

DEED OF LEASE

FIFTH EDITION 2008

DEED made the 11th day of June 2012

LANDLORD THE WOOLSTORE SIX LIMITED

TENANT DOWNER NEW ZEALAND LIMITED

GUARANTOR

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:

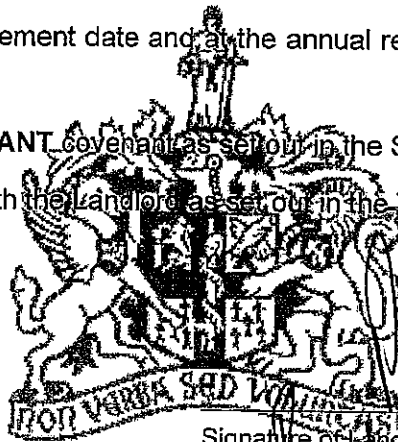
- a) The Landlord's fixtures and fittings contained in the premises.
- b) The common areas of the property.

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 THE TENANT covenants as set out in the Second Schedule.

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

SIGNED by the Landlord *
THE WOOLSTORE SIX LIMITED
in the presence of:



Signature of Landlord

Witness Signature

Print Full Name
(for a company specify position:
Director/Attorney/Authorised Signatory)

Witness Name

Witness Occupation

Signature of Landlord

Witness Address

Print Full Name
(for a company specify position:
Director/Attorney/Authorised Signatory)

* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

Note: Signing by a company - please refer to the note on page 2

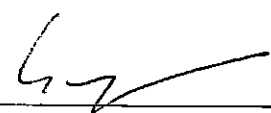
SIGNED by the Tenant *
DOWNER NEW ZEALAND LIMITED
 in the presence of:

 Witness Signature

 Witness Name

 Witness Occupation

 Witness Address



 Signature of Tenant

Cornelius Wilhelmus Bruyn

 Print Full Name
 (for a company specify position:
 Director/Attorney/Authorised Signatory)



 Signature of Tenant

Barry Glen Herbison

 Print Full Name
 (for a company specify position:
 Director/Attorney/Authorised Signatory)

SIGNED by the Guarantor *

in the presence of:

 Witness Signature

 Witness Name

 Witness Occupation

 Witness Address



 Signature of Guarantor

 Print Full Name
 (for a company specify position:
 Director/Attorney/Authorised Signatory)

 Signature of Guarantor

 Print Full Name
 (for a company specify position:
 Director/Attorney/Authorised Signatory)

* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

Note: Signing by a company – to ensure that this document binds the company as a deed, it must be signed in accordance with section 180 of the Companies Act 1993.
 If two directors sign, no witnessing is necessary.
 If only one director or a director and authorised signatory(ies) or attorney(ies) sign, signatures must be witnessed.

FIRST SCHEDULE

PREMISES: All the Landlord's land and buildings at 14-16 Makaro Street, Porirua, Wellington and comprised in certificates of title 531959 and 531960 together with any easements appurtenant to the property

CAR PARKS: The carparks included in the premises

TERM: 20 years (or thereabouts) expiring on 29 November 2031

COMMENCEMENT DATE: 21 December 2010

RIGHTS OF RENEWAL: six further terms of five years each

RENEWAL DATES: 30 November 2031, 2036, 2041, 2046, 2051 and 2056

FINAL EXPIRY DATE: 29 November 2061 (if all renewals exercised)

ANNUAL RENT:	Premises	\$ 1,183,270	plus GST
Calculated in accordance with the Sixth Schedule	Car Parks	\$ 133,120	plus GST
(Subject to review if applicable)	TOTAL	\$ 1,316,390	plus GST

MONTHLY RENT: \$ 109,699.17 plus GST

RENT PAYMENT DATES: The 1st day of each month commencing on the 1st day of December 2011

RENT REVIEW DATES:

(Delete where appropriate: if neither option is deleted, then option (a) applies)

(a) Each renewal date
30 November 2031, 2036, 2041, 2046, 2051 and 2056
OR

(b) (Insert date(s):)

CPI ADJUSTMENT DATES

30 November 2013, 2015, 2017, 2019, 2021, 2023, 2025, 2027 & 2029 & if the renewals are exercised 30 November 2031, 2036, 2041, 2046, 2051 and 2056

PROPORTION OF OUTGOINGS: (clause 3.1)

DEFAULT INTEREST RATE: (clause 5.1) 5% per annum

IMPROVEMENTS RENT PERCENTAGE: (clause 21.2) 10%

above the Landlord's bank's commercial overdraft rate at time of default

BUSINESS USE: (clause 16.1) Construction and maintenance yard, manufacturing facility, offices and any other uses permitted by the relevant district plan or resource consent

LANDLORD'S INSURANCE: (clause 23.1)

(Delete or amend extent of cover as appropriate)

(1) Cover for fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; and

(2) Cover for the following additional risks:
risks as would from time to time be covered under a comprehensive buildings insurance policy, including such risks as reasonably required by the tenant

on the following basis:

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

OR

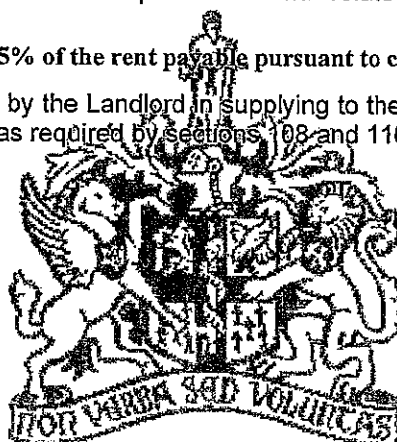
(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass).

