

AGREEMENT TO LEASE

EVEREST CENTRAL INVESTMENT LIMITED
Landlord

MAGSONS HARDWARE LIMITED
Tenant

MAGSONS INVESTMENTS LIMITED
Guarantor



Christchurch
Level 9, HSBC Tower
62 Worcester Boulevard
PO Box 2646
Christchurch 8140
Telephone +64 3 379 0920
Facsimile +64 3 366 9277

Auckland
Level 8, Chorus House
66 Wyndham Street
PO Box 2646
Auckland 1140
Telephone +64 9 920 6400
Facsimile +64 9 920 9599

www.anthonharper.co.nz



CONTENTS	Page No.
1 DEFINITIONS AND INTERPRETATION	5
2 CONDITIONS.....	6
3 DEVELOPMENT WORKS	6
4 PREMISES CONDITION REPORT	6
5 TENANT'S WORKS	6
6 INSURANCE.....	7
7 THE LEASE	8
8 ASSIGNMENT	8
9 COSTS	8
10 CONSENT	8
11 NO CAVEAT	8
12 COMPLETE AGREEMENT	9
13 NON MERGER.....	9
14 NON WAIVER.....	9
15 NOTICES.....	9
16 NON DISCLOSURE.....	9
17 RESOLUTION OF DISPUTES	10
18 SEVERANCE	10
19 COUNTERPARTS.....	10
20 BANK GUARANTEE AND SECURITY DEPOSIT.....	10
21 EXCLUSION OF CERTAIN PROPERTY LAW ACT 2007 PROVISIONS.....	11
22 GUARANTEE.....	11

172

DATED

30 November

2018

PARTIES:

- 1 EVEREST CENTRAL INVESTMENT LIMITED (Landlord)
- 2 MAGSONS HARDWARE LIMITED (Tenant)
- 3 MAGSONS INVESTMENTS LIMITED (Guarantor)

AGREEMENT TO LEASE:

The Landlord agrees to grant and the Tenant agrees to take a lease of the Premises and the Carparks described in the First Schedule together with the right to use the Landlord's fixtures, fittings and chattels contained in the Premises as more particularly described in the Lease for the Term from the Commencement Date and at the Annual Rent (subject to review) as set out in the First Schedule.

The Guarantor agrees to guarantee the obligations of the Tenant under this Agreement and in the Lease.

The Landlord, the Tenant and the Guarantor agree as set out in the Second Schedule.

EXECUTED AS AN AGREEMENT

LESSOR

Executed by **EVEREST CENTRAL INVESTMENT LIMITED** as Landlord by a director/authorised signatory:




Director / Authorised Signatory

Neil James Tuffin

Print Name

TENANT

Executed by **MAGSONS HARDWARE LIMITED** as Tenant by a director/authorised signatory:



Director / Authorised Signatory

Vinod Kumar

Print Name

GUARANTOR

Executed by **MAGSONS INVESTMENTS LIMITED** as Guarantor by a director/authorised signatory:



Director / Authorised Signatory

Vinod Kumar

Print Name

FIRST SCHEDULE

Reference Schedule

Landlord:	Everest Central Investment Limited
Address of Landlord:	C/- Maat Consulting Limited, P O Box 301848, Albany, Auckland 0752 (Attention: Neil Tuffin)
	Email: ntuffin@maat.co.nz
Tenant:	Magsons Hardware Limited
Address of Tenant:	C/- Magsons Investments Limited, P O Box 69-155, Glendene, Auckland (Attention: Vinod Kumar)
	Email: vinod@nidoliving.co.nz
Guarantor:	Magsons Investments Limited
Address of Guarantor:	C/- Magsons Investments Limited, P O Box 69-155, Glendene, Auckland (Attention: Vinod Kumar)
	Email: vinod@nidoliving.co.nz
Land:	The land at 156-160 Central Park Drive, Henderson, Auckland, to be transferred to the Landlord in accordance with the Development Agreement
Premises:	The building to be constructed on the Land in accordance with the Development Agreement
Carparks:	Approximately 625 car parks as shown generally in accordance with the Outline Plans and Specification
Bank Guarantee Sum:	\$2,000,000
Commencement Date:	The earlier of the Working Day following the Practical Completion Date and the date the Tenant commences trading from the Premises
Initial Term:	Fifteen (15) years
Renewal Terms:	Two (2) further terms of ten (10) years each
Annual Rent:	(a) Premises – \$4,484,000.00 plus GST; and (b) Carparks – Included in Premises
	Total: \$4,484,000.00 plus GST

Rent Review Dates:

The Annual Rent will be reviewed annually during the initial term and any renewal term as follows:

- (a) by fixed 2% per annum increases on every anniversary of the Commencement Date which is not a market rent review date; and
- (b) by market reviews on each renewal date, provided that the Annual Rent will not be less than that payable immediately prior to the relevant renewal date.

Permitted Use of Premises:

Retail centre selling furniture, furnishings, home décor and other lines of products and services required to equip a home and commercial premises, and all associated uses including café, food and beverage

Public Liability Insurance:

\$10,000,000

Default Rate:

5% above the Landlord's principal banker's commercial lending rate at the time of default



SECOND SCHEDULE

Terms and Conditions

1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions** - In this Agreement unless the context indicates otherwise:

Approvals means all necessary consents, authorities, and permits required from any Authority for the Landlord to complete the Development Works including all consents required pursuant to the Resource Management Act 1991 and the Building Act 2004;

Authority means any local body, government or other authority having jurisdiction over or authority for the Building or the Land, its use or occupation;

Contractor means Vijay Holdings Limited;

Development Agreement means the development agreement between the Landlord, the Guarantor (as the Vendor) and the Contractor dated on or around the date of this Agreement;

Development Works means the Development Works for the construction of the Premises on the Land, which are to be completed in accordance with the Development Agreement;

GST means tax charged under the Goods and Services Tax Act 1985 and includes any tax charged in substitution for that tax;

Lease means the form of lease attached to this Agreement as the Third Schedule completed by reference to this Agreement's provisions;

Tenant's Drawings means the plans and specifications for the Tenant's Works;

Tenant's Works means the works required to complete the fit out of the interior of the Premises to the occupational and trading requirements of the Tenant;

Outgoings means the Outgoings due under the Lease;

Plans and Specifications means the plans and specifications for the Development Works as more particularly described in the Development Agreement;

Practical Completion Date has the meaning given to that term in the Development Agreement; and

Working Day means a day which is not a Saturday or a Sunday or a public holiday in Auckland, New Zealand and not any day in the period commencing on 24 December in any year and ending on 5 January in the following year.

1.2 **General provisions of interpretation** - In this Agreement, unless the context otherwise requires:

- (a) all words and phrases throughout this Agreement will have the meanings ascribed to them as set out in the First Schedule;
- (b) expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the introduction and the schedules;
- (c) the schedules and their contents have the same effect as if set out in the body of this Agreement;
- (d) terms defined in the Lease have the same meaning in this Agreement;

- (e) the singular includes the plural and vice versa;
 - (f) a reference to a person includes references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
 - (g) references to parties are references to parties to this Agreement and include each party's executors, administrators and successors; and
 - (h) any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and each of them severally.
- 1.3 **Statutes and regulations** - References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.

2 CONDITIONS

- 2.1 This Agreement is conditional upon the Development Agreement becoming unconditional in all respects. If the Development Agreement is terminated due to a failure to satisfy any of the conditions contained therein, this Agreement will automatically be terminated, without the requirement for notice to be given between the parties.

3 DEVELOPMENT WORKS

- 3.1 **Contractor to develop** - Once the Development Agreement is unconditional, and the Landlord takes title to the Land, the Landlord will use its reasonable endeavours to procure that the Contractor carries out and completes the Development Works in accordance with the Development Agreement.
- 3.2 **No liability** - If the Contractor fails to comply with its obligations in the Development Agreement, the Landlord will have no liability to the Tenant under this Agreement or the Lease. Any waiver or indulgence granted by the Landlord to the Contractor under the Development Agreement, or variation of the Development Agreement, will be deemed to be done with the full knowledge and acceptance of the Tenant.

4 PREMISES CONDITION REPORT

- 4.1 As soon as reasonably practicable following completion of the Development Works, the Landlord will procure an appropriately qualified consultant to prepare a premises condition report ("PCR") to be attached to the Lease as a schedule (the costs of which will be met by the Contractor under the Development Agreement), and which will outline the condition of the premises and identify which items of the Development Works comprise Landlord's fixtures and fittings and which items comprise Tenant's fixtures and fittings.

