



LEASE

Jewel Cave Café

AUGUSTA MARGARET RIVER TOURISM ASSOCIATION INC
(Lessor)

[TBA]
(ACN !!! !!! !!!)
(Lessee)

[TBA]
(Covenantor)

Perth Office
1st Floor, 25 Richardson Street
West Perth, Western Australia 6005
t +61 8 9481 2040
f +61 8 9481 2041
e office@whlaw.com.au

Geraldton Office
288 Foreshore Drive
Geraldton, Western Australia 6530
t +61 8 9921 2344
f +61 8 9921 2243
e office@whlaw.com.au

CONTENTS

1.	CONSTRUCTION & DEFINITIONS.....	1
1.1	Definitions.....	1
1.2	Interpretation	5
1.3	Joint and several obligations.....	5
1.4	Lessee/Covenantor obligations	5
2.	GRANT.....	6
2.1	Lease.....	6
2.2	Licence.....	6
3.	RENT AND REVIEW.....	6
3.1	Rent.....	6
3.2	Rent Review	6
3.3	Delay in Rent Review	6
3.4	CPI Review.....	6
3.5	Market Review.....	7
3.6	Rent payable to until determination	7
3.7	Minimum Rent	8
4.	OUTGOINGS	8
4.1	Payment Obligation	8
4.2	Notice of Outgoings.....	8
4.3	Payment of Outgoings.....	8
4.4	Statement and Audits.....	8
4.5	Charges.....	9
5.	REPAIR AND MAINTENANCE.....	10
5.1	General repair obligations	10
5.2	Cleaning and Pest Control	10
5.3	Additional specific repair obligation	10
5.4	Air Conditioning Contract	11
5.5	Requisitioned works	11
5.6	Notice of defects etc.....	11
5.7	Local authority notices	11
6.	ALTERATIONS, ADDITIONS	12
6.1	No alteration	12
6.2	Approved alterations	12
6.3	Right of inspection and entry	12
7.	CONTAMINATION	13
8.	USE OF PREMISES	13
8.1	Use	13
8.2	Lessee enquiries	13
8.3	Liquor Licence.....	13
8.4	No warranty by Lessor	14
8.5	No illegal purpose	14
8.6	No nuisance	14
8.7	No Liquidation Sale	14
8.8	Use of sanitary appliances.....	14
8.9	Vermin	14
8.10	Redecoration	15

8.11	Signs.....	15
9.	INSURANCE AND INDEMNITY	15
9.1	Lessor Insurance.....	15
9.2	Lessee Indemnity	16
9.3	Lessee's other obligations	16
9.4	Indemnity	16
9.5	Compliance with by-laws.....	17
9.6	Industry Best Practice and Manufacturers Guidelines.....	17
9.7	Occupation at risk of Lessee.....	17
10.	ASSIGNMENT, UNDER-LETTING, ETC	17
10.1	Restrictions on assignments etc	17
10.2	Consent to an assignment	17
10.3	Reasonable Grounds to Refuse Consent.....	18
10.4	Property Law Act exclusion	19
10.5	Change of control.....	19
10.6	Deemed Approval	19
10.7	Assignment during a Rent Review.....	20
11.	COSTS	20
11.1	Costs of preparation of Lease.....	20
11.2	Renewal or extension.....	20
11.3	Consents, transactions and default	20
11.4	Costs on an indemnity basis	21
11.5	Lessor's internal costs.....	21
11.6	Lessee's obligation to pay costs	21
12.	LESSOR'S COVENANTS	21
12.1	Quiet enjoyment	21
12.2	Managing agent	21
12.3	Consents of the Lessor	22
12.4	Repairs and maintenance	22
12.5	Lessor's rights of entry	22
13.	DEFAULT OR REPUDIATION BY LESSEE.....	22
13.1	Events of default	22
13.2	Right to recover damages	23
13.3	Preservation of rights	23
13.4	Lessor obliged to mitigate	24
13.5	Acceptance of Lease Moneys.....	24
13.6	No waiver.....	24
14.	DAMAGE OR DESTRUCTION TO PREMISES	24
14.1	Abatement of Rent	24
14.2	Destruction of Building	25
14.3	New Lease	25
14.4	Reference to Umpire	26
15.	UMPIRE.....	26
16.	HOLDING OVER	26
17.	PROVISIONS ON EXPIRY OF TERM.....	26
17.1	Notice to let	26
17.2	Make good.....	27
17.3	Delivery of possession	27

17.4	Removal of fixtures and fittings.....	27
17.5	Lessor's right to remove.....	28
17.6	Attorney.....	28
17.7	Occupation Fee.....	28
18.	RENEWAL OF LEASE.....	29
18.1	Right of renewal.....	29
18.2	Notice of renewal.....	29
18.3	Term of renewal.....	29
18.4	Deed of extension.....	29
18.5	Guarantee.....	29
19.	NOTICES.....	30
20.	GST.....	30
21.	GUARANTEE, INDEMNITY AND WARRANTY BY COVENANTOR.....	31
21.1	Guarantee.....	31
21.2	Indemnity.....	31
21.3	Further acknowledgments.....	31
22.	DUE EXECUTION WARRANTY.....	33
23.	MISCELLANEOUS PROVISIONS.....	33
23.1	Invalidity.....	33
23.2	Lessee's caveat.....	33
23.3	No Lessor's warranties.....	33
23.4	Interest on arrears of Rent.....	34
23.5	Trust.....	34
23.6	Building works.....	34
23.7	Liability for loss.....	35
23.8	Liability for negligent acts.....	35
23.9	Validity.....	35
23.10	Security Deposit.....	35
23.11	Special Clauses.....	36

THIS LEASE is made on

2010

BETWEEN

- (1) **AUGUSTA MARGARET RIVER TOURISM ASSOCIATION (INC)** of 100 Bussell Highway, Margaret River, Western Australia (**Lessor**)
- (2) **[TBA] (ACN !!! !!! !!!) of [TBA]** (**Lessee**)
- (3) **[TBA] of [TBA]** (**Covenantor**)

1. CONSTRUCTION & DEFINITIONS

1.1 Definitions

In this Lease, unless the context otherwise requires, the expression:

Building means the building or buildings from time to time erected on the Land including modifications, extensions or alterations of the Building;

Business Day means any day not being a Saturday, Sunday or public holiday in Western Australia but, where this expression is used in the context of giving a notice under this Lease outside Western Australia, means any day not being a Saturday, Sunday or public holiday at the place of receipt of that notice;

Commencement Date means the date of commencement date specified in Item 4 of the Schedule;

Commercial Tenancy Act means the *Commercial Tenancy (Retail Shops) Agreements Act (WA)*.

Common Areas means those parts of the Land and Building from time to time set aside or intended for use in common by the occupants for the time being of the Land and/or Building and their servants employees and invitees and all other persons from time to time authorised by the Lessor.

Contaminated Groundwater means water in which any Pollutant occurs at concentrations above background or naturally occurring levels and assessment indicates that it poses or is likely to pose an immediate or long term hazard to the health of humans, animals, agriculture or the environment.

Contaminated Soil means soil in which any Pollutant occurs at concentrations above background or naturally occurring levels and assessment indicates that it poses or is likely to pose an immediate or long term hazard to the health of humans, animals, agriculture or the environment.

Covenantors means the parties named herein as Covenantors jointly and each of them severally and includes in respect of any Covenantor that is a person, his personal representatives and, in respect of any Covenantor which is a company, its successors;

Expiry Date means the date specified in Item 5 of the Schedule;

Facilities means any air-conditioning or fire prevention services serving the Building;

GST has the meaning given to it in the GST Act;

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

Interest Rate means the rate being 15% per annum daily calculated daily and capitalised monthly;

Insurable Events means fire, storm and tempest, flood, impact, malicious damage, loss of rent and other risks against which a Lessor normally insures against;

Land means the land described in Item 1 of the Schedule;

Late Opening Fee means a fee calculated to reimburse the Lessor its costs in providing security and other services necessary in the event that the Lessee applies to operate the Café outside the nominated hours of this Lease, and is to be calculated as the actual costs plus 5% of those costs.

Lessee includes, where the Lessee is a person, his personal representatives and permitted assigns, and where the Lessee is a company, its successors and permitted assigns;

Lessee's Notice means the notice that may be given by the Lessee to the Lessor referred to in clause 3.5(b);

Lessor includes, where the Lessor is a person, his personal representatives and transferees, and, where the Lessor is a company, its successors and transferees;

Lessor's Notice means the notice referred to in clause 3.5(a);

Licensed Valuer means a valuer who:

- (a) is a full member of the Australian Property Institute (Inc) (WA Division) of not less than 5 years standing;
- (b) has had not less than 5 years practical experience in Western Australia in the valuation of premises of similar type to the Premises;

Local or Public Authority means every city, town, shire, board or authority now or hereafter exercising under any present or future Act of Parliament (whether State or Commonwealth) any control or jurisdiction over or power in connection with the Premises or any part thereof or with the business carried on thereat, and includes every officer or person acting under the authority of such Local or Public Authority or any such Act or any regulation, rule or by-law made by a relevant authority;

Market Rent means the best annual rent that can be reasonably obtained for Premises in a free and open market and:

- (a) having regard to the provisions of this Lease with the Lessee in possession of the Premises;
- (b) having regard to rent paid for premises comparable to the Premises;

- (c) taking into account the permitted use of the Premises and any specific approvals attached to the Premises required for Lessee's use or occupation of the Premises;
- (d) assuming that this Lease is between a willing lessor and a willing lessee;
- (e) but disregarding:
 - (i) goodwill in the Premises because of the trade or business carried on by the Lessee;
 - (ii) any lease incentive concession or inducement paid, given or provided by the Lessee to or on behalf of the Lessee in relation to the grant of this Lease;
 - (iii) the condition of the Premises if that condition is a result of a breach of this Lease by the Lessee;
 - (iv) the Lessee's fixtures and fittings in the Premises.

Outgoings means 50% of all costs charges assessments impositions rated charged taxed assessed imposed on or payable in respect of the Premises, the Land or the Building or any part thereof for:

- (a) rates and charges, including a fire services levy, payable to the relevant Local Authority or entity;
- (b) the actual costs in respect of the supply of water and the actual cost of sewerage disposal and rubbish removal and fire protection services;
- (c) land tax and Metropolitan Region Improvement Tax (calculated on the basis that the Land is the only land owned by the Lessor);
- (d) Interest charges added by a relevant authority to any unpaid amounts due to that authority
- (e) premiums, costs and expenses, relating to insurance in connection with the Premises, including insurance against the Insurable Events;
- (f) gardening and reticulation;
- (g) the actual cost of security lighting.
- (h) Replacement of lamps and tubes in the Common Areas.
- (i) the cleaning of such toilets, and the maintenance of the Bio Litics septic system used in such toilets.
- (j) obtaining an annual statement of expenditure incurred under each item of this definition in respect of any period and property inspection fees (initial condition report and ongoing inspections) and

- (k) all other matters directly related to the operation, management and maintenance of the Building including but not limited to audit fees and reports prepared for safety and insurance purposes,

except capital costs and items of expenditure which by law the Lessor may not recover from lessee's of the Building.

