

Belmont Vic

3718

1A.

LEASE

Centre: BELMONT SHOPPING VILLAGE

Shop: SHOP 1

Trading Name: LIQUORLAND

Retailer: LIQUORLAND (AUSTRALIA) PTY LTD

Owner: MYER PROPERTIES W.A. LIMITED

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LEASE:

Date:

BETWEEN:

The Owner: **MYER PROPERTIES W.A. LIMITED (ACN 050 141 645)**
of 800 Toorak Road, Tooronga, Victoria

The Retailer: **LIQUORLAND (AUSTRALIA) PTY LTD (ACN 007 512 414)**
of 110 Silverwater Road, Silverwater, New South Wales

The Guarantor: Not applicable

IT IS AGREED, on the terms contained in the attached Lease Terms and Conditions (reference BEL/LTC/09/96), as follows:

1. The Owner leases the Shop to the Retailer.
2. The Retailer accepts the Lease from the Owner.
3. The Guarantor guarantees the performance of the Retailer's obligations.

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LEASE: (continued)

EXECUTED as a deed.

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THE COMMON SEAL of MYER PROPERTIES W.A. LIMITED (ACN 050 141 645) was affixed in accordance with its Articles of Association in the presence of:

Secretary/Director

Director

Name (please print)

Name (please print)

EXECUTED by LIQUORLAND (AUSTRALIA) PTY LTD by being signed sealed and delivered by its attorney in the presence of:

Attorney

Witness

Please print name

Please print name

SIGNED in my presence for and on behalf of Liquorland [Australia] Pty. Ltd. A.C.N. 007 512 414 by its constituted Attorney *David McDowell* who is personally known to me and declares that he has not received notice of revocation of Power of Attorney

Liquorland [Australia] Pty. Ltd. A.C.N. 007 512 414 by its Attorney under Power of Attorney Registered 23.6.92

McDowell J.P
David Carroll
110 Silverwater Road
Silverwater NSW 2141
Accountant

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REFERENCE TABLE

Item 1:	Owner:	Myer Properties W.A. Limited (ACN 050 141 645) of 800 Toorak Road, Tooronga, Victoria.
Item 2:	Retailer:	Liquorland (Australia) Pty Ltd (ACN 007 512 414) of 110 Silverwater Road, Silverwater, New South Wales.
Item 3:	Trading Name:	Liquorland
Item 4:	Guarantor:	Not applicable
Item 5:	Centre:	Belmont Shopping Village.
Item 6:	Land:	The whole of the land in Certificate of Title Volume 8820 Folio 628
Item 7:	Shop:	The premises known as Shop 1 in the Centre being for identification purposes only the premises highlighted on the Shop Plan.
Item 8:	Shop Area:	square metres
Item 9:	Permitted Use:	Retail sale of liquor, beverages and associated items.
Item 10:	Term of Lease:	Ten (10) years.
Item 11:	Commencement Date:	

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Item 12: Termination Date:

Item 13: Rent:

- (1) Minimum Annual Rent: \$57,000.00 per annum
- (2) Percentage Rent Rate: Not applicable
- (3) Base Gross Sales: Not applicable

Item 14: Rent Variation:

- (1) Fixed Percentage Increase Rate: Not applicable
- (2) Fixed Increase Dates: Not applicable
- (3) Market Review Dates: The fifth anniversary of the Commencement Date and the Commencement Date of each Further Term (if applicable)
- (4) CPI Increase Dates: Every anniversary of the Commencement Date of the Term and of each Further Term (if applicable).

Item 15: Marketing Fund Contribution: 3% of the Minimum Annual Rent.

Item 16: Minimum Advertising Expenditure: Not applicable.

Item 17: Liquidated Damages Rate: \$100.00 per hour.

Item 18: Public Liability Insurance Cover: \$10,000,000.00.

Item 19: Secured Sum: Not applicable.

Item 20: Special Covenants

(1) Notwithstanding any other provision contained in the Lease, for so long as the party named in item 2 of the Reference Table is the Retailer and is in occupation of the Shop this Lease is varied and is to be read and construed as follows:

- A new clause 2.3 will be inserted as follows:

"2.3 Renewal of Lease

- (a) The Retailer may renew the Lease for 2 further terms of five (5) years each (the "Further Terms").

- (b) To renew the Lease, the Retailer must give the Owner written notice of not more than 9 months or less than 6 months before the Termination Date.
- (c) Unless the Retail Tenancies Act 1986 provides otherwise, the Owner must grant a Further Term if the Retailer has:
 - (i) always paid the rent on time; and
 - (ii) obeyed the Lease Terms and Conditions.
- (d) The Owner must grant the Retailer the Further Term on the same terms and conditions as the Lease Terms and Conditions except that the number of further terms in clause 2.3(a) above will be reduced by one so that any lease for the second Further Term will contain no renewal of lease and this clause 2.3 will be deleted.
- (e)
 - (i) The Minimum Annual Rent for the first year of each Further Term will be the Minimum Annual Rent payable immediately prior to the Termination Date reviewed to the market rent of the Shop at the Commencement Date of the Further Term.
 - (ii) The provisions of clause 20.2 of the Lease will apply in determining the market rent of the Shop under clause 2.3(e)(i).
- (f) The Minimum Annual Rent for each subsequent year of each Further Term will be increased in accordance with Clause 20.1.

- Clause 3.9(a) is deleted.
- Clause 3.13 is inserted as follows:

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“3.13 Costs The Retailer and the Owner will pay their own legal costs for the preparation, negotiation, completion and stamping of the Lease.”
- Clause 4.1.3 is deleted.
- Clause 4.3.2 is deleted.
- Clause 4.3.3 is deleted.
- Clause 4.4.1 is amended by inserting the following at the end of the clause:

“provided that the Retailer may remain open for business during any hours that any supermarket, department store or discount department store is open in the Centre”.
- Clause 4.4.2 is deleted.
- Clause 4.7(a) is amended by inserting after the word “notice” in the third line the words:

“provided that such consent will not be withheld in the case of the Retailer’s usual corporate signage whilst ever the Retailer is Liquorland (Australia) Pty Ltd or any related corporation”.
- Clause 4.19.1 is amended by inserting the word “reasonably” after the word “Owner” in the first line.
- Clause 4.20.1(b) is deleted.
- Clause 5.1.3(c) is substituted as follows:

“(c) the particular business use of the Shop by the Retailer”.
- Clause 5.5.1 is amended:
 - (a) by inserting after the words “reasonable notice” in line 1 the words “and in the company of an officer of the Retailer”; and
 - (b) by inserting at the end of the clause:

“which the Owner may be required or authorised to carry out pursuant to this

Lease”.

- Clause 5.6 is substituted as follows:

“5.6 Owner may require refurbishment

The Retailer undertakes to keep the Retailer’s Removable Fixtures in first-class order and condition throughout the Term.”

- Clause 7.8 is amended by inserting the following at the end of the clause:

“and provided further that whilst ever the Lessee is Liquorland (Australia) Pty Ltd, no kiosk will be erected within 4.5 metres of any part of the entrance to the shop”.

- Clause 7.9.1 is amended by inserting after the word “Centre” in the first line, the words “(other than the Shop)”.

- Clause 7.12.1(a) is amended by substituting the word “Shop” with the word “Centre”.

- Clause 9.1.1(c) is amended by inserting at the beginning of the clause the words:

“(In cases where this Lease is sought to be terminated by the Owner)”.

- Clause 9.1.6 is amended by deleting the words “which the Owner determines in good faith”.

- Section 10 is substituted as follows:

“SECTION 10 - BUILDING ALTERATIONS

10.1 In the event that the Owner requires the premises for the purpose of redevelopment of the Centre, the Owner may require the Retailer to relocate the Retailer’s Business to alternative premises (“the New Premises”) then existing or to be constructed by the Owner at its sole cost within the Building, provided always that the New Premises are in all respects acceptable to the Retailer.

10.2 In the event that the Owner does require the Retailer to relocate its business to the New Premises, then the Owner shall give not less than 7 months prior notice in writing of that fact (“the Relocation Notice”). The Relocation Notice will specify the New Premises proposed by the Owner including plans showing its location, elevations and schedule of features and works.

10.3 Within one month of the date of receipt of the Relocation Notice, the Retailer shall serve the Owner with notice in writing either that it accepts or that it rejects the New Premises. If the Retailer fails to serve notice of rejection upon the Owner within that time, it will be deemed to have accepted the New Premises.

10.4 If the New Premises are accepted by the Retailer then the following provisions will apply:

- (a) The Retailer will apply for the removal of its packaged liquor licence to the New Premises and use its best endeavours to prosecute that application.
- (b) The Retailer will apply for all requisite town planning approvals for the use of the New Premises.
- (c) Following the obtaining by the Retailer of the approvals mentioned in clauses 10.4(a) and (b) above and the expiry of all appeal periods without an appeal being filed (or if an appeal is filed, its successful resolution in favour of the Retailer), the Owner will construct the New Premises in accordance with the plans and specifications previously accepted by the Retailer. Any certificate given by an architect retained by the Owner as to completion of those works will be prima facie evidence of completion.

10.5 Eight weeks after the latter to occur of the following:

- (a) the completion of the New Premises; and
- (b) the obtaining by the Retailer of the approvals mentioned in clauses 10.4(a) and (b) above and the expiry of all appeal periods without an appeal being filed (or if an appeal is filed, its successful resolution in favour of the

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Retailer), THEN:

- (i) this Lease shall be determined and the parties will at their expense sign any surrender documents reasonably required by the Owner to evidence the fact of surrender;
- (ii) the parties will be landlord and tenant of the New Premises on the same terms, covenants and conditions as contained in this Lease (including as to rent, terms and options of renewal) with the exception of these clauses dealing with relocation and will at their own expense execute a fresh Lease of the New Premises on such terms. Any stamp duty payable in respect of such Lease will be paid by the Owner, who will also be entitled to a refund of any stamp duty payable on the termination of this Lease.