5 TENANT'S WORKS

- 5.1 **Approval** - As soon as possible after this Agreement is unconditional, the Tenant must have the Tenant's Drawings prepared and submitted to the Landlord for approval. The Landlord's approval of the Tenant's Drawings will not be unreasonably withheld provided that:
- (a) the Tenant's Works comply with the requirements of all relevant Authorities;
 - (b) the Tenant's Works will not materially affect the value or quality of the Premises; and
 - (c) the Tenant's Works will not adversely affect the weathertightness of the Premises.

5.2 **Non-exclusive access** – The Landlord will allow the Tenant non-exclusive access to the Premises for the purpose of constructing the Tenant's Works, at times to be arranged directly between the Tenant and the Contractor so as not to cause any delay to the Development Works, provided that the Tenant has:

- (a) obtained the Landlord's consent for the Tenant's Works pursuant to clause 5.1;
- (b) provided copies of all relevant consents and approvals in respect of the Tenant's Works (from any relevant Authority) to the Landlord; and
- (c) complied with its obligations contained in clause 6.

The Tenant will not be obliged to pay Rent or Outgoings during the early access period, but must otherwise comply with the provisions of the Lease as if it were on foot.

5.3 **Tenant's obligations** - During construction of the Tenant's Works the Tenant must:

- (a) not impede or delay the Development Works;
- (b) ensure that the Premises and the Land (including lifts, escalators and common areas) are properly protected and all common areas are kept clean and tidy and free from debris;
- (c) keep the Landlord informed of all communications from any Authority in relation to any applications made pursuant to this clause 5;
- (d) cause the Tenant's Works to be carried out in a good and workmanlike manner using good quality materials; and
- (e) not bring any heavy items of machinery into the Premises likely to damage the Premises or the Land without the consent of the Landlord.

5.4 **Standards** - The Tenant's Works must be carried out in accordance with:

- (a) the requirements of all relevant Authorities, laws and consents obtained;
- (b) the Tenant's Drawings approved by the Landlord under this clause 5; and
- (c) the reasonable safety requirements or restrictions imposed by the Landlord in relation to the time, duration and means of access and co-ordination of the Tenant's Works with the Development Works.

5.5 **Plans** - On completion of the Tenant's Works, the Tenant must at the Tenant's own cost give the Landlord updated "as built" and "as laid out" plans of the Premises and a copy of the code compliance certificate and any compliance schedule issued in relation to the Tenant's Works under the Building Act 2004.

5.6 **Damage** - The Tenant must repair any damage caused to the Land or Premises either directly or indirectly as a result of the Tenant's Works. The Tenant indemnifies the Landlord against all claims, costs or losses suffered or incurred by the Landlord and caused by or arising out of anything done or omitted by the Tenant or the Tenant's employees, agents and contractors during the Tenant's Works.

6 INSURANCE

6.1 The Tenant must not commence the Tenant's Works until the following insurance policies are in place:

- (a) public liability insurance:
 - (i) the limit of indemnity shall be not less than specified in the First Schedule;

- (ii) the policy shall be in the joint names of the Tenant and all persons employed or engaged by the Tenant in the Tenant's Works;
- (iii) the insurance shall include a "cross liability clause" so that the indemnity specified applies to each of the insured parties as if separate policies had been issued;
- (iv) the insurance shall include liability arising out of vibration, weakening or removal of support; and
- (v) the insurance shall provide indemnity arising out of the use of all mobile or mechanical plant and equipment to be used for the Tenant's Works;
- (b) contracts works insurance:
 - (i) for a sum insured of not less than the full value of the Tenant's Works including allowances for demolition and removal of debris costs and professional fees;
 - (ii) the contract works insurance policy shall be in the joint names of the Tenant and all persons employed or engaged by the Tenant on the Tenant's Works.

7 THE LEASE

- 7.1 **Grant of Lease** - The Landlord will grant to the Tenant and the Tenant will take a lease of the Premises and the Carparks on the terms and conditions specified in the First Schedule and otherwise contained in this Agreement and in the Lease.
- 7.2 **Signing of Lease** - The Tenant and Guarantor must sign and return the Lease to the Landlord within 21 days of its delivery to the Tenant for signing, and the Landlord must sign the Lease and return the Tenant's counterpart copy within 14 days of delivery from the Tenant. From the Commencement Date, until all parties have signed and delivered the Lease in accordance with this clause, the Landlord, Tenant and Guarantor will be bound by the terms and conditions contained in the Lease as if they had already signed the Lease.

8 ASSIGNMENT

- 8.1 **Personal rights** - The rights conferred by this Agreement are personal to the Tenant. The Tenant must not assign, transfer, sublease or otherwise dispose of this Agreement or the Tenant's interest under this Agreement.
- 8.2 **Deemed assignment** - Any change in the legal or beneficial ownership of any of the shares in the capital of the Tenant, or change in the rights attaching to existing capital, or any other thing which shall have the effect of altering the effective management or control of the Tenant prior to the Commencement Date shall be deemed to be an assignment of the Tenant's interest in this Agreement and a breach of the provisions of this Agreement.

9 COSTS

- 9.1 The Landlord and the Tenant will share equally in the cost of initial preparation of this Agreement and the Lease, and will meet their own costs associated with the subsequent negotiations of those documents.

10 CONSENT

- 10.1 The Landlord will not be required to obtain the consent of any mortgagee of the Land to this Agreement or to the Lease.

11 NO CAVEAT

- 11.1 The Tenant must not caveat the title to the Land.

12 COMPLETE AGREEMENT

- 12.1 **Obligations** - The obligations of the parties are as exclusively set out in this Agreement.
- 12.2 **No warranty** - The Tenant enters into this Agreement entirely in reliance on the Tenant's own skill and judgment and not in reliance on any representations, warranties, statements, agreements or undertakings of any nature made by:
- (a) the Landlord;
 - (b) any agent of the Landlord; or
 - (c) any other person acting for or on behalf of the Landlord,

except only to the extent that those representations, warranties, statements, agreements or undertakings (or any of them) are expressly set out in this Agreement.

- 12.3 **Waiver of rights** - To the extent that the Tenant has been induced to enter into this Agreement in reliance on any representations, warranties, statements, agreements or undertakings of any nature made by the Landlord or the Landlord's agents (apart from those expressly set out in this Agreement), the Tenant unconditionally and irrevocably waives any claims which the Tenant might otherwise have had in relation to any of those representations, warranties, statements, agreements or undertakings.

13 NON MERGER

- 13.1 The obligations and warranties of the parties contained in this Agreement will not merge on execution of the Lease and will remain fully effective after the Lease has been executed.

14 NON WAIVER

- 14.1 A party's failure to insist in any one or more instances on strict performance of any of this Agreement's terms, or any party's waiver of any term or right under this Agreement or of any default by any other party, will not be taken as that party's waiver of that term, right or default in the future.

15 NOTICES

- 15.1 **Notices** - Each notice given under this Agreement shall be in writing and delivered personally or sent by post or email to the address of the relevant party set out in the First Schedule or to any other address from time to time designated for that purpose by at least five (5) Working Days' prior notice to the other party. Where a notice is given by email, the party giving the notice must confirm in the body of the email that the email constitutes a notice for the purpose of this clause 15.1.

- 15.2 **Receipt** - A notice under this Agreement is deemed to be received if:

- (a) delivered personally, when delivered;
- (b) posted, five (5) Working Days after posting; or
- (c) sent by email, when actually received in readable form by the recipient,

provided that any notice deemed received after 5 pm or on a non-Working Day shall be deemed to have been received on the next Working Day.

16 NON DISCLOSURE

- 16.1 **Confidentiality** - Subject to clause 16.2 below, each party must keep the terms of this Agreement and all information received from the other party confidential.

16.2 **Exceptions** - Despite clause 16.1, a party may make any disclosures in relation to this Agreement:

- (a) as, in its absolute discretion, it thinks necessary to:
 - (i) its professional advisers, bankers, financial advisers, auditors and financiers to whom it is reasonably necessary to disclose the information;
 - (ii) comply with any applicable law or requirement of any regulatory body; or
 - (iii) any of its employees to whom it is reasonably necessary to disclose the information;
- (b) to the party's contractors, consultants or agents to whom it is reasonably necessary to disclose the information;
- (c) if the information is generally and publicly available other than as a result of that party's breach of clause 16.1; and
- (d) with the written consent of the other party.