Outgoings Year means:

- (a) the period from the Commencement Date until the 30th June next following; and
- (b) each period during the Term from the 1st July in any year until the 30th June next following or until the expiration of the Term by effluxion of time, whichever first occurs.

Premises means the leased premises and/or car parking facilities so described in the Schedule and includes:

- (a) all Lessor's fixtures and fittings therein,
- (b) all alterations or additions made thereto or to the Lessor's fixtures and fittings, or any replacement thereof, and
- (c) the electrical, water, gas and other installations and fittings thereon and therein.

In the case of such premises, the Premises extend vertically from the upper surface of the floor slab on each floor level of the Building to the under surface of the ceiling above the floor slab on each floor level of the Building and extend horizontally to the centre line of inter-tenancy walls and to (but not including) the outer face of external walls and of shop fronts and to (but not including) the outer face or line of all other boundaries of the Premises.

In the case of car parking facilities, the Premises are limited to a height of 3 metres above the surface of such facilities.

Permitted Use means the use of the Premises specified in Item 9 of the Schedule;

Rent means the rent specified in Item 7 of the Schedule as varied from time to time;

Review Date means the date or dates (if any) specified in Item 8 of the Schedule upon and from which the Rent shall be reviewed in accordance with the review mechanism set out alongside each Review Date;

Schedule means the Schedule to this Lease;

Secured Amount means an amount equal to three (3) months rent and outgoings as adjusted from time to time;

Term means the Term of the Lease hereby created being the Term referred to in Item 3 of the Schedule, and where the context so permits that expression extends to and includes any extension or renewal thereof and period of holding over; and

Umpire means some independent person to be agreed upon in writing by the Lessor and the Lessee or otherwise appointed at the instance of either party by the president or other senior officer for the time being in Western Australia of the Law Society of Western Australia.

1.2 Interpretation

In the interpretation of this Lease, unless there is something in the subject or context inconsistent therewith:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) headings used in this Lease are for convenience only and shall not be used in the interpretation or construction of this Lease;
- (d) references to the introduction, clauses, sub-clauses, paragraphs, schedules or annexures are references to introduction, clauses, sub-clauses, paragraphs, schedule and annexures respectively to or of this Lease;
- (e) a reference to any Statute or any Act of any Parliament or to any section or provision thereof shall be read as a reference to that Statute, Act, section or provision as amended or substituted and includes all regulations and orders made thereunder;
- (f) references to currency means Australian currency;
- (g) references to time are to local time in Perth, Western Australia;
- (h) "including" and similar expressions are not words of limitation.

1.3 Joint and several obligations

Where any Party comprises two or more persons then, unless expressly stated otherwise in this Lease:

- (a) the covenants and obligations by or on behalf of that Party shall bind those two or more persons jointly and each of them severally;
- (b) where any covenants or obligations in this Lease are to be performed by two or more Parties those two or more parties jointly and each of them severally shall be liable to perform those covenants or obligations;
- (c) the benefit of any covenant or obligation in favour of that Party accrues to and may be enforced by any one or more of those persons.

1.4 Lessee/Covenantor obligations

The covenants on the part of the Lessee and the Covenantor to be performed and observed under this Lease shall be deemed to be made by the Lessee and the Covenantor to the intent that such obligations:

- (a) may continue throughout the whole of the Term, and during any period of holding over, and
- (b) be binding upon and enforceable not only against the Lessee and the Covenantor but also against any occupier whatsoever for the time being of the Premises or any part thereof.

2. GRANT

2.1 Lease

The Lessor hereby leases the Premises to the Lessee for the Term subject to any encumbrances affecting the Land and subject to the provisions of this Lease.

2.2 Licence

The Lessor hereby grants to the Lessee a licence to use the Business Name "Jewel Cave Café" for the period of the term of this Lease including any period of extension and holding over, such licensee terminating on the termination of this lease by effluxion of time or by any other means.

3. RENT AND REVIEW

3.1 Rent

- (a) The Lessee must pay the Rent to the Lessor without demand, deduction or right of set-off by equal monthly instalments in advance on the first day of each month, if an instalment is for a period of less than a calendar month that instalment is the Rent for a calendar month then payable divided by the number of days in that calendar month and multiplied by the number of days in that period.
- (b) The first instalment of Rent shall be paid on the Commencement Date.
- (c) All instalments of Rent shall be paid in the manner and at the place as the Lessor directs.

3.2 Rent Review

As from the Review Date or dates, as the case may be, the Rent shall be reviewed in accordance with this clause 3.

3.3 Delay in Rent Review

The Lessor shall not lose its right to have the annual Rent reviewed with effect from any Review Date by reason of the failure by the Lessor to take any action with respect to the review within any time limits specified in this Lease.

3.4 CPI Review

On the relevant Review Date the annual Rent then payable shall be increased by a percentage equal to the percentage by which the Consumer Price Index published in respect of the quarter ending immediately before the relevant Review Date has

increased over the said Consumer Price Index in respect of the quarter ending immediately before the Commencement Date of the Term or the last Review Date (as the case may be). For the purposes of this clause 3.3 the expression "Consumer Price Index" means the Consumer Price Index (All Groups) for Perth published by the Australian Bureau of Statistics. If that index ceases to exist, "Consumer Price Index" means the index which replaces it or (if none does) the index which most closely measures changes in the cost of living in Perth, Western Australia as nominated by a senior officer of the Australian Bureau of Statistics at the Lessor's request.

3.5 Market Review

- (a) The Lessor may give notice to the Lessee at any time before the relevant Market Review Date of the sum the Lessor considers is the Market Rent for the Premises at the relevant Review Date. The Lessor's Notice may be given after the relevant Review Date and is effective from the relevant Market Review Date.
- (b) Within 10 Business Days after service of the Lessor's Notice, as to which time shall be of the essence, the Lessee may serve a notice either agreeing to or disputing the sum stated in the Lessor's Notice.
- (c) If the Lessee agrees or fails to give a Lessee's Notice within 10 Business Days of service of the Lessor's Notice the sum stated in the Lessor's Notice shall be the annual Rent payable on and from the relevant Market Review Date.
- (d) if the Lessee by the Lessee's Notice disputes the Lessor's estimate of the market rent then from the relevant Market Review Date the annual Rent payable shall be adjusted to an amount equivalent to that determined as the Market Rent of the Premises by either:
 - (i) a Licensed Valuer appointed in writing by agreement between the Lessor and the Lessee not more than 21 Business Days after the date the Lessee's notice is served upon the Lessor; or
 - (ii) if the Lessor and the Lessee fail to agree on the appointment as contemplated in paragraph (i) above, then by a Licensed Valuer appointed by the President or other senior officer for the time being of the Australian Property Institute (W.A. Division) (herein referred to as the "President"); and
 - (iii) the Lessor and Lessee shall each pay one half of the President's costs of making such appointment, and one half of the Licensed Valuer's cost's of determining the Market Rent.

3.6 Rent payable to until determination

In the event of the reviewed Rent being agreed, calculated or determined after the relevant Review Date the Lessee shall continue paying the Rent at the rate being paid immediately prior to the relevant Review Date from such date until the date upon which the reviewed Rent is agreed, calculated or determined (as the case may be) and thereafter in accordance with such agreement, calculation or determination and thereupon there shall be due to the Lessor from the Lessee as Rent payable on demand the difference (if any) between the Rent paid as aforesaid and the Rent due

from the relevant Review Date applying pursuant to such agreement, calculation or determination.

3.7 Minimum Rent

Notwithstanding anything to the contrary herein contained or implied the annual Rent to be payable from any Review Date shall not be less than the annual Rent payable immediately prior to that Review Date.

4. OUTGOINGS

4.1 Payment Obligation

The Lessee must pay to the Lessor the Outgoings.

4.2 Notice of Outgoings

Before the start of each Outgoings Year, the Lessor shall give the Lessee a written estimate of the Outgoings (**Outgoings Estimate**) payable for that Outgoings Year.

4.3 Payment of Outgoings

- (a) The Lessee must pay to the Lessor the Outgoings Estimate by equal calendar monthly instalments payable on the same days during that Outgoings Year as instalments of Rent are due.
- (b) As soon as is reasonably practicable after the relevant Outgoings Year the Lessor or its agent shall give to the Lessee notification as to the actual amount payable by the Lessee for that Outgoings Year in respect of the Outgoings.
- (c) The Lessee must pay to the Lessor, on demand, any shortfall between what the Lessee has paid and what is due on the basis of the Lessor's actual costs.
- (d) If the amount paid by the Lessee during an Outgoings Year is more than the Outgoings Estimate for that Outgoings Year calculated after the actual amount of the Outgoings is known, the Lessor must give credit for the difference, when the next payment (or payments) is due by the Lessee under this Lease PROVIDED THAT if the Term has then expired by effluxion of time and there are no moneys owing from the Lessee to the Lessor, that balance shall be paid by the Lessor to the Lessee within 14 days after the difference has been calculated.
- (e) When during an Outgoings Year some additional item of Outgoings or unexpected increase in the cost of an item of Outgoings is incurred the Lessor may reassess the Outgoings Estimate and require the Lessee to pay such greater amount by monthly instalments for the balance of the Outgoings Year as is required to pay for the increase.

4.4 Statement and Audits

Notwithstanding anything to the contrary herein contained or implied:

- (a) the Lessee is not required to make any payment of Outgoings in respect of any period until at least one month after the Lessor has given to the Lessee annual estimates of expenditure under each item of Outgoings in respect of that period;
- (b) the Lessor must give the Lessee an operating expenses statement detailing all expenditure by the Lessor on account of Outgoings to which the Lessee is required to contribute, within 3 months after the end of the accounting period to which it relates;
- (c) if the Premises are in a retail shopping centre (as defined in the Commercial Tenancy Act), the operating expenses statement must include a statement of the then current total lettable area of the retail shopping centre, and details of any material change in that total lettable area during the period to which the statement relates.
- (d) the operating expenses statement must be prepared in accordance with relevant principles and disclosure requirements of the applicable accounting standards made by the Australian Accounting Standards Board as in force from time to time;
- (e) the operating expenses statement may be a composite statement (i.e. may relate to more than one tenant) if the Lessee is able to ascertain from the statement the information required by the Commercial Tenancy Act that is relevant to the Lessee;
- (f) where required under the Commercial Tenancy Act, the operating expenses statement must be accompanied by a report on the statement prepared by a registered company auditor including a statement by the auditor as to whether or not the operating expenses statement correctly states expenditure by the Lessor during the accounting period concerned in respect of Outgoings to which the Lessee is required to contribute, and as to whether or not the total amount of estimated Outgoings for the period (as shown in the estimate of Outgoings given to the Lessee) exceeded the total actual expenditure by the Lessee in respect of those Outgoings during the period;
- (g) the Lessor must pay half the costs of the abovementioned audit and the other half of those costs forms part of the Outgoings; and
- (h) if the Lessor does not comply with its obligations as to the giving of an operating expenses statement to the Lessee, the Lessee is not obliged to pay Outgoings from the date being 3 months after the end of the relevant accounting period, until the Lessor gives an operating expenses statement to the Lessee.

