

MEMORANDUM OF LEASE

(Part of Complex)

**BROOKFIELD ~~MULTIPLEX~~ FUNDS MANAGEMENT LIMITED (ACN
105371917) as custodian for the MULTIPLEX ALBERT STREET
LANDOWNING TRUST**

Lessor

W
BROOKFIELD

BUNNINGS LIMITED

Lessee



Simpson Grierson

Barristers & Solicitors
Auckland & Wellington, New Zealand
www.simpsongrierson.com

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MEMORANDUM OF LEASE

This Lease is dated

30 September

2010

PARTIES

1. **BROOKFIELD ~~MULTIPLEX~~ FUNDS MANAGEMENT LIMITED (ACN 105371917) as custodian for the MULTIPLEX ALBERT STREET LANDOWNING TRUST at Auckland ("Lessor")** *L BROOKFIELD* *ll*
2. **BUNNINGS LIMITED at Auckland ("Lessee").**

INTRODUCTION


- (a) The Lessor is the registered proprietor of the Land and all improvements constructed on it.
- (b) The Lessor demises and leases to the Lessee the Premises for the Term commencing on the Commencement Date and at the Rent (subject to review as provided within this Lease) and subject to the covenants, conditions, terms and restrictions set out in Annexure "A".
- (c) The Lessee accepts that this Lease of the Premises to be held by it as lessee and subject to the covenants, conditions, terms and restrictions set out in Annexure "A".

EXECUTED AS A DEED on the above date

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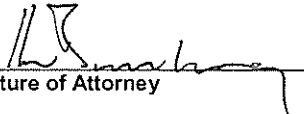
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SIGNED for and on behalf of **BROOKFIELD MULTIPLEX FUNDS MANAGEMENT LIMITED** as custodian for the Brookfield Multiplex Albert Street Landowning Trust by two of its Attorneys:



Signature of Attorney

Dated: **Kurt Andrew Wilkinson**
Director

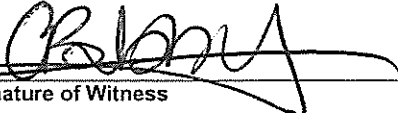


Signature of Attorney

Dated:

In the presence of:

WITNESS:

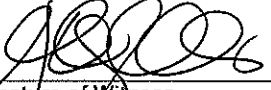


Signature of Witness

Full name:

Occupation:

City of Residence:



Signature of Witness

Full name:

Occupation:

City of Residence:

Michelle Flemmer
Finance Manager
Auckland

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, **Kurt Andrew Wilkinson**, of Sydney, Australia hereby certify:

1. That by Deed Granting General Power of Attorney dated 16 December 2009 Brookfield Multiplex Funds Management Limited (*Company*) as custodian for Multiplex New Zealand Property Fund and as custodian for Brookfield Multiplex Albert Street Landowning Trust appointed the following persons (together *the Attorney*) to be its Attorney when acting jointly in accordance with the terms and subject to the conditions set out in the said Power of Attorney:

Group A Attorneys:

Each person who from time to time occupies the position of, or its functional equivalent:

- Director, Brookfield Multiplex Funds Management Limited
- Secretary, Brookfield Multiplex Funds Management Limited
- CEO – Brookfield Australia
- CFO - Brookfield Australia
- Managing Director - Commercial Property

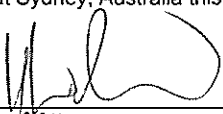
Group B Attorneys:

Each person who from time to time occupies the position of, or its functional equivalent:

- Director – Property New Zealand
- Fund Manager – Multiplex New Zealand Property Fund
- Legal Counsel – Commercial Property
- Group General Manager – Accounting

2. That I am employed by the Company in the offices set out above under my name and as such am an Attorney for the Company pursuant to the said Power of Attorney.
3. That at the date of signing I have not received notice or information of the revocation of my appointment by the commencement of liquidation of the Company or otherwise.

SIGNED at Sydney, Australia this _____ day of _____ 2010



Signature of Attorney

Kurt Andrew Wilkinson
Director

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Kym Bunting of Auckland, New Zealand hereby certify:

1. That by Deed Granting General Power of Attorney dated 16 December 2009, instrument Brookfield Multiplex Funds Management Limited (*Company*) as custodian for Multiplex New Zealand Property Fund and as custodian for Brookfield Multiplex Albert Street Landowning Trust appointed the following persons (together *the Attorney*) to be its Attorney when acting jointly in accordance with the terms and subject to the conditions set out in the said Power of Attorney:

Group A Attorneys:

Each person who from time to time occupies the position of or its function equivalent::

- Director, Brookfield Multiplex Funds Management Limited
- Secretary, Brookfield Multiplex Funds Management Limited
- CEO – Brookfield Australia
- CFO – Brookfield Australia
- Managing Director - Commercial Property

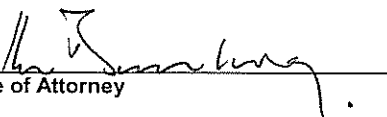
Group B Attorneys:

Each person who from time to time occupies the position of or its function equivalent::

- Director – Property New Zealand
- Fund Manager – Multiplex New Zealand Property Fund
- Legal Counsel – Commercial Property
- Group General Manager – Accounting

2. That I am employed by the Company in the offices set out above under my name and as such am an Attorney for the Company pursuant to the said Power of Attorney.
3. That at the date of signing I have not received notice or information of the revocation of my appointment by the commencement of liquidation of the Company or otherwise.

SIGNED at Auckland, New Zealand this 30 day of September 2010


Signature of Attorney

SIGNED by BROOKFIELD MULTIPLEX FUNDS
MANAGEMENT (ACN 105371917) as custodian
for the MULTIPLEX ALBERT STREET
LANDOWNING TRUST by:

Full name of director/authorised signatory

Signature of director/authorised signatory

Full name of director/authorised signatory

Signature of director/authorised signatory

Witness:
(if other than two directors sign)

Signature of witness

Full name of witness

Occupation of witness

Address of witness

SIGNED by BUNNINGS LIMITED by: 22/10

Lod BAET CAUST
Full name of director/authorised signatory

Signature of director/authorised signatory

CHRISTOPHER DAVID GREEN
Full name of director/authorised signatory

Signature of director/authorised signatory

Witness:
(if other than two directors sign)

Signature of witness

David Alexander Kneelove
Full name of witness

Property manager
Occupation of witness

Auckland
Address of witness

**BUNNINGS PART OF COMPLEX LEASE
NEW ZEALAND**

"A"

THIS IS THE ANNEXURE MARKED "A" REFERRED TO IN THE MEMORANDUM OF LEASE COVER PAGE BETWEEN BROOKFIELD MULTIPLEX FUNDS MANAGEMENT LIMITED (ACN 105371917) as custodian for the MULTIPLEX ALBERT STREET LANDOWNING TRUST (the "Lessor") AND BUNNINGS LIMITED (the "Lessee")

1. DEMISE AND TERM

The Lessor leases the Premises to the Lessee to be held by the Lessee as lessee for the Term commencing on the Commencement Date at the Rent and subject to the covenants, conditions, terms and restrictions contained in this Lease.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Lease unless the context otherwise requires:

"Additional Rent" means the additional rent (if any) specified in Item 5A;

"Agreement for Lease" means the agreement for lease made between the Lessor and the Lessee in connection with the construction of the Premises by the Lessor;

"Appurtenances" means and includes all toilets, grease traps, water apparatus, wash basins, gas fittings, electrical fittings and other apparatus contained in or about the Premises;

"Authority" means any government, semi-government, regional, municipal, statutory or other authority or body having jurisdiction or authority over or in respect of the Premises or their use or anything done at the Premises by the Lessee;

"Chattels" means the chattels (if any) owned by the Lessor and used in the Premises;

"Commencement Date" means the date specified in Item 3(a);

"Common Areas" means those parts of the Complex not leased or licensed or intended to be leased or licensed to any lessee or occupier and intended for use by the Lessor and the lessees and occupiers of the Complex and their respective employees, customers, invitees and licensees in common with each other and in particular, without limitation, includes all driveways, roads, walks, landscaped areas and common parking areas in or adjacent to the Complex;

"Company" has the meaning given to it by the Companies Act 1993;

"Complex" means the Complex which is to the west of the Entry Road on the Land as shown outlined in blue on the Lease Plan attached to this Lease as Annexure A;

"**Contaminant**" has the meaning given to this word in the Resource Management Act 1991;

"**Complex Outgoings**" means amounts paid or payable by the Lessor (acting reasonably) for those rates, taxes and charges specified in Item 7;