In addition a party may, with the prior consent of the other party (which consent may not be unreasonably withheld or delayed), issue a press release relating to the subject matter of this Agreement.

16.3 **Survive termination** - The obligations of the parties under this clause 15.1 will survive the expiration or termination of this Agreement.

17 RESOLUTION OF DISPUTES

17.1 **Resolution of Dispute** - If a party considers that there is a dispute in respect of any matters arising out of, or in connection with this Agreement, then that party shall immediately give notice to the other party setting out details of the dispute. The parties will in good faith endeavour to resolve the dispute between themselves within 5 Working Days of receipt of the notice, failing which the parties will in good faith endeavour to appoint a mediator within a further 10 Working Days, time being of the essence.

17.2 **No Legal Proceedings** - Neither party will commence legal proceedings against the other, except for injunctive relief, before following the procedure set out in clause 17.1.

18 SEVERANCE

18.1 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of that provision in any other jurisdiction.

19 COUNTERPARTS

19.1 This Agreement may be executed in a number of counterparts. All the counterparts taken together constitute this Agreement.

20 BANK GUARANTEE AND SECURITY DEPOSIT

20.1 **Bank guarantee** - No later than two (2) months prior to the anticipated Commencement Date, the Tenant must arrange for the issue to the Landlord of an irrevocable and unconditional bank guarantee (in the form specified in the Lease) by a trading bank or other financial institution approved by the Landlord to pay to the Landlord the Bank Guarantee Sum specified in the First Schedule. This clause is an essential term of this Agreement.

- 20.2 **Security deposit** – If the Tenant fails to provide the bank guarantee to the Landlord within the timeframe required by clause 20.1, the parties acknowledge that, without prejudice to its other remedies, the Landlord will be entitled under the terms of the Development Agreement to apply payments the Landlord is required to make under that agreement towards a security deposit in the same amount as the Bank Guarantee Sum. That security deposit shall be held by the Landlord's solicitors as security for the performance of the Tenant's obligations under the Lease, pending the provision of the Bank Guarantee by the Tenant, and the Landlord's solicitors will amend the form of Lease in the Third Schedule to include usual provisions relating to the holding of a security deposit.

21 EXCLUSION OF CERTAIN PROPERTY LAW ACT 2007 PROVISIONS

- 21.1 The covenants, conditions and powers contained in Sections 218, 219, 266(1)(b) and 266(4) of the Property Law Act 2007 shall not be implied in this Agreement or the Lease and are expressly negated.

22 GUARANTEE

- 22.1 **Guarantee** - In consideration of the Landlord entering into this Agreement, the Guarantor:

- (a) guarantees payment to the Landlord of the rent and the Tenant's performance of the Tenant's covenants in this Agreement and the Lease; and
- (b) indemnifies the Landlord from and against all claims, demands, damages, losses, costs and liabilities which the Landlord may suffer or incur as a result of the Tenant's breach of any of the Tenant's covenants in this Agreement or the Lease.

- 22.2 **Incorporation of Lease provisions** - The guarantee and indemnity contained in clause 22.1 will be deemed to incorporate any guarantee provisions of the Lease subject to any amendments which may be necessary in the circumstances.



THIRD SCHEDULE

The Lease

Refer attached.

122



DEED OF LEASE

Sixth Edition 2012 (5)

GENERAL address of the premises:

156-160 Central Park Drive, Henderson

DATE:

LANDLORD:

Everest Central Investment Limited

TENANT:

Magsons Hardware Limited

GUARANTOR:

Magsons Investments Limited


THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises and the car parks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT covenant as set out in the First, Second and Third Schedules.

THE GUARANTOR covenants with the Landlord as set out in the Fourth Schedule.



SIGNED by the Landlord
Everest Central Investment Limited
in the presence of:


Witness Signature

Natalie Bell
Witness Name

Administrator
Witness Occupation

23A Belmont Ice.
Witness Address


Signature of Landlord

Neil James Tiffin
Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity


Signature of Landlord

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity


SIGNED by the Tenant
Magsons Hardware Limited
in the presence of:


Witness Signature

Natalie Bell
Witness Name

Administrator
Witness Occupation

23A Belmont Ice.
Witness Address


Signature of Tenant

Vinod Kumar
Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Signature of Tenant

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*

Delete the options that do not apply

If no option is deleted, the signatory is signing in their personal capacity

Note: If signing by a company or as an Attorney - please refer to the notes on page 3

SIGNED by the Guarantor
Magsons Investments Limited
in the presence of:



Witness Signature

Natalie Bell

Witness Name

Administrator

Witness Occupation

23A Belmont Ave.

Witness Address



Signature of Guarantor
Vinod Kumar

Print Full Name

Director / Trustee / Authorised Signatory / Attorney*
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

Signature of Guarantor

Print Full Name
Director / Trustee / Authorised Signatory / Attorney*
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity



* If this agreement is signed under:

- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (ADLS form code: 4098WFP); or
- (ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (ADLS form code: 4997WFP).

Also insert the following wording for the Attorney's Signature above:

Signed by [full name of the donor] by his or her Attorney [attorney's signature].

Note: Signing by a company – Companies must sign this document in accordance with section 180 of the Companies Act 1993, to ensure it is binding as a deed. In general, this means:

- (a) if there are two or more directors of the company, two directors must sign and no witnessing is necessary;
- (b) if there is only one director of the company, that director signs and the signature must be witnessed.

Other methods of signing may be permitted by the company's constitution or if an attorney has been appointed.

FIRST SCHEDULE

1. **PREMISES:** All the land and buildings situated at 160 Central Park Drive, Henderson described as Lot 2 DP 464917 and comprised in identifier 618171

2. **CAR PARKS:** [625] car parks as included within the premises

3. **TERM:** Fifteen (15) years

4. **COMMENCEMENT DATE:** [TBC]

5. **RIGHTS OF RENEWAL:** Two (2) further terms of ten (10) years each

6. **RENEWAL DATES:** [TBC]

7. **FINAL EXPIRY DATE:** [TBC]

8. **ANNUAL RENT:**

Premises	\$ 4,484,000.00	plus GST
(Subject to review if applicable)	Car Parks	\$ Included plus GST
	TOTAL	\$ 4,484,000.00 plus GST

9. **MONTHLY RENT:** \$ 373,666.67 plus GST

10. **RENT PAYMENT DATES:** The 1st day of each month commencing on the day of 20

11. **RENT REVIEW DATES:**

(Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)

 1. Market rent review dates:
[TBC]
 - Fixed
 2. ~~CPI~~ rent review dates:
Every anniversary of the commencement date which is not a market rent review date

12. **DEFAULT INTEREST RATE:** 5 % per annum
(subclause 5.1) above the Landlord's principal bank's commercial lending rate at the time of default.

13. **BUSINESS USE:**
(subclause 16.1) Retail centre selling furniture, furnishings, home décor and other lines of products and services required to equip a home and commercial premises, and all associated uses including café, food and beverage.

14. LANDLORD'S INSURANCE:
(subclause 23.1)
(Delete or amend extent of cover as appropriate)

(Delete either (a) or (b): if neither option is deleted, then option (a) applies)

(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)

- (1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:

- (a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass);

OR

- ~~(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass):~~

- (2) Cover for the following additional risks:

- (a) ~~(i) 12 months~~

OR

- (ii) 36 months

indemnity in respect of consequential loss of rent and outgoings.

- (b) Loss damage or destruction of any of the Landlord's fixtures fittings and chattels.

- (c) Public liability

15. NO ACCESS PERIOD:
(subclause 27.6)

(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)

- (1) ¹²~~9~~ months

OR

- (2)

16. PROPORTION OF OUTGOINGS:
(subclause 3.1)

100 % which at commencement date is estimated to be \$ Plus GST per annum

17. LIMITED LIABILITY TRUSTEE: Not applicable
(subclause 45.2)

18. OUTGOINGS:
(clause 3)

- (1) Rates or levies payable to any local or territorial authority.
- (2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.
- (3) Rubbish collection and recycling charges.
- (4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
- (5) Any insurance excess (but not exceeding ~~\$2,000~~ ^{\$10,000}) in respect of a claim and insurance premiums and related valuation fees (subject to subclause 23.2).
- (6) Service contract charges for air conditioning, lifts, other building services and security services.
- (7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building ~~(minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.~~
- (8) The provisioning of toilets and other shared facilities.
- (9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
- (10) Yard and car parking area maintenance and repair charges but excluding charges for repaving or resealing.
- (11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.
- (12) Management expenses (subject to subclause 3.7).
- (13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

SECOND SCHEDULE

TENANT'S PAYMENTS

Rent

- 1.1 The Tenant shall pay the annual rent by equal monthly payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first monthly payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. All rent shall be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct.

