

THE LEASE BUREAU

STANDARD TERMS & CONDITIONS

Questions or queries should be addressed to:

THE LEASE BUREAU
66 The Parade, Norwood SA 5067
Fax: 8362 0511 **Telephone: 8362 4444**
www.theleasebureau.com.au

The Commercial Lease Specialists

INDEX

DEFINITIONS / CONSTRUCTION

- 1/1 Definitions
- 1/2 Construction

RENT / RENT REVIEW

- 2/1 Payment of Rent and Other Moneys
- 2/2 Goods and Services Tax
- 2/3 Mode of Payment
- 2/4 Outgoings/Money Owed Included in Rent
- 2/5 Rent Review
- 2/6 Replacement of CPI
- 2/7 Current Rent Payable Until New Rent Determined
- 2/8 Holding Over Rent Increase

RE-ENTRY / BREACH

- 3/1 Right of Re-Entry: Notice of Breach
- 3/2 Lessor's Rights or Powers on Re-Entry or Breach
- 3/3 Lessor's Rights to Remove/Sell Lessee's Fixtures
- 3/4 Other Remedies
- 3/5 Appointment of Attorney
- 3/6 Waiver
- 3/7 Costs of Breach/Re-Entry
- 3/8 Essential Terms
- 3/9 Interest on Arrears of Rent and Other Moneys
- 3/10 Damages in Respect of Repudiation or Breach
- 3/11 Landlord and Tenant Act Notice
- 3/12 Means of Entry and Possession

RATES and TAXES / OUTGOINGS / EXPENSES

- 4/1 Rates and Taxes/Outgoings
- 4/2 Adjustment of Rates Taxes and Outgoings
- 4/3 Electricity Gas and Telephone
- 4/4 Lease Preparation Costs
- 4/5 Payments to the Lessor

TERM / RIGHT OF RENEWAL

- 5/1 Term
- 5/2 Holding Over
- 5/3 Right of Renewal
- 5/4 Statutory Extension Rent Review

USE OF PREMISES / RESTRICTIONS / ALTERATIONS

- 6/1 Permitted Use
- 6/2 Suitability of Premises
- 6/3 Restrictions on Use
- 6/4 Compliance With Statutes
- 6/5 Repair of Damage
- 6/6 Keep Premises in Good Order
- 6/7 Structural Alterations
- 6/8 Removal of Lessee's Alterations
- 6/9 Fire Regulations

POSSESSION / SUBLETTING / TRANSFER / ASSIGNMENT

- 7/1 Quiet Possession
- 7/2 Maintain Possession
- 7/3 Assignment/Subletting
- 7/4 Changes of Ownership in Lessee Company

REPAIRS / MAINTENANCE / CLEANING

- 8/1 Inspection by Lessee
- 8/2 Keep Grounds Clean
- 8/3 Sewers Drains and Plumbing
- 8/4 Keep Area Tidy
- 8/5 Pest Control
- 8/6 Remove Refuse
- 8/7 Carpets
- 8/8 Remove Graffiti
- 8/9 Not to Damage Facilities
- 8/10 Replace Broken Glass/Electrical Equipment
- 8/11 Defects

- 8/12 Accidents
- 8/13 Painting
- 8/14 Payment in Lieu of Works
- 8/15 Environmental Impact

INSURANCE / ABATEMENT OF RENT

- 9/1 Building Insurance
- 9/2 Public Risk
- 9/3 Lessee's Insurances
- 9/4 Production of Insurance Policy/Premium Receipt
- 9/5 Voiding Insurance
- 9/6 Abatement of Rent on Damage
- 9/7 Termination upon Destruction
- 9/8 Damage to Fittings

FIXTURES / FITTINGS / AIR CONDITIONING / SIGNS / LOCKS

- 10/1 Lessee may Adapt Premises to Suit
- 10/2 Lessee to Maintain Lessor's Fittings
- 10/3 Removal of Partitioning/Equipment/Signs
- 10/4 Air conditioning
- 10/5 Lessee not to Attach Fittings
- 10/6 Heating/Cooling
- 10/7 Signs
- 10/8 Locks/Keys

LESSOR'S RIGHTS / INDEMNITIES

- 11/1 Right to Enter Premises
- 11/2 Lessor's Right to Re Let
- 11/3 Lessor's Right to Sell
- 11/4 Lessor May Act Through Agents
- 11/5 Joint Lessors
- 11/6 Lessor's Right of Access to Cables and Pipes
- 11/7 Indemnity to Lessor
- 11/8 Indemnity by Lessee
- 11/9 Redevelopment
- 11/10 Resumption

MISCELLANEOUS

- 12/1 Service of Notices
- 12/2 Severance of Offending Provision
- 12/3 Consents
- 12/4 Trusts
- 12/5 Guarantors
- 12/6 Entire Agreement
- 12/7 Security Bond
- 12/8 Malfunction of Services
- 12/9 Capital Costs Not Recoverable
- 12/10 Electricity

COMMON AREAS / RULES

- 13/1 Common Areas
- 13/2 Lessee's Right to Common Areas
- 13/3 Dispute as to Common Areas
- 13/4 Regulation of Common Areas
- 13/5 Management of Common Areas
- 13/6 Conduct in Common Areas
- 13/7 Delivery of Goods
- 13/8 Litter
- 13/9 Toilet Facilities
- 13/10 Advertising and Soliciting
- 13/11 Use of Carpark

SECTION 1
DEFINITIONS / CONSTRUCTION

1/1 **Definitions**

"Accounting Period" for the purposes of this Lease and for the purposes of the Retail and Commercial Leases Act 1995 means a period of five (5) years.

"Building" means the interior and exterior of the building erected on the Land in which the Premises are contained and any part thereof together with air conditioning fire protection and other plant machinery and equipment and all fixtures and fittings of the Lessor and all conveniences services amenities and appurtenances thereof.

"Centre" means the Premises, the Building and the Land described in the Schedule hereto and any adjacent space land or car parking area used for the benefit of the Centre.

"CPI review", "Market review", "Valuer review" means a revision of the Rent in accordance with the definitions set out in Section 2 hereof.

"Fixed Rent Period" means the period between the date of the commencement of the Term and the day upon which a new Rent may become payable pursuant to the provisions of this lease or the period between any two successive review dates thereafter during the Term.

"GST Act" means A New Tax System (Goods and Services Tax) 1999.

"Land" means the whole of the land comprised in the Certificate(s) of Title described in the Schedule hereto.

"Lessee" means the party or parties described in the Schedule hereto as the Lessee and if more than one (1) then jointly and severally and includes heirs executors administrators successors and permitted assigns.

"Lessor" means the party or parties described in the Schedule hereto as the Lessor and if more than one (1) then jointly and severally and includes heirs executors administrators successors and assigns.

"Percentage" in relation to the Consumer Price Index, means a percentage appearing on table 2 of the catalogues of the Australian Bureau of Statistics containing the changes in the Consumer Price Index.

"Premises" means the premises demised by this Lease and described in the Schedule hereto which form part or all of the Building(s) erected on the Land and includes where appropriate the Lessor's fixtures and fittings.

"Rent" means the rent specified in the Schedule hereto or such other varied rent agreed or determined from time to time in accordance with the provisions hereof.

"Rent Review" means the revision of the Rent on a regular basis in accordance with the provisions set out herein.

"Right of Renewal" means the right to extend the Term(s) for a further period or periods.

"Term" means the term of this Lease and any and each renewal or extension thereof and any period during which the Lessee holds over as tenant.

1/2 **Construction**

In the construction and interpretation of this Lease unless inconsistent with the context:- singular words shall include plural words and plural words shall include singular words as the case may require:-

- a reference to a particular gender shall include each other gender
- a reference to a person shall include a corporation
- marginal notes headings the index and reference notes are not part of this Lease or of the covenants or conditions of this Lease and are not intended to nor shall they affect alter or limit the interpretation or construction of this Lease
- where there is any inconsistency between the covenants in this Lease and any special conditions contained herein then the special conditions shall, to the extent of such inconsistency, prevail
- where there is any inconsistency between the Schedule and any other part of this Lease then the Schedule shall prevail
- this Lease means the Memorandum of Lease attached hereto, the Schedule thereto, any annexures attached thereto and the covenants and conditions contained herein.

SECTION 2

RENT / RENT REVIEW

2/1 Payment of Rent and Other Moneys

The Lessee shall pay in advance at the times specified in this Lease the Rent and all other moneys payable under this Lease by the Lessee (whether demanded or not) free of any deduction to the Lessor or to such other person or in such manner as the Lessor in writing from time to time nominates. The Rent for any period at the beginning or end of the Term of less than one (1) calendar month shall be adjusted according to the proportion of the month which is included in the Term.