- 10.6 The relocation of the Retailer and the determination of this Lease will be subject to and conditional upon the following, notwithstanding any prior acceptance by the Retailer of the New Premises:
 - (a) Consent in writing by any mortgagee of the Shop and the New Premises to the determination of this Lease and the grant of a new lease of the New Premises to the Retailer on the terms, covenants and conditions reasonably acceptable to the Retailer.
 - (b) The obtaining of all required approvals (including the removal of the Retailer's packaged liquor licence to the New Premises) on terms, covenants and conditions reasonably acceptable to the Retailer. If any such application is refused then the Retailer in its sole and unfettered discretion may elect whether to decide to appeal against such a refusal.
- 10.7 The Retailer shall fit out the New Premises in accordance with the Retailer's occupational standards.
- 10.8 The Owner will pay or reimburse to the Retailer the Retailer's reasonable costs incurred in moving stock, fixtures and fittings from the premises to the New Premises, will pay the reasonable cost of fitting out the New Premises in accordance with the Retailer's occupational standards, and will pay all costs incurred by the Retailer in respect of the applications referred to in clauses 10.4(a) and (b) hereof.
- 10.9 In respect of either the premises or the New Premises, rent will abate during any period which, as a consequence of the relocation of the Retailer's Business, the Retailer is unable to carry on business from either the premises or the New Premises."

- Clause 11.5A is inserted as follows:

"11.5A Whilst ever the Retailer is Liquorland (Australia) Pty Ltd or any related corporation, the Retailer shall be deemed to have complied with its obligations under this section, if the Retailer maintains insurance cover in respect of the Shop under the Coles Myer Limited general insurance policy and provides the Owner with a copy of a Certificate of Currency as and when reasonably requested by the Owner".

- Clause 12.1(a) is amended as follows:

- (a) by deleting "20 Business Days" and substituting "10 Business Days"; and
- (b) by deleting the words ", documentation proposed and other relevant circumstances".

- Clause 12.1(b) is deleted.

- Clause 12.1(c) is substituted as follows:

"(c) **Retailer not in default:** The Retailer is not, at the date of giving the notice under sub clause (a), in default under any notice in writing previously given by the Owner specifying any breach or default and giving a reasonable time for the

Retailer to rectify that breach or default;"

- Clause 12.1(d)(i) is substituted as follows:

"(i) is a respectable, responsible and solvent person capable of performing the obligations of the Retailer under the Lease and of successfully carrying on a business in the Shop which is approved by the Owner such approval not to be unreasonably withheld having regard to the tenancy mix of the Centre".
- Clause 12.1(d)(iii) is deleted.
- Clause 12.1(e)(i) is amended by deleting the words from "including an acknowledgement" to "those rights".
- Clause 12.1(g)(i) is deleted.
- Clause 12.1A is inserted as follows:

"12.1A If the Retailer assigns or transfers its right to possession of the Shop with the prior written consent of the Owner, the Retailer without further written agreement shall be relieved of and released from its obligations and liabilities pursuant to and under this Lease but without prejudice to any liability to the Owner for any breach or default by the Retailer occurring prior to the date of such assignment or transfer".
- Clause 12.1B is inserted as follows:

"12.1B The Retailer may without the consent of the Owner and upon giving to the Owner prior notice in writing, freely assign its right to possession of the Shop to a related corporation, in which event:

 - (a) the Retailer and the related corporation shall execute such assignment or transfer reasonably required by the Owner and shall pay all reasonable legal costs incurred by the Owner in connection therewith; and
 - (b) the Retailer without further written agreement shall be relieved of and released from its obligations and liabilities pursuant to and under this Lease but without prejudice to any liability to the Owner for any breach or default by the Retailer occurring prior to the date of such assignment or transfer."
- Clause 12.4.3 is inserted as follows:

"While the Retailer is Liquorland (Australia) Pty Ltd the provisions of sub clauses 12.4.1 and 12.4.2 will not apply."
- Clause 12.5.1 is amended by inserting after "Owner" in line 1 the words "(which consent will not be unreasonably withheld)".
- Clause 13.1(a) is amended by inserting after the word "unpaid" in the first line the words "for 14 days".
- Clause 13.3.1 is amended by inserting after the words "at the Retailer's cost" the words:

"provided that the Owner will first have given notice of that default to the Retailer in writing and the Retailer has not rectified that default within a reasonable time of receiving that notice."

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- Clause 15.4.2 is amended by inserting the following at the end of the clause:

“Provided always that whilst the Retailer under this Lease is Liquorland (Australia) Pty Ltd all notices to be addressed to the Retailer shall be addressed by certified mail to:

The National Manager
Real Estate
Liquorland (Australia) Pty Ltd
110 Silverwater Road
Silverwater, New South Wales, 2141

or to such other address as the Retailer may notify to the Owner from time to time.”
- Clause 15.13 is inserted as follows:

“15.13 Liquor Licence

15.13.1 The Owner acknowledges that the Liquor Licence shall be and remain the sole property of the Retailer and that the Owner shall have no interest in or title to the Liquor Licence. The Owner further acknowledges that the Retailer shall be at liberty to remove the Liquor Licence to other premises on the expiration of this Lease or at any other time and the Owner shall at the expense of the Retailer do all such things and sign all such documents including but without limiting the generality hereof allowing the affixing of any signs or notices to the Shop or the doing of any other act or thing required by the Liquor Act for the removal of the Liquor Licence. The Owner covenants that it will at no time make application pursuant to Section 102 of the Liquor Act

15.13.2 The Owner agrees that it will, without cost to the Retailer, promptly sign and return to the Retailer any forms or agreement from time to time required to be signed by the Owner pursuant to Sections 67 and 69 of the Liquor Act, in order to facilitate the transfer of the licence between nominees of the Retailer.

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- Clause 18.2 is amended by deleting the words from “or, if directed by the Owner” to “nominated by the Owner”.
- Clause 19.1.1 is substituted by:

“19.1.1. The Retailer will pay the Minimum Annual Rent by equal monthly instalments on the 15th day of the month to which the payment relates each monthly instalment to be one-twelfth of the Minimum Annual Rent (except that the first and last payments will, if necessary, be proportionate ones).”
- Clause 20.2.1(b) is deleted.
- Clause 20.2.8(b) is deleted.
- Clauses 20.2.8(g) and (h) are deleted and clause 20.2.8(m) becomes 20.2.8(g).
- Clause 20.2.10 - Delete from “unless” in line 2 to the end of the clause.
- Clause 20.3 is deleted.
- Clause 21.1 is amended as follows:

Delete “For the purposes of determining the Percentage Rent,” in line 1.
- Clause 21.1(a) is amended by deleting “for that part of the Percentage Rent Period then expired” in line 4.

- Clause 21.1(b) is amended by replacing "Percentage Rent Period (time being of the essence)" with "Lease Year" in line 1 and replacing "during the expired Percentage Rent Period" with "for the preceding Lease Year" in line 2.
- Clause 21.2 is deleted.
- Clause 21.3) is deleted.
- Clause 22.1 - in the second line delete the words "determines (or where necessary, estimates)" and replace with "reasonably estimates".
- Clause 25.2.3 - Delete the first three lines and replace with the following:
"The term "Operating Expenses" where used in the Lease means, all Costs which the Owner pays or incurs in respect of the Centre and which the Owner is entitled to recover from the Retailer in respect of the following amounts:"
- Clause 25.2.3(b) - Delete and replace with the following:
"insurance: all Costs relating to building and public liability insurance including all insurance premiums and associated charges (including any excess premiums and any stamp duty payable in respect of the policies of insurance and excluding insurance for loss of rent and consequential loss, relating to the Centre;".
- Clause 25.2.3(c) - Insert after the word "renovations" the words "(excluding items of a capital nature)" in line 2.
- Clause 25.2.3(h) - Insert after the word "Costs" the words "in the nature of a rate, tax, levy or charge" in line 1.
- Clause 25.2.3(i) is deleted.
- Clause 26.1 is amended by adding the following new defined terms:
"Liquor Act" means the Liquor Control Act (1987) Victoria;
"Liquor Licence" means a packaged liquor licence or any other liquor licence approved by the Owner which replaces that liquor licence and which allows the Retailer to sell liquor from the Shop in the conduct of the Retailer's business;
- Clause 26.1 - definition of "Liabilities": insert at the end the words "excluding those arising out of the Owner's negligence".
- Clause 26.1 - definition of "Shop" is amended by substituting the following clauses (a)(i) and (a)(ii):
"(a) (i) the exterior face of the Shop;
(ii) the line of inter-tenancy walls;"
- Clause 26.1 - definition of "Trading Name" is deleted.

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- (2) For the removal of doubt, it is recorded that on the party named in item 2 of the Reference Table ceasing to be the Retailer or ceasing to occupy the Shop these Special Covenants set out in sub-clause 1 (if any) are to be of no further force or effect.
- (3) The Retailer will not permit smoking in the Shop.
- (4) Without affecting sub-clause (3), smoking will only be permitted in those parts of the Centre (if any) designated by the Owner.

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LEASE TERMS AND CONDITIONS

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LEASE TERMS AND CONDITIONS

PART A - GENERAL PROVISIONS

SECTION 1: GRANT OF LEASE

1.1 Grant

The Owner grants to the Retailer and the Retailer takes from the Owner a lease of the Shop for the Term in accordance with the Lease.

1.2 Quiet enjoyment

The Retailer may peaceably possess and enjoy the Shop for the Term without any interruption or disturbance from the Owner, except to the extent interruption or disturbance is permitted by any provision in the Lease.

SECTION 2: TERM

2.1 Commencement and termination

The Term commences on the Commencement Date and terminates on the Expiration Date.

