

MEMORANDUM OF LEASE

CERTIFICATES OF TITLE BEING LEASED

Portion of the land comprised in Certificate of Title Register Book Volume 5496 Folio 572, being more particularly defined as that area marked "Shop 1" as set out and outlined in red in the plan annexed hereto and marked "Plan A".

ESTATE AND INTEREST

Fee Simple

ENCUMBRANCES

Mortgage No. 10536006

Mortgage No. 10536007

LESSOR (Full name and address)

VINTAGE REAL ESTATE PTY LTD ACN 097 363 507 of 88 Murray Street Tanunda SA 5352 and  
C R LINDNER NOMINEES PTY LTD ACN 007 962 101 of PO Box 382 Tanunda SA 5352

LESSEE (Full name, address and mode of holding)

NICHOLAS HEDLEY HAMBOUR and CORALEE DENISE HAMBOUR both of 12 Ward Street  
Eudunda SA 5374

TERM OF LEASE

COMMENCING ON THE 1<sup>st</sup> DAY OF SEPTEMBER 2008

EXPIRING ON THE 31<sup>st</sup> DAY OF AUGUST 2011

together with right(s) of renewal as set out in the Fourth Schedule herein.

**RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)**

\$22,212.32 per annum exclusive of GST payable in equal monthly instalments of \$1,851.03 exclusive of GST on the first working day of each month, such rent being subject to review pursuant to the terms of the Sixth Schedule herein.

**OPERATIVE CLAUSE**

The Lessor LEASES TO THE LESSEE the land <sup>(a)</sup> ABOVE / ~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed <sup>(a)</sup> herein / ~~in Memorandum No. ....~~ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

**DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.**

Not applicable

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

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- FIRST SCHEDULE: **(Legal description of Lessor's Land Holding)**  
Whole of the land comprised in Certificate of Title Register Book Volume 5496 Folio 572.
- SECOND SCHEDULE: **(Lot)**  
Portion of the land situated at 46 Murray Street, Tanunda in the State of South Australia being that area marked "Shop 1" and outlined in red on the plan marked "Plan A" attached hereto together with any common areas (including conveniences and car parks) as indicated and further described and enunciated hereto.
- THIRD SCHEDULE: **(Trading Name)**  
Luxaflex Gallery
- FOURTH SCHEDULE: **(Full Term of this Lease)**  
For a term of 3 years commencing on 1 September 2008 and expiring on 31 August 2011 with 1 right of renewal for a term of 3 years.
- FIFTH SCHEDULE: **(Rent and manner of payment)**
- (a) A minimum rental of \$22,212.32 per annum (subject to clause 7.3) exclusive of GST (in accordance with the provisions of clause 7.3) plus outgoings, payable monthly in advance in the amount of \$1,851.03 (exclusive of GST, exclusive of monthly outgoings). The first such payment will be due and payable on the first working day of each month.
  - (b) In the event that the Lessee exercises their right of renewal, then the minimum rent to apply from the commencement of the further term of the renewed lease shall be determined by the method set out in the Sixth Schedule. The first such payment will be due and payable within seven (7) days of the execution of the renewed term by the Lessee and thereafter on the 1<sup>st</sup> day of each calendar month.
  - (c) Rental calculated herein shall be paid by the Lessee to Brock Harcourts Barossa, 88 Murray Street, Tanunda SA 5352 or in such other manner as the Lessor may nominate from time to time.
  - (d) Interest at the rate of 1.5% per month compounded monthly will be charged on all monies seven (7) days in arrears until paid.

- (d) In the event that the demised premises are sublet by the tenant then, and in such case, the base rent as detailed in paragraph (a) of this the Fifth Schedule, and if applicable, as most recently received pursuant to the Sixth Schedule hereto, may be increased up to but no more than 25%.

SIXTH SCHEDULE:

**(Rental Review, How Calculated and Manner of Payment)**

1. (a) The minimum rent and the monthly instalments thereof shall be reviewed upon each anniversary of the commencement date of the Lease and of any renewed terms in accordance with the following method.

- (b) The rental reserved at the commencement of the lease pursuant to the FOURTH SCHEDULE hereof shall be reviewed as required by Clause C(ii) and (a) above according to the following formula:

$A = B \times C / D$  where

A is the reviewed amount of annual rent;

B is the amount of annual rent payable immediately before the relevant review date:

C shall be the Consumer Price Index (All Groups) for South Australia published by the Australian Bureau of Statistics ("the Index") in respect of the latest concluded quarter immediately preceding the relevant review date; and

D shall be the Index in respect of the quarter ending 12 months before the relevant review date.

2. The minimum rent to apply from the commencement of any further term specified in the Fourth Schedule shall be determined as follows:

- (a) The Lessor shall give to the Lessee a notice stating the Lessor's assessment of the current market rent of the premises.
- (b) The Minimum rent shall be the amount specified in the Lessor's notice unless the Lessee gives the Lessor a notice disputing the amount within 21 days after the Lessor's notice is given.
- (c) If the Lessor and Lessee do not agree then the current market rent must be determined by a licensed land valuer appointed by the agreement of the parties or failing agreement by the President or Acting President of the Australian Property Institute (SA Division) at

*Take  
quarter*

the request of either party hereto PROVIDED ALWAYS that in making such assessment of rent such valuer shall be considered to be acting as an expert and not as an arbitrator and accordingly the provision of the *Arbitration Act 1891* or amended from time to time shall not apply AND PROVIDED THAT the costs of any such valuer shall be paid equally by the Lessor and the Lessee AND FURTHER PROVIDED THAT such valuer as shall be appointed shall have regard to the market value of the premises upon the basis that the same are being put to their optimum possible use in the permitted use pursuant to the Eighth Schedule of this Lease concluded thereon.

- SEVENTH SCHEDULE: **(Percentage of outgoings if not separately rated)**  
100 per cent of directly assessable outgoings and 19.63 per cent of all other outgoings.
- EIGHTH SCHEDULE: **(Permitted use of the premises)**  
The Lessee may use premises for the purpose of retail sales of window blinds and associated items.
- NINTH SCHEDULE **(Non-permitted use of the premises)**  
In addition to clauses 4.2 and 4.3 which apply at all times, the Lessee will not permit the demised premises to be used as:  
Not applicable
- TENTH SCHEDULE **(Guarantors)**  
Not applicable
- (Bank Guarantee)**  
Not applicable
- (Security Bond)**  
\$1,851.03

**Plan A**

## **INTERPRETATION**

1. In this Lease unless the contrary intention appears:
 

**"demised premises/the said land"** means the land above described and the building and where context so admits any part of the land or the building.

**"this Lease"** means this Lease including any Schedules and Annexures hereto and the panel form entitled Memorandum of Lease.

**"Lessee"** means and includes the Lessee its successors and permitted assigns, or, being a person, the Lessee's executors administrators and permitted assigns and where not repugnant to the context the servants and the agents of the Lessee.

**"Lessor"** means and includes the Lessor and its successors and assigns, or, being a person, the Lessor's executors administrators and assigns and where not repugnant to the context the servants and agents of the Lessor.

**"the building"** means the building and other improvements erected on the land above described and all fixtures fittings (other than Lessee's fixtures and fittings), conveniences, amenities and appurtenances therein including and without prejudice to the generality of foregoing the sprinkler system, gardens, foot and vehicular ways within the said land.

**"the Act"** means the *Retail and Commercial Leases Act 1995* as amended from time to time.

**"GST"** means goods and services taxes or similar value added tax

**"Disclosure Statement"** means the disclosure statement defined in Section 3 of the Act served by the Lessor on the Lessee pursuant to the provisions of the Act.
2. Words importing the singular number include the plural and the masculine gender the feminine or neuter and vice versa and words importing persons include corporations and vice versa.
3. Any covenant or agreement on the part of two or more persons shall be deemed to bind them jointly and severally.
4. Reference to a statute or ordinance includes all regulations under and amendments to that statute or ordinance whether by subsequent statute or otherwise and a statute or ordinance passed in substitution for the statute or ordinance referred to or incorporating any of its provisions.

