

# MEMORANDUM

New South Wales  
Section 80A Real Property Act 1900



## AN433565F

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(B) **LODGED BY**

Document Collection Box  <i>iw</i>	Name, Address or DX, Telephone, and Customer Account Number if any	<i>Level 2, St Andrews House, <del>Sydney Square</del> 2000 <del>164 Kent St</del></i>	<b>CODES</b>
	Rebecca Belzer Manager, Legal Services 02 9265 1537 Sydney Diocesan Secretariat Reference: <input type="text"/>		LM CM MM GM BM

(B) **APPLICANT**

ANGLICAN CHURCH PROPERTY TRUST DIOCESE OF SYDNEY
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(C) The applicant requests the Registrar General to record this memorandum, comprising 14 pages including this page, which contains provisions deemed to be incorporated in any instrument which refers to it.

- (D) i For option to renew see clause 23
- ii For option to purchase see clause NOT APPLICABLE

(E) Signature of applicant's representative:

Name of signatory: Penelope Barletta  
 Capacity of signatory (if applicable): Manager, Parish Property Services  
 Date: 20 June 2018

FOR THE PROVISIONS CONTAINED IN THIS MEMORANDUM SEE ANNEXURE A

## CLAUSES IN ANGLICAN CHURCH PROPERTY TRUST DIOCESE OF SYDNEY LEASE MEMORANDUM

## 1. INTERPRETATION

1.1 In this lease, unless the context otherwise requires:

"**Act**" means the Retail Leases Act, 1994 (NSW).

"**Building**" includes any Building erected on the Land or on any other land which is used in conjunction with or in addition to the Land. "Building" also includes any fixtures, fittings, plant, machinery and equipment installed or owned by the Landlord.

"**Land**" means the land on which the Premises are erected and includes the land in any Certificate of Title included in the description of "property leased" on the first page.

"**Landlord**" means the Lessor referred to on the first page and includes, so far as is relevant, the Landlord's executors, administrators, successors and assigns and the Landlord's agents, customers, employees, contractors and invitees.

"**Legislation**" includes all Acts of Parliament, rules, regulations, proclamations, ordinances and by-laws and a reference to any legislation includes a reference to some other legislation that has amended or repealed that legislation.

"**Premises**" means the property leased referred to on the first page of the lease and includes any fixtures, fittings, plant and equipment installed or owned by the Landlord or which will become the property of the Landlord during or at or after the end of the lease.

"**Public Authority**" means a public or local authority constituted by or under an Act (State or Federal), a government department or a statutory body representing the Crown, and includes a person exercising functions on behalf of that authority, department or body.

"**Tenant**" means the Lessee referred to on the first page and, unless inappropriate in the context, the Tenant's executors, administrators, successors and assigns and the Tenant's agents, customers, employees, contractors and invitees.

1.2 Words in the singular or plural are to be taken to include the plural or singular.

1.3 Words referring to one gender are to be taken to include the other gender.

1.4 A reference to a person includes a reference to firms, associations, corporations, companies and institutions.

1.5 A reference to a provision in this lease includes any covenant, agreement, power or provision which is:

- (a) in this lease,
- (b) implied in this lease, or
- (c) taken to be included in this lease.

1.6 A provision that the Tenant must not do anything is to be taken to include a provision that the Tenant must not permit any person to do that thing.

1.7 A provision applying to two or more persons binds them jointly and individually.

1.8 Where possible, each provision of this lease is to be interpreted in such a way as to be effective and valid, but if any provision is void then the void provision is to be severed from the remaining provisions of this lease and the remaining provisions are to be read and construed as if the void provision were not included in this lease.

1.9 This is a deed.

## 2. EXCLUSION OF STATUTORY PROVISIONS

2.1 The provisions implied in every lease by Sections 84 and 85 of the Conveyancing Act, 1919 do not apply to this lease.

## 3. TERM

3.1 The Landlord leases the Premises to the Tenant for the Term in **Item 1 of the Schedule**.

## 4. RENT

- 4.1 (a) The Tenant must pay to the Landlord
- the Rent referred to in **Item 2 of the Schedule**
  - and all other amounts payable by the Tenant on a periodical basis
  - monthly in advance
  - on the first day of the month unless otherwise provided
  - without demand by the Landlord, and
  - without any deduction of any kind.
- (b) Where the rent is payable on the first day of a month and the Term commences on a day other than the first day of a month, the Tenant is to pay a proportionate amount of the Rent for the split periods at the beginning and end of the Term.
- (c) The Rent has been negotiated without any allowance for a Goods and Services Tax (GST). If a GST

*AS or letter*

applies to this lease because it is a taxable supply or for any other reason the Tenant must pay to the Landlord at the same time that Rent is payable, an additional amount on account of GST calculated by multiplying the consideration payable under this lease by the prevailing GST rate. If:

- (i) any part of the consideration payable by the Tenant under this lease includes reimbursement of an amount paid or payable by the Landlord to a third party, and
  - (ii) the Landlord is entitled to an input tax credit in respect of that payment,
- the Tenant is only required to pay the additional amount under sub-clause (i) on the amount of the payment less the input tax credit.
- 4.2 (a) If the whole or any part of the Premises or Building is damaged ("damaged" includes "destroyed"):
- (i) The Tenant is not liable to pay Rent, or any other amount payable to the Landlord in respect of outgoing or other charges, that is attributable to any period during which the Premises cannot be used under the lease or are inaccessible due to that damage.
  - (ii) If the Premises are still useable but the usability is diminished due to the damage, the Tenant's liability for Rent and any amount in respect of outgoing or other charges attributable to any period during which usability is diminished is reduced in proportion to the reduction in usability caused by the damage.
  - (iii) If the Landlord notifies the Tenant that the Landlord considers that the damage is such as to make its repair impracticable or undesirable, the Landlord or the Tenant may terminate the lease by giving not less than seven days' notice to the other. No compensation is payable in respect of that termination.
  - (iv) If the Landlord does not repair the damage within a reasonable time after the Tenant requests the Landlord to do so, the Tenant may terminate the lease by giving not less than seven days' notice of termination to the Landlord.
  - (v) Sub-clauses (i) to (iv) do not affect any right of the Landlord to recover damages from the Tenant in respect of any damage or destruction to which those sub-clauses apply.
- (b) No provision in this lease is to be taken as imposing any obligation on the Landlord to rebuild, reinstate or make the Premises or the Building fit for occupation.
- (c) The termination of this lease does not affect the rights of either the Landlord or the Tenant in respect of anything prior to the termination.
- (d) No provision in this lease limits any liability of either the Landlord or the Tenant to pay compensation to the other in respect of damage to the Premises or the Building.
- (e) If the parties cannot agree on a particular issue under this clause 4.2, either party may request the President of the Australian Property Institute Inc (NSW Division) to appoint a person to determine the issue. So far as is possible, the provisions of clause 5.3 apply as if that clause referred to the determination of a dispute under this clause 4.2.

