

EXISTING IMPROVEMENTS

YARRA RANGES SHIRE COUNCIL

AND

Dr Mark Sean O'Meadhra

**Section 17D Crown Land (Reserves) Act 1978
Lease
(Retail)**

**DEPARTMENT OF ENVIRONMENT, LAND, WATER AND
PLANNING**

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SCHEDULE 1

SCHEDULE 2 - (RENT REVIEW)

SCHEDULE 3 - FURTHER OBLIGATIONS

APPENDIX ONE (PLAN OF LAND)

THIS LEASE is made on
Schedule 1

and commences on the date in Item 4 of

BETWEEN THE LANDLORD whose name appears in Item 1 (**Landlord**)

AND THE TENANT whose name appears in Item 2 (**Tenant**)

RECITALS

- A** The Land is reserved pursuant to Section 4 of the Act for the purposes set out in Item 13.
- B** The Minister has appointed the Landlord as the Committee of Management of the Land and has power to enter into this Lease pursuant to Section 17D of the Act subject to the approval in writing of the Minister.
- C** The Landlord has agreed to lease the Land to the Tenant pursuant to Section 17D of the Act subject to the conditions, covenants, reservations, restrictions and exceptions and at the Rent set out in this Lease.

OPERATIVE PROVISIONS

1 PART 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document:

Act means the *Crown Land (Reserves) Act 1978*.

Authority includes any government, local government, statutory, public or other Person, authority, instrumentality or body having jurisdiction over the Land, the Premises or any part of it or anything in relation to it;

Bank Guarantee means an unconditional and irrevocable undertaking in a form acceptable to the Landlord given by a bank authorised under the provisions of the *Banking Act 1959* (Cth.) or an Act of the Parliament of Victoria;

Business Day means any day (except a Saturday, Sunday or public holiday) on which banks are open for business in Melbourne, Victoria;

Claim includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding and right of action;

Clause means a clause of this Lease; ("sub-clause" has a similar meaning); a reference to a Clause followed by a number refers to the relevant Clause in this Lease;

Commencement Date means the date set out in Item 4;

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever;

Crown means the Crown in right of the State of Victoria;

Default Rate means the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983*; if that rate ceases to be published then it means any rate substituted in its place;

Further Obligations means any obligations set out in Schedule 3;

Further Term means the further term or terms set out in Item 8;

GST means any consumption, goods and services or value added tax, by whatever name called, imposed, levied or collected by any Federal or State Government which operates at any time or times during the Term or any renewal or overholding of the Lease including, without limitation, GST as defined in the GST Act and any replacement tax;

GST Act means *A New System (Goods and Services Tax) Act 1999*;

Guaranteed Sum means the amount set out in Item 9;

Hazardous Materials includes any substance, material, thing, component or element which is hazardous, a contaminant or a pollutant to persons or property;

Insured Sum means the amount set out in Item 12;

Her Majesty means Her Majesty Queen Elizabeth II and her heirs and successors;

Item means the relevant item in Schedule 1 to this Lease;

Land means the land described in Item 3 to a depth of 15 metres below the surface and all rights, easements and appurtenances usually and normally enjoyed with that land and listed in Item 15 of Schedule 1 together with any improvements, fixtures, fittings, plant, equipment and chattels on the land at the Commencement Date;

Landlord means the Landlord named in this Lease and the person for the time being entitled to the Lease reversion when the Lease ends;

Landlord's Agents means the employees, contractors, agents and any other Person appointed from time to time by the Landlord as agent of the Landlord;

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or local law, present or future, and whether State, Federal or otherwise;

Minister means the Minister having responsibility for the administration of the Act or such other Minister of the Crown or Authority to whom responsibility for this Lease may at any time be given;

Minister's Agents and Officers includes any person, committee or delegate (including any statutory authority or statutory body corporate or committee for the time being responsible for the administration, care and management of the Land) from time to time responsible for carrying out functions, including the functions of the Minister, under this Lease;

Name and Notice Address means the name and address in Item 11 as it may be changed from time to time;

Notice means any notice or other written communication;

Party means a party to this Lease and includes any Guarantor;

Permitted Use means the permitted use of the Land set out in Item 7;

Person includes any corporation and vice versa;

Premises mean the Land and the Tenant's Improvements;

Proposed Work means the construction, alteration, addition, renovation, refurbishment, demolition, removal of or to any improvement on the Land;

Rates and Taxes means all existing and future rates (including any special rates or levies) taxes (excluding if the *Retail Act* applies and prohibits its recovery land tax charged against the Landlord as owner of the Land), duties, charges, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the Land or the Landlord or the Tenant or payable by the owner or occupier of the Land;

Rent means the annual Rent set out in Item 6;

Requirement includes any lawful Notice, order or direction received from or given by any Authority or pursuant to any Law, in writing or otherwise, and notwithstanding to whom such Requirement is addressed or directed but if not addressed to the Tenant then the Tenant must be given a copy;

Retail Act means the *Retail Leases Act 2003*;

Review Date means at the date or dates set out in Item 10.

Services means all services installed or to be installed and connected to the Premises including, without limitation, gas, electricity, telephone and telecommunication, water, sewerage and drainage;

Supply means the supply of any good, service or thing by either Party under this Lease.

Tenant means the Tenant named in this Lease and includes in the case of a:

- (a) corporation the Tenant, its successors and permitted assigns;
- (b) natural Person the Tenant, his executors, administrators and permitted assigns;

Tenant's Employees means each of the Tenant's employees, agents, contractors, invitees or others (whether with or without invitation), sublessees, licensees and concessionaires or others (whether expressly or impliedly) who may at any time be in or upon the Land;

Tenant's Improvements means those items listed in Item 16 of Schedule 1 and all buildings, structures, fixtures, fittings, plant, equipment, partitions, signs or other material or articles and chattels of all kinds which are at any time erected or installed by the Tenant in or on the Land;

Term means the term of this Lease set out in Item 5 commencing from and including the Commencement Date; and

this Lease or "the Lease" means this lease and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

1.2 Interpretation

- (a) The singular includes the plural and vice versa;
- (b) A gender includes all genders;
- (c) An obligation imposed by this Lease on more than one Person binds them jointly and severally;
- (d) Every covenant by the Tenant includes a covenant by the Tenant to procure compliance with the covenant by each of the Tenant's Employees;
- (e) A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it and a regulation, rule or statutory instrument issued under it;
- (f) This Lease must be interpreted so that it complies with all Laws applicable in Victoria. Any provision must be read down so as to give it as much effect as possible. If it is not possible to give a provision any effect at all, then it must be severed from the rest of the Lease. If any provision or part of it cannot be so read down, such provision or part shall be deemed to be void and severable and the remaining provisions of this Lease shall not in any way be affected or impaired;
- (g) Unless otherwise stated, no provision of this Lease limits the effect of any other provision of this Lease. "Including" and similar expressions are not and must not be treated as words of limitation;
- (h) A reference to the Land, Premises or any thing includes the whole and each part of it;
- (i) The Landlord and the Tenant agree that:
 - (i) the terms contained in this Lease constitute the whole of the agreement in respect of the Land and Premises between the Landlord and the Tenant and all previous negotiations and agreements are negated;
 - (ii) no further terms are to be implied or arise between the Landlord and the Tenant by way of collateral or other agreement made by or on behalf of the Landlord or by or on behalf of the Tenant on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negated;
 - (iii) no information, representation or warranty by the Landlord or the Landlord's agents was supplied or made with the intention or knowledge that it would be relied on by the Tenant in entering into this Lease; and
 - (iv) no information, representation or warranty has been relied on by the Tenant in entering into this Lease.
- (j) Headings and the index to this Lease are for guidance only and do not affect the interpretation of this Lease;
- (k) If a reference is made to any Person, body or Authority and that person, body or Authority has ceased to exist, then the reference is deemed to be a reference to the

Person, body or Authority that then serves substantially the same or equivalent objects as the Person, body or Authority that has ceased to exist;

- (l) Reference to the President of a Person, body or Authority must, in the absence of a President, be read as a reference to the senior officer or equivalent employee for the time being of the Person, body or Authority or such other Person fulfilling the duties of President;
- (m) A reference to "writing" or "written" and any words of similar import include printing, typing, lithography and any other means of reproducing characters in tangible and visible form, including any communication effected through any electronic medium if such communication is subsequently capable of reproduction in tangible or visible form;
- (n) A reference to "corporation" and any other words or expressions used or defined in the *Corporations Act 2001*, unless the context otherwise requires, has the same meaning that is given to them in the *Corporations Act 2001*;
- (o) This Lease is governed by Victorian law. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them. Except as expressly agreed in writing by both Parties or for an action required at a federal level, each Party waives any right it has to object to an action being brought in any court outside Victoria including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction;
- (p) If the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, the day or last day for doing the thing or date on which the entitlement arises for the purposes of this Lease shall be the next Business Day;
- (q) Each provision of this Lease continues to have full force and effect until it is satisfied or completed;
- (r) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (s) A reference to an agreement or a document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Lease.