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

OUTGOINGS

(clause 3)

1. Rates or levies payable to any local or territorial authority.
2. Charges for water gas electricity telephones and other utilities or services, including line charges.
3. Rubbish collection 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 \$500) in respect of a claim and insurance premiums and related valuation fees (clause 23).
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).
8. The provisioning of toilets and other shared facilities.
9. The cost of ground maintenance i.e. 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 structural repairs to any car parking area of the building.
11. Body Corporate charges for insurance premiums and related valuation fees and management administration expenses.
12. Management expenses being 5.5% of the rent payable pursuant to clause 1.1 of the Second Schedule
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.



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.

Rent Review

- 2.1 THE annual rent payable as from each rent review date shall be determined as follows:
- Either party may not earlier than 3 months prior to a rent review date and not later than the next rent review date give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant 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 clause 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 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 this clause shall be the annual rent payable as from the relevant 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 rent review date but subject to clause 2.3 and 2.4.
 - The rent review at the option of either party may be recorded in a Deed, **to be prepared by the Landlord.**

2.1A See Clause 1.1 (b) of the Fourth Schedule 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 10 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 10 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;
 - 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 such representations but not be bound thereby.
 - See clause 1.2 of the Fourth Schedule**

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

Interim Rent

- ~~2.3 PENDING determination of the new rent, the Tenant shall from the relevant 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 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 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 payable shall be determined as at the relevant 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 rent review date and, subject to clause 2.4, shall not be subject to adjustment. See clause 1.3 of the Fourth Schedule~~

- 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.

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 thereof 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 may 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 such 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 such 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. See clause 1.4 (a) of the Fourth Schedule.
- 3.6 ~~AFTER the 31st March in each year of the term or such 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. See clause 1.4 (b) of the Fourth Schedule.~~
- 3.7 THE Tenant's liability to pay outgoings during the term shall subsist notwithstanding the end or earlier termination of the term.
- 3.8 SUBJECT to clauses 8.1, 16.2 and 21.1 the Tenant shall be liable to pay only those outgoings specified in the First Schedule.
- 3.9 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.

Goods and Services Tax

- 4.1 THE Tenant shall pay to the Landlord or as the Landlord shall direct the Goods and Services Tax payable by the Landlord in respect of the rental and other payments payable by the Tenant hereunder. The tax 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 hereunder and the Landlord becomes liable to pay additional Goods and Services Tax then the Tenant shall on demand pay to the Landlord the additional tax.

Interest on Unpaid Money

- 5.1 IF the Tenant defaults in payment of the rental or other moneys payable hereunder 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.

Costs

- 6.1 ~~THE Tenant shall pay the Landlord's solicitors' reasonable costs of and incidental to the preparation of this lease and any variation or renewal or any Deed recording a rent review and 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 solicitor and client) of and incidental to the enforcement or attempted enforcement of the Landlord's rights remedies and powers under this lease. See clause 1.5 of the Fourth Schedule.~~

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 (subject to any maintenance covenant by the Landlord) 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 including the Landlord's fixtures and fittings in the same clean order repair and condition as they were in at the commencement 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. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use. Where the premises are 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, then the Tenant is liable for the cost of making good that damage to the extent that:
- (1) the damage was intentionally caused by the Tenant or those for whom the Tenant is responsible;
 - (2) the 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:
 - (i) occurred on or about the property; and
 - (ii) constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
 - (3) any insurance moneys otherwise payable are rendered irrecoverable because of an act or omission of the Tenant or those for whom the Tenant is responsible.

(b) **Breakages and Damage**

Pay for the repair of all glass breakages and breakage or damage to all doors windows light fittings and power points of the premises and shall keep that portion of the electrical system of the premises from the switchboard to all power outlets in good operating condition;

(c) **Painting**

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated when the same reasonably require repainting and redecoration to a specification as approved by the Landlord;

(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 a similar quality when reasonably required by the Landlord; and

(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) **Maintain yards and fences**

Keep and maintain any surfaced areas and all fences in good order and repair;

(b) **Care of grounds**

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

(c) **Water and drainage**

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

(d) **Other works Refer clause 1.6 (a) of the Fourth Schedule.**

~~Carry out such works to the property as the Landlord may require in respect of which outgoings are payable by the Tenant~~

8.3 THE Tenant shall not be liable for the maintenance or repair of any building service the subject of a service maintenance contract but this clause shall not release the Tenant from any obligation to pay for the cost of any such contract or charges in respect of any such maintenance or repair.