"**Entry Road**" means the road marked Road to Vest on the Lease Plan attached to this Lease as Annexure A;

"**Further Terms**" means the further terms (if any) of this Lease specified in Item 11;

"**Land**" means the whole of the land described in Certificate of Title 314186;

"**Laws**" means all acts or statutes for the time being enacted and all rules, regulations, by-laws, notices, requisitions or orders made to or under any act or statute from time to time by any Authority;

"**Lessee**" means the lessee named in this Lease and where not repugnant to the context its successors and assigns and the Lessee's employees, agents, invitees and licensees;

"**Lessee's fixtures and fittings**" means the fixtures and fittings owned by the Lessee and any other fixtures and fittings brought onto the Premises by the Lessee;

"**Lessor**" means the Lessor named in this Lease and where the context so admits includes the person from time to time entitled to the immediate reversion of the Term and where not repugnant to the context the employees and agents of the Lessor and other persons authorised by the Lessor;

"**Month**" means calendar month;

"**Net Lettable Area of the Complex**" means the total lettable area of the Complex available or to be available for leasing or licensing to lessees or licensees at any relevant time (whether or not the area or any part is actually leased or licensed) calculated in accordance with the Method of Measurement of Industrial Buildings 1996 Revision of the Property Council/Building Owners and Managers Association of New Zealand Incorporated and the Property and Land Economy Institute of New Zealand Incorporated and "**Net Lettable Area of the Premises**" or any part must be calculated in the same manner and have the same meaning in respect of the Premises;

"**Premises**" means the premises described in Item 1 and any improvements and additions to the Premises and includes where the context admits the Appurtenances, the fixtures, fittings, furnishings, plant, machinery and equipment (if any) from time to time installed in the Premises and owned by the Lessor and the Chattels (if any);

"**Rent**" means the annual rent specified in Item 4 or that amount as reviewed in accordance with Item 4 and clause 13;

"**Rent Commencement Date**" means the date specified in Item 3(b);

"**Services**" means the services supplied to the Premises including, without limitation, electricity, gas, water, sewerage and telephone;

"**Signs**" includes signs, advertisements, names and notices;

"**Structure**" in relation to the Premises includes, but is not limited to, all walls (whether load-bearing or not), floors, windows, gutters, downpipes, facades, foundations, ceilings and roofs and "**structural**" has a corresponding meaning;



"Term" means the term specified in Item 2 and includes any extension or renewal of the term and any overholding;

"Vehicle Dealer" means an occupier who operates a vehicle dealership which sells and/or leases predominantly new vehicles of the same brand as is sold elsewhere in New Zealand by that occupier, or, the occupier is a franchisee of predominantly new vehicles of the same brand as is sold by other franchisee's of the franchisor. By way of example, only, a franchisee of Toyota New Zealand Limited would be a "Vehicle Dealer"; and

"Working Day" has the meaning given to it in the Property Law Act 2007.

2.2 Interpretation

In this Lease unless the context otherwise requires:

the singular includes the plural and vice versa, words of one gender include the other genders and references to persons include corporations and vice versa;

the obligations of the Lessee whether positive or negative are to be construed as if each obligation is a separate and independent covenant in favour of the Lessor;

"person" includes a natural person, corporation, body corporate, unincorporated association, firm or an authority or body (whether it be any government, semi-government, municipal, statutory or other authority or body);

where two or more persons are named as the Lessor or Lessee the covenants, obligations and agreements on their part bind them jointly and each of them severally;

clause headings are for convenience only and will be disregarded in determining the rights and obligations of the parties;

reference to an Item is a reference to an Item in the Schedule to this Lease;

reference to a clause is to a clause in this Lease;

the covenants and powers implied by law (statutory or otherwise) are modified (where so permitted) as provided in this Lease;

the rule of interpretation known as contra proferentem shall not apply to the interpretation of this Lease;

reference to a statute includes all statutes amending, consolidating or replacing that statute and all regulations, ordinances and by-laws under that statute; and

all monetary references are to New Zealand dollars.

3. PAYMENTS BY LESSEE OF RENT, RATES, OUTGOINGS AND OTHER MONEY

3.1 Rent

The Lessee during the Term will on and from the Rent Commencement Date pay the Rent to the Lessor at its address stated in this Lease (or as the Lessor may otherwise from time to time direct in writing) without demand from the Lessor subject to the provisions of clause 8.9 and without deduction or set-off on the days and in the manner specified in Item 5.

3.2 Rates and Land Tax

The Lessee will on and from the Rent Commencement Date pay when due or reimburse the Lessor for all outgoings specified in Item 6 made known to it and on demand produce receipts for any payments.

3.3 Complex Outgoings

- (a) This clause 3.3 does not apply if the words "Not applicable" appear in Item 7.
- (b) The Lessee must pay or reimburse the Lessor, within 21 days of being requested to do so, a proportion of Complex Outgoings which relate to both the Premises and other areas of the Complex. The Lessee's proportion is to be that proportion that the land area of the Premises bears to the total land area of the Complex, which at the Commencement Date is estimated to be 90%.

3.4 Services and Removal of Sewerage and Waste

The Lessee will pay when due all charges for the supply of Services metered and consumed in or on the Premises made known to it.

3.5 Heating and Air-Conditioning

The Lessee will punctually pay the expenses of operating and maintaining any heating or air-conditioning equipment exclusively serving the Premises, but will not be obliged to incur any expenditure of a capital nature.

3.6 Lessee's Insurance Premiums

The Lessee will pay when due all premiums for insurances to be effected by the Lessee as provided in clause 6.

3.7 Costs and Expenses

The Lessee will pay on demand all the Lessor's reasonable legal costs, charges and expenses of and incidental to:

- (a) any variation and any surrender or other termination of this Lease requested by the Lessee other than by effluxion of time;
- (b) any proven breach or default by the Lessee under this Lease; and
- (c) the exercise of any right power or remedy of the Lessor under this Lease;

and the reasonable fees of all consultants reasonably incurred by the Lessor as a result of or in connection with any breach or default by the Lessee under this Lease.

3.8 Interest on Default

The Lessee will pay to the Lessor on demand interest at the rate specified in Item 8 on any Rent or other money payable to the Lessor by the Lessee which remain unpaid for 14 days after the due date for payment, interest to be calculated from the relevant due date and to accrue on a daily basis until paid.

3.9 Additional Rent

The Lessee will pay to the Lessor any Additional Rent in the manner specified in Item 5A over the first Term only.

This clause 3.9 does not apply if the words "not applicable" appear in Item 5A.

4. USE AND OCCUPANCY OF PREMISES

4.1 Use

The Lessee will not use or allow the use of the Premises for any purpose other than the purpose or use specified in Item 9 and in particular will not use or allow the use of the Premises for residential purposes whether temporary or permanent.

4.2 No Noxious or Illegal Activity

The Lessee will not carry on or allow to be carried on from the Premises any noisome, noxious or offensive act, trade, business or occupation nor use or allow the use of the Premises for any illegal or immoral purpose. The carrying on by the Lessee in a reasonable manner of the purpose or use specified in Item 9 or any use to which the Lessor has consented shall be deemed not to be a breach of this clause.

4.3 No Nuisance

The Lessee will not do or allow to be done on the Premises anything which causes annoyance, grievance, disturbance or damage to occupiers or owners of any adjacent premises. The carrying on by the Lessee in a reasonable manner of the purpose or use specified in Item 9 or any use to which the Lessor has consented shall be deemed not to be a breach of this clause.

4.4 Signs

The Lessee will not without the Lessor's prior written approval (which will not be unreasonably withheld) erect, display, affix or exhibit to the exterior of the Premises any signs. The Lessee will maintain any sign which has been so approved in good condition and repair at all times and on vacating the Premises at the request of the Lessor will remove any signs erected, painted, displayed, affixed or exhibited on to or in the Premises by or on behalf of the Lessee and make good any damage or disfigurement caused by their erection, painting, display, affixation, exhibition or removal.

4.5 Alterations and Additions

The Lessee will not without the Lessor's prior written approval (which will not be unreasonably withheld) make any alterations or additions in or to the Premises and will in the course of any alterations or additions made with the Lessor's approval observe and comply with all reasonable requirements of the Lessor and all requirements of Authorities.

4.6 Installation of Fixtures

Without limiting clause 4.5, the Lessee will not without the Lessor's prior written approval (which will not be unreasonably withheld) install any gas, water or electrical fixtures, equipment or appliances or any apparatus for illuminating, air-conditioning, heating, cooling or ventilating the Premises.