2.2 Monthly tenancy

2.2.1 If the Retailer continues to occupy the Shop beyond the Termination Date, and the Lease has not been renewed the Retailer will do so as a *monthly tenant on terms* specified by the Owner or where no terms are specified by the Owner on the terms of the Lease.

2.2.2 Without limiting the Owner's powers under section 13 (default and termination), the Owner or the Retailer may terminate the monthly tenancy at any time by giving 1 month's notice to the other which notice may be given at any time.

SECTION 3: FINANCIAL OBLIGATIONS

3.1 Rent

The Retailer will pay to the Owner the Rent in accordance with the Rent Provisions.

3.2 Rates and charges

3.2.1 The Retailer will pay direct to the relevant Authority, or if required by the Owner will reimburse to the Owner, all rates, taxes (other than income tax) and other outgoings of every description which are separately assessed, metered or levied by any Authority against the Shop or the Retailer, or which are assessed, metered or levied against the Owner or the Centre but are referable to the Shop.

3.2.2 The rates, taxes and outgoings specified in clause 3.2.1 will be treated as having accrued in equal increments daily in respect of the period to which they relate and will be apportioned, if applicable, between the Owner and the Retailer accordingly.

3.2.3 If land tax is assessed against the Shop together with other lands of the Owner, the land tax to be paid by the Retailer will be calculated on the basis that the land comprised in the Centre is the only land owned by the Owner.

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- (a) electricity, gas, oil and water separately metered and consumed in the Shop;
- (b) telephone services connected to the Shop; and
- (c) all other charges and impositions imposed by any Authority for the supply of any service to the Shop.

3.7.2 If the Retailer does not punctually pay any of the accounts specified in clause 3.7.1, the Owner may pay the amount due and in that case the Retailer will pay the amount paid by the Owner to the Owner.

3.8 Stamp duty

The Retailer will promptly:

- (a) pay all stamp duty on the Lease (including any additional duty, penalty duty, fines, interest and costs); and
- (b) submit the Lease for upstamping from time to time as required by legislation.

3.9 Payment of Owner's costs

The Retailer will pay to the Owner the Owner's reasonable legal and other Liabilities of or incidental to:

- (a) the preparation, negotiation, completion and stamping of the Lease;
- (b) any request for the consent or approval of, or waiver by, the Owner, any head lessor or any mortgagee of the Owner;
- (c) any request made by the Retailer to the Owner under section 12 (control and ownership of shop);
- (d) any breach or default by the Retailer under the Lease, and the exercise or attempted or proposed exercise of any right, power or remedy of the Owner under the Lease, in law or in equity;
- (e) the occurrence of any Event of Default; and
- (f) any surrender or termination of the Lease other than by expiration.

3.10 Interest on overdue money

3.10.1 The Owner may require payment of interest, in accordance with clause 3.10.2 on any money due but unpaid by the Retailer to the Owner despite any failure by the Owner to have previously required payment of interest.

3.10.2 If the Owner requires payment of interest under clause 3.10.1:

- (a) the Retailer will pay interest to the Owner at the rate which is 2% higher than the Interest Rate; and
- (b) interest will be calculated on the amount due but unpaid daily from and including the due date for payment up to and including the date on which the Owner receives payment of the amount.

3.11 Time for payments

3.11.1 Any amount payable by the Retailer to the Owner unless otherwise specified will be paid to the Owner within 10 Business Days of the Owner giving a notice to the Retailer requiring payment.

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If the Retailer does not open the Shop for business during the hours specified by the Owner under clause 4.4.1 the Retailer will pay to the Owner the amount set out in item 17 of the Reference Table for every hour that the business is not open.

4.5 No undesirable or illegal use

The Retailer will not:

- (a) use the Premises or any other part of the Centre for sleeping or for any noxious, noisy, illegal or offensive act, business or use; or
- (b) do or omit to be done any act, matter or thing in the Shop or any other part of the Centre which causes or may cause nuisance, damage or disturbance to any People who use the Centre or any occupier or owner of any nearby property.

4.6 No fire sales or auctions

The Retailer will not, without the prior consent of the Owner, conduct from the Shop:

- (a) any fire, bankruptcy, closing down, liquidation sale or any sale purporting to be in connection with the closure, cessation or termination of any business; or
- (b) any auction.

4.7 No signs

The Retailer will not without the prior consent of the Owner which consent will not be unreasonably withheld:

- (a) exhibit on the exterior of the Shop or the interior face of the Shop Front any sign, light, embellishment, advertisement, name, logo or notice; or
- (b) use any picture or likeness of the Centre or the Shop for any purpose whatsoever.

4.8 No nuisance

The Retailer will not without the prior consent of the Owner:

- (a) use any sound equipment which can be or is likely to be heard from outside the Shop; or
- (b) speak in a manner that can be heard from outside the Shop.

4.9 No coin machines

The Retailer will not install in or operate from the Shop any electronic game, vending machine, pay telephone, kiddie ride or other like equipment.

4.10 Infectious disease in Shop

If any infectious disease occurs in the Shop the Retailer will promptly give notice of that occurrence:

- (a) to every relevant Authority and will comply with the lawful requirements of every relevant Authority to the satisfaction of the Authority; and
- (b) to the Owner and permit the Owner to enter the Shop to fumigate or disinfect the Shop and pay to the Owner all costs incurred by the Owner.

4.19.2 The Retailer will notify the Owner immediately of any threat or demand (including bomb and firearm threats) which relate in any way to the Centre or the safety of any person or property in the Centre of which the Retailer is aware.

4.20 Security of Shop

4.20.1 The Retailer will:

- (a) securely lock all doors or other openings to the Shop when the Shop is left unoccupied; and
- (b) if required by the Owner install in the Shop a security alarm system approved by the Owner.

4.20.2 The Owner may enter the Shop for any purpose in relation to security, but nothing in this clause makes the Owner responsible in any way for the security of the Shop.

4.21 List of key holders

The Retailer will:

- (a) keep current a schedule showing the names, residential addresses and after-hours contact telephone numbers of all persons who hold keys and passcards to the Shop and the Centre; and
- (b) on request by the Owner provide to the Owner a copy of the schedule maintained by the Retailer in accordance with sub-clause (a).

4.22 Contact numbers

The Retailer will ensure that the Owner has:

- (a) the names;
- (b) the residential address; and
- (c) after-hours contact telephone numbers,

of at least two people who will be responsible for dealing with matters relating to the Shop and the Centre on behalf of the Retailer.

4.23 Vehicle registration numbers

The Retailer will ensure that the Owner has the car models and registration numbers of:

- (a) all vehicles used by the Retailer in connection with the Retailer's Business; and
- (b) all vehicles used by the Retailer's Agents whilst engaged in the Retailer's Business.

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(d) comply with statutes: comply with:

- (i) all statutes and orders which relate to the Lease or the Shop, the Permitted Use or the Retailer's Business; and
- (ii) all requirements, notices or orders of any relevant Authority;
- (e) **painting:** so often as the Owner may reasonably require and from time to time if necessary, but in any event at the expiration of every 5 years from the Commencement Date and at the Expiration Date, in a proper and workmanlike manner:
 - (i) re-paint all parts of the interior of the Shop; and
 - (ii) repair any floor, ceiling or wall surfaces (including the Shop Front) which are worn, broken or cracked.

5.4 Owner's rights to inspect and carry out repairs

- 5.4.1 The Owner may enter and inspect the Shop at all reasonable times on giving to the Retailer reasonable notice (except in the case of emergency when no notice is necessary and the entry may be at any time).
- 5.4.2 The Owner may give to the Retailer notice of any defect in or work required to the Shop which is the Retailer's responsibility under the Lease requiring the Retailer within a reasonable time to rectify the defect or to effect the work.
- 5.4.3 If the Retailer does not comply with a notice under clause 5.4.2, the Owner may rectify the defect or effect the work and the Retailer will pay to the Owner the cost incurred by the Owner in rectifying the defect or effecting the work.

5.5 Owner may carry out works in the Shop

- 5.5.1 The Retailer will permit the Owner at all reasonable times on reasonable notice (except in the case of emergency when no notice is necessary and the entry may be at any time) to enter and remain in the Shop to undertake work relating to the Shop or the Centre.
- 5.5.2 The Owner will, when carrying out work in the Shop under clause 5.5.1:
 - (a) attempt to minimise inconvenience to the Retailer as far as is practicable in the circumstances; and
 - (b) remove from the Shop all rubbish resulting from the work and leave those parts of the Shop used as clean as they were prior to the Owner carrying out the work.

5.6 Owner may require refurbishment

- 5.6.1 The Owner may, at intervals of not less than 5 years, by notice require the Retailer at the Retailer's cost to effect specified works (the "Refurbishment Works") within a specified period to refurbish the Shop (the "Refurbishment Notice").
- 5.6.2 Within 1 month after the date the Refurbishment Notice is given the Retailer will submit to the Owner for approval, professionally drawn and accurately dimensioned plans, specifications, safety plans, work programmes and samples of the finishes that the Retailer proposes for the Refurbishment Works.
- 5.6.3 The Retailer will pay to the Owner the Owner's reasonable costs together with the reasonable fees of any architects, engineers and other consultants engaged by the Owner incurred in:
 - (a) carrying out the procedures necessary to approve the Refurbishment Works; and

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and immediately make good any damage that removal causes to the Shop or the Centre; and

(c) return to the Owner all keys and passcards relating to the Shop and the Centre.

5.9.2 The Retailer must not remove from the Shop the Non-Removable Fixtures.

5.9.3 If the Retailer does not remove the Retailer's Removable Fixtures and other articles referred to in clause 5.9.1 (b) by the Expiration Date, those items will from the Expiration Date become the property of the Owner who may, at the expense of the Retailer, remove and dispose of them as the Owner determines. The Retailer will pay to the Owner the cost to the Owner of removing any item from the Shop under this clause.