8.4 NOTWITHSTANDING any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises or the Landlord's fixtures and fittings 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 clause 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 garbage 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

11.1 THE Landlord shall keep and maintain the building, all building services, the Landlord's fixtures and fittings, and the car parks in good order and repair but the Landlord shall not be liable for any:

- (a) Repair or maintenance which the Tenant is responsible to undertake; or
- (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; or
- (c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises and the car parks; or
- (d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing thereof from the Tenant and shall not within a reasonable time thereafter have 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 unless it is the obligation of the Tenant to maintain such contracts.

11.3 THE Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract if it is an outgoing specified in the First Schedule.

11.4-11.6 See clause 1.7 of the Fourth Schedule.**Notification of Defects**

12.1 THE Tenant shall give to the Landlord ~~prompt~~ 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

* See clause 1.8 of the Fourth Schedule.

13.1 THE Landlord and the Landlord's employees contractors and invitees may at all reasonable times 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 enter upon the premises to execute such works. Any moneys expended by the Landlord in executing such works shall be payable by the Tenant to the Landlord upon demand together with interest thereon at the default interest rate from the date of expenditure to the date of payment.

Access for Repairs

- 15.1 THE Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times to enter the premises to carry out repairs to the premises or adjacent premises and to install inspect repair renew or replace any services where the same are not the responsibility of the Tenant all such repairs inspections and work to be carried out with the least possible inconvenience to the Tenant.

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:

- (a) not in substantial competition with the business of any other occupant of the property which might be affected by the use;
- (b) reasonably suitable for the premises; and
- (c) complying 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 thereto other than the rights of use herein provided.

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 exhibition 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 or the appurtenances thereof without the prior approval in writing of the Landlord but such 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 thereby.

**19.2-19.3 See clause 1.9 of the Fourth Schedule.
Additions and Alterations**

- 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 shall authorise any alterations or additions the Tenant will at the Tenant's own expense if required by the Landlord at the end or earlier termination of the term reinstate the premises. 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. See clause 1.10 of the Fourth Schedule.~~

- 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.

**20.3 See clause 1.10(b) of the Fourth Schedule
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; and
 - (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.

- 21.2 If the Landlord is obliged by any such legislation or requirement to expend moneys on any improvement addition or alteration to the property then the Landlord shall be entitled to charge up to the next rent review date in addition to the rent an annual sum equal to the Improvements Rent Percentage of the amount so expended by the Landlord and the monthly payments of rent shall increase accordingly from the first day of the month in which such improvement addition or alteration is completed. If the Landlord would be obliged to expend an unreasonable amount then the Landlord may determine this lease and any dispute as to whether or not the amount is unreasonable shall be determined by arbitration. In the case of a multi tenancy building, the annual sum payable shall be assessed in respect of a fair proportion of the amount so expended.
- ~~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 clause 1.11 of the Fourth 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 such 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; See clause 1.12 (a) of the Fourth Schedule.
- (c) use the premises or allow them to be used for any noisome noxious illegal or offensive trade or business; or
- (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.

22.2 See clause 1.12 (b) of the Fourth Schedule.

INSURANCE

Landlord shall insure

23.1 THE Landlord shall at all times during the term keep and maintain any buildings on the property insured under a policy of the type shown in the First Schedule and such cover may include:

- (a) a 12 month 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; or
- (c) public liability.

23.2 See clause 1.13 of the Fourth Schedule.

Tenant not to Void Insurances

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; or
- (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:

In any case where in breach of this clause the Tenant has rendered any insurance less effective or void and the Landlord has suffered loss or damage thereby the Tenant shall forthwith compensate the Landlord in full for such loss or damage.

When Tenant to have benefit of Landlord's insurance

25.1 The Landlord will indemnify the Tenant for the cost of making good damage to the property or loss to the Landlord where the Tenant is obligated to pay for making good such damage or loss, to the extent that:

- (a) the damage was not intentionally caused by the Tenant or those for whom the Tenant is responsible;
- (b) the damage was not 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 indictable offence within the meaning of the Summary Proceedings Act 1957; or
- (c) the Landlord is (or covenanted with the Tenant to be) insured and the insurance moneys are not rendered irrecoverable in consequence of any act or default of the Tenant or those for whom the Tenant is responsible.

DAMAGE TO OR DESTRUCTION OF PREMISES**Total Destruction** See clause 1.14 of the Fourth Schedule

- ~~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; 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 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 clause shall be without prejudice to the rights of either party against the other.~~

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 shall be obtainable:
- THEN 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 and/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. See clause 1.15(a) of the Fourth Schedule.~~
- 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.
- 27.5 See clause 1.15 (b) of the Fourth Schedule.

DEFAULT**Cancellation**

- 28.1 THE Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) cancel this lease by re-entering the premises at the time or at any time thereafter:
- (a) if the rent shall be in arrear 10 working days after any of the rent payment dates 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 herein expressed or implied (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 or liquidation of the Tenant; or
 - (e) if the Tenant shall suffer distress or 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): **\$50,000**
- and the term shall terminate on such 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 hereunder 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. 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.
- 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.