5. Headings have been inserted for guidance only and shall not be deemed to form any part of the context.
6. Where under or pursuant to this Lease the day on or by which any act matter or thing is to be done is a Saturday or a Sunday or a public holiday in the place in which the demised premises are situated such act matter or thing may be done on the next succeeding day which is not a Saturday Sunday or such a public holiday.

### **GENERAL**

THIS LEASE IS MADE BETWEEN the Lessor described in that panel first hereinbefore appearing marked "Lessor" (hereinafter with its successors and assigns referred to as "the Lessor") of the one part AND the Lessee described in that panel first hereinbefore appearing marked "Lessee" (hereinafter with their and each of their heirs executors administrators successors and assigns referred to as "the Lessee") of the other part and witnesses THAT WHEREAS:

- A. The Lessor is the registered proprietor of an estate in fee simple in the land comprised in the Certificate of Title set forth in the FIRST SCHEDULE
- B. The Lessee desires to be granted the right and entitlement to occupy as tenant the whole of that portion of the Lessor's land-holding being the premises in the nature described in the SECOND SCHEDULE hereto ("the demised premises").
- C. The Lessor is prepared to grant to the Lessee such a right and entitlement to occupy as tenant the demised premises and the Lessee is prepared to accept such grant on the terms and conditions that:-
  - (i) the term of such grant is the term set forth in the FOURTH SCHEDULE hereto;
  - (ii) rental be reserved to be paid by the Lessee to the Lessor at the annual rate or rates payable calendar monthly in advance at the rate or rates and in the manner set out in the FIFTH SCHEDULE first herein before appearing and the SIXTH SCHEDULE marked "Rental Review, How Calculated and Manner of Payment" and subject to review as specified therein;
  - (iii) upon such other covenants stipulations restrictions conditions and agreements as are hereinafter in this memorandum set forth (and which memorandum is hereafter referred to as "this Lease").

- (iv) where the Lessee is a Corporate Body or Company the then Executive members or Directors of the said Corporate Body or Company will give Directors Guarantees of the performance of the Lessee of the terms of this Lease and incumbent on the Lessee as and when required by the Lessor or the Lessor's duly authorised Attorney or Agent.

NOW THIS LEASE WITNESSETH the covenants stipulations restrictions conditions and agreements given by the parties hereto as follows:-

### **LESSEE'S COVENANTS**

#### **PART 1 - RENTAL**

1. THE LESSEE hereby covenants and agrees with the Lessor to pay the said rental reserved without any deduction or abatement whatsoever at the time and in the manner aforesaid to the Lessor at such address as the Lessor may in writing stipulate and in such manner to such person firm or bank as the Lessor or the Lessor's duly authorised Attorney or Agent may in writing from time to time require.

#### **PART 2 - IMPLIED COVENANTS AND POWERS**

2. The following covenants terms and conditions provisos and agreements are in addition to and without prejudice to those implied by the *Real Property Act 1886* (as amended) and the *Law of Property Act 1936* (as amended) except in so far as the same are altered or modified hereby.

#### **PART 3 - TERMINATION OR ABATEMENT ON DAMAGE**

3. If during the said term or any extension thereof the demised premises or any part thereof are destroyed or damaged by storm tempest lightening fire earthquake riot explosion or any other disabling cause so as to render them wholly or partially unfit for occupation and use and the insurance policy or policies effected in respect thereof shall not have been vitiated or payment of the policy moneys refused in whole or in part in consequence of some act or default or negligence of the Lessee then the whole or a fair proportion of the rent shall be suspended until the demised premises shall be again

rendered fit for occupation and use PROVIDED HOWEVER that in the case of the parties failing to agree in respect thereof the adjustment of rent shall be determined by a Licensed Valuer (being a person licensed under the Australian Property Institute or its successor) who shall be appointed by the parties and who in so fixing the adjustment shall act as an expert and not as an arbitrator PROVIDED HOWEVER that if the premises shall not be reinstated within TWELVE (12) calendar months from the date when such destruction or damage shall have occurred then at or after the expiration of such period and until reinstated the Lease hereby created may be determined at the option of the Lessor or the Lessee but such determination shall be without prejudice to the Lessor's rights and remedies in respect of any rent for any period prior to the date of such determination. PROVIDED that should the premises be more than FIFTY PERCENT (50%) unfit for occupation and use the Lessee may at any time within six months determine this Lease. Whether or not the premises are unfit for use to the extent of FIFTY PERCENT (50%) shall in the event that the parties themselves cannot agree be referred to a Licensed Valuer who shall be appointed in the manner provided for in this clause whose determination shall be as an expert and not as an arbitrator and any adjustment of rent prior to such determination shall be carried out in the manner set out above. The fees of any Licensed Valuer or Builder who may be appointed pursuant to this clause are to be borne by the parties equally.

#### **PART 4 - USE OF THE DEMISED PREMISES AND ASSIGNMENT**

##### **PERMITTED USE**

- 4.1 The Lessee may use the premises for the purposes set out in the EIGHTH SCHEDULE hereto and for such other purpose as the Lessor may from time to time approve in writing and such approval shall not be unreasonably withheld.

##### **NON PERMITTED USE.**

- 4.2 The Lessee will not permit any noxious, immoral, offensive or illegal act, trade, business occupation or calling at any time during the term to be exercised, carried on, permitted or suffered in or upon the demised premises and will not permit any act, matter or things whatsoever at any time during the term to be done in or upon the demised premises, which shall or may cause annoyance, nuisance, grievance, damage



or disturbance to the occupiers or owners of adjoining or neighbouring lands or buildings.

- 4.3 The Lessee agrees not to bring or allow to be brought on to the demised premises any noxious explosive or dangerous substance or appliance and not to do or allow to be done on the demised premises any act or thing whereby any policy of insurance effected by the Lessor in respect of the demised premises or any part thereof may become void or voidable or render an increased premium liable to be paid in respect thereof.

#### **ASSIGNMENT OR OTHER PARTING WITH POSSESSION OF TENANCY AGREEMENT AND/OR PREMISES**

- 4.4 Subject always to the provisions of Section 43 of the Act, the Lessee agrees not to assign transfer demise underlet mortgage or otherwise part with the possession (whether by license or otherwise) of the demised premises or any part thereof for the whole or any part of the said term without the prior written consent of the Lessor which consent shall be applied for by giving no less than one calendar month's notice in writing to the Lessor and which consent shall not be unreasonably or capriciously withheld PROVIDED THAT:-

- (a) the consent of the Lessor shall be embodied in such deed or agreement as the Lessor or the solicitors for the Lessor shall require the Lessee and the proposed lessee to enter into and which agreement and deed shall contain such provisions, covenants and stipulations as shall be required of the Lessee by the Lessor or the solicitors of the Lessor;
- (b) suitable documentation is produced by the Lessee to the Lessor evidencing the nature character reputation and financial standing of the person or body corporate to whom it is proposed to assign transfer demise or sublet;
- (c) the proposed lessee has financial and management abilities similar to the Lessee;
- (d) if required the outgoing Lessee shall guarantee the financial obligations of the proposed lessee for the maximum period permitted in the Act;
- (e) any contract, deed, agreement or other document evidencing the need to request consent to an agreement, transfer, demise, under-lease, mortgage or

such other transaction relating to the demised premises or any part thereof shall, at or prior to the Lessee seeking the Lessor's consent to such assignment, transfer, demise, under-leases, mortgage or other transaction be forwarded to the solicitors for the Lessor;

- (f) such reasonable costs as are incurred by the Lessor in satisfying the Lessor as to the Lessee's compliance with this Clause and all other reasonable costs necessary or incidental to the granting or otherwise of the Lessor's consent shall be borne by the Lessee and such reasonable costs shall be deemed to include the preparation and stamping of such documents as the Lessor may require to be prepared in order to embody the terms conditions and stipulations of such consent.
- (g) the rent on the demised premises, in the event that the demised premises are sublet, may be increased by up to 25% per annum.

