contractors and consultants working on the design and construction of the Building Improvement Works; and
- (i) not breach the Current Lease or the Further Lease in the design or construction of the Building Improvement Works.

Ownership of fixtures

- 18 Council will become the owner of any permanent fixture installed or constructed on the Premises in the course of the Building Improvement Works upon its installation or construction.

Tenant to obtain necessary approvals etc

- 19 To remove any doubt, this deed does not constitute, or remove the Tenant's obligation to obtain, any approval or permit required under a Statutory Requirement for the carrying out of the Building Improvement Works, including for example:
- (a) any required development permit under the *Sustainable Planning Act 2009*; and
 - (b) any required consent or approval under the Current Lease or the Further Lease.

Payment Claims

- 20 The Tenant may make a claim or claims (each a '**Payment Claim**') to Council for the payment by Council of an amount or amounts not exceeding in total \$175,000 ('**Funding Cap**').
- 21 A Payment Claim is valid only if:
- (a) the Tenant gives Council a tax invoice, complying with the GST Law, for the amount of the Payment Claim; and
 - (b) the Tenant gives Council evidence (in the form of tax invoices addressed to the Tenant from the third party suppliers, consultants and contractors and in any further form that Council requires) that satisfies Council that:
 - (1) the Tenant has bona fide paid or incurred an amount or amounts payable to third party suppliers, consultants and contractors totalling at least the amount of the Payment Claim; and

- (2) the amount has, or those amounts have, been paid or incurred solely for the purpose of the design and construction of the Building Improvement Works in accordance with this deed; and
 - (c) the amount of the Payment Claim, when added to the amounts of any previous Payment Claims paid by Council, does not exceed the Funding Cap; and
 - (d) the Further Lease has been entered into between Council and the Tenant; and
 - (e) the Payment Claim is made on or before the Funding Expiry Date; and
 - (f) construction of the Building Improvement Works has commenced.
- 22 Paragraph 21(f) does not apply to a Payment Claim that is only for the reasonable amount of a deposit payable to a construction contractor engaged by the Tenant to construct the Building Improvement Works.
- 23 If the Tenant makes a valid Payment Claim, Council will pay the amount of the Payment Claim within 30 days unless:
- (a) Council has terminated the funding arrangements under clause 55; or
 - (b) the Current Lease has been or is terminated (other than by expiry through the passage of time) or rescinded; or
 - (c) the Further Lease has been or is terminated or rescinded; or
 - (d) a valid notice has been or is given by Council or the Tenant to terminate the Current Lease or the Further Lease; or
 - (e) there has occurred or there occurs an event that constitutes a default under the Current Lease or the Further Lease or both of them that entitles Council to terminate the Current Lease or the Further Lease or both of them or to do so after the giving and expiry of a notice under section 124 of the *Property Law Act 1974*.
- 24 Council may pay the amount of a Payment Claim to:
- (a) except to the extent that the Tenant has given Council evidence that satisfies Council that the Tenant has already paid the tax invoices to the relevant third party suppliers, consultants and contractors – to either:
 - (1) the third party suppliers, consultants and contractors named in tax invoices accompanying the Payment Claim under paragraph 21(b); or
 - (2) the Tenant; or
 - (b) otherwise – to the Tenant.
- 25 If Council pays Funds to the Tenant, the Tenant must use the Funds only for the purpose of paying amounts bona fide incurred to third party suppliers, consultants and contractors solely for the purpose of the design and construction of the Building Improvement Works in accordance with this deed.
- 26 A payment of Funds made by Council is not to be construed as an acknowledgement that the Tenant has discharged his obligation under this deed.