## 5. RENT REVIEW

- 5.1 (a) "CPI Review Date" means the date or dates referred to in **Item 3 of the Schedule**.
- (b) If a CPI Review Date is referred to in **Item 3 of the Schedule** then the Rent varies on each CPI Review Date in accordance with the formula:

$$R2 = \frac{R1 \times \text{CPI}(2)}{\text{CPI}(1)}$$

Where:

- R2 = Rent payable on and from the relevant CPI Review Date.
- R1 = Rent payable immediately before the relevant CPI Review Date.
- CPI(2) = Consumer Price Index Number (All Groups) for Sydney published for the quarter ending on or prior to the relevant CPI Review Date.
- CPI(1) = Consumer Price Index Number (All Groups) for Sydney published for the quarter ending on or prior to the commencement of the previous year of this lease.

- (c) If the reference base of the Consumer Price Index is changed the appropriate conversion factor is to be applied to preserve the intended continuity of the Consumer Price Index numbers.
- (d) If:
- (i) the Rent calculated under sub-clause (b) is less than the Rent payable immediately before that CPI Review Date, and
  - (ii) this lease is not a retail lease regulated by the Act,
- then the Rent from the CPI Review Date is to remain unchanged.
- 5.2 (a) "Market Review Date" means the date or dates referred to in Item 4 of the Schedule.
- (b) If this lease is not a retail lease regulated by the Act:

- (i) The Landlord may review the Rent on the Market Review Date..
  - (ii) At any time not earlier than four months before each Market Review Date the Landlord may notify the Tenant of the Landlord's assessment of the Rent to apply from the Market Review Date ("Rent Review Notice").
  - (iii) If the Tenant does not within twenty-eight days after service of the Rent Review Notice give notice to the Landlord that the Tenant disputes the Rent assessed by the Landlord ("Dispute Notice"), the amount stated in the Landlord's Rent Review Notice is to become the Rent payable from the Market Review Date,
  - (iv) The Landlord does not lose the right to have the Rent reviewed on a Market Review Date if the Landlord does not give a Rent Review Notice before a Market Review Date.
  - (v) If the Tenant gives a Dispute Notice and the Landlord and the Tenant are unable to agree on the Rent payable from the Market Review Date then either the Landlord or the Tenant may request the President of the Australian Property Institute Inc (NSW Division) to appoint a licensed valuer to determine the Rent. The valuer must:
    - (A) be a member of not less than five years' standing of the Australian Property Institute Inc (NSW Division),
    - (A) have over the previous three years been valuing the rent of the kind of premises leased by this lease,
    - (B) undertake to hand down a determination of the Rent within twenty-one days of being instructed to proceed with the determination,
    - (C) act as an expert and not as an arbitrator,
    - (D) determine the current market Rent of the Premises as at the Market Review Date, taking into account all relevant valuation principles and having regard to the terms and conditions of the lease, and
    - (E) provide a "speaking valuation" (that is, the valuer must give detailed reasons for the determination and specify the matters to which the valuer had regard for the purposes of making the determination).
  - (vi) The Landlord and the Tenant must pay the costs of the valuation equally.
  - (vii) The valuer's determination is final and binding on the Landlord and the Tenant.
  - (viii) Any variation in the Rent takes effect from the Market Review Date.
  - (ix) Until the Rent has been determined the Tenant must continue to pay the Rent and any other amounts which were payable immediately before the Market Review Date.
  - (x) An appropriate adjustment and payment or repayment must be made between the Landlord and the Tenant within 28 days of the date when the valuer hands down the determination of the Rent.
  - (xi) If the Rent determined by the valuer is less than the Rent payable immediately before that Market Review Date, then the Rent from the Market Review Date is to remain unchanged.
- (c) If this lease is a retail lease regulated by the Act:
- (i) In this clause 5.2(c), 'Valuer' means a specialist retail valuer as defined in the Act.
  - (ii) For the purposes of this clause:
    - (A) the current market rent of the Premises is the rent that would reasonably be expected to be paid for the Premises as between a willing landlord and a willing tenant in an arm's length transaction (where the parties are each acting knowledgeably, prudently and without compulsion), determined on an effective rent basis, having regard to:

- (1) the provisions of this Lease;
  - (2) the rent that would reasonably be expected to be paid for the Premises if the Premises were unoccupied and offered for renting for the same or a substantially similar use to which the Premises may be put in accordance with this Lease;
  - (3) the gross rent, less the Landlord's outgoings payable by the Tenant; and
  - (4) rent concessions and other benefits that are frequently or generally offered to prospective tenants of unoccupied retail shops are relevant matters to be taken into account in the assessment of current market rent; and
- (B) the value of goodwill created by the Tenant's occupation and the value of the Tenant's fixtures and fittings on the Premises are to be ignored for the purposes of the assessment of the current market rent.
- (iii) For the purposes of establishing the Rent payable by the Tenant from a Market Review Date the Landlord, no earlier than six months before the Market Review Date and no later than three months before the Market Review Date, may, by written notice to the Tenant, nominate, as the Rent, an amount specified in the notice, to be the current market rent of the Premises at the Review Date.
- (iv) (A) If the Landlord and the Tenant fail to agree in writing on the amount of the current market rent for the Premises within 28 days after the Landlord gives to the Tenant a notice pursuant to clause 5.2(c)(ii), the current market rent for the Premises must be determined by a Valuer appointed by agreement of the Landlord and the Tenant, or failing agreement, by the Registrar, as defined in the Act.
- (B) The person so appointed must act as an expert and not as an arbitrator and his or her decision will be final and binding on the parties.
- (C) The person so appointed must give detailed reasons for his or her determination and must specify the matters to which he or she had regard for the purposes of making his or her determination.
- (D) The amount determined by that person, on and from the Market Review Date, is the Rent payable under this Lease and:
- (1) the instalments of the Rent must be varied accordingly; and
  - (2) any adjustment necessary in respect of any underpayment or overpayment of any instalment of Rent paid at the rate previously applicable must be paid by the Tenant to the Landlord immediately on the decision of that appointed person.
- (v) Where there is a review of the Rent under this clause after the Market Review Date, Rent is payable by the Tenant from the Market Review Date pending the completion of the review at the rate applicable immediately prior to the Market Review Date and an adjustment must be made, as between the Landlord and the Tenant, as soon as the Rent payable from the relevant Market Review Date has been determined.].