SECTION 6: AIRCONDITIONING PLANT

6.1 Use of Airconditioning Plant

Where any Airconditioning Plant is provided:

- (a) **cost of airconditioning:** the Retailer will pay to the Owner all amounts reasonably charged to the Retailer by the Owner for the use, maintenance or repair of the Airconditioning Plant;
- (b) **non-interference by Retailer:** the Retailer will comply with the reasonable requirements of the Owner in respect of the Airconditioning Plant and will not do anything in relation to the Airconditioning Plant which might interfere with their efficient operation; and
- (c) **any failure:** if the Airconditioning Plant fail to function for any reason the Retailer is not entitled to terminate the Lease and the Retailer will not have any right of action or claim for compensation, damages or set-off against the Owner.

SECTION 7: MANAGEMENT AND OPERATION OF THE CENTRE

7.1 Common Area

- 7.1.1 The Owner may make available within the Centre any part of the Centre that the Owner determines for use as Common Area.
- 7.1.2 The Retailer may use the Common Area together with the other People who use the Centre.
- 7.1.3 The Common Area will at all times be under the control of the Owner.
- 7.1.4 The Owner may operate, manage, decorate, refurbish, equip, police, light, repair and maintain the Common Area as the Owner determines.
- 7.1.5 The Owner may from time to time increase, decrease or otherwise vary the size, location or nature of the Common Area.

7.2 Use of the Common Area

The Retailer will not:

- (a) cause an obstruction in any part of the Common Area;
- (b) use any part of the Common Area for purposes other than access to or egress from the Shop; or
- (c) leave any goods or articles in any part of the Common Area.

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7.7 Hand bills

The Retailer will not in the Centre without the Owner's consent:

- (a) distribute any hand bills or notices; or
- (b) advertise the Retailer's Business by way of sandwich boards or blackboards.

7.8 Kiosks

The Owner may at any time erect, remove, re-erect and license or lease kiosks and other structures in any part of the Common Area for purposes, for periods and upon terms that the Owner determines provided that the location of the kiosk does not in the opinion of the Owner substantially and materially prejudice the Retailer's Business.

7.9 Improvements to Centre

7.9.1 The Owner may alter, extend or reduce the Centre as the Owner determines.

7.9.2 Without limiting clause 7.9.1, in exercising the Owner's rights under clause 7.9.1, the Owner will attempt to cause as little inconvenience to the Retailer and the Retailer's Business as is practicable in the circumstances.

7.10 Easements

7.10.1 The Owner may dedicate, grant, transfer or otherwise enter into any arrangement in relation to the Land or the Centre for any purpose provided that the Owner does not substantially and materially prejudice the Retailer's rights under the Lease.

7.10.2 The Lease will be interpreted as being subject to any right or arrangement granted or entered into by the Owner under clause 7.10.1.

7.11 Closure of the Centre

7.11.1 The Owner will not in any Lease Year close the whole of the Centre or simultaneously close all entrances to the Centre for more than 48 continuous hours except in the case of a real or threatened emergency.

7.11.2 Subject to clause 7.11.1 the Owner may close all or any of the entrances to the Centre or the whole or any part of the Centre (in each case including the Common Area).

7.12 Owner's reservations

7.12.1 The Owner reserves the right to:

- (a) use the exterior walls and the roof of the Shop;
- (b) install, inspect, maintain, repair, alter, remove and replace pipes, ducts, airconditioning equipment, conduits, wires, cables and fibres leading through the Shop;
- (c) pass and run water, air, electricity, sewerage, drainage, gas and other services through the pipes, ducts, conduits, wires, cables and fibres referred to in sub-clause (b); and
- (d) enter and remain in the Shop for the purposes set out in sub-clause (b).

7.12.2 In entering and remaining in the Shop for the purposes set out in clause 7.12.1(b), the Owner will cause as little inconvenience to the Retailer as is practicable in the circumstances.

- (a) the Marketing Fund Contribution; and
- (b) the amount paid by the Owner under clause 8.3.1.

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8.4 Marketing Fund Committee Meetings

The Marketing Fund Committee will:

- (a) meet at a place in or near to the Centre and at times nominated by the Owner;
- (b) not meet without a nominated representative of the Owner being present; and
- (c) make any decision at a meeting by majority vote.

SECTION 9: DAMAGE, DESTRUCTION OR RESUMPTION

9.1 Termination on damage, destruction or resumption

9.1.1 If:

- (a) the Centre or the Shop is damaged or destroyed;
- (b) the destruction or damage has rendered the Shop inaccessible or substantially unfit for use by the Retailer; and
- (c) in the opinion of the Owner, the rebuilding or reconstruction of either the Centre or that part of the Centre in which the Shop is located or the Shop is impracticable or undesirable,

the Lease may be terminated without compensation or other Liability by either the Owner or the Retailer by notice to the other.

9.1.2 If the Lease is not terminated the Owner will rebuild or reinstate the Shop within a reasonable time.

9.1.3 If the Centre is resumed by any Authority so as to render the Shop inaccessible or substantially unfit for the occupation of the Retailer, the Lease may be terminated without compensation or other Liability by either the Owner or the Retailer by notice to the other.

9.1.4 Termination under this clause is without prejudice to the rights of the Owner or the Retailer for any prior breach, matter or thing.

9.1.5 Nothing expressed or implied in the Lease imposes any obligation on the Owner to rebuild or reinstate or make the Shop or the Centre accessible or fit for occupation.

9.1.6 If the damage or destruction specified in clause 9.1.1 occurs, the Minimum Annual Rent, the Retailer's Proportion and the Marketing Fund Contribution (or a proportionate part of those amounts which the Owner determines in good faith having regard to the nature and extent of the damage sustained) will abate until:

- (a) the Shop has been rebuilt or reinstated or made accessible or fit for the use by the Retailer; or
- (b) the Lease is terminated under clause 9.1.1.

9.1.7 If any dispute arises as to the duration or extent of any abatement under clause 9.1.6:

- (a) the Owner will promptly refer the dispute to arbitration under the laws of Victoria; and

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10.2.3 The Retailer's business cannot be required to be relocated unless the Owner has given to the Retailer at least 3 month's written notice of relocation and that notice gives details of an alternative shop (the "New Shop") to be made available to the Retailer within the Centre, the proposed termination date of the Lease and the term of the new lease (a "Relocation Notice").

10.2.4 The Retailer is entitled to be offered a new lease of the alternative shop on the same terms and conditions (including as to rent) as the existing Lease except that the term of the new lease is to be for the remainder of the Term:

10.2.5 If a Relocation Notice is given to the Retailer, the Retailer may terminate the Lease within 1 month after the Relocation Notice is given by giving written notice of termination to the Owner; in which case this Lease will be terminated 3 months after the Relocation Notice was given unless the parties agree that it is to terminate at some other time.

10.2.6 If the Retailer does not give a notice of termination as referred to in clause 10.2.5 the Retailer is taken to have accepted the offer of a lease as referred to in clause 10.2.4 unless the parties have agreed to a lease on some other terms.

10.2.7 Subject to clauses 10.3 and 10.4, the Retailer is entitled to payment by the Owner of the Retailer's reasonable costs of the relocation, including legal costs.

10.2.8 On the date specified in the Relocation Notice unless the Lease is terminated under clause 10.2.5, the Retailer will:

- (a) vacate the Shop and deliver up vacant possession to the Owner in accordance with the provisions of the Lease;
- (b) execute and deliver to the Owner a surrender of the Lease and a new lease of the New Shop in a form approved by the Owner; and
- (c) commence trading from the New Shop.

10.3 Lease of the New Shop

10.3.1 The lease of the New Shop required by the relocation of the Retailer's business under clause 10.2 will be prepared by the Owner and the costs of and incidental to the preparation of that lease will be paid as follows: -

- (a) if the term of the lease of the New Shop expires after the Termination Date - the Retailer will pay all costs;
- (b) if the term of the lease of the New Shop expires prior to or on the Termination Date each party will pay its own costs.

All stamp duty on the lease of the New Shop will be paid by the Retailer.

10.3.2 Whether or not the lease of the New Shop has been executed by the day specified in the Relocation Notice, on the commencement date of that lease, the lease of the New Shop will be effective and enforceable on the terms specified in the Relocation Notice and until the lease of the New Shop is executed and delivered, the Retailer, the Owner and the Guarantor agree that the parties will be bound by that lease as if there had been full compliance with all formalities.

10.4 Retailer's expenses

10.4.1 The Owner will pay to the Retailer the Retailer's reasonable costs of the relocation; which are agreed to be the amount expended by the Retailer in physically relocating the Retailer's Business from the Shop to the New Shop calculated as specified in clause 10.4.2 on the last to occur of:

- (a) the date on which the Retailer vacates the Shop;

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- (i) the policy cannot lapse or be terminated or varied without 30 days' prior notice to the Owner;
- (ii) notice of any occurrence given by any insured party will be treated as notice given by all insured parties; and
- (iii) failure by any insured party to disclose any material information or to observe and fulfil the conditions of any policy will not prejudice the rights of any other insured party.

11.4 Retailer not to void insurance

The Retailer will not do any act, matter or thing in the Shop or in the Centre which may:

- (a) vitiate or render void or voidable any insurance; or
- (b) increase the rate of premium on any insurance.

11.5 Payment of additional premiums

The Retailer will pay to the Owner all extra premiums for insurance taken out by the Owner if those extra premiums are payable as a result of any extra risk caused by the use to which the Shop is put by the Retailer whether or not that extra risk has been approved by the Owner.

11.6 Release of Owner

- 11.6.1 The Retailer will occupy, use and keep the Shop and use the Retailer's Fixtures at the risk of the Retailer.
- 11.6.2 The Retailer releases to the full extent permitted by law the Owner and the Owner's Agents in the absence of any negligent act or omission on their part from all Liabilities resulting from any loss, death, damage or injury occurring in the Shop or any other part of the Centre.