4.7 Partitions

The Lessee will not without the Lessor's prior written approval (which will not be unreasonably withheld) install or alter any partitioning work, equipment or other installation in the Premises and where approval is given by the Lessor the materials and designs must first be approved by the Lessor or its architect (which approval will not be unreasonably withheld) at the cost of the Lessee and all that partitioning work and other installation will remain the property of the Lessee who will be responsible for its maintenance and the Lessee may (and will if so required by the Lessor) remove that partitioning work and/or installation immediately before the expiration of the Lease but the Lessee will on its removal cause no damage to the Premises and will if so required make good.

4.8 Heavy Equipment

The Lessee will not bring onto the Premises any heavy machinery or other plant or equipment not necessary or proper for the Lessee's use of or its conduct of the business conducted from the Premises and in no event will any machinery, plant or equipment be of a nature or size that will cause or be likely to cause any structural damage to any part of the Premises.

4.9 Use of Facilities

The Lessee will not use or allow the use of the drainage and plumbing facilities in the Premises for any purposes other than those for which they were constructed or provided and will not deposit or allow to be deposited in those facilities any sweepings, rubbish or other material and the Lessee will promptly make good any damage caused by misuse and will keep all such drains and plumbing facilities clear and free from blockage.

4.10 Not to Vitate Insurance

The Lessee will not at any time during the Term do or allow to be done any act, matter or thing on the Premises which the Lessor has advised the Lessee may result in any insurance in respect of the Premises becoming vitiated or rendered void or voidable or any claim being declined, or the rate of premium on any insurance being increased and if so will pay any such increase in premium to the Lessor on demand.

4.11 No Flammable Substances

The Lessee will not use chemicals, inflammable liquids or alcohol, volatile or explosive oils, compounds or substances or any potentially dangerous noxious or harmful matter of any kind on the Premises unless necessary or proper for the Lessee's use of or its conduct of the business conducted from the Premises.

4.12 No Interference with Services

The Lessee will not interfere in any way with any Services in the Premises.

4.13 Compliance with Law

The Lessee will unless exempted or allowed not to do so by any Authority comply with all Laws affecting the Premises or relating to their use by the Lessee and which may be given by any Authority. The Lessee will keep the Lessor indemnified in respect of all matters referred to in this clause but nothing in this clause will be taken to require the Lessee to carry out work to the Structure of the Premises or in relation to any asbestos or other harmful or unsafe material in within or on the Premises or to incur any expenditure of a capital nature or carry out work resulting from fair wear and tear or work for which the Lessor has insured, or is obliged to insure, or is obliged to perform, under this Lease except where it is rendered necessary by any default or misconduct by the Lessee, the Lessee's particular use of the Premises, or as a result of the

number or sex of the Lessee's employees. The Lessee will not be liable to discharge the Lessor's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Lessee as an occupier of the Premises, but subject always to the Lessor's obligations under clauses 8.2 and 8.3.

4.14 Sprinkler and Fire Alarm Regulations

The Lessee will comply with insurance sprinkler and/or fire alarm regulations in respect of any partitions which may be erected by the Lessee on the Premises after the Commencement Date.

4.15 Licences, Permits and Registrations

The Lessee will at all times keep in force and available for inspection all licences, permits and registrations required for carrying on any business conducted by the Lessee on the Premises.

5. REPAIR, MAINTENANCE, CLEANING AND INSPECTION OF PREMISES

5.1 Repair

The Lessee will at all times during the Term and when and as often as need be well and sufficiently and substantially repair, replace, maintain and keep the whole of the Premises in good and substantial repair, order and condition damage by fire, flood, lightning, storm, tempest, explosion, earthquake, impact by vehicles or aircraft, riot, civil commotion, war damage, inevitable accident or act of God and fair wear and tear only excepted PROVIDED THAT this clause does not impose on the Lessee any obligation for any repair, maintenance, replacement or work to the Structure of the Premises or to any asbestos or other harmful or unsafe material in within or on the Premises or to incur any expenditure of a capital nature or carry out work resulting from fair wear and tear or work for which the Lessor has insured, or is obliged to insure, or is obliged to perform, under this Lease except where it is rendered necessary by any default or misconduct of the Lessee or as a result of the number or sex of the Lessee's employees.

5.2 Cleaning of Premises

The Lessee will cause the Premises to be cleaned regularly in a proper and workmanlike manner and kept clean and free from dirt and rubbish.

5.3 Cleaning Lessor's Fittings

The Lessee will clean and keep in good and substantial working order and condition all:

- (a) fixtures;
- (b) fittings;
- (c) Chattels;
- (d) plant and equipment of the Lessor;

exclusively serving the Premises, but will not be obliged to incur any expenditure of a capital nature.

5.4 Maintenance of Garden Areas

Except where maintain^{ed} by the Lessor and on-charged to tenants via the Complex Outgoings, the Lessee will cultivate, maintain and keep trim, well-watered and in good order and condition all garden areas of the Premises including lawns, shrubberies and other landscaped areas and will not, except in the course of proper management, remove any trees or shrubs.

5.5 Painting and Papering

The Lessee will maintain in good order and condition (but subject to fair wear and tear) all painted and papered portions of the Premises and at the time that Bunnings Limited vacates the Premises shall redecorate. The term "redecorate" shall include the washing down of the whole of the Premises including all partitions or additions made to the Premises and the treatment as previously treated of all surfaces of the Premises by painting, staining, polishing or otherwise to a reasonable specification approved by the Lessor (provided that this obligation does not extend to structural steel or external metal coloursteel cladding) and also the replacing of all floor coverings which in the reasonable opinion of the Lessor are worn or damaged and in need of replacement, the Lessee in such case to obtain the prior approval of the Lessor as to floor covering quality colour and design.

5.6 Breakages

The Lessee will from time to time promptly repair and make good any damage to the Premises caused by lack of care, misuse or abuse by the Lessee and will replace all broken glass in or about the Premises with glass of the same or better quality and colour and all electric light globes and fluorescent tubes in the Premises which may become damaged or broken.

5.7 Inspection by Lessor

The Lessee will permit the Lessor at all reasonable times on giving to the Lessee reasonable notice (except in the case of emergency when no notice will be required) to enter on the Premises and view their state of repair and the Lessor may serve on the Lessee a written notice of any defect the repair of which is the Lessee's obligation and requiring the Lessee within a reasonable time to repair that defect.

5.8 Lessor's Repairs

The Lessee will permit the Lessor at all reasonable times on reasonable notice to carry out necessary repairs or maintenance to the Premises and for this purpose to enter the Premises with workmen and others and all necessary materials PROVIDED THAT in the exercise of the Lessor's powers under this clause no undue inconvenience will be caused to the Lessee.

5.9 Notices of Accidents and Breakages

The Lessee will give to the Lessor prompt written notice of any accident to or breakage defect or lack of repair in any service to or fittings in the Premises and of any other circumstances likely to endanger or cause any risk or hazard to the Premises or any person in them.

5.10 Condition on Termination

The Lessee will at the expiration or sooner determination of the Term peaceably surrender and yield up to the Lessor the Premises and the Lessor's fixtures, fittings and Chattels in good and substantial repair, order and condition in all respects in accordance with the Lessee's obligations under this Lease and clean and free from dirt and rubbish and will also return all keys to the Premises.

5.11 Removal of Lessee's Property

The Lessee may (and shall if requested by the Lessor to do so) at the expiration or sooner determination of the Term promptly remove all the Lessee's fixtures and fittings, goods and property from the Premises and the Lessee will in their removal either do no damage to the Premises or make good all damage caused by the removal. Without prejudice to the Lessor's rights and remedies, any of the Lessee's fixtures and fittings, goods or property not so removed

within a reasonable time will be deemed to have been abandoned by the Lessee and will become the property of the Lessor.

5.12 Lessor may remedy Lessee's Default

The Lessor may at its option remedy any default by the Lessee in complying with the provisions of clauses 5.10 and 5.11 and any reasonable costs and expenses of doing so will be payable by the Lessee to the Lessor on demand.

6. INSURANCE

6.1 Insurances to be effected by Lessee

The Lessee will effect and maintain the insurances specified below in the names of the Lessee and the Lessor for their respective rights and interests with a reputable insurance office approved by the Lessor (such approval not to be unreasonably withheld):

(a) Public Risk

In respect of liability for loss, injury or damage to any person or property (including without limitation to the person or property of any of the Lessor and its officers, employees, agents, customers, invitees and licensees) caused by or arising out of any act of or omission by the Lessee or its officers or employees in or about the Premises or the condition or state of repair of the Premises or the business carried on in or from the Premises in the sum specified in Item 10 in respect of any single accident or event PROVIDED THAT the Lessor may as from the date of any of the anniversaries of the Commencement Date by written notice to the Lessee require the amount of insurance to be increased to the amount the Lessor reasonably considers necessary in order to effect a sufficient and proper cover.