Market Rent Review

- 2.1 The annual rent payable as from each market rent review date (except for a market rent review date that is a renewal date) shall be determined as follows:
- Either party may not earlier than 3 months prior to a market rent review date and not later than the next rent review date (regardless of whether the next rent review date is a market or CPI rent review date) give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant market rent review date.
 - If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with subclause 2.2.
 - If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
 - Notwithstanding any other provision of this clause, the annual rent payable as from the relevant market rent review date shall not be less than the annual rent payable ~~as at the commencement date of the then current lease term~~.
 - The annual rent agreed, determined or imposed pursuant to subclause 2.1 shall be the annual rent payable as from the relevant market rent review date, ~~or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant market rent review date but subject to subclause 2.3 and 2.4.~~
 - The market rent review at the option of either party may be recorded in a deed.

Rent Determinations

- 2.2 Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:
- By one party giving written notice to the other requiring the new rent to be determined by arbitration; or
 - If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
 - Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent.
 - If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.
 - The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.
 - The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert.
 - Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.
 - The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party.
 - If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 2.2.

When the new rent has been determined the person or persons determining it shall give written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.

Interim Market Rent

- 2.3 Pending determination of the new rent, the Tenant shall from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:
- if both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
 - if only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
 - if no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date,
- but in no circumstances shall the interim rent be less than the rent payable ~~as at the commencement date of the then current lease term~~.
- The interim rent shall be payable with effect from the relevant market rent review date, ~~or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date~~ and, subject to subclause 2.4, shall not be subject to adjustment.

- 2.4 Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Tenant. Any shortfall in payment shall immediately be payable by the Tenant.

* immediately preceding the relevant review date.

GPI Rent Review

2.5 The annual rent payable from each GPI rent review date shall be determined as follows:

(a) The Landlord shall adjust the annual rent on the basis of increases (and not decreases) in the GPI by giving notice to the Tenant of the increase (if any) using the formula:

$$A = B \times (G + D)$$

Where:

A = the GPI reviewed rent from the relevant GPI rent review date

B = the annual rent payable immediately before the relevant GPI rent review date

G = GPI for the quarter year ending immediately before the relevant GPI rent review date

D = GPI for the quarter year ending immediately before the last rent review date or if there is no previous rent review date, the commencement date of the then current term of the lease (and in the case where A is the GPI reviewed rent for a renewal date then the last rent review date of the immediate preceding lease term or if there is no rent review date the commencement date of the preceding term)

where (G+D) shall not be less than 1.

(b) If the GPI is discontinued and not replaced, or if there is a material change to the basis of calculation of the GPI, or a resetting of the GPI, an appropriate index which reflects the change in the cost of living in New Zealand as agreed by the parties and failing agreement to be determined by an expert appointed by the president or vice president of the New Zealand Law Society will be used.

(c) If the relevant GPI is not published at the relevant GPI rent review date, as soon as the GPI is published an appropriate adjustment will be made to the rent (if necessary) with effect from the relevant GPI rent review date.

(d) Notwithstanding any other provision of subclause 2.5, the annual rent payable as from the relevant GPI rent review date shall not be less than the annual rent payable immediately preceding the GPI rent review date (and in the case where the relevant GPI rent review date is a renewal date, the annual rent payable at the expiry of the preceding term).

2.6 The new rent determined pursuant to subclause 2.5 shall be payable from the relevant GPI rent review date once it is determined by the Landlord giving notice under that subclause. Pending determination of the new rent, the Tenant will pay the rent that applies prior to the GPI rent review date. On determination of the new rent, the Tenant will immediately pay any shortfall to the Landlord.

Outgoings

3.1 The Tenant shall pay the outgoings properly and reasonably incurred in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion of it as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration.

3.2 The Landlord shall vary the proportion of any outgoing payable to ensure that the Tenant pays a fair proportion of the outgoing.

3.3 If any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then that outgoing shall not be payable by the Tenant.

3.4 The outgoings shall be apportioned between the Landlord and the Tenant in respect of periods current at the commencement and termination of the term.

3.5 The outgoings shall be payable on demand or if required by the Landlord by monthly instalments on each rent payment date of a reasonable amount as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand.

3.6 After the 31st March in each year of the term or other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand.

3.7 Any profit derived by the Landlord and if a company by its shareholders either directly or indirectly from the management of the property shall not comprise part of the management expenses payable as an outgoing. See Annexure Schedule

Goods and Services Tax

4.1 The Tenant shall pay to the Landlord or as the Landlord shall direct the GST payable by the Landlord in respect of the rental and other payments payable by the Tenant under this lease. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.

4.2 If the Tenant shall make default in payment of the rental or other moneys payable under this lease and the Landlord becomes liable to pay Default GST then the Tenant shall on demand pay to the Landlord the Default GST in addition to interest payable on the unpaid GST under subclause 5.1.

Interest on Unpaid Money

5.1 If the Tenant defaults in payment of the rent or other moneys payable under this lease for 10 working days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment to the date of payment.

5.2 Unless a contrary intention appears on the front page or elsewhere in this lease the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum.

Costs

6.1 Each party will pay their own costs of the negotiation and preparation of this lease and any deed recording a rent review or renewal. The Tenant shall pay the Landlord's reasonable costs incurred in considering any request by the Tenant for the Landlord's consent to any matter contemplated by this lease, and the Landlord's legal costs (as between lawyer and client) of and incidental to the enforcement of the Landlord's rights remedies and powers under this lease.

LANDLORD'S PAYMENTS**Outgoings**

7.1 Subject to the Tenant's compliance with the provisions of clause 3 the Landlord shall pay all outgoings in respect of the property not payable by the Tenant direct. The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax prior to receiving payment from the Tenant.

MAINTENANCE AND CARE OF PREMISES**Tenant's Obligations**

8.1 The Tenant shall be responsible to:

(a) **Maintain the premises**

In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior of the premises in the same clean order repair and condition as they were in at the commencement date of this lease (or where the lease is renewed, the commencement date of the initial term of this lease) and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. The premises condition report (if completed) shall be evidence of the condition of the premises at the commencement date of this lease. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use.

(b) **Breakages and minor replacements**

Repair or replace glass breakages with glass of the same or better weight and quality, repair breakage or damage to all doors windows light fittings and power points of the premises and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification.

(c) **Painting**

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated as at the commencement date of this lease (or where the lease is renewed the commencement date of the initial term of this lease) when they reasonably require repainting and redecoration to a specification as approved by the Landlord such approval not to be unreasonably withheld.

(d) **Floor coverings**

Keep all floor coverings in the premises clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of the same or better quality, specification and appearance when reasonably required by the Landlord.

(e) **Damage or Loss**

Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements.

8.2 Where the Tenant is leasing all of the property, the Tenant shall:

(a) **Care of grounds**

Keep any grounds yards and surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition.

(b) **Water and drainage**

Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.

(c) **Other works**

Carry out those works maintenance and repairs to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.

8.3 Notwithstanding subclause 8.1(a) the Tenant shall not be liable for the maintenance or repair of any building services but this subclause shall not release the Tenant from any obligation to pay for the cost of any service maintenance contract or charges in respect of the maintenance or repair of the building services if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.

~~8.4 Notwithstanding any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises nor to pay any outgoings incurred by the Landlord in remedying any inherent defect.~~

8.5 If the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of subclauses 8.1 or 8.2 the Tenant shall with all reasonable speed so comply.

Toilets

9.1 The toilets sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

Rubbish Removal

10.1 The Tenant shall regularly cause all of the Tenant's rubbish and recycling to be removed from the premises and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at the Tenant's own expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority.

Landlord's Maintenance Subject to clause 11.4

11.1 The Landlord shall keep and maintain the building, all building services and the car parks in good order and repair and weatherproof but the Landlord shall not be liable for any:

(a) Repair or maintenance which the Tenant is responsible to undertake.