1.3 Minister's delegations

- (a) Wherever this Lease refers to an action, consent, approval or other thing to be done by, or matter to be considered by the Minister, the reference to the Minister shall be deemed to include a reference to the Minister's Agents and Officers.
- (b) The Minister may appoint any person as the Minister's delegate to exercise all powers conferred by this Lease on the Minister expressly, including without limitation, the power to give any consent or approval pursuant to this Lease.
- (c) The Minister may change the appointment at any time.

2 PART 2 - EXCLUSION OF STATUTORY PROVISIONS

2.1 Moratorium

To the extent permitted by law, the application to this Lease or to any Party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any Party is excluded and negatived.

2.2 Exclusion of Statutory Provisions

The covenants, powers and provisions implied in leases by virtue of the *Transfer of Land Act 1958* are expressly negatived.

3 PART 3 - LEASE OF LAND

3.1 Lease of Land for Term

The Landlord leases the Land to the Tenant for the Term.

3.2 Landlord's Reservations

The Landlord reserves the right for the Landlord and the Landlord's Agents to:

- (a) carry out any works that may be required to comply with any applicable Law or Requirement; and
- (b) create any registered or unregistered easement or other right over the Land as long as it does not adversely affect the Tenant's rights under this Lease;
- (c) enter the Land and the Premises for the purposes set out in this Clause.

3.3 Other Reservations

This Lease is granted subject to the following reservations:

- (a) the reservation to the Crown of all gold and minerals within the meaning of the *Mineral Resources Development Act 1990* and petroleum within the meaning of the *Petroleum Act 1958*, all of which are described as the "reserved minerals";
- (b) the reservation to the Crown of the rights of access for the purpose of searching for and obtaining the reserved minerals in any part of the Land;
- (c) the reservation to the Crown of the rights of access for any pipeline works and other purposes necessary for obtaining and conveying on and from the Land any of the reserved minerals obtained in any part of the Land; and
- (d) the right to resume the Land for mining purposes under Section 205 of the *Land Act 1958*.

3.4 Landlord's Exercise of Rights

Except in an emergency, the Landlord must give the Tenant reasonable notice of the Landlord's intended exercise of the rights set out in this Clause. The Landlord must only

exercise the rights at reasonable times and must minimise interference to the Tenant when doing so.

3.5 Ownership of Tenant's Improvements

The Tenant owns all of the Tenant's Improvements unless the Act requires any buildings and structures erected on the Land by the Tenant to be and to remain the property of the Landlord.

4 PART 4 - RENT

4.1 Tenant to pay Rent

The Tenant covenants to pay the Rent:

- (a) at the times and in the manner set out in Item 6 without demand by the Landlord;
- (b) without any abatement, deduction or right of set-off;
- (c) to the Landlord at the address set out in Item 14 or to any other address or in any other way the Landlord directs the Tenant by Notice.

4.2 Apportionment of Rent

If the Commencement Date is not the first day of a rent period, the first and last instalments of Rent will be apportioned on a pro-rata daily basis for the periods from:

- (a) the Commencement Date to the first day of the next rent period;
- (b) the first day of the last rent period of the Term until the date on which the Term expires.

5 PART 5 - RATES AND TAXES AND GST

5.1 Tenant to pay Rates and Taxes

The Tenant must pay the Rates and Taxes:

- (a) to the assessing Authority on time if assessed directly against the Tenant or the Land; but otherwise
- (b) to the Landlord by the date which is 10 Business Days before the due date for payment if the Landlord must pay the Rates and Taxes and has given the Tenant a copy of the notice at least 10 Business Days before then.

5.2 Tenant to Produce Receipts

The Tenant must produce receipts to the Landlord evidencing payment of the Rates and Taxes by the due date for payment if the Tenant is required to pay them to the assessing Authority.

5.3 Pro-rata apportionment

If necessary, the Rates and Taxes will be apportioned on a pro-rata daily basis at the beginning and at the end of the Term.

5.4 Goods and Services Tax

- (a) If GST is or will be or is purported to be payable on any Supply the Party receiving the Supply must pay the Party making the Supply a sum equal to any GST payable by the supplier for that Supply.
- (b) To the extent that one Party is required to reimburse the other Party for costs incurred by the other Party, those costs do not include any amount in respect of GST for which the Party is entitled to claim an input tax credit.
- (c) A Party's obligation to pay an amount under this Clause is subject to a valid tax invoice being delivered to that Party. For the avoidance of any doubt, the Rent and all other payments under this Lease are exclusive of GST.

6 PART 6 - COST OF SERVICES AND MAINTENANCE

6.1 Services

The Tenant must pay Costs for all Services (including any special, additional or unusual Services separately supplied, metered, consumed or connected as appropriate in, to or on the Land or the Premises):

- (a) by direct payment on or before the due date if assessed directly against the Land or the Premises; but otherwise
- (b) by reimbursing the Landlord by the date which is 5 Business Days before the due date for payment if the Landlord has given a copy of the Notice to the Tenant at least 10 Business Days before then.

6.2 Maintenance

If the *Retail Act* applies and to the extent permitted by the *Retail Act*, the Tenant must reimburse the Landlord on demand for costs incurred by the Landlord in maintaining the Premises in accordance with Section 52 of the *Retail Act*.

7 PART 7 - COSTS

The Tenant must pay to the Landlord all the Landlord's reasonable legal and other Costs including the costs of valuers, quantity surveyors and other consultants engaged by the Landlord of and incidental to:

- (a) if the *Retail Act* does not apply, the negotiation, preparation and execution of this Lease;
- (b) any consent required under this Lease;
- (c) any assignment or subletting for which the Landlord's consent is required by this Lease;
- (d) any variation, extension, surrender or termination of this Lease otherwise than by effluxion of time;
- (e) any default by the Tenant or the Tenant's Employees in observing or performing any covenants contained or implied in this Lease.

8 PART 8 - INTEREST

8.1 Payment

The Tenant must pay on demand interest at the Default Rate on any Rent or other moneys which the Tenant has not paid within 30 days of the due date for payment.

8.2 Calculation

Interest is to be calculated daily from the due date and is to continue until the overdue money is paid. The interest will be capitalised on the last day of each month and may be recovered in the same way as Rent in arrears.

8.3 No Prejudice

If the Landlord requires a Tenant to pay interest, it is without prejudice to any other rights, powers and remedies which the Landlord may have under this Lease or at law.

9 PART 9 - USE OF PREMISES

9.1 Tenant's Permitted Use and negative covenants

The Tenant must not:

- (a) use the Premises for any purpose other than the Permitted Use;
- (b) do anything in or on the Premises which in the reasonable opinion of the Landlord causes or may cause nuisance, damage, disturbance or danger to the Landlord or the occupiers or owners of any other property;
- (c) use or allow the use of any radio, television or other sound producing equipment at a volume that can be heard outside the Premises except with the prior written consent of the Landlord which is not to be unreasonably withheld but may be given conditionally;
- (d) affix any television or radio mast or antennae, satellite dish or any other communication device to any part of the Premises except with the prior written consent of the Landlord which is not to be unreasonably withheld but may be given conditionally;
- (e) write, paint, display, hang or affix any sign, advertisement, placard, name, flagpole, flag or notice on any part of the Premises except with the prior written consent of the Landlord which is not to be unreasonably withheld but may be given conditionally;
- (f) overload the floor, walls, roof or any other part of the Premises, or, bring onto or remove from the Premises any plant or heavy equipment which by reason of its weight or vibration in its operation or in any way is likely in the reasonable opinion of the Landlord to cause damage to any part of the Premises or the Services;
- (g) except to the extent that they are necessary for the Permitted Use and then only in compliance with any Law or Requirement and in such quantities as are reasonably appropriate, store Hazardous Materials on or in the Premises;

- (h) install any equipment or system in the Premises that overloads or may overload the electrical or other Services to the Premises;
- (i) use the Premises as a residence unless it is a Permitted Use;
- (j) use the Premises for an illegal purpose;
- (k) burn any rubbish or waste on the Premises other than the burning of vegetation in accordance with all necessary permits.