2/2 Goods and Services Tax

In addition to all other amounts payable by the Lessee pursuant to this Lease the Lessee upon presentation of a tax invoice from the Lessor shall pay to the Lessor, at the same time as the relevant rent, outgoing, expense or other amount is due, all goods and services taxes, value added taxes, consumption taxes or other similar taxes, duties excises surcharges levies or imposts (collectively "GST") charged or levied in respect of:

- rent paid or received pursuant to this Lease
- any outgoings or other expenses incurred or paid by the Lessor and which are to be reimbursed by the Lessee to the Lessor pursuant to this Lease and
- any other taxable supply by the Lessor (for which the Lessor is to receive consideration from the Lessee pursuant to this Lease) within the meaning of the GST Act or any other Act amending or in substitution thereof.

The parties acknowledge that the Rent specified in the Schedule is exclusive of the amount of GST charged, levied or payable from time to time in respect of the Rent.

2/3 Mode of Payment

All payment of Rent or other moneys due by the Lessee to the Lessor which are tendered by cheque or other than in cash may be accepted by the Lessor but shall not be deemed to have been paid or received by the Lessor unless and until the Lessor receives or the account of the Lessor is credited with cash or the value of cash for the same.

2/4 Outgoings/Moneys Owed included in Rent

All rates taxes Goods and Services Taxes outgoings costs fees expenses interest and other moneys of any nature which are to be paid or reimbursed by the Lessee to the Lessor or which the Lessor may otherwise recover from the Lessee as herein provided and which are due and payable from time to time by the Lessee to the Lessor shall be deemed to be Rent due by the Lessee to the Lessor and any default in payment shall be deemed and may be treated by the Lessor as a default in payment of Rent and shall be recoverable in like manner to Rent in arrears and the Lessor may take such action or proceedings for the recovery thereof as the Lessor may in the absolute discretion of the Lessor deem fit.

2/5 Rent Review

The Rent payable during each new Fixed Rent Period shall be reviewed as at the beginning of that Fixed Rent Period on the dates and in accordance with the method set out in the Schedule hereto.

The following definitions are provided for reference purposes only.

"CPI Review" shall mean a Rent for the new Fixed Rent Period being a Rent mutually agreed between the Lessor and Lessee but failing agreement within one (1) month of the date of commencement of the new Fixed Rent Period the Rent shall be the amount of the Rent payable during the immediately preceding Fixed Rent Period plus an amount arrived at by multiplying the Rent payable during the immediately preceding Fixed Rent Period by the percentage change in the Consumer Price Index for Adelaide (all Groups) published by the Australian Bureau of Statistics between:-

- the last quarter which was published before the commencement of the immediately preceding Fixed Rent Period and
- the last quarter which was published before the commencement of the new Fixed Rent Period.

“Market Review” shall mean a Rent for the new Fixed Rent Period being a Rent mutually agreed between the Lessor and Lessee but failing agreement within one (1) month of the date of commencement of the new Fixed Rent Period, the Rent shall be determined by a Valuer appointed for that purpose at the request of either or both of the Lessor and the Lessee by the President for the time being of the South Australian Division of the Australian Property Institute or its successor, and the costs of the valuation shall be borne equally by the Lessor and the Lessee. In determining the Rent, the Valuer shall: -

- be deemed to be acting as an expert and not as an arbitrator
- disregard any improvements made by the Lessee, the value of the Lessee’s fixtures and fittings and the value of any goodwill created by the Lessee’s occupation of the Premises
- have regard to the current market value of the Premises, the covenants of the Lease and the financial contributions of the Lessee to the outgoings of the Lessor in respect of the Land, the obligation of the Lessor to pay Land Tax, and any other matter which is material or relevant
- give detailed reasons for the determination and specify the matters taken into account in making the determination.

“Valuer Review” shall mean a Rent for the new Fixed Rent Period being a Rent mutually agreed between the Lessor and the Lessee but failing agreement within one (1) month of the date of commencement of the new Fixed Rent Period the Rent shall be determined by a Valuer appointed by the President for the time being of the South Australian Division of the Australian Property Institute or its successor who shall be deemed to act as a expert and not an arbitrator and who shall be instructed to determine the Rent for the Premises on the basis of the highest and best use thereof. The cost of any such determination shall be borne in equal shares between the Lessor and the Lessee.

“Fixed Percentage Increase” shall mean a Rent for the new Fixed Rent Period being a Rent determined by increasing the Rent payable during the immediately preceding Fixed Rent Period by the percentage specified in the Schedule hereto.

2/6 Replacement of Consumer Price Index

If the Consumer Price Index is required for the purposes of this Lease and it has ceased to be published then for the purposes of this Lease there shall be substituted such index that in the opinion of the Public Actuary for South Australia most nearly reflects the changes in the prevailing cost of living in Adelaide and is suitable for the purposes of a review of Rent under this Lease.

2/7 Current Rent Payable Until New Rent Determined

If the Rent payable during any new Fixed Rent Period has not been determined by the beginning of the new Fixed Rent Period the Rent payable during the immediately preceding Fixed Rent Period shall continue to be payable until the new Rent is determined and once determined the new Rent shall be payable from the commencement of the new Fixed Rent Period.

2/8 Holding Over Rent Increase

If the Lessee holds over at the expiration of this Lease, the Rent payable during the holding over period shall be an amount determined by increasing the previous Rent by ten percent (10%).

SECTION 3
RE-ENTRY / BREACH

3/1 Right of Re-entry; Notice of Breach

This Lease is granted on the condition that if: -

- the Rent or any part of its is unpaid for seven (7) days after the date on which the same ought to have been paid in accordance with the covenants for payment of Rent contained in this Lease (although no formal or legal demand has been made theretofore)
- the Lessee is in breach of any covenant or condition (other than the covenant to pay Rent) and also including any breach which is not capable of remedy
- where the breach (other than a breach of the covenant to pay Rent) is capable of remedy the Lessee fails to remedy the breach within fourteen (14) days after the Lessor has served on the Lessee a notice specifying the breach or breaches and requiring the Lessee to remedy the breach or breaches OR if the breach is not capable of remedy within fourteen (14) days, then requiring the Lessee to commence within fourteen (14) days and diligently to continue without any delay whatsoever all such action procedures and works as may be necessary to remedy the breach or breaches in the shortest possible time AND under this paragraph time shall be of the essence
- being a company a ground exists which would enable a court to order the winding up of the company or it resolves to wind itself up or has a summons served on it for its winding up or an order is made for its winding up
- any receiver or manager of the Lessee or of the Lessee's assets or property is appointed
- the Lessee makes or enters into or agrees to make or enter into any composition with or assignment of property for the benefit of the Lessee's creditors
- the Lessee (being a person) or any director or secretary (where the Lessee is a company) is convicted of any indictable offence or of any offence (whether indictable or not) which is committed on or arises out of the use of or out of any activity on or associated with the Premises
- any warrant of execution or other process for the execution of any judgement for the payment of moneys is levied or imposed on any chattels or property on the Premises
- the Premises or a substantial part thereof are left vacant or unattended for any period exceeding seven (7) days without the consent in writing of the Lessor or if possession of the Premises is given up or surrendered without the consent in writing of the Lessor

then in each or any of those events the Lessor without prejudice to any other right or remedy may exercise any one or more of the rights or powers set out in the following clause.

3/2 Lessor's Rights or Powers on Re-Entry or Notice of Breach

In the event that the Lessor is entitled to exercise any rights conferred by the previous clause the Lessor may: -

- enter into and take possession of the Premises or any part thereof in the name of the whole and terminate this Lease and may eject the Lessee any sub-tenant licensee or occupier of or under the Lessee and all other persons thereon and may re-possess and have and enter the same as of the Lessor's former estate and interest free and clear of any right interest or claim of the Lessee or of any person claiming by through or under the Lessee
- by notice in writing to the Lessee terminate this Lease as from a date specified in the notice or on that date this Lease shall terminate and the Lessor may exercise the rights or powers set out herein
- enter into and take possession of the Premises or any part thereof in the name of the whole and may eject any sub-tenant licensee or occupier of or under the Lessee and all other persons thereon without terminating this Lease and the Lessor may then hold and retain possession of the same until each breach of the Lessee's covenants has been remedied but in all other respects the covenants and conditions of this Lease including the payment of Rent shall continue in full force and effect unless and until this Lease expires or is otherwise terminated
- by notice in writing to the Lessee may convert the Term into a tenancy from month to month or from week to week and upon the giving of such notice this Lease is terminated and thereafter the Lessee shall hold the Premises on a monthly or weekly tenancy at a Rent which is one-twelfth or one-fifty-second (as the case may be) of the Rent applicable at that time and which is payable in advance in all other respects the tenancy shall be on the same covenants and conditions (except the right of renewal) mutatis mutandis as are contained or implied in this Lease AND the Lessor may terminate the tenancy by not less than one (1) month's or one (1) week's (as the case may be) notice in writing to the Lessee notwithstanding that the termination date may not be a date on which a normal period of tenancy would expire

- recover the whole or any part of the moneys due by the Lessee to the Lessor whether for the Rent or otherwise in any way arising from this Lease and including any loss damage or expense of the Lessor arising from any breach of the Lessee's covenants whether liquidated or unliquidated by distress in accordance with the Landlord and Tenant Act 1936 on any goods or chattels that are or which may be on the Premises and in addition to any right of distress the Lessee does hereby appoint the Lessor the agent and attorney of the Lessee to sell and dispose of all or any of the Lessee's goods or chattels on the Premises by whatever means and on whatever terms and conditions for whatever price or consideration the Lessor may deem fit without the responsibility for loss and the excess of the proceeds of any such distress after payment of all moneys due by the Lessee to the Lessor shall be paid by the Lessor to the Lessee.