## **PART 5 - MAINTENANCE REPAIR, PAINTING AND ALTERATIONS**

### **TO KEEP IN GOOD REPAIR**

- 5.1 The Lessee at the Lessee's cost will during the whole of the term and otherwise so long as the Lessee may remain in possession or occupation when where and so often as need shall be maintain replace repair and keep the demised premises in good and substantial repair order and condition damage by explosion, earthquake, aircraft, riot, civil commotion, fire, flood, lightening, storm, tempest, act of God, war damage, and fair wear and tear only excepted. This covenant shall not impose on the Lessee any obligation in respect of any structural maintenance replacement or repair except when the same is rendered necessary by the Lessee's use or occupancy of the demised premises.

### **MAINTENANCE AND REPAIR OF PREMISES**

- 5.2 The Lessee at the Lessee's own cost and expense at all times during the term will well and sufficiently repair amend clean and maintain the demised premises and keep the same in same good order condition and repair having regard to their condition as at the commencement date of this Lease (fair wear and tear only excepted) and other fixtures and fittings belonging to or connected with the premises and the Lessee shall at the

expiration or other sooner determination of the term deliver up to the Lessor the premises and all such improvements and fixtures in good order condition and repair as herein provided. Provided that the obligation created under this clause shall not extend to repairs of a structural nature and whether or not such repairs are structural shall be determined at all times by the Lessor's Architect or other duly authorised and suitably qualified agent.

#### **PAINTING**

- 5.3 At intervals of not more than (5) five years during the term of this Lease or any extension thereof the Lessee shall whenever reasonably requested by the Lessor or in any event within three (3) months of the expiration of term of this Lease or any extension thereof paint the interior and exterior of the demised premises. Such painting shall be at the Lessee's own cost and expense in all things and the Lessee shall well and sufficiently repair, rub down, paint, colour, paper and varnish (or appropriately treat as the case may be) and in colours to be approved by the Lessor in advance and in a good and workmanlike manner and by a duly licensed and competent tradesman such parts of the interior of the premises as have previously been painted or treated.

#### **TO KEEP PREMISES CLEAN AND IN GOOD ORDER**

- 5.4 The Lessee will during the term cause the demised premises including (if any) all gardens, yards, lanes, ways, car parks and rights of way belonging appurtenant or adjacent to the demised premises to be kept clean and free from debris refuse and rubbish or accumulation of any description and will not cause permit or suffer to be deposited any debris refuse or rubbish of any kind in any such grounds, yards, lanes, ways, car parks or rights of way or in any public road or footway abutting upon or adjacent to the said premises and at all times shall cause all debris refuse and rubbish and garbage to be stored and kept in proper impermeable receptacles and arrange for frequent regular removal thereof from the demised premises to the satisfaction of the Lessor.

#### **MAKE GOOD DAMAGE TO BUILDING**

- 5.5 The Lessee will immediately make good any breakages defect or damage to the building or to any adjoining premises or any facility or appurtenance thereof

occasioned by want of care misuse or abuse on the part of the Lessee or the Lessee's invitees and customers or otherwise occasioned by any breach or default of the Lessee hereunder.

#### **LESSOR MAY INSPECT AT REASONABLE TIMES**

- 5.6 The Lessor may at all reasonable times upon giving to the Lessee prior reasonable notice (except in the case of emergency when no notice shall be required) enter upon the demised premises during the hours between the hours of 9.00 am to 4.00 pm and view the state of repair thereof and may serve upon the Lessee a notice in writing of any defect for the repair of which the Lessee may be responsible hereunder requiring the Lessee within a reasonable time to repair the same.

#### **LESSOR MAY REPAIR**

- 5.7 The Lessor may at all reasonable times upon giving to the Lessee prior reasonable notice (except in the case of emergency where no notice shall be required) enter upon the demised premises with workmen and others and all necessary materials for the purpose of complying with any request, or authority over or in respect of the demised premises for which the Lessee is not liable under its covenants herein contained or for carrying out such reinstatement repairs renovations maintenance modifications extensions or alterations of the demised premises or the building deemed necessary or desirable by the Lessor provided always that in the exercise of any such power under this Clause no undue inconvenience shall be caused to the Lessee and the Lessee's business conducted on the demised premises.

#### **PARTITIONING AND ALTERATION OF PREMISES**

- 5.8 5.8.1 The Lessee will not without the consent in writing of the Lessor which consent shall not be unreasonably withheld install or alter any partitioning equipment or other installations in or on the demised premises provided that where such consent is given the materials and design shall be approved by the Lessor or the Lessor's Architect and such work equipment or installation shall be installed or altered in accordance with the approval so given. Any fees and charges payable to the Lessor's Architect or for any Local Government or licensing authority for approval and inspection of any installation requested by the Lessee shall be borne by the Lessee.

- 5.8.2 Unless otherwise agreed in writing between the parties hereto any partitioning work equipment or other installation installed or altered as aforesaid and any other installation made by the Lessee shall remain the property of the Lessee who shall be responsible for all maintenance thereof and such partitioning work and/or installations may and if so required by the Lessor shall be removed by the Lessee at or immediately prior to the expiration of the Lease and the Lessee shall upon such removal ensure that no undue damage is sustained to the demised premises and shall in any event reinstate that same to the condition it was in prior to such installation to the entire satisfaction of the Lessor.

## **PART 6 – OUTGOINGS**

- 6.1 The Lessee will pay to the Lessor in the manner stated in this clause the Lessee's proportion of the amount of the aggregate of variable outgoings (as hereinafter defined) for any fiscal year during the term hereof.
- 6.1.1 In this clause the "*Lessee's proportion*" is the proportion (expressed as a percentage) that the gross area of the demised premises bears to the total lettable area of the land which is the amount specified in the Seventh Schedule
- 6.1.2 The "*aggregate of variable outgoings*" means the total amount expended by the Lessor including provisions and adjustments appropriate for the fiscal year in respect of the whole of the centre including any additions thereto (and not otherwise the direct responsibility of the Lessee within the terms of the Lease or otherwise) on the terms hereinafter mentioned.
- 6.1.3 The "*items*" are:
- (a) Any statutory taxes, rates, charges, assessments and other outgoings of a like nature including but not limited to Council Rates, SA Water Corporation Rates, Emergency Services Levy rate and Excess water charges Levy which are at any time during the term charged upon the said land or the centre or otherwise chargeable against or to the Lessor in respect of the said land or the centre (but not including any Income

Tax or Land Tax) whether governmental, semi-governmental, municipal or otherwise.

- (b) Cleaning of the common areas and signs.
- (c) Lighting of and power to common areas and signs.
- (d) Common garbage, trade waste and/or sanitary waste disposal.
- (e) All costs associated with the preparation of a written report by a registered company auditor as required by Section 32 of the Act.
- (f) Security.
- (g) General repairs and maintenance.
- (h) Air conditioning service and repairs, including cleaning of filters but excluding unit replacement.
- (i) Upkeep and maintenance of garden, landscaping, pathways and car-parking areas.
- (j) Lessor's management expenses.
- (k) The premium incurred by the Lessor in insuring against the risk of loss or damage to the building for the full insurable reinstatement value against fires, floods, lightning, storm, tempest, explosion, impact, commotion, vandalism, malicious damage and burglary, earthquake and against such other risks the Lessor may deem necessary.
- (l) Pest control.
- (m) Maintenance of fixed and mobile Fire Protection equipment and/or signage.