Accounting and reporting

- 27 The Tenant must:
- (a) keep at all times proper and adequate books of account in relation to:
 - (1) the Project; and
 - (2) the Tenant's receipt and expenditure of the Funds; and
 - (b) if required by Council, at the end of each financial year at the expense of the Tenant, have its books of account in relation to its receipt and expenditure of the Funds audited, and provide a copy of the audited accounts to Council within 60 days of the end of the financial year; and
 - (c) if required by Council, provide a copy of its financial accounts to Council within 60 days of the end of the Tenant's accounting year.
- 28 The Tenant will, if required by Council, provide a copy of any agreements or contracts relating to the Project, including design and construction contracts, to Council within 10 Business Days of being requested to do so in writing.
- 29 The Tenant must, if requested by Council, provide written monthly reports (the **'Reports'**) to Council. Each Report must contain details about:
- (a) the Funds spent on the Project to the date of the Report; and
 - (b) the progress of the Project to the date of the Report; and
 - (c) any significant issues or concerns about, including emerging risks in relation to the Project that have arisen in the preceding month and how they are being dealt with by the Tenant; and
 - (d) an anticipated date for completion of the Project.
- 30 Within 10 Business Days of the completion of the Project, the Tenant must provide a final Report to Council that contains:
- (a) an outline of all monies, including the Funds, spent in relation to the Project; and
 - (b) a summary of all unresolved issues or concerns that have arisen in respect of the Project and the Tenant's proposals for dealing with those issues or concerns.
- 31 If Council request the Tenant, in writing, to produce any document, invoice or receipt relevant to a Report or the Project, the Tenant will produce the document, invoice or receipt within 10 Business Days of the request.
- 32 The Tenant acknowledges and agrees that:
- (a) it is the principal, and Council is not a co-principal, for and in respect of the Building Improvement Works arranged by the Tenant; and
 - (b) all payment obligations of Council under this deed are independent of any obligations of the Tenant to suppliers, consultants and contractors engaged by the Tenant; and

- (c) all payment obligations of Council under this deed are independent of any obligation the Tenant may have in relation to payments under the *Building and Construction Industry Payments Act 2004* ('BCIPA'); and
- (d) the Tenant is solely responsible for administering and processing any payment claims made under the BCIPA.

33 The Tenant must:

- (a) ensure that expenditure of the Project is supported by suitable documentation (including without limitation, wage schedules, bank receipts, orders and invoices) detailing the purpose of the expenditure; and
- (b) maintain separate and identifiable accounts to record expenditure of the Funds within the Tenant's accounts system, as well as ensuring that bank reconciliations are performed during the course of the Project.

34 Council or Council's auditors may inspect and make copies of books, records, documents and other materials in the possession or under the control of the Tenant and the Tenant will provide the auditors with the necessary access to the books, records, documents and materials and the necessary facilities to enable them to do so.

Insurance

35 Until the Expiry Date, the Tenant must hold and maintain at all times:

- (a) Workers' compensation insurance under the *Workers' Compensation and Rehabilitation Act 2003*; and
- (b) public liability insurance for a sum of not less than \$10 million per claim arising from any one event in respect of accidental death of or accidental bodily injury to persons, or accidental damage to property, arising out of the Tenant and Council carrying out its obligations under this deed.

36 The Tenant must also comply with all obligations of the Tenant under the Current Lease and the Further Lease regarding insurance.

37 The Tenant must ensure that the policies effected under clauses 35 and 36 cover all contractors, subcontractors, employees, licensees and invitees of the Tenant, and any volunteers assisting the Tenant in carrying out the project.

38 The Tenant, must when requested by Council provide a copy of the certificate of currency for each of the insurance policies referred to in clauses 35 and 36 within five Business Days of Council's request.

39 The Tenant will provide evidence of the policy of insurance taken out and maintained for the purpose of clauses 35 and 36 to the Council prior to the commencement of the Project.

40 The Tenant must immediately notify Council if:

- (a) any insurance required by clauses 35 and 36 is cancelled; or

- (b) the Tenant becomes aware, or should reasonably be aware, of any matter or circumstance prejudicing, or potentially prejudicing, the insurance.

Meetings

- 41 Council may from time to time convene meetings about the Project or the administration of the Funding Provisions to be held between:
 - (a) a representative or representatives of Council; and
 - (b) the Tenant; and
 - (c) any other person or persons that Council decides.
- 42 The Tenant must:
 - (a) attend any meeting convened by Council under clause 41; and
 - (b) bring to the meeting any other person that Council decides should be at the meeting (for example, a contractor working on the Project).

Indemnity

- 43 The Tenant releases and indemnifies Council, to the full extent permitted by law, from and against any claim that may be brought against or made upon or incurred by Council arising directly or indirectly out of:
 - (a) any breach of this deed by the Tenant; or
 - (b) any negligent or wilful act or omission of the Tenant in connection with the Project, except to the extent that any negligent or wilful act or omission by Council caused or contributed to the Claim.
- 44 In clause 43:
 - (a) **'Claim'** includes any claim, action, proceeding, demand, liability, obligation, costs, loss, damages and expenses; and
 - (b) a reference to Council or the Tenant respectively includes Council's and the Tenant's officers, employees, contractors and agents.
- 45 Clause 43 applies independently of any indemnity under the Current Lease or the Further Lease.

Intellectual property

- 46 The Tenant grants to Council a non-exclusive licence, exercisable both before and after the Funding Expiry Date, to use and exploit any Intellectual Property Rights held by the Lessee in:
 - (a) the Project Documents; and
 - (b) the detailed designs and drawings for the Building Improvement Works; and
 - (c) anything incorporated in the Building Improvement Works or in anything that is, or becomes, an asset of Council under clause 18.