3/3 Lessor's Rights to Remove/Sell Lessee's Fixtures and Fittings

As long as any Rent or other moneys remain owing by the Lessee to the Lessor or the Lessee is in breach of any covenant or condition and whether the Lessee is still in possession of the Premises or not the Lessee shall not remove any fixtures fittings stock-in-trade plant equipment or machinery of the Lessee from the Premises and the Lessor and the Lessor's servants and agents may enter into and upon the Premises and remove the same (subject always to the restrictions imposed by the Retail and Commercial Leases Act 1995 or the Landlord and Tenant Act 1936) and may sell the same either by public auction or by private contract at such times and in such manner as the Lessor deems fit and may apply the net proceeds of such sale in reduction of all or any moneys then owing by the Lessee to the Lessor or as the case may require in the making good or remedying any breach or non-observance on the part of the Lessee of any covenant or obligation of the Lessee.

3/4 Other Remedies

The rights or powers of the Lessor as set out above are in addition to and shall not derogate from any other right or power of the Lessor including any right or power that has arisen as a result of any antecedent breach of the Lessee's covenants and obligations and without limiting the foregoing the Lessor may take court action for the recovery of Rent and other moneys or the recovery of the Premises or any part thereof or for ejectment or for any other remedy or relief.

3/5 Appointment of Attorney

If the Lessor becomes entitled to re-enter and take possession of the Premises and/or to terminate this Lease the Lessee HEREBY IRREVOCABLY APPOINTS the Lessor the attorney of the Lessee in the Lessee's name and as the Lessee's act and deed to do all such things and to execute all such documents as may be necessary to give full effect to any re-entry or termination and to execute a surrender of this Lease to procure the registration thereof and to record this Power of Attorney and to procure to be done any act matter or thing which may be requisite or proper for giving full effect thereto according to the Real Property Act 1886 or any law or usage for the time being in force in South Australia AND all and whatsoever such attorney lawfully does or purports to do or causes to be done by virtue of the appointment is by this Lease ratified and confirmed.

3/6 Waiver

No waiver by the Lessor of any breach of any covenant or condition of this Lease or grant of any time or indulgence by the Lessor in relation thereto shall operate as waiver of any other breach of the same or any other covenant or condition of this Lease or any right action or remedy of the Lessor.

3/7 Costs of Breach/Re-Entry

The Lessee hereby indemnifies and shall keep indemnified the Lessor against and shall pay to the Lessor all reasonable costs fees and expenses arising from any breach or default by the Lessee of any covenant or condition of this Lease and of any re-entry termination surrender or giving up of possession or reletting of the Premises and the exercise of any right power or remedy of the Lessor including all reasonable costs fees commissions and expenses of any solicitor registered conveyancer bailiff land agent valuer architect accountant or other professional or business person who is employed by or on behalf of the Lessor.

3/8 Essential Terms

Each of the covenants by the Lessee which are specified in this clause are essential terms of this Lease:-

- Section 2 relating to payment of Rent and other moneys and Section 4 relating to payment of rates and taxes if applicable
- Section 6 relating to the Permitted Use of the Premises and compliance with statutes etc
- Section 7 relating to the assignment or sub-letting of the Premises without the consent in writing of the Lessor
- Section 8 relating to maintenance of the Premises
- Section 9 relating to insurance obligations.

3/9 Interest on Arrears of Rent and Other Moneys

The Lessee (if so required by the Lessor) shall pay to the Lessor interest on all Rent and other moneys payable under this Lease by the Lessee to the Lessor which are in arrears for more than seven (7) days at a rate of interest of two (2) per centum per annum greater than the annual rate of interest charged from time to time by the Commonwealth Bank of Australia on overdrafts of less than One Hundred Thousand Dollars (\$100,000.00) and such interest shall be calculated from the date the moneys became due and payable and shall be regarded as additional Rent and be recoverable as such.

3/10 Damages in Respect of Repudiation or Breach

In the event that the Lessee's conduct (whether by way of act or omission) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any covenant contained in this Lease the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.

The Lessor may recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire term of this Lease.

The Lessor's entitlement to recover damages is not affected or limited by any of the following:-

- if the Lessee abandons or vacates the Premises
- if the Lessor elects to re-enter or to terminate the estate of the Lessee
- if the Lessor accepts the Lessee's repudiation;
- if the parties conduct constitutes a surrender by operation of law.

The damages recoverable pursuant to the above include damages for the periods before and after the Lessee has vacated the Premises and before and after the abandonment termination repudiation acceptance of repudiation or surrender by operation of law referred to above whether the proceedings are instituted either before or after such conduct.

In the event of the Lessee vacating the Premises whether with or without the Lessor's consent the Lessor shall take reasonable steps to mitigate the Lessor's damages and to endeavour to re-lease the Premises at a reasonable Rent and on reasonable terms. The Lessor's entitlement to damages shall be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this sub-clause. The Lessor's conduct in pursuance of the duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

3/11 Landlord and Tenant Act Notice

It is hereby acknowledged and agreed by and between the Lessor and the Lessee that for the purposes of Section 10 of the Landlord and Tenant Act 1936 that the period of fourteen (14) days is a reasonable period for the remedy of any breach of the Lessee's covenants.

3/12 Means of Entry and Possession

In any event which the Lessor may be entitled to enter onto or take possession of the Premises then the Lessor may so enter or take possession of the Premises by whatever means and with such force as is reasonable in the circumstances without any responsibility for any loss or damage caused thereby.

SECTION 4
RATES and TAXES / OUTGOINGS / EXPENSES

4/1 Rates and Taxes / Outgoings

The Lessee shall pay promptly to the levying body or to the Lessor should he so direct the designated proportion of all those rates taxes outgoings premiums and other charges assessed or levied in respect of the Premises or the Land that are listed in the Schedule hereto.

If during the Term any of the rates taxes outgoings premiums and other charges listed in the Schedule are separately assessed on the Premises or incorporated into a levy such as a Strata or Community Corporation Levy then the Lessee shall pay the whole of the separate assessment or the levy as the case may be.

“Strata or Community Corporation Levy” means an amount payable to a fund whether in existence at the commencement date hereof or created at a future date set up by authority of the Strata or Community Corporation for the purposes of maintaining the common property and all units in the Strata Plan or Lots in the Community Plan in good and presentable condition and includes (but is not limited to) charges and costs relating to gardening cleaning repairs to common property management of the Strata or Community Corporation maintenance of air conditioning equipment maintenance of car parking areas and walkways insurance premiums for building public liability and any other risks deemed necessary by the Strata or Community Corporation electricity consumed in the common property and sign writing.

4/2 Adjustment of Rates Taxes and Outgoings

All rates taxes outgoings premiums and other charges levied or charged for any period at the beginning or end of the Term shall be adjusted on a daily basis so that the Lessee shall only be liable for the payment of such rates taxes outgoings premiums and other charges during the Terms of this Lease.

4/3 Electricity Gas and Telephone

The Lessee shall pay punctually all charges for electricity gas and any telephone services which are used during the Term and which are charged or imposed upon the Premises or upon the Lessor or the Lessee in respect thereof.

4/4 Lease Preparation Costs

The Costs relating to the preparation stamping and registration of this Lease shall be borne and paid in equal shares by the Lessor and the Lessee except where the Lessee enters into and then withdraws from negotiations with the Lessor, in which case the Lessee shall be solely liable for all such costs. The costs of any stamp duty, preparation of guarantees, attendances on mortgagees, attendances on the Lessor in relation to obtaining details of mortgagees plan preparation costs and the Land Titles Office searches and other charges shall be borne and paid by the Lessee.