6.1.4 "*Fiscal year*" means the period of twelve calendar months commencing on the 1<sup>st</sup> day of July in a year and ending on the 30<sup>th</sup> day of June in the next following calendar year.

6.2 Where the outgoings have been paid by the Lessor they are to be reimbursed by the Lessee within fourteen (14) days of presentation of invoice.

6.3 The Lessor may if it thinks fit in respect of any fiscal year render an interim account to the Lessee based upon the Lessor's knowledge (insofar as the amount may be known) or estimate (insofar as the amount is then unknown) of the amount of aggregate of variable outgoings in respect of such fiscal year and the Lessee will pay to the Lessor

on receiving such interim account the amount therein shown as payable provided that as soon as the actual amount of the aggregate of variable outgoings for the fiscal year in question (insofar as not already known) shall have been ascertained the precise amount payable by the Lessee shall be calculated and any overpayment repaid to the Lessee or underpayment paid to the Lessor as the case may be.

- 6.4 If the date of expiry of the term of this Lease is not the 30<sup>th</sup> day of June, being the end of the fiscal year, the Lessee shall pay the appropriate proportion of the amount which the Lessee would otherwise have been liable to pay hereunder in respect of the fiscal year expiring on the 30th day of June next following such date of expiry according to the following formula:

$$\frac{a \times b}{c}$$

Where:

- a = the proportion that the gross area of the demised premises bears to the total lettable area of the centre expressed as a percentage;
- b = the number of days from the 30<sup>th</sup> day of June previous until the date of expiry; and
- c = the number of days in a calendar year being 365.

## **PART 7 - GENERAL LESSEE'S COVENANTS**

### **SIGNS AND ADVERTISING**

- 7.1 The Lessee will not without the prior approval in writing of the Lessor (which approval shall not be unreasonably withheld) erect display affix or exhibit on or to the exterior of the demised premises or any part of the interior therein any signs lights embellishments advertisements names or notices visible from outside the demised premises. Any such signs, lights, advertisements or notices which are approved shall at all times be tasteful and maintained in good order and condition by the Lessee at the Lessee's cost and expense in all things.

**SERVICES AND UTILITIES**

- 7.2 The Lessee will as and when the same become due for payment pay all accounts for water used, the supply of all gas, electricity and telephone and all and any other services installed or provided to the demised premises at the request of the Lessee. The Lessee will if so required by the Lessor in writing and at the Lessee's cost install separate meters for such services as are capable of being separately metered if premises become shared or as a result of an assignment.

**GOODS AND SERVICES TAX (GST)**

- 7.3 7.3.1 The Lessor and the Lessee agree that the rent payable under this lease is exclusive of the payment of any Goods and Services Tax (GST) or any other similar form of government levy that is or may be imposed from time to time by any State or Federal Government authority.
- 7.3.2 The Lessee shall pay the GST (if so applicable) on the gross rent or on any adjustments or reimbursements made to the Lessor. However, this obligation shall at all times be subject to any future Legislative changes that may be made in respect to the above obligation on the Lessor and the Lessee to pay a GST.

**REQUIREMENTS OF PUBLIC AUTHORITIES**

- 7.4 7.4.1 The Lessee will forthwith comply with all statutes, ordinances, proclamations, orders and regulations present or future affecting or relating to the demised premises or the use thereof, and with all requirements which may be made or notices or orders which may be given by any governmental, semi or local governmental, municipal, health, licensing or any other authority having jurisdiction or authority in respect of the demised premises or the use thereof PROVIDED ALWAYS that the Lessee shall be under no liability in respect of any structural alteration required by any such authority which was not caused or contributed to by the Lessee's use or occupation of the demised premises.
- 7.4.2 It is the Lessee's obligation to ascertain from the local council prior to taking occupation of the premises and at the Lessee's cost as to whether or not the proposed use is permitted by the local council and to obtain all such



other authorities and approvals as necessary. The Lessee hereby indemnifies the Lessor in respect of any claim, loss or damage (financial or otherwise) suffered by the Lessor due to the Lessee's failure to observe and satisfy this obligation.

#### **USE OF LAVATORIES AND WET AREAS**

- 7.5 The Lessee will not use nor permit nor suffer to be used the lavatories toilets sinks and drainage and other plumbing facilities in the demised premises for any purpose other than those for which they were constructed or provided and shall not deposit or permit to be deposited therein any sweepings rubbish or other matter and any damage thereto caused by misuse shall be made good by the Lessee forthwith to the entire satisfaction of the Lessor.

#### **PEST CONTROL**

- 7.6 The Lessee will take all reasonable and necessary precautions to keep the demised premises free of rodents vermin insects pests birds and animals and in the event of failing so to do will if so required by the Lessor but at the cost of the Lessee to employ from time to time or periodically such pest control measures are approved by the Lessor.

#### **NOTICE OF DEFECTS TO LESSOR**

- 7.7 The Lessee will give to the Lessor prompt notice in writing of any accident to or defect or want of repair in any services or fixtures fittings plant or equipment in the demised premises and of any circumstances likely to be or to cause any danger risk or hazard to the demised premises.

#### **COSTS**

- 7.8 7.8.1 As detailed in the Disclosure Statement and upon the submission of an account by the Lessor to the Lessee, and pursuant to Section 14 of the Act, the Lessee is to pay the following costs:
- (i) one half of all reasonable costs of and incidental to the negotiation, preparation and engrossment of the Lease by the Lessor's then solicitors or agent;
  - (ii) all stamp duty due and payable on the said lease;

- (iii) any stamp duty due and payable on any subsequent renewal of the said lease;
- (iv) any government fees or charges for the registration or associated with the registration of the said Lease, either now or in the future;
- (v) any costs associated with the registration or protection of the Lessor's interest such as the removal of any Caveat lodged by or on behalf of the Lessee.

7.8.2 In so far as such costs are solicitor's costs the same shall be calculated on the Eleventh Schedule of the Supreme Court Rules (South Australia) or such further schedule of the Supreme Court Rules as may be enacted from time to time on the basis of Solicitor and Client or on such basis as shall be permitted by the Taxing Master of the said Supreme Court. Such costs shall include fees and disbursements incurred in securing the consent of any Government, Local Government authority, Licensing Authority, Statutory Body, any body corporate or any person having an estate or interest in the said land where the consent, licensing or approval of such Government, Local Government authority, Licensing Authority, Statutory Body, any body corporate or any person is required or reasonably necessary in relation to the granting or registration of the said Lease.

## **PART 8 - INSURANCE – PUBLIC LIABILITY/BUILDING DAMAGE OR LOSS ETC**

### **NATURE OF INSURANCES OF PREMISES**

#### **PUBLIC RISK**

8.1 8.1.1 The Lessee shall obtain and keep in force during the term of this Lease (and any renewal therein) a Public Liability Insurance Policy (extended so as to cover property in the physical and legal control of the Lessee) in respect of the use and occupancy of the premises by the Lessee and the business conducted thereon by the Lessee having a limit per any one uninsurable event of an amount of not less than ten million dollars (\$10,000,000.00) and noting thereon the Lessor's interest in the premises.

## **FITTINGS AND STOCK**

- 8.1.2 The Lessee shall obtain and keep in force during the term of this Lease (and any renewal therein) a policy of insurance to cover against loss damage or destruction to the stock in trade and plant and equipment of the business conducted by the Lessee occasioned by fire, storm, tempest, flood, rain water discharge, leaking pipe or water system, impact by animal, explosion, earthquake, impact by vehicle or aircraft or other aerial devices to include articles dropped therein, riots, strikes, or civil commotion, damage occasioned by theft or burglary upon any violent or forcible entry such cover to include full replacement value of the said stock in trade and plant and equipment together with any additional costs of reinstatement incurred by reason of the necessity to comply with any government or municipal or local or licensing authorities requirements together with all other contingencies and risks associated therewith.