9.2 Tenant's positive covenants

The Tenant at its Cost must:

- (a) at all times carry out the Permitted Use in a business like and reputable manner;
- (b) keep the Premises clean and not permit any accumulation of useless property or rubbish in them;
- (c) keep the Premises free of pests, insects and vermin;
- (d) provide the Landlord (and keep updated when it changes) with the name, postal address, e-mail address, telephone and facsimile transmission numbers of a person or persons to contact during and after business hours if an emergency arises which affects the Premises;
- (e) comply with the Landlord's reasonable operational requirements for the Services and not interfere with the Services;
- (f) on vacating the Premises, remove all lettering, signs, flagpoles, flags, and other distinctive marks from the Premises and make good any damage caused by the removal;
- (g) obtain, maintain and comply with all consents or approvals from all Authorities which from time to time are necessary or appropriate for the Permitted Use. The Tenant must not by any act or omission cause or permit any consent or approval to lapse or be revoked;
- (h) maintain documented risk management identification and treatment programs for the Premises and the Services;
- (i) arrange for the regular and efficient removal from the Premises of its refuse and rubbish;
- (j) the Tenant must if a notifiable infectious illness occurs in the Premises promptly give Notice to the Landlord and all relevant Authorities and thoroughly fumigate and disinfect the Premises to the satisfaction of the Landlord and all relevant Authorities;
- (k) undertake all fire protection works on the Land required by Law to the satisfaction of the Landlord and all relevant Authorities;

- (l) permit the Landlord or the Landlord's servants or agents with or without vehicles and equipment, workmen or others at all times to enter the Land for fire protection and suppression purposes;
- (m) comply with the further obligations, if any, set out Schedule 3.

9.3 No warranty as to use

- (a) The Landlord gives no warranty (either present or future) that the Land or the Premises are fit for the Permitted Use.
- (b) The Tenant has entered into this Lease with full knowledge of and subject to any prohibitions or restrictions contained in any Law or any Requirement on how the Land or the Premises may be used.

9.4 To Let Signs and Inspection

The Landlord may after giving reasonable notice and at reasonable times:

- (a) place advertisements and signs on those parts of Land and Premises as are reasonable having regard to the interests of the Landlord and the Tenant where the Premises are available for lease if the Tenant does not exercise any option to renew this Lease for a Further Term;
- (b) by appointment with the Tenant, show prospective tenants through the Land and the Premises.

The Landlord in exercising rights under this Clause must endeavour to minimise any inconvenience to the Tenant.

9.5 Cost of alteration

Pay to the Landlord on demand the Cost reasonably incurred by the Landlord of any alteration to any Services, sprinkler or fire prevention equipment and installations (including alarms) which may become necessary because of the non-compliance of the Tenant or of the Tenant's Employees with any Requirements, including those of any Tenant's insurer of the Premises or any Tenant's fittings within the period required or, if no period is required, within a reasonable period to meet those requirements.

10 PART 10 - COMPLIANCE WITH LAWS AND REQUIREMENTS

10.1 Compliance with Laws

- (a) The Tenant at its Cost must comply with and observe all Laws and Requirements relating to the Land, the Premises, the Services and the Permitted Use. If the Tenant receives any Notice from an Authority, the Tenant must immediately provide a complete copy of it to the Landlord;
- (b) Before complying with any Law or Requirement, the Tenant must:
 - (i) obtain the written consent of the Landlord which is not to be unreasonably withheld and;
 - (ii) observe the provisions of this Lease.

10.2 Landlord may comply with Laws if Tenant defaults

If the Tenant fails to do so, the Landlord may comply with any Law or Requirement referred to in this Clause either in part or whole. If the Landlord does this:

- (a) any Costs incurred by the Landlord must be paid or reimbursed to the Landlord by the Tenant;
- (b) it is without prejudice to any of the Landlord's other rights in respect of non-compliance by the Tenant with its obligations under this Lease.

11 PART 11 - MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS

11.1 General repairing obligation

- (a) The Tenant at its Cost during the Term and any extension or holding over must keep the Premises and the Services in good repair and condition and clean and tidy. For the avoidance of any doubt, the Tenant acknowledges that the Landlord will have no responsibility for any repairs or maintenance to the Premises and the Services, except if the *Retail Act* applies and then only to the extent required by the *Retail Act*;
- (b) Before carrying out any repairs or maintenance to the Premises, the Tenant must obtain the written approval of the Landlord and all relevant Authorities but the Tenant will not be required to obtain written or any form of approval from the Landlord for maintenance of a non-structural nature.

11.2 Landlord's right of inspection

The Landlord or the Landlord's Agents may enter the Premises and view the state of repair and condition of the Premises and Services:

- (a) in the presence of the Authorised Officer of the Tenant if required by the Tenant;
- (b) at reasonable times on giving to the Tenant reasonable notice in writing (except in the case of emergency when no notice is required) .

11.3 Enforcement of repairing obligations

The Landlord may serve on the Tenant a Notice:

- (a) specifying any failure by the Tenant to carry out any repair, replacement or cleaning of the Premises or the Services which the Tenant is required to do under this Lease; and/or
- (b) require the Tenant to carry out the repair, replacement or cleaning within a reasonable time. If the Tenant does not comply with the Notice, the Landlord may elect to carry out such repair, replacement or cleaning and any Costs incurred must be paid by the Tenant when demanded by the Landlord.

11.4 Landlord may enter to repair

The Landlord, the Landlord's Agents and others authorised by the Landlord may at all reasonable times after giving the Tenant reasonable notice (except in the case of

emergency when no notice is required) enter the Land and the Premises to carry out any works and repairs in the circumstances set out below. In doing so, the Landlord must endeavour not to cause undue inconvenience to the Tenant.

- (a) The circumstances for entry are:
 - (i) to carry out any repairs on or to the Premises or the Services, which the Landlord considers necessary or desirable or which relate to anything which the Landlord is obliged or entitled to do under this Lease;
 - (ii) if an Authority requires any repair or work to be undertaken on or to the Premises or the Services which the Landlord is either required or in the Landlord's discretion elects to do and for which the Tenant is not liable under this Lease; and/or
 - (iii) if the Landlord elects to carry out any repair work which the Tenant is required or liable to do under this Lease by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done.

11.5 Alterations to Premises

- (a) The Tenant must not and must not permit any other person to carry out any Proposed Work without the Landlord's and the Minister's prior written consent which must not be unreasonably withheld or delayed;
- (b) In seeking the Landlord's and the Minister's consent the Tenant must submit plans and specifications of the Proposed Work for the approval of the Landlord together with a list of the Persons (if any) from or to whom the Tenant proposes to call a tender or award a contract for the Proposed Work;
- (c) the Landlord and the Minister may give consent subject to the Tenant satisfying the following requirements:
 - (i) any Proposed Work must be supervised by a Person approved by the Landlord;
 - (ii) any Proposed Work must be executed promptly and continuously in a proper and workmanlike manner, using the materials and by contractors or tradesmen approved by the Landlord (unless the *Retail Act* applies in which case the Landlord's approval is not required but the contractors and tradesmen must be fully qualified and experienced), in accordance with all Laws and Requirements;
 - (iii) the Tenant must pay on demand all Costs incurred by the Landlord in considering or inspecting the Proposed Work and its supervision, including the reasonable fees of architects, engineers or other building consultants reasonably engaged by or on behalf of the Landlord;
 - (iv) the Tenant must obtain and keep current and comply with all necessary approvals or permits from all Authorities necessary to enable any Proposed Work to be lawfully effected, and must on request by the

Landlord produce for inspection by the Landlord copies of all such approvals and permits;

- (v) on completion of the Proposed Work the Tenant must immediately obtain and produce to the Landlord, any unconditional certificates of compliance or of satisfactory completion issued by relevant Authorities and, a certificate by a consultant approved by the Landlord that the Proposed Work has been carried out in accordance with the plans and specifications approved by the Landlord.

11.6 Notice to Landlord of damage, accident etc

The Tenant must immediately give Notice to the Landlord of any:

- (a) damage however caused, accident to or defects in the Premises or the Services;
- (b) circumstances likely to cause any damage or injury occurring within the Premises of which the Tenant has actual or constructive notice;
- (c) any fault in the Services; or
- (d) Notice from any Authority.

12 PART 12 - ASSIGNMENT AND SUBLETTING

12.1 No disposal of Tenant's interest

The Tenant must not without the prior written consent of the Landlord and the Minister:

- (a) assign, transfer, sub-let, grant any licence, mortgage, encumber, charge or part with or share the possession of or otherwise deal with or dispose of the Tenant's estate or interest in the Land or any part of the Land or the Premises;
- (b) declare itself trustee of the Land or any part of the Land or of any legal or equitable estate or interest in the Land or the Premises.