4/5 Payments to the Lessor

The Lessor may by notice in writing to the Lessee either generally or in any specific case request the Lessee to pay to the Lessor the full amount of any rates taxes outgoings premiums and other charges that are assessed levied or charged in respect of the Premises or the Land and which the Lessee is liable to pay pursuant to this Lease. The Lessor shall then pay all such rates taxes outgoings premiums and other charges when same become due for payment.

SECTION 5
TERM / RIGHT OF RENEWAL

5/1 Term

The Term commences at 12.01 a.m. on the commencement date set out in the Schedule hereto and ends at 12.00 p.m. on the last day of the Term or the last day of any further term(s) if this Lease is extended.

5/2 Holding Over

If the Lessee with the consent of the Lessor express or implied remains in occupation of the Premises after the expiration of the Term then the Lessee shall be deemed to hold the Premises as a tenant on a monthly basis subject to all the covenants and conditions herein contained and the tenancy may be terminated by either party giving to the other not less than one (1) calendar month's prior notice in writing expiring on a day not necessarily at the end of a normal monthly period provided always that such tenancy shall cease absolutely immediately prior to the expiration of six (6) months from the date of expiry of the previous Term.

5/3 Right of Renewal

If the Schedule hereto provides for a further Term or Terms and the Lessee:-

- is not in breach of the payment of moneys due under this Lease
- has complied substantially with the conditions and covenants contained or implied in this Lease
- has not regularly committed any breach or breaches of this Lease and there is no subsisting breach at the time of the giving of notice

then the Lessee shall have the right to renew this Lease exercisable by notice in writing to the Lessor given not less than six (6) months prior to the date on which the then current Term but for exercise of this Right of Renewal would otherwise expire and time shall be of the essence in relation to this clause:-

- for the further period or periods specified in the Schedule hereto
- at a Rent mutually agreed between the Lessor and the Lessee but failing agreement one (1) month prior to the date of commencement of the Further Term the Rent shall be determined in accordance with the provisions of the Schedule hereto
- upon the same covenants and conditions as have applied during the immediately preceding Term
- and properly documented by the execution of an Extension of Lease document prepared by the Lessor's Solicitors or Conveyancers

PROVIDED HOWEVER that upon the exercise of the final Right of Renewal the covenants and conditions contained herein shall be varied by deleting any reference to this Right of Renewal AND FURTHER PROVIDED that if the Lessee requests a determination of the current market Rent in accordance with Section 36 of the Retail and Commercial Leases Act 1995 then the Lessee shall pay to the Lessor all of the estimated costs of the determination prior to the determination taking place on the understanding that the Lessor will repay to the Lessee one half of the estimated costs forthwith upon the Lessee exercising the Right of Renewal.

5/4 Statutory Extension Rent Review

If this Lease is extended by operation of Section 20B of the Retail and Commercial Leases Act 1995 the Rent shall be reviewed as at the commencement date of such extended period and thereafter annually on each anniversary of such commencement date. The Rent payable during each new Fixed Rent Period shall be mutually agreed between the Lessor and the Lessee but failing agreement one (1) month after the date of commencement of any new Fixed Rent Period the Rent shall be determined by a valuer appointed by the President for the time being of the South Australian Division of the Australian Property Institute or its successor, who shall be deemed to act as an expert and not as an arbitrator and who shall be instructed to determine the current Rent on the basis of the highest and best use for the Premises and whose determination shall be final and binding on all parties. All charges, fees and costs of any such determination shall be borne by the Lessee.

SECTION 6
USE OF PREMISES / RESTRICTIONS / ALTERATIONS

6/1 Permitted Use

The Lessee shall use the Premises only for the Permitted Use described in the Schedule hereto and shall not without the prior written consent of the Lessor use the Premises or permit them to be used for any other purpose.

6/2 Suitability of Premises

The Lessee acknowledges and declares that no promise representation warranty or undertaking has been given by or on behalf of the Lessor as to the suitability of the Premises for the Permitted Use to be carried on therein or to the facilities and amenities of the Premises.

6/3 Restrictions of Use

The Lessee shall not at any time during the Term: -

- use permit or suffer the Premises to be used for any illegal or immoral purpose or activity or as a place in which any person lives or sleeps
- permit to be on the Premises any dangerous toxic explosive or inflammable substance or compound whether in solid or gaseous form other than that which is required in the normal course of the Lessee's business
- do or permit to be done any act matter or thing at any time upon the Premises which causes or is likely to cause any annoyance nuisance damage or disturbance to occupiers or owners of any adjacent Premises
- make permit or suffer to be made in or upon the Premises any unreasonable noise whether directly or by means of amplification in such manner as the same may be heard outside the Premises whether for the purpose of attracting attention to the business of the Lessee or otherwise
- keep any dog or other animal or bird on the Premises
- bring or permit to be brought on to the Premises without the Lessor's written consent any plant machinery or heavy article which causes or may cause undue noise vibration or damage directly or indirectly to the Premises
- install any fitting equipment facility or illumination or display any merchandise or other objects or make or do any act or thing that would in the reasonable opinion of the Lessor soil impair or detract from the architectural form style appearance of the Premises or any adjoining area
- without the Lessor's written consent install or use any electrical equipment on the Premises which may overload the cables switchboard or any sub-boards through which electricity is conveyed to the Premises
- bring onto or keep on the Premises anything the keeping of which contravenes any statute regulation or by-law
- without the Lessor's written consent place or suffer to be placed upon the Premises any amusement or coin operated vending machine
- cover close or obscure any of the windows of the Premises by means of any paint white wash paper cloth blind shutter window treatments signs notices or otherwise unless consented to by the Lessor.

6/4 Compliance With Statutes

The Lessee shall at the Lessee's own expense and in a proper and workmanlike manner comply with the requirements of all Acts of Parliament Regulations By-Laws and other provisions of whatsoever nature affecting the Premises or any part thereof and also with all lawful directions and orders of any governmental municipal or other body having authority in that behalf which require the doing or the refraining from doing of work or acts upon or in connection with the Premises BUT nothing herein contained requires the Lessee to make provide or pay for any structural alterations or additions to the Premises unless such structural alterations or additions are necessitated by the nature of the business conducted by the Lessee upon the Premises or by the number sex or physical capacity of persons employed therein. If the Lessee defaults in observing and performing this covenant the Lessor may (but is not bound to) enter upon the Premises and carry out the required work at the expense of the Lessee in all things.

6/5 Repair of Damage

The Lessee shall repair to the Lessor's reasonable satisfaction (or failing repair within fourteen (14) days after the Lessor has given notice to repair to the Lessee the Lessee shall pay the costs of such repairs incurred by the Lessor) any damage resulting from the use of or the bringing onto the Premises of any machinery plant or equipment or any abuse by the Lessee's employees servants customers invitees and visitors to the Premises the Building or any adjoining area or as a result of burglary or attempted burglary.

6/6 Keep Premises in Good Order

The Lessee at all times during the Term at the Lessee's own expense without any notice or demand from the Lessor shall maintain and keep clean (including external surfaces of windows and doors) and from time to time shall repair to the reasonable satisfaction of the Lessor the Premises in the same good and tenantable cleanliness condition and repair as it was in at the commencement of this Lease and shall keep clean and maintain in good condition and repair all fixtures fittings plant furnishings and equipment of both the Lessor and the Lessee PROVIDED THAT:-

- the Lessee is not liable for damage caused by fire storm tempest earthquake lightning riot civil commotion explosion aircraft accident objects falling from aircraft operation of war or by fair wear and tear unless the Lessor's insurance has been vitiated or rendered void or voidable by reason of an act default or negligence of the Lessee or the Lessee's agents servants workmen or licensees
- the Lessee is not liable for any structural maintenance replacement or repair except when the same is rendered necessary by an act omission default or negligence on the part of the Lessee or the Lessee's agents servants workmen or licensees or the Lessee's use or occupation of the Premises or as a result of a risk that the Lessee is obliged to insure against under this Lease.

6/7 Structural Alterations

Subject to any other provisions of this Lease the Lessee shall not make or suffer to be made any alteration or addition of a structural nature on the Premises without the prior written consent of the Lessor who may require as a condition of the giving of consent that the alterations or additions be executed at the cost of the Lessee under supervision of a competent architect and with materials and in accordance with a design approved by the Lessor or the Lessor's architect and any reasonable fees payable to the Lessor's architect for approval and inspection shall be paid by the Lessee on demand.