## **GLASS**

- 8.1.3 The Lessee shall obtain and keep in force during the term of the Lease and any renewal thereon a policy of insurance to cover the breakage of any glass on or in the premises.

## **LESSEE NOT TO AVOID INSURANCE**

- 8.2 8.2.1 The Lessee will upon execution of this lease upon further request from time to time by the Lessor provide to the Lessor copies of the aforesaid policies and evidence of their currency and evidence of the interest of the Lessor as registered proprietor of the said land.
- 8.2.2 The Lessee will not at any time during the term do permit or omit or suffer to be done permitted or omitted any act matter or thing upon the demised premises or the bringing or keeping of anything therein whereby any insurance effected on the demised premises may be vitiated or rendered void or voidable or whereby the rate of premium on such insurance shall be liable to be increased.

## **FIRE REGULATIONS**

- 8.3 The Lessee will comply with insurance sprinkler and fire alarm regulations in respect of any partitions which may be erected by the Lessee upon the demised premises and the Lessee will pay to the Lessor the cost of any alterations to the sprinkler and fire alarm installations which may become necessary by reason of the non-compliance by the Lessee with the said regulations or the requirements of the Insurance Council of Australia or the requirements of the Insurer.

#### **PARTIAL OR TOTAL DESTRUCTION OF PREMISES**

- 8.4 8.4.1 In the event of the demised premises being totally destroyed or damaged so as to render the repair of or making good such damage impractical or undesirable the Lessor will as soon as is reasonably possible to do so and subject to the receipt of insurance proceeds rebuild the demised premises substantially in accordance with its original design or such other design as the Lessor and Lessee may agree upon having regard to the nature of the business conducted by the Lessee from the demised premises.
- 8.4.2 In the event of the demised premises being partially destroyed or damaged the Lessor will as soon as it is reasonably possible to do so and subject to the receipt of insurance proceeds repair replace and make good the whole of the destroyed or damaged portion of the demised premises as nearly as possible to the condition in which it was immediately prior to such damage or destruction.

#### **PART 9 - INDEMNITIES AND RELEASES BY LESSEES**

- 9.1 9.1.1 The Lessee agrees to occupy and use the demised premises at the risk of the Lessee and hereby releases to the full extent permitted by law the Lessor and its contractors Architects employees and agents from all claims and demands of every kind resulting from any accident damage death or injury occurring therein except to the extent that the same is caused by negligence on the part of the Lessor or its contractors Architects employees or agents.

9.1.2 Without prejudice to the generality of the foregoing provisions, to the extent that any moneys paid to the Lessor out of insurances effected by the Lessee do not fully indemnify the Lessor from and against all actions, claims, demands, notices, losses, damages, costs and expenses to which the Lessor shall or may be or become liable in respect of all or any of the following:-

- (i) any loss or damage to property, or death or injury of whatsoever nature or kind and howsoever or wherever sustained, caused or contributed to by the use or occupation of the demised premises and not caused by the negligence or wilful act default or omission of the Lessor;
- (ii) resulting from any act default or omission by the Lessee hereunder and whether the same arises through any act default or omission of the Lessee or any of its agents, contractors, servants, licensees, sublessees, invitees or to any trespassers;
- (iii) resulting from any notice claim or demand to pay do or perform any act matter or thing to be paid done or performed by the Lessee under this Lease except however to the extent that the Lessee shall be obliged under the provisions of this Lease to pay for or contribute to the costs of the same;

The Lessee agrees to indemnify the Lessor, the Lessors' Architects, contractors, employees and agents to the full extent of the shortfall between any or all such claim or claims and the amount of insurance recovery in respect therein.

9.1.3 Without limiting the generality of sub-clause 9.1.1 and 9.1.2 herein the Lessee will and does hereby indemnify the Lessor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor shall or may be or become liable in respect of or arising from all or any of the following:-

- (i) overflow or leakage of water (including rain water) and other fluids in, into or from the demised premises; and

- (ii) any damage to property loss of life or injury to persons which may be suffered or sustained by the Lessee or any employee or invitee of the Lessee in or upon any portion of the building whether in the occupation or control of the Lessor or of the Lessee or of any other person except to the extent that the same is caused by negligence on the part of the Lessor its contractors or employees.

## **PART 10 – LESSOR’S COVENANTS**

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

### **MAINTENANCE OF LIGHTING**

- 10.1 The Lessor will ensure that the lighting of the public or common areas as is needed be maintained repaired and replaced so as to ensure that the lighting provided is at all times suitable and adequate for safety in the relevant area throughout the whole of the term and otherwise so long as the Lessee may remain in possession or occupation of the premises described in the SECOND SCHEDULE.

### **COMMON AREAS**

- 10.2 The Lessor will be responsible for when where and so often as it is needed the maintenance repair upgrading and replacement of the public or common area and will ensure that the condition of the surfaces and building (if applicable) is suitable for those uses of the Lessee and its patrons or as are permitted by the Lessor in accordance with Clause 4.1 of this agreement.

### **QUIET ENJOYMENT**

- 10.3 The Lessee paying the rent hereby reserved and duly and punctually observing and performing the covenants obligations and provisions in this Lease on the part of the Lessee to be observed and performed shall peaceably possess and enjoy the demised premises during the term without any interruption or disturbance from the Lessor or any other persons lawfully claiming from or under the Lessor.

### **REMOVAL OF LESSEE’S FIXTURES**

- 10.4 The Lessee may at or prior to the determination of this Lease (and will if so required by the Lessor at or immediately following the expiration or sooner determination of the term) take remove and carry away from the demised premises all fixtures fittings

plant equipment or other articles upon the demised premises in the nature of trade or Lessee's fixtures brought upon the demised premises by the Lessee with the consent of the Lessor together with any items referred to in clause 7.1 hereof but the Lessee shall in such removal do no damage to the demised premises or to any of the Lessor's internal fixtures and fittings or shall forthwith make good any damage which the Lessee may occasion thereto to the entire satisfaction of the Lessor.

#### **LESSEE'S FIXTURES NOT REMOVED**

- 10.5 If the Lessee does not remove and carry away any such fixtures, fittings, plant, equipment and other articles or items at or immediately following the determination of this Lease the Lessor may at the expense of the Lessee remove and dispose of the same and any of such fixtures, fittings, plant, equipment and other articles or items not removed by the Lessee as aforesaid shall become the absolute property of the Lessor without any liability to compensation to the Lessee therefore.

#### **MONTHLY TENANCY UPON HOLDING OVER**

- 10.6 If the Lessee holds the demised premises with the express or implied permission of the Lessor after the expiration or sooner determination of the said term or any extended term hereby granted the Lessee shall be deemed to hold the demised premises as a tenant from month to month and shall hold the demised premises subject to all the covenants agreements and conditions hereinbefore contained so far as the same shall be applicable to a monthly tenancy and the tenancy so constituted may be determined by one month's notice to quit on either side which may be given so as to expire at any time. In such case the applicable rent shall be the monthly rent applicable immediately before the expiration of the Lease plus 10%.

#### **RIGHT OF RENEWAL**

- 10.7 That on the written request of the Lessee made not less than three months nor more than six months before the expiration of the said term and PROVIDED THAT there shall not at the time of such request be any existing breach or non-observance of any of the covenants and conditions herein contained and on the Lessee's part to be observed and performed the Lessor will at the expense of the Lessee grant to the Lessee an extension of this Lease of the land for a further term or terms or part thereof (as set out in the FOURTH SCHEDULE) subject to the same terms and conditions as are herein

contained save for the exclusion of this Clause giving the Lessee a right or renewal and PROVIDED FURTHER that if the due observance or performance by the Lessee of his duties and obligations hereunder shall have been guaranteed by any person firms or corporation then the execution by such guarantor or guarantors of such documents or assurances as the Lessor may require for the purpose of affirming or renewing such guarantee or guarantees for the said extension shall be a condition precedent to the exercise by the Lessee of the Lessee's right to request an extension hereunder.