REMOVAL OF TENANT'S FIXTURES, FITTINGS AND CHATELS

- ~~31.1 THE Tenant may at any time before and will if required by the Landlord at the end or earlier termination of the term remove all the Tenant's fixtures fittings and chattels and make good at the Tenant's own expense all resulting damage and if not removed within 5 working days after the date of termination ownership of the fixtures fittings and chattels may at the Landlord's election pass to the Landlord or the Landlord may in a proper and workmanlike manner remove the same from the premises and forward them to a refuse collection centre. See clause 1.16 of the Fourth Schedule.~~
- 31.2 The cost of making good resulting damage and the cost of removal 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.

QUIET ENJOYMENT

- 32.1 THE Tenant paying the rent and performing and observing all the covenants and agreements herein expressed and implied 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

- 33.1 IF the Tenant has given to the Landlord written notice to renew the lease at least 3 calendar months before the end of the term and is not at the date of the giving of such notice in breach of this lease (including any maintenance obligations) 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 rent review date the annual rent shall be agreed upon or failing agreement shall be determined in accordance with clauses 2.1 and 2.2 ~~but such annual rent shall not be less than the rent payable as at the commencement date of the immediately preceding lease term; See clause 1.17(a) of the Fourth Schedule.~~
 - (b) Subject to the provisions of paragraph (a) the new lease shall be upon and subject to the covenants and agreements herein expressed and implied except that the term of this lease plus all further terms shall expire on or before the final expiry date;
 - (c) The annual rent shall be subject to review during the term of the new lease on the rent review dates or if no dates are specified then after the lapse of the equivalent periods of time as are provided herein for rent reviews;
 - (d) 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;
 - (e) ~~Pending the determination of the rent, the Tenant shall pay an interim rent in accordance with clauses 2.3 and 2.4; and~~ See clause 1.17(b) of the Fourth Schedule.
 - (f) ~~Notwithstanding anything contained in clause 33.1(e) the interim rent referred to in that clause shall not be less than the annual rent payable as at the commencement date of the immediately preceding lease term.~~ See clause 1.17(c) of the Fourth Schedule.

ASSIGNMENT OR SUBLETTING

- 34.1 THE Tenant shall not assign sublet or otherwise part with the possession of the premises or any part thereof without first obtaining the written consent of the Landlord which the Landlord shall give if the following conditions are fulfilled:
- (a) The Tenant proves to the 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;
 - (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) 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; and See clause 1.18(a) of the Fourth Schedule.
 - (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 payable whether or not the assignment or subletting proceeds.
- 34.2 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.
- 34.3 WHERE any Tenant is a company which is not listed on the main board of a public stock exchange then any change in the legal or beneficial ownership of its shares or issue of new capital whereby in either case there is a change in the effective management or control of the company is deemed to be an assignment of this lease. See clause 1.18(b) of the Fourth Schedule.
- 34.4 See clause 1.18(c) of the Fourth Schedule.

UNIT TITLE COVENANTS**Body Corporate**

- 35.1 THE expression "Body Corporate" means the Body Corporate incorporated under the Unit Titles Act 1972 ("the Act") in respect of the property.

Act and Rules Paramount

- 35.2 THIS lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.

Insurance

- 35.3 THE Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance covers in accordance with the Act.

Indemnity

- 35.4 THE Tenant's obligation to indemnify the Landlord as herein expressed is extended to include the Body Corporate but only to the extent that the Body Corporate is not fully indemnified under any policy of insurance.

Landlord's Obligations

- 35.5 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.

Consents

- 35.6 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 any such matter would be necessary under its rules or the Act.

Car Parks

- ~~36.1 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.~~
- ~~36.2 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 clauses 26.1 or 27.~~
- ~~36.3 THE Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and access thereto and in particular shall only use the car parks for the parking of one car per parking space.~~
- ~~36.4 THE provisions of the Second Schedule shall apply to the car parks as appropriate.~~

GENERAL**Holding Over**

- ~~37.1 IF the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, such occupation shall be a periodic tenancy only terminable by 20 working days notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as herein expressed or implied.~~
- See clause 1.19 of the Fourth Schedule.

Access for Re-Letting or Sale

- 38.1 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;
 - (b) is conducted in a manner which does not cause disruption to the Tenant; and
 - (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

- 39.1 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

- 40.1 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

- 41.1 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

- ~~42.1 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 hereunder. See clause 1.20 of the Fourth Schedule.~~

Notices

- 43.1 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.
- 43.2 IN respect of the means of service specified in clause 43.1(b)(ii), 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; or
 - ~~(d) in the case of email, when acknowledged by the addressee by return email or otherwise in writing.~~
- 43.3 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.
- 43.4 A notice shall be valid if given by any director, general manager, solicitor or other authorised representative of the party giving the notice.

Arbitration

- 44.1 UNLESS any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- 44.2 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 for the time being of the District Law Society of the district within which the premises are situated. 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 hereto and varied accordingly.
- 44.3 THE procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable hereunder which remain unpaid or from exercising the rights and remedies in the event of such default prescribed in clause 28.1 hereof.