(b) Accident Compensation

In respect of the Lessee's liability under accident compensation Laws and at common law or otherwise for which the Lessee is liable as employer. The Lessee will at all times comply with accident compensation Laws in respect of persons employed at the Premises.

(c) Premises

In respect of the Premises for its full replacement and reinstatement value against loss or damage by fire, fusion, explosion, lightning, floods, earthquake, storm, tempest, riot, civil commotion, and damage from all vehicles and aircraft and such other risks as are normally included in a commercial property insurance policy.

6.2 Delivery of Policies and Renewal of Insurances

The Lessee will:

- (a) punctually pay all premiums payable for the renewal of the insurances referred to in clause 6.1 when due and payable; and
- (b) produce and deliver to the Lessor once each year on demand certificates of currency for those insurances.

6.3 Extra Premiums

From time to time as and when required by written notice from the Lessor the Lessee will promptly pay all extra premiums of insurance on the Premises and its contents if any be required on account of extra risk caused by the Lessee's use of the Premises.

6.4 Lessee's Master Policy

Despite clauses 6.1 and 6.2, if the Lessee is Bunnings Limited or any "related company" of or to it (within the meaning of that term in the Companies Act 1993), or any company in the Wesfarmers Limited or Bunnings Limited group of companies, the production to the Lessor of a certificate of currency of the group or master insurance policy effected by the Lessee covering the risks specified in clause 6.1 and noting the interest of the Lessor will be deemed to be compliance by the Lessee with all its obligations in clauses 6.1 and 6.2.

7. ASSIGNMENT

7.1 Restriction on Dealings with Lease

The Lessee will not during the Term without the Lessor's prior written consent which will not be unreasonably withheld, assign, transfer, demise, sub-let or part with or share the possession of the Lessee's estate or interest in the Premises (unless to a "related company" of the Lessee within the meaning of that term in the Companies Act 1993 in which case the Lessor's consent is not required and clauses 7.2 to 7.7 inclusive will not apply) PROVIDED THAT the provisions of this clause 7.1 will not apply if the requirements of clause 7.2 are satisfied.

7.2 Conditions of Assignment

If the Lessee desires to assign, transfer, sub-let or part with possession of its estate or interest in this Lease the Lessor will not withhold its consent if the Lessee has:

- (a) requested the Lessor in writing to consent to the assignment or sub-letting;
- (b) proved to the reasonable satisfaction of the Lessor that the proposed assignee or sub-lessee is a respectable, responsible, solvent person or corporation of good financial standing able to meet the Lessee's obligations under this Lease;
- (c) given to the Lessor the name and address of the proposed assignee or sub-lessee together with at least one reference as to the proposed assignee's or sub-lessee's financial circumstances and at least one reference as to the proposed assignee's or sub-lessee's business experience;
- (d) executed and at its expense procured the execution by the assignee or sub-lessee of an assignment or sub-lease of this Lease to which the Lessor is a party in a customary form reasonably acceptable to the Lessor and its solicitors and in which categorically or by reference the proposed assignee or sub-Lessee enters into covenants with and grants powers to the Lessor in terms of the covenants, conditions, agreements and powers expressed in this Lease or such of them as may be reasonably required by the Lessor or its solicitors;
- (e) paid all Rent and other money due and payable as provided in this Lease and there is not any existing unremedied breach of the Lessee's covenants, conditions and agreements contained in this Lease.

7.3 Costs of Assignment

The Lessee will pay to the Lessor all reasonable costs, charges and expenses incurred by the Lessor of and incidental to any enquiries which may be made by or on behalf of the Lessor as to the responsibility, respectability, solvency and suitability of the proposed assignee or sub-lessee and of and incidental to the giving of its consent and the obtaining of any other necessary consents to the assignment or sub-lease.

7.4 Effect of Assignment

The covenants and agreements by any permitted assignee or sub-lessee will be deemed to be supplementary to this Lease and will not in any way relieve or be deemed to relieve the Lessee from its liability under this Lease but, for the avoidance of doubt, the Lessee will have no liability or obligations under any further lease if any permitted assignee exercises any rights pursuant to clause 14.

7.5 Corporate Ownership

If the Lessee is a company (other than a company whose shares are listed on any recognised Stock Exchange or a subsidiary of such a company) a change in 51% or more of the shareholding of the Lessee as existing at the Commencement Date (whether occurring at the one time or through a series or succession of transfers or issues of shares) or the establishment by any means of any trust under which any third party becomes a beneficial owner of this Lease or any of the Lessee's rights under this Lease will for the purpose of this clause 7 be deemed to be an assignment by the Lessee requiring consent by the Lessor under this clause 7. This clause 7.5 will not apply while the Lessee is Bunnings Limited or any "related company" of or to it (within the meaning of that term in the Companies Act 1993).

7.6 Sub-Letting Without Lessor's Consent

Despite the provisions of clauses 7.1 and 7.2, the Lessee may, at any time without having to request or obtain the consent of the Lessor:

- (a) grant sub-leases or licences to any person to occupy or use any part or parts of the Premises; or
- (b) grant concessions to any person or appoint any person a concessionary to occupy or use any part or parts of the Premises;

as long as the total area of the Premises sub-let, licensed or concessioned does not exceed ten percent (10%) of the Net Lettable Area of the Premises.

8. LESSOR'S COVENANTS AND WARRANTIES

8.1 Quiet Enjoyment

The Lessor covenants with the Lessee that the Lessor will ensure that subject to payment of the Rent by the Lessee the Lessee will peaceably hold and enjoy without interruption the Premises for the purposes permitted by this Lease during the Term.

8.2 Maintenance, Repairs and Replacement

The Lessor covenants with the Lessee that it will:

- (a) maintain the Premises in a sound structural, watertight, weatherproof and safe condition;

- (b) maintain the structural aspects of all paved, sealed or hardstand areas of the Complex so that they are capable of being used for their intended purposes;
- (c) maintain the Services and the fixtures, fittings, plant, machinery and equipment serving the Premises in accordance with the manufacturer's requirements and any requirements of a relevant Authority, provide and operate them for the Lessee's occupation and use of the Premises and repair them, or substitute appropriate replacement parts in them, promptly after the notification of any malfunction by the Lessee except to the extent that it is the Lessee's obligation to do so under this Lease;
- (d) promptly replace all Services and the fixtures, fittings, plant, machinery and equipment serving the Premises and their component parts which cannot be reasonably repaired or have come to the end of their economic life; and
- (e) promptly effect any works or repairs to the Premises which are reasonably necessary for the use and enjoyment of the Premises by the Lessee and which are not the obligation of the Lessee under this Lease.

8.3 Compliance with Law

The Lessor covenants with the Lessee that it will comply with all Laws affecting the Premises which are not the obligation of the Lessee under this Lease.

8.4 Rates and Taxes

The Lessor covenants with the Lessee that it will pay all such rates, taxes, charges, levies and assessments, duties, impositions and fees at any time and from time to time payable in respect of the Premises as are not in this Lease required to be paid by the Lessee and will use reasonable endeavours to ensure that they are (in particular the municipal council's site value and capital improved value) at all times during the Term fair and reasonable, are assessed or calculated on the current market value from time to time of the Premises and do not impose an unfair burden on the Lessee. In addition, the Lessor agrees that the Lessee may make objections to the municipal council's assessments or its valuation of the Complex and/or the Premises and objections to the relevant Authority to land tax assessments (if any) or land value of the Complex and/or the Premises as assessed from time to time, on behalf of the Lessor, and at the cost of the Lessee. If the Lessee makes any objections it must provide to the Lessor copies of any such objection and all relevant correspondence relating to it. The Lessor must co-operate with the Lessee in making such objections and the Lessor hereby appoints the Lessee its attorney to do all such acts, matters and things and to sign all documents necessary for the purposes of the objections.

8.5 Health and Safety

The Lessor warrants to the Lessee that no materials containing asbestos or other dangerous, harmful or unsafe materials exist in the Premises, and if any such materials are at any time discovered in the Premises or in the land upon which the Premises is constructed, the Lessor must at its own expense promptly and in a safe manner remove those materials. The Lessor indemnifies the Lessee against all actions, claims, demands, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any kind which the Lessee may suffer or incur whether during or after the Term in respect of or arising from a breach of this warranty by the Lessor.