(b) Want of repair or defect in respect of building services, so long as the Landlord is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Landlord.

(c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises and the car parks.

(d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing of that from the Tenant and has not within a reasonable time after that taken appropriate steps to remedy the same.

11.2 The Landlord shall keep and maintain service maintenance contracts for lifts, air-conditioning and at the Landlord's option any other building services supplied by the Landlord. Whenever building services cannot be maintained in good order and repair through regular maintenance, the Landlord will if reasonably required replace the services with services of a similar type and quality.

or any relevant parts or parts

11.3 The Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract pursuant to subclauses 11.1 and 11.2 if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.

11.4 See Annexure Schedule.

Notification of Defects

12.1 The Tenant shall give to the Landlord prompt written notice of any accident to or defect in the premises of which the Tenant may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services.

Landlord's Right of Inspection

- 13.1 The Landlord and the Landlord's employees contractors and invitees may at all reasonable times and after having given prior written notice to the Tenant (except in the case of emergencies) enter upon the premises to view their condition.

Landlord may Repair

- 14.1 If default shall be made by the Tenant in the due and punctual compliance with any repair notice given by the Landlord pursuant to this lease, or if any repairs for which the Tenant is responsible require to be undertaken as a matter of urgency then without prejudice to the Landlord's other rights and remedies expressed or implied the Landlord may by the Landlord's employees and contractors with all necessary equipment and material at all reasonable times and on reasonable notice (except in the case of emergencies) enter the premises to execute the works. Any moneys expended by the Landlord in executing the works shall be payable by the Tenant to the Landlord upon demand together with interest on the moneys expended at the default interest rate from the date of expenditure to the date of payment.

Access for Works

- 15.1 The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times and on reasonable written notice (except in the case of emergencies) to enter the premises for a reasonable period to inspect and carry out works to the premises or adjacent premises and to install inspect repair renew or replace any services where they are not the responsibility of the Tenant or are required to comply with the requirements of any statutes, regulations, by-law or requirement of any competent authority. All repairs inspections and works shall be carried out with the least possible inconvenience to the Tenant subject to subclauses 15.3 and 15.4.
- 15.2 If the Tenant's business use of the premises is materially disrupted because of the Landlord's works provided for in subclause 15.1, then during the period the works are being carried out a fair proportion of the rent and outgoings shall cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligation, under subclause 15.1, to cause the least possible inconvenience to the Tenant.
- 15.3 If in the Landlord's reasonable opinion, the Landlord requires the Tenant to vacate the whole or part of the premises to enable the works referred to in subclause 15.1 to be carried out, the Landlord may give the Tenant reasonable written notice requiring the Tenant to vacate the whole or part of the premises and specifying a reasonable period for which the Landlord requires possession. On the expiry of the notice the Landlord may take possession of the premises or the part specified in the notice. A fair proportion of the rent and outgoings shall cease to be payable during the period the Tenant vacates the premises as required by the Landlord.
- 15.4 The Landlord shall act in good faith and have regard to the nature, extent and urgency of the works when exercising the Landlord's right of access or possession in accordance with subclauses 15.1 and 15.3.

USE OF PREMISES**Business Use**

- 16.1 The Tenant shall not ~~without the prior written consent of the Landlord~~ use or permit the whole or any part of the premises to be used for any use other than the business use. ~~The Landlord's consent shall not be unreasonably or arbitrarily withheld or delayed in respect of any proposed use which is:~~
- ~~(a) not in substantial competition with the business of any other occupant of the property which might be affected by the use; and~~
- ~~(b) reasonably suitable for the premises; and~~
- ~~(c) compliant with the requirements of the Resource Management Act 1991 or any other statutory provisions relating to resource management.~~
- ~~If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the premises the Landlord as a condition of granting consent may require the Tenant to pay the increased or extra premium.~~
- 16.2 If any change in use requires compliance with sections 114 and 115 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with sections 114 and 115 of the Act and to pay all compliance costs.
- 16.3 If the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.

Lease of Premises and Car Parks Only

- 17.1 The tenancy shall relate only to the premises and the car parks (if any) and the Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation to it other than the rights of use under this lease.

Neglect of Other Tenant

- 18.1 The Landlord shall not be responsible to the Tenant for any act or default or neglect of any other tenant of the property.

Signage

- 19.1 The Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building without the prior approval in writing of the Landlord but approval shall not be unreasonably or arbitrarily withheld or delayed in respect of signage describing the Tenant's business. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned in connection with the signage.

Additions, Alterations, Reinstatement and Chattels Removal

- 20.1 The Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises or alter the external appearance of the building without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld or delayed) for that purpose. If the Landlord authorises any alterations or additions which are made before the commencement date or during the term of this lease the Tenant will at the Tenant's own expense if required by the Landlord no later than the end or earlier termination of the term reinstate the premises. Ownership of the alterations or additions that are not removed by the end or earlier termination of the lease may at the Landlord's election pass to the Landlord without compensation payable to the Tenant. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstating the premises whether in whole or in part, within 6 months of the end or earlier termination of the term shall be recoverable from the Tenant.
- 20.2 The Tenant, when undertaking any "building work" to the premises (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act and shall provide copies of the building consents and code compliance certificates to the Landlord.

- 20.3 The Tenant may at any time before and will if required by the Landlord no later than the end or earlier termination of the term remove all the Tenant's chattels. In addition to the Tenant's obligations to reinstate the premises pursuant to subclause 20.1 the Tenant will make good at the Tenant's own expense all resulting damage and if the chattels are not removed by the end or earlier termination of the term ownership of the chattels may at the Landlord's election pass to the Landlord or the Landlord may remove them from the premises and forward them to a refuse collection centre. Where subclause 27.5 applies, the time by which the Tenant must remove the chattels and to make good all resulting damage will be extended to 5 working days after access to the premises is available.
- 20.4 The cost of making good resulting damage and the cost of removal of the Tenant's chattels shall be recoverable from the Tenant and the Landlord shall not be liable to pay any compensation nor be liable for any loss suffered by the Tenant.

Compliance with Statutes and Regulations

- 21.1 The Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant provided that:
- (a) * The Tenant shall not be required to make any structural repairs alterations or additions nor to replace or install any plant or equipment except where required by reason of the particular nature of the business carried on by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises.
 - (b) * The Tenant shall not be liable to discharge the Landlord's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Tenant as an occupier of the premises.
 - (c) The Tenant will promptly provide the Landlord with a copy of all requisitions and notices received from a competent authority under this subclause.
- 21.2 If the Landlord is obliged by any legislation or requirement of any competent authority to expend moneys during the term of this lease or any renewed term on any improvement addition or alteration to the property which is not the Tenant's responsibility under subclause 21.1 and the expenditure would be an unreasonable amount then the Landlord may determine this lease. Any dispute as to whether or not the amount to be expended by the Landlord is unreasonable shall be determined by arbitration.
- 21.3 The Landlord warrants that allowing the premises to be open to members of the public and allowing the use of the premises by members of the public at the commencement date will not be a breach of section 363 of the Building Act 2004. This clause does not apply to any "building work" (as defined in the Building Act 2004) relating to the fit-out of the premises by the Tenant.
- 21.4 The Tenant, when undertaking any building work to the premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the premises to be open to members of the public or allow use of the premises by members of the public if that would be in breach of section 363 of the Building Act 2004.
- 21.5 During the term and any renewal, the Landlord shall not give consent to or carry out any building work in any part of the Landlord's property which may cause the Tenant to be in breach of section 363 of the Building Act 2004 by allowing the premises to be open to members of the public and allowing the use of the premises by members of the public.
- 21.6 See Annexure Schedule
- No Noxious Use**
- 22.1 The Tenant shall not:
- (a) Bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of a weight size or shape as is likely to cause damage to the building or any surfaced area.
 - (b) Contaminate the property and shall undertake all works necessary to remove any contamination of the property other than contamination not caused by the Tenant or which took place prior to the commencement date of the lease term. Contamination means any change to the physical chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991.
 - (c) Use the premises or allow them to be used for any noxious illegal or offensive trade or business.
 - (d) Allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

INSURANCE

Landlord shall insure

- 23.1 The Landlord shall at all times during the term keep and maintain insurance of the type shown and for the risks specified in the First Schedule. If insurance cover required under this subclause becomes unavailable during the term of this lease or any renewal other than because of the Landlord's act or omission, the Landlord will not be in breach while cover is unavailable, provided the Landlord uses all reasonable endeavours on an ongoing basis to obtain cover. The Landlord will advise the Tenant in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Landlord will also provide the Tenant with reasonable information relating to the cover when requested by the Tenant.
- 23.2 The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Landlord, the excess will represent an amount for which the Landlord has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Landlord makes any claim against its insurance for any destruction or damage because of any act or omission of the Tenant, the Tenant will pay the Landlord the amount of the excess not exceeding the sum specified in the list of outgoings in the First Schedule

Tenant not to void insurance

- 24.1 The Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which:
- (a) Shall make void or voidable any policy of insurance on the property.
 - (b) May render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause.
- 24.2 In any case where in breach of subclause 24.1 the Tenant has rendered any insurance void or voidable and the Landlord has suffered loss or damage by that the Tenant shall at once compensate the Landlord in full for such loss or damage.