12.2 Landlord's consent

If the *Retail Act* applies, the Landlord and the Minister will consent to a proposed assignment of the Premises if:

- (a) the Tenant seeks the Landlord's consent in the manner provided by the Act;
- (b) the Tenant is not at the time in breach of this Lease;
- (c) the Tenant proves to the satisfaction of the Landlord that the proposed assignee is a respectable, responsible and solvent Person having the financial capacity and trading experience necessary to enable the Permitted Use to be successfully undertaken and maintained. The Tenant must submit to the Landlord all information reasonably required by the Landlord including:
 - (i) at least two references as to the proposed assignee's business experience;

- (ii) at least two references as to the proposed assignee's financial circumstances; and
 - (iii) a detailed statement of the financial circumstances of the proposed assignee and any proposed guarantor;
- (d) the Tenant arranges for the proposed assignee to execute a deed of assignment of lease:
- (i) to which the Landlord is a party;
 - (ii) in a form approved by the Landlord or its solicitors;
 - (iii) which contains a covenant by the assignee to be bound by the terms of the Lease and unless the Act provides otherwise an acknowledgment by the Tenant that the Tenant is not to be released from its obligations under the Lease;
- (e) if the proposed assignee is a company (other than a company whose shares are listed on the Australian Stock Exchange) then all the directors and shareholders of the company and any ultimate holding company (as defined in the *Corporations Act 2001* (Commonwealth)) of that company must by deed (in a form acceptable to the Landlord) guarantee the due performance by the company of the terms and conditions of the Lease; and
- (f) the Tenant pays to the Landlord all Costs incurred by the Landlord in enquiring as to the respectability, responsibility and solvency of the proposed assignee and of obtaining the approval by the Landlord's solicitors of the documents referred to in this Clause.

12.3 Deemed assignment on change of shareholding

There is a deemed assignment under this Clause if the Tenant is a Corporation (other than an incorporated association) and there is any change in any of the following which results in a change in the effective control of the Tenant:

- (a) the membership of the Corporation or any holding Company of the Corporation;
- (b) the beneficial ownership of any shares in the capital of the Corporation or any holding Company of the Corporation; or
- (c) the beneficial ownership of the business or assets in the Corporation or part of it.

If any of these events occur then the Tenant must obtain the Landlord's written consent under this Clause. This does not apply in relation to the sale of shares in the Tenant or the Tenant's holding company that is listed on a recognised stock exchange.

12.4 Acceptance of Rent by Landlord

The acceptance by the Landlord of any Rent or other payment from any Person other than the Tenant does not constitute an acknowledgment by the Landlord that it recognises that person as the Authorised assignee or sub tenant.

12.5 S.144 excluded

Section 144 of the *Property Law Act 1958* does not apply to this Lease.

13 PART 13 - INSURANCE AND INDEMNITIES**13.1 Insurances to be taken out by Tenant**

The Tenant must effect and maintain at the Tenant's Cost:

- (a) a standard public liability insurance policy endorsed to extend the indemnity under the policy to include the Tenant's liability under Clause 13.5. The policy must:
 - (i) be for an amount of not less than the Insured Sum or such higher amount as the Landlord may reasonably require in respect of any single occurrence; and
 - (ii) be on terms that the insurer waives all rights of subrogation against the Landlord;
- (b) insurance for the Premises and all Tenant's property for their full replacement value; and
- (c) any other insurance reasonably required by the Landlord.

13.2 Tenant's insurance obligations

The Tenant must:

- (a) ensure that all policies of insurance effected by the Tenant pursuant to this Clause are taken out with an insurance office or company authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia including policies underwritten by Lloyd's of London or otherwise approved by the Landlord.
- (b) by 30 July in each year of the Term produce to the Landlord a certificate of currency; and
- (c) pay all premiums and other money payable in respect of the insurance policies when they become due and payable.

13.3 Non-vitiating of policies

The Tenant must not do anything in, to or on the Premises and must use its best endeavours not to allow anything to be done which may vitiate or render void or voidable any Tenant's insurances or any condition of any insurance taken out by the Landlord of which the Tenant has been made aware in respect of the Premises or any property in or on it.

13.4 Exclusion of Landlord's liability

- (a) In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents, the Tenant acknowledges that all property which may be in or on the Premises will be at the sole risk of the

Tenant and the Landlord will not be liable for any Claim that the Tenant or the Tenant's Employees or any Person claiming by, through or under the Tenant may incur or make or any which arises from:

- (i) any fault in the construction or state of repair of the Premises or any part of it; or
 - (ii) the collapse of the Premises irrespective of the cause; or
 - (iii) any defect in any Services; or
 - (iv) the flow, overflow, leakage, condensation or breakdown of any water, air-conditioning, gas, oil or other sources of energy or fuel, whether from the roof, walls, gutter, downpipes or other parts of the Premises.
- (b) In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents, the Tenant agrees that the Landlord will not be responsible for and releases the Landlord, the Crown and the Landlord's Agents from liability in respect of any:
- (i) Claim relating to any property of the Tenant or any other Person in or on the Premises or any part of it however occurring; or
 - (ii) death, damage or injury to any Person or property in on or under the Premises or on any land near it suffered as a direct consequence of the construction, operation, presence or maintenance of the Premises and including, without limitation, damage or injury to any person or property resulting from any collision with or the collapse of the Premises.

13.5 Indemnities

In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Landlord or the Landlord's Agents and Officers and despite:

- (a) any Claims having resulted from anything which the Tenant may be authorised or obliged to do under this Lease; and/or
- (b) at any time any waiver or other indulgence having been given to the Tenant in respect of any obligation of the Tenant under this Clause,

the Tenant will indemnify and keep indemnified the Landlord, the Landlord's Agents and the Crown from and against all Claims for which any of them will or may be or become liable, during or after the Term, in respect of or arising from:

- (i) any cause whatever in respect of damage or injury to the Premises, to any property or to any Person or the death of any Person inside or outside the Premises caused or contributed to by any neglect or default of the Tenant or the Tenant's Employees under this Lease or by the use of the Premises by the Tenant or by the Tenant's Employees including, without limitation, injury or death to any Person or property resulting from any collision with or collapse of the Premises;
- (ii) the negligent or careless use or neglect of the Services and facilities of the Premises by the Tenant or the Tenant's Employees or any other

Person claiming through or under the Tenant or of any trespasser while such trespasser is in or on the Premises caused or contributed to by any default or negligent act or omission of the Tenant;

- (iii) overflow or leakage of water (including rain water) or from any Services whether originating inside or outside the Premises caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Employees or other Person claiming through or under the Tenant;
- (iv) failure of the Tenant to give Notice to the Landlord of any defect in any of the mechanical or any other Services in the Premises within a reasonable time of the Tenant becoming aware of it; and
- (v) damage to plate, float and other glass caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Employees.

14 PART 14 - DAMAGE AND DESTRUCTION

14.1 If the Retail Act applies

If the *Retail Act* applies and contains provisions dealing with damage to the Premises, the provisions of the *Retail Act* will apply.

14.2 If the Retail Act does not apply

If the *Retail Act* does not apply or does not contain provisions dealing with damage to the Premises, clauses 14.3 to 14.5 apply.

14.3 Tenant to reinstate Premises

If the Premises or any part of them are at any time damaged or destroyed by any disabling cause then the Tenant must expeditiously re-instate the Premises and make them fit for the occupation and use by the Tenant as if it was Proposed Work.

14.4 Obligation to reinstate is absolute

The Tenant's obligation under Clause 14.3 to reinstate the Premises applies irrespective of how the damage and destruction occurred and irrespective of whether any policy of insurance effected for the Premises is avoided or payment refused or reduced.

14.5 Rent and Rates and Taxes

The Tenant must continue to pay the Rent and the Rates and Taxes even if the Premises are destroyed or damaged.

15 PART 15 - LANDLORD'S COVENANT

15.1 Quiet Enjoyment

If the Tenant pays the Rent and observes and performs in a timely fashion the covenants and conditions on its part contained in this Lease, the Tenant may occupy and enjoy the Land during the Term without any interruption by the Landlord or by any Person claiming through the Landlord except as provided in this Lease.

16 PART 16 - TERMINATION AND DEFAULT

16.1 Events of Default

The following are Events of Default:

- (a) if the Rent or any other money payable under this Lease is not paid within 30 days of the due date for payment whether legally demanded or not;
- (b) if the Tenant at any time fails to perform or observe any of its obligations under this Lease;
- (c) if the Tenant or the Guarantor are companies then if either the Tenant or the Guarantor:
 - (i) enter into any compromise or arrangement with any of its creditors or if an application is made to any court for an order summoning a meeting of creditors; or
 - (ii) has a receiver or receiver and manager or administrator or controller appointed of any of its assets; or
 - (iii) is wound up or dissolved or notice is given of intention to propose a resolution for winding up or an order is made or resolution passed or an application is made for winding up or dissolution; or
 - (iv) has a resolution passed by the directors that in their opinion the company can no longer continue its business; or
 - (v) calls a meeting of its creditors pursuant to the *Corporations Act 2001*; or
 - (vi) is placed under official management or if the members determine to convene a meeting of creditors for the purpose of placing the company under official management; or
 - (vii) has an inspector appointed pursuant to *the Australian Securities and Investments Commission Act 2001*; or
 - (viii) is unable to pay its debts as and when they fall due; or
 - (ix) makes an assignment for the benefit of or enters into an arrangement or composition or a moratorium whether formal or informal with its creditors or financiers; or
 - (x) has a provisional liquidator or a liquidator by any means appointed;
- (d) if any execution exceeding ten thousand dollars is issued, levied or enforced against the Tenant or the Guarantor or on any of the assets of the Tenant or the Guarantor unless such execution is fully paid or satisfied within seven days from the date of the issue, levy or enforcement, or appropriate legal proceedings to invalidate the execution are taken within seven days of the issue, levy or enforcement; and

- (e) if the Tenant or the Guarantor is a natural person and becomes or is made bankrupt or makes any assignment of his estate or any part of it for the benefit of creditors or otherwise seeks relief under or takes advantage of any Law for the time being in force relating to bankruptcy or insolvent debtors or causes or permits his goods to be levied on or under any execution or other legal process.