8.6 Common Areas

The Lessor covenants with the Lessee that the Lessor will permit the Lessee to use the Common Areas in common with the Lessor and others having the like rights.

8.7 Restrictions on Land

- (a) The Lessor covenants with the Lessee that:
- (i) it shall not allow or permit or suffer any part of the Land to be used for:
 - A. the sale or rental of hardware or building products;
 - B. advertising the sale or rental of hardware or building products; or
 - C. signage or advertising of the presence of a retailer or renter of hardware or building products;
 - (ii) the areas designated as parking on the plan attached to this lease shall be used only for parking and that it will not erect or place or permit or allow to be erected or placed on such areas any Structure temporary or otherwise to the intent that such areas will always be used and available for parking of motor vehicles by the Lessee and its customers and invitees;
 - (iii) if it sells any part of the Complex to a purchaser, it shall procure from the purchaser covenants to the effect of this clause 8.7(a) in a form which is reasonably acceptable to the Lessee;
 - (iv) for the purposes of this clause 8.7(a):

"Structure" means any dwelling house, garage, shed, warehouse, commercial premises or other building, fence, wall, hoarding or billboard, aerial and/or satellite dish or any other similar or such like receiving or transmitting device;
- (b) If the Lessor breaches clause 8.7(a), then without prejudice to its other rights the Lessee at any time and in its absolute discretion shall be entitled to give the Lessor notice of an intention to terminate this Lease unless the Lessor satisfies the conditions contained in the notice within 21 days. If the conditions are not satisfied within the 21 day period, the Lessee may in its absolute discretion terminate this Lease at any time after that period.

8.8 Building Warrant of Fitness

- (a) The Lessee covenants and agrees with the Lessor that it will comply with the requirements of the Building Act 2004 relating to the supply and display of an annual building warrant of fitness for the buildings forming part of the Premises, and the retention for inspection purposes of the compliance schedule for these buildings, and the reports and the requirements of that schedule. The Lessee further covenants and agrees with the Lessor that it will complete, at its cost, all work that may be required to the Premises to obtain the building warrant of fitness, except to the extent that the work is the Lessor's obligation to do so under this Lease.

8.9 Environmental Contamination

- (a) The Lessor warrants that all Contaminant located on or about the Land has been remediated up to the legally required standard (so as to fully comply with all relevant laws) sufficient to enable the Lessee to legally carry out the Lessee's Business Use and that there shall be no new Contaminant brought on to the Land by the Lessor, whether within the ground or in any structure on the Land, which would or might reasonably be expected to:
- (i) cause nuisance, death or injury to any person;

- (i) either determine this Lease by notice in writing to the Lessor and this Lease shall determine 30 Business Days after the giving of notice; or
 - (ii) or clean up the Environmental Condition to the satisfaction of all Authorities and deduct the total cost of the clean up including all costs and losses as more particularly described in clause 15.2(d)(iii)(C), from rent which would otherwise be payable under this Lease.
- (e) Every 5 years during the Term of this Lease and immediately prior to the Lessee terminating this Lease (or any renewal) the Lessee shall engage an expert environmental consultant to visually only inspect the site and to state as a result of this visual inspection whether in its view any Contaminant is present on the Site. The Lessee shall make this report available to the Lessor.

8.10 Limited Access to Lot 7

- (a) Notwithstanding the provisions of clause 8.7 or any other provisions of this Lease, the Lessee acknowledges the Lessor has agreed to grant to Ford Motor Company of New Zealand Limited (together with its employees, customers, agents and invitees) ("**Ford**") a personal non-exclusive right to access Lot 7 (shown marked on the Plan) ("**Adjoining Land**") over that part of the car parks shown cross-hatched on plan ("**Plan**") attached at Annexure B to this deed ("**Limited Access**") for the purpose of limited access to and from the Adjoining Land. The Limited Access shall
 - (i) be limited to passenger and light commercial vehicles;
 - (ii) be subject to compliance by Ford with all signposted signs within the Lessor's carpark; and
 - (iii) not extend to heavy motor vehicles (as that term is defined in the Land Transport Act 1998) including but not limited to car transporters loading or unloading cars within the Lessor's car park, and will at all times remain subject to Ford complying with all traffic signs posted on or about the Premises.
- (b) In the event that Lot 7 is occupied by a Vehicle Dealer other than Ford, the Lessee will not unreasonably withhold its consent to any request by the Lessor for the Lessor to grant, to such Vehicle Dealer, the rights set out in clause 8.10(a).

8.11 Ford Non-Compliance

In the event that the Lessee identifies any non-compliance with the provisions of clause 8.10 it shall inform the Lessor of such non-compliance and the Lessor shall take the appropriate enforcement action as soon as reasonably practicable. If the Lessor does not take enforcement steps to prevent non-compliance with the provisions of clause 8.10 within a reasonable period of time of receipt of notice from the Lessee of such non-compliance, then the Lessee shall be entitled to take appropriate enforcement action.

8.12 Height Barriers

To assist in ensuring compliance, the Lessor shall, if required by the Lessee and upon receipt of notice from the Lessee, and subject further to obtaining all appropriate consents, install height restricting barriers at the entrance to its car park to prevent heavy motor vehicles from using the Limited Access.

9. DEFAULT BY LESSEE

9.1 Default

If any one or more of the following occurs:

- (a) the Rent or any part of the Rent is unpaid for a period of 10 Working Days any of the days on which it ought to have been paid in accordance with the covenants for its payment contained in this Lease and of which written notice of not less than 10 Working Days has been given to the Lessee in accordance with section 245 of the Property Law Act 2007;
- (b) the Lessee commits or allows to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions of this Lease and that breach or default continues for a period of 14 days after service on the Lessee of a notice requiring him to remedy the breach or default in accordance with section 246 of the Property Law Act 2007;
- (c) the Lessee being a company, an official manager, receiver, receiver and manager, liquidator or agent for a mortgagee is appointed to the Lessee or to any or all of its assets or undertaking;
- (d) the Lessee being a natural person, an order is made for sequestration of the Lessee's estate or any part of it or an order is made that the Lessee be bankrupt or an arrangement or compromise is made with creditors; or
- (e) execution is levied against the Lessee and is not satisfied within 30 days;

(and in respect of a breach or default referred to in clauses 9.1(b) to (e) inclusive that breach or default continues for a period of 10 Working Days after service on the Lessee of a notice requiring the Lessee to remedy that breach or default in accordance with section 246 of the Property Law Act 2007) then even though the Lessor may not have exercised any of its rights under this clause 9.1 in respect of some previous breach or default of a like nature by the Lessee, the Lessor may (subject to the provisions of the Property Law Act 2007 and other relevant property legislation) immediately or at any later time re-enter the Premises or any part of them in the name of the whole and repossess and enjoy the Premises as of its former estate and in that event the Lease and the Term will absolutely cease and determine but without prejudice to any action or other remedy which the Lessor or the Lessee has or might otherwise have had for arrears of Rent or breach of covenant or for damages as the result of any such event.

9.2 Acceptance of Rent

Acceptance of Rent by the Lessor after default by the Lessee under this Lease will be without prejudice to the exercise by the Lessor of the powers conferred on it by clause 9.1 or any other right power or privilege of the Lessor under this Lease and will not operate as an election by the Lessor either to exercise or not to exercise any of those rights powers or privileges.

9.3 Lessor may Remedy Default

On each and every occasion on which the Lessee fails to pay any money or to do or effect any thing which the Lessee has in this Lease agreed to pay do or effect then the Lessor may (without prejudice to any rights and powers arising from that default) pay that money or do or effect that thing by itself and the amount of any reasonable payment and/or the reasonable expenses and costs of doing or effecting that thing will constitute a liquidated debt payable by the Lessee to the Lessor on demand.