## 6. OUTGOINGS

- 6.1 The Tenant must pay to the Landlord the share set out in **Item 11(a) of the Schedule** of the outgoings and in **Item 11(b) of the Schedule** ("Outgoings"). The Tenant's share of Outgoings are payable in respect of any rent free period at the commencement of this lease unless this lease provides otherwise.
- 6.2 The Landlord or any agent of the Landlord may from time to time notify the Tenant of the Landlord's estimate of the Tenant's share of Outgoings calculated on a monthly basis. If the notice is given to the Tenant, the Tenant must pay the Tenant's share of Outgoings referred to in the notice at the same time and in the same manner as Rent is payable under the lease. Failure to pay any such amount by the due date is the same as a failure to pay Rent.

- 6.3 (a) As soon as possible after 30 June in each year the Landlord must notify the Tenant of the amount of each item of expenditure in the Outgoings.
- (b) If the amount payable by the Tenant is greater than the amount paid by the Tenant on account of the Tenant's share of Outgoings the Tenant must pay the difference to the Landlord within 14 days.
- (c) If the amount payable by the Tenant is less than the amount paid by the Tenant on account of the Tenant's share of Outgoings, the Tenant must be credited with the difference and may deduct that amount from the next payment or payments of the Tenant's share of Outgoings.
- (d) If the Term has expired or has otherwise ended, the amount of any credit payable to the Tenant must be paid by the Landlord to the Tenant within 14 days after the Landlord notifies the Tenant of the amount payable unless there are any moneys owing by the Tenant to the Landlord on any account whatsoever in which case the Landlord may retain the amount of the credit and set it off against such other moneys.

## 7. TENANT NOT TO TRANSFER ETC.

- 7.1 (a) The Tenant must not sublet, license, mortgage or charge the whole or any part of the Premises.
- (b) The Tenant must not transfer the lease without the Landlord's consent.
- (c) The Landlord is not required to consider an application for consent to a transfer until the Tenant has remedied all breaches of the lease which are capable of being remedied.
- (d) The Landlord's consent to a transfer of the lease is subject to the following conditions:
- (i) The Tenant must give to the Landlord not less than one month's notice of the Tenant's intention to transfer the lease.
  - (ii) The Tenant must prove to the reasonable satisfaction of the Landlord that the proposed transferee is a respectable, responsible and solvent person capable of properly carrying on the business or use proposed for the Premises.
  - (iii) The Tenant must provide the Landlord with such information as the Landlord may reasonably require concerning the financial standing and business experience of the proposed transferee.
  - (iv) The proposed transferee must enter into a deed with the Landlord in the form reasonably required by the Landlord in which the proposed transferee agrees to comply with the provisions of this lease.
  - (v) The Tenant must enter into a deed in the form reasonably required by the Landlord in which the Tenant releases the Landlord from all claims which the Tenant then has, or may in the future have, against the Landlord in respect of, or in any way arising from, this lease.
  - (vi) The proposed transferee must provide the Landlord with such guarantee of the performance of the Tenant's obligations under this lease as the Landlord requires, including personal guarantees of directors of a corporation.
  - (vii) The Tenant must pay to the Landlord a reasonable fee to cover administrative expenses and also the Landlord's proper legal costs and expenses in relation to the investigation of all matters relevant to the Landlord's consent.
- (e) If this lease is a retail lease regulated by the Act:
- (i) A request for the Landlord's consent to an assignment of this lease must be made by the Tenant in writing and the Tenant must provide the Landlord with the information reasonably required by the Landlord to satisfy the Landlord that the financial resources and retailing skills of the proposed assignee are not inferior to those of the Tenant.
  - (ii) The Tenant must furnish the proposed assignee with a copy of any disclosure statement given to the Tenant under section 11 of the Act in respect of this lease, together with details of any changes that have occurred in respect of the information contained in that disclosure statement since it was given to the Tenant.
  - (iii) For the purpose of enabling the Tenant to comply with paragraph (ii), the Tenant is entitled to request the Landlord to provide the Tenant with a copy of the disclosure statement concerned and, if the Landlord is unable or unwilling to comply with that request within 14 days after it is made, the Tenant may instead give the proposed assignee a landlord's disclosure statement completed by the Tenant to the best of the Tenant's knowledge (but with information as to the then current outgoings in place of information as to estimated outgoings).  
The Landlord must deal expeditiously with a request for consent and is taken to have consented to the assignment if: the Tenant has complied with paragraphs (i) and (ii) and the Landlord has not within 42 days or, if this lease is a retail lease regulated by the Act, 28 days, after the request was made given notice in writing to the Tenant either consenting or withholding consent.
- 7.2 (a) If the Tenant is a company which is not listed on an Australian stock exchange, the Tenant is in breach of the provisions of this lease if, without the Landlord's prior consent,
- (i) a transfer of any share in the capital of the Tenant is registered in its books,
  - (ii) a beneficial interest in any share is dealt with,
  - (iii) a new share is issued, or
  - (iv) any other action is taken,
- which has the effect that the persons who were shareholders of the Tenant at the date of commencement of this lease (or at any later date when the Landlord gave a consent under this clause) together beneficially

hold or control less than 51% of the income or capital participation rights in the Tenant or less than 51% of any shareholders' or directors' voting rights.