16.2 Forfeiture of Lease

If an Event of Default occurs the Landlord may, without prejudice to any other Claim which the Landlord has or may have against the Tenant or any other Person at any time re-enter into and upon the Land or any part of it in the name of the whole and thereupon this Lease will be absolutely determined.

16.3 Re-entry

The right of re-entry for breach of any covenant or condition to which section 146(1) of the *Property Law Act 1958* applies must not be exercised until the expiration of 30 days after the Landlord has served on the Tenant the notice required pursuant to that section.

16.4 Landlord may rectify

If the Tenant is in default under this Lease and fails to commence to rectify that default within 7 days of the Landlord notifying the Tenant in writing of that default and requiring its rectification or, having commenced, fails to expeditiously complete that rectification within a reasonable time, the Landlord may, but will not be obliged to, remedy at any time without further notice any default by the Tenant under this Lease. If the Landlord so elects all reasonable Costs incurred by the Landlord (including legal costs and expenses) in remedying the default will constitute a liquidated debt and must be paid by the Tenant to the Landlord on demand.

16.5 Waiver

- (a) The Landlord's failure to take advantage of any default or breach of covenant by the Tenant will not be or be construed as a waiver of it, nor will any custom or practice which may grow up between any of the Parties in the course of administering this Lease be construed to waive or to lessen the right of the Landlord to insist upon the timely performance or observance by the Tenant of any covenant or condition of this Lease or to exercise any rights given to the Landlord in respect of any such default;
- (b) A waiver by the Landlord of a particular breach is not deemed to be a waiver of the same or any other subsequent breach or default;
- (c) The demand by the Landlord for, or subsequent acceptance by or on behalf of the Landlord of, Rent or any other money payable under this Lease will not constitute a waiver of any earlier breach by the Tenant of any covenant or condition of this Lease, other than the failure of the Tenant to make the particular payment or payments of Rent or other moneys so accepted, regardless of the Landlord's knowledge of any earlier breach at the time of acceptance of such Rent or other moneys.

16.6 Tender after determination

If the Landlord accepts money from the Tenant after the Landlord ends this Lease the Landlord may (in the absence of any express election of the Landlord) apply it:

- (a) first, on account of any Rent and other moneys accrued and due under this Lease but unpaid at the date the Lease is ended; and
- (b) secondly, on account of the Landlord's Costs of re-entry.

16.7 Essential terms

The Landlord and the Tenant agree that each of the following covenants by the Tenant are essential terms of this Lease:-

- (a) to pay the Rent;
- (b) to keep the Premises open for use;
- (c) to carry on the Permitted Use;
- (d) to comply with Laws and Requirements;
- (e) subject to this Lease, to repair and maintain and, if necessary, reinstate or demolish the Tenant's Improvements;
- (f) not to assign this Lease or sub-let the Land or any part of it;
- (g) to take out and keep current those insurances required to be taken out by the Tenant;
- (h) to pay or reimburse Rates and Taxes.

16.8 Damages for Breach

The Tenant covenants to compensate the Landlord for any breach of an essential term of this Lease. The Landlord may recover damages from the Tenant for such breaches. The Landlord's entitlement under this Clause is in addition to any other remedy or entitlement to which the Landlord is entitled (including to terminate this Lease).

16.9 Repudiation by Tenant

- (a) The Tenant covenants to compensate the Landlord for any loss or damage suffered by reason of the Tenant's conduct (whether acts or omissions):
 - (i) constituting a repudiation of this Lease or of the Tenant's obligations under this Lease; or
 - (ii) breaching any Lease covenants.
- (b) The Landlord may recover damages against the Tenant in respect of repudiation or breach of covenant for the loss or damage suffered by the Landlord during the entire term of this Lease.

16.10 Acts by the Landlord not to constitute forfeiture

The Landlord's entitlement to recover damages shall not be affected or limited if any of the following events occur:-

- (a) the Tenant abandons or vacates the Land; or
- (b) the Landlord elects to re-enter the Land or to terminate the Lease; or
- (c) the Landlord accepts the Tenant's repudiation; or
- (d) the Parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of law.

16.11 Mitigation

Nothing in this Clause will operate to relieve the Landlord of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Landlord.

17 PART 17 - DETERMINATION OF TERM**17.1 Tenant to yield up**

When this Lease ends the Tenant at its Cost, if required by the Landlord must remove the Tenant's Improvements in a proper and workmanlike manner in compliance with the requirements of all Authorities and to the satisfaction of the Landlord. If the Landlord does not require the Tenant to remove the Tenant's Improvements those improvements that have not vested in the Landlord by operation of Law will revert to and become the absolute property of the Crown (except for the Tenant's trade fixtures, fittings and chattels) without any payment or compensation.

17.2 Tenant to continue pay rent etc

If the Tenant is required to remove the Tenant's Improvements the Tenant must continue to pay the Rent, the Rates and Taxes and all other money payable under this Lease until it has demolished and removed the Tenant's Improvements.

17.3 Tenant not to cause damage

- (a) The Tenant must not cause or contribute to any damage to the Land in the demolition and removal of the Tenant's Improvements.
- (b) If the Tenant causes any such damage in the demolition and removal of the Tenant's Improvements, the Tenant must make good any such damage and must leave the Land in a condition that is acceptable to the Landlord and all Authorities.
- (c) If the Tenant fails to do so within a reasonable time, the Landlord may make good any such damage at the Cost of and as agent for the Tenant and recover from the Tenant the reasonable cost to the Landlord of doing so as a liquidated debt payable on demand.

17.4 Failure by Tenant to remove the Tenant's Improvements

If the Tenant fails to remove the Tenant's Improvements in accordance with this Clause or if the Landlord re-enters the Land, the Landlord at the Landlord's option (without prejudice to any action or other remedy which the Landlord has) may:

- (a) demolish and remove the Tenant's Improvements; and
- (b) without being guilty of any manner of trespass, cause any of the Tenant's property to be removed and stored in such manner as is reasonable at the risk and at the Cost of Tenant and/or at the option of the Landlord sell it as the attorney of the Tenant and appropriate the proceeds of sale in payment of any Rent or other money owing by the Tenant to the Landlord and pay any residue without interest to the Tenant; or
- (c) treat the Tenant's property as if the Tenant had abandoned its interest in it and it had become the property of the Landlord, and deal with it in such manner as the Landlord thinks fit without being liable in any way to account to the Tenant for them.

17.5 Tenant to indemnify and pay Landlord's Costs

The Tenant must:

- (a) indemnify and keep indemnified the Landlord in respect of the reasonable cost of the removal and storage of the Tenant's property, the cost of demolishing and removing the Tenant's Improvements and also in respect of all Claims which the Landlord may suffer or incur at the suit of any Person (other than the Tenant) claiming an interest in the Premises or the Tenant's property by reason of the Landlord acting in any manner permitted in this Clause; and
- (b) pay to the Landlord as a liquidated debt payable on demand any reasonable Costs incurred by the Landlord in exercising its rights pursuant to this Clause, including any excess of Costs over moneys received in disposal of the Tenant's property pursuant to the Landlord's rights contained in Clause 17.4 except to the extent caused by any negligent act or omission of the Landlord.

17.6 Condition at Termination

At the end of this Lease the Tenant must return the Premises to the Landlord in the condition required by this Lease.

17.7 Earlier breaches

The ending of this Lease does not prejudice or affect any rights or remedies of the Landlord against the Tenant in respect of any earlier breach by the Tenant of any Lease covenants and conditions.

18 PART 18 – MISCELLANEOUS

18.1 Notices

- (a) Any Notice served or given by either Party pursuant to this Lease will be valid and effectual if signed by either Party or by any director, alternate director,

secretary, executive officer, attorney, managing agent, Authorised Officer or solicitors for the time being of that Party or any other Person nominated from time to time by that Party.