6/8 Removal of Lessee's Alterations

At the expiration or other termination of the Term any alteration addition or improvement to the Premises that may have been effected by the Lessee shall be forthwith removed and the Premises shall be made good and restored to their state and condition prior to the effecting of that alteration addition or improvement unless the Lessor shall agree in writing to the same or any part thereof remaining and in that event that alteration addition or improvement as the case may be shall form part of the Premises and shall be the sole property of the Lessor free of any claim right title or estate of the Lessee.

6/9 Fire Regulations

The Lessee shall regularly maintain and service any fire extinguishers and fire hose reels located in or on the Premises and shall comply with all insurance sprinkler and fire alarm regulations in respect of the Premises and any partitions which may be erected by the Lessee upon the Premises and the Lessee shall pay to the Lessor the cost of any alterations to the sprinkler and fire alarm installation which may become necessary by reason of the non-compliance by the Lessee with the regulations of Fire and Accident Underwriters' Association or the requirement of the Lessor's insurer, provided however that the Lessee's obligations under this clause shall not extend to works of a structural nature unless such works are a direct result of the Lessee's use of the Premises.

SECTION 7
POSSESSION / SUBLETTING / TRANSFER / ASSIGNMENT

7/1 Quiet Possession

The Lessee paying the Rent and performing and observing all of the Lessee's covenants may quietly hold and enjoy the Premises without interruption by the Lessor or any person claiming through the Lessor.

7/2 Maintain Possession

The Lessee shall keep and maintain possession of the Premises at all times during the Term and shall not leave it vacant or unattended during normal business hours for more than one (1) week or any reasonable period of annual holiday, shut down or temporary closure without the consent of the Lessor. Consent may be so given on the condition that the Lessee notify any insurer of the Premises and pay any increase in premium that may be charged by any such insurer.

7/3 Assignment/Subletting

Subject to any statutory right of the Lessee with the consent of the Lessor to assign the Lessee's rights under this Lease subject to the covenants of this Lease it is acknowledged by the Lessor and the Lessee that the Lessor has made a decision in all the circumstances to lease the Premises to the Lessee and not to any other person and that the Lessor was entitled to take into account in making that decision:-

- the respectability and responsibility of the Lessee
- the suitability of the Lessee as a tenant
- the financial capacity of the Lessee to meet the Lessee's liabilities and duties under this Lease;
- the Permitted Use and its likely effect on and commercial compatibility with other businesses in close proximity
- the commercial viability of the Lessee's business
- the retailing skills of the Lessee
- any previous history of the Lessee as a tenant.

Should the Lessee wish to assign the Lessee's rights under this Lease or to sublet the whole or a portion of the Premises the Lessee acknowledges that the Lessor is entitled to take similar factors into account in addition to the factors and requirements set out below in determining whether to consent to any such assignment or subletting.

The additional factors and requirements are as follows:-

- that the Lessee is or has been in default in the performance and observance of any of the Lessee's covenants or agreements contained in this Lease
- whether the proposed assignee is already a tenant of another portion of the Land
- that the Lessee has complied with the Lessee's obligations pursuant to Section 45 of the Retail and Commercial Leases Act 1995.

And the Lessor may require as a condition of the giving of consent:-

- that the Lessee procure the execution by the proposed assignee of either an assignment, transfer of this Lease or a Sublease in such form as the Lessor approves containing (inter alia) a covenant with the Lessor to observe and perform the Lessee's covenants and agreements contained in the Lease and such covenants and agreements shall be supplementary to this Lease and shall not in any way relieve or be deemed to relieve the Lessee from the Lessee's liability under this Lease
- and if the proposed assignee is a company or other body corporate that the directors thereof guarantee unconditionally the obligations of the assignee
- that the Lessee shall pay to the Lessor within fourteen (14) days of a request in writing all of the Lessor's reasonable costs incurred by the Lessor in satisfying the Lessor as the Lessee's ability to comply with the requirements of the Lease and any assignment thereof.

7/4 Changes of Ownership in Lessee Company

If the Lessee is a proprietary limited company, a transfer or series or succession of transfers of shares totalling more than one-half (1/2) of the issued share capital of the Lessee company or of the controlling interest therein during the Term shall constitute an assignment of this Lease requiring the consent of the Lessor.

SECTION 8
REPAIRS / MAINTENANCE / CLEANING

8/1 Inspection by Lessee

The Lessee acknowledges that the Lessee has inspected the Premises prior to the execution of this Lease and that the Premises are in good and tenantable repair save and except only such items if any as may be specifically agreed and acknowledged in writing by the Lessor and the Lessee prior to the execution of this Lease.

8/2 Keep Grounds Clean

The Lessee shall keep all grounds gardens yards laneways and rights of way belonging appurtenant or adjacent to the Premises clean and free from debris refuse rubbish or accumulation of every description and shall not deposit or cause permit or suffer to be deposited any debris rubbish or refuse of any kind in or on any such grounds gardens yards laneways or rights of way or on any public road or footway abutting upon or adjacent to the Premises. Where the Premises includes paved or bituminised walkways driveways or car parking areas the Lessee shall maintain same in good and substantial repair and condition (fair wear and tear excepted) and shall keep tidy and maintain and water any lawns plants or gardens within or adjacent to the Premises.

8/3 Sewers Drains and Plumbing

The Lessee shall keep free and clear of any blockage or accumulation of waste or other matter all drains sewers sinks gutters down pipes cisterns toilets basins and all fittings relating thereto on the Premises.

8/4 Keep Area Tidy

The Lessee shall not nor permit any of the Lessee's employees agents servants workmen or customers to leave or place any goods chattels rubbish or anything whatsoever in or on or in any way obstruct any walkway pavement passageway stairway lavatory or area of which the Premises forms a part and as soon as reasonably practicable on the demand of the Lessor or any agent servant or caretaker of the Lessor the Lessee shall remove any such object and in default or if no such demand can be made by reason of the absence of the Lessee from the Premises or for any other reason the Lessor or any agent servant or caretaker of the Lessor may remove such goods chattels rubbish or things to any place at the cost of the Lessee.

8/5 Pest Control

The Lessee shall at its own expense take all proper precautions to keep the Premises free of rodents vermin insects and pests (including white ants) and will if required by the Lessor engage at the Lessee's expense pest exterminators for such purpose.

8/6 Remove Refuse

The Lessee shall store and keep all trade waste trash and garbage in proper receptacles kept a reasonable distance from any building or other structure and arrange for the regular removal thereof from the Premises.

8/7 Carpets

If there are carpets in the Premises at the commencement of this Lease then the Lessee covenants that the Lessee will at the Lessee's own expense without any notice or demand from the Lessor clean the carpets and maintain them in good repair and when reasonably requested by the Lessor AND in any event upon vacating the Premises shampoo the carpets with a good quality shampoo and in a workmanlike manner.

8/8 Remove Graffiti

The Lessee shall cause the exterior of the Premises to be cleaned regularly and to be kept free from dirt rubbish graffiti and other disfigurement and shall prevent any deterioration in the condition of the exterior.

8/9 Not to Damage Facilities

The Lessee shall not use nor permit any agent servant workman licensee or invitee to use the lavatories sinks drainage and other plumbing facilities in the Premises or adjoining area for any purpose other than that for which they were constructed or provided and shall not deposit nor permit to be deposited therein any sweeping rubbish or other material and forthwith make good any damage thereto caused by any misuse.

8/10 Replace Broken Glass/Electrical Equipment

The Lessee shall at the Lessee's own expense from time to time replace all non-operative light bulbs globes or tubes and any broken or defaced glass including windows with bulbs globes tubes or glass of the same or similar quality and repair or where appropriate replace all heating air conditioning ventilation equipment lighting and electrical equipment broken or damaged by the Lessee or any person under the control of the Lessee.

8/11 Defects

The Lessee shall make good forthwith any defects and wants of repair in breach of the Lessee's covenants to repair the Premises as soon as reasonably possible after the Lessor gives to the Lessee notice in writing of such defects and wants of repair AND in the event of the Lessee failing to commence the work of remedying the same within fourteen (14) days after the giving of such notice or failing to proceed diligently with the execution of such repairs the Lessor (without prejudice to the right of re-entry set out in this Lease) and the Lessor's servants or agents with or without workmen and others may enter the Premises and execute or complete the execution of such repairs at the cost and expense of the Lessee. Any moneys so expended by the Lessor are deemed to be a debt due from the Lessee to the Lessor and are recoverable forthwith.

8/12 Accidents

The Lessee shall give to the Lessor or the Lessor's agent immediate notice in writing of any accident to or defect in any electric light fixtures or other appliances or equipment installed in the Premises or in respect of any damage to the Premises or any part thereof or of any other circumstances of which the Lessee should reasonably be aware that are likely to cause damage risk or hazard to the Premises or to persons in the vicinity thereof.