10. DESTRUCTION OR DAMAGE TO PREMISES

- (a) If the Premises and/or the Complex or normal means of access to the Premises and/or the Complex are totally or partially destroyed, the Lessor will promptly obtain all necessary consents and approvals and diligently carry out all works necessary to reinstate the Premises and/or the Complex or the means of access to the Premises and/or the Complex to their condition at the Commencement Date.
- (b) The Rent, rates, taxes, outgoings and all other money payable under this Lease, or a fair proportion according to the nature and extent of the damage sustained, will abate until the Premises and/or the Complex are rendered fit for occupation and for its permitted use by the Lessee.
- (c) Any dispute arising out of this clause will be referred for determination by an arbitrator appointed at the request of either the Lessor or the Lessee by the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated, who will act as an expert and not as an arbitrator and whose costs will be borne equally by the Lessor and the Lessee.
- (d) If the Lessor fails to comply with clause 10(a), the Lessee may terminate this Lease unless within 30 days of receipt of a written notice of the Lessee's intention to terminate this Lease the Lessor within a reasonable period (having regard to the nature and extent of the destruction) takes such steps as may be reasonable in the circumstances to reinstate the Premises and/or the Complex or means of access to the Premises and/or the Complex to the required condition.
- (e) If the Premises and/or the Complex or access to the Premises and/or the Complex is totally destroyed so that the Premises and/or the Complex are rendered wholly unfit for occupation and use by the Lessee, or so as to effectively prevent the economical use of the Premises by the Lessee, the Lessee may, within 45 days of the date of destruction or damage unless such destruction or damage is due to the negligent act or omission of the Lessee terminate this Lease 14 days after written notice to the Lessor, but without prejudice to any antecedent rights of either party prior to the date of termination.

11. OVERHOLDING

If with the consent of the Lessor the Lessee continues in occupation of the Premises after the expiration or sooner determination of the Term the tenancy will continue as a monthly tenancy only on and under the same covenants and conditions mutatis mutandis as those contained in this Lease at a monthly rental equal to a monthly proportion of the Rent payable immediately before the expiration of the Term (together with all other payments as provided in this Lease proportionate to the period of overholding) and determinable by one month's written notice by either party to the other expiring on any day.

12. INDEMNITIES

12.1 Release of Lessor

The Lessee agrees to occupy use and keep the Premises at the risk of the Lessee and releases to the full extent permitted by law the Lessor and its employees, agents and contractors, in the absence of any act or omission on their part, from all claims and demands of every kind in respect of or resulting from any accident, damage or injury occurring in the Premises.

12.2 Indemnity by Lessee

The Lessee indemnifies and will keep indemnified the Lessor from and against all actions, claims, demands, proceedings, judgments, orders, decrees, damages, costs, losses and



expenses of any kind which the Lessor may suffer or incur or for which the Lessor whether during or after the Term may be or become liable in respect of or arising from:

- (a) loss, damage or injury from any cause whatever to property or person in or outside the Premises occasioned by the failure of the Lessee or any person claiming through or under the Lessee to observe or perform any of the covenants by the Lessee under this Lease;
- (b) the negligent use, misuse, waste or abuse by the Lessee or any person claiming through or under the Lessee of any Services to the Premises;
- (c) the overflow leakage or escape of water, gas, electricity or any other substance in or from the Premises except to the extent that it is caused or contributed to by any act or omission by the Lessor or any of its employees or other persons for whom the Lessor is vicariously responsible; and
- (d) loss, damage or injury from any cause whatever to property or person caused by the use of the Premises by the Lessee or any person claiming through or under the Lessee except to the extent that it is caused or contributed to by the Lessor or any of its employees or other persons for whom the Lessor is vicariously responsible;

provided that the Lessee's obligation to indemnify the Lessor under this clause will be limited to the extent that the Lessor is not indemnified from money recovered by insurances effected by the Lessor or by the Lessee.

12.3 Limitation on Lessee's Indemnity

Nothing contained in this Lease and in particular clauses 12.1 and 12.2:

- (a) requires the Lessee to indemnify the Lessor against any action, liability, penalty, claim or demand for or to which the Lessor would otherwise be liable or subject; or
- (b) renders the Lessee liable for or subject to any action, liability, penalty, claim or demand in respect of any act, matter or thing done or omitted to be done by the Lessor or any other person if the Lessee would not otherwise be liable for or subject to that action, liability, penalty, claim or demand.

13. RENT REVIEW

13.1 CPI Review of Rent

Where Item 4 specifies that the Rent is to be reviewed to CPI in accordance with this clause 13.1, then on each of the dates of commencement of those years specified in Item 4 (each of those dates being called "CPI Review Date") the annual Rent must be reviewed to an amount calculated as follows:

- (a) the Rent payable following a CPI Review Date will be determined by multiplying the Rent payable for the 12 months immediately preceding that CPI Review Date by a fraction obtained by dividing the Index number most recently published before that CPI Review Date by the Index number most recently published before the date that was 12 months preceding that CPI Review Date;
- (b) "Index number" means the Consumer Price Index (All Groups) for New Zealand published from time to time by Statistics New Zealand PROVIDED THAT if the same Index is not current on both dates or is calculated from different base years or if a substantial change takes place in the method or basis of calculating it the fraction to be applied will be a fraction representing the rise between the two dates in the weighted

average for New Zealand of weekly wage rates to be determined by Statistics New Zealand and if Statistics New Zealand is unwilling to make a determination then to be determined by an economist nominated by the President for the time being of the New Zealand Law Society or his or her nominee and the decision of the economist (who will act as an expert) will be final and conclusive and his or her fees will be paid by the Lessor and the Lessee equally.

13.2 Payment of Rent Pending Review

Where any review of Rent under this clause 13 has not been completed by the relevant CPI Review Date then:

- (a) pending completion of the review the Lessee will pay as rent the amount of the Rent payable immediately before the CPI Review Date;
- (b) on completion of the review the amount (if any) by which the instalments of the Rent paid from the CPI Review Date are different must be paid by the Lessee to the Lessor or by the Lessor to the Lessee (as the case may be) no later than the date on which the next instalment of Rent is payable under this Lease.

14. FURTHER TERMS

14.1 Lessee's Right to Further Terms

Subject to clauses 14.2 and 14.4, the Lessor will renew this Lease for the next of the Further Terms if the Lessee gives the Lessor a written request for renewal no later than six months prior to this Lease expiring.

14.2 Lessor May Refuse Renewal

The Lessor may refuse to renew this Lease if:

- (a) the Lessee has not substantially remedied any material default under this Lease about which the Lessor has given the Lessee written notice; or
- (b) the Lessee has materially defaulted persistently under this Lease throughout the Term and the Lessor has given the Lessee written notice of the defaults.

14.3 Renewed Lease

Subject to clause 14.4, following the giving of a notice of renewal by the Lessee in accordance with clause 14.1, the Lessor and the Lessee will promptly execute the renewed lease which will contain the same terms and conditions as this Lease except the renewed lease will:

- (a) commence on the day after this Lease expires;
- (b) be at a rent specified in Item 4;
- (c) not contain those terms or conditions which have become redundant or which are no longer capable of being applicable to the renewed lease;
- (d) omit Item 5A and omit any provision for Additional Rent; and
- (e) omit from Item 11 the Further Term first specified in Item 11 and omit any provision for renewal in the case of the last Further Term.

14.4 Further Lease in the Case of Assignment

If the Lessee assigns its interest in the Premises in accordance with this Lease:

- (a) it is agreed that the benefit of the covenant in clause 14.1 will not enure for the benefit of the assignee;
- (b) subject to clause 14.4(c), the Lessor will enter into a further lease directly with the assignee for the next of the Further Terms specified in Item 11 if the assignee gives the Lessor a written request to do so not more than six months nor less than three months before this Lease expires;
- (c) the Lessor may refuse to grant a further lease if:
 - (i) the Lessee or the assignee have not remedied any material default under this Lease about which the Lessor has given the Lessee or the assignee written notice; or
 - (ii) the Lessee or the assignee have materially defaulted persistently under this Lease throughout the Term and the Lessor has given the Lessee or the assignee written notice of the defaults;
- (d) following the giving of a written notice in accordance with clause 14.4(b), the Lessor and the assignee will promptly execute the further lease which will contain the same terms and conditions as this Lease except the further lease will:
 - (i) commence on the day after this Lease expires;
 - (ii) be at a rent specified in Item 4;
 - (iii) not contain those terms or conditions which have become redundant or which are no longer capable of being applicable to the further lease;
 - (iv) omit Item 5A and omit any provision for Additional Rent; and
 - (v) omit from Item 11 the Further Term first specified in Item 11 and omit any provision for a further lease in the case of the last Further Term..