11.7 Indemnity by Retailer

Without limiting or being limited by clause 11.6, the Retailer indemnifies and will keep indemnified the Owner and the Owner's Agents from and against all Liabilities for which they are or may become liable whether relating to death or injury to persons or damage or destruction of property either:

- (a) in the Shop; or
- (b) in any part of the Centre other than the Shop and caused or contributed to by the Retailer or the Retailer's Agents,

except to the extent caused by the negligent act or omission of the Owner or the Owner's Agents.

11.8 Exercise of Owner's rights

Where, in accordance with the Lease the Owner exercises a right, or enters the Shop, or effects work or requires the Retailer to comply with a request, subject to any statutory right of the Retailer:

- (a) the Retailer will not be entitled to:
 - (i) object or to claim any compensation;
 - (ii) any reduction of Rent or other monies payable under the Lease;
- (b) the Owner will not be liable to the Retailer for any Liability the Retailer might incur as a result of any action taken by the Owner (including any Liability to the Retailer); and

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a non-refundable fee to cover administration expenses and any necessary adjustment in Operating Expenses (currently \$1,200.00); and

(ii) the Owner's reasonable costs and disbursements (including legal costs and expenses, stamp duty and any registration fees) relating to the matters referred to in this clause; and

- (h) release of Owner: the Retailer and the Guarantor enter into a deed in the form required by the Owner releasing the Owner and the Owner's Agents from all claims and demands which the Retailer and the Guarantor have, or may have, against the Owner in respect of the Lease.

12.2 Franchise of Retailer's Business

12.2.1 Despite clause 12.1, if the Retailer wishes to permit a franchisee to conduct the Retailer's Business and the Retailer has:

- (a) observed the provisions of the Lease;
- (b) satisfied the Owner that the proposed franchisee meets the criteria specified in clause 12.1(d);
- (c) furnished to the Owner a copy of the proposed franchise agreement, the terms of which:
 - (i) are not inconsistent with the terms of the Lease;
 - (ii) grant non-exclusive possession of the Shop to the franchisee and do not grant to the proposed franchisee any rights as lessee;
 - (iii) provide that the franchisee will observe and perform the terms of the Lease to the extent they are applicable to the conduct of the Retailer's Business, the use of the Centre and the occupation of the Shop; and
- (d) paid to the Owner the Owner's reasonable costs and disbursements (including legal costs and expenses, stamp duty and any registration fees) relating to the matters referred to in this clause,

the Owner will not unreasonably refuse its consent to the Retailer entering into the franchise agreement in relation to the Retailer's Business with that franchisee.

- 12.2.2 (a) The Retailer indemnifies and will keep indemnified the Owner from and against all Liabilities resulting from the occupation of the Shop and conduct of the Retailer's Business by a franchisee.
- (b) The indemnity contained in sub-clause (a) is in addition to the Retailer's obligations under the Lease.

12.3 Section 144 of the Property Law Act

Section 144 of the Property Law Act 1958 (Vic) and any covenants implied in or under that section do not apply to the Lease.

12.4 No change in beneficial ownership of Retailer without consent

12.4.1 This clause applies to the Retailer if it is a corporation other than a corporation whose shares are listed on the official list of the Australian Stock Exchange Limited or a foreign company, the securities in which are quoted for trading on a stock exchange or in a market for the public trading in securities.

12.4.2 No:

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- (b) will take any procedures necessary to ensure the assets of the trust are available to compensate the Owner for any default by the Retailer;
- (c) will assign to the Owner any right of indemnity the Retailer has against the assets of the trust to the extent of the liability of the Retailer under the Lease; and
- (d) warrants that the Retailer has the power and authority under the terms of the trust to enter into the Lease; and entry into the Lease by the Retailer is in the due administration of the trust.

SECTION 13: DEFAULT AND TERMINATION

13.1 Events of Default

It is an Event of Default by the Retailer if any of the following occur:

- (a) **non-payment of rent:** any part of the Rent is owing or unpaid after becoming due whether or not any formal or legal demand is made;
- (b) **non-payment of moneys other than rent:** any moneys payable under the Lease, other than Rent, is owing or unpaid at the expiration of 14 days after a notice is given to the Retailer specifying the moneys payable and requiring the Retailer to pay those moneys;
- (c) **breach of covenant:** there is a breach or default by the Retailer of any of the provisions under the Lease (other than the covenant to pay Rent or other moneys to which sub-clauses (a) or (b) apply) and where that breach or default is capable of remedy, the breach or default has not been remedied to the reasonable satisfaction of the Owner within 14 days after a notice is given to the Retailer specifying the breach or default and requiring the Retailer to remedy the breach or default;
- (d) **assignment and arrangements:** the Retailer or the Guarantor makes any arrangement for the suspension of debts or for the benefit of the Retailer's creditors generally or legal proceedings are commenced in relation to any of the Retailer's debts under any applicable law relating to the suspension reconstruction or re-adjustment of debts or the Retailer or Guarantor effect an assignment of assets, that arrangement or assignment being made or proceedings being commenced without the consent of the Owner, which consent will not be unreasonably withheld;
- (e) **winding up and liquidation:** the Retailer or the Guarantor is a corporation and:
- (i) a resolution is passed, or taken to have been passed by reason of the provisions of Part 5.3A of the Corporations Law, that the Retailer or Guarantor be wound up;
 - (ii) proceedings are commenced for either the voluntary or compulsory winding up of the Retailer or Guarantor; or
 - (iii) an order is made for the appointment of a provisional liquidator to the Retailer or Guarantor;
- (f) **appointment of controller:** a controller within the meaning of section 9 of the Corporations Law is appointed over any property of the Retailer or the Guarantor;
- (g) **appointment of administrator:** the Retailer or Guarantor is a corporation and an administrator is appointed in respect of the Retailer or the Guarantor under Part 5.3A of the Corporations Law, or the directors of the Retailer or Guarantor pass a resolution or implement procedures to pass a resolution to appoint an administrator;
- (h) **bankruptcy:** the Retailer is a natural person and proceedings are commenced for either the voluntary or compulsory bankruptcy of the Retailer; or

13.3 Owner's right to remedy Retailer's default

- 13.3.1 If an Event of Default occurs or the Retailer otherwise fails to perform any obligation of the Retailer under the Lease, the Owner may without prejudice to the Owner's rights arising from the Event of Default or the failure to perform, remedy that Event of Default or the failure to perform as if the Owner was the Retailer, at the Retailer's cost. The Retailer will pay to the Owner all Liabilities incurred by the Owner in remedying an Event of Default or failure to perform.
- 13.3.2 None of the following events constitutes a re-entry or forfeiture or waiver of the Owner's rights to recover in full all Rent and other money payable by the Retailer under the Lease:
- (a) acceptance of the keys for the Shop;
 - (b) entry onto the Shop by the Owner for the purpose of inspection or for the purpose of showing the Shop to prospective tenants or to remedy an Event of Default; or
 - (c) advertising the Shop for re-letting.

13.4 Essential Terms

The following provisions are fundamental and essential terms of the Lease: section 3 (Financial Obligations), section 4 (Use), clause 5.1 (Maintenance of Shop), clause 5.2 (Maintenance of Retailer's Fixtures), clause 5.6 (Owner may require refurbishment), clause 7.3 (Rules), clause 8.2 (Retailer to participate), section 11 (Insurance & Indemnities), section 12 (Control & Ownership of Shop), clause 14.1 (Disclosure of representations), clause 16.1 (Bank Guarantee to be provided by Retailer), section 21 (Calculation of Percentage Rent), clause 22.1 (Retailer to pay Retailer's Proportion), section 24 (Retailer to pay costs relating to Shop).

13.5 Power of attorney

- 13.5.1 The Retailer appoints the Owner (and each of the officers of the Owner) to be the true and lawful attorney of the Retailer to act at any time after the power to re-enter contained in the Lease becomes exercisable or has been exercised (sufficient proof of which will be a statutory declaration by any officer of the Owner) to:
- (a) sign a transfer or a surrender of the Lease or a withdrawal of any caveat lodged by the Retailer affecting the Land;
 - (b) arrange for any document signed by the Owner as the Retailer's attorney to be registered and for this purpose to use the name of the Retailer; and
 - (c) generally do, sign and perform any act, deed, matter or thing relating to the Shop as fully and effectually as the Retailer could do in relation to the Shop.
- 13.5.2 The Retailer agrees to:
- (a) ratify and confirm all that the Owner or the officers of the Owner lawfully do or cause to be done as attorney under clause 13.5.1; and
 - (b) pay to the Owner the amount of any Liabilities incurred by the Owner or any attorney appointed under this clause in the exercise of the powers under this clause.

SECTION 14: DISCLOSURE OF REPRESENTATIONS

14.1 Disclosure of representations

The Retailer warrants to the Owner that prior to executing the Lease the Retailer disclosed by notice to the Owner all information, and every representation, warranty, promise or undertaking (other than as may be

15.4 Notices

15.4.1 Any notice to be given under the Lease by the Retailer to the Owner must be served on the Owner either

- (a) personally; or
- (b) by security post, at the registered office for the time being of the Owner in Victoria marked - attention "Group General Manager - Shopping Centres", or at any other address the Owner notifies to the Retailer.

15.4.2 Any notice to be given under the Lease by the Owner to the Retailer or the Guarantor must be signed by the Owner or on behalf of the Owner by any director, secretary or other officer of the Owner or by solicitors on behalf of the Owner and must be served either:

- (a) personally; or
- (b) by security post, to one of the following addresses:
 - (c) in the case where a corporation is the Retailer or the Guarantor - at the registered office of the corporation;
 - (d) in the case where a natural person is the Retailer or the Guarantor - at the last known place of business of that natural person; or
 - (e) in the case of both the Retailer and the Guarantor:
 - (i) at the Shop;
 - (ii) at the address of the Retailer or the Guarantor as specified in this Lease; or
 - (iii) at any other address which the Retailer or the Guarantor by notice to the Owner specifies as the address for service of notice on the Retailer or the Guarantor.