- (b) The Landlord's consent is subject to the following conditions:
- (i) The Landlord is not required to consider an application for consent until the Tenant has remedied all breaches of the lease which are capable of being remedied.
  - (ii) The Tenant must give to the Landlord not less than one month's notice of the action intended to be taken.
  - (iii) Each person to whom it is proposed to transfer or issue shares or in whom it is proposed any rights are to become vested ("proposed transferee") must prove to the satisfaction of the Landlord that the proposed transferee is a respectable responsible and solvent person.
  - (iv) Each proposed transferee (and where the proposed transferee is a company, at least two directors of each proposed transferee) must give to the Landlord joint and individual guarantees and indemnities in the form required by the Landlord to secure compliance by the Tenant with the provisions of this lease.
  - (v) The Tenant must pay to the Landlord a reasonable fee to cover administrative expenses and also the Landlord's proper legal costs and expenses in relation to the investigation of all matters relevant to the Landlord's consent.

## 8. OCCUPATIONAL HEALTH AND SAFETY

- 8.1 (a) In this clause 8:
- (i) "WH&S Legislation" means the Work Health and Safety Act 2011 (NSW) and Work Health and Safety Regulation 2017 (NSW).
  - (ii) "Principal Contractor" means a principal contractor under the WH&S Legislation.
  - (iii) "Work" means any work in or on the premises which requires the appointment of a principal contractor.
- 8.2 (a) The Tenant must not carry out any Work on the Premises without the prior consent of the Landlord.  
(b) Before the Tenant commences any Work the Tenant must provide the Landlord with full details of the proposed Work.  
(c) The Landlord may consent, or withhold consent, in its discretion to the carrying out of the Work.  
(d) The Landlord may, as a condition of its consent, appoint a Principal Contractor at the Tenant's cost.  
(e) The Tenant must reimburse all costs and expenses of any kind which the Landlord incurs in relation to the giving or withholding of consent.
- 8.3 If the Tenant commences to carry out any Work without consent the Tenant will have committed an act of default under clause 12 and the Landlord may immediately exercise any right it has under clause 12.2. The Tenant agrees that for the purposes of Section 129 of the Conveyancing Act 1919, one hour is reasonable notice for the purposes of giving notice of the Tenant's default under this clause.
- 8.4 The Tenant is appointed by the Landlord, and the Tenant accepts appointment, as Principal Contractor until such time as the Landlord appoints a Principal Contractor in place of the Tenant.
- 8.5 This clause 8 overrides any other provision of this lease to the extent of any inconsistency.

## 9. USE OF THE PREMISES

- 9.1 (a) The Tenant must only use the Premises for the Permitted Use in **Item 5 of the Schedule**.  
(b) The Tenant must at the Tenant's cost obtain and comply with all consents and approvals required by any Public Authority or under any Legislation necessary for the Tenant to use the Premises for the Permitted Use.
- 9.2 The Tenant must not use the Premises:
- (a) for any illegal or immoral purposes,
  - (b) for the sale of tobacco or the promotion of the use of tobacco in any form,
  - (c) in any way connected with gambling or betting,
  - (d) for the manufacture, sale, distribution, consumption or promotion of the consumption of liquor,
  - (e) in connection with narcotic drugs (including any prohibited drug, prohibited plant or drug of addiction),
  - (f) for trade on Sunday, or
  - (g) for the sale or distribution of publications, films or computer games as presently marked "RC", "Category 1 or 2 Restricted", "X 18+" or "R 18+" by the Classification Board.
  - (h) for the manufacture or sale of abortifacient or abortifacient-type contraceptives and pornography.
- 9.3 The Tenant must:
- (a) install any fire sprinklers and carry out any other fire safety or fire prevention work required by the nature or location of any Tenant's fixtures or by the Permitted Use, and
  - (b) install and pay for any fire extinguishers required by Legislation.
- 9.4 The Tenant must not do anything which causes any nuisance, damage, interference or disturbance to any neighbouring premises or to any person on any neighbouring premises.
- 9.5 The Tenant must not put, leave or abandon (or permit any person to put, leave or abandon) any of its property on

- any part of the Land outside the Premises.
- 9.6 The Tenant must not without the Landlord's prior consent put any sign, name or writing on:
- (a) the outside of the Premises, or
  - (b) on the inside of the Premises if the sign, name or writing is visible from outside the Premises.
- On vacating the Premises the Tenant must remove all signs, names and writing from the Premises and make good any damage caused by their removal.
- 9.7 Subject to clause 9.2(f), where the Tenant has leased the Premises to operate a business, the Tenant must keep the Premises open for periods usual for businesses of that kind. This clause does not require the Tenant to trade at a time when trading would be unlawful.
- 9.8 The Tenant must give to the Landlord prompt notice of any problem with the water, sewerage, gas, electrical, oil, air conditioning or other systems at the Premises or the Building.
- 9.9 The Tenant must not use any part of the plumbing system in the Premises or the Building in a way for which it was not intended.
- 9.10 The Tenant must pay all charges for telephone, electricity, gas, water usage, oil and other services supplied to the Premises.
- 9.11 The Tenant must keep the Premises free of noxious weeds, rodents, vermin, insects and pests.
- 9.12 The Tenant must not bring onto the Premises anything which might cause any damage to the Premises, the Building or the Land or to occupants of the Premises, the Building or the Land, including:
- (a) machinery,
  - (b) plant,
  - (c) equipment,
  - (d) chemicals,
  - (e) dangerous substances.
- This prohibition does not apply where the Permitted Use authorises the thing being brought onto the Premises or the Landlord's consent is obtained.
- 9.13 The Tenant must at all reasonable times permit prospective tenants or purchasers to inspect the Premises.
- 9.14 The Tenant must permit the Landlord to display "For Sale" notices in conspicuous positions on the Premises.
- 9.15 The Tenant must permit the Landlord to display "To Let" notices in conspicuous positions on the Premises at any time after the date which is three months before the end of the Term unless:
- (a) the Tenant has exercised an option to renew, or
  - (b) the Tenant has the right to exercise an option to renew.
- 9.16 Without limiting the Tenant's obligations under the other provisions of this lease, in this clause and the following clause ("Cleaning, Alteration, Work & Repairs"):
- (a) The Tenant must ensure that every person who is in occupation of the Premises, whether as sub-lessee, licensee or otherwise ("Occupier"), complies with the terms of the clauses.
  - (b) The acts or omissions of the Occupier are taken to be the acts or omissions of the Tenant.
  - (c) A reference to the Tenant is taken to be a reference to each Occupier.