15. ESSENTIAL TERMS

15.1 Essential Covenants

The Lessee acknowledges that each of the covenants by the Lessee specified in this clause is an essential and fundamental term of this Lease:

- (a) the covenant to pay the Rent throughout the Term PROVIDED THAT the failure to pay the Rent will be a breach of an essential term only if that failure continues for more than 14 days after the due date for payment of the monthly instalment of the Rent as provided in clause 3.1;
- (b) the covenant to pay rates and land tax as provided in clause 3.2;
- (c) the covenant to pay Complex Outgoings as provided in clause 3.3 (if applicable);
- (d) the covenant dealing with the use of the Premises as set out in clause 4.1;

- (e) the covenant dealing with alterations to the Premises without approval as set out in clause 4.5;
- (f) the covenant dealing with compliance with law as set out in clause 4.13;
- (g) the covenant dealing with repair as set out in clause 5.1; and
- (h) the covenants restricting assignment sub-leasing and other dealings with this Lease as set out in clause 7.1.

15.2 No Waiver

In respect of the Lessee's obligation to pay Rent, the acceptance by the Lessor of arrears or of any late payment of Rent will not constitute a waiver of the essentiality of the Lessee's obligation to pay Rent in respect of those arrears or of the late payments or in respect of the Lessee's continuing obligation to pay Rent during the Term.

15.3 Damages

The Lessee will compensate the Lessor in respect of any breach of an essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of those breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this Lease).

15.4 Repudiation

If the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any Lease covenants, the Lessee will compensate the Lessor for the loss or damage suffered because of the repudiation or breach.

15.5 Lessor to Mitigate

If the Lessee vacates the Premises, whether with or without the Lessor's consent, the Lessor must make reasonable endeavours to lease the Premises to a replacement Lessee at a reasonable rent and on reasonable conditions. The Lessor and the Lessee must co-operate with each other to enable the Lessor to do so. The Lessor's entitlement to rent or damages will be subject to the Lessor's obligation to do so.

16. GENERAL

16.1 Whole Agreement

This Lease contains the whole agreement of the parties and no obligation or liability will arise because of any promise, representation, warranty or undertaking allegedly given or made by either party to the other before the date of this Lease.

16.2 Notices

- (a) Any notice or statement to be given or demand to be made on either party under this Lease:
 - (i) will be effectively signed on behalf of a party if it is executed by that party, any of its officers, its solicitor or its duly constituted attorney;
 - (ii) may be served by being delivered personally or being left at or posted in a prepaid envelope or wrapper to the address of the other party specified in this

Lease or the registered office or place of business or residence of the other party last known to the sender or by being sent to the other party by facsimile transmission.

- (b) A demand or notice if:
 - (i) posted will be deemed served two (2) business days after posting;
 - (ii) sent by facsimile transmission will be deemed served on conclusion of transmission PROVIDED THAT the recipient's receipt appears on the sender's copy of the notice or on the activity record print-out of the sender's machine or the activity record print-out of the sender's machine shows a successful transmission of an appropriate size document to the recipient's facsimile machine on the date indicated on the print-out, but if it is received after 5.00 pm on any day it will be deemed to be given or served on the next business day.

16.3 Waiver

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

16.4 Reading Down and Severance of Invalid Provisions

The provisions of this Lease are to be interpreted so as not to infringe the provisions of any Laws. If any provision of this Lease does infringe any Laws it will be read down to the extent necessary to give it, if possible, a valid operation of a partial nature but if it cannot be so read down it will be deemed to be void and severable. If any provision is held invalid by a court that provision will be disregarded and the rest of this Lease will continue in force.

16.5 Consents

In any case where under any of the provisions of this Lease the doing of any act or thing or the carrying out or the refraining from any activity or procedure is prohibited without or dependent on obtaining the Lessor's or the Lessee's consent or approval the Lessor or the Lessee (as the case may be) must give or refuse its consent or approval within 14 days of the written request for it failing which it will be deemed to have given its consent or approval and the Lessor or the Lessee (as the case may be) must not unreasonably withhold or refuse its consent or approval and must where it is possible for it to do so provide its consent or approval subject to such conditions as it may reasonably impose.

16.6 Mortgagee's Consent

- (a) The Lessor warrants to the Lessee that any mortgagee of the land upon which the Premises is erected has unconditionally consented to the Lessor entering into, and granting to the Lessee, this Lease. The Lessor will if requested to do so provide to the Lessee a true and complete certified copy of the unconditional consent granted by the mortgagee.
- (b) The Lessor will not grant any mortgage, charge or other encumbrance over the land upon which the Premises is erected without first obtaining, and producing evidence to the Lessee of, the unconditional consent of the mortgagee, chargee or encumbrancer (as the case may be) to the grant of this Lease.
- (c) The warranty and obligations in clauses 16.6(a) and (b) are essential terms of this Lease. In the event that the warranty in clause 16.6(a) is not accurate, or the obligations in clauses 16.6(a) and (b) are breached by the Lessor, the Lessee may, without prejudice to

any other rights it may have, by notice in writing elect to terminate this Lease as a result of such inaccuracy or breach.

16.7 Right of First Refusal

- (a) Other than in respect of a sale to Direct Property Limited, or an associated party of the Lessor, if the Lessor during the Term desires to sell the Premises, the Lessor will first offer the Premises for sale to the Lessee by written notice ("**Lessor's Offer**") specifying the purchase price acceptable to the Lessor, the terms and conditions upon which the Lessor is prepared to sell the Premises and the time for which the offer to sell is open for acceptance by the Lessee which must not be less than 21 days, during which time the Lessor will not withdraw that offer ("**Acceptance Period**").
- (b) The Lessor need not make any Lessor's Offer to the Lessee if the Lessor proposes to offer the Premises for sale by public auction.
- (c) The Lessee may accept the Lessor's Offer by written notice delivered to the Lessor within the Acceptance Period.
- (d) If the Lessee accepts the Lessor's Offer within the time and in the way prescribed by clause 16.7(c) the Lessee and the Lessor will as from the date of acceptance ("**Acceptance Date**") become immediately bound as vendor and purchaser respectively under a contract for the sale of the Premises in accordance with the terms of the Lessor's Offer.
- (e) Even though a contract will exist between the Lessor and the Lessee pursuant to clause 16.7(d), the parties agree that if the Lessee accepts the Lessor's Offer, they will execute and exchange counterparts of an agreement for sale and purchase of real estate in the form then currently approved by the Real Estate Institute of New Zealand and the Auckland District Law Society incorporating the terms of the Lessor's Offer, within 14 days of the Acceptance Date, those documents to be prepared by the Lessor's solicitors who will forward them to the Lessee for execution.
- (f) If the Lessee does not accept the Lessor's Offer within the time and in the way prescribed by clause 16.7(c), then the Lessor must not at any future time during the Term sell the Premises to any other person at a purchase price materially less than or on terms and conditions materially more favourable to the purchaser than those specified in the Lessor's Offer unless the Lessor has first made a further offer to the Lessee and in that event the provisions of this clause will apply mutatis mutandis to that further offer, except that the time for notification of acceptance shall be reduced from twenty one days to two business days.
- (g) Any nominee of the Lessee may accept the Lessor's Offer and may purchase the Premises in accordance with this clause 16.7.

16.8 GST

- (a) For the purposes of this clause:

"**Act**" means the Goods and Services Tax Act 1985 and any related tax impositions Act calculated with reference to the supply of goods and services;

"**GST**" means any tax imposed by or through the Act on a taxable supply (without regard to any input tax credit);

"**taxable supply**" means a taxable supply under the Act; and

except where the contrary intention appears, expressions used in this clause 16.8 have the meanings given to them in the Act.

- (b) Unless expressly indicated otherwise and subject to clause 16.8(c), all amounts referred to in this Lease are exclusive of GST.
- (c) Subject to clause 16.8(d), if GST is imposed on a taxable supply under this Lease then the amount or other consideration payable for that taxable supply shall be increased by an amount equal to the GST imposed on that taxable supply and that amount shall be payable at the same time and in the same manner as the consideration for that taxable supply.
- (d) A party is not obliged to pay any amount under clauses 16.8(c) and/or 16.8(e) unless and until it receives a tax invoice.
- (e) If this Lease requires a party to reimburse, indemnify or otherwise pay another party for any expense, loss or outgoing ("**reimbursable expense**"), the amount required to be paid by the first party will be the amount of the reimbursable expense inclusive of any GST paid when that expense, loss or outgoing was incurred less the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.
- (f) A party which receives payment of an amount equal to the GST payable for a taxable supply made by it agrees to provide the party which paid such amount with an adjustment note for any adjustment that arises from an adjustment event relating to the taxable supply within 14 days of becoming aware of that adjustment.

16.9 Agreement for Lease Obligations

Nothing in this Lease will impose upon the Lessee an obligation to do or not to do any thing if the circumstance which gave rise to that obligation was caused or contributed to by a failure by the Lessor to comply with its obligations under the Agreement for Lease.