- (b) Each Party must immediately provide the other Party with a Notice containing full particulars of the address and facsimile information of the Party giving the Notice and must update such notice in the event of any change.
- (c) Any Notice required to be served or which the Landlord may elect to serve on the Tenant shall be sufficiently served if:
 - (i) served personally
 - (ii) sent by facsimile transmission
 - (iii) forwarded by prepaid security post to the Tenant at its address in this Lease.
- (d) Any Notice required to be served on the Landlord shall be sufficiently served if:
 - (i) served personally
 - (ii) sent by facsimile transmission
 - (iii) forwarded by prepaid security post addressed to the Landlord to the Name and Notice Address.

All such Notices must be addressed to the Landlord at that address or at such other address as the Landlord from time to time nominates.

- (e) Any Notice is deemed to have been duly served if given:-
 - (i) by post, two Business Days after the day it was posted;
 - (ii) by facsimile, at the time of transmission to the Party's facsimile number unless the time of dispatch is later than 5.00 p.m. at the place to which the facsimile transmission is sent in which case it shall be deemed to have been received at the commencement of business on the next Business Day in that place. A copy of any Notice sent by facsimile transmission must also on the date of dispatch be sent by mail to the Party to whom it was sent by facsimile transmission;
 - (iii) personally, on the date of service.

18.2 Overholding

If the Tenant continues in occupation of the Land after the Term has expired without objection by the Landlord:

- (a) the Tenant will be deemed a tenant on the terms of this Lease from month to month for a period not exceeding the period permitted by the Act (if any) at a rent to be agreed and failing agreement at a rent to be determined by a qualified valuer acting as an expert and not as an arbitrator and his costs must be paid equally by the Parties;

- (b) either Party may end the Lease by giving to the other Party at any time one month's Notice.

18.3 Set-Off

If the Tenant defaults in the payment of the Rent, the Rates and Taxes or any other money payable under this Lease to the Landlord or any Authority, the Landlord may set-off that amount against any moneys which may from time to time be payable by the Landlord to the Tenant on any account whatsoever but any set-off will not relieve the Tenant from its default for any non-payment of the Rent, the Rates and Taxes or other moneys under this Lease.

18.4 Easements

The Landlord may grant rights of support and enter into any arrangement or agreement with any party with an interest in any adjacent land or with any Authority as the Landlord thinks fit for the purpose of:

- (a) public or private access to the Land; or
- (b) support structures erected on adjoining land;
- (c) the provision of Services.

The Landlord must not exercise any rights under this Clause if it substantially and permanently derogates from the enjoyment of the rights of the Tenant under this Lease.

18.5 Guarantee

If a Guarantee and Indemnity is annexed to this Lease, the Tenant must on the same date as the execution of this Lease procure its execution by the Guarantors named in it and deliver the executed Guarantee and Indemnity to the Landlord. If that Landlord elects, this Lease will not take effect until the Guarantee and Indemnity has been properly executed by the Guarantors and delivered to the Landlord.

18.6 Waiver

No waiver by one Party of a breach by or on behalf of the other Party of any obligation, provision or condition of this Lease expressed or implied shall operate as a waiver to or of any other breach of the same or any other obligation, provision or condition of this Lease expressed or implied.

19 PART 19 – FURTHER TERM

19.1 Option for new lease

The Landlord must grant the Tenant and the Tenant must take a new lease for the next Further Term if:

- (a) the Tenant gives the Landlord a renewal Notice not more than six months or less than three months before the Term expires;
- (b) there is no unremedied default of which the Landlord has given the Tenant written notice;

- (c) the Tenant has not persistently defaulted under this Lease throughout its Term and the Landlord has not given the Tenant Notices of the defaults; and
- (d) if the *Retail Act* does not apply, the Tenant does not default under this Lease after giving the Landlord the renewal Notice.

19.2 Terms of new lease

The new lease will:

- (a) commence on the day after the Term expires;
- (b) be at an initial annual Rent from the commencement of the Further Term determined in the manner set out in this Lease and the Second Schedule; and
- (c) be on the terms and conditions contained in this Lease including any provision for the review of Rent but not including any provision for renewal if there are no Further Terms.

19.3 Execution of extension of lease

The Landlord and the Tenant, at the Landlord's option, must execute either a new lease or an extension of lease to be prepared at the direction of the Landlord and at the Tenant's Cost, unless the *Retail Act* applies in which case each party will bear its own costs.

19.4 Guarantor to execute extension of lease or guarantee

- (a) If the Tenant is a corporation, then the Tenant must procure the Guarantor to execute a guarantee of the Tenant's obligations under the new lease.
- (b) The Landlord does not have to grant the new lease if the Tenant does not procure the Guarantor to execute the guarantee in accordance with the preceding sub-Clause.

20 PART 20 – BANK GUARANTEE

20.1 Tenant to provide Bank Guarantee

If asked to do so by the Landlord, 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 for the Guaranteed Sum. The following provisions apply to the Bank Guarantee:-

- (a) The Bank Guarantee will remain in force until the bank is notified in writing by the Landlord that it is no longer required.
- (b) The Bank Guarantee must be provided to the Landlord and come into effect on the Commencement Date;
- (c) 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;

- (d) 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;
- (e) The Bank Guarantee must require the 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 bank to the contrary. The bank must have 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.

20.2 Return of Bank Guarantee

The Landlord must return the Bank Guarantee to the Tenant 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.

20.3 Assignment or sale does not affect guarantee

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.

EXECUTED as a deed.

Signed on behalf of the YARRA RANGES)
SHIRE COUNCIL by an officer authorised)
to enter into this agreement in the presence)
of:)
)
)
)
)
)

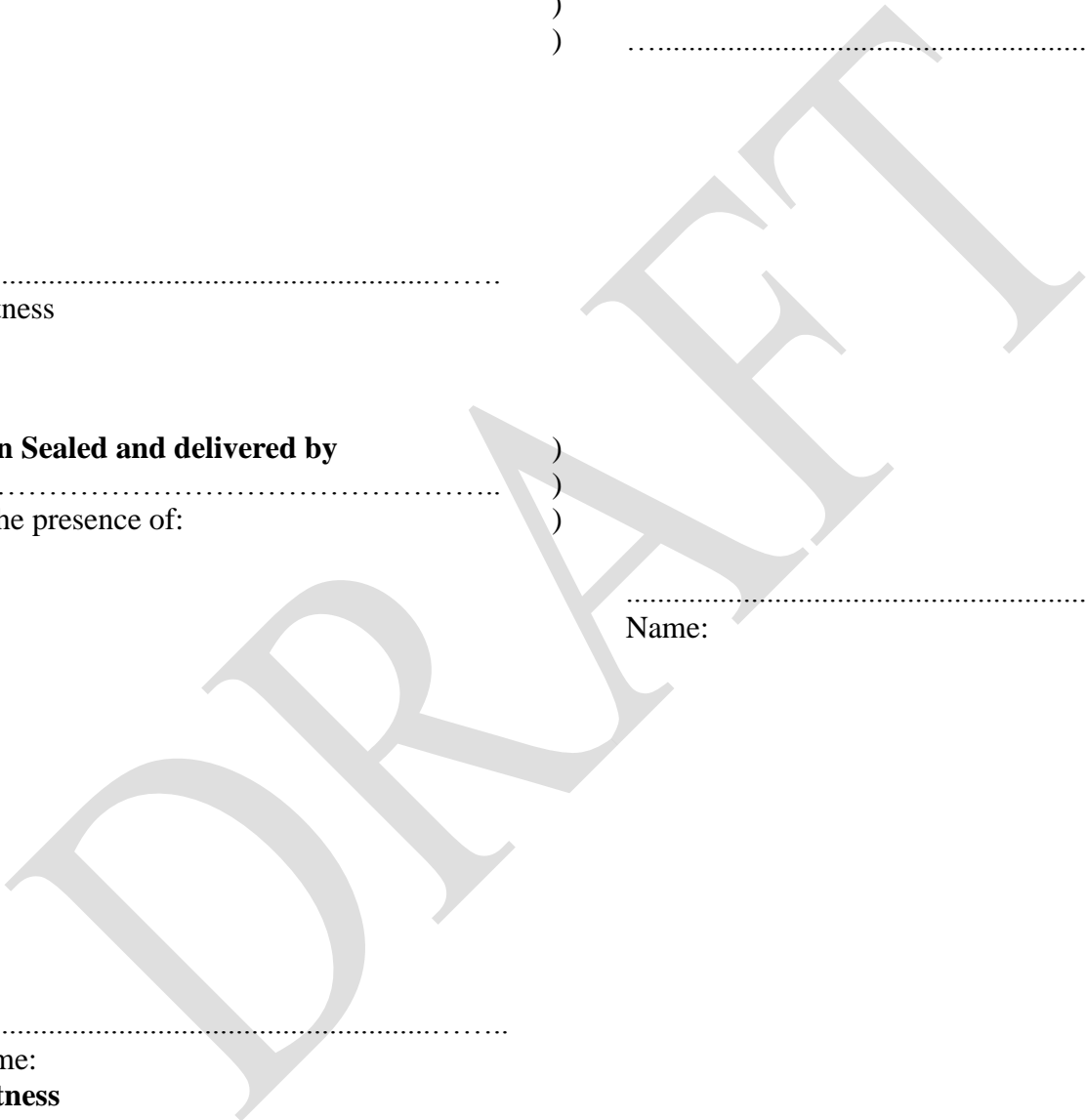
.....