## **MUTUAL COVENANTS**

It is agreed between the parties as follows:

### **PART 11 – DEFAULT AND TERMINATION**

#### **RE-ENTRY OR SURRENDER ON DEFAULT**

##### **11.1 In the event that:-**

- (a) The Lessee shall be declared bankrupt or execute a statutory assignment for the benefit of his creditors or enter into a scheme of arrangement or composition with or call a meeting of his creditors or in any manner become insolvent or bankrupt; or
- (b) The Lessee being a corporation, an order is made or resolution is effectively passed by the winding up of the Lessee (other than for the purpose of amalgamation or reconstruction) or the Lessee ceases or threatens to cease to carry on business; or
- (c) The Lessee fails to perform or observe any one or more of the covenants or provisions on the part of the Lessee expressed or implied in this Lease unless the non-performance or non-observance has been waived or excused by the Lessor in writing;

THEN the Lessor may at any time thereafter but without prejudice to any claim which the Lessor may have against the Lessee in respect of any breach of the covenants and provisions in this Lease on the part of the Lessee to be observed or performed either re-enter into and repossess and enjoy the demised premises as in its former estate as if this agreement had not been made (anything herein contained to the contrary



notwithstanding) and thereupon this Lease shall absolutely determine or call for an immediate surrender of the Lessee's estate and interest under this Lease and for the more effectual enforcement of this right the Lessee hereby irrevocably appoints the Lessor the Lessee's true and lawful attorney to surrender or cause to be surrendered this Lease and to sign all notices deeds and documents for the purpose of such surrender in the name of the Lessee and upon such surrender the Lessor shall be freed and discharged from any action suit claim or demand by or obligation to the Lessee under or by virtue of this Lease.

#### **ACCEPTANCE OF RENT**

- 11.2 Demand or acceptance of rent by the Lessor after default by the Lessee under this Lease shall be without prejudice to the exercise by the Lessor of the powers conferred upon the Lessor by Clause 11.1 herein or any other right power or privilege of the Lessor under this Lease and shall not operate as an election by the Lessor either to exercise any of such rights powers or privileges.

#### **LESSOR MAY REMEDY LESSEE'S DEFAULTS**

- 11.3 If the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has herein covenanted to pay do or effect then on each and every such occasion it shall be lawful for but not obligatory upon the Lessor and without prejudice to any rights or powers arising from such default to pay such money or to do or effect such thing by itself as if it were the Lessee and for that purpose the Lessor may enter upon the demised premises upon giving not less than seven (7) days advance notice to the Lessee and there remain for the purpose of doing or effecting any such thing and without prejudice to the rights and powers and remedies of the Lessor otherwise under this Lease the Lessee will pay to the Lessor interest at the rate of one and a half percent (1.5%) per calendar month, compounded monthly on any moneys due by the Lessee to the Lessor on any account whatsoever pursuant to this Lease but unpaid for seven (7) days such interest to be computed from the due date for the payment of the moneys in respect of which the interest is chargeable until payment of such moneys in full and be recoverable in like manner as rent in arrears.

**YIELDING UP THE PREMISES**

- 11.4 The Lessee will at the expiration or sooner determination of this Lease peaceably surrender and yield up unto the Lessor the demised premises clean and free from rubbish and in a state of repair order and condition in all respects consistent with full compliance with the obligations relating to repair order and condition set out in Part 5 herein but taking into consideration the Lessee's prior use of the subject premises and the condition of the premises (when leased by the Lessor to the Lessee).

**ESSENTIAL TERMS**

- 11.5 11.5.1 Each of the covenants contained in Parts 1, 2, 4, 5, 6, 7 and 8 and the obligation to observe and perform the same by the Lessee are of a fundamental character and are essential to the term of this Lease in that were they not agreed by the Lessor and the Lessee as being fundamental and essential the Lessor would not have entered into this Lease and the Lessor shall be entitled to treat any break or default thereunder by the Lessee as a repudiation of this Lease.
- 11.5.2 The Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of any covenants or conditions in this Lease for the loss or damage suffered by or resulting to the Lessor during the entire term of this Lease and the Lessor's entitlement shall not be affected or limited by any actions of the Lessor or Lessee which results in the vacating of the demised premises or the termination or surrender of the Lease.

**OPPORTUNITY TO RECTIFY DEFAULT BY THE LESSEE**

- 11.6 Notwithstanding anything expressed or implied in this Lease and subject to the provisions of Clause 10.3 herein the Lessor will not re-enter upon the demised premises or determine or forfeit or require a surrender of this Lease for the remainder of the term unless the Lessor shall have first given to the Lessee notice of breach default or non-observance on which the Lessor relies in seeking to act as aforementioned PROVIDED ALWAYS that:-
- 11.6.1 in the case of a breach default or non-observance remediable by payment of money if the Lessee pays to the Lessor within twenty-one (21) days of service

of such notice all moneys necessary to remedy such breach or non-observance; or

- 11.6.2 in the case of a breach default of non-observance remediable other than by payment of moneys, if the Lessee within twenty-eight (28) days of the service of such notice undertakes in writing to the Lessor to remedy the breach default or non-observance and so remedies the same within a reasonable time having regard to the extent therein but in any event within three (3) months of the giving of such undertaking;

THEN the Lessor shall not be entitled to rely upon the breach default or non-observance set out in the notice to the Lessee as a ground for re-entry, determination, forfeiture or requiring surrender and the same shall be absolutely waived by the Lessor and this Lease shall continue in full force and effect as if no such breach default or non-observance has occurred.

## **PART 12 - GENERAL**

### **EXCLUSION OF WARRANTIES**

- 12.1 The Lessee acknowledges and declares that no promise representation warranty or undertaking has been given by or on behalf of the Lessor in respect to the suitability of the demised premises for any business to be carried on therein or to any air-conditioning plant or other plant or to the fittings finish facilities and amenities of the demised premises or as to the other businesses to be carried on in the building (if applicable).

### **WHOLE AGREEMENT**

- 12.2 The covenants and provisions contained in this Lease expressly or by statutory implications cover and comprise the whole of the agreement between the parties hereto and it is expressly agreed and declared that no further or other covenants or provisions whether in respect of the demised premises or otherwise shall be deemed to be implied herein or to arise between the parties hereto by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by any party hereto to another on or prior to the execution herein and the existence of any such implication or collateral or other agreement is hereby negated.

**WAIVER**

- 12.3 No waiver by the Lessor of one breach of any covenant obligation or provision in this Lease contained or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Lease contained or implied.

**NO PREMIUM TO ENTER LEASE AND COSTS IN EVENT OF BREACH**

- 12.4.1 Save as herein contained no premium or other consideration has been or is to be paid to the Lessee or any other person.
- 12.4.2 The Lessee will pay the Lessor's legal fees on a solicitor and own client basis such fees to be charged pursuant to the Eleventh Schedule of the Supreme Court Rules (South Australia) or such further schedule of the Supreme Court Rules as may be enacted from time to time, and all other fees, charges and expenses of or incidental to each and every breach or default by the Lessee hereunder and in or incidental to the exercise or attempted exercise of any right power or privilege authority or remedy of the Lessor under or by virtue of this Lease and the fees of all professional consultants properly incurred by the Lessor in consequence of or in connection with breach or default by the Lessee hereunder.

**LESSEE NOT TO CAUSE RENT REDUCTION**

- 12.5 The Lessee will not without the written consent of the Lessor by any act matter or deed or by any failure or omission impair reduce or diminish directly or indirectly the rent hereby reserved or impose or cause or permit to be imposed on the Lessor any liability of the Lessee under or by virtue of this Lease.