16.10 Special Conditions

The special conditions (if any) in Item 12 form part of this Lease. If there is an inconsistency between a special condition in Item 12 and another provision of this Lease, the special condition prevails.

16.11 Governing Law

This Lease will be construed in accordance with the laws of New Zealand. Each party unconditionally and irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and to appeal courts from those courts.

16.12 Exclusion of Statutory Provisions

To the extent permitted by law or as may be contradicted by this Lease, the covenants, powers and provisions (if any) implied in leases by virtue of any law, are expressly negated including the powers contained in sections 106 and 107 of the Property Law Act 1952.

16.13 Registration

The Lessee shall, at its option, have the right to call for this Lease to be registered against the Land. If the Lessee so exercises this option, it shall do so by notice in writing to the Lessor. The Lessee will pay the Lessor's reasonable costs of registration of this Lease and for converting this Lease into a registrable form. Upon receiving the Lessee's notice under this clause, the Lessor will do all acts and things necessary to register this Lease.

17. LIMITED OF LANDLORD'S LIABILITY

17.1 Capacity of Landlord

The Tenant acknowledges that:

- a. the Landlord enters into this Deed solely in its capacity as the custodian for Brookfield Multiplex Albert Street Landowning Trust, and not in its private or personal capacity; and
- b. Subject to clause 17.4 below, despite any other provision of this Deed, the liability of the Landlord under this Deed is at all times, and for all purposes, to be construed solely as a liability or obligation to be satisfied out of, and only to the extent of, the assets of the Brookfield Multiplex Albert Street Landowning Trust ("**Scheme Assets**"), and in no circumstances will the Landlord be liable in its private or personal capacity.

17.2 Limited recourse

Where the Tenant makes a claim or pursues a remedy against the Landlord in respect of any cause of action, claim or loss arising:

- a. under or in connection with this Deed; or
- b. in connection with any transaction, conduct or other agreement contemplated by this Deed;

(together, a "**Deed Claim**")

The Tenant, subject to clause 17.4 below:

- a. is only entitled to recover an amount which does not exceed the amount the Landlord actually recovers from the Scheme Assets by exercising its rights of indemnity under the constitution governing the Brookfield Multiplex Albert Street Landowning Trust; and
- b. is not entitled to pursue a remedy which would require the Landlord to expend monies in excess of the amount the Landlord is able and entitled to recover referred to in sub-clause (a) above,

provided that the Landlord shall use its best endeavours to exercise its right of indemnity against the Scheme Assets.

17.3 Acknowledgement of limitations

Subject to clause 17.4 below, the Tenant agrees and acknowledges that it must not, in respect of any Deed Claim:

- a. bring proceedings against the Landlord in its personal capacity;
- b. seek to appoint an administrator or liquidator to the Landlord;
- c. commence the winding up, dissolution or administration of the Landlord; or
- d. appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Landlord.

17.4 Landlord's personal liability

The limitations of the Landlord's liability in clause 17.1 and 17.2 above, and the restrictions on the rights of the Tenant under clause 17.3 above, do not apply to the extent that the relevant Deed Claim arises from the Landlord's fraud or negligence or breach by the Landlord of its duties under the Corporations Act 2001 (Australia).

The limitations of the Landlord's liability expressed in this clause 17 shall only apply while the Landlord is the custodian for Brookfield Multiplex Albert Street Landowning Trust.



SCHEDULE OF TERMS

ITEM 1

Premises:
(clause 2.1)

The land and improvements shown bordered red on the attached plan, (and unrestricted use of 423 grade level car parking spaces more or less contained in the Complex) being part of the land more particularly described in 314186 and comprising:

Area	Area (in square metres)
Mainstore	3,758.18
Trade Sales	1,997.29
Storage Yard	1,082.16
Nursery	919.39
Canopy / Bagged Goods	190.60
Mezzanine Office	93.16

ITEM 2

Term:
(clause 2.1)

12 years.

ITEM 3

Commencement Date:
(clause 2.1)

(a) 19 June 2006

Rent Commencement
Date:
(clause 2.1)

(b) The date which is the Commencement Date.

ITEM 4

Rent and its Review:
(clauses 2.1 and 13)

Type	NLA Sqm	Rate \$ per sqm	\$ pa (plus GST)
Mainstore	3,758.18	97.03	364,667.48
Trade Sales	1,997.29	71.50	145,802.24
Storage Yard	1,082.16	35.75	38,686.14
Nursery	919.39	35.75	32,867.27
Canopy / Bagged Goods	190.60	40.86	7,787.15
Mezzanine Office	93.16	122.57	11,418.43
			<hr/> 598,228.71
Approved Variations			6,366.00
			<hr/> <hr/> 604,594.71

Such rent to be reviewed on the following basis:

- Year 3 CPI plus 1% calculated annually (capped at 6.5% biennially)
- Year 5 CPI plus 1% calculated annually (capped at 6.5% biennially)
- Year 7 CPI plus 1% calculated annually (capped at 6.5% biennially)
- Year 9 CPI plus 1% calculated annually (capped at 6.5% biennially)

ITEM 5

Rent payable:
(clause 3.1)

By equal monthly instalments in advance on the first day of each month during the Term (except that if the Rent Commencement Date is not the first day of a month the first payment, which must be made on or before the Rent Commencement Date, and the final payment will be payments proportionate to the months to which they relate).

ITEM 5A

Additional Rent:
(clauses 2.1 and 3.10)

Not applicable.

ITEM 6

Separate Rates and
Land Tax:
(clause 3.2)

All rates and levies, water and sewerage rates, fire service charges, land tax or a similar tax (if any) and charges for garbage and waste removal payable to any Authority which are separately payable and assessed in respect of the Premises PROVIDED THAT land tax or a similar tax (if any) will be calculated and paid on the basis that the Premises is the only land owned by the Lessor in New Zealand.

ITEM 7

Complex Outgoings:
(clause 2.1)

- (a) Rates and levies, water and sewerage rates, fire service charges and land tax or a similar tax (if any) payable to any Authority in connection with the Complex PROVIDED THAT land tax or a similar tax (if any) will be calculated on the basis that the Premises is the only land owned by the Lessor in New Zealand; and
- (b) the reasonable costs of repairing and maintaining the Common Areas, damage by fire, flood, lightning, storm, tempest, explosion, earthquake, impact of vehicles or air-craft, riot, civil commotion, war damage, inevitable accident or act of God and fair wear and tear excepted;
- (c) all charges for costs and expenses incurred by the Lessor in relation to the supply of water, sewage and drainage and all other charges for and costs of lighting and power supplied to the Complex which are not the direct responsibility of the Lessee or any other Lessee in the Complex;

- (d) all proper and reasonable costs associated with the operation, repairing, servicing, testing, inspecting and maintenance of all Services from time to time provided by the Lessor for the Premises and/or for the Complex, which are not the direct responsibility of the Lessee or any other lessee in the Complex;
- (e) all costs of gardening and landscaping in or about the Common Areas;
- (f) all costs incurred in connection with the periodic marking of carparks;
- (g) all charges incurred in the maintenance servicing and repair of the sealed areas and lighting (including security lighting) of all Common Areas and grounds;
- (h) all costs and expenses incurred by the Lessor in providing an annual Building Warrant of Fitness to an Authority including any costs paid to an independent qualified person for any report establishing compliance with the Compliance Schedule.

BUT EXCLUDING

- (i) any costs which are specific to a particular lessee of the Complex;
- (j) cost of work of a structural nature;
- (k) expenses properly chargeable to capital account;
- (l) any insurance premiums;
- (m) any management fees, costs or charges; and
- (n) any amounts payable by the Lessee in accordance with clause 3.2.

ITEM 8

Interest on Rent and other money in arrears:
(clause 3.9)

2% per annum above the midpoint of the Westpac 90 day bank bill rate on the date of demand.

ITEM 9

Use of Premises:
(clause 4.1)

Retail, wholesale and bulk sale and display of goods, materials, products, merchandise and items of any description (including, without limitation, building, hardware, timber and nursery products or materials) sold by any Wesfarmers or Bunnings branded stores in Australia or New Zealand.

ITEM 10

Amount of Public Risk Insurance:
(clause 6.1(a))

TEN MILLION DOLLARS (\$10,000,000.00)



ANNEXURE A

LEASE PLAN

(Showing "Complex" outlined in blue, "Premises" in red)



ANNEXURE B

LIMITED ACCESS PLAN

4