4.5 Charges

The Lessee duly and punctually shall pay and discharge all charges for sewerage garbage and waste disposal gas electricity telephone and other utilities and services used in or charged against or in respect of the Premises during the Term or any extension or renewal thereof including all meter installation costs telephone connection charges and rents.

5. REPAIR AND MAINTENANCE

5.1 General repair obligations

The Lessee shall keep the Premises and the Lessor's fixtures and chattels situated in the Premises in good repair and working condition throughout the Term and shall on expiry or termination of the Term yield up the Premises to the Lessor in a good state of repair and condition as is required by this clause 5, except that the Lessee is not required to undertake capital expenditure (except where occasioned by the Lessee's particular use of the premises), or repair structural works where the damage to such works is not caused by the Lessee. The Lessee is responsible for the repair of anything which becomes worn or damaged through fair wear and tear. The Lessee is not required to repair damage covered by insurances taken out by the Lessor in respect of the Premises (but this exception will not apply if the insurance money is irrecoverable through the act, default, neglect, omission or misconduct of the Lessee or an employee, contractor, agent or invitee of the Lessee).

5.2 Cleaning and Pest Control

- (a) The Lessee shall maintain the Leased Premises, windows, and adjacent verandah area in a clean and tidy condition at its own expense.
- (b) The Lessee shall maintain and, when necessary repair the hot water systems;

5.3 Additional specific repair obligation

In addition to the Lessee's obligations under clause 5.1 the Lessee shall throughout the Term carry out the following repairs and maintenance:

- (a) promptly repair or replace all broken, cracked or damaged glass in the Premises, with glass of at least the same or similar gauge and quality;
- (b) promptly repair or replace all damaged, broken or faulty light globes, fluorescent lights, power points, light switches, heating, lighting and electrical appliances, services and wiring in the Premises;
- (c) promptly repair or remove any graffiti upon the Premises;
- (d) promptly repair and keep in proper working order and free from blockage plumbing fittings, drains, water pipes, sewerage pipes, toilets and sinks, to the extent to which they are situated in or under the Premises and provide services or Facilities to the Premises;
- (e) maintain and repair all door and window locks and fittings in the Premises;
- (f) repair any damage or breakage to the Premises, including the Lessor's fixtures, services and Facilities in the Premises, caused by lack of care or misuse by the Lessee or by its employees or agents;
- (g) repaint all previously painted surfaces of the Premises in the last year of the Term, including any extension of the Term;
- (h) maintain and repair the air conditioning system (if any) servicing the Premises;

- (i) when carrying out any repair in accordance with this clause, the Lessee shall ensure that
 - (i) the work is carried out by appropriately licensed and qualified tradespersons;
 - (ii) the work is carried out promptly;
 - (iii) the work is completed in high class workmanship and with good quality materials;
 - (iv) fittings and materials of similar style and quality are used to the items being repaired or replaced;
 - (v) the required consent or approval of any Local or Public Authority is obtained to carry out the work and the conditions of approval are observed; and
 - (vi) the work is carried out without creating undue noise, nuisance or interference with the use and enjoyment of adjoining or nearby tenants of the Lessor.

5.4 Air Conditioning Contract

Except where the Lessor has notified the Lessee in writing that the Lessor will maintain the air-conditioning equipment, the Lessee at its cost shall keep in force with a reputable firm of air-conditioning contractors a fully comprehensive maintenance contract to cover repairs, servicing, maintenance and replacement parts which from time to time are required to the air-conditioning equipment

5.5 Requisitioned works

The Lessee at its own expense shall take such measures and precautions and/or perform such works as shall at any time or times be required by any order or requisition made by any Local or Public Authority over or in respect of the Premises unless such works involve structural alterations to the Premises other than structural alterations required by any order or requisition made in consequence of the nature of the trade or business there carried on by the Lessee or the number or sex of the Lessee's employees.

5.6 Notice of defects etc

The Lessee shall give to the Lessor prompt notice in writing of any accident to or defect or want of repair to the structure of or in any service to or fittings in the Premises and of any circumstances likely to be or cause any danger risk or hazard to the Premises or any person therein.

5.7 Local authority notices

Should the Lessee receive a notice from any Local or Public Authority in respect of the Premises the Lessee shall forthwith give notice in writing of the same to the Lessor.

6. ALTERATIONS, ADDITIONS

6.1 No alteration

The Lessee shall not without the prior written consent of the Lessor on each occasion:

- (a) make any alterations or addition whatsoever to the Premises;
- (b) suspend or permit or suffer to be suspended from the interior roof or ceiling of the Premises any article whatsoever other than normal or usual electric light fittings and apparatus or overload the floors of the Premises or permit or suffer the same to be overloaded.

6.2 Approved alterations

The Lessor shall not unreasonably withhold its consent to any alterations or additions to the Premises required by any order or requisition made by any Local or Public Authority PROVIDED THAT such alterations or additions shall at the election of the Lessor either be carried out by the Lessor pursuant to clause 6.3 or by the Lessee under supervision of the Lessor or its agent (in which case all costs incurred by the Lessor shall be paid by the Lessee to the Lessor on demand). At the expiration or sooner determination of the Term the Lessee (if so required by the Lessor) at the cost of the Lessee shall reinstate the Premises to their condition prior to such alterations or additions.

6.3 Right of inspection and entry

- (a) The Lessor may after giving reasonable notice to the Lessee enter the Premises to view the state of repair and condition of the Premises and may require the Lessee by notice in writing to rectify any defect. If the Lessee fails to repair any defect according to such notice within 21 Business Days of the date of such notice the Lessor may enter the Premises and execute all or any of the required repairs as the Lessor shall think fit and the Lessee on demand shall pay to the Lessor the costs of remedying such default and the Lessor may recover such costs by action or otherwise as for Rent in arrear.
- (b) The Lessor may without previous notice enter the Premises to carry out any repairs or other works which in the reasonable opinion of the Lessor are of an emergency nature. In the event that the Lessor shall pursuant to this power carry out any works or repairs which should be carried out by the Lessee in accordance with the covenants to be observed by the Lessee herein contained then the Lessee shall on demand pay to the Lessor the costs of such works or repairs and the Lessor may recover such costs by action or otherwise as for Rent in arrear.
- (c) In the event of the early determination of the Term (or of any extension or renewal thereof) the Lessor may enter the Premises at all reasonable times and without previous notice to carry out any painting or repairs which the Lessee has failed to undertake in accordance with this Lease. The Lessee shall pay to the Lessor on demand the Lessor's costs of carrying out such painting or repairs.
- (d) The Lessor may enter the Premises after having given the Lessee 14 Business Days written notice of its intention so to do, to carry out any repairs or other

works for which the Lessor is liable and which the Lessor considers it necessary or desirable to carry out. In pursuing such activities the Lessor shall endeavour to minimise the nuisance and irritation caused to the Lessee, but the Lessee shall gratuitously be obliged to suffer such activities and shall not impede or obstruct the carrying out of such repairs or other works.

7. CONTAMINATION

- (a) During the Term of this Lease, the Lessee will not release or place or allow any servant, agent, employee, contractor, occupier or sub-tenant to release or place on or in the Premises any Pollutant which may result in Contamination groundwater or Contaminated Soil or both on or under the Premises or adjoining land.
- (b) If there is a breach of Clause 7(a) and as a result there is Contaminated Soil or Contaminated Groundwater or both, the Lessee or its contractors, if required by the Lessor or the appropriate Local or Public Authority, shall treat or remove the Contaminated Soil or Contaminated Groundwater or both in a manner and to achieve the result considered acceptable by the Lessor or the appropriate Local or Public Authority.
- (c) The Lessee agrees to indemnify and keep indemnified the Lessor against any and all claims, demands, liabilities, losses, damages, penalties, costs or expenses which the Lessor may incur, suffer or be required to pay by reason of breach of Clause 7(a) by the Lessee.
- (d) During the Term the Lessee will at its expense comply with the requirements of the *Environmental Protection Act 1986* in respect of the Premises including satisfying any notices or orders issued under the *Environment Protection Act*.

8. USE OF PREMISES

8.1 Use

The Lessee shall only use the Premises for the Permitted Use.

8.2 Lessee enquiries

The Lessee acknowledges that the Lessee has relied on the Lessee's own enquiries as to how the Premises may be used and not on any representation from the Lessor.

8.3 Liquor Licence

The Parties agree that:

- (a) the Premises are not licensed under the Liquor Control Act and the Lessee shall not apply for a licence under that Act for the Premises without the prior consent of the Lessee;
- (b) the Lessor may consent to the application by the Lessor for a liquor license for the Premises subject to such condition as the Lessor reasonably considers necessary and appropriate; and

- (c) if a liquor license is granted for the Premises:
 - (i) any condition made by the Lessor in providing its consent will be a term of this Lease;
 - (ii) the obligations of the Lessee under the terms of its liquor license and the Liquor Control Act will be a term of this Lease;
 - (iii) any breach by the Lessee of the terms and conditions incorporated into this Lease under clauses 8.3(2)(c)(i) and 8.3(2)(c)(ii) shall be a default in the terms of clause 13 of this Lease.

8.4 No warranty by Lessor

The Lessor does not give a warranty of any kind that the Premises are suitable for the purpose for which the Lessee intends to use it and any warranty in relation to the Premises which is implied by law is excluded to the extent the law permits the warranty to be excluded.

8.5 No illegal purpose

The Lessee shall not use or permit to be used the Premises or any part thereof for any illegal or immoral purpose.

8.6 No nuisance

The Lessee shall not at any time use exercise or carry on or permit or suffer to be used exercised or carried on in or upon the Premises or any part thereof any noxious, noisome or offensive trade art business occupation or calling or permit to be done on the Premises any acts matter or thing whatsoever which at any time shall or may be or grow to be of annoyance, nuisance, grievance, damage or disturbance to the owners or occupiers of any lands buildings or premises or any part thereof adjoining the Premises.

8.7 No Liquidation Sale

The Lessee shall not hold or permit to be held nor advertised as to be held on the Premises any bankrupt or liquidation or auction sale (public or otherwise) of any real or personal property whatsoever.

