

Dealing Number



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<b>1. Lessor</b> FLINDERS SHIRE COUNCIL	<b>Lodger</b> (Name, address, E-mail & phone number) Preston Law P.O. Box 707N 15 Spence Street North Cairns QLD 4870 Email: <a href="mailto:info@prestonlaw.com.au">info@prestonlaw.com.au</a> Ref: JC:20213167 Ph: 07 4052 0700	<b>Lodger Code</b> <b>BE 3192</b>
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<b>2. Lot on Plan Description</b> Lot 2 on RP 735883	<b>Title Reference</b> 21372129
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<b>3. Lessee</b> Given names [INSERT]	Surname/Company name and number [INSERT]	(include tenancy if more than one)
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**4. Interest being leased**  
FEE SIMPLE

**5. Description of premises being leased**  
That part of the ground floor of the building erected on the land described in Item 2 shown on the plan in Schedule 1.

<b>6. Term of lease</b> Commencement date/event: [INSERT] Expiry date: [INSERT] #Options: 1 x 1 year #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	<b>7. Rent/Consideration</b> See attached Schedule
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**8. Grant/Execution**  
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached schedule.

**Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994**

.....signature		<b>Flinders Shire Council</b>
.....full name		<b>Kate Peddle – Mayor</b>
.....qualification	/ /	.....
<b>Witnessing Officer</b>	<b>Execution Date</b>	<b>Bruce Davidson - Chief Executive Officer</b> <b>Lessor's Signature</b>

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

**9. Acceptance**  
The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

.....Signature		
.....full name		
.....qualification	/ /	.....
<b>Witnessing Officer</b>	<b>Execution Date</b>	<b>Lessee's Signature</b>

(Witnessing officer must be in accordance with Schedule 1 Of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

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1. REFERENCE SCHEDULE

Item 1	Name and Address of Lessor:	Flinders Shire Council 34 Gray Street, Hughenden QLD 4821 Email: ceo@flinders.qld.gov.au
Item 2	Name and Address of Lessee:	[INSERT]
Item 3	Address of Premises:	37 Gray Street, Hughenden QLD 4821
Item 4	Term:	1 year
Item 5	Options to Renew:	1 x 1 year
Item 6	Rent - First Year of Term:	[INSERT] per annum including GST
Item 7	Rent Review Date:	Annually on each anniversary of the Commencement Date
Item 8	Rent Review Method:	Fixed Percentage Increase of 3.5%
Item 9	Insurances to be taken out by Lessee:	Public risk insurance - \$20,000,000.00 per claim Lessee's property and fittings at Premises
Item 10	Permitted Use:	Café
Item 11	Security Deposit:	\$(INSERT) being an amount equivalent to approximately 3 months Rent (inclusive of GST) as at the Commencement Date

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2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Lease, the following terms have the following meanings unless the context otherwise requires:

**Appurtenances** means all mechanical ventilation, stop-cocks, alarm systems, fire prevention and extinguishing equipment, lavatories, grease traps, water apparatus, gas fittings, electrical fittings and apparatus and other services at the Buildings or the Premises, as the context requires.

**Authority** means any federal, state or local government authority or body.

**Buildings** means all improvements from time to time existing on the Land and improvements developed in conjunction with the Land and where appropriate, includes the Land and which are and remain the property of the Lessor.

**Business** means the operation of a café and provision of ancillary services.

**Centre** means the Flinders Discovery Centre within which the Premises is located.

**Centre Operating Hours** means the hours of operation of the Centre which will be communicated to the Lessee by the Lessor. The Lessee will receive reasonable notice of any changes to the operating hours of the Centre as far as is practicable.

**Commencement Date** means the date of commencement of this Lease as specified in Item 6.

**Common Areas** means all those parts of the Building not leased or licensed to any person and designated by the Lessor from time to time for use by the occupants of the Building and their respective employees, invitees and licensees in common with each other, and includes any grounds, fields, or outdoor areas that form part of the Land on which the actual Building is located.

**Contaminated Land** has the meaning given to it in the EP Act.

**CPI** means the Consumer Price Index being the All Groups Consumer Price Index published from time to time by the Australian Bureau of Statistics in relation to the city of Brisbane.

**Creditable Acquisition, GST, GST Exclusive Market Value, Input Tax Credit, Supply and Tax Invoice** each has the meaning attributed to each of those terms in the GST Law.

**Default Rate** means the rate of 12% per annum.

**EP Act** means the *Environmental Protection Act 1994 (Qld)*.

**Expiry Date** means the date of expiry of this Lease as specified in Item 6.

**Fixed Percentage Increase** means a Rent review whereby the Rent (leaving aside any Rent concessions granted) will be increased by the percentage set out in the Reference Schedule.

**Force Majeure** means delay or inability to perform caused by war, whether declared or not, insurrections, strikes, lockouts, other industrial disturbance, inability to obtain materials, unavailability of equipment, fire, cyclone, flood, storm or other severe action of the elements, accidents, government or statutory restrictions or from other causes whether like or unlike the foregoing which are unavoidable or beyond

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the reasonable control of either party but shall not include, for the avoidance of doubt, a lack of funds or the unserviceability of plant and equipment (for any reason).

**GST Date** means the date which this Lease becomes subject to GST under the GST Law.

**GST Law** means that term as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Increase in Statutory Charges** means any extra Rates and Taxes which the Lessor or Lessee, as the case may be, is charged (over and above those at the Commencement Date) by any Authority or other body due to the Lessee's use of the Premises.

**Insurance** means the costs of any insurance effected by the Lessor in respect of the Building and Lessor's Improvements.

**Item** means the relevant item number of the Form 7 of which this Schedule forms part.

**Land** means the land described in Item 1.

**Law** means any statute, regulation or ordinance made by an Authority and includes the applicable common law.

**Lease** means this Form 7 Lease and Form 20 Schedule and any schedules or annexures.

**Lessee** means the Lessee named in Item 2, and its successors in title and assigns.

**Lessee's Notice** means a written notice given by the Lessee under clause 20.5.

**Lessor** means the Lessor named in Item 1 and its successors and assigns.

**Lessor Assets** means the Building and Lessor's Fixtures and any improvements or alterations thereto and any other personal property (as that term is defined in the PPSA) provided by the Lessor to the Lessee under this Lease at any time.

**Lessor's Fixtures** includes all Appurtenances, equipment, fittings, fixtures and furnishings of whatever nature supplied from time to time at the Premises by the Lessor.

**Maintenance and Cleaning** means the cost of cleaning and maintaining the Premises, car parks, internal and external areas of the Building, including cleaning materials and the disposal of rubbish.

**Month** or **Monthly** means respectively calendar month or calendar monthly.

**Option to Renew** means the option specified in the Reference Schedule or a further term of the Lease exercisable by the Lessee.

**Payee** means the party receiving the Payment.

**Payer** means the party making the Payment.

**Payment** means:

- (a) the amount of monetary consideration (exclusive of GST); or

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- (b) the GST Exclusive Market Value of any non-monetary consideration; or
- (c) any amount required to be paid by the Payer to the Payee for a Supply under this Lease.

**Permitted Use** means the operation of the Business and as described in the Reference Schedule.

**Premises** means the Land described in Item 3 of the Reference Schedule and includes any of the Lessor's Fixtures and Assets.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* and its regulations as amended and in force from time to time.

**Quarter** means the respective three monthly periods adopted by the Australia Bureau of Statistics for the compilation and issue of the Consumer Price Index.

**Reference Schedule** means the schedule in clause 1 of this Lease.

**Register** means the Personal Property Security Register.

**Rent** means the annual sum specified in the Reference Schedule and where the context requires, any instalment/s of Rent.

**Rent Year** means each separate year of the Term, with the first Rent Year commencing on the Commencement Date and each subsequent Rent Year commencing on the anniversary of the Commencement Date in each succeeding year.

**Review** means the review of the Rent, on the applicable Review Date in accordance with the applicable Review Method.

**Review Date** means the applicable date specified in the Reference Schedule.

**Review Method** means the applicable method specified in the Reference Schedule.

**Security Deposit** means a bank guarantee or cash to be given by the Lessee in accordance with clause 5 and for the sum specified in the Reference Schedule.

**Services** means all services of any nature from time to time provided to the Premises and/or the Buildings and/or the Land or available for use, and includes any electronic medium, electricity, lighting, gas, fire services, airconditioning and the fittings and equipment utilised for such services.

**Statutory Charges** means charges levied against the Premises being:

- (a) charges and levies (including rates and charges for the provision or reticulation of water and/or sewerage and/or drainage services) payable to the local government;
- (b) charges and other levies payable to the local government for the provision of rubbish removal; and
- (c) levies, contributions and/or other amounts payable to the local government or other authority for, or on account of fire protection services.

**Supply** has the meaning provided for that word in the GST Law.

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**Term** means the term of this Lease, being the period from and including the Commencement Date to and including the Expiry Date.

**Utilities** means those Services provided by an external provider and for which the Lessor has an account such as electricity and/or telecommunications.

**2.2 Interpretation**

- (a) Words importing the singular number include the plural and vice versa.
- (b) Reference to a person includes any corporation and vice versa.
- (c) The respective obligations of each party under this Lease are separate and independent, and continue throughout the Term and any period of renewal and holding over (unless the context provides otherwise).
- (d) If any term of this Lease becomes unenforceable, that term will not affect the validity of the remaining terms of this Lease.
- (e) Reference to a Law includes all Laws amending or replacing a Law.
- (f) Reference to an Authority or body that have ceased to exist or been reconstituted, will constitute a reference to the Authority or body established in lieu of the initial Authority or body.
- (g) Where two or more persons are Lessees, the obligations of the Lessee (as the case may be) under this Lease bind them jointly and each of them severally.
- (h) Headings and sub-headings have been included for ease of reference only and have no bearing on the construction of this Lease.

**3. GRANT OF LEASE**

The Lessor grants and the Lessee accepts a lease of the Premises on the terms and conditions set out in this Lease.

**4. RENT AND OTHER CHARGES**

**4.1 Payment of Rent**

- (a) Rent is payable monthly in advance on the first day of each month by instalments each being one-twelfth (to the next whole cent) of the Rent for that Rent Year.
- (b) If the Term commences on a day other than the first day of a month or expires on a day other than the last day of a month, the Lessee must pay to the Lessor Rent for the broken period calculated at a daily rate proportionate to the monthly Rent, and payable on the first day of the broken period.
- (c) If this Lease ends at a time other than at the end of a Rent Year, the Lessee must pay to the Lessor prior to the end of this Lease the proportion of the Rent due at that time and the Parties must pay any monies owing to the other under this clause 4 (subject to any right of set-off) within one month of the Lease ending.

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**4.2 Rent Free**

- (a) Despite clause 4.1(a), Rent will not be payable by the Lessee for the first three months of the Term.
- (b) Clause 4.2(a) will not apply if the Lessee is in breach of this Lease.

**4.3 Rent Reviews**

- (a) Rent Reviews occur on the Rent Review Date and in accordance with the Rent Review Method.
- (b) Pending determination of the Rent for any Rent Year, Rent is paid at the rate payable at the end of the previous Rent Year.
- (c) If the Lessor does not undertake a Rent Review for a Rent Year, then the Lessor may at any time throughout the Term or after the Expiry Date recover from the Lessee the difference between the Rent that was paid by the Lessee and the Rent that ought to have been paid had the Rent Review occurred.

**4.4 Payment of other charges**

- (a) The Lessee must pay by the due date all Utilities and Statutory Charges in respect of the Premises.
- (b) The Lessee is responsible for establishing accounts in its own name wherever possible.
- (c) Where accounts are not separately established in the Lessee's name and are received by the Lessor, the Lessee shall be required to reimburse the Lessor for those costs, within fourteen (14) days of receipt of a tax invoice from the Lessor.

**4.5 Costs of Lease**

The Lessee must pay upon demand:

- (a) the survey fees and registration fees associated with the registration of this Lease; and
- (b) all costs incurred by the Lessor where the Lessee requests a variation to the terms of the Lease.

**4.6 Costs of notices, re-entry and consents**

The Lessee must, upon demand by the Lessor, pay all costs (on a solicitor and own client basis) and expenses incurred by the Lessor in relation to:

- (a) any notice lawfully given to the Lessee pursuant to this Lease and any actions taken to enforce the performance of the Lessee's obligations under this Lease;
- (b) the lawful determination or attempted determination of this Lease, or the lawful re-entry or attempted re-entry by the Lessor into the Premises;
- (c) the surrender of this Lease (including any duty and registration fees);
- (d) the consideration of any consents by the Lessor; and

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- (e) the Lessor, without fault, being made a party to litigation commenced by or against the Lessee (other than litigation between the parties), and arising directly or indirectly from the Lessee's occupation of the Premises.

**4.7 Goods and Services Tax**

- (a) Subject to sub-clause (b), any Payment required to be made under this Lease after the GST Date will be increased by any GST payable by the Payee for that Supply. The Payee will deliver a Tax Invoice for the Payment to the Payer at or before the Payment becoming due.
- (b) Where a Payment is a repayment of, or contribution to, a Creditable Acquisition made by the Payee, the Payment will (prior to the increase provided for under sub-clause (a)) be discounted by the amount of the Input Tax Credit to which Payee is entitled for that Creditable Acquisition under the GST Law.

**5. SECURITY DEPOSIT**

- (a) On or before the Commencement Date, the Lessee must give the Security Deposit to the Lessor.
- (b) The Lessor may appropriate or call on any part of the Security Deposit if the Lessee does not comply with any of its obligations under this Lease, without first having to give notice to the Lessee.
- (c) Any appropriation or call up of the Security Deposit by the Lessor will be without prejudice to any other rights or remedies the Lessor may have.
- (d) If the Lessor appropriates or calls on the Security Deposit, the Lessee must give to the Lessor a replacement or additional Security Deposit, within 14 days of the Lessor's request to do so, so that the amount of the Security Deposit held by the Lessor at all times is the amount specified in the Reference Schedule.
- (e) The Lessor will return the Security Deposit, or any unused portion of the Security Deposit to the Lessee at the end of the Lease, or any further term, or any holding over period.

**6. OCCUPATION OF PREMISES**

**6.1 Use and conduct**

- (a) The Lessee must not use the Premises for any use other than the Permitted Use.
- (b) The Lessor does not warrant that the Premises are, or will remain, suitable for the Lessee's use and any warranties as to the suitability of the Premises implied by Law are negated.
- (c) The Lessee must:
  - i) conduct the Permitted Use at the Premises in an orderly manner;
  - ii) comply with all Laws, and obtain and maintain all licences and approvals required at Law to carry on the Lessee's business from the Premises;
  - iii) ensure its operations and the Premises comply with all fire safety legislation and supply all items or equipment required from time to time at its sole cost;



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- iv) promptly notify the Lessor in writing of any damage sustained to the Premises or defective operation of the Appurtenances;
  - v) lock all exterior doors and windows in the Buildings when the Premises are not in use;
  - vi) keep the Premises free of rodents, vermin and any infectious diseases.
- (d) The Lessee must, as a minimum, keep the Premises open for business in line with the Centre's Operating Hours. Additional hours are permitted at the discretion of the Lessee.
- (e) The Lessee must not:
- i) without the Lessor's prior written consent, mark or damage the Premises, or erect any partitions, fittings or signs to the Premises;
  - ii) use any form of light, power or heat (other than an apparatus for heating beverages, auxiliary power during any power failure or, electricity or gas supplied through meters);
  - iii) interfere with the Services or Appurtenances, or use the Appurtenances for any purpose other than those for which they were constructed;
  - iv) carry on or permit to be carried on any offensive or illegal act, or any act which may void or invalidate any insurances effected by the Lessor in respect of the Buildings and Lessor's Fixtures or any other part of the Premises;
  - v) bring upon the Premises any explosive, flammable or corrosive fluid except that normally used by the Lessee in its business, and only if such fluids are safely confined in containers.
- (f) All social media accounts operated by the Lessee must be operated in a way that is consistent with all policies and procedures adopted by Council from time to time. For the avoidance of doubt the Lessee's obligations include:
- i) regularly monitoring official social media applications administered by the Lessee;
  - ii) exercising responsible management of external comments prior to them being made public.
  - iii) removing any derogatory comments immediately on the Lessee becoming aware of such comments; and
  - iv) ensuring all of the Lessee's comments involving the Lessor are approved by the Lessor prior to posting on social media.
- (g) Co-operation with Centre
- i) The Lessee must at all times cooperate with the operator of the Centre.
  - ii) This includes in relation to:
    - I. Procedures that affect both the operations of the Centre and the Premises (for example, and without limitation, fire evacuation procedures);

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- II. Closing and lock up procedures, where the Centre's closing procedures may impact upon the operation of the Premises.
- (h) Name of Premises
  - i) The Lessee must operate the Premises under whatever name the Lessor lawfully requires.
  - ii) If it requires the Lessee to operate the Premises, or not to operate it, under a particular name:
    - I. The Lessor must notify the Lessee of the requirement; and
    - II. the Lessee will be bound by the requirement upon receiving the notice.
- (i) Subject to the Lessor's rights under this Lease, the Lessee may occupy the Premises during the Term without interruption by the Lessor.

**6.2 Obligations under EP Act**

- (a) The Lessor does not warrant that the Land is not Contaminated Land. The Lessee acknowledges and agrees that it has made the necessary inspections and enquiries to satisfy itself whether or not the Land is Contaminated Land.
- (b) The Lessee must not permit its employees, agents or others (with or without invitation) who may be at or around the Premises to cause the Land to become Contaminated Land. If it does become Contaminated Land, the Lessee must immediately take such remediation measures as reasonably required by the Lessor and the chief executive under the EP Act. If the Lessee fails to take such measures, the Lessor may take such remediation measures as the agent of the Lessee and at the expense of the Lessee, which will constitute a liquidated debt immediately due and owing by the Lessee to the Lessor and payable on demand made by the Lessor.
- (c) The Lessee must indemnify and keep indemnified the Lessor against any claim, damage, liability or expense which the Lessor may be, or becomes, liable (during or after the Term) because the Lessee fails to comply with sub-clause (b).

**7. MAINTENANCE AND REPAIR OF PREMISES**

**7.1 Obligation to clean, repair and maintain**

- (a) The Lessee must:
  - i) keep the Premises (including the external surfaces) clean and tidy;
  - ii) not allow any accumulation of useless property or rubbish at the Premises.
- (b) The Lessee must maintain the Premises and all Services in good condition as at the Commencement Date, except for:
  - i) fair wear and tear, subject to the express obligations of the Lessee in this clause 7.1, and then only if the Lessee has taken all reasonable measures to ensure that any damage attributed to fair wear and tear will not contribute to any further damage to the Premises;

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- ii) damage caused by an event of Force Majeure;
  - iii) damage by a structural defect at the Premises, provided that damage is not caused or contributed to by the Lessee.
- (c) Without limiting the generality of sub-clause (b), the Lessee must:
- i) maintain the doors, locks, windows and fittings of the Premises in good condition and efficient working order as at the Commencement Date;
  - ii) replace any broken light bulbs, tubes or glass at the Premises;
  - iii) keep and maintain any signs at the Premises in good repair and of good appearance;
  - iv) maintain the Appurtenances in good condition and efficient working order;
  - v) where an airconditioning system has been installed at the Premises, enter into and keep current service and repair contracts for the airconditioning system;
  - vi) maintain and be responsible for the regular emptying of the grease trap which services the Premises at its sole cost.
- (d) Replacement of Lessor Assets
- i) If the Lessor's Assets are damaged as a result of the acts or omissions of the Lessee it must replace the item with an item of similar value and quality at its cost.
  - ii) If Lessor's Assets require replacement due to no fault of the Lessee the Lessor is not obliged to replace them.

**7.2 No alterations without consent**

- (a) Subject to 7.2 (c), the Lessee must not make any alterations or improvements ("**Works**") to the Premises or Services without the Lessor's prior written consent, which (should it be forthcoming) will include the following conditions:
- i) The Lessee must provide detailed plans of the Works to the Lessor who may, at the Lessee's cost, refer the plans to the Lessor's architect for its approval;
  - ii) The Lessee must obtain all relevant Authority approvals to the Works before commencing the works. If required by the Lessor, the Lessee must construct the Works under the supervision of the Lessor's architect (with the cost of the supervision to be borne by the Lessee);
  - iii) The Works must be carried out in a proper and workmanlike manner, and at the cost of the Lessee, by contractors who have a current public liability insurance policy for at least \$20,000,000.00 and have previously been approved by the Lessor; and
  - iv) The Lessee must indemnify and keep indemnified the Lessor against all claims, expenses and losses incurred by the Lessor relating to the construction of the Works.

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- (b) For avoidance of doubt, any Works installed by the Lessee shall remain part of the Premises upon termination of this Lease and the Lessor shall not be liable to pay any amount to the Lessee in compensation for the Works.
- (c) The Lessee may repair or replace the existing floor in the Premises or part thereof to an appropriate standard as required for the operation of the Business subject to obtaining all necessary approvals and permits in compliance with all laws and the provisions set out in clause 7.2 (a).
- (d) All costs incurred with the Works including the repair or replacement of the floor in the Premises in accordance with 7.2 (c) are payable by the Lessee.

**8. PERSONAL PROPERTY SECURITIES**

8.1 Notwithstanding anything to the contrary express or implied in this Lease, the parties agree that the Lessor retains full title to the Lessor Assets and title will not at any time pass to the Lessee notwithstanding:

- (a) the delivery or collection of the Lessor Assets to/by the Lessee (as the case may be); and/or
- (b) the possession and use of the Lessor Assets by the Lessee.

8.2 The Lessee acknowledges that the Lessee has the right to possess the Lessor Assets as a mere bailee only and will deal with the Lessor Assets in such a manner which enables it to be clearly identified as Lessor Assets belonging to the Lessor and does not have any right to pledge the Lessor's credit in connection with the Lessor Assets and agrees not to do so.

8.3 The Lessee acknowledges and agrees that:

- (a) by agreeing to and/or accepting or adopting this Lease the Lessee grants a purchase money security interest to the Lessor in the Lessor Assets to secure the Lessor's interest in the Lessor Assets and if a purchase money security interest is not able to be claimed on the Lessor Assets by the Lessor for any reason, the Lessor will have a general security interest in the Lessor Assets;
- (b) it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal possession of or otherwise deal with the Lessor Assets without the express written consent of the Lessor;
- (c) it will, if requested by the Lessor, return the Lessor Assets to the Lessor following non-fulfilment of any obligation of the Lessee (including payment of moneys) without limiting any other right the Lessor may have;
- (d) it will deliver up the Lessor Assets at the end of the Term and give the Lessor or its agents or authorised representatives the right to enter any premises occupied by the Lessee and any premises where the Lessor believes any Lessor Assets may be stored (without liability for trespass or any resulting damage) and to use the name of the Lessee and to act on its behalf, if necessary, to recover possession of the Lessor Assets and agrees to indemnify the Lessor and its agents and/or authorised representatives from any damage, injury and/or loss arising from such recovery or attempted recovery of the Lessor Assets from the Lessee's possession or control;

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- (e) it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the Lessor Assets on trust for and as agent for the Lessor immediately when they are receivable or are received;
- (f) the Lessor may recover as a debt due and immediately payable by the Lessee all amounts owing by the Lessee to the Lessor in any respect even though title to the Lessor Assets has not passed to the Lessee; and
- (g) the Lessee unconditionally and irrevocably appoints the Lessor as its attorney to do any of the acts and matters set out in this clause 8.

**8.4 Further Supplies**

The parties acknowledge and agree that any provision of any additional Lessor Assets made by the Lessor to the Lessee during the Term which is not specifically set out in this Lease is deemed to form part of this Lease and is subject to the terms of this Lease.

**8.5 Enforcement**

- (a) The enforcement provisions contained in this Lease are in addition to any rights available to the Lessor under the PPSA and apply to the maximum extent permitted by law.
- (b) Without limitation to clause 8.5(a) and any other provision of this Lease section 125, 129(2), 142 and 143 of the PPSA are contracted out of.

**8.6 Interpretation**

- (a) A term used in this clause is taken to have the meaning defined under the PPSA.

**9. COMMON AREAS**

**9.1 Right to Use**

- (a) Subject to the terms of this Lease, the Lessor grants to the Lessee the right in common with other occupants of the Building to use the Common Areas, but reserving to the Lessor the full and exclusive right to grant, approve of and receive all revenue from concessions and permits whether for advertising or otherwise from time to time granted by the Lessor in respect of the Common Areas or any part thereof.
- (b) The Lessee must not restrict access or interrupt or interfere with operations of other occupants of the Building.

**9.2 Common Areas**

- (a) Subject to the limitations and restrictions herein contained and any rules and regulations from time to time in force, the Lessor shall permit the Lessee and its lawful invitees in common with others having the like rights to exercise and enjoy the following rights:-
  - i) the right to pass and repass whilst on foot and without animals over and through all vestibules, passages and stairways in the Common Areas;

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- ii) the right to use any toilets, washrooms and other facilities from time to time provided by the Lessor for the occupants of the Building and their employees, customers, clients and invitees, together with adequate means of access thereto and therefrom.

**9.3 Obstruction of Driveways**

The Lessee shall prohibit its employees, service suppliers, and others over whom it may have control from parking vehicles or otherwise obstructing in any manner howsoever the entrances, exits and driveways in and to the Common Areas.

**9.4 Closure of Common Areas**

Notwithstanding anything herein contained or implied to the contrary, the Lessor may at its absolute discretion restrict access to any parking areas or parts thereof and may close off all or any of the entrances or exits thereto and any of the driveways therein and may also restrict access to all or any of the other parts of the Common Areas during the periods outside the normal trading hours from time to time prevailing in the Building.

**9.5 Use of Appurtenances**

The Lessee shall not use or permit persons under its control to use the Appurtenances contained in or about the Common Areas for any purpose other than those for which the same were constructed and shall not place or permit to be placed therein any substances which they were not designed to receive.

**9.6 Interference with Services**

The Lessee shall not interfere with or permit any person under its control to interfere with the Services or Appurtenances contained in or about the Common Areas.

**9.7 Maintenance of Common Areas**

The Lessor shall keep and maintain in good order and repair all Common Areas from time to time provided for the use of the licensees of the Building and their respective servants, employees, customers, clients, invitees and licensees.

**9.8 Cleaning and Consumables**

- (a) Subject to (b) the Lessee, jointly with other occupants of the Building must maintain the Common Areas in a clean and tidy condition at its cost. Consumables required for use in the Common Areas are the responsibility of the Lessee jointly with other occupants of the Building.
- (b) The Lessee must provide tables and chairs for the part of the Common Area adjacent to the Premises at its cost and maintain this area and all equipment in good and clean condition, at its cost.

**9.9 Directory Boards**

Any directory boards provided by the Lessor in the Common Areas shall be under the sole control of the Lessor who may allot space therein for the names and descriptions of the occupants of the Building.

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**9.10 Rules and Regulations**

- (a) The Lessor may from time to time promulgate rules and regulations, not to be inconsistent with the terms of this Lease, in relation to the Common Areas, including but not limited to:-
- i) the use, safety, care and cleanliness thereof;
  - ii) the preservation of good order therein;
  - iii) the comfort of persons lawfully using the Common Areas;
  - iv) the location of garbage and refuse therein pending its removal;
  - v) the closure thereof or any part thereof outside of normal business hours;
  - vi) the external appearance of the Building.

Any such rules and regulations may from time to time be repealed, amended or added to at the discretion of the Lessor and upon notice in writing given by the Lessor to the Lessee, shall be and become as binding upon the Lessee as if the same were expressly set forth in this Lease.

**10. RESERVATIONS**

**10.1 Right of entry**

The Lessor reserves the right to:

- (a) at all reasonable times enter and view the Premises. If the Lessor considers it necessary, the Lessor may leave a notice at the Premises requiring the Lessee, within a stated period, to carry out a repair or take the required action for the Lessee to comply with the terms of this Lease;
- (b) at all times effect any works to the Premises considered necessary by the Lessor for the safety or preservation of the Premises or to comply with any Laws. The Lessor will (except in an emergency, the existence of which shall be determined by the Lessor acting reasonably) carry out the works in a manner which minimises, so far as practicable, interruption to the Lessee's business;
- (c) at all reasonable times of the day enter the Premises with prospective lessees of the Premises during the period of three calendar months immediately preceding the Expiry Date.

**10.2 Third party interests**

- (a) The Lessee must during the Term permit any person having any interest in the Premises superior to or concurrent with the Lessor to exercise the Lessor's and that person's lawful rights.
- (b) The Lessor reserves the right to grant, and the Lessee's rights under this Lease are subject to, any easements or arrangements the Lessor makes regarding the Land for the purposes of providing access to the Land or the provision of any services to the Land, provided that such easements do not substantially interfere with the Lessee's rights under this Lease.

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**11. INSURANCES AND INDEMNITIES**

**11.1 Insurances**

- (a) The Lessee must take out and maintain in the Lessee's name with the Lessor's interest noted, a standard public liability insurance policy with an insurance company approved by the Lessor, for at least the amount specified in the Reference Schedule. If required by the Lessor, the Lessee must extend this policy to cover risks of an insurable nature regarding any indemnities that the Lessee has provided to the Lessor under this Lease.
- (b) The Lessee must take out and maintain a plate glass insurance policy in the Lessee's name with the Lessor's interest noted, against the breakage of all plate and other glass in the Premises. The policy must be with an insurance company approved by the Lessor.
- (c) The Lessee must take out and maintain an insurance policy to the replacement value of the Lessee's property and fittings at the Premises.
- (d) If requested by the Lessor, the Lessee must produce to the Lessor evidence of any insurance policies (including renewals) effected by the Lessee under this clause 11.1.
- (e) The Lessee must not do anything which could:
  - i) prejudice any insurance of the Premises or property in the Premises;
  - ii) increase the premium for that insurance without the Lessor's consent.
- (f) If the Lessee does anything that increases the premium of any insurance the Lessor has in connection with the Premises, the Lessee must pay the amount of that increase to the Lessor on demand.

**11.2 Indemnities**

- (a) The Lessee occupies and uses the Premises at its own risk. The Lessor is not liable in any circumstances to the Lessee for any damage to the Lessee's property in or about the Premises, interruption to the Services or Appurtenances nor any loss of profits by the Lessee.
- (b) The Lessee must indemnify and keep indemnified the Lessor (during and after the Term) against all actions, losses and expenses incurred by the Lessor:
  - i) for any loss, damage, death or injury caused by, or incidental to, the Lessee's use of the Premises or by the escape of any water, fire, gas, electricity or other such agent from the Premises, except where the Lessor has caused or contributed by negligence, wilful act or omission;
  - ii) which are caused by, or incidental to, the Lessee's failure to comply with this Lease.
- (c) Notwithstanding anything in this Lease to the contrary, the Lessor will not be in default of this Lease for a remediable breach, unless the Lessee has given written notice to the Lessor of the breach, and the Lessor has failed to remedy the breach within a reasonable period of time.



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**12. SUBLETTING, ASSIGNMENT AND ENCUMBERING**

**12.1 Subletting, Assignment and encumbering**

The Lessee must not without the prior written consent of the Council:

- (a) sublet or in any manner part with possession of the Premises; or
- (b) assign or transfer the Lease to any third party, subject to clause 12.2; or
- (c) mortgage or otherwise encumber the Lessee's interest in this Lease.

**12.2 Assignment**

- (a) The Lessee must not assign this Lease without the prior written consent of the Lessor. The consent will not be unreasonably withheld, if:
  - i) the proposed assignee is a respectable and financially responsible person with suitable prior business experience and at least equal trading and turnover potential in conducting a business substantially similar to that of the Lessee. The Lessee has the onus of proving these requirements to the satisfaction of the Lessor;
  - ii) the Lessee pays the Lessor's costs and expenses of, and incidental to, making enquiries regarding the suitability of the proposed assignee;
  - iii) at the date of assignment, the Lessee has paid all Rental and other moneys owing to the Lessor, and has otherwise complied with all of its obligations under the Lease;
  - iv) the proposed assignee enters into a deed in the form required by the Lessor and prepared by the Lessor's solicitors at the Lessee's expense. Under the deed, the proposed assignee must covenant with the Lessor to observe the terms of the Lease and appoint the Lessor its attorney for the purposes described in clause 18.1 (Power of attorney). Where the proposed assignee is a corporation, the Lessor may require the directors or principal shareholders of the proposed assignee, or both, to guarantee the proposed assignee's obligations under that deed; and
  - v) the Lessee assigns its interest in any Security Bond or the proposed assignee provides a replacement Security Bond or Bank Guarantee;
- (b) If the Lessor must obtain the consent of any other person or authority to the assignment of the Lease, the Lessor's consent will be deemed to be conditional upon that consent being received. The Lessee is liable for the Lessor's costs and expenses associated with seeking, obtaining and documenting the consent of any other such person or authority to the assignment.

**13. DAMAGE OR DESTRUCTION OF PREMISES**

**13.1 Abatement of rental and suspension of covenant to repair**

- (a) If, without any neglect or default by the Lessee, all, or part, of the Premises are damaged or destroyed by any flood, storm, riot, war or act of God which renders the Premises wholly or partially unfit for use by the Lessee in conducting its business, payment of the Rental or a

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proportionate part, (according to the damage sustained) will abate. The Lessee's covenants to repair under this Lease will suspend until the restoration of the Premises.

- (b) Notwithstanding sub-clause (a), the Lessor is not required to restore the Premises to its former specifications provided that the layout and the dimensions of the Premises and Services are not substantially different to their state and condition prior to the damage or destruction. Clause 8.2 applies to any works required to be undertaken by the Lessee.
- (c) The Lessee will during any period of repair of the Premises continue to provide its services as far as practicable having regard to the nature of the Lessee's services and the extent of the damage to the Premises.

**13.2 Parties may terminate if no reinstatement**

If, without any neglect or default by the Lessee, the Premises are damaged or destroyed by any flood, storm, riot, war or act of God so as to render the Premises:

- (a) wholly unfit for use by the Lessee and the restoration of the Premises by the Lessor has not substantially commenced within a reasonable period of time from the damage occurring, the Lessee may give a written notice to the Lessor stating that the Lessee will terminate the Lease if the restoration of the Premises has not substantially commenced within three months of the date of that notice. If the restoration has not substantially commenced within that time and continues not to be substantially commenced, the Lessee may terminate this Lease; or
- (b) wholly or substantially unfit for use by the Lessee, the Lessor may, in lieu of restoring the Premises, give written notice to the Lessee terminating this Lease.

This termination will not prejudice either parties' rights regarding any antecedent breach of this Lease.

**13.3 Arbitration of disputes**

- (a) If a dispute arises between the parties in respect of this clause 15, the dispute must be submitted for arbitration to an independent arbitrator appointed by the president of the Queensland Law Society Incorporated, whose decision will be conclusive and binding on the parties. The submission will be deemed to be a submission to arbitration within the meaning of the *Commercial Arbitration Act 2013*. A determination from arbitration under this clause will be a condition precedent to the parties commencing legal proceedings relating to the dispute.

**14. DEFAULT OF LESSEE**

**14.1 Lessor may rectify**

- (a) If the Lessee fails to perform any of its obligations under this Lease, the Lessor may, in its absolute discretion (as the agent of the Lessee) do all such things and incur such expenses as are necessary to perform these obligations.
- (b) All of the Lessee's costs associated with or incidental to taking a step under subclause (a) of this clause shall be recoverable from the Lessee as a liquidated debt and shall be payable on demand.

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14.2 **Overdue payments**

- (a) If the Lessee fails to pay any money payable on demand within 14 days of the Lessor's demand, or fails to pay any other money due under this Lease within 7 days of their due date, the Lessee must pay to the Lessor interest accruing daily at the Default Rate:
  - i) on the money owing from the payment due date until the money is paid; and
  - ii) upon any judgment the Lessor obtains against the Lessee from the date of the judgment until the debt is satisfied.
- (b) Interest is capitalised on the last day of each month and payable on the first day of the next month. The interest is recoverable in the same manner as the Rent in arrears.
- (c) If an amount of Rent, or any other money due under this Lease, remains unpaid by the Lessee as a result of consecutive breaches of the same term of this Lease, interest at the Default Rate accrues on that amount from the date when the breach first occurred.
- (d) Without prejudice to any other remedy, the Lessor may sue the Lessee for any money owing by the Lessee under this Lease. Neither the institution of legal proceedings nor the entering of judgment by a court will bar the Lessor from bringing any subsequent suits against the Lessee for any other money owing by the Lessee to the Lessor under this Lease.

14.3 **Definition of default**

The Lessee will be in default of this Lease, if:

- (a) any part of the Rent is in arrears for 7 days, whether demanded or not;
- (b) any money (other than the Rent) payable by the Lessee under this Lease on demand is not paid within 14 days of the Lessor making such a demand, or if any other money payable by the Lessee under this Lease is not paid by the payment due date;
- (c) the Lessee fails to comply with a term of this Lease;
- (d) the Lessee (except for the purpose of reconstruction) becomes bankrupt, insolvent, under administration, in liquidation or receivership, or otherwise without full capacity; or
- (e) the Lessee's interest under this Lease is taken in execution under any legal process.

14.4 **Rights upon default**

- (a) If the Lessee defaults under this Lease, the Lessor may (without prejudice to any other rights):
  - i) subject to any prior notice required by Law, re-enter and take possession of the Premises and eject the Lessee and any persons in possession of the Premises (which may be by force, if necessary), from which time this Lease will be terminated;
  - ii) terminate this Lease by giving written notice to the Lessee; or

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- iii) by giving written notice to the Lessee, elect to convert the unexpired residue of the Term to a monthly tenancy. The Lease will be terminated and the Lessee will hold the Premises from the Lessor pursuant to clause 15.6 (Holding over).
- (b) Upon re-entry to the Premises, the Lessor may remove any fittings, additions, signage, chattels or other property at the Premises and store them at the cost of the Lessee (those costs are payable by the Lessee to the Lessor on demand) without being guilty of conversion or liable for any loss or damage to these items. If the Lessee fails to claim the items within 14 days of removal, those items are deemed abandoned by the Lessee and will the Lessor may elect to either:
  - i) deem any fittings, additions, signage, chattels or other property not removed from the Premises as abandoned and such items shall become the property of the Lessor; or
  - ii) remove any fittings, additions, signage, chattels or other property not removed from the Premises and dispose of them, with any costs associated with such removal and disposal recoverable from the Lessee as a liquidated debt, payable on demand.

**15. END OF LEASE**

- 15.1 The Lessee must at the end of the Lease peacefully yield up the Premises in the condition required by clause 7.1 (Obligation to clean, repair and maintain) and subclause 15.2, and return to the Lessor all keys and security devices relating to the Premises.
- 15.2 The Lessee must during the last 14 days of the Term remove the fittings, additions, signage and other branding it has erected or affixed to the Premises during the Term or purchased with the consent of the Lessor from a previous lessee, and the Lessee must make good any damage caused in the removal.
- 15.3 At the end of the Lease, the Lessor may elect to either:
  - (a) deem any fittings, additions, signage, chattels or other property not removed from the Premises as abandoned and such items shall become the property of the Lessor; or
  - (b) remove any fittings, additions, signage, chattels or other property not removed from the Premises and dispose of them, with any costs associated with such removal and disposal recoverable from the Lessee as a liquidated debt, payable on demand.
- 15.4 The Lessee must, immediately prior to vacating the Premises, paint the interior parts of the Premises which have been previously painted with two coats of first quality paint in a workmanlike manner and in the colour as directed in writing by the Lessor.
- 15.5 The ending of this Lease does not affect any of the Lessor's rights against the Lessee on account of any antecedent breach by the Lessee of a term of this Lease.
- 15.6 **Holding over**
  - (a) If the Lessee remains in occupation of the Premises after the expiration of the Term with the consent of the Lessor, the Lessee becomes a monthly tenant. The Lessee continues to pay the same amount of Rent, and other money under this Lease in accordance with this Lease.
  - (b) The monthly tenancy created under sub-clause (a) will continue on the same terms of this Lease (so far as the terms can be applied to a monthly tenancy) until either party gives the other party

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one month's written notice terminating the tenancy. However, if the Lessee is in default, the Lessor may give 72 hours written notice to the Lessee terminating the tenancy.

**16. OPTION TO RENEW**

16.1 This clause applies if an option to renew is specified in the Reference Schedule.

16.2 If the Lessee punctually and properly performs its obligations under this Lease, the Lessee has the option, exercisable not less than two (2) but not more than six (6) months prior to the expiry of the Term, to renew this Lease for the option period specified in the Reference Schedule, commencing on the day after the Expiry Date and continuing on the same terms as this Lease, except that:

- (a) Rent, will be reviewed in accordance with the applicable Review Method specified in the Reference Schedule; and
- (b) this clause has no further effect unless the Reference Schedule refers to more than one option period, in which case the number of remaining option periods shall be reduced by one upon each occasion on which the Lessee exercises an option to renew.

**17. DISCLOSURE STATEMENTS**

The Lessee acknowledges receipt of a Disclosure Statement complying with section 22 of the *Retail Shop Leases Act 1994* and confirms that it consents to the receipt of this Disclosure Statement by electronic communication.

**18. GENERAL PROVISIONS**

**18.1 Power of attorney**

The Lessee irrevocably appoints the Lessor to be the true and lawful attorney of the Lessee to do the following acts on the Lessee's behalf:

- (a) If the Lessor has lawfully terminated this Lease (proof of which will be the declaration of the Lessor), the Lessor may execute and do all things necessary to register a surrender of this Lease; and
- (b) Substitute the Lessor as the attorney with a purchaser of the Premises for the reversion of this Lease.

**18.2 Consent**

Subject to anything in this Lease to the contrary, any consent which the Lessor is requested to provide under this Lease may, at the absolute discretion of the Lessor, be granted, refused, granted subject to conditions or withdrawn at any time.

**18.3 Waiver**

- (a) A waiver by either party of a term of this Lease will only be effective if it is made in writing by that party. The waiver will not extend to, and act as, a waiver of a term generally.
- (b) If the Lessee is in breach of this Lease, the acceptance by the Lessor of money from the Lessee does not act as a waiver of the Lessor's rights regarding that breach.

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- (c) A delay by the Lessor to exercise its rights under this Lease does not act as a waiver of those rights.

**18.4 Severance**

If a provision of this Lease is void or unenforceable it must be severed from this Lease and the provisions that are not void or unenforceable are unaffected by the severance.

**18.5 Service of notices**

- (a) A notice required to be given by one party to another under this Lease is effectively served, if it is in writing and:
- i) served personally or left for the Lessee at the Premises, upon which the notice will be deemed to have been served immediately;
  - ii) sent by email to the other party's email address, upon which the notice will be deemed to be served at the time the email was transmitted by the sender, provided the sender does not immediately indicate a malfunction in the transmission;
  - iii) sent by facsimile machine to the other party's facsimile machine, upon which the notice will be deemed to be served at the time the facsimile was transmitted from the sending machine, provided the receiving facsimile machine does not immediately indicate a malfunction in the transmission; or
  - iv) forwarded by post addressed to the party at the address specified in the Reference Schedule notice will be deemed to be given on the next week day (other than a public holiday) after which it was posted.
- (b) A party must as soon as possible advise the other party of its new facsimile and address details, if these change from that listed in the Reference Schedule.

**18.6 Time of the essence**

Time is of the essence in respect of the parties' obligations under this Lease.

**18.7 Effect of legislation**

Unless mandatory by Law, any Law (present or future) will not apply to this Lease if it has the effect of prejudicially affecting any of the Lessor's rights under this Lease or is inconsistent with the terms of this Lease.

**18.8 Entire agreement**

- (a) The provisions of this Lease, and any consents given under it, contain the entire agreement as concluded between the parties and no oral or collateral agreements are of any effect.
- (b) No representation by the Lessor regarding the Premises will form an implied or other term of this Lease. The Lessee acknowledges that it has not been induced into this Lease by any representation, made by the Lessor or its agents, that is not included in this Lease.

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**18.9 Lessee's costs**

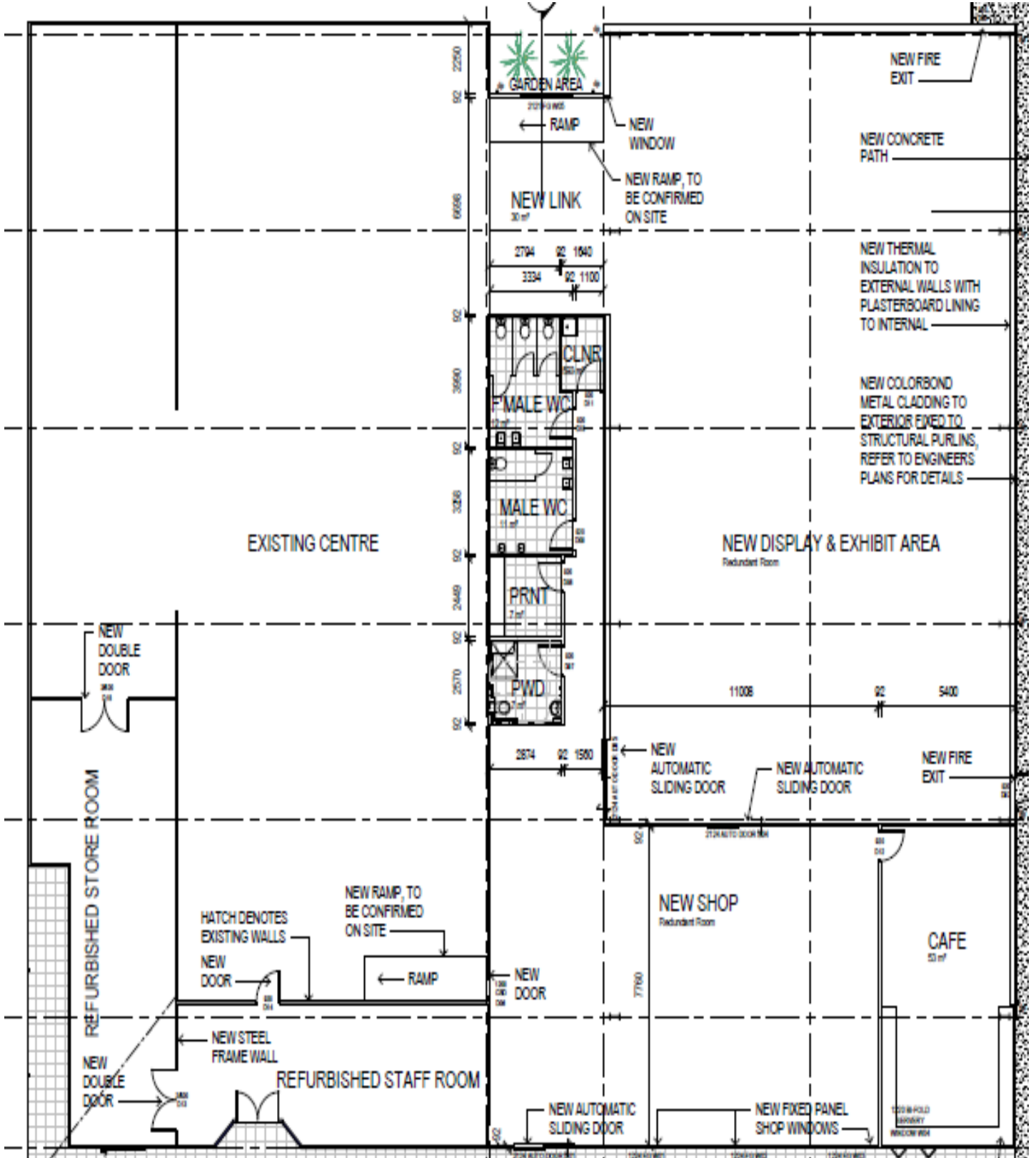
The Lessee must perform all of its obligations under this Lease at its own cost, unless otherwise specified in this Lease.

**18.10 Electronic communication**

The Lessee confirms it consents to receiving this Lease and any notices or communications pursuant to this Lease by electronic communication.

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SCHEDULE 1 - PLAN





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**SCHEDULE 2 - LESSOR'S ASSETS**

- Double fridge
- Benchtops including
- Sink
- Glassware Dishwasher
- Cold display
- Hot display
- Automatic Coffee machine
- Deep fryer
- Stove
- Oven