Interpretation**45.1****IN this lease:**

- (a) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant;
- (b) "the property" and "the building" mean the land and building(s) 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;
- (c) "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;
- (d) "GST" means the Goods and Services Tax;
- (e) "structural repair, alteration or addition" means a repair, alteration or addition to the structure or fabric of the building but excluding building services;
- (f) "renewal" means the granting of a new lease as provided for in clause 33.1;
- (g) 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;
- (h) Where the context requires or admits, words importing the singular shall import the plural and vice versa;
- (i) "those for whom the Tenant is responsible" includes the Tenant's agents employees contractors or invitees;
- ~~(j) "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.~~
- (k) Where the Landlord's consent 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, and
 - (2) must, within a reasonable time of the Landlord's consent being requested:
 - (i) grant that consent; or
 - (ii) notify the Tenant in writing that the consent is withheld.

See clause 1.21 of the Fourth Schedule.

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See clause 1.22 of the Fourth Schedule.



THIRD SCHEDULE

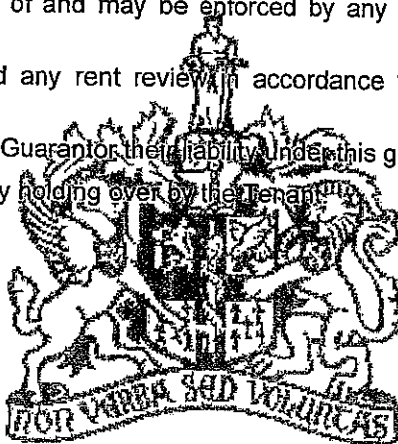
GUARANTEE

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, and
- (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 whereby 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 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 shall be joint and several.
6. **THE** Guarantee shall extend to any holding over by the Tenant.



**FOURTH SCHEDULE
LEASE OF PREMISES AT MAKARO STREET, PORIRUA, WELLINGTON**

AMENDMENTS TO THE SECOND SCHEDULE

If there is any conflict between the amendments in the Fourth Schedule and the clauses of the Second Schedule, the amendments in the Fourth Schedule will prevail.

1.1 Rent Review

- (a) A new clause 2.1(d) is inserted as follows:

"Notwithstanding any other provision of this clause, the annual rent payable as from a rent review date shall not be more than 110% or less than 100% of the annual rent payable immediately prior to that rent review date provided that where the rent review date is also a CPI Adjustment Date, the annual rent shall be the greater of that determined pursuant to this clause 2.1, and that calculated in accordance with clause 2.1A, so long as the annual rent payable from that date shall not be more than 110% of the annual rent payable immediately prior to that date."

- (b) A new clause 2.1A is inserted as follows:

"2.1A On and from each CPI Adjustment Date, the annual rent will be the greater of;

- (a) the annual rent payable immediately prior to that CPI Adjustment Date increased by 3% per annum calculated over the period between that CPI Adjustment Date and the immediately preceding rent review date or the immediately preceding CPI Adjustment Date, whichever is the later; and*
- (b) the CPI Adjusted Rent.*

In this clause:

***CPI** means the Consumer Price Index (All Groups) as published by Statistics New Zealand (or any successor organisation) on an annual basis. If that index ceases to be published on an annual basis or if the basis of calculation of the index is fundamentally changed then CPI will mean an index on which the parties agree, or failing agreement, as may be determined by an independent expert with the appropriate qualifications and expertise appointed by the President for the time being of the New Zealand Society of Accountants; and*

***CPI Adjusted Rent** means $B = A \times (C/D)$ where:*

- A = the annual rent payable during the period of 12 months immediately preceding the relevant CPI Adjustment Date;*
- B = the annual rent payable immediately following the relevant CPI Adjustment Date;*
- C = CPI ending on the quarter immediately preceding the relevant CPI Adjustment Date; and*

D = CPI ending on the quarter immediately preceding either the commencement date, the immediately preceding rent review date or the immediately preceding CPI Adjustment Date, whichever is the later."

1.2 Rent Determinations

Clause 2.2 is amended by inserting a new subparagraph (6) as follows:

"(6) When determining the current market rent for the premises the valuers shall consider comparable premises AND shall disregard any deleterious condition of the Premises if such condition results from any breach of this Lease by the Lessee; and the value of goodwill attributable to the Lessee's business and the value of the Lessee's fixtures and fittings in the Premises."

1.3 Interim Rent

Clause 2.3 is deleted and replaced with the following

"2.3 Pending determination of the new rent, the Tenant shall from the relevant rent review date, until the determination of the new rent pay rent at the same rate as was payable immediately before the initiator's notice was issued."

1.4 Outgoings

(a) Clause 3.5 is amended by adding the following words at the end:

"Prior to or as soon as practicable after 31 December in each year of the term of the lease, the Landlord shall provide to the Tenant (in writing) details of the Landlord's budgeted outgoings for the year to 31 December next following."

(b) Clause 3.6 is deleted and replaced with the following:

"3.6 After 31 December in each year of the term or such other date in each year as the Landlord may specify, and after the end of term, if requested by the Tenant, the Landlord shall supply to the Tenant copies of the assessments, levies and accounts relating to the relevant outgoings such as to enable the Tenant to verify the quantum and purpose of the relevant outgoings, and a comparison with the budget previously notified by the Landlord to the Tenant under clause 3.5. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand."

1.5 Costs

Clause 6.1 is deleted and replaced with the following:

"6.1 Each party shall pay its own costs of and incidental to the preparation, negotiation and completion of this lease and any variation or renewal or any deed recording a rent review, and 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 solicitor and client) of and incidental to the enforcement or attempted enforcement of the Landlord's rights, remedies and powers under this lease."