15.4.3 Any notice served by security post will be treated as having been served on the third Business Day after the date of posting.

15.5 Inspection by potential tenants

The Retailer will permit the Owner at all times during the last 3 months of the Term:

- (a) on reasonable notice, to show the Shop to prospective tenants; and
- (b) to display on the front of the Shop a "To Let" or other notice.

15.6 Special Covenants

15.6.1 Subject to clause 15.6.2, the special covenants (if any) specified in item 20 of the Reference Table bind the parties (the "Special Covenants").

15.6.2 If there is an inconsistency between any of the Special Covenants and any other provision of the Lease, the Special Covenants will prevail.

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the Owner a further Bank Guarantee on substantially the same terms as the Bank Guarantee initially delivered to the Owner under this section.

16.3 Bank Guarantee not to prejudice Owner's other rights

- 16.3.1 Payment under the Bank Guarantee does not limit the rights of the Owner under the Lease or operate as a waiver of the Retailer's default of any of the Retailer's obligations under the Lease.
- 16.3.2 Any part of the amount paid under the Bank Guarantee subsequently determined by the Owner to be in excess of the Liabilities incurred by the Owner resulting from the Retailer's default, or any other default of the Retailer, will be paid to the Retailer after the Owner determines the amount of the excess.

16.4 Duration of Bank Guarantee

Not more than 3 months after the expiration of the Lease Year in which the Expiration Date occurs if the Bank Guarantee has not become presentable under clause 16.2, the Owner will promptly release the Bank Guarantee to the bank provided that there is then:

- (a) no Rent or other moneys payable under the Lease; and
- (b) no act, matter or thing in respect of which the Owner has or may have a claim against the Retailer.

SECTION 17: GUARANTOR'S OBLIGATIONS

17.1 Guarantee and indemnity

In consideration of the Owner agreeing to the Guarantor's request to grant the Lease to the Retailer, the Guarantor:

- (a) unconditionally guarantees to the Owner the due and punctual performance by the Retailer of the Retailer's obligations under the Lease;
- (b) unconditionally agrees that if the Retailer is in default of any of the Retailer's obligations under the Lease, the Guarantor will perform, or cause the performance of that obligation;
- (c) will indemnify and keep indemnified the Owner for any Liability incurred by the Owner in respect of any default by the Retailer under the Lease; and
- (d) will indemnify and keep indemnified the Owner for any Liability incurred by the Owner arising out of the disclaimer of this Lease by a trustee in bankruptcy, or a liquidator, of the Retailer.

17.2 Liability of Guarantor not affected

The liability of the Guarantor will not be affected by:

- (a) the death of any natural person who is, or who is one of two or more persons who comprise the Retailer or the Guarantor;
- (b) the giving of time or the granting of any other indulgence to the Retailer or any Guarantor;
- (c) any variation, assignment or extension of the Lease;
- (d) any sub-lease or grant of a licence or other occupation rights in respect of the Shop;

PART B - RENT PROVISIONS
(cross reference: clause 3.1)

SECTION 18: RENT

18.1 Rent

The Retailer will pay to the Owner without notice or demand:

- (a) the Minimum Annual Rent; and
- (b) the Percentage Rent.

18.2 Place for Payment

The Retailer will pay all Rent to the Owner (or any other person that the Owner may nominate) in whatever place the Owner nominates or, if directed by the Owner, by order on the Retailer's bankers directing payment to the credit of the Owner's account (or to the account of any other person that the Owner may nominate) at a bank and branch nominated by the Owner.

SECTION 19: METHOD OF PAYMENT OF RENT

19.1 Minimum Annual Rent

19.1.1 The Retailer will pay the Minimum Annual Rent by equal monthly instalments in advance at least one week before the first day of the month to which the payment relates each monthly instalment to be one-twelfth of the Minimum Annual Rent (except that the first and last payments will, if necessary, be proportionate ones).

19.1.2 Where the Retailer is required to make a proportionate payment in respect of the Minimum Annual Rent that proportion will be calculated as follows:

$$P = \frac{MAR \times D}{365}$$

Where:

- "P" means the proportion to be paid;
- "MAR" means the current Minimum Annual Rent; and
- "D" means the number of days in respect of which the payment is required.

19.2 Percentage Rent

19.2.1 The Retailer will pay to the Owner Percentage Rent for each Percentage Rent Period.

19.2.2 The Percentage Rent will be paid within 10 Business Days after the end of each Percentage Rent Period.

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(c) the provisions of the Lease to the extent they are not inconsistent with any other provision of this clause 20.2.8;

- (d) the period which will elapse between the Market Review Date and the immediately following Market Review Date or, if there is no following Market Review Date (whether under the Lease or under any lease for a further time), the Termination Date;
- (e) the full length of the Term and the benefit of any option to renew;
- (f) any refurbishments or improvements to the Centre commenced by the Owner as if those refurbishments or improvements were completed by the Market Review Date;
- (g) any other criteria that the Owner regards as relevant which have been notified to the Retailer and the valuer by the Owner; and
- (h) any other criteria, not inconsistent with any provision in this Lease, which the valuer regards as relevant to the determination;

and the following will be disregarded:

- (i) the consequence of any breach by the Retailer of a term of the Lease which may have adversely affected the condition, rental value or market rent of the Shop;
- (j) any part of the Term which has expired;
- (k) any damage to the Shop or the Centre which the Owner has advised that it intends to restore;
- (l) the value of the Retailer's Fixtures and any goodwill created by the Retailer's Business;
- (m) any concession, abatement, inducement or reduction (whether in respect of rent, fitout or otherwise) which may ordinarily be allowed, granted or paid to secure a tenant for the Shop or which was or may be allowed, granted or paid to secure a tenant of any premises specified in sub-clause (a); and
- (n) section 10 (Centre alterations).

20.2.9 The criteria detailed in clause 20.2.8 are specified in random order and no significance is to be attached to that order.

20.2.10 The Owner and the Retailer will share equally the cost of the valuer in determining the Minimum Annual Rent under this section 20 unless the valuer's determination is within 10% of the Minimum Annual Rent nominated by the Owner in the Rent Review Notice in which case the Retailer will bear the entire cost of the valuation.

20.2.11 The valuer will act independently as an expert and not as an arbitrator and will be a person who:

- (a) at all times during the currency of appointment is and remains a full member of the Australian Institute of Valuers and Land Economists (Inc.) (Victorian Division); and
- (b) has, as at the date of appointment, not less than 5 years' practice as a registered valuer carrying out valuations of retail premises in comparable shopping centres.

Any purported appointment as a valuer of a person not so qualified is ineffective.

20.2.12 Minimum Annual Rent agreed or determined in accordance with this clause will apply and be payable by the Retailer to the Owner with effect from the relevant Market Review Date.

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SECTION 21: PERCENTAGE RENT - STATEMENTS AND RECORDS

21.1 Provision of statistics

For the purposes of determining the Percentage Rent, the Retailer will:

- (a) within 14 days after the last day of each month throughout the Term give to the Owner a statement itemised in reasonable detail and certified by the Retailer of the Retailer's Gross Sales (including if requested by the Owner the number of transactions) during that month together with a cumulative total of Gross Sales for that part of the Percentage Rent Period then expired; and
- (b) within 42 days of the expiration of each Percentage Rent Period (time being of the essence) give to the Owner a statement of the Retailer's Gross Sales during the expired Percentage Rent Period (itemised in reasonable detail) which is audited by an independent registered public accountant.

21.2 Records

For the purpose of determining the Percentage Rent:

- (a) the Retailer will:
 - (i) issue to each customer a receipt or serially numbered sales slip for each Transaction;
 - (ii) record each Transaction at the time it occurs:
 - (A) in a cash register having a non-resettable audit counter or computerised register rolls and allied EDP systems and any other features approved or required by the Owner; or
 - (B) in any other manner or by any other means approved by the Owner;
 - (iii) record on a cash register supplied by the Retailer and kept in the Shop the total of all Gross Sales commencing from the first day of each Percentage Rent Period;
- (b) the Retailer must keep:
 - (i) written copies of each receipt or sales slip referred to in sub-clause (a)(i); and
 - (ii) all computer discs on which records or information are stored in accordance with sub-clause (a)(ii) for at least 3 years after the end of the Lease Year or Portion of a Lease Year to which they relate;
- (c) the records referred to in sub-clause (b) will be kept:
 - (i) during the Term - at the Shop or any other place approved by the Owner; and
 - (ii) after the Expiration Date - at a place approved by the Owner;
- (d) the Owner will be entitled to inspect or cause an auditor to inspect the records referred to in sub-clause (b):
 - (i) at the place specified in sub-clause (c);
 - (ii) during normal business hours;
- (e) when an inspection or audit is undertaken under sub-clause (d):
 - (i) the Owner, and any auditor appointed by the Owner, will be entitled to enter into the place specified in sub-clause (c); and

PART C - OPERATING EXPENSE PROVISIONS
(cross reference: clause 3.3)

SECTION 22: PAYMENT OF OPERATING EXPENSES

22.1 Retailer to pay Retailer's Proportion

The Retailer will pay on account of the Retailer's Proportion for each Lease Year or Portion of a Lease Year the amount which the Owner determines (or where necessary, estimates) and notifies to the Retailer by equal monthly instalments in advance on the days specified under clause 19.1.1 and in the place and manner specified under clause 18.2.

22.2 Apportionment

All Operating Expenses (irrespective of the period for which they are assessed, charged, imposed, levied, paid or payable) are to be treated as having accrued in equal increments daily in respect of the period to which they relate and will be apportioned in respect of that period accordingly.

SECTION 23: ESTIMATES OF AMOUNT AND PAYMENT

23.1 Owner to provide estimates

23.1.1 At least 1 month prior to the commencement of each Lease Year or Portion of a Lease Year, the Owner will give notice to the Retailer of the Owner's estimate, made in good faith, of the Retailer's Proportion for the forthcoming Lease Year or Portion of a Lease Year.