8/13 Painting

The Lessee shall at the Lessee's own expense immediately prior to the expiration or sooner determination of this Lease or in any case at least every three years during the Term (if so required by the Lessor) paint in colours and in accordance with specifications approved by the Lessor all parts of the Premises which have previously been painted.

8/14 Payment in Lieu of Works

In the event that any painting or repairs or other works are required to be done in or upon the Premises in accordance with the provisions of this Lease the Lessee may pay to the Lessor the cost of the said works in lieu of the performance or execution thereof. The costs payable by the Lessee hereunder shall be as reasonably determined by the Lessor.

8/15 Environmental Impact

The Lessee shall take all such reasonable measures and precautions as may be necessary to ensure that the environmental impact resulting from the Lessee's occupation of the Premises and the activities of the Lessee are kept to a minimum. Without limiting the generality of the foregoing and irrespective of whether the Lessor has given its consent in respect of the storage of any particular compounds or substances upon or within the Premises by the Lessee in the event that during the Term or any period of holding over any pollution contamination or degradation occurs of on or to the Premises (other than to the extent to which the same has been caused by any wilful or negligent act or omission of the Lessor or its agents servants or employees) then the Lessee shall immediately prior to the expiration of the Term or any holding over period at its cost and expense remove any and all such contaminating or polluting substances and compounds from all parts of the Premises.

SECTION 9
INSURANCE / ABATEMENT OF RENT

9/1 Building Insurance

The Lessor at the expense of the Lessor (or at the expense of the Lessee if Building Insurance is stated as an outgoing payable by the Lessee in the Schedule hereto) shall insure and keep insured during the Term the Premises and any Building and other improvements now or hereafter erected on the Land and the Lessor's fixtures and fittings therein or thereon under a policy of insurance covering the usual and necessary risks including damage by fire storm tempest earthquake lightning explosion aircraft accident burglary and motor vehicle accident for the full reinstatement or replacement value of the Premises the Building the improvements and the Lessor's fixtures and fittings. If a claim is made on such Insurance during the Term then the Lessee shall bear the entire cost of any excess payable or such proportion as the Lessor may determine irrespective of the proportion of the Building Insurance costs attributed to the Lessee.

9/2 Public Risk

The Lessee shall effect and keep current in respect of the Premises during the Term a public risk insurance policy for the sum of not less than the amount set out in the Schedule hereto or such other reasonable sum as the Lessor may from time to time direct in writing. Such policy shall note the names of the Lessor and the Lessee and their respective rights and interest.

9/3 Lessee's Insurances

The Lessee shall effect and keep current in respect of the Premises during the Term policies of insurance covering those risks that are stated in the Schedule hereto. Such policies shall note the names of the Lessor and the Lessee and their respective interests. The Lessee shall expend all moneys received under any insurance policies in reinstating the Premises and if such moneys are insufficient shall make good any deficiency out of the Lessee's own moneys. The Lessee shall also bear and pay any excesses payable under such insurance policies.

The following definitions are provided for reference purposes only.

"Lessee's Liability Insurance"

means a policy of insurance covering loss injury or damage (including burglary damage) to any property of the Lessor, the Lessee and the other tenants and occupiers of the Building howsoever caused for the full replacement value thereof.

"Plate Glass Insurance"

means a policy of insurance covering breakage or damage to glass windows, glass doors plate glass in or forming part of the Premises and all door frames and doors for the full replacement value thereof.

"Fixtures and Fittings Insurance"

means a policy of insurance covering loss damage, and other usual and necessary risks including consequential loss howsoever caused in relation to the Lessee's fixtures fittings plant equipment and chattels for the full replacement value thereof.

9/4 Production of Insurance Policy/Premium Receipt

The Lessee if requested by the Lessor shall produce to the Lessor any policy of insurance which the Lessee is required to effect or take out under this Lease and the receipt for the last premium paid or a certificate of currency in respect thereof.

9/5 Voiding Insurance

The Lessee shall not at any time during the Term do permit or suffer to be done any act matter or thing whereby any insurance in respect of the Premises may be vitiated or rendered void or voidable.

9/6 Abatement of Rent on Damage

If as the result of fire storm tempest earthquake lightning riot civil commotion explosion aircraft accident objects falling from aircraft or operation of war the Building of which the Premises forms a part at any time during the Term is damaged or destroyed so as to render the Premises partly unusable or partly inaccessible PROVIDED THAT the damage or destruction was not caused by any wilful or negligent act or default of the Lessee or persons under the control of the Lessee, the Rent and any rates taxes outgoing premiums and other charges listed in the Schedule or an appropriate part of the Rent and any rates taxes outgoing premiums and other charges listed in the Schedule according to the extent of damage shall be suspended until the Building and the Premises have been reinstated or made accessible and fit for the occupation and use of the Lessee or until this Lease is terminated as hereinafter provided.

If there is any dispute as to:-

- the appropriate part of the Rent or any rates taxes outgoing premiums and other charges listed in the Schedule to be suspended
- any other matter arising under this clause which the parties agree should be decided by a valuer;

then the same shall be referred for determination to a valuer to be agreed by the parties or failing agreement to be appointed at the request of the Lessor or the Lessee by the President for the time being of the South Australian Division of the Australian Property Institute or its successor who shall be deemed to act as an expert and not an arbitrator and the costs of any such determination shall be borne in equal shares between the Lessor and the Lessee.

9/7 Termination upon Destruction

If as the result of fire storm tempest earthquake lightning riot civil commotion explosion aircraft accident objects falling from aircraft or operation of war the Building of which the Premises forms a part at any time during the Term is damaged or destroyed so as to render the Premises wholly unfit for occupation or use by the Lessee or the Lessor considers that the damage is such as to make its repair impracticable or undesirable then either party hereto on giving seven (7) days notice to the other may terminate this Lease and the Term hereby granted shall cease at the expiration of that period but such termination shall be without prejudice to the rights of either party for any antecedent breach PROVIDED ALWAYS that this clause shall not apply if payment of any moneys payable in respect of any policy of insurance is refused in consequence of any act or default on the part of the Lessee or any servant agent or contractor of the Lessee. If there is any dispute as to any matter arising under this clause which the parties agree should be decided by a valuer then the same shall be referred for determination to a valuer to be agreed by the parties or failing agreement to be appointed at the request of the Lessor or the Lessee by the President for the time being of the South Australian Division of the Australian Property Institute or its successor who shall be deemed to act as an expert and not an arbitrator and the costs of any such determination shall be borne in equal shares between the Lessor and the Lessee.

9/8 Damage to Fittings

The Lessor shall not in any way be liable for or accountable to the Lessee for any damage to or destruction or loss of the Premises or to any property chattels stock plant equipment fixtures fittings furnishings furniture of the Lessee or any other person that may be or may come on the Premises from time to time however caused including any damage loss or destruction which may be caused by any fault or defect in the Premises or any outbreak or escape of any fire or any escape or any overflow of water caused by storm tempest or any other means whatsoever, unless such damage destruction or loss is directly attributable to the wilful or negligent act or omission of the Lessor.

SECTION 10
FIXTURES / FITTINGS / AIR CONDITIONING / PLANT / SIGNS / LOCKS

10/1 Lessee May Adapt Premises to Suit

For the purposes of enabling the Lessee to conduct the business of the Lessee in the Premises the Lessee subject to obtaining the prior written consent of the Lessor and notwithstanding any other provision of this Lease whether express or implied, may:-

- install in the Premises any partitioning plant equipment or other fixtures fittings or installations
 - alter the interior layout or design of the Premises for any purposes connected with the Lessee's business
- PROVIDED THAT the Lessee shall not do any damage to the Premises other than that which is necessary for the installations or alterations otherwise the Lessee at the Lessee's own expense forthwith shall make good any damage in a proper and workmanlike manner.

10/2 Lessee to Maintain Lessor's Fittings

The Lessee shall at all times keep and maintain both the Lessor's and the Lessee's fixtures equipment plant and fittings in good and tenable order and condition or in good working order or condition as the case may require (fair wear and tear excepted) and the Lessee shall not alter modify deface damage or move or remove from or about the Premises any of the Lessor's fixtures plant or fittings without the consent in writing of the Lessor.

10/3 Removal of Partitions/Equipment/Signs

The Lessee may and shall if so required by the Lessor at or immediately prior to the expiration or termination of this Lease remove and carry away from the Premises all partitioning plant equipment and other fixtures fittings and installations which were brought on to the Premises by the Lessee or acquired from a previous Lessee and any sign lettering plate advertisement or notice painted affixed or erected by the Lessee and forthwith shall make good any damage or disfigurement caused thereby.