8.8 Use of sanitary appliances

The Lessee shall not use or permit the water closets lavatories grease traps and other sanitary appliances to be used for any purpose other than that for which they were constructed and shall not do or suffer to be done any act or thing that might choke or otherwise affect or damage the same.

8.9 Vermin

The Lessee shall take all proper precautions (but only using non chemical means) to keep the Premises free from rodents vermin insects pests termites birds and animals and in the event of failing so to do if so required by the Lessor but at the cost of the Lessee shall employ from time to time pest exterminators appointed by the Lessor for that purpose.

8.10 Redecoration

- (a) At the Lessor's absolute discretion, the Lessee must redecorate the Premises by the end of the Term or if the Further Term is exercised by the end of the Further Term or on any earlier termination of this Lease.
- (b) For the purpose of this clause 8.10 redecoration includes repainting any areas within the Premises which were previously painted, using good quality paint, in colours approved by the Lessor.
- (c) If the Lessee has not complied with the obligation to redecorate the Premises in accordance with this Lease, the Lessee must pay to the Lessor within 14 days after the Lessor requests payment, any costs reasonably incurred by the Lessor to redecorate the Premises as required by this Lease. The obligation to pay those costs does not limit any other rights of the Lessor in relation to the Lessor's default.

8.11 Signs

- (a) The Lessee shall not place any sign or advertisement outside the Premises or on the inside windows and doors of the Premises except with the consent of the Lessor (which consent shall not be withheld unreasonably) and then only of such nature colour size and style and on such place or places on the Premises as shall be designated by the Lessor and shall remove the same and repair all damage caused by the removal and restore that part of the Premises to its condition as at the Commencement Date at its own cost and expense within 7 days of the expiration or sooner determination of the Term or any extension or renewal thereof.
- (b) Signage must be consistent with the Lessors brand and inline with the environmental setting as the area is a shared space.

9. INSURANCE AND INDEMNITY

9.1 Lessor Insurance

At all times during the term and any renewal thereof the Lessor shall:

- (a) keep current a public risk policy in respect of the Leased Premises with cover of not less than ten million dollars (\$10,000,000.00);
- (b) insure and keep insured or cause to be insured and kept insured against loss of rent and Outgoings, and also against damage or destruction by fusion fire storm tempest and earthquake and such other insurable risks as the Lessor may reasonably require all buildings and erections forming part of the Leased Premises to the full insurable value thereof; and
- (c) keep insured or cause to be kept insured the plate glass in the windows screens mirrors and advertisements which form part of the Leased Premises against damage or destruction to the full insurable value thereof.

9.2 Lessee Indemnity

The Lessee shall indemnify and keep indemnified the Lessor from and against all claims demands writs summonses actions suits proceedings judgments orders decrees damages costs losses and expenses of any nature whatsoever (including the cost of any excess on the Lessor's insurance) which the Lessor may suffer or incur in connection with loss of life personal injury and/or damage to property arising from or out of any occurrence in upon at or in the vicinity of the Leased Premises or the use by the Lessee of the Leased Premises or any part thereof or to any person or the property of any person using or entering on or near the Leased Premises howsoever occasioned or wheresoever it may occur save in respect of any neglect or default on the part of the Lessor or its servants or agents.

9.3 Lessee's other obligations

The Lessee must not do or fail to do anything, allow anything to be done or not done:

- (a) which might increase the cost of any insurance the Lessee or the Lessor arranges; or
- (b) which might adversely affect the Lessee's or the Lessor's rights under any insurance the Lessee or the Lessor arranges.

9.4 Indemnity

- (a) The Lessee agrees to indemnify the Lessor and its agents, contractors and employees from and against any liability, loss, damage, expense or claim, which the Lessor or its agents, contractors and employees may incur, including to a third party, during or after the Term, in respect of or arising from:
 - (i) loss, damage or injury to property or person occurring within the Building or the Premises, caused or contributed to by the Lessee's failure (including through the Lessee's agents or employees) to comply with the obligations imposed under this Lease,
 - (ii) the negligent use or misuse by the Lessee (and by its agents or employees) of any services or Facilities in the Building or in the Premises,
 - (iii) the overflow, leakage or escape of water, gas, electricity, fire, or other materials or substances in or from the Premises, caused or contributed to by the Lessee's (and its agents' or employees') negligence,
 - (iv) loss, damage or injury to property or person, caused or contributed to by the Lessee's negligence, arising out of use of the Premises,
 - (v) loss, damage or injury to property or persons, caused or contributed to by the defective installation of plant, fixtures and equipment in the Premises by or on behalf of the Lessee, and
 - (vi) the Lessee's failure to notify the Lessor regarding any defect in the Facilities or services in the Premises.

- (b) The indemnities under this clause
 - (i) include penalties, fines, legal and other costs incurred by the Lessor;
 - (ii) do not apply when the loss, damage or injury was caused or substantially contributed to by the wilful or negligent act or omission of the Lessor, its employees or agents.

9.5 Compliance with by-laws

The Lessee at all times in its use of the Premises shall comply with the requirements of all relevant authorities and all laws and regulations for the time being relating to fires and the provisions of any and every relevant statute regulation and ordinance. If the Lessee shall do or permit to be done any act matter or thing which has the effect of invalidating or avoiding any policy of insurance taken out by or effected hereunder for the benefit of the Lessor then the Lessee shall be responsible for any damage or loss which the Lessor may suffer or incur as a result.

9.6 Industry Best Practice and Manufacturers Guidelines

The Lessee at all times must comply with all industry best practices and manufacturers guidelines for the conduct of its equipment used in relation to the Premises so as to eliminate as far as possible injury to persons in the Premises and damage to the Premises.

9.7 Occupation at risk of Lessee

The Lessee shall use and occupy the Premises at the Lessee's own risk and the Lessee hereby releases to the fullest extent provided by law the Lessor and its agents employees contractors and employees from all claims and demands of every kind resulting from any accident damage or injury occurring in or in the vicinity of the Premises except to the extent caused by or contributed by any neglect or default on the part of the Lessor or its employees or agents.

10. ASSIGNMENT, UNDER-LETTING, ETC

10.1 Restrictions on assignments etc

The Lessee shall not assign, transfer, sub-let, mortgage, charge, part with the possession of or otherwise deal with or agree to assign, transfer, sub-let, mortgage, charge, part with the possession of or otherwise deal with the leased premises or any part or any estate or interest in the Premises created by this Lease or implied at law or otherwise by any act or deed procure allow or suffer (either voluntarily or involuntarily) the Premises or any part or any interest created by this Lease to be assigned, transferred, sub-let, mortgaged, charged, or otherwise dealt with or possession parted with for all or any part of the Term or grant any licence exclusive or otherwise for the use of the Premises or any part or any estate or interest in the Premises created by this Lease or implied at law without the prior written consent of the Lessor or except as provided by this clause 10.

10.2 Consent to an assignment

If the Lessee wishes to assign the whole of the Premises:

- (a) the Lessee shall submit to the Lessor the name address and occupation of any proposed assignee, transferee, sub-lessee, mortgagee, chargee, possessor or licensee together with proof to the satisfaction of the Lessor that such person is of at least equal financial standing of the Lessee responsible respectable and capable financially of meeting the commitments of this Lease;
- (b) the proposed assignee and each of its covenantors sign a deed of assignment (in a form prepared by the Lessor's lawyers) with the Lessee and Lessor whereby:
 - (i) the assignee assumes responsibility for all of the Lessee's covenants under this Lease;
 - (ii) the assignee covenants with the Lessor to pay all moneys payable under this Lease and to perform and observe all of the Lessee's covenants under this Lease; and
 - (iii) the assignee's covenantors (which shall include, if the assignee is a corporation, the directors of the assignee) give the Lessor a guarantee in respect of the assignee's covenants similar to the guarantee contained in clause 21.
- (c) the Lessee is not in default under this Lease;
- (d) (if the Lessor so determines) the proposed assignee has provided to the Lessor a Bank Guarantee equal to an amount no greater than 3 months rent;
- (e) the Lessee pays to the Lessor's managing agent his fee for acting for the Lessor on the assignment of this Lease; and
- (f) the Lessee shall duly pay to the Lessor, in respect of any proposed assignment all reasonable costs charges and expenses incurred by the Lessor in connection with:
 - (i) any enquiry as to the respectability, responsibility and financial standing of each proposed assignee; and
 - (ii) all other matters relating to the proposed assignment,the Lessor will not unreasonably withhold its consent to a proposed assignment.

10.3 Reasonable Grounds to Refuse Consent

Without in any way limiting what may constitute reasonable grounds for the Lessor to refuse consent to an assignment, the Lessee expressly acknowledges and agrees that the Lessor shall have reasonable grounds to refuse to consent to an assignment by the Lessee of its interest in the Premises if:

- (a) the Lessee does not duly and punctually comply with all and singular its covenants and obligations under this clause 10 of the Lease; or

- (b) at the time the Lessee in writing has requested the Lessor to consent to such assignment, all Rent and other moneys payable under this Lease have not been paid or there shall then be any existing unremedied breach of the covenants conditions and stipulations herein contained (provided that breaches which have been waived by the Lessor shall not be deemed to be unremedied breaches for the purpose of this sub-clause).

10.4 Property Law Act exclusion

Anything contained or implied in Sections 80 and 82 of the Property Law Act 1969 shall not apply to this Lease and the provisions of those Sections are hereby expressly excluded.

10.5 Change of control

- (a) When the Lessee is a company other than a company whose shares are listed on an Australian stock exchange, any proposed

- (i) transfer in the legal or beneficial interest in shares in the Lessee's company;
- (ii) allotment of shares in the Lessee company; or
- (iii) changes in the company's Constitution,

which would have the consequence of altering the effective control of the Lessee, is considered to be an assignment of this Lease and requires the Lessor's consent in accordance with clause 10.2 as if the parties which would acquire control over the company were assignees of the Lease.

- (b) For the purpose of considering an application for consent in accordance with paragraph (a), in addition to the matters contained in clause 10.2:

- (i) the Lessee shall be required to prove to the satisfaction of the Lessor that the persons gaining control over the Lessee would be of at least equal financial standing as the Lessee respectable, responsible and capable financially of meeting the commitment of the Lessee in accordance with clause 10.2;
- (ii) those persons must provide to the Lessor personal guarantees for the performance of lease covenants for the balance of the Term and during holding over as periodical tenant, similar to the guarantee contained in clause 210.

10.6 Deemed Approval

If in any circumstances the Lessor is deemed to have approved an assignment of this Lease, the Lessee within 7 days after request therefore by the Lessor shall comply with the requirements of **Clause 10.2**.