23.1.2 The Owner may vary the Owner's estimate at any time during a Lease Year or Portion of a Lease Year and the variation will take effect 1 month after the date on which it is notified to the Retailer.

23.1.3 Any failure by the Owner to give notice to the Retailer in accordance with this clause by the date specified does not affect the obligation of the Retailer to pay the Retailer's Proportion.

23.2 Adjustment of payments

On the provision of the audited statement to the Retailer under clause 23.3 (even if the Lease has expired or been determined at that time):

(a) any necessary adjustment between the estimated amount paid by the Retailer and the actual amount of the Retailer's Proportion will be made; and

(b) any refund to or further payment by the Retailer will be immediately allowed or made by or to the Owner accordingly.

23.3 Owner to provide actual Operating Expenses

23.3.1 Within 3 months after the expiration of:

(a) if the Commencement Date is a date other than 1 August in any year - the period from the Commencement Date to the succeeding 31 July; and

(b) each Lease Year,

("Outgoings Period") the Owner will give to the Retailer a statement of Operating Expenses for the preceding Outgoings Period audited by an independent registered public accountant (the "Statement").

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any payment to or by the Retailer will be made by or to the Owner accordingly.

SECTION 24: RETAILER TO PAY COSTS RELATING TO SHOP

24.1 Retailer to pay costs relating to Shop

Irrespective of any other provision of the Lease, the Retailer will pay to the Owner (or any other person as the Owner may from time to time nominate) the whole of any assessment for trade waste, excess water or other costs incurred or determined by the Owner, in good faith, to have been incurred in respect of the Shop as a result of any particular use or circumstance relating to the Shop.

SECTION 25: RETAILER'S PROPORTION OF OPERATING EXPENSES

25.1 Definition of Retailer's Proportion

25.1.1 The term "Retailer's Proportion" where used in the Lease means, in relation to an Operating Expense, that percentage of the Operating Expense calculated as follows:

$$RP = \frac{SA \times 100}{GLA}$$

Where:

"RP" means the percentage of the Operating Expense payable by the Retailer (being the Retailer's Proportion);

"SA" means the Shop Area; and

"GLA" means subject to clause 25.1.2 the Shop Area and the floor area of all other shops in the Centre.

25.1.2 Where in the Owner's opinion it is appropriate for an Operating Expense to be attributed to a particular part of the Centre only, the Owner may apportion that Operating Expense to that part of the Centre and if the Shop is within the part of the Centre to which the Operating Expense is apportioned the definition of "GLA" in clause 25.1.1 means the area of the Shop and the floor area of all other shops within the part of the Centre to which the Operating Expense is apportioned.

25.2 Definition of Operating Expenses

25.2.1 The term "Costs" means all assessments, charges, costs, duties, expenses, fees, levies, payments, rates, taxes, wages (including any other employment overheads) and other outgoings of any nature whether incurred directly, indirectly or through the engagement of independent contractors and whether incurred at the Centre or elsewhere and "Cost" means any one of those amounts.

25.2.2 The term "Operating Expense" means any Cost comprised in the Operating Expenses or any portion of that Cost.

25.2.3 The term "Operating Expenses" where used in the Lease means, all Costs which the Owner, acting in good faith, determines are paid or payable in respect of the Centre and which the Owner is entitled to recover from the Retailer and includes:

(a) **cleaning, waste disposal and pest control:** all Costs relating to the cleaning of, waste removal from and pest control in the Centre including:

(i) the provision of cleaning materials and toilet requisites;

(ii) liquid waste and garbage removal; and

- (h) **rates and taxes:** rates and taxes and all Costs payable to an Authority including:
- (i) Municipal rates;
 - (ii) state deficit levies;
 - (iii) fire service levies;
 - (iv) taxes (including bank accounts debits tax and land tax or tax in the nature of a tax on land calculated on the basis that the Centre is the only parcel of land owned by the Owner for the purposes of the Land Tax Act 1958 (Vic));
 - (v) water, sewerage and drainage charges, including water consumption charges;
 - (vi) fees and levies (including any levies in respect of the environment or any mall or street); and
 - (vii) impositions and duties (including any goods and services or consumption tax or tax of a similar nature, and financial institutions duties receipt and other duties paid or payable by the Owner in consequence of the receipt by the Owner of rent and other money payable under all leases or licences granted by the Owner in respect of shops in the Centre but excluding income tax),

of any Authority assessed, charged, levied or imposed in respect of the Centre, the Land, services to the Centre or all of them (irrespective of ownership);

- (i) **general expenses:** all other Costs provided to, for, or in respect of the Centre including:
- (i) child minding facilities; and
 - (ii) public facility areas such as libraries, community purpose offices and municipal information centres.

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PART D - DEFINITIONS AND INTERPRETATION

SECTION 26: DEFINITIONS

26.1 Definitions

In the Lease Terms and Conditions unless the contrary intention appears:

"Airconditioning Plant" means any plant or equipment for heating, cooling, circulating and ventilating air (or any combination of them) installed from time to time in the Shop or any other section of the Centre by the Owner;

"Authority" means any government or any governmental, semi-governmental, city, municipal, civic, administrative, fiscal, statutory or judicial body, instrumentality, department, commission, authority, tribunal, agency or other similar entity;

"Base Gross Sales" means:

- (a) subject to sub-clause (b), the amount specified in item 13(3) of the Reference Table;
- (b) the amount specified in item 13(3) of the Reference Table will be varied with effect from each day on which Minimum Annual Rent is varied, to a sum calculated as follows:

$$\text{NBGS} = \frac{\text{OBGS} \times \text{NMAR}}{\text{OMAR}}$$

Where:

"NBGS" means the amount which represents the new amount of Base Gross Sales with effect from the day on which the Minimum Annual Rent is varied;

"OBGS" means the amount of the Base Gross Sales which applied immediately prior to the day on which the Minimum Annual Rent is varied;

"NMAR" means the new Minimum Annual Rent which will apply from the day on which the Minimum Annual Rent is varied; and

"OMAR" means the old Minimum Annual Rent which was payable immediately preceding the day on which the Minimum Annual Rent is varied;

"Business Day" means a day which is not a Saturday or a Sunday or a public holiday in Melbourne;

"Car Park" means the area on or near the Land from time to time designated by the Owner for car parking purposes and where the context permits includes the parks and gardens on or near the Land;

"Centre" means the shopping centre specified in item 5 of the Reference Table and the Car Park and includes:

- (a) the Land; and
- (b) any other land which the Owner occupies, develops, holds, uses or controls in conjunction with or in addition to the Land and which the Owner specifies from time to time to be included in the Centre;

and which the Owner operates as a retail shopping centre and includes the following as they may exist from time to time:

- (c) all improvements now or in the future erected on that land;
- (d) all plant, machinery, fixtures, fittings, furnishings and equipment located on that land owned or controlled by the Owner; and

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"CPI Period" means the period which immediately precedes a CPI Increase Date, calculated from the last to occur of the following:

- (a) the Commencement Date;
- (b) a Market Review Date; or
- (c) the immediately preceding CPI Increase Date;

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"Essential Terms" means each of the fundamental and essential terms of the Lease as specified in clause 13.4;

"Event of Default" means each event specified in clause 13.1;

"Expiration Date" means each of the following:

- (a) if the Term is terminated prior to the Termination Date - the date on which the Term is terminated;
- (b) if sub-clause (a) does not apply, the later of:
 - (i) the Termination Date; and
 - (ii) the date of expiry of any period of holding over under clause 2.2;

"Fixed Increase Date" means each date specified in item 14(2) of the Reference Table;

"Fixed Percentage Increase Rate" means the rate specified in item 14(1) of the Reference Table;

"Guarantor" means the person specified in item 4 of the Reference Table (if any) and includes in the case of a natural person the executors and administrators of that natural person and in the case of a corporation the successors of that corporation;

"Gross Sales" includes the actual sale price (including deposits and instalments and including so far as permitted by law the amount of any purchase receipt or other tax) of all goods sold and the actual charges for all services provided by the Retailer (which expression, for the purposes of this clause, includes any sub-lessee, concessionaire or licensee of the Retailer) from the Shop, whether made for cash, credit or otherwise;

"Index Number" means that the index number compiled and issued by the Australian Bureau of Statistics for the CPI for and in respect of a particular Quarter;

"Interest Rate" means the rate which is the benchmark rate from time to time set by the National Australia Bank;

"Land" means the land specified in item 6 of the Reference Table;

"Lease" means the lease to which these Lease Terms and Conditions are annexed and form part and includes these Lease Terms and Conditions, any equitable lease or lease at law evidenced by this document (and any annexure, exhibit, plan or schedule to those leases);

"Lease Terms and Conditions" means parts A, B, C and D of these lease terms and conditions;

"Lease Year" means each full twelve-month period during the Term commencing on 1 August and ending on 31 July (or other date nominated by the Owner);

"Liabilities" means each cost, expense, claim, liability and loss of any kind and all damages and actions;

"Marketing Fund Contribution" means subject to clause 3.6.5 the amount specified in item 15 of the Reference Table;

"Market Review Date" means each date specified in item 14(3) of the Reference Table;

- (b) if the Gross Sales for the relevant Percentage Rent Period are less than the amount calculated as the BGSS under sub-clause (a) - no Percentage Rent will be payable for the Percentage Rent Period;
- (c) if the Gross Sales for the relevant Percentage Rent Period exceed the sum calculated as BGSS in accordance with sub-clause (a), the Percentage Rent payable in respect of the Percentage Rent Period will be calculated as follows:

$$PR = PRR (GS - BGSS)$$

Where:

"PR" means the Percentage Rent;

"PRR" means the Percentage Rent Rate;