- 47 In clause 46, **'Intellectual Property Rights'** means all copyright, registered and unregistered trade marks and service marks, patents and other proprietary intellectual property rights subsisting anywhere in the world, and any licences or rights to exploit any of the foregoing, but does not include moral rights under the *Copyright Act 1968* or corresponding rights elsewhere in the world.

Acknowledgement of funding

- 48 The Tenant must not make any public statement in relation to this deed without the written consent of Council.
- 49 The Tenant must in making any public statement or in any promotional or publicity material produced by the Lessee in relation to the Project include an acknowledgment of the support received from Council under this deed.
- 50 The Tenant must notify Council immediately on becoming aware of any event arising in the course of performing its obligations under the deed which may receive media attention.

Privacy and Personal Information

- 51 The Tenant must:
- (a) comply with Parts 1 and 3 Chapter 2 of the *Information Privacy Act 2009* in relation to the discharge of its obligations under this deed, as if the Tenant was Council; and
 - (b) not use Personal Information other than for the purpose of carrying out the Project or otherwise for the performance of this deed, unless required or authorised by law; and
 - (c) ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure or against other misuse; and
 - (d) not disclose Personal Information without the consent of Council, unless required or authorised by law; and
 - (e) not transfer Personal Information outside Australia without the consent of Council; and
 - (f) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties under this deed; and
 - (g) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties in order to perform their duties under this deed; and
 - (h) ensure that its subcontractors that have access to Personal Information comply with the same obligations as those imposed on the Tenant under this clause; and
 - (i) fully co-operate with Council to enable Council to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
 - (j) comply with such other privacy and security measures as Council reasonably advises the Tenant in writing from time to time; and

- (k) on request by Council, obtain from its employees, officers, agents, or subcontractors engaged for the purposes of this deed, an executed privacy deed in a form acceptable to Council; and
- (l) immediately notify Council upon becoming aware of any breach of this clause.

52 In clause 51, '**Personal Information**' means the same as in the *Information Privacy Act 2009*.

Right to information and disclosure

53 The Tenant acknowledges that:

- (a) the *Right to Information Act 2009* ('RTI Act') provides members of the public with a legally enforceable right to access documents held by local governments, including Council; and
- (b) the RTI Act requires that documents be disclosed upon request, unless the documents are exempt or, on balance, disclosure is contrary to the public interest; and
- (c) information relation to this deed or any reports, records or other documents provided by the Tenant to Council in accordance with this deed, are potentially subject to disclosure to third parties; and
- (d) if disclosure under the RTI Act, or general disclosure of information provided by the Tenant in connection with this deed, would be of substantial concern to the Tenant, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, the purpose or results of research or other information of a confidential nature, this should be clearly indicated by the Tenant to Council, however, Council cannot guarantee that any information provided by the Tenant will be protected from disclosure under the RTI Act.

Conflict of interest

54 The Tenant warrants that to the best of his knowledge, information and belief, no conflict of interest exists or is likely to arise in the performance of this deed, and the Tenant will promptly notify Council if any conflict of interest arises or, in the reasonable opinion of the Tenant, has the potential to arise.

Termination of funding arrangements

55 Council may terminate the funding arrangements if:

- (a) the Tenant breaches an obligation under the Funding Provisions and:
 - (1) the breach is not capable of being remedied; or
 - (2) the breach is capable of being remedied and the Tenant fails to remedy the breach within 10 Business Days after a notice to remedy from Council specifying the breach; or
- (b) Council determines that the Tenant is no longer complying with this deed in respect of the Building Improvement Works; or

- (c) Council and the Tenant cannot reach agreement in relation to a substantial change to the Building Improvement Works or the Project Documents proposed by one of them; or
- (d) the Tenant discontinues the construction of the Building Improvement Works at any time after commencement; or
- (e) information provided by the Tenant in respect of the Building Improvement Works is found to be materially false or misleading; or
- (f) Council determines that an amount paid by Council on a Payment Claim has been used by the Tenant in contravention of clause 25; or
- (g) the Tenant becomes bankrupt or subject to an arrangement under Part IX or X of the *Bankruptcy Act 1966*; or
- (h) the Lessee fails to meet the accounting requirements set out in the Agreement.