10.7 Assignment during a Rent Review

In the event of an assignment of this Lease occurring during a Rent review period for which a Rent determination has not been made:

- (a) The Lessee and the assignee are jointly and severally liable to pay to the Lessor any additional Rent payable from the Review Date to the date of the assignment; and
- (b) as a condition of obtaining the Lessor's consent to the assignment, at the time of the assignment the Lessee shall deposit in a trust account held by the Lessor's agent as stakeholder an amount determined by the Lessor in order to provide security for any additional liability for Rent during that period.

11. COSTS

11.1 Costs of preparation of Lease

The Lessee shall pay, on execution of this Lease, the Lessor's reasonable legal costs of the negotiation, preparation, engrossment, and registration (if required), of this Lease i, plus the costs of obtaining all consents to this Lease.

11.2 Renewal or extension

The costs and disbursements of any renewal or extension of this Lease shall be paid by the Lessee as provided in clause 11.1.

11.3 Consents, transactions and default

The Lessee agrees to pay the Lessor's reasonable costs, charges, and expenses which are incurred reasonably and properly in connection with:

- (a) the obtaining of any consent from the Lessor, mortgagee or other person, which is required by the Lessee under this Lease;
- (b) the negotiation and preparation of all documents relating to any consent required by the Lessee, and all costs incurred by the Lessor, and by any other party whose consent is required, whether a consent is given, refused, or the application for consent is withdrawn;
- (c) any breach or default by the Lessee under this Lease (the Lessor's costs, charges and expenses incurred by the Lessee in relation to a breach or default by the Lessee are to be paid by the Lessee within 7 days of written demand); or
- (d) the exercise or attempted exercise by the Lessor of any right, power, privilege, authority or remedy, against the Lessee or against the Covenantor, to enforce the Lessee's obligations under this Lease, or to terminate the Lease for the Lessee's breach or default (including for the purpose of or incidental to the compliance by the Lessor with the provisions of Section 81 of the Property Law Act 1969, solicitor's, architect's, surveyor's and valuer's costs and fees).

11.4 Costs on an indemnity basis

The Lessor's legal and professional costs and disbursements under clause 11.3 shall be charged and allowed on a full indemnity basis to the Lessor for costs charges and expenses.

11.5 Lessor's internal costs

The Lessor's costs under clause 11.3 include

- (a) the Lessor's reasonable administrative costs and expenses of considering any application for consent, of considering and managing any breach or default under this Lease and attendances by the Lessor's officers, employees or agents, including attendances on the Lessor's legal advisers and in court; and
- (b) the fees of professional consultants reasonably and properly incurred by the Lessor.

11.6 Lessee's obligation to pay costs

- (a) If the Lessor renders to the Lessee a statement of any costs charges and expenses for which the Lessee is liable in accordance with clause 11.3 at any time after they have been incurred and the Lessee shall pay to the Lessor the amount claimed:
 - (i) when the Lessor's consent is provided to the Lessee; or
 - (ii) in any other case, within 14 days after service of the statement on the Lessee.
- (b) The Lessee's liability shall incur interest at the Interest Rate from the 15th day after the date of service of the statement until the day of payment, calculated on a daily rate.

12. LESSOR'S COVENANTS

12.1 Quiet enjoyment

The Lessor covenants with the Lessee, that so long as the Lessee complies with the Lessee's covenants under this Lease, the Lessee may occupy and use the Premises during the Term without disturbance or interference by the Lessor except as permitted by this Lease or law.

12.2 Managing agent

The Lessor may appoint a managing agent to manage the Lessor's interest in relation to this Lease and the Building. If the Lessor appoints a managing agent, the managing agent may exercise the rights and powers of the Lessor under this Lease. Decisions of the Lessor override those of the managing agent if there is any inconsistency between them.

12.3 Consents of the Lessor

Except as expressly provided in this Lease, where the Lessee requires from the Lessor a consent or approval, the Lessor shall not unreasonably withhold or delay such consent or approval.

12.4 Repairs and maintenance

The Lessor shall undertake all repairs and maintenance to the Premises and the Building, (whether or not of a structural nature) for which the Lessee is not responsible in accordance with this Lease.

12.5 Lessor's rights of entry

In any case where the Lessor or any person authorised by the Lessor, including any employee or contractor of the Lessor, is entitled under this Lease to enter upon the Premises the Lessor and all such persons shall:

- (a) except in the case of an emergency, give reasonable notice to the Lessee prior to entering upon the Premises; and
- (b) at all times cause as little inconvenience as is reasonably practicable to the Lessee and its business.

13. DEFAULT OR REPUDIATION BY LESSEE

13.1 Events of default

If:

- (a) the Rent remains unpaid for more than 10 Business Days after the Lessor has given the Lessee written demand requiring the Lessee to make the payment; or
- (b) the Lessee assigns, transfers, sub-lets, mortgages, charges, parts with the possession of or otherwise deals with any estate or interest in the leased premises created by this Deed or implied at law, or agrees so to do other than in compliance with clause 10; or
- (c) the Lessee shall at any time fail or neglect to duly perform or observe any of the covenants conditions or agreements contained or implied in this Lease and such breach or non performance shall continue for 14 Business Days after written notice thereof shall have been given by the Lessor to the Lessee to remedy the same; or
- (d) the Lessee while the Premises or any part thereof shall remain vested in it being a company shall enter into liquidation whether compulsory or voluntary not being a voluntary liquidation for the purpose of amalgamation or reconstruction or enter into arrangement or composition for the benefit of its creditors or not being a company shall assign his estate or enter into a deed of arrangement for the benefit of his creditors (provided always that any deed of assignment or deed of arrangement made under the Bankruptcy Act 1966 and any act or actions by or against the Lessee or his property which is or may be

deemed to be an act of bankruptcy under the said Act shall be excluded from the operation of this sub-clause); or

- (e) any execution either by writ or warrant or by appointment of a Receiver be levied on or against any of the property or assets of the Lessee; or
- (f) the Premises shall be deserted or vacated,

then and in any such case it shall be lawful for the Lessor or any person or persons duly authorised by the Lessor to re-enter the Premises or any part thereof in the name of the whole and thereupon this Lease and the Term hereby created shall cease and determine without prejudice to any right of action or remedy of the Lessor in respect of the breach non-performance or non-observance of any covenant or condition hereof by the Lessee and thereupon the Lessor shall be freed and discharged from any action claim or obligation howsoever arising to the Lessee. For the purposes of such re-entry the Lessor or the Lessor's appointed agent or employee shall have power to open by any means any door or fastening for the purpose of resuming possession of the Premises and to expel and remove all persons furniture and other property therefrom (without being liable for any action for trespass assault or other proceedings whatsoever for so doing).

13.2 Right to recover damages

In regard to payment of the Rent, Outgoings and any other moneys payable by the Lessee to the Lessor hereunder (for the purposes of this clause 12.1 referred to as the "Lease Moneys") the time for payment shall be of the essence, and in addition to any rights of action or remedies of the Lessor referred to in clause 13.1 the Lessor shall be entitled in any case where the Lessor has terminated this Lease for non-payment of the Lease Moneys or any part, or by the acceptance of a repudiation of this Lease by the Lessee, or by the failure of the Lessee to comply with any notice given pursuant to clause 13.1, to recover as damages from the Lessee the difference between the amount of the Lease Moneys for such part of the Term as had not expired at the date of such termination, and the amount of Lease Moneys it may reasonably be anticipated the Lessor will receive for such period from another or other tenants and a certificate signed by the Lessor shall be prima facie proof of the amount of the Lessor's claim as and of all components and of the reasonableness of all of the Lessor's estimates involved therein.

13.3 Preservation of rights

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

- (a) if the Lessee shall abandon or vacate the Premises;
- (b) if the Lessor shall elect to re-enter or to terminate the Lease;
- (c) if the Lessor shall accept the Lessee's repudiation; or
- (d) if the parties' conduct shall constitute a surrender by operation of law.

13.4 Lessor obliged to mitigate

In the event of the Lessee vacating the Premises, whether with or without the Lessor's consent, the Lessor shall be obliged to take reasonable steps to mitigate its damages and to endeavour to lease the Premises at a reasonable Rent and on reasonable terms.

The Lessor's entitlement to damages shall be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this clause. The Lessor's conduct taken in pursuance of the duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

13.5 Acceptance of Lease Moneys

Acceptance of any Lease Moneys by the Lessor after default by the Lessee under this Lease shall be without prejudice to the exercise by the Lessor of the powers conferred upon the Lessor by clause 13.1 or any other right power or privilege of the Lessor and shall not operate as an election by the Lessor either to exercise or not to exercise any such rights powers or privileges.

13.6 No waiver

No consent or waiver expressed or implied by the Lessor to or of any breach of any covenant or condition of the Lessee shall be construed as a consent or waiver to or of any other breach of the same or any other covenant or condition.

14. DAMAGE OR DESTRUCTION TO PREMISES

14.1 Abatement of Rent

- (a) If the Premises or any part of them shall at any time be destroyed or damaged by fire or any other insured risk so as to render the same unfit for the business carried on by the Lessee, then subject to clause 14.1(c), the Rent or a fair proportion thereof according to the nature and extent of the damage sustained shall cease to be payable until the Premises shall have been rebuilt and rendered fit for such use.
- (b) Until the amount of Rent to be abated has been mutually agreed upon, or fixed by the umpire failing agreement between the Lessor and the Lessee, the full Rent shall be paid without deduction but the Lessor shall (if necessary) subsequently refund the difference (if any) between the Rent paid by the Lessee as from the date of such destruction or damage and the amount so agreed or fixed by the umpire.
- (c) The Lessee is not entitled to an abatement of the Rent under this clause if
 - (i) the event resulting in the damage or destruction is caused or contributed to by the act or negligent omission of the Lessee or the Lessee's employees, agents or contractors; or
 - (ii) the Lessor fails to recover the benefit of any insurance for loss or damage to the Building or the Premises because of any act or omission of the Lessee or the Lessee's employees, agents or contractors.

14.2 Destruction of Building

If the Premises or the Building are damaged to such an extent that their demolition is required by law, or if the Premises or the Building are damaged to such an extent that in the opinion of the Lessor it is uneconomical to reinstate the section of the Premises or the Building so damaged without the prior demolition of the Building or part thereof, the Lessor may give notice in writing to the Lessee determining this Lease and this Lease shall thereupon be determined without compensation to the Lessee but without prejudice to any claim by any party against any other in respect of any antecedent breach of any of the covenants conditions agreements or restrictions contained or implied. In any such case the Lessee shall yield up vacant possession of the Premises to the Lessor and shall deliver to the Lessor its copy of this Lease duly endorsed with a surrender thereof (and if this Lease has been registered, in registrable form).