**NOTICES**

- 12.6 All demands requisitions consents elections or notices shall be in writing and may be given to or served upon a party hereto by being left at that party's registered office or principal place of business in the state or place in which the demised premises are situated or by being posted in a prepaid certified or registered letter addressed to that party at such office or principal place of business. Any such demand requisition consent election or notice if posted shall be deemed duly served at the expiration of three (3) days after the time of posting. In proving the giving of the same it shall be sufficient to prove the envelope containing the same was properly addressed stamped and registered and put into a Post Box in Australia. Any demand requisition consent

election or notice may be signed by the Lessor or on its behalf by the Manager, the Secretary or other authorised officer for the time being of the Lessor.

#### **“FOR LEASE” NOTICES**

- 12.7 The Lessee will at all times within THREE (3) months immediately preceding the termination of this Lease allow the Lessor to affix and exhibit where the Lessor shall think fit the usual “For Lease” notice and/or sign and in each case with the name and address of the Lessor and/or its agents thereon and to enter the demised premises for the purpose of inspection by prospective tenants and the Lessee will not remove any such notice without the written consent of the Lessor.

#### **CONSENTS**

- 12.8 In any case where pursuant to this Lease the doing or execution of any at matter or thing by the Lessee is dependent upon the consent or approval of the Lessor such consent or approval may be given conditionally or unconditionally or withheld by the Lessor provided that the Lessor shall not obstruct the Lessee or withhold such consent unreasonably or capriciously.

#### **NON-MERGER**

- 12.9 None of the terms or conditions for this Lease nor any matter or thing done under or by virtue of or in connection with this Lease or any other agreement between the parties hereto shall operate as a merger of any of the rights and remedies of the parties in or under this Lease or in or under any such other agreement all of which shall continue in full force and effect.

#### **MORATORIUM**

- 12.10 Unless application is mandatory by law no statute ordinance proclamation order regulation or moratorium present or future shall apply to this Lease so as to abrogate extinguish impair diminish fetter delay or otherwise prejudicially affect any rights powers remedies or discretions given or accruing to the Lessor.

#### **REIMBURSEMENT OF LESSOR’S EXPENSES**

- 12.11 To the extent permissible at law the Lessee will forthwith upon demand pay to the Lessor by way of additional rent an amount equivalent to any moneys paid by the Lessor in respect of any liability imposed on the Lessor under or by virtue of this Lease notwithstanding that any statute ordinance proclamation order regulation or

moratorium present or future directly or indirectly imposes such liability upon the Lessor.

#### **REBUTTAL OF AGENCY ETC.**

- 12.12 Nothing contained herein shall be deemed or construed by the parties hereto nor any third party as creating the relationship of partnership or of principal and agent or of joint venture between the parties hereto it being understood and agreed that neither the method of computation of rent or any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.

#### **PART 13 - LESSEES' ATTORNEY**

- 13.1 The Lessee hereby irrevocably makes nominates constitutes and appoints the Lessor and its officers severally to be the true and lawful attorney of the Lessee to act at any time after the power to re-enter herein contained shall have become exercisable or shall have been exercised (a sufficient proof wherein shall be the statutory declaration of the Lessor) to execute and sign a transfer or a surrender of this Lease and to procure the same to be registered and for this purpose to use the name of the Lessee and generally to do execute and perform any act deed matter or thing relative to the demised premises as fully and effectually as the Lessee could do in and about the demised premises and the Lessee hereby covenants to rectify and confirm all and whatsoever the said attorney or any substitute shall lawfully do or cause to be done in and about the demised premises. The Registrar-General is hereby authorised to act upon the said statutory declaration and to accept the same as sufficient evidence of the right of the Lessor to determine this Lease or re-enter the demised premises.

#### **PART 14 - EXCESSIVE NOISE**

- 14.1 The Lessee in carrying out its permitted use of the demised premises shall not do so in a loud noisome or offensive manner so as to cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of adjoining or neighbouring lands or buildings. In the event of the Lessee being in breach of this covenant the Lessee

will in all things at the expense of the Lessee attend to the sound proofing of the demised premises or so much therein as may be necessary in such manner as shall be approved by the Lessor or the Lessor's architect and such work equipment or installation shall be installed or altered in accordance with the approval so given. Any fees payable to the Lessor's Architect for approval and inspecting of the installation shall be paid by the Lessee.

#### **PART 15 - REDEVELOPMENT**

15.1 The Lessee acknowledges and agrees that:

- 15.1.1 the Lessor may propose to redevelop the premises and/or the building and land of which it forms a part during the term of this Lease;
- 15.1.2 the Lessor will suffer harm expense and loss of it elects to redevelop and is unable to obtain vacant possession of the premises;
- 15.1.3 the Lessor has only agreed to the Lessee's offer to lease the premises on the condition it can obtain vacant possession of the premises for the purpose of redevelopment as and when required;
- 15.1.4 this Lease is expressly subject to the condition precedent that the Term of this Lease be subject to the Lessor's rights and the exercise thereof contained in this clause;
- 15.1.5 the Lessee is aware of its rights under the Act (if any) and agrees that the exercise of its rights thereunder shall be subject to this clause to the extent permitted by law;
- 15.1.6 if the Lessor in its absolute and unfettered discretion elects to redevelop the premises or the building or the land during the term of this Lease and the Lessor requires the premises for any reason connected with such redevelopment then the Lessor may at any time terminate the Lease upon giving not less than SIX (6) months (or such other period if any prescribed by the Act) written notice to the Lessee specifying the date on which the Lessor so requires vacant possession of the Premises ("the termination date") and upon giving such notice:
  - (i) this Lease shall terminate on the termination date;

- (ii) not less than 7 days prior to the termination date the Lessee shall execute and deliver to the Lessor a surrender of Lease in registrable form by mutual consent and for no monetary or other consideration effective from the termination date and the Lessee's registered duplicate copy of this Lease. The costs of preparation and registration of the surrender of Lease shall be paid by the Lessor; and
  - (iii) the Lessee shall vacate the premises in compliance with the terms and conditions of this Lease.
- 15.1.7 the Lessor shall be the sole judge of whether the Lessor requires the premises for the redevelopment;
- 15.1.8 the Lessee shall not be entitled to any compensation or damages from the Lessor on any account whatsoever or howsoever by reason of termination of this Lease.

#### **PART 16 – BANK GUARANTEE**

- 16.1 16.1.1 On the signing of this Lease the Lessee will provide the Lessor with a Bank Guarantee for the sum specified in the TENTH SCHEDULE ("the Bank Guarantee") as security for the due and punctual observance and performance of the Lessee's obligations under this Lease.
- 16.1.2 If the Lessee fails duly and punctually to observe and perform its obligations under this Lease, then the Lessor may in its discretion at any time appropriate apply so much of the Bank Guarantee as it thinks necessary to compensate it for loss or damage sustained or suffered because of such breach by the Lessee. Any appropriation by the Lessor will not waive the Lessee's breach and will not prejudice any other right of the Lessor arising from such breach.
- 16.1.3 If the Bank Guarantee or any part of it is appropriated by the Lessor, then within FIVE (5) days after the date of any demand by the Lessor, the Lessee will reinstate the Bank Guarantee by extending or renewing the Bank Guarantee for the amount appropriated.
- 16.1.4 At the expiration of the term of this Lease or of any holding-over period or on the earlier termination of this lease, if the Lessee is not indebted or otherwise



liable to the Lessor for non-observance or non-performance of the Lessee's obligations under this Lease, the Lessor will return to the Lessee the Bank Guarantee then held by the Lessor.

