

THIS IS THE ANNEXURE “A” REFERRED TO IN THE LEASE BETWEEN WAVERLEY  
COUNCIL ABN 12 502 583 608 (Landlord) AND #NAME OF TENANT# ABN #TENANT’S ABN#  
(Tenant)

DATED #DATE OF LEASE#

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## Reference Schedule

- Item 1      **Landlord**
- Waverley Council** ABN 12 502 583 608
- Cnr Paul Street and Bondi Road, Bondi Junction NSW 2022
- Item 2      **Tenant**
- [Insert Tenant's name and ACN/ARBN]
- [Insert Tenant's registered or trading address]
- Item 3      **Premises [clause 1.2(23)]**
- 8/15134 and 1/123571 part being Lot 1 in DP632454 and known as Bronte House, 470 Bronte Road, Bronte NSW 2024
- Item 4      **Commencing Date [clause 3.1]**
- [Insert the Commencing Date of the Lease]
- Item 5      **Terminating Date [clause 3.1]**
- [Insert the Terminating Date of the Lease]
- Item 6      **Term [clause 3.1]**
- 5 years commencing on the Commencing Date and ending on the Terminating Date
- Item 7      **Rent [clause 4.1]**
- \$ per annum (inclusive of GST if any)
- Item 8      **Fixed Rent Increase Dates [clause 4.3]**
- [Insert the exact Fixed Rent Increase Dates.]
- Fixed Rent Increase percentage [clause 4.3]**
- The greater of 2.5% or CPI
- Item 9      **Use of Premises [clause 6.1]**
- Private Residence
- Item 10      **Amount of public risk insurance [clause 14.1(1)(a)]**
- \$20,000,000.00
- Item 11      **Bank guarantee amount [clause 20.2(1)]**
- [Insert the amount of bank guarantee] Calculated to be a minimum of 4 months rent

Item 12      **Guarantor [clause 20]**

[Insert the full names and residential addresses of each Guarantor]

Item 13      **Land [clause 1.2(18)]**

8/15134 and 1/123571 part being Lot 1 in DP632454

Item 14      **Default Rate [clause 16.6]**

The rate which is 2% per annum above the rate of interest which would be charged to the Landlord by the Landlord's bank for borrowing the same amount as that due from the Tenant to the Landlord on unsecured overdraft as certified by the Landlord's bank

Item 15      Garden Sinking Fund, which is levied quarterly at \$2,500 excluding GST.

## 1 Definitions and interpretation

### 1.1 Terms in Reference Schedule

Where a term used in this Lease appears in bold type next to an Item in the Reference Schedule, that term has the meaning provided in the correlating Item.

### 1.2 Definitions

In this Lease unless the context otherwise requires:

- (1) **Authority** means any:
  - (a) government or semi-government authority in any jurisdiction, whether federal, state, territorial or local;
  - (b) provider of public utility services, whether statutory or not; and
  - (c) other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them;
- (2) **Bronte House Working Group** means a group which consists of a representative of the Tenant and a representative of the Landlord formed by the Landlord and the Tenant for the purpose of discussing and making decisions and recommendations with respect to the matters listed under clause 10.2(2);
- (3) **Building** means all improvements, including the Landlord's Fixtures but excluding the Tenant's Fittings, erected or situated on the Land, from time to time;
- (4) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales;
- (5) **Charges** means the amount of any cost, charge, duty, impost, expense, outgoing, payment or other expenditure of any nature;
- (6) **Claim** includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action;
- (7) **Conservation Management Plan** means the conservation management plan for the Premises as adopted or amended by the Landlord from time to time which at the date of this Lease is the conservation management plan prepared by Clive Lucas at Stapleton & Partners Pty Ltd dated 23 April 2014;
- (8) **Construction Work** means any construction work carried out or caused to be carried out by the Tenant on the Premises, which is the subject of the WHS Act and WHS Regulation;
- (9) **Cost** means the amount of any cost, charge, expense, outgoing, payment or other expenditure of any nature incurred by or on behalf of the Landlord and whether or not it is:
  - (a) direct;
  - (b) indirect or consequential;
  - (c) accrued or paid; or

(d) reasonable or not,

and includes all direct legal costs (solicitor, barrister and court costs) of the Landlord on a full indemnity basis;

- (10) **Damage Notice** means the Tenant's Notice referred to in clause 5.1(1);
- (11) **First Occupancy Date** means the date on which the Tenant or any predecessor in title of the Tenant first occupied the Premises, whether under this Lease or any previous lease or arrangement;
- (12) **Fixed Rent Increase Date** means each of the dates (if any) stated in Item 8 in the Reference Schedule;
- (13) **Garden Sinking Fund** means the quarterly levy paid by the tenant which is allocated to the future development and enhancement of the premises garden and stated in Item 15 in the Reference Schedule
- (14) **Heritage Legislation** means:
- (a) *Local Government Act 1993* (NSW) and its regulations;
  - (b) *Environmental Planning and Assessment Act 1979* and its regulations;
  - (c) *Heritage Act 1977* and its regulations; and
  - (d) Waverley Local Environmental Plan 2012;
- (15) **Insolvency Event** means the happening of any of these events in relation to a party (Defaulting Party):
- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Defaulting Party's property and is not satisfied, set aside or withdrawn within 7 days after its issue;
  - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
  - (c) the Defaulting Party suspends payment of its debts;
  - (d) where the Defaulting Party is a body corporate:
    - (i) the Defaulting Party becomes an externally-administered body corporate under the Corporations Act 2001 (Cth);
    - (ii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
    - (iii) a controller (as defined in section 9 of the Corporations Act 2001(Cth)) is appointed to any of the property of the Defaulting Party or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within 14 days);

- (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001(Cth); or
    - (v) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;
  - (e) where the Defaulting Party is a natural person:
    - (i) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
    - (ii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
    - (iii) the Defaulting Party commits an act of bankruptcy; or
  - (f) an event happens analogous to an event specified in clauses 1.2(15)(a) to 1.2(15)(e) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied;
- (16) **Item** means an item appearing in the Reference Schedule;
- (17) **Keys** means keys and other means of access from time to time used for the Building or any part of it;
- (18) **Land** means the Land described in Item 13 of the Reference Schedule and includes the gardens;
- (19) **Landlord's Fixtures** includes:
- (a) all plant and equipment (mechanical or otherwise) including Air Conditioning Equipment, fittings, fixtures, furniture, furnishings, window coverings, blinds, floor coverings, light fittings and other goods in or comprising any part of the Premises, and which are owned or supplied by the Landlord including those items Listed in Schedule 1;
  - (b) stop cocks, smoke alarms, fire systems and any other security systems located in or comprising any part of the Premises or servicing the Premises and which are owned or supplied by the Landlord; and
  - (c) drains, basins, sinks, tap washers, showers, toilets and urinals in the Building;
- (20) **Landlord's Notice** means a notice in writing served on the Tenant by the Landlord;
- (21) **Law** includes any requirement of any statute, rule, regulation, proclamation, order, ordinance or by-law whether Commonwealth, state, territorial or local;
- (22) **Lease** means this lease together with any schedule, attachments and plans, as amended from time to time;

- (23) **Plan of Management** means the plan of management adopted from time to time for the Premises under Division 2, Part 2, Chapter 6 of the *Local Government Act 1993* which at the date of this lease is the Bronte House Plan of Management adopted by the Landlord on 20/10/2015;
- (24) **Premises** means the premises described in Item 3 of the Reference Schedule and includes the whole of the Land, the Building and the Landlord's Fixtures;
- (25) **Premises Costs** means the total of all amounts payable (plus GST on those amounts) in connection with the Premises relating to any Operating Expenses Year, whether or not by direct assessment, including all Charges:
- (a) incurred in providing electricity, gas and water to the Premises (excluding water provided to the gardens through any irrigation system);
  - (b) for any telephone, internet, cable network or similar communication services connected to the Premises;
  - (c) incurred in providing lighting, fuel or power to the Premises;
  - (d) imposed by any Authority for the supply of any other Service to the Premises;
  - (e) incurred for the control of pest, vermin, insect or other similar infestation (excluding all Charges incurred for the monitoring, treatment and control of termites);
  - (f) incurred in relation to purchasing, hiring, maintaining and servicing any indoor or outdoor plants, gardens, lawns, potted shrubs, planted areas, fountains, artificial watercourses and associated or similar facilities on the Premises (excluding all Charges incurred by the Landlord in relation to the Landlord's gardening contractor unless required because of any negligent act of the Tenant);
  - (g) incurred in relation to cleaning the Premises including general cleaning, window cleaning and carpet shampooing; and
  - (h) imposed on any of the Tenant, the Premises, the Tenant's Fittings and the Tenant's occupation of the Premises;
- (26) **Principal Contractor** has the same meaning as that contained in the WHS Regulation;
- (27) **Quarter** means a 3 month period;
- (28) **Reference Schedule** means the part of this Lease described as Reference Schedule;
- (29) **Reinstatement Notice** means a notice given by the Landlord to the Tenant of the Landlord's intention to carry out the Reinstatement Works;
- (30) **Reinstatement Works** means the work necessary to:
- (a) reinstate the Building; or
  - (b) make the Premises fit for occupation and use or accessible by the Tenant;
- (31) **Related Body Corporate** has the meaning given in the Corporations Act 2001;

- (32) **Rent** means the amount stated in Item 7 of the Reference Schedule as varied under this Lease;
- (33) **Requirement** means any requirement, notice, order, direction, recommendation, consent, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise and regardless of to whom it is addressed or directed;
- (34) **Services** means:
- (a) all services of any nature from time to time provided to the Premises or available for use by the Tenant, including any energy source, lighting, gas, fuel, electricity, power, telephone, water, sewerage, ventilation, drainage, air conditioning, hydraulic, elevator and security services;
  - (b) all fixtures, fittings, appliances, plant and equipment, fire services, sprinkler systems or devices and all other services or systems provided in the Premises or available for the Tenant's use, whether or not they are also Landlord's Fixtures; and
  - (c) any services or systems from time to time utilised for access to the Premises;
- (35) **Standard Exemptions** means the standard exemptions from subsection 57(1) of the *Heritage Act 1977*, as amended from time to time by order of the Minister administering the *Heritage Act 1977*;
- (36) **Taxable Supply** has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (37) **Tenant's Visitors** means every visitor, licensee, invitee, consultant, contractor, agent of the Tenant and if the Tenant is a company its employees and officers;
- (38) **Tenant's Fittings** means all fixtures, fittings, plant, equipment and goods of all kinds which are in or on the Premises during the Term and are not owned by the Landlord;
- (39) **Tenant's Notice** means a notice in writing served on the Landlord by the Tenant;
- (40) **Termination Notice** means a notice in writing of the Tenant's intention to terminate the Lease due to the Landlord's failure to commence the Reinstatement Works within a reasonable time after the Landlord gives a Reinstatement Notice;
- (41) **Valuer** means a person who is:
- (a) a fellow or an associate of not less than 5 years' standing of the Australian Institute and active in the market for valuing premises substantially similar to the Premises at the time of that person's appointment; and
  - (b) has at least 5 years' immediate past experience in valuing premises substantially similar to the Premises;
- (42) **WHS Act** means *Work Health and Safety Act 2011* (NSW); and
- (43) **WHS Regulation** means *Work Health and Safety Regulation 2011* (NSW).