14.3 New Lease

(a) If this Lease is terminated pursuant to Clause 14.2 and the Lessor receives full proceeds from its insurance policy the Lessor shall use reasonable endeavours to rebuild or redevelop the Building (whether or not in a similar layout to that existing immediately prior to such termination) so that the rebuilding or redevelopment will be completed within 12 months after the date of such termination, subject to any delay caused by any Local or Public Authority granting its approval for the Building works to commence and the Lessor shall include in the rebuilt or redeveloped Building, Premises, then 21 days after (or as soon as reasonably practicable) the Lessor receives a building license from the Local Authority the Lessor shall give the Lessee a written offer (the Offer) for a lease:

- (i) for a term of the greater of 5 years or unexpired residue of the Term of this Lease;
- (ii) with the Annual Rent as at the commencement of the Term being the Market Rent determined in accordance with a Market Review; and
- (iii) with other terms and conditions, which shall be no more onerous than those terms and conditions contained in this Lease.

on which the Lessor would be prepared to lease the Premises to any other person bona fide desiring to conduct thereon the Use.

(b) If the Lessee wishes to accept the Offer the Lessee shall within 14 days after the receipt of the Offer cause to be delivered to the Lessor a notice in writing accepting the Offer.

(c) In the absence of acceptance by the Lessee within the above period of 14 days (as to which time shall be of the essence) or other mutual agreement between the Lessor and the Lessee as to the Term, Rent and other terms and conditions of any such new lease of the Premises then the Lessee shall have no further claim to a lease of premises in the redeveloped Building and the Lessor may lease the Premises to any other person but not at a Rent, for a term and upon terms and conditions more favourable to that other person than those upon which same were previously offered to the Lessee unless the Lessor has first offered the Lessee a lease of the Premises on that more

favourable basis and the Lessee has not accepted that offer within 7 days (as to which time shall be of the essence) of receiving written notice thereof.

- (d) In this clause 14.3:
- (i) **Use** means a business identical or substantially similar to the Lessee's permitted use;
 - (ii) **Premises** means premises in the redeveloped Building which are in the Lessor's reasonable opinion of a similar gross leasable area, configuration and trading potential (as regards locations) as the Premises.

14.4 Reference to Umpire

In case of any difference touching the provisions of this clause 13 the same shall be referred to the decision of an Umpire.

15. UMPIRE

The following further provisions shall apply to any Umpire appointed under the provisions of this Lease:

- (a) he shall be deemed to act as an expert and not as an arbitrator;
- (b) before reaching any decision as to any matter in dispute he shall be obliged to hear reasonable argument put forth by or on behalf of the parties hereto;
- (c) his decision as to any matter in dispute shall be final and binding on the parties hereto; and
- (d) his fees shall be borne and paid equally by the Lessor and the Lessee.

16. HOLDING OVER

If the Lessee, without having duly exercised any option for renewal herein contained but with the consent of the Lessor, shall remain in possession of the Premises after the expiration of the Term or any extension, the Lessee shall so remain as tenant from month to month at the Rent equal to the Rent immediately preceding the Expiry Date together with the monthly payment on account of Outgoings payable immediately prior to the Expiry date and otherwise on the same terms and conditions as those contained in this Lease with such modifications or variations as are necessary to make them applicable to a tenancy from month to month.

17. PROVISIONS ON EXPIRY OF TERM

17.1 Notice to let

During the period of 4 months preceding the end of the Term the Lessee shall permit intending tenants and others with authority from the Lessor at all reasonable times to enter and view the Premises and shall permit the Lessor to affix to the exterior of the Premises a sign indicating that the Premises are to be re-let, and shall not tamper with same.

17.2 Make good

During the last 3 months of the Term the Lessee shall:

- (a) replace all lamps and tubes, relamp exit signs and hibay lights in the Premises;
- (b) remove computer, telephone and data cabling and make-good of damaged surfaces including skirtings of the Premises;
- (c) thoroughly clean the Premises to the satisfaction of the Lessor;
- (d) remove all bolts and fixtures from walls and floors of the Premises and make good any damage caused by their removal;
- (e) service fire hydrant and fire hose reels and sprinkler systems within the Premises and complete all necessary maintenance and provide a copy of the report from the reputable firm completing the repairs and maintenance;
- (f) replace any damaged ceiling tiles;
- (g) replace and/or repair of all damaged Lessor's fixtures and fittings; and
- (h) remove all signage from the Premises;
- (i) Service the air conditioning system (if any) servicing the Premises;

All such works shall be performed with materials of the best quality and to the satisfaction of the Lessor or its agent and the Lessee shall make good any damage done to the Premises in the carrying out of the required works.

17.3 Delivery of possession

At the expiration or sooner determination of the Term the Lessee shall quietly deliver up to the Lessor possession of the Premises in such state condition and order as shall be consistent with the due performance and observance of the covenants by the Lessee under this Lease and shall surrender all keys for the Premises to the Lessor and if required by the Lessor steam clean the carpets. If the Lessee has made any alterations or additions to the Premises the Lessee must at the Lessor's absolute discretion reinstate the Premises so that the Premises are returned to the condition they were in before the alteration or addition was made. If the Lessee fails to do so then the Lessor at its option may carry out all repairs or works which should have been carried out by the Lessee in accordance with the covenants of the Lessee herein contained, and if the Lessor carries out any such repairs or works the Lessee shall pay to the Lessor upon demand the cost of such repairs or works.

17.4 Removal of fixtures and fittings

All fixtures, fittings, plant, machinery, utensils, shelving, signs and advertising material, counters, floor coverings, safes and chattels (but excluding ceilings, toilet and sanitary accommodation, wall finishes, shop fronts, doors and grills, lighting and electrical fixtures or fittings, electrical wiring, hydraulic and drainage and gas services, lifts, escalators and air-conditioning) and partitions belonging to and erected or put in by the Lessee whether before or after the Commencement Date shall be trade or tenant's

fixtures and the Lessee shall at the expiration or sooner determination of the Term remove the same from the Premises (but so as not in any way to injure the Land and/or Building) and the Lessee shall immediately thereupon make good to the satisfaction of the Lessor all damage caused or occasioned to the Premises by such removal.

17.5 Lessor's right to remove

If the Lessee fails to comply with its obligations pursuant to clause 17.4, then in addition to its other rights under this Lease and at law and otherwise resulting out of such breach the Lessor may:

- (a) by notice in writing to the Lessee deem such of the items referred to in the notice to be abandoned by the Lessee, in which case such items upon delivery of such notice shall be and become the property of the Lessor absolutely and the Lessor shall be at liberty either to retain the same in the Premises or to remove the same or any portion thereof from the Premises in which case the costs of such removal and costs of making good those parts of the Premises occasioned by such removal shall be borne by the Lessee and payable to the Lessor upon demand;
- (b) remove such items or any part thereof to the Lessee's last known abode or place of business, and there or as near thereto as possible to leave the same at the risk in every respect of the Lessee in which case the costs of such removal and the costs of making good those parts of the Premises occasioned by such removal shall be borne by the Lessee and payable to the Lessor upon demand; and
- (c) at public auction or by private treaty sell or otherwise dispose of the same or any part thereof at such price and on such terms as the Lessor in the Lessor's absolute discretion may think fit, and out of the proceeds thereof reimburse the Lessor in respect of any costs and expenses thereby incurred in which case the costs of such removal and the costs of making good those parts of the Premises occasioned by such removal shall be borne by the Lessee and payable to the Lessor upon demand.

17.6 Attorney

For the purposes referred to in clause 17.5 the Lessee appoints the Lessor or a nominee of the Lessor to be the Lessee's lawful attorney and for the Lessee and in the Lessee's name to sign all necessary deeds, agreements, receipts and other instruments for the purposes of effecting such sale or other disposition, and the Lessee indemnifies the Lessor and such nominee and their respective estates and effects, and undertakes to ratify any of their actions in respect of the exercise of such powers.

17.7 Occupation Fee

Without prejudice to any other rights of the Lessor hereunder, during the period from the date of expiry or sooner determination of this Lease (including any extension or renewal hereof or period of holding over) until such date as the Lessee has complied with its obligations under Clauses 17.2 to 17.4, the Lessee shall pay to the Lessor from time to time forthwith upon demand an occupation fee (calculated on a daily basis) at a rate equal to the rate of the aggregate of the Rent, Outgoings and other monies payable immediately prior to the date of expiry or sooner determination of this Lease and all

other obligations on the part of the Lessee hereunder (other than the obligation to pay Rent and Outgoings for such period) shall apply mutatis mutandis.

18. RENEWAL OF LEASE

18.1 Right of renewal

Subject to clauses 18.2 and 17.3 and so long as the Lessee shall not have been in default at any time during the Term in payment of the Rent reserved by this Lease or in the performance or observance of the covenants and conditions herein contained in this Lease the Lessee shall have the right to require the Lessor to grant to the Lessee a further lease of the Premises from the Expiry Date for the Further Term specified in the Schedule.

18.2 Notice of renewal

The Lessee shall give to the Lessor not less than 4 months before the Expiry Date notice in writing of the Lessee's intention to exercise such right, and in that respect time shall be of the essence.

18.3 Term of renewal

Except for the amount of Rent and any option for further renewal (save as is expressly given by this Lease) such renewed term or terms shall be subject to the same covenants and conditions as are contained herein or as are necessary to make them applicable to the renewed term or terms and the Rent Review Dates during the renewed term shall be at the same intervals as if the original Term of this Lease had been for the Term together with the renewed term, provided that the rent applicable to the first year of the Further Term shall be the Market Rent calculated as at the first day of the Further Term.

18.4 Deed of extension

If requested by the Lessor, the Lessee shall promptly execute a deed of extension of lease (prepared by the Lessor's lawyers at the expense of the Lessee) to formally record the terms of such further lease.

18.5 Guarantee

Notwithstanding anything to the contrary herein contained or implied, the Lessor (at its option, and at any time prior to granting the further lease) shall be entitled to refuse to grant to the Lessee a further lease as contemplated in clause 18.1 unless the Lessor is satisfied that each person who (as at the date of the notice contemplated in clause 18.2) guarantees or otherwise assures to the Lessor the due and punctual performance and observance by the Lessee of its covenants and obligations hereunder shall guarantee or assure to the Lessor (on the same terms but with such modifications only as are necessary to make such guarantee or assurance applicable to the further lease) the due and punctual performance and observance by the Lessee of its covenants and obligations under the further lease.

19. NOTICES

Any notice, document or demand ("notice") under this Lease shall be served in accordance with this clause.