"GS" means the Gross Sales during the relevant Percentage Rent Period;

"BGSS" means the amount calculated in accordance with sub-clause (a);

- (d) if at the commencement of a Percentage Rent Period, the Minimum Annual Rent is required to be varied, but the amount of the variation of the Minimum Annual Rent has not been agreed or determined as at the date when Percentage Rent is required to be calculated, the following provisions will apply:
- (i) Percentage Rent will be calculated in accordance with the provisions of sub-clauses (a), (b) and (c) on the basis of the amount of the Base Gross Sales applicable at the commencement of the relevant Percentage Rent Period, prior to the variation of the Minimum Annual Rent;
 - (ii) within 10 Business Days of the Minimum Annual Rent being agreed or determined, the Percentage Rent for the relevant Percentage Rent Period will be calculated in accordance with the provisions of sub-clauses (a), (b) and (c);
 - (iii) following the calculation of Percentage Rent in accordance with sub-clause (d)(ii), the Owner and the Retailer must pay to each other any amount due to the other, arising out of the adjustment of the Percentage Rent in accordance with this sub-clause, within 10 Business Days of the determination of the Percentage Rent payable;

"Percentage Rent Period" means each of the following:

- (a) each Lease Year; and
- (b) each Portion of a Lease Year;

"Percentage Rent Rate" means the rate specified in item 13(2) of the Reference Table;

"Permitted Use" means the use specified in item 9 of the Reference Table;

"Portion of a Lease Year" means any period of the Term not being a full Lease Year:

- (a) prior to the commencement of the first full Lease Year; or
- (b) after the expiration of a full Lease Year and ending on the Expiration Date;

"Quarter" means the respective three monthly periods, adopted by the Australian Bureau of Statistics for the compilation and issue of the CPI;

"Reference Table" means the Lease reference table that is annexed to the Lease;

"Rent" means the Minimum Annual Rent and the Percentage Rent;

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- (b) all fixtures, fittings, furnishings, plant, machinery and equipment of the Owner from time to time installed in that shop;

"Shop Area" means the floor area of the Shop specified in item 8 of the Reference Table;

"Shop Front" means the signage, bulkhead, display windows, customer entrance doors and safety and security grills to the Shop;

"Shop Plan" means the plan annexed to the Lease Terms and Conditions;

"Term" means, the period specified in item 10 of the Reference Table commencing on the Commencement Date and expiring at midnight on the Termination Date subject to:

- (a) earlier termination under section 13; and
 (b) any period of holding over under clause 2.2;

"Termination Date" means the date specified in item 12 of the Reference Table;

"Trading Name" means the name for the Retailer's Business specified in item 3 of the Reference Table;

"Transferee" means a proposed assignee, transferee, sub-lessee or licensee of the rights of the Retailer in relation to the Shop, or the Lease, under section 12;

"Transaction" means each transaction relating to the sale of goods or the provision of a service.

SECTION 27: INTERPRETATION

27.1 Interpretation

In these Lease Terms and Conditions unless the context otherwise requires:

- (a) words importing:
- (i) the singular include the plural and vice versa;
 - (ii) a gender include every gender; and
 - (iii) a person includes both a natural person and a body corporate;
- (b) any covenant, indemnity or agreement on the part of two or more persons binds them jointly and severally;
- (c) a reference to a thing includes a part of that thing;
- (d) a reference to month means calendar month;
- (e) the index, headings and underlinings are for convenience only and do not affect the interpretation of these Lease Terms and Conditions;
- (f) a reference to a clause, section, schedule, or an item is a reference to:
- (i) a clause, section, schedule or item in the Lease Terms and Conditions; or
 - (ii) an item in the Reference Table;
- (g) a reference to a sub-clause is a reference to a sub-clause of the clause in which the reference appears;

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27.6 Floor Area

Where in the Lease it is necessary to calculate the floor area of the Centre or a part of the Centre, that area will be calculated in accordance with the BOMA Method of Measurement (1996 Revision) Gross Lettable Area - Retail.

27.7 Exclusion of implied covenants and powers

The covenants and powers implied by the Transfer of Land Act 1958 (Vic) will not apply or be implied in the Lease unless a particular provision of the Lease specifies otherwise.

27.8 Continuing obligations

An obligation imposed on a party by the Lease (including, without limitation, section 16 (Bank Guarantee) and section 17 (Guarantor's obligations) continues throughout the Term and after the Expiration Date if the obligation has not already been performed.

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SHOP PLAN

(see over)

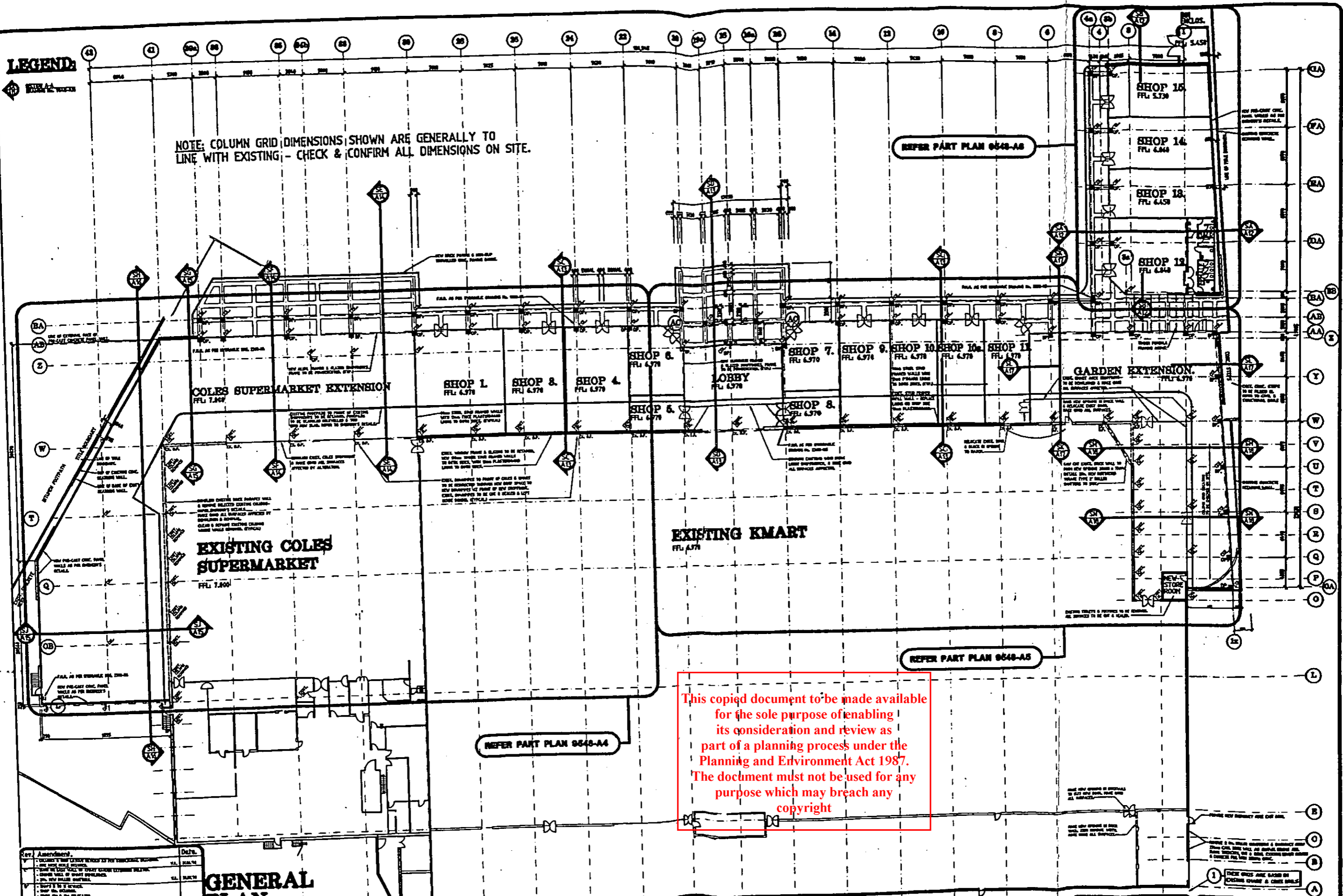
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LEGEND

REF. TO PART PLAN 9648-A4

NOTE: COLUMN GRID DIMENSIONS SHOWN ARE GENERALLY TO LINE WITH EXISTING - CHECK & CONFIRM ALL DIMENSIONS ON SITE.



EXISTING COLES SUPERMARKET
FFL 7.800

COLES SUPERMARKET EXTENSION
FFL 7.800

EXISTING KMART
FFL 6.578

REFER PART PLAN 9648-A4

REFER PART PLAN 9648-A5

REFER PART PLAN 9648-A6

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Rev.	Description	Date
1	Issued for construction	20/04/96
2	Revised to include shop extension details	21/04/96
3	Revised to include shop extension details	21/04/96
4	Revised to include shop extension details	21/04/96
5	Revised to include shop extension details	21/04/96
6	Revised to include shop extension details	21/04/96
7	Revised to include shop extension details	21/04/96
8	Revised to include shop extension details	21/04/96
9	Revised to include shop extension details	21/04/96
10	Revised to include shop extension details	21/04/96

GENERAL PLAN

NOTE: BUILDER TO CHECK ALL DIMENSIONS, LEVELS AND SERVICES ON SITE PRIOR TO COMMENCEMENT OF ANY WORKS. ANY DISCREPANCIES TO BE REFERRED BACK TO BUILDING CONSULTANTS.



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COLES MYER PROPERTIES

Project: **HELMONT SHOPPING PLAZA REDEVELOPMENT, HIGH STREET, BELMONT, VICTORIA**

Title: **GENERAL PLAN**

Client: M.E.A.	Drawn: VIBOILL	Date: APRIL 96
Job No: 9648	Dwg No: 9648-AMB	Rev No: 1