### 1.3 Interpretation



- (1) Reference to:
  - (a) one gender includes the other;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assigns;
  - (e) a statute, regulation, code or other law or a provision of any of them includes:
    - (i) any amendment or replacement of it; and
    - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced;
  - (f) money is to Australian dollars, unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Lease or affect its interpretation.
- (5) A provision of this Lease must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Lease or the inclusion of the provision in the Lease.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

#### **1.4 Parties and capacity**

- (1) If the Tenant consists of more than 1 person, this Lease binds each of them separately and any 2 or more of them jointly.
- (2) Any agreement, obligation, representation, warranty or indemnity in favour of more than 1 person is for the benefit of them separately and jointly.

#### **1.5 Severability**

- (1) As far as possible all provisions of this Lease will be construed so as not to be unenforceable, illegal or void in any respect.
- (2) If any provision of this Lease is unenforceable, illegal or void:
  - (a) that provision must, as far as possible, be read down to the extent necessary to ensure that it is not unenforceable, illegal, or void and so as to give it a valid operation of a partial character; and
  - (b) the Landlord may terminate this Lease on 30 days' notice to the Tenant and the Tenant is not entitled to make a Claim.

- (3) If any provision or part of it cannot be read down and the Landlord does not terminate this Lease under clause 1.5(2)(b), or if any provision in this Lease is unenforceable, illegal or void or makes this Lease or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Lease remains in force.

## **1.6 Whole agreement**

- (1) This Lease:
- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Lease; and
  - (b) supersedes any prior agreement or understanding on anything connected with that subject matter.
- (2) Each party has entered into this Lease without relying on any information or advice given or statement made (whether negligently or not) by any other party or any person purporting to represent that party.

## **1.7 Organisations**

- (1) If any organisation has ceased to exist, reference to that organisation will be deemed to be reference to an organisation as then serves substantially the same objects as the original organisation.
- (2) Reference to the president of an organisation will, in the absence of a president, be read as reference to the senior officer for the time being of the organisation or any other person fulfilling the duties of the president.

## **1.8 Landlord's consent**

Unless otherwise stated, if the Landlord's consent or approval is required it:

- (1) may be granted or withheld at the Landlord's absolute discretion; and
- (2) is not effective unless it is in writing.

## **1.9 Governing law and jurisdiction**

This Lease is governed by the Law of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts of appeal from those courts.

## **2 Exclusion of statutory provisions**

### **2.1 General**

To the extent permitted by Law the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated and do not apply to this Lease.

### **2.2 Specific exclusions**

- (1) Without limiting the generality of clause 2.1:
- (a) the covenants, powers and provisions implied in leases by sections 84, 84A, 85 and 86 of the Conveyancing Act 1919 (NSW) do not apply to this Lease;

- (b) Part 4 of the Civil Liability Act 2002 (NSW) does not apply to Claims by the Landlord against the Tenant; and
  - (c) if any forms of words in the first column of Part 2 of Schedule 4 to the Conveyancing Act 1919 (NSW) are used in this Lease, they do not imply a covenant under section 86 of that Act.
- (2) The Landlord discloses and the Tenant acknowledges that the Residential Tenancies Act 2010 (NSW) does not apply to this Lease.

### 2.3 **Moratorium**

To the extent permitted by Law, any Law, Requirement or moratorium which at any time directly or indirectly:

- (1) extends or reduces the Term;
- (2) lessens, varies or affects in favour of the Tenant or the Guarantor any obligation under this Lease;
- (3) delays, prevents or prejudicially affects the exercise by the Landlord of any right, power or remedy given by this Lease;
- (4) reduces or postpones the payment of Rent or any part of it; or
- (5) reduces or postpones the payment of any other money by the Tenant to the Landlord as required under this Lease or any part of it,

is excluded from this Lease and may not be enforced by the Tenant against the Landlord.

## 3 **Term and holding over**

### 3.1 **Term**

The Landlord grants to the Tenant and the Tenant takes a lease of the Premises for the Term on the terms and conditions of this Lease.

### 3.2 **Holding over**

- (1) The Tenant may only occupy the Premises after the Terminating Date:
  - (a) having first obtained the prior written consent of the Landlord to do so; or
  - (b) under a lease arising from the valid exercise of an option to renew.
- (2) If the Tenant occupies the Premises after the Terminating Date with the written consent of the Landlord (except under a lease arising from the valid exercise of an option to renew):
  - (a) the Tenant will occupy the Premises as a monthly tenant;
  - (b) the monthly Rent payable monthly in advance and with the first of the monthly payments to be made on the day following the Terminating Date being an amount represented by R in the following formula:

$$R = (PR + (PR \times 10\%)) / 12$$

Where:

PR is the Rent payable immediately prior to the Terminating Date.

- (c) the monthly Rent or any part of it for the monthly tenancy may be reviewed whenever the Landlord determines it appropriate and any provisions in this Lease relating to calculation of, limitation on or right of review of the monthly Rent or any part of it will not apply;
- (d) without limiting any other right of the Landlord, the monthly tenancy can be terminated at any time by either the Landlord or the Tenant giving 1 months' notice to the other, expiring on any date,

and otherwise the tenancy continues on the terms and conditions of this Lease, as they apply to the monthly tenancy, but:

- (e) any bank guarantee or security deposit is not reduced; and
- (f) the Landlord may require other changes, in its absolute discretion, as a condition of giving its consent to the continued occupation.

#### **4 Rent and rent reviews**

##### **4.1 Rent**

- (1) The Tenant must pay the Rent to the Landlord:
  - (a) without demand;
  - (b) without withholding any part of the rent by way of any deduction, counterclaim or right of set-off; and
  - (c) in advance on the first day of each month by equal monthly instalments, and proportionately for any part of a month.
- (2) The first instalment of Rent must be paid on the Commencing Date, unless a later date is specified in Item 7 of the Reference Schedule.

##### **4.2 Payment method**

- (1) All Rent and other amounts due under this Lease must be paid by direct transfer to the bank account notified to the Tenant by the Landlord from time to time and in the absence of any such notification, to the place and in the manner directed by the Landlord from time to time.
- (2) The Tenant must, if requested by the Landlord to do so, establish a direct debit arrangement with the Tenant's bank to pay all Rent and other amounts due under this Lease on their due date to the bank account notified to the Tenant by the Landlord from time to time.

##### **4.3 Fixed rent increase**

- (1) If Item 8 of the Reference Schedule has been completed by inserting Fixed Rent Increase Dates the Rent will be reviewed in accordance with clause 4.3(2).
- (2) The Rent will be increased on each Fixed Rent Increase Date to an amount represented by R in the following formula:

$$R = PR + (PR \times A)$$

Where:

PR is the Rent payable immediately prior to the Fixed Rent Increase Date; and

(a) A is the percentage stated at Item 8 of the Reference Schedule.

#### 4.4 Premises Costs

- (1) The Tenant must:
  - (a) pay promptly all Premises Costs; and
  - (b) must obtain direct accounts with:
    - (i) the suppliers of the Services; and
    - (ii) the suppliers of any internet or cable or other network services connected to the Premises (**Internet Services**),and pay all Costs as and when due.
- (2) Despite clause 4.4(1)(b), if the supplier of the Services and/or the Internet Services (as the case may be) will only supply to the Landlord:
  - (a) if the Landlord is able and willing it will on-sell these Services and/or the Internet Services (as the case may be) to the Tenant, at the Tenant's request;
  - (b) the Cost to be charged for the supply of the Services and/or the Internet Services (as the case may be) will be the appropriate Cost calculated as if the Tenant had been a direct customer of the supplier of the Service and/or the Internet Services (as the case may be); and
  - (c) any money payable under clause 4.4(2)(b) by the Tenant to the Landlord are payable within 10 Business Days of the Tenant being invoiced by the Landlord and if the Tenant fails to pay for any Service and/or the Internet Services (as the case may be) by the due date for payment the Landlord reserves the right, in addition to any other right the Landlord may have under this Lease or at Law, to cease supplying that Service and/or the Internet Services (as the case may be).

### 5 Damage and destruction

#### 5.1 Abatement

- (1) If the Premises are damaged or destroyed so as to render any part of the Premises wholly or substantially:
  - (a) unfit for occupation and use by the Tenant; or
  - (b) inaccessible having regard to the nature and location of the Premises and the normal means of access to them,then subject to this clause 5 from the date that the Tenant notifies the Landlord of the damage or destruction:
  - (c) the Rent;

(d) any other money payable by the Tenant to the Landlord under this Lease;  
and

(e) the covenant to repair and maintain,

will abate according to the nature and extent of the damage or destruction sustained until the Premises are restored so that they are:

(f) made fit for the Tenant's occupation and use; and

(g) made accessible.