.....
Witness

Sign Sealed and delivered by)
.....)
in the presence of:)

.....
Name:

.....
Name:
Witness



MINISTERIAL ATTESTATION

Under Section 17D(4)(c) of the *Crown Land (Reserves) Act 1978* I,
Program Manager, Public Land Administration, Port Phillip Region, in the Department of
Environment, Land, Water and Planning as delegate of the Minister for Environment, Energy and
Climate Change hereby approve the covenants, exceptions, reservations and conditions contained
therein.

(Signature)

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SCHEDULE 1

- 1 **LANDLORD:** YARRA RANGES SHIRE COUNCIL
- 2 **TENANT:**
- 3 **LAND:** Part of Crown Allotment 15S in the Parish of Warburton, known as 3420 Warburton Hwy, Warburton and outlined in red on the attached plan (Appendix1).
- 4 **COMMENCEMENT DATE:**
- 5 **TERM:** 5 Years
- 6 **RENT:** \$15,600 per annum payable
- The Rent shall be revised on the Rent Review Dates in accordance with the Schedule Two
- 7 **PERMITTED USE:**
- 8 **FURTHER TERM:** Not Applicable
- 9 **GUARANTEED SUM:** \$3,900.00
- 10 **REVIEW DATE(S):** Year 2 – Year 1 plus 3%
 Year 3 – Year 2 plus 3%
 Year 4 – Market Review
 Year 5 – Year 4 plus 3%
- 11 **NAME AND NOTICE ADDRESS:** **Landlord:**
 Yarra Ranges Council
 15 Anderson Street, Lilydale, Vic, 3140
 (Postal: PO Box 105, Lilydale, Vic, 3140)
- Tenant:**

- 12 **INSURED SUM:** \$20 Million dollars
- 13 **RESERVATION:** Crown land temporarily reserved for Public Purposes (Rail Trail) by Order in Council 24 September 1996 and published in the Government Gazette on 26 September 1996, p.2565

- | | | |
|-----------|---------------------------------|--|
| 14 | PAYMENT ADDRESS: | PO Box 105, Lilydale, 3140 |
| 15 | LANDLORD'S IMPROVEMENTS: | All improvements onsite, incl. fixtures and fittings and floor coverings |
| 16 | TENANT'S IMPROVEMENTS: | Nil |

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SCHEDULE 2
(RENT REVIEW)

The Landlord may review the annual rent on each Review Date as follows:

- 1 If the *Retail Act* applies and the *Retail Act* provides a mechanism for market rent review, the review will take place in accordance with the provisions of the *Retail Act* and clauses 7, 8 and 9 of this Schedule.
- 2 If the *Retail Act* does not apply or does not provide a mechanism for market rent review, clauses 3 to 9 (inclusive) of this Schedule and the Method of Determination will apply.
- 3 Not earlier than three months before the Review Date and not later than sixty days after the Review Date the Landlord must give the Tenant notice of the new rental it proposes be paid by the Tenant during that period or part thereof.
- 4 Time shall not be of the essence in respect of the Landlord's rent review notice and any delay by the Landlord in giving notice will not affect the Landlord's rights.
- 5 Within twenty eight days of being notified in writing of the proposed new rent the Tenant may give to the Landlord written notice of objection to the proposed new rent and within a further thirty days from the notice of objection supply the Landlord with a rent valuation from a qualified valuer. If no notice of objection is given or if notice is given and no rent valuation is supplied the new rent will be the new rent as proposed in the Landlord's notice.
- 6 If within thirty days from the lodgment with the Landlord of the Tenant's rent valuation the Landlord and the Tenant are unable to agree on the new rent and a conference of the Landlord's and Tenant's valuer's has failed to result in agreement on the rent the new rent shall be determined by a valuer nominated by the President for the time being of the Australian Property Institute (the **nominated valuer**) who in making a determination, must accept representations from either Party received within twenty one days of the appointment.
- 7 The decision of the nominated valuer will be final and binding and the nominated valuer's costs and fees must be paid by the parties equally.
- 8 Until the new rent is agreed or determined the Tenant must pay rent at the rate applicable immediately prior to the date fixed for review until such time as the new rent is determined.
- 9 After the new rent is determined the Tenant must pay the difference if any between the amount of the new rent paid since the date fixed for review.

Method of Determination:

- 1 Fixed 3% increase at the commencement of years 2, 3, & 5 of the lease and market rent review at year 4 of the lease (method of determination follows.)
- 2 In determining a new rent for the Premises the nominated valuer must as nearly as possible determine the open market rent value on the date when that rent is to apply for the Premises having regard to the following matters:
 - (a) act as an expert and not as an arbitrator and his decision will be final and binding on the parties;
 - (b) there is a reasonable period within which to negotiate the new rent having regard to the nature of the property and the state of the market;
 - (c) the Landlord and the Tenant are well acquainted with the Premises and aware of any factors which might affect its value.
 - (d) The length of the Term and the period between rent reviews.
 - (e) The terms and obligations of the Lease.
 - (f) The Permitted Use.
 - (g) The rental of comparable premises
 - (h) Rents paid to the Tenant under any sub leases or licenses

SCHEDULE 3

FURTHER OBLIGATIONS

TENANT'S FURTHER OBLIGATIONS:

1. The tenant will provide the Landlord with a business plan at the commencement of the lease.
2. The tenant may undertake any internal fitout of the premises at its own cost, subject to the Landlord's consent which will not be unreasonably withheld or delayed.
3. The tenant will maintain the premises in line with the Building Maintenance Schedule at Appendix 3.
4. The tenant is not required to undertake insurance for the building (clause 13.1 (b) of the lease), however the tenant is required to insure all contents and fitout in the leased premises.
5. The tenant will maintain all exits and paths of travel in accordance with regulation 1218 of the Building Regulations 2006.
6. The tenant will not allow any environmental weeds to be planted on the site.

LANDLORD'S FURTHER OBLIGATIONS:

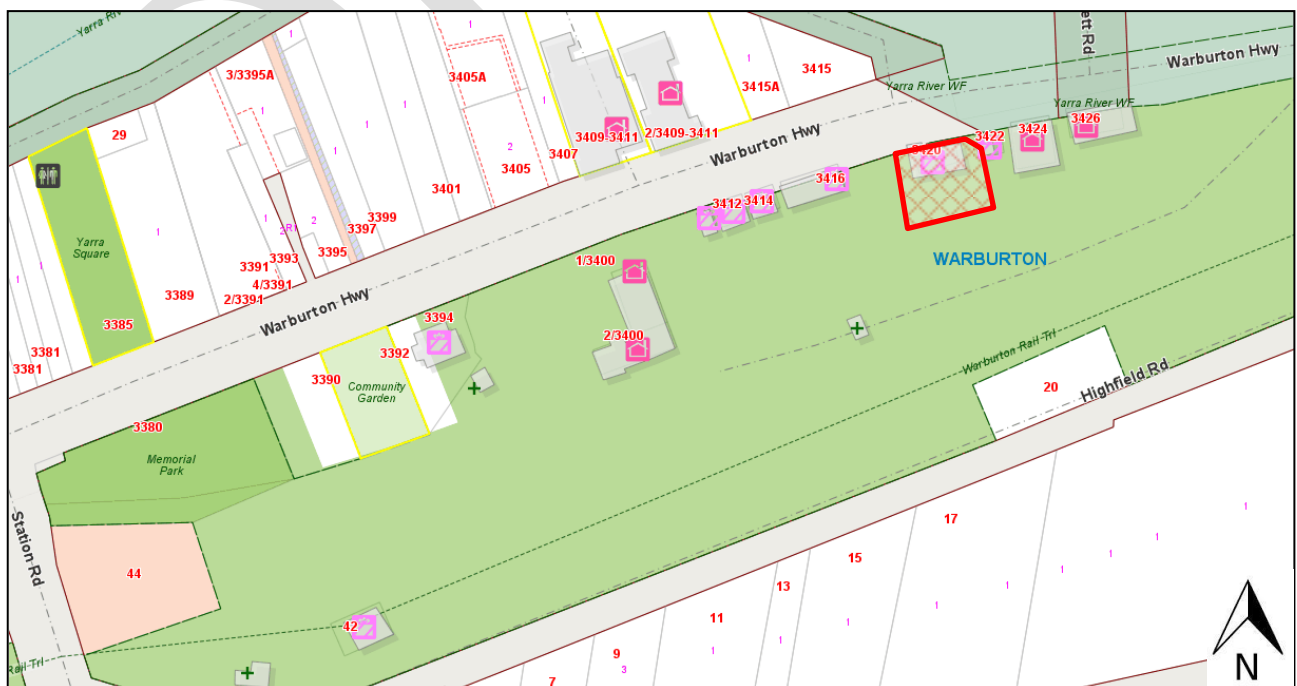
1. The Landlord will prepare annually an Essential Safety Measures Report in accordance with regulation 1208 of the Building Interim Regulations 2017 and provide a copy to the tenant to be retained onsite and available for inspection.
2. The Landlord will undertake a building condition report at the commencement of the lease and will provide the tenant with a copy of the report. A copy of the Building Condition Report is attached at Appendix Two.
3. The Landlord will maintain a policy of insurance for the building.