* Subject to clause 21.6

When Tenant to have benefit of Landlord's insurance

- 25.1 Where the property is destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured the Landlord will not require the Tenant to meet the cost of making good the destruction or damage to the property and will indemnify the Tenant against such cost where the Tenant is obligated to pay for making good such damage or destruction. The Landlord does not have to indemnify the Tenant and the Tenant will not be excused from liability under this subclause if and to the extent that:
- (a) The destruction or damage was intentionally caused by the Tenant or those for whom the Tenant is responsible; or
 - (b) The destruction or damage was the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:
 - (1) occurred on or about the property; and
 - (2) constitutes an imprisonable offence; or
 - (c) Any insurance moneys that would otherwise have been payable to the Landlord for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Tenant or those for whom the Tenant is responsible.

DAMAGE TO OR DESTRUCTION OF PREMISES**Total Destruction**

* or such longer period as may be reasonable in the circumstances

- 26.1 If the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged:
- (a) as to render the premises untenable then the term shall at once terminate from the date of destruction or damage; or
 - (b) in the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within 3 months of the date of damage^a give the Tenant 20 working days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.

Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.

26.2 See Annexure Schedule
Partial Destruction

- 27.1 If the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenable and:
- (a) the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and
 - (b) all the necessary permits and consents are obtainable,
- the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the premises or the building but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.
- 27.2 Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises.
- 27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.
- 27.4 If any necessary permit or consent shall not be obtainable or the insurance moneys received by the Landlord shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other.

No Access in Emergency

- 27.5 If there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant's business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:
- (a) a prohibited or restricted access cordon applying to the premises; or
 - (b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or
 - (c) restriction on occupation of the premises by any competent authority,
- then a fair proportion of the rent and outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant's business from the premises until the inability ceases.
- 27.6 This subclause 27.6 applies where subclause 27.5 applies and the premises or building of which the premises form part are not totally or partially destroyed or damaged resulting in the lease being cancelled as provided for in subclauses 26.1 or 27.4. Either party may terminate this lease by giving 10 working days written notice to the other if:
- (a) the Tenant is unable to gain access to the premises for the period specified in the First Schedule; or
 - (b) the party that terminates this lease can at any time prior to termination establish with reasonable certainty that the Tenant is unable to gain access to the premises for that period.

Any termination shall be without prejudice to the rights of either party against the other.

DEFAULT**Cancellation**

- 28.1 The Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this lease by re-entering the premises at the time or at any time after that:
- (a) If the rent shall be in arrears 10 working days after any rent payment date and the Tenant has failed to remedy that breach within 10 working days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007.
 - (b) In case of breach by the Tenant of any covenant or agreement on the Tenant's part expressed or implied in this lease (other than the covenant to pay rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
 - (c) If the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors.
 - (d) In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Tenant.

- (e) If the Tenant shall suffer execution to issue against the Tenant's property goods or effects under any judgment against the Tenant in any Court for a sum in excess of five thousand dollars (\$5,000).

The term shall terminate on the cancellation but without prejudice to the rights of either party against the other.

Essentiality of Payments

- 29.1 Failure to pay rent or other moneys payable under this lease on the due date shall be a breach going to the essence of the Tenant's obligations under the lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. This entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.
- 29.2 The acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay rent and other moneys.

Repudiation

- 30.1 The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

QUIET ENJOYMENT

- 31.1 The Tenant paying the rent and performing and observing all the covenants and agreements expressed and implied in this lease shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord.

RENEWAL OF LEASE

- 32.1 If the Tenant has given to the Landlord written notice to renew the lease at least 12 calendar months before the end of the term and is not at the date of the giving of the notice in breach of this lease then the Landlord will grant a new lease for a further term from the renewal date as follows:
- (a) If the renewal date is a market rent review date the annual rent shall be the current market rent which if not agreed on shall be determined in accordance with subclause 2.2 but the annual rent shall not be less than the rent payable ~~as at the commencement date of the immediately preceding lease term~~ immediately preceding the renewal date.
 - (b) If the renewal date is a CPI rent review date, the annual rent shall be determined in accordance with subclause 2.5.
 - (c) Subject to the provisions of paragraphs (a) and (b) the new lease shall be upon and subject to the covenants and agreements expressed and implied in this lease except that the term of this lease plus all further terms shall expire on or before the final expiry date.
 - (d) The annual rent shall be subject to review during the term of the new lease on the rent review dates specified in the First Schedule.
 - (e) The Landlord as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Tenant who has given notice or the security of a bank guarantee that has been given.
 - (f) If the renewal date is a market rent review date, pending the determination of the rent, the Tenant shall pay an interim rent in accordance with subclauses 2.3 and 2.4.
 - (g) Notwithstanding anything contained in subclause 32.1(f) the interim rent referred to in that subclause shall not be less than the annual rent payable ~~as at the commencement date of the immediately preceding lease term~~ immediately preceding the renewal date.
 - (h) The parties will not be released by the renewal of the lease from any liability for any breach under this lease.

ASSIGNMENT OR SUBLETTING

- 33.1 The Tenant shall not assign sublet or otherwise part with the possession of the premises, the carparks (if any) or any part of them without first obtaining the written consent of the Landlord which the Landlord shall not unreasonably withhold or delay if the following conditions are fulfilled:
- (a) The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable responsible and has the financial resources to meet the Tenant's commitments under this lease and in the case of the subtenant the subtenant's commitments under the sublease. The Tenant shall give the Landlord any additional information reasonably required by the Landlord.
 - (b) All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants.
 - (c) In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord.
 - (d) In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange in New Zealand or Australia) either a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and delivered to the Landlord or a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Landlord as security for the performance by the company of its obligations under this lease is provided to the Landlord.
 - (e) The Tenant pays the Landlord's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor. All such costs shall be
 - (f) * payable whether or not the assignment or subletting proceeds.
- 33.2 Where the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.
- 33.3 Where any Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Landlord which will not be unreasonably withheld or delayed.
- * 33.1 (f) In the case of a sublease, no more than 10% of the relevant part of the premises is being sublet (in aggregate with all other subleases) and the Landlord is satisfied that the premises are not being subleased at below market rental.

UNIT TITLE PROVISIONS

34.1 Clause 34 applies where the property is part of a unit title development.

Body Corporate

34.2 The expression "Body Corporate" means the Body Corporate under the Unit Titles Act 2010 (in subclauses 34.2 to 34.7 "the Act") in respect of the property.

Act and Rules Paramount

34.3 This lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.

Insurance

34.4 Unless the Body Corporate has resolved that the Landlord is to insure the building the Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance cover in accordance with the Act.

Landlord's Obligations

34.5 The Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.

Tenant's Obligations

34.6 The Tenant shall comply with the rules of the Body Corporate and the provisions of the Act to the extent that they apply to the Tenant's use of the property.

Consents

34.7 Where in this lease the consent of the Landlord is required in respect of any matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to the matter would be necessary under its rules or the Act.

CARPARKS

35.1 The Tenant shall have the right to exclusive possession of the leased car parks, but when any car park is not being used by the Tenant other persons shall be entitled to pass over the same.

35.2 The Landlord may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Tenant except pursuant to subclauses 26.1 or 27.3.

35.3 The Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and access to them and in particular shall only use the car parks for the parking of one motor vehicle per parking space.