(2) The Landlord must notify the Tenant of the extent of the abatement within 5 Business Days after receipt of the Damage Notice.

(3) The Tenant must notify the Landlord of any disagreement with or dispute about the extent of the abatement within 5 Business Days after receipt of the Landlord's notice (time of the essence).

(4) There is no disagreement or dispute about the extent of the abatement if the Landlord does not receive a notice under clause 5.1(3).

(5) If there is a disagreement or dispute about the extent of the abatement, then:

(a) within 5 Business Days of service of the Tenant's Notice under clause 5.1(3), the Landlord and the Tenant either personally or by their representatives must meet and attempt to agree the extent of the abatement;

(b) if the Landlord and the Tenant have not agreed on the extent of the abatement within 5 Business Days after service of the Tenant's Notice:

(i) the dispute must be referred for determination by a Valuer to be nominated by the president of the Australian Institute at the request of either the Landlord or the Tenant;

(ii) the appointed Valuer must give notice of acceptance of appointment to the Landlord and the Tenant;

(iii) the Valuer must as a condition of accepting the appointment agree to make a written determination of the extent of the abatement:

(A) within 30 Business Days of appointment;

(B) in accordance with this clause 5; and

(C) that sets out reasons for that determination;

(c) the Valuer must make a determination of the abatement as at the date of the damage or destruction, acting as an expert and not as an arbitrator;

(d) the Valuer's determination is final and binding on the Landlord and the Tenant;

(e) the Valuer's Costs must be paid by the Landlord and the Tenant equally;  
and

- (f) either Party may pay the Valuer's Costs and recover one-half of the amount paid from the other party.
- (6) Until the determination of abatement has been made under clause 5.1(5), the Tenant must comply with the Landlord's notice under clause 5.1(2).
- (7) Within 10 Business Days after the determination, the Landlord must refund any overpayment or the Tenant must pay any shortfall.

## **5.2 Termination**

- (1) The Landlord may terminate this Lease by notice to the Tenant within 3 months after a Damage Notice has been received.
- (2) The Tenant may terminate this Lease by notice to the Landlord after the date which is 3 months after a Damage Notice has been received, unless the Landlord:
  - (a) within 3 months after receiving the Damage Notice, gives the Tenant a Reinstatement Notice; and
  - (b) subsequently diligently proceeds within a reasonable time to commence the Reinstatement Works.
- (3) The Landlord may decide whether or not to carry out any Reinstatement Works in its absolute discretion.

## **5.3 Tenant may terminate**

- (1) If the Landlord gives a Reinstatement Notice to the Tenant and fails to commence the Reinstatement Works within a reasonable time, the Tenant may give the Landlord a Termination Notice.
- (2) If the Landlord does not commence the Reinstatement Works within a reasonable time after receipt of the Termination Notice, the Tenant may end this Lease by giving not less than 1 months' notice to the Landlord and, at the expiration of that period, this Lease ends.
- (3) If the Landlord commences Reinstatement Works to the Premises, it must use its reasonable endeavours to complete the Reinstatement Works within a reasonable time.

## **5.4 Exceptions**

Clauses 5.1, 5.2 and 5.3 do not apply if:

- (1) the damage or destruction was caused or contributed to, or arises from any act, omission, negligence or default of the Tenant or the Tenant's Visitors ; or
- (2) an insurer under any policy effected by the Landlord refuses indemnity or refuses or reduces the sum payable under the policy because of any act, negligence or default of the Tenant or the Tenant's Visitors .

## **5.5 Landlord not obliged to reinstate**

Nothing in this Lease obliges the Landlord to reinstate any part of the Premises or any means of access to them.

## **5.6 Proceeds of insurance and release**

If the Premises are damaged or destroyed and the Lease ends under this clause 5:

- (1) no liability attaches to either party but the Lease ending will be without prejudice to the rights of either party for any antecedent breach or non-observance of any provision of this Lease;
- (2) the Tenant's right and interest is immediately vested in the Landlord; and
- (3) the Tenant has no interest in any insurance proceeds (other than in respect of any policies for public risk and Tenant's Fittings effected by it under clause 14.1).

## **6 Use of the Premises**

### **6.1 Permitted use**

The Tenant must not use, occupy or permit the Premises to be used or occupied for any purpose other than as stated in Item 9 of the Reference Schedule.

### **6.2 Restrictions on use**

Without limiting any other obligation or restriction in this Lease, the Tenant must:

- (1) not keep any animals or birds (including for the avoidance of doubt any pets) in the Premises without the Landlord's consent;
- (2) at its own expense, keep the Premises free and clean of pests, insects and vermin and in default the Landlord may employ pest exterminators to carry out any pest extermination at the Tenant's expense, payable to the Landlord on demand;
- (3) not carry on any noxious or offensive act, trade, business, occupation or calling in the Premises;
- (4) not cause annoyance, nuisance, grievance, damage or disturbance to occupiers of adjacent premises;
- (5) not hold any auction, bankrupt or fire sale on the Premises;
- (6) not hold any open fires in the gardens;
- (7) not alter, add or remove any plants in or on the Premises without the Landlord's consent;
- (8) not use the fireplaces in or on the Premises;
- (9) not erect, paint, write or attach any sign, advertisement or notice on, in or to any part of the Premises without the Landlord's prior consent;
- (10) not cause or permit to be attached any fixture, or alter or add to the Premises in any way without the Landlord's prior consent;
- (11) not place, store or use any heavy articles or materials in the Premises without first obtaining the Landlord's consent; the Landlord may prescribe the maximum weight and position of any heavy article, materials or machinery to be used in the Premises and the safe floor loading of the Building;
- (12) not install any equipment in the Premises that may overload any Services; and



- (13) not interfere with or obstruct or hinder access to any Air-Conditioning Equipment, smoke alarm or security system installed in, on or servicing the Premises.

### 6.3 Condition

- (1) The Tenant:
  - (a) accepts this Lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises under any Law or Requirement; and
  - (b) accepts the Premises as at the Commencing Date in their present condition and state of repair subject to all defects whether latent or patent.

### 6.4 Compliance with Laws and Requirements

- (1) At its own expense, the Tenant must comply with and observe all Laws and Requirements concerning the Tenant's use and occupation of the Premises.
- (2) If any Law or Requirement is notified to or served upon the Tenant, it must immediately provide a complete copy to the Landlord.
- (3) The Tenant must obtain the Landlord's consent before complying with any Law or Requirement under clause 6.4(1), which requires any variation, modification or alteration of the Premises.
- (4) The Tenant indemnifies and will keep indemnified the Landlord against any failure on the part of the Tenant and or persons under its control to comply with the provisions of this clause 6.4.

### 6.5 Landlord's rights if Tenant fails to comply

The Landlord may:

- (1) without prejudice to any of its other rights in respect of non-compliance, elect to either wholly or partially comply with any Law or Requirement described in clause 6.4 at the Tenant's expense; and
- (2) if it exercises any rights under clause 6.5(1), elect to have the balance of any Law or Requirement complied with by the Tenant.

### 6.6 Structural alterations

- (1) The Tenant is not required under clauses 6.3, 6.4 and 6.5 to effect or pay for structural alterations or additions except those caused by, contributed to or arising from its occupation or use of the Premises or any act, omission, negligence or default by the Tenant or the Tenant's Visitors.
- (2) Subject to clause 6.6(1), the Tenant must pay to the Landlord on demand all Costs incurred by the Landlord in good faith in complying with any Law or Requirement described in clauses 6.3, 6.4 and 6.5.

### 6.7 Landlord's Fixtures

- (1) The Tenant must not use any Landlord's Fixture or any other part of the Premises other than for its intended purpose or place in it any substance that it was not designed to receive.

- (2) The Tenant or the Tenant's Visitors must not do or permit to be done to the Landlord's Fixtures or any other part of the Premises anything which will cause the Premises to be out of keeping with its historic character.
- (3) The Tenant must pay to the Landlord on demand the Costs of repairing any damage to the Landlord's Fixtures or the Premises arising from misuse by the Tenant or the Tenant's Visitors.

#### **6.8 Antennae and radios**

The Tenant must not:

- (1) affix any television or radio mast, antennae, satellite dish or similar device to any part of the Premises; or
- (2) use or operate any sound or picture producing equipment in the Premises if it is audible or visible from outside the Premises.

#### **6.9 Rubbish accumulation and cleaning**

- (1) The Tenant must not:
  - (a) deposit waste, unwanted or used articles or rubbish anywhere on the Premises except in proper receptacles;
  - (b) place anything on any external windowsill or ledge of the Premises; or
  - (c) burn any rubbish or waste in or on the Premises.
- (2) The Tenant must keep the Premises clean and not permit any accumulation of unwanted property or rubbish in or on them.
- (3) The Tenant must, at the Tenant's cost:
  - (a) keep the Premises thoroughly clean and tidy;
  - (b) keep the Premises free from dirt and rubbish, store all trade waste, shop refuse and garbage in proper receptacles and arrange for its regular removal from the Premises; andkeep the Tenant's Fittings clean and maintained in a good order and condition.

#### **6.10 Doors and windows**

- (1) The Tenant must lock all exterior doors and fasten all exterior windows of, on and in the Premises whenever the Premises are not occupied and whenever this is prudent at other times.
- (2) The Tenant authorises the Landlord and any agent of the Landlord to enter the Premises whenever necessary to lock any door or window left unlocked or unfastened.
- (3) The Tenant must not erect or install window coverings, blinds, awnings, screens or other window furnishings without first obtaining the Landlord's consent.
- (4) All window coverings, blinds, awnings, screens or other window furnishings installed must be of low-flammable material and comply with all Laws and Requirements.

- (5) The Tenant must maintain any alarm system installed at the Premises at the Tenant's own cost.