## 10. CLEANING, ALTERATION, WORK AND REPAIRS

- 10.1 (a) The Tenant must repair and keep the Premises in as good a state of repair and condition as they were at the time the Tenant (or any one of them) or the Tenant's predecessors in title commenced occupying the Premises. The obligation to repair does not extend to damage from fire, flood, lightning, storm, tempest or reasonable wear and tear, except where the damage is caused by any act or neglect of the Tenant.
- (b) The Tenant must only do work of a structural nature if the need for the work results from any act or neglect of the Tenant or from the Permitted Use.
- (c) The Tenant must keep the Premises tidy and free from rubbish.
- 10.2 Without affecting the general intention of the preceding clause, the Tenant must at the Tenant's expense:
- (a) as often as the Landlord may reasonably require but at intervals of not less than three years during the Term or during continuous occupation by the Tenant, paint in a colour and paper with materials and to standards reasonably determined by the Landlord all parts of the Premises which have been or ought to have been painted or papered,
  - (b) keep clean the Premises and any external surfaces of windows and doors,
  - (c) keep all trade waste and garbage in proper receptacles and arrange for regular removal from the Premises,
  - (d)
    - (i) deal with and manage trade waste as required by law, and
    - (ii) enter into and maintain any agreements relating to trade waste as required by law and provide copies of the agreements to the Landlord.
  - (e) clean any grease trap used exclusively by the Tenant,
  - (f) keep clean and in good repair and condition all the Tenant's fixtures, fittings, plant, furnishings and equipment,
  - (g) repair any damage to, or problems with, the plumbing system caused by the Tenant,
  - (h) replace all broken glass including exterior show-windows with glass of at least the same quality,
  - (i) repair or replace all damaged heating, lighting and electrical installations (including light globes and



- (j) fluorescent tubes) at the Premises,
  - (i) comply with the requirements of any:
    - (i) Public Authority,
    - (ii) Legislation,
    - (iii) owners corporation under the Strata Schemes Management Act, Community Titles Act or any similar Act, or
    - (iv) in the case of company title, the company, affecting or relating to the Permitted Use.
- 10.3 The Tenant must not without the Landlord's previous consent:
  - (a) make any alteration or addition to the Premises,
  - (b) install any water, sewer, gas or electrical fixtures, equipment or appliances for air-conditioning, heating, cooling or ventilating the Premises,
  - (c) mark, paint, drill or in any way deface the Premises, or
  - (d) install any partitions.
- 10.4 The Tenant must comply with the requirements of the Landlord and Public Authorities when carrying out any work on the Premises.
- 10.5 The Landlord may at all reasonable times on giving to the Tenant reasonable notice (except in case of emergency when no notice is required) enter the Premises and view their condition and state of repair.
- 10.6 The Landlord may enter the Premises and do any thing which is the Tenant's responsibility if:
  - (a) the Landlord gives notice to the Tenant that the Landlord requires the Tenant to do the thing which is the Tenant's responsibility, and
  - (b) the Tenant does not do that thing within a reasonable time.
 The expenses and costs of doing the thing must be paid by the Tenant to the Landlord on demand.
- 10.7 The Tenant must permit the Landlord at all times on reasonable notice to enter and carry out repairs, renovations, maintenance or alterations to the Premises or to the Building required by:
  - (a) this lease,
  - (b) any Legislation,
  - (c) a Public Authority,
  - (d) an owners corporation under the Strata Schemes Management Act, Community Titles Act or any similar Act,
  - (e) in the case of company title, the company,
 or otherwise reasonably required by the Landlord if no undue inconvenience is caused to the Tenant.
- 10.8 The Tenant must pay to the Landlord within one month of demand the cost of carrying out any work or doing any thing which it is the obligation of the Tenant to do under this lease but which the Tenant has not done after having been given reasonable notice.
- 10.9 If the Premises or the Building are destroyed or damaged, the Landlord has the right at all reasonable times with workmen and others and all necessary materials and appliances to enter the Premises to protect, make safe or rebuild the Premises or the Building or make them fit for occupation by the Tenant.

## 11. INSURANCE AND INDEMNITY

- 11.1 (a) The Tenant must maintain a policy of public risk insurance with respect to the Premises and the Permitted Use.
- (b) The public risk insurance must:
  - (i) be for not less than the amount in **Item 6 of the Schedule** (or any other amount the Landlord may from time to time reasonably require) in respect of any single event,
  - (ii) note the interest of the Landlord, any person designated by the Landlord, and the Tenant.
- (c) The Tenant must deliver to the Landlord evidence of the renewal of the policy at the commencement of each year of the Term.
- 11.2 The Tenant must not knowingly do any thing on the Premises:
  - (a) by which any insurance in respect of the Premises might be cancelled or made void or voidable, or
  - (b) (except with the Landlord's consent) which might cause the premium on any insurance to increase.
- 11.3 The Tenant must pay all extra insurance premiums payable by the Landlord as a result of any extra risk caused by the Permitted Use.
- 11.4 Any policy of insurance which the Tenant is required to take out under this lease, whether in respect of the property or risk of either the Landlord or the Tenant, must be taken out with an insurance company approved by the Landlord.
- 11.5 The Tenant occupies and uses the Premises at the Tenant's risk subject to the provisions of this lease. The Tenant releases the Landlord to the full extent permitted by law from all claims resulting from any loss, death, damage or injury occurring at the Premises or caused by the Tenant's negligence or deliberate act. This release does not apply where the Landlord has been negligent or has deliberately caused the loss, death, damage or injury.
- 11.6 The Tenant indemnifies the Landlord against, and releases the Landlord from, all claims for which the Landlord becomes liable arising from:

AS

- (a) the negligent use, misuse, waste or abuse by the Tenant of the water, sewerage, gas, electrical, oil, air conditioning or other systems at the Premises or the Building,
- (b) the overflow or leakage of water (including rain water) or sewage in the Premises, into the Premises, or originating within the Premises,
- (c) any defect in the water, sewerage, gas, electrical, oil, air conditioning or other systems at the Premises or the Building of which the Tenant was aware and failed to notify the Landlord,
- (d) anything that the Tenant does or does not do on the Premises,
- (e) any injury which any person may sustain when using or entering or near the Premises, the Land or the Building, whether occupied by the Landlord or the Tenant, as a result of the creation of some dangerous thing or state of affairs by the Tenant and whether or not the existence of such dangerous thing or state of affairs was or ought to have been known to the Landlord.

## 12. DEFAULT

12.1 The Tenant commits an act of default if:

- (a) the Tenant does not pay any Rent or other amount payable by the Tenant within seven days after it becomes payable (whether or not any demand has been made),
- (b) the Tenant does any thing which the Tenant must not do under this lease,
- (c) the Tenant does not do any thing which the Tenant must do under this lease,
- (d) the Tenant does not comply within a reasonable time with any notice given under this lease.

12.2 If the Tenant commits an act of default the Landlord may immediately or at any time afterwards:

- (a) terminate the Lease by re-entry, by notice or by any other action available to the Landlord,
- (b) by notice to the Tenant convert the Term into a monthly tenancy as if the Tenant was holding over upon the expiration of the Term at the monthly rent current on receipt of the notice,
- (c) take any action the Landlord considers necessary or desirable to give effect to the Landlord's rights under this lease,
- (d) elect to treat the conduct or failure to perform as a repudiation of the lease by the Tenant,
- (e) recover from the Tenant an amount equal to the damages the Landlord sustains or may sustain, and
- (f) apply any security deposit or bank guarantee in reduction of the damages suffered by the Landlord.

12.3 (a) Each of the following provisions is an essential term of this lease:

- (i) The requirement to pay Rent and any other amounts payable under this lease during the Term at a date not later than seven days after the due date for payment,
- (ii) Clause 7 - Transfer,
- (iii) Clause 8 - Work Health and Safety,
- (iv) Clause 9.1 - Use.

- (b) The Tenant must compensate the Landlord for any breach of an essential term of this lease. The Landlord is entitled to recover damages from the Tenant for such breaches. The Landlord's entitlement under this clause is in addition to any other remedy or entitlement (including the right to terminate this lease).

12.4 The acceptance by the Landlord of any arrears of Rent or of any late payment of Rent is not to be taken as a waiver of the Landlord's rights.

12.5 (a) If the Tenant's conduct (whether an act or an omission) constitutes a repudiation of the lease or constitutes a breach of any provision of this lease, the Tenant must compensate the Landlord for the damage suffered as a result of the repudiation or breach.

- (b) The Landlord is entitled to recover damages from the Tenant in respect of repudiation of the lease or breach of a provision of the lease for the damage suffered by the Landlord during the entire Term.

- (c) The Landlord's entitlement to recover damages is not affected or limited by any of the following:

- (i) the Tenant abandoning or vacating the Premises,
- (ii) the Landlord electing to re-enter or to terminate this lease,
- (iii) the Landlord accepting the Tenant's repudiation, or
- (iv) either the Landlord's or the Tenant's conduct constituting a surrender by operation of law.

- (d) The Landlord is entitled to commence legal proceedings claiming damages from the Tenant in respect of the entire Term, including the periods before and after the Tenant has vacated the Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in sub-clause (c) and whether the proceedings are instituted before or after such conduct.

## 13. QUIET ENJOYMENT

13.1 If the Tenant pays the Rent and all other amounts payable under this lease, and complies with the Tenant's obligations under this Lease, the Tenant may occupy the Premises for the Term without any interruption or disturbance from the Landlord or from any other person lawfully claiming under the Landlord.

## 14. HOLDING OVER

14.1 If the Tenant continues to occupy the Premises after the expiration or sooner determination of the lease with the

Landlord's consent, the Tenant is a monthly tenant of the Landlord at a monthly Rent equal to one month's proportion of the Rent and other amounts payable by the Tenant immediately before the expiration or determination of the lease. The provisions of this lease (with any necessary amendments) apply to the Tenant's occupation.

## **15. AIR CONDITIONING AND LIFTS**

- 15.1 The Tenant is not entitled to terminate this lease or to claim compensation from the Landlord if any
- (a) air conditioning system,
  - (b) lift, or
  - (c) escalator
- at any time installed in the Building stops working, or if the Landlord is required by law to switch off or to remove the air conditioning system, lift or escalator. To the extent to which the Landlord has control over the air conditioning system, lift or escalator, their use and operation are at the discretion of the Landlord.

## **16. TENANT'S FIXTURES, GOODS ETC.**

- 16.1 If required by the Landlord, the Tenant must remove from the Premises all fixtures installed by the Tenant during the Term, except those which this lease provides are to become the Landlord's property ("the Tenant's fixtures").
- 16.2 The Tenant may remove the Tenant's fixtures during the Term, during any extension of the Term, during holding over after the expiration of the Term and during the Term of a new lease granted to the Tenant.
- 16.3 The Tenant must repair any damage to the Premises caused by the installation or removal of the Tenant's fixtures and restore the Premises to the condition which they should be in at that time as required by clause 10.
- 16.4 The Landlord may deal with the Tenant's goods, equipment, plant, fixtures or fittings as the Landlord thinks fit as if they were the Landlord's own property (and for this purpose appoints the Landlord the attorney of the Tenant) without being liable to the Tenant if any of them are left at the Premises, and if:
- (a) the lease has been determined, or
  - (b) Rent or other amounts payable under this lease are in arrears by more than fourteen days and the Landlord has formed a reasonable belief that the Tenant has vacated the Premises.
- 16.5 The Tenant indemnifies the Landlord against all claims for which the Landlord is or becomes liable to any person as a result of the Landlord's actions under this clause 16.
- 16.6 The Tenant must pay to the Landlord a daily occupation fee at a rate equal to one day's proportion of the Rent and other amounts payable by the Tenant before the expiration or determination of this lease from the date of the determination until the Premises have been restored, and all the Tenant's goods, equipment, plant, fixtures or fittings have been removed.