1.6 Tenant's Maintenance

- (a) Clause 8.2(d) is deleted and replaced with the following:

"(d) Tenant's Plant, Equipment and Structures

The Tenant shall keep and maintain any buildings comprised in the Tenant's Plant, Equipment and Structures in the condition required to comply with statutory requirements."

1.7 Landlord's Maintenance

New clauses 11.4, 11.5 and 11.6 are inserted as follows:

"11.4 In addition the Landlord shall keep the building in a watertight condition.

11.5 Where the Tenant has given notice in accordance with clause 12.1 of any defect and the Landlord fails within a reasonable time to carry out any repair, replacement and/or maintenance obligations required by the provisions of this clause 11 then the Tenant may undertake the repair, replacement and/or maintenance work at the Landlord's sole cost and expense, and the Landlord will, upon demand, pay to the Tenant all costs and expenses incurred by the Tenant in carrying out the work.

11.6 The Landlord shall use best endeavours to enforce any guarantees in respect of the premises and the building."

1.8 Notification of Defects

Clause 12.1 is amended by replacing the words "prompt notice" in the first line with "notice within a reasonable time".

1.9 Signage/Corporate Branding

New clauses 19.2 and 19.3 are inserted as follows:

"19.2 Notwithstanding clause 19.1, while the Tenant is a Downer Group Member, the Tenant shall be entitled to erect exterior and foyer signage and colour treatments on either or both the Landlord's building and the premises provided that the Landlord's consent to such signage and colour treatments is obtained which the Landlord shall not withhold where the signage and colour treatments are the standard advertising signage used by a Downer Group Member for its business carried on in New Zealand.

19.3 The Landlord consents to all of the Tenant's signage existing on and adjacent to the premises as at the commencement date."

1.10 Additions and Alterations

- (a) Clause 20.1 is deleted and replaced with the following:

"Subject to the prior written consent of the Landlord being obtained, the Tenant shall be entitled to undertake Refurbishment works at the premises (including installing Tenant's Plant, Equipment and Structures). The Tenant shall on each occasion provide the Landlord with plans and specifications of all the works proposed to be carried out as part of the Refurbishment and all information reasonably required by the Landlord in connection with the proposed works."

- (b) A new clause 20.3 is inserted as follows:

20.3 *"If the Landlord agrees to undertake any Landlord's Improvement Works requested by the Tenant or as part of the Refurbishment to be undertaken by the Tenant, the Landlord shall carry out the Landlord's Improvement Works at its own cost and to a timetable as reasonably agreed with the Tenant and the Tenant and Landlord shall negotiate in good faith to agree how most efficiently to integrate the carrying out of the Landlord's Improvement Works (including the possibility of the works being carried out by the Tenant at the Landlord's cost) with the carrying out of any other work to be carried out by or on behalf of the Tenant.*

- (a) *The Landlord shall to the extent it carries out the same ensure that the Landlord's Improvement Works are carried out:*
 - (i) *to a professional standard;*
 - (ii) *in accordance with all applicable acts, bylaws and regulations (including obtaining all necessary Authority consents and complying with those consents);*
 - (iii) *by a contractor and on terms (including as to price) approved by the Tenant;*
 - (iv) *in a manner causing the least possible inconvenience and disruption to the Tenant and its business operations at the premises; and*
 - (v) *so that allowing the premises to be open to the public will not breach section 363 of the Building Act 2004.*
- (b) *The Landlord shall while carrying out any Landlord's Improvement Works maintain comprehensive insurance (including contractor's all risk insurance and public liability insurance) in respect of those works.*
- (c) *From completion of the Landlord's Improvement Works, the Tenant shall pay to the Landlord as additional annual rental (Additional Rent) an amount per annum (plus GST) equal to 10% of the amount paid by the Landlord (excluding GST) for the Landlord's Improvement Works (including amounts for contractors, materials, capital, machinery, legal costs, and associated costs). The Tenant may request that the Landlord produce suitable evidence of the costs incurred and the Tenant may elect to have the costs audited by an independent accountant at the Tenant's cost in which case the amount determined by audit will be binding on the parties.*
- (d) *The Landlord and the Tenant shall enter into a variation of lease to record the Additional Rent, the inclusion of the Landlord's Improvement Works in the demise (if appropriate) and to provide an unexpired term (whether by renewal or otherwise) of at least seven years following completion of the Landlord's Improvement Works. If the next rent review after the completion of the Landlord's Improvement Works is a CPI adjustment, then, despite clause 2.1A, the component of the annual rent comprising the Additional Rent will only be adjusted (in accordance with that clause) if the CPI Adjustment Date is at least twelve months after the completion of the Landlord's Improvement Works (provided the Additional Rent will not decrease).*
- (e) *This clause 20.3 shall only apply while a Downer Group Member is the Tenant.*
- (f) *For the purposes of this clause 20.3, "completion of the Landlord's Improvements Works" means the date that a code compliance certificate or a*

certificate of public use is issued in respect of the Landlord's Improvements Works."