#### **6.11 Window coverings**

- (1) The existing window coverings form part of the Landlord's Fixtures and the Tenant must not remove or make any alterations to the window coverings. If the Tenant desired additional window coverings the number of window coverings to be installed will be determined by the landlord in its absolute discretion and paid for by the Tenant.

#### **6.12 Keys**

- (1) The Tenant must return all Keys held by the Tenant during its occupancy, whether provided by the Landlord or made or provided by the Tenant for its own use, when this Lease ends.
- (2) Subject to clause 9.2(1)(a), the Tenant must not remove or make any alternations to the locks installed at the Premises at the Commencement Date.

#### **6.13 Tenant's Visitors**

The Tenant must ensure that the Tenant's Visitors comply with the Tenant's obligations under this Lease, if appropriate.

#### **6.14 Unoccupied Premises**

- (1) If the Tenant intends on not occupying the Premises for a continuous period in excess of 60 days the Tenant must first obtain the prior written consent of the Landlord to do so. The Tenant must make a written application to the Landlord that must contain details of the period (including the dates) that the Tenant will not be in occupation of the Premises.
- (2) The Landlord must give or withhold consent within 15 Business Days after service of the written application.
- (3) The Landlord must not unreasonably withhold its consent under clause 6.14(2).

### **7 Assignment and subletting**

#### **7.1 No dealing with the premises**

The Tenant must not:

- (1) assign, transfer, mortgage, charge or otherwise deal with this Lease or its interest in the Premises;
- (2) sublet, part with possession of or grant any licence affecting the Premises; or
- (3) use the Premises to derive an economic or financial benefit including by conducting any of the following activities:
  - (a) filming;
  - (b) advertising;

- (c) photo shoots;
- (d) functions; or
- (e) any activity of a similar nature.

## **7.2 Assignment permitted**

- (1) The Landlord may grant its consent to an assignment of the whole of the Premises if the Tenant first makes a written application to the Landlord for consent and the following conditions have been satisfied:
  - (a) the Tenant is not in default under this Lease, other than a default which has been waived by the Landlord or remedied by the Tenant;
  - (b) the Tenant proves to the Landlord's reasonable satisfaction that the incoming tenant is respectable, responsible and solvent and is capable of complying with the Tenant's obligations under this Lease;
  - (c) the obligations of the incoming tenant are guaranteed in a form and on terms in each case acceptable to the Landlord;
  - (d) the Tenant obtains, at its expense, from the incoming tenant and any incoming guarantor an executed deed, in a form reasonably required by the Landlord;
  - (e) the Tenant pays the Landlord's Costs of considering whether or not to give its consent, whether or not the proposed assignment proceeds; and
  - (f) the Landlord has obtained any consents that it has agreed to endeavour to obtain.
- (2) Despite any other provision of this Lease, any Law or any Requirement, the Landlord may withhold its consent in its absolute discretion to a sublease of the Premises.

## **7.3 Change in ownership or control**

If the Tenant is a corporation and there is a proposed change in Control of the Tenant or a Related Body Corporate of the Tenant and the Tenant is a company which is not listed on the Australian Stock Exchange, then:

- (1) that proposed change in Control is treated as a proposed assignment of this Lease to an incoming tenant;
- (2) the person or entity proposed to acquire Control is treated as an incoming tenant; and
- (3) clause 7.2 applies.

## **8 Utilities**

### **8.1 Source of light and power**

The Tenant must only use light, power or heat generated by electrical current or gas supplied through meters except in the case of failure of supply when the Tenant may only use other safe sources of energy.

## **8.2 No alterations to electrical installations**

- (1) The Tenant must not make any alterations or additions to the electrical installations or wiring on the Premises without the Landlord's prior consent.
- (2) The Tenant must not install any electrical equipment which overloads the cables or sub-boards through which electricity is conveyed to the Premises.

## **8.3 Heating or cooling devices**

The Tenant must not use or install any heating or cooling device or machine which in the Landlord's opinion may interfere with the efficient running of the Air Conditioning Equipment or increase its running costs.

# **9 Maintenance and repair**

## **9.1 Repair of Premises**

- (1) The Landlord and Tenant acknowledge that a report as to the condition of the Premises as at the First Occupancy Date was prepared and a copy of that report, for identification purposes, has been provided to the Tenant.
- (2) The Tenant must keep the Premises, the Tenant's Fittings and the Landlord's Fixtures in good repair and condition having regard to:
  - (a) the Standard Exemptions, the Conservation Management Plan and the Plan of Management;
  - (b) the Heritage Legislation;
  - (c) state of repair and condition of the Premises, the Tenant's Fittings and the Landlord's Fixtures, including (subject to clause 10.1(3)), any structural or capital maintenance or repair, as at the Commencing Date except for:
    - (i) fair wear and tear (where not excluded by this Lease); and
    - (ii) acts of God.
- (3) Nothing in clause 9.1(2) imposes any obligation on the Tenant in respect of any major structural maintenance, replacement, renovation or repair unless it is required because of any act, negligence, omission or default of the Tenant or the Tenant's Visitors.

## **9.2 Maintenance and breakages**

- (1) The Tenant must:
  - (a) not carry out any repairs, alterations, renovations, extensions or works on or in the Premises (including of a minor nature) without the Landlord's consent & not engage a gardener to work at the Premises other than the landlord appointed garden contractor and only do garden work or maintenance under the direction of the Principal or their nominated garden contractor.
  - (b) water the lawn adjacent to the gravelled driveway and at the rear of the property (as marked on the plan annexed to this Lease as Exhibit 1) on a regular basis in order to maintain the lawn in good condition;

- (c) water all pots plants on the Premises in order to maintain the pot plants in good condition;
- (d) inspect the gardens on the Premises on a regular basis and immediately notify the Landlord of any plant of a significant age or size that appears unhealthy;
- (e) immediately make good any damage to the Premises caused or contributed to by any act, negligence, omission or default of the Tenant or the Tenant's Visitors or by its or their use or occupancy of the Premises or by the installation, use or removal of the Tenant's Fittings;
- (f) immediately repair or replace:
  - (i) broken glass with glass of the same quality;
  - (ii) damaged or inoperative electric light bulbs, globes, tubes and other means of illumination and light switches and power points which may become damaged or fail to operate; and
  - (iii) Landlord's Fixtures which are broken or damaged by the Tenant or the Tenant's Visitors.

(2) The Tenant must:

- (i) Pay \$2,500 (exclusive of GST) per quarter in every year of the tenancy to the Garden Sinking Fund, as per Item 15

### 9.3 **Landlord's right to inspect and repair**

- (1) Except in the case of emergency (when no notice is required), after giving the Tenant 3 Business Days' notice, the Landlord and its agents may enter the Premises and view their condition.
- (2) The Landlord may serve a notice on the Tenant requiring it to undertake any repair which is the Tenant's obligation, within a reasonable time.
- (3) Without limiting any other right of the Landlord, if the Tenant does not make the repairs required in a notice served pursuant to clause 9.3(2), to the Landlord's satisfaction, the Landlord and its agents may (but is or are not obliged to) enter any part of the Premises and make the repairs and the Landlord's Cost of doing so must be paid by the Tenant on demand.
- (4) In exercising its powers under this clause 9.3, the Landlord must endeavour to cause as little inconvenience to the Tenant as is practicable in the circumstances.

### 9.4 **Landlord may enter**

- (1) The Landlord may enter the Premises with workers, agents and other authorised persons and necessary materials and appliances to:
  - (a) comply with any Law or Requirement involving the destruction of noxious animals, rodents or other pests;
  - (b) carry out any repairs, alterations, renovations, extensions or works;
  - (c) exercise the Landlord's rights under this Lease; or

- (d) provide any Services to the Tenant.
- (2) In exercising its powers under this clause 9.4, the Landlord must endeavour to cause as little inconvenience to the Tenant as is reasonably practicable in the circumstances.

#### 9.5 Notice of damage or defect in Services

The Tenant must promptly give the Landlord notice of:

- (1) any damage to, defect or disrepair in the Premises, the Services or the Landlord's Fixtures;
- (2) any circumstances likely to cause any danger risk or hazard to the Premises or to any person; and
- (3) any notice received from any Authority.

#### 9.6 Furniture and fittings

- (1) Within four months of the Commencing Date, the Tenant must spend a minimum of \$20,000.00 (exclusive GST) on furniture and fittings for the Premises or provide furniture to that value for display:
- (2) The furniture and fittings purchased under clause 9.6(1) or provided are:
  - (a) the Lessees Fixtures for the purposes of this Lease; and
  - (b) to be placed in the lounge and dining rooms of the Premises that are to be open to the public under clause 10. The style and look must be compatible with and look like the furniture that maybe associated with a historic residential premise. The approval on the style and look is at the Landlords (Council) discretion.
- (3) Unless instructed by the Landlord to the contrary (in its absolute discretion) under clause 17.1(2),
- (4) The Tenant must provide the Landlord with written evidence of the money spent under clause 9.6(1) or to the value of furniture & fittings provided to substantiate their value.
  - (a) as soon as practicable after the Tenant has spent the amount in clause 9.6(1); or
  - (b) within 30 days of the Landlord's request in writing.

### 10 Open days and Bronte House Working Group

#### 10.1 Open Days

- (1) In this clause 10, **Open Days** means days on which the Premises are open:
  - (a) to the public to view; and

- (b) for functions or other agreed activities,  
as agreed between the Landlord and Tenant:
    - (a) prior to the Commencement Date; or
    - (b) during the Term of this Lease under clause 10.1(1)(b).
- (2) The Open Days may involve preparation, setting up and dismantling:
  - (a) prior to the Open Days; or
  - (b) post Open Days.