APPENDIX ONE

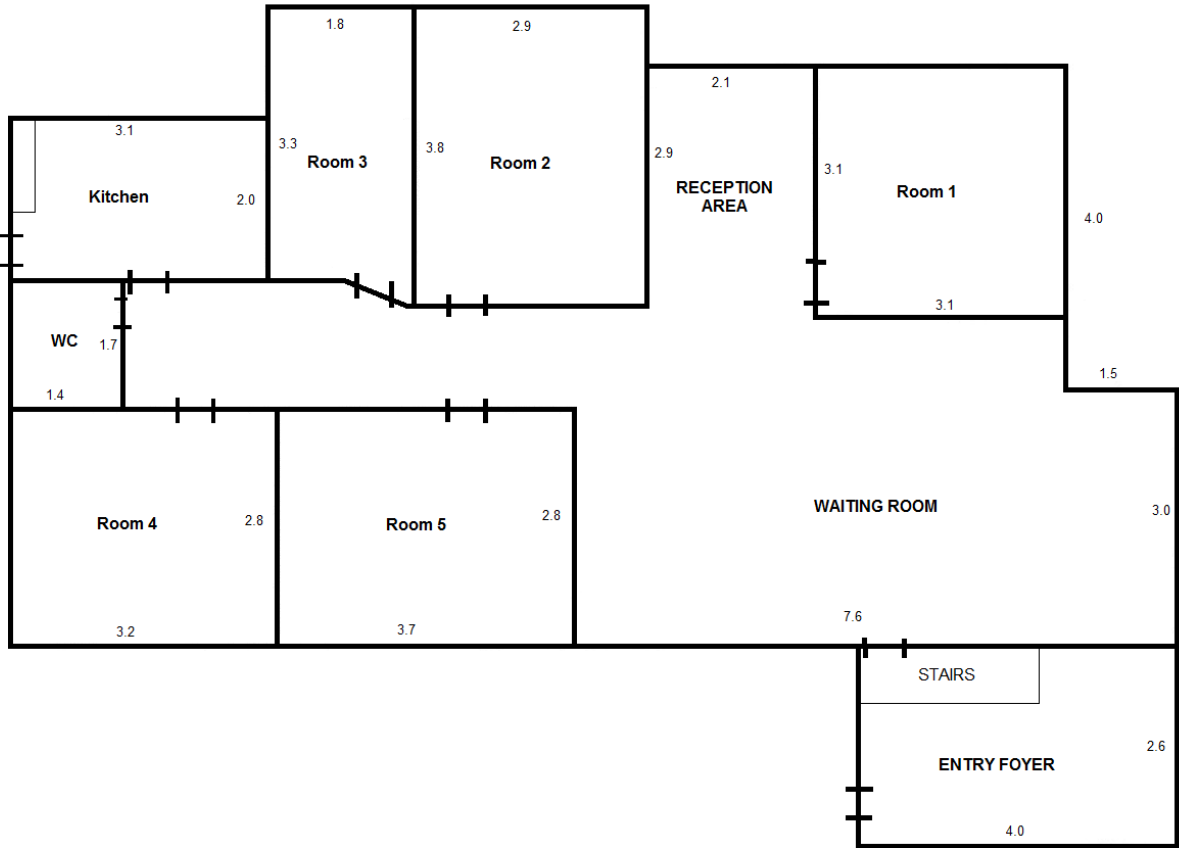
(PLAN OF LAND)

Leased area is from footpath to the top of the embankment at the rear.
West side is approx. 4.7 metres from the building to the edge of the ramp

East side is approx. 3 metres from building including the steps



Measurements approx. only



WARBURTON HWY

DRY

APPENDIX TWO
CONDITION REPORT

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APPENDIX THREE
BUILDING MAINTENANCE SCHEDULE

This schedule will apply notwithstanding alternative provision contained in the lease

| | Tenant | Council | Comments |
|---|-----------------------------|-------------------------------------|--|
| Infrastructure | | | |
| Structure | | | |
| Roof | | Full Maintenance | |
| Gutter and Spouting | Regular cleaning | Full Maintenance excluding cleaning | |
| External and Internal Structural Walls | Maintain | Replace | <i>Structural walls only. Non-structural internal walls are the tenants responsibility</i> |
| Floor | Maintain | Replace | |
| Stumps, footings etc | | Full Maintenance | |
| Services | | | |
| Electrical wiring | Maintain | Replace | <i>Tenant to replace any wiring associated with fit out or upgrading the premise</i> |
| Plumbing (including sewerage) | Maintain | Replace | |
| Sub surface drain pipes | Maintain | Replace | |
| Water Supply | Full Maintenance from meter | Full Maintenance to meter | |
| Fittings | | | |
| Electrical fittings and lights | Full Maintenance | | |
| External Lighting | Full Maintenance | | <i>Council to replace external security lighting.</i> |
| Plumbing fittings (toilet, sink, taps etc) | Full Maintenance | | |
| Heating / Cooling | Full Maintenance | | |
| Hot Water System | Full Maintenance | | |
| Floor surfaces and coverings | Full Maintenance | | |
| Fly screens | Full Maintenance | | |
| Plate glass | Full Maintenance | | |
| Windows | Full Maintenance | | |
| Keys and locks | Maintain | Replace | <i>Requires Council authority</i> |
| Internal wall surfaces (paint, wallpaper and tiling, etc) | Full Maintenance | | <i>Tenant to Paint on 10 year cycle</i> |
| External wall surfaces | Maintain | Replace | <i>Council to Paint on 10 year cycle</i> |
| Appurtenant fittings or fixtures | Full Maintenance | | |

| | Tenant | Council | Comments |
|---|---------------------------------|------------------------------------|---|
| Doors | Maintain | Replace <i>External doors only</i> | |
| Security system | Full Maintenance | | |
| Open Space | | | |
| Retaining Walls, Outdoor steps etc. | Full Maintenance | | |
| Signage | Full Maintenance | | |
| Paths | Full Maintenance | | <i>Assess fortnightly</i> |
| Loose litter / leaves | Full Maintenance | | <i>Assess fortnightly</i> |
| Garden beds | Full Maintenance | | <i>Assess fortnightly</i> |
| Trees | Maintain | Replace | <i>Council approval to be sought prior to any major tree maintenance</i> |
| Pest Control | Undertake | | |
| Waste removal | Undertake | | <i>Weekly</i> |
| Insurance | | | |
| Public Liability | Undertake | | |
| Plate Glass | Undertake | | |
| Building Insurance | | Undertake | |
| Contents Insurance for all equipment, fixtures and fittings | Undertake | | |
| Essential Services | | | |
| Fire extinguishers / fire blankets | Replace if discharged or stolen | Full Maintenance | <i>Inspect and maintain to Australian Standard</i> |
| Fire service levy | | Council to pay | |
| Emergency exits | | Full Maintenance | <i>Inspect and maintain to Australian Standard</i> |
| Path of travel to exits | Maintain | Inspect | <i>Tenant to maintain a minimum of 1 metre wide clear path of travel to all exits. Council to inspect regularly</i> |
| Smoke detectors | Full Maintenance | | |

Definitions:

Maintain: Clean and maintain. Keep in good condition. Inspect. Service. Maintain to Australian Standard

Replace: Fix if broken. Replace or Repair.

Full Maintenance: Clean, maintain, repair, replace.

Blank: No Maintenance

Undertake: Carry out specified activity

The comments column is provided for the benefit of the tenant. This column may be used to clarify the maintenance responsibilities that relate to a particular site.

The replacement of certain items may be dependent upon budget provisions.

Approved contractors

If the tenant is required to engage contractors to perform maintenance tasks for which the tenant is responsible, Council, as landlord, will only approve the use of contractors who are qualified, authorised &/or licenced in accordance with relevant standards and codes.

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APPENDIX FOUR
ASBESTOS REPORT

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