## **17. NO WARRANTIES**

- 17.1 The Tenant acknowledges that neither the Landlord nor any person on behalf of the Landlord has given any promise, representation, warranty or undertaking as to
- (a) the suitability of the Premises or the existence of any approval from a Public Authority for the Permitted Use,
  - (b) the fittings, finish, facilities and amenities of the Premises, or
  - (c) any other businesses which will or will not be carried on in the Building or on the land.

## **18. LEGAL COSTS**

- 18.1 The Tenant must pay the Landlord's legal costs and all expenses of or incidental to:
- (a) the preparation, completion, stamping and registration of this lease,
  - (b) any renewal of this lease,
  - (c) any transfer of this lease,
  - (d) any application for the consent of any mortgagee,
  - (e) any breach of a provision of the lease by the Tenant,
  - (f) the exercise or attempted exercise of any right of the Landlord under this lease,
  - (g) the fees of all professional consultants properly incurred by the Landlord in consequence of or in connection with any breach of a provision of the lease by the Tenant, and
  - (h) any other matter arising between the Landlord and the Tenant under this lease and in respect of which it is reasonable for the Landlord to obtain professional advice or assistance.
- 18.2 If this lease is a retail lease under the Act, the Tenant is only required to pay those costs and expenses which are permitted to be recovered by a landlord under that Act.

## **19. SERVICE**

- 19.1 Any notice, notification, request or consent required under this lease must be in writing and may be served

- (a) in the manner provided in Section 170 of the Conveyancing Act, 1919 as if the notice were required or authorised to be served by that Act,
- (b) by fax.

## 20. INTEREST

- 20.1 The Tenant must pay to the Landlord interest on all moneys from time to time due but unpaid for a space of seven days calculated on a daily basis at the rate prescribed from time to time for interest on judgments in the Supreme Court. Interest is to be computed from the due date for payment of the moneys in respect to which the interest is chargeable until all moneys have been paid. Interest is taken as being rent in arrears.

## 21. BANK GUARANTEE

- 21.1 The Tenant must provide a bank guarantee as required by **Item 7 of the Schedule** to secure the performance of the Tenant's obligations under this lease.
- 21.2 If the Tenant is a proprietary company or incorporated association (either the original Tenant or a Tenant taking an assignment of the lease) and the company does not procure at least two directors of the company, or one director in the case of a sole director/shareholder company, to guarantee the lease, then the amount of the bank guarantee must be an amount equal to one year's Rent and outgoings.
- 21.3 If the Tenant defaults in the payment of Rent or any other amount payable under this lease or in the performance of any other obligation under this lease, the Landlord may use the bank guarantee towards any claim against the Tenant for Rent and any other amount payable under this lease and for damages for breach of any provision of this lease. The Landlord must notify the Tenant that the bank guarantee has been applied in full or in partial satisfaction of the Landlord's claim and must itemise the Landlord's claim, giving credit for the bank guarantee.
- 21.4 If the Landlord draws on the bank guarantee and the Landlord gives the Tenant a notice stating the amount required to top up the bank guarantee then, no later than 14 days after the Landlord gives the notice, the Tenant must provide a bank guarantee for that amount to the Landlord.
- 21.5 The Landlord is entitled to recover Rent and any other amount payable under this lease and damages for breach of any provision of this lease without being limited to the bank guarantee. When making any claim, the Landlord must credit the Tenant with the amount paid under the bank guarantee.
- 21.6 If the Tenant has vacated the Premises and the Landlord does not have any claim against the Tenant which would entitle the Landlord to call on the bank guarantee, the Landlord must return the bank guarantee within two months after the Tenant completes performance of its obligations under this lease.

## 22. GUARANTEE

- 22.1 In consideration of the Landlord agreeing to grant this lease to the Tenant at the request of the Guarantor in **Item 8 of the Schedule**, the Guarantor (and where there are more than one Guarantor, the Guarantors jointly and individually) enters into this guarantee in favour of the Landlord.
- 22.2 The Guarantor guarantees:
  - (a) the payment of Rent and any other amount specified in this lease, and
  - (b) the compliance with all of the Tenant's obligations specified in this lease throughout the Term, including during holding over as periodical tenant after the expiration of the Term, by the Tenant, its successors and transferees of this lease.
- 22.3 This guarantee covers the whole period while the Tenant occupies or is entitled to occupy the Premises as the Tenant, or while holding an equitable interest over the Premises under an agreement for lease or as a periodical tenant.
- 22.4 This guarantee includes claims by the Landlord:
  - (a) for damages for breaches of provisions of the lease,
  - (b) for breach of any essential term of the lease,
  - (c) for repudiation of the lease or agreement for lease,
  - (d) for the Landlord's reasonable legal and other expenses of seeking to enforce the provisions of the lease against the Tenant, for recovering possession and terminating the lease,
  - (e) for damages if the Tenant abandons or vacates the Premises,
  - (f) for loss or damage arising from a disclaimer of this lease on the Tenant's insolvency as if this lease had not been disclaimed,
  - (g) if the Landlord decides to re-enter or to terminate the lease, including claims for the Tenant's repudiation of the lease.
- 22.5 The Landlord is entitled to require the Guarantor to pay to the Landlord any outstanding Rent and any other amount payable under this lease, or to compensate the Landlord for any damages under this lease, without the Landlord being required to institute any proceedings against the Tenant.
- 22.6 If this lease is terminated by disclaimer by a trustee, liquidator or administrator of the Tenant and the Landlord notifies the Guarantor within ninety days after the date of the disclaimer that the Landlord requires the Guarantor to sign a lease under this clause, the Guarantor must enter into a lease of the Premises for a term from the date of

the disclaimer to the end of the Term at the cost of the Guarantor and on the terms and conditions of this lease as then applying.