For the avoidance of doubt, any days on which the Premises are required by the Landlord:

  - (c) to prepare and set-up for any Open Days (**Preparation Days**); or
  - (d) to dismantle and pack-up post Open Days (**Post Open-Days**),

are not counted as one of the 6 Open Days under clause 10.1(3)(a).
- (3) The Tenant must provide access to the Premises for the Landlord (or its nominee):
  - (a) to conduct a minimum of 6 Open Days per year on:
    - (i) such dates as agreed between the parties; and
    - (ii) if no agreement can be reached under clause 10.1(3)(a)(i), the Open Day is to be held on the third Saturday and Sunday of any particular month to be nominated by the Landlord. The Landlord must give the Tenant 15 Business Days written notice of the nominated date of the Open Day; and
  - (b) on the Preparation Days; and
  - (c) on the Post Open Days.
- (4) The Tenant is not:
  - (a) subject to clause 10.1(5), liable to fund nor organise the Open Days or events; and
  - (b) entitled to an abatement of Rent,

in connection with the Open Days.
- (5) If requested by the Landlord, the Tenant must be present at the Open Days:
  - (a) to facilitate access to the Premises; and
  - (b) supervise the Open Days.
- (6) Prior to the Open Days, the Tenant must:



- (a) ensure the Premises are clean and presentable;
  - (b) remove any of the Tenant's Fittings which the Landlord, acting reasonably, directs is necessary to provide unobstructed access or poses a potential safety concern;
  - (c) sweep and remove any rubbish from the veranda's;
  - (d) ensure the gravel driveway (marked on the plan annexed to this Lease as Exhibit 1) is free of debris;
  - (e) remove any rubbish or receptacles in or on the Premises; and
  - (f) water all pots plants on the Premises.
- (7) The Tenant acknowledges that it may remove any of the Tenant's Fittings from any area of the Premises to be used in connection with the Open Days.
  - (8) The Tenant must provide the Landlord with details of any incidents or events that occur or threats or complaints made prior, on or post the Open Days.
  - (9) Any income derived from Open Day entrance fees, fund raising, plant sales or associated activities approved by the Landlord must be transferred to the Landlord (Council) to be added into the Garden Sinking Fund to be expended on upgrades and enhancements.

#### 10.2 **Bronte House Working Group**

- (1) The Landlord and Tenant agree to form the Bronte House Working Group.
- (2) The Bronte House Working Group will be formed to perform the function of deciding and making recommendations to the Landlord on matters in relation to the Premises, including the:
  - (a) operation of the Premises;
  - (b) Open Days including the establishment of policies, guidelines and directives;
  - (c) requirements under the Plan of Management and Conservation Management Plan; and
  - (d) review and discussion of performance and conduct of the Open Days.
- (3) The Landlord must arrange and co-ordinate each meeting of the Bronte House Working Group on a quarterly basis or such other times as reasonably required by the Landlord after giving the Tenant and the Tenant's representative reasonable notice.

### 11 **Heritage and Plan of Management**

#### 11.1 The Tenant acknowledges that:

- (1) the Land is classified as community land under the *Local Government Act 1993*;
- (2) the Premises:

- (a) is listed on the State heritage register under the *Heritage Act 1977* (gazetted on 2 April 1999);
  - (b) is listed on the National Trust Register of Australia and the Register of National Estate;
  - (c) is listed as a heritage item under the *Waverley Local Environmental Plan 2012*;
  - (d) are subject to restrictions and requirements of particular legislative instruments including the Heritage Legislation
- (3) the Landlord has provided the Tenant with a copy of the Standard Exemptions, the Plan of Management and Conservation Management Plan; and
- (4) it must comply with the terms and conditions of the:
- (a) Heritage legislation;
  - (b) Plan of Management and Conservation Management Plan,
- and do all things necessary to meet the objectives for the Premises contained in the Plan of Management and Conservation Management Plan.

## **12 Alterations**

### **12.1 Alterations and additions**

The Tenant must not alter or add to the Premises or the Tenant's Fittings, install or alter any partitions:

- (1) without the Landlord's prior consent; and
- (2) otherwise than in accordance with the Heritage Legislation, Plan of Management and Conservation Management Plan.

### **12.2 Installation of equipment**

The Tenant must not:

- (1) install any water, gas or electrical fixtures, equipment or appliances or any apparatus for air conditioning, heating, cooling, ventilating or illuminating the Premises; or
- (2) mark, paint, drill, deface or damage any part of the Premises,

otherwise than in accordance with the Heritage Legislation, Plan of Management, Conservation Management Plan and with the Landlord's prior consent.

### **12.3 Principal Contractor**

- (1) Subject to clause 12.3(3), the Landlord:
  - (a) appoints the Tenant and the Tenant accepts its appointment as Principal Contractor for any Construction Work (other than Construction Work in respect of which the Landlord has elected to be the Principal Contractor); and

- (b) authorises the Tenant to exercise such authority of the Landlord as is necessary to enable the Tenant to discharge its responsibilities as Principal Contractor.
- (2) The Tenant agrees that, as Principal Contractor, the Tenant:
  - (a) is responsible for the Construction Work at all times until the Construction Work is completed;
  - (b) must ensure that in carrying out the Construction Work it complies with all requirements of the WHS Regulation and the WHS Act; and
  - (c) is responsible for all costs associated with performing the role of Principal Contractor.
- (3) The Landlord may, in its absolute discretion, elect to be the Principal Contractor for the whole or any part of the Construction Work.

### **13 Work Health and Safety Obligations**

#### **13.1 The Tenant:**

- (1) acknowledges and agrees that for the purpose of the WHS Law, the Tenant has the control of the Premises and all plant, substances and activities within the Premises;
- (2) warrants that its use and occupation of the Premises and its activities at the Premises (including the activities of the Tenant's Visitors) will not give rise to any risk to the health and safety of any person;
- (3) must implement procedures to identify all risks to the health and safety of any person arising from its use and occupation of the Premises and activities at the Premises and take all necessary steps to minimise those risks as far as reasonably practicable; and
- (4) must not breach the WHS Law and must not do or allow to be done, or omit or allow to be omitted anything in connection with:
  - (a) the Premises; or
  - (b) the use of the Premises by Tenant or the Tenant's Visitors ,
 which may result in the Landlord being in breach of the WHS Law.

13.2 The Tenant must consult, cooperate and coordinate its activities with the Landlord in connection with the Premises to ensure that the Tenant and the Tenant's Visitors comply with the WHS Law, including but not limited to by participating in any meetings, furnishing and maintaining information and taking such other steps as required by the Landlord.

13.3 The Tenant must immediately notify the Landlord of any accident, notifiable incident (being an incident which is notifiable under the WHS Law) or injury which occurs in connection with:

- (1) the Premises; or
- (2) the use of the Premises by the Tenant or the Tenant's Visitors .

13.4 The Tenant releases and indemnifies the Landlord from and against any liability, loss, claim, damage, cost or expense arising from or incurred in connection with the WHS Law to the extent that it relates to:

- (1) the Premises; or
- (2) the use of the Premises by the Tenant or the Tenant's Visitors .

13.5 If the Tenant commissions a construction project (as the term 'construction project' is defined in the WHS Regulations) on the Premises, the Tenant must appoint a principal contractor for that project to discharge the duties of a principal contractor under Chapter 6 of the WHS Regulations.

## **14 Insurances and indemnities**

### **14.1 Insurance**

- (1) The Tenant must keep current:
  - (a) a public risk insurance policy for an amount in respect of any single event of not less than the amount in Item 10 or a greater sum if nominated by the Landlord; and
  - (b) an insurance policy covering the Tenant's Fittings for the full insurable reinstatement Cost.
- (2) The Landlord discloses and the Tenant acknowledges that the Tenant should disclose the terms of this Lease in particular the Open Days under clause 10.1 in connection with the application for insurances set out in this clause 14.1.

### **14.2 Landlord may insure**

- (1) If the Tenant fails to maintain the insurances required by this clause 14, then without limiting any right of the Landlord, the Landlord may (but is not obliged to) effect and maintain those insurances.
- (2) The Landlord's Costs in effecting and maintaining the insurances under clause 14.2(1) must be paid by the Tenant.

### **14.3 Tenant's insurances**

The Tenant must ensure that all policies of insurance effected or required to be effected by the Tenant under this clause 14:

- (1) are taken out with an independent and reputable insurer approved by the Landlord;
- (2) are for an amount, cover risks and contain conditions which are acceptable to the Landlord and its insurer;
- (3) are on an occurrence, not a claims made, basis;
- (4) have no exclusions, endorsements or alterations unless first approved by the Landlord; and
- (5) are taken out in the joint names of the Landlord and the Tenant for their respective rights and interests.

#### **14.4 Payment and production of insurance policies**

- (1) The Tenant must promptly pay all premiums and other money payable in respect of its insurances.
- (2) If requested by the Landlord, the Tenant must produce policies of insurance which the Tenant is required to effect under this clause 14 and the receipt or other evidence of up to date payment of the premium.

#### **14.5 Effect on the Landlord's insurance**

- (1) Unless the Tenant has the Landlord's prior consent in writing, the Tenant must not do or omit to do anything to or on the Premises which may:
  - (a) increase the rate of any insurance on the Premises or any property on the Premises;
  - (b) vitiate or render void or voidable or prejudice any insurance on the Premises or any property on the Premises; or
  - (c) conflict with any Law or Requirement, the requirements of the Landlord's insurer relating to fire, fire safety or fire prevention or any insurance policy in respect of the Premises or any property in the Premises.
- (2) The Tenant must pay to the Landlord all extra insurance Costs on the Premises on account of the extra risk caused by the Tenant's use or occupation of the Premises or anything done by the Tenant in breach of clause 14.5(1).
- (3) The Landlord's acceptance of any extra insurance Costs does not constitute a waiver of any breach of this clause 14.5 by the Tenant.

#### **14.6 Inflammable substances and fire regulations**

The Tenant must not store, flammable, volatile or explosive substances (whether liquid, gas or solid) on the Premises other than in small quantities used for domestic purposes.