10/4 Air conditioning

If there is air conditioning plant and equipment installed in the Premises or which service the Premises at the date of commencement of this Lease then the Lessee hereby acknowledges that such air conditioning plant and equipment comprise part of the Lessor's fittings and is the property of the Lessor. The Lessor or the Lessee should the Lessor so direct in writing shall maintain inspect and regularly service or cause to be maintained inspected and regularly serviced in a proper and tradesman like manner all such air conditioning plant and equipment and the Lessee shall promptly pay or reimburse to the Lessor any costs and charges incurred by the Lessor in keeping the air conditioning plant and equipment in good working order and repair, provided always that the Lessee shall not be liable for expenses of a capital nature.

10/5 Lessee not to Attach Fittings

The Lessee shall not fix any hooks nails brackets shafts appliances or materials to the walls or ceilings of the Premises or seal down any carpets or other coverings to the floor thereof without obtaining the prior written consent of the Lessor.

10/6 Heating/Cooling

The Lessee shall not use any method of heating or cooling in the Premises other than that approved of by the Lessor.

10/7 Signs

The Lessee shall not paint colour affix erect place or exhibit any sign lettering plate advertisement or notice on the outside of the Premises or on the Land without the prior written consent of the Lessor and the local government authority. For the purposes of assisting the Lessor in making a decision the Lessee if so required shall submit the plans and specifications of any such sign to the Lessor and shall paint affix or erect the same only in accordance with the requirements of the Lessor and the Lessee shall keep such sign clean and polished and in good working order at the Lessee's expense.

10/8 Locks/Keys

All locks or latches of any nature and all keys to locks which are on or which may be fitted to the Premises from time to time shall be and remain the sole property of the Lessor and the Lessee shall not without the consent in writing of the Lessor change alter remove or fit any lock or latch on the Premises or dispose of or part with possession of any key to any lock on the Premises.

SECTION 11
LESSOR'S RIGHTS / INDEMNITIES

11/1 Right to Enter Premises

The Lessor and the Lessor's servants or agents at all reasonable times when the Premises are open for business or at other times upon giving reasonable notice to the Lessee (except in the case of an emergency requiring immediate attention) may enter into and upon the Premises for the purpose of viewing the state of condition and repair of the Premises or carrying out repairs renovations or alterations to the Premises in order to comply with the Lessor's obligations under this Lease or to remedy any default by the Lessee in the performance or observance of any of the covenants or conditions to be performed or observed by the Lessee.

11/2 Lessor's Right to Relet

During the last six (6) months of the Term or if at any time the Lessor wishes to offer the Premises for sale by public auction or private treaty or at any time if the Lessee has abandoned or vacated the Premises the Lessor or its servants or agents may enter upon the Premises with persons wishing to view the same and to affix and display on the Premises a notice for reletting or sale of the Premises.

11/3 Lessor's Right to Sell

The Lessor at any time or from time to time may sell transfer assign mortgage encumber charge divide subdivide apply for new Certificates of Title or Strata or Community Titles and generally deal with the Premises or the Land and the Lessor's right interest title or estate therein SUBJECT ALWAYS TO THIS LEASE and to the Lessee's First Right of Refusal (if any) contained herein and the Lessee hereby covenants and agrees with the Lessor that should the Lessee's consent be required for any such dealing then the Lessee will consent to such dealing promptly and without charge or cost to the Lessor.

11/4 Lessor May Act Through Agents

The Lessor may act through and may appoint or employ for any matter or purpose arising from this Lease any attorney agent or employee including any solicitor registered conveyancer land agent valuer architect builder bailiff tradesman or workman and every act or thing done by any duly authorised attorney agent or employee of the Lessor shall be as valid and effective as if done by the Lessor.

11/5 Joint Lessors

If any two or more persons are included in the expression "the Lessor" herein then any direction or notice by or on behalf of the Lessor may be given by or with the authority of any one or more of the persons included in the expression "the Lessor".

11/6 Lessor's Right of Access to Cables and Pipes

The Lessee hereby acknowledges that the Lessor reserves the right of free and uninterrupted passage of gas water waste and electricity through and along any pipes wires or drains which are now or may at any time be in or adjacent to the Premises and will allow the Lessor or any person or persons authorized by the Lessor access at all reasonable times to enter into the Premises for the purpose of inspecting installing repairing cleaning replacing or altering such pipes wires or drains PROVIDED THAT in so doing the Lessor causes as little disturbance damage and interruption to the Lessee as is practicable.

11/7 Indemnity to Lessor

The Lessee shall indemnify the Lessor from and against all actions claims demands losses damages costs and expenses for which the Lessor may be or become liable in respect of or arising from: -

- the negligent use misuse waste or abuse by the Lessee or any agent servant or sub-tenant of the Lessee or any other person claiming through or under the Lessee or any person on the Premises by lawful licence of the Lessee of any water gas electricity oil lighting and other services and facilities of the Premises
- non-performance or non-observance by the Lessee of the provisions of clause 6/4
- overflow or leakage of water (including rain water) in or from the Premises but having origin within the Premises caused or contributed to by any act or omission on the part of the Lessee the Lessee's servant agent sub-tenant or other persons as aforesaid
- loss damage or injury from any cause whatsoever to property or person or persons caused or contributed to by the use of the Premises or the Land by the Lessee notwithstanding that such use of the Premises of the Land may be within the scope of the Permitted Use or by any servant agent sub-tenant or other persons as aforesaid
- loss damage or injury from any cause whatsoever to property or person within or without the Premises or the Land occasioned or contributed to by any act omission negligent breach or default of the Lessee or any servant agent sub-tenant or other persons as aforesaid.

11/8 Indemnity by Lessee

The Lessee shall occupy and use the Premises and the Land at the risk of the Lessee and shall hold the Lessor free from all liability whatsoever and howsoever arising in respect of any loss or damage suffered by the Lessee as a result of fire or explosion or the escape of water liquids or sewage or by reason of any fault or failure of the electrical installation or other apparatus including any fire protection or alarm system or by the insufficiency or absence of lighting or from any other cause howsoever occurring and the Lessee HEREBY INDEMNIFIES the Lessor against any claims and demands in respect of such loss or damage PROVIDED ALWAYS that this provision shall not apply in respect of any loss or damage occasioned by the negligence or wilful act of the Lessor or the Lessor's servants or agents.

11/9 Redevelopment

If the Lessor in its absolute and unfettered discretion elects to redevelop the Premises or the Building or the Land during the Term and the Lessor requires the Premises for any reason connected with such redevelopment then (subject to compliance with Section 57 of Retail and Commercial Leases Act 1995 if the same applies to this Lease) the Lessor may at any time give the Lessee not less than six (6) months written notice requiring the Lessee to relocate its business specifying the date (the 'Termination Date') on which the Lessor requires vacant possession of the Premises and upon giving such notice:

- this Lease shall terminate on the Termination Date
- not less than seven (7) days prior to the Termination Date the Lessee shall upon receipt of the same from the Lessor execute and deliver to the Lessor a surrender of this 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 if any
- the Lessee shall vacate the Premises in compliance with the terms and conditions of this Lease.

The costs of preparation stamping and registration of the Surrender of this Lease shall be paid by the Lessor and the Lessor shall (subject to the provisions of Section 57 of the Retail and Commercial Leases Act 1995) be the sole judge of whether the Lessor requires the Premises for the redevelopment.

11/10 Resumption

It is hereby mutually agreed and expressly declared between the parties hereto that in the event that the Lessor shall receive notice of any proposed resumption or acquisition of the Premises or any part thereof by any government (whether Federal State or Local) public statutory or other competent authority neither the Lessor nor the Lessee shall have any claim against the other for any breach of any covenant herein which breach is as a direct result of such resumption or acquisition.

SECTION 12 **MISCELLANEOUS**

12/1 Service of Notices

The parties agree that for the purposes of this Lease Service can be effected by any of the following means:

- by personally delivering the notice to the other party
- by pre paid post to the address shown on page 1 hereof or to such other address as the parties may nominate
- by facsimile to the normal business fax number of the party during normal business hours
- by email to the normal email address of either party provided that the email address in question has been used previously in correspondence between the parties

12/2 Severance of Offending Provision

If any covenant or provision or part thereof of this Lease is or becomes unlawful void or invalid or infringes the Competition and Consumer Act 2010, the Landlord and Tenant Act 1936, the Retail and Commercial Leases Act 1995 or any other statute the offending provision shall be severed herefrom without affecting the validity and enforceability of the remainder hereof. If any covenant relating to the payment of Rent Outgoings or other charges assessed or levied on the Premises or the Land is severed from this Lease then notwithstanding the Term or any Right of Renewal or any other provision of this Lease the Lessor giving fourteen (14) days notice in writing to the Lessee may terminate this Lease.