56 If Council terminates the funding arrangements under clause 55:

- (a) the termination:
 - (1) means that Council has no further obligation to pay any Payment Claim even if it has already been made; but
 - (2) does not terminate this deed as a whole and does not release the Tenant from any obligations or liabilities:
 - (A) accrued up to the time of the termination of the funding arrangements; or
 - (B) under clause 25, clauses 27 to 54, this clause and clauses 57 and 58; and
- (b) Council may, in the notice of termination or separately, require the Tenant to immediately repay all or part of the Funds paid by Council and such sum will be a debt due to and recoverable by Council from the Tenant; and
- (c) the termination and Council's rights under this clause are in addition to any other rights Council may have in relation to any breach of this deed by the Tenant.

Repayment of funding

57 If on the Funding Expiry Date:

- (a) any part of the Funds paid to the Tenant has not been spent or committed on the Project in accordance with this deed; or
- (b) any part of the Funds paid to the Tenant cannot, by reconciliation between the accounts and records maintained by the Tenant, be shown to the reasonable satisfaction of Council to have been spent or committed in accordance with this deed,

then Council may by written notice to the Tenant require the Tenant to repay that part of the Funds and the Tenant must repay to Council the amount set out in the notice within 20 Business Days after the notice is given.

58 If at any time Council forms the reasonable opinion or otherwise becomes aware that:

- (a) any part of the Funds paid to the Tenant has not been used, spent or committed by the Tenant other than in accordance with this deed; or

- (b) Council has made a payment of Funds (whether or not to the Tenant directly) to which the Tenant was not entitled under this deed,

then Council may by written notice to the Tenant require the Tenant to repay that part of the Funds and the Tenant must repay to Council the amount set out in the notice within 20 Business Days after the notice is given.

Dispute resolution

- 59 The parties will seek to settle any dispute under the Funding Provisions by negotiation, mediation and conciliation. In any such proceedings, each party may elect to be represented or accompanied by a legal practitioner.
- 60 For the avoidance or settlement of disputes, and for the better management of the Funding Provisions, Council or the Tenant may notify the other party in writing of the occurrence of a dispute and they will meet within five Business Days after receipt of the notice at a mutually convenient time and place or by teleconference and attempt to resolve the dispute.
- 61 Nothing in clause 59 or 60 prevents either party from commencing court proceedings relating to any dispute under the Funding Provisions at any time.

Definitions

- 62 For the purpose of the Funding Provisions:
- (a) **'Funding Expiry Date'** means the earlier of:
- (1) the completion of the Project by the Tenant in accordance with this deed; or
 - (2) 6 months after the earlier of:
 - (A) commencement of the construction of the Building Improvement Works; or
 - (B) 1 June 2015; and
- (b) **'Funds'** means money paid by Council:
- (1) on a Payment Claim; or
 - (2) that is intended to form part of the amount covered by the Funding Cap; and
- (c) **'Project'** means the project comprising the design and construction of the Building Improvement Works; and
- (d) **'Standard'** means any relevant:
- (1) Australian Standard published by Standards Australia; or
 - (2) if there is no relevant Australian Standard – International Standard published by the International Organization for Standardization; and
- (e) **'Statutory Requirement'** means an obligation under any applicable:
- (1) Act of Parliament; or
 - (2) regulation, regulation, order, by-law, rule, proclamation or other statutory instrument or subordinate legislation under any Act of Parliament; or

- (3) approval, consent, licence, authority, permit, notice, order, direction, instrument or requirement issued, given or made under any of the above.

Signing

Executed as a deed by Ipswich City Council by

on 26 / 05 / 15 as duly authorised Council
delegate under section 236 of the *Local
Government Act 2009*

J Flynn

(Signature of witness)

THERESE FLYNN

(Name of witness signing above)

J Lindsay

(Signature of Council delegate)

James Michael Lindsay
Chief Executive Officer

(Name and position of Council delegate)

Signed, sealed and delivered as a deed by Rajesh
Sharma on 14 / 5 / 2015

[Signature]

(Signature of witness)

GERARD PHILIP PENDER
SOLICITOR

(Name of witness signing above)

[Signature]

(Signature of Rajesh Sharma)

Attachment 1 – Project Documents

[illegible]

PRELIMINARY PLAN



Raj SHARMA - ICC Kitchen

116 Brisbane St
IPSWICH

DATE	15/04/2014	TIME	10:00
TO	MR. SHARMA - ICC		
FROM	MR. SHARMA - ICC		
SUBJECT	ICC		
REMARKS	ICC		
DATE	15/04/2014	TIME	10:00
TO	MR. SHARMA - ICC		
FROM	MR. SHARMA - ICC		
SUBJECT	ICC		
REMARKS	ICC		

[illegible]