#### **14.7 Tenant's risk**

- (1) All property at the Premises is at the Tenant's sole risk.
- (2) The Tenant occupies and uses the Premises at the Tenant's sole risk.
- (3) The Landlord, its employees and agents are not liable for any Claim by the Tenant, the Tenant's Visitors or any person which may arise from:
  - (a) any fault in the construction or state of repair of the Premises or any part of it or the Landlord's Fixtures;
  - (b) any defect in the Services or the Landlord's Fixtures;
  - (c) the flow, overflow, leakage, condensation or breakdown of any water, air conditioning, gas, oil or other source of energy or fuel from or in any part of the Premises; or
  - (d) from any other cause,except as to the extent caused by the negligence of the Landlord.

#### 14.8 Release

To the full extent permitted by Law, the Tenant releases the Landlord, its employees and agents from all Costs and Claims incurred in connection with:

- (1) any property in the Premises (including any damage or theft to any Tenant's Fittings which may occur on the Open Days under clause 10.1);
- (2) damage or injury to any person or property on the Premises;
- (3) any of the circumstances set out in clause 14.9; or
- (4) provided that the Landlord has complied with its obligation in clause 15.4:
  - (a) a Service being interrupted, not being available or not working or not doing so properly;
  - (b) the Landlord's Fixtures not working or not doing so properly;
  - (c) the Premises not complying with any Law; or
  - (d) the Premises not complying with the requirement of any Authority,other than to the extent that the Claim results from the negligence of the Landlord, its employees, contractors, invitees or agents; and

#### 14.9 Indemnities

- (1) The Tenant is responsible for and indemnifies the Landlord against all Claims and Costs incurred in connection with:
  - (a) any cause relating to the Premises, any property or any person inside or outside the Premises, except to the extent caused by the negligence of the Landlord;
  - (b) the negligent or careless use or neglect of the Services in the Premises or the Landlord's Fixtures by the Tenant or the Tenant's Visitors or claiming by, through or under the Tenant or any trespasser while in the Premises;
  - (c) the overflow or leakage of water from any source including the Services or the Landlord's Fixtures, whether originating outside or within the Premises;
  - (d) the Tenant's failure to give notice to the Landlord of any defect in the Services;
  - (e) any person exercising or purporting to or attempting to exercise a right or remedy in relation to this Lease after the Tenant has defaulted under this Lease;
  - (f) the Landlord doing anything:
    - (i) which the Landlord is permitted or required to do under this lease; or
    - (ii) which the Tenant must do under this Lease but has not done or which the Landlord considers the Tenant has not done properly;

- (g) the Tenant's breach of this Lease (including if this Lease is terminated for breach, the Landlord's loss of the benefit of the Tenant performing its obligations under this Lease),
- (2) Amounts due under the indemnity in clause 14.9(1) must be paid by the Tenant to the Landlord on demand.
- (3) The indemnity in this clause 14.9 is independent from the Tenant's other obligations under this Lease and does not come to an end when this Lease expires or is terminated. It is not necessary for the Landlord to incur expense or make a payment before enforcing this indemnity.

## **15 Landlord's covenants and additional rights**

### **15.1 Quiet enjoyment**

If the Tenant performs and observes all its obligations under this Lease and subject to the Landlords' rights, the Tenant may use the Premises without interruption or disturbance from the Landlord or any person claiming by, through or under the Landlord.

### **15.2 Person other than Landlord becoming entitled to Rents**

- (1) If any person other than the Landlord becomes entitled to receive the Rent, that person has the benefit of all covenants by the Tenant under this Lease.
- (2) If required by and at the expense of the Landlord, the Tenant must enter into a deed in favour of that other person agreeing to be bound by this Lease as if that other person was named in this Lease as Landlord.

### **15.3 Landlord released**

If a person other than the Landlord becomes the registered proprietor of the Land, then the Landlord is released from all obligations under this Lease arising after the other person becomes the registered proprietor of the Land.

### **15.4 Services to be provided by Landlord**

The Landlord must use reasonable endeavours to ensure that the Services are operational and functional.

### **15.5 Failure of Services**

The Tenant has no Claim against the Landlord and is not entitled to terminate this Lease solely because:

- (1) the Services fail to operate; or
- (2) the Landlord shuts down or removes any Services to repair, maintain or replace them or because of the provisions of any Law or Requirement.

### **15.6 Additional rights**

In addition to any express rights and to the full extent permitted by law:

- (1) the Landlord may:
  - (a) do anything to comply with any Law or Requirement of any Authority;

- (b) exclude or remove any person from the Premises;
  - (c) enter the Premises at reasonable times on reasonable notice to determine if the Tenant is complying with its obligations under this Lease and to do anything that the Landlord may or must do under this Lease;
  - (d) if it decides there is an emergency, enter the Premises at any time without notice and stop the Tenant from entering the Premises;
  - (e) after giving the Tenant reasonable notice, do anything which the Tenant should have done under this Lease but which it has not done or which the Landlord considers it has not done properly; and
  - (f) appoint agents or others to exercise any of its rights or perform any of its duties under this Lease, on the condition that communications from the Landlord prevail over communications from others if they are inconsistent, and
- (2) the Landlord and its gardeners and contractors may enter the Premises:
- (a) on a weekly or bi-weekly basis or such other times as reasonably required by the Landlord after giving the Tenant reasonable notice;
  - (b) with workers, agents and other authorised persons and necessary materials and appliances; and
  - (c) to carry out any gardening services on the Land which may be up to three times per week depending on the garden maintenance schedule

**15.7 Landlord not required to carry out works**

- (1) Despite clause 15.1, the Landlord is not required to undertake any works to the Premises which will alleviate any impact that any adjoining land users may have on the Premises or the Tenant's use of the Premises.
- (2) Despite any other provision of this Lease, if the Landlord is required by law to effect, or the Tenant makes a Claim against the Landlord to effect, any works of the kind referred to in clause 15.7(1), the Landlord may in its absolute discretion:
  - (a) carry out such works; or
  - (b) terminate this Lease on 3 months notice to the Tenant.
- (3) If the Landlord terminates this Lease pursuant to clause 15.7(2)(b):
  - (a) clause 17 will apply;
  - (b) the Tenant will not be entitled to any payment of compensation from the Landlord because of the Landlord's termination of this Lease pursuant to clause 15.7(2)(b) or because of any impact that an adjoining land user may have on the Premises or the Tenant's use of the Premises; and
  - (c) the Tenant will not otherwise have any Claim against the Landlord for any liability the Tenant may have or does suffer because of the Landlord's termination of this Lease pursuant to clause 15.7(2)(b) or because of any impact that an adjoining land user may have on the Premises or the Tenant's use of the Premises.



## **16 Termination**

### **16.1 Essential terms of this Lease**

- (1) The following are essential terms of this Lease:
  - (a) each obligation of the Tenant to pay money;
  - (b) each obligation of the Tenant under clause 6;
  - (c) each obligation of the Tenant under clause 7;
  - (d) each obligation of the Tenant under clause 9;
  - (e) each obligation of the Tenant under clause 11;
  - (f) each obligation of the Tenant under clause 14;
  - (g) each obligation of the Tenant under clause 18;
  - (h) each obligation of the Tenant under clause 20; and
  - (i) the Tenant to not be subject to an Insolvency Event.
- (2) Other obligations of the Tenant under this Lease may also be essential terms.

### **16.2 Forfeiture of Lease**

- (1) The Tenant will be in default and the Landlord may terminate this Lease by notice to the Tenant or re-entry if the Tenant does not comply with an essential term of this lease.
- (2) The Tenant will be in default and the Landlord may terminate this Lease by notice to the Tenant or re-entry if the Tenant does not comply with an obligation that is not an essential term and the failure to comply either (in the reasonable opinion of the Landlord):
  - (a) cannot be remedied or compensated for;
  - (b) can be remedied but is not remedied within a reasonable time after the landlord gives the Tenant notice to do so; or
  - (c) cannot be remedied but can be compensated for and is not compensated for within a reasonable time after the Landlord gives the Tenant notice to do so.

### **16.3 Costs**

Without notice to the Tenant, any Costs incurred by the Landlord in remedying a default may be treated by the Landlord as a liquidated debt payable by the Tenant on demand.

### **16.4 Waiver**

- (1) No waiver by the Landlord is effective unless it is in writing.
- (2) The Landlord's failure to notify the Tenant of any default or to otherwise act on any default by the Tenant must not be construed as waiving the default.

- (3) No custom or practice which evolves between the parties constitutes a waiver or lessen the Landlord's right to insist upon the Tenant's strict performance or observance of any provision of this Lease or to exercise any of the Landlord's other rights.
- (4) Regardless of the Landlord's knowledge at the time, a demand by it for Rent or other money payable under this Lease or the subsequent acceptance of Rent or other money does not constitute a waiver of any earlier default by the Tenant.
- (5) No single or partial exercise of any right, power or remedy precludes any other or further exercise of that or any other right, power or remedy.
- (6) Attempts by the Landlord to mitigate its loss are not a waiver of any breach of or the Landlord's rights under this Lease.

#### **16.5 Tender after termination**

In the absence of any election by the Landlord, any money tendered by the Tenant after termination of this Lease and accepted by the Landlord must be applied:

- (1) firstly, on account of any unpaid Rent and other money due under this Lease at the date of termination; and
- (2) secondly, on account of the Landlord's Costs in relation to the termination.

#### **16.6 Interest on overdue money**

- (1) The Tenant must pay interest to the Landlord at the Default Rate on any Rent, Costs or other money not paid when due to the Landlord.
- (2) Interest:
  - (a) accrues from day to day and is calculated daily;
  - (b) is capitalised on the last day of each month;
  - (c) is payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or months; and
  - (d) is computed from the date for payment of the Rent, Costs or other money, or in the case of an amount by way of reimbursement or indemnity the date of the outlay or loss, until payment.
- (3) Any Costs, loss or damage for the unexpired residue of the Term suffered by the Landlord as a result of the Tenant's repudiation may be recovered as damages at any time.
- (4) The Landlord's entitlement to recover damages from the Tenant or any other person is not limited or affected by any of the following:
  - (a) if the Tenant abandons or vacates the Premises;
  - (b) if the Landlord elects to re-enter the Premises or terminate this Lease;
  - (c) if the Landlord accepts the Tenant's repudiation; or

- (d) if the parties' conduct (or that of any of their servants or agents) constitutes or may constitute a surrender by operation of law.