12/3 Consents

If any consent or permission is required from any planning authority or other authority to this Lease then this Lease is subject to that consent or permission and both the Lessor and the Lessee at the sole cost and expense of the Lessee shall do all such acts and things as may reasonably be required to obtain or to facilitate that consent or permission as soon as reasonably possible. If the consent permission or approval of the Lessor is required under this Lease or the Lessor is required to form an opinion then except as otherwise specifically required the consent permission or approval shall not be withheld unreasonably or capriciously and the opinion shall not be formed unreasonably.

12/4 Trusts

The Lessor is not bound to acknowledge or to give effect to any trust or any beneficial interest in this Lease notwithstanding that the Lessor may have notice of the same and may have consented to the same and the Lessor may treat the Lessee as the sole and beneficial owner of this lease and may exercise any right or remedy against the Lessee personally and any property of the Lessee notwithstanding that the same may be held by the Lessee on or subject to any trust or otherwise.

12/5 Guarantors

If the Schedule hereto specifies the name or names of any Guarantors then the Lessee shall procure obtain and deliver to the Lessor all such guarantees and indemnities in such form and on and subject to such terms covenants and conditions as the Lessor may reasonably require for and in respect of the duties and obligations of the Lessee pursuant to this Lease and in particular without limiting the foregoing the payment of all Rent and other moneys by the Lessee to the Lessor from each of the Guarantors from time to time.

12/6 Entire Agreement

The Lessee and the Lessor acknowledge that this Lease is not entered into in reliance on any representation or warranty (express or implied) save as may be specifically set out in this Lease and that this Lease embodies the entire agreement between the parties any written or oral agreement between the parties having ceased to have any effect immediately prior to the execution of this Lease. This Lease may be amended only in writing executed by the Lessor and Lessee.

12/7 Security Bond

If the Schedule hereto specifies an amount of a Security Bond then the Lessee shall pay to the Lessor on the execution of this Lease a Security Bond of the amount specified and the Lessor shall pay such Security Bond to the Commissioner for Consumer Affairs. In accordance with Section 19 of The Retail and Commercial Leases Act 1995 the Lessor may by written notice once every two (2) years require the Lessee to increase the Security Bond so that it equals four (4) weeks of the then current Rent.

12/8 Malfunction of Services

The Lessee hereby agrees that should any gas electrical or water fitting air-conditioning plant or other fitting appliance or service installed in the Building fail to function from any cause whatsoever or should the Lessor for the purpose of maintenance repair or replacement desire or cause such fitting appliance or service to be shut off or removed from the Building the Lessee shall not by reason thereof be entitled to terminate this Lease nor shall the Lessee have any right or action or claim for compensation or damages against the Lessor in respect thereto other than that provided for by Section 38 of the Retail and Commercial Leases Act 1995.

12/9 Capital Costs Not Recoverable

In accordance with Section 13 of the Retail and Commercial Leases Act 1995 the Lessee shall not be required to pay any amount towards the capital costs of the Premises provided however and it is hereby expressly agreed by the Lessee that this shall in no way negate or limit the Lessee's obligations contained herein to repair any damage and to maintain the premises in good and tenable condition and repair.

12/10 Electricity

If the Lessor supplies electricity to the Premises and the Lessee chooses to purchase electricity from the Lessor, the Lessee must purchase electricity from the Lessor at the rates agreed between the parties from time to time.

The Lessor acknowledges that the Lessee may in its absolute discretion at any time during the term of the Lease on giving sixty (60) days prior written notice to the Lessor elect to purchase electricity to be consumed in the Premises from a licensed retailer of the Lessee's choice.

If the Lessee arranges its own supply of electricity to the Premises:

- the Lessee agrees that any contract entered into between the Lessee and its retailer will include a provision requiring the retailer to provide the Lessor with whatever information is reasonably required by the Lessor regarding the Lessee's electricity consumption
- the Lessee must install at its own cost all additional electricity meters, wiring and other equipment required by the Lessee's electricity retailer
- if external network charges do not form part of the electricity charges payable to the Lessor by the Lessee, or the Lessee does not purchase electricity from the Lessor, then the Lessee must pay its share of external network charges as reasonably determined by the Lessor
- if at the Lease Commencement Date the Lessee purchases electricity from the Lessor and during the term of the Lease the Lessee exercises its right to purchase electricity from a retailer of its choice, then the Lessor may at the next Rent Review date increase Rent to take into account all the additional costs and losses incurred by the Lessor as a result of the Lessee purchasing electricity from a retailer of its choice. Such costs and losses may include but are not limited to lost margins on reselling electricity and additional administration costs.

SECTION 13

COMMON AREAS / RULES

13/1 Common Areas

If appropriate in the context of the Premises "Common Area" shall mean the toilets washrooms tearooms forecourts gardens lawns entrances vestibules passages stairways landings escalators lifts car parks and other areas or any parts thereof if any from time to time permitted by the Lessor to be used in general by the occupants of the Premises the Building the Land or the Centre.

13/2 Lessee's Right to Common Areas

The Lessee and the Lessee's servants employees agents customers suppliers licensees or invitees shall have a non-exclusive right to use the Common Area designated by the Lessor from time to time subject to the provisions of this Lease and the Lessor may close and secure the Building or any part of parts thereof. No Common Area or part thereof shall be or be construed to be part of the Premises.

13/3 Dispute as to Common Area

The Lessee agrees that in the event of any dispute amongst the Lessee and any other Lessees of the Lessor as regards the use of the Common Area the Lessor's decision is final.

13/4 Regulation of Common Areas

The Lessor if necessary in conjunction with the Strata or Community Corporation from time to time may give directions and may make rules for the proper use and regulation of the Common Area to the best advantage of the Centre the Premises the Building the tenants of the Lessor and the public and without limiting the foregoing the Lessor may:-

- impose restrictions on the passage of vehicles or persons over the Common Area
- designate specific areas for the parking of vehicles or areas for the parking of particular types of vehicles or for vehicles in which particular persons including the Lessee or servants agents employees or customers of the Lessee may park or stand motor vehicles
- restrict the times in which members of the public may enter in and upon or pass over the Common Area.

13/5 Management of Common Areas

The Lessor may appoint any agent or may delegate to any person the management or control of the Common Area and may delegate to that agent or person all or any of the rights powers authorities or privileges of the Lessor in or in relation to the Common Area.

13/6 Conduct in Common Areas

The Lessee and the Lessee's servants agents customers suppliers invitees and licensees of the Lessee shall use the Common Area properly soberly and reasonably and for the purposes for which the same are designated by the Lessor and without any unnecessary disturbance noise or hindrance to any other person in the Common Areas or the tenants of the Building or the Centre.

13/7 Delivery of Goods

The Lessee may accept delivery of goods services or other items on or for the Premises from suppliers or carriers only at such times as may be reasonable and which do not cause any undue hindrance or obstruction to the Common Area and shall effect such unloading or loading as the case may be as expeditiously as possible.

13/8 Litter

The Lessee shall not cause or allow any litter article or substance to be thrown dropped or placed or fall on to the Common Area.

13/9 Toilet Facilities

The Lessee shall use and shall cause to be used all such toilet facilities washrooms and other amenities as may be situated on the Common Area with all proper care and respect.

13/10 Advertising and Soliciting

The Lessee shall not cause or permit any advertising or soliciting for business or any distribution of handbills posters or advertisements or the exhibition of any signs or advertisements or cause or permit any sound light or visual image to be heard or seen by means of any loud speaker amplifier television radio tape recorder video cassette recorder musical instrument or any other device on the Common Area without the prior consent of the Lessor.

13/11 Use of Car Park

The Lessee and the Lessee's agents servants and customers in common with the Lessor's other tenants may use the land reserved from time to time by the Lessor as car parking area for the purposes of: -

- ingress to and egress from the Premises
- the parking of vehicles for the unloading and loading of all kinds of merchandise used by the Lessee in the Lessee's business
- customer car park
- the Lessee with the Lessee's employees occupying those car park spaces as may be designated by the Lessor from time to time for the use of the Lessee for the parking of their motor vehicles. The Lessee acknowledges that in the event that the Lessee's car park spaces are occupied then the Lessee shall make arrangement for the parking of the Lessee's vehicle and/or the vehicles of the Lessee's employees outside of the car park and under no circumstances are the Lessee or the Lessee's employees to park their vehicles in any car park spaces other than those that have been allocated to the Lessee.

The Lessee acknowledges that the Lessee is responsible for informing the employees of the Lessee of the car park conditions as set out herein.