- (a) The notice shall be in writing, signed by the party giving it, or by the party's duly authorised officer (if a corporation), agent or solicitor.
- (b) A notice may be served on a party to this Lease, including their successors, assigns, and guarantors
 - (i) by personal delivery to that party or if more persons than one are lessors or lessees to any one of them;
 - (ii) in the case of the Lessee by delivering the notice to the Premises and leaving it with the Lessee or an employee of the Lessee;
 - (iii) in the case of the Lessor by delivering the notice to the Lessor's business address and leaving it with an employee of the Lessor;
 - (iv) by sending it, addressed to the party at that party's address stated in this Lease by prepaid security post or certified post;
 - (v) if the Lessor maintains a centre manager's or administrator's office in the Building, by delivering any notice addressed to the Lessor to that office whilst it is open and leaving it with a person working in that office.
- (c) Either party may advise the other party of an additional or an altered address for the service of notices, which is within the State of Western Australia and is not a post office box.
- (d) A notice is considered to have been served
 - (i) at the time of delivery;
 - (ii) on the third Business Day after the day on which it is posted, the first Business Day being the day of posting.

20. GST

The Parties agree that:

- (a) unless otherwise stated in this Lease, the Rent and all other amounts agreed to be paid by the Lessee to the Lessor, being the consideration for the supply expressed in this Lease, are exclusive of GST;
- (b) in respect of any liability of the Lessor for GST under this Lease, and the renewal or extension of this Lease including Rent, rates, Outgoings or consideration for any other supply the Lessee covenants to pay to the Lessor at the same time as any payment is made for which the Lessor incurs liability for GST, the additional amount of GST together with the payment to which it relates;

- (c) the Lessee's liability under this clause for each supply made under this Lease is to reimburse the full amount of GST less the Lessor's entitlement to any input tax credits which relates to that supply;
- (d) in respect of each payment by the Lessee under this clause the Lessor agrees to deliver to the Lessee a valid tax invoice; and
- (e) for the purposes of this clause the terms "supply", "consideration" and "tax invoice" have the meanings given to them in the GST Tax Act.

21. GUARANTEE, INDEMNITY AND WARRANTY BY COVENANTOR

21.1 Guarantee

In consideration of the Lessor entering into this Lease at the request of the Covenantors as is testified by the execution by the Covenantors of this Lease the Covenantors guarantee to the Lessor the due and punctual performance and observance by the Lessee of all and singular the covenants obligations and stipulations on the part of the Lessee contained or implied in this Lease including, without limitation, the due and punctual payment by the Lessee of the Rent and all other moneys payable by the Lessee hereunder.

21.2 Indemnity

The Covenantors also agree to indemnify and keep indemnified the Lessor from and against all losses costs expenses and damages sustained or incurred by the Lessor arising out of or in respect of any breach or default by the Lessee in duly and punctually observing and performing such covenants and obligations.

21.3 Further acknowledgments

The Covenantors further agree as follows:

- (a) this guarantee and indemnity covers the whole Term of this Lease and any other period whilst the Lessee occupies or is entitled to occupy the Premises including, without limitation, all periods during which the Lessee holds any equitable interest in the Premises or interest in the Premises as a periodical tenant;
- (b) this guarantee and indemnity is in favour of the Lessor and its successors and assigns being the registered proprietor or proprietors of the Premises from time to time;
- (c) this guarantee and indemnity extends to claims by the Lessor for damages for breaches of any of the covenants obligations and stipulations on the part of the Lessee contained or implied in this Lease, for breaches of any essential terms of this Lease and for repudiation of the Lease and to the Lessor's reasonable legal and other expenses of seeking to enforce those obligations against the Lessee or of recovering possession and of terminating the Lease;
- (d) this guarantee and indemnity extends to the Lessor's loss or damage in the event of the Lessee abandoning or vacating the Premises and also in the

event of the Lessor electing to re-enter or to terminate the Lease, including for the Lessee's repudiation of the Lease;

- (e) this guarantee and indemnity is a principal obligation and may be enforced against the Covenantor without any responsibility on the part of the Lessor to proceed against the Lessee or any other person;
- (f) this guarantee and indemnity is irrevocable and continuing and (but without limiting the generality of the foregoing) shall not be revoked by notice or by reason of the death insolvency bankruptcy liquidation or mental incapacity of the Covenantor or of any of them or of the Lessee and the said guarantee and indemnity shall not be discharged or released or otherwise affected by the avoidance of any payment by the Lessee or the Covenantors to the Lessor or by any arrangement made between the Lessor and the Lessee or by any forbearance on the part of the Lessor whether as to payment time performance or otherwise or by any assignment of the whole or any part of the Premises or of the Lessee's estate right and or interest hereunder or by any sub-lease of the whole or any part of the Premises or by any variation of the Lease or by any extension to or renewal of the Term or by the termination or expiration of the Lease or the Term or any extension or renewal thereto (whether by re-entry forfeiture surrender effluxion of time or otherwise) or by the Lessee's liability under this Lease being or becoming invalid illegal or unenforceable though any act, omission or legislation or by any delay neglect omission dealing or other cause or reason whatsoever;
- (g) in the event of the Lease being terminated by disclaimer by a trustee or liquidator of the Lessee the Covenantors agree that upon being required by the Lessor within 90 days after the date of the disclaimer to do so the Covenantors shall enter into an agreement to lease the Premises for a term commencing from the date of the disclaimer to the end of the Term at the cost of the Covenantors and on the terms and conditions of the Lease but without containing any provision for a guarantee of that agreement for lease;
- (h) if the Lessee shall go into compulsory or voluntary liquidation or become bankrupt or shall enter into any composition arrangement with or assignment for the benefit of the Lessee's creditors or shall have appointed under any Act or instrument or by order of any Court a manager or an administrator or a trustee or a receiver or a receiver and manager or liquidator (provisional or otherwise) in relation to any part of the Lessee's undertakings or assets or property the Covenantors shall not prove or claim in any such liquidation bankruptcy composition arrangement or assignment or in respect of such appointment until the Lessor has received 100 cents in the dollar in respect of the moneys owing by the Lessee to the Lessor and the Covenantors shall hold in trust for the Lessor such proof and claim.
- (i) the parties intend that the Lease shall not be registered pursuant to the Transfer of Land Act Western Australia, and accordingly references in this clause to the "Lease" include the estate or interest of the Lessee in the Premises from time to time whether arising in equity or by implication.

22. DUE EXECUTION WARRANTY

The Covenantors HEREBY WARRANT to the Lessor that where any party other than the Lessor has executed or shall execute this Lease pursuant to any constitution (as that term is defined in the Corporations Act), trust Lease, will, deed of settlement or other instrument whatsoever (in this clause the "Instrument") each such party has done or prior to executing this Lease shall do, all acts matters and things required by the Instrument or otherwise to ensure that each such party has validly executed or shall validly execute this Lease and shall be bound hereby in accordance with the terms of this Lease and the Covenantors HEREBY AGREE UNCONDITIONALLY that they shall indemnify and keep indemnified the Lessor from and against all losses costs claims expenses and damages of any nature whatsoever directly or indirectly sustained or reasonably expected to be sustained by the Lessor from or out of the breach of any of the warranties contained in this clause.

23. MISCELLANEOUS PROVISIONS

23.1 Invalidity

To the extent that any one or more of the provisions herein contained is prohibited by any applicable law including the Trade Practices Act 1974 such provisions and each of them shall to such extent be ineffective without invalidating or modifying the remaining provisions hereof which shall continue in full force and effect as if the provisions so prohibited had not been included herein as from the date hereof.

23.2 Lessee's caveat

The Lessee covenants that neither the Lessee nor any agent or other person on behalf of the Lessee shall register this Lease under the Transfer of Land Act 1893 Western Australia nor lodge any caveat against the land or any part thereof upon which the Premises are situate or erected other than a caveat to protect the Lessee's interests as Lessee under this Lease which caveat shall:

- (a) forbid the registration of any person as transferee or proprietor of and of any instrument affecting the Lessee's interest unless such instrument be expressed to be subject to the claim of the Lessee (as caveator); and
- (b) be withdrawn by the Lessee at the Lessee's expense at the expiration or sooner determination of the Term or if the Term is extended or renewed then at the expiration of the extended or renewed term

but in the event of this Lease being registered or of the Lessee lodging a caveat other than in accordance with this clause or of the Lessee failing to withdraw any caveat lodged in accordance with this clause the Lessee hereby irrevocably appoints the Lessor (and where the Lessor is a company, each and every one of the directors and other officers of the Lessor jointly and severally) the agent and attorney of the Lessee to surrender sign and withdraw the registration of any such lease or caveat the cost of which shall be borne and paid by the Lessee.

23.3 No Lessor's warranties

The Lessee acknowledges and declares that in entering into this Lease the Lessee has not relied on any promise representation warranty or undertaking given by or on behalf

of the Lessor with respect to the suitability of the Premises or the finish facilities amenities or services thereof for any business to be carried on therein or otherwise and that the terms covenants conditions and provisions contained in this Lease expressly cover and comprise the whole of the agreement between the parties hereto and it is expressly agreed and declared that no further or other terms covenants conditions or provisions whether in respect of the Premises or otherwise shall be deemed to be implied herein or to arise between the parties hereto by way of collateral or other agreement.

23.4 Interest on arrears of Rent

In the event of any payment of Rent Outgoings or any other moneys payable by the Lessee to the Lessor under this Lease not being paid on the due date such indebtedness shall bear interest at the Interest Rate computed from the date that the same shall have become due and payable and such interest shall accrue from day to day and be payable and paid on demand.

23.5 Trust

Where the Lessee enters into this Lease as trustee of a trust (the "Trust"), the Lessee enters into this Lease in its personal capacity and as trustee of the Trust and the Lessee and the Covenantor warrant to the Lessor that:

- (a) the Lessee has the power and authority under the terms of the Trust to enter into this Lease;
- (b) the Lessee is the sole trustee of the Trust and no action has been taken to remove or replace it;
- (c) the Lessee has power under the Trust to execute and perform its obligations under this Lease and all necessary action has been taken to authorise the execution and performance of this Lease under the Trust;
- (d) the Lessee has unrestricted and unlimited right to be fully indemnified out of the Trust;
- (e) the Lessee is not in default under the Trust;
- (f) all necessary steps shall be taken to ensure the assets of the Trust are available to rectify any unremedied default by the Lessee; and
- (g) the Trust will not be altered without prior notice of at least 14 Working Days to the Lessor.

23.6 Building works

The Lessor reserves the right to add to the Building and or to build additional storeys onto the Building and no such additions or additional storeys shall form part of the Premises. The Lessor shall have power by its agents and workmen with all necessary materials and appliances to enter upon the Land and the Building for all purposes connected with such additions and or building. In pursuing such activities the Lessor shall endeavour to minimise as much as possible the nuisance and irritation caused to the Lessee, but the Lessee shall be obliged gratuitously to suffer such activities.