1.11 Compliance with Statutes and Regulations

A new clause 21.6 is inserted as follows:

"21.6 The Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the building and/or the property (including, without limitation, the Health and Safety in Employment Act 1992)."

1.12 No Noxious Use

(a) A proviso is inserted at the end of the first sentence of clause 22.1(b) as follows:

"provided that the Tenant shall not be required to undertake works pursuant to this clause 22.1(b) to remediate the property to a level in excess of that which is sufficient to enable the use of the premises as a construction and maintenance yard and manufacturing facility except as may be required by any Government agency or local or regulatory authority."

(b) A new clause 22.2 is inserted as follows:

"22.2 Subject to compliance with clause 22.1 and the other provisions of this lease, the Tenant may continue to store and use chemicals required in order to continue the business use existing at the commencement date of the initial lease term provided such storage and use is in accordance with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of such substances."

1.13 Insurance

A new clause 23.2 is inserted as follows:

"23.2 At the reasonable request of the Tenant, the Landlord shall produce details of the Landlord's insurance currently in effect under the lease and evidence of the payment of the last premium."

1.14 Total Destruction

Clause 26.1 is deleted and replaced with the following clauses:

"26.1 If the premises shall be destroyed or so damaged as to render the premises untenable then either party may terminate this lease by giving to the other notice in writing within 20 working days from and exclusive of the date upon which the damage occurs (time being of the essence). If this lease is not terminated then the Landlord is to reinstate the premises with all reasonable speed, subject to:

(a) the policies of insurance for the damage not having been invalidated by, or payment of the policy moneys refused because of, some act or default of the Tenant; and

(b) all the necessary permits and consents being obtainable,

provided that the Landlord shall not be liable to expend any sum of money greater than the amount of insurance money received. Termination pursuant to this clause shall be without prejudice to the rights of either party against the other.

- 26.2 *Until such termination or completion of reinstatement (as the case may be) a fair proportion of the rent and outgoings payable by the Tenant under this lease will cease to be payable as from the date of damage.*
- 26.3 *Subject to clause 26.1, repair or reinstatement under clause 26.1 must be carried out by the Landlord using materials and form of construction and according to a plan which will reinstate, as nearly as possible, the premises to the state they were in prior to the destruction or damage.*
- 26.4 *For the avoidance of doubt destruction of the buildings alone shall not cause the premises to be untenable."*

1.15 Partial Destruction

- (a) Clause 27.2 is deleted and replaced with the following:

"27.2 Repair or reinstatement under clause 27.1 must be carried out by the Landlord using materials and form of construction and according to a plan which will reinstate, as nearly as possible, the premises to the state they were in prior to the destruction or damage provided that the Landlord shall not be liable to expend any sum of money greater than the amount of insurance money received."

- (b) A new clause 27.5 is inserted as follows:

"(a) If the Landlord fails to obtain all necessary permits and consents (other than by reason of any act or default of the Tenant) within five months (or such longer period as may be agreed between the parties) of the date on which written notice of the damage is given to the Landlord, and the Tenant has then given written notice to the Landlord requiring the Landlord to provide the Tenant with evidence that the Landlord has obtained all necessary permits and consents within twenty Working Days and the Landlord fails to do so, then the Tenant may terminate this lease by giving written notice to the Landlord without affecting the rights of either party against the other in respect of any prior breach of any of the covenants, conditions, or agreements contained or implied in this lease.

- (b) If the Landlord fails:*

- (i) to commence building works to repair or reinstate the premises within six months (or such longer period as may be agreed between the parties) from the date of the damage, or*
- (ii) to continuously progress such work in a timely manner,*

(other than by reason of any act or default of the Tenant) then the Tenant may terminate this lease by giving written notice to the Landlord without affecting the rights of either party against the other in respect of any prior breach of any of the covenants, conditions, or agreements contained or implied in this lease."

1.16 Removal of Tenant's Fixtures, Fittings and Chattels

Clause 31.1 is deleted and replaced with the following:

"31.1 (a) Notwithstanding anything to the contrary in this lease the Tenant may (but shall not be required to) at any time before or at the expiration or earlier determination of this lease remove all or any of the Tenant's Plant, Equipment and Structures and, if so removed, the Tenant shall make good, at the Tenant's expense, any resulting damage. If the Tenant leaves any of the Tenant's Plant, Equipment and Structures

on the premises for more than 10 working days after the expiration of the lease, they shall be deemed to have become the property of the Landlord.

(b) Notwithstanding the foregoing provision:

- (i) the Tenant shall leave the premises in a clean and tidy condition; and
- (ii) in the case of removal of any Tenant's Plant, Equipment and Structures which are fixed or attached to the ground or floor, the Tenant need only remove such items to the level of the ground or the floor to which those items were fixed or attached and need not undertake any removal below that level but shall fill in any resulting holes to leave a flush and properly filled surface."

1.17 Renewal of Lease

Clause 33.1 is amended as follows:

- (a) Clause 33.1(a) is amended by deleting from the words "but such annual rent..." and substituting the following:

"but such annual rent shall not be more than 110% or less than 100% of the annual rent payable immediately prior to that renewal date."