35.4 The provisions of the Second Schedule shall apply to the car parks as appropriate.

GENERAL**Holding Over**

36.1 If the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, the occupation shall be a periodic tenancy only terminable by at least 20 working days notice given at any time with the tenancy terminating on the expiry of the notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as expressed or implied under this lease.

Access for Re-Letting or Sale

37.1 The Tenant will during the term permit the Landlord, the Landlord's representatives and prospective tenants or purchasers to have access to inspect the premises provided that:

- (a) Any such inspection is at a time which is reasonably convenient to the Tenant and after reasonable written notice.
- (b) The inspection is conducted in a manner which does not cause disruption to the Tenant.
- (c) If the Landlord or the Landlord's representatives are not present the persons inspecting have written authority from the Landlord to do so.

Suitability

38.1 No warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

Affirmation

39.1 A party to this lease shall not be entitled to cancel this lease if, with full knowledge of any repudiation or misrepresentation or breach of covenant, that party affirmed this lease.

Waiver

40.1 No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.

Land Transfer Title or Mortgagee's consent

41.1 The Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the property and the Tenant will not register a caveat in respect of the Tenant's interest under this lease.

Notices

42.1 All notices must be in writing and must be served by one of the following means:

- (a) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (b) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
 - (1) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (2) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.

- 42.2 In respect of the means of service specified in subclause 42.1(b)(2), a notice is deemed to have been served:
- (a) In the case of personal delivery, when received by the addressee.
 - (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
 - (c) In the case of facsimile transmission, when sent to the addressee's facsimile number.
 - (d) In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- 42.3 In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- 42.4 A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- 42.5 Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 47.1(p).
- 42.6 Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

Arbitration

- 43.1 The parties shall first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.
- 43.2 Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.
- 43.3 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 43.4 The procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable under this lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in subclause 28.1.

No Implied Terms

- 44.1 The covenants, conditions and powers implied in leases pursuant to the Property Law Act 2007 and sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this lease where allowed.

Limitation of Liability

- 45.1 If any person enters into this lease as trustee of a trust, then:
- (a) That person warrants that:
 - (1) that person has power to enter into this lease under the terms of the trust; and
 - (2) that person has properly signed this lease in accordance with the terms of the trust; and
 - (3) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this lease; and
 - (4) all of the persons who are trustees of the trust have approved entry into this lease.
 - (b) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.
- 45.2 Notwithstanding subclause 45.1, a party to this lease that is named in item 17 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 45.1(b).

Counterparts

- 46.1 This lease may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same lease. A party may enter into this lease by signing a counterpart copy and sending it to the other party, including by facsimile or email.

DEFINITIONS AND INTERPRETATION

- 47.1 In this lease:
- (a) "building services" means all services provided by the Landlord as an integral part of the building for the general use and enjoyment of the building by its tenants or occupants including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications, lifts and escalators whether or not they are located within the premises.
 - (b) "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index.
 - (c) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Landlord (or where the Landlord is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this lease but does not include any sum levied against the Landlord (or where the Landlord is or was a member of a GST group its representative member) by reason of a default or delay by the Landlord after payment of the GST to the Landlord by the Tenant.
 - (d) "emergency" for the purposes of subclause 27.5 means a situation that:
 - (1) is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic, failure of or disruption to an emergency service; and
 - (2) causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and
 - (3) the event is not caused by any act or omission of the Landlord or Tenant.

- (e) "GST" means the Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (f) "premises" includes all the Landlord's fixtures and fittings provided by the Landlord and those set out in the Fifth Schedule.
- (g) "premises condition report" means the report as set out in the Sixth Schedule.
- (h) "renewal" means the granting of a new lease as provided for in subclause 32.1.
- (i) "rules" in clause 34 means the Body Corporate operational rules under the Unit Titles Act 2010 and any amendments to those rules or replacement rules.
- (j) "structural repair" means a repair, alteration or addition to the structure or fabric of the building but excluding building services.
- (k) "term" includes, where the context requires, a further term if the lease is renewed.
- (l) "the common areas" means those parts of the property the use of which is necessary for the enjoyment of the premises and which is shared with other tenants and occupiers.
- (m) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant.
- (n) "the property" and "the building" mean the land, building(s) or improvements of the Landlord which comprise or contain the premises. Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development.
- (o) "those for whom the Tenant is responsible" includes the Tenant's agents employees contractors or invitees.
- (p) "working day" has the meaning given to it in the Property Law Act 2007. Notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.
- (q) A reference in this lease to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (r) A reference to the words "include" or "including" are to be interpreted without limitation.
- (s) If any inserted term (including any Further Term in the Third Schedule) conflicts with the covenants in the First, Second and Fourth Schedules, the inserted term will prevail.
- (t) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.
- (u) Where the context requires or admits, words importing the singular shall import the plural and vice versa.
- (v) Where the Landlord's consent or approval to any matter is required under this lease then, unless expressly stated to the contrary in this lease, in each case the Landlord:
 - (1) must not unreasonably withhold consent or approval, and
 - (2) must, within a reasonable time of the Landlord's consent or approval being requested:
 - (i) grant that consent or approval; or
 - (ii) notify the Tenant in writing that the consent or approval is withheld,

ANNEXURE SCHEDULE – SECOND SCHEDULE (CONTINUED)

REPLACEMENT/ADDITIONAL CLAUSES:

Outgoings (continued)

- 3.7 The management fees recoverable from the Tenant will be limited to \$52,000 plus GST per annum (such limit to be increased annually in line with CPI increases).

Landlord's Maintenance (continued)

- 11.4 The parties acknowledge that as the buildings which form part of the premises have been designed and constructed by a related party of the Tenant (Vijay Holdings Limited), the Landlord will not have any responsibility to the Tenant to remedy any defect in the design or construction of the premises.

Compliance with Statutes and Regulations (continued)

- 21.6 If as a result of the Tenant applying for consent to its alterations pursuant to clause 20.1 any competent authority requires works to be carried out to the building the Tenant must comply at its cost with the requirements and provisions of any relevant consent if it elects to proceed with carrying out its alterations and the provisions of clause 20 shall apply to such works.

Total Destruction (continued)

- 26.2 For the purposes of clause 26.1 the premises shall only be deemed to be untenable if:
- (a) the damage or destruction causes a substantial interference with the Tenant's ability to conduct its business from the premises; and
 - (b) it is determined that the damage or destruction will not be capable of being repaired to an extent which enables normal operations to resume from the premises (subject to minor finishing/remedial work) within eighteen (18) months of the date of damage or destruction.

Any dispute as to whether damage or destruction has rendered the premises untenable shall be determined by arbitration in accordance with clauses 43.1 to 43.3.



THIRD SCHEDULE

FURTHER TERMS (if any)



A handwritten signature in blue ink, consisting of stylized initials, is located in the bottom right corner of the page.

THIRD SCHEDULE – FURTHER TERMS

48 Fixed Rent Reviews

48.1 On each Fixed Rent Review Date the annual rent payable shall increase as follows:

$$R = 1.02 \times A$$

Where:

R = New annual rent payable from the relevant Fixed Rent Review Date

A = Annual rent for the previous 12 months

48.2 The Landlord will not, because of its failure to notify the Tenant before the Fixed Rent Review Date, forfeit its right to have the rent reviewed at the particular Fixed Rent Review Date. The reviewed rent which should have been paid will date back to and shall be payable as from the particular Fixed Rent Review Date. Any necessary adjustment shall be made within 14 days after the rent is determined.

49 Bank guarantee

49.1 Subject to clause 51.1, the Tenant must provide and maintain throughout the initial term of the lease a Bank Guarantee in favour of the Landlord for the Guaranteed Amount as set out below.

49.2 In this clause 49 the following terms have the following meaning:

(a) **"Bank Guarantee"** means a bank guarantee in favour of the Landlord from a registered bank in New Zealand reasonably acceptable to the Landlord or some other bank first approved in writing by the Landlord on terms and in a form acceptable to the Landlord (acting reasonably) for the Guaranteed Amount;

(b) **"Guaranteed Amount"** means \$2,000,000.

49.3 If the Tenant fails to punctually observe and perform any of the Tenant's obligations under this lease, then the Landlord may at its discretion at any time call upon and exercise its rights under the Bank Guarantee and apply so much of the Guaranteed Amount as is received by the Landlord to compensate the Landlord for loss or damage suffered or sustained because of the breach by the Tenant. If the Landlord calls upon the Bank Guarantee then the Tenant must forthwith put in place a replacement Bank Guarantee for the balance of the initial term of the Lease then extant for the full Guaranteed Amount.