23.7 Liability for loss

- (a) Despite anything herein contained or implied or rule of law or equity to the contrary the Lessor shall not in any circumstances (save for the wilful malicious acts of the Lessor or its servants or agents) be liable to the Lessee for any loss or damage suffered by the Lessee in consequence of any malfunction or breakdown in or interruption of or to the water gas or electricity services the air conditioning equipment fire fighting equipment lift escalator or elevator or any of the appurtenances contained in the Premises or in the Building or from the breakage blockage or overflow of any sewer waste drains conduits cables wires gutters down pipes or stormwater drains from any cause whatsoever.
- (b) The Lessor is not be liable for any losses or damage suffered by the Lessee If the cave is closed for any reason, not caused by the Lessor.

23.8 Liability for negligent acts

Despite anything herein contained or implied or rule of law or equity to the contrary the Lessor shall not be liable for any damage or loss that the Lessee may suffer by reason of or any act or omission of the Lessor to do any act or thing to or in respect of the Premises or the Building which (as between the Lessor and the Lessee) the Lessor might be legally liable to do unless the Lessee shall have given to the Lessor notice in writing of such act or omission and the Lessor has without reasonable cause failed within a reasonable time thereafter to take proper steps to rectify such act or omission.

23.9 Validity

If any covenant or obligations of this Lease or the application thereof to any person or circumstances shall be or become invalid or unenforceable the remaining covenants and obligations shall not be affected thereby and each covenant and obligation of this Lease shall be valid and enforceable to the fullest extent permitted by law.

23.10 Security Deposit

- (a) On or prior to the date of execution of this Lease, the Lessee covenants that it shall deliver to the Lessor a bank cheque made payable to the Lessor as a security deposit ("the Security Deposit"), for the Secured Amount.
- (b) A Security Deposit will be held by the Lessor in an interest bearing account with interest accruing to the benefit of the Lessee.
- (c) If the Lessee does not comply with any of its obligations under this Lease (including any extension or holding over) whether this Lease is registered or not, then the Lessor may draw on the Security Deposit without notice to the Lessee.
- (d) If the Lessor draws on the Security Deposit or if the Rent or estimated Outgoings are increased, then no later than 7 days after the Lessor gives the Lessee a notice asking for it the Lessee must deliver to the Lessor such further sum as is necessary to restore the Security Deposit to the Secured Amount..
- (e) If the Lessee assigns this Lease with the consent of the Lessor then, subject to the assignee providing any security and any guarantees required by the Lessor

under this Lease and if the Lessee has paid all money payable by the Lessee accrued up to and including the assignment date and performed all other obligations of obligations under this Lease arising prior to the assignment date, the Lessor will release the Security Deposit amount held to the Lessor to the Lessee.

- (f) If a Lessor ceases to be the Lessor the Lessee must forthwith upon demand replace the Security Deposit with a new Security Deposit to the new landlord or consent to a request of the Lessor to transfer the Security Deposit to the new landlord.

23.11 Special Clauses

The Special Clauses (if any) contained in the Schedule form part of this Lease. If any of the Special Clauses are inconsistent with or ambiguous to the terms of this Lease, the Special Clauses shall prevail over the terms of this Lease to the extent of such inconsistency or ambiguity.

DRAFT

SCHEDULE

Item 1. Land

being more particularly described as that part of Lot 4174 on Deposited Plan 208911 and being part of the land comprised in Crown Land Title Volume 3146 Folio 246.

Item 2. Premises

The property known as the Jewel Cave Cafe erected upon the Land and being premises delineated in the sketch attached to this Lease.

Item 3. Term

Five (5) years.

Item 4. Commencement Date

[TBA]

Item 5. Expiry Date

[TBA]

Item 6. Further Term

Four (4) years

Item 7. Initial Rent

[\$TBA] per annum, payable calendar monthly in advance by equal instalments of [\$TBA].

Item 8. Rent Review Date(s)

Date(s)	Review Method
First anniversary of the Commencement Date	CPI Review
Second anniversary of the Commencement Date	CPI Review
Third anniversary of the Commencement Date	CPI Review
Fourth anniversary of the Commencement Date	CPI Review
Fifth anniversary of the Commencement Date	Market Review
Sixth anniversary of the Commencement Date	CPI Review
Seventh anniversary of the Commencement Date	CPI Review
Eighth anniversary of the Commencement Date	CPI Review
Ninth anniversary of the Commencement Date	CPI Review

Item 9. Permitted Use

Café for the service of food and drinks in relation to the associated operations of the Jewel Cave.

Item 10. Special Clause(s):

1. Operating Hours

The Lessee is to operate the business of the Jewel Cave Café from the Premises principally to service visitors to the Jewel Cave, and must be open every day except Christmas Day, Anzac Day and Good Friday in each year between the hours 9.00am and 5.00pm.

The Lessee may operate the Café outside the nominated hours with the prior approval of the Lessor, and upon payment of the Late Opening Fee.

2. Retail Sales

The Lessee shall not conduct retail sales from the premises, and for certainty the Lessor shall exercise its reasonable discretion to determine from time to time what items are classified as retail sales.

3. Environmental Issues

The Lessee acknowledges that the Premises are located within a natural bush setting and will take all reasonable steps to preserve that setting and especially take all steps that a prudent person would take to minimise the risk of bushfires.

4. Lessee's Fitout

- (a) The Lessee shall at its own expense fit out the Premises in accordance with a fitout plan and a schedule of finishes approved by the Lessor.
- (b) The Parties agree that the Lessee shall retain ownership of the following items from the fitout plan and schedule of finishes:
 - (i) **(List to be advised)**

5. Jewel Cave Closure

- (a) If Jewel Cave is to be closed at the direction of the Lessor or if the Lessor is forced to close the Cave at the direction of any other party, the Lessee is relieved of its obligation under this Lease to keep the Café open but may do so at the Lessee's option.
- (b) During any period greater than two weeks (14 days) that the Jewel Cave is closed the Lessee is relieved of its obligations to pay rent under this Lease, but not its obligations to pay Outgoings on the Premises.

6. Membership AMRTA

- (a) The Lessee acknowledges that the Lessor is an incorporated association which, at its own discretion at all times, provides promotional services to its members.
- (b) The Lessee shall become and remain a member of the Lessor during the Term.

7. Licence to use Car Parking Bays

The Lessor hereby grants to the Lessee a licence to use 2 of the car parking bays of the car park on the Land as from time to time are nominated by the Lessor (and initially the 2 car parking bays shaded red on the plan annexed hereto) (the car parking space) together with the right for the Lessee and its duly authorised employees and visitors in common with all others authorised by the Lessor and in exercise of such licence as aforesaid to enter and leave the said car park by the entrances and exits thereof and subject to the terms conditions and restrictions hereinafter contained:

- (1) this Licence shall commence on the Commencement Date and shall terminate on the day the Term of this Lease expires to the intent that:

- (a) if the Lessee extends the Term of the Lease, this Licence automatically shall be extended for the same period; and
 - (b) upon the expiration or sooner determination of the Term of the Lease, this Licence forthwith shall determine without the need for any notice or other action by the Lessor or the Lessee.
- (2) The Lessee agrees with the Lessor that:
- (a) the Lessee shall use the car parking space for the purpose only of parking of motor vehicles owned or used by the Lessee or the Lessee's employees and visitors;
 - (b) the Lessee shall not use or permit to be used the car parking space for any purpose other than for the parking of motor vehicles and shall comply with and cause to be complied with the provisions of all Statutes for the time being in force affecting the same and all by-laws and regulations thereunder;
 - (c) the Lessee shall not store or keep on or permit to be stored or kept on the car parking space or in any motor vehicle thereon any petrol or other inflammable fuel except that which is contained in petrol or other fuel feed tanks or lines forming a permanent part of a motor vehicle and shall not knowingly permit the spillage or leakage of oil grease or petrol onto any part of the car parking space or the Land from any motor vehicle owned or used by the Lessee or any of the Lessee's employees and visitors;
 - (d) the Lessee shall not leave or permit to be left at any time any motor vehicle upon the car parking space with its engine running;
 - (e) unless otherwise agreed in writing by the Lessor, the Lessee shall ensure that no motor vehicle parked in the car parking space remains thereon for a continuous period longer than 20 hours and the Lessee shall ensure that any motor vehicle parked on the car parking space for longer than 20 hours shall be removed promptly;
 - (f) the Lessee shall keep and maintain the car parking space free of rubbish and debris and in a clean tidy and hygienic condition;
 - (g) the licence hereby granted is personal to the Lessee and the Lessee shall not assign or attempt to assign the benefit thereof or any part thereof except with the prior written consent of the Lessor if the Lease is assigned or sub-let;
 - (h) the Lessee shall indemnify the Lessor from and against all actions claims demands suits losses costs and expense whatsoever and by whomsoever made or occasioned by or as a result of:
 - (i) any damage from any cause that any motor vehicle owned or used by the Lessee or by any of the Lessee's employees and visitors or any other person lawfully

authorised by the Lessee in that behalf may at any time sustain while upon the car parking space or the Land;

- (ii) any loss resulting from the theft of any motor vehicle (or any parts equipment or contents thereof) owned or used by the Lessee or any of the Lessee's employees and visitors or any other person lawfully authorised by the Lessee in that behalf while upon the car parking space or the Land;
 - (iii) any injuries which the Lessee or any of the Lessee's employees and visitors or any other person lawfully authorised by the Lessee in that behalf may at any time sustain whilst in about or upon the car parking space or the Land.
- (3) The grant of this licence shall not in any way create in favour of the Lessee any tenancy or any rights in the nature of a tenancy or any rights to the exclusive occupation of the parking space or any part of the Land.
 - (4) Notwithstanding anything to the contrary herein contained or implied in the event of default by the Lessee in the observance or compliance with any of the obligations imposed on the Lessee in this licence the Lessor may immediately determine this Licence by notice in writing to the Lessee and this licence shall determine ipso facto upon service of such notice on the Lessee.
 - (5) If at any time a Local or Public Authority introduces any fee, charge or impost on or payable in respect of the car parking space such fee, charge or impost shall be payable by the Lessee as if it were an outgoing relating to the .

Executed as a Deed on the date first mentioned.

AUGUSTA MARGARET RIVER TOURISM ASSOCIATION INC

EXECUTED by **AUGUSTA MARGARET RIVER TOURISM ASSOCIATION INC** in accordance with Section 127 of the Corporations Act 2001 by authority of its directors:)
)
)
)
)

Signature of Director

Signature of Director/Secretary*

Name of Director (block letters)

Name of Director/Secretary* (block letters)
* delete whichever is not applicable

EXECUTED **[TBA]** (ACN !!! !!! !!!) in accordance with Section 127 of the Corporations Act 2001 by authority of its directors:)
)
)
)
)

Signature of Director

Signature of Director/Secretary*

Name of Director (block letters)

Name of Director/Secretary* (block letters)
* delete whichever is not applicable

SIGNED by)
TBA)
in the presence of) _____

Witness name

Witness address:

Witness Occupation

SIGNED by
[TBA]
in the presence of

)
)
)

Witness name

Witness address:

Witness Occupation

DRAFT