#### **16.7 Landlord to mitigate damages**

- (1) The Landlord's entitlement to damages is assessed on the basis that the Landlord has observed the obligation to mitigate damages.
- (2) The Landlord's conduct in mitigating its damages does not of itself constitute acceptance of the breach or repudiation or a surrender by operation of Law.

#### **16.8 Calculation of damages**

Following repudiation by the Tenant if the Landlord terminates this Lease then, without prejudice to any other right or remedy:

- (1) the Landlord may recover the difference between the aggregate of Rent and other money payable by the Tenant for the unexpired residue of the Term less any amount the Landlord obtains by observing clause 16.7; and
- (2) the Tenant indemnifies the Landlord against any Claims arising because the Landlord will not receive the benefit of the Tenant performing its obligations under this Lease from the date of the termination until the Terminating Date.

#### **16.9 Statutory notice**

If the Law requires the Landlord to give a notice in a particular form before terminating this Lease, then the notice required by Law will be sufficient to satisfy the Landlord's obligations under clause 16.2.

### **17 Expiry or termination of term**

#### **17.1 Tenant to yield up**

On or before the date this Lease ends, the Tenant must:

- (1) deliver the Premises to the Landlord in good repair, order and condition and otherwise as required by clause 9.1;
- (2) remove all the Tenant's Fittings;
- (3) otherwise comply with the Tenant's obligations in relation to the condition of the Premises, including without limitation those obligations in clause 18.1.

#### **17.2 Tenant not to cause damage**

- (1) The Tenant must not damage the Premises in the removal of the Tenant's Fittings and any signs or advertisements affixed by the Tenant.
- (2) If the Tenant does so, it must repair any damage and leave the Premises clean.
- (3) If the Tenant fails to comply with clause 17.2(2), then without limiting any right of the Landlord, the Landlord may (but is not obliged to) repair and clean the Premises and recover the Costs of doing so from the Tenant on demand.

#### **17.3 Failure by Tenant to remove Tenant's Fittings**

- (1) If the Tenant fails to remove the Tenant's Fittings as required by clause 17.1(2), then without limiting any right of the Landlord, the Landlord may:
  - (a) treat the Tenant's Fittings as if the Tenant had abandoned them and deal with the Tenant's Fittings as it thinks fit without being liable to account to the Tenant; or
  - (b) remove and store the Tenant's Fittings at the Tenant's risk and expense.

#### **17.4 Tenant to indemnify and pay Landlord's costs**

The Tenant:

- (1) is responsible for and indemnifies the Landlord against the removal and storage of the Tenant's Fittings and against all Claims by any person claiming an interest in the Tenant's Fittings by reason of the Landlord's actions under clause 17.3; and
- (2) must pay the Landlord, as a liquidated debt payable on demand, any Costs incurred by the Landlord in exercising its rights under clause 17.3 less any money received on disposal of the Tenant's Fittings.

#### **17.5 Earlier breaches**

Termination of this Lease does not prejudice or affect any of the Landlord's rights or remedies against the Tenant for an earlier default by the Tenant.

### **18 Restoration of Premises**

#### **18.1 Specific works**

- (1) In addition to any other obligations of the Tenant, prior to it vacating the Premises the Tenant must, in accordance with the Heritage Legislation, Plan of Management, Conservation Management Plan and after obtaining the consent of the Landlord, carry out the following works (Tenant's Works):
  - (a) repair or replace any damaged or affected carpet and clean the carpet to the Landlord's reasonable satisfaction;
  - (b) clean lighting boxes and diffusers and replace tubes and diffusers as necessary;
  - (c) remove, clean and then replace the window furnishings after cleaning all glass and sills; and
  - (d) if in the Landlord's opinion, in its absolute discretion, any of the painted surfaces or walls of the Premises are worn or damaged, prepare those painted surfaces and walls and apply an undercoat and 2 top coats of good quality paint to the Landlord's satisfaction.

#### **18.2 Tenant's expense**

The Tenant must carry out the Tenant's Works under clause 18.1 at its expense to reasonable trade standards approved by the Landlord's consultants.

#### **18.3 Failure to do Tenant's Works**

If the Tenant does not complete the Tenant's Works under clause 18.1 before vacating the Premises, it is deemed to be holding over as a monthly tenant under this Lease until the

Tenant's works under clause 18.1 are completed to the reasonable satisfaction of the Landlord's consultants.

**18.4 Landlord may carry out the Tenant's Works**

- (1) If the Tenant does not carry out the Tenant's Works under clause 18.1, the Landlord is entitled to complete them at the Tenant's expense and the Landlord's Costs of doing so, Rent and all other Costs must be paid by the Tenant on demand.
- (2) A certificate signed by the Landlord's architect giving reasonable details of the Tenant's Works under clause 18.1 completed by the Landlord and the Landlord's Costs is conclusive evidence of the works and Costs unless the Tenant disputes the certificate within 20 Business Days of service.

**18.5 Dispute resolution**

- (1) If any dispute or matter arises under this clause 18, the Landlord may refer it to an architect appointed by the president of the Royal Australian Institute of Architects (New South Wales Division) at the Landlord's request.
- (2) The appointed architect must decide the dispute or matter acting as an expert not as an arbitrator.
- (3) The appointed architect's decision is final and binding on the parties.
- (4) The Tenant must pay the Costs of the appointed architect.

**19 Miscellaneous**

**19.1 Notices**

- (1) If a provision in this Lease requires a notice be given by a party, it must be in writing.
- (2) Any notice by the Landlord under this Lease is valid if signed by an officer, manager or solicitor of the Landlord.
- (3) The Tenant must promptly notify the Landlord of the address and facsimile number of the Tenant and any Guarantor and update the notice if any changes occur.
- (4) Any notice that the Landlord elects to serve on the Tenant is sufficiently served if:
  - (a) served personally or addressed to the Tenant and left at the Premises;
  - (b) sent to the last known facsimile number of the Tenant; or
  - (c) forwarded by prepaid security post to the Tenant's last known registered office, place of business or residence.
- (5) Any notice to the Landlord is sufficiently served if:
  - (a) served personally;
  - (b) sent to the Landlord's facsimile number; or
  - (c) forwarded by prepaid security post addressed to the Landlord.

- (6) All notices must be addressed to the Landlord at the address stated in this Lease or, if another address is later nominated by the Landlord, then at that address.
- (7) Any notice sent by:
  - (a) post is deemed to have been served on the second Business Day after the day it was posted; or
  - (b) facsimile is deemed to have been served at the time that the notice was transmitted unless the sender's facsimile machine indicates a malfunction in the transmission.

## 19.2 Costs

Without limiting any other obligation of the Tenant to pay money to the Landlord, the Tenant must pay or reimburse the Landlord on demand for:

- (1) the Landlord's Costs in connection with:
  - (a) the preparation and completion of this Lease;
  - (b) any consent required under this Lease;
  - (c) any assignment, subletting, licensing or other dealing by the Tenant with this Lease or an interest in or associated with it;
  - (d) any renewal; and
  - (e) any surrender or termination of this Lease;
- (2) the Landlord's Costs in relation to any default by the Tenant or the Tenant's Visitors in observing, performing or enforcing the provisions of this Lease including the Costs of seeking advice in relation to any such default;
- (3) any negotiations, alterations or changes to this Lease;
- (4) everything the Tenant does or is supposed to do under this Lease; and
- (5) all stamp duty (including fines and penalties) and registration fees,

and whether or not any proposed dealing, renewal, change, litigation or other event contemplated by this clause 19.2 proceeds.

## 19.3 Easements

- (1) For the purpose of:
  - (a) the provision of access to the Premises;
  - (b) the support of structures erected on the Land or adjoining land; or
  - (c) any Service;

the Landlord may dedicate, grant, transfer or otherwise enter into any arrangement in relation to the Premises as the Landlord thinks fit.

- (2) This Lease is deemed to be subject to any right granted by the Landlord under this clause 19.3 and the Tenant must promptly sign all other documents and give all

consents required in a form reasonably required by the Landlord to enable the Landlord to give effect to the dedication, grant, transfer or other arrangement.

#### **19.4 Reliance**

The Tenant acknowledges and represents that it:

- (1) has had the opportunity to seek disclosure of all material information relating to the transactions dealt with by this Lease;
- (2) has not relied to any extent on any conduct by or on behalf of the Landlord or the Managing Agent in relation to those transactions apart from those set out or referred to in this Lease; and
- (3) has satisfied itself that the location of and access to the Premises is sufficient for its intended use of the Premises.

#### **19.5 Representations and warranties by Tenant**

The Tenant warrants to the Landlord that:

- (1) it has the power to enter into this Lease; and
- (2) it has relied on its own enquiries and investigations in relation to all matters referred to in this Lease and not on any representation or warranty by or on behalf of the Landlord.

### **20 Guarantees**

#### **20.1 Bank guarantee**

Clause 20.2 applies if Item 11 has been completed by inserting the amount of a bank guarantee.

#### **20.2 Issue and review of bank guarantee**

The Tenant must:

- (1) on or before executing this Lease, arrange for the issue of an unconditional and irrevocable undertaking:
  - (a) from an APRA approved Australian trading bank in a form approved by the Landlord;
  - (b) for the amount stated in Item 11 of the Reference Schedule;
  - (c) to pay the Landlord a guaranteed amount without notice to the Tenant;
  - (d) with no expiry date;
  - (e) specifying the address of the Premises; and
  - (f) which is expressed as being security for the performance by the Tenant of its obligations under this Lease;
- (2) at each review date under clause 4 or at the later determination of each Rent review, provide a replacement or additional bank guarantee so that the total amount guaranteed bears to the Rent payable from each review date the same

proportion as the amount stated in Item 11 of the Reference Schedule bears to the Rent as at the Commencing Date;

- (3) ensure that any bank guarantee is kept current and enforceable; and
- (4) if the Landlord makes demand on any bank guarantee, provide a replacement bank guarantee for the amount demanded by the Landlord on demand by the Landlord.