49.4 If the Landlord assigns or transfers its interest in the lease or the premises, then the Bank Guarantee will be assigned and transferred to the person to whom the Landlord assigns or transfers its interest under the lease. If the Bank Guarantee is incapable of being assigned, the Tenant must (at its cost) procure a new Bank Guarantee in favour of the assignee or transferee.

49.5 Subject to clause 51.1, on the date three (3) months after the earlier of:

(a) The expiry date of the initial term of this lease or expiration of any holding over period (whichever is the later); or

(b) The date of earlier termination of the lease;

if the Tenant is not indebted or otherwise liable to the Landlord for non-observance or non-performance of any of the Tenant's obligations under the lease, the Landlord will release the Bank Guarantee.



- 49.6 If at any time the Tenant assigns its interest in the premises, the Landlord shall, subject to all conditions set out in clause 33.1 being satisfied including (without limitation) any replacement Bank Guarantee required by the Landlord pursuant to clause 33.1(d) having first been lodged with the Landlord, the Landlord shall release the relevant bank from its obligations under the existing Bank Guarantee.

50 Release of Bank Guarantee

- 50.1 Notwithstanding the foregoing, the Landlord will release the relevant bank under its obligations under the Bank Guarantee once the Tenant proves to the satisfaction of the Landlord that the annual earnings before interest and tax of the Tenant (after the deduction of expenses including rent) has exceeded the annual rent and outgoings payable under this lease for two (2) consecutive financial years, and provided that:

- (a) the Tenant can demonstrate to the Landlord (acting reasonably) by the provision of trading forecasts for the next two (2) financial years that the level of earnings is expected to continue at that level; and
- (b) in any event there will be no release prior to the third anniversary of the commencement date.

51 Financial reporting

- 51.1 Prior to the commencement of each financial year (on 1 April) the Tenant must supply the Landlord with a copy of its annual budget for the forthcoming year. Within one month after the end of each financial quarter, the Tenant will supply the Landlord with details of its financial performance for the preceding quarter against the budget, and, if required by the Landlord the parties will meet to discuss the same. This obligation will cease following the release of the Bank Guarantee to the Tenant in accordance with clause 51.

52 Tenant's Public Risk Insurance

- 52.1 In this clause 53 the term "**Public Risk Amount**" means \$10,000,000 or such higher amount as the Landlord may reasonably require from time to time.
- 52.2 The Tenant shall keep current at all times a policy of public liability insurance, in the joint names of the Landlord and the Tenant, applicable to the Premises and the business carried on in the Premises for an amount of not less than the Public Risk Amount (being the amount which may be paid arising out of any one event).
- 52.3 Such policy shall be effected with an insurance company and on terms acceptable to the Landlord (acting reasonably) and the Tenant will if requested provide the Landlord from time to time with copies of policies and certificates of currency.

53 Trade Restraint

- 53.1 The Tenant agrees and undertakes that, except with the prior written consent of Landlord, it will not, and will procure that each other related company (as that term is defined in section 2(3) the Companies Act 1993) of the Guarantor or the Tenant and their directors will not directly or indirectly anywhere in the Auckland Region:

- (a) carry on or be engaged in or be concerned with any business or activity that is the same or similar to the Nido retail store business carried on by the Tenant at the premises; or
- (b) provide assistance to any person to carry on or be engaged in or concerned with any business or activities that is the same or similar to the Nido retail store business carried on by the Tenant,

provided that if the Tenant's turnover from the premises exceeds \$100 million per annum at any time, then from that time the Tenant, or a related company of the Tenant or the Guarantor, will be entitled to open a second Nido retail store business in the Auckland

Region, provided the location of that store is approved by the Landlord (acting reasonably).

- 53.2 The parties consider the undertakings in clause 54.1 are reasonable in all the circumstances. However, if a Court of competent jurisdiction finds any of them to be unenforceable, the parties agree to accept any modification of area, extent or duration of the restraint concerned which the Court sees fit to impose, or if it does not see fit, which may be required to make the restraint enforceable.

54 Right of first refusal

- 54.1 If at any time during the term or any renewal term of this lease the Landlord desires to sell the property, the Landlord shall first deliver written notice ("**Landlord's Notice**") specifying the terms and conditions upon which the Landlord is prepared to sell.
- 54.2 The Tenant shall have 20 working days from receipt of the Landlord's Notice (time being of the essence) to advise the Landlord by written notice ("**Tenant's Notice**") whether the Tenant, or an entity nominated by the Tenant who will be identified, wishes to acquire the property on the terms and conditions specified in the Landlord's Notice. If the Tenant's Notice contains advice that the Tenant wishes to acquire the property on such terms and conditions, then from receipt by the Landlord of the Tenant's Notice a binding agreement shall exist for the sale and purchase of the property.
- 54.3 The terms and conditions of such agreement for sale and purchase shall be those specified in the Landlord's Notice and otherwise those of the then most recent edition of the Real Estate Institute of New Zealand/Auckland District Law Society "Agreement for Sale and Purchase of Real Estate". Where the Tenant has nominated another entity as purchaser, the Tenant shall at all times be liable for all obligations on the part of the purchaser under the agreement.
- 54.4 If the Tenant either does not respond to the Landlord's Notice within the period as provided in clause 55.2 above, or the Tenant's Notice contains advice the Tenant does not wish to purchase the property on the terms and conditions stipulated in the Landlord's Notice, then at any time within six (6) calendar months from the date of the Landlord's Notice the Landlord may sell the premises to any other person on terms and conditions no more favourable to the purchaser than those provided in an agreement under clause 55.2 above. If within such period the Landlord wishes to offer more favourable terms and conditions of sale the Landlord shall re-offer the premises to the Tenant under clause 55.1 above.

55 Mitre 10 Encumbrance

- 55.1 The parties acknowledge that the title to the property is subject to encumbrance instrument 8333379.2 (the "**Encumbrance**") in favour Mitre 10 (New Zealand) Limited ("**Mitre 10**"), which requires that the property must not be used as the location of a wholesale and/or retail outlet for the sale of home improvement or building supplies or hardware without the prior written consent of Mitre 10, which consent may be given or withheld by Mitre 10 in its sole discretion.
- 55.2 If Mitre 10 at any time during the term of this lease claims that the business use of the Tenant breaches the covenants within the Encumbrance, the Tenant must immediately do whatever is necessary, at its own cost in all respects, to ensure that the restrictions in the Encumbrance are fully complied with, including immediately ceasing the sale or display of any home improvement or building supplies or hardware from the premises.
- 55.3 The Tenant indemnifies the Landlord against all losses, liabilities, costs, claims, charges, expenses, actions and demands which the Landlord may incur, or which may be made against the Landlord, as a result of a breach of the covenants in the Encumbrance.
- 55.4 Any failure on the part of the Landlord to insist that the Tenant strictly adheres to the covenants within the Encumbrance from the commencement date will not amount to a waiver or release by the Landlord of the Tenant from its obligations in this clause 55.

FOURTH SCHEDULE

GUARANTEE

IN CONSIDERATION of the Landlord entering into the lease at the Guarantor's request the Guarantor:

- (a) Guarantees payment of the rent and the performance by the Tenant of the covenants in the lease.
- (b) Indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

THE GUARANTOR covenants with the Landlord that:

- 1. No release delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
- 2. As between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor.
- 3. The guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.
- 4. An assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.
- 5. Should there be more than one Guarantor their liability under this guarantee and indemnity shall be joint and several.
- 6. The Guarantee and indemnity shall extend to any holding over by the Tenant.



FIFTH SCHEDULE

LANDLORD'S FIXTURES AND FITTINGS

(Subclause 47.1(f))



Handwritten signatures in blue ink.

SIXTH SCHEDULE

PREMISES CONDITION REPORT

(Subclause 8.1)



A handwritten signature in blue ink, consisting of stylized initials, is located in the bottom right corner of the page.

Dated

Between

Everest Central Investment Limited

Landlord

and

Magsons Investments Limited

Tenant

and

Magsons Investments Limited

Guarantor

DEED OF LEASE

General address of the premises:

160 Central Park Drive, Henderson

Anthony Harper

Christchurch Office
L9, HSBC Tower
62 Worcester Boulevard
PO Box 2646
CHRISTCHURCH 8140