- (b) Clause 33.1(e) is deleted and replaced with the following:

"(e) pending the determination of the rent, the Tenant shall continue to pay rent at the rate payable immediately before the Tenant's renewal notice was issued; and"

- (c) Clause 33.1(f) is deleted and replaced with the following:

"(f) the deed recording the exercise of the renewal right will be recorded in a deed, to be prepared by the Landlord."

1.18 Assignment or Subletting

- (b) Clause 34.1(d) is amended by inserting the words "Where reasonably required by the Landlord," at the beginning.

- (b) Clause 34.3 is amended by adding the following words at the end:

"except that this clause shall not apply whilst a Downer Group Member is the tenant".

- (b) A new clause 34.4 is inserted as follows:

"34.4 Despite the foregoing provisions in this clause 34, Landlord consent shall not be required to any assignment, subletting, parting of possession to, or sharing of possession with, a Downer Group Member. In the event that such an assignment takes place, the Tenant shall procure a deed of covenant from the assignee on the terms set out in clause 34.1(c) and shall continue to be responsible for the obligations of the Tenant under the Lease."

1.19 Holding Over

Clause 37.1 is deleted and replaced with the following clause:

"37.1 If the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, such occupation shall be a three monthly tenancy only terminable by three months written notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a three monthly tenancy) as herein expressed or implied."

1.20 Land Transfer Title or Mortgagee's Consent

Clause 42.1 is deleted and replaced with the following:

"42.1 The Landlord shall on request from the Tenant, do all things reasonably required to enable this lease to be registered."

1.21 Interpretation

Clause 45.1 is amended by deleting the definition of "working day" and inserting the following additional definitions:

- (l) *"Authority" means any government or semi-government, local government, statutory, public, ministerial, civil, fiscal or judicial body or other authority or body having jurisdiction in relation to the premises including the Council or any officer of any of them.*
- (m) *"Downer Group Member" means Downer New Zealand Limited or a related company (as that term is defined in section 2 of the Companies Act 1993 provided that a reference to "Company" in that section includes a body corporate notwithstanding its jurisdiction of incorporation).*
- (n) *"Landlord's Improvement Works" means all replacements, alterations, additions and/or other improvements (whether structural or non-structural) to the building services, Landlord's fixtures and fittings and/or premises (including without limitation yard and surfaced areas), and which may include an extension to the building or the construction of a new building, required to be carried out pursuant to a Refurbishment and which are not otherwise the Landlord's responsibility to undertake (at its own cost) pursuant to the provisions of this lease. For the avoidance of doubt Specialised Works are excluded.*
- (o) *"Refurbishment" means the refurbishment, redevelopment and/or expansion of the premises (including without limitation yard and surfaced areas), building services, Landlord's fixtures and fittings and/or the Tenant's Plant, Equipment and Structures to meet the requirements of the Tenant for its business.*
- (p) *"Specialised Works" means any additions, alterations or improvements which are:*
 - (a) *not generic in nature; and*
 - (b) *specific to the Tenant's business.*
- (q) *"Tenant's Plant, Equipment and Structures" means the fixtures, fittings, plant, equipment, structures, buildings and other improvements owned by the Tenant or a Downer Group Member and located at the premises and includes, without limitation, the items listed in the Fifth Schedule and any items brought onto and/or constructed at the premises and owned or paid for by the Tenant after lease commencement."*

(r) *"working day" means any day of the week other than:*

- (i) *Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, and the Provincial Anniversary Day as observed at the place where the property is situated; and*
- (ii) *a day in the period commencing on (and including) the 24th day of December in any year and ending on (and including) the 5th of January in the following year."*

1.23 Tenant's Plant, Equipment and Structures

A new clause 46 is inserted as follows:

"Tenant's Plant, Equipment and Structures

46.1 *The parties agree that the Tenant's Plant, Equipment and Structures (including, without limitation, the items listed in the Fifth Schedule) shall remain the property of the Tenant during the term of this lease and cannot be charged by the Landlord.*

46.2 *For the avoidance of doubt, the premises, the building and the building services exclude the Tenant's Plant, Equipment and Structures."*

FIFTH SCHEDULE

LIST OF TENANT'S PLANT, EQUIPMENT AND STRUCTURES

Fixtures and Fittings

Retained Plant and Equipment

Downer Porirua

Sixth Schedule

of Deed of Lease

	<i>Area m2</i>	<i>Rate \$/m2</i>	<i>Rental pa</i>
Offices	2,650	\$220.00	\$583,000
Office Deck	60	\$50.00	\$3,000
Warehouse	2,306	\$95.00	\$219,070
Warehouse Toilets / Lockers	120	\$140.00	\$16,800
Warehouse Lunchroom	120	\$140.00	\$16,800
Warehouse Tech Room Office	64	\$150.00	\$9,600
Warehouse Tech Room Mezzanine	64	\$75.00	\$4,800
Yard	16,510	\$20.00	\$330,200
Undercover Carparks	44	\$20.00	\$45,760
Carparks	112	\$15.00	\$87,360
Total Rental			\$1,316,390

Dated _____

Between
THE WOOLSTORE SIX LIMITED

Landlord

and
DOWNER NEW ZEALAND LIMITED

Tenant



DEED OF LEASE