#### **20.3 Default**

- (1) Any bank guarantee provided in connection with this Lease is additional security for the performance of the Tenant's obligations under this Lease.
- (2) The Landlord may apply the bank guarantee or any part of it to remedy or partly remedy any default by or breach of the Tenant's obligations under this Lease.

#### **20.4 Transfer**

- (1) If at any time during the Term the Landlord transfers the Landlord's interest in the Land the tenant must promptly at the request and reasonable cost of the Landlord provide the Landlord with a replacement bank guarantee in favour of the transferee.
- (2) The Tenant authorises the Landlord to deliver the bank guarantee and any replacement guarantee held by the Landlord under this clause 20.1 to the transferee.

#### **20.5 Personal guarantee**

Clauses 20.6 to 20.13 apply if Item 12 of the Reference Schedule has been completed by inserting details of a Guarantor.

#### **20.6 Guarantee and indemnity**

- (1) In consideration of the Landlord granting this Lease to the Tenant at the Guarantor's request, the Guarantor guarantees to the Landlord prompt performance and observance of all of the Tenant's covenants and obligations contained or implied in this Lease.
- (2) If the covenant or obligation of the Tenant is to pay money, the Landlord may recover that money from any Guarantor as a liquidated debt.

#### **20.7 Indemnity**

In addition to the Guarantors' liability under clause 20.6, the Guarantor indemnifies the Landlord against:

- (1) all losses incurred by the Landlord;
- (2) all liabilities incurred by the Landlord; and
- (3) all Costs incurred by the Landlord in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with any use, occupation, breach or default by the Tenant under this Lease or any extension or renewal of the Term.



## **20.8 Liability of Guarantor**

The Landlord's rights and a Guarantor's liability under clauses 20.6 and 20.7 are not be prejudiced or affected by:

- (1) the granting of any time, credit, forbearance, indulgence or concession by the Landlord to the Tenant or any Guarantor;
- (2) any absolute or partial release of the Tenant or any Guarantor or any compromise with the Tenant or any Guarantor;
- (3) any variation of this Lease, extension or renewal of the Term, holding over or continued occupation of the Premises by the Tenant;
- (4) any composition, compromise, release, discharge, arrangement, abandonment, waiver, variation, relinquishment or renewal of any security or right by the Landlord;
- (5) any assignment of this Lease or sublease of any part of the Premises;
- (6) the termination of this Lease;
- (7) the fact that the Rent or any other money may not be recoverable, may cease to be recoverable or may never have been recoverable or that any transaction affecting the Rent or the obligations contained in this Lease is or was wholly or partially void, voidable or unenforceable;
- (8) any failure to sue or agreement not to sue or any dealing, act or omission (whether constituting a waiver, election, estoppel or otherwise) by the Landlord with respect to the Rent, other money payable or the obligations under this Lease;
- (9) any fact, circumstance, legal disability or incapacity which would otherwise release the Tenant or any Guarantor from its obligations;
- (10) non-execution of this Lease by one or more of the persons named as Guarantor or the unenforceability of this guarantee and indemnity against one or more of the Guarantors;
- (11) the exercise or purported exercise by the Landlord of its right of re- entry; or
- (12) any other matter or thing which, but for this clause, would modify or abrogate the liability of the Guarantor.

## **20.9 Irrevocable**

This guarantee and indemnity is irrevocable and remains in force until the Tenant has performed and observed all of its obligations under this Lease.

## **20.10 Guarantor liable regardless of any law**

- (1) The Guarantor's liability is not discharged by any payment to the Landlord which is later avoided by Law.
- (2) If that happens the Landlord, the Tenant and the Guarantor are restored to their respective rights as if the payment had not been made.

## **20.11 Indemnity on disclaimer**

If a liquidator disclaims this Lease, the Guarantor is responsible for and indemnifies the Landlord against any resulting cost, loss, liability, expense or Claim by the Landlord for or arising out of the residue of the Term.

**20.12 Guarantor not prove in liquidation**

- (1) The Guarantor must not prove or claim in any liquidation, composition, arrangement or assignment for the benefit of creditors until the Landlord has received payment in full of all money payable to it by the Tenant.
- (2) The Guarantor must hold any proof, claim or dividend received by it on trust for the Landlord.

**20.13 Guarantee to continue**

- (1) If the Landlord sells the Premises subject to this Lease or otherwise assigns or transfers this Lease, the benefit of this guarantee and indemnity extends to the transferee and continues concurrently for the benefit of the Landlord despite the transfer, unless the Landlord releases the Guarantor in writing.
- (2) Without limiting any other provision of this Lease, this guarantee and indemnity covers the period while the Tenant occupies or is entitled to occupy the Premises as tenant or holds an equitable interest over the Premises under an agreement for lease or as a periodical tenant.
- (3) This guarantee and indemnity extends to any further term granted pursuant to this Lease and if a further term is granted, each Guarantor undertakes to the Landlord to promptly execute a deed on terms reasonably required by the Landlord confirming that this guarantee and indemnity applies for that further term.

**20.14 Trustee as Guarantor**

- (1) If the Tenant acts as trustee of a trust, the Tenant enters into this guarantee and indemnity personally and in its capacity as trustee of that trust.
- (2) The Tenant must cause any successor of the Tenant and any person who becomes a trustee of the trust jointly with the Tenant to execute all documents required by the Landlord to ensure that this guarantee and indemnity is binding on them.
- (3) The Tenant warrants to the Landlord that:
  - (a) it is the sole trustee of the trust and no action has been taken to remove or replace it;
  - (b) the copies of the trust deed and any other documents relating to the trust and the constitution of the Tenant have been delivered to the Landlord before the Tenant executed this guarantee and indemnity and they are true copies of those documents as in force at the date of this guarantee and indemnity;
  - (c) the documents delivered to the Landlord contain full particulars of all the terms of the trust;
  - (d) it has power under the trust deed to execute and perform its obligations under this guarantee and indemnity;

- (e) all necessary action has been taken to authorise the execution and performance of this guarantee and indemnity under the trust deed and the constitution of the Tenant;
  - (f) this guarantee and indemnity is executed and all transactions relating to this Lease are or will be entered into as part of the due and proper administration of the trust and are or will be for the benefit of the beneficiaries;
  - (g) it is not in default under the trust deed;
  - (h) no vesting date for the trust fund has been determined;
  - (i) it has complied with all fiduciary obligations directly or indirectly imposed on it;
  - (i) it has a right to be indemnified out of the assets of the trust in respect of all of its obligations and liabilities incurred by it under this guarantee and indemnity; and
  - (j) each of the warranties contained in this clause 20.14(3) remain true as long as this guarantee and indemnity remains in force.
- (4) Except with the prior written consent of the Landlord, the Tenant must:
- (a) ensure that the trust deed is not varied, terminated or revoked;
  - (b) not retire as trustee of the trust or appoint any new or additional trustee;
  - (c) not default in its duties as trustee of the trust;
  - (d) not exercise any power to appoint new beneficiaries or class of beneficiaries;
  - (e) not vest or distribute or advance any capital of the trust to any beneficiary;
  - (f) not sell any of the property of the trust except in the ordinary course of the ordinary conduct of its business; and
  - (g) not do anything which effects or facilitates the resettlement of the trust funds.

#### 20.15 **General warranty of capacity**

In addition to and despite all other warranties, express or implied, in this guarantee and indemnity, the Guarantor warrants and covenants that:

- (1) it is empowered to enter into this guarantee and indemnity and to do all things required by this Lease;
- (2) all things have been done or will be done as may be necessary to render this guarantee and indemnity legally enforceable in accordance with its terms and fully valid and binding on it; and
- (3) all authorisations by any Authority (whether in Australia or not) that are required or will be required in connection with the execution and delivery of, the performance of obligations under or the validity or enforceability of, this guarantee and indemnity

have been obtained or effected and are or will be fully operative and in full force and effect.

## **21 Goods and services tax**

### **21.1 In this clause 21.1**

- (1) **GST** means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
- (2) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
- (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

21.2 The parties acknowledge their understanding that the supply of this Lease is a supply of residential premises to be used predominantly for residential accommodation (not being commercial residential premises or new residential premises) and that the supply is an input taxed supply.

21.3 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Lease for any supply made under or in connection with this Lease does not include GST.

21.4 To the extent that any supply made under or in connection with this Lease is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

21.5 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

## **22 Personal information**

### **22.1 Consent**

Each individual who is a party to this Lease consents to its Personal Information being used by the Landlord as set out in clause 22.2 and disclosed by the Landlord as set out in clause 22.3.

### **22.2 Using information**

The Landlord may use Personal Information for:

- (1) anything in connection with the Landlord's business;
- (2) developing, managing, selling or leasing any land;
- (3) financing arrangements;
- (4) reporting to any third party, including direct marketing and internal reporting; and
- (5) any other use specified in any Privacy Statement.

### 22.3 **Disclosing information**

The Landlord may disclose Personal Information:

- (1) to any related body corporate, agent, adviser, financier, contractor, service provider, successor in title of or to the Landlord;
- (2) if required or permitted by Law; or
- (3) if the individual consents to the disclosure.

**Executed** as a deed and delivered on the date shown on the first page.

Executed by **Waverley Council** by affixing the  
Common Seal on \_\_\_\_\_ pursuant  
to a resolution passed at a duly convened  
meeting held on #insert# in the presence of:

.....  
General Manager

.....  
Mayor

Signed sealed and delivered by xx in the presence of:

Signature of witness

Name of witness (BLOCK LETTERS)

Address of witness

Signed sealed and delivered by xx in the presence of:

Signature of witness

Name of witness (BLOCK LETTERS)

Address of witness