- 16.1.5 If the Lessor assigns or transfers its interest in the Premises, it may pay or transfer to the assignee or transferee the Bank Guarantee then held by it and after doing so will be discharged from all liability to the Lessee or any other person with respect to the Bank Guarantee.

#### **PART 17 – SECURITY BOND**

- 17.1 On the signing of this Lease the Lessee shall provide the Lessor with a Security Bond in accordance with the terms of the Act in the amount specified in TENTH SCHEDULE.
- 17.2 The Lessor shall forward the Bond to the Commissioner of Consumer and Business Affairs within SEVEN (7) days of receipt of the Bond.
- 17.3 The Lessor may require the Lessee to increase the amount of the Security Bond TWO (2) years after the commencement of this Lease in accordance with the terms of The Act.

#### **PART 18 – GUARANTEE AND INDEMNITY**

- 18.1 It is acknowledged that this Lease has been granted to the Lessee at the request of the Guarantors as specified in the TENTH SCHEDULE of this Lease. In consideration of such grant:
- 18.1.1 the Guarantors guarantee to the Lessor the due payment by the Lessee of all money, interest and damages and the due performance and observance by the Lessee of all the terms, covenants and obligations in this Lease or implied and on the part of the Lessee to be paid, performed and observed ("Terms");
- 18.1.2 the Guarantors indemnify the Lessor and agree always to keep the Lessor indemnified from and against all damages and all costs, losses and expenses which the Lessor suffers or incurs due to or arising directly or indirectly out of any breach or non-observance by the Lessee of any of the Terms. The Guarantor agrees that this indemnity continues and the Guarantor remains

liable to the Lessor under this indemnity despite that:

- (i) due to such breach or non-observance the Lessor has exercised any of its rights to re-enter or terminate this Lease;
- (ii) the Lessee (being a company) may be wound-up or (being a natural person) may be declared bankrupt;
- (iii) the Terms may be unenforceable either in whole or in part; and
- (iv) the Lease may not be registered.

18.1.3 the Guarantor acknowledges and agrees that:

- (i) the liability of the Guarantor in this Lease will not be affected by:
  - (A) the granting of time, indulgence or concessions to the Lessee;
  - (B) the compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any of the rights of the Lessor against the Lessee;
  - (C) any neglect or omission to enforce such rights;
  - (D) any other act, matter or thing which under the law relating to the sureties would or might but for this provision release the Guarantor from any obligation under this clause 20;
- (ii) the guarantee and indemnity given continues and remains in full force until SEVEN (7) months after the due performance, observance and fulfilment by the Lessee of all the Terms in accordance with the Terms;
- (iii) the guarantee and indemnity will not be determined by:
  - (A) the death or notice of death of the Guarantor;
  - (B) the Guarantor's bankruptcy or insolvency or entry into an arrangement, assignment or composition for the benefit of the creditors;
- (iv) the guarantee and indemnity will not be deemed to have been discharged if any payment by the Lessee is avoided in whole or part by the operation of law so that the Lessor does not retain the benefit of the payment;
- (v) until the Lessor has received in full all money payable by or

recoverable from the Lessee, the Guarantor must not claim the benefit of any security held by the Lessor or prove in the estate of the Lessee or any guarantor in competition with the Lessor;

- (vi) if the Lease contains an option for a further lease and the Lessee exercises such option, the Lessor's obligation to grant such a lease is subject to the Guarantor guaranteeing the Lessee's obligation under such lease and indemnifying the Lessor in respect of that lease in the terms of the guarantees and indemnities in this clause;
- (vii) the liability of the Guarantor under this Lease will not be affected by any assignment, transfer, sub-letting or parting with possession by the Lessee (whether with or without the Lessor's consent) of the Premises but continues in full force and effect.

- 18.2 The Guarantor agrees to pay to the Lessor on demand any outstanding rent or other amount or to compensate the Lessor for any loss or damage without the Lessor having made any claim or instituted any proceedings against the Lessee or any other person in respect of such claims or breaches.
- 18.3 Each person being a Guarantor and intended to be bound on due execution of the Lease having duly executed the Lease acknowledges that:
  - 18.3.1 the due execution by each other person being a Guarantor is not a precondition either to his being bound or to delivery of the Lease to the Lessor;
  - 18.3.2 he shall be bound in all respects on delivery of the Lease to the Lessor despite that any person being a Guarantor does not execute or deliver the Lease or executes the Lease by himself or his Attorney in a manner defective at law or by Attorney without adequate power; and
  - 18.3.3 the guarantee and indemnity given covers the whole period whilst the Lessee occupies or is entitled to occupy the Premises under the Lease or any extension or renewal of the Lease, or whilst holding an equitable interest over the Premises under an agreement for Lease or as a periodical tenant.
- 18.4 If two or more people are Guarantor, they are jointly and severally bound with each other person named as Guarantor.
- 18.5 For the purpose of this Guarantee and Indemnity "Lease" extends to any agreement for

lease entered into between the Lessor and the Lessee prior to the date of this Lease.

**CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION**

This Lease does not contravene Section 32 of the *Development Act 1993*.

COMMONWEALTH BANK OF AUSTRALIA of 96 King William Street Adelaide SA 5000 the mortgagee under and by virtue of Memorandum of Mortgage No. 10536006 hereby consents to the within Memorandum of Lease

JOHANNES ANTONIUS ENGELBERTUS ALBERS and GILLIAN FAY ALBERS both of 283 Barker Street Castlemaine VIC 3450 the mortgagees under and by virtue of Memorandum of Mortgage No. 10536007 hereby consent to the within Memorandum of Lease

DATED ..... 2008

**EXECUTION**

EXECUTED by the LESSOR – VINTAGE REAL ESTATE PTY LTD  
ACN 097 363 507 in accordance with Section 127(1) of the  
*Corporations Act 2001* by the authority of its directors:

.....  
Director

.....  
Director/Secretary

EXECUTED by the LESSOR – C R LINDNER NOMINEES PTY LTD  
ACN 007 962 101 in accordance with Section 127(1) of the  
*Corporations Act 2001* by the authority of its directors:

..... CRL  
Director

..... PEL  
Director/Secretary

.....  
Signature of the LESSEE – NICHOLAS HEDLEY HAMBOUR

.....  
Signature of the LESSEE – CORALEE DENISE HAMBOUR

.....  
Signature of WITNESS – Signed in my presence by the LESSOR who is  
either personally known to me or has satisfied me as to her identity. \*

KELLY NOSTIKOW  
.....  
Print Full name of Witness (BLOCK LETTERS)

Po Box 158 Lyndoch  
5351 SA.  
.....  
Address of Witness

(08) 85811666  
.....  
Business Hours Telephone Number

**Exclusion of warranty of fitness for purpose**  
*Retail and Commercial Leases Act 1995: Section 18*  
*Retail and Commercial Leases Regulations 1995: Regulation 7*  
**The Lessor does not warrant that the premises that you are  
about to lease will, for the duration of your Lease, be  
structurally suitable for the type of business that you intend to  
carry on.**

NB: A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing.

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

**MEMORANDUM OF LEASE**

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE &  
STAMP DUTY PURPOSES ONLY**

Prefix
<b>L</b>
Series No.

**BELOW THIS LINE FOR AGENT USE ONLY**

CERTIFIED CORRECT FOR THE PURPOSES  
OF THE REAL PROPERTY ACT 1886

\_\_\_\_\_  
Solicitor/Registered Conveyancer/Lessee

AGENT CODE

Lodged by: HEUZENROEDER & HEUZENROEDER      HEUZ P

Correction to: HEUZENROEDER & HEUZENROEDER      HEUZ P  
PO BOX 60, TANUNDA SA 5352

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH  
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. ....
2. ....
3. ....
4. ....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1. ....
2. ....
3. ....
4. ....

**DELIVERY INSTRUCTIONS** (Agent to complete)

PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE  
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	