- 22.7 This Guarantee is in favour of the Landlord and its successors and assigns being the owner of the Premises from time to time during the continuance of this guarantee.
- 22.8 When there is more than one Guarantor under this lease:
- (a) the term Guarantor in this clause 22 refers to each of the Guarantors and to all of them,
  - (b) their obligations as Guarantor are joint and several,
  - (c) the Landlord may enforce this Guarantee against all or any of them,
  - (d) any notice or demand may be served on all of them by serving any one of them,
  - (e) this guarantee remains binding on the other Guarantors, even if:
    - (i) any Guarantor failed to execute this lease or to enter into this guarantee,
    - (ii) this Guarantee is not binding on any Guarantor,
    - (iii) the Landlord releases any Guarantor from liability under this guarantee.
- 22.9 The Landlord is entitled to require the Guarantor to pay to the Landlord any outstanding Rent or other amount or to compensate the Landlord for any loss or damage without the Landlord having made a claim or instituted any proceedings against the Tenant in respect of such claim or breach.
- 22.10 This guarantee is not discharged and the Landlord's rights against the Guarantor are not affected by any of the following:
- (a) the granting of any indulgence or extension of time by the Landlord to the Tenant or to the Guarantor,
  - (b) the Landlord's neglect or failure to enforce any lease covenant against the Tenant or waiver of any breach or default under this lease,
  - (c) the total or partial release of liability of the Tenant or of a Guarantor by the Landlord,
  - (d) the entry into any arrangement, composition or compromise relating to the lease between the Landlord and the Tenant or any other person,
  - (e) the variation of any provision of this lease between the Landlord and the Tenant without the Guarantor's consent but only if they are minor and are not prejudicial to the Guarantor,
  - (f) the death or bankruptcy or winding up of the Tenant or the Guarantor,
  - (g) the Tenant's liability under this lease being or becoming invalid, illegal, or unenforceable, including through any act, omission or legislation,
  - (h) the disclaimer of this lease following the Tenant's insolvency.
- 22.11 For the purpose of this guarantee, a certificate or statement signed by or on behalf of the Landlord or by the Landlord's solicitors relating to any sum of money claimed by the Landlord to be due from the Tenant under this lease is prima facie evidence of the amount claimed and the facts stated in the certificate or statement.
- 22.12 In respect of any payment made by or on behalf of the Tenant under this lease which is void or is avoided for any reason, the Guarantor remains liable under this guarantee as if that payment had not been made.
- 22.13 Until the Landlord's claims against the Tenant and against the Guarantor have been fully satisfied, the Guarantor will hold on trust for the Landlord any money received by the Guarantor under any arrangement, composition, assignment, liquidation or bankruptcy of the Tenant.

## 23. OPTION

- 23.1 The Tenant has an option to enter into a further lease for the term in **Item 9 of the Schedule**.
- 23.2 The Landlord must at the cost of the Tenant lease to the Tenant (and the Tenant must take as tenant) the Premises for the further term if:
- (a) the Tenant gives notice to the Landlord not more than six months and not less than three months before the end of the Term that the Tenant wishes to renew the lease,
  - (b) the Tenant is not in default under this lease at the end of the Term, and
  - (c) the Tenant has not during the Term committed persistent breaches of this lease.
- 23.3 The renewed lease is to have the same provisions as are in this lease except as follows:
- (a) the Landlord may require the Tenant to provide a security deposit or bank guarantee for, or to increase the amount of an existing security deposit or bank guarantee to, an amount which is reasonable in the circumstances,
  - (b) if the Tenant is a body corporate, the Landlord may require two guarantors to guarantee the lease,
  - (c) the Commencing Date of the renewed lease will be the date of the day after the Terminating Date,
  - (d) the Terminating Date of the renewed lease will be the date of expiry of the term in **Item 9 of the Schedule**,
  - (e) the Rent is the amount determined in the manner set out in this clause 23, and
  - (f) this option to renew is not to be included.
- 23.4 This option may be exercised by, and the renewed lease granted to:
- (a) the Tenant for the time being of the Premises,
  - (b) the survivors of any two or more Tenants who hold the lease as joint tenants,
  - (c) if not all of the Tenants exercise the option, those of the Tenants who do exercise the option.
- 23.5 The Rent for the renewed lease is the current market Rent as agreed between the Landlord and the Tenant in writing.
- 23.6 If the Landlord and the Tenant cannot agree on the amount of the Rent (and if the rent has not been determined in

accordance with clause 23.7) then the Rent is to be determined in accordance with clause 5.3 as if:

- (a) the notice exercising the option is a Dispute Notice, and
- (b) the first day of the new Term is a Market Review Date.

23.7 If this lease is a retail lease regulated by the Act:

- (a) the Tenant is entitled to request a determination of the current market Rent at any time within the period that begins six months before and ends three months before the last day on which the option may be exercised under this lease, but may not make such a request if the Landlord and the Tenant have already agreed as to what the actual amount of that Rent is to be.
- (b) the Tenant makes such a request by giving notice of the request to the Landlord.
- (c) if the Tenant makes such a request, the amount of the current market Rent is to be determined (as at the time of the request) in accordance with the provisions of section 31 of the Act and the period within which the Tenant must exercise the option is varied so that the last day on which the option may be exercised is twenty-one days after the determination of rent is made and notified to the Tenant
- (d) the amount of rent determined under sub-clause (c) is the current market rent for the purposes of the exercise of the option even though it may be a determination of the current market rent as at some earlier time.
- (e) the Landlord and the Tenant must pay the costs of the determination of current market rent in equal shares.
- (f) if the Term is twelve months or less, the periods of six months and three months in this clause 22 are shortened to three months and thirty days respectively.

## 24. TRUSTEE

24.1 The Tenant acknowledges that the Landlord enters into this lease in its capacity as trustee pursuant to the Anglican Church of Australia Trust Property Act 1917. The Landlord will only be liable to the extent of such property as for the time being is in its hands or under its control for the purposes of the Parish in **Item 10 of